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## STATEMENT OF FACTS

Respondent supplements Informant's Statement of Facts with significant facts relevant to the appeal.

Mark Belz was admitted to practice law in Iowa (1970), Missouri (1976), and Illinois (1999). (A. 23, TR. 77). His Iowa license status is inactive. His practice is in Missouri and Illinois. (A. 5, TR. 8; A. 113). For the past thirty years, Mr. Belz has practiced civil litigation from his office in St. Louis, Missouri, in the areas of personal injury, probate, and trust administration. (A. 5, TR. 8; A. 23-24, TR. 79-80, 82).

From 1999 through 2003, Mr. Belz was the sole shareholder in the law firm, Belz & Jones, P.C. (A. 9, TR. 23). Terry Jones, Harris Maynard, F. Craig King, and Robert Ritter have also been members of Belz & Jones, P.C. (A. 8, TR. 20). Mr. Belz managed the day-to-day activities of the firm (A. 14, TR. 43), but all attorneys at the firm had access to the firm's client trust account at Cass Bank. (A. 9, TR. 23-24; A. 10, TR. 26-27; A. 14, TR. 43; A. 36, TR. 130-33). Mr. Belz now practices solely with Matthew H. Hearne, who first joined Belz & Jones, P.C. as an associate in 1999. (A. 27, TR. 95-96; A. 84, TR. 78-79).

Mr. Belz's otherwise solid mental health has been interrupted by two relatively short manic episodes secondary to his bipolar disorder. (A. 12, TR. 35; A. 46, TR. 169-70; A. 47, TR. 173-76; A. 54, TR. 203). The first, in 1975, caused indiscretions in his personal life and caused him to seek treatment with Dr. Eugene Holemon, a board-certified psychiatrist and then-Chief of Psychiatry at Missouri Baptist Hospital. (A. 43, TR. 159; A. 46, TR. 169-70). Dr. Holemon diagnosed Mr. Belz with bipolar disorder

based on Mr. Belz's behavior and family history. (**A. 46, TR. 169**). Bipolar disorder is a mood disorder that causes radical emotional changes and mood swings, from manic highs to depressive lows. (*Gale Encyclopedia of Medicine* (2d ed. 2007)(electronically referenced, GALE-MED 3451600242). It is a genetic, biological disorder that is treated medically along with treatment for the psychological factors and secondary emotional and personal problems. (**A. 44, TR. 161-62**). Dr. Holemon successfully treated Mr. Belz with lithium, a powerful mood stabilizer. (**A. 45-46, TR. 166-72**). Dr. Holemon decided to stop administering lithium to Mr. Belz in 1981. (**A. 12, TR. 34-36; A. 46, TR. 172; A. 55, TR. 208**).

During the eighteen-year period from 1981 through 1998, Mr. Belz was symptom-free, and he amassed an impressive record as an honest and competent attorney. (**A. 12, TR. 36**). Martindale-Hubbell has rated him AV – the highest possible rating. (**A. 24, TR. 81**). He is the attorney of record in approximately 35 reported opinions from the appellate courts in Missouri, Iowa, and the United States Court of Appeals for the Eighth Circuit. (**A. 24-25, TR. 80-81; A. 120**). He has tried approximately 50 jury trials and 75 bench trials. (**A. 120**). Attorneys Robert Wulff, Robert Hickel, Robert Nienhuis, and Terry Jones, as well as Judges Bernhardt Drumm and James Hartenbach, have characterized Mr. Belz as an outstanding and honest attorney. (**A. 35-36, TR. 128-29; A. 43, TR. 157; A. 58-59, TR. 219-21; A. 60, TR. 225-26, 228; A. 82, TR. 70-71; A. 90, TR. 102-104; A. 153-169**).

During that same eighteen-year period, Mr. Belz brought respect to lawyers and the legal community through his behavior, civic activism, and deeply rooted religious

conviction. Having a Masters of Divinity degree from Covenant Theological Seminary, he engaged in numerous activities in the Presbyterian Church of America. He served as an elder, and was elected to the church's highest national office in 1991. (A. 24, TR. 82). In addition, Mr. Belz helped to found one of this region's premier parochial educational institutions, Westminster Christian Academy, as well as New City Fellowship, a Presbyterian congregation dedicated to improving race relations. He also served on the Board of Trustees of Covenant College. (A. 67, TR. 11-12; A. 84, TR. 78; A. 153-69). Chairman-Emeritus of A.G. Edwards Benjamin Edwards, Vice-Chairman of A.G. Edwards Robert Avis and Presbyterian ministers George Robertson and W. Wilson Benton, Jr. have written or testified to Mr. Belz's core morality. (A. 61-63, TR. 232-39; A. 153-69).

Mr. Belz's second bipolar episode began in 1998 after returning from a trip to Europe during which time he began to drink alcohol. (A. 13-14, TR. 40-41; A. 56, TR. 211-12). As a result of his bipolar disorder, Mr. Belz suffered grandiose feelings causing him to spend excessively at Belz & Jones, P.C. (A. 13, TR. 40; A. 23, TR. 78; A. 47, TR. 173-76; A. 48, TR. 179; A. 84-85, TR. 80-81; A. 87, TR. 91; A. 88, TR. 95-96). Mr. Hearne, an attorney working directly with Mr. Belz at the time, observed mood swings, general malaise, and odd spending. (A. 85-86, TR. 80-81; A. 87, TR. 89-92). As a consequence of the bipolar episode (A. 32, TR. 114; A. 47, TR. 173-76; A. 53, TR. 200; A. 95, TR. 121-22), between December 1998 and December 2002, Mr. Belz made admittedly unauthorized withdrawals from the Belz & Jones, P.C. client trust

account to cover his home mortgage and Belz & Jones, P.C. operating expenses. (**A. 6, TR. 12; A. 14-15, TR. 44-46; A. 17, TR. 54-55; A. 18, TR. 57**).

Consistent with his character, and inconsistent with most, if not all, client trust fund violations committed by other lawyers, Mr. Belz kept careful records of the withdrawals and did not attempt to hide his conduct. (**A. 9, TR. 23-24; A. 10, TR. 26-27; A. 17-18, TR. 56-57; A. 19, TR. 63; A. 36, TR. 130-31**). In mid-January of 2003, Mr. Belz reported his conduct. Mr. Belz's detailed report is the sole source of the allegations in the Chief Disciplinary Counsel's Information. (**A. 5-6, TR. 7, 9; A. 6, TR. 11-12**). Mr. Belz reported his conduct in detail to the other officers of Belz & Jones, P.C. He also reported his conduct to each of the affected clients and to affected trust beneficiaries. He met with the officers of his Presbyterian church to report his conduct, and he appeared before his congregation to admit wrongdoing and ask for forgiveness. (**A. 7, TR. 15; A. 9, TR. 21-22; A. 20, TR. 68; A. 24-25, TR. 83-85; A. 27, TR. 94-95; A. 37, TR. 134; A. 38, TR. 137; A. 125-53**).

