**IN THE SUPREME COURT**
**STATE OF MISSOURI**

---

| | | |
|---|---|---|
| **IN RE:** | ) | |
| | ) | |
| **MICHAEL M. SEBOLD,** | ) | **Supreme Court #SC92047** |
| | ) | |
| **Respondent.** | ) | |

---

# INFORMANT'S REPLY BRIEF

---

ALAN D. PRATZEL #29141
CHIEF DISCIPLINARY COUNSEL

SAM S. PHILLIPS #30458
DEPUTY CHIEF DISCIPLINARY COUNSEL
3335 American Avenue
Jefferson City, MO 65109
(573) 635-7400
Sam.Phillips@courts.mo.gov

ATTORNEYS FOR INFORMANT

# TABLE OF CONTENTS

**TABLE OF CONTENTS** ..... **1**

**TABLE OF AUTHORITIES** ..... **2**

**POINT RELIED ON** ..... **4**

**ARGUMENT** ..... **5**

What Mental State is Established by the Record? ..... 5

Does a Felony DWI, Based on Two Previous Crimes, Adversely Impact the Integrity of the Profession? ..... 8

**CONCLUSION** ..... **9**

**CERTIFICATE OF SERVICE** ..... **11**

**CERTIFICATION: RULE 84.06(C)** ..... **11**

# TABLE OF AUTHORITIES

Cases

*In re Stewart*, 342 S.W.3d 307 (Mo. banc 2011) ..... 4, 7, 8

Statutes

Section 562.011(2), RSMo ..... 4, 7

Section 562.076, RSMo ..... 4, 7

Other Authorities

ABA, *Standards for Imposing Lawyer Sanctions* (1992) ..... 4, 5

Most issues in Respondent's brief are addressed in Informant's initial brief filed November 22, 2011. This Reply Brief is intended to address two issues raised by Respondent. First, is Respondent's claim - that his third Driving While Intoxicated offense involved no conscious acts - supported by the record? Second, should a lawyer's felony conviction relating to public safety implicate the Court's oft-stated goal of maintaining the integrity of the legal profession?

## POINT RELIED ON

**I.**

**THE SUPREME COURT SHOULD INDEFINITELY SUSPEND RESPONDENT'S LICENSE WITHOUT LEAVE TO APPLY FOR REINSTATEMENT FOR SIX MONTHS BECAUSE HIS GUILTY PLEA TO FELONY DRIVING WHILE INTOXICATED ESTABLISHES THAT HE KNOWINGLY ENGAGED IN CRIMINAL CONDUCT THAT SERIOUSLY ADVERSELY REFLECTS ON HIS FITNESS TO PRACTICE IN THAT HIS CONDUCT DELETERIOUSLY EFFECTS THE REPUTATION OF THE LEGAL PROFESSION AND DEMONSTRATES HIS INDIFFERENCE TO THE LAW AND PUBLIC SAFETY.**

*In re Stewart*, 342 S.W.3d 307 (Mo. banc 2011)

Section 562.011(2), RSMo

Section 562.076, RSMo

ABA, *Standards for Imposing Lawyer Sanctions* (1992)

## ARGUMENT

### I.

### THE SUPREME COURT SHOULD INDEFINITELY SUSPEND RESPONDENT'S LICENSE WITHOUT LEAVE TO APPLY FOR REINSTATEMENT FOR SIX MONTHS BECAUSE HIS GUILTY PLEA TO FELONY DRIVING WHILE INTOXICATED ESTABLISHES THAT HE KNOWINGLY ENGAGED IN CRIMINAL CONDUCT THAT SERIOUSLY ADVERSELY REFLECTS ON HIS FITNESS TO PRACTICE IN THAT HIS CONDUCT DELETERIOUSLY EFFECTS THE REPUTATION OF THE LEGAL PROFESSION AND DEMONSTRATES HIS INDIFFERENCE TO THE LAW AND PUBLIC SAFETY.

What Mental State is Established by the Record?

Mr. Sebold properly points to the ABA's *Standards for Imposing Lawyer Sanctions* as guidance for this Court. Specifically, he refers to Standard 3.0, which sets out four key factors in determining sanctions. Those factors are: (a) the duty violated; (b) the lawyers' mental state; (c) the potential or actual injury caused by the lawyer's misconduct; and (d) the existence of aggravating or mitigating factors. ABA, *Standards for Imposing Lawyer Sanctions, Sec. 3.0* (1992)

He argues that his sanction should be reduced because his mental state, at the time of his crime, was not 'conscious.' Sebold says: "[he] did not understand the gravity of his problem, or that he was capable of becoming so intoxicated that he could enter and

operate a motor vehicle without making a conscious decision to do so." (Respondent's Brief, p. 13). And, he reports that he "made no conscious decision to operate a motor vehicle in either of the latter two incidents," (Respondent's Brief, p. 13). Finally, he states emphatically: "[My] actions did not reflect a repeated indifference to law or public safety," (Respondent's Brief, p. 13).

Mr. Sebold's denials - of conscious acts - chase credulity. In June 2010, he had twice been convicted of DWI. To explain that his third DWI was an unconscious act, he says that he was so drunk that he didn't know he was driving. (Respondent's Brief, p. 6). As it turns out, that was the same explanation he gave for his second DWI. (Respondent's Brief, p. 6). And, although he pled guilty to his second DWI, admitting that he drove drunk, he says that he, even after he pled guilty to that second DWI, " [he] maintained serious doubts as to whether he had really operated a motor vehicle with no recollection of doing so," (Respondent's Brief, p. 6).

