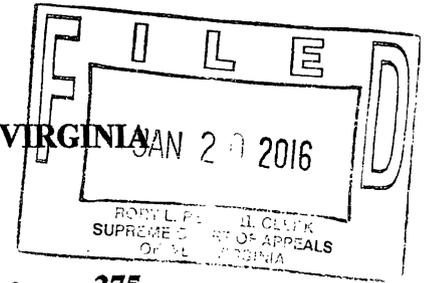


14-0365

BEFORE THE SUPREME COURT OF APPEALS OF WEST VIRGINIA



**In Re: Howard Blyler, a member of
The West Virginia State Bar**

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

HEARING PANEL SUBCOMMITTEE'S FINDINGS OF FACT, CONCLUSIONS OF LAW AND RECOMMENDED SANCTIONS

This matter came on for hearing on two separate occasions before the Hearing Panel Subcommittee (HPS) of the Lawyer Disciplinary Board of the State of West Virginia comprised of Cynthia L. Pyles, lay member, Kelly D. Ambrose, Esq., lawyer member, and John W. Cooper, lawyer member and Chairperson.¹ Lawyer Disciplinary Counsel appeared by Jessica H. Donahue-Rhodes, Esq., on both occasions. Respondent appeared at the first hearing only by his counsel, Gregory A. Tucker, Esq. At the second hearing, Respondent appeared in person and by his counsel, Gregory A. Tucker, Esq. Both hearings occurred by agreement of the parties at Stonewall Jackson Resort and Conference Center at Roanoke, West Virginia.

PROCEDURAL BACKGROUND: The Statement of Charges and the Pre-hearing Procedures and Scheduling Notice were issued by the Investigative Panel on April 18, 2014. Respondent was served with the same on April 22, 2014. Due to the progression of a terminal

¹ The initial hearing commenced on April 20, 2015; however, Respondent only appeared by counsel at this hearing because Respondent's mother passed away in New Jersey during the week of the hearing and he was present at that location. By agreement of Respondent and his counsel, ODC presented evidence from witnesses other than Respondent and they were cross-examined by Respondent's counsel. A second hearing occurred on August 31, 2015, at which time Respondent appeared in person and by counsel.

illness and the eventual death of Respondent's wife, the various telephonic conferences leading up to the hearing and the actual hearing were repeatedly continued at the request of Respondent. As indicated in footnote 1, the first segment of the hearing occurred on April 20, 2015, but due to the failing health and subsequent death of Respondent's mother that week, it was not concluded until August 31, 2015.

On May 8, 2014, ODC filed its mandatory discovery and served the same by mail on Respondent on the same day. At the request of Respondent, ODC consented to an extension for Respondent to file an Answer to the Statement of Charges. On May 21, 2014, ODC filed a supplement to its mandatory discovery and served the same on Respondent by mail on the same date. On May 27, 2014, Counsel for Respondent entered an appearance and filed an Answer to the Statement of Charges. This case was originally scheduled for hearing for July 22, 2014, but Respondent filed a motion to continue which the HPS granted in a pre-hearing conference on July 8, 2014. At that time the hearing was rescheduled for September 26, 2014, with another pre-hearing conference on September 15, 2014. At this pre-hearing conference, Respondent again moved for a continuance due to the failing health of his wife. The HPS granted his motion and scheduled a status conference for October 29, 2014. On September 23, 2014, ODC filed and served its second supplement to its discovery. At the pre-hearing conference on October 29, 2014, the hearing was rescheduled for January 7, 2015. As of the time of the October 29th hearing, Respondent had not served any of its mandatory discovery on ODC. On December 19, 2014, ODC provided further discovery to Respondent's counsel.

During December, 2014, Respondent and ODC entered into stipulations of fact and conclusions of law concerning the facts and circumstances surrounding this matter and identifying certain Rules of Professional Responsibility which had been violated by Respondent.

(Joint Exhibit 1) The stipulations also indicated that during the hearing in this matter, the parties would introduce evidence concerning Respondent's state of mind, the existence of mitigating and aggravating factors and evidence related to the matter and Respondent. On December 19, 2014, ODC supplemented its earlier discovery with additional exhibits. On December 24, 2014, Respondent again filed a motion to continue based upon his wife's deteriorating health. Prior to ruling on said motion, an amended motion to continue was filed by Respondent's counsel on December 29, 2014, as Respondent's wife had passed away on December 28, 2014. The HPS granted said motion in a telephonic status conference on January 5, 2015, and rescheduled the matter for hearing on March 5, 2015. In the order granting said motion, the HPS ordered that all exhibit notebooks and any supplements thereto shall be provided to all parties or before February 15, 2015. On March 4, 2015, the matter was continued due to an impending ice/snow storm and possible flooding in the area, and the matter was rescheduled once again until April 20, 2015.

