

PUBLIC MATTER

FILED

AUG 01 2007

STATE BAR COURT
CLERK'S OFFICE
LOS ANGELES

STATE BAR COURT OF CALIFORNIA
HEARING DEPARTMENT - LOS ANGELES

In the Matter of

JAMES HARVEY TIPLER,

Member No. 80748,

A Member of the State Bar.

Case No. 03-C-02219; 03-J-02524; 05-J-01274
(Cons.)

ORDER APPROVING STIPULATION

Finding the stipulation to be fair to the parties and that it adequately protects the public, IT IS ORDERED that the requested dismissal of counts/charges, if any, is GRANTED without prejudice, and the stipulated facts and disposition are APPROVED AS MODIFIED as set forth below, and the DISCIPLINE IS RECOMMENDED to the Supreme Court.

On page 4 of the stipulation, an "X" is inserted in the box at paragraph D(1)(b). The above-referenced suspension is stayed.

The parties are bound by the stipulation as approved unless: (1) a motion to withdraw or modify the stipulation, filed within 15 days after service of this order, is granted; or (2) this court modifies or further modifies the approved stipulation. (See rule 135(b), Rules of Procedure.) The effective date of this disposition is the effective date of the Supreme Court order herein, normally 30 days after file date. (See rule 953(a), California Rules of Court.)

Dated: July 24, 2007



DONALD F. MILES
Judge of the State Bar Court

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PUBLIC MATTER

FILED

JUL 09 2007

STATE BAR COURT
CLERK'S OFFICE
LOS ANGELES

1 THE STATE BAR OF CALIFORNIA
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16

THE STATE BAR COURT

HEARING DEPARTMENT - LOS ANGELES

17 In the Matter of

18 JAMES HARVEY TIPLER
19 No. 80748

20 A Member of the State Bar

21) Case Nos. 03-C-02219; 03-J-02524;
22) 05-J-01274 (Consolidated)

23) JOINT STIPULATION OF PARTIES RE
24) STIPULATION RE FACTS, CONCLUSIONS
25) OF LAW AND DISPOSITION AND ORDER
26) APPROVING ACTUAL SUSPENSION

27 IT IS HEREBY STIPULATED between the State Bar of California, Office of the
28 Chief Trial Counsel ("State Bar"), by and through Deputy Trial Counsel Michael J.
Glass, and Respondent James Harvey Tipler, that the Stipulation Re Facts,
Conclusions of Law and Disposition and Order Approving Actual Suspension, signed by
the parties on August 11, 2005, a copy of which is attached hereto, is still in force and
effect, and should be considered by the Court with regard to the above captioned
matters.

Respectfully submitted,

29 DATED: July 6, 2007

BY: [Signature]

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James Harvey Tipler
Respondent

DATED: ~~June~~ ^{July} 9, 2007

BY: Michael J. Glass
Michael J. Glass
Deputy Trial Counsel
State Bar of California
Office of the Chief Trial Counsel

(Do not write above this line.)

State Bar Court of California		
Hearing Department <input checked="" type="checkbox"/> Los Angeles <input type="checkbox"/> San Francisco		
Counsel for the State Bar MICHAEL J. GLASS DEPUTY TRIAL COUNSEL 1149 S. HILL STREET LOS ANGELES, CA 90015 (213) 765-1254 Bar # 102700	Case number(s) 03-C-02219 03-J-02524 05-J-01274	(for Court's use) PUBLIC MATTER FILED AUG 01 2007 STATE BAR COURT CLERK'S OFFICE LOS ANGELES
<input checked="" type="checkbox"/> Counsel for Respondent <input type="checkbox"/> In Pro Per, Respondent EDWARD O. LEAR 5200 W. CENTURY BLVD. SUITE 490 LOS ANGELES, CA 90045 Bar # 132699	Submitted to <input checked="" type="checkbox"/> assigned judge <input type="checkbox"/> settlement judge	
In the Matter of JAMES HARVEY TIPLER Bar # 80748 A Member of the State Bar of California (Respondent)	STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION AND ORDER APPROVING ACTUAL SUSPENSION <input type="checkbox"/> PREVIOUS STIPULATION REJECTED	

Note: All information required by this form and any additional information which cannot be provided in the space provided, must be set forth in an attachment to this stipulation under specific headings, e.g., "Facts," "Dismissals," "Conclusions of Law," "Supporting Authority," etc.

A. Parties' Acknowledgments:

- (1) Respondent is a member of the State Bar of California, admitted June 23, 1978
(date)
- (2) The parties agree to be bound by the factual stipulations contained herein even if conclusions of law or disposition are rejected or changed by the Supreme Court.
- (3) All investigations or proceedings listed by case number in the caption of this stipulation, are entirely resolved by this stipulation and are deemed consolidated. Dismissed charge(s)/count(s) are listed under "Dismissals." The stipulation and order consist of 15 pages.
- (4) A statement of acts or omissions acknowledged by Respondent as cause or causes for discipline is included under "Facts."
- (5) Conclusions of law, drawn from and specifically referring to the facts are also included under "Conclusions of Law."
- (6) The parties must include supporting authority for the recommended level of discipline under the heading "Supporting Authority."
- (7) No more than 30 days prior to the filing of this stipulation, Respondent has been advised in writing of any pending investigation/proceeding not resolved by this stipulation, except for criminal investigations.

(Do not write above this line.)

(8) **Payment of Disciplinary Costs**—Respondent acknowledges the provisions of Bus. & Prof. Code §§6086.10 & 6140.7. (Check one option only):

- ☐ until costs are paid in full, Respondent will remain actually suspended from the practice of law unless relief is obtained per rule 284, Rules of Procedure.
- ☒ costs to be paid in equal amounts prior to February 1 for the following membership years:
2006, 2007, and 2008
(hardship, special circumstances or other good cause per rule 284, Rules of Procedure)
- ☐ costs waived in part as set forth in a separate attachment entitled "Partial Waiver of Costs"
- ☐ costs entirely waived

B. Aggravating Circumstances [for definition, see Standards for Attorney Sanctions for Professional Misconduct, standard 1.2(b)]. Facts supporting aggravating circumstances are required.

(1) ☒ **Prior record of discipline** [see standard 1.2(f)]

(a) ☐ State Bar Court case # of prior case _____

(b) ☐ Date prior discipline effective _____

(c) ☐ Rules of Professional Conduct/ State Bar Act violations: _____

(d) ☐ Degree of prior discipline _____

(e) ☒ If Respondent has two or more incidents of prior discipline, use space provided below or a separate attachment entitled "Prior Discipline."
See Attachment Page 2a

(2) ☐ **Dishonesty:** Respondent's misconduct was surrounded by or followed by bad faith, dishonesty, concealment, overreaching or other violations of the State Bar Act or Rules of Professional Conduct.

(3) ☐ **Trust Violation:** Trust funds or property were involved and Respondent refused or was unable to account to the client or person who was the object of the misconduct for improper conduct toward said funds or property.

(4) ☒ **Harm:** Respondent's misconduct harmed significantly a client, the public or the administration of justice.

PRIOR DISCIPLINE

Alabama

1. In March 1994, Respondent received a Public Reprimand (unpublished) under Rule 25(a) of the Alabama Rules of Professional Conduct as reciprocal discipline from the State Bar of Florida for violation of Rule 3-4.3 of the Florida Rules of Professional Conduct (Misconduct and Minor Misconduct arising out of Respondent's January 16, 1991 arrest for possession of cocaine in which Respondent tested negative for any drug use, pled not guilty, and criminal charges were dismissed).

2. On June 16, 1994, in Case No. ASB 1992-68(a), Respondent received a Private Reprimand for violation of Rule 1.4 of the Alabama Rules of Professional Conduct (Failure to Communicate).

Florida

1. On December 24, 1992, Respondent received a Public Reprimand with Probation for violation of Rule 3-4.3 of the Florida Rules of Professional Conduct (Misconduct and Minor Misconduct arising out of Respondent's January 16, 1991 arrest for possession of cocaine in which Respondent tested negative for any drug use, pled not guilty, and criminal charges were dismissed).

2. On November 15, 2001, Respondent received a Public Reprimand with Probation for violation of Rule 4-1.5(f)(4)(B)(i) of the Florida Rules of Professional Conduct (Fees for Legal Services) and Rule 4-8.4(a) of the Florida Rules of Professional Conduct (Violation of Rules of Professional Misconduct).

(Do not write above this line.)

- (5) ☐ **Indifference:** Respondent demonstrated indifference toward rectification of or atonement for the consequences of his or her misconduct.
- (6) ☐ **Lack of Cooperation:** Respondent displayed a lack of candor and cooperation to victims of his/her misconduct or to the State Bar during disciplinary investigation or proceedings.
- (7) ☐ **Multiple/Pattern of Misconduct:** Respondent's current misconduct evidences multiple acts of wrongdoing or demonstrates a pattern of misconduct.
- (8) ☐ **No aggravating circumstances** are involved.

Additional aggravating circumstances:

C. Mitigating Circumstances [see standard 1.2(e)]. Facts supporting mitigating circumstances are required.

- (1) ☐ **No Prior Discipline:** Respondent has no prior record of discipline over many years of practice coupled with present misconduct which is not deemed serious.
- (2) ☐ **No Harm:** Respondent did not harm the client or person who was the object of the misconduct.
- (3) ☒ **Candor/Cooperation:** Respondent displayed spontaneous candor and cooperation with the victims of his/her misconduct and to the State Bar during disciplinary investigation and proceedings.
- (4) ☐ **Remorse:** Respondent promptly took objective steps spontaneously demonstrating remorse and recognition of the wrongdoing, which steps were designed to timely atone for any consequences of his/her misconduct.
- (5) ☐ **Restitution:** Respondent paid \$ _____ on _____ in restitution to _____ without the threat or force of disciplinary, civil or criminal proceedings.
- (6) ☐ **Delay:** These disciplinary proceedings were excessively delayed. The delay is not attributable to Respondent and the delay prejudiced him/her.
- (7) ☒ **Good Faith:** Respondent acted in good faith.
- (8) ☐ **Emotional/Physical Difficulties:** At the time of the stipulated act or acts of professional misconduct Respondent suffered extreme emotional difficulties or physical disabilities which expert testimony would establish was directly responsible for the misconduct. The difficulties or disabilities were not the product of any illegal conduct by the member, such as illegal drug or substance abuse, and Respondent no longer suffers from such difficulties or disabilities.
- (9) ☐ **Severe Financial Stress:** At the time of the misconduct, Respondent suffered from severe financial stress which resulted from circumstances not reasonably foreseeable or which were beyond his/her control and which were directly responsible for the misconduct.

(Do not write above this line.)

- (10) ☐ **Family Problems:** At the time of the misconduct, Respondent suffered extreme difficulties in his/her personal life which were other than emotional or physical in nature.
- (11) ☐ **Good Character:** Respondent's good character is attested to by a wide range of references in the legal and general communities who are aware of the full extent of his/her misconduct.
- (12) ☐ **Rehabilitation:** Considerable time has passed since the acts of professional misconduct occurred followed by convincing proof of subsequent rehabilitation.
- (13) ☐ **No mitigating circumstances** are involved.

Additional mitigating circumstances:

See attachment Page 13

D. Discipline:

(1) ☒ **Stayed Suspension:**

- (a) ☒ Respondent must be suspended from the practice of law for a period of three (3) years
- i. ☒ and until Respondent shows proof satisfactory to the State Bar Court of rehabilitation and present fitness to practice and present learning and ability in the law pursuant to standard 1.4(c)(ii) Standards for Attorney Sanctions for Professional Misconduct.
- ii. ☐ and until Respondent pays restitution as set forth in the Financial Conditions form attached to this stipulation.
- iii. ☐ and until Respondent does the following: _____

(b) ☒ The above-referenced suspension is stayed.

