

## Judicial Bonds

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### Repository Citation

Norris G. Nordahl, *Judicial Bonds*, 34 Marq. L. Rev. 183 (1951).

Available at: <http://scholarship.law.marquette.edu/mulr/vol34/iss3/3>

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# JUDICIAL BONDS

NORRIS G. NORDAHL\*

## I

### PURPOSE

Legal practitioners, excepting those who specialize in certain branches of the law, do not have frequent occasion to use bonds, judicial or otherwise. Thus, when a situation arises for the use of a bond, a large number of attorneys are at a loss as to where to obtain one. The subject matter of this article deals with judicial bonds; the field in which attorneys are most frequently required to file bonds.

It would be impossible to give even a brief description of all bonds falling under the classification of judicial bonds. Such a description, however feasible, would not be practical since attorneys come in contact with a relatively small number of such bonds. The ones commonly used will be outlined and in addition the general underwriting requirements will be given in order to familiarize the attorney with facts the corporate sureties require before they will consider writing such bonds. Often attorneys confronted with the requirements of joint control, collateral, indemnity, copies of wills, etc., are puzzled and sometimes reluctant to give surety companies such information or cooperation. These requirements will be analyzed and their necessity explained.

The subject of judicial bonds includes those bonds written in probate proceedings. Many attorneys in drawing up wills consider the clause allowing an executor or executrix to act without bond as an important saving to the estate. This practice, based on early English ecclesiastical law, will be scrutinized and reasons for its rejection noted.

## II

### INTRODUCTION

A judicial bond is a promise to answer for the default of another.<sup>1</sup> It is never created by implication in law, but always arises through contract and such contract must contain consideration, be executed by competent parties, be without duress, and in writing.<sup>2</sup> All such bonds require three parties (except where there is statutory authority for the filing of an undertaking, which is a two party instrument—the surety and the obligee) to make the contract; first, the principal, the one for whom the contract is made, whose debt or default is the subject matter of the transaction; second, the obligee, the one to whom the debt or obligation runs; third, the promisor or surety, who agrees

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<sup>1</sup> *Hough v. Aetna Ins. Co.* 57 Ill. 318, 11 Am. Rep. 18 (1870).

<sup>2</sup> *Ingersoll v. Baker*, 41 Mich. 48 (1879).

that the debt or obligation running to the obligee will be performed and if not performed will undertake to perform it or pay the resulting loss. The promisor or surety was formerly an individual who for the sake of friendship, or good-heartedness, pledged himself to be bound for another's debt or obligation. However, such personal surety, although still existing in certain jurisdictions is very much discouraged and some states have forbidden it completely.<sup>3</sup> In its place the corporate surety has arisen and is now sanctioned by the courts in all states.<sup>4</sup>

Judicial bonds are regulated by statute as to form, penalty, qualification of surety and approval. However, these provisions are merely directory, for the benefit of the obligee, and the surety in most instances is estopped from claiming non-conformity to statute.<sup>5</sup> Thus, failure to file the bond within the time prescribed by statute or failure to have the bond properly signed will not relieve the surety from responsibility.<sup>6</sup> Courts will extend every available means to help an obligee against corporate surety. Decisions relieving a personal surety of responsibility have been reversed when a corporate surety has been involved.<sup>7</sup> This point is emphasized to show that courts will do all in their power to hold corporate sureties to their obligations. Thus when a bond is obtained the obligee is assured that performance by the principal or the surety will materialize.

For the purpose of this article, judicial bonds will be those that are filed in court and will be classified under two major classes:

*Fiduciary Bonds*, which will be divided into probate and other than probate bonds, and further divided into long and short term obligations.

*Court Bonds*, will be divided into those required by the plaintiff and those by the defendant.

### III

#### FIDUCIARY BONDS

The word "fiduciary," used in its widest scope, encompasses practically anyone in a trust capacity; its meaning here, however, will be restricted to anyone who, by reason of court appointment, takes into his custody or management the affairs or property of another.

