

FILE NO. _____

STATE OF MINNESOTA

IN SUPREME COURT

In Re Petition for Disciplinary Action
against DENO WALTER BERNDT,
a Minnesota Attorney,
Registration No. 215636.

**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 upon the parties' agreement pursuant to Rules 10(a) and 12(a), Rules on Lawyers Professional Responsibility. The Director alleges:

The above-named attorney, hereinafter respondent, was admitted to practice law in Minnesota on May 10, 1991. Respondent currently practices law in Shoreview, Minnesota.

Respondent has committed the following unprofessional conduct warranting public discipline:

DISCIPLINARY HISTORY

On November 17, 1998, respondent was issued an admonition for failing to timely respond to discovery and to timely notify a client about an order for sanctions in violation of Rules 1.3, 1.4 and 3.2, Minnesota Rules of Professional Conduct (MRPC).

FIRST COUNT

**Client Neglect and Misrepresentations to Clients to Conceal the Neglect
Kline Matter**

1. In approximately January 2000, Sidney Austin, n/k/a Sidney Kline (Sidney Kline), retained respondent to pursue recovery for the theft of her personal items from a

rented storage facility. Respondent agreed to seek recovery on a contingency fee basis from the owner of a storage facility and the rental insurer, Farmers Insurance (Farmers). Respondent subsequently settled the matter against the storage facility and remitted the settlement funds to Sidney Kline in January 2002.

2. Respondent was to continue the suit against Farmers for an additional settlement. Over the course of the next four years, respondent admittedly neglected the suit with Farmers.

3. In late 2003, Sidney Kline and her husband, Bret Kline, became dissatisfied with the lack of progress on their suit with Farmers. Bret Kline contacted respondent and asked him to forward a copy of the documents relating to the lawsuit against Farmers. In December 2003, respondent falsely told Bret Kline that he had filed an "unfair claim settlement" with the Minnesota Department of Commerce (MDC) and that the MDC had taken over investigation of the claim against Farmers. Respondent's misrepresentations were made in order to conceal his neglect.

4. From January 2004 to the summer of 2004, Bret Kline made numerous inquiries to respondent regarding the status of the Farmers suit. In the summer of 2004, Bret Kline made several telephone inquiries to MDC about the purported unfair claim settlement and to obtain copies of the documents respondent allegedly had filed. MDC advised Bret Kline that there was no matter pending under the name of his wife.

5. Bret Kline then contacted respondent, who falsely advised him that the matter could be under the name Stephanie Raymond, Sidney Kline's co-defendant. Bret Kline again contacted the MDC and requested information regarding any matter under the names of Austin, Kline, Raymond or Berndt. The MDC indicated that there was no record of any claims under those names.

6. From August through October 2004, Bret Kline made approximately 25 calls to respondent requesting a status update of the Farmers matter. Respondent failed to respond.

7. In mid-October of 2004, Bret Kline finally spoke with respondent about the lack of progress on the Farmers matter. Respondent persisted with his fabricated story that the MDC was actively pursuing the claim against Farmers.

8. In early November 2004, Bret Kline placed a minimum of 15 telephone calls to respondent. In mid-November 2004, respondent advised Sydney Kline that a settlement in the amount of \$27,500 had been reached with Farmers when in fact no such settlement had occurred. Respondent invented this story to cover his neglect of the suit against Farmers. Respondent further told the Klines that the settlement funds had been deposited into the trust account of his employer, Hellmuth & Johnson PLLC, and that it would take a week to process payment.

9. Thereafter, Bret Kline made numerous telephone calls and unsuccessful arrangements to meet with respondent to transfer the funds. In December 2004, Bret Kline placed a minimum of 18 calls to respondent regarding the settlement funds.

10. Respondent then purported to make several attempts to pay the Klines the fictitious settlement funds, including:

a. At one point in December 2004, respondent told the Klines that his assistant would drop off the funds and release forms at their residence. When respondent's assistant failed to appear, Bret Kline contacted respondent's assistant at her home and requested the funds. Respondent's assistant was unaware of any settlement funds.

b. A few days later, respondent arranged for Bret Kline to pick up the funds at respondent's home later that evening. Respondent indicated the check would be posted on his door. Bret Kline arrived at respondent's house at 10 p.m. and was unable to locate the check.

c. Bret Kline contacted respondent again to obtain the funds. Respondent offered to wire transfer the funds to Bret Kline's Premier Bank

account. Bret Kline contacted his bank on several occasions and was unable to confirm the transfer of the funds.

d. On or about December 10, 2004, Bret Kline went to respondent's office without an appointment and demanded to meet with respondent. Respondent placed a conference call to Premier Bank to confirm the alleged wire transfer. Premier Bank confirmed that no funds had been transferred, but suggested calling later at 5 p.m. to see if the funds had arrived. After the conference call, respondent told Bret Kline that the funds had left the firm's bank, and that he would follow-up with the firm's bank to determine the whereabouts of the wired funds. Bret Kline contacted Premier Bank later that evening and learned that no funds had been transferred to his account.

e. The following week, respondent advised Bret Kline that he had been in an auto accident. Respondent indicated the funds and release forms were in the trunk of his vehicle, which was unavailable. Respondent stated that when the vehicle became available, he would have either his wife or assistant obtain the funds and release forms. Approximately two days later, respondent advised Bret Kline that he was admitting himself to Hazelden, an alcohol and drug treatment clinic. Upon completing treatment, respondent withdrew from representation.

