



36419

HANDLING BAILS

This booklet was produced under a grant conceived by Judge F. J. de Larios of the Northern District Municipal Court of San Mateo County, California. The project was financially assisted through a federal grant from the Law Enforcement Assistance Administration and the California Office of Criminal Justice Planning. Opinions, findings and conclusions in this publication are those of the project staff and not necessarily those of LEAA, COCJP or assisting agencies.

NCJRS

SEP 14 1976

Court Support Personnel Project
Skyline College
San Bruno, CA 94066
Douglas C. Oliver,
Project Director

Writer/Researcher: Daniel Branch
Editor: Theani Louskos
Graphics: Jan Kirkpatrick
Manuscript Typing: Donna Hughes

Prepared with the assistance of
San Francisco Municipal Court

CONTENTS

	PAGE
INTRODUCTION	1
OBJECTIVES	3
COMMENTARY	4
THE FUNCTION OF BAIL	4
PURPOSE OF A BAIL SYSTEM	5
Establishing a Record	5
<i>Recording Cash Deposits (5)</i>	
<i>Accounting for and Storing Cash Deposits (6)</i>	
<i>Reading Surety Bond Deposits (8)</i>	
<i>Accounting for and Storing Surety Bond Deposits (10)</i>	
Updating the Record	12
<i>Surety Bonds (12)</i>	
<i>Surety Bond Exonerations (13)</i>	
<i>Surety Bond Forfeitures (15)</i>	
<i>Summary Judgment (16)</i>	
<i>Cash Deposits (18)</i>	
<i>Cash Bail Exonerations (19)</i>	
<i>Cash Bail Forfeitures (20)</i>	
CONCLUSION	23
GLOSSARY	25
SELF-REVIEW TEST	26
SAMPLE FORMS	28

PROLOGUE

Most nights Faithful Friend would be sound asleep in bed at this time, happily dreaming away. A phone call in the middle of the night, however, disrupted his usual routine. It seems his good friend Jerry drank a bit too much and lost his sense of direction. A policeman found him wandering around the Main Street of town, trying to find his way home. Recognizing a violation of Penal Code S 415, "Disturbing the Peace" and "Drunk in Public," the policeman arrested Jerry and escorted him to the "drunk tank" of the local police department.

"Faithful? Is that you Faith? I'm down here at the police station in a little trouble...Do you think you could come down and bail me out? Yeah? Thanks alot Faith...oh, be sure to bring some cash. The bail clerk will be waiting for you."

A sleepy Faithful Friend makes his way downtown and wanders around the Hall of Justice until he comes upon the "Bail Clerk Office" night window. Behind the window sits an equally sleepy bail clerk. Faithful explains he wants to pay Jerry's bail. The clerk checks the county bail schedule and finds that the bail for a P.C. S145 violation is \$500. Faithful reluctantly hands over the cash and in return, receives two copies of a Cash Bail Receipt. The clerk tells Faithful to keep one of the copies and to bring the other to the police station and present it to the jailer, so Jerry can be released immediately. After Faithful leaves for the station, the sleepy bail clerk carelessly places the court's copy of the receipt in the wrong file. Shortly thereafter,

the night shift ends and a new bail clerk comes to replace the sleepy night clerk, who can finally go home and get some sleep. In the meantime, Faithful arrives at the police station and hands the bail receipt over to the jailer, hoping to get Jerry in return. The jailer makes a routine call to the bail clerk's office to verify the receipt before releasing Jerry. Unfortunately, since the new clerk can't locate the receipt that was misfiled by the night clerk, the jailer arrests Faithful and throws him in jail with Jerry, for attempted fraud.

Jerry and Faithful do not really exist, but their predicament is, unfortunately, not uncommon. Some defendants have been forced to spend many unnecessary hours and even days in jail, while administrative and clerical errors made in the bail office of the court, were discovered and corrected. The only safeguard against such occurrences is an effective and efficient bail system and a staff of well trained and conscientious bail clerks to run it.

In the booklet that follows, we will be looking at the "function" of bail in our criminal justice system, the purpose of a bail system, and some of the administrative and clerical procedures and problems of establishing and maintaining an effective and efficient bail system for the court.

