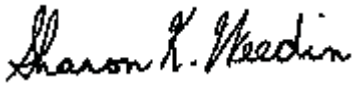
IN THE SUPREME COURT
STATE OF MISSOURI

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

INFORMANT'S BRIEF

OFFICE OF
CHIEF DISCIPLINARY COUNSEL



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ATTORNEY FOR INFORMANT

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TABLE OF AUTHORITIES

CASES

OTHER AUTHORITIES

STATEMENT OF JURISDICTION

Jurisdiction over this attorney discipline matter is established by Article V, Section 5 of the Missouri Constitution, Supreme Court Rule 5, this Court's common law and Mo. Rev. Stat. §484.040 (1994).

STATEMENT OF FACTS

On June 21, 2010, Respondent Sebold drove while intoxicated in Jefferson County, Missouri. At the time, Respondent was driving a vehicle without a functioning, certified ignition interlock device, which violated a condition of the probation he was then serving. App. 6, 8. On June 24, 2008, Respondent drove with excessive blood alcohol content in St. Louis County. On August 28, 2007, Respondent drove while intoxicated in Jefferson County, Missouri. App. 6, 8.

The June 21, 2010, incident was a class D felony because Respondent had on his record two prior intoxication-related driving offenses. Driving the vehicle without the interlock device was a class A misdemeanor. App. 2-3.

Respondent was admitted to Missouri's Bar in 1994. He has no disciplinary history.

POINT RELIED ON

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)

In re Kirtz, 494 S.W. 2d 324 (Mo. banc 1973)

ARGUMENT

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.

On September 28, 2011, disciplinary counsel filed an information pursuant to Rule 5.21 (c) informing the Court that Respondent had pled guilty to a felony drunk driving charge. Disciplinary counsel recommended that Respondent's license be suspended with no leave to file for reinstatement for six months. On October 11 and 14, 2011, Respondent filed pleadings opposing the level of sanction recommended by disciplinary counsel. On October 25, 2011, the Court activated a briefing schedule.

Disciplinary counsel recommended the Court order an indefinite suspension with no leave to apply for reinstatement for six months on the basis of the Court's reasoning in *In re Stewart*, 342 S.W. 3d 307 (Mo. banc 2011). That case, like this one, was a Rule 5.21 (c) case filed to inform the Court that Mr. Stewart had pled guilty to felony driving while intoxicated. Mr. Stewart had accumulated four DWIs over eleven years; Mr. Sebold has accumulated three DWIs in three years.

Mr. Stewart served sixty days shock time in the county jail and was placed on three year criminal probation. Mr. Sebold served ten days shock time and was placed on a five year criminal probation. He is required to wear a SCRAM monitoring device. He was ordered to complete 200 hours of community service.

Both Mr. Stewart and Mr. Sebold, as of the time their disciplinary cases were before the Court, professed abstinence and commitment to the Alcoholics Anonymous program.

In neither case did the final drunk driving incident triggering the felony involve property damage or injury to persons. Indeed, in both cases the respondents were found passed out in a stopped vehicle.

As was the case with Stewart, disciplinary counsel has no record that Sebold reported his prior drunk driving convictions to OCDC, although both Respondents self-reported the felony charges.

Both Stewart and Sebold apparently successfully insulated their law practices from their self-professed alcoholism. Mr. Stewart had one admonition for diligence and communication issues when his case came before the Court; Mr. Sebold has no prior disciplinary history.

On the issue of the role that client harm should play in sanction analysis, it is, of course, one of the four analytical inquiries that make up the sanctions analysis model set forth in the ABA *Standards for Imposing Lawyer Sanctions*. The lack of client involvement or harm in the lawyer's misconduct, however, while a factor to be given

consideration, does not negate the wrong. See *In re Wallingford*, 799 S.W. 2d 76, 78 (Mo. banc 1990). The Court has long recognized its inherent power to sanction misconduct not committed in the attorney's capacity as a lawyer. *In re Kirtz*, 494 S.W. 2d 324, 328 (Mo. banc 1973), *In re Panek*, 585 S.W. 2d 477, 479 (Mo. banc 1979). The Court ordered disbarment in both *Kirtz* and *Panek*, even though client harm was not a factor in either case.

The Court concluded in *Stewart* that suspension was the appropriate sanction in a case of felony conviction for multiple DWIs. The deleterious effect of such conduct on the reputation of the legal profession, as well as the repetitiveness of the conduct, which reflects indifference to law and public safety, substantiates suspension as the appropriate sanction.

CONCLUSION

The Court should indefinitely suspended Respondent's license with no leave to apply for reinstatement for six months, in accordance with the sound sanction analysis and prophylactic instruction of *In re Stewart*, 342 S.W. 3d 307 (Mo. banc 2011).

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on this 22nd day of November, 2011, two copies of Informant's Brief and a CD containing the Brief in PDF format have been sent via First Class United Mail, postage prepaid, to:

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

Sharon K. Weedin

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Sharon K. Weedin

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 1,244 words, according to Microsoft Word, which is the word processing system used to prepare this brief; and

4. That Trend Micro Anti-Virus software was used to scan the disk for viruses and that it is virus free.

Sharon K. Weedin

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Sharon K. Weedin

APPENDIX

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