

1986

H.C. Heninger and Doris W. Heninger v. Ninth  
Circuit Court, State of Utah, Washington County,  
St. George Department, and Robert F. Owens,  
Circuit Judge : Brief of Respondent

Utah Supreme Court

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BRIEF

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IN THE SUPREME COURT OF THE STATE OF UTAH

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H. C. HENINGER and DORIS W. )  
HENINGER, )

Plaintiffs-Respondents, )

vs. )

NINTH CIRCUIT COURT, State of )  
Utah, Washington County, )  
St. George Department, and )  
ROBERT F. OWENS, Circuit Judge, )

Case No. 20976

Category No. 13b

Defendants-Appellants. )

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BRIEF OF RESPONDENT

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APPEAL FROM THE FIFTH JUDICIAL DISTRICT COURT IN  
AND FOR WASHINGTON COUNTY, STATE OF UTAH, THE  
HONORABLE J. HARLAN BURNS, JUDGE PRESIDING.

---

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MAY 16 1986

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H. C. HENINGER and DORIS W. HENINGER,

**VS.**

NINTH CIRCUIT COURT, State of  
Utah, Washington County,  
St. George Department, and  
ROBERT F. OWENS, Circuit Judge,

Category No. 13b

Defendants-Appellants. )

## STATEMENT OF ISSUES PRESENTED ON APPEAL

1. Did the District Court err in granting Plaintiffs extraordinary relief in the form of an order prohibiting the enforcement of the Circuit Court's directive revoking Plaintiffs' bonding authority?

2. Did the District Court err in granting declaratory relief, adjudicating Plaintiffs' rights and obligations under the terms of the subject undertakings of bail?

3. Did the District Court err in concluding that the subject undertakings of bail had been exonerated?

Plaintiffs as bail bondsmen petitioned the Fifth  
Judicial District Court, Washington County, for declaratory

judgment adjudicating their rights and obligations under the terms of certain undertakings of bail and further seeking extraordinary relief to the extent necessary to prohibit the Circuit Court's unjustified interference with Plaintiffs' bonding business or enforcement of bail bonds which Plaintiffs claim to have been exonerated. The District Court granted summary judgment declaring that the subject undertakings had been exonerated by operation of law and prohibiting the enforcement of the Circuit Court's directive revoking Plaintiffs' bonding authority, which directive had been issued without affording Plaintiffs notice or hearing. Defendants, the Ninth Circuit Court and Robert F. Owens, prosecute this appeal.

#### STATEMENT OF FACTS

Plaintiffs have acted as bondsmen in the First Judicial District for a period of twenty (20) years. They applied for and were granted the authority to act as bondsmen in the Fifth District in January, 1984. By letter dated January 17, 1984, the Defendants, at times herein referred to as "The Circuit Court", approved Plaintiffs as bondsmen in the Ninth Circuit Court (R. 51-52, 59-60). Plaintiffs, as authorized bondsmen, filed undertakings of bail with the Circuit Court in certain cases involving charges of driving under the influence (R. 18-19, 30-39).

Three individuals by the name of Benally, Marshall and Ashcroft, were charged with alcohol related offenses in the Circuit Court. Each was released on an undertaking of bail

provided by Plaintiffs. All three of the above-mentioned individuals entered pleas of guilty and each were sentenced to sixty (60) days in the Washington County Jail with fifty-eight (58) days of each sentence being suspended. Each individual was also sentenced to pay a fine and granted probation subject to certain terms and conditions. Each of the individuals surrendered himself to the Sheriff of Washington County and served two days in the Washington County Jail beginning on January 19, 1985, February 1, 1985, and February 20, 1985, respectively (R. 20-22).

Another individual by the name of Greening entered a plea of guilty to driving under the influence of alcohol. Greening had previously been released on undertaking of bail filed by Plaintiffs. On February 20, 1985, Greening was sentenced to serve sixty (60) days in the Washington County Jail. All but two days of his sentence was suspended and he was granted the privilege of probation subject to certain terms and conditions which included, as a part of sentence, the payment of a fine and surcharges. The Circuit Court, after entering judgment and pronouncing sentence, stayed the execution of the sentence until March 1, 1985. Greening failed to appear at the Washington County Jail (R. 22-23).

Benally, Marshall and Ashcroft failed to abide by the terms of the probation granted each of them in failing to pay the fines as assessed as a part of their sentences (R. 20).

Plaintiffs requested the exoneration of the above-



mentioned undertakings on the grounds and for the reasons that Benally, Marshall and Ashcroft had surrendered themselves in execution of the sentence and on the grounds that Greening, from and after imposition of sentence, was in the custody of the Circuit Court rather than in the custody of his bondsman and that his bond was therefore exonerated by operation of law. The Circuit Court refused to exonerate these undertakings and took the position that the undertakings continue through the entire term of probation until all terms and conditions thereof had been met (R. 20-26).

No judgments have been taken against Plaintiffs on any of the undertakings.

This action was initiated by Plaintiffs in the Fifth District Court on May 28, 1985, seeking declaratory and/or extraordinary relief regarding their outstanding bonds. The following day, May 29, 1985, the Circuit Court, without notice or hearing revoked Plaintiffs' authorization to act as bail bondsman in the Ninth Circuit Court and advised the Washington County Sheriff that he was no longer authorized to accept Plaintiffs' bonds (R. 24-26).

Thereafter, Plaintiffs amended their complaint seeking extraordinary relief and alleging that the Circuit Court's action in denying Plaintiffs authorization to file undertakings constituted an abuse of discretion and/or was undertaken in retaliation (R. 18-40).

The Fifth District Court in the Summary Judgment from

which this appeal is taken, ruled that the enforcement of the Defendants' directive or order suspending or revoking Plaintiffs' bonding authority was prohibited unless and until Plaintiffs were provided with notice of the basis of any suspension or revocation and given opportunity for full hearing on the issues of their qualifications and fitness (R. 117-118).

The District Court also ruled that the undertakings of bail filed on behalf of Benally, Marshall, Ashcroft and Greening were exonerated and that Plaintiffs' obligation was fulfilled by producing the criminal defendant "at the times and places required by the Court up to and including the time of sentence and that the bail bond is exonerated upon the imposition of the Court's sentence" (R. 117-118).

Plaintiffs submit that the foregoing is a brief but accurate statement of the relevant facts as submitted to the District Court. In their Brief, Defendants assert that Plaintiffs agreed to an oral expansion of the written bond obligation extending the liability on the bond throughout any period of probation which may ultimately be granted. This assertion was injected into the lawsuit by Affidavit of Judge Owens filed after the District Court ruled but before the execution and entry of the written pleadings (R. 95, 107).

#### SUMMARY OF ARGUMENT

Plaintiffs contend that the District Court acted properly and within its jurisdiction in considering the rights and obligations arising out of certain undertakings of bail.

Plaintiffs' complaint clearly sought declaratory relief, the rights and obligations were a proper subject for declaratory relief and the record is devoid of any objection made on the basis of the unavailability of declaratory relief.

Plaintiffs further contend that the Circuit Court acted outside of its discretion or abused its discretion in summarily revoking Plaintiffs' bonding authority and that the District Court acted appropriately in prohibiting the enforcement of that order until Plaintiffs were afforded due process of law.

Finally, Plaintiffs contend that the District Court properly construed the statutory language relating to the duration and termination of a bondsman's obligation and ruled in harmony with traditional principles of criminal law.