OBJECTIVES

After reading this booklet on "Handling Bails", you should be able to:

1. Describe the function of "bail" in the criminal justice system.
2. List and describe the two major purposes of a bail system.
3. Describe the difference between cash deposits and surety bond deposits.
4. Briefly describe the procedure for recording cash deposits.
5. Briefly describe the procedure of accounting for and storing cash deposits.
6. Describe the procedure for recording surety bond deposits.
7. Briefly describe the procedure of accounting for and storing security bond deposits.
8. Describe the purpose of updating the bail record.
9. Describe the general updating and notification procedures required in each of the following circumstances:
 - a. Exoneration of a surety bond.
 - b. Forfeiture of a surety bond.
 - c. Forfeiture Set Aside on a surety bond.
 - d. Exoneration of cash bail deposited by a non-defendant.
 - e. Exoneration of cash bail deposited by a defendant.
 - f. Forfeiture of cash bail deposited by a non-defendant.
10. Describe the purpose of the summary judgment proceeding and under what circumstances it is used.

COMMENTARY

THE FUNCTION OF BAIL

Bail is a form of security deposited with the court to insure that a defendant in a criminal case will make all scheduled court appearances. In simple terms, bail is a financial guarantee that a defendant will not flee the jurisdiction of the court, before his case has been disposed of. A county bail schedule lists the amount of money or security a defendant must deposit for the crime that he is charged with. Bail deposits are generally made in one of two ways. Either the defendant himself, a relative or a friend can deposit the required amount of cash. Or the defendant can arrange for the bail to be "put up" (deposited), by a local bail bondsman. The bail bondsman is actually a local representative of a national insurance company. For a fee, the bondsman arranges a kind of insurance policy called a surety bond. The surety bond states on its face that the insurance company he represents will pay the county the amount stipulated in the county bail schedule, if the defendant fails to show up for any scheduled court appearances.

When the bail clerk of the court receives one of these surety bonds, he issues a bail receipt, similar to the type of receipt issued when cash is deposited. Presenting of either one of these receipts to the law enforcement agency that is holding the defendant in custody will guarantee his release from jail.

PURPOSE OF A BAIL SYSTEM

ESTABLISHING A RECORD

The first task of any bail system is to provide a means to accurately record bail deposits as they are made. This record should allow the bail clerk easy access to necessary information on the bail status of any given defendant. With little effort the clerk should be able to determine when the defendant's bail deposit was made, by whom, in what form (cash or surety bond), and when the defendant's next court appearance will be.

The following sections of the booklet describe just such a system for establishing a complete and easy access record of cash deposits and surety bonds.

Recording Cash Deposits

Remember Faithful Friend? He paid Jerry's \$500 bail with cash out of his pocket. Let's examine what should have happened had he deposited the bail with a competent bail clerk. To properly record and deposit a cash deposit, the clerk fills out a numbered "Cash Bail Receipt Form" (see page 28 for sample) by writing on the form



the name of the defendant, the amount of bail paid, the date of the defendant's next court appearance, and the type of offense charged. The Cash Bail Receipt Form makes one original and three copies. Faithful receives two of the copies of the receipt. One he keeps as a record so he can reclaim the cash when the case is disposed of (so long as Jerry doesn't forfeit the \$500 by running away). He presents the other copy of the receipt to the police officer keeping Jerry in custody, so everyone can go home and get some sleep. The bail clerk files the remaining two copies of the receipt with the \$500, in a cash drawer. This drawer provides a secure and centralized file for all cash bail deposited with the court. When the police officer holding Jerry calls to verify Faithful's bail receipt, it's a simple matter for the clerk to check the cash drawer and locate (verify) both the money and the court's copies of the receipt. When the bail clerk goes off duty the next morning, all receipts and cash deposited in the cash drawer during his/her shift are transferred to a safe for secure storage.

Accounting For and Storing Cash Deposits

Besides providing an accurate and easy access record of every cash deposit made, a complete bail system must also provide a means to account for and store a potentially large number of cash deposits. In San Francisco's Municipal Court, this aspect of the system is the responsibility of a special cashier clerk. (Keep in mind that even though this section only describes the process for recording, accounting for, and storing cash bail receipts, surety bonds and surety bond receipts would also normally be deposited and stored with the cash and the cash bond receipts. However, we'll be dealing with the process for handling surety

bonds in a separate section later in the book.)

The task of the cashier clerk begins by emptying the safe each day and sorting the contents into four groups: 1) cash 2) cash receipts, 3) surety bonds, and 4) surety bond receipts. (Remember, for now we'll just be dealing with cash and cash receipts.) The cash receipt forms are all numbered, so to make sure that none are missing, the cashier puts all the receipts in numerical order. If all the receipts are accounted for, the cashier adds up all the cash that has been collected. There should be no discrepancy between the totals of the receipts and the total cash. As another accounting measure the cashier clerk must make sure that no receipts are lost between shifts. To verify this, the clerk starts with the number of the last receipt issued on a previous shift and checks the numbers of all subsequent receipts stored in the safe, up to the number of the first unused receipt. If all cash receipts are in order, the cashier clerk can continue with the "accounting" process.

