FILE NO. _____

STATE OF MINNESOTA

IN SUPREME COURT

In Re Petition for Disciplinary Action against JILL ELEANOR CLARK, a Minnesota Attorney, Registration No. 196988.	**PETITION FOR DISCIPLINARY ACTION**

TO THE SUPREME COURT OF THE STATE OF MINNESOTA:

At the direction of the Honorable John B. Van de North, Jr., acting as 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 November 18, 1988. Respondent currently practices law in Golden Valley, Minnesota.

Respondent has committed the following unprofessional conduct warranting public discipline:

FIRST COUNT

False Statements About a Judge

Allegations that Judge Wieland Improperly Removed Documents from Court Files

1. In September 2005, Rarity Abdullah (Rarity) was charged in Hennepin County with felony robbery. The matter was assigned to Hennepin County District Court Judge Lucy A. Wieland. Initially, Rarity was assigned a public defender, but on April 11, 2006, Rarity retained respondent.

2. On April 13, 2006, respondent filed documents with the court, including a "certificate of representation and/or substitution of counsel." On April 20, 2006, respondent went to the Hennepin County government center to review Rarity's file.

3. On April 25, 2006, respondent filed a civil complaint in United States District Court naming Judge Wieland as a defendant, both individually and in her official capacity as Hennepin County Chief Judge. In her pleadings, respondent stated that when she reviewed the file on April 20, 2006, documents she had filed with Hennepin County were missing from the official court file.

4. Also in her pleadings, respondent asserted that "[u]nfortunately, this is not the first time that Judge Wieland has asserted her authority as chief judge to secrete from the public (and the parties), documents that alleged wrongdoing on her part." Contrary to respondent's assertions, no documents were secreted from Rarity's file, or any court file, by Judge Wieland.

5. Based in part upon this false statement, Judge Wieland filed a complaint with the Director alleging that respondent had repeatedly made unfounded accusations against judges, legal officers, and the court system. The Director opened an investigation into Judge Wieland's complaint and, as part of the investigation, asked respondent to identify the missing documents and the basis for her assertion that Judge Wieland had secreted documents from the file.

6. While respondent identified the documents she alleged Judge Wieland had removed from Rarity's file, respondent provided no evidence for the basis of her statement that these documents had been secreted from the file by Judge Wieland. Respondent has also not provided any information to support her statement that "this is not the first time" Judge Wieland had secreted documents from official court files.

7. Respondent made her statement about Judge Wieland secreting documents from the Rarity court file, and other court files, either knowing the statements were false or with a reckless disregard as to their truth or falsity.

Allegations that Judge Wieland Improperly Negotiated Guilty Pleas

8. In the same U. S. District Court matter referred to above, respondent alleged that Judge Wieland:

> [C]ontinued to be involved in the negotiation of guilty pleas and continued to promise a particular sentence to criminal defendants, having those discussions in chambers or otherwise 'off the record.' It is not clear what percentage of criminal cases before her she engaged in this conduct, but evidence suggests that such conduct was not rare.

9. Respondent further alleged that "Wieland involved herself in settlement discussions and promised in the Rarity Abdullah case, that she would sentence him to probation if he agreed to plead guilty."

10. It is not true Judge Wieland "continued to promise a particular sentence to criminal defendants," nor has she had such discussions "in chambers or otherwise off the record." Judge Wieland has not been involved in improper negotiations or settlements with criminal defendants.

11. As part of his investigation, the Director requested that respondent provide the information she relied on in making allegations that it was not rare for Judge Wieland to meet in chambers and off the record to negotiate guilty pleas with a promise of a particular sentence for criminal defendants.

12. Respondent has failed to provide any evidence to support her allegation that Judge Wieland improperly promised defendants that if they pled guilty, she would give them probation or any other particular criminal sentence or that there were such discussions in Judge Wieland's chambers or off the record.

13. Respondent made her allegation about Judge Wieland improperly promising a specific criminal sentence to a defendant with a reckless disregard as to the allegation's truth or falsity.

Allegations of a Pattern of Illegal Conduct

14. On May 16, 2006, respondent filed an amended complaint alleging "a pattern of illegal conduct by Wieland, including but not limited to the frequent, *ex parte*, and undisclosed communications with [the Minneapolis City Attorney's Office]." There was no illegal conduct by Judge Wieland, much less a pattern of illegal conduct, nor was there any improper or *ex parte* communications with the city attorney's office.

15. The Director has asked respondent to state what information she relied upon which enabled her to allege a pattern of illegal conduct by Judge Wieland. The Director has requested respondent to identify the "frequent, *ex parte*, and undisclosed communications" referred to in the Rarity matter. Respondent has not identified any information that would allow her to make such an allegation.

16. Respondent made her statement that Judge Wieland engaged in a pattern of illegal conduct either knowing it was false or with a reckless disregard as to the statement's truth or falsity.

Allegations that Judge Wieland Worked to Improperly Influence Outcome of Cases

17. On June 7, 2006, respondent filed "Motions Filed by Defendant before Sentencing – Supplemented 6/7/06 Re Motion to Withdraw Guilty Plea" in Rarity's Hennepin County criminal matter. The motions referenced a May 24, 2006, hearing to withdraw Rarity's guilty plea and to remove Judge Wieland from his case. Judge Kevin Burke presided over the May 24 hearing.

