

FILE NO. \_\_\_\_\_

STATE OF MINNESOTA

IN SUPREME COURT

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

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**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 October 13, 1965. Respondent currently practices law in Eagan, Minnesota.

Respondent has committed the following unprofessional conduct warranting public discipline:

DISCIPLINARY HISTORY

A. 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.

B. 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.

COUNT ONE

Pattern of Harassing and Frivolous Litigation

1. Respondent has engaged in a pattern of harassing and frivolous litigation on behalf of his clients. As part of this pattern, respondent has, among other things,

brought harassing and frivolous cases, claims and motions, and sent harassing correspondence, as set forth more fully below.

D.B. v. L.F. Matter

2. Since March 2000 respondent has been representing L.F. (the mother) in a child visitation matter brought by D.B. (the biological father). The matter involves M.F., the pre-school age child of L.F. and D.B.

3. The case arose out of a paternity proceeding. Minn. Stat. § 257.70 provides:

All papers and records, other than the final judgment, pertaining to [a parentage act] action or proceeding, whether part of the permanent record of the court or of a file in the state department of human services or elsewhere, are subject to inspection only upon consent of the court and all interested persons, or in exceptional cases only upon an order of the court for good cause shown.

4. By letter dated May 27, 2000, respondent stated to the guardian ad litem, "You have been worse than worthless . . . ."

5. During a July 2000 telephone conversation with opposing counsel, respondent stated that he was tape-recording the conversation. This statement was false. Respondent did not tape-record any of the conversation.

6. After a July 17, 2000, hearing, respondent stated to opposing counsel that L.F. would not obey any court order which required visitation to occur not at the AmericInn in Burnsville, Minnesota, but at the I'm OK Visitation Center.

7. By order filed July 19, 2000, the court ordered that supervised visitation as ordered in a June 16, 2000, order would continue at the AmericInn in Burnsville, Minnesota, to be supervised by a relative of D.B. and the mother of L.F. (Exhibit 1).

8. By letter dated July 23, 2000, to the judge, respondent stated that the judge "will conclude that [the guardian ad litem] is not truthful and that you cannot rely on her representations."

9. By letter dated July 29, 2000, respondent stated to the guardian ad litem, "you are not truthful or impartial and cannot be trusted . . . ."

10. By letter dated August 2, 2000, the coordinator of the county's guardian ad litem program requested the court to appoint counsel for the guardian ad litem. This request was made because respondent had "repeatedly threatened and harassed . . . the Court appointed Guardian Ad Litem, for several weeks," culminating in respondent's July 29 letter. By order filed August 15, 2000, the court appointed counsel for the guardian ad litem.

11. By order filed August 2, 2000, the court appointed R. Kathleen Morris as visitation investigator (Exhibit 2). Among other things, the order 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. Payment shall be made to R. Kathleen Morris . . . .

12. By separate order filed August 2, 2000, the court also appointed Morris parenting time evaluator (Exhibit 3). Among other things, the order provided:

The parties shall cooperate fully with the parenting time evaluator and she shall have access to the minor child as she deems necessary to conduct the parenting time evaluation.

The parties shall provide Ms. Morris with the names, addresses and telephone numbers for all medical professionals who have had contact with the child, including but not limited to counselors and/or therapists.

Ms. Morris shall have free access, without limitation, to any information from hospitals, schools, organizations, department of health and welfare agencies, doctors, healthcare providers, mental health professionals, chemical health programs, psychologists, psychiatrists and police department records.

The parties shall each pay 50% of [Morris'] fees payable at the rate of \$25.00 per month . . . until paid in full.

13. By letter dated August 19, 2000, to the guardian ad litem's attorney, respondent stated, "I hereby inform you that several of Ms. Gerr's letters to me and to Judge Blakely will be published on a web site 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." This statement was made for no substantial purpose and threatened to violate the confidentiality statute regarding paternity matters.

14. By letter dated August 19, 2000, to Morris, respondent stated that L.F. "will not pay any amount to you for your services . . ." because L.F. believed the appointment was unjustified and would be appealed. Respondent's advice and statement threatened to violate the August 2 orders (§§ 11 & 12, above).

15. By letter dated August 22, 2000, respondent informed Morris that he would publish an article on his website regarding her conduct in the case. Respondent also stated:

- You engaged in the same kind of behavior that disgraced and drove you from the small office of county attorney several years ago when you damaged scores of children and parents.
- You are hereby informed that you may no longer directly contact [L.F.] or any member of her family. . . . If you desire additional information, please let me know what information you want and we will provide it if it is available and reasonably related to your investigation.
- You are further informed that you will not be allowed to be alone with [the child] and will be very closely monitored when you are in [the child's] presence.
- 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.

16. Respondent's statements in his August 22 letter were made without substantial purpose, violated the court's August 2 orders (§§ 11 & 12, above) and threatened to violate the confidentiality statute regarding paternity matters.

17. By letter to the assigned judge dated September 6, 2000, respondent stated, "Clearly, Ms. Morris' objective was not to objectively determine the advisability of unsupervised visitation. . . . I believe the purpose of the appointment [by the court], and Ms. Morris' objective, was to create a basis the Court could use to implement the determination it had already made . . . ." Respondent described the court's ruling as, "This pre-determined decision . . . ." These assertions were made knowing they were false or with reckless disregard as to their truth or falsity.

18. By letter dated September 14, 2000, respondent stated to Morris that he would not identify any psychological providers the child might visit in the future until after the provider completed its services, would not allow Morris individual contact with the child, and would not provide information about pre-schools the child attended.

19. Respondent's advice and failure to provide information violated the court's August 2 orders (§§ 11 & 12, above).

20. By letter to Morris dated September 18, 2000, respondent stated, "On my recommendation, [L.F. and her husband] are not willing to provide information at this time on the organization that is performing an evaluation of the effect on [the child] of visitation with [D.B.]. This information will be provided in approximately seven weeks, when the evaluation will have been completed." Respondent's advice and failure to disclose the identity of the organization conducting a psychological evaluation of the child violated the court's August 2 orders (§§ 11 & 12, above).

