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IN THE SUPREME COURT OF FLORIDA
(Before a Referee)

APR 30 2018

THE FLORIDA BAR
FORT LAUDERDALE OFFICE

THE FLORIDA BAR,

Supreme Court Case

No. SC17-1403

Complainant,

The Florida Bar File

No. 2013-51,399(17H)

v.

BRUCE DON BURTOFF,

Respondent.

REPORT OF REFEREE ACCEPTING CONSENT JUDGMENT

I. SUMMARY OF PROCEEDINGS

Pursuant to the undersigned being duly appointed as Referee to conduct disciplinary proceedings herein according to Rule 3-7.6, Rules of Discipline, the following proceedings occurred:

On July 27, 2017, The Florida Bar filed its Complaint against Respondent. All of the aforementioned pleadings, responses thereto, exhibits received in evidence, and this Report constitute the record in this case and are forwarded to the Supreme Court of Florida. The Florida Bar was represented by Frances R. Brown-Lewis in these proceedings. Respondent was represented by Kevin P. Tynan of Richardson & Tynan, P.L.C., in these proceedings.

II. FINDINGS OF FACT

A. Jurisdictional Statement. Respondent is, and at all times mentioned during this investigation was, a member of The Florida Bar, subject to the jurisdiction and disciplinary rules of the Supreme Court of Florida.

B. Narrative Summary of Case.

1. In August of 2002, Mary and Charles Bullington, with the assistance of a lawyer in Tennessee, as they resided in that state at that time, became the settlors of The Bullington Revocable Trust and also created other testamentary documents, inclusive of individual wills.

2. In 2004, Respondent agreed to draft certain estate planning documents for his mother-in-law and step father-in-law, Mary and Charles Bullington, who had relocated to Florida.

3. Respondent drafted The Bullington Restated Trust, wherein Mary and Charles Bullington remained the settlors and also drafted a will for Mary Bullington and a will for Charles Bullington, with both wills being nearly identical and requiring that their residuary estates be "poured-over" into The Bullington Restated Trust. These testamentary documents were drafted in 2004 and provided to Mary and Charles Bullington for execution in 2004.

4. The couple each had adult children from previous marriages and pursuant to the trust at the death of one of the settlors, that settlor's children would be entitled to a portion of the trust assets.

5. The Bullington Revocable Trust, which the Respondent had not drafted, contained similar terms to the The Bullington Restated Trust which the Respondent drafted for the Bullingtons.

6. At the death of Mrs. Bullington in 2012, a dispute arose regarding The Bullington Restated Trust, including the intent of the settlors relative to the testamentary disposition of trust assets.

7. In December of 2012, Respondent undertook the representation of his wife, the personal representative of Mrs. Bullington's estate, and on her behalf filed suit against Mr. Bullington, his former client.

8. Respondent took positions contrary to his former client, Charles Bullington, and continued to represent his wife in the probate matter when he knew or reasonably should have known he had a conflict of interest vis-à-vis his prior representation of Charles Bullington in 2004.

9. The Respondent was ultimately disqualified as counsel for the personal representative.

III. RECOMMENDATIONS AS TO GUILT

I recommend that Respondent be found guilty of violating the following Rules Regulating The Florida Bar:

4-1.9(a) [A lawyer who has formerly represented a client in a matter must not afterwards represent another person in the same or a substantially related matter in which that person's interests are materially adverse to the interests of the former client unless the former client gives informed consent.]

IV. STANDARDS FOR IMPOSING LAWYER SANCTIONS

I considered the following Standards prior to recommending discipline:

4.3 Failure to Avoid Conflicts of Interest

4.33 Public reprimand is appropriate when a lawyer is negligent in determining whether the representation of a client may be materially affected by the lawyer's own interests, or whether the representation will adversely affect another client, and causes injury or potential injury to a client.

V. CASE LAW

I considered the following case law prior to recommending discipline:

The Florida Bar v. Stone, 538 So. 2d 460 (Fla. 1989) Public reprimand.

Stone engaged in dual representation of clients with conflicting interests and represented clients with whom he had a close personal relationship.

The Florida Bar v. McKenzie, 442 So. 2d 934 (Fla. 1983) Public reprimand.

McKenzie accepted a \$1,000.00 retainer from an heir to an estate and also became the attorney for the personal representative of the same estate.

The Florida Bar v. Kramer, 593 So. 2d 1040 (Fla. 1992) Public reprimand.

The attorney entered into a business relationship with the client without making a full disclosure to the client regarding the terms of the business transaction, without giving the client the opportunity to consult independent counsel, and without obtaining his client's written consent before finalizing the transaction.

VI. RECOMMENDATION AS TO DISCIPLINARY MEASURES TO BE APPLIED

I recommend that Respondent be found guilty of misconduct justifying disciplinary measures, and that he be disciplined by:

A. Respondent shall receive a public reprimand to be served by publication in the Southern Reporter.

B. Respondent shall complete The Florida Bar's Ethics School within 6 months of the Order of the Supreme Court of Florida approving this Report of Referee.

C. Respondent shall pay The Florida Bar's costs in this proceeding.

VII. PERSONAL HISTORY AND PAST DISCIPLINARY RECORD

Prior to recommending discipline pursuant to Rule 3-7.6(m)(1)(D), I considered the following personal history of Respondent, to wit:

Age: 69

Date admitted to the Bar: April 23, 2002

Prior Discipline: None

9.32 Mitigating Factors

(a) absence of a prior disciplinary record;

(e) full and free disclosure to disciplinary board or cooperative attitude

toward proceedings; and

(g) otherwise good character and reputation.

VIII. STATEMENT OF COSTS AND MANNER IN WHICH COSTS SHOULD BE TAXED

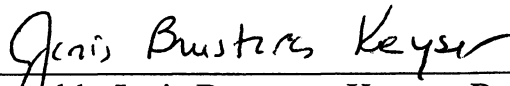
I find the following costs were reasonably incurred by The Florida Bar:

Investigative Costs	\$54.40
Bar Counsel Travel Expenses	\$8.56
Ethics School	\$750.00
Administrative Costs	\$1,250.00
TOTAL	\$2,062.96

It is recommended that such costs be charged to Respondent and that interest at the statutory rate shall accrue and that should such cost judgment not be satisfied

within thirty days of said judgment becoming final, Respondent shall be deemed delinquent and ineligible to practice law, pursuant to R. Regulating Fla. Bar 1-3.6, unless otherwise deferred by the Board of Governors of The Florida Bar.

Dated this 27 day of April, 2018.


Honorable Janis Brustares Keyser, Referee
Palm Beach County Courthouse
205 N Dixie Highway
West Palm Beach, FL 33401-4522

Original To:

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