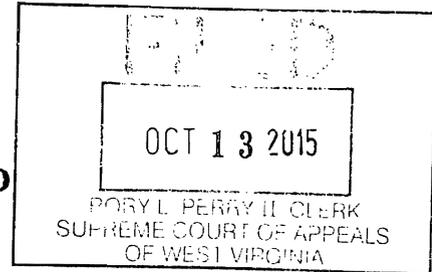


**BEFORE THE LAWYER DISCIPLINARY BOARD
STATE OF WEST VIRGINIA**



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

Bar No.: 375
Supreme Court No.: 14-0365
I.D. No.: 12-05-614

**DISCIPLINARY COUNSEL'S PROPOSED FINDINGS OF FACT,
CONCLUSIONS OF LAW AND RECOMMENDED SANCTIONS**

I. PROCEDURAL HISTORY

Formal charges were filed against Respondent Howard J. Blyler with the Clerk of the Supreme Court of Appeals on or about April 18, 2014, and served upon Respondent via certified mail by the Clerk on April 22, 2014. A scheduling conference was held on April 30, 2014, and the matter was set for hearing on July 22, 2014. Disciplinary Counsel filed her mandatory discovery on or about May 8, 2014. Respondent subsequently obtained counsel and filed his Answer to the Statement of Charges on or about May 27, 2014. Respondent's discovery was filed on April 24, 2015.

On July 7, 2014, Respondent's counsel filed a "Motion to Continue", citing numerous issues, including the poor health of Respondent's wife and problems encountered when Respondent and his counsel needed to meet to prepare for the hearing. On July 8, 2014, the hearing was rescheduled for September 26, 2014. On September 15, 2014, Respondent's counsel filed a second "Motion to Continue", citing the deteriorating health of Respondent's

wife. A status conference was set for October 29, 2014. The hearing was then set for January 7, 2015. Disciplinary Counsel and Respondent entered into "Stipulations Regarding Findings of Fact and Conclusions of Law", and a copy was provided to the Hearing Panel Subcommittee on December 19, 2014. Disciplinary Counsel reserved the right to argue the factual and legal matters encompassed in paragraphs 22, 23, and 24 of the Statement of Charges.

On December 24, 2014, Respondent's counsel filed a "Motion to Continue" the January 7, 2015 hearing date based on health issues of the care-giver who assisted in caring for Respondent's wife. Respondent's wife passed away on December 28, 2014, and the January 7, 2015 hearing was continued to March 5, 2015. Due to an impending ice/snow storm and possible flooding, the March 5, 2015 hearing was continued to April 20, 2015. On April 10, 2015, Respondent's counsel filed a "Motion to Permit Testimony", and Disciplinary Counsel filed her objection thereto.

Thereafter, this matter proceeded to hearing at Stonewall Resort in Roanoke, West Virginia, on April 20, 2015. Because Respondent's mother was in ill health and passed away the week of April 20th, a second day of hearing was held on August 31, 2015. The Hearing Panel Subcommittee was comprised of John W. Cooper, Esquire, Chairperson, Kelly D. Ambrose, Esquire, and Cynthia L. Pyles, Layperson. Jessica H. Donahue Rhodes, Lawyer Disciplinary Counsel, appeared on behalf of the Office of Disciplinary Counsel. Gregory A. Tucker, Esquire, appeared on behalf of Respondent, who appeared for the second day of hearing on August 31, 2015. The Hearing Panel Subcommittee heard testimony from Lloyd

A. Cogar, II, on April 20, 2015; and heard the testimony of Joyce Helmick Morton, Dwayne Vandevender, Michele Hitt and Respondent on August 31, 2014. In addition, ODC Exhibits 1-27 and Joint Exhibit 1 were admitted into evidence on April 20, 2015; and Respondent's Exhibit 1 was admitted into evidence on August 31, 2015.

Based upon the evidence and the record, the Office of Disciplinary Counsel submits to the Hearing Panel Subcommittee of the Lawyer Disciplinary Board the following Proposed Findings of Fact, Conclusions of Law and Recommended Sanctions regarding the final disposition of this matter.

II. FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. Howard J. Blyler (hereinafter "Respondent") is a lawyer practicing in Cowen, which is located in Webster County, West Virginia. ODC Ex. 9, Bates stamp 40. Respondent was admitted to The West Virginia State Bar by diploma privilege on May 18, 1976. ODC Ex. 9, Bates stamp 42. 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, the Executrix of the Estate of Lloyd Allen Cogar, Jr., and Trustee of the Estate of Stacy Lynn Cogar, infant, filed an action in the Circuit Court of Braxton County, West Virginia, Case No. 05-C-29, to sell the real estate of Lloyd Allen Cogar, III, and several other individuals. ODC Ex. 15, Bates stamp 556-561. The lawsuit was filed on behalf of the plaintiff by William C. Martin,

a now suspended member of the West Virginia Bar, and Respondent was retained to represent Lloyd A. Cogar, III. ODC Ex. 15, Bates stamp 561.

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. ODC Ex. 15, Bates stamp 564-565. 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. Id. 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. Id. The remaining sums were ordered to be held by the Special Commissioner pending distribution under the will of Lloyd Allen Cogar, Jr. Id. 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. Id.
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. ODC Ex. 15, Bates stamp 567-568.
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. ODC Ex. 15, Bates

stamp 574-575. 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. Id. Pursuant to said Orders, all sums had been deposited into the account of William C. Martin and/or Respondent.

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). ODC Ex. 23, Bates stamp 788.
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. ODC Ex. 10, Bates stamp 238-242.
8. On or about March 19, 2009, City National Bank withdrew all of the sums from the "Special Account". ODC Ex. 23, Bates stamp 790. 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. ODC Ex. 23, Bates stamp 789.
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. ODC Ex. 15, Bates stamp 638-640. The Order also stated that Respondent was attempting to retrieve the money from

the State of West Virginia. Id. 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. Id. 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. Id.

10. Complainant Lloyd A. Cogar, III, filed his complaint against Respondent on November 21, 2012. ODC Ex. 1, Bates stamp 1-9. 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. ODC Ex. 1, Bates stamp 2. 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. Id.
11. By letter dated November 30, 2012, Disciplinary Counsel forwarded the complaint to Respondent asking for a response thereto. ODC Ex. 2, Bates stamp 11-12.
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. ODC Ex. 3, Bates stamp 13-15. The return receipt was signed and such was received by the Office of Disciplinary Counsel on or about January 18, 2013. ODC Ex. 3, Bates stamp 15.

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. ODC Ex. 4, Bates stamp 16-25. 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. ODC Ex. 4, Bates stamp 16. The Court then appointed Respondent and William C. Martin as Special Commissioners to hold the sales and that was done. Id. Bernard Mauser was appointed and ordered to determine the liabilities of the estate. Id. Respondent was holding the funds pending Mr. Mauser's report. Id. Respondent stated that he contacted Mr. Mauser on numerous occasions about getting the report. Id. 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. ODC Ex. 4, Bates stamp 17. 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. Id. The matter sat the same way until the Court brought a hearing on the same. Id. Respondent stated that he had a complaint prepared to sue City National Bank and the State Tax Commissioner for the return of the money. Id. 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. Id. 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. Id.

16. Mr. Cogar filed additional correspondence dated August 17, 2013, wherein he stated that Respondent had not filed a suit to retrieve the money. ODC Ex. 7, Bates stamp 28.
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. ODC Ex. 20, Bates stamp 736-741.
18. On or about November 19, 2013, Respondent appeared for a sworn statement at the Office of Disciplinary Counsel. ODC Ex. 9, Bates stamp 37-91. Respondent stated that he "should have filed suit sooner" regarding the money being taken by the State Tax Commissioner. ODC Ex. 9, Bates stamp 76. Respondent provided a copy of his file concerning this case. ODC Ex. 9, Bates stamp 41. 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. ODC Ex. 10, Bates stamp 251.
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. ODC Ex. 15, Bates stamp 672-676.

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 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.

¹23. 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.

24. 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.

¹ Paragraphs 23 through 25 herein were numbered as Paragraphs 22 through 24 in the Statement of Charges.

25. 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.

III. DISCUSSION

The Supreme Court of Appeals of West Virginia has long recognized that attorney disciplinary proceedings are not designed solely to punish the attorney, but also to protect the public, to reassure the public as to the reliability and integrity of attorneys, and to safeguard its interests in the administration of justice. Lawyer Disciplinary Board v. Taylor, 192 W. Va. 139, 451 S.E.2d 440 (1994). Factors to be considered in imposing appropriate sanctions are found in Rule 3.16 of the Rules of Lawyer Disciplinary Procedure. These factors consist of: (1) whether the lawyer has violated a duty owed to a client, to the public, to the legal system, or to the profession; (2) whether the lawyer acted intentionally, knowingly, or negligently; (3) the amount of the actual or potential injury caused by the lawyer's misconduct; and (4) the existence of any aggravating or mitigating factors. *See also*, Syl. Pt. 4, Office of Disciplinary Counsel v. Jordan, 204 W. Va. 495, 513 S.E.2d 722 (1998).

