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## The Professional Bail Bondsman 2024

Arkansas Criminal Procedure Rule 9.1 At the **first appearance** the judicial officer may release the defendant on his **personal recognizance** or upon an order to appear.

### Arkansas Criminal Procedure Rule 9.2 Release on Money

1. The execution of an **unsecured bond** in an amount specified by the judicial officer, either signed by other persons or not;
  2. The execution of a unsecured bond in an amount specified by the judicial officer , accompanied by a deposit of cash or securities equals to **ten per cent (10%)** of the face amount of the bond. **Ninety percent (90%) of the deposit shall be returned** at the conclusion of the proceeding, provided the defendant has not defaulted in the performance of the conditions of the bond; or
  - 3 / 4. The execution of a bond secured by the deposit of the full amount in **cash**, or by other property, or by **obligation of qualified sureties**.
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### **Cash Only” Constitutional Issues**

**The Constitution of the State of Arkansas in so far as here pertinent provides:**

**Art. 2, Section 8, “All persons shall before conviction, be bailable by sufficient sureties, except for capital offenses.**

**Art. 2, Section 9. “Excessive bail shall not be required.”**

**Arkansas Criminal Procedure Rule 9.1 At the first appearance the judicial officer may release the defendant on his personal recognizance or upon an order to appear**

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### Cash Only” Constitutional Issues

The drafting committee’s comment to Rule 9.2 states: “**Money bail** in any form ought to be a **last resort** and should be used only to assure the defendant’s appearance)

Finally, we must agree that Rule 9. contemplates that in fixing money bail, the judicial officer will use the **least restrictive type of money bail** arrangement set out in Rule 9.2 for securing the appearance of an arrested person. **Thomas v State, Supreme Court of Arkansas, 542 S.W.2d 284 (1976).**

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### **Cash Only” Constitutional Issues**

**The United States Constitution governs pretrial detention and bail.**

**The Eighth Amendment states “excessive bail shall not be required”. Bail is ‘excessive’ when “set higher than an amount that is reasonably likely to ensure the defendant’s presence at the trial. The United States Supreme Court has consistently invalidated statutes or actions that arguably punish individuals on indigence (ability to pay)**

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**The Arkansas Supreme Court case, *Trujillo v State*, CR-15-638, (2016) the issue being “whether the circuit court erred in setting a “cash only” bail as being in violation of Arkansas Constitution, ruled in a 5-2 decision that people charged with crimes can be held in jail in with “cash only” bail amounts. The two dissenting opinions are detailed hereafter.**

**The complicating factor in this case however was this was not a first appearance, but a second appearance because of violations of prior bond conditions (which is an acceptable cause for “cash only” pretrial release conditions. Because of this Arkansas Supreme Court case, the Arkansas Judiciary believes it has the right to require “cash only” pretrial release conditions.**

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**HOWARD W. BRILL, Chief Justice, dissenting:**  
“the issue is whether an Arkansas judge, after concluding that a prisoner is eligible to be released on bail, **may inform him that the only acceptable form of bail is cash.** I agree that no Arkansas law answers the question of whether cash-only bail is permitted by the Arkansas Constitution. The issue before us is whether a judicial order requiring cash-only for bail violates the language in **Article 2, Section 8 of the Arkansas Constitution**, which provides, **“All persons shall, before conviction, be bailable by sufficient sureties. If a prisoner can procure a sufficient surety that satisfies the amount set for bail, then he is entitled to be released.**”

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**HOWARD W. BRILL, Chief Justice, dissenting**

**Cash-only bail may have definite advantages:** for example, the court may believe that the defendant is unlikely to appear or to flee the jurisdiction; a cash bond may be a stronger incentive for a defendant to appear for the hearing. On the other hand, cash-only bail has drawbacks. It may have an unfair, even disparate impact, upon lower-income defendants without resources. Cash-only bail particularly in larger amounts, may be used punitively. But my **dissent** is not based on practice or policy. It is based on the language of the **Arkansas Constitution**. Any possible advantages must give way to the constitutional intent that has been a declared right guaranteed in Arkansas since 1836. **Requiring cash-only for bail strips a person of his constitutional right to provide any sufficient surety for his/her release.**

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**JOSEPHINE LINKER HART, Justice, dissenting:** “The circuit court’s decision to set a cash only bail is in contravention of the Arkansas Constitution. Further, our rules of criminal procedure do not permit it. In defying the Arkansas Constitution, the majority takes from the people the fundamental, absolute right to reasonable bail before conviction. In its place, and by affirming the imposition of cash-only bails, the majority creates and grants to the government an absolute right to incarcerate until the time of trial an accused who is not affluent. This decision will disproportionately impact the poor, as well as those whose wealth is invested and do not have readily at their disposal large sums of cash.

