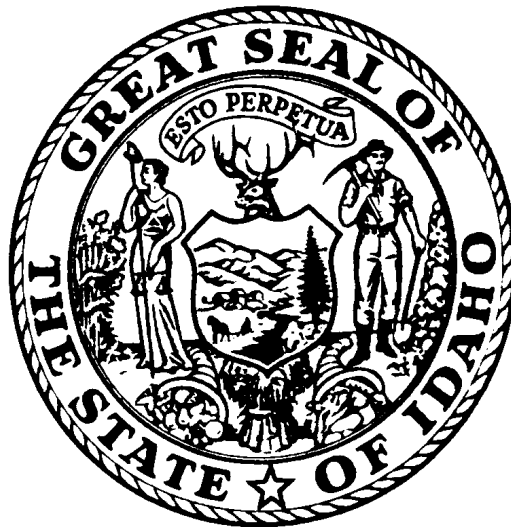


**GUIDELINES FOR THE ADMINISTRATION OF BAIL AND BAIL BONDS
IN THE FIFTH JUDICIAL DISTRICT OF THE STATE OF IDAHO**

Effective September 30, 1997

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Pending Adoption of Statewide Guidelines



**A Handbook Prepared and Assembled by
Honorable Barry Wood
Administrative District Judge
Fifth Judicial District**

**(limited portions taken from previously existing Guidelines)
(other than the cost of making a photo copy paid to a county, this publication is free)**

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SECTION 1.

GENERAL BAIL INFORMATION

A. Sources of law.

Idaho Criminal Rule 46 relates to bail for a defendant (hereinafter Idaho Criminal Rule = I.C.R.).

I.C.R. 46.1 relates to bail for a witness. See also I.C. §19-820, §19-821 and §19-3011.

I.C.R. 4(d) and (f) and 5(c) relate to the requirement that there must be a finding of probable cause by a judge, once the defendant is brought before a judge, before a defendant can be required to post bail. I.C.R. 5(e) deals with setting bail.

Idaho Misdemeanor Criminal Rule 13 relates to a bail schedule in certain misdemeanor crimes. This can be varied up or down if the defendant appears before a judge. M.C.R. 13(a). M.C.R. 2(c) defines bail (hereinafter Misdemeanor Criminal Rule = M.C.R.).

Idaho Code §19-2901 through §19-2937, and §19-1507 through §19-1510, relate to many topics on bail.

I.C.R. 54.5 and I.C. §19-3941 deal with bail on appeal to the district court from a conviction in magistrate court on a misdemeanor.

I.A.R. 13(c)(7) and (8) deal with the powers of the District Court to stay execution of a judgment pending appeal to the Supreme Court (bail pending appeal) as well as the power to set bail, modify the amount forfeited, or issue arrest warrants (I.A.R. = Idaho Appellate Rule).

I.C.A.R. 11 relates to disposition of bail bond forfeitures in misdemeanor charges. Note that if forfeiture is under M.C.R. 14, the bond can be used to pay court costs, but if the forfeiture is for failure to appear or any other reason, the bond cannot be used to pay court costs (I.C.A.R. = Idaho Court Administrative Rule).

Note: The Idaho Rules of Evidence **do not** apply to proceedings with respect to release on bail or otherwise. I.R.E. 101(e)(3).

Conflicts between rules and statutes. In some areas, there exist conflicts between the criminal rules of procedure adopted by the Idaho Supreme Court and the statutes adopted by the Legislature. According to *State v. Currington*, 108 Idaho 539, if a conflict exists, the rules of procedure prevail.

B. Definitions.

Admission to bail. Admission to bail is the order of a competent court or magistrate that the defendant be discharged from actual custody upon bail. I.C. §19-2901.

Bail. Bail means procuring the release from custody of a defendant charged with a criminal offense by posting security for the defendant's future appearance in court and may also include limitations on the defendant including the duty to remain within the jurisdiction. This posting of security is accomplished by one of the methods outlined in paragraph C below.

Bail is also defined by M.C.R. 2(c). “Money or its equivalent, a property bail bond executed by sureties as provided by law, or a surety bond issued by a surety or fidelity company authorized to issue bail bonds under the law of the state of Idaho, deposited with the court, court clerk, or other public officer by a defendant to secure the defendant’s appearance on a uniform citation or a sworn misdemeanor complaint.”

Bail bond. As used in these Guidelines, the phrase “bail bond” means the “security” posted in a given criminal case to secure future appearance of the defendant at a time certain. This security can be cash, money order or check, property, or surety bond. See M.C.R. 13(c).

Exoneration of bail. Exoneration of bail means a court order directing the release and discharge from liability of the person posting a bail bond, or the sureties on a surety bail bond. This occurs either by the bail’s surrender of the defendant, or the defendant’s own surrender to the proper authorities in the time allowed, or by the acquittal of the defendant, or when the conditions of bail have been met, or when the clerk fails to mail the required written notice of forfeiture in a timely fashion. If exonerated, the bail is refunded to the person who posted it. I.C.R. 46 (g) and I. C. §19-2927.

Forfeiture of bail. Forfeiture means a court order declaring that the defendant who is out of custody on bail has breached one or more of the conditions of his release, usually the failure to appear at court, and the consequences of which are the bail posted for that defendant may be forfeited or lost to the court as a penalty for the defendant’s breach.

O. R. release. O. R. release means the defendant is released from custody on his or her own recognizance and no bail is required for this release from custody. See I.C.R. 46(a).

Readmittance to bail. Readmittance to bail means an order from the court readmitting the defendant to bail (again allowing the defendant to be released on bail) following an order of revocation or recommitment of the defendant. I.C.R. 46(e)(3) and (4), and 46(f), and I.C. §19-2934.

Revocation of bail by court order, a.k.a. recommitment of defendant after bail. Recommitment or revocation of bail means the court which originally admitted the defendant to bail may thereafter order the bail bond revoked and the defendant arrested and jailed if the defendant has breached one or more conditions of bail, such as failed to appear. I.C.R. 46(e)(1), (2), and (3), and I.C. §19-2930. Once the bail bond has been revoked, the bail bond may be forfeited.

Setting and taking or posting of bail. The function of setting bail is clearly a discretionary decision of the judge. The taking of bail, also called the posting of bail, consists of the acceptance by a competent court or magistrate, of the undertaking of sufficient bail, for the appearance of the defendant, according to the terms of the undertaking, or that the bail will pay to the state a specified sum. I.C. §19-2902. Any judge or magistrate can set bail. I.C. §19-2908 and I.C.R. 46(a) and (d). The bail must ultimately be deposited with the clerk of the court in which the bail is set. I.C.R. 46(d).

C. Methods of taking or posting bail

Under Idaho law as stated in I.C.R. 46(d) and M.C.R. 13(c), if bail is required in a criminal case (meaning in the event the defendant is not released upon the defendant's own recognizance), it can be posted in one of four ways:

- 1) Cash bail bond
- 2) Check or money order
- 3) Property bail bond
- 4) Surety bail bond

D. Probable cause--judicial finding required

1. Finding of probable cause required. I.C.R. 4(d). See also I.C.R. 5(c).

“If a defendant is arrested without a warrant or appears before the court pursuant to a summons, the magistrate before whom the defendant first appears shall not order the defendant retained or ordered into custody nor require the defendant to post bond unless the magistrate shall determine there is such probable cause as defined in subsection (a) of this Rule at or before the time of the first appearance of the defendant. The defendant must be released upon the defendant’s own recognizance unless and until such determination of probable cause has been made by a magistrate or unless immediate disposition of the complaint has been made; but the complaint shall not be dismissed pending such determination or disposition. If a defendant fails to appear in response to a summons, a warrant shall issue if probable cause has been shown.”

2. Disposition on finding of no probable cause. I.C.R. 4(f).

“If the magistrate finds there is no such probable cause, the magistrate shall refuse to issue a warrant, and shall exonerate any bond posted, and shall order the release of the defendant if the defendant is in custody. A finding of a lack of probable cause shall not require the dismissal of the complaint.”

E. Other terms and prohibitions of bail or O.R. release

If a person is admitted to bail, or is released upon the person’s own recognizance, the court making such determination may also impose such reasonable terms, conditions, and prohibitions as the court finds necessary in the exercise of its discretion. I.C.R. 46(a)(10), and 46(d). In other words, the court can release the defendant O.R., or the court can release the defendant O.R. plus impose reasonable terms and conditions, or the court can release the defendant upon bail, or the court can release the defendant upon bail plus impose reasonable terms and conditions.

F. Name and address of person posting bail bond absolutely required

The name and address of the person posting the bail bond is absolutely necessary for a variety of reasons. The following four (4) reasons are examples.

1. No bail bond of any kind can be properly forfeited unless timely notice of the forfeiture is given to the person who actually posted the bail. I.C. §19-2927 and I.C.R. 46(e)(5) and 46(g).
2. No bail bond of any kind can be reinstated without the prior approval of the person who actually posted the bail bond. I.C. §19-2927 and I.C.R. 46(e)(4).

3. No bail bond of any kind can be properly refunded and/or exonerated except to the person who actually posted the bail bond. I.C.R. 46(g), I.C. §19-2923 and §19-2926.

4. The court may not properly increase or decrease the posted bail without prior notice to and with the consent of the party who actually posted the bail bond. I.C.R. 46(h).

G. Administrative Order regarding name and address of person posting bail

By Order of the Administrative District Judge of the Fifth Judicial District, the sheriff or any peace officer within the Fifth Judicial District having legal custody of any person, or any clerk or deputy clerk shall have no authority to accept any bail bond of any kind which does not state on the receipt the true name and address of the person posting the bail bond. If the defendant posts the bail, list the defendant's name. If someone other than the defendant posts the bail, the person who posted the bail must be listed. If more than one person posts bail (joint contributions to get the necessary bail) each contributor and the respective amount must be listed, i.e., do one receipt for each person, listing the amount deposited by that person.

This name and address shall be considered the "last known address of the person posting the undertaking of bail" for purposes of mailing and receiving notices of forfeiture and any other documents from the court.

H. Notice to prosecutor before setting bail

If admission to bail is a matter of discretion, the court or officer to whom the application to bail is made must give reasonable notice of the request for application to bail to be given to the prosecutor of the county before setting the amount of bail. I.C. §19-2907. The only time admission to bail would not be a matter of discretion is if the defendant did not appear before the judge and posted bail in accordance with M.C.R. 13.

I. Who sets bail

If defendant is brought before a judge in the county where charge is pending. If it is in the county where the charge is pending, bail may be set by any judge in that jurisdiction after a finding of probable cause. I.C. §19-2908, I.C.R. 46 (d) and I.C.R. 4(d) and 5(e). Some bail amounts on misdemeanor cases are set by M.C.R. 13. Typically, the bail amount is set by the judge who is assigned to hear the case. If a bail amount has already been endorsed on a warrant of arrest, this amount should be honored unless the judge finds good cause to alter the amount of bail. I.C.R. 5(e).

If defendant is brought before a judge in a county other than where the charge is pending. If the defendant is brought before a magistrate (or other judge) of another county for the purpose of giving bail, the judge must proceed on the bail issue as if the defendant had been brought before that judge on a warrant of arrest. I.C. §19-1509. Typically, however, the original warrant issued by the judge in the county where the charge is pending has already set the bail which is stated or endorsed on the warrant. The judge should honor the bail as set on the warrant unless the judge finds good cause to alter the amount of bail. I.C.R. 5(e).

If the defendant posts bail. I.C.R. 5(e) requires that in the event the defendant posts bail, the judge shall certify that fact upon the warrant, order the defendant to appear before the court issuing the warrant at a time and place certain, discharge the defendant, and transmit the warrant and undertaking

of bail to the court in which the defendant is required to appear.

J. The typical four scenarios generally seen once bail has been posted.

This brief discussion is of the four scenarios which are most typically and frequently encountered once bail has been posted. Their order of listing here is not suggestive of their priority. It is intended for illustration purposes only and it is not intended to be exhaustive of all scenarios which could arise.

Admission to Bail. In the criminal process, if the defendant has not been granted an O.R. release or if the defendant has not posted a scheduled bail under M.C.R. 13, a defendant must be taken before a judge who sets bail, i.e., the judge requires bail in order to be released from custody. I.C. §19-2908. This is called “admission to bail”. I.C. §19-2901. To require bail there must first be a finding of probable cause by a judge. I.C.R. 4(d). For purposes of illustration, it is assumed the defendant or someone on the defendant’s behalf posts bail. If not, the defendant remains in jail. In the event bail is posted, the defendant is to be given the required notice of time and place to appear. I.C.R. 5(e).

1. First Typical Scenario: Before bail is ordered forfeited by the court, the person posting bail or surety bail bond surrenders the defendant and the bail bond is exonerated. I.C. §19-2924

- a. Before the bail bond (no matter which kind of bail bond) is ordered forfeited by the court.
- b. Whoever posted the bail bond, or the surety, physically turns the defendant into the officer in whose custody he was committed at the time of giving bail or to the county sheriff where the court action is pending. I.C. §19-2924. The defendant is placed into custody by the police. Often, the place where bail was posted and the county where the action is pending is the same. However, sometimes it is different and this can create a problem.
- c. The bail bond is exonerated and returned to the person who posted it. I.C. §19-2924 and §19-2926. See Section 7 of these Guidelines.

Comments. This situation typically arises in one of two circumstances. One is where the person who posted the bail becomes afraid the defendant is not going to show up for court and the bail will be forfeited. The second is when the person who put up the bail believes the defendant will be assessed fines and costs and they do not want to use the bail to pay the fine. I.C. §19-2923. In either event, the bail surrenders the defendant to avoid loss of the bail bond.

2. Second Typical Scenario: Defendant satisfies conditions of bail and the bail, or what is left of the bail, is exonerated.

