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FILE NO. C5-02-519

STATE OF MINNESOTA

IN SUPREME COURT

In Re Petition for Disciplinary
Action against DALE C. NATHAN
an Attorney at Law of the
State of Minnesota

**FINDINGS OF FACT,
CONCLUSIONS OF LAW, AND
RECOMMENDATION FOR
DISCIPLINE**

The above entitled matter came on for hearing before the Honorable Warren E. Litynski, Judge of the District Court, acting as Referee by appointment of the Minnesota Supreme Court on the 2nd and 3rd days of October, 2002, at the Minnesota Judicial Center, St. Paul, Minnesota. Appearing were:

Timothy M. Burke, Assistant Director, Office of Lawyers Professional Responsibility, and Dale C. Nathan, Respondent, *pro se*.

Subsequent to the hearing, the parties submitted proposed findings of fact, conclusions of law and recommendation for discipline and written memorandum. The last memorandum was received on October 17, 2002, and the record closed at that time.

Based upon the evidence submitted to the Referee, and upon all the files, records and proceedings herein, the Referee makes the following:

FINDINGS OF FACT

1. Dale C. Nathan, Respondent, was admitted to practice law in the State of Minnesota on October 13, 1965. Respondent currently practices law in Eagan, Minnesota. [Respondent testimony]

L.F. / D.B./M.F. Visitation Matter

2. L.F. is the mother of M.F. (d.ob. 3/26/96) D.B. was adjudicated the father of M.F. by Court Order of June 18, 1997, in a paternity proceeding. Pursuant to the order, L.F. was awarded sole legal and physical custody of M.F. subject to initial supervised visitation for D.B. as scheduled by the Guardian ad Litem. [Director's exhibit 50A]
3. There were visitation problems between L.F. and D.B. [Director's exhibit 50A]
4. Christine M. Davis-Wilke served as Guardian ad Litem on the case in 1997 and July 1998. Visitation took place at the I'm OK Visitation Center. Ms. Davis Wilke had contact with both D.B. and L.F. She found D.B. to be less than emotionally sound and that he was tenacious about visitation and custody issues. She found that L.F.'s attitude about visitation was that L.F. did not wish for D.B. to have visitation and was concerned about whether D.B. would keep M.F. Ms. Davis Wilke was discharged as the Guardian ad Litem at the request of D.B. [Respondent's Exhibit 9, D.B v. L.F. Matter]

5. During the year 2000, Linda Gerr served as Guardian ad Litem on the case. [Director's Exhibits 3, 4, 5, 14]
6. Respondent first met L.F. in 1998, and he referred her to another attorney. Later, L.F. came back to Respondent to request his assistance. In late 1999 or early 2000, Respondent began to represent L.F. regarding the child visitation issues which arose out of the paternity proceeding. [Respondent testimony]
7. In the summer of 2000, Attorney Timothy Warnemunde represented D.B. in the visitation matter. D.B. sought unsupervised visitation and greater time with M.F. [Warnemunde testimony] [D.B. testimony]
8. A hearing regarding visitation was conducted by Judge Timothy Blakely on May 24, 2000 with a follow-up telephone conference on June 12, 2000. [Director's exhibit 5]
9. Respondent sent Ms. Gerr a letter dated May 27, 2000, indicating an intention to file a complaint against her with her supervisor and agency. He was critical of her actions toward him and L.F. His letter stated in part:

"...You have accomplished absolutely nothing positive as a guardian ad litem. You have been worse than worthless and have made matters far worse rather than better. ... You have completely discredited yourself as a person who can work constructively with L.F. or me and I will deal with you accordingly...."

[Director's exhibit 3]
10. By letter dated June 7, 2000, Respondent wrote Judge Blakely and stated that Ms. Gerr had been untruthful with Respondent and L.F. and that she was *"biased toward my client."* Respondent stated that Ms. Gerr was unfit to serve as guardian ad litem, but stated that he realized she was going to continue as Guardian ad Litem. [Director's exhibit 4]
11. There was some dispute as to the proper location for visitation. Apparently, at the June 12, 2000, telephone conference hearing Judge Blakely resolved the issue and ordered visitation to take place at the AmericInn. Judge Blakely issued a written temporary order on June 16, 2000, which contained an unsupervised visitation schedule to begin August 6, 2000. [Director's exhibit 5]
12. Respondent requested a hearing to reconsider or modify the June 16, 2000 order. A hearing was set for July 17, 2000. [Director's exhibit 7]
13. During a July 2000 telephone conversation regarding the case, Respondent stated to Mr. Warnemunde that he was tape recording the conversation. Respondent says he did not actually tape the conversation. One of Respondent's statements was false. Respondent says he made that statement to make Mr. Warnemunde use more suitable language in the conversation. The statement caused Mr. Warnemunde to distrust Respondent and exacerbated tensions between the attorneys. Mr. Warnemunde's letters in the case show that the communication between the attorneys lacked civility. [Warnemunde testimony] [Respondent testimony] [Director's exhibit 6]
14. Judge Blakely wrote a letter dated June 30, 2000, to counsel indicating his purpose of having

supervised visitation at the AmericInn was to "...develop a positive visitation atmosphere for the child that would make the transition to unsupervised visitation easier if that were to occur...." [Respondent's exhibit 17 D.B. v. L.F. Matter] [Director's exhibit 5A]

15. A July 17, 2000 telephone conference hearing was conducted by Judge Blakely. Following the hearing, Respondent and Mr. Warnemunde had a conversation in which Respondent stated that L.F. would not permit visitation at the I'm OK Center. Mr. Warnemunde wrote a letter to Judge Blakely discussing Respondent's resistance to following any order concerning visitation at the I'm OK Center. Mr. Warnemunde believed the Court ordered visitation to be held at the I'm Ok Center. However, on July 18, 2000, Judge Blakely issued a written order granting the motion to reconsider. At paragraph 2 of the order Judge Blakely ordered that supervised visitation would take place at the AmericInn until an amended order was issued. It is not clear that Judge Blakely orally ordered visitation at the I'm OK Center. It is not clear that Respondent threatened to disobey such an order. [Director's exhibits 6, 7]
16. By letter dated July 23, 2000, Respondent wrote to Judge Blakely:

"...In time I believe you will conclude that Ms. Gerr is not truthful and that you cannot rely on her representations. However, although Ms. Gerr is a serious impediment in this proceeding, I am not asking for a replacement primarily because you have made it clear that you will not change the guardian ad litem. Under the circumstances of this case, I do not believe the matter is overly significant because the child psychologist who is going to evaluate the parties and recommend what is in the best interests of M.F. will probably be the key advisor to the Court...."

[Director's exhibit 8]
17. On July 28, 2000, Judge Blakely *sua sponte* ordered R. Kathleen Morris to conduct a Visitation Investigation. Judge Blakely stayed the June 16, 2000, Order in regard to unsupervised visitation. Judge Blakely's order did not indicate the authority for the appointment of Morris. [Director's exhibit 10]
18. By letter dated July 29, 2000, Respondent indicated to Ms. Gerr that he was going to provide the psychologist with copies of letters to demonstrate that Ms. Gerr was not truthful and that she had already determined that D.B. must have unsupervised visitation. [Director's exhibit 9]
19. Because of the nature of Respondent's letters to Ms. Gerr, the Guardian ad Litem Program Coordinator requested that an attorney be appointed for the Guardian ad Litem. The coordinator characterized the acts of Respondent as threatening and slanderous. Chief Judge of the District, Leslie Metzen appointed the attorney on August 8, 2000. [Director's exhibits 12, 13]
20. Judge Blakely appointed R. Kathleen Morris as visitation investigator. Among other things, the order of July 28, 2000, provided:

The Investigator shall have a right to all records regarding the child including, but not limited to, medical, psychological, daycare and visitation reports. The parties shall sign all releases that may be required to give the Investigator access to the records.

The Investigator shall have the right to interview medical, psychological, daycare and visitation center personnel as well as the parties, the extended families of both parties and other persons that she believes necessary in order to make a full recommendation.

The Investigator shall have independent access to the child as may be required by the investigation.

[E]ach party is ordered to pay \$25.00 per month towards the cost of the investigation commencing August 1, 2000.

