MINUTES OF A MEETING OF
THE BAIL SYSTEM TASK FORCE
NOVEMBER 10, 2004

The Task Force held its sixth meeting on November 10, 2004, beginning at 3:25 pm at the District Court Conference Center, Annapolis, Maryland.

Task Force members present were:

Hon. James N. Vaughan, Chair
Brian J. Frank, Esq.
Hon. Maureen M. Lamasney
Dennis J. Laye, Esq.
Patrick H. Loveless
Hon. Daniel M. Long, Vice Chair
Thomas Paul Raimondi, Esq.
Elizabeth Ann Ritter, Esq.
Joseph P. Rosenthal

Also present were:
Joan Baer, Operations Manager, Headquarters, District Court of Maryland
Jean E. Bienemann, Esq., Director of Producer Licensing, Maryland Insurance Administration
Kathleen A. Birrane, Esq., Principal Counsel, Maryland Insurance Administration
Susan Cohen, Esq., Assistant Attorney General, Maryland Insurance Administration
Crystal Cokley
Quinn Cokley
Solomon P. Hamilton III, Hamilton Bonding Service
Mark Holtschneider, Esq., Lexington National Insurance Corp.
Kelly O'Connor, Director of Government Affairs, Court Information Office
Diane S. Pawlowicz, Assistant Chief Clerk, District Court of Maryland
Rhea R. Reed, Esq., Director of Internal Audit, Maryland Judiciary
John H. Riggle, Compliance and Enforcement, Life and Health Enforcement, Maryland Insurance Administration
Marvin N. Robbins, Esq.
Elizabeth Buckler Veronis, Esq., Task Force staff
Linda Williams, Staff Auditor, Maryland Judiciary

The Chair opened the meeting by disavowing an agenda for the Task Force but expressing his wish to have a final report for the Honorable Robert M. Bell, Chief Judge of the Court of Appeals, before the Chair's retirement on December 28, 2004. At the least, the Chair hopes there will be a consensus for a letter to Chief Judge Bell acknowledging that the Task Force members may not be in total agreement and emphasizing that all points of view are important.

The Chair, referring to the summary of the audit report, reiterated the need of Statewide policies and rules to which the Task Force have agreed to provide a unified system. As to

a bail bond commissioner, the Task Force had agreed that each circuit should have a designated bail bond commissioner, whose position would be modeled on the 7th Circuit commissioner and who need not be full-time but should be trained. This would be pursuant to the current rule.

The Chair redirected discussion to a concern that Mr. Frank has expressed several times at meetings and, legitimately so, has raised in his draft report – collection of the 10 % bail bond – expressing the hope that the Task Force could propose some solution. The Chair explained that, when a judge orders restitution, a judgment is entered against the defendant without a trial on the merits and the judgment is recorded. Should payment not be made, the victim or other obligee may proceed to collect the judgment in the same manner as any other judgment. Consider whether a person who posts a 10% bond could be viewed as giving the State of Maryland the right similar to a confessed judgment for the balance of the bond in the event the defendant fails to appear and the bond is forfeited. That judgment, automatically recorded as a judgment against the person who posted the bond, could be referred to the State's Central Collection Unit ("CCU") to collect. Thereby, the collection onus would be transferred to the State, with collection accomplished in the various ways in which judgments can be collected without taking and selling a home. This procedure also could apply to property bonds.

In answer to Ms. Ritter's query whether 10 % bonds are professional bonds, the Chair replied that they are not; 10% bonds are personal bonds. The Chair noted that the Task Force has discussed the absence of a set pattern for collection of forfeited 10% bonds – as opposed to recognizance for which a sanction of, the Chair believed, a fine up to $5,000 is provided. [NOTE: Maryland Code, Criminal Procedures § 5-211.]

Mr. Raimondi wondered whether this procedure would apply to surety bondsmen, and the Chair responded that the procedure could apply to whomever posts a percentage of a bond – whether, *e.g.*, parent, grandparent or friend, the judgment would be entered against the person. Mr. Frank asked whether judgments already are being entered? The Chair remarked that judgments, if any, being entered or even recorded, are not being enforced. The Chair noted a statutory exemption may need to be changed. [NOTE: Maryland Code, State Finance Article, § 3-302(b)(6).] State's attorney do not collect on forfeitures, and it is not a function of a court to do so. The Chair remarked on the quandary for State's attorneys in foreclosing against a home in which a parent has $80,000 equity when a child fails to appear on a $10,000 bond. State's attorneys don't want to look like "bad guys" – nobody wants to take the property. A civil judgment enforced by CCU would allow payment of the forfeited amount other than by sale of the property, such as refinancing to borrow against the equity.

Mr. Raimondi asked how "Mom & Pop" and professional property bondsman are to be

distinguished. The Chair acknowledged that this question needs to be addressed, noting that he had been addressing legitimate family property bonds. This procedure could, however, apply to professional property bonds as well. Judge Lamasney opined that a judge forfeiting a bond could make a determination whether the bond is professional or family. Ms. Ritter suggested that no determination would be needed, if a confessed judgment note is executed when property is posted, written so that it would be effective only if the bond is forfeited. The Chair indicated that he would prefer to avoid confessed judgment notes, entailing the need for hearings and other ramifications beyond the Task Force's concern. Ms. Ritter reiterated that the situation for family and professional bonds are the same with the 90-day forfeiture period and 90-day extension.