- a. The defendant satisfies the conditions of bail.
- b. The court then exonerates the posted bail bond.
- c. If the bail is cash, check or money order, the costs, fees and fines are deducted and the balance, if any, is refunded to the person posting bail. I.C. §19-2923.
- d. If the bail bond is real property or a surety bail bond, the person posting the property or

the “surety” or company which is backing the bond, is released from liability on the bond. Because no cash was actually deposited with the court, there is none to refund or deduct costs, fees, and fines from. I.C.R. 46(g), I.C. I.C. §19-2924 and §19-2926.

3. Third Typical Scenario: Defendant fails to satisfy conditions of bail, court orders forfeiture, but before 180 days expires, or any period of extension expires, defendant is taken into custody.

- a. Defendant fails to satisfy one or more conditions of the bail as ordered by the court; most commonly this is done by failing to appear in court.
- b. The court immediately orders the bail bond to be forfeited and the clerk enters this in the court minutes. See Sections 8 and 9 of these Guidelines for the steps to follow.
- c. The court issues a bench warrant for the arrest of the defendant. The issuance of a bench warrant on a failure to appear is discretionary. I.C.R. 46(e)(1).
- d. The clerk sends the Notice of the Forfeiture to the person who posted the bail bond within five (5) days of the date it is ordered forfeited in court. See Sections 8 and 9 of these Guidelines.
- e. Within 180 days of the forfeiture notice, or within the time period of any court ordered extension of time on forfeiture (see Section 10 of these Guidelines), if the defendant himself appears and satisfactorily excuses his neglect, the court shall direct the forfeiture of the bail bond to be exonerated. I.C. §19-2927.

If during this same period, someone other than the defendant delivers the defendant into the custody of any peace officer in Idaho on the charge for which the bail was posted, the court is required to exonerate the bail. I.C. §19-2927.

- f. Once the defendant appears or is in custody on the charge for which the bail was posted, the court can increase or decrease the bail, or re-admit the defendant to bail. This must be done with the consent of the person originally posting the bail bond, if the original bail bond is to be used. See Sections 11, 13, 14, and 15 of these Guidelines.

4. Fourth Typical Scenario: Defendant fails to satisfy conditions of bail, court orders forfeiture, defendant is not timely surrendered or taken into custody, bail is remitted to county.

- a. Defendant fails to satisfy one or more conditions of bail as ordered by the court.
- b. The court orders the bail bond to be forfeited. See Section 8 of these Guidelines.
- c. The court issues a bench warrant for the arrest of the defendant.
- d. The clerk sends notice of the forfeiture to the person who posted the bail bond. See Section 8 of these Guidelines.
- e. Within the 180 day statutory “grace” period on forfeiture, or within an extension granted

by the court, the defendant fails to appear or is not taken into custody on the charge for which the bail was posted, or is not surrendered by the person posting the bail, the person posting the bail bond loses their money or property, or the surety is required to pay the face amount of the surety bail bond to the county.

SECTION 2.

POSTING CASH BAIL BOND

A. Cash bail bond. An amount of cash equal to the bail as set by the court or bail schedule in M.C.R. 13 can be deposited by the defendant or posted by someone else on the defendant's behalf. M.C.R. 13(c)(1). Notice of the time and place to appear is to be given to the defendant. I.C.R. 5(e).

B. Entry of bail information on ISTARs. Promptly upon receipt of the bail, the clerk or deputy clerk receiving the bail shall make the appropriate entries into ISTARs for the case file at issue. See Section 6 of these Guidelines for the appropriate steps.

C. Recommended notice to person posting cash bail bond. The Administrative District Judge of the Fifth Judicial District recommends that the person depositing the cash be told prior to the time of the deposit that if the cash bail bond remains on deposit at the time the defendant is sentenced, and the sentence requires the payment of a fine and costs, then the clerk must, under the direction of the court, apply the money to satisfy the fine and costs. After satisfying the fine and costs, the court will refund the surplus, if any, to the person who posted the cash bond. If no fine or costs are levied, the entire bond is refunded to the posting party, I.C. §19-2923. This notice is not a legal requirement; it is only recommended so the party posting the cash understands the risks.

D. Denominations of cash for bail. By order of the Administrative District Judge of the Fifth Judicial District, the cash bail must be in reasonable denominations of currency. Unreasonable amounts of coin will be refused. Examples are bail paid with pennies, or coins which are not in rolls, etc.

E. Cash bail bond receipt must be in the name of the person who owns the money deposited. Because of forfeiture requirements and because any monies posted by anyone on behalf of the defendant which remains at the time of the sentencing must be used to satisfy a judgment if fine and costs are a part of that judgment, I.C. §19-2923, it is absolutely imperative that the name of the person or party posting the cash is placed on the receipt and in the ISTARs system. Many problems have been encountered because the cash bail was receipted to the named defendant, and not the person who actually posted the cash. See also Section 1(f) of these Guidelines.

F. Caution to clerks refunding cash bail bonds. The surplus, if any, must be refunded to the person whose name appears on the receipt as the posting party. The surplus must not be refunded to some other person or party who claims it was their money which was deposited. Such cases are a dispute which must be decided by and between those claiming an interest in the money, not by the Clerk's office.

SECTION 3.

POSTING BAIL BY CHECK OR MONEY ORDER

A. Checks and money orders. Posting bail may be accomplished by depositing a cashier's check, a money

order, or a personal check payable to the clerk of the court according to the procedures established by the Administrative District Judge of the Fifth Judicial District, or where acceptance of the personal check has been approved by a magistrate or district judge. M.C.R. 13(c)(2). Notice of the time and place to appear must be given to the defendant. I.C.R. 5(e).

B. Bail deposited by check or money order immediately becomes cash bail. Because the bail deposited by check or money order is cashed (deposited for collection) by the clerk, once it has cleared through the bank for collection, it becomes a cash bail bond and the provisions of Section 2 of these Guidelines should be followed. The same refund procedures for cash bail would also then apply.

C. Entry of bail information on ISTARs. Promptly upon receipt of the bail, the clerk or deputy clerk receiving the bail shall make the appropriate entries into ISTARs for the case file at issue. See Section 6 of these Guidelines for the appropriate steps.

D. Procedures regarding checks and money orders established for the Fifth Judicial District. The procedures established by Order of the Administrative District Judge of the Fifth Judicial District are as follows:

The ultimate decision of whether a particular county will accept any personal checks for bail will be left to the discretion of each County Clerk. Because of collection problems, the clerk may elect to accept no personal checks for bail. Of course, under M.C.R. 13(c), a judge can elect to accept a personal check for bail on a case by case basis.

E. Personal checks. If the clerk does elect to accept personal checks in a respective county, the following Guidelines shall apply:

1. The check must be a personal check, drawn on an a commercial bank which is licensed to do business in Idaho, and which has one or more branches located within the state of Idaho.
2. Both the maker of the check must be a resident of the state of Idaho.
3. No two party checks are acceptable.
4. The named payee on the check must be the Clerk of the District Court of the county where the bail is to be deposited.
5. The check must be for the face amount of the bail required.
6. The receipt for the bail and the ISTARs entry for the person who posted the bail must be in the name of the maker of the check.
7. Within two (2) business days of receipt of the check by the clerk's office, the clerk must negotiate the check and deposit it for collection in the bank used by the clerk's office.
8. No refunds on the bail will be made for at least fifteen (15) business days from the date of the deposit of the check in the bank for collection.
9. Once deposited for collection in the bank and the fifteen day waiting period has expired, the bail

is treated the same as a cash bail unless the check is returned dishonored.

10. Any check which is returned, dishonored for any reason, shall be immediately turned over to the prosecuting attorney of the county, and a bench warrant for the arrest of the defendant shall promptly be issued and turned over to law enforcement for execution of the warrant.

11. If the check is dishonored, no refund of the posted bail will be made until payment for the check is made, plus any costs of collection, and a judge orders the refund.

12. The clerk and/or the appropriate law enforcement agency may refuse to take a personal check if they have a reasonable and legitimate belief that the check may be dishonored.

F. Money orders and cashier's checks.

1. The money order or cashier's check must be for the face amount of the bail required.

2. The named payee on the money order or cashier's check must be the clerk of the district court of the county where the bail is to be posted.

3. The receipt for the bail and the ISTARs entry must be in the name of the owner of the money order or cashier's check.

4. Within two (2) business days of receipt of the check by the clerk's office, the clerk must negotiate the money order or cashier's check and deposit it for collection in the bank used by the clerk's office.

5. No refunds on the bail will be made for at least fifteen (15) business days from the date of the deposit of the money order or cashier's check in the bank for collection.

6. Once the bail has been deposited in the bank and the fifteen day waiting period has expired, the bail will be treated the same as a cash bail.

7. Any money order or cashier's check which is returned dishonored for any reason shall be immediately turned over to the prosecuting attorney of the county, and a bench warrant for the arrest of the defendant shall promptly be issued and turned over to law enforcement for execution of the warrant.

8. If the money order or cashier's check is dishonored, no refund of the posted bail will be made until the money order or cashier's check is paid, plus costs of collection, and a judge orders the refund.

9. The clerk and/or the appropriate law enforcement agency may refuse to take a money order or cashier's check if they have a reasonable and legitimate belief that the money order or cashier's check may be dishonored.

SECTION 4.

POSTING BAIL BY A PROPERTY BAIL BOND

A. Property bail bond. For posting bail by a property bail bond, this is accomplished by depositing a property bail bond (usually by pledging real property) by the owners of the property as provided by statute. M.C.R. 13(c)(4) and Idaho Code §19-2901 et seq. authorizes the posting of a property bail bond. The qualifications for this type of bail are set forth in I.C. §19-2910. Notice of the time and place to appear is

given to the defendant. I.C.R. 5(e).

B. Judge must approve any property bail bond. Posting bail by a property bail bond may only be done if a judge approves and accepts the bond. M.C.R. 13(c)(4).

THE SERVICES OF A LAWYER MAY BE REQUIRED TO ASSIST IN MEETING COURT REQUIREMENTS RELATING TO A PROPERTY BOND.

C. Restrictions on property bonds. By Order of the Administrative District Judge of the Fifth Judicial District, the following restrictions are placed upon the acceptance of property bonds:

1. There must be at least two sufficient sureties as required by I.C. §19-2909.
2. Each surety must meet the qualifications of bail as stated in I.C. §19-2910, which are as follows:
 - a. Each of them must be a resident, householder or freeholder within the state; but the court or magistrate may refuse to accept any person as bail who is not a resident of the county where bail is offered.
 - b. They must each be worth the amount specified in the undertaking, exclusive of property exempt from execution; but the court or magistrate, on taking bail, may allow more than two (2) sureties to justify severally in amounts less than that expressed in the undertaking, if the whole justification is equivalent to the required bail.
3. If a property bail bond is used, pursuant to I.C. §19-2909 (before indictment), each surety must execute and acknowledge a written undertaking in substantially the following form:

“An order having been made on the....day of...., 19.., by A.B., a judge of.....county (or as the case may be), that (name of the defendant) be held to answer upon a charge of (stating briefly the nature of the offense), upon which he has been admitted to bail in the sum of dollars; we, (name of first surety) and (name of second surety) (each stating their place of residence), hereby undertake that the above named (name of defendant) will appear and answer the charge above mentioned in whatever court it may be prosecuted, and will at all times hold himself amenable to the orders and process of the court, and if convicted, will appear for pronouncement of judgment, or if he fails to perform any of these conditions, that we will pay to the people of the state of Idaho the sum set forth above.”
4. The defendant may or may not be a surety, which decision is in the discretion of the judge. I.C. §19-2909.
5. The form of the undertaking after indictment shall be in the form prescribed in I.C. §19-2916.
6. Before approving and accepting a property bail bond, the designated judge must hold an

evidentiary hearing to determine the true “bail” worth of the property; specifically to determine the surety’s actual ownership of the property (title), the current market value of the property, the encumbrances of record against the property, if any, and whether the property, or some portion thereof is exempt (homestead election or fits a statutory exemption--see I.C. §11-601 et seq.). An illustration is a home with a fair market value of \$100,000, mortgage of \$99,000, and a homestead election of \$50,000, is useless as bail.

7. The Court must decide if the county is going to be given a security interest in the property of some form (mortgage or deed of trust) including who prepares the required documents, and second, whether this is going to be recorded, and if so, at whose expense.

8. With real property, the court must also be certain that if the property is community property or jointly owned property, all owners must be sureties on the property bond.

9. See Section 14 of these Guidelines for the form of undertaking after indictment.

SECTION 5.

POSTING BAIL BY A SURETY BAIL BOND-- STACKING SURETY BAIL BONDS PROHIBITED

A. Surety bail bond. For a surety bail bond, this is accomplished by depositing, in lieu of cash or other property, a bond or bond certificate which guarantees payment of the amount of the bail bond in the event the person charged fails to appear when required by the court. A fidelity, surety, guaranty, title or trust company authorized to do business in the state of Idaho to become and be accepted as sole surety on undertakings and bonds may execute the written undertakings provided for by the rules, which bail bond may be accepted by

the person receiving the bond without prior approval by a judge unless otherwise ordered by the Administrative District Judge of the Fifth Judicial District. M.C.R. 13(c)(3). Notice of the time and place to appear is given to the defendant. I.C.R. 5(e).

B. Entry of bail information on ISTARs. Promptly upon receipt of the bail, the clerk or deputy clerk receiving the bail shall make the appropriate entries into ISTARs for the case file at issue. See Section 6 of these Guidelines for the appropriate steps.

C. Personal sureties on a bail bond. Personal sureties on a bail bond may be permitted with the approval of the judge, and the general form of the surety bond and justification of sureties shall be as provided in Title 19, Chapter 29, Idaho Code. I.C.R. 46(d). See also Section 4 of these Guidelines for this form of undertaking. The acceptance of personal sureties is rare.

