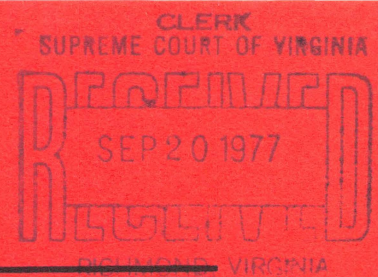


219 VA 175



IN THE

Supreme Court of Virginia

AT RICHMOND

RECORD NO. 761562

L. DOUGLAS WILDER,

.....Appellant

v.

THIRD DISTRICT COMMITTEE OF THE
VIRGINIA STATE BAR,

.....Appellee

APPENDIX

S. W. Tucker, Esq.
HILL, TUCKER & MARSH
214 East Clay Street
Post Office Box 27363
Richmond, Virginia 23261

Counsel for Appellant

TABLE OF CONTENTS

	Page
Bill of Complaint -----	1
Notice and Written Complaint -----	4
Demurrer -----	5
Order -----	6
Amended Bill of Complaint -----	6
Demurrer -----	9
Bill of Particulars -----	11
Transcript of Inquiry by Committee -----	12
Order -----	69
Answer -----	69
Interrogatories propounded by defendant -----	71
Answers to Interrogatories and attachments -----	73
Statement of Testimony and other Incidents of the Case -----	77
Letter Opinion -----	85
Final Order -----	96
Order of Amendment -----	98
Amended Notice of Appeal and Assignments of Error -----	98

RECEIVED

1000

1000

1000

1000

1000

1000

1000

1000

1000

1000

1000

1000

1000

1000

1000

1000

1000

1000

1000

1000

1000

1000

VIRGINIA:

IN THE CIRCUIT COURT OF THE CITY OF RICHMOND

THIRD DISTRICT COMMITTEE
OF THE VIRGINIA STATE BAR,

Complainant

v.

Chancery No. D-8980-W

L. DOUGLAS WILDER,
A licensed Attorney at Law
Practicing in Richmond, Virginia
3026 "P" Street
Richmond, Virginia 23223

Defendant

BILL OF COMPLAINT

FILED
Nov. 25, 1975

TO THE HONORABLE JUDGE OF SAID COURT:

1. Complainant herein is the Third District Committee of the Virginia State Bar duly appointed and organized pursuant to Paragraph 13 of Section IV of Part Six of the Rules of the Supreme Court of Virginia.
2. Defendant is a member of the Virginia State Bar who practices within the Third Congressional District of Virginia.
3. Complainant became aware of conduct by Defendant warranting investigation in March, 1975.
4. Following preliminary investigation of aforesaid conduct Complainant determined that further investigation of said matter in the form of a hearing was warranted, whereupon Complainant caused to be served upon Defendant a NOTICE AND WRITTEN COMPLAINT informing

Defendant as to the nature of the conduct under investigation and the time and place for the hearing on whether such conduct constituted unprofessional conduct warranting disciplinary action.

5. Complainant conducted its hearing of the matter on September 16, 1975 at State Bar headquarters in Richmond, during which Defendant appeared personally and was afforded opportunities to cross examine witnesses, have summons and subpoenae issued in his behalf, and present evidence and arguments in his defense.

6. After the conclusion of said proceedings Complainant concluded that Defendant had engaged in unethical, unprofessional conduct as set forth in the aforesaid NOTICE AND WRITTEN COMPLAINT, a copy of which is attached hereto as Complainant's Exhibit No. 1.

7. Complainant also concluded that the only disciplinary action warranted would be an order by this Court reprimanding Defendant for such conduct and injoining Defendant from further engaging in said conduct.

8. Accordingly, pursuant to sub-paragraph (d) of the aforesaid Paragraph 13 Complainant has directed that this BILL OF COMPLAINT for equitable relief be filed herein.

9. Defendant has a duty to refrain from unethical, unprofessional conduct.

10. The Defendant having engaged in unethical, unprofessional conduct as aforesaid and injury to the Virginia State Bar and to the public of the Commonwealth of Virginia being imminent, Complainant has no adequate remedy at law; whereupon Complainant hereby respectfully prays that this Court

- a. Reprimand Defendant for the aforesaid misconduct,
- b. Injoin Defendant from hereafter engaging in said misconduct and
- c. Award Complainant its costs and expenses in this matter.

Respectfully submitted,

THIRD DISTRICT COMMITTEE
VIRGINIA STATE BAR

By /s/ James R. Wrenn, Jr.
Special Counsel

A F F I D A V I T

IN THE CITY OF RICHMOND:

This 25th day of November, 1975

appeared personally before me and made oath that the statements and allegations in the foregoing BILL OF COMPLAINT are true to the best of his knowledge and belief.

/s/ Donna S. Dunn
Notary Public

My Commission Expires 8/7/78.

* * *

IN RE: LAWRENCE DOUGLAS WILDER)
A licensed attorney)
practicing in the) NOTICE AND WRITTEN
City of Richmond Va.) COMPLAINT

TO: Lawrence Douglas Wilder, 3026 P Street, Richmond, Va.

WHEREAS, a complaint of unprofessional conduct on your part has been received by the THIRD District Committee of the Virginia State Bar, and WHEREAS, the said Committee is of the opinion that the said complaint justifies and requires further investigation:

NOW, THEREFORE, you are hereby notified, in pursuance of the provisions of Rule 13 of the Rules for the Integration of the Virginia State Bar, that on the 16th day of September, 1975, at the offices of the Virginia State Bar, 700 East Main Street, Richmond, Virginia, at 2:00, P.M., a hearing will be had on the said complaint which the said Committee has caused to be reduced to writing, and which is as follows:

That in your conduct in the representation of Cortess Wills, Jr., Gladys Wills, May Wills, Charles Wills and Kenneth Wills against Anna Ruth Neal in a certain civil action filed in the United States District Court for the Eastern District of Virginia you may have violated the provisions of the Code of Professional Responsibility (211 Va. 295, et seq.), Disciplinary Rules 6-101 A and 7-101 A,

At the aforesaid time and place you are privileged to appear in person and to be represented by counsel, if desired, and produce by summons or otherwise such testimony as you may care to offer. Subpoenas for such witnesses as you may care to summon will be issued to you upon application.

GIVEN UNDER MY HAND this ____ day of _____, 19__

THIRD District Committee
Virginia State Bar

By _____
Chairman-Sec'y-Member

Complainant's Exhibit No. 1

* * *

D E M U R R E R

SERVED
Dec. 16, 1975

The defendant says that the bill of complaint is not sufficient in law.

As grounds for demurrer, the defendant says that neither the bill nor the exhibit therewith sets forth any act or omission which is alleged to have been in violation of any specified subsection of either of the disciplinary rules to which the exhibit refers. Without being informed of any alleged violation specifically stated, the defendant is unable to answer the bill of complaint.

* * *

* * *

O R D E R

ENTERED
Feb. 12, 1976

This day came the parties, by counsel, and argued the matters of law arising from the respondent's demurrer to the bill of complaint; upon consideration whereof the demurrer is hereby sustained, and the bill adjudged not to be sufficient in law by reason of its failure to allege that the defendant did violate certain provisions of the Code of Professional Responsibility. Leave is granted the complainant to amend its bill within fifteen days from the entry hereof.

* * *
* * *

AMENDED
BILL OF COMPLAINT

FILED
Feb. 13, 1976

Comes now the Third District Committee of the Virginia State Bar, by counsel, and represents unto the Court as follows:

1. Your complainant has been duly appointed by the Virginia State Bar and is organized pursuant Paragraph 13 of Section IV of Part Six of the Rules of the Supreme Court of Virginia.

2. Your defendant is a member of the Virginia State Bar who practices within the Third Congressional District of Virginia.

3. Your complainant became aware of conduct by defendant warranting investigation in March, 1975.

4. Following preliminary investigation of aforesaid conduct complainant determined that further investigation of said matter in the form of a hearing was warranted, whereupon complainant caused to be served upon defendant a Notice of Written Complaint, a copy of which was attached to the original Bill of Complaint filed herein as Exhibit 1.

5. Your complainant conducted its hearing of the matter on September 16, 1975 at State Bar headquarters in Richmond, during which defendant appeared personally and was afforded opportunities to cross examine witnesses, have summons and subpoenae issued in his behalf, and present evidence and arguments in his defense.

6. That from the evidence adduced at the proceeding, the Committee concluded and therefore alleges that the defendant was guilty of unethical and unprofessional conduct in his representation of Cortez Wills, Jr., Gladys Wills, May Wills, Charles Wills and Kenneth Wills in connection with certain claims they had for personal injuries against Anna Ruth Neal asserted by the defendant in the form of a certain civil action filed in the United States District Court for the Eastern District of Virginia.

7. That the defendant's conduct from the date of his employment to represent the aforesaid Cortez Wills, Jr., Gladys Wills, May Wills, Charles Wills and Kenneth Wills on or before September 1, 1966 until the dismissal of the aforesaid civil action on September 20, 1973 constituted

neglect of a legal matter entrusted to him in violation of D.R. 6-101 (A)3, and that failure to carry out a contract of employment entered into with a client for professional services in violation of D.R. 7-101 (A)2 and that such conduct on his part prejudiced or damaged his clients during the course of the professional relationship in violation of D.R. 7-101 (A)3.

8. That your complainant concluded that disciplinary action was warranted in the form of an order by this court reprimanding the defendant for his conduct and enjoining him from further engaging in such conduct.

9. Accordingly, pursuant to Subparagraph (d) of Paragraph 13 heretofore referred to, complainant has directed that this Bill of Complaint for equitable relief be filed herein.

10. That the defendant has a duty to refrain from unethical and unprofessional conduct.

11. That the defendant having engaged in unethical and unprofessional conduct and that unless the defendant is enjoined from such conduct in the future injury to the Virginia State Bar and the public of the Commonwealth of Virginia may occur.

WHEREUPON, your complainant hereby respectfully prays that (a) this Court reprimand the defendant for the aforesaid misconduct; (b) that the defendant be enjoined from hereafter engaging in such misconduct and (c) that the

complainant recover its costs and expenses.

THIRD DISTRICT COMMITTEE
OF THE VIRGINIA STATE BAR

By /s/ Henry H. McVey, III
Henry H. McVey, III
Chairman

A F F I D A V I T

IN THE CITY OF RICHMOND:

This 12th day of February, 1976 appeared personally before me and made oath that the statements and allegations in the foregoing Bill of Complaint are true to the best of his knowledge and belief.

/s/ Marie W. Gilman
Notary Public

My commission expires: Oct. 2, 1978

* * *

* * *

D E M U R R E R

FILED
March 3, 1976

The defendant says that the amended bill of complaint is not sufficient in law. Moreover, inasmuch as it fails to set forth any specific act or omission which is alleged to have been in violation of any given subsection of either of the disciplinary rules therein referred to, the amended bill of complaint seeks to have this defendant deprived of liberty and property without due process of

law, in violation of the Fourteenth Amendment to the Constitution of the United States.

As grounds for demurrer, the defendant says:

1. The bill purports to be brought pursuant to subparagraph (d) of paragraph 13 of Section IV of Part Six of the Rules of the Supreme Court of Virginia. That subparagraph requires the Committee to proceed by bill in equity "praying that the defendant be reprimanded and enjoined from continuing the misconduct complained of". The quoted language presupposes an unequivocal allegation of some misconduct made with such definiteness and specificity that it will leave no room for conjecture as to what conduct the court is asked to enjoin.

2. The bill of complaint suggests that the defendant's conduct from September 1, 1966 until September 20, 1973 constituted neglect of a legal matter entrusted to him and failure to carry out a contract of employment. But the bill does not intimate what was any specific duty of the defendant at any given time within that period or that the defendant failed to discharge such duty.

3. The bill of complaint suggests that some unspecified conduct of the defendant prejudiced or damaged his clients during the course of the professional relationship. Absent some indication of the specific conduct referred to and absent some indication of prejudice or damage to the clients, the defendant simply can not respond

to the suggestion; neither can he prepare a defense thereto.

4. The bill of complaint suggests "[t]hat the defendant has a duty to refrain from unethical and unprofessional conduct" and "[t]hat the defendant . . . engaged in unethical and unprofessional conduct". But nowhere within the four corners of the bill is there any statement of anything done or omitted by the defendant. The defendant can not admit or deny an allegation not made; neither can the court enjoin the repetition or continuance of unknown and unspecified conduct.

* * *

* * *

BILL OF PARTICULARS

FILED
March 17, 1976

Comes now the complainant and for its Bill of Particulars states that the defendant's conduct constituting the violations of the Code of Professional Responsibility fully appear in the transcript of the evidence taken before the Third District Committee at its hearing on September 16, 1975 and the exhibits introduced at that time all of which are attached hereto and made a part hereof.

THIRD DISTRICT COMMITTEE OF THE
VIRGINIA STATE BAR

By /s/ Henry H. McVey, III

* * *

1 An inquiry by the Third District Committee of
2 the Virginia State Bar into complaints against Lawrence
3 Douglas Wilder, a licensed attorney, practicing in the City
4 of Richmond, Virginia, was convened at 2:00 p. m., September
5 16, 1975, in the offices of the Virginia State Bar, Seven
6 Hundred Building, 700 East Main Street, Richmond, Virginia,
7 Chairman Henry H. McVey, III, presiding.

