

NORTH CAROLINA DEPARTMENT OF INSURANCE
RALEIGH, NORTH CAROLINA

STATE OF NORTH CAROLINA
COUNTY OF WAKE

BEFORE THE COMMISSIONER
OF INSURANCE

Docket Number: D-1281

IN THE MATTER OF
THE LICENSURE OF
DEXTER TROGDON

FINAL AGENCY DECISION

This matter was heard on March 15, 2006 by the undersigned Hearing Officer, as designated by the Commissioner of Insurance pursuant to North Carolina General Statutes §§ 58-2-55, 58-2-70, 58-33-46, 58-71-80, 58-71-82, 58-71-85, 58-71-95, 150B-38, 150B-40 and 11 NCAC 1.0401 et seq. and other applicable statutes and regulations. Petitioner, the North Carolina Department of Insurance [NCDOI], was represented by Assistant Attorney General Anne Goco Kirby. Respondent Dexter Trogdon [Trogdon] was present and was represented by Douglas Brocker, Esq.

After careful consideration of the evidence and arguments presented, and based upon the record as a whole, the undersigned Hearing Officer hereby renders the following Findings of Fact and Conclusions of Law:

FINDINGS OF FACT

Procedural Background

1. Pursuant to North Carolina General Statutes §§ 58-2-55, 58-2-70, 58-33-46, 58-71-80, 58-71-82, 58-71-85, 58-71-95, 150B-38, 150B-40 and 11 NCAC 1.0401 et seq. and other applicable statutes and regulations, the NCDOI issued a Notice of Hearing [“Notice”] in the Matter of the Licensure of Dexter Trogdon (Docket No. 1281) on December 9, 2005. The Notice was duly served on Trogdon on December 12, 2005.

2. The hearing was originally scheduled for January 5, 2006. Trogdon served a request for a continuance on December 21, 2005. On January 5, 2006, the undersigned entered an Order of Continuance granting Trogdon’s request and rescheduling the hearing to March 15, 2006.

3. Trogdon holds Professional Bail Bondsman [“professional bondsman”] and

Surety Bondsman licenses issued by NCDOI on May 25, 2004 and August 30, 1994, respectively. Trogdon also holds Life/Health and Property/Liability agent's licenses issued by the NCDOI on March 26, 1996 and August 30, 1994, respectively.

4. The NCDOI called the following witnesses in its case in chief: Angela Hatchell, the Continuing Education Complaint Section Supervisor in NCDOI's Agent Services Division, and Larry Reeves, an Investigator in NCDOI's Investigations Division.

5. Trogdon testified on his own behalf. Trogdon also called Willie Gladden, Jr. and Ruth Simmons to testify as to his character and reputation in the community.

Applicable Statutes

6. G.S. § 58-71-145, entitled "Financial Responsibility of Professional Bondsmen," requires professional bondsmen acting as surety on bail bonds in this State to maintain a deposit of securities with the Commissioner which have a fair market value of at least one-eighth the amount of all bonds or undertakings written in this State on which he is liable as of the first day of the current month. This statute in effect limits the amount of bonds that the bondsman can write to no more than eight times the value of his or her security deposit. The amount of the security deposit must be reconciled with the bondsman's liabilities as of the first day of the month on or before the fifteenth day of said month. A minimum deposit of \$15,000 is required.

7. Professional bondsmen are prohibited under G.S. § 58-71-175 from becoming "liable on any bond or multiple of bonds for any one individual that totals more than one-fourth of the value of the securities deposited with the Commissioner at that time, until final termination of liability on such bond or multiple of bonds."

8. A professional bondsman whose security deposits with the Commissioner are, for any reason, reduced in value below the requirements of Article 71 is required under G.S. § 58-71-160(a) to "*immediately* upon receipt of a notice of deficiency from the Commissioner *deposit* such additional securities as are necessary to comply with the law". G.S. § 58-71-160(a) (Emphasis added). Until the professional bondsman makes such additional deposit, he is prohibited under G.S. § 58-71-160(a) from signing, endorsing, executing, or becoming surety on any additional bail bonds, or pledging or depositing any cash, check, or other security of any nature in lieu of a bail bond in any county in North Carolina.

