

**IN THE SUPREME COURT
STATE OF MISSOURI**

IN RE:

ROBERT PHILLIP NUMRICH,

Respondent.

)
)
)
)
)

Supreme Court #SC93890

INFORMANT'S BRIEF

ALAN D. PRATZEL #29141
CHIEF DISCIPLINARY COUNSEL

KEVIN J. ODROWSKI #40535
Special Representative, Region IV
4700 Belleview, Suite 215
Kansas City, MO 64112
Telephone: (816) 931-4408
Fax: (816) 561-0760
kevinodrowski@birch.net

ATTORNEY FOR CHIEF
DISCIPLINARY COUNSEL

TABLE OF CONTENTS

TABLE OF CONTENTS.....	1
TABLE OF AUTHORITIES	2
STATEMENT OF JURISDICTION.....	3
STATEMENT OF FACTS	4
POINT RELIED ON	
I.	13
II.	14
ARGUMENT	
I.	15
II.	17
CONCLUSION.....	24
CERTIFICATE OF SERVICE	28
CERTIFICATION: RULE 84.06(C)	28

TABLE OF AUTHORITIES

CASES

<i>In re Belz</i> , 258 S.W.3d 38 (Mo. banc 2008)	25
<i>In re Caranchini</i> , 956 S.W.2d 919 (Mo. banc 1997)	22
<i>In re Coleman</i> , 295 S.W.3d 859, 870 (Mo. banc 2009)	21
<i>In re Cupples</i> , 979 S.W.2d 936 (Mo. banc 1998)	21
<i>In re Forck</i> , 418 S.W.3d 437 (Mo. banc 2014)	25, 26
<i>In re Littleton</i> , 719 S.W.2d 772, 777 (Mo. banc 1986)	20, 22
<i>In re Staab</i> , 719 S.W.2d 780 (Mo. banc 1986)	22
<i>In re Storment</i> , 873 S.W.2d 227, 231 (Mo. banc 1994)	21
<i>In re Wiles</i> , 107 S.W.3d 228, 229 (Mo. banc 2003)	20, 23

OTHER AUTHORITIES

ABA <u>Standards for Imposing Lawyer Sanctions</u> (1991 ed.)	22
---	----

RULES

Rule 4-1.2.....	15, 16
Rule 4-1.3.....	15, 16
Rule 4-1.4.....	15, 16
Rule 4-3.2.....	16
Rule 4-4.1.....	15, 21
Rule 4-8.4.....	7, 15, 16, 21
Rule 5.225	17, 25, 26
Rule 5.285	24, 25

STATEMENT OF JURISDICTION

This action is one in which the Chief Disciplinary Counsel is seeking to discipline an attorney licensed in the State of Missouri for violations of the Missouri Rules of Professional Conduct. Jurisdiction over attorney discipline matters is established by this Court's inherent authority to regulate the practice of law, Supreme Court Rule 5, this Court's common law, and Section 484.040 RSMo 2000.

STATEMENT OF FACTS

This attorney disciplinary matter reaches the Court following an evidentiary hearing conducted by the appointed disciplinary hearing panel. **App. 37-62.** In its written decision the disciplinary hearing panel found that Robert P. Numrich (“Respondent”) was guilty of violating several Rules of Professional Misconduct. **App. 93-129.** The panel recommended that Respondent’s law license be suspended for two years but that such suspension be stayed during a three-year period of probation. **App. 96; 177.** Both the Office of Chief Disciplinary Counsel and the Respondent accepted the DHP’s recommendation, which adopted the parties’ stipulations. **App. 130-131.**

This disciplinary matter was commenced as a self-reported incident in February 2010, but also included reports received from third parties. **App. 64.** Respondent was licensed as an attorney in Missouri on September 7, 1974, and has practiced law for nearly forty years. **App. 64.** Respondent's bar number is #23747. Respondent’s license is currently in good standing. **App. 64.** The address designated in Respondent's most recent registration with The Missouri Bar is 4600 Madison, Suite 210, Kansas City, MO 64112. **App. 64.**

For over twenty-five years, Respondent has been a shareholder and founding attorney in a Kansas City law firm now known as Baty, Holm, Numrich & Otto, P.C., but originally incorporated as Field, Gentry, Benjamin & Robertson, P.C. **App. 64.** Respondent has primarily been engaged in civil litigation, including major litigation in both state and federal courts in Missouri and Kansas. **App. 64.**

