FILE NO. _____

STATE OF MINNESOTA

IN SUPREME COURT

In Re Petition for Disciplinary Action against SHIRLEY A. DVORAK, an Attorney at Law of the State of Minnesota.	**PETITION FOR DISCIPLINARY ACTION**

TO THE SUPREME COURT OF THE STATE OF MINNESOTA:

The Director of the Office of Lawyers Professional Responsibility, hereinafter Director, files this petition seeking reciprocal discipline pursuant to Rule 12(d), Rules on Lawyers Professional Responsibility. The Director alleges:

The above-named attorney, hereinafter respondent, was admitted to practice law in Minnesota on February 26, 1982. Respondent currently practices law in Grand Forks, North Dakota. On May 18, 2000, respondent was publicly disciplined by the North Dakota Supreme Court (Exhibit 1) as more fully set forth herein:

1. Respondent's Minnesota discipline history includes a public reprimand and 30 day suspension for filing a false tax return and billing a client in excess of the court ordered amount. *In re Dvorak*, 554 N.W.2d 399 (Minn. 1996), Exhibit 2. She was reinstated to the practice of law in Minnesota on December 19, 1996, *In re Dvorak*, 556 N.W.2d 218 (Minn 1996) Exhibit 3.

2. In 1997 and 1998 Dvorak represented Weston Berg in a marriage dissolution action which involved an extensive and bitter child custody dispute. The trial court appointed a guardian ad litem, Carma Christensen, who asked each of the parties for the names of persons who could provide helpful information about the children's circumstances.

3. Brenda Berg gave Christensen the name of her cousin, Deb Jacobs. Christensen sent Jacobs a questionnaire. Jacobs used her computer at work to type her responses.

4. Dvorak obtained a copy of Jacobs' responses to the questionnaire and deposed Jacobs on February 5, 1998. At the deposition it became clear that some of Jacobs' answers were based on statements Brenda had made to her in the past rather than on personal knowledge. Some of the information in Jacobs' response was inaccurate.

5. On February 28, 1998, Dvorak sent Jacobs a letter in which she claimed Jacobs had defamed Weston Berg by making false and malicious statements. The letter was sent "PURSUANT TO NDCC 32-43-01 THROUGH 10," which contained the legal requirements for maintaining a defamation action in North Dakota.

6. Dvorak attached a copy of Jacobs' responses to the questionnaire on which she had redacted statements "acceptable" to Weston Berg and indicated all other statements were to be corrected. Dvorak further stated that if Jacobs failed to correct those statements, Weston Berg would "pursue all remedies available to him."

7. On March 12, 1998, Dvorak sent a letter to Jacobs' employer, the North Dakota Department of Human Services ("DHS"). In that letter, Dvorak stated that Jacobs had stored documents relevant to the Berg divorce on her computer at work and that she wished to secure all writings relevant to the pending case. Dvorak further stated that Jacobs had admitted in her deposition that information contained in these documents was "untrue."

8. Respondent's conduct violated Rules 3.4 and 4.4, Minnesota Rules of Professional Conduct.

9. Jacobs, with the help of an attorney she contacted after receiving Dvorak's letter, filed a complaint with the North Dakota disciplinary board. The North Dakota hearing body determined that violations of North Dakota Rules 3.4 and 4.4 [identical to

these Minnesota rules] had not been proven by clear and convincing evidence and recommended that the petition be dismissed. The North Dakota disciplinary board adopted the hearing body's recommendation on November 22, 1999.

10. North Dakota disciplinary counsel objected to the disciplinary board's dismissal of the petition for discipline and filed the objection with the North Dakota Supreme Court who, using its reserved authority to institute disciplinary proceedings on its own initiative, concluded that the circumstances presented by this case were serious enough to warrant the exercise of its inherent authority.

11. The North Dakota Court reviewed the disciplinary proceedings *de novo* on the record which included a 262-page transcript of the proceeding before the hearing body. Throughout the proceedings Dvorak was represented by attorney Kermit Bye.

12. After briefing and oral argument, the North Dakota Supreme Court determined that Dvorak's letter to Jacobs violated Rule 3.4(a), North Dakota Rules of Professional Conduct, in that it was an attempt to "unlawfully obstruct another party's access to evidence." The Court held that Dvorak's threat was "an unlawful attempt to intimidate Jacobs into changing her responses."

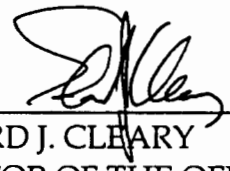
13. The North Dakota Supreme Court further found that Dvorak's statement to Jacobs' employer that Jacobs had provided false information was a separate and independent act which violated Rule 4.4. The Court found that Dvorak's characterization of the documents as untrue made no difference to the legitimate purpose of seeking to preserve any documents relevant to the divorce and therefore did not serve the legitimate purposes of her letter. The North Dakota Supreme Court concluded that no substantial purpose other than to embarrass or burden Jacobs existed for telling Jacobs' employer that Jacobs admitted making untrue statements. The North Dakota Supreme Court found there was clear and convincing evidence of a Rule 4.4 violation.

14. After weighing the North Dakota standards for imposing lawyer sanctions and aggravating and mitigating factors in this matter, the North Dakota Supreme Court concluded Dvorak's misconduct warranted a suspension from the practice of law for a period of one year commencing June 30, 2000. The Court noted that this case marks Dvorak's fourth disciplinary sanction in five years in North Dakota. *See* Exhibit 1.

15. On May 31, 2000, Dvorak through her attorney petitioned the North Dakota Supreme Court for a rehearing on their May 18, 2000, order for discipline. The Court denied her motion on June 13, 2000. *See* Exhibit 4.

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

Dated: June 21, 2000.



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