

SUPREME COURT OF ARIZONA

In the Matter of) Arizona Supreme Court
) No. R-16-0041
RULES 6, 7, AND 41, RULES)
OF CRIMINAL PROCEDURE)
)
)
) **FILED 12/14/2016**
)
)
_____)

ORDER

AMENDING RULES 3, 6, AND 7, AND ABROGATING FORMS 6 AND 7, RULE 41, RULES OF CRIMINAL PROCEDURE, AND SUBSTITUTING NEW FORMS 6 AND 7 IN THEIR PLACE

A petition having been filed proposing to amend Rules 6, 7, and 41, Forms 6 and 7, Rules of Criminal Procedure, and comments and a reply having been received, upon consideration,

IT IS ORDERED that Rules 3, 6, and 7, Arizona Rules of Criminal Procedure, be amended in accordance with the attachment hereto, effective April 3, 2017.

IT IS FURTHER ORDERED that Rule 41, Forms, Arizona Rules of Criminal Procedure, be amended by abrogating existing Forms 6 and 7, and substituting new Forms 6 and 7 in their place, in accordance with the attachment hereto, effective April 3, 2017.

DATED this 14th day of December, 2016.

/s/
SCOTT BALES
Chief Justice

TO:

Rule 28 Distribution

David K Byers

Barbara Broderick

Mark C Faull

Elizabeth B Ortiz

David J Euchner

Michael A Breeze

ATTACHMENT*

Rule 3.2. Content of warrant or summons

a. Warrant. The warrant shall be signed by the issuing magistrate and shall contain the name of the defendant or, if the defendant's name is unknown, any name or description by which the defendant can be identified with reasonable certainty. It shall state the offense with which the defendant is charged and whether the offense is one to which victims' rights provisions apply. It shall command that the defendant be arrested and brought before the issuing magistrate or, if the issuing magistrate is absent or unable to act, the nearest or most accessible magistrate in the same county. If the defendant is bailable as a matter of right, it shall may state the amount of a an secured appearance bond.

b. and c. [no changes]

Rule 6.1. Rights to counsel; waiver of rights to counsel

a. [no changes]

b. *Right to Appointed Counsel.* An indigent defendant shall be is entitled to have an attorney appointed; ~~to represent him or her in~~

(1) For the limited purpose of determining release conditions, if detained pretrial after misdemeanor criminal charges are filed;

(2) [i] In any criminal proceeding ~~which~~ that may result in loss of liberty; and

(3) In any other criminal proceeding in which the court concludes that the interests of justice so require.

c. through e. [no changes]

Rule 7.1. Definitions and applicability of rule

a. *Own recognizance.* "Own recognizance" means release ~~without any condition of an undertaking relating to, or deposit of, security~~ of a person without imposing any bond as a condition of release.

* Additions to text are shown by underscoring; deletions by ~~strikeouts~~.

b. Unsecured Appearance bond. An "unsecured appearance bond" is an undertaking, on a form approved by the Supreme Court, to pay to the clerk of the court a specified sum of money upon failure of a person released to comply with its the conditions of the bond.

c. Cash bond. A "cash bond" is a secured appearance bond consisting of actual cash deposited by the person released or someone on behalf of that person other than a professional bondsman.

d. Deposit bond. A "deposit bond" is a partially-secured appearance bond in which the person, or someone on behalf of that person other than a professional bondsman, deposits a percentage of the full bond amount in cash.

ee. Secured Appearance bond. A "secured appearance bond" is an appearance bond secured by deposit with the clerk of security equal to the full amount thereof.

ef. Security. "Security" is cash, a surety's undertaking, or any property of value, deposited with the clerk to secure an appearance bond. The value of such property shall be determined by the clerk, or at the clerk's or a party's request, by the court.

