

FILE NO. _____

STATE OF MINNESOTA

IN SUPREME COURT

In Re Petition for Disciplinary
Action against WILLIAM F. JONES,
a Minnesota Attorney,
Registration No. 146444.

**PETITION FOR
DISCIPLINARY ACTION**

TO THE SUPREME COURT OF THE STATE OF MINNESOTA:

At the direction of a Lawyers Professional Responsibility Board Panel, the Director of the Office of Lawyers Professional Responsibility, hereinafter Director, files this petition.

The above-named attorney, hereinafter respondent, was admitted to practice law in Minnesota on May 6, 1983. Respondent's license to practice law is currently suspended pursuant to Supreme Court order, *In re Jones*, 763 N.W.2d 38 (Minn. 2009).

Respondent has committed the following unprofessional conduct warranting public discipline:

DISCIPLINARY HISTORY

Respondent's history of prior discipline, including admonitions, is as follows:

- A. On March 28, 1989, respondent received an admonition for violation of Rule 8.4(c), Minnesota Rules of Professional Conduct (MRPC).
- B. On October 26, 1995, respondent received an admonition for violation of Rules 1.7(a) and 1.9, MRPC.
- C. On February 11, 1997, respondent received an admonition for violation of Rule 8.4(c) and (d), MRPC.
- D. On November 17, 1999, respondent stipulated to a two-year private probation for violation of Rules 1.3, 3.3(a), 4.1, 8.4(c), and 8.4(d), MRPC.

E. On July 5, 2006, respondent was suspended from the practice of law for 60 days for violation of Rules 1.8(a) and 1.15(c)(2), MRPC. *In re Jones*, 717 N.W.2d 404 (Minn. 2006).

F. On August 8, 2007, respondent was suspended from the practice of law pending his providing verification that he had successfully completed the professional responsibility portion of the state bar examination as was required for reinstatement after his suspension in 2006. *In re Jones*, 736 N.W.2d 636 (Minn. 2007).

G. On March 25, 2008, respondent received an admonition for violation of Rule 1.3, MRPC.

H. On March 26, 2009, respondent was suspended from the practice of law with no right to petition for reinstatement for a minimum of three years for violating Rule 8.4(b) and (c), MRPC.

FIRST COUNT

Jon Koch/JCO, Inc. Matter

1. Jon Koch (Koch) ran a flooring installation business in the Park Rapids area. In the early 1990s Koch incurred disputed tax liabilities that remained unresolved.
2. In 1996 Koch retained respondent for assistance in resolving a claim for past due taxes by the Internal Revenue Service (IRS).
3. Respondent failed to timely initiate negotiations with the IRS regarding Koch's tax liabilities. No offer of compromise or other attempt to resolve the disputed tax liabilities on behalf of Koch was submitted by respondent until 2002.
4. As part of his advice to Koch regarding his tax problems, respondent advised Koch that he could not hold any property in his name. Respondent further advised that it would be in Koch's best interests to incorporate his business. Koch understood that, since he was not to hold any property in his own name, his mother, Carol Koch, would own the corporation through which he would conduct his business.

5. On June 25, 1999, on Koch's behalf, respondent filed articles of incorporation for a business named JCO, Inc. (JCO) with the Minnesota Secretary of State's Office. Other than the articles of incorporation, respondent drafted no organizational documents regarding JCO, such as bylaws or corporate minutes reflecting the issuance of shares of stock or appointment of directors and officers.

6. Respondent regularly asserted an ownership and pecuniary interest in JCO adverse to Koch. From 1999 through at least 2003, respondent repeatedly held himself out as "owner," "president," or "CEO" of JCO. Respondent provided no consideration for his acquisition of his interest in JCO.

7. In acquiring his interest in JCO, respondent failed to comply with the provisions of Rule 1.8(a), MRPC, as that rule read at the time. More specifically, respondent did not fully disclose to Koch the nature of his (respondent's) interest in JCO, how it was acquired, and the consideration that was to be provided in exchange for the interest; respondent did not give Koch a reasonable opportunity to seek the advice of independent counsel in connection with respondent's acquisition of an ownership interest in JCO; and respondent did not obtain a written consent from Koch to his obtaining an interest in JCO.

8. From the formation of JCO in 1999 through at least 2002, respondent exercised exclusive control over the corporate checking account and improperly diverted JCO funds to his personal benefit.