Respondent failed to provide timely mandatory discovery as required by the Scheduling Order, but on April 10, 2015, he filed a motion requesting that he be allowed to call several identified witnesses. ODC objected on timeliness grounds, and by Order of April 17, 2015, the HPS refused the Respondent's motion, but permitted the Respondent to renew his motion at the time of the hearing on April 20th. Due to the death of Respondent's mother and the need to have the second hearing, at the time of the April 20th hearing, the HPS thereafter permitted Respondent to file exhibits and to identify his witnesses. The HPS scheduled the resumed evidentiary hearing for June 18, 2015. Respondent filed his exhibit discovery on April 24, 2015, but neglected to file the witness information within the time required in the Order reflecting the proceedings of April 20, 2015. On May 14, 2015, ODC filed a motion to exclude Respondent's witnesses, but in a hearing on June 1, 2015, the HPS denied the same since the hearing had been continued until July

17, 2015, giving ample time for ODC to interview the witnesses remained prior to that date. At a status hearing on July 2, 2015, due to a scheduling conflict of the lay member of the HPS, the resumed evidentiary hearing was rescheduled for August 31, 2015. The evidence concluded at the hearing on August 31, 2015, and ODC filed its proposed findings of fact, conclusions of law and recommended sanctions on October 9, 2015. Respondent moved for an extension to file his proposed findings of fact, conclusions of law and recommended sanctions on October 14, 2015. Respondent was granted an extension to November 16, 2015, but ordered not to read what had been submitted by ODC before filing the same. On November 16, 2015, Respondent filed his proposed findings of fact, conclusions of law and recommended sanctions.

The HPS notes that the facts and circumstances giving rise to the instant disciplinary proceedings arise from precisely the same facts and circumstances which this Court very recently addressed in *Blyer, Spec. Comm'r. v. Matcovich, State Tax Comm'r*, and *Blyler, Special Comm'r v. City National Bank*, 2015 WV LEXIS 1181. (Memorandum Decision, November 23, 2015, Cases 14-0760 and 14-1335).²

FINDINGS OF FACT AND CONCLUSIONS OF LAW:

1. Howard J. Blyler (hereinafter "Respondent") is a lawyer practicing in Cowen, which

² Although the written opinion recites that the case was a 3 - 2 decision (with a dissent by Justices Davis and Workman), as of the date of this recommended decision, no written dissent is found by the HPS in either this Court's published opinions on its website or in the LEXIS version of the decision.

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 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 identify the assets and liabilities of the estate in order to determine the priority of

the same along to be included 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 a separate 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, and in response to this levy, 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, “Special Commissioners William Martin and Howard Blyler opened an account, entitled “Special Account” with City National Bank, and the proceeds from the two sales were deposited in this account.” The Order also stated that Respondent was attempting to retrieve the money back 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 therefore 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.*³

³ The HPS notes that the above findings of fact 1 through 22 are nearly identical to the findings of fact Nos. 1 through 8, and 10 through 22 which are contained in the Stipulations entered by the Parties and signed by Respondent on December 18, 2014, although the HPS has modified its findings of fact slightly from what was contained in the Stipulations. See, Joint Exhibit No. 1. Finding of Fact No. 9 *infra* is identical to the Findings of Fact No. 9 in the Stipulation with one exception: the HPS has added the italicized portion of Finding of Fact No. 9, *infra*, as it more accurately describes what occurred in this case and what the statutory law of this State seems to require. In that regard, the HPS also notes that notwithstanding the language of the Court Orders of April 27, 2006, and April 25, 2007, which reflected that the net sums realized from the sales by the Special Commissioners were to be deposited *in the trust accounts* of Respondent and/or William Martin, the language of West Virginia Code, § 55-12-1 requires that special commissioners deposit funds realized from judicial sales of real estate in a special account as was done by Respondent and Mr. Martin in this case:

A court, in a suit properly pending therein, may make a decree or order for the sale of property in any part of the State, and may direct the sale to be for cash, or on such credit and terms as it may deem best; and it may appoint a special commissioner or special receiver to make such sale. Every special commissioner or special receiver appointed under this section . . . shall make no sale and shall receive no money under a decree or order until he give a bond with approved security before the said court or its clerk, conditioned as the law requires for the faithful accounting therefor and with the further condition that *he will deposit in his name as such special commissioner or special receiver all moneys received by him as such special commissioner or special receiver in one or more banks in the county in which the suit or cause is properly instituted*, and will not remove the same therefrom without the order or decree of distribution of the presiding judge. . . .” [italics emphasis added]

Respondent contended in his testimony that placing the funds in his IOLTA account was contrary to the above statute and that he instead, did what the statute required. (Hearing transcript, 8-31- 2015, pp. 11, 47-48).

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. 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 property sale, which 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 upon learning of the tax levy, he immediately notified the bank and the State Tax Commissioner that the money was not his money. *Id.* No action was taken on the matter 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 then 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 736-741.⁴

⁴As discussed above, this Court has recently determined that both Mr. Blyler's claim and the claim of Mr. Cogar and his siblings are barred by the applicable statute of limitations. *Blyler, Spec. Comm'r. v. Matcovich, State Tax Comm'r*, and *Blyler, Special Comm'r v. City National Bank*, 2015 WV LEXIS 1181.

