

IN THE SUPREME COURT OF PENNSYLVANIA

OFFICE OF DISCIPLINARY COUNSEL,	:	No. 1186 Disciplinary Docket No. 3
Petitioner	:	
	:	
	:	No. 117 DB 2006
v.	:	
	:	Attorney Registration No. 80582
DANIEL L. McCAUGHAN,	:	
Respondent	:	(Chester County)

ORDER

PER CURIAM:

AND NOW, this 13<sup>th</sup> day of October, 2006, upon consideration of the Recommendation of the Three-Member Panel of the Disciplinary Board dated July 18, 2006, the Petition in Support of Discipline on Consent is hereby granted, pursuant to Rule 215(g), Pa.R.D.E., and it is

ORDERED that Daniel L. McCaughan is suspended on consent from the Bar of this Commonwealth for a period of one year, and he shall comply with all the provisions of Rule 217, Pa.R.D.E.

A True Copy Patricia Nicola

As of: October 13, 2006

Attest:

Chief Clerk

Supreme Court of Pennsylvania

BEFORE THE DISCIPLINARY BOARD OF THE  
SUPREME COURT OF PENNSYLVANIA

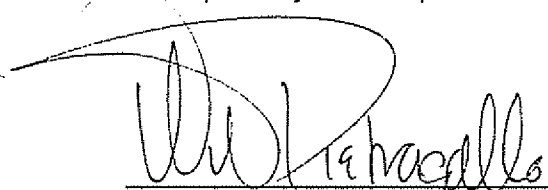
OFFICE OF DISCIPLINARY COUNSEL	:	No. 117 DB 2006
Petitioner	:	
	:	
v.	:	Attorney Registration No. 80582
	:	
DANIEL L. McCAUGHAN	:	
Respondent	:	(Chester County)

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 William A. Pietragallo, Donald E. Wright, Jr., and Sal Cognetti, Jr., has reviewed the Joint Petition in Support of Discipline on Consent filed in the above-captioned matter on June 29, 2006.

The Panel approves the Joint Petition consenting to a One Year Suspension and recommends to the Supreme Court of Pennsylvania that the attached 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.

  
William A. Pietragallo, Panel Chair  
The Disciplinary Board of the  
Supreme Court of Pennsylvania

Date: July 18, 2006

**BEFORE THE DISCIPLINARY BOARD OF THE  
SUPREME COURT OF PENNSYLVANIA**

OFFICE OF DISCIPLINARY COUNSEL,	:	No. <u>117</u> DB 2006
Petitioner	:	
	:	ODC File No. C2-05-565
v.	:	
	:	Attorney Reg. No. 80582
DANIEL L. MCCAUGHAN,	:	
Respondent	:	(Chester County)

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

Petitioner, the Office of Disciplinary Counsel (hereinafter, "ODC") by Paul J. Killion, Chief Disciplinary Counsel, and Harold E. Ciampoli, Jr., Disciplinary Counsel and Respondent, Daniel L. McCaughan (hereinafter, "Respondent"), respectfully petition the Disciplinary Board in support of discipline on consent, pursuant to Pennsylvania Rule of Disciplinary Enforcement ("Pa.R.D.E.") 215(d), and in support thereof state:

1. ODC, whose principal office is situated at Suite 1400, 200 North Third Street, Harrisburg, Pennsylvania, 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 prosecute all disciplinary proceedings brought in accordance with the various provisions of the aforesaid Enforcement Rules.

**FILED**

JUN 29 2006

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

2. Respondent was admitted to practice law in the Commonwealth on December 2, 1997. Respondent is on active status and his last registered address is 64 E. Uwchlan Avenue, Exton, PA 19341. Respondent is subject to the disciplinary jurisdiction of the Disciplinary Board of the Supreme Court.

**SPECIFIC FACTUAL ALLEGATIONS ADMITTED**

3. Respondent's executed affidavit stating, *inter alia*, his consent to the recommended discipline is attached hereto as Exhibit A.

4. In April 2004, Istvan Merchenthaler, Jr., ("Istvan") was arrested in San Paolo, Brazil on charges of drug trafficking 20 kg. of cocaine.