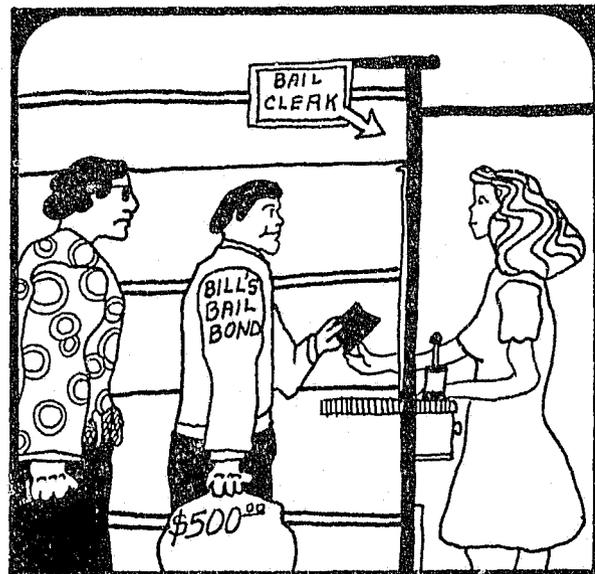
Remember that when Faithful Friend deposited the \$500 for Jerry's bail, four copies of the cash bail receipt were made; two were for Faithful and two were retained by the court. The clerk must separate the court's copies into two groups. One group remains with the court and the other set of receipts is forwarded to the County Accounting office and filed with the county's records.

The cashier's work, however, is not yet complete. The court's copies of the cash bail receipts must further be separated into two groups. One group contains those receipts in which the depositer was the defendant himself. The other group is for those receipts in which the cash was deposited by a friend or relative (anyone but the defendant). From this

group the clerk prepares a master record of all cash deposits made by non-defendants. This record includes the depositor's name, the defendant's name, his case number, the number of his cash deposit receipt and the date of the next scheduled court appearance. This master record is continuously updated throughout the course of a proceeding to reflect any changes in the defendant's bail status, such as whether the bail was forfeited or exonerated. When there are changes in the bail status, California law requires the court to notify all non-defendant depositors. Thus it's important that this master record contain not only a complete list of all non-defendant depositors, but an up-to-date record of any and all bail changes, so proper notice can be sent immediately. Interestingly, the law does not require the court to notify a defendant depositor of any changes in his bail. It presumes that the defendant will keep track of his own bail, and know whether he has forfeited it by not appearing for court as scheduled, or that he can claim the cash from the clerk's office if for any reason his bail was exonerated.

Recording Surety Bond Deposits

Let's say Faithful Friend cannot raise the \$500 in cash. So he goes instead to a local bail bondsman. The bondsman agrees to write Jerry an "insurance policy" in the form of a surety bond. The surety bond guarantees that a defendant will fulfill his



obligation to appear in court. Together the bondsman and Mr. Friend go to the bail clerk's office of the court. The bondsman explains the situation to the clerk and gives him a surety bond for \$500. The clerk examines the bond to make sure it is complete and that it covers the required amount of bail. If satisfied, the clerk writes up a Surety Bond Receipt (see page 29 for sample) which includes the defendant's name, the offense, the amount of bail, the name of the surety company (the bailbonds agency), the date of the defendant's next scheduled court appearance, and the number assigned to the bond by the court. This surety bond receipt has three copies. One is given to the bondsman for his records. Another is given to Mr. Friend, who presents this copy to the police who are keeping Jerry in custody, so he can be released from jail. The third copy is retained by the clerk and becomes the court's record. As you'll soon see, the recordkeeping procedure for surety bonds is different from the procedure followed for cash bail deposits.

To keep track of all surety bonds deposited with the court a "Bail Record Journal" is kept. Each page of the journal contains a series of pre-numbered lines. On the first empty line in the Journal the clerk will make a record of the surety bond deposited for Jerry by entering the date, the name of the defendant, and the surety company that put up the \$500 bond. The clerk also records the number of the journal line he used, onto the surety bond itself. This provides the court with a quick means to find a particular entry in the Bail Record Journal from simply looking at the surety bond itself. Once the record is set up, the clerk can file the surety bond and the receipt with other bonds, cash, and cash receipts that were deposited during the clerk's shift.

