4

Bond Forfeitures

Table of Contents

INTRODUCTION

The failure to perform the conditions of the bond requires the court to declare forfeiture of the bail. A defendant's failure to appear in court after posting bond in the criminal case and the judicial declaration of the forfeiture initiates the bond forfeiture procedures. A bond forfeiture is a new civil lawsuit to recover from a defendant or sureties, if any, the amount of a bond because of the violation of the conditions of the bond. Generally, Chapter 22 of the Code of Criminal Procedure governs bond forfeiture proceedings. If the court is in a county with a population of 110,000 or more or has a bail bond board, the court must also consider Chapter 1704 of the Occupations Code, which governs licensing requirements, bail bond businesses, and enforcement provisions in a bond forfeiture proceeding.

The exception to using the bond forfeiture procedures in Chapter 22 is found in Article 45.044 of the Code of Criminal Procedure. This statute provides an additional method of forfeiting a cash bond for municipal and justice courts. Both methods are discussed in this study guide.

Although a bond forfeiture is considered a criminal case, the bond forfeiture proceedings are governed by the rules that govern civil lawsuits. *Safety National Casualty Corporation v. State,* 305 S.W.3d 586 (Tex. Crim. App. 2010). This means that the court must consult the Texas Rules of Civil Procedure for preparation and service of the citation (the civil citation, not the "ticket"), timelines regarding the bond forfeiture lawsuit, and other requirements. These rules may appear to be somewhat intimidating because municipal courts do not usually use them. For more detailed step by step procedures and explanation, further reading should include the TMCEC *Bench Book*.

The clerk's role in processing bond forfeitures includes the following:

- creating the civil forfeiture file;
- entering the forfeiture on the civil docket (scire facias docket);
- issuing a "citation" when requested to do so;
- serving the citation when requested to do so;
- coordinating with the prosecutor the service of the citation if other methods of service fail;
- stamping the file date on answers to the forfeiture lawsuit;
- scheduling any hearings on the case;
- issuing a writ of execution upon a bond forfeiture judgment directing the payment of the forfeiture; and
- managing the paperwork.

True or False

1. When a defendant fails to appear, a bond forfeiture lawsuit is filed to recover the bond from a defendant or the sureties, if any. ____
2. Bond forfeitures are governed by the Rules of Criminal Procedure. ____

PART 1
BAIL

Bail is the security given by an accused that he or she will appear and answer before the proper court the accusation brought against him or her and includes a bail bond or a personal bond. Art. 17.01, C.C.P. Generally, the purpose of bail is to guarantee the person's appearance in court.

The Texas Constitution states in Article 1, Section 11 of the Bill of Rights that prisoners can be released on bail guaranteed by sufficient sureties except in cases punishable by the death penalty. The Code of Criminal Procedure provides in Article 1.07 that any person shall be eligible for bail unless denial of bail is expressly permitted by the Texas Constitution or by other law. Generally, only defendants accused of crimes punishable by the death penalty when the evidence is clear and strong that the person will be convicted and sentenced to death are not bailable. Therefore, persons charged with fine-only offenses are presumed to be entitled to reasonable bail based on the presumption of innocence.

Bail in a fine-only misdemeanor case may be set in two different instances. A person who is arrested must be taken before a magistrate for certain warnings under Article 15.17 of the Code of Criminal Procedure. The magistrate, after giving the required warnings, shall admit the person to bail if allowed by law. Art. 15.17(a), C.C.P. The first instance would be bail set by the magistrate prior to formal charges being filed.

The second instance would be bail set by the judge. A municipal judge or justice of the peace may require a defendant to give bail to secure the defendant's appearance in accordance with the Code of Criminal Procedure. Art. 45.016, C.C.P.

When a defendant gives bail for his or her personal appearance before a court or magistrate to answer a charge against him or her, the bond is valid and binding upon the defendant and his sureties, if any, for the defendant's personal appearance before the court designated in the bond, any other court to which the case may be transferred, and for any and all subsequent proceedings in the case. Art. 17.09, Sec. 1, C.C.P. When a defendant gives bail, he or she cannot be required to give another bond in the course of the same criminal case, with limited exception. Art. 17.09, Sec. 2, C.C.P.

A bail bond is a written undertaking entered into by a defendant and/or the defendant's sureties guaranteeing the appearance of the principal (the defendant) before some court or magistrate to answer a criminal accusation. Art. 17.02, C.C.P. Section 1704.001 of the Occupations Code defines a bail bond as a cash deposit or similar deposit, written undertaking, a bond, or other security given to guarantee the appearance of a defendant in a criminal case. Requisites for a bail bond can be found in Article 17.08 of the Code of Criminal Procedure.

A. Surety Bond

A surety is defined by *Black's Law Dictionary* as a person who is primarily liable for the payment of another's debt or the performance of another's obligation. Article 17.11 of the Code of Criminal Procedure provides that one surety is sufficient if such surety is worth at least double the amount of the sum for which he or she would be bound (the amount of the bail) and is a Texas resident.

A corporation can be a surety if authorized by law to act as a surety. Art. 17.06, C.C.P. Any corporation authorized by law to act as a surety shall, before executing a bail bond, file in the office of the county clerk of the county in which the corporation is giving bonds, a power of attorney designating and authorizing named agent(s) or attorney of the corporation to execute the

bail bonds. It is the power of attorney that provides that the bonds are a valid and binding obligation on the corporation. Art. 17.07, C.C.P. A copy of the power of attorney should be attached to each bond filed with the court. Article 22.04 of the Code of Criminal Procedure requires that a copy of the power of attorney be attached to the citation when there is a bond forfeiture.

A surety who is on default for another bond is disqualified from again acting as a surety. Art. 17.11(b), C.C.P. A minor cannot be a surety on a bail bond, nor can a person, for compensation, act as a surety if the person has been convicted of a felony or a misdemeanor involving a crime of moral turpitude. Art. 17.10(a) and (c), C.C.P. Article 17.10(b) provides that a person, for compensation, may not be a surety on a bail bond written in a county in which there is not a county bail bond board unless the person within two years before the bail bond is given completes at least eight hours of continuing legal education in criminal law courses or bail bond law courses that are (1) approved by the State Bar of Texas and (2) offered by an accredited institution of higher education in Texas.

Section 1704.001 of the Occupations Code applies to counties with a population of 110,000 or more or counties that have elected to be governed by Chapter 1704. This section defines a "bail bond surety" as a person who (1) executes a bail bond as a surety or cosurety for another person; or (2) for compensation deposits cash to ensure the appearance in court of a person accused of a crime. Person is defined as an individual or corporation. In order for a person to act as a bail bond surety, the person must hold a license under Chapter 1704. There is one exception to being licensed−an attorney licensed to practice law in the State of Texas may act as a surety for a person in a criminal case in which he or she represents the person without being licensed under Chapter 1704. The attorney, however, must, at the time the bond is executed, file with the court a notice of appearance as counsel of record in the criminal case for which the bond was executed or surety provided. Sec. 1704.163(a)(2), O.C.

Every county with a population of 110,000 or more must have a bail bond board. Sec. 1704.051, O.C. The bail bond board shall post in each court having criminal jurisdiction in the county a current list of each licensed bail bond surety and the licensed agent of the corporate surety in the county. Sec. 1704.105(a), O.C. The bail bond board shall provide to each local official responsible for the detention of prisoners in the county a current list of each licensed bail bond surety and agent of the bail bond surety in the county. A list of each licensed bail bond surety in the county must be displayed where prisoners are examined, processed, or confined. Sec. 1704.105(a) and (b), O.C.

A judge or court employee may not recommend a particular bail bond surety to another person. Doing so is a Class B misdemeanor offense. Sec. 1704.304(b)(3), O.C.

In counties in which there is no bail bond board regulated under the Occupations Code, the sheriff may post a list of eligible bail bond sureties whose security has been determined to be sufficient. Each surety listed must file annually with the sheriff a sworn financial statement. Art. 17.141, C.C.P.

Other laws for determining the sufficiency of a surety can be found in Articles 17.13 and 17.14 of the Code of Criminal Procedure.

B. Cash Bond

A defendant can file a cash bond, by depositing cash in the amount of the bond with the custodian of the court in which the prosecution is pending, in lieu of having sureties sign any

time a bond is required of the defendant. When a defendant complies with the conditions of the bond, the court shall order the bond returned to the defendant. Art. 17.02, C.C.P. A cash bond, when a refund is due, is to be refunded to the person that posted the bond. Art.17.02(1), C.C.P. The officer receiving the funds is to receipt the funds, and when the court orders the bond to be refunded, it should go to the person in the name of whom the receipt was issued. If no one produces a receipt, the bond shall be refunded to the defendant. The statute is silent as to how long the court must wait on the production of a receipt.

C. Personal Bond

In certain cases, a magistrate may, in his or her discretion, release a defendant on personal bond without sureties or other security. Art. 17.03, C.C.P. Municipal judges are magistrates. Art. 2.09, C.C.P. The requisites for a personal bond are contained in Article 17.04 of the Code of Criminal Procedure.

If there is a personal bond office in the county from which the warrant for arrest was issued, the court releasing a defendant on his or her personal bond must forward a copy of the personal bond to the personal bond office in that county. Art. 17.031(b), C.C.P.

In a county that has a personal bond office, a court that releases an accused on personal bond on a recommendation of a personal bond office must assess a personal bond reimbursement fee of $20 or three percent of the amount of the bail fixed for the accused, whichever is greater. The court may waive the fee or assess a lesser fee if good cause is shown. A municipal judge that requires a Class C defendant to give a personal bond under Article 45.016, C.C.P. may not assess a personal bond fee. Art. 17.42, C.C.P. The court may order the personal bond fee to be:

- paid before the defendant is released;
- paid as a condition of bond;
- paid as court costs;
- reduced as otherwise provided for by statute; or
- waived. Article 17.03(g), C.C.P.

As an alternative, a magistrate may also release a person charged with a fine-only misdemeanor without bond on an order to appear at a later date for arraignment in the applicable justice or municipal court. Art. 15.17(b), C.C.P. If the magistrate utilizes this provision, there would be no bond on which to declare a forfeiture.

Practice Note

It is important to note that a municipal judge that requires a Class C defendant to give a personal bond under Article 45.016, C.C.P. may not assess a personal bond fee. Although this was not a common practice in the majority of municipal courts prior to the 85th legislative session, after September 1, 2017 it is also prohibited by law.

True or False

3. Bail includes a bail bond or a personal bond and is the security given by the accused

promising to appear in court at a later date or dates as required by the court. ____

4. What is the purpose of bail? _____

_____

5. Define bail bond. _____

_____

6. When can a defendant present the court with a cash bond? _____

_____

7. Who has the authority to release a defendant on a personal bond?_____

_____

PART 2
SURRENDER OF PRINCIPAL DEFENDANT

A person executing a bail bond is relieved of liability on the bond on the date of disposition of the criminal case for which the bond is executed. A disposition occurs on the date the criminal case is dismissed, or the principal is acquitted or convicted. Sec. 1704.208, O.C.

A. Discharge on Incarceration of Principal

A surety may generally be released from the responsibility on a bond if, before forfeiture or a judgment nisi (the process that initiates the bond forfeiture lawsuit) is issued, the surety surrenders the principal into custody of the sheriff of the county where the prosecution is pending or produces an affidavit that the defendant is in federal, state, or county custody. Art. 17.16(a), C.C.P. Any affidavit that the accused is incarcerated must be filed, with any documentation, in the record of the underlying criminal case in the court in which the prosecution is pending. A copy must be delivered to the State. Art 17.16(f), C.C.P. The bond is discharged, and the surety is absolved from liability on the bond upon verification of the incarceration of the accused principal defendant. Art 17.16(e), C.C.P. Producing an affidavit that the defendant is in custody does not relieve the surety if the accused is in federal custody to determine whether the accused is lawfully present in the United States. Art. 17.16(a-1), C.C.P.

The issuance of a capias for the arrest of the principal is not required if: (1) a warrant has already been issued for the accused's arrest and remains outstanding, or (2) the issuance of a capias is unnecessary to take the accused into custody. Art 17.16(d), C.C.P. A capias is a writ that is issued by a judge of the court having jurisdiction of a case after commitment or bail and before trial, is directed to any peace officer of the State of Texas and commands the officer to arrest the person and bring them before the court. Art. 23.01, C.C.P.

B. Surety May Obtain Warrant

Any surety desiring to surrender a principal defendant can file an affidavit of that intention and request the judge or magistrate to issue a capias or warrant for the principal. Art. 17.19, C.C.P. Article 17.19(a) and Section 1704.207(a) of the Occupations Code require the affidavit to state:

- the person's intention to surrender the principal;
- the court and cause number of the case;
- the name of the defendant;

- the offense with which the defendant is charged;
- the date of the bond;
- the cause or reason for the surrender; and
- that notice of the person's intention to surrender the principal has been provided to the principal's attorney as provided by Rule 21a of the Rules of Civil Procedure. (Rule 21a provides methods of service and allows service to be made by delivering a copy to the party to be served, or the party's duly authorized agent, or attorney of record. The service may be either in person, by agent, or by courier receipted delivery; by certified or registered mail to the party's last known address; by telephonic document transfer to the recipient's current telecopier number; or by such other manner as the court in its discretion may direct.)

The judge of the court shall issue a capias for the defendant if cause is shown for the surrender. If the affidavit is presented to the magistrate, the magistrate shall issue a warrant of arrest. Article 17.19(b) provides that it is an affirmative defense to a bond forfeiture case filed later if a court or magistrate refused to issue a capias or warrant for the principal and the principal later fails to appear. It has been held that there is no authority for a trial judge to refuse the issuance of a capias if the requisite affidavit to surrender is properly filed. *McConathy v. State*, 545 S.W.2d 166 (Tex. Crim. App. 1977). If the court or magistrate before whom the prosecution is pending is not available, the surety may deliver the affidavit to any magistrate in the county. Art. 17.19(c), C.C.P.

A capias (warrant) issued under Article 17.19(d) of the Code of Criminal Procedure must be issued (given) to the sheriff of the county in which the case is pending and a copy of the warrant or capias must be given to the surety or his or her agent. A peace officer, a security officer, or a licensed private investigator may execute the capias (warrant). Art. 17.19(e), C.C.P.

When a clerk receives a surety's affidavit of intent to surrender his or her principal, the clerk should immediately transmit the affidavit to the judge. If the judge determines that there is sufficient cause to issue the capias (warrant), the clerk should prepare a capias (warrant) for the judge's signature. The clerk or judge should note on the criminal docket the date the capias (warrant) is issued and to whom the capias (warrant) was given for execution. The filing of an affidavit of intent to surrender and the issuance of a warrant does not constitute a surrender as to discharge the surety's liability under the bond until the principal is taken into custody. *Apodaca v. State*, 493 S.W.2d 859 (Tex. Crim. App. 1973).

After the judge issues the capias (warrant), the clerk should give a copy to the State and to the defendant's attorney, if the defendant has one.

C. Contest of Surrender

If the principal on the bond (the defendant) or an attorney representing the State determines that the surrender was without reasonable cause, that person may contest the surrender in the court that authorized the surrender. Sec. 1704.207(b), O.C. If the court finds that a contested surrender was without reasonable cause, the court may require the person who executed the bond to refund to the principal all or part of the fees paid for execution of the bond. The court shall identify the fees paid to induce the person to execute the bond regardless of whether the fees are described as fees for the execution of the bond. Sec. 1704.207(c), O.C.