D. Accept only surety bail bonds from approved agents. The clerk and law enforcement may only accept surety bail bonds from approved agents of bonding companies who have been approved to write bonds in the Fifth Judicial District. The clerk or deputy clerk or appropriate law enforcement agency shall accept no surety bond unless that agent's name appears on the current list of agents approved to write bonds in the Fifth Judicial District. This list may change frequently. The most current list as provided by the Trial Court Administrator's Office must be used.

E. Stacking surety bail bonds--prohibited.

1. Power of Attorney must be current.

All surety bonds submitted to the court or to the custodian of an arrested person must be accompanied by a current, non-expired, fully executed and legal Power of Attorney. No Power of Attorney shall be submitted after the date of expiration, if any, on the face of the power.

2. Only one Power of Attorney to be submitted.

Only one Power of Attorney shall be submitted and the face value of the power shall be equal to or greater than the amount of the bond set by the judge in the case for which the bond and power are being submitted. A bond agent shall not attempt to "stack" bonds or powers by submitting more than one Power of Attorney for any single bond.

3. No alteration of Power of Attorney.

No Power of Attorney shall be submitted which has been erased or altered in any manner.

4. Power of Attorney to be used only once.

No Power of Attorney shall be used more than once.

F. To obtain a surety bail bond. A surety bail bond is obtained from a local commercial bondsman who is acting as an agent for the fidelity, surety, or guaranty company. For money paid by the defendant, or someone on the defendant's behalf to the bondsman, the bondsman will guarantee the defendant's appearance in court by posting a surety bond. If the defendant fails to appear as ordered, the bond is forfeited and the bondsman may be required to pay the sum of money which was set by the court as bail. If the bondsman does not pay, the surety who underwrote the bond will have to pay. If the bondsman is required to pay money to the court for the bail, the bondsman has recourse against the defendant for recovery of whatever loss he has suffered.

G. Cost of surety bail bond is not refundable. The money used to purchase a surety bail bond is not refunded to the party purchasing the surety bail bond. The money paid to the bail bondsman for the bond is a private matter between the person paying and the bondsman and is of no concern to the clerk or the court.

H. Name and address of posting agent required. The face sheet of all surety bonds submitted to the court or to the custodian of an arrested person must contain the name and mailing address of the surety agent posting the same.

This name and address must be typewritten, stamped in ink in typewritten form, or in pre-printed typed form. It shall not be considered compliance with this section to have the name and address included in handwritten form or any other form.

This name and address shall be considered the “last known address of the person posting the undertaking of bail” for purposes of mailing and receiving notices of forfeiture and any other documents from the court.

The sheriff or any person within the Fifth Judicial District having legal custody of any person shall have no authority to accept any surety bonds which do not comply with this section, and no surety agent shall attempt to submit a surety bond which does not comply with this section.

I. Surety bail bonds on appeal from a criminal conviction.

1. **Fine Only.** Do not accept surety bail bonds on an appeal from a criminal conviction when only a fine has been imposed. I.C. §19-2906(2)(a). This is because the surety (whoever is posting the bail and in whatever form) must agree to pay the fine, or such portions thereof, as the appellate court directs. Obviously, a surety bail bond will not cover this. For appeals from a misdemeanor conviction, a cash bond or undertaking is required. See I.C.R. 54.5 and I.C. §19-3941.

2. **Imprisonment.** It is acceptable to accept appellate surety bail bonds if there is an appeal from a sentence imposing imprisonment. I.C. §19-2906(2)(b). This is because the surety bail bond is liable if the defendant doesn’t appear as required. The form of the appellate surety bail bond is apparently different from the regular surety bail bond form. The judge must ascertain that the bond is an appellate surety bail bond.

Caution: Make sure the bail bond covers an appellate bail bond situation. See *State v. Rupp*, 123 Idaho 1.

SECTION 6.

HOW TO ENTER A BAIL BOND ON ISTARs

A. Procedure.

The following is the recommended procedure for entry of a bail bond on the ISTARs system:

1. In any criminal case, click on “BONDS” under the Defendant Options.

2. Click on “NEW”.
3. Enter all pertinent information on the Bond Detail Screen.
Enter bond amount, type, payment method, etc.
4. Click on “SAVE”

If surety: Enter bonding company and number, agent number, and Power of Attorney number.

If cash, money order, check or property: Enter property description, name and address of the person actually posting bond. This is critical if a third party is posting the cash, check or money order to ensure the correct refund, if any, correct notice of forfeiture, etc.

B. Picture of ISTARS Screen.

The following is an example of a surety bond that has been entered into ISTARS:

Detail		Transaction Detail		Summary (all bonds)	
Bond type:	Surety	Posted Date:	00-00-0000	Closed	Bond 1 of 1
Bond set at:	.00	Bond number:		Exonerated:	6/27/2006
Bond amount:	000.00	Received:	0.00	Converted:	
Charge:	0 [none]	Undisposed:	0.00	Forfeited:	
				Percent fee:	
				Write off:	
Bonding company:	Aladdin Bail Bond Co. - ALA	Bonding agent:	Hoagland, Blaine W. 208		
Power number:	LG150-290777				
Notice of forfeiture:	00-00-0000	Failed to appear:	<input type="checkbox"/>		
Comment/Condition:				Lookup	

Exonerate			Forfeit Notice	
Forfeit				

Save | New | Void | Close

SECTION 7.

“VOLUNTARY” REVOCATION OF BAIL BOND PRIOR TO BAIL BOND BEING FORFEITED BY COURT ORDER, BY SURRENDER OF DEFENDANT BY THE PERSON POSTING THE BAIL

A. Surrender of defendant by bail. Prior to forfeiture by a court order, any person who posted bail, regardless of whether the bail was cash, check, money order, property, or a surety bond, has the legal right to revoke the posted bond in accordance with I.C. §19-2924. The defendant may even turn himself in. Once the defendant is turned in and placed in custody, the posted bail is exonerated or returned to the person who

posted it. I.C. §19-2924 and §19-2926.

B. Statutory procedure for surrender of defendant by bail prior to forfeiture and exoneration of bail. I.C. §19-2924. Of interest, I.C.R. 46 does not cover this topic.

1. The defendant must be physically turned over either to the officer in whose custody he was committed at the time bail was given, or to the county sheriff where the action is pending, i.e., note that there are only two places the defendant can be surrendered. Often they will be the same place.
2. A certificate of surrender, executed by the bail, must be delivered to the officer who must also attach thereto his signature, the month, day, year and time of day as evidence of surrender and detain the defendant in his custody thereon as upon a commitment. The certificate of surrender shall contain the legal caption of the action in which the undertaking was given, including the name of the defendant, case number, name and address of the person who posted the bail, and shall clearly state that the bail bond is being revoked by the person who posted the bail.
3. The bail bondsman or bond agent shall, the next judicial day, file with the court in which the action or appeal is pending the certificate of surrender, and shall deliver a copy of the same to the county prosecuting attorney. The court shall thereupon order that the bail be exonerated.

C. Certificate of surrender. Before a bail bond will be considered by the court to be revoked, there shall be filed with the court a properly executed "Certificate of Surrender".

1. All "Certificates of Surrender" submitted by a party posting bail pursuant to a bail bond revocation shall indicate that the purpose of surrendering custody of the defendant is to revoke the bail bond prior to a notice of forfeiture.
2. In addition to the "Certificate of Surrender", the party posting bail shall file with the court, a "Motion" and "Order" for "Exoneration of Party Posting Bail From Liability Prior to Notice of Forfeiture". The bail bond is not exonerated until the "Order for Exoneration of Party Posting Bail from Liability Prior to Notice of Forfeiture" is signed by the court. Therefore, no refunds of bail will be made until the above is accomplished. The procedure for a motion and order is not pursuant to I.C. §19-2924, but rather is by order of the Administrative District Judge of the Fifth Judicial District.

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF

THE STATE OF IDAHO, IN AND FOR THE COUNTY OF

THE STATE OF IDAHO,)
) Case No. _____
 Plaintiff,)
 vs.) CERTIFICATE OF SURRENDER
) PRIOR TO COURT ORDERED
) FORFEITURE
)
 Defendant.)
 _____)

The person posting bail herewith delivers to the Sheriff or Custodial agency the defendant by reason of:

_____ Bond Revoked by party posting bail and prior to Notice of Bond Forfeiture

_____ The defendant turned himself/herself into the _____ County Jail prior to court ordered forfeiture

Person Posting Bail Bond Date

Address of Person Posting Bail Bond

The undersigned Deputy Sheriff of the County of _____ certifies that the above-named defendant was surrendered to me by _____, his/her party posting bail bond, this _____ day of _____, 20_____, at _____ AM/PM and is now in my custody.

Deputy Sheriff #

Date of Bond : _____
Bond Amount : _____
Power of Atty.#: _____
Charge: : _____

c: Prosecuting Attorney

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF _____

THE STATE OF IDAHO,)
) Case No. _____
 Plaintiff,)
 vs.) MOTION FOR EXONERATION OF
) PARTY POSTING BAIL FROM
) LIABILITY PRIOR TO NOTICE
) OF BOND FORFEITURE
 Defendant.)
 _____)

Pursuant to I.C. §19-2924, the Party Posting Bail requests that he/she be exonerated from liability of the bail bond in this matter for the following reason(s):

_____ ,

and this bail bond has not been forfeited by any Court and the defendant has been remanded to the custody of the Sheriff of the County of _____, and the original "Certificate of Surrender" has been filed with the Court.

DATED this _____ day of _____, 20____.

Signature of Party Posting Bail

Date of Bond : _____
Bond Amount : _____
Power of Atty.#: _____
Charge : _____

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF _____

THE STATE OF IDAHO,)
) Case No. _____
 Plaintiff,)
 vs.) ORDER OF EXONERATION OF
) PARTY POSTING BAIL FROM
) LIABILITY PRIOR TO NOTICE OF
) BOND FORFEITURE
 Defendant.)
 _____)

The party posting bail bond for the above-named defendant has filed a motion with this Court requesting an Order exonerating him/her from liability on the bail bond, along with a properly executed "Certificate of Surrender".

IT IS ORDERED that the party posting bail bond and any surety are exonerated and discharged from all further liability in this matter, and that the defendant shall be held in custody by the Sheriff of _____ County.

DATED this _____ day of _____, 20____.

 JUDGE

Date of Bond : _____
 Bond Amount : _____
 Power of Atty.#: _____
 Charge : _____

SECTION 8.

FORFEITURE AND ENFORCEMENT OF BAIL BOND

A. Forfeiture. Forfeiture of the posted bail or some portion thereof, regardless of its form, can occur when the defendant fails to comply with one or more conditions of his or her bail bond, such as, without sufficient excuse, fails to appear before the court upon any occasion when the defendant's presence has been ordered by the court. The bail bond (or the defendant's right to bail) is ordered revoked and the posted bail bond is ordered forfeited. The code provisions are I.C. §19-2917, §19-2927 and §19-2929. See also I.C.R. 46(e), and

State v. Fry, 128 Idaho 50, 910 P.2d 164 (App. 1994).

NO BAIL FORFEITURE CAN BE SET ASIDE AFTER ONE HUNDRED EIGHTY (180) DAYS UNLESS AN EXTENSION WAS GRANTED BY A JUDGE DURING THE 180 DAYS--SEE SECTION 12.

B. Conflict between I.C. §19-2927, I.C.R. 46(e), and Idaho case law *State v Fry*, 128 Idaho 50. I.C.R. 46(e) provides that forfeiture for failure to appear is discretionary with the judge. This position is clearly supported by *State v. Fry*, 128 Idaho 50. However, I.C. §19-2927 provides that upon failure to appear, the court must order forfeiture, subject to later discretion by the judge if sufficient excuse is provided.

C. Suggested steps to be followed to effectuate a forfeiture for defendant's failure to appear. To create a forfeiture the judge and clerk must do the following:

1. Call the case and determine that the defendant is not present.
2. Make sure the defendant had been ordered or given a notice to appear on the date and time in question.
3. Make sure the defendant had received the notice or order to be present. This can be by notice to the lawyer for the defendant.
4. Determine that no sufficient excuse is stated.
5. The judge should make clear on the record that the judge understands the decision to order a forfeiture is one of discretion.
6. If the judge decides to enter the order of forfeiture, the judge should state the reasons therefore.
7. The judge must immediately direct the above four findings (1-4) be entered upon the minutes by the clerk.
8. The judge orders the forfeiture of the posted bail or some portion thereof, whether it is cash, check, property, surety bail bond, etc. An actual written order of forfeiture by the judge is not a legal requirement for forfeiture of the bail, but it is clearly the better practice (*State v. Fry*). *State v. Fry*, 128 Idaho 50, also makes it clear that forfeiture is not an all or nothing concept, as the judge can order forfeiture of only a portion of the bail.
9. The judge orders the issuance of a bench warrant for the arrest of the defendant. Note, however, that the judge may delay issuance of the bench warrant for a period of 90 days to see if the defendant is going to appear. I.C.R. 46(e)(1).
10. The court clerk shall mail written notice of the forfeiture within five (5) days of the in-court forfeiture order for failure to appear to the last known address of the person posting the undertaking of bail. This is five days from the date the judge orders the forfeiture in court. I.C. §19-2927, I.C. §19-2929, and I.C.R. 46(e)(5).
11. Once the 90 days has elapsed and the forfeiture is still outstanding, the clerk shall remit the forfeited bail bond to the county auditor. I.C.R. 46(e)(5).

12. If, after all the steps in Section 18 are followed, the property bail bond or surety bail bond is not timely paid, then the trial court administrator should turn the information over to the county prosecuting attorney for enforcement. I.C. §19-2928.

D. CAUTION: FAILURE OF THE CLERK OF THE COURT TO GIVE TIMELY NOTICE TO THE PERSON POSTING THE BAIL OR TO THE SURETY BAIL BONDSMAN SHALL EXONERATE THE BAIL OR UNDERTAKING, I.E., THE COURT LOSES THE POSTED BAIL. I.C. §19-2927 and I.C. §19-2929.