(2) ☒ **Probation:**

Respondent must be placed on probation for a period of three (3) years, which will commence upon the effective date of the Supreme Court order in this matter.
(See rule 953, Calif. Rules of Ct.)

(Do not write above this line.)

(3) ☒ **Actual Suspension:**

(a) ☒ Respondent must be actually suspended from the practice of law in the State of California for a period of fifteen (15) months

- i. ☐ and until Respondent shows proof satisfactory to the State Bar Court of rehabilitation and present fitness to practice and present learning and ability in the law pursuant to standard 1.4(c)(ii), Standards for Attorney Sanctions for Professional Misconduct
- ii. ☐ and until Respondent pays restitution as set forth in the Financial Conditions form attached to this stipulation.
- iii. ☐ and until Respondent does the following: _____

E. Additional Conditions of Probation:

- (1) ☐ If Respondent is actually suspended for two years or more, he/she must remain actually suspended until he/she proves to the State Bar Court his/her rehabilitation, fitness to practice, and learning and ability in general law, pursuant to standard 1.4(c)(ii), Standards for Attorney Sanctions for Professional Misconduct.
- (2) ☒ During the probation period, Respondent must comply with the provisions of the State Bar Act and Rules of Professional Conduct.
- (3) ☒ Within ten (10) days of any change, Respondent must report to the Membership Records Office of the State Bar and to the Office of Probation of the State Bar of California ("Office of Probation"), all changes of information, including current office address and telephone number, or other address for State Bar purposes, as prescribed by section 6002.1 of the Business and Professions Code.
- (4) ☒ Within thirty (30) days from the effective date of discipline, Respondent must contact the Office of Probation and schedule a meeting with Respondent's assigned probation deputy to discuss these terms and conditions of probation. Upon the direction of the Office of Probation, Respondent must meet with the probation deputy either in-person or by telephone. During the period of probation, Respondent must promptly meet with the probation deputy as directed and upon request.
- (5) ☒ Respondent must submit written quarterly reports to the Office of Probation on each January 10, April 10, July 10, and October 10 of the period of probation. Under penalty of perjury, Respondent must state whether Respondent has complied with the State Bar Act, the Rules of Professional Conduct, and all conditions of probation during the preceding calendar quarter. Respondent must also state whether there are any proceedings pending against him or her in the State Bar Court and if so, the case number and current status of that proceeding. If the first report would cover less than 30 days, that report must be submitted on the next quarter date, and cover the extended period.

In addition to all quarterly reports, a final report, containing the same information, is due no earlier than twenty (20) days before the last day of the period of probation and no later than the last day of probation.

- (6) ☐ Respondent must be assigned a probation monitor. Respondent must promptly review the terms and conditions of probation with the probation monitor to establish a manner and schedule of compliance. During the period of probation, Respondent must furnish to the monitor such reports as may be requested, in addition to the quarterly reports required to be submitted to the Office of Probation. Respondent must cooperate fully with the probation monitor.
- (7) ☐ Subject to assertion of applicable privileges, Respondent must answer fully, promptly and truthfully any inquiries of the Office of Probation and any probation monitor assigned under these conditions which are directed to Respondent personally or in writing relating to whether Respondent is complying or has complied with the probation conditions.

(Do not write above this line.)

- (8) ☐ Within one (1) year of the effective date of the discipline herein, Respondent must provide to the Office of Probation satisfactory proof of attendance at a session of the Ethics School, and passage of the test given at the end of that session.

☒ No Ethics School recommended. Reason: Respondent resides in Florida. In lieu of Ethics School, Respondent will complete 6 hours of MCLE courses in general

- (9) ☐ Respondent must comply with all conditions of probation imposed in the underlying criminal matter and legal must so declare under penalty of perjury in conjunction with any quarterly report to be filed with the ethics Office of Probation.

- (10) ☒ The following conditions are attached hereto and incorporated:

- | | |
|---|--|
| <input type="checkbox"/> Substance Abuse Conditions | <input checked="" type="checkbox"/> Law Office Management Conditions |
| <input type="checkbox"/> Medical Conditions | <input type="checkbox"/> Financial Conditions |

F. Other Conditions Negotiated by the Parties:

- (1) ☒ **Multistate Professional Responsibility Examination:** Respondent must provide proof of passage of the Multistate Professional Responsibility Examination ("MPRE"), administered by the National Conference of Bar Examiners, to the Office of Probation during the period of actual suspension or within one year, whichever period is longer. **Failure to pass the MPRE results in actual suspension without further hearing until passage. But see rule 951(b), California Rules of Court, and rule 321(a)(1) & (c), Rules of Procedure.**

☐ No MPRE recommended. Reason: _____

- (2) ☒ **Rule 955, California Rules of Court:** Respondent must comply with the requirements of rule 955, California Rules of Court, and perform the acts specified in subdivisions (a) and (c) of that rule within 30 and 40 calendar days, respectively, after the effective date of the Supreme Court's Order in this matter.
- (3) ☐ **Conditional Rule 955, California Rules of Court:** If Respondent remains actually suspended for 90 days or more, he/she must comply with the requirements of rule 955, California Rules of Court, and perform the acts specified in subdivisions (a) and (c) of that rule within 120 and 130 calendar days, respectively, after the effective date of the Supreme Court's Order in this matter.
- (4) ☐ **Credit for Interim Suspension [conviction referral cases only]:** Respondent will be credited for the period of his/her interim suspension toward the stipulated period of actual suspension. Date of commencement of interim suspension: _____
- (5) ☐ **Other Conditions:**

(Do not write above this line.)

In the Matter of JAMES HARVEY TIPLER	Case Number(s): 03-C-02219; 03-J-02524; 05-J-01274
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Law Office Management Conditions

- a. ☐ Within ____ days/ ____ months/ ____ years of the effective date of the discipline herein, Respondent must develop a law office management/ organization plan, which must be approved by the Office of Probation. This plan must include procedures to (1) send periodic reports to clients; (2) document telephone messages received and sent; (3) maintain files; (4) meet deadlines; (5) withdraw as attorney, whether of record or not, when clients cannot be contacted or located; (6) train and supervise support personnel; and (7) address any subject area or deficiency that caused or contributed to Respondent's misconduct in the current proceeding.
- b. ☒ Within ____ days/ ____ months 1 years of the effective date of the discipline herein, Respondent must submit to the Office of Probation satisfactory evidence of completion of no less than 6 hours of Minimum Continuing Legal Education (MCLE) approved courses in ~~law office management, attorney-client relations, and/or~~ general legal ethics. This requirement is separate from any MCLE requirement, and Respondent will not receive MCLE credit for attending these courses (Rule 3201, Rules of Procedure of the State Bar.)
- c. ☐ Within 30 days of the effective date of the discipline, Respondent must join the Law Practice Management and Technology Section of the State Bar of California and pay the dues and costs of enrollment for ____ year(s). Respondent must furnish satisfactory evidence of membership in the section to the Office of Probation of the State Bar of California in the first report required.

ATTACHMENT TO
STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION
IN THE MATTER OF JAMES HARVEY TIPLER
CASE NUMBERS 03-C-02219; 03-J-02524; and 05-J-01274

FACTS AND CONCLUSIONS

Respondent admits that the following facts are true and that he is culpable of violation of the Business and Professions Code.

Case No. 03-C-02219

1. On or about June 25, 2001, Respondent James Harvey Tipler ("Respondent") pled guilty and was convicted of a violation of Alabama Code, Title 13A-10-130(a)(1) (Interfering with Judicial Proceedings), a misdemeanor.

2. In the underlying matter, Respondent represented Plaintiff The Estate of Harold Rogers, in a medical malpractice action against Dr. David McKowen, in the Circuit Court of Covington County, Alabama, before Judge M. Ashley McKathan. Respondent attempted to offer a videotape into evidence at trial. The videotape depicted the decedent, Harold Rogers, at a birthday party prior to the decedent being operated on by Dr. McKowen. The court believed Respondent's questions at trial to the authenticating witness created the impression that the videotape was in its' original unedited condition. The videotape had in fact been edited, although Respondent alleged that the edited portions of the videotape were inconsequential, had no effect upon the tenor or meaning of the original videotape, were not intended to mislead, and did not in fact mislead .

3. On or about June 25, 2001, in connection with the aforementioned conviction, Respondent was sentenced to pay a \$1000 fine and to pay \$100 to the Victim's Compensation Fund.

Conclusions of Law

By being convicted of a violation of Alabama Code, Title 13A-10-130(a)(1) (Interfering with Judicial Proceedings), Respondent was convicted of a crime involving other misconduct warranting discipline.

Case No. 03-J-02524

1. On or about March 22, 2001, in In the Matter of James Harvey Tipler, an Attorney at Law in the State of Alabama, Case No. ASB 99-267(A), the Report and Order was filed by the Disciplinary Board of the Alabama State Bar ("Report and Order"). The Report and Order recommended that Respondent James Harvey Tipler ("Respondent") be suspended from the practice of law for a period of 91 days upon condition that if Respondent deposited \$487,714.80 into a specified trust account within 30 days of the date of the order, then the suspension period would be 30 days. The \$487,714.80 was for payment of a contingency fee

alleged to be due to the James law firm in a wrongful death action for a client named Bentley. The amount of restitution due the James law firm was not before the Disciplinary Board of the Alabama State Bar as that question was subject to the jurisdiction of the Circuit Court of Covington County, Alabama, in the case of *James et.al. vs. Tipler, et al.*

2. On or about June 20, 2002, in In the Matter of James Harvey Tipler, an Attorney at Law in the State of Alabama, Case No. ASB 99-267(A), Board of Disciplinary Appeals No. 01-02, the Final Order was filed by the Board of Disciplinary Appeals of the Alabama State Bar ("Final Order"). The Final Order upheld the Report and Order and recommended a 91 day actual suspension from the practice of law.

3. On or about June 18, 2003, the Supreme Court of Alabama issued its Order suspending Respondent from the practice of law in Alabama for 91 days effective June 18, 2003 ("Order").

4. True and correct copies of the Report and Order, Final Order, and Order are attached hereto as Exhibit "1" and incorporated by reference.

5. True and correct copies of the statutes, rules, or court orders of Alabama found to have been violated by Respondent are attached hereto as Exhibit "2" and incorporated by reference.

4. Respondent's culpability as determined by the State Bar of Alabama indicates that the following California statutes or rules have been violated warranting discipline in California: rule 4-100(A) of the Rules of Professional Conduct.

Conclusions of Law

By failing to deposit the sum of \$487, 714.80 in a specified trust account, Respondent failed to deposit funds in a trust account in violation of rule 4-100(A) of the California Rules of Professional Conduct.

Under California Business and Professions Code Section 6049.1, Respondent's culpability determined in the disciplinary proceeding in Alabama would warrant the imposition of discipline in the State of California under the laws or rules in effect in California at the time the misconduct was committed.

Case No. 05-J-01274

1. On February 22, 2005, in Case No. BDA 02-05/ASB 00-102(A), the Supreme Court of Alabama entered its order ("Order") imposing a 15 month actual suspension from the practice of law, effective January 7, 2005, as to Respondent James Harvey Tipler ("Respondent").

2. In the underlying matter, on December 5, 2002, in Case No. ASB 00-102(A), the Report and Order ("Report and Order") of the Disciplinary Board of the Alabama State Bar ("the Board") found Respondent culpable of violating Rule 8.4(d) A.R.C.P. (engaging in conduct prejudicial to the administration of justice) and Rule 8.4(g) A.R.C.P. (engaging in conduct which adversely reflects on fitness to practice law). Respondent contends in the proceeding before the Board that his rights to due process were violated in that he was not able to subpoena a number of crucial witnesses across the State line from Florida, where all of the events occurred.