8. When is a surety released from the responsibility on a bond? _____

_____

_____

_____

9. What must be stated in an affidavit filed by a surety requesting to surrender the principal?

_____

_____

True or False

10. When an affidavit is filed with a court asking permission for the surrender of the principal, the court may refuse to issue the capias if no reasonable cause is shown. ____

11. A capias issued for the surrender of the principal may be executed only by a peace officer. ____

12. When a clerk receives an affidavit, the clerk should immediately notify the judge. ____

PART 3
SURETY BOND FORFEITURE

When a defendant is bound by bail to appear on a criminal case and fails to appear, the court shall declare a forfeiture of the bond. Art. 22.01, C.C.P. An action by the State to forfeit the bond must be brought not later than the fourth anniversary of the date the principal fails to appear in court. Art. 22.18, C.C.P. This part addresses the procedure to forfeit a bond involving a surety. The State is the plaintiff and is referred to in this chapter as "State," "city attorney," or "prosecutor." The surety is referred to as "defendant surety" or "surety." The defendant is referred to as "defendant," "principal" or "principal defendant." See Parts 4 and 5 for procedures to forfeit a bond posted only by a defendant without a surety.

A. Declaring the Forfeiture

1. Calling Name Outside of Courtroom

On scheduled appearance dates for criminal cases, the judge asks the defendants to acknowledge their presence when their name is called. When a defendant fails to answer, the judge must order that the name of the defendant be called distinctly at the courthouse door. Usually, the judge directs either a clerk or bailiff to call the name outside the courtroom. Art. 22.02, C.C.P. In *Burns v. State*, 814 S.W.2d 768 (Tex. App.−Houston [14th Dist.] 1991, rev'd on other grounds, 801 S.W.2d 361 (1992)), the court held that only substantial compliance with Article 22.02 is required and that calling the defendant's name in the hallway on the sixth floor of the courthouse meets this test.

If the defendant fails to appear or answer the call, the prosecutor moves for forfeiture of bond posted on the criminal case. The clerk or bailiff prepares and swears to a statement that he or she called the name outside the court and that the defendant failed to answer or to appear. (The clerk has the authority to administer this oath.) The affidavit is filed with the bond forfeiture case and may also be used as probable cause for filing a new offense of failure to appear or violation of

promise to appear, if applicable, and issuing a warrant for the defendant's arrest for the new nonappearance crime.

2. Judgment Nisi

If a defendant does not appear on the criminal case within a reasonable amount of time after his or her name is called at the courthouse door, the court shall enter a judgment nisi that the State recover the amount of the bond unless good cause is shown as to why the defendant did not appear. Art. 22.02, C.C.P. Although statutes do not define the words "reasonable amount of time," typically the judge signs the judgment nisi at the end of the court session on the day that the forfeiture is declared (the day the defendant failed to appear). Some judges, however, consider the "Mailbox Rule" in Article 45.013(a) of the Code of Criminal Procedure and wait 10 working days before signing the judgment nisi. (The judge is waiting to see if the defendant is appearing by mail.) The signing of a judgment nisi is a judicial decision.

3. Issuance of Capias After Forfeiture of Bond

When a court declares a bond forfeiture, the court shall issue a capias for the defendant's arrest on the original underlying charge for which the bond was posted. Art. 23.05(a), C.C.P. The capias must be issued immediately but not later than the 10th business day after the order of the forfeiture. Art. 23.05(c), C.C.P. When the defendant is arrested on this capias, the court may require a cash bond to guarantee the defendant's appearance in court. Art. 23.05(a), C.C.P. This is the *only* time a judge may require the bond to be posted by cash only.

Usually, the clerk prepares the capias for the judge's signature. After the judge issues the capias, the clerk should coordinate the service of the capias with the police department.

A capias issued when a bond forfeiture is declared may be executed by a peace officer or by a private investigator licensed under the Chapter 1702 of the Occupations Code. Art. 23.05(b), C.C.P. Section 1702.3867 provides rules that private investigators must follow when executing a capias.

True or False

13. When a defendant fails to appear, the court is not required to declare a forfeiture of the bail. ____

14. When a defendant fails to answer docket call, the court is required to have the defendant's name called at the courthouse door. ____

15. When a bond forfeiture is declared, the court must issue a capias for the defendant's arrest. ____

16. When a bond forfeiture is declared and the defendant is rearrested, the court may require the defendant to present the court with a cash bond to obtain a new court date. ____

B. Initiating the Forfeiture

Before filing the judgment nisi, the State (prosecutor) needs to determine if the name of the bail bond company is merely an assumed or trade name and who is the proper party in the lawsuit. This information is given to the clerk for the clerk to prepare the judgment nisi. After the judge signs the judgment nisi, the clerk records the judgment nisi on the court record of the original

criminal case. The judgment nisi is the basis of the State's case for the forfeiture and becomes the State's petition in a separate civil case. *Swaim v. State*, 498 S.W.2d 988 (Tex. Crim. App. 1973); *Cheatam v. State,* 13 Tex. Ct. App. 32 (1884).

C. Scire Facias Docket

Once a judgment nisi is entered, this new case is given a new case number and set on the scire facias docket. Art. 22.10, C.C.P. The scire facias docket is a separate civil docket for bond forfeiture cases. Although either the judge or the clerk may docket the case, usually the clerk performs this action. The forfeiture is docketed in the name of the State of Texas as the plaintiff party. The defendant and his or her sureties, if any, are the defendant parties. The nature of the action is a bond forfeiture.

Rule 26 of the Rules of Civil Procedure requires the civil docket to be a permanent record that shall include the number of the case, the names of the parties, the names of the attorneys, the nature of the action, the pleas, the motions, and the ruling of the court.

17. What is a judgment nisi? _____
_____
18. After a bond forfeiture is declared, when is the judgment nisi signed? _____
_____
19. Define scire facias docket. _____
_____
20. How is the bond forfeiture case docketed? _____
_____
21. Who is the defendant in a bond forfeiture case? _____
22. How long is the court required to keep and maintain the scire facias docket? _____
23. List the information required on a scire facias docket. _____
_____
_____
_____
_____

D. Notification of Bond Forfeiture Lawsuit

1. Citation

After the entry of the judgment nisi, a "citation" is issued to notify the surety and the principal of the bond forfeiture. Arts. 22.03(a) and 22.04, C.C.P. A citation, in this sense, is a notice to a person that he or she must appear to answer before a court. This is a civil citation as distinguished from the criminal citation that an officer issues in lieu of an arrest. The purpose of the citation is to notify the defendant surety and the principal defendant (the person charged with the criminal offense) of the pending lawsuit now filed against him, her, or them. The citation requires the surety and principal to appear and show cause why the judgment of forfeiture (the judgment nisi) should not be made final.

2. Principal Defendant

It is not necessary to give notice of the bond forfeiture to the principal defendant on a surety bond unless he or she has furnished an address on the bond. Art. 22.05, C.C.P. If the court has an address, the notice is served by depositing it in the U.S. Mail directed to the defendant at the address shown on the bond or the last known address of the defendant. The court must attach a copy of the judgment nisi and a copy of the bond to the notice. Although Article 22.05 of the Code of Criminal Procedure does not define what is meant by "notice" to the defendant/principal on a surety bond, under the Rules of Civil Procedure, proper notice is the citation.

If the defendant posted a cash bond, the court is required to give notice of the bond forfeiture as in civil cases. The court must give notice by regular mail if the defendant provided his or her address on the bond. If the defendant did not provide an address, notice shall be served at the last known address of the defendant.

3. Defendant Surety

Sureties have a right to notice of the bond forfeiture lawsuit against them. The process that provides sureties this notice is the citation.

a. Issuance of Citation

The citation must be in the form provided for citations in civil cases and a copy of the judgment nisi, a copy of the bond, and a copy of the power of attorney, if any, must be attached. Art. 22.04, C.C.P.

The clerk, when requested by the State, shall immediately issue a citation. Also, upon request, the clerk must issue separate or additional citations. Rule 99, R.Civ.P. The clerk must deliver the citation(s) as directed by the requesting party. In municipal court, the requesting party is the State or prosecutor. The party requesting the citation is responsible for obtaining service of the citation.

b. Requirements of Citation

Rule 99 of the Rules of Civil Procedure requires that the citation be in the following form:

- be styled "The State of Texas;"
- be signed by the clerk under seal of court;
- contain name and location of the court;
- show date of filing of the judgment nisi;
- show date of issuance of citation;
- show file number;
- show names of parties (State, principal defendant and defendant surety, if any);
- be directed to the principal defendant and defendant surety, if any;
- show the name and address of the attorney for the plaintiff (State, or prosecutor); and
- contain the address of the clerk.

The citation shall direct the defendant(s) to file a written answer on or before 10:00 a.m. on the next Monday after the expiration of 20 days after the date of service. The "answer" is the formal written statement made by a defendant setting forth the grounds of his or her defense.

The citation shall include the following notice to the defendant(s):

"You have been sued. You may employ an attorney. If you or your attorney do not file a written answer with the clerk who issued this citation by 10:00 a.m. on the Monday next following the expiration of 20 days after you were served this citation and petition, a default judgment may be taken against you."

If a citation is to be served by publication, the requirements of the citation are different from the ones listed in this section. See the next section regarding service of the citation.

True or False

24. The court must always give notice of the bond forfeiture to the principal defendant on a surety bond. ____
25. The citation to the principal defendant who has posted a cash bond is required to be served as in civil cases. ____
26. The notice to the defendant(s) must include a copy of the judgment nisi. ____
27. The purpose of the citation is to notify the surety of the bond forfeiture lawsuit. ____
28. When a citation is served on a surety, a copy of the judgment nisi and a copy of the bond must always be attached. ____
29. When must the clerk issue the citation? _____
30. List the requirements of the citation. _____

_____

_____

_____

31. What does the citation require the defendant to do?_____

_____

32. When does the citation direct the defendant to answer?_____

_____

33. Define answer. _____

_____

c. Service of the Citation

Sureties are entitled to notice of the civil lawsuit to forfeit the bond by service of a citation. One of the chief difficulties of service on a surety is serving the citation on the proper party. Before requesting service of a citation, the State must determine if the name of the bail bond company is merely an assumed or trade name and who the proper party is in the lawsuit. If the bail bond company is a property bail bond company, it will have an individual owner and the citation will be served on the individual owner in his or her individual capacity. The company may be named "Easy Bonds," but the owner is John Star. The forfeiture lawsuit would be against John Star d/b/a Easy Bonds.

If a surety is an insurance company doing business as a bail bonding company, the company will have agents who run the bonding business. Insurance companies must have obtained authority from the Texas Department of Insurance to write surety bonds. The agents have no liability to the State for the bonds. The citation must be served on the insurance company. Insurance

companies must have a registered agent (this is an attorney) for service on file with the bail bond board in the county. If the court is in a county that does not have a bail bond board, the State can contact the Office of the Secretary of State and obtain the name and address of the registered agent.

Article 22.03(c) of the Code of Criminal Procedure requires that service of a citation to a surety who is a corporation or other entity shall be served to the attorney designated for service of process by the corporation or entity under Chapter 804 of the Insurance Code.

Service of a citation to a surety who is an individual shall be served to the individual at the address shown on the face of the bond. Art. 22.03(b), C.C.P. A surety may designate a person other than the surety to receive service of the citation by filing a designation in writing with the clerk of the court. This is effective until revoked. Art. 22.03(d), C.C.P.

The service of the citation on a surety is in the same manner as provided for civil actions. Art. 22.05, C.C.P. Rule 103 of the Rules of Civil Procedure states that no person who is a party to or interested in the outcome of a suit shall serve any process. Rule 103 provides that the following persons may serve a citation anywhere:

- any sheriff or constable or other person authorized by law; or
- any person authorized by law or by written order of the court who is not less than 18 years of age.

Article 45.202(a) of the Code of Criminal Procedure provides that all process issuing out of a municipal court may be served by a city peace officer or a marshal under the same rules as are provided by law for the service of process by sheriffs and constables issuing out of the justice court. Article 45.202(b) provides that city police officers may serve all process issuing out of a municipal court anywhere in the county in which the city is situated. If the city is situated in more than one county, the city police officer may serve the process throughout those counties, as well. Hence, city peace officers may serve a citation anywhere in the county or counties where the city is situated.

The order authorizing a person to serve process may be made without written motion and no fee may be imposed for issuance of such order.

Rule 106 of the Rules of Civil Procedure provides for the method of service of a citation. It includes service by mail, personal service, alternative service, and service by publication. The following information explains the procedures for using each method.

- **Service by Mail**

  Usually, the prosecutor requests that the clerk serve the citation by registered or certified mail, restricted delivery to addressee only. A copy of the judgment nisi, a copy of the bond, and a copy of a power of attorney, if any, shall be attached to the citation. Art. 22.04, C.C.P. If the surety is a corporation, such as a bonding company, the clerk should call the company and ask who the registered agent is for accepting service of the citation.

  If the defendant surety or the defendant surety's registered agent for service accepts service and signs the green card (return receipt), the clerk must attach the card to the original citation in the forfeiture file. Rule 107(g), R.Civ.P. The clerk fills out the return portion of the citation noting the date and time the return receipt (green card) was signed and returned to the court. When the citation was served by registered or

certified mail, the return must also contain the return receipt with the addressee's signature. Rule 107(c), R.Civ.P.

If the citation is returned unclaimed or refused, or if someone other than the defendant surety or registered agent for service accepted the citation by signing the green card, the citation has not been served and the clerk would notify the prosecutor.

- **Personal Service**

  If service by mail fails, the clerk should notify the prosecutor. The prosecutor may request that a peace officer or marshal personally serve the citation on the defendant surety or the defendant's registered agent. A copy of the judgment nisi, a copy of the bond, and a copy of any power of attorney must be attached to the citation. The officer or authorized person to whom the citation is delivered shall endorse the citation with the day and hour on which he or she received it. Rule 105, R.Civ.P. The person serving the citation shall execute it and return it without delay. The return of the officer or authorized person executing the citation may be endorsed on or attached to the citation. Rule 107, R.Civ.P. The return shall include 11 items, listed in Rule 107 of the Rules of Civil Procedure. The return must also:

  - state when the citation was served;
  - state the manner of service; and
  - be signed by the officer officially or by the authorized person.

  The return of citation signed by a person other than a sheriff, constable, or the court clerk shall be verified (sworn).

  When the officer or authorized person has not served the citation, the return shall show:

  - the diligence used to execute it;
  - the reason for failing to execute it; and
  - if the whereabouts of the defendant surety can be ascertained.

