

MOTION TO SET ASIDE FORFEITURE

NOTE: A motion to set aside a pending forfeiture under Nos. 1-7 or 9 below may be filed at any time before the expiration of one hundred and fifty (150) days after the "Date Notice Given" on the reverse. A motion under No. 8 must be filed within 30 days of that date. G.S. 15A-544.5(d)(1a). The motion must state the reason for the motion and attach to the motion the evidence specified in G.S. 15A-544.5(b). Complete this Motion and the Moving Party's Certificate of Service below. **Copy both sides of this form before serving.**

Pursuant to G.S. 15A-544.5, the undersigned moves that the forfeiture on the reverse be set aside for the following reason(s):

- ☐ 1. The defendant's failure to appear has been set aside by the court and any order for arrest issued for that failure to appear has been recalled, as evidenced by the attached copy of the official court record.
- ☐ 2. All charges for which the defendant was bonded to appear have been finally disposed by the court other than by the State taking a dismissal with leave, as evidenced by the attached copy of the official court record.
- ☐ 3. The defendant has been surrendered by a surety on the bail bond as provided by G.S. 15A-540, as evidenced by the attached "Surrender Of Defendant By Surety" (AOC-CR-214).
- ☐ 4. The defendant has been served with an order for arrest for the failure to appear on the criminal charge in the case in question as evidenced by a copy of an official court record.
- ☐ 5. The defendant died before or within the period between the forfeiture and this Motion, as evidenced by the attached copy of the defendant's death certificate.
- ☐ 6. The defendant was incarcerated in a unit of the Division of Prisons of the Department of Adult Correction and is serving a sentence or in a unit of the Federal Bureau of Prisons located within the borders of the state at the time of the failure to appear as evidenced by a copy of an official court record or copy of a document from the Division of Prisons of the Department of Adult Correction or Federal Bureau of Prisons.
- ☐ 7. The defendant was incarcerated in a local, state, or federal detention center, jail, or prison located anywhere within the borders of the United States at the time of the failure to appear or between the failure to appear and the final judgment date, and the district attorney for the county in which the charges are pending was notified of the defendant's incarceration while the defendant was still incarcerated and the defendant remains incarcerated for a period of 10 days following the district attorney's receipt of notice, as evidenced by a copy of the written notice served on the district attorney via hand delivery or certified mail and written documentation of date upon which the defendant was released from incarceration, if the defendant was released prior to the time the motion to set aside was filed.
- ☐ 8. Notice of the forfeiture was not provided pursuant to G.S. 15A-544.4(e).
- ☐ 9. The court refused to issue an order for arrest for the defendant's failure to appear, as evidenced by a copy of an official court record.

1 Check ONLY ONE of the nine boxes

Name And Address Of Moving Party (type or print)

☐ New Address

Date

Signature

2 Your name and address

3 Date

4 /s/ Your signature

Moving Party: ☐ Defendant **5** ☐ Surety **6** **Surety company name**

Signed By: ☐ Self **7** ☐ Bail Agent ☐ Runner ☐ Attorney

☐ Other:

Professional bondsman: check Surety, write YOUR name on line 6, check Self at 7.

MOVING PARTY'S CERTIFICATE OF SERVICE

NOTE: G.S. 15A-544.5(d)(2) provides, "The motion shall be filed in the office of the clerk of superior court of the county in which the forfeiture was entered. The moving party shall, under G.S. 1A-1, Rule 5, serve a copy of the motion on the district attorney for that county and on the attorney for the county board of education."

The moving party hereby certifies that a copy of the above Motion To Set Aside Forfeiture was served on the district attorney for this county and the attorney for the county board of education by ☐ mailing a copy to each by first-class mail. ☐ personally delivering a copy to each.

☐ sending a copy by email from ICMS/File & Serve to an email address of record with the court for each person, specifically: **8 Check this box**

Email Of Record For District Attorney For This County

Email Of Record For Attorney For County Board Of Education

9 DA's email address

10 School board attorney's email address

Date Of Service

Name Of Moving Party (type or print)

Signature Of Moving Party

11 Date served

12 Your name

13 /s/ Your signature

OBJECTION AND NOTICE OF HEARING

The ☐ district attorney ☐ board of education objects to the foregoing Motion. A hearing on this Objection will be held at the date, time, and location below.

Date Of Hearing

Time Of Hearing

☐ AM

Location Of Hearing

☐ PM

School board attorney or DA only, and only if they object. Leave blank.

Date

Name (type or print)

Signature

☐ School Board Atty.

☐ DA ☐ Asst. DA

CERTIFICATE OF SERVICE OF OBJECTION AND NOTICE OF HEARING

I certify that on this date I served a copy of the above Objection And Notice Of Hearing on the moving party by ☐ first-class mail. ☐ personal delivery.

Date

Name (type or print)

Signature

☐ School Board Atty.

☐ DA ☐ Asst. DA

ORDER ON OBJECTION

Upon due notice, a hearing was held on the above Objection to the Motion To Set Aside Forfeiture. The Court finds that on the "Date Of Bond" shown on the reverse the moving party named above executed a bond for the defendant's appearance in the case(s) identified, and in the "Amount Of Bond" shown, on the reverse. On the "Failure To Appear Date" shown on the reverse, the defendant failed to appear to answer the charges in the case(s), and forfeiture of the bond was entered on that date. Notice of forfeiture was mailed to the moving party on the "Date Notice Given" shown on the reverse.

The Court ☐ finds ☐ does not find that the moving party has established one or more of the reasons specified in G.S. 15A-544.5 for setting aside that forfeiture.

NOTE TO THE COURT: G.S. 15A-544.5(a) provides, "There shall be no relief from a forfeiture except as provided in this section. The reasons for relief are those specified in [G.S. 15A-544.5(b)]," which also provides, "a forfeiture shall be set aside for any one of the following reasons, and none other." The reasons are those set forth in the above Motion To Set Aside Forfeiture.

Therefore, it is ORDERED that:

☐ The above Motion is allowed and the forfeiture is set aside.

☐ The above Motion is denied and the forfeiture shall become a final judgment of forfeiture on the later of this date or one hundred and fifty (150) days after the "Date Notice Given" as shown on the reverse side.

Date

Name Of Judge (type or print)

Signature Of Judge

The judge's section. Leave blank.