

260 VA 251

IN THE
Supreme Court of Virginia

RECORD NO. 000417



VICTOR ALAN MOTLEY,

Appellant,

v.

VIRGINIA STATE BAR,

Appellee.

JOINT APPENDIX
VOLUME I OF II

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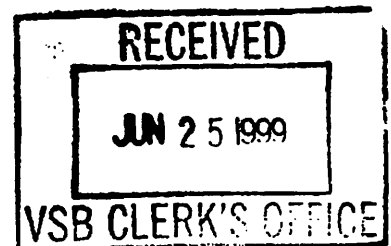
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Virginia State Bar

THIRD DISTRICT COMMITTEE



PLEASE REPLY TO:

P.O. Box 12137

Richmond, VA 23241

June 25, 1999

PERSONAL AND CONFIDENTIAL

Ms. Patricia J. Rios
Clerk of the Disciplinary System
Virginia State Bar
Suite 1500
707 East Main Street
Richmond, VA 23219

Re: In the Matter of Victor Alan Motley
VSB DOCKET NO. 96-032-2446

Dear Ms. Rios:

Enclosed please find the Third District, Section Two, Subcommittee Determination (Certification) pertaining to this matter.

Very truly yours,

Cary A. Ralston
Secretary

Enclosure

cc: Victor Alan Motley, Esq., Respondent, w/o encl.
Roger L. Gregory, Esq., Respondent's Counsel, w/o encl.
Harry M. Hirsch, Esq., w/o encl.

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VIRGINIA:

BEFORE THE THIRD DISTRICT SUBCOMMITTEE, SECTION TWO
OF THE VIRGINIA STATE BAR

IN THE MATTER OF

VICTOR ALAN MOTLEY
VSB Docket No. 96-032-2446

SUBCOMMITTEE DETERMINATION
(CERTIFICATION)

On July 17, 1998, a meeting in this matter was held before a duly convened Third District Subcommittee, Section Two, consisting of Dr. James H. Slatton, Lay Member; Robert L. Freed, Esq.; and Cary A. Ralston, Esq., Secretary, presiding.

Pursuant to Part 6, Section IV, Paragraph 13(B)(5)(c)(ii)(c) of the Rules of the Supreme Court, the Third District Subcommittee, Section Two, of the Virginia State Bar hereby serves upon the Respondent the following Certification:

I. FINDINGS OF FACT

The Davis-Grey Transaction

1. At all times relevant hereto the Respondent, Victor Alan Motley [Motley], has been an attorney licensed to practice law in the Commonwealth of Virginia.

2. In or about February of 1996, Complainant Evelyn J. Meade Davis [Davis] entered into a verbal agreement with Rebecca Grey [Grey] to sell to Grey that property know as 1400 East Eighteenth Street, Richmond, VA 23224, located in the City of Richmond, Virginia [property]. The original agreement called for

Grey to purchase the property for \$35,000.00 by paying approximately \$4,000.00 at closing and assuming an existing deed of trust and note held by Sun Coast Savings and Loan Association with the approximate balance of \$31,317.03.

3. Motley was the only attorney involved in the transaction which was to close on February 15, 1996.

4. Prior to the date of closing, Davis was informed that Grey would not be able to pay the full \$4,000.00 at closing but could pay \$2,000.00 instead. Davis agreed that Grey would pay \$2,000.00 at closing and that Grey would pay the remaining \$2,000.00 by May 15, 1996 in accordance with a deed of trust and note.

5. On February 15, 1996, Davis, Grey and Motley met for the closing. Grey had no funds with her. It was agreed that the closing papers would be signed anyway and that Grey would pay at a later date the \$2,000.00 she had agreed to bring to closing. Inter alia, A HUD-1 settlement statement, deed of assumption, deed of trust note [Davis to Grey], deed of trust note [Grey to Davis], and deed of trust [Grey to Davis] were signed.

6. Several days later, Motley called Davis to inform her that he had received a check from Grey in the amount of \$1,000.00 instead of \$2,000.00. Out of the \$1,000.00 check, Motley subsequently paid Davis the sum of \$319.80.

7. In May of 1996, Motley informed Davis that he had received a certified check from Grey in the amount of \$1,500.00 and that he was still owed \$200.00 in the transaction. After consulting with another attorney, Davis picked up the

certified check from Motley. Davis received a total of \$1,319.80 from the transaction although the HUD-1 settlement statement called for her to receive a total of \$3,373.23.

8. Davis moved out of the property prior to the closing date and Grey moved into the premises right after the closing.

9. According to Motley, when Grey appeared at closing without funds, Davis agreed to complete the closing but recordation was not to occur until Motley had received the required \$2,000.00. Motley never did receive a total of \$2,000.00 from Grey. However, Motley did record the deed of assumption and a deed of trust from Grey on February 20, 1996.

10. The \$1,000.00 check which Grey provided to Motley several days after closing was an uncertified personal check. Motley deposited the check into his personal checking account on or about February 20, 1996, although he stated to VSB Investigator Lacy Campbell that he had deposited the check into his trust account. Davis believed that the \$319.80 check she then received from Motley came out of the \$1,000.00 check. In fact, the \$1,000.00 check was an insufficient funds check.

11. On or about February 6, 1996, Motley had deposited into his trust account his own personal loan proceeds in the amount of \$3,026.27. Of that amount Motley proceeded to write trust account checks payable to himself in amounts which totaled \$2,300.00, leaving a balance of personally borrowed funds of

\$726.27 in the trust account.

12. Although Motley stated to VSB Investigator Lacy Campbell that he had disbursed from his trust account in accordance with the HUD-1 settlement statement in the Davis to Grey transaction, in fact Motley disbursed only three checks from his trust account in the transaction:

#4689	Richmond Circuit Court	\$105.20	2/20/96
#4690	Suncoast S & L Assoc., FSA	\$125.00	2/20/96
#4704	Evelyn Davis	\$319.80	2/28/96

No monies from Grey were in the trust account to fund the transaction.

13. Motley failed to meet the requirements of the lender by sending to the lender evidence of a hazard insurance policy and an assignment of escrow reserves.

14. Motley maintained no subsidiary ledger card or an equivalent for the Davis to Grey transaction.

15. The name used by Motley for the Complainant was not always the same. The settlement statement, deed of assumption, deed of trust note from the Complainant to Grey (the Respondent's apparent attempt to take care of an outstanding judgment), deed of trust and note from Grey to the Complainant all referred to the Complainant's last name as "Meade". However the trust account check in the amount of \$319.80 was made payable to "Evelyn Davis".

16. The deed of trust from Grey to Meade names Evelyn Meade as a trustee as well as the beneficiary on the underlying note.

Trust Account Problems

17. A review of Motley's trust account and records pertaining to account number 051000127 010041351 12 at Consolidated Bank and Trust Company corresponding to the time frame of July 1, 1995 through July 30, 1996 revealed the following:

- a. subsidiary ledgers were incomplete;
- b. cash receipts journals, or any equivalent, provided no identification of the source of funds deposited;
- c. cash disbursements journals were incomplete;

18. A review of ten subsidiary ledger cards with the corresponding checks, cash receipts, journals, when compared to monthly bank statements revealed the following:

A. Myrtle Cooper- check written did not equal the deposit and the ledger card; check number 4389 was written for \$200.00 on June 28, 1995 and the funds of the Myrtle Cooper settlement were not deposited until August 10, 1995; there were insufficient funds to cover checks written on this settlement on 32 occasions between August 15, 1995 and November 13, 1995.

B. Beryl Phillips- the amount deposited does not equal the disbursements as indicated on the subsidiary ledger. There were insufficient funds to cover checks written on nine separate occasions

between August 15, 1995 and September 21, 1995.

C. Hatchett- the funds deposited do not match the funds disbursed as indicated on the subsidiary ledger card. There were insufficient funds to cover checks written on eight different occasions in the month of August 1995.

D. Mary Green- the funds deposited do not match the disbursement as shown on the subsidiary ledger card and the checks that were written do not match either the ledger or the deposit. There were insufficient funds to cover checks written on at least 12 separate occasions between February 5, 1996 and April 24, 1996.

E. 3100 Duryear Place- the deposit is different from the disbursement as shown on the ledger sheet and the checks written do not match the deposit nor the ledger. There were insufficient funds on at least six different occasions to cover checks issued between February 5, 1996 and March 19, 1996.

F. Marsha Latney settlement- the checks written do not equal the deposit and the disbursement as indicated on the ledger sheet. There were insufficient funds to cover checks issued on this settlement on at least 24 separate occasions between August 15, 1995 and October 11, 1995. Only \$1,500.00 of the \$2,000.00 attorney fees was withdrawn from the escrow account leaving a balance of \$500.00.

G. Jeri Jones- the deposit figure is not the same as the disbursement as indicated on the subsidiary ledger card and the checks written do not match either the deposit or the ledger card. The trust account was out of trust in the amount of \$4,409.09 on November 30, 1995.

H. Mathis -The deposit does not match the disbursement as indicated on the ledger sheet and the checks written do not match the deposit or ledger sheet. There were insufficient funds to cover checks written on this settlement on at least 27 occasions between October 19, 1995 and March 25, 1996.

I. Talbert- the checks written do not equal the amount deposited and shown on the ledger card as being disbursed. There were insufficient funds to cover checks written on at least 19 occasions between August 15, 1995 and November 8, 1995.

J. Greenhouse- the amount deposited differs from the amount shown as disbursed on the ledger card and the checks issued differed from both the deposit and the ledger card. There were insufficient funds to cover a check written on at least 13 separate occasions between August 15, 1995 and November 8, 1995.

19. A review of the bank statements for said account for the time period June 30, 1995 through July 11, 1996 indicate:

A. Eleven overdraft charges totaling \$275.00.

B. Interest totaling \$666.25 was credited to the trust account over thirteen months with no indication that the bank recovered the interest.

C. Seven months of activity service charges of \$49.00 and a charge back service charge of \$3.00 were assessed on the account without any indication that Motley paid the fees.

20. Motley failed to operate his trust account in accordance within the required rules and procedures of Canon 9 of the Virginia Code of Professional Responsibility.

II. NATURE OF MISCONDUCT

Such conduct on the part of Victor Alan Motley constitutes misconduct in violation of the following Disciplinary Rules of the Virginia Code of Professional Responsibility:

DR 1-102. Misconduct.

(A) A lawyer shall not:

- (3) Commit a crime or other deliberately wrongful act that reflects adversely on the lawyer's fitness to practice law.
- (4) Engage in conduct involving dishonesty, fraud, deceit, or misrepresentation which reflects adversely on a lawyer's fitness to practice law.

DR 2-108. Terminating Representation.

(A) Except as stated in paragraph (C), a lawyer shall withdraw from representing a client if:

- (1) Continuing the representation will result in a course of conduct by the

lawyer that is illegal or inconsistent with the disciplinary Rules; or

DR 6-101. Competence and Promptness.

(A) A lawyer shall undertake representation only in matters in which:

- (1) The lawyer can act with competence and demonstrate the specific legal knowledge, skill, efficiency, and thoroughness in preparation employed in acceptable practice by lawyers undertaking similar matters, or
- (2) The lawyer has associated with another lawyer who is competent in those matters.

DR 6-101. Competence and Promptness.

(B) A lawyer shall attend promptly to matters undertaken for a client until completed or until the lawyer has properly and completely withdrawn from representing the client.

DR 6-101. Competence and Promptness.

(C) A lawyer shall keep a client reasonably informed about matters in which the lawyer's services are being rendered.

DR 7-101. Representing a Client Zealously.

(A) A lawyer shall not intentionally:

- (3) Prejudice or damage his client during the course of the professional relationship, except as required under DR 4-101(D)

DR 9-102. Preserving Identity of Funds and Property of a Client.

(A) All funds received or held by a lawyer or law firm on behalf of a client, estate or a ward, residing in this State or from a transaction arising in this State, other than reimbursement of advances for costs and expenses, shall be deposited in one or more identifiable trust accounts and, as to client funds, maintained at a financial institution in a state in which the lawyer maintains a law office, and no funds belonging to the lawyer or law firm shall be deposited therein except as follows:

- (1) Funds reasonably sufficient to pay service or other charges or fees imposed by the financial institution may be deposited therein.
- (2) Funds belonging in part to a client and in part presently or potentially to the lawyer or law firm must be deposited therein, and the portion belonging to the lawyer or law firm must be withdrawn promptly after they are due unless the right of the lawyer or law firm to receive it is disputed by the client, in which event the disputed portion shall not be withdrawn until the dispute is finally resolved.

DR 9-102. Preserving Identity of Funds and Property of a Client.

(B) A lawyer shall:

- (1) Promptly notify a client of the receipt of his funds, securities, or other properties.
- (2) Identify and label securities and properties of a client promptly upon receipt and place them in a safe deposit box or other place of safekeeping as soon as practicable.
- (3) Maintain complete records of all funds, securities, and other properties of a client coming into the possession of the lawyer and render appropriate accounts to his client regarding them.
- (4) Promptly pay or deliver to the client or another as requested by such person the funds, securities, or other properties in the possession of the lawyer which such person is entitled to receive.

DR 9-103. Record Keeping Requirements.

- (A) **Required Books and Records:** As a minimum requirement, every attorney engaged in the private practice of law in Virginia, hereinafter called "attorney," shall maintain or cause to be maintained, on a current basis, books and records which establish his compliance with Disciplinary Rule 9-102. These records including all the reconciliations and supporting records required under Section (B) hereof shall be preserved for at least five years following completion of the fiduciary obligation and accounting period. For this purpose, the following books and records, or their equivalent, are required.

- (1) A cash receipts journal or journals listing all funds received, the sources of the receipts and the date of receipts. Checkbook entries of receipts and deposits, if adequately detailed and bound, may constitute a journal for this purpose. If separate cash receipts journals are not maintained for fiduciary and nonfiduciary funds, then the consolidated cash receipts journal shall contain separate columns for fiduciary and nonfiduciary receipts.
- (2) A cash disbursements journal listing and identifying all disbursements from the fiduciary account. Checkbook entries of disbursements, if adequately detailed and bound, may constitute a journal for this purpose. If separate disbursements journals are not maintained for fiduciary and nonfiduciary disbursements then the consolidated disbursements journal shall contain separate columns for fiduciary and nonfiduciary disbursements.
- (3) **Subsidiary ledger:** A subsidiary ledger containing a separate account for each client and for every other person or entity from whom money has been received in trust shall be maintained. The ledger account shall by separate columns or otherwise clearly identify fiduciary funds disbursed, and fiduciary funds balance on hand. The ledger account for a client or a separate subsidiary ledger account for a client shall clearly indicate all fees paid from trust accounts.
- (4) **Computerized and marketed manual accounting systems:** Where an attorney or firm of attorneys maintains computerized records or a manual accounting system, such system must produce the records and information required by this rule.

DR 9-103. Record Keeping Requirements.

- (B) **Required Trust Accounting Procedures:** The following minimum trust accounting procedures are applicable to all trust accounts maintained by lawyers or law firms holding funds on behalf of clients who reside in this State, or from a transaction arising in this State, whether or not the lawyer or law firm maintains an office in this State.

- (1) **Insufficient fund check reporting:**
 - (a) **Clearly identified trust accounts required:**

A lawyer or law firm shall deposit all funds held in trust in a clearly identified account, and shall inform the financial institution in writing of the purpose and identity of such account. Attorney trust accounts shall be maintained only in financial institutions approved by the Virginia State Bar, except as otherwise expressly directed in writing by the client for whom the funds are being deposited.

(b) Overdraft notification agreement required:

A financial institution shall be approved as a depository for attorney trust accounts if it shall file with the Virginia State Bar an agreement, in a form provided by the Bar, to report to the Virginia State Bar in the event any instrument which would be properly payable if sufficient funds were available, is presented against an attorney trust account containing insufficient funds, irrespective of whether or not the instrument is honored. The Virginia State Bar shall establish rules governing approval and termination of approved status for financial institutions. The Virginia State Bar shall maintain and publish from time to time a list of approved financial institutions.

No trust account shall be maintained in any financial institution which does not agree to make such reports. Any such agreement shall apply to all branches of the financial institution and shall not be canceled by the financial institution except upon thirty (30) days notice in writing to the Virginia State Bar, or as otherwise agreed to by the Virginia State Bar. Any such agreement may be canceled without prior notice by the Virginia State Bar if the financial institution fails to abide by the terms of the agreement.

(c) Overdraft reports:

The overdraft notification agreement shall provide that all reports made by the financial institution shall be in the following format:

- (i) In the case of a dishonored instrument, the report shall be identical to the overdraft notice customarily forwarded to the depositor, and should include a copy of the dishonored instrument, if such a copy is normally provided to depositors;
- (ii) In the case of instruments that are presented against insufficient funds but which instruments are honored, the report shall identify the financial institution, the attorney or law firm, the account name, the account number, the date of presentation for payment, and the date paid, as well as the amount of the overdraft created thereby;
- (iii) Such reports shall be made simultaneously with and within the time provided by law for notice of dishonor to the depositor, if any. If an instrument presented against insufficient funds is honored, then the report shall be made within five (5) banking days of the date of presentation for payment against insufficient funds.

(d) Financial institution cooperation:

In addition to making the reports specified above, approved financial institutions shall agree to cooperate fully with the Virginia State Bar and to produce any attorney trust account or other account records upon receipt of a subpoena therefor.

A financial institution may charge for the reasonable costs of producing the records required by this Rule.

(e) Attorney cooperation:

Every attorney or law firm shall be conclusively deemed to have consented to the reporting and production requirements mandated by this Rule.

(f) The following definitions apply to all of Canon 9:
 “Attorney” and “Lawyer” mean a member of the Virginia

State Bar, any other attorney admitted to regular or limited practice in this State, and any member of the bar of any other jurisdiction while engaged, *pro hac vice* or otherwise, in the practice of law in Virginia.

“Attorney trust account” or “trust account” means an account, including an escrow account, maintained in a financial institution for the deposit of funds received or held by an attorney or law firm on behalf of a client, an estate, or a ward.

“Client” includes any individual, firm, or entity for which an attorney performs any legal service, including acting as an escrow agent, fiduciary, or as a legal representative of a fiduciary. The term does not include a public or private entity of which an attorney is a full-time employee.

“Dishonored” shall refer to instruments which have been dishonored because of insufficient funds as defined above.

“Financial institution” and “bank” include regulated state or federally chartered banks, savings institutions and credit unions which have signed the approved Notification Agreement, which are licensed and authorized to do business, and in which deposits are insured by an agency of the Federal Government.

“Insufficient Funds” refers to an overdraft in the commonly accepted sense of there being an insufficient balance as shown on the bank’s accounting records; and does not include funds which at the moment may be on deposit, but uncollected.

“Law firm” includes a partnership of attorneys, a professional or nonprofit corporation of attorneys, and a combination thereof engaged in the practice of law. In the case of a law firm with offices in this State and in other jurisdictions, these Rules apply to the offices in this State, to trust accounts in other jurisdictions holding

funds of clients who are located . . . this State, and to trust accounts in other jurisdictions holding client funds from a transaction arising in this State.

“Notice of Dishonor” refers to the notice which, pursuant to Uniform Commercial Code Section 3-508(2), must be given by a bank before its midnight deadline and by any other person or institution before midnight of the third business day after dishonor or receipt of notice of dishonor. As generally used hereunder, the term notice of dishonor shall refer only to dishonor for the purpose of insufficient funds, or because the drawer of the bank has no account with the depository institution.

“Properly payable” refers to an instrument which, if presented in the normal course of business, is in the form requiring payment under the Uniform Commercial Code Section 4-104, if sufficient funds were available.

- (2) Deposits: All receipts of trust money shall be deposited intact and a retained duplicate deposit slip or other such record shall be sufficiently detailed to show the identity of each item.
- (3) Deposit of mixed fiduciary and nonfiduciary funds other than fees and retainers: Mixed fiduciary and nonfiduciary funds shall be deposited intact to the trust account. The nonfiduciary portion shall be withdrawn upon the clearing of the mixed fund deposit instrument.
- (4) Periodic Trial Balance: A regular periodic trial balance of the subsidiary ledger shall be made at least quarter annually, within 30 days after the close of the period and shall show the trust account balance of the client or other person at the end of each period.
 - (a) The total of the trial balance must agree with the control figure computed by taking the beginning balance, adding the total of monies received in trust for the period and deducting the total of trust monies disbursed for the period.
 - (b) The trial balance shall identify the preparer and be

approved by the attorney or one . . the attorneys in the firm.

(5) Reconciliations:

- (a) A monthly reconciliation shall be made at month end of the cash balance derived from the cash receipts journal and cash disbursements journal total, the trust account checkbook balance, and the trust account bank statement balance.
 - (b) A periodic reconciliation shall be made at least quarter annually, within 30 days after the close of the period, reconciling cash balances to the subsidiary ledger trial balance.
 - (c) Reconciliations shall identify the preparer and be approved by the attorney or one of the attorneys in the firm.
- (6) Receipts and Disbursements Explained: The purpose of all receipts and disbursements of trust funds reported in the trust journals and subsidiary ledgers shall be fully explained and supported by adequate records.

III. CERTIFICATION

Accordingly, it is the decision of the Subcommittee to certify the charges of misconduct to the Virginia State Bar Disciplinary Board.

THIRD DISTRICT SUBCOMMITTEE, SECTION TWO
OF THE VIRGINIA STATE BAR

By Cary A. Ralston
Cary A. Ralston
Secretary

CERTIFICATE OF SERVICE

I certify that I have this 25th day of June, 1999, mailed by CERTIFIED MAIL, RETURN RECEIPT REQUESTED, a true and correct copy of the foregoing Subcommittee Determination (Certification) to Victor Alan Motley, Respondent, at P.O. Box 25786, Richmond, VA 23260-5786, his last address of record with the Virginia State Bar and to Respondent's Counsel, Roger L. Gregory, Esq., at Wilder & Gregory, Suite 1000, Eighth and Main Building, 707 East Main Street, P.O. Box 518, Richmond, VA 23218-0518.

A handwritten signature in cursive script, appearing to read "J. M. Juice", is written over a horizontal line.



Virginia State Bar

Eighth and Main Building
707 East Main Street, Suite 1500
Richmond, Virginia 23219-2800
Telephone: (804) 775-0500

Facsimile: (804) 775-0501 TDD: (804) 775-0502

July 8, 1999

PERSONAL AND CONFIDENTIAL

CERTIFIED MAIL
RETURN RECEIPT REQUESTED :
P 975 335 020

Victor Alan Motley, Esquire
P.O. Box 25786
Richmond, VA 23260-5786

RE: In the Matter of Victor Alan Motley
VSB Docket # 96-032-2446

Dear Mr. Motley:

Pursuant to Part 6, Section IV, Paragraph 13(C)(5) of the Rules of the Supreme Court of Virginia, I am hereby serving upon you the Third District, Section Two Subcommittee Determination (Certification) in the above-referenced complaint. The procedural rules provide that you may, within twenty-one days from today, (a) file an original and eight copies of an answer or (b) demand that the charges against you be heard by a three-judge court pursuant to Section 54.1-3935 of the Code of Virginia, as amended.

The above-captioned matter has been set for hearing before the Disciplinary Board on September 24, 1999, at 9:00 a.m., in the Virginia Supreme Court, 100 North Ninth Street, First Floor, **Hearing Room A**, Richmond, VA 23219.

You have the right to request that witness summons and/or subpoenae duces tecum be issued on your behalf. Any request for the issuance of summons or subpoenae should be mailed to me at the above address, subject only to the proviso that such right be exercised reasonably and promptly.

Victor Alan Motley, Esquire
July 8, 1999
Page Two

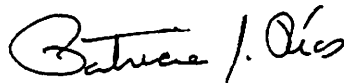
To assist this office in preparing and mailing witness summons and/or subpoenae duces tecum, we ask you to submit your request no later than two (2) weeks prior to the hearing date.

Please be advised that it is the policy of the Disciplinary Board not to grant continuances. If the hearing date conflicts with your schedule or that of your counsel, however, the board will consider a request for continuance if made in writing within five (5) days of the date of this letter.

Also, please be advised that it is the policy of the Disciplinary Board not to accept filings by facsimile transmission in any disciplinary proceeding, effective July 1, 1992. Effective July 13, 1994, it is the policy of the Disciplinary Board not to grant a continuance if an Agreed Disposition is not accepted.

If you have any questions regarding this notice, you should have your attorney write to me or call me at (804) 775-0573.

Sincerely,



Patricia J. Rios
Clerk of the Disciplinary System

PJR/tmc

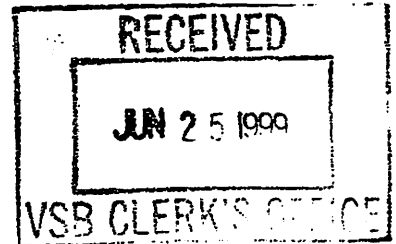
Enclosure

cc: Roger Lee Gregory, Respondent's Counsel, w/encl.
Harry M. Hirsch, Deputy Bar Counsel, w/encl.



Virginia State Bar

THIRD DISTRICT COMMITTEE



PLEASE REPLY TO:

P.O. Box 12137

Richmond, VA 23241

June 25, 1999

PERSONAL AND CONFIDENTIAL

Ms. Patricia J. Rios
Clerk of the Disciplinary System
Virginia State Bar
Suite 1500
707 East Main Street
Richmond, VA 23219

Re: In the Matter of Victor Alan Motley
VSB DOCKET NO. 96-032-2446

Dear Ms. Rios:

Enclosed please find the Third District, Section Two, Subcommittee Determination (Certification) pertaining to this matter.

Very truly yours,

Cary A. Ralston
Secretary

Enclosure

cc: Victor Alan Motley, Esq., Respondent, w/o encl.
Roger L. Gregory, Esq., Respondent's Counsel, w/o encl.
Harry M. Hirsch, Esq., w/o encl.

VIRGINIA:

BEFORE THE THIRD DISTRICT SUBCOMMITTEE, SECTION TWO
OF THE VIRGINIA STATE BAR

IN THE MATTER OF

VICTOR ALAN MOTLEY
VSB Docket No. 96-032-2446

SUBCOMMITTEE DETERMINATION
(CERTIFICATION)

On July 17, 1998, a meeting in this matter was held before a duly convened Third District Subcommittee, Section Two, consisting of Dr. James H. Slatton, Lay Member; Robert L. Freed, Esq.; and Cary A. Ralston, Esq., Secretary, presiding.

Pursuant to Part 6, Section IV, Paragraph 13(B)(5)(c)(ii)(c) of the Rules of the Supreme Court, the Third District Subcommittee, Section Two, of the Virginia State Bar hereby serves upon the Respondent the following Certification:

I. FINDINGS OF FACT

The Davis-Grey Transaction

1. At all times relevant hereto the Respondent, Victor Alan Motley [Motley], has been an attorney licensed to practice law in the Commonwealth of Virginia.

2. In or about February of 1996, Complainant Evelyn J. Meade Davis [Davis] entered into a verbal agreement with Rebecca Grey [Grey] to sell to Grey that property know as 1400 East Eighteenth Street, Richmond, VA 23224, located in the City of Richmond, Virginia [property]. The original agreement called for

Grey to purchase the property for \$35,000.00 by paying approximately \$4,000.00 at closing and assuming an existing deed of trust and note held by Sun Coast Savings and Loan Association with the approximate balance of \$31,317.03.

3. Motley was the only attorney involved in the transaction which was to close on February 15, 1996.

4. Prior to the date of closing, Davis was informed that Grey would not be able to pay the full \$4,000.00 at closing but could pay \$2,000.00 instead. Davis agreed that Grey would pay \$2,000.00 at closing and that Grey would pay the remaining \$2,000.00 by May 15, 1996 in accordance with a deed of trust and note.

5. On February 15, 1996, Davis, Grey and Motley met for the closing. Grey had no funds with her. It was agreed that the closing papers would be signed anyway and that Grey would pay at a later date the \$2,000.00 she had agreed to bring to closing. Inter alia, A HUD-1 settlement statement, deed of assumption, deed of trust note [Davis to Grey], deed of trust note [Grey to Davis], and deed of trust [Grey to Davis] were signed.

6. Several days later, Motley called Davis to inform her that he had received a check from Grey in the amount of \$1,000.00 instead of \$2,000.00. Out of the \$1,000.00 check, Motley subsequently paid Davis the sum of \$319.80.

7. In May of 1996, Motley informed Davis that he had received a certified check from Grey in the amount of \$1,500.00 and that he was still owed \$200.00 in the transaction. After consulting with another attorney, Davis picked up the

certified check from Motley. Davis received a total of \$1,817.80 from the transaction although the HUD-1 settlement statement called for her to receive a total of \$3,373.23.

8. Davis moved out of the property prior to the closing date and Grey moved into the premises right after the closing.

9. According to Motley, when Grey appeared at closing without funds, Davis agreed to complete the closing but recordation was not to occur until Motley had received the required \$2,000.00. Motley never did receive a total of \$2,000.00 from Grey. However, Motley did record the deed of assumption and a deed of trust from Grey on February 20, 1996.

10. The \$1,000.00 check which Grey provided to Motley several days after closing was an uncertified personal check. Motley deposited the check into his personal checking account on or about February 20, 1996, although he stated to VSB Investigator Lacy Campbell that he had deposited the check into his trust account. Davis believed that the \$319.80 check she then received from Motley came out of the \$1,000.00 check. In fact, the \$1,000.00 check was an insufficient funds check.

11. On or about February 6, 1996, Motley had deposited into his trust account his own personal loan proceeds in the amount of \$3,026.27. Of that amount Motley proceeded to write trust account checks payable to himself in amounts which totaled \$2,300.00, leaving a balance of personally borrowed funds of

\$726.27 in the trust account.

12. Although Motley stated to VSB Investigator Lacy Campbell that he had disbursed from his trust account in accordance with the HUD-1 settlement statement in the Davis to Grey transaction, in fact Motley disbursed only three checks from his trust account in the transaction:

#4689	Richmond Circuit Court	\$105.20	2/20/96
#4690	Suncoast S & L Assoc., FSA	\$125.00	2/20/96
#4704	Evelyn Davis	\$319.80	2/28/96

No monies from Grey were in the trust account to fund the transaction.

13. Motley failed to meet the requirements of the lender by sending to the lender evidence of a hazard insurance policy and an assignment of escrow reserves.

14. Motley maintained no subsidiary ledger card or an equivalent for the Davis to Grey transaction.

15. The name used by Motley for the Complainant was not always the same. The settlement statement, deed of assumption, deed of trust note from the Complainant to Grey (the Respondent's apparent attempt to take care of an outstanding judgment), deed of trust and note from Grey to the Complainant all referred to the Complainant's last name as "Meade". However the trust account check in the amount of \$319.80 was made payable to "Evelyn Davis".

16. The deed of trust from Grey to Meade names Evelyn Meade as a trustee as well as the beneficiary on the underlying note.

Trust Account Problems

17. A review of Motley's trust account and records pertaining to account number 051000127 010041351 12 at Consolidated Bank and Trust Company corresponding to the time frame of July 1, 1995 through July 30, 1996 revealed the following:

- a. subsidiary ledgers were incomplete;
- b. cash receipts journals, or any equivalent, provided no identification of the source of funds deposited;
- c. cash disbursements journals were incomplete;

18. A review of ten subsidiary ledger cards with the corresponding checks, cash receipts, journals, when compared to monthly bank statements revealed the following:

A. Myrtle Cooper- check written did not equal the deposit and the ledger card; check number 4389 was written for \$200.00 on June 28, 1995 and the funds of the Myrtle Cooper settlement were not deposited until August 10, 1995; there were insufficient funds to cover checks written on this settlement on 32 occasions between August 15, 1995 and November 13, 1995.

B. Beryl Phillips- the amount deposited does not equal the disbursements as indicated on the subsidiary ledger. There were insufficient funds to cover checks written on nine separate occasions

between August 15, 1995 and September 21, 1995.

C. Hatchett- the funds deposited do not match the funds disbursed as indicated on the subsidiary ledger card. There were insufficient funds to cover checks written on eight different occasions in the month of August 1995.

D. Mary Green- the funds deposited do not match the disbursement as shown on the subsidiary ledger card and the checks that were written do not match either the ledger or the deposit. There were insufficient funds to cover checks written on at least 12 separate occasions between February 5, 1996 and April 24, 1996.

E. 3100 Duryear Place- the deposit is different from the disbursement as shown on the ledger sheet and the checks written do not match the deposit nor the ledger. There were insufficient funds on at least six different occasions to cover checks issued between February 5, 1996 and March 19, 1996.

F. Marsha Latney settlement- the checks written do not equal the deposit and the disbursement as indicated on the ledger sheet. There were insufficient funds to cover checks issued on this settlement on at least 24 separate occasions between August 15, 1995 and October 11, 1995. Only \$1,500.00 of the \$2,000.00 attorney fees was withdrawn from the escrow account leaving a balance of \$500.00.

G. Jeri Jones- the deposit figure is not the same as the disbursement as indicated on the subsidiary ledger card and the checks written do not match either the deposit or the ledger card. The trust account was out of trust in the amount of \$4,409.09 on November 30, 1995.

H. Mathis -The deposit does not match the disbursement as indicated on the ledger sheet and the checks written do not match the deposit or ledger sheet. There were insufficient funds to cover checks written on this settlement on at least 27 occasions between October 19, 1995 and March 25, 1996.

I. Talbert- the checks written do not equal the amount deposited and shown on the ledger card as being disbursed. There were insufficient funds to cover checks written on at least 19 occasions between August 15, 1995 and November 8, 1995.

J. Greenhouse- the amount deposited differs from the amount shown as disbursed on the ledger card and the checks issued differed from both the deposit and the ledger card. There were insufficient funds to cover a check written on at least 13 separate occasions between August 15, 1995 and November 8, 1995.

19. A review of the bank statements for said account for the time period June 30, 1995 through July 11, 1996 indicate:

A. Eleven overdraft charges totaling \$275.00.

B. Interest totaling \$666.25 was credited to the trust account over thirteen months with no indication that the bank recovered the interest.

C. Seven months of activity service charges of \$49.00 and a charge back service charge of \$3.00 were assessed on the account without any indication that Motley paid the fees.

20. Motley failed to operate his trust account in accordance within the required rules and procedures of Canon 9 of the Virginia Code of Professional Responsibility.

II. NATURE OF MISCONDUCT

Such conduct on the part of Victor Alan Motley constitutes misconduct in violation of the following Disciplinary Rules of the Virginia Code of Professional Responsibility:

DR 1-102. Misconduct.

(A) A lawyer shall not:

- (3) Commit a crime or other deliberately wrongful act that reflects adversely on the lawyer's fitness to practice law.
- (4) Engage in conduct involving dishonesty, fraud, deceit, or misrepresentation which reflects adversely on a lawyer's fitness to practice law.

DR 2-108. Terminating Representation.

(A) Except as stated in paragraph (C), a lawyer shall withdraw from representing a client if:

- (1) Continuing the representation will result in a course of conduct by the

lawyer that is illegal or inconsistent with the Disciplinary Rules; or

DR 6-101. Competence and Promptness.

(A) A lawyer shall undertake representation only in matters in which:

- (1) The lawyer can act with competence and demonstrate the specific legal knowledge, skill, efficiency, and thoroughness in preparation employed in acceptable practice by lawyers undertaking similar matters, or
- (2) The lawyer has associated with another lawyer who is competent in those matters.

DR 6-101. Competence and Promptness.

(B) A lawyer shall attend promptly to matters undertaken for a client until completed or until the lawyer has properly and completely withdrawn from representing the client.

DR 6-101. Competence and Promptness.

(C) A lawyer shall keep a client reasonably informed about matters in which the lawyer's services are being rendered.

DR 7-101. Representing a Client Zealously.

(A) A lawyer shall not intentionally:

- (3) Prejudice or damage his client during the course of the professional relationship, except as required under DR 4-101(D)

DR 9-102. Preserving Identity of Funds and Property of a Client.

(A) All funds received or held by a lawyer or law firm on behalf of a client, estate or a ward, residing in this State or from a transaction arising in this State, other than reimbursement of advances for costs and expenses, shall be deposited in one or more identifiable trust accounts and, as to client funds, maintained at a financial institution in a state in which the lawyer maintains a law office, and no funds belonging to the lawyer or law firm shall be deposited therein except as follows:

- (1) Funds reasonably sufficient to pay service or other charges or fees imposed by the financial institution may be deposited therein.
- (2) Funds belonging in part to a client and in part presently or potentially to the lawyer or law firm must be deposited therein, and the portion belonging to the lawyer or law firm must be withdrawn promptly after they are due unless the right of the lawyer or law firm to receive it is disputed by the client, in which event the disputed portion shall not be withdrawn until the dispute is finally resolved.

DR 9-102. Preserving Identity of Funds and Property of a Client.

(B) A lawyer shall:

- (1) Promptly notify a client of the receipt of his funds, securities, or other properties.
- (2) Identify and label securities and properties of a client promptly upon receipt and place them in a safe deposit box or other place of safekeeping as soon as practicable.
- (3) Maintain complete records of all funds, securities, and other properties of a client coming into the possession of the lawyer and render appropriate accounts to his client regarding them.
- (4) Promptly pay or deliver to the client or another as requested by such person the funds, securities, or other properties in the possession of the lawyer which such person is entitled to receive.

DR 9-103. Record Keeping Requirements.

- (A) **Required Books and Records:** As a minimum requirement, every attorney engaged in the private practice of law in Virginia, hereinafter called "attorney," shall maintain or cause to be maintained, on a current basis, books and records which establish his compliance with Disciplinary Rule 9-102. These records including all the reconciliations and supporting records required under Section (B) hereof shall be preserved for at least five years following completion of the fiduciary obligation and accounting period. For this purpose, the following books and records, or their equivalent, are required.

- (1) A cash receipts journal or journals listing all funds received, the sources of the receipts and the date of receipts. Checkbook entries of receipts and deposits, if adequately detailed and bound, may constitute a journal for this purpose. If separate cash receipts journals are not maintained for fiduciary and nonfiduciary funds, then the consolidated cash receipts journal shall contain separate columns for fiduciary and nonfiduciary receipts.
- (2) A cash disbursements journal listing and identifying all disbursements from the fiduciary account. Checkbook entries of disbursements, if adequately detailed and bound, may constitute a journal for this purpose. If separate disbursements journals are not maintained for fiduciary and nonfiduciary disbursements then the consolidated disbursements journal shall contain separate columns for fiduciary and nonfiduciary disbursements.
- (3) **Subsidiary ledger:** A subsidiary ledger containing a separate account for each client and for every other person or entity from whom money has been received in trust shall be maintained. The ledger account shall by separate columns or otherwise clearly identify fiduciary funds disbursed, and fiduciary funds balance on hand. The ledger account for a client or a separate subsidiary ledger account for a client shall clearly indicate all fees paid from trust accounts.
- (4) **Computerized and marketed manual accounting systems:** Where an attorney or firm of attorneys maintains computerized records or a manual accounting system, such system must produce the records and information required by this rule.

DR 9-103. Record Keeping Requirements.

- (B) **Required Trust Accounting Procedures:** The following minimum trust accounting procedures are applicable to all trust accounts maintained by lawyers or law firms holding funds on behalf of clients who reside in this State, or from a transaction arising in this State, whether or not the lawyer or law firm maintains an office in this State.
 - (1) **Insufficient fund check reporting:**
 - (a) **Clearly identified trust accounts required:**

A lawyer or law firm shall deposit all funds held in trust in a clearly identified account, and shall inform the financial institution in writing of the purpose and identity of such account. Attorney trust accounts shall be maintained only in financial institutions approved by the Virginia State Bar, except as otherwise expressly directed in writing by the client for whom the funds are being deposited.

(b) Overdraft notification agreement required:

A financial institution shall be approved as a depository for attorney trust accounts if it shall file with the Virginia State Bar an agreement, in a form provided by the Bar, to report to the Virginia State Bar in the event any instrument which would be properly payable if sufficient funds were available, is presented against an attorney trust account containing insufficient funds, irrespective of whether or not the instrument is honored. The Virginia State Bar shall establish rules governing approval and termination of approved status for financial institutions. The Virginia State Bar shall maintain and publish from time to time a list of approved financial institutions.

No trust account shall be maintained in any financial institution which does not agree to make such reports. Any such agreement shall apply to all branches of the financial institution and shall not be canceled by the financial institution except upon thirty (30) days notice in writing to the Virginia State Bar, or as otherwise agreed to by the Virginia State Bar. Any such agreement may be canceled without prior notice by the Virginia State Bar if the financial institution fails to abide by the terms of the agreement.

(c) Overdraft reports:

The overdraft notification agreement shall provide that all reports made by the financial institution shall be in the following format:

- (i) In the case of a dishonored instrument, the report shall be identical to the overdraft notice customarily forwarded to the depositor, and should include a copy of the dishonored instrument, if such a copy is normally provided to depositors;
 - (ii) In the case of instruments that are presented against insufficient funds but which instruments are honored, the report shall identify the financial institution, the attorney or law firm, the account name, the account number, the date of presentation for payment, and the date paid, as well as the amount of the overdraft created thereby;
 - (iii) Such reports shall be made simultaneously with and within the time provided by law for notice of dishonor to the depositor, if any. If an instrument presented against insufficient funds is honored, then the report shall be made within five (5) banking days of the date of presentation for payment against insufficient funds.
- (d) Financial institution cooperation:

In addition to making the reports specified above, approved financial institutions shall agree to cooperate fully with the Virginia State Bar and to produce any attorney trust account or other account records upon receipt of a subpoena therefor.

A financial institution may charge for the reasonable costs of producing the records required by this Rule.

- (e) Attorney cooperation:

Every attorney or law firm shall be conclusively deemed to have consented to the reporting and production requirements mandated by this Rule.

- (f) The following definitions apply to all of Canon 9:
“Attorney” and “Lawyer” mean a member of the Virginia

State Bar, any other attorney admitted to regular or limited practice in this State, and any member of the bar of any other jurisdiction while engaged, *pro hac vice* or otherwise, in the practice of law in Virginia.

“Attorney trust account” or “trust account” means an account, including an escrow account, maintained in a financial institution for the deposit of funds received or held by an attorney or law firm on behalf of a client, an estate, or a ward.

“Client” includes any individual, firm, or entity for which an attorney performs any legal service, including acting as an escrow agent, fiduciary, or as a legal representative of a fiduciary. The term does not include a public or private entity of which an attorney is a full-time employee.

“Dishonored” shall refer to instruments which have been dishonored because of insufficient funds as defined above.

“Financial institution” and “bank” include regulated state or federally chartered banks, savings institutions and credit unions which have signed the approved Notification Agreement, which are licensed and authorized to do business, and in which deposits are insured by an agency of the Federal Government.

“Insufficient Funds” refers to an overdraft in the commonly accepted sense of there being an insufficient balance as shown on the bank’s accounting records; and does not include funds which at the moment may be on deposit, but uncollected.

“Law firm” includes a partnership of attorneys, a professional or nonprofit corporation of attorneys, and a combination thereof engaged in the practice of law. In the case of a law firm with offices in this State and in other jurisdictions, these Rules apply to the offices in this State, to trust accounts in other jurisdictions holding

funds of clients who are located in this State, and to trust accounts in other jurisdictions holding client funds from a transaction arising in this State.

“Notice of Dishonor” refers to the notice which, pursuant to Uniform Commercial Code Section 3-508(2), must be given by a bank before its midnight deadline and by any other person or institution before midnight of the third business day after dishonor or receipt of notice of dishonor. As generally used hereunder, the term notice of dishonor shall refer only to dishonor for the purpose of insufficient funds, or because the drawer of the bank has no account with the depository institution.

“Properly payable” refers to an instrument which, if presented in the normal course of business, is in the form requiring payment under the Uniform Commercial Code Section 4-104, if sufficient funds were available.

- (2) Deposits: All receipts of trust money shall be deposited intact and a retained duplicate deposit slip or other such record shall be sufficiently detailed to show the identity of each item.
- (3) Deposit of mixed fiduciary and nonfiduciary funds other than fees and retainers: Mixed fiduciary and nonfiduciary funds shall be deposited intact to the trust account. The nonfiduciary portion shall be withdrawn upon the clearing of the mixed fund deposit instrument.
- (4) Periodic Trial Balance: A regular periodic trial balance of the subsidiary ledger shall be made at least quarter annually, within 30 days after the close of the period and shall show the trust account balance of the client or other person at the end of each period.
 - (a) The total of the trial balance must agree with the control figure computed by taking the beginning balance, adding the total of monies received in trust for the period and deducting the total of trust monies disbursed for the period.
 - (b) The trial balance shall identify the preparer and be

approved by the attorney or one of the attorneys in the firm.

(5) Reconciliations:

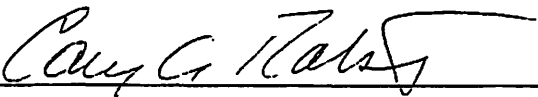
- (a) A monthly reconciliation shall be made at month end of the cash balance derived from the cash receipts journal and cash disbursements journal total, the trust account checkbook balance, and the trust account bank statement balance.
- (b) A periodic reconciliation shall be made at least quarter annually, within 30 days after the close of the period, reconciling cash balances to the subsidiary ledger trial balance.
- (c) Reconciliations shall identify the preparer and be approved by the attorney or one of the attorneys in the firm.

- (6) Receipts and Disbursements Explained: The purpose of all receipts and disbursements of trust funds reported in the trust journals and subsidiary ledgers shall be fully explained and supported by adequate records.

