

Bail Bond Forfeitures, Judgments NISI, and Final Judgments

Wednesday, January 30, 2019
9:15–10:15 a.m

Ms. Bridgete Chapman
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The session will include review of the Bail Bond Forfeiture process from the Defendant's failure to appear through final judgment. The presentation will include discussion of other related bail bond issues.

2019 County
and District Clerks'
Association of Texas
Winter Education
Conference

January 28-31, 2019

Embassy Suites by
Hilton Hotel
Conference Center & Spa,
San Marcos

**Piece of the
Puzzle, Part of
the Whole**



Bridgete Chapman serves as the Assistant District Attorney in the Civil Division of Williamson County District Attorney's Office. She graduated from the University of Houston Law Center in 1988. After graduation, Chapman worked in civil litigation practice for ten years. In 2010, she became the assistant city attorney for the City of Georgetown and then served as the city attorney from 2011-2015. She has been with the Williamson County Assistant District Attorney Civil since 2017.

BAIL BOND FORFEITURES, JUDGMENTS NISI, AND FINAL JUDGMENTS

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BAIL BOND BOARDS

Bail Bond Board Creation

- County population over 110,000 Bail Bond Board automatically created
- County population under 110,000 Bail Bond Board may be created

Non-Bail Bond Board Counties

- Texas Code Criminal Procedure Chapter 17 (TCCP)

Bail Bond Board Counties

- Texas Occupations Code Chapter 1704 (TOC)
- TCCP Chapter 17

ARREST AND THE RIGHT TO BAIL

An accused has a constitutional right to bail after arrest

“All prisoners shall be bailable by sufficient sureties, unless for capital offenses, when the proof is evident; but this provision shall not be so construed as to prevent bail after indictment found upon examination of the evidence, in such manner as may be prescribed by law.” ~ Texas Constitution, Article I, Section 11

Exceptions

Section 11a - Denial of bail after multiple felonies

Section 11b - Denial of bail for violation of condition of release

Section 11c - Denial of bail for violation of protective order involving family violence

MAGISTRATION

- Generally, after arrest, the accused shall be taken without unnecessary delay, but not later than 48 hours after the arrest, before a magistrate
- Magistrates are identified in TCCP Article 2.09
- The magistrate informs the arrested person of his rights and “shall, after determining whether the person is currently on bail for a separate criminal offense, admit the person arrested to bail if allowed by law”

BAIL

TCCP CHAPTER 17

Bail is the security given by the accused that he will appear and answer before the proper court the accusation brought against him

- Surety Bond – surety and security
- Cash Bond – no surety and security
- Personal Bond – no surety and no security

Rules for fixing amount of bail ~ TCCP Article 17.15

- sufficiently high to ensure that the accused will show up for court
- not oppressive
- consider nature of offense and circumstances under which offense committed
- ability to make bail
- future safety of the victim and the community

OTHER BOND CONDITIONS

TCCP ARTICLE 17.40 – 17.49

Magistrate may include other bond conditions to limit the occurrence of additional crimes while on bail:

- Conditions related to victim or community safety
- Conditions where a child is the victim
- Conditions requiring home confinement, electronic monitoring and drug testing
- Conditions requiring motor vehicle ignition interlock
- Conditions Requiring AIDS and HIV Instruction
- Conditions requiring submission of a specimen to create a DNA record
- Conditions for a stalking offense
 - Emergency Protective Order
- Conditions for a family violence offense
 - Further detention after the posting of a bond
 - Emergency Protective Order

BAIL BONDS

TCCP CHAPTER 17

A bail bond is a written agreement that the defendant will appear in court to answer a criminal accusation

Types of Bonds

- Surety Bond ~ TCCP Article 17.08
- Cash Bond ~ TCCP Article 17.02
- Personal Bond ~ TCCP Article 17.03

SURETY BONDS

Requirements Surety Bond ~ TCCP Article 17.08

- payable to The State of Texas
- defendant/sureties bind themselves that the defendant will appear in court
- states that the defendant is charged with a felony or misdemeanor
- signed by principal (defendant) and sureties with mailing address
- states the time and place defendant shall appear
- provides for payment of expenses of re-arrest if defendant fails to appear

TYPES OF SURETIES

Individual Surety (property bondsman)

- individuals DBA their bonding company name
- bonds are backed by a cash deposit or real property under a deed of trust

Corporate Surety (insurance bondsman)

- Insurance Company backs the bond
- Individual DBA the bonding company name as agents for the insurance company
- The corporate surety files powers of attorney with County Clerk for agents

May be both

NO-SURETY BONDS CASH BOND ~ TCCP ARTICLE 17.02

- Defendant executes the bond
- Cash is deposited with the prosecuting court as security for the defendant's appearance as required

