

LAW AND ANALYSIS

Any person charged with a noncapital offense shall be ordered released pending trial on his own recognizance without surety in an amount specified by the court, unless the court determines in its discretion that such a release will not reasonably assure the appearance of the person as required, or unreasonable danger to the community will result. S.C. Code Ann. § 17-15-10(A).¹ The court may impose certain conditions upon release, including the “execution of an appearance bond in a specified amount with good and sufficient surety or sureties approved by the court.” S.C. Code Ann. § 17-15-10(A). As a part of the *Order Specifying the Methods and Conditions of Release*, the court releases the defendant to a designated person or organization, generally a surety,² that agrees to supervise the defendant as set forth by the court, to use every effort to assure the appearance of the defendant at all scheduled hearings before the court and to notify the court immediately in the event the defendant violates any conditions of his release or disappears. The surety also posts a bail bond for the defendant in the amount specified by the court.

A bail bond is an undertaking by the defendant to appear in court as required upon penalty of forfeiting bail to the State in the amount established by the court. The types of bail bonds permissible in South Carolina include: 1) an unsecured appearance bond; 2) a premium-secured appearance bond; 3) an appearance bond secured by a cash deposit of the full amount of the bond; 4) an appearance bond secured by a mortgage; and 5) an appearance bond secured by at least one surety. *See* S.C. Code Ann. § 38-53-10(2). The bail bond is a contract between the State and the bondsman of the accused where the bondsman promises to act as a guarantor of the defendant’s appearance in court under risk of forfeiture of the entire bond. Generally, the parties to this contract are the State (which brings the criminal charges); the bondsman or surety (who guarantees the defendant appears and complies with bail terms); and the defendant (who is the principal on the bond). By posting bail, the bondsmen agree to ensure the defendant’s appearance and compliance with the terms and conditions of the bail order and bail bond³ in accordance with applicable South Carolina law. *See* S.C. Code Ann. § 17-15-10.

South Carolina courts have recognized the bondsmen’s statutory and contractual obligations to the State when they post a bond for the defendant. The South Carolina Supreme Court opined that the bondsmen’s obligations on a bond entail more than just ensuring the defendant’s appearance in court.⁴ It specifically rejected the argument advanced in *State v.*

¹ *See* S.C. Code Ann. § 22-5-510(A) (“If the offense charged is bailable, the magistrate shall take recognizance with sufficient surety, if it is offered, in default whereof the person must be incarcerated.”).

² *See* S.C. Code Ann. § 38-53-40. A surety includes an accommodation bondsman, professional bondsman or surety bondsman.

³ Most bondsmen employ runners. By definition, a runner is a person employed by a bail bondsman for the purpose of assisting the bail bondsman in presenting the defendant in court when required, assisting in the apprehension and surrender of the defendant to the court, keeping the defendant under the necessary surveillance, and executing bonds on behalf of the licensed bondsman when the power of attorney has been recorded. S.C. Code Ann. § 38-53-10(10); *see also* S.C. Code Ann. § 22-5-510.

⁴ Additionally, the Supreme Court opined in *State v. Boatwright*, 310 S.C. 281, 283, 423 S.E.2d 139, 141 (1992), that a professional bondsperson “is certainly aware that an appearance bond carries conditions beyond the defendant’s presence in court.” *Id.* at 283, 423 S.E.2d at 141.

Mitchell, 421 S.C. 365, 807 S.E.2d 193 (2017), that bondsmen post *appearance bonds and not behavior bonds* or that the bondsmen’s sole responsibility is to ensure the defendant shows up for trial. In rejecting that argument, the Court noted that:

An appearance recognizance bond:

must be conditioned on the person charged personally appearing before the court specified to answer the charge or indictment and to do and receive what is enjoined by the court, and not to leave the State, and be of good behavior toward all the citizens of the State, or especially toward a person or persons specified by the court.

