

FILED
SID J. WHITE

FEB 5 1990

IN THE SUPREME COURT OF FLORIDA
(Before a Referee)

CLERK, SUPREME COURT

By _____
Deputy Clerk

THE FLORIDA BAR,
Complainant,

Supreme Court Case
No. 74,157

vs.

The Florida Bar File
No. 88-70,938(11L)

JAMES C. BURKE,
Respondent.

REPORT OF REFEREE

I. SUMMARY OF PROCEEDINGS: Pursuant to the undersigned being duly appointed as Referee for the Supreme Court of Florida to conduct disciplinary proceedings as provided for by Rule 3-7.5 of the Rules Regulating The Florida Bar (Article XI, Rule 11.06 of the Integration Rule of The Florida Bar), a final hearing was held at Broward County Courthouse on October 24, 1989. All of the pleadings, notices, motions, orders, transcripts and exhibits are forwarded with this report and the foregoing constitutes the record of this case.

The following attorneys acted as counsel for the parties:

For The Florida Bar: Warren Jay Stamm
Suite M-100, Rivergate Plaza
444 Brickell Avenue
Miami, Florida 33131

For the Respondent: Robert L. Parks
Anderson, Moss, Parks & Russo, P.A.
Suite 2500, New World Tower
100 North Biscayne Boulevard
Miami, Florida 33132

II. SPECIFIC FINDINGS OF FACT: I find the following facts to be true and correct:

1. That on or about July 18, 1983, by Order of Court, Dorothy Banks was named Personal Representative of the Estate of Samuel L. Banks, Deceased, who was the subject of a wrongful death action which occurred on February 9, 1982.

2. That Respondent, James C. Burke, was the attorney for Dorothy Banks as Personal Representative of the Estate.

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3. That a wrongful death action was filed by Respondent on behalf of Dorothy Banks in re: Dorothy Banks, as Personal Representative of the Estate of Samuel L. Banks, Deceased v. The Firestone Tire and Rubber Company, a foreign corporation, Case No. 84-04140 (08), Dade County Circuit Court.

4. That on or about May 11, 1984, Respondent submitted an Amended Petition for Approval of Settlement and Disbursement.

5. That on or about May 14, 1984, the Honorable Judge Francis Knuck entered an Order Approving Settlement and Disbursement of the wrongful death proceeds.

6. That on or about August 3, 1987, the Honorable Judge Edward Newbold entered an Agreed Order directing counsel to account for settlement proceeds in that the Court found the proceeds of the settlement were not disbursed according to Court Order and there were no remaining assets in the Estate to pay administration expenses.

7. That Respondent failed to timely account for settlement proceeds pursuant to said Order and on December 11, 1987, a Petition for Order to Show Cause why James Burke Should Not Be Adjudged in Contempt was filed.

8. That on or about January 25, 1988, Respondent filed a response and accounting of the settlement proceeds.

9. That Carlos Ruga, Staff Auditor of The Florida Bar, conducted an audit and investigation of Respondent's trust account no. 32109173201 and account no. 32109846401 opened in the name of the Estate of Samuel L. Banks. Both accounts were maintained at Peoples National Bank of Commerce in Miami.

10. That on or about May 25, 1984, the Firestone Tire and Rubber Company issued check no. 55167 in the amount of \$150,000.00 payable to "Dorothy Banks as Personal Representative of the Estate of Samuel L. Banks, Deceased".

11. That said check was deposited by Respondent in his personal account at Southeast Bank, account no. 081192874.

12. That during the month of August, 1984, Respondent transferred \$120,251.77 from this personal account to his trust account.

13. That on or about August 24, 1984, Respondent transferred the sum of \$100,000.00 from his trust account to the Estate account of Samuel Banks.

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14. That such distribution was not in compliance with the Order of Judge Knuck.

15. That upon the completion of the distribution, the remaining funds left in the account were to be those attorney fees taken by Respondent.

16. That said amount remaining in this account was \$50,000.00.

17. That pursuant to Court Order, Respondent was to receive the sum of \$40,080.55 as attorney fees.

18. That Respondent appropriated \$9,919.44 in excess of Court awarded attorney fees.

19. That on December 7, 1988, Respondent paid \$9,919.45 to James R. Sloto, Esquire, as guardian ad litem for the guardianships of Dwaine Randall and DeMarco Tyler. This payment was made after hearing by Grievance Committee 11L concerning this matter which took place on October 13, 1988.

III. RECOMMENDATION AS TO GUILT: I find Respondent guilty of all violations charged by The Florida Bar. I find that Respondent has violated Disciplinary Rules 1-102(A)(4) (a lawyer shall not engage in conduct involving dishonesty, fraud, deceit or misrepresentation), Disciplinary Rule 1-102(A)(5) (a lawyer shall not engage in conduct that is prejudicial to the administration of justice), Disciplinary Rule 1-102(A)(6) (a lawyer shall not engage in any other conduct that adversely reflects on his fitness to practice law) of the Code of Professional Responsibility, Rule 11.02(4) (trust accounting procedures) of the Integration Rules of The Florida Bar and Rule 5-1.1 (trust accounts) of the Rules Regulating Trust Accounts.

IV. RECOMMENDATION AS TO DISCIPLINARY MEASURES TO BE IMPOSED:

That James C. Burke be suspended for eighteen (18) months from the practice of law in the State of Florida and be required to retake the Ethics "Professional Responsibilities" portion of The Florida Bar prior to his suspension being lifted.

V. STATEMENT OF COSTS AND RECOMMENDATION AS TO THE MANNER IN WHICH COSTS SHOULD BE TAXED: I find that the following costs were reasonably incurred by The Florida Bar and should be assessed against Respondent to be payable within 30 days after the Supreme Court's acceptance of this report:

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<u>Administrative Costs:</u>	<u>Amount</u>
Rules 3-7.5(k) (1), Rules of Discipline	500.00
Court Reporter	
Final Hearing held on 10/24/89	
Appearance Fee	125.00
Transcript	834.15
Grievance Committee Hearing 10/13/88	
Appearance Fee	100.00
Transcript	435.85
Grievance Committee Hearing 1/24/89	
Transcript	281.90
Process Service - Subpoena	19.50
Investigator	62.00
Bar Counsel travel costs to Final Hearing at Broward County Courthouse	<u>19.80</u>
TOTAL	\$2,378.20

It is recommended that the foregoing costs be assessed against Respondent. It is further recommended that execution issue with interest at a rate of twelve percent (12%) to accrue on all costs not paid within thirty (30) days of entry of the Supreme Court's final order, unless the time for payment is extended by the Board of Governors of The Florida Bar.

Dated this 30 day of January, 19 90.


LAWRENCE L. KORDA, Referee

Copies furnished to:

Warren Jay Stamm, Esquire
Robert L. Parks, Attorney for Respondent