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Comments to Petition to Amend A.R.Crim.P. Rule 7.6, R-12-0036

IN THE SUPREME COURT OF THE STATE OF ARIZONA

IN THE MATTER OF: ARIZONA RULE OF CRIMINAL PROCEDURE, RULE 7.6	R-12-0036 COMMENTS TO *PETITION TO AMEND ARIZONA RULE OF CRIMINAL PROCEDURE, RULE 7.6*

COMES NOW THOMAS J. RANKIN, Deputy Pima County Attorney, Pima County Attorney's Office, pursuant to Rule 28(D), Rules of the Supreme Court of Arizona, and submits these Comments opposing the *Petition to Amend Arizona Rule of Criminal Procedure, Rule 7.6.*

I. INTRODUCTION

A. Practice And Results In Pima County

Undersigned counsel has been a Deputy Pima County Attorney since 1991. Since that time, one of counsel's primary assignments has been the litigation of all bond forfeiture proceedings in felony cases in Pima County Superior Court. Counsel personally appears in and litigates nearly every bond forfeiture proceeding in felony cases in Pima County Superior Court, as well as any resulting appellate litigation.

For the years 1997 through 2012, the Pima County Attorney's Office has appeared in an average of 153 bond forfeiture proceedings per year.

For the years 2007 through 2012, Pima County Superior Court conducted 1,148 bond forfeiture proceedings, forfeited 772 bonds, exonerated 183 bonds referred for forfeiture, and entered a total of $6.714 million in bond forfeiture judgments. That constitutes for that period of time an average of 191 bond forfeiture proceedings per year, 129 forfeited bonds per year, 31 exonerated referred bonds per year, and $1.19 million in bond forfeiture judgments per year.[1] The Court exonerated an average of $261,000.00 per year on bonds referred for forfeiture. For that period the average bond forfeiture amount per bond forfeited was $6,184.00, while the average exoneration amount per bond referred for forfeiture was $9,636.00. Of course, a far greater number of bonds are exonerated each year in cases where no violation occurred and no forfeiture referral was made.

The Pima County Attorney's Office litigates bond forfeiture proceedings pursuant to the procedural and substantive provisions of A.R.Crim.P., Rule 7.6, and Arizona case law that has interpreted, analyzed, discussed and decided the purpose and application of the provisions of Rule 7.6. Neither the Pima County Superior Court nor the Pima County Attorney's Office conducts a practice like that

[1] The remaining bond forfeiture proceedings resulted in the vacation of further bond forfeiture proceedings due to hearings being set in error (e.g. the release conditions of a defendant failing to appear did not include a bond requirement) or the trial court's order to continue the defendant on release on the same bond despite a failure to appear.

described in the Petition[2] for Maricopa County in which a flat $150.00 "administrative fee" bond forfeiture judgment is imposed in cases in which a surety surrenders a defendant who has violated an appearance bond. *See* Petition, pp. 6-7.

B. Purpose And Operation Of Rules 7.6 (c) and (d)

The primary and paramount purpose of an appearance bond is to insure the defendant's presence at all proceedings. *In re Bond in Amount of $75,000* 225 Ariz. 401, 238 P.3d 1275 (App. 2010); *State v. Bail Bonds USA*, 223 Ariz. 394, 224 P.3d 210 (App. 2010); *State v. Donahoe ex rel. County of Maricopa* 220 Ariz. 126, 203 P.3d 1186 (App. 2009); *State v. Garcia Bail Bonds*, 201 Ariz. 203, 33 P.3d 537 (App. 2001); *State v. Nunez,* 173 Ariz. 524, 844 P.2d 1174 (App.1992); *United Bonding Ins. Co. v. City Court of Tucson,* 6 Ariz.App. 462, 433 P.2d 642 (1967). A surety undertakes "to pay to the clerk of the court a specified sum of money upon failure of a person released to comply with its conditions." A.R.Crim.Proc., Rule 7.1, subsections (b), (c), and (e). In return, the State releases the defendant from its custody. A surety assumes the risk that a bonded defendant will not appear and assumes the risk that the full amount of the bond will be forfeited if the defendant does not appear. *In re Bond Forfeiture in Pima County*

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[2] Maricopa County can address whether it does, in fact, have such an "unwritten" practice or policy.