21. In that September 18 letter, respondent also stated:

Similarly, on my recommendation, [L.F.] is not willing to provide you information at this time on any pre-school activity by [the child]. That information is not the least bit relevant to visitation by [D.B.] with [the child]. We will not provide that information to you because we believe

you will attempt to see and interrogate [the child] alone and then use falsified, prefabricated statements you claim were said by [the child] to support allegations of misconduct by [L.F.] in your decision, already stated in more than one letter, that [D.B.] should have extensive, unsupervised visitation with [the child] even though you have not seen or considered any of the medical, psychological, day-school and other information you are demanding. Let me put it to you simply—we will not voluntarily allow you to see [the child] alone.

22. Respondent's advice and failure to disclose information regarding the child's pre-school activity or to allow Ms. Morris free access to the child violated the August 2 orders (§§ 11 & 12, above).

23. By order filed October 3, 2000, the court scheduled the final hearing in the matter for October 23, 2000. The court also stated:

The parties are hereby given notice that failure to comply with the visitation order filed concurrently with this order may constitute a finding of contempt of court, and the violating party(ies) may be subject to incarceration for any such finding of contempt.

24. By separate order filed October 3, 2000, the court also issued an amended interim parenting time schedule (Exhibit 4). Among other things, the order allowed for visitation to occur at places other than AmericInn, allowed D.B. to select the sole supervisor and provided:

[L.F.] is hereby given notice that submission of further unsubstantiated allegations, harassing correspondence, and/or claims, defenses and other contentions that are unwarranted by existing law or by a nonfrivolous argument for the extension, modification, or reversal of existing law or the establishment of new laws; and/or allegations and other contentions that have no evidentiary support or are unlikely to have evidentiary support after a reasonable opportunity for further investigation or discovery may result in sanctions being imposed upon her by the Court to reimburse Respondent's reasonable legal fees, as allowed by Minn. Stat. § 549.211.

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.

25. Respondent's client has not brought the child to the visitation exchange site pursuant to the October 3 order.

26. On or about October 9, 2000, D.B.'s counsel served and filed a request for an order to show cause directing L.F. to appear and explain why she had not appeared for visitation pursuant to the October 3 order.

27. On October 10, 2000, the court issued an order to show cause directing L.F. to appear on October 23, 2000 (Exhibit 5).

28. On or about October 13, 2000, respondent filed with the Court of Appeals a petition for a writ of prohibition and a writ of mandamus (Exhibit 6). In that petition respondent stated that:

- a. the district court judge "has substituted his personal view for the law;"
- b. the district court judge "won election to the office of judge by appealing to racism;" and
- c. the district court judge's "campaign finance report" contained "irregularities."

These statements were made knowing they were false or with reckless disregard as to their truth or falsity.

29. On October 23, 2000, a hearing was conducted regarding the order to show cause and the final hearing regarding visitation. L.F. failed to appear.

Respondent stated that L.F. did not appear because she feared she would be jailed if she

appeared. The court stated that it would issue a bench warrant for L.F. to appear and explain her actions.

30. By letter dated October 28, 2000, respondent requested the court to stay unsupervised visitation 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.

31. 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 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.

32. By letter dated October 31, 2000, D.B.'s counsel informed the judge that the allegation of abuse raised in respondent's October 28 letter had been raised more than a year previously and not proven.

33. By order filed October 31, 2000, the court ordered a telephone hearing be conducted on November 1, 2000.

34. On November 1, 2000, a telephone hearing was conducted (Exhibit 7). During that hearing the following exchange occurred:

THE COURT: Mr. Nathan are you in contact with your client?

MR. NATHAN: Yes.

THE COURT: All right. Where is your client?

MR. NATHAN: I'm not at liberty to say, Your Honor.

35. The court asked respondent if M.F. was with respondent's client; respondent replied that she was. Respondent also stated that when child protection was ready, "we'll certainly make the mother and child available." Later during the hearing respondent was informed that a county child protection worker would be on-call 24 hours a day to receive the child.

36. Respondent also stated that he could not produce M.F. on this day because M.F. would not appear until a pending petition for a writ of prohibition or writ of mandamus had been decided by the Court of Appeals. The Court of Appeals eventually denied the request for the writs.

37. During the November 1 hearing, the court asked respondent if M.F. was in Minnesota; respondent refused to answer. The court then ordered respondent to answer; respondent again refused. The court told respondent that the information the court ordered respondent to provide was not a privileged attorney/client communication.

38. The court issued an order arising out of the November 1 hearing on November 7, 2000 (*see* Exhibit 7). Among other things, the court found:

Attorney Dale Nathan represented to the Court that his client . . . is currently hiding out to avoid being arrested on the Court's current bench warrant issued for [L.F.'s] failure to appear at the October 23, 2000, order to show cause hearing. Mr. Nathan informed the Court that he knows where his client is hiding out and that he does have the ability to communicate with her on a regular basis. Mr. Nathan further informed the Court that [M.F.] is currently with her mother and will remain in hiding with her mother until this case is resolved.

The Court asked Mr. Nathan based upon his representations that he knew where the child was to reveal the location of [M.F.]. Mr. Nathan repeatedly refused to do so citing attorney/client privilege. The Court informed Mr. Nathan that attorney/client privilege does not extend this far. The Court informed Mr. Nathan that he had a legal obligation to answer the Court's question as to the location of [M.F.]. Mr. Nathan refused to divulge the location of [M.F.] and even repeatedly refused to divulge whether she was currently located in or out of the State of Minnesota.

The November 7 order also provided:

Attorney Dale Nathan is hereby ordered to immediately disclose to this Court the current location of [M.F.]. He is further ordered to take no action to subvert the Court's exercise of its jurisdiction over [M.F.].

Attorney Dale C. Nathan is hereby ordered to appear and show cause . . . on Monday November 13, 2000, at 9:00 a.m., why he should not be found in direct civil contempt of Court for refusing to disclose to this Court the

location of [M.F.]. If Mr. Nathan fails to appear a bench warrant may be issued for his arrest.

