

**IN THE SUPREME COURT OF OHIO**

**In Re:**

**Paul Nickolas Peterson** :

**RESPONDENT** :

**CASE NO. 2012-0996**

**Disciplinary Counsel** :

**RELATOR** :

**RESPONDENT'S OBJECTIONS TO THE BOARD OF COMMISSIONER'S  
REPORT AND RECOMMENDATION**

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## STATEMENT OF FACTS

### I. BRIEF FACTUAL SUMMARY

Paul N. Peterson, Respondent, was admitted to practice law in Ohio on November 27, 2002. *Stipulations, paragraph 1.* Respondent was employed at Kinetico until January 2007. *Trans. p. 135, lines 16-19.* Respondent opened his solo law practice in January 2007. *Trans. p. 135, lines 15-22.*

On **March 31, 2009**, Paul N. Peterson, Respondent, self-reported his misconduct to the Office of Disciplinary Counsel. As part of that self-reporting, Mr. Peterson admitted to using monies from the LB2, LLC account. In that same self-reporting, Mr. Peterson indicated that he wanted to fully cooperate with the Office of Disciplinary Counsel and make restitution to LB2, LLC and its sole owner, Linda Mae Gabriel. *Stipulations, Mitigation paragraph 23.*

Included within the March 31, 2009 self-report letter was notice that Linda Mae Gabriel had retained new counsel and that on April 1, 2009, Mrs. Gabriel's files were being provided to her new counsel. *Respondent's Exhibit Y.*

On **March 29, 2010**, Linda Mae Gabriel filed a civil suit against Respondent in the Cuyahoga County Court of Common Pleas, same being *Gabriel et al. vs. Peterson, et al*, Case No. CV-10-721720 ("Gabriel Civil Suit"). The allegations in the Gabriel Civil Suit included legal malpractice, fraudulent misrepresentation and civil theft. *Stipulated Facts, paragraph 7.*

On [insert date] the Gabriel Civil Suit was settled and dismissed with prejudice.

On or about **September 8, 2010**, Respondent was charged by way of information for theft in violation of R.C. 2912.02(a)(3), in the case of *State vs. Peterson*, Case No. CR-10-540387-A, in the Cuyahoga County Court of Common Pleas. *Respondent's Exhibit A.*

On **November 22, 2010**, Respondent entered a plea of NO contest to a violation of R.C.

2912.02(a)(3), a fourth-degree felony. On that same date, the court found Respondent guilty, sentenced him to 30 days in Cuyahoga County Jail, five years community control, and ordered Respondent to pay restitution in the amount of \$80,000, an amount agreed to by Respondent and Linda Mae Gabriel. *Respondent's Exhibit C.*

On **December 8, 2010**, Respondent was suspended from the practice of law for an interim period by The Supreme Court of Ohio due to the felony conviction. *Stipulated Facts, paragraph 6.*

In **January 2011**, Respondent was first given medicine to treat the manic side of his Bipolar Mood Disorder, because his wife, Amanda Peterson, went with him to see Dr. Castro and told the doctor either we have to do something to help him or we're going to get a new doctor because what he was doing wasn't helping him. *Trans. p. 120, lines 15-25, Trans. p. 121, lines 1-11*

Respondent began making restitution payments to the Cuyahoga County Probation Department as Ordered by the Cuyahoga County Common Pleas Court. The final two restitution payments of \$30,000 on March 8, 2012 and \$27,000 on March 9, 2012, were made by Respondent. *Respondent's Exhibit E.*

Respondent has paid all other fees and costs assessed by the Cuyahoga County Court of Common Plea and the Cuyahoga County Probation Department. *Respondent's Exhibit E. and AA.* Respondent's probation was terminated on March 21, 2012. *Respondent's Exhibit AA.*

Linda Mae Gabriel has received \$80,000 in restitution from payments from Respondent and a lump sum from the Client's Security Fund. *Respondent's Exhibits E, O-1 and O-2.*

Respondent has been diagnosed as suffering from Bipolar Mood Disorder. *Respondent's Exhibit G.* Respondent has treated and is treating with his psychiatrist, Alan Castro, M.D. and

his psychologist, Jane Miller Hellwig, Ph.D. for his Bipolar Mood Disorder. *Respondent's Exhibits G and I, Relator's Exhibits 3 and 4*