18. On or about November 19, 2013, Respondent appeared at the Office of Disciplinary Counsel for a sworn statement. ODC Ex. 9, Bates stamp 37-91. Respondent admitted that he “should have filed suit sooner” in reference to the money which was 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 addressed to 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 company for the bond pay the Fifty Thousand Dollars (\$50,000.00) bond 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. Mr. Cogar and his siblings have filed a professional negligence claim against Mr. Blyler that was pending and unresolved as of the date of the August 31, 2015, hearing. That claim seeks damages for the losses suffered by Mr. Cogar and his siblings with regard to the funds seized from the special account in the tax levy. (Hearing transcript, 4-20-15, p. 23; hearing transcript 8-31-15, pp. 34-35)

21. Respondent’s law practice is and has been a small, rural general rural practice, which focused in large part upon defense criminal appointments, abuse and neglect cases, domestic relations, and guardian ad litem work. (At present, other than the prosecuting attorney, he is one

of only two regular practitioners in Webster County.) (Hearing transcript 8-31-15, pp. 58-59)⁵
The only other lawyer, Joyce Morton, Esq., has reduced her practice to part-time and she does not handle criminal appointments or abuse and neglect cases; however, she testified she would be willing to act as a supervising attorney for Mr. Blyler should the sanctions imposed by the Supreme Court of Appeals include such a requirement. (Hearing transcript 8-31-15, pp. 50, 66)

22. Madonna Jan Blyler, Respondent's wife of 45 years (Respondent's Exhibit R-1), was a school teacher who, at an early age, suffered from cognitive problems related to Alzheimer's disease which forced her to take an early retirement at the end of the school year in 2008. Before her retirement, Mr. Blyler had helped compensate for his wife's failing mental acuity at home by grading all of her students' papers, by preparing all of her students' report cards and performing other tasks that she was unable to do. Also, her school administrators and fellow teachers assisted her with in-school tasks and responsibilities, but as the disease process progressed, she was unable to continue to work and forced to take early retirement. (Hearing transcript 8-31-15, pp. 39-40) In March of 2009, at age fifty four, she applied for and received social security disability because of a diagnosis of early onset dementia or Alzheimer's disease. (*Id.*) Respondent and his wife had managed financially until that time, but with the loss of her income and the increase in her medical costs, they became financially strapped and did not have sufficient funds to provide the full-time care which Madonna Blyler required. (Hearing transcript 8-31-15, p. 42, 54) Mrs. Blyer not only had medical bills related to Alzheimer's disease, but she

⁵ A third lawyer recently closed his office practice, but it is presently unknown whether he may be doing some work from his home.

also had substantial ongoing monthly expenses for medications related to a prior gastric bypass surgery and for diabetes, neither of which were covered by insurance or Medicare. (Hearing transcript 8-31-15, pp. 54-55)

23. Howard Blyler was a caring and devoted husband who provided his wife with round-the-clock care from the time of her diagnosis with Alzheimer's disease in March, 2009 until her death in December, 2014. He tried hiring outside help to care for her while he worked, but that proved difficult and unworkable. The testimony of Joyce Morton, Esq., a practicing attorney in Webster County is particularly detailed on the extent of the measures Respondent took to care for his wife:

“Q. Okay. can you tell the panel as far as Howard's situation with Madonna, what you know about it or when you first learned of it?

A I can't tell you the date that i first learned about it, but I do know that she had an early onset of Alzheimer's and that it took its toll on Howard. He basically cared for her every need. He -- there were times, many times and close to the end, he had to bring her to court all of the time. I've seen him out private with her. He would have to lead her. To my knowledge, he didn't have any outside help. I know the children lived outside of the county. They came in and helped him when they could. Because of the nature of her disease, it was hard to get somebody to come in and sit with her, mainly because of her fears and the unknowns for her because it was Alzheimer's. I know that everything took a backseat to his wife for a long time.

Q The extent of the care you mentioned while we were out in the hallway. There was a situation that you saw at an auction?

A ... Yeah. Howard and Madonna and my husband and I, we often ended up at the same auctions and I just remember specifically watching Howard -- watching, him take Madonna to the bathroom. He had to take care of all of her needs. She couldn't even go to the bathroom by herself.” (Hearing transcript 8-31-15, pp. 64-65)

Initially, Respondent was able to take his wife to court and to depositions with him. He cared for his wife by himself until the last year when he could no longer take her to court with him because of the gravity of her deteriorating health. He had difficulty, however, keeping people to stay with

her during his court appearances. (Hearing transcript of 8-31-15 pp. 9) At the time Respondent neglected to take sufficient action to recover the seized funds from City National Bank, the record reflected Respondent's wife had also broke her arm and began having fainting spells. However, because she suffered from Alzheimer's, medical professionals advised that she could not be placed under general anesthesia for corrective surgery. As such, her medical condition required extensive travel, several times a week, from Cowen to Parkersburg, for physical therapy and orthopedist's care causing her to become more dependent upon Respondent for assistance and care with her daily activities. Nonetheless, Respondent continued to practice law while taking her with him to court and to hearings. (Hearing transcript, 8-31-15, pp. 40 - 44)

