

Alabama Rules of Criminal Procedure

Rule 7. Release.

Rule 7.6. Transfer and disposition of bond.

(a) TRANSFER UPON SUPERVENING INDICTMENT. An appearance bond or release order issued to assure the defendant's presence for proceedings following the filing of a complaint shall automatically be transferred to the same charge prosecuted by indictment, even though the complaint is superseded by return of the indictment, unless, upon issuance of the arrest warrant following indictment, the judge presiding, for good cause, shall order revocation or modification of the conditions of release, as provided in Rule 7.5(a) and (b).

(b) FILING AND CUSTODY OF APPEARANCE BONDS AND SECURITY. Appearance bonds and security shall be filed with the clerk of the court in which the case is pending. Whenever the case is transferred to another court, any appearance bond and security shall be transferred also.

(c) SURRENDER OF DEFENDANT BY SURETY. At any time, a surety may surrender to the sheriff a defendant released, and the sheriff shall certify such surrender to the court. The defendant may then obtain other sureties under the same conditions of release. In municipal ordinance cases, surrender may be to the chief of police of the municipality, who shall certify to the court the defendant's surrender.

(d) FORFEITURE. If at any time it appears to the court that a defendant fails to appear, the court shall so notify the principal and any surety and shall require the principal and any surety to show cause by filing a written response with the clerk of the court within twenty-eight (28) days of the date of service of the notice why the bond should not be forfeited. The notice required by this subsection may be served in the same manner as provided in Rule 3.4 for the service of a summons and must be returned by the person serving it, with his proper return endorsed thereon, within twenty-eight (28) days of the date of issuance or within five (5) days of service, whichever period of time is shorter. If the notice is not served on any of the parties to the undertaking, such other notices as are necessary may from time to time be issued, but two returns of "not found" by the proper officer are equivalent to personal service. If a written response is filed within the time allowed, the court shall set a hearing to determine whether the bond should be forfeited. If at the hearing the violation is not excused for good cause, or if, after twenty-eight (28) days from the date of service of the notice, no written response has been filed, the court may enter an appropriate order or final judgment forfeiting all or part of the amount of the bond or cash deposit, which shall be enforceable as any civil judgment.

(e) EXONERATION. At any time that the court finds there is no further need for an appearance bond, the court shall exonerate the appearance bond and order the return of any security deposited.

[Amended eff. 3-3-92.]

Committee Comments

Under prior practice, bonds did not necessarily carry over from one court to another. Under Rule 7.6(a), the same bond would carry over from the initial appearance through indictment and trial, unless the presiding judge for good cause orders revocation of the release upon issuance of the indictment. The good cause may be information not available to the district attorney earlier, or which he did not want to reveal until after an indictment was returned. The process of revocation is the same as in any other situation. In any event, revoking release at this stage should not be done capriciously, because in most instances no good reason exists to rearrest the defendant and have him execute a new recognizance bond or make a new secured bond. This would, of course, apply as well to substitute indictments.

See Ala.Code 1975, §§ 15-13-80, -81, and -82 which relate to forfeitures.