MEMORANDUM OF LAW – MANDAMUS

**COVENANT AND BOND - MANDATORY TO OBTAIN THE PUBLIC TRUST**

The oath taker makes certain promises contained in the statutory oath to the public at-large in exchange for the public trust; as the public’s consideration; the oath taker gives a fiduciary bond or recognizance payable to the government (not to be confused with a fidelity/liability bond payable to the injured party) binding him/her to those promises as their consideration. Accordingly, the giving of said bond as consideration acquires the public’s trust as its consideration which then, and only then, enables the oath taker the essential contract/covenant authority to enter the public office and exercise the duties of the office with public trust. Exercising the public trust cannot be accomplished in any other way. The covenant is then given legal effect. Then it is filed and recorded as evidence within a prescribed period of time in a pertinent public office where it is to be available for public viewing at their leisure. Failure to do so within the time prescribed vacates the office and denies the offender’s entry to the public office.

Persons holding public office under oath without the said bond are free to ignore the promises contained in the oath of office as they desire and without consequence. They do not constitutionally or lawfully hold public office, and no decision made by such imposter office holders has any validity whatsoever in a competent court of law; all decisions and judgements are null, void, and without legal effect at their inception. An imposter unconstitutionally and unlawfully holding public denies the power of the constitution, defies the authorities of attendant statute, and engages in an insurrection against the applicable constitutions.

**A BLANKET BOND IS NOT ACCEPTABLE, LAWFUL, OR SUFFICIENT**

As demonstrated below, the uniform practice required by law over the years require each public official or employee to furnish an individual fiduciary bond or recognizance covering the requirements of his position. The bonds shall be endorsed/executed by the public official or employee as principal. The public official must then put up collateral or select a surety and have the surety execute the bond and submit it to the approving authority for determination of sufficiency and secure approval. Then file the bond with the oath in the required office or with the required person in a timely manner described by law. This procedure provides that all official bonds of county and state officers shall be executed by the principal named in such bonds and by at least two sufficient sureties or any official bond of a county or state officer may be executed by the officer as principal and by a bonding company as surety.

Contrary to said procedure, a blanket bond would the reverse of that process in that the county or state prepared the bond, selected the surety and had it execute the bond, submitted the bond to the officers, and directed the filing of the bond. Furthermore, a blanket bond forces the People to pay for it out of their tax dollars rather than the money coming out of the public servants own pockets who is required by law to furnish a fiduciary bond or recognizance. The People cannot be trustee and the beneficiary at the same. Therefore, any "blanket" bond procedure is contrary to the constitutions, general laws, and statutory process. Also see: Foote v. County of Adams 80 N.W. 2d 179 (1956)

 **A FIDELITY BOND CANNOT BE USED AS OR SUBSTITUTED FOR A**

**FIDUCIARY BOND OR RECOGNIZANCE**

The primary distinction between a fiduciary bond also known as recognizance and a fidelity bond is that the fiduciary bond shall be paid for with money out of the public servants’ own pocket to secure the covenant with People to uphold and defend both constitutions. The public servant may alternatively purchase the backing for the fiduciary bond thru an authorized surety company. A third alternative could be to put up something of value as collateral such as his/her home, a herd of cattle, or valuable art work ect. That is why, “It shall be the duty of the board of county commissioners of each county, at each regular term, on the first day of each term, to examine and inquire into the sufficiency of the official bond of the designated public servants at the county level. The sufficiency of fiduciary bonds of public servants at the state level shall be examined by other designated state officers.

In contrast the fidelity bond is paid for out of the state treasury using taxpayer dollars but only after the public servant has demonstrated that he/she is qualified to enter office by his timely filing of an oath and fiduciary bond or recognizance. The fidelity bond is a guaranty of personal honesty of state and county employees furnishing indemnity against his defalcation or negligence and therefore cannot be take the place of fiduciary bond or recognizance.

**CONSTITUTION FOR THE UNITED STATES OF AMERICA (1789)**

**“Article VI, Clause 2;** This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land: and the Judges in every State shall be **bound** there, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding.