A. Respondent violated duties to his clients, to the public, to the legal system and to the legal profession.

Lawyers owe duties of candor, loyalty, diligence and honesty to their clients. Members of the public should be able to rely on lawyers to protect their property, liberty, and their lives. Lawyers are officers of the Court and, as such, must operate within the bounds of the law and abide by the rules of procedure which govern the administration of justice in our state. Furthermore, a lawyer's duties also include maintaining the integrity of the profession.

The evidence in this case establishes by clear and convincing proof that Respondent violated his duties to his client. Respondent was hired to represent Lloyd A. Cogar, III, in a partition action concerning his late father's estate. 4/20/15 Hrg. Trans. p. 13; ODC Ex. 4, Bates stamp 16. Respondent and another attorney were appointed by as Special Commissioners to sell property. 8/31/15 Hrg. Trans. p. 10; ODC Ex. 4, Bates stamp 16. Respondent held the funds from the sale of the property to await the determination of the liabilities of the estate. ODC Ex. 4, Bates stamp 16. Respondent said that it was his responsibility as Special Commissioner to set up the account. 8/31/15 Hrg. Trans. p. 14. The account held Ninety-Six Thousand Eight Hundred Fifty-One Dollars and Eighty Cents (\$96,851.80) by March of 2009. ODC Ex. 23, Bates stamp 788. Respondent's account holding those funds was seized by the West Virginia Tax Department to pay Respondent's personal tax liens in March of 2009. ODC Ex. 4, Bates stamp 17. While Respondent may have contacted the State Tax Commissioner and the bank to advise that the funds were client

funds and not his personal funds, Respondent never told Mr. Cogar that the Estate funds had been taken. 4/20/15 Hrg. Trans. p. 17-19; 8/31/15 Hrg. Trans. p. 20.

Respondent clearly failed to communicate with his client, Mr. Cogar, about the funds being taken. Respondent admitted that did not advise Mr. Cogar that the funds were taken, even though he “should’ve told him right off the bat.” 8/31/15 Hrg. Trans. p. 20. Further, he admitted that he did not tell Mr. Cogar due to his “own embarrassment.” 8/31/15 Hrg. Trans. p. 30-31. Mr. Cogar testified that the first time he was informed about the funds being taken was during the September 11, 2012 hearing. 4/20/15 Hrg. Trans. p. 18-19. The funds clearly provided a benefit to Respondent as his back tax obligation has been lowered by Ninety-Six Thousand Eight Hundred Fifty-One Dollars and Eighty Cents (\$96,851.80) since 2009. Respondent has benefitted for six (6) years, because at this point the Tax Department still holds the funds. Further, without the Court hearing on September 11, 2012, Mr. Cogar would never have discovered that the Estate’s funds had been taken by the State Tax Department. Mr. Cogar testified that his father’s estate is still not settled and his sister has derogatory credit over the funeral bill. 4/20/15 Hrg. Trans. p. 21. Respondent admitted that he should have filed the suit to recover the Estate’s funds earlier than he did. 8/31/15 Hrg. Trans. p. 26. Further, “[t]here was nothing that prevented [Respondent] from filing a suit” and “it was wrong for [Respondent] not to have taken steps between 2009 and 2012.” 8/31/15 Hrg. Trans. p. 31-32. And Respondent admitted that it was only after he received a notice about the September 2012 hearing, that he began to take steps to retrieve the Estate’s funds. 8/31/15 Hrg. Trans. p. 37. Respondent failed to preserve the property of a client, failed to be

diligent retrieving the funds, and failed to have candor with his client about the funds being taken.

Respondent failed the general public in the fact that the members of the public are entitled to be able to trust lawyers to protect their property. Respondent failed to protect client funds from being taken for back taxes and failed to do anything to recover those funds until the Court ordered him to do so. The community expects lawyers to exhibit the highest standards of honesty and integrity, and lawyers have a duty not to engage in conduct involving dishonesty, fraud, or interference with the administration of justice. Respondent engaged in dishonest conduct by failing to tell his client that the Estate's funds being seized to pay Respondent's own personal tax liens, and has deprived the Estate of the funds for more than six (6) years.

