

# YLS In brief

A Periodic Newsletter of the Young Lawyers Section of the  Arkansas Bar Association Vol. 13 #1 Winter 2009

## Bond Hearings in Arkansas: Seeing the Light of Day Before Trial

by Justin Eisele

If you have been practicing criminal law for any period of time, you have likely gotten a frantic phone call from a family member stating that they need a lawyer right away. This call, if you are lucky, comes before your future client has had a bond hearing. Unfortunately, we are all creatures of the present. When your client is sitting in jail, all he is thinking about is sitting in jail. Being a former prosecutor, and now handling criminal defense cases, I have a few tips to share with those trying to make a living by doing criminal defense work.

### The Law

The law regarding the setting of your client's bond, albeit relevant, is in my opinion, not the most important thing to keep in mind. Arkansas Rule of Criminal Procedure 8.5(b) sets forth a number of factors that the judge will assess before deciding your client's bond. I have listed the first seven factors below with my commentary in bold:

(i) the defendant's employment status, history and financial condition (**If your client is broke, tell the judge he needs a reasonable bond. If your client is not broke, inform the court that your client needs a reasonable bond so that he can keep his job and feed his kids.**);

(ii) the nature and extent of his family relationships (**If you have a member of your client's family that is well thought of in the community, drag them to court to speak to the judge**);

(iii) his past and present residence (**If your client lives locally, inform the court. If he does not, I would not focus on this point.**);

(iv) his character and reputation (**If your client is well thought of, in the military, or something else honorable, mention this to the court.**);

(v) persons who agree to assist him in attending court at the proper times (**A good position here is to bring someone's father (if it is a young person), or his or her well thought of uncle to come to court and say "I'll make sure he'll be here judge."**);

(vi) the nature of the current charge and any mitigating or aggravating factors that might bear on the likelihood of conviction and the possible penalty (**Unfortunately this is probably one of the most considered factors. If your client is overcharged you need to be able to tell the judge why. Sometimes a shoplifting is only a stiff-arm away from a robbery.**);

(vii) the defendant's prior criminal record, if any, and, if he previously has been released pending trial, whether he appeared as required (**This factor, is the most important. If your client has been released on bail and has Failures to Appear ("FTAs"), then your client might be in trouble. Sometimes these FTAs are erroneously issued by the court. You need to have already talked to your client so that you can explain this to the court if this situation arises. However, don't let your client say, "I did not know where the courthouse was."**)

### The Dough

There are three main types of bonds in criminal cases in Arkansas:

1. **Cash Only.** This type of bond means your client will have to post the whole enchilada. You do not want this type of bond.

2. **Cash or Professional (Surety).** This type of bond allows your client to contract with a bondsman to allow your client to keep from having to post the entire amount. If your client has a really bad criminal history, and never shows up for court, you

probably should not ask for a Release or Recognizance bond (see below). You can get instant credibility by telling the court “your honor, my client has had some troubles in the past--we would agree to a modest cash or professional bond so that the court can insure my client’s appearance.”

3. **“ROR”**. This type of bond goes by different names. “ROR” or “Release on Recognizance” allows your client to basically be bonded out on his signature. This is the type of bond you want to try to get for your client if at all possible.

### **The Practical. (Most Important!)**

The following is a list of three practical tips you should never forget with regard to bond hearings:

**1. High Bond = Less Money for Defense.** I have had family of potential clients ask me why they would need an attorney at the bond hearing. It is important to explain to potential clients and their families that it can sometimes take up to a year from arrest to get a trial date set. If you potential client can make the investment in hiring you before the bond hearing you can help him have more money for the defense of his case, and allow him to live his life in a more normal fashion pending trial.

**2. Talk Early to the Prosecutor.** There is a fine line between bugging the heck out of a prosecutor, and being an advocate. You need to be able to talk to the prosecutor before bond hearings if possible to explain to him/her your situation. This is very prosecutor specific. With some less is more. With others, more is

more. Whatever the situation, a quick word with the prosecutor beforehand is extremely beneficial. In many jurisdictions, if the prosecutor will to agree to a bond, as long as everything is in line, the court will go along with the agreed bond.

**3. Hit the Highlights.** If you go before a judge that has a dozen folks in the drunk tank and two capital murders he/she is not going to want to hear you client’s life story. Focus on two or three points from above and hit them hard and quick. Candor and brevity at bond hearings will get you a long way.

In summary, knowing the rules is nice but knowing the practical makes you valuable.

*Justin Eisele currently practices criminal law, domestic relations, and collections law from his office in Benton, Arkansas. He is a former prosecuting attorney with trial experience on both sides of the table. You can contact him at [jeisele@eisele-law.com](mailto:jeisele@eisele-law.com).*

## Hats Off

**Brian Rabal** and **Hollie Greenway** have joined together as Rabal & Greenway Law Partners in Centerton, AR.

**Amy Johnson** and **Matt House** are celebrating the recent official opening of the Harmony Health Clinic in Little Rock. Ms. Johnson and Mr. House were instrumental in organizing, forming and opening this charitable medical and dental clinic. Ms. Johnson serves as the Treasurer for the Board of Directors of the clinic and Mr. House serves as the Board’s Vice-President.

**Rachael M. Dockery** was named a shareholder at Strong-Garner-Bauer, P.C., in Springfield, Missouri.

**Robert Herzfeld** was elected to fill the new fourth division Circuit Judgeship in Saline County as of January 1, 2009.

**Serena Thompson Green** and her husband, Eric, recently welcomed a new baby girl into their family. Vivian Marie was born on November 17, 2008 and she weighed 6 lbs and 14 ounces and was 19 inches long.

**Courtney Salas-Ford**, her husband, Joe, and their son,

Colin, recently welcomed Caleb Ford into their family. Born on December 4, 2008, Caleb weighed 8 lbs and 14 ounces and was 20 inches long.

**Lindsey Mitcham Lorence** and her husband recently welcomed their second son, Gabe Tremble, into their family.

**Staci Carson** of Watts, Donovan and Tilley, P.A., recently gave birth to a healthy boy, Eli.

**Eric Walker** and his wife, Kesha, welcomed their second child on September 11, 2008. Jackson Eric Walker weighed 9 pounds, 9 ounces and was 21 inches long.

**Ginger Stuart Schafer** was recently named Best Lawyer in the 2008 Lonoke County Reader’s Choice poll.

**Kyla D. Aycock** and her husband, Tony, recently welcomed a baby boy, Zachary David, into their family.

IF YOU HAVE ANY INFORMATION ON YLS MEMBERS WHO DESERVE A “HATS OFF” OR WOULD LIKE TO SUBMIT IDEAS FOR ARTICLE PUBLICATION PLEASE CONTACT THE EDITOR OF “IN BRIEF”, TASHA SOSSAMON TAYLOR, [tcossamon@yahoo.com](mailto:tcossamon@yahoo.com)