## ARGUMENT

### POINT I

THE DISTRICT COURT HAS POWER TO SUPERVISE THE  
CIRCUIT COURT BY EXTRAORDINARY WRIT.

Article VIII, §5, Constitution of Utah, effective July 1, 1985, provides in part as follows:

The District court shall have original jurisdiction in all matters except as limited by this constitution or by statute, and power to issue all extraordinary writs.  
[Emphasis added]

The power to issue such writs constitutes the power to supervise, at least within the limited scope of the writs.

Section U.C.A. 78-3-4, clearly grants the District Court supervisory jurisdiction over the Circuit Court. It reads as follows:

The district court shall have original jurisdiction in all matters civil and criminal, not excepted in the Constitution and not prohibited by law; appellate jurisdiction from all inferior courts and tribunals, and a supervisory control of the same. The district courts, or any judges thereof, shall have power to issue writs of habeas corpus, mandamus, injunction, quo warranto, certiorari, prohibition, and other writs necessary to carry into effect their orders, judgments and decrees, and to give them a general control over inferior courts and tribunals within their respective jurisdictions. Under the general supervision of the chief judge of the judicial council and subject to policies established by the judicial council, cases filed in the district court, which are also within concurrent jurisdiction of the circuit court, may be transferred to the circuit court by the presiding judge of the district court in multiple judge districts, or the district court judge in single judge districts. The transfer of these cases may be made upon the court's own motion or upon the motion of either party for adjudication. When an order is made transferring a case, the court must transmit the pleadings and papers to the circuit court to which the case is transferred. The circuit court shall have the same jurisdiction as if the case had been originally commenced in the circuit court and any appeals from final judgments shall run to the district court as provided for in section 78-4-11 unless the Supreme Court by writ of certiorari shall order the appeal heard by the Supreme Court.

Defendants argue that this section is unconstitutional or has been repealed by implication as a result of the latest amendments to our State Constitution. Defendants provide us with no legislative history which would indicate that the Legislature intended or anticipated such a result. Indeed, this section was amended in 1983 to include all of the references to the Circuit Court and the Judicial Council. The Judicial Council acquired constitutional status the following year by the amendment of Article VIII of the Constitution of Utah. The Legislature has acted to harmonize the powers and authority of the District Court

with the responsibilities of the Judicial Council. Plaintiffs see nothing in the legislation or in the constitutional amendment which would indicate that the statute as amended and reenacted in 1983 has been repealed by implication or that it is unconstitutional merely by reason of the fact that the Judicial Council has acquired constitutional status.

The Supreme Court and the District Court are the only Courts of this State which are created by the Constitution. The Circuit Court was created by an act of the Legislature. It is inconceivable that the Legislature which has the power to create or abolish the Circuit Court would not have power to provide for its supervision.

## POINT II

### THE DISTRICT COURT DID NOT ERR IN GRANTING DECLARATORY OR EXTRAORDINARY RELIEF.

Defendants' position apparently fails to recognize that the District Court's jurisdiction was invoked under four separate and distinct causes of action and relief was sought in the nature of certiorari, prohibition, and declaratory judgment. Inasmuch as the arguments relating to the availability of relief vary from one cause of action to another, Plaintiffs will treat them separately herein.

In their First Claim for Relief, Plaintiffs asked that the District Court require the Circuit Court to certify its files, records and transcripts concerning the subject criminal proceedings and asked that the District Court issue its writ

requiring Defendants to discharge Plaintiffs from liability under the subject undertakings. In their Second Claim for Relief, Plaintiffs requested declaratory judgment, asking the District Court to "construe and interpret Utah law with respect to the duties and obligations of the Plaintiffs under the facts and circumstances as set forth in the above-mentioned criminal proceedings and in similar proceedings." In their Third Claim for Relief, Plaintiffs asked that the District Court issue its order enjoining the Defendants from in any way retaliating against the Plaintiffs, including an order enjoining any unjustified interference with Plaintiffs' bonding authority. Finally, in the Fourth Claim for Relief, Plaintiffs asked that the District Court exercise its supervisory jurisdiction over Defendants and issue all orders and writs necessary in support thereof "requiring Defendants to accept the Plaintiffs undertaking barring some articulable and a justifiable reason for refusing to honor the same."

Relief was granted in the following particulars:

1. The District Court prohibited the enforcement of the Circuit Court's directive terminating Plaintiffs' bonding authority "unless and until Plaintiffs are provided with notice of the basis of any suspension or revocation of their bonding authority and given opportunity for a full hearing on the issues of their qualification and fitness to act as bondmen in the Ninth Circuit Court."

2. By way of declaratory relief, the District Court

determined that the subject undertakings of bail had been exonerated.

3. Finally the District Court exercised its supervisory jurisdiction and articulated the nature and extent of a bondsman's obligation in a criminal case.

A

AN ORDER OR WRIT IN THE NATURE OF PROHIBITION  
IS AN APPROPRIATE REMEDY.

In State ex rel. Weaver v. Dostert, W. Va., 300 S.E.2d 102 (1983), the West Virginia Supreme Court of Appeals found a Writ of Prohibition to be an appropriate remedy for staying a lower court's order revoking bonding authority until the bondsman was provided notice and a hearing.

B

THE DISTRICT COURT APPROPRIATELY GRANTED  
DECLARATORY RELIEF.

Defendants are determined to overlook the declaratory aspects of the District Court Judgment and to attack the entire Judgment on the basis of the unavailability of extraordinary relief.

U.C.A. 78-33-1 provides as follows:

The district courts within their respective jurisdictions shall have power to declare rights, status, and other legal relations, whether or not further relief is or could be claimed. No action or proceeding shall be open to objection on the ground that a declaratory judgment or decree is prayed for. The declaration may be either affirmative or negative in form and effect; and such declaration shall have the force and effect of a final judgment or decree.

The District Court had power to "declare rights, status, and other legal relationships" relating to the nature and extent of the Plaintiffs' obligations on subject undertakings of bail.

Declaratory relief is not confined to cases where no other relief was or could be granted. Gray v. Defa, 103 Utah 339, 135 P.2d 251 (1943); Whitmore v. Murray City, 107 Utah 445, 154 P.2d 748 (1944). Indeed, the Declaratory Judgment Act is remedial in nature and "its purpose is to settle and to afford relief from uncertainty and insecurity with respect to rights, status, and other legal relations; and is to be liberally construed and administered." U.C.A. 78-33-12.

C

NO APPEAL WAS AVAILABLE TO PLAINTIFFS NOR WAS ANY SUCH RIGHT WAIVED.

Defendants assert that Plaintiffs could have appealed the Circuit Court's ruling and that having failed to do so are not entitled to seek declaratory or extraordinary relief in determining their liability on outstanding undertakings of bail. Contrary to this assertion, there exists no final judgment from which Plaintiffs could have perfected an appeal.

Whenever a minute entry is made indicating that a criminal defendant failed to appear as required, that minute entry "is deemed a forfeiture of the bail which has been posted." U.C.A. 77-20a-1. No action can be initiated for the purpose of taking judgment against a surety until sixty (60) days have



elapsed from the date of the forfeiture. U.C.A. 77-20a-2.

Defendants have not initiated any proceeding against Plaintiffs or obtained any final judgment against them as sureties on the subject undertakings.