- **Substitute Alternative Service**

  If the above methods of service are not successful, the court may authorize alternative service under Rule 106(b) of the Rules of Civil Procedure. The officer must have noted the cause for failure to serve the citation and the diligence used in attempting service when he or she returns the citation to the court. The clerk notifies the prosecutor of the failure to serve the citation. The prosecutor may file a motion with the court for alternative service. The motion must be supported by an affidavit stating the location of the defendant surety's usual place of business, usual place of abode, or other place where the defendant can probably be found. The affidavit must state specifically the facts showing that service has been attempted by mail or personal service at the location named in the affidavit, but has not been successful. If the court grants the motion, the citation can be served:

  - by leaving a copy of the citation, with a copy of the judgment nisi, a copy of the bond, and a copy of any power of attorney attached, with anyone over 16 years of age at the location specified in such affidavit; or

- in any other manner that the affidavit or other evidence before the court shows will be reasonably effective to give the defendant notice of the suit.

If the court grants substitute service, the clerk delivers the citation to the peace officer. The peace officer endorses the citation with the date and hour received and attempts to serve the citation by leaving a copy with anyone over 16 years of age at the location specified in the affidavit or in any other manner specified by the court in its order. If the officer is able to serve the citation, the officer signs the citation, noting the manner, person, time, and place served. The officer returns the citation to the court.

- **Service by Publication**

If the officer is unable to serve the citation by alternative service, the officer notes the cause for failure to serve and the diligence used and returns the citation to the court. The clerk notifies the prosecutor of the failure to serve the citation by substitute service. When a citation is unable to be served by any of the abovementioned methods, Rule 109 of the Rules of Civil Procedure provides for service by publication. The prosecutor must make an oath that the residence of the defendant surety is unknown or that the defendant surety is a transient person and that, even though due diligence has been used in attempting to serve the citation, the defendant surety has not been located. The court must inquire into the sufficiency of the diligence used in attempting to locate the defendant surety before granting such service. If the court grants the motion, the clerk shall issue the citation for service by publication.

Rule 114 of the Rules of Civil Procedure provides for the requirements of a citation that is to be published. The citation shall:

- be styled "The State of Texas;"
- be directed to the defendant surety by name, if their name is known;
- if there is more than one defendant (e.g., two sureties), the citation may be directed to all of them by name;
- contain the names of the parties (the State (city) and the defendant surety); and
- contain a brief statement of the nature of the suit.

A copy of the judgment nisi does not have to be published with this citation.

The citation must be published once each week for four consecutive weeks. Rule 116, R.Civ.P. It must be published in the county where the lawsuit is pending. If there is not a newspaper in the county where the suit is pending, publication may be published in an adjoining county where a newspaper is published. The first publication is to be at least 28 days before the return day of the citation.

The clerk who executed the citation shall endorse the citation and show how and when the citation was executed, specifying the dates of publication. A copy of the publication shall be attached to the citation. Rule 117, R.Civ.P.

Rule 114 of the Rules of Civil Procedure provides that a defendant (surety) must file an answer with the court before 10:00 a.m. of the first Monday after the expiration of 42 days from issuance of the citation for publication.

Rule 244 of the Rules of Civil Procedure states that where service of the citation has been made by publication and no answer has been filed nor appearance entered within the prescribed time, the court shall appoint an attorney to defend the suit on behalf of the defendant. Judgment may be rendered as in other cases, but a statement of evidence, approved and signed by the judge, shall be filed with the papers of the case as a part of the record. The court shall allow a reasonable fee to be paid to the attorney for his or her services. This fee is added on as part of the costs.

4. Waiver of Service

Article 22.03(d) of the Code of Criminal Procedure allows a surety to file a waiver with the clerk of the court waiving service of citation or to designate a person other than the surety or the surety's attorney to receive service of the citation.

The defendant surety may accept service or waive the issuance of service of the citation by filing with the court a sworn memorandum signed by the defendant surety or by his or her duly authorized agent or attorney. The waiver is effective until written revocation is filed with the clerk. The waiver or acceptance shall have the same force and effect as if the citation had been issued and served. The defendant surety who waives service of the citation shall be delivered a copy of the judgment nisi. Receipt of the copy of the judgment nisi must be acknowledged in the memorandum. Rule 119, R.Civ.P.

5. Absent Surety or Non-Resident Surety

If a defendant surety is absent or a non-resident, service of a certified copy of the citation may be made outside of Texas by any person competent to make an oath of the fact of service, who is a disinterested party not less than 18 years of age. The affidavit of such person stating the facts of service shall be a sufficient return. Art. 22.08, C.C.P.

When the defendant surety is absent from the State or is a non-resident of the State, the form of the notice to the defendant surety shall be in the same form prescribed for a citation to a resident defendant surety. The return of service shall be endorsed on or attached to the original notice and shall be in the same form as for the return of service on a resident defendant surety. Rule 108, R.Civ.P.

True or False

34. A citation issued in a bond forfeiture case is served in the same manner as civil citations. ____

35. The sheriff, constable, city peace officers, and court clerks are the only persons who may serve a citation. ____

36. If a city police officer serves the citation, he or she may serve the citation only within the city limits. ____

37. A clerk may serve a citation by mail. ____

38. List the methods of serving a citation. _____

_____

_____

_____

39. When a citation is mailed to a surety, what are the requirements for mailing a citation? ____

_____

_____

40. When the surety is a corporation, what should the clerk do before serving the citation? ____

_____

_____

41. If the clerk serves the citation by mail, what must the clerk attach to the citation in the forfeiture file after the surety accepts service? _____

42. After service of the citation by mail, what information on the return of the citation must be completed? _____

_____

True or False

43. A citation that is refused is considered to be served. ____

44. Anyone can sign for a citation and it is considered to be served. ____

45. If the court is unable to serve the citation by mail, the clerk must notify the prosecutor of the failure to serve the citation. ____

46. When a peace officer receives a citation, what information is he or she required to put on the citation? _____

_____

47. After a citation is served by a peace officer, what information must the officer endorse on or attach to the citation? _____

_____

48. If the person serving the citation is not able to locate the defendant surety for personal service, what must that person do? _____

_____

True or False

49. The State may request alternative service from the court by submitting an affidavit stating specific facts about the previous attempted service. ____

50. If a court grants alternative service, the citation may be served on anyone who lives at the address specified in the affidavit. ____

51. When a citation is served by a peace officer, the officer must note the time and date he or she received the citation. ____

52. If alternative service is not successful, the clerk may ask the judge to serve the citation by publication. ____

53. The request for service by publication must be made under oath that the residence of the defendant surety is unknown and previous attempted service, although diligent, was not successful. ____

54. When a court grants a motion for service by publication, the clerk must issue a new citation since the requirements for this citation are different from the one that is served by mail or

one served on a defendant surety personally. ____

55. A copy of the judgment nisi must be published along with the citation. ____

56. A citation that is published must be published once each week for four consecutive weeks. ____

57. The first publication must be at least 28 days before the return day of the citation. ____

58. When a citation is published, the clerk must endorse the citation and show how and when the citation was executed, specifying the dates of publication. ____

59. Since the clerk endorses the citation showing how it was executed, the clerk does not have to attach a copy of the publication to the citation. ____

60. The defendant surety must file an answer with the court 80 days from the issuance of the citation when service is by publication. ____

61. If a defendant does not file an answer when a citation is published, the court is required to appoint an attorney to defend the suit in behalf of the defendant. ____

62. Defendant surety may waive service of the citation by filing a sworn memorandum with the court. ____

63. A defendant surety who waives service of the citation is not entitled to a copy of the judgment nisi. ____

64. Who may serve a citation to an absent or non-resident surety? _____

_____

E. Answer

The answer is the formal written response made by a defendant or surety, if any, setting forth the grounds of his or her defense. After the forfeiture of the bond is declared and the defendant or surety has been notified (successful service of the citation) of the lawsuit, he or she can answer in writing and show cause why the principal defendant did not appear.

1. When Filed

The answer must be filed within the time limit for answering in other civil actions. Art. 22.11, C.C.P. The civil rules provide that the answer must be filed by 10:00 a.m. on or before the Monday next following the 20th day after the service of the citation. To compute the period of time, the court does not count the day of service, but begins counting on the first day following service. The court counts calendar days, not just business days. The last day is included unless it is a Saturday, Sunday, or legal holiday, in which event the period of time runs until the end of the next working day of the court. Rule 4, R.Civ.P.

For example, if a citation is served on a Friday, the court starts the counting with Saturday as the first day. If the 20th day is a Thursday, the court then looks to the following Monday as the answer date. If this Monday is a holiday, the court then goes to the following day which is Tuesday. The answer is due by 10:00 a.m.

Ten additional days are allowed if the answer is mailed by first class mail, properly addressed and mailed on or before the last day for filing an answer. Art 45.013(a), C.C.P.; Rule 5, R.Civ.P. When an answer is mailed to the court, the clerk must keep the envelope in which the answer is

received to determine if the mailing of the answer was within the time deadline. The postmark will indicate the day that the answer was mailed.

All answers received should be stamped with the time and date received. After receiving the answer, the clerk sets the case on the scire facias trial docket and provides a copy of the answer(s) to the State.

2. General Denial

A general denial is an answer that is not required to be denied under oath and it is sufficient to put the case on the scire facias trial docket. Rule 92, R.Civ.P. The defendant or surety may later amend the answer. However, if the amended answer is filed within seven days of the date of the trial, the defendant or surety must get permission from the judge to file the amendment. Rule 63, R.Civ.P. When the court receives an amended answer, the clerk should date stamp it and notify the State and the judge.

3. Verified Pleadings

A verified statement is a sworn statement. Rule 93 of the Rules of Civil Procedure requires that certain pleadings be verified. This means that some answers must be sworn so that certain issues are raised at the trial of the bond forfeiture case. Rule 185, R.Civ.P. Examples of when a verified pleading would be required are:

- when the surety and principal deny the execution of the bond; or
- when the surety and principal plead that the bond was not a valid bond.

If the defendant or surety has filed a general denial, he or she may later amend the answer and deny the allegations of the bond forfeiture suit under oath. This is the responsibility of the defendant or surety and not the court. When the clerk receives a verified answer, the clerk should date stamp it and notify the State.

4. Answer Before Citation Issued

If the defendant or surety files an answer before the court that issues the citation, the answer constitutes an appearance and dispenses with the necessity for issuance or service of the citation. If the clerk receives an answer before issuing the citation, the clerk should date stamp the answer and note on the file that the answer was received before the issuance of the citation. Rule 121, R.Civ.P.

5. Appearance in Open Court

If the defendant or surety enters an appearance in open court either in person or by his or her attorney or duly authorized agent, the judge shall note the appearance on the civil docket and enter it in the minutes. The citation shall be deemed to have been issued and served. Rule 120, R.Civ.P.

65. How can a defendant surety answer the bond forfeiture lawsuit?_____

_____

66. What is the time limit for filing an answer with the court?_____

_____

67. If an answer is mailed by first class mail on or before the last day for filing the answer, how much additional time is allowed? _____

68. If an answer is received by mail, why must the clerk keep the envelope in which the answer was mailed? _____

69. What is a general denial? _____

_____

70. When must a defendant obtain permission of the court to file an amended answer? _____

_____

71. What is a verified pleading? _____

_____

72. What happens if a defendant surety files an answer before the court issues a citation? _____

_____

_____

73. What happens when a defendant surety enters an appearance in open court before a citation is issued?_____

_____

F. Setting the Case

An answer filed contests the State's (prosecutor's) case. The court may set contested cases on the scire facias docket on written request of any party, defendant surety or State (prosecutor), or on the court's own motion. The court must give reasonable notice of not less than 45 days of a first setting for trial. When a case has previously been set for trial, the court may reset the case to a later date on any reasonable notice to the parties or by agreement of the parties. Rule 245, R.Civ.P.

Rule 21a of the Rules of Civil Procedure states that the notice may be served on the parties:

- by delivering a copy to the party to be served or the party's duly authorized agent or attorney of record either in person or by agent or by courier receipted delivery;
- by certified or registered mail to the party's last known address;
- by telephonic document transfer to the recipient's current telecopier number; or
- by such other manner as the court in its discretion may direct.

Service by mail shall be complete upon deposit in a post office or official depository under the care and custody of the U.S. Postal Service. Service by telephonic document transfer after 5:00 p.m. local time of the recipient shall be deemed served on the following day. Whenever a party has the right or is required to do some act within a prescribed period after the service of the notice is made by mail or telephonic document transfer, three days shall be added to the

prescribed period. Notice may be served by a party to the suit, an attorney of record, a sheriff or constable, or by any other person competent to testify. The party or attorney of record shall certify to the court compliance by filing a signed written document of the compliance. A certificate by a party or an attorney of record, the return of an officer, or the affidavit of any person showing service of a notice shall be prima facie evidence of the fact of service. The clerk, upon receiving a document showing compliance of the service of notice, should date stamp the document and file it with the bond forfeiture case.

1. Continuance

A case can be postponed or continued by agreement of both the defendant or surety and the State (prosecutor) for good cause supported by an affidavit presented to the court after notice to the other party (by consent of the parties) or by operation of law. Rules 247 and 251, R.Civ.P.

2. Non-Contested Cases – No Answer Filed

If the defendant or surety does not file an answer, the case is uncontested.

Non-contested cases may be tried or disposed of at any time, whether set or not, and may be set at any time for any other time. Rule 245, R.Civ.P. If the surety does not file an answer within the specified period, the clerk should notify the State (prosecutor) and set the case on the scire facias docket. After the State presents evidence, the judge will enter a final default judgment for the State. Rule 239, R.Civ.P. At the time of judgment, the State (prosecutor) shall certify to the clerk in writing the last known mailing address of the party against whom judgment is taken. Rule 239a, R.Civ.P. The clerk notifies the surety of the final judgment and that the judgment is due and payable to the city.

74. When may a court set bond forfeiture contested cases in which answers have been filed? __
_____

75. How many days notice must a court give a defendant surety of a trial date? _____

76. If a case has been previously set for trial, how much notice is the defendant surety entitled to receive?_____

77. When may a case be postponed or continued? _____
_____

78. When can non-contested cases be disposed? _____
_____

G. Remittitur Before Entry of Final Judgment

Article 22.16(a) of the Code of Criminal Procedure provides that after the forfeiture of a bond and before entry of a final judgment, the court shall, on written motion, remit (return) to the surety the amount of the bond after deducting court costs, any reasonable and necessary re-arrest costs, and the interest on bond amount after forfeiture if:

- the principal defendant is released on new bail in the criminal case; or
- the criminal case for which the bond was given is dismissed.

For other good cause shown and before entry of a final judgment against the bond, the court in its discretion may remit to the surety all or part of the amount of the bond after deducting the court costs, any reasonable and necessary re-arrest costs, and interest accrued on the bond from the date of the forfeiture. Art. 22.16(b), C.C.P.

H. Trials

Courts may not enforce bail bonds during a period of active military service of the principal defendant when the military service prevents the defendant surety from obtaining the attendance of the principal. Sec.103(c), Service Members Civil Relief Act (S.C.R.A.). The State must provide the court with an affidavit of non-military service regarding the defendant. If the State does not provide an affidavit that the principal defendant is not on active military duty, the court may appoint an ad litem (an attorney appointed by the court to appear in a lawsuit on behalf of the party) for the service member, for whom the State must pay the fees, or the court may refuse to proceed and abate the forfeiture action until the service member's return from active duty. Sec. 201, S.C.R.A. The Department of Defense provides a website for government agencies to check military status: https://scra.dmdc.osd.mil/.

