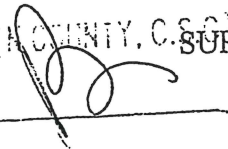


13 R 566
(09 R 28)

FILED

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BY: 

STATE OF NORTH CAROLINA IN THE GENERAL COURT OF JUSTICE
COUNTY OF JOHNSTON SUPERIOR AND DISTRICT COURT DIVISION

IN RE:

BOND FORFEITURES AMENDMENT TO ADMINISTRATIVE ORDER

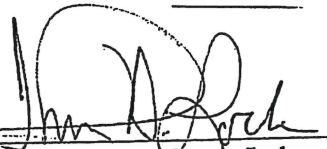
WHEREAS the North Carolina General Assembly has amended North Carolina General Statute 15A-544.5 which said the amendment no longer requires the Clerk of Superior Court for Johnston County to serve a Motion to Set Aside a Bond Forfeiture and/or a Motion for Remission on the attorney for the Johnston County Board of Education, and in order for the efficient administration of justice in the Superior and District Court Divisions in Johnston County Courts, the following is hereby ordered:


The Administrative Order filed with the Johnston County Clerk of Superior Court on July 12, 2012 is hereby amended as follows:

Any surety, when filing a Motion to Set Aside a Bond Forfeiture and/or a Motion for Remission pursuant to North Carolina General Statute 15A-544.5 shall file the said petition in duplicate, with one (1) filed copy to go in the court file and the other filed copy to be held by the Clerk of Superior Court to be received by the attorney for the Johnston County Board of Education.

This amendment to the Administrative Order is entered pursuant to North Carolina General Statute 15A-544.5 by Thomas H. Lock, Senior Resident Superior Court Judge of the Eleventh Judicial District, after consultation and approval by Albert A. Corbett, Jr., Chief District Court Judge of the Eleventh Judicial District and shall be effective for all Motions to Set Aside Bond Forfeiture and all Motions for Remissions filed on or after December 1, 2013.

This the 27th day of November, 2013.


Senior Resident Superior Court Judge
Eleventh Judicial District


Chief District Court Judge
Eleventh Judicial District

STATE OF NORTH CAROLINA

FILED

IN THE GENERAL COURT OF JUSTICE
DISTRICT COURT DIVISION
SUPERIOR COURT DIVISION

COUNTY OF JOHNSTON 2012 JUL 2 8 35 AM

JOHNSTON CO., N.C.

BY NH

IN RE:
BOND FORFEITURES

ADMINISTRATIVE ORDER

WHEREAS, N.C.G.S. 15A-544.1 through 15A-544.8 has been revised by the North Carolina Legislature;

WHEREAS, after the effective dates of the statutory revisions, this Order shall apply to all bonds written and all forfeiture proceedings in the District and Superior Court of Johnston County as follows;

WHEREAS, an entry of forfeiture upon an appearance bond shall become final after one-hundred fifty (150) days elapse from notice of the forfeiture unless an appropriate party files a motion to set aside the forfeiture;

WHEREAS, any motion to set aside a forfeiture shall be automatically allowed unless the District Attorney or School Board Attorney objects to said motion within twenty (20) days from the date of service of the motion pursuant to NCGS 15A-554.5(c)(4);

WHEREAS, a final judgment of forfeiture may only be set aside by a motion duly filed within three (3) years of the date the judgment of forfeiture became final;

WHEREAS, the majority of these revisions have been incorporated by the Administrative Office of the Courts into form AOC-CR-213 (Exhibit A Attached); and

WHEREAS, it is the intention of the Court through this Administrative Order to establish a procedure in Johnston County for appearance bond forfeiture matters under N.C.G.S. 15A-544.1 through 15A-544.8 which will fully implement and facilitate the process adopted by the Legislature.

NOW THEREFORE, it is ordered and decreed that the following procedure shall be applicable in all Superior and District Criminal Courts in Johnston County to all bonds written on or after AUGUST 1, 2012, and all bonds upon which a forfeiture is entered pursuant to N.C.G.S. 15A-544.3 on or after AUGUST 1, 2012.

1. Pursuant to N.C.G.S. 15A-544.5(d)(1), a motion to set aside a forfeiture may be filed by the defendant, any surety, professional bondsman or runner acting on behalf of a professional bondsman, or a bail agent acting on behalf of an

insurance company on a bail bond at any time before the expiration of 150 days after the date on which notice was given under N.C.G.S. 15A-544.5(d)(1). Such motions to set aside must state the reasons for the motion and attach the documentation required by the statute.