After the Defendants had indicated their intention to enforce undertakings given on behalf of persons who had failed to meet some condition of their probation, Plaintiffs initiated this action in the District Court in an attempt to have their rights and liabilities adjudicated prior to the initiation of a multitude of actions in the Circuit Court to take judgment against Plaintiffs.

Plaintiffs have no right of appeal under the rule announced in People v. Tremayne, 3 Utah 331, 3 P. 85 (1884). Defendants take the position that Tremayne no longer has any application as a result of the many changes in the bail and court structure which have occurred since that case was decided.

On page 6 of their Brief, Defendants state: "Moreover, this Court has entertained an appeal from a circuit court bail forfeiture order which had been appealed to the district court." Defendants cite Walton v. Circuit Court, Utah, Case No. 16281 (Filed December 12, 1979) and go on to say: "Appealability of a bond forfeiture order was not an issue, but the case was successfully appealed to the district court and the district court order was appealed to the Utah Supreme Court." A photocopy of the Third District Court pleadings in Walton (Verified Complaint and Petition for Issuance of Certiorari and the Summary

Judgment) are attached hereto and designated as Addendum "A" and "B". Contrary to Defendants' conclusions, the bail forfeitures in Walton were not appealed to the District Court from the Circuit Court. A complaint for declaratory judgment and a petition for extraordinary relief was filed with the District Court.

A review of these pleadings in Walton will reveal that the pleadings filed and the theories relied upon therein are virtually identical to the course followed by Plaintiffs in the instant action.

Plaintiffs act as surety on at least ten individual undertakings of bail which Defendants have refused to exonerate. If Plaintiffs' only remedy is to wait until the Circuit Court has proceeded to judgment on each undertaking and appeal each individual case to the District Court, the remedy can hardly be deemed adequate.

### POINT III

JUDGE OWENS HAS AUTHORITY AND DISCRETION TO SUPERVISE BONDSMEN IN THE NINTH CIRCUIT COURT BUT THE REVOCATION OF PLAINTIFFS' BONDING AUTHORITY WAS IMPROPER.

It has been held that the deprivation, by revocation of a license previously granted, of the right to engage in the bail bond business is a judicial act that must meet the requirements of due process of law. In Re Carter, 192 F.2d 15 (1951); Weaver v. Dostert, supra.

In Carter, supra, the United States Court of Appeals, District of Columbia, was considering the appropriateness of the

Federal District Court's action in denying a bondsman's application to do business with the Court and referring to an earlier opinion involving the same bondsman stated the following:

On appeal we held the revocation invalid for lack of "a hearing and revelation of all data upon which a decision is to be based." We held that whatever might be true of the grant of the right to engage in the bonding business, and "the deprivation of that right, once granted, is a judicial act, requiring due process of law." 192 F.2d, p.16.

The Federal District Court had taken the position that Carter's application was "in the administrative discretion of the Court". The Court of Appeals likened the application of a bondsman to that of an attorney applying to practice before a court and observed:

But both lawyers and bondsman are on quite different footing from a Court's Clerk or Bailiff. They are not completely under the Court's control, or obligated to deal with the public impartially; within wide limits they may chose how, when, where and whom they will serve. They are not commonly paid from public funds, their callings are not necessarily limited to a single person or a few persons, they cannot be deprived of their functions in a Court's discretion. 192 F.2d, pp. 16-17.

The Court of Appeals went on to state:

Old charges never brought to trial, and appellant's innocent mistake of fact on an immaterial matter, do not support the [revocation] order. Nor do any secret charges that may have been made by anonymous informants whom the appellant had no opportunity to confront and cross examine. 192 F.2d, p. 17.

The Court of Appeals concluded:

We do not imply that in our opinion the appealed order would be valid if it were administrative. Like the order involved in Carter's previous appeal, if it were upheld, it would destroy an established business. We do not imply that in our opinion a purely administrative refusal to renew, or to grant, a license to do

a lawful business could be supported if based on arbitrary grounds or made without such a "hearing and opportunity to answer . . . as would constitute due process." 192 F.2d, p. 17.

The Judgment appealed from in the instant case merely prohibits the enforcement of any order or directive suspending or evoking Plaintiff's bonding authority unless Plaintiffs are first provided with notice of the basis of any suspension or revocation and given opportunity for full hearing on the issues of their qualification and fitness.

Defendants have cited Taylor v. Waddey, 206 Tenn. 497, 334 S.W.2d 733 (1960). The factual background in Waddey, supra, is briefly stated as follows:

On May 13, 1959, one of the General Sessions Judges had notice served by the Sheriff on the appellee bondsman and bonding company to appear at a fixed place in the courthouse of Davidson County on May 20th at a fixed time "and then and there show cause why the order of November 12, 1958, approving the Petition" etc. of the bonding company and its power of attorney, should not be revoked and canceled. On May 25th after the hearing, pursuant to this Notice, the five Judges of the General Sessions Courts of Davidson County entered an order which among other things shows that "after the unanimous decision of the five Judges of the General Sessions Courts sitting en banke that the said Robert Waddey be permanently suspended from the writing of bonds in The General Sessions Court and it is, therefore, ordered, adjudged and decreed that said Robert Waddey is from and after Friday, May 22, 1959, permanently suspended from the writing of bonds in the General Sessions Court, and further that the show cause order in respect to The Athens Bonding Company be and the same is indefinitely taken under advisement." 334 S.W.2d, p. 734.

Defendants apparently cite this case for the proposition that a Court has inherent power to regulate the bonding business and that the power extends to more than an

examination of financial responsibility but includes also moral qualification. With this premise Plaintiffs heartily agree. Plaintiffs cite the case to provide the Court with a comparison of the method by which the bonding authority was terminated in that case as opposed to the method by which Plaintiffs' bonding authority was terminated in the instance case.

The Supreme Court of Tennessee went on to state:

So long as the bondsman complies with the statutes above referred to and meets a fair and reasonable standard in the conduct of his business before these courts, then there is no one going to prevent him from practicing his profession therein. 334 S.W.2d, p. 737.

Defendants quote the same language from Taylor v. Waddey, supra, suggesting that Plaintiffs have somehow failed to meet "a fair and reasonable standard in the conduct of [their] business" before the Ninth Circuit Court. Plaintiffs challenge Defendants to articulate one incident of misconduct supported by the record of the District Court.

Plaintiffs agree that Judge Owens has authority and discretion to supervise them in the conduct of their bonding business before his court. Plaintiffs merely asked the District Court to determine the legality of the Circuit Court's policy regarding the nature and extent of their obligation on certain bail bonds. The Circuit Court responded by arbitrarily terminating their bonding authority without notice and without hearing. Plaintiffs fail to see that any discretion was exercised and if such conduct constitutes the exercise of discretion, it is an abuse thereof.

POINT IV

THE SUBJECT UNDERTAKINGS OF BAIL HAVE BEEN  
EXONERATED BY OPERATION OF LAW.

U.C.A. 1953 Section 77-20-7(1) provides as follows:

The principal and the sureties on the written undertaking are liable thereon during all proceedings and for all appearances required of the defendant up to and including the surrender of the defendant in execution of any sentence imposed irrespective of any contrary provision in the undertaking. [Emphasis Added]

U.C.A. 77-20-8 provides pertinent part:

Upon conviction, by plea or trial, the court may order a defendant to be taken into custody or may order bail continued pending imposition of sentence. [Emphasis added.]