Cause No. CR-20031154, 208 Ariz. 368, 369, 93 P.3d 1084, 1085 (App. 2004). "The surety in its undertaking agrees with the State to produce the defendant at the necessary court appearances or pay the penalty in the amount of the bond." *Gearing v. State*, 24 Ariz.App. 159, 160, 536 P.2d 1051, 1052 (1975). A surety does not meet its obligation pursuant to Rule 7.6 merely by surrendering a non-appearing defendant before entry of a forfeiture judgment. *State v. Old West Bonding Company*, 203 Ariz. 468, 56 P.3d 42 (App. 2002).

Rule 7.6 operates substantively as follows. Under Rule 7.6(c)(1), if at any time it appears that a defendant has violated a condition of an appearance bond the trial court shall issue a warrant. Within ten days after the issuance of the warrant, the trial court shall notify the surety in writing or by electronic means that the warrant issued. The court shall also set a bond forfeiture hearing within a reasonable time, not to exceed 120 days. Rule 7.6(c)(2) authorizes the court to forfeit all or part of a bond if no cognizable explanation or excuse for the failure to appear is established by the surety. Rule 7.6(d)(1) provides for mandatory exoneration of a bond only when, prior to any violation, no further need for the bond exists. Rule 7.6(d)(2) provides the court with discretion to exonerate a bond if the surety actually surrenders the defendant to the sheriff of the county in which the prosecution is pending, or the surety delivers an affidavit to the sheriff of the

county in which the prosecution is pending stating that the defendant is incarcerated in that jurisdiction or another jurisdiction and the sheriff reports the surrender or incarceration status to the court. The apprehension and surrender must be conducted by the surety, not by the surety simply submitting a "paper surrender" of the defendant after a police apprehension. *State v. Affordable Bail Bonds*, 198 Ariz. 34, 6 P.3d 339 (App. 2000). Rule 7.6(d)(3) provides that in all other instances the decision whether or not to exonerate a bond lies within the sound discretion of the court.

Rule 7.6(d)(1) provides the only mandatory exoneration provision, stating that prior to any violation the court shall exonerate a bond if there is no further need for the bond.

In all instances in which a violation of the bond has occurred, Rule 7.6 operates procedurally as follows. First, under Rule 7.6(c)(2), the primary issue of the violation of the bond is addressed. The surety must establish a cognizable explanation or excuse for the violation. If the surety does not, the court may end its inquiry there and forfeit all or part of the bond. *State v. Martinez-Gonzales*, 145 Ariz. 300, 302, 701 P.2d 8 (App. 1985). The court may, however, exercise a first level of discretion and decide to consider additional information. The court may decide to hear and consider evidence from the surety establishing the application of

Rule 7.6(d)(2). The court may then exercise a second level of discretion and either reject any established factors and still forfeit all or part of the bond, or consider the established factors and exercise discretion in exonerating a bond. The court may also exercise a third level of discretion and determine if other instances or circumstances have been established and decide whether or not to exonerate a bond pursuant to Rule 7.6(d)(3) using sound discretion.