Judge Blakely's order made no independent evaluation or finding of the parties' ability to pay for Ms. Morris services. Judge Blakely's order did not indicate Ms. Morris's qualifications. Judge Blakely did not allow the parties to submit names from a roster prior to making his appointment of Morris. The Minnesota Court of Appeals found that the method of appointment was error. [Director's exhibit 10] Director's exhibit 50A]

21. On August 1, 2000, Judge Blakely issued an amended order appointing Ms. Morris parenting time evaluator. The order required the parties to cooperate fully with the evaluator and gave the evaluator access to the minor child as she deemed necessary. Respondent objected to Morris' appointment because of her past history. [Director's exhibit 11] [Respondent's testimony]
22. The attorney appointed for the Guardian ad Litem wrote Respondent a letter dated August 17, 2000, addressing concerns about Respondent's "personal slurs against Ms. Gerr's character". [Director's exhibit 14]
23. By letter dated August 19, 2000, Respondent replied to the August 17 letter. Respondent stated:
"*...I hereby inform you that several of Ms. Gerr's letters to me and to Judge Blakely will be published on a website as examples of outrageous actions by a court-appointed quasi-expert and as examples of the need for reform of the Scott County Guardian Ad Litem Program as well as court reform...*"
The letter again stated that Ms. Gerr was untruthful. [Director's exhibit 15]
24. The correspondence between individuals and a Judge is not accessible to the public, but such correspondence may be made accessible to the public by the sender or the recipient. Rule 5 Public Access to Judicial Records. Except for the final judgments, case records of paternity proceedings are not accessible to the public. Minn. Stat. 257.70. Once paternity has been adjudicated, Minn. Stat. 257.541 provides that visitation and custody matters be determined by Chapter 518. Proceedings under Chapter 518 are open. The letters referred to by Respondent in his August 19, 2000, letter were not confidential records. [But see, Petition for Disciplinary Action against Terrazas, 581 N.W.2d 841 (Minn. 1998)].
25. By letter dated August 19, 2000, Respondent wrote to Ms. Morris that L.F. would not pay for Ms. Morris' services. This was contrary to the Order which appointed Ms. Morris. It is not clear whether Respondent did or did not seek to modify the order regarding payment for the services. Respondent's letter was an *ex parte* contact. [Director's exhibit 16]
26. By letter dated August 22, 2000, Respondent wrote to Ms. Morris that Ms. Morris could no longer have direct contact with L.F. or any member of her family; that Ms. Morris' contact with M.F. would be monitored, and that Ms. Morris' contact with M.F. could not be alone. This was contrary to the Order which appointed Ms. Morris. Respondent's letter constituted an improper *ex parte* contact. [Director's exhibit 17]
27. Respondent's letter dated August 22, 2000, to Ms. Morris also stated:
"*...You are further informed that a description of your behavior in this case will be published*

next week when my new website becomes operational as part of and in connection with my campaign for court reform and to defeat Judge Blakely in his attempt to be elected to continue as a judge..."

It is not clear that such description would constitute a disclosure of confidential data. See finding # 24. [Director's exhibit 17]

28. By letter dated August 31, 2000, Ms. Morris provided her recommendations to Judge Blakely on an interim parenting time schedule for D.B. with M.F. Respondent believed that Morris had not obtained complete information needed to make such a recommendation. [Director's exhibits 18, 19]

29. By letter dated September 6, 2000, Respondent wrote to Judge Blakely of L.F.'s objections to Ms. Morris' recommendations. The letter criticized the recommendation of unsupervised visitation while a psychological evaluation was still taking place. Respondent went on to state:

"...I believe the purpose of the appointment, and Ms. Morris' objective was to create a basis the Court could use to implement the determination it already made, as stated in the Court's earlier letter-that Mr. D.B. must have unsupervised visitation with the child at this time. This predetermined decision made in the absence of any professional evaluation or recommendation not only is unacceptable, it violates fundamental principles of fairness. Ms. L.F. will contest and otherwise appeal the Court's action with respect to Ms. Morris' recommendations by an appeal if necessary as allowed by law. We also will, in a proper manner, bring this situation to the attention of the public..."

It is not clear what Respondent meant when he used the term "predetermined decision". It appears, however, that Respondent was urging the court not to make a decision as to unsupervised visitation until all evaluations were complete and had been made available. [Director's exhibit 19]

30. The above assertion of Respondent was a blunt, candid expression of Respondent's opinion. It was made directly to the Judge. However, Judge Blakely in his letter of June 30, 2000, had characterized unsupervised visitation "if that were to occur." From an objective point of view, a Judge could anticipate unsupervised visitation without having made a final decision. At that point, Judge Blakely had not issued an Order corresponding with Ms. Morris' recommendations. It is not clear that Respondent's statement presented a clear and present danger to the administration of justice. The statement that Respondent would bring this to the attention of the public could be construed as an attempt to assert public pressure on Judge Blakely to make a decision not to grant unsupervised visitation.

31. By order dated October 2, 2000, Judge Blakely adopted Ms. Morris' recommendations. Appendix B of the Order laid out a specific interim schedule for the parties to follow. Judge Blakely found L.F. had failed to comply with visitation orders. Judge Blakely's order stated that a party who did not adhere to the visitation schedule would be subject to contempt of court and jailed. Respondent was put on notice that Judge Blakely viewed Respondent's demeanor and conduct toward the Guardian ad Litem and Visitation Investigator as unprofessional. Judge Blakely's Order warned Respondent of Rule 11 sanctions. It is not clear whether L.F. was served notice of the Judge's order. Paragraph 10 of the order stated:
Counsel for Petitioner, Dale C. Nathan has made persistent and repeated threats and accusations to the Court and to the court-appointed Guardian ad litem and Visitation Investigator, one example of which is contained in Mr. Nathan's correspondence of August 22, 2000. Mr. Nathan's demeanor and conduct have been consistently unprofessional and further statements of the kind described

above may be deemed in contempt of court. Additionally, Mr. Nathan is hereby given notice that further submissions of pleadings, motions, correspondence or other documentation that are interposed for any improper purpose, such as to harass or cause unnecessary delay or needless increase in the cost of litigation, the Court, upon motion or upon its own initiative, or both, may impose upon Mr. Nathan an appropriate sanction, which may include an order to pay to the other party the amount of reasonable expenses incurred because of the filing of the pleading, motion, or other paper, including reasonable attorney fees, as set forth in Minnesota Rules of Civil Procedure 11. [Director's exhibit 23] [Respondent's exhibit 1, D.B. v. L.F. Matter]

32. A second order signed by Judge Blakely on October 2, 2000, set a final fact hearing for October 23, 2000. The purpose of the hearing was to determine "*...whether visitation should occur; whether any visitation allowed should be supervised or unsupervised; ...*" The second order reiterated that a failure to comply with the visitation as ordered concurrently on October 2, 2000, would constitute a finding of contempt of court subjecting the violating party to incarceration. [Director's exhibit 24] [Respondent's exhibit 2, D.B. v. L.F. Matter].
33. Respondent's client L.F. did not bring M.F. to the visitation exchange site pursuant to the October 2, 2000, Order. D.B. did not know where M.F. was after October 8, 2000. D.B. did not see M.F. again for over 1 year. [D.B. testimony] [Warnemunde testimony]
34. On October 9, 2000, D.B.'s attorney, Mr. Warnemunde moved for a contempt hearing against L.F. An Order to Show Cause was issued October 10, 2000, directing L.F. to appear on October 23, 2000. It is not clear if the Order to Show Cause was served on L.F. [Director's exhibits 25, 26]
35. After consultation with Respondent, L.F. went into hiding after the Order to show Cause was issued. L.F. did not want to go to jail. [Testimony of Respondent]
36. On October 13, 2000, Respondent filed with the Court of Appeals a petition for a writ of prohibition and a writ of mandamus. In that petition, Respondent stated that:
"...Mother believes Judge Blakely has demonstrated bias and such lack of fairness that removal is the only option if Child's best interests are to be protected...Judge Blakely is a bad judge. He demonstrates that election of judges is a bad idea because voters are not sufficiently informed to vote on competing candidates for judge. I am in the process of initiating a proceeding before the Judicial Standards Board to remove Judge Blakely from office because: (1) he has substituted his personal view for the law, (2) he refuses to rule on Mother's motion for child support arrearages; (3) he won election to office by appealing to racism; and (4) there were irregularities in his campaign finance reports. ..."
[Director's exhibit 27] Respondent did not file a motion for removal of the Judge pursuant to Rule 63.03 of Minnesota Rules of Civil Procedure and Rule 106 of the General Rules of Practice.
37. There is no evidence of Judge Blakely's personal view other than that expressed in Judge Blakely's June 30, 2000, letter to counsel. From an objective viewpoint, Judge Blakely's views as expressed in the letter are not inconsistent with law. Respondent's only evidence of an appeal to racism is that Respondent thought Blakely's election opponent had a Hmong sounding name. There is no factual basis for the assertion that Judge Blakely appealed to racism in the election. Judge Blakely did appear to delay consideration of the support arrearages. Respondent's statements regarding Judge Blakely's substitution of his personal views for the law and his

appeal to racism were made by Respondent in reckless disregard as to their truth or falsity. The statements constitute a clear and present danger that the statements would impair the administration of justice.