24. Prior to the time of the present proceedings, and despite having practiced for 39 years in this State, Respondent has only received an admonishment/reprimand for not responding to ODC communications. Respondent Blyler has had no prior disciplinary history. (ODC's Proposed Findings of Fact and Conclusions of Law, p. 16)

25. Mr. Blyler's wife was diagnosed with Alzheimer's within a month of the tax levy in question in this case. (Hearing transcript 8-31-15, p. 40)

26. The funds taken from the special account in the tax levy were taken without Respondent's knowledge, authorization or consent. He had no involvement in the process, and was unaware that the levy would occur. Respondent had no complicity or involvement in the decision-making process that amounted to the levy upon the special commissioner's account nor a chance to contest or rebut this action prior to the levy being issued. Likewise, there is no evidence that indicates any nefarious or other intentional act was taken on the part of Respondent

to benefit him financially from this matter. The execution of the levy and the withdrawal of the funds from the special account were separate administrative actions taken by the State Tax Department and by City National Bank. The special commissioners' account was originally opened after the first property was sold by both Respondent and William Martin in their names. Originally, that account had both the FEIN of Mr. Martin and the social security number of Mr. Blyler. At some point, Mr. Martin was relieved as special commissioner because of his new position as a prosecuting attorney. Mr. Martin's name and FEIN number were apparently removed from the account by City National Bank without the knowledge of Respondent. (Hearing transcript 8-31-15, pp. 11, 13, 14, 16, 67.)

27. After learning that the funds in the special commissioners' account had been seized pursuant to the tax levy, Mr. Blyler immediately notified the State Tax Department and the bank that the funds levied upon were not personal funds but were instead client funds not subject to levy. He also made contact with a representative of the Governor's office to see if they might intervene to help recover the money. (Hearing transcript 8-31-15, pp. 36-37) Admittedly, Respondent failed to follow up on the loss of these client funds, and to notify his client of this action which was clearly adverse to his client's interest. He additionally failed to notify the Court having jurisdiction over this matter. Respondent indicated he was embarrassed by the tax levy and failed to disclose what happened because of that. He also admitted he failed to take adequate steps to bring a lawsuit or other action against the Tax Commissioner until the matter was set for hearing by the Circuit Court of Braxton County. (Hearing transcript, pp. 16- 20)

28. Respondent was very contrite and emotional during the hearing he attended on August 31, 2015. Although the transcript may not reflect it, he repeatedly was brought to tears both during the testimony relating to his admitted violations and during the testimony relating to the illness and

death of his wife and his mother. He was embarrassed, apologetic, and regretful in his testimony. He was also sincere. He readily admitted the violations contained in the Stipulation including violations of Rules 1.3, 1.4, and 8.4.⁶ (Hearing transcript, 8-31-15, pp. 6, 8, 30, 31, 32, 35, 36). He is fully willing to make restitution if he has the means from his practice to do so. (Hearing transcript 8-31-15, pp. 37-38)

29. Respondent is practicing on a limited basis at present. He has not asked to be put back on the panel of appointed lawyers in abuse and neglect cases, felony cases or guardian ad litem cases because of the uncertainty of his status as a practicing lawyer going forward (as a consequence of this present proceedings). Initially after the death of his wife and his mother, Respondent did not work, but has since resumed some parts of his civil practice.

29. 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.

30. Because he failed to keep his client Lloyd Allen Cogar, III, reasonably informed about the

⁶ As will be indicated later in this recommended decision, the HPS finds that the clear and convincing evidence, at most, only supported a violation of deceit by Respondent's failure to advise Mr. Cogar that the funds had been seized. The HPS however, did not find that clear and convincing evidence existed proving that Respondent committed a higher level of misconduct, ie. fraud, misrepresentation or other dishonesty.

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.

31. 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.⁷

32. Although ODC urges that Respondent violated Rule 1.15(a) of the Rules of Professional

⁷ Respondent stipulated to a violation of Rule 8.4, the HPS finds that the misconduct applicable to Rule 8.4(c) does not constitute dishonesty, fraud, or misrepresentation. But there is an element of deceit as he neglected to advise Mr. Cogar or his grandmother about the levy by the State Tax Commissioner on the occasions when she would ask about the estate on behalf of her grandson or when he met with one or both of them. (Hearing transcript, 8-31-15, p. 30-31). Both the testimony of Mr. Cogar and that of Respondent confirm that Mr. Blyler never had an actual communication with Cogar about the status of the funds in the Special Commissioner's Account. (Hearing transcript 4-20-15, pp. 13-14; 17-18) Mr. Cogar first learned of the funds being taken in a tax levy during a hearing which Cogar attended on September 11, 2012. At that time, Respondent advised the court that the money had been taken from the bank account in a tax levy. (Hearing transcript 4-20-15, p. 18-19) He admitted that he should have discussed the matter with the grandmother when she asked about the estate, but was too embarrassed about his tax problems to discuss it with her. He indicated that Mr. Cogar never discussed the matter with him at any time from the date of the levy. (Hearing transcript 8-31-15, p. 30-31)

What happened to the money in the special commissioners' account was a mistake, and the levy did not occur as a result of an intentional act or omission on the part of Respondent. His primary failing occurred when he neglected to advise his client that the money had been taken and when he failed to take all actions necessary to retrieve the funds.