\* \* \*

Regardless of whether Mr. Nathan purges himself of his contempt by disclosing the location of [M.F.], he is found by this Court to be in violation of Minnesota Rule of Civil Procedure 11 as well as Minnesota Statutes Section 588.11 (2000) and he shall therefore be personally responsible for reimbursing [D.B.] for all reasonable attorney's fees and costs incurred by [D.B.] as concerns the November 1, 2000, telephonic hearing and the contempt hearing of November \_\_\_\_ [13], 2000. \* \* \* 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.

39. On November 13, 2000, respondent filed a Statement of Dale Nathan dated November 12, 2000. In that Statement, respondent stated that L.F. and M.F. had moved and that he did not know their current whereabouts.

40. Later on November 13, the court conducted a hearing (Exhibit 8). The court asked respondent to say where M.F. was; respondent said he did not know. The court asked respondent to say where L.F. was; respondent stated he did not know. Respondent stated that his last contact with L.F. was the Thursday or Friday before; *i.e.*, November 9 or 10, 2000. Respondent also stated that he would not divulge the last-known whereabouts of L.F. or M.F. Respondent stated that he does receive calls from L.F. and that he would receive a call from L.F. before 4:30 p.m. the next day (November 14, 2000). The court again told respondent that the attorney-client privilege did not apply and did not prevent respondent from providing the information the court ordered respondent to provide.

41. At the conclusion of the November 13 hearing, the court found that respondent's failure to disclose the whereabouts of L.F. and M.F. was contempt of court, ordered respondent to divulge their whereabouts, and ordered that if he failed to do so by 4:30 p.m. the next day he be incarcerated until such time as he did disclose their whereabouts.

42. By letter dated November 13, 2000, respondent reiterated that L.F. would not appear in court and stated that L.F. would not tell respondent where she was and respondent would not ask her where she was.

43. By letter to the county social worker dated November 14, 2000, respondent suggested that L.F. was still in hiding.

44. On November 14, 2000, respondent was incarcerated pursuant to the contempt order.

45. Respondent thereafter made multiple requests to the trial court to be released from incarceration. Each was denied. In an amended order filed on December 5, 2000, the court denied one of respondent's requests and reiterated that respondent's claim that the attorney/client privilege precluded disclosure was "unjustified."

46. A hearing on another of respondent's requests to be released was conducted on December 12, 2000.

47. On December 14, 2000, the court filed an order arising out of the December 12 hearing (Exhibit 9). The court made the following findings:

Mr. Nathan has failed to provide adequate certification that the child is currently safe.

Mr. Nathan has failed to adequately certify to the Court that he has made a good faith effort to confirm, disclose, or seek disclosure from his client or clients of the whereabouts of the child.

Mr. Nathan has maintained ongoing contact with [L.F.'s] husband . . . and [M.F.'s] grandmother . . . prior to and since his incarceration on November 14, 2000. On each occasion Mr. Nathan had, at the very least, the opportunity to ask these individuals if they knew the whereabouts of the child. Mr. Nathan has indicated that on each occasion he did not inquire as to the whereabouts of the child or his client.

Mr. Nathan testified that he has access to the cell phone number of [L.F.] directly and through [L.F.'s husband]. When asked by the Court if he would provide the number, Mr. Nathan refused.

Mr. Nathan admits that he has communicated with [L.F.'s] mother, and that he believes family members are in contact with [L.F.]. [L.F.'s

grandmother] visited Mr. Nathan during his incarceration two days before the December 12 hearing.

\* \* \*

Mr. Nathan refused to reveal to the Court at the December 12 hearing the nature of conversations he has had with [L.F.'s husband], claiming [L.F.'s husband] is now his client, information not previously disclosed to the Court.

Mr. Nathan admits that he has communicated with [L.F.'s husband] "as to what was occurring, absolutely."

\* \* \*

Mr. Nathan testified at the December 12 hearing that he had not been in contact with his client since prior to October 18. During the November 1 hearing, Mr. Nathan indicated that he was in contact with his client at that time and that his client had the child. See Transcript pp. 5-6. Mr. Nathan's statement during the November 1 hearing, prior to the contempt finding, and in light of his continuing retention of [L.F.'s] cell phone number and refusal to disclose the same, casts doubt upon the credibility of Mr. Nathan's claim of a last contact prior to October 18.

With regard to a CHIPS Risk Assessment that had been ordered by the Court, Mr. Nathan stated 'When the child protection worker is ready we will certainly make the mother and child available.' *Id.* at 9-10 (emphasis added). Mr. Nathan had access to and control over production of the child on November 1.

The Court notified Mr. Nathan during the November 1 hearing that a child protection worker would, from that moment, be on 24 hour availability for receipt of the child. Mr. Nathan has not made the mother and child available at any time subsequent to the November 1 hearing.

\* \* \*

At the November 13 hearing, Mr. Nathan refused to inform the Court of the location of the child or of the last known whereabouts of the child. He indicated that he had been in contact with his client since the 11/1 hearing and that he would be in contact with his client on 11/14.

During the December 12 hearing, Mr. Nathan testified that he last knew the child's whereabouts sometime prior to October 18. This is inconsistent with Mr. Nathan's statement to the Court at the November 13 hearing, that he had knowledge of the child's whereabouts the prior week. Mr. Nathan's testimony regarding his last knowledge of the child's

whereabouts prior to October 18 is not credible. See transcripts of November 13 and December 12.

Outside of the Court's presence on November 13, Mr. Nathan informed the Visitation Investigator [Morris] that 'I'm not at liberty to tell where she [the child] is.' Mr. Nathan further advised the Investigator that he could get a hold of his client and have the child produced that afternoon. December 12 Transcript p. 60. Mr. Nathan acknowledged the ability to produce the child immediately on November 13 but has never done so.

\* \* \*

In a letter to the Court dated 11/26 Mr. Nathan stated '[I]f you release me, I will arrange for [L.F.] and [the child] to meet with' a child protection worker for the Court ordered CHIPS Risk Assessment, an assertion that confirms Mr. Nathan continues to exercise active control over the availability of the child (emphasis added)[.]

