

FILE NO. C9-99-1192

STATE OF MINNESOTA

IN SUPREME COURT

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In Re Petition for Disciplinary Action  
against DANIEL FRANCIS JAMBOR,  
an Attorney at Law of the  
State of Minnesota.  
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**AMENDED AND SUPPLEMENTARY  
PETITION FOR REVOCATION OF  
PROBATION AND FOR FURTHER  
DISCIPLINARY ACTION**

TO THE SUPREME COURT OF THE STATE OF MINNESOTA:

The Director of the Office of Lawyers Professional Responsibility, hereinafter Director, files this amended and supplementary petition for disciplinary action pursuant to Rules 10(e) and 12(a), Rules on Lawyers Professional Responsibility (RLPR).

Respondent is currently the subject of a September 15, 2000, petition for disciplinary action. The Director has investigated further allegations of unprofessional conduct against respondent. The Director alleges that respondent has committed the following unprofessional conduct warranting public discipline:

INTRODUCTION

By August 23, 1999, order, this Court publicly reprimanded respondent and ordered him placed on probation for two years. A copy of the Court's order is attached as Exhibit 1.

Respondent's discipline was based upon neglecting two client matters, making misrepresentations to clients and others involved in those matters, and failing to cooperate with the Director's investigation of complaints regarding those matters.

Among the conditions of respondent's probation was the following:

- a. Respondent shall cooperate fully with the Director's Office in its efforts to monitor compliance with this probation and promptly respond to the Director's correspondence by the due date. Respondent shall cooperate with the Director's investigation of any allegations of unprofessional conduct which may

come to the Director's attention. Upon the Director's request, respondent shall provide authorization for release of information and documentation to verify compliance with the terms of this probation.

b. Respondent shall abide by the Minnesota Rules of Professional Conduct (MRPC).

Respondent has committed the following unprofessional conduct warranting revocation of probation and further public discipline:

FIRST COUNT

Additional Non-Cooperation While on Probation

1. On April 20, 2000, the Director wrote to respondent noting that he had failed to pay his attorney registration fee due April 1, 2000. That letter requested that respondent explain his failure to pay the attorney registration fee and describe the status of his practice since April 1, 2000. A response within seven days was requested.
2. On May 17, 2000, respondent paid his past due attorney registration fee.
3. On May 18, July 10, and July 31, 2000, having received no response to the prior inquiries regarding the nature of his practice while suspended for nonpayment of his attorney registration fee, the Director wrote to respondent requesting that he provide that information.
4. Respondent failed to respond to any of the Director's letters regarding his failure to pay his attorney registration fee and the status of his practice until August 10, 2000.
5. On August 2, 2000, the Director mailed a notice of investigation to respondent requesting that he respond in writing to the complaint of Matthew Burton within 14 days. The notice specifically noted that the request was made pursuant to Rule 25, RLPR, and Rule 8.1(a)(3), MRPC.
6. On August 16, 2000, the Director mailed a notice of investigation to respondent requesting that he respond in writing to the complaint of Cynthia Harvey

within ten days. The notice specifically noted that the request was made pursuant to Rule 25, RLPR, and Rule 8.1(a)(3), MRPC.

7. On August 16, 2000, the Director mailed a notice of investigation to respondent requesting that he respond in writing to the complaint of Michael Kolodjski within 14 days. The notice specifically noted that the request was made pursuant to Rule 25, RLPR, and Rule 8.1(a)(3), MRPC.

8. On August 17, 2000, the Director mailed a notice of investigation to respondent requesting that he respond in writing to alleged neglect in the matter of *American Alpine Mortgage, LLC. v. Tracy Mixon* within two weeks. The notice specifically noted that the request was made pursuant to Rule 25, RLPR.

9. On October 9, 2000, the Director mailed a notice of investigation to respondent requesting that he respond in writing to the complaint of Mark McNurlin and Jane Von Busch within 14 days. The notice specifically noted that the request was made pursuant to Rule 25, RLPR, and Rule 8.1(a)(3), MRPC.

10. On October 26, 2000, the Director wrote to respondent noting that no response had been received to the October 9, 2000, notice of investigation and requesting a response within one week.

