

IN THE SUPREME COURT OF PENNSYLVANIA

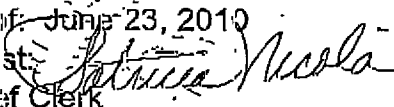
OFFICE OF DISCIPLINARY COUNSEL, : No. 1508 Disciplinary Docket No. 3
Petitioner :
 : No. 105 DB 2009
v. :
 : Attorney Registration No. 73289
MICHAEL S. KLEIN, :
Respondent : (Bucks County)

ORDER

PER CURIAM:

AND NOW, this 23rd day of June, 2010, upon consideration of the Recommendation of the Three-Member Panel of the Disciplinary Board dated May 11, 2010, the Joint Petition in Support of Discipline on Consent is hereby granted pursuant to Rule 215(g), Pa.R.D.E., and it is

ORDERED that Michael S. Klein is suspended on consent from the Bar of this Commonwealth for a period of eighteen months retroactive to August 27, 2009, and he shall comply with all the provisions of Rule 217, Pa.R.D.E.

A True Copy Patricia Nicola
As of: June 23, 2010
Attest: 
Chief Clerk
Supreme Court of Pennsylvania

BEFORE THE DISCIPLINARY BOARD OF THE
SUPREME COURT OF PENNSYLVANIA

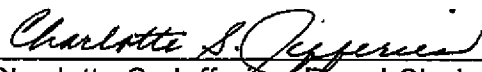
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Respondent : (Bucks County)

RECOMMENDATION OF THREE-MEMBER PANEL
OF THE DISCIPLINARY BOARD OF THE
SUPREME COURT OF PENNSYLVANIA

The Three-Member Panel of the Disciplinary Board of the Supreme Court of Pennsylvania, consisting of Board Members Charlotte S. Jefferies, Mark S. Baer and Sal Cognetti, Jr., has reviewed the Joint Petition in Support of Discipline on Consent filed in the above-captioned matter on April 5, 2010.

The Panel approves the Petition consenting to an 18 month suspension retroactive to August 27, 2009 and recommends to the Supreme Court of Pennsylvania that the attached Joint Petition be Granted.

The Panel further recommends that any necessary expenses incurred in the investigation and prosecution of this matter shall be paid by the respondent-attorney as a condition to the grant of the Petition.


Charlotte S. Jefferies, Panel Chair
The Disciplinary Board of the
Supreme Court of Pennsylvania

Date: May 11, 2010

BEFORE THE DISCIPLINARY BOARD OF THE
SUPREME COURT OF PENNSYLVANIA

OFFICE OF DISCIPLINARY COUNSEL, : No. 105 DB 2009
Petitioner :
 :
v. :
 : Attorney Reg. No. 73289
MICHAEL S. KLEIN :
Respondent : (Bucks County)

JOINT PETITION IN SUPPORT
OF DISCIPLINE ON CONSENT
PURSUANT TO Pa.R.D.E. 215 (d)

Petitioner, the Office of Disciplinary Counsel by Paul J. Killion, Chief Disciplinary Counsel, and Harold E. Ciampoli, Jr., Disciplinary Counsel, and Respondent, Michael S. Klein (hereinafter, "Respondent"), by and through his counsel, Michael Hayes, Esquire, file this Joint Petition In Support of Discipline on Consent under Pennsylvania Rule of Disciplinary Enforcement ("Pa.R.D.E.") 215(d), and respectfully represent:

1. Petitioner, whose principal office is situated at Pennsylvania Judicial Center, 601 Commonwealth Ave., Suite 2700, P.O. Box 62485, Harrisburg, PA 17106 is invested, pursuant to Pa.R.D.E. 207, with the power and duty to investigate all matters involving alleged misconduct of an attorney admitted to practice law in the Commonwealth of Pennsylvania and to

FILED

APR 05 2010

Office of the Secretary
The Disciplinary Board of the
Supreme Court of Pennsylvania

prosecute all disciplinary proceedings brought in accordance with the various provisions of the aforesaid Enforcement Rules.