E. Incarceration of defendant in another jurisdiction.

1. Incarceration of the defendant in another jurisdiction is not, per se, a sufficient excuse to prevent forfeiture. It is merely one factor, among many, that a judge may consider in making the discretionary decision whether to forfeit bail. *State v. Fry*, 128 Idaho 50. *Fry* discussed the three lines of authority existing in the United States regarding the failure of a defendant to appear because he or she is incarcerated elsewhere. One line of authority is that the incarceration of the defendant absolutely prevents forfeiture. On the other extreme is the line of authority that the incarceration of the defendant is no excuse and the bail is always forfeited. Idaho adopted the third approach, which makes the incarceration just one of the factors for the judge to consider.

2. Whether the incarceration of the defendant arises from a new crime committed while the defendant was free on bond, or from an offense that preceded his arrest in Idaho on the charge pending before the court, should be considered. *State v. Fry*, 128 Idaho 50.

F. What is a sufficient excuse. *State v. Fry*, 128 Idaho 50. Whether a sufficient excuse has been presented and whether bail should be forfeited remain decisions within the trial court's discretion. If no such excuse is shown, the district court then must determine how much, up to the entire amount of bail, is to be forfeited. This decision of how much of the bail is to be forfeited is also a discretionary decision, apart from, but closely related to, the original decision whether a sufficient excuse has been demonstrated and whether bail should be forfeited.

G. How much of the bail bond to forfeit--factors. See *State v. Fry*, 128 Idaho 50. In deciding how much, if any, of the bail bond to forfeit, the court should consider:

1. If the defendant is incarcerated elsewhere, whether the incarceration of the defendant arises from a new crime committed while the defendant was free on bail or whether the incarceration results from an offense that preceded the defendant's arrest in Idaho on the charge pending before the court.
2. The willfulness of the defendant's violation of bail conditions;
3. The surety's participation in locating and apprehending the defendant;
4. The costs, inconvenience, and prejudice suffered by the state as a result of the violation;
5. Any intangible costs;
6. The public's interest in ensuring a defendant's appearance; and
7. Any mitigating factors, such as physical incapacitation of the defendant;

8. See also I.C.R. 46(e)(4) -- if justice does not require forfeiture.

H. Proper exercise of discretion, *State v. Fry*, 128 Idaho 50. In order to properly exercise its discretion, a trial court must:

1. Correctly perceive the issue as one of discretion;
2. Act within the boundaries of its discretion and consistently with the legal standards applicable to the specific choices available to it;
3. Reach a decision by an exercise of reason.

SECTION 9.

FORFEITURE NOTICES AND ORDERS

A. Form of notice. The clerk can use either the Notice of Bond Forfeiture which is on ISTARs or you can use the form which follows this section.

B. One notice only. The Notice of Forfeiture will be the only notice sent to the bond agent or to the person posting the bail bond. No subsequent billings or notices will be sent out.

C. Steps to follow in ISTARs to print a Notice of Bond Forfeiture.

vs.) NOTICE OF BOND FORFEITURE
)
)
)
 Defendant.)
 _____)

TO: Posting Party's Name _____
Posting Party's Address _____

YOU ARE NOTIFIED that the bail bond for the above-named defendant, for which you are the obligor or payor, is declared forfeited by Order of this court pursuant to Idaho Code §19-2927, the defendant having failed to appear for:

_____ Arraignment	_____ Trial
_____ Pre Trial Conference	_____ Sentencing
_____ Preliminary Hearing	_____ Order of the Court

scheduled for _____ day of _____, 20_____, at _____ o'clock.

If, within one hundred eighty (180) days from this Order, you file with the Clerk of the Court a properly executed "Certificate of Surrender", the Court shall direct that the forfeiture of the undertaking or deposit be discharged.

NO EXTENSIONS OF THE (180) DAY TIME PERIOD WILL BE ALLOWED EXCEPT UPON PROPER APPLICATION AND ORDER OF THE COURT.

JUDGE

Received _____
Person Posting Bond

cc: Custodial Agency

CERTIFICATE OF SERVICE

I certify that a true and correct copy of this Notice was mailed, postage prepaid, to the posting party or bond agent at the address of record this _____ day of _____, 20____.

Court Clerk

Date of Bond : _____
Bond Amount : _____
Power of Atty# : _____
Charge : _____

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF

THE STATE OF IDAHO,)
) Case No. _____
 Plaintiff,)
 vs.) ORDER OF BAIL BOND FORFEITURE
)
)
 Defendant.)
 _____)

The Court having ordered a forfeiture of the posted bail bond in the above-entitled case in open court on the _____ day of _____, 20____.

IT IS HEREBY ORDERED that the bail bond (or the portion hereafter delineated) in the sum of \$_____ is hereby forfeited.

DATED this _____ day of _____, 20____.

 JUDGE

CERTIFICATE OF SERVICE

I certify that a true and correct copy of this order was mailed, postage prepaid, to the above-named posting party or bond agent at the address of record on this _____ day of _____, 20____.

Court Clerk

SECTION 10.

EXONERATION OF FORFEITED BAIL BONDS, i.e., AVOIDANCE OF FORFEITURE BY PERSON POSTING BAIL BOND OR ARREST ON BENCH WARRANT--EFFECT ON POSTED BAIL BOND

A. Exoneration by someone other than the defendant. The bond agent or the posting party will have one hundred eighty (180) calendar days from the date of the Notice of Forfeiture to pay to the clerk of the court the full amount of the bond, or to produce the defendant to any Idaho Peace Officer, or to file acceptable written documentation seeking to excuse payment of the forfeiture. I.C. §19-2927. I.C.R. 46(g) requires the defendant to appear before the court.

1. A defendant will not be considered to be produced before the court until a properly executed "Certificate of Surrender" is filed with the court from the officer in whose custody the defendant is committed or the county sheriff where the action is pending. The document cannot be executed until the actual physical custody of the defendant has been remanded to that office (meaning any Idaho peace officer). In other words, I.C. §19-2927 means the defendant can be turned over to any peace officer anywhere in the state of Idaho, regardless of where the case is pending.
2. All "Certificates of Surrender" submitted by a bond agent or the posting party after a Notice of Forfeiture shall include a statement indicating that the purpose of surrendering custody of the defendant is because the person posting the bail was notified that the posted bail bond was forfeited by the court.
3. The bail bondsman or bond agent shall file the Certificate of Surrender with the court by the next judicial day and shall also deliver a copy of the certificate to the prosecuting attorney.
4. When the defendant is returned to the custody of the county sheriff's office as set forth above, in addition to filing the "Certificate of Surrender" with its accompanying documentation, the bond agent must also file with the court a "Motion" and "Order to Exonerate Party Posting Bail From Liability After Notice of Forfeiture". If the "Certificate of Surrender" is timely and duly executed, the court clerk shall be authorized and directed to secure the signature of the presiding judge on the order and then return to the bond agent or posting party a copy of the order. A party posting bail bond shall not approach a judge for the purpose of securing a signature on an Order of Exoneration.
5. If the defendant is surrendered by the person posting the bail or the bond agent within the 180 days to any Idaho peace officer, the court must exonerate the bond. I.C. §19-2927. I.C.R. 46(g) requires that the defendant be brought before the court (which set the bail) within this time period. This again is a conflict between the rules and the statutes, and as such, I.C.R. 46(g) prevails.
6. If within one hundred eighty (180) calendar days from the date of the Notice of Forfeiture, the defendant is arrested and detained by the state of Idaho, or one of its cities or counties, and the arrest or detainment prevents the party posting bail from taking custody of the defendant within this 180-day time period, the person posting the bail may file with the court written documentation from the custodial agency which confirms the custody and that the custody will continue for the duration of

the 180-day time period and request an extension. See Section 12.

B. Exoneration by the defendant personally. If at any time within one hundred eighty (180) days after the forfeiture entry in the minutes and notice of forfeiture, the defendant appears and satisfactorily excuses his neglect, the court should rescind the order of forfeiture and exonerate the bail bond. I.C. §19-2927. See also I.C.R. 46(g). The determination of a satisfactory excuse is a judicial determination and is discretionary. *State v. Fry*, 128 Idaho 50, 910 P.2d 164 (Ct. App. 1994). The court should enter the order exonerating the bail once the defendant is in custody. Here again is a conflict, as Rule 46(g) has no requirement of a satisfactory excuse--if the defendant appears or is brought before the court, the forfeiture order is rescinded and the bond is exonerated. I.C. §19-2927 requires a finding of a satisfactory excuse before exoneration.

C. Exoneration is a judicial function. Exoneration of forfeited bail is a judicial and not an administrative function, and thus must be formally achieved by an order of the court. I. C. §19-2927. I.C.R. 46(g).

D. Arrest on bench warrant--effect on posted bail bond.

1. Issuance of a bench warrant after forfeiture is discretionary with the judge. I.C.R. 46(e)(1) provides that if the judge forfeits bail, the judge may delay the issuance of the bench warrant for a period of 90 days and determine whether the defendant will appear in court.

2. If defendant is arrested within the 180 days of the date the bail bond is forfeited. When a bench warrant has been issued by the court after a notice of bond forfeiture, the latest warrant shall govern the bond status and amount. If the bench warrant sets a new bond amount, posting of the new bond amount by the defendant exonerates the original person who posted the bail bond from liability on the previous bail bond. The defendant shall not be required to post both the new bail bond and the old bail bond before being released from jail.

3. Consent of person posting bail bond required to readmit defendant to bail. If the original posted bail or bail bond is to be used to readmit the defendant to bail, the court must give notice to and secure the written consent of the person posting bail or the surety bail bondsman. I.C. §19-2927 and I.C.R. 46(e)(4). If the defendant is readmitted to bail, the form of the undertaking is to be in accordance with I.C. §19-2936. See Section 14 of these Guidelines.

4. Additional orders on O.R. The court may enter additional orders affecting the release of the defendant after arrest, including setting aside the forfeiture notice and reinstating the bond in accordance with Section 11. Releasing the defendant on his own recognizance is called O.R. If a defendant is released O.R. after being arrested for a failure to appear, the O.R. release operates to exonerate the original person posting the bail bond from liability on the previous bond.

5. If the Defendant is Arrested after the 180 days of the date the Bail Bond is Forfeited. If the defendant is arrested after the 180 days of the date the bail bond is forfeited, the original bail posted is then forfeited at the end of the 180 days, unless the judge has granted an extension, and the bail is paid over to the county treasurer. I.C. §19-2929.

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF _____

THE STATE OF IDAHO,)
) Case No. _____
Plaintiff,)
vs.) CERTIFICATE OF SURRENDER
) AFTER NOTICE OF FORFEITURE
)
)
Defendant.)
_____)

It is hereby requested that the bail bond posted herein be exonerated and returned to the posting party for the following reasons:

_____ The person posting bail bond surrendered the defendant within one hundred eighty (180) days of the forfeiture, or within any extension of time ordered by the court.

_____ The defendant turned self into the _____ County Jail within 180 days of the forfeiture.

_____ The defendant was arrested by law enforcement within 180 days of the forfeiture.

DATED this _____ day of _____, 20____.

Address of person posting bail bond

Signature of defendant/Person posting bail Date

The undersigned Deputy Sheriff of the County of _____ certifies that the above-named defendant was surrendered to me by _____, his/her party posting bail bond, this _____ day of _____, 20____, at _____ AM/PM and is now in my custody.

Deputy Sheriff

#

Date of Bond : _____
Bond Amount : _____
Power of Atty.#: _____
Charge: : _____

c: Prosecuting Attorney

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF _____

THE STATE OF IDAHO,)
) Case No. _____
)
) Plaintiff,)
 vs.) MOTION FOR EXONERATION OF PARTY
) POSTING BAIL FROM LIABILITY
) AFTER NOTICE OF BOND FORFEITURE
)
) Defendant.)
)
 _____)

THE UNDERSIGNED PERSON POSTING BAIL REPRESENTS TO THE COURT:

1. A notification for bond forfeiture was filed and by the court and;
2. The defendant has been surrendered to the Sheriff of the County of _____, and
3. The Sheriff has signed a "Certificate of Surrender", and
4. All this has been done within the time period allowed by law, or within any extension granted by the court.

MOTION IS MADE for exoneration of the person posting bail from liability of the bail bond posted in this case.

Dated this _____ day of _____, 20____.

Person Posting Bail Bond

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF _____

THE STATE OF IDAHO,)
) Case No. _____
Plaintiff,)
vs.) ORDER OF EXONERATION OF PARTY
) POSTING BAIL FROM LIABILITY
) AFTER NOTICE OF BOND FORFEITURE
)
Defendant.)
_____)

UPON MOTION of the person posting bail and approval of the Court, and the defendant being in custody it is hereby ordered that the person posting bail is exonerated from liability of the bail bond posted in this case. Any bail on deposit is ordered returned to the person posting the bail.

DATED this _____ day of _____, 20____.

JUDGE

Date of Bond : _____
Bond Amount : _____
Power of Atty.#: _____
Charge : _____

SECTION 11.

REINSTATEMENT OF BAIL AND BAIL BONDS AFTER FORFEITURE WHEN FORFEITURE IS BASED UPON DEFENDANT'S FAILURE TO APPEAR

A. Sources of law. Reinstatement to bail after forfeiture based upon the defendant's failure to appear is governed by I.C.R. 46(e)(4) and I.C. §19-2927.

B. Written consent of person posting bail bond required. A forfeiture may be set aside and the posted bail bond may be reinstated by the court only upon written consent of the surety bond agent or the posting party, I.C. §19-2927 and I.C.R. 46(e)(4). If thereafter a judge orders a bond reinstated pursuant to Idaho Criminal Rule 46, said rule requires that written notice of such action be given to the surety or person posting the bail bond after the court takes such action. I.C.R. 46(e)(4). In other words, both notice and consent before reinstatement and notice of reinstatement thereafter.

