original

IN THE SUPREME COURT OF FLORIDA

THE FLORIDA BAR,

Complainant,

v.

JAMES C. BURKE,

Respondent.
_____/

Supreme Court Case
No. 74,157

THE FLORIDA BAR'S ANSWER BRIEF TO RESPONDENT'S PETITION TO REVIEW

AND

INITIAL BRIEF OF THE FLORIDA BAR

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TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

Table of Authorities
Continued

SYMBOLS AND REFERENCES

In this Brief, The Florida Bar will be referred to as either "The Florida Bar" or "The Bar". James C. Burke will be referred to as "Respondent" or "Burke". Other witnesses will be referred to by their respective surnames for clarity.

Abbreviations utilized in this Brief are as follows: "T" will refer to the transcript of proceedings held October 24, 1989. "A" will refer to the appendix.

STATEMENT OF THE CASE

These disciplinary proceedings commenced upon the filing by The Florida Bar of a complaint on May 16, 1989 wherein respondent, James Burke, was charged with engaging in unethical conduct; specifically, violations of disciplinary rules 1-102(a)(4), 1-102(a)(5), and 1-102(a)(6) of the Code of Professional Responsibility; Rule 11.02 of the Integration Rule of The Florida Bar, and Rule 5-1, Rules Regulating Trust Accounts. (A.1-26).

A referee was appointed to hear the matter and this case proceeded to final hearing on October 24, 1989 (T. 1-249). After full hearing on all issues so triable, the referee issued its Report on January 30, 1990, finding respondent, James C. Burke guilty of violating the Rules as charged and recommended an eighteen month suspension as discipline and required that Respondent take and pass the Professional Responsibility portion of The Florida Bar exam and pay all costs incident to these proceedings. (A.118-121)

The Report of Referee and recommendations were considered by the Board of Governors at its meeting held March 14-17, 1990. At that time, the Board of Governors directed the filing of The Florida Bar's Petition for Review to contest the discipline as recommended by the referee.

The Florida Bar recommends the rejection of the referee's recommendation of an eighteen month suspension as discipline and in lieu thereof recommends that Respondent, James C. Burke, be disbarred, pursuant to the recommendations made by The Florida Bar at trial.

STATEMENT OF THE FACTS

The Respondent, James C. Burke, was the attorney of record representing the Plaintiff in an action styled Dorothy Banks as Personal Representative of the Estate of Samuel L. Banks, Deceased v. The Firestone Tire and Rubber Company, A Foreign Corporation. (A.28) On May 11, 1984, respondent submitted an Amended Petition for Approval of Settlement and Disbursement which was considered by the court on May 14, 1984, and an order issued approving settlement and disbursement setting out a specific schedule of payment and amounts payable to the respective beneficiaries to be used to fund guardianship accounts for the minor beneficiaries. (A.8,12)

Respondent received the settlement draft in the amount of $150,000.00 on July 31, 1984. (A.26, T.160) On August 2, 1984, respondent deposited the settlement draft in his own personal account maintained at Southeast Bank rather than in his trust account maintained at People's National Bank. (T.160, A.22-23) Respondent maintains that this was done due to the fact that People's National Bank allegedly represented that it would take two weeks to clear the settlement funds and Southeast Bank could clear the funds in one day. (T.192) The funds remained in respondent's personal account and earned interest for over twenty-one days before partially being transferred to the authorized trust account maintained at People's National Bank. (T.162)

Subsequent to the court ordered distribution, one of the beneficiaries demanded additional monies in settlement amounting to $3,500.00. (T.38-39, 44,114-116) This would have required a minor adjustment of approximately $1,000.00 from each of the beneficiaries. However, respondent, Burke, deducted in excess of $13,000.00 from the beneficiaries and guardianships. (T.47) The net effect of this was that approximately $10,000.00 in excess of what was needed was deducted from the guardianships and has remained unaccounted for by respondent. (T.95)

