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Kathleen D. Baxter, PhD, CGFM, CPM
State Comptroller

Michael G. Hudson, CGFM
Deputy State Comptroller

MEMORANDUM

TO: All Probate Judges - Elect

FROM: Kathleen D. Baxter 
State Comptroller

DATE: December 13, 2018

RE: Public Official Surety Bonds

In compliance with the Code of Alabama, 1975, as amended, probate judges are required to execute a public official surety bond for the faithful performance of your duties (Section 11-2-1, Code of Alabama, 1975). There are provisions contained in the Code of Alabama, 1975, as amended, relative to the execution and filing of your bond. Bonds not properly prepared or in compliance with the Code of Alabama, 1975, as amended, will be returned for correction.

The bond of the probate judge shall be filed and recorded in the Office of the Circuit Clerk, and **a duplicate copy filed in the Office of the State Comptroller** (Section 11-2-3, Code of Alabama, 1975, as amended).

The bond **must be filed no later than the date you take office which is January 15, 2019** (Section 11-2-6, Code of Alabama, 1975, as amended). However, it is important that the bond be **filed as soon as possible** to avoid last minute delays should the bond have to be returned for correction. If any official, required by law to give bond, fails to file the bond within the time fixed by law, he/she vacates his/her office (Section 36-5-15, Code of Alabama, 1975, as amended).

As previously cited, the bond is to be executed in duplicate – the original to be filed in the Circuit Clerk's Office and the duplicate filed in the Office of the State Comptroller. The **amount of the bond** will be determined by using the table provided in Section 12-13-33, Code of Alabama, 1975, as amended. The bond shall be **for the term of six (6) years from January 14, 2019** (Section 12-13-30, Code of Alabama, 1975, as amended). Alternatively, the bond may be worded so that it is **for the term of six (6) years beginning on January 15, 2019** (Attorney General Opinion 83-00241 states that the term of office of a probate judge begins on Tuesday and does not include the Monday from which the term begins to run).

Before the bond can be filed, it **must show the approval and signature of the approving officer and the day and year approved** (Sections 36-5-6 through 36-5-8, Code of Alabama, 1975, as amended). Since the bond must be filed in the Circuit Clerk's Office, either the Circuit Clerk or Circuit Judge would be the appropriate officer to approve the bond.

The bond is to be made payable **to the county treasury** (Section 11-2-1, Code of Alabama, 1975, as amended). The bond must be made by a surety or guaranty company authorized by the laws of this state to make bonds and qualified to do business in this state (Section 11-2-6, Code of Alabama, 1975, as amended). The bond must be issued through an insurance producer duly licensed under the laws of this state (Section 27-3-27, Code of Alabama, 1975, as amended).

The agent's name and their city of residence must be provided to the Comptroller's Office with copy of bond. The Comptroller's office via The Department of Insurance checks the authorization of the agent, so the name and city must be legible.

In conjunction with the filing the public official bond, an oath of office must be filed with the clerk of the circuit court.

A commission must be obtained before entering upon and exercising the duties of the office. This commission may be obtained from the Secretary of State and the cost of the commission is \$5.00 (Sections 36-2-6 through 36-2-10, Code of Alabama, 1975, as amended). The \$5.00 is to be sent to the Secretary of State. Questions concerning the commissions should be directed to Shemekwa Farrow, Commissions Administrator, at (334) 242-7224.

For assistance or additional questions, please contact Shirley O'Connell at (334) 242-0440.

CHECKLIST TO BE FOLLOWED BEFORE BONDS FILED

- () Amount of bond (Section 12-13-33)
- () Term - 6 years from January 14, 2019 or 6 years beginning on January 15, 2019 (Section 12-13-30)
- () Payable to the county treasury (Section 11-2-1)
- () Surety company and insurance producer authorized by the laws of this state (agent's name and city provided with copy of bond) (Sections 11-2-6 and 27-3-27)
- () Approval and signature of approving officer, day and year. Must say, "approved" (Sections 36-5-6 through 36-5-8)
- () You signature as principal

Once all items have been fulfilled the bond may be filed with the circuit clerk and a duplicate sent to the Comptroller at the following address:

State Comptroller's Office
Department of Finance – Receipts Section
P.O. Box 302602
Montgomery, AL 36130-2602
Attn: Shirley O'Connell