C. Written order or notice of reinstatement--service of notice required. When such action takes place, the presiding judge shall without delay, issue a written order or other notice reinstating the bail bond, and it shall be the responsibility of the clerk of the district court to mail a copy of said order or other notice to the surety or person posting the bail bond affected by such order. There is no legal requirement of an actual order, the rule just provides written notice of the court's action to be given to the person posting the bail. I.C.R. 46(e)(4).

Said orders or other written notice shall be mailed to the surety or person posting the bail bond no later than seven (7) calendar days from the date the order is signed by the judge. This shall constitute satisfaction of the notice requirement. Failure to comply with the seven day time restriction of this section shall not entitle the affected person posting bail to automatic exoneration or discharge of the affected bail. The presiding judge, however, may, in his/her discretion, exonerate or discharge the bail if enforcement thereof is not in the interest of justice.

D. Request of person posting bail to reinstate bail bond. In the event the person posting bail bond files a "Motion and Order to Set Aside Notice of Bond Forfeiture and Reinstate Bail Bond", said agent shall be given by the clerk a copy of said order upon signature by a judge and the seven day notice requirements of this section shall not apply.

If a surety bail bond has been reinstated, it shall be the duty of the surety bond agent to retrieve the discharge/exoneration slips and attach them to the Motion to Set Aside Notice of Bond Forfeiture and Reinstate Bond. These slips attached to the Motion will signify that the bonds are reinstated and are still in effect until the disposition of the case has been given.

The following forfeitures may not be reinstated:

1. A forfeiture which has been paid by the surety bond agent;
2. In the case of a cash or property bail:

a. Where 180 days from the date of the forfeiture have past, the cash or property bail in the possession of the clerk of the district court will be applied toward the forfeiture and it will be deemed after said 180-day period to be paid.

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF _____

THE STATE OF IDAHO,)
) Case No. _____
)
) Plaintiff,)
 vs.) MOTION TO SET ASIDE NOTICE OF
) BOND FORFEITURE AND REINSTATE
) BAIL BOND
)
)
) Defendant.)
)
 _____)

Date of Notice of Bail Bond Forfeiture: _____

_____, having posted bail bond
for the defendant, and the Notice of Bond Forfeiture having been
issued by this Court, moves this Court for an Order setting aside
the Notice of Bond Forfeiture for bond and reinstating the bond
pursuant to authority set forth in Idaho Criminal Rule 46(e) for
the following reasons:

By this motion, I hereby give my written consent to the Court

to reinstate the bail bond previously posted.

Dated this _____ day of _____, 20_____.

Person Posting Bail Bond

STAPLE DISCHARGE/EXONERATION SLIPS HERE

Date of Bond : _____
Bond Amount : _____
Power of Atty.#: _____
Charge : _____

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF

THE STATE OF IDAHO, IN AND FOR THE COUNTY OF _____

THE STATE OF IDAHO,)	
	)	Case No. _____
Plaintiff,)	
vs.	)	ORDER TO SET ASIDE NOTICE OF
	)	BOND FORFEITURE AND
	)	<u>REINSTATE</u> BAIL BOND
)	
Defendant.)	
_____)	

IT IS ORDERED THAT the Notice of Bond Forfeiture for the bail bond previously issued in this case is set aside and the bail bond is reinstated by this Court under the same terms and conditions as previous imposed upon this bond.

DATED this _____ day of _____, 20____.

JUDGE

Date of Bond : _____
 Bond Amount : _____
 Power of Atty.#: _____
 Charge : _____

CERTIFICATE OF SERVICE

I certify that a true and correct copy of this order was mailed, postage prepaid, to the above-named posting party or bond agent at the address of record.

DATED this _____ day of _____, 20____.

Court Clerk

SECTION 12.

EXTENSIONS OF TIME ON FORFEITURE

A. Sources of law. I.C.R. 46(e)(1) and *State v. Fry*, 128 Idaho 50.

B. Request for extension. If a person posting bail bond requests an extension, he or she must submit to the court, within the 180-day time period after forfeiture is ordered, the written documentation and a “Request for Extension of Time After Notice of Bond Forfeiture”. ANY “**REQUESTS FOR EXTENSIONS**” FILED AFTER THE 180-DAY TIME PERIOD HAS LAPSED WILL NOT BE CONSIDERED BY THE COURT.

All extensions authorized by the presiding court shall be on a uniform form entitled “Order of Authorization/Denial Of Request For Extension of Time After Notice of Bond Forfeiture”.

In granting extensions, the court shall have the right to place any conditions on the extension. I.C.R. 46(e)(4).

If granted, the “Order of Authorization/Denial Of Request For Extension After Notice of Bond Forfeiture” shall be filed with the court. If the defendant is not returned by the last day of the extended period, the person posting bail bond will pay the amount of the bail bond ordered forfeited by the court. The clerk of the court shall notify the presiding judge if the person posting the bail bond fails to comply with the terms and conditions or the time restrictions of said extension.

If the extension is denied, the judge shall make the proper notation on the form and file a copy with the court clerk and return a copy to the person posting bail bond.

C. Extensions may only be authorized by a judge. Extensions of time for enforcement of forfeitures may only be authorized by a judge. This is a matter of discretion, but must be done within 180 days of the forfeiture notice.

D. Extensions of time on forfeiture--factors. See *State v. Fry*, 128 Idaho 50. Similar to deciding how much of the bail bond to forfeit, in deciding to grant an extension of time on forfeiture, or how much time to grant, if any, the court should consider:

1. If the defendant is incarcerated elsewhere, whether the incarceration of the defendant arises from a new crime committed while the defendant was free on bail vs the incarceration results from an offense that preceded the defendant’s arrest in Idaho on the charge pending before the court.
2. The willfulness of the defendant’s violation of bail conditions;
3. The surety’s participation in locating and apprehending the defendant;
4. The costs, inconvenience, and prejudice suffered by the state as a result of the violation;
5. Any intangible costs;

6. The public's interest in ensuring a defendant's appearance; and
7. Any mitigating factors, such as physical incapacitation of the defendant;
8. See also I.C.R. 46(e)(4) -- if justice does not require forfeiture.

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF _____

THE STATE OF IDAHO,)
) Case No. _____
 Plaintiff,)
 vs.) REQUEST FOR EXTENSION OF TIME
) AFTER NOTICE OF BOND FORFEITURE
)
)
 Defendant.)
 _____)

THE UNDERSIGNED party posting bail requests an Extension after
Notice of Bond Forfeiture until the _____ day of
_____, 20____, for the following reason(s):

If the request is granted, this extension shall expire at 5:00
p.m. on the day listed above at which time the party posting bail
shall submit a properly executed "Certificate of Surrender", or
pay the bail bond, or agree that any bail posted with the clerk be
remitted to the county treasurer.

The undersigned party posting bail represents to the Court that the bail Court ordered the bail bond forfeited on the _____ day of _____, and that the 180-day period for bringing the defendant before the Court has not yet expired.

DATED this _____ day of _____, 20__.

Person Posting Bail Bond

Date of Bond : _____
Bond Amount : _____
Power of Atty.#: _____
Charge : _____

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF _____

THE STATE OF IDAHO,)
) Case No. _____
 Plaintiff,)
) ORDER OF AUTHORIZATION/DENIAL
 vs.) OF REQUEST FOR EXTENSION OF
) TIME AFTER NOTICE OF BOND
) FORFEITURE
)
 Defendant.)
 _____)

IT IS HEREBY ORDERED AS FOLLOWS:

[] This request for extension after Notice of Bond
 Forfeiture, is approved.

This extension shall expire at 5:00 p.m. on the _____ day of
 _____, 20____. This extension is granted
 upon the following terms and conditions:

[] This request for extension after Notice of Bond
 Forfeiture is denied.

DATED this _____ day of _____, 20____.

JUDGE

Date of Bond : _____
Bond Amount : _____
Power of Atty.#: _____
Charge : _____

c: Bond Agent

SECTION 13.

REVOCAION OF BAIL BY COURT ORDER, a.k.a. RECOMMITMENT OF DEFENDANT AFTER BAIL FOR REASONS OTHER THAN DEFENDANT'S FAILURE TO APPEAR

A. Sources of Law. Revocation of bail or recommitment of the defendant after bail by a court order is governed by I.C.R. 46(e)(2) and (3), and I.C. §19-2930, §19-2931, and §19-2932.

B. The basis for an order of revocation or recommitment. I.C.R. 46(e)(2) provides that upon a verified application of the prosecuting attorney alleging that a defendant has willfully violated conditions of the defendant's release on bail, other than a failure to appear, the court may issue a warrant directing that the defendant be arrested and brought before the court for a hearing. Without ordering the arrest of the defendant, the court may just order the defendant to appear at a time certain. Failure to appear under the rule is handled by I.C.R. 46(e)(1).

I.C. §19-2930, on the other hand, provides that the court may, by an order entered upon its minutes, direct the arrest of the defendant and his commitment to the officer whose custody he was committed at the time of giving bail for:

1. Failure to appear, or
2. That the defendant's bail, or either of them, are dead, insufficient, or have moved out of state, or
3. The defendant has been bound over on a felony.

C. Bail revocation hearing. I.C.R. 46(e)(3) provides for a bail revocation hearing.

1. The defendant must appear personally if he or she can be found.
2. If the court finds that there has been a wilful breach of conditions of bail and the defendant is present in court, the court may revoke bail and remand the bailed person to the custody of the sheriff.
3. If the court finds that there has been a wilful breach of conditions of bail and the defendant is not before the court, the court may revoke bail and issue a bench warrant for the arrest of the defendant.

D. Notice to person posting bail of the revocation or recommitment hearing.

1. If the basis of the revocation is the defendant's failure to appear, this is handled under I.C.R. 46(e)(1), the order of forfeiture and the order revoking bail is done on the spot, and the clerk must provide written notice to the person posting the bail within five (5) days of the order of forfeiture. I.C.R. 46(g) and I.C. §19-2927. In other words, the notice is given to the person posting bail after the event, i.e., after the defendant failed to appear. See Section 9 of these Guidelines.
2. If the basis of the revocation of the bail is for any reason other than failure of the defendant to appear, neither I.C.R. 46(e)(2) or (3), or I.C. §19-2930 require any notice to be given to the party posting the bail.

However, it is strongly recommended that this notice of the hearing be given to the party posting the bail for at least two reasons. If the court ends up revoking the bail, notice would be given. Secondly, if the court sets additional terms and conditions, the person who posted the bail should be made aware of the court's action.

In any event, the court should promptly notify the person posting the bail of the action taken at the revocation hearing.

E. Order for revocation under I.C.R. 46. Under Rule 46(e)(3), the court may revoke bail and remand the defendant to the custody of the sheriff in which county the action is pending, regardless of where the defendant was when the bail was posted on his or her behalf. See the next section for the conflict.

F. Order for recommitment under the statute. I.C. §19-2931 provides that the order for recommitment must:

1. Recite generally the facts upon which it is founded.
2. Direct that the defendant be arrested by any police officer in the state of Idaho.
3. Direct thereafter, that the defendant be committed to the officer in whose custody he was at the time he was admitted to bail.

Note how this statute operates, e.g.,--arrest warrant for a defendant is issued in Blaine County for a crime charged in Blaine County. The arrest warrant sets bail. The defendant is arrested in Ada County on this warrant. The defendant is released on bail in Ada County. Subsequently, the defendant's bail is revoked and he is arrested. By this statute, even though this is a Blaine County case, the defendant is required to be in custody in Ada County.

Therefore, it is recommended to follow I.C.R. 46(e) with custody where the action is pending.

G. Where the defendant may be arrested. I.C. §19-2932 provides that the order for recommitment of the defendant can be served in any county of the state of Idaho and the defendant be arrested.

SECTION 14.

**READMITTANCE OF DEFENDANT TO BAIL AFTER AN
ORDER REVOKING BAIL OR AFTER AN ORDER OF RECOMMITMENT
FOR REASONS OTHER THAN THE DEFENDANT'S FAILURE TO APPEAR**

A. Sources of law. Readmittance to bail after revocation for reasons other than the defendant's failure to appear is governed by I.C.R. 46(e)(3), 46(f), I.C. §19-2934, I.C. §19-2935, §19-2936, and §19-2937.

B. The rule. I.C.R. 46(e)(3) and 46(f) and I.C. §19-2934 make it very clear that after bail is revoked for reasons other than the defendant's failure to appear, the court in its discretion may:

1. Reconsider bail at any time after the revocation,
2. Set new bail and determine the amount thereof,
3. Order the defendant admitted to bail, and
4. Impose other or additional conditions of release.

C. Posting of bail on readmittance. With the exception of the form of undertaking hereafter discussed, posting of bail on readmittance is done in the same way and in the same fashion as bail was or could have been originally posted, i.e., the process starts all over. I.C. §19-2935.

D. Form of undertaking on bail recommitment if a property bail bond is used. The form of bail on recommitment if a property bail bond is used is different than the original form of undertaking (I.C. §19-2909) used when bail was originally posted. (See also Section 4 of these Guidelines)

The form of undertaking at this stage is governed by I.C. §19-2936 and must be in substantially the following form:

“An order having been made on the day of, 19. ., by the court (naming it), that (name of defendant) be admitted to bail in the sum of dollars in an action pending in that court against him in behalf of the state of Idaho, upon an (information, presentment, indictment, or appeal, as the case by be), we, the sureties, (name of surety 1) and (name of surety 2), of (stating their places of residence), hereby undertake that the above named (name of defendant) will appear in that or any other court in which his appearance may be lawfully required upon that (information, presentment, indictment, or appeal, as the case may be), and will at all times render himself amenable to its order and process and appear for pronouncement of judgment; or if he fails to perform any of these conditions, that we will pay to the state of Idaho the sum set forth above.”

