

IN THE CRIMINAL COURT OF SHELBY COUNTY, TENNESSEE
30TH JUDICIAL DISTRICT AT MEMPHIS
EN BANC

IN RE:)
)
AMENDMENTS TO LOCAL RULES)
SIX AND SEVEN)
)
)

ORDER SOLICITING COMMENTS REGARDING PROPOSED AMENDMENTS
TO LOCAL RULES SIX AND SEVEN

Pursuant to Supreme Court Rule 18, this Court sitting *en banc* hereby solicits written comment regarding the following two proposed amendments to the Rules of Criminal Court for the Thirtieth Judicial District:

RULE SIX

This Court proposes deleting Rule 6.03 in its entirety, as outdated, and renumbering the remaining sections of Rule Six accordingly. Rule 6.03 presently states as follows:

All preliminary motions, including motions to dismiss and motions to suppress evidence, and notice to adversary counsel, required by Rule 12 of the Rules of Criminal Procedure, must be filed in writing not more than twenty (20) days after formal arraignment of the defendant, unless an extension is allowed by the Court for good cause. Upon the filing of a motion to suppress evidence, the defendant shall appear in Court within seventy-two (72) hours and receive an evidentiary hearing date. These evidentiary hearings are to be heard prior to the report date, unless good cause is shown for a continuance. A violation of this requirement and this rule will authorize the Court to enter a summary dismissal of said motion.

RULE SEVEN

This Court proposes deleting Rule Seven in its entirety and replacing it with the new proposed Rule Seven attached to this order as an Appendix. The new proposed Rule Seven, if adopted, will not become effective for professional bail bond companies presently approved to do business in this judicial district until six months after the date of its adoption.

This Court hereby solicits written comments regarding these proposed amendments from judges, lawyers, bar associations, members of the public and any other interested parties. The

deadline for submitting written comments is August 31, 2013. Written comments should be addressed to:

Maerne Bernard, Operations Director
Re: Amendment to Rules Six and Seven
Office of the Criminal Court Clerk, Suite 4-01
201 Poplar Avenue
Memphis, TN 38103

The Clerk shall provide a copy of this order to each professional bail bond company approved to do business in this judicial district, shall post this order on the Court's website, and shall have copies available to members of the public upon request.

IT IS SO ORDERED

PER CURIAM

June 10, 2013

APPENDIX

RULE 7 BAIL BOND COMPANIES

7.01 GENERAL

These Court Rules shall be applicable to the Criminal Court of Shelby County, the General Sessions Criminal Court of Shelby County and all other Courts of record in Shelby County exercising criminal court jurisdiction for the administration of all professional bail bond companies in their courts.

7.02 PETITIONS FOR APPROVAL OF NEW COMPANY AND/OR AGENTS

- A. The Criminal Court Judges, exercising jurisdiction over bail bond companies, shall sit *en banc*, as needed, in the courtroom of the respective Administrative Judge and shall approve each company who petitions the Court for permission to write bonds in Shelby County. All petitions for approval of a new bonding company or agent shall include the following information:
1. The business name under which the new company or agents will be operating, the street address and the business telephone number for the bonding company office which shall be located in Shelby County.
 2. A copy of the state or business license issued for the insurance company.
 3. A copy of the power of attorney from the insurance company.
 4. The original consent order.
 5. A copy of a complete drug screen of the owner and each prospective agent. The drug screens shall be performed by a licensed medical facility within 48 hours of the date of filing the petition for permission to write bonds.
 6. A copy of all organizational documents (e.g. corporate charter, partnership agreement) and all other agreements or documents pertaining to the identity of the owners and interest holders in said company, the distribution of profits from the said company, the source of all funds used to establish the company, and the names of those persons who will be personally liable for forfeiture judgments.
 7. A statement of whether the bond company, or any of its owners, shareholders or partners, writes bonds in any other jurisdiction. If such company writes bonds in other jurisdictions; the application shall identify those jurisdictions and attach an addendum identifying any surety posted with any other jurisdiction, a copy of the last semi-annual report filed with said other jurisdictions, and a list of all pending conditional forfeitures and final forfeitures in any other jurisdiction.
 8. An identification of the funds and source of said funds to be filed with the