Well before filing his self-report with the OCDC, Mr. Belz repaid all withdrawals, in full and with nine percent interest. (**A. 25, TR. 85-87**). The affected clients and trust beneficiaries have not filed complaints and, tellingly, have chosen to maintain Mr. Belz as their attorney and trustee. (**A. 111-246**). Judge James Hartenbach, a former Region X investigative committee member, believes Mr. Belz is a candidate for probation. (**A. 60-61, TR. 228-31**).

Also prior to filing the self-report, Mr. Belz voluntarily re-entered treatment for his bipolar disorder with Dr. Holemon. (**A. 14, TR. 42; A. 47, TR. 173-74**). Mr. Belz

takes prescription medications and sees a clinical psychotherapist in Dr. Holemon's practice group, Mr. Darwin White, for talk therapy. (**A. 31, TR. 109-110; A. 47, TR. 174-75; A. 66-67, TR. 7-10**). In addition, both Dr. Holemon and Mr. White actively involve Mr. Belz's family in his treatment to insure continued progress. (**A. 31, TR. 110-11; A. 45-56, TR. 168-69; A. 48, TR. 179; A. 54, TR. 201-02; A. 57, TR. 214-15**). This treatment is effective, and has proven effective for the past five years. (**A. 47-48, TR. 176-80; A. 57, TR. 215; A. 85-86, TR. 83-85**). Dr. Holemon testified that, based upon his medical expertise, Mr. Belz has been symptom-free since 2003 and can practice law at his pre-episode level of competency. (**A. 54, TR. 202-03; A. 57, TR. 215**). Both Dr. Holemon and Mr. White will continue Mr. Belz's treatment in this model and believe treatment will be effective. (**A. 47-48, TR. 176-80; A. 54, TR. 202-032; A. 67, TR. 9-10; A. 80, TR. 62-63; A. 168-69**).

Mr. Belz's treatment allows him to competently practice law. To ensure against any further problems, there have been and remain safeguards in place at his office. Mr. Hearne, Mr. Belz's sole partner since 2003, can monitor Mr. Belz's behavior in the professional sphere. (**A. 85-86, TR. 83-85; A. 87, TR. 90**). Mr. Belz's daughter worked at the firm, and managed the firm's trust account for a period of time. (**A. 86, TR. 85**). Since the hearing in 2006, Mr. Hearne and certain clerical staff have taken over the management of the client trust account. To further insure adequate supervision, Mr. Belz has given consent for both Dr. Holemon and Mr. White to cooperate with the Disciplinary Commission in monitoring Mr. Belz's treatment and compliance, should this Court place Mr. Belz on probation. (**A. 31, TR. 110-11; A. 69, TR. 18**).

Although Mr. Belz reported his conduct in January of 2003, the disciplinary hearing in this matter was not held until May 25, 2006 (Day One), and June 6, 2006 (Day Two). (A. 3-64, A. 65-96). The Disciplinary Hearing Panel did not issue its recommendation until October 11, 2007, sixteen months later. (A. 320-29). Mr. Belz meanwhile has continued his treatment regimen with Dr. Holemon and Mr. White. (A. 393). As a result, Mr. Belz has also continued to improve in managing his condition. He is more introspective and conscious of his condition, and knows what is going on within himself. (A. 386, 389, Holemon Dep., pp. 32-33). Mr. Belz is responding well to the medication, and recently handled a very stressful home situation. (A. 380, Holemon Dep., pp. 40-41). Dr. Holemon testified that, in his expert opinion, Mr. Belz will continue to be compliant with his treatment program. (A. 390, Holemon Dep., pp. 47-49). Dr. Holemon also testified that, based upon a reasonable degree of medical certainty, it is very unlikely that Mr. Belz would ever again misappropriate client funds. (A. 390, Holemon Dep., pp. 47-49).

**POINT RELIED ON**

- I. THE COURT SHOULD NOT DISBAR RESPONDENT BUT SHOULD INSTEAD SUSPEND RESPONDENT’S LICENSE, BECAUSE STAYING SUSPENSION IN CONJUNCTION WITH PROBATION IS APPROPRIATE IN THAT MANY MITIGATING FACTORS MUST BE TAKEN INTO ACCOUNT AND SUFFICIENT SAFEGUARDS ARE IN PLACE TO MONITOR RESPONDENT’S ILLNESS TO ASSURE THAT HE DOES NOT ENGAGE IN CONDUCT OR BEHAVIOR THAT RENDERS HIM UNFIT.**

*In re Miller*, 568 S.W.2d 246 (Mo.banc 1978)

*In re Lang*, 641 S.W.2d 77 (Mo.banc 1982)

*In re Kopf*, 767 S.W.2d 20 (Mo.banc 1989)

*In re Tessler*, 783 S.W.2d 906 (Mo.banc 1990)

*ABA Standards for Imposing Lawyer Sanctions* (1991 & Supp. 1992)

## ARGUMENT

**I. THE COURT SHOULD NOT DISBAR RESPONDENT BUT SHOULD INSTEAD SUSPEND RESPONDENT’S LICENSE, BECAUSE STAYING SUSPENSION IN CONJUNCTION WITH PROBATION IS APPROPRIATE IN THAT MANY MITIGATING FACTORS MUST BE TAKEN INTO ACCOUNT AND SUFFICIENT SAFEGUARDS ARE IN PLACE TO MONITOR RESPONDENT’S ILLNESS TO ASSURE THAT HE DOES NOT ENGAGE IN CONDUCT OR BEHAVIOR THAT RENDERS HIM UNFIT.**

The fundamental purpose of an attorney disciplinary proceeding is to “protect the public and maintain the integrity of the legal profession.” *In re Crews*, 159 S.W.3d 355, 360 (Mo.banc 2005)(quoting *In re Waldron*, 790 S.W.2d 456, 457 (Mo.banc 1990)). It is proper to consider mitigating factors when determining the appropriate discipline. *Id.* This Court reviews the evidence in a disciplinary matter de novo. *In re Crews*, 159 S.W.3d at 358.