9. Pursuant to G.S. § 58-71-165, on or before the fifteenth day of each month, professional bondsmen and surety bondsmen must "file with the Commissioner a written report in form prescribed by the Commissioner regarding all bail bonds on which the bondsman is liable as of the first day of each month showing (i) each individual bonded, (ii) the date the bond was given, (iii) the principal sum of the bond, (iv) the State or local official to whom given, and (v) the fee charged for the bonding service in each instance." ASD requires that monthly reports be signed by the Bondsman.

Trogdon's Violations of G.S. §§ 58-71-145, 58-71-160(a), 58-71-165, and 58-71-175

10. Trogdon operates a bail bond business in Asheboro, North Carolina. Trogdon writes bonds in a number of outlying counties and also employs a bail bond runner to write bonds under his professional license.

11. In early October, 2005, a Clerk of Court called ASD and spoke with Nesa Jones and Gerald Mitchell, who are employees in ASD's Continuing Education Complaint Section. The Clerk reported that Trogdon had written bonds under his professional license in excess of the statutory limit. The Clerk also advised ASD that Trogdon had not listed all of the bonds he wrote on one of his monthly reports.

12. ASD's Continuing Education Complaint Section maintains the monthly reports. An employee within that section is responsible for maintaining and reviewing the monthly reports. That employee's responsibilities include verifying from each monthly report that: (a) the bondsman's total liabilities do not exceed eight times the value of his security deposit in violation of G.S. § 58-71-145 and (b) that the bondsman has not violated G.S. § 58-71-175 by writing any bond or bonds for any one individual in excess of one-fourth the value of his or her security deposit with the Commissioner at that time.

13. If a monthly report shows that the bondsman is in violation of either G.S. §§ 58-71-145 or 58-71-175, a notice of deficiency is sent to the bondsman pursuant to G.S. § 58-71-161(a). The notice of deficiency informs the bondsman that his security deposits with the Commissioner have been reduced in value below the statutory requirements and requests the bondsman to deposit an amount of securities sufficient to cure the deficiency within 5 days of receipt of the notice.

14. The notice of deficiency quotes verbatim the language of G.S. § 58-71-160(a), which expressly requires the bondsman, upon receipt of a notice of deficiency, to "*immediately deposit* such additional securities as necessary to comply with the law" and expressly prohibits the professional bondsman from writing any more bail bonds "in any county in North Carolina until he has made such additional deposit of securities as required by the notice of deficiency."

15. Shortly after receiving the phone call from the Clerk of Court, ASD examined Trogdon's professional bail bond monthly report ["report" or "monthly report"] for August, 2005 and confirmed that Trogdon was in violation of G.S. § 58-71-145, as well as G.S. § 58-71-175.

16. ASD mailed notices of deficiency to Trogdon on October 6, 2005. One notice informed Trogdon that his August report showed that he was in violation of G.S. § 58-71-145 and requested Trogdon to make a minimum security deposit of \$47,949.00 to comply with G.S. §§ 58-71-145 and 58-71-160. The other notice informed Trogdon that his August report showed that he was in violation of G.S. § 58-71-175 and requested Trogdon to make a minimum security deposit of \$6,749 to comply with G.S. §§ 58-71-175 and 58-71-160. Each notice requested

Trogdon to make the necessary security deposit within 5 days of receipt of the notice and quoted verbatim the language of G.S. § 58-71-160(a).

17. ASD subsequently reviewed Trogdon's prior monthly reports dating from June 2005 to September 2005. Those reports showed that Trogdon had written bonds in excess of the statutory limit during each of these months and that he violated G.S. § 58-71-175 during each of these months except June 2005. After discovering the additional violations in Trogdon's prior monthly reports, ASD scheduled an informal conference with Trogdon to discuss the violations.

18. On October 10, 2005, Angela Hatchell called Trogdon and informed him that ASD was scheduling an informal conference. Ms. Hatchell also told Trogdon that he needed to make an additional security deposit in order to come into compliance with G.S. §§ 58-71-145 and 58-71-175 and that he could not write any more bonds under his professional license until he was in compliance with these statutes. During that phone conversation, Trogdon admitted responsibility for the deficiencies in his security deposit.

19. Gerald Mitchell of ASD later joined the October 10, 2005 phone conversation. Mr. Mitchell explained to Trogdon how to reduce his bail bond liabilities by transferring some of his professional bonds to surety bonds. Trogdon told Ms. Hatchell that he would switch some professional bonds to surety bonds. Ms. Hatchell again told Trogdon that he needed to deposit additional securities to come into compliance with the statutes.