This disciplinary investigation involves Respondent's conduct in separate, unrelated client matters as identified below, specifically the *Hicks v. Chessin* matter and the *Amsted v. Longview* matter. **App. 65-67.**

In February 2009, Respondent was engaged to provide a defense to Paul Chessin, a Colorado Senior Assistant Attorney General, in a case captioned as *Hicks v. Chessin*, Case No. 08-0362-CV-W-FJG (the "*Chessin* Lawsuit"), a § 1983 action filed in the Western District of Missouri federal court. **App. 65.** Mr. Chessin was sued in an official capacity. **App. 65.** Respondent advised the client that he would seek a dismissal of the matter by way of a dispositive motion. **App. 65** However, the motion was never filed. **App. 65.** Instead of seeking a dismissal or otherwise advising the client of some difficulty in filing a dispositive motion, Respondent negotiated a purported settlement agreement with the plaintiff without approval from the client. **App. 65.** Respondent falsely claimed that he had authority to settle the case for \$35,000. **App. 65.**

The opposing party and his counsel relied upon what they thought was an authorized settlement agreement. **App. 65.** The opposing plaintiff sought to enforce the settlement agreement, which created a significant amount of extra litigation, culminating in an evidentiary hearing held by the federal judge to determine the circumstances of the purported settlement agreement. **App. 65.** The federal court declined to enforce the settlement agreement, finding that no agreement had been authorized by the client. **App. 65-66.** Respondent has admitted that his acts and omissions caused prejudice to all parties, including the plaintiff and his counsel, in

the *Chessin* Lawsuit. **App. 66.** The *Chessin* Lawsuit was eventually dismissed by the federal court in favor of the defendant on the basis of lack of personal jurisdiction following the entry of appearance by successor counsel. **App. 24; 47 (Tr. 11:22 - 12:15).**

In 2006, Respondent was hired by a company called Griffin Wheel, a subsidiary of Amsted, to assert a claim against a company called Longview. **App. 66.** The claim sought over one million dollars in damages regarding indemnification for a personal injury claim. **App. 66.** Respondent failed to file an action on the claim. **App. 66.** Respondent falsely represented to the client that the claim had indeed been filed. **App. 66.** Thereafter, for a couple of years, Respondent continued to leave the client with the impression that the lawsuit had been filed, even advising the client in late 2008 that a settlement mediation was going to take place. **App. 67.** In January 2009, Respondent falsely represented to the client that the lawsuit had been settled for \$812,500. **App. 67.**

For several months thereafter, Respondent continued to give the client the impression that the settlement was pending and that he was working on the mechanics of the settlement payment. **App. 67.** In September 2009, Respondent finally advised the client that there was no lawsuit, no settlement and no settlement check. **App. 67.** Respondent's representation of the client was promptly terminated. **App. 67.** An action on the claim was eventually filed by substitute counsel within the applicable limitations period. **App. 67.** Ultimately, the claim was resolved to the satisfaction of the former client with a substantial recovery on the claim of

\$850,000. **App. 48 (Tr. 12:23 – 13:2); 67.**

Respondent admitted, by stipulation, that there is a pattern of misconduct in making representations concerning settlement authority and the existence of settlements when in fact Respondent had no authority to enter into a settlement and in fact no settlement had been reached. **App. 68.** The above matters demonstrate that Respondent engaged in multiple offenses. **App. 68.**

As a veteran litigator and founding member of a longstanding law firm, Respondent has substantial experience in the practice of law. **App. 69.**

The parties stipulated that dishonesty is a significant component of both instances of misconduct at issue, inasmuch as Respondent admits to violations of Rule 4-8.4(c). **App. 69.** However, Respondent contended that his mental disorder described below was so severe as to negate an actual mental state motivated by dishonesty. **App. 69.** By stipulation, the Informant conceded that Respondent's motives were not selfish, in that Respondent did not stand to gain anything from the misconduct. **App. 69.** Respondent was not motivated by his own self interests. **App. 69.**

Respondent has exhibited a cooperative attitude towards this proceeding and he has made a full and free disclosure of the matters addressed herein, as evidenced in part by his stipulation; by Respondent's voluntary action to self-report the misconduct; and by Respondent's cooperation with respect to an independent psychological examination as addressed below. **App. 69.**

Respondent has consistently expressed and demonstrated remorse with

respect to the professional misconduct identified above. **App. 69-70.** Respondent is deeply troubled by his own conduct and his inability to control his conduct. **App. 69-70.**