Dr. Castro and Dr. Hellwig have both opined that Respondent's Bipolar Mood Disorder contributed to cause his misconduct. *Respondent's Exhibits G and I and Relator's Exhibits 3 and 4*. Dr. Hellwig also testified that Respondent's Bipolar Mood Disorder contributed to cause his misconduct. *Trans. p.*

## II ARGUMENT

### Proposition of Law No. 1:

Supreme Court Is the Ultimate Arbiter of Misconduct and Sanctions in Disciplinary Cases and Is Not Bound by Factual and Legal Conclusions Drawn by Panel or the Board

This Honorable Court's precedent dating back to 1972 concludes that this Honorable Court is the ultimate determiner of facts and law in disciplinary cases. *See, Cincinnati Bar Assn. v. Heitzler* (1972), 32 Ohio St.2d 214, cert. denied (1973), 411 U.S. 967 and *In Re Complaint Against Harper* (1996), 77 Ohio St.3d 211, cert. denied (1997), 117 S. Ct. 2454.

This Honorable Court has reaffirmed this precedent in *Disciplinary Counsel v. Kelly*, 121 Ohio St.3d 39, 2009-Ohio-317, 901 N.E.2d 798 at ¶ 11, when this Court stated:

But as the ultimate arbiter of misconduct and sanctions in disciplinary cases, this court is not bound by factual and legal conclusions drawn by either the panel or the board. *See Cincinnati Bar Assn. v. Powers*, 119 Ohio St.3d 473, 2008-Ohio-4785, 895 N.E.2d 172 ¶ 21. Accord *Disciplinary Counsel v. Furth* (2001), 93 Ohio St.3d 173, 181, 754 N.E.2d 219; *Ohio State Bar Association v. Reid* (1999), 85 Ohio St.3d 327, 708 N.E.2d 193. Thus, we need not defer to either's conclusions and remain free to exercise our independent judgment as to evidentiary weight and applicable law.

Respondent respectfully requests that this Honorable Court exercise its independent judgment in the instant case and after review of the evidence and applicable law, enter a sanction

of indefinite suspension from the practice of law.

**Proposition of Law No. 2**

**When Imposing Sanctions, Court Considers Relevant Factors,  
Including Aggravating and Mitigating Factors**

The Board's Findings include the following aggravating factors: dishonest or selfish motive and vulnerability of and resulting harm to the victim of the misconduct. *Board's Findings* ¶ 39.

The Board's Findings also include the following mitigating factors: cooperation in the disciplinary investigation; self-reporting to Disciplinary Counsel on March 31, 2009, other penalties and sanctions and made restitution. *Board's Findings* ¶ 40 and 41.

Respondent respectfully submits that additional mitigation is part of the evidence in the instant case and further respectfully requests that this Honorable Court find such additional mitigation.

**A. NO Prior Discipline**

This Honorable Court can take judicial notice of its own records, which reflect that Respondent does **not** have any prior discipline. Respondent also testified that he had **not** been disciplined previously. *Trans. p. 135, lines 5 - 9.*

The Board's Findings are silent on this factor.

Relator argued in its Hearing Brief that the interim suspension for the felony conviction arising out of the current charges in the instant case is prior discipline. This Honorable Court has considered and rejected Relator's argument on a number of occasions. In *Disciplinary Counsel v. Cantrell*, 130 Ohio St.3d 46, 2011-Ohio-4554, 955 N.E.2d 950 at ¶ 16, this Honorable Court stated:

we disagree with the board that the interim felony suspension relating to the current charges constitute a prior disciplinary