Accounting For and Storing Surety Bond Deposits

As you'll recall, we already described how the cashier clerk accounts for all the cash and cash receipts. A similar accounting process occurs for all surety bonds and surety bond receipts as well. While the specific procedures are different for the two, and while these procedures will vary widely from court to court, the purpose is the same. First, to insure that for every surety bond deposited there is a corresponding receipt and entry in a centralized record, such as the Bail Record Journal. Second, that no surety bonds or receipts are out of order or lost, particularly between shifts. Third, that the surety bonds themselves are filled out properly and that they cover the required amount of bail. And finally, that a central record is established which contains the most current and up-to-date bail status of every defendant for which a surety bond has been deposited. In San Francisco's system; this central record is the "Surety Bond Register." This register contains a complete listing of all surety bonds deposited and a record of the bail status of all defendants out on bond. This register is available for public use and is frequently checked by surety companies and bail bondsmen who want to keep track of the status of their outstanding bonds. As for the actual surety bonds and receipts, these are stored in a numerical file in the clerk's office of the court. Additionally, copies or a listing of all surety bonds deposited with the court must be forwarded to the County Accounting office and filed with the records of that office.

At this point, the court has a complete and accessible record of all bail deposited, in both cash and surety bond form. Should there be

any question as to whether bail has been deposited for a particular defendant and whether that bail covered the required amount, the court now has an accurate record which can easily be checked for the information. But more than just providing a permanent record of all bail deposited, an effective bail system is one that allows for frequent updating.



UPDATING THE RECORD

Surety Bonds

A continuous and ongoing part of the court's work is the transferring of the "rough" minutes of every courtroom proceeding to an "official" court record, the "Register of Actions", or "Docket and Minutes" as the record is commonly known. To the deputy clerk charged with transferring these rough minutes to the official minutes goes the added responsibility of updating the bail record and preparing any additional documents, forms, or notices, that are required when changes in bail status occur during a particular proceeding. For example, a judge might order an increase or a decrease in the amount of a defendant's bail. Or perhaps a defendant fails to show up for his arraignment, and the judge orders his bail forfeited. Or perhaps a defendant is acquitted by a jury, and his bail is ordered exonerated. Each of these occurrences in the courtroom would require an updating of the bail record in the clerk's office.

To facilitate the updating procedure, the clerk will have not only the minutes of the proceedings that occurred in each of the departments (or courtrooms) of the court the previous day, but also all the surety bond receipts for those defendants who were scheduled to appear that day. Then when there are any changes in the bail status of a particular defendant, the surety bond receipts are right at hand. Let's see how a clerk in San Francisco's Municipal Court would handle the updating of the bail record for five defendants: Mr. Alvarez, Ms. Calihan, Ms. Duff, Mr. Eyerly, and Mr. Wong.

Surety Bond Exonerations

The court's minutes from the previous day indicate that the case against Mr. Alvarez has been dismissed and that his bail has been "exonerated." This means that Mr. Alvarez is free to go. It also means that the surety bond company that put up his bail is no longer liable on their bond. The surety bond receipt provides a space labeled "court date" for entering each subsequent court appearance date (see sample, page 29). Because the case has been dismissed, the clerk will enter a "0" in the space on Mr. Alvarez's surety bond, to signify that he doesn't have to appear in court again. The clerk must also mark this information on the other copy of the surety bond receipt filed with the court. This insures that all the court's records conform. Remember the Surety Bond Register in which the deposit for Mr. Alvarez was first recorded? This record too must be updated. Since the defendant's bail was exonerated, record of this exonerated must be entered in the Surety Bond Register next to the original entry. The surety bond receipt is then filed with

other bonds that have been exonerated. Should the surety company request a certificate of exoneration, the clerk can quickly check the Register, see that Mr. Alvarez's bail was in fact exonerated, and mail a certificate of exoneration to the company as requested. The surety bond receipt itself is not sent to the surety company but rather is filed with other exonerated surety bonds and kept for five years, after which time it is destroyed.

Next, our clerk picks up the surety bond receipt for Ms. Calihan. The court minutes of her proceeding show that the defendant pled Not Guilty to a drunk driving charge. The judge set a date for trial three weeks from that day. Since this will be Ms. Calihan's next scheduled court appearance, the clerk will enter this date on both the original surety bond receipt and the second copy that's in the court's file. In addition, the date of the defendant's next scheduled court appearance must also be updated in the Surety Bond Register. Finally, the original surety bond receipt is filed in a special container that stores all surety bond receipts bearing the same "next appearance date".

