



# DISCIPLINE CASE *DIGEST*

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Case 11-11

<b>Member:</b>	Jeffrey Joseph Niederhoffer
<b>Jurisdiction:</b>	Winnipeg, Manitoba
<b>Called to the Bar:</b>	December 13, 2004
<b>Particulars of Charges:</b>	Professional Misconduct (3 Counts): <ul style="list-style-type: none"><li>▪ Breach of Sections 19 and 20(1) of <i>The Legal Profession Act</i> [practising without practising certificate and without being insured]</li><li>▪ Breach of Chapters 1 and 13 of the <i>Code of Professional Conduct</i> [failing to act with integrity and failing to encourage public respect for and try to improve the administration of justice]</li><li>▪ Breach of Chapter 16 of the <i>Code of Professional Conduct</i> [failing to act with courtesy and good faith]</li></ul>
<b>Plea:</b>	Not Guilty
<b>Date of Hearing:</b>	February 16, 2012
<b>Panel:</b>	<ul style="list-style-type: none"><li>▪ Jennifer Cooper, Q.C. (Chair)</li><li>▪ Roberta Campbell</li><li>▪ Kenneth Molloy (Public Representative)</li></ul>
<b>Counsel:</b>	<ul style="list-style-type: none"><li>▪ David M. Skwark for The Law Society of Manitoba</li><li>▪ The Member did not appear</li></ul>
<b>Disposition:</b>	<ul style="list-style-type: none"><li>▪ Fine of \$2,000.00</li><li>▪ Costs of \$21,500.00</li><li>▪ Prior to applying to resume active practice, Mr. Niederhoffer is required to satisfy the Law Society that he has completed the education component of the new <i>Code of Professional Conduct</i>.</li></ul>

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## Breach of Integrity / Unauthorized Practice of Law

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### Facts

Mr. Niederhoffer ceased maintaining an active practising certificate in Manitoba in June 2007. On February 20, 2010 he wrote a letter to a former client in which he provided the client with legal advice. He did so without having paid an annual fee to the Law Society and he was therefore carrying on the practice of law without a practising certificate and without being insured to do so. Between January and March 2010 in communications with the same former client, Mr.

Niederhoffer advised the client how he could publish information in contravention of an Order of the Court of Queen's Bench issued in May 2006. He then sought and obtained instructions from the former client to publish, and in fact did publish information on at least three websites contrary to the Court Order. Mr. Niederhoffer also distributed a copy of an unexpunged affidavit sworn by the former client and that was subject to the May 2006 Order to various media sources, with accompanying commentary from Mr. Niederhoffer to the effect that they were not restricted from publishing same. In correspondence dated February 2, 2010 and February 20, 2010 to his former client Mr. Niederhoffer criticized the competence, conduct and advice of the opposing counsel in ongoing Court proceedings involving his former client.

### **Plea**

Not guilty

### **Decision and Comments**

The panel convicted Mr. Niederhoffer of each of three counts of professional misconduct.

### **Penalty**

The panel ordered that Mr. Niederhoffer pay a fine of \$2,000.00. The panel further ordered that prior to applying to resume active practice Mr. Niederhoffer must satisfy the Law Society that he has completed the education component of the new *Code of Professional Conduct*.

The panel ordered that Mr. Niederhoffer pay the entirety of the Society's costs in the amount of \$21,500.00 as the member had failed to attend the hearing or make any submissions with respect to costs, and by failing to appear he had treated the Society with contempt. The panel further concluded that Mr. Niederhoffer's course of conduct during the entirety of the proceedings which included motions to disqualify the prosecutor, a motion for further disclosure and a constitutional challenge was designed to delay the prosecution and increase the expense to the Society.