8 [FILED MARCH 17, 1976]

9 PRESENT:

10 Members of the Committee

11 HENRY H. McVEY, III, Chairman

12 ✓ CHARLES W. BEDDOW

13 JOHN P. ACKERLY, III

14 DELMAR L. BROWN

15 ✓ FRANK B. MILLER, III

16
17 Others

18 LAWRENCE DOUGLAS WILDER, Respondent

19 Dwayne M. Savik
20 Shorthand Reporter

21 Mr. Cortess Wills
 Complaining Witness

22 Mrs. Gladys Wills
23 Complaining Witness
24

I N D E X

WITNESSES

THE COMMITTEE:	<u>Direct</u>	<u>Cross</u>	<u>Red.</u>	<u>Rec.</u>
Gladys May Wills	2	10		
Cortess Wills, Jr.	15	16		
Lawrence Douglas Wilder	18	44	50	

EXHIBITS

<u>No.</u>	<u>Description</u>	<u>In Evid.</u>
COMMITTEE:		
1	Copy of the Virginia State Bar Notice and Written Complaint in re Lawrence Douglas Wilder	1
2	Copy of one page letter from Herbert H. Whigham, Jr., M.D. to Wilder dated Aug. 3, 1967	5
3	Copy of one page letter from Wilder to Mrs. Wills dated March 6, 1968	6
4	Copy of Complaint and Marshal's Summons and Return, U.S. District Court, Richmond, Civil Action 5909-R, filed July 31, 1968	7
5	Copy of one page letter, W. Farley Powers to Wilder dated Feb. 13, 1969 [notification of abatement of case]	8
6	St. Paul Insurance Companies Automobile Policy No. 266HGH4316, insuring Cortess Wills for period 2/14/66 to 2/14/67 with attached Change of Vehicle Endorsement dated 10/21/66	13
7	A copy of an Affidavit of Non residency of Anna Ruth Neal dated Mar. 21, 1969	17

	<u>EXHIBITS</u> (Continuing)	<u>In</u> <u>Evid.</u>
2	<u>No.</u> <u>Description</u>	
3	COMMITTEE:	
4	8. Copy of "speed letter" from Wilder to Mrs. Wills dated Aug. 14, 1969	17
5	9 Copy of Summons and Marshal's Return Filed May 25, 1971 in Cortess Wills, Jr., et als v. Anna Ruth Neal, Civil Action No. 339-71-R	23
7	10 Copy of Complaint filed in Civil Action 339-71-R, Cortess Wills, Jr., et als v. Anna Ruth Neal, dated May 20, 1971	24
9	11 Copy of Fidelity & Deposit Co. of Maryland bond for Undertaking For Costs, filed in U.S. District Court, Richmond, May 20, 1971, Civil Action 339-71-R	24
12	12 Copy of U.S. Marshal's service on Patricia Smith for Division of Motor Vehicles Commissioner, dated May 24, 1971	25
14	13 Copy of one page letter from D.M.V. Commissioner Hill by P. B. Smith to W. Farley Powers, Jr. dated May 25, 1971 with attached Affidavit of Compliance	25
16	14 Copy of one page letter from Wilder to Motor Company of America dated Oct. 7, '71	26
18	15 Copy of one page letter from Clarence E. Haggerty, Jr., Gonzer-Haggerty Agency, to St. Paul Fire & Marine dated Oct. 12, '71	26
20	16 Copy of one page letter, Wilder to Mrs. Wills, dated Mar. 23, 1972	28
21	17 Copy of Judge Merhige's Order To Show Cause dated Jan. 5, 1973, Civil Action No. 339-71-R	29
23	18 Copy of one page letter, Wilder to Clerk, Federal District Court, dated Jan. 16, '73	30
24		

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24

EXHIBITS (Continuing

<u>No.</u>	<u>Description</u>	<u>In Evid.</u>
COMMITTEE:		
19	Copy of Motion to Amend Pleadings in Civil Action No. 339-71, Wills v. Neal, dated Jan. 19, 1973	30
20	Copy of Marshal's Summons to Motor Club of America, re Civil Action 339-71-R, dated Jan 26, 1973	31
21	Copy of Motion to Dismiss filed by counsel for Motor Club of America in Civil Action 339-71-R, dated Feb. 16, '73	32
22	Copy of Judge Merhige's Order Soliciting Response to Motion dated Feb. 16, 1973	32
23	Copy of one page letter, Wilder to Farley Powers enclosing Amended Pleadings, dated Mar. 2, 1973	33
24	Copy of Amended Pleadings in Civil Action 339-71-R, dated Mar. 2, 1973	33
25	Copy of one page letter, Wilder to Cortez Wills, dated Sept. 14, 1973 [notice to appear in court]	35
26	Copy of U. S. District Court Civil Docket summary, three pages, Civil Action No. 339-71-R	35
WILDER:		
1	Copy of Motion for Judgment, Cortez Wills, Jr. v. Lawrence Douglas Wilder	44
2	Copy of Motion for Judgment, Charles E. Wills, Jr. v. Lawrence Douglas Wilder	48
3	Copy of Motion for Judgment, Gladys Wills v. Lawrence Douglas Wilder	48

P R O C E E D I N G S

(The hearing was convened at 2:16 p.m.,
September 16, 1975.)

CHAIRMAN McVEY: Doug, for the purposes of the
record we try to keep these fairly informal. I'm going to
ask some preliminary questions, and then I would like to be
able to ask you certain questions about what showed up in
the court file.

MR. WILDER: No problem.

CHAIRMAN McVEY: All right, at the outset, as
a portion of the record, I would like to make as Committee's
Exhibit 1 a copy of the complaint which was served upon Mr.
Wilder by certified mail.

MR. WILDER: I have a copy.

(A copy of the Virginia State Bar Notice and
Written Complaint in re Lawrence Douglas Wilder was
received as Committee Exhibit No. 1.)

CHAIRMAN McVEY: Mr. Savik, would you swear Mr.
and Mrs. Wills and Senator Wilder, please?

(The witnesses and the Respondent were sworn.)

1 CHAIRMAN McVEY: All right, if I could, Mrs.
2 Wills, let me start with you.

3 GLADYS MAY WILLS was sworn, and testified
4 in behalf of the Committee, as follows:

5 DIRECT EXAMINATION

6 BY CHAIRMAN McVEY:

7 Q. May I ask your name and your address, please?

8 A. My name is Mrs. Gladys May Wills, it's
9 38 North 18th Street, East Orange, New Jersey.

10 Q. Are you the wife of Cortess Wills?

11 A. Yes, I am.

12 Q. And May Wills is whom?

13 A. Is my daughter.

14 Q. How old is she?

15 A. She is now 15 years old.

16 Q. Fifteen?

17 A. Yes, she is.

18 Q. Fifteen; and Charles Wills?

19 A. Charles Wills is now 21 years old.

20 Q. And Kenneth Wills?

21 A. He is 17.

22 Q. And so you were involved, I believe, in an acci-
23 dent on August 15, 1966 at Jefferson Davis Highway and Terminal
24 Avenue in Chesterfield County, Virginia?

1 A. Yes, I was.

2 Q. You were what, a passenger in a car operated by
3 your husband?

4 A. Yes, I was.

5 Q. And the children were passengers in the car with
6 you?

7 A. That's right.

8 Q. And the lady who ran into you was Anna Ruth Jean?

9 A. Yes, Anna Ruth O'Neal.

10 Q. Excuse me--

11 MR. WILDER: Not "O'Neal", it's "Neal", N-e-a-l.

12 BY CHAIRMAN McVEY:

13 Q. Excuse me, Mrs. Wills. Were you hospitalized
14 after that accident?

15 A. Yes, I was.

16 Q. Where were you hospitalized?

17 A. Medical College here in Virginia.

18 Q. For approximately how long?

19 A. For about 15 days.

20 Q. During the time you were hospitalized did you have
21 occasion to see an attorney, Lawrence Douglas Wilder?

22 A. Yes, I did.

23 Q. So that would be in the period between August 15
24 and approximately September 1, 1966?

1 A. Yes, it was.

2 Q. How did you come to see him, do you recall?

3 A. My husband brought him in to see me.

4 Q. Why had your husband gone to see him, if you know?

5 A. I don't know, somebody--well, he was introduced,
6 somehow or another, as a lawyer.

7 Q. Had your husband employed Mr. Wilder to represent
8 you and him and your children for personal injuries arising
9 out of the accident?

10 A. As far as I know, yes.

11 Q. When Mr. Wilder came to see you did he discuss
12 with you the effects of the accident?

13 A. As far as I can remember.

14 Q. Well, after you were discharged from the hospital,
15 Mrs. Wills, did you all go back to East Orange, New Jersey?

16 A. Yes, I did.

17 Q. Did you from time to time thereafter confer with
18 Mr. Wilder, either by telephone, by letter or in his office?

19 A. Yes, I did.

20 Q. Do you recall how long after the accident and
21 after you saw Mr. Wilder in the hospital did you see Mr. Wilder
22 again?

23 A. I saw him quite frequently.

24 Q. Would that be here in Richmond?

1 A. As I passed through I would stop in to see him.

2 Q. Did you all have occasion to pass through on a
3 fairly frequent basis?

4 A. Yes, we did.

5 Q. How did you all have occasion to come to Richmond?

6 A. I was going to North Carolina to visit my mother.

7 Q. Was your mother sick or something?

8 A. Sometimes she was sick and sometimes we just went
9 down alone to see her.

10 Q. All right, were you treated for your injuries by
11 Dr. Herbert Whigham, Jr. in East Orange?

12 A. Yes, I was.

13 Q. And did Dr. Whigham, at your request or with
14 your permission, furnish to Mr. Wilder information as to your
15 injuries?

16 A. Yes, he did.

17 CHAIRMAN McVEY: I'd like this letter from Dr.
18 Whigham, dated August 3, 1967, marked as Committee's
19 Exhibit No. 2.

20
21 (A copy of a one page letter from Herbert H.
22 Whigham, Jr., M.D. to Wilder, dated Aug. 3, 1967, was
23 received as Committee Exhibit No. 2.)
24

1 BY CHAIRMAN McVEY:

2 Q. Now I would like this also--I pass this up to
3 you, Mrs. Wills, and ask you if that is a letter you received
4 from Senator Wilder?

5 A. Yes, it is.

6 CHAIRMAN McVEY: All right, I'd like that marked
7 Committee Exhibit 3.

8 (A copy of a one page letter, Wilder to Mrs.
9 Gladys Wills, dated March 6, 1968, was received as
10 Committee Exhibit No. 3.)
11

12 BY CHAIRMAN McVEY:

13 Q. Would you read that to the members of the committee,
14 Mrs. Wills? That's a letter addressed to you, is it not?

15 A. Yes.

16 Q. What does the letter say?

17 A. "Mrs. Gladys Wills
18 "38 North 18th Street
"East Orange, New Jersey

19 "Dear Mrs. Wills:

20 "Thank you for your correspondence of March
21 1, 1968. We are trying to negotiate settlement
22 in your case and your nephew's is going to be sepa-
23 rate from your family's.

24 "I will be in touch with you within the next

Mrs. Wills-direct

[7]

1 "several weeks."

2 "Very truly yours,
3 s/Lawrence Douglas Wilder
4 Lawrence Douglas Wilder"

5 Q. Now Mrs. Wills, which one of these children--was
6 there another child in the car, who was your nephew, at the
7 time?

8 A. Yes, it was.

9 Q. What was his name?

10 A. His name was Benjamin Wills.

11 Q. Do you know, of your own knowledge, whether some
12 type of settlement was negotiated for Benjamin Wills?

13 A. Not that I know of, no, sir.

14 CHAIRMAN McVEY: Now I would like to pass up and
15 have marked as Committee Exhibit 4 a copy of the
16 Complaint filed in the United States District Court for
17 the Eastern District of Virginia, July 31, 1968, along
18 with a Summons and the Marshal's return on the reverse
19 thereof.

20 (A copy of a five page Complaint filed in Federal
21 District Court of the Eastern District of Virginia,
22 Civil Action No. 5909-R, dated July 31, 1968 re Cortess
23 Wills, Jr., et als v. Anna Ruth Neal, with attached copy
24 of Marshall's Return and Summons dated July 31, 1968 was
received as Committee Exhibit No. 4.)

1 BY CHAIRMAN McVEY:

2 Q. Mrs. Wills, did Mr. Wilder advise you that he
3 was filing a suit in your behalf, and on behalf of your
4 husband and children, in the Federal Court?

5 A. Yes, he did.

6 Q. All right, in your conferences with him, if you
7 recall, did you furnish to him a copy of your insurance policy?

8 A. I did later.

9 Q. Approximately when was that?

10 A. I think it was in 1973. I'm not sure, but it was
11 the last visit that we had here with him, I brought him the
12 correct policy.

13 CHAIRMAN McVEY: I'd like to pass up and have
14 marked as Committee Exhibit No. 5 a letter from Farley
15 Powers, Clerk, to Lawrence Douglas Wilder, dated
16 February 13, 1969, indicating "The above-styled action
17 was abated this date pursuant to Local Rule 7."

