

STATE OF INDIANA)

BEFORE THE INDIANA

)

) SS:

COMMISSIONER OF INSURANCE

COUNTY OF MARION)

CAUSE NUMBER: 12765-BB15-0915-002

IN THE MATTER OF:)

FILED

Alvin C. Putman,)

Bail Agent/Respondent)

130 E. 8th Street)

Rochester, IN 46975)

SEP 17 2015

STATE OF INDIANA
DEPT. OF INSURANCE

Type of Agency Action: Enforcement)

Indiana Bail Agent License No. 679453

MOTION TO REVOKE BAIL AGENT LICENSE

Comes now the Enforcement Division (“Division”), by its counsel, Joshua D. Harrison, and shows the Commissioner as follows:

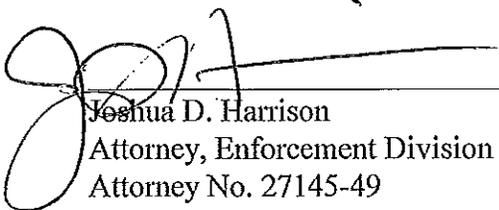
1. That on September 16, 2015, Respondent was found guilty of Battery, a Class D Felony, in Fulton County Superior Court.

2. Ind. Code §27-10-3-8(d) states: “The Commissioner shall revoke the license of any person who is convicted of a disqualifying offense immediately upon conviction. The pending of sentencing or the pending of an appeal of a conviction of a disqualifying offense does not stay the revocation of a license under this subsection.”

3. Ind. Code §27-10-3-8(d) further states: “A person convicted of a felony is not eligible to reapply for a license until ten (10) years from the date of conviction or release from imprisonment, parole, or probation, whichever is later.”

WHEREFORE, the Division, by its counsel, Joshua D. Harrison, respectfully requests that the Commissioner issue an order revoking Respondent's bail agent license per the terms of Ind. Code §27-10-3-8(d).

Respectfully Submitted,



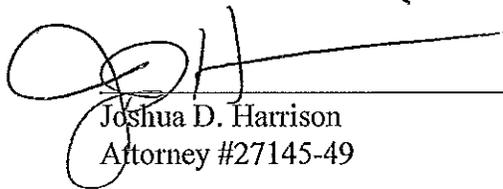
Joshua D. Harrison
Attorney, Enforcement Division
Attorney No. 27145-49

Indiana Department of Insurance
311 W. Washington Street, Suite 103
Indianapolis, IN 46204
232-2422 - telephone
234-2103 - facsimile

CERTIFICATE OF SERVICE

This is to certify that the foregoing has been served upon Respondent by depositing a copy of same in the United States Mail, first class postage prepaid, this 17th day of September, 2015.

Alvin C. Putman
130 E. 8th Street
Rochester, IN 46975



Joshua D. Harrison
Attorney #27145-49

Indiana Department of Insurance
311 W. Washington St., Suite 103
Indianapolis, IN 46204

STATE OF INDIANA)
) SS:
COUNTY OF MARION)

BEFORE THE INDIANA
COMMISSIONER OF INSURANCE
CAUSE NO. 12765-BB15-0915-002

IN THE MATTER OF:)
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Alvin C. Putman,)
Bail Agent/Respondent)
130 E. 8th Street)
Rochester, IN 46975)
)
Type of Agency Action: Enforcement)
)
Indiana Bail Agent License No. 679453)

FILED
JAN 21 2016
STATE OF INDIANA
DEPT. OF INSURANCE

MOTION TO RESCIND COMMISSIONER'S ORDER

Comes now Alvin C. Putman, Bail Agent, by his counsel, and seeks the rescission of the Commissioner's Order dated September 17, 2015, for the following reasons:

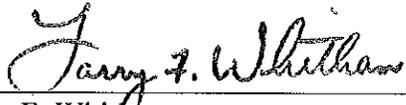
1. On September 17, 2015, the Enforcement Division, acting by its counsel Joshua D. Harrison, filed its Motion to Revoke Bail Agent License.
2. Although the September 17, 2015 Motion was sent to Alvin C. Putman, Bail Agent under License No. 679453, Mr. Putman was given no opportunity to respond to the Motion prior to the granting thereof.
3. On September 17, 2015, the Indiana Commissioner of Insurance issued its Order Revoking Bail Agent License in which the Commissioner:
 - a. Revoked Agent License No. 679453;
 - b. Precluded Alvin C. Putman from reapplying for a Bail Agent License for a **period of ten (10) years** from the date of his conviction or release from imprisonment, parole, or probation.

