

11.13.2020

Laura Dukes Beck, Partner
lbeck@shumaker.com
843.996.1927



At some point during your career, chances are you will get a phone call from a friend or friend-of-a-friend who needs help with a bond hearing. "But I don't practice criminal law!" you think. Depending on the severity of the charge, you may want to go ahead and refer the person to someone who does. But, if the charge is a magistrate or municipal level offense, you should be able to handle a basic bond hearing, especially if it is too late to find someone else to refer your friend to for help. Only agree to help for the bond hearing, however. Anything beyond that, send the person to a criminal lawyer. Bond hearings must be held within 24 hours of arrest. Also, remind the person you are going to speak on their behalf, that the hearings are recorded and can be used against them, so they should not say anything expressing remorse, apology, or otherwise, incriminating themselves. A trial is for another day, so do not go into a recitation of facts, guilt, or innocence - this is just to determine the requirements and conditions for being released on bond. If you do decide to represent the defendant, remember to limit your appearance to the bond hearing, and make sure they are aware they have 10 days to request a preliminary hearing if applicable, so they need to find criminal counsel as soon as possible.

When appearing before the magistrate who sets bond, bear in mind the two main issues the judge is considering are flight risk and danger to the community. Present basic information to the judge concerning those two issues. (See South Carolina Constitution, Article 1, § 15 and S.C. Code Ann. § 17-15-10 et seq.)

On flight risk, the judge wants to know: How long has the person lived in the area? Do they own or rent their home? How long have they lived in their home? What family lives in the area? Do they have minor children or other family members they help care for? Do they have a job? How long have they had that job? What is their level of education? Are there mental health or other issues? Is the person an alien or a U.S. citizen? Focus on

their ties to the community, and any other information you can give that shows the person is not a flight risk. Of importance is to ask the person if they have any failures to appear for court in the past - whether that is in traffic court (including failure to pay tickets), family court, or criminal court. Do they have any trials held in absentia? You may not have access to a National Crime Information Center (NCIC) report, otherwise known as a rap sheet, but it is a good idea to have the discussion with the person so that if law enforcement or the solicitor offers a history of flight or failure to appear, you can address it. Also, remember from law school, some charges show flight risk, like failure to stop for blue lights. Try to give the judge as deep a dive as possible and as succinctly as possible as to why the person's local ties offset any flight risk. Some judges like to hear of community involvement and religious affiliation, and some judges may have additional questions they will ask. Be ready by asking as many pertinent things you can of your client.

On danger to the community, it is especially important if you are asked to help someone whom you know has a history of General Sessions charges, that you refer this person to a criminal lawyer. Pending charges are considered, as well as any convictions, by the judge when looking at danger to the community. What is the person charged with now? If, for example, the person is charged with Driving Under the Influence (DUI) - do they have any prior DUIs or Driving With an Unlawful Alcohol Concentration (DUACs)? Was there an accident, and were there injuries? What is the status of those injuries now? Not all arrest warrants are served immediately; how much time has passed, and has the person been in trouble in the interim? Is the person on probation or parole? Are there other steps that can be taken that you can put on the record that may offset danger to the community, for example: getting the person admitted to rehab, seeking drug or alcohol evaluations or mental health evaluations and assistance, or turning over weapons that are in the home to other family

members or counsel. If it is a crime with a victim, go ahead and offer to agree to a no-contact order, where the defendant may not contact the victim, or have anyone else contact the victim, unless the contact is made by the defendant's lawyer, a police officer, or a judge. Restitution, if an issue can be handled by a lawyer later. You can also stipulate to a "do not return" order by the court - where the defendant does not go back to the location of the alleged incident.

In Charleston County, we have a Pretrial Services Report prepared by the Criminal Justice Coordinating Council, which evaluates defendants on a scale of one to four, with one being the lowest risk of failure to appear or re-arrest in the future and four being the highest. Take a look at this report, which should be available to you by asking the Bond Court Clerks for it, as it has important information on past criminal history and failures to appear. It isn't a rap sheet, but it will help you ask the judge for a reasonable bond.

So what is a reasonable bond? Listen to what law enforcement and/or the Solicitor's Office say in their presentations - have they asked for a surety, a high surety, or did they say a personal recognizance (PR) bond is acceptable? If you are not a criminal lawyer, you honestly should be representing folks who should get a PR bond. The South Carolina Constitution requires all bonds to start as PR bonds; they become surety bonds based on flight risk and danger to the community. There is a chance you may have a client who will be required to pay for a surety bond to be released. Maybe you did not know the extent of your person's history, and you end up facing a request for a surety. Remember that the point is to get the defendant to appear at their next court hearing and to keep the community safe. Perhaps a high PR is a good enough carrot and stick to get them to do so - you can ask for that. Or maybe financial resources only permit your client to afford a low surety. Either one can be requested by you at the hearing, if circumstances are not as cut and dry as you thought they were when you agreed to the bond hearing representation.

Currently, in South Carolina, bondsmen require somewhere between one and 10 percent down to stand on a defendant's behalf. If the defendant has 10 percent of the bond amount available in cash, you can also ask the court to allow this 10 percent cash bond to be posted with the Clerk of Court's office. The Bond Court Clerks can walk you through this process. Another option is home detention, where the defendant may only leave home for work, medical and legal appointments, school, and religious services (or whatever else the judge permits.) Ankle monitors, which are an additional expense, must be tied to a surety bond and bonding company that has the ability to monitor the ankle monitor, so do not necessarily ask for or agree to this if it will be a burden on your client. Judges can issue home detention conditions without an ankle monitor.

Also be aware there is a list of "no-bond" offenses, where the magistrate either does not have jurisdiction to set bond, or the magistrate has the discretion not to set bond, and thus refers the case on to a Circuit Court Judge to set bond within 30 days. These are very serious offenses, and even without a criminal past, defendants are considered a danger to the community. If your friend or friend-of-a-friend is charged with one of these offenses, get them a criminal lawyer; do not take them on as a client. (See <https://www.sccourts.org/summaryCourtBenchmarkBook/MemosHTML/2015-12.htm> for a complete list.)

This is a starting point for what to present at a bond hearing on behalf of a defendant, not an all-inclusive list of considerations. Every magistrate setting bond is slightly different, of course, and has a slightly different take on how they weigh information and what is important to them in their determination. And, every person charged with a crime has a slightly different story. This will help you decide whether you can represent that friend who calls at 2:00 a.m., or if you should send them on to the experienced criminal lawyer who can help them into the future.

To receive the latest legal and legislative information straight to your inbox, subscribe [here](#).