IN THE SUPREME COURT OF FLORIDA

(Before a Referee)

THE FLORIDA BAR,)	CONFIDENTIAL
Complainant,)	Supreme Court Case No. 61,410
v.)	
BURNETT ROTH,)	The Florida Bar File No. 11E79M90
Respondent.)	

REPORT OF REFEREE

I. SUMMARY OF PROCEEDINGS: On or about November 11, 1981, The Florida Bar filed its Complaint against the Respondent with the Supreme Court of Florida. The undersigned was duly appointed as Referee by Order of the Chief Justice of the Supreme Court dated December 10, 1981, and final hearings on this matter were convened on or about November 30 and December 9, 1983, and January 6, 1984.

The following attorneys appeared as Counsel for the parties:

On behalf of The Florida Bar: Robert D. Rosenbloom, Esq.
The Florida Bar
200 S. Miami Avenue
Suite 300A
Miami, FL 33130-1989
(305) 377-4445

On behalf of the Respondent: Harvie S. Duval, Esq.
1680 NE 135th Street
P.O. Box 610488
N. Miami, FL 33161
(305) 893-9270

The Respondent was at all times physically present during the taking of testimony, the presentation of evidence, the argument of counsel, and the findings of fact by this Referee.

II. FINDINGS OF FACT AS TO EACH ITEM OF MISCONDUCT OF WHICH THE RESPONDENT IS CHARGED: After considering all the pleadings, documentary evidence, and testimony, the undersigned Referee finds:

IN GENERAL

1. That the Respondent, Burnett Roth, is and at all times hereinafter mentioned, was a member of The Florida Bar subject to the jurisdiction and Disciplinary Rules of the Supreme Court of Florida.

2. That at all times material to the investigation and prosecution of the various allegations giving rise to the complaint sub judice, The Florida Bar has diligently pursued its obligations and ethical responsibility to contact the Respondent and to provide him with notice of all proceedings, pleadings, hearings, and the like.

3. That at all times material to the hearing of this cause, both The Florida Bar and Respondent have been afforded ample opportunity to file responses, to personally appear before this Referee, and to present witnesses, testimony, and all other matters of evidence material and relevant to this cause.

AS TO COUNT I:

4. That the Respondent was the long-time attorney, counselor, and trusted confidant for the family of Eli Einbinder (deceased) and Florence Einbinder and their three daughters, Phyliss, Andee, and Shaune Harriet.

5. That on or about November 5, 1973, Florence Einbinder died, intestate, in Dade County, Florida, leaving her three daughters, all of whom being over the age of majority, as her sole heirs at law.

6. That Florence Einbinder's estate legitimately consisted of a family business known as Eli Einbinder, Inc., cash, stock, and personal items such as jewelry, furniture, and other such personalty.

7. That shortly after her death, Florence Einbinder's surviving daughters retained the services of the Respondent to handle all matters pertaining to the Estate of Florence Einbinder.

8. That on or about November 12, 1973, the Respondent filed his Petition for Letters of Administration with the Circuit Court of the Eleventh Judicial Circuit, in and for Dade County, Florida (Probate Division).

9. That on or about November 13, 1973, the Respondent was appointed administrator of the estate and that on or about November 14, 1973, the Probate Division issued Letters of Administration. The Respondent was also the attorney for the estate.

10. That shortly thereafter, the Respondent advised the heirs that all liquid assets and all insurance proceeds were required to be deposited into an estate checking account, notwithstanding the fact that the surviving daughters were the only beneficiaries to the insurance proceeds on the life of Florence Einbinder.

11. That on or about November 20, 1973, the Respondent opened, a checking account, No. 10-4474-1, in the name of the Estate of Florence Einbinder, at the Bank of Miami Beach/Carner Bank of Miami Beach. For purposes of this Report, this checking account is hereinafter referred to as the "Estate Account". The Respondent was the sole signatory on this account.

12. That during all times material to the Respondent's involvement with the Estate of Florence Einbinder, the Respondent also maintained an unrelated checking account at the Bank of Miami Beach/Carner Bank of Miami Beach, No. 03-9614-1, under the name Burnett Roth Special Account. For purposes of this Report, this checking account is hereinafter referred to as the "Special Account". The Respondent was the sole signatory on this account. It should also be noted that the Bank of Miami Beach subsequently became the Intercontinental Bank of Miami Beach, and for purposes of this Report, any and all references to one shall be considered references to the other, as appropriate.