- Clerk to establish the bonding capacity.
9. For all individuals identified in subsection six (6) above, the person(s) must attach an affidavit stating the following:
 - a. A list of all prior criminal charges (whether resulting in a conviction or not) and the disposition of the charge and the jurisdiction, as well as all other information required by T.C.A. §40-11-317.
 - b. A description of all relationships to any other bond company owner, interest holder or agent of any other bail bond company authorized to do business in Shelby County.
 - c. A statement as to whether such person has ever been an owner, interest holder or agent for any other bail bond company in this State or in any other state.
 - d. A statement as to whether such person is related by blood or marriage to any person who works for the Clerk of Shelby County Criminal Court or for the Sheriff of Shelby County.
 10. A copy of the proposed bail bond contract shall be attached.
 11. A statement that the officers/owners of the bonding company and its proposed agents have read and are aware of the requirements of T.C.A. §40-11-301, et seq. and §40-11-401, et seq. pertaining to the Rules governing Professional Bondsmen, the Requirements for Continuing Education and the Rules of this Court governing bonding companies.
 12. When a bail bond company desires to change, alter, or modify its authority to write bail bonds on cash or surety, it will be the obligation of the company to file a sworn petition setting out the reasons and necessity for such a hearing. All qualification hearings will be conducted in open Court upon the record.
- B. All petitions for approval of a new company and/or its agents shall be served upon the District Attorney General at least two (2) weeks prior to the hearing on the petition and shall be heard by the Criminal Court Judges sitting *en banc*, as needed. The District Attorney General and/or Shelby County Sheriff's Department shall conduct a criminal history and background investigation of the owner of the bonding company and its agents. The results of the background investigation shall be furnished to the Court on or before the date of the *en banc* qualification hearing. The applicant shall submit to a criminal history background check by the Tennessee Bureau of Investigation as provided pursuant to T.C.A. §38-6-109. The applicant shall be responsible for any fees for the criminal history background check. The results shall be submitted to the Criminal Court Clerk at least one (1) week before the date of the qualification hearings. The District Attorney General shall be present and represent the State of Tennessee at the qualification hearing. The petition shall have an attached affidavit disclosing the criminal history and all criminal charges, if any, of the petitioner. If the affidavit is found to be inaccurate, the petitioner shall be immediately disqualified as a professional bonding person.

7.03 COLLATERAL

- A. From the effective date of these rules, any person or company filing a petition for approval to open a professional bail bond company in Shelby County is required to post a minimum of Seventy-Five Thousand Dollars (\$75,000.00) in cash with the Criminal Court Clerk as security for bonds written.
- B. Said funds may also be deposited in a Certificate of Deposit in the sum of not less than Seventy-Five Thousand Dollars (\$75,000.00) in the joint names of said bonding company and the Criminal Court Clerk of Shelby County, Tennessee.
- C. No real property collateral will be accepted by the Court.
- D. The bonding company must obtain prior written approval from the Court before the bonding company will be allowed to post any additional security exceeding the minimum cash deposit to increase its bonding capacity.
- E. Any bonding company approved by the Court may write total bonds in an amount equal to ten (10) times the amount of cash security posted with the Criminal Court Clerk. No bonding company shall be allowed to write any one single or blanket bond in excess of twenty (20) percent of its available bonding capacity as determined by the Criminal Court Clerk on a weekly basis.
- F. Collateral posted as security with the Clerk may not be withdrawn or applied to satisfy a forfeiture judgment except upon notice to the District Attorney General and an Order of the Court.

