

FILE NO. _____

STATE OF MINNESOTA

IN SUPREME COURT

In Re Petition for Disciplinary
Action against JOHN ALLEN HATLING,
a Minnesota Attorney,
Registration No. 167630.

**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 18, 1985. Respondent currently practices law in Fergus Falls, Minnesota.

Respondent has committed the following unprofessional conduct warranting public discipline:

FIRST COUNT

1. Respondent is the owner of the Hatling Law Office in Fergus Falls, Minnesota. Hatling Law Office is organized as a sole proprietorship and accordingly, all income and expenses of the business are reported on Hatling's individual federal and Minnesota income tax returns.

2. In January of 2003, the Minnesota Department of Revenue began an investigation of respondent's law office for unfiled and delinquent withholding returns. While investigating the delinquent withholding returns, the Department of Revenue

noted that respondent had failed to file Minnesota income tax returns for the years 2000 and 2001. Shortly thereafter, respondent's 2002 return became delinquent as well.

3. After receiving the delinquent returns for the years 2000 and 2002, the Department of Revenue concluded that respondent was possibly reporting very little of the net profit from his law practice. Based upon this, the Department of Revenue conducted an audit of respondent's tax returns.

4. The Department of Revenue notified respondent by letters in August and September 2003 to make arrangements to audit the 2000 and 2002 returns and demanded that he file his 2001 Minnesota income tax return. Respondent did not respond and on October 8, 2003, a Department of Revenue "income specialist" made a personal visit to respondent's law office to ask about his failure to respond to the audit letters.

5. Initially, respondent indicated that he did not want to provide the information being requested and asked what would happen if he refused to provide the information requested in the audit letters. Eventually, respondent provided information relating to the audit and filed his delinquent 2001 return.

6. On respondent's 2001 and 2002 returns, respondent failed to report a portion of his gross receipts and claimed extensive expenses that he could not substantiate and for which he had no explanation. Respondent also claimed large expenses that he called "claim of right deductions."

7. A claim of right deduction is based upon the assertion that the value of wages is not taxable because the United States Constitution does not provide for taxation of money earned by United States citizens. The Internal Revenue Service and numerous courts have held that such a claim is frivolous.

8. On October 8, 2003, the Department of Revenue tax specialist told respondent that the claim of right deduction was incorrect, frivolous and potentially

illegal. The Department of Revenue thereafter adjusted respondent's taxable incomes in the years 2001 and 2002.

9. On August 14, 2004, respondent filed his 2003 Minnesota tax return. Despite being expressly told that his claim of right deduction was meritless, respondent again asserted a \$39,950 claim of right deduction, resulting in little or no taxable income. Respondent explained this claim of right deduction in various fashions on Form 8275-R including, "a common law immunity that rendered any money earned from the right accession immune to taxation," and "the United States Code defined this immunity as a 'white citizen' right for the United States citizens in Title 42, section 1981."

10. On April 19, 2005, respondent filed his 2004 income tax return. While respondent did not include a claim of right deduction, he reported little or no taxable income. The Department of Revenue concluded that not all of respondent's income was reported and that the expenses he claimed were unusual and out of line with the amounts claimed in prior years.

11. In the summer of 2005, the Department of Revenue audited respondent's 2003 and 2004 Minnesota Income Tax Returns. During the audit of the 2003 and 2004 tax returns, the Department of Revenue obtained records from respondent's accountant, including Quick Books records showing all check register transaction entries for 2003 and 2004 and a copy of respondent's own internal profit and loss records for the same years. Those documents, respondent's bank records, loan application records, and records of cash drawn by respondent from his law practice indicated that respondent knowingly under-reported gross receipts and thus income from his law practice.

12. On his 2003 tax return, respondent reported gross receipts of \$173,278. However, respondent's profit and loss statements for that same year showed gross receipts of \$188,839.89. On his 2004 tax return, respondent reported gross receipts of \$129,436. However, respondent's profit and loss statements for that same year showed

gross receipts of \$202,029.23. The Minnesota Department of Revenue determined that respondent's law office's gross receipts were under-reported by \$18,265.55 in 2003 and \$56,812 in 2004.

13. In addition to under-reporting gross receipts from his law practice, respondent under-reported rental income for a building his wife owned, which was the same building which housed respondent's law practice. Respondent under-reported the amount of rental income for that property by \$3,626.

14. In July of 2004, respondent signed a loan application stating his income was \$15,000 per month, or \$180,000 per year. Despite this stated income, respondent claimed net profit (income after expenses) for 2004 of \$8,868. In 2003, respondent reported his net profit at \$924. In 2003 and 2004, respondent made cash withdrawals from his law practice of \$107,753.02 and \$122,776.29, respectively.

15. After adding back in reported income, eliminating the false claim of right deduction and other miscellaneous unsubstantiated deductions and expenses, the Department of Revenue determined respondent's underpayment of taxes in Minnesota was \$6,947 for 2003, and \$5,954 for 2004.

16. Based upon this information, the Douglas County Attorney's Office subsequently charged respondent with two counts of fraudulent tax filing in violation of Minn. Stat. § 289A.63, subd. 2(a).

17. On September 12, 2008, respondent entered a plea of guilty to Minn. Stat. § 289A.63, subd. 1(b), failure to pay income tax, a felony level offense. Respondent received a stay of imposition for five years and probation for up to five years. Respondent was incarcerated for 60 days with the court permitting him to participate in work-release.

18. Respondent's conduct violated Rule 8.4(b) and (c), Minnesota Rules of Professional Conduct (MRPC).

WHEREFORE, the Director respectfully prays for an order of this Court suspending respondent or imposing otherwise 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 16, 2009.



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