III. CERTIFICATION

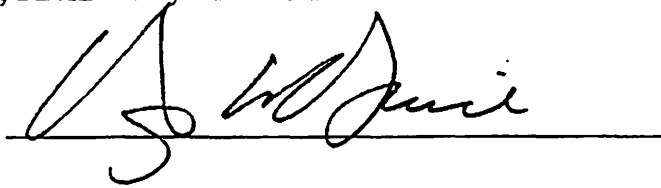
Accordingly, it is the decision of the Subcommittee to certify the charges of misconduct to the Virginia State Bar Disciplinary Board.

THIRD DISTRICT SUBCOMMITTEE, SECTION TWO
OF THE VIRGINIA STATE BAR

By 
Cary A. Ralston
Secretary

CERTIFICATE OF SERVICE

I certify that I have this 25th day of June, 1999, mailed by CERTIFIED MAIL, RETURN RECEIPT REQUESTED, a true and correct copy of the foregoing Subcommittee Determination (Certification) to Victor Alan Motley, Respondent, at P.O. Box 25786, Richmond, VA 23260-5786, his last address of record with the Virginia State Bar and to Respondent's Counsel, Roger L. Gregory, Esq., at Wilder & Gregory, Suite 1000, Eighth and Main Building, 707 East Main Street, P.O. Box 518, Richmond, VA 23218-0518.



THE
WALZ
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FROM **MOORE**

ITEM #18178
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WALZ CERTIFIED MAILER™

P 975 335 020

TO:

P 975 335 020

Label #1 Victor Alan Motley, Esquire
P.O. Box 25786
Richmond, VA 23260-5786

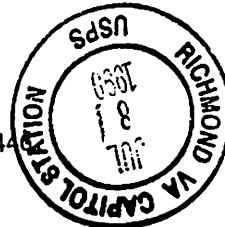
TO:

Victor Alan Motley, Esquire
P.O. Box 25786
Richmond, VA 23260-5786

Label #2 Victor Alan Motley, Esquire
P.O. Box 25786
Richmond, VA 23260-5786

SENDER: Tricia Clark

REFERENCE: 96-032-244



Label #3 Victor Alan Motley, Esquire
P.O. Box 25786
Richmond, VA 23260-5786

PS FORM 3800, SEPTEMBER 1995		
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	Return Receipt Fee	1.25
	Restricted Delivery	0.00
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Label #4

Label #5

Certified Article Number

P 975 335 020

SENDER'S RECORD

CHARGE
AMOUNT:

Victor Alan Motley, Esquire
P.O. Box 25786
Richmond, VA 23260-5786

P 975 335 020

MAIL

RETURN RECEIPT REQUESTED

RESTRICTED DELIVERY

Label #6

CHARGE TO:

FOLD AND TEAR THIS WAY →

96-032-2446

SENDER:

Tricia Clark

Article Addressed to:

Victor Alan Motley, Esquire
P.O. Box 25786
Richmond, VA 23260-5786

Received By: (Print Name)

Signature: (Addressee or Agent)

I also wish to receive the
following service (for an extra fee):

RESTRICTED
DELIVERY ☐

Consult postmaster for fee.

4a. Article Number

P 975 335 020



4b. Service Type



CERTIFIED

7. Date of Delivery

JUL 1 2 1999

8. Addressee's Address

39

Domestic Return Receipt

I also wish to receive the
following service (for an extra fee):

RESTRICTED
DELIVERY ☐

Consult postmaster for fee.

4a. Article Number

P 975 335 020



4b. Service Type



CERTIFIED

7. Date of Delivery

8. Addressee's Address

38

Domestic Return Receipt

Thank you for using Return Receipt Service

Virginia W. Powell, Chair
951 East Byrd Street
Richmond, VA 23219

Carl A. Eason, Vice Chair
One Columbus Center, Ste. 1100
Virginia Beach, VA 23462

Henry P. Custis, Jr., Vice Chair
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Accomac, VA 23301

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Theophilus L. Twitty
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Portsmouth, VA 23701

Deborah A.J. Wilson
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Fairfax, VA 22030



Virginia State Bar

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Richmond, Virginia 23219-2800
Telephone: (804) 775-0500

Facsimile: (804) 775-0501 TDD: (804) 775-0502

VIRGINIA STATE BAR
DISCIPLINARY BOARD

July 9, 1999

PERSONAL AND CONFIDENTIAL

Carl Arthur Eason, Chair
Disciplinary Board
Wolcott, Rivers, Wheary, et al.
1100 One Columbus Center
Virginia Beach, VA 23462-6722

Re: In the Matter of Victor Alan Motley
VSB Docket # 96-032-2446

Dear Mr. Motley:

Please enter the enclosed Order if you deem it appropriate to do so.

Sincerely,

Patricia J. Ríos
Clerk of the Disciplinary System

PJR/tmc

Enclosure

Patricia J. Ríos
Clerk of the Disciplinary System

Eighth and Main Building
707 East Main Street, Suite 1500
Richmond, Virginia 23219-2803

RECEIVED

JUL 14 1999

VIRGINIA STATE BAR

BEFORE THE VIRGINIA STATE BAR DISCIPLINARY BOARD

IN RE:
VICTOR ALAN MOTLEY

VSB DOCKET # 96-032-2446

PRE-HEARING ORDER

In accordance with procedures adopted by the Board to facilitate presentation of evidence in matters before the Board, it is hereby

ORDERED that by July 29, 1999, Respondent shall answer in writing the Certification by admitting or denying the specific allegations contained therein. Where Respondent cannot admit or deny any allegation without qualification then Respondent shall admit or deny each allegation as best he or she can and set forth all qualifications.

ORDERED that by August 20, 1999, Counsel for the parties (and/or any pro se parties) shall file with the Clerk of the Disciplinary System a list and an original and eight copies of all exhibits proposed to be introduced at the misconduct stage of the hearing. This filing shall include a certification that Counsel for the parties (and/or any pro se parties) served via hand delivery or first class mail, one copy of the filing upon opposing counsel or pro se parties. For the purposes of this Order filing shall be accomplished by hand delivery or certified mailing. This filing does not include exhibits which may be used for rebuttal or for impeachment. Failure to comply with this

paragraph in a timely fashion may be grounds, absent good cause shown, to bar introduction of the exhibits at the hearing of this matter.

It is further ORDERED that by September 3, 1999, Counsel for the parties (and/or any pro se parties) shall file with the Clerk of the Disciplinary System an original and eight copies of any objections to exhibits filed hereunder. This filing shall include a certification that Counsel for the parties (and/or any pro se parties) served via hand delivery or first class mail, one copy of the filing upon opposing counsel or pro se parties. Exhibits not objected to in writing will be deemed admitted at the hearing. Objections shall be to particular numbers and must state the reason for the objection.

It is further ORDERED that the parties are strongly encouraged to meet and enter into stipulations of fact and/or disciplinary violations. Accordingly, the parties are directed to communicate regarding the proposed stipulations and file any agreed stipulations on or before September 16, 1999. In the event the parties are unable to enter into any stipulations, each party or his counsel shall file with the Clerk a certification that they have exercised due diligence and made a good faith effort to enter into stipulations, but have been unable to do so. This certification shall be filed with the Clerk by the date set out above for the filing of stipulations.

It is further ORDERED that by August 20, 1999, Counsel for the parties (and/or any pro se parties) shall file with the Clerk of the Disciplinary System witness lists setting forth the name of each witness the party intends to call. This includes fact witnesses, character witnesses, expert witnesses and witnesses who may be called for the sanctions phase of the hearing if necessary. Failure to identify any witness in a timely fashion may be grounds, absent good cause shown, to bar any such witness. This filing shall include a certification that Counsel for the parties (and/or any pro se parties) served via hand delivery or first class mail, one copy of the filing upon opposing counsel or pro se parties.

When this order specifies that an item be filed with the Clerk of the Disciplinary System by a certain date, that means that the item must be received by the Clerk by the same date.

This matter shall be heard on September 24, 1999, as previously noticed. Should additional days be needed to hear this matter, then those dates shall be set at the initial hearing. No party shall be precluded from offering probative, non-cumulative evidence should the hearing not be completed in one day. The undersigned simply wants the parties to consider seriously pre-trial stipulations which will minimize hearing delays, help keep the hearing focused on the issues and minimize the inconvenience of the witnesses.

The parties are further reminded that the rules of evidence are flexible. As a result, the Board does entertain evidence by letter, affidavit or via other documents containing hearsay and where the proponent is not subject to cross-examination which are sometimes offered on matters which are collateral to the central issues or cumulative or where the witness is beyond the Board's subpoena power. The parties should carefully consider and balance the need for live testimony versus the burden on the witness and the collateral nature of his or her testimony. At times, the parties may choose and the Board has accepted depositions and other forms of testimony taken and preserved in other proceedings even when that testimony does address central issues. Submitting any such alternative forms of evidence to the opposing party in advance of trial will minimize the chance of any claim of surprise and maximize the admissibility of the evidence. This type of evidence is given such weight as the Board determines is appropriate. Finally, notwithstanding the absence of discovery, the parties may agree to take depositions de bene esse of witnesses who are not available or for whom appearance at the hearing would be an undue burden when considering the nature of their testimony.

ENTERED this 12th day of July, 1999

Carl A. Eason, chair
Carl A. Eason, Chair
Virginia State Bar Disciplinary Board

Virginia W. Powell, Chair
951 East Byrd Street
Richmond, VA 23219

Carl A. Eason, Vice Chair
One Columbus Center, Ste. 1100
Virginia Beach, VA 23462

Henry P. Custis, Jr., Vice Chair
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Accomac, VA 23301

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Roanoke, VA 24038

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Washington, DC 20005

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Portsmouth, VA 23701

Deborah A.J. Wilson
4161 Chain Bridge Road
Fairfax, VA 22030



Virginia State Bar

Eighth and Main Building
707 East Main Street, Suite 1500
Richmond, Virginia 23219-2800
Telephone: (804) 775-0500

Facsimile: (804) 775-0501 TDD: (804) 775-0502

VIRGINIA STATE BAR
DISCIPLINARY BOARD

July 14, 1999

PERSONAL AND CONFIDENTIAL

CERTIFIED MAIL
RETURN RECEIPT REQUESTED
P 975 335 026

Victor Alan Motley, Esquire
P.O. Box 25786
Richmond, VA 23260-5786

Re: In the Matter of Victor Alan Motley
VSB Docket No. 96-032-2446

Dear Mr. Motley:

Enclosed is an attested copy of a "Pre-Hearing Order" of the Virginia State Bar Disciplinary Board entered July 12, 1999, in the above-referenced matter.

If you have any questions, or desire to discuss this matter further, please have your attorney contact me at (804) 775-0573.

Sincerely,

Patricia J. Rios
Clerk of the Disciplinary System

PJR/tmc
Enclosure

cc: Roger Lee Gregory, Respondent's Counsel, w/encl.
Harry M. Hirsch, Deputy Bar Counsel, w/encl.

BEFORE THE VIRGINIA STATE BAR DISCIPLINARY BOARD

IN RE:
VICTOR ALAN MOTLEY

VSB DOCKET # 96-032-2446

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ENTERED this 12th day of July, 1999

Carl A. Eason, Chair

Carl A. Eason, Chair
Virginia State Bar Disciplinary Board

A COPY TESTE:

Patricia J. Rios

PATRICIA J. RIOS

CLERK OF THE DISCIPLINARY SYSTEM

THE
WALZ
CERTIFIED
MAILER™

FROM

MOORE

ITEM #48178
U.S. PAT. NO. 5,501,393
WALZ CERTIFIED MAILER™

P 975 335 026

P 975 335 026

Label #1 Victor Alan Motley, Esquire
P.O. Box 25786
Richmond, VA 23260-5786

TO:

Victor Alan Motley, Esquire
P.O. Box 25786
Richmond, VA 23260-5786

Label #2 Victor Alan Motley, Esquire
P.O. Box 25786
Richmond, VA 23260-5786

SENDER: Tricia Clark

REFERENCE: 96-032-2446

Label #3 Victor Alan Motley, Esquire
P.O. Box 25786
Richmond, VA 23260-5786

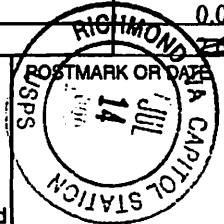
PS FORM 3800, SEPTEMBER 1995

RETURN RECEIPT SERVICE	Postage	1.55
	Certified Fee	1.40
	Return Receipt Fee	1.25
	Restricted Delivery	0.00
	Total Postage and Fees	3.20

US Postal Service

**Receipt for
Certified Mail**

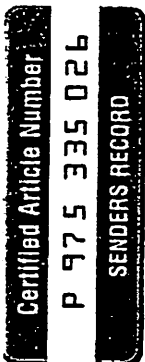
No Insurance Coverage Provided
Do not use for International Mail



FOLD AND TEAR THIS WAY → OPTIONAL

Label #4

Label #5



Victor Alan Motley, Esquire
P.O. Box 25786
Richmond, VA 23260-5786

CHARGE
AMOUNT:

CERTIFIED

P 975 335 026

MAIL

RETURN RECEIPT REQUESTED

Label #6

RESTRICTED DELIVERY

CHARGE TO:

FOLD AND TEAR THIS WAY →

RE:

96-032-2446

SENDER:

Tricia Clark

3. Article Addressed to:

Victor Alan Motley, Esquire
P.O. Box 25786
Richmond, VA 23260-5786

5. Received By: (Print Name)

6. Signature: (Addressee or Agent)

PS Form 3811, December 1994

I also wish to receive the
following service (for an extra fee):

RESTRICTED
DELIVERY ☐

Consult postmaster for fee.

4a. Article Number

P 975 335 026

4b. Service Type ☒ CERTIFIED

4c. Date of Delivery
JUL 16 1999

4d. Addressee's Address
RICHMOND, VA 23260-5786

50

I also wish to receive the
following service (for an extra fee):

RESTRICTED
DELIVERY ☐

Consult postmaster for fee.

4e. Article Number

P 975 335 026

4f. Service Type ☒ CERTIFIED
of Delivery

4g. Addressee's Address

49

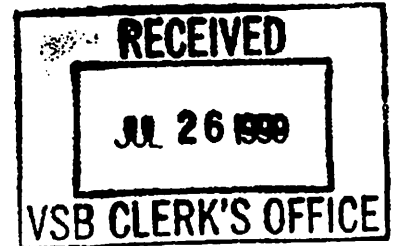
Domestic Return Receipt

Domestic Return Receipt

Thank you for using Return Receipt Service

WILDER & GREGORY
ATTORNEYS AT LAW
EIGHTH & MAIN BUILDING
SUITE 1000
707 EAST MAIN STREET
RICHMOND, VIRGINIA 23219

MAILING ADDRESS:
POST OFFICE BOX 518
RICHMOND, VA 23218-0518



TELEPHONE (804) 643-8401
TELECOPIER (804) 648-2707

July 26, 1999

BY HAND

Ms. Patricia J. Rios
Clerk of the Disciplinary System
Eighth and Main Building
707 East Main Street, Suite 1500
Richmond, Virginia 23219-2800

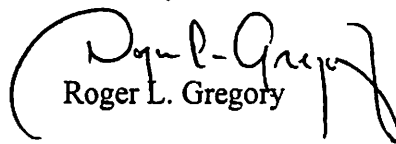
Re: In the Matter of Victor Alan Motley
VSB Docket # 96-032-2446

Dear Ms. Rios:

Enclosed please find Respondent's Answer to the Certification (original and 8 copies) and Respondent's Motion to Dismiss (original and 8 copies) which I would appreciate your filing with the Disciplinary Board.

Thank you for your assistance in this regard.

Sincerely,


Roger L. Gregory

Enclosure

Harry M. Hirsch, Esquire
Deputy Bar Counsel

BEFORE THE VIRGINIA STATE BAR DISCIPLINARY BOARD

**IN RE:
VICTOR ALAN MOTLEY**

VSb DOCKET # 96-032-2446

RESPONDENT'S ANSWER TO CERTIFICATION

Victor Alan Motley ("Respondent"), pursuant to Part 6, Section IV, Paragraph 13 (C) (5) (i), for his answer to the Subcommittee's Certification states:

1. That the allegations contained in paragraphs 1 through 6 of the Certification are admitted.
2. That Respondent received a certified check in the amount of \$1,500.00 from Gray which he gave to Davis and the remaining allegations contained in paragraph 7 of the Certification are denied.
3. That the allegations contained in paragraphs 8 and 9 of the Certification are denied.
4. That the \$1,000.00 check Respondent received from Gray was an uncertified check and the remaining allegations contained in paragraph 10 of the Certification are denied.
5. That the allegations contained in paragraph 11 of the Certification are admitted.
6. That the allegations contained in paragraphs 12 through 16 of the Certification are denied.

7. That the allegations contained under the heading “Trust Account Problems” in paragraphs 17 through 20 including all sub parts are denied.

8. That the allegations contained under the heading “II. NATURE OF MISCONDUCT” in un-numbered paragraphs including all sub parts citing specific Disciplinary Rules are denied.

9. That all allegations contained in the Certification not specifically admitted herein are denied.

10. That Respondent for his affirmative defenses to the Certification states:

AFFIRMATIVE DEFENSE ONE

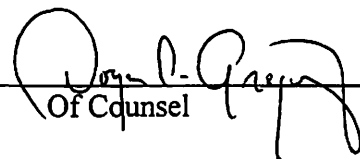
The Certification is in violation of Part 6, Section IV, Paragraph 13 (B) (5) (c) (ii) (c) and Paragraph (12) in that the Subcommittee elected to certify the Charges of Misconduct on July 18, 1998 but did not notify the Respondent of the facts and basis for the charges until nearly one year later. Such delay violated procedural requirements and irreparably prejudiced Respondent’s right to present his defense to these charges.

AFFIRMATIVE DEFENSE TWO

The enlargement of the investigation and the Charges of Misconduct from the original scope which pertained solely to the handling of a specific real estate closing to the general investigation of Respondent’s trust account and Charges of Misconduct relating to trust accounting violated Respondent’s rights to due process and equal protection under the law under the Fourteenth Amendment to the United States Constitution.

WHEREFORE having fully answered the Certification, Victor Alan Motley prays
that this matter be dismissed.

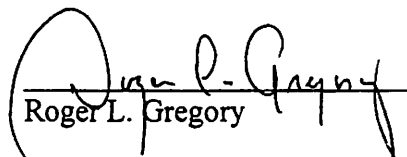
VICTOR ALAN MOTLEY

By 
Of Counsel

Roger L. Gregory
WILDER & GREGORY
707 East Main Street
Suite 1000
Richmond, Virginia 23219
(804) 643-8401

CERTIFICATE

I hereby certify that Respondent's Answer to the Certification was hand delivered
to Harry M. Hirsch, Esquire, Deputy Bar Counsel, Eighth and Main Building, 707 East
Main Street, Suite 1500, Richmond, Virginia 23219-2800 on this 26th day of July, 1999.


Roger L. Gregory

BEFORE THE VIRGINIA STATE BAR DISCIPLINARY BOARD

**IN RE:
VICTOR ALAN MOTLEY**

VSB DOCKET # 96-032-2446

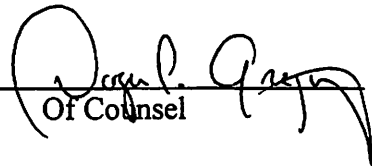
RESPONDENT'S MOTION TO DISMISS

Victor Alan Motley ("Respondent"), moves to dismiss the Certification and in support of such motion states:

1. That the Certification is in violation of Part 6, Section IV, Paragraph 13 (B) (5) (c) (ii) (c) and Paragraph (12) in that the Subcommittee elected to certify the Charges of Misconduct on July 18, 1998 but did not notify the Respondent of the facts and basis for the charges until nearly one year later. Such delay violated procedural requirements and irreparably prejudiced Respondent's right to present his defense to these charges.
2. That this Certification is barred by the applicable statute of limitations and or doctrine of laches.
3. That the enlargement of the investigation and the Charges of Misconduct from the original scope which pertained solely to the handling of a specific real estate closing to the general investigation of Respondent's trust account and Charges of Misconduct relating to trust accounting violated Respondent's rights to due process and equal protection under the law under the Fourteenth Amendment to the United States Constitution.

WHEREFORE Victor Alan Motley prays that this matter be dismissed.

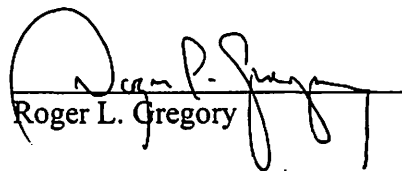
VICTOR ALAN MOTLEY

By 
Of Counsel

Roger L. Gregory
WILDER & GREGORY
707 East Main Street
Suite 1000
Richmond, Virginia 23219
(804) 643-8401

CERTIFICATE

I hereby certify that Respondent's Motion to Dismiss was hand delivered to Harry M. Hirsch, Esquire, Deputy Bar Counsel, Eighth and Main Building, 707 East Main Street, Suite 1500, Richmond, Virginia 23219-2800 on this 26th day of July, 1999.


Roger L. Gregory

Virginia W. Powell, Chair
951 East Byrd Street
Richmond, VA 23219

Carl A. Eason, Vice Chair
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Virginia Beach, VA 23462

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VIRGINIA STATE BAR
DISCIPLINARY BOARD

July 26, 1999

PERSONAL AND CONFIDENTIAL

Patricia J. Rios
Clerk of the Disciplinary System

Eighth and Main Building
707 East Main Street, Suite 1500
Richmond, Virginia 23219-2800

Roger Lee Gregory, Esquire
Wilder & Gregory
Suite 1000, 707 East Main Street
P.O. Box 518
Richmond, VA 23218-0518

Re: In the Matter of Victor Alan Motley
VSB Docket # 96-032-2446

Dear Mr. Gregory:

This is to acknowledge receipt of your letter dated July 26, 1999, with attached original and eight (8) copies of "Respondent's Answer to Certification", and "Respondent's Motion to Dismiss", which were received by the Virginia State Bar Clerk's Office today, in the above-referenced matter.

By copy of this letter, I am forwarding the "Respondent's Motion to Dismiss" to Carl A. Eason, Chair of the Disciplinary Board, for his consideration. I will notify you of his decision.

If you have any questions, or wish to discuss this matter further, please contact me at (804) 775-0573 or write to me at the above-listed address.

Sincerely,

Patricia J. Rios
Clerk of the Disciplinary System

PJR/tmc

cc: Victor Alan Motley, Respondent, w/o encls.
Harry M. Hirsch, Deputy Bar Counsel, w/o encls.
Carl A. Eason, Chair, w/encls.

WOLCOTT, RIVERS, WHEARY, BASNIGHT & KELLY, P.C.

CARL A. EASON

ATTORNEYS AND COUNSELORS AT LAW
ONE COLUMBUS CENTER, SUITE 1100
VIRGINIA BEACH, VIRGINIA 23462-6765

TELEPHONE: (757) 497-6633
TELECOPIER: (757) 497-7267
EMAIL: eason@wolriv.com

August 3, 1999

TELECOPIER TRANSMITTAL INSTRUCTION

NO. OF PAGES: 3

URGENT X ROUTINE

DELIVER TO: TELECOPIER NUMBER: 804-775-0501
NAME: Patricia Rios

SENT BY: TELECOPIER NUMBER: (757) 497-7267
PHONE NUMBER: (757) 497-6633

NAME: Carl A. Eason, Esq.

TRANSMITTED BY: Jacque Titus

Please advise me of any suggested changes to the attached Orders. If they are alright please advise and I will forward you the originals.

BEFORE THE VIRGINIA STATE BAR DISCIPLINARY BOARD

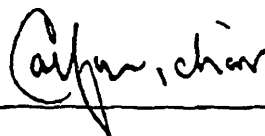
IN RE:
VICTOR ALAN MOTLEY

VSB DOCKET # 96-032-2446

ORDER

THIS CAUSE came upon the Respondent's Motion to Dismiss filed on or about July 26, 1999 and was duly considered by Carl A. Eason, Chair, and after reviewing the grounds advanced by the Respondent incident to the Motion to Dismiss, the motion is denied with leave to renew same before the Board at a hearing of this cause. A copy of this order shall be provided to Harry M. Hirsch, Esquire, Deputy Bar Counsel, Eighth and Main Building, 707 E. Main, Suite 1500, Richmond, VA 23219 and to Roger L. Gregory, Esquire, Wilder and Gregory, 707 E. Main Street, Suite 1000, Richmond, VA 23219, counsel for Respondent and Respondent, Victor Alan Motley, P.O. Box 25786, Richmond, VA 23260-5786.

ENTER: 8/3/99





Virginia W. Powell, Chair
951 East Byrd Street
Richmond, VA 23219

Carl A. Eason, Vice Chair
One Columbus Center, Ste. 1100
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20 North Eleanor Court
Portsmouth, VA 23701

Deborah A.J. Wilson
4161 Chain Bridge Road
Fairfax, VA 22030

Patricia J. Rios
Clerk of the Disciplinary System

Eighth and Main Building
707 East Main Street, Suite 1500
Richmond, Virginia 23219-2803

Virginia State Bar

Eighth and Main Building
707 East Main Street, Suite 1500
Richmond, Virginia 23219-2800
Telephone: (804) 775-0500

Facsimile: (804) 775-0501 TDD: (804) 775-0502

VIRGINIA STATE BAR
DISCIPLINARY BOARD

August 10, 1999

PERSONAL AND CONFIDENTIAL

CERTIFIED MAIL
RETURN RECEIPT REQUESTED
P 975 335 049

Victor Alan Motley, Esquire
P.O. Box 25786
Richmond, VA 23260-5786

Re: In the Matter of Victor Alan Motley
VSB Docket No. 96-032-2446

Dear Mr. Motley:

Enclosed is an attested copy of an "Order" of the Virginia State Bar Disciplinary Board entered August 3, 1999, in the above-referenced matter.

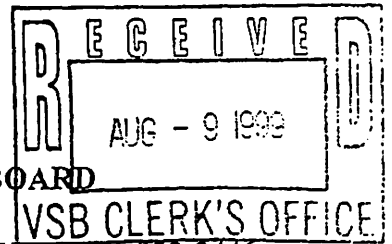
If you have any questions, or desire to discuss this matter further, please have your attorney me at (804) 775-0572.

Sincerely,

Vivian R. Byrd
Senior Assistant Clerk of the Disciplinary System

VRB/tmc
Enclosure

cc: Roger Lee Gregory, Respondent's Counsel, w/encl.
Harry M. Hirsch, Assistant Bar Counsel, w/encl.



BEFORE THE VIRGINIA STATE BAR DISCIPLINARY BOARD

IN RE:
VICTOR ALAN MOTLEY

VSB DOCKET # 96-032-2446

ORDER

THIS CAUSE came upon the Respondent's Motion to Dismiss filed on or about July 26, 1999 and was duly considered by Carl A. Eason, Chair, and after reviewing the grounds advanced by the Respondent incident to the Motion to Dismiss, the motion is denied with leave to renew same before the Board at a hearing of this cause. A copy of this order shall be provided to Harry M. Hirsch, Esquire, Deputy Bar Counsel, Eighth and Main Building, 707 E. Main, Suite 1500, Richmond, VA 23219 and to Roger L. Gregory, Esquire, Wilder and Gregory, 707 E. Main Street, Suite 1000, Richmond, VA 23219, counsel for Respondent and Respondent, Victor Alan Motley, P.O. Box 25786, Richmond, VA 23260-5786.

ENTER: 8/3/99

Carl A. Eason, chair

A COPY TESTE:

Patricia J. Rios

PATRICIA J. RIOS

CLERK OF THE DISCIPLINARY SYSTEM

THE
WALZ
CERTIFIED
MAILER™

FROM

MOORE

ITEM #48178
U.S. PAT. NO. 5,501,393
WALZ CERTIFIED MAILER™

P 975 335 049

TO:

P 975 335 049

TO:

Victor Alan Motley, Esquire
P.O. Box 25786
Richmond, VA 23260-5786

Label #1

Victor Alan Motley, Esquire
P.O. Box 25786
Richmond, VA 23260-5786

Label #2

Victor Alan Motley, Esquire
P.O. Box 25786
Richmond, VA 23260-5786

Label #3

Victor Alan Motley, Esquire
P.O. Box 25786
Richmond, VA 23260-5786

SENDER: Tricia Clark
REFERENCE: 96-032-2446

PS FORM 3800, SEPTEMBER 1995

RETURN RECEIPT SERVICE	Postage	1.33
	Certified Fee	1.40
	Return Receipt Fee	1.25
	Restricted Delivery	0.00
	Total Postage and Fees	2.98

US Postal Service

**Receipt for
Certified Mail**

No Insurance Coverage Provided
Do not use for International Mail

POSTMARK OR DATE

CERTIFIED

P 975 335 049

MAIL

RETURN RECEIPT REQUESTED

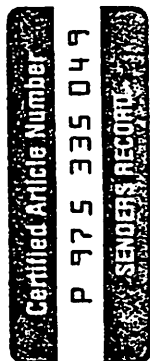
RESTRICTED DELIVERY

Label #6

FOLD AND TEAR THIS WAY → OPTIONAL

Label #4

Label #5



Victor Alan Motley, Esquire
P.O. Box 25786
Richmond, VA 23260-5786

CHARGE
AMOUNT:

CHARGE TO:

RE:

96-032-2446

SENDER:

Tricia Clark

3. Article Addressed to:

Victor Alan Motley, Esquire
P.O. Box 25786
Richmond, VA 23260-5786

5. Received By: (Print Name)

6. Signature: (Addressee or Agent)

I also wish to receive the
following service (for an extra fee):

RESTRICTED
DELIVERY ☐

Consult postmaster for fee.

4a. Article Number

P 975 335 049



4b. Service Type



CERTIFIED

7. Date of Delivery

Addressee's Address

62

Domestic Return Receipt

I also wish to receive the
following service (for an extra fee):

RESTRICTED
DELIVERY ☐

Consult postmaster for fee.

Article Number

P 975 335 049



Service Type



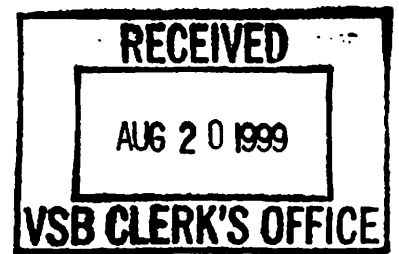
CERTIFIED

Date of Delivery

Addressee's Address

61

Domestic Return Receipt



WILDER & GREGORY
ATTORNEYS AT LAW
EIGHTH & MAIN BUILDING
SUITE 1000
707 EAST MAIN STREET
RICHMOND, VIRGINIA 23219

MAILING ADDRESS:
POST OFFICE BOX 518
RICHMOND, VA 23218-0518

TELEPHONE (804) 643-8401
TELECOPIER (804) 648-2707

August 20, 1999

BY HAND

Ms. Patricia J. Rios
Clerk of the Disciplinary System
Eighth and Main Building
707 East Main Street, Suite 1500
Richmond, Virginia 23219-2800

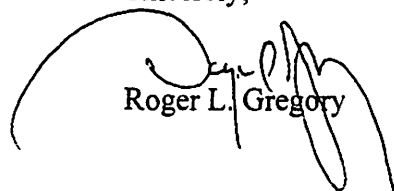
Re: In the Matter of Victor Alan Motley
VSB Docket # 96-032-2446

Dear Ms. Rios:

Enclosed please find Respondent's Witness List (original and 8 copies) which I would appreciate your filing with the Disciplinary Board.

Thank you for your assistance in this regard.

Sincerely,


Roger L. Gregory

Enclosure

Harry M. Hirsch, Esquire
Deputy Bar Counsel

BEFORE THE VIRGINIA STATE BAR DISCIPLINARY BOARD

**IN RE:
VICTOR ALAN MOTLEY**

VSb DOCKET # 96-032-2446

RESPONDENT'S WITNESS LIST

Victor Alan Motley ("Respondent"), pursuant to the Pre-Hearing Order sets forth below his list of proposed witnesses as follows:

Lacy Campbell

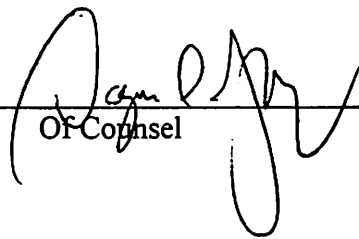
Evelyn J. Steele (Meade)

Rebecca Gray

Any witness identified by Bar Counsel

Respondent reserves the right to call additional witnesses for rebuttal.

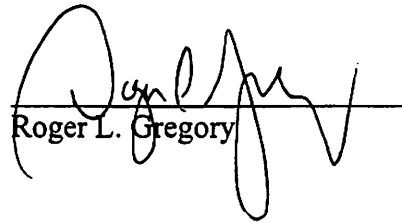
VICTOR ALAN MOTLEY

By  _____
Of Counsel

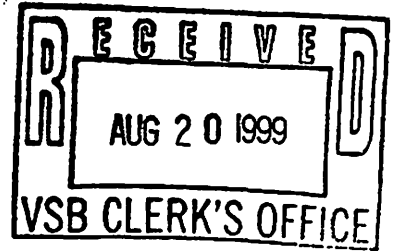
Roger L. Gregory
WILDER & GREGORY
707 East Main Street
Suite 1000
Richmond, Virginia 23219
(804) 643-8401

CERTIFICATE

I hereby certify that Respondent's Witness List was sent by first class mail with postage pre paid to Harry M. Hirsch, Esquire, Deputy Bar Counsel, Eighth and Main Building, 707 East Main Street, Suite 1500, Richmond, Virginia 23219-2800 on this 20th day of August, 1999.



Roger L. Gregory



Virginia State Bar

Eighth and Main Building
707 East Main Street, Suite 1500
Richmond, Virginia 23219-2800
Telephone: (804) 775-0500

Facsimile: (804) 775-0501 TDD: (804) 775-0502

PERSONAL AND CONFIDENTIAL

August 20, 1999

Ms. Patricia J. Rios
Clerk of the Disciplinary System
Virginia State Bar
Suite 1500
707 East Main Street
Richmond, VA 23219

Re: In the Matter of Victor Alan Motley
VSB Docket No. 96-032-2446

Dear Ms. Rios:

In accordance with the pre-trial order in this matter, please find enclosed the following for filing:

Original and eight copies of bar exhibits with an index

List of the bar's anticipated witnesses

By copy of this letter I am forwarding by first class mail one copy of each of the above to Respondent's counsel, Mr. Gregory.

Very truly yours,

Harry M. Hirsch
Deputy Bar Counsel

Enclosures

cc: Roger L. Gregory, Esq., Respondent's Counsel, w/copy of each encl.

VIRGINIA:

BEFORE THE VIRGINIA STATE BAR DISCIPLINARY BOARD

IN THE MATTER OF
VICTOR ALAN MOTLEY

VSb DOCKET NO. 96-032-2446

LIST OF ANTICIPATED BAR WITNESSES

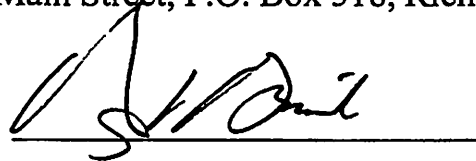
Ms. Evelyn J. Steele
(formerly Meade)

Lacy Campbell

Victor Alan Motley

Certificate of Service

I certify that on August 20, 1999, a copy of the foregoing was mailed by first class mail postage prepaid to Roger L. Gregory, Esq., counsel for the Respondent, at Wilder & Gregory, Suite 1000, 707 East Main Street, P.O. Box 518, Richmond, VA 23218-0518.

A handwritten signature in black ink, appearing to read "R. Gregory", is written over a horizontal line.



Virginia State Bar

Eighth and Main Building
707 East Main Street, Suite 1500
Richmond, Virginia 23219-2800
Telephone: (804) 775-0500

Facsimile: (804) 775-0501 TDD: (804) 775-0502

August 25, 1999

PERSONAL AND CONFIDENTIAL

HAND-DELIVERED

Harry M. Hirsch, Deputy Bar Counsel
Virginia State Bar
707 East Main Street
Suite 1500
Richmond, VA 23219

Re: In the Matter of Victor Alan Motley
VSB Docket # 96-032-2446

Dear Mr. Hirsch:

This is to acknowledge receipt of your letter dated August 20, 1999, with attached "List of Anticipated Bar Witnesses", and an original and eight (8) copies of the "Index of Bar Exhibits", and VSB Exhibits A-N, P-U, AA-JJ, and V, which were received by the Virginia State Bar Clerk's Office on August 20, 1999, in the above-referenced matter.

Sincerely,

A handwritten signature in cursive script, appearing to read "Vivian R. Byrd".

Vivian R. Byrd
Senior Assistant Clerk of the Disciplinary System

VRB/tmc

cc: Victor Alan Motley, Respondent
Roger Lee Gregory, Respondent's Counsel



Virginia State Bar

Eighth and Main Building
707 East Main Street, Suite 1500
Richmond, Virginia 23219-2800
Telephone: (804) 775-0500

Facsimile: (804) 775-0501 TDD: (804) 775-0502

August 25, 1999

PERSONAL AND CONFIDENTIAL

Roger Lee Gregory, Esquire
Wilder & Gregory
Suite 1000, 707 East Main Street
P.O. Box 518
Richmond, VA 23218-0518

Re: In the Matter of Victor Alan Motley
VSB Docket # 96-032-2446

Dear Mr. Gregory:

This is to acknowledge receipt of your letter dated August 20, 1999, with attached original and eight (8) copies of "Respondent's Witness List", which were received by the Virginia State Bar Clerk's Office on August 20, 1999, in the above-referenced matter.

If you have any questions, or wish to discuss this matter further, please contact me at (804) 775-0572.

Sincerely,

A handwritten signature in black ink, appearing to read "Vivian R. Byrd", written over a horizontal line.

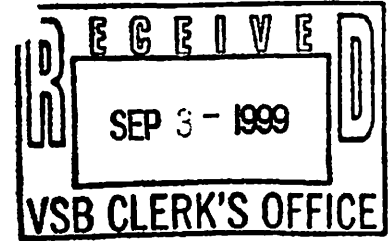
Vivian R. Byrd
Senior Assistant Clerk of the Disciplinary System

VRB/tmc

cc: Victor Alan Motley, Respondent
Harry M. Hirsch, Deputy Bar Counsel

MAILING ADDRESS:
POST OFFICE BOX 518
RICHMOND, VA 23218-0518

WILDER & GREGORY
ATTORNEYS AT LAW
EIGHTH & MAIN BUILDING
SUITE 1000
707 EAST MAIN STREET
RICHMOND, VIRGINIA 23219



TELEPHONE (804) 643-8401
TELECOPIER (804) 648-2707

September 3, 1999

BY HAND

Ms. Patricia J. Rios
Clerk of the Disciplinary System
Eighth and Main Building
707 East Main Street, Suite 1500
Richmond, Virginia 23219-2800

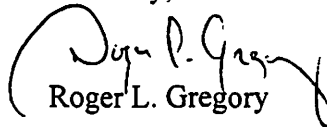
Re: In the Matter of Victor Alan Motley
VSB Docket # 96-032-2446

Dear Ms. Rios:

Enclosed please find Respondent's Objections to Exhibits (original and 8 copies) which I would appreciate your filing with the Disciplinary Board.

Thank you for your assistance in this regard.

Sincerely,


Roger L. Gregory

Enclosure

Harry M. Hirsch, Esquire
Deputy Bar Counsel

BEFORE THE VIRGINIA STATE BAR DISCIPLINARY BOARD

**IN RE:
VICTOR ALAN MOTLEY**

VSB DOCKET # 96-032-2446

RESPONDENT'S OBJECTIONS TO EXHIBITS

Victor Alan Motley ("Respondent"), for his objections to the Bar's exhibits
states:

That Respondent objects to the documents listed in the *Index of Bar Exhibits* as
follows:

Exhibit T ----- Bank statements, 6/30/95 –7/11/96

Exhibit U -----Investigative Analysis of Ten Subsidiaries

AA Myrtle Cooper

BB Beryl Phillips

CC Hatchett

DD Mary Green

EE 3100 Duryea Place

FF Marsha Latney Settlement

GG Geri Jones

HH Mathis

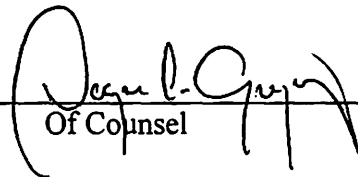
II Talbert

JJ Greenhouse

and as grounds for such objections states that the foregoing exhibits pertain solely to Respondent's trust account and therefore, are not probative or relevant to the Complainant's charges. Respondent further states that the enlargement of the investigation and the Charges of Misconduct from the original charge which pertained solely to the handling of the Complainant's real estate closing to a general investigation of Respondent's trust account and Charges of Misconduct relating to trust accounting violated Respondent's rights to due process and equal protection of the law under the Fourteenth Amendment to the United States Constitution and therefore, the admission of these exhibits would be improper.

Respectfully submitted,

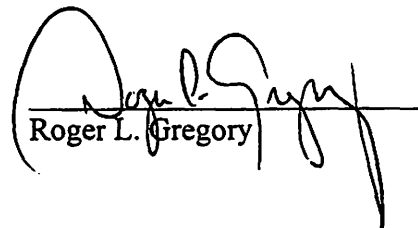
VICTOR ALAN MOTLEY

By 
Of Counsel

Roger L. Gregory
WILDER & GREGORY
707 East Main Street, Suite 1000
Richmond, Virginia 23219
(804) 643-8401

CERTIFICATE

I hereby certify that Respondent's Objections to Exhibits was hand delivered to Harry M. Hirsch, Esquire, Deputy Bar Counsel, Eighth and Main Building, 707 East Main Street, Suite 1500, Richmond, Virginia 23219-2800 on this 3rd day of September, 1999.


Roger L. Gregory



Virginia State Bar

Eighth and Main Building
707 East Main Street, Suite 1500
Richmond, Virginia 23219-2800
Telephone: (804) 775-0500

Facsimile: (804) 775-0501 TDD: (804) 775-0502

September 8, 1999

PERSONAL AND CONFIDENTIAL

Roger Lee Gregory, Esquire
Wilder & Gregory
Suite 1000, 707 East Main Street
P.O. Box 518
Richmond, VA 23218-0518

Re: In the Matter of Victor Alan Motley
VSB Docket # 96-032-2446

Dear Mr. Gregory:

This is to acknowledge receipt of your letter dated September 3, 1999, and attached original and eight (8) copies of "Respondent's Objections to Exhibits", which were received by the Virginia State Bar Clerk's Office on September 3, 1999, in the above-referenced matter.

Sincerely,

A handwritten signature in cursive script, appearing to read "Vivian R. Byrd".

Vivian R. Byrd
Senior Assistant Clerk of the Disciplinary System

VRB/tmc

cc: Victor Alan Motley, Respondent
Harry M. Hirsch, Deputy Bar Counsel



Virginia State Bar

Eighth and Main Building
707 East Main Street, Suite 1500
Richmond, Virginia 23219-2800
Telephone: (804) 775-0500

Facsimile: (804) 775-0501 TDD: (804) 775-0502

September 20, 1999

PERSONAL AND CONFIDENTIAL

BY UPS GROUND

Carl A. Eason, Chair
D. Stan Barnhill
Eric N. Davidson
John A. Dezio
Deborah A. J. Wilson

Re: In the Matter of Victor Alan Motley
VSB Docket No. 96-032-2446

Dear Panel Members:

Enclosed are copies of the following documents:

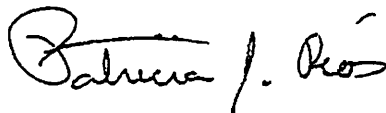
1. Certified letter dated July 8, 1999, from Patricia J. Rios to Victor Alan Motley, Esquire, and attached Certification, a copy of which is attached
2. Certified letter dated July 14, 1999, from Patricia J. Rios to Victor Alan Motley, Esquire, enclosing an attested copy of a "Pre-Hearing Order" entered July 12, 1999, a copy of which is attached
3. Letter dated July 26, 1999, from Roger L. Gregory to Ms. Patricia J. Rios, with attached original and eight (8) copies of "Respondent's Answer to Certification", and "Respondent's Motion to Dismiss", copies of which are attached
4. Letter dated July 26, 1999, from Patricia J. Rios to Roger Lee Gregory, Esquire, without enclosure
5. Certified letter dated August 10, 1999, from Vivian R. Byrd to Victor Alan Motley, Esquire, enclosing an attested copy of an Order entered August 3, 1999, a copy of which is attached
6. Letter dated August 20, 1999, from Roger L. Gregory to Ms. Patricia J. Rios, with attached original and eight (8) copies of "Respondent's Witness List", a copy of which is attached (No Objection Filed)

Disciplinary Board Members
September 20, 1999
Page Two

7. Letter dated August 20, 1999, from Harry M. Hirsch, Deputy Bar Counsel, to Ms. Patricia J. Rios, with attached "List of Anticipated Bar Witnesses", and an original and eight (8) copies of the "Index of Bar Exhibits", and VSB Exhibits A-N, P-U, AA-JJ, and V, copies of which are attached (Mr. Gregory filed objections to VSB Exhibits T, U, AA, BB, CC, DD; EE, FF, GG, HH, II, and JJ, therefore, they are not attached.)
8. Letter dated August 25, 1999, from Vivian R. Byrd to Harry M. Hirsch, Deputy Bar Counsel
9. Letter dated August 25, 1999, from Vivian R. Byrd to Roger Lee Gregory, Esquire
10. Letter dated September 3, 1999, from Roger L. Gregory to Ms. Patricia J. Rios, and attached original and eight (8) copies of "Respondent's Objections to Exhibits", a copy of which is attached
11. Letter dated September 8, 1999, from Vivian R. Byrd to Roger Lee Gregory, Esquire

Please note that this matter is scheduled for hearing on Friday September 24, 1999, 9:00 a.m., in the Virginia Supreme Court, 100 North Ninth Street, First Floor, Hearing Room A, Richmond, Virginia 23219.

