

FILE NO. _____

STATE OF MINNESOTA

IN SUPREME COURT

In Re Petition for Disciplinary
Action against CHESTER D. SWENSON,
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 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 September 16, 1974. Respondent currently practices law in Albert Lea, Minnesota.

Respondent has committed the following unprofessional conduct warranting public discipline:

FIRST COUNT

1. Respondent represented P.R. on an underinsured motorist claim against Auto Owners Insurance Company. Another attorney had handled the matter and settled portions of the case prior to respondent's involvement.

2. In July 1994, respondent reached an agreement with the insurer's counsel to resolve the remaining portion of the matter for \$15,000. Respondent discussed the matter with his client and the client agreed to the settlement. Respondent so notified the insurer's attorney.

3. Respondent received a check from Auto Owners on July 18, 1994, payable to P.R. and respondent. On July 21, respondent issued to himself a trust

account check for \$2,000, which he attributed as fees on the P.R. matter. At the time, respondent had no funds for P.R. in his trust account. Respondent thereby misappropriated other clients' funds. Although there were no overdrafts, the issuance of this check caused a \$1,841.74 shortage in respondent's trust account.

4. Respondent contacted P.R., who refused to sign the settlement check, notified respondent that she had changed her mind about the settlement and wished to now arbitrate the matter. P.R. then contacted Auto Owners directly to seek arbitration. The settlement check was never negotiated.

5. Respondent did not replace the funds withdrawn from his trust account until December 1994, when he left \$2,000 in earned fees from another matter in his trust account to cover the shortage. At all times from July until December 1994, respondent was aware of the shortage in his trust account.

6. In March 1995, upon motion of the insurer's counsel, the original settlement was enforced by the district court.

7. Respondent's conduct violated Rules 1.15(a) and 8.4(c), Minnesota Rules of Professional Conduct (MRPC).

SECOND COUNT

8. A complaint on the P.R. matter was received by the Director's Office in January 1995. As a part of the investigation of that matter, respondent's trust account books and records were reviewed.

9. Although respondent has maintained partial trust account records, he has failed to maintain all the required trust account books and records as set out in Amended Lawyers Professional Responsibility Board Opinion No. 9 or to maintain them properly. Further, respondent has not annotated all checks and deposit slips as required.

10. Respondent's conduct violated Rule 1.15(g), MRPC, and Amended Lawyers Professional Responsibility Board Opinion No. 9.

THIRD COUNT

11. Respondent was hired to represent J.A. in 1991 on a lawsuit initiated against J.A. by his former mother-in-law's estate on a 1983 promissory note owed to the estate by J.A. and his ex-wife. J.A. now resides in Kentucky and wished to contest personal jurisdiction in Minnesota. Respondent was contacted by J.A.'s personal counsel in Kentucky and agreed to handle the Minnesota matter.

12. In fall 1991, respondent prepared and filed an answer to the complaint, in part contesting jurisdiction. Respondent conducted discovery and brought one motion to compel response. Respondent's associate researched and drafted motion papers to bring a motion to contest jurisdiction. Respondent states that his research had led him to believe that J.A. had no legitimate basis to oppose jurisdiction. Respondent's associate nevertheless forwarded a proposed affidavit to J.A. in Kentucky for his signature as part of that motion, which was signed and returned. The motion was never brought and respondent and J.A. had no communication for several months after November 1991. Respondent continued to negotiate with opposing counsel concerning possible settlement of the matter during this time.

13. In May 1992, respondent received notice of a July 9, 1992, trial date in the case. Respondent appeared at trial, where he agreed to jurisdiction, called no witnesses and offered no documentary evidence.

14. The court issued its findings, conclusions and an order for judgment against J.A. on September 14, 1992. Judgment was entered thereafter. Respondent did not forward a copy of the findings or judgment to J.A. in Kentucky or otherwise advise him of the result.

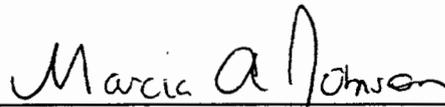
15. Respondent nevertheless continued to negotiate with opposing counsel in late 1992 and through May 1993. Respondent did communicate these offers to J.A., but did not advise him that judgment had already been entered against him.

16. In August 1993, J.A. learned of the Minnesota judgment when an action was commenced in Kentucky to enforce the judgment and certain property belonging to J.A. was attached by the estate. J.A. then discharged respondent.

17. Respondent's conduct violated Rules 1.2(a), 1.3 and 1.4(a), 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: August 25, 1995.



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