38. Subsequent to trial Respondent attempted to submit a letter regarding irregularities with the Campaign Committee for Judge Blakely. The document was stricken and not considered by the Referee. [Respondent's memorandum]
39. L.F. failed to appear at the October 23, 2000, hearing. Respondent stated L.F. failed to appear because she feared being jailed. L.F. stated in a January 3, 2002 affidavit she did not appear on advice of Respondent. Her affidavit indicated that Respondent told her not to come to court because the Judge was going to put her in jail. The Court issued a bench warrant for L.F. Because L.F. failed to appear, the Court conducted a default hearing. The Court issued an Order on October 25, 2000, adopting the parenting time schedule as recommended by Ms. Morris. In addition, the Court ordered Scott County Social Services to do an assessment of M.F. as a child in need of protective services. [Director's exhibits 28, 129] [Respondent's exhibit 4, D.B. v. L.F. Matter]
40. By letter dated October 28, 2000, Respondent requested that unsupervised visitation be stayed until the county could investigate an allegation of abuse. Respondent stated that M.F. recently alleged that D.B. abused her in September 1999. Respondent also stated that L.F. had gone into hiding because of the bench warrant. Respondent's request for a stay was frivolous because in 1999 the same allegation was determined to be unfounded. In her January 3, 2002 affidavit L.F. stated that Respondent told her not to turn herself in to authorities. [Director's exhibits 29, 129]
41. By letter dated October 30, 2000, Morris stated to the judge that in October 1999 the claim of abuse raised in Respondent's October 28, 2000 letter was determined to be unfounded and that on multiple occasions, including October 27, 2000, L.F. had failed to bring M.F. to the ordered visitation exchange site. [Director's exhibit 30]
42. On November 1, 2000, Judge Blakely conducted a telephone conference at the mutual request of the attorneys to consider Respondent's request for a stay of its visitation order, to determine what steps would be needed to be done to accomplish visitation previously ordered, and to determine the location of M.F. [Director's exhibits 31, 33]
43. During the telephone conference, Respondent refused to divulge the location of M.F., citing attorney/client privilege. Respondent stated that he had no power to do that; he had to abide by what his client wanted. Judge Blakely indicated that a failure to answer would be deemed contempt of court. Respondent indicated he was going to check with the Professional Responsibility Board and get an opinion. The transcript of the hearing then shows Respondent stating: "...if they tell me such information is not privileged, that I can, without my client's consent, reveal it then I'll have to do it." Mr. Warnemunde asked that Respondent be held in contempt of court. Respondent's request for a stay was frivolous. [Director's exhibit 34]
44. In an Order issued November 7, 2000, Judge Blakely denied Respondent's motion for a stay of the unsupervised visitation. Judge Blakely found that Respondent had a legal obligation to disclose the whereabouts of M.F. to the Court and ordered Respondent to immediately disclose the location of M.F. Judge Blakely's order also stated: *Mr. Nathan's refusal to disclose the*

location of the child irreparably harms [D.B.'s] relationship with his child as well as his visitation rights.[Director's exhibit 34]

45. Respondent failed to disclose the whereabouts of M.F. Respondent had the ability to ask his client about M.F.'s whereabouts, but he did not do so. Respondent purposely avoided asking the question. Respondent stated that he believed he owed a duty to L.F. not to obtain the information. [Director's exhibits 36, 37, 38]
46. By affidavit dated November 12, 2000, Respondent stated that L.F. and M.F. had moved to a new location, that L.F. refused to tell Respondent of the location, and that L.F. instructed Respondent not to divulge any information she gave him. [Director's exhibit 36]
47. On November 13, 2000, the Court conducted an Order to Show Cause hearing. Respondent indicated he did not know the whereabouts of M.F. The Court then directed Respondent to disclose the whereabouts of L.F. Judge Blakely found Respondent in contempt of court and ordered him incarcerated until he disclosed the location of M.F. [Director's exhibits 36, 37]
48. During his incarceration, Respondent had telephone contact with L.F. and her husband and other family members but was unwilling to ask about M.F.'s whereabouts. [Respondent testimony]
49. Judge Blakely issued an Order on December 14, 2000, requiring Respondent to produce the cell phone number of L.F. and to disclose communication between Respondent and L.F.'s husband. [Director's exhibit 47] Respondent did not provide any of this information. [Respondent's testimony]
50. Respondent sought review of the contempt orders with the Court of Appeals by an appeal filed December 21, 2000. On May 1, 2000, the Court of Appeals affirmed Judge Blakely's finding of contempt. The Court of Appeals ordered Respondent released because the Court found further incarceration would not lead to compliance with the court order. Respondent spent approximately 54 days in jail on the contempt charge between the order for contempt on November 13, 2000 and his release on January 5, 2001. [Director's exhibit 50]
51. L.F. appealed the decision regarding unsupervised visitation and the issuance of the bench warrant for her arrest. On August 7, 2001, the Court of Appeals affirmed Judge Blakely's decisions. The Court declined to address the issue of judicial bias because it was not properly raised before the District Court. [Director's exhibit 50A]

Coat of Arms v. Water Street Builders

52. Coat of Arms contracted its services to Water Street Builders to do painting and staining on a residence identified as the Halper residence for the sum of \$29,350. Terry Kolb (Kolb) is the owner of Coat of Arms. Between April 1996 and June 1996 Coat of Arms did painting and staining and performed other related services. [Respondent's exhibit 2, Water Street Builders Matter] [Kolb testimony]
53. Water Street Builders made advance payment of \$14,200 to Coat of Arms. The balance was to be paid upon completion. [Kolb Testimony]
54. Kolb believed Coat of Arms had completed the work to the satisfaction of Water Street

Builders. However, due to alleged problems and unfinished work, Water Street Builders did not pay the remaining \$15,150. [Respondent's exhibit 1, Water Street Builders Matter] [Kolb Testimony]

55. Water Street Builders asked Kolb to return to the home to correct deficiencies on June 28, 1996. Kolb sent workers to the home to correct deficiencies. There were some other changes to the walls, such as moving electrical boxes, after Coat of Arms had left the home. Some of the alleged deficiencies may have been attributable to persons other than Coat of Arms. [Kolb testimony] [Respondent's exhibit 1 Water Street Builder's matter][Director's exhibit 108]
56. Kolb retained Respondent to file and foreclose a mechanic's lien, together with a complaint for breach of contract, fraud, and conspiracy to defraud. Defendants included Water Street Builders, Barbara Halper, and the others associated with the closing documents related to Halper's mortgage. [Kolb testimony] [Director's exhibit 107]
57. A dispute arose as to whether Coat of Arms was required to correct additional alleged deficiencies. Kolb said that he was not allowed to correct the deficiencies. Water Street Builders said that Kolb refused to even talk about it. Mr. Kolb directed Respondent to proceed with his claims. Mr. Kolb also wanted to recover attorney fees. [Respondent's testimony] [Kolb testimony] [Director's exhibit 108]
58. There was a reasonable factual basis for Kolb to believe he had substantially performed the contract. At closing no escrow account was set up to protect Coat of Arms. Ms. Halper had stated in a letter to Respondent dated September 11, 1996, the following: *As I previously told you, at the closing we will deposit funds into an escrow account for payment of the bill.* Therefore, the claims asserted on behalf of Coat of Arms by Respondent were not, on their face, frivolous. [Kolb testimony] [Respondent's exhibit 1, Water Street Builders Matter] [Director's exhibit 107C] However, the defendant bank holding the mortgage offered to stipulate that the mortgage would be subordinate to any valid mechanic's lien. But Respondent was unwilling to stipulate, causing the bank to continue to be involved in the case. [Director's exhibit 110]
59. Respondent served substantial discovery on defendants. Included in the discovery requests were many items that related to questions regarding the lack of an escrow on the closing of the property. [Director's exhibit 107]
60. In a settlement conference, Respondent demanded \$50,000. The defendants were offering \$0. [Respondent's testimony] Respondent's demand was unreasonable. However, it is probable that the case would not have settled given the stance of each party.
61. Judge Thomas Carey viewed the case as a simple mechanic's lien case. He required that the parties deal with that claim prior to litigating fraud.
62. The case was tried. Credible evidence was presented by Respondent for Coat of Arms' position. During trial Judge Carey, Respondent, Kolb, and defendants viewed the home. [Director's exhibits 108, 132]
63. Judge Carey determined that defendants were entitled to judgment. He found that Coat of