C. The Intent And Effect Of The Petition Is Solely To Benefit The Bail Bond Industry

The Petition to Amend Rule 7.6 seeks to do two things: (1) Under Rule 7.6(c)(1), it would require the trial court to set a bond forfeiture hearing at the same time it issues the warrant, and set the bond forfeiture hearing between 60 and 120 days from the issuance of the warrant; and (2) Under Rule 7.6(d)(2), it would permit the surety to surrender a defendant to the sheriff of the county in which the prosecution is pending or to a sheriff in another Arizona county if the defendant is located there, then receive a mandatory exoneration of all of the bond except $150.00, regardless of the amount of the bond; and it would permit the surety to file an affidavit with the court in which the prosecution is pending stating the defendant is incarcerated in another jurisdiction, permit the surety to pay the costs of extradition and transportation of the defendant to the county in which the prosecution is pending, and upon deposit of the payment of those costs the surety

would receive a mandatory exoneration of the bond in its entirety from the court.

The proposed changes build in a minimum two-month time period for a surety to look for a fugitive defendant before a bond forfeiture hearing could be held, nearly returning Arizona to a previous statutory 90-180 window for holding the bond forfeiture hearing [A.R.S. § 13-3973, repealed 1999] that conflicted with the previous and current time frames for holding the hearing under Rule 7.6(c)(1). The proposed changes build in a scenario for a complete or near-complete exoneration of a bond, converting appearance bonds into *de facto* cost bonds when a fugitive defendant is apprehended by the surety or the police, or the surety discovers a defendant in custody somewhere. This is regardless of the amount of a bond set by the trial court as a part of the defendant's release conditions, regardless of the surety's original undertaking and obligation, and regardless of any other aggravating factors existing as a result of the violation of the bond. Most of all, the proposed provisions completely disregard the fact that the surety failed to produce the defendant for court, the need for a surety to establish a cognizable explanation or excuse for that violation of the bond, and negate all or nearly all consequence of the surety's violation of the primary purpose of an appearance bond; the surety's guarantees that it will monitor the defendant and his court dates and insure the defendant's appearance for all proceedings.

The post-violation exoneration scenarios in the current Petition are much like the post-violation exoneration scenarios offered in a Petition rejected by the Supreme Court in 1998, when the current version of Rule 7.6 was enacted. The stated grounds for the current Petition are not supported by empirical data or sound public policy and practice considerations, do not reflect any pattern or practice of an abuse of discretion by the trial courts of Arizona, but rather demonstrate a desire for further reduction or elimination of liability for the bail bond industry.

II. COMMENT TO PARTS I AND II OF THE PETITION

A. The Petition Does Not Establish An Abuse Of Discretion By Arizona Courts In Considering Exoneration

Parts I and II of the Petition lament a lack of "balance," unresolved "historical problems," and "old habits" by Arizona's trial courts in bond forfeiture rulings. It further laments the entry of "'unembraced' decisions" by the trial courts, upheld by appellate courts, that have left unfulfilled "the promises that the current version of Rule 7.6 has failed to achieve." The Petition mistakes the results of the 1998 amendment proceedings as intending and promising mandatory exonerations in post-violation surrender and incarceration scenarios. Further, the Petition cites no historical or empirical data with respect to bond forfeiture judgments entered in Arizona, nor any data demonstrating any patterns or trends or anomalies indicating a failure of the trial courts to consider relevant factors in

exercising discretion where it is provided for in Rule 7.6. The Petition simply seems to be in disagreement with trial courts that do not enter complete exoneration in all post-violation surrender and incarceration scenarios.

Indeed, it appears that the trial courts have duly exercised the discretion provided in the current version of Rule 7.6, as amended in 1998, while remaining mindful of the primary issue of whether a cognizable explanation or excuse has been established for the violation of the bond and while remaining mindful of aggravating factors resulting from such a violation even where a defendant is later surrendered or located in custody. The intended operation of this exercise of discretion was made clear in *State v. Old West Bonding Co.*, 203 Ariz. 468, 56 P.3d 42 (App. 2002) with respect to the provisions adopted by the Supreme Court and the provisions rejected by the Supreme Court in 1998 as proposed by the bail bond industry:

> ¶ 17 Our review of the process that culminated in the 1998 amendments to Rule 7.6 leads us to reject appellants' construction of Rule 7.6(d)(2) as unfounded. The impetus for the 1998 amendments was the petition filed by the Professional Bail Agents of Arizona, Inc. ("PBA"), which also filed the *amicus* brief in this case. *See* Am. Pet. to Amend R. 7.6 of the Ariz. R.Crim. P. (filed Ariz. Sup.Ct. July 24, 1997). In its amended petition, the PBA proposed that former Rule 7.6(e) be amended to require exoneration of all or part of the appearance bond in a variety of post-violation scenarios, including when the surety apprehends and surrenders the defendant before the bond is forfeited.7 However, as promulgated by the supreme court, amended Rule 7.6(d) only mandates exoneration if the defendant does not violate any condition of the appearance bond. *See* Rule

> 7.6(d)(1). In all other scenarios, Rule 7.6(d) grants the trial court discretion whether to exonerate the bond. Thus, it is clear that the supreme court considered and rejected PBA's much broader proposal, similar to that urged by appellants here. That proposal would have mandated exoneration, regardless of the existence of reasonable cause for a defendant's nonappearance, if the defendant was apprehended within six months after entry of a forfeiture judgment.

Id., at para. 17. The data presented above in Section I, Introduction, of this Comment demonstrate that in Pima County the trial courts enter both bond forfeiture and bond exoneration rulings and have not engaged in a heightened rate of bond forfeiture judgments or amounts, or "bond forfeiture fever" as the Petition asserts.[3] This does not mean that the trial courts are not considering post-violation surrender scenarios, it merely means they are not ascribing mandatory exoneration effect to them, which is what the Supreme Court recognized in rejecting a similar previous Petition and enacting the current Rule, and what applicable case law recognizes as the proper standard of review of the evidence in bond forfeiture proceedings and the scope of discretion accorded to the trial courts in such proceedings.

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[3] The Petition goes beyond suggesting and actually accuses the trial court judges of Arizona of deliberately ignoring the provisions of Rule 7.6(d)(2) and evidence presented thereon in court solely to line county coffers.

B. The Proposed Amendments Ignore the Primary Purpose Of The Bond And Mandate Absolution Of The Surety From Liability In Post-Violation Scenarios

The primary issues to be addressed by the trial court are the violation of the bond itself -- as it creates other negative circumstances -- and whether a cognizable explanation or excuse for the violation of the bond has been established. *Old West*, in *dicta*, suggests a number of other factors a trial court may consider in its review of the evidence and in exercising any discretion in post-violation surrender scenarios:

> ¶ 26 It is beyond the scope of this opinion, if it were even possible, to catalog all of the circumstances that might bear on the court's discretionary decision whether, and in what amount, to forfeit an appearance bond. In general, however, we believe relevant considerations may include: (1) whether the defendant's failure to appear due to incarceration arose from a crime committed before or after being released on bond; (2) the willfulness of the defendant's violation of the appearance bond; (3) the surety's effort and expense in locating and apprehending the defendant; (4) the costs, inconvenience, and prejudice suffered by the state as a result of the violation; (5) any intangible costs; (6) the public's interest in ensuring a defendant's appearance; and (7) any other mitigating or aggravating factors. *State v. Fry*, 128 Idaho 50, 910 P.2d 164, 167–68 (App.1994); *see also United States v. Castaldo*, 667 F.2d 20, 21 (9th Cir.1981).

Id., at para 26. The violation itself invokes factors 1, 2, 4, 5, and 6, and results in delayed or eliminated prosecution and justice for victims, evasion of punishment for defendants, decay of witness and evidence viability, A.R.Crim.P. Rule 8 consequences, and other harm to the people of Arizona. Other than being listed in

Old West, Arizona law has not considered willfulness to be an element in the determination of forfeiture, only the fact of the failure to appear itself. *State v. Veatch*, 132 Ariz. 394, 646 P.2d 279, Ariz. (1982).

