

## **Summary of SC91370, *In Re: Byron G. Stewart***

Original attorney discipline action

Argued and submitted May 10, 2011; opinion issued June 28, 2011

**Attorneys:** The chief disciplinary counsel was represented by Alan D. Pratzel and Sharon K. Weedon of the chief disciplinary counsel's office in Jefferson City, (573) 635-7400. Stewart, an attorney with offices in Independence and Kansas City, did not file a brief or participate in oral arguments before this Court.

*This summary is not part of the opinion of the Court. It has been prepared by the communications counsel for the convenience of the reader. It neither has been reviewed nor approved by the Supreme Court and should not be quoted or cited.*

**Overview:** The chief disciplinary counsel seeks to discipline the law license of an attorney with four convictions for driving while intoxicated. In a 7-0 decision written by Judge Mary R. Russell, the Supreme Court of Missouri suspends the man's license with no leave to apply for reinstatement for six months. His felony conviction constitutes a violation of the rules of professional conduct, and his repeated conduct shows indifference to the law and to public safety, which undoubtedly undermines the public's confidence in the legal system and the profession at large. Because his conduct is not closely related to the practice of law and does not pose an immediate threat to the public, suspension is more appropriate than disbarment. Because the man's repeated disregard for the boundaries of the law cannot be excused, it is not appropriate to stay that suspension. Judge Richard B. Teitelman concurs, noting that while the man committed a serious criminal offense, lengthy suspensions generally should be reserved for circumstances in which clients are harmed.

**Facts:** Attorney Byron Stewart has a history of four convictions for driving while intoxicated in 11 years. He pleaded guilty to his first DWI in 1997, his second in 2004, his third in 2006 and was arrested for his fourth in November 2008. For this fourth charge, he received a three-year suspended sentence with supervised probation that requires him to undergo alcohol and drug testing and forbids him from driving or consuming alcohol. He also was ordered to serve 60 days of shock time, during which the chief disciplinary counsel asked this Court to discipline Stewart's law license pursuant to Rule 5.21(c). Under this rule, an attorney who has pleaded guilty to a felony is subject to discipline by this Court without the requirement of any other proceeding. Stewart's only previous discipline involved an April 2009 admonition relating to diligence and communication. Although his fourth DWI was pending at the time, the chief disciplinary counsel apparently was unaware of Stewart's criminal history or pending charge. This Court now considers the discipline warranted by Stewart's felony conviction.

### **SUSPENDED WITH NO LEAVE TO APPLY FOR REINSTATEMENT FOR SIX MONTHS.**

**Court en banc holds:** (1) Stewart's felony conviction constitutes a violation of Rule 4-8.4(b). A criminal act by a lawyer that reflects adversely on that lawyer's honesty, trustworthiness or fitness as a lawyer is considered professional misconduct under this rule. When a lawyer engages in criminal conduct that reflects adversely on his fitness as a lawyer in violation of Rule 4-8.4,

that lawyer's conduct inevitably tarnishes the public image of the profession as a whole. Although Stewart has avoided causing injury or property damage, his repetitive conduct shows indifference to the law and to public safety, which undoubtedly undermine the public's confidence in the legal system and the profession at large.

(2) Stewart's felony warrants a suspension of his law license. Under the standards of the American Bar Association for attorney discipline, disbarment is warranted when an attorney's criminal conduct is closely related to the practice of law and poses an immediate threat to the public, whereas suspension is considered appropriate when a lawyer knowingly engages in criminal conduct that is not closely related to the practice of law, does not pose an immediate threat to the public, but that seriously and adversely reflects on the lawyer's fitness to practice law. Aggravating and mitigating factors also are considered in determining appropriate discipline. Here, Stewart's aggravating factors are his four DWI convictions and that he failed to report his criminal conduct to the chief disciplinary counsel when he was admonished for unrelated issues in 2009. His mitigating factors include his limited prior disciplinary history, his remorse, his ongoing struggle with alcoholism and his commitment to sobriety, his participation in extensive inpatient and outpatient treatment and his attendance at numerous Alcoholics Anonymous meetings, and his full compliance with the terms of his criminal probation. As such, suspension is more appropriate than disbarment.

(3) Staying Stewart's suspension is not warranted. He has been convicted of a felony arising out of his fourth DWI during an 11-year period, which implicates the ABA standard's contemplation of suspension for a lawyer who "knowingly" engages in criminal conduct. Staying his suspension for a period of probation would be inconsistent with this Court's previous cases involving felony convictions for multiple DWIs. That Stewart received a lenient criminal sentence does not diminish the severity of his conduct for the purpose of assessing the proper discipline. The damage caused by drunken drivers is well-documented; this Court must insist that attorneys be keenly aware of the parameters the law places on their conduct. Stewart's repeated disregard for those boundaries cannot be excused.

**Concurring opinion by Judge Teitelman:** The author notes that Stewart's conviction for driving while intoxicated illustrates a serious criminal offense but that the goals of the disciplinary system are served only marginally by disciplining an attorney for conduct that does not relate even tangentially to the representation of clients such that disbarments and lengthy suspensions generally should be reserved for circumstances in which clients are harmed.