This is Respondent's first and only disciplinary complaint in his forty years of practice. **App. 70.** Respondent has never been disciplined by any court, and he has no disciplinary record. **App. 70.**

Respondent is recognized among his peers for his good moral character. **App. 70.** The disciplinary hearing panel received letters of support from distinguished members of the Kansas City legal community. **App. 70.**

One attorney wrote:

I have known Robert Numrich since approximately 1980. I have interacted with him throughout the course of those years with sufficient frequency to allow me to comment about him. . . It has been my observation that Robert Numrich is a very knowledgeable and skillful attorney and has always taken steps to try to protect his clients. He has been ethical and professional in all my dealings with him. I have become aware of some of the ethical issues which currently confront Bob Numrich. I can only tell you that what I have heard is out of character for him. His history as an attorney in this city has been one of providing high quality service to clients and demonstrating a respect not only to the Courts but to other lawyers in the area. . . . I am confident that whatever issues caused Bob to get

himself into the predicament in which he now finds himself, those issues can be solved and hopefully those who oversee the licenses of attorneys will take into consideration his past experience because it is my opinion that the public would be greatly benefitted by having Bob Numrich available to serve people who have legal issues and problems. **App 82-83.**

Another attorney wrote:

I have known Bob since law school [in 1974]. Our paths have crossed continuously since then, generally on opposite sides of litigation. Bob is an accomplished litigator and worthy adversary. He is very skilled. He has a degree of charisma and charm which serves him well in the courtroom. But, more than that, it has been my experience, without exception, that Bob Numrich is an honest, forthright lawyer. He can always be counted upon to represent his client zealously—but honestly, and without attempt to take unfair advantage. I have been around awhile. . . I have been president of our local Bar Association My impression of Bob is shared by all members of our profession who have dealt with him. He is well liked and well-respected for his skill and his candor. I read with sadness the account of his ethical lapse. My experience with Bob is so personal and so extensive that I knew it was an aberration. **App. 84.**

In 2011, Respondent voluntarily attended the Missouri Bar / OCDC Law

Practice Management program (“Ethics School”). **App. 70.** Respondent successfully completed such program with satisfactory participation. **App. 70.** As of the date of the DHP decision, there have been no additional complaints against Respondent. **App. 70.**

It has been stipulated that Respondent has made timely and good faith efforts to rectify the consequences of his misconduct. **App. 70.** Respondent contributed \$125,000 of his own funds towards the global resolution of the *Amsted* matter. **App. 70.**

Respondent is now 67 years of age. **App. 3.** Respondent has agreed to have his law firm responsibilities restructured so that his workload and cases are supervised by other members of the firm. **App. 50; 70.** Respondent accepted a reduction in responsibilities within the law firm he helped to found as a result of these matters.¹ **App. 50; 70.**

Respondent has experienced the personal embarrassment and publicity of having the circumstances of this disciplinary matter featured in the *Missouri Lawyers Weekly* which chose to provide an in-depth report on this disciplinary case. **App. 70-71.** Additionally, Respondent has lost a significant amount of business.

¹ At the disciplinary hearing Respondent’s counsel suggested that Respondent was in the midst of accepting a buyout from his law firm and that Respondent would thereafter retire from the active practice of law at some point during a probationary period. **App. 51-52.**

App. 71.

Respondent was faced with several personal, emotional and mental health problems during the time period of the conduct described above. **App. 71.** However, since the incidents, there has been a sustained and meaningful period of successful functioning. **App. 71.**

Respondent submitted a report of a Psychiatric Evaluation from John H. Wisner, M.D. dated August 22, 2011. **App. 71.** The report provides:

It is my professional opinion, with a high degree of medical certainty, that Mr. Robert Numrich was suffering from a psychiatric disorder (Major Depressive Disorder) for some months prior to and during the period when his professional lapses took place. In my opinion, this disorder was the direct cause of his lapses in judgment resulting in misconduct. I find no evidence that he would be prone to unprofessional behavior before or since, and certainly, not currently. **App. 71; 87-89.**