2. Respondent, Michael S. Klein, was born on January 19, 1971, and was admitted to practice law in the Commonwealth on November 28, 1994. His Attorney Registration No. is 73289.

3. Respondent voluntarily assumed inactive status on July 1, 2008, and his last registered office address was P.O. Box 775 Warrington, PA 18976.

4. On July 2, 2009, Petitioner and Respondent filed with the Supreme Court of Pennsylvania a Joint Petition to Temporarily Suspend an Attorney.

5. By Order dated August 27, 2009, the Court granted the Joint Petition; placed Respondent on temporary suspension; and referred the matter to the Disciplinary Board Pursuant to Rule 214(f)(1), Pa.R.D.E.

6. Respondent is subject to the disciplinary jurisdiction of the Disciplinary Board of the Supreme Court.

SPECIFIC FACTUAL ALLEGATIONS ADMITTED

7. On November 28, 2007, a federal grand jury for the Eastern District of Pennsylvania returned an indictment charging Attorney Bernard J. Bagdis, Respondent, and nine other defendants, with a total of 74 counts of criminal tax offenses, alleging that they had concealed income totaling more than \$23

million for which \$4.6 million was owed to the IRS. A superseding indictment was returned on June 17, 2008. That indictment charged Bagdis and eleven other defendants, including Respondent, with a total of 96 counts of criminal tax offenses. Respondent was named in, and charged with, two of these 96 counts (Counts 40 and 41).

8. The indictment alleged that:

- a) Bagdis recruited as clients and employees various individuals, including physicians, lawyers and self-employed small business owners, to join his tax obstruction and tax evasion schemes;
- b) The goal of Bagdis's schemes was to conceal from the IRS personal and corporate income for the purpose of evading both the assessment and the payment of income taxes through the filing of false returns, and by failing to file tax returns;
- c) Bagdis assisted his clients and employees in creating nominee entities for the purpose of concealing large portions of their income from the IRS. Money was funneled through bank accounts of those nominee entities and bills were paid out of the nominee entities' bank accounts and the bank accounts of other corporations which Bagdis controlled. Bagdis engaged in these transactions so that the sources and uses of funds were not directly traceable back to the individual clients or their social security numbers; and
- d) In the course of his dealings with undercover agents, Bagdis described himself as an active member of the "anti-tax underground" and claimed that he was "working on [his] new book ... called Federal Tax Fraud, the User's Guide."

9. The charges against Respondent arose from his employment with Bagdis, and his participation in a conspiracy with Bagdis, to conceal Respondent's income from the IRS.

10. Respondent graduated from Villanova University School of Law in 1994 at the age of 23 and immediately upon graduation, was employed by Bagdis as an associate at an annual salary of \$25,000.00.

11. Respondent filed a 1994 tax return and paid his taxes at the conclusion of his first year working for Bagdis.

12. At or about the first quarter of 1996, Bagdis suggested, and Respondent agreed, that Bagdis would discontinue withholding taxes from Respondent's paychecks and cease paying employment taxes on Respondent's wages.

13. Thereafter, Respondent used a dormant corporation that he previously formed for an unrelated business purpose in an effort to shield a portion of his income from Bagdis from the IRS.

14. From 1995 through 2003, Bagdis paid Respondent a total of over \$363,000.00 and Respondent received additional income from his individual practice. Despite knowing he was required to do so, Respondent did not file any federal tax returns during those years and paid no federal taxes, resulting in an approximate federal income due and owing of \$74,446.00.

15. Following Bagdis's instructions, Respondent corresponded with the IRS and prepared tax returns for Bagdis's clients who were attempting to hide income from the IRS.

16. On December 13, 2007, Respondent entered a guilty plea in the United States District Court for the Eastern District of Pennsylvania before the Honorable J. Curtis Joyner to one count of income tax evasion in violation of 18 U.S.C. §7201 and one count of conspiracy to defraud the United States in violation of 18 U.S.C. §371.

