IN THE SUPREME COURT OF FLORIDA

THE FLORIDA BAR,

Complainant,

vs.

TARYN XENIA TEMMER,

Respondent.

CASE NO. 80,982

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**RESPONDENT'S REPLY BRIEF**

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## TABLE OF CONTENTS

## TABLE OF CITATIONS

## ARGUMENT

**COMPLAINANT'S MISCHARACTERIZATION OF RESPONDENT'S INITIAL DENIAL OF THE CHARGES AND ITS FAILURE TO CITE ANY CASE IN SUPPORT OF ITS POSITION REQUIRE THE MODIFICATION OF THE RECOMMENDATION OF DISCIPLINE.**

The Complainant is incorrect in its interpretation of amended Rule 4-8.4(g) of The Rules Regulating The Florida Bar, and the comment thereunder. The Complainant states in its answer brief that "the false denial of the initial complaint was improper and constitutes serious misconduct." The Complainant relies upon this perceived misrepresentation in supporting the Referee's recommendation of a 91 day suspension.

According to The Florida Bar v. Musleh, 453 So. 2d 794 (Fla. 1984), the standard of proof of guilt in bar proceedings is "clear and convincing evidence". at 796. Further, recently adopted Rule 4-8.4(g) requires a lawyer to respond to an initial complaint, however, the comment thereunder allows the accused attorney to deny the charges. If an accused attorney is required to respond and, as the Complainant maintains, must admit the allegations, if true, the burden of proof is thereby stood on its head. The attorney accused would be required to admit his or her wrong doing and accept the consequences without any requirement that the Complainant prove its allegations by clear and convincing evidence. Such a reading of Rule 4-8.4(g) is, most respectfully, ludicrous. The rule and its comment clearly allow a denial of the allegations. Therefore, Respondent's initial denial is not "a significant untrue

statement". Instead, it is merely the right of the accused attorney to require the Complainant to meet its burden.

The new rule allows an attorney the same rights as anyone charged with wrong doing, that is the right to require the accuser to prove its allegations or accusations. The Respondent did not "subvert the truth finding process", as Complainant insists. In fact, the truth was admitted long before the disciplinary hearing when Respondent was evaluated by Dr. Sheehan at the Complainant's request. The delay the Complainant suggests was the Respondent's fault is, with all due respect, also absurd. Clearly, the Complainant received a timely response to the complaint from the Respondent. The Complainant then waited over a year to take any further action against the Respondent. The Complainant if anyone prevented "the proper and efficient operation of the disciplinary system".

If the Respondent's actions were that serious and of such grave concern why did the Complainant not move this case forward? Why did the Complainant not move for an emergency suspension? The answers to these questions are obvious. There was no concern for the Respondent's competency to practice and properly represent clients. There was no belief that the Respondent continued to engage in the use of illicit drugs. If there was a concern, and if the Respondent truly needed to show rehabilitation, the Complainant would have taken more swift and decisive action two years ago.

The Referee's and Complainant's reliance on the Respondent's resumed drug usage is equally uncompelling. While there was a

resumption of drug use, it was brief and there has been a significant span (approximately 20 months to date) of time between that last usage and this review. This fact must be considered in determining whether the suspension suggested is warranted. As this Court stated in Musleh, "we cannot see how greater deterrence or protection of the public will be achieved by a lengthy suspension of one, who until this episode, had an unblemished record and who has now, with the help of ongoing medical assistance, returned to his former level of conduct and practice." at 797. Accordingly, there would be no purpose served in suspending the Respondent for the period suggested. Prior to these proceedings the Respondent had an unblemished record. Further, she voluntarily has continued in therapy and intends to do so in the future. The Respondent's practice has never suffered and there would be no logical reason to interrupt it now.

It is both interesting and significant that Complainant failed to cite a single case in support of the imposition of the draconian sanction it seeks here. It must be assumed that Complainant could not find any past precedent from this Court to bolster its sagging argument that a 91 day suspension is the proper discipline herein.

This Court must modify the Referee's recommendations as they are punitive, are not appropriate for the misconduct and are inconsistent with other disciplinary sanctions in like circumstances. A public reprimand is the proper discipline in this case and it should be so ordered.

## CONCLUSION

Given the Referee's and Complainant's misplaced reliance upon the nature of Respondent's initial denial and further, given the past decisions of this Court relative to punishment for drug usage, it is clear the appropriate discipline in this cause is a public reprimand.

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by U.S. Mail delivery this 24 day of September, 1993, to: ~~David R. Ristoff, Esquire, Branch~~ JOSEPH A. CORSMEIER, ESQUIRE, ASSISTANT Staff Counsel, The Florida Bar, Tampa Airport Marriott Hotel, Suite C-49, Tampa, Florida 33607.

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