Respondent states that he was fully aware of how much money was needed to pay the additional settlement demanded by the beneficiary, fully aware of how much he actually deducted and fully acknowledged that the proper disbursement and monitoring of the funds was his responsibility. (T. 119, 124) Respondent also admitted that his actions/inactions were not in compliance with the court order of distribution. (T. 123-124)

Due to respondent's failure to close out the estate, the probate court appointed attorney James Sloto to act as Administrator Ad Litem for the estate and Guardian Ad Litem for the guardianships. It was at that time that James Sloto discovered the misappropriation of the settlement funds. (T. 80)

Mr. Sloto prepared a Report of Administrator and Guardian Ad Litem setting out the discrepancies in the guardianship accounts and indicating that review of the court files did not reveal any reason why the distribution made by the respondent was not in

accordance with the order of distribution. (T.81-82)

Multiple requests were made of Mr. Burke to explain the discrepancies, but this was to no avail. A Petition for Order to Show Cause why Respondent, James Burke, should not be held in contempt of Court was filed and respondent did file a reponse, but said response did not address where the additional $10,000.00 went. (T.95) However, an Agreed Order was subsequently entered into wherein it was indicated that respondent did provide a satisfactory explanation as to the distribution of settlement proceeds. (T. 60) In retrospect, The Honorable Judge Edmond Newbold testified that this order should not have been entered in that respondent failed to comply with the order to show cause. (T.60) Respondent still has not accounted for the whereabouts of the $10,000.00.

This matter was brought to the attention of The Florida Bar by Judge Newbold. An audit and investigation was conducted by Carlos Ruga, Staff Auditor for The Florida Bar, of the three primary accounts of James Burke in which the Banks settlement proceeds were deposited, transferred and disbursed. (T.25, 157) Based upon documents and bank records received relative to these accounts and in conjunction with the additional disbursements made, the audit revealed that there remained in the personal account, or in the control of James Burke, the sum of $50,000.00. (T.167) Mr. Burke was only entitled to attorney's fees of $40,080.55. Thus, respondent received $9,919.45 in excess of the court awarded attorney fees. (T. 167)

SUMMARY OF THE ARGUMENT

A referee's findings of fact enjoy the same presumption of correctness as the judgment of the trier of fact in a civil proceeding. Rule 3-7.5(c)(1), Rules of Discipline. The Supreme Court is not bound by the referee's recommendation for discipline. The Florida Bar v. Weaver, 356 So.2d 797 (Fla. 1978).

Respondent, Burke, argues that the acts for which he was charged by The Florida Bar involving the Estate of Banks occurred as a result of "sloppy accounting". This is a thinly veiled attempt to hide his misappropriation of funds.

Respondent relies on his prior disciplinary case styled The Florida Bar v. Burke, 517 So.2d 684 (Fla. 1988) to justify his actions in the instant matter. He argues that he has already been disciplined for the acts complained of which were caused by his "sloppy accounting" procedures that were allegedly in effect during 1984. This is misdirection.

In Burke, Respondent received monies belonging to his clients in the form of a check issued from the Clerk of the Court's office. Respondent cashed the check and failed to turn the monies over to his clients. Respondent, Burke, was unable to account for where these funds went. When repeated demands were made by the clients for their monies, on two separate occasions Burke issued the clients a check from his account which bounced. Finally, ten months later, on the day of the Grievance Committee hearing on this matter, Respondent paid the clients their money.

The fact remains, and it is undisputed by Respondent, that he failed to comply with the Court orders of distribution in the Banks matter. It is further undisputed that Respondent deposited $150,000.00 of client funds into his personal bank account and now cannot account for misappropriated client funds in excess of $9,919.45. The Florida Bar was able to account for these funds. After Respondent made all of his distributions to the beneficiaries and guardianships, the $9,919.45 remained in Respondent's personal account and/or under the care, custody and control of James Burke.