4. The September 17, 2015 Order Revoking Bail Agent License is contrary to law and should be immediately rescinded.
5. As disclosed by reference to the Order of Judgment of Conviction, attached hereto as Exhibit "A", Alvin C. Putman was convicted of misdemeanor battery on November 24, 2015.
6. The provisions of IC §27-10-3-3 provide that the maximum suspension of a bail agent's license, or the maximum period during which the Commissioner may preclude a bail agent from reapplying for a license, is **five (5) years** in a case in which a bail agent is convicted of a "misdemeanor disqualifying offense."
7. The September 17, 2015 Order was issued before Mr. Putman's misdemeanor conviction.
8. The September 17, 2015 Order was issued based upon the erroneous belief that Alvin C. Putman's Order of Judgment of Conviction, when issued, would disclose the bail agent's conviction of a felony, not a misdemeanor.
9. The September 17, 2015 Order Revoking Bail Agent License is without legal authority and contrary to law, and the same should be immediately rescinded, and the license of Alvin C. Putman, namely License No. 679453, should be reinstated forthwith.
10. The Commissioner is requested to schedule an evidentiary hearing to determine whether Alvin C. Putman was convicted of a misdemeanor disqualifying offense, as that term is defined by Indiana statute.

WHEREFORE, Alvin C. Putman, by his counsel, respectfully prays for the relief set forth herein and for all other relief just and proper in the premises.

Respectfully submitted,

WHITHAM, HEBENSTREIT & ZUBEK, LLP

By: 
Larry F. Whitham

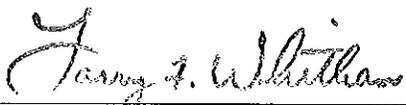
CERTIFICATE OF SERVICE

I hereby certify that a copy of the above and foregoing has been served by United States

First Class mail, postage prepaid, upon:

Joshua D. Harrison, Attorney
Indiana Department of Insurance
311 West Washington Street, Suite 103
Indianapolis, IN 46204

on the 19th day of January, 2016.


Larry F. Whitham

Larry F. Whitham, Attorney No. 1559-49
WHITHAM, HEBENSTREIT & ZUBEK, LLP
Market Square Center, Suite 2000
151 North Delaware Street
Indianapolis, IN 46204
(317) 638-5555

STATE OF INDIANA)
) SS:
COUNTY OF MARION)

BEFORE THE INDIANA
COMMISSIONER OF INSURANCE
CAUSE NO. 12765-BB15-0915-002

IN THE MATTER OF:)
)
Alvin C. Putman,)
Bail Agent/Respondent)
130 E. 8th Street)
Rochester, IN 46975)
)
Type of Agency Action: Enforcement)
)
Indiana Bail Agent License No. 679453)

FILED
JAN 21 2016
STATE OF INDIANA
DEPT. OF INSURANCE

MOTION TO RESCIND COMMISSIONER'S ORDER

Comes now Alvin C. Putman, Bail Agent, by his counsel, and seeks the rescission of the Commissioner's Order dated September 17, 2015, for the following reasons:

1. On September 17, 2015, the Enforcement Division, acting by its counsel Joshua D. Harrison, filed its Motion to Revoke Bail Agent License.
2. Although the September 17, 2015 Motion was sent to Alvin C. Putman, Bail Agent under License No. 679453, Mr. Putman was given no opportunity to respond to the Motion prior to the granting thereof.
3. On September 17, 2015, the Indiana Commissioner of Insurance issued its Order Revoking Bail Agent License in which the Commissioner:
 - a. Revoked Agent License No. 679453;
 - b. Precluded Alvin C. Putman from reapplying for a Bail Agent License for a **period of ten (10) years** from the date of his conviction or release from imprisonment, parole, or probation.