This case is about a lawyer with thirty years’ service to our profession and to his community. The lawyer suffers from bipolar disorder, which has twice manifested itself in manic/depressive symptoms. During the second event, the lawyer misappropriated client trust funds. The lawyer, however, also simultaneously and openly kept records of the transfer of funds. The lawyer reported his misconduct. He made right his clients; who, even after his disclosure, remained his clients. He sought treatment and is rehabilitated. He continues treatment and ever will, as he fully comprehends the nature

of his illness. The question before this Court, then, is what discipline should be imposed upon the lawyer, Mark Belz, under these circumstances.

There are many mitigating factors for the Court to consider in determining the appropriate discipline in this case. Most prominent: Respondent Mark Belz (Mr. Belz) reported the misconduct himself, and the misconduct was the result of Mr. Belz's mental disability. The Court should consider these two significant mitigating factors, along with the additional mitigating circumstances discussed herein, and determine that the appropriate discipline is suspension in conjunction with probation. Such a determination is supported by the evidence, and is consistent with the Court's standards.

**A. The Court should consider the mitigating factors to determine that the appropriate discipline is suspension with probation.**

After misconduct has been established, mitigating circumstances may be considered in deciding what sanction to impose. *ABA Standards for Imposing Lawyer Sanctions*, § 9.1. Mitigating factors in this case include: (a) absence of a prior disciplinary record; (d) timely good faith effort to make restitution or to rectify consequences of misconduct; (e) full and free disclosure to disciplinary board or cooperative attitude toward proceedings; (g) character or reputation; (i) mental disability or chemical dependency; (l) remorse. *ABA Standards*, § 9.32.

While mitigating facts do not constitute a defense, the Court may consider them in determining what action should be taken under the circumstances. *In re Miller*, 568 S.W.2d 246, 253 (Mo.banc 1978). This Court must take into account mitigating factors

such as the absence of any prior disciplinary action and the presence of emotional problems. *In re Harris*, 890 S.W.2d 299, 302 (Mo.banc 1994).

**1. Full and free disclosure to disciplinary board**

In correspondence to the Region X Disciplinary Committee dated June 10, 2003, Mr. Belz submitted a thirteen-page report along with supporting exhibits which outlined the conduct at issue herein. (A. 111-246). Although Informant claims before this Court a lack of candor on the part of Mr. Belz, that claim is entirely without basis. In his self-report, Mr. Belz provided detailed information regarding the transfer of funds. (A. 115-17). The Office of Chief Disciplinary Counsel (OCDC) was not required to investigate the matter nor assemble evidence against Mr. Belz. Instead, the OCDC relied exclusively on Mr. Belz's self-report to prepare the Information in this matter. Informant's only witness at the disciplinary hearing was Mr. Belz. (A. 114). But for the self-report, Mr. Belz is likely not before the Court today.

Mr. Belz testified as to the details of the transfers from the trust account, and admitted the misconduct:

A. It was misconduct.

Q. Okay.

A. And I am—I have never from the time I was in the hospital backed away from that, nor do I want to today.

Q. All right.

A. ... But my belief is what I did was misconduct.

(A. 10, TR. 27-28).

This evidence is undisputed. But Informant attempts to negate the very real fact that its case against Mr. Belz was provided by Mr. Belz himself. First, Informant selectively cites Mr. Belz's pleadings to suggest that Mr. Belz thought his misconduct was "minor." Informant also argues that by asserting affirmative defenses Mr. Belz was somehow attempting to deny his conduct.

Informant's argument is without merit. Mr. Belz fully and freely disclosed his conduct to the OCDC, well aware of the possible consequences. Mr. Belz was candid with the Missouri Bar in 1976 when he disclosed his mental disability on his application for a license. (**A. 23, TR. 77**). And, Mr. Belz was equally candid when he self-reported his conduct in 2003.

## **2. Mental disability**

Mental disability is a mitigating factor when: (1) there is medical evidence that the respondent is affected by a mental disability; (2) the mental disability caused the conduct; (3) the respondent's recovery from the mental disability is demonstrated by a meaningful and sustained period of successful rehabilitation; and, (4) the recovery arrested the misconduct and recurrence of that misconduct is unlikely. *ABA Standards*, § 9.32(i) (1)-(4).

The sole medical evidence is that Mr. Belz is affected by a mental disability. Dr. Eugene Holemon, a board-certified psychiatrist, testified that he first diagnosed and started treating Mr. Belz for bipolar disorder in 1975. (**A. 46, TR. 169**). Dr. Holemon released Mr. Belz from treatment in the early 1980s, but Mr. Belz suffered a recurrence of the manic state from 1998 into 2002. (**A. 13, TR. 39-40**).

Informant failed to produce expert witness testimony or any other evidence to refute Dr. Holemon's diagnosis and testimony. Instead, Informant now contends that certain testimony at the disciplinary hearing proves that Mr. Belz does not have bipolar disorder. The Disciplinary Hearing Panel (DHP) heard all the testimony, including that referenced by Informant, and believed Dr. Holemon. The DHP found that Mr. Belz was diagnosed and treated for bipolar disorder. (A. 325).

The mental disability caused the misconduct. Dr. Holemon testified that the misconduct at issue was caused by the bipolar disorder: "The acts are a product of his illness." (A. 47, TR. 173-76, 200). The DHP found Dr. Holemon credible, and determined that Mr. Belz's bipolar disorder was a significant factor in the misconduct. (A. 328).

Mr. Belz's recovery from the mental disability is demonstrated by a meaningful and sustained period of successful rehabilitation. In March 2003, prior to his self-report, Mr. Belz voluntarily re-entered treatment with Dr. Holemon for his bipolar disorder. (A. 14, TR. 42; A. 47, TR. 173-74). Dr. Holemon monitors his condition and his prescription medications. (A. 47, TR. 173-75). In conjunction with Dr. Holemon's treatment, Mr. Belz sees a clinical psychotherapist, Darwin White, for talk therapy. (A. 31, TR. 109-10; A. 47, TR. 174-75; A. 66-67, TR. 7-10). Mr. Belz's family works with Dr. Holemon and Mr. White in monitoring Mr. Belz's condition. (A. 31, TR. 111).

This treatment was effective for the three years preceding the disciplinary hearing in 2006, and continues to be so. On the first day of the hearing, May 25, 2006, Dr. Holemon testified that Mr. Belz had been symptom-free since 2003, and could

practice law at his pre-episode level of competency. (A. 47-48, 54, 57, TR. 176-80, 202-03, 215; A. 85-86, TR. 83-85). The DHP found that Mr. Belz had recovered from the manic state he suffered, and his recovery has been demonstrated by a meaningful and sustained period of successful rehabilitation and treatment. (A. 325).