20. On October 18, 2005, Larry Reeves, an NCDOJ investigator, traveled to Asheboro and met with the Clerk of Court who had complained to NCDOJ about Trogdon. Mr. Reeves arranged to meet with Trogdon later the same day.

21. During his meeting with Trogdon, Mr. Reeves advised him that he had not listed all of his bonds on his monthly report and asked him to prepare another report listing all his bonds to determine his total liability. Trogdon told Mr. Reeves that he did not intentionally leave any bonds off his report and promised to have a corrected report completed the next week. Mr. Reeves testified that he did not think that Trogdon intentionally left these bonds off his report because he had reported total liabilities well in excess of the statutory limit and would thus have nothing to gain by omitting these bonds from the report.

22. During this meeting with Trogdon, Mr. Reeves reminded him that he had written bonds in excess of the statutory limit and that he needed to get in compliance with G.S. § 58-71-145. Mr. Reeves explained to Trogdon how he could come into compliance not only by depositing additional securities, but also by transferring some professional bonds to surety bonds in order to reduce his total liabilities.

23. On October 26, 2005, Mr. Reeves met Trogdon again in Asheboro and picked up his corrected October monthly report. Mr. Reeves again reminded Trogdon that his total

liabilities were well over his statutory limit and that he needed to work on getting in compliance.

24. On October 20, 2005, ASD sent Trogdon a letter requesting that he appear for an informal conference with NCDOJ on November 10, 2005. The letter set forth the violations of G.S. §§ 58-71-145 and 58-71-175 shown in Trogdon's June 2005 through September 2005 monthly reports. It also listed three monthly reports that Trogdon failed to timely send to ASD. ASD had sent delinquency notices to Trogdon for those reports.

25. Trogdon increased his liabilities between August and September, 2005. Thus, on October 26, 2005, ASD sent Trogdon additional notices of deficiency for violations of G.S. §§ 58-71-145 and 58-71-175 shown on his September report. The notices requested that Trogdon deposit at least \$67,537.00 to comply with G.S. §§ 58-71-145 and 58-71-160 and at least \$16,749 to comply with G.S. §§ 58-71-175 and 58-71-160. The notices once again requested Trogdon to make the necessary security deposit within 5 days of receipt and quoted G.S. § 58-71-160(a).

26. On November 10, 2005, Trogdon attended the scheduled informal conference with ASD. At the conference, Trogdon told ASD that the violations of G.S. §§ 58-71-145 and 58-71-175 were due to negligence on his part.

27. Since receiving the first notices of deficiency which were sent on October 6, 2005, Trogdon had not made any additional deposits of securities with the Commissioner to cure the deficiency in his security deposit as required by G.S. § 58-71-160(a), nor had he transferred any professional bonds to surety bonds. At the informal conference, Trogdon told ASD that he had looked into transferring professional bonds to surety and was trying to get a loan to make additional deposits of security.

28. ASD told Trogdon that he needed to make an additional deposit of securities that day to cure the deficiency in his security deposit and that if he failed to do so, his case would be referred for a hearing to revoke all of his licenses. Trogdon did not make the additional deposit.

29. Trogdon's October, November, December, 2005 and January, 2006 reports each showed that his liabilities were decreasing, but were still far in excess of his statutory limit and that he had written a bond or bonds which remained outstanding on an individual in excess of one-fourth the value of his security deposit. Pursuant to G.S. § 58-71-160(a), ASD sent additional notices of deficiency to Trogdon on January 5 and 31, 2006, requesting Trogdon to make an additional deposit of securities to cure the deficiencies shown in his November and December 2005 reports, respectively, within five days of receipt. Trogdon did not make the additional deposits as requested and as required under G.S. § 58-71-160(a).

30. NCDOJ introduced Trogdon's monthly professional bail bond reports for March, 2005 through January, 2006. Those reports show that Trogdon was in violation of G.S. § 58-71-145 during this entire eleven month period. Trogdon's liabilities increased each month between March and September, 2005, growing from \$279,200 in March to \$806,300 in September, 2005.

