

James Harvey Tipler
DC # 217386
Century Correctional Institution
400 Tedder Road
Century, FL 32535
Telephone: 850-256-2600 c/o Ms. Senterfitt, Classification
Member of California State Bar

FILED

JUL 24 2014

STATE BAR COURT
CLERK'S OFFICE
LOS ANGELES

STATE BAR COURT

HEARING DEPARTMENT – LOS ANGELES

In the Matter of :)	Case No.: 14-N-00234
)	
James Harvey Tipler)	FIRST AMENDED ANSWER
Member No. 80748)	TO NOTICE OF
)	DISCIPLINARY CHARGES
<u>A member of the State Bar</u>)	

Respondent, James Harvey Tipler, says as follows:

1. The allegations of paragraph one are admitted.
2. The Allegations of paragraph two are denied.

AFFIRMATIVE DEFENSES

First Affirmative Defense

3. Respondent did not receive the October 17, 2013 Order, nor Notice of any hearing prior to the entering of said Order. This Failure to provide Respondent with the Order, nor any Notice of any hearing prior to its entering, excuses compliance with its Rule 9.20 requirement.



1 allowed to pick and choose which Order, Notices, and/or communications are
2 capable of receipt by Respondent. This practice of willful and/or negligent service
3 of legal documents is a violation of the constitutional right of due process, and the
4 State Bar should be estopped from taking such advantage of a member.
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7 Fifth Affirmative Defense

8 7. Some legal documents pertinent to this case were sent to Respondent, at his
9 current address, prior to the October 17, 2013 Order, proving that the State Bar
10 knew the correct address at which Respondent could be contacted, and at which real
11 service could have been effected, in this case. Further, the Motion to Withdraw filed
12 by Respondent's former counsel was served upon Respondent and the Office of
13 Chief Trial Counsel, and filed in the State Bar Court, in February, 2014, well prior
14 to the filing of this action. Due to this selective failure to provide Respondent with
15 critical legal documents prevented Respondent from complying with the Rule 9.20
16 requirements of the Order. The State Bar should therefore be estopped from its
17 enforcement.
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22 Sixth Affirmative Defense

23 8. Respondent was served with only three (3) pleadings by the California Bar
24 between September of 2013, and June of 2014, as follows:
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- 26 a. Transmittal of Records of Conviction of Attorney for Case No. 11-C-
27 14962, dated 9-12-13.
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1 b. Transmittal of Records of Conviction of Attorney for Case No. 10-C-
2 06808, dated 9-12-13.

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4 c. Supplemental Transmittal of Records (Notice of Appeal) for Case No.
5 10-C-06808, dated 11-2-13.

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7 Each of these pleadings was mailed to Respondent at his current address, so
8 that the Office of Chief Trial Counsel was clearly aware of his state of incarceration
9 and his address.

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11 9. On Friday, June 13, 2014, Respondent received a letter dated June 9, 2014,
12 from the Office of Chief Trial Counsel, subtitled Re: Notice of Intent to File Notice
13 of Disciplinary Charges. Said Notice referenced the Order dated October 17, 2013,
14 and the Rule 9.20 compliance, but did not attach a copy of the Order, nor the rule.
15 Said Notice also referenced Case No. 13-C-11542, a Bar matter with which
16 Respondent was not familiar, since the only three (3) pleadings received by
17 Respondent from the Bar referenced other Case numbers. (See paragraph 8.a. - c.,
18 inclusive, herein.) The letter offered Early Neutral Evaluation Conference
19 ("ENEC"), pursuant to Rule 5.30, did not enclose a copy of the rule, but did attach a
20 form with which to request ENEC. On Monday, June 16, at approximately 9:00
21 a.m., Respondent hand- delivered to Mr. McGovern, the official at Century
22 Correctional Institution in charge of legal mail services, the original of the form
23 requesting ENEC, for mailing to the State Bar Court in Los Angeles.
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1 10. Also on Monday, June 16, at approximately 9:00 a.m., Respondent hand-
2 delivered to Mr. McGovern, the official at Century Correctional Institution in
3 charge of legal mail services, the original of a letter to Drew Massey, Esq., for
4 mailing to the Office of Chief Trial Counsel in Los Angeles.
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6 11. The letter to the Office of Chief Trial Counsel also requested ENEC, asked
7 for a copy of the Order to which compliance was required, and for a copy of the
8 entire California Rules applicable to State Bar proceedings. The letter also
9 explained the Mailbox Rule, applicable to the incarcerated.
10

11 12. The Mailbox Rule has also been cited in Proofs of Service attached to all
12 pleadings filed by Respondent in this action. As stated by the United States
13 Supreme Court, in relevant part:
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16 “... a *pro se* prisoner’s control over the processing of his notice
17 necessarily ceases as soon as he hands it over to the only public
18 officials to whom he has access – the prison authorities – and the
19 only information he will likely have is the date he delivered the
20 notice to those authorities and the date ultimately stamped upon
21 it.”