Sincerely,



Patricia J. Rios
Clerk of the Disciplinary System

PJR:vrw

Enclosures

cc: Victor Alan Motley, Respondent, w/o encls., BY REGULAR MAIL
Roger Lee Gregory, Respondent's Counsel, w/encls., BY HAND
Harry M. Hirsch, Deputy Bar Counsel, w/encls., BY HAND

WILDER & GREGORY
ATTORNEYS AT LAW

EIGHTH & MAIN BUILDING
SUITE 1000

MAILING ADDRESS:
POST OFFICE BOX 518
RICHMOND, VA 23218-0518

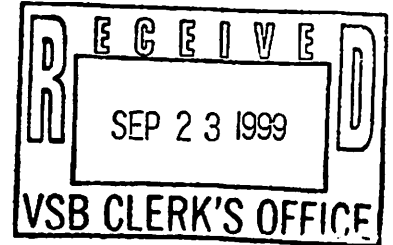
707 EAST MAIN STREET
RICHMOND, VIRGINIA 23219

TELEPHONE (804) 643-8401
TELECOPIER (804) 648-2707

September 23, 1999

BY HAND

Ms. Patricia J. Rios
Clerk of the Disciplinary System
Eighth and Main Building
707 East Main Street, Suite 1500
Richmond, Virginia 23219-2800

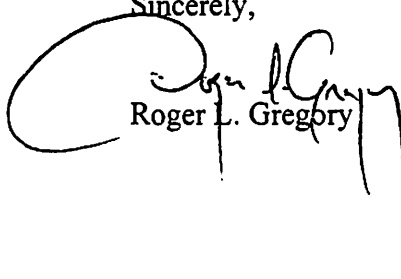


Re: In the Matter of Victor Alan Motley
VSB Docket # 96-032-2446

Dear Ms. Rios:

Enclosed please find Respondent's Certification and eight copies.

Sincerely,


Roger L. Gregory

Enclosure

C: Harry M. Hirsch, Esquire
Deputy Bar Counsel

BEFORE THE VIRGINIA STATE BAR DISCIPLINARY BOARD

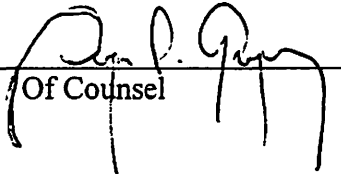
**IN RE:
VICTOR ALAN MOTLEY**

VSB DOCKET # 96-032-2446

RESPONDENT'S CERTIFICATION

Victor Alan Motley ("Respondent"), certifies that he has exercised due diligence and made a good faith effort to enter into stipulations, but has been unable to do so.

VICTOR ALAN MOTLEY

By 
Of Counsel

Roger L. Gregory
WILDER & GREGORY
707 East Main Street
Suite 1000
Richmond, Virginia 23219
(804) 643-8401

CERTIFICATE

I hereby certify that the foregoing Certification was hand delivered to Harry M. Hirsch, Esquire, Deputy Bar Counsel, Eighth and Main Building, 707 East Main Street, Suite 1500, Richmond, Virginia 23219-2800 on this 23rd day of September, 1999.


Roger L. Gregory



Virginia State Bar

Eighth and Main Building
707 East Main Street, Suite 1500
Richmond, Virginia 23219-2800
Telephone: (804) 775-0500

Facsimile: (804) 775-0501 TDD: (804) 775-0502

September 23, 1999

PERSONAL AND CONFIDENTIAL

Roger Lee Gregory, Esquire
Wilder & Gregory
Suite 1000, 707 East Main Street
P.O. Box 518
Richmond, VA 23218-0518

RE: In the Matter of Victor Alan Motley
VSB Docket #96-032-2446

Dear Mr. Motley:

This is to acknowledge receipt of your letter dated September 23, 1999, and an original and eight (8) copies of "Respondent's Certification", which were received by the Clerk's Office today, in the above-referenced matter.

Sincerely,

A handwritten signature in cursive script, appearing to read "Patricia J. Rios".

Patricia J. Rios
Clerk of the Disciplinary System

PJR:vrw

cc: Victor Alan Motley, Respondent
Harry M. Hirsch, Deputy Bar Counsel



Virginia State Bar

Eighth and Main Building
707 East Main Street, Suite 1500
Richmond, Virginia 23219-2800
Telephone: (804) 775-0500

Facsimile: (804) 775-0501 TDD: (804) 775-0502

September 23, 1999

PERSONAL AND CONFIDENTIAL

Henry P. Custis, Jr., 1ST Vice Chair
Eric N. Davidson
Donna A. Decorleto
John A. Dezio
Karen A. Gould

Re: In the Matter of Victor Alan Motley
VSB Docket No. 96-032-2446

Dear Panel Members:

Enclosed are copies of the following documents:

1. Letter dated September 23, 1999, from Roger L. Gregory to Ms. Patricia J. Rios, and an original and eight (8) copies of "Respondent's Certification", a copy of which is attached
2. Letter dated September 23, 1999, from Patricia J. Rios to Roger L. Gregory, Esquire

Please note that this matter is scheduled for hearing on Friday September 24, 1999, 9:00 a.m., in the Virginia Supreme Court, 100 North Ninth Street, First Floor, **Hearing Room A**, Richmond, Virginia 23219.

Sincerely,

A handwritten signature in cursive script, reading "Patricia J. Rios" with a stylized flourish at the end.

Patricia J. Rios
Clerk of the Disciplinary System

PJR:vrw

Enclosures

cc: Victor Alan Motley, Respondent, w/o encls., BY HAND
Roger Lee Gregory, Respondent's Counsel, w/encls., BY HAND
Harry M. Hirsch, Deputy Bar Counsel, w/encls., BY HAND

VIRGINIA:

BEFORE THE VIRGINIA STATE BAR DISCIPLINARY BOARD

IN THE MATTER OF

Victor Alan Motkey

Respondent

VSB Docket # 960322446

O R D E R

On Sept. 24, 1999, the above-referenced matter was heard by the Virginia State Bar Disciplinary Board pursuant to Notice served upon the Respondent in the manner provided by the Rules of Supreme Court of Virginia.

WHEREFORE, upon consideration of the testimony and documentary evidence, it is ORDERED that Respondent's license to practice law in the Commonwealth of Virginia is

✓ Suspended for a period of 18 months,
 Revoked,
effective Oct 1, 1999.

The Board notes for the record in this matter that

✓ The Respondent was present in person and was advised of the imposition of the sanction and the effective date of the sanction; and

 The Respondent was not present in person, but the Clerk of the Disciplinary System is directed to communicate promptly to the Respondent the actions of the Board; and

that the Board shall issue a written opinion in this matter which, when issued, shall be attached hereto and incorporated herein by reference.

It is further ORDERED that pursuant to the provisions of Part Six, Section IV, Paragraph 13(K)(1) of the Rules of the Supreme Court of Virginia, that the Respondent shall forthwith give notice by certified

mail, return receipt requested, of the

✓ Suspension

 Revocation

of his license to practice law in the Commonwealth of Virginia, to all clients for whom he is currently handling matters and to all opposing attorneys and presiding judges in pending litigation. The Attorney shall also make appropriate arrangements for the disposition of matters then in his care in conformity with the wishes of his client. The Attorney shall give such notice within fourteen (14) days of the effective date of the Suspension order, and make such arrangements as are required herein within forty-five (45) days of the effective date of the Suspension order. The Attorney shall furnish proof to the bar within sixty (60) days of the effective date of the Suspension order that such notices have been timely given and such arrangement for the disposition of matters made. Issues concerning the adequacy of the notice and arrangements required herein shall be determined by the Disciplinary Board, which may impose a sanction of revocation or suspension for failure to comply with the requirements of this subparagraph.

Pursuant to Part Six, § IV, ¶ 13(K)(10) of the Rules of the Supreme Court, the Clerk of the Disciplinary System shall assess costs.

It is further ORDERED that a copy teste of this Order shall be mailed by Certified Mail, Return Receipt Requested, to the Respondent, at his last address of record with the Virginia State Bar and hand-delivered to Bar Counsel.

ENTER THIS ORDER THIS 24 DAY OF
Sept., 1999

VIRGINIA STATE BAR DISCIPLINARY BOARD

Henry P. Winston Chair



Virginia State Bar

Eighth and Main Building
707 East Main Street, Suite 1500
Richmond, Virginia 23219-2800
Telephone: (804) 775-0500

Facsimile: (804) 775-0501 TDD: (804) 775-0502

September 27, 1999

PERSONAL AND CONFIDENTIAL

CERTIFIED MAIL
RETURN RECEIPT REQUESTED
P 971 902 781

Victor Alan Motley, Esquire
P.O. Box 25786
Richmond, VA 23260-5786

Re: In the Matter of Victor Alan Motley
VSB Docket No. 96-032-2446

Dear Mr. Motley:

Enclosed is an attested copy of an Order from the Virginia State Bar Disciplinary Board entered September 24, 1999, in the above-referenced matter.

Please note your duty under the Rules of Court, Part Six, § IV, ¶13(K)(1) which states as follows:


Duties of Disbarred or Suspended Attorney: Any attorney who is disbarred or suspended as a result of a proceeding under this paragraph 13 shall forthwith give notice, by certified mail, of his disbarment or suspension to all clients for whom he is currently handling matters and to all opposing attorneys and the presiding judges in pending litigation. The Attorney shall also make appropriate arrangements for the disposition of matters then in his care in conformity with the wishes of his client. The Attorney shall give such notice within fourteen (14) days of the effective date of the disbarment or suspension order, and make such arrangements as are required herein within forty-five (45) days of the effective date of the disbarment or suspension order. The Attorney shall also furnish proof to the bar within sixty (60) days of the effective date of the disbarment or suspension order that such notices have been timely given and such arrangements for the disposition of matters made. Issues concerning the adequacy of the notice and arrangements required herein shall be determined by the Disciplinary Board, which may impose a sanction of revocation or suspension for failure to comply with the requirements of this subparagraph.

Victor Alan Motley, Esquire
September 27, 1999
Page Two

Enclosed are forms which are acceptable to the Disciplinary Board in order to be in compliance with the Rules of Court, Part Six, §IV, ¶13(K)(1). Please use the appropriate form for your situation.

You must provide me with proof that you have complied with the foregoing notice requirement on or before November 29, 1999.

Sincerely,



Vivian R. Byrd
Senior Assistant Clerk of the Disciplinary System

VRB/tmc

Enclosures

cc: Roger Lee Gregory, Respondent's Counsel, w/encls.
Harry M. Hirsch, Deputy Bar Counsel, w/encls.

VIRGINIA:

BEFORE THE VIRGINIA STATE BAR DISCIPLINARY BOARD

IN THE MATTER OF

Victor Alan Motkey

Respondent

VSB Docket # 96 0322446

O R D E R

On Sept. 24, 1999, the above-referenced matter was heard by the Virginia State Bar Disciplinary Board pursuant to Notice served upon the Respondent in the manner provided by the Rules of Supreme Court of Virginia.

WHEREFORE, upon consideration of the testimony and documentary evidence, it is ORDERED that Respondent's license to practice law in the Commonwealth of Virginia is

✓ Suspended for a period of 18 MONTHS,
Revoked,
effective Oct 1, 1999.

The Board notes for the record in this matter that

✓ The Respondent was present in person and was advised of the imposition of the sanction and the effective date of the sanction; and

 The Respondent was not present in person, but the Clerk of the Disciplinary System is directed to communicate promptly to the Respondent the actions of the Board; and

that the Board shall issue a written opinion in this matter which, when issued, shall be attached hereto and incorporated herein by reference.

It is further ORDERED that pursuant to the provisions of Part Six, Section IV, Paragraph 13(K)(1) of the Rules of the Supreme Court of Virginia, that the Respondent shall forthwith give notice by certified

mail, return receipt requested, of the

✓ Suspension

 Revocation

of his license to practice law in the Commonwealth of Virginia, to all clients for whom he is currently handling matters and to all opposing attorneys and presiding judges in pending litigation. The Attorney shall also make appropriate arrangements for the disposition of matters then in his care in conformity with the wishes of his client. The Attorney shall give such notice within fourteen (14) days of the effective date of the Suspension order, and make such arrangements as are required herein within forty-five (45) days of the effective date of the Suspension order. The Attorney shall furnish proof to the bar within sixty (60) days of the effective date of the Suspension order that such notices have been timely given and such arrangement for the disposition of matters made. Issues concerning the adequacy of the notice and arrangements required herein shall be determined by the Disciplinary Board, which may impose a sanction of revocation or suspension for failure to comply with the requirements of this subparagraph.

Pursuant to Part Six, § IV, ¶ 13(K)(10) of the Rules of the Supreme Court, the Clerk of the Disciplinary System shall assess costs.

It is further ORDERED that a copy teste of this Order shall be mailed by Certified Mail, Return Receipt Requested, to the Respondent, at his last address of record with the Virginia State Bar and hand-delivered to Bar Counsel.

ENTER THIS ORDER THIS 24 DAY OF
Sept, 1999

A COPY TESTE:

VIRGINIA STATE BAR DISCIPLINARY BOARD

Henry P. [Signature] Chair

[Signature]
PATRICIA J. RIOS
CLERK OF THE DISCIPLINARY SYSTEM

THE
WALZ
CERTIFIED
MAILER™

FROM

MOORE

ITEM #18178
U.S. PAT. NOS. 5,501,393; 4,368,903
WALZ CERTIFIED MAILER™

Label #1

Victor Alan Motley, Esquire
P.O. Box 25786
Richmond, VA 23260-5786

Label #2

Victor Alan Motley, Esquire
P.O. Box 25786
Richmond, VA 23260-5786

Label #3

Victor Alan Motley, Esquire
P.O. Box 25786
Richmond, VA 23260-5786

FOLD AND TEAR THIS WAY → OPTIONAL

Label #4

Label #5

Certified Article Number

P 971 902 781

SENDER'S RECORD

CHARGE
AMOUNT:

CHARGE TO:

Victor Alan Motley, Esquire
P.O. Box 25786
Richmond, VA 23260-5786

TO:

P 971 902 781

TO:

P 971 902 781

Victor Alan Motley, Esquire
P.O. Box 25786
Richmond, VA 23260-5786

SENDER: Tricia Clark

REFERENCE: 96-032-2446

PS FORM 3800, SEPTEMBER 1995

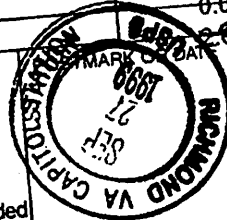
RETURN
RECEIPT
SERVICE

Postage	.33
Certified Fee	1.40
Return Receipt Fee	1.25
	0.00
Restricted Delivery	0.00
Total Postage and Fees	2.98

US Postal Service

**Receipt for
Certified Mail**

No Insurance Coverage Provided
Do not use for International Mail



P 971 902 781

MAIL

RETURN RECEIPT REQUESTED

RESTRICTED DELIVERY

Label #6

RE:

96-032-2446

SENDER:

Tricia Clark

3. Article Addressed to:

Victor Alan Motley, Esquire
P.O. Box 25786
Richmond, VA 23260-5786

5. Received By: (Print Name)

6. Signature: (Addressee or Agent)

I also wish to receive the
following service (for an extra fee):

RESTRICTED
DELIVERY ☐

Consult postmaster for fee.

4a. Article Number

P 971 902 781



4b. Service Type ☒ CERTIFIED

7. Date of Delivery

SEP 29 1996

8. Addressee's Address

86

I also wish to receive the
following service (for an extra fee):

RESTRICTED
DELIVERY ☐

Consult postmaster for fee.

Article Number

P 971 902 781



Service Type ☒ CERTIFIED

Date of Delivery

Addressee's Address

85

WILDER & GREGORY

ATTORNEYS AT LAW

EIGHTH & MAIN BUILDING

SUITE 1000

707 EAST MAIN STREET

RICHMOND, VIRGINIA 23219

MAILING ADDRESS:

POST OFFICE BOX 518

RICHMOND, VA 23218-0518

TELEPHONE (804) 643-8401

TELECOPIER (804) 648-2707

September 30, 1999

BY HAND

RECEIVED

RECEIVED

SEP 30 1999

David B. Beach, Clerk
Virginia Supreme Court
100 North 9th Street
Richmond, Virginia 23219

VIRGINIA STATE BAR

VIRGINIA

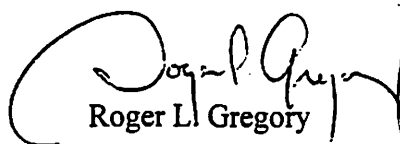
RE: Victor Alan Motley v. Virginia State Bar

Dear Mr. Beach:

Enclosed for filing is the original Petition for Stay and three copies for the referenced case. Also, enclosed is a copy to be date stamped and returned. I would appreciate your bringing this matter to the Court's attention immediately as time is of the essence.

Thank you for your assistance in this matter.

Sincerely,


Roger L. Gregory

Enclosures

C. Clerk of the Virginia State Bar Disciplinary Board
The Honorable Mark Early, Attorney General of Virginia
Harry M. Hirsch, Deputy Bar Counsel

IN THE
Supreme Court of Virginia

RECORD NO. _____

VICTOR ALAN MOTLEY,

Appellant,

v.

VIRGINIA STATE BAR,

Appellee.

PETITION FOR STAY

Roger L. Gregory
VA Bar No. 20230
WILDER & GREGORY
707 E. Main Street, Suite 1000
Post Office Box 518
Richmond, Virginia 23218-0518
(804) 643-8401

Counsel for Appellant

PETITION FOR STAY

Victor Alan Motley (“appellant”), pursuant to Part 6, Section IV, Paragraph 13 (H) (6) of the Rules of the Supreme Court of Virginia, petitions this Honorable Court to stay the effect of the Virginia State Bar Disciplinary Board’s (“Board”) order entered on September 24, 1999, suspending his license to practice law in the Commonwealth of Virginia for eighteen (18) months effective October 1, 1999. In support of his petition, Appellant states as follows:

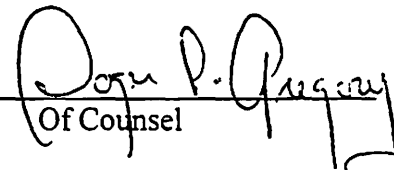
1. That the Board entered an order on September 24, 1999, suspending his license to practice law in the Commonwealth of Virginia for a period of eighteen (18) months effective October 1, 1999. The order was delivered by certified mail to appellant on September 29, 1999 and is attached as Exhibit 1 to this petition.
2. That appellant intends to appeal to this Court from the order of suspension imposed by the Board.
3. That appellant can raise several valid assignments of error to the decision imposing suspension and has a meritorious basis for his appeal to this Court.
4. That the purpose of this petition is not for delay or evasion.
5. That appellant has no other source of income other than his law practice to support his spouse and children.
6. That the suspension imposed by the Board was not based upon any finding that appellant engaged in misconduct.
7. That appellant is no longer handling any matters in the area of law that was the basis for the bar complaint.

8. That there is no risk to the public in allowing the appellant to continue to practice law in the Commonwealth of Virginia while his appeal is pending.

9. That appellant and his family would suffer irreparable financial hardship even though he later prevails on appeal if the Board's order is not stayed during his appeal.

WHEREFORE, Victor Alan Motley prays that this Honorable Court will grant his petition and stay the effect of the suspension imposed by the Virginia State Bar Disciplinary Board until this Court has ruled upon his appeal.

VICTOR ALAN MOTLEY

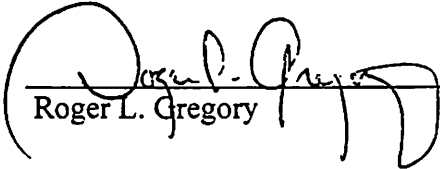
By 
Of Counsel

Roger L. Gregory
VA Bar No. 20230
WILDER & GREGORY
707 E. Main Street, Suite 1000
Post Office Box 518
Richmond, Virginia 23218-0518
(804) 643-8401

Counsel for Appellant

CERTIFICATE OF SERVICE

I hereby certify that the foregoing Petition to Stay was delivered by hand to
The Honorable Mark Early, Attorney General of Virginia, 900 East Main Street,
Richmond, Virginia 23219, Clerk of the Virginia State Bar Disciplinary Board , Eighth
and Main Building, 707 East Main Street, Suite 1500, Richmond, Virginia 23219, and
Harry M. Hirsch, Deputy Bar Counsel, Eighth and Main Building, 707 East Main Street,
Suite 1500, Richmond, Virginia 23219, on this 30th day of September, 1999.



Roger L. Gregory

VIRGINIA:

BEFORE THE VIRGINIA STATE BAR DISCIPLINARY BOARD

IN THE MATTER OF

Victor Alan Motley

Respondent

VSB Docket # 96 032246

O R D E R

On Sept. 24, 1999, the above-referenced matter was heard by the Virginia State Bar Disciplinary Board pursuant to Notice served upon the Respondent in the manner provided by the Rules of Supreme Court of Virginia.

WHEREFORE, upon consideration of the testimony and documentary evidence, it is ORDERED that Respondent's license to practice law in the Commonwealth of Virginia is

☒ Suspended for a period of 18 months,
☐ Revoked,
 effective Oct 1, 1999.

The Board notes for the record in this matter that

☒ The Respondent was present in person and was advised of the imposition of the sanction and the effective date of the sanction; and

☐ The Respondent was not present in person, but the Clerk of the Disciplinary System is directed to communicate promptly to the Respondent the actions of the Board; and

that the Board shall issue a written opinion in this matter which, when issued, shall be attached hereto and incorporated herein by reference.

It is further ORDERED that pursuant to the provisions of Part Six, Section IV, Paragraph 13(K)(1) of the Rules of the Supreme Court of Virginia, that the Respondent shall forthwith give notice by certified

mail, return receipt requested, of the

✓ Suspension

 Revocation

of his license to practice law in the Commonwealth of Virginia, to all clients for whom he is currently handling matters and to all opposing attorneys and presiding judges in pending litigation. The Attorney shall also make appropriate arrangements for the disposition of matters then in his care in conformity with the wishes of his client. The Attorney shall give such notice within fourteen (14) days of the effective date of the Suspension order, and make such arrangements as are required herein within forty-five (45) days of the effective date of the Suspension order. The Attorney shall furnish proof to the bar within sixty (60) days of the effective date of the Suspension order that such notices have been timely given and such arrangement for the disposition of matters made. Issues concerning the adequacy of the notice and arrangements required herein shall be determined by the Disciplinary Board, which may impose a sanction of revocation or suspension for failure to comply with the requirements of this subparagraph.

Pursuant to Part Six, § IV, ¶ 13(K)(10) of the Rules of the Supreme Court, the Clerk of the Disciplinary System shall assess costs.

It is further ORDERED that a copy teste of this Order shall be mailed by Certified Mail, Return Receipt Requested, to the Respondent, at his last address of record with the Virginia State Bar and hand-delivered to Bar Counsel.

ENTER THIS ORDER THIS 24 DAY OF
Sept, 1999

A COPY TESTE:

VIRGINIA STATE BAR DISCIPLINARY BOARD

Henry P. Lister Chair

PATRICIA J. RIOS
CLERK OF THE DISCIPLINARY SYSTEM

RECEIVED

OCT 05 1999

VIRGINIA:

VIRGINIA STATE BAR

*In the Supreme Court of Virginia held at the Supreme Court Building in the
City of Richmond on Friday the 1st day of October, 1999.*

Victor Alan Motley, Appellant,
against VSB Docket No. 960322446
Virginia State Bar, Appellee.

From the Virginia State Bar Disciplinary Board

On September 30, 1999 came the appellant, by counsel, and
filed a petition for stay in this case.

Thereupon came the appellee, by the Attorney General of
Virginia, and filed a response in opposition.

On consideration whereof, the Virginia State Bar
Disciplinary Board's order of September 24, 1999, suspending the
appellant's license to practice law in this Commonwealth, is stayed
pending the appeal of this case in this Court.

A Copy,

Teste:


Clerk



Virginia State Bar

Eighth and Main Building
707 East Main Street, Suite 1500
Richmond, Virginia 23219-2800
Telephone: (804) 775-0500

Facsimile: (804) 775-0501 TDD: (804) 775-0502

October 5, 1999

PERSONAL AND CONFIDENTIAL

CERTIFIED MAIL
RETURN RECEIPT REQUESTED
P 971 902 830

Victor Alan Motley, Esquire
P.O. Box 25786
Richmond, VA 23260-5786

Re: In the Matter of Victor Alan Motley
VSB Docket # 96-032-2446

Dear Mr. Motley:

This is to acknowledge receipt of a copy of your "Notice of Appeal", which was received by the Virginia State Bar Clerk's Office on October 5, 1999, in the above-referenced matter.

Enclosed is an attested copy of an "Order" entered September 24, 1999, by the Virginia State Bar Disciplinary Board, and a copy of an "Order" entered October 1, 1999, by the Virginia Supreme Court.

If you should have any questions, or wish to discuss this matter further, please contact me at (804) 775-0573 or write to me at the above-listed address.

Sincerely,

A handwritten signature in cursive script, reading "Patricia J. Rios".

Patricia J. Rios
Clerk of the Disciplinary System

PJR/tmc

Enclosures

cc: Roger Lee Gregory, Respondent's Counsel, w/encls.
Harry M. Hirsch, Deputy Bar Counsel, w/encls.

VIRGINIA:

BEFORE THE VIRGINIA STATE BAR DISCIPLINARY BOARD

IN THE MATTER OF

Victor Alan Motkey

Respondent

VSB Docket # 960322446

O R D E R

On Sept. 24, 1999, the above-referenced matter was heard by the Virginia State Bar Disciplinary Board pursuant to Notice served upon the Respondent in the manner provided by the Rules of Supreme Court of Virginia.

WHEREFORE, upon consideration of the testimony and documentary evidence, it is ORDERED that Respondent's license to practice law in the Commonwealth of Virginia is

✓ Suspended for a period of 18 Months,
 Revoked,
effective Oct 1, 1999.

The Board notes for the record in this matter that

✓ The Respondent was present in person and was advised of the imposition of the sanction and the effective date of the sanction; and

 The Respondent was not present in person, but the Clerk of the Disciplinary System is directed to communicate promptly to the Respondent the actions of the Board; and

that the Board shall issue a written opinion in this matter which, when issued, shall be attached hereto and incorporated herein by reference.

It is further ORDERED that pursuant to the provisions of Part Six, Section IV, Paragraph 13(K)(1) of the Rules of the Supreme Court of Virginia, that the Respondent shall forthwith give notice by certified

mail, return receipt requested, of the

✓ Suspension

 Revocation

of his license to practice law in the Commonwealth of Virginia, to all clients for whom he is currently handling matters and to all opposing attorneys and presiding judges in pending litigation. The Attorney shall also make appropriate arrangements for the disposition of matters then in his care in conformity with the wishes of his client. The Attorney shall give such notice within fourteen (14) days of the effective date of the Suspension order, and make such arrangements as are required herein within forty-five (45) days of the effective date of the Suspension order. The Attorney shall furnish proof to the bar within sixty (60) days of the effective date of the Suspension order that such notices have been timely given and such arrangement for the disposition of matters made. Issues concerning the adequacy of the notice and arrangements required herein shall be determined by the Disciplinary Board, which may impose a sanction of revocation or suspension for failure to comply with the requirements of this subparagraph.

Pursuant to Part Six, § IV, ¶ 13(K)(10) of the Rules of the Supreme Court, the Clerk of the Disciplinary System shall assess costs.

It is further ORDERED that a copy teste of this Order shall be mailed by Certified Mail, Return Receipt Requested, to the Respondent, at his last address of record with the Virginia State Bar and hand-delivered to Bar Counsel.

A COPY TESTE:

Patricia J. Rios

**PATRICIA J. RIOS
CLERK OF THE DISCIPLINARY SYSTEM**

ENTER THIS ORDER THIS 24 DAY OF
Sept., 1999

Henry P. West
VIRGINIA STATE BAR DISCIPLINARY BOARD
Chair

RECEIVED

OCT 05 1999

VIRGINIA:

VIRGINIA STATE BAR

*In the Supreme Court of Virginia held at the Supreme Court Building in the
City of Richmond on* Friday *the* 1st *day of* October, 1999.

Victor Alan Motley, Appellant,
against VSB Docket No. 960322446
Virginia State Bar, Appellee.

From the Virginia State Bar Disciplinary Board

On September 30, 1999 came the appellant, by counsel, and
filed a petition for stay in this case.

Thereupon came the appellee, by the Attorney General of
Virginia, and filed a response in opposition.

On consideration whereof, the Virginia State Bar
Disciplinary Board's order of September 24, 1999, suspending the
appellant's license to practice law in this Commonwealth, is stayed
pending the appeal of this case in this Court.

A Copy,

Teste:


Clerk

THE
WALZ
CERTIFIED
MAILER™

FROM **MOORE**

ITEM #48178
U.S. PAT. NOS. 5,501,393; 4,368,903
WALZ CERTIFIED MAILER™

Victor Alan Motley, Esquire
P.O. Box 25786
Label #1 Richmond, VA 23260-5786

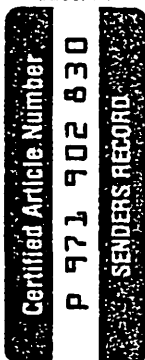
Victor Alan Motley, Esquire
P.O. Box 25786
Label #2 Richmond, VA 23260-5786

Victor Alan Motley, Esquire
P.O. Box 25786
Label #3 Richmond, VA 23260-5786

FOLD AND TEAR THIS WAY → OPTIONAL

Label #4

Label #5



Victor Alan Motley, Esquire
P.O. Box 25786
Richmond, VA 23260-5786

CHARGE
AMOUNT:

CHARGE TO:

RE: 96-032-2446

SENDER: Tricia Clark

3. Article Addressed to:

Victor Alan Motley, Esquire
P.O. Box 25786
Richmond, VA 23260-5786

5. Received By: (Print Name)

6. Signature: (Addressee or Agent)

I also wish to receive the
following service (for an extra fee):

RESTRICTED
DELIVERY ☐

Consult postmaster for fee.

4a. Article Number

P 971 902 830



4b. Service Type ☒ CERTIFIED

7. Date of Delivery

OCT - 7 1999

8. Addressee's Address

99

I also wish to receive the
following service (for an extra fee):

RESTRICTED
DELIVERY ☐

Consult postmaster for fee.

Article Number

P 971 902 830



Service Type ☒ CERTIFIED

Date of Delivery

Addressee's Address

100

P 971 902 830

P 971 902 830

TO:

Victor Alan Motley, Esquire
P.O. Box 25786
Richmond, VA 23260-5786

SENDER: Tricia Clark

REFERENCE: 96-032-2446

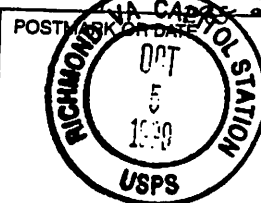
PS FORM 3800, SEPTEMBER 1995

RETURN RECEIPT SERVICE	Postage	1.33
	Certified Fee	1.40
	Return Receipt Fee	1.25
	Restricted Delivery	0.00
	Total Postage and Fees	0.00

US Postal Service

Receipt for
Certified Mail

No Insurance Coverage Provided
Do not use for International Mail



CERTIFIED

P 971 902 830

MAIL

RETURN RECEIPT REQUESTED

Label #6

RESTRICTED DELIVERY

Thank you for using Return Receipt Service

**BEFORE THE VIRGINIA STATE BAR
DISCIPLINARY BOARD**

In the matter of:

Victor Alan Motley

VSB Docket No: 96-032-2446

ORDER

THIS MATTER came on to be heard on September 24, 1999, before a panel of the Disciplinary Board consisting of Henry P. Custis, Jr., Vice Chair, presiding, Eric N. Davidson, Donna A. DeCorleto, John A. Dezio and Karen A. Gould. The State Bar was represented by Harry M. Hirsch, Deputy Bar Counsel, and the Respondent Victor Alan Motley appeared in person and with his counsel Roger L. Gregory. This matter came before the Board on a Subcommittee Certification from the Third District, Section Two, Committee of the Virginia State Bar.

MOTIONS

The Respondent moved the Board to continue the hearing because Rebecca Grey did not appear pursuant to a witness subpoena, and this motion was overruled after due deliberation, because there was no evidence that her testimony would be material, with leave granted to the Respondent to proffer the testimony of Rebecca Grey for the record.

The Respondent moved the Board to dismiss the certification because a delay in the filing of the certification from July 18, 1998 to June 27, 1999, violated procedural requirements, and this motion was overruled after due deliberation.

The Respondent moved the Board to dismiss the certification because the general investigation of the trust accounting violated Respondent's rights to due process and equal protection under the law under the Fourteenth Amendment to the United States Constitution, and this motion was overruled after due deliberation.

The Respondent moved that Vice Chair Henry P. Curtis, Jr., and member John A. Dezio be recused because of prior hearings involving the Respondent, and this motion was overruled after due deliberation because both members felt that they could act in a fair and impartial manner.

Exhibits A,B,C,D,E,F,G,H,I,J,K,L,M,N,P,Q,R,S, and V, of the State Bar were admitted without objection, and Exhibits T and U were offered and admitted over the objection of the Respondent.

FINDINGS OF FACT

The Board finds, by clear and convincing evidence, the following facts:

1. At all times relevant hereto, Victor Alan Motley, Esquire (hereinafter the Respondent) has been an attorney licensed to practice law in the Commonwealth of Virginia.
2. In or about February of 1996, Complainant Evelyn J. Meade Davis (Davis) entered into a verbal agreement with Rebecca Grey (Grey) to sell to Grey that property know as 1400 East Eighteenth Street, Richmond, Virginia, 23224, located in the City of Richmond, Virginia (property). The original agreement called for Grey to purchase the property for \$35,000.00 by paying approximately \$4,000.00 at closing and assuming an existing deed of trust and note held by Sun Coast Savings and Loan Association with the approximate balance of \$31,317.03.
3. Motley was the only attorney involved in the transaction which was to close on February 15, 1996.
4. Prior to the date of closing, Davis was informed that Grey would not be able to pay the full \$4,000.00 at closing but could pay \$2,000.00 instead. Davis agreed that Grey would pay \$2,000.00 at closing and that Grey would pay the remaining \$2,000.00 by May 15, 1996 in accordance with a deed of trust and note.
5. On February 15, 1996, Davis, Grey and Motley met for the closing. Grey had no funds with her. It was agreed that the closing papers would be signed anyway and that Grey would pay at a later date the \$2,000.00 she had agreed to bring to closing. Inter alia, a HUD-1 settlement statement, deed of assumption, deed of trust note (Davis to Grey), deed of trust note (Grey to Davis), and deed of trust (Grey to Davis) were signed.
6. Several days later, Motley called Davis to inform her that he had received a check from Grey in the amount of \$1,000.00 instead of \$2,000.00. Out of the \$1,000.00 check, Motley subsequently paid Davis the sum of \$319.80.
7. In May of 1996, Motley informed Davis that he had received a certified check from Grey in the amount of \$1,500.00 and that he was still owed \$200.00 in the transaction from her. After consulting with another attorney, Davis obtained the certified check from Motley. Davis received a total of \$1,819.80 in cash from the transaction although the HUD-1 settlement statement called for her to receive a total of \$3,373.23, including the deferred purchase money.

8. Davis moved from the property prior to the closing date and Grey moved into the premises after the closing.

9. When Grey appeared at closing without funds, Davis agreed to complete the closing but recordation was not to occur until Motley had received the required \$2,000.00. Motley never did receive a total of \$2,000.00 from Grey. However, Motley did record the deed of assumption and a deed of trust from Grey on February 20, 1996, with the consent of Grey.

10. The \$1,000.00 check which Grey provided to Motley several days after closing was an uncertified personal check. Motley deposited the check into his personal checking account on or about February 20, 1996, although he stated to VSB Investigator Lacy Campbell that he had deposited the check into his trust account. Davis believed that the \$319.80 check she then received from Motley came out of the \$1,000.00 check. In fact, the \$1,000.00 check was an insufficient funds check.

11. On or about February 6, 1996, Motley had deposited into his trust account his own personal loan proceeds in the amount of \$3,026.27. Of that amount Motley proceeded to write trust account checks payable to himself in amounts which totaled \$2,300.00, leaving a balance of personally borrowed funds of \$726.27 in the trust account.

12. Although Motley stated to VSB Investigator Lacy Campbell that he had disbursed from his trust account in accordance with the HUD-1 settlement statement in the Davis to Grey transaction, in fact Motley disbursed only three checks from his trust account in the transaction.

#4689 Richmond Circuit Court	\$105.20	2/20/96
#4690 Suncoast S & L Assoc., FSA	\$125.00	2/20/96
#4704 Evelyn Davis	\$319.80	2/28/96

No monies from Grey were in the trust account to fund the transaction.

13. Motley failed to meet the requirements of the lender by not sending to the lender evidence of a hazard insurance policy, a copy of the recorded deed and an assignment of escrow reserves.

14. Motley maintained no subsidiary ledger card or an equivalent for the Davis to Grey transaction.

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16. The deed of trust from Grey to Meade names Evelyn Meade as a trustee as well as the beneficiary on the underlying note.

Trust Account Problems

17. A review of Motley's trust account and records pertaining to account number 051000127 010041351 12 at Consolidated Bank and Trust Company corresponding to the time frame of July 1, 1995 through July 30, 1996 revealed the following:

- a. subsidiary ledgers were incomplete;
- b. cash receipts journals, or any equivalent, provided no identification of the source of funds deposited;
- c. cash disbursements journals were incomplete;

18. A review of ten subsidiary ledger cards with the corresponding checks, cash receipts, journals, when compared to monthly bank statements revealed the following:

- a. Myrtle Cooper - check written did not equal the deposit and the ledger card; check number 4389 was written for \$200.00 on June 28, 1995 and the funds of the Myrtle Cooper settlement were not deposited until August 10, 1995; there were insufficient funds to cover checks written on this settlement on 32 occasions between August 15, 1995 and December 13, 1995.
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- a. Eleven overdraft charges totaling \$275.00.
- b. Interest totaling \$666.25 was credited to the trust account over thirteen months with no indication that the bank recovered the interest.
- c. Seven months of activity service charges of \$49.00 and a charge back service charge of \$3.00 were assessed on the account without any indication that Motley paid the fees.

20. Motley failed to operate his trust account in accordance within the required rules and procedures of Canon 9 of the Virginia Code of Professional Responsibility.

NATURE OF MISCONDUCT

The Board unanimously finds by clear and convincing evidence that the following Disciplinary Rules of the Virginia Code of Professional Responsibility have been violated by the Respondent:

DR 6-101. Competence and Promptness.

(A) A lawyer shall undertake representation only in matters in which:

- (1) The lawyer can act with competence and demonstrate the specific legal knowledge, skill, efficiency, and thoroughness in preparation employed in acceptable practice by lawyers undertaking similar matters, or

DR 6-101. Competence and Promptness.

(B) A lawyer shall attend promptly to matters undertaken for a client until completed or until the lawyer has properly and completely withdrawn from representing the client.

DR 6-101. Competence and Promptness.

(C) A lawyer shall keep a client reasonably informed about matters in which the lawyer's services are being rendered.

DR 9-102. Preserving Identity of Funds and Property of a Client.

- (A) All funds received or held by a lawyer or law firm on behalf of a client, estate or a ward, residing in this State or from a transaction arising in this State, other than reimbursement of advances for costs and expenses, shall be deposited in one or more identifiable trust accounts and, as to client funds, maintained at a financial institution in a state in which the lawyer maintains a law office and no funds belonging to the lawyer or law firm shall be deposited therein except as follows:
- (1) Funds reasonably sufficient to pay service or other charges or fees imposed by the financial institution may be deposited therein.
 - (2) Funds belonging in part to a client and in part presently or potentially to the lawyer or law firm must be deposited therein, and the portion belonging to the lawyer or law firm must be withdrawn promptly after they are due unless the right of lawyer or law firm to receive it is disputed by the client, in which event the disputed portion shall not be withdrawn until the dispute is finally resolved.

DR 9-102. Preserving Identity of Funds and Property of Client.

- (B) A lawyer shall:
- (3) Maintain complete records of all funds, securities, and other properties of a client coming into the possession of the lawyer and render appropriate accounts to his client regarding them.

DR 9-103. Record Keeping Requirements.

- (A) **Required Books and Records:** As a minimum requirement, every attorney engaged in the private practice of law in Virginia, hereinafter called "attorney," shall maintain or cause to be maintained, on a current basis, books and records which establish his compliance with Disciplinary Rule 9-102. These records including all the reconciliation and supporting records required under Section (B) here of shall be preserved for at least five years following completion of the fiduciary obligation and accounting period. For this purpose, the following books and records, or their equivalent, are required.

- (1) A cash receipts journal or journals listing all funds received, the sources of receipts and the date of receipts. Checkbook entries of receipts and deposits, if adequately detailed and bound, may constitute a journal for this purpose. If separate cash receipts journals are not maintained for fiduciary and nonfiduciary funds, then the consolidated cash receipts journal shall contain separate columns for fiduciary and nonfiduciary receipts.
- (2) A cash disbursements journal listing and identifying all disbursements from the fiduciary account. Checkbook entries of disbursements, if adequately detailed and bound, may constitute a journal for this purpose. If separate disbursements journals are not maintained for fiduciary and nonfiduciary disbursements then the consolidated disbursements journal shall contain separate columns for fiduciary and nonfiduciary disbursements.
- (3) **Subsidiary ledger:** A subsidiary ledger containing a separate account for each client and for every other person or entity from whom money has been received in trust shall be maintained. The ledger account shall by separate columns or otherwise clearly identify fiduciary funds disbursed, and fiduciary funds balance on hand. The ledger account for a client or a separate subsidiary ledger account for a client shall clearly indicate all fees paid from trust accounts.

DR 9-103. Record Keeping Requirements.

- (B) **Required Trust Accounting Procedures:** The following minimum trust accounting procedures are applicable to all trust accounts maintained by lawyers or law firms holding funds on behalf of clients who reside in this State, or from a transaction arising in this State, whether or not the lawyer or law firm maintains an office in this State.
- (2) **Deposits:** All receipts of trust money shall be deposited intact and a retained duplicate deposit slip or other such record shall be sufficiently detailed to show the identity of each item.
- (3) **Deposit of mixed fiduciary and nonfiduciary funds other than fees and retainers:** Mixed fiduciary and nonfiduciary funds shall be deposited intact to the trust account. The nonfiduciary portion shall be withdrawn upon the clearing of the mixed fund deposit instrument.

- (4) **Periodic Trial Balance:** A regular periodic trial balance of the subsidiary ledger shall be made at least quarter annually, within 30 days after the close of the period and shall show the trust account balance of the client or other person at the end of each period.
- (a) The total of the trial balance must agree with the control figure computed by taking the beginning balance, adding the total of monies received in trust for the period and deducting the total of trust monies disbursed for the period.
 - (b) The trial balance shall identify the preparer and be approved by the attorney or one of the attorneys in the firm.
- (5) **Reconciliations:**
- (a) A monthly reconciliation shall be made at month end of the cash balance derived from the cash receipts journal and cash disbursements journal total, the trust account checkbook balance and the trust account bank statement balance.
 - (b) A periodic reconciliation shall be made at least quarter annually, within 30 days after the close of the period, reconciling cash balances to the subsidiary ledger trial balance.
 - (c) Reconciliations shall identify the preparer and be approved by the attorney or one of the attorneys in the firm.
- (6) **Receipts and Disbursements Explained:** The purpose of all receipts and disbursements of trust funds reported in the trust journals and subsidiary ledgers shall be fully explained and supported by adequate records.

IMPOSITION OF SANCTIONS

The Board took into consideration the instant matter, as well as the prior disciplinary record of Victor Alan Motley, to-wit:

- (1) 1986 - dismissed with terms
- (2) 1991 - private reprimand with terms
- (3) 1992 - dismissed with terms

Accordingly, it is **ORDERED** that the license to practice law in the Courts of this Commonwealth heretofore issued to Victor Alan Motley, Esquire, be, and the same hereby is, suspended for a period of eighteen months effective October 1, 1999.

It is further **ORDERED** pursuant to the provisions of Part Six, Section IV, Paragraph 13 (K) (1) of the Rules of the Supreme Court of Virginia, that the Respondent shall forthwith give notice by certified mail, return receipt requested, of his suspension of his license to practice law in the Commonwealth of Virginia, to all clients for whom he is currently handling matters and to all opposing attorneys and presiding judges in pending litigation. The Respondent shall also make appropriate arrangements for the disposition of matters then in his care in conformity with the wishes of his client. The Respondent shall give each notice within fourteen (14) days of the effective date of the suspension order, and make such arrangements as are required herein within forty-five (45) days of the effective date of the suspension order. The Respondent shall furnish proof to the bar within sixty (60) days of the effective date of the suspension order that such notices have been timely given and such arrangement for the disposition of matters made. Issues concerning the adequacy of the notice and arrangements required herein shall be determined by the Disciplinary Board, which may impose a sanction of revocation or suspension for failure to comply with the requirements of this subparagraph.

It is further **ORDERED** that Victor Alan Motley shall furnish true copies of all of the notice letters sent to all persons notified of the suspension, with the original return receipts for said notice letters, to the Clerk of the Disciplinary System, on or before November 29, 1999.

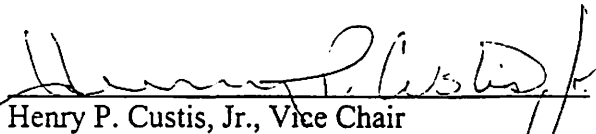
It is further **ORDERED** that costs shall be assessed against the Respondent in accordance with the Rules of the Supreme Court of Virginia, Part Six, Section Four, Paragraph 13 (K) (10), and the Respondent shall comply therewith.