eg. Surety. A "surety" is one, other than the person released, who executes an appearance bond and binds ~~himself or herself~~ the surety to pay its amount if the person released fails to comply with its conditions. A surety shall file with an appearance bond an affidavit that he or she is not an attorney or person authorized to take bail, and that ~~he or she~~ the surety owns property in this state (or is resident of this state owning property) worth the amount of the appearance bond, exclusive of property exempt from execution and above and over all liabilities, including the amount of all outstanding appearance bonds entered into by ~~him or her~~ the surety, specifying such property, the exemptions and liabilities thereon, and the number and amount of such appearance bonds.

fh. Professional Bondsman. Any person who is surety simultaneously on more than four appearance bonds is a "professional bondsman." No person may be a professional bondsman unless the person annually certifies in writing under oath to the clerk of the Superior Court that ~~he or she~~ the person

(1) Is a resident of this state;

(2) Has sufficient financial net worth to satisfy reasonable obligations as a surety;

(3) Agrees to assume an affirmative duty to the court to remain in regular contact with any defendant released pursuant to an appearance bond on which the person is a surety;

(4) Has not been convicted of a felony, except as otherwise provided by A.R.S. § 20-340.03;

(5) Has no judgments arising out of surety undertakings outstanding against ~~him or her~~ the person;

(6) Has not, within a period of two years, violated any provisions of these rules or any court order.

Capacity to act as a professional bondsman may be revoked or withheld by the clerk, or by the court, for violation of any provision of this rule.

gj. *Applicability.* This rule shall not apply to minor traffic offenses.

COMMENT [AMENDED 2007]

Rule 7.1 contains the definitions of the terms used in the rule and the requirements for “sureties” and “professional bondsmen” currently specified in the rules of criminal procedure.

Rule 7.1(a). See Form 6 for an order of release.

Rule 7.1(b). The rule substitutes for “bail bond” and “bail” the term “unsecured appearance bond” which emphasizes the role of unsecured bonds. See Ariz. Rev. Stat. Ann. § 13-1577(E) (Supp.1972) [now § 13-3967] (noting propriety of conditions other than money bail). See Form 7.

Rule 7.1(ce). “Secured appearance bond” is used instead of “bail”. See Form 7 for a secured appearance bond.

Rule 7.1(df). “Security” is defined broadly enough to encompass anything of value.

Rule 7.1(eg). This definition includes the requirements of the 1956 Ariz. Rules of Criminal Procedure, as amended, Rules 46, 47, 48(A) and 49. Wherever standards are unclear under present rules, this definition chooses their most onerous interpretation. See Form 7 and Attachment A thereto for the form of the surety's undertaking and affidavit.

Rule 7.1(fh). The definition of “professional bondsman” is more limited than the 1956 Ariz. Rules of Criminal Procedure, as amended, Rules 50 and 51. The clerk is required to review a professional bondsman's qualifications annually.

Rule 7.2. Right to release

a. Before Conviction; Persons Charged With an Offense Bailable as a Matter of Right. All persons charged with a crime but not yet convicted are presumed to be innocent. Except as otherwise provided in these rules. Any person charged with an offense bailable as a matter of right shall ~~shall~~ must be released pending or during trial on the person's own recognizance with only the conditions of release required by Rule 7.3(a), unless the court determines, in its discretion, that such a release will not reasonably assure

the person's appearance as required or protect other persons or the community from risk posed by the person. If such a determination is made, the court may impose the least onerous condition or conditions contained in rule 7.3(b) which will reasonably assure the person's appearance that are reasonable and necessary to protect other persons or the community from risk posed by the person or to secure the appearance of the person in court.

b. through d. [no changes]

COMMENT TO 2014 AMENDMENT TO RULE 7.2(B)

Rule 7(b) was amended in 2014 to comply with *Lopez-Valenzuela v. Arpaio*, 770 F.3d 772 (9th Cir. 2014), cert. denied, 135 S.Ct. 2046 (2015), which held unconstitutional A.R.S. Const. Art. 2, § 22(A)(4) and A.R.S. § 13-3961(A)(5) mandating that bail be denied to undocumented immigrants charged with a serious crime.