3. The Disciplinary Board of the Alabama State Bar found that Respondent had represented Candi Lyons, who worked as a dancer at the "Show and Tell," an adult strip club, on a charge of aggravated

assault. Respondent charged Ms. Lyons a fee of \$2,300 and entered into an agreement with her that she would be allowed a "credit of \$200 for each time she had sex with Respondent", and a "credit of \$400 if she arranged for other females to have sex with Respondent."

4. The Board reviewed a videotape of Respondent and Ms. Lyons discussing the fee agreement which confirmed the fee agreement. Respondent also admitted that he engaged in sex with Ms. Lyons and another female as a means of crediting his bill for legal services which was corroborated by videotape. Respondent also admitted that his conduct was morally and ethically wrong. The relationship between Ms. Lyons and Respondent had pre-existed and was consensual for approximately six months prior to the incident involved herein, but was not an ongoing relationship.

5. In regard to aggravating circumstances, the Board found that Respondent had a record of prior discipline in Alabama and Florida; Respondent's actions were selfish; that Ms. Lyons was 18 years old and a mother at the time the felony criminal charges were filed; and that Respondent was very experienced in the practice of law.

6. In regard to mitigating circumstances, the Board found that Respondent had no dishonest motive; and that Respondent and his counsel were cooperative during the pendency of the proceedings.

7. True and correct copies of the Report and Order, and Order are attached hereto as Exhibit "3" and incorporated by reference.

8. True and correct copies of the statutes, rules, or court orders of Alabama found to have been violated by Respondent are attached hereto as Exhibit "4" and incorporated by reference.

9. Respondent's culpability as determined by the State Bar of Alabama indicates that the following California statutes or rules have been violated warranting discipline in California: rule 3-120(B)(1) of the Rules of Professional Conduct.

Conclusions of Law

By requiring that Ms. Lyons, engage in sexual relations with Respondent, in connection with Respondent's representation of Ms. Lyons on the charge of aggravated assault, Respondent required sexual relations with a client incident to his professional representation of the client in violation of rule 3-120(B)(1) of the California Rules of Professional Conduct.

Under California Business and Professions Code section 6049.1, Respondent's culpability determined in the disciplinary proceeding in Alabama would warrant the imposition of discipline in the State of California under the laws or rules in effect in California at the time the misconduct was committed.

PENDING PROCEEDINGS

The disclosure date referred to on page one, paragraph A. (7), was August 10, 2005.

COST OF DISCIPLINARY PROCEEDINGS

Respondent acknowledges that the Office of the Chief Trial Counsel has informed Respondent that as of August 10, 2005, the estimated prosecution costs in this matter are approximately \$8,539.00. Respondent acknowledges that this figure is an estimate only and it does not include State Bar costs which

will be included in any final cost assessment. Respondent further acknowledges that should this stipulation be rejected or should relief from the stipulation be granted, the costs in this matter may increase due to the cost of further proceedings.

The parties stipulate that the costs are to be paid in three equal amounts, one third being added to and becoming a part of the membership fees for each of the years 2006, 2007 and 2008.

AUTHORITIES SUPPORTING DISCIPLINE

Standard 2.2(b) provides that “Culpability of a member... or the commission of another violation of rule 4-100, Rules of Professional Conduct, none of which offenses results in the wilful misappropriation of entrusted funds or property shall result in at least a three month actual suspension from the practice of law, irrespective of mitigating circumstances.”

Standard 2.10 provides, that “Culpability of a member of a violation of any provision of the Business and Professions Code not specified in these standards or of a wilful violation of any Rule of Professional Conduct not specified in these standards shall result in reproof or suspension according to the gravity of the offense or the harm, if any, to the victim, with due regard to the purposes of imposing discipline set forth in standard 1.3.

Standard 3.4 provides that “Final conviction of a member of a crime which does not involve moral turpitude inherently or in the facts and circumstances surrounding the crime’s commission but which does involve other misconduct warranting discipline shall result in a sanction as prescribed under part B of these standards appropriate to the nature and extent of the misconduct found to have been committed by the member.”

In *In Re Ross* (1990) 51 Cal. 3d 451 the Attorney was convicted of two counts of criminal contempt under Title 18 U.S.C. Section 401. The crime did not involve moral turpitude but did constitute other misconduct warranting discipline. Discipline was imposed consisting of a two year stayed suspension with a six month actual suspension.

In *In the Matter of Stewart* (2002) 563 S.E. 859, the Attorney agreed to represent the client in the client’s uncontested divorce in exchange for sexual favors. The Attorney and the client never actually engaged in any sexual activity. The Attorney pled guilty to misdemeanor solicitation of sodomy. In disciplinary proceedings before the Georgia State Bar, the Attorney was found culpable of violating rule 8.4(a)(3) of the Georgia Rules of Professional Conduct (conviction of a misdemeanor involving moral turpitude where underlying conduct relates to lawyer’s fitness to practice law). The Georgia Supreme Court imposed discipline consisting of an 18 month actual suspension. In mitigation, the Attorney did not actually engage in any sexual activity with the client, the Attorney did not pressure the client and suggested that they forget the matter, the Attorney participated in counseling, showed remorse, and acknowledged this wrongful conduct, had no prior record of discipline over seven years of practice, and had received criminal sanctions and punishment for his misconduct.

In *People of the State of Colorado v. Crossman* (1993) 850 P. 2d 708, the Attorney solicited sexual favors in exchange for legal fees with three prospective clients. In regard to two of the clients, the Attorney stated he would reduce his fee in exchange for sexual favors. In regard to the third client, the Attorney approached an undercover agent employed by the Arapahoe County District Attorney’s office with the same

proposition. In each instance, the Attorney was found culpable of violating, inter alia, Colorado Code of Professional Responsibility DR 1-102(A)(6) (engaging in conduct that adversely reflects on the lawyer's fitness to practice law) and DR 5-101(A)(except with client's consent, lawyer shall not accept employment if exercise of lawyer's professional judgment on behalf of client will be or reasonably may be affected by lawyer's own financial, business, property, or personal interest). The Colorado Supreme Court imposed discipline consisting of a one year and one day actual suspension.

In aggravation, the court found that the Attorney had previously received two letters of admonition for neglect of legal matters, a dishonest and selfish motive, a pattern of misconduct, multiple offenses, vulnerability of the victims, and the Attorney's substantial experience of 14 years of practice. In mitigation, the court found the multiple acts of misconduct occurred over a relatively short period of time during which the Attorney was undergoing personal and emotional problems, shortly after the last incident, the Attorney went to see a psychologist and underwent counseling, the psychologist provided a letter stating that a recurrence of the misconduct was unlikely, the Attorney had been the subject of several newspaper articles that reported his misconduct, the Attorney had received the sanction of a criminal conviction with a sentence of probation, admitted his misconduct, showed remorse, and recognized the impropriety of his actions

AGGRAVATING CIRCUMSTANCES

Under Standard 1.2(b)(i), with regard to Case Nos. 03-C-02219, 03-J-02524, and 05-J-01274, in regard to prior discipline, the following prior discipline was imposed by the Alabama State Bar: 1.) In March 1994, Respondent received a Public Reprimand (unpublished) under Rule 25(a) of the Alabama Rules of Professional Conduct as reciprocal discipline from the State Bar of Florida for violation of Rule 3-4.3 of the Florida Rules of Professional Conduct (Misconduct and Minor Misconduct arising out of Respondent's January 16, 1991 arrest for possession of cocaine in which Respondent tested negative for any drug use, pled not guilty, and criminal charges were dismissed). 2.) On June 16, 1994, in Case No. ASB 1992-68(a), Respondent received a Private Reprimand for violation of Rule 1.4 of the Alabama Rules of Professional Conduct (Failure to Communicate).

Under Standard 1.2(b)(i), with regard to Case Nos. 03-C-02219, 03-J-02524, and 05-J-01274, in regard to prior discipline, the following prior discipline was imposed by the Florida State Bar: 1.) On December 24, 1992, Respondent received a Public Reprimand with Probation for violation of Rule 3-4.3 of the Florida Rules of Professional Conduct (Misconduct and Minor Misconduct arising out of Respondent's January 16, 1991 arrest for possession of cocaine in which Respondent tested negative for any drug use, pled not guilty, and criminal charges were dismissed); 2.) On November 15, 2001, Respondent received a Public Reprimand with Probation for violation of Rule 4-1.5(f)(4)(B)(i) of the Florida Rules of Professional Conduct (Fees for Legal Services) and Rule 4-8.4(a) of the Florida Rules of Professional Conduct (Violation of Rules of Professional Misconduct).

Under Standard 1.2(b)(iv), with regard to Case No. 05-J-01274, Respondent's misconduct significantly harmed the client when Respondent required sexual relations incident to Respondent's professional representation of Ms. Lyons on the charge of aggravated assault.

MITIGATING CIRCUMSTANCES

Under Standard 1.2(e)(ii), Respondent acted in good faith, with regard to Case No. 03-C-02219, as the edited portions the videotape offered by Respondent at trial were inconsequential, had no effect upon

the tenor or meaning of the original videotape, were not intended to mislead, and did not in fact mislead. Additionally, under Standard 1.2(e)(ii), Respondent acted in good faith, with regard to Case No. 03-J-02524, as the dispute did not involve client trust funds but did involve a good faith dispute over attorneys fees.

Under Standard 1.2(e)(v), with regard to Case Nos. 03-C-02219, 03-J-02524, and 05-J-01274, Respondent has displayed spontaneous candor and cooperation to the victims of the misconduct and to the State Bar during disciplinary investigation and proceedings by working with the State Bar in the resolution of this matter by the instant Stipulation Re Facts, Conclusions of Law and Disposition and Order Approving Actual Suspension.

ADDITIONAL MITIGATING CIRCUMSTANCES

In regard to Case No. 05-J-01274, Respondent exhibited contrition for his actions in the proceedings before the Disciplinary Board of the Alabama State Bar.

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STATE OF ALABAMA)
)
COUNTY OF MONTGOMERY)

CERTIFICATE OF AUTHENTICITY

I, Keith B. Norman, Secretary of the Alabama State Bar, hereby certify that the attached are true, complete and accurate copies of certain records, the originals of which are kept in the normal and ordinary course of business of the Alabama State Bar, under my custody and control, as required by law.

Keith B. Norman

Keith B. Norman
Secretary
Alabama State Bar

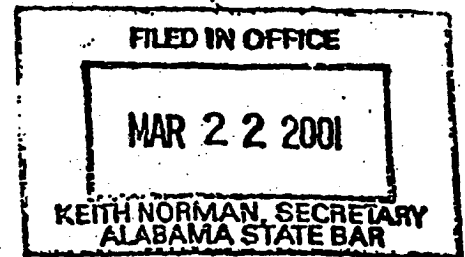
ACKNOWLEDGEMENT

Sworn to and subscribed before me on this, the 4 day of March,
2004.

Aiane W. Locke

NOTARY PUBLIC
STATE OF ALABAMA AT LARGE

BEFORE THE DISCIPLINARY BOARD OF THE
ALABAMA STATE BAR



IN THE MATTER OF
JAMES HARVEY TIPLER
AN ATTORNEY AT LAW
IN THE STATE OF ALABAMA

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CASE NUMBER: ASB 99-267(A)

REPORT AND ORDER

This matter came before the Disciplinary Board of the Alabama State Bar, Panel III, on the 20th day of March, 2001. The attorney was present and was represented by Steve Schmitt; and, the Bar was represented by Milton Moss.

The panel members were Patsy Sumrall, a layperson, Commissioners Cecilia Collins, Anthony Joseph, Jeffrey Kelley, and Charles Langley; the Hearing Officer was William D. Scruggs.

I.