Conduct, the HPS finds that such violation was not proven by clear and convincing evidence.

Rule 1.15 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.

The evidence in this case indicates that Respondent did comply with the statutory requirements of West Virginia Code, § 55-12-1, respecting special commissioner's accounts. Ironically however, and, but for the "perfect storm" of adverse events and circumstances surrounding the special commissioner's account, including, the removal of Mr. Martin as a joint fiduciary; the change in the name or title on the special account; and, the mistaken payment of the funds from the account by City National Bank, the money would never have been taken from the account. Placing the money in an IOLTA account as urged by ODC and suggested by the Circuit Court may have provided better protection, but the specific language of § 55-12-1 does not require it. This statute applies whether the special commissioner is a lawyer or not.

33. 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.

34. The complainant, Allen Cogar, III, testified before the panel that he had no objection to Mr. Blyler being permitted to continue to practice law under appropriate supervision so that he would be in a position to make restitution in this matter should it become necessary after the Supreme Court decision. (Hearing transcript 4-20-15, page 44) Mr. Cogar was understandably upset with the fact that the funds deposited in the special commissioners' account had been seized. Even after the forfeiture of the \$50,000.00 bond had replenished half of the funds seized from the account, there is still a shortfall of nearly \$47,000.00 some of which may be subject to distribution to Mr. Cogar and his family.

35. The Respondent has no personal funds to repay the money improperly levied on by the State Tax Department as reflected by his testimony before the hearing panel. From the evidence addressed before the hearing panel, the only way the money may be recovered by the complainant and his family is if the Respondent is permitted to maintain his license to practice law.

DISCUSSION AND RECOMMENDED SANCTIONS

The Lawyer Disciplinary Board's function in disciplinary matters is to protect the public as to the reliability and integrity of attorneys and to safeguard its interest in the administration of justice. *Lawyer Disciplinary Board v. Taylor*, 192 W.Va. 139, 451 S.E.2d 440 (1994). In order to establish violations of the Rules of Professional Responsibility, ODC must prove the elements by clear and convincing evidence. Rule 3.17, *Rules of Lawyer Disciplinary Procedure*. The factors to be considered in imposing appropriate sanctions are found in Rule 3.16, *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).

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. Lawyers also have a duty to comply with statutory procedures in the conduct of their practices.

The evidence in this case establishes by clear and convincing proof that Respondent violated his duties to his client. He was hired to represent Lloyd A. Cogar, III, in a partition action concerning his late father's estate. Respondent and another attorney were appointed by as Special Commissioners to sell property. A third attorney was appointed (1) to determine the assets and liabilities of the estate so the Court could determine how any funds realized in the sale of the real estate could be utilized to satisfy the debts and (2) to determine the priority of claimants and beneficiaries for the court to determine the appropriate distribution of the funds. As soon as the first sale of real estate was completed in 2006, Mr. Blyler and William Martin went to City National Bank and deposited the funds in a special commissioners' account as required by West Virginia Code, § 55-12-1. They also obtained a bond with surety as required by the court order and as required by that section of the code. A subsequent sale of real estate in another county was also conducted. The funds from the sales of the real property

by the special commissioners were deposited in the special account and held pending the determination of the liabilities of the estate and priorities for distribution by the court. The determination of the assets and liabilities of the estate and the priority of liens and beneficiaries was the responsibility of a third special commissioner, Bernard Mauser, Esq. Respondent had no duty with respect to the determination of the liabilities of the estate, and neither he nor Mr. Martin were authorized or permitted to pay any sums from that account until Mr. Mauser filed a report with the circuit court, the court approved the same, and ordered Respondent and Mr. Martin to distribute the funds. By March 16, 2009, Ninety-Six Thousand, Eight Hundred Fifty-One Dollars and Eighty Cents (\$96,851.80) was in the special account. On that date, the State Tax Department served a notice of levy upon City National Bank for personal income taxes due and owing from Respondent. On March 19, 2009, City National Bank paid the funds in the account to the State Tax Commissioner pursuant to the notice of levy. The funds in that account should not have been paid by the bank to satisfy the levy on Respondent's personal accounts since it was designated a Special Account.

The clear and convincing evidence presented in the two hearings in this case, and through stipulation of the Respondent, establishes that Respondent violated Rules 1.3, 1.4, and 8.4 of the Rules of Professional Conduct (Joint Exhibit 1). The clear and convincing evidence also established a violation of Rule 3.2.