COMMENT

Rule 7.2(a). This section establishes a presumption for release on recognizance in most cases. Offenses "bailable as a matter of right" are defined in *Ariz. Const. Art. 2, § 22* and *Ariz. Rev. Stat. Ann. § 13-1571* (1956) [now § 13-3961] as all cases except "capital offenses when the proof is evident or the presumption great" and felonies committed while on bail (using the same "proof is evident or the presumption great" standard).

The presumption of an "own recognizance release" follows closely the ABA, Standards Relating to Pretrial Release, § 5.1 (Approved Draft, 1968), and the Federal Bail Reform Act, 18 U.S.C.A. § 3146 (1966). This section of the rule differs only in emphasis from *Ariz. Rev. Stat. Ann. § 13-1577(B)*.

Rule 7.2(b). See *Rule 17, Rules of the Supreme Court*, 17 Ariz. Rev. Stat. Ann.

COMMITTEE COMMENT TO 1993 AMENDMENT

The 1993 amendment renumbered as Rule 7.2(b)(1) former Rule 7.2(b), which provides for the custody of a person convicted of an offense for which that person in all probability will suffer a sentence of incarceration, and made it applicable only in superior court. It added Rule 7.2(b)(2), applicable in limited jurisdiction courts, which represents a significant diversion from the parallel provision of Rule 7.2(b)(1). Rule 7.2(b)(2) provides that the person *shall* remain released on bail or own recognizance if these were conditions that existed prior to the person's conviction. A bond may still be required under Rule 6. Superior Court Rules of Appellate Procedure, in order to stay the execution of the remaining portion of the person's sentence.

Rule 7.3. Conditions of release

a. Mandatory Conditions. [no changes]

~~**b. Additional Conditions.** An order of release may include the first one or more of the following conditions reasonably necessary to secure a person's appearance:~~

~~(1) Execution of an unsecured appearance bond in an amount specified by the court;~~

~~(2) Placing the person in the custody of a designated person or organization agreeing to supervise him or her;~~

~~(3) Restrictions on the person's travel, associations, or place of abode during the period of release;~~

~~(4) Any other condition not included in (5) or (6) which the court deems reasonably necessary;~~

~~(5) Execution of a secured appearance bond; or~~

~~(6) Return to custody after specified hours.~~

b. Discretionary Conditions in General. The court may impose as a condition of release one or more of the following conditions, if the court finds the condition is reasonable and necessary to protect other persons or the community from risk posed by the person or secure the person's appearance. In making this determination, the court must consider the results of a risk assessment approved by the supreme court or a lethality assessment provided by law enforcement, if provided.

(1) Non-monetary conditions:

(i) Place the person in the custody of a designated person or organization agreeing to provide supervision;

(ii) Restrict the person's travel, associations, or residence;

(iii) Prohibit the person from possessing any dangerous weapon or engaging in certain described activities or consuming intoxicating liquors or any controlled substance not validly prescribed;

(iv) Prohibit the person from contacting the victim;

(v) Require the person to report regularly to and remain under the supervision of an officer of the court;

(vi) Return the person to custody after specified hours; or

(vii) Any other non-monetary condition that has a reasonable relationship to assuring the safety of other persons or the community from risk posed by the person or securing the person's appearance.

(2) Monetary conditions. In deciding whether to impose a monetary condition of release and what amount to impose, the court must make an individualized determination of the person's risk of non-appearance, risk to the community, and financial circumstances rather than rely on a schedule of charge-based bond amounts. The court must not impose a monetary condition that results in unnecessary pretrial incarceration solely because the person is unable to pay the bond. If the court determines a

monetary condition is necessary, the court must impose the least onerous of the types of bonds listed below in the lowest amount necessary to protect other persons or the community from risk posed by the person or to secure the person's appearance. Monetary conditions include:

- (i) Unsecured appearance bond;
- (ii) Deposit bond;
- (iii) Other type of secured appearance bond; or
- (iv) Cash bond

COMMENT [AMENDED 2007]

Rule 7.3(a). This section replaces the 1956 Ariz. Rules of Criminal Procedure, as amended, Rules 48 and 68 (forms of undertaking), specifying the matters which must be included in every order of release.

