



Best of the Listserv

Question:

Has anyone tried to post a bond in a child abduction case? How is it done? What agencies sell such bonds?

Janet Uthe

Answer:

Janet: The NCMEC [National Center for Missing and Exploited Children www.missingkids.org] has worked with a National Organization of Bonding Agents to come up with a child custody bond for use in various situations. Information on this type of bonding is available through various bonding agents. One agency that has child custody bonds is "Accredited Property and Casualty Company." From a brochure they handed out to the ABA Family Law Section Meeting a couple years ago:

"HISTORY AND DEVELOPMENT - CHILD CUSTODY! VISITATION BOND

"In the Spring of 2000, The National Center for Missing and Exploited Children (NCMEC) approached a national surety bond agents' organization about developing a surety bond product that could be used to ensure a parent's compliance with the terms of a custody decree. It had been the Center's experience, after looking for eleven years, that no insurance company offered a bond product that could guarantee such a highly specialized obligation. The Center's main interest and hardest task was in finding insurance companies willing to underwrite a bond to protect children and families against parental abduction and non-compliance with visitation orders.

"Already a successful underwriter specializing in surety bail, Accredited took great interest in the child custody bond proposed by NCMEC. Our product development team began to evaluate the purpose, duty and mission of the new bond and created a surety bond with preventive goals in mind:

- “ offering a financial and emotional deterrent to violating custody decrees
- “ protecting children from becoming victims of contentious visitation battles
- “ providing financial resources to a searching parent for much-needed legal counsel and investigative support in the event of abduction

“Like any other new bond product, once the Child Custody/Visitation Bond was developed, the next step was to file rates and forms with the Departments of Insurance across the nation. Once the filings were approved and the bond could be offered, Accredited began an information campaign to announce the availability of the bond to family law attorneys, judges and courts,

“This campaign has allowed Accredited the opportunity to discuss with family law practitioners across the nation, the practical applications of the Child Custody/Visitation Bond to address the complex issues and emotions at play in custody cases. The bond has been well received by all audiences, with attorneys being especially pleased that their clients will now have an alternative option to escrow accounts with the courts.

“To date Accredited is pleased to be able to offer the bond in 38 states, including: Alabama, Arizona, California, Colorado, Delaware, District of Columbia, Florida, Georgia, Idaho, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maine, Maryland, Michigan, Minnesota, Mississippi, Missouri, Montana, Nebraska, Nevada, New Hampshire, New Jersey, New York, North Carolina, North Dakota, Oklahoma, Ohio, Pennsylvania, Rhode Island, South Carolina, South Dakota, Tennessee, Texas, Virginia, and Wyoming. Filings in other states are pending.”

Ron Nelson
Overland Park, Kansas
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Questions and Answers:

Q: Why do I need this bond?

A: Where there is a history of non-compliance with the custody order or visitation terms, or it is suspected that there may be a future problem, the court may determine that a bond is necessary to compel the parties to comply with the visitation terms of the custody decree. The court will most likely require evidence to support such a claim by the requesting parent (obligee).

Q: Who determines the amount of the bond? What are the criteria?

A: The judge who is hearing the custody case will be responsible for setting the amount of the bond. The court would set the bond large enough to not only discourage abduction and ensure compliance with visitation orders. They also may consider a sum reasonable enough to fund a search for the child in the event of abduction.

Q: Under what circumstances would a judge order the bond?

A: If there has been evidence of past non-compliance with the visitation terms of the custody decree or there is suspicion that there may be interference with the custody and visitation terms, it may be wise for the concerned parent to, through counsel, request a bond be posted.

Q: What is the cost for a Child Custody/Visitation Bond?

A: The premium cost, a percentage of the bond amount, is based on a sliding scale, which runs commensurate with the risk involved over the life of the bond. The premium for the first year is 10%, second year is 8%, third year is 6%, fourth year is 4%, fifth and each year thereafter is 2%.

Q: Who is qualified to sign as an indemnitor for a Child Custody/Visitation Bond?

A: Allowable indemnitors include the principal themselves, with proper collateral, and any third party who is well acquainted with the principal and who's financial responsibility rating meets the company's underwriting requirements.

Q: Can the bond be filed on behalf of custodial parties other than parents? (i.e. Grandparents, aunts, uncles, etc.?)

A: Yes

Q: What is the underwriting based upon?

A: Given the often times contentious nature of custody and divorce proceedings, the potential loss for these types of bonds is quite high. Like many other types of surety bonds, the bond will be underwritten based on the principal's financial responsibility. Collateral in the form of cash, securities or real estate will be considered. Third-party indemnity and/or collateral will also be considered.

Q: What can be offered as collateral on the Child Custody/Visitation Bond?

A: The most common types of collateral are liquid assets and real estate. Other forms of collateral include: irrevocable letters of credit and assignable stock and securities.

Q: Can the bond be used for a non-custodial parent during custody litigation or during mediation?

A: Yes, upon approval of the court and the parties.

Q: Does the bond cover travel to foreign countries? Any exceptions?

A: There are varieties of the bond, which may be employed to ensure compliance with international visitation situations. The bond covers international visitation obligations to any foreign country, with the proper collateral.

Q: If the principal fails to abide by the terms of the bond and decree, and the bond is ordered forfeited, who receives the proceeds of the bond?

A: The proceeds of the bond are paid to the obligee directly, not to the court.

Q: If the bond is forfeited, and the child is later, voluntarily returned, can the forfeiture be reversed?

A: Yes, and the bond can be reinstated. However the court must approve such action and must dismiss the forfeiture and liability to the insurance company. However, if the insurance company has paid the forfeiture, the principal and/or indemnitor must pay the company in full prior to reinstatement of the bond.

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