The Court Reporter for this hearing was J. Shannon Toombs , Crane - Snead & Associates, Inc., Court Reporters, 4914 Fitzhugh Avenue, Suite 203, Richmond, Virginia, 23230, (804) 355-4335.

It is further **ORDERED** that the Clerk of the Disciplinary System send an attested copy of this order to the Respondent Victor Alan Motley, at his address of record with the Virginia State Bar, Post Office Box 25786, Richmond, Virginia 23260-5786, by certified mail, return receipt requested, and by regular mail, and that a copy be provided by mail or hand delivering to Harry M. Hirsch, Deputy Bar Counsel, Virginia State Bar, Eighth and Main Building, 707 East Main Street, Suite 1500, Richmond, Virginia 23219-2800 and by mail to Roger Lee Gregory, Respondent's Counsel, Wilder and Gregory, P.O. Box 518, 707 East Main Street, Suite 1000, Richmond, Virginia, 23218-0518

ENTERED THIS 5th DAY OF November, 1999

VIRGINIA STATE BAR DISCIPLINARY BOARD


Henry P. Custis, Jr., Vice Chair



Virginia State Bar

Eighth and Main Building
707 East Main Street, Suite 1500
Richmond, Virginia 23219-2800
Telephone: (804) 775-0500

Facsimile: (804) 775-0501 TDD: (804) 775-0502

November 10, 1999

PERSONAL AND CONFIDENTIAL

CERTIFIED MAIL
RETURN RECEIPT REQUESTED
P 971 902 865

Victor Alan Motley, Esquire
P.O. Box 25786
Richmond, VA 23260-5786

Re: In the Matter of Victor Alan Motley
VSB Docket No. 96-032-2446

Dear Mr. Motley:

Enclosed are the following orders in the above-referenced matter:

1. Attested copy of a Virginia State Bar Disciplinary Board "Order" entered September 24, 1999
2. Copy of a Virginia Supreme Court "Order" entered October 1, 1999
3. Attested copy of a Virginia State Bar Disciplinary Board "Order" entered November 5, 1999

If you have any questions, or desire to discuss this matter further, please have your attorney contact me at (804) 775-0572.

Sincerely,

A handwritten signature in black ink, appearing to read "Vivian R. Byrd".

Vivian R. Byrd
Senior Assistant Clerk of the Disciplinary System

VRB/tmc
Enclosures

cc: Roger Lee Gregory, Respondent's Counsel, w/encls.
H. M. Hirsch, Deputy Bar Counsel, w/encls.

VIRGINIA:

BEFORE THE VIRGINIA STATE BAR DISCIPLINARY BOARD

IN THE MATTER OF

Victor Alan Motley

Respondent

VS B Docket # 96 0322446

O R D E R

On Sept. 24, 1999, the above-referenced matter was heard by the Virginia State Bar Disciplinary Board pursuant to Notice served upon the Respondent in the manner provided by the Rules of Supreme Court of Virginia.

WHEREFORE, upon consideration of the testimony and documentary evidence, it is ORDERED that Respondent's license to practice law in the Commonwealth of Virginia is

☒ Suspended for a period of 18 months,
☐ Revoked,
effective Oct 1, 1999.

The Board notes for the record in this matter that

☒ The Respondent was present in person and was advised of the imposition of the sanction and the effective date of the sanction; and

☐ The Respondent was not present in person, but the Clerk of the Disciplinary System is directed to communicate promptly to the Respondent the actions of the Board; and

that the Board shall issue a written opinion in this matter which, when issued, shall be attached hereto and incorporated herein by reference.

It is further ORDERED that pursuant to the provisions of Part Six, Section IV, Paragraph 13(K)(1) of the Rules of the Supreme Court of Virginia, that the Respondent shall forthwith give notice by certified

mail, return receipt requested, of the

✓ Suspension


 Revocation

of his license to practice law in the Commonwealth of Virginia, to all clients for whom he is currently handling matters and to all opposing attorneys and presiding judges in pending litigation. The Attorney shall also make appropriate arrangements for the disposition of matters then in his care in conformity with the wishes of his client. The Attorney shall give such notice within fourteen (14) days of the effective date of the Suspension order, and make such arrangements as are required herein within forty-five (45) days of the effective date of the Suspension order. The Attorney shall furnish proof to the bar within sixty (60) days of the effective date of the Suspension order that such notices have been timely given and such arrangement for the disposition of matters made. Issues concerning the adequacy of the notice and arrangements required herein shall be determined by the Disciplinary Board, which may impose a sanction of revocation or suspension for failure to comply with the requirements of this subparagraph.

Pursuant to Part Six, § IV, ¶ 13(K) (10) of the Rules of the Supreme Court, the Clerk of the Disciplinary System shall assess costs.

It is further ORDERED that a copy teste of this Order shall be mailed by Certified Mail, Return Receipt Requested, to the Respondent, at his last address of record with the Virginia State Bar and hand-delivered to Bar Counsel.

A COPY TESTE:


PATRICIA J. RIOS
CLERK OF THE DISCIPLINARY SYSTEM

ENTER THIS ORDER THIS 24 DAY OF
Sept, 1999

VIRGINIA STATE BAR DISCIPLINARY BOARD
 Chair

RECEIVED

OCT 05 1999

VIRGINIA:

VIRGINIA STATE BAR

*In the Supreme Court of Virginia held at the Supreme Court Building in the
City of Richmond on Friday the 1st day of October, 1999.*

Victor Alan Motley, Appellant,
against VSB Docket No. 960322446
Virginia State Bar, Appellee.

From the Virginia State Bar Disciplinary Board

On September 30, 1999 came the appellant, by counsel, and
filed a petition for stay in this case.

Thereupon came the appellee, by the Attorney General of
Virginia, and filed a response in opposition.

On consideration whereof, the Virginia State Bar
Disciplinary Board's order of September 24, 1999, suspending the
appellant's license to practice law in this Commonwealth, is stayed
pending the appeal of this case in this Court.

A Copy,

Teste:


Clerk

**BEFORE THE VIRGINIA STATE BAR
DISCIPLINARY BOARD**

In the matter of:

Victor Alan Motley

VSB Docket No: 96-032-2446

ORDER

THIS MATTER came on to be heard on September 24, 1999, before a panel of the Disciplinary Board consisting of Henry P. Custis, Jr., Vice Chair, presiding, Eric N. Davidson, Donna A. DeCorleto, John A. Dezio and Karen A. Gould. The State Bar was represented by Harry M. Hirsch, Deputy Bar Counsel, and the Respondent Victor Alan Motley appeared in person and with his counsel Roger L. Gregory. This matter came before the Board on a Subcommittee Certification from the Third District, Section Two, Committee of the Virginia State Bar.

MOTIONS

The Respondent moved the Board to continue the hearing because Rebecca Grey did not appear pursuant to a witness subpoena, and this motion was overruled after due deliberation, because there was no evidence that her testimony would be material, with leave granted to the Respondent to proffer the testimony of Rebecca Grey for the record.

The Respondent moved the Board to dismiss the certification because a delay in the filing of the certification from July 18, 1998 to June 27, 1999, violated procedural requirements, and this motion was overruled after due deliberation.

The Respondent moved the Board to dismiss the certification because the general investigation of the trust accounting violated Respondent's rights to due process and equal protection under the law under the Fourteenth Amendment to the United States Constitution, and this motion was overruled after due deliberation.

The Respondent moved that Vice Chair Henry P. Curtis, Jr., and member John A. Dezio be recused because of prior hearings involving the Respondent, and this motion was overruled after due deliberation because both members felt that they could act in a fair and impartial manner.

Exhibits A,B,C,D,E,F,G,H,I,J,K,L,M,N,P,Q,R,S, and V, of the State Bar were admitted without objection, and Exhibits T and U were offered and admitted over the objection of the Respondent.

FINDINGS OF FACT

The Board finds, by clear and convincing evidence, the following facts:

1. At all times relevant hereto, Victor Alan Motley, Esquire (hereinafter the Respondent) has been an attorney licensed to practice law in the Commonwealth of Virginia.
2. In or about February of 1996, Complainant Evelyn J. Meade Davis (Davis) entered into a verbal agreement with Rebecca Grey (Grey) to sell to Grey that property know as 1400 East Eighteenth Street, Richmond, Virginia, 23224, located in the City of Richmond, Virginia (property). The original agreement called for Grey to purchase the property for \$35,000.00 by paying approximately \$4,000.00 at closing and assuming an existing deed of trust and note held by Sun Coast Savings and Loan Association with the approximate balance of \$31,317.03.
3. Motley was the only attorney involved in the transaction which was to close on February 15, 1996.
4. Prior to the date of closing, Davis was informed that Grey would not be able to pay the full \$4,000.00 at closing but could pay \$2,000.00 instead. Davis agreed that Grey would pay \$2,000.00 at closing and that Grey would pay the remaining \$2,000.00 by May 15, 1996 in accordance with a deed of trust and note.
5. On February 15, 1996, Davis, Grey and Motley met for the closing. Grey had no funds with her. It was agreed that the closing papers would be signed anyway and that Grey would pay at a later date the \$2,000.00 she had agreed to bring to closing. Inter alia, a HUD-1 settlement statement, deed of assumption, deed of trust note (Davis to Grey), deed of trust note (Grey to Davis), and deed of trust (Grey to Davis) were signed.
6. Several days later, Motley called Davis to inform her that he had received a check from Grey in the amount of \$1,000.00 instead of \$2,000.00. Out of the \$1,000.00 check, Motley subsequently paid Davis the sum of \$319.80.
7. In May of 1996, Motley informed Davis that he had received a certified check from Grey in the amount of \$1,500.00 and that he was still owed \$200.00 in the transaction from her. After consulting with another attorney, Davis obtained the certified check from Motley. Davis received a total of \$1,819.80 in cash from the transaction although the HUD-1 settlement statement called for her to receive a total of \$3,373.23, including the deferred purchase money.

8. Davis moved from the property prior to the closing date and Grey moved into the premises after the closing.

9. When Grey appeared at closing without funds, Davis agreed to complete the closing but recordation was not to occur until Motley had received the required \$2,000.00. Motley never did receive a total of \$2,000.00 from Grey. However, Motley did record the deed of assumption and a deed of trust from Grey on February 20, 1996, with the consent of Grey.

10. The \$1,000.00 check which Grey provided to Motley several days after closing was an uncertified personal check. Motley deposited the check into his personal checking account on or about February 20, 1996, although he stated to VSB Investigator Lacy Campbell that he had deposited the check into his trust account. Davis believed that the \$319.80 check she then received from Motley came out of the \$1,000.00 check. In fact, the \$1,000.00 check was an insufficient funds check.

11. On or about February 6, 1996, Motley had deposited into his trust account his own personal loan proceeds in the amount of \$3,026.27. Of that amount Motley proceeded to write trust account checks payable to himself in amounts which totaled \$2,300.00, leaving a balance of personally borrowed funds of \$726.27 in the trust account.

12. Although Motley stated to VSB Investigator Lacy Campbell that he had disbursed from his trust account in accordance with the HUD-1 settlement statement in the Davis to Grey transaction, in fact Motley disbursed only three checks from his trust account in the transaction.

#4689 Richmond Circuit Court	\$105.20	2/20/96
#4690 Suncoast S & L Assoc., FSA	\$125.00	2/20/96
#4704 Evelyn Davis	\$319.80	2/28/96

No monies from Grey were in the trust account to fund the transaction.

13. Motley failed to meet the requirements of the lender by not sending to the lender evidence of a hazard insurance policy, a copy of the recorded deed and an assignment of escrow reserves.

14. Motley maintained no subsidiary ledger card or an equivalent for the Davis to Grey transaction.

15. The name used by Motley for the Complainant was not always the same. The settlement statement, deed of assumption, deed of trust note from the Complainant to Grey (the Respondent's apparent attempt to take care of an outstanding debt), deed of trust note from Grey to the Complainant all referred to the Complainant's last name as "Meade". However, the trust account check in the amount of \$319.80 was made payable to "Evelyn Davis".

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20. Motley failed to operate his trust account in accordance within the required rules and procedures of Canon 9 of the Virginia Code of Professional Responsibility.

NATURE OF MISCONDUCT

The Board unanimously finds by clear and convincing evidence that the following Disciplinary Rules of the Virginia Code of Professional Responsibility have been violated by the Respondent:

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(A) A lawyer shall undertake representation only in matters in which:

- (1) The lawyer can act with competence and demonstrate the specific legal knowledge, skill, efficiency, and thoroughness in preparation employed in acceptable practice by lawyers undertaking similar matters, or

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- (A) All funds received or held by a lawyer or law firm on behalf of a client, estate or a ward, residing in this State or from a transaction arising in this State, other than reimbursement of advances for costs and expenses, shall be deposited in one or more identifiable trust accounts and, as to client funds, maintained at a financial institution in a state in which the lawyer maintains a law office and no funds belonging to the lawyer or law firm shall be deposited therein except as follows:
 - (1) Funds reasonably sufficient to pay service or other charges or fees imposed by the financial institution may be deposited therein.
 - (2) Funds belonging in part to a client and in part presently or potentially to the lawyer or law firm must be deposited therein, and the portion belonging to the lawyer or law firm must be withdrawn promptly after they are due unless the right of lawyer or law firm to receive it is disputed by the client, in which event the disputed portion shall not be withdrawn until the dispute is finally resolved.

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- (B) A lawyer shall:
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- (A) **Required Books and Records:** As a minimum requirement, every attorney engaged in the private practice of law in Virginia, hereinafter called "attorney," shall maintain or cause to be maintained, on a current basis, books and records which establish his compliance with Disciplinary Rule 9-102. These records including all the reconciliation and supporting records required under Section (B) here of shall be preserved for at least five years following completion of the fiduciary obligation and accounting period. For this purpose, the following books and records, or their equivalent, are required.

- (1) A cash receipts journal or journals listing all funds received, the sources of receipts and the date of receipts. Checkbook entries of receipts and deposits, if adequately detailed and bound, may constitute a journal for this purpose. If separate cash receipts journals are not maintained for fiduciary and nonfiduciary funds, then the consolidated cash receipts journal shall contain separate columns for fiduciary and nonfiduciary receipts.
- (2) A cash disbursements journal listing and identifying all disbursements from the fiduciary account. Checkbook entries of disbursements, if adequately detailed and bound, may constitute a journal for this purpose. If separate disbursements journals are not maintained for fiduciary and nonfiduciary disbursements then the consolidated disbursements journal shall contain separate columns for fiduciary and nonfiduciary disbursements.
- (3) **Subsidiary ledger:** A subsidiary ledger containing a separate account for each client and for every other person or entity from whom money has been received in trust shall be maintained. The ledger account shall by separate columns or otherwise clearly identify fiduciary funds disbursed, and fiduciary funds balance on hand. The ledger account for a client or a separate subsidiary ledger account for a client shall clearly indicate all fees paid from trust accounts.

DR 9-103. Record Keeping Requirements.

- (B) **Required Trust Accounting Procedures:** The following minimum trust accounting procedures are applicable to all trust accounts maintained by lawyers or law firms holding funds on behalf of clients who reside in this State, or from a transaction arising in this State, whether or not the lawyer or law firm maintains an office in this State.
- (2) **Deposits:** All receipts of trust money shall be deposited intact and a retained duplicate deposit slip or other such record shall be sufficiently detailed to show the identity of each item.
- (3) **Deposit of mixed fiduciary and nonfiduciary funds other than fees and retainers:** Mixed fiduciary and nonfiduciary funds shall be deposited intact to the trust account. The nonfiduciary portion shall be withdrawn upon the clearing of the mixed fund deposit instrument.

- (4) **Periodic Trial Balance:** A regular periodic trial balance of the subsidiary ledger shall be made at least quarter annually, within 30 days after the close of the period and shall show the trust account balance of the client or other person at the end of each period.
- (a) The total of the trial balance must agree with the control figure computed by taking the beginning balance, adding the total of monies received in trust for the period and deducting the total of trust monies disbursed for the period.
 - (b) The trial balance shall identify the preparer and be approved by the attorney or one of the attorneys in the firm.
- (5) **Reconciliations:**
- (a) A monthly reconciliation shall be made at month end of the cash balance derived from the cash receipts journal and cash disbursements journal total, the trust account checkbook balance, and the trust account bank statement balance.
 - (b) A periodic reconciliation shall be made at least quarter annually, within 30 days after the close of the period, reconciling cash balances to the subsidiary ledger trial balance.
 - (c) Reconciliations shall identify the preparer and be approved by the attorney or one of the attorneys in the firm.
- (6) **Receipts and Disbursements Explained:** The purpose of all receipts and disbursements of trust funds reported in the trust journals and subsidiary ledgers shall be fully explained and supported by adequate records.

IMPOSITION OF SANCTIONS

The Board took into consideration the instant matter, as well as the prior disciplinary record of Victor Alan Motley, to-wit:

- (1) 1986 - dismissed with terms
- (2) 1991 - private reprimand with terms
- (3) 1992 - dismissed with terms

Accordingly, it is **ORDERED** that the license to practice law in the Courts of this Commonwealth heretofore issued to Victor Alan Motley, Esquire, be, and the same hereby is, suspended for a period of eighteen months effective October 1, 1999.

It is further **ORDERED** pursuant to the provisions of Part Six, Section IV, Paragraph 13 (K) (1) of the Rules of the Supreme Court of Virginia, that the Respondent shall forthwith give notice by certified mail, return receipt requested, of his suspension of his license to practice law in the Commonwealth of Virginia, to all clients for whom he is currently handling matters and to all opposing attorneys and presiding judges in pending litigation. The Respondent shall also make appropriate arrangements for the disposition of matters then in his care in conformity with the wishes of his client. The Respondent shall give each notice within fourteen (14) days of the effective date of the suspension order, and make such arrangements as are required herein within forty-five (45) days of the effective date of the suspension order. The Respondent shall furnish proof to the bar within sixty (60) days of the effective date of the suspension order that such notices have been timely given and such arrangement for the disposition of matters made. Issues concerning the adequacy of the notice and arrangements required herein shall be determined by the Disciplinary Board, which may impose a sanction of revocation or suspension for failure to comply with the requirements of this subparagraph.

It is further **ORDERED** that Victor Alan Motley shall furnish true copies of all of the notice letters sent to all persons notified of the suspension, with the original return receipts for said notice letters, to the Clerk of the Disciplinary System, on or before November 29, 1999.

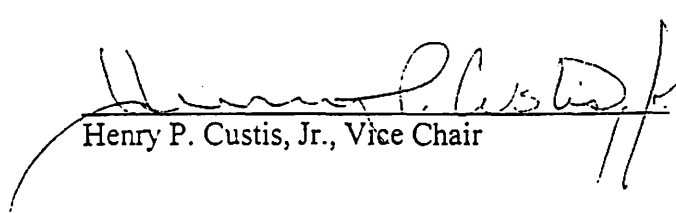
It is further **ORDERED** that costs shall be assessed against the Respondent in accordance with the Rules of the Supreme Court of Virginia, Part Six, Section Four, Paragraph 13 (K) (10), and the Respondent shall comply therewith.

The Court Reporter for this hearing was J. Shannon Toombs , Crane - Snead & Associates, Inc., Court Reporters, 4914 Fitzhugh Avenue, Suite 203, Richmond, Virginia, 23230, (804) 355-4335.

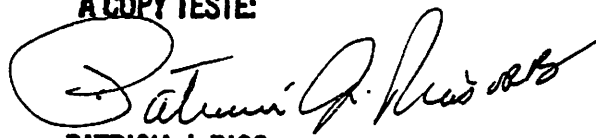
It is further **ORDERED** that the Clerk of the Disciplinary System send an attested copy of this order to the Respondent Victor Alan Motley, at his address of record with the Virginia State Bar, Post Office Box 25786, Richmond, Virginia 23260-5786, by certified mail, return receipt requested, and by regular mail, and that a copy be provided by mail or hand delivering to Harry M. Hirsch, Deputy Bar Counsel, Virginia State Bar, Eighth and Main Building, 707 East Main Street, Suite 1500, Richmond, Virginia 23219-2800 and by mail to Roger Lee Gregory, Respondent's Counsel, Wilder and Gregory, P.O. Box 518, 707 East Main Street, Suite 1000, Richmond, Virginia, 23218-0518

ENTERED THIS 5th DAY OF November, 1999

VIRGINIA STATE BAR DISCIPLINARY BOARD


Henry P. Custis, Jr., Vice Chair

A COPY TESTE:


PATRICIA J. RIOS
CLERK OF THE DISCIPLINARY SYSTEM

THE
WALZ
CERTIFIED
MAILER™

FROM **MOORE**

ITEM #48178
U.S. PAT. NOS. 5,501,393, 4,368,903
WALZ CERTIFIED MAILER™

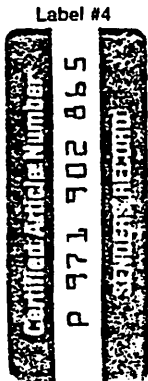
P 971 902 865

Victor Alan Motley, Esquire
P.O. Box 25786
Richmond, VA 23260-5786
Label #1

Victor Alan Motley, Esquire
P.O. Box 25786
Richmond, VA 23260-5786
Label #2

Victor Alan Motley, Esquire
P.O. Box 25786
Richmond, VA 23260-5786
Label #3

FOLD AND TEAR THIS WAY → OPTIONAL



Label #5

Victor Alan Motley, Esquire
P.O. Box 25786
Richmond, VA 23260-5786

CHARGE
AMOUNT:

CHARGE TO:

RE: 96-032-2446

SENDER: Tricia Clark

Article Addressed to:

Victor Alan Motley, Esquire
P.O. Box 25786
Richmond, VA 23260-5786

Received By: (Print Name)

Signature: (Addressee or Agent)

S Form 3811, December 1994

I also wish to receive the following service (for an extra fee):

RESTRICTED
DELIVERY ☐

Consult postmaster for fee.

4a. Article Number

P 971 902 865



4b. Service Type ☒ CERTIFIED

7. Date of Delivery
NOV 15 1999

8. Addressee's Address

126

Domestic Return Receipt

I also wish to receive the following service (for an extra fee):

RESTRICTED
DELIVERY ☐

Consult postmaster for fee.

4a. Article Number

P 971 902 865



4b. Service Type ☒ CERTIFIED

7. Date of Delivery

8. Addressee's Address

127

Domestic Return Receipt

TO:

P 971 902 865

TO:

Victor Alan Motley, Esquire
P.O. Box 25786
Richmond, VA 23260-5786

SENDER: Tricia Clark

REFERENCE: 96-032-2446

PS FORM 3800, SEPTEMBER 1995

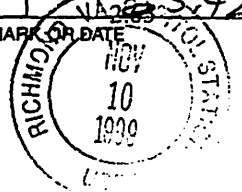
RETURN RECEIPT SERVICE	Postage	.77
	Certified Fee	1.40
	Return Receipt Fee	1.25
	Restricted Delivery	0.00
	Total Postage and Fees	0.00

US Postal Service

**Receipt for
Certified Mail**

No Insurance Coverage Provided
Do not use for International Mail

POSTMARK OR DATE



CERTIFIED

P 971 902 865

MAIL

RETURN RECEIPT REQUESTED

RESTRICTED DELIVERY

Label #6

Thank you for using Return Receipt Service



Virginia State Bar

Eighth and Main Building
707 East Main Street, Suite 1500
Richmond, Virginia 23219-2800
Telephone: (804) 775-0500

Facsimile: (804) 775-0501 TDD: (804) 775-0502

November 16, 1999

PERSONAL AND CONFIDENTIAL

CERTIFIED MAIL
RETURN RECEIPT REQUESTED
P 971 902 870

Victor Alan Motley, Esquire
P.O. Box 25786
Richmond, VA 23260-5786

Re: In the Matter of Victor Alan Motley
VSB Docket No. 96-032-2446

Dear Mr. Motley:

On November 15, 1999, while processing docket work in the above-referenced case, I realized that the "Notice of Appeal" I acknowledged in my October 5, 1999 letter was not a notice of appeal in this case. I have enclosed a copy of my October 5, 1999 letter for your information. I have not received a notice of appeal in this case. I apologize for the error.

Should you have any questions, or wish to discuss this matter further, please do not hesitate to have your attorney contact me at (804) 775-0573 or write to me at the above-listed address.

Sincerely,

A handwritten signature in cursive script, reading "Patricia J. Rios".

Patricia J. Rios
Clerk of the Disciplinary System

PJR/tmc
Enclosures

cc: Roger Lee Gregory, Respondent's Counsel, w/encls.
Harry M. Hirsch, Deputy Bar Counsel, w/encls.



Virginia State Bar

Eighth and Main Building
707 East Main Street, Suite 1500
Richmond, Virginia 23219-2800
Telephone: (804) 775-0500

Facsimile: (804) 775-0501 TDD: (804) 775-0502

October 5, 1999

PERSONAL AND CONFIDENTIAL

CERTIFIED MAIL
RETURN RECEIPT REQUESTED
P 971 902 830

Victor Alan Motley, Esquire
P.O. Box 25786
Richmond, VA 23260-5786

Re: In the Matter of Victor Alan Motley
VSB Docket # 96-032-2446

Dear Mr. Motley:

This is to acknowledge receipt of a copy of your "Notice of Appeal", which was received by the Virginia State Bar Clerk's Office on October 5, 1999, in the above-referenced matter.

Enclosed is an attested copy of an "Order" entered September 24, 1999, by the Virginia State Bar Disciplinary Board, and a copy of an "Order" entered October 1, 1999, by the Virginia Supreme Court.

If you should have any questions, or wish to discuss this matter further, please contact me at (804) 775-0573 or write to me at the above-listed address.

Sincerely,

A handwritten signature in cursive script, reading "Patricia J. Rios".

Patricia J. Rios
Clerk of the Disciplinary System

PJR/tmc
Enclosures

cc: Roger Lee Gregory, Respondent's Counsel, w/encls.
Harry M. Hirsch, Deputy Bar Counsel, w/encls.

VIRGINIA:

BEFORE THE VIRGINIA STATE BAR DISCIPLINARY BOARD

IN THE MATTER OF

Victor Alan Motley

Respondent

VS B Docket # 96 0322446

O R D E R

On Sept. 24, 1999, the above-referenced matter was heard by the Virginia State Bar Disciplinary Board pursuant to Notice served upon the Respondent in the manner provided by the Rules of Supreme Court of Virginia.

WHEREFORE, upon consideration of the testimony and documentary evidence, it is ORDERED that Respondent's license to practice law in the Commonwealth of Virginia is

✓ Suspended for a period of 18 months,
____ Revoked,
effective Oct 1, 1999.

The Board notes for the record in this matter that

✓ The Respondent was present in person and was advised of the imposition of the sanction and the effective date of the sanction; and

____ The Respondent was not present in person, but the Clerk of the Disciplinary System is directed to communicate promptly to the Respondent the actions of the Board; and

that the Board shall issue a written opinion in this matter which, when issued, shall be attached hereto and incorporated herein by reference.

It is further ORDERED that pursuant to the provisions of Part Six, Section IV, Paragraph 13(K)(1) of the Rules of the Supreme Court of Virginia, that the Respondent shall forthwith give notice by certified

mail, return receipt requested, of the

 Suspension

 Revocation

of his license to practice law in the Commonwealth of Virginia, to all clients for whom he is currently handling matters and to all opposing attorneys and presiding judges in pending litigation. The Attorney shall also make appropriate arrangements for the disposition of matters then in his care in conformity with the wishes of his client. The Attorney shall give such notice within fourteen (14) days of the effective date of the Suspension order, and make such arrangements as are required herein within forty-five (45) days of the effective date of the Suspension order. The Attorney shall furnish proof to the bar within sixty (60) days of the effective date of the Suspension order that such notices have been timely given and such arrangement for the disposition of matters made. Issues concerning the adequacy of the notice and arrangements required herein shall be determined by the Disciplinary Board, which may impose a sanction of revocation or suspension for failure to comply with the requirements of this subparagraph.

Pursuant to Part Six, § IV, ¶ 13(K)(10) of the Rules of the Supreme Court, the Clerk of the Disciplinary System shall assess costs.

It is further ORDERED that a copy teste of this Order shall be mailed by Certified Mail, Return Receipt Requested, to the Respondent, at his last address of record with the Virginia State Bar and hand-delivered to Bar Counsel.

A COPY TESTE:

Patricia J. Rios

**PATRICIA J. RIOS
CLERK OF THE DISCIPLINARY SYSTEM**

ENTER THIS ORDER THIS 24 DAY OF
Sept., 1999

VIRGINIA STATE BAR DISCIPLINARY BOARD

Henry P. Smith, Chair

RECEIVED

OCT 05 1999

VIRGINIA:

VIRGINIA STATE BAR

*In the Supreme Court of Virginia held at the Supreme Court Building in the
City of Richmond on Friday the 1st day of October, 1999.*

Victor Alan Motley,

Appellant,

against VSB Docket No. 960322446

Virginia State Bar,

Appellee.

From the Virginia State Bar Disciplinary Board

On September 30, 1999 came the appellant, by counsel, and
filed a petition for stay in this case.

Thereupon came the appellee, by the Attorney General of
Virginia, and filed a response in opposition.

On consideration whereof, the Virginia State Bar
Disciplinary Board's order of September 24, 1999, suspending the
appellant's license to practice law in this Commonwealth, is stayed
pending the appeal of this case in this Court.

A Copy,

Teste:


Clerk

THE
WALZ
CERTIFIED
MAILER™

FROM

MOORE

ITEM #48178
U.S. PAT. NOS. 5,501,393; 4,368,903
WALZ CERTIFIED MAILER™

Victor Alan Motley, Esquire
P.O. Box 25786
Richmond, VA 23260-5786

Label #1

Victor Alan Motley, Esquire
P.O. Box 25786
Richmond, VA 23260-5786

Label #2

Victor Alan Motley, Esquire
P.O. Box 25786
Richmond, VA 23260-5786

Label #3

FOLD AND TEAR THIS WAY → OPTIONAL

Label #4

Label #5

Victor Alan Motley, Esquire
P.O. Box 25786
Richmond, VA 23260-5786

Certified Article Number

P 971 902 870

SENDERS RECORD

CHARGE
AMOUNT:

CHARGE TO

E: 96-032-2545 2446

SENDER: Tricia Clark

3. Article Addressed to:

Victor Alan Motley, Esquire
P.O. Box 25786
Richmond, VA 23260-5786

5. Received By: (Print Name)

6. Signature: (Addressee or Agent)

PS Form 3811, December 1994

I also wish to receive the
following service (for an extra fee):

RESTRICTED
DELIVERY ☐

Consult postmaster for fee.

4a. Article Number

P 971 902 870



4b. Service Type ☒ CERTIFIED

7. Date of Delivery

NOV 1 8 1999

8. Addressee's Address

Domestic Return Receipt

or Agent)

132

PS Form 3811, December 1994

TO:

P 971 902 870

P 971 902 870

TO:

Victor Alan Motley, Esquire
P.O. Box 25786
Richmond, VA 23260-5786

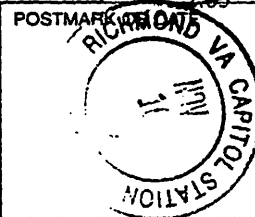
SENDER: Tricia Clark

REFERENCE: 96-032-2545 2446

PS FORM 3800, SEPTEMBER 1995

Postage	1.55
Certified Fee	1.40
Return Receipt Fee	1.25
	0.00
Restricted Delivery	0.00
Total Postage and Fees	3.20

US Postal Service
**Receipt for
Certified Mail**
No Insurance Coverage Provided
Do not use for International Mail



P 971 902 870

MAIL

RETURN RECEIPT REQUESTED
RESTRICTED DELIVERY

I also wish to receive the
following service (for an extra fee):

RESTRICTED
DELIVERY ☐

Consult postmaster for fee.

Article Number

P 971 902 870



Service Type ☒ CERTIFIED

Date of Delivery

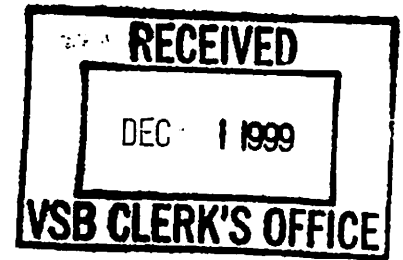
Addressee's Address

Thank you for using Return Receipt Service

133

MAILING ADDRESS:
POST OFFICE BOX 518
RICHMOND, VA 23218-0518

WILDER & GREGORY
ATTORNEYS AT LAW
EIGHTH & MAIN BUILDING
SUITE 1000
707 EAST MAIN STREET
RICHMOND, VIRGINIA 23219



TELEPHONE (804) 643-8401
TELECOPIER (804) 648-2707

December 1, 1999

BY HAND

Ms. Patricia J. Rios
Clerk of the Disciplinary System
Eighth and Main Building
707 East Main Street, Suite 1500
Richmond, Virginia 23219-2800

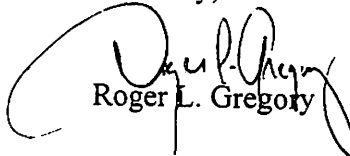
Re: In the Matter of Victor Alan Motley
VSB Docket # 96-032-2446

Dear Ms. Rios:

Enclosed please find Mr. Motley's Notice of Appeal and Assignments of Error which I would appreciate you filing in this matter.

Thank you for your assistance in this regard.

Sincerely,


Roger L. Gregory

Enclosure

Harry M. Hirsch, Esquire
Kevin O. Barnard, Esquire
The Honorable David B. Beach

VIRGINIA:

BEFORE THE VIRGINIA STATE BAR DISCIPLINARY BOARD

**IN RE:
VICTOR ALAN MOTLEY**

VSb DOCKET No: 96-032-2446

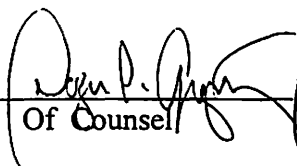
Respondent.

NOTICE OF APPEAL

COMES NOW, Victor Alan Motley, Respondent, by counsel, and pursuant to Part Six, Section Four, Paragraph 13 (H) (2) of the Rules of the Supreme Court of Virginia, hereby appeals to the Supreme Court of Virginia from the Memorandum Order of the Virginia State Bar Disciplinary Board entered in this matter on November 5, 1999 and served upon him by certified mailed on November 10, 1999. The transcript, testimony and other incidents of the case will be filed. It is hereby certified that a copy of the transcript has been ordered from the court reporter who reported the case.

Respectfully Submitted

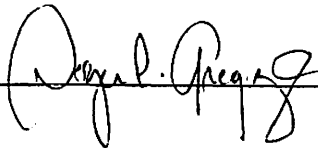
VICTOR ALAN MOTLEY

By 
Of Counsel

Roger L. Gregory
WILDER & GREGORY
707 East Main Street
Suite 1000, P. O. Box 518
Richmond, VA 23218-0518
(804) 643-8401

CERTIFICATE OF SERVICE

I certify that a true copy of the foregoing Notice of Appeal was mailed, postage, prepaid to Kevin O. Barnard, Esquire, Assistant Attorney General, Office of the Attorney General, 900 East Main Street, Richmond, Virginia 23219, Harry M. Hirsch, Esquire, Deputy Bar Counsel, Eighth and Main Building, 707 East Main Street, Suite 1500, Richmond, Virginia 23219, and the Honorable David B. Beach, Clerk, Virginia Supreme Court, 100 North 9th Street, Richmond, Virginia 23219, on this the 1st day of December, 1999.



VIRGINIA:

BEFORE THE VIRGINIA STATE BAR DISCIPLINARY BOARD

**IN RE:
VICTOR ALAN MOTLEY**

VSB DOCKET No: 96-032-2446

Respondent.

ASSIGNMENTS OF ERROR

COMES NOW, Victor Alan Motley, Respondent, by counsel, and pursuant to Part Six, Section Four, Paragraph 13 (H) (2) of the Rules of the Supreme Court of Virginia, sets forth below Assignments of Error to the Memorandum Order of the Virginia State Bar Disciplinary Board (the "Board") entered in this matter on November 5, 1999 and served upon him by certified mailed on November 10, 1999, as follows:

1. The Board erred in overruling Respondent's motion to continue the hearing because Rebecca Grey did not appear pursuant to a witness subpoena and finding that there was no evidence that her testimony would be material.
2. The Board erred in overruling Respondent's motion to dismiss the certification because a delay in the filing of the certification from July 18, 1998 to June 27, 1999, violated procedural requirements.
3. The Board erred in overruling Respondent's motion to dismiss the certification because the general investigation of the trust accounting violated Respondent's rights to

due process and equal protection under the law under the Fourteenth Amendment to the United States Constitution.

4. The Board erred in overruling Respondent's motion that Vice Chair Henry P. Curtis, Jr., and member John A. Dezio be recused because of their participation as panel members in prior hearings involving the Respondent.

5. The Board erred in admitting Exhibit T (Bank statements, 6-30-95 through 7-11-96) of the State Bar.

6. The Board erred in admitting Exhibit U (Investigative analysis of ten subsidiaries) of the State Bar.

7. The Board erred in finding that the Respondent failed to meet the requirements of the lender by not sending to the lender evidence of a hazard insurance policy, a copy of the recorded deed and an assignment of escrow reserves.

8. The Board erred in finding that the Respondent maintained no subsidiary ledger card or an equivalent for the Davis to Grey transaction.

9. The Board erred in finding that a review of the Respondent's trust account and records pertaining to account number 051000127 010041351 12 at Consolidated Bank and Trust Company corresponding to the time frame of July 1, 1995 through July 30,

1996 revealed that the cash receipts journals, or any equivalent, provided no identification of the source of funds deposited.

10. The Board erred in finding that there was insufficient funds to cover checks written from trust accounts designated as follows: “Myrtle Cooper”, “Beryl Phillips”, “Hatchett”, “Mary Green”, “3100 Duryear Place”, “Marsha Latney”, “Mathis”, “Talbert” and “Greenhouse”.

11. The Board erred in finding that the trust account designated as “Jeri Jones” was out of trust in the amount of \$4,409.09 on November 30, 1995.

12. The Board erred in finding that the Respondent failed to operate his trust account in accordance with the required rules and procedures of Canon 9 of the Virginia Code of Professional Responsibility.

13. The Board erred in finding the Respondent’s conduct violated DR 6-101 (A) (1) because there was insufficient evidence that Respondent’s conduct constituted incompetence.

14. The Board erred in finding Respondent’s conduct violated DR 6-101 (B) because there was insufficient evidence that Respondent failed to act promptly in rendering his legal services.

15. The Board erred in finding the Respondent's conduct violated DR 6-101 (c) because there was insufficient evidence that Respondent failed to keep his client's reasonably informed about matters in which legal services were rendered.

16. The Board erred in finding Respondent's conduct violated DR 9-102 (B) (3) because there was insufficient evidence that Respondent failed to preserve the funds and property of his clients or failed to deposit client funds into a trust account.

17. The Board erred in finding Respondent violated DR 9-102 (A) (1) and DR 9-102 (A) (2) because there was insufficient evidence that Respondent retained improper funds in his trust account or failed to deposit funds belonging to his client in his trust account.

18. The Board erred in finding Respondent violated DR 9-103 (A) (1); DR 9-103 (A) (2); DR 9-103 (A) (3); DR 9-103 (B) (2); DR 9-103 (B) (3); DR 9-103 (B) (4) (a) (b); DR 9-103 (B) (5) (a) (b) (c) and DR 9-103 (B) (6) because there was insufficient evidence that Respondent failed to meet the minimum record keeping requirements for funds deposited on behalf of clients in his trust accounts.

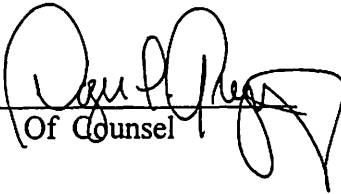
19. The Board erred in considering three (3) prior disciplinary matters designated as "1986-dismissed with terms", "1991-private reprimand with terms" and "1992-dismissed with terms" as these matters were improperly before the Board.

20. The Board erred and abused its discretion because it failed to consider any mitigating evidence on behalf of the Respondent.

21. The Board erred by imposing a term of suspension that is excessive and not supported by sufficient evidence, and violates Respondent's rights to equal protection under the law and procedural and substantive due process as guaranteed under the United States Constitution.

Respectfully Submitted

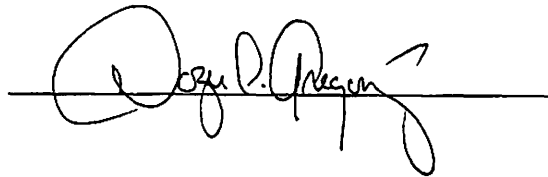
VICTOR ALAN MOTLEY

By 
Of Counsel

Roger L. Gregory
WILDER & GREGORY
707 East Main Street
Suite 1000, P. O. Box 518
Richmond, VA 23218-0518
(804) 643-8401

CERTIFICATE OF SERVICE

I certify that a true copy of the foregoing Assignments of Error was mailed, postage, prepaid to Kevin O. Barnard, Esquire, Assistant Attorney General, Office of the Attorney General, 900 East Main Street, Richmond, Virginia 23219, Harry M. Hirsch, Esquire, Deputy Bar Counsel, Eighth and Main Building, 707 East Main Street, Suite 1500, Richmond, Virginia 23219, and the Honorable David B. Beach, Clerk, Virginia Supreme Court, 100 North 9th Street, Richmond, Virginia 23219, on this the 1st day of December, 1999.

A handwritten signature in black ink, appearing to read "Jeffrey P. Pagen", is written over a horizontal line.



Virginia State Bar

Eighth and Main Building
707 East Main Street, Suite 1500
Richmond, Virginia 23219-2800
Telephone: (804) 775-0500

Facsimile: (804) 775-0501 TDD: (804) 775-0502

December 2, 1999

PERSONAL AND CONFIDENTIAL

Roger Lee Gregory, Esquire
Wilder & Gregory
Suite 1000
707 East Main Street
P.O. Box 518
Richmond, VA 23218-0518

Re: In the Matter of Victor Alan Motley
VSB Docket # 96-032-2446

Dear Mr. Gregory:

This is to acknowledge receipt of your letter dated December 1, 1999, and attached original "Notice of Appeal", and "Assignments of Error", which were hand-delivered to me at the Virginia State Bar yesterday, in the above-referenced matter.

Should you have any questions, or wish to discuss this matter further, please contact me at (804) 775-0573 or write to me at the above-listed address.

Sincerely,

A handwritten signature in cursive script, appearing to read "Patricia J. Rios".

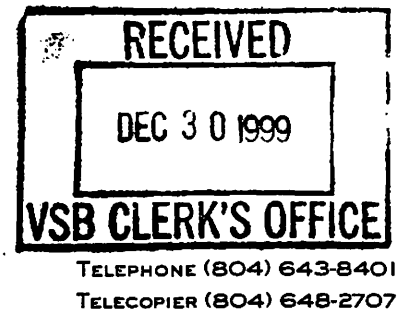
Patricia J. Rios
Clerk of the Disciplinary System

PJR/tmc

cc: Victor Alan Motley, Respondent
Harry M. Hirsch, Deputy Bar Counsel

MAILING ADDRESS:
POST OFFICE BOX 518
RICHMOND, VA 23218-0518

WILDER & GREGORY
ATTORNEYS AT LAW
EIGHTH & MAIN BUILDING
SUITE 1000
707 EAST MAIN STREET
RICHMOND, VIRGINIA 23219



December 30, 1999

BY HAND

Ms. Patricia J. Rios
Clerk of the Disciplinary System
Eighth and Main Building
707 East Main Street, Suite 1500
Richmond, Virginia 23219-2800

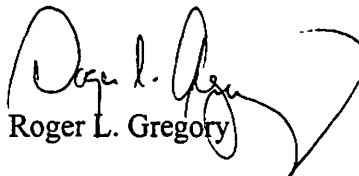
RE: Victor Alan Motley v. Virginia State Bar
VSB Docket # 96-032-2446

Dear Ms. Rios:

Enclosed please find the Original Transcript and a copy of the Notice of Filing Transcript and Certificate of Service to be filed in this matter.

Thank you for your assistance. Should you have questions, please give me a call.

Sincerely,


Roger L. Gregory

RLG/trh

Enclosures

cc: Kevin O. Barnard, Assistant Attorney General (*w/out Enclosures*)
Harry M. Hirsch, Deputy Bar Counsel (*w/out Enclosures*)

VIRGINIA:

BEFORE THE VIRGINIA STATE BAR DISCIPLINARY BOARD

IN RE:

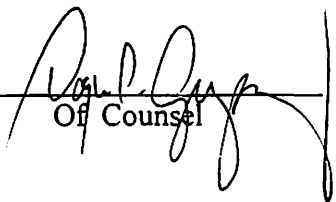
VSb DOCKET No: 96-032-2446

**VICTOR ALAN MOTLEY,
Respondent.**

NOTICE OF FILING TRANSCRIPT

Victor Alan Motley ("Respondent"), Pursuant to Rule 5:11 (a) and (b) of the Rules of the Supreme Court of Virginia, gives Notice that the Original Transcript of the Evidentiary Hearing held in this matter on Friday, September 24, 1999 was filed with the Clerk of the Virginia State Bar Disciplinary Board on Thursday, December 30, 1999.