Arms had abandoned the contract and that it would cost \$5,377.50 to remedy the deficiencies. He concluded that Coat of Arms was not entitled to a mechanic's lien and found that Coat of Arms had intentionally and improperly protracted the litigation. The Judge's order stated: *"This simple dispute over a \$15,000 balance of a paint contract certainly does not warrant attorney fees in excess of \$1,500."* Judge Carey found *"Plaintiff and his counsel have intentionally protracted this litigation to build up excessive attorney fees, and have otherwise conducted themselves in bad faith..."* [Director's exhibit 108]

64. Judge Carey determined that given the deficiencies in the amount of \$5,377.50, ...*the maximum amount to which the plaintiff could be entitled to is \$9,572. Against this the defendants Halper and their counsel have presented a valid claim for the Halpers personal time necessary to fight this unnecessary and protracted litigation.*" [Director's exhibit 108]
65. Judge Carey conducted a hearing on Rule 11 sanctions based upon his findings and awarded sanctions against Respondent. Judge Carey awarded a total of \$21,093.74 to defendants for attorney fees against Respondent and his law firm. [Director's exhibit 110]
66. Coat of Arms appealed the judgment and Respondent appealed the sanctions. The Court of Appeals affirmed the trial Court on the Judgment, but reversed the trial Court on the sanctions finding that the trial court abused its discretion by not following the procedural requirements set forth in *Uselman v. Uselman*, 464 N.W.2d 130, 142 (Minn. 1990). [Director's exhibit 112]
67. There is insufficient evidence that Respondent's acts in representing Coat of Arms were unnecessary, abusive, or frivolous because:
 - (a) the Court of Appeals reversed the sanctions imposed on Respondent, and
 - (b) absent an offset for counterclaim of defendants, Coat of Arms may have been entitled to \$9,572. It was within Coat of Arms rights to seek the remedy of a mechanic's lien and to seek to recover reasonable attorney fees under the statute.
 - (c) Judge Carey provided no factual basis as to why a reasonable attorney's fee would be limited to a maximum of \$1500.00.
 - (d) The fraud claim was dismissed by Judge Carey sua sponte without a hearing.
 - (e) Respondent was advocating the position of his client. A contractor is entitled to utilize the remedy of a mechanic's lien, subject to exceptions, which do not apply here; e.g. bad faith. Judge Carey found that the foreclosure action was not frivolous, but the manner in which Respondent conducted it was frivolous and unnecessary. It is not clear from the evidence in this proceeding that Respondent's manner in conducting the litigation was unnecessary.
 - (f) The view of the premises at trial was in July 1997, approximately one year after Coat of Arms left the job.
 - (g) Defendants in the case withdrew any settlement offer and offered nothing to Coat of Arms; therefore, Coat of Arms was left without any alternative but to fully litigate its position.
 - (h) There is nothing in the record to indicate that Judge Carey ordered alternative dispute resolution under Rule 114 of the General Rules of Practice. It is not clear that Respondent and his client rejected ADR. Therefore, absent a settlement agreement, it was proper for Respondent to take the case to trial.

Coat of Arms v. Jacques

68. Coat of Arms did painting and stain work on a home of Alistair Jacques which was built by

John Thomas Homes. Coat of Arms claimed the contract amount was for \$17,760. Coat of Arms is owned by Terry Kolb. [Kolb Testimony]

69. Coat of Arms received \$11,914. Mr. Kolb claimed he was entitled to the balance of \$5846. John Thomas Homes refused to pay. [Kolb testimony]
70. When Coat of Arms did not get paid, Mr. Kolb called the builder asking to get paid. The builder offered only \$2000. [Kolb testimony]
71. Mr. Kolb retained Respondent to collect the unpaid balance. [Kolb testimony]
72. Respondent filed a mechanic's lien for Coat of Arms and later filed an action to foreclose the lien together with a suit for breach of contract. Defendants were Alistair Jacques, John Thomas Homes, Inc., First Bank NA Wayzata, Northwest Mortgage, Inc., and Long Island Savings FBS. [Director's exhibit 114]
73. Respondent served substantial discovery on all of the defendants. Some of Respondent's discovery requests were unnecessary. [Director's exhibit 114]
74. Defendants in the Jacques home matter alleged that Coat of Arms failed to remedy deficiencies in the work. [Director's exhibits 114, 116]
75. Mr. Kolb was unwilling to return to the property. He believed that there was shoddy drywall work on the home. He directed Respondent to litigate the claims after Defendants were unwilling to accept Kolb's offer to split the difference and were unwilling to offer more than \$2000. [Kolb testimony]
76. Other workers were hired to correct deficiencies. [Director's exhibit 116]
77. Judge Robert Lynn granted defendants' motion for summary judgment and dismissed Coat of Arms claims. Judge Lynn further found that Coat of Arms and Respondent conducted the litigation of the claims in an improper manner. However, no sanctions were imposed because of the ruling by the Court of Appeals in the Water Street Builders case. [Director's exhibit 116] [See also, Director's exhibit 118 to support Judge Lynn's decision]

P.G. Parental Rights Termination Matter

78. P.G. is the mother of four children, Ti.G., d.o.b, 2/23/87, To.G., d.o.b 6/01/88, R.M. d.o.b. 8/06/92 and B.M., d.o.b. 95. [Director's exhibit 99] [P.G. testimony]
79. In April 1999, Ramsey County filed a petition alleging that the children were in need of protection or services (CHIPS). [Director's exhibit 99]
80. P.G. agreed to a case plan which included, among other things, that she was required to abstain from use of illegal drugs, submit to random drug testing, attend family therapy, and see a psychologist. In August 1999, the Ramsey County Court adjudicated all four children as CHIPS. [Director's exhibit 99]
81. P.G. failed to comply fully with the case plan. [Director's exhibit 99]

82. During late 1999, Ramsey County placed R.M. and B.M. on a trial placement with the father. Ti.G. visited her sisters at the apartment. It was alleged that Ti.G. was sexually assaulted while at the apartment. [P.G. testimony]
83. Ramsey County appointed and paid Dr. Freyda Rosen, psychologist, to evaluate R.M. and B.M. [Respondent's testimony] [Director's exhibits 55, 99]
84. Ti.G. and To.G were placed in long term foster care in February, 2000. [Director's exhibit 99]
85. In April, 2000, Ramsey County brought a petition to terminate P.G.'s parental rights to R.M. and B.M. Ann Ploetz was the assistant Ramsey County Attorney involved in the case. [Director's exhibit 99] [Ploetz testimony]
86. Respondent began representing P.G. in May, 2000. [Respondent's testimony]
87. In July and August 2000, Respondent had conversations with Anthony McWell, Ramsey County Social Worker in an attempt to arrange unsupervised visitation for P.G. with R.M. and B.M. Respondent wrote a letter proposing a visitation schedule. [Respondent's testimony] [Director's exhibit 54]
88. By letter dated August 2, 2000, Freyda Rosen, wrote a letter to McWell recommending only supervised visitation with R.M. and B.M. Ms. Rosen indicated that prior sexual abuse had occurred with at least one of the children Ms. Rosen stated that *"Both children have acted-out sexually towards adult males. Because of their vulnerability to being victims of sexual abuse, they require constant supervision."* Ms. Rosen also detailed other shortcomings of P.G., including that in the past P.G. had used drugs in front of the children. Rosen's information was provided by the social worker, the children's own reports, Rosen's contact with the children, and reports by the foster parent. [Respondent's exhibit 5, P.G. Parental Termination Matter]
89. P.G. had moved in with another man. McWell inspected the home at various times for its suitability for children. On August 23, 2000, McWell visited P.G.'s home bringing R.M and B.M. with him. While at the home and in front of the children, McWell accused P.G. of using drugs. Later, McWell stated that he may have acted inappropriately. [P.G. testimony] [Anthony McWell testimony]
90. By letter dated August 29, 2000, Respondent demanded that Freyda Rosen provide a written response to 31 questions in that letter. Respondent stated,
"If you do not provide satisfactory bases for your allegations, I will publish your letter on my website, mncourtreform.ord, with the names of the children and their mother deleted as an example of the need for reform in juvenile court cases."
[Director's exhibit 55]
91. Juvenile Rule 44.03, subd. 2, (2000) required a court order before release of a juvenile protection case record, or any portion of a juvenile protection case record, to the public. The definition in effect in 2000 of a juvenile protection case record was:
"Juvenile protection case records means all records of the juvenile court regarding a particular case or controversy, including all records filed with the court, all records maintained by the court, and all reporter's notes and tapes, electronic recordings, and

transcripts of hearing and trials."