After a full hearing of the testimony ore tenus and the exhibits of proof, the Disciplinary Board finds that the following charge has been proved by clear and convincing evidence: Charge III – Rule 1.15(c). The Respondent was found not guilty on the remaining charges. The vote was unanimous on all charges.

The Panel found that the Respondent was initially due to pay to the James law firm a referral fee amounting to 40% of a 50% contingency fee in a wrongful death action for a client named Bentley. The Bentley case eventually resulted in collecting a verdict in excess of \$2.4 Million. Until near the time of actual disbursement there was not a

SENT REGULAR AND CERTIFIED MAIL

dispute and, in fact, the Respondent actually acknowledged during the hearing that he was obligated to pay the James firm approximately \$487,000 as their portion of the fee. The Respondent strongly indicated by the evidence that he wanted and intended to make that payment. The Respondent stated that the money was good as in the bank.

The gross fees of the proceeds amounted to approximately \$1.2 Million. Prior to the Respondent receiving the gross judgment proceeds the Internal Revenue Service and the Department of Revenue levied on the funds while still in possession of the judgment debtor, and took approximately \$660,000 which was due to the taxing authorities for the tax liability of the Respondent.

Just prior to the time for distribution to the client, and to the James firm, the Respondent made a unilateral decision that payment to the James firm might be unethical based upon the language contained in the original fee agreement between the plaintiff and the James firm, although that fee agreement had been supplanted by a subsequent agreement between the plaintiff and the Tipler firm. Approximately a week later, the Respondent also decided, or discovered, that no fee should be paid to the James firm because the mutual client then claimed that the case had been solicited by the James firm, and the client objected to the James firm receiving any portion of the fee. There was substantial and ongoing contact, inquiry, and discussion between the Respondent and Sonny James concerning the expected date of disbursement, and only late in that process was Sonny James informed that there was a legal or ethical problem in payment of the previously agreed fee.

The Respondent also testified that he relied upon the advice of Dana Mathews, a member of the Florida Bar, who purportedly advised the Respondent that there was a

problem in the payment to the James firm. No evidence of a written opinion or basis for Mr. Mathews' advice was entered into evidence.

Faced with what the Respondent describes as a legal or ethical problem in paying the James firm, the only action that he took was to seek the advice from Florida counsel. He did not seek an opinion from the Office of General Counsel of the Alabama State Bar, nor did he, consult an Alabama lawyer, especially in light of the large amount of money in dispute. Another option available would have been to interplead the disputed funds into an appropriate court.

During the trial the Respondent clearly stated that he would have no financial problem in paying the James firm from his line of credit or other sources, if he was ultimately required so to do. In fact, he testified that he intended and wanted, presently, to pay the James firm if he could ethically do so.

After the Respondent had full knowledge that there was a dispute or question as to the division of the legal fee, which was in his possession, and in his trust account, the Respondent, nevertheless, transferred all the remaining fee to either his general operating account, or to two other recipients. The Respondent transferred \$200,000 to pay a claim against him, the amount and payment date of which had been agreed upon by the Respondent's lawyer and a third party claimant. Another sum of \$279,000 was sent to a bank in Destin, Florida as payment on the Respondent's line of credit loan.

The Panel finds that the Respondent had a pressing need for the subject funds, and would not have been able to easily meet the two debt obligations mentioned above if the James firm had been paid at that time, especially in view of the levy of the tax authorities.

Clearly, both the Respondent, and another person claimed interest in the property (money) in the possession of the Respondent in his trust account. The property was not kept in a separate account pending a resolution of the dispute and, instead, the Respondent used all of the disputed property to his own use, all in violation of Rule 1.15(c).

II.

As to the charge, the Panel has considered the factors set out in Rules 3, 4, 5, 6, 7, and 8 of the ALABAMA STANDARD FOR IMPOSING LAWYER DISCIPLINE to the extent modified by the consideration of Rules 8 and 9 as set out in the following section.

III.

In order to adjudge the appropriate disciplinary sanction, the Disciplinary Board has considered those factors constituting aggravation as set out in the standard and makes the following findings:

- A. Prior disciplinary offenses; Respondent previously received a private reprimand for violation of Rule 1.4 on June 16, 1994. In March, 1994, the Respondent received a public reprimand (unpublished) by way of reciprocal discipline from the State Bar of Florida for possession of cocaine.
- B. Dishonest or selfish motive; the Board finds that the conduct of the Respondent, in utilizing the disputed funds, was financially motivated.
- C. A pattern of misconduct; not applicable.

- D. Multiple offenses; not applicable.
- E. Bad faith obstruction of the disciplinary proceedings by intentionally failing to comply with rules or orders of the disciplinary agency; not applicable.
- F. Submission of false evidence, false statements, or other deceptive practices during the disciplinary process; not applicable.
- G. Refusal to acknowledge wrongful nature of conduct; not applicable.
- H. Vulnerability of victim; not applicable.
- I. Substantial experience in the practice of law; the Panel finds that the Respondent is very experienced and skillful in the practice of law.
- J. Indifference to making restitution. Not applicable.

IV.

The Board has considered the following mitigating circumstances:

- A. Absence of a prior disciplinary record; not applicable.
- B. Absence of a dishonest or selfish motive; not applicable.
- C. Personal or emotional problems; Respondent testified that during the period in question he had received substantial adverse publicity and that his personal and professional life was under a microscope. The exact nature of the personal problems or publicity was not revealed.
- D. Timely good faith effort to make restitution or to rectify consequences of misconduct; not applicable

- E. Full and free disclosure to disciplinary board or cooperative attitude toward proceedings; not applicable.
- F. Inexperience in the practice of law; not applicable.
- G. Character or reputation; not applicable.
- H. Physical or mental disability or impairment; not applicable.
- I. Delay in disciplinary proceedings; not applicable.
- J. Interim rehabilitation; not applicable.
- K. Imposition of other penalties or discipline; not applicable.
- L. Remorse; not applicable.
- M. Remoteness of prior offenses. The dates of the two prior offenses were considered in giving weight to those prior offenses.

V. Conclusion

Based upon all the foregoing, it is the judgment of the Disciplinary Board, Panel III, that the Respondent Attorney, James Harvey Tipler, be suspended from the practice of law for a period of ninety-one (91) days upon condition, however, that if James Harvey Tipler shall deposit in the trust account of either Steve Schmitt, or Robert Segall, the Respondent's attorneys, the sum of \$487,714.80 within thirty (30) days from the date of this order, then, and in that event, the suspension period shall be thirty (30) days. In either event, the appropriate suspension period will commence May 1, 2001.

In addition the Respondent attorney shall be assessed for all costs, including, but not limited to, costs of publication of public notices, incurred incidental to these proceedings and this hearing.

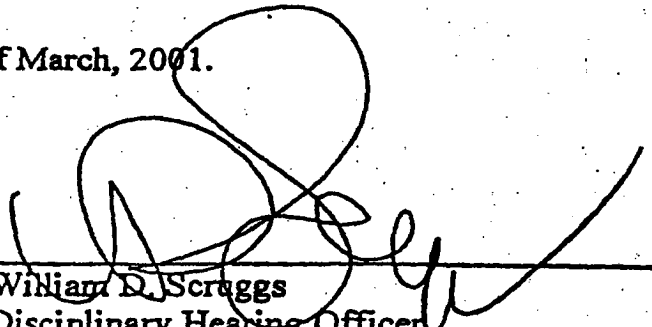
VI.
Additional Findings

The findings of this Panel do not and shall not be interpreted as a decision on the question of how much fee, if any, is due to be paid to the James firm. While a Panel has the authority to order restitution, neither the pleadings nor the evidence suggests, support, or require a decision on that question. That question is presently subject to the jurisdiction of Circuit Court of Covington County, Alabama, in the case of *James et al. vs. Tipler, et al.*

The Rules of Professional Conduct, as adopted and ordered by the Supreme Court of Alabama expressly provide that the violation of a Rule should not give rise to a cause of action nor create any presumption that a legal duty has been breached, and the finding of guilt in this case does not imply that an antagonist in a collateral proceeding has standing to seek enforcement of the Rule. Indeed, §6-5-578, Code of Ala. 1975, expressly provides that evidence of a violation does not give rise to an independent cause of action, and cannot, otherwise, be used to support a recovery in a legal services liability action.

All Panel members concur.

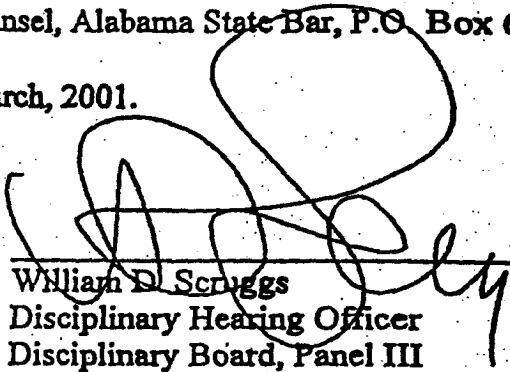
Made and entered into this 22nd day of March, 2001.



William D. Scraggs
Disciplinary Hearing Officer
Disciplinary Board, Panel III
Alabama State Bar
P.O. Box 671
Montgomery, AL 36101

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was served upon counsel for the Respondent Attorney, Steven F. Schmitt, P.O. Box 780608, Tallassee, AL 36078-0608, and Milton L. Moss, Assistant General Counsel, Alabama State Bar, P.O. Box 671, Montgomery, AL, this the 22nd day of March, 2001.


William D. Scruggs
Disciplinary Hearing Officer
Disciplinary Board, Panel III

STATE OF ALABAMA)
COUNTY OF MONTGOMERY)

CERTIFICATE OF AUTHENTICITY

I, Keith B. Norman, Secretary of the Alabama State Bar, hereby certify that the attached are true, complete and accurate copies of certain records, the originals of which are kept in the normal and ordinary course of business of the Alabama State Bar, under my custody and control, as required by law.

Keith B. Norman

Keith B. Norman
Secretary
Alabama State Bar

ACKNOWLEDGEMENT

Sworn to and subscribed before me on this, the 20th day of June,

2003.

Margaret V. Boone

NOTARY PUBLIC
STATE OF ALABAMA AT LARGE

IN THE SUPREME COURT OF ALABAMA
June 18, 2003

1011865

James Harvey Tipler v. Alabama State Bar (Appeal from State Bar Association: ASB 99-267(A), Board of Disciplinary Appeals 01-02).

ORDER

IT IS ORDERED by the Supreme Court of Alabama, that James Harvey Tipler, be, and he is hereby, suspended from the practice of law in the State of Alabama for a period of ninety-one (91) days, said suspension to become effective on June 18, 2003.

Moore, C. J., and Houston, See, Lyons, Brown, Harwood, Woodall, and Stuart, JJ., concur.

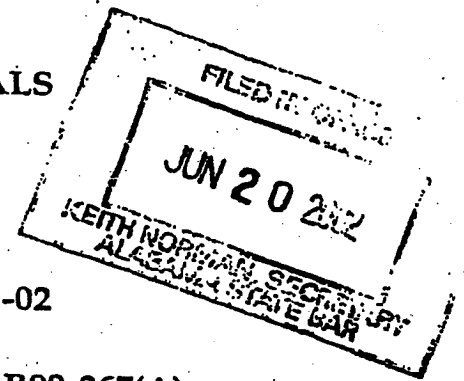


I Robert G. Esdale, Sr., as Clerk of the Supreme Court of Alabama, do hereby certify that the foregoing is a full, true and correct copy of the Instrument(s) herewith set out as same appear(s) of record in said Court.