13. That immediately subsequent to the opening of the estate, the Respondent advised the heirs that the proceeds of all insurance policies which were not probatable were to be treated as estate assets. Acting in reliance thereon, each of the three heirs endorsed separate life insurance proceeds checks in the identical amounts of FIFTEEN THOUSAND, SIX HUNDRED SEVENTY-EIGHT DOLLARS AND THIRTY-FOUR CENTS ($15,678.34), and tendered same to the Respondent. Each of these checks represented a one-third interest in the life insurance benefits paid by New England Mutual Life Insurance Company on the life of Florence Einbinder.

14. That on or about December 10, and 12, 1973, the Respondent deposited the aggregate amount of FORTY SEVEN THOUSAND THIRTY-FIVE DOLLARS AND TWO CENTS ($47,035.02) into the Estate Account.

15. That on or about December 31, 1973, Washington National Insurance Company of Evanston, Illinois, issued three (3) separate checks in the individual amounts of TWO THOUSAND, FIVE HUNDRED DOLLARS ($2,500.00), each check payable to an individual surviving heir. The Respondent continued to advise the heirs that the

proceeds of insurance policies were to be treated as estate assets. Acting in reliance thereon, each heir separately endorsed her respective check, and on or about January 9, 1974, and March 28, 1974, the Respondent deposited the aggregate amount of SEVEN THOUSAND FIVE HUNDRED DOLLARS ($7,500.00) into his Special Account.

16. That contemporaneous with the events discussed above, the Respondent, as administrator for the estate, was entrusted with varying amounts of funds (properly includable as estate assets) in the aggregate amount of FORTY ONE THOUSAND, SIX HUNDRED NINETY-NINE DOLLARS AND TWENTY-THREE CENTS ($41,699.23); FIFTEEN THOUSAND, ONE HUNDREDD NINETY-NINE DOLLARS AND TWENTY-THREE CENTS ($15,199.23) of these funds were deposited directly into the Estate Account and TWENTY SIX THOUSAND FIVE HUNDRED DOLLARS ($26,500.00) of these funds were deposited directly into the Special Account. All deposits to the Special Account were without the knowledge, consent, or authorization of the heirs.

17. That during the period November 5, 1973, to April 8, 1974, the Respondent, as administrator of the estate, was entrusted with the total sum of NINETY-SIX THOUSAND, TWO HUNDRED THIRTY-FOUR DOLLARS AND TWENTY-FIVE CENTS ($96,234.25) of monies lawfully belonging either to the estate, or the heirs/beneficiaries.

18. That during the period November 5, 1973, to April 8, 1974, the Respondent made legitimate disbursements, on behalf of the estate, to the three heirs/beneficiaries in the aggregate amount of FOURTEEN THOUSAND SIXTY-FIVE DOLLARS ($14,065.00); and in the respective, individual amounts of, to wit: Phyliss J. (Einbinder) Wagner, FOUR THOUSAND, ONE HUNDRED FIFTY DOLLARS ($4,150.00); Andee (Einbinder) Weiner, FOUR THOUSAND FIVE HUNDRED

DOLLARS ($4,500.00); and Shaune Harriet Einbinder, FIVE THOUSAND, FOUR HUNDRED FIFTEEN DOLLARS ($5,415.00).

19. That as of April 8, 1974, the Respondent had made legitimate disbursements, on behalf of the estate, in the aggregate amount of ONE THOUSAND, ONE HUNDRED FIFTY-THREE DOLLARS AND EIGHTY-FIVE CENTS ($1,153.85).

20. That during the period November 5, 1973 to April 8, 1974, the Respondent commingled, misappropriated, and converted to his own personal use the total sum of EIGHTY THOUSAND, EIGHT HUNDRED SEVENTY-FOUR DOLLARS AND FIFTEEN CENTS ($80,874.15) in derogation of his responsibilities as administrator and attorney to the estate, and to the heirs/beneficiaries.

21. That during the course of these disciplinary hearings, the undersigned Referee entertained the testimony of the three heirs/beneficiaries; Phyliss J. Wagner, Shaune Harriet Einbinder, and Andee (Einbinder) Weiner. All three women testified that the Respondent had for many years represented their parents as family attorney and trusted confidant. In addition to the attorney-client relationship, the heirs testified that there existed a strong family and social relationship between the Einbinder family and the Respondent. Indeed, it was the uncontroverted testimony of the three heirs that they referred to the Respondent as "Uncle Bernie", and that at the time of their mother's death, they naturally turned to the Respondent for his expertise and guidance regarding the probate of their mother's estate.