S.C. Code Ann. § 17-15-20(A) (2014). Upon breach of a condition of the recognizance, the recognizance is forfeited and the liability of the surety to pay the amount of the penalty becomes fixed, “unless relieved or exonerated by action of the court.” *Pride v. Anders*, 266 S.C. 338, 340, 223 S.E.2d 184, 185 (1976) (citing *State v. Edens*, 88 S.C. 302, 70 S.E. 609 (1911)).

Id. at 371, 807 S.E.2d at 196.

In *Mitchell*, the Court affirmed the circuit court’s determination that the bondsperson’s willful failure to fulfill their obligations as the bondsperson entitled the circuit court to estreat the bond and order remission in the amount of \$75,000. Specifically, the Court noted the bondsperson failed to fulfill her obligations by ignoring reports that the defendant was violating the electronic monitoring terms and conditions of the bail/pretrial release order. *See id.* at 373, 807 S.E.2d at 197.

Section 38-53-50 defines the procedures to be followed when the defendant fails to appear in court, or the bondsman learns the defendant has violated or is about to violate the terms and conditions of the bail bond and pretrial release.

1. *Bondsman May File a Motion to Be Relieved on the Bond for Good Cause.*⁵

A bondsman who is obligated on a defendant’s bond may request to be relieved of that obligation or “taken off of the bond” under specific circumstances. Section 38-53-50(A) provides that a surety may file a motion with the court with jurisdiction over the defendant requesting to be relieved on the bond obligation for “good cause.” “Good cause” means the violation of a specific term of the bail bond, **but it does not include the nonpayment of fees**. *See* S.C. Code Ann. § 38-53-10(14).

The bondsman must file the motion with and pay the appropriate fee to the clerk of court. The fee is retained by the clerk for use in the operation of the clerk’s office. The fee covers the cost of copies of the motion required by the surety. A copy of the motion must be served upon the defendant, his attorney, and the corresponding circuit solicitor’s office. The court then schedules

⁵This section summarizes the procedures outlined in the Summary Judges Bench Book. *See* [S.C. Judicial Department \(sccourts.org\)](http://www.sccourts.org).

a hearing to determine if the surety should be relieved on the bond. All parties should be advised of the hearing date.

2. The Bondsman May Surrender the Defendant to the Detention Facility and File Motion to be Relieved.

Section 38-53-50(B) provides a procedure for the surety to follow if the circumstances warrant immediate incarceration of the defendant, i.e., to prevent imminent violation of any one of the specific terms of the bail bond or if the defendant has violated any one of the specific terms of the bond. In this instance, the surety may take the defendant to the appropriate detention facility for holding until the court determines whether the surety should be relieved of the bond obligation. The surety must file with the detention facility an un-clocked affidavit stating the facts to support the surrender of the defendant for good cause.

The surety, within three business days following recommitment, must file with the court an affidavit, clocked in with the clerk, stating the facts to support the surrender of the defendant for good cause. The surety must provide the detention facility with the clocked copy of the affidavit within those three days. When the affidavit is filed with the court with jurisdiction over the defendant, the surety must also file a motion to be relieved with the court, serving the defendant, his attorney, and the corresponding circuit solicitor's office. The surety must also pay a filing fee with the motion. The court shall then schedule a hearing, as expeditiously as possible, to determine if the surety should be relieved. All parties should be notified of the hearing date.

3. The Bondsman May Request the Issuance of a Bench Warrant.

Section 38-53-60 provides the surety may arrest or apprehend the defendant before forfeiture or request a judicial officer to order the arrest of the defendant by the surety. S.C. Code Ann. § 38-53-60. Section 38-53-50(C) provides if the defendant is incarcerated by the surety or a law enforcement agency as the result of a bench warrant, the surety shall file an affidavit with the court stating that the defendant is incarcerated in the appropriate detention facility as a result of the bench warrant, as well as the violation of the specific term or terms of the bail bond stated in the bench warrant. Once the affidavit pursuant to the provisions of the subsection has been filed and served on the defendant, the surety is relieved of all liability on the bail bond by the court unless otherwise ordered by the circuit court within fourteen calendar days of the filing of the affidavit, or if there is no term of court within the fourteen-day period, at the ensuing term of court. Neither the motion to be relieved nor filing fee is required in this instance.