4. The September 17, 2015 Order Revoking Bail Agent License is contrary to law and should be immediately rescinded.
5. As disclosed by reference to the Order of Judgment of Conviction, attached hereto as Exhibit "A", Alvin C. Putman was convicted of misdemeanor battery on November 24, 2015.
6. The provisions of IC §27-10-3-3 provide that the maximum suspension of a bail agent's license, or the maximum period during which the Commissioner may preclude a bail agent from reapplying for a license, is **five (5) years** in a case in which a bail agent is convicted of a "misdemeanor disqualifying offense."
7. The September 17, 2015 Order was issued before Mr. Putman's misdemeanor conviction.
8. The September 17, 2015 Order was issued based upon the erroneous belief that Alvin C. Putman's Order of Judgment of Conviction, when issued, would disclose the bail agent's conviction of a felony, not a misdemeanor.
9. The September 17, 2015 Order Revoking Bail Agent License is without legal authority and contrary to law, and the same should be immediately rescinded, and the license of Alvin C. Putman, namely License No. 679453, should be reinstated forthwith.
10. The Commissioner is requested to schedule an evidentiary hearing to determine whether Alvin C. Putman was convicted of a misdemeanor disqualifying offense, as that term is defined by Indiana statute.

WHEREFORE, Alvin C. Putman, by his counsel, respectfully prays for the relief set forth herein and for all other relief just and proper in the premises.

Respectfully submitted,

WHITHAM, HEBENSTREIT & ZUBEK, LLP

By: 
Larry F. Whitham

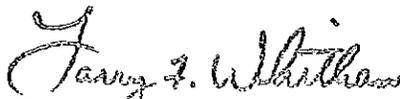
CERTIFICATE OF SERVICE

I hereby certify that a copy of the above and foregoing has been served by United States

First Class mail, postage prepaid, upon:

Joshua D. Harrison, Attorney
Indiana Department of Insurance
311 West Washington Street, Suite 103
Indianapolis, IN 46204

on the 19th day of January, 2016.


Larry F. Whitham

Larry F. Whitham, Attorney No. 1559-49
WHITHAM, HEBENSTREIT & ZUBEK, LLP
Market Square Center, Suite 2000
151 North Delaware Street
Indianapolis, IN 46204
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STATE OF INDIANA)
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SS:

BEFORE THE INDIANA

COMMISSIONER OF INSURANCE

CAUSE NUMBER: 12765-BB15-0915-002

IN THE MATTER OF:)

Alvin C. Putman,)
Bail Agent/Respondent)
130 E. 8th Street)
Rochester, IN 46975)

Type of Agency Action: Enforcement)

FILED

SEP 17 2015

STATE OF INDIANA
DEPT. OF INSURANCE

Indiana Bail Agent License No. 679453

MOTION TO REVOKE BAIL AGENT LICENSE

Comes now the Enforcement Division (“Division”), by its counsel, Joshua D. Harrison, and shows the Commissioner as follows:

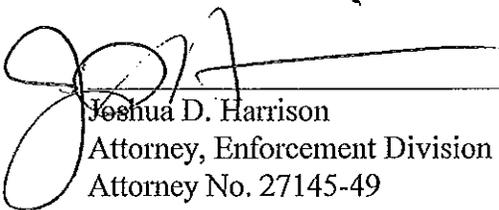
1. That on September 16, 2015, Respondent was found guilty of Battery, a Class D Felony, in Fulton County Superior Court.

2. Ind. Code §27-10-3-8(d) states: “The Commissioner shall revoke the license of any person who is convicted of a disqualifying offense immediately upon conviction. The pending of sentencing or the pending of an appeal of a conviction of a disqualifying offense does not stay the revocation of a license under this subsection.”