18 (A copy of a one page letter, W. Farley Powers, Jr.
19 to Wilder, dated Feb. 13, 1969, was received as
20 Committee Exhibit No. 5.)
21

22 BY CHAIRMAN McVEY:

23 Q. Mrs. Wills, did you, from time to time, talk with
24 Mr. Wilder about the progress of your case?

1 A. Yes, I did.

2 Q. What did he advise you as to how it was coming?

3 A. Well, every time I talked to him he said
4 everything was going good.

5 Q. Did he ever advise you that the action had been
6 dismissed or abated in the Federal Court?

7 A. No, sir, not to my knowledge.

8 Q. How many times did you meet with Mr. Wilder, if
9 you know, approximately?

10 A. Well, over the past eight years I don't know. I
11 have been to his office, I'd say, seven or eight times, maybe
12 more, maybe less.

13 Q. Would they be fairly evenly spaced over the last
14 eight years, Mrs. Wills? I mean, have you been here once a
15 year, or was it early on that you went more times to his
16 office?

17 A. Well, I would say it had been spaced until here
18 recently, since '73 I didn't hear anything from him. He
19 didn't say, I'm not on the case any more. I didn't hear
20 any more, that's all.

21 Q. Did you try to contact him about the status of
22 the case?

23 A. I tried to call him but no more, I couldn't get
24 him.

1 Q. What do you mean you couldn't get him?

2 A. He wouldn't answer the phone or nobody would
3 give him the message any more; I didn't get any return calls.

4 Q. Did you write him a letter, or just call him?

5 A. I just called him on the phone.

6 CHAIRMAN McVEY: Answer Mr. Wilder's questions,
7 if he has any.

8 CROSS-EXAMINATION

9 BY MR. WILDER:

10 Q. Mrs. Wills, you were to see me at least three
11 or four times a year, isn't that right?

12 A. Very possible; maybe more, maybe less.

13 Q. For instance, whenever you would come to Richmond--

14 A. When I passed through I would stop.

15 Q. And you knew where my office was, you would
16 come whether you had an appointment or not; we would see
17 you, is that right?

18 A. Yes, that's right.

19 Q. You also would come to my home if I wasn't at
20 the office?

21 A. Yes, if I wanted to contact you.

22 Q. I never told you not to come if you didn't have
23 an appointment?

24 A. No.

1 Q. I always told you you were welcome to stop at
2 my home too, didn't I?

3 A. Yes.

4 Q. When you said you furnished me with the insurance
5 policy, do you recall me telling you that as far as I was
6 concerned I could not determine that there was any insurance
7 at all for Anna Ruth Neal? Do you recall me telling you that,
8 that she had no insurance?

9 A. Say that again.

10 Q. Do you recall me telling you Anna Ruth Neal had
11 no insurance at all as far as I could determine?

12 A. Yes. Well, that was in the later years.

13 Q. Do you recall me telling you when I filed suit
14 that I had no response from anybody, no one filed any answer
15 on her behalf? Do you recall me telling you that?

16 A. Yes.

17 Q. Do you recall me telling you that I could get a
18 judgment against Anna Ruth Neal but that wouldn't be any money
19 in terms of an insurance company? Do you recall me telling
20 you that?

21 A. That's right.

22 Q. Do you recall me telling you that I needed to
23 know if your husband had a policy of insurance on his car?

24 A. Yes.

1 Q. Do you recall me asking you to send that to me?

2 A. Surely; he brought it to you.

3 Q. All right, now the only policy you have ever
4 furnished me is the policy--I have a policy I have submitted
5 to the Committee--from the Motor Club of America, 540 Main
6 Street, Orange, New Jersey?

7 A. You have something there, Marine--

8 Q. Well, St. Paul--

9 You told me one time it was Motor Club of
10 America, 540 Main Street, Orange, New Jersey?

11 A. That's right. That's who I bought my insurance--
12 that's who I paid my money to.

13 Q. And then the policy you furnished--

14 A. That's why I thought that they would know who I
15 was placed with, because I didn't know.

16 Q. And the policy that you furnished me was from
17 St. Paul Fire & Marine Insurance Company, is that correct?

18 A. That's right.

19 Q. Is this the only policy that you have ever
20 furnished me?

21 A. Yes, it is, as far as I know.

22 CHAIRMAN McVEY: Would you mark that Committee
23 Exhibit No. 6?
24

1 (The St. Paul Insurance Companies Automobile
2 Insurance Policy No. 266HG4316, insuring Cartess Wills
3 for period 2/14/66 to 2/14/67 with attached Change of
4 Vehicle Endorsement dated 10/21/66 was received as
5 Committee Exhibit No. 6.)

6 BY MR. WILDER:

7 Q. Mrs. Wills, do you recall when we were in court
8 the last time? Do you recall when that was?

9 A. That's when I brought you the policy.

10 Q. Do you recall what year that was?

11 A. No, I don't recall. I think it was '73. I
12 don't know whether it was '72 or '73.

13 Q. Do you recall me telling you that the company that
14 I had sued I could not get any money from and the case was going
15 to be dismissed?

16 A. Yes, but you said you were going to sue this company.

17 Q. Certainly. Then did I not tell you that I was
18 going to file an amended complaint with the court to sue this
19 company?

20 A. That's what you said.

21 Q. Did I tell you that I had ever been able to talk
22 with any company? You will have to speak because he has to
23 record it.
24

1 A. Let's see---

2 Q. Do you recall me ever telling you that I had
3 talked with any company with regard to any money?

4 A. Not that I know of.

5 Q. The times that you would come down here on at
6 least two occasions your car broke down, is that right?

7 A. That's right.

8 Q. Did I not assist you and gave you money so that
9 you could get back to New Jersey?

10 A. Surely.

11 Q. And did I ever refuse to talk to you?

12 A. Once or twice I called and I could never get you
13 on the phone, and you never returned my calls. You didn't
14 have the courtesy to return my calls after I spent a lot of
15 money on the telephone calling you.

16 Q. Did I tell you, or did I not inform you rather, that
17 in January of 1970 I was elected to the Senate and that I was
18 asking a Mr. Harrison Bruce to assist me in this case?

19 A. Yes.

20 Q. Did I tell you that perhaps--

21 A. I received a couple of letters from him.

22 Q. Did I tell you that one of the reasons that you
23 perhaps were not getting through to me was that during the
24 months of January through March we were in session? Did I not

1 explain that to you?

2 A. I don't remember that.

3 Q. Do you recall any specific question that you
4 asked me that I refused to give you an answer to?

5 A. You always had an answer for me, --

6 Q. I have nothing further.

7 A. --whether it was good or bad.

8 MR. WILDER: I don't have anything further.

9 CHAIRMAN McVEY: I don't have anything else for
10 Mrs. Wills at the present time.

11 (Witness stood aside.)
12

13 CORTESS WILLS, JR. was sworn, and testified in
14 behalf of the Committee, as follows:

15 DIRECT EXAMINATION

16 BY CHAIRMAN McVEY:

17 Q. Mr. Wills, would you state your name, please, sir?

18 A. Yes, Cortess Wills, I am the husband of Mrs.
19 Wills.

20 Q. Mr. Wills, the policy of insurance which has been
21 forwarded up and marked as an exhibit, Committee Exhibit 6,
22 that's a policy of insurance, I believe, issued to you, is it
23 not?

24 A. That's right.

1 Q. And that was the policy of insurance in effect,
2 according to the dates, at the time this accident occurred,
3 is that correct?

4 A. Yes.

5 Q. You heard your wife testify about coming by Mr.
6 Wilder's office, and you have also heard her answer Mr.
7 Wilder's questions about the things that he advised her,
8 do you recall anything that is contrary or additional to
9 what she has testified?

10 A. No. Excuse me but what she told, everything she
11 said, was true, because I was with her. Every time we went
12 by there he would give us the "everything is going to be
13 all right," like tomorrow is going to be it, and tomorrow
14 never come.

15 CHAIRMAN McVEY: I don't have any other questions
16 for Mr. Wills.

17 CROSS-EXAMINATION

18 BY MR. WILDER:

19 Q. Mr. Wills, has there ever, at any time, with
20 your wife or with yourself, been any disagreement between us?

21 A. There has never been no disagreement as I know of,
22 no, no disagreement, because when he come in that was just it.
23 He- you had all the answers and the questions. He said, "Leave
24 it to me and I will take care of it." So we left it to him and

1 this is where we stand, we didn't get nothing yet.

2 Q. Is that the only policy of insurance that you
3 had on the car?

4 A. As I know of, that's the only one.

5 MR. WILDER: I have nothing further, Mr. Chairman.

6 CHAIRMAN McVEY: I'd like to pass up and have
7 marked as the next Committee exhibit an affidavit of
8 none residency of Anna Ruth Neal, filed in the United
9 States District Court March 24, 1969.

10 (A copy of an Affidavit of non residency of
11 Anna Ruth Neal filed in U.S. District Court for the
12 Eastern District of Virginia, Richmond Division re
13 Cortess Wills, Jr., et als v. Anna Ruth Neal, was
14 received as Committee Exhibit No. 7.)

15
16 CHAIRMAN McVEY: Now, Mr. Wilder, I'd like to
17 ask you some questions, if I may.

18 MR. WILDER: Yes, sir, no problem.

19 CHAIRMAN McVEY: I'd like to pass up and have
20 marked as the next exhibit a memorandum or speed letter.

21 (A copy of a speed letter from Wilder to Mrs.
22 Cortess Wills dated Aug. 14, 1969 was received as
23 Committee Exhibit No. 8.)

1 LAWRENCE DOUGLAS WILDER, respondent, was sworn,
2 and examined in behalf of Committee, as follows:

3 DIRECT EXAMINATION

4 BY CHAIRMAN McVEY:

5 Q. I ask you, Mr. Wilder, whether this memorandum
6 or speed letter is a communication that you sent to Mrs. Wills?

7 A. That's correct.

8 Q. Now, Mr. Wilder, if I could, I would like to ask
9 you, in that memorandum, would you read that into the record,
10 please?

11 A. "Your case is progressing as well as can
12 be expected at the moment.

13 "I shall keep you apprised of any new
14 developments.

15 "Thanking you for your cooperation."

16 Q. And that is dated when, sir?

17 A. August 14, 1969.

18 Q. Now, Mr. Wilder, at that point in time, according
19 to the letter from the Clerk, the action had been abated, is
20 that correct?

21 A. That's correct, sir.

22 Q. Under Rule 7.

23 A. 7, yes.

24 Q. What did you mean by the terms of that letter

1 that her case was progressing as well as could be expected?

2 A. Well, I had not come by any insurance, the action
3 was abated; there had been no answer filed on behalf of the
4 defendant, I had taken no action to obtain any judgment against
5 the defendant. What I meant was that I was going to seek to
6 find additional insurance, or find insurance. I had always
7 intended to amend the complaint, I had called the Clerk's office
8 and had had sufficiently explained to me what the abatement
9 meant. Mrs. Wills was calling from New Jersey, and on many
10 occasions it would be a long-distance call.

11 I tried to explain to her on one occasion what
12 I meant, what was meant by "uninsured motorist." I don't
13 believe she understood what I meant. This is not meant to
14 underestimate her intelligence at all, but what I was referring
15 to in the letter was that I was going to still keep the case
16 in court, and I attempted to keep it in court. There was
17 nobody for me to negotiate with in terms of settlement, and the
18 only thing I saw fit to do next was to continue with the matter
19 in court.

20 Q. Mr. Wilder, up to that time had you requested she
21 or her husband furnish you with a copy of the policy?

22 A. Yes, sir, I had asked that information when I first
23 took the case. When I first took the case--I think Mr. Wills
24 would bear this out--that he had a friend here who was a barber

1 at the time, and who is since deceased, who referred Mr.
2 Wills to me.

3 MRS. WILLS: He wasn't no barber, he worked at
4 the courthouse.

5 CHAIRMAN McVEY: That's all right.

6 A. Well, he worked at the jail as a cook, but he
7 really was a barber, had a barber shop on 25th Street. This
8 is the simple negligence folio that I have, and Mr. Wills
9 had informed me that his insurance carrier was Motor Club
10 of America, 540 Main Street, Orange, New Jersey.

11 I had told him that if that was the correct
12 company--in fact I notified them, I don't know whether you have
13 the correspondence there or not--the Motor Club of America,
14 540 Main Street wasn't the proper insurance company, the
15 proper insurance company was St. Paul.

16 Q. Well, Mr. Wilder, you say you were notified--
17 that was the notice you got at the first meeting, did you,
18 when you filed--

19 A. What do you mean "the first meeting"?

20 Q. With the Willses, is that correct?

21 A. No, sir.

22 Q. When were you furnished that information?

23 A. Well, after I had filed the action in court, and
24 after the matter had been abated, I was furnished this informa-

1 tion, because I was attempting to name the insurance company
2 as a party defendant.

3 Q. Well, at that time, though, Mr. Wilder, you
4 knew that Anna Ruth Neal had not been served by the Marshal?

5 A. That's correct.

6 Q. And that until she was served there was no chance
7 of any insurance being effective insofar as she was concerned?

8 A. That's correct, sir.

9 Q. Well, did you do anything subsequent to the
10 filing of the suit and the Marshal's return, which I believe
11 is dated September 20, 1968, and the time it was abated in
12 February of 1969?

13 A. Yes, sir, I made determination as to whether Anna
14 Ruth Neal lived in Virginia by employing the services of a
15 private investigator, J. E. Huband. I made determination
16 with the Division of Motor Vehicles as to what her last
17 known address was, as far as they were concerned. I made a
18 determination with the Division of Motor Vehicles if she in fact
19 did have any insurance, and all of it was negative.