Respondent clearly did not act with reasonable diligence and promptness in protecting his client's interest after the State mistakenly seized funds from the special commissioners' account and when he failed to communicate to his client the fact that the funds had been seized. His failure to contact his client to let him know that the funds had been seized was deceitful and violated Rule 8.4. In addition to the stipulated violations, Respondent was additionally not

diligent in filing a lawsuit to retrieve the wrongfully seized funds from the State and the bank, and his negligence to diligently pursue such an action resulted in further harm to his client in that the claims became barred by the statute of limitations. As a result, there is also a violation of Rule 3.2 for failure to expedite litigation to protect his client's interest.

Elements of negligence and intent

In evaluating the evidence in this matter, the HPS had to determine which of Respondent's actions or omissions were intentional as contrasted with those that were unintentional or negligent. 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 which occurs when a lawyer fails to be aware of a substantial risk that circumstances exist or that a likely adverse result will follow, which failure is a deviation from the standard of care that a reasonable lawyer would exercise in the situation.

Respondent clearly did not intentionally place the funds in the special account with any intent to gain financial benefit from them. Likewise, he did not knowingly allow the funds to be taken from the account to satisfy his personal tax lien. He had no involvement whatsoever in that process, and he had no knowledge of this withdrawal of funds until the funds were levied upon and removed from the account. The facts of this case are somewhat unique and troublesome, many of which have little to do with Respondent. After being appointed as special commissioners, Respondent and Mr. Martin followed the requirement of West Virginia Code, § 55-12-1, by securing a bond as required by the court. They also immediately opened a special

commissioner's account at City National Bank as required by West Virginia Code, § 55-12-1. Respondent and his co-fiduciary properly caused the deposit of the funds from the sales of real estate to be deposited in that account pending the filing of the report of Mr. Mauser establishing the liabilities of the estate and the priority of the claimants. Respondent obtained the necessary approvals of the real estate sales by the Court. As soon as Mr. Mauser filed his report and court approval was obtained, the moneys would be distributed in accordance with the court's order.

The unfortunate events that occurred in this matter created a "perfect storm" of adverse consequences and events, many or most of which were beyond Respondent's control and certainly beyond his intent. Although the account was properly in the name of Respondent and Mr. Martin, the latter was relieved of his responsibilities after becoming a prosecuting attorney and his bond released. Although the account was originally listed in the name of Respondent and Mr. Martin as special commissioners, it appears that when Martin was relieved, his name and his FEIN number were apparently also removed from the account by City National Bank. (Respondent was not advised that Mr. Martin's name was taken off the account and he had no role in removing Martin's name or tax number.) In fact, the evidence is undisputed that Respondent never possessed the check book for the account before Mr. Martin's removal and also he did not begin receiving periodic bank statements until after Mr. Martin was removed as special commissioner. (Hearing transcript, 8-31-15, pp. 14-15)

Respondent did owe back taxes to the State in the approximate principal amount of \$25,000.00, but as of March, 2009, the total tax liability exceeded \$157,000.00 with penalties and accrued interest. (Hearing transcript, 8-31-15, pp. 15-16) Respondent was aware of his personal tax liability, but there is no evidence he did anything intentionally to utilize client funds to satisfy

his own liability. He certainly would know that his own bank accounts were subject to tax levy; but he had no reason to anticipate that a tax levy would extend to a special commissioners' account created pursuant to a court order to hold funds for a third party. He did not have any advanced notice that the funds in the account were being seized by tax levy. We can only speculate if perhaps he had used his taxpayer's identification number (TIN) instead of his social security number when he and Mr. Martin opened the account, the levy would not have happened, but the evidence at the hearing is silent on that issue.⁸ If Mr. Martin had not been elected prosecuting attorney, the seizure of the funds would not have happened because his name and tax number would still have been on the account. Additionally, if Mr. Mauser had filed a timely report of the liabilities of the estate with priorities of those entitled to compensation, the court may have authorized the distribution of the funds before the levy. Respondent cannot be held responsible for all of those events. It was those events which caused the initial economic harm to Mr. Cogar and his family.

Respondent did, however, contribute to the subsequent and ultimate financial harm to Mr. Cogar and his family. He was negligent in failing to file suit immediately against the State and against the bank. Had he filed suit in 2009, the evidence suggests that a court would have ordered that the funds be restored to the special account. By not acting with diligence, the case was ultimately dismissed by the circuit court for failure to file within the statute of limitations, and

⁸ In his sworn statement given to ODC in November, 2013, Respondent indicated that at the time he and Mr. Martin opened the account, Respondent did not have his TIN with him, so he used his social security number. ODC Exhibit 9, Bates No. 0065-0066. But there was no further evidence offered on this issue at the two hearings. Respondent might have avoided the adverse consequences to his client if he or Mr. Martin had verified the bank's label of the account as a "special account" in the beginning instead of "special commissioner's account" and by taking steps to verify or rename the account to protect the funds after Martin's removal. But that comment is mere speculation as no officer or representative from the bank was called by ODC as a witness in this case.

subsequently affirmed by this Court recently. Clearly, Respondent's lack of diligence and his failure to file a suit to protect his client's interest resulted in harm to his client. In the opinion of the HPS, the Respondent's violations were not intentional, but they were violations nonetheless which have caused substantial harm to Mr. Cogar and his family.

