

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

In Re: Phillip B. Ball, a member of
The West Virginia State Bar

SCA EFiled: Jul 21 2022
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Transaction ID 67845767
Bar No.: 7124
I.D. Nos.: 20-03-061

STATEMENT OF CHARGES

To: Phillip B. Ball, Esquire
c/o John A. Carr, Esquire
179 Summers Street, Suite 209
Charleston, West Virginia 25301

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

1. Phillip B. Ball (hereinafter "Respondent") is a lawyer practicing in Princeton, which is located in Mercer County, West Virginia. Respondent, having passed the bar exam, was admitted to The West Virginia State Bar on September 30, 1996. 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.

COUNT I

I.D. No. 20-03-061

Complaint of Harold Wolfe, III, Esquire

2. Harold B. Wolfe, III, Esquire, a licensed member of the West Virginia State Bar,¹ pursuant to his reporting requirements in Rule 8.3 of the Rules of Professional Conduct,

¹ Mr. Harold B. Wolfe, III, a member of the West Virginia State Bar, died on or about January 26, 2022.

filed a verified complaint against Respondent Phillip B. Ball, Esquire, a licensed member of the West Virginia State Bar.

3. Fred B. Warden passed away testate on or about April 16, 2012. At the time of his death, he was the owner of a variety of property and assets and his estate was of substantial value, including liquid monetary assets in banks, real estate of substantial value, as well as a substantial amount of stock in BB&T Corporation, First Community Bank, and One Valley Bank. As part of Mr. Warden's estate planning, he had prepared a will that established a trust with the primary purpose of caring for his daughter, Ms. Leslee Burton, for life, with remainder of any trust assets to pass to other relatives upon Ms. Burton's death.
4. The original Executrix on the Estate and Trustee of the Estate rejected the role as trustee and a petition was filed for the appointment of a successor trustee.
5. After a hearing held on or about July 9, 2013, after no objection from the beneficiaries of the Trust, the Sheriff of Mercer County was appointed as successor trustee. The Sheriff at the time of the appointment was Don Meadows.
6. A final Accounting of the Estate was filed by the Executrix of the Estate on or about October 29, 2013.
7. The Fiduciary Commissioner filed a Final Settlement of the Estate with the Clerk's Office on or about December 2, 2013. The Final Settlement reflects disbursement of assets² in excess of One Hundred and Ninety-Six Thousand (\$196,000.00) to the Sheriff of Mercer County, as Trustee.

² It is noted that there is a mathematical error on the appraisement as it relates to the value of the stock for BB&T.

8. On or about December 13, 2013, Ms. Burton, by and through counsel, filed a Motion to Interpret the Trust Provisions of the Last Will and Testament of Fred Warden. (Civil Action No. 13-C-99-OA)
9. By Order entered May 16, 2014, the Court issued an Order that set forth the terms and conditions of the Trust. The Court directed that Respondent, as counsel for the Sheriff of Mercer County, receive a copy of the Order.
10. As the Trustee, the Sheriff was given control over the entire corpus of the trust assets, and was responsible for complying with the Court's orders regarding distribution, which was primarily for Ms. Burton's rent and utilities.
11. In 2019, Ms. Burton's attorney, John E. Williams, Esquire, suggested that the trust be used to purchase a home for Ms. Burton. However, as the purchase of the home was outside the purview of the Court's prior order regarding the trust and, as such, Court approval was required.
12. In or about November 2019, Mr. Williams prepared a petition for approval to acquire the home for Ms. Burton with funds from the Trust.
13. T.A. Bailey was elected as Sheriff and took office in or about January of 2017. Sheriff T.A. Bailey did not retain Respondent as counsel, but instead retained Attorney Wolfe. Attorney Wolfe appeared on behalf of Sheriff in his capacity as Trustee, but stated prior to November of 2019, he had not been aware of the particulars of the Trust.
14. At the November 2019 hearing on Ms. Burton's petition, both Attorney Wolfe and Attorney Williams indicated that approximately \$77,000.00 remained in the trust for Ms.

Burton. Judge Sadler approved the proposal for the purchase of the home, but expressed surprise that only \$77,000.00 remained in the Trust.

15. Attorney Wolfe then contacted Jessica Tibbs,³ an administrative assistant to the Sheriff to determine how “almost \$200,000.00 worth of assets had been reduced to approximately \$77,000.00 in roughly six years.” Ms. Tibbs provided copies of the bank statements which outlined the deposits and withdrawals relating to the trust account. From review the documents, the trust corpus was never the approximate \$196,000.00 as previously referenced in the Court’s order creating the Trust.
16. By Order entered December 11, 2019, because it was discovered the funds were not deposited into the Trust as previously ordered by the Court, the Court directed Attorney Wolfe, as counsel for the Trustee, to obtain all financial records as it related to the Estate and the Trust.
17. Attorney Wolfe’s investigation ultimately revealed the entirety of Mr. Warden’s shares of stock in First Community Bank consisting of 84.607133 were transferred to Respondent and his wife as joint tenants on or about March 12, 2015.
18. Attorney Wolfe’s investigation further revealed that the entirety of Mr. Warden’s shares of stock in BB&T consisting of 1,840.544327 were transferred to Respondent and his wife as joint tenants on or about March 13, 2015.
19. At the time of the transfer, the value of Mr. Warden’s stocks converted by Respondent and his wife were in excess of One Hundred and Five Thousand Dollars (\$105,000.00).

³ Upon information and belief, Ms. Tibbs became the administrative assistant at the Sheriff’s Office in charge of administering trusts, estates, and guardianships in or about 2018. Prior to Ms. Tibbs’, Ms. Loretta Lusk handled all of these matters until her retirement.