11. Respondent submitted a response to the October 9, 2000, notice of investigation on November 6, 2000.

12. On November 20, 2000, the Director mailed to Edward Kautzer, respondent's then retained counsel, a letter enclosing the notices of investigation and complaints in the matters of the complaints of Matthew Burton, Cynthia Ann Harvey, Michael Kolodjski, and the Director's file regarding the Tracy Mixon matter. That letter requested a response within two weeks.

13. On December 5, 2000, the Director wrote a second letter to Edward Kautzer requesting a response to the matters listed in the November 20, 2000, letter.

14. On December 12, 2000, Edward Kautzer withdrew as counsel for respondent.

15. On December 13, 2000, the Director wrote to respondent requesting an immediate response to the matters listed in the November 20, 2000, letter.

16. Respondent has not provided the Director with a written response to the complaints of Matthew Burton, Cynthia Harvey, Michael Kolodjski, or the Director in the *American Alpine Mortgage, LLC. v. Tracy Mixon* matter.

## SECOND COUNT

### Pattern of Frivolous and Retaliatory Litigation

#### Neston and Jones Matters.

17. On November 19, 1999, Christopher W. Neston submitted a complaint against respondent to the Office of Lawyers Professional Responsibility (OLPR). That complaint alleged misconduct by respondent in connection with his handling of a real estate closing.

18. On January 14, 2000, respondent brought suit against Christopher W. Neston in Anoka County District Court alleging that Neston, on or about November 19, 1999, defamed respondent. The alleged defamation consisted of the statements that were contained in Neston's complaint to the Director.

19. On December 21, 1999, Beth Jones filed a complaint with the Department of Labor & Industry alleging that respondent had made false statements in an application for insurance. Her complaint referenced a November 14, 1999, letter she had written to the Minnesota Workers Compensation Insurers Association, Inc.

20. On December 27, 1999, the Department of Labor & Industry referred the complaint to the OLPR.

21. On January 10, 2000, the Director mailed a notice of investigation to respondent regarding Beth Jones' complaint.

22. On January 12, 2000, respondent instituted suit against Beth Jones in Anoka County District Court alleging defamation based upon statements that Jones had made that respondent had threatened her.

23. Jones and Neston both retained the same counsel to defend the litigation commenced by respondent.

24. During the course of the litigation, respondent served requests for admissions on both Neston and Jones. Both requests for admissions made references to statements made by Neston and Jones in their complaints to the OLPR.

25. During the course of the litigation, discovery requests were served upon respondent. Respondent failed to comply with these discovery requests.

26. On June 6, 2000, the court ordered that respondent appear for his deposition and provide full and complete answers to interrogatories and requests for production of documents that were served upon him and assessing attorney's fees against him. The order required respondent to comply with the discovery requests and pay the fees assessed by June 14, 2000, and provided that respondent's lawsuits be dismissed with prejudice should respondent fail to comply with its order in all respects.

27. Respondent failed to comply with the court's order regarding discovery and payment of attorney's fees and, accordingly, on June 22, 2000, respondent's suits against Jones and Neston were dismissed with prejudice.

Morrell Matter.

28. On July 28, 2000, John and Nancy Morrell filed a complaint against respondent with the OLPR. Their complaint alleged that respondent, in the course of handling a real estate closing on their behalf, failed to disburse closing proceeds of approximately \$21,000, intended to pay off prior mortgages on the property. Respondent served as the closer in the transaction under the auspices of Integrity Abstract & Title, Inc., a corporation owned and operated by respondent.

29. On August 1, 2000, the Director mailed a notice of investigation to respondent regarding the complaint of John and Nancy Morrell.

30. On August 3, 2000, respondent mailed a summons and complaint to John and Nancy Morrell alleging that they breached their contract with Integrity Abstract &

Title, Inc. by not providing additional funds to cover late payment fees and interest. Respondent asked that the Morrells admit service by mail.

Lee Matter.

31. On March 6, 2000, Jean Lee filed a complaint against respondent with the OLPR. Her complaint alleged that respondent had not acted diligently in representing her in a real estate matter.

