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**MEMORANDUM**

TO: Barbara Sattler, Deputy District Attorney

FROM: Applicant

RE: State v Henry Raymond, Defendant, and Oscar Raymond, the Bond Poster/Surety,  
Real Party in Interest

DATE: March 3, 2019

Draft of Brief in Support of Forfeiture of the Bond

I. Introduction

In this brief, I will explain why the forfeiture of the bond is appropriate and why the exoneration of the bond as requested by Oscar Raymond is not justified.

II. Summary of Facts

On February 23, 2018, Henry Raymond was indicted on felony charges of unlawful possession of a narcotic drug for sale and possession of drug paraphernalia. On March 13, 2018, the trial court conducted a hearing on the defense counsel's motion to set conditions of release. The trial court set a \$45,000 cash bond requirement and the defendant's son, Oscar Raymond posted the \$45,000 cash bond resulting in defendant's release from the county court's hold. At the March 23, 2018 pre-trial conference, Defendant's counsel informed the court that Defendant's bond had been posted and that the Defendant had fled. It was noted in the trial court minutes that Defendant's counsel bore the responsibility of arranging for Defendant's return. On January 30, 2019 when the trial began, the Defendant failed to appear. A jury was impaneled, opening statements were made, two witnesses testified and several items of evidence were admitted. The Defendant failed to appear again in the second day of trial. Several more witnesses testified and more items of evidence were admitted. The defense counsel then made a motion for acquittal and the trial court granted the motion, acquitting the defendant and ending the trial. The defense counsel then moved to exonerate the bond and was denied the motion and the matter was sent to the Superior Court Hearing Office for commencement of the bond forfeiture proceedings based on the defendant's failure to appear for his trial.

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### III. Argument

A) FORFEITURE IS APPROPRIATE BECAUSE THE DEFENDANT FAILED TO APPEAR IN IMPORTANT TRIAL HEARINGS AND DEFENDANT'S PRESENCE WAS NECESSARY FOR TRIAL.

The object of bail and its forfeiture is to insure the attendance of the accused and his obedience to the orders and judgement of the court. People v Nationwide Surety Insurance Company. Nonappearance for trial creates a presumption of forfeiture. Once the defendant fails to appear in compliance with the bond terms, the surety bears the burden of showing a legally recognized justification for the failure to appear either because the statute mandates exoneration or because it should be exonerated in whole or in part at the discretion of the court. Nationwide. In the present case, Oscar Raymond posted the bond for Defendant his father and as the surety, he has the burden of showing the state mandate exoneration or because it should be exonerated at the court's discretion.

The Rules of Criminal Procedure, Rule 13(d), govern forfeitures of bonds and provides that the court shall exonerate an appearance bond in the event of pretrial dismissal. People. Rule 13(e) further provides that in all other instances the decision whether or not to exonerate a bond shall be within the sound discretion of the court. Nationwide. Counsel for the defense argues that under Rule 13(d)(1) when there is no further need for an appearance bond exoneration is mandatory and that 13(d)(2) provides that when a prosecution is dismissed the defendant shall also be released on those charges and the bond exonerated citing to People v Weinberger. In People v Weinberger, the appellant's bond was exonerated because the state was not prejudiced by the non-appearance of appellant at one pretrial conference and the appellant was not required for any other event prior to dismissal.

Our case is distinguishable from Weinberger in that the State has been prejudiced by Defendant's nonappearance and was in fact required for the other appearances. In our case, the only reason Defendant was acquitted was because Defendant's absence made identification impossible. In fact, the court quoted "There is no substantial evidence to warrant conviction based on insufficient evidence of the Defendant. Furthermore, Defendant failed to appear to the strat of his trial and second day of his trial where several evidence was admitted and several witnesses testified in comparison to Weinberger were the nonappearance was for a simple pre-trial conference.

Therefore, the forefeiture is appropriate because the defendant failed to appear in

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important trial hearings and the Defendant's presence was necessary for a trial and conviction in this instance.

B) EXONERATION IS NOT JUSTIFIED BECAUSE OSCAR RAYMOND, THE SURETY, FAILED TO LOCATE AND INSURE THE RETURN OF DEFENDANT.

In Nationwide, the bond was exonerated because there was reason for the surety to know that the defendant was a flight risk and had a good faith belief that the defendant would appear. However, in People v Sainly Bail Bonds, the court held that exoneration was not justified where the surety had not made an effort to in attempting to arrange for the defendant's appearance and the surety failed to exercise care in ascertaining the defendant's circumstances and community ties before executing an appearance bond. Our case is comparable to that of Sainly Bonds in that Oscar, Defendant's Son failed to ask Defendant if he would appear for trial and was not familiar with his father as Defendant was not a constant presence in Oscar's life and has not been around much. Furthermore, Oscar assumed the risk Defendant would flee as he knew his father had no ties to the state and was aware of his father's unlawful activities. Additionally, Oscar was aware of the decent chance his father would flee rather than face trial. Also, Oscar made no attempt to contact defense counsel to ensure Defendant would appear. Lastly, the bond is not a financial burden on Oscar as he makes good money.

Therefore Oscar assumed the risk and exoneration is not justified.

#### IV. Conclusion

In conclusion, the \$45,000 bond should be forfeited and the exoneration is not justified.

Question #6 Final Word Count = 986

**END OF EXAM**