18. In respondent's June 7, 2006, motions she wrote that on May 24, 2006, Judge Wieland was "seen going through the double doors to the hallway that leads to judges' chambers." Respondent further asserted that her client was aware that "twice Judge Burke excused himself from an active hearing to go somewhere in the back." Respondent wrote that a fundamental aspect of due process is to know who the decision maker is, and be allowed to address that decision maker, to address each and every point made to that decision maker, and to be able to counter the same.

19. The only reasonable inference that can be drawn from respondent's statement is that Judge Wieland was improperly influencing Judge Burke's actions. Judge Wieland did not discuss respondent's client matter with Judge Burke during an active hearing.

20. Respondent also represented Tony Moore. Moore was on probation for a 2002 conviction of possession of controlled substances. On October 4, 2004, Moore was

charged with sale of controlled substances which resulted in an arrest and detention order for probation violation. Prosecutors moved to proceed with a probation revocation. Respondent moved for a trial and to have the district court judge removed from the case.

21. In post-commitment motions dated June 5, 2005, respondent asserted that she had heard from a number of Hennepin County judges that they did not have discretion to make decisions in their cases. Respondent further asserted that a small group of judges were making decisions in many cases and that their identity, their decisions, the criteria (and perhaps other information), was not being disclosed to the parties.

22. It was not true that Hennepin County judges did not have discretion to make decisions in their cases. During Judge Wieland's tenure as chief judge, Hennepin County judges had discretion to make decisions in their cases. Judge Wieland is unaware of any group of judges usurping decision-making powers with regard to other Hennepin County judges.

23. To determine whether respondent had any evidence that Hennepin County judges did not have discretion to make decisions in their cases, the Director asked respondent from whom she had heard this. Respondent has failed to provide the Director with any information to demonstrate that the allegation was true or that she had some basis for believing that it was true.

24. Respondent made her allegations either knowing the statements were false or with a reckless disregard as to the statements' truth or falsity.

25. Respondent's conduct in making false statements concerning the integrity of a judge, either knowing the statements were false or with a reckless disregard as to the truth or falsity of the statements, violated Rule 8.2, Minnesota Rules of Professional Conduct (MRPC).

26. Respondent's conduct in making false statements concerning the integrity of a judge was prejudicial to the administration of justice and violated Rule 8.4(d), MRPC.

SECOND COUNT

Stepnes Matter

27. Respondent represented plaintiffs Paul Stepnes and Chester Group LLC, in an action against All States Title, Inc. and other parties arising out of financing Stepnes had obtained to enable Chester Group LLC, to renovate a building.

28. On November 4, 2010, on behalf of Stepnes and Chester Group LLC, respondent filed a summons and complaint requesting an injunction and alleging negligent misrepresentation, fraud and deceit. On November 15, 2010, the case was assigned to Hennepin County Judge Regina Chu.

29. On November 24, 2010, the defendants filed a notice of motion and motion to dismiss. The hearing was scheduled for January 25, 2011. On November 29, 2010, respondent, on behalf of plaintiff Chester Group LLC, removed Judge Chu pursuant to Rule 63.03 of the Rules of Civil Procedure (MRCP). Rule 63.03, MRCP, provides that "[a]fter a party has once disqualified a presiding judge or judicial officer as a matter of right that party may disqualify the substitute judge or judicial officer, *but only by* making an affirmative showing of prejudice." (Emphasis added.)

30. On December 15, 2010, the case was reassigned to Judge Susan Burke. Judge Burke issued a scheduling and trial order on December 23, 2010, setting the matter for a court trial beginning on September 6, 2011. On December 23, 2010, defendant Steven R. Little filed a Rule 63.03 removal of Judge Burke.

31. On January 6, 2011, the case was reassigned to Judge Bruce Peterson. On January 18, 2011, on behalf of plaintiff Stepnes, respondent filed a Rule 63.03 removal of Judge Peterson. At that time, since she had already brought Rule 63.03 motions on

behalf of both of her clients, respondent could only file another motion to remove by making an affirmative showing of prejudice.

32. On January 19, 2011, the matter was reassigned to Judge Ann Alton. She recused herself. On January 27, 2011, the case was reassigned to Judge Lloyd Zimmerman. Judge Zimmerman issued an amended scheduling and trial order on February 1, 2011, setting the case for court trial on September 26, 2011.

33. On February 7, 2011, respondent filed an amended summons and amended complaint adding an additional plaintiff, Green House, LLC, to the summons and an additional plaintiff, Chester House LLC, to the complaint.

34. That same day, February 7, 2011, on behalf of the new plaintiff, Chester House LLC, respondent filed a Rule 63.03 removal of Judge Zimmerman. The amended summons and complaint contained no substantive allegations about Chester House LLC (or Green House, LLC) and as of that date Chester House LLC was administratively suspended by the Secretary of State's Office for failing to pay its annual renewal fee. Respondent added Chester House LLC for the improper purpose of circumventing the requirement of Rule 63.03, MRCP, requiring an affirmative showing of prejudice to have a substitute judge removed.