17. In April 2009, Respondent testified over two days against the three defendants who did not plead guilty.

18. On April 27, 2009, at the conclusion of a four-week jury trial, defendants Bagdis, Russell and Frase were found guilty of all counts against them.

19. The guideline sentencing range for Respondent's offenses was 12 to 18 months incarceration.

20. On May 21, 2009, the Government filed a Motion for Downward Departure, stating the following:

Defendant Klein was one of the first of Mr. Bagdis's co-defendants to cooperate in the investigation, coming forward shortly after the IRS executed a search warrant in 2004. He has taken full responsibility for his conduct from the beginning and has been fully forthcoming with investigators. He has paid the principal on his back taxes and is current in his filings with the IRS. His cooperation was instrumental in building a case against Mr. Bagdis, who orchestrated a

multi-million dollar, multi-year tax fraud. Because he was the key insider cooperating with the government, his cooperation also led to the guilty plea of a number of Bagdis's clients. Defendant's testimony at trial was one of the most important parts of the government's case against the three defendants who did not plead guilty. Thus, in light of the seriousness of defendant's offense, his acceptance of responsibility, and his substantial and timely cooperation, the government recommends that the court depart significantly downward from the sentencing guideline range of 12 to 18 months imprisonment

21. By letter dated May 26, 2009, Respondent's attorney, Michael Hayes, wrote to notify Petitioner of Respondent's impending conviction, to express his intent to enter into a voluntary temporary suspension, and to open dialogue concerning the possibility of Discipline on Consent.

22. On May 28, 2009, Respondent was sentenced by Judge Joyner on each count to probation for a term of five years, counts to run concurrently.

23. Respondent has paid the principal of his \$74,443.00 stipulated tax loss in full, and has provided to the IRS all of the required tax forms, and reviewed them in person with a revenue officer. He has contacted the IRS to establish a payment plan and is waiting on the agency's final determination.

24. The crime of income tax evasion is a felony and is punishable by imprisonment for a maximum of five years.

25. Income tax evasion is a "serious crime" as defined by Rule 214(i), Pa.R.D.E.

26. Respondent's conviction for income tax evasion constitutes an independent basis for discipline, pursuant to Rule 203 (b) (1), Pa.R.D.E.

**SPECIFIC RULES OF PROFESSIONAL CONDUCT AND
RULES OF DISCIPLINARY ENFORCEMENT VIOLATED**

Respondent violated the following Rule of Disciplinary Enforcement and Rule of Professional Conduct:

- A. Former Pa.R.D.E. 203(b)(1), which provides that conviction of a crime, which under Enforcement Rule 214 (relating to attorneys convicted of crimes) may result in suspension, shall be grounds for discipline; and
- B. RPC 8.4(b), which states that it is professional misconduct for a lawyer to commit a criminal act that reflects adversely on the lawyer's honesty, trustworthiness or fitness as a lawyer in other respects.

SPECIFIC RECOMMENDATION FOR DISCIPLINE

27. Petitioner and Respondent jointly recommend that the appropriate discipline for Respondent's admitted misconduct is an eighteen month suspension.

28. Respondent hereby consents to that discipline being imposed upon him by the Supreme Court of Pennsylvania. Attached to this Petition is Respondent's executed Affidavit required by Rule Pa.R.D.E. 215(d), stating that he consents to the recommended discipline and including the mandatory

acknowledgements contained in Rule 215(d)(1) through (4)
Pa.R.D.E.

