

FILE NO. _____

STATE OF MINNESOTA

IN SUPREME COURT

In Re Petition for Disciplinary Action
against PETER DANIEL PLUNKETT,
a Minnesota Attorney,
Registration No. 169304.

**PETITION FOR
DISCIPLINARY ACTION**

TO THE SUPREME COURT OF THE STATE OF MINNESOTA:

The Director of the Office of Lawyers Professional Responsibility, hereinafter Director, files this petition upon the parties' agreement pursuant to Rules 10(a) and 12(a), Rules on Lawyers Professional Responsibility. The Director alleges:

The above-named attorney, hereinafter respondent, was admitted to practice law in Minnesota on October 18, 1985. Respondent currently practices law in Austin, Minnesota.

Respondent has committed the following unprofessional conduct warranting public discipline:

FIRST COUNT

Background

1. Minnesota Surety & Trust Company (MSTC) was a Minnesota domiciled and licensed insurance company operating out of 107 West Oakland Avenue, Austin, Minnesota. MSTC was engaged in the business of writing property and casualty insurance, with fidelity and surety as its primary lines. MSTC was also engaged in the bail bond business that included operations in Minnesota and Colorado.

2. MSTC is primarily a family owned business of which respondent owns approximately 18 percent. Respondent, at all times relevant to this petition, was the

president of MSTC, sat on its board of directors, and was primarily responsible for MSTC's operation.

3. In addition to respondent's attorney license, respondent was also issued a Minnesota resident insurance producer license, no. 20119964.

Notice of Market Conduct Examination of MSTC Bail Bond Files

4. On December 3, 2010, the Colorado Division of Insurance (DOI) informed MSTC that a market conduct examination of its business affairs in Colorado would be undertaken in February 2011.¹ The market conduct examination would "principally address bail bond business," including reviewing MSTC's agents' files for "Underwriting: Applications, Forms, Rates, and Cancellations/Declinations" and "Producers/Agents" for the calendar year of 2010.

5. Respondent identified himself to the Colorado DOI as the MSTC examination coordinator for the market conduct examination.

6. In anticipation of the market conduct examination, respondent contacted L. Jay Labe, who is chair of the Bail Insurance Company Round Table (CRT), about MSTC seeking membership in CRT.² MSTC had declined a prior request by CRT to join the organization, which had been formed in June 2010 in an effort to develop forms and standards of practice that would be acceptable to the Colorado DOI in anticipation of seeking legislative reform of Colorado's statutory regulation of the bail bond industry.³

7. On December 27, 2010, MSTC was granted membership in CRT, which provided MSTC with full access to the draft standardized commercial bail forms that had been developed by CRT, with limited cooperation from the Colorado DOI. Through MSTC's membership in CRT, respondent learned that several other bail bond

¹ DOI is a subdivision of the Colorado Department of Regulatory Agencies.

² Labe is also an attorney licensed to practice law in Colorado.

³ These statutes were set for legislative review during the 2011-2012 legislative session.

companies had been subject to hefty fines after undergoing and failing portions of recent market conduct examinations by the Colorado DOI.

8. In early January 2011, respondent travelled to Colorado. On January 5, 2011, respondent and Randall Eason, an agent of MSTC, met with Labe at his law offices in Denver and discussed the general process employed by the Colorado DOI in three ongoing market conduct examinations of other CRT members.⁴ Respondent inquired how CRT members were handling any remedial plans necessary at the end of the examination.

9. During the meeting, Labe provided respondent with a set of draft CRT bail underwriting and practice forms, explained how they were developed and how CRT members would use them in the future. Respondent and Labe discussed the fact that MSTC's current problems stemmed from the Colorado DOI's request for agent files for the 2010 calendar year. Labe advised that his involvement with other bail surety companies came after the files had been produced to the Colorado DOI and CRT members were responding to inquiries about specific practices not correcting existing deficiencies prior to a market conduct examination. Respondent informed Labe that he was familiar with the Colorado DOI's process as he had previously handled a market conduct examination by the Colorado DOI.

