**FILE NO. _____**

STATE OF MINNESOTA

IN SUPREME COURT

---

In Re Petition for Disciplinary Action
against CHESTER D. SWENSON,
a Minnesota Attorney,
Registration No. 10789X.

---

**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 contained in the attached December 13, 2002, stipulation for probation (Exhibit l) 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.

DISCIPLINE HISTORY

Respondent's record of discipline, including admonitions, is as follows:

a. On April 17, 1987, respondent received an admonition for his conduct in not responding to a client's telephone calls and not informing the client that a summons and complaint had been served. Respondent's conduct violated Rules 1.4(a) and (b), Minnesota Rules of Professional Conduct (MRPC).

b. On November 9, 1995, the Minnesota Supreme Court issued an order suspending respondent for 30 days because of respondent's unprofessional conduct in failing to diligently pursue a matter entrusted to him, failing to inform his client of the status of the matter, failing to properly maintain trust account books and records, and withdrawing funds from his trust account as a

fee where no funds had been deposited from his client, resulting in a misappropriation of other clients' funds. *In re Swenson*, 539 N.W.2d 394 (Minn. 1995).

c. On May 7, 1999, respondent received an admonition for his conduct in failing to diligently pursue a client's matter and for not responding to a client's reasonable requests for information. Respondent's conduct violated Rules 1.3 and 1.4, MRPC.

d. On December 13, 2002, respondent agreed to a two year private probation after admitting he had neglected and failed to adequately communicate with two clients in violation of Rules 1.3 and 1.4, MRPC.

## INTRODUCTION

Respondent's December 13, 2002, probation was based upon respondent's admission that he had neglected and inadequately communicated with two clients in violation Rules 1.3 and 1.4, Minnesota Rules of Professional Conduct.

Paragraph 6 of the December 13, 2002, stipulation provides:

> If at any time during the period of probation, after giving respondent an opportunity to be heard by the Director, the Director concludes that respondent has violated the conditions of the probation or engaged in further misconduct, the Director may file a petition for disciplinary action against respondent in the Minnesota Supreme Court without the necessity of submitting the matter to a Panel or Panel Chair. Respondent waives the right to such consideration by the Panel or Panel Chair.

The Director provided respondent an opportunity to be heard on August 26, 2004.

Respondent has committed the following unprofessional conduct warranting public discipline:

## FIRST COUNT

1. In 1999 Randy Smith retained respondent to represent him in a no-fault wage loss claim based on his very serious injuries sustained in an out-of-state work-

related accident. Smith believes he signed a contingent fee retainer agreement but cannot find it.

2. Smith was represented by other counsel in a workers' compensation claim relating to the accident.

3. In 1999 Smith had large child support arrearages which Mower County was attempting to collect on behalf of his ex-wife. Smith instructed respondent to use any proceeds obtained from his no-fault claim to pay the child support arrearages.

4. On July 16, 1999, respondent called Mower County District Court and told child support officer Coleen Hoerter that he was filing a claim with Smith's insurance company for no-fault wage benefits which should total about $20,000. Respondent told Hoerter that the third party workers' compensation case should settle in about a year but that the wage loss claim should settle right away. Respondent requested that Hoerter send him a letter directing that any no-fault benefits or recovery should not be disbursed to Smith but instead applied to Smith's child support arrearages. *See* Exhibit 2. On August 2, 1999, Hoerter sent respondent this letter. *See* Exhibit 3.

5. On September 21, 1999, Hoerter called respondent about the status of the wage loss claim. Respondent told her that he was waiting for an arbitration date and she should call back in about thirty days (Exhibit 4).

6. On January 18, 2000, Hoerter spoke with respondent on the phone. Respondent told her he thought settlement was about 60 days away and assured her he would involve child support and collections in the settlement process (Exhibit 5).

7. Respondent's phone records indicate that Smith called on March 8, 2000, to make an appointment for March 10, 2000.

8. On October 4, 2000, respondent told Hoerter that he had not heard from Smith for six months and that the lawsuit was going nowhere at that time (Exhibit 6).

9. Smith's phone records indicate that he called respondent on more than 20 occasions between February 1999 and December 1999 and an additional 10 times between October 2000 and February 2001.

10. Smith states that whenever he called to check on his case, respondent told him that "it is in litigation."

11. Respondent's statements to Hoerter and Smith were false and misleading because respondent had made no demand on Smith's insurance company for no-fault benefits, nor had he commenced a lawsuit or made an arbitration demand.

12. When Smith called again about the status of his wage loss claim in 2004, respondent told Smith he had never represented Smith in the matter, that respondent filed no claim and had no file on the matter.

13. Smith's claim for no-fault benefits is now barred by the statute of limitations.

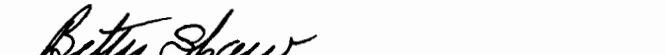
14. Respondent's conduct violated Rules 1.3, 1.4, 1.16(d) and 8.4(c), Minnesota Rules of Professional Conduct (MRPC).

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: November 5, 2004.

KENNETH L. JORGENSEN
DIRECTOR OF THE OFFICE OF LAWYERS
PROFESSIONAL RESPONSIBILITY
Attorney No. 159463
1500 Landmark Towers
345 St. Peter Street
St. Paul, MN 55102-1218
(651) 296-3952

and



BETTY M. SHAW
SENIOR ASSISTANT DIRECTOR
Attorney No. 130904