29. In support of Petitioner and Respondent's joint recommendation, it is respectfully submitted that the following mitigating circumstances are present:

- a) When the government's investigation came to light in 2004, Respondent took immediate steps to attempt to mitigate his crime and promptly offered the government his full, complete and truthful cooperation;
- b) Soon after the execution of the search warrant in October 2004, Respondent (in consultation with the government so as not to impede its investigation in any way) contacted certain of his and Bagdis's clients to suggest (at Respondent's legal peril) that those clients seek a second opinion on their tax returns from another professional in order to minimize the potential damage for those clients. Two of those clients ultimately sued Respondent for malpractice;
- c) From the outset of the investigation, Respondent provided the Government with a complete and accurate accounting of his own misconduct, as well as valuable information about every other defendant in the case;
- d) In nearly a dozen meetings, totaling over 45 hours, the government never questioned the veracity of the information provided by Respondent;
- e) Respondent's cooperation was instrumental in building a case against Mr. Bagdis, who orchestrated a multi-million dollar, multi-year tax fraud. Because he was the key insider cooperating with the government, Respondent's cooperation also led to the guilty plea of a number of Bagdis's clients;

- f) Respondent testified over two days against the three defendants who did not plead guilty. His testimony was instrumental in securing convictions against these individuals;
- g) Respondent has paid the principal of his \$74,443 stipulated tax loss in full, and has provided to the IRS all of the required tax forms, and reviewed them in person with a revenue officer. He has contacted the IRS to establish a payment plan and is waiting on the agency's final determination;
- h) Respondent showed remorse by pleading guilty to his crimes;
- i) Respondent has admitted engaging in misconduct and violating the charged Rule of Professional Conduct and Rule of Disciplinary Enforcement;
- j) Respondent requested that he assume voluntary inactive status in Pennsylvania and has not practiced law in any jurisdiction since June 30, 2008. Respondent also agreed to be placed on temporary suspension as evidenced by his participation in the filing of a Joint Petition to Suspend;
- k) Respondent is remorseful for his misconduct and understands he should be disciplined, as is evidenced by his cooperation with Petitioner and his consent to receiving an eighteen month suspension;
- l) Respondent has no record of discipline; and
- m) Respondent is deeply involved in community work and helped his mother develop community programs to raise funds for research against multiple myeloma, a deadly cancer which his aunt has been fighting for some time. Respondent has expended many hours working with the Philadelphia Multiple Myeloma Networking Group (PMMNG). Respondent has helped raise funds for Lupus research and has launched AMREAL, a not-for-profit organization

that connects real estate professionals to donate time, services, products and money to assist American military personnel in connection with the sale and purchase of their homes.

30. A suspension of eighteen months is within the range of discipline imposed for similar cases involving a criminal conviction for income tax evasion in violation of 18 U.S.C. §7201. Discipline imposed for tax evasion convictions ranges from a public censure to a three year suspension. See, e.g., *In re Anonymous No. 86 DB 93* (Patrick C. Campbell), 28 Pa. D. & C. 4th 390(1995) (attorney received public censure in connection with his plea of guilty to tax evasion of \$6,000.00-\$7,000.00 arising from his filing of a false and fraudulent tax return for tax year 1985); *In re Anonymous No. 87 DB 93* (Thomas L. McGill, Jr.) (1995) (attorney received public censure in connection with his conviction of two counts of failure to pay \$30,906.93 in violation of 26 U.S.C. §7203 and one count of tax evasion of \$1,593.00 in violation of 26 U.S.C. §7201); *In re Anonymous No 18 DB 1994* ((Yaier Yona Lehrer), (attorney suspended for two years in connection with his plea of guilty to tax evasion of \$15,515.00 over a two year period) *In re Anonymous No. 99 DB 92* (Nino Tinari), 24 Pa.D.&C.4th 279 (1994) (attorney suspended for 30 months in connection with his plea of guilty to tax evasion of \$475,000.00 arising from his intentional failure over a five

year period to report as income cash fees from clients of his law practice in the amount of over a million dollars); *Office of Disciplinary Counsel v. Mark Anthony DeSimone*, No. 11 DB 2002 (2004) (attorney suspended for two years and eight months in connection with his plea of guilty to tax evasion of \$85,000.00 arising from his "sophisticated concealment" of income); *Office of Disciplinary Counsel v. Dean Ian Weitzman*, No. 24 DB 2000 (2002) (attorney suspended for three years in connection with his plea of guilty to tax evasion of \$197,828 arising from his failure over a three period to report legal fee income of \$575,569); *Office of Disciplinary Counsel v. John A. Havey*, No. 42 DB 2006 (S. Ct. Order 5/19/08) (attorney suspended on consent for three years in connection with his conviction of income tax evasion of \$205,532.00).

