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Judges go easy on bail bondsmen

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Some of Dallas County's criminal court judges have been letting bail bondsmen walk away from hundreds of thousands of dollars in court judgments against them - often with the blessing of the district attorney - and in many cases without scrutiny or explanation for their decisions.

The Dallas Morning News found cases in which felony court judges dismissed six-figure forfeiture cases against bondsmen even though their clients had missed court and apparently hadn't been recaptured. There may have been a good reason, but the case files didn't reflect one. And many judges and bondsmen aren't talking.

Some current and former judges say decisions about bond forfeiture cases are generally made informally through discussions with the various parties, without hearings or motions or any record of such talks.

They say they will usually approve a forfeiture case dismissal only if the DA's office and the bondsman are in agreement. If not, a hearing will probably be held - usually by the magistrate judges. Such hearings are rare, judges say.

Seven recent felony cases alone resulted in the collective loss of \$700,000 in potential bail bond forfeiture revenue to the county, court records show. That's equal to all of the bond forfeiture revenue the county has received over the past two years combined in felony court.

Those are the latest findings of a continuing examination by *The News* of Dallas County's bond forfeiture operations. *The News* also found that:

In many cases, judges are not initiating forfeiture actions against bondsmen when their clients miss court and disappear.

Dallas County judges are inappropriately dismissing numerous other forfeiture cases after bondsmen request to "go off bond" to avoid liability if their clients miss court.

The DA's office is agreeing to let bondsmen off the hook for thousands of dollars in forfeitures even after their clients disappear. In one case, a prosecutor signed off on a deal to dismiss a \$100,000 forfeiture judgment against a bondsman even though the defendant was a fugitive.

It's unclear how widespread these practices are because the county doesn't track them. But an analysis of numerous cases indicates they could have cost the cash-strapped county government millions of dollars over several years. *The News* viewed dozens of

case files from 2005 to 2010 and analyzed computer records of more than 11,000 bond forfeiture cases.

The result of these decisions is that many bondsmen in Dallas County are being allowed to pocket thousands of dollars in fees from defendants for writing essentially risk-free bonds, and they have little incentive to try to track down fugitives they helped release from jail.

Most of the judges who signed orders dismissing forfeiture actions under questionable circumstances did not return phone calls seeking comment. Those who did comment said they couldn't recall the specifics of cases they ruled on over the last five years.

Often, scribbled notes on case file docket sheets are the only record of what happened, but they do not explain why the decision was made. Nor do settlement agreements between the DA's office and bondsmen.

State District Judge Gracie Lewis said that, unlike judges in other counties, she doesn't require bondsmen to file motions if they are asking for dismissal of forfeiture cases against them.

"It's informal. At least for me," Lewis said, adding that she dismisses cases only when the prosecutor and defense agree.

But District Attorney Craig Watkins, a former bail bondsman, said that "99 percent of the time," bondsmen go directly to the judge to seek a dismissal, without the prosecutor's knowledge. "The DA is not even a part of it," Watkins said.

Bail bonds are supposed to induce defendants released from jail to appear for court hearings and trial. Judges in Texas forfeit bonds to the county if the defendants aren't recaptured within a certain grace period. However, judges and prosecutors have broad discretion over how to handle such cases.

Watkins said "it doesn't make sense" to put bondsmen out of business by making them pay up, because they serve an important purpose - helping to reduce the jail population.

Bill Cox, a local criminal defense attorney, defended the practice of bondsmen working out deals informally with judges and prosecutors.

"It cuts both ways," he said. "It helps the bondsmen out but also gets a warrant out for someone who should be in jail."

Cost to the county

Dismissing forfeiture judgments against bondsmen, so-called set-asides, comes at a cost.

Felony bond forfeiture revenues in Dallas County have fallen almost 70 percent since 2006 and are significantly less than what's collected in neighboring Tarrant County, which has a smaller population.

And bond forfeiture set-asides are on the rise.

The News analyzed Dallas County bond forfeiture data dating to 2005 and found that forfeiture set-asides have increased greatly since 2007.

Set-asides numbered about 780 in 2006. And every year since 2007, when a new slate of judges took office, they have totaled more than 2,300. In 2006, the county potentially lost about \$4 million worth of forfeited bond money because of set-asides. In 2007, that grew to \$8.4 million.

Dallas County District Clerk Gary Fitzsimmons said the actual numbers are even higher because the data collected by the county is not accurate.

Judges typically set aside forfeiture cases because defendants either had a good excuse for their absence or returned to court soon after. But if the defendant has disappeared, setting aside the bond forfeiture raises questions.