20 Q. But you did not file an affidavit to that effect,
21 as to her non residency, until subsequent to the abatement, is
22 that correct?

23 A. That's correct, sir.

24 Q. Now did you successfully negotiate a settlement

1 for Benjamin Wills?

2 A. No, sir. Benjamin Wills--I had informed Mr.
3 and Mrs. Cortess Wills, since Benjamin Wills was their nephew
4 and he did not live in their household, I understood--

5 MRS. WILLS: He did live in our household.

6 A. I was under the impression he had a mother and
7 father living in New Jersey. I asked that they contact me, and
8 I told them I was going to keep his case separately from
9 theirs because I had been retained by them, they had signed a
10 retainer agreement for me to represent Cortess, Gladys, May,
11 Charles and Kenneth.

12 Q. In other words, your original letter indicating
13 you were going to negotiate a settlement separately was an
14 indication you hoped to negotiate a settlement?

15 A. Yes. sir. In other words, when I filed the
16 action I never even included Benjamin Wills in it, I didn't
17 feel that I had been retained.

18 Q. Now, Mr. Wilder, between your letter of August 14,
19 1969, or the speed memo to Mrs. Wills, and May 20, 1971, no
20 action was taken, insofar as the records of the Federal Court
21 are concerned, to revive in any way the original action, is
22 that correct?

23 A. The judge called me on several occasions, Judge
24 Merhige, and said he wanted to get this matter off of his

1 docket and he said it was dragging. I would say to him that
2 I did not want judgment against Anna Ruth Neal. I had been in-
3 formed--I didn't go this far with the judge, but I did know
4 she was a non resident; I felt I could have gotten a judgment
5 against her but it would be getting an in rem judgment
6 when I was really trying to get judgment over her personally.

7 Q. But in May of 1971 you filed an entirely new
8 action, under the same style but carrying a new Civil Action
9 number, posting a bond for costs separate and apart from
10 the original action which was filed, isn't that correct?

11 A. Well, I filed an amended complaint, as I recall
12 it, and I apologize for the chronology. There are three
13 different things--

14 Q. Let me pass up to you what purports to be the
15 Marshal's return, the Marshal's summons, and ask that that be
16 marked if you recognize it.

17 A. That's correct, this is it.

18 (A copy of a one page Summons in a Civil Action
19 and Marshal's Return filed May 25, 1971 re Cortess
20 Wills, Jr., et als v. Anna Ruth Neal, served through
21 Division of Motor Vehicles, was received as Committee
22 Exhibit No. 9.)
23

24 CHAIRMAN McVEY: And also a Complaint filed May

1 20, 1971 in the United States District Court or the
2 Federal District Court, Eastern District of Virginia,
3 new case, amended complaint, showing Civil Action No. 339-71-
4 R. I ask that be marked Exhibit 10.

5 (A copy of a Complaint filed in the Federal
6 District Court, Eastern District of Virginia, re
7 Cortess Wills, Jr., et als v. Anna Ruth Neal, filed
8 at Richmond on May 20, 1971 was received as Committee
9 Exhibit No. 10.)
10

11 CHAIRMAN McVEY: A bond for the Undertaking For
12 Costs, same style, same civil action number, dated May
13 20, 1971, I ask that be marked Committee Exhibit 11.

14 (A copy of a Fidelity & Deposit Company of
15 Maryland bond for Undertaking For Costs filed in
16 Cortess Wills, Jr., et al v. Anna Ruth Neal, Civil
17 Action 339-71-R, filed May 20, 1971, was received as
18 Committee Exhibit 11.)
19

20 CHAIRMAN McVEY: The only hesitancy I have is,
21 if what you are saying is correct, I think 339-71-R is this
22 one; I don't have the number of the original complaint--

23 MR. MILLER: The original was 5909-R.

24 CHAIRMAN McVEY: It reflects it has been an amended
complaint and in fact the style is the same, is it not?

1 A. Yes, sir. That's the '71 you are referring to?

2 Q. That's correct.

3 A. Yes.

4 CHAIRMAN McVEY: I'd like to pass up and have
5 marked for identification Committee Exhibit 12,
6 the Marshal's return showing service upon Secretary
7 Patricia Smith, who was evidently an agent of the
8 Division of Motor Vehicles.

9 (A copy of U. S. Marshall's Service on Patricia
10 Smith for Division of Motor Vehicles Commissioner,
11 Richmond, Va. dated 5/24/71 was received as Committee
12 Exhibit No. 12.)

13
14 CHAIRMAN McVEY: Now I'd like to pass up and
15 have marked as the next Committee Exhibit, as one
16 exhibit, a letter from the Division of Motor Vehicles
17 to the Clerk along with an Affidavit of Compliance and
18 a copy of a Notice sent to Anna Ruth Neal.

19 MR. WRENN: This is No. 13.

20 MR. MILLER: No. 13.

21 (A copy of a letter from DMV Commissioner Hill by
22 P. B. Smith to W. Farley Powers, Jr., Clerk, dated
23 May 25, 1971 with enclosed Affidavit of Compliance
24 filed May 26, 1971 and notice to defendant filed

1 May 26, 1971, were received as Committee Exhibit 13.)

2 BY CHAIRMAN McVEY:

3 Q. I'd like to show you, Mr. Wilder, a letter dated
4 October 7, 1971, addressed to Motor Company of America, and
5 ask you if that is a letter you wrote to that company?
6

7 A. Yes.

8 CHAIRMAN McVEY: All right, I'd like that
9 marked as the next Committee exhibit.

10 (A copy of a one page letter to Motor Company
11 of America from Wilder, dated Oct. 7, 1971, was received
12 as Committee Exhibit 14.)

13 CHAIRMAN McVEY: I'd like to pass up and have
14 marked as Committee Exhibit No. 15 a copy of a letter
15 from the Gonzer-Haggerty Agency, 540 Main Street,
16 Orange, New Jersey to St. Paul Fire & Marine Insurance
17 Company, a copy of which went to Lawrence Douglas Wilder.
18

19 (A copy of a letter from Clarence E. Haggerty, Jr.,
20 Gonzer-Haggerty Agency, to St. Paul Fire & Marine Insurance
21 Co. dated Oct. 12, 1971, re Cartess Wills, was received
22 as Committee Exhibit 15.)

23 BY CHAIRMAN McVEY:

24 Q. I would ask you, Mr. Wilder, if that exhibit did

1 not come from your file?

2 A. That's correct.

3 Q. So, Mr. Wilder, upon receipt of the copy of that
4 letter, which I assume you received within several days after
5 it was mailed by that agency, you were aware of the fact that
6 the insurance for the Willses was through St. Paul Fire and
7 Marine, is that correct?

8 A. Yes, sir--well, I thought so at this time, at
9 the time I got this letter, that's correct.

10 Q. Did you contact St. Paul Fire & Marine to determine
11 whether in fact they were so insured?

12 A. Yes, sir, I wrote them a letter, I think we just
13 gave that--

14 Q. The letter I just passed up to you indicated that
15 was to the Motor Club of America at the same address as
16 the Gonzer-Haggerty Agency, and what I'm asking you is,
17 subsequent to the receipt of a copy of the October 12, 1971
18 letter indicating that the Willses were insured through
19 St. Paul Fire and Marine did you take any action, insofar as
20 that company is concerned, to determine whether or not they did
21 have such coverage available?

22 A. Well, I'm certainly not trying to pass the buck,
23 but in April of 1970, I think it was sometime in April,
24 I turned the entire file over to Mr. Bruce; whenever anything

1 like this came in I would send it to him. When this did
2 come in I usually sent him the original or a copy, anything
3 that was communicated to me from April, 1970 up until 1973 I
4 think. I think the file was returned to me sometime in '73.

5 Q. Well now, Mr. Wilder, I'm going to hand up and
6 ask that this be marked as the next Committee exhibit, which
7 I think is 16, a letter of March 23, 1973, apparently from
8 you to Mrs. Wills, indicating that you had been in contact
9 with two insurance companies and hadn't received any reply.

10 A. "I have received no response from either insurance
11 company other than a letter copy of which I am enclosing."
12 I think I sent her a copy of this.

13 Q. The letter from the Gonzer-Haggerty Agency?

14 A. Yes. This spelling is wrong. In this copy I
15 said, "I discussed the matter with the Judge and for fear of
16 receiving an empathy judgment," I don't know what that is; I
17 didn't put that in. "I am going to amend certain language to
18 be certain that the judgment will be one that can be satisfied."

19 Yes, I did send her this letter.

20 Q. That is dated March 23, 1972?

21 A. Yes.

22 (A copy of a one page letter to Mrs. Cortess Wills
23 from Wilder, dated Mar. 23, 1972, was received as
24 Committee Exhibit No. 16.)

BY CHAIRMAN McVEY:

1 Q. What action did you take, Mr. Wilder, or did you
2 take any action, prior to January of 1973 to amend the
3 complaint?

4 A. Whenever the record reflects I amended the
5 complaint is when I amended it. I didn't do anything until
6 that time. I had several discussions with Mr. Bruce about
7 whether we could successfully amend it or what we could
8 do in that regard, but the record would accurately reflect
9 when I did amend it.

10 Q. Well, the fact is--and I ask that this be passed
11 up and marked the next Committee Exhibit--that another order
12 of the Court was issued indicating that the complaint had
13 not been answered and that the plaintiffs' be required to show
14 cause why the action should not be dismissed from the docket.

15 I ask that be marked as the next Committee
16 Exhibit, which, I think, is 17. This is dated January
17 5, 1973.

18
19 (A copy of a one page ORDER to show cause of
20 Robert R. Merhige, United States District Judge in
21 Cortess Wills, Jr., et a. V. Anna Ruth Neal, Civil
22 Action No. 339-71-R, dated Jan. 5, 1973, was received
23 as Committee Exhibit No. 17.)

24 Q. Now I hand you, Mr. Wilder, a letter on your

1 letterhead, dated January 16, 1973, and apparently received
2 in the U. S. District Court on January 19, 1973, enclosing
3 certain papers, and would that be your order to amend
4 your motion or your motion to amend?

5 A. I would think so.

6 CHAIRMAN McVEY: I ask that be marked as the
7 next Committee Exhibit.

8 (A copy of a one page letter from Wilder to
9 Clerk, Federal District Court, dated Jan. 16, 1973, was
10 received as Committee Exhibit No. 18.)

11
12 BY CHAIRMAN McVEY:

13 Q. Now I hand you, and ask that it be marked the
14 next Committee Exhibit, a Motion to Amend Pleadings.

15 A. I have a copy.

16 Q. Stating that it's filed January 19, 1973 and
17 at the bottom is written, apparently, "So ordered, Robert R.
18 Merhige, Judge, 1-26-73". I ask you to take a look at that,
19 Mr. Wilder.

20 A. Yes, sir, that's correct.

21 (A copy of a Motion to Amend Pleadings in
22 Cortess Wills, Jr. v. Anna Ruth Neal, et al, Civil Action
23 No. 339-71, was received as Committee Exhibit 19, dated
24 Jan. 19, 1973.)

1 BY CHAIRMAN McVEY:

2 Q. All right, Mr. Wilder, when you did make
3 that amendment you named the Motor Club of America to be
4 served pursuant to the uninsured motorist coverage, is that
5 correct?

6 A. That's correct.

7 Q. You did not ask that a copy of the process
8 be served upon the St. Paul Fire & Marine Company, did you?

9 A. I don't know that I did.

10 Q. All right, I would like to pass up the next three
11 papers, and we will mark them as one exhibit, showing the
12 summons and complaint reflecting that the Marshal's summons was
13 directed to the Motor Club of America.

14 A. In fact I'm almost positive I didn't.

15 CHAIRMAN McVEY: I ask that be marked as the
16 next Committee Exhibit.

17 (A copy of a Summons to Motor Club of America, re
18 Civil Action 339-71-R, dated Jan. 26, 1973, was received
19 as Committee Exhibit No. 20.)

20 A. I had it served on Harvey White.

21 MR. MILLER: Where are the rest of the three?
22 Is this Exhibit 20 by itself?

23 CHAIRMAN McVEY: Yes, I'm sorry. I ask to be marked
24

1 as the next exhibit a Motion to Dismiss filed by
2 Motor Club of America, filed in the U. S. District
3 Court on February 16, 1973.

4 (A copy of a Motion to Dismiss filed Feb. 16,
5 1973 in U. S. District Court, Eastern District of
6 Virginia, Civil Action No. 339-71-R, filed by Donald
7 M. Schubert, Esq. counsel for defendant, was received
8 as Committee Exhibit No. 21.)

9 CHAIRMAN McVEY: And then, as the next exhibit,
10 an Order Soliciting Response to Motion entered on the
11 same date.

12 (A copy of an Order Soliciting Response to
13 Motion, filed in Civil Action No. 339-71-R by Robert
14 R. Merhige, Judge, filed Feb. 16, 1973, was received
15 as Committee Exhibit No. 22.)
16

17 BY CHAIRMAN McVEY:

18 Q. I show you, Mr. Wilder, a letter dated March 2,
19 1973, from you to the Clerk, indicating that you are asking
20 additional Amended Pleadings to be filed. I'm asking you if
21 you can identify that letter.

22 A. Yes, sir.

23 CHAIRMAN McVEY: All right, I'd like that marked
24 as the next Committee Exhibit.

1 (A copy of a one page letter to Clerk, Federal
2 District Court from Wilder, enclosing Amended Pleadings,
3 dated Mar. 2, 1973, was received as Committee Exhibit 23.)