5. In May 2004, Respondent met with the family of Istvan at Respondent's West Chester law office in connection with Istvan's arrest.

6. At the meetings Respondent made the following representations to the Merchenthalers:

- a) Respondent could be of assistance in obtaining Istvan's return;
- b) Istvan was facing a possible prison term of 20 years;
- c) Respondent had been of assistance to clients in South America in the past;
- d) Respondent had extensive business and other dealings in South America;
- e) Respondent had dealings with an influential Columbian law firm specializing in international drug trafficking cases;
- f) The Columbian law firm had a member named Juromo;
- g) Juromo was the trade name for attorney Julian Rodriguez Moreno;

- h) The Colombian law firm would work behind the scenes in investigative and security matters in connection with Istvan's criminal charges;
- i) The fee to represent Istvan was connected to the amount and weight of the alleged drugs he was charged with distributing and would be \$150,000.00;
- j) Respondent would ensure that the funds were delivered to the Colombian law firm; and
- k) It was necessary that they provide Respondent with cash.

7. Respondent suggested that Istvan's sister, ("Foghi") and Respondent's associate, Mr. Schuldo, travel to Brazil to find out more about Istvan's case.

8. On May 13, 2004, Respondent signed a *Contract for Legal Services* for Istvan's retention of legal services from the Law Offices of Daniel McCaughan in connection with allegations of Istvan's criminal drug charges originating in San Paulo, Brazil.

9. Respondent provided the signed Contract to Foghi and instructed her to transmit it to Istvan.

10. Foghi and Mr. Schuldo traveled to Brazil from May 13, 2004 to May 16, 2004 and met with Istvan.

11. Between May 16, 2004 and May 20, 2004, Respondent met with the Merchantalers at which time Respondent :

- a) Was apprised of the details of Foghi's trip;
- b) Advised that he would commence contact with the Colombian firm about Istvan's situation; and
- c) Advised that the deadline to provide him with the \$150,000.00 cash was June 5, 2004.

12. On the following dates Respondent received the following sums of cash from the Merchenthalsers:

- a) May 11, 2004 - \$4,500.00;
- b) May 26, 2004 - \$28,500.00;
- c) June 4, 2004 - \$45,800.00; and
- d) June 9, 2004 - \$64,200.00.

13. Respondent's position is that the \$4,500.00 received on May 11, 2004 was for expenses and fees in connection with his associate's trip to Brazil.

14. On each occasion that Respondent received cash from the Merchenthalsers, Respondent provided the Merchenthalsers with a receipt in the form of a notation on the back of his attorney at law business card.

15. Respondent contends, and ODC cannot clearly and convincingly disprove, that he delivered \$138,500.00 of the Merchenthaler money supplemented with \$11,500.00 of Respondent's money, to Dr. Andre Renard in Toronto Canada.

16. Respondent contends, and ODC cannot clearly and convincingly disprove, that although he had never met or spoken with Juromo, Respondent had discussed the Merchenthaler situation with Edgar Larrea, a well-known Spanish translator in Chester County Court. Larrea related that one of Larrea's contacts, Dr. Luis Cueva, had worked with Juromo. Larrea arranged for Respondent to deliver the Merchenthalsers' money to Dr. Andre Renard, whom Respondent had known from Respondent's service in the Air Force.

17. Respondent contends and ODC cannot clearly and convincingly disprove, that Renard explained to him that Renard would deliver the funds to Dr. Cueva, who would ultimately deliver the money to Juromo in Columbia.

18. Respondent did not obtain a receipt from Renard for the money.

19. Respondent contends and ODC cannot clearly and convincingly disprove, that subsequent to delivering the money to Renard, Respondent was advised by Larrea that Renard had delivered the money to Dr. Cueva, who then delivered it to Juromo.

20. Respondent contends, and ODC cannot clearly and convincingly disprove, that after receiving complaints from Dr. Merchenthaler that he had no documentation to verify that Juromo had received his money, Respondent flew to Ecuador in September 2004 and met with Dr. Cueva at which time Dr. Cueva provided Respondent with a letter, in Spanish, purportedly from Juromo and purportedly acknowledging receipt of the \$150,000.00 and representing that Juromo was working on Istvan's case.