The legal system was affected by Respondent's failure to timely file suit to recover the funds. Respondent, as an officer of the Court, has to abide by the procedural rules, which ensure the administration of justice. The integrity of the legal system suffers when lawyers do not abide by the rules of procedure which govern the administration of justice in our state. While Respondent asserted that he attempted to recover the Estate's funds, Respondent only did so after being ordered by the Court and after his client and the matter became public knowledge.

B. Respondent acted intentionally, and negligently.

The most culpable mental state is that of intent, when the lawyer acts with the conscious objective or purpose to accomplish a particular result. The next most culpable

mental state is that of knowledge, when the lawyer acts with conscious awareness of the nature or attendant circumstances of his conduct both without the conscious objective or purpose to accomplish a particular result. The least culpable mental state is negligence, when a lawyer fails to be aware of a substantial risk that circumstances exist or that a result will follow, which failure is a deviation from the standard of care that a reasonable lawyer would exercise in the situation.

While Respondent did not intentionally allow the funds to be taken out of the special account, he did intentionally fail to inform his client about the money being seized and intentionally failed to recover the funds in a diligent manner. Further, there is evidence that Respondent was negligent in labeling the special account in the beginning and not taking steps to correct or rename the account to protect the Estate's funds.

C. The amount of real injury is great.

Respondent failed to communicate with his client about client funds being taken, which resulted in actual injury to Mr. Cogar because of the Estate is still not closed and the funds from the estate are gone. Mr. Cogar has had to employ additional counsel to continue to try to recover the funds and to file a legal malpractice suit. Mr. Cogar did not know that he needed to hire another attorney until over three years after the funds were taken because Respondent failed to advise him of the funds being taken. Mr. Cogar said that his sisters have gone through financial difficulties because their father's estate has not been settled. This has brought the legal system into disrepute.

D. There are several aggravating factors present.

Aggravating factors are considerations enumerated under Rule 3.16 of the Rules of Lawyer Disciplinary Procedure for the Court to examine when considering the imposition of sanctions. Elaborating on this rule, the Scott Court held “that aggravating factors in a lawyer disciplinary proceeding ‘are any considerations, or factors that may justify an increase in the degree of discipline to be imposed.’” Lawyer Disciplinary Board v. Scott, 213 W.Va. 209, 216, 579 S.E. 2d 550, 557 (2003) *quoting ABA Model Standards for Imposing Lawyer Sanctions*, 9.21 (1992). These are the following aggravating factors: dishonest motive and substantial experience in the practice of law. Respondent was dishonest in failing to communicate with Mr. Cogar about the funds being taken. Further, Respondent has been licensed to practice since 1976.

D. There are several mitigating factors present.

The following are mitigating factors in this case: absence of a prior disciplinary record, personal problems, good character, and remorse. Several individuals testified on behalf of Respondent to support his good character and reputation in the community. Further, Respondent testified about dealing with his wife’s diagnosis of Alzheimer’s in early part of 2009. Respondent expressed his apology to Mr. Cogar during his testimony, but Mr. Cogar was not present during that apology.

The following are not considered aggravating or mitigating: force or compelled restitution. In this case, Respondent had to be forced by the Circuit Court to sue the State Tax Department and the bank to recover the funds. If it were not for the Circuit Court stepping

in, the discovery of the missing funds may never have happened and the attempt to recover the funds may not have begun.

IV. SANCTION

The Rules of Professional Conduct state the minimum level of conduct below which no lawyer can fall without being subject to disciplinary action. Syllabus Pt. 3, *in part*, Committee on Legal Ethics v. Tatterson, 173 W.Va. 613, 319 S.E.2d 381 (1984), *cited in* Committee on Legal Ethics v. Morton, 186 W.VA. 43, 410 S.E.2d 279, 281 (1991). In addition, discipline must serve as both instruction on the standards for ethical conduct and as a deterrent against similar misconduct to other attorneys. In Syllabus Point 3 of Committee on Legal Ethics v. Walker, 178 W.Va. 150, 358 S.E.2d 234 (1987), the Court stated:

In deciding on the appropriate disciplinary action for ethical violations, this Court must consider not only what steps would appropriately punish the respondent attorney, but also whether the discipline imposed is adequate to serve as an effective deterrent to other members of the Bar and at the same time restore public confidence in the ethical standards of the legal profession.