offense. Our precedent indicates that a prior interim felony suspension has not heretofore been considered as a prior disciplinary offense. See e.g. *Disciplinary Counsel v. Ulinski*, 106 Ohio St.3d 53, 2005-Ohio-3673, 831 N.E.2d 425 ¶ 1 and 14 (acknowledging an interim felony suspension but determining that no prior disciplinary offenses had occurred); *Disciplinary Counsel v. O'Malley*, 126 Ohio St.3d 443, 2010-Ohio-3802, 935 N.E.2d 5, ¶ 1 and 10 (same); *Disciplinary Counsel v. Gittinger*, 125 Ohio St.3d 467, 2012-Ohio-1830, 929 N.E.2d 410, ¶ 1 and 41 (same); *Disciplinary Counsel v. Andrews*, 124 Ohio St.3d 523, 2010-Ohio-931, 924 N.E.2d 829, ¶ 1 and 18 (same); *Disciplinary Counsel v. Butler*, 128 Ohio St.3d 319, 2011-Ohio-236, 943, N.E.2d 1025, ¶ 1 and 3 (same).

Based upon this Honorable Court's precedent and the evidence, Respondent respectfully submits that he has additional mitigation of **no** prior discipline. Respondent further respectfully requests that this Honorable Court take the mitigating factor of no prior discipline into consideration when determining the sanction to impose upon Respondent.

This Honorable Court went on to state in *Cantrell, supra*, that the board having found Cantrell's interim suspension to be prior discipline contrary to the Court's precedent justified the Court's modification of the board's recommended sanction of disbarment. Respondent respectfully submits that the Board's failure to find and consider that Respondent in the instant case has **no** prior discipline is a basis for this Honorable Court to consider modification of the Board's recommended sanction of disbarment and to impose the Hearing Panel's recommended sanction of indefinite suspension.

**B. Respondent Has Otherwise Good Character and Reputation in the Community**

The Board's Findings are silent as to whether Respondent has otherwise good character and reputation in the Community.

Respondent's Exhibits J through N speak to Respondent's otherwise good character and

reputation in the community. Mr. Bolton describes Paul as “a loyal and generous friend . . . very loving towards his family and is unwavering in his efforts to be a great father, spouse and friend . . . Paul is fundamentally an honorable and good person.” *Respondent’s Exhibit J*

Attorney Hlavka wrote: “I have known Paul for more than 10 years and I have always known him to be a hard working and honest individual who is ready, willing and able to help someone in need.” *Respondent’s Exhibit K.*

Attorney Hlavka also testified at the disciplinary hearing. Attorney Hlavka testified how Attorney Hlavka’s son “was immediately taken under wing by Paul to make sure that he got the engineering experience . . . Paul went out of his way to make sure that he [Attorney Hlavka’s son] got that experience, and made sure that he was integrated into the — into Kinetico, and got to meet employees and felt — was made to feel very comfortable.” *Trans. p 257, lines 4-17.*

Attorney Hlavka went on to testify that Respondent is “a very caring person who, you know, at the drop of a hat would, I think, do anything for you. . . . I never even heard Paul use a — a — you know, a curse word in all the years that I have know him. . . . I never heard him say a negative thing about a person.” *Trans. p. 264, lines 1-19.*

Reverend Esala, Senior Pastor at Valley Lutheran Church describes Respondent as follows: “In the time I’ve known Paul [Respondent], he’s shown himself to be a man of integrity, high moral character and willingness to serve others. He is respectful, polite, well-regarded by the other members of the congregation, and liked by everyone.” *Respondent’s Exhibit L.*

Reverend Esala also testified at the disciplinary hearing. Reverend Esala when presented with Respondent’s Exhibit L testified, “This is the letter that I wrote and — and it’s exact — that’s an exact representation of the way I feel about this. And this one I wrote not too long ago; and yes, I would still agree with that completely.” *Trans. p. 281, lines 16-20.*

Reverend Esala also testified about Respondent's involvement in activities at Valley Lutheran Church, such as: Saturday morning bible study, (*Trans. p. 272, lines 10-16*); work with the praise team, operating the overhead projector during the worship services, taught vacation bible school, helps with Sunday school and other kids programs. *Trans. p 272, lines 17-23*. Reverend Esala went on to state: "He's one of the kind of guys that you can depend on to show up. Is very helpful, too, by the way." *Trans. p. 272, lines 23-25*.

Reverend Esala also testified, "When I said he's involved in a lot of things, my goodness, I can't think of them all. And I don't think it's just — he's not just playing a game. He loves to be — He's got a group of guys there on Saturday morning that love him and care for him and with whom he shares his burdens, they share theirs, we share them with each other. And I know that they like him and they care for him." *Trans. p. 280, lines 16-24*.