The Petition cites *Storkamp*, and, by reference, *Amador*, cases from Minnesota and New Mexico, respectively. These cases may discuss the current state of the operation of bail bond statutes and rules in other States, but they do not serve as guiding authority in Arizona or as the general rule on this issue. In fact, *Amador* is based on the application of the New Mexico bond forfeiture statute, which is different than Arizona's Rule 7.6, and *Amador* follows a minority rule with respect to a post-violation incarceration scenario.

The New Mexico statute states that "(t)he court may direct that a forfeiture be set aside, upon such conditions as the court may impose, if it appears that justice does not require the enforcement of the forfeiture." At the hearing on the order to show cause why judgment should not be entered on the forfeiture, "(i)f good cause is not shown the court may then enter judgment against the (bondsmen) … for such sum as it sees fit, not exceeding the penalty fixed by the bail bond or recognizance." *Amador*, 648 P.2d at 312. While *Amador* notes the State argued the general rule that incarceration in another jurisdiction is not an excuse for the failure to appear so as to exonerate the bond, *Id.* at 311, the *Amador* court ruled the

other way based on its findings of the facts in that case and relying on the very broad discretion it believed was accorded to it under the language of the New Mexico statute. The language of Arizona's Rule 7.6 is different, and its accord of discretion is more focused and limited.

New Mexico also does not require a bond poster to actually surrender a defendant. *Amador* follows an intermediate rule that incarceration in another jurisdiction is but one factor among many that may be taken into consideration when a court exercises its discretionary decision whether to forfeit the bond. Arizona has long followed the general rule that the location of a fugitive defendant in custody in another jurisdiction for an offense occurring after release on the Arizona bond does not explain or excuse the violation of the bond and does not require an exoneration of the bond. *See State v. Garcia Bail Bonds*, 201 Ariz. 203, 33 P.3d 537 (App. 2001), and *State v. Old West Bonding Company*, 203 Ariz. 468, 56 P.3d 42 (App. 2002), n.3, both citing *State ex rel. Ronan v. Superior Court*, 96 Ariz. 229, 393 P.2d (1964) (arrest and detention in another state two days after scheduled court appearance in Arizona is not reasonable cause for non-appearance); *State ex rel. Corbin v. Superior Court*, 2 Ariz.App. 257, 407 P.2d 938 (1965) (appellate court reinstated bond forfeiture judgment vacated by trial court where defendant was in federal custody on day he failed to appear for trial,

appellate court directed trial court to reinstate forfeiture if federal offense was committed after defendant's release on bond); *State v. Rocha*, 117 Ariz. 294, 572 P.2d 122 (App. 1977) (defendant allowed to remain free on bond pending appeal subsequently committed and was convicted and incarcerated for federal drug offense, bond forfeited after State conviction was affirmed and defendant was unable to surrender to State authorities due to federal incarceration).

An actual surrender or incarceration surrender by a surety already exists as a factor that Arizona courts can and do choose to consider. However, Arizona law does not mandate the exercise of that choice or a subsequent exercise of discretion to enter a complete or partial exoneration. The Petition urges incorrectly that the current Rule was meant to be interpreted and applied in this manner.

C. Codification Of A $150.00 Forfeiture And Deposit Of Extradition And Transportation Costs In Post-Violation Surrender Scenarios Is Bad Public Policy

The Petition refers to an "'unwritten rule' or policy" in Maricopa imposing only a $150.00 forfeiture judgment in post-violation surrender scenarios and asks that this unwritten rule be codified in Rule 7.6 and applied Statewide. The Petition couples this with an offer to seek the defendant's waiver of extradition and to deposit extradition and transportation costs. This is a bad idea for several reasons.

First, such a mechanism would convert an appearance bond, with its definite

and pre-existing contractual terms, into a speculative cost bond that ignores the judicial determinations made in setting the bond according to Rule 7.2(a) and A.R.S. § 13-3967(B)[4] and the violation of the bond and the aggravating circumstances resulting from the violation of the bond. Extradition and transportation costs are only determined once they happen.