3. Ind. Code §27-10-3-8(d) further states: “A person convicted of a felony is not eligible to reapply for a license until ten (10) years from the date of conviction or release from imprisonment, parole, or probation, whichever is later.”

WHEREFORE, the Division, by its counsel, Joshua D. Harrison, respectfully requests that the Commissioner issue an order revoking Respondent's bail agent license per the terms of Ind. Code §27-10-3-8(d).

Respectfully Submitted,



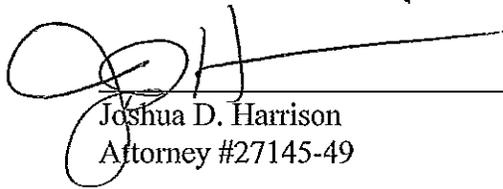
Joshua D. Harrison
Attorney, Enforcement Division
Attorney No. 27145-49

Indiana Department of Insurance
311 W. Washington Street, Suite 103
Indianapolis, IN 46204
232-2422 - telephone
234-2103 - facsimile

CERTIFICATE OF SERVICE

This is to certify that the foregoing has been served upon Respondent by depositing a copy of same in the United States Mail, first class postage prepaid, this 17th day of September, 2015.

Alvin C. Putman
130 E. 8th Street
Rochester, IN 46975



Joshua D. Harrison
Attorney #27145-49

Indiana Department of Insurance
311 W. Washington St., Suite 103
Indianapolis, IN 46204

STATE OF INDIANA)
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BEFORE THE INDIANA
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Rochester, IN 46975)
)
Type of Agency Action: Enforcement)

Indiana Bail Agent License No. 679453

FILED

SEP 17 2015

STATE OF INDIANA
DEPT. OF INSURANCE

ORDER REVOKING BAIL AGENT LICENSE

The Commissioner, having reviewed the Enforcement Division's Motion to Revoke Bail Agent License, now GRANTS said motion. Therefore, Respondent's bail agent license, number 679453, is hereby **immediately revoked**. Respondent may not reapply for a license until ten (10) years from the date of conviction or release from imprisonment, parole, or probation, whichever is later.

So Ordered this 17 day of September, 2015.



Stephen W. Robertson
Commissioner

Distribution:

Al Putman
130 E. 8th Street
Rochester, IN 46975

Joshua D. Harrison, Attorney
Indiana Department of Insurance
311 W. Washington St., Suite 103
Indianapolis, IN 46204

STATE OF INDIANA)
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COUNTY OF MARION)

BEFORE THE INDIANA
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CAUSE NUMBER: 12765-BB15-0915-002

IN THE MATTER OF:)
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Bail Agent/Respondent)
130 E. 8th Street)
Rochester, IN 46975)
)
Type of Agency Action: Enforcement)

FILED
FEB 03 2016
STATE OF INDIANA
DEPT. OF INSURANCE

Indiana Bail Agent License No. 679453

MOTION TO MODIFY REVOCATION
ORDER ON BAIL AGENT LICENSE

Comes now the Enforcement Division ("Division"), by its counsel Joshua D. Harrison, and files its Motion to Modify Revocation Order on Bail Agent License against Alvin Putman ("Respondent"). In support of which, the Division states the following:

1. That on September 16, 2015, Fulton Superior Court entered Judgment of Conviction against Respondent on the count of Battery, a Class D Felony.
2. On September 17, 2015, pursuant to Ind. Code §27-10-3-8(d), the Commissioner of the Indiana Department of Insurance ("Commissioner") entered an Order Revoking Bail Agent License ("Order").
3. The Order cited Ind. C
revoke the license of any person who

Pre Closing memo

s: "The Commissioner shall
; offense immediately upon

conviction. The pending of sentencing or the pending of an appeal of a conviction of a disqualifying offense does not stay the revocation of a license under this subsection.”

3. Further, the Order stated that Respondent could not reapply for a license for until ten (10) years from the date of conviction or release from imprisonment, parole, or probation. This was a direct citation to Ind. Code §27-10-3-8(d), which states: “A person convicted of a felony is not eligible to reapply for a license until ten (10) years from the date of conviction or release from imprisonment, parole, or probation, whichever is later.”