10. Labe advised respondent to generally cooperate with the Colorado DOI, make any files requested available and that files should be as complete as possible. Labe advised that other CRT members had run into problems with providing incomplete agent files to the Colorado DOI. Respondent stated his concern that MSTC's agent files did not contain the necessary documentation that the required notices had been given to consumers. Labe also reviewed MSTC's current forms, which were non-compliant. Respondent asked Labe if it would be problematic if "new forms" were

⁴ Labe was familiar with respondent because Labe's law firm had an ongoing attorney-client relationship with MSTC on several unrelated matters, both past and present.

found in existing agent files. Labe advised respondent that forms could not be backdated. Labe also later drafted new contracts for subagents for MSTC to sign going forward in 2011. Labe was unaware that respondent would advise subagents to backdate these forms.

11. Respondent also met with Dave Hyatt, an executive from Pioneer General Insurance Company (Pioneer), another Colorado based bail bond company. Pioneer had recently been fined \$533,000 following a market conduct examination by the Colorado DOI. The purpose of the meeting was for Hyatt to provide respondent with the examination report that Pioneer had undergone and examples of violations cited by the Colorado DOI. Respondent, concerned that MSTC could not afford to pay a similar fine, circulated the Pioneer market conduct examination report to MSTC's agents working in Colorado. Respondent also circulated a market conduct examination report that had resulted in a fine against International Fidelity Insurance Company, another Colorado based bail bond company.

12. Respondent knew that MSTC had committed similar violations in Colorado and feared that the Colorado DOI would impose a substantial fine that MSTC could not afford to pay. As such, respondent devised a strategy whereby he attempted to reduce the fine by making it appear that MSTC had complied with the applicable law.

Back Stamping & Document Insertion/Alteration

13. In advance of the Colorado DOI's market conduct examination, respondent participated in, directed and/or authorized MSTC staff to alter hundreds of MSTC's active and inactive bail bond documents for the calendar year 2010 to include statutorily required language and disclosures that were otherwise missing from agent files.

14. Specifically, for all bail bond transactions that were subject to the market conduct examination, respondent created stamps of required language and directed

MSTC staff to cause the following language to be stamped in ink on the MSTC's file copies:

- If a refund is ordered by the court after the bond is posted, premium will be returned in the amount and within the time specified by the court order. If the bail bond is not posted within twenty four (24) hours, as required by law, all monies paid to the agent must be returned within forty-eight (48) hours.
- Collateral will be returned after the surety receives a Certificate of Discharge or a true copy of the court order releasing and discharging the Bail Bond. Collateral will be returned within ten (10) working days. Trust deeds will be returned within (30) working days. If the bail bond is not posted within twenty-four (24) hours of receipt of full payment or a signed contract for payment collateral must be returned and lien released within forty-eight (48) hours.
- Translation Certificate: The undersigned translator makes this affidavit and hereby certifies, under penalty of perjury, that he/she has read verbatim and translated this entire document, including the reverse side, and all related bond application documents including disclosures, promissory notes, security instruments and trust deeds to the indemnitor(s) signing below in his/her primary language.

TRANSLATOR (signature)_____ (print name)_____ (Date)_____

- It is unlawful to knowingly provide false, incomplete or misleading facts or information to an insurance company for the purpose of defrauding or attempting to defraud the company. Penalties may include imprisonment, fines, denial of insurance and civil damages. Any insurance company or agent of an insurance company who knowingly provides false, incomplete or misleading facts or information to a policy holder or claimant for the purpose of defrauding or attempting to defraud the policy holder or claimant with regard to a settlement or award payable from insurance proceeds shall be reported to the Colorado division of insurance within the Department of regulatory agencies. 10-1-128(8)(a) C.R.S.

MSTC was required to make these disclosures to the consumer under Colorado law at the time of any bail bond transaction.

15. Respondent's purpose in making these alterations after the fact was to mislead the Colorado DOI that the disclosures had been made at the time of the bail bond transaction. On January 6, 2011, respondent emailed Eason a "market conduct examination to do list" stating, among other things, that:

We will need to have the agents get a stamp with all of their information on it, so they can stamp documents that are required to have this information on such as disclosure agreements, bonding agreements, premium receipts, etc.