Respondent's Mother-in-Law, Shelby Peto, also wrote a character letter on his behalf. Mrs. Peto states, "He is good caring lawyer, son-in-law, and father to my grandchild who I respect very much even though this unfortunate incident occurred." *Respondent's Exhibit M*.

Respondent's Brother, James Peterson writes, "... he never tried to avoid accepting responsibility for what occurred. . . . I think that the experiences that have come from this event will only lead him to be a better lawyer and it would be a shame for him not to have the opportunity to prove that." *Respondent's Exhibit N*.

This Honorable Court has held that otherwise good character and reputation in the community is a factor that mitigates the sanction to be imposed. *See, BCGD Proc. Reg. 10(B)(2)(e)*. In *Cleveland Bar Assn. v. Harris*, 96 Ohio St.3d 138, 2002-Ohio-2988, 772 N.E.2d 621, Mr. Harris was found to have wrongfully taken \$29,000 petty-cash type withdrawals. Letters and testimony of Mr. Harris' good character and reputation tempered the sanction to be

imposed and Mr. Harris was indefinitely suspended from the practice of law in Ohio.

Respondent respectfully submits that the evidence demonstrates that he has otherwise good character and reputation in the community; and respectfully requests that this factor be considered when this Honorable Court determines the sanction to imposed upon him.

Respondent further respectfully requests that he be indefinitely suspended from the practice of law in Ohio.

**C. Respondent Has Sincere Remorse And Has Accepted Responsibility for His Actions**

The Board's Findings are silent as to whether Respondent expressed remorse. Likewise, the Board's Findings are silent as to whether Respondent accepted responsibility for his actions.

Respondent testified as to his remorse and his acceptance of responsibility at the disciplinary hearing. Respondent testified:

I deeply regret what has happened. It was never my intention for that. It's always why I left a documented trail, always — and I think that's the part that even the psychologist will talk about, is that the intention was never there to ultimately do any harm.

That, you know, there was always — I always made sure that there was a way to be held accountable. And, therefore, I am trying to do everything that can I to make this right at this point and — and moving forward. And that at this point, its been several years since this has happened, and I'm trying the best to get this — to move on. And so I regret that it happened. I'm trying to move on, and ---- and am trying to just do the next step in the process.  
*Trans. p. 152, lines 21-25; Trans. p. 153, lines 1-12.*

Respondent also testified about his impaired thinking. *Trans. p. 142, lines 1-25; Trans. p. 143, lines 1-25; and Trans. p. 144, lines 1-25; Trans. p. 145, lines 1-25.* During this testimony, Respondent also acknowledged the wrongful nature of his conduct and accepted responsibility for what he had done. Respondent testified:

Which, ultimately, knowing now and looking back, even if she said it was okay to borrow this money from that account, being in the position of an attorney and trusted with that money, it's not okay. And I wouldn't do that now. *Trans. p. 144, lines 12-16*

Respondent went on to testify:

But today, I'll fight through it and — and say that for the honor of the profession and that — that — and for my daughter, that you stand up, you take accountability, you try to mitigate things, admit it, get it out in the open so people can see it, admit wrong so that if other people have the issue they know that they're not the only one and that they can — that there's other people that deal with this. *Trans. p. 147, lines 3-12.*

Reverend Esala testified about Respondent confessing his sins, and that to confess, one has to take responsibility for one's actions. *Trans. p. 276, lines 13-25; Trans. p. 277, lines 1-25; and Trans. p 278, lines 1-16.* When asked his perception of whether Respondent understood what he done and was remorseful for his actions, Reverend Esala testified:

I have been doing this for 30 years and — and I know that I cannot always be right in it, but if — if he didn't care, he's one of the best actors in the world. I think that he was sincerely aggrieved over what he had — his involvement and what he had done, *Trans. p. 278, lines 21-25.*

And, again, I'm not certain of what it was exactly, but it seems to be that there was some kind of financial issues about which he felt culpable or responsible for. And — And he was just deeply ashamed and embarrassed and — and he confessed that. **And I regarded it as genuine** [emphasis added]. *Trans. p. 279, lines 1-7.*