21. Sometime in early September 2004, Respondent met with Foghi and Istvan's wife at his West Chester office and provided them with a letter and business card he represented was a receipt he had received from Julian Rodriguez Moreno aka Juromo.

22. On February 23, 2005, the criminal charges against Istvan were dismissed and he was released from Brazilian custody the following day.

23. The Brazilian law firm of Toron, Torihara, E Szafir, Advogados (hereinafter, "Toron law firm") represented and defended Istvan in connection with the criminal allegations against him.

24. At no time did Respondent, or anyone on Respondent's behalf, have any connection, association or communication with the Toron law firm.

25. At no time did Respondent, or anyone on Respondent's behalf, ever attend any legal conference, proceeding, hearing or trial in connection with Istvan's criminal case.

26. At no time did Respondent, or anyone on Respondent's behalf, ever enter Respondent's appearance or file any legal papers with the Brazilian authorities in connection with Istvan's criminal case.

#### **SPECIFIC RULES OF PROFESSIONAL CONDUCT VIOLATED**

27. Respondent violated the following RPCs (as in effect in 2004):
- a. RPC 1.8(e), which provides that a lawyer shall not provide financial assistance to a client in connection with pending or contemplated litigation.
  - b. RPC 1.15(a), which provides that a lawyer shall hold property of clients or third persons that is in a lawyer's possession in connection with a representation separate from the lawyer's own property. Funds shall be kept in a separate account maintained in the state where the lawyer's office is situated, or elsewhere with the consent of the client or third person. Other property shall be identified as such and appropriately safeguarded. Complete records of such account funds and other property shall be preserved for a period of five years after termination of the representation.

#### **SPECIFIC RECOMMENDATION FOR DISCIPLINE** **ONE YEAR SUSPENSION**

28. Petitioner and Respondent jointly recommend that the appropriate discipline for Respondent's admitted misconduct is a suspension from the practice of law for a period of one year.

29. Respondent hereby consents to that discipline being imposed upon him by the Supreme Court of Pennsylvania.



30. The comment to RPC 1.15 clearly states that “[a] lawyer should hold property of others with the care required of a professional fiduciary.”

31. Respondent unequivocally acknowledges that his handling of the Merchenthaler money fell far short of the care required of a professional fiduciary and that he did not obtain the proper records, receipts and documentation to adequately safeguard the Merchenthaler property. Though Respondent contends that the exigencies of the situation confronting Istvan and the Merchenthaler family did not allow him to obtain such records, he nonetheless recognizes that his handling of client property in this regard was seriously deficient.

32. In support of Petitioner and Respondent’s joint recommendation, thusly it is respectfully submitted that the following factors constitute mitigating circumstances:

- a) Respondent has admitted engaging in misconduct and violating the charged Rules of Professional Conduct;
- b) Respondent has cooperated with Petitioner by voluntarily submitting to questioning by Petitioner’s counsel and investigator, and producing his records, and by his consent to receive a suspension of one year;
- c) Respondent’s agreement to forego a disciplinary hearing and accept the suspension of one year will avoid the expenditure of a large amount of limited investigative resources and expenses including but not limited to procuring and presenting the testimony of witnesses from South America; and
- d) Respondent has no record of discipline.

33. Public discipline has been administered in other jurisdictions for an attorney’s failure to safe keep client property. *See, e.g., Florida Bar v. Grosso*, 760 So. 2d 940 (Fla. 2000) (lawyer failed to safeguard and promptly return client’s firearms warranting a 90 day suspension followed by a one year probation); *Idaho State Bar v.*

*Frazier*, 28 P. 3d 363 (Idaho 2001) (lawyer, inter alia, violated RPC 1.15(a) by keeping estate jewelry in a briefcase underneath desk in office for over a year and by leaving pieces of jewelry taken to jeweler for appraisal at the jeweler for over a year thus warranting a one year suspension).