48. In the December 14 order, the court ordered respondent to immediately produce the cell phone number for L.F.; to disclose all communication between respondent and L.F. regarding the last status, current status, whereabouts, location and all other information pertaining to the child's safety, and to remain incarcerated until he purged his contempt. Respondent did not provide any of this information.

49. On December 21, 2000, respondent filed an appeal of the trial court's contempt orders. Respondent also moved the Court of Appeals for a stay of confinement pending appeal. By order filed January 8, 2001, the Court of Appeals granted respondent's motion for a stay of incarceration pending the appeal.

50. By order opinion filed May 3, 2001, the Court of Appeals affirmed the trial court's orders finding respondent in contempt (Exhibit 10). The Court of Appeals ordered that respondent should not be incarcerated again because "there is no indication that further incarceration of [respondent] will lead to compliance with the court order."

51. Neither D.B. nor his counsel knew the whereabouts of M.F. until approximately September 2001 when D.B. learned of her potential whereabouts from third persons. Respondent did not divulge the location of L.F. or M.F.

### P.G. Parental Rights Termination Matter

52. P.G. is the mother of four children, Ti.G., To.G., R.M. and B.M. On or about February 24, 2000, two of P.G.'s children, Ti.G. and To.G., were placed into long-term foster care.

53. In late May 2000, P.G. retained respondent to represent P.G. in an action the Ramsey County Community Human Services Department (RCCHSD) brought to terminate P.G.'s parental rights to her other two children, R.M. and B.M.

54. On or about August 17, 2000, respondent served a notice of motion and motion to, among other things, appoint a parenting time evaluator. Included in respondent's motion papers was an amended order appointing parenting time evaluator from the *D.B. v. L.F.* case (see ¶ 12, above). Respondent was counsel for L.F. in that case. That case arose out of a paternity action. Minn. Stat. § 257.70 provides that documents filed in court regarding paternity matters, with exceptions not applicable here, are confidential. Respondent violated this statute by distributing an order from the *D.B. v. L.F.* case.

55. Minn. R. Juv. P. 44 provides that case records in child protection proceedings are confidential. Minn. R. Juv. P. 44.03, subd. 2, provides that a court order is required before any portion of the case record is made available to the public.

56. On or about August 29, 2000, respondent filed a motion in which he stated that he represented Ti.G.

57. By letter dated August 29, 2000, respondent demanded Dr. Freyda Rosen, a psychologist who evaluated R.M. and B.M. at the request of RCCHSD, to provide no later than September 6, 2000, a complete written response to the 31 questions in that letter. Respondent further stated, "If you do not provide satisfactory bases for your allegations, I will publish your [August 2, 2000] letter on my website, [mncourtreform.org](http://mncourtreform.org), with the names of the children and their mother deleted, as an example of the need for reform in juvenile court actions."

58. Respondent's statement was made for no substantial purpose and threatened to violate the confidentiality rules regarding child protection matters.

59. Anthony McWell is a RCCHSD social worker assigned to the matter. Ann Ploetz is an Assistant Ramsey County Attorney representing RCCHSD.

60. On or about August 29, 2000, respondent served a memorandum dated August 27, 2000. In that memorandum respondent stated:

[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 . . . . The person who is crazy is Dr. Rosen.

The children should be returned to [P.G.] immediately. Mr. McWell 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, and their associates - by name, without naming or identifying the children.

61. Respondent's statement was made for no substantial purpose and threatened to violate the confidentiality rule regarding paternity matters.

62. By letter dated April 26, 2001, to the Director's Office, respondent agreed that in his August 27, 2000, memorandum he did make a threat to Mr. McWell.

63. On or about August 29, 2000, respondent also served a motion in limine and supporting memorandum. Respondent signed the document as attorney for P.G. In the motion respondent stated, "[Ti.G.] asks for an order granting her one of the following remedies . . . ." In the supporting memorandum respondent stated:

[Ti.G.] asks for an order that will allow her to attend Battle Creek Middle School. 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 relief, 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.

64. This statement was made for no substantial purpose, threatened to bring a frivolous lawsuit and threatened to violate the confidentiality rules regarding child protection matters.

65. On or about August 30, 2000, RCCHSD served and filed a motion to dismiss the motion respondent filed and for an order:

Restraining Dale Nathan from making public any part of the juvenile protection case records without first obtaining a court order and notice to RCCHSD, and to all persons affected by such a publication, pursuant to Minnesota Rules of Juvenile Procedure 44.05.

Restraining Dale Nathan from harassment and threatening of witnesses and parties in this case.

Awarding attorneys' fees to attorney for petitioner [RCCHSD] for violation of Juvenile Discovery Rules and violation of Minnesota Rules Juvenile Procedure 52.01, Subd. 3(c).

66. During an August 31, 2000, hearing, the court 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 (Exhibit 11). The court also ordered respondent to pay by October 2, 2000, a \$1,500 sanction for filing pleadings intended to threaten or harass witnesses and parties.

67. To date, respondent has paid none of this sanction.

68. By letter dated August 31, 2000, and sent after the hearing that day, respondent stated to the judge that he could not pay all "or any significant part of" the \$1,500 sanction by October 2, 2000. Respondent also stated:

Regardless of consequences to me, I have and will continue to publish an article on what has happened to [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.

69. Respondent's statement constituted a threat to violate the confidentiality rules regarding child protection matters and the August 31 order (§ 66, above).

70. By letter dated September 5, 2000, respondent sent to Ploetz and Karen Garvin (counsel for the guardian ad litem) a draft of an article regarding the termination of parental rights case and stated that he would publish the article on his website on or shortly after September 7, 2000.

71. Respondent's statement was made for no substantial purpose and threatened to violate the confidentiality rule regarding child protection matters and to violate the August 31 protective order (§ 66, above).

72. By letter dated September 6, 2000, Ploetz advised respondent that if he published the article, he would violate the August 31 protective order and could be found in contempt.

