**IN THE IOWA DISTRICT COURT FOR POLK COUNTY**

|  |
| --- |
| IN RE THE MARRIAGE OF JOHN DOE AND JANE DOE |
| Upon the Petition ofJOHN DOE,Petitioner,And Concerning,JANE DOE,Respondent. | CASE NO. \*\*\*\*\*\*\*\* **PETITION TO VACATE JUDGMENT** |

 COMES NOW Petitioner, John Doe, by and through counsel, Mark R. Hinshaw, and pursuant to Iowa Rule of Civil Procedure 1.1012 hereby moves the court to vacate the final judgment entered in this matter and in support of states:

1. On June 01, 2016, a Decree was entered herein against Petitioner in the original action, who now files this Petition to vacate the judgment.
2. There was irregularity or fraud in obtaining the Decree of Dissolution of Marriage.
3. Prior to the divorce finalization Jane Doe filed a financial affidavit pursuant to Iowa Code §598.13. **See** Jane’s February 01, 2016 Financial Affidavit attached as Exhibit A.
4. In her affidavit Jane only listed one retirement account, her pension.
5. Jane then provided John with an account statement for her pension. **See** Jane’s February 01, 2014, Estimated Benefit Calculation attached as Exhibit B.
6. On March 01, 2016, John served upon Jane Requests for Production of Documents. **See** March 01, 2016Requests for Production of Documents attached as Exhibit C. The requests directed in pertinent part that Jane produce all documents relating to any retirement or financial accounts in her possession.
7. Jane failed to timely respond to these requests; thus, on May 01, 2016, the Court entered an Order compelling her to provide complete responses. **See** May 01, 2016, Order attached as Exhibit D.
8. On May 15, 2016, Jane responded to the request for retirement account statements with, “[p]lease see Respondent’s retirement account statement that has previously been provided to counsel for Petitioner.” **See** May 15, 2016 Response to Request for Production of Documents attached as Exhibit E.
9. Based on the above disclosures, John entered a Decree of Dissolution of Marriage on June 01, 2016. **See** June 01, 2016Decree of Dissolution of Marriage attached as Exhibit F.
10. John was awarded a marital portion in Jane’s Pension.
11. In the end of October John retrieved a box of his personal possessions from Jane. Upon reviewing the contents he discovered a June 30, 2011, Quarterly Financial Report for Jane’s Deferred Compensation Plan. **See** June 30, 2011, Account Statement attached as Exhibit G.
12. John subsequently retained counsel to review this matter. In February of 2015, John’s attorney, \*\*\*\*\*\*\* \*\*\*\*\*, notified him that they believed this was a different account that was not divided or disclosed by Jane during the dissolution proceeding.
13. Respondent’s failure to disclose significant financial assets on the sworn affidavit lulled John into a false sense of security in accepting the terms of the stipulated decree of dissolution of marriage. In addition, his failure to disclose a six figure asset, when sent an express discovery request, constitutes fraud under Iowa Rule of Civil Procedure 1.1012(2).
14. Further, the district court may not have approved the decree had said assets been disclosed.
15. The grounds for relief were not and could not have been discovered in time to proceed under Iowa Rule of Civil Procedure 1.977 or 1.1004.
16. The grounds for relief were discovered in October of 2016, making the filing of this petition within one year from the entry of the decree impossible.

WHEREFORE Petitioner prays that the Court vacate the Decree entered on June 1, 2016, grant a new trial, assess attorney fees against Respondent, and grant such further relief that the court deems just in the premises.

Respectfully submitted,

#

# Mark R. Hinshaw AT0009119

The Law Offices of Mark R. Hinshaw

1200 Valley West Drive, Suite 208

West Des Moines, IA 50266

Telephone: (515) 222-1410

## Facsimile: (515) 222-1408

mark@hawkeyedivorce.com

ATTORNEY FOR PETITIONER