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<sup>3</sup> The Law of Suretyship, 4th Ed. Feinsinger, 1934, page 12d.

<sup>4</sup> Cramer v. Title, 72 Cal. 12, 12 Pac. 869 (1887); Gans v. Carter & Aiden, 77 Md. 1, 25 Atl. 663 (1893); Traves v. Traves, 48 Hun. 343, 1 N.Y.S. 357 (1888); Steel v. Auditor General, 111 Mich., 381, 69 N.W. 738 (1896); Bank of Tarboro v. Fidelity & Deposit Co., 128 N.C. 366, 38 S.E. 908 (1901).

<sup>5</sup> Klein v. Beers, 95 Okla. 80, 218 Pac. 1087 (1923).

<sup>6</sup> U.S. v. Ambrose, 2 Fed. Rep. 552 (1880); State of Ohio v. Findley, 10 Ohio 51 (1840).

<sup>7</sup> The Law of Suretyship, 4th Ed., Feinsinger 1934, 401-420 at page 403.

## A. PROBATE PROCEEDINGS

*Executor's Bond.*<sup>8</sup> In the earliest history of probate law we find that the ecclesiastical courts of England did not require a bond of an executor.<sup>9</sup> The common law rule, therefore, is that no bond will be required of an executor on the granting of letters testamentary.<sup>10</sup> The reason for this rule is that an executor is selected by the testator himself and is presumably a person in whom the testator reposes special trust and confidence.<sup>11</sup> This reasoning, based on the fact that the testator because of his trust in the executor needed no other assurance that his will would be properly probated, fails to take into consideration the factor of latent contingencies beyond the executor's ability to meet or non-cooperation of the executor. The executor's fidelity is of primary importance and if temptations, because of dire family need or otherwise, result in loss, the estate would have no recourse other than the executor's private estate to recoup such loss. Beyond fidelity, however, is the important factor of performance of the executor as provided by law. It is true that the attorney often controls the estate to a great extent but it is equally true that an uncooperative executor can cause an estate great harm. Examples of such uncooperative behavior are: an executor assuming to interpret the meaning of the will and the law applicable thereto; not performing an order of the court because he believes it unreasonable; investing funds of estate wrongfully because of negligence or bad judgment; failure to pay over distributive share to heirs; failure to observe order of preference in the distribution of the estate; and neglect to file an account within a reasonable time. The executor's bond guarantees legal performance and should be inserted as a requirement in every will where there is any possibility of malfeasance or infidelity. This point is brought out clearly in a booklet—*The Surety Bond in Court Proceedings*—published by The Surety Association of America (November, 1947) at page 9. It reads:

"It is elemental to point out that the testator undoubtedly had carried ample insurance against all the customary hazards and was far-sighted enough to realize that insurance premiums were a wise investment. He was, in other words, carefully protected by fire insurance, automobile coverage, workmen's compensation, accident and health, life, and business interruption insurance, and unquestionably fidelity bonds covered his employees.

"It appears incredible, then, that such a man would voluntarily waive the giving of a bond by the executor of his will.

<sup>8</sup> Wis. Stats. 310.14 (1949); see also U.S. Revised Stats. Sec. 3467 (Title 31. Sec. 192 U.S.C.A.).

<sup>9</sup> 1 Wms. on Ex'rs 6th Am. Ed., 275; 51 Am. Decisions 519; Re: Estate of Prout, 126 N.Y. 301, (1891); 13 L.R.A. 104.

<sup>10</sup> 35 L.R.A. (N.S.) 333, 63 L.A.R. 235, 105 Am. Rep. 890.

<sup>11</sup> *More v. Eure*, 101 N.C. 11, 7 S.E. 471 (1889); 9 Am. St. Rep. 17.

since such a provision is a complete reversal of the frame of mind that contributed to the creation of the estate which the executor will administer. It seems, bluntly, to be throwing caution to the winds and gambling on the unforeseeable, in direct contradiction to the hard-headed common sense that made the estate possible in the first place.

