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To: **Assignment Judges**
Trial Court Administrators

Directive # 04-16

From: **Glenn A. Grant, J.A.D.**

Date: **June 14, 2016**

Subj: **Bail Recognizances – Preclusion from Registry for Failure to Correct Deficiencies**

This directive outlines a change in the procedure for recording a recognizance of bail pursuant to R. 3:26-4, which requires that "a person admitted to bail shall, together with that person's sureties, sign and execute a recognizance before the person authorized to take bail." The particular change relates to submitted recognizances that contain deficiencies and the consequences of failure to correct those deficiencies.

A recognizance is essentially a contract, endorsed by the court, between the defendant and the surety through its agents and agencies that the defendant will appear. The extent of the surety's financial guarantee that the defendant will appear is defined by the terms of the bail agreement recorded in the form of the recognizance document. This directive establishes a preclusion procedure for those instances where a surety or defendant failed to take the necessary measures to cure the deficiencies contained in the recognizance.

Rule 1:13-3 sets forth the procedure for the preclusion of a surety for the failure to satisfy a judgment. As authorized by the Supreme Court in its March 22, 2016 rule relaxation order (copy attached), this directive permits the Clerk of the Superior Court to preclude a surety, agency and agent from posting bail when they fail to take the necessary measure to cure deficiencies in the recognizance. Currently, the Finance Division contacts the bond agent and the defendant if a correction is required. When the corporate surety, through its agents and agency, fails to cure the defect, the Clerk of the Superior Court contacts the corporate surety to attempt to obtain compliance. This directives formalizes that procedure and, further, authorizes the Clerk to issue a notice of removal from the Surety Bond Registry to the surety if they fail to cure the defect within a week's time.

It is a well-established principle of suretyship that the surety is chargeable for the defendant's appearance only according to the strict terms of the recognizance and that, as a result, the surety's obligation cannot be altered or extended beyond the terms of that agreement. Consequently, a modification of the terms of a bail contract by the court or by

the defendant without the surety's consent operates to discharge the surety from its obligation (State v. Tuthill, 389 N.J. Super. 144 (App. Div. 2006)).

The change in procedure effected by this directive is in those instances where the recognizance document is incomplete, improperly executed, or requires any alteration. The court in such instances shall require the surety or its agent and the defendant to execute a corrected recognizance within one week of notice of the defect. Both the trial courts and the Superior Court Clerk's Office shall make reasonable efforts to allow for such correction before enforcement of the recognizance. If the recognizance has not been corrected within one week after notification of the defect, the Clerk of the Superior Court shall send notice to the surety, including the surety's agency and agent by copy, advising that they have three days from that point in which to execute a corrected recognizance containing the required information. If the deficiency has not been corrected by the end of those three days, the Superior Court Clerk shall issue a notice of removal from the Surety Bond Registry (preclusion notice) pursuant to Rule 1:13-3, with another 24 hours allowed for the surety to cure the defective recognizance. Failure to cure within 24 hours of that preclusion notice shall result in the removal of the corporate surety and all of its agents and agencies from the Surety Bond Registry and the issuance of a bench warrant for the defendant.

Questions regarding this directive may be directed to Superior Court Clerk Michelle Smith by email at Michelle.Smith@njcourts.gov or by phone at 609-984-4200.

G.A.G

Attachment (order)
cc: Chief Justice Stuart Rabner
Steven D. Bonville, Chief of Staff
AOC Directors and Assistant Directors
Clerks of Court
Melaney S. Payne, Special Assistant
Ann Marie Fleury, Special Assistant
Finance Division Managers
Criminal Division Managers
Municipal Division Managers

SUPREME COURT OF NEW JERSEY

Pursuant to N.J. Const. Art. VI., sec. 2 par. 3, it is ORDERED that the provisions of Rule 1:13-3 ("Approval and Filing of Surety Bond") of the Rule Governing the Courts of the State of New Jersey are supplemented and relaxed so as to permit the Clerk of the Superior Court to preclude a surety where a defective recognizance has not been remediated within the time frame established by the court.

For the Court,

Chief Justice

Dated: March 22, 2016