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**JOSEPHINE LINKER HART, Justice**

**The Arkansas Constitution** affirms that the people have a constitutional right to bail for noncapital offenses, stating that “[a]ll persons shall, before conviction, be bailable by sufficient sureties.” Ark. Const. art. II, § 8. Further, the Arkansas Constitution specifically recognizes a right against excessive bail. Ark. Const. art. 2, § 9 (stating that “[e]xcessive bail shall not be required”). Thus, the Arkansas Constitution affirms that, other than in capital cases, the people have an absolute right to a reasonable bail before conviction. *Reeves v. State*, 261 Ark. 384, 387, 548 S.W.2d 822, 824 (1977). In keeping with these constitutional dictates, this court promulgated Rule 9.2 of the Arkansas Rules of Criminal Procedure, which sets out our rules regarding bail. In essence, promulgation of Rule 9.2 was this court’s implicit expression of the requirements of art. II, section 8 of the Arkansas Constitution.

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**JOSEPHINE LINKER HART, Justice**

Further, this court's comments to Rule 9.2 fortify its connection to the Arkansas Constitution, as we stated, "Money bail in any form ought to be a last resort and should be used only to assure the defendant's appearance. It is believed that damage to the integrity of the legal process will best be avoided by limiting bail to its lawful function." According to Rule 9.2(b), if a judicial officer determines that money bail should be set, one of the following could be selected: (i) the "execution of an unsecured bond in an amount specified by the judicial officer, either signed by other persons or not"; (ii) the "execution of an unsecured bond in an amount specified by the judicial officer, accompanied by a deposit of cash or securities equal to ten per cent (10%) of the face amount of the bond"; or (iii) the "execution of a bond secured by the deposit of the full amount in cash, or by other property, or by obligation of qualified sureties."

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**JOSEPHINE LINKER HART, Justice**

Only the third option speaks in terms of a “bond secured by the deposit of the full amount in cash.” Yet, even there, the defendant has two other alternatives: the execution of a bond secured by the deposit of other property or the execution of a bond secured by obligation of qualified sureties. **These three alternatives under Rule 9.2(b)(iii) for the execution of a bond are for the benefit of the defendant.** It cannot seriously be suggested that a judicial officer could reject a deposit of cash and instead demand the deposit of the defendant’s real property, or vice versa. **Treating these alternatives as choices to be made by the defendant is in keeping with our case law.** A judicial officer must use the least restrictive type of money-bail arrangement set out in Rule 9.2(b) for securing the appearance of an arrested person. Thomas v. State, 260 Ark. 512, 522, 542, S.W.2d 284, 290 (1976) 853 (1994).

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**JOSEPHINE LINKER HART, Justice**

**The circuit court’s decision to require a cash-only bail does not comport with Rule 9.2.** I cannot see how the circuit court’s decision to forgo our mandated rules regarding bail, and instead create out of nothing a requirement for cash-only bail, can possibly comport with the constitutional requirement of bail by “sufficient sureties.

**The 5th U.S. Circuit Court of Appeals in New Orleans, October 3, 2017,** upheld a ruling claiming that Texas Harris County’s bail practices by requiring a “cash only” bond unfairly discriminate against poor misdemeanor defendants who can’t afford the cash bail only requirement.

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It has now become a common practice among the Arkansas Judiciary that Judges are now requiring **“cash only”** for pre-trial release which conditions are contrary to the rule of law; **and or** Rule 9.2(b)(2), the execution of a unsecured bond in an amount specified by the judicial officer, accompanied by a deposit of cash or securities equals to ten per cent (10%) of the face amount of the bond. Ninety percent (90%) of the deposit shall be returned at the conclusion of the proceeding, provided the defendant has not defaulted in the performance of the conditions of the bond, commonly called a **“Sheriff’s Bond”**

**Both conditions require the full payment of cash;** effectively circumventing the requirement of the least restrictive bail.

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### Appearance of Defendant / Failure To Appear:

The primary and only purpose for a bail bond is the **appearance of the defendant** in court to answer for his/her conduct and to seek justice for the victims.