Second, the offer to seek a waiver of extradition is without authority or force. A surety holds no party status or authority in extradition proceedings. The defendant holds the right to contest extradition proceedings. The jurisdiction holding a defendant also holds the authority to keep the defendant until it has completed its proceedings. There may also be other jurisdictions with an extradition hold on the defendant, pushing Arizona farther to the back of the line. This can delay the Arizona prosecution for extensive periods of time [Arizona cannot proceed *in absentia* if an absence is involuntary] or even indefinitely [prosecution becomes dependent on presence of fugitive defendant; incarcerating State(s) may undergo significant delays or impose long sentences] and even make

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[4] Fixing the least onerous release condition in an amount necessary to insure the defendant's appearance at all proceedings upon penalty of forfeiture of that amount, upon consideration of the defendant's offense and other relevant factors, such as the views of the victim, the nature and circumstances of the offense charged, the weight of the evidence, the accused's family ties, employment, financial resources, character and mental condition as well as residency in the community and the accused's record of appearance at court proceedings.

prosecutions impossible [Rule 8 sanctions].[5]

Third, this mechanism significantly reduces the incentive of a surety to undertake its paramount obligation of monitoring a defendant and insuring his appearance in court prior to a violation, knowing the set amount of liability undertaken. Instead a surety could adopt a wait-and-see approach to monitoring the defendant and start looking for a defendant only after receiving notice of a violation, knowing that the defendant's apprehension by the surety or by the police will result in only a nominal $150.00 judgment. This is contrary to the nature and operation of an appearance bond and is contrary to the Supreme Court's view of the similar proposal in 1998. Additionally, codifying a putative judicial practice of one jurisdiction for all jurisdictions is similarly ill-advised.

Fourth, the Petition's claim that forfeiting all or a substantial part of a bond in a post-violation surrender or incarceration scenario is an unfair or unreasonable

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[5] Pima County has experienced such harm in two post-violation incarceration cases in which counsel for Petitioner offered the extradition waiver, payment of extradition and transportation costs, and assurance of the fugitive's speedy return to Arizona as grounds for exoneration of the bonds in those cases, much like the argument for these provisions in his Petition. As a result, in the first case he received an exoneration of $150,000.00 of a $200,000.00 bond, and in the second case he received a $5,000.00 exoneration of a $30,000.00 bond. The change in the same Hearing Officer's consideration and exercise of discretion on an exoneration amount likely was the result of being advised of the fact that the first defendant was still sitting in the incarcerating State at the time of the second case, over a year later, and the fact that the second defendant was subsequently removed to federal custody, placing him farther from both Arizona and the incarcerating State, where the defendant was facing two manslaughter charges. The cases are *State v. Kenyatta Campbell*, CR-20111461-003, and *State v. Kory Crayton*, 20113789-001, respectively.

form of excessive damages is incorrect. The violation itself provides grounds for forfeiture even if a defendant is later apprehended. This is so because of the harm inherent in the violation. Further, the known liability undertaken upon posting a bond gives faith and credit to the judicial imposition of a bond requirement and amount, and promotes compliance with the purpose of the bond:

> The underlying assumption is that cash or property posted as security for a bond is sufficiently valuable to the defendant that he or she will appear in court as required. *See, e.g., United States v. Szott,* 768 F.2d 159, 160 (7th Cir.1985) ("The purpose of bail is not served unless losing the sum would be a deeply-felt hurt to the defendant and his family; the hurt must be so severe that defendant will return for trial rather than flee.").

State v. Donahoe ex rel. County of Maricopa, supra., at ¶13. Under A.R.Civ.P., Rule 59(a)(5), damages are excessive if they are so manifestly unfair, unreasonable, and outrageous as to shock the conscience of the Court." *Young Candy & Tobacco Co. v. Montoya*, 91 Ariz. 363, 370, 372 P.2d 703, 707 (1962). When a surety knowingly undertakes the set liability in the first place, upon a violation of the bond such liability is not unfair, unreasonable or outrageous.