The court's minutes of the case of Ms. Duff indicate that the judge sentenced the defendant to serve six months in the county jail. In this instance, the clerk writes "Exonerated by Reason of Being Sentenced" on Ms. Duff's surety bond receipt and marks a "0" in the space designated for "next appearance date". The rest of the procedure for this matter is identical to that procedure followed when an ordinary exoneration of bail is involved.

The fourth defendant, Mr. Eyerly is in trouble. According to the minutes of his last appearance in court, even though Mr. Eyerly pled Not Guilty, the judge found cause to increase his bail from \$500 to \$5,000. The clerk treats this order as an exoneration of the original \$500 bail and

goes through the same exoneration procedures that were described above. Mr. Everly is again taken into custody and will have to go through posting the larger \$5,000 bail in order to be released.

Surety Bond Forfeitures

Mr. Wong is our last defendant and the minutes of his proceeding show that Mr. Wong failed to show up at all. The Judge issued a bench warrant for his arrest, posted a new bail, and ordered a bail "forfeiture". A bail forfeiture requires a fairly involved updating procedure. First, it requires the bail clerk to make a record of the forfeiture on both the original surety bond receipt and its copy, and in the Surety Bond Register. California law requires the court to notify the surety bond company of the forfeiture within thirty days of the order, or the bail is considered exonerated. To comply, a "Notice of Forfeiture" is prepared in triplicate (see sample, page 30). One copy is sent to the surety company, one sent to the bail bondsman involved, and the third is filed in the clerk's office according to the date of forfeiture. At the same time the clerk prepares and sends this Notice of Forfeiture, a list of all forfeitures entered that day are compiled and copies of the list are made. One copy of the list goes to the County Accounting Office so they can make sure the court follows up on the forfeitures with the appropriate action. Another copy is filed with the Notice of Forfeiture. Finally, the third copy goes into the court's master file of all forfeitures.

Once Notice of Forfeiture is sent to the surety company, they have 180 days to make good their surety bond obligations. In simple terms, this means that if the company issued a surety for Mr. Wong and his bail

was set at \$5,000, they must pay the court the \$5,000 within 180 days. To make sure that all forfeitures are paid, the bail clerk must keep track of the passage of the 180 day time limit. Besides the 180 days, the clerk must also be alert to any "Forfeiture Set Aside" orders issued by the court that would show up in the rough minutes. For example, the judge in Mr. Wong's case might decide that he should not have ordered the defendant's bail forfeited, because Mr. Wong had a legitimate reason for missing his court appearance. He would immediately issue a "Forfeiture Set Aside" order. Whenever a Forfeiture Set Aside order is issued, the clerk must record this change on the court's forfeiture list and on the original surety bond receipt for that defendant. The exact notation that is made on the list and on the receipt will vary according to the nature of the "Forfeiture Set Aside" order. For example, if the judge set aside Mr. Wong's forfeiture because Mr. Wong had a valid excuse for not appearing on his trial date, the judge could set a new trial date. In this situation, the clerk notation would read "bail reinstated" and would indicate the new trial date in the space designated for the defendant's "next court appearance". However, if the bail was set aside because Mr. Wong had been arrested and jailed for his failure to appear, the clerk would treat the bail as exonerated, and would proceed to update both the surety bond receipts and the Surety Bond Register.

Summary Judgment

If Mr. Wong's forfeiture is not set aside, it will remain in the court's forfeiture file for 180 days. At the end of this 180 day period, the clerk will add Mr. Wong's forfeiture to a list of "mature" forfeitures

- those on which the court is entitled to collect from the surety company. On this "mature" forfeiture list, the clerk writes the defendant's name, the surety company's name, the number of the bond itself, the bond receipt number, the department (courtroom) in which the forfeiture was ordered, the date of that order, and the amount of bail forfeited. The clerk also indicates in the record that the required 30 day notice had been sent to the surety company and to the bail bondsman involved. Most surety companies will comply with the forfeiture order and will pay the court the designated amount. However, some companies refuse to pay voluntarily even after the 180 days have passed. When this happens, the clerk's office issues an order for "Summary Judgment" against the company. Before going further, let's examine the meaning of this term, "Summary Judgment". Although it sounds mysterious, the term derives from a very simple judicial procedure. Under the Fourteenth Amendment of the United States Constitution, local governments, such as states and counties, are prevented from taking away a person's property without "due process of law". This restriction means that the county cannot take away a person's car, or house, or personal belongings unless a judge or a jury in a court of law, decides that they have the right to it. In most cases, the county would have to submit to a full jury trial. However, in some situations, due to the special characteristics of the property being taken, the county may present their claim in a "summary proceeding" rather than before a full jury. Summary proceedings are used by the County to collect claims on forfeited surety bonds, because the proceedings are much faster than a full trial and because a summary judgment is easier to get than a trial verdict. While this description makes the proceeding sound like a short cut to justice, it's really the most expeditious