### The alternative pre-trial release methods:

- 1) Rule 9.1 Personal Recognizance (OR);  
FTA Rate 50% or more.
  - 2) Rule 9.2.(b)(2) The 90/10 bond, Sheriff's Bond  
FTA Rate 50% or more
  - 3) Rule 9.2.(b)(3) Cash Only  
FTA Rate 75% or more
  - 4) Rule 9.2.(b)(3) Sufficient Sureties (Bail Bond).  
FTA Rate 2.6%, lowest in United States (2019)
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## Appearance of Defendant / Failure To Appear

**Failure to appear is a costly budget item.** Studies have shown that individuals who fail to appear are **four (4) times more likely to commit new crimes** because of no supervision or accountability. Only the innocent will come back to court for their cash only bond and no justice for the victims. Being rich or poor, male or female, black or white are not reasonable determinants that a defendant is less likely to show up for trial or will not commit a new crime. **Monetary bail is the only guarantee that a defendant will appear for trial to answer for this conduct, achieve justice for the victims, and secure general safety for the public.** Sheriffs and Police departments are greatly over burdened and do very little in pursuing absconding defendants. The bail bondsman however have a financial interest in the defendant being in court and not having to pay the bail bond amount because of non appearance in court.

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## Appearance of Defendant / Failure To Appear

Rule 9.2.(b)(2) The 90/10 bond, sometimes called **Sheriff's Bond**; and Rule 9.2.(b)(3) **Cash Only** pre-trial release methods **would seem at odds with the sole purpose of the bond, appearance** of the defendant in court to answer for his criminal conduct and seek justice for the victims. A **failure to appear and bond forfeiture would work to the financial benefit of the bond benefactors, County and Municipality, for their financial budget needs, an appearance of a conflict of interest.** There is **no one to seek the absconding defendant(s) !**

**The purpose of bail is not to enrich the budget coffers of counties or municipalities but to ensure the appearance of the defendant in court.**

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### **Cash Only / Johnson County**

Prior to the Judicial “Cash Only Bond” requirement, Johnson County collected only **\$7,000**. In the first year, Johnson County collected **“90,000”** for the benefit of the County’s general operating fund. In the following year, collected **“90,000” by May !**

1. **FTA Rate / 100%**

2. **Purpose of Bond ?**

**Appearance of Defendant / Justice for Victims**

3. **Not to enrich County Coffers with Cash**

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## Travis Simpson, Court Reporter

### No more commercial bonds in Pope County?

By **TRAVIS SIMPSON**  
tsimpson@couriernews.com

In 2020, District Judge Don Bourne stopped issuing commercial bonds during felony bond hearings inside the Pope County Detention Center. Instead, the court began issuing cash-only bonds.

Fifth Judicial District Prosecuting Attorney Jeff Phillips said this was a change made by the courts and one he doesn't object to.

"But we [the Prosecuting Attorney's office] don't set the bond amounts," Phillips said. "Circuit Judge James Dunham does it if Bourne doesn't."

In Phillips' mind, the only person the new system negatively impacts are the bondsmen, who now have fewer clients to choose from. Even though at a glance, the bond amounts look lower, it's still more or less the same amount since bondsmen typically charge 10 percent. In the past, offenders may have received larger bond amounts, but those were commercial, meaning the accused could

bond out of jail with the help of a bail bondsman. Typically, a bondsman charged a client a percentage of the bond amount, usually around 10 percent. For example, someone with a \$7,500 commercial bond might only pay \$750 to a bondsman to get out of jail. The tradeoff is the bondsman is then responsible for getting their client back to court for their court date.

"We are basically recommending the same bonds," Phillips said. "They are basically what they would have paid if it'd been commercial. Back then, if we thought someone needed a \$750 bond, we would have asked for \$7,500. It used to be defendants had to pay that 10 percent up front to a bondsman, but we noticed that wasn't happening. They were taking pennies on the dollar and letting them pay out over time."

Moreover, Phillips said the county does a good job finding people who fail to show

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# **Arkansas Surety Bonds Statewide**

- **2005.....76,760.....Agents 530**
  - **2010.....69,999.....Agents 500**
  - **2016.....61,263.....Agents 500**
  - **2018.....57,936**
  - **2020.....55,562**
  - **2022.....42,000.....Agents 411**
  
  - **Crime dramatically Up !**
  - **Surety Bail Bonds lowest level in history**
    - **FTA Rates 2.6% / Justice for Victims**
  - **Pre-Trial Release Options Up**
    - **OR / Sheriff Bond / Cash Only**
    - **FTA Rates 75% or more**
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Gerald Madrid, New Mexico Association Bail President

2022