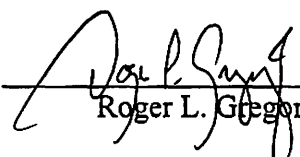
VICTOR ALAN MOTLEY

By 
Of Counsel

Roger L. Gregory
VA Bar No. 20230
WILDER & GREGORY
707 E. Main Street, Suite 1000
Post Office Box 518
Richmond, Virginia 23218-0518
(804) 643-8401

CERTIFICATE OF SERVICE

I certify that a true copy of the foregoing Notice of Filing Transcript was mailed, postage pre-paid to Kevin O. Barnard, Esquire, Assistant Attorney General, Office of the Attorney General, 900 East Main Street, Richmond, Virginia 23219 and Harry M. Hirsch, Esquire, Deputy Bar Counsel, Eighth and Main Building, 707 East Main Street, Suite 1500, Richmond, Virginia 23219 on this 30th day of December, 1999.



Roger L. Gregory



Virginia State Bar

Eighth and Main Building
707 East Main Street, Suite 1500
Richmond, Virginia 23219-2800
Telephone: (804) 775-0500

Facsimile: (804) 775-0501 TDD: (804) 775-0502

December 30, 1999

PERSONAL AND CONFIDENTIAL

Roger Lee Gregory, Esquire
Wilder & Gregory
Suite 1000, 707 East Main Street
P.O. Box 518
Richmond, VA 23218-0518

Re: In the Matter of Victor Alan Motley
VSB Docket # 96-032-2446

Dear Mr. Gregory:

This is to acknowledge receipt of your letter dated December 30, 1999, and attached "Notice of Filing Transcript", and original transcript, which were received by the Virginia State Bar Clerk's Office on December 30, 1999, in the above-referenced matter.

Should you have any questions, or wish to discuss this matter further, please do not hesitate to contact me at (804) 775-0573.

Sincerely,

A handwritten signature in cursive script, appearing to read "Patricia J. Ríos".

Patricia J. Ríos
Clerk of the Disciplinary System

PJR/tmc

cc: Victor Alan Motley, Respondent
Harry M. Hirsch, Deputy Bar Counsel



Virginia State Bar

Tenth Floor, Ross Building, 801 East Main Street
Richmond, Virginia 23219 (804) 796-2061

August 13, 1987

PERSONAL AND CONFIDENTIAL

Victor A. Motley, Esq.
2817 North Avenue
Richmond, VA 23222

Re: VSB v. Victor A. Motley
VSB Docket #86-146

Dear Mr. Motley:

This is to inform you that the Third District Committee - Section I has considered the above matter at its August 12, 1987 meeting.

It is the determination of the committee that you have adequately fulfilled the terms imposed by the committee and, as a result, the committee is dismissing the complaint.

Very truly yours,

Harry M. Hirsch
Assistant Bar Counsel

HMH:pjr

cc: / Joseph E. Blackburn, Jr., Chairman
/ Fred S. Hunt, III, Secretary
/ Third District Committee - Section I
/ Harvey Latney, Jr., Esq.

CLOSED
Hirsch
8-13-87
ATTY.
DATE

COMMONWEALTH OF VIRGINIA



VIRGINIA STATE BAR

THIRD DISTRICT COMMITTEE

PLEASE REPLY TO:

P. O. Box 6855

Richmond, VA 23230

(804)359-9151

PERSONAL AND CONFIDENTIAL

July 3, 1986

Victor A. Motley, Esquire
P. O. Box 25786
Richmond, VA 23260

RE: BC-DC-03-MOTLEY, VICTOR A.
Complaint by: Virginia State Bar

VSB Docket No. 86-146

Dear Mr. Motley:

After due deliberations, the committee has determined that the conduct alleged does not warrant either a private reprimand or certification to the Virginia State Bar Disciplinary Board provided that you take the following actions within 180 days:

1. Attend three (3) Continuing Legal Education Seminars or their equivalent in the field of tort law. This specifically will include the seminar to be held in Richmond, Virginia on Thursday, September 25, 1986 at the Holiday Inn 6531 West Broad Street Road, which covers sources of insurance coverage for personal injury actions in Virginia.
2. You will read the textbook entitled Virginia Automobile Liability Insurance authored by Wilfred J. Ritz and available through the Harrison Company, publishers, 3110 Crossing Park, Norcross, GA 30071. If you are unable to obtain a copy, you may contact committee counsel listed below who will provide you with a copy on loan.

Mr. Motley
VSB Docket #86-146
7/3/86
Page 2

Upon your certification at the end of 180 days from the date of this letter that you have completed the above requirements, the committee will dismiss the complaint.

Very truly yours,

Christopher A. Meyer

CAM:jjj

cc: Harry M. Hirsch, Esquire, Assistant Bar Counsel
Jerry Hendrick, Jr., Esquire, Assistant Secretary
Thomas O. Bondurant, Esquire, Chairman
Harvey Latney, Jr., Esquire



Virginia State Bar

Tenth Floor, Ross Building, 801 East Main Street
Richmond, Virginia 23219
(804) 786-2061

Voice/Telecommunications Device for the Deaf: (804) 786-5966

February 18, 1992

PERSONAL AND CONFIDENTIAL

Victor Alan Motley, Esquire
P. O. Box 25786
Richmond, Virginia 23260-5786

Re: In the Matter of Victor Alan Motley
VSB Docket No. 89-031-0495

Dear Mr. Motley:

Upon your completion of the terms of the District Committee Determination mailed to you by certified mail on August 9, 1991, this matter is now closed.

Very truly yours,

A handwritten signature in dark ink, appearing to read "Harry M. Hirsch", written over a horizontal line.

Harry M. Hirsch
Senior Assistant Bar Counsel

HMH/ew

cc: Roger L. Gregory, Esquire
Michael E. Harman, Esquire, Chair
James J. Burns, Esquire, Secretary
✓ Clerk of the Disciplinary System

V I R G I N I A:

BEFORE THE THIRD DISTRICT COMMITTEE
OF THE VIRGINIA STATE BAR

IN THE MATTER OF VICTOR A. MOTLEY

VSB DOCKET NO.: 89-031-0495

DISTRICT COMMITTEE DETERMINATION
(PRIVATE REPRIMAND WITH TERMS)

On July 22 and 26, 1991, a hearing in this matter was held before a duly convened panel of the Third District Disciplinary Committee consisting of James J. Burns, Vera Duke, R. Shawn Majette, C. Thomas Mustian and Michael E. Harman.

Respondent, Victor A. Motley appeared in person and with his counsel, Roger Gregory, Esquire. The Complainants were present and Harry M. Hirsch, Esquire, Senior Assistant Bar Counsel, appeared as counsel for the Virginia State Bar.

Pursuant to Part 6, § IV, ¶ 13(B)(7) of the Rules of the Supreme Court, the Third District Committee of the Virginia State Bar hereby serves upon the Respondent the following private reprimand with terms:

I. FINDINGS OF FACT

1. At all times relevant hereto the Respondent, Victor Alan Motley [Motley], has been an attorney licensed to practice law in the Commonwealth of Virginia.

2. On March 30, 1964, Milton A. Jarvis [Milton] died testate survived by his wife, Mamie L. Jarvis [Mamie]. Until Milton's death, Milton and Mamie owned that property known as 350 Lincoln Street, Hampton, Virginia [realty], "jointly". Milton's will left half of his estate to six cousins to be divided equally and the remaining half of his estate to another cousin, Anna. Anna died testate in 1969 leaving seven heirs; one of Anna's heirs died leaving four heirs.

3. From October until December of 1983 Motley obtained powers of attorney from each of the heirs of Milton; Mamie and Ruth Jarvis Prescott were named as the attorneys-in-fact in said powers of attorney for the limited purpose of selling the respective interests in the realty. The powers of attorney were recorded in the Circuit Court of Hampton, Virginia on December 21, 1983.

4. In 1985 Cornelius Powell, Wilma Powell and their son Barry Powell [Powells] agreed to purchase the realty for the sum of Ten Thousand Dollars (\$10,000.00) and they asked Motley to represent them in the settlement of the transaction.

5. At Motley's request Pioneer Virginia Title Agency performed a title search on the realty and issued a commitment for title insurance effective July 11, 1985. No formal closing of the transaction was held. On August 27, 1985 Motley mailed settlement statements to the purchasers and sellers.

6. In September 1985 the Powells paid Motley the sum of Ten Thousand Three Hundred Ninety-Eight Dollars and Fifty Cents (\$10,398.50) in settlement of the purchase. Motley deposited the check, paying himself Fifty Dollars (\$50.00) for deed preparation and One Hundred Dollars (\$100.00) for performing a title rundown, and deposited the balance of Ten Thousand Two Hundred Forty-Eight Dollars and Fifty Cents (\$10,248.50) into his trust account.

7. Motley prepared and recorded a General Warranty deed with English Covenants of Title, dated August 26, 1985, from Milton A. Jarvis, deceased, and Mamie Brown Jarvis, his wife, to Cornelius O. Powell, Wilma J. Powell, and Barry L. Powell for the purpose of transferring title to the realty as a result of the purchase.

8. The settlement statement in the transaction shows that the sum of Four Thousand Three Hundred Forty-Seven Dollars and Ninety-Six Cents (\$4,347.96) was disbursed to Mamie out of the settlement, when in fact Mamie was paid the sum of Four Thousand Two Hundred Forty-Seven Dollars and Ninety-Six Cents (\$4,247.96).

9. Although the title agency billed Motley in the amount of Two Hundred Seventeen Dollars and Fifty Cents (\$217.50) when it issued the title insurance commitment, Motley did not pay the billed sum and the title agency did not issue an owner's title policy until after Motley made his November 18, 1987 payment of the amount due.

10. The title search of the realty showed twenty-one judgment potential liens existing against the property. On more than one occasion Motley requested that the title agency delete the liens as exceptions against the title of the realty and Motley was told that the liens would remain as policy exceptions unless and until Motley could prove to the title agency that the liens were no longer valid against the realty.

11. In September 1988 Cornelius and Wilma Powell asked Motley to draw a deed of gift conveying their interests in the realty to the Complainants, Barry L. Powell and his wife Sherrita [Complainants]. Motley prepared a deed of gift dated September 21, 1988. Thereafter the Complainants attempted to use the realty as security for a loan and were informed that the realty had numerous potential liens against it. Neither Cornelius and Wilma Powell, nor the Complainants, had previously known that any liens existed against the realty.

12. Upon learning that liens existed against the realty, the Complainants demanded that Motley provide the title policy to them; upon receiving the title policy the Complainants learned the full nature and extent of the liens which existed against the realty.

13. On or about December 2, 1988, Motley requested that the title agency perform a title update on the realty. The title agency informed Motley that to do so was a waste of money since Motley had taken no action to obtain the removal of the liens from the realty's title.

14. The amount of the potential liens shown as exceptions on the title policy of the realty total over Thirty-Seven Thousand Dollars (\$37,000.00).

15. With reference to Motley's failure to fully and adequately inform and advise the buyers and sellers of the aforementioned property of the existence of the potential liens on said property and Motley's delay in taking adequate steps to remove the potential liens, Motley did not attend promptly to the matters undertaken for his clients nor did Motley properly or completely withdraw from representing his clients. Additionally, Motley did not keep his clients reasonably informed.

II. NATURE OF MISCONDUCT

Upon consideration of the testimony and the exhibits presented at the hearing, the Committee determined that the conduct described in Paragraphs 1 through 15 above constituted violations of DR 2-108(A)(1) and DR 6-101(B) and (C).

III. DECISION AS TO DISPOSITION

Following the finding described above, the Committee inquired as to the prior disciplinary record of the Respondent and was informed that the Respondent had a prior dismissal on terms in the matter of Virginia State Bar v. Victor A. Motley, VSB Docket No. 86-146 and in connection therewith, the Committee reviewed the July 3, 1986, letter of Christopher A. Meyer of the Third District Committee.

Upon consideration of the evidence and the prior disciplinary record of the Respondent it is the decision of the Committee to ~~offer the Respondent~~ an opportunity to comply with certain terms and conditions, compliance with which will be a predicate for the disposition of a private reprimand with terms of this complaint. To wit, the Respondent shall attend and satisfactorily complete eight (8) hours of continuing legal education seminars in the field of real estate law on or before February 1, 1992.

Upon satisfactory proof that such terms and conditions have been met, this matter shall be closed if, however, the terms and conditions are not met by February 1, 1992, this District Committee shall impose a public reprimand.


THIRD DISTRICT COMMITTEE
OF THE VIRGINIA STATE BAR

By:


Michael E. Harman
Acting Chairman

C E R T I F I C A T E

I hereby certify that a true copy of the foregoing District Committee Reprimand (Private Reprimand with Terms) was mailed by Certified Mail, Return Receipt Requested this 9th day of November, 1991, to Victor A. Motley, Esquire, P. O. Box 25786, Richmond, Virginia, 23260; and to Roger L. Gregory, Esquire, WILDER & GREGORY, 2509 East Broad Street, Richmond, Virginia, 23223; and to Harry Hirsch, Esquire, Virginia State Bar, 801 E. Main Street, Ross Building, Suite 1000, Richmond, Virginia, 23219.


Michael E. Harman
Acting Chairman



Virginia State Bar

Eighth and Main Building
707 East Main Street, Suite 1500
Richmond, Virginia 23219-2803
Telephone: (804) 775-0500

Facsimile: (804) 775-0501 TDD: (804) 775-0502

September 22, 1993

PERSONAL AND CONFIDENTIAL

Victor Alan Motley, Esquire
P. O. Box 25786
Richmond, Virginia 23260-5786

Re: In the Matter of Victor Alan Motley
VSB Docket No. 91-031-0795

Dear Mr. Motley:

Upon your completion of the terms imposed by the District Committee Determination (Dismissal With Terms) dated May 8, 1992, this matter is now closed.

Very truly yours,

A handwritten signature in dark ink, appearing to read "H. M. Hirsch", written over a horizontal line.

Harry M. Hirsch
Deputy Bar Counsel

HMH/ew

cc: Debra S. Gardner, Chair
Robert C. Elliott, II, Secretary
Ronald C. Burton (Complainant)
✓ Clerk of the Disciplinary System

V I R G I N I A:

BEFORE THE THIRD DISTRICT COMMITTEE
OF THE VIRGINIA STATE BAR

IN THE MATTER OF VICTOR A. MOTLEY

VSB DOCKET NO.: 91-031-0795

DISTRICT COMMITTEE DETERMINATION
(DISMISSAL WITH TERMS)

On January 22, 1992, a hearing in this matter was held before a duly convened panel of the Third District Disciplinary Committee consisting of James J. Burns, David Hauck, Deborah Gardner, Donna Lange, Adam Harrell and Michael E. Harman.

Respondent, Victor A. Motley appeared in person without counsel. Harry M. Hirsch, Esquire, Senior Assistant Bar Counsel, appeared as counsel for the Virginia State Bar.

Pursuant to Part 6, § IV, ¶ 13(B)(7) of the Rules of the Supreme Court, the Third District Committee of the Virginia State Bar hereby serves upon the Respondent the following dismissal with terms:

I. FINDINGS OF FACT

1. At all times relevant hereto the Respondent, Victor Alan Motley [Motley], has been an attorney licensed to practice law in the Commonwealth of Virginia.

2. Gwendolyn B. Smith, mother of the Complainant, died testate on May 5, 1990. On or about May 18, 1990, Motley qualified as executor of the estate of Gwendolyn B. Smith [estate]. Motley also served as a trustee under a provision of Smith's will which purportedly created a trust in which the Complainant, Ronald Burton [Burton] was the beneficiary.

3. Motley invested the corpus of Burton's trust in a bank certificate of deposit from which Motley received monthly interest checks. Upon receiving such interest checks Motley endorsed said checks to Burton; Motley did not deposit said checks in his trust account.

4. Motley did not prepare and/or file any accountings of the income and disbursements of the said trust.

II. NATURE OF MISCONDUCT

Upon consideration of the testimony and the exhibits presented at the hearing, the Committee determined that the conduct described in Paragraphs 1 through 4 above constituted violations of Disciplinary Rules:

DR 9-102. Preserving Identity of Funds and Property of a Client.

(B) A lawyer shall:

(3) Maintain complete records of all funds, securities, and other properties of a client coming into the possession of the lawyer and render appropriate accounts to his client regarding them.

DR 9-103. Record Keeping Requirements.

(B) Required Trust Accounting Procedures: The following minimum trust accounting procedures are applicable to all trust accounts maintained by attorneys practicing in Virginia.

(2) Deposits: All receipts of trust money shall be deposited intact and a retained duplicate deposit slip or other such record shall be sufficiently detailed to show the identity of each item.

III. DECISION AS TO DISPOSITION

Following the finding described above, the Committee inquired as to the prior disciplinary record of the Respondent and was informed that the Respondent had a prior dismissal on terms in the matter of Virginia State Bar v. Victor A. Motley, VSB Docket No. 86-146 and in connection therewith, the Committee reviewed the July 3, 1986, letter of Christopher A. Meyer of the Third District Committee, and Respondent had a prior Private Reprimand with Terms in the matter of Victor A. Motley, VSB


Docket No. 89-031-0495, and in connection therewith, the Committee reviewed the District Committee Determination.

Upon consideration of the evidence and the prior disciplinary record of the Respondent it is the decision of the Committee to ~~offer the Respondent an opportunity to comply with certain terms and conditions, compliance with which will be a predicate for the disposition of a dismissal with terms of this complaint. To wit, the Respondent shall within one year attend and satisfactorily complete four (4) hours of continuing legal education seminars in the field of estate and trust administration, four (4) hours in the field of drafting of wills and trust instruments, and within thirty (30) days Respondent shall read the Disciplinary Rules and so certify to the Virginia State Bar. The aforesaid CLE hours are in addition to the mandatory CLE requirements of the Virginia State Bar. In the event the Respondent fails to comply with the aforesaid terms, the alternative disposition is a public reprimand.~~ *issue a Public Reprimand.*

*NOTE
APPEND*

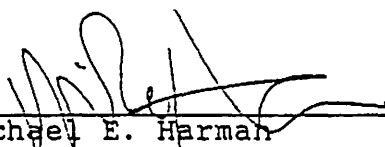
THIRD DISTRICT COMMITTEE
OF THE VIRGINIA STATE BAR

By:


Michael E. Harman
Chairman

C E R T I F I C A T E

I hereby certify that a true copy of the foregoing District Committee Reprimand (Dismissal with Terms) was mailed by Certified Mail, Return Receipt Requested this 20th day of May, 1992, to Victor A. Motley, Esquire, P. O. Box 25786, Richmond, Virginia, 23260, and to Harry Hirsch, Esquire, Virginia State Bar, 801 E. Main Street, Ross Building, Suite 1000, Richmond, Virginia, 23219.



Michael E. Harman
Chairman

VIRGINIA STATE BAR

Any questions regarding this summons should be addressed to Roger Lee Gregory, Esquire, Wilder & Gregory, Suite 1000, 707 East Main Street, P.O. Box 518, Richmond, VA 23218-0518, telephone (804) 643-8401.

The Virginia State Bar is an agency of the Commonwealth of Virginia and is exempt from payment of service fees (§ 14.1-87, Va. Code).

VIRGINIA STATE BAR DISCIPLINARY BOARD
SUMMONS

RECEIVED

AUG 23 1999

COMMONWEALTH OF VIRGINIA
CITY/COUNTY OF RICHMOND

VIRGINIA STATE BAR

To the Sheriff of said City/County of Richmond:

In the name of the Commonwealth of Virginia, at the instance of the Virginia State Bar Disciplinary Board, I command you to summon **EVELYN J. DAVIS**, 6200 Debora Drive, Richmond, Virginia 23225, to appear before the Disciplinary Board of the Virginia State Bar, at the Virginia Supreme Court, 100 North Ninth Street, First Floor, Hearing Room A, , Richmond, Virginia, at 9:00 a.m. on September 24, 1999, to give evidence in connection with a certain complaint pending before the Virginia State Bar Disciplinary Board against Victor Alan Motley, VSB Docket #96-032-2446, and make return how you have executed this summons.

If the said person upon whom this summons is served shall disregard the same, he shall be liable to a rule or attachment, as in cases of contempt.

Given under my hand this 10th day of August, 1999.

VIRGINIA STATE BAR DISCIPLINARY BOARD

By Patricia J. Rios
Patricia J. Rios, Clerk
of the Disciplinary System

Any questions regarding this summons should be addressed to Harry M. Hirsch, Deputy Bar Counsel, 8th & Main Building, Suite 1500, 707 E. Main Street, Richmond, Virginia 23219-2803 (804) 775-0560.

RECEIVED

**VIRGINIA STATE BAR DISCIPLINARY BOARD
SUMMONS**

AUG 18 1999

VIRGINIA STATE BAR

**COMMONWEALTH OF VIRGINIA
CITY/COUNTY OF RICHMOND**

To the Sheriff of said City/County of Richmond:

In the name of the Commonwealth of Virginia, at the instance of the Virginia State Bar Disciplinary Board, I command you to summon **VICTOR ALAN MOTLEY**, Esquire, 2817 North Avenue, Richmond, Virginia 23222, to appear before the Disciplinary Board of the Virginia State Bar, at the Virginia Supreme Court, 100 North Ninth Street, First Floor, Hearing Room A, , Richmond, Virginia, at 9:00 a.m. on September 24, 1999, to give evidence in connection with a certain complaint pending before the Virginia State Bar Disciplinary Board against Victor Alan Motley, VSB Docket #96-032-2446, and make return how you have executed this summons.

If the said person upon whom this summons is served shall disregard the same, he shall be liable to a rule or attachment, as in cases of contempt.

Given under my hand this 10th day of August, 1999.

VIRGINIA STATE BAR DISCIPLINARY BOARD

By Patricia J. Rios
Patricia J. Rios, Clerk
of the Disciplinary System

Any questions regarding this summons should be addressed to Harry M. Hirsch, Deputy Bar Counsel, 8th & Main Building, Suite 1500, 707 E. Main Street, Richmond, Virginia 23219-2803 (804) 775-0560.

Virginia W. Powell, Chair
51 East Byrd Street
Richmond, VA 23219

Carl A. Eason, Vice Chair
One Columbus Center, Ste. 1100
Virginia Beach, VA 23462

Henry P. Custis, Jr., Vice Chair
P.O. Box 577
Accomac, VA 23301

D. Stan Barnhill
P.O. Box 14125
Roanoke, VA 24056

Bruce T. Clark
P.O. Box 850
Culpeper, VA 22701

Richard J. Coiten
4210 University Drive, Ste. 200
Fairfax, VA 22030

Eric N. Davidson
125 Executive Drive, Ste. H
Danville, VA 24541

Donna A. DeCorleto
404 Fontaine Street
Alexandria, VA 22302

John A. Dezio
414 E. Jefferson Street
Charlottesville, VA 22902

Robert C. Elliott, II
P.O. Box 425
Colonial Heights, VA 23054

Dennis P. Gallagher
711 E. Franklin Street, Ste. 1111
Richmond, VA 23219

Michael A. Glasser
899 Waterside Drive
Norfolk, VA 23510

Karen A. Gould
700 E. Main Street, Ste. 1015
Richmond, VA 23215

Frank B. Miller, III
P.O. Box 1996
Richmond, VA 23216

William M. Moriet
P.O. Box 2288
Abingdon, VA 24212

Werner H. Quasebarth
8473 Broadlands Ct.
Nokesville, VA 20181

Roscoe B. Stephenson, III
251 West Riverside Street
Covington, VA 24426

Anthony J. Trenga
655 15th Street, NW, Ste. 900
Washington, DC 20005

Theophilus L. Twitty
20 North Eleanor Court
Portsmouth, VA 23701

Deborah A.J. Wilson
4101 Chain Bridge Road
Fairfax, VA 22030



Virginia State Bar

Eighth and Main Building
707 East Main Street, Suite 1500
Richmond, Virginia 23219-2800
Telephone: (804) 775-0500

Facsimile: (804) 775-0501 TDD: (804) 775-0502

VIRGINIA STATE BAR
DISCIPLINARY BOARD

August 10, 1999

PERSONAL AND CONFIDENTIAL

Roger Lee Gregory, Esquire
Wilder & Gregory
Suite 1000
707 East Main Street
P.O. Box 518
Richmond, VA 23218-0518

Re: In the Matter of Victor Alan Motley
VSB Docket # 96-032-2446

Dear Mr. Gregory:

This is to acknowledge receipt of your letter dated August 6, 1999, which was received by the Virginia State Bar Clerk's Office on August 6, 1999, in the above-referenced matter.

Enclosed please find a copy of a letter dated August 10, 1999, and attached "Summons", issued pursuant to your request.

Should you have any questions, or wish to discuss this matter further, please contact me at (804) 775-0572 or write to me at the above-listed address.

Sincerely,

Vivian R. Byrd
Senior Assistant Clerk of the Disciplinary System

VRB/tmc

Enclosures

**VIRGINIA STATE BAR DISCIPLINARY BOARD
SUMMONS**

**COMMONWEALTH OF VIRGINIA
CITY/COUNTY OF RICHMOND**

To the Sheriff of said City/County of Richmond:

In the name of the Commonwealth of Virginia, at the instance of the Virginia State Bar Disciplinary Board, I command you to summon **VICTOR ALAN MOTLEY**, Esquire, 2817 North Avenue, Richmond, Virginia 23222, to appear before the Disciplinary Board of the Virginia State Bar, at the Virginia Supreme Court, 100 North Ninth Street, First Floor, Hearing Room A, , Richmond, Virginia, at 9:00 a.m. on September 24, 1999, to give evidence in connection with a certain complaint pending before the Virginia State Bar Disciplinary Board against Victor Alan Motley, VSB Docket #96-032-2446, and make return how you have executed this summons.

If the said person upon whom this summons is served shall disregard the same, he shall be liable to a rule or attachment, as in cases of contempt.

Given under my hand this 10th day of August, 1999.

VIRGINIA STATE BAR DISCIPLINARY BOARD

By Patricia J. Rios
Patricia J. Rios, Clerk
of the Disciplinary System

Any questions regarding this summons should be addressed to Harry M. Hirsch, Deputy Bar Counsel, 8th & Main Building, Suite 1500, 707 E. Main Street, Richmond, Virginia 23219-2803 (804) 775-0560.

**VIRGINIA STATE BAR DISCIPLINARY BOARD
SUMMONS**

COMMONWEALTH OF VIRGINIA

To Whom It May Concern:

In the name of the Commonwealth of Virginia, at the instance of the Virginia State Bar Disciplinary Board, I command you to summon **LACY O. CAMPBELL**, VSB Investigator, c/o Virginia State Bar, Eighth & Main Building, Suite 1500, 707 East Main Street, Richmond, Virginia 23219-2803, to appear before the Disciplinary Board of the Virginia State Bar, at the Virginia Supreme Court, 100 North Ninth Street, First Floor, Hearing Room A, , Richmond, Virginia, at 9:00 a.m. on September 24, 1999, to give evidence in connection with a certain complaint pending before the Virginia State Bar Disciplinary Board against Victor Alan Motley, VSB Docket #96-032-2446, and make return how you have executed this summons.

If the said person upon whom this summons is served shall disregard the same, he shall be liable to a rule or attachment, as in cases of contempt.

Given under my hand this 24th day of August, 1999.

VIRGINIA STATE BAR DISCIPLINARY BOARD

By Patricia J. Rios
Patricia J. Rios, Clerk
of the Disciplinary System

Any questions regarding this summons should be addressed to Harry M. Hirsch, Deputy Bar Counsel, 8th & Main Building, Suite 1500, 707 E. Main Street, Richmond, Virginia 23219-2803 (804) 775-0560.

Legal and timely service of the foregoing Summons is hereby accepted this ____ day of _____, 19____, in the City/County of _____, Virginia.

**VIRGINIA STATE BAR DISCIPLINARY BOARD
SUMMONS**

**COMMONWEALTH OF VIRGINIA
CITY/COUNTY OF RICHMOND**

To the Sheriff of said City/County of Richmond:

In the name of the Commonwealth of Virginia, at the instance of the Virginia State Bar Disciplinary Board, I command you to summon **EVELYN J. DAVIS**, 6200 Debora Drive, Richmond, Virginia 23225, to appear before the Disciplinary Board of the Virginia State Bar, at the Virginia Supreme Court, 100 North Ninth Street, First Floor, Hearing Room A, , Richmond, Virginia, at 9:00 a.m. on September 24, 1999, to give evidence in connection with a certain complaint pending before the Virginia State Bar Disciplinary Board against Victor Alan Motley, VSB Docket #96-032-2446, and make return how you have executed this summons.

If the said person upon whom this summons is served shall disregard the same, he shall be liable to a rule or attachment, as in cases of contempt.

Given under my hand this 10th day of August, 1999.

VIRGINIA STATE BAR DISCIPLINARY BOARD

By Patricia J. Rios
Patricia J. Rios, Clerk
of the Disciplinary System

Any questions regarding this summons should be addressed to Harry M. Hirsch, Deputy Bar Counsel, 8th & Main Building, Suite 1500, 707 E. Main Street, Richmond, Virginia 23219-2803 (804) 775-0560.



Virginia W. Powell, Chair
11 East Byrd Street
Richmond, VA 23219

Carl A. Eason, Vice Chair
One Columbus Center, Ste. 1100
Virginia Beach, VA 23462

Henry P. Custis, Jr., Vice Chair
P.O. Box 577
Accomac, VA 23301

Stan Barnhill
P.O. Box 14125
Roanoke, VA 24008

Race T. Clark
P.O. Box 650
Lulpeper, VA 22701

Richard J. Cohen
110 University Drive, Ste. 200
Fairfax, VA 22030

Eric N. Davidson
25 Executive Drive, Ste. H
Danville, VA 24541

Donna A. DeCorieto
14 Fontaine Street
Alexandria, VA 22302

John A. Dezie
14 E. Jefferson Street
Charlottesville, VA 22902

Robert C. Elliott II
P.O. Box 425
Colonial Heights, VA 23054

Dennis P. Gallagher
111 E. Franklin Street, Ste. 1111
Richmond, VA 23219

Michael A. Glasser
409 Waterside Drive
Norfolk, VA 23510

Naren A. Gould
700 E. Main Street, Ste. 1015
Richmond, VA 23218

Frank B. Miller, III
P.O. Box 1995
Richmond, VA 23218

William M. Moffet
P.O. Box 2288
Abingdon, VA 24212

Werner H. Quasebarth
9473 Broadlands Ct.
Nokesville, VA 20181

Roscoe B. Stephenson, III
251 West Riverside Street
Covington, VA 24426

Anthony J. Trenga
155 15th Street, N.W., Ste. 900
Washington, DC 20005

Theophilise L. Twitty
20 North Eleanor Court
Portsmouth, VA 23701

Deborah A.J. Wilson
4161 Chain Bridge Road
Fairfax, VA 22030

Patricia J. Rios
Clerk of the Disciplinary System

Eighth and Main Building
707 East Main Street, Suite 1500
Richmond, Virginia 23219-2803

Virginia State Bar

Eighth and Main Building
707 East Main Street, Suite 1500
Richmond, Virginia 23219-2800
Telephone: (804) 775-0500

Facsimile: (804) 775-0501 TDD: (804) 775-0502

VIRGINIA STATE BAR
DISCIPLINARY BOARD

August 10, 1999

PERSONAL AND CONFIDENTIAL

Sheriff's Department for the
City of Richmond
Attn: Civil Process
400 N. Ninth Street
Richmond, VA 23219

Dear Sir/Madam:

Please serve the enclosed Virginia State Bar Disciplinary Board Summons on the following individual, note your service on the original and return to me:

Rebecca Gray
1400 E. 18th Street
Richmond, VA 23224

The Virginia State Bar is an agency of this Commonwealth and under Virginia Code § 14.1-87, no fee for service is chargeable to the State Bar.

If you have any questions concerning this matter, you may contact Roger Lee Gregory, Esquire, Wilder & Gregory, Suite 1000, 707 East Main Street, P.O. Box 518, Richmond, VA 23218-0518, telephone (804) 643-8401, who is handling this matter.

Sincerely,

Vivian R. Byrd
Senior Assistant Clerk of the Disciplinary System

VRB/tmc
Enclosure: As above stated

SUMMONS

TO: Sheriff of said City:

Given under my hand this 10th day of August, 1999.

By Patricia J. Rios
Patricia J. Rios
Clerk of the Disciplinary System

Any questions regarding this summons should be addressed to Roger Lee Gregory, Esquire, Wilder & Gregory, Suite 1000, 707 East Main Street, P.O. Box 518, Richmond, VA 23218-0518, telephone (804) 643-8401.

The Virginia State Bar is an agency of the Commonwealth of Virginia and is exempt from payment of service fees (§ 14.1-87, Va. Code).

WILDER & GREGORY

ATTORNEYS AT LAW

EIGHTH & MAIN BUILDING

SUITE 1000

707 EAST MAIN STREET

RICHMOND, VIRGINIA 23219

MAILING ADDRESS:

POST OFFICE BOX 518

RICHMOND, VA 23218-0518

TELEPHONE (804) 643-8401

TELECOPIER (804) 648-2707

August 6, 1999

BY HAND

Ms. Patricia J. Rios
Clerk of the Disciplinary System
Eighth and Main Building
707 East Main Street, Suite 1500
Richmond, Virginia 23219-2800

RECEIVED

AUG 6 1999

VIRGINIA STATE BAR

Re: In the Matter of Victor Alan Motley
VSB Docket # 96-032-2446

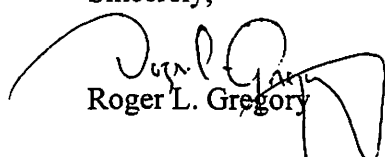
Dear Ms. Rios:

Please issue a witness summons for the person set forth below to appear at the hearing in this matter before the Disciplinary Board on September 24, 1999, at 9:00 a.m., in the Virginia Supreme Court, 100 North Ninth Street, First Floor. Hearing Room A, Richmond, VA 23219.

Rebecca Gray
1400 E. 18th Street
Richmond, VA 23224

Thank you for your assistance in this regard.

Sincerely,


Roger L. Gregory

ASSIGNMENT OF ERROR

I.

Whether keeping a client reasonably informed means written correspondence with proof of receipt or verbal communication with proof that the communication was renumbered and comprehended?

II.

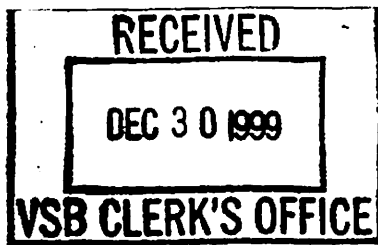
Whether the VA State Bar met it's burden of clear and convincing evidence when claimant and claimant's witnesses evidence is conflicting or cannot be remembered and when the notes and written report of claimant's witness is not supported by the witnessed testimony and physical evidence?

III.

Whether, the VA State Bar erred in introducing VSB Docket #86-146 which violates the Rules of the Supreme Court, Pt. 6, Section IV, Paragraph 13 (B) (6) (c) ?

IV.

Whether the VA State Bar, Docket No.: 91-031-0795 is supported by the facts, making its introduction proper?



000417
ORIGINAL

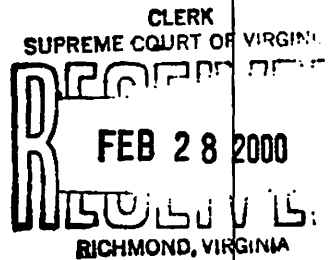
1

VIRGINIA:

BEFORE THE VIRGINIA STATE BAR DISCIPLINARY BOARD

IN THE MATTER OF: VICTOR ALAN MOTLEY

VIRGINIA STATE BAR DOCKET NO.: 96-032-2446



FRIDAY, SEPTEMBER 24, 1999, at 9:00 a.m.

SUPREME COURT OF VIRGINIA

CRANE-SNEAD & ASSOCIATES, INC.

4914 Fitzhugh Avenue, Suite 203

Richmond, Virginia 23230

Tel. No. (804) 355-4335

1 A P P E A R A N C E S:

2

3

PANEL MEMBERS:

4

Henry Custis, Chairman

5

John Dezio, Esquire

6

Dr. Eric Davidson, lay member

7

Donna DeCorleto, lay member

8

Karen Gould, Esquire

9

BY: Harry M. Hirsch, Esquire

10

VIRGINIA STATE BAR

11

707 E. Main Street, Suite 1500

12

Richmond, Virginia 23219-2800

13

Counsel for the Virginia State Bar

14

WILDER & GREGORY

15

BY: Roger L. Gregory, Esquire

16

707 E. Main Street, Suite 1000

17

Richmond, Virginia 23218-0518

18

Counsel for the Respondent

19

20

21

22

23

24

25

26

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1 CHAIRMAN CUSTIS: Good morning.

2 Is bar counsel ready?

3 MR. HIRSCH: Yes, sir.

4 CHAIRMAN CUSTIS: Is the
5 respondent ready?

6 MR. GREGORY: Yes, sir. We are
7 ready.

8 CHAIRMAN CUSTIS: I apologize for
9 the delay, but Mr. Hirsch did call and say
10 he was delayed. I don't know what the
11 reason was, but he apologized for it.

12 This board matter is the matter
13 of Victor Alan Motley. It's case no.
14 96-032-2446.

15 Gentlemen, I'd like to introduce
16 the panel members, if I may. To my far
17 left is John Dezio from Charlottesville.
18 To my immediate left is Dr. Eric Davidson,
19 a lay member from Danville. To my far left
20 is Donna A. DeCorleto from Alexandria.

21 BOARD MEMBER DECORLETO: I think
22 we have a problem. I also am a lay member.

23 CHAIRMAN CUSTIS: That's no
24 problem.

25 To my immediate right is Karen

1 Gould, from Richmond, and I am Henry
2 Custis, from Accomac.

3 Before proceeding further, does
4 any member of the board panel have any
5 personal or financial interest that might
6 affect, or reasonably be perceived to
7 affect his or her ability to be impartial?

8 Mr. Dezio?

9 BOARD MEMBER DEZIO: No, sir.

10 CHAIRMAN CUSTIS: Dr. Davidson?

11 BOARD MEMBER DAVIDSON: No, sir.

12 CHAIRMAN CUSTIS: Ms. DeCorleto?

13 BOARD MEMBER DECORLETO: No, sir.

14 CHAIRMAN CUSTIS: Ms. Gould?

15 BOARD MEMBER GOULD: I do not.

16 CHAIRMAN CUSTIS: Nor do I.

17 Gentlemen, I've been told that
18 there are some preliminary matters that we
19 need to take up.

20 Who would like to proceed? Mr.
21 Gregory?

22 MR. GREGORY: Yes, sir.

23 Mr. Chairman, members of the
24 Board, I'd move on behalf of the respondent
25 for a continuance. The basis of the

1 continuance is that Rebecca Gray was
2 subpoenaed here. The record will reflect
3 that she was subpoenaed here on August 6,
4 some seven weeks ago we requested that she
5 be subpoenaed for her appearance at this
6 hearing. She is not present. I asked my
7 client to look, and he has not seen her. I
8 do not know what she looks like, but he
9 says she is not here.

10 She was subpoenaed. She is
11 crucial. This goes in with my motion to
12 dismiss this matter at the very basis of
13 prejudice that we have here.

14 Under rules -- I think you'll see
15 my motion, that the subcommittee, in
16 violation of the rules, did not forthwith,
17 and in a timely and reasonable manner,
18 refer this matter to the Board. Instead, a
19 report came to them one year ago. One year
20 ago. That's the whole purpose for the
21 delay. That delay prejudiced my client in
22 terms of his defense, because that witness
23 is not available now.

24 The rules clearly say, upon
25 certification and receipt of the report, if

1 they decide they are going to certify it,
2 they shall do so in a timely manner. It
3 says if the subcommittee has elected to
4 certify the complaint, or the district
5 committee has elected to certify the charge
6 of misconduct to the Board, it will
7 promptly mail to the clerk a disciplinary
8 statement certifying charges, and shall
9 include significant facts to reasonably
10 notify bar counsel and the respondent of
11 the charges. That's the purpose, so you
12 don't have delays like this. For a whole
13 year, the subcommittee sat on this matter,
14 to the prejudice of my client. Then, they
15 file this a year later to the Board, and
16 now we have a hearing. And, this lady who
17 is crucial, is not here. That's the
18 predictable result. That's why the
19 statute, as passed by the Supreme Court of
20 Virginia has that. It's for the protection
21 of both bar counsel. Because, we don't
22 want his witnesses to fade off into
23 midnight either, and for the respondent.
24 That's why I say this is a dual motion, in
25 the sense that one, she was duly

1 subpoenaed, she's not here, and she's
2 crucial, and furthermore, bar counsel --
3 what makes this even more -- I really want
4 to put this on the record, because when
5 this case was three years old -- when they
6 investigated it -- I don't think there's
7 any evidence that they tried to talk to
8 this lady. They didn't preserve any
9 records. At least we could have maybe what
10 she said to them, and we could adopt it.
11 We don't have that. This is double
12 prejudiced to him.

13 So, first my motion is that we be
14 allowed a continuance to try to get her
15 here, but furthermore, I think it's a
16 crucial question that this matter should be
17 dismissed.

18 We timely filed our motion to
19 dismiss, and as a matter of fact, when I
20 filed the respondent's response, I made an
21 affirmative defense on this basis, as well
22 as filing a separate motion to dismiss.

23 So, we have a different chairman
24 now. That chairman, at that time, denied
25 the motion without prejudice, to be made at

1 the time of the hearing. One of the key
2 things I think is, is she going to show up?
3 I think that's a big factor in my motion to
4 dismiss, because not only is it a violation
5 of the letter, but the spirit and actual
6 prejudice is here, because this morning,
7 she's not here.

8 CHAIRMAN CUSTIS: Mr. Gregory,
9 when was the last time you spoke with Ms.
10 Gray?

11 MR. GREGORY: I have never spoken
12 to Ms. Gray.

13 CHAIRMAN CUSTIS: Is she still a
14 resident of the City of Richmond?

15 MR. GREGORY: As far as we know,
16 yes. She was served at her residence.

17 CHAIRMAN CUSTIS: Was she
18 personally served?

19 MR. GREGORY: I would have to
20 call the bar to find that out. That's why
21 we have compelled the attendance of all
22 witnesses who are not somewhat necessarily
23 within my bailiwick, or someone who's a
24 character witness.

25 She's adverse. That's why we

1 have compelled compulsion. That's why we
2 need the arm of this Court to compel her
3 here.

4 CHAIRMAN CUSTIS: I understand.

5 Mr. Dezio, do you have any
6 questions?

7 BOARD MEMBER DEZIO: Mr. Gregory,
8 does your client have any information that
9 she is not at this residence?

10 MR. GREGORY: No, sir.

11 BOARD MEMBER DEZIO: So, you
12 understand that she is at this residence?

13 MR. GREGORY: Yes, sir. Based on
14 the return, she is at that residence. She
15 doesn't want to come.

16 BOARD MEMBER DEZIO: Do you have
17 any reason to believe she is not at this
18 residence?

19 RESPONDENT MOTLEY: No, sir. I
20 believe the service was accepted by a
21 family member or relative.

22 MR. GREGORY: I believe that the
23 answer is, no.

24 BOARD MEMBER DEZIO: I have no
25 further questions.

1 CHAIRMAN CUSTIS: Dr. Davidson?

2 BOARD MEMBER DAVIDSON: Did you
3 make any attempt to contact her to
4 ascertain whether or not she actually knew
5 about that? Was any attempt made in that
6 regard?

7 MR. GREGORY: I don't think she's
8 a friendly witness, and may very well scare
9 people off. That's why we used the arm of
10 the law.

11 BOARD MEMBER DAVIDSON: I have no
12 further questions.

13 CHAIRMAN CUSTIS: Ms. DeCorleto?

14 BOARD MEMBER DECORLETO: I have
15 no questions.

16 CHAIRMAN CUSTIS: Ms. Gould?

17 BOARD MEMBER GOULD: I have no
18 questions.

19 CHAIRMAN CUSTIS: Nor, do I.

20 Mr. Hirsch?

21 MR. HIRSCH: We're now
22 considering only the Motion to continue.
23 Is that correct?

24 CHAIRMAN CUSTIS: There's a dual
25 motion here. At this juncture we're

1 hearing the motion for continuance.

2 MR. HIRSCH: The summons for Ms.
3 Gray?

4 CHAIRMAN CUSTIS: Yes.

5 MR. HIRSCH: Well, Mr. Chairman,
6 in the face of the fact that apparently the
7 respondent, nor his counsel, has talked to
8 this witness, they have no idea what she's
9 going to say. They made no contact with
10 her. The service is substituted. I take
11 it that but for the return on the summons,
12 they would not be able to tell you that
13 yes, this is her last address, from the
14 comment that was made.

15 I would submit to you that the
16 motion is without any grounds. Usually you
17 summons someone you want to have appear as
18 a witness because you know what that person
19 is going to say and it bolsters your case.
20 This is a shot in the dark by the
21 respondent to try to get someone here.

22 The Bar did not interview this
23 lady. We don't know what her whereabouts
24 are. She was not pertinent to our
25 investigation. The complainant was not Ms.

1 Gray. There were sufficient facts based
2 upon what we found in our investigation to
3 move forward without Ms. Gray. So, what
4 you have before you, I believe, is a motion
5 that's based upon the assumption that Ms.
6 Gray is at this address, bolstered by the
7 return of the sheriff, which was
8 substituted. This was not followed up by
9 the respondent to see whether or not Ms.
10 Gray knows about the proceeding.

11 We're sort of left in the dark
12 here. I would submit to you that this is
13 not a sufficient basis for a continuance
14 motion.

15 Thank you.

16 CHAIRMAN CUSTIS: Mr. Gregory,
17 you stated earlier that this lady is
18 material to your case. Can you state to us
19 the materiality of what you anticipate that
20 she would say? Maybe we can -- I'm not
21 speaking for bar counsel, but we might be
22 able to reach some sort of stipulation as
23 to what those facts may be.