22. That at the time of Florence Einbinder's death, the three daughters ranged in ages from twenty-one to thirty years. None of the heirs were particularly well-versed in business

affairs, nor did they possess any degree of sophistication regarding probate matters. They placed their total trust and confidence in the Respondent and they relied exclusively upon his advice and guidance. Each of the heirs testified that the Respondent had advised them, individually and/or collectively, that all insurance benefit proceeds were to be treated as estate assets and had to be deposited into the Estate Account. All of the heirs testified that the Respondent had never advised them that he would be placing estate assets or insurance proceeds into his Special Account. According to the heirs, at no time did the Respondent request their permission to use estate assets or insurance proceeds for his own benefit. Further, according to the heirs, at no time did they authorize the Respondent to utilize either estate funds or insurance proceeds for his own personal use. The heirs further testified that they had discussed with the Respondent his placing estate funds and insurance proceeds into an interest bearing account. At no time were these monies placed in an interest bearing account.

23. That having heard the testimony of the three heirs and having observed their demeanor, the undersigned Referee is of the belief that their testimony was totally credible, that their sincerity was genuine, that their motivation is not at issue, and that their testimony was extremely believable and should be afforded the utmost weight. In light of the foregoing, I specifically find that at no time did the Respondent ever request the heirs' permission to use either the estate funds or insurance proceeds for his own personal benefit, and at no time did the heirs ever authorize the Respondent to do so. Further, I specifically find that the heirs, individually and/or collectively,

discussed with the Respondent his investing these funds in an interest bearing account and, that in fact, at no time did the Respondent so invest the funds. Finally, I specifically find that the three heirs placed their total trust and confidence in the Respondent and that at all times the Respondent encouraged their investiture of faith.

24. That during the course of these disciplinary hearings, various character witnesses, to include the Respondent's Rabbi, two United States District Court judges and one State of Florida Circuit Court judge, testified as to their opinion of the Respondent's reputation for truth and veracity in the local community. All of the character witnesses testified that they believed the Respondent's reputation for truth and veracity to be good. Each of the character witnesses further indicated that they believed the Respondent to be an honorable man. Finally, each of the witnesses indicated that the Respondent had performed a significant amount of pro bono work and that he has volunteered his services to many worthwhile charitable organizations and causes.

25. That during the course of these disciplinary proceedings, the Respondent testified that the Einbinder children had retained him to probate their mother's estate. The Respondent admitted that he was the long-time attorney and confidant of the Einbinder family. According to the Respondent, he advised the heirs that the insurance proceeds "should be handled the same way as other probate assets"; he denied ever advising the heirs that the insurance proceeds were, in fact, properly includable in the probate estate. According to the Respondent, he was of the

opinion that the three heirs, all of whom being over the age of majority, were not responsible enough to handle their new-found wealth. According to the Respondent, it was his avowed intention to manage their money for them. Indeed, the Respondent testified that as a result of his long-standing relationship with the heirs' parents, he considered himself to be morally obligated and justified to handle the estate funds and the insurance proceeds "in any manner he deemed most appropriate". The Respondent denied any conversation with the heirs regarding the deposit of either estate funds or insurance proceeds into an interest bearing account. On the contrary, the Respondent maintains that he had the heirs' implicit permission to use both the estate funds and insurance proceeds for his own personal use. The Respondent further maintains that at all times the heirs knew and understood that he was using the estate funds and insurance proceeds for his own personal use.

26. That the Respondent admits, and the Record demonstrates beyond a doubt, that he commingled the estate funds and the insurance proceeds with his own personal funds. By his own admissions, and through the expert testimony of The Florida Bar's Staff Investigator, James D. Hayes, the Record demonstrates beyond a doubt, that during the period November 5, 1973 to April 8, 1974, the Respondent diverted EIGHTY THOUSAND, EIGHT HUNDRED SEVENTY-FOUR DOLLARS AND FIFTEEN CENTS ($80,874.15) to his own personal use. The undersigned Referee specifically finds that the Respondent's actions amounted to a misappropriation and conversion of the estate funds and the insurance proceeds. Indeed, the Respondent admitted that, on two separate occasions, he utilized a total of SIXTEEN THOUSAND DOLLARS ($16,000.00) of

estate funds and/or insurance proceeds to satisfy his personal obligations with the Internal Revenue Service. When queried repeatedly during the course of these disciplinary hearings as to the other uses he made of the remaining SIXTY-FOUR THOUSAND, EIGHT HUNDRED SEVENTY-FOUR DOLLARS AND FIFTEEN CENTS ($64,874.15), the Respondent was either unable or unwilling to account for same.