Moreover, a principle purpose of attorney disciplinary proceedings is to safeguard the public's interest in the administration of justice. Daily Gazette v. Committee on Legal Ethics, 174 W.Va. 359, 326 S.E.2d 705 (1984); Lawyer Disciplinary Board v. Hardison, 205 W.Va. 344, 518 S.E.2d 101 (1999).

With regard to the failure to preserve the Estate's funds, 4.13 of the Standards for Imposing Lawyer Sanctions states that reprimand is generally appropriate when a lawyer is

negligent in dealing with client property and causes injury or potential injury to a client. Respondent was negligent in handling the funds as a special commissioner. However, Respondent committed other misconduct that must be considered by this Hearing Panel Subcommittee to determine the ultimate sanction.

Standards for Imposing Lawyer Sanctions 4.41 states that disbarment is generally appropriate, absent aggravating or mitigating circumstances, when (b) a lawyer knowing fails to perform services for a client and causes serious or potentially serious injury to a client; or (c) a lawyer engages in a pattern of neglect with respect to client matters and causes serious or potentially serious injury to a client. 5.11 of the Standards for Imposing Lawyer Sanctions states that disbarment is generally appropriate when a lawyer engages in any other intentional conduct involving dishonesty, fraud, deceit, or misrepresentation that seriously adversely reflects on the lawyer's fitness to practice, absent aggravating or mitigating circumstances. The sanction of disbarment is generally appropriate in cases involving failure to expedite litigation under the Standards for Imposing Lawyer Sanctions 6.21 when a lawyer knowingly violates a rule with the intent to obtain a benefit for the lawyer or another, and causes serious injury or potentially serious injury to a party or causes serious or potentially serious interference with a legal proceeding. While disbarment is the appropriate sanction in relation to the misconduct, Respondent does have mitigating factors which should reduce his ultimate sanction.

This is a difficult case in that Respondent's mitigating factor concerning his wife's illness came right at the time that the funds were seized by the State Tax Department, and she

suffered with her difficult illness until she passed away in early 2015. However, there was no evidence that her illness prevented Respondent from informing Mr. Cogar that the funds had been seized, or that he was prevented from taking steps to recover the Estate's funds prior to the Court ordering him to do so in 2012. Furthermore, the amount of money taken from the special commissioner account is a large number, and it appears that Respondent does not have personal funds to repay this amount.

The West Virginia case of Lawyer Disciplinary Board v. Santa Barbara, 229 W.Va. 344, 729 S.E.2d 179 (2012) dealt with an attorney who failed to diligently handle client matters, failed to communicate with a clients, failed to competently represent his client, and failed to manage a trust account for a client. That case resulted in a one (1) year suspension. While that case dealt with multiple complaints, it does show what happens when you negligently handle your trust account and fail to communicate with your clients. Also, in that case, the attorney claimed depression as a mitigating factor for his misconduct, which was considered by the West Virginia Supreme Court as a mitigating factor to lessen the ultimate sanction to a one (1) year suspension.

Also, in Oregon, it was found that negligent handling of a trust account would normally result in a reprimand, but an increase in the sanction would occur if the attorney then engaged in deceptive conduct. In re Skagon, 149 P.3d 1171, 342 Or. 183 (Or. 2006). The Oregon attorney was suspended for one (1) year. In the Skagon case, the Oregon Supreme Court found that the attorney had mishandled his trust account and client funds, which resulted in the failure to preserve client property, but he also failed to cooperate with

the disciplinary investigation. Id. at 1191, 216-217. The attorney's mental state in that case was found to have been negligent regarding his trust account and intentional conduct for the being prejudicial to the administration of justice and failure to be truthful and open in the disciplinary investigation. In re Skagon, 149 P.3d 1171, 1192, 342 Or. 183, 217 (Or. 2006). Respondent's case also involves two (2) mental states, which include negligence and intention. Further, the negligence deals with the trust account and the intentional misconduct deals with failure to communicate and failure to recover funds. Respondent's case is analogous to the Skagon case.