4. On November 24, 2015, the Fulton Superior Court entered sentence against Respondent on the Battery count as a Class A Misdemeanor.

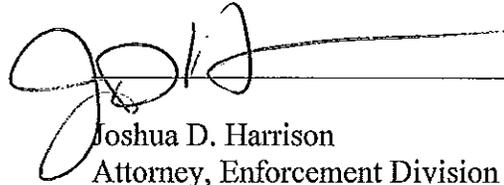
5. Ind. Code §27-10-3-8(d) states: “A person convicted of a misdemeanor qualifying offense is not eligible to reapply for a license until five (5) years from the date of conviction or release from imprisonment, parole, or probation, whichever is later.”

6. Ind. Code §27-10-1-6 defines a disqualifying offense as either a felony or a misdemeanor if an element of the offense involves dishonesty, violence, or a deadly weapon.

7. Since Respondent’s conviction was entered as a Class A Misdemeanor Battery, which is a misdemeanor with an element of violence, the Order should be modified to reflect the appropriate restriction on reapplication of five (5) years instead of ten (10) years as originally ordered.

WHEREFORE, the Division, by its counsel Joshua D. Harrison, respectfully requests that the Commissioner issue a Modified Order Revoking Respondent’s Bail Agent License per the terms of Ind. Code §27-10-3-8(d) reflecting the five (5) year restriction on reapplication.

Respectfully Submitted,



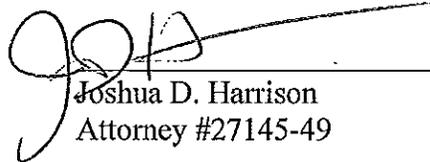
Joshua D. Harrison
Attorney, Enforcement Division
Attorney No. 27145-49

Indiana Department of Insurance
311 W. Washington Street, Suite 103
Indianapolis, IN 46204
232-2422 - telephone
234-2103 - facsimile

CERTIFICATE OF SERVICE

This is to certify that the foregoing has been served upon Attorney for Respondent,
Larry Whitham, by depositing a copy of same in the United States Mail, first class postage
prepaid, this 3rd day of February, 2015.

Larry Whitham
Attorney for Respondent
151 N. Delaware St
Indianapolis, IN 46204



Joshua D. Harrison
Attorney #27145-49

Indiana Department of Insurance
311 W. Washington St., Suite 103
Indianapolis, IN 46204

STATE OF INDIANA)
) SS:
COUNTY OF MARION)

BEFORE THE INDIANA
COMMISSIONER OF INSURANCE
CAUSE NO. 12765-BB15-0915-002

IN THE MATTER OF:)
)
Alvin C. Putman,)
Bail Agent/Respondent)
130 E. 8th Street)
Rochester, IN 46975)
)
Type of Agency Action: Enforcement)
)
Indiana Bail Agent License No. 679453)

FILED

FEB 09 2016

STATE OF INDIANA
DEPT. OF INSURANCE

RESPONDENT'S OPPOSITION TO MOTION TO MODIFY REVOCATION AND
RESPONDENT'S RENEWAL OF MOTION TO RESCIND COMMISSIONER'S
SEPTEMBER 17, 2015 ORDER

Comes now Respondent, Alvin C. Putman, Bail Agent ("Bail Agent"), by his counsel, and files his opposition to the Motion to Modify Revocation filed herein on February 3, 2016, and the Bail Agent renews his Motion to Rescind the Commissioner's September 17, 2015 Order, and in support of his position, the Respondent states as follows:

1. On February 3, 2016, the Enforcement Division ("Division") filed a Motion to Modify Revocation Order on Bail Agent License.
2. In the Division's Motion, the Division concedes that the Commissioner's Order dated September 17, 2015, is inappropriate because the Commissioner's action in imposing a 10-year period of asserted ineligibility of Bail Agent to hold a license is based upon the erroneous underlying premise that Bail Agent was convicted of a felony.

