IN THE SUPREME COURT OF FLORIDA

Case Number: SC03-149

THE FLORIDA BAR,

Complainant,

versus

JAMES H. TIPLER,

Respondent

RESPONDENT'S REPLY BRIEF

JAMES HARVEY TIPLER
P.O. BOX 10
MARY ESTHER, FL 32569
(850) 654-6566

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I. ONE YEAR OR LESS IS THE APPROPRIATE SUSPENSION ACCORDING TO FLORIDA CASE LAW.

The Florida case closest in fact to this one is The Florida Bar v. Bryant, 813 So. 2d 38 (Fla. 2002). The Referee in Bryant, supra., had only ordered probation where the lawyer had exchanged legal services for sex with a prostitute. This Court found that a one year suspension was appropriate, finding that such a penalty was the standard, if you will, in other states dealing with similar situations.

Alabama in this case of reciprocal discipline found that 15 months was appropriate. For what reason can the Referee justify 18 months, instead of the one year found appropriate by the Court in the case most similar.

It is submitted that the only justification for a longer period in Florida would be that the facts are more egregious in this case than they were in Bryant, which this Court felt merited only one (1) year. To the contrary, however, the facts of this case were clearly less egregious, as set forth in detail in the Initial Brief of Respondent. Under this scenario alone, one (1) year and not 18 months, would be appropriate discipline.

This scenario, however, does not end at one (1) year. Unlike the lawyer in Bryant, Respondent sought treatment in a program approved by the Florida Lawyer's Assistance program. The Rules mandate a reduction in time when such

occurs, and it is undisputed that it did, both at Pine Grove and at the Sexual Recovery Institute. Not only was the length of suspension not reduced because of this voluntary treatment, it was increased!

The clear wording of the Rule is that such voluntary treatment "shall" be considered. It was not even mentioned in the Report of Referee.

II. THE FACTS AS TO WHAT HAPPENED IN CALIFORNIA ARE NOT IN DISPUTE.

Perhaps one reason for the unsupported and unwarranted longer period of suspension is the inclusion in the record of the factual finding with regard to California, now proven untrue, which the Referee failed to even hold a hearing to resolve.

The Alternative Discipline Program in California has no counterpart in Florida. The rules are just different. The proceeding in California is also highly confidential. For that reason, Respondent was not able to obtain a written transcript of what had happened in California within the ten (10) days required by the Referee.

The Florida Bar did not submit any sworn testimony as to their version of the facts in California. The Bar submitted only an unsworn Declaration, which is not admissible evidence in Florida. Respondent submitted two (2) affidavits, both sworn, rebutting that unsworn Declaration. At that point, should not the Referee have held a hearing on Respondent's timely filed Motion for Rehearing? Should not the Referee, in the interest of simple fairness, have called a hearing so that questions could have been asked of the three (3) licensed bar attorneys in California, where statements seemed conflicting?

The fact is that the statements of all three (3) could have been and would have been reconciled. If this Court would listen to the audiotape, it will find that it is extremely difficult to hear and follow. If the Referee had really listened to it, however, and been able to hear and follow it, he would have found out the simple truth. The Sate Bar Judge in California stated to Respondent and to his California counsel, not once, but eleven times, on two (2) days of hearings, that the Agreed Order of fifteen (15) months, for three (3) separate bar matters, not just this one, was "final", unless or until the Alternative Discipline Program changed it in Respondent's favor, to make it less. (In this contempt matter, only one (1) month suspension was agreed to and made "final" in that context, not the three (3) years imposed by the Florida Referee.)

No argument advanced by The Bar can change this simple and undeniable fact. It is in writing; it is written down in the transcript. The Referee's Report stating that Respondent had misrepresented facts to the Referee in Florida with regard to the proceedings in California is absolutely and manifestly not true.

Obviously something of this significance would greatly influence the Referee. Since it has been proven, without question, that the Referee's conclusion is wrong, this case must be reversed, if for no other reason than to correct this complete falsehood which is included in the findings of the Referee, especially

since the Referee failed to conduct any evidentiary hearing in order to resolve conflicting evidence presented to him.

CONCLUSION

For these reasons, this case must be reversed, at least to correct a significant factual finding now proven untrue.

Respectfully submitted,

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James Harvey Tipler
P.O. Box 10
Mary Esther, FL 32569
(850) 654-6566

Certificate of Service

I HEREBY CERTIFY that the foregoing Respondent's Reply Brief has been furnished to the following by regular U.S. Mail, postage prepaid, this 21st day of May, 2007, and by e-mail pursuant to this Court's directive.

Florida Supreme Court
Attention: Clerk's Office
500 South Duval Street
Tallahassee, Florida 32399-1927

_____
James Harvey Tipler

I HEREBY CERTIFY that one (1) copy of the foregoing Respondent's Reply Brief has been furnished to the following by regular U.S. Mail, postage prepaid, this 21st day of May, 2007:

Olivia P. Klein, Esq.
The Florida Bar
651 East Jefferson Street
Tallahassee, FL 32399

_____
James Harvey Tipler

Certificate of Compliance

I hereby certify that the font requirements of the Rule have been complied with in this motion.

_____

James Harvey Tipler