The two sections are harmonized when read in conjunction with U.C.A. 77-18-1 which reads in pertinent part as follows:

On a plea of guilty or no contest or conviction of any crime of offense, except in the case of class C misdemeanors, for which supervised probation by the Department of Corrections may not be imposed, and if it appears compatible with the public interest, the court may suspend the imposition or execution of sentence and place the defendant on probation for a period of time it may determine, unless otherwise provided by law. The legal custody of all probationers referred to the Department of Corrections is vested in the court having jurisdiction and the Department of Correction. The legal custody of all unsupervised probationers is vested in the court having jurisdiction of the offender. [Emphasis added.]

The Circuit Court takes the position that an undertaking remains in force and effect after sentence is imposed and until such time as the conditions of probation, if granted, are met.

A bail bond serves a three-fold purpose: (1) it

permits release of a defendant from incarceration; (2) it delivers the custody of the defendant to the bail bondsman; and (3) it guarantees the personal appearance of the defendant for trial and for imposition of sentence.

Benally, Marshall and Ashcroft appeared for the imposition of sentence. They were all granted probation as a condition of which they were to each to serve two days in the Washington County Jail. Each of these defendants surrendered themselves to the custody of the Sheriff of Washington County and upon completion of this imprisonment they left the jail pursuant to the order of probation, not by reason of the undertakings of bail. It cannot be said that they were still on bail while committed to jail. Commitment to jail terminates the obligation of bail. U.C.A. 77-20-8(2).

By the order of probation, each of these defendants was committed to the legal custody of the Circuit Court. Each of these three defendants surrendered themselves to the actual custody of the Washington County Sheriff.

Greening, on the other hand, while not submitting himself to the physical custody of the Sheriff of Washington County was, as a probationer, from and after the entry of the order of probation, in the legal custody of the Circuit Court rather than in the custody of his bail bondsman. U.C.A. 77-18-1.

An interesting anomaly arises when U.C.A. 77-20-8(2) is applied to the Circuit Court's policy. Under that section, a bail bondsman is entitled to effect the surrender of a defendant

for whom he has bonded by delivering a certified copy of the undertaking to a peace officer who then detains the defendant in his custody "as upon a commitment."

In commenting upon this anomaly, a California Court of Appeals in People v. Doe, 172 Cal. App.2d 812, 342 P.2d 533 (1959) stated:

But if the court has granted the defendant probation, the power to surrender the defendant not only would defeat the purpose of probation, but would impair its operation, as both the court and the sureties would have the control of the defendant.

\* \* \*

If bond were still in effect after a probation order was made which did not impose incarceration as a term thereof, a surrender of the defendant to the jailer by the bondsman would be an idle act; because the jailer would then have no authority to imprison the defendant, she being free on the terms of the probation order.

An order granting probation without imposing incarceration as a term thereof, frees from jail a defendant who has been unable to post bail. It is inconsistent that a defendant, who is on bail, should be in a less favorable position than such a prisoner, or that he should continue in the technical custody of his bondsman.

In Rodman v. Superior Court, supra, 13 Cal.2d 262, 89 P.2d 109, the court held that when a defendant appears at the "time for pronouncement of judgment" under Pen. Code sec. 1191 (which is also the time for hearing of an application for probation), the surety is entitled to be exonerated upon application. This is inconsistent with the theory that if at the time of such appearance and hearing, the defendant is granted probation, the bail bond still continues in a state of suspended animation, to be revived if ever probation is revoked. 342 P.2d, p. 537.

See also Trammel v. State, Tex. Crim., S.W.2d 528 (1975).

Plaintiffs submit that the Circuit Court's policy is in direct contradiction to the statutory directives of the Utah Code



and that from and after the imposition of sentence, the criminal defendants, and each of them, were in the custody of the Circuit Court and no longer in the custody of the Plaintiffs or in any way subject to the Plaintiffs' control.

A criminal defendant cannot be compelled, at the price of his liberty, between the date of his arrest and the close of his trial, to give a bond guaranteeing the performance of a sentence which the law presumes will never be imposed upon him as an innocent man. He can only be required, at the outset of any prosecution, to give a bond guaranteeing his appearance through all stages of a criminal proceedings until such time as the court acquires custody of his person upon judgment of conviction.

Finally, Plaintiffs briefly addressed the allegation that Plaintiffs entered into an oral agreement with the Circuit Court expanding the terms and conditions of the subject undertakings. In their brief, Defendants state that "[t]he language of the individual bonds provides that the terms would continue through execution of sentence." Defendants then support the statement by referring, not to the written undertakings but, to a letter from Judge Owens to the Sheriff of Washington County and an Affidavit filed by the Judge following the District Court's ruling (R. 61, 107). Plaintiffs have attached all of the subject undertakings of bail as addendum hereto for the purpose of demonstrating that the written undertakings contain no such language. (Addendum C, D, E and F.)

Plaintiffs categorically deny any such oral expansion

of their obligations under the subject undertakings. Furthermore, Defendants' argument is without merit for the following reasons: (1) Defendants failed to properly raise the issue in the District Court; (2) any such attempt to orally expand Plaintiffs' obligations would be unenforceable under the statute of frauds and evidence of any such attempted expansion would be inadmissible under the parol evidence rule; and (3) the applicable statutes define the nature and extent of the sureties obligations and the statute governs "irrespective of any contrary provision in the undertaking." U.C.A. 77-20-7.

#### CONCLUSION

Plaintiffs respectfully submit that the District Court acted appropriately in granting declaratory relief and adjudicating disputed rights and obligations existing between the parties. The court ruled without any objection being made by Defendants regarding the availability of declaratory relief. Indeed, such an argument would have been without merit.

The District Court further acted appropriately in granting extraordinary relief to the extent that such relief was appropriate in enjoining the enforcement of the Circuit Court's directive which had deprived Plaintiffs of their bonding authority without notice or hearing.

Finally, Plaintiffs submit that the District Court's ruling concerning the duration and exoneration of the subject undertakings of bail is the only interpretation which harmonizes all of the relevant statutory law and is in harmony with

traditional principles of criminal and constitutional law.

The District Court should be affirmed in all respects.

RESPECTFULLY SUBMITTED this 15 day of May, 1986.

15/  
Gary W. Pendleton  
Attorney for Plaintiffs and  
Respondents

CERTIFICATE OF SERVICE

I do hereby certify that on this 15 day of May, 1986,  
I did personally mail a true and correct copy of the above and  
foregoing Brief of Respondents to David L. Wilkinson, Attorney  
General, Diane W. Wilkins, Assistant Attorney General, 236 State  
Capitol, Salt Lake City, Utah 84114.

15/  
Secretary

25-07  
C9.2688

Ronald C. Barker  
Attorney for plaintiffs  
2870 South State Street  
Salt Lake City, Utah 84115  
Telephone: 486-9636

FILED

BY *[Signature]*  
CLERK

IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT  
IN AND FOR SALT LAKE COUNTY, STATE OF UTAH

---ooOoo---

VINCENT P. WALTON, as )  
general partner of BEEHIVE )  
BAIL BONDS, a limited part- )  
nership, and LEO G. BATEMAN )  
and GLADYS M. BATEMAN, )

Plaintiffs, )

vs. )

CIRCUIT COURT, STATE OF )  
UTAH, SALT LAKE COUNTY, )  
SALT LAKE CITY DEPARTMENT, )  
and the HONORABLE MAURICE )  
D. JONES, Circuit Judge, )

Defendants. )

VERIFIED COMPLAINT AND  
PETITION FOR ISSUANCE OF  
CERTIORARI

Civil No. C 78- 78 5004

---ooOoo---

Plaintiffs complain and allege against the defend-  
dants as follows:

FIRST CLAIM FOR RELIEF

1. The plaintiff Behive Bail Bonds is a limited partnership organized and existing under the Laws of the State of Utah, with Vincent P. Walton as the sole general partner. The plaintiffs Leo G. Bateman and Gladys M. Bateman, hereinafter referred to as "Batemans," are husband and wife, and are the persons who, for and on behalf of Beehive Bail Bonds executed and filed the undertakings in bail which are the subject matter of this lawsuit, and whose bail bonds the defendatns have ordered forfeited. The plaintiff Leo G. Bateman is the sole limited partner in Beehive Bail Bonds.