3. The Division acknowledges the truth contained in Bail Agent's Motion to Rescind Commissioner's Order, which Motion accurately points out that Bail Agent was convicted of a misdemeanor, not a felony.
4. Because the Division concedes that the Commissioner's September 17, 2015 Order is erroneous, the Division has requested that the Commissioner correct the erroneous Order by modifying it to reflect a five (5) year restriction on reapplication. In an attempt to support its request for such relief, the Division cites the provisions of Indiana Code §27-10-3-8(d).
5. However, the Division is mistaken in its contention that the provisions of Indiana Code §27-10-3-8(d) apply in this case.
6. The Division quotes the subject statute as stating: "A person convicted of a *misdemeanor qualifying offense* is not eligible to reapply for a license until five (5) years from the date of conviction or release from imprisonment, parole, or probation, whichever is later." [Emphasis added.]
7. A "misdemeanor qualifying offense" is defined by Indiana Code §27-10-1-6 to include a "misdemeanor if an *element of the offense* involves dishonesty, violence, or a deadly weapon." [Emphasis added.]
8. The Division concedes that the misdemeanor conviction in question does not involve dishonesty or use of a deadly weapon.
9. However, without citing any authority in support of its position, the Division states that a Class A Misdemeanor Battery "is a misdemeanor with an element of violence." The Division then proceeds to utilize that unsubstantiated assertion to

purportedly justify a modification (from 10 years to 5 years) of the erroneously issued September 17th Order.

10. The Division's assertion that a Class A Misdemeanor Battery is a misdemeanor in which "an element of the offense involves . . . violence . . ." has been judicially rejected.
11. Misdemeanor battery is defined in Indiana Code §35-42-2-1. The *elements* of the offense are set forth, and these are the *elements* which a prosecutor must prove in order to obtain a conviction: a person who knowingly or intentionally touches another person in a rude, insolent, or angry manner which results in bodily injury to any other person has committed the offense of battery as a class A misdemeanor.
12. Indiana Courts have concluded clearly stated that the "bodily injury" element of the crime does not require an act of violence. Indiana Courts have held that a rude, insolent, or angry touching which causes any physical pain, even without trauma, can qualify as battery and can support a Class A Misdemeanor conviction. Lewis v. State, 438 N.E.2d 289 (Ind. 1982); Tucker v. State, 725 N.E.2d 894 (Ind. App. 2000).
13. In the case of Mr. Putman, he was convicted of disciplining (spanking) his grandson, which produced no evidence of trauma or other physical manifestations. However, the "rude, insolent, or angry" touching was intended to and did result in some pain to his grandson inasmuch as the purpose of the spanking was to discourage the child from continuing to disobey his grandfather.

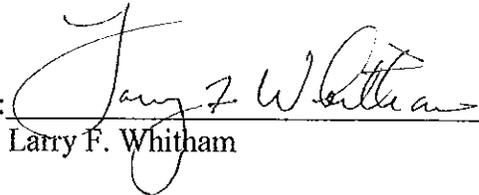
14. In the case of Flores v. Ashcroft, 350 F.3d 666, United States Court of Appeals, Seventh Circuit (2003), the Court dealt with Indiana's misdemeanor battery statute, found at Indiana Code §35-42-2-1. The defendant in that case pleaded guilty to battery as a class A misdemeanor. Notably, the Court acknowledged that misdemeanor battery requires only an intentional touching of someone "in a rude, insolent, or angry manner." The Court noted that it was dealing with interpretation of a federal statute in which a violation required proof that a crime had been committed which included as one of its *elements* the use of physical force against the person of another. The Court's holding relied upon the Court's conclusion that battery under Indiana's misdemeanor battery statute, which proscribes "knowingly or intentionally touching another in a rude, insolent, or angry manner" *did not have as an element* the use or threatened use of violence.
15. The Flores decision was followed in Szucz-Toldy v. Gonzales, 400 F.3d 978, United States Court of Appeals, Seventh Circuit (2005). The Szucz-Toldy Court referenced the Flores opinion and noted the following: "In [Flores], we held that an Indiana conviction for misdemeanor battery was not a crime of violence . . ."
16. The Commissioner's September 17, 2015 Order is clearly erroneous and should be vacated and set aside.
17. The Commissioner should not issue a subsequent or amended order imposing a five (5) year restriction, or any restriction, upon the Bail Agent in question, because the crime for which the Bail Agent was convicted is not a "misdemeanor disqualifying offense."

