

**RULES OF PRACTICE
OF THE
COURT OF COMMON PLEAS**

STATEMENT OF PURPOSE

Delay in criminal and civil cases in the Courts of Common Pleas throughout the state of Ohio is a serious problem in the administration of justice. Constitutional courts were created to serve the litigants and the interest of the public at large, not for the convenience or benefit of judges and lawyers. Unnecessary delay erodes the public's confidence in the judicial system.

It is the obligation of the judges of the Court of Common Pleas, Franklin County, Ohio, to operate the Court in a manner that is lawful, fair, just, and efficient for the benefit of the citizens of Franklin County and all other litigants that come before it. To that end, the following rules are designed (1) to expedite the disposition of both criminal and civil cases in this Court, while at the same time safeguarding the rights of litigants to the just processing of their cases; (2) to expedite and make consistent the disposition of cases in the general branch of the Court; and (3) to serve the public interest which mandates the prompt disposition of all cases before this Court.

RULE 67 - BAIL FORFEITURE (Amended 8-6-01)

67.01 Bail shall be adjudged forfeited upon the nonappearance by a defendant at any scheduled hearing before any judge or at any other time when ordered by said judge. Except as provided herein, appearance, surety, property, and cash bonds, shall be subject to the same procedures.

B. Forfeiture of Bail; Hearing; Remittance Procedures.

- 1) In the case of appearance, property, and cash bond, the court may order the entire bond forfeited and shall notify the clerk to proceed to collect the unfunded bond that is due. If the court determines that the defendant's failure to appear was justified, or if good cause is shown to mitigate the forfeiture as provided in sections 7 (a-f) and 8, herein, the court may order a lesser amount to be forfeited.
- 2) In the case of surety bonds, if good cause is not shown at the forfeiture hearing judgment shall be rendered against the surety for the face amount of the bond. Twenty percent (20%) of the amount is to be paid within fifteen (15) days from the date of judgment. If such twenty percent (20%) is not paid within fifteen (15) days of judgment, then execution shall be levied against the surety for one hundred percent (100%) of the amount of the bond.
- 3) Judgment entries referred to in this rule shall be prepared by the clerk's office, signed by the Court served by regular mail upon both the defendant at his last known address, and upon the surety and/or other persons responsible on the bond.
- 4) If the defendant is returned to the custody of the Court within three hundred sixty five (365) days from the date of judgment, the Court may, upon application and applying the factors set forth in (C)(7) herein, remit all or any part of the amount paid by the surety or other persons responsible on the bond.
- 5) In the case of surety bonds, if the defendant has not been returned to the custody of the Court within three hundred sixty five (365) days from the date of judgment, the remaining eighty percent (80%) of the amount of the bond shall be paid in the Court. The Court will not be required to, but will attempt to notify the surety of its duty to pay the balance of the bond.

- 6) If after the expiration of three hundred sixty five (365) days and payment of the above, the defendant is returned to the custody of the Court, the surety or parties responsible on the bond may, upon Application, have returned up to ninety percent (90%) of the bond paid.
- 7) Factors the Court shall consider in mitigating the forfeited bond are as follows:
 - a. The circumstances surrounding the subsequent reappearance of the defendant, including the timing and whether reappearance was voluntary;
 - b. The reasons for the defendant's failure to appear;
 - c. The inconvenience, expense, delay and any other prejudice to the Court and/or prosecution;
 - d. Whether the surety was instrumental in securing the appearance of the defendant;
 - e. The costs and inconvenience incurred by the County and Court in gaining custody of the accused and again preparing for trial.
 - f. Any circumstances that the Court determines should mitigate the obligation owed to the Court;
- 8) "Good Cause" as it is used in this rule includes the return of the defendant to the Sheriff and/or the Court on or before the date of the forfeiture hearing and the factors set forth in (C)(7)(a-f).
- 9) If the surety returns the defendant to the Sheriff before the show cause hearing; and if the Court is in receipt of an affidavit from the surety stating that the surety turned the

defendant over to the Sheriff, the Prosecutor can request the Court to relieve the surety of its responsibility before the hearing date.

B. Custody in another jurisdiction.

- 1) If the defendant is arrested in another jurisdiction before the hearing date which lead to the forfeiture and continues to be incarcerated outside of Franklin County, judgment shall not be rendered if the surety and/or other persons responsible on the bond agrees in writing to pay for the defendant's return to the custody of this Court.
- 2) If the defendant is arrested in another jurisdiction after the hearing date which lead to the forfeiture, the surety or other person responsible on the bond may seek a remittitur as provided in this rule.
- 3) If the defendant has not been returned to the custody of this Court within three hundred sixty five (365) days from the date of judgment, but the defendant has been located in the custody of another jurisdiction prior to the expiration of three hundred sixty five (365) days, the remaining eighty percent (80%) of the bond owed shall be held in abeyance if the surety agrees in writing to pay for the defendant's return to the custody of this Court. If the defendant is not returned to the Court within three (3) years the eighty percent (80%) shall be due. If the defendant is or is not returned within the three (3) years, after payment of the amount due, the surety or responsible person may make an Application for a remittitur as provided in this rule.

D. Failure of Surety to Pay Obligation to Court.

- 1) If, at any time, judgment has been rendered and not paid by a surety within five (5) days of notice to the surety in accordance with this rule, the surety's general power to write bonds before this Court shall be revoked.
- 2) The Court shall notify the surety in writing, by regular mail, within five (5) business days

of the revocation, after which the revocation becomes effective. Until payment is made in full, the surety will no longer be permitted to execute bonds before this Court.