7.04 FORFEITURES

- A. A bonding company shall not be allowed total outstanding forfeitures in the Criminal Courts and the General Sessions Court to exceed more than fifty (50) percent of the amount of collateral posted with the Criminal Court Clerk.
- B. The Criminal Court Clerk's Office shall issue a written notice to a bail bond company when said company's liability reaches 90% of its ratio as set out in these rules. If there is a discrepancy between the records of the bail bond company and the records of the Criminal Court Clerk's Office, the records of the Criminal Court Clerk's Office will be presumed correct.
- C. If a company writes bail bonds and/or has forfeitures in an amount exceeding the mandated ratios, the Criminal Court Clerk is ordered to notify immediately and obtain forthwith from any Judge of Criminal Court an order removing and

suspending the company from the approved list of bondsmen. The Criminal Court Clerk shall notify the suspended company and all inferior courts of said suspension. The suspension shall remain in effect and the bonding company shall not be allowed to write any additional bail bonds until the company posts the required amount of additional security, or until the forfeitures are within the company's allowable ratios.

- D. The bonding company shall remain suspended unless reinstated upon Order from the Court. There shall be a \$1,000.00 reinstatement fee, together with the costs as a result of suspension.
- E. In order to facilitate the determination of the owner of any funds remitted to a bail bond company after having been granted relief pursuant to T.C.A. §40-11-204 on forfeitures paid in, any monies paid into the Office of the Criminal Court Clerk due on forfeitures taken shall be paid only by case or by a single check written on the account of the surety or its owner. The Criminal Court Clerk shall not accept payment for any forfeiture by personal check written on the account of any other party, nor shall the Clerk take payment by multiple checks drawn on different accounts.
- F. These Court Rules shall apply to the General Sessions Criminal Courts of Shelby County for the administration of the professional bail bond companies in the General Sessions Criminal Courts. Bonding companies approved before the effective dates of these Rules shall be in compliance with this Rule within six (6) months of the effective dates.

7.05 COMPANY CHANGES

- A. The bonding company must notify, in writing, the Criminal Court Clerk of any changes to a bonding company's address or telephone number from that documented in the original qualifying petition. Written notice of any such changes shall be provided to the Clerk's office within ten (10) days of said changes.
- B. Any changes to a bonding company's name, ownership, or agents as submitted in the original petition must be presented in writing and approved by order of the Court.
- C. Any request for changes to an approved bonding company's bonding capacity or collateral shall be proffered to the Administrative Judge after filing said request with the Criminal Court Clerk with notice to the District Attorney General.
- D. Any material changes to the financial statements submitted to the Court must be corrected and filed with the Criminal Court Clerk.

- E. Any changes in the employment status of qualified agents must be submitted in writing within ten (10) days of said change and filed with the Clerk.

7.06 ACTIVITIES OF QUALIFIED BAIL AGENTS

- A. All agents shall wear photo identification badges issued by the Criminal Court Clerk while performing their duties as a bail agent. The identification badges will continue to be made by the Shelby County Office of Compliance.
- B. It is the duty of each agent to surrender his/her photo identification badge upon termination of their employment. It is the responsibility of the owner of the bond company, or a designee, to retrieve and return said photo identification badge to the Criminal Court Clerk.
- C. As mandated by T.C.A. §40-11-126, no bondsman or bonding company shall solicit business directly or indirectly, in any place immediately surrounding any locations where prisoners are confined, including, but not limited to, the Criminal Justice Complex. No bonding company employee or agent shall initiate contact with a defendant or a defendant's family member to obtain business. Contact with a defendant who is a potential client will be allowed only after the bonding company has been contacted by the defendant or someone authorized to act on behalf of a defendant. All agents or employees of a bonding company shall conduct themselves in accordance with all the rules and orders of the Sheriff and Criminal Courts of Shelby County while performing required duties within such buildings. The penalty for a first violation of this provision is a suspension for not less than ninety (90) days. The penalty for a second violation of this provision is a suspension for not less than six (6) months. After any suspension, the bonding company must petition the Court for reinstatement of the bonding company and/or agent. The penalty for a third or subsequent violation of this provision is termination of the privilege to write bonds in Shelby County.
- D. All qualified agents shall be subject to random drug screens as requested by the Court. The cost of said random drug screens shall be the responsibility of said agent. All urine samples shall be divided to provide for confirmation testing. Should an agent test positive for any illegal substance, the agent has forty-eight (48) hours to request that the remaining sample be forwarded to a certified laboratory for re-testing at the agent's expense. Should an agent test positive for any illegal substance, the agent shall be suspended immediately pending a show cause hearing before the Administrative Judge. On the first occasion that an agent tests positive for any illegal substance, the agent shall be suspended for a minimum of six (6) months. After the agent has provided written documentation of successful completion of a drug treatment program, the agent may petition the Court for reinstatement. The credentials and/or qualifications of