method for dealing with bail forfeitures. It is also fair because the whole issue of bail liabilities is cut and dried. Either the defendant showed up for his scheduled court appearance or he didn't. If he didn't and the court sent out the proper 30 day Notice of Forfeiture, the surety company is legally obligated to pay the bail fee within the 180 day time limit. In deciding a summary proceeding, the judge simply checks through the bail clerk's records to make sure the bail was forfeited over 180 days ago and that the required 30 day notice was properly sent. If satisfied, the judge orders a summary judgment against the surety company and they then have ten days to either appeal the judgment or pay it. If the surety company refuses to comply, the court from that time on will refuse to accept any further surety bonds from that company. Because this penalty is severe, most companies respond quickly to a summary judgment. Again, as with other bail-related orders, a summary judgment requires that existing bail records be updated and that copies of the order be prepared and sent to the surety company, to the bail bondsman, and that a copy be placed in the Bail Forfeiture file of the clerk's office.

Cash Deposits

The procedure for updating changes in the status of cash bail are somewhat different from those used with surety bond deposits. Additionally, a major distinction is made between cash deposits made by the defendant himself, and between cash bail deposited by persons other than the defendant (such as friends or relatives). All receipts for cash bail deposited by a defendant are filed alphabetically and stored until the defendant comes to the clerk's office with an exoneration order and

asks for his money back. There is a completely separate listing of all cash deposits made by "non-defendants". This listing is in addition to the central file which stores all cash bail receipts, regardless of who made the deposit. Let's see how a bail clerk in San Francisco handles changes in the bail status of three defendants, Mr. Cardozo, Ms. Homes, and Mr. Pound. Incidentally, the bail for each of these defendants was deposited by a friend or relative. Consequently, all changes in bail status will be updated on the master list of "non-defendant" depositors that was described above. To update the records of each bail the clerk reads through the minutes of all courtroom proceedings the previous day, and at the same time checks through a comprehensive listing of all defendants that were scheduled to appear that day. Let's take the case of Mr. Cardozo first. In reading through the minutes of the defendant's last court appearance, the record shows that Mr. Cardozo pled Not Guilty to a charge of illegally transporting explosives on a passenger train. Correspondingly, the judge set the matter for trial and designated a particular date. In this instance, the clerk would simply update the master list of cash deposits made by non-defendants (since Mr. Cardozo's bail was put up by his brother), by writing in the new trial date.

Cash Bail Exonerations

In the minutes for a second proceeding, the clerk sees that another defendant, Ms. Homes pled Guilty to a charge of petty theft. Because the matter is over and Ms. Homes was taken into custody until time for sentencing, her bail is exonerated. Accordingly, the clerk enters "Bail Exonerated" next to the original entry made for Ms. Homes on the master list of cash deposits made by non-defendants.

Finally, the court minutes for the third defendant, Mr. Pound, shows that the court dismissed the case against him. This dismissal effectively exonerates Mr. Pound's bail. The clerk follows the same procedure for exoneration of bail as in Ms. Homes case above.

Under California law (P.C. S1297) the court is required to send all non-defendant cash depositors a "Notice of Exoneration of Bail" (see page 31 for sample) if the cash is not otherwise claimed within ten days following the exoneration order. To comply with this law, the master list of non-defendant depositors is checked once a week for "old" exonerations, that is, bails that were ordered exonerated over 10 days ago but have not yet been claimed by the depositor. Upon finding an "old" exoneration, a clerk prepares a Notice of Exoneration and mails it to the depositor. This notice simply informs the depositor that the cash bail he put up has been exonerated by the court and that he can re-claim his cash at the court immediately. (No such notice of exoneration is sent to the defendant, even if he put up the bail for himself.) In addition to mailing the Notice of Exoneration, the clerk must also record this fact on the master list of non-defendant depositors.

