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# MEMORANDUM OF LAW

## REQUIRING FAITHFUL PERFORMANCE

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36 USC 302 – National Motto "*In God we trust*" is the national motto.

May 15, 2023

The purpose of this Memorandum is to remind all public officials of their obligation to faithfully perform their duties under oath with integrity by upholding the “Law of the Land” a/k/a Common Law or Natural Law. Whereas their mandatory bonds guarantee against the public official’s fraud or dishonesty and cover loss arising from neglect or omissions.

### **THE PUBLIC OFFICIALS BOND A STATUTORY OBLIGATION REQUIRING “FAITHFUL PERFORMANCE”**

A public official’s bond refers to an instrument “by which a public officer and a secondary obligor undertake to pay up to a fixed sum of money if the officer does not faithfully discharge the duties of his or her office.”<sup>1</sup> A statutory public officials’ bond is thus a public official’s bond mandated by statute. Black’s Law Dictionary defines “official bond” as “a bond given by a public officer, conditioned on the faithful performance of the duties of office.”<sup>2</sup> In the three-party surety structure, the public official is the principal, the bonding company is the surety (sometimes called the secondary obligor), and the government or, in many cases, the public being served by the official is the obligee.

Statutory bond requirements are found within the individual state codes.<sup>3</sup> They are typically interspersed throughout the code, although there is typically a “Public Officials” or “Public Office” chapter that has the general bond requirements and procedures as well as the authority for the issuance of such bonds. The requirements for the various individual officials, however, are found within the specific chapter relating to their office. In general, bonds for public officials that are required by statute (hereinafter, “Official

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<sup>1</sup> Restatement (Third) of Suretyship & Guaranty § 71 cmt. c (1996).

<sup>2</sup> BLACK’ S LAW DICTIONARY 171 (7th ed. 1999).

<sup>3</sup> All fifty states have statutory bond requirements.

Bond[s]” or “Public Officials bond[s]”) are mandatory for all elected and most public officials. This can range from the governor to local school board members. Statutes may require an Official Bond for an individual public official or may allow a blanket bond for a group of officials, such as the members of the board of directors.<sup>4</sup> Depending on the statutory language, an Official Bond may be a “faithful performance bond,” “fidelity bond,” “public employees blanket bond,” or “public employee dishonesty policy.” While “faithful performance” bonds are by far the most common Official Bonds, the others may also be statutorily required.

“Statutory bonds” by definition, Official Bonds are required when a statute so dictates. Often, the bond is required to be effective before or upon the taking of the oath of office by the employee or official. In other cases, an official bond may run indefinitely, covering each successive employee or official as they take office. The statutes will either mandate<sup>5</sup> or authorize<sup>6</sup> the procurement of a bond. If the controlling statutory language merely “authorizes” the issuance of a bond, that bond will only be a statutory Official Bond to the extent the language of the bond reflects the requirements and intent of the statute.<sup>7</sup> In *Price v. Arrendale*, a bond was procured by the governmental entity to protect itself from losses caused by the employee’s failure to perform his duties. Because the bond did not meet the criteria set forth in the authorizing statute, it was held to be a non-statutory bond, not subject to the provisions of the code affecting official bonds.

The Public Officials bond is commonly issued to protect against conduct or omissions by the named public official that constitutes a breach of the public official’s duties of office. These bonds guarantee against more than the public official’s fraud or dishonesty and, in certain cases, can cover loss arising from neglect or omissions.

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<sup>4</sup> Compare K AN . S TAT. A NN . § 19-4207 (2005) (excluding county treasurer from officials that may be bonded with a blanket bond) with KAN. S TAT. A NN . § 19-4203 (2005) (stating that for county officers and employees, a blanket bond may be purchased to cover both elected and appointed officers and employees).

<sup>5</sup> See, e.g., A RK. CODE A NN . § 25-16-502 (2005) (“[T]he Auditor of State shall execute and deliver to the Governor a bond to the State of Arkansas ...”)

<sup>6</sup> See, e.g., A RK. CODE A NN . § 26-52-105 (2005) (“The [Income Tax Director] may require such of the officers, agents, and employees as he may designate to give bond for the faithful performance of their duties . . . .”)

<sup>7</sup> See *Price v. Arrendale*, 168 S.E.2d 193 (Ga. Ct. App. 1969).

A Public Officials bond may be issued for the benefit of the governmental unit in which the principal holds office, but also it can provide coverage to the general public.<sup>8</sup> The Bond is “in the nature of an Indemnity Bond rather than a Penal or Forfeiture Bond; it is, in effect, a contract between the officer and the government, binding the officer to discharge the duties of his or her office.”<sup>9</sup> The Official Bond is not intended to protect the principal or the public official himself but rather is intended to protect the city or the entire citizenship served by the official.<sup>10</sup>

The Official Bond indemnifies those who have suffered a loss as a result of the official’s misconduct, and in many cases the state statute will include a provision specifically allowing a member of the public to bring suit against the bond, if that individual has suffered a loss resulting from the official’s misconduct.<sup>11</sup> To that end, while there is some varying degree of specificity in the statutory requirements, almost all satisfy the general purpose of requiring an official to issue a bond for the faithful performance of his or her duties. An Official Bond is taken “as assurance of compliance with the law.”<sup>12</sup> It is designed to ensure that the official or employee will faithfully perform his or her duties while in office.

### **CODE OF CONDUCT<sup>13</sup>**

The Code of Conduct for United States Judges includes the ethical canons that apply to federal judges and provides guidance on their performance of official duties and engagement in a variety of outside activities. Anyone who is an officer of the federal judicial system authorized to perform judicial functions is a judge for the purpose of this Code. All judges should comply with this Code.