2. That the defendant Circuit Court is a duly organized and existing Court of the State of Utah, as provided by 78-4-1, UCA, 1953, et seq., and the defendant Jones is a judge of said Court.

3. The District Court has supervisory control

over the Circuit Court as provided by 78-3-4. UCA, 1953, Art. VIII, § 7 of the Constitution of the State of Utah, Rule 65B, URCP, including the power to issue writs of mandamus, injunction, certiorari, prohibition, and other writs necessary to carry into effect their orders, judgments and decrees, and to give them a general control over inferior courts and tribunals, including the defendants in this matter. This is an appropriate case for the exercise of that power to control the acts of the defendants herein, it appearing that plaintiff herein has no standing to appeal the orders forfeiting the bail or denying the motions to exonerate the bail bonds since the bail bondsmen are not parties to the criminal proceedings in the Salt Lake City Court. See People v. Tremayne, 3 U. 331, 3 P. 85.

4. That plaintiffs filed undertakings of bail with the City Court of Salt Lake City, in the following cases, copies of which are annexed hereto as exhibits "A", "B", "C" and "D". In each instance a fine was imposed upon the defendant which the defendant in each of those cases has failed to pay:

#A0130669 - Donald J. Cromer  
#A0253135 - George Tovar  
#A0253135 - David George Crenshaw, aka David  
Gregory  
#A0271648 - Michael Rulin Hedelius

5. In each of the above-mentioned cases the Honorable Maurice D. Jones, Judge of the Circuit Court (which has taken over the functions of the Salt Lake City Court) has ordered the undertaking in bail filed by plaintiffs herein forfeited by reason of non-payment of said fines by the defendants in the cases listed in ¶ 3 above, and has denied plaintiffs' herein motion to exonerate said bonds. A copy of the orders denying said motions is annexed hereto as exhibits "E", "F", "G" and "H".

6. Under the terms of said undertakings, exhibits "A" thru "D", the obligation of plaintiff herein is limited to (a) assuring the appearance of the defendants in those

cases before the lower court to answer the charge, to (b) assure that said defendants would at all times hold (or surrender) themselves amenable to the orders and process of the court, (c) and if convicted, that they would appear for judgment and (d) render themselves in execution thereof. There is no agreement in said exhibits "A" thru "D" that the bail bondsman would pay any fine which might be imposed by the Court.

7. Under the terms of applicable laws and statutes, including but not limited to the provisions of 77-33-13, 77-35-4, 77-43-22, 77-43-23, 77-43-24, 77-43-25, UCA, 1953, the liability and obligation of plaintiffs herein by reason of said bail bonds, exhibits "A" thru "D", terminated, was extinguished and liability under those bail bonds was exonerated at the time that the Court imposed sentence upon those defendants.

8. The order of the Circuit Court (and City Court) forfeiting the bail bonds and denying the motion to exonerate the bonds was and is void, contrary to law, and should be vacated and set aside, and the defendants should be ordered and directed to do so.

#### SECOND CLAIM FOR RELIEF

9. Plaintiffs incorporate herein by reference thereto all of the allegations contained in the first claim for relief above.

10. This action is a suit for declaratory judgment as provided by Title 78, Chapter 33, UCA, 1953, and other applicable laws. The defendants are all of the parties required to be made parties to this action as provided by 78-33-11, UCA, 1953.

11. The Court should declare, as provided by 78-33-2, UCA, 1953, the rights, status, obligations and legal relations between the plaintiffs and defendants with respect to the obligation, if any of a bail bondsman to pay a fine

imposed by the Court after a finding of guilt or plea of guilt has been entered.

12. Under the provisions of the statutes and laws mentioned in ¶ 7 above, including 77-33-13, 77-43-23, 77-43-24, 77-33-25, UCA, 1953, surrender of the person on whose behalf the undertaking in bail was filed exonerates the bail bond, regardless of the disposition of the charges pending against that person, and whether or not he pays any fine that may be imposed by the Court in that proceeding. The Honorable Maurice D. Jones has ruled that surrender of the person for whom the undertaking was filed does not exonerate the undertaking in bail, and that the bail bondsman remains liable thereunder to guarantee payment of any fine that is imposed, and the performance of any other conditions imposed by the Court order, which would presumably include performance of conditions of probation, etc.

13. It is in the interests of orderly administration of justice and the rights of the parties, that the Court construe and interpret whether or not surrender of the person for whom an undertaking in bail has been filed by a bail bondsman exonerates and discharges that bond, and if not, what duties and obligations the bail bondsman has after the surrender of the person for whom the undertaking in bail was filed.

#### THIRD CLAIM FOR RELIEF

14. Plaintiffs incorporate herein by reference thereto and re-allege all of the allegations in the first and second claims for relief, above.

15. The Court should construe and interpret whether or not a finding of guilt or a plea of guilty by the person for whom the undertaking in bail has been filed accompanied by his appearance before the Court, exonerates the undertaking in bail. In the alternative, the Court should declare whether or not the imposition of sentence by

the Court after a finding of guilt or plea of guilty by the person for whom an undertaking in bail has been filed, accompanied by his appearance before the Court, exonerates the undertaking in bail. It is the position of plaintiffs that either of said acts (finding or plea of guilty or imposition of sentence, together with his appearance before the Court) discharges the bail bondsman and exonerates the undertaking in bail. Among other things, the person is then in the custody of the Court and the bail bondsman has no further rights or duties concerning him. See also statutes mentioned in ¶¶ 6 and 12 above. It is the position of the defendants that said acts or events do not discharge the bail bondsman from liability or exonerate the undertaking in bail. See first claim for relief above, and exhibits "E" thru "H" attached hereto.

#### FOURTH CLAIM FOR RELIEF

16. Plaintiffs incorporate herein by reference thereto all of the allegations in the first, second and third claims for relief, above.

17. The Court should declare, construe and interpret the circumstances, terms and conditions upon and/or under which a bail bondsman can be and/or is relieved of further liability, duties or responsibilities on his undertaking in bail, and the acts or things which he is required to do and/or which must occur to terminate his liability and obligations.

WHEREFORE, plaintiffs pray for judgment against the defendants and/or declaring, interpreting and construing the rights, duties and obligations of the parties and of bail bondsmen under Utah Law, under the usual form of undertaking on bail in use in Utah (see exhibits "A" thru "D" attached), as follows:

18. For the issuance of a writ of certiorari directing the defendants to certify to the District Court



their entire files, records and transcript concerning the cases listed in ¶ 4 above, including the proceedings and orders pertaining to proceedings for forfeiture of the undertakings on bail of the plaintiff herein in those cases, and orders entered in connection therewith.