E. Qualification of bail on recommitment. The qualifications of bail on recommitment if a property bail bond is used are governed by I.C. §19-2937. In other words, those stated in I.C. §19-2910. These are:

1. Each surety must meet the qualifications of bail as stated in I.C. §19-2910, which are as follows:

a. Each of them must be a resident, householder or freeholder within the state; but the court or magistrate may refuse to accept any person as bail who is not a resident of the county where bail is offered.

b. They must each be worth the amount specified in the undertaking, exclusive of property exempt from execution; but the court or magistrate, on taking bail, may allow more than two (2) sureties to justify severally in amounts less than that expressed in the undertaking, if the whole justification be equivalent to that of sufficient bail.

SECTION 15.

INCREASING OR REDUCING BAIL

A. Sources of law. The sources of law regarding increasing or decreasing bail are M.C.R. 13(a), I.C.R. 46(h), I.C. §19-1510, I.C. §19-1511, I.C. §19-2918, and I.C. §19-2930(3).

B. Increasing or reducing the amounts stated in M.C.R. 13 bail schedule. For the bail amounts set in M.C.R. 13(b), if the defendant appears before a judge, the scheduled amounts are advisory only. The judge may follow, raise, lower, or eliminate the amount stated. M.C.R. 13(a).

C. Increasing bail.

1. When bail may be increased.

After admission to bail, the court before which a case is pending may increase the amount of bail. I.C. §19-2918 and I.C.R. 46(h). While the rule does not expressly state this, it is apparent the court can increase the bail on its own motion.

2. Reasons for increases.

The above cited authority states the reasons bail may be increased which include the following:

- a. Upon good cause shown. I.C. §19-2918.
- b. In the discretion of the court. I.C.R. 46(h)(1).
- c. In a felony case, when the defendant has posted bail before an information or indictment is filed. Once filed, the judge can increase the bail. I.C. §19-1510.
- d. Upon an application of the prosecuting attorney for an increase in bail. I.C.R. 46(h)(1).
- e. Upon a bail revocation hearing, the court may set “new bail”. I.C.R. 46(e)(3).
- f. After forfeiture of bail, but before remittance of the forfeiture, the court may set “new bail”. I.C.R. 46(e)(4).
- g. Note, that in *State v. Sabin*, 120 Idaho 780 (App. 1991), the judge revoked the defendant’s bail in part on his “gut feeling” that the defendant might flee.

3. Steps to be taken in increasing bail.

- a. If the increase is sought upon application of the prosecuting attorney,
- b. The court orders the defendant to appear for a hearing on the application.
- c. The court should also notify the person posting the bail of the date and time of the hearing.
- d. Court holds the hearing and makes a discretionary determination of whether to increase the bail based upon what is presented.

e. If the court orders the amount to be increased, the court should order the defendant be committed to actual custody unless the defendant's gives bail in the increased amount. I.C. §19-2918.

f. If the defendant fails to appear at the hearing after being properly notified of the date and time of said hearing, the court shall, absent evidence of sufficient excuse for this absence, immediately forfeit the bail and may issue a warrant for the arrest of the defendant. I.C.R. 46(h)(1).

D. Decreasing bail.

1. When bail may be decreased. After admission to bail, the court before which a case is pending may decrease the amount of bail previously set. I.C. §19-2918 and I.C.R. 46(h)(2).

2. Reasons for decrease. The above cited authority states the reasons bail may be decreased which include the following:

a. Upon good cause shown. I.C. §19-2918.

b. In the discretion of the court. I.C.R. 46(h)(2).

3. Consent required of person posting existing bail to continue the defendant on the original bail; Notice to prosecutor. If the court decides to reduce the amount of required bail, in order to use the original bail, or the part of the original bail now necessary, the court must obtain the written consent of the person posting the undertaking, with the court record properly reflecting the reduced amount of the bail obligation. I.C.R. 46(h)(2). I.C. §19-2918 and I.C.R. 46(h)(2) require notice to be given to the prosecutor if the decrease is sought upon the application of the defendant.

If the person posting will not consent, the court can only reduce bail by requiring the defendant to surrender to the custody of the sheriff and the court exonerates the original bail. The defendant will then have to acquire new bail in the reduced amount.

4. Steps to be taken in decreasing bail.

a. Defendant makes application to the court to reduce bail.

b. Timely notice must be given to the prosecutor.

c. The court hears whatever is presented and makes a discretionary decision.

d. If the court decides to reduce, it must obtain the written consent of the person posting the bail to continue the defendant on the original bail and reflect the reduced bail obligation on the court's record.

e. If the person posting the original bail refuses such consent, the court may reduce the amount of the bond only by requiring the defendant to surrender himself to the custody of the sheriff and posting a new bond in the reduced amount. The court's order shall reflect that upon such surrender the original undertaking shall be exonerated.

SECTION 16.

**RIGHT TO BAIL AFTER PLEA OF GUILTY OR VERDICT OF
GUILTY PENDING (BEFORE) SENTENCING**

A. Sources of law. Bail between the time the defendant either plead guilty or there is a verdict of guilty, and the time the defendant is sentenced, is governed by I.C.R. 46(a), I.C. §19-2904, (the word conviction being interpreted as a judgment of conviction entered at the time of sentencing), §19-2905, and §19-2521(1)(c). See *State v. Sabin*, 120 Idaho 780 (App. 1991).

B. Judge’s discretion to revoke bail and incarcerate the defendant after a finding of guilt. I.C.R. 46(a) clearly provides that this determination to revoke a defendant’s bail and incarcerate the defendant after a plea of guilty or a verdict of guilty is one of discretion resting with the judge, taking into account all factors in Rule 46(a), including the risk of flight and that the seriousness of the crime will require some incarceration. So the defendant “might as well get started serving the sentence.” *Sabin*, 120 Idaho at 782; I.C. §19-2521(c)(1).

SECTION 17.

RIGHT TO BAIL PENDING APPEAL AFTER SENTENCING

A. Sources of law. For felony cases on appeal, bail is governed by I.A.R. 13(c)(7) & (8), I.C.R. 46 (b), I.C. §19-2905, §19-2906(2), §19-2919, and §19-2920. For misdemeanors, bail on appeal is governed by I.C.R. 46(b), 54.5, I. C. §19-3941, and I.C. §19-3944.

B. Felony cases.

1. The right. If not released on his or her own recognizance, a defendant may be admitted to bail by the court in which the defendant was convicted (sentencing court) pending an appeal unless it appears that the appeal is frivolous or taken for delay. I.C. R. 46(b). Note, however, that I.C. §19-2919 states either the sentencing judge or any magistrate having the power to issue a writ of habeas corpus may set the bail on appeal.

2. Jurisdiction. The District Court retains certain jurisdiction regarding bail issues while a case is on appeal. See I.A.R. 13(c)(7) and (8). These include whether to allow bail, the amount of bail, modify the amount of bail, forfeiture and arrest.

3. Conflict between I.C.R. 46(b) and I.C. §19-2905. There is language in I.C. §19-2905 to the effect that if the defendant is sentenced to a term of incarceration greater than five (5) years, or has received an enhanced penalty pursuant to I.C. §19-2520 or I.C. §19-2520A, no bail shall be allowed. I.C.R. 46(b) contains no such limitation. *State v. Currington*, 108 Idaho 539, decided by the Idaho Supreme Court in 1985, said to follow Rule 46(b) and that the limitations of the statute were improper. However, the legislature amended I.C. §19-2905 in 1986, after the *Currington* decision, to provide “notwithstanding any rule of court or statutory provision to the contrary, no court of the state shall have any power to alter the right to bail pending appeal as limited herein.” A reading of *Currington* indicates I.C.R. 46(b) trumps the statute on a constitutional basis as the Supreme Court found that the fixing of bail and release from custody are matters traditionally within the discretion of the courts, citing Idaho Constitution, Article 1, § 6 and Article 5 § 13. The *Currington* Court was a 3-2 decision and none of the five justices are now on the Supreme Court. Until the Supreme Court rehears a case on this amended statute, it is the opinion of the author of these Guidelines that if bail on appeal is going to be denied in the circumstances of a case fitting under §19-2905, the judge has the right to rely on the statute (as now amended), but to be safe, deny it for reasons other than the statute itself if such other grounds exist. Also, §19-2520A has been repealed.

4. Factors in allowing and/or setting the amount of bail on appeal. Subject to the statutory language quoted immediately above, I.C.R. 46(b) states that the sentencing judge is to take into account the factors set forth in I.C.R. 46(a) in deciding whether to admit the defendant to bail on appeal, unless it appears the appeal is frivolous or taken for delay.

5. Bail on appeal--qualification and how put in--undertaking. I.C. §19-2920 provides that in addition to the requirement for posting bail, the undertakings of bail (on a property bail bond) must be conditioned as prescribed for undertakings of bail on appeal. Apparently this means the restrictions imposed by I.C. §19-2906(2)(a) and (b).

6. Appellate Court setting bail. An appellate court may set bail pending an appeal if the sentencing court has refused to allow bail. I.C.R. 46(b). Presumably, the appellate court can review and alter any bail posted.

7. Surety bail bonds on appeal from a criminal conviction:

a. Fine Only. Do not accept surety bail bonds on an appeal from a criminal conviction

when only a fine is imposed. I.C. §19-2906(2)(a). This is because the surety (whoever is posting the bail and in whatever form) must agree to pay the fine, or such portions thereof, as the appellate court directs. Obviously, a regular surety bail bond will not cover this.

b. Imprisonment. It is proper to accept appellate surety bail bonds if there is an appeal from a sentence imposing imprisonment. I.C. §19-2906(2)(b). This is because the surety bail bond is liable if the defendant doesn't appear as requested. The form of the appellate surety bail bond is apparently different than the form of a regular surety bail bond. The judge needs to make sure the bond is an appellate surety bail bond.

8. Caution. Make sure the bail bond covers an appellate bail bond situation. See *State v. Rupp*, 123 Idaho 1.

C. Misdemeanor cases.

1. The right. I.C. §19-3941 provides that the defendant is entitled to be released from custody or obtain a stay in the proceedings if a cash or property bail bond is posted in an amount not exceeding \$1,000, to be set by the judge. I.C.R. 54.5(a) provides the I.C. §19-3941 method can be followed, or bail may be ordered by the magistrate or the district court in accordance with I.C.R. 46(b) and 54.5(b)(7).

2. Factors in allowing and/or setting the amount of bail on appeal. Subject to the statutory language quoted immediately above, I.C.R. 46(b) states that the sentencing judge is to take into account the factors set forth in I.C.R. 46(a) in deciding whether to admit a defendant to bail on appeal, unless it appears the appeal is frivolous or taken for delay.

3. Person posting bail bond loses bail if defendant loses appeal. I.C. §19-3944 provides that if the defendant loses the appeal and costs and fines remain unpaid, the bail goes to pay those costs and fines.

4. Do not accept an appellate surety bail bond if the defendant was ordered to pay a fine and/or costs. I.C. §19-3944.

a. Fine Only. Do not accept surety bail bonds on an appeal from a criminal conviction when only a fine is imposed. I.C. §19-2906(2)(a). This is because the surety (whoever is posting the bail and in whatever form) must agree to pay the fine, or such portions thereof, as the appellate court directs. Obviously, a regular surety bail bond will not cover this.

b. Imprisonment. It is proper to accept appellate surety bail bonds if there is an appeal from a sentence imposing imprisonment. I.C. §19-2906(2)(b). This is because the surety bail bond is liable if the defendant doesn't appear as requested. The form of the appellate surety bail bond is apparently different than the regular surety bail bond form. The judge needs to make sure the bond is an appellate surety bail bond.

SECTION 18.

POLICY REGARDING FORFEITED UNPAID SURETY BAIL BONDS

CLERK'S DUTY TO REPORT

T. C. A.'S DUTY TO PROVIDE CURRENT LIST OF APPROVED SURETY BAIL BONDSMEN

A. Clerk's notice to trial court administrator. Approximately five (5) days after the 180-day time period of forfeiture has expired, and on a weekly basis, all clerks of the district court will send the trial court administrator an outstanding bond report from ISTARs which will list all surety bail agents who have failed to timely pay forfeited bonds. This should give all agents ample time to pay their forfeitures immediately following their 180 days. If an agent pays their forfeitures timely, their name will not be on the outstanding bond report. To run this report from ISTARs use the following steps:

Reports
Case Related
Bonds
Bonds Forfeited Report
Past Notice Grace Period

B. Clerk's notice to surety bond agent. If an agent's name appears on the outstanding bond report, the clerk of the district court will, by certified mail, mail a copy of the report to that agent. If the agent wishes to pay the bonds listed, he or she must pay the forfeited bail bonds to the clerk of the district court to have their name removed from the report.

C. Removal of surety bail agent to write. If a bail agent's name appears on the outstanding bond report ten days after receiving a copy of the report by certified mail, the trial court administrator will immediately remove that agent's name from the list of bonding agent's that have been approved to write bonds in the Fifth Judicial District, pending final adjudication of the nonpayment issue under Sections 25 and 26 of these Guidelines. The agent will receive no prior notice of this action from the trial court administrator. If an agent's name is on the outstanding bond report, it will be assumed that the agent intends not to pay. If there is a pending motion before the court regarding the forfeiture in question, the trial court administrator will not remove the agent's name from the list of approved bonding companies until the court rules on that motion. The clerk's office will monitor the activity and outcome of all motions.

If a "supervising" agent's name is removed from the list of approved bonding companies, all of that agent's "sub-agents" will also be removed from the list.

D. Reinstatement.

1. If the trial court administrator removes an agent's name from the list of approved bonding companies, the trial court administrator will not put that agent back on the list until that agent provides a copy of the court receipt as proof that the bonds in question have been paid. The Department of Insurance and the agent's insurance company will be notified that the agent has been removed from the list for failure to pay.
2. If a bail agent submits a check as payment on a forfeiture, and that check is unsigned or bears the incorrect amount, it will be treated as any other check received by the court. It will be returned to the party and will be treated as a "nonpayment".