Cash Bail Forfeitures

Cash deposit bail "forfeitures" are handled in a different manner than exonerations. Each day, the bail clerk's office receives a listing of all cash bail forfeiture orders handed down in court the previous day. This list of forfeiture orders is cross-checked with the actual court minutes to make sure the information is accurate. For each verified entry on the list, a "Notice of Forfeiture of Bail" is prepared and

mailed to the depositor, to inform him that the cash bail he put up has been forfeited and will remain with the court. In addition, a master list of all cash bail forfeitures is compiled. This list, plus a similar list of forfeitures of surety bonds becomes the master record of all forfeitures for the court. Copies of the lists are made and forwarded to the County Accounting Office and to the Controller. These are the people with the money and with the responsibility for keeping track of the 180 day period that's required to pass before the county can claim the forfeited cash. Note that the court need not obtain a summary judgment when cash is involved. All the County has to do at the end of the 180 days is transfer the cash from a "suspense" account (a special "trust" set up to store money not actually in the legal possession of the court) into the general treasury fund. The cash becomes the absolute property of the County when this transfer occurs.

Similarly, all Forfeiture Set Aside orders are compiled and forwarded to the Accounting Office and to the Controller. When they receive notice of a Forfeiture Set Aside, they correct their records and stop the running of the 180 day period. This means that the cash deposit will not be "lost" to the County unless a new Order of Forfeiture is issued and the 180 day time period starts up again.

The effectiveness and efficiency with which the court's administrative and clerical staff performs the complex task of updating the bail record, in large part determines whether the bail system itself is to function as it should.

Simply forgetting to record a forfeiture, or mistakenly entering it as an exoneration could cause a serious breakdown in the whole system - that of allowing a defendant to reclaim a bail deposit even though he

failed to show up in court. If the bail system is to effectively serve its function of "encouraging" and insuring defendants to appear, inefficiency and error in the administrative and clerical aspects of the system must be minimized as much as possible.

CONCLUSION

Individual bail systems will undoubtedly vary widely from county to court. Procedures that are followed may be quite different and even the "common" problems may be unique from court to court. In spite of the variations and differences, the purpose of any bail system remains standard. First, every bail system must provide a method for establishing a record of all bail deposits made. And since every county in California accepts surety bonds in lieu of cash deposits, every system must make provisions for handling both cash and surety bond deposits. The purpose of establishing a record is to make sure that the court as well as all interested parties, such as jailers, bail bondsmen, non-defendant depositors, and defendants themselves, have a quick and ready access to accurate bail deposit information.

A bail system must also provide a means for constantly updating the bail record. The events of even the simplest court proceeding are everchanging. Similarly, the state of a defendant's bail is variable as well. A variety of events in the court can create an instant change in the status or the amount of any defendant's bail, such as whether the amount is raised or lowered or whether bail is forfeited or exonerated. In any of these events, the record of bail must be immediately updated. In addition, when bail is exonerated, the system must somehow notify the depositor that he can re-claim his cash deposit. Or if a bail forfeiture is ordered by the court for a defendant's failure to appear, the depositor must be notified of this action as well. In the instance of surety bond

deposits, the system must notify the surety company that they are released from liability, in the event of an exoneration. Or in the case of forfeiture, the system must provide a method of initiating summary judgment proceedings against a surety company, in order to collect an obligation now due.

A system that strives to function in this many ways is bound to be complex. The bail system is no exception. Because it is complex and because it serves such an important purpose in our criminal justice system, the administrative and clerical personnel of the court who operate the system every day, have a major responsibility to make sure it functions as effectively as it possibly can.

GLOSSARY

- BAIL:** A form of security deposited with the county government to make sure a criminal defendant will not fail to make all his court appearances.
- BAIL RECORD JOURNAL:** A large journal kept in the bail clerk's office. It contains entries of every surety bond deposited with the office. The clerks use it as a reference guide when locating information about surety bond deposits.
- BAIL SCHEDULE:** A list prepared by the county court system that sets out the amount of bail required to release a defendant charged with a particular crime.
- DEFENDANT:** Person placed in jail after his/her arrest. He is allowed to leave jail after posting bail.
- EXONERATION:** Process whereby the bail requirement is lifted. Where bail is posted in cash, exoneration allows the person depositing the bail to pick up his money. When a surety bond is exonerated, the insurance policy is automatically cancelled and the company is no longer liable to the county.
- FORFEITURE:** When the defendant fails to make his court appearance, the bail is treated as forfeited. Where the bail was posted in cash forfeiture allows the county to claim outright ownership of the cash. Where a surety bond is posted, forfeiture makes the surety bond insurance company liable for the amount of the bail.
- SUMMARY JUDGMENT:** A quick court procedure which the county bail clerk's office initiates in order to retrieve the bail amount owed the county by a surety bond company following a forfeiture.
- SURETY BOND:** An insurance policy taken out by the defendant with a national insurance company. The company agrees in the terms of the policy to pay the county the amount of bail required for defendant's release if the defendant fails to make his court appearances.
- SURETY BOND REGISTER:** A bound, dated volume made available to the public. The register contains information about each surety bond deposited with the office. It is used by surety bond insurance companies and their bail bondsmen to check on the status of their outstanding bonds. From the register the company can discover whether or not their bonds have been forfeited or exonerated.