And I guess part of the — proof in the pudding I guess is in the tasting. After — It's been three years since that time, and — and Paul has demonstrated to me that he has an entirely different character than I saw at first when he came in in terms of he was — he was — he was fairly pathetic at the beginning ... .. And — And I think Paul was — was pretty hard on himself and he was — and he was very hard on himself. *Trans. p 279, lines 8-24*

This same theme of remorse and acceptance of responsibility is contained in the character

letters from persons who know Respondent. In Respondent's Exhibit J, Mr. Bolton writes, "I can attest that Paul feels great shame and regret for the circumstances, that his sole motive is to correct the situation as quickly as possible, and that he has learned from the event – never to be repeated." *Respondent's Exhibit J.*

Respondent's Mother-in-Law, Shelby Peto writes, "Upon the realization of what had occurred, Paul stepped forward immediately and attempted to take responsibility for his poor judgment. He and his lawyers have tried to negotiate a settlement with his ex-Client since the realization of what occurred in 2009. *Respondent's Exhibit M.*

Respondent's Brother, James Peterson writes, "However, he never tried to avoid accepting responsibility for what occurred. . . . also that you give consideration to the fact that he reported himself to you when he discovered what happened." *Respondent's Exhibit N.*

Based upon the foregoing, Respondent respectfully submits that the evidence demonstrates that he is sincerely remorseful and has accepted responsibility for his actions.

Remorse and acceptance of responsibility are factors to be considered in mitigation when determining the sanction to impose in a disciplinary case. In *Disciplinary Counsel v. Kramer*, 126 Ohio St.3d 163, 2010-Ohio-3300, 931 N.E.2d 571, this Honorable Court cited to Kramer's expression of sincere remorse, as a mitigating factor to be considered in favor of a less severe sanction. Kramer was convicted of theft for failing to remit required monies to the law firm at which he was employed. Kramer also received an interim suspension based upon his felony conviction.

Like Respondent in the instant case, the mitigation in Kramer was: lack of prior discipline, payment of restitution, cooperation in the disciplinary case, imposition of other penalties, good character and reputation, and remorse. Kramer was suspended from the practice

of law for 2 years with 1 year stayed on condition that he continue his mental health counseling and complete a two-year probationary period. Respondent in the instant case is requesting that this Honorable Court impose the Hearing Panel's recommended sanction of indefinite suspension.

In *Cincinnati Bar Assn. v. Rothermel*, 104 Ohio St.3d 413, 2004-Ohio-6559, Rothermel was indefinitely suspended by the Court, rejecting the Board's recommended sanction of disbarment. The mitigation in *Rothermel, supra.*, was cooperation in the disciplinary process, remorse and restitution.

Respondent has fully cooperated in the disciplinary process, fully cooperated with law enforcement authorities, made full restitution, had other sanctions imposed upon him, has otherwise good character and reputation, and has no prior discipline. Respondent respectfully requests that the sanction imposed upon him be an indefinite suspension from the practice of law.

#### **D. Bipolar Disorder Contributed to Cause Misconduct**

The Board's Findings do not dispute that Respondent was diagnosed with a mental disability by a qualified health care professional. In addition, the Board's Findings are that Respondent could return to the practice of law under appropriate supervision. *Board's Findings*, ¶ 48.

However, the Hearing Panel and the Board did not find that Respondent's mental disability contributed to cause his misconduct. Those Board's Findings are at ¶ 45: "In the absence of professional opinions based on probability, the panel does not consider that Respondent's mental condition contributed to his dishonesty." *Board's Findings* ¶ 45. This finding is at odds with the evidence.

First, BCGD Proc. Reg. 10(B)(2)(g)(ii) provides: "A determination that the chemical

dependency or mental disability contributed to cause the misconduct.” This is the standard that a respondent must meet in order for a mental disability to be a mitigating factor.