The actions/inactions of Respondent, Burke, are not attributable to "sloppy accounting" but rather are calculated and intentional acts to misappropriate client funds in direct violation of the Rules Regulating The Florida Bar. Such conduct warrants disbarment.

POINT ON APPEAL

POINT I

WHETHER BASED ON THE FACTS AND EVIDENCE PRESENTED AT TRIAL DISBARMENT IS THE APPROPRIATE DISCIPLINE TO BE IMPOSED AGAINST RESPONDENT JAMES C. BURKE. (RESTATED)

ARGUMENT

The facts and evidence presented at trial before the referee support The Florida Bar's recommendation that the appropriate discipline to be imposed against respondent James C. Burke is disbarment.

A referee's findings of fact enjoy the same presumption of correctness as the judgment of the trier of fact in a civil proceeding. Rule 3-7.5(k)(1), Rules of Discipline. The Supreme Court is not bound by the referee's recommendation for discipline. The Florida Bar v. Weaver, 356 So.2d 797 (Fla. 1978).

The referee in his report tracked the allegations of the complaint as filed by The Florida Bar almost verbatim and found that after hearing all of the evidence and testimony presented at trial, the allegations were now proven facts supported by the evidence. Respondent, James Burke was and is guilty of violating the Rules Regulating The Florida Bar.

The thrust of respondent's case/argument both at trial and in his initial brief is that respondent's practice was "messed up," he was "trying to work things through his secretary," and he was "attending to his legislative duties." Further, respondent relies heavily on his prior discipline and "shabby accounting procedures." These assertions do not justify or obviate respondent's violative conduct, but rather, are a thinly veiled attempt to hide his misappropriation of funds.

Respondent, Burke, principally relies on his prior disciplinary case styled, The Florida Bar v. James C. Burke, 517 So.2d 684 (Fla. 1988) to justify his actions in the Banks matter. He argues, that he has already been disciplined for his actions and that the acts complained of which are the subject matter of the Bar's Complaint were the result of the same "sloppy accounting" procedures that were allegedly in effect during 1984. THIS IS MISDIRECTION.

The Court in Burke, supra, found respondent guilty of failure to maintain complete records of client funds, failure to properly deliver funds to clients and failure to properly maintain trust account records.

Respondent began representing the Alvarez sisters in 1980. On October 4, 1983, $8,380.60 of the Alvarezes' money was released to respondent by check from the Clerk's office. These funds belonged to the clients. Burke cashed the check on October 4, 1983, but was unable to account for where the money went or what he did with it. It was clear, however, that he did not deposit the funds into his trust account where they should have gone under trust accounting rules in effect at that time. As the check was cashed, the funds were available, yet Burke told the Alvarez sisters that the funds would not clear for ninety days.

Multiple requests were made by the Alvarezes for their money and on no less than two separate occasions, the checks sent by Burke to the Alvarezes bounced for insufficient funds in Burke's accounts.

This immediately should have put Burke on notice that something was wrong with his accounting system and immediate action should have been taken to ameliorate and discover where client funds had gone.

As such, as early as October of 1983, Burke was aware that he was not complying with minimal trust accounting procedures. Additionally, assuming that his accounting procedures were in disarray, he took no action to rectify them at this time despite the fact that he now had knowledge of this.

It was not until ten months later, on August 7, 1984, the day of the grievance committee hearing on the Alvarez matter when Burke was faced with Bar discipline, that Burke finally, in a cashier's check, gave the Alvarezes $6,567.35 due them. And is it coincidental that on August 7, 1984, the same day as the grievance committee hearing, respondent withdrew, in cash, for no apparent reason $6,900.00 from the estate of Samuel Banks? The Florida Bar thinks not. This is not the action of an individual with "sloppy accounting," but rather an intentional and knowing transfer of funds.

