

FILE NO. \_\_\_\_\_

STATE OF MINNESOTA

IN SUPREME COURT

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In Re Petition for Disciplinary Action  
against JOHN G. HOESCHLER,  
a Minnesota Attorney,  
Registration No. 0045810.  
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**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 November 14, 1968. Respondent currently practices law in Eagan, Minnesota. Respondent has committed the following unprofessional conduct warranting public discipline:

FIRST COUNT

Renae Fry Matter

1. In early 2011, respondent was retained by Dr. Fei Xiao to petition for a tax reduction and refund for a unit that he was in the process of purchasing in the Tacheny Professional Center. The Tacheny Professional Center has a total of eight separate units.
2. The statutory deadline for filing a petition with the tax court was April 30, 2011.
3. On April 19, 2011, respondent sent an email to complainant, Renae Fry, as president of the Tacheny Professional Association ("Association"), stating that he would be filing a property tax appeal on behalf of his client, Dr. Xiao. In his email, respondent briefly explained his retainer agreement, the expected costs, and stated that it would benefit all the owners in the Association to take part in the appeal.

Respondent's email states that "[t]he important thing to focus on is that the appeal needs to be filed before April 30, 2011 to be effective for taxes payable in 2011."

4. Complainant forwarded respondent's email to all the owners in the Association.

5. On April 22, 2011, respondent filed the appeal of the property tax on behalf of the Association, specifically, the petitioner is listed as "Tacheney Professional Association and Unit Owners." At the time that respondent filed the appeal he had not had any response from complainant or any of the other owners.

6. On May 9, 2011, complainant responded to respondent's April 19, 2011, email stating that "until [the Association] can have a meeting of the owners at which we can discuss this further, I must decline your services." At the time that complainant sent her email to respondent, he had already filed the property tax appeal on behalf of the Association.

7. On May 11, 2011, respondent responded to complainant's email with his own email. Respondent's May 11, 2011, email states "[b]ecause the time for filing was slipping past us, I took the liberty of filing an appeal on behalf of Dr. Xiao and drafted the appeal in a manner that allows us to include the rest of the units in the development if they eventually decide that this is a good deal for them." Respondent's email to complainant also requested a meeting with the Association to discuss the appeal.

8. In the summer of 2011, complainant met with other property owners in the Association to discuss respondent's offer to represent them in a property tax appeal. Complainant states that the other owners in the Association did not want to take part in the property tax appeal, in part, because they did not want their property tax values to decrease.

9. On March 23, 2012, respondent emailed complainant and again renewed his efforts to represent the Association in the property tax appeal for 2012. Respondent states in his email in 2011, "no one showed enough interest to act. Notwithstanding that, I filed an appeal in a form that included all units in the development with the hope

that, in the end, everyone would see that such an appeal would be in their interest.”  
Complainant did not respond to respondent’s March 23, 2012, email.

10. On March 29, 2012, respondent again emailed complainant to request that complainant consider the appeal on behalf of the Association. Respondent’s email states, “As you may remember, because you did not feel that you could get the troops organized sufficiently, you did not agree to join in a master appeal. But I still filed an appeal on behalf of Dr. Xiao in a way that could include the other units for last year.” Respondent goes on in his email to renew his offer to represent the Association in the property tax appeal. Complainant did not respond to respondent’s email.

11. In April 2012, complainant had a telephone conversation with respondent where complainant specifically stated that she did not want respondent to file a property tax appeal on the Association’s behalf or represent the Association in any way. Complainant told respondent he could contact the other property owners. Respondent did contact the other property owners; however, none of them were interested in the property tax appeal.

12. Respondent re-filed the appeal of the property tax in April 2012 on behalf of the Association for the year 2012.

13. Respondent re-filed the appeal of the property tax in April 2013 on behalf of the Association for the year 2013.

14. By April 2013, respondent had begun settlement discussions with the tax assessor regarding the reduction in property taxes at the Tacheny Professional Center.

15. On April 30, 2013, respondent emailed complainant and some of the other property owners regarding the settlement process and requested a meeting to discuss a strategy for the settlement.

16. Complainant responded to respondent’s April 30, 2013, email by reminding respondent that she had declined his services personally and on behalf of the Association repeatedly. Complainant requested that respondent not contact her again.

17. On March 21, 2014, respondent wrote a letter to the unit owners stating that he was pleased to report that he had “successfully negotiated refunds for all unit owners in the Tacheny Professional Center for real estate taxes payable in CY 2011, 2012 and 2013. Because this was an appeal on behalf of specific unit owners but couched in the name of the property owners’ association, all members of the association were able to benefit from the appeal.”

18. Respondent’s March 21, 2014, letter goes on state that he “presented to everyone who could potentially benefit from this the [sic] option of joining the appeal at either a 2/3 rate (after a 1/3 contingent fee to me) if you were willing to contribute \$200 to the out-of-pocket costs of the appeal each year, or at a 55% share (after a 45% contingent fee to me) if you did not wish to contribute to the costs of the appeal.”

19. Respondent states in the March 21, 2014, letter that complainant’s “unit was one of those which did not elect to contribute. In addition, however, you did not return to me your explicit election for your 55% share.” Respondent states that he prepared a check for \$5,159.27 for complainant, which was 55% of the total refund received for her unit.

20. Respondent’s March 21, 2014, letter also included a retainer agreement outlining the above terms.

21. Complainant responded to respondent’s March 21, 2014, letter by email stating again that she never authorized him to include her on the property tax appeals.

22. Respondent ended up providing the full amount of the property tax refund (over \$75,000 for all the units) to his own client and to the other unit owners, including complainant, without any payment to himself.

23. The property tax rates for the other units in the building would have been readjusted after the 2014 settlement, meaning that their property tax values would have decreased in 2014 to reflect the value of the one unit that had conducted a property tax appeal. One of the reasons that the other unit owners had not participated in the property tax appeal was that they did not want their property tax values to decrease;

however, only parties to the property tax appeal would receive a retroactive property tax refund for the tax years 2011, 2012 and 2013. Therefore, there was not an economic harm to the Association, as the property tax values remained the same until 2014 when they began to reflect the lower value and the unit owners received a retroactive property tax refund in 2014 for the tax years 2011, 2012 and 2013.

24. Respondent's conduct violated Rules 3.3(a)(1), 8.4(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: Oct. 6, 2015.

  
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