Pursuant to section 38-53-50(D), after the surety has been relieved by order of the court, a new undertaking must be filed with the appropriate court to secure the subsequent release of the defendant. S.C. Code Ann. § 38-53-50(D). The undertaking must include the same conditions included in the original bond unless the conditions have been changed by the court. Pursuant to section 38-53-50(B), a surety who surrenders a defendant and files an affidavit which does not show good cause as defined above is subject to the penalty of perjury.

The court generally conducts a hearing to determine whether the bondsman should be relieved of the obligation or whether the surety should remain on the bond. If the court determines that the surety should be relieved, a new undertaking must be filed with the court to secure the re-release of the defendant. *See* S.C. Code Ann. § 38-53-50(D).

In summary, a bail bondsman or insurer who is provided written notice from the solicitor, electronic monitoring company or the courts that the defendant is not complying with the terms and conditions of the bond must 1) investigate and 2) if the evidence provided establishes that the defendant has violated the terms and conditions of bail, surrender the defendant by taking the defendant to the appropriate detention facility for holding until the court orders the surety be relieved or 3) request the issuance of a bench warrant. *See* S.C. Code Ann. § 38-53-50.

The preceding section summarizes the options for a surety in the event the defendant fails to comply with the terms of the bail order or bond. Disregarding reports of a defendant's noncompliance with the terms and conditions of the bond or bail order is not an option. Bondsmen who ignore or disregard reports that criminal defendants are violating the terms and conditions of the bail bond and who fail to act as outlined in S.C. Code Ann. § 38-53-50 and in accordance with the release order not only risk having their bonds estreated by the court, but they also may be subject to administrative disciplinary action by this Department.

Section 38-53-150 provides that the director or his designee may impose an administrative penalty, suspend or revoke the license of any bondsman or runner who: 1) violates any laws of this State relating to bail in the course of dealings under the license issued by this Department to a bondsman or runner; 2) engages in fraudulent or dishonest practices while conducting business as a licensee; 3) fails to comply with or violates a provision of this chapter or of any order of the director or his designee or regulation of the Department; or 4) is no longer in good faith carrying on the bail bond business. S.C. Code Ann. § 38-53-150. Failing to take the action necessary to surrender a defendant who is in violation of the terms and conditions of the bail order and bond falls within each of these categories. Therefore, the bondsman who agrees to the undertaking but fails to act in compliance with South Carolina law may be subject to estreatment as well as administrative disciplinary action.

Section 38-53-340 provides that “[a] person violating any of the provisions of this chapter is guilty of a misdemeanor and, upon conviction, must be fined not more than five hundred dollars or imprisoned for not more than thirty days, or both.” In addition, willful or intentional conduct may be referred to SLED for criminal investigation. *See* S.C. Code Ann. § 38-3-110(3) (providing that the director or his designee has the duty to “report to the Attorney General or other appropriate law enforcement officials criminal violations of the laws relative to the business of insurance or the provisions of this title which he considers necessary to report.”) Moreover, in *State v. Cogdell*, the South Carolina Supreme Court held that at “common law, it is an offense to do any act which prevents, obstructs, impedes or hinders the administration of justice.” 273 S.C. 563, 567, 257 S.E.2d 748, 750 (1979) (“The intentional failure of a responsible public official to report convictions of traffic violations so as to interrupt or prevent the mandated suspension of a motorist’s driver’s license is an obstruction of justice and punishable at common law.”); *see also State v. Love*, 275 S.C. 55, 61, 271 S.E.2d 110, 113 (1980) (“In the application of the foregoing principle in *Cogdell*, we held that the failure to perform the duty of reporting convictions of traffic violations, as required by statute, constituted the common law offense of obstruction of justice.”); S.C. Code Ann. § 16-9-370 (providing that “[a]ny person who, knowing of the commission of an offense, takes any money or reward, upon an agreement or undertaking expressed or implied, to

compound or conceal such offense or not to prosecute or give evidence” is guilty of a misdemeanor and shall be punished accordingly depending on the underlying offense).