"Nor is it easy to understand why the testator's attorney, who certainly would not advise his client to economize on essential insurance premiums during his lifetime, would fail to advise him against risking his estate after death by waiving bond from his executor, however near to him or however irreproachable his character. While the chief hazard for an estate and its heirs and creditors is the honesty of the fiduciary who will administer that trust, it does not follow that the executor chosen by the testator will also apply the necessary skill, care and foresight that will safeguard the assets of the estate and that he will invest them in accordance with the applicable provisions of the law."

In the United States the statutes of the majority of the states provide that executors shall give bond unless the will directs that no bond shall be required,<sup>12</sup> however, in other states, notwithstanding a provision in the will to the contrary, an executor is required to give bond if his financial standing does not meet the prerequisites of the court.<sup>13</sup> Moreover, a direction by a testator in his will that his executor may act as such without giving bond where the statute positively requires otherwise is of no legal effect.<sup>14</sup>

*Administrator's Bond.*<sup>15</sup> The purpose of an administrator's bond is to secure creditors and heirs from loss through the fraud or default of the administrator. Under the bond, the principal and surety are equally and primarily liable in case of a breach of its conditions, and the liability of the surety is within the terms of the contract and controlling statute, co-extensive with that of the principal.<sup>16</sup>

The parties are deemed to have contracted with reference to the law as it existed at the time the bond was executed and the applicable law becomes a part of the bond.<sup>17</sup>

The surety on administrator and executor bonds remains liable generally until such administrator or executor is released from liability.<sup>18</sup>

Besides the bonds written for executors and administrators there are various others that the attorney may be confronted with in probate

<sup>12</sup> *Providence Rubber Co. v. Goodyear*, 9 Wall (U.S.) 788 (1869); *Coolidge v. Rueth*, 209 Wis. 458, 245 N.W. 186 (1933).

<sup>13</sup> 13 L.R.A. 104; 54 Am. Dec. 540; 21 Am. Juris 452.

<sup>14</sup> *Wall v. Bessell*, 125 U.S. 382 (1887).

<sup>15</sup> Wis. Stats. 311.04 (1949).

<sup>16</sup> *Newcomb v. Ingram*, 211 Wis. 88, 243 N.W. 209 (1932).

<sup>17</sup> *Newcomb v. Ingram*, 211 Wis. 88, 243 N.W. 209 (1932); *Hartford Accident & Indemnity Co. v. White*, 22 Tenn. App 1, 115 S.W. (2d) 249 (1932).

<sup>18</sup> 34 *Corpus Juris Secundum*, at page 1163.

proceedings. A few of the more common forms are as follows: Ancillary Administrator bonds, Administrator C.T.A. or W.W.A. bonds, Administrator de Bonis Non bonds, Administrator for Sale of Real Estate bonds, Special Administrator or Administrator Pendente Lite bonds, and Administrator to Collect bonds.

The bonds under this section are classified by surety companies as *short term* bonds for the reason the fiduciary is required only to *collect* the assets of the decedent, pay any debts and *distribute* such assets in accordance with the will or statutory direction. These bonds usually run for a short period of time, thus minimizing the liability of the surety, and as a result the underwriting requirements are less strict than for those classified as long term bonds.

#### B. OTHER THAN PROBATE PROCEEDINGS

This category comprises a large number of bonds, but only a comparative few are regularly utilized by the attorney. These bonds are *long term* obligations unless they run for a period of less than three years. They are so classified because the fiduciary is responsible for *preserving* the assets and *investing* them over a long period of time as well as collecting and distributing them.