any treatment program shall be submitted to the Criminal Court Clerk for approval of the Court. Any agent who tests positive for any illegal substance on a second occasion shall be terminated and disqualified from serving as a bond agent and shall not be subject to reinstatement.

- E. The Criminal Court Clerk shall notify the bonding company in writing of the initial court appearance. The Clerk shall retain proof of such notification. The bonding company shall notify the defendant/principal of each court appearance.

7.07 PREMIUMS

- A. As provided by T.C.A. §40-11-126, no bonding company or agent shall accept anything of value from a principal or anyone acting on their behalf except the authorized premium and initiation fee as set out in T.C.A. §40-11-316 and as described in the bond contract. If any property other than cash (or other negotiable instrument) is accepted for the premium, the agent shall notify the Administrative Judge and the District Attorney General in writing. All funds or negotiable instruments accepted in payment or in satisfaction of the premium and the initiation fee shall be recorded and itemized by the bonding company. A copy of the said record documenting the premium and initiation fee received shall be provided to the defendant, or to the party acting in the defendant's behalf, and shall be maintained as a part of the ordinary daily business records of said company. If funds or negotiable instruments are accepted as collateral, the bonding company shall: (1) deposit such collateral into a separate trust account pending its redemption, (2) identify the account or principal to which the collateral applies, and (3) provide the person providing the collateral with the identity of the institution in which the collateral is held. In the event that a bail bonding company receives funds for a premium or initiation fee and elects not to post the bond for the defendant/principal, any funds received shall be returned immediately to the defendant or the person acting on the defendant's behalf.
- B. Every bondsman and/or agent must use a duplicate receipt book to record all payments for premiums. A copy of the receipt must be given to the defendant or the person acting on the defendant's behalf. Receipts must include:
 - 1. A specific description of all property, including cash or checks, received from the defendant or someone acting on the defendant's behalf, and
 - 2. The signature of the defendant or the person acting on his/her behalf tendering the said funds.
- C. No bond in the amount of Seventy-Five Thousand Dollars (\$75,000.00) or more shall be made without a hearing before the Court wherein said case is pending, and notice by the bonding company to the Court and the District

Attorney General. The Court shall conduct a hearing to determine compliance with these Rules and the provisions of T.C.A. §39-11-715 regarding the source of the premium of said bond. Any Criminal Court or General Sessions Court may conduct such hearings and enter such orders, injunctions, restraining orders, prohibitions, or issue any extraordinary process for the purpose of ensuring that any defendant does not use any proceeds directly or indirectly derived from a criminal offense for the purpose of securing an appearance bond or to pay the premium for the bond. Any court may require the defendant or bonding agent to prove in open court the source of such bond or premium before accepting the bond, and the burden of proof shall be upon the party seeking the approval or acceptance of the bond.

The source hearings shall be conducted in the Criminal Court or in the General Sessions Court in which the case is pending.

- D. Bonding companies shall be prohibited from making or initiating credit bonds on cases where the total bonds for any defendant exceed Twenty-Five Thousand (\$25,000.00). No additional funds, installment arrangements or unfinished payments in satisfaction of the premium may be received, collected or demanded following release of the defendant/principal from custody for any bonds for any single defendant in excess of Twenty-Five Thousand (\$25,000.00), except as authorized by T.C.A. §40-11-316 or other applicable law.