There are similarities between the Alvarez matter and the Banks matter. They both occurred in 1984 and in both cases, respondent misappropriated client funds. It should be noted that in the Alvarez matter, this Court stated with respect to respondent's inadequate record keeping that, " ... worst of all, the check from the court designated for Janet and Yvette Alvarez, was not even deposited into the trust account... " (id.page 685).

At least in the Alvarez matter, Burke deposited some of the funds in his office account. In the Banks matter, he deposited $150,000.00 solely into his personal account.

The fact remains, and it is undisputed by respondent, that the Court order in Banks of May 14, 1987 was not complied with. Further, it is not disputed that respondent filed court pleadings in the guardianship matters funding each guardianship with $18,486.92 when the court order called for $23,880.35. It is suggested to this Court that since these accountings were approved by the respective family members who were aware that the guardianships were only going to be funded with $18,486.92, there was no alternative for Burke but to fund them as such.

In The Florida Bar v. Newhouse, 520 So.2d 525 (Fla. 1988), this Court held that failure to abide by Court orders regarding disbursement of settlement proceeds, assisting clients in violation of the Court order regarding disbursement of settlement proceeds for minors who were to receive benefits of guardianship assets, failure to follow proper trust accounting procedures, and failure to pay outstanding costs of litigation as a result of settlement, warrants disbarment without leave to reapply for a period of ten years. and the payment of costs in the amount of $2,435.60.

As did respondent Burke in the case at Bar, respondent Newhouse violated the Court's order of distribution and transferred a portion of the settlement proceeds to a parent and retained a portion for himself.

Newhouse took the position that the Court had no authority to restrict the distribution of the settlement proceeds, but the referee found this position to be without merit.

It should be noted that this Court disbarred Richard Newhouse not only on the same factual circumstances as those in the case at Bar involving Burke's handling of the Banks Estate and Guardianships, but the referee found Newhouse guilty of the same rule violations occurring during the same period of time as that set out in The Florida Bar's complaint against James Burke.

The referee went on to further support his findings by relying on Rule 4.11 of the Florida Standards for Imposing Lawyer Discipline. The Referee found that Newhouse had knowingly converted a client's property and therefore disbarment was appropriate.[1] Such is the case at Bar.

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[1] The referee in Newhouse found that the following standards for discipline were applicable:

> 4.11 Disbarment is appropriate when a lawyer intentionally or knowingly converts client property regardless of injury or potential injury.
>
> 4.61 Disbarment is appropriate when a lawyer knowingly or intentionally deceives a client with the intent to benefit the lawyer or another, regardless of injury or potential injury.
>
> 6.21 Disbarment is appropriate when a lawyer knowingly violates a court order or rule with the intent to obtain a benefit for the lawyer or another, and causes serious injury or potentially serious injury to a party, or causes serious or potentially serious interference with a legal proceeding.

Respondent testified, and it was supported by the evidence, that James Banks demanded an additional $3,496.41. This is undisputed. Why then deduct over $13,398.86?

Respondent attempts to argue in his brief that the odd sums transferred and distributed were a source of confusion, that his accounting procedures were responsible for that confusion and that no "lump sum" was withdrawn by him.

Respondent himself admits that his Court awarded attorney fees of $40,080.55 and expert fees of $1,190.00 were paid in full and received by him. (T.115) How then, could he have possibly deducted monies from his fees as he represented to contribute to the additional sum sought by James Banks? He didn't. Quite the contrary, after all of the disbursements, $9,919.45 remained under the care, custody, and control of respondent.

The record will speak for itself. When asked by Bar Counsel on no less than five separate occasions, "Where did the difference of $9,919.45 go?", respondent Burke either went off on a tangent or said he didn't know. (T. 122,123,126,127,128)

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[1] continued

In that Respondent Burke has had prior discipline imposed, the following standard for discipline also applies:

> 8.1 Disbarment is appropriate when a lawyer: (B) Has been suspended for the same or similar misconduct, and intentionally engages in further similar acts of misconduct.