The Task Force returned to discussion of the effect of a bond secured by property valued at much more than the bond, and the effort that would to required to distribute the proceeds from the sale (*e.g.*, $200,000 property posted for a $10,000 bond).

Mr. Raimondi concurred with the suggestion that CCU be charged with collection of forfeited bonds – whether secured by property or otherwise. The Chair also reminded the Task Force of the seldom used criminal provisions for fining or imprisoning defendants who fail to appear on a recognizance.

Mr. Frank summarized his understanding that CCU would collect on the judgments against sureties on 10 % bonds. A "family" member would have 90 days before forfeiture became absolute and a civil judgment was entered. The Chair countered that the suggestion pertains to "non-professional" property bondsman, because there is a procedure in effect for the professional property bondsman.

Joan Baer expressed the need to collect from professional property bondsmen who fail to satisfy forfeitures, as currently no one pursues those collections either. Ms. Ritter believed that, with corporate bondsman, the threat of being unable to write bonds generally brings forth payment quickly. Ms. Reed noted this raises the question how "posers" – the imposters – are identified. Some discussion ensued regarding whether it matters, the Chair suggesting that a person securing bond without pay should be treated an a non-professional. At this time, only the Seventh Circuit provide for professional property bondsmen.

Ms. Reed questioned whether, given a judiciary-wide communication structure, persons could be barred from writing bonds until CCU collected on a forfeited bond. The Chair felt that, if the Task Force concurs with the suggestion, a method could be established. Ms. Reed noted that a two-pronged problem exists – enforcement is number one but judiciary-wide communication is need to ensure everyone knows who is creating an enforcement issue. Mr. Loveless advised that commissioners currently can access Statewide District Court

judgments but not Circuit Court judgments. The Chair noted that JIS would need to adjust the system so that commissioners can check circuit court judgments. Mr. Loveless further noted the lack of specific search mechanisms, so that a common name such as John Smith could appear in hundreds of cases, and commented that the search screen gives insufficient information to determine the nature of the judgment.

The discussion turned to the need for search the title of all property securing bonds – an issue previously considered in connection with bonds over a certain amount. The sense seemed to be that a need arises only if a defendant fails to appear for court.

Judge Lamasney expressed her agreement with the idea of CCU collection. The Chair reiterated that any recommendation should provide for amendment of the statute, if needed. Mr. Raimondi concurred with the idea. Ms. Ritter asked whether judgment is to be entered against both the surety and the property. The Chair suggested that judgment be issued only against the surety on a bond, which generated discussion whether judgment is to be entered against the non-appearing defendant as well, with mention that defendants are to sign bonds but, in some areas, this is not done.

The Chair asked Mr. Raimondi to lay out for the Task Force the Maryland Insurance Administration's ("MIA") concept as to professional property bondsmen. Mr. Raimondi said MIA would agree to register professional property bondsmen on proper application and, after review for felony convictions, would make the names of registrants available on the MIA website so the courts could access a list of registered bondsman. MIA sees transfer of information as to status to be critical.

Ms. Birrane recognized that acting as a surety on a property bond for a fee may be the business of insurance due to a statutory change occurring in 1991, which removed a blanket exception for property bail bondsmen in making corporate bondsmen eligible to be insurance producers. However, the Attorney General has not issued on opinion whether a compensated property bond transaction constitutes doing surety insurance as defined in the Maryland Code, Insurance Article. If property bondsmen are doing insurance business, they should be regulated as such. Ms. Birrane noted that reinstating the pre-1991 provision only would result in MIA having no jurisdiction over property bondsmen. Ms. Birrane was asked whether MIA currently has jurisdiction and, if so, whether MIA should be regulating property bondsmen under the same solvency standards of other insurers. Ms. Birrane emphasized that property bonds differ from other insurers, such that MIA could not assess accurately the day-to-day value of property being used to secure a bond. Hence, MIA is willing to undertake registration alone – not licensing as MIA understands it. Mr. Raimondi did mention, however, letters of credit from banks.

The Chair noted that Massachusetts has combined licensing and understood that MIA had been attempting to contact Virginia about its licensing laws, which he understood provided for consolidated licensing as of last year , with Mr. Raimondi indicating that his staff had no additional information but that he thought Virginia abolished property bondsmen.[1] Ms. Birrane restated the MIA's inability to calculate losses, having no expertise at property valuation. Mr. Raimondi quoted an estimated $ 3.5 million and two years to achieve computerization of the Statewide licensing scheme previously considered.

