

## **Bail Bond Companies, Individuals or Sureties in the 14<sup>th</sup> Judicial District Court**

### **COMMERCIAL SURETY RULES AND PROCEDURES -**

#### **A. Authorization to Issue Appearance Bonds:**

Except as otherwise provided by law, no Compensated Surety shall be authorized to act as a Surety in this Court until having fully complied with Kansas law, including K.S.A. 22-2806 through 22-2809a, and the rules of this Court, including this Local Rule relating to the justification and approval of sureties, and the issuance of appearance bonds. Persons who are not a Compensated Surety may act as sureties in this Court on a case by case basis without complying with section C if a judge of this Court approves.

#### **B. Definitions:**

As used in this Rule, the terms shall have the following meanings:

"Applicant" means any person applying for approval or having been approved to issue appearance bonds under this Rule, or any previous version of this Rule, as a compensated surety.

"Appearance bond" means a bond certificate issued by a surety which guarantees the appearance of a defendant in the Fourteenth Judicial District at the time specified on the bond and at all subsequent court appearances. In the event of failure to appear at any time specified by the Court, the surety guarantees payment of the amount on the bond.

"Chief Judge" means the Chief Judge of the Fourteenth Judicial District or other Judge of the District Court designated by the Chief Judge of the Fourteenth Judicial District to act on his/her behalf. The Chief Judge may also designate the Clerk of the District Court to perform clerical or administrative duties outlined in this Rule.

"Commercial Surety" means any person or entity who, as surety, issues appearance bonds for compensation, is responsible for any forfeiture, and is liable for appearance bonds written by their authorized agents.

"Bail Enforcement Agent" means a person not performing the duties of a law enforcement officer who tracks down, captures and surrenders to the custody of a court a fugitive who has violated a surety or bail bond agreement, commonly referred to as a bounty hunter.

"Compensated Surety" means any person who or entity that is organized under the laws of the state of Kansas that, as surety, issues appearance bonds for compensation, is responsible for any forfeiture and is liable for appearance bonds written by such person's or entity's authorized agents. A Compensated Surety is either an insurance agent surety or a property surety.

"Insurance Department" means the Kansas Insurance Department.

"Insurance Agent Surety" means a compensated surety licensed by the insurance commissioner to issue surety bonds or appearance bonds in this state and who represents an authorized

insurance company. An insurance agent surety may have other insurance agent sureties working with or for such surety.

"Property Surety" means a compensated surety who secures appearance bonds by property pledged as security. A property surety may be a person or entity, other than a corporation, and may authorize bail agents to act on behalf of the property surety in writing appearance bonds. In the 14th Judicial District, the only property that can be pledged to secure appearance bonds is a valid, current and enforceable irrevocable two-year Letter of Credit starting July 1st in the year of the application in an amount not less than one hundred thousand dollars (\$100,000) issued to the Fourteenth Judicial District, by a state or national banking institution authorized to and doing business in the State of Kansas, guaranteeing payment of any forfeited appearance bonds posted by the Property Surety or his/her Bail Agent(s) on which judgment has been granted. Any supplemental Letter of Credit shall meet all requirements of this Rule and shall not expire until the next June 30th. All such letters of credit must be reviewed by the County Attorney and approved by the Chief Judge. Letters of Credit shall be retained by the Clerk of the District Court, following approval of the application. No other property is acceptable to be pledged from a property surety.

"Bail Agent" means a person authorized by a compensated surety to execute surety bail bonds on such surety's behalf. In the 14th Judicial District, Bail Agents shall have the same continuing education requirements as Compensated Sureties.

"Insurance Company" means any company authorized by the Kansas State Insurance Commissioner to write surety bonds or appearance bonds.

"Surety" means a person or compensated surety, other than a defendant in a criminal proceeding, that guarantees the appearance of a defendant in a criminal proceeding, by executing an appearance bond.

"Unsatisfied Appearance Bond Forfeitures" shall mean appearance bonds, which after thirty (30) days from the granting of judgment on the motion for the same, have not been paid into the Court or the defendant has not been recommitted into custody by the surety or his/her bail agent.

