DISTRICT OF COLUMBIA COURT OF APPEALS

In the Matter of Melvin M. Burton, Jr.

472 A.2d 831 (D.C. 1984) · No. Nos. M-143-82; 83-492 · Decided January 11, 1984

SUMMARY

The District of Columbia Court of Appeals disbarred Melvin M. Burton, Jr. for commingling and misappropriating funds held as a court-appointed trustee and for misrepresenting his income to the Auditor-Master. The court adopted the Board on Professional Responsibility's findings that Burton violated Disciplinary Rules 9-102(A) and 1-102(A)(4).

CASE DETAILS

COURT	District of Columbia Court of Appeals
WRITING FOR THE COURT	Nebeker; Ferren; Belson
JURISDICTION	District of Columbia
DECIDED	January 11, 1984
DOCKET	Nos. M-143-82; 83-492
DISPOSITION	other
PROCEDURAL POSTURE	Consolidated attorney-discipline proceedings in which the Board on Professional Responsibility recommended disbarment after finding that respondent commingled and misappropriated funds held as a court-appointed trustee and knowingly misrepresented his income under oath.
STANDARD OF REVIEW	The court reviewed whether the records supported the Board's findings of fact and accepted findings supported by substantial evidence on the record as a whole; disciplinary violations were required to be established by clear and convincing evidence.
PRECEDENTIAL VALUE	published precedential opinion
PARTIES	Office of Bar Counsel v. Melvin M. Burton, Jr.

TOPICS

trustee duties · breach of trust · trust administration · trusts

PRACTICE AREAS

legal ethics · attorney discipline · trust administration · trustee duties

QUESTIONS PRESENTED

1. Whether documentary and bank-record evidence established a prima facie case and supported findings of commingling and misappropriation.
2. Whether Disciplinary Rule 9-102(A), requiring segregation and maintenance of client funds, applies when an attorney holds funds in a fiduciary capacity as a court-appointed trustee rather than in a conventional attorney-client relationship.
3. Whether unauthorized withdrawals from a trust account violate Disciplinary Rule 9-102(A) in addition to commingling.
4. Whether Burton's sworn statement to the Auditor-Master that his 1979 gross income exceeded $150,000 constituted dishonesty, fraud, deceit, or misrepresentation under Disciplinary Rule 1-102(A)(4).
5. Whether the findings of knowing misappropriation required disbarment despite Burton's prior unblemished disciplinary record and character evidence.

HOLDINGS

1. The documentary exhibits and bank records were sufficient to establish a prima facie case and supported the findings that Burton commingled fiduciary funds and misappropriated trust funds through unauthorized withdrawals.
2. Disciplinary Rule 9-102(A) applies when an attorney assumes a fiduciary relationship and mishandles funds, even when no conventional attorney-client relationship exists.
3. DR 9-102(A) prohibits unauthorized withdrawals from an account in which fiduciary funds are required to be maintained, as well as commingling.
4. Burton knowingly misrepresented his 1979 gross income under oath before the Auditor-Master and thereby violated DR 1-102(A)(4).
5. Knowing misappropriation of entrusted funds, absent the most stringent extenuating circumstances, requires disbarment; Burton's character evidence and prior unblemished record did not justify a lesser sanction.

KEY QUOTATIONS

> *"The decisions cited above reflect the view, correctly in our opinion, that DR 9-102(A) should apply whenever an attorney assumes a fiduciary relationship and violates his duty in a manner that would justify disciplinary action if the relationship had been that of attorney and client."* (837)

> *"Restitution is not a defense to the charge of having misappropriated trust funds."* (838)

> *"Thus, we conclude that the findings in this case of commingling and knowing misappropriation, absent any mitigating factors, require Respondent's disbarment."* (849)

FACTUAL BACKGROUND

Burton was appointed by the Superior Court of the District of Columbia as a trustee to sell real estate and later handled foreclosure-sale proceeds for the Veterans Administration and private beneficiaries. He deposited proceeds into trust accounts, then made unauthorized withdrawals for personal and business purposes and deposited funds from unidentified sources, causing substantial shortages. In one matter, the account balance fell to $191.30 while Burton was accountable for more than $10,000; in another, the balance fell to $10.10 while more than $7,000 remained due to a beneficiary. Burton also testified under oath that his 1979 gross income exceeded $150,000, although his tax return reported $58,073.