31. Petitioner and Respondent submit that an eighteen month suspension is a fair and appropriate resolution based upon the specific facts of this case and analysis of prior cases. The parties agree that Respondent's willful failure to file tax returns and conspiracy to evade his tax responsibility for over nine years distinguish his case from the two reported cases in which the attorney received a public censure. Respondent acknowledges that the seriousness of his misconduct merits a suspension that would require him to petition for reinstatement.

However, the parties believe that Respondent's particular case has substantial mitigating factors and circumstances and distinguish it from the above cited cases where the attorney received a greater sanction.

32. Although the federal criminal sentencing guidelines called for a prison sentence of twelve to eighteen months, Respondent's extraordinary cooperation in a major tax fraud conspiracy investigation resulted in the Judge following the Government's Motion for Downward Departure and placing Respondent on probation. Thus Respondent's case is distinguishable from **Havey** (21 months incarceration); **DeSimone** (12 month one day incarceration) and **Tinari** (12 month incarceration). Respondent's case is also distinguishable from previously cited cases in that the amount of income he failed to report and the ultimate tax evaded was considerably less. **Havey's** crime resulted in a \$205,532 tax loss. **Weitzman** failed to report \$575,000.00 over a three year period for a tax loss of \$197,828 and **Tinari** failed to report more than a million dollars of income over a five year period resulting in an underpayment of tax of \$475,000.00.

33. Respondent's sincere remorse for his crime was demonstrated by his early and complete cooperation with the government, his plea of guilty and acknowledgement that his

misconduct warrants severe discipline. Therefore, his case is distinguishable from **DeSimone**, where, in recommending a two year and eight month suspension, the Board specifically noted "the absence of any substantial mitigating factors." **DeSimone's** expressions of remorse were found by the Hearing Committee to be "less than sincere" and he changed his plea to guilty only after the U.S. Attorney suggested that the government might proceed with an indictment against his wife. Respondent's case is also distinguishable from **Havey**, who did not plead guilty and was found guilty by a jury.

34. In sum, the jointly proposed discipline of an eighteen month suspension is appropriate when considering the specific facts of Respondent's misconduct. Public Censure is not justified because of the severity and duration of Respondent's crime, which clearly merits a suspension requiring a petition for reinstatement. However, there are sufficient mitigating factors, as previously discussed that warrant a less severe sanction than a three year suspension.


WHEREFORE, Petitioner and Respondent respectfully request that, pursuant to Pennsylvania Rules of Disciplinary Enforcement 215(e) and 215(g), a three member panel of the Disciplinary Board review and approve the Joint Petition in Support of Discipline on Consent and file a recommendation with the Supreme

Court of Pennsylvania that Respondent receive an eighteen month suspension, retroactive to August 27, 2009, and that Respondent be ordered to pay all necessary expenses incurred in the investigation and prosecution of this matter as a condition to the grant of the Petition.


Respectfully submitted,

OFFICE OF DISCIPLINARY COUNSEL
PAUL J. KILLION
Attorney Reg. No. 20955
Chief Disciplinary Counsel


Date: 3/2/10


HAROLD E. CIAMPOLI, JR.
Disciplinary Counsel
Attorney Reg. No. 51159
820 Adams Avenue, Ste 170
Trooper, PA 19403
(610) 650-8210

Date: 3/15/10


MICHAEL S. KLEIN
Respondent

Date: 3/15/10


MICHAEL Hayes, Esquire
Attorney for Respondent

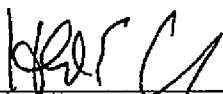
FILED
MARCH 15 2010
JUDICIAL CENTER
PHILADELPHIA, PA

VERIFICATION

The statements contained in the foregoing *Joint Petition In Support of Discipline on Consent Discipline* are true and correct to the best of my knowledge or information and belief and are made subject to the penalties of 18 Pa.C.S.A. §4904, relating to unsworn falsification to authorities.