32. On March 14, 2000, the Director mailed a notice of investigation to respondent regarding the complaint of Jean Lee.

33. On August 3, 2000, respondent commenced suit against Lee in Ramsey County District Court seeking to collect fees claimed owed for legal services in the amount of \$1,194.60.

34. Respondent told Lee's new attorney that his action against Lee was brought in Ramsey County District Court, rather than Anoka County Conciliation Court, in order to make the proceedings more expensive for Lee to defend.

35. Respondent's suits against Neston, Jones, Morrell and Lee were all brought in retaliation for their having filed complaints with the OLPR.

McNurlin Matter.

36. Mark McNurlin retained respondent to represent him in a claim against McNurlin's former business partner.

37. Respondent's retainer agreement with McNurlin, executed on June 6, 1999, called for attorney's fees to be calculated on a contingency basis with respondent entitled to 33.33% of the gross recovery. The agreement further provided that if McNurlin terminated respondent's services, respondent was entitled to an hourly fee of \$125.00 per hour.

38. On August 7, 2000, Mark McNurlin discharged respondent as his attorney. At that time a settlement of the matter had been agreed upon calling for payment of \$27,000 to McNurlin.

39. As of the date of respondent's discharge, no written settlement agreement had been executed nor any monies paid in settlement.

40. On August 9, 2000, respondent wrote to McNurlin demanding immediate payment of \$14,679.83 in attorney's fees and stating that he would not return McNurlin's file to him unless he was paid \$500 in advance to cover copying costs.

41. On August 9, 2000, respondent signed an Attorney's Lien asserting a lien against McNurlin's settlement proceeds in the amount of \$16,920.83. The fee claimed was based upon an hourly charge of \$150 per hour, not the \$125 per hour called for in the retainer agreement.

42. On August 10, 2000, respondent placed a call to McNurlin. Jane Von Busch, McNurlin's girlfriend, answered the call. During the course of the telephone conversation, respondent yelled and swore at Von Busch. Respondent told Von Busch, amongst other things, that if McNurlin did not change his mind about discharging him, respondent would delay disbursement of the settlement proceeds, that McNurlin would not see his money for "a long, long time," and that he would not return McNurlin's client file to him unless he was first paid \$300 for copying the file.

43. After receipt of respondent's attorney's lien, counsel for the defendant in McNurlin's civil matter withheld the lien amount from distribution and retained the disputed funds in his trust account.

44. On November 20, 2000, Bruce Rubbelke, McNurlin's new counsel, wrote to respondent requesting return of McNurlin's client file and offering to settle the attorney's lien dispute for \$3,500.

45. Respondent did not respond to the November 20 letter, and Rubbelke wrote on December 12, 2000, again requesting return of the file and noting that McNurlin was willing to entertain all reasonable counteroffers for settlement of the attorney's lien.

46. Respondent has not responded to Rubbelke's letters and the attorney's lien matter has been set on for hearing in Aitkin County.

47. Respondent's refusal to return McNurlin's file, his assertion of an attorney's lien claiming an inflated amount due, and his refusal to respond to requests to discuss settlement of his claim, are all acts of retaliation against McNurlin for discharging him.

### THIRD COUNT

#### Continued Neglect and Non-Communication

##### Lee Matter.

48. On November 17, 1999, Jean P. Lee retained respondent to clear title to certain real estate sold by Lee.

49. On November 18, 1999, respondent sent a letter of undertaking to Stewart Title Guaranty Company stating that he anticipated concluding the actions necessary to clear title within 30 to 45 days.

50. Amongst the matters which respondent undertook was the probate of the estate of Irven Leonard Lee. Respondent failed to file any documents necessary to commence a probate proceeding until February 23, 2000.

51. On March 2, 2000, Lee discharged respondent and obtained new counsel.

##### Priority Mortgage Matter.

52. Priority Mortgage, Inc. (Priority) retained respondent to represent it in the matter of *Georgetta Vaughn v. Priority Mortgage, Inc., et. al.*

53. On May 2, 2000, Vaughn's attorney served an amended complaint upon respondent as attorney for Priority.

54. On May 30, 2000, Vaughn's attorney wrote to respondent asking if he intended to respond to the amended complaint.

55. On June 1, 2000, at respondent's request, Vaughn's attorney faxed a second copy of the amended complaint to respondent.