In 2013 Respondent underwent an independent psychological evaluation at the request of Informant. **App. 52-53; 72.** Informant submitted a Psychological Evaluation of Respondent as provided by a licensed psychologist, John M. Wubbenhorst, dated April 26, 2013. **App. 72; 90-92.** Mr. Wubbenhorst's evaluation concurs in all material respects with the findings of Dr. Wisner. **App. 72.** Among other conclusions, Mr. Wubbenhorst opines that major depressive episodes can negatively impact self-confidence and professional interactions. **App. 72; 90-92.** He found that Respondent's over-

functioning to compensate for a fear of failing and his desire to please impaired Respondent's judgment. **App. 72; 90-92.** He found that a Major Depressive episode can completely resolve fairly quickly, after persisting for months. **App. 72; 90-92.** He finds Respondent to be free of any current mental disorder and that Respondent has sustained a successful period of functioning. **App. 72; 90-92.** The psychologist concludes with his ultimate impression that "Mr. Numrich presents no present danger to his clients, the public, or himself." **App. 72; 90-92.**

The Joint Full Stipulation of Facts, Conclusions of Law and Recommendation for Discipline was submitted to the Disciplinary Hearing Panel on September 23, 2013. **App. 41.** In the written decision of the Disciplinary Hearing Panel the panel adopted the parties' stipulation on November 5, 2013. **App. 96.** The Informant's statement of acceptance was filed with the Advisory Committee on January 2, 2014. **App. 131.** The Respondent's statement of acceptance was filed with the Advisory Committee on December 13, 2013. **App. 130.** The Supreme Court ordered this case briefed and argued on February 4, 2014. The Record was filed with the Supreme Court on March 6, 2014.

POINT RELIED ON

I.

**RESPONDENT IS SUBJECT TO DISCIPLINE BECAUSE HE
ENGAGED IN SEVERAL INSTANCES OF PROFESSIONAL
MISCONDUCT.**

POINT RELIED ON

II.

**PROBATION IS THE MOST APPROPRIATE DISCIPLINARY
SANCTION.**

ARGUMENT

I.

RESPONDENT IS SUBJECT TO DISCIPLINE BECAUSE HE ENGAGED IN SEVERAL INSTANCES OF PROFESSIONAL MISCONDUCT.

In view of Respondent's own self-report, the admissions in his Answer and the stipulation of misconduct submitted to the hearing panel, there are no factual disputes and no contested legal issues presented with respect to the instances of professional misconduct at issue in this disciplinary matter.

With respect to the *Chessin* Lawsuit, Respondent admitted by his stipulation, and the DHP found, that Respondent engaged in multiple and repeated instances of professional misconduct, as follows:

- (a) failing to abide by the client's decision concerning the objectives of representation in violation of Missouri Supreme Court Rule 4-1.2(a);
- (b) failing to act with reasonable diligence and promptness in representing a client, in violation of Missouri Supreme Court Rule 4-1.3;
- (c) failing to keep the client reasonably informed about the status of the matter, in violation of Missouri Supreme Court Rule 4-1.4;
- (d) knowingly making false statements of material facts to third persons, in violation of Missouri Supreme Court Rule 4-4.1;
- (e) engaging in conduct prejudicial to the administration of justice in violation of Missouri Supreme Court Rule 4-8.4(d); and

(f) engaging in conduct involving dishonesty and misrepresentation, in violation of Missouri Supreme Court Rule 4-8.4(c).

With respect to the *Amsted* matter, Respondent admitted by his stipulation, and the DHP found, that he had engaged in multiple and repeated instances of professional misconduct, as follows:

(a) failing to abide by a client's decisions concerning the objectives of representation in violation of Missouri Supreme Court Rule 4-1.2(a);

(b) failing to act with reasonable diligence and promptness in representing a client, in violation of Missouri Supreme Court Rule 4-1.3;

(c) failing to keep the client reasonably informed about the status of the matter, in violation of Missouri Supreme Court Rule 4-1.4;

(d) failing to make reasonable efforts to expedite the litigation consistent with the interests of the client, in violation of Missouri Supreme Court Rule 4-3.2;

(e) engaging in conduct prejudicial to the administration of justice in violation of Missouri Supreme Court Rule 4-8.4(d); and

(f) engaging in conduct involving dishonesty and misrepresentation, in violation of Missouri Supreme Court Rule 4-8.4(c).

ARGUMENT

II.

PROBATION IS THE MOST APPROPRIATE DISCIPLINARY SANCTION.

