

NORTH CAROLINA
ROBESON COUNTY

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
DISTRICT COURT DIVISION
JUDICIAL DISTRICT 16B

IN THE MATTER OF:)
DEFERRED PROSECUTIONS AND)
APPEARANCE BONDS)

ORDER

THIS CAUSE, coming on to be heard and being heard before the Senior Resident Superior Court Judge and the Chief District Court Judge of Judicial District 16B and after careful consideration of the issues presented, pursuant to the express and inherent authority of our respective offices, we, the undersigned, do jointly and severally adopt the following **FINDINGS OF FACT**:

1. That N.C.G.S. §15A-1341(a1) and (a2) expressly authorize the use of deferred prosecutions as a form of probation in cases in which a community or intermediate level of punishment is authorized as a sentence disposition.
2. That N.C.G.S. §15A-1342(i) further provides that a defendant shall be immune from prosecution of any charges deferred upon the expiration or early termination of the deferral term.
3. That the North Carolina Judicial Department Forms Manual for the Administrative Office of the Courts for form AOC-CR-201 entitled *Appearance Bond for Pretrial Release* requires in part as follows:

The conditions of this Bond are that the above named defendant shall appear in the above entitled action(s) whenever required and will at all times remain amenable to the orders and processes of the Court. It is agreed and understood that this Bond is effective and binding upon the defendant and each surety throughout all stages of the proceedings in the trial divisions of the General Court of Justice until the entry of judgment in the district court from which no appeal is taken or until the entry of judgment in the superior court.

4. That it is not unusual for the court to approve deferred prosecutions for terms of one year or longer.
5. That such deferred prosecutions cause bail bondsmen and other sureties executing form AOC-CR-201 to remain on appearance bonds for months and years after what otherwise would be considered the entry of judgment at the time the court approved the deferred prosecutions.
6. That when the court enters other types of probationary sentences sureties are not required to remain liable on the appearance bond in any way after the entry of judgment.
7. That it appears to the undersigned that the risks sought to be addressed by the requirement of appearance bonds are substantially minimized after the court approves a deferred prosecution even though the court has not yet entered a final judgment.

8. That it also appears to the undersigned that sureties on appearance bonds generally have not intentionally undertaken to remain liable on such bonds for months and years after deferred prosecutions have been approved by the court and after the cases have in effect been disposed of by the court.

9. That prior to the entry of this order the undersigned have consulted with both the District Attorney and the attorney for the Public Schools of Robeson County and neither has raised any objection to the entry of this order.

The undersigned jointly and severally **CONCLUDE AS A MATTER OF LAW:**

1. That by virtue of their respective offices the undersigned have the express and inherent authority to enter this order.

2. That the provisions of this order represent a minimal risk to the safety of the public and a minimal risk that defendants will commit new offenses or fail to appear.

IT IS THEREFORE ORDERED:

1. That the obligations of a bondsman or other surety pursuant to any Appearance Bond for Pretrial Release are and shall be terminated immediately upon the entry of the State and a defendant into a formal deferred prosecution concerning the underlying criminal charges referred to in the Appearance Bond for Pretrial Release.

2. That this order shall have both prospective and retroactive effect.

3. That this order shall remain in effect indefinitely unless modified, amended or vacated by future court order.

ENTERED in chambers and signed this 1st day of November 2007.

Robert F. Floyd, Jr.
Senior Resident Superior Court Judge

J. Stanley Carmical
Chief District Court Judge