1. Trial before the Judge

Although a bond forfeiture stems from a criminal case under Chapter 22 of the Code of Criminal Procedure, the procedures are governed by the Rules of Civil Procedure instead of the Code of Criminal Procedure. Art 22.10, C.C.P. Under the Rules of Civil Procedure, when a defendant wants to contest a lawsuit, the defendant is automatically entitled to a trial before the judge. The rules that govern a jury trial also govern trials by the court in so far as they are applicable. Rule 262, R.Civ.P.

2. Jury Trial

A defendant surety may request a jury trial. The request must be made in writing and filed with the clerk a reasonable time before the date set for trial on the non-jury docket, but not less than 30 days in advance. Rule 216(a), R.Civ.P. When the clerk receives the request, the clerk should date stamp it and file it with the case.

A defendant surety who requests a jury trial must also pay a fee. Rule 216(b), R.Civ.P. Unless otherwise provided by law, defendants in county court are required to pay a $5 fee, and defendants in district court are required to pay a $10 fee. Although municipal courts must follow the Rules of Civil Procedure in bond forfeiture cases, the rules do not state if municipal courts use the rule governing county court or the one governing district court. Clerks should ask their judge for guidance on this issue.

If a defendant within the time for making the jury fee deposit files with the clerk an affidavit that he or she is unable to pay the fee and cannot otherwise obtain the money, the court shall order the clerk to enter the suit on the jury docket without requiring a fee. Rule 217, R.Civ.P.

If the jury fee is not paid, the court may deny the jury trial. When the clerk receives the fee, the clerk must promptly enter a notation of the payment of the fee upon the court's docket sheet. Rule 216(b), R.Civ.P. The clerk is required to keep a docket, styled "The Jury Docket," which shall be entered in the order of the cases in which jury fees have been paid or an affidavit of indigence in lieu of the fee has been filed. Rule 218, R.Civ.P.

If the request is timely received and the fee is paid, the clerk must summons prospective jurors. Rule 248, R.Civ.P. The clerk summons the jury in the same manner as any other jury trial in municipal court.

If the trial is a jury trial, either the defendant surety or the State may challenge the array of the jury upon the ground that the officer summonsing the jury has acted corruptly and has willfully summonsed jurors known to be prejudiced against or for either side. All such challenges must be in writing setting forth distinctly the grounds of the challenge and be supported by an affidavit. Rule 221, R.Civ.P. If the challenge is sustained, the jurors must be discharged, and the court shall order that other jurors be summonsed. The person who summonsed the first panel of jurors may not summons any other jurors in the case. Rule 222, R.Civ.P.

The court must give instructions to the jury panel as prescribed by Rule 226a of the Rules of Civil Procedure.

Both the State (prosecutor) and defendant surety may question the jurors under oath. During questioning, jurors may be excused for cause (i.e., they have a biased view of the case). This is called a challenge for cause. Rule 228, R.Civ.P. In addition, both the defendant surety and the State have the right to strike three persons without assigning a reason to the strike. This type of challenge is called a peremptory challenge. Rule 232, R.Civ.P. After any challenges for cause, the State and the defendant surety shall deliver their lists of jurors with their preemptory challenges to the clerk. The clerk shall call off the first six names on the lists that have not been erased. These six persons make up the jury. Rule 234, R.Civ.P.

After the evidence has been presented, the judge must give instructions to the jury as prescribed by the Texas Supreme Court. Rule 226a, R.Civ.P. The court's charge and verdict certificate is included in Rule 226a. The State (prosecutor) and defendant surety make their closing arguments and the case is submitted to the jury. The jury's decision is the verdict.

3. Trial Proceedings

Whether the trial is before the judge or a jury, the evidence and trial procedures are the same. The State offers into evidence a copy of the complaint on the original criminal charge for which the bond was given, a copy of the bond, the docket entry and indication of the forfeiture, the affidavit of the person who called the name outside the courtroom, and the judgment nisi. The bond and judgment nisi are the essential elements in a bond forfeiture proceeding. Generally, the State will ask the court to take judicial notice of the bond and judgment nisi unless the defendant surety has filed a sworn answer challenging the bond's validity. *Hokr v. State*, 545 S.W.2d 463 (Tex. Crim. App. 1997). If there is a sworn answer, the State follows the required predicate to introduce a copy of the bond.

The State may also ask for court costs, costs of arrest, if any, and interest from the date of the judgment nisi until the date of final judgment. Then, the State rests.

If a proper answer has been filed, the defendant surety can present his or her case. If the defendant has not filed or raised a valid defense or raised a defense that must be verified, the State may object. (Note: A bond forfeiture trial is equitable in nature, and therefore, it can be argued that the judge has discretion to hear any testimony he or she may deem fit.)

I. Powers of the Court

After a trial, the court may exonerate the defendant surety from liability on the forfeiture, remit the amount of the forfeiture, or set aside the forfeiture. If the forfeiture is set aside, it may be

done so only as expressly provided by Chapter 22 of the Code of Criminal Procedure. The court may approve any proposed settlement of the liability on the forfeiture that is agreed to by the State and by the defendant surety. Art. 22.125, C.C.P.; Sec. 1704.205, O.C.

J. Causes that Will Exonerate

Article 22.13 of the Code of Criminal Procedure provides causes that will exonerate the principal and surety. The causes are:

- The bond is not a valid and binding undertaking in law.
- The death of the principal defendant before the forfeiture was taken.
- The sickness of the principal or some uncontrollable circumstance that prevented the principal defendant's appearance at the court. It must be shown that the failure to appear arose from no fault on the principal defendant's part. This defense is available if the principal and surety, if any, appear before final judgment on the bond forfeiture to answer the accusation or show the cause for not appearing.
- Failure to present an indictment or information at the first term of the court after the principal has been admitted to bail (municipal courts file a complaint to begin proceedings).
- The incarceration of the principal defendant in any jurisdiction in the United States:
  - in the case of a misdemeanor, at the time of or not later than the 180th day after the date of the principal's failure to appear in court; or
  - in the case of a felony, at the time or not later than the 270th day after the date of the principal's failure to appear in court. A surety who may be exonerated for the incarceration of the principal remains obligated to pay costs of court, any reasonable and necessary costs incurred to secure the return of the principal, and interest accrued on the bond amount from the date of the judgment nisi to the date of the principal's incarceration. Art. 22.13(b), C.C.P.

The court may consider only the causes listed in Article 22.13 and no others for exoneration. Art. 22.13(a), C.C.P.

79. How may a defendant surety request a jury trial?_____

_____

80. If a defendant surety wants a jury trial, what is the time limit for filing a request with the court? _____

81. What is the amount of the fee a defendant surety must pay when requesting a jury trial? ___

_____

82. If a defendant surety does not pay the jury fee what may the court do?_____

_____

83. Who summons prospective jurors in a bond forfeiture trial? _____

84. After the State and defense deliver their lists of prospective jurors to the clerk, how does the clerk determine which persons shall sit on the jury? _____

_____

85. List the powers of the court after a judicial declaration of a bond forfeiture. _____

_____

_____

86. What may the court remit to the defendant surety before entry of a final judgment?_____

_____

87. If a court remits the bond to the defendant surety, what may the court keep and not remit?

_____

True or False

88. If the principal defendant died before the forfeiture of bond, the surety is exonerated from liability. ____

89. If the principal defendant broke his leg and was in the hospital when he missed his court date for the criminal charge, the surety can send a letter to the court explaining the situation and be exonerated from liability. ____

90. If no complaint (charging instrument) has been filed against the principal defendant at the time of trial for the bond forfeiture, the court could find that as a cause for exoneration of liability. ____

91. The court can consider any cause for exoneration. ____

K. Judgments that May Be Entered

1. Summary Judgment

The State (prosecutor) or the defendant surety may, after the adverse party has appeared or answered, file a motion for a summary judgment. A summary judgment is filed when either the State or the defendant believes that there is no genuine issue of material fact and that the State or defendant is entitled to prevail as a matter of law. Rule 166a, R.Civ.P. Usually, the summary judgment is filed by the prosecutor. The party requesting the summary judgment must file and serve the motion and supporting affidavit at least 21 days before the time specified for hearing on the motion. The adverse party has no later than seven days prior to the hearing to file and serve opposing affidavits. Rule 166a(c), R.Civ.P. At the hearing, no oral testimony is received. If the judge grants the motion for summary judgment, the State prepares the judgment for the judge's signature. If the judge denies the motion for summary judgment, the case should be set on scire facias trial docket.

2. Default Judgment

When the sureties and principal have been properly served but all fail to answer within the time limit, the State may make a motion for a default judgment. Art. 22.15, C.C.P.; Rule 239, R.Civ.P. Before the court can enter a default judgment, the citation with the officer's return must have been on file in the clerk's office for at least 10 days, exclusive of the date of filing and the date of judgment. Rule 107(h), R.Civ.P. If there is more than one surety, each may have been served on different days and therefore may have different deadlines to answer. The clerk should make sure that the deadlines have passed for all defendants.

Also, before the court can grant a default judgment, the State must provide the court with an affidavit of non-military service regarding the principal defendant. Sec. 201, S.C.R.A.

The court entering a default judgment during or within 60 days after military service of a principal defendant shall, upon application by or on behalf of the service member, reopen the case. The purpose is to allow the service member to defend the action if it appears that the service member was materially affected by reason of the military service in making a defense to the action and the service member has a meritorious or legal defense to the action or some part of it. The application must be filed not later than 90 days later the date of termination of or release from military service. Sec. 201, S.C.R.A.

The State presents evidence and prepares the default judgment for the judge's signature. Rule 305, R.Civ.P. The State must certify in writing to the clerk the last known mailing address of the defendant surety against whom the default is taken. The certificate is filed with the case. Immediately upon the signing of the judgment, the clerk shall mail written notice of the default judgment to the defendant surety at the address shown in the certificate filed by the State. Rule 239a, R.Civ.P. The clerk must also note on the scire facias docket the date that the notice was mailed. The notice shall state the number and style of the case, the court in which the case is pending, that the judgment was rendered for the State against the defendant surety, and the date of the signing of the judgment. Failure to comply with these requirements shall not affect the finality of the judgment. Rule 239a, R.Civ.P.

3. Default Final Judgment

If a defendant surety files an answer but fails to appear at trial, the court may enter a default judgment against the defendant surety after the State has presented its evidence. See information directly above for procedures on default judgments.

4. Final Judgment - Defendant Surety Exonerated

If the court exonerates or sets aside the forfeiture, it can dismiss with or without costs or dismiss and reinstate the bond. Unless the principal defendant has filed a new bond on the original criminal case, there may still be an outstanding capias for the defendant's arrest that the court should review at the same time.

5. Final Judgment – Liability on Bond

If the court finds that no sufficient cause has been shown for failure of the principal defendant to appear in the original criminal case, judgment should be made final for the amount of the bond on which the defendant surety is bound; and the amount of the bond shall be collected by execution as in civil actions. If there is more than one party, a separate execution shall be issued against each party for the amount adjudged against each. The costs shall be equally divided between sureties, if there is more than one. Art. 22.14, C.C.P.

6. Agreed Judgment

An agreed judgment is one in which the State (prosecutor) recommends to the court to settle the bond forfeiture lawsuit for an amount less than the amount of the bond. The court may also on its own motion approve such a settlement. Sec. 1704.205, O.C.

Article 22.125 of the Code of Criminal Procedure provides authority for the judge to approve any proposed settlement of the liability on the forfeiture that is agreed to by the State and by the defendant or the defendant surety.

7. Clerical Mistakes in Judgment Record

Clerical mistakes in the record of the judgment may be corrected by the judge in open court according to the truth or justice of the case after notice of the motion has been given to the parties interested in the judgment.

The notice can be served by:

- Delivering a copy to the party to be served or the party's duly authorized agent or attorney of record either in person or by agent or by courier receipted delivery;
- Certified or registered mail to the party's last known address;
- Telephonic document transfer to the recipient's current telecopier number; or
- Such other manner as the court in its discretion may direct.

Rule 21a, R.Civ.P. Thereafter, the execution shall conform to the judgment as amended. Rules 316 and 329b(f), R.Civ.P.

92. What can the State do when a defendant surety has been served, but fails to answer within the time limit?_____

93. When can the court enter a default judgment? _____

_____

_____

94. Who prepares the default judgment for the judge's signature?_____

95. What is the State required to do when a default judgment is taken?_____

96. What is the clerk required to do when the court signs a default judgment? _____

_____

97. What can the court do when a defendant files an answer but fails to appear at the trial? ____

_____

_____

98. When a court decides to exonerate a defendant surety, what does the court do with the bond?

_____

99. When a court finds no sufficient cause for a defendant's failure to appear in the criminal case, what does the court do with the bond forfeiture case? _____

_____

100. What is a summary judgment? _____

_____

101. Who usually files the motion for summary judgment?_____

102. What is the time limit for filing a motion for summary judgment? _____

_____

103. How long does the surety have to answer the motion for summary judgment? _____

104. When a motion for summary judgment is granted, what must the prosecutor do?_____

_____

105. When a motion for summary judgment is denied, what does the clerk do? _____

_____

106. What is an agreed judgment? _____

107. Who approves an agreed judgment?_____

108. Who can enter into an agreed judgment? _____

109. If a clerk makes a clerical mistake in the record of the judgment, how is the mistake to be corrected? _____

110. When a mistake in the record of the judgment occurs, how is the notice to the interested parties served? _____

_____

_____

_____

L. Post-Judgment Procedures

1. New Trial

A motion for new trial may be granted in the court's discretion on motion of either party or on the court's own motion for good cause. Rule 320, R.Civ.P. The motion must be in writing and signed by the party or his or her attorney. If the motion is based on a defense, affidavits or other evidence of a defense must support the motion.

If a defendant surety or the State files a motion for new trial, the motion must be filed prior to or within 30 days after the judgment. Rule 329b, R.Civ.P.

2. Appeal

The Code of Criminal Procedure directs that all appeals from municipal courts, including bond forfeitures, go to the county court, except where some other court has jurisdiction. Appeals to the county court are de novo (a new trial) unless it is an appeal from a municipal court of record. If the appeal is from a municipal court of record, the appeal is based on error in the record. Art. 45.042, C.C.P. The Code of Criminal Procedure also states that bond forfeitures are governed by the same rules governing other civil suits. Art. 22.10, C.C.P.

Although there are special rules governing appeals in civil suits heard in a justice court (Rule 571, R.Civ.P.), there are no special rules regarding appeals from a judgment on a bond forfeiture in a municipal court. The civil rules of procedure relate to courts of record and do not address non-record municipal courts. Hence, it is unclear how an appeal from a bond forfeiture judgment from a non-record municipal court is handled other than using the procedures set forth in Chapter 45 of the Code of Criminal Procedure.

3. Special Bill of Review

A special bill of review is a proceeding brought on equitable grounds for the purpose of reversing a prior judgment of forfeiture of a trial court after a judgment has become final. Within two years of the date of final judgment, a surety may file a special bill of review requesting remittitur (return) of all or part of the bond amount minus costs and interest. Art. 22.17(a), C.C.P.; Rule 329b(f), R.Civ.P. A surety proceeding under Article 22.17 does not have to meet

the requirements of a general civil bill of review under Rule 329b(f) of the Rules of Civil Procedure. *Gramercy v. State*, 834 S.W.2d 379 (Tex. App.−San Antonio 1992). The decision to grant or deny the bill is entirely within the court's discretion. *Lyles v. State*, 850 S.W.2d 497 (Tex. Crim. App. 1993). A subsequent appearance by the defendant is not enough for a complete remittitur.