In consideration of the nature of the violations and the factors in mitigation and aggravation, the most appropriate sanction in this case is an indefinite suspension with no leave to apply for reinstatement for twenty-four months, stayed during a thirty-six month period of probation under the terms and conditions set forth below and as otherwise provided under Rule 5.225. Respondent is eligible for probation because Respondent is unlikely to harm the public during the period of probation and because Respondent can be adequately supervised. Respondent is able to perform legal services and is able to practice law without causing the courts or profession to fall into disrepute. Respondent has not committed any acts warranting disbarment.

The parties jointly proposed the following terms and conditions of probation:

Term of probation: Respondent shall be on probation for 36 months. The probation period shall begin to run upon the entry of an order of discipline by the Missouri Supreme Court.

Probation Monitor: The probation monitor for the term of probation shall a staff attorney with OCDC.

Quarterly Reporting Responsibility: Respondent shall submit written quarterly reports to the probation monitor concerning the status of Respondent's

practice of law and the extent and nature of Respondent's compliance with the conditions of probation.

Compliance with Rules of Professional Conduct: Respondent shall not engage in conduct that violates the Rules of Professional Conduct.

Ethics School: Once during the term of probation, Respondent shall attend and fully participate in all aspects of the Ethics School program developed and offered by The Missouri Bar and the OCDC as refresher to the law practice management program previously attended.

Malpractice Insurance: Respondent shall maintain malpractice insurance in amount of not less than \$100,000 per occurrence and an aggregate amount of not less than \$300,000.

Multistate Professional Responsibility Examination: At least six months prior to the termination of the period of probation, Respondent shall take and pass the Multi-State Professional Responsibility Examination.

Mental Health Evaluation and Treatment: Respondent shall obtain a new and updated evaluation by a mental health professional within 30 days of the date of the Court's order placing Respondent on probation. The mental health evaluation shall provide the following information:

- (1.) the history of Respondent's mental health issues;
- (2.) an analysis of the efforts expended by Respondent toward
a sustained rehabilitation;
- (3.) current status of any mental health problems;

- (4.) diagnosis and prognosis;
- (5.) risk to clients from any mental health problems; and
- (6.) recommendation for continued treatment, if any.

Respondent shall follow the mental health professional's recommendations for therapy or treatment. Respondent shall execute a release permitting the mental health professional to advise the probation monitor at least once every quarter that Respondent has obtained the recommended treatment and that Respondent's mental health condition does not substantially impede occupational functioning as a lawyer. The mental health professional shall be expected to advise the probation monitor at any time of conduct that raises a substantial question as to Respondent's honesty, trustworthiness, or fitness as a lawyer.

Personal Observers: Respondent shall, within 30 days of the date of the Court's order placing Respondent on probation, provide to the probation monitor a list of at least two individuals who will serve as personal observers of the Respondent's functioning. The personal observers may be family members, friends, co-workers, and/or others who have frequent personal contact with Respondent. The primary purpose of the personal observers shall be to provide constructive feedback to the Respondent regarding the Respondent's management of the condition. The personal observers shall also be expected to report to the probation monitor observations which raise

concern about Respondent's management of the condition or risk to clients.

The probation monitor also may request reports from the personal observers.

Disability or Disaster Plan: Respondent shall, within 60 days of the date of the Court's order placing Respondent on probation, prepare and deliver to the probation monitor for approval a disability and/or disaster plan to protect clients in the event of a personal problem or natural disaster that prohibits the Respondent from practicing law.

Maintenance Plan: Respondent shall, at least 60 days prior to any motion to terminate probation, provide the probation monitor with a maintenance treatment plan which Respondent intends to follow to sustain the treatment gains.

The purpose of discipline is not to punish the lawyer, but to protect the public and maintain the integrity of the legal profession. Those twin purposes may be achieved both directly, by removing a person from the practice of law, and indirectly, by imposing a sanction which serves to deter other members of the Bar from engaging in similar conduct. *In re Littleton*, 719 S.W.2d 772, 777 (Mo. banc 1986).