The Florida Bar knows. After a full audit by Carlos Ruga, C.P.A. and Staff Auditor who was able to account for each transaction, $9,919.45 was remaining in James Burke's personal account. To date respondent has failed to account for this $9,919.45 of additional funds. It should be noted at this point that it was not until December 7, 1988 that respondent paid back the $9,919.45 to the respective guardianship accounts despite the fact that he was aware of the discrepancy as early as August, 1987.

In The Florida Bar v. Golub, 550 So.2d 455 (Fla. 1989), respondent Golub was the attorney for the Estate of Cecil Harlig. During a twenty month period he systematically stole money from the estate and failed to repay the money at the time the theft was discovered.

Although Golub did not have the permission of the heirs or the Probate Court to remove said funds, wherein James Burke maintains that he did, Golub argued extreme alcoholism as the principle cause of his actions and therefore his alcoholism should significantly act as mitigation for the theft.

The referee recommended Golub be suspended from the practice of law for a period of three years. This Court held that while alcoholism may explain the respondent's conduct, it does not excuse it. Respondent was disbarred for five years. Alcoholism is an involuntary addiction; "sloppy accounting" is something one elects and has control over to remedy.

The Court in Golub cited The Florida Bar v. Tunsil, 503 So.2d 1230,1231, (Fla. 1986) wherein it was stated, "[I]n the heirarchy of offenses for which lawyers may be disciplined, stealing from a client must be among those at the top of the list." No one sets up a systematic plan to misappropriate client funds and makes it look intentional. Respondent, Burke's actions/inactions in not correcting the accounting procedures when discovered is just as culpable as taking affirmative action.

Respondent argues that such activities post 1984 are irrelevant. Quite the contrary. As previously stated, respondent became aware of potential problems with his trust account as early as 1983. That was the time to bring in the accountant to audit the books, not after a finding of probable cause by the grievance committee.

And what effect did this accountant have? Judge Newbold filed the initial complaint with The Florida Bar in the Banks matter in February 1988, wherein at that point Judge Newbold had had before him a Petition for Order to Show Cause and no less than four requests were made of Burke to supply an accounting to the Court, which to date he had failed to do. And when he did, no explanation was provided relative to the $9,919.45.

Respondent filed his Response to the Petition for Order to Show Cause in January of 1988. Certainly from October of 1983 to January of 1988 was a sufficient period of time for Burke to

investigate and ascertain the alleged problems with his accounting system and to track these missing funds.

In The Florida Bar v. Breed, 378 So.2d 783 (Fla. 1980), this Court found that failure to keep adequate records, reconcile escrow accounts, comingling of client funds with personal funds, and misuse and misappropriation of client funds warrants a two year suspension with proof of rehabilitation. However, this Court gave notice that post 1980, it would not be reluctant to disbar an attorney for this type of offense even though no client is injured.[2]

In recommending disbarment, the referee in Breed stated the following:

> If one looks strictly at the conduct of a lawyer's practice, the misuse of client's funds, whether it be using comingled funds or otherwise, is certainly one of the most serious offenses a lawyer can commit. Few offenses have such an adverse public impact. While many disciplinary infractions involve situations where matters in mitigation should be considered, a violation involving the misuse of client's funds is not one of them. Recognizing restitution (or "nobody lost anything") as a defense or in mitigation may help minimize client losses, but it should not mitigate the discipline. The referee is aware that other referees have found that a "lack of intent to deprive the client of his money" and "personal hardship" justified relatively minor punishment. Such excuses stand out like an invitation to the lawyer who is in financial difficulty for one reason or another. All too often he is willing to

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[2] The Court held true to its word as evidenced in the Newhouse and Golub cases as previously cited and in the Casler, Leopold, Burton, and Owen cases, hereinafter cited.

> risk a slap on the wrist, and even a little ignominy, hoping he wouldn't get caught, but knowing that if he is he can plead restitution, but duly contrite, and escape the ultimate punishment. The profession and the public suffer as a consequence. The willful misappropriation of client funds should be the Bar's equivalent of a capital offense. There should be no excuses.