Witness my hand this 18th day of June 2003

Robert G. Esdale, Sr.
Clerk, Supreme Court of Alabama

BEFORE THE BOARD OF DISCIPLINARY APPEALS
OF THE ALABAMA STATE BAR



IN THE MATTER OF:
JAMES HARVEY TIPLER,
an attorney at law of the State
of Alabama

)
) B.D.A. NO. 01-02
)

) CASE NO. ASB99-267(A)

FINAL ORDER

The Respondent appeals to this Board a decision of Panel III of the Disciplinary Board of the Alabama State Bar finding him guilty of a violation of Rule 1.15(c) of the Alabama Rules of Professional Conduct. This Rule provides as follows:

"Rule 1.15(c) Safekeeping Property: When in the course of representation a lawyer is in possession of property in which both the lawyer and another person claim interest, the property shall be kept separate by the lawyer until there is an accounting and a severance of their interests. If a dispute arises concerning their respective interests, the portion in dispute shall be kept separate by the lawyer until the dispute is resolved."

This Order is issued after the Board has considered the briefs of the parties, reviewed the record as a whole and heard oral argument. The scope and standard of review of this Board is set forth in Rule 5.1(d) Rules of Disciplinary Procedure as follows:

"Rule 5.1(d) Scope and Standard of Review.

All proceedings filed with the Board of Disciplinary Appeals shall be conducted as herein provided. When proceedings before the Board of Disciplinary Appeals are conducted, the board of Disciplinary Appeals shall affirm the decision under review unless it determines that, based on the record as a whole, the findings of fact are clearly erroneous or that the form or extent of discipline imposed, when considered under the Alabama

Standards for imposing lawyer discipline (1) bears no relation to the conduct, (2) is manifestly excessive or insufficient in relation to the needs and protection of the public, the profession, or the administration of justice, or (3) is arbitrary and capricious. No error shall be predicated on any ground not presented to the Disciplinary Board or the Disciplinary Commission. In affirming, reversing or modifying a decision or order, the Board of Disciplinary Appeals shall specifically state the reason(s) for its conclusion(s) and the legal basis on which it relies.

Prior to oral argument the Respondent presented for review the following issues:

(1) Based on the record as a whole the findings of violation of Rule 1.15(c) by Panel III was clearly erroneous; and

(2) The punishment imposed by Panel III was manifestly excessive in relation to the needs and protection of the public, the profession, and the administration of justice.

Because of questions raised by members of this Board during oral argument the Respondent submitted a third issue and made a "Supplemental Argument" which raised for the first time a new issue. The Supplemental Argument contended that the conduct of the Respondent did not arise "during the course of representation" as set forth in Rule 1.15(c).

Since this argument was not raised prior to this appeal, according to Rule 5.1(d) Rules of Disciplinary Procedure, it should not be considered by this Board. However, in the interest of making a complete review of the issues raised we will address this argument.

ISSUE I

based on the record as a whole the findings of violation of Rule 1.15(c) by Panel III was clearly erroneous.

The Respondent argues that the findings of the Disciplinary Board based upon the record as a whole are clearly erroneous. We disagree. The record indicates that the Respondent only became involved in this case after the case was referred to his father by another attorney. There was a written agreement regarding the division of attorney's fees between the Respondent and the referring attorney. More than five and one-half years passed following this agreement, and Respondent at no time disputed his obligations under the agreement regarding the division of attorney's fees. It was not until after the money was received by the Respondent that any problems or concerns arose.

A review of the record reveals that the Respondent never voiced or otherwise communicated any concern or other problem with the referring attorney until after the Internal Revenue Service and the State Department of Revenue levied and removed from the proceeds of the verdict monies owed by the Respondent to these agencies while they were still in the possession of the judgment debtor. The Respondent acknowledged that he expected to pay a referral fee until he realized there might be some problems with him and the referring attorney and the Alabama State Bar if he did. (See 195-197). However, the Respondent never contacted the Bar for advice despite the provisions of Rule 18 of the Rules of Disciplinary Procedures which provide:

"RULE 18. CONDUCT NOT SUBJECT TO DISCIPLINARY ACTION.

If, before engaging in a particular course of conduct, a lawyer makes a full and fair disclosure, in writing, to the General Counsel, and receives therefrom a written opinion, concurred in by the Disciplinary Commission, that the proposed conduct is permissible, such conduct shall not be subject to disciplinary action."

The Order by Panel III finds from the testimony and a review of the exhibits that the Respondent had a pressing need for the subject funds and would not have been able to easily meet his debt obligations if he paid the referring firm given the actions of the Internal Revenue Service and the State Department of Revenue. Our review of the record leads us to the same conclusion.

Thus, we cannot find that the decision of Panel III was "clearly erroneous" under the evidence presented and we cannot reverse on this basis.

ISSUE II

The punishment imposed by Panel III was manifestly excessive in relation to the needs and protection of the public, the profession and the administration of justice.

The decision entered by Panel III suspended Mr. Tipler for 91 days but afforded the Respondent the opportunity to deposit \$487,714.80 into his trust account within 30 days following the date of the Order. Since the Respondent had testified during the course of the hearing that the reason he had not paid the referral fee to the referring attorney was that he had found himself in a dilemma and that he believed that there was a reasonable possibility that the Bar might bring an action against him for paying a referral fee and had further testified that he had the capability of paying the fee and would pay the fee, it

Panel III, in its decision, afforded the Respondent the opportunity to mitigate his punishment. The Order provided that if the Respondent deposited the disputed proceeds to his attorney's trust account within 30 days the suspension would have been lifted within 30 days. The effect of the Order afforded the Respondent an opportunity to do what he had testified he could do.

The report issued by Panel III outlines in great detail the factors set forth in Rules 4, 5, 6, 7 and 8 of the Alabama Standards for Imposing Law Discipline and that it made specific findings consistent with those standards. The Order found the Respondent had no aggravating factors and no mitigating factors. The form or extent of discipline imposed bore a direct relationship to Respondent's conduct, was not manifestly excessive, and was neither arbitrary nor capricious.

This Board does not believe that the punishment imposed by Panel III amounts to the "death penalty" and therefore should be reversed. On the contrary we find that the record in this case and the reasoned Order entered by the Hearing Officer of Panel III carefully outlining the review and applications of the standards set forth by the Rules should not be disturbed.

ISSUE III

The conduct complained of in this case did not arise in the course of representation of a client as provided in Rule 1.15(c).

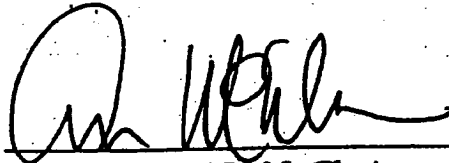
Even though the provisions of Rule 5.1(d) provide that this Board should not consider any error predicated on any ground not presented to the Disciplinary Board or

the Disciplinary Commission, we have considered the facts in this case to determine whether or not the Respondent's conduct in failing to disburse or escrow the disputed proceeds with the referring lawyer arose out of the course of representation of a client. We believe that a reasonable reading of the provisions of Rule 5.1(c) must lead to the conclusion that the lawyer's representation of a client begins at the time he undertakes representation and continues until such time as all terms and conditions established under the contract of employment are concluded or modified in a manner consistent with the Rules of Professional Conduct. In our view, the Respondent's representation would have continued until such time as the terms of the original agreement surrounding the Respondent's employment were performed or the dispute was resolved by some appropriate tribunal. The disputed proceeds should have been held in escrow or trust until such time as the matter was concluded. The actions of the Respondent in unilaterally disposing of all of the attorney's fees in our view arose out of the course of representation of a client.

We affirm the March 22, 2001, Order of the Disciplinary Board in that the Board's findings of fact are not clearly erroneous. Also, we find that the form or extent of discipline imposed, a suspension for ninety-one days, bore a direct relationship to Respondent's conduct, was not manifestly excessive, and was neither arbitrary nor capricious. Further, we find that the Respondent's conduct that was the basis of the discipline imposed by the Disciplinary Board arose in the course of representation as is contemplated in Rule 1.15(c) of the Rules of Professional Conduct.

Adams and Franklin concur; Davis and Melton did not participate.

Done this the 19th day of June, 2002.

A handwritten signature in black ink, appearing to read 'Ann McMahon', written over a horizontal line.

ANN McMAHAN, Chairman
Board of Disciplinary Appeals
Alabama State Bar

2

RULE 1.15
SAFEKEEPING PROPERTY

(a) A lawyer shall hold the property of clients or third persons that is in a lawyer's possession in connection with a representation separate from the lawyer's own property. Funds shall be kept in a separate account maintained in the state where the lawyer's office is situated, or elsewhere with the consent of the client or third person. No personal funds of a lawyer shall ever be deposited in such a trust account, except (1) unearned attorney fees that are being held until earned, and (2) funds sufficient to cover maintenance fees, such as service charges, on the account. Interest, if any, on funds, less fees charged to the account, other than overdraft and returned item charges, shall belong to the client or third person, except as provided in Rule 1.15(g), and the lawyer shall have no right or claim to the interest. Other property shall be identified as such and appropriately safeguarded. Complete records of such account funds and other property shall be kept by the lawyer and shall be preserved for six (6) years after termination of the representation.

A lawyer shall designate all such trust accounts, whether general or specific, as well as deposit slips and all checks drawn thereon, as either an "Attorney Trust Account," an "Attorney Escrow Account," or an "Attorney Fiduciary Account." A lawyer shall designate all business accounts, as well as other deposit slips and all checks drawn thereon, as a "Business Account," a "Professional Account," an "Office Account," a "General Account," a "Payroll Account," or a "Regular Account." However, nothing in this Rule shall prohibit a lawyer from using any additional description or designation for a specific business or trust account, including, for example, fiduciary accounts maintained by the lawyer as executor, guardian, trustee, receiver, or agent or in any other fiduciary capacity.

(b) Upon receiving funds or other property in which a client or third person has an interest from a source other than the client or the third person, a lawyer shall promptly notify the client or third person. Except as stated in this Rule or otherwise permitted by law or by agreement with the client, a lawyer shall promptly deliver to the client or third person any funds or other property that the client or third person is entitled to receive and, upon request by the client or third person, shall promptly render a full accounting regarding that property.

(c) When in the course of representation a lawyer is in possession of property in which both the lawyer and another person claim interests, the property shall be kept separate by the lawyer until there is an accounting and a severance of their interests. If a dispute arises concerning their respective interests, the portion in dispute shall be kept separate by the lawyer until the dispute is resolved.

(d) A lawyer shall not make disbursements of a client's funds from separate accounts containing the funds of more than one client unless the client's funds are collected funds; provided, however, that if a lawyer has a reasonable and prudent belief that a deposit of an instrument payable at or through a bank representing the client's funds will be collected promptly, then the lawyer may, at the lawyer's own risk, disburse uncollected client's funds. If collection does not occur, then the lawyer shall, as soon as practical, but in no event more than five (5) working days after notice of non-collection, replace the funds in the separate account.

(e) A lawyer shall request that the financial institution where the lawyer maintains a trust account file a report to the Office of General Counsel of the Alabama State Bar in every instance where a properly payable item or order to pay is presented against a lawyer's trust account with insufficient funds to pay the item or order when presented and either (1) the item or payment

order is returned because there are insufficient funds in the account to pay the item or order or, (2) if the request is honored by the financial institution, any overdraft created thereby is not paid within three (3) business days of the date the financial institution sends notification of the overdraft to the lawyer. The report of the financial institution shall contain the same information, or a copy of that information, forwarded to the lawyer who presented the item or order.