- 3) If the surety makes full payment of the amount due plus interest at the rate of ten percent (10%) and demonstrates to the satisfaction of the Court that it was justified in not paying its obligation when due and the Court determines that the surety is safe and solvent, the surety may be reinstated and be permitted to execute bonds in this Court.
- 4) If, within one hundred eighty (180) days of its reinstatement, the surety defaults a second time, the Court shall permanently revoke the surety's permission to execute bonds.
- 5) In the event of permanent revocation, the surety may apply to the Court for reinstatement no sooner than one year after the permanent revocation.
- 6) (04-26-00) The court reserves the right to regulate sureties, their contracts, agents, and procedures as the same shall affect the Franklin County Court of Common Pleas. If adverse action is taken against a surety, its contracts, agents or procedures, the surety has a right to request a timely hearing before the administrative judge to show cause why such action should be stayed or rescinded.

E. General Provisions

- 1) No oral hearing shall be held unless requested in writing and granted by the Trial Judge or in the case of an unassigned case, by the Administrative Judge. In a case where the forfeiture resulted from a failure to appear at arraignment, the hearing shall take place before the Duty Judge assigned to the arraignment Court at the time of the failure to appear. If an oral hearing is held, the judge may request and/or permit witnesses to be called.
- 2) All Applications seeking a remittance or a release from a bond responsibility shall be made on a verified Application setting forth, in detail, the reason for the remittance. A copy of the Application must be filed with the Clerk in the case which gave rise to the Application. All Applications must be served upon the County Prosecutor. The Prosecutor may respond, in writing, to the Application. The Prosecutor shall represent the County at any hearing set on the Application.
- 3) The Clerk shall provide the Prosecutor with copies of the Application and any notices of hearings.
- 4) The Prosecutor is authorized to collect all bonds due under this rules by any method authorized under the Ohio Revised Code. The Prosecutor is also authorized to contract with a collection agent or agents to collect the moneys owed.
- 5) Pursuant to Criminal Rule 46(H) the bond of surety shall continue until a verdict has been returned or a plea has been accepted. If the Court, in its discretion continues the bond until sentencing or other disposition, the Clerk shall notify the surety as soon as practical of the continuance of the bond.

67.02 (8-6-01) Forfeiture of secured recognizance or face amount recognizance bond.

For purposes of this rule a "secured recognizance" or "face amount recognizance" bond shall refer to a recognizance bond for which a specific dollar amount has been designated

- A) Face amount to be forfeited. The face amount of a secured recognizance bond shall be adjudged forfeited upon the non-appearance by a defendant at any scheduled hearing before any judge or at any other time when ordered by said judge.
- B) Failure to appear. Should the defendant fail to appear at the time scheduled for arraignment, pre-trial, pre-trial hearing, trial, sentencing, post-sentencing hearing and/or probation or community control hearing, the clerk shall prepare a bond forfeiture and capias for the

defendant and mail them by regular mail to the defendants last known address. The court shall notify the defendant that he is to show cause why judgment should not be rendered in the amount of the bond.

- C) Show cause hearing scheduled. The clerk shall set a date for the show cause hearing which shall not be less than twenty (20) nor more than thirty (30) days after the date of the mailing notice. The show cause hearing on a failure to appear at arraignment shall be set before the duty judge who was scheduled to preside over the arraignment.
- D) Non-oral show cause hearing. At the show cause hearing, the court may order the entire amount of the face amount recognizance bond forfeited and, if so, notify the clerk to proceed to collect the face amount of the bond. If the court determines that the defendant's failure to appear was justified, or if good cause is shown to mitigate the forfeiture. Judgment entries referred to in this rule shall be prepared by the clerk's office, signed by the court, and served by regular mail upon the defendant at his last known address.
- E) Request for hearing. No oral hearing shall be held unless requested in writing and granted by the trial judge or in the case of an unassigned case, by the administrative judge. In the case where the forfeiture resulted from a failure to appear at arraignment, the hearing shall take place before the duty judge assigned to the arraignment court at the time of the failure to appear. If an oral hearing is held, the judge may request and/or permit witnesses to be called.
- F) The prosecutor is authorized to collect amounts due under this rule by any method authorized under the ohio revised code. The prosecutor is also authorized to contract with a collection agent(s) to collect the moneys owed.
- G) Bond schedule for secured recognizance bonds. All secured recognizance bonds shall be set in an amount not to exceed the amounts listed in the following schedule:

Murder	Judge sets bond
F-1 and aggravated F-1	\$20,000 recognizance
F-2 and aggravated F-2	\$10,000 recognizance
F-3 and aggravated F-3	\$ 5,000 recognizance
F-4	\$ 2,000 recognizance
F-5	\$ 1,000 recognizance

Notice to the defendant. When a defendant is granted a secured recognizance bond, the clerk's office shall provide to the defendant at the time of signature a copy of the following notice printed in bold faced type:

Notice

Today you have been granted a recognizance bond in a specific dollar amount. If you fail to appear for any court proceeding, a notice for a show cause hearing will be sent to you. If you fail to appear for the show cause hearing to explain why you failed to appear for the court proceeding, the dollar amount of your recognizance bond will become a civil judgment against you. This civil judgment could adversely affect your credit. This civil judgment is not dischargeable in bankruptcy.