Black’s Law Dictionary defines contributing cause as “A factor that –though not the primary cause – plays a part in producing the result.” *Black’s Law Dictionary, Seventh Edition, page 212.*

Respondent respectfully submits that Dr. Hellwig’s testimony to a reasonable degree of psychological certainty that Respondent’s Bipolar Disorder contributed to cause his misconduct was sufficient to meet the standard set forth in BCGD Proc. Reg. 10(B)(2)(g)(ii).

Dr. Hellwig testified that in March 2009, Respondent contacted her and told her that he was in legal trouble and needed to see her sooner. *Trans. p. 209, lines 18-25.* Dr. Hellwig also testified that in March 2009 “was in the period of time when he was very difficult to follow. . . . At one point he talked about getting confused about the bank account numbers. At another point, he said something about writing payroll checks to himself. . .” *Trans. p. 201, lines 1-14*

The following acts were outlined for Dr. Hellwig: Respondent used the online bill pay, sometimes he mixed-up the account numbers between his own account and the LB2 account and paid his personal expenses from the LB2 account, *Trans. p. 201, lines 21-25*; Respondent used the LB2 debit card for his personal expenses, again using the wrong card, *Trans. p. 211, lines 1-9*; Respondent paid his own bills from his client’s bank account and tried to keep a tally in his head, *Trans. p. 211, lines 10-16.* Dr. Hellwig was then asked based upon these facts, her over 5 plus years of interaction with Respondent, her education, training and experience if she had an opinion to a reasonable degree of psychological certainty as to whether Respondent’s Bipolar Disorder contributed to cause the acts listed. Dr. Hellwig testified:

Well, a depressive swing can cause difficulty with concentrating and decision making. A manic swing can also create difficulty

with concentrating and poor decision making. And certainly attention-deficit hyperactivity disorder can contribute to poor – poor decision making, difficulty concentrating, difficulty attending to details like account numbers. *Trans. p 212, lines 2-9.*

So, yes, I believe that his mental illnesses could contribute to those circumstances. I suppose they could also contribute to a misunderstanding or a difference in understanding about do I have permission to borrow some money from this account or do I not, or do I have permission to borrow a little money from this account or do I have permission to borrow a lot of money from this account.

**Absolutely.** [Emphasis added]. *Trans. p. 212, lines 10-18.*

Could it also be possible that his mental illnesses could contribute to a misunderstanding about his ability to repay whatever he borrowed in a reasonable amount of time?

**Absolutely.** Again, people do things for short-term gain without really anticipating the consequences of their behaviors.

**Absolutely.** I think that his psychiatric disposition really could contribute to this behavior. [Emphasis added] *Trans. p. 212, lines 19-25; Trans. p. 213, lines 1-2.*

Dr. Hellwig testified how a person suffering from Bipolar Disorder thought process is impaired. Dr. Hellwig testified:

**Absolutely.** A person's thought process is impaired when they're having a manic episode. A person's thought process can also be impaired when they're having a depressive episode. Their ability to concentrate, their ability to make decisions and to make good decisions can be significantly impaired. [Emphasis added]

But in the manic phase, the – the tendency to make decisions to maximize short-term gains without any long-term consequences can be significant. *Trans. p. 192, lines 17-25; Trans. p. 193, lines 1-2*

Dr. Hellwig testified that in 2006 when she began treating Respondent, Respondent would start one sentence then jump to another topic, making it almost impossible for Dr. Hellwig to follow Respondent's thoughts. *Trans. p. 198, lines 5-11; and Trans. p. 219, lines 23-25.*

Although Dr. Hellwig began treating Respondent in 2006, it was not until **April 2009** that Respondent began completing sentences and actually carrying on a conversation with her; which in turn made their relationship therapeutic, or conducive to therapy. *Trans. p. 198, lines 5-25;*

*Trans. p. 199, lines 1-25.* Dr. Hellwig testified that in April 2009, Respondent brought his Mother with him for a session and it was shortly after that session that Respondent's communication started to improve. *Trans. p. 228, lines 22-25; Trans. p. 229, lines 1-6.*

