IN THE SUPREME COURT OF FLORIDA

Case Number: SC05-1014

THE FLORIDA BAR,

Complainant,

versus

JAMES H. TIPLER,

Respondent

RESPONDENT'S REPLY BRIEF

JAMES HARVEY TIPLER
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ARGUMENT

I. SERVICE OF THE COMPLAINT

Because Rhonda Clyatt was counsel of record for Respondent in one case, SC 03-149, does not automatically make her counsel of record in a separate case, unrelated as to facts or timing. If the Florida Bar had consolidated the two (2) matters, which it could have done pursuant to Rule 3-7.6(g)(C), and it did not, there could be an arguable reason for serving Rhonda Clyatt, and not Respondent.

Rule 3-7.11(c) states, in relevant part, as follows:

> …due to process requires the giving of reasonable notice and such shall be effective by the service of the complaint upon the respondent by mailing a copy thereof by registered or certified mail return receipt requested to the last known address of the respondent according to the records of the Florida Bar…

(Emphasis supplied)

By its own admission, the Florida Bar did not serve Respondent with the Complaint or with the Request of Admissions. The Florida Bar knew the address of Respondent, but never attempted to serve Respondent with papers. The Florida Bar could have consolidated their case with SC03-149, where Rhonda Clyatt was counsel for Respondent, but it did not do so. It is clear that Respondent was not

served, and due process requires, at least, service of the complaint, notice to Respondent of the charges, an opportunity to answer these charges by Answer (Rule 3-7.6(g)(2), and the right to conduct discovery (Rule 3-7.6(e)(2).

All Notices regarding hearings were sent to Rhonda Clyatt, and not to Respondent, who was unrepresented.

By proceeding to summary judgment, The Florida Bar and the Referee deprived Request of his most basic due process rights – notice and an opportunity to be heard.

II. A PLEA IN BEST INTEREST TO THE LOWEST CLASS OF MISDEMEANOR IN ALABAMA, AMOUNTING TO ONLY CONTEMPT, DOES NOT MERIT A THREE (3) YEAR SUSPENSION.

The Bar in Alabama fully considered the facts in their matters, which occurred in an Alabama Court, and concluded that a four (4) month suspension was appropriate. Without hearing all the facts, and not allowing a hearing on whether discipline was appropriate, how can a Florida Referee rule that three (3) years is appropriate?

This case was such a close call that the prestigious Board of Disciplinary Appeals, made up of former Bar Presidents, reversed even the four (4) months, stating that it was not "serious", but only amounted to a "delay".

The Referee's reliance on The Florida Bar v. Klausner, 721 So. 2d 720 (Fla., 1998) is completely "off the mark". See The Florida Bar v. Vining, 707 So. 2d 670, 673 (Fla. 1998).

In Klausner, supra., three (3) years was imposed for forging documents and lying to the Court. Here Respondent's investigator compiled an edited two (2) minute videotape for trial presentation, taken from a two (2) hour mostly unrelated, and irrelevant videotape, including footage of different persons and different days. Because a sentence without a face was not "heard" by the investigator, that sentence was inadvertently omitted by the investigator, contrary to the clear

instruction by Respondent, the trial attorney, to "include everything". However, that omitted sentence, if included, would actually have helped the side of the case being advanced by Respondent.

When asked by the Court for the original, it was promptly produced. There was no effort by Respondent to hide anything. The witness did not give false testimony; he was asked about the videotape "that he had seen", not the edited tape, which was only produced for ease of presentation.

There was nothing close to forging documents and lying about them, as in Klausner. If Respondent had done anything close to the facts in Klausner, then the Alabama Bar would have imposed a several year suspension, and the prestigious Alabama Board of Disciplinary Appeals, made up of former Bar Presidents, would definitely have considered it "serious".

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

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 the instant case, 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 all these reasons, but especially because the Report of Referee contains a glaring and very significant falsehood, as proven by the Record, this case must be reversed.

Respectfully submitted,

_____

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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:

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:

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_____
James Harvey Tipler

Certificate of Compliance

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

_____

James Harvey Tipler