

**IN THE SUPREME COURT  
STATE OF MISSOURI**

IN RE: )  
 )  
NATHAN JAMES FORCK ) Supreme Court #SC88961  
 )  
Respondent )

---

**RESPONDENT'S BRIEF**

---

**CARSON & COIL, P.C.**  
Lori J. Levine #26172  
Jason H. Ludwig #58945  
515 East High Street  
P.O. Box 28  
Jefferson City, MO 65102  
(573) 636-2177  
(573) 636-7119 (fax)  
[llevine@carsoncoil.com](mailto:llevine@carsoncoil.com)

**ATTORNEYS FOR RESPONDENT.**

**TABLE OF CONTENTS**

TABLE OF CONTENTS ..... 1

TABLE OF AUTHORITIES ..... 2

STATEMENT OF JURISDICTION ..... 3

STATEMENT OF FACTS ..... 4

POINTS RELIED ON ..... 6

    POINT I ..... 6

    POINT II ..... 7

ARGUMENT ..... 8

    POINT I ..... 8

    POINT II ..... 13

CONCLUSION ..... 15

CERTIFICATE OF SERVICE ..... 16

CERTIFICATION RULE 84.06(C) ..... 17

**TABLE OF AUTHORITIES**

**CASES**

*Basler v. Delassus*, 690 S.W.2d 791 (Mo. banc 1985) ..... 12

*Croker v. Consolidated Service Car*, 365 S.W.2d 524 (Mo. 1963) ..... 12

*In the Matter of Cupples*, 952 S.W.2d 226 (Mo. banc 1997) ..... 11

*In re Mills*, 539 S.W.2d 447 (Mo. banc 1976) ..... 11

*State v. Reese*, 457 S.W.2d 713 (Mo. banc 1970) ..... 11

**OTHER AUTHORITY**

ABA Standard 8.2 ..... 13

**STATEMENT OF JURISDICTION**

Respondent adopts Informant's Statement of Jurisdiction.

## STATEMENT OF FACTS

Respondent agrees with and adopts Informant's Statement of Facts but writes additionally to emphasize some aspects of Respondent's personal background as it relates to his use of alcohol and his family.

Respondent acknowledges he has an alcohol problem, and that he is and always will be an alcoholic. As with many alcoholics, the recovery process has come in stages and has had its interruptions. Soon after returning from active duty in Iraq, Respondent resumed his legal education. The students that he began law school with had graduated and the job he was promised had been filled. His use of alcohol increased. **Informant's Appendix pgs. 122-123.** When Respondent received his second DWI, he knew that he had a problem. However, like many alcoholics, after receiving treatment and remaining sober for a period of time, he thought that he could handle drinking socially again. **Informant's Appendix pg. 124.**

Following Respondent's conditional admission to the Bar, his desire to drink again arose and was exacerbated by the stress of beginning his legal career. Following his arrest, and around the time he was facing discipline by this Court, he learned that his significant other, Annie, was pregnant with their first child. These events were very "sobering," both figuratively and literally. Respondent was faced with a serious choice – continue drinking alcohol and lose his family and the career he had been working towards, or stop drinking and become the lawyer and father he wanted to be. The choice was a serious one, but the answer

was clear. He has not had a solitary drink since. He has had three children after making this decision and, despite the challenges presented by his daughter's spina bifida, his family is flourishing. **Informant's Appendix pgs. 124-125.** The reasons underlying, as well as the length of Respondent's current sobriety, while of course never conclusive, are indicative of his commitment to sobriety.

**POINTS RELIED ON**

**I.**

**A. SIGNIFICANT CHANGES IN RESPONDENT'S CIRCUMSTANCES WARRANT EXTENDING HIS STAYED SUSPENSION WITH PROBATION. THE SIGNIFICANT CHANGES INCLUDE:**

**1. RESPONDENT'S PREVIOUS DISCIPLINARY PROBLEMS AROSE FROM HIS ALCOHOL ABUSE; HOWEVER, HE HAS BEEN SOBER SINCE 2007;**

**2. THE VIOLATIONS DESCRIBED BY INFORMANT ARE RESPONDENT'S FIRST VIOLATIONS RESULTING IN CLIENT HARM;**

**3. THE OCDC HAS NOT RECEIVED CLIENT COMPLAINTS FOR CONDUCT OCCURRING AFTER 2009 WHEN HE DISCHARGED HIS PREDECESSOR'S STAFF;**

**4. RESPONDENT HAS BEEN PAYING SIGNIFICANT RESTITUTION;**

**5. RESPONDENT HAS OBTAINED A COMMITMENT FROM A REPUTABLE AND UNIQUELY QUALIFIED MENTOR TO MONITOR HIS PRACTICE AND ENSURE CLIENT PROTECTION.**

**B. THE INTERESTS OF JUDICIAL ECONOMY SUPPORT ADDRESSING BOTH NEW VIOLATIONS AND RESPONDENT'S PROBATION IN THIS CASE.**

*Basler v. Delassus*, 690 S.W.2d 791, 796 (Mo. banc 1985)