Although Respondent was in therapy for his mental disability from 2006, Respondent's ability to effectively communicate with his medical professionals was hampered by his mental disability. Respondent's ability to communicate with his medical professionals was better beginning in March 2009 when he disclosed his legal problems to Dr. Hellwig; and became even better in April 2009 when Respondent was completing sentences and actually carrying on a conversation with Dr. Hellwig. In fact, the manic side of Respondent's Bipolar Mood Disorder was not treated with medication until January 2011. Respondent's impaired thought process, judgment and impaired ability to communicate because of his mental disability should not be construed, as set forth in the Board's Findings, that Respondent was not candid with either Dr. Hellwig or Dr. Castro. *Board's Findings ¶ 45 and 46.*

In fact, Dr. Hellwig's testimony contradicts the Board's Findings. When asked on cross-examination if Respondent "was always upfront with you and talked about what was going with him at the time and what problems he was experiencing (*Trans. p. 219, lines 1-3*), Dr. Hellwig testified:

I think that was much harder early in the treatment. And it may not have been harder for him to be upfront; it may have been harder for me to understand because of the communication issues that there were. *Trans. p. 219, lines 4-8.*

Dr. Hellwig's testimony on page 219, coupled with her testimony on page 198 about Respondent starting one sentence then jumping to another topic illustrates that Respondent's problem was not a failure to be candid with his treatment professionals, but rather Respondent's mental disability was such that he could not converse with his treatment professionals in a

logical, easily understood manner. Impaired thinking and impaired judgment are hallmarks of Bipolar Disorder. *Trans. p. 241, lines 18-25.*

Respondent respectfully submits that he did prove that his Bipolar Disorder contributed to cause his misconduct; and respectfully requests that his mental disability be considered mitigation when determining the sanction to impose. Respondent respectfully requests that he be indefinitely suspended from the practice of law.

**Proposition of Law No. 3:**

**Sufficient Evidence of Mitigation Tempers Sanction to be Imposed**

This Honorable Court has held that sufficient evidence of mitigating or extenuating circumstances can temper the sanction to be imposed. The cases so holding include: *Dayton Bar Assn. v. Gerren*, 103 Ohio St.3d 21, 2004-Ohio-4110, 812 N.E.2d 1280, ¶ 14, citing *Disciplinary Counsel v. France*, 97 Ohio St.3d 240, 2002-Ohio-5945, 778 N.E.2d 573, ¶ 11, and *Rothermel*, *supra*.

This Honorable Court has also held that the “disciplinary process exists not to punish the offender but to protect the public” *Akron Bar Assn. v. Catanzarite*, 119 Ohio St.3d 313 at ¶ 37, citing to *Disciplinary Counsel v. Agopian*, 112 Ohio St.3d 103 at ¶ 10, citing *Disciplinary Counsel v. O’Neill*, 103 Ohio St.3d 204 at ¶ 53 and *Ohio State Bar Assn. v. Weaver* (1975), 41 Ohio St.2d 97, 100.

Respondent’s mitigation includes:

- no prior discipline;
- self-reported his misconduct;
- full restitution made;
- fully cooperated in disciplinary case;
- had other sanctions imposed upon him;
- otherwise good character and reputation;
- remorse and acceptance of responsibility;
- diagnosed mental disability – Bipolar Disorder;
- Bipolar Disorder contributed to cause his misconduct;

- sustained period of effective treatment from January 2011 to the present;
- prognosis that in the future Respondent can return to the competent ethical practice of law.

There are a number of cases similar to Respondent's where the sanction imposed was indefinite suspension.

In *Disciplinary Counsel v. Scacchetti*, 2012-Ohio-223, there were **no** mitigating factors to Mr. Scacchetti's use of his client trust account to pay his personal and office bills, causing his account to be overdrawn on 5 separate occasions. Mr. Scacchetti was indefinitely suspended from the practice law.

In *Akron Bar Assn. v. Smithern*, 125 Ohio St.3d 72, 2010-Ohio-652, 926 N.E.2d 274 although the attorney converted client funds on more than 30 separate occasions and deposited over \$100,000 in client retainers in her personal account, and despite the fact that Ms. Smithern had not make full restitution, an indefinite suspension was imposed upon Ms. Smithern.