A lawyer shall enter into an agreement with the financial institution that holds the lawyer's trust account pursuant to which the financial institution agrees to file the report required by this Rule. Every lawyer shall have the duty to assure that his or her trust accounts maintained with a financial institution in Alabama are pursuant to such an agreement. This duty belongs to the lawyer and not to the financial institution. The filing of a report with the Office of General Counsel pursuant to this paragraph shall constitute a proper basis for an investigation by the Office of General Counsel of the lawyer who is the subject of the report, pursuant to the Alabama Rules of Disciplinary Procedure. Nothing in this Rule shall preclude a financial institution from charging a lawyer or a law firm a fee for producing the report and maintaining the records required by this Rule. Every lawyer and law firm maintaining a trust account in Alabama shall hereby be conclusively deemed to have consented to the reporting and production requirements mandated by this Rule and shall hold harmless the financial institution for its compliance with the aforesaid reporting and production requirements. Neither the agreement with the financial institution nor the reporting or production of records by a financial institution made pursuant to this Rule shall be deemed to create in the financial institution a duty to exercise a standard of care or a contract with third parties that may sustain a loss as a result of a lawyer's overdrawing a trust account.

A lawyer shall not fail to produce any of the records required to be maintained by these Rules at the request of the Office of General Counsel, the Disciplinary Commission, or the Disciplinary Board. This obligation shall be in addition to, and not in lieu of, any other requirements of the Rules of Professional Conduct or Rules of Disciplinary Procedure for the production of documents and evidence.

(f) A lawyer, except a lawyer not engaged in active practice pursuant to Alabama Code 1975, Sections 34-3-17 and -18, shall maintain a separate account to hold funds of a client. If a lawyer does not hold funds for a client, then he or she shall give written notice to the Secretary of the Alabama State Bar that the lawyer will not maintain such an account. A lawyer must so advise the Secretary of the Alabama State Bar within six (6) months of admission to practice or of a practice return to active practice. A lawyer who has previously given the notice required by this paragraph shall revoke that notice immediately upon establishing a separate account to hold the funds of a client by giving a written notice of revocation to the Secretary of the Alabama State Bar.

(g) Unless a lawyer shall have given the notice specified in Rule 1.15(h), a lawyer shall hold the funds of a client or of a third person that are nominal in amount or that the lawyer expects to be held for a short period in one or more interest-bearing deposit accounts maintained at a bank, savings bank, savings and loan association, or credit union, whose deposits are insured by an agency of the federal government. A lawyer shall use the account only for the purpose of holding funds of clients or third persons that are nominal in amount or that the lawyer expects to be held in the account for a short period. The account shall be maintained under a written agreement with the depository that provides, among other things, that the depository (1) will not permit the lawyer to receive any interest, (2) will remit interest, less fees charged to the account (other than overdraft and return item charges), at least quarterly to the Alabama Law Foundation or the Alabama Civil Justice Foundation, as the lawyer shall designate, (3) will transmit with each remittance a statement reflecting the name in which the account is maintained and the amount of

interest remitted, with a copy to the lawyer, and (4) will provide information to the Alabama Law Foundation or the Alabama Civil Justice Foundation, as appropriate, as to the rate or rates of interest on the account.

b) A lawyer, or a law firm on behalf of its lawyers as disclosed in the notice, may give written notice to the Secretary of the Alabama State Bar that the lawyer does not intend to maintain the interest-bearing account otherwise required by Rule 1.15(g). This notice must be given within six (6) months of the lawyer's admission to practice or return to active practice, and may later only be given during the period between April 1 and June 1 of each year, to be effective as of June 1. The notice shall remain in effect until revoked or changed by the lawyer, or by a law firm on behalf of its lawyers. Notice given by a lawyer or law firm in compliance with prior DR 9-102(D) (3) to the Executive Director of the Alabama State Bar, that the lawyer or law firm opted not to maintain the interest-bearing account required by prior DR 9-102(D)(2), shall remain effective without annual repetition.

i) All interest transmitted to and received by the Alabama Law Foundation pursuant to Rule 1.15(g) shall be distributed by it for one or more of the following purposes:

- (1) to provide legal aid to the poor;
- (2) to provide law student loans;
- (3) to provide for the administration of justice;
- (4) to provide law-related educational programs to the public;
- (5) to help maintain public law libraries;
- (6) to help maintain a client security fund;
- (7) to help maintain an inquiry tribunal; and
- (8) for such other programs for the benefit of the public as the Supreme Court of the State of Alabama specifically approves from time to time.

j) All interest transmitted to and received by the Alabama Civil Justice Foundation pursuant to Rule 1.15(g) shall be distributed by it for one or more of the following purposes:

- (1) to provide financial assistance to organizations or groups providing aid or assistance to:
 - (a) underprivileged children;
 - (b) traumatically injured children or adults;
 - (c) the needy;
 - (d) handicapped children or adults; or
 - (e) drug and alcohol rehabilitation programs.

j) To be used in such other programs for the benefit of the public as the Supreme Court of the State of Alabama specifically approves from time to time.

k) A lawyer shall not fail to produce, at the request of the Office of General Counsel, the Disciplinary Commission or the Disciplinary Board, any of the records required to be maintained by these Rules. This obligation shall be in addition to, and not in lieu of, any other requirements of the Rules of Professional Conduct or Rules of Disciplinary Procedure for the production of documents and evidence.

COMMENT

Basis or Rate of Fee

When the lawyer has regularly represented a client, they ordinarily will have evolved an understanding concerning the basis or rate of the fee. In a new client-lawyer relationship, however, an understanding as to the fee should be promptly established. It is not necessary to recite all the factors that underlie the basis of the fee, but only those that are directly involved in its computation. It is sufficient, for example, to state that the basic rate is an hourly charge or a fixed amount or an estimated amount, or to identify the factors that may be taken into account in finally fixing the fee. When developments occur during the representation that render an earlier estimate substantially inaccurate, a revised estimate should be provided to the client. A written statement concerning the fee reduces the possibility of misunderstanding. Furnishing the client with a simple memorandum or a copy of the lawyer's customary fee schedule is sufficient if the basis or rate of the fee is set forth.

Terms of Payment

A lawyer may require advance payment of a fee, but is obliged to return any unearned portion. See Rule 1.16(d). A lawyer may accept property in payment for services, such as an ownership interest in an enterprise, providing this does not involve acquisition of a proprietary interest in the cause of action or subject matter of the litigation contrary to Rule 1.80(j). However, a fee paid in property instead of money may be subject to special scrutiny because it involves questions concerning both the value of the services and the lawyer's special knowledge of the value of the property.

An agreement may not be made whose terms might induce the lawyer improperly to curtail services for the client or perform them in a way contrary to the client's interest. For example, a lawyer should not enter into an agreement whereby services are to be provided only up to a stated amount when it is foreseeable that more extensive services probably will be required, unless the situation is adequately explained to the client. Otherwise, the client might have to bargain for further assistance in the midst of a proceeding or transaction. However, it is proper to define the extent of services in light of the client's ability to pay. A lawyer should not exploit a fee arrangement based primarily on hourly charges by using wasteful procedures. When there is doubt whether a contingent fee is consistent with the client's best interest, the lawyer should offer the client alternative bases for the fee and explain their implications. Applicable law may impose limitations on contingent fees, such as a ceiling on the percentage.

Division of Fee

A division of fee is a single billing to a client covering the fee of two or more lawyers who are not in the same firm. A division of fee facilitates association of more than one lawyer in a matter in which neither alone could serve the client as well, and most often is used when the fee is contingent and the division is between a referring lawyer and a trial specialist. Paragraphs (e)(1)(a) and (b) permit the lawyers in any type of matter to divide a fee on either the basis of the proportion of services they render or by agreement between the participating lawyers if all assume responsibility for the representation as a whole and the client is advised and does not object. Paragraph (e)(1)(c) permits the lawyers in a

contingency fee matter to divide the fee without restriction other than disclosure to the client. Paragraphs (e)(2) and (3) do not require disclosure to the client of the share that each lawyer is to receive. However, Rule 1.5(b) does require the extent of the division to be disclosed upon request. Joint responsibility for the representation entails the obligations stated in Rule 5.1 for purposes of the matter involved. Paragraph (e)(4) requires that the total fee of both lawyers not be clearly excessive. That the total percentage applicable to a contingency fee arrangement is increased when a matter is referred does not indicate that the fee is excessive. Nor is excessiveness shown merely because the receiving lawyer would have accepted the matter for a lesser total fee had that lawyer been the only lawyer receiving a fee.

Disputes over Fees

If a procedure has been established for resolution of fee disputes, such as an arbitration or mediation procedure established by the bar, the lawyer should conscientiously consider submitting to it. Law may prescribe a procedure for determining a lawyer's fee, for example, in representation of an executor or administrator, a class or a person entitled to a reasonable fee as part of the measure of damages. The lawyer entitled to such a fee and a lawyer representing another party concerned with the fee should comply with the prescribed procedure.

Fees for Indigent Representation

Lawyers appointed by a court to represent indigent criminal defendants are typically paid by the government, under various state or federal programs providing for the representation of indigent criminal defendants. When a criminal defendant, upon the basis of indigency, receives representation by a lawyer through a court appointment, the lawyer may not accept any fee from the defendant or from anyone acting on behalf of the defendant, unless the lawyer obtains the prior approval of the court. This prohibition prevents the defendant from abusing the system of court appointments. Furthermore, a lawyer who accepts a court appointment does so with the expectation that any fee in excess of the amount approved through the appointment system will be subject to further scrutiny by the court. When a criminal defendant is indigent at the time of appointment but is later able, through family, friends or other sources, to pay a fee to the lawyer, the lawyer may deposit the proffered fee, which may be kept separately in trust according to the Rules regulating the holding of property for clients or third persons. When the appointing court approves the acceptance of a fee from the defendant or on his behalf, then the Rules generally applicable to the disbursement of such property or funds apply. Otherwise the fee shall be disbursed first as the appointing court directs.

COMMENT TO RULE 1.15 AS AMENDED EFFECTIVE JULY 1, 1997

In addition to making stylistic changes, the amendment added the second paragraph in section (a) and added section (e) and section (k). It also added a sentence to the first paragraph of section (a) to set out the conditions under which a lawyer can deposit personal funds into a trust account.

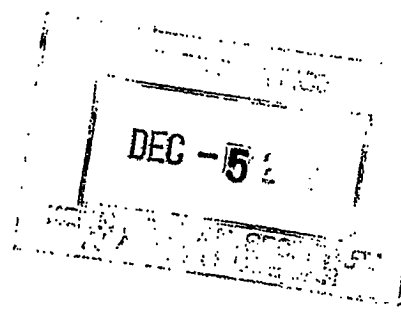
COMPARISON WITH FORMER ALABAMA CODE OF PROFESSIONAL RESPONSIBILITY

With regard to paragraph (a), DR 9-102(A) provided that "funds of clients" are to be kept in an identifiable bank account in the state in which the lawyer's office is situated. DR 9-102(B)(2) provided that a lawyer shall "identify and label securities and properties of a client . . . and place them in . . . safekeeping" DR 9-102(B)(3) required that a lawyer "maintain complete records of all funds, securities, and other properties of a client" Paragraph (a) extends these requirements to property of a third person that is in the lawyer's possession in connection with the representation.

Paragraph (b) is substantially similar to DR 9-102(B)(1), (3) and (4).

3

BEFORE THE DISCIPLINARY BOARD OF THE
ALABAMA STATE BAR



IN THE MATTER OF)
)
JAMES HARVEY TIPLER) ASB 00-102(A)
)
AN ATTORNEY AT LAW)
)
IN THE STATE OF ALABAMA)

REPORT AND ORDER

THIS MATTER came before the Disciplinary Board of the Alabama State Bar, Panel III, on November 12, 2002. The Respondent was present and represented by George Beck, Jr. and David B. Byrne, Jr. and the Alabama State Bar was represented by Milton L. Moss. The Panel members were Leon Garrett, a layperson, Commissioners Cecilia Collins, Louis Colley, Charles Langley and Jeffrey Kelley. Hearing Officer was James S. Ward.

I.