Fitzsimmons said that when judges set aside forfeiture judgments, bondsmen no longer have any incentive to track down absconded defendants, some of whom are accused of violent crimes. Instead, that job falls to the Sheriff's Department, which does not get reimbursed for its costs, he said.

If defendants can't be tracked down and brought to court within a legally mandated grace period - nine months in felony court - judges can still dismiss forfeiture cases if bondsmen cite certain reasons that mitigate their clients' failure to appear.

Under state law, those excuses are: sickness or some other uncontrollable circumstance, the defendant's death, the defendant's incarceration, an invalid bond, or failure by the state to win an indictment of the defendant within a certain time.

But in some cases in which judges set aside forfeiture judgments, bondsmen filed no motions or presented no evidence, records show.

For example, forfeiture cases were initiated against Lucky Bail Bonds after two defendants facing drug charges, each free on a \$150,000 bond, failed to show up for their May 2009 court dates.

Ten months later, state District Judge Jennifer Balido set aside the forfeiture judgments, court records show. An attorney for one of the men said his client is still a fugitive. The other man has not been returned to Dallas County custody. The court record provides no explanation for why the bond forfeiture cases went away. The bondsman did not file any motions seeking relief.

Balido, now in private practice after losing her re-election bid in November, said she reviewed the court records and had "no recollection of either of these cases."

Lucky Bail Bonds, which was saved \$300,000 by the rulings, is out of business, and its former owner could not be reached for comment.

Kathy Braddock, chief of the Harris County district attorney's bond forfeiture division, said DAs should be challenging such dismissals.

"It's just a 'Get out of jail free' card," she said. "Why not just open up the jail doors?"

In Dallas County, some dismissals occur with a prosecutor's blessing.

In early 2008, state District Judge Carter Thompson set aside a forfeiture judgment against Doc's Bail Bonds, which had posted a \$100,000 bond for a man facing a felony drug charge. The defendant had fled to Mexico. But David Alex, a Dallas prosecutor who is now the felony trial bureau chief, agreed to the set-aside, court records show.

Thompson did not return a call seeking comment. But his court coordinator, Doris Irvin, said Alex and the defendant's attorney, Phillip Robertson, approached Thompson and asked him to set aside the forfeiture case. Doc's did not present any motions or evidence.

Alex said Robertson told him the defendant's brother had posted collateral for the bond and stood to lose his house and "everything he's got." Alex said he agreed to the dismissal after determining the brother didn't have a criminal record.

In some instances, a bondsman does have to file a motion to get out of paying a forfeiture. It's called a bill of review, and it's an appeal that can be filed up to two years after a final judgment.

The News found that some judges have been granting bills of review even though the defendant was not recaptured within the nine-month grace period. Some prosecutors in other counties call that an abuse of the judge's discretion.

State District Judge Lena Levario said she let the insurance company for the now-defunct Town East Bail Bonds off the hook in 2009 for a \$10,000 bond that had been forfeited, because the DA's office agreed to it. The defendant was rearrested about 10 months after his missed court date.

Heath Harris, Watkins' top assistant, said he will agree to dismiss forfeiture cases even if bondsmen take longer than nine months to find absconders. "We need bondsmen out there looking for these people," he said.

Prosecutors in Bexar and Harris counties - two of the state's largest - adamantly say such lenient practices do not occur in their counties.

Removing liability

Prosecutors often file motions asking judges to rule that a defendant's bond is "insufficient" and to increase the amount, typically when a defendant is arrested on a new charge or violates the conditions of his release in some other way. It triggers the issuance of an arrest warrant so the defendant can be returned to custody and be required to post the higher bond.

But *The News* discovered that bail bondsmen in Dallas County also use such motions to ask judges to remove their liability.

The highly irregular practice essentially allows them to opt out of being responsible for the defendants' bond.

Dallas bondsman Tom Benson, who operates Act Quick Bail Bonds, filed a "motion for declaration of insufficiency of defendant's bond" more than two months before one of his clients skipped out on a \$100,000 bond and missed a court date last year.

Benson wrote that his client, accused of aggravated assault with a deadly weapon, wasn't following the terms of his bond and apparently had fled.

Benson could not be reached for comment.

State District Judge Fred Tinsley granted the motion and later set aside the forfeiture.

But if the defendant is a no-show in court and isn't rearrested, the forfeiture case is good and should proceed, prosecutors from other counties say. Benson's client remains a fugitive.

Ashley Fournier of the Tarrant County district attorney's office said holding the bond insufficient doesn't get the bondsman off the hook; it merely gets an arrest warrant issued.