Since May 2006, Mr. Belz has continued his treatment regimen with Dr. Holemon and Mr. White. He has also continued to practice law without incident. As Dr. Holemon recently testified at his January 14, 2008 deposition, Mr. Belz has also continued to improve in managing his condition. He is more introspective and conscious of his condition, and knows what is going on within himself. (A. 386, 389, Holemon Dep., pp. 32-33, 43). Mr. Belz is responding well to the medication, and has handled a very stressful home situation. (A. 380, Holemon Dep., pp. 40-41). Dr. Holemon testified that, in his expert opinion, Mr. Belz will continue to be compliant with his treatment program. (A. 390, Holemon Dep., pp. 47-49).

Mr. Belz's recovery arrested the misconduct, and recurrence of the misconduct is unlikely. In 2006, Dr. Holemon testified that Mr. Belz would have a sustained recovery, and that he is capable of practicing law. (A. 54, TR. 202-03; A. 57, TR. 214-15).

Dr. Holemon's 2006 prognosis has been borne out by Mr. Belz's continued improvement. In January of this year, Dr. Holemon testified that, based upon a reasonable degree of medical certainty, Mr. Belz's illness is under control, not just lying dormant, and that it is very unlikely that Mr. Belz would ever again misappropriate client funds. (A. 390, Holemon Dep., pp. 47-49).

The evidence supports a finding that Mr. Belz's mental disability, bipolar disorder, is a mitigating factor. Mental illness can and should be considered as a mitigating factor in determining what discipline to impose. *In re Lang*, 641 S.W.2d 77,79 (Mo.banc 1982) (holding that suspension, not disbarment, was appropriate when considering all the circumstances, including the showing of mental illness). And this Court has consistently treated mental disability as a significant mitigating factor. In *In re Kopf*, 767 S.W.2d 20 (Mo.banc 1989), the respondent testified that he was experiencing anxiety and depression and had difficulty concentrating and remembering things. *Id.* at 22. The respondent obtained psychiatric help and began a treatment program that included medication and counseling. The respondent also produced a letter from his psychiatrist which corroborated his description of his condition and treatment and indicated that the respondent had continued to improve. *Id.* This Court held that while respondent's personal difficulties did not justify his conduct, his mental state was properly considered a mitigating factor. *Id.* at 23.

Likewise, in *In re Tessler*, 783 S.W.2d 906 (Mo.banc 1990), this Court noted that its holding was based in part on its consideration of the respondent's emotional and mental state as mitigating factors. *Id.* at 910; *see also In re Harris*, 890 S.W.2d 299 (Mo.banc 1994) (holding Court must take into account the mitigating factor of emotional problems).

Mr. Belz meets the requirements for his mental disability to be considered a mitigating factor. But Informant argues that Mr. Belz's mental disability should not be

considered to preclude disbarment. The cases on which Informant relies, however, are factually distinct, and therefore fail to support Informant's claim.

For example, in *In re Adams*, 737 S.W.2d 714 (Mo.banc 1987), this Court held that respondent's cocaine abuse, not a mental disability, was not a mitigating factor. In *Adams*, unlike in this case, the respondent did not make restitution until after suit was filed, and lied both to the disciplinary committee and to his client. *Id.* at 715. This Court found that the respondent's conduct was sufficiently grievous to warrant disbarment, and that his battle "to defeat the scourge of cocaine" might be an issue for consideration should he apply for readmission. *Id.* at 717.

Similarly, in *In re Mentrup*, 665 S.W.2d 324 (Mo.banc 1984), the respondent suggested that his "structural brain defect" mitigated his conduct and justified a lesser sanction than disbarment. *Id.* at 325. Unlike in this case, there was no evidence that the respondent had been diagnosed and treated for a mental disability. This Court held that mental illness can and should be considered a mitigating factor in determining the extent of discipline, and that in some instances psychological disorders that affect an attorney's ability to practice law responsibly may properly suggest leniency. *Id.* But this Court found that Mentrup was incapable of competent performance as an attorney. *Id.*

This case is entirely different from *Adams* and *Mentrup*. Mr. Belz has been diagnosed with bipolar disorder, and continues to improve under a treatment regimen. He has met his illness head on. (**A. 46, TR. 169; A. 393**). According to Dr. Holemon, a board-certified psychiatrist, Mr. Belz is competent to practice law. (**A. 54, TR. 202-03; A. 57, TR. 215**). That testimony is undisputed.

The facts of this case are also distinct from those of *In re Staab*, 785 S.W.2d 551 (Mo.banc 1990) (holding that respondent's neglect of clients' interests of sufficient caliber to warrant disbarment). In *Staab*, the respondent testified that he suffered severe panic attacks whenever he received mail from the Bar Committee and the Court. *Id.* at 554. For this reason, he did not open the mail, and was therefore not aware of the Bar Committee's requests. *Id.* The respondent claimed this was evidence that his failure to comply with the Bar Committee's requests was not intentional. *Id.* at 555. Unlike in this case, there was no diagnosis of or treatment for a mental disability. In addition, the respondent had other violations pending, and did not make restitution until after a lawsuit had been filed. *Id.* at 554.

Likewise in *In re Lechner*, 715 S.W.2d 257 (Mo.banc 1986), the respondent claimed his actions were the result of stress caused by the break-up of his marriage and other health problems. *Id.* at 258. Again, there was no diagnosis or treatment for a mental disability. In addition, the Court found unconvincing the respondent's argument that marital problems and emotional stress caused him to take money that did not belong to him. *Id.* at 259.

Informant also relies on *In re Griffey*, 873 S.W.2d 600 (Mo.banc 1994), and *In re Williams*, 711 S.W.2d 518 (Mo.banc 1986), for the proposition that even unintentional misappropriation of funds should result in disbarment. In *Williams*, the respondent offered ignorance, not a mental disability, as a mitigating factor. *Id.* at 521. The Court found that the respondent knowingly and intentionally ignored trust account problems, and demonstrated a disregard for the protection of those funds. *Id.* at 522. In *Griffey*, the

respondent forged his client's signatures, and attempted to cover up his misconduct. *Id.* at 603. He argued that the reason for his mistakes was that his office was in disarray because of his lack of organization. *Id.* Informant's reliance on these cases is misplaced because mental illness as a mitigating factor was not at issue in either action.

Informant argues that Mr. Belz should not receive a lesser sanction because he was taking money to "nail down his retirement." Informant relies on Dr. Holemon's notes. In his January 2008 deposition, Dr. Holemon was asked to read his notes from a 2003 entry. Dr. Holemon read the following:

A. Money went into the general fund, expenses and salaries, under pressure from bills always. I don't know. Three years ago patient, Terry were full partners. Changed and dividing fees. The first time separated fees. Patient's productivity was higher than his partner. The taxes, the best year, most. Thought I could make more money to nail down retirement. Felt I was paying too much of the overhead. Increased pressure to perform for myself. Didn't think of consequences.