##### *Long Term Bonds*

*Guardian of Minor.*<sup>19</sup> A guardian of a minor undertakes that he will manage the estate of the minor, invest the funds of the estate as prescribed by law, obey the orders of the court and render due account of the trust fund and of all his acts touching the duties of his office; and he is required by law to execute a bond conditioned for the faithful performance of all the obligations which the trust imposes. Further, in accepting the position of guardian, he stipulates by legal implication, that he is fit and capable of managing the business affairs of his ward, and his bond is liable if such implied representation is not true. Thus, if he makes an improvident loan of moneys belonging to the ward by taking insufficient collateral, the bond will be chargeable.<sup>20</sup>

The guardian is responsible for all property of the ward, whether such property is derived from the estate or from any other source, and the surety is liable, as in the case of an executor or administrator, even though the money or property comes into the hands of the guardian before the execution of the bond, and is converted in whole or in part prior to the date of the bond.<sup>21</sup>

*Guardians of Incompetents.*<sup>22</sup> The underlying characteristics of bonds under this heading, and the liabilities of the surety, are similar to

<sup>19</sup> Wis. Stats. 260.26 (1949).

<sup>20</sup> The Law of Suretyship, 4th Ed., Feinsinger, 1934, pp. 386-388.

<sup>21</sup> Aetna Indemnity Co. v. State, 101 Miss. 703, 57 So. 980 (1912); Commonwealth v. Amer. Bonding & Trust Co., 16 Pa. Super St. 570 (1901).

<sup>22</sup> Wis. Stats. 260.26 (1949).

those of a guardian of a minor. These bonds are always considered long term obligations since the life of the incompetent can never be predicted with accuracy.

Other bonds falling in this category are Testamentary Trustee, Equity Trustee, and Trustee Under Deed to Create an Income.

#### *Short Term Bonds.*

Under this category bonds most frequently called for by attorneys are the following: Receivers in Equity Proceedings, Receivers in Bankruptcy—Liquidation, Trustees in Bankruptcy—Liquidation, Trustees Under Chapter X of the Chandler Act, Debtor Remaining in Possession, Assignee for the Benefit of Creditors and Trustees, Masters, Referees or Commissioners for the Sale of Real Estate.

The receivers, trustees or assignees in insolvency are officers of the court, charged with the duty of receiving and preserving the property of the insolvent, pending a determination by the court of the right of the creditors. This class of trustees are executive in their functions; they have been termed the right hand of the court. They represent neither the claimants nor the insolvent, but occupy a middle ground and are subject only to the orders of the court; the property in their possession is under the control of the court or "in custodia legis," and such property cannot be distributed without the express consent of the court. These officers, who are usually attorneys, are required to execute bond, to cover not only their fidelity in properly accounting for money and property coming into their hands, but also conditional that they will be responsible in damages if they fail to obey the orders of the court in all matters touching the administration of their trust.

### C. UNDERWRITING PRINCIPLES

Of primary importance to the practicing attorney is an understanding of what a corporate surety demands before it will execute any of the bonds hereofore mentioned. These requirements are all based on prior experience and deemed necessary because of repeated losses if they are relaxed. The classifications of short and long term bonds is purely a surety categorization to aid in underwriting.

The short term bond is a bond that the company can, with some degree of accuracy, predict will not continue for more than three years. However, besides the time element the bond to be classified cannot be over ten thousand dollars, and in probate bonds there can be no going business involved or any possible contest among the heirs. If any of these elements exist the bond automatically becomes a long term obligation. If the bond is short term it will be written freely with comparatively little investigation on the part of the surety. The completion and approval of the company's fiduciary application is usually sufficient for the applicant's acceptance by the company.

The long term bond, however, is entirely different. Here the company extends its protection in some cases for an indefinite period of time. Thus corporate sureties usually require joint-control of the assets of the estate, and in some cases where a large amount of money is involved or the principal is a poor financial risk will require indemnity from another responsible person. Most attorneys when told that the company requires joint control are most reluctant to submit to it. Many scout from company to company trying to find one that will write the bond without joint control. Possibly the reason for their objection is the belief that this arrangement is a reflection upon the integrity of the fiduciary. This is not the surety's viewpoint since joint control is by no means an absolute protection against dishonesty. It is merely the safest method by which bonds of this type can be written at all. The surety Association of America writes as follows concerning joint control:<sup>23</sup>

"By means of joint control, the surety performs an invaluable service in connection with proper investments. The preservation as well as the distribution of an estate poses a serious risk for the surety which bonds a fiduciary entrusted with the careful management of the estate, and joint control aids effectively in assuring that such management will be conscientiously and correctly pursued. Furthermore, the records kept as a result of joint control are frequently of great value in the final settlement of the fiduciary's account."

