

46.1 Bonds and Other Sureties.

(a) General Requirements.

Unless a judge supervising a criminal action under 18 U.S.C. § 3142 expressly directs otherwise, the principal obligor and one or more sureties qualified as provided in this rule must execute every bond, recognizance, or other undertaking required by law or court order in any proceeding.

(b) Unacceptable Sureties.

An attorney in a case, the attorney's spouse or employee, a party to a case, and the party's spouse may not act as a surety on a bond or other undertaking in a criminal case.

(c) Corporate Surety.

A corporate surety upon any undertaking in which the United States is the obligee must be qualified under 31 U.S.C. §§ 9301-9309 and approved by the Secretary of the Treasury of the United States. The parties may consult with the clerk to confirm that a surety is qualified. In all other instances, a corporate surety qualified to write bonds in the State of Nebraska is an acceptable surety. In all cases, a power of attorney showing the authority of the agent signing the bond must be attached to the bond.

(d) Personal Surety.

Persons competent to convey real estate who own land in the State of Nebraska of an unencumbered value of at least the stated penalty of the bond may obtain consideration for qualification as a surety by attaching an acknowledged justification showing:

- (1) a legal description of the real estate;
- (2) a complete list of all encumbrances and liens on the real estate;
- (3) the real estate's market value based on recent sales of like property;
- (4) a waiver of inchoate rights of any character and certification that the real estate is not exempt from execution; and
- (5) certification of the aggregate amount of the penalties of any other subsisting undertakings assured by the bondsman as of that date.

The judge before whom the proceeding is pending will approve or disapprove the surety after reviewing the justification and certifications.

(e) Cash Bonds.

Cash bonds may be deposited into the registry of the court, but only upon execution and filing of a written bond sufficient in form and setting forth the conditions of the bond. Withdrawal of deposited cash bonds may not be made except upon a written court order.

(f) Insufficiency; Remedy.

The government may object to a bond's form or timeliness or the sufficiency of the surety. If the bond is found to be insufficient, the judge may order that a sufficient bond be filed within a stated time, and if the defendant does not comply with the order, the judge may take other appropriate action, including ordering that the defendant required to post a bond be taken into custody.