27. That the Respondent's failure to account for the uses he made of the remaining entrusted funds, his cavalier attitude regarding his authority to actually make use of these funds, and his self-appointment as the "guardian angel" of three adult heirs, seriously taints the credibility of his entire testimony. Indeed, for these very reasons the undersigned Referee considers the Respondent's testimony to be untruthful. I specifically find that the Respondent had neither moral justification, nor the legal right to perceive himself as a self-appointed guardian; and that at no time did the Respondent have the heirs' permission or authorization (either implicit, explicit, or otherwise) to use the estate funds and/or the insurance proceeds.

AS TO COUNT II:

28. That a fiduciary relationship existed between the Respondent and the estate, both as administrator and as attorney, and between the Respondent and the heirs, as a result of the Respondent's long-time relationship with the Einbinder family. In this regard, the undersigned Referee specifically finds that the Respondent's actions, advices, and representations to the heirs, were calculated to repose in him their total trust and

confidence. As a result thereof, the heirs did repose their total trust and confidence in the Respondent. The Respondent seized the opportunities resulting from this veneer of faith to exercise his unbridled dominion and control over assets otherwise not properly includable in the probate estate, i.e., the insurance proceeds.

29. That as a result of this fiduciary relationship, the Respondent had a duty imposed by law (and morality) to deal with the heirs with a superlative degree of frankness and honesty, and to act only in the best interest of the heirs, to the total exclusion of his own personal interest.

30. That the Respondent advised the heirs that all liquid assets and all insurance benefits were required to be deposited into an Estate Account, notwithstanding that only the heirs were the beneficiaries of life insurance proceeds on the life of Florence Einbinder and therefore not probatable. The heirs acted in reliance thereon, and in accordance with the advice and directions of the Respondent, submitted the aforesaid sums to him. The Respondent deposited the sums from insurance proceeds into both the Estate Account and his Special Account. He did not invest the sums in an interest bearing account, nor did he deposit said sums in the heirs' names. Shortly after the estate funds and the insurance proceeds were deposited into the Estate Account, the Respondent withdrew the majority of these funds and commingled them with other funds belonging to him. As of April 8, 1974, a mere five months after the estate had been opened, the Respondent had actually converted and misappropriated EIGHTY THOUSAND, EIGHT HUNDRED SEVENTY-FOUR DOLLARS AND FIFTEEN CENTS ($80,874.15) of these funds to his own

personal and/or business use and advantage. All of these withdrawals and resulting conversions were made without the knowledge, consent, or authority of the heirs (or beneficiaries) and against the wishes, desires, and best interests of the heirs.

31. That during the initial five months of the estate, the Respondent distributed FOURTEEN THOUSAND, SIXTY-FIVE DOLLARS ($14,065.00) to the heirs. These distributions were made at various times and in varying amounts, sporadically, as the Respondent saw fit. At no time during this period did any distributions to the heirs occur without an heir first requesting a partial distribution. The balance of all other funds remained within the use and control of the Respondent. Contrary to the realities of the situation, the Respondent continuously reassured the heirs that he was safely maintaining their money and that he was precluded from distributing the remainder of the funds until the estate was closed.

32. That as a result of the close confidential relationship which the Respondent had developed with the heirs' family over the many years, and as a result of the Respondent's above-discussed representations and actions, the undersigned Referee specifically finds that the Respondent grossly abused the heirs' confidence in him.