**Article VI, Clause 3;** The Senators and Representatives before mentioned, and the Members of the several State Legislatures, and all executive and judicial Officers, both of the United States and of the several States, shall be **bound** by Oath or Affirmation, to support this Constitution; **…**”

The fundamental principles to confine an inferior court to a lawful exercise of its prescribed jurisdiction or to compel it to exercise its authority when it is its duty to do so is described in *Abel Trevino V. HHL Financial Services, Inc., and University Hospital*,945 P.2d 1345, (Colo. 1997)“As recently explained by the Supreme Court in *Mallard v. United States District Court*, 490 U.S. 296, 109 S. Ct. 1814, 1822, 104 L. Ed. 2d 318 (1989):

" [HN1] The traditional use of the writ in aid of appellate jurisdiction both at common law and in the federal courts has been to confine an inferior court to a lawful exercise of its prescribed jurisdiction or to compel it to exercise its authority when it is its duty to do so." *Roche v. Evaporated Milk Assn.*, 319 U.S. 21, 26, 63 S. Ct. 938, 941, 87 L. Ed. 1185 (1943). See also *Will v. Calvert Fire Ins. Co.*, 437 U.S. 655, 661, 98 S. Ct. 2552, 2556, 57 L. Ed. 2d 504 (1978); *Kerr v. United States District Court*, 426 U.S. 394, 402, 96 S. Ct. 2119, 2123, 48 L. Ed. 2d 725 (1976); **[\*\*6]** *Will v. United States*, 389 U.S. 90, 95, 88 S. Ct. 269, 273, 19 L. Ed. 2d 305 (1967). Mallard alleged that the District Court did not lawfully exercise its jurisdiction in appointing him and that the Court of Appeals should therefore order the District Court to grant his motion to dismiss his appointment; he did not seek to compel the District Court to exercise some authority it wrongfully declined to use. [HN2] Although "we have not limited the use of mandamus by an unduly narrow and technical understanding of what constitutes a matter of 'jurisdiction,'" *Kerr, supra*, 426 U.S. at 402, 96 S. Ct. at 2124; see *Will v. United States, supra*, 389 U.S. at 95, 88 S. Ct. at 273 we have required that petitioners demonstrate a "clear abuse of discretion," *Bankers Life & Casualty Co. v. Holland*, 346 U.S. 379, 383, 74 S. Ct. 145, 148, 98 L. Ed. 106 (1953), or conduct amounting to "usurpation of [the judicial] power," *De Beers Consolidated Mines, Ltd. v. United States*, 325 U.S. 212, 217, 65 S. Ct. 1130, 1133, 89 L. Ed. 1566 (1945), **[\*\*7]** to be entitled to issuance of the writ. To ensure that mandamus remains an extraordinary remedy, petitioners must show that they lack adequate alternative means to obtain the relief they seek, see, *e.g., Kerr, supra*, 426 U.S. at 403, 96 S. Ct. at 2124; *Allied Chemical Corp. v. Daiflon, Inc.*, 449 U.S. 33, 35, 101 S. Ct. 188, 190, 66 L. Ed. 2d 193 (1980) (*per curiam*), and carry "the burden of showing that [their] right to issuance of the writ is 'clear and indisputable.'" *Bankers Life, supra*, 346 U.S. at 384, 74 S. Ct. at 148, quoting *United States v. Duell*, 172 U.S. 576, 582, 19 S. Ct. 286, 287, 43 L. Ed. 559 (1899).

We have limited issuance of mandamus writs to "'those exceptional cases where the inferior court acted wholly without jurisdiction or so clearly abused its discretion as to constitute usurpation of **[\*247]** power.'" *United States v. Carrigan*, 804 F.2d 599, 602 (10th Cir. 1986) (quoting *In re Dalton*, 733 F.2d 710, 716 (10th Cir. 1984)), *cert. dismissed*, 469 U.S. 1185, 105 S. Ct. 947, 83 L. Ed. 2d 959 (1985). **[\*\*8]** *See also United States v. Carrigan*, 778 F.2d 1454, 1466 (10th Cir. 1985).

*Marbury V. James Madison*, 5 U.S. 137, 1803

Thus, the particular phraseology of the constitution of the United States confirms and strengthens the principle, supposed to be essential to all written constitutions, that [HN25] a law repugnant to the constitution is void; and that courts, as well as other departments, are bound by that instrument.

The rule must be discharged.

Demand for Conformation for June 5th 2017 of judges of the court

Notice by way of Petition for writ of Habeas Corpus November 7, 2017

An Assertion for Immediate Response from the Court and a Notice Boulder County Clerk and Recorders RF 03617757 and Memorandum of Law Re: Fiduciary Bond and Recognizance Boulder County Clerk and Recorders RF 03617756 were filed in Denver District Court Case No. 17CR010088 October 2, 2017.