Dallas County bondsmen also routinely present to judges what's called an "affidavit to go off bond" when they suspect their clients have gone missing.

In doing so, bondsmen are asking a judge to issue an arrest warrant for their client so they can try to have the client rearrested and returned to court to avoid a forfeiture. If a bondsman can't find a client in time for the next court hearing, he forfeits the bond.

But if the judge refuses to sign the affidavit and issue a warrant, the bondsman can't later be held liable for the bond if the client misses court, state law says.

However, some judges in Dallas County are not forfeiting bonds when defendants miss court even though the judges signed the affidavit to go off bond and issued the arrest warrant.

Numerous bail bond forfeiture experts and prosecutors across Texas say they should require the bond companies to pay.

Missing court dates

In other instances, bond forfeiture cases were never initiated in Dallas County when defendants missed court dates.

For example, days before a jewelry robbery suspect missed his July 2010 court date, Patrick Kinnard, the bondsman who had posted his \$50,000 bond, submitted to the court an "affidavit to hold bond insufficient" because he couldn't reach his client.

State District Judge Don Adams granted the request, and an arrest warrant was issued. But no forfeiture case was filed after the defendant, still a fugitive, missed his court date.

Adams said he grants such requests if he believes there is a valid reason. However, shortly after *The News* brought the case to his attention, Adams declared a forfeiture, in early August.

Kinnard did not respond to calls seeking comment.

Pat McDowell, the county's drug court judge, granted a similar request when a defendant charged with stealing a firearm missed a 2007 court date. But Delta Bail Bonds never faced a civil action to forfeit the defendant's \$15,000 bond.

It's unclear from court documents who asked McDowell to hold the bond insufficient. Delta's owner did not return calls.

McDowell said that he could not recall specific cases but that in general he will forfeit a bond when the defendant misses court. However, that's not always easy to tell, he said. Bailiffs don't always call defendants' names in the hallway as the law specifies, he said, and defendants instead sometimes sign a sheet to show they were present for a court date. But a sign-in sheet isn't legal proof of court attendance.

If there's any question about whether a defendant actually missed a court date or whether the appropriate procedures were followed, then the judge can't forfeit the bond, McDowell said. "The only alternative I have to issue a warrant is to hold the bond insufficient," he said.

Michael Herndon, a local defense attorney, said he often asks judges to hold a bond insufficient instead of forfeiting it because a defendant's family members who signed away collateral for the bail bond company could end up losing their property.

"I try to keep friends and family members from getting stuck," Herndon said.

He said he's never been accused of giving bondsmen a break. "I am interested in giving [defendants'] friends and family a break," he said.

Forfeiture cases don't go away so easily in other Texas counties, however.

"That practice, I am happy to report, does not happen in Harris County," said Braddock, the Harris County DA's office lawyer.

AT A GLANCE

Leniency in Dallas County bail bond forfeiture cases

- State District Judge Andy Chatham dismissed a \$100,000 bond forfeiture case against Omega Bail Bonds in 2009 even though the defendant, Eladio Lopez, was not in county custody at the time. Lopez remains a fugitive on a felony drug charge. Chatham said Omega told him its request to be absolved of liability for the bond had been filed in the wrong court accidentally. Chatham said there was no reason not to trust what the bondsman said.

- When Demond Urain Smith missed a 2005 court date for a felony drug charge, a forfeiture action was not filed against JJ's Bail Bonds, which had posted his \$10,000 bond. Smith was rearrested about four years later. James J. Salvo, the bondsman, said he didn't recall the case. The judge in the case, Mary Miller, now a Denton County prosecutor, did not return calls seeking comment.

- Act Quick Bail Bonds' \$15,000 bond for Soo Hee Kim was forfeited in 2009 when Kim missed a court date for a charge of using fake information to try to obtain a loan. In 2010, Act Quick filed a special appeal called a bill of review asking for its money back. In that appeal, attorney Randy Adler said Act Quick had learned that Kim would be rearrested and asked for more time to pursue leads. Heath Harris, now District Attorney Craig Watkins' top assistant, agreed to return the forfeited money. Kim was rearrested in July, about a year and a half after her missed court date. Harris said he agrees to such cases only if lawyers guarantee or show proof that the defendant is in custody.

- Francisco Pedraza, charged with felony burglary, missed his 2007 court date, and the \$15,000 bond posted by Town East Bail Bonds was forfeited. Pedraza was rearrested a year later. Town East's surety, International Fidelity Insurance Co., asked state District Judge Ernest White to be absolved of liability for the forfeiture, citing the defendant's rearrest. The request was granted in 2009 in an agreed order signed by Harris.

SOURCE: Dallas County court records