20. The necessary documents regarding the transfer of the stocks were notarized by Respondent's law office staff on or about March 10, 2015.
21. Attorney Wolfe, in addition to reporting the findings to the Court and law enforcement, pursuant to his reporting obligations, filed an ethics complaint at the Office of Disciplinary Counsel on or about February 19, 2020. ODC received the complaint on or about February 21, 2020.
22. On or about February 26, 2020, after being asked about the Estate of Fred Warden by his senior partner on the same date, Respondent sent a letter regarding self-reporting his actions.
23. On or about February 27, 2020, Respondent contacted Attorney Wolfe and advised him that he had control of the Warden Estate stocks, agreed that he would transfer the stocks to an account designated by Attorney Wolfe.
24. By letter dated February 28, 2020, ODC sent the complaint to Respondent by First Class Mail and requested a verified response to the same within twenty (20) days. ODC also requested that Respondent provide all relevant banking information and records relative to the transactions.
25. As a result of the COVID-19 pandemic, in early March of 2020, the judicial branch declared a judicial state of emergency and issued multiple Orders relating to the operation of the Courts. The Court issued an Order on or about May 6, 2020, that allowed for the resumption of operations.

26. On or about March 6, 2020, Attorney Wolfe sent Respondent the appropriate documents to transfer the stocks converted by Respondent and his wife. The transfer of the converted stocks was completed on or about April 1, 2020.
27. After receiving an extension of time to consult with counsel and acknowledging the shutdowns relating to COVID-19, Respondent filed a timely response to the complaint on or about May 14, 2020.
28. Respondent failed to competently safeguard and/or diligently deposit the Warden Estate shares of stock into the corpus of the Trust, or notify the Trust of the property, and instead wrongfully misappropriated and converted all of the Warden Estate shares of stock to his own personal use, and as such has violated Rule 1.1; 1.3; 1.15(d); 8.4(b); 8.4(c) and 8.4(d) of the Rules of Professional Conduct, which provide as follows:

Rule 1.1 Competence

A lawyer shall provide competent representation to a client. Competent representation requires the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation.

Rule 1.3 Diligence

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

Rule 1.15 Safekeeping Property

* * *

(d) Upon receiving funds or other property in which a client or third person has an interest, a lawyer shall promptly notify the client or third person. Except as stated in this Rule or otherwise permitted by law or by agreement with the client, a lawyer shall promptly deliver to the client or third person any funds or other property that the client or third person is entitled to receive and, upon request by the client or third person, shall promptly render a full accounting regarding such property.

Rule 8.4 Misconduct

It is professional misconduct for a lawyer to:

* * *

(b) commit a criminal act that reflects adversely on the lawyer's honesty, trustworthiness or fitness as a lawyer in other respects.

(c) engage in conduct involving dishonesty, fraud, deceit or misrepresentation;

(d) engage in conduct that is prejudicial to the administration of justice;

29. On or about August 11, 2017, Respondent's mother passed away and he inherited 4,500 shares of BB&T stock, and he ultimately deposited those shares into the same account he held the converted shares, and as such he violated Rule 1.15(a) of the Rules of Professional Conduct, which provides as follows:

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. Such separate accounts must comply with State Bar Administrative Rule 10 with regard to overdraft reporting. Other property shall be identified as such and appropriately safeguarded. 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.

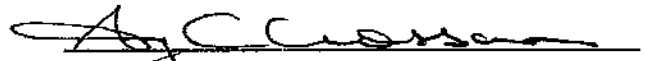
30. Since the date of the March 12 and March 13, 2015 wrongful conversion of the Warden Estate shares of stock that rightfully belonged to the Trust until the April 1, 2020 forced return of the converted property, Respondent enjoyed the benefits associated with the shares of stock, including but not limited to the financial benefits, including growth, dividends, and any tax advantages associated with the wrongfully converted shares of

stock, and as such has violated Rules 8.4(b); 8.4(c); and 8.4(d) of the Rules of Professional Conduct, as previously stated.

* * *

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

STATEMENT OF CHARGES ORDERED on the 11th day of June 2022, and **ISSUED** this 15th day of June, 2022.


Amy C. Crossan, Chairperson
Investigative Panel
Lawyer Disciplinary Board

CERTIFICATE OF SERVICE

This is to certify that I, Rachael L. Fletcher Cipoletti, Chief Lawyer Disciplinary Counsel for the Office of Lawyer Disciplinary Counsel, have this day, July 21, 2022, served a true copy of the foregoing "**STATEMENT OF CHARGES**" upon John A. Carr, counsel for Respondent Phillip B. Ball, by mailing the same, Via Certified United States Mail and First Class United States Mail with sufficient postage, to the following address:

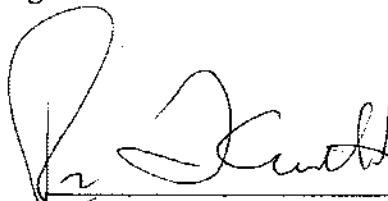
John A. Carr, Esquire
179 Summers Street, Suite 209
Charleston, West Virginia 25301

And upon the Hearing Panel Subcommittee by First Class United States Mail at the following addresses:

Clayton J. Fitzsimmons, Esquire
1609 Warwood Avenue
Wheeling, West Virginia 26003

Timothy E. Haught, Esquire
Post Office Box 548
New Martinsville, West Virginia 26155

Helen M. Matheny, M.S.
PO Box 751
Charleston, West Virginia 25323



Rachael L. Fletcher Cipoletti