The deficiency in Trogdon's security deposit increased concomitantly during this period from \$2,900 in March, 2005 to \$62,517 in September, 2005. In September, 2005, the peak month, Trogdon's total liabilities exceeded his statutory limit under G.S. § 58-71-145 by \$540,290.

31. Trogdon's monthly reports for May, 2005 through January, 2006 show that he was in violation of G.S. § 58-71-175 each of those months except June, 2005.

32. ASD could not determine whether Trogdon was in compliance with G.S. § 58-71-175 during March and April, 2005 because Trogdon only listed the bonds he had written for that given month on those reports. Trogdon also failed to list all of the bonds he had written in his May and June, 2005 reports. However, upon ASD's request, Trogdon filed corrected monthly reports for May and June, 2005 which listed all of the bonds he had written.

33. Trogdon did not sign his March, April, and May reports, but did sign his monthly reports for June, 2005 through January, 2006.

34. Trogdon testified that he was not paying attention to his bail bond business during this 11 month period because he was looking after his wife, who became ill in late 2004 and had to go on kidney dialysis. During this period, he turned the administrative details of his bail bond business over to his daughter, an employee of his business.

35. Although Trogdon had prepared and filed his monthly bail bond reports in the past, he allowed his daughter to prepare and file those monthly reports during this period because of his wife's illness. Trogdon's daughter was new to these tasks.

36. Trogdon testified that he explained the statutory limits under G.S. §§ 58-71-145 and 58-71-175 to his daughter and told her to call NCDOI if she had any questions. However, Trogdon admitted in hindsight that he did not adequately instruct and supervise his daughter in preparing the reports.

37. Trogdon testified that he did not even look at the monthly reports for March, April, and May, 2005 which were unsigned and that he did not review any of the monthly reports that he signed between June and September, 2005.

38. Trogdon did not have a system in place to ensure that he remained in compliance with G.S. § 58-71-175.

39. Trogdon testified that he did not know he was in violation of G.S. §§ 58-71-145 and 58-71-175 until receiving the October 6, 2005 notices of deficiency. Trogdon did not think that he was prohibited from writing bonds in all counties until he cured the deficiency in his security deposit and testified that he *voluntarily* stopped writing bonds under his professional license after receiving the October 6, 2005 notices of deficiency.

40. In November, 2005, Trogdon began working on reducing his liabilities and continued working on this up until the time of the hearing. Trogdon's February, 2006 report, which was due to ASD the day of this hearing, showed that he was then in compliance with G.S. § 58-71-145. Thus, Trogdon did not come back into compliance with G.S. § 58-71-145 until five months after he received the first notices of deficiency from ASD.

41. On March 3 and 10, 2006, the NCDOJ had to liquidate a total of \$4,704.36 from Trogdon's security deposit in order to satisfy writs of execution on bonds which Trogdon wrote. On March 14, 2006, one day before this hearing, Trogdon made an additional security deposit of \$6,200.00 with the Commissioner. That additional deposit kept Trogdon in compliance with G.S. § 58-71-145.

CONCLUSIONS OF LAW


1. The undersigned has personal jurisdiction over the Respondent and subject matter jurisdiction in this matter.
2. Trogdon violated G.S. §§ 58-71-145, 58-71-160(a), 58-71-165, and 58-71-175 and these violations are grounds under G.S. §§ 58-71-80(a)(7) for disciplinary action.
3. Trogdon has demonstrated financial irresponsibility in the conduct of business in this State and this is grounds under G.S. § 58-71-80(a)(8) for disciplinary action.

Based on the foregoing Finding of Facts and Conclusions of Law, the Hearing Officer makes the following:

ORDER

Trogdon's professional bail bondsman and surety bondsman licenses shall be suspended for a period of two years from the date of entry of this Order.

This the 17th day of April, 2006.


Stewart L. Johnson, Hearing Officer
N.C. Department of Insurance

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this day served the foregoing **Final Agency Decision** by certified mail, return receipt requested, first class postage prepaid, addressed as follows:

Dexter Trogon
1120 South Cox Street
Asheboro, NC 27203

Douglas J. Brocker
Attorney for Respondent
1101 Haynes Street, Suite 104
Raleigh, NC 27604

This the 20th day of April, 2006.



Anne Goco Kirby
Assistant Attorney General
N. C. Department of Justice
9001 Mail Service Center
Raleigh, NC 27699-9001
(919) 716-6610