It is not clear whether Freyda Rosen's letter to McWell had been made a part of the court record at the time Respondent threatened to post it on his website. But the letter did contain the names of juveniles. The letter states that one of the juveniles was sexually abused. Furthermore, it was likely that Freyda Rosen would testify or her letter would have been used in a juvenile court proceeding. Respondent threatened to violate the confidentiality rules of juvenile protection matters.

92. Respondent signed a Memorandum, dated August 27, 2000, wherein he complained of McWell's acts on August 22, 2000, and complained about the conduct of the guardian ad litem and the foster parent. In the Memorandum, Respondent stated:
- "...What is happening in this case is madness. It is uncivilized. Ms. [P.G.] is being denied custody of her children, and they with her by an out-of-control power crazed social worker on the basis of a report by a psychologist, Dr. Freyda Rosen, that Ms. [P.G.'s] two daughters, age 4 and 6 at the time, "acted-out sexually towards adult males," and because there were unproven and unprovable allegations that their older brother, then 9, 'sexually abused' one of his sisters and 'may have' abused the other as well, and that Ms. P.G. misbehaved because she told her daughters 'they will be living with her in her home.' I have shown Dr. Rosen's incredible letter to experts and knowledgeable persons and asked them to explain to me how 4 and 6 year old girls can 'act-out sexually' towards adult males. The person who is crazy is Dr. Rosen. ..."*
- [Director's exhibit 56]
93. On or about August 29, 2000, Respondent served a motion in limine and supporting memorandum. Respondent signed the document as attorney for P.G. But the motion was for an order for Ti.G to attend Battle Creek Middle School. Respondent stated in the memorandum:
- "...If Ramsey County refuses to grant Ti.G this simple and humane request, and if the Court is unable or unwilling to provide the requested ruling, I will, as Ti.G's attorney, bring suit against the foster parent for interference with her constitutional right to attend the school best suited for her and desired by her mother, and will publicly expose this outrage and the individuals who perpetrated or defended it without naming or identifying the child or her mother. I ask Ramsey County to inform Ti.G.'s foster parent of this possibility."*
- [Director's exhibit 56]
94. Ramsey County filed a motion to dismiss the Respondent's motion. Ramsey County also asked for an order prohibiting Respondent from making public any part of the juvenile case records without first obtaining a court order, restraining Respondent from harassment and threatening of witnesses and parties, and awarding attorneys' fees to petitioner. [Director's exhibit 57]
95. A hearing was held on the motions on August 31, 2000. Judge James Clark orally issued a protective order. It ordered Respondent to refrain from disclosing any part of the record in the case without an order allowing respondent to do so, after notice to all parties. The Court also ordered Respondent to pay by October 2, 2000, a \$1500 sanction for filing pleadings intended to threaten or harass witnesses and parties. [Director's exhibits 58, 60, 62]
96. Respondent sent a letter to Judge Clark, dated August 31, 2000, stating that he could not pay

\$1500 or any significant part of the amount by October 2, 2000. Respondent also addressed the request of visitation of P.G. and indicated the Judge did not rule on the motion for visitation. [Respondent's exhibit 58]

97. Respondent's August 31, 2000, letter to Judge Clark, in part, stated:
"I also assume unless advised differently that you have decided the county can deny Ms. [P.G.] all contact with her children whether or not there is a reasonable basis for such denial and that the Court will do nothing to help Ms. P.G. on the issue of visitation. I wish to appeal your order imposing sanctions on me. Please issue a written opinion. I also ask for a written order concerning the protective order. I contend the protective order has nothing to do with the interests of the children or the rights of Ms. [P.G.], and is entirely intended to shield Ramsey County officials and their associates from the embarrassment that will result from public exposure of their actions and abuse of Ms. P.G. and her children. Regardless of consequences to me, I have and will continue to publish an article on what has happened to Ms. [P.G.] and her children as part of my campaign to (1) defeat you in your campaign for re-election to the office of judge ; and (2) demonstrate the need for reform in Ramsey County Juvenile Court.
[Director's exhibit 58]
98. It is not clear whether Respondent's letter threatened to disclose confidential material to the public.
99. Respondent sent a letter dated September 5, 2000, to Ann Ploetz, of the Ramsey County Attorney's office, and Karen Garvin, of the office of the Public Defender. With the letter was a draft of an article Respondent said he was going to publish regarding the P.G. parental termination case. Respondent asked Ploetz and Garvin to review the draft and point out any erroneous factual content. He also requested that if they had any objection to the publication of the article to identify their objections and the legal basis for them. He gave them until 5:00 on September 6, 2000, to respond. [Director's exhibit 59]
100. Ms. Ploetz notified Respondent to remind him of the Court's oral protective order of August 31, 2000, and suggested to Respondent that she believed publication would violate the order and subject him possible contempt of court. She forwarded a copy of Respondent's September 5, 2000, letter to Judge Clark. [Director's exhibit 60]
101. On or about September 7, 2000, Respondent published on his website the article about the case titled, "The Young Sex Perverts-Ages 4, 6 and 9". Without using the names of P.G. or any of the children, Respondent's article described Respondent's view of the facts related to the case. The article concluded, "*Judge Clark should be defeated in his campaign for re-election.*" Included with the article were multiple letters and affidavits from the case, some of which were part of the court record. It is not clear whether Respondent told his client of the contents of the article or that he was planning to publish information he obtained about the case through his representation. [Director's exhibit 59]
102. Respondent drafted his article to technically comply with the letter of Judge Clark's oral order. Respondent's inclusion on the website of letters and affidavits that were part of the court record violated the confidentiality rules of Juvenile protection matters and violated Judge Clark's oral order.

103. On September 12, 2000, Respondent placed an ad in the St. Paul Pioneer Press. The ad requested people to visit Respondent's website where the article and letters were published. The ad also stated, "*We think you will find our case summaries very interesting (such as the cases of 'The Young Sex Perverts-Ages 4, 6 and 9...')*" [Director's exhibit 61]
104. On September 14, 2000, Judge Clark issued a written order memorializing the oral order he issued from the bench during the August 31, 2000, hearing. The Court found, among other things:
- Respondent's pleadings filed in support of the August 29, 2000, motion contain multiple threats to parties and witnesses in this case.*
- Respondent's attorney, Dale Nathan, signed the Memorandum dated August 27, 2000. This Memorandum was served on the parties and filed with the court. In this Memorandum, Mr. Nathan demands that the children be returned to [P.G.] immediately and states 'Mr. McWell (the Ramsey County Social Worker) should resign from the case or be discharged. If this does not occur, I will take actions to publicly humiliate Mr. McWell and Ms. Ploetz (Assistant Ramsey County Attorney), and their associates-by name, without naming or identifying the children.'*
- Respondent's attorney, Dale Nathan, signed the Motion in Limine and Supporting Memorandum dated August 29, 2000. This motion was served on the parties and filed with the court. In this Motion, among other things, Mr. Nathan states that if the court does not grant his request to allow Ti.G. to attend a different school he 'will, as Ti.G.'s attorney, bring suit against the foster parents for interference with her constitutional right to attend the school best suited for her and desired by her mother, and will publicly expose this outrage and the individuals who perpetrated or defended it.'*
- Mr. Nathan does not represent the minor child, [Ti.G.]. The Court appointed the Children's Law Center to represent [Ti.G.] on May 13, 1999.*
- Respondent's pleadings were filed for an improper purpose, specifically they were filed with the intent to threaten or harass witnesses and parties to this case contrary to Rule 52.01, subd.3(c), Minnesota Rules of Juvenile Court.*
- The documents filed by respondent's attorney with respect to the motion filed August 29, 2000, contained defamatory and spurious statements and should be stricken in their entirety from the court record.*
- Respondent's attorney signed and filed pleadings in violation of the Rules of Juvenile Court, specifically Rule 52.01, Subd. 3(c) and should be sanctioned as provided for in Rule 52.02, Minnesota Rules of Juvenile court*
- [Director's exhibit 62]
105. Judge Clark's September 14, 2000 order included, among other things:
- Mr. Dale Nathan is hereby put on notice that he is restrained from any further harassing or threatening of any witnesses or parties in this case.*
- Pursuant to the Rules 44.03, 44.05 and 53.06, Minnesota Rules of Juvenile Procedure, a Protective Order is hereby granted restraining Mr. Nathan from making public any part of a juvenile protection case record in this case without first obtaining a court order allowing the publication, after notice to all parties.*
- The following documents are immediately stricken from the court record as being defamatory and spurious: Memorandum dated August 27, 2000 and Motion in Limine*

and Supporting Memorandum dated August 29, 2000.

