

STATE OF MINNESOTA
COUNTY OF PIPESTONE

DISTRICT COURT
FIFTH JUDICIAL DISTRICT

In Re Petition for Disciplinary
Action against YVONNE B. MOORE,
a Minnesota Attorney,
Registration No. 74895.

File No.: A05-1383

**FINDINGS OF FACT,
CONCLUSIONS OF LAW,
AND RECOMMENDATION FOR
DISCIPLINE**

The above-captioned matter was heard on November 2, 2005, by the undersigned acting as Referee by appointment of the Minnesota Supreme Court.

Timothy M. Burke appeared on behalf of the Director of the Office of Lawyers Professional Responsibility. Stephen C. Rathke appeared on behalf of respondent Yvonne B. Moore, who was personally present throughout the proceedings.

The hearing was conducted on the Director's June 27, 2005, petition for disciplinary action. The Director presented the testimony of Katie Trotzky. Ms. Moore testified at the hearing. The Director submitted twelve (12) exhibits; respondent submitted three (3) exhibits. The parties were directed to submit on or before November 10, 2005, proposed findings of fact, conclusions of law, a recommendation for appropriate discipline and a brief.

Upon all of the files, records and proceedings herein, the Referee makes the following:

FINDINGS OF FACT

1. Respondent was admitted to practice law in the State of Minnesota on May 24, 1963. Respondent's current office is located in her home in Minneapolis, Minnesota. (R. test.)

False Statements Concerning Pending Disciplinary Action

2. In January of 2004 respondent signed an application to be a member of the Volunteer

Attorney Program for Legal Assistance of Dakota County. In that document respondent certified:

There has not been any disciplinary action ever taken against me in any state nor is there a current disciplinary proceeding pending against me. I am not currently under any disciplinary action such as suspension. If such an action does happen, I will notify Legal Assistance of Dakota County.

(Exh. 5.)

3. These statements were false. As set forth below (¶ 15), by January 2004 respondent had been disciplined three times (Exhs. 1 – 3).

4. Moreover, in January 2004 respondent was the subject of the disciplinary proceeding which culminated in the public reprimand and probation imposed by the Supreme Court on February 24, 2005 (¶ 15d, below). On December 19, 2003, notice was sent to respondent of the January 22, 2004, probable cause hearing on pending charges of unprofessional conduct (Exh. 5A). Respondent appeared at the January 22 hearing, during which a Lawyers Professional Responsibility Board Panel found probable cause to believe public discipline was warranted (Exh. 5B). On January 28, 2004, the Director served the petition for disciplinary action on respondent's counsel (Exh. 5C).

5. On January 25, 2005, respondent signed another application to be a member of the Volunteer Attorney Program for Legal Assistance of Dakota County. Respondent again certified:

There has not been any disciplinary action ever taken against me in any state nor is there a current disciplinary proceeding pending against me. I am not currently under any disciplinary action such as suspension. If such action does happen, I will notify Legal Assistance of Dakota County.

(Exh. 6.)

6. These statements were false. On January 25, 2005, the disciplinary action against respondent was pending before the Minnesota Supreme Court. (R. test.) On January 11, 2005, two weeks before signing the Volunteer Lawyer application, respondent had appeared at oral argument before the Supreme Court in her pending disciplinary proceeding. (R. test.) As of

January 25 the proceeding was under advisement by the Supreme Court. (R. test.; Exh. 15d.)

7. At no time did respondent advise Legal Assistance of Dakota County about any of her disciplinary matters. Legal Assistance of Dakota County did not learn of respondent's disciplinary matters until the Supreme Court released its opinion publicly reprimanding respondent on February 24, 2005. (Trotzky test.)

Attempted Improper *Ex Parte* Contact

8. The underlying misconduct giving rise to respondent's February 24, 2005, public reprimand related to a hearing before Ramsey County District Court Judge Kathleen Gearin. (R. test.) The hearing had been scheduled at respondent's request. Respondent failed to request a continuance and advised her client not to attend the hearing. When neither respondent nor her client appeared, Judge Gearin awarded the opposing party \$540. The facts relating to the hearing before Judge Gearin were alleged in the petition for disciplinary action filed against respondent. *See In re Moore*, 692 N.W.2d at pages 448, 449.

9. An evidentiary hearing on the petition for disciplinary action was held on May 19, 2004, before Judge Randall Slieter who had been appointed referee by the Supreme Court. (Exh. 7, pp. 1, 9.) Respondent did not call Judge Gearin as a witness during the evidentiary hearing. (R. test.)

10. On June 24, 2004, Judge Slieter issued his findings of fact, conclusions of law and recommendation for discipline. Judge Slieter found that respondent committed misconduct, including her failure to appear before Judge Gearin. (Exh. 7.)

11. On or about July 6, 2004, while the disciplinary matter was pending, respondent wrote to Judge Gearin. (Exh. 8.) Respondent did not send a copy of this letter to the Director's Office. (Exh. 8; R. test.) Respondent told Judge Gearin she believed that certain findings made by Judge Slieter were incorrect and that Judge Slieter's "decision seems quite unfair." (Exh. 8.)

Respondent asked Judge Gearin, "If you agree and would call that Judge [Slieter] I would appreciate it." (Exh. 8.)

12. Judge Gearin responded that she believed that respondent's request was improper and asked her to engage in unethical conduct. (Exh. 9.)