4 BY CHAIRMAN McVEY:

5 Q. I'm passing up to you, Mr. Wilder, what purports
6 to be Amended Pleadings filed March 2, 1973, and ask you
7 whether those are the pleadings which were filed pursuant to
8 that letter?

9 A. The pleadings were filed. I know I filed them,
10 I don't know whether it's pursuant to that letter or not; I
11 filed those pleadings.

12 Q. Those pleadings are dated the same date as your
13 letter, is that correct?

14 A. Yes.

15
16 (A copy of an Amended Pleadings in Civil Action
17 No. 339-71, filed March 2, 1973 was received as
18 Committee Exhibit No. 24.)

19 BY CHAIRMAN McVEY:

20 Q. Mr. Wilder, did you have any discussion with
21 Mr. Schubert?

22 A. Don Schubert, yes.

23 Q. And did he in fact indicate to you Motor Club
24 of America was simply an agency through whom insurance was

1 written?

2 A. He did.

3 Q. And subsequent to those meetings with Mr. Schubert
4 did you make any effort thereafter to serve the St. Paul Fire
5 and Marine Company?

6 A. I don't think I served them. I don't think I
7 made any effort to serve them. I don't think so, unless you
8 have--I don't think so. I think what happened, in my
9 conversation with Don Schubert he informed me that they were
10 the agent, that St. Paul did not have uninsured motorist
11 c overage. Well, to be brutally frank, at that point, what
12 Schubert told me was there was no insurance that I could go
13 against, whether it would be St. Paul or Motor Club of
14 America; there wasn't any uninsured motorist coverage.

15 Q. Well, the case was ultimately tried before
16 Judge Bryan, was it not, on September 20, 1973, in open
17 court?

18 A. No, sir, I don't recall that. I recall the
19 matter--it may have been Judge Bryan. Wait a minute. As I
20 recall, we went to Court, the only thing--most of it was before
21 Judge Merhige; it may have been Judge Bryan.

22 Q. I'm going to pass this up to you and ask if that's
23 not a letter directing Mr. Wills to appear on September 20.

24 A. That's correct.

1 MR. MILLER: That will be 25.

2 (A copy of a one page letter, Wilder to
3 Cortez Wills, dated Sept. 14, 1973, was received as
4 Committee Exhibit 25.)
5

6 BY CHAIRMAN McVEY:

7 Q. I'm also passing up a docket summary from the
8 records of the United States District Court reflecting an
9 entry, "IN OPEN COURT: Bryan, Judge, Webb, Reporter,
10 Appearances: Counsel of Record. Motion by plaintiffs to
11 dismiss Defendant Motor Club of America, Granted. Motion by
12 Plaintiff to amend complaint to add proper defendant, denied.
13 Plaintiff's motion for voluntary dismissal, granted.
14 Action dismissed without prejudice."

15 I ask you if that is not what occurred?

16 A. That's what took place, it could very well have
17 been Judge Bryan.

18 CHAIRMAN McVEY: I ask that be marked as the final
19 Committee Exhibit.

20 (A copy of Civil Action 339-71-R, U. S. District
21 Court Civil Docket summary - 3 pp was received as
22 Committee Exhibit No. 26.)
23

24 BY CHAIRMAN McVEY:

Q. Mr. Wilder, then the records do not reflect that

1 you made any effort to serve the--

2 A. St. Paul--

3 Q. St. Paul--

4 A. That's correct, sir.

5 Q. And you did not, on September 20th or at any
6 time subsequent thereto, take a judgment against Anna Ruth
7 Neal, is that correct?

8 A. That's correct.

9 Q. But the fact is that service, insofar as substitute
10 of service is allowed in Virginia, upon Anna Ruth Neal was
11 in fact valid, was it not?

12 A. As to the Division of Motor Vehicles?

13 Q. Yes.

14 A. Yes, sir, I could have gotten judgment against
15 Anna Ruth Neal with substituted service.

16 Q. You made the decision to dismiss this voluntarily
17 on September 20th, rather than take judgment against Mrs.
18 Neal, is that correct?

19 A. That's correct.

20 Q. And the fact is when you took that action you
21 knew, did you not, insofar as Mr. Wills' claim and Mrs. Wills'
22 claim is concerned, the statute of limitations had run, did
23 you not?

24 A. That's correct.

1 CHAIRMAN McVEY: I don't think I have any
2 further questions. That's all that I expect to present
3 on behalf of the Committee. Other members of the
4 Committee may have questions. We will start with
5 Frank Miller.

6 MR. MILLER: I don't have any right now.

7 BY MR. BROWN:

8 Q. When the case was dismissed, do I understand you to
9 say that you were relying on Don Schubert's statement that
10 you didn't have any insurance coverage to go against?

11 A. Well, the policy, as I read it, which was
12 introduced, didn't contain any uninsured motorist provisions.
13 Don Schubert--I asked him and he said perhaps I have the wrong
14 policy. I went over it with him, and I relied on that to the
15 extent that there would have been no money from St. Paul or
16 from Motorist Club of America.

17 BY MR. BEDDOW:

18 Q. You went through the ages of these other
19 plaintiffs, did any of those plaintiffs own an automobile?

20 A. No, sir, they were all--

21 Q. No other possible policies in this household?

22 A. None were furnished to me. I asked about that,
23 and the only policy of insurance that was in the household was
24 this policy.

1 Q. Only one car in the household then?

2 A. As far as I knew.

3 Q. Were you able to determine whether the state of
4 the law in New Jersey provided for uninsured motorist coverage?

5 A. Mr. Wills informed me that it did.

6 Q. That it did?

7 A. Yes.

8 Q. Were you able to verify that?

9 A. I understand it's not mandatory, from what I can
10 gather, and the issuance or the copy of his policy contained
11 no provisions in it.

12 BY CHAIRMAN McVEY:

13 Q. Does the New Jersey law contain an omnibus clause
14 such as is required in Virginia as to uninsured motorist
15 coverage?

16 A. You mean in terms of whether someone anywhere in
17 the household has insurance?

18 Q. No, as I understand the Virginia law, even
19 though it's not written in the policy the law requires it to
20 be part of the policy, and even though it's not there there
21 is uninsured motorist coverage, even though you don't look
22 in here and find it.

23 A. Well, as I understand the omnibus law, but I
24 understand that is not available in New Jersey. That was my
interpretation.

1 Q. Did you do any work to find out whether it was
2 or not?

3 A. I relied on Mr. Wills. I asked him. The
4 first thing he asked me, as I recall, is what does my company
5 have to do with it. I told him as far as I was concerned the
6 only insurance they have would be his company. Mr. Wills
7 indicated he did not want to sue his company. And I told him
8 it wasn't a question of suing his company, it was a question
9 of his company covering whatever judgment we would be able to
10 get down here. And when he furnished me that policy and that
11 policy didn't contain it, I relied on that policy only, in terms
12 of checking the New Jersey statutes as to whether there was
13 an omnibus clause.

14 Q. Were you able to determine, other than Don
15 Schubert--

16 A. Don Schubert, a local attorney here.

17 Q. Did he indicate that St. Paul did not provide
18 uninsured motorist coverage, and that there was no such
19 coverage in New Jersey?

20 A. This was my understanding with him and, again, I
21 don't want to misquote him, but in talking with him, as I got
22 it, he said the proper party to have been sued would have been
23 St. Paul, but even had you sued them I don't believe there
24 would have been any coverage; based on his representations

it could very well have been he being the attorney for St. Paul

1 could have said that, but I relied on his statement that
2 there was no coverage in the event St. Paul had been served,
3 one being the agent for the other.

4 Q. So right now you still really don't know whether
5 there is uninsured motorist coverage in New Jersey as of 1966?

6 A. No, sir, that's correct.

7 Q. You indicated a few moments ago that you had
8 concluded that the statute had run?

9 A. As to the adults.

10 BY MR. BEDDOW:

11 Q. Now you searched for Anna Neal about 1968, didn't
12 you?

13 A. Well, from the date of the accident until after
14 I filed.

15 Q. When did you conclude or really find out that
16 she had removed herself from the State of Virginia?

17 A. I made an affidavit --I think I made more than one
18 affidavit.

19 Q. That was in 1968?

20 A. Yes. Well, I found out--it would have been
21 thereabouts, within a month or so after, when I made the
22 affidavit.

23 Q. Okay, then you filed an Amended Complaint naming
24 the Motor Club of America?

1 A. Yes.

2 Q. And that action was dismissed?

3 A. Yes, sir.

4 MR. BEDDOW: Thank you, sir.

5 CHAIRMAN McVEY: Mr. Lambert, do you have any
6 questions?

7 MR. LAMBERT: No questions. I don't want my
8 appearance noted on this case.

9 CHAIRMAN McVEY: Mr. Ackerly?

10 MR. ACKERLY: No questions.

11 MR. MILLER: Could I ask him one question?

12 CHAIRMAN McVEY: Go ahead.

13 BY MR. MILLER:

14 Q. Mr. Wilder, this thing was filed in '68; is there
15 any reason for delaying from '66 yo '68 to file the suit?

16 A. Well, yes, because I was looking for Anna Ruth
17 Neal.

18 Q. When did you first employ J. E. Huband to find
19 Anna Ruth Neal?

20 A. What is the date of this accident, August of '66;
21 it was after I filed. In other words, I had gone to the
22 Division of Motor Vehicles. And the tragedy is it was an
23 absolute case of liability, there is no question about it,
24 it was a rear-end collision. And I had told the Willses that

1 I was reasonable certain that if we could ever get a con-
2 ference with the insurance people we could settle the matter.
3 And they were also interested in that, not going into any
4 long litigation. I would say Huband investigated the
5 accident, I would say, about a year after.

6 Q. Year after the accident?

7 A. Yes. Well, I mean--no, I mean investigated her
8 whereabouts.

9 Q. About a year after you filed or a year after the
10 accident?

11 A. Well, he investigated the accident. I had
12 the preliminary things, it wasn't any question as to where
13 she lived then, she lived on Magnolia, 1201 Magnolia Street
14 in Richmond. It was after there was no response within the
15 period of time that I asked him to check as to where she
16 lived. And this is when I was informed she was living someplace
17 in Cincinnati, if I'm not mistaken, or someplace in Ohio rather.

18 Q. How did you actually ascertain at the time of
19 the accident Anna Ruth Neal had no insurance?

20 A. None was filed with the Division under SR-21.

21 Q. In other words you went to DMV and checked,
22 ascertained an SR-21 had been filed?

23 A. Yes.

24 Q. When was that?

1 A. Immediately after. In fact I wrote the
2 Willises--they didn't have a copy of the DMV report in
3 September of '66; I wrote them saying, "Enclosed is
4 a report from the Division of Motor Vehicles, Richmond,
5 Virginia, please sign where it says 'signature' and have
6 Gladys fill out Section 2. After the doctor fills out
7 his section mail to the Division of Motor Vehicles as per
8 the attached letter." This was in September of '66.
9 I went back to the Division as soon as she had furnished all
10 that that ~~had~~ had been furnished, to find out if there
11 had been anything filed on behalf of Anna Ruth Neal, and there
12 was still nothing. This would have been, I'd say, between
13 September and October.

14 Q. Of '66?

15 A. '66.

16 MR. MILLER: I have nothing further.

17 MR. BEDDOW: May I ask something else?

18 CHAIRMAN McVEY: Certainly.

19 BY MR. BEDDOW:

20 Q. How old are the children who are identified as
21 infants? How old are they now?

22 MRS. WILLS: My one child is 15 and one is 17 and
23 one is 21. The infant, she is 15 years old now.

24 MR. BEDDOW: That's Junior?

1 MRS. WILLS: That's Gladys May.

2 MR. BEDDOW: But Charles and Kenneth are still
3 under 18?

4 MRS. WILLS: Yes, Kenneth is 17 and Charles is 21.

5 MR. BEDDOW: Have you employed other counsel
6 now in this matter?

7 MRS. WILLS: Yes, I have.

8 MR. WILDER: I might add in that regard, I would
9 like these marked as Exhibits if the Committee would
10 be good enough; these are the only copies I have. This
11 is a motion for judgment filed by Attorney William S.
12 Francis on behalf of Cortess Wills, Jr.

13 MR. MILLER: Committee 27?

14 CHAIRMAN McVEY: Wilder 1.

15
16 (A copy of a Motion for Judgement in the case
17 of Cortess Wills, Jr. v. Lawrence Douglas Wilder in
18 The Circuit Court of the City of Richmond, Virginia,
19 Division II, was received as Wilder Exhibit 1.)

20 MR. WILDER: Motion for Judgment has been filed on
21 behalf of Charles E. Wills, Jr. and Motion for Judgment
22 has been filed on behalf of Gladys Wills, all of which
23 I have turned over to my carrier. These I received
24 Thursday and turned them over to my carrier. I put them
in the mail this last Thursday.

1 MR. WRENN: Do you have the third one?

2 MR. WILDER: The third one is Gladys. The
3 allegations, for the most part, are the same in all of
4 them, and I would like to read just one for the record.

5 "That during the month of August, 1966, the
6 plaintiff retained the defendant to provide legal services
7 on account of personal injuries received by the plaintiff
8 in an automobile accident which occurred on or about
9 August 15, 1966 in Chesterfield County, Virginia.

