

FILE NO. _____

STATE OF MINNESOTA

IN SUPREME COURT

In Re Petition for Disciplinary Action
against JAMES EARL SCHAEFER,
a Minnesota Attorney,
Registration No. 183039.

**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 October 16, 1987. Respondent currently practices law in Bloomington, Minnesota.

Respondent has committed the following unprofessional conduct warranting public discipline:

FIRST COUNT

1. In June 2003 Zafer Dyab was served with a summons and complaint relating to his purchase of a gas station. Dyab retained respondent to defend him in the litigation. No written fee agreement was signed. Respondent billed Dyab at \$150 per hour.

2. Respondent prepared and filed an answer to the complaint on July 17, 2003.

3. On December 4, 2003, respondent was served with the opposing party's request for production of documents and statements and interrogatories. Respondent did not respond to the discovery requests.

4. On April 5, 2004, respondent sent Dyab a facsimile indicating that he had served the opposing party with discovery requests and that he had also received discovery requests from the opposing party. Respondent also enclosed a copy of the opposing party's interrogatories. Respondent requested additional information from Dyab so that he could answer the interrogatories.

5. On May 20, 2004, respondent was served with the opposing party's notice of motion and motion to compel discovery.

6. On May 24, 2004, respondent sent Dyab a facsimile updating him on the status of the case and informing him that the opposing party wanted to depose him. Respondent reiterated that he still needed to meet with Dyab to discuss their response to the opposing party's discovery requests. Respondent also included a bill for legal services in the amount of \$1,068. Dyab did not pay respondent's bill or provide him with the requested discovery information.

7. Respondent subsequently failed to prepare or file a written response to the opposing party's motion to compel discovery. On June 15, 2004, respondent attended a hearing on the opposing party's motion to compel. That same day the district court granted the motion to compel and the opposing party was awarded sanctions against Dyab in the amount of \$350 for attorney's fees. The district court further ordered respondent to prepare and file answers to the opposing party's interrogatories and that Dyab should sit for a deposition within 10 days of the court's order.

8. On June 18, 2004, respondent faxed Dyab requesting that Dyab provide information so that he could answer the opposing party's interrogatories. Respondent's

facsimile did not reference the district court's June 15, 2004, order or the sanctions against Dyab.

9. On August 29, 2004, respondent faxed and mailed Dyab a copy of a notice of deposition. Respondent also provided Dyab with another bill for legal services in the amount of \$1,448.35. On September 3, 2004, respondent attended Dyab's deposition.

10. Respondent's legal fees remained unpaid throughout the fall of 2004. Respondent assumed that Dyab had obtained new counsel and abandoned Dyab's case. Respondent did not withdraw from representation or contact Dyab to confirm that he no longer represented him.

11. Throughout the fall of 2004, respondent continued to receive notices and orders from the clerk of court relating to Dyab's case.

12. Respondent failed to appear for a pretrial conference on March 8, 2005, which had been scheduled by order of the court dated June 10, 2004. Respondent had received a copy of the court's scheduling order in the mail.

13. On March 11, 2005, the opposing party served respondent with notice of motion and motion for default judgment. On Friday, March 13, 2005, respondent sent a notice of withdrawal to the district court administrator. Respondent did not notify Dyab of his withdrawal or the hearing on the opposing party's motion for default judgment. Neither respondent nor Dyab attended the hearing.

14. On March 30, 2005, the district court granted the opposing party's motion for default judgment and entered judgment in favor of the plaintiff in the amount of \$40,000 plus costs and disbursements. The district court also dismissed Dyab's counterclaim with prejudice. Dyab first learned of respondent's neglect and withdrawal when he received a copy of the court's March 30, 2005, order.

15. Dyab subsequently retained new counsel, William Skolnick, to represent him in the litigation. Skolnick unsuccessfully attempted to vacate the default judgment. Skolnick subsequently negotiated a settlement agreement whereby Dyab paid the

plaintiff in the civil litigation \$25,000. On December 15, 2005, a satisfaction of judgment was entered in the amount of \$40,000.

16. Skolnick is currently pursuing a negligence claim against respondent. Respondent does not have malpractice insurance.

17. Respondent's conduct violated Rules 1.1, 1.3, 1.4, 1.16, 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: February 14, 2006.



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