E. Collection. An unpaid forfeiture, after the 180-day time limit, is a legal debt due to the county. If an agent's name is removed from the list for nonpayment, and the forfeiture remains unpaid 10 days thereafter, an order to show cause will be issued to the agent and the trial court administrator will request that the prosecuting attorney file a civil action against the agent and that agent's insurance company for collection on the debt in accordance with I.C. §19-2928.

F. Updated list. The Trial Court Administrator's Office shall be responsible for providing all sheriffs and clerks of the district court within the Fifth Judicial District with an updated list of those surety bond agents who are so qualified to post bonds.

SECTION 19.

DEATH OF A DEFENDANT

If a defendant for whom a bail bond has been posted dies prior to forfeiture or within the 180-day period following forfeiture, the person posting the bond must sign and file with the court a "Motion

and Order To Discharge Bond - Death of Defendant” together with official proof of death which lists at least the full name of the deceased and the date of death.

If the documentation is satisfactory, the clerk shall submit the same to a judge for signature of the order.

A copy of the signed order shall be mailed by the clerk of the court to the surety bond agent or person posting the bail bond.

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF

IN AND FOR THE STATE OF IDAHO, COUNTY OF _____

THE STATE OF IDAHO,)
) Case No. _____
 Plaintiff,)
 vs.) MOTION TO DISCHARGE BAIL BOND--
) DEATH OF DEFENDANT
)
 Defendant.)
 _____)

_____, having posted a bond on behalf of the above-named defendant and the Court stipulate and agree that the bond should be discharged on the grounds that the defendant is now deceased.

DATED this ____ day of _____, 20__.

 Person Posting Bail Bond

Date of Bond : _____
 Bond Amount : _____
 Power of Atty.#: _____
 Charge : _____

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF

IN AND FOR THE STATE OF IDAHO, COUNTY OF _____

THE STATE OF IDAHO,)	
	)	Case No. _____
Plaintiff,)	
vs.	)	ORDER TO DISCHARGE
	)	BAIL BOND--DEATH OF DEFENDANT
)	
)	
Defendant.)	
_____)	

IT IS ORDERED that the bond in this matter is discharged, the Bond Agent is exonerated, any cash posted be refunded, and/or any property posted be released.

DATED this _____ day of _____, 20_____.

JUDGE

SECTION 20.

AMENDMENTS TO GUIDELINES & APPLICATION

The Administrative District Judge of the Fifth Judicial District, or the trial court administrator with the written consent of the Administrative District Judge of the Fifth Judicial District, shall have the authority to amend any portion of these Guidelines as is necessary for the efficient processing of bail bonds within the Fifth Judicial District.

These Guidelines shall apply to all locations within the boundaries of the Fifth Judicial District.

SECTION 21.

LICENSE REQUIREMENT TO WRITE SURETY BAIL BONDS

No surety bail bond shall be accepted by any sheriff, or other law enforcement, or clerk of the district court within the Fifth Judicial District, from any person who is not duly licensed with the Idaho Department of Insurance, nor shall any bond be accepted where the bond is insured by an insurance company, organization, business, or person which is not duly registered and approved to conduct business in the state of Idaho by the Idaho Department of Insurance.

SECTION 22.

**APPLICATION TO WRITE SURETY BAIL BONDS AND
CRIMINAL HISTORY CHECKS OF SURETY BAIL BONDSMAN**

Any person desiring to write or post surety bail bonds in the Fifth Judicial District shall first be required to complete, in typewritten form, and sign an “Application to Write Surety Bonds within the Fifth Judicial District, State of Idaho” and any other form(s) required by the Trial Court Administrator's Office. The application form must be submitted with a copy of the applicant's valid and unexpired license from the Idaho Department of Insurance authorizing the person to act as an insurance agent within the state of Idaho.

The applicant must also provide personal information, including date of birth, social security number, and any other information required by the Trial Court Administrator's Office.

All applicants to write surety bail bonds in the Fifth Judicial District must agree to and authorize a criminal history background check.

No applicant shall be placed on the approved list of surety agents if said criminal history check reveals a conviction of an applicant or the applicant's proposed insurance company in any state or federal court within the United States or any of its territories, of any felony, or a misdemeanor involving theft, fraud, or any other crime bearing upon honesty or veracity.

*** SURETY BONDSMAN CHECKLIST FOR TCA OFFICE USE ONLY ***

* Copy of insurance license received _____

- * Insurance Company contacted _____
- * Supervising Agent contacted _____
- * Idaho Dept. Ins. contacted _____
- * Other states contacted _____
- * Supp. Info. Crim. History Form _____
- * Criminal History Check Completed _____
- * Copy of Guidelines Given to App. _____

APPLICATION TO WRITE SURETY BONDS
WITHIN THE FIFTH JUDICIAL DISTRICT, STATE OF IDAHO

ALL INFORMATION MUST BE TYPEWRITTEN

Agent's
Last Name: First Name: Mid. Initial:

Aliases:

DOB: SS#: Driver's Lic. #:

Home Address:

City: Zip:

Home Phone:

Agent's Insurance Company:

Contact In Bail Division:

Address:

City: State: Zip:

Phone:

Name of Business For Which You Will Post Bonds:

Address:

City: State Zip:

Phone:

Name of Your Supervising Agent:

Address:

City: State Zip:

Phone:

If this application is approved, I would like all Notices of Forfeiture and other correspondence mailed to the following address:

Name:

Address:

City:

State:

Zip:

Expiration Date of Insurance License:

Please list any other states where you are currently or have previously been licensed to post surety bonds and the effective dates of your license:

State

Date License Was Active

Have you ever been convicted of a felony anywhere?

_____ Yes

_____ No

If so, please give details (use additional sheets if necessary);

Have you ever been the subject of disciplinary proceedings by any state or courts with regard to the posting of surety bonds or any other type of insurance?

_____ Yes

_____ No

If so, please give details (use additional sheets if necessary);

List any city or town in which you have lived during the last 5 years:

City and State

City and State

City and State

City and State

City and State

City and State

I hereby certify that all information in this Application is true and correct. I further certify that I am duly licensed by the Idaho Department of Insurance to act as a Resident Agent for Surety and that said license is in full force and effect as of the date of this application and that said license is not currently suspended or revoked. I further certify that I am not under any type of probation or restrictions with the Idaho Department of Insurance. By filing this application, I also understand that the Fifth District Court will conduct a full criminal history check into my background and I authorize this background check to occur.

Date

Applicant--Agent

SECTION 23.

PETITIONS FOR BANKRUPTCY

Any surety bail bond agent authorized to write or post surety bail bonds for the Fifth Judicial District who files a petition for bankruptcy of any type in any state may be prohibited from further writing or

posting any bonds, or may be restricted in such activity, as determined by the Administrative District Judge of the Fifth Judicial District. If such a petition is filed by an insurance company, all bond agents writing or posting bonds on behalf of the insurance company may be prohibited from further writing or posting any bonds or may be restricted in such activity, as determined by the Administrative District Judge of the Fifth Judicial District.

SECTION 24.

CHANGE OF ADDRESS OR OTHER STATUS OF SURETY BAIL BOND

All surety agents authorized to post surety bonds within the Fifth Judicial District shall immediately notify the trial court administrator of any:

1. Change of business or residential address of the surety agent; and

2. Change of name or address of the surety agent's insurance company; and
3. Change of insurance company who the surety agent will represent when posting surety bonds; and
4. Change of phone number, business or personal, of the surety agent; and
5. Change of supervising agent of the surety agent, or a change of employees/agents who the surety agent supervises; and
6. Change of status of the surety agent on the records of the Idaho Department of Insurance; and
7. Change of the name of the business the surety agent works for or operates.

Notification of any such changes must be done in writing and within five (5) business days from the date of the subject change. **If a surety fails to comply with the notification requirements of this section, the surety shall not be allowed to assert as grounds for exoneration the fact that Notices of Forfeiture were sent to an address other than his current business address.**

Failure to comply with this section will be deemed a violation of these Guidelines and will subject the surety agent to the sanctions listed in Sections 18, 25, and 26 hereof.

SECTION 25.

VIOLATION OF THESE GUIDELINES—CLERK'S DUTY TO REPORT VIOLATIONS

The clerks of the district court or their appointed deputies, or court clerks designated under Idaho Misdemeanor Criminal Rule 12, shall be responsible for reporting any and all violations of these Guidelines to the trial court administrator or his/her delegate within one business day of discovery of

the violation at which time the trial court administrator or his/her delegate shall investigate and, if appropriate, take immediate action against the named surety or other person posting bail bond as set forth herein.

For good cause shown, the Administrative District Judge of the Fifth Judicial District shall have authority to order all sheriffs and clerks within the Fifth Judicial District to refuse to accept any bail bonds posted by any surety or bail bonds business, or any bonds posted which are insured by any insurance company. "Good Cause" for exercising this authority and issuing such an order shall include, but is not limited to:

1. Failure of the surety to comply with any provisions of these Guidelines.
2. Violations by the surety or insurance company of any rules or regulations promulgated and applicable to surety or insurance companies by the Idaho Department of Insurance.
3. Conviction of a surety or insurance company of any felony, or a misdemeanor involving theft, fraud or any other crime of moral turpitude in any state or federal court within the United States or any of its territories.
4. If in the conduct of his affairs, a surety or insurance company has used fraudulent or dishonest practices, or has shown himself in any way to be incompetent, untrustworthy or a source of injury and loss to the public, the court or others.
5. Providing false, incorrect or incomplete information in any format, verbal or written, to the court, a judge, a clerk, deputy clerk or the office of the Trial Court Administrator of the Fifth Judicial District.
6. If a surety or a surety's insurance company is subjected to any disciplinary measures imposed by the Idaho Department of Insurance or by any judge or trial court administrator in the state of Idaho.
7. Failure to timely pay the court for any forfeiture as set forth in these Guidelines.
8. A conviction in any state or federal court within the United States or any of its territories, of any felony, or a misdemeanor involving theft, fraud, or any other crime bearing upon honesty or veracity.
9. Use of fraudulent or dishonest practices.
10. Imposition of any bond related disciplinary measures by the Idaho Department of Insurance or by any judge or trial court administrator in the state of Idaho.

Except for failure to timely pay the court for any forfeiture as set forth in these Guidelines (which failure to pay is prima facie proof of a violation of these Guidelines), before entering such an order, a hearing must first be held as provided in Section 26 of these Guidelines.

SECTION 26.

**REQUIRED HEARING BEFORE ADMINISTRATIVE JUDGE
PRIOR TO ENTRY OF SECTION 25 ORDER**

Except for provisions of Section 18(C) of these Guidelines for failure to timely pay forfeitures, which is prima facie proof of a violation of these Guidelines, the trial court administrator or his/her delegate, who shall be responsible to oversee implementation of these Guidelines shall file with the

Administrative District Judge of the Fifth Judicial District an “Affidavit and Petition” requesting the issuance of an order as set for in Section 25 of these Guidelines. Upon filing said “Affidavit and Petition” the Administrative District Judge of the Fifth Judicial District shall issue an “Order to Show Cause” directed to the affected surety or insurance company giving a day and time certain on which the named surety or insurance company must appear and show good cause why an order should not be issued which will prohibit the posting of any bail bonds by said surety or underwritten by said insurance company at any location within the Fifth Judicial District.

After the “Affidavit and Petition” have been filed, the court shall cause a copy thereof along with a copy of the executed “Order to Show Cause” to be served upon the named surety or insurance company at least five (5) business days prior to the date of the hearing. Service upon the named surety bail bondsman and/or insurance company shall be deemed complete by sending said documents to the bail division of the named insurance company by certified mail, return receipt requested. Service may be made on the bondsman by personal service.

If, at the hearing, the surety fails to show good cause as required in the order, the Administrative District Judge of the Fifth Judicial District may then issue the order to refuse to accept any bail bonds posted by the named surety, his business, sub-agents, or bail bonds insured by the named insurance company.

Said order issued by the Administrative District Judge of the Fifth Judicial District may be permanent or temporary, and may also be conditional in the discretion of the Administrative District Judge.

In cases where there has been a Section 18(C) removal of the right to write surety bail bonds, the parties adversely affected may request a hearing before the Administrative District Judge for relief from such action by the trial court administrator.

An appeal from or relief from any order issued by the Administrative District Judge under these Guidelines shall be in accordance with law.

RE:)
) Case No. _____
)
) AFFIDAVIT AND PETITION
)
)
)
) Respondent.
)
 _____)

The trial court administrator of the Fifth Judicial District, having been duly sworn, deposes and says:

1. That the respondent provided a bond to insure the attendance of _____ in Case No. _____, and
2. The respondent was provided with a copy of and is bound by the "Guidelines For The Administration of Bail and Bail Bonds", and
3. That the respondent has violated the Guidelines as follows:

Because of the violations, your affiant petitions the Administrative District Judge for an "Order to Show Cause" directed to the respondent as to why this court should not issue appropriate sanctions including an Order to all Sheriffs and Clerks of the District Court within the Fifth Judicial District prohibiting the same from the acceptance of any bonds posted by the respondent.

DATED this _____ day of _____, 20__.

Trial Court Administrator
Fifth Judicial District
State of Idaho

STATE OF IDAHO)
) SS
COUNTY OF _____)

On this _____ day of _____, in the year of
20____, before me _____, personally
appeared _____ known to me to be the
person whose name is subscribed to the within "Affidavit and
Petition", and acknowledged to that he executed the same.