We need to get some kind of machine that will put numbers on the receipts after the fact. This is going to have to be done. Then these "pre-numbered" receipt numbers will need to be added to the daily bond register. This is very important.

We may also want to get a stamp that describes under what conditions the premium or collateral gets returned and then stamp each receipt that is missing this information and each collateral receipt missing this information. **I know it is after the fact but it is very unlikely that the examiners will get a hold of the consumer's receipts to compare them to.**

(Emphasis added.) Respondent's market conduct examination "to do list" confirmed that the goal of the file stamping was to deceive the Colorado DOI. MSTC further never provided notice to or obtained permission from the consumers that MSTC wished its agents' bail bond files to be modified after the fact. Finally, respondent did not make any attempt to keep records of which files were "stamped" or otherwise altered in anticipation of the market conduct examination.

16. In January and February 2011, respondent provided four sets of ink stamps to Eason and Heather Selmecki, another MSTC agent, who travelled to Colorado to implement respondent's market conduct examination "to do list." Prior to Eason's departure to Colorado, Eason raised the issue of the legality of the stamping plan with respondent, who stated that as an attorney with previous experience with market conduct examination he knew Colorado law and that what MSTC was doing in Colorado was legal.

17. On January 25, 2011, Eason drove to Colorado to implement respondent's market conduct examination "to do list." Eason started visiting all of MSTC's agents with the stamps and new forms to be used going forward. In addition to personally stamping documents, Eason directed MSTC's agents to stamp their active and closed bail documents, as well as insert files into the files that were not part of the file at the time the bail bond was issued.

18. Selmecki spent a week in Colorado stamping file documents at the office of MSTC agent Jason Armstrong. Selmecki had been instructed by respondent to make the files "complete" prior to the market conduct examination.

19. At respondent's further direction, MSTC's agents, including Eason, backdated and placed a "rate deviation form" in any active or inactive bail bond file in which an MSTC agent charged the consumer a commission of less than 15 percent.

20. MSTC did not have contracts with all of its subagents as required by Colorado law. At respondent's direction, MSTC created a "Sub-Producer Underwriting Agreement" for all of its subagents that were backdated to when the subagent was originally appointed by MSTC. Per respondent's market conduct examination "to do list" MSTC's subagents were directed to execute and backdate these agreements, which were also to be countersigned and backdated by respondent. Respondent's intent was to make it appear that MSTC had complied with applicable law at the time.

21. Altering MSTC's files after the fact did not cure MSTC's failure to provide mandatory notifications to consumers as required by applicable law or otherwise bring its files into compliance.

Emergency Cease and Desist Order and Sworn Statements

22. On or about February 7, 2011, one of MSTC's subagents in Colorado, Richard Tyson, notified the Colorado DOI that MSTC was altering documents in advance of the pending market conduct examination. On February 10, 2011, Tyson provided a sworn statement to the Colorado DOI to this effect.

23. On February 15, 2011, the Colorado DOI issued an interim cease and desist order against MSTC that provided, in part, as follows:

Immediately cease and desist from any stamping, alteration, modification, redaction or revision of any books, records, accounts, . . . or any other documents related to the property, business, assets or affairs of Minnesota Surety and Trust Company's bail bond operations in the state of Colorado.

The Colorado DOI also issued multiple subpoenas to MSTC's agents, including respondent, to produce records and testimony.

24. In late April 2011, the Colorado DOI commenced a formal action against MSTC by issuing a notice to show cause hearing, which alleged that MSTC failed to comply with numerous insurance laws and regulations in Colorado.

25. On or about April 22, 2011, MSTC and respondent, individually, executed a stipulation for entry of final agency order re: notice of show cause hearing (Colorado stipulation), which included admissions of the following misconduct:

MSTC failed to comply with DOI's market conduct examination scope and data requests, and produced certain files in a duffle bag which were in disarray and missing required documents.

MSTC made alterations to the entries and memorandum upon the books and papers of the company or upon any statement filed or offered to be filed with DOI in the course of any examination, inquiry or investigation, in a manner that could result in deception to DOI.