(A. 382, **Holemon Dep., p. 14**). Informant expects the Court to infer that Mr. Belz transferred funds from the trust account in order to establish a retirement fund for himself.

There is *no* testimony or other evidence to support this far-fetched extrapolation. Mr. Belz admits that he wrongly transferred funds from the client trust account. He did *not* do so in order to create a retirement fund for himself. These are doctor's notes. When reading the entire record, it is evident that Informant's parsing of Dr. Holemon's

notes, exclusively to focus on one phrase, is overreaching. Mr. Belz interprets that note, in fact, to be part of the explanation for his changing relationship with his partner three years before. This Court, of course, may draw its own inferences. Mr. Belz submits, however, that his is correct in light of the entire record.

Returning to the importance of a mental disability as a mitigating factor, Mr. Belz directs the Court to the Model Rule on Conditional Admission to Practice Law, adopted by the ABA in February of this year. The Model Rule would permit recent law school graduates to be admitted to practice on a conditional basis even though they experienced chemical dependency or a mental health illness if they are deemed otherwise eligible to practice and have gone through rehabilitation. (ABA MODEL RULE ON CONDITN'L ADMISSION 1 (Adopted February 2008). (**Resp. A. 12-23**). Applicants may be required to adhere to monitoring and to conditions for continuing treatment. *Id.* The import of the conditional rule, it would seem, is to reflect the ABA's interest in prompting lawyers-to-be to seek and continue help for mental health issues without fear that medical treatment would prevent admission to the Bar, so long as they are otherwise competent.

In the Model Rule, the ABA has reaffirmed its standards and, even, this Court's precedents. A mental health condition does not per se render a person unfit/incompetent to practice law. Furthermore, the Model Rule reflects important policy considerations. As a matter of policy, disclosure of a condition and the treatment that follows are preferable to non-disclosure and avoidance of treatment. Also as a matter of policy, a probationary period, properly monitored, is preferable to exclusion from practice when a lawyer is otherwise eligible to practice and has gone through rehabilitation.

For all of the foregoing reasons, Mr. Belz's mental disability is a mitigating factor. The law and the facts support this Court's giving great weight to this factor because, among other reasons, Mr. Belz has demonstrated that he is successfully dealing with his illness and will continue to do so.

**3. Absence of a prior disciplinary record**

Mr. Belz has no disciplinary record. He is 64 years old. He was first admitted to practice law in Iowa in 1970. (A. 23, TR. 77). He was licensed in Missouri in 1976 and in Illinois in 1999. (Id.) For the past thirty years, Mr. Belz has practiced civil litigation in St. Louis, Missouri, in the areas of personal injury and probate and trust administration. (A. 5, 23-24, TR. 8, 79-80, 82).

In thirty years of practice in Missouri, there have been only three minor complaints made against Mr. Belz, two were with regard to his withdrawal from a case, and the other was made by opposing counsel. (A. 24, TR. 81-82). All three complaints were dismissed. Mr. Belz has never been disciplined in either Missouri, Illinois, or Iowa. (A. 24, TR. 81-82). When considering the appropriate discipline for an attorney, this Court will consider the attorney's previous record. *In re Weier*, 994 S.W.2d 554, 558 (Mo.banc 1999). Mr. Belz's record of no discipline is a mitigating factor.

**4. Timely good faith effort to make restitution**

Mr. Belz did not attempt to hide his conduct, but rather kept precise records documenting withdrawals from the accounts at issue. (A. 9-10, 17-18, 19, 36, TR. 23-24, 26-27, 56-57, 63, 130-31). Mr. Belz's detailed self-report is the sole source of the allegations set forth in the Information. (A. 6, TR. 11-12; A. 111-246).

Well before the disciplinary hearing, Mr. Belz repaid all withdrawals in full, with nine percent interest. (A. 25, TR. 85-87). The affected clients and trust beneficiaries did not have to file suit, nor did they file complaints with the OCDC. (A. 111-246). They have instead chosen to maintain Mr. Belz as their attorney and trustee. (Id.) As in *Kopf*, Mr. Belz's breach of duty is not trivialized here, but it is equally apparent from the record here that harm to the clients was minimal. *In re Kopf*, 76 S.W.2d at 23.

This Court has previously refused to order disbarment under facts similar to those herein. In *In re Miller*, 568 S.W.2d 246 (Mo.banc 1978), the respondent was 70 years old, had an excellent professional reputation among his colleagues, both lawyers and judges, for honesty, integrity, good character, and professional competence. *Id.* at 253. This Court noted that it has uniformly held that misconduct of attorneys in appropriating to their own use funds entrusted to their care justifies disbarment. *Id.* at 254. This Court refused to order disbarment in *Miller*, however, because it found respondent's conduct was not contumacious. *Id.* With one minor exception, the respondent had freely and willingly cooperated in the accounting and restoration of all sums due the estate, even to the point of agreeing to pay compound interest. *Id.* This Court further noted that the respondent's accounting and payments were not made under threat of prosecution, litigation, or complaint to the Bar's advisory committee. *Id.* This Court held that the respondent was not guilty of conduct involving moral turpitude or conscious wrongdoing, and for those reasons permanent disbarment was not justified to obtain the objectives of Rule 4 of the Rules of Professional Conduct. *Id.*

The *Miller* case should govern this Court's decision here. Mr. Belz has practiced law in Missouri for thirty years. He is well respected among his colleagues, and has a reputation for being an honest and competent attorney. The undisputed evidence demonstrates that Mr. Belz's misconduct was the result of his bipolar disorder. On his own initiative, he reported the misconduct, and immediately took steps to make restitution with interest to his clients.

While Informant correctly argues that restitution is not a *defense* to misconduct, he does not address this Court's consistent history, based on the *ABA Standards*, of considering restitution as a mitigating factor in determining the appropriate discipline. Informant relies instead on cases that are significantly distinct, and therefore inapposite. In several of those cases, the respondent made restitution only after suit had been filed or disciplinary proceedings instituted. *In re Staab*, 785 S.W.2d at 552; *In re Adams*, 737 S.W.2d at 715. Also, unlike in this case, the respondents had other violations. *In re Staab*, 785 S.W.2d at 551; *In re Schaeffer*, 824 S.W.2d 1, 2 (Mo.banc 1992). Finally, and most importantly, in many of the cases cited by Informant, the respondent lied to the Bar Committee and/or his clients, or refused to cooperate with the Bar Committee, and made deliberate efforts to conceal or deceive the clients or the Bar Committee. *In re Adams*, 737 S.W.2d at 715-16; *In re Staab*, 785 S.W.2d at 551, 554; *In re Schaeffer*, 824 S.W.2d at 5; and *In re Fenlon*, 775 S.W.2d 134, 136-38, 142 (Mo.banc 1989).