73. 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." The article included information in the court records. Included with the article were multiple letters and affidavits from the case, some of which were part of the court record. Respondent had published this material deleting only information identifying P.G. and her children.

74. Respondent's publication of information about the case violated the confidentiality rules regarding child protection cases and the court's August 31 order (§ 66, above).

75. On Tuesday, 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 referenced in § 73, above, 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 . . .')." "

76. On September 14, 2000, the court filed an order memorializing the order it issued from the bench during the August 31 hearing (*see* § 66, above). 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, among other things, 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 Tina'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.

The 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.

77. The court then ordered, 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 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.

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.

78. By letter dated September 19, 2000, respondent replied to a letter from McWell to P.G. and stated, "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 [P.G.] and her children deleted and may be published on television and radio programs in September and October and possibly early November 2000."

79. Respondent's statement was made for no substantial purpose and threatened to violate the confidentiality rule regarding child protection cases and to violate the August 31 and September 14 orders (§§ 66 & 76-77, above).

80. On or about September 22, 2000, Ploetz served and filed a notice of motion and 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.

81. On or about September 25, 2000, respondent served a notice of motion and motion in limine and memorandum. Respondent requested the hearing on the motion to hold respondent in contempt be rescheduled to a date after October 2, 2000. In the memorandum respondent stated, among other things:

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.

\* \* \*

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.

82. Respondent's statement constituted a threat to continue violating the confidentiality rule regarding child protection cases and to continue violating the August 31 and September 14 orders (§§ 66 & 76-77, above).

83. By letter dated September 26, 2000, respondent requested Ploetz to provide documents respondent originally requested in a letter to Ploetz dated September 14, 2000. Respondent also stated:

I will publish your letter on my website and will publish an article in the *Pioneer Press* this Sunday describing your refusal and the refusal of the Ramsey County Attorney to provide this vital documentation while pursuing a sham case to terminate [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 also will publish.

84. Respondent's statement constituted a threat to violate the confidentiality rule regarding child protection cases and to violate the August 31 and September 14 orders (§§ 66 & 76-77, above).

85. On October 2, 2000, trial began.

86. By letter dated October 3, 2000, respondent requested the judge to allow respondent to order a transcript of the direct testimony of McWell and another witness who testified on October 2 and 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.

87. The court granted respondent's request. By letter dated October 4, 2000, respondent thanked the court for authorizing P.G. to obtain the transcripts for use in preparing for cross-examination.

88. By letters dated October 5, 2000, respondent requested Ploetz and the judge to advise respondent if they would accept service of a federal civil summons and complaint by mail. On or about October 10, 2000, respondent filed the summons and complaint in federal court. He then served each defendant. (See §§ 115-120, below.)

89. By letter dated October 14, 2000, respondent (1) informed Ploetz that P.G. requested all further communications from McWell to P.G. be sent to respondent, (2) called McWell a "racist," "unprofessional," and "a liar," and (3) stated that McWell was attempting to place the children with their biological father instead of P.G. "because, unlike [P.G.], [the biological father] has agreed to kiss Mr. McWell's ass."

90. Respondent's statements were made for no substantial purpose.

91. By letter dated October 17, 2000, Ploetz stated to respondent:

I have received numerous threatening and insulting letters from you over the course of this case and as a result I will no longer respond to any of your letters. If you are seeking any action of any kind from either the county or from me regarding this case, it will need to be by motion filed with the court and served on me. I will no longer respond to any requests that you make of me or the county by letter.

92. By letter dated October 19, 2000, respondent stated to Ploetz, "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."

93. During an October 24, 2000, hearing, respondent admitted that he had published facts of the case and documents from the case on his website.

94. By letter dated March 20, 2001, respondent stated to the Director's Office, "I acknowledge that I violated [the court] order by publishing materials" from and about the case on respondent's website. Respondent also stated, "I realize that good intentions or even a worthwhile cause do not justify violation of the Rules of Professional Responsibility."

95. By order filed October 27, 2000, the court ordered, among other things:

1. Dale Nathan is in contempt of this Court's August 31, 2000, protective order and his hereby ordered to remove all information regarding this juvenile protection case record from his website by 12:00 noon, November 7, 2000. Mr. Nathan shall pay to the Court Administrator, Second Judicial District, a sanction of \$500.00 for his contempt, and, if Mr. Nathan does not remove all information regarding this juvenile protection case record by 12:00 noon, November 7, 2000, he

shall be arrested by the Ramsey County Sheriff and be held in jail for up to 90 days or until he removes the information from his website, whichever occurs first.

2. Mr. Nathan is restrained from publishing on any website or by publishing or disseminating in any way any information regarding this juvenile protection case record, consistent with the Court's September 14, 2000, order which was announced in court on August 31, 2000.

(Exhibit 12.)

96. By letter dated October 29, 2000, respondent sent to the judge assigned to the case an advertisement that respondent said he would publish from November 3 through 6, 2000, in Ramsey County areas newspapers if RCCHSD did not provide certain information to respondent by noon on October 31, 2000. The judge, Honorable James Clark, was running for reelection. Election Day was November 7, 2000. Respondent also stated, "As a precaution, I have given the advertisement and checks [to pay for the advertisement] to a friend who will deliver it to the newspapers I designated if I am incarcerated." Respondent then set forth 10 items of requested relief and asked the judge to schedule a hearing by noon on October 31, 2000. Respondent stated that if the 10 items of relief were granted, then respondent would not publish the advertisement before November 8, 2000, delete from his website the article about this case and not publish anything about the case until he had presented the proposed publication to the court and the court had been given reasonable opportunity to rule on the motion.

97. By letter dated October 31, 2000, Judge Clark advised respondent that the request for a hearing would not be granted because respondent's request failed to comply with multiple Rules of Juvenile Procedure.

98. On or about November 1, 2000, respondent filed a "Notice Re: [Ti.G.]" and a "Notice Re: [To.G.]".

99. Respondent signed the Notice Re [Ti.G.] as attorney for Ti.G. and stated that Ti.G. demanded to be placed either with her 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.”