Probation, as a part of a stayed suspension, has been utilized since the rule was adopted and put into effect in 2003. This Court, the disciplinary system, the Bar and the public have all benefited from conditional discipline as a tool to protect the public and maintain the integrity of the profession. This Court determined probation was the appropriate discipline in *In re Wiles*, 107 S.W.3d 228 (Mo. banc

2003). There, the attorney had been admonished at least eleven times over a three-year period for violations of the rules pertaining to diligence, communication, safeguarding client property, and conduct prejudicial to the administration of justice in Missouri. *Id.* at 229. The attorney also had two prior admonitions and stipulated to misconduct that warranted a public censure in Kansas. *Id.* at 228. Likewise, in *In re Coleman*, this Court issued a suspension, which was stayed, subject to the completion of a one-year term of probation. *In re Coleman*, 295 S.W.3d at 859. There, the attorney had been admonished twice and publicly reprimanded once for a total of eight violations of the rules pertaining to communication, unreasonable fees, diligence, expediting litigation, and conduct prejudicial to the administration of justice. *Id.* This Court found the attorney committed five new violations of the rules that resulted in client harm, and that concerned the management of his IOLTA account, yet this Court permitted the attorney to serve a probationary term rather than be suspended. *Id.*

When this Court finds a lawyer has committed multiple acts of misconduct, “the ultimate sanction imposed should at least be consistent with the sanction for the most serious instance of misconduct among the violations.” *In re Coleman*, 295 S.W.3d 870 (Mo. banc 2009). In this case, Respondent’s most egregious acts of misconduct involve dishonesty and deceit towards clients and opposing parties, e.g. violations of Rule 4-8.4(c) and Rule 4-4.1.

In cases of false statements or misrepresentation, this Court issues reprimands only if the lawyer is negligent. *In re Stormont*, 873 S.W.2d 227, 231

(Mo. banc 1994); *In re Caranchini*, 956 S.W.2d 919 (Mo. banc 1997); ABA Standard Rule 6.11. For isolated instances of misconduct or clearly inappropriate acts with minimal harm to the client, a reprimand may be more appropriate. *In re Staab*, 719 S.W.2d 780 (Mo. banc 1986). The gravity of the misconduct in this case, the similarities in the two legal matters, and the adverse effects on the legal proceeding and the claim eliminates reprimand as an appropriate discipline.

This Court has “imposed the ultimate sanction of disbarment where a lawyer’s conduct involved dishonesty and misrepresentation.” *In re Cupples*, 979 S.W.2d 936 (Mo. banc 1998). In cases of dishonesty not directed towards a tribunal, disbarment is generally appropriate when (a) a lawyer knowingly deceives a client with the intent to benefit the lawyer or another, and causes serious injury or potential serious injury to a client; (b) engages in serious criminal conduct; or (c) engages in intentional conduct that seriously adversely reflects on the lawyer’s fitness to practice. ABA Standards for Imposing Lawyer Sanctions 4.61, 5.11.

Disbarment is not warranted here. Disbarment should be reserved for fraud cases in which it is clear that the lawyer should not be at the Bar. *In re Littleton*, 719 S.W.2d 777 (Mo. banc 1986); *In re Caranchini*, 956 S.W.2d 919 (Mo. banc 1997). As a practical matter, an actual suspension imposed upon Respondent, who will soon be 68 years of age, is tantamount to disbarment. Such a sanction is arguably too harsh for a lawyer with an otherwise spotless disciplinary record over a career of forty years in the profession.

In deciding between an actual suspension and a stayed suspension with

probation, this Court has considered, *inter alia*, the gravity of the conduct, as well as the applicable aggravating and mitigating circumstances. *In re Wiles*, 107 S.W.3d 228, 229 (Mo. banc 2003). After misconduct has been established other circumstances may be considered in deciding what sanction to impose. Other than the pair of similar instances of misconduct both coinciding in 2009 after 35 years of experience in the practice, no other aggravating circumstances exist in this case. Several factors, however, weigh in favor of mitigation such as: absence of a prior disciplinary record; full and free disclosure to the disciplinary board and cooperative attitude towards the proceeding; an excellent reputation; remorse and voluntary efforts to improve the management of his law practice. Respondent has rectified the misconduct, he made voluntary payment of \$125,000 to cover his former client's loss. The mitigating factor of a mental health disorder is addressed separately below.

It is critically necessary for Respondent to reevaluate his practice and familiarity with the Rules that govern lawyers in this State. To that end the Chief Disciplinary Counsel, the Disciplinary Hearing Panel and the Respondent, with the assistance of counsel, have arrived at a fair and reasonable recommendation for this Court. The sanction includes indefinite suspension from the practice of law stayed with a three-year probationary period. The conditions include educational requirements, oversight by members of the Bar and the Office of Chief Disciplinary Counsel, and most importantly, continued mental health treatment and evaluation. The conditions are onerous but Respondent's conduct and personal circumstances

justify the need for these conditions of probation.