33. That I specifically find the Respondent's representations and actions to have been deceitful, untruthful, and calculated to maintain the heirs' trust and confidence for as long a period of time as possible. Indeed, as a result of his representations, the Respondent was able to maintain the heirs' trust and confidence, albeit to a lesser extent, for almost four years, at which time

the heirs determined that it was in their mutual best interests to retain alternate, independent counsel. Although the Respondent finally repaid the heirs all monies previously misappropriated and converted by him, to include successor-attorney's fes, it is patently obvious to the undersigned Referee that the Respondent did not lend his full cooperation to successor-counsel or the Probate Court, and that he continued to conduct himself in a manner inconsistent with the highest goals of the legal profession. Rather than admit his incompetence, ineptitude, and what can only be characterized as deceptive actions, the Respondent engaged the heirs in protracted civil litigation. In this regard, it is my specific finding that the Respondent's attitude, actions, and strategy reflected disfavorably upon himself and the profession, and greatly detracts from the Respondent's contention that he is an ethical practitioner.

AS TO COUNT III:

34. That as discussed in Count II, above, during or about the latter part of 1977, the heirs became dissatisfied and suspicious of the Respondent's administration of the estate and brought an action for an Accounting in the Probate Division of the Circuit Court of the Eleventh Judicial Circuit, in and for Dade County, Florida.

35. That incidental to this litigation, or or about September 7, 1977, the Respondent was deposed under oath for the purpose of ascertaining the true financial status of the estate. During the course of this deposition, the Respondent was queried as to the then present balance of the Estate Account. The Respondent testified under oath that the then present balance of the Estate

Account was TWENTY-THREE THOUSAND, TWO HUNDRED THIRTY DOLLARS AND THIRTY-FOUR CENTS ($23,230.34). In fact, two days prior to the taking of this deposition, the balance of the Estate Account was FIVE HUNDRED EIGHTY DOLLARS AND THIRTY-FOUR CENTS ($580.34); that one day prior to the deposition the Respondent withdrew TWENTY-TWO THOUSAND SIX HUNDRED FIFTY DOLLARS ($22,650.00) from his Special Account and deposited this sum into the Estate Account; and, that immediately subsequent to the taking of this deposition, the Respondent withdrew said TWENTY-TWO THOUSAND, SIX HUNDRED FIFTY DOLLARS ($22,650.00) from the Estate Account, leaving an actual balance of FIVE HUNDRED EIGHTY DOLLARS AND THIRTY-FOUR CENTS ($580.34).

36. That although The Florida Bar and the Respondent have stipulated that the Respondent later redeposited TWENTY-FIVE THOUSAND DOLLARS ($25,000.00) into the Estate Account, and that this money was used for the purpose of paying the heirs, the undersigned Referee can only conclude that the Respondent's representations and actions were calculated to confuse and deceive the heirs, that his representations and actions were deceitful and inconsistent with the highest goals of the profession, and that the Respondent's representations and actions fell far below the minimally acceptable standards of the profession. It is the further opinion of the undersigned Referee that this particular course of conduct militates against the Respondent's professed good-faith in the cause sub judice.

AS TO COUNT IV:

37. That the Respondent freely admits to violating Article XI, Rule 11.02(4)(b) of the Integration Rule of The Florida Bar,

and the Bylaws thereto, by failing to maintain and preserve the records of all bank accounts or other records pertaining to the funds and property of a client.

38. That of greater concern to the undersigned Referee is the manner in which the Respondent violated this provision of the Integration Rule. A close examination of the Estate Account checkbook reflects a disturbing course of conduct on the part of the Respondent. It would appear that whenever the Respondent had drafted a check on the Estate Account to satisfy legitimate estate purposes, such checks would be drafted in a sequentially-numbered manner from the front of the checkbook. However, during the initial five months of the estate, the Respondent drafted many checks made payable either to himself or to cash. These checks were generally "unnumbered" and, therefore not easily identifiable or amenable to reconstructive audit. In this regard, many checks were drafted from the rear of the Estate Account checkbook; the remaining check stubs are "unnumbered" and do not reflect either the amount of the check or the purpose for which it was intended. Based on the Respondent's testimony, his admissions, and his demonstrated course of conduct throughout the entire estate matter, the undersigned Referee is compelled to conclude that the Respondent's failure to maintain proper records served to conceal his true actions and his wrongful use of Estate funds and insurance proceeds.

III. RECOMMENDATION AS TO WHETHER OR NOT RESPONDENT SHOULD BE FOUND GUILTY: Based upon the foregoing findings, all of which having been supported by at least clear and convincing evidence, and in most instances evidence beyond any reasonable doubt, the

undersigned Referee makes the following recommendations as to guilt or innocence.

