STATE OF MINNESOTA
BOARD OF ARCHITECTURE, ENGINEERING,
LAND SURVEYING, LANDSCAPE ARCHITECTURE, GEOSCIENCE
AND INTERIOR DESIGN

In the matter of
David R. Schwarting, PE
License Number 17100

STIPULATION AND ORDER

Board File No. 2005-0095

TO: Mr. David R. Schwarting, PE
9453 Riverview Drive
Becker, Minnesota 55308

The Minnesota Board of Architecture, Engineering, Land Surveying, Landscape Architecture, Geoscience and Interior Design ("Board") is authorized pursuant to Minnesota Statutes §§ 214.10 and 326.111 to review complaints against architects, professional engineers, land surveyors, landscape architects, geoscientists, and certified interior designers, and to take disciplinary action whenever appropriate.

The Board received information concerning Mr. David R. Schwarting ("Respondent"). The Board's Complaint Committee ("Committee") reviewed the information. The parties have agreed that the matter may now be resolved by this Stipulation and Order.

STIPULATION

IT IS HEREBY AGREED by and between Respondent and the Committee as follows:

1. Jurisdiction. The Respondent has held a license to practice professional engineering from March 8, 1985 through June 30, 1994 and from March 17, 2005 through the present date. Respondent is subject to the jurisdiction of the Board with

respect to the matters referred to in this Stipulation.

2. Facts. This Stipulation is based upon the following facts:

a. Respondent was first licensed to practice professional engineering in the State of Minnesota on March 8, 1985.

b. On June 30, 1994, Respondent's license to practice professional engineering in the State of Minnesota expired.

c. On March 17, 2005, Respondent renewed his license to practice professional engineering.

d. Between June 30, 1994 and March 17, 2005, Respondent held himself out to the public as a professional engineer and used a description that tends to convey the impression that he was licensed as a professional engineer in the State of Minnesota.

e. Between June 30, 1994 and March 17, 2005 and in his capacity as Sherburne County Engineer, Respondent practiced professional engineering on an average of four to five highway projects each year.

3. Violations. Respondent admits that the facts specified above constitute violations of Minn. Stat. §§ 326.02, subd. 1 and 3 (2004), and are sufficient grounds for the action specified below.

4. Enforcement Action. Respondent and the Committee agree that the Board should issue an Order in accordance with the following terms:

a. Reprimand. Respondent is reprimanded for the foregoing conduct.

b. Civil Penalty. Respondent shall pay to the Board a civil penalty of twenty thousand dollars ($20,000.00). Respondent shall submit a civil penalty of twenty

thousand dollars ($20,000.00) to the Board, by cashier's check or money order, payable to the "Board of Architecture, Engineering, Land Surveying, Landscape Architecture, Geoscience, and Interior Design," by making one payment of one thousand dollars ($1,000.00) on or before August 16, 2005 and nineteen (19) equal payments of one thousand dollars ($1,000.00) on or before: November 16, 2005; February 16, 2006; May 16, 2006; August 16, 2006; November 16, 2006; February 16, 2007; May 16, 2007; August 16, 2007; November 16, 2007; February 16, 2008; May 16, 2008; August 16, 2008; November 16, 2008; February 16, 2009; May 16, 2009; August 16, 2009; November 16, 2009; February 16, 2010; May 16, ~~2009~~ 2010

5. Additional Discipline for Violations of Order. If Respondent violates this Stipulation and Order, Minn. Stat. ch. 326, or Minn. Rule ch. 1800 or 1805, the Board may impose additional discipline pursuant to the following procedure:

a. The Committee shall schedule a hearing before the Board. At least thirty days prior to the hearing, the Committee shall mail Respondent a notice of the violation alleged by the Committee and of the time and place of the hearing. Within fourteen days after the notice is mailed, Respondent shall submit a response to the allegations. If Respondent does not submit a timely response to the Board, the allegations may be deemed admitted.

b. At the hearing before the Board, the Complaint Committee and Respondent may submit affidavits made on personal knowledge and argument based on the record in support of their positions. The evidentiary record before the Board shall be limited to such affidavits and this Stipulation and Order. Respondent waives a hearing before an administrative law judge and waives discovery, cross-examination of

adverse witnesses, and other procedures governing administrative hearings or civil trials.

c. At the hearing, the Board will determine whether to impose additional disciplinary action, including additional conditions or limitations on Respondent's practice or suspension or revocation of Respondent's license.