2. Only those individuals authorized by N.C.G.S. 84-4 may prepare legal documents on behalf of an insurance company or appear at any bond forfeiture proceeding in Court on behalf of an insurance company. No individual may prepare legal documents in bond forfeiture matters or appear in bond forfeiture matters when such preparation or appearance is unlawful under N.C.G.S. 84.4.
3. All motions to set aside a forfeiture shall be filed with the Office of the Clerk of Court, Johnston County Courthouse, on form AOC-CR-213. The movant shall file an original and one copy of this motion to set aside a forfeiture on form AOC-CR-213.
4. All motions to set aside a forfeiture shall be filed stamped by the Office of the Clerk of Court, by the Clerk of Court or staff member, with the date and time of filing. All motions or petitions must be filed with the proper accompanying documentation setting out the reasons for the forfeiture remissions and shall be presented to the Clerk of Court for filing. No motions or petitions not properly filled out or motions or petitions that do not have accompanying documents will not be entered in the court system.

No motions or petition to set aside bond forfeiture shall be accepted and filed by the Clerk of Court nor will be entered in the court system by the Clerk of Court after 4:00 p.m.
5. All objections to motion to set aside a forfeiture shall be file stamped by the Office of the Clerk of Court, by the Clerk of Court or staff member, with the date and time of filing. No objections to motions to set aside a forfeiture shall be filed with the Clerk of Court after 4:00 p.m.
6. All objections to motions to set aside a forfeiture shall be filed by the District Attorney or School Board Attorney with the Office of the Clerk of Court, Johnston County Courthouse on a form promulgated by the said Board Attorney.
7. All motion shall be filed in the office of the Clerk of Superior Court of Johnston County. The moving party shall serve a copy of the motion on the District Attorney for that county and on the attorney for the Johnston County Board of Education. The Clerk of Superior Court shall, by personal delivery or by mail, serve a copy of the motion to the District Attorney for Johnston County and to the Johnston County Board of Education.

Service on the attorney for the Johnston County Board of Education shall be accomplished on the said board of education attorney by mailing a copy to the said attorney for the Johnston County Public Schools or hand-delivering the motion at the following address:

James R. Lawrence, Jr.
Attorney for the Johnston County
Board of Education
405 E. Market St.
PO Drawer 1960
Smithfield, NC 27577

There shall be no service on the Attorney for the Board of Education by leaving a copy of a motion or petition in the Attorney's box at the Johnston County Courthouse.

8. Service by first class mail or by hand delivery of all motions to set aside a forfeiture shall be accomplished on the Johnston County District Attorney at the following address:

Via first class mail:

District Attorney
Johnston County District Attorney's Office
PO Box 1029
Smithfield, NC 27577

Via hand delivery:

District Attorney
Johnston County District Attorney's Office
Johnston County Courthouse
Third Floor
Smithfield, NC 27577

9. If neither the District Attorney nor the attorney for the Johnston County Board of Education has filed a written objection to the motion by the twentieth (20th) day after the copy of the motion is served by the Clerk of Superior Court on the District Attorney and the attorney for the Johnston County Board of Education, the Clerk shall enter an order setting aside the forfeiture, regardless of the basis for relief asserted in the motion, the evidence attached, or the absence of either. The time for the twenty (20) day period to commence for the purpose of this section shall be the last date that either the District Attorney or the attorney for the Johnston County Board of Education accepts service from the Clerk. The twenty (20) day period under this section shall

not commence until both the District Attorney and the school board attorney has accepted service.

10. District Court bond forfeitures shall be held on the designated days of each month set by the Chief District Court Judge of the county to hear bond forfeiture matters. Upon receiving any objection to a motion to set aside a forfeiture, after receipt of notice by the school board attorney, the Clerk shall calendar the same on the next court date for bond forfeitures to be heard.

In Superior Court, the Clerk shall notify the person filing the petition and the attorney for the Johnston County Board of Education of the next Superior Court Session within thirty (30) days of the date the objection is filed, that the bond forfeiture matter will be calendared to be heard.

11. As provided in N.C.G.S. 15A-544.5 motions to set aside a forfeiture are limited to the grounds set forth as follows:

A. Motions based on N.C.G.S. 15A-544.5(b)(1) shall be accompanied by a copy of the "official court record". The following may constitute an official court record under this subsection:

- (a) An order signed by a Judge setting aside the defendant's failure to appear and recalling any order for arrest; or
- (b) The official log of the court proceedings, as maintained by the Clerk of Superior Court, demonstrating that the defendant's failure to appear has been set aside and any order for arrest for the failure to appear has been recalled by a Judge.

(c) Electronic record

When a true and accurate copy of one of the above listed documents is provided in support of a motion, the document shall be an "official court record" and shall not be objected to on the grounds of authenticity by the District Attorney or the Board of Education when they are certified by the Office of the Clerk of Court.