The most egregious conduct before the HPS was Respondents intentional failure to inform his client about the money being seized and his subsequent failure to file suit to recover the funds in a diligent manner. Respondent testified that he was too embarrassed about the delinquency in his taxes to tell his client. His embarrassment about his tax status does not relieve him of the duty to schedule a conference with his client to apprise him of the problem. He also had a duty of candor with the court to notify the circuit judge of the levy upon learning of it. Additionally, while the evidence corroborates that during the time frame of Respondent's failure to act, his wife's health was progressively deteriorating, thereby placing increasing demands upon him and his practice; this however, does not relieve him of his duties and responsibilities to his client.

Aggravating factors present.

As this Court has held in *Office of Disciplinary Counsel v. Jordan, supra*, and in *Lawyer Disciplinary Board v. Duty*, 671 S.E.2d 763, 222 W.Va. 758 (2008), the factors to be considered in imposing sanctions after a finding of lawyer-misconduct, the disciplinary board shall take into consideration: (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. 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). The HPS found that the following are aggravating factors in this matter: dishonesty in failing to inform his client of the tax levy and with failing to immediately and diligently move forward with legal action to rectify this mistake. In addition, Respondent’s substantial experience in the practice of law is also an aggravating factor. Respondent has practiced since 1976, and has had more than adequate experience to understand appropriate conduct expected and required of him in this context.

Mitigating factors present.

As noted in *Lawyer Disciplinary Board v. Robinson*, 736 S.E. 2d, 18, 230 W.Va. 18 (2012), mitigating factors which may be considered in determining the appropriate sanctions to be imposed against a lawyer for violating the Rules of Professional Conduct include: (1) Absence of a prior disciplinary record; (2) Absence of a dishonest or selfish motive; (3) Personal or emotional problems; (4) Timely good faith effort to make restitution or to rectify consequences of misconduct; (5) Full and free disclosure to disciplinary board or cooperative attitude towards proceedings; (6) Inexperience in the practice of law; (7) Character reputation; (8) Physical or mental disability or impairment; (9) Delay in disciplinary proceedings; (10) Interim rehabilitation; (11) Imposition of other penalties or sanctions; (12) Remorse; and (13) Remoteness of prior offenses.

The following are mitigating factors in this case: absence of a prior disciplinary record,

extraordinary personal problems and the chronic and progressive physical deterioration of his wife's health, of whom he was the sole care giver, good character, absence of selfish motive, and remorse. Other than a failure to respond to communications from ODC, Respondent had no prior disciplinary record.⁹ Several individuals including both of the attorneys currently practicing in Webster County testified on behalf of Respondent to attest to his good character and reputation in the community. It is obvious from the evidence that he is one of only three attorneys with offices in Webster County at this time and he provides a service to the community that others have not provided.¹⁰ Despite his wife's progressive disease and the time and emotional constraints her health placed upon Respondent, he remained devoted to his practice and continued to try to serve the community for the five year tenure before her demise. Attorney Dwayne Vandevender, the current prosecuting attorney for Webster County vouched as to Respondent's competence and professionalism in representing clients in criminal cases, abuse and neglect cases and guardian ad litem cases. (Hearing transcript, 8-31-15, pp. 74-75.) Both Attorney's Morton and Vandevender indicated that they believed Respondent would comply with any mandate of this Court in its sanctions if Respondent was permitted to continue practicing. On questioning by the HPS, Prosecutor Vandevender indicated that he would have no problem with Respondent continuing to handle criminal appointments and abuse and neglect cases.... He indicated that the conduct of Respondent in this case was in his opinion, an aberration in

⁹ In ODC's post-hearing argument, ODC conceded that Respondent had no prior disciplinary record, although in the sworn statement taken from Respondent in November, 2013, Respondent acknowledged that he had been admonished/reprimanded for failing to respond to communications from ODC years before the present proceeding.

¹⁰ In her testimony, Joyce Morton indicated that Respondent takes cases that no other attorney will take in the community and as such provides a service to the people of Webster County. Hearing transcript, 8-31-15, pp. 68-70.

Respondent's behavior. (Hearing transcript, 8-31-15, p. 79) Respondent also called a long-time client who testified as to his good character, his competence and his diligence in his representation of her.

The HPS does not find evidence of a selfish motive on the part of Respondent. To the contrary, the problems giving rise to this disciplinary proceeding surfaced in large part because of the unselfish conduct of Respondent as a devoted husband/caretaker in trying to provide for the needs of his dying wife while continuing to manage a small rural law practice. His devotion to his wife included around the clock care, 365 days a year, for her remaining years. Before his wife's forced retirement, he served not only as a lawyer in his community, but also as a surrogate teacher as he helped by grading student's papers and preparing report cards on her behalf. After her diagnosis with Alzheimer's' Respondent arranged his schedule to not only attempt to practice law, but also to be able to take his wife to Parkersburg for as many as three days a week for medical care and physical therapy. Fortunately for him, the circuit court, magistrate court, court personnel, and opposing counsel were empathetic to the situation in which the Respondent found himself and were willing to accommodate him by allowing him to bring her to his necessary court appearances even in her demented condition.