Sanctions against Mr. Dale Nathan, individually, for violating Rule 52.01 subd. 3(c) are ordered. Reasonable attorney fees shall be imposed in the amount of \$1,500.00 to be paid by Mr. Dale Nathan and not by his client by October 2, 2000.

This Order is effective from the time of its announcement in court on August 31, 2000.

[Director's exhibit 62]

106. By letter dated September 19, 2000, Respondent replied to a letter from McWell to P.G. Respondent's letter stated in part:

Please note that your letter dated 9-18-00 and your reply to this letter will be published on my website (with the names of Ms. [P.G.] and her children deleted) and may be published on television and radio programs in September and October and possibly early November, 2000.

[Director's exhibit 63]

107. The statement in Respondent's letter threatened to violate the confidentiality rule regarding child protection cases and to violate the Judge Clark's protective orders as stated in the August 31, 2000, hearing and the September 14, 2000, order.

108. On or about September 22, 2000, Ms. Ploetz served and filed a motion for contempt. The motion sought to hold Respondent in contempt of court for publishing information about the case without court permission in violation of the protective order. [Director's exhibit 64]

109. On or about September 25, 2000, Respondent filed a Motion in Limine and Memorandum. In the Memorandum, Respondent stated, among other things:

**** With respect to the motion to find me in contempt of court, I acknowledge and will not dispute at the hearing on that motion that the facts alleged in the affidavit of Ms. Ann E. Ploetz are true, although I deny that any of the documents I published in my website were in the Juvenile Court file when I received them. And while the facts alleged by Ms Ploetz are true, I disagree with the Court's Protective Order filed September 14, 2000 because I believe there was not good cause for a protective order as required by Juvenile Court Rule 44.05. None of the materials I published revealed the names of the children or their mother. The sole purpose of the protective order was to keep the public from learning about the actions of Mr. Anthony McWell, Ms Ann E. Ploetz , Ms Karen J. Garvin, Ms Julie Rossamano, and their associates against Ms.[P.G.] and her children, or learning about the outrageous findings and conclusions of Dr. Frayda Rosen and Mr. William Fournier, both of whom were paid by Ramsey County to generate findings and reports to be used against Ms. P.G. I believe the Court's Protective Order is terribly wrong and contrary to public policy, and that the sanctions assessed against me are without valid reason. I will appeal the Court's Order filed September 14, 2000. I believe the Court should wait for the disposition of my appeal before proceeding further against me.*

*I acknowledge that I published my materials despite the Court's oral order on August 31, 2000 directing me not to publish any materials or reveal any information concerning the subject proceeding without court approval. Occasionally it is necessary to violate a court order or even a law in order to correct serious injustices. I believe this such an occasion. The treatment of Ms. [P.G.] and her children by Mr. McWell and Ramsey County and this Court has been monstrous. ****

[Director's exhibit 65]

110. Respondent later stated in the Memorandum:
****So there is no misunderstanding, I will continue publication of this and other articles in my website and elsewhere as part of a continuing effort to get court reform, and to have Judges Clark and Connelly dismissed from their positions. This effort will continue after the election in November, 2000 as part of a campaign for legislative reform, and thereafter for the purpose of defeating judges and the Ramsey County Attorney in the 2002 election.*
[Director's exhibit 65]
111. Respondent's statement constituted a threat to violate the confidentiality rule regarding child protection cases and to violate the protective orders. There is no indication Respondent sought a stay of the protective order.
112. In a letter dated September 26, 2000, to Ploetz, Respondent stated:
*...I will publish your letter on my website and will publish an article in the Pioneer Press this Sunday describing your refusal and refusal of the Ramsey County Attorney to provide this vital documentation while pursuing a sham case to terminate Ms. [P.G.'s] parental rights and will ask for support from the public.
Enclosed is a copy of the results of the lie detector tests taken by [P.G.], which I will also publish.*
[Director's exhibit 66]
113. Respondent's statement in the September 26, 2000 letter constituted a threat to violate the protective order.
114. In a letter dated September 27, 2000, to Ploetz, Respondent stated:
"...I am going to publish the content of my Pre-Trial Memorandum with specific references to you, Mr. McWell, Ms. Garvin, Ms. Rossamano and Judge Clark I am doing so because you individually and as a group either do not understand or do not care that what you are doing to Ms. [P.G.] and her children is very wrong and very damaging to them. Each of you should be removed from office. My chance of achieving that may be slim, but I am going to try as hard as I can to achieve that result. Nothing will stop me from trying. ..."
[Director's exhibit 67]
115. Respondent's statement in the September 27, 2000, letter constituted a threat to violate the protective order.
116. After trial began on October 2, 2000, Respondent requested, by a letter to Judge Clark dated October 3, 2000, that he be allowed to order a transcript of the direct testimony of McWell and William Fournier, another witness who had testified. Respondent's letter stated:
"... I will use the transcripts only for the purpose of preparing for cross-examination and will not publish any portion of the transcripts on my website or elsewhere, and will keep them confidential unless disclosure is authorized by a future court order. ..."
The court granted Respondent's request. By letter date October 4, 2000, Respondent thanked the court allowing him to obtain the transcripts, and Respondent requested that the court authorize payment for the transcript at public expense.
[Director's exhibits 68, 69]

117. By letter dated October 5, 2000, Respondent notified Judge Clark and Ann Ploetz of his intention to file a federal civil rights lawsuit in U.S. District Court. He asked that they accept service of the summons and complaint. Respondent indicated that only injunctive relief was being sought from defendants who were judicially immune from suits for monetary damages. [Director's exhibits 71, 72]
118. Respondent filed the federal lawsuit on or about October 10, 2000. [Director's exhibit 104]
119. By letter dated October 14, 2000, Respondent informed Ploetz that any communications from McWell to P.G. had to be accomplished through him. Respondent stated in his letter:
*"...Mr. McWell testified that [sic]wants to terminate Ms. [P.G.'s] parental rights to her two youngest children and it is too late for Ms. [P.G.] to change his mind. Because of this, there is no reason for Ms. [P.G.] to communicate with Mr. McWell. Further, Mr. McWell wants to defend his decision and his job and will do everything he can to sabotage Ms. [P.G.]'s efforts to show she is a fit parent and should have custody of all her children. Mr. McWell is a racist. He is biased against Ms. [P.G.] because she dated a black man at one time.
Mr. McWell is unprofessional. He acknowledged this in his testimony.
Mr. McWell is a liar. He lied to me in early August, 2000 when he said he would arrange for Ms. [P.G.] to have visitation with her two youngest children at her home.
Mr. McWell is a defendant in a lawsuit brought against him by Ms. [P.G.] that may cost him his job...."*
[Director's exhibit 74]
120. Ms. Ploetz sent a letter dated October 17, 2000, stating that she had received numerous threatening and insulting letters from Respondent and as a result would no longer respond to his letters. She stated that Respondent would need to file all future action by way of motion. Ms. Ploetz did not identify the specific letters. [Director's exhibit 76]
121. Respondent sent a letter to Ploetz dated October 19, 2000 stating:
I understand your letter dated October 17, 2000 to mean that you do not want the opportunity to avoid the consequences of the actions I will be taking. Accordingly, I will not give you advance notice of these actions.
[Director's exhibit 77]
122. In the October 20, 2000, issue of the *Pioneer Press* Respondent published an advertisement seeking a response from persons who "*were abused by Ramsey County in Ramsey County Juvenile Court*". [Director's exhibit 78]
123. On October 24, 2000, Judge Clark conducted a hearing on Ramsey County's motion for contempt. Judge Clark made the following findings, among others:
6. *The affidavit of Ms. Ann E. Ploetz states that Mr. Nathan has published many of the facts of this juvenile protection case on his website. In addition to factual descriptions of the case Mr. Nathan has included copies of documents from this case. These documents include letters from the social worker to [P.G.], letters from Ann Ploetz to Dale Nathan and a letter from the children's therapist, Freyda Rosen to the social worker, Anthony McWell.*
7. *Mr. Nathan admitted in court on October 24, 2000, that he did publish this information*

on his website, contrary to the Court's August 31, 2000 protective order announced orally in court and the written order of September 14, 2000.

[Director's exhibit 79]

124. Judge Clark found Respondent in contempt of court for violating the protective order. Judge Clark ordered Respondent to remove all information regarding the juvenile protection case record from his website by 12:00 noon, November 7, 2000. Judge Clark imposed a sanction of \$500 for the contempt. Judge Clark again restrained Respondent from publishing any information regarding the juvenile protection case record. [Director's exhibit 79]
125. By letter dated October 29, 2000, to Judge Clark, Respondent stated his intention to publish an article on November 3, 4, 5, and 6, 2000, in Ramsey County area newspapers if the County had not implemented the visitation order by noon October 31, 2000. Respondent stated:

I understand I may be incarcerated for ninety days if I take this action. If this occurs, I will have the media visit me as often as I can.