The court can grant or deny the special bill of review without an oral hearing even if a party asks for one. Whether or not arguments will be heard is discretionary with the court. *Hickman v. State*, 141 S.W. 973 (Tex. Crim. App. 1911); *Hester v. Baskin*, 184 S.W. 726 (Tex. Civ. App.−Amarillo 1916); *Peck v. Murphy & Bolenz*, 184 S.W. 542 (Tex. Civ. App.−Dallas 1916). Additionally, not every rule of Texas procedure requires an oral hearing. *Gulf Coast Investment Corporation v. Nasa 1 Business Center*, 754 S.W.2d 152 (Tex. 1988); *Classic Promotions, Inc. v. Shafer*, 846 S.W. 2d 948 (Tex. App.−Houston [14th Dist.] 1993); *Gordon v. Ward*, 822 S.W.2d 90 (Tex. App.−Houston [1st Dist.] 1991). An oral hearing is not mandatory unless the rule explicitly requires one. *Gulf Coast*, 754 S.W.2d at 153; *Gordon*, 822 S.W.2d at 92; *Classic Promotions*, 846 S.W.2d at 950. Neither Article 22.17 nor Rule 329b requires a hearing on a bill of review.

111. Who can file a motion for new trial? _____
112. How is a motion for new trial made? _____
113. What is the time deadline for filing a motion for new trial on a bond forfeiture case?_____
_____
114. Define special bill of review. _____
115. How long does a surety have to file a special bill of review with the court? _____
116. Is the court required to have an oral hearing after a special bill of review is filed? _____

M. Collection and Enforcement of Judgment

1. Bail Bond Surety

A "bonding business" or "bail bond business" means the solicitation, negotiation, or execution of a bail bond by a bail bond surety. A "bail bond surety" is a person who executes a bail bond as a surety or cosurety for another person or for compensation deposits cash to ensure the appearance in court of a person accused of a crime. Sec. 1704.001(2), O.C.

a. Surety in Default

Article 17.11 of the Code of Criminal Procedure provides that a surety on a bail bond who is in default is disqualified to sign as a surety so long as the surety is in default on a bond. Once a final judgment is signed, a surety is deemed to be in default until the judgment is satisfied, set aside, or superseded. Art. 17.11, C.C.P. It is the duty of the clerk to notify in writing the sheriff, chief of police, or other peace officer of the default.

b. Corporation in Default

To be eligible to be licensed to write bonds under Chapter 1704 of the Occupations Code, a corporation must be chartered or admitted to do business in Texas and qualified to write fidelity, guaranty, and surety bonds under the Insurance Code. Sec. 1704.152(b), O.C.

Under Chapter 1704, a corporation may not act as a bail bond surety in a county in which the corporation is in default on five or more bail bonds. Under Sections 1704.212(a) and (b), if a corporation defaults on a bail bond, the clerk of the court in which the corporation executed the bond shall deliver a written notice of the default to:

- the sheriff;
- the chief of police; or
- another appropriate peace officer.

A corporation is considered to be in default on a bail bond beginning on the 11th day after the date the trial court enters a final judgment on the scire facias docket and ending on the date the judgment is satisfied, superseded, or set aside. Sec. 1704.212(c)(1)(2), O.C. A license holder shall pay a final judgment on a forfeiture of a bail bond executed by the license holder not later than the 31st day after the date of the final judgment. However, if the license holder fails to pay a final judgment as required, the judgment shall be paid from the security deposited or executed by the license holder required upon application for a license. Sec. 1704.204(a)(b), O.C.

A corporation is not considered to be in default on a bail bond if, pending appeal, the corporation deposits cash in the amount of the final judgment with the court in which the bond is executed. Sec. 1704.212(c)(2), O.C. The cash deposit shall be applied to the payment of a final judgment in the case. Sec. 1704.212(d), O.C.

2. Executions

Execution means carrying out some act or course of conduct to its completion. Execution upon a money judgment is the legal process of enforcing the judgment, usually by seizing and selling property of the debtor.

Municipal courts have jurisdiction over the forfeiture and final judgment of all bail bonds taken in criminal cases over which it has jurisdiction. Sec. 29.003(e), G.C. Since all matters pertaining to bail bonds are governed by the Rules of Civil Procedure, execution is a way to satisfy a bond forfeiture judgment. Arts. 4.14(e) and 22.10, C.C.P. Rule 308 of the Rules of Civil Procedure states the court must cause its "judgments and decrees to be carried into execution." The rule also states that the court may enforce its judgments by "attachment, fine and imprisonment." The judgment in a bond forfeiture case shall be collected by execution as in civil actions and separate execution shall issue against each party for the amount adjudged against him or her. The costs shall be equally divided between the sureties if there is more than one. Art. 22.14, C.C.P.

Rule 621 of the Rules of Civil Procedure states that the judgment shall be enforced by execution or other appropriate process. Such execution or other process shall be returnable in 30, 60, or 90 days from the time a final judgment is signed as requested by the State (prosecutor). Usually, the State requests that the writ of execution be returnable in 30 days. If a timely motion for new trial or an arrest of judgment is filed, the clerk shall not issue execution upon the judgment until after 30 days from the time the order overruling the motion is signed or from the time the motion is overruled by operation of law. The State (prosecutor) must make application for the execution. Rule 627, R.Civ.P.

Execution may be issued at any time before the 30th day upon the filing of an affidavit by the State (prosecutor) that the defendant is about to remove personal property subject to execution by law out of the county or is about to transfer or hide such personal property for the purpose of defrauding his or her creditors. Rule 628, R.Civ.P.

A writ (written order) of execution is a formal process issued by the court generally evidencing the debt of the defendant surety to the plaintiff (State) and commanding the officer to take property of the defendant in satisfaction of the debt. Rule 629 of the Rules of Civil Procedure provides for the requirements of the writ of execution. They are:

- shall be styled in "The State of Texas;"
- shall be directed to any sheriff or any constable within the State of Texas;
- shall be signed by the clerk or judge and bear the seal of the court, if any;
- shall require the officer to execute it according to its terms;
- to make costs which have been adjudged against the defendant in execution and the further costs of executing the writ;
- shall describe the judgment, stating the court in which, and the time when, rendered, and the names of the parties in whose favor and against whom the judgment was rendered;
- a correct copy of the bill of costs taxed against the defendant in execution shall be attached to the writ; and
- shall require the officer to return it within 30, 60, or 90 days as directed by the State (prosecutor).

The officer receiving the execution is required to endorse it with the exact hour and day when he or she received it. If the officer receives more than one on the same day against the same person, the officer shall number them as received. Rule 636, R.Civ.P.

When an execution is issued upon a judgment for a sum of money, or directing the payment of a sum of money, it must specify in the execution the sum recovered or directed to be paid and the sum actually due when it is issued and the rate of interest upon the sum due. It must require the officer to satisfy the judgment and costs out of the property of the debtor subject to execution by law. Rule 630, R.Civ.P. The property secured by the Constitution and laws from forced sale shall not, in any case, be held liable for the satisfaction of bail, either as to principal or sureties, if any. Art. 17.12, C.C.P. Chapter 42 of the Property Code defines exempt personal property that is not subject to execution.

117. When is a surety deemed to be in default of a bond forfeiture judgment? _____

_____

118. Who is responsible for notifying the sheriff or chief of police of a default judgment?_____

_____

119. When may a corporation not act as a bail bond surety in a county?_____

120. If a corporation appeals a final forfeiture of a bail bond, what must the corporation do to not be considered in default? _____

_____

121. Define execution. _____

_____

122. If there is more than one surety, how are the costs divided?_____

123. When is an execution to be returned?_____

124. What happens to an execution if a motion for new trial or an arrest of judgment is filed?_____

125. Who is responsible for making an application for execution? _____

126. If the State determines that the surety is about to remove out of the county personal property subject to execution, when may execution be issued? _____

127. What is a writ? _____

128. What are the requirements for a writ of execution? _____

129. When an officer receives a writ of execution, what must the officer do?_____

130. When a writ of execution is issued upon a judgment for a sum of money, what must it specify?_____

N. Costs and Interest

1. Costs

Civil court costs may be assessed in bail bond forfeiture cases after entry of the judgment nisi. *Dees v. State*, 865 S.W.2d 461 (Tex. Crim. App. 1993). The costs must be equally divided between the sureties, if there is more than one. The costs include necessary and reasonable expenses in rearresting the defendant and any other costs involved in the bond forfeiture case such as any costs for service of process. Art. 22.14, C.C.P.

2. Interest

Under Section 301.002(a)(4) of the Finance Code, interest is the compensation allowed by law for the use, forbearance, or detention of money. Interest on the bond amount after forfeiture begins to accrue on the face amount of the bond at six percent per annum if no specified rate of interest is agreed upon by the defendant surety or State (prosecutor). The six percent per year on the principal amount begins on the 30th day after the date on which the amount is due. If an obligor has agreed to pay to a creditor any compensation that constitutes interest, the obligor is considered to have agreed on the rate produced by the amount of that interest, regardless of whether that rate is stated in the agreement. Although Section 302.002 of the Finance Code provides that interest does not begin to accrue until 30 days after the date on which the amount is due, Articles 22.16(c) and 22.17(a) of the Code of Criminal Procedure and case law from the

Texas Court of Criminal Appeals say that the interest on a bond forfeiture begins to accrue from the date of the judgment nisi.

131. What court costs are assessed in a bond forfeiture case? _____

132. What costs are included in the court costs? _____

133. When can interest be assessed? _____

_____

134. What is the rate of interest that can be assessed? _____

_____

PART 4
PERSONAL BOND FORFEITURE

In a personal bond situation, the principal is the defendant in the criminal case and the defendant in any subsequent bond forfeiture. Article 17.04 of the Code of Criminal Procedure provides requirements for a personal bond and includes the provision that the defendant must swear to and sign an oath promising to appear or pay to the court the principal sum of the bond plus all necessary and reasonable expenses incurred in any arrest for failure to appear. If the defendant fails to appear, a judgment nisi shall be issued and all the other normal procedures of bail bond forfeitures should be followed since there are no distinctions made in the law between the forfeiture of a surety bond and a personal recognizance bond. See Part 3 of this guide for procedures and substitute "defendant" for "defendant surety."

135. How is a bond forfeiture on a personal bond processed? _____

_____

PART 5
CASH BOND FORFEITURE

When a defendant who has filed a cash bond with the court, in lieu of a surety bond, fails to appear, the court may use the procedures in Chapter 22 of the Code of Criminal Procedure or the procedure in Article 45.044 of the Code of Criminal Procedure to forfeit the cash bond, depending on whether a defendant has previously entered a plea.

A. Forfeiture Under Chapter 22

If the cash bond has no plea (meaning the defendant has never entered a plea of guilty or no contest), the court must use Chapter 22 procedures: the process is initiated in the same manner as a surety bond−with a judgment nisi. The judgment nisi is entered on the scire facias docket upon the defendant's failure to appear. If the defendant has provided his or her address on the bond, the court is required to give the defendant notice by regular mail. If there is no address on the cash bond, notice shall be served at the last known address of the defendant. Art 22.035, C.C.P. This notice is by citation, the same as for sureties. The court shall attach a copy of the judgment nisi and a copy of the forfeited bond to the notice. Art. 22.04, C.C.P. See Part 3 of this guide for information on the requirements of the citation. Since the citation notice to the defendant is not

required to be sent certified mail with a return receipt, the court will not know when the defendant received the notice and will not know when to start counting the time period in which the defendant should file an answer.

However, Rule 21a of the Rules of Civil Procedure provides rules for service of notices by regular mail. That rule provides that three days shall be added to the time period. This means that the clerk would count three days from mailing the notice and then count the 20 days. The defendant's answer would be due in court on the Monday next after the expiration of the three days plus the 20 days. If the defendant files an answer, the court handles the case in the same manner as a bond forfeiture case involving a surety. See Part 3 of this guide for information on setting the hearing. If the defendant does not file an answer, the court may enter a default judgment. See Part 3 in this guide for information regarding judgments. Substitute "defendant" for "defendant surety" in the procedures discussed in Part 3.

B. Forfeiture Under Article 45.044 in Satisfaction of Fine

Article 45.044 of the Code of Criminal Procedure applies only to cash bonds posted by the defendant in which a conditional plea of nolo contendere has already been entered, and not to any other type of bond. Under this statute, the court may enter a judgment of conviction and forfeit a cash bond to satisfy a defendant's fine and costs when certain conditions are met. Those conditions are that the defendant:

- must have entered a written and signed plea of nolo contendere and a waiver of jury trial; and
- must have failed to appear on the criminal case according to the terms of the defendant's release.

When a court enters a judgment of conviction, the court shall immediately notify the defendant in writing by regular mail addressed to the defendant's last known address that:

- a judgment of conviction and forfeiture of bond was entered against the defendant on the date that the defendant failed to appear;
- the forfeiture satisfies the defendant's fine and costs in the criminal case; and
- the defendant has a right to a new trial, if the defendant applies for the new trial not later than the 10th day after the date of the judgment and forfeiture. Remember that under Article 45.013 of the Code of Criminal Procedure if the defendant files the request for a new trial by mail, the request must be mailed on or before the due date of filing and the clerk must receive the request within 10 days after the due date. This is called the "Mailbox Rule" and increases the amount of time that a defendant has to request a new trial.

If the defendant applies for a new trial, the court shall allow the defendant to withdraw the previously entered nolo contendere plea and waiver of jury trial. The court would also reinstate the bond.

If the defendant does not apply for a new trial, the judgment becomes final and a conviction is entered. If the defendant spent time in jail, the court is required to give the defendant credit for any time spent in jail before the conviction. Arts. 42.03, Sec. 2, and 45.041(c), C.C.P. Jail-time is credited at a rate of not less than $100 for a period of time specified in the judgment. "Period of time" is defined as not less than eight hours or more than 24 hours. Arts. 45.041(c) and 45.048(a) and (b), C.C.P. This means that the court may be refunding to the defendant part or all of the

bond money if he or she spent time in jail. The court shall also remit court costs to the State Comptroller. If the case involved a traffic offense, a notice of final conviction would be sent to the Department of Public Safety within seven days of the judgment. Sec. 543.203, T.C.