As in *Miller*, Mr. Belz's conduct was not contumacious. He is not guilty of conduct involving moral turpitude or conscious wrongdoing. For these reasons, disbarment is not justified. *In re Miller*, 568 S.W.2d at 254.

## **5. Character or reputation**

As discussed above, Mr. Belz has practiced in Missouri for thirty years with no previous discipline. The minor complaints lodged against him were dismissed. He has an AV rating with Martindale-Hubbell. (**A. 24, TR. 81**). He is the attorney of record in approximately thirty-five reported opinions from the appellate courts in Missouri, Iowa, and the United States Court of Appeals for the Eighth Circuit. (**A. 23-24, TR. 80-81; A. 111-246, p. 9**). Mr. Belz has tried approximately fifty jury trials and seventy-five bench trials. (**A. 111-246, p. 9**). Attorneys Terry Jones, Robert Hickel, Robert A. Wulff, Matt Hearne, and Robert Nienhuis, along with Judges Bernhardt Drumm and James Hartenbach, provided letters to the OCDC and/or appeared at the disciplinary hearing to testify to their knowledge of Mr. Belz as an outstanding and honest attorney. (**A. 35-36, TR. 128-29; A. 58-59, TR. 219-21; A. 60, TR. 225-28; A. 82, TR. 70-71; A. 90, TR. 102-04; A. 154-65**).

In addition to his law practice, Mr. Belz was an elder in the Presbyterian Church of America, and was elected to the Presbyterian Church's highest national office in 1991. (**A. 24, TR. 82**). Mr. Belz has a Masters of Divinity degree from Covenant Theological Seminary. (**A. 6, TR. 10**). He helped to found one of the region's premier parochial educational institutions, Westminster Christian Academy, as well as New City Fellowship, a Presbyterian congregation dedicated to improving race relations. (**A. 67, TR. 11-12**). He also served on the Board of Trustees of Covenant College. (**A. 84, TR. 78; A. 162, 164**). Leaders in the business and religious committee joined with lawyers and judges in testifying to Mr. Belz's excellent character and reputation,

including Benjamin Edwards, Chairman-Emeritus of A.G. Edwards; Robert Avis, Vice-Chairman of A.G. Edwards; and Presbyterian ministers George Robertson and W. Wilson Benton, Jr. Prior to retiring from A.G. Edwards in 2001, Robert Avis was the Vice Chairman and the Chairman and CEO of A.G. Edwards trust and capital management units. (A. 61, TR. 232). Mr. Avis has known Mr. Belz socially and through their involvement in various organizations of the Presbyterian Church for more than thirty years. (A. 159). Mr. Avis testified that he is aware of Mr. Belz's conduct, but does not believe he is a risk to repeat his misconduct because his basic character is one of honesty and integrity. (A. 62-63, TR. 233-39).

Informant does not dispute that Mr. Belz's character and reputation are mitigating factors.

## **6. Remorse**

Mr. Belz reported and detailed his conduct in a self-report to the OCDC in June 2003. He never attempted to cover up his conduct or deceive his clients. As documented above, Mr. Belz admitted the misconduct and took responsibility for his actions. Despite the clear evidence to this effect, Informant wields Mr. Belz's pleadings against him in an attempt to portray Mr. Belz as denying or minimizing the seriousness of his conduct. This argument is not supported by the evidence and is without merit because it is wrong.

Mr. Belz first disclosed his conduct to his son, Aaron, and to his long-time partner, Terry Jones. Both testified that Mr. Belz was remorseful. (A. 33, TR. 118-19; A. 37, TR. 134-35). Mr. Belz's current partner, Matt Hearne, likewise testified that Mr. Belz showed remorse when he disclosed his conduct. (A. 85, TR. 82-83).

But Mr. Belz's expression of remorse was not limited to the legal community. Mr. Belz also disclosed his conduct to the Elders of the Presbyterian Church, and resigned his position with the church. (**A. 24, TR. 83-85**). Finally, Mr. Belz appeared before his congregation, admitted his misdeeds, and asked their forgiveness. (*Id.*)

Informant failed to dispute the evidence of Mr. Belz's remorse. And Informant admits that the DHP found Mr. Belz to be remorseful. In response to the undisputed evidence, however, Informant argues that this mitigating factor should be ignored or at least minimized based solely on the pleadings filed on Mr. Belz's behalf by his counsel. By Informant's logic, an attorney must accept that if he rightfully asserts a defense to a disciplinary action against him, he does so at his own peril.

The undisputed evidence demonstrates that Mr. Belz was remorseful, and that remorse must therefore be considered a mitigating factor.

**B. Mr. Belz is eligible for probation pursuant to Rule 5.225 of the Missouri Rules of Professional Conduct.**

Rule 5.225 of the Missouri Rules of Professional Conduct provides that an attorney is eligible for probation if he or she:

- (1) Is unlikely to harm the public during the period of probation and can be adequately supervised;
- (2) Is able to perform legal services and is able to practice law without causing the courts or profession to fall into disrepute; and
- (3) Has not committed acts warranting disbarment.

(Rules of Prof. Conduct, Rule 5.225).

As outlined below, Mr. Belz meets all the eligibility requirements for probation.

1. **Mr. Belz is unlikely to harm the public, and can be adequately supervised.**

The evidence demonstrates that Mr. Belz is unlikely to harm the public, and can be adequately supervised. In March 2003, prior to his self-report, Mr. Belz voluntarily re-entered treatment with Dr. Holemon for his bipolar disorder. Dr. Holemon monitors his condition and his prescription medications. In conjunction with Dr. Holemon's treatment, Mr. Belz sees a clinical psychotherapist, Darwin White, for talk therapy. Mr. Belz's family works with Dr. Holemon and Mr. White in monitoring Mr. Belz's condition. (A. 31, TR. 111). This treatment has proven effective for the past five years. Dr. Holemon testified that Mr. Belz has been symptom-free since 2003, and can practice law at his pre-episode level of competency. (A. 47-48, TR. 176-80; A. 54, TR. 202-03; A. 57, TR. 214-15). As discussed above, Mr. Belz has continued to improve, and Dr. Holemon testified, based upon a reasonable degree of medical certainty, that it is very unlikely that Mr. Belz would ever again misappropriate client funds. (A. 390, Holemon Dep., pp. 48-49).

