

FILE NO. A04-2251

STATE OF MINNESOTA

IN SUPREME COURT

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In Re Petition for Disciplinary  
Action against CHESTER D. SWENSON,  
a Minnesota Attorney,  
Registration No. 10789x.  
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**STIPULATION  
FOR DISCIPLINE**

THIS STIPULATION is entered into by and between Kenneth L. Jorgensen, Director of the Office of Lawyers Professional Responsibility, hereinafter Director, and Chester D. Swenson, attorney, hereinafter respondent.

WHEREAS, respondent has concluded it is in respondent's best interest to enter into this stipulation,

NOW, THEREFORE, IT IS HEREBY STIPULATED AND AGREED by and between the undersigned as follows:

1. Pursuant to the Rules on Lawyers Professional Responsibility (RLPR), the parties agree to dispense with further proceedings under Rule 14, RLPR, and respondent agrees to the immediate disposition of this matter by the Minnesota Supreme Court under Rule 15, RLPR.
2. Respondent understands this stipulation, when filed, will be of public record.
3. It is understood that respondent has certain rights pursuant to Rule 14, RLPR. Respondent waives these rights, which include the right to a hearing before a referee on the petition; to have the referee make findings and conclusions and a recommended disposition; to contest such findings and conclusions; and to a hearing before the Supreme Court upon the record, briefs and arguments.

4. Respondent withdraws the answer filed herein and unconditionally admits the allegations of the petition which may be summarized as follows:

a. In 1999 Randy Smith reasonably believed that he had retained respondent to represent him in a no-fault wage loss claim based on his injuries sustained in an out-of-state work-related accident.

b. Smith was represented by other counsel in a workers' compensation claim and social security disability claims relating to the accident.

c. In 1999 Smith had large child support arrearages which Mower County was attempting to collect on behalf of his ex-wife.

d. On July 16, 1999, respondent returned a phone call to Mower County Human Services and told child support officer Coleen Hoerter that he was filing a claim with Smith's insurance company for no-fault wage benefits which could 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. On August 2, 1999, Hoerter sent respondent this letter.

e. 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.

f. On January 18, 2000, Hoerter spoke with respondent on the phone. Respondent told her he thought settlement was about 60 days away.

g. Respondent's phone records indicate that Smith called on March 8, 2000, to make an appointment for March 10, 2000, which appointment Smith did not keep.

h. 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.

i. 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.

j. When Smith called regarding the status of his matter, respondent failed to tell him that the matter was not in litigation.

k. 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, had not commenced a lawsuit or made an arbitration demand.

l. Smith's possible claim for no-fault benefits may now be barred by the statute of limitations.

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

n. Respondent's disciplinary history includes:

i. A 1987 admonition for failing to respond to a client's telephone calls and failing to inform the client that a summons and complaint had been served, in violation of Rules 1.4(a) and (b), MRPC.

ii. A 30-day suspension for failing to diligently pursue a client 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).

iii. A 1999 admonition for failing to diligently pursue a client matter and respond to reasonable requests for information in violation of Rules 1.3 and 1.4, MRPC.

iv. A two year private probation in December 2002 for neglecting and failing to adequately communicate with two clients in violation of Rules 1.3 and 1.4, MRPC.

o. Respondent is 60 years old and has been a three-quarter time public defender for the last 10 years and prior to that time had served as a part-time public defender since 1988. Respondent retired from his public defender position on January 7, 2005, to take advantage of early retirement benefits contained in the public defender contract.<sup>1</sup>

5. Respondent understands that based upon these admissions, this Court may impose any of the sanctions set forth in Rule 15(a)(1) - (9), RLPR, including making any disposition it deems appropriate. Respondent understands that by entering into this stipulation, the Director is not making any representations as to the sanctions the Court will impose.

6. The Director and respondent join in recommending that:

a. The appropriate discipline pursuant to Rule 15, RLPR, is a 60-day suspension effective 30 days from the date of this Court's order;

b. During the 30 day period following the Court's order, respondent agrees to wind-up and close his law practice in preparation for his retirement from the practice of law;

c. Respondent pay \$900 in costs and disbursements pursuant to Rule 24(a), RLPR;

d. Respondent comply with Rule 26, RLPR;

e. The reinstatement hearing provided for in Rule 18(a) through (d), RLPR, be waived; and

f. Respondent be reinstated to permanent retired status following the expiration of the suspension provided that at least 15 days before the expiration

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<sup>1</sup> Respondent has served as an examiner of titles for Freeborn County since 1977. Respondent also served in the U.S. Army from 1969 - 1971.

of the suspension period, respondent files an affidavit with the Clerk of Appellate Courts and the Director's Office establishing that respondent has fully complied with Rules 24 and 26, RLPR, and has satisfactorily completed any other conditions imposed by the Court in its decision.

7. This stipulation is entered into by respondent freely and voluntarily, without any coercion, duress or representations by any person except as contained herein.

8. Respondent hereby acknowledges receipt of a copy of this stipulation.

9. Respondent has been advised of the right to be represented herein by an attorney but has freely chosen to appear *pro se*.

IN WITNESS WHEREOF, the parties executed this stipulation on the dates indicated below.

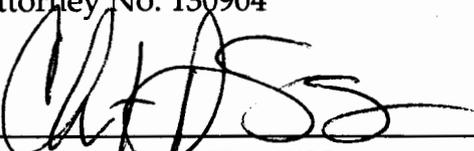
Dated: March 2, 2005.

  
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

Dated: March 2, 2005.

  
BETTY M. SHAW  
SENIOR ASSISTANT DIRECTOR  
Attorney No. 130904

Dated: March 2, 2005.

  
CHESTER D. SWENSON  
RESPONDENT  
206 South Washington  
P.O. Box 426  
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(507) 373-2291

## MEMORANDUM

Despite respondent's discipline history, the Director believes this disposition is appropriate in light of respondent's lengthy public defender service and because his permanent retirement from the practice of law following the expiration of his suspension will adequately protect the public.

K.L.J.