136. How is a bond forfeiture processed when a defendant files a cash bond that does not contain a plea of nolo contendere with the court? _____

_____

137. How does a court serve notice of this type of bond forfeiture on a defendant who has filed a cash bond containing no plea with the court? _____

_____

138. What type of notice does the court use to notify the defendant of a cash bond forfeiture? ___

_____

_____

True or False

139. When a defendant files a cash bond with the court and also gives a conditional plea of nolo contendere, the court can enter a finding of guilty and forfeit the bond for the fine and court costs. ____

140. The court must send the defendant notice of this action to the defendant within 10 days from the time the judgment is entered. ____

141. The notice must be sent certified mail. ____

142. If a defendant has been in jail, the court must give the defendant credit for the jail-time. ____

143. If a defendant applies for a new trial after receiving notice, the defendant must file a new bond with the court. ____

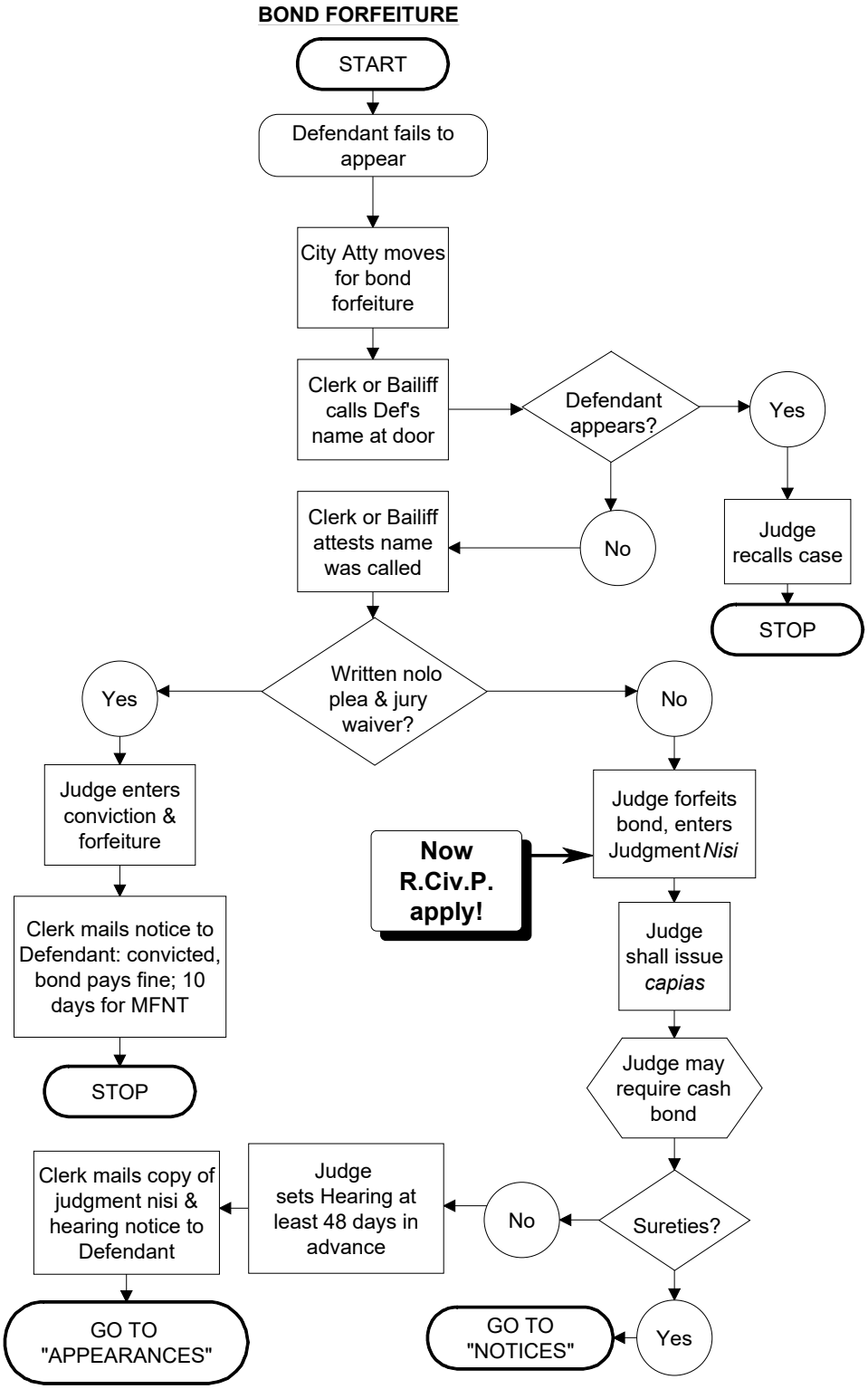
144. If the defendant applies for a new trial within 10 days of the date of judgment and forfeiture, the court shall allow the defendant a new trial. ____

145. When a bond is forfeited for the fine and costs, the clerk must remit the costs to the State Comptroller. ____

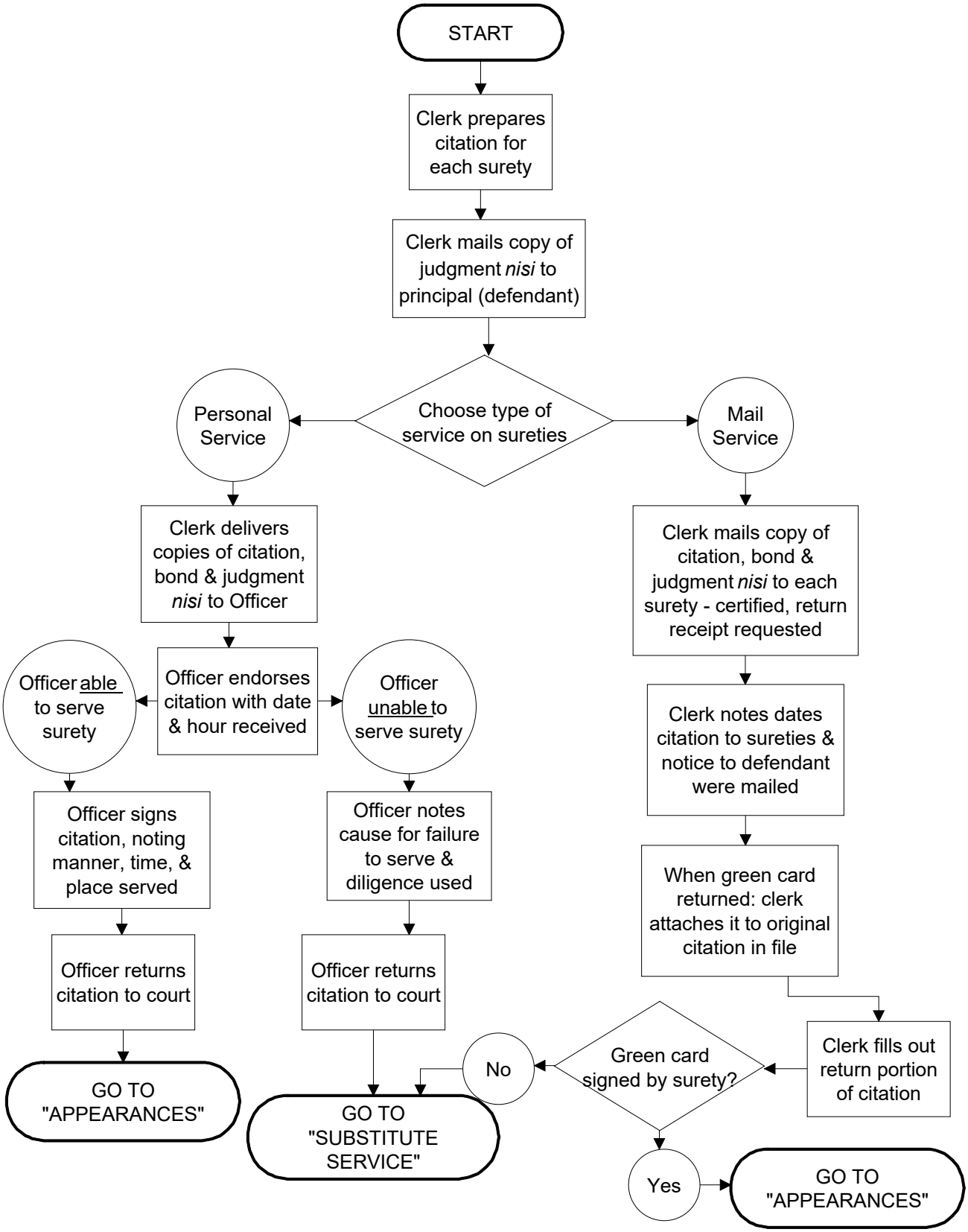
PART 6
REPORTING BOND FORFEITURES
TO THE DEPARTMENT OF PUBLIC SAFETY

Courts are required to report to the DPS a bond forfeiture of a person who has been charged with violating a law regulating the operation of a vehicle on a highway. Sec. 543.203, T.C. The court has seven days after the final forfeiture is entered to send the notice of the bond forfeiture to DPS. This notice can be submitted along with the notice of final convictions on traffic offenses.