Mr. Belz voluntarily sought treatment. He has complied consistently and successfully with a treatment program since March 2003, and his condition has continued to improve. For these reasons, Mr. Belz is unlikely to harm the public.

In addition, Mr. Belz can be adequately supervised. Mr. Belz has agreed to allow Dr. Holemon and Mr. White to cooperate with the Disciplinary Commission in monitoring his treatment and compliance during the probation period. (A. 31, TR. 110-

**11; A. 69, TR. 18).** Mr. Belz's partner, Mark Hearne, testified that he would be willing to take over the trust account. (**A. 86, TR. 85**). Since the hearing in 2006, Mr. Hearne and certain clerical staff have taken over the management of the client trust account.

A schedule for supervision by the OCDC is consistent with this Court's standard of discipline. *See, e.g., In re: Morganstern*, No. SC85306 (Mo.banc 2003), and *In re: Bante*, No. SC85782 (Mo.banc 2004) (**Resp. A. 1-11**). In *Morganstern*, the parties jointly recommended an order staying the suspension of the respondent for three months of probation during which time the respondent was ordered to maintain treatment with a licensed psychiatrist. (**Resp. A. 6-8**). In addition, the respondent was ordered to instruct and insure that his psychiatrist sent quarterly reports about the status of his treatment directly to the Office of the Chief Disciplinary Counsel. (**Resp. A. 7-8**).

Similarly, in *Bante*, this Court ordered Bante's license suspended for six months. (**Resp. A. 10**). This Court stayed the suspension, and placed Bante on probation for one year. (**Resp. A. 10**). The conditions for probation included an order for Bante to choose a mental health professional and follow the recommendations for therapy or treatment. (**Resp. A. 10-11**). Further, this Court ordered Bante to arrange for any treating mental health professional to provide quarterly reports to the Office of Chief Disciplinary Counsel. (**Resp. A. 11**).

2. **Mr. Belz is able to perform legal services and practice law without causing the courts or profession to fall into disrepute.**

As discussed above, Dr. Holemon testified that Mr. Belz is practicing at his pre-episode level of competency. In his recent deposition, Dr. Holemon testified that

Mr. Belz has only continued to improve. (A. 388-91, *Holemon Dep.*, pp. 40-50; A. 393).

Mr. Belz's partner, Mr. Hearne, testified that in the past three years, Mr. Belz's behavior has improved. He has consistent hours, and pays more attention to clients, schedules, discovery deadlines, and fiscal spending. (A. 85, TR. 81-82). The evidence demonstrates that Mr. Belz is currently practicing law in a competent manner, and will be able to continue to do so in the future.

**3. Mr. Belz has not committed acts warranting disbarment.**

Mr. Belz has documented above the numerous mitigating factors that weigh heavily against disbarment. Relying on *In re Mendell*, 693 S.W.2d 76 (Mo. banc 1985), Informant contends, however, that disbarment is the "Missouri standard." Informant's reliance on *Mendell* is misplaced because the cases are factually distinct. In *Mendell*, the respondent offered to make restitution only after he was confronted with "unassailable proof" at the disciplinary hearing. *Id.* at 76. In addition, the respondent actively attempted to cover up the fact that he had withheld his client's money, and offered a variety of explanations which neither the master nor the Court found persuasive. *Id.* at 77. More importantly, in *Mendell*, there was no mitigating mental health factor. The Court found the violation was "willful, deliberate, and inexcusable." *Id.* Finally, *Mendell* was decided in 1985, well before the institution of Rule 5.225.

Informant also argues that this Court should disbar Mr. Belz based on precedent from other states. First, as discussed above, this Court has consistently refused to impose disbarment under the same facts as are present in this case. "This Court has held that disbarment should be reserved for those cases in which it is clear that respondent is one

who should not be at Bar.” *In re Kopf*, 767 S.W.2d at 23 (quoting *In re Littleton*, 719 S.W.2d 772, 777 (Mo.banc 1986)). And disbarment is reserved only for cases of severe misconduct where it is clear the attorney is not fit to continue in the profession. *In re Crews*, 159 S.W.3d at 360.

If this Court chooses to consider the law of other jurisdictions, courts in other states have determined, like Missouri, that a mental disability justifies a lesser penalty. In *Lawyer Disciplinary Board v. Dues*, 624 S.E.2d 125 (W. Va. 2005), the court held that the attorney’s mental disability (depression) deserved the greatest weight as a mitigating factor, and justified a public reprimand with restrictions. *Id.* at 134. In *Dues*, the Lawyer Disciplinary Board recommended an eighteen-month suspension of Dues’ license for thirty-nine violations. Dues argued that his mental disability was a mitigating circumstance warranting a lesser penalty. *Id.* at 132. The West Virginia court noted that it appreciated the gravity of the misconduct, and that under a different set of facts, such misconduct could warrant a sanction greater than that recommended by the Board. *Id.* at 134. But the court held that a lesser penalty was justified because Dues was the tragic victim of a mental disease that the legal community has been slow to recognize. *Id.*

Likewise in *Hawes v. The State Bar of California*, 797 P.2d 1180 (Cal. 1990), the court held that a mental disorder was entitled to mitigating weight. *Id.* at 595-96. In *Hawes*, the petitioner presented evidence that at the time of the misconduct he was abusing alcohol and methamphetamines, and that he had been diagnosed with bipolar affective disorder. *Id.* at 592-93. The court reduced the penalty recommended by the

Review Department of the State Bar Court, holding that the petitioner had demonstrated a meaningful and sustained period of successful rehabilitation. *Id.* at 596.

And in *In the Matter of Disciplinary Proceedings Against McLendon*, 845 P.2d 1006 (Wash. 1993), the Supreme Court of Washington held that a lawyer who showed existence of bipolar disorder and the abatement of symptoms had established mitigating circumstances to warrant a sanction less than disbarment. In *McLendon*, the attorney stipulated to serious ethical violations including the conversion of client funds. *Id.* at 1006. The court noted that such conduct typically mandates disbarment to ensure the protection of the public. *Id.* The court held, however, that an extraordinary circumstance may be present where a lesser sanction is warranted. *Id.*

In *McLendon*, as in this case, the attorney was diagnosed with bipolar disorder. *Id.* at 1007. In its analysis, the court focused on McLendon's bipolar disorder, its effect on his mental state, and on the appropriate sanction. *Id.* at 1010. The court noted that, given the involuntary, biochemical nature of McLendon's illness, there was no time when he chose the path which ultimately led to the misconduct. *Id.* at 1011. As in this case, McLendon had an excellent reputation as a capable lawyer prior to the onset of the disorder. *Id.*

As a result, the *McLendon* court rejected the Disciplinary Board's recommendation of disbarment because it was not persuaded that the purposes of lawyer discipline, to protect the public, deter misconduct, and protect public confidence were served by disbarment. *Id.* at 1012. The court acknowledged that a mental disability should be a significant consideration in determining the appropriate discipline:

We do not believe it offends the dignity of the judiciary or the reputation of the bar for persons who have suffered from a mental illness and been successfully treated to thereafter practice law in this state.