In writing any bond, surety companies stress three important characteristics of the applicant. The first is *character*. The second is *capacity*, which is judged by training in business affairs. The third is the applicant's financial responsibility. These are self explanatory, and many times fiduciaries are rejected because of the lack of any one of the three.

Certain fiduciary bonds surety companies are reluctant to write. Of these, the following are considered the most dangerous.<sup>24</sup> A bond: (a) which succeeds another corporate surety or personal surety; (b) on a principal who succeeds a previous fiduciary; (c) on a fiduciary who was a former personal surety in same trust; (d) which is additional to another bond in mid-term; (e) on a fiduciary who is indebted to the estate; (f) on a fiduciary who refuses joint control when demanded by surety; (g) where a going-business is to continue for an indefinite period; (h) where estate is insolvent; (i) on a surviving partner who is fiduciary of partnership estate; (j) on an estate of an absentee, a person assumed to be dead; (k) on a fiduciary who is a life-tenant in the estate; (l) on a fiduciary who is to handle his own

<sup>23</sup> The Surety Bond in Court Proceeding, The Surety Association of America, November 1947, at page 13.

<sup>24</sup> Suretymaster, 1st Ed. Jenne, D.D. 1947, at page 8.



property; (m) on a fiduciary who formerly was an officer of an insolvent corporation or partner of an insolvent partnership.

#### IV

#### COURT BONDS

The purpose of a court bond is to enable a principal to obtain a remedy which he believes he has a right to without waiting for his case to be finally adjudicated. The bond itself protects the obligee in case the principal does not succeed in ultimately winning his case.

It is important to point out the distinction between fiduciary and court bonds. Fiduciary bonds require honesty and business judgment while court bonds demand financial responsibility.

Court bonds in many instances are nothing more than financial guarantees and the liability which the surety assumes is similar to that of an endorser on a check or note. Therefore, in most instances collateral is demanded by the company before the bond will be written.

Unfortunately court bonds differ widely as to their form and liability in the different states. However, all bonds have two primary functions, first to guarantee the principal's credit during the litigation period, and second to render the principal a service.

Court bonds are of many types and it would be impracticable to discuss all of them. However, there are certain bonds that are used frequently and these will be discussed.

To facilitate explanation of court bonds, they will be classified into plaintiff bonds and defendant bonds.

##### A. PLAINTIFF'S BONDS

*Attachment and Garnishment.*<sup>25</sup> The statutes of each state, almost without exception, require that before an attachment or garnishment shall issue, the plaintiff shall give a bond conditioned to pay the costs and damages which the defendant may sustain by reason of the wrongful institution of the action. The filing of the bond is a condition precedent to the issuance of the writ. Further, it is not within the discretion of the court to permit the filing of bond for an amount smaller than that required by the statute.<sup>26</sup>

The primary obligations and rights of the parties to a bond given in an attachment or garnishment action must be determined in view of the provision of the law in force when the bond is executed and with regard to the object sought to be accomplished by the statute prescribing its execution. The bond will always be construed and en-

<sup>25</sup> Wis. Stats. 266.06 (1949).