56. On June 5, 2000, Vaughn's attorney wrote to respondent informing him that, unless a response to the amended complaint was served by June 9, he would schedule a motion for a default judgment.

57. Respondent failed to serve a response to the amended complaint.

58. On June 29, 2000, a default judgment was entered against Priority as a result of respondent's failure to serve or file an answer to the amended complaint.

Mixon Matter.

59. In March 1999 Tracey Mixon retained respondent to represent her in civil proceedings pending in Hennepin County District Court.

60. At the time Mixon retained respondent, there was pending a motion to enforce a purported settlement agreement in the litigation. Responsive documents to that motion were due to be filed and served by May 3, 1999.

61. Respondent did not serve or file a response to the motion until May 7, 1999.

62. At a motion hearing on May 10, 1999, the court refused to accept respondent's responsive motion as untimely.

63. As a result of the motion being unopposed, the court granted judgment against Mixon and awarded \$10,000 in sanctions against Mixon.

64. Respondent failed to pursue any motion to reopen or appeal the trial court decision or explain to the court that Mixon did not have the funds to pay the \$10,000 sanction.

65. When the \$10,000 sanction was not paid as set forth in the court's order, an order to show cause hearing was scheduled for June 14, 1999.

66. Respondent failed to appear at the June 14, 1999, motion hearing on behalf of Mixon and Mixon was found in contempt of court for failing to pay the sanction. The court issued a bench warrant for Mixon's arrest.

67. On July 16, 1999, Mixon obtained new counsel.

68. In November 1999 Mixon sued respondent for malpractice arising out of his failure to adequately represent her in the litigation.

69. During the course of the legal malpractice action, respondent failed to fully comply with discovery requests served upon him by Mixon.

70. On February 28, 2000, the court ordered that respondent fully comply with discovery within five days. Respondent failed to do so.

71. On May 9, 2000, the court issued an order finding respondent in contempt for failure to comply with the court's February 28, 2000, order and entered default judgment against respondent.

Harvey Matter.

72. In September 1999 Cynthia Harvey retained respondent for representation in a marriage dissolution matter. Harvey told respondent that time was of the essence in the dissolution because she was scheduled to donate half her pancreas to her sister in March 2000. She wanted the dissolution completed by that time so that, if she were to die during surgery, her estate would go to her daughters, not her husband.

73. On October 15, 1999, a petition for marriage dissolution was signed.

74. On January 14, 2000, Harvey and her husband signed a Marital Termination Agreement that had been drafted by respondent.

75. Throughout the latter half of January, February, March and April 2000, Harvey repeatedly called respondent to inquire as to the status of the dissolution. Despite leaving approximately 50 messages for respondent on his voicemail, respondent returned only two of Harvey's calls.

FOURTH COUNT

Pattern of False and Misleading Statements

Harvey Matter.

76. During the course of representing Cynthia Harvey, as more fully set forth above, respondent twice falsely told Harvey that the marriage dissolution proceedings had been completed and she was divorced.

77. In fact, respondent had not completed the Harvey dissolution proceedings. While he had filed the Marital Termination Agreement executed by the parties, the court required the correction of 26 errors in the documents submitted by

respondent before the dissolution could be completed. Respondent never provided the corrections.

McNurlin Matter.

78. As noted above, Mark McNurlin retained respondent to represent him in a claim against McNurlin's former business partner.

79. On July 13, 2000, a settlement conference was held on McNurlin's claim. At this conference it was agreed that McNurlin would accept \$27,000 in settlement of his claim, reserving the right to request an award of attorney's fees from the court.

80. On July 21, 2000, respondent submitted to the court a Memorandum of Law Supplementing Prior Demands for Attorney's Fees. The memorandum had attached to it, as Exhibit A, a billing record that respondent certified as accurate and appropriate claiming a total owed of \$16,620.93. Exhibit A falsely claimed compensation for respondent's services at \$150 per hour. In fact, respondent, to the extent he had agreed to an hourly rate, had agreed only to a charge of \$125 per hour.