In review of other cases in this jurisdiction where mitigation played a role in determining an appropriate recommendation as to sanctions against a practicing lawyer, the HPS could not find any with stronger compelling facts to warrant more lenient consideration of probation and a reprimand as opposed to a suspension. The mitigating factors do not however, excuse his violations. The fact that he did not notify his client of the seizure of the funds, coupled with his failure to act immediately to rectify this situation, cannot be excused and some disciplinary sanction is both appropriate and necessary.

IV. SANCTIONS

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).

In this matter, ODC seeks a suspension of Respondent's license. In seeking this punishment, it relies upon the punishment of *In re Skagon*, 149 P.3d 1171, 342 Or. 183 (Or. 2006). In *Skagon*, a suspension of one year was upheld for those facts. *Skagon* is distinguishable from the present case here in that the lawyer in *Skagon* had mishandled both client funds and his trust account, and was also deceptive in the disciplinary proceeding. Respondent here did not mishandle client funds and he did not mishandle the special commissioners' account. He has also fully cooperated in the disciplinary proceedings and readily admitted to his infractions

showing sincere remorse for his actions or inactions. As such, the magnitude of the mitigating factors to be considered in the present case before us was certainly not present in the *Skagon* case.

In the opinion of this HPS, a suspension is not warranted by either the facts of this case or the mitigating circumstances. We further believe the issuance of a suspension would adversely affect the administration of justice in Webster County where there are already so few practitioners. Moreover, it would inhibit Mr. Cogar and his family from recouping the funds which have been lost. While the record does not disclose the current status of the professional negligence claim which the Cogar family has filed against Mr. Blyler, what is apparent, however, is the fact that if Respondent is not permitted to continue practicing law, the Cogars and/or the bonding company may not be able to recoup their respective losses. As previously indicated in his testimony, Mr. Cogar acquiesced with a resolution which would place Respondent in a position where he could practice law, but the practice would be supervised for a period of time. During her testimony, Joyce Morton voluntarily agreed to serve in that capacity if the Court deems it appropriate. In addition, both she and Prosecutor Vandevender believe that Respondent could continue to be a productive legal member of their community and that he has learned his lesson from these bad decisions.

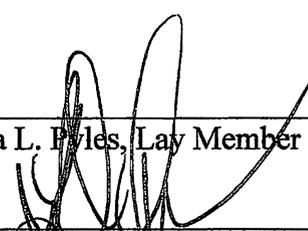
Most importantly, when considering the facts, the violations, the aggravating factors and the mitigating factors, a suspension of the Respondent's license appears inconsistent with his violations and the mitigation of the events in question. While admittedly Respondent failed to act appropriately after learning his client's funds were removed, we cannot overlook the fact that a series of unfortunate and potentially inappropriate events triggered the initial problem that Respondent found himself facing. Upon learning of the levy, and appreciating the gravity of

this loss of money entrusted to him as a special commissioner, Respondent's initial attempts to rectify this situation appear to be an attempt to fix this situation privately before anyone found out. This decision by Respondent was without doubt, in error, inappropriate and in violation of his sworn ethical canons. Unfortunately, it was not until much later, when Respondent was confronted at the Court hearing that he began, what was later determined to be, a too late attempt to resolve this matter appropriately and legally. Respondent's failure to both, immediately and to candidly, acknowledge and deal with this error, has caused harm to his client that quite possibly could have been avoided altogether.

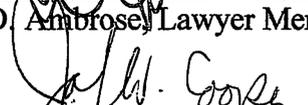
For the foregoing reasons, the HPS makes the following recommendations as to disposition in this case:

1. That a strong reprimand be issued against Respondent.;
2. That he be placed on probation for a period of at least eighteen months;
3. That he be permitted to practice law during the period of probation under the supervision of Joyce Morton or any other lawyer approved by this Court and ODC;
3. That Respondent make restitution of the amounts seized from the special commissioners' account within 36 months from the date of the Court's order if the same is not fully satisfied in the Cogar's pending negligence action against Respondent;
4. That Respondent pay the costs and expenses incurred by ODC in the prosecution of this proceeding and in overseeing the Respondent's probation and in the fulfillment of his obligations in making restitution.

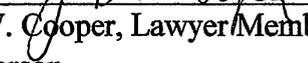
Respectfully submitted



Cynthia L. Pyles, Lay Member

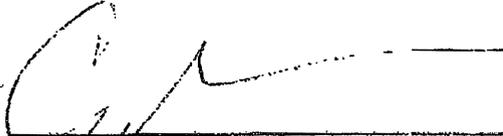


Kelly D. Ambrose, Lawyer Member



John W. Cooper, Lawyer Member and
Chairperson

Respectfully submitted



Cynthia L. Pyles, Lay Member

Kelly D. Ambrose, Lawyer Member

John W. Cooper, Lawyer Member and
Chairperson