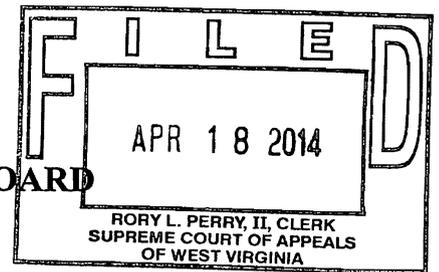


**BEFORE THE LAWYER DISCIPLINARY BOARD
STATE OF WEST VIRGINIA**



In Re: HOWARD J. BLYLER, a member of
The West Virginia State Bar

Bar No.: 375
I.D. No.: 12-05-614

STATEMENT OF CHARGES

To: Howard J. Blyler, Esquire
Post Office Box 614
Cowen, West Virginia 26206

YOU ARE HEREBY notified that a Hearing Panel Subcommittee of the Lawyer Disciplinary Board will hold a hearing pursuant to Rules 3.3 through 3.16 of the Rules of Disciplinary Procedure, upon the following charges against you:

1. Howard J. Blyler (hereinafter "Respondent") is a lawyer practicing in Cowen, which is located in Webster County, West Virginia. Respondent was admitted to The West Virginia State Bar by diploma privilege on May 18, 1976. As such, Respondent is subject to the disciplinary jurisdiction of the Supreme Court of Appeals of West Virginia and its properly constituted Lawyer Disciplinary Board.
2. On or about May 19, 2005, Brenda Alderman filed a partition lawsuit against Lloyd Allen Cogar, III and several other individuals as executrix of the estate of Lloyd Allen Cogar, Jr., and trustee of the estate of Stacy Lynn Cogar, an infant in the Braxton

County, West Virginia Circuit Court, Case Number 05-C-29. The lawsuit was filed by William C. Martin, a now suspended member of the West Virginia Bar.

3. On or about November 10, 2005, an Order was entered in the case wherein the parties agreed to sell all of the real estate owned by the late Lloyd Allen Cogar, Jr. at the time of his death. The Order was stated that William C. Martin and Respondent were appointed as Special Commissioners to conduct the sale and post bond in the amount of \$50,000.00. The proceeds from the sale were ordered to be used to pay the costs of the sale, then to pay an unpaid loan at the Bank of Gassaway which secured the real estate. The remaining sums were ordered to be held by plaintiff pending distribution by the will of Lloyd Allen Cogar, Jr. Bernard R. Mauser, Esquire was also appointed Commissioner to determine the assets and liabilities of the estate to determine the priority of the same along with a report to be filed with the court.
4. On or about April 27, 2006, the Court entered an "Order Approving Sale" which allowed the payment of certain costs and ordered the remaining balance of the proceeds from the sale to be deposited by William C. Martin into his trust account to be distributed upon further Order of the Court.
5. On or about April 25, 2007, the Court entered another "Order Approving Sale" regarding another sale which allowed payment of certain costs and ordered the remaining balance of the proceeds from the sale to be deposited by Respondent into his trust account to be distributed upon further Order of the Court. The Order noted

that William C. Martin was now a full time prosecuting attorney and could no longer act as a Special Commissioner in the case and therefore, he was relieved as Special Commissioner and his bond was released.

6. By March of 2009, the “Special Account” maintained by Respondent at City National Bank, Account Number 8004027879, reached the amount of Ninety-Six Thousand Eight Hundred Fifty-One Dollars and Eighty Cents (\$96,851.80).
7. On or about March 16, 2009, a Notice of Levy from the State of West Virginia was served on City National Bank for personal income taxes due and owing by Respondent.
8. On or about March 19, 2009, City National Bank withdrew all of the sums from the “Special Account”. The State of West Virginia was paid the amount of Ninety-Six Thousand Seven Hundred Twenty-Six Dollars and Eighty Cents (\$96,726.80) with City National Bank keeping One Hundred Twenty-Five Dollars (\$125.00) as a legal processing fee.
9. On or about September 11, 2012, the Court entered an Order which stated that Respondent was to hold the funds in his trust account and the State of West Virginia had taken the money from the account for a tax levy. The Order also stated that Respondent was attempting to retrieve the money from the State of West Virginia. However, the Court noted that the State of West Virginia and City National Bank were not parties to the case, and the Court had no authority to order them to return the

money. The Court ordered Respondent to take action to restore the funds within thirty (30) days from the entry date of the Order and if Respondent felt the money was improperly paid, then he would need to take appropriate legal action within thirty (30) days from the entry date of the Order.

10. Complainant Lloyd A. Cogar, III, filed his complaint against Respondent on November 21, 2012. Mr. Cogar alleged that Respondent did not alert the heirs of the estate about the State of West Virginia taking the money for a tax levy, nor did Respondent do anything to get the money back. Mr. Cogar indicated that he discovered the money was missing on or about September 5, 2012, when the Braxton County Circuit Court held a hearing on the matter.
11. By letter dated November 30, 2012, Disciplinary Counsel forwarded the complaint to Respondent asking for a response thereto.
12. Respondent did not respond.
13. By letter dated January 14, 2013, sent via certified and regular mail, Disciplinary Counsel again wrote to Respondent asking for a response to the complaint by January 24, 2013. The return receipt was signed and such was received by the Office of Disciplinary Counsel on or about January 18, 2013.
14. On or about January 24, 2013, Respondent called and asked for an extension to file his response. An extension was granted to February 6, 2013, and Respondent was told to send a letter to confirm the extension.