The rule adds the requirement of good behavior from [Ariz. Rev. Stat. Ann. § 13-1578\(B\)](#) [now § 13-3968]. Also, following [Ill. Ann. Stat. Ch. 38, § 110-10\(a\)\(3\) and \(b\)\(3\)](#) (Smith-Hurd 1970), the prohibition against out-of-state travel without leave of the court is mandated for every case. The diligent prosecution of an appeal is also taken from the Illinois statute. (See the provision in Rule 7.2(b) for mandatory revocation upon violation of this requirement.) The surety's undertaking to surrender the person in the event of a supervening felony charge is deleted. See generally Form 6.

~~**Rule 7.3(b).** This section sets forth the additional conditions which a court may impose under the standard of Rules 7.2(a) or (b), and the order of priority in their imposition—e.g., the court may not properly impose (b)(6) unless it finds (b)(5) inadequate. See Form 6, which lists these conditions in the same order.~~

~~Subsection (1) calls for an unsecured appearance bond as defined in Rule 7.1. This condition is closely related to Release on Own Recognizance and is used interchangeably with it in the Federal Bail Reform Act, [18 U.S.C.A. § 3146 \(1966\)](#).~~

~~Subsection (2) is taken from the statute. If a person willfully fails to produce a defendant released in his custody, the court may hold him in contempt. Subsection (3) and (4) are taken verbatim from § 13-1577(E)(2) and (6) [now § 13-3967]. Subsection (4) would also encompass the additional possibilities mentioned in the statute: prohibition against possessing weapons, engaging in certain activities or indulging in drugs or intoxicating liquors [§ 13-1577(E)(4)] and requiring the defendant to report to and remain under the supervision of an officer of the court [§ 13-1577(E)(5)].~~

~~Subsection (5), a fully secured bond, is included within the language of § 13-1577(E)(3), and is listed as the second least desirable condition. Part-time incarceration, authorized by § 13-1577(E)(6), is the harshest permissible condition.~~

Rule 7.4. Procedure

a. through d. [no changes]

e. Appointment of Counsel. The court must appoint counsel in any case in which the defendant is eligible for appointment of counsel under Rule 6.1(b).

Rule 7.6. Transfer and disposition of bond

a. through c. [no changes]

d. *Exoneration*

(1) At any time before violation that the court finds that there is no further need for an appearance bond, ~~it shall~~ the court must exonerate the appearance bond and order the return of any security deposited.

(2) When a deposit bond or cash bond is exonerated, the court must order the return of the entire amount deposited unless forfeited pursuant to rule 7.6(c)(2).

(~~23~~) If the surety, in compliance with the requirements of A.R.S. § 13-3974, surrenders the defendant to the sheriff of the county in which the prosecution is pending, or delivers an affidavit to the sheriff stating that the defendant is incarcerated in this or another jurisdiction, and the sheriff reports the surrender or status to the court, the court may exonerate the bond.

(~~34~~) In all other instances, the decision whether or not to exonerate a bond shall be within the sound discretion of the court.

e. [no changes]

COURT _____

County, Arizona

STATE OF ARIZONA Plaintiff -VS- Defendant (FIRST, MI, LAST) _____										Booking Number _____				Date of Birth _____				RELEASE ORDER			
LINE #	COMPLAINT NO.	VIOLATION CODE	NF	ORR	PSR	3P	BOND	BA	UB	DB	SB	CB	NB								
1							\$														
2							\$														
3							\$														
4							\$														
5							\$														

(NF=Charge not filed; ORR=Own recognizance release; PSR=Pretrial supervision release; 3P=Third party custody; Bond=Amount of bond; BA=Bond applies; UB=Unsecured bond; DB=Deposit bond; SB=Secured bond; CB=Cash bond; NB=Non-bailable)

If you are released from jail, you must follow all release conditions and appear at court as indicated below:

MANDATORY AND STANDARD CONDITIONS OF YOUR RELEASE:

- 1. Appear at _____ court on: _____ at _____ a.m. / p.m., Courtroom: _____
(Court name and address) (Date) (Time)
for _____ and attend all future court hearings.
- 2. Violate no federal, state or local criminal laws.
- 3. Not leave the state of Arizona without written permission from the court.
 Defendant may leave the state of Arizona provided defendant returns for court dates.
- 4. Diligently pursue any appeal if released from custody after judgment and sentence have been imposed.
- 5. Maintain contact with your attorney.
- 6. Provide a current address and phone number to the court and to your attorney and immediately notify both of any changes.
- 7. Not threaten or initiate any type of contact with the alleged victim(s).
- 8. Not drive a motor vehicle without a valid driver's license in your possession.
- 9. Not threaten or initiate any type of contact with any person as specified here: _____.
- 10. Not possess weapons as specified here: _____.
- 11. Not consume any alcoholic beverages.
- 12. Not go to scene of the alleged crime.
- 13. Not go to locations as specified here: _____.
- 14. Comply with 3rd party custody release conditions as specified here: _____.
- 15. Contact probation or parole officer. (See 3rd party obligations in this document.)
- 16. Electronic monitoring, if available, (mandatory if charged with a felony offense under Chapters 14 or 35.1 of Title 13)
- 17. Other: _____.

ADDITIONAL CONDITIONS FOR YOUR PRETRIAL SUPERVISION RELEASE (PSR):

- 18. Comply with the assigned pretrial supervision program as specified here: _____.
- 19. Provide a current address and phone number to Pretrial Services immediately and notify of any changes.

FINANCIAL CONDITIONS OF RELEASE: If you cannot post an appearance bond of \$ _____ you will remain in custody until your next court hearing on _____.

IF YOU VIOLATE THIS ORDER: You have the right to be present at your trial and at all other proceedings in your case. IF YOU FAIL TO APPEAR THE COURT MAY ISSUE A WARRANT FOR YOUR ARREST AND/OR HOLD THE TRIAL OR PROCEEDING IN YOUR ABSENCE. IF CONVICTED, YOU WILL BE REQUIRED TO APPEAR FOR SENTENCING. IF YOU FAIL TO APPEAR, YOU MAY LOSE YOUR RIGHT TO A DIRECT APPEAL.

If you violate any condition of a bond, the court may order the bond and any related security deposit forfeited to the State of Arizona. In addition, the court may issue a warrant for your arrest upon learning of any violation of the conditions of release. After a hearing, if the court finds that you have not complied with the release conditions, the court may modify the conditions or revoke the release altogether.

If you are released on a felony charge, and the court finds the proof evident or the presumption great that you committed a felony during the period of release, the court must revoke your release. You may also be subject to an additional criminal charge, and upon conviction you could be punished by imprisonment in addition to the punishment which would otherwise be imposable for the crime committed during the period of release. Upon finding that you violated conditions of release, the court may also find you in contempt of court and sentence you to a term of imprisonment, a fine, or both.

ACKNOWLEDGEMENT: I fully understand and will comply with all release conditions indicated above and further understand the consequences should I violate any part of this order.

Current Address where you live

Apt. No.

Address where you receive mail if different from current address

()

Phone No.

()

Phone No.

X

Defendant Signature

Date

X

Judicial Officer

Date

THIRD PARTY OBLIGATIONS

YOU MUST comply with the following obligations if the defendant has been placed in your custody while the case is pending in court.

- A. Supervise the defendant in accordance with all of the release conditions.
- B. Make every effort to assure that the defendant is present for all scheduled court hearings.
- C. Make every effort to assure that the defendant will contact Indigent Defense Services to determine indigency status.
- D. Notify the court immediately in the event the defendant violates any conditions of release or disappears.

As Third Party Custodian appointed by the Court, I understand and accept these obligations.