The result we reach today reflects the growing recognition and acceptance of the effects of mental illness in our bar and in our society. “Mental illness is an illness, not a character flaw.”

*Id.* at 1013, quoting St. Peter Hospital, *Stigma Hurts: Shattering Stereotypes about Mental Illness*, 11 *Vital Signs* 7 (No. 3, Summer 1992).

Finally, Informant contends that the Court should follow the recommendation of the DHP to disbar Mr. Belz. As Informant is no doubt aware, however, the findings of fact, conclusions of law, and the recommendations from the DHP are advisory only. *In re Crews*, 159 S.W.3d at 358. This Court reviews the evidence de novo, independently determining issues pertaining to the credibility of witnesses and the weight of the evidence, and draws its own conclusions of law. *Id.*

**C. Proposal for discipline.**

Despite Dr. Holemon’s testimony and their own finding that Mr. Belz had demonstrated a meaningful and sustained period of successful rehabilitation and treatment, the DHP was not convinced Mr. Belz’s recovery had arrested the misconduct. (A. 325, 328). Perhaps this was because Dr. Holemon acknowledged that any person who suffers from bipolar disease could have a recurrence. Mr. Belz submits that, at least in his case, the DHP’s focus on its fear is refutable, not just by the record at the hearing, but, even more significantly, by Dr. Holemon’s testimony in January of this year. First,

contrary to the DHP's conclusion, Mr. Belz's recovery has arrested the misconduct. His condition has continued to improve since the January 2006 hearing date when the DHP last heard evidence of Mr. Belz's condition. In addition, Dr. Holemon's recent testimony contradicts the DHP's finding that recurrence is likely. To the contrary, Dr. Holemon specifically testified that, in his expert opinion, it was very unlikely that Mr. Belz would ever again misappropriate client funds. Mr. Belz has continued the treatment regimen initiated in 2003, and he has been compliant with treatment since that date. Mr. Belz continues to be monitored by medical professionals, his law partner, and his family. **(A. 383-84, TR. 21-23; A. 385-86, TR. 28-33).**

As discussed above, Mr. Belz is eligible for probation pursuant to Rule 5.225. Keeping in mind that the fundamental purpose of an attorney disciplinary proceeding is to "protect the public and maintain the integrity of the legal profession," Mr. Belz proposes the following:

A. This Court orders suspension of Mr. Belz from practice for a period of five (5) years;

B. Pursuant to Rule 5.225, this Court orders a stay of the suspension, and places Mr. Belz on probation for a period of five (5) years. The conditions of probation shall be:

1. Dr. Eugene Holemon and Mr. Darwin White shall report to a board-certified psychiatrist to be named by the OCDC at such intervals as shall be required by the OCDC; and

2. Mr. Belz shall be evaluated by Dr. Holemon no less often than once every three months; and

3. Mr. Belz shall continue treatment with Mr. White, and be seen by Mr. White no less often than once every month; and

4. Any disbursement made by Mr. Belz from any client trust account must first be approved by a third party chosen by the OCDC; and

5. Mr. Belz shall deposit funds and maintain a sufficient balance in an escrow account to pay the fees incurred for any and all third-party reviews or actions set forth herein. The amount to be deposited and/or balance to be maintained in said escrow account shall be determined by the OCDC; and

6. Failure to comply with any of the conditions set forth shall result in revocation of probation and the imposition of a suspension.

These proposed conditions of probation will insure that Mr. Belz will continue to be adequately supervised, thereby guaranteeing the protection of the public and the integrity of the profession.

### **SUMMARY**

There is no question about the respondent's character or legal ability, and, so long as he is seeking professional help for his psychological problems, we should not demand freedom from all symptoms and manifestations. I am not persuaded that the public interest would be served by an interruption of the respondent's practice.

*In re Kopf*, 767 S.W.2d at 23-24 (Blackmar, J. concurring).

This is a case about a 64-year-old gentleman lawyer. He has been practicing law in Missouri, successfully and honorably, for thirty years. He has an outstanding reputation in the legal community, and in the community as a whole. He has been diagnosed and is being treated for bipolar disorder.

Mark Belz has taken the steps necessary to manage his chronic illness. As a result, he has shown significant and continued improvement. As the recent model rule adopted by the ABA demonstrates, the legal community is coming to acknowledge that mental illness, successfully treated, does not render an upstanding individual like Mark Belz unfit to practice law.

The purpose of this disciplinary action is protect the public, not to punish Mark Belz. This Court has repeatedly said so. And that is why this Court considers mitigating factors in determining the appropriate discipline. In this case, there is undisputed evidence of many mitigating factors. Mark Belz has bipolar disorder which caused the misconduct. He fully and freely disclosed his conduct to the OCDC. He expressed remorse at the disciplinary hearing. But more importantly, he expressed remorse to family, friends, and colleagues well before the hearing. He voluntarily made full and timely restitution. As friends, colleagues, and judges testified, Mr. Belz's misconduct was the exception—not the rule—in a long and distinguished career.

### **CONCLUSION**

For the foregoing reasons, this Court should determine that the public interest would not be served by an interruption of Mark Belz's practice. Disbarment should be

reserved “for those cases in which it is clear that respondent is one who should not be at Bar.” *In re Kopf*, 767 S.W.2d at 23. Mark Belz is not that case.

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## CERTIFICATE OF COMPLIANCE

1. This Brief complies with the limitations contained in Rule 84.06(b) because it contains 9,398 words and 911 lines. This word count includes the entire Brief and does not exclude the parts of the Brief subject to exemption under said rules.

2. This Brief has been prepared in a proportionally spaced typeface using Microsoft Word 2003 in 13-point Times New Roman.

3. Pursuant to Rule 84.06(g), a floppy disk containing this Brief is being filed; this disk was scanned for viruses and is virus-free.

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**CERTIFICATE OF SERVICE**

The undersigned certifies that this Brief of the Respondent was sent by United States mail, postage prepaid, this \_\_\_\_\_ day of \_\_\_\_\_, 2008 to the following persons, along with a floppy disk containing the Brief that was scanned for viruses and is virus-free:

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