SELF-REVIEW TEST

1. Describe the function of "bail" in the criminal justice system.
2. List and describe the two major purposes of a bail system.
3. Describe the difference between cash deposits and surety bond deposits.
4. Briefly describe the procedure for recording cash deposits.
5. Briefly describe the procedure of accounting for and storing cash deposits.
6. Describe the procedure for recording surety bond deposits.

7. Briefly describe the procedure of accounting for and storing security bond deposits.

8. Describe the purpose of updating the bail record.

9. Describe the general updating and notification procedures required in each of the following circumstances:
 - a. Exoneration of a surety bond:

 - b. Forfeiture of a surety bond:

 - c. Forfeiture Set Aside on a surety bond:

 - d. Exoneration of cash bail deposited by a non-defendant:

 - e. Exoneration of cash bail deposited by a defendant:

 - f. Forfeiture of cash bail deposited by a non-defendant:

10. Describe the purpose of the summary judgment proceeding and under what circumstances it is used.

SAMPLE FORMS

CASH BAIL RECEIPT

BAIL RECORD
RELEASE FROM CUSTODY

MUNICIPAL COURT
CITY AND COUNTY OF SAN FRANCISCO
CASH DEPOSIT

NoC 80799

19

DEFENDANT

ACTION NO./S

DEPOSITOR

ADDRESS

VIOLATION

RECEIVED

CASH TOTAL

BAIL and PENALTY ASSM'T

ADD'L. BAIL, T. BOND

REC'T. NO.

WHERE PERMITTED
WILL FORFEIT

X →

COURT DATE _____ A. M.

_____ P. M.

19

BAIL SET BY JUDGE

ON

19

BRUNO B. FARDIN, CLERK

DEPUTY

INSTRUCTED RE-APPEARANCE

AND

RELEASED

DATE

KEEPER

1. CITY PRISON

SAMPLE FORMS

SURETY BOND RECEIPT

DATE	DEFENDANT	CASE NO.	REGISTER NUMBER	CASH DEPOSIT	SURETY DEPOSIT	TREASURY DEPOSIT	REQUIRED AMOUNT

DEPOSITOR
OR SURETY CO. _____

ADDRESS _____

BAIL RECORD

MUNICIPAL COURT
CITY AND COUNTY OF SAN FRANCISCO

CASH DEPOSIT

WHERE PERMITTED WILL FORFEIT "X" →

SURETY BOND DEPOSIT

SURETY BOND NUMBER: _____

VIOLATION

TREASURY BOND DEPOSIT

TREASURY BOND NO.	NEXT COUPON
-------------------	-------------

REQUIRED AMOUNT

BAIL SET BY JUDGE _____

ON _____

COURT DATE _____ A.M.
_____ P.M. _____ 19 _____

INSTRUCTED REAPPEAR-
ANCE AND RELEASED _____

BRUNO B. FARDIN, CLERK _____
DEPUTY

KEEPER _____

1. CITY PRISON

IN THE MUNICIPAL COURT, NORTHERN JUDICIAL DISTRICT
COUNTY OF SAN MATEO, STATE OF CALIFORNIA

THE PEOPLE OF THE STATE)
OF CALIFORNIA,)
)
Plaintiff,)
)
VS.)
)
)
Defendant.)
_____)

Case No. _____

NOTICE OF FORFEITURE OF BAIL
P.C. 1305

TO: Bondsman _____
or Depositor of Money _____

Please be advised that the Court has ordered the forfeiture of your hereinafter described bail for the non-appearance of defendant, which order was entered on _____.

Money _____ Amount \$ _____

Treasury Bond No. _____ Amount \$ _____

Surety Bond No. _____ Amount \$ _____

In the event of the forfeiture of a Treasury Bond, please contact this Court immediately to redeem same.

In the event of the forfeiture of a Surety Bond, you are referred to the provisions of Section 1306 Penal Code, California.

RICHARD R. LIBERTY,
Clerk of the Municipal Court

Deputy Clerk

Dated: _____

END

7 10/10/10