After full hearing of the testimony ore tenus and the receipt and consideration of exhibits, the panel finds the following charges have been proved by clear and convincing evidence: Charge XI - Rule 8.4 (d) A.R.C.P. and Charge XII - Rule 8.4 (g) A.R.C.P. This finding of guilt is based upon Paragraph 7 of the Complaint with the exception of the allegation concerning the Respondent's representation of Candi Lyons on a child custody matter. The Respondent is found not guilty of all the remaining charges of the Complaint. The vote was unanimous of all charges.

The Panel found that Respondent represented Candi Lyons, who worked as a dancer at the "Show & Tell", an adult bar or strip club, on a charge of aggravated assault. The Respondent charged Ms. Lyons

a fee of \$2,300.00 dollars and entered into an agreement with her that she would be allowed a "credit of \$200.00 for each time she engaged in sex with Respondent" and a "\$400.00 credit if she arranged for other females to have sex with him." Respondent admitted the existence of this agreement.

The Panel reviewed a videotape of Respondent and Ms. Lyons discussing the above-referenced fee agreement, the remaining legal fees due and how they were going to be paid. The videotape confirms the fee agreement referenced above.

The Respondent admitted he engaged in sex with Ms. Lyons and another female as a means of crediting his bill for legal services as explained above. This was corroborated by the videotape. Further, Respondent admitted that his actions in this regard were morally and ethically wrong and improper. Respondent admitted that his conduct in this regard has hurt the Alabama State Bar and that his conduct was not trustworthy to the Bar. Respondent admitted that it was unethical to exchange sex for fees.

The panel also finds significant that an expert witness who testified in Respondent's behalf, Dr. Daniel Goldstine, a licensed psychologist in the state of California, admitted that Respondent "engaged in high risk behavior" and was not condoning what he considered highly inappropriate behavior. As a matter of fact, Dr. Goldstine admitted that Respondent "engaged in behavior way outside his code of conduct.

II.

As to the charges, the Panel has considered the factors set out in Rules 3,4,5,6,7 and 8 of the Alabama Standards for Imposing Lawyer Discipline to the extent modified by the consideration of Rules 8 and 9 as set out in the following sections.

III.

In order to adjudge the appropriate disciplinary sanction, the Panel has considered those factors constituting aggravation as set out in the standards and makes the following findings:

- A. Prior disciplinary offenses - The Panel finds that Respondent has a history of prior disciplinary offenses both with this Bar and the Florida State Bar where he is also licensed.
- B. Dishonest or selfish motive - The Panel finds that Respondent's actions and his arrangement of trading sex for legal fees was selfish.
- C. A pattern of misconduct - Not applicable.
- D. Multiple offenses - Not applicable.
- E. Bad faith obstruction of the disciplinary proceedings by intentionally failing to comply with Rules or Orders of the disciplinary agency - Not applicable.
- F. Submission of false evidence, false statements or other deceptive practices during the disciplinary process - Not applicable.
- G. Refusal to acknowledge wrongful nature of conduct - Not applicable.
- H. Vulnerability of victim - The Panel finds that Ms. Lyons was vulnerable. She was eighteen (18) years old at the time the criminal charges were filed and she was already a mother. She was arrested for a serious felony offense and viewed Respondent as her only way to resolve her criminal case and be released from jail. The Panel finds that Respondent took advantage of Ms. Lyons' young age and circumstances.
- I. Substantial experience in the practice of law - The Panel finds that the Respondent is very experienced in the practice of law.

- J. Indifference to making restitution - Not applicable.

IV.

The Panel has considered the following mitigating circumstances:

- A. Absence of prior disciplinary record - This circumstance does not apply in that Respondent has a prior history of disciplinary offenses. (See Aggravating Circumstance A above).
- B. Absence of dishonest or selfish motive. While the Panel does not find any dishonest motive, Respondent was motivated by selfishness. (See Aggravating Circumstance B above).
- C. Personal or emotional problems - Not applicable.
- D. Timely good faith effort to make restitution or to rectify consequences of misconduct - Not applicable.
- E. Full and free disclosure to disciplinary board or cooperative attitude towards proceedings - The Panel finds that Respondent and his counsel were cooperative during the pendency of these proceedings.
- F. Inexperience in the practice of law - Not applicable.
- G. Character or reputation - Not applicable.
- H. Physical or mental disability or impairment - Not applicable.
- I. Delay in disciplinary proceedings - Not applicable.
- J. Interim rehabilitation - Not applicable.
- K. Imposition of other penalties or discipline - Not applicable.

L. Remorse - Not applicable.

M. Remoteness of prior offenses - This circumstance applies only to the most recent disciplinary offenses involving Respondent which are a matter of record.

V.

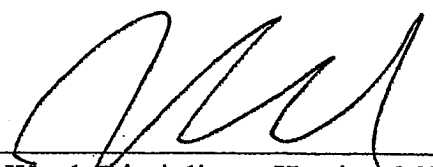
CONCLUSION

Based upon all the foregoing, it is the judgment of Disciplinary Board, Panel III, that the Respondent attorney, James Harvey Tipler, be suspended from the practice of law for a period of fifteen (15) months. It is the further judgment of this Panel that as a condition to any reinstatement Respondent sit for and pass a professional responsibility examination.

In addition, the Respondent attorney shall be assessed for all costs, including, but not necessarily limited to, cost of publication of public notices incidental to these proceedings and this hearing; and, an administrative fee in the amount of Seven Hundred Fifty dollars (\$750.00) is assessed against the Respondent in accordance with Rule 33(d)(9) of the Rules of Disciplinary Procedure.

All Panel members concur.

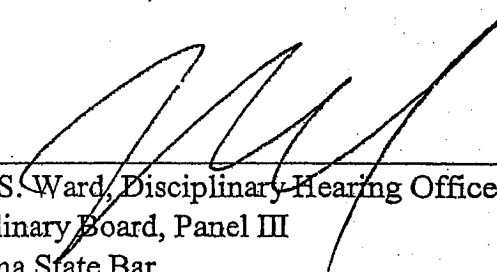
Made and Entered into this 5 day of December, 2002.



James S. Ward, Disciplinary Hearing Officer
Disciplinary Board, Panel III
Alabama State Bar
Post Office Box 671
Montgomery, Alabama 36101
(334) 269-1515

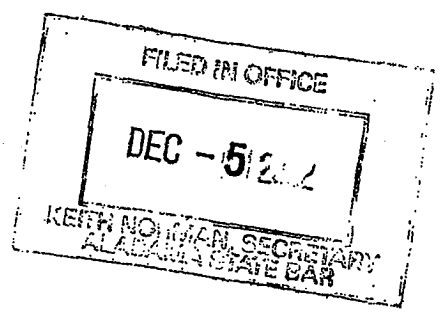
CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Order was served upon James Harvey Tipler, through his attorney of record, George Beck, Jr., Post Office Box 5019, Montgomery, Alabama 36101; and, David B. Byrne, Jr., Post Office Box 2069, Montgomery, Alabama 36102, by facsimile and by United States Mail, postage prepaid, on this the 5 day of December, 2002.



James S. Ward, Disciplinary Hearing Officer
Disciplinary Board, Panel III
Alabama State Bar

BEFORE THE DISCIPLINARY BOARD OF THE
ALABAMA STATE BAR



IN THE MATTER OF)
)
JAMES HARVEY TIPLER) ASB 00-102(A)
)
AN ATTORNEY AT LAW)
)
IN THE STATE OF ALABAMA)

REPORT AND ORDER

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The Panel found that Respondent represented Candi Lyons, who worked as a dancer at the "Show & Tell", an adult bar or strip club, on a charge of aggravated assault. The Respondent charged Ms. Lyons

DEV. 00 02 (110) 10-22 JON MONROE & HARD, P. C. TEL 813/14411 P. 003

a fee of \$2,300.00 dollars and entered into an agreement with her that she would be allowed a "credit of \$200.00 for each time she engaged in sex with Respondent" and a "\$400.00 credit if she arranged for other females to have sex with him." Respondent admitted the existence of this agreement.

The Panel reviewed a videotape of Respondent and Ms. Lyons discussing the above-referenced fee agreement, the remaining legal fees due and how they were going to be paid. The videotape confirms the fee agreement referenced above.

The Respondent admitted he engaged in sex with Ms. Lyons and another female as a means of crediting his bill for legal services as explained above. This was corroborated by the videotape. Further, Respondent admitted that his actions in this regard were morally and ethically wrong and improper. Respondent admitted that his conduct in this regard has hurt the Alabama State Bar and that his conduct was not trustworthy to the Bar. Respondent admitted that it was unethical to exchange sex for fees.

The panel also finds significant that an expert witness who testified in Respondent's behalf, Dr. Daniel Goldstine, a licensed psychologist in the state of California, admitted that Respondent "engaged in high risk behavior" and was not condoning what he considered highly inappropriate behavior. As a matter of fact, Dr. Goldstine admitted that Respondent "engaged in behavior way outside his code of conduct.

II.

As to the charges, the Panel has considered the factors set out in Rules 3,4,5,6,7 and 8 of the Alabama Standards for Imposing Lawyer Discipline to the extent modified by the consideration of Rules 8 and 9 as set out in the following sections.

III.

In order to adjudge the appropriate disciplinary sanction, the Panel has considered those factors constituting aggravation as set out in the standards and makes the following findings:

- A. Prior disciplinary offenses - The Panel finds that Respondent has a history of prior disciplinary offenses both with this Bar and the Florida State Bar where he is also licensed.
- B. Dishonest or selfish motive - The Panel finds that Respondent's actions and his arrangement of trading sex for legal fees was selfish.
- C. A pattern of misconduct - Not applicable.
- D. Multiple offenses - Not applicable.
- E. Bad faith obstruction of the disciplinary proceedings by intentionally failing to comply with Rules or Orders of the disciplinary agency - Not applicable.
- F. Submission of false evidence, false statements or other deceptive practices during the disciplinary process - Not applicable.
- G. Refusal to acknowledge wrongful nature of conduct - Not applicable.
- H. Vulnerability of victim - The Panel finds that Ms. Lyons was vulnerable. She was eighteen (18) years old at the time the criminal charges were filed and she was already a mother. She was arrested for a serious felony offense and viewed Respondent as her only way to resolve her criminal case and be released from jail. The Panel finds that Respondent took advantage of Ms. Lyons' young age and circumstances.
- I. Substantial experience in the practice of law - The Panel finds that the Respondent is very experienced in the practice of law.

J. Indifference to making restitution - Not applicable.

IV.

The Panel has considered the following mitigating circumstances:

- A. Absence of prior disciplinary record - This circumstance does not apply in that Respondent has a prior history of disciplinary offenses. (See Aggravating Circumstance A above).
- B. Absence of dishonest or selfish motive. While the Panel does not find any dishonest motive, Respondent was motivated by selfishness. (See Aggravating Circumstance B above).
- C. Personal or emotional problems - Not applicable.
- D. Timely good faith effort to make restitution or to rectify consequences of misconduct - Not applicable.
- E. Full and free disclosure to disciplinary board or cooperative attitude towards proceedings - The Panel finds that Respondent and his counsel were cooperative during the pendency of these proceedings.
- F. Inexperience in the practice of law - Not applicable.
- G. Character or reputation - Not applicable.
- H. Physical or mental disability or impairment - Not applicable.
- I. Delay in disciplinary proceedings - Not applicable.
- J. Interim rehabilitation - Not applicable.
- K. Imposition of other penalties or discipline - Not applicable.

- L. Remorse - Not applicable.
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V.


CONCLUSION

Based upon all the foregoing, it is the judgment of Disciplinary Board, Panel III, that the Respondent attorney, James Harvey Tipler, be suspended from the practice of law for a period of fifteen (15) months. It is the further judgment of this Panel that as a condition to any reinstatement Respondent sit for and pass a professional responsibility examination.