S E A L

NOTARY PUBLIC FOR IDAHO
Residence:
My Commission Expires:

Date of Bond : _____
Bond Amount : _____
Power of Atty.#: _____
Charge : _____

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF

RE:)
) Case No. _____
)
) ORDER TO SHOW CAUSE
)
)
)
)
) Respondent.
)
 _____)

A sworn "Affidavit and Petition" having been filed in this matter and good cause appearing therefore;

IT IS ORDERED that the respondent show cause before the Administrative District Judge on the _____ day of _____, 20____, at the hour of _____ o'clock ____m. at the _____ County Courthouse, _____, Idaho, why:

The Court should not impose sanctions including an Order directed to all Sheriffs and Clerks of the District Court of the Fifth Judicial District, State of Idaho, prohibiting them from accepting any bonds posted by the respondent as requested in the

"Affidavit and Petition".

IT IS FURTHER ORDERED that a copy of this Order and the "Affidavit and Petition" be served upon the respondent at least five (5) business days prior to the time set for hearing on this Order to Show Cause.

IT IS FURTHER ORDERED that if the respondent wishes to contest this matter or elects to present testimony and evidence at the hearing, or to cross-examine the affiant, the respondent must serve upon the affiant and file with this court a notice of the intent at least twenty-four (24) hours prior to the time set for the hearing on this "Order to Show Cause".

DATED this _____ day of _____, 20____.

Administrative District Judge
Fifth Judicial District
State of Idaho

Date of Bond : _____
Bond Amount : _____
Power of Atty.#: _____
Charge : _____

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF _____

RE:)
) CASE NO.
)
) ADMINISTRATIVE ORDER
)
)
)
)
)
) Respondent.
)
 _____)

TO: SHERIFFS AND CLERKS OF THE DISTRICT COURT OF BLAINE, CAMAS, CASSIA, GOODING, JEROME, LINCOLN, MINIDOKA, AND TWIN FALLS COUNTIES, IDAHO

The Court having heard the testimony offered and having considered all documents filed with the Court in this matter finds that the allegations of the affidavit and Petition are true and that the respondent has violated the "Guidelines for the Administration of Bail and Bail Bonds in the Fifth Judicial District". Based on this finding:

IT IS ORDERED that all Sheriffs and Clerks of the Courts within the Fifth Judicial District, State of Idaho, are prohibited from accepting any surety bail bonds posted by:

_____ or insured by
_____ until _____.

DATED this _____ day of _____, 20_____.

Administrative District Judge
Fifth Judicial District

Date of Bond : _____
Bond Amount : _____
Power of Atty.#: _____
Charge : _____

SECTION 27.

DEPARTMENT OF INSURANCE

The trial court administrator or his/her delegate shall inform the compliance officer of the Idaho Department of Insurance of any and all violations of these Guidelines by any surety bail bondsman or insurance company. Violations shall also be reported to the respective county prosecuting attorney's

office for purposes of enforcement of forfeiture orders or for the purpose of filing an independent civil cause of action against the surety bail bondsman and the surety's insurance company. I.C. §19-2928.

SECTION 28.

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT
OF THE STATE OF IDAHO

RE: GUIDELINES FOR THE) 97-1
ADMINISTRATION OF BAIL AND BAIL)
BONDS IN THE FIFTH JUDICIAL)
DISTRICT OF THE STATE OF IDAHO) ADMINISTRATIVE ORDER
_____)

On behalf of the Fifth Judicial District, Barry Wood, as the Administrative District Judge, hereby implements the foregoing Guidelines for the Administration of Bail and Bail bonds in the Fifth Judicial District and good cause appearing;

NOW, THEREFORE, IT IS HEREBY ORDERED that these Guidelines are to be used and followed by all Judges, Clerks of the District Court, Deputy Clerks, Sheriffs, and any party posting a bail bond in the Fifth Judicial District.

IT IS FURTHER ORDERED that these Guidelines shall apply to all locations within the boundaries of the Fifth Judicial District.

IT IS FURTHER ORDERED that the Administrative District Judge of the Fifth Judicial District, or the Trial Court Administrator with the written consent of the Administrative District Judge, shall have the authority to amend any portion of these Guidelines as is necessary for the efficient processing of bonds within the Fifth Judicial District.

IT IS SO ORDERED.

DATED this 5th day of September, 1997.

/s/ Barry Wood
BARRY WOOD
Administrative District Judge

c: All Judges
All Clerks of the District Court
All Sheriffs
All Approved Bail Bond Agents

In the Supreme Court of the State of Idaho

IN RE: APPROVAL OF FORMS)
PERTAINING TO BAIL BONDS) ORDER


The Court having reviewed a recommendation from the Bail Bonds Guidelines Committee for approval of forms pertaining to bail bonds, and the Court being fully informed;
NOW, THEREFORE, IT IS HEREBY ORDERED, that the following forms be, and the same are hereby, approved:

- (1) Certificate of Surrender, approved pursuant to Idaho Code § 19-2905(6);
- (2) Affidavit of Appointment to Arrest, approved pursuant to Idaho Code § 19-2914;
- (3) Promissory Note, approved pursuant to Idaho Code 19-2909; and
- (4) Property Bond – Real Property, and Property Bond – Personal Property, approved pursuant to Idaho Code § 19-2909.

IT IS FURTHER ORDERED, that this order shall be effective immediately.

DATED this 14 day of August, 2009.

By Order of the Supreme Court



Daniel T. Eismann
Chief Justice

ATTEST: Stephen Kenyon
Clerk

I, Stephen W. Kenyon, Clerk of the Supreme Court of the State of Idaho, do hereby certify that the above is a true and correct copy of the Order entered in the above entitled cause and now on record in my office.
WITNESS my hand and the Seal of this Court. 8/18/09

STEPHEN W. KENYON
Clerk

By: Kimberly Gabe Deputy

IN THE DISTRICT COURT OF THE _____ JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF _____

THE STATE OF IDAHO,)
) Case No. _____
 Plaintiff,)
 v.) PROPERTY BOND – PERSONAL PROPERTY
)
 _____,)
)
 Defendant.)
 _____)

[I] [We], _____, being duly sworn upon oath, depose and state as follows:

1. [I] [We] reside at _____.

2. [I am] [We are] the owner[s] of property described as follows:

_____.

3. There are no other owners of the above-described property.

4. [I] [We] acknowledge that the above-named defendant is charged in this case with the following offenses: _____.

5. [I] [We] acknowledge that bail has been set by the court in this case at \$_____.

6. By this property bond, [I] [we] guarantee that the defendant will appear in court as ordered at all hearings and proceedings where the defendant's presence is required until the case is resolved.

7. [I] [We] have executed a promissory note pledging to pay to _____ County the full amount of the bail if the defendant fails to appear as required by the court. Such payment shall be

made as provided in the Idaho Bail Act, Idaho Code § 19-2901 *et seq*, and within the time established by Idaho Code § 19-2918.

8. [I] [We] pledge, under the provisions of Idaho Code § 19-2909, the above-described property as security for the guarantee that the defendant will appear in court as ordered in this case. [I] [We] agree and understand that in the event that the court orders forfeiture of the bail following the defendant's failure to appear in court as ordered, and if [I] [we] should fail to make remittance of the forfeiture as provided in Idaho Code § 19-2918, the above described property may be sold to satisfy payment of the bail. In such event, [I] [we] shall also be required to pay all attorney fees and costs arising from the sale of the property.

9. The value of the above-described property is \$_____. The following documentation establishing such value is attached: _____.

10. The above-described property is subject to the following liens and encumbrances: _____. The following documentation reflecting such liens and encumbrances is attached: _____. There are no other liens or encumbrances on the property.

11. [I] [We] agree that [I] [we] shall not sell, lease, or encumber the property in any way without first informing the court. [I] [We] further agree that should [I] [we] become aware of any liens or encumbrances on the property in addition to those listed above [I] [we] shall immediately inform the court.

12. [I] [We] understand and agree that this property bond shall be recorded with the Office of the Secretary of State pursuant to Idaho Code § 28-9-501, that [I] [we] shall pay all recording fees and costs, and that this bond when so recorded shall constitute a lien on the above-described real property.

DATED this _____ day of _____, 20_____.

STATE OF IDAHO)
) ss.
COUNTY OF _____)

On this _____ day of _____, 20_____, before me a Notary Public for the State of Idaho, personally appeared _____, known to me and/or identified to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument and acknowledged to me that he/she executed the same.

Notary Public
Residing at _____
Commission Expires _____

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the _____ day of _____, 20_____, I caused a true and correct copy of the foregoing document to be delivered to the following in the method marked herein:

- ____ Mailed
- ____ Hand-Delivered
- ____ Faxed to (_____)
- ____ Mailed and Faxed

IN THE DISTRICT COURT OF THE _____ JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF _____

THE STATE OF IDAHO,)	
	)	Case No. _____
Plaintiff,)	
v.	)	PROPERTY BOND – REAL PROPERTY
)	
_____,)	
)	
Defendant.)	
_____)	

[I] [We], _____, being duly sworn upon oath, depose and state as follows:

1. [I] [We] reside at _____.
2. [I am] [We are] the owner[s] of property located in the State of Idaho at the following address: _____, and described as follows: _____.
3. There are no other owners of the above-described property.
4. [I] [We] acknowledge that the above-named defendant is charged in this case with the following offenses: _____.
5. [I] [We] acknowledge that bail has been set by the court in this case at \$_____.
6. By this property bond, [I] [we] guarantee that the defendant will appear in court as ordered at all hearings and proceedings where the defendant's presence is required until the case is resolved.
7. [I] [We] have executed a promissory note pledging to pay to _____ County the full amount of the bail if the defendant fails to appear as required by the court. Such payment shall be made as provided in the Idaho Bail Act, Idaho Code § 19-2901 *et seq*, and within the time established by Idaho Code § 19-2918.

8. [I] [We] pledge, under the provisions of Idaho Code § 19-2909, the above-described property as security for the guarantee that the defendant will appear in court as ordered in this case. [I] [We] agree and understand that in the event that the court orders forfeiture of the bail following the defendant's failure to appear in court as ordered, and if [I] [we] should fail to make remittance of the forfeiture as provided in Idaho Code § 19-2918, the above described property may be sold to satisfy payment of the bail. In such event, [I] [we] shall also be required to pay all attorney fees and costs arising from the sale of the property.

9. The tax-assessed value of the above-described property is \$_____. The following documentation establishing such value is attached: _____.

10. The above-described property is subject to the following liens and encumbrances: _____. The following documentation reflecting such liens and encumbrances is attached: _____. There are no other liens or encumbrances on the property.

11. [I] [We] agree that [I] [we] shall not sell, lease, or encumber the property in any way without first informing the court. [I] [We] further agree that should [I] [we] become aware of any liens or encumbrances on the property in addition to those listed above [I] [we] shall immediately inform the court.

12. [I] [We] understand and agree that this [I] [we] property bond shall be recorded in the county in which the above-described property is located, that [I] [we] shall pay all recording fees and costs, and that this bond when so recorded shall constitute a lien on the above-described real property.

DATED this _____ day of _____, 20_____.

STATE OF IDAHO)
) ss.
COUNTY OF _____)

On this _____ day of _____, 20____, before me a Notary Public for the State of Idaho, personally appeared _____, known to me and/or identified to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument and acknowledged to me that he/she executed the same.

Notary Public
Residing at _____
Commission Expires _____

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the _____ day of _____, 20____, I caused a true and correct copy of the foregoing document to be delivered to the following in the method marked herein:

- Mailed
- Hand-Delivered
- Faxed to (_____)
- Mailed and Faxed

IN THE DISTRICT COURT OF THE _____ JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF _____

THE STATE OF IDAHO,)
) Case No. _____
 Plaintiff,)
 v.) PROMISSORY NOTE
)
 _____,)
)
 Defendant.)
 _____)

[I] [We] promise to pay _____ County the sum of \$_____, which is the amount that the court has set as bail as in the above-entitled case, in the event that the defendant _____ fails to appear in court as ordered at all hearings and proceedings until the case is resolved. Such payment shall be made in the event that the court orders forfeiture of the bail following the defendant’s failure to appear, as provided in the Idaho Bail Act, Idaho Code § 19-2901 *et seq.*, and within the time prescribed in Idaho Code § 19-2918. This promise is secured by the property bond that has been filed in the above-entitled case. Should such property be sold to satisfy payment of the bail, [I] [we] further promise to pay all attorney fees and costs arising from the sale of the property.

DATED this _____ day of _____, 20_____.

STATE OF IDAHO)
) ss.
 COUNTY OF _____)

On this _____ day of _____, 20_____, before me a Notary Public for the State of Idaho, personally appeared _____, known to me and/or identified to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within

instrument and acknowledged to me that he/she executed the same.

Notary Public
Residing at _____
Commission Expires _____

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the _____ day of _____, 20____, I caused a true and correct copy of the foregoing document to be delivered to the following in the method marked herein:

- Mailed
- Hand-Delivered
- Faxed to ()
- Mailed and Faxed

IN THE DISTRICT COURT OF THE _____ JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF _____

THE STATE OF IDAHO,)	
	)	Case No. _____
Plaintiff,)	
v.	)	AFFIDAVIT OF APPOINTMENT
	)	TO ARREST
_____ ,)	
)	
Defendant.)	
_____))	

I, _____, being duly sworn, depose and state as follows:

1. I am a [licensed bail agent in the State of Idaho authorized by (name of surety insurance company) to execute or undersign undertakings of bail in connection with judicial criminal proceedings, which company has posted the bail bond in the above-entitled case] [the person who has posted bail in the above-entitled case].

2. I hereby extend my authority and empower _____, a person of suitable age and discretion, to arrest _____, the defendant in the above-entitled case, at any place in the State of Idaho under the provisions of the Idaho Bail Act, Idaho Code § 19-2901 *et seq.*

3. This authority to arrest the defendant shall continue until the bail bond posted in this case has been exonerated or until such authority is revoked.

DATED this _____ day of _____, 20____.

STATE OF IDAHO)
	) ss.
COUNTY OF _____)

On this _____ day of _____, 20____, before me a Notary Public for the State of Idaho, personally appeared _____, known to me and/or identified to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument and acknowledged to me that he/she executed the same.

Notary Public
Residing at _____
Commission Expires _____