

The **GOOD** Law Firm
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February 15, 2018

All Elected Officials

Re: 5th Circuit Rules Bail Constitutional, Reverses Harris County District Court

Dear Elected Official:

How To Write Bail under Cause No. 17-20333; O'Donnell v. Harris County; In United States Court of Appeals for the 5th Circuit (February 14, 2018).

1. If you use a "Bail Schedule" or other automated tool then you are a policy maker subject to federal court review. this requires:

a. If the Defendant obtains a bond pursuant to the "Bond Schedule" the Defendant should be allowed to do a "walk through" and released on bond.

b. When someone is arrested and the defendant maintains that he/she cannot afford the amount of bail set under the schedule, then the defendant must have a meaningful opportunity to be heard at a hearing asking for a deviation where the court has certain financial information to allow the court to give individual magistration.

c. After the hearing, the trial court must set out on the record or in writing its findings or reasons for either changing the bail amount or not changing the bail amount.

c. The hearing must be conducted within 48 hours of arrest.

d. There is no requirement that a defendant be released solely because of a claim of poverty. The court is required to apply the factors for setting bail set out in 17.15 of the Texas Code of Criminal Procedure (or other appropriate state guidelines) which includes the "ability to pay" as one of the factors. However, it is not the only factor.

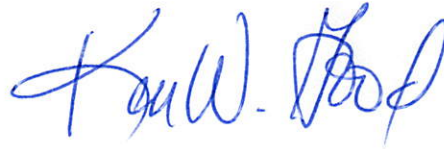
e. If the defendant is not able to post the new bond or the bond does not change, the defendant remains in jail because the constitutional requirements of due process have been met. The defendant would be subject to further review by the court asking for a further bond reduction.

f. If the trial court fails to conduct a hearing within 48 hours of arrest, the defendant should be released on a personal bond.

2. If you do not use a "Bail Schedule" then you are not a policy maker and you are exercising your judicial function, and therefore, you are not subject to federal court review because a judge exercising only judicial functions is not subject to 42 U.S.C. 1983.

- a. Once someone is arrested they are personally magistrated.
- b. The court is required to apply the factors for setting bail set out in 17.15 of the Texas Code of Criminal Procedure which includes "ability to pay" as one of the factors. However, it is not the only factor.
- c. If the defendant cannot post the bond amount, then the defendant remains in jail. The defendant would be subject to further review by the court asking for a bond reduction.

Sincerely,
The Good Law Firm



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