Fifth, the policy of encouraging sureties to remand defendants already exists in Rule 7.6(d), a mechanism whereby a surety can reduce or eliminate its liability by doing what is within its power and what it contracted to do in the first place.

This Comment would accept one proposal put forth by the Petition; that a

surety be required to file in the prosecuting court the affidavit of actual surrender or the affidavit stating the exact location of a defendant in custody in another jurisdiction, provided the surety also provides the same to the sheriff of the county in which the prosecution is pending and where a defendant is located so that proper sheriff detainers can be lodged and recognized.

III. COMMENT TO PART III OF THE PETITION

Finally, the Petition proposes the setting of a bond forfeiture hearing simultaneously with the issuance of a warrant, and sets a window for conducting the bond forfeiture hearing between 60 and 120 days from the bond violation. These proposals are not necessary or prudent.

Bond forfeiture proceedings are a streamlined substitute for a separate civil suit resulting from a breach of contract, which proceedings were codified into previous rules and are now codified in Rule 7.6. Although independent of the criminal proceedings, they are conducted under the criminal cause number. *In re Bond in Amount of $75,000* 225 Ariz. 401, ¶6, 238 P.3d 1275 (App. 2010). As such, bond forfeiture proceedings are often conducted not by the assigned trial division but rather by Commissioners and Hearing Officers (in Pima County, for example) who set bond forfeiture hearings and provide notice of the hearings on their own schedule and calendar. Requiring the assigned trial division to set the

bond forfeiture hearing at the same time it issues the warrant would work contrary to the administration of these matters by the courts. There is no need for this, as all appropriate parties entitled to notice under Rule 7.6 receive notice from the judicial officer that will hear the matter.

Similarly, changing the time for conducting the bond forfeiture hearing from the current "within a reasonable time (after the violation) not to exceed 120 days" to a 60-120 day window will add delay to the proceedings and would return Arizona nearly to a previous but repealed time window. The proposal also presumes grounds that are not correct. Currently, bond forfeiture proceedings may be set within a reasonable and relatively short period of time, providing judicial efficiency. A previous time window of 90-180 days under A.R.S. § 13-3973 was repealed in 1999 after the time period in current Rule 7.6 was enacted. That 90-180 window presented confusion and unintended procedural bars to conducting forfeiture proceedings, as demonstrated in *State v. Nunez*, 173 Ariz. 524, 844 P.2d 1174 (App.1992). The Petition also incorrectly presumes that the time between the violation and the conducting of the bond forfeiture hearing exists as a curative period for the surety to locate and apprehend the defendant after a violation and be absolved of liability. As discussed above, that is not the purpose or intent of Rule 7.6(c) or 7.6(d), nor is such a purpose or intent provided in Rule 7.6, in previous

adoptions and rejections of amendments to Rule 7.6, or in Arizona case law. A surety can certainly look for and apprehend a defendant prior to the bond forfeiture hearing, present that evidence at the hearing, and ask the court to exercise discretion in its favor on that issue. However, the Petition seeks to create a specific delay in conducting a bond forfeiture hearing in order to create additional time in which a surety can do what it was supposed to do prior to a violation; know the defendant's whereabouts and present the defendant in court.

IV. CONCLUSION

For the reasons set forth above, and because the current Rule 7.6 gives integrity to the purpose and operation of an appearance bond, provides due process to all parties, holds the surety accountable according to the terms of its undertaking, already allows a surety the opportunity to present evidence to mitigate its liability, and accords the exercise of sufficient and sound discretion to the courts in bond forfeiture proceedings, this Comment opposes the Petition.

RESPECTFULLY SUBMITTED this 21st day of May, 2013.

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