100. Respondent signed the Notice Re: [To.G.] as counsel for To.G. and demanded an immediate hearing for the purpose of releasing To.G. on bail pending trial in a juvenile delinquency proceeding.

101. On November 2, 2000, a hearing was conducted regarding Ti.G., who had been removed from her foster home on October 25, 2000. During the November 2 hearing, respondent attempted to represent both Ti.G. and her mother. The court told respondent that it was a conflict of interest for respondent to represent both the child and the parent (Exhibit 13). The court ordered:

Dale Nathan is hereby prohibited from representing [Ti.G.] in this proceeding. The Children’s Law Center has been previously appointed to represent the child and shall continue to do so.

\* \* \*

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.

102. On Friday, November 3 and Monday, November 6, 2000, respondent published an advertisement in the *St. Paul Pioneer Press* regarding the termination of parental rights case. The ad was part of respondent’s effort to defeat the reelection effort of Judge Clark. The advertisement identified the court, court file number, and judge by name and contained information from the court file regarding the case.

103. Respondent violated the confidentiality rules regarding child protection matters and the August 31 and September 14 orders (¶¶ 66 & 76-77, above).

104. On or about November 4, 2000, respondent served and filed a notice of motion, motion and memorandum requesting permission to provide information about

the case to the Center for Urban and Regional Affairs. Respondent stated the Center made the request "for the purpose of their research project on the Ramsey County Juvenile Court . . . ." Respondent also stated that, "The research director believes there may be major problems in the work of the Ramsey County Juvenile Court." These statements were false.

105. In early November 2000 Patricia A. Bruce, a community research assistant at the Center for Urban and Regional Affairs, had left a message on respondent's telephone answering machine which stated that she was conducting a research project concerning Ramsey County.

106. On or about November 6, 2000, Bruce's employer told Bruce that he had had a conversation with Ploetz during which Ploetz stated that respondent had filed the motion set forth above. By letter dated November 7, 2000, Bruce disavowed any connection to respondent's motion and stated that she did not want any of the case records.

107. In early November 2000 and before Election Day, respondent removed the information and documents about this case from his website.

108. On or about November 9, 2000, a hearing was conducted regarding To.G. The hearing arose out of To.G.'s request for a continuance of a probation violation hearing and request for bail. By order filed the same day the court ordered:

[T]hat defense counsel, Dale Nathan, is enjoined by this Court from filing a lawsuit against Homme House as was his stated intention. He is also enjoined from filing a lawsuit against any other group home, residential treatment facility or any other type of facility which this Court is considering for possible future placement for this child.

\* \* \*

Mr. Nathan has informed the Court that his purpose in filing such lawsuits is to prevent possible placement of the child. The child has been convicted of criminal sexual conduct in the first degree and found in previous evaluations to be in need of treatment. Should Mr. Nathan violate this Court order and file such a lawsuit against Homme House, a contempt hearing shall be scheduled.

(Exhibit 14.)

109. In a letter dated November 9, 2000, regarding the termination of parental rights case respondent stated to Judge Clark:

As I thought I had made clear, my purpose in obtaining this transcript [of the October 2, 2000, testimony on direct examination of William Fournier] 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 [P.G.'s] psychologist for her use in better understanding Mr. Fournier's analysis of [P.G.], which would assist her in her treatment of [P.G.].

110. The reason respondent gave in this letter for obtaining the transcript directly contradicted the reason respondent gave in his October 3 letter (§§ 86-87, above).

111. Later in that November 9 letter respondent stated, "I do not regret my violation of the Court's protective order."

112. By order filed May 16, 2001, P.G.'s parental rights to R.M. and B.M. were terminated.

113. On or about July 8, 2001, respondent filed a memorandum with the Court of Appeals. In that memorandum, respondent stated:

I am aware that this Court [the Court of Appeals] 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.

This statement was made knowing it was false or with reckless disregard as to its truth or falsity.

114. On July 18, 2001, respondent placed an advertisement in the *St. Paul Pioneer Press*. The advertisement was titled "Juvenile Court Abuse." The advertisement included information from the P.G. parental rights termination case.

P.G. Federal Lawsuit Matter

115. On or about October 10, 2000, after trial began in the termination of P.G.'s parental rights case, respondent filed in federal court a civil complaint he had drafted. The complaint purported to raise claims under 42 U.S.C. § 1983 and other law. The defendants were Ramsey County, McWell, Ploetz, Julie Russomanno (the guardian ad litem), Garvin, unnamed supervisors of McWell, Ploetz, Russomanno and Garvin, Judge Clark, Dr. Rosen and Judy Daggy (foster parent of Ti.G.).

116. The plaintiffs were P.G. and her four children. Respondent represented all five plaintiffs. By letter dated October 14, 2000, respondent stated to Daggy, "The lawsuit against you is by [P.G.]. [Ti.G.] had nothing to do with it."

117. On April 27, 2001, the court granted the motions of all the defendants to dismiss (Exhibit 15). The court held that each of the claims failed as a matter of law.

118. As to the claims against Ploetz and Judge Clark, the court also stated:

There is no doubt that these defendants are protected by absolute immunity against any claims for money damages arising out of their official duties. Plaintiffs' decision to file suit against the prosecutor and the judge handling their case is disturbing, especially in light of the well-settled body of law giving prosecutors and judicial officers absolute immunity.

Prosecutors are absolutely immune from liability under § 1983 for their role in "initiating a prosecution and in presenting the State's case." The only allegations against Ploetz are that she unconstitutionally brought the child protection action against P.G. [the mother]. This claim is clearly improper, and Ploetz is entitled to absolute immunity.

The claims against Judge Clark are also improper. That judges are immune from suits for money damages has been the law of the land for 130 years.

(Citations omitted.)

119. As to the claims against Daggy and Dr. Rosen, the court also stated that it was "inclined to agree that Daggy and Dr. Rosen are entitled to their fees and, upon proper motion, will consider those requests in detail." Daggy and Dr. Rosen were the

only defendants who had sought sanctions pursuant to Fed. R. Civ. P. 11. Rosen then requested fees.