B. Motions based on N.C.G.S. 15A-544.5(b)(2) shall be accompanied by a copy of the "official court record". The following may constitute an official court record under this subsection:

- (a) An order signed by a Judge disposing of all of the charges for which the defendant was bonded to appear; or

(b) A certified copy of the notice of dismissal, other than dismissal with leave, signed by the District Attorney, or an Assistant District Attorney, dismissing the charges for which the defendant was bonded to appear; or

(c) A copy of the defendant's criminal record, certified by the Clerk of Court or designee demonstrating the facts set forth in paragraphs (a) and (b) above.

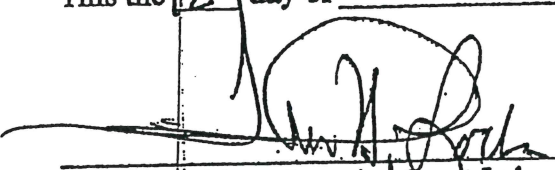
When a true and accurate copy of one of the above listed documents is provided in support of a motion, the document shall be an "official court record" and shall not be objected to on the grounds of authenticity by the District Attorney or the Board of Education when they are certified by the Office of the Clerk of Court.

- C. Motions based on N.C.G.S. 15A-544.5(b)(3) shall be evidenced by a sheriff's receipt that the defendant has been surrendered by a surety on the bail bond as provided by N.C.G.S. 15A-540.
- D. Motions based on N.C.G.S. 15A-544.5 (b)(4) shall be evidenced by a copy of an order for arrest for the failure to appear on the criminal charge in the case in question, including evidence of service by a law enforcement officer. Service of the order for arrest may also be shown by official court documentation, including electronic record.
- E. Motion based on N.C.G.S. 15A-544.5(b)(5) shall be evidence by documentation showing a valid death certificate of the defendant, evidencing that the defendant died before or within the period between the forfeiture and the final judgment.
- F. Motions based on N.C.G.S. 15A-544.5(b)(6) should, but are not legally required to, include documentations demonstrating that the defendant was incarcerated in a unit of the Department of Correction, or in a unit of the Federal Bureau of Prisons, located within the borders of North Carolina, and was serving a sentence at the time of the failure to appear. The failure to include said documentation shall constitute grounds upon which the District Attorney or School Board Attorney may object to the motion. The movant has the burden of proving that the defendant was incarcerated as alleged.
- G. Motions based on N.C.G.S. 15A-544.5(b)(7) should be evidenced by documentation showing that the defendant was incarcerated in a local, state, federal detention center, jail, or prison located anywhere within the borders of the United States at the time of the failure to appear. The movant must notify the District Attorney for the Eleventh Judicial

District of the defendant's incarceration while the defendant was still incarcerated and that the defendant remained incarcerated for a period of ten (10) days following the District Attorney's receipt of notice, as evidenced by a copy of the written notice service on the District Attorney via hand-delivery or certified mail and written documentation of the date upon which the defendant was released from incarceration, if the defendant was released prior to the time the motion to set aside was filed.

12. No motion shall be marked "filed" by the Clerk's Office and entered into the court system without accompanying documentation and the motion being completely filled out. The failure to include any documentation with a motion to set aside a forfeiture as required by N.C.G.S. 15A-544.5(b) shall render the motion null and void, and of no effect. No objection shall be required when said documentation is not included with a motion as required. However, the movant may, without prejudice, re-submit the motion for filing to the Clerk of Court with the required documentation within the time periods prescribed under N.C.G.S. 15A-544.1 through 15A-544.8.
13. Pursuant to N.C.G.S. 15A-544.5(e) no more than one motion to set aside a specific forfeiture may be considered by the Court.
14. All motions requesting relief from a final judgment of forfeiture (Motion for Remission) shall be filed in duplicate with the Office of the Clerk of Court at the Johnston County Courthouse. Said motions shall be served upon the District Attorney and the Johnston County Board of Education as set forth above. Said motions shall be set for hearing at the time of filing by the Clerk of Court for the next available bond calendar in District and Superior Court.
15. Pursuant to N.C.G.S. 15A-544.8(d) no more than one motion by any party for relief from a final judgment of forfeiture (Motion for Remission) may be considered by the Court.
16. This Administrative Order is entered pursuant to N.C.G.S. 15A-535 by Thomas H. Lock, Resident Superior Court Judge of the Eleventh Judicial District, after consultation and approval by Albert A. Corbett, Jr., Chief District Court Judge of the Eleventh Judicial District.

This the 12th day of July, 2012.


Senior Resident Superior Court Judge
Eleventh Judicial District


Chief District Court Judge
Eleventh Judicial District