24 MR. GREGORY: Yes, I can. I
25 would ask that the witnesses be excused.

1 CHAIRMAN CUSTIS: The complainant
2 can stay. Mr. Campbell, would you please
3 go outside?

4 MR. GREGORY: Let me say this,
5 just for the record. I haven't seen it in
6 the rules, but I think it's unfair that Ms.
7 Steele gets to be considered a party here,
8 for the purpose of staying and being here
9 as a witness. I'm analogizing to the
10 police officers in criminal court. They
11 have to be excused when witnesses are
12 excused.

13 CHAIRMAN CUSTIS: Mr. Gregory,
14 she's the complainant. If this were a
15 civil matter or a criminal matter, she
16 would be allowed to stay in the courtroom.
17 She's going to be allowed to stay in here.

18 MR. GREGORY: Very well.

19 Therefore, that even buttresses
20 my argument in terms of materiality. As
21 much as Ms. Steele is now a party, those
22 would be party admissions, in terms of her
23 statement.

24 Let me state the complaint here.
25 The complaint charges that Ms. Steele was

1 not aware that \$4,000 was supposed to be
2 paid to her.

3 BOARD MEMBER DEZIO: Excuse me,
4 Mr. Gregory. I don't know who Ms. Steele
5 is. I've got the name of Ms. Davis.

6 MR. GREGORY: It changed. It's
7 Ms. Davis Meade Steele.

8 BOARD MEMBER DEZIO: Thank you.

9 MR. GREGORY: I had the same
10 confusion too. These are the parties to
11 the agreement. It says Ms. Davis entered
12 into a verbal agreement with Ms. Gray.
13 They are the parties to the agreement by
14 allegation. They agreed to purchase the
15 property. They are alleging that this lady
16 was a joint client. Not just someone who's
17 a passerby, but by allegation, they allege
18 that Ms. Gray was a joint client. That set
19 forth the basis of saying whether or not
20 there was a conflict. Dual roles.

21 What could be more material than
22 the person who supposedly was the person
23 who was the client who sets up the alleged
24 misconduct for conflict? This was not
25 someone who's peripheral. They said that

1 Ms. Gray agreed to pay \$4,000. That's the
2 question. This was all Ms. Gray. As a
3 matter of fact, Ms. Gray's name was
4 probably mentioned more times than Ms.
5 Steele's. For Mr. Hirsch to say that's
6 somewhat -- Well, I won't say.

7 That's why we have to compel her
8 attendance, and that's why she's crucial.
9 You have to go down the line. Ms. Gray is
10 crucial to the question of what was
11 received by Mr. Motley. These transactions
12 occurred outside of Ms. Davis. She said
13 Ms. Gray gave her \$1,000. Ms. Gray gave
14 \$800. That's what her intent was.

15 Then, there's some vague
16 allegation that there was some sinister
17 move by Mr. Motley between the parties.
18 Notes were made out between Ms. Gray and
19 Ms. Steele. There were Deeds of Trust.

20 I can't think of any allegation
21 or complaint more replete with allegations
22 as to materiality. For example, no monies
23 from Ms. Gray were in the trust account.
24 They are talking about her trust funds
25 allegedly, because all of these

1 funds -- The only funds that were
2 interested in this case that were allegedly
3 received, were from Ms. Gray. Not one dime
4 came from Ms. Steele.

5 This is a trust account case, and
6 you're saying it's not relevant that Ms.
7 Gray, who's the only person who allegedly
8 gave trust funds, is not here?

9 CHAIRMAN CUSTIS: We didn't say
10 that.

11 MR. GREGORY: No, no. I'm
12 responding to Mr. Hirsch. Please, I'm not
13 responding to the Board at all. I'm
14 responding to counsel's argument. He's
15 entreating you to adopt his illogical
16 conclusion that it has a nonsensible impact
17 in a case like this. Ms. Gray is the only
18 person who had alleged funds in escrow.
19 That's what Mr. Motley's accused of. Not
20 taking care of her business. That's the
21 case. I can't think of anything more
22 crucial than that. I mean, right down the
23 line. The whole case. Then Mr. Hirsch
24 wonders why we didn't want to talk to Ms.
25 Gray. The lady whose funds have supposedly

1 been mishandled. We didn't want to talk to
2 her. It wasn't crucial. But, the person
3 who had not one dime, or gave Mr. Motley
4 one dime, is crucial. Something is wrong.

5 The point is, it falls right in
6 with the position that this was delayed.
7 It was delayed and it's crucial. All I'm
8 asking is that we at least have a chance to
9 bring her here.

10 I think the matter should be
11 dismissed anyway, in terms of fairness. We
12 have nothing to hide. We want the truth,
13 in terms of the lady here. Obviously we
14 have to defer to the judgment of this
15 Board. I just can't imagine that any
16 conclusion can be reached, other than she
17 is crucial to this, or even that at any
18 stage of the investigation, and certainly
19 here, the only person who gave funds, by
20 the only allegation, is Ms. Gray.

21 CHAIRMAN CUSTIS: Do you care to
22 respond?

23 MR. HIRSCH: Sure. Apparently,
24 we're going to be arguing the case now.
25 The facts from which Mr. Gregory argued are

1 very simple. It's a real estate case.
2 There's no written contract. There was a
3 buyer, there was a seller. The complainant
4 is the seller. The complainant did not
5 receive all of her money out of the
6 transaction. The buyer, being the buyer,
7 was supposed to pay all of the money into
8 the transaction. She never did. These
9 will be the facts that you will hear.

10 The evidence that you will hear
11 is whether or not monies were in the trust
12 account, or not in the trust account,
13 revolve upon the evidence, the records and
14 the testimony of the respondent. Not Ms.
15 Gray. Ms. Gray did not operate Mr.
16 Motley's trust account.

17 So, to say that Ms. Gray is
18 pivotal to this case, is totally incorrect.
19 The evidence that you will have before you
20 includes the admissions of Mr. Motley in
21 writing, his records, the financial
22 instruments involved in the transaction and
23 the HUD-1 statement. All of which was
24 generated by Mr. Motley, in terms of the
25 records, and not Ms. Gray, will amply

1 demonstrate the basis for the Bar's case.
2 The assertion that Ms. Gray is tantamount
3 and necessary in order for the respondent
4 to put on his case doesn't speak to whether
5 or not the funds were in Mr. Motley's trust
6 account. It doesn't speak to whether or
7 not Mr. Motley's trust account was
8 adequately maintained. It doesn't speak to
9 the question of why Ms. Steele did not
10 receive all of her money. It does not
11 speak to the question of why the
12 transaction even went forward in the face
13 of an insufficient sum of money even being
14 present to close. All of these questions
15 have nothing to do with Ms. Gray.

16 As a matter of fact, after you
17 hear the case, I will argue to you that the
18 evidence will show that Ms. Gray walked
19 away with more than she ever intended to
20 receive, or that Ms. Steele ever intended
21 that Ms. Gray should receive. She didn't
22 pay fully for the house.

23 There will be evidence concerning
24 an escrow account balance, the benefit of
25 which inured to Ms. Gray, for which Ms.

1 Steele did not get paid. She got the
2 house. Ms. Gray did. And, she didn't
3 fully pay for it. So, why do we need Ms.
4 Gray here to talk about Mr. Motley's trust
5 account and the way in which Mr. Motley,
6 the only attorney in the transaction,
7 handled that transaction?

8 I would submit to you that she's
9 not material to the case, and if she was so
10 material to the case, and if she was so
11 crucial, I think Mr. Motley would have made
12 it his point during the pendency of this
13 case to talk to Ms. Gray, to see whether
14 she is, in fact, a material witness. We
15 don't know. The respondent doesn't know.
16 The respondent is simply assuming that
17 she's material to the case, based upon the
18 assertions to the Bar and the materials
19 presented.

20 As to the question of the delay
21 that's been mentioned twice, and is also at
22 issue related to the motion to dismiss -- I
23 guess I'd better put something on the
24 record concerning delay, since it's being
25 mentioned here.

1 First of all, for the delay or
2 laches, whatever you want to call it, to
3 have an effect, there must be some harm
4 from it. None has been shown. Be that as
5 it may, delay or laches in a Supreme Court
6 of Virginia case, City of Manassas v. Board
7 of County Supervisors of Prince William
8 County, a 1995 case, the Court held there
9 that the concept of laches doesn't apply to
10 state or local government's acting in a
11 governmental capacity. Well, the Virginia
12 State Bar is a governmental agency acting
13 under the authority of 54:1-39.10 as an
14 administrative agency for the purpose of
15 investigating and reporting violations of
16 rules and regulations of members of the
17 bar. In another Supreme Court case in
18 1990, John T. Falls v. Virginia State Bar,
19 the Court noted that the Virginia State Bar
20 was in accordance with the statute, an
21 administrative arm of the Court. And, as
22 such, an administrative agency performing a
23 governmental function. In a three judge
24 court proceeding in the Circuit Court of
25 the City of Richmond, the Virginia State

1 Bar v. Sa'ad ElAmin, the Court, in the face
2 of an argument of laches, stated that it
3 does not apply to disciplinary charges
4 brought by the State Bar, citing the three
5 cases I just mentioned, and that suspension
6 of that case was affirmed by the Supreme
7 Court of Virginia.

8 So, the concept of delay or
9 laches, if you will, doesn't apply to these
10 proceedings.

11 CHAIRMAN CUSTIS: Madam Clerk,
12 would you go out into the hall and see if
13 Ms. Gray is out there, please?

14 (Clerk complied.)

15 THE CLERK: Mr. Chairman, I
16 called Ms. Gray three times, and she did
17 not respond.

18 CHAIRMAN CUSTIS: Thank you.

19 The panel will retire to
20 deliberate on the motion.

21 (The Panel retired at 10:04 a.m.
22 to deliberate, and returned at 10:16 a.m.)

23 CHAIRMAN CUSTIS: Mr. Gregory,
24 the panel does not believe that Ms. Gray's
25 testimony would be material. Especially in

1 view of respondent's answers to the
2 assertions. That being the case, your
3 motion is overruled.

4 However, in order for you to
5 create a record, I would offer you the
6 opportunity to proffer what you believe Ms.
7 Gray would say if she was here.

8 MR. GREGORY: If we could do that
9 sometime during a break.

10 CHAIRMAN CUSTIS: That's fine.
11 We'll continue then.

12 Are you asking for a break now?

13 MR. GREGORY: Oh, no. Just so we
14 won't hold things up.

15 I would like to proffer at
16 another time.

17 CHAIRMAN CUSTIS: Do you want to
18 move on? I assume you have another motion.

19 MR. GREGORY: Yes. The motion is
20 that the matter should be dismissed. It's
21 clear on the record that the subcommittee
22 did not do as required. Upon
23 certification, I think the record is clear
24 on the date.

25 Madam Clerk, do you have the

1 official record, or should I proffer what
2 the record is?

3 THE CLERK: I do not have the
4 record.

5 MR. GREGORY: You don't have the
6 record?

7 THE CLERK: Not with me.

8 CHAIRMAN CUSTIS: The whole
9 record is right here, Mr. Gregory.

10 MR. GREGORY: The certification
11 record, not the factual matters.

12 I wanted to get the exact date.
13 Here it is. On July 17, 1998, this matter
14 came before the subcommittee. On that same
15 date, they so certified that they would
16 certify this matter to the Board.

17 The statute clearly says, they
18 shall promptly, promptly, forward this
19 matter to the Board. The matter was not
20 forwarded to the board until June 25, 1999.
21 Some 11 months later. I don't see how, by
22 any stretch of the imagination, 11 months
23 could be considered prompt by any tribunal.

24 Mr. Hirsch, I assume -- I got a
25 prevue of what he's going to argue, that

1 laches doesn't apply. So, basically what
2 he's saying is that Bar counsel is above
3 the law. That the law and statute is
4 written, and the only way we can go by due
5 process in this country is to --

6 CHAIRMAN CUSTIS: Mr. Gregory,
7 how has your client been harmed or
8 prejudiced in any way, as a result of this
9 delay?

10 MR. GREGORY: The prejudice is,
11 this delay, let me say first of all, is not
12 required. It does not require any
13 prejudice to be shown, in terms of due
14 process. Due process requires that the
15 procedure be done promptly. That in itself
16 is just like, for example, a statute of
17 limitations -- How would somebody be harmed
18 from a speedy trial, if all of their
19 defenses are still there? The point is,
20 it's required. There's nothing in here
21 that says, prompt if that's convenient,
22 unless it doesn't matter. Certainly it
23 does. The cases that don't cite it are the
24 ones that talk about delay, in terms of
25 investigating a matter that might be old.

1 That's different. We're not talking about
2 him coming back and investigating. The key
3 is, promptly.

4 Today we're left with the ruling
5 of the Bar, in terms that it's not
6 required.

7 Yet, Mr. Hirsch told you that at
8 the end of this case, I'm going to tell you
9 that Ms. Gray got this and she received
10 that.

11 Here's the key. Here's the key
12 to this case, why it's prejudiced. If Mr.
13 Hirsch had just made this case a question
14 of, -- and this goes to my second basis for
15 motion to dismiss -- handling a transaction
16 of real estate; that's different. He's
17 charging misconduct, fraud and intent.
18 That's the first DR he's talking about.

19 That is crucial in terms of
20 having the other party here, in terms of
21 what intent is. Intent is a question.
22 He's not just talking about transactions,
23 he's accusing Mr. Motley of trying to
24 commit a crime. That's what it says in the
25 charges. Committing a crime. We're not

1 just talking about a real estate
2 transaction. That's a serious charge when
3 a person's own integrity is at stake, and
4 you say the witness is not crucial, who is
5 a party here? You talk about intent?
6 That's mens rea. That's not just getting
7 a fee wrong in a trust account, or not
8 getting a HUD-1. He's accusing him -- This
9 is what it says. I was somewhat floored
10 when I read it, but this is what it says:
11 Misconduct. A lawyer shall not commit a
12 crime or a deliberately wrongful act,
13 engage in conduct of dishonesty, fraud,
14 deceit or misrepresentation. That's what
15 this case is. He's going to argue that.
16 This is that kind of case. To say that
17 this person is irrelevant? He's not
18 limiting it just to this real estate
19 transaction. That is definitely prejudice.
20 I can't think of anything more important a
21 person has than their integrity and their
22 name. You're practicing law, and you're
23 going to delay that for a year? You don't
24 even investigate that person? How in the
25 world is that not crucial, when you come in

1 here and tell this Board to discipline this
2 person for being a crook? He's a criminal.
3 You're not just talking about some real
4 estate transaction. How in the world can
5 this man defend his honor and integrity if
6 he doesn't get a chance to get a witness
7 here?

8 Yet, you have a Bar that delays
9 deliberately for 11 months to manipulate
10 the system. That's wrong. I just don't
11 see how he, in good faith, can argue that
12 that's not prejudice. That's why the
13 statute says that. We can't win. The
14 statute says this, and we raise it.

15 No, you're not showing prejudice.
16 The prejudice is right here in the record.
17 No, that's not required. I just don't
18 understand it. If it did, it is prejudice.

19 This is a case where he's
20 accusing Mr. Motley of being a criminal,
21 not just someone who messed up on one real
22 estate transaction, or didn't dot an i.
23 He's committed a crime. That's what he's
24 going to be arguing to you at the end of
25 this. That's the DR he's charging here.

1 Saying the person that was his client --
2 That's not wrong?

3 MR. HIRSCH: I think we're now on
4 a motion to dismiss, based on the delay of
5 the certification and the statute of
6 limitations.

7 As to the delay, I would point
8 again to the cases I previously cited.

9 As to the statute of limitations,
10 in Norfolk and Portsmouth Bar Association
11 v. Sheppard Drewery, a 1934 case, which is
12 still good, the Supreme Court of Virginia
13 held that there is no statute of
14 limitations applicable to this kind of
15 proceeding. It stated that -- This is
16 where this phrase started because it's
17 picked up new cases coming forward from
18 this. The only right, if you will, the
19 respondent has to these proceedings, with
20 respect to these kinds of matters, is that
21 he be informed of the nature of the
22 charges, and that he be given an
23 opportunity to answer them. That's why
24 we're here today.

25 Now, the delay is a little

1 curious, because in the course of the Bar's
2 investigation in this matter, on January
3 24, 1997, the bar issued a subpoena duces
4 tecum --

5 MR. GREGORY: I'm going to
6 object. I know exactly what Mr. Hirsch is
7 going to say. He is going to argue to you
8 that Mr. Motley did not exercise a
9 constitutional right to challenge. That's
10 the other basis for our motion to dismiss.

11 I am talking about the delay from
12 July 17, 1998. Unless Mr. Hirsch is an
13 officer of the court and can say that those
14 matters delayed from July 17, 1998, to June
15 25, 1999, that's inappropriate.

16 CHAIRMAN CUSTIS: Mr. Gregory,
17 you have raised the issue of delay here. I
18 think it's proper for Mr. Hirsch to
19 respond.

20 MR. GREGORY: But, in the
21 parameters of which I raised it. The
22 statute talks about once you certify it.
23 It has nothing to do with what happens
24 during the investigation. I did not open
25 any door in terms of that. That's why I

1 made the record very clear. I wanted the
2 the clerk to read it. I very specifically
3 wanted to put those dates in there. July
4 17, 1998, to June 25, 1999. There was
5 never any question raised about the Bar's
6 delay prior to that date. Mr. Hirsch knew
7 that.

8 I just want to say for the record
9 that this is totally inappropriate. It is
10 designed to put prejudice and matters not
11 appropriate into the minds of the Board.

12 CHAIRMAN CUSTIS: Mr. Hirsch,
13 does that delay prior to those dates
14 inclusive have any effect on that delay?

15 MR. HIRSCH: The effect of the
16 delay, prior to the inclusive dates, simply
17 delayed the decision to ultimately certify
18 it.

19 MR. GREGORY: The answer to the
20 question was, no, then. He deliberately
21 did not answer your question, Mr. Chairman.

22 CHAIRMAN CUSTIS: I thought he
23 said, yes.

24 MR. GREGORY: No, you said the
25 delay --

1 CHAIRMAN CUSTIS: It has no
2 effect as to the inclusive dates.

3 MR. HIRSCH: Let me try to answer
4 your question again. Any delay in the
5 investigation of a case causes a delay in
6 the ultimate conclusion. That's what I'm
7 saying to you. There was a delay in the
8 investigation caused by the respondent.
9 That obviously had to delay the conclusion
10 to the investigation, which was the
11 question of what we do with the case. This
12 case was certified.

13 CHAIRMAN CUSTIS: Just argue as
14 to the dates inclusive.

15 MR. HIRSCH: Okay. Well, again,
16 the language that Mr. Gregory speaks to
17 does use the term promptly, but there is no
18 language that states what is done if it is
19 not prompt. There has been no showing of
20 prejudice. There is only the assertion of
21 prejudice. There is no showing of whether
22 the delay of July 17, until June 25,
23 prejudiced the respondent. We don't know.
24 All we have is a word promptly, and an
25 assertion based upon the word. We have

1 nothing more. I would submit that he would
2 have to show more, in order to make
3 something of that particular assertion.

4 Again, as I've said before, I've
5 adopted the cases about laches.

6 CHAIRMAN CUSTIS: Thank you, sir.

7 (The Panel retired at 10:36 a.m.
8 to deliberate, and returned at 10:39 a.m.)

9 CHAIRMAN CUSTIS: Mr. Gregory,
10 your motion to dismiss is overruled.

11 MR. GREGORY: I take it, Mr.
12 Chairman, that I don't need to officially
13 note my objections.

14 CHAIRMAN CUSTIS: It's all in the
15 record.

16 MR. GREGORY: Great.

17 CHAIRMAN CUSTIS: Are there any
18 other preliminary matters?

19 MR. GREGORY: Yes. My motion to
20 dismiss on two other grounds. This needs
21 to be put on the record.

22 One of the grounds is the
23 constitutional issue. That is the equal
24 protection issue that raises a serious
25 constitutional question in terms of how the

1 Bar proceeds.

2 The record is clear that this
3 matter was investigated by Mr. Campbell,
4 under report on January 19, 1997, and the
5 record is clear as to a concise description
6 of the alleged misconduct question. One
7 line. The respondent is alleged to have
8 improperly conducted a real estate closing,
9 period. That was investigated. Mr.
10 Campbell is on the record and has testified
11 under oath that he had concluded his
12 investigation as to that, before he
13 requested Mr. Motley's trust account items
14 for a year period.

15 The grounds for my motion to
16 dismiss is that the Bar improperly turned
17 an investigation related to a real estate
18 closing into a broad search of Mr. Motley's
19 trust account, and then opened up a new
20 investigation on that basis, which was
21 dated another time in 1998.

22 Therefore, this was purposely
23 done for the patterns of selected lawyers
24 to take the cases very specifically related
25 to a real estate transaction, and then from

1 that, the investigator concludes from that.
2 Mr. Hirsch asked -- That's why we're in
3 Court alluded to, because we filed a motion
4 against it, to get into those records, and
5 then turn this into a greater case.

6 CHAIRMAN CUSTIS: Mr. Gregory,
7 are you saying it's not proper for the Bar,
8 during the course of an investigation of a
9 complaint, if they discover other
10 wrongdoings based upon the disciplinary
11 rules, to bring charges based upon what
12 they find?

13 MR. GREGORY: No. I'm saying
14 it's wrong to have an investigator who
15 concludes that that investigation hasn't
16 found really anything, in terms of general
17 trust account matters at all, and then for
18 Bar counsel to deliberately open it up to
19 search to find a case. That's exactly what
20 happened in this case. There's a pattern
21 in doing it, in terms of it doesn't allow
22 equal protection. It allows disparaged
23 treatment. You could turn a lot of lawyers
24 cases into trust account cases, if every
25 time you have an investigation you said,

1 well now, let's go into your trust account
2 and see if we can find something else.
3 That is an invidious type practice and it
4 does not allow equal protection.

5 That's a serious constitutional
6 question, and I don't suspect this will
7 perhaps sit well with the Board, but it
8 preserves a very important question. I
9 think this case makes it clear.

10 The delay in this case -- Not
11 investigating the person who is crucial in
12 this case, I think is crucial. This is a
13 very clear case of the kind of problems you
14 have when you allow this type of action to
15 go on.

16 To come here and tell this Board
17 a person is not required -- You're bringing
18 criminal actions?

19 CHAIRMAN CUSTIS: Do you
20 understand that anyone who is a member of
21 the Virginia State Bar is subject to having
22 his or her trust account audited by the
23 state bar at any time?

24 MR. GREGORY: Randomly? Then?
25 In 1996 -- '97?

1 CHAIRMAN CUSTIS: Yes, sir.

2 MR. GREGORY: Without any basis
3 of probable cause?

4 CHAIRMAN CUSTIS: Yes, sir.

5 MR. GREGORY: Oh. Well, I think
6 that that was certainly not the evidence
7 that was in the Court. It was only
8 because -- There would have to be some
9 showing that this was relevant. For
10 example, I don't believe that that allows
11 equal protection when it is purposely done
12 in terms of this regard.

13 CHAIRMAN CUSTIS: Mr. Gregory, we
14 understand your motion.

15 MR. GREGORY: All right.

16 CHAIRMAN CUSTIS: We need to move
17 this thing on.

18 Mr. Hirsch?

19 MR. HIRSCH: Again Mr. Chairman,
20 we have a number of assertions by the
21 respondent using certain catch phrases.
22 Disparaged treatment, etc., without
23 anything more. This is exactly what was
24 argued, again, in Mr. Motley's effort to
25 quash the subpoena duces tecum issued by

1 the Bar on January 24, 1997, which was
2 unsuccessful. He then filed a notice of
3 appeal. He didn't proceed with the notice
4 of appeal, and he didn't proceed with the
5 petition. All of that took a year, between
6 the issuance of the subpoena duces tecum
7 and the notice back to the Supreme Court.
8 The petition had not been filed. It was
9 January 24, 1997, to January 6, 1999. A
10 solid year.

11 What was the issuance of the
12 subpoena duces tecum about? Basically what
13 Mr. Motley is asserting is exactly what he
14 asserted back in that court. It's an
15 attack on what the subpoena duces tecum was
16 for.

17 The Bar is authorized by the
18 Supreme Court to enforce a code of ethics
19 as well as procedures for disciplining
20 attorneys. It's 54.1-3909. In accordance
21 with the power this Court has from this
22 legislature, it has promulgated that code.
23 The Code of Professional Responsibility.
24 The Court has established the disciplinary
25 system we have today. It granted the

1 Virginia State Bar the administrative
2 authority and responsibility for that
3 disciplinary system. You see that in the
4 Rules of Court, Part 6, Section 4,
5 Paragraph 13B1.

6 The subpoena was issued in
7 accordance with the authority reposed in
8 the Third District Committee, Section 2, by
9 the Supreme Court to compel quote, the
10 production of documents necessary or
11 material to any inquiry, unquote. That's
12 the key phrase. Necessary or material to
13 any inquiry. That is found in the Rules of
14 Court, Part 6, Section 4, Paragraph 13B,
15 4C, iii.

16 The issuance of the subpoena was
17 part of an ongoing investigation by the
18 committee. Again, in accordance with
19 paragraph 13B5a. The subpoena was issued
20 as a part of the ongoing investigation of
21 the complaint filed by, now Ms. Steele,
22 formerly Ms. Davis.

23 In the course of the
24 investigation, and prior to the issuance of
25 the subpoena duces tecum, there was a

1 letter dated December 9, 1996, among other
2 things, which counsel for the respondent
3 had submitted, and will be in the record of
4 the proceedings today.

5 There were certain irregularities
6 which were shown, just on the face of that
7 letter, of things that occurred either in
8 the transaction of the Davis sale, or in
9 Mr. Motley's escrow account. All of this
10 was before the Court on the subpoena duces
11 tecum motion to quash submission. These
12 were some of the things which the bar was
13 confronted with, which caused the issuance
14 of the subpoena. These facts may not be
15 the facts of the certification. This was
16 what was before the Bar then. Not now.

17 On or about February 6, 1996, Mr.
18 Motley obtained a personal loan in the
19 amount of \$3,026.27, which he deposited
20 into his trust account. On February 6,
21 1996, Mr. Motley proceeded to disburse to
22 himself, out of the trust account, funds
23 totaling \$2,300, just leaving a balance of
24 personal loan proceeds in his trust account
25 of \$726.27. If you stop right there, that

1 was evidence of co-mingling, under 9-102A.

2 On the closing date of the
3 transaction in the Davis, now Steele
4 complaint, the transaction date being
5 February 15, 1996, the purchaser brought no
6 funds to the closing. The documentation
7 was executed on the purchaser's promise to
8 bring Mr. Motley \$2,000, in partial
9 payment, later -- \$2,000 of the amount the
10 purchaser needed to pay in the transaction.

11 On February 20, 1996, the
12 purchaser brought Mr. Motley a personal
13 check, not certified, from someone other
14 than the buyer, in the amount of \$1,000,
15 which Mr. Motley deposited into his
16 personal checking account. Not in his
17 trust account. Based, according to Mr.
18 Motley, known at that time, on the premise
19 that Mr. Motley had already advanced
20 personal funds from Mr. Motley's escrow
21 account for the transaction, totaling \$550,
22 and that Mr. Motley was due his fee of
23 \$450.

24 However, the uncertified personal
25 check of a third party given to him from

1 including, without limitation, any and all
2 trust accounts, estate accounts, fiduciary
3 accounts or operating accounts maintained
4 by the attorney or his or her law firm,
5 closed quote, under paragraph 13B3. The
6 information retained during an
7 investigation up to the point of a subpoena
8 duces tecum requires that the Board proceed
9 to a more detailed investigation of Mr.
10 Motley's trust account. That's why the Bar
11 proceeded in the matter with respect to the
12 subpoena duces tecum.

13 Now, Mr. Gregory has mentioned
14 the phrase, equal protection. I assume
15 he's talking about due process, so I might
16 as well go ahead and speak to that.

17 Due process has been considered
18 in a couple of cases, one of which is in
19 re: Bryant, a Circuit Court of the City of
20 Richmond case, 27 Va. Cir. 414, a 1992
21 case, in which the respondent asserted that
22 the subpoena duces tecum of the trust
23 account records was an overboard fishing
24 expedition. The Court noted in that case
25 that the Supreme Court had specifically

1 found that an absence of discovery rights
2 in bar proceedings doesn't violate any
3 procedural due process rights belonging to
4 an attorney. Since then, as you should
5 know, the rules have been changed as such
6 that a respondent whose case, for instance,
7 has been certified by a subcommittee or
8 district committee, then receives a copy of
9 the investigative report from the Bar.

10 That's why Mr. Gregory was
11 reading from it. You don't have it, but
12 he's got it.

13 The Court in in re: Bryant also
14 noted that a proceeding to discipline an
15 attorney is a special proceeding, civil and
16 disciplinary in nature, and of summary
17 character. Being an informal proceeding,
18 it is only necessary that the attorney be
19 informed of the nature of the charge
20 referred against him, and be given an
21 opportunity to answer. That's quoting from
22 the Seventh District Committee v. Gunther
23 at 212 Va. 278, which also quotes language
24 from the Drewery case I mentioned to you
25 earlier.

1 It's best the Court find that
2 there's no due process violation which
3 arises from either the empowering of the
4 district committee to compel the production
5 of documents, or from the issuance of a
6 subpoena duces tecum pursuant to that
7 power.

8 So, I don't think that Mr.
9 Gregory has, again, shown you any bases for
10 his argument or any grounds for his
11 constitutional assertion, other than making
12 the assertion.

13 Again, I think we are left with
14 only assertions, and I encourage you to
15 overrule this particular motion.

16 CHAIRMAN CUSTIS: Instead of
17 retiring, I'm just going to poll the
18 members of the panel.

19 Mr. Dezio?

20 BOARD MEMBER DEZIO: I would vote
21 to overrule the motion.

22 CHAIRMAN CUSTIS: Mr. Davidson?

23 BOARD MEMBER DAVIDSON: I would
24 vote to overrule.

25 CHAIRMAN CUSTIS: Ms. DeCorleto?

1 BOARD MEMBER DECORLETO: I would
2 vote to overrule.

3 CHAIRMAN CUSTIS: Ms. Gould?

4 BOARD MEMBER GOULD: Overrule.

5 CHAIRMAN CUSTIS: Likewise.

6 Any further preliminaries?

7 MR. GREGORY: Yes. One more, Mr.
8 Chairman.

9 I don't apologize for practicing
10 law with zeal and advocacy, but I do say
11 this with all due respect that I make this
12 one, and as I said, with all due respect, I
13 am compelled to do so for my client, and
14 because I think it has to be raised for the
15 record.

16 That is, I believe that this
17 panel should recuse itself. We had the
18 notice of who the chair would be
19 beforehand, and this morning we were given
20 this panel for the record. We got notice
21 of this panel this morning when we came
22 here on time for the hearing.

23 I believe -- While this argument
24 is not based upon the question of whether
25 or not someone has had some prior

1 dealing -- it's a matter of, we believe,
2 inadmissible evidence at a stage where
3 panel members were involved, and should not
4 have that information at all. It's
5 different, in terms of what is admissible
6 evidence, in terms of if this got to a
7 stage of discipline. Admissible, but
8 inadmissible --

9 CHAIRMAN CUSTIS: Mr. Gregory,
10 your comments must be directed at me.

11 MR. GREGORY: Well, --

12 CHAIRMAN CUSTIS: Because of my
13 sitting --

14 MR. GREGORY: That's correct.

15 CHAIRMAN CUSTIS: Are you saying
16 that I should recuse myself because of
17 having heard the show cause against Mr.
18 Motley last month? Is that where we are
19 going?

20 MR. GREGORY: That's on appeal.
21 It's very awkward, because to raise this
22 grounds is to do what we don't want to do.
23 The only way to raise it is to do that.
24 For this record, I think it's very serious
25 that there's 20 members on the board -- am

1 I correct, madam clerk?

2 THE CLERK: Yes.

3 MR. GREGORY: This record was
4 known to the bar -- Mr. Hirsch -- months
5 ago. I just think in terms of,
6 particularly in light of this, I think it's
7 a very precarious situation Mr. Motley's in
8 today, in terms of rulings and in terms of
9 defending himself.

10 I'm obligated to put that on the
11 record, and I think that it's important.
12 Justice is very important. I know you
13 don't take it lightly. None of you. You
14 certainly can't.

15 I think that to be a part of the
16 inadmissible evidence, it's just not
17 appropriate in terms of fairness. If not
18 for expedience, hopefully for justice.
19 What is right. Not for expedience. I
20 think it's very important. It's so
21 important, because you can start this
22 session off with conflicts or other things
23 you may have. I have no reason to believe
24 that that's not the case. I'm talking
25 about terms asked by the Chairman, and I

1 don't take any exception or challenge at
2 all. I want you to know that. This goes
3 to inadmissible evidence. I don't see how
4 Mr. Motley can fairly have that done when
5 the person -- I think it's not only one but
6 two members of the panel.

7 CHAIRMAN CUSTIS: Who?

8 MR. GREGORY: It just seems that
9 with 20 people, it's interesting. Again,
10 the only way we can raise this is, that I
11 believe matters should not be admissible --
12 It would be John A. Dezio.

13 BOARD MEMBER DEZIO: Are you
14 saying that I --

15 MR. GREGORY: Again, I don't want
16 to go into it because --

17 CHAIRMAN CUSTIS: We appreciate
18 the fact that you have to do what you have
19 to do for your client, and that is to raise
20 the issue, but what is the basis for it?

21 MR. GREGORY: The basis for it is
22 that the matter is on appeal. It's
23 admissible to be heard if we get to that
24 stage of the case. Therefore, the person
25 who was involved in that disposition -- The

1 disposition of this point, is squashed
2 until the Supreme Court of Virginia says
3 so. It has not done so. Mr. Motley can't
4 -- We would presume --

5 CHAIRMAN CUSTIS: I understand,
6 and I guess you're saying it goes to
7 impartiality as sitting here as chairman
8 today.

9 MR. GREGORY: That's correct.

10 CHAIRMAN CUSTIS: What is the
11 basis for your objection to Mr. Dezio?
12 Because, he did not sit on that panel.

13 MR. GREGORY: That is a matter
14 that is on appeal. He was part of the
15 disposition.

16 BOARD MEMBER DAVIDSON: Can I ask
17 a question? The matter that's on appeal,
18 was that at a public forum?

19 MR. GREGORY: No. It was
20 private. Otherwise, it would not have been
21 known.

22 Again, I have the record, --

23 CHAIRMAN CUSTIS: You still
24 haven't answered my question about Mr.
25 Dezio. The rest of the panel is inclined.

1 MR. GREGORY: I'm showing it to
2 the clerk. I don't like to represent what
3 the record says --

4 MR. HIRSCH: Can I see what
5 you're talking about?

6 MR. GREGORY: You have the
7 record.

8 MR. HIRSCH: May I explain
9 something to Mr. Gregory?

10 CHAIRMAN CUSTIS: Sure.

11 (Off the record.)

12 MR. GREGORY: Matters before
13 Mr. Dezio in the decision is inadmissible.

14 CHAIRMAN CUSTIS: What decision?
15 What case?

16 MR. GREGORY: October 17, 1997.

17 CHAIRMAN CUSTIS: 1997?

18 MR. HIRSCH: If I may, maybe I
19 could explain a little bit.

20 MR. GREGORY: I don't want you to
21 explain my motion.

22 BOARD MEMBER DEZIO: Are you
23 saying I sat on the panel?

24 MR. GREGORY: Yes.

25 BOARD MEMBER DEZIO: I certainly

1 do not remember Mr. Motley's name, and I
2 don't remember the case.

3 MR. GREGORY: You sat on the
4 panel, according to this.

5 BOARD MEMBER DEZIO: If you say I
6 sat on the panel, I don't disagree with
7 you. I just don't remember Mr. Motley.

8 MR. GREGORY: It's two panel
9 members, and that's inadmissible in this
10 case. That goes back to the circumstances
11 that it would be inadmissible. Obviously,
12 it's already there. It's inadmissible
13 because those matters are not final.

14 CHAIRMAN CUSTIS: It's
15 inadmissible?

16 MR. GREGORY: Yes. The record is
17 inadmissible --

18 CHAIRMAN CUSTIS: The matter that
19 Mr. Dezio sat on in 1997, is still on
20 appeal? Is that what you're saying?

21 MR. GREGORY: Yes.

22 CHAIRMAN CUSTIS: And, the matter
23 that I sat on, which was the show cause
24 last month, is on appeal. I understand
25 that.

1 MR. GREGORY: Right. It's the
2 same matter. It's the same case.

3 CHAIRMAN CUSTIS: All right. The
4 panel will --

5 MR. HIRSCH: May I speak to the
6 motion?

7 CHAIRMAN CUSTIS: Yes, sir.

8 MR. HIRSCH: I'm not trying to
9 put words into Mr. Gregory's mouth, because
10 I think he does a very good job, but I
11 think what this is about is an assertion
12 that you know about what's in the order
13 that I hold, which is the order preceding
14 the hearing on which the chair sat, which
15 is a show cause hearing. In other words,
16 it was two hearings on one case. I think
17 what Mr. Gregory is getting at is that the
18 two of ya'll are charged with knowing
19 information in that case.

20 I would argue that first of all,
21 this doesn't even become an issue, if at
22 all, until this proceeding, the one that
23 we're here on today, gets to the stage
24 where the prior record is even mentioned.
25 I haven't raised it. Mr. Gregory has

1 raised it. It's a little premature.

2 The second point is that if, I
3 guess to use Mr. Gregory's reasoning, if a
4 board member sat on a case involving a
5 respondent, and another case came along
6 against that respondent, that board member
7 would forever be barred from sitting on any
8 other case against that respondent.

9 I submit to you that that's just
10 totally, systemically and common sensibly
11 unreasonable. If there's some reason why a
12 particular board member perceives a
13 conflict, or if there's some basis upon
14 which the respondent can show some conflict
15 other than just asserting it again, perhaps
16 there might be something to it at that
17 point. You have nothing before you, other
18 than the simple fact that each of you sat
19 at different points in time in a particular
20 case at a particular time where Mr. Motley
21 happened to be the respondent.

22 You even have Mr. Dezio telling
23 you that he doesn't even remember the case.
24 It's a very awkward situation, but I would
25 suggest that you overrule this motion as

1 well.

2 MR. GREGORY: Please let me
3 respond to that. This one from Mr. Hirsch
4 reminds me of a thing from Cervantes' Don
5 Quixote. That is not an argument that you
6 are forever barred. The question is, if
7 something were final, it becomes a part of
8 the record. This is not final. This is
9 not that you can't ever sit on a case for
10 every lawyer. This is not the issue. The
11 issue is, Mr. Motley -- That's why we have
12 a Supreme Court of Virginia, with all due
13 respect to this Board, that sits above you.
14 If they say what you did was wrong, then
15 what you did is a nullity. I'm saying that
16 Mr. Motley can't have a day in court in the
17 Supreme Court, if it's already going to be
18 used against him before it decides whether
19 or not it was a correct decision.

20 Two members of this panel were a
21 part of that decision. That should be
22 inadmissible if we got -- If Mr. Hirsch
23 says it's premature, how in the world can
24 we wait until you hear the case and then
25 get to the point where you've heard the

1 case and made a disposition as to the
2 question of misconduct?

3 But, now I'm raising whether or
4 not you can now make a disposition. It's
5 the only time you can raise it. Again,
6 it's not even common sense to say you raise
7 it then. You have to raise it here. The
8 question is, with 20 members of the panel,
9 why is it that this would be the case?
10 Maybe you don't know the answer, and you
11 probably don't, but in terms of fairness to
12 the respondent --

13 CHAIRMAN CUSTIS: You're raising
14 an issue of fairness and impartiality, just
15 because Mr. Dezio and I heard that other
16 matter. Isn't this akin, though? What
17 about Circuit Court judges who hear
18 criminal cases day in and day out? The
19 fact that that judge may have heard a
20 criminal case that's on appeal, and say the
21 defendant comes back in six months later
22 for another crime. You're telling me that
23 judge is not supposed to hear that case?

24 MR. GREGORY: No. The beauty of
25 it is, the defendant has a right to a jury.

1 That's the beauty of our system. That's
2 the cure. I don't get a jury here.
3 Believe me, if I had that option, I would
4 take it.

5 CHAIRMAN CUSTIS: All right.
6 We're going to --

7 BOARD MEMBER DEZIO: Mr.
8 Chairman, may I ask one other question of
9 Mr. Gregory?

10 CHAIRMAN CUSTIS: Sure.

11 BOARD MEMBER DEZIO: What about a
12 juror who knows something about the case,
13 based upon questions from the judge? He
14 asks if they have heard something about the
15 case. Does that prejudice you in any way?

16 MR. GREGORY: Oh my goodness. If
17 we had a juror who sat there -- Even grand
18 jurors who were there at the time of the
19 indictment -- That seat wouldn't even get
20 warm for cause. They would be gone.
21 I want to make sure, if a juror was part of
22 a case --

23 BOARD MEMBER DEZIO: If the juror
24 had heard, or had read something in the
25 newspaper about the case?

1 MR. GREGORY: Well, then the
2 question would become, what impact --

3 BOARD MEMBER: Could the juror
4 not render a fair and impartial decision,
5 even though the juror --

6 MR. GREGORY: That's true. But,
7 the juror would not be able to sit on a
8 case where they once convicted a defendant
9 before.

10 BOARD MEMBER DEZIO: I don't
11 disagree with that.

12 MR. GREGORY: That's the posture
13 you're in.

14 CHAIRMAN CUSTIS: Mr. Hirsch?

15 MR. HIRSCH: One quick comment.

16 MR. GREGORY: Excuse me. How
17 does Mr. Hirsch get the last say on my
18 motion? I just don't understand how that
19 happens in terms of procedures.

20 CHAIRMAN CUSTIS: We don't follow
21 the strict rules here. I will do the same
22 in return.

23 Mr. Hirsch?

24 MR. HIRSCH: The cure to prevent
25 the concern that Mr. Motley has, would have

1 been for Mr. Motley to ask for a three
2 judge court proceeding, instead of leaving
3 the matter within the District Court's
4 docket.

5 MR. GREGORY: We didn't know who
6 the chairman was going to be until the day
7 of the trial.

8 CHAIRMAN CUSTIS: But you knew
9 Mr. Dezio was going to be here.

10 MR. GREGORY: On the 20th of
11 September. Is that correct, madam clerk?
12 I just want the record to say that.

13 THE CLERK: You didn't know that
14 this case was before the Board until the
15 20th?

16 MR. GREGORY: No, no. That Mr.
17 Dezio would be here. Did it not go out
18 September 20th?

19 THE CLERK: Yes, it did.

20 MR. GREGORY: Thank you.

21 (The panel retired at 11:04 a.m.
22 to deliberate, and returned at 11:08 a.m.)

23 CHAIRMAN CUSTIS: Mr. Gregory,
24 the panel is going to overrule your motion.

25 Both members of the panel feel

1 very strongly that the facts that you have
2 raised will not affect us as to our
3 impartiality and fairness at this hearing
4 today. So, your motion is overruled.

5 Gentlemen, are there any
6 stipulations?

7 Mr. Gregory, I got your -- we got
8 your files as of yesterday.

9 MR. GREGORY: Did you get any
10 from the Bar?

11 CHAIRMAN CUSTIS: I would assume
12 that your answer to the Bar's certification
13 that you have admitted are in the record.
14 The panel will consider those the same as
15 admissions, stipulations, or whatever you
16 want to call them.

17 I would ask that that being the
18 case, that the evidence be directed to
19 stipulations -- I mean the issues in the
20 certifications that are not admitted, in
21 order to avoid the necessity of evidence
22 when it's not necessary.

23 MR. GREGORY: Let me say that in
24 terms of -- That sounds good, in terms of
25 expediency, but it doesn't work in this

1 case because that depends on how artfully
2 drawn are the assertions. For example,
3 there are some that says \$4,000, for
4 example, that Ms. Steele was supposed to
5 receive prior to the closing, she found out
6 that she would not be getting \$4,000.
7 Technically, that's true. But, there are
8 some very important facts in terms of, what
9 does that mean?

10 CHAIRMAN CUSTIS: We're not going
11 to deny you the opportunity to present your
12 facts.

13 MR. GREGORY: Well, other than
14 the fact that you've made prior rulings and
15 that Ms. Gray won't be here, we won't have
16 any evidence in rebuttal. And, I'll put
17 that on the record at an appropriate time,
18 but --

19 CHAIRMAN CUSTIS: At the
20 appropriate time.

21 MR. GREGORY: Again, --

22 CHAIRMAN CUSTIS: You'll make
23 your proffer, I assume, whenever you want
24 to.

25 MR. GREGORY: Again, for the

1 record, I'm going to renew my motion for a
2 continuance in that matter.

3 CHAIRMAN CUSTIS: Overruled, sir.

4 Mr. Hirsch, you may proceed in
5 chief.

6 MR. HIRSCH: This involves a
7 complaint of Evelyn Steele, formerly Ms.
8 Meade and Ms. Davis, about Mr. Motley's
9 handling of the sale of her home in
10 February of 1996. And, the results of the
11 Bar's review of Mr. Motley's trust account
12 for the period July 1, 1995 through July
13 30, 1996.

14 The evidence is going to show
15 you, that as to the real estate
16 transaction, Mr. Motley was the only
17 attorney involved, and that a number of
18 problems arose during the representation.
19 Among which, as the evidence will show you,
20 Ms. Steele never received all the proceeds,
21 the buyer never paid all the sums she was
22 due to pay, and the escrow account for Ms.
23 Steele with the lender was not accounted
24 for in the closing. Mr. Motley closed and
25 recorded without having all the funds

1 accounted for. Mr. Motley disbursed the
2 funds from his trust account without having
3 deposited any funds into the trust account
4 from the transaction.