The Chair reminded the Task Force that it already has recommended that each judicial circuit have a bail bond commissioner, who could have the responsibility of keeping MIA advised of the status of property, as well as corporate, bondsmen. After further discussion, the Task Force concurred that the functions and duties of bail bond commissioners are to be patterned after those of the commissioner for the 7th Judicial Circuit. An application form is to be filed with MIA, which will perform a background check and, absent any felony convictions, the applicant's name would be posted on a special MIA website, which could be available 24/7, with weekly updates based on information as to registrants' status provided by bail bond commissioners. Mr. Raimondi expressed pleasure as currently corporate bondsman skirt disciplinary action by writing property bonds.

The Task Force moved to the issue of regulating individuals not declaring themself as a compensated property bondsman. Ms. Ritter reiterated the suggestion of a designated number of posting triggering an inquiry as to familial relationships, to stop abuse as "accommodation" sureties. After discussion of fraudulent practices and the limited prosecutions, the sense was that circuit bail bond commissioners should keep track of postings.

The Chair summarized that the recommendation will be for drafting of legislation to require registration of professional property bondsmen with MIA, which will post on a website the names of applicants meeting established minimum requirements/qualifications, while the proposed bail bond commissioners would keep MIA advised on forfeitures and other status changes. MIA would be authorized to adopt implementing regulation.

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The Virginia Legislative Information System describes Chapter 460 (HB 1057), Acts of 2004, as "[p]rovid[ing] for licensure and regulation of property and surety bail bondsmen by the Department of Criminal Justice Services. Surety bail bondsmen will continue to be licensed as property and casualty insurance agents by the State Corporation Commission also. A bail bondsman is added to the membership of the Private Security Services Advisory Board. The bill is the result of a study by the Virginia State Crime Commission and is scheduled to become effective July 1, 2005."

Mr. Loveless noted, in 7th Circuit, every property bond posted by a "citizen" is faxed to the bail bond commissioner, who tries to identify individuals who may be abusing the system. Ms. Ritter argued the need for a standard as to how many times a person may act as an accommodation surety. The Task Force further discussed fraudulent, compensated property bondsmen, with Mr. Loveless noting that the 7th Circuit bail bond commissioner advised District Court commissioners about individuals who appear to be acting as professional bondsmen without being licensed, noting that District Court commissioners will not accept a bond from those individuals.

Ms. Reed noted the Attorney General opinion that basically says that courts must accept an affidavit, thereby prohibiting investigation of the sworn information. The Chair believed that a rule change may be required to allow bail bond commissioners to check information, noting that District Court commissioners should not be making legal judgments in this manner.

Mr. Hamilton brought up the need for property to be located in the circuit in which the property is being posted, as the easiest way to keep check property status.

The Chair summarized that the Task Force will be recommending Statewide registration of all professional property bondsmen with MIA, with the necessary Statewide changes to the law, including possibly public local laws. MIA would post registrant's names on a website and adopt implementing regulations. Bail bond commissioners would advise MIA of forfeitures and other status changes. Mr. Frank opposed the recommendation, commenting that 8 bail bond commissioners would be feeding information on bondsmen to MIA and 7 new positions, on top of those needed by MIA, would be needed. The Chair countered that commissioner positions would not necessarily be new positions. Ms. Reed interjected that she had thought a judiciary-wide bail bond commissioner would collate information. Judge Lamasney and the Chair clarified that the Task Force voted at the last meeting not to have a Statewide position but, rather, to have one bail bond commissioner in each circuit.

Mr. Frank expressed his belief that a bunch of unregulated insurance companies are being created with people circumventing registration and using undervalued property. The Chair countered that this is the current state of affairs. Mr. Frank argue that the Task Force will be legitimizing illegal conduct.

Mr. Raimondi, asked what would happen when a bail bond commissioner notifies MIA that a bondsman is in default, responded that MIA would suspend the bondsman summarily pending a hearing.

As to non-professionals, Mr. Laye suggested a rebuttal presumption that posting of 3 bonds per year is done for compensation and, thus, requires registration. After discussion, the Task

Force concurred, with a system for monitoring postings. Mr. Hamilton mention hearings.

Mr. Raimondi expressed concern about allowing posting up to 4 times a property's value, with Mr. Loveless noting a recent reduction from 10 times the value. Mr. Raimondi compared insurers whose assets are calculated based on 3 times the valee.

Judge Long again asked whether property is to be posted on in the circuit where located. Ms. Reed thought the proposal was for county postings. The recommendation is for registration that is effective Statewide but that allows posting of property only in the circuit where the property is located.

Mr. Frank questioned why a Deed of Trust is not recorded for each property bond. Ms. Reed noted that, in the 7th Circuit, a Deed of Trust is recorded. The Chair suggested making this practice Statewide, although Mr. Frank expressed continued concern. Mr. Loveless detailed the 7th Circuit practices. The recommendation is for recordation of all Deeds of Trust. Mr. Frank noted, however, that property checks will be after-the-fact.

The Chair stated another draft report would be sent out to everyone and input would be welcomed. He thanked the members of the Task Force for their efforts.

The meeting ended at 4:50 pm.

Respectfully submitted,

/s/ Elizabeth Buckler Veronis
Staff

Approved: December 3, 2004