FILE NO. _____

STATE OF MINNESOTA

IN SUPREME COURT

In Re Petition for Disciplinary Action against STEPHEN LOUIS MADSEN, an Attorney at Law of the State of Minnesota.	**PETITION FOR DISCIPLINARY ACTION**

TO THE SUPREME COURT OF THE STATE OF MINNESOTA:

The Acting 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 12, 1988. Respondent currently practices law in St. Paul, Minnesota.

Respondent has committed the following unprofessional conduct warranting public discipline:

FIRST COUNT

Mark Magers Matter

1. In late 1997, respondent began representing Mark Magers (hereinafter "Magers") on various business transactions. In March or April of 1998, Magers contacted respondent about the feasibility of commencing litigation against a former employee, John Erwine (hereinafter "Erwine"). Magers believed that Erwine was using proprietary and confidential information to compete with his company.

2. On April 16, 1998, respondent commenced an action on behalf of Magers against Erwine in Ramsey County District Court. The six-count complaint alleged conversion, claim and delivery, breach of fiduciary duty, breach of loyalty, tortious

interference with contract and tortious interference with prospective business advantage.

3. After filing the lawsuit, respondent served 18 subpoenas duces tecum on suppliers and vendors throughout the country. The subpoenas demanded documentation regarding each supplier's business dealings with Erwine.

4. In response to the subpoenas, opposing counsel sent respondent two letters informing him that the subpoenas did not comply with Rule 45.01, Minn. R. Civ. P., which prohibits the use of *ex parte* subpoenas during discovery.

5. On July 15, 1999, Judge Michael Fetsch ordered that all information obtained through the subpoenas be suppressed and also sanctioned respondent by ordering him to pay $5,000 in attorney's fees to the defendant.

6. After receiving the court sanction, respondent failed to engage in any further discovery on the matters being pursued.

7. On August 17, 1999, respondent sent Magers a letter apologizing for his mistake and confirming his intention to pay the $5,000. Upon receiving the letter, Magers became upset with respondent and never again spoke or otherwise attempted to communicate with him. However, Magers did not formally discharge respondent at this time.

8. During the interim, respondent states he attempted to contact Magers by leaving phone messages and sending at least three letters inquiring whether Magers intended to pursue the matter. Magers states that he did not receive any letters from respondent.

9. On October 4, 1999, respondent unilaterally agreed to settle and dismiss the case because he had not heard from Magers. Respondent states that he assumed Magers had no desire to continue the litigation. On October 14, 1999, respondent agreed to pay the defendant $5,000 to settle the case. Respondent did not notify Magers about his agreement to settle and dismiss the case.

10. On October 5, 1999, Magers retained a second attorney to take over the case. The second attorney, Tim Dunn (hereinafter "Dunn"), drafted a substitution of counsel letter and authorization to release the file, which were signed by Magers on October 27, 1999. On November 2, 1999, Dunn personally delivered to respondent's office a letter enclosing the substitution of counsel letter and authorization for release of file. Respondent states that he never received the letter and enclosures.

11. On the afternoon of November 2, 1999, respondent delivered to the court an executed stipulation of dismissal with prejudice, which was filed on November 8, 1999. Respondent did not provide Magers with a copy of the stipulation or notify him that it had been entered with the court.

12. On December 3, 1999, respondent paid the $5,000 discovery sanction against him and judgment was entered by the court.

13. By December 7, 1999, Dunn had still not received Mager's client file from respondent. Dunn prepared and mailed a second letter to respondent. The letter was almost identical to the first letter, which was sent on November 2, 1999. Dunn also enclosed another substitution of attorney form and authorization, both of which had been signed by Magers on December 6, 1999.

14. On December 10, 1999, Dunn received a response from respondent along with Mager's client file. Respondent's letter expressed puzzlement and concern since he had elected to settle and dismissed the case almost a month earlier. Respondent confirmed that he would pay the $5,000 settlement. To date, respondent has paid only $1,500.

15. Magers, through his attorney Dunn, then sued respondent for malpractice. Respondent defaulted in the matter and judgment was entered for damages of $98,812.50. The entire judgment remains unsatisfied.

16. To date, respondent has not made any good faith efforts to pay-off any portion of the judgment or to contact Magers about arranging for a payment plan.

17. Respondent's conduct in failing to comply with the discovery provisions of the Minnesota Rules of Civil Procedure; in settling and dismissing his client's cause of action without his client's knowledge or consent; and in failing to make a good faith effort to either pay-off or arrange a payment plan for the default judgment entered against him in his client's malpractice case violated Rules 1.1, 1.2(a), 1.4, 3.4(c), and 8.4(d), Minnesota Rules of Professional Conduct.

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: September 25, 2002.

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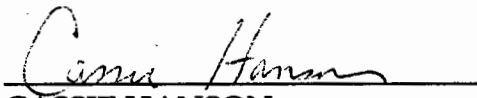

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