18. The license of Alvin C. Putman should be immediately restored in order to minimize the significant financial losses which he has suffered as a result of the erroneous revocation of his license

WHEREFORE, Alvin C. Putman, by his counsel, respectfully prays for: rescission of the Commissioner's September 17, 2015 Order: denial of the Division's Motion to Modify Revocation; immediate restoration of the Bail Agent's license; and all other relief just and proper in the premises.

Respectfully submitted,

WHITHAM, HEBENSTREIT & ZUBEK, LLP

By: 
Larry F. Whitham

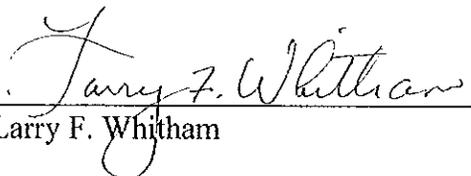
CERTIFICATE OF SERVICE

I hereby certify that a copy of the above and foregoing has been served by United States

First Class mail, postage prepaid, upon:

Joshua D. Harrison, Attorney
Indiana Department of Insurance
311 West Washington Street, Suite 103
Indianapolis, IN 46204

on the 9 day of February, 2016.


Larry F. Whitham

Larry F. Whitham, Attorney No. 1559-49
WHITHAM, HEBENSTREIT & ZUBEK, LLP
Market Square Center, Suite 2000
151 North Delaware Street
Indianapolis, IN 46204
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offense immediately upon conviction. The pending of sentencing or the pending of an appeal of a conviction of a disqualifying offense does not stay the revocation of a license under this subsection.”

5. Further, the Order stated that Respondent could not reapply for a license for until ten (10) years from the date of conviction or release from imprisonment, parole, or probation. This was a direct citation to Ind. Code §27-10-3-8(d), which states: “A person convicted of a felony is not eligible to reapply for a license until ten (10) years from the date of conviction or release from imprisonment, parole, or probation, whichever is later.”

6. On November 24, 2015, the Fulton Superior Court entered sentence against Respondent on the Battery count as a Class A Misdemeanor.

7. Ind. Code §27-10-3-8(d) states: “A person convicted of a misdemeanor disqualifying offense is not eligible to reapply for a license until five (5) years from the date of conviction or release from imprisonment, parole, or probation, whichever is later.”

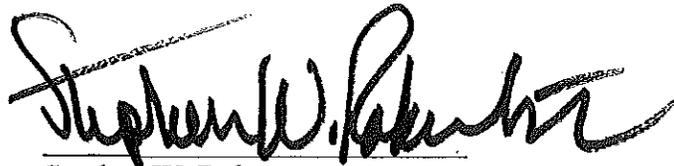
8. Ind. Code §27-10-1-6 defines a disqualifying offense as either a felony or a misdemeanor if an element of the offense involves dishonesty, violence, or a deadly weapon.

9. Since Respondent’s conviction was entered as a Class A Misdemeanor Battery, which is a misdemeanor with an element of violence, the Order should be modified to reflect the appropriate restriction on reapplication of five (5) years instead of ten (10) years as originally ordered.

MODIFIED ORDER

IT IS THEREFORE ORDERED that Respondent's bail agent license, number 679453, is hereby **immediately revoked**. Respondent may not reapply for a license until **FIVE (5)** years from the date of conviction or release from imprisonment, parole, or probation, whichever is later.

So Ordered this 12 day of February, 2016.



Stephen W. Robertson
Commissioner

Distribution:

Larry Whitham
Attorney for Respondent
151 N. Delaware St
Indianapolis, IN 46204

Joshua D. Harrison, Attorney
Indiana Department of Insurance
311 W. Washington St., Suite 103
Indianapolis, IN 46204