PROCEDURAL HISTORY

The Superior Court of the District of Columbia appointed Burton as trustee in separate real-estate and foreclosure-related matters. After irregularities were identified in trustee and trust-account records, disciplinary proceedings were conducted before hearing committees and the Board on Professional Responsibility. The Board recommended disbarment in both matters, and the District of Columbia Court of Appeals reviewed the records, adopted the Board's recommendations, and ordered disbarment.

DISPOSITION

other

CASES CITED

- In re McClellen, No. M-51-80 (D.C. Mar. 26, 1981)
- In the Matter of Burka, 423 A.2d 181 (D.C. 1980) (en banc)
- In re Newsome, No. D-34-79 (D.C. Nov. 21, 1979)
- In re Quimby, 123 U.S. App. D.C. 273, 359 F.2d 257 (1966) (per curiam)
- In Matter of Thorup, 432 A.2d 1221 (D.C. 1981)
- Charlton v. Federal Trade Commission, 177 U.S. App. D.C. 418, 543 F.2d 903 (1976)
- In the Matter of Vogel, 382 A.2d 275, 279-80 (D.C. 1978) (per curiam)
- Simmons v. State Bar of California, 70 Cal. 2d 361, 450 P.2d 291, 74 Cal. Rptr. 915 (1969) (per curiam)
- Clark v. State Bar, 39 Cal. 2d 161, 246 P.2d 1 (1952) (per curiam)
- Johnstone v. State Bar, 64 Cal. 2d 153, 410 P.2d 617, 49 Cal. Rptr. 97 (1966) (per curiam)
- State v. Freeman, 229 Kan. 639, 629 P.2d 716 (1981) (per curiam)
- In re Draper, 317 A.2d 106 (Del. 1974) (per curiam)
- In re Makowski, 73 N.J. 265, 374 A.2d 458 (1977) (per curiam)
- In the Matter of Wilson, 81 N.J. 451, 409 A.2d 1153 (1979)
- Greenbaum v. State Bar, 15 Cal. 3d 893, 544 P.2d 921, 126 Cal. Rptr. 785 (1976) (per curiam)
- In re Broverman, 40 Ill. 2d 302, 239 N.E.2d 816 (1968)
- Ohio State Bar Association v. Gray, 1 Ohio St. 2d 97, 204 N.E.2d 683 (1965) (per curiam)
- In re Smith, 403 A.2d 296, 302 (D.C. 1979)
- Attorney Grievance Commission v. Boehm, 293 Md. 476, 446 A.2d 52, 54 (1982)

- In re Harrison, 461 A.2d 1034 (D.C. 1983)
- In re Hines, Nos. 194-80 and 447-79 (D.C. Nov. 10, 1982)
- In re McLean, No. M-142-82 (D.C. Apr. 11, 1983)
- In re Wilson, 81 N.J. 451, 409 A.2d 1153 (1979)
- Bar Association of Baltimore City v. Marshall, 269 Md. 510, 307 A.2d 677 (1973)
- In the Matter of Moore, 110 Ariz. 312, 518 P.2d 562 (1974) (en banc)
- State v. Barrett, 207 Kan. 178, 483 P.2d 1106 (1971) (per curiam)
- Attorney Grievance Commission v. Pattison, 292 Md. 599, 441 A.2d 328 (1982)
- Office of Disciplinary Counsel v. Lewis, 493 Pa. 519, 426 A.2d 1138 (1981)
- In re Davis, 129 Ariz. 1, 628 P.2d 38 (1981) (en banc)
- Florida Bar v. Merritt, 394 So. 2d 1018 (Fla. 1981) (per curiam)
- Doe v. Board on Professional Responsibility of the D.C. Court of Appeals, 230 U.S. App. D.C. 367, 717 F.2d 1424, 1427 (1983) (per curiam)
- In re Thorup, 461 A.2d 1018, 1019-20 (D.C. 1983)