Respondent, Burke repeatedly argued before the referee that is actions/inactions were not intentional and that, as previously stated, "his problems spanned a general time period ending with 1984." (Appellant's Brief, page 18)

Although The Florida Bar believes that Respondent, Burke's actions/inactions were intentional and believes that the evidence establishes this, intent is not the primary factor for the imposition of disbarment as the ultimate discipline.

In The Florida Bar v. Rhodes, 355 So.2d 744 (Fla. 1978), this Court held that improper withdrawal of funds from an estate for personal use and benefit of the attorney warrants disbarment. In Rhodes, the Court ordered respondent to show cause and produce an accounting of estate assets within a specified period of time. Respondent failed to reply timely and when he did, argued that the "withdrawals" were justified. The referee found no justification for this theory. It should be noted that Rhodes did file an accounting; Burke did not even attempt to do so despite mutiple requests. This, coupled with the fact that Burke bounced two checks to the Alvarez sisters and waited ten months before repaying them, clearly establishes his failure to comply with minimal trust accounting standards then in effect during his dealings with the Alvarez sisters and the Banks Estate.

The Court in The Florida Bar v. Casler, 508 So.2d 721 (Fla. 1987), held that misappropriation of estate assets, comingling of estate assets with trust funds and personal funds, and failure to comply with various trust accounting procedures or maintain adequate trust account records warrants disbarment for three years with restitution as a condition for readmission. It should be noted that respondent, Casler, was charged with the same rule violations as Burke.

Respondent Burke maintains that at no time did he actually withdraw the misappropriated $9,919.45, but rather left these monies ear-marked as attorneys fees in his personal account at Southeast Bank where the record showed, respondent paid out personal and unrelated expenses incurred collateral to the Banks matter.

This Court has not tolerated such actions on the part of an attorney. Where an attorney misappropriates funds from his trust accounts for personal use and comingles private funds with trust account funds, disbarment is the appropriate penalty. The Florida Bar v. Leopold, 399 So.2d. 978 (Fla. 1981). In Leopold, the referee found that respondent misappropriated client funds and comingled them with his own personal funds. The referee recommended that Leopold be suspended for a period of two years. The Bar appealed the referee's findings and argued that disbarment is the appropriate discipline based on the actions of Leopold coupled with his prior discipline for similar acts.

In considering the prior discipline, the Court found Leopold's present actions reprehensible and one of the most serious offenses a lawyer can commit; as such, disbarment was warranted.

In The Florida Bar v. Burton, 218 So.2d 748 (Fla. 1969), this Court held that a failure to return client's funds upon demand, although subsequently repaid in part with arrangments made for repayment of balance, warrants disbarment. Additionally, this Court found that disbarment is justified when an attorney misappropriates funds which he receives by virtue of his fiduciary relationship with a client. Burke was not only acting in a fiduciary capacity for the Banks, but as he so amply stated, continued to represent the estate and guardianships.

Burke attempted to argue before the referee and now argues to this Court the contention that why would he continue to represent the heirs of the Banks Estate in subsequent matters if he intentionally "stole" money from them? The Florida Bar can think of no better way to maintain the trust of the victims and keep control of the accounting of the misappropriated funds than to maintain the trust of those you have taken from.

In Burton, as with Burke, respondent made restitution to the client. The court went on to state:

> Unless offending members of The Florida Bar are properly disciplined, the members of the legal profession will never retain the trust of the people.

> The judgment of disbarment (of Burton) is certainly justified when an attorney misappropriates funds which he receives by virtue of his fiduciary relationship with his client... However, this does not preclude offending members who have rehabilitated themselves from being given an opportunity to return to their profession. Burton at 749.

This Court has been consistent in its dealing with attorneys who misappropriate funds. In The Florida Bar v. Owen, 393 So.2d 551 (Fla. 1981), the respondent was a personal representative and attorney for the estate. He comingled the assets of a trust which he controlled for the estate with his personal funds and funds of other clients.