6. Waiver of Respondent's Rights. For the purpose of this Stipulation, Respondent waives all procedures and proceedings before the Board to which Respondent may be entitled under the Minnesota and United States constitutions, statutes, or the rules of the Board, including the right to dispute the allegations against Respondent, to dispute the appropriateness of discipline in a contested case proceeding pursuant to Minn. Stat. ch. 14, and to dispute the civil penalty imposed by this Agreement. Respondent agrees that upon the application of the Committee without notice to or an appearance by Respondent, the Board may issue an Order containing the enforcement action specified in paragraph 4 herein. Respondent waives the right to any judicial review of the Order by appeal, writ of certiorari, or otherwise.

7. Collection. In accordance with Minn. Stat. § 16D, subd. 2 (2004), in the event this order becomes final and Respondent does not comply with the condition in paragraph 4(b) above, Respondent agrees that the Board may lift the stay on the remaining portion of the civil penalty and that the Board may file and enforce the unpaid portion of the civil penalty as a judgment without further notice or additional proceedings.

8. Board Rejection of Stipulation and Order. In the event the Board in its discretion does not approve this Stipulation and Order or a lesser remedy than specified

herein, this Stipulation and Order shall be null and void and shall not be used for any purpose by either party hereto. If this Stipulation is not approved and a contested case proceeding is initiated pursuant to Minn. Stat. ch. 14, Respondent agrees not to object to the Board's initiation of the proceedings and hearing the case on the basis that the Board has become disqualified due to its review and consideration of this Stipulation and the record.

9. Unrelated Violations. This settlement shall not in any way or manner limit or affect the authority of the Board to proceed against Respondent by initiating a contested case hearing or by other appropriate means on the basis of any act, conduct, or admission of Respondent justifying disciplinary action which occurred before or after the date of this Stipulation and Order and which is not directly related to the specific facts and circumstances set forth herein.

10. Record. The Stipulation, related investigative reports and other documents shall constitute the entire record of the proceedings herein upon which the Order is based. The investigative reports, other documents, or summaries thereof may be filed with the Board with this Stipulation.

11. Data Classification. Under the Minnesota Government Data Practices Act, this Stipulation and Order is classified as public data upon its issuance by the Board. Minn. Stat. § 13.41, subd. 4 (2004). All documents in the record shall maintain the data classification to which they are entitled under the Minnesota Government Data Practices Act, Minn. Stat. ch. 13. They shall not, to the extent they are not already public documents, become public merely because they are referenced herein.

12. Entire Agreement. Respondent has read, understood, and agreed to this

Stipulation and is freely and voluntarily signing it. The Stipulation contains the entire agreement between the parties hereto relating to the allegations referenced herein. Respondent is not relying on any other agreement or representations of any kind, verbal or otherwise.

13. Counsel. Respondent is aware that he may chose to be represented by legal counsel in this matter. Respondent knowingly waived legal representation.

14. Service. If approved by the Board, a copy of this Stipulation and Order shall be served personally or by first class mail on Respondent. The order shall be effective and deemed issued when it is signed by the Chair of the Board.

RESPONDENT

David R. Schwarting

David R. Schwarting

Dated: May 20, 2005

COMPLAINT COMMITTEE

By: _____

Doris Preisendorf Sullivan, FASLA
Committee Chair

Dated: May 20, 2005

ORDER

Upon consideration of the foregoing Stipulation and based upon all the files, records and proceedings herein, all terms of the Stipulation are approved and hereby issued as an Order of this Board on this the 20TH day of MAY, 2005.

MINNESOTA BOARD OF ARCHITECTURE, ENGINEERING, LAND SURVEYING, LANDSCAPE ARCHITECTURE, GEOSCIENCE AND INTERIOR DESIGN

By: _____

James O'Brien, Architect, FAIA
Board Chair