Respondent then stated in the letter a list of 10 demands for relief and asked for a hearing. Respondent stated that if the relief was provided he would not publish.
[Director's exhibits 80, 81]
126. By letter dated October 31, 2000, Judge Clark advised Respondent that he would not grant a hearing because Respondent had failed to comply with the rules of Juvenile Procedure.
[Director's exhibit 82]
127. Judge Clark viewed Respondent's letter as an attempt to coerce him into ruling in Respondent's favor. [James Clark testimony]
128. On or about November 1, 2000, Respondent filed a "Notice Re: [Ti.G.]" and a "Notice Re: [To.G.]. [Director's exhibit 85]
129. Respondent signed the document stating he was attorney for Ti.G. The content of the submission included a demanded that Ti.G. be placed with either the mother or the Oberg Shelter Home. Respondent further stated that Ti.G. "will file suit against any prospective foster parent other than the Obergs who agree to accept her as a foster child and will so inform the prospective foster parent at the placement interview. [Director's exhibit 85]
130. Respondent signed the document as counsel for [To.G.] and demanded an immediate hearing for the purpose of releasing To.G. on bail pending trial on November 7, 2000. Respondent went on to state: "... *If [To.G.] is not released by 5:00 p.m. on Friday November 3, 2000, I will publish an article concerning this. ...*" [Director's exhibit 85]
131. On November 2, 2000, a hearing was conducted regarding Ti.G.'s removal from her foster home placement. Respondent attempted to represent both Ti.G. and P.G. The referee raised the issue of a conflict of interest for Respondent to represent a child and a parent. The referee informed Respondent that another attorney had been appointed to represent Ti.G. Respondent believed that both Ti.G. and P.G. agreed to have him represent them at the hearing and that their position in the matter was the same. Respondent claimed that he was not aware of prior appointment of an attorney for Ti.G. However, Judge Clark's September 14, 2000, Order clearly identified Gail Chang Bohr as the attorney representing Ti.G.

Respondent withdrew from representing Ti.G., as the Referee suggested. The Referee recommended to the district court that Respondent be prohibited from representing Ti.G. The Referee also recommended that Respondent be enjoined from filing a lawsuit against any prospective foster home. On November 14, 2000, Judge Clark signed such an Order adopting the recommendations of the Referee. [Director's exhibit 96] [Respondent's testimony] Judge Clark's order also stated:

...Mr. Nathan has also indicated in his recent motion of November, 2000 his intention to file a lawsuit against any prospective foster placement for [Ti.G]. Mr. Nathan is hereby enjoined from filing a lawsuit against any foster home residential treatment facility or any other type of facility in order to prevent that facility from accepting placement of Ti.G by this Court. Should Mr. Nathan violate this Court order and file such a lawsuit against a prospective foster home or other placement in order to prevent the child's placement, a contempt hearing shall be scheduled . [Director's exhibit 96] [Director's exhibit 85]

Respondent's threat to file suit against any prospective foster placement made it difficult for Ramsey County to place Ti.G.

132. On November 3, 2000, the Pioneer Press published an advertisement authored by Respondent. At the top of the advertisement the Juvenile Court File number was identified. The advertisement's heading was as follows:
- "The Young Sex Perverts
Judge James H. Clark, Jr."*
- The content of the advertisement detailed Respondent's characterization of the case. The conclusion of the advertisement was an appeal for voters to vote for "New Judge" instead of Judge Clark in the election in November. [Director's exhibit 88]
133. It is not clear that the advertisement violated the protective order, except for revealing the case file number. The advertisement was political speech regarding an election for judge.
134. On or about November 4, 2000, Respondent filed a motion and memorandum requesting permission to provide information about the case to the Center for Urban and Regional Affairs. Respondent stated that:
- "The research director believes there may be major problems in the work of the Ramsey County Juvenile Court."*
- Respondent made the statement knowing or in reckless disregard that it was a false statement. [Director's exhibit 89]
135. Patricia Bruce, the person who had contacted Respondent wrote a letter addressed to Ann Ploetz dated November 7, 2000, and stated that she felt Respondent had a political agenda and misrepresented her employer. She stated that Respondent was using deception to try to make the case "public information". Ms. Bruce did not ask for case material. [Director's exhibit 91] [Patricia Bruce testimony]
136. In early November, 2000, before Election Day, Respondent removed the information and documents regarding the case from his website. [Respondent's testimony]
137. On November 9, 2000, Respondent represented To.G. and P.G. in a hearing on To.G.'s alleged probation violation. Respondent's motion for bail was denied by the Referee. The Referee further enjoined Respondent from filing a lawsuit against Homme House, any other group home, residential treatment facility, or any other time facility regarding placement of To.G.

The Referee found that Respondent's stated purpose in filing such lawsuits would be to prevent possible placement of To.G. [Director's exhibit 92]

138. In a letter dated November 9, 2000, Respondent stated to Judge Clark:

"...The only transcript I have ordered to date is that of the direct testimony of Mr. William Fournier, a psychologist who is one of the County's expert witnesses. As I thought I had made clear, my purpose in obtaining this transcript is not to prepare for cross-examination. My notes of Mr. Fournier's testimony and possession of his records, which were provided to me by Ms. Ploetz, are adequate for that purpose. I specifically informed Ms. Judish, your court reporter, that I wanted to provide the transcript of Mr. Fournier's testimony to Ms. [P.G.] psychologist for her use in better understanding Mr. Fournier's analysis of Ms. [P.G.], which would assist her in her treatment of Ms. [P.G.]"

This was inconsistent with Respondent's earlier stated purpose in obtaining the transcript. See finding #117. [Director's exhibit 93]

139. Also in Respondent's letter of November 9, 2000, to Judge Clark was the following statements:

"...The only records I have disclosed to date are those that are not in the court file to my knowledge or that I received from sources other than the Juvenile Court file. While I violated your protective order because I believe it is invalid, I have not violated any of the Juvenile Court rules to my knowledge. Nor have I done anything I said I would not do. ...I do not regret my violation of the Court's protective order...."

[Director's exhibit 93]

If the order had been void, Respondent could have ignored it. Respondent failed to produce any law to show that the order was void. In Re Tambllyn, 695 P.2d 902 (Oregon 1985)

140. Judge Clark responded to Respondent's letter and stated: *"...Your letter of November 9th is a gross misrepresentation of fact with respect to the intended purposes of the transcript you requested."* [Director's exhibit 94]

141. Respondent replied to Judge Clark's letter by stating in part:

"...Although not stated in that letter, a second purpose was to provide a copy of the Fournier transcript to Ms. [P.G.]'s psychologist."

[Director's exhibit 95]

142. On May 14, 2001, Judge Clark issued Findings of Fact, Conclusions of Law, and Order Terminating Parental Rights of P.G. to R.M. and B.M. Judge Clark signed the Order Terminating P.G.'s parental rights on May 16, 2001. [Director's exhibit 99]

143. On or about July 8, 2001, Respondent filed a memorandum with the Court of Appeals. Within the memorandum, Respondent stated:

"...I am aware that this Court is determined to support trial court judges in whatever action they take in order to preserve the almost unlimited power of judges to do what they wish, right or wrong, regardless of how severely they hurt parents, children or persons."

From an objective viewpoint the statement was made with reckless disregard as to its truth or falsity. [Director's exhibit 100]

144. On July 18, 2001, the *Pioneer Press* published an advertisement authored and paid for by Respondent with the heading:

"JUVENILE COURT ABUSE"

The advertisement only obliquely referred to the P.G. termination case. It did not violate confidentiality or protective orders. [Director's exhibit 101]

145. P.G. appealed the parental termination order. The trial court was affirmed by the Court of Appeals by decision filed March 12, 2002. P.G. was represented by Respondent. [Director's exhibit 102A]
146. Respondent was appointed by the Court at a rate of \$75.00 per hour to represent P.G. in the appeal. He has not yet sent the Ramsey County Court Administrator a bill for his services. [Respondent's Exhibit 1. P.G Parental Termination Matter] [Respondent's Testimony] [Tama Hall testimony]
147. Respondent has not yet paid the sanctions owing Ramsey County. It is possible that Respondent's amounts owing would be partially or fully offset by amounts owed him by Ramsey County. [Tama Hall testimony] [Respondent testimony] [Respondent's exhibit 3, P.G. Parental Termination Matter]
148. Respondent used his representation of P.G. in part to promote his own agenda of reform of the courts or to attack the system.