22 Therefore, the Court continued:

23 “The general rule that receipt by the court clerk constitutes filing,
24 although appropriate for most civil appeals, should not apply in
25 the *pro se* prisoner context.”

26 *Houston v. Lack*, 487 U.S. 266 (1988).

27 13. On Monday, July 7, 2014, Respondent received a letter dated June 30, 2014,
28 from the Office of Chief Trial Counsel. Said letter declined ENEC due to the failure
to file the Request form within 10 calendar days, enclosed a copy of Rule 9.20 but

1 not the complete Rules requested, and stated further that the State Bar Court called
2 Mr. Massey on June 30, informing him that Respondent's Request for ENEC would
3 not be processed. The State Bar Court has not acknowledged receipt directly to
4 Respondent.
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6 14. Since the State Bar elected to offer ENEC to Respondent, it was then
7 obligated to follow its procedure in a manner which did not violate the
8 constitutional rights of Respondent. Pursuant to *Houston v. Lack*, 487 U.S. 266
9 (1988), and its progeny, the ENEC Request was timely made and should have been
10 honored. This action is therefore premature and should be dismissed, without
11 prejudice, and refiled only if required after the ENEC.
12

13 15. According to the Office of Chief Trial Counsel, the letter hand-delivered by
14 Respondent to the official at Century Correctional Institution on June 16 for mailing
15 was not received until June 27 – eleven (11) days later. Respondent has not been
16 informed when the ENEC form, also hand-delivered for mailing on June 16, arrived
17 at the State Bar Court. Since the call to Drew Massey from the State Bar Court was
18 made on June 30, it is presumed that the ENEC form arrived that day – fourteen
19 (14) days after it was delivered for mailing.
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24 Seventh Affirmative Defense

25 16. Respondent has no access to the complete Rules, nor to any California law.
26 This proceeding therefore violates due process.
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2 Eighth Affirmative Defense

3 17. The October 17 Order states, in relevant part:

4 “We will take no further action at this time pending the
5 submission of evidence that the convictions are final or Tipler
6 waives finality pursuant to rule 5.344(B) of the Rules of Procedure
7 of the State Bar.”

8 The convictions are not final, and Respondent has not waived finality. This Notice
9 of Disciplinary Charges is an attempt to disbar Respondent without waiting for
10 finality. It therefore violates the Rules and due process.

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12 Ninth Affirmative Defense

13 18. Since Respondent was already under a Suspension Order, pursuant to which a
14 Rule 9.20 Affidavit of Compliance was filed more than five (5) years ago, a new
15 affidavit serves no real purpose, and is therefore superfluous and unnecessary.
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18 Tenth Affirmative Defense

19 19. Since the rule 9.20 Affidavit of Compliance, filed by the Mailbox Rule on
20 July 15, 2014, states simply that no acts specified in subdivisions (a) and (c) were
21 required, the Affidavit serves no real purpose, and no person or entity has been
22 harmed by this delay.
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CONCLUSION

20. Because Respondent still has no access to the Rules of Procedure of the State Bar of California, nor to the Rules of Practice of the State Bar Court, nor to any California law applicable to this matter, the right to amend this First Amended Answer and/or to add other Affirmative Defenses, is expressly reserved and requested.

Respectfully Submitted,

Dated: July 17, 2014



James Harvey Tipler

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3 **PROOF OF SERVICE**

4 Case Number: 14-N-00234
5 In the Matter of James Harvey Tipler

6 I am the Respondent in the above captioned action. Because I am currently
7 incarcerated, I am unable to have any person other than me serve this document
8 upon the Office of the Chief Trial Counsel. I am over the age of 18 years and my
9 only address is Century Correctional Institution, 400 Tedder Road, Century, Florida
10 32535.

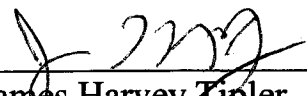
11 I am also unable to personally mail, fax, e-mail, or hand-deliver any document.
12 Pursuant to *Houston v. Lack*, 487 U.S. 266 (1988), which applies to both criminal
13 and civil proceedings, and its progeny, I have placed the original and a true and
14 correct copy of this First Amended Answer to Notice of Disciplinary Charges in the
15 hands of the properly designated official at Century Correctional Institution, on July
16 17, 2014, with postage-paid envelopes addressed as follows:

14 State Bar of California -and-
15 Rose M. Luthi, Case Adm.
16 845 S. Figueroa Street
17 Los Angeles, CA 90017-2515
(original)

Drew Massey, Esq.
Office of Chief Trial Counsel
845 S. Figueroa Street
Los Angeles, CA 90017-2515
(copy)

18 I declare under penalty of perjury, pursuant to the laws of the State of California,
19 that the foregoing is true and correct.

20 Executed at Century, Florida, this 17 day of July, 2014.

21
22 
23 James Harvey Tipler