### **C. Criteria for Authorization to Act as Commercial Surety in the Fourteenth Judicial District:**

Every Compensated Surety shall submit an application to the Chief Judge of the 14<sup>th</sup> Judicial District, or the Chief Judge's designee, in each judicial district where such surety seeks to act as a surety. A Compensated Surety shall not act as a surety in such judicial district prior to approval of such application. The application must be filed with the Clerk of the District Court of the 14th Judicial District.

#### **Requirements for Insurance Agents**

1. The application shall include the following information for each insurance agent surety, property surety or bail agent:
  - A. A copy of the applicant's Kansas driver's license or nondriver's identification card;

- B. A statement, made under penalty of perjury, that the applicant is a resident of this state and is not prohibited by K.S.A. 22-2809a(c), and amendments thereto, from acting as a surety;
  - C. A certificate of continuing education compliance in accordance with Kansas law.
2. The application for each insurance agent surety also shall include:
- A. A copy of the qualifying power of attorney certificate(s) issued to such surety by any insurance company;
  - B. A current and valid certificate of license from the insurance department; and
  - C. A current and valid certificate of authority from the insurance department.
  - D. A statement that the applicant has not been convicted of a felony in Kansas or any other jurisdiction, has not in the preceding ten (10) years been convicted of any misdemeanor involving violence, dishonesty, deceit or moral turpitude, is qualified to act as a surety under Kansas law, has read this Rule and the Kansas statutes dealing with appearance bonds in their entirety and agrees to comply with all provisions.
  - E. A completed application including the Authorization for Release of Records, a copy of a valid driver's license or photo identification and a statement of the maximum monetary limit authorized on any individual bond.
  - F. A signed release from the applicant allowing the Court or its designee, to conduct a criminal history records investigation on said individual.
3. The application for each property surety also shall include:
- A. A list of all bail agents authorized by such property surety to write appearance bonds on such property surety's behalf and all documentation from such bail agents demonstrating compliance with subsection of this Rule.
  - B. An affidavit describing the property by which such property surety proposes to justify its obligations and the encumbrances thereon, and all such surety's other liabilities. The description shall include a valuation of the property described therein. If the valuation is not readily evident, an appraisal of the property may be required and, if required, shall be incorporated into the affidavit.
  - C. A property surety authorized to act as a surety in the 14th Judicial District shall be allowed outstanding appearance bonds not to exceed an aggregate amount which is fifteen (15) times the valuation of the property pledged by the property surety. Such property surety shall not write any single appearance bond that exceeds 35% of the total valuation of the property pledged by the property surety.
  - D. A completed application including the Authorization for Release of Records and a statement of the maximum monetary limit authorized on any individual bond.

- E. A signed release from the applicant and any persons authorized by the applicant to issue appearance bonds, allowing the Court or its designee to conduct a criminal history records investigation on said individual(s).
- F. A statement that the applicant has not been convicted of a felony in Kansas or any other jurisdiction, has not in the preceding ten (10) years been convicted in Kansas or any other jurisdiction of any misdemeanor involving violence, dishonesty, deceit or moral turpitude, is qualified to act as a surety under Kansas law, has read this Rule and the Kansas statutes dealing with appearance bonds in their entirety and agrees to comply with all provisions.
- G. Any other information as may be requested by the Chief Judge regarding the applicant concerning his/her ability or qualifications to issue appearance bonds.

**D. Disqualification/Suspension:**

Applicants shall not be approved to issue appearance bonds; or bonding privileges may be suspended or revoked if:

1. The applicant or any authorized agent has been convicted of any felony or within the preceding ten (10) years has been convicted of any misdemeanor involving violence, dishonesty, deceit or moral turpitude.
2. The applicant is not a citizen of the United States.
3. The applicant or any authorized agent does not have current federal or state photo identification.
4. The applicant or any authorized agent has failed to meet financial responsibilities to this or any other Court; or has any pending matters before the Court in which the applicant or any authorized agent has failed to appear as directed. This may be evidenced by a failure to pay a judgment on a bond forfeiture or by any other legal action to collect past due amounts or other commonly accepted indications.
5. The appearance bonds outstanding by a Property Surety and/or his/her Bail Agents exceed an aggregate amount which is fifteen (15) times the amount of the letter(s) of credit issued to the Court.
6. The applicant or authorized agent has provided a false statement in any information submitted to the Court for approval of his/her application or regarding a warrant/appearance bond recall.
7. The applicant or any authorized agent has outstanding warrant(s) issued for his/her arrest for any crime.
8. The applicant or any authorized agent allows an unauthorized person to write an appearance bond(s).

9. An Insurance Agent allows an appearance bond to be submitted to the Court which does not contain an individual, numbered, power of attorney properly executed.
10. The applicant or any authorized agent employs a Bail Enforcement Agent who is not qualified to act as such under the provisions of K.S.A. 22-2809a.
11. The applicant or any authorized agent failed to timely submit a periodic quarterly report as required by Section K of this Rule or to file a renewal application by June 1<sup>st</sup>.
12. The applicant or any authorized agent issues an appearance bond wherein property or services were accepted as compensation.
13. Good cause exists for the Chief Judge to determine that it is not in the best interest of the Court and/or the community to permit the applicant or Surety to write appearance bonds in the Fourteenth Judicial District.
14. Written notice of suspension or revocation of bonding privileges, except for a suspension due to a conviction for a disqualifying crime, exceeding the aggregate amount of bonds approved to be written under the letter(s) of credit or due to failure to pay a judgment within thirty (30) days of it being granted, shall be given to the surety. Such notice of suspension or revocation shall state the reason for the suspension or revocation and be mailed by regular mail to the address on file with the Court as provided in the most current application. Any suspension or revocation under this Rule shall be effective upon signature of the written notice by the Chief Judge.
15. If the suspension or revocation is for failure to pay a judgment within thirty (30) days of it being granted, the suspension shall be effective on the 31st day following judgment without any further action or notice by the Court. The surety may request a hearing before the Chief Judge within fourteen (14) days of the date of suspension, revocation or the notice of suspension or revocation. If such request is made, the suspension or revocation of bonding privileges may be stayed by the Chief Judge pending such hearing which shall be held within fourteen (14) days of the request for hearing.

#### **E. Persons Authorized to Write Appearance Bonds**

As part of the approval process, the applicant shall submit the name(s) and requested information for all proposed Bail Agents of the applicant. Only those persons so approved are authorized to act as a Property Surety or Bail Agents to write appearance bonds. If, following approval, the applicant wants to add additional Bail Agents, the applicant must complete and submit a supplemental application that meets the requirements of this Rule to the Chief Judge and file it with the Clerk of the District Court. The bail agent will not be allowed to write appearance bonds unless and until approved to do so by the Chief Judge or designee. In addition, when Bail Agents are no longer authorized to write bonds or are no longer employed by the Property Surety, the Property Surety shall notify the Chief Judge, in writing, within three (3) business days, that said person is no longer authorized by the applicant to write appearance bonds, or serve as their Bail Agent and the notice shall be filed with the Clerk of The District Court. The Property Surety will remain responsible for any appearance bonds written by the Bail Agent until the notice required is received by the Chief Judge.

The Sheriff shall provide all approved Compensated Sureties equality in exposure. The Chief Judge shall periodically furnish the Clerk of the District Court and the Sheriff a list of approved Compensated Sureties.

Nothing in this Rule shall negate K.S.A. 22-2806 which provides that an appearance bond may be approved and accepted by the Sheriff of Montgomery and/or Chautauqua Counties, according to law.