MSTC created four sets of ink "stamps," which contained information required by statute and regulation to be contained on bail bond documents written in Colorado, with the intent to use the "stamps" after the fact on bail bond documents written in Colorado in 2010.

In January and February 2011, MSTC's agents placed ink "stamps" onto a minimum of 4,000 bail bond documents that were actually written and effectuated in calendar year 2010, causing hundreds of consumers, indemnitors, or defendants who secured bail bonds from MSTC to possess copies of bail bond documents that were different than the bail bond

documents which were retained by MSTC due to the fact that the copies or originals retained by MSTC were altered after the fact.

MSTC's agents placed "translation stamps" upon many files after the fact, which are intended to confirm that the bail bond documents were read in their entirety to a person who does not speak English as a primary language.

MSTC's agents placed "rate deviation forms" in many files after the fact, which could have resulted in the appearance that the files were compliant during the market conduct examination.

MSTC's "demonstrated negligence" in altering bail bond documents could have resulted in deception to DOI by making the files appear to be in compliance at the time the bail bond was written in 2010.

In January and February 2011, MSTC created backdated contracts between itself and several of its Colorado agents, which did not exist in 2010, and requested or required its Colorado agents to sign and backdate the contracts.

MSTC's insistence on backdating contracts caused at least one of its agents to sign a contract with a date that preceded the date that the agent became a licensed bail bond agent in Colorado.

MSTC's proffered backdated contracts materially altered the agents' contractual liability with MSTC for bail bonds written during 2010.

MSTC allowed its agents to write bail bonds in some instances before the agents were appointed by MSTC, and in other instances before the agents were licensed as bail bond agents in Colorado.

MSTC negligently oversaw and directed its agents, negligently altered material facts in its files, and negligently omitted or failed to make true entries in its business records.

MSTC's alteration of its files rendered them in a condition whereby they could not be fully or completely examined for compliance with Colorado law.

MSTC should have known about the unfair business practices of its insurance producers.

26. Based on the admitted misconduct, MSTC consented to the revocation of its certificate of authority in Colorado effective May 22, 2011. MSTC was further ordered to pay a \$1.2 million dollar civil penalty, which was stayed on multiple conditions including that respondent may not apply for any insurance-related license in Colorado for at least five years and that he not conduct or be involved in any insurance-related business in Colorado for at least five years.

27. On August 22, 2011, the Minnesota Department of Commerce (Department) initiated a regulatory action at the Office of Administrative Hearings against MSTC's certificate of authority for its violations of law.⁵ On November 17, 2011, MSTC and respondent entered into a consent order with the Department to resolve this action. As part of the discipline imposed, respondent's insurance producer license was revoked in Minnesota, a \$50,000 civil penalty, jointly and severally, was imposed against respondent and MSTC (with \$40,000 stayed on multiple conditions), and liquidation of MSTC was ordered in Minnesota.

28. On November 21, 2011, a liquidation order was entered allowing the Department to commence the liquidation of MSTC pursuant to Minn. Stat. Ch. 60(B) (2010).

29. The Department also sought discipline against Eason's insurance producer license based upon his participation in the above scheme. The presiding administrative law judge entered a February 10, 2012, order for discipline against Eason which included numerous findings that respondent had orchestrated and directed a scheme to alter bail bond files after the fact for the purpose of misrepresenting the files to a lawfully appointed insurance examination. As a result, the administrative law judge filed a complaint against respondent with the Director.

⁵ "Commissioner" refers to the Commissioner of the Minnesota Department of Commerce and "Department" refers to the Minnesota Department of Commerce.

30. Respondent's conduct in directing and participating in a scheme to alter bail bond files after the fact in anticipation of a market conduct examination by the Colorado Department of Insurance in order to misrepresent that the files of a bail bond business, which was owned in part and operated by respondent, was in compliance with Colorado's statutory provisions therefore violated Rule 8.4(a) and (c), Minnesota Rules of Professional Conduct.

WHEREFORE, the Director respectfully prays for an order of this Court imposing appropriate discipline, awarding costs and disbursements pursuant to the Rules on Lawyers Professional Responsibility, and for such other, further or different relief as may be just and proper.

Dated: Sept. 10, 2012.



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