19. On the first claim for relief for a writ of mandate requiring the defendants to discharge the plaintiffs herein from liability under, and to exonerate the undertakings in bail filed by plaintiffs herein on behalf of the persons accused in the cases listed in ¶ 4 above, and for a writ of prohibition prohibiting the defendants from forfeiting the undertaking on bail in said cases, from taking or permitting the taking or prosecuting of any proceedings to require the payment of any amounts by plaintiffs herein by reason of and/or as a result of the filing of the undertakings in bail filed in said cases by the plaintiff herein, including prohibiting the defendants from causing the removal of plaintiffs' signs offering bail bonding service from the jail or other public places, or from otherwise interfering with the conduct by plaintiffs herein of their bail bonding business by reason of and/or as a result of this lawsuit or the undertakings in bail filed in connection with those matters, or the failure of plaintiffs herein to pay the amount of the bail forfeiture in those cases.

20. On the second claim for relief for declaratory judgment construing and interpreting Utah Law with respect to the duties and obligations of bail bondsmen after surrender of the accused to the jail, police or other appropriate public official, and determining that upon such an occurrence the undertaking in bail is exonerated and that the bail bondsman is thereupon discharged from further liability or obligation by reason of that undertaking.

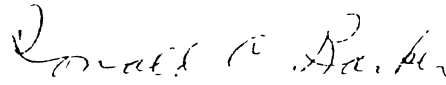
21. On the third claim for relief for declaratory judgment construing and interpreting Utah Law with respect

t the duties and obligations of bail bondsmen after a finding of guilt, and after imposition of sentence, adjudging that upon such an occurrence the undertaking in bail is exonerated and that the bail bondsman is thereupon discharged from further liability or obligations by reason of that undertaking.

22. On the fourth claim for relief for declaratory judgment construing and interpreting Utah Law to declare the circumstances, terms and conditions upon and/or under which a bail bondsman can be and/or is relieved from further liability, duties or responsibilities on his undertaking in bail, and the acts or things which he is required to do and/or which must occur to terminate his liability and obligations.

23. For such other and further relief as the Court deems proper in the circumstances.

Dated this 5 day of August, 1978.

  
\_\_\_\_\_  
Ronald C. Barker, attorney for  
plaintiffs

STATE OF UTAH            )  
                              : ss.  
County of Salt Lake)

LEO G. BATEMAN, GLADYS M. BATEMAN and VINCE WALTON, being each first duly sworn, each on his oath deposes and says that he is a plaintiff in the above-entitled matter; that he has read the foregoing complaint and petition for writ of certiorari and is familiar with the statements of fact contained therein; that each of said statements is true of his own knowledge except for statements made on information and belief and as to each such statement he believes it to be true; that just cause exists for the prosecution of this matter, for the issuance of a writ of certiorari, and for declaratory judgment defining the rights, duties and obligations of bail bondsmen; that different

judges of the Circuit Court, Salt Lake City Department,  
construe the rights, duties and obligations of bail bondsmen  
in an manner substantially different from the manner in  
which they are construed by the Honorable Maurice D. Jones,  
that it is in the interests of justice and orderly judicial  
proceedings that the rights, duties and obligations of bail  
bondsmen be defined by this Court.

Dated this 5<sup>th</sup> day of August, 1978.

Leo G. Bateman  
Leo G. Bateman

Gladys M. Bateman  
Gladys M. Bateman

Vince Walton  
Vince Walton

Subscribed and sworn to before me this 8 day  
of August, 1978.

Notary Public residing at Salt Lake City, Utah  
Notary Public residing at Salt Lake City, Utah

My commission expires: Feb. 16, 1980

Plaintiffs' addresses:

1146 East 2700 South  
Salt Lake City, Utah 84115

3249 South West Temple  
Salt Lake City, Utah 84115

Ronald C. Barker  
Attorney for plaintiffs  
2870 South State Street  
Salt Lake City, Utah 84115  
Telephone: 486-9636

IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT  
IN AND FOR SALT LAKE COUNTY, STATE OF UTAH

---ooOoo---

VINCENT P. WALTON, et al., )

Plaintiffs, )

vs. )

CIRCUIT COURT, STATE OF )  
UTAH, SALT LAKE COUNTY, SALT )  
LAKE CITY DEPARTMENT, and )  
the HONORABLE MAURICE D. )  
JONES, Circuit Judge, )

SUMMARY JUDGMENT

Civil No. C 78-5004

Defendants. )

---ooOoo---

Plaintiffs' motion for summary judgment in the above-entitled matter came on regularly for hearing at the hour of 10:00 a.m. on the 31st day of October, 1978, before the Honorable G. Hal Taylor, District Judge. Plaintiffs were represented by Ronald C. Barker and defendants were represented by Robert R. Wallace, Assistant Attorney General. Oral arguments were presented by respective counsel. It appearing to the Court that the undertakings in bail filed with the defendants do not constitute an undertaking that the defendant on whose behalf the undertaking was filed will pay a fine that may be assessed against that person by the defendants and that the obligation of plaintiff under the terms of that bail bond and applicable law is limited to the obligations to produce the defendant at appropriate times and places up to and including the time of sentencing, but not thereafter. The Court being fully advised in the premises and good cause appearing therefor, it is hereby

ORDERED, ADJUDGED AND DECREED as follows:

1. The defendants are ordered to exonerate the undertakings in bail filed by plaintiff and to discharge and

release the plaintiffs from liability under the following  
bail bonds filed by plaintiffs with defendants.

Case #A0130669 - Donald J. Cromer  
Case #A0253135 - George Tovar  
Case #A0253135 - David George Crenshaw, aka David  
Gregory  
Case #A0271648 - Michael Rulin Hedelius

Defendants are restrained, enjoined and prohibited from  
forfeiting the bail posted by plaintiff in those cases; from  
in any manner taking or prosecuting any proceedings to  
require payment of any amounts by reason of non-payment by  
the defendants in those cases of their fines imposed by the  
defendants; from causing the removal of plaintiffs' signs  
offering their bail bonding service from the jail or other  
public places, or from otherwise interfering with the con-  
duct by plaintiffs of their bail bonding business by reason  
of non-payment of said fines and the failure of plaintiff  
herein to pay said fines on behalf of the defendants in  
those cases.

2. The Court determines that the obligation of  
the bail bondsman is fulfilled by the producing the person  
for whom the bail was posted at the times and places required  
by the Court up to and including the time of sentencing, and  
that under the provisions of 77-33-13, UCA, 1953, and other  
applicable laws, that the bail bond is exonerated upon entry  
of a plea by the person for whom the bond is furnished,  
unless the bail bondsman agrees that the bond may continue  
thereafter.

Dated the 22<sup>nd</sup> day of November, 1978.