To consider his explanation, we should also consider this: As of the third time he was caught driving drunk, he had been to jail twice for DWI. And, even after his first DWI, he says he knew he had a drinking problem. (Respondent's Brief pp. 5-6). He had to have learned something when he worked with the Missouri Bar's Lawyer Assistance Program. (Respondent's Brief, p. 6). He had to have learned something when he was active with Alcoholics Anonymous. (Respondent's Brief, p. 6). He knew that he was continuing to drink at his home, by himself. (Respondent's Brief, p. 6). And, he admitted to the court that he had driven drunk on his second DWI, after drinking at home, even when he didn't remember driving. (Respondent's Brief, p. 6).

Mr. Sebold's denials are refuted by common sense. And, his denials are refuted by his guilty pleas. In pleading guilty, he has already admitted that he drove while intoxicated. Under Missouri law, he could not be guilty of that offense unless his conduct included a "voluntary act." A voluntary act, by definition is: (1) A bodily movement performed while conscious as a result of effort or determination; or (2) An omission to perform an act of which the actor is physically capable." Section 562.011(2), RSMo. And, because he argues that he was too drunk to know that he was driving, it may be helpful to state the obvious: his voluntary intoxication offers no defense to DWI (or any other crime), Section 562.076, RSMo. In other words, it is conclusively established that he voluntarily (consciously) drove his car while he was drunk after twice being convicted of intoxication related driving offenses.

In choosing a sanction for a lawyer convicted of a third DWI, this Court recently addressed that lawyers' mental state: "His felony conviction reflects adversely on his fitness as a lawyer, and *the repetitive nature of his behavior defeats any suggestion that he embarked on his course of conduct with less than full knowledge of the nature and consequences of his action*," *In re Stewart*, 342 S.W.3d 307, at 311-312 (Mo. banc 2011). (emphasis added).

After two trips to the jail and extensive support to deal with his known alcohol problem, Mr. Sebold's denial of "repeated indifference to law or public safety" rings hollow. As this Court announced recently in the *Stewart* decision, also involving a lawyer convicted of his third DWI, who was also found asleep at the wheel, "His felony

conviction represents an indifference to the law that merits a strong disciplinary response." *In re Stewart*, 342 S.W.3d at 311.

The most disturbing aspect about Mr. Sebold's denials is the indication that he still may not be accepting responsibility for his conduct. Until he fully accepts his conscious criminal behavior, the discipline system should not consider his recovery as mitigation. To reduce a sanction while he remains in denial would be to enable Respondent to continue his denials. The disciplinary process offers an opportunity (or risk) to enable alcoholic lawyers; it also offers an opportunity to improve lawyers' chances at recovery by encouraging accountability. Informant asks the system to help this lawyer recover.

Does a Felony DWI, Based on Two Previous Crimes, Adversely Impact the Integrity of the Profession?

Mr. Sebold has been convicted, three times, of driving while too drunk to drive. His third offense was a felony. This Court recently considered whether those circumstances embarrassed the profession. In a very similar recent case, also involving a lawyer convicted of his third DWI, the court wrote, ". . . we cannot ignore the deleterious effect of his conduct on the reputation of the legal profession," *In re Stewart*, 342 S.W.3d at 311. In further explaining the need for an actual suspension, the Court wrote: "The damage wrought in our state every year by drunken drivers is well documented, . . .This court must insist that attorneys are keenly aware of the parameters the law places on their conduct." "Repeated disregard for those boundaries cannot be excused." *In re Stewart*, 342 S.W.3d at 313.

## CONCLUSION

Maintenance of the integrity of the legal profession is one of two reasons for an attorney discipline system. The integrity of the profession may indeed be harmed by a single lawyer's misconduct. But, everyone, both those directly involved in the system and the public, understand that any collection of people includes members who occasionally struggle with life's challenges. With that in mind, the integrity of any self-regulating profession is less about those individual's struggles and more about the profession's response. Does the profession require accountability? Does the profession offer assistance and support? Does the profession's response enable its struggling members to continue in any self-denials? Does the profession apply consequences?

To maintain the integrity of the profession in this felony case, Mr. Sebold's license should be suspended indefinitely. He should not be granted probation (although Informant will consider the advantages of probation upon reinstatement to support Mr. Sebold's recovery and to protect the public). He should not be eligible for reinstatement until six months after the order of suspension is entered.

Respectfully submitted,

ALAN D. PRATZEL #29141
Chief Disciplinary Counsel

By: _____

Sam S. Phillips #30458
Deputy Chief Disciplinary Counsel
3335 American Avenue
Jefferson City, MO 65109
(573) 635-7400 – Phone
(573) 635-2240 – Fax
Sam.Phillips@courts.mo.gov

ATTORNEYS FOR INFORMANT

## CERTIFICATE OF SERVICE

I hereby certify that on this 30th day of January, 2012, a true and correct copy of the foregoing was served via the electronic filing system pursuant to Rule 103.08 and two copies of Informant's Reply Brief and a CD containing the Reply Brief in PDF format have been sent via First Class United States Mail, postage prepaid, to:

Michael M. Sebold
5509 Duchesne Parque Dr.
St. Louis, MO 63128

Sam S. Phillips

## 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(b);

3. Contains 1,721 words, according to Microsoft Word, which is the word processing system used to prepare this brief; and

4. That Trend Micro software was used to scan the CD for viruses and that it is virus free.

Sam S. Phillips