For a producer to transact the business of insurance, the producer must be appointed as a producer of the insurer. *See* S.C. Code Ann. § 38-43-10. Surety bondsmen are no exception. They must be licensed and appointed by a surety insurer. South Carolina law requires surety insurers to vouch for the producers (surety bondsmen) who represent them. *See* S.C. Code Ann. §§ 38-43-40 through -60. Similarly, professional bondsmen are required to appoint the runners who represent them. *See* S.C. Code Ann. §§ 38-53-120;38-53-230.

Accordingly, surety insurers and professional bondsmen are responsible for the actions of their representatives (i.e., producers or runners) and must take the action necessary to ensure they are properly trained and comply with the applicable requirements of South Carolina law. *Carson v. Vance*, 326 S.C. 543, 550, 485 S.E.2d 126, 129–30 (1997) (“The activities of bail bondsmen and runners are statutorily regulated in South Carolina. Bail bondsmen have a statutorily imposed responsibility for the actions of their runners when they receive their license. . . . These statutes specifically provide a bail bondsman *shall* supervise his runner’s work and is responsible for the runner’s conduct in the bail bond business. The statutorily imposed duty to supervise the runner is a clear mandate.” (citations omitted)).

Upon receipt of a complaint from a circuit solicitor’s office or the Attorney General’s Office, as applicable, that includes 1) a copy of an order from a South Carolina court of competent jurisdiction that finds the defendant has violated the terms and conditions of the bail order and 2) an affidavit from an attorney in the corresponding circuit solicitor’s office or the Attorney General’s Office, as applicable, or an officer or official with SLED or other law enforcement agency, which alleges (a) the bondsman was provided written notice of the defendant’s violations of the bail order and (b) despite that notice, the bondsman failed to take action in accordance with the requirements of this order and the provisions of S.C. Code Ann. § 38-53-50, this Department will investigate, then initiate the administrative disciplinary process against the licensee(s) involved if warranted by the evidence. Upon a determination by this Department that the licensee(s) has violated the provisions of this order and applicable South Carolina law, the licensee(s) will be subject to the penalties set forth in Title 38 of the South Carolina Code of Laws, including administrative fines of up to \$5,000 for individual licensees and up to \$30,000 for insurers, as well as suspension, revocation or a combination of the aforementioned penalties for each violation of the South Carolina insurance laws. Criminal violations will be promptly referred to law enforcement authorities for investigation and potential prosecution. *See* S.C. Code Ann. §§ 38-3-110(3); 38-53-340.

ORDER

IT IS THEREFORE ORDERED that surety insurers, bondsmen and runners comply with this order and applicable provisions of South Carolina law regarding bail, including the provisions of *The Insurance Law*, S.C. Code Ann. §§ 38-1-10 *et seq.*, and S.C. Code Ann. §§ 38-53-10 *et seq.*, and train their employees, producers, agents, and runners on the requirements of South Carolina law pertaining to bail bonds.

IT IS FURTHER ORDERED THAT surety insurers, bondsmen and runners who are notified of violations of the terms and conditions of the bond or pre-trial release order must report those violations and take the actions necessary to verify whether the defendant (principal) has violated the terms and conditions of the bail bond and court order. Upon verification, the bondsman must comply with the procedures outlined in S.C. Code Ann. § 38-53-50 and other applicable provisions of South Carolina law to have the defendant surrendered to the court or the detention facility pending further action from the court.

This Order shall take effect immediately.



Michael Wise
Acting Director

Columbia, South Carolina
October 21, 2022