WHEREFORE, Joint Petitioners respectfully pray that your Honorable Board:


- a. Approve this Petition; and
- b. File a recommendation for a one year suspension and this Petition with the Supreme Court of Pennsylvania.

Respectfully submitted,

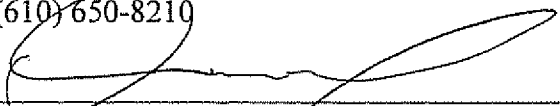
OFFICE OF DISCIPLINARY COUNSEL  
PAUL J. KILLION,  
Attorney Reg. No. 20955,  
Chief Disciplinary Counsel

Date: 6/26/06


By:

  
HAROLD E. CIAMPOLI, JR.,  
Disciplinary Counsel  
Attorney Registration Number 51159  
Suite 170, 820 Adams Avenue  
Trooper, PA 19403  
(610) 650-8210

Date: 6.23.06

  
DANIEL L. MCCAUGHAN  
Respondent

Date: 6/23/06

  
MICHAEL O'HAYER  
Attorney for Respondent  
Attorney Registration Number 49774  
22 N. Walnut Street  
West Chester, PA 19380  
(610) 738-1230

BEFORE THE DISCIPLINARY BOARD OF THE  
SUPREME COURT OF PENNSYLVANIA

OFFICE OF DISCIPLINARY COUNSEL,	:	No.	DB 2006
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	:	ODC File No.	C2-05-565
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	:	Attorney Reg. No.	80582
DANIEL L. MCCAUGHAN	:		
Respondent	:	(Chester County)	

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

COMMONWEALTH OF PENNSYLVANIA  
COUNTY OF CHESTER

DANIEL L. MCCAUGHAN, being duly sworn according to law, deposes and hereby submits this affidavit consenting to the recommendation of a one year 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 December 2, 1997.
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.

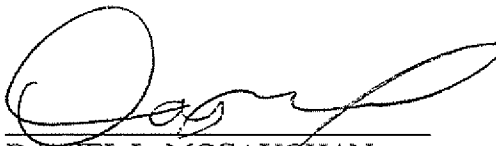
5. He acknowledges that the material facts set forth in the Joint Petition are true.

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.

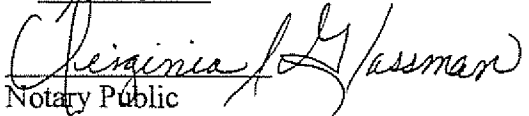
7. He acknowledges that he is fully aware of his right to consult and employ counsel to represent him in the instant proceeding. He has retained, consulted and acted upon the advice of counsel, Michael O'Hayer in connection with his decision to execute the within Joint Petition.

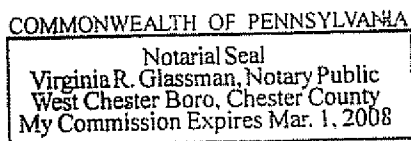
It is understood that the statements made herein are subject to the penalties of 18 Pa.C.S.A. §4904 (relating to unsworn falsification to authorities).

Signed this 23<sup>RD</sup> day of JUNE, 2006

  
DANIEL L. MCCAUGHAN

Sworn to and subscribed  
before me this 23 day  
of June 2006

  
Notary Public



**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.

6/26/06

Date

6.23.06

Date

Harold E. Ciampoli, Jr.

HAROLD E. CIAMPOLI, JR.,  
Disciplinary Counsel

Daniel L. McCaughan

DANIEL L. MCCAUGHAN  
Respondent

**BEFORE THE DISCIPLINARY BOARD OF THE  
SUPREME COURT OF PENNSYLVANIA**

OFFICE OF DISCIPLINARY COUNSEL,	:	No.	DB 2006
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	:	Board File No.	C2-05-565
	:		
	:	Attorney Reg. No.	80582
DANIEL L. MCCAUGHAN,	:		
Respondent	:	(Chester 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:

Daniel L. McCaughan, Esquire      (610) 701-0800  
c/o Michael O'Hayer, Esquire  
22 N. Walnut St., Suite 300  
West Chester, PA 19380

Dated: 6/27/06

  
\_\_\_\_\_  
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