BY THE COURT:

ATTEST  
W. L. STERLING EVANS  
CLERK  
BY [Signature]  
D. J. [Signature]

[Signature]  
District Judge

**Plaintiff**)  
State of Utah.)  
)  
)  
)  
)  
)  
**vs.**)  
)  
)  
**Criminal**)  
**No.**)  
Gregory Scott Dewdney.)  
**Defendant(s)**)  
(include address and DOB) )  
)  
)  
25 East 450 South )  
Salt Lake City, UT )  
DOB: 5-22-57 )  
**UNDERTAKING**

An order was made on the date of Nov 7, 1954 by the above court,  
that the defendant be held to answer upon a charge of D.I.T  
\_\_\_\_\_. Bail was set in the amount of \$ 555.00

We, the undersigned H.C. HENINGER and DORIS W. HENINGER, of Logan, Utah, Cache County, State of Utah, jointly and severally undertake that the defendant Errol Roy Harold Heninger will appear and answer the charge mentioned above in whatever court it may be presented, and that he will at all times hold himself amenable to the orders and proceedings of the court, including all appearances required of him by the court up to and including his surrender in execution of any sentence irrespective of any contrary provision contained herein, or if he fails to perform any of these conditions that he will pay to the plaintiff the sum of \$ 5,500.00; and if the defendant does not make payment after the forfeiture of the bond, judgment shall be entered in favor of the plaintiff and against us as sureties for the amount set forth.

We hereby submit ourselves to the jurisdiction of the court and irrevocably appoint the clerk of the court as our agent upon whom any papers affecting our liability on this undertaking may be served, and that our liability may be enforced on motion and upon such notice as the court may require without the necessity of an independent action.

H/C Heninger Surety

\_\_\_\_\_

HENINGFR

# AFFIDAVIT

STATE OF UTAH )  
 ) ss  
County of )

***Sureties' names and addresses:***

H.C. HENINGER and DORIS W. HENINGER  
746 North 100 West Logan, Utah 84321

The sureties whose names are subscribed to the above undertaking, being sworn, each for himself, says: that he is a real or personal property holder within the State of Utah, and is worth the sum in the undertaking specified as the penalty thereof, over and above all his just debts and liabilities, exclusive of property exempt from execution.

Surety

H.C. HENINGER

Surety

**DORIS W. HENINGER**

Subscribed and sworn to before me on the date of

*(Seal)*

Notary Public

Residing at

My commission expires

**The above undertaking is hereby accepted, and the sureties are approved.**

Dated

Circuit Judge

WASHINGTON COUNTY\*\* ST. GEORGE DEPARTMENT

<i>Plaintiff</i>	)	
<u>State of Utah</u>	)	UNDERTAKING
	)	OF BAIL
	)	
vs.	)	
	)	<i>Criminal</i>
	)	<i>No.</i>
<u>Samuel Benally</u>	)	
<i>Defendant(s)</i>	)	
<i>(include address and DOB)</i>	)	
	)	
<u>Sands Motel # 204</u>	)	
<u>St. George ut</u>	)	
<u>D.O.B. 8-12-56</u>	)	

UNDERTAKING

An order was made on the date of Jan 8, 1965 by the above court,  
that the defendant be held to answer upon a charge of DUI NO. Driver's  
License. Bail was set in the amount of \$ 614.00

We, the undersigned H.C. HENINGER and DORIS W. HENINGER, of Logan, Utah, Cache County, State of Utah, jointly and severally undertake that the defendant Samuel Benally will appear and answer the charge mentioned above in whatever court it may be presented, and that he will at all times hold himself amenable to the orders and proceedings of the court, including all appearances required of him by the court up to and including his surrender in execution of any sentence irrespective of any contrary provision contained herein, or if he fails to perform any of these conditions that he will pay to the plaintiff the sum of \$ 614.00; and if the defendant does not make payment after the forfeiture of the bond, judgment shall be entered in favor of the plaintiff and against us as sureties for the amount set forth.

We hereby submit ourselves to the jurisdiction of the court and irrevocably appoint the clerk of the court as our agent upon whom any papers affecting our liability on this undertaking may be served, and that our liability may be enforced on motion and upon such notice as the court may require without the necessity of an independent action.

H.C. Heninger  
Surety

H.C. HENINGER

Doris W. Heninger  
Surety

DORIS W. HENINGER



$$\left. \begin{array}{l} ) \\ ) \\ ) \end{array} \right\} \text{SS}$$

**County of**

**H.C. HENINGER and DORIS W. HENINGER**  
746 North 100 West Logan, Utah 84321

H. C. Heninger  
Surf

Charles H. Herring  
Surety

Subscribed and sworn to before me on the date of

Wendy Anne Enstrom  
Notary Public

Residing at Smithfield, Utah

My commission expires 3/2/86

**Dated**

**Circuit Judge**

WASHINGTON COUNTY\*\* ST. GEORGE DEPARTMENT

STATE OF UTAH  
COUNTY OF WASHINGTON

I, the undersigned Clerk of the Court,  
St. George Department, State of Utah,  
do hereby certify that the foregoing  
document is a true and correct copy of  
the original on file in my office.  
(WITNESS my hand and seal of office)

Date: 03-28-85  
[Signature]  
Clerk of Court

Plaintiff

State of Utah

UNDERTAKING  
OF BAIL

VS.

Jeffery Charles Geering SR.  
Defendant(s)  
(include address and DOB)

Criminal  
No.

85-TF-035

Mosquero, N.M.  
Gen. Delonoy  
D.O.B. 11-5-57.

UNDERTAKING

An order was made on the date of Jan 16, 1985 by the above court,  
that the defendant be held to answer upon a charge of D. WI

\_\_\_\_\_ Bail was set in the amount of \$ 555.00  
Five Hundred Fifty Five Dollars

We, the undersigned H.C. HENINGER and DORIS W. HENINGER, of Logan, Utah, Cache County, State of Utah, jointly and severally undertake that the defendant Jeffery Charles Geering SR. will appear and answer the charge mentioned above in whatever court it may be presented, and that he will at all times hold himself amenable to the orders and proceedings of the court, including all appearances required of him by the court up to and including his surrender in execution of any sentence irrespective of any contrary provision contained herein, or if he fails to perform any of these conditions that he will pay to the plaintiff the sum of \$ 555.00; and if the defendant does not make payment after the forfeiture of the bond, judgment shall be entered in favor of the plaintiff and against us as sureties for the amount set forth.

We hereby submit ourselves to the jurisdiction of the court and irrevocably appoint the clerk of the court as our agent upon whom any papers affecting our liability on this undertaking may be served, and that our liability may be enforced on motion and upon such notice as the court may require without the necessity of an independent action.

[Signature]  
Surety

H.C. HENINGER

[Signature]  
Surety

DORIS W. HENINGER

**AFFIDAVIT**

STATE OF UTAH

County of

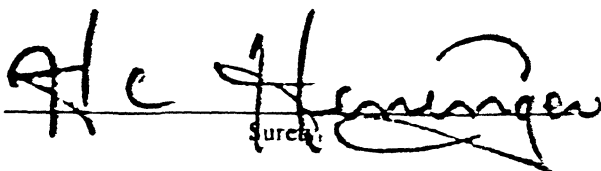
)  
) ss  
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*Sureties' names and addresses:*

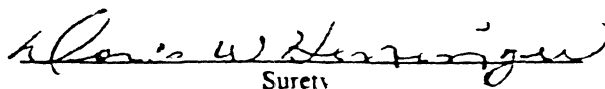
H.C. HENINGER and DORIS W. HENINGER

746 North 100 West Logan, Utah 84321

The sureties whose names are subscribed to the above undertaking, being sworn, each for himself, says: that he is a real or personal property holder within the State of Utah, and is worth the sum in the undertaking specified as the penalty thereof, over and above all his just debts and liabilities, exclusive of property exempt from execution.