35. On February 8, 2011, the case was reassigned to Judge Cara Lee Neville. She recused herself. On February 8, 2011, the matter was reassigned to Judge Ronald Abrams. On February 16, 2011, Judge Robert Blaeser issued an order to show cause directing plaintiffs, through respondent, to appear on February 24, 2011, to address the question of whether the newly added plaintiff, Chester House LLC, was a real entity, and if it was not, whether plaintiffs would have had any Rule 63.03 removals available.

36. Later on February 16, 2011, respondent filed a dismissal without prejudice dated February 15, 2011. The caption on the dismissal did not include Chester House LLC as a plaintiff. The dismissal was filed and processed through civil filing rather than through the assigned judge. The case remained open and no order dismissing it

was issued. A hearing on the defendant's motion to dismiss remained scheduled for March 23, 2011.

37. On February 23, 2011, rather than appearing at the February 24, 2011, order to show cause hearing at which she would have been questioned about her conduct in adding a plaintiff to the cause of action that appeared to have no purpose other than to circumvent the requirements of Rule 63.03, MRCP, respondent filed a "limited appearance to object to jurisdiction and removal without cause."

38. On February 24, 2011, Judge Blaeser issued an order and memorandum setting out the above facts and finding that "[b]ecause there is no indication that Chester House LLC was an active LLC *on February* 7, the date it was added as a Plaintiff and filed a Rule 63.03 removal on Judge Zimmerman, and because there are no substantive allegations involving either Chester House LLC or Green House LLC in the Complaint or Amended Complaint and the events occurred over four years ago, Chester House LLC's Rule 63.03 removal of Judge Zimmerman is denied."

39. On March 7, 2011, Judge Blaeser filed an ethics complaint against respondent with the Office of Lawyers Professional Responsibility.

40. Respondent's conduct in adding a party solely for the purpose of circumventing the requirements of Rule 63.03, MRCP, violated Rules 3.1, 3.4(c) and 8.4(d) MRPC.

THIRD COUNT

Veches Matter

41. On March 23, 2010, respondent filed a lawsuit on behalf of Jeffery Veches against multiple parties alleging that they, in actions arising out of Veches' arrest for careless driving, had violated Veches' constitutional rights. Judge Lloyd Zimmerman was the judge assigned to the case.

42. On December 28, 2010, respondent wrote to Judge Zimmerman requesting that he remove himself from the case. On December 29, 2010, the court issued an order,

citing to the Rules of Civil Procedure relating to motion practice, directing respondent to file her request for removal in the form of a motion.

43. Pursuant to Fourth Judicial District Bench Policy D. 04, effective November 6, 2006, parties in blocked civil cases were to bring *in forma pauperis* motions before the blocked civil judge or the chief judge. On January 11, 2011, respondent appeared not before Judge Zimmerman or the chief judge, but before the signing judge, retired Judge Thomas Wexler, with two separate requests for *in forma pauperis* orders in the Veches matter.

44. The first related to an interlocutory appeal of an order Judge Zimmerman had issued regarding the cost of a transcript. Respondent objected that the order was issued by the judge *"sua sponte."* Judge Wexler refused to sign the order, suggesting that if respondent objected, she should contact Judge Zimmerman and request to be heard, rather than incurring the expense and delay of an appeal.

45. The second *in forma pauperis* request was to waive filing fees for future motions in the case. Judge Wexler signed the second request, because the supporting affidavit represented that Veches was receiving public assistance and it appeared, to Judge Wexler, to be an automatic basis for *in forma pauperis* qualification.

46. Each of respondent's proposed *in forma pauperis* orders were accompanied by a two-page affidavit.

47. Respondent filed the order Judge Wexler signed, together with the first page of the affidavit accompanying that order, but then attached or caused to be attached the second page of the affidavit accompanying the order that Judge Wexler had refused to sign. The effect of respondent's conduct was to create the false appearance that Judge Wexler had issued an *in forma pauperis* order allowing Veches to obtain a copy of the transcript in filing an appeal. This was directly contrary to what Judge Wexler had ordered.

48. The next day, the clerk brought the order to Judge Wexler and advised him that the filing had not been completed. At that time, Judge Wexler withdrew the order, having come to realize that he had filed it contrary to court policy requiring the judge assigned to the case handle such requests. At that time, Judge Wexler discovered that respondent had filed the affidavit supporting the order he had denied with the order he had approved.

49. Judge Wexler subsequently filed an ethics complaint with the Office of Lawyers Professional Responsibility regarding respondent's conduct in this matter.

50. Respondent's conduct in filing a proposed *in forma pauperis* order with a portion of an affidavit from a different proposed *in forma pauperis* order violated Rules 3.3(a)(1) and 8.4(c) and (d), MRPC.

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

Dated: Feb. 10, 2012.

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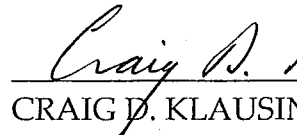

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