The parties' stipulation expresses what should otherwise be obvious: in arriving at a disciplinary recommendation the parties have placed the greatest weight upon the Respondent's mental health disorder and the subsequent period of successful functioning as an attorney. **App. 71.** Paragraph 41 of the Stipulation states that:

In considering both mitigating and aggravating circumstances, the parties place the greatest weight upon Respondent's personal, emotional and mental health problems present during the time period of the misconduct described above followed by a sustained and meaningful period of successful functioning. In that regard, Respondent timely implicated Rule 5.285 in his Answer. The parties have given careful consideration to the procedures and criteria set forth in such rule.

The timeline in this matter is critical. The misconduct occurred over a period of a few years, most markedly throughout 2009. The misconduct was self-reported in February 2010. A psychiatric evaluation was completed in August 2011. An independent psychological evaluation was completed in April 2013 at the request of OCDC. The DHP decision was issued in late 2013, completing the record in this matter. We now have the benefit of four years of monitoring and professional evaluation of Respondent. No repeat misconduct has come to the attention of the disciplinary office. If the Court adopts a recommendation of a three-year

probationary period, the disciplinary system will have the benefit of monitoring Respondent until approximately the end of 2017. Although Respondent has not yet been placed on probation, his personal situation and professional practice situation have been carefully monitored through mental health evaluation, ethics school, remedial measures and the like since 2010.

Both Respondent and disciplinary authorities acknowledged the authority and applicability of *In re Belz*, 258 S.W.3d 38 (Mo. banc 2008) and Rule 5.285 to their analysis of an appropriate disposition for this case. Informant believes that the stipulation and the DHP's adoption of the stipulation reflects fidelity to the policies behind *Belz* and Rule 5.285.

Informant further believes that the stipulation and DHP recommendation faithfully adheres to another important principle espoused by the Court. This Court adheres to a practice of applying progressive discipline when imposing sanctions on attorneys who commit misconduct. *In re Forck*, 418 S.W.3d 437 (Mo. banc 2014). Probation, under the stringent terms recommended by the parties and adopted by the hearing panel, is appropriate sanction for a lawyer with an otherwise immaculate disciplinary record spanning a forty-year career.

An attorney is eligible for probation if the attorney: (1) is unlikely to harm the public during the probationary period and can be supervised adequately; (2) is able to perform legal services and practice law without causing the courts or profession to fall into disrepute; and (3) has not committed acts warranting disbarment. Rule 5.225(a)(2)(A-C). This Court must take into account the nature

and circumstances of the attorney's misconduct and his or her history, character, and health status when placing him or her on probation and fashioning the conditions the attorney must abide by while on probation. Rule 5.225(b)(1). *In re Forck* 418 S.W.3d 437 (Mo. banc 2014). All three eligibility requirements of Rule 5.225(a) have been demonstrated here.

CONCLUSION

For the reasons set forth above, the Chief Disciplinary Counsel respectfully requests this Court:

- (a) to find that Respondent is guilty of professional misconduct with respect to each of the counts charged in the Information and to find that Respondent has violated Missouri Supreme Court Rules 4-1.2, 4-1.3, 4-1.4, 4-3.2, 4-4.1, and 4-8.4(c) and (d);
- (b) to suspend Respondent's law license for an indefinite period of time with no leave to apply for reinstatement until after the expiration of two years, but to stay such suspension and place Respondent on probation for three years under the stringent requirements proposed by the parties and adopted by the disciplinary hearing panel; and

- (e) to tax all costs in this matter to Respondent, including the \$1,500 fee pursuant to Rule 5.19(h).

Respectfully submitted,

ALAN D. PRATZEL, MO #29141
CHIEF DISCIPLINARY COUNSEL



By: _____
Kevin J. Odrowski #40535
Special Representative, Region IV
4700 Belleview, Suite 215
Kansas City, MO 64112
kevinodrowski@birch.net
(816) 931-4408
(816) 561-0760 (fax)

ATTORNEY FOR CHIEF
DISCIPLINARY COUNSEL

CERTIFICATE OF SERVICE

I hereby certify that on this 7th day of May, 2014, a copy of Informant's Brief is being served upon Respondent through the electronic filing system pursuant to Rule 103.08:



Kevin J. Odrowski

CERTIFICATION: 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(c);
3. Contains 5264 words, according to Microsoft Word, which is the word processing system used to prepare this brief.



Kevin J. Odrowski