11. In January 2005, Bret Kline contacted Hellmuth & Johnson about respondent's failure to remit payment of the settlement funds. Hellmuth & Johnson reviewed respondent's files and discovered that the firm did not have a file on the Kline matter. Hellmuth & Johnson informed the Klines of respondent's misrepresentations and that no settlement funds were ever placed in the firm's trust account. Hellmuth & Johnson also terminated respondent's employment.

12. Respondent subsequently admitted that he had neglected the suit against Farmers and that he had made misstatements regarding the status of the suit, including

that the MDC was pursuing the matter as an unfair claim settlement and fabricating a fictitious settlement agreement.

Chestnut Matter

13. Sometime in late 2001 or early 2002, Doug Chestnut, Bob Skie and Gary Iikaas retained respondent to initiate litigation against the manufacturer of a failed heating cable that had been installed in an in-floor heating system in their respective town homes.

14. In 2004, respondent met with Chestnut and informed him that the case was nearing settlement. Over the next several months, respondent continued to advise Chestnut, Skie and Iikaas that he was actively negotiating settlement of their case.

15. Sometime in either August or September 2004, respondent informed Chestnut, Skie and Iikaas that their case had been settled in the amount of \$45,000. Respondent had in fact not settled the case and again made up a fictitious settlement agreement to conceal his neglect. Respondent also told Chestnut that he agreed to waive attorney fees because the matter had taken so long to settle. Respondent had originally agreed to a contingency fee agreement.

16. Again respondent made a series of misrepresentations to conceal his neglect, including:

a. Respondent advised Chestnut, Skie and Iikaas that the settlement check was mailed to his previous law firm, which "intercepted" the check. Respondent stated that his previous law firm could not transfer the settlement proceeds to Hellmuth & Johnson and had to return the settlement check to the defendant. Respondent alleged that the defendant was dilatory in issuing a new settlement check.

b. Respondent then alleged that the settlement check had been received but the defendant had not sent the necessary releases and that he was required to draft the settlement release, which would take some time.

Respondent made several appointments with Chestnut, Skie and Iikaas to sign the fake settlement documents but failed to attend the meetings.

c. As in the above matter, respondent also told Chestnut, Skie and Iikaas that he was in a car accident and that the settlement check and release were in his vehicle and unavailable, because his car was at an impound lot.

17. Respondent eventually informed Chestnut that he was entering treatment at Hazelden Clinic. After completing treatment, respondent withdrew from representation. Hellmuth & Johnson subsequently reviewed respondent's files and determined that respondent had not settled Chestnut's case and that no settlement funds were ever deposited into the law firm trust account. Hellmuth & Johnson informed Chestnut to this effect in January 2005.

18. Respondent admits he neglected the Chestnut case and made misstatements, including fabricating a settlement agreement, to conceal the neglect.

19. Respondent's conduct violated Rules 1.3, 1.4, 3.2, 4.1 and 8.4(c), MRPC.

SECOND COUNT

Driving While Intoxicated

20. On December 15, 2004, respondent was arrested by the White Bear Lake police department for driving under the influence. Respondent refused to take a breathalyzer test. On April 4, 2005, respondent pled guilty to third degree driving while intoxicated (DWI), a gross misdemeanor.

21. Respondent was sentenced to one year in the Ramsey County workhouse with all but thirty days stayed. Respondent was ordered to pay a \$3,000 fine and placed on two years probation under the following conditions: (1) completion of 240 hours of community service, (2) completion of a chemical dependency program and follow all aftercare recommendations, (3) obtain mental health counseling and follow all recommendations, (4) abstain from alcohol or drugs and submit to random urinalysis,

(5) no similar violations, and (6) regular attendance at Alcoholic Anonymous (AA) and obtain a sponsor.

22. Respondent has two prior DWI convictions, which include:
 - a. In July 2003, respondent pled guilty to fourth degree DWI, a misdemeanor.
 - b. In May or June 1987, respondent also pled guilty to DWI.
23. Respondent's conduct violated Rule 8.4(b), MRPC.

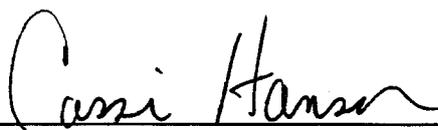
WHEREFORE, the Director respectfully prays for an order of this Court imposing appropriate discipline, awarding costs and disbursements pursuant to the Rules on Lawyers Professional Responsibility, and for such other, further or different relief as may be just and proper.

Dated: December 6, 2005.



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