#### **F. Failure to Appear**

1. An appearance bond issued by a Compensated Surety authorized to transact business in the State of Kansas and in the Fourteenth Judicial District guarantees the appearance of such person in Court at the time specified on the appearance bond and at all subsequent court appearances unless and until the Compensated Surety is released on the appearance bond.
2. If an appearance bond is posted on a charge for which a disposition has not yet been entered, the appearance bond remains in effect until such time as the defendant answers the complaint and sentence or disposition is entered thereon. This would not include future court appearances for review of compliance with court orders. However, if the appearance bond is posted for a non-appearance on a post-conviction or post-diversion matter, the appearance bond remains in effect until final disposition of the matter for which the appearance bond was posted. Upon failure of the defendant to appear as ordered, the Judge shall declare the appearance bond forfeited. The Court may set aside the forfeiture upon such conditions as the Court may impose, if it appears that justice does not require the enforcement of the forfeiture. If the forfeiture is not set aside, the Court shall request the County Attorney to prepare a Journal Entry of Bond Forfeiture of the appearance bond and file a Motion for Judgment on said bond forfeiture to be set for hearing not less than sixty (60) days following the filing of the Motion for Judgment. It is the responsibility of the Surety to be aware of the defendant's required court appearances on the Court's calendar, and to see to it that the defendant appears as ordered. The Surety's liability on the appearance bond is not conditioned upon any notice by the Court, County Attorney or any other person or entity of the defendant's failure to appear.

#### **G. Failure to Produce the Defendant or the Forfeited Funds**

If the defendant is not surrendered or the appearance bond forfeiture paid by the end of the Court's business day on the 30th day following judgment, the Surety's bonding privileges will be suspended at that time. If the Surety is a Property Surety and he/she or one or more of his/her Bail Agents is suspended for non-payment of a judgment, the Property Surety and all of his/her Bail Agents will be suspended. Notification of the suspension of bonding privileges shall be made in writing to the Property Surety and his/her Bail Agents. The letter will be sent by regular mail to the address on file with the Court. Failure to send or receive the letter does not negate the suspension of bonding privileges under this paragraph.

#### **H. Reinstatement of Bonding Privileges**

1. *Nonpayment of a judgment.* If suspended for nonpayment of a judgment, the Surety must pay all judgments for unsatisfied appearance bond forfeitures before consideration will be given for reinstatement of bonding privileges. Once payment in full is made, the following schedule will be followed:  
For the first suspension within a one (1) year period, the Surety's privileges will be suspended for a period not to exceed thirty (30) days after payment. For a second or subsequent suspension within a one (1) year period, the Surety's privileges will be suspended for ninety (90) days after payment.
2. *Exceeding Total Amount of Bonding Privileges.* If the total aggregate amount of outstanding bonds of a bondsman and his/her agents ever exceeds the total amount permitted under this Rule the Chief Judge or designee without notice may immediately suspend the bonding privileges of that surety and agents. The Property Surety and Bail Agents shall not qualify for reinstatement of bonding privileges and reinstatement shall not be considered until the total aggregate amount of outstanding bonds of that Property Surety and Bail Agents do not exceed 75% of the total bonding authority allowed under this Rule. Upon a second violation of Section H.2 within a twelve (12) month period, the bonding privileges shall not be reinstated until at least three (3) months have passed since the property surety qualifies for reinstatement. Upon a third or more violation of Section H. 2 within a twelve (12) month period, the bonding privileges shall not be reinstated until at least twelve (12) months have passed since the property surety qualifies for reinstatement.
3. In order to qualify for reinstatement the Property Surety and Bail Agents(s) while suspended shall continue to meet all obligations under this Rule.
4. Nothing in this Rule or section obligates the Chief Judge to reinstate a suspended or revoked bail agent as soon as he/she may be eligible for reinstatement, nor does it prevent or prohibit the Chief Judge from imposing any other requirements upon a property surety before privileges are reinstated. Nothing in this Rule prevents or prohibits the Chief Judge from permanently revoking a Property Surety's or Bail Agent's bonding privileges.