<sup>26</sup> *Fleitas v. Cockrem*, 101 U.S. 301 (1880); *Griffith v. Milw. Harvester Co.*, 92 Iowa 634, 61 N.W. 243 (1894).

forced with respect to the statute, which will be read into it, especially if the construction of the bond is doubtful.<sup>27</sup>

*Replevin.*<sup>28</sup> Both at common law, and under modern statutes where possession is sought pending the action, the plaintiff in replevin is required to give bond, which in modern practice is usually conditioned for the prosecution of the action, for the return of the property if return thereof is adjudged, and for the payment of such sum as may for any cause be recovered against the plaintiff. It is primarily for the protection of the defendant in the event the plaintiff does not prevail.<sup>29</sup>

Formal requisites of the bond are not paramount. The statutory requirements are for the benefit of the defendant, and he may waive them. Thus he may waive practically any insufficiency thereof making the surety liable regardless of whether defendant had a right to a certain type bond or not.<sup>30</sup> Thus wherever the action of replevin is in force the giving of a bond is jurisdictional, and the court has no authority to order the writ, or the officer to serve it, except upon the condition of the execution of the bond.<sup>31</sup> The requirement of the replevin bond is mandatory and cannot be dispensed even by a deposit of money.

Three conditions must be in the bond to fully protect the defendant:

- (1) The plaintiff will prosecute the action with diligence;
- (2) The plaintiff will restore property, or pay its value in money if he fails in the action;
- (3) The plaintiff will pay defendant damages if the seizure is declared illegal.<sup>32</sup>

*Injunction.*<sup>33</sup> Originally courts of equity granted preliminary or interlocutory injunctions without requiring a bond or other security. But if the injunction was subsequently dissolved on the ground of having been issued without just cause, the person restrained thereby had no relief by way of an action for damages unless he could establish that the injunction was sued out maliciously and without probable cause. To remedy this situation the execution of a bond became statutory.<sup>34</sup>

Practically every state requires that before the extraordinary relief by injunction be granted that plaintiff execute bond, condition to pay

<sup>27</sup> *Jayne v. Platt*, 47 Ohio St. 262, 24 N.E. 262 (1890); *Kimbrell v. Hefner*, 163 S.C. 35, 161 S.E. 175 (1932).

<sup>28</sup> Wis. Stats. 265.04 (1949).

<sup>29</sup> 46 Am. Juris at page 80.

<sup>30</sup> *Capital Lumbering Co. v. Fearned*, 36 Or. 544, 59 Pac. 454 (1900).

<sup>31</sup> *Dowell v. Richardson*, 10 Ind. 573 (1858); *Graves v. Sittig*, 5 Wis. 219 (1856).

<sup>32</sup> *The Law of Suretyship*, 4th Ed., Feinsinger, 1934, pp. 367-375.

<sup>33</sup> Wis. Stats. 268.06 (1949).

<sup>34</sup> 28 Am. Juris 434.

damages that result in case it is decided the injunction should not have been granted.<sup>35</sup> The U.S. Supreme Court has stated:<sup>36</sup>

. . . without a bond for the payment of damages or other obligation of like effect, a party against whom an injunction wrongfully issues can recover nothing but costs, unless he can make out a case of malicious prosecution. It is only by reason of the bond, and upon the bond, that he can recover anything.

Other bonds falling into this division are cost bonds, indemnity to sheriff bonds, sequestration bonds, and interpleader bonds.

#### B. DEFENDANT'S BONDS

The purpose of a defendant's bond is primarily to regain or retain possession of property during the pendency of the action or to prevent execution being levied pending appeal and final judgment. Bonds of this type are written by surety companies only after thorough investigation, and in most cases they require full collateral before assuming the risk since they invariably guarantee payment of damages, costs or an adverse judgment, should the principal lose the litigation.

*Appeal and Error Bond.*<sup>37</sup> Although some states<sup>38</sup> do not require the execution of a bond on an appeal or error proceeding, the statutes of most jurisdictions require the giving of a bond on behalf of the appellant or plaintiff in error in order to perfect an appeal.<sup>39</sup> The bond amount is fixed by statutes of the various jurisdictions and is usually twice the amount of the judgment appealed.<sup>40</sup>

*Counter-Replevin.*<sup>41</sup> The purpose of this bond is to release the replevied property, enabling the defendant to retain possession of the same during the pendency of the action.

*Release of Attachment or Garnishment.*<sup>42</sup> This bond takes the place of the property attached or garnished and in effect acts as security to the plaintiff that defendant will pay any judgment which may be awarded in the pending case.