3/2/10

Date



HAROLD E. CIAMPOLI, JR.
Disciplinary Counsel

3/15/10

Date



MICHAEL S. KLEIN
Respondent

3/19/10

Date



MICHAEL Hayes, Esquire
Attorney for Respondent

BEFORE THE DISCIPLINARY BOARD OF THE
SUPREME COURT OF PENNSYLVANIA

OFFICE OF DISCIPLINARY COUNSEL, : No. 105 DB 2009
Petitioner :
:
:
MICHAEL S. KLEIN, : Attorney Reg. No. 73289
Respondent : (Bucks County)

CERTIFICATE OF SERVICE


I hereby certify that I am this day serving the foregoing document upon all parties of record in this proceeding in accordance with the requirements of 204 Pa. Code §89.22 (relating to service by a participant).

First Class and Overnight Mail, as follows:

Michael Hayes, Esquire
Montgomery, McCracken, Walker & Rhoads, LLP
123 South Broad Street
Philadelphia, PA 19109

Dated: _____

4/11/10



HAROLD E. CIAMPOLI, JR.
Disciplinary Counsel
Office of Disciplinary Counsel
Suite 170
820 Adams Avenue
Trooper, PA 19403
(610) 650-8210
Attorney Reg. No. 51159

BEFORE THE DISCIPLINARY BOARD OF THE
SUPREME COURT OF PENNSYLVANIA

OFFICE OF DISCIPLINARY COUNSEL, : No. 105 DB 2009
Petitioner :
 :
v. :
 : Attorney Reg. No. 73289
MICHAEL S. KLEIN :
Respondent : (Bucks County)

AFFIDAVIT
UNDER RULE 215 (d) Pa.R.D.E.

COMMONWEALTH OF PENNSYLVANIA
COUNTY OF BUCKS

MICHAEL S. KLEIN, being duly sworn according to law, deposes and hereby submits this affidavit consenting to the recommendation of a eighteen months suspension from the practice of law in the Commonwealth of Pennsylvania in conformity with Pa.R.D.E. 215(d) and further states as follows:

1. He is an attorney admitted in the Commonwealth of Pennsylvania, having been admitted to the bar on or about November 28, 1994.
2. He desires to submit a Joint Petition in Support of Discipline on Consent pursuant to Pa.R.D.E. 215(d).
3. His consent is freely and voluntarily rendered; he is not being subjected to coercion or duress, and he is fully aware of the implications of submitting this affidavit.
4. He is aware that there are presently pending investigations into allegations

that he has been guilty of misconduct as set forth in the Joint Petition in Support of Discipline on Consent of which this affidavit is attached hereto.

5. He acknowledges that the material facts set forth in the Joint Petition are true.

6. He submits the within affidavit because he knows that if charges predicated upon the matter under investigation were filed, or continued to be prosecuted in the pending proceeding, he could not successfully defend against them.

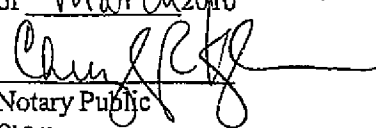
7. He acknowledges that he is fully aware of his right to consult and employ counsel to represent him in the instant proceeding. He has retained, consulted and acted upon the advice of counsel, Michael Hayes, Esquire in connection with his decision to execute the within Joint Petition.

It is understood that the statements made herein are subject to the penalties of 18 Pa.C.S.A. §4904 (relating to unsworn falsification to authorities).

Signed this 22 day of March, 2010


MICHAEL S. KLEIN

Sworn to and subscribed
before me this 22 day
of March 2010


Notary Public

COMMONWEALTH OF PENNSYLVANIA
NOTARIAL SEAL
Cheryl R. Klein, Notary Public
Trediffryn Township, Chester County
My commission expires March 25, 2012