5 Mr. Motley accepted a late
6 partial payment from a third party in the
7 form of a personal check which bounced, and
8 that was put into his personal checking
9 account. Mr. Motley had Ms. Steele execute
10 a Deed of Trust note, which, according to
11 the answer filed, was for an amount which
12 was a judgment. There may be some question
13 as to whether there was a judgment against
14 the property. That's what Mr. Motley says
15 it was for. Mr. Motley did not timely get
16 the materials required by the lender to the
17 lender.

18 On the review of the trust
19 account, the evidence that will be before
20 you is that a review conducted by
21 Investigator Lacy Campbell showed
22 incomplete subsidiary ledgers, incomplete
23 cash disbursement journals and cash receipt
24 journals, and in many instances there was
25 no idea of the source of funds deposited or

1 funds disbursed. As to ten specific
2 subsidiary ledgers which Mr. Campbell
3 isolated for specific analysis, numerous
4 problems were found, including insufficient
5 funds to cover checks and numerous
6 discrepancies within the records, such as
7 the total shown on a subsidiary ledger
8 provided by Mr. Motley may differ from the
9 total amount of checks provided by Mr.
10 Motley, which may differ from the amount of
11 checks which apparently cleared.

12 The evidence will show you that a
13 review of the bank statements for the time
14 period show 11 overdraft charges, the
15 accrual of over \$600 in interest, the
16 assessment of activity charges for which
17 there appear to have been no corresponding
18 deposits to cover them, and as to six of
19 those specific subsidiaries analyzed by Mr.
20 Campbell, the fact that Mr. Motley was out
21 of trust in the amount of \$11,675.48.

22 In short, the evidence will show
23 you that as to the trust account for that
24 period, Mr. Motley did not operate his
25 trust account in accordance with the

1 provision of Canon 9.

2 The evidence that the Bar will
3 present to you will be in the form of
4 testimony by Ms. Steele, Mr. Campbell, and
5 documentary exhibits.

6 CHAIRMAN CUSTIS: Mr. Gregory?

7 MR. GREGORY: Mr. Chairman,
8 members of the panel of the Board, my name
9 is Roger Gregory. I represent Victor A.
10 Motley, the attorney whose license to
11 practice law in Virginia stands before you
12 as the respondent to these charges.

13 I believe when you hear the
14 evidence, it will be uncontradicted that
15 there is no evidence that Mr. Motley took
16 any funds from any client, didn't steal any
17 funds, and that he didn't revert any funds
18 for any inappropriate use.

19 Yes, there will be evidence that
20 he did not handle the trust account
21 properly, in terms of all the balances and
22 checks. I'm not going to say that he did,
23 because he didn't. But, when you hear the
24 evidence, this is not a case as alleged
25 here that Mr. Motley is a criminal, he

1 engaged in fraud, he --

2 CHAIRMAN CUSTIS: Mr. Gregory, I
3 want to get this clear. There is not a
4 specific direct allegation that he is, in
5 fact a criminal. The word crime is used in
6 the misconduct provision in the
7 disjunctive, along with other unlawful
8 acts. You continue to make reference that
9 everybody is pointing the finger to your
10 client as a criminal. We are not.

11 MR. GREGORY: Well, I can only
12 read the plain language of what it says.
13 It says, crime, wrongdoing, deceit and
14 fraud.

15 CHAIRMAN CUSTIS: Mr. Gregory,
16 that is absolutely correct.

17 MR. GREGORY: All of those
18 intentional. I believe there will be no
19 evidence that my client intentionally did
20 any wrongdoing.

21 This is a case that started with
22 a complaint by Ms. Steele, as to a real
23 estate closing. Ms. Steele was upset for
24 one reason. The lady who she came to deal
25 with, Ms. Gray -- Mr. Motley didn't bring

1 them together. They had already made their
2 agreements to assume that loan. Ms. Steele
3 was anxious to make this assumption. She
4 wanted it done and almost at any cost. She
5 agreed. They had already decided, in terms
6 of this lady would assume the mortgage, the
7 note. She was aware that this lady came to
8 the closing with no money. A real estate
9 person told her, I wouldn't close. She
10 decided, I want to close, apart from Mr.
11 Motley. That's what she wanted. She's
12 here because the lady she trusted and dealt
13 with, didn't pay her all of the money. How
14 is that Mr. Motley's fault?

15 A client has a right, I know, and
16 the evidence will be that in a perfect
17 world people come to closings -- I agree,
18 this was a case where a person said, Mr.
19 Motley, don't close this thing, all the
20 money is not here. Ms. Steele wanted to
21 close. And, so much so, they even agreed,
22 if Ms. Gray was here to testify -- They
23 agreed that the lien that was on her
24 property of about \$3,000 -- Really she
25 shouldn't have gotten any money, because a

1 clean deal would have been an assumption
2 and taken over that judgment. But, she
3 wanted money, so she said, no. I will sign
4 an agreement that if the creditor comes
5 after you, I will reimburse you, but I want
6 some money out of this transaction now. I
7 want to close. I want this house sold so I
8 can move into another house. Mr. Motley
9 told her, I have a check that's for \$1,000.
10 It's a personal check. It's not certified.
11 It's out of state. She decided, I want to
12 go forward. She gave Ms. Gray her keys.
13 Not Mr. Motley. She turned them over. She
14 moved out of the house. She let Ms. Gray
15 move in. That's the deal she wanted.

16 Now she comes here and says Mr.
17 Motley ought to be put on the rack because
18 the person I dealt with, Ms. Gray, didn't
19 come through. That's the choice she made.
20 That was what Mr. Motley told her. She
21 doesn't have the money. I don't care. She
22 was supposed to get that at closing --
23 \$2,000 had been paid -- But, \$1,317 -- What
24 she got was \$1,800. More than she was
25 required. She was supposed to get \$2,000,

1 and the other in a note for \$2,055. If you
2 subtract out her portion for attorney's
3 fees and grantor fees, it comes up to
4 \$1,300. Mr. Motley gave her more than she
5 was entitled to, based on what Ms. Gray
6 paid. The balance of it was Ms. Gray's
7 responsibility. Not Mr. Motley's.

8 Now Ms. Steele is coming in here
9 and saying we're going to discipline the
10 lawyer because Ms. Gray didn't give her her
11 money.

12 I say this with all due respect,
13 I'm sorry it happened, but that's the deal
14 she made. They were already together.
15 They had put that deal together. As a
16 matter of fact, they didn't even come to
17 Mr. Motley. The real estate agency said,
18 well, if you all want to go forward --

19 Again, the Bar alleges that there
20 was no Sale of Contract. That's normally
21 done by a realtor. That's why the Bar
22 never investigated Ms. Gray. They don't
23 want that side of the story. Ms. Steele
24 decided on her own, I want to get rid of
25 this house if it means signing this thing

1 and taking money that's less, I want it
2 closed. I say a client has a right to do
3 that if they want. That's their bargain.
4 This is still America. If a client says,
5 look. They're supposed to bring \$2,000,
6 and the lawyer says it's not here, I don't
7 care. Go ahead and put it to record. I'll
8 trust them to pay me later. There's
9 nothing in the law that says that can't be
10 done if that's what the client wants.
11 That's what Ms. Steele wanted, in terms of,
12 go for it.

13 Mr. Motley did what she wanted.
14 Ms. Steele and Ms. Gray agreed on that.
15 That's the evidence.

16 This other part that Mr. Hirsch
17 opened up about Mr. Motley's trust
18 account -- You're going to find that most
19 of the money is accounted for, because he
20 didn't pull his own fee out. But, you
21 won't see any situation where he's taken
22 anyone's money. Not one client's monies
23 were not paid to them appropriately.

24 This is a case, again, where a
25 lawyer did not do everything necessarily

1 correct, in terms of a trust account. You
2 will see that it is not the best practice.

3 Again, as far as the evidence of
4 this real estate transaction, he did not
5 violate these DRs at this level. I believe
6 this is not the case that has been
7 burlesqued to you and has charged, and has
8 been so-called investigated two-tiered and
9 delayed, and all of these things coming
10 before you.

11 I believe when you hear all of
12 the evidence you'll find that the nature
13 and extent of this case is trying to be
14 puffed up to make it look bigger. That's
15 exactly what it is.

16 This is Ms. Steele's deal she
17 made. I assume she's going to tell you the
18 truth, and I think she will, but that's
19 what she agreed to. Ms. Gray just didn't
20 pay. That's probably why she's not here
21 now. She doesn't want to have to pay the
22 rest of it.

23 Thank you.

24 CHAIRMAN CUSTIS: Mr. Hirsch?

25 MR. HIRSCH: Let me go ahead and

1 introduce to the record the following
2 exhibits:

3 Exhibit A is the certification
4 and notice from the clerk of the
5 disciplinary system.

6 Exhibit B is the complaint of
7 Evelyn J. Davis Meade, now Steele, without
8 enclosures.

9 Exhibit C is the response of Mr.
10 Motley, dated June 14, 1996.

11 Exhibit D is a letter dated
12 December 9, 1996, from Mr. Gregory to Mr.
13 Campbell with attachments. Those
14 attachments are Exhibit 2, a statement of
15 account, Exhibit 3, a deposit ticket for
16 \$3,026.27 and three checks: \$350.00;
17 \$1,200; and \$750, respectively. Exhibit 4
18 is three checks in the amounts of \$319.80;
19 \$125; and \$105.20, respectively, and
20 Exhibit 5, a deposit ticket showing a
21 \$1,000 deposit.

22 All of those exhibits are
23 attached to Exhibit D.

24 Exhibit E is an itemization of
25 amount financed in the Motley loan.

1 Exhibit F is a HUD-1 settlement
2 statement dated February 15, 1996.

3 Exhibit G is a Deed of Assumption
4 dated February 15, 1996, recorded February
5 20, 1996.

6 Exhibit H is a Deed of Trust note
7 in the amount of \$3,366.78, dated February
8 15, 1996.

9 Exhibit I is a Deed of Trust note
10 and Deed of Trust in the amount of
11 \$2,055.83, dated February 15, 1996, the
12 trust having been recorded on a date shown
13 as February 20, 1996.

14 Exhibit J is a document entitled
15 "Notice."

16 Exhibit K is a lender assumption
17 statement and related forms.

18 Exhibit L is a \$1,000 check from
19 Nathaniel Battle and two bank notices.

20 Exhibit M is a receipt from the
21 respondent for \$800.

22 Exhibit N is a notice from the
23 lender dated March 21, 1996, to Ms. Gray.

24 Exhibit P is a cashier's check in
25 the amount of \$1,500, dated May 21, 1996.

1 Exhibit Q is a document dated May
2 28, 1996.

3 Exhibit R is a letter dated June
4 6, 1996, to the Mortgage Payment Division.

5 Exhibit S is a fax cover sheet,
6 dated June 19, 1996.

7 Mr. Chairman, the respondent has
8 made objections to Exhibits T and U. I
9 think we've already covered the same bases
10 in the motions that were heard
11 preliminarily. Are we at a point where the
12 objections to these exhibits have been met
13 already, or are they still under
14 consideration?

15 CHAIRMAN CUSTIS: They will be
16 under consideration.

17 MR. HIRSCH: Okay.

18 Exhibit T are the bank statements
19 for the dates June 30, 1995, through July
20 11, 1996.

21 Exhibit U is a multiple exhibit
22 entitled investigative analysis of ten
23 subsidiaries.

24 In Exhibit U, there are ten
25 double-lettered exhibits.

1 AA is in the name of Myrtle
2 Cooper.

3 BB is in the name of Beryl,
4 B-E-R-Y-L Phillips.

5 CC is in the name of Hatchett.

6 DD is in the name of Mary Green.

7 EE is entitled of 3100 Duryea,
8 D-U-R-Y-E-A Place.

9 FF is in the name of Marsha
10 Latney Settlement.

11 GG is in the name of Geri Jones.

12 HH is in the name of Mathis.

13 II is in the name of Talbert.

14 JJ is in the name of Greenhouse.

15 All of those double-lettered
16 exhibits are part of Exhibit U.

17 Exhibit V is a reconstructed
18 subsidiary for the Meade, now Steele,
19 closing.

20 I would offer all of those
21 exhibits for entry.

22 CHAIRMAN CUSTIS: Mr. Gregory,
23 are there any objections?

24 MR. GREGORY: Yes. My objections
25 are so filed.

1 CHAIRMAN CUSTIS: Overruled.

2 These will be admitted, as
3 numerated by the Bar.

4 MR. HIRSCH: May the Bar proceed?

5 CHAIRMAN CUSTIS: Please.

6 MR. HIRSCH: I will call as my
7 first witness, Evelyn Steele, the
8 complainant.

9 Mr. Chairman, where would you
10 like Ms. Steele to sit? We have a chair
11 there, but I don't think everyone would be
12 able to see her. She could just sit where
13 she is, at counsel table.

14 CHAIRMAN CUSTIS: It's fine with
15 the panel, if it's okay with Mr. Gregory.

16 Mr. Gregory, do you have any
17 objection to that?

18 MR. GREGORY: That's fine with
19 me.

20 MR. HIRSCH: Do we have the
21 distribution of all the exhibits?

22 THE CLERK: I have them.

23 MR. HIRSCH: The exhibits to
24 which the objections were held, need to be
25 distributed.

1 THE CLERK: Yes, sir.

2

3 EVELYN DAVIS STEELE, introduced
4 on behalf of the Bar, first being duly sworn,
5 testified as follows:

6

7 DIRECT EXAMINATION

8 BY MR. HIRSCH:

9 Q Would you state your name for the
10 record, please?

11 A My full, current, legal name is
12 Evelyn Davis Steele.

13 Q You were formerly --

14 A Evelyn Joyce Meade Davis.

15 Q You are the complainant in this
16 matter?

17 A Yes, sir.

18 Q All right. Was there a written
19 contract between you and Ms. Gray for the sale of
20 your house?

21 A No.

22 Q All right. How did you -- How
23 did Mr. Motley get involved in the transaction? How
24 did he become the attorney?

25 A He was retained by the realtor

1 who closed.

2 Q All right. Let me take you to
3 the hearing date. Excuse me. The closing date. Do
4 you recall the closing date?

5 A Yes, I do.

6 Q What is the date?

7 A February 15, 1996.

8 Q All right. Now, on the date of
9 the closing, what did you expect to happen?

10 A I expected for the closing
11 attorney --

12 MR. GREGORY: Objection to the
13 relevance as to what her expectations are.
14 The question is what was said and done.

15 CHAIRMAN CUSTIS: Sustained.

16 BY MR. HIRSCH: (Continuing)

17 Q All right. On February 15, 1996,
18 what did you expect Ms. Gray to provide for you, if
19 anything, relative to the transaction?

20 A Initially, she was to provide
21 \$4,000 for the closing. I was advised that she only
22 had half of that amount.

23 Q When were you advised of that, in
24 relation to the closing?

25 A A couple of days prior. It might

1 have been the day before.

2 Q Okay.

3 A I recall that the weather was
4 bad. We had a snow storm the night before, or either
5 two nights before. I believe it was during that
6 time.

7 I was told she didn't have the \$4,000. I'm
8 not sure how I was advised. It might have been
9 through the realtor, but it was not through Mr.
10 Motley, because I had never had the opportunity to
11 meet him until the 15th, when we went into his
12 office.

13 Q Okay. As a result --

14 A I believe the realtor called to
15 let me know it was still going to take place.
16 Otherwise, I wasn't going to go because everything
17 was shut down.

18 Q As a result --

19 A As a result, we went to the
20 closing, and --

21 Q Let me ask the question.

22 A Okay.

23 Q As a result of your learning that
24 only \$2,000 was going to be brought to closing, did
25 you make any agreement relative to the money?

1 A I don't recall.

2 Q Okay. So, on February 15, 1996,
3 you had the closing. Correct?

4 A Yes.

5 Q Who was present?

6 A Myself, Ms. Gray and Mr. Motley.

7 Q All right. Do you recall whether
8 Ms. Gray brought any money to the closing?

9 A She did not.

10 Q Had you expected Ms. Gray to
11 bring money to the closing?

12 A Yes, I did.

13 Q How much had you expected her to
14 bring?

15 A \$2,000.

16 Q All right. What was your
17 understanding was to have occurred with respect to
18 the balance -- The difference between the \$2,000 and
19 \$4,000 you expected her to bring?

20 A The balance was going to be
21 written into a note.

22 Q Okay. Was that done, to your
23 knowledge?

24 A Yes, it was.

25 Q Okay. Now, since Ms. Gray

1 appeared on the closing date without any money, how
2 was the fact that she had no money at closing solved,
3 if it was?

4 A She was to bring half. No. She
5 was to bring one quarter of the amount of the half
6 the next day to Mr. Motley. That would have been the
7 16th.

8 MR. HIRSCH: All right. Do we
9 have a set of exhibits I could use for the
10 witness?

11 THE CLERK: Sure.

12 CHAIRMAN CUSTIS: Would you be
13 kind enough to show Mr. Gregory.

14 MR. HIRSCH: He's got a set.

15 CHAIRMAN CUSTIS: Okay. I just
16 wanted him to see that they were the same
17 set.

18 Okay, sir. Go ahead.

19 BY MR. HIRSCH: (Continuing)

20 Q Would you please turn to Exhibit
21 F, as in Frank? Look at the bottom left figure on
22 line 303.

23 A Okay.

24 Q Is that the \$4,000 fee you were
25 referring to?

1 MR. GREGORY: Objection.

2 Leading. It speaks for itself.

3 CHAIRMAN CUSTIS: Sustained. Get
4 her to explain the statement.

5 MR. HIRSCH: Right.

6 BY MR. HIRSCH: (Continuing)

7 Q You mentioned that Ms. Gray was
8 to bring a fourth of some amount. Would you explain
9 what you meant by that?

10 A The initial amount that she was
11 to give me was \$4,000.

12 Q Right.

13 A I was advised that she could only
14 provide \$2,000.

15 Q Right.

16 A When we got to the closing, she
17 only had -- Well, she indicated that she could only
18 get \$1,000.

19 Q Okay.

20 A But, she did not have that at
21 that time.

22 Q Okay.

23 A She was to bring that the next
24 day.

25 Q All right. Did you agree to

1 that?

2 A Yes, I did.

3 Q Okay. Why did you agree to that?

4 A I trusted her.

5 Q Okay. And, on the closing date,
6 did you sign any documents?

7 A Yes, I did.

8 Q Did you sign that document that's
9 in front of you there? Is that your signature on the
10 second page?

11 A Yes, it is.

12 Q All right. Did Mr. Motley
13 explain this document to you?

14 A Yes, he did.

15 Q What did he explain this document
16 to be?

17 A It was my understanding that it
18 was a contract. I now know that it wasn't. There's
19 a difference between a contract and a settlement
20 statement.

21 Q Okay. Did Mr. Motley offer any
22 explanation for the \$4,000 figure I asked you about
23 previously?

24 A I don't recall.

25 Q Okay. What was your

1 understanding of that figure?

2 A Of the \$4,000?

3 Q Yes.

4 A That that was the amount that the
5 purchaser was to have at the closing.

6 Q Did you know the amount that you
7 were supposed to get out of the closing?

8 A I presumed it was \$4,000. That
9 was the agreed amount.

10 Q That's the amount that you
11 thought you were going to get out of the closing?

12 A Yes. But, I knew that it
13 wouldn't be that day.

14 Q All right. You then signed a
15 deed, did you not? Granting the property to Ms.
16 Gray?

17 A A Deed of Trust?

18 Q A Deed of Assumption.

19 A Yes.

20 Q Okay. Now, would you go to
21 Exhibit H, please. Did you sign that document?

22 A Yes, I did.

23 Q What was your understanding of
24 this document?

25 A This copy is pretty bad.

1 CHAIRMAN CUSTIS: Excuse me.

2 What did you say?

3 THE WITNESS: This copy is not
4 very clear.

5 BY MR. HIRSCH: (Continuing)

6 Q Did you owe Ms. Gray \$3,366?

7 A No, I didn't. I believe this is
8 the amount that was due on a note that I had. Well,
9 not a note.

10 I had put windows on the property, and that
11 was the amount that I was paying for those windows.

12 Q Okay. When you put the windows
13 on your house, did you finance it? Did you get a
14 judgment against you?

15 A It was financed.

16 Q Did the creditor sue you at any
17 point?

18 A No.

19 Q To your knowledge, did you have a
20 judgment against your property at the time you sold
21 it to Ms. Gray?

22 A No, I did not.

23 Q Okay. Do you recall whether you
24 signed a Deed of Trust, in addition to this Deed of
25 Trust note?

1 A The Deed of Trust meaning what?

2 Q Look at the middle of the page
3 there. It says, this note is secured by a Deed of
4 Trust of even date. I'm asking you whether you
5 actually signed the Deed of Trust?

6 A Yes, I did.

7 Q Do you recall signing the Deed of
8 Trust?

9 A Yes, I do.

10 Q You do? Okay. On February 15,
11 1996, did you receive any money?

12 A No, I did not.

13 Q Okay. Let me ask you to go to
14 Exhibit J.

15 A Where it says, notice?

16 Q Correct. That's your signature
17 again, I take it?

18 A Yes.

19 Q Can you tell us why you signed
20 this document? What you thought this meant?

21 A Ms. Gray would assume the
22 existing mortgage on the property.

23 Q There's a two year time frame in
24 there. Can you explain why that's in there?

25 A As far as the mortgage company is

1 concerned?

2 Q I'm just looking at the
3 statement.

4 A Oh. Okay. Okay. I requested
5 that after -- within two years, or by a two-year
6 period, that she obtain her own financing on the
7 property.

8 Q Was there a purpose for that?

9 A Yes. So that I would be released
10 from all responsibility in the event she defaulted on
11 the loan.

12 Q Do you know who prepared this
13 document?

14 A No, I don't.

15 Q Did Mr. Motley explain this to
16 you?

17 A I don't recall.

18 Q Do you know whether you signed
19 that the date of closing?

20 A I did sign it on the date of
21 closing.

22 Q Okay. Now, did you receive any
23 money from Mr. Motley?

24 A At all?

25 Q Yes.

1 A Yes, I did.

2 Q All right. Was it more than one
3 amount?

4 A Yes.

5 Q What was the first amount?

6 A \$319, and I believe 80 some
7 cents.

8 Q Okay. Do you recall the
9 circumstances under which you received that sum?

10 A Yes.

11 Q Tell us what they were.

12 A Mr. Motley contacted me and let
13 me know that he had received \$1,000 from Ms. Gray and
14 that he had forwarded it to the mortgagor and that
15 the balance that remained was \$319.80.

16 Q Okay.

17 A And that I could pick that up.

18 Q And, did you in fact, pick it up?

19 A Yes, I did.

20 Q All right. At any time, do you
21 recall Mr. Motley asking your permission to close the
22 transaction?

23 A Yes, I do.

24 Q When did that occur?

25 A It would have been after he

1 received the \$1,000.

2 Q Okay. And, when Mr. Motley asked
3 for your permission to close the transaction, what
4 did you understand that to mean?

5 A That the papers that we had
6 signed on the date of February 15th would be sent to
7 the mortgagor, and that the ownership of the house
8 was going to be awarded to Ms. Gray.

9 Q Okay. And, you agreed to that?

10 A Yes, I did.

11 Q At the time that you agreed to
12 that, had you been paid any money?

13 A No.

14 Q How were you going to be paid the
15 money, if at all?

16 A That's when I was to pick up the
17 \$319. Then the other \$1,000 had been -- She was
18 supposed to give that to him by the 15th, I believe,
19 of May.

20 Q What did you understand the
21 source of the \$319?

22 A That that was -- What do you
23 mean? Where it came from?

24 Q Yes.

25 A That was the \$1,000 that was part

1 of what was supposed to be the \$2,000 she was
2 supposed to have had on the 15th.

3 Q So, that was the \$4,000 that you
4 mentioned before?

5 A Right.

6 Q So, when you got the \$319, what
7 was your understanding that had happened with the
8 additional thousand?

9 A I was to get that shortly
10 thereafter.

11 Q The second thousand?

12 A Right.

13 Q All right. All right. And, what
14 was your understanding with respect to the remaining
15 additional \$2,000?

16 A She was supposed to have paid
17 that by, I think it was the 15th of May.

18 Q Was that the Deed of Trust note?

19 A Yes.

20 Q So, at the time that you agreed
21 to quote, close the transaction, did you consider the
22 money you were supposed to get, taken care of one way
23 or the other?

24 A Yes, I did.

25 Q Okay. Now, you said that you

1 received more than one amount from Mr. Motley. What
2 was the second amount that you received?

3 A \$1,500.

4 Q All right. Do you recall the
5 circumstances in which you received that money?

6 A Ms. Gray called me to let me know
7 that she was taking a certified check, in my name
8 only, to Mr. Motley's office. Shortly thereafter,
9 Mr. Motley called me to let me know she had brought
10 the check, or the cashier's check to his office.

11 Q Okay.

12 A And, that I could pick that up.

13 Q Okay. Did you go pick it up?

14 A Not right then.

15 Q What happened?

16 A By that time, I had contacted

17 Mark Fleckenstein --

18 MR. GREGORY: Objection to the
19 relevance of the question.

20 MR. HIRSCH: It's pretty
21 relevant, Mr. Chairman.

22 CHAIRMAN CUSTIS: I think she can
23 say what she did.

24 BY MR. HIRSCH: (Continuing)

25 Q Go ahead.

1 A By that time, I had contacted
2 Mark Fleckenstein.

3 Q Who is Mark Fleckenstein?

4 A He's an attorney. A real estate
5 attorney.

6 Q Why did you contact Mark
7 Fleckenstein?

8 A From the time that we went to the
9 closing, through April, I had not received funds, as
10 I was supposed to have, and I was not comfortable
11 with what was happening with my case. One of my
12 co-workers gave me the name of the realtor who I
13 talked to, and --

14 Q Let's not get into what other
15 people said.

16 Tell me what you did and why you did it.

17 A I did it because I was not
18 getting anywhere with Mr. Motley or with the closing.
19 And, the house -- The property had been turned over
20 to Ms. Gray's name, so, I couldn't get things with
21 her. And, I knew that I needed someone to explain to
22 me what I could do and what had happened.

23 Q Okay. Did you obtain that
24 explanation?

25 A Yes, I did.

1 Q All right. Did you pick up the
2 second sum of money?

3 A The final \$2,000?

4 Q No. You picked up \$319, you
5 said. And, then there was a second sum, you said?

6 A Okay. The \$1,500.

7 Q Did you pick it up?

8 A Yes, I did. But, it wasn't until
9 after I met with Mr. Fleckenstein.

10 Q Okay.

11 A The reason for that was because
12 when Mr. Motley called me and told me that Ms. Gray
13 had brought \$1,500, he told me that he was due
14 another \$200, and that I could write him a personal
15 check to satisfy that amount.

16 After I hung up the phone with him I asked
17 myself, why am I paying \$200 more on something, when
18 I haven't received half of the full amount that I was
19 supposed to get to begin with. That's when I
20 contacted Mr. Fleckenstein, and he told me that I
21 didn't have to --

22 MR. GREGORY: Objection.

23 CHAIRMAN CUSTIS: Sustained.

24 Don't say what somebody said to
25 you, other than what Mr. Motley said to

1 you.

2 THE WITNESS: Yes, sir.

3 BY MR. HIRSCH: (Continuing)

4 Q Did Mr. Motley discuss hazard
5 insurance, or home owner's insurance with you?

6 A No.

7 Q Okay. Would you go to Exhibit K.
8 Tab down to the third sheet of paper with Assignment
9 of Trust across the top. Got it? Go down half of
10 the page and you'll see the heading, Agreement. The
11 second paragraph below that says, as related to
12 hazard insurance. Do you see that?

13 A Yes.

14 Q Now, that's your signature at the
15 bottom. Right?

16 A Yes, it is.

17 Q Would you tell me your
18 understanding with respect to what was to happen with
19 your home owner's insurance coverage on your house?
20 If you need to, you can read the paragraph to refresh
21 your memory.

22 A My understanding was that she was
23 to purchase her own hazard insurance for the
24 property.

25 Q To your knowledge, did she do

1 that?

2 A I don't know.

3 Q Okay. All right. Did Mr. Motley
4 discuss with you what to do with your escrow fund
5 balance with the lender?

6 A No.

7 Q In that same tab, if you'll go
8 back to the first page you'll see in the middle of
9 the page, escrow/impound balance \$413.40. Do you see
10 that?

11 A Yes.

12 Q Was there any discussion with
13 Mr. Motley about that sum of money?

14 A I don't recall.

15 Q Okay. Did you know that you had
16 some money to pay your insurance?

17 MR. GREGORY: Objection.

18 Leading. Assuming facts not in evidence.

19 MR. HIRSCH: It is in evidence.

20 CHAIRMAN CUSTIS: I think she can
21 answer that. Overruled.

22 MR. HIRSH: (Continued)

23 Q Please answer the question.

24 A No, I didn't.

25 Q Okay. Would you please turn to

1 Exhibit Q. That has the date May 28, 1996 at the
2 top?

3 A Yes.

4 Q Is that your signature there?

5 A Yes, it is.

6 Q Do you know who prepared that
7 document?

8 A Mr. Fleckenstein.

9 Q All right. What is your
10 understanding of what was trying to be accomplished
11 here, when you signed it?

12 A The amount that was due from the
13 first half of the \$2,000 to be satisfied. Since I
14 had only received \$319, -- The \$1,653 is the other
15 part of that \$2,000.

16 Q Is it the first half or the
17 second half, or do you know?

18 A I'm not sure.

19 Q Okay. But, it was trying to
20 clear up what somebody owed you?

21 A Yes.

22 Q Look at the next exhibit.

23 Exhibit R. A letter dated June 6, 1996.

24 Is this your letter?

25 A Yes, it is.

1 Q All right. Can you tell us why
2 you -- what the circumstances were that led you to
3 write this letter?

4 A May I read it?

5 Q Please.

6 A Okay. Let me have your question
7 again, please.

8 Q What were the circumstances that
9 led to the writing of this letter to the lender?

10 A I was contacted by the mortgagor
11 that --

12 MR. GREGORY: Objection.

13 CHAIRMAN CUSTIS: She can state
14 what precipitated her signing this. She's
15 not stating what any third party said.

16 MR. GREGORY: I thought she was
17 about to say what the person told her.

18 CHAIRMAN CUSTIS: Don't say what
19 the third party said. Just say what
20 precipitated you to sign it.

21 BY MR. HIRSCH: (Continued)

22 Q Please answer the question.

23 A I was contacted by the mortgagor
24 that the mortgage was in arrears. I needed to --

25 MR. GREGORY: Objection.

1 CHAIRMAN CUSTIS: Overruled.

2 MR. GREGORY: Is that not
3 hearsay?

4 CHAIRMAN CUSTIS: It's not --
5 She's not offering -- It's not being said
6 for the truth of what the purpose is
7 behind the writing of this letter.

8 MR. GREGORY: So, it's not being
9 said that that's true, as to the status of
10 the matter.

11 CHAIRMAN CUSTIS: He hasn't asked
12 that question. He's asked what
13 precipitated the writing of this letter.
14 She can say what precipitated it. She was
15 contacted by the mortgagor because she was
16 in default, and as a result of it, she
17 wrote a letter.

18 THE WITNESS: The mortgage was in
19 arrears. I was contacted by the mortgage
20 company. They told me I needed to get it
21 straightened out. I was trying to obtain a
22 piece of property, and I had to maintain
23 the mortgage since it was an assumed
24 mortgage and they had not received any
25 insurance information, and --

1 MR. GREGORY: Objection. It's
2 hearsay as to what they had not received.
3 How could that not be hearsay?

4 CHAIRMAN CUSTIS: That's what
5 precipitated the writing of this letter.
6 Whether or not that's true, she is stating
7 why she wrote this letter. I'm not saying
8 the information she got from that third
9 party is true. That's what precipitated
10 her to write this letter, and that's the
11 whole purpose, since it is the exhibit.
12 It's not the truth of the underlying
13 statement.

14 MR. GREGORY: As long as it's not
15 being substituted for the truth of what
16 she's saying the existence of the documents
17 that the mortgagor has.

18 THE WITNESS: The purpose of my
19 writing the letter was to let the mortgagor
20 know that I had all intentions of
21 clarifying the circumstances and the
22 reasons they had not received their money.

23 BY MR. HIRSCH: (Continuing)

24 Q Why who had not received their
25 money?

1 A The mortgage company.

2 Q Had the mortgage company
3 contacted you to tell you that they had not received
4 it?

5 A Yes, they had.

6 Q Had they done that on more than
7 one occasion?

8 A Yes, they had.

9 Q Did they do that by letter?

10 A By letter and by phone. However
11 they could get in touch with me.

12 Q How often did they contact you
13 about that?

14 A More times than I --

15 CHAIRMAN CUSTIS: Mr. Hirsch,
16 what difference does it make?

17 MR. HIRSCH: Because it goes to
18 the harm the client suffered because Mr.
19 Motley didn't take care of his duties.

20 THE WITNESS: They contacted me
21 several times. I guess every time your
22 name comes up on the computer, they call
23 you. Whether it's a real person or a
24 machine.

25 They want to hear from somebody.

1 I would say at least three times during a
2 month they would contact me.

3 BY MR. HIRSCH: (Continuing)

4 Q Okay. Did you receive a copy of
5 what's marked as Exhibit N? Did you get a copy of
6 that letter?

7 A Yes, I did.

8 Q From whom?

9 A From the mortgage company.

10 Q Did that letter -- Did you take
11 any action as a result of receiving that letter?

12 A Yes, I did.

13 Q What did you do?

14 A I contacted Ms. Perlene Thomas
15 and I let her know -- I believe another part of the
16 reason why I wrote that letter. I let her know that
17 I was trying to purchase another piece of property,
18 and I asked that they just be patient until I could
19 contact everybody and resolve this, and get Ms. Gray
20 to have or Mr. Motley send the insurance information.
21 They were waiting for the assumption package, and I
22 don't know what all that included, but I know --

23 MR. GREGORY: Same objection.

24 BY MR. HIRSCH: (Continuing)

25 Q Who was waiting for the

1 assumption package?

2 A The mortgage company.

3 MR. GREGORY: Again, same
4 objection. It's hearsay.

5 CHAIRMAN CUSTIS: Try to remember
6 that.

7 THE WITNESS: Okay.

8 They needed the assumption
9 package.

10 BY MR. HIRSCH: (Continuing)

11 Q Well, the letter that you
12 identified here is a copy that you received that told
13 you what they needed?

14 A Right.

15 Q Did you contact Mr. Motley?

16 A Yes, I did.

17 Q From February 15, 1996, to --
18 What's the last document we have here?

19 A June 6, from my letter.

20 Q I see. Did you contact
21 Mr. Motley about these problems at any time?

22 A Yes, I did.

23 Q How did you contact him?

24 A By telephone.

25 Q Did you reach him?

1 A Yes, I did.

2 Q What was the nature of your
3 discussion?

4 A I let him know that I could not
5 do anything about the property, because it had been
6 turned over to her name in the city records. I let
7 him know that the mortgage company had advised me
8 that they had not received the assumption package
9 which included insurance information as well as
10 things that I think I'm not really sure of.

11 Q Like the letter?

12 A Right. And, that he needed to
13 send those documents.

14 Q Did he give you a response?

15 A Yes, he did.

16 Q What was his response?

17 A I believe he told me that he had
18 sent them.

19 Q Okay.

20 A But, they hadn't received them.

21 MR. GREGORY: I object to the
22 second part.

23 CHAIRMAN CUSTIS: Sustained. She
24 doesn't know whether they received them or
25 not.

1 MR. HIRSCH: Right.

2 BY MR. HIRSCH: (Continuing)

3 Q Did you learn -- Did you get
4 further communication from the lender?

5 A Yes, I did.

6 Q After that communication with
7 Mr. Motley?

8 A Yes, I did.

9 Q About what was missing, or not
10 missing?

11 A Yes, I did.

12 Q Did they say things were missing?

13 A Yes, they did.

14 Q Did you contact Mr. Motley about
15 that?

16 A Yes, I did.

17 Q How many times did you contact
18 Mr. Motley?

19 A More times than I can remember.

20 Q What was the response the next
21 time that you contacted him? What was he telling
22 you?

23 A He wasn't telling me anything.

24 Q Was he helpful to you?

25 A No, he was not.

1 Q How did you finally determine how
2 to solve the problem?

3 A I contacted Mark Fleckenstein and
4 he let me know exactly what I needed to do. That I
5 could --

6 CHAIRMAN CUSTIS: Don't say what
7 he told you.

8 THE WITNESS: Okay.

9 BY MR. HIRSCH: (Continuing)

10 Q As a result of receiving legal
11 advice, what did you decide to do, if anything?

12 A That's when I wrote the letter to
13 the mortgage company, --

14 Q Okay.

15 A -- and tried to get a hold of Ms.
16 Gray, --

17 Q Okay.

18 A -- and get the additional funds
19 and send the mortgage company. I believe I sent the
20 mortgage company what they needed so they would stop
21 calling me as far as the mortgage goes.

22 Ms. Gray agreed to meet with me at
23 Mr. Fleckenstein's office to keep from doing a Deed
24 in Lieu of Foreclosure or some other things that Mr.
25 Fleckenstein suggested.

1 Q Is that a result of May 28, 1996?
2 The paragraph you looked at?

3 A Yes.

4 Q Is that when it resulted?

5 A Yes.

6 Q Okay. So, how much have you been
7 paid as a result of selling your house to Ms. Gray?

8 A \$1,800, I believe. I was paid
9 \$319.80 and \$1,500.

10 Q That is it?

11 A That is it.

12 Q Did you ever -- You didn't
13 receive any money on the note signed by Ms. Gray?

14 A No. That she was supposed to
15 have paid by May 25?

16 Q Did you take any steps to obtain
17 that money or to enforce the Deed of Trust?

18 A No, I didn't.

19 Q Why?

20 A I was tired and aggravated and so
21 frustrated that I felt like as long as she stayed in
22 the house and kept up her mortgage so Suncoast would
23 never call me again, I'd go on with my life.

24 Q When had Ms. Gray taken
25 possession of the house?

1 A She took possession of the house
2 in February, or the first part of March because the
3 closing was in February. I'm not sure that she was
4 ready to move that day or within that period, but it
5 would have either been --

6 Q But she was in the house?

7 A Yes.

8 Q Where were you living?

9 A I was living with my sister.

10 Q Okay. Did you incur any
11 attorney's fees from having to go see
12 Mr. Fleckenstein?

13 A Yes, I did.

14 Q How much?

15 A I believe \$500.

16 Q Okay. Were you able to
17 subsequently purchase another home?

18 A Yes.

19 Q Okay.

20 MR. HIRSCH: Would you answer the
21 questions of Mr. Gregory, over here or the
22 panel, please?

23 THE WITNESS: Yes, sir.

24 CHAIRMAN CUSTIS: Mr. Gregory,
25 you may cross-examine.

CROSS-EXAMINATION

BY MR. GREGORY:

Q Ms. Steele, Mr. Hirsch asked you was there a judgment against your home because of the work that was done on your windows, and you said yes or no?

A No. It was not a judgment.

Q Do you know what a mechanic's lien is?

A No, I don't.

Q But the work was done to the windows to your home. Correct? And, you were paying it. Right?

A I was paying it.

Q But you had not paid it off?

A No.

Q Is that correct?

A Yes.

Q To make it clear, these windows are attached to the house. Correct?

A Right.

Q And, when you heard from the mortgage company, you were surprised that Ms. Gray wasn't paying the mortgage, weren't you?

A Yes.

1 Q She should have been paying the
2 mortgage, as you do after you close, right?

3 A Yes.

4 Q And, you gave her the keys to
5 move in, did you not?

6 A Yes, I did.

7 Q And, the note you said she was
8 supposed pay was \$2,055 by the 15th, correct?

9 A Yes.

10 Q Mr. Motley never told you that he
11 was going to pay it, did he? The note? Did
12 Mr. Motley tell you that he was going to pay the
13 note, or did Ms. Gray say she was going to pay the
14 note? Who promised to pay the note by the 15th?

15 A I don't recall.

16 Q You don't know who was supposed
17 to pay you by the 15th?

18 A I presumed that the money was
19 supposed to go through Mr. Motley, since he was the
20 closing attorney.

21 Q But, it was going to be paid by
22 Ms. Gray. Correct?

23 A As far as I knew, she was to give
24 him the money.

25 Q And, you trusted her. Correct?

1 Didn't you testify to that?

2 A Yes.

3 Q Okay. Now, did Mr. Motley tell
4 you that you can keep your insurance intact? The
5 hazard insurance that you had?

6 A Keep it intact to what?

7 Q Make sure that the house was
8 covered by insurance. Did you have discussions about
9 the hazard insurance?

10 A I don't recall.

11 Q You don't?

12 A No.

13 Q Do you recall signing that
14 document? That exhibit that said that you
15 could -- I believe it's referred to as the
16 purchaser's wishes to retain --

17 CHAIRMAN CUSTIS: Is this an
18 exhibit, sir?

19 MR. GREGORY: Yes, it is.

20 CHAIRMAN CUSTIS: Do you know
21 which one it is?

22 MR. GREGORY: I think it's
23 Exhibit K.

24 CHAIRMAN CUSTIS: Are you
25 referring to the assumption statement?

1 MR. GREGORY: Yes.

2 THE WITNESS: What was your
3 question?

4 BY MR. GREGORY: (Continuing)

5 Q Do you recall -- Does that
6 refresh your memory about discussions you had about
7 hazard insurance?

8 A I don't recall a discussion about
9 it.

10 Q You don't deny it, you just don't
11 recall it?

12 A Right. I just don't recall it.

13 Q Now, the first question that was
14 asked of you was, was there a written contract? You
15 said Mr. Motley didn't bring you two together. You
16 and Ms. Gray were working together and trying to work
17 this out, obviously before you met Mr. Motley,
18 correct?

19 A We had a realtor.

20 Q A realtor?

21 A Yes.

22 Q Your realtor never drew up a
23 sales contract?

24 A I don't recall seeing one.

25 Q Matter of fact, you said your

1 realtor retained Mr. Motley, correct?

2 A Yes.

3 Q You didn't retain him, right?

4 A No, I didn't.

5 Q Ma'am, do you know why there's no
6 amount for real estate commission on the HUD-1?

7 CHAIRMAN CUSTIS: That is Exhibit
8 F.

9 MR. GREGORY: Thank you, Mr.
10 Chairman.

11 BY MR. GREGORY: (Continued)

12 Q Do you know why there's no
13 commission there?

14 A Hold on.

15 Q Exhibit F. I'm sorry.

16 A This is a document that
17 Mr. Motley had for us at the closing.

18 Q Right. So, you don't know why
19 there's no real estate commission?

20 A I would say it's because she
21 wasn't there.

22 Q I see. Did you sign that?

23 A Yes, I did. How he got this
24 document -- What he got his information from --

25 Q Well, I haven't asked another

1 question, unless you're still explaining that answer.

2 A Yes.

3 Q I didn't mean to cut you off. Go
4 ahead. You can explain it.

5 A He had to get this information
6 from something, which I presume would have been a
7 contract, but I never saw the contract.

8 I thought that this was a contract.

9 Q Now, Mr. Hirsch asked you did you
10 know anything about your escrow balance. Did you
11 know what expenses you owed?

12 A I didn't think I owed any
13 expenses.

14 Q Okay. Does it say anything about
15 attorney's fees for you that you have to pay?

16 A No.

17 Q It doesn't?

18 A Are you talking about this
19 statement here?

20 Q Yes.

21 CHAIRMAN CUSTIS: Mr. Gregory, in
22 fairness to her, show her what you're
23 referring to on the statement. The
24 statement speaks for itself, but she
25 obviously doesn't understand it.

1 THE WITNESS: 1107 here?

2 Attorney's fees?

3 BY MR. GREGORY: (Continued)

4 Q No. 1105.

5 A It's \$100.

6 Q All right. \$100. That was for
7 you to pay?

8 A Excuse me?

9 Q That was part of your expense?

10 A Yes.

11 Q Do you see on the other page that
12 you had prorated the mortgage payment to \$186?

13 Look on line 213.

14 A Okay. I see that.

15 Q Do you see also on the page that
16 you had recording fees to pay? \$13, \$165, \$495, \$4?
17 So, you had expenses to pay too, in this closing, did
18 you not?

19 A Yes. I presumed that that was
20 all taken care of from the \$1,000 check that she
21 wrote that bounced.

22 Q Okay. Tell me this. You
23 received from Mr. Motley \$1,819, correct?

24 A Yes. The total after all of this
25 was --

1 Q Correct?

2 A Yes.

3 Q Okay. Now, based on what you've

4 testified to, you said that Mr. Motley received

5 \$1,000 from Ms. Gray, and then you said \$1,500,

6 correct?

7 A Yes.

8 Q That's \$2,500, total. Correct?

9 A Yes.

10 Q And, you said that you received a

11 total of \$1,800?

12 A Yes. The final total that I

13 received was \$1,819.

14 Q You also received \$2,055 in a

15 note, did you not?

16 A No.

17 Q Didn't you say she wrote a note

18 to you to pay by the 15th?

19 A She didn't pay that.

20 Q I know she didn't pay it. But,

21 didn't you receive that note from her?

22 A Well, yes. She signed a note.

23 Q Okay. So, that's \$2,055 as a

24 note, and \$1,819 you received, correct?