*In the Matter of Cupples*, 952 S.W.2d 226, 233 (Mo. banc 1997)

*In re Mills*, 539 S.W.2d 447, 450 (Mo. banc 1976)

*Croker v. Consolidated Service Car*, 365 S.W.2d 524, 532 (Mo. 1963)

**II.**

**PROBATION IS WARRANTED UNDER RULE 5.225 AND IS SUPPORTED BY APPLICATION OF PREVIOUS DECISIONS OF THIS COURT AND THE ABA STANDARDS FOR IMPOSING LAWYER DISCIPLINE.**

**ABA Standard 8.2**

**ARGUMENT**

**I.**

**A. SIGNIFICANT CHANGES IN RESPONDENT'S CIRCUMSTANCES WARRANT EXTENDING HIS STAYED SUSPENSION WITH PROBATION. THE SIGNIFICANT CHANGES INCLUDE:**

**1. RESPONDENT'S PREVIOUS DISCIPLINARY PROBLEMS AROSE FROM HIS ALCOHOL ABUSE; HOWEVER, HE HAS BEEN SOBER SINCE 2007;**

**2. THE VIOLATIONS DESCRIBED BY INFORMANT ARE RESPONDENT'S FIRST VIOLATIONS RESULTING IN CLIENT HARM;**

**3. THE OCDC HAS NOT RECEIVED CLIENT COMPLAINTS FOR CONDUCT OCCURRING AFTER 2009, WHEN HE DISCHARGED HIS PREDECESSOR'S STAFF;**

**4. RESPONDENT HAS BEEN PAYING SIGNIFICANT RESTITUTION;**

**5. RESPONDENT HAS OBTAINED A COMMITMENT FROM A REPUTABLE AND UNIQUELY QUALIFIED MENTOR TO MONITOR HIS PRACTICE AND ENSURE CLIENT PROTECTION.**

**B. THE INTERESTS OF JUDICIAL ECONOMY SUPPORT ADDRESSING BOTH NEW VIOLATIONS AND RESPONDENT'S PROBATION IN THIS CASE.**

**A.**

Respondent agrees with the arguments presented by Informant in its Brief and will not re-argue that which has been addressed by Informant. Respondent does wish to apprise the Court of a development which was finalized following the filing of Informant's Brief and therefore not addressed therein.

As part of the Stipulation reached with Informant, Respondent agreed to the appointment of a mentor who practices in the same area as Respondent, Elder Law. Thus, at the same time OCDC will be monitoring and supervising Respondent's proposed probation, there will be another level of checks and balances available to ensure Respondent's competency, sobriety, and the safety of his clients going forward. The attorney that OCDC and Respondent have agreed to employ in this regard is Rudy D. Beck.

Mr. Beck, of St. Charles, has been engaged in the practice of law since approximately 1975 and since that time has practiced primarily in the area of Elder Law. He is a member of the Missouri Bar, as well as the Estate Planning Council of St. Louis and the National Academy of Elder Law Attorneys. He was elected to serve on the Board of Directors for the Missouri Chapter of the National Academy of Elder Law Attorneys in 2002, where he served as its treasurer in 2005-2006 and president in 2008-2009. He was selected for membership

in the American Association of Trust, Estate, and Elder Law Attorneys. He is also the co-founder of two national organizations – Veterans Advocates Group of America and Elder Care USA. Finally, he co-authored a book on Elder Law entitled *Don't Go Broke in a Nursing Home* in 2011.

In addition to being eminently qualified to mentor in the area of Elder Law, Mr. Beck is also uniquely suited to mentor Respondent. First, Mr. Beck was a 1<sup>st</sup> Lieutenant in the U.S. Army and served during the Vietnam war. Thus, as a former service member, he shares some common experiences with Respondent and has extensive experience with service members in general. As evidenced by his founding of the Veterans Advocates Group of America, he has taken a keen interest in the well-being of service members in his law practice. Further, Mr. Beck has intimate experiences dealing with alcoholism due to the fact that someone very close to him has struggled with alcoholism. Given his background, Mr. Beck is a veritable “triple-threat” when it comes to his ability to identify with, recognize problems in, and ultimately effectively mentor Respondent in his legal and personal life.

## **B.**

Again, Respondent joins in the arguments of Informant under this Point. The fact that the parties entered into a Stipulation following extensive investigation, witness interviews, and expert consultation/deposition, as well as input from the harmed clients, should be given substantial weight before this Court.

The Court appointed the Chief Disciplinary Counsel, who is well-versed and knowledgeable about our attorney discipline system. When the parties in these matters reach reasonable stipulations regarding discipline and conditions of practice, as in this case, it is with the combined goals of protecting the public and ensuring a competent and healthy law practice for the attorney going forward. The agreement in this case was based upon the facts of this case with the assistance of expert consultants on both sides *who in fact consulted with one another and agreed upon the essential terms of the Stipulation and Proposed Terms and Conditions of Probation* (Informant's Appendix A91-A110), and upon consideration of the Rules of Professional Conduct, the ABA Standards, the substantive Elder Law involved, and the reported and unreported case law concerning dispositions of other disciplinary actions.