LLC Matter.

81. On November 6, 1998, respondent filed articles of organization for the limited liability company of Kuntz & Jambor, LLC. Thereafter, respondent commenced practicing law under the firm name of Kuntz & Jambor, LLC.

82. In May 1999 David Kuntz terminated his association with respondent and began practicing elsewhere.

83. Thereafter, respondent began practicing in association with Bruce Rubbelke. Respondent told Rubbelke that he would amend the articles of organization of Kuntz & Jambor, LLC, to reflect a name change to Jambor & Rubbelke, LLC.

84. Respondent failed to either amend the Kuntz & Jambor, LLC, articles of organization or create a new limited liability company utilizing the name Jambor & Rubbelke, LLC. Despite this, respondent began practicing under the name Jambor & Rubbelke, LLC.

85. On June 2, 1999, respondent applied for workers' compensation insurance with First Choice Insurance Services. Respondent falsely advised First Choice that he had changed the name of the firm from Kuntz & Jambor, LLC, to Jambor & Rubbelke, LLC. In his application, respondent falsely used the federal tax identification number of Kuntz & Jambor, LLC. Respondent signed the application as managing governor for Jambor & Rubbelke, LLC.

86. In the workers' compensation insurance application, respondent falsely stated that Kuntz & Jambor, LLC, had changed its name on June 1, 1999, to Jambor & Rubbelke, LLC.

87. On or about November 2, 1999, Rubbelke ended his association with respondent. On November 2, 1999, Rubbelke hand-delivered a letter to respondent specifically requesting that he not use Rubbelke's name on any letterhead, envelopes, business cards, etc.

88. Despite this request, respondent continued to do business under the name of Jambor & Rubbelke, LLC.

#### RULE VIOLATIONS

89. Respondent's conduct in failing to promptly respond to the Director's requests for information violated Rule 8.1(a)(3), MRPC, Rule 25, RLPR, and the probation order.

90. Respondent's conduct in retaliating against persons who have discharged him and/or complained about his misconduct, failing to comply with court orders regarding discovery, and intentionally venueing suit in district court in order to inconvenience the parties violated Rules 3.1, 3.4(c) and (d), and 8.4(d), MRPC.

91. Respondent's conduct in neglecting client matters and failing to respond to client inquiries violated Rules 1.3 and 1.4, MRPC.

92. Respondent's conduct in making false statements to Cynthia Harvey, in falsely stating to the court in the McNurlin matter that his hourly fee rate was \$150 per

hour, and in falsely identifying the name of his firm, violated Rules 4.1, 7.1, 7.5, and 8.4(c), MRPC.

WHEREFORE, the Director respectfully prays for an order of this Court revoking respondent's probation, suspending respondent's license to practice law or imposing otherwise 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: Jan 17, 2001.

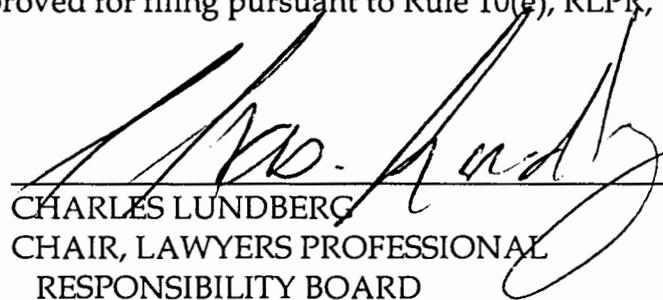
  
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and

  
PATRICK R. BURNS  
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Attorney No. 134004

This supplementary petition is approved for filing pursuant to Rule 10(e), RLPR, by the undersigned.

Dated: Jan. 19, 2001.

  
CHARLES LUNDBERG  
CHAIR, LAWYERS PROFESSIONAL  
RESPONSIBILITY BOARD

\*690 598 N.W.2d 690

Supreme Court of Minnesota.