15. On or about February 19, 2013, the Office of Disciplinary Counsel received a response from Respondent dated February 5, 2013. Respondent stated in his response that he was retained by Mr. Cogar to represent him in a partition action filed by his step-mother to sell the property of his father after his father's death. The Court then appointed Respondent and William C. Martin as Special Commissioners to hold the sales and that was done. Bernard Mauser was appointed and ordered to determine the liabilities of the estate. Respondent was holding the funds pending Mr. Mauser's report. Respondent stated that he contacted Mr. Mauser on numerous occasions about getting the report. At a time soon after, the State Tax Commissioner filed a suggestion with City National Bank and the bank then forwarded all of the money to the State Tax Commissioner. Respondent said he immediately notified the bank and the State Tax Commissioner that the money was not his money as soon as he received notice of the lien. The matter sat the some way until the court brought a hearing on the same. Respondent stated that he had a complaint prepared to sue City National Bank and the State Tax Commissioner for the return of the money. Mr. Cogar has now retained William McCourt, Esquire to represent him and Respondent sent Mr. McCourt a copy of the complaint for him to include Mr. Cogar as a party. Respondent also stated that Clinton Bischoff, Esquire was appointed as Special Commissioner and he would also have an opportunity to modify the complaint to include Mr. Bischoff's client.

16. Mr. Cogar filed additional correspondence dated August 17, 2013 wherein he stated that Respondent had not filed a suit to retrieve the money.
17. On or about October 15, 2013, Respondent along with Mr. Cogar and other heirs filed a lawsuit against City National Bank and the West Virginia State Tax Commissioner in the Braxton County, West Virginia Circuit Court, Case Number 13-C-59.
18. On or about November 19, 2013, Respondent appeared for a sworn statement at the Office of Disciplinary Counsel. Respondent stated that he “should have filed suit sooner” regarding the money being taken by the State Tax Commissioner. Respondent provided a copy of his file concerning this case. In that file, there was an unsigned March 23, 2009 letter City National Bank that stated the funds were a client’s funds and should not have been subjected to the tax levy.
19. On or about November 24, 2013, the Court entered an Order that forfeited Respondent’s bond as Special Commissioner and ordered that the insurance for the bond to pay Fifty Thousand Dollars (\$50,000.00) into an account set up for the monies concerning the estate with the Braxton County Commission and Braxton County Fiduciary Commissioner.
20. Because Respondent failed to act with reasonable diligence by failing to retrieve the money taken by the State Tax Commissioner, which harmed his client Lloyd Allen Cogar, III, he has violated Rule 1.3 of the Rules of Professional Conduct, which provides as follows:

Rule 1.3. Diligence.

A lawyer shall act with reasonable diligence and promptness in representing a client.

21. Because he failed to keep his client Lloyd Allen Cogar, III reasonably informed about the State Tax Commissioner taking the funds, Respondent has violated Rule 1.4(a) and Rule 1.4(b) of the Rules of Professional Conduct, which provide as follows:

Rule 1.4. Communication.

(a) A lawyer shall keep a client reasonably informed about the status of a matter and promptly comply with reasonable requests for information.

(b) A lawyer shall explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation.

22. Because Respondent failed to properly safeguard the funds for the estate and failed to timely retrieve the funds, he violated Rule 1.15(a) of the Rules of Professional Conduct, which states:

Rule 1.15 Safekeeping property

(a) A lawyer shall hold property of clients or third persons that is in a lawyer's possession in connection with a representation separate from the lawyer's own property. Funds shall be kept in a separate account designated as a "client's trust account" in an institution whose accounts are federally insured and maintained in the state where the lawyer's office is situated, or in a separate account elsewhere with the consent of the client or third person. Other property shall be identified as such and appropriately safe guarded. Complete records of such account funds and other property shall be kept by the lawyer and shall be preserved for a period of five years after termination of the representation.

23. Because Respondent failed to timely retrieve the money taken by the State Tax Commissioner and failed to make reasonable efforts to retrieve the money, he has violated Rule 3.2 of the Rules of Professional Conduct which provides as follows:

Rule 3.2. Expediting litigation.

A lawyer shall make reasonable efforts to expedite litigation consistent with the interest of the client.

24. Because Respondent failed to follow the Braxton County, West Virginia Circuit Court's Order entered on November 10, 2005 to keep the funds in a Special Account, he has violated Rule 3.4(c) of the Rules of Professional Conduct which provides as follows:

Rule 3.4. Fairness to opposing party and counsel.

A lawyer shall not:

(c) knowingly disobey an obligation under the rules of a tribunal except for an open refusal based on an assertion that no valid obligation exists.

25. Because Respondent failed to inform Mr. Cogar and others about the money being taken from the Special Account, he violated Rule 8.4(c) and 8.4(d) of the Rules of Professional Conduct, which provides as follows:

Rule 8.4. Misconduct.

It is professional misconduct for a lawyer to:

* * *

(c) Engage in conduct involving dishonesty, fraud, deceit or misrepresentation.

(d) Engage in conduct that is prejudicial to the administration of justice.

* * *

Pursuant to Rule 2.9(d) of the Rules of Lawyer Disciplinary Procedure, the Investigative Panel has found that probable cause exists to formally charge you with a violation of the Rules of Professional Conduct and has issued this Statement of Charges. As provided by Rules 2.10 through 2.13 of the Rules of Lawyer Disciplinary Procedure, you have the right to file a verified written response to the foregoing charges within 30 days of service of this Statement of Charges by the Supreme Court of Appeals of West Virginia. Failure to file a response shall be deemed an admission of the factual allegations contained herein.

STATEMENT OF CHARGES ORDERED on the 31st day of March, 2014, and
ISSUED this 31st day of March, 2014.



Charles J. Kaiser, Jr., Chairperson
Investigative Panel
Lawyer Disciplinary Board