9. Respondent's improper diversion of funds from JCO included funds transferred to himself without consideration, transfers of funds to various contractors and suppliers for improvements to property owned by respondent known as the Henrietta property. The improper disbursements include, but are not limited to the following:

<u>DATE</u>	<u>CHECK NO.</u>	<u>AMOUNT</u>	<u>PAYEE</u>	<u>PURPOSE</u>
12/26/01	1416	\$6,800.00	Randy Weaver	Henrietta property
1/29/02	1438	\$2,527.02	Northland Lumber	Henrietta property
2/5/02	1443	\$2,090.02	Thelen's Excavating	Henrietta property
2/25/02	1453	\$175.00	Park Rapids Overhead Door	Henrietta property
3/22/02	1468	\$376.74	Foltz Building	Henrietta property
4/10/02	1476	\$1,147.67	Northland Lumber	Henrietta property
4/10/02	1477	\$267.47	Gopher Plumbing	Henrietta property
4/10/02	1478	\$1,880.00	Mid-State Insulation	Henrietta property
5/31/02	1501	\$2,000.00	Brent Electric	Henrietta property
6/19/02	1510	\$4,850.00	Thelen's Excavating	Henrietta property
7/15/02	1542	\$316.55	May Comfort Zone	Henrietta property
7/15/02	1543	\$361.56	Northland Lumber	Henrietta property
7/19/02	1552	\$200.00	Cash	Petty cash
7/19/02	1553	\$850.00	None indicated	Unknown
7/29/02	1561	\$2,350.00	Ron Husby	Henrietta property
7/26/02	1562	\$900.00	Brent Electric	Henrietta property
8/26/02	1575	\$210.00	Lorna Jones	Unknown
8/26/02	1576	\$1,086.25	Northern Safety & Sec'y	Henrietta property
9/5/02	1587	\$392.50	Cumber Construction	Henrietta property
9/19/02	1598	\$2,355.00	Cumber Construction	Henrietta property
10/11/02	1618	\$700.00	Jones Law Office	Unknown
10/25/02	1628	\$300.00	Jones Law Office	Reimburse Office Ass't

10. Respondent's conduct in failing to diligently pursue resolution of Jon Koch's disputed tax liabilities violated Rules 1.1 and 1.3, MRPC.

11. Respondent's conduct in failing to complete the organizational documents for JCO so that ownership interests and the identity of the directors and officers was clearly delineated violated Rule 1.1, MRPC.

12. Respondent's conduct in acquiring an interest in JCO without providing consideration for the acquisition of his interest, without fully disclosing to Jon Koch the nature of his interest in JCO, how that interest was acquired, and the consideration given in exchange for that interest; his failure to allow Koch a reasonable opportunity to seek the advice of independent counsel; and his failure to obtain Koch's written consent to the transactions in which respondent acquired his interest in JCO violated Rules 1.7 and 1.8(a), MRPC, as those rules read in 1999.

13. Respondent's misconduct in diverting funds from JCO to his own benefit violated Rule 8.4(c), MRPC.

SECOND COUNT

Henrietta Property Matter

14. In 1999 Koch wished to buy some real property for his flooring business and a boat storage business he wished to start.

15. In connection with his representation of Koch, respondent agreed to transfer to Koch, through JCO, an interest in real property owned by respondent located on Henrietta Avenue North, Park Rapids, Minnesota (the Henrietta property).

16. Respondent did not draft or provide to Koch any contemporaneous documentation setting forth the terms of the transaction in which JCO was to obtain an interest in the Henrietta property.

17. Koch understood from respondent that he, through JCO, was purchasing the property on a contract for deed. Koch's original understanding of the transaction was that he was purchasing an undeveloped parcel of property owned by respondent for \$50,000.

18. On December 31, 1999, JCO paid respondent \$20,000 as a down payment on the Henrietta property. Later it was determined that a large lot owned by respondent would be more appropriate for JCO's purposes and it was agreed that the down payment would be applied to the purchase of that lot.

19. In reliance on his understanding that he was purchasing the Henrietta property, Koch invested substantial amounts of his time and effort into making improvements to the property, including participating in the construction of a commercial building on the property.

20. In March 2003, after completion of the construction of the commercial building on the property, respondent renegotiated the purchase price with Koch, agreeing to a purchase price of \$206,000, payable over a 15-year term with monthly payments of \$2,000, and interest on the unpaid balance of 9% per year.

21. From March 2003 through June 2005, JCO paid respondent \$2,000 per month for the Henrietta property, again with the understanding that JCO was purchasing the land and the building.

22. Respondent later asserted that JCO's interest in the Henrietta property was a leasehold interest and not that of a purchaser under a contract for deed as originally understood by Koch. To that end, respondent entered into a "Property Lease Agreement" dated March 2003 which he executed both as lessor and, in his purported capacity as president of JCO, as lessee. Respondent did not contemporaneously provide Koch with a copy of the lease.

23. On July 22, 2008, respondent commenced an unlawful detainer action against JCO, Jon Koch, and Carol Koch seeking to evict them from the Henrietta property. In that action, respondent asserted that he was the record owner of the Henrietta property and that Koch had agreed to lease the property from him with an option to purchase.