*Discharge of Injunction.*<sup>43</sup> This bond is given to counteract the effect of the writ of injunction. Its purpose is to have the use of the property in question during the action and is conditioned on the premise that if such writ be allowed permanently, the defendant will pay damages as a result of his usage thereof.

Other forms of defendant's bonds prevalent are bail bonds, dis-

<sup>35</sup> *Meinhard v. Youngblood*, 37 S.C. 223, 15 S.E. 947 (1892).

<sup>36</sup> *Meyers v. Block*, 120 U.S. 211, 7 S.Ct. 525 (1886).

<sup>37</sup> Wis. Stats. 274.07; 324.02; 324.04 (1949).

<sup>38</sup> *Stuart v. Coleman*, 78 Okla. 81, 188 P. 1063; *Mexican National R. Co. v. Mussetts*, 86 Tex. 798, 26 S.W. 1075 (1894).

<sup>39</sup> Anno. 66 L.R.A. 858.

<sup>40</sup> Anno. 69 A.L.R. 1103; Wis. Stats. 274.07; 324.02; 324.04 (1949).

<sup>41</sup> Wis. Stats. 265.06 (1949).

<sup>42</sup> Wis. Stats. 266.16 (1949).

<sup>43</sup> Wis. Stats. 268.11 (1949).

charge of mechanic's lien bonds, removal of cause bonds and third party claimant bonds.

### C. UNDERWRITING PRINCIPLES

Since most court bonds are financial guarantees, surety companies require full collateral, especially in defendant's bonds, before they execute them. Plaintiff's bonds, in many instances, will be written without collateral if it can be shown that the principal is responsible. Many attorneys, when informed of the requirement of collateral, object on the basis the surety is asking a premium without assuming any risk. This reasoning fails to take into account the fact that suretyship is not insurance, but rather the extension of credit to an applicant. The principal, if he does not wish bond, has the alternative, in some cases, of depositing collateral in the custody of the court; but the charge for such service is usually larger than the bond premium, there is no guarantee of its safety, and frequently considerable delay attends its return.

Collateral acceptable to surety companies includes cash, savings bank books, United States Government Bonds—excluding Series E, state bonds and listed securities.

### CONCLUSION

The writing of judicial bonds is now done almost completely by corporate surety companies. Personal suretyship, which formerly played a large role is now almost out of use, and is discouraged by courts as evidenced by the following statement found in Section 112 of the Model Probate Code of the American Bar Association (1946), which states:

“No bond of a personal representative (administrator or executor) shall be deemed sufficient unless it shall have been examined and approved by the judge, or in his absence by the clerk, and the approval endorsed thereon in writing. Before giving approval the judge or clerk may require evidence as to the value and character of the assets of personal sureties, including an abstract, certificate or other satisfactory evidence of title of every tract of real property which is offered as security. In the event that the bond is not approved, the personal representative shall, within such time as the judge or in his absence the clerk may direct, secure a bond with a satisfactory surety or sureties.”

The passing of the personal surety is a step in the right direction. Other evils continue to exist. Without doubt, the hang-over from English law regarding the unbonded executor or executrix is one such evil. Failure by an attorney to properly probate an estate because of a fiduciary's infidelity or improper administration could be very detrimental to his reputation and career. The attorney, as well as the heirs, has a right to such protection and it is certainly a legitimate expense to

the estate. The attorney is further guaranteed his fee when a fiduciary is bonded.

The other bonds reviewed are generally required by statute. Here the only problem that exists is where to obtain such bonds immediately and with certainty of the service required.<sup>44</sup> The majority of these bonds are written by the attorney himself, but surety companies are willing to be of assistance whenever necessary, and will supply statutory forms.

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<sup>44</sup> Judicial bonds may be obtained through practically any local insurance agent; who has the facilities of the bond department of the company he represents at his disposal. Many agents have a power of attorney enabling them to execute certain bonds upon the immediate request of the attorney.