P.G. Federal Lawsuit

149. On or about October 10, on behalf of P.G. and her children, Respondent filed in federal district court a civil complaint raising claims under 42 U.S.C. § 1983 against defendants Ramsey County, McWell, Ploetz, Julie Russomanno, (the guardian ad litem), Garvin, Judge Clark, unnamed supervisors, Frayda Rosen and Judy Daggy (the foster parent of Ti.G.). The complaint sought damages against Ramsey County, McWell, Russomanno, Garvin, Rosen, and Daggy. The complaint sought injunctive relief against Ramsey County, Ploetz, and the supervisors, and Daggy. The only apparent relief sought of Judge Clark was for the federal court to direct the Juvenile Court to issue an Order dismissing Russomanno and Garvin and replacing them with persons not affiliated with or paid by or in any way by Ramsey County., [Director's exhibit 104]
150. On April 27, 2001, the federal district court issued an order dismissing all of the claims. [Director's exhibit 105]
151. The federal court concluded that the Plaintiff failed to state claims against Daggy and Rosen. The Court determined that a foster parent was not a "state actor". It found that Rosen's letter was privileged and there was no malice on Rosen's part. The Court stated that "*Plaintiffs' insinuation that perhaps Dr. Rosen was acting out of some financial conflict-of-interest borders on the outrageous.*" [Director's exhibit 105] Respondent's basis regarding Rosen's financial conflict of interest was that 90% of Rosen's practice was with Ramsey County which paid for Rosen's services. [Respondent's testimony]
152. As to the state and county defendants, the federal court found that the abstention doctrine required dismissal of the claims. Younger v. Harris, 401 U.S. 37 (1971). The federal court specifically found that there was no evidence to suggest that the state court proceeding was so fundamentally biased or unfair to warrant federal court interference. The federal court

also stated that the Rooker-Feldman doctrine required dismissal of Plaintiff's claims. Rooker v. Fidelity Trust Co., 263 U.S. 413 (1923) District of Columbia Court of Appeals v. Feldman, 460 U.S. 462 (1983). [Director's exhibit 105]

153. The federal court also indicated that Ploetz and Judge Clark were protected by immunity from damages. Despite the federal court's order, it is not clear that Respondent sought damages from Ploetz or Judge Clark. Respondent's position was that Judge Clark and Ploetz were included in the lawsuit only for the injunctive relief sought by the Plaintiffs. [Director's exhibits 71, 72, 104, 105]
154. The federal court found that Rosen and Daggy were entitled to recover their fees. The federal court ordered Respondent to pay Rosen's counsel attorney fees in the amount of \$2,607.09. Respondent has not yet paid that amount. [Director's exhibit 106]
155. It is not clear whether the federal court found the federal lawsuit to be frivolous.

Count One

Pattern of Harassing and Frivolous Litigation

156. Respondent engaged in a pattern of harassing or embarrassing correspondence or statements related to court matters. (See findings 9, 10, 16, 18, 23, 26, 27, 29, 31, 36, 90, 92, 93, 95, 97, 99, 103, 104, 106, 109, 110, 112, 114, 119, and 143) (Also, in general, all of Respondent's conduct in the P.G. Parental Termination Matter)
157. It is not clear that Respondent's motions or litigation were facially frivolous or for the sole purpose of annoyance. But, certain motions were frivolous and some discovery requests were unnecessary. (See findings 40, 43, 73)

Count Two

Pattern of Violating Court Orders, Threatening to Violate Court Orders and Assisting Client in Violating Court Orders

158. Respondent violated court orders, threatened to violate court orders, and assisted a client in violating court orders. (See findings 25, 26, 39, 43, 45, 46, 47, 48, 49, 99, 100, 101, 102, 105, 106, 107, 108, 109, 111, 112, 113, 114, 115, 123, 124, 125, and 139).

Count Three

Pattern of Violating and Threatening to Violate Confidentiality Statutes and Rules

159. Respondent violated or threatened to violate confidentiality rules. (See findings 90, 91, 94, 95, 99, 100, 101, 102, 104, 105, 106, 107, 108, 109, 110, 111, and 114).
160. It is not clear that Respondent violated confidentiality rules or statutes in all of the instances alleged by the Director. (See Findings 24, 27, 98, and 133).

Count Four

Baseless Derogatory Statements about Judges

161. Respondent made baseless derogatory statements about Judges. (See findings 36, 37, 97, 132, and 143).
162. Some of Respondent's statements about Judges were made in the context of a judicial election. [See findings 110, 133].

Count Five

False Statements

163. Respondent made false statements in regard to court matters in correspondence and statements to other attorneys or third persons. (See findings 13, 36, 134, 135, 138, 140 and 143).

Count Six

Failure to Pay Sanctions

164. Respondent failed to pay sanctions or arrange for a payment schedule. (See findings 95, 96, 105, 124, 147, and 154). Other than a general statement of inability to pay, Respondent did not produce other evidence that he is financially unable to make payments. Respondent paid for advertisements at the same time he owed sanctions. (See findings 133, 144)
165. Some sanctions imposed on Respondent were found to be improperly imposed. (See findings 65, 66).

Conflict of Interest

166. Respondent's representation or attempted representation of Ti.G., To.G, and P.G. was not clearly a conflict of interest, or a potential conflict of interest. [See findings 93, 104, 129, 131]. Respondent withdrew when a referee advised Respondent had a conflict.

Aggravating Factors

167. Respondent has a prior history of prior discipline. On July 13, 1994 Respondent was issued an admonition for using letterhead showing a suspended lawyer as "of counsel" for approximately seven months after that lawyer was suspended. On January 17, 1997, Respondent was issued an admonition for sending a written solicitation to 76 people which failed to contain the word "Advertisement" clearly and conspicuously at the beginning of the solicitation. [Director's exhibits 1, 2]
168. Respondent admitted he intentionally ignored orders because he personally disagreed with the orders. (See findings 93, 111) He does not regret violating the court's protective order in the P.G. Termination case. (See finding 93).

169. Respondent made no effort to set up payment plans or otherwise address payment of sanctions.
170. Respondent testified that it is okay to disobey a court order if he believes it is wrong. (See also finding 139)
171. Respondent refuses to acknowledge the severity of his misconduct. In Re Pinotti, 585 N.W.2d 55 (Minn. 1998).
172. D.B. and M.F. did not see each other for approximately 1 year because of Respondent's advice to L.F.

Mitigating Factors

173. Respondent was incarcerated for approximately 54 days for contempt. (See finding 50).

CONCLUSIONS OF LAW

1. Respondent violated Rules 3.1, 3.4(c), 4.4, 8.4(d) of the Minnesota Rules of Professional Conduct by asserting some frivolous motions and by using means which had the purpose to embarrass or burden a third person.
2. Respondent violated Rules 3.4(c) and 8.4(d) of the Minnesota Rules of Professional Conduct by violating or defying court orders, threatening to violate court orders, violating confidentiality rules, and assisting his client in violating court orders.
3. Respondent violated Rules 8.2(a) and 8.4(d) by making derogatory statements about judges with reckless disregard as to whether the statement was true or false.
4. Respondent violated Rule 4.1 and 8.4(c) of the Minnesota Rules of Professional Conduct by making false statements.
5. Respondent violated Rules 3.4(c) and 8.4(d) of the Minnesota Rules of Professional Conduct by failing to pay or failing to make arrangements to pay sanctions.
6. It is not clear that Respondent violated Rule 1.7(b) by representing or attempting to represent persons with potential conflicting interests.

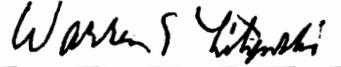
RECOMMENDATION FOR DISCIPLINE

1. That Respondent, Dale C. Nathan, be indefinitely suspended from the practice of law, with leave to apply for reinstatement after six months. It is recommended that Respondent be given some credit against the suspension for the time he was incarcerated for contempt.
2. That the reinstatement be conditioned upon:
 - a. Payment of costs, disbursements and interest pursuant to Rule 24, RLPR;
 - b. Compliance with Rule 26, RLPR;
 - c. Successful completion of the professional responsibility examination pursuant to Rule 18(e), RPLR;

- d. Satisfaction of the continuing legal education requirements pursuant to Rule 18(e), RLPR; and
- e. Proof by Respondent by clear and convincing evidence that he is fit to practice law and that future misconduct is not apt to recur.
- f. Respondent shall submit an affidavit and/or he shall testify under oath that he will not intentionally disobey a court order.
- g. Following reinstatement Respondent shall be on supervised probation for 2 years.

Dated this 22 day of November, 2002.

(Court Seal)



Warren E. Litynski
Referee