10 "That the defendant did undertake to represent
11 the plaintiff from that day forward and did so continue
12 to represent him up to and until September 20, 1973.

13 "That the defendant filed, as attorney for the
14 plaintiff, a certain suit, by COMPLAINT, in the United
15 States District Court styled Cortess Wills, Jr., et als
16 v. Anna Ruth Neal, on April 29, 1971.

17 "That the defendant, as attorney for the plaintiff,
18 filed on or about May 20, 1971, a sworn Affidavit as to
19 the residence of the defendant Anna Ruth Neal, requesting
20 that service of the above mentioned suit be had upon the
21 Commissioner of Division of Motor Vehicles for the
22 Commonwealth of Virginia pursuant Section 8-57.1 of the
23 1950 Code of Virginia, as amended.

24 "That the defendant took no further action in

1 "regards to said suit until January 5, 1973 when an order
2 was entered by the Judge of the United States District
3 Court requiring the plaintiff to show cause within sixty
4 days why the suit should not be dismissed from the
5 docket of the Court.

6 "The defendant, as attorney for the plaintiff,
7 subsequently filed an amended complaint alleging that
8 the said Anna Ruth Neal was an uninsured motorist and
9 requesting that the Motor Club of America be made a
10 party defendant as the insurance company for the plaintiff.

11 "That on September 20, 1973, the Motor Club of
12 America moved the United States District Court to
13 dismiss them as a defendant from the aforementioned suit
14 stating that the proper insurance company should have been
15 and should be St. Paul Fire Marine Company; said motion
16 was granted by the Court.

17 "That on September 20, 1973, the defendant as attorney
18 for plaintiff, moved the Court to amend the complaint
19 and to add the proper defendant; said motion was denied
20 by the United States District Court.

21 "That the plaintiff's action was dismissed by
22 Order of the United States District Court on September
23 20, 1973, and no trial was ever held.

24 "That the plaintiff's claim to personal injuries

1 "concerning which he retained the legal services of the
2 defendant is now and was at the time of its dismissal
3 on September 20, 1973 by the United States District Court
4 barred from further action by the appropriate statute
5 of limitations.

6 "That the defendant in his legal representation
7 of the plaintiff in regards to legal services provided
8 and advice given and in particular in regards to the
9 above mentioned suit in the United States District Court
10 did improperly manage the affairs of the plaintiff
11 entrusted to him; was negligent in the performance of
12 his duties in regards to the plaintiff's case; failed to
13 properly execute the legal responsibilities entrusted
14 to his professional management with a reasonable degree
15 of care, skill and dispatch; was guilty of the lack
16 of ordinary care, skill and reasonable diligence of his
17 representation of the plaintiff; was negligent in the
18 representation of the plaintiff in regard to the above
19 mentioned suit filed on his behalf; was otherwise
20 negligent in regards to his duty in providing competent
21 legal representation to the plaintiff; and was negligent
22 in causing and did so cause the plaintiff's case to be
23 barred forever by the running of the applicable statute
24 of limitations.

1 "As a direct and proximate cause of the actions
2 of the defendant as aforesaid, the plaintiff has been
3 injured and damaged and will continue to be so injured
4 and damaged by the defendant's negligent handling of
5 the above mentioned case and matters entrusted to him
6 and specifically by his negligent handling of the above
7 mentioned case and its subsequent dismissal resulting in
8 the plaintiff's claim being barred forever by the
9 applicable statute of limitations."

10 And then the addendum clause asking for \$75,000.00
11 in all three cases. I'd like these filed.

12 (A copy of the Motion for Judgment re Charles
13 E. Wills, Jr. v. Lawrence Douglas Wilder was received
14 as Wilder Exhibit No. 2.)

15
16 A copy of the Motion for Judgment re Gladys Wills
17 v. Lawrence Douglas Wilder was received as Wilder
18 Exhibit No. 3.)

19 BY MR. BEDDOW:

20 Q. That's for Charles, Cortess and Gladys?

21 A. Cortess, Jr.

22 BY MR. MILLER:

23 Q. That's all of them who are adults now?

24 A. Yes. Charles is 21, his would not be barred by

1 the statute now.

2 REDIRECT EXAMINATION

3 BY MR. BEDDOW:

4 Q. Did I misunderstand the allegations there, that
5 you did attempt to amend to make St. Paul a defendant?

6 A. That's what the allegation said.

7 Q. Did you do that?

8 A. Yes, I did; I attempted to do that in
9 court; that was denied.

10 Q. Judge Bryan acted on the motion to dismiss Motor
11 Club of America; how about St. Paul?

12 A. They never were defendant. I made motion then
13 to amend to add them as defendant and the judge denied that
14 motion.

15 Q. Did he give you a reason?

16 A. No, he didn't.

17 Q. What do you feel was the reason?

18 A. I think he thought it was on the docket long
19 enough. He said, "I will dismiss it without prejudice," the
20 same thing as a voluntary nonsuit, which would save the
21 infant's cases. The most-serious injury of the adults was
22 Mrs. Wills, of the two parties, between Mr. Wills and Mrs.
23 Wills, and I didn't want to lose it all.

24 Q. Was it your opinion that the statute ran in two

1 years, as it states, or there might have been an abatement of
2 the statute, or at least the two years start, from the time
3 she was a non resident?

4 A. Well, that's right, two years I thought ran from
5 the time I would have discovered that she was a non resident.
6 I had filed a suit against her, so it's not a question whether
7 it ran as to filing it against her.

8 Q. But you discovered she was a non resident
9 prior to 1968 when you filed the suit; you discovered that
10 shortly after you became involved because DMV reported it?

11 A. That's correct.

12 Q. And you investigated?

13 A. That's correct.

14 MR. BEDDOW: That's all I have.

15 CHAIRMAN MOVEY: Mr. Wilder, have you got anything
16 else you want to add?

17 MR. WILDER: I don't have anything else. I think
18 I furnished the Committee most of what I have in my
19 file, which I would like to say that rather than--the
20 car did--Mr. and Mrs. Wills told me they had car trouble
21 on at least two occasions; one time they came to my home
22 and the car radiator was not working. I loaned them a
23 hundred dollars and explained to them I could not advance
24 fees but I would be making a loan to them, that Mr. Wills

~~Wilder-redirect~~

[50]

1 should pay me back. And rather than being a hundred
2 dollars it was \$300.00 all together; is that right, sir?

3 MR. WILLS: I don't know.

4 MR. WILDER: Is that your signature?

5 CHAIRMAN McVEY: Mr. Wilder, I don't think the
6 Committee is really concerned with that part.

7 Mr. Wills, do you have something you want to say?

8 MR. WILLS: Yes, he said he didn't know we wasn't
9 residents of Virginia; he knew from the beginning we
10 were from East Orange, New Jersey.

11 CHAIRMAN McVEY: I don't think that really makes
12 any difference.

13 MR. WILDER: I didn't say that; I was referring
14 to the defendant.

15 CHAIRMAN McVEY: I think we understand, Mr. Wilder.

16 MR. WILLS: Thank you.

17 MRS. WILLS: The car Mrs. Neal was driving wasn't
18 her own.

19 CHAIRMAN McVEY: In other words it was registered
20 in the name of some other person?

21 MRS. WILLS: That's right.

22 BY MR. BEDDOW:

23 Q. Mr. Wilder, you do have malpractice insurance?

24 A. Yes, sir.

1 Q. Now indication they are going to deny coverage
2 in any way?

3 A. I haven't received any. No, I have malpractice.
4 In fact, I wrote the letter to the company saying I would
5 be happy and willing to talk to their attorney at any time,
6 to talk to their attorney at any time, to discuss just what
7 it was.

8 I might add that Skip Francis had written me a
9 letter--I think it is germane, if you will--and he wanted to
10 negotiate prior to filing suit, and he wanted to know whether
11 I would object to him doing that. I told him I had no
12 objection, but I thought that if he had a case he would have
13 to, I thought he should file suit, quite frankly, because
14 it would then put the company in position of determining whether
15 they owed anything or not. I didn't want him to spare me.
16 He asked me as to whether I would object to him getting into
17 it, I told him I had no objection to it. He wanted to know
18 whether I had objection to him getting into it on a limited
19 basis and negotiating. I told him he should file suit; he
20 said he would file suit. As soon as he did file suit I turned
21 the papers over to my company.

22 Q. How long has that been now?

23 A. Friday I got--it was either Thursday or Friday.
24 I sent them out Thursday. I got them at my home. I'm sorry,

1 I got them Wednesday, I sent them out that Thursday. My
2 company should have gotten it Friday. I don't anticipate my
3 company will deny coverage if there is a claim.

4 CHAIRMAN McVEY: Is there anything further
5 anyone wants to add? Mr. and Mrs. Wills, so you will
6 know, and Senator Wilder will know, the Committee
7 deliberates in private and we make a decision as to what
8 action it will take--what action, if any, it will take
9 in respect to Mr. Wilder's conduct.

10 I will tell you also, that the Committee cannot
11 take any real action, all we can do is recommend that
12 certain action be taken by a court of competent
13 jurisdiction here in Virginia, and we cannot be involved
14 in whether or not there is any civil liability upon Mr.
15 Wilder with respect to his handling of the case.

16 We appreciate very much you all coming, and you
17 will hear from us in writing.

18 MR. WILLS: Thank you, I appreciate that.

19 MR. WILDER: Thank you, gentlemen.

20
21 (The Respondent, the witnesses and the reporter
22 were excused and the Committee went into
23 executive session.)
24

* * *

O R D E R

ENTERED
March 29, 1976

This matter came on to be heard on the Demurrer filed herein by the defendant to the Amended Bill of Complaint and the motion of the complainant to overrule the same. And the Court having considered said bill and having heard argument doth overrule the Demurrer.

The defendant, by counsel, moved the Court that the complainant file a Bill of Particulars as to those allegations and it appearing to the Court that the complainant has done so, it is ORDERED that the defendant file his responsive pleadings herein on or before April 1, 1976 to which action on the part of the Court the defendant, by counsel, objects.

* * *

* * *

ANSWER

FILED
April 1, 1976

This defendant, for answer to the amended bill of complaint says:

1. Paragraphs 1, 2, 5 and 10 of the amended bill are admitted.

2. The defendant admits that he was served with the notice of written complaint; otherwise the defendant is without knowledge of the matters alleged in paragraphs 3 and 4 of the amended bill and, hence, denies same.

3. Insofar as paragraph 6 of the amended bill alleges that the defendant was guilty of unethical or unprofessional conduct, such allegation is denied; otherwise the defendant is without knowledge of the matters alleged in paragraphs 6, 8, and 9 of the amended bill and, hence, denies same.

4. Paragraphs 7 and 11 of the amended bill are denied.

5. This defendant accepted employment to obtain compensation for injuries which Cortess Willis, Jr., and others had sustained in an automobile collision between an automobile operated by Willis and an automobile operated by Anna Ruth Neal, the fee of this defendant being contingent upon the obtaining of such compensation. On June 31, 1968 and within the time allowed by law, this defendant instituted an action in the United States District Court for the Eastern District of Virginia to recover damages sustained by his clients in the collision.

6. At the time said action was instituted, this defendant had found no indication that Anna Ruth Neal's liability was covered by insurance or that she had assets which could be subjected to a judgment for the damages which this defendant's clients had sustained. Moreover, it was then apparent to this defendant that the liability of Anna Ruth Neal was not covered by insurance and that she had no assets which could be subjected to judgment.

7. This defendant made investigation to determine whether there was uninsured motorist coverage respecting the automobile in which his clients had been riding when they were injured.

8. Having determined that there was no insurance coverage from which his clients might benefit and that there were no assets of Anna Ruth Neal which could be subjected to the liens of judgments this defendant declined to incur the expense incident to the trial of the several causes of action for personal injuries.

9. At and before the time the action for personal injuries was dismissed, those of the claimants who were adults had been informed that no assets had been found which the claims for compensation could reach and that this defendant considered that further proceedings would require considerable expense and would yield nothing by way of compensation.

And now having fully answered, this defendant prays to be hence dismissed with his reasonable costs.

* * *

* * *

INTERROGATORIES

FILED
June 18, 1976

The defendant, L. Douglas Wilder, requests that the complainant answer under oath the following interrogatories within twenty-one days after service hereof in accordance with Rule 4:8 of the Rules of the Supreme Court

of Virginia.

1. What was the specific information which caused the complainant committee to become aware of conduct of the defendant warranting investigation as suggested in paragraph 3 of the amended complaint?

2. What person or persons communicated such information?

3. To what member or agent of the complainant committee was that information communicated?

4. If the communication was in writing, furnish a copy thereof.

5. What members of the complainant committee considered such communication?

6. Furnish a copy of the record of the proceedings at which the complainant committee found itself aware that conduct of the defendant warranted investigation.

7. Who conducted the preliminary investigation mentioned in paragraph 4 of the amended bill?

8. Furnish a copy of the report of such preliminary investigation and a copy of the record of the proceedings at which it was considered and acted upon, including a transcript or summary of the evidence then considered and/or of the deliberations of the committee, if such transcript or summary now exists.