As a result, these funds were never fully and properly disbursed to the beneficiaries as required by the terms of the trust. The situation involving Burke is quite similar in that it was not until multiple court proceedings and orders were effectuated that Burke properly distributed to the estate and guardianships the amounts to which they were to be funded by court order. As with Owen, disbarment is the appropriate remedy for such actions.

Despite the fact that respondent, Burke, maintains that he has already been disciplined for his "sloppy accounting" and that what the Bar seeks to do now is cumulative punishment, it is precisely the cumulative nature of his acts which warrant an enhanced discipline.

In The Florida Bar v. Golden, Supreme Court Case No. 73,553 (May 31, 1990), the respondent, Samuel Golden, argued that the

disciplinary recommendations of the referee should not be followed because the referee erroneously determined that he had committed cumulative misconduct as a result of a prior disciplinary offense. Golden maintained that at the time that such acts were committed, there were no previous disciplinary offenses against him in that although the acts occurred in April, 1986, he was not subjected to discipline until May 1989. The Court went on to find that cumulative misconduct can be found when misconduct occurs near in time to other offenses, regardless of when discipline is imposed. Citing The Florida Bar v. Baron, 392 So.2d 1318 (Fla. 1981).

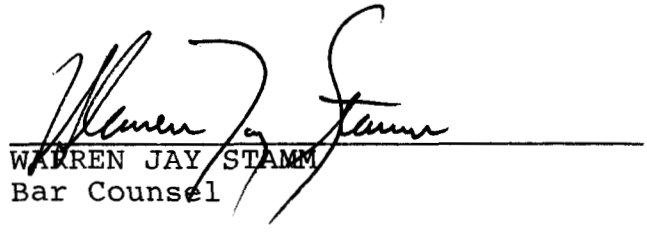
In The Florida Bar v. Vernell, 374 So.2d 473 (Fla. 1979), it was noted that this Court deals more severely with cumulative misconduct than with isolated misconduct. This case was followed in The Florida Bar v. Green, 515 So.2d 1280 (Fla. 1987) and The Florida Bar v. Shupack, 523 So.2d 1139 (Fla. 1988), wherein the court found that the prior history of the respondent should be considered when determining the appropriate punishment for misconduct by the attorney. In Shupack, the similar acts complained of occured within three months of each other. The court distinguished the two acts and imposed more severe discipline as a result of the second one based on the cumulative nature and closeness in proximity of the acts, rather than considering Shupack's reason for the acts occurring (ie:"sloppy accounting"). The arguments and citations presented in this brief clearly establish that disbarment is the appropriate sanction.

CONCLUSION

"A license to practice law conveys no vested right to the holder thereby, but is a conditional privilege which is revocable for cause." Rule 3-1.1 Rules Regulating The Florida Bar. As with any other privilege, if you violate the rules, the privilege is taken away. Respondent, James C. Burke, violated the rules. His privilege to practice law should be taken away. He should be disbarred.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that the original and seven copies of the foregoing The Florida Bar's Answer Brief to Respondent's Petition to Review and Initial Brief of The Florida Bar were mailed to Sid J. White, Clerk, Supreme Court of Florida, 500 South Duval Street, Tallahassee, Florida 32399-1927 and true and correct copies have been mailed to Robert L. Parks, Esquire, Attorney for Respondent, Anderson, Moss, Parks & Russo, P.A., Suite 2500, New World Tower, 100 North Biscayne Boulevard, Miami, Florida, 33132; Elizabeth Russo, Attorney for Respondent, Suite 601, New World Tower, 100 North Biscayne Boulevard, Miami, Florida 33132, and to John T. Berry, Staff Counsel, The Florida Bar, 650 Apalachee Parkway, Tallahassee, Florida 32399-2300 this 22nd day of June, 1990.



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