120. By order filed June 6, 2001, the court ordered respondent to pay \$2,607.09 to Rosen's counsel for attorneys' fees incurred in defending against respondent's frivolous claims (Exhibit 16). To date, respondent has paid none of the sanction.

#### Water Street Builders Matter

121. Respondent represented Coat of Arms Protective Coatings, Inc. ("Coat of Arms") in an action in which it sought to foreclose a mechanic's lien.

122. The suit arose out of a dispute between Coat of Arms and Water Street Builders, Ltd. ("Water Street Builders"), which was constructing a new house. Coat of Arms agreed to paint the house for \$29,000. Water Street Builders paid part of the contract price but refused to pay the balance, \$14,950, claiming deficient work by Coat of Arms.

123. After Coat of Arms retained respondent, both the owner of Coat of Arms and respondent refused to view the property.

124. In 1996 respondent, on behalf of Coat of Arms, commenced a mechanic's lien foreclosure action. Respondent sued Water Street Builders, the homeowners, the lenders, and all other holders of liens on the property.

125. During pre-trial proceedings, respondent refused to settle for less than \$50,000. Respondent claimed that his client was entitled to the \$14,950 unpaid contract price plus respondent's attorneys' fees of more than \$30,000.

126. Trial was conducted from July 14 through 17, 1997. During trial, the parties, respondent, other counsel and the judge viewed the house. Coat of Arms' owner then testified that the paint job was not completed and was not done correctly.

127. On August 12, 1997, the court issued Findings of Fact, Conclusions of Law, Order for Judgment (Exhibit 17). The court found that Coat of Arms had abandoned the contract. The court also found that Coat of Arms and respondent:

[I]ntentionally and improperly protracted this litigation far beyond any reasonable expectations and have totally refused to attempt any form of resolution or agreement. Factually, one need only look at the file itself and inspect the volume of paperwork to recognize that plaintiff, through his counsel, protracted this litigation and are attempting to secure an extraordinary and unreasonable attorney fee by the totally unnecessary work performed on this file.

Factually, the Court finds that plaintiff is not entitled to attorney fees under the mechanics lien statute because a valid mechanics lien does not exist and attorney fees in excess of \$1,500 are unreasonable and in bad faith. Plaintiff and his counsel have intentionally protracted this litigation to build up excessive attorney fees, and have otherwise conducted themselves in bad faith in the following manner:

- A. An absolute refusal to even review the punch list, an integral part of the contract.
- B. Absolute refusal of plaintiff to meet with the homeowners and the general contractor to go over the punch list or otherwise discuss differences.
- C. The total abandonment of the contract by plaintiff, even though it was not done properly and was not completed.
- D. A refusal by plaintiff's counsel to meet with the defendant homeowners and the contractor to go over the property and review the problems involved.
- E. An obvious and notorious attempt by plaintiff's counsel, knowing the attorney fees provision of the mechanics lien statute, to take a simple mechanics lien dispute over a \$15,000 balance of a contract and turn it into a complex tort litigation, resulting in unconscionable claims for attorney fees.
- F. A flat refusal to negotiate at settlement conference in good faith, agree to go out and view the premises during the litigation, and not even discussing the problem until they were forced to review it with the Court during trial, at which time the plaintiff himself finally admitted there were substantial deficiencies.

Thus, the Court concludes that defendants have shown that counsel for plaintiff has proceeded in bad faith. *See Uselman v. Uselman*, 464 N.W.2d 130 (Minn. 1990). Although the commencement of a lien foreclosure action because of the disputed balance due would not be considered frivolous, the manner in which it was commenced, conducted, drawn out and exaggerated was totally frivolous and unnecessary. The Court

concludes it was done in order to either build up attorney fees, intimidate the defendants and to force settlement, or both.

128. The court concluded that Coat of Arms' mechanic's lien based on the abandoned contract was invalid, Coat of Arms was entitled to no recovery, and the defendants were entitled to sanctions because of the improper litigation they were forced to defend.

129. In a letter dated August 12, 1997, sending to counsel the Findings of Fact, Conclusions of Law, Order for Judgment, the judge stated, "I feel that this may be the most protracted piece of litigation I have witnessed in close to 40 years in the legal community . . . ." (Exhibit 18.)

130. By order dated September 25, 1997, the court imposed against respondent sanctions totaling \$21,093.74 (Exhibit 19). The court imposed sanctions against respondent only, and not Coat of Arms, "because there is no evidence establishing that [the abuse of process] was sanctioned by or participated in by the plaintiff corporation or its managing agent."

131. In the September 25 order the Court stated:

Mr. Nathan made it extremely clear to this Court and to opposing counsel that he would not negotiate a settlement below \$50,000, that he would not accept any form of mediation or arbitration, and he wanted only to try this case on the merits under the mechanic's lien statute which allowed for his attorney fees. \* \* \* This is a clear case of an attorney attempting to extort a payment for the sum allegedly owed (\$15,000) by threatening the parties with costs and attorney fees, including their own, which are five times the amount in dispute.

132. The court also stated:

The manner in which plaintiff's counsel has dealt with [North American Mortgage Company] NAMC further substantiates that plaintiff and its counsel have acted in bad faith. NAMC's only connection to this mechanic's lien dispute has been that it holds a mortgage against the subject property. As early as March, 1997, NAMC offered to stipulate with plaintiff that NAMC's mortgage would be subordinate to any valid mechanic's lien of plaintiff, by its counsel, Mr. Nathan, flatly refused to so stipulate. The proffered stipulation would have settled all issues then extending between plaintiff and NAMC and obviated the necessity of NAMC to incur any further attorney's fees and costs. \* \* \* The fees

incurred by NAMC after . . . the date when NAMC offered to stipulate to priority, amount to \$5,000.

133. Coat of Arms and respondent appealed. The Court of Appeals affirmed the dismissal of Coat of Arms' claims but reversed the award of sanctions against respondent (Exhibit 20). The Court of Appeals stated, "Although Nathan's conduct might have warranted sanctions," the proper procedural requirements necessary before sanctions can be imposed were not followed. The Court of Appeals did not address the merits of the trial court's findings and award of sanctions.