9. Furnish a copy of the complainant committee's directive that the instant action be instituted.

* * *

* * *

FILED
June 24, 1976

ANSWERS TO INTERROGATORIES

Comes now the Third District Committee of the Virginia State Bar and for its Answers to the Interrogatories propounded herein states as follows:

1. See attached letter.
2. See attached letter.
3. Letter was received by the office of the Virginia State Bar and assigned to the District Committee for the Congressional District in which the defendant practiced.
4. See attached letter.
5. Initially, the Chairman, Henry H. McVey, III; thereafter, Harrison Bruce; and subsequently, the entire Committee.
6. There is no record of the proceeding in which it was determined that the conduct of the defendant warranted investigation. The Minutes of the meeting reflect that upon information furnished by Mr. Bruce and Mr. McVey a formal investigatory hearing should be held. The Committee objects to furnishing a copy of the Minutes on the grounds that the same contain references to other matters not pertinent to this proceeding which matters are confidential as well as irrelevant.
7. Mr. Bruce and Mr. McVey.
8. There is no written report of the preliminary investigation. The Committee considered the written

complaint attached in response to these Interrogatories and the record of the proceedings in the United States District Court.

9. There is no written directive that the instant action be instituted. There is a reference in the Minutes that after consideration the Committee voted that a formal complaint should be issued. The Committee objects to furnishing copies of the applicable minutes for the reasons previously stated in response to Interrogatory 6.

* * *

March 21/75

Mr. James R. Wrenn Jr.

I on behalf of myself Cartess and Gladys Mae Kenneth &
Gladys Lee Wills.

Wish to bring a complaint against L. D Wilder because of
his conduct in representing us in a personal injury suit
on accout of an accident which occured on Aug 15, 1966 in
Chesterfield County on U.S Rt 1 L. D Wilder was retained
and suit Was filed in U.S District Court Richmond Virginia
and was pending for 5 year Finally the suit Were dismissed
for Mr. Wilder failure to ever give notice to the proper
insurance Company. Under the Virgina Uninsured Motorist
lawes.

Our Claims are now bared by the Statue of limitation because
Mr. Wilder handling of our eause case. Thank you.

/s/ Charles V. Wills Sr.
52 Shepard Ave
East Orange N.J
201
07018 678-2872

Sworn to and subscribed before me this 21st
day of March 1975.

Witness my hand and official seal.

/s/ Robert R. Guse, Notary Public

* * *

* * *

March 24, 1975

Mr. Henry H. McVey III
1400 Ross Building
Richmond, Va. 23219

PERSONAL & CONFIDENTIAL

RE: 3-DC: Wilder, Lawrence Douglas

Dear Hal:

Enclosed is a sworn complaint against Mr. Wilder by Charles V. Wills. Enclosed also are copies of materials pertaining to his complaint.

Mr. Wills told me that he was advised by another attorney in Richmond to bring this to the attention of the Bar.

Yours truly,

James R. Wrenn, Jr.
by M.V.

JAMES R. WRENN, JR.
Special Counsel

encl.

JRWjr:mvd

cc: Mr. Charles V. Wills

* * *

* * *

STATEMENT OF TESTIMONY AND
OTHER INCIDENTS OF THE CASE

By stipulation of counsel, as evidenced by their endorsements on a copy thereof, the complainant introduced into evidence the transcript of the September 16, 1975 proceedings before the Third District Committee of the Virginia State Bar which transcript the Court ordered received as evidence along with the Exhibits therewith including Committee Exhibit No. 1 which was attached to the Bill of Complaint herein as an exhibit thereto. Counsel for the Committee then indicated that the afore-said transcript with the exhibits constituted the evidence on its behalf and rested his case.

Counsel for the defendant then moved the Court to strike the complainant's evidence and to dismiss the proceeding for the following reasons:

1. Notwithstanding two demurrers and a request for a bill of particulars, the only statement of a specific

charge made in these proceedings is that found in the March 21, 1975, letter from Charles V. Wills, Sr., to Mr. James B. Wrenn, Jr., (counsel for Virginia State Bar), charging "Mr. Wilder's failure to ever give notice to the proper insurance company under the uninsured motorist laws". The evidence does not bear out the presupposition that there was an insurance company from which recovery could be had. To the contrary, the evidence suggests at Transcript 34, line 14: "there wasn't any uninsured motorist coverage" and at Transcript 37, line 11: "the policy, as I read it, didn't contained any uninsured motorist provisions". There having been no proper insurance company under the uninsured motorist laws of Virginia or of New Jersey, there could have been no culpable failure to give notice to such company.

2. The requisite predicate for this proceeding has not been developed. The only authority for this proceeding is Rule of Court, Part Six, Section IV, ¶13(d). Following the requirements of that Rule, the amended bill charges (¶13) that in March of 1975, the committee became aware of conduct of the defendant warranting investigation and (¶4) that following preliminary investigation the committee determined that further investigation was warranted and (¶6) that the committee concluded and alleges that the defendant was guilty of unprofessional conduct. For lack of knowledge, the answer denies that the committee became

aware of any improper conduct of the defendant or reached any conclusions with reference thereto.

The cited Rule, ¶13 (f), permits a charge to be brought only upon the concurrence of four (a majority of any seven) duly designated members of the committee. The transcript reflects the presence of five members at the September 16, 1975, proceedings. No record has been introduced showing the concurrence of four. Neither has such record been made available to the defendant notwithstanding his interrogatories 5, 8, and 9.

3. The Committee has not at any time charged a violation of the Code of Professional Responsibility. The Notice and Written Complaint returnable 16 September 1975 suggests: "you may have violated" DR 6-101(A) and 7-101(A). The amended bill relies on that notice and can rise no higher than that notice which is the only thing in this record which purports to be the action of the Committee rather than that of its counsel. Although the complainant charges in ¶6 that the defendant was guilty of unethical and unprofessional conduct and in ¶7 suggests violation of DR 7-101(A)3, we submit that there was no Committee action between the time the original bill was filed and the time the amended bill was filed and that, hence, all the Committee has charged or suggested is "you may have violated". Absent proof that these proceedings were brought pursuant to the Committee's finding and charge,

arrived at and made in the manner prescribed by the enabling Rule, the court is without jurisdiction.

4. It is of the essence of the Fourteenth Amendment's guaranty of due process that a charge must be fairly proved. Neither has been done here.

In response to the motion of the defendant to strike the complainant's evidence, counsel for the complainant argued that:

1. That the filing of the demurrers by the defendant have nothing to do with particularization of the claim; that while there was no formal motion for a bill of particulars by the defendant, a bill of particulars was filed in anticipation of the same and subsequent thereto there was no motion for greater particularization of the claim; that the Committee's position was that the handling of the case from its outset to its dismissal by the United States District Court demonstrated unprofessional conduct as alleged in the Bill of Complaint and that the Committee's case did not rise or fall on the proof or failure to prove that one specific incident constituted unprofessional conduct.

2. That Rule 13(f) is a procedural rule for the operation of the Committee and that compliance therewith need not be proven by the evidence since the court has the inherent power to discipline a lawyer for unprofessional conduct whether that conduct is brought to its attention by the Committee action, by an individual member of the

Committee, by an individual citizen or by the court on its own motion and that the defendant's objection to the Answers to the Interrogatories as a portion of his argument on the motion to strike is inappropriate in that no motion was ever made to compel Answers to those Interrogatories to which objection was made nor was any motion made for a more definite response to the Interrogatories.

3. That the original complaint alleged that the defendant had engaged in unprofessional conduct and that it was sufficient in spite of the Court's sustaining of the demurrer but more importantly that the deficiency, if it existed, was corrected by the amended complaint and for the reasons previously stated there was no reason for a recital of further Committee action.

4. That the charge of unprofessional conduct was properly made by virtue of the filing of the Bill of Complaint and the filing as a Bill of Particulars of the transcript and the exhibits thereto and if the defendant was unable to determine what the charge against him was or if he needed additional information to defend the same the appropriate discovery procedures such as a motion for a bill of particulars, interrogatories, motion to compel more definite answers to interrogatories and subpoenas duces tecum were open to him and that he did not avail himself of the available remedies except as indicated by the record.

The defendant's motion to strike and dismiss was overruled.

The defendant, L. Douglas Wilder, testified in his own behalf substantially as follows:

He had given his clients, the Wills family, notice that they should be in court on September 20, 1973, and his clients came in response to that notice. When the Wills case was being considered, the court asked him as plaintiff's counsel if there were any grounds on which the claim against Motor Club of America could be sustained and he replied negatively. The court then asked if there was any reasons why the case should not be dismissed. In reply, he asked leave to amend the complaint to add the proper company when the identity of the proper company would be ascertained. Thereupon the court ruled that it would dismiss the action without prejudice.

Mr. Wilder further testified that he had accepted employment in the Wills cases on a contingent fee arrangement under which his clients were to pay or reimburse expenses. He advanced the costs of the suit. He had made cash loans to Mr. Wills when the clients' car had become inoperative in Richmond to enable them to return to their home in New Jersey. He had talked to one of the clients' physicians in New Jersey who made payment of his bill of \$400-\$500 a precondition for his coming to Virginia to testify and on this basis had estimated an advance of \$1,000 would be necessary to secure medical testimony for trial.

The defendant testified that he was unable to locate and obtain service upon the defendant, Anna Ruth Neal, in the civil action and therefore was unable to identify any collectible insurance or locate any other assets belonging to Anna Ruth Neal.

On several occasions Mr. Wilder had asked his client to send the insurance policy but the client did not deliver a policy until September 30, 1973, after the case had been dismissed.

On cross-examination, the defendant admitted that he had received a copy of a letter from Motor Club of America to St. Paul Fire & Marine Ins. Co. dated October 12, 1971 (Committee Exhibit 15) and that by such letter he was aware of the fact that St. Paul Fire & Marine was the insurance carrier for the Wills' vehicle and the only available source of uninsured motorist coverage if the same existed and that therefore Motor Club of America was not the insurance carrier on the Wills' vehicle.

On inquiry from the court, Mr. Wilder testified that he had made investigation and had determined that the New Jersey statutes did not mandate uninsured motorist coverage.

When the defendant had rested, counsel for the complainant called Gladys May Wills and, in turn, Cortess Wills, Jr.

Gladys May Wills testified that when she and her husband, Cortess Wills, Jr., arrived at the federal court building in Richmond on September 20, 1973, they met Mr.

Wilder in the corridor and were informed by him that their case was over. Mr. Wilder discussed with them the lack of insurance from which they could recover anything. Her husband had brought with him St. Paul Fire and Marine insurance policy and gave that policy to Mr. Wilder at that time.

Cortess Wills, Jr., testified that he had engaged Mr. Wilder's services shortly after the August 15, 1966 accident and that the proceedings in district court were over before he arrived on September 20, 1973. Before September 20, 1973, he had not delivered to Mr. Wilder any policy of insurance on his automobile although Mr. Wilder may have asked him for such. He (Wills) had been looking for his policy all that time. He found it just before coming to Virginia on September 20, 1973, and gave it to Mr. Wilder on that occasion.

Approved:

/s/ S. W. Tucker
Counsel for the defendant

/a/ Henry H. McVey, III
Counsel for the plaintiff

Signed this 31st day of August, 1976

/s/ Alex H. Sands, Jr.
Judge

* * *

* * *

July 30, 1976

Henry H. McVey, III, Esq.
McGuire, Woods & Battle
1400 Ross Building
Richmond, VA 23219

[LETTER OPINION]

S. W. Tucker, Esq.
Hill, Tucker & Marsh
P. O. Box 27363
Richmond, VA 23261

Gentlemen:

Re: Case No. D-8980
Third District Committee
v. L. Douglas Wilder

This is a proceeding first instituted by the Commonwealth against defendant pursuant to the provisions of Rule 13 of the Rules for the Integration of the Virginia State Bar charging that defendant violated Disciplinary Rules 6-101(A) and 7-101(A) of the Code of Professional Responsibility.

Demurrer filed by defendant was sustained upon the ground that it failed to allege affirmatively that defendant had violated the provisions in question but only that he "may have" so violated them. Demurrer was sustained and an amended bill of complaint was then filed alleging specific violations by defendant of DR 6-101(A)(3),¹ DR 7-101(A)(2), and DR 7-101(A)(3).

¹DR 6-101(A)(3). Neglect a legal matter entrusted to him.

(Continued on page 77)

Henry H. McVey, III, Esq.
S. W. Tucker, Esq.
Page 2
July 30, 1976

Demurrer filed to the amended bill of complaint was overruled.

Defendant answered denying the charges presented against him.

PROCEDURAL OBJECTIONS RAISED

Prior to going into the merits of the case, defendant raised a number of procedural objections upon the basis of which it was urged that the complaint be dismissed. Without reviewing these objections *seriatim* suffice it to say that the court deems these objections to be without merit and will, therefore, proceed to a review of the evidence bearing upon the merits.

FACTS

The facts of the case are, for the most part, undisputed, certainly not insofar as the real issues are concerned. A brief chronological review of these facts, as reflected by the transcript of the testimony taken at the hearing before the Third District Committee and the

DR 7-101(A)(2). Fail to carry out a contract of employment entered into with a client for professional services, but he may withdraw as permitted under DR 2-110, DR 5-102, and DR 5-105.

DR 7-101(A)(3). Prejudice or damage his client during the course of the professional relationship, except as required under DR 7-102(B).

Henry H. McVey, III, Esq.
S. W. Tucker, Esq.
Page 3
July 30, 1976

testimony heard *ore tenus* by the court, becomes necessary at the outset.