In *Disciplinary Counsel v. Muntean*, 127 Ohio St.3d 427, 2010-Ohio-6133, 940 N.E.2d 942, Mr. Muntean misappropriated almost \$50,000 from a charity for his personal expenses and then tried to hide his actions by ignoring requests by the charity to produce the records. Mr. Muntean's mitigation included self-reporting, making complete restitution, understands the gravity of his misconduct, taking measures to address why the conduct occurred. An indefinite suspension was imposed upon Mr. Muntean.

In *Cincinnati Bar Assn. v. Newman*, 127 Ohio St.3d 123, 2012-Ohio-5034, 937 N.E.2d 81, Mr. Newman had a felony theft conviction for passing bad checks and for check kiting. Mr. Newman did not cooperate in the investigation and failed to file an Answer in the disciplinary case and default proceedings were initiated. The only mitigation was no prior discipline. Mr. Newman was indefinitely suspended from the practice of law.

In *Columbus Bar Assn. v. Thomas*, 124 Ohio St.3d 498, 2010-Ohio-604, 924 N.E.2d 352, Mr. Thomas misappropriated \$32,600 of his client's money in 38 illegal disbursements. Mr. Thomas concealed his theft by misleading his client as to the amount of monies he had collected. Due to his cooperation in the investigation and prosecution, his good character and reputation, and no other penalties and sanctions, Mr. Thomas was sanctioned with an indefinite suspension.

Respondent respectfully submits that given sufficient evidence of mitigation in his case, an indefinite suspension is warranted.

#### **IV CONCLUSION**

From the time that Respondent realized what he had done in March 2009, Respondent has set about to make amends for his actions. He self-reported his misconduct to Disciplinary Counsel via letter dated March 31, 2009 and admitted to using monies from the LB2, LLC account, whose sole owner was Linda Mae Gabriel. *Respondent's Exhibit Y*. He has fully cooperated with the Office of Disciplinary Counsel in its investigation and prosecution of him. He cooperated with law enforcement authorities. He was convicted of theft and he served jail time. He has made full restitution to Ms. Gabriel and to the Client's Security Fund. He has entered into a settlement of the civil law suit brought against him by Ms. Gabriel.

Respondent has also proven mitigating factors including: no prior discipline, otherwise good character and reputation, remorse, acceptance of responsibility; his mental disability, Bipolar Disorder, contributed to cause his misconduct; and he has had other sanctions imposed upon him. This Honorable Court's precedent supports Respondent's request that he be given an indefinite suspension from the practice of law.

An indefinite suspension from the practice of law does protect the public, because Respondent will have to go through another hearing at which he will have to prove that he

possesses the requisite character, fitness and moral qualifications to be readmitted to the practice of law. An indefinite suspension recognizes the seriousness of Respondent's actions while preserving at some point in the future the possibility that Respondent can prove that he is fit to be reinstated to the practice of law in Ohio.

For all of the reasons set forth herein, Respondent respectfully requests that the Hearing Panel's recommended sanction of indefinite suspension be adopted and this Honorable Court impose an indefinite suspension upon him.

RESPECTFULLY SUBMITTED,



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**PROOF OF SERVICE**

I, Mary L. Cibella, do hereby certify that on July 6<sup>th</sup>, 2012 a copy of the foregoing

Objections of Respondent to the Board of Commissioner's Report and Recommendation were served as follows:

**Via Overnight Federal Express**

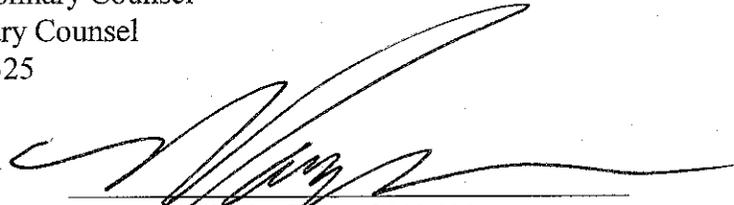
Kristina D. Frost, Clerk  
Supreme Court of Ohio  
65 South Front Street  
Columbus, Ohio 43215

**Via Certified Mail #7004 1350 0002 7709 0140**

Richard A. Dove, Secretary  
Board of Commissioners on Grievances and Discipline  
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**Via Regular U.S. Mail to**

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**Counsel for Respondent, Paul N. Peterson**