FILE NO. C5-87-1684

STATE OF MINNESOTA

IN SUPREME COURT

In Re Petition for Disciplinary Action against DAVID J. GHERITY, an Attorney at Law of the State of Minnesota.	**PETITION FOR REVOCATION OF PROBATION AND FOR FURTHER 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 pursuant to Rules 12(a) and 19(a), Rules on Lawyers Professional Responsibility (RLPR), and pursuant to this Court's January 2, 1991, order (Exhibit 1) as modified on March 20, 1991 (Exhibit 2) in the matter.

The above-named attorney, hereinafter respondent, was admitted to practice law in Minnesota on October 15, 1982. Respondent has notified the Director's Office that he is not currently representing clients in Minnesota and that he is now temporarily residing in Scottsdale, Arizona.

INTRODUCTION

Respondent's public disciplinary history began with this Court's May 23, 1988, order (Exhibit 3) placing respondent on two years supervised probation for harassing and assaulting his former girlfriend in violation of a court order. By order dated September 29, 1989, as amended October 4, 1989, this Court publicly reprimanded respondent and extended his public probation for failing to comply with probation requirements and failing to appear in court as ordered (Exhibits 4 and 5). By Court order dated January 2, 1991, as amended on March 20, 1991, respondent's probation was again extended and his right to practice limited for failure to return an unearned retainer and for his involvement in an altercation with two women which resulted in minor injuries to the women. *See* Exhibits 1 and 2.

The Court's January 2, 1991, order provided:

> At any time on or after May 23, 1991, respondent may petition, pursuant to Rule 18, Rules on Lawyers Professional Responsibility, this court for an order terminating respondent's probation. It shall be respondent's burden at the reinstatement hearing to prove by clear and convincing evidence that he: (1) successfully has completed his criminal probation; (2) has complied with all the terms of this public probation; and (3) is psychologically fit to represent clients without supervision.

Exhibit 1, p. 3. Respondent has never applied for reinstatement and remains on probation.

Respondent has committed the following unprofessional conduct warranting revocation of probation and further public discipline.

FIRST COUNT

Assault and Disorderly Conduct

1. Between 12:00 and 12:30 a.m. on October 29, 2000, respondent and his then girlfriend, Laura Kallestad, returned to her apartment on the twenty-sixth floor of the Pinnacle Apartments in Minneapolis, Minnesota. As they exited the elevator, respondent pushed Ms. Kallestad to the floor, and began dragging her toward her apartment. Ms. Kallestad began to yell for help.

2. Complainant Ron Kilgore, who lived in the apartment across the hall from Ms. Kallestad, stepped into the hallway and asked what was happening. Respondent then repeatedly punched complainant and pushed him down the hallway toward an outdoor balcony where he pushed complainant part way over the balcony railing while choking him.

3. Ms. Kallestad intervened to separate respondent and Mr. Kilgore yelling that respondent might push Kilgore over the balcony and kill him.

4. Mr. Kilgore and Ms. Kallestad retreated into complainant's apartment.

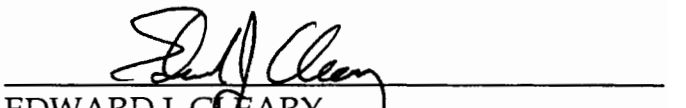
5. Kilgore's roommate, Daryl Palmquist, called the police, who subsequently issued a criminal complaint against respondent. Following a jury trial, respondent was convicted of fifth degree assault (causing harm to Mr. Kilgore) and one count of disorderly conduct (Exhibit 6, p. 4).

6. On June 27, 2001, Judge Katheryn Quaintance sentenced respondent to 90 days in jail, 75 days of which would be stayed subject to a one year probation which included the following requirements: (a) a full chemical health evaluation; (b) a mental health assessment; (c) anger management counseling approved by the probation department; (d) no contact with the victim or the victim's building; (e) no same or similar misconduct; (f) a $100 fine (taking into account his transportation costs); and (g) restitution as determined by the probation department subject to a hearing on any disagreement as to the amount of restitution (Exhibit 6, p. 5). Imposition of the sentence was stayed pending respondent's appeal to the Minnesota Court of Appeals. The appeal is still pending.

7. Respondent's conduct violated Rules 8.4(b) and (d), Minnesota Rules of Professional Conduct, and the Court's probation orders.

WHEREFORE, the Director respectfully prays for an order of this Court revoking respondent's probation, suspending respondent's license to practice 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: February 5, 2002.



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