In August, 1966, Mrs. Gladys May Wills and several members of her family were involved in an automobile accident in Chesterfield County, as a result of which they sustained injuries. Almost immediately after the accident defendant was employed to represent the interests of a number of the occupants of the Mills vehicle against Anna Ruth Neal, the operator of the other vehicle.

On March 6, 1968, defendant wrote Mrs. Mills that he was trying to negotiate a settlement of her and the other cases.

On July 31, 1968, defendant instituted an action in the United States District Court at Richmond on behalf of his clients against Anna Ruth Neal attempting to serve her at 1201 Magnolia Street, Richmond, the address which she had reported to DMV at the time of the accident. The marshal's return showed that Anna Ruth Neal was not found in his district.

The action was, accordingly, abated as of February 13, 1969, and defendant advised of the abatement on the same date. Mrs. Mills was not advised of the abatement.

On August 14, 1969, although no further proceeding had been had in court, defendant wrote Mrs. Mills that "case

Henry H. McVey, III, Esq.
S. W. Tucker, Esq.
Page 4
July 30, 1976

progressing as well as could be expected." There was, of course, no case upon the current docket at the time.

On April 26, 1971, defendant filed with DMV an affidavit alleging nonresidency of Neal, which was a requisite for service upon the Commissioner of Motor Vehicles under the Virginia statute providing for service upon nonresidents.

On May 20, 1971, defendant filed a new complaint against Neal in the same court (Civil Action number different from the former action which had been abated two years earlier) and secured service upon Neal by service upon the Commissioner of Motor Vehicles. No responsive pleading was ever filed by Neal who thus became in default after the lapse of 20 days.

On October 7, 1971, some six months later, defendant² wrote the Motor Company of America enclosing copy of the complaint which had been filed some six months earlier.

Immediately thereafter defendant was notified that St. Paul Fire and Marine Insurance Company was the insurer³ of the Mills vehicle at the time of the collision.

²This company had been given to defendant after the accident by Cortess Wills, Jr., as the liability carrier for the Wills vehicle.

³This notice was by letter dated October 12, 1971, from a New Jersey broker forwarding the suit papers on to St. Paul Fire and Marine Insurance Company, copy of which letter was received by defendant.

Henry H. McVey, III, Esq.
S. W. Tucker, Esq.
Page 5
July 30, 1976

Defendant then procured from Cortess Wills, Jr. the St. Paul Fire and Marine policy which, in fact, was the policy upon the Wills vehicle outstanding at the time of collision. This policy, upon its face, showed that it did not extend uninsured motorist coverage and defendant satisfied himself that the state of issuance had no "omnibus clause" statutory requirement similar to that prevailing in Virginia.

It does not appear from the record that anything further was done by defendant until, over a year later, a court order was entered January 5, 1973, threatening to dismiss the action unless defendant could show cause within 60 days for his failure to proceed with the case.

Defendant thereupon, on January 26, 1973, filed a motion seeking to join Motor Club of America (not St. Paul Fire and Marine) as a party defendant.

Motor Club of America promptly, on February 15, 1973, filed its motion to be dismissed upon the ground that the Wills amended complaint did not state a cause of action against it.

On March 2, 1973, defendant filed an amended pleading and Motor Club of America's motion to dismiss was set for 10:00 a.m., September 20, 1973, and Cortess Wills so advised.

Henry H. McVey, III, Esq.
S. W. Tucker, Esq.
Page 6
July 30, 1976

On September 20, 1973, it was moved to dismiss Motor Club of America, which motion was granted. Defendant then moved to amend to add what he contended to be a proper defendant. This motion was denied. Defendant thereupon took a voluntary nonsuit which action was known by him to result in his client's claims being forever barred by the statute of limitations.

MERITS CONSIDERED

Defendant's representation of the complainants in this case extends over a period of nearly seven years. It was not until the case had been in defendant's office for almost two years that defendant instituted action in the District Court, just prior to the running of the two year statute of limitations. A proper investigation by defendant prior to institution of the action would have revealed that Neal was no longer a Virginia resident and that it was a futile act to attempt to serve her at a Richmond address.

The action was abated for lack of service on February 13, 1969, and although it appears from the record that defendant was notified on August 6, 1968, that no service had been had, he did nothing to rectify the situation until the action was abated six months later.

Not only was his client not notified of the abatement of her action, but six months after the abatement and

Henry H. McVey, III, Esq.
S. W. Tucker, Esq.
Page 7
July 30, 1976

before any further action had been initiated by defendant, he wrote Mrs. Wills that her "case is progressing as well as could be expected." In point of fact it was not progressing at all, as it had been abated six months earlier.

On May 20, 1971, almost two years after this letter and nearly two and one-half years after the abatement of the action defendant did what he should have done four years earlier--filed an affidavit of nonresidency and filed an action in the same court securing service upon Neal through the Commissioner of Motor Vehicles. Neal having failed to file responsive pleadings within 20 days thereafter, Neal was in default and judgment could have been obtained by defendant in favor of his client on motion at any time thereafter. No such motion was ever made.

Although defendant either knew, or could have and should have ascertained shortly after his employment that Neal was uninsured, it was not until October 7, 1971, some five years after his employment that he attempted to determine by letter of October 7, 1971, if the Motor Company of America, which company he believed to be the uninsured motorist carrier upon the Mills vehicle, was in fact the carrier upon the Mills vehicle at the time of the accident, and furnished it with a copy of the complaint.

Henry H. McVey, III, Esq.
S. W. Tucker, Esq.
Page 8
July 30, 1976

In spite of having received information on October 12, 1971, that it was not Motor Company of America but the St. Paul Fire and Marine Insurance Company that was the Mills' carrier defendant did nothing for another year and then on January 26, 1973, attempted to join *not* St. Paul Fire and Marine, but Motor Company of America as a party defendant in the pending action. He did not attempt to join the St. Paul Fire and Marine company.

On September 20, 1973, upon motion, the Motor Company of America was dismissed and at this hearing, with full knowledge that his clients' claims would be barred by the statute of limitations, defendant took a voluntary nonsuit.

The full impact of defendant's actions on this occasion is capsuled in the following testimony of defendant at the time of the hearing before the Third District Committee (Tr. pp. 35-35).

Q. Mr. Wilder, then the records do not reflect that you made any effort to serve the--

A. St. Paul--

Q. St. Paul--

A. That's correct, sir.

Q. And you did not, on September 20th or at any time subsequent thereto, take a judgment against Anna Ruth Neal, is that correct?

Henry H. McVey, III, Esq.
S. W. Tucker, Esq.
Page 9
July 30, 1976

A. That's correct.

Q. But the fact is that service, insofar as substitute of service is allowed in Virginia, upon Anna Ruth Neal was in fact valid, was it not?

A. As to the Division of Motor Vehicles?

Q. Yes.

A. Yes, sir, I could have gotten judgment against Anna Ruth Neal with substituted service.

Q. You made the decision to dismiss this voluntarily on September 20th, rather than take judgment against Mrs. Neal, is that correct?

A. That's correct.

Q. And the fact is when you took that action you knew, did you not, insofar as Mr. Wills' claim and Mrs. Wills' claim is concerned, the statute of limitations had run, did you not?

A. That's correct.

DEFENSES CONSIDERED

Defendant's defense upon the merits is that from start to finish he was concerned primarily with the collectability of any judgment which he might have obtained against Neal. He says that he did not desire to expose his clients to unnecessary expense in securing a worthless

Henry H. McVey, III, Esq.
S. W. Tucker, Esq.
Page 10
July 30, 1976

judgment. Defendant's feelings in this respect are understandable.

It is also true that defendant's position as a member of the General Assembly justifies a delay in handling the affairs of his clients which would not be accorded other attorneys. But the limits upon this privilege are fixed by statute.

Nor is the court unmindful of the difficult and often frustrating task imposed upon a plaintiff's attorney in attempting to locate insurance coverage which would render a judgment collectible.

Finally, the court can understand, *in the early stages of representation*, why defendant did not desire to secure a default judgment against the tort-feasor Neal until he had located and served a potential insurance carrier, as this might have destroyed the collectibility of a judgment, if obtained.

None of these considerations, however, can alter or justify the fact that defendant was guilty of inexcusable procrastination in his handling of the claims of these complainants. Defendant allowed to drag out over a period of seven years a matter which should have been disposed of in a few months.

Henry H. McVey, III, Esq.
S. W. Tucker, Esq.
Page 11
July 30, 1976

Had he conducted a prompt investigation of the whereabouts and the financial responsibility of the tortfeasor Neal, and whether his clients' vehicle had uninsured motorist coverage, and as a result of such investigation determined that a judgment would be uncollectible, he should have promptly advised his clients of his views and either retired from the case or pursued it to judgment.

Nor is there any conceivable basis upon which could be justified his action at the September 20, 1973, hearing in nonsuiting and thus destroying his clients' claims without having first advised them of the effect of this procedure and given them the election of whether or not they desired to abandon their claims.

CONCLUSION

It is, accordingly, *held* that defendant's conduct in the handling of the claims in question was in violation of DR 6-101(A)(3) and of DR 7-101(A)(3) of the Virginia Code of Professional Responsibility, and that such violations constituted unprofessional conduct on the part of defendant. It becomes unnecessary to consider the charge of violation of DR 7-101(A)(2).

In conclusion, it should be observed that defendant's conduct in regards these violations does not reflect upon

Henry H. McVey, III, Esq.
S. W. Tucker, Esq.
Page 12
July 30, 1976

his character, nor upon his legal ethics but is limited to his procrastination and neglect in handling the claims.

Order, copy enclosed, is being entered.

Yours very truly,

/s/ Alex H. Sands, Jr.

sac

* * *

* * *

O R D E R

ENTERED
Aug. 2, 1976

This day came Lawrence Douglas Wilder, an attorney at law, in person and by counsel, in obedience to the Rule issued by this Court, and came also the Commonwealth by its attorney; and the defendant, by counsel, having moved the Court to dismiss the complaint, such motion was overruled; whereupon the Court having heard the evidence as to the merits of the case consisting, by stipulation, of the transcript of the evidence taken before the Third District Committee and argument of counsel, and now being advised of its decision to be rendered herein,

It is considered by the Court that the defendant, Lawrence Douglas Wilder, for reasons stated in its letter opinion to counsel dated July 30, 1976, which is ordered made a part of the record, is guilty of the charge of

having violated Disciplinary Rules 6-101(A)(3) and 7-101(A)(3) in that having been entrusted with the work of conducting all matters necessary to conducting litigation on behalf of Cortess Wills, Jr., Gladys Wills, May Wills, Charles Wills, an infant, and Kenneth Wills, an infant, growing out of an actionable accident occurring in Chesterfield County on or about August 15, 1966, he has been guilty of such procrastination in the handling of such case and in failing to advise his clients that he would voluntarily dismiss their cases after the statute of limitations thereon had run, as to amount to neglect of this legal matter entrusted to him and to constitute unprofessional conduct in contemplation of Disciplinary Rules 6-101(A)(3) and 7-101(A)(3) of the Virginia Code of Professional Responsibility.

And the Court, as punishment for such violation, doth reprimand the said Lawrence Douglas Wilder therefor and doth enjoin him from further engaging in such conduct.

To all of which rulings of the Court defendant duly objected and excepted.

* * *

* * *

ORDER

ENTERED
Aug. 7, 1976

On consideration of the defendant's motion, filed August 19, 1976 that the court vacate, set aside and dissolve so much of the order herein entered on July 30, 1976 as enjoins the defendant from engaging in such conduct as in said order is referred to, and there being no objection by the complainant, it is ADJUDGED and ORDERED: that this court's order entered in this cause on July 30, 1976 be and the same hereby is amended by striking and deleting from the penultimate sentence thereof the words: "and doth enjoin him from engaging in such conduct"; and that the judgment of the court, stated in said order as amended, is as follows: "And the Court, as punishment for such violation, doth reprimand the said Lawrence Douglas Wilder therefor."

* * *

* * *

AMENDED
NOTICE OF APPEAL AND ASSIGNMENTS OF ERROR

FILED
Aug. 30, 1976

Defendant gives notice that he will apply to the Supreme Court of Virginia for a writ of error to the order of the Circuit Court of the City of Richmond, Division I, made by the Honorable Alex H. Sands, Jr., Judge, on the 30th day of July, 1976 by which the defendant was reprimanded for unprofessional conduct and enjoined from engaging in such conduct.

The assignments of error are:

I

The court erred in overruling the defendant's demurrer and thereby in holding that the Due Process Clause of the Fourteenth Amendment does not require that, in advance of trial, the defendant be specifically informed of the charge or charges against him.

II

The court erred and, in violation of the Fourteenth Amendment to the Constitution, deprived the defendant of liberty and property without due process of law when it overruled the defendant's motion to dismiss the bill of complaint for the absence of proof that a majority of any seven members of the complainant committee concurred in any accusation that any specified conduct of the defendant merited disciplinary action.

III

The court erred in reprimanding the defendant for procrastination in the absence of evidence that such procrastination militated to his clients' detriment.

IV

The court erred in reprimanding the defendant for failure to advise his clients that he would voluntarily dismiss their cases on which the statute of limitations had run, the evidence being that the decision was made under the pressure of the moment and in the clients' absence due to their tardiness in attending court.

V

The court erred and violated the due process and equal protection clauses of the Fourteenth Amendment when it enjoined the defendant from further engaging in such conduct as is referred to in its order.

A statement of testimony and incidents of trial will be filed.

* * *