24. On August 26, 2008, the district court issued an order entering judgment in favor of respondent in the unlawful detainer proceedings and requiring that JCO vacate the Henrietta property. While that order was eventually reversed by the Court of Appeals, respondent remained the fee owner of the Henrietta property until that property was lost to foreclosure.

25. In entering into the Henrietta property transaction with Koch, respondent failed to comply with the provisions of Rule 1.8(a), MRPC, as that rule read at the time. More specifically, respondent did not fully disclose to Koch in writing the terms of the transaction; respondent did not give Koch a reasonable opportunity to seek the advice of independent counsel in connection with the transaction; and respondent did not obtain a written consent from Koch to the conflict of interest inherent in the transaction by virtue of respondent, as Koch's attorney, entering into a business transaction with his client.

26. Respondent's conduct in entering into a business transaction with Koch regarding the Henrietta property without disclosing to Koch the terms of the transaction, allowing a reasonable opportunity for Koch to seek the independent advice of counsel in connection with the transaction, and without obtaining Koch's consent to the conflict of interest inherent in the transaction violated Rules 1.7 and 1.8(a), MRPC, as those rules read in 1999.

THIRD COUNT

Lake Moran Property Matter

27. Koch's mother, Carol Koch, owned real property located at 14601 Buckhorn Circle, Menahga, Minnesota (the Lake Moran property). Carol Koch was purchasing this property by way of a contract for deed.

28. In order to secure an \$80,000 line of credit—purportedly for the benefit of JCO—respondent advised Carol Koch to transfer the Lake Moran property to JCO so that it could be used to secure a line of credit.

29. At the time respondent advised Carol Koch to transfer the Lake Moran property to JCO, Carol Koch was not represented by counsel. Respondent knew or reasonably should have known that JCO's interests and Carol Koch's interests in regard to the Lake Moran property were adverse. Respondent failed to clearly disclose to Carol Koch that JCO's interests and her interests with respect to the Lake Moran property were adverse.

30. Carol Koch, in agreeing to the transfer of the Lake Moran property to JCO, relied upon respondent's advice and counsel. Respondent knew or reasonably should have known that Carol Koch misunderstood his role in the transaction, but failed to make any reasonable efforts to correct that misunderstanding.

31. On June 12, 2002, respondent, identifying himself as the owner of JCO, applied for an \$80,000 line of credit from Northwoods Bank on behalf of JCO.

32. Upon respondent's advice, Carol Koch transferred the Lake Moran property to JCO by way of a warranty deed dated June 19, 2002. No consideration was paid by JCO or respondent to Carol Koch in exchange for this transfer nor was there any documentation drafted outlining the terms of the transaction such as a purchase agreement or other documentation that would have addressed Carol Koch's rights in the property.

33. After transfer of the Lake Moran property to JCO, respondent obtained an \$80,000 line of credit loan to JCO secured by a mortgage on the Lake Moran property. Respondent executed the various mortgage documents identifying himself as CEO of JCO.

34. Respondent utilized the \$80,000 line of credit to pay off an underlying contract for deed on the Lake Moran property and thereafter primarily to finance improvements to the Henrietta property (*see* paragraph 9, above). As also noted above, Carol and Jon Koch, at the time, believed that they were purchasing the Henrietta property from respondent on a contract for deed and would be the ultimate beneficiaries of the improvements to that property. In fact, respondent was treating the Henrietta property as his own property.

35. On July 1, 2002, without approval or authorization of Jon or Carol Koch, respondent transferred \$4,727.24 from the JCO line of credit to his personal account. This transfer constitutes misappropriation.

36. On January 22, 2003, without her knowledge, respondent conveyed the Lake Moran property back to Carol Koch. That conveyance was subject to the mortgage securing the \$80,000 line of credit which had not been repaid.

37. In 2008, Northwoods Bank foreclosed on the Lake Moran property.

38. Respondent's conduct in advising Carol Koch to transfer the Lake Moran property to JCO for the purposes of obtaining a line of credit for use in making improvements to a property owned by respondent without disclosing to Carol Koch

that her interests were adverse to those of JCO, failing to correct Carol Koch's misunderstanding of his role in the transaction, and giving legal advice to Carol Koch regarding the transaction violated Rule 4.3, MRPC, as that rule read in 2002.

39. Respondent's conduct in misappropriating \$4,727.24 from the JCO line of credit violated Rule 8.4(c), MRPC.

40. Respondent's conduct in utilizing the line of credit secured by the mortgage on the Lake Moran property to finance improvements to the Henrietta property and then re-conveying the property back to Carol Koch subject to the unpaid mortgage violated Rule 8.4(c), MRPC.

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: April 21, 2011.



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