7.08 REPORTS AND REQUIRED RECORDS

- A. It shall be the duty of the bonding company to certify that all bonds are fully completed upon the release of the defendant/principal from custody. All bail bond contracts, written undertakings and bond powers shall:
 - 1. Contain the name, address (including any apartment number) and zip code of the defendant typed or legibly printed thereon. It shall be the obligation of the bonding company to notify the Clerk of any change of address of the defendant.
 - 2. Be signed by the agent making said bond.
 - 3. Have the name of the bonding company boldly and legibly stamped or printed thereon.
 - 4. Identify the property used to pay the premium and initiation fee as well as any other property received as collateral for said bond, and
 - 5. Include a copy of a photo identification of all persons (excluding the defendant/principal) delivering such premiums, fees or collateral to the agent if the bond is Seventy-Five Thousand Dollars (\$75,000.00) or more.
- B. Any bonding company authorized by the Shelby County Criminal Court to execute bail or bonds, or bonds securing fines and cost, shall file with the

Criminal Court Clerk a semi-annual financial report pursuant to T.C.A. §40-11-303. The semi-annual report shall be an attested filing subject to prosecution for perjury. The semi-annual report shall be prepared by a licensed certified public account and verified according to general accounting principles. Such reports shall include, but are not limited to, a listing of:

1. All current and active qualified bonding agents approved for said company.
 2. Any outstanding civil performance or costs bonds.
 3. All persons having financial or managerial interest in the bonding company.
 4. The most recent audit from the bonding company's insurance company. Said audit is required by law to be on file with the Tennessee Department of Commerce and Insurance.
 5. A certificate of compliance for each qualified agent for continuing education credits. The certificate must be furnished annually as required by T.C.A. §40-11-402.
 6. A copy of all complete and most recent drug screens of the bond company owner and all agents. The drug screens must have been performed by a licensed medical facility. The owner of a bond company and each agent must furnish proof annually of at least one successful drug screen. The drug screens shall be filed with the first semiannual report.
- C. Upon failure of any bonding company to file the required semi-annual report, or any other record or document mandated by statute or these Local Rules, the Criminal Court Clerk shall notify the Administrative Judge who shall suspend and remove the company from the approved list. The Administrative Judge shall issue a written order and immediately terminate the bail bond company's authority to execute bonds in Shelby County. Thereupon, the bond company shall not be allowed to write any bonds until such time as all the requirements of the semi-annual report have been satisfied and the Administrative Judge has reinstated the bonding company in a written order. In the event the bonding company disputes the suspension, the bonding company may petition the Court for a hearing to reconsider the suspension.

7.09 INDIVIDUAL BONDS

- A. Any individual who desires to post a real property bond pursuant to T.C.A. §40-11-122 shall submit a current title for said real property reflecting any encumbrances thereon. The appraised value/equity of the property must equal one and one-half times the amount of the bond. The bail bond may be secured by real estate situated in this State with nonexempt unencumbered equity owned by the defendant or the defendant's surety worth one and one-half (1.5) times the amount of bail set. If the bail bond is secured by real estate, the defendant or the defendant's surety shall execute a deed of trust conveying the real estate in trust

to the clerk who shall immediately file the deed of trust in the office of the register of the county in which the real estate is situated. The costs of preparation of the deed of trust and recordation shall be paid by the defendant. The property owner providing said surety must comply with all regulations as set forth by the Office of the Criminal Court Clerk. If the amount of the bond is Seventy-Five Thousand Dollars (\$75,000.00) or more, the bond cannot be made unless notice is provided to the District Attorney General and a hearing is conducted in open court pursuant to T.C.A. §39-11-715 regarding the source of the bond.