The law favors compromise and settlement except in criminal cases. *State v. Reese*, 457 S.W.2d 713, 717 (Mo. banc 1970). An attorney disciplinary proceeding is not a criminal prosecution. *In re Mills*, 539 S.W.2d 447, 450 (Mo. banc 1976); *In the Matter of Cupples*, 952 S.W.2d 226, 233 (Mo. banc 1997). This Court has held that an attorney disciplinary hearing is *sui generis*. It is an examination into the fitness of a member of the Bar. The parties are essentially asking this Court for approval of the settlement they have reached. If satisfied that the goals of attorney discipline will be served and the public protected by the terms of the parties' Stipulation and Proposed Terms and Conditions of Probation, this Court should follow the policy of favoring compromise and settlement in civil cases and approve

and adopt the settlement. *Basler v. Delassus*, 690 S.W.2d 791, 796 (Mo. banc 1985);  
*Croker v. Consolidated Service Car*, 365 S.W.2d 524, 532 (Mo. 1963).

## ARGUMENT

### II.

#### **PROBATION IS WARRANTED UNDER RULE 5.225 AND IS SUPPORTED BY APPLICATION OF PREVIOUS DECISIONS OF THIS COURT AND THE ABA STANDARDS FOR IMPOSING LAWYER DISCIPLINE.**

Respondent again echoes the arguments of Informant. He also again writes to address any concerns regarding progressive discipline given the prior discipline of his license.

Respondent wishes to emphasize that none of the “new” complaints, which are the catalysts for the instant case, have anything to do with alcohol abuse. Respondent has been sober since 2007. His prior discipline was focused solely upon his alcohol abuse. In relevant part, ABA Standard 8.0 regarding prior disciplinary orders provides as follows:

- 8.2 Suspension is generally appropriate when a **lawyer has been reprimanded for the same or similar misconduct and engages in further acts of misconduct** that cause injury or potential injury to a client, the public, the legal system, or the profession.

ABA Standard 8.2 (emphasis added) (Respondent's Appendix A-1). Thus, the touchstone when discussing progressive punishment is whether the subsequent complaint or case deals with the same or similar misconduct. In this case, the conduct in each case was distinctly different. Respondent's initial discipline related solely to his abuse of alcohol. He has been sober since 2007. Further, the probation proposed by the parties continues to address alcohol

concerns, even though had the new complaints not arisen, he would likely have been released from probation by the time of writing. The probation proposed in this case adequately ensures the protection of his clients, as he will be subject to additional educational requirements, trust account audits, ethics school attendance and will have a top-notch mentor in addition to the OCDC supervising his competency and fitness. Progressive discipline such as suspension without probation would harm Respondent, his family, and most important to this Court, his current clients – none of whom have had any complaints regarding his work since 2009.

Respondent has recognized and admitted to his personal and professional shortcomings. He has proactively sought out a mentor in Mr. Beck, who has been approved by OCDC, and has made substantial restitution payments in reliance upon the settlement and in a good faith effort to correct his mistakes. As such, Respondent joins Informant in requesting that this Court approve the agreement heretofore reached by the parties.

**CONCLUSION**

For all of the foregoing reasons and those stated in Informant's Brief, Respondent respectfully prays that this Court approve the Stipulation and Proposed Terms and Conditions of Probation agreed upon by the parties and enter its order accordingly.

**RESPECTFULLY SUBMITTED,**

**CARSON & COIL, P.C.**



Lori J. Levine #26172

Jason H. Ludwig #58945

515 East High Street

P.O. Box 28

Jefferson City, MO 65102

(573) 636-2177

(573) 636-7119 (fax)

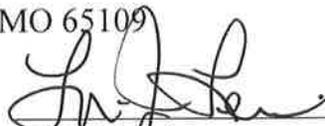
[llevine@carsoncoil.com](mailto:llevine@carsoncoil.com)

**ATTORNEYS FOR RESPONDENT.**

**CERTIFICATE OF SERVICE**

I hereby certify that on this 18th day of July, 2013, a true and correct copy of the foregoing was served via the electronic filing system pursuant to Rule 103.08 on:

Sam S. Phillips  
Office of Chief Disciplinary Counsel  
3335 American Avenue  
Jefferson City, MO 65109

  
Lori J. Levine

**CERTIFICATION PURSUANT TO RULE 84.06(c)**

I certify to the best of my knowledge, information and belief that this Brief:

1. Includes the information required by Rule 55.03;
2. Complies with the limitations contained in Rule 84.06(b); and
3. Contains 2,060 words, according to Word Perfect, which is the word

processing system used to prepare this brief.

  
Lori J. Levine