#### John Thomas Homes Matter

134. Respondent represented Coat of Arms in another action in which it sought to foreclose a mechanic's lien.

135. The suit arose out of a contract between Coat of Arms and John Thomas Homes, Inc. ("John Thomas Homes"), which was constructing a new house. Coat of Arms agreed to paint the house. John Thomas Homes paid part of the contract price but refused to pay the balance, claiming deficient work by Coat of Arms. Coat of Arms claimed it was owed \$5,846; John Thomas Homes claimed it owed substantially less.

136. After Coat of Arms retained respondent, both the owner of Coat of Arms and respondent refused to view the property.

137. In April 1997 respondent commenced a mechanic's lien foreclosure action. Respondent sued John Thomas Homes, the homeowner, and all other holders of liens on the property.

138. During pre-trial proceedings, respondent served voluminous discovery. The defendant brought a motion to limit the discovery, which was granted. Respondent also brought two motions for summary judgment; each was denied. Respondent also refused to discuss settlement unless Coat of Arms was paid a substantial sum above the amount owing under the contract for respondent's attorneys' fees.

139. The defendants brought a motion for summary judgment. By order dated May 1, 1998, the court granted the motion, held the mechanic's lien invalid and denied Coat of Arms any recovery (Exhibit 21).

140. In the memorandum to its May 1 order, the court stated,

This Court has never seen a more unnecessary, burdensome, costly and abusive proceeding as that pursued by Coat of Arms and its attorney Dale Nathan. Commencing with its refusal in late 1996 to review the alleged problems with the paint job, through the filing of a faulty mechanic's lien, abusive and harassing correspondence particularly to Mr. Jacques, extraordinary discovery which this Court was forced to limit, two failed summary judgment motions brought by plaintiff, plaintiff's refusal to accept or even discuss settlement without a hefty premium for its attorney's fees, the mis-citation of case holdings, the actions of plaintiff and its counsel are reprehensible.

141. The court instructed defendants to decide whether they wished to seek sanctions and, if so, to schedule a hearing on that issue.

142. The defendants moved for sanctions. On April 9, 1999, a hearing was held on the defendants' motion. From the bench, the court denied the motion. The court stated that in light of the Court of Appeals' decision in the Water Street Builders case (*see* ¶ 133, above), in this case the proper procedural requirements necessary to impose sanctions were not followed. The court did not rescind its findings about respondent's misconduct.

143. Respondent's conduct in engaging in a pattern of harassing and frivolous litigation violated Rules 3.1, 3.4(c), 4.4, and 8.4(d), Minnesota Rules of Professional Conduct (MRPC).

## COUNT TWO

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

144. The Director re-alleges and incorporates by this reference ¶¶ 6, 7, 11-12, 14-16, 18-22, 24-25, 29, 34-51, 63, 66, 69-79, 81-84, 93-96, 102-103, 107, 111 & 114, above.

145. Respondent's conduct in violating court orders, threatening to violate court orders, and assisting his client in violating court orders violated Rules 3.4(c) and 8.4(d), MRPC.

### COUNT THREE

#### Pattern of Violating and Threatening to Violate Confidentiality Statutes and Rules

146. The Director re-alleges and incorporates by this reference ¶¶ 3, 13, 15, 16, 54-55, 57, 60-63-69-79, 81-84, 93-96, 102-103, 107, 111 & 114, above.

147. Respondent's conduct in violating and threatening to violate statutes and rules governing the confidentiality of cases violated Rule 8.4(d), MRPC.

### COUNT FOUR

#### Derogatory Statements About Judges

148. The Director re-alleges and incorporates by this reference ¶¶ 17, 28 & 113, above.

149. Each of these statements was made knowing the statement was false or with reckless disregard as to the truth or falsity of the statement.

150. Respondent's derogatory statements about judges made knowing the statements were false or with reckless disregard as to whether they were true or false violated Rule 8.2(a) and 8.4(d), MRPC.

### COUNT FIVE

#### False Statements

151. The Director re-alleges and incorporates by this reference ¶¶ 5, 86-87, 104-106 & 109-110, above.

152. Respondent's false statements violated Rules 4.1 and 8.4(c) and (d), MRPC.

### COUNT SIX

#### Failure to Pay Sanctions

153. The Director re-alleges and incorporates by this reference ¶¶ 66-67, 95 & 120, above.

154. To date, respondent has paid no amount of any of these sanctions.

155. Respondent's failure to pay sanctions imposed against him violated Rules 3.4(c) and 8.4(d), MRPC.

### COUNT SIX

#### Conflict of Interest

156. The Director re-alleges and incorporates by this reference ¶¶ 56, 76, 98-101, 108 & 115-116, above.

157. Respondent's representations of parties with conflicting interests violated Rule 1.7(b), MRPC.

### EXHIBITS

#### D.B. v. L.F. Matter

1. July 19, 2000, order.
2. August 2, 2000, order.
3. August 2, 2000, order.
4. October 3, 2000, order.
5. October 10, 2000, order to show cause.
6. October 13, 2000, petition for writ of prohibition and writ of mandamus.
7. November 7, 2000, order, including November 1, 2000, transcript of hearing.
8. November 13, 2000, transcript of hearing.
9. December 14, 2000, order.
10. May 3, 2001, order opinion.

#### P.G. Parental Rights Termination Matter

11. September 14, 2000, order.
12. October 27, 2000, order.
13. November 15, 2000, order.
14. November 9, 2000, order.

P.G. Federal Lawsuit Matter

- 15. April 27, 2001, order.
- 16. June 6, 2001, order.

Water Street Builders Matter

- 17. August 12, 1997, Findings of Fact, Conclusions of Law, Order for Judgment.
- 18. August 12, 1997, letter from Honorable Thomas Carey to respondent, et al.
- 19. September 25, 1997, Order.
- 20. Court of Appeals' opinion.

John Thomas Homes Matter

- 21. May 1, 1998, order.

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

Dated: May 2, 2002.



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