In addition, the Respondent attorney shall be assessed for all costs, including, but not necessarily limited to, cost of publication of public notices incidental to these proceedings and this hearing; and, an administrative fee in the amount of Seven Hundred Fifty dollars (\$750.00) is assessed against the Respondent in accordance with Rule 33(d)(9) of the Rules of Disciplinary Procedure.

All Panel members concur.

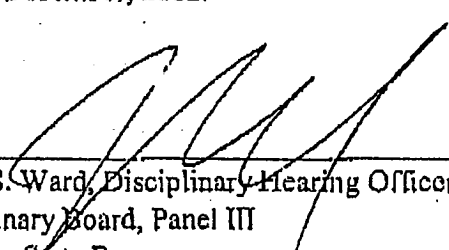
Made and Entered into this 5 day of December, 2002.



James S. Ward, Disciplinary Hearing Officer
Disciplinary Board, Panel III
Alabama State Bar
Post Office Box 671
Montgomery, Alabama 36101
(334) 269-1515

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Order was served upon James Harvey Tipler, through his attorney of record, George Beck, Jr., Post Office Box 5019, Montgomery, Alabama 36101; and, David B. Bynne, Jr., Post Office Box 2069, Montgomery, Alabama 36102, by facsimile and by United States Mail, postage prepaid, on this the 5 day of December, 2002.



James S. Ward, Disciplinary Hearing Officer
Disciplinary Board, Panel III
Alabama State Bar

IN THE SUPREME COURT OF ALABAMA
February 22, 2005

RECEIVED
FEB 25 2005
STATE BAR

In the Matter of

James Harvey Tipler,

Attorney at Law

Disciplinary Commission of
The Alabama State Bar,
BDA 02-05/ASB 00-102(A)

ORDER

IT IS ORDERED that James Harvey Tipler be stricken from the Roll of the Supreme Court as an attorney authorized to practice law in the courts of Alabama, effective January 7, 2005, for a period of 15 months.

Nabers, C.J., and See, Harwood, Woodall, Stuart, Smith, Bolin, and Parker, JJ., concur.

I Robert G. Esdale, Sr., as Clerk of the Supreme Court of Alabama, do hereby certify that the foregoing is a full, true and correct copy of the instrument(s) herewith set out as same appear(s) of record in said Court.

Witness my hand this 22nd day of February, 2005

Robert G. Esdale, Sr.
Clerk, Supreme Court of Alabama

4

1 of 1 DOCUMENT

MICHIE'S ALABAMA RULES

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* THIS DOCUMENT IS CURRENT THROUGH AMENDMENTS AND NEW RULES
RECEIVED THROUGH JANUARY 28, 2005 *

* ANNOTATIONS CURRENT THROUGH FEBRUARY 4, 2005 *

ALABAMA RULES OF PROFESSIONAL CONDUCT
MAINTAINING THE INTEGRITY OF THE PROFESSION

ARPC, R 8.4 (2005)

Review Court Orders which may amend this Rule

Rule 8.4. Misconduct.

It is professional misconduct for a lawyer to:

- (a) Violate or attempt to violate the Rules of Professional Conduct, knowingly assist or induce another to do so, or do so through the acts of another;
- (b) Commit a criminal act that reflects adversely on the lawyer's honesty, trustworthiness or fitness as a lawyer in other respects;
- (c) Engage in conduct involving dishonesty, fraud, deceit or misrepresentation;
- (d) Engage in conduct that is prejudicial to the administration of justice;
- (e) State or imply an ability to influence improperly a government agency or official;
- (f) Knowingly assist a judge or judicial officer in conduct that is a violation of applicable Canons of Judicial Ethics or other law; or
- (g) Engage in any other conduct that adversely reflects on his fitness to practice law.

NOTES:**Comment**

Many kinds of illegal conduct reflect adversely on fitness to practice law, such as offenses involving fraud and the offense of willful failure to file an income tax return.

ARPC, R 8.4

However, some kinds of offense carry no such implication. Traditionally, the distinction was drawn in terms of offenses involving "moral turpitude." That concept can be construed to include offenses concerning some matters of personal morality, such as adultery and comparable offenses, that have no specific connection to fitness for the practice of law. Although a lawyer is personally answerable to the entire criminal law, a lawyer should be professionally answerable only for offenses that indicate lack of those characteristics relevant to law practice. Offenses involving violence, dishonesty, breach of trust, or serious interference with the administration of justice are in that category. A pattern of repeated offenses, even ones of minor significance when considered separately, can indicate indifference to legal obligation.

A lawyer may refuse to comply with an obligation imposed by law upon a good faith belief that no valid obligation exists. The provisions of Rule 1.2(d) concerning a good faith challenge to the validity, scope, meaning, or application of the law apply to challenges of legal regulation of the practice of law.

Lawyers holding public office assume legal responsibilities going beyond those of other citizens. A lawyer's abuse of public office can suggest an inability to fulfill the professional role of attorney. The same is true of abuse of positions of private trust such as trustee, executor, administrator, guardian, agent and officer, director, or manager of a corporation or other organization.

This rule does not repeal, abrogate, or modify Rule 22 of the Alabama Rules of Disciplinary Procedure (Interim), which provides for mandatory disbarment or suspension under specified circumstances.

Comparison with Former Alabama Code of Professional Responsibility

With regard to paragraphs (a) through (d), DR 1-102(A) provided that a lawyer shall not:

- "(1) Violate a Disciplinary Rule.
- "(2) Circumvent a Disciplinary Rule through actions of another.
- "(3) Engage in illegal conduct involving moral turpitude.
- "(4) Engage in conduct involving dishonesty, fraud, deceit, or misrepresentation.
- "(5) Engage in conduct that is prejudicial to the administration of justice.
- "(6) Engage in any other conduct that adversely reflects on his fitness to practice law."

Former DR 7-102(A)(B) provided that "[i]n his representation of a client, a lawyer shall not ... (8) Knowingly engage in other illegal conduct...."

Paragraph (e) is substantially similar to DR 9-101(C).

There is no direct counterpart to paragraph (f) in the former Alabama Code of Professional Responsibility. EC 7-34 stated in part that "[a] lawyer ... is never justified in making a gift or a loan to a [judicial officer] except legitimate political campaign

ARPC, R 8.4

contributions under appropriate circumstances." EC 9-1 stated that a lawyer "should promote public confidence in our [legal] system and in the legal profession."

Paragraph (g) was not included within the ABA Model Rules, but was carried from the former Alabama Code of Professional Responsibility DR 1-102(A)(6).

CASE NOTES

- Evidence -- Insufficient
- Evidence -- Sufficient.
- Suspension.
- Illustrative cases.

- Evidence -- Insufficient

No evidence existed to indicate that attorney from one firm "knowingly assisted" attorney from another firm in violation of this section, and petitioner failed to demonstrate a "clear legal right" to additional discovery. *Ex parte Terminix Int'l Co., L.P.*, 736 So. 2d 1092 (Ala. 1998).

- Evidence -- Sufficient.

Sufficient evidence was presented at the disciplinary hearing that proved the attorneys' advertising practices and the procedures and policies adopted by the defendants adversely affected their ability to practice law in the manner required by the *Rules of Professional Conduct*. *Davis v. Alabama State Bar*, 676 So. 2d 306 (Ala. 1996).

- Suspension.

Disciplinary Board's order suspending attorney from practice of law for failure to return unearned portion of advance retainer was supported by clear and convincing evidence. *Taylor v. Alabama State Bar*, 587 So. 2d 1205 (Ala. 1991).

- Illustrative cases.

Where the essentially uncontested facts showed attorney's continuing disregard for his clients' affairs and appropriation of their money without providing the services for which he was retained, the Board's punishment for this conduct was not too severe. *Jackson v. Alabama State Bar*, 462 So. 2d 365 (Ala. 1985).

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In the Matter of JAMES HARVEY TIPLER	Case number(s): 03-C-02219; 03-J-02524; 05-J-01274
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SIGNATURE OF THE PARTIES

By their signatures below, the parties and their counsel, as applicable, signify their agreement with each of the recitations and each of the terms and conditions of this Stipulation Re Facts, Conclusions of Law and Disposition.

<u>8-11-05</u> Date	<u>[Signature]</u> Respondent's signature	<u>JAMES HARVEY TIPLER</u> Print name
<u>8/11/2005</u> Date	<u>[Signature]</u> Respondent's Counsel's signature	<u>PAUL VIRGO</u> Print name
<u>8/11/05</u> Date	<u>[Signature]</u> Deputy Trial Counsel's signature	<u>MICHAEL GLASS</u> Print name

(Do not write above this line.)

In the Matter of JAMES HARVEY TIPLER	Case number(s): 03-C-02219; 03-J-02524; 05-J-01274
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ORDER

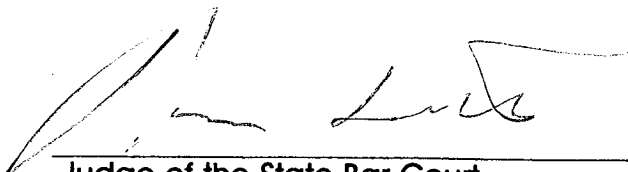
Finding the stipulation to be fair to the parties and that it adequately protects the public, IT IS ORDERED that the requested dismissal of counts/charges, if any, is GRANTED without prejudice, and:

- ☐ 1 The stipulated facts and disposition are APPROVED and the DISCIPLINE RECOMMENDED to the Supreme Court.
- ☒ The stipulated facts and disposition are APPROVED AS MODIFIED as set forth below, and the DISCIPLINE IS RECOMMENDED to the Supreme Court.
- ☐ All Hearing dates are vacated.

At page 4, section "D." Discipline, (1)(b) place an "x" in the box. The above-referenced suspension is stayed.

The parties are bound by the stipulation as approved unless: 1) a motion to withdraw or modify the stipulation, filed within 15 days after service of this order, is granted; or 2) this court modifies or further modifies the approved stipulation. (See rule 135(b), Rules of Procedure.) The effective date of this disposition is the effective date of the Supreme Court order herein, normally 30 days after file date. (See rule 953(a), California Rules of Court.)

8/11/05
Date


Judge of the State Bar Court
ROBERT M. TALCOTT

CERTIFICATE OF SERVICE
[Rule 62(b), Rules Proc.; Code Civ. Proc., § 1013a(4)]

I am a Case Administrator of the State Bar Court of California. I am over the age of eighteen and not a party to the within proceeding. Pursuant to standard court practice, in the City and County of Los Angeles, on August 1, 2007, I deposited a true copy of the following document(s):

**ORDER APPROVING STIPULATION;
JOINT STIPULATION OF PARTIES RE STIPULATION RE FACTS,
CONCLUSIONS OF LAW AND DISPOSITION AND ORDER APPROVING
ACTUAL SUSPENSION;
STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION AND
ORDER APPROVING**

in a sealed envelope for collection and mailing on that date as follows:

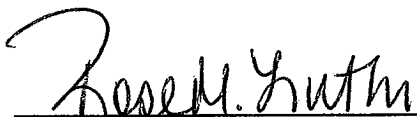
- ☒ by first-class mail, with postage thereon fully prepaid, through the United States Postal Service at Los Angeles, California, addressed as follows:

**JAMES HARVEY TIPLER, ESQ.
PO BOX 10
MARY ESTHER, FL 32569**

- ☒ by interoffice mail through a facility regularly maintained by the State Bar of California addressed as follows:

MICHAEL GLASS, ESQ., Enforcement, Los Angeles

I hereby certify that the foregoing is true and correct. Executed in Los Angeles, California, on **August 1, 2007.**



Rose M. Luthi
Case Administrator
State Bar Court