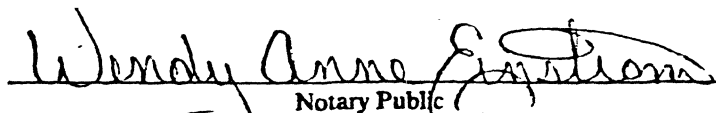
  
Surety

H.C. HENINGER

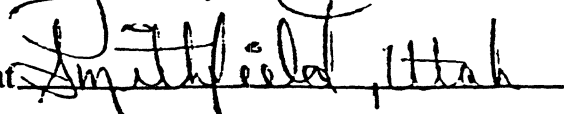
  
Surety

DORIS W. HENINGER

Subscribed and sworn to before me on the date of

  
Notary Public

(Seal)

Residing at  Smithfield, Utah

My commission expires 3/2/86

The above undertaking is hereby accepted, and the sureties are approved.

Dated

WASH. CO. COURT ST. GEORGE DEPARTMENT

<i>Plaintiff</i>	)	UNDERTAKING OF BAIL
<u>State of Utah</u>	)	
	)	
vs.	)	
	)	
	)	<i>Criminal No.</i>
<u>JONATHAN ALLEN Marshall</u>	)	
12-3-50 Defendant(s)	)	
(include address and DOB)	)	
<u>224 N. 300 West St George, UT 84770</u>	)	

UNDERTAKING

An order was made on the date of January 24, 1985 by the above court,  
that the defendant be held to answer upon a charge of D.U.I

\_\_\_\_\_ . Bail was set in the amount of \$ Five Hundred Fifty Five Dollars

We, the undersigned H.C. HENINGER and DORIS W. HENINGER, of Logan, Utah, Cache County, State of Utah, jointly and severally undertake that the defendant Jonathan Allen Marshall will appear and answer the charge mentioned above in whatever court it may be presented, and that he will at all times hold himself amenable to the orders and proceedings of the court, including all appearances required of him by the court up to and including his surrender in execution of any sentence irrespective of any contrary provision contained herein, or if he fails to perform any of these conditions that he will pay to the plaintiff the sum of \$ 555.00; and if the defendant does not make payment after the forfeiture of the bond, judgment shall be entered in favor of the plaintiff and against us as sureties for the amount set forth.

We hereby submit ourselves to the jurisdiction of the court and irrevocably appoint the clerk of the court as our agent upon whom any papers affecting our liability on this undertaking may be served, and that our liability may be enforced on motion and upon such notice as the court may require without the necessity of an independent action.

H.C. Heninger  
Surety  
H.C. HENINGER

Doris W. Heninger  
Surety  
DORIS W. HENINGER

AFIDAVIT

STATE OF UTAH

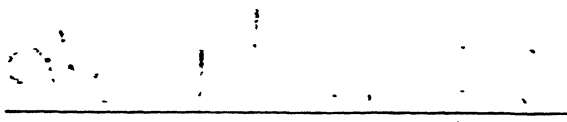
County of

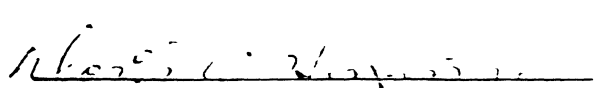
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) ss  
)

*Sureties' names and addresses:*

H.C. HENINGER and DORIS W. HENINGER  
746 North 100 West Logan, Utah 84321

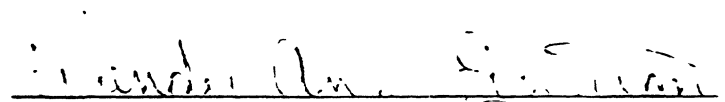
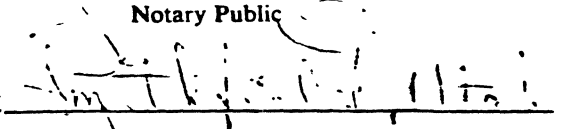
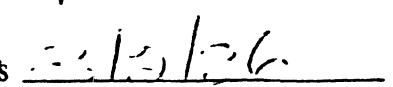
The sureties whose names are subscribed to the above undertaking, being sworn, each for himself, says: that he is a real or personal property holder within the State of Utah, and is worth the sum in the undertaking specified as the penalty thereof, over and above all his just debts and liabilities, exclusive of property exempt from execution.

  
\_\_\_\_\_  
Surety  
H.C. HENINGER

  
\_\_\_\_\_  
Surety  
DORIS W. HENINGER

Subscribed and sworn to before me on the date of

(Seal)

  
\_\_\_\_\_  
Notary Public  
Residing at   
\_\_\_\_\_  
My commission expires   
\_\_\_\_\_

The above undertaking is hereby accepted, and the sureties are approved.

Dated

\_\_\_\_\_  
Circuit Judge

Ullrich, 1994

## UNDERTAKING OF BAIL

**VS.**

*Criminal  
No.*

Defendant(s)

(include address and DOB)

ed.

B.O.B. 5-19-49

## UNDERTAKING

that the defendant be held to answer upon a charge of 0 u.I

Bail was set in the amount of \$ 555.00  
Five Hundred Fifty Five Dollars.

We, the undersigned H.C. HENINGER and DORIS W. HENINGER, of Logan, Utah, Cache County, State of Utah, jointly and severally undertake that the defendant Dennis B. Ashcroft will appear and answer the charge mentioned above in whatever court it may be presented, and that he will at all times hold himself amenable to the orders and proceedings of the court, including all appearances required of him by the court up to and including his surrender in execution of any sentence irrespective of any contrary provision contained herein, or if he fails to perform any of these conditions that he will pay to the plaintiff the sum of \$ 555.00; and if the defendant does not make payment after the forfeiture of the bond, judgment shall be entered in favor of the plaintiff and against us as sureties for the amount set forth.

We hereby submit ourselves to the jurisdiction of the court and irrevocably appoint the clerk of the court as our agent upon whom any papers affecting our liability on this undertaking may be served, and that our liability may be enforced on motion and upon such notice as the court may require without the necessity of an independent action.

*Richard W. Higgins* Surety

DORIS W. HENINGER

AFFIDAVIT

STATE OF UTAH

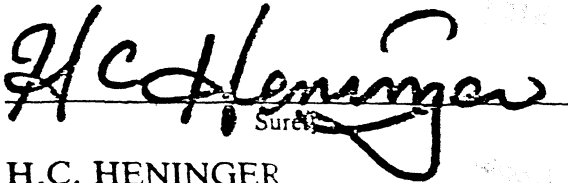
County of

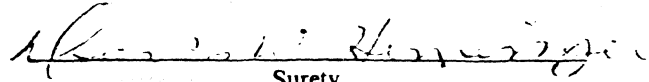
)  
) ss  
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*Sureties' names and addresses:*

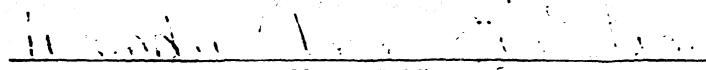
H.C. HENINGER and DORIS W. HENINGER  
746 North 100 West Logan, Utah 84321

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\_\_\_\_\_  
Surety  
H.C. HENINGER


  
\_\_\_\_\_  
Surety  
DORIS W. HENINGER

Subscribed and sworn to before me on the date of

  
\_\_\_\_\_  
Notary Public

(Seal)

Residing at  \_\_\_\_\_

My commission expires,  \_\_\_\_\_

The above undertaking is hereby accepted, and the sureties are approved.

Dated

\_\_\_\_\_  
Circuit Judge