## **I. Refunds**

If the judgment on the appearance bond forfeiture is paid on time, and the defendant is later surrendered by the Surety, upon request, a partial refund may be allowed as indicated below:

- 1 – 30 days after payment    75% refund
- 31 – 60 days after payment    50% refund
- 61 – 90 days after payment    25% refund

Said request for refunds must be made in writing and filed with the Clerk of the District Court with a copy served upon the County Attorney's Office. No refunds will be given for surrenders that occur in excess of ninety (90) days after payment unless specifically ordered by the Chief Judge after the filing of a proper motion. No refunds will be given unless the defendant is surrendered by the Surety or Agent of the Surety to the Montgomery County Department of Corrections. If the defendant is arrested by law enforcement personnel within ninety (90) days

of forfeiture, without the assistance of the Surety or Agent of the Surety, no refunds will be provided.

#### **J. Surrender**

For purposes of consideration of a refund, a defendant is considered surrendered to the Court when he/she is surrendered to the Montgomery County Department of Corrections. A defendant is not considered surrendered to the Court if the defendant is incarcerated in another County or another State. Upon timely surrender, the Surety will be released from all further liability on the appearance bond.

The Surety, pursuant to K.S.A. 22-2807(3), may provide to the court, prior to judgment on the appearance bond forfeiture, a written statement, signed under penalty of perjury, setting forth the details of the incarceration of the defendant in some location within the United States. Upon receipt of such statement, the Court shall set aside the forfeiture and upon the defendant's return to the Court's jurisdiction, the Surety may be ordered to pay the costs of the return.

#### **K. Periodic Report by Sureties**

All Sureties shall file a quarterly report with the Clerk of the District Court setting forth all active appearance bonds that are outstanding. Said reports shall set forth the required information as of the final day of each calendar quarter and shall be filed no later than ten (10) days following the last day of each quarter.

The report shall include the defendant's name, the Court case number, the date the appearance bond was written, the amount of the appearance bond and the current status of the case. Additionally, if any appearance bond premium is paid in installments, a written copy of the installment plan, executed by all parties, must be submitted with each quarterly report.

A Property Surety shall file the letter(s) of credit used as security for appearance bonds with the Clerk and immediately report any expiration, renewal, cancellation, suspension or revocation of said letter(s) of credit to the Clerk.

The report shall also include a list of appearance bond forfeitures that have been declared on cases in this Judicial District where there are appearance bonds written by the Surety, any judgments granted in those cases and the payment due date of said judgments.

The reports required by this Rule shall be submitted to the Clerk of the District Court in the form directed by the Court.

Failure to submit said report as designated is cause for a suspension or revocation of bonding privileges.

#### **L. Application of Rule to Compensated Sureties Already Approved to Write Appearance Bonds in the Fourteenth Judicial District; Continuation of Bonding Privileges; Time Period for Bonding Privileges**

Any Compensated Surety currently approved to write appearance bonds in the Fourteenth Judicial District shall be required to comply with this Rule as of January 1, 2019. The annual bonding privileges period shall be from July 1<sup>st</sup> through June 30<sup>th</sup> of the following year. In order to retain bonding privileges, a Compensated Surety must submit an application, pursuant to this order, no later than June 1<sup>st</sup> of each year to remain in good standing for the next twelve (12) month bonding period from July 1<sup>st</sup> to June 30<sup>th</sup>. Upon approval of an application, the bonding privileges will be granted and will remain valid for the approved bonding period, at which time it will expire unless renewed.

A Compensated Surety may not submit a new application under this Rule while the Compensated Surety's bonding privileges are suspended or revoked.

A Compensated Surety may withdraw from writing bonds prior to expiration of the bonding authority granted under this Rule. Any withdrawal from writing bonds prior to the expiration of the bonding authority granted under this Rule is not effective until made in writing to the Chief Judge and filed with the Clerk of the District Court, and it shall not result in the early termination or withdrawal of any letter(s) of credit submitted in support of the application(s) submitted under this Rule.

A Compensated Surety's obligations under this Rule shall continue even though the Compensated Surety's privileges have been suspended, revoked or withdrawn.

#### **M. Ability to Sue**

Nothing contained herein shall in any way limit the Court's ability to proceed with any and all proper civil remedies against any Surety, insurance company or banking institution to collect on an appearance bond if payment is not forthcoming upon demand and for the Court to authorize all needed actions to engage in collection efforts, including the engagement of counsel and others to enforce and collect bond judgments.