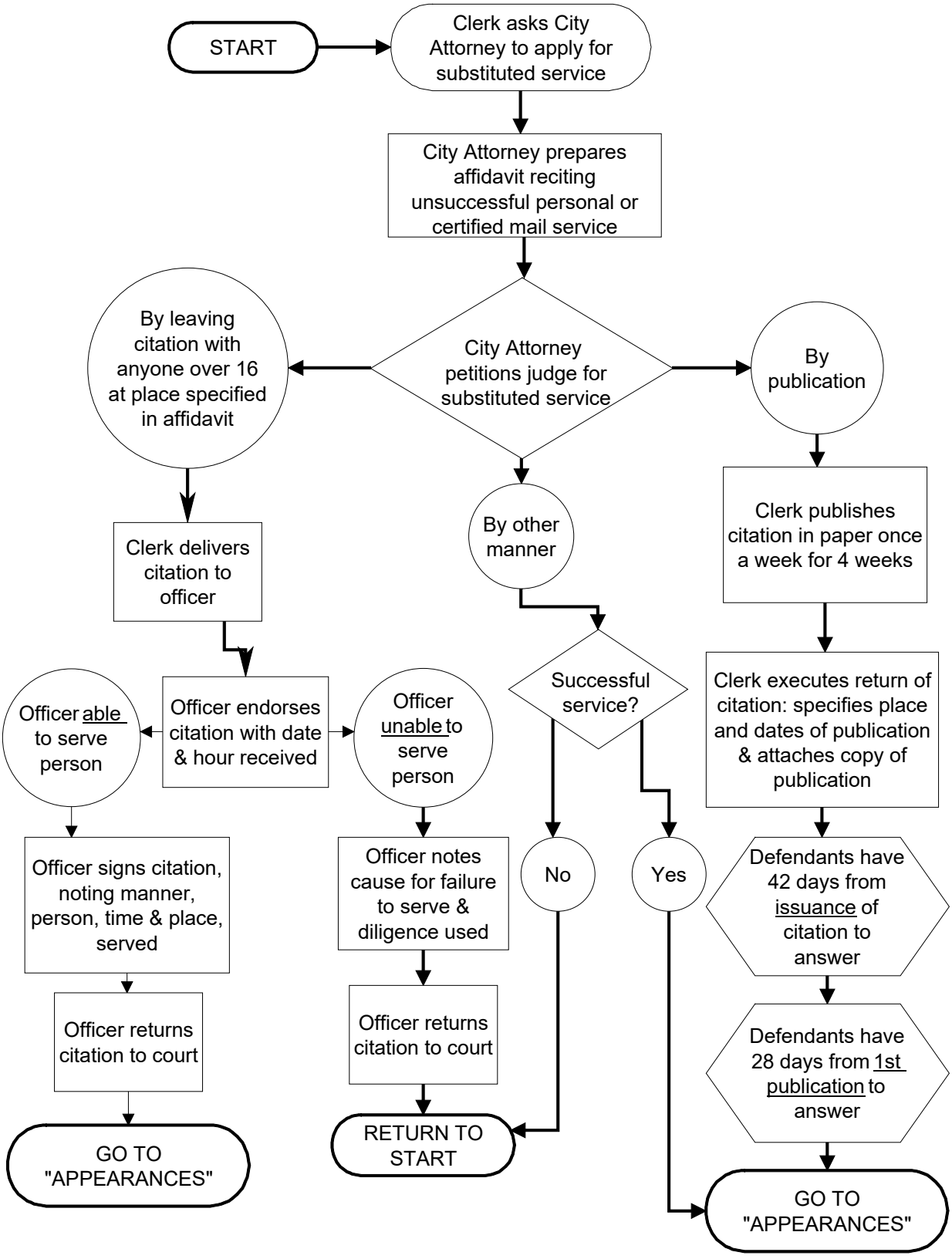
APPENDIX A: FLOWCHARTS



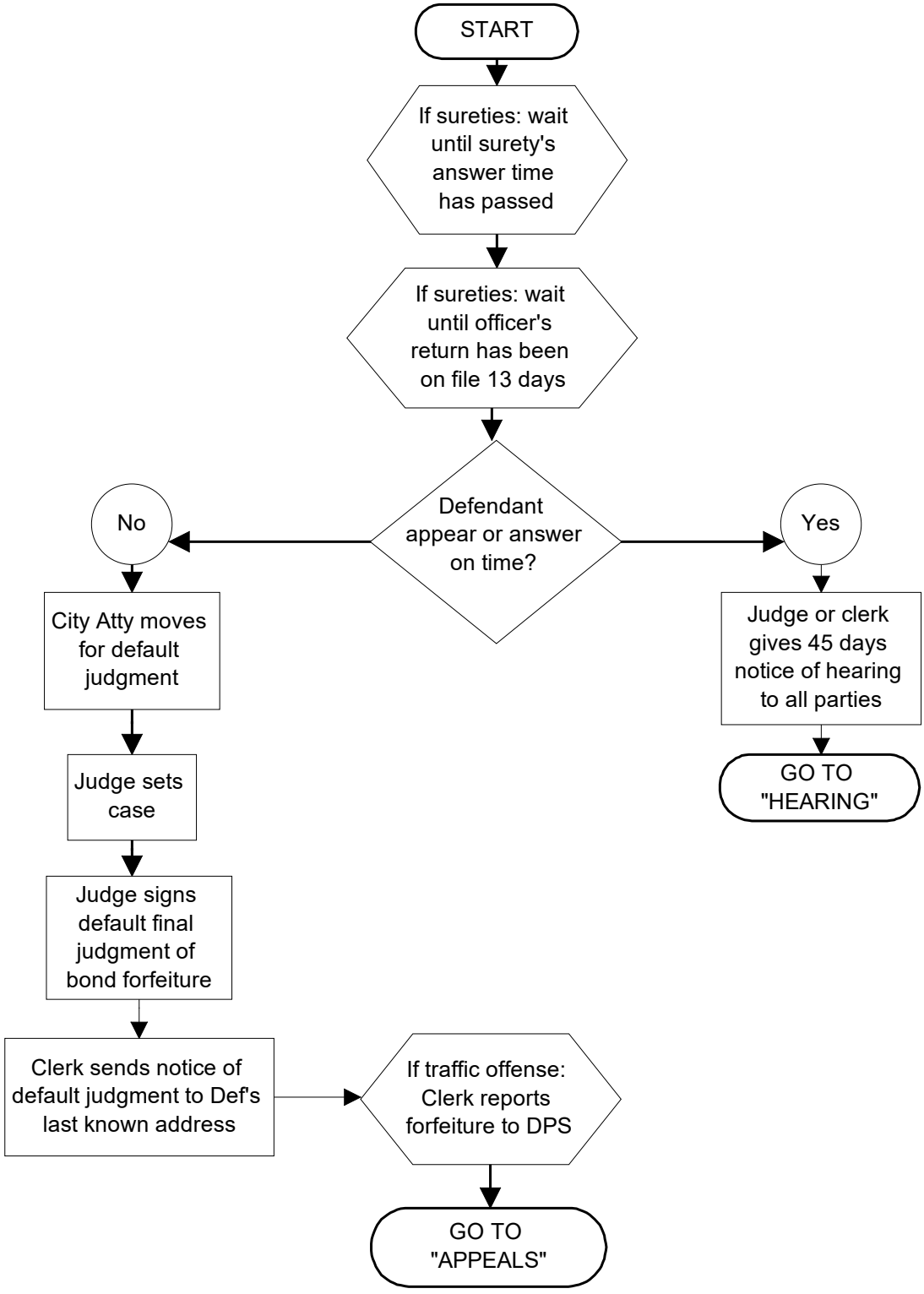
NOTICES

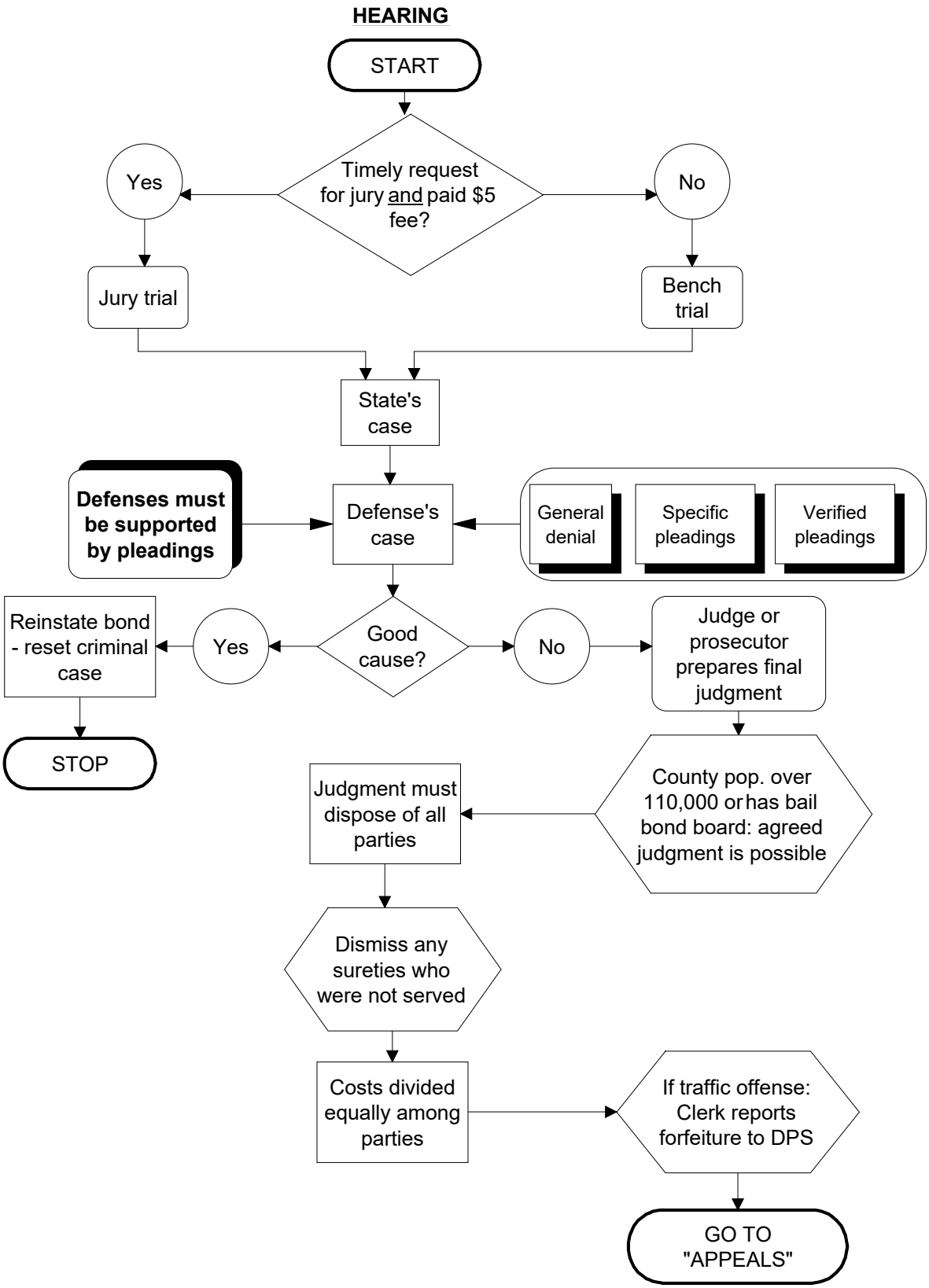

START
Clerk prepares citation for each surety
Clerk mails copy of judgment *nisi* to principal (defendant)
Choose type of service on sureties
Personal Service
Mail Service
Clerk delivers copies of citation, bond & judgment *nisi* to Officer
Clerk mails copy of citation, bond & judgment *nisi* to each surety - certified, return receipt requested
Officer able to serve surety
Officer endorses citation with date & hour received
Officer unable to serve surety
Clerk notes dates citation to sureties & notice to defendant were mailed
Officer signs citation, noting manner, time, & place served
Officer notes cause for failure to serve & diligence used
When green card returned: clerk attaches it to original citation in file
Officer returns citation to court
Officer returns citation to court
Clerk fills out return portion of citation
Green card signed by surety?
No
GO TO "APPEARANCES"
GO TO "SUBSTITUTE SERVICE"
Yes
GO TO "APPEARANCES"

SUBSTITUTE SERVICE

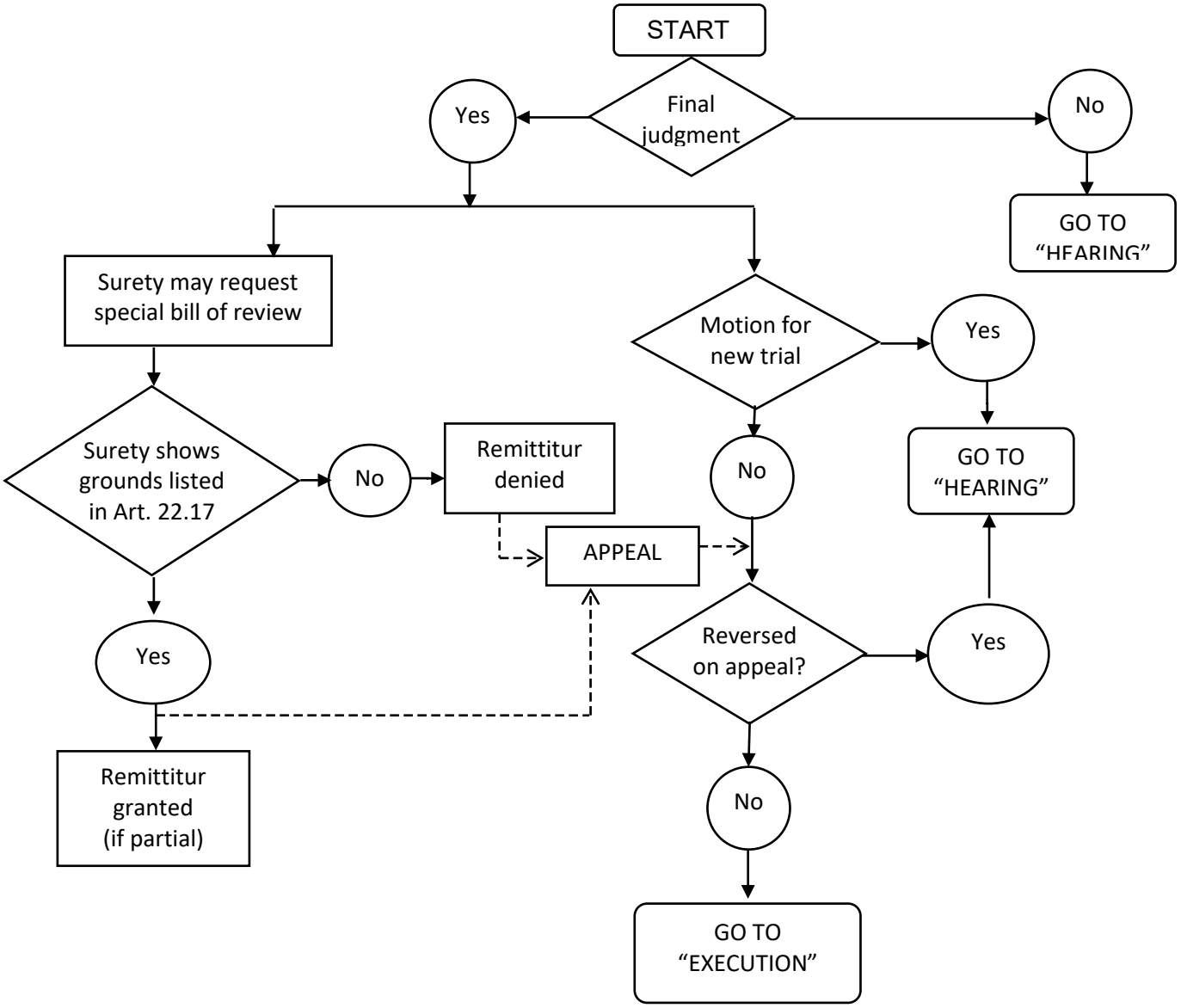


APPEARANCES

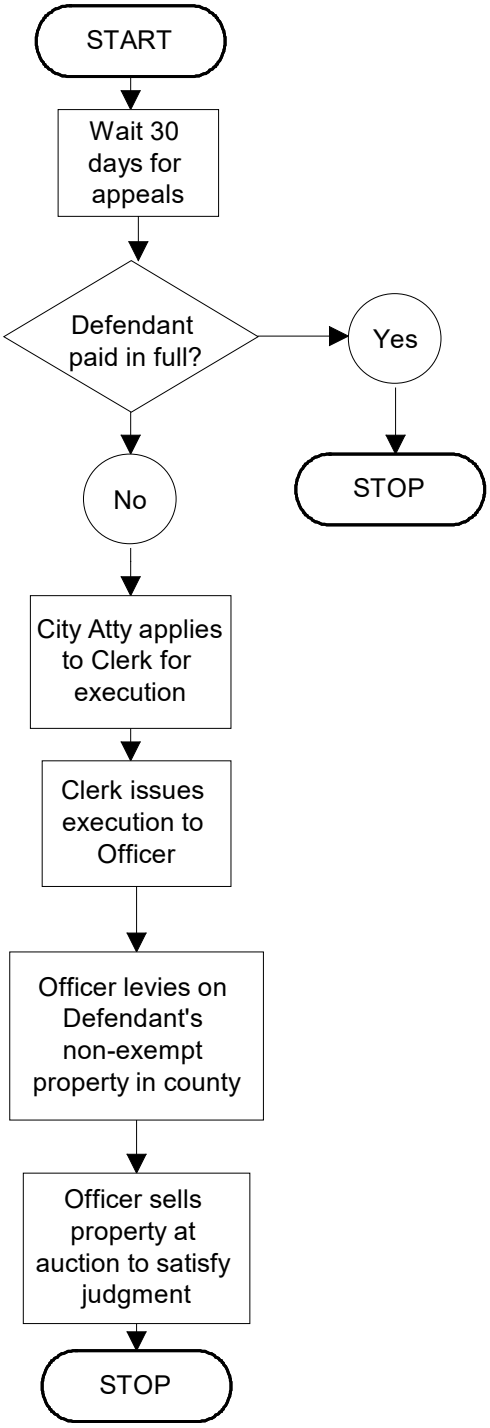



HEARING
START
Timely request for jury and paid $5 fee?
Yes
No
Jury trial
Bench trial
State's case
Defenses must be supported by pleadings
Defense's case
General denial
Specific pleadings
Verified pleadings
Reinstate bond - reset criminal case
Yes
Good cause?
No
Judge or prosecutor prepares final judgment
STOP
County pop. over 110,000 or has bail bond board: agreed judgment is possible
Judgment must dispose of all parties
Dismiss any sureties who were not served
Costs divided equally among parties
If traffic offense: Clerk reports forfeiture to DPS
GO TO "APPEALS"

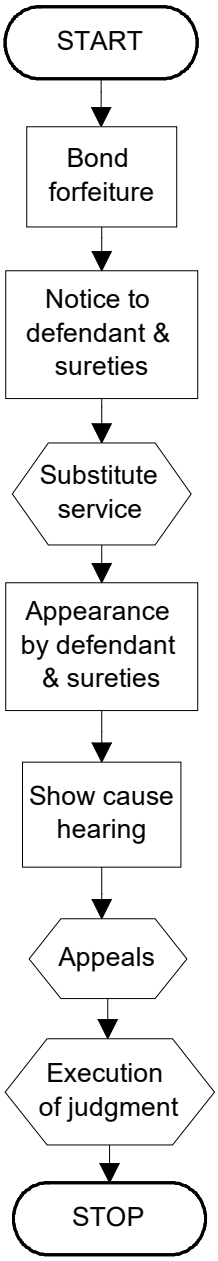
APPEALS


START
Final judgment
Yes
No
GO TO "HEARING"
Surety may request special bill of review
Surety shows grounds listed in Art. 22.17
No
Remittitur denied
Yes
Remittitur granted (if partial)
Motion for new trial
Yes
GO TO "HEARING"
No
APPEAL
Reversed on appeal?
Yes
No
GO TO "EXECUTION"