AS TO COUNT I

I recommend that the Respondent be found guilty and specifically that he be found guilty of the following violations of his oath as an attorney, the Integration Rule of The Florida Bar, and the Disciplinary Rules of the Code of Professional Responsibility, to wit: Article XI, Rule 11.02(4), Integration Rule of The Florida Bar, by misappropriating and converting funds entrusted to him for a purpose other than that for which they were intended; Disciplinary Rules 1-102(A)(3), engaging in illegal conduct involving moral turpitude; Disciplinary Rule 1-102(A)(4), engaging in conduct involving dishonesty, fraud, deceit, and misrepresentation; Disciplinary Rule 1-102(A)(5), engaging in conduct that is prejudicial to the administration of justice; Disciplinary Rule 1-102(A)(6), engaging in any other conduct that adversely reflects on his fitness to practice law; Disciplinary Rule 6-101(A)(3), neglecting a legal matter entrusted to him; Disciplinary Rule 7-101(A)(1), intentionally failing to seek the lawful objectives of his client; Disciplinary Rule 7-101(A)(2), intentionally failing to carry out a contract of employment entered into with clients for professional services; Disciplinary Rule 7-101(A)(3), intentionally prejudicing and damaging his clients during the course of the professional relationship; Disciplinary Rule 7-102(A)(8), knowingly engaging in other illegal conduct or conduct contrary to a Disciplinary Rule; Disciplinary Rule 9-102(A), failing to deposit entrusted funds into a bank account where no funds included therein belong to the Respondent; Disciplinary Rule 9-102(B)(1),

failing to properly notify the heirs of the receipt of funds belonging to the Estate; and Disciplinary Rule 9-102(B)(3), failing to maintain complete records of all funds coming into his possession and failing to render appropriate accounts to the heirs regarding same.

AS TO COUNT II

I recommend that the Respondent be found guilty and specifically be found guilty of the following violations of his oath as an attorney, the Integration Rule of The Florida Bar, and the Disciplinary Rules of the Code of Professional Responsibility, to wit: Disciplinary Rules 1-102(A)(3), by engaging in illegal conduct involving moral turpitude; Disciplinary Rule 1-102(A)(4), by engaging in conduct involving dishonesty, fraud, deceit and misrepresentation; Disciplinary Rule 1-102(A)(5), by engaging in conduct prejudicial to the administration of justice; and Disciplinary Rule 1-102(A)(6), by engaging in conduct that adversely reflects on his fitness to practice law.

AS TO COUNT III

I recommend that the Respondent be found guilty and specifically be found guilty of the following violations of his oath as an attorney, the Integration Rule of The Florida Bar, and the Disciplinary Rules of the Code of Professional Responsibility, to wit: Disciplinary Rule 1-102(A)(3), by engaging in illegal conduct involving moral turpitude; Disciplinary Rule 1-102(A)(4), by engaging in conduct involving dishonesty, fraud, deceit, and misrepresentation; Disciplinary Rule 1-102(A)(5), by engaging in conduct prejudicial to the administration of justice; and Disciplinary Rule 1-102(A)(6), by engaging in conduct that adversely reflects on his fitness to practice law.

AS TO COUNT IV

I recommend that the Respondent be found guilty and specifically be found guilty of the following violations of his oath as an attorney, the Integration Rule of The Florida Bar, and the Disciplinary Rules of the Code of Professional Responsibility, to wit: Article XI, Rule 11.02(4)(b), Integration Rule of The Florida Bar, by failing to maintain and preserve the records of all bank accounts or other records pertaining to the funds or property of a client for a period of not less than six (6) years subsequent to the last transaction pertaining to same.

IV. RECOMMENDATION AS TO DISCIPLINARY MEASURES TO BE APPLIED:

I recommend that the Respondent, Burnett Roth, be disbarred from the practice of law in the State of Florida.

This decision was not done in haste, but with grave slow deliberate reflection. Burnett Roth is a senior member of The Bar. He has devoted countless hours to his philanthropic causes. He has produced Judges and a Rabbi to extol his virtue and honesty. Yet the facts are clear as crystal: Burnett Roth misused and misappropriated clients' funds: a capital offense for an attorney.

Burnett Roth wants this Referee to believe that he had permission to use these funds. That position is ludicrous. Heirs do not ask for their own money and receive it piece-meal if they know it was theirs. Why would Burnett Roth deposit personal money into an estate account the day before his deposition and remove it the day after? The Respondent, Burnett Roth, was not truthful with this Referee or more important with the heirs.