- B. Any individual who desires to deposit a cash bond with the Clerk pursuant to T.C.A. §40-11-118 shall be notified in writing by the Clerk that such cash deposit shall be returned subject to any fines, court costs or restitution as ordered by the Court. No cash bond may be received in the amount of Ten Thousand (\$10,000.00) or more without notice to the District Attorney General and a hearing is conducted in open court pursuant to T.C.A. §39-11-715 regarding the source of the bond.
- C. Upon release from custody, or at first appearance to booking authorities upon receipt of a citation, the Clerk shall notify the defendant in writing of the initial court appearance. The Clerk shall retain proof of such notification. Each defendant shall provide to the clerk before release on a property or cash bond an address where notification of a court date may be delivered. It shall be the responsibility of the defendant to notify the Clerk of any change of address.

7.10 SUSPENSION OF BONDING COMPANY OR AGENTS

- A. Every bonding company acts as an agent of the Court and the conduct of the bonding company constitutes an integral part of the operation of the Court. The Court may impose any limits and conditions necessary to insure the professional standing and reliability of the bonding company. Such measures, if any, shall be made in the public interest to avoid a conflict of interest or an appearance of impropriety on the part of the bonding company. Pursuant to the provisions of T.C.A. §40-11-125 and T.C.A. §40-11-126, the Court may take appropriate disciplinary action including the withholding, suspension or termination of the approval to do business as a bail bond company or agent if it appears to the Court that it is in the best public interest to take such action. For good cause, the Court may issue a restraining order, writ or other process without notice to the company if deemed necessary in the public interest.
- B. Pursuant to the provisions of T.C.A. §40-11-125 and T.C.A. §40-11-126, the Court may take appropriate disciplinary action including the withholding, suspension or termination of approval for a bondsman to act as an agent for an approved bonding company, if the agent:
 - 1. Has been convicted of a crime of dishonesty, any felony or any alcohol or

- drug related offense.
2. Fails to submit to a drug screen as requested by the Court or fails to provide proof of successful drug screens as mandated in the semi-annual reports.
 3. Tests positive for any illegal substance by a drug screen requested by the Court. The owner of the bonding company must notify the Court immediately of any failed drug screens by any owner or agent of the bonding company.
 4. Authorized a bond which has a final judgment of forfeiture entered against the bonding company that remains unsatisfied. If a bonding company fails to satisfy payment of a final judgment, the bonding company shall be suspended immediately from the list of qualified bonding companies. The bonding company shall remain suspended unless reinstated upon Order from the Court. There shall be a \$1,000.00 reinstatement fee, together with the costs as a result of such suspension.
 5. Has failed to comply with any local rules.
 6. Is guilty of any unprofessional conduct that includes, but is not limited to:
 - a. Loitering about the jail or court premises and within prohibited areas to solicit business
 - b. Suggesting or advising the employment of, or otherwise referring, any particular attorney to represent a defendant.
 - c. Paying a fee or giving or promising anything of value to any Clerk of the Court, jailer, police officer, peace officer, committing Magistrate, or any other person who has the power to arrest or hold in custody, or to any public official or public employee to secure a bond and/or a settlement, compromise, remission or reduction of the amount of any bail bond or the forfeiture thereof.
 - d. Paying a fee or rebate or giving anything of value to an attorney in bail bond matters, except in the legal representation or any action pertaining to the bail bond company or action.
 - e. Surrendering a principal without good cause.
 - f. Accepting anything of value from a principal except the premium provided, however, the bondsman shall be allowed to collect collateral, security or other indemnity from the principal that shall be returned upon final termination of liability on the bond where such collateral, security or other indemnity required by the bondsman is reasonable in relation to the amount of the bond and where the said bondsman accepting such collateral delivers a written receipt for the same which receipt describes in detail the collateral received and the term of redemption.
 - g. Receiving anything of value as payment for a premium or collateral on credit bonds on cases where the total bonds for any defendant exceed Twenty-Five Thousand (\$25,000.00) after the defendant/principal is released from custody as prohibited by these Rules, except as authorized under Rule 7.07(D).