Another sanction that should be imposed upon Respondent is full repayment of the Ninety-Six Thousand Eight Hundred Fifty-One Dollars and Eighty Cents (\$96,851.80) that was seized to pay his personal tax liens. In Lawyer Disciplinary Board v. Rossi, 234 W.Va. 675, 769 S.E.2d 464 (2015), the Supreme Court of Appeals of West Virginia ordered an attorney who had multiple diligence issues, failure to communicate charges, failure to litigate issues, and failure to respond to disciplinary counsel charges to pay make full restitution to a client if the client's company is required to pay a default judgment. Id. at 687, 476. The client had hired the attorney to represent him to seek the dismissal of a lawsuit that was filed against his company. Lawyer Disciplinary Board v. Rossi, 234 W.Va. 675, 680, 769 S.E.2d 464,469 (2015). While the attorney had told the client that he had researched the matter and had filed "stuff" in the case, a default judgment for Thirty Thousand Dollars (\$30,000.00) was entered against the company for failure to file any pleadings in the case. The West

Virginia Supreme Court obviously felt that an attorney should be required to make the client whole.

For the public to have confidence in our disciplinary and legal systems, lawyers who engage in the type of conduct exhibited by Respondent must be removed from the practice of law for some period of time. A license to practice law is a revokable privilege and when such privilege is abused, the privilege should be revoked. Such sanction is also necessary to deter other lawyers from engaging in similar conduct and to restore the faith of the victims in this case and of the general public in the integrity of the legal profession.

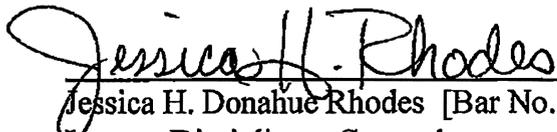
V. RECOMMENDED SANCTIONS

Rule 3.15 of the Rules of Lawyer Disciplinary Procedure provides that the following sanctions may be imposed in a disciplinary proceeding: (1) probation; (2) restitution; (3) limitation on the nature or extent of future practice; (4) supervised practice; (5) community service; (6) admonishment; (7) reprimand; (8) suspension; or (9) annulment. It is the position of Disciplinary Counsel that for his conduct of allowing the funds to be seized to pay his personal tax liens, his failure to communicate that information to his client, and his failure to take steps to recover the Estate's funds until ordered to do so by the Court, Respondent's law license should be suspended for one (1) year. A principle purpose of attorney disciplinary proceedings is to safeguard the public's interest in the administration of justice. Daily Gazette v. Committee on Legal Ethics, 174 W.Va. 359, 326 S.E.2d 705 (1984); Lawyer Disciplinary Board v. Hardison, 205 W.Va. 344, 518 S.E.2d 101 (1999).

For the reasons set forth above, the Office of Disciplinary Counsel recommends the following sanctions:

- A. That Respondent's law license be suspended for one (1) year;
- B. That Respondent be required to petition for reinstatement;
- C. That upon reinstatement, Respondent's practice be supervised for one (1) year;
- D. That Respondent pay Ninety-Six Thousand Eight Hundred Fifty-One Dollars and Eighty Cents (\$96,851.80) into the Estate of Lloyd Allen Cogar, Jr.; and
- E. Respondent be ordered to pay the costs of these proceedings pursuant to Rule 3.15 of the Rules of Lawyer Disciplinary Procedure.

Respectfully submitted,
The Office of Disciplinary Counsel
By counsel


Jessica H. Donahue Rhodes [Bar No. 9453]
Lawyer Disciplinary Counsel
City Center East, Suite 1200C
4700 MacCorkle Avenue SE
Charleston, West Virginia 25304
jrhodes@wvodc.org
(304) 558-7999
(304) 558-4015 *facsimile*

CERTIFICATE OF SERVICE

This is to certify that I, Jessica H. Donahue Rhodes, Lawyer Disciplinary Counsel for the Office of Disciplinary Counsel, have this day, the 9th day of October, 2015, served a true copy of the foregoing **"DISCIPLINARY COUNSEL'S PROPOSED FINDINGS OF FACT, CONCLUSIONS OF LAW AND RECOMMENDED SANCTIONS"** upon Gregory A. Tucker, counsel for Respondent Howard J. Blyler, by mailing the same via United States Mail with sufficient postage, to the following address:

Gregory A. Tucker, Esquire
719 Main Street
Summersville, West Virginia 26651

And upon the Hearing Panel Subcommittee via email and at the following addresses:

John W. Cooper, Esquire
Post Office Box 365
Parsons, West Virginia 25287

Kelly D. Ambrose, Esquire
Office of the Staff Judge Advocate
1703 Coonskin Drive
Charleston, West Virginia 25311

Cynthia L. Pyles
24 Sharpless Street
Keyser, West Virginia 26726



Jessica H. Donahue Rhodes