**In re Petition for DISCIPLINARY ACTION  
AGAINST Daniel  
Francis JAMBOR, an Attorney at Law of the  
State of  
Minnesota.  
No. C9-99-1192.  
Aug. 23, 1999.**

Attorney discipline proceeding was brought. The Supreme Court, Page, J., held that attorney's conduct in neglecting two client matters, making misrepresentations to clients and others involved in those matters, and failing to cooperate with the investigation of complaints regarding those matters warranted public reprimand and two years of supervised probation.

So ordered.

West Headnotes

Attorney and Client ↪ 58

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45I The Office of Attorney  
45I(C) Discipline  
45k47 Proceedings

45k58 Punishment.

Attorney's conduct in neglecting two client matters, making misrepresentations to clients and others involved in those matters, and failing to cooperate with the investigation of complaints regarding those matters warranted public reprimand and two years of supervised probation. 52 M.S.A., Lawyers Prof.Resp., Rule 14.

\*691 ORDER

The Director of the Office of Lawyers Professional Responsibility has filed a petition for disciplinary action alleging that respondent Daniel Francis Jambor has committed professional misconduct warranting public discipline, namely, neglecting two client matters, making misrepresentations to clients and others involved in those matters, and failing to cooperate with the Director's investigation of complaints regarding those matters.

In mitigation, respondent states that from June through November 1998 he was involved in a bitter marital dissolution proceeding, including an

emotional custody dispute regarding his child.

Respondent admits his conduct has violated the Rules of Professional Conduct, waives his rights pursuant to Rule 14, Rules on Lawyers Professional Responsibility (RLPR), and has entered into a stipulation with the Director wherein they jointly recommend that the appropriate discipline is a public reprimand and two years of supervised probation subject to the following conditions:

(1) Respondent shall cooperate fully with the Director's Office in its efforts to monitor compliance with this probation and promptly respond to the Director's correspondence by the due date. Respondent shall cooperate with the Director's investigation of any allegations of unprofessional conduct which may come to the Director's attention. Upon the Director's request, respondent shall provide authorization for release of information and documentation to verify compliance with the terms of this probation.

(2) Respondent shall abide by the Minnesota Rules of Professional Conduct.

(3) Respondent shall be supervised by a licensed Minnesota attorney appointed by the Director to monitor compliance with the terms of this probation. Respondent shall provide to the Director the names of four attorneys who have agreed to be nominated as respondent's supervisor within four weeks from the date this order is filed. If, after diligent effort, respondent is unable to locate a supervisor acceptable to the Director, the Director will seek to appoint a supervisor. Until a supervisor has signed a consent to supervise, the respondent shall, on the first day of each month, provide the Director with an inventory of active client files described in paragraph (4) below. Respondent shall make active client files available to the Director upon request.

(4) Respondent shall cooperate fully with the supervisor in his/her efforts to monitor compliance with this probation. Respondent shall contact the supervisor and schedule a minimum of one in-person meeting per calendar quarter. Respondent shall submit to the supervisor an inventory of all active client files by the first day of each month during the probation. With respect to each active file, the inventory shall disclose the client name, type of representation, date opened, most recent activity, next anticipated action, and anticipated closing date. Respondent's supervisor shall file written reports with the Director at least quarterly, or at such more

frequent intervals as may reasonably be requested by the Director.

(5) Respondent shall initiate and maintain office procedures which ensure that there are prompt responses to correspondence, telephone calls, and other important communications from clients, courts and other persons interested in matters which respondent is handling, and which will ensure that respondent regularly reviews each and every file and completes legal matters on a timely basis.

\*692. (6) Within 30 days from the filing of this order, respondent shall provide to the Director and to the probation supervisor, if any, a written plan outlining office procedures designed to ensure that respondent is in compliance with probation

requirements. Respondent shall provide progress reports as requested.

(7) Respondent shall pay \$900 in costs and disbursements pursuant to Rule 24, RLPR.

This court has independently reviewed the file and approves the jointly recommended disposition.

IT IS HEREBY ORDERED that respondent Daniel Francis Jambor is publicly reprimanded and placed on two years of supervised probation under the conditions jointly agreed to and stated above.

BY THE COURT:

Alan C. Page

Alan C. Page

Associate Justice