_____	_____	() _____
Third Party Custodian	Date	Phone No.

Address		

City, State Zip		

WARNING

IF YOU WILLFULLY VIOLATE ANY OF THESE OBLIGATIONS, THE COURT MAY HOLD YOU IN CONTEMPT AND IMPOSE A JAIL SENTENCE, FINE, OR BOTH, AND YOU MAY LOSE YOUR RIGHT TO APPEAL.

COURT

County, Arizona

STATE OF ARIZONA Plaintiff

-VS-

**APPEARANCE
BOND**

Defendant (FIRST, MI, LAST)

Booking Number

Date of Birth

WARNING TO DEFENDANT AND DEFENDANT'S SURETY (if any)

If defendant fails to appear at _____ at _____ a.m./p.m. on _____, 20____ and at any other hearing, or fails to follow any other court-ordered condition of release during the pendency of the case, THIS BOND MAY BE FORFEITED and the proceedings begun without defendant. If convicted, defendant will be required to appear for sentencing. If defendant fails to appear at sentencing, defendant may lose the right to a direct appeal.

Amount of appearance bond ordered: \$ _____

TYPE OF APPEARANCE BOND ORDERED:

UNSECURED APPEARANCE BOND: Defendant and defendant's surety, _____ (if none, so state) hereby promise to pay the State of Arizona the amount of the bond ordered if defendant fails to comply with any condition of release.

DEPOSIT BOND: Defendant hereby deposits with the Clerk of the Court _____% of the total amount of the bond, with the remainder of \$ _____ as an unsecured appearance bond. Defendant and defendant's surety, _____ (if none, so state) hereby promise to pay the State of Arizona the full amount of the bond ordered if defendant fails to comply with any condition of release. The deposited amount of the bond will be returned to the defendant, if defendant complies with all conditions of release.

SECURED APPEARANCE BOND: Defendant hereby deposits with the Clerk of the Court cash or property having a value equal to or greater than the full amount of the bond.

Depositor or Professional Bondsman: _____

Email address: _____

Address: _____

Phone number: _____

Avowal of non-professional surety (if applicable): _____, surety for the defendant, hereby swears (or affirms) that the surety is not an attorney or person authorized to take bail, and that the surety owns property in this state (or is a resident of this state owning property) worth the amount of this bond, exclusive of property exempt from execution and above and over all liabilities, as detailed in Attachment A.

CASH BOND: Defendant hereby deposits cash equal to the full amount of the bond with the Clerk of the Court. The cash deposited will be returned to defendant, if defendant complies with all conditions of release.

ACKNOWLEDGEMENTS

Date

Defendant

State of Arizona)
)
County of _____) ss.

Subscribed and sworn to before me on

My Commission Expires _____

Notary Public

Approved:

Date

Surety or Authorized Agent

FORM 7 ATTACHMENT A

**SPECIFICATION BY SURETY OF PROPERTY
CERTIFIED IN APPEARANCE BOND**

_____, surety on the attached appearance bond certifies that the surety owns the following properties, subject to the stated exemptions and liabilities, and to the stated outstanding appearance bonds entered into by the defendant.

<u>I. Properties, less Exemptions and Liabilities.</u>	<u>Value or Amount</u>	
Items of Property		
(1) _____	_____	
Less _____	_____	
Net _____	_____	_____
(2) _____	_____	
Less _____	_____	
Net _____	_____	_____
(3) _____	_____	
Less _____	_____	
Net _____	_____	_____
(4) _____	_____	
Less _____	_____	
Net _____	_____	_____
 Total	_____	\$ _____

<u>II. Other Outstanding Liabilities or Exemptions.</u>		
(1) _____	_____	_____
(2) _____	_____	_____
(3) _____	_____	_____
(4) _____	_____	_____
 Total		\$ _____

<u>III. Other Outstanding Appearance Bonds.</u>		
(1) _____	_____	_____
(2) _____	_____	_____
(3) _____	_____	_____
(4) _____	_____	_____
 Total		\$ _____

<u>IV. Total Property in Excess of Liabilities, Exemptions, and Outstanding Appearance Bonds (I less II and III).</u>		\$ _____
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