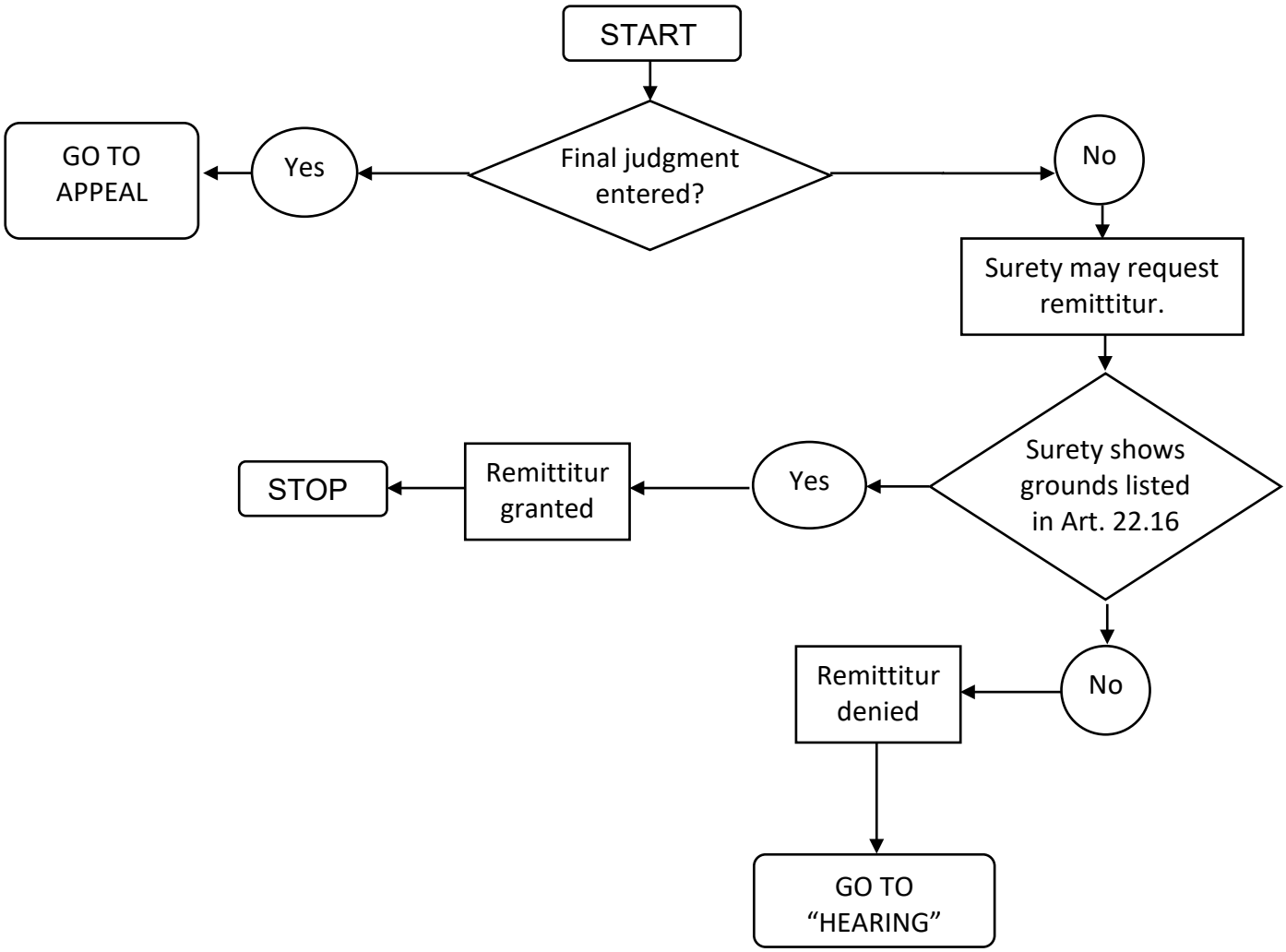
EXECUTIONS



SUMMARY



REMITTITUR


START
Final judgment entered?
Yes
GO TO APPEAL
No
Surety may request remittitur.
Surety shows grounds listed in Art. 22.16
Yes
Remittitur granted
STOP
No
Remittitur denied
GO TO "HEARING"

ANSWERS TO QUESTIONS

INTRODUCTION

1. True.
2. False (they are governed by both the Rules of Criminal Procedure and Rules of Civil Procedure).

PART 1

3. True.
4. Generally, the purpose of bail is to guarantee the person's appearance in court.
5. A bail bond is a written undertaking entered into by the defendant and/or the defendant's sureties for the appearance of the principal (defendant) before some court or magistrate to answer a criminal accusation.
6. A defendant can file a cash bond, by depositing cash in the amount of the bond with the custodian of the court in which the prosecution is pending, in lieu of having sureties sign any time a bond is required of the defendant.
7. A magistrate or judge may release a defendant on a personal bond.

PART 2

8. A person executing a bail bond is relieved of liability on the bond on the date of disposition of the criminal case for which the bond is executed. However, a surety may be released from the responsibility on a bond if, before a forfeiture or judgment nisi (the process that initiates the bond forfeiture lawsuit) is issued, the surety surrenders the principal into custody or produces an affidavit that the defendant is in custody.
9. The following must be stated in an affidavit filed by a surety requesting to surrender the principal:
    - the person's intention to surrender the principal;
    - the court and cause number of the case;
    - the name of the defendant;
    - the offense with which the defendant is charged;
    - the date of the bond;
    - the cause or reason for the surrender; and
    - that notice of the person's intention to surrender the principal has been provided to the principal's attorney as provided by Rules 21a of the Rules of Civil Procedure.
10. True.
11. False (may be executed by a peace officer, security officer, or licensed private investigator).
12. True.

PART 3

13. False (the statutes say "shall declare").
14. True.
15. True.

16. True.
17. The judgment nisi initiates the bond forfeiture. It states that the State of Texas recover the amount of money in which the defendant and/or surety are bound (the amount of the bond) and shall be made final unless good cause be shown why the defendant did not appear.
18. The judgment nisi is signed within a reasonable amount of time. Usually, it is signed the same day that the forfeiture is declared, but some judges consider the Mailbox Rule and wait to see if the defendant is appearing by mail.
19. The scire facias docket is a separate civil docket for bond forfeiture cases.
20. The bond forfeiture case is docketed in the name of the State of Texas, as plaintiff, and the principal and his or her sureties, if any, as defendants.
21. The defendant is the principal (defendant in the criminal case) and the surety, if any.
22. The scire facias docket is a permanent record.
23. The scire facias docket must include the number of the case, the names of the parties, the names of the attorneys, the nature of the action (bond forfeiture), the pleas (answer), the motions, and the ruling of the court.
24. False (only required to if the principal defendant furnished his or her address on the bond).
25. True.
26. True.
27. True.
28. True.
29. The clerk must issue a citation when requested to do so by the State (prosecutor).
30. The requirements of the citation are:
    - be styled "The State of Texas;"
    - be signed by the clerk under seal of the court;
    - contain name and location of the court;
    - show date of filing of the judgment nisi;
    - show date of issuance of citation;
    - show file number;
    - show names of parties (State, principal defendant, and/or defendant surety);
    - be directed to the principal defendant and/or defendant surety;
    - show the name and address of the State (prosecutor); and
    - contain the address of the clerk.
31. The citation directs the defendant (surety) to file a written answer with the court.
32. A defendant must file a written answer on or before 10:00 a.m. on the next Monday after the expiration of 20 days after the date of service.
33. An answer is a formal written statement made by a defendant setting forth the grounds of his or her defense.
34. True.

35. False (any person not less than 18 years of age who is authorized by law or court order may also serve the citation).
36. False (can be anywhere in the county in which the city is located).
37. True.
38. A citation may be served by registered or certified mail, addressee only return receipt requested; by personal service; by alternative service on someone 16 years or older at a residence or place of business; or by publication.
39. The citation must be sent registered or certified mail return receipt requested and delivery must be restricted to the surety or the surety's agent for accepting service of process.
40. The clerk should call the company and ask who the registered agent is for accepting service of the citation.
41. The green card (the return receipt).
42. The clerk would need to complete the information on the return portion of the citation. This would include the date and time the return receipt was signed and returned to the court.
43. False (must go to substitute alternative service).
44. False (must be signed for by the defendant surety or defendant surety's registered agent).
45. True.
46. When a peace officer receives a citation, the officer is required to note on the citation the day and hour he or she received the citation.
47. After a peace officer serves a citation, the officer must endorse the return, stating when the citation was served and noting the manner of service. The officer must then sign the return.
48. The return must state the diligence used to execute the citation, the reason for failing to execute it, and if the whereabouts of the defendant surety can be ascertained, that information should also be included on the return.
49. True.
50. False (person must be 16 years of age).
51. True.
52. False (the prosecutor requests service by publication).
53. True.
54. True.
55. False (the judgment nisi is not published).
56. True.
57. True.
58. True.
59. False (the clerk must attach a copy of the publication).
60. False (must be filed by 10:00 on the Monday after 42 days from the issuance of the citation for publication).
61. True.
62. True.

63. False (the defendant surety is entitled to a copy of the judgment nisi).
64. The citation may be served by any person competent to make an oath of the fact of service.
65. The defendant surety can answer the bond forfeiture lawsuit by filing a written answer with the court, in a general denial or verified pleading.
66. The answer must be filed by 10:00 a.m. on or before the Monday following 20 days after service of the citation.
67. Ten additional days.
68. The court needs the envelope to determine if the mailing of the answer was within the time deadline. The postmark will indicate the day that the answer was mailed.
69. A general denial is an answer that is not required to be denied under oath.
70. If the amended answer is filed within seven days of the date of trial, the defendant must get permission of the judge to file the amendment.
71. A verified pleading is an answer that has been sworn to under oath.
72. The answer constitutes an appearance and dispenses with the necessity for issuance or service of the citation.
73. The citation is deemed to have been issued and served.
74. The court may set contested cases on written request of either the defense or the State or the court may set cases upon its own motion.
75. Forty-five days notice of a trial setting must be given to the defendant (surety).
76. The court may reset the case to a later date on any reasonable notice to the parties or by agreement of the parties.
77. A case may be postponed or continued by agreement of both the defendant surety and the State (prosecutor) or for good cause supported by an affidavit presented to the court after notice to the other party, or by operation of law.
78. Non-contested cases may be tried or disposed of any time, whether set or not, and may be set at any time for any other time.
79. The request must be made in writing and filed with the clerk.
80. The request must be made within a reasonable time before the date set for trial on the non-jury docket, but not less than 30 days in advance.
81. The defendant must pay a jury fee of either $5 or $10, whichever the judge determines is applicable.
82. If the fee is not paid, the court may deny the jury trial.
83. The clerk summons prospective jurors in a bond forfeiture trial.
84. The clerk shall call off the first six names on the lists that have not been erased by challenges for cause or peremptory challenges.
85. After a judicial declaration of a bond forfeiture, the court may exonerate the defendant surety from liability on the forfeiture; remit the amount of the forfeiture; set aside the forfeiture; or approve any proposed settlement that is agreed to by the State and defendant surety.

86. The court may remit to the surety all or part of the amount of the bond less court costs, re-arrest costs, and interest on the bond amount after forfeiture.
87. The costs and interest.
88. True.
89. False (the principal and/or surety must appear before trial).
90. True.
91. False (the court may only consider the causes in Article 22.13 of the Code of Criminal Procedure and no others).
92. The State can make a motion for a default judgment.
93. Before the court can enter a default judgment, the citation with the officer's return must have been on file in the clerk's office for at least 10 days, exclusive of the date of filing and the date of judgment. Note: If there is more than one surety, each may have been served on different days and therefore may have different deadlines to answer. The clerk should make sure that the deadlines have passed for all defendants.
94. The State (prosecutor).
95. The State (prosecutor) must certify in writing to the clerk the last known mailing address of the defendant surety against whom the default is taken.
96. The clerk shall mail written notice of the default judgment to the defendant surety at the address shown in the certificate filed by the State (prosecutor). The clerk must also note on the scire facias docket the date that the notice was mailed.
97. The court may enter a default judgment against the defendant surety after the State has presented its evidence.
98. The court can dismiss with or without costs or dismiss and reinstate the bond.
99. The court makes the judgment on the bond forfeiture case final for the amount of the bond on which the defendant surety is bound.
100. A summary judgment is a motion filed after the adverse party has appeared or answered when a party to a lawsuit believes that there is no genuine issue of material fact and that the party is entitled to prevail as a matter of law.
101. In a bond forfeiture case, it is the State (prosecutor).
102. The party requesting the summary judgment must file and serve the motion and supporting affidavit at least 21 days before the time specified for hearing on the motion.
103. The surety must answer or file opposing affidavits no later than seven days prior to the hearing.
104. The prosecutor must prepare the judgment for the judge's signature.
105. If the judge denies the motion for summary judgment, the clerk sets the case on the scire facias trial docket.
106. An agreed judgment is one in which the State recommends to the court to settle the bond forfeiture lawsuit for an amount less than the amount of the bond.
107. The judge.
108. The State (prosecutor), principal defendant, and defendant surety may enter into an agreed judgment without having a trial.

109. The correction must be made in open court by the judge.
110. The notice can be served by:
    - delivering a copy to the party to be served or the party's duly authorized agent or attorney of record either in person or by agent or by courier receipted delivery;
    - certified or registered mail to the party's last known address;
    - telephonic document transfer to the recipient's current telecopier number; or
    - such other manner as the court in its discretion may direct.
111. The State (prosecutor) or the defendant surety may file a motion for new trial.
112. The motion must be in writing and signed by the party or his or her attorney.
113. The motion must be filed prior to or within 30 days after the judgment.
114. A special bill of review is a proceeding brought for the purpose of reversing a prior judgment of a forfeiture of a trial court after a judgment has become final.
115. The special bill of review must be filed within two years of the date of final judgment.
116. No.
117. A surety is considered to be at default when a final judgment is signed. However, Section 1704.212 of the Occupations Code, provides that a surety is not considered to be in default until the 11th day after final judgment is entered.
118. The clerk.
119. A corporation may not act as a bail bond surety in a county in which the corporation is in default on five or more bail bonds.
120. The corporation must deposit cash in the amount of the final judgment with the court in which the bond is executed.
121. Execution means carrying out some act or course of conduct to its completion. Execution upon a money judgment is the legal process of enforcing the judgment, usually by seizing and selling property of the debtor.
122. The costs are divided equally.
123. The execution shall be returnable in 30, 60, or 90 days from the time a final judgment is signed. Usually, the prosecutor requests that the execution be returnable in 30 days.
124. The clerk shall not issue the writ of execution upon the judgment until 30 days from the time the order overruling the motion is signed or from the time the motion is overruled by operation of law.
125. The State (prosecutor) must make application for the execution.
126. The writ of execution may be issued at any time before the 30th day upon the filing of an affidavit by the State that the defendant is about to remove personal property subject to execution out of the county or is about to transfer or hide such personal property for the purpose of defrauding his or her creditors.
127. A writ is a written order.
128. The writ of execution requirements are:
    - the style shall be "The State of Texas;"
    - shall be directed to any sheriff or any constable with the State of the Texas;

- shall be signed by the clerk or judge and bear the seal of the court, if any;
- shall require the officer to execute it according to its terms;
- to make costs which have been adjudged against the defendant in execution and the further costs of executing the writ;
- shall describe the judgment, stating the court in which and the time when rendered, and the names of the parties in whose favor and against whom the judgment was rendered;
- a copy of the bill of costs taxed against the defendant in execution shall be attached to the writ; and
- shall require the officer to return it within 30, 60, or 90 days as directed by the State (prosecutor).

129. The officer is required to endorse the writ with the exact hour and day when he or she received it.

130. The writ must specify the amount of money to be recovered and when it was issued and the rate of interest due.

131. Civil court costs.

132. Costs include necessary and reasonable expenses in rearresting the defendant and any other costs involved in the bond forfeiture cases such as any costs for service of process.

133. Interest is assessed and begins to run from the date the judgment nisi is signed by the court.

134. The interest begins to accrue on the face amount of the bond at six percent per annum from the date of the judgment nisi if no specified rate of interest is agreed upon by the defendant surety or the State (prosecutor).

PART 4

135. A bond forfeiture case involving a personal bond is processed in the same manner as a bond forfeiture case involving a surety.

PART 5

136. The bond forfeiture is initiated in the same manner as a surety bond−with a judgment nisi. The judgment nisi is entered on the scire facias docket upon the defendant's failure to appear. If the defendant has provided his or her address on the bond, the court is required to give the defendant notice by regular mail.

137. Since this notice is sent by regular mail, the clerk should count three days from mailing the notice and then count the 20 days. The defendant's answer would be due in the court on the Monday after the 20 days. The rest of the case is processed the same as a surety bond forfeiture.

138. The notice is by citation, the same as for sureties. The court shall issue the citation and attach a copy of the judgment nisi and the forfeited bond to the notice.

139. True.

140. False (must be sent immediately).

141. False (can be sent by regular mail).

142. True.

143. False (the original bond is reinstated).
144. True.
145. True.