NO-SURETY BONDS

PERSONAL BOND ~ TCCP ARTICLE 17.03

- Requirements ~ TCCP Article 17.04 (in addition to Article 17.08)
 - Defendant's name, address, place of employment
 - Defendant's date and place of birth, height, weight, color of hair and eyes
 - Driver's license number and state of issuance
 - Nearest relatives name and address
 - Oath to appear
- Release of certain defendants with mental illness or intellectual disability ~ TCCP Article 17.032
- Release of certain persons arrested without warrant ~ TCCP Article 17.033
- Personal Bond ≠ Personal Recognizance
 - Personal recognizance means release without a bond
 - A personal bond is a bond without any sureties or security

FORFEITURE OF BAIL

TCCP CHAPTER 22

Defendant's failure to appear in court as required = forfeiture of bail ~ TCCP Article 22.01

Manner of taking a forfeiture ~ TCCP Article 22.02

- defendant's name is called three times at the "courtroom" door and defendant fails to appear
- the officer should file a certificate/affidavit documenting the call with the court as evidence of nonappearance
- court orders forfeiture of the bond and signs a judgment nisi
- warrant for arrest of the defendant is issued

CIVIL BOND FORFEITURE CASE JUDGMENT NISI

The judgment nisi commences the civil bond forfeiture case on the civil (scire facias) docket ~ TCCP Article 22.10

Parties

- Plaintiff – The State of Texas
 - Defendant-Principal – the defendant (only defendant if cash bond or personal bond)
 - Defendant-Surety – individual surety (Bill Bondsman d/b/a 123 Bail Bonds)
- OR
- Defendant-Surety – corporate surety (Insurance Company by and through Bill Bondsman d/b/a 123 Bail Bonds)

CIVIL BOND FORFEITURE CASE ISSUANCE OF CITATION

Citation notices that the bond has been forfeited and requires the parties to appear and show cause why the judgment of forfeiture should not be made final ~ TCCP Article 22.03

Citation must include ~ TCCP Article 22.04

- a copy of the judgment nisi
- a copy of the forfeited bond, and
- a copy of any power of attorney attached to the forfeited bond (if a corporate surety)

CIVIL BOND FORFEITURE CASE SERVICE OF PROCESS

No Surety

- defendant served with citation to address on the bond or to last known address

Surety

- individual surety – served with citation at the address listed on the bond or last known address
- corporate surety – served with citation by serving agents for service of process
- defendant mailed notice if address is on the bond – file certificate of mailing by the court clerk

CIVIL BOND FORFEITURE CASE DEFENSES

Causes that will exonerate the defendant and sureties from liability upon the forfeiture taken ~ TCCP Article 22.13

- the bond is not a valid and binding undertaking in law
- the defendant's death before forfeiture
- the defendant's sickness or some uncontrollable circumstance preventing his appearance in court – no fault of the defendant
- failure to present an information or indictment at the first term of court after the defendant posted the bond
- defendant was incarcerated anywhere in the United States
 - within 180 days of his failure to appear on a misdemeanor
 - within 270 days of his failure to appear on a felony

CIVIL BOND FORFEITURE CASE FINAL JUDGMENT

Default Judgment ~ TCCP Article 22.15

Settlement ~ TCCP Article 22.125

Final Hearing ~ TCCP Article 22.14

- Conditional judgment nisi becomes final unless a defense to the failure to appear is established
- Final Judgment includes bond amount and court costs
 - surety bond – surety typically pays within thirty days after judgment or appeals
 - cash bond – an order directing payment from the court registry (or sheriff) should accompany the final judgment
 - personal bond – no security for bond; judgment collection against the defendant

DISCHARGE OF SURETY BEFORE BOND FORFEITURE AFFIDAVIT OF SURRENDER

Non-Bail Bond Board Counties ~ TCCP Article 17.19

- surety may surrender the accused into the custody of the sheriff in the county where the prosecution is pending
- file an affidavit with notice to the defendant's attorney
- if the court finds that there is cause for the surety to surrender the principal, the court shall issue a warrant of arrest or capias for the principal

Bail Bond Board Counties ~ TOC Section 1704.207

- notice of intention to surrender sent to defendant's attorney
- file and affidavit with the prosecuting court
- surrender may be contested
- if the court finds that surrender was without reasonable cause the court may order bond fees refunded

DISCHARGE OF SURETY BEFORE BOND FORFEITURE AFFIDAVIT OF INCARCERATION – TCCP ARTICLE 17.16

A surety may relieve himself of his liability by surrendering the accused into the custody of the sheriff of the prosecuting county OR by delivering an affidavit to the sheriff stating that the accused is incarcerated in federal custody (not immigration), the custody of any state, or the custody of any county in the State of Texas

- the sheriff shall verify whether the accused is incarcerated as stated in the affidavit
- upon verification the sheriff shall notify the magistrate and place a detainer against the accused
- the magistrate shall direct the court clerk to issue a capias for the arrest of the accused (unless unnecessary)
- the affidavit and verification documentation is filed in the criminal case and delivered to the prosecuting attorney
- the bond is discharged on the sheriff's verification of the incarceration of the accused but the surety remains liable for expense in returning the accused into the custody of the sheriff of the prosecuting county