

# Supreme Court of Florida

THURSDAY, MAY 31, 2018

**CASE NO.: SC17-1403**

Lower Tribunal No(s).:  
2013-51,399(17H)

THE FLORIDA BAR

vs. BRUCE DON BURTOFF

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Complainant(s)

Respondent(s)

The Court approves the uncontested referee's report and reprimands respondent. Respondent is further directed to comply with all other terms and conditions of the report and consent judgment.

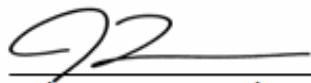
Judgment is entered for The Florida Bar, 651 East Jefferson Street, Tallahassee, Florida 32399-2300, for recovery of costs from Bruce Don Burtoff in the amount of \$2,062.96, for which sum let execution issue.

NOT FINAL UNTIL TIME EXPIRES TO FILE REHEARING MOTION AND,  
IF FILED, DETERMINED.

LABARGA, C.J., and PARIENTE, LEWIS, QUINCE, CANADY, POLSTON,  
and LAWSON, JJ., concur.

A True Copy

Test:



John A. Tomasino  
Clerk, Supreme Court



as

Served:

FRANCES R. BROWN-LEWIS  
HON. JANIS BRUSTARES KEYSER, JUDGE

ADRIA E. QUINTELA  
KEVIN P. TYNAN

IN THE SUPREME COURT OF FLORIDA  
(Before a Referee)

THE FLORIDA BAR,  
Complainant,

v.

BRUCE DON BURTOFF,  
Respondent.

Supreme Court Case  
No. SC17-1403

The Florida Bar File  
No. 2013-51,399(17H)

CONDITIONAL GUILTY PLEA FOR CONSENT JUDGMENT

COMES NOW, the undersigned Respondent, Bruce Don Burtoff, and files this Conditional Guilty Plea pursuant to Rule 3-7.9 of the Rules Regulating The Florida Bar.

1. Respondent is, and at all times mentioned herein was, a member of The Florida Bar, subject to the jurisdiction of the Supreme Court of Florida.
2. Respondent is acting freely and voluntarily in this matter and tenders this Plea without fear or threat of coercion. Respondent is represented in this matter.
3. The disciplinary measures to be imposed upon Respondent are as follows:
  - A. Public Reprimand to be served by publication.

B. Attendance at The Florida Bar's Ethics School within 6 months of the Order of the Supreme Court of Florida approving this consent judgment.

C. Payment of The Florida Bar's costs in this matter.

4. The following allegations and rules provide the basis for Respondent's guilty plea and for the discipline to be imposed in this matter:

A. 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.

B. 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.

C. 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.

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

E. 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.

F. 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.

G. 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.

H. 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.

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

J. By the conduct set forth above, Respondent violated R. Regulating Fla. 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.].

5. In mitigation of his actions Respondent asserts the following:

A. Respondent has been a member of The Florida Bar since 2002 and has not been previously disciplined. [Standard 9.32(a)] At the time he drafted the documents for the Bullingtons, Respondent had only been practicing law in Florida for two years.

B. Respondent enjoys an otherwise good reputation and good character. [Standard 9.32(g)]

C. Respondent has made full and free disclosure to the disciplinary board and has had a cooperative attitude toward these proceedings. [Standard 9.32(e)]

6. The Florida Bar has approved this proposed plea in the manner required by Rule 3-7.9.

7. If this plea is not finally approved by the Referee and the Supreme Court of Florida, then it shall be of no effect and may not be used by the parties in any way.

8. If this plea is approved, then Respondent agrees to pay all reasonable costs associated with this case pursuant to Rule 3-7.6(q) in the amount of

\$2,062.96. These costs are due within 30 days of the Court Order. Respondent agrees that if the costs are not paid within 30 days of this Court's Order becoming final, Respondent shall pay interest on any unpaid costs at the statutory rate.

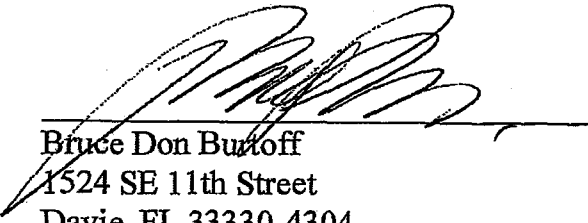
Respondent further agrees not to attempt to discharge the obligation for payment of the Bar's costs in any future proceedings, including but not limited to, a petition for bankruptcy. Respondent shall be deemed delinquent and ineligible to practice law pursuant to Rule 1-3.6 if the cost judgment is not satisfied within 30 days of the final court Order, unless deferred by the Board of Governors of The Florida Bar.

9. Respondent acknowledges the obligation to pay the costs of this proceeding and that payment is evidence of strict compliance with the conditions of any disciplinary order or agreement and is also evidence of good faith and fiscal responsibility. Respondent understands that failure to pay the costs of this proceeding may reflect adversely on any other Bar disciplinary matter in which Respondent is involved.

10. This Conditional Guilty Plea for Consent Judgment fully complies with all requirements of the Rules Regulating The Florida Bar.


**SIGNATURES ON FOLLOWING PAGE**

Dated this 24 day of April, 2018.



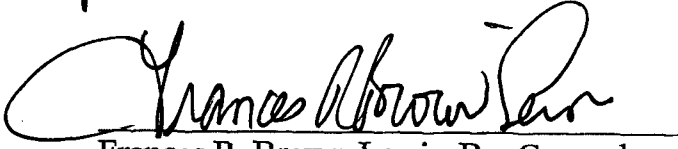
Bruce Don Burtoff  
1524 SE 11th Street  
Davie, FL 33330-4304  
954/463-5494  
Florida Bar ID No. 546348  
[burtoff809@aol.com](mailto:burtoff809@aol.com)

Dated this 26<sup>th</sup> day of April, 2018.



Kevin P. Tynan, Counsel for Respondent  
Richardson & Tynan P.L.C.  
8142 N University Drive  
Tamarac, FL 33321-1708  
954/721-7300  
Florida Bar ID No. 710822  
[ktynan@rtlawoffice.com](mailto:ktynan@rtlawoffice.com)

Dated this 26<sup>th</sup> day of April, 2018.



Frances R. Brown-Lewis, Bar Counsel  
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Fort Lauderdale Branch Office  
Lake Shore Plaza II  
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(954) 835-0233  
Florida Bar ID No. 503452  
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RECEIVED

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.

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**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**

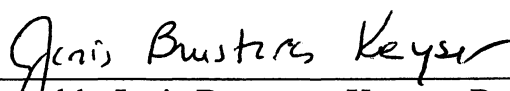
I find the following costs were reasonably incurred by The Florida Bar:

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

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:

Clerk of the Supreme Court of Florida; Supreme Court Building; 500 South Duval Street, Tallahassee, Florida, 32399-1927

Conformed Copies to:

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Frances R. Brown-Lewis, Fort Lauderdale Branch Office, Lake Shore Plaza II, 1300 Concord Terrace, Suite 130, Sunrise, Florida 33323, [fbrownle@floridabar.org](mailto:fbrownle@floridabar.org)

Adria E. Quintela, Staff Counsel, The Florida Bar, at [aquintel@floridabar.org](mailto:aquintel@floridabar.org)