I find no merit in his benevolent guardian theory.

There are no facts in mitigation. Further the Respondent, Burnett Roth, shows absolutely no remorse.

The end result is that Burnett Roth is guilty as charged and stands convicted without benefit of mitgation or remorse.

V. PERSONAL HISTORY AND PAST DISCIPLINARY RECORD: After entering findings of guilt as enumerated in Section III, above, and prior to entering the recommendation for discipline as contained in Section IV, above, the undersigned Referee has considered the following personal history and prior disciplinary record of the Respondent, to wit:

Age: 71
Date admitted to The Florida Bar: June 13, 1934
Prior disciplinary convictions and disciplinary measures imposed therein: None
Other personal data: The Respondent has been a member of The Florida Bar for almost 50 years. The Respondent has performed significant pro bono work and he has volunteered his services to many worthwhile charitable organizations and causes. The Respondent enjoyed a long-term marriage, which ended with his wife's passing in 1979.

VI. MITIGATION: The undersigned Referee notes that aside from the instant cause, the Respondent has never been the subject of disciplinary proceedings during his almost fifty years as a member of The Florida Bar. However, a person of the Respondent's maturity, experience, and expertise should never have permitted this situation to have perpetuated itself. Respondent's unexplained failure in this regard does not reflect favorably upon his sense of ethics; nor does it favorably reflect upon his respect for the dignity of the legal process or the profession. The Respondent did not suffer from an alcohol, a drug, or a gambling addiction. He did not suffer from serious illness, nor did he undergo psychiatric care during this period of time.

On the one hand he claims that he perceived his function to be that of a "guardian angel"; on the other hand, he admits to using the heirs' funds for his own personal purposes. The Respondent claims that he had the heirs' permission to use these funds and I have already found that he did not have this authority. There is nothing in the Record that would even allow the Respondent to reasonably believe that he was so empowered. There is absolutely no excuse for his actions. Although the Respondent has returned all of the funds to the heirs, I do not consider this restoration to the status quo as an element of mitigation. Rather, it is a factor to be considered at a much later date should the Respondent elect to reapply for membership in The Florida Bar. Having heard all of the testimony and having reviewed all of the evidence, I specifically find a complete absence of any mitigation whatsoever.

VII. STATEMENT OF COSTS AND MANNER IN WHICH COSTS SHOULD BE TAXED: The undersigned Referee finds the following costs were reasonably incurred by The Florida Bar, to wit:

Administrative Costs at Grievance Committee Level Pursuant to Article XI, Rule 11.06(9)(a)(5) of the Integration Rule of The Florida Bar	$150.00
Administrative Costs at Referee Level Pursuant to Article XI, Rule 11.06(9)(a)(5) of the Integration Rule of The Florida Bar.....	$150.00
Investigative Costs & Related Expenses.....	$8,102.24
Court Reporter Costs (Excluding hearing of January 6, 1984).....	$2,591.23
Court Report Costs; Hearing of January 6, 1984...	1216.-
Out of State Witness Travel Costs.....	$256.00
TOTAL ITEMIZED COSTS:.....	12465.47

It is apparent that other costs have or may be incurred. It is recommended that all such costs and expenses, together with the foregoing itemized costs, be charged to the Respondent.

It is further recommended that interest at the rate of 12% per annum should be assessed against Respondent should all costs not be paid within thirty (30) days of the entry of the Supreme Court's Order.

Dated this 4 day of APRIL, 1984.

PAUL M. MARKO, III, REFEREE
Circuit Court Judge
Duly Appointed Referee

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that the original Report of Referee and the Record in this matter have been forwarded to the Clerk of the Supreme Court, and that true and correct copies of the Report of Referee and the Record have been provided to Robert D. Rosenbloom, Esquire, Bar Counsel, The Florida Bar, 200 S. Miami Ave., Suite 300A, Miami, FL 33130-1989, Harvie S. Duval, Esquire, Respondent's Counsel, 1680 NE 135th Street, P.O. Box 610488, North Miami, FL 33161, and to John T. Berry, Esquire, Staff Counsel of The Florida Bar, at 600 Apalachee Parkway, Tallahassee, FL 32301-8226, this 5 day of APRIL, 1984.

PAUL M. MARKO, III, REFEREE