13. Respondent wanted Judge Slieter's findings and recommendation changed. (R. test.)

14. Judge Gearin did not contact Judge Slieter. (Exh. 9.)

Aggravating Factors and Claimed Mitigation

15. Respondent has a disciplinary history as follows:

a. On June 1, 1993, respondent was issued an admonition for demanding and receiving a \$300 fee without first securing approval or consent from the Social Security Administration, failing to promptly return client property, and non-communication in violation of Rules 1.4(a), 1.5(a), and 1.15(b)(4), Minnesota Rules of Professional Conduct (MRPC) (Exh. 1)¹.

b. On April 14, 1995, respondent agreed to be placed on private probation for failing to place an advance fee payment into her client trust account, failing to return an unearned fee to a client, failing to provide an accounting of her billing, and failing to provide a client with a copy of a temporary restraining order in violation of Rules 1.4(a), 1.15(a), 1.15(b)(3) and (4), MRPC, as further interpreted by Lawyers Professional Responsibility Board Opinion No. 15 and Rule 1.16(d), MRPC. (Exh. 2.)

c. On November 20, 1997, the Minnesota Supreme Court affirmed an admonition issued to respondent for failing to attend a hearing, obtain a continuance or inform a client of the consequences of not attending a hearing in violation of Rules 1.1, 1.3, and 1.4, MRPC. (Exh. 3.)

d. On February 24, 2005, respondent was publicly reprimanded and placed on supervised probation for two (2) years for failing to attend a hearing she scheduled for a client, failing to

¹ All citations to the MRPC herein are to the Rules effective through September 30, 2005.

inform the court she could not attend, failing to attempt to obtain a continuance, advising her client that he need not appear and failing to advise her client of the potential consequences of not attending. *In re Moore*, 692 N.W.2d 446 (Minn. 2005) (Exh. 4).

Respondent's disciplinary history shows a pattern of misconduct. Respondent's current misconduct is consistent with this pattern.

16. Respondent's current misconduct includes misconduct (false certifications) similar to previous conduct (Exh. 1, ¶¶ 3, 4 & 15).

17. Respondent has substantial experience in the practice of law. (R. test.)

18. Respondent practices primarily in family law. Respondent is familiar with rules of procedure and the obligations such rules impose on her. Respondent believes it is important for lawyers to follow rules of procedure. (R. test.)

19. Respondent testified that she regretted her actions which have led to this disciplinary proceeding. Regarding her *ex parte* request to Judge Gearin to contact Judge Slieter, however, respondent testified that she wished she had acted differently not because she believed that she had committed any misconduct, but simply "because it's created a lot of confusion and pain."

20. In mitigation, respondent offered evidence of her *pro bono* and other law-related volunteer services and membership in professional organizations.

21. That since January 2005 respondent has used her home as an address for receiving legal publications. She has not represented any client since closing her office in Bloomington.

CONCLUSIONS OF LAW

1. Respondent's false statements violated Rule 8.4(c) and (d), MRPC.
2. Respondent's attempt to have a judge make *ex parte* contact with the judge assigned to respondent's disciplinary matter violated Rule 8.4(a) and (d), MRPC.
3. Respondent's misconduct occurred during and directly relates to a disciplinary

proceeding against her. This substantially aggravates respondent's misconduct.

4. Respondent's disciplinary history, which spans more than a decade and includes public discipline, substantially aggravates respondent's current misconduct.

5. Respondent's failure to acknowledge the wrongful nature of her misconduct and her failure to undertake efforts to ensure such misconduct does not recur, all aggravate respondent's current misconduct.

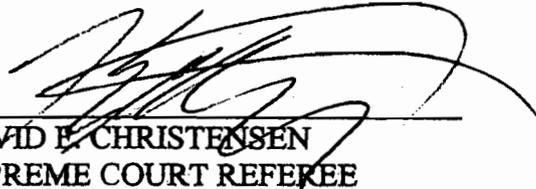
RECOMMENDATIONS FOR DISCIPLINE

The undersigned recommends that:

- a. Respondent Yvonne B. Moore be suspended from the practice of law for 90 days pursuant to Rule 15, RLPR;
- b. The reinstatement hearing provided for in Rule 18(a) through (d), RLPR, be waived;
- c. Respondent be required to successfully complete the professional responsibility portion of the state bar examination within one year of the date of this Court's order;
- d. Respondent comply with Rule 26, RLPR;
- e. Respondent pay \$900 in costs pursuant to Rule 24(a), RLPR;
- f. Respondent be reinstated following the expiration of the suspension provided that at least 15 days before the expiration of the suspension period, respondent files an affidavit with the Clerk of Appellate Courts and the Director's Office establishing that respondent is current with Continuing Legal Education, has fully complied with Rules 24 and 26, RLPR, and has satisfactorily completed all other conditions imposed by the Court in its decision; and
- g. Upon reinstatement, respondent be placed on probation for a period of two years from the date of reinstatement, upon the terms and conditions set forth in the Supreme

Court's February 24, 2005, disciplinary opinion.

Dated: November 21, 2005.



DAVID E. CHRISTENSEN
SUPREME COURT REFEREE

CERTIFICATE OF DISTRIBUTION

File No. A05-1383

The undersigned hereby acknowledges the distribution of Findings of Fact, Conclusions of Law & Recommendation for Discipline date November 21, 2005 in the above-entitled matter on this 21st day of November, 2005 to the following persons:

CLERK OF THE APPELLATE COURTS
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Official Court Reporter