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<sup>8</sup> See Hugh E. Reynolds, Jr. & James Dimos, Fidelity Bonds and the Restatement, 34 W M. & MARY L. REV. 1249 (Summer 1993); 63C A M. J UR . 2 D Public Officers & Employees § 130 (2005).

<sup>9</sup> 63C A M. J UR . 2 D Public Officers & Employees § 130 (2005).

<sup>10</sup> Id.

<sup>11</sup> See, e.g., I DAHO CODE A NN . § 59-815 (2005) (“Every official bond executed by any officer pursuant to law is in force and obligatory upon the principal and sureties therein to and for the state of Idaho, and to and for the use and benefit of all persons who may be injured or aggrieved by the wrongful act or default of such officer in his official capacity, and any person so injured or aggrieved may bring suit on such bond, in his own name, without an assignment thereof.”).

<sup>12</sup> 12 A M. J UR . 2D Bonds § 6 (2005).

<sup>13</sup> <https://www.uscourts.gov/judges-judgeships/code-conduct-united-states-judges#b>

**CANON 1**  
**A JUDGE SHOULD UPHOLD THE INTEGRITY**  
**AND INDEPENDENCE OF THE JUDICIARY**

An independent and honorable judiciary is indispensable to justice in our society. A judge should maintain and enforce high standards of conduct and should personally observe those standards, so that the integrity and independence of the judiciary may be preserved. The provisions of this Code should be construed and applied to further that objective.

**CANON 2**  
**A JUDGE SHOULD AVOID IMPROPRIETY**  
**AND THE APPEARANCE OF IMPROPRIETY IN ALL ACTIVITIES**

A judge should respect and comply with the law and should act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary. A judge should not allow family, social, political, financial, or other relationships to influence judicial conduct or judgment. A judge should neither lend the prestige of the judicial office to advance the private interests of the judge or others nor convey or permit others to convey the impression that they are in a special position to influence the judge. A judge should not testify voluntarily as a character witness. A judge should not hold membership in any organization that practices invidious discrimination on the basis of race, sex, religion, or national origin.

**CANON 3**  
**A JUDGE SHOULD PERFORM THE DUTIES OF THE OFFICE**  
**FAIRLY, IMPARTIALLY AND DILIGENTLY**

The duties of judicial office take precedence over all other activities. The judge should perform those duties with respect for others, and should not engage in behavior that is harassing, abusive, prejudiced, or biased. A judge should be faithful to, and maintain professional competence in, the law and should not be swayed by partisan interests, public clamor, or fear of criticism. A judge should hear and decide matters assigned, unless disqualified, and should maintain order and decorum in all judicial proceedings.

A judge should be patient, dignified, respectful, and courteous to litigants, jurors, witnesses, lawyers, and others with whom the judge deals in an official capacity.

#### **CANON 4**

Complete separation of a judge from extrajudicial activities is neither possible nor wise; a judge should not become isolated from the society in which the judge lives. As a judicial officer and a person specially learned in the law, a judge is in a unique position to contribute to the law, the legal system, and the administration of justice, including revising substantive and procedural law and improving criminal and juvenile justice. To the extent that the judge's time permits and impartiality is not compromised, the judge is encouraged to do so, either independently or through a bar association, judicial conference, or other organization dedicated to the law. Subject to the same limitations, judges may also engage in a wide range of non-law-related activities. ...

#### **CANON 5**

##### **A JUDGE SHOULD REFRAIN FROM POLITICAL ACTIVITY**

A judge should not: act as a leader or hold any office in a political organization; make speeches for a political organization or candidate, or publicly endorse or oppose a candidate for public office; or solicit funds for, pay an assessment to, or make a contribution to a political organization or candidate, or attend or purchase a ticket for a dinner or other event sponsored by a political organization or candidate.

#### **PROFESSIONAL CONDUCT**

A lawyer, as a member of the legal profession, is a representative of clients and an officer of the legal system with special responsibility for the quality of justice. As an officer of the legal system, each lawyer has a duty to uphold the legal process; to demonstrate respect for the legal system; to seek improvement of the law; and to promote access to the legal system and the administration of justice. In addition, a lawyer should further the public's understanding of and confidence in the rule of law and the justice system because in a "Constitutional Republic" you have a duty to uphold Justice even above the law.

The relative autonomy of the legal profession carries with it special responsibilities of self-governance. Every lawyer is responsible for observing the true rules of professional conduct established through reason. The “Rules of Law” must always be governed by morals founded on common law maxims and guided by ethics.

### **OATH OF OFFICE**

Article VI of the Constitution states that other officials, including members of Congress, "shall be bound by Oath or Affirmation to support this constitution." An officer, within 30 days after the effective date of his appointment, shall file with the oath of office required by section 3331 of this title an affidavit that neither he nor anyone acting in his behalf has given, transferred, promised, or paid any consideration for or in the expectation or hope of receiving assistance in securing the appointment.

5 U.S. Code § 3331 – Oath of office: An individual, except the President, elected or appointed to an office of honor or profit in the civil service or uniformed services, shall take the following oath: “I, AB, do solemnly swear (or affirm) that I will support and defend the Constitution of the United States against all enemies, foreign and domestic; that I will bear true faith and allegiance to the same; that I take this obligation freely, without any mental reservation or purpose of evasion; and that I will well and faithfully discharge the duties of the office on which I am about to enter. So, help me God.” This section does not affect other oaths required by law.