25 A \$1,819.

1 Q Correct. Do you have a
2 calculator there? That's \$3,864. Is that right?

3 CHAIRMAN CUSTIS: 74, I believe.

4 MR. GREGORY: Well, it can't be
5 74, because it was \$1,800.

6 CHAIRMAN CUSTIS: It was
7 \$1,819.80, Mr. Gregory.

8 MR. GREGORY: Right. Plus
9 \$2,055.

10 CHAIRMAN CUSTIS: Right. That
11 comes to \$3,874.80

12 MR. GREGORY: I'm sorry. I
13 thought you said \$3,774.80. What is it?

14 CHAIRMAN CUSTIS: \$3,874.80.

15 MR. GREGORY: Thank you.

16 BY MR. GREGORY: (Continuing)

17 Q And, according to this statement,
18 how much were you supposed to get from this?

19 A \$4,000.

20 Q No. Look at 603 to seller.

21 A Which page?

22 Q The first page.

23 A \$3,373.23.

24 Q But, you got \$3,832.

25 CHAIRMAN CUSTIS: \$3,874.80.

1 BY MR. GREGORY: (Continuing)?

2 Q How about \$500 more than that
3 amount that you received.

4 A If you count the note, yes.

5 Q That's what you agreed to, did
6 you not?

7 A I agreed to getting the money on
8 the note.

9 MR. GREGORY: No further
10 questions.

11 CHAIRMAN CUSTIS: Mr. Hirsch, any
12 redirect?

13 MR. HIRSCH: No questions.

14 BOARD MEMBER GOULD: I'm
15 confused. The \$2,055 -- When did you --
16 When was that note executed?

17 THE WITNESS: That was during the
18 closing.

19 BOARD MEMBER GOULD: Is there an
20 exhibit?

21 MR. HIRSCH: It's Exhibit --

22 CHAIRMAN CUSTIS: It's under
23 Exhibit I.

24 BOARD MEMBER GOULD: Thank you.

25 CHAIRMAN CUSTIS: Mr. Dezio?

1 BOARD MEMBER DEZIO: Ms. Steele,
2 when did you first understand that you
3 would only get -- I'm referring to Exhibit
4 F. The settlement statement. If you would
5 get Exhibit F in front of you, please. The
6 bottom right-hand line. Line 603. It
7 says, cash to seller. \$3,373.23.

8 THE WITNESS: I never understood
9 that that was the amount I was supposed to
10 get.

11 BOARD MEMBER DEZIO: When did you
12 understand the first time that you had
13 money at the lender's in an escrow account
14 that the lender said should be paid to you,
15 based upon the exhibit that is before that
16 you signed? The one that refers to the
17 insurance, which is Exhibit K, I believe.

18 THE WITNESS: Two days ago.

19 BOARD MEMBER DEZIO: Have you
20 ever been told why you were to pay the
21 recording taxes for the deferred purchase
22 money Deed of Trust? When I say deferred
23 purchase money Deed of Trust, I'm referring
24 to the \$2,055 Deed of Trust that the
25 purchaser agreed to pay you later.

1 Do you know that you paid the
2 recording cost for that?

3 THE WITNESS: No.

4 BOARD MEMBER DEZIO: Do you know
5 that the amount that was paid on the Deed
6 of Trust to the clerk was an amount
7 different from what Mr. Motley collected
8 from you at closing as a part of this
9 closing statement?

10 THE WITNESS: One more time?

11 BOARD MEMBER DEZIO: I'll try to
12 explain it. I apologize. I'm being a
13 little vague. When Mr. Motley recorded the
14 deed that transferred the property from you
15 to the purchaser, he recorded that deed.
16 He also recorded the Deed of Trust -- The
17 mortgage that said if the purchaser doesn't
18 pay, you have the right to have her
19 property sold, to get your \$2,055. He took
20 that instrument to the clerk's office. He
21 gave the clerk money to pay a fee.
22 According to the closing statement on the
23 second page in the right-hand column --
24 Exhibit F. You will see a couple of
25 figures. Did you ever know that that is

1 not the amount that he paid? That he paid
2 some lesser amount to the clerk?

3 THE WITNESS: No.

4 BOARD MEMBER DEZIO: We're not
5 talking about big dollars. You never knew
6 that?

7 THE WITNESS: No.

8 BOARD MEMBER DEZIO: Look at
9 Exhibit, I believe it's I. It's the note
10 that you signed for \$3,366.78.

11 MR. HIRSCH: H. Exhibit H.

12 BOARD MEMBER DEZIO: Exhibit H?
13 Would you tell me again why you
14 signed a note promising to pay Ms. Gray
15 money?

16 THE WITNESS: I wasn't paying
17 Ms. Gray money. I was continuing to pay
18 that bill. It's Federal Diversified.
19 It's --

20 CHAIRMAN CUSTIS: Is that for the
21 windows?

22 THE WITNESS: Yes, but I wasn't
23 paying her directly.

24 BOARD MEMBER DEZIO: You weren't
25 paying her directly?

1 THE WITNESS: No.

2 BOARD MEMBER DEZIO: Why did you
3 sign the note to her?

4 THE WITNESS: Because that was my
5 bill. It was a bill that I had created,
6 and --

7 BOARD MEMBER DEZIO: That was
8 your understanding?

9 THE WITNESS: Yes.

10 BOARD MEMBER DEZIO: Is there
11 anything in Exhibit H that says if you pay
12 the window expense that you didn't have to
13 pay Ms. Gray?

14 THE WITNESS: Not that I recall.

15 BOARD MEMBER DEZIO: Is there
16 anything in that document that you know of
17 that sets forth your understanding that if
18 you paid the window bill that you didn't
19 have to pay Ms. Gray?

20 THE WITNESS: One more time?

21 BOARD MEMBER DEZIO: My concern
22 is, I read the note.

23 THE WITNESS: Yes.

24 BOARD MEMBER DEZIO: It says to
25 me, you promised to pay Ms. Gray money.

1 What you're telling me is that
2 you really didn't have to pay Ms. Gray
3 money. You had to pay somebody else. You
4 were going to pay the window people.

5 THE WITNESS: Right.

6 BOARD MEMBER DEZIO: My concern
7 is, did you ever understand that this
8 doesn't say that?

9 THE WITNESS: No, I didn't.

10 BOARD MEMBER DEZIO: I have no
11 more questions. Thank you.

12 CHAIRMAN CUSTIS: Gentlemen,
13 maybe these questions are premature. Maybe
14 Mr. Motley is going to answer them, but
15 this \$3,366.78, was it a judgment? Was it
16 a filed mechanic's lien? What was it?
17 Nobody has told us. I don't know. Mr.
18 Gregory? Mr. Hirsch? Am I supposed to
19 know?

20 MR. GREGORY: It's Mr. Hirsch's
21 exhibit.

22 MR. HIRSCH: This comes from
23 Mr. Motley's file. The only thing that we
24 know is what Mr. Motley has provided to us
25 in his answer.

1 CHAIRMAN CUSTIS: Well, I've read
2 that, too.

3 MR. HIRSCH: He refers to it as
4 judgment, which of course when we get to
5 argument, I'll have something to say about
6 that. In his letter to the Bar, which is
7 Exhibit C, in the fourth paragraph, he also
8 mentions that Ms. Davis has signed, Ms.
9 Davis being Ms. Steele, has signed a note
10 regarding a judgment docketed against him.

11 CHAIRMAN CUSTIS: I've got to
12 assume from this it's an off-set note. I
13 guess this will be explained when
14 Mr. Motley testifies, Mr. Gregory?

15 RESPONDENT MOTLEY: For clarity,
16 what it was, as she said, she owed for the
17 windows. She was going to pay for the
18 windows. But, as insurance to Ms. Gray,
19 that she paid for the windows, she signed
20 that note and it was a Deed of Trust.

21 The figures you have for the Deed
22 of Trust on the HUD-1 were two Deeds of
23 Trust to be recorded. Two deeds. Not one
24 Deed of Trust. Two Deeds of Trust to be
25 recorded, the --

1 CHAIRMAN CUSTIS: Mr. Motley --

2 RESPONDENT MOTLEY: -- the one
3 where Ms. Gray owed and the one where Ms.
4 Steele owed.

5 CHAIRMAN CUSTIS: -- you are
6 going to testify that it --

7 RESPONDENT MOTLEY: I just wanted
8 to --

9 CHAIRMAN CUSTIS: -- that it was
10 off-set?

11 RESPONDENT MOTLEY: Right. It
12 was a security.

13 CHAIRMAN CUSTIS: Any further
14 questions?

15 BOARD MEMBER DEZIO: No.

16 BOARD MEMBER DAVIDSON: No.

17 BOARD MEMBER DECORLETO: No.

18 BOARD MEMBER GOULD: No

19 questions.

20 CHAIRMAN CUSTIS: Nor do I.

21 Gentlemen, it's 12:30. Mr.
22 Hirsch, how long is your next witness going
23 to be?

24 MR. HIRSCH: Mr. Campbell will be
25 my next witness, and he will be a long

1 witness.

2 I need to also tell you that Ms.
3 Long is going to be back at some point for
4 her motion on the other matter, if we could
5 work her in at some point? She's not here
6 right now. So, we've got a lot to do.

7 CHAIRMAN CUSTIS: I don't
8 anticipate her matter taking very long,
9 sir.

10 Let's try to be back here -- I
11 don't know what the closest place to get a
12 bite to eat is. Let's try to be back here
13 at ten minutes after one.

14 (The hearing recessed for lunch
15 at 12:32 p.m. Another matter was heard,
16 and the hearing reconvened at
17 1:44 p.m.)

18 MR. HIRSCH: I'm going to go
19 ahead and call my next witness.

20 CHAIRMAN CUSTIS: You may.

21 MR. GREGORY: As the Court ruled
22 on our motion -- our objection to this
23 whole trust account area, which we raised
24 the constitutional question, which had been
25 denied.

1 I guess we could stipulate to the
2 testimony of Mr. Campbell as exhibits that
3 would have been in and are now in.

4 CHAIRMAN CUSTIS: You will
5 stipulate his testimony?

6 MR. GREGORY: We'll stipulate his
7 testimony as exhibits. As to his
8 testimony, in terms that he will say that
9 that's what he found, in terms of the
10 evidence.

11 MR. HIRSCH: The Bar will not
12 agree to that stipulation. You need the
13 explanation of the witness to explain the
14 exhibits. Otherwise, they're going to be
15 meaningless to you.

16 CHAIRMAN CUSTIS: Okay.

17
18 LACY O. CAMPBELL, introduced on
19 behalf of the Virginia State Bar, first being duly
20 sworn, testified as follows:

21
22 DIRECT EXAMINATION

23 BY MR. HIRSCH:

24 Q Would you please state your name?

25 A Lacy O. Campbell. I'm an

1 investigator with the Virginia State Bar.

2 Q And, Mr. Campbell, did you
3 investigate the Motley matter of 96-032-2446?

4 A Yes, sir. I did.

5 Q In your investigation, did you
6 interview Mr. Motley?

7 A Yes, I did.

8 Q Did you ask Mr. Motley whether or
9 not he disbursed money in the Meade transaction
10 according to the HUD-1?

11 A Yes. I asked him that, and he
12 said he did.

13 Q He said he did?

14 A Yes.

15 Q Did you ask Mr. Motley whether
16 he'd sent the lender evidence of hazard insurance and
17 the assignment of escrow reserves?

18 A He said he did not.

19 Q All right. Did you ask
20 Mr. Motley whether he had a subsidiary ledger or an
21 equivalent for the Meade transaction?

22 A He said he did not.

23 Q Did not. Did you ask Mr. Motley
24 what he did with the \$1,000 check that he received in
25 the transaction?

1 A He stated he placed it in his
2 trust account.

3 Q All right. Now, did you conduct
4 a review of Mr. Motley's trust account?

5 A Yes, I did.

6 Q What trust account did you
7 review? What account number is it?

8 A It's Consolidated Bank and Trust
9 Company, customer number 1004135100.

10 Q What were the inclusive dates of
11 your examination?

12 A July 1, 1995, through June 30,
13 1996.

14 BOARD MEMBER DEZIO: Excuse me,
15 Mr. Hirsch. Is Mr. Campbell using my
16 exhibits? May I have those so I can
17 follow?

18 MR. HIRSCH: Yes. I'm sorry.

19 CHAIRMAN CUSTIS: Will you state
20 those inclusive dates again, Mr. Campbell?

21 THE WITNESS: July 1, 1995,
22 through June 30, 1996.

23 BY MR. HIRSCH: (Continuing)

24 Q All right. Now, what records did
25 you review?

1 A Mr. Motley supplied me with cash
2 receipts journals and cash disbursement journals,
3 certain copies of checks, not all the checks, and
4 monthly bank statements for that period of time. And
5 subsidiary ledgers for the clients in that period of
6 time.

7 Q Was this in compliance with the
8 subpoena duces tecum?

9 A Yes. We subpoenaed those
10 documents from Mr. Motley.

11 Q Did your investigation find that
12 the submission was complete?

13 A No. It was not complete.

14 Q In what sense is that?

15 A The subsidiary ledgers were
16 incomplete.

17 MR. GREGORY: I would object to
18 that. The ledgers speak for themselves.
19 If they are in evidence, it's for this
20 board to determine completeness.

21 CHAIRMAN CUSTIS: He can explain
22 what the exhibits say, sir.

23 MR. GREGORY: I agree, but in
24 terms of the best evidence, these exhibits
25 ought to be exhibits.

1 I think he's referring to
2 documents not in evidence.

3 CHAIRMAN CUSTIS: I understand
4 that the best evidence is the actual
5 documents, but he can certainly explain
6 what that document says.

7 MR. GREGORY: But, the documents
8 ought to be before the panel.

9 CHAIRMAN CUSTIS: They have been
10 admitted into evidence.

11 MR. GREGORY: I thought he named
12 a series of things, in terms of beyond just
13 exhibits. I thought.

14 MR. HIRSCH: The question was
15 whether the submission in the face of the
16 subpoena duces tecum was complete, and if
17 not, why? What was missing?

18 CHAIRMAN CUSTIS: He can
19 certainly answer that question,
20 Mr. Gregory.

21 BY MR. HIRSCH: (Continuing)

22 Q Go ahead sir.

23 A The subsidiary ledgers were
24 submitted. They were incomplete. The cash
25 disbursement journals that were submitted were

1 incomplete. The cash receipts journals, or bank
2 deposit slips that I assume were used as cash
3 receipts journals were incomplete, as they did not
4 show who the funds were received from.

5 Q Now, in your examination of the
6 trust account for that time frame, did you try to
7 audit that account?

8 A Yes, I did.

9 Q Could you do so?

10 A No, sir. I could not.

11 Q Why not?

12 A Because the documents supplied to
13 me were incomplete. All of the checks were not
14 submitted. Only copies of certain checks were
15 submitted, --

16 MR. GREGORY: I object to this
17 testimony in terms of how this witness got
18 a foundation of what's not in existence.

19 CHAIRMAN CUSTIS: Overruled, sir.

20 BY MR. HIRSCH: (Continuing)

21 Q Okay. Go ahead.

22 A The cash receipts disbursement
23 journal was written in such a way that I could not
24 use it in an audit of the entire trust account.

25 Q All right. But, you did analyze

1 the account to some extent?

2 A Yes, I did.

3 Q What did you decide to do with
4 it? How did you approach it?

5 A I went through the documents
6 furnished to me. I selected ten cases that
7 Mr. Motley had represented, ten clients that he had
8 represented. Most of these -- These ten were the
9 ones that showed the greatest amount of money he had
10 received in that period of time, and I did an
11 examination of each of these subsidiary ledgers.

12 MR. HIRSCH: Let me refer
13 everyone to Tab U, which is entitled,
14 Investigative analysis of ten subsidiaries.

15 BY MR. HIRSCH: (Continued)

16 Q Let's go to Tab AA. You've
17 reviewed this. Are most of these set up in a similar
18 fashion?

19 A Yes. There are one or two
20 exceptions, and I will try to explain the exceptions
21 for you.

22 Q All right. Well, let's look in a
23 little more detail at AA, which is the Myrtle Cooper
24 one.

25 First of all, tell us who prepared the

1 first sheet that's shown there.

2 A I prepared that.

3 Q You did?

4 A Yes.

5 Q Let's quickly run through it.

6 The second sheet -- What is that?

7 A The second sheet, excluding the
8 adding machine tape in the middle, is a copy of the
9 subsidiary ledger supplied to me by Mr. Motley. The
10 adding machine tape in the middle is what I did.

11 Q That's your work?

12 A That's my work. I attached it to
13 that.

14 Q There's a third sheet. Who
15 prepared that?

16 A That's a settlement sheet. That
17 was supplied to me by Mr. Motley.

18 Q All right. And, then you have a
19 couple more pages. What do they represent?

20 A All right. The next three
21 pages -- At the top is a copy of the cash receipts
22 journal or deposit slip, which does not denote who it
23 was received from -- The funds. And, the others are
24 copies of checks supplied to me by Mr. Motley.

25 Q So, the materials that you

1 received in Myrtle Cooper came from Mr. Motley? How
2 did you know to match these checks and deposit slips
3 with this subsidiary ledger?

4 A It was all stapled together.

5 Q Was that the case in each one of
6 these that we're going to get to?

7 A Yes.

8 Q Okay. So, Mr. Motley provided
9 you each one of these like that. Stapled together?

10 A Yes.

11 Q Let's go back to the first page.
12 Explain to us how you set this page up. I think this
13 is sort of similar to the rest of the cases.

14 A On the first page under Myrtle
15 Cooper, it denotes that on August 10, 1995, \$6,750
16 was deposited into the trust account. That figure
17 was taken from the subsidiary ledger furnished by
18 Mr. Motley, plus the settlement sheet, plus I went to
19 the bank statement and verified that there was a
20 deposit for that amount of money at that time, on
21 that date.

22 Q I take it you have the deposit
23 slip as well?

24 A Yes. I have the deposit slip as
25 well.

1 Q Okay. Keep going on the first
2 page.

3 A The next entries are numbers of
4 checks, amount, issued and cleared. These are the
5 check numbers that were furnished to me by Mr.
6 Motley.

7 The second is the amount of the checks.

8 The third is the date on the check. Where
9 it says, issued.

10 And, the last column, cleared -- I checked
11 with the bank statements to show that that check
12 cleared the bank on that date.

13 MR. GREGORY: Excuse me. What
14 exhibit is the bank statement?

15 MR. HIRSCH: T.

16 MR. GREGORY: What page of T?
17 Which page?

18 MR. HIRSCH: Well, all of those
19 are bank statements.

20 MR. GREGORY: You're referring --
21 Are we going to go through all of this? I
22 want to know what document he's referring
23 to. I looked at the --

24 CHAIRMAN CUSTIS: What statement
25 are you referring to, as to the Cooper

1 matter, Mr. Campbell?

2 THE WITNESS: Which bank
3 statement?

4 CHAIRMAN CUSTIS: Yes.

5 THE WITNESS: It would be the
6 bank statement from July 31, 1995, to
7 August 31, 1995.

8 CHAIRMAN CUSTIS: Mr. Gregory, I
9 think you can figure out which bank
10 statement he's looking at if you look at
11 the dates of the checks.

12 MR. GREGORY: All right. Is that
13 the first page?

14 CHAIRMAN CUSTIS: It's the third
15 page of that series.

16 MR. GREGORY: The third page?
17 Because, mine aren't numbered.

18 CHAIRMAN CUSTIS: It's the third
19 item down on the third page.

20 MR. GREGORY: Okay.

21 CHAIRMAN CUSTIS: May I ask one
22 question before we go further? Is trust
23 account and escrow account synonymous?

24 THE WITNESS: Yes, sir. I'm
25 sorry.

1 BY MR. HIRSCH: (Continuing)

2 Q What's the third section? I
3 guess it would be this long list.

4 A The third section is where I went
5 through the bank statements for the period that money
6 was outstanding, of checks that had been written but
7 had not cleared the bank. I went through the bank
8 statements, and these were the dates that there was
9 an outstanding balance in the trust account that was
10 less than the check outstanding that was to cover it.

11 CHAIRMAN CUSTIS: So, on
12 7-31-1995, that trust account was \$209.74
13 short, to cover any outstanding check that
14 might have been drawn? Is that correct?

15 THE WITNESS: Let me use another
16 date.

17 MR. HIRSCH: Why don't we just
18 explain the whole sheet, and then go back
19 up and use the examples. Okay? I think it
20 might be better that way.

21 BY MR. HIRSCH: (Continuing)

22 Q So, the section you just talked
23 about, -- That's where he's out of trust?

24 A He's out of trust on each of
25 these dates.

1 BOARD MEMBER GOULD: Which part
2 of the sheet?

3 THE WITNESS: The escrow account
4 monthly bank statement indicates the
5 following balances on the dates indicated.

6 On these dates, he was out of
7 trust. There was not enough money in the
8 bank to cover the outstanding checks for
9 this client.

10 BY MR. HIRSCH: (Continuing)

11 Q So, as an example, on 8-15-95,
12 you show \$189?

13 A Yes.

14 Q What is that?

15 A That is the amount the bank
16 statements showed on 8-15-95. There was a balance in
17 the bank account of \$189.

18 Q All right.

19 A On August 10, 1995, \$6,750 was
20 deposited into the trust account. Only one check had
21 not cleared. That check was issued on June 28, 1995,
22 but the remaining checks totaling \$6,550 was
23 outstanding. There was only \$189 in the bank to
24 cover it.

25 Q I see. All right. So, go down

1 and explain the last section you've got there at the
2 bottom.

3 A During this time frame of this
4 audit of this particular subsidiary ledger, the
5 account for June, July, August, September and October
6 was credited with interest of \$239.99.

7 Q And, these are the amounts that
8 you show there?

9 A Yes. For each one of these
10 months.

11 Q Okay.

12 A The last two in that same time
13 frame of June 30, 1995, through October 31, 1995,
14 there were 6 overdrafts charged to the account of
15 \$150 and three activity charges totaling the account
16 \$21.

17 Q What is the significance of the
18 charges, other than one of those is an overdraft?

19 A It's to further show that --

20 Q Were there monies that you saw
21 deposited to cover those charges?

22 A No. I saw no money deposited to
23 cover those charges.

24 Q Okay. Let's go back and try to
25 give some examples that are related, so we can learn

1 how to read this.

2 A Let's use the date of August 23,
3 1995.

4 Q All right.

5 A On that date, according to the
6 bank statement, there was an \$18 balance in the trust
7 account, or escrow account.

8 Q Okay. That's shown in the middle
9 part of your page?

10 A Yes. That's shown in the middle
11 part of the page.

12 Q All right.

13 A On that date, the top three
14 checks had already cleared the bank.

15 Q Okay.

16 A On the top portion. Which leaves
17 four other checks to clear the bank.

18 Q Okay.

19 A Those four checks totaled
20 \$3,832.55. They were outstanding. And, on the
21 August 23, there was only \$18 in the bank to cover
22 that amount of money.

23 Q Okay.

24 CHAIRMAN CUSTIS: Go through that
25 again?

1 THE WITNESS: On the 23rd of
2 August there was \$18 in the bank account --
3 The trust account. The escrow account. If
4 you will look up at the top of the page --

5 CHAIRMAN CUSTIS: Where?

6 THE WITNESS: Where it says,
7 checks, amount, issued and cleared.

8 CHAIRMAN CUSTIS: Okay.

9 THE WITNESS: Okay? Exclude the
10 top three checks, because prior to August,
11 18, they had already cleared.

12 BY MR. HIRSCH: (Continued)

13 Q By August 23?

14 A By August 23, they had already
15 cleared.

16 MR. HIRSCH: Stop right there.

17 Do you see that?

18 CHAIRMAN CUSTIS: All of them on
19 the right hand side had cleared?

20 THE WITNESS: Those checks had
21 cleared the account before August 23.

22 MR. HIRSCH: They had already
23 gone through.

24 CHAIRMAN CUSTIS: Okay.

25

1 BY MR. HIRSCH: (Continued)

2 Q So, that leaves the other four?

3 A The other four have not cleared
4 the bank. They have been issued, but they have not
5 cleared the bank. They total \$3,832.55.

6 CHAIRMAN CUSTIS: Wait a minute.
7 One was only issued in August. The other
8 three were issued in October, November and
9 January of the following year.

10 THE WITNESS: You must remember
11 that \$6,750 was deposited into the account.

12 MR. HIRSCH: On August 10.

13 THE WITNESS: On August 10. That
14 \$3,832.55 is what remains in the account.
15 What should remain in the account is that
16 \$6,750.

17 BOARD MEMBER DECORLETO: May I
18 ask a question?

19 CHAIRMAN CUSTIS: Sure.

20 BOARD MEMBER DECORLETO: Are you
21 saying that these checks in this top
22 section are the only checks that should
23 have been drawn against Cooper?

24 THE WITNESS: They were the only
25 checks he supplied me.

1 MR. HIRSCH: Remember, they were
2 incomplete.

3 THE WITNESS: Those checks
4 totaled \$6,750.

5 So, to recap, \$6,750 was
6 deposited in the trust account on August
7 10, 1995. Those, prior to August 18, 1995.
8 The top three checks had cleared.

9 MR. HIRSCH: On August 23.

10 THE WITNESS: On August 23, the
11 top three checks had cleared. There should
12 have been \$3,832.55 remaining in the trust
13 account of the original \$6,750. And, in
14 fact, there was only \$18 in the trust
15 account.

16 BY MR. HIRSCH: (Continuing)

17 Q How does the interest figure into
18 that August 23, 1995, date?

19 A The trust account would be
20 further out of balance if that interest was not
21 credited to the account. That \$18 should have
22 been, would actually be a negative balance of
23 \$221.99.

24 MR. GREGORY: I object. The
25 witness is not only reading the documents,

1 but he's telling you what it should say.
2 Basically this witness is -- First of all,
3 he's not qualified at all.

4 CHAIRMAN CUSTIS: I think he's
5 very qualified.

6 MR. GREGORY: The record doesn't
7 reflect that, unless the Chairman knows the
8 person. No foundation has been laid.

9 CHAIRMAN CUSTIS: Are you
10 objecting to his testimony?

11 MR. GREGORY: I object to the
12 whole basis of it. There was no foundation
13 laid, unless I missed something. I didn't
14 hear any qualifications from him. He's
15 just really stating what these documents
16 say. Now he's telling you what the
17 documents should say, but don't.

18 CHAIRMAN CUSTIS: He's taken your
19 client's records and analyzed those
20 records, and put them in this order. He
21 certainly can explain or give us an
22 explanation as to what he has done. That's
23 what he's doing.

24 They are your client's records
25 that your client gave to the Bar.

1 MR. GREGORY: First of all, these
2 records came from the bank.

3 CHAIRMAN CUSTIS: Mr. Gregory,
4 they are your client's records. He created
5 the bank account. The bank account was
6 based upon his deposits. He gave the Bar
7 the checks, and --

8 MR. GREGORY: Well, what I'm
9 saying is --

10 CHAIRMAN CUSTIS: I want to be as
11 liberal as I can here, but these are your
12 client's records.

13 MR. GREGORY: I'm not arguing
14 with that. I'm just saying, first of all,
15 the record is bereft of any foundation of
16 expertise. I didn't hear any foundation
17 laid for this witness's expertise.

18 CHAIRMAN CUSTIS: I don't think
19 we need an expert.

20 MR. GREGORY: I think the Dauber
21 rule would apply. You can read these
22 documents yourself. That's the whole basis
23 for it, so he will not add anything to
24 them.

25 CHAIRMAN CUSTIS: He's explaining

1 what he did to determine that there was a
2 shortage, or that these accounts could not
3 audit them because they were insufficient;
4 That there was a shortage of funds in the
5 trust account.

6 MR. GREGORY: There's no
7 foundation laid that he has any expertise
8 in auditing anything.

9 CHAIRMAN CUSTIS: Overruled.

10 MR. GREGORY: I just want the
11 record to indicate that there's no
12 foundation in evidence.

13 CHAIRMAN CUSTIS: So noted.

14 MR. GREGORY: Thank you.

15 CHAIRMAN CUSTIS: Mr. Hirsch?

16 BY MR. HIRSCH: (Continued)

17 Q Why don't we try another date,
18 Mr. Campbell. Use a different example so we can
19 learn how to use this format. Pull another date.

20 A All right. Let's pull the date
21 of January 2, 1996. The date the \$450 check was
22 issued. After November 30, that was the only check
23 remaining outstanding.

24 Let's go back. I'm sorry. Let's go to the
25 last two checks. The \$1,300 check and the \$450

1 check. There was \$1,750 outstanding in the trust
2 account. Those checks had not cleared. On 11-28-95,
3 there was \$53 remaining in the trust account. The
4 trust account was out of trust \$1,697. He used those
5 dates.

6 Q It was actually out more, if you
7 add in the interest?

8 MR. GREGORY: I object to the
9 leading of the witness.

10 CHAIRMAN CUSTIS: Overruled.
11 BY MR. HIRSCH: (Continuing)

12 Q Let's go to the second page.
13 What does your investigation show about this --

14 BOARD MEMBER DECORLETO: Excuse
15 me. Can I take a step back to where we
16 were previously? I see that these checks
17 cleared on November 30, and January 2.
18 They were \$1,300 and \$450. Is that
19 correct?

20 THE WITNESS: Yes, ma'am.

21 BOARD MEMBER DECORLETO: However,
22 I see in here a balance on the 13th of
23 \$1,670. You're saying that that was
24 insufficient to cover it? Is that correct?
25 Do I understand you correctly?

1 THE WITNESS: No, ma'am. I went
2 back to 11-8. I started with that date,
3 and then I realized there was money to
4 cover it on that date for those two. If
5 you go back on 11-8-95, there was
6 insufficient funds. On 11-13, there was
7 insufficient funds of \$1,697 on that date.
8 On 11-13-95, the bank had \$1,670. There
9 were two checks outstanding, totaling
10 \$1,750.

11 BOARD MEMBER DECORLETO: I guess
12 what I don't understand is, you're saying
13 on 11-13, and I see these checks written
14 after that. I'm having trouble finding out
15 what --

16 THE WITNESS: We have to use the
17 date that they cleared, because the checks
18 could have been written and held by
19 Mr. Motley, and not sent. That's common in
20 real estate closings. So, we use the clear
21 date. The date it cleared. Well, that's
22 the date I use.

23 BOARD MEMBER DECORLETO: I'm
24 sorry. I still am not seeing the balance
25 in the account as of, let's say, the 29th

1 of November. Where is that? Am I missing
2 something?

3 THE WITNESS: It's not in here.
4 Because, on that date there was enough
5 funds in there to cover it. These dates
6 were selected dates.

7 BOARD MEMBER DECORLETO: These
8 are the exception dates?

9 THE WITNESS: These are the
10 exception dates.

11 BOARD MEMBER DECORLETO: I'm
12 sorry. Okay. I'm back.

13 THE WITNESS: These are the
14 out-of-trust dates.

15 BOARD MEMBER DECORLETO: Thank
16 you.

17 MR. HIRSCH: Are there any other
18 questions about the first page, before I go
19 on to the --

20 CHAIRMAN CUSTIS: Is the format
21 the same on each one of these?

22 THE WITNESS: It varies a little
23 bit from time to time. I will try to
24 explain it when it does.

25 BY MR. HIRSCH: (Continuing)

1 Q All right. Mr. Campbell, tell us
2 what your investigation showed about the second
3 sheet.

4 A The second sheet is a copy of the
5 subsidiary ledger supplied to me by Mr. Motley. The
6 adding machine tape in the middle -- It shows the
7 deposit of \$6,750.

8 Q Is that the top figure?

9 A It's the top figure. Where it
10 says deposited, 8-10-95. If you come down to the
11 next set of figures, it shows -- The ledger card
12 shows that there is --

13 Q By ledger card, you mean --

14 A I'm sorry. Subsidiary ledger and
15 ledger card is synonymous.

16 If you come to the next set of figures,
17 they are the copies of the checks Mr. Motley
18 furnished to me, and they totaled \$6,350.

19 Q So, is there a correlation
20 between his records and the checks actually written,
21 or is it the same total?

22 A No. No. The total after that is
23 different from what was deposited and what the ledger
24 card shows.

25 Q Using his records, would there

1 actually be money left over from this lady's account?

2 A There should be, yes. There
3 should be \$400 left over in her account.

4 Q But, you don't know that because
5 you --

6 A I have no idea.

7 Q The third sheet of paper,
8 entitled, Settlement, -- I think you said that came
9 from Mr. Motley. And, the deposit slip -- Does that
10 have any identification as to the source of those
11 funds?

12 A No. It does not.

13 Q Is that required by Canon 9?

14 A Yes, it is.

15 Q Do all of the checks show where
16 these monies are going and what transaction it
17 pertains to?

18 A It shows who the check was
19 written to, but it does not denote which case it was
20 written for.

21 Q As an example, the last two
22 checks were written to Mr. Motley himself. Do those
23 two checks show what cases they pertain to?

24 A No, they do not.

25 Q So, you have no way of knowing,

1 Mr. Campbell, whether these two checks actually go
2 with this file or not?

3 A No, I don't.

4 Q They were attached by Mr. Motley?

5 A They were attached by Mr. Motley.

6 Q Okay.

7 BOARD MEMBER GOULD: The last two
8 checks being \$1,300 and \$450?

9 MR. HIRSCH: Yes, ma'am.

10 MR. GREGORY: I'm sorry. I
11 thought the whole premise was, we'd know
12 because they were attached. Now, we don't
13 know whether it relates to this? I thought
14 that was the whole theory that he was
15 telling you he was out of trust for this
16 account, because we were assuming that they
17 relate. Now, when it comes to attorney's
18 fees --

19 CHAIRMAN CUSTIS: Mr. Gregory,
20 these are the records that your client
21 provided for this case.

22 MR. GREGORY: I'm just trying to
23 follow the theory. I thought the theory
24 was that they related to this. Now, we get
25 to attorney's fees, and we don't know

1 whether it relates or not. I mean, you
2 can't have your cake and eat it, too.
3 Either they are related, or they're not.

4 CHAIRMAN CUSTIS: They are
5 related to it in that your client says they
6 are related to it. The document, in and of
7 itself, does not say that it relates to it.

8 MR. GREGORY: It does not say
9 that?

10 CHAIRMAN CUSTIS: There's no
11 tracking, is what Mr. Campbell is saying.
12 He can't track it, based upon the
13 documentary evidence.

14 BOARD MEMBER DECORLETO: Am I
15 correct in my assumption that the \$1,300
16 and \$450 are in the right-hand column in
17 Mr. Motley's handwriting? Is that correct?

18 THE WITNESS: I don't know.

19 BOARD MEMBER DECORLETO: But,
20 those are the amounts, and these are the
21 checks that --

22 THE WITNESS: Yes.

23
24
25 BY MR. HIRSCH: (Continuing)

1 Q Mr. Campbell, in working with
2 these records, how did you treat figures like those
3 figures right there? The \$1,300 and \$450. Did you
4 just give him the benefit of the doubt that it
5 belonged there? What did you do?

6 MR. GREGORY: Excuse me. One
7 quick question so we don't have to go
8 through all of this again. I notice that
9 in this exhibit on the \$6,750, in mine, Mr.
10 Campbell's receipt sort of conveniently
11 covers up the middle of it.

12 CHAIRMAN CUSTIS: Mr. Gregory,
13 you can cross-examine him at a later time.
14 You can have your time.

15 MR. GREGORY: But --

16 CHAIRMAN CUSTIS: I don't know
17 what's under that. We don't know what's
18 under that.

19 MR. GREGORY: But in fairness,
20 don't you think it's not appropriate to
21 block out an exhibit?

22 CHAIRMAN CUSTIS: It's your
23 client's records. You can cross-examine at
24 the appropriate time.

25 MR. GREGORY: Okay.

1 CHAIRMAN CUSTIS: Mr. Gregory,
2 would you like to come forward, please?

3 This is the original of your
4 client's record. This is the exhibit you
5 are referring to.

6 MR. GREGORY: It looks like it's
7 cut off right here. This is the top. It
8 says, Myrtle Cooper.

9 CHAIRMAN CUSTIS: So, there's
10 nothing under that.

11 MR. HIRSCH: We were providing
12 the copy, Mr. Gregory, and you kept the
13 original.

14 CHAIRMAN CUSTIS: You had the
15 original, and you raised the issue as to
16 whether or not there was something under
17 that?

18 MR. GREGORY: I wanted them to
19 know that the question was --

20 CHAIRMAN CUSTIS: Mr. Gregory,
21 that's fine. Don't do that again this
22 afternoon.

23 MR. GREGORY: All right.

24
25 BY MR. HIRSCH: (Continuing)

1 Q Let's go to BB.

2 A BB is the file on Beryl Phillips.

3 Q All right.

4 A It indicates that on January 4,
5 1994, there was a deposit in the escrow account in
6 the amount of \$99,023.66. I was only given two
7 copies of two checks by Mr. Motley. Those checks are
8 reflected in the second portion. Check 4487 and
9 4492, for \$471.25, and \$200, which gives a total of
10 \$671.25. The first check, 4487 cleared on 9-26-95.
11 That's in the period that I did the audit. Check
12 4492 cleared on 9-28-95. So, from the period of
13 January 4, 1994, there should have been \$671.25
14 remaining in the trust account until those two
15 amounts cleared.

16 If you will look on August 23, 1995, there
17 is only \$18 in the trust account. There was not
18 enough money in the trust account to cover those two
19 checks, at any time, on any of these dates.

20 Q So, all of those checks shown in
21 the middle represent --

22 A The balance of the trust account
23 on those dates. He was out of trust on each of those
24 dates on this particular subsidiary ledger.

25 Q As to Beryl Phillips?

1 A As to Beryl Phillips.

2 In addition, during the time frame of
3 6-30-95, is when I started the audit, through
4 8-31-95, which was the end of the month. Prior to
5 the checks clearing, there was an interest credited
6 in the amount of \$227.40. In that same time frame,
7 there were five overdrafts totaling \$125, and one
8 activity charge totaling \$7.

9 Q As to the overdraft charges and
10 the activity charges, is there some overlap in these
11 pages?

12 A Yes. That would be overlapping
13 those pages on those overdrafts and activity charges.

14 But, I had to show on each of these what
15 the situation was on the subsidiary ledger --

16 Q During that time frame?

17 A -- even though they do overlap.

18 Q Okay.

19 A I took each on its own.

20 Q Let's go to the subsidiary
21 ledgers.

22 A That is a copy of the subsidiary
23 ledger.

24

25

1 MR. GREGORY: Mr. Chairman, I
2 don't want to interrupt Mr. Campbell, but
3 is it understood that I have a continuing
4 objection to all of this testimony for the
5 reasons stated previously on the record?

6 CHAIRMAN CUSTIS: Yes, sir. It
7 is.

8 MR. GREGORY: Thank you.

9 BY MR. HIRSCH: (Continuing)

10 Q Go ahead.

11 A That's a copy of the subsidiary
12 ledger furnished to me by Mr. Motley. The portion in
13 the middle is a copy of the adding machine tape that
14 I prepared. The top portion shows there was
15 \$99,023.66 deposited in the trust account. There was
16 no cash receipts journal for that. He did not supply
17 me with a cash receipts journal in that case. But,
18 on the right-hand side of the subsidiary ledger, you
19 will notice that there is an amount of \$99,023.66. I
20 verified that that amount was deposited on January 4,
21 1994 -- I did not verify it because I did not have a
22 bank statement, so I used these figures.

23 The second set of figures shows that the
24 ledger card -- If you add all of the amounts from the
25 ledger card, it totals \$99,003.66. There's a 20 cent

1 difference.

2 Q \$20?

3 A Yes. A \$20 difference.

4 Also, if you look at the ledger card, it
5 shows title insurance for \$471.25. Going back to the
6 original sheet, it shows that two checks --

7 Q Do you mean your first sheet?

8 A My first sheet. There are two
9 checks for \$200 and \$471.25. That's how I arrived at
10 the figure of \$671.25. Those checks cleared. After
11 August 23, 1995, there was \$18 in the trust account.

12 Also during that time frame, when I did
13 the audit, these checks cleared, which would be July
14 and August, there was interest credited in the amount
15 of \$227.40. There were five overdrafts for \$125, and
16 one activity charge of \$7.

17 Q Does the check number 4492, a
18 copy of which is in the back, appear on the
19 subsidiary ledger?

20 A There is no \$200 check back there
21 on the subsidiary ledger.

22 Q But, there is a \$200 figure
23 shown. Do you know what that is? In the middle
24 column?

25 A No. I don't know what that's

1 about. There is nothing to denote -- All there is is
2 a plus \$200. I have no way of knowing.

3 Q So, with the Beryl Phillips
4 matter, do the checks provided -- Do the records
5 indicate that the amount deposited and the amount of
6 the disbursements correlate, so that they are the
7 same?

8 A Except for \$20.

9 Q So, the answer is, no?

10 A They do not.

11 Q All right, let's go to Exhibit
12 CC.

13 A This sheet was set up the same as
14 the first two. It shows that on May 27, 1994, there
15 was two deposits made. One was \$66,366.70. The
16 other was for \$2,548.18. The total deposit on that
17 date was \$68,914.88. There were four checks
18 outstanding, totaling \$873.94. Again, if you'll go
19 to August 23, 1995, there are three checks
20 outstanding, counting all four of them outstanding,
21 totaling \$873.94. There was only \$18 in trust. It
22 was again, out of trust the difference between
23 \$873.94 and \$18.

24 In addition, in that period of July and
25 August, there were two credits of interest of \$209.74

1 and \$17.66, totaling 227.40. There were five
2 overdrafts of \$125, and one activity charge of \$7.

3 Like I said before, these overdraft charges
4 and activity charges are cumulative.

5 CHAIRMAN CUSTIS: One question.

6 We keep referring to the interest he was
7 getting. Was it an Iolta account?

8 THE WITNESS: I don't know, sir.

9 BY MR. HIRSCH: (Continuing)

10 Q Was there any indication, Mr.
11 Campbell, that any interest was paid out to the
12 Virginia Law Foundation, or anywhere else?

13 A No. The bank statements at the
14 end of each month says, interest credited, and
15 there's a figure.

16 MR. HIRSCH: The only
17 significance of the interest, as far as the
18 case is concerned, is that it amounts to a
19 larger out-of-trust figure than is stated,
20 if you add the interest back in.

21 BY MR. HIRSCH: (Continuing)

22 Q All right. If you look at the
23 subsidiary ledger, what is that date for your
24 investigation, Mr. Campbell?

25 A In this particular file,

1 Mr. Motley did not furnish a copy of the cash
2 receipts journal or a deposit ticket. I used the
3 figures in the right-hand column of the subsidiary
4 ledger of \$66,366.70, and \$2,548.18 as deposit
5 figures. I verified them with the bank statements
6 that they were deposited in the account. However, I
7 don't know where from. So, if you add those two
8 figures together, it shows on 5-27-94, \$68,914.88 was
9 deposited into the trust account. If you add the
10 subsidiary ledger amounts, it totals \$69,286.68.
11 There's a difference in the two figures.

12 Q So, in this case, did Mr. Motley
13 presumably disburse more money than he had received?

14 A Yes.

15 Q Does check number 4462 identify
16 what case it's related to?

17 A No, it does not.

18 Q How about check number 4494?

19 A No, sir. It does not.

20 Q Let's go to Exhibit DD.

21 CHAIRMAN CUSTIS: Mr. Hirsch, I
22 don't want to cut you off, but I assume DD
23 through the last seven accounts are going
24 to show something like what we've been
25 through on these first three accounts?

1 MR. HIRSCH: It will. I think
2 there's one case back here that's got a
3 little bit of a different twist, but they
4 are basically all the same thing.

5 CHAIRMAN CUSTIS: Can we just
6 have a general summary? We can go through
7 these now that we have the format and see
8 that they are out of trust.

9 Now, if there's a grievous one
10 back here that you think we should look
11 at -- Otherwise, I would ask, if it's all
12 right with you, that you have Mr. Campbell
13 summarize the remainder.

14 MR. HIRSCH: Sure. I think the
15 one that's different is the Geri Jones
16 case.

17 THE WITNESS: Yes. It's number
18 seven. GG.

19 MR. HIRSCH: Why don't you
20 summarize the rest of them first, before
21 you get to the different one, while we're
22 still on the same wave-length. Just give
23 us an overview of what we're seeing in all
24 of these things.

25

1 THE WITNESS: Well, in each of
2 these cases it shows that Mr. Motley was
3 out of trust, on numerous occasions, on
4 each of these clients. If you look at the
5 top figures, at the checks that were
6 pending, and look at the middle figures, it
7 will tell you how much money was in the
8 checking account, and that there was not
9 enough money to cover the checks. Then,
10 you add the bottom figures, which is the
11 interest credited, which brings it out of
12 trust even more. That's true in each one
13 of these, except that one.

14 Starting with each one of these
15 after this, if you'll look at the second
16 page, you will denote that the amount
17 deposited and the amount on the ledger, and
18 the amount of checks are not the same
19 figure. He deposited one amount. His
20 ledger denotes another amount. His total
21 of checks denote another amount. That's on
22 the deposit slip ticket, if you look.

23 CHAIRMAN CUSTIS: All right.
24
25

1 BY MR. HIRSCH: (Continuing)

2 Q In that case, there is also a
3 check number of 4698 in that account without
4 identification?

5 A Yes. In each of these cases
6 there are checks issued that -- If they were not
7 attached, I had no way of knowing what they were for.
8 The deposit slips were the same way, and the cash
9 receipts journal. If they were not attached to the
10 checks, I had no way of knowing what went with what.

11 Q Now, before you get to the Geri
12 Jones case, did you review the bank statements of the
13 trust account for the bracketed time frame you
14 mentioned previously?

15 A Yes.

16 Q All right. And, did you
17 determine the amount of overdraft charges shown
18 during the analysis time frame?

19 A Yes.

20 Q What was that total?

21 A I can't tell you off the top of
22 my head. I could have ten years ago. I'm sorry.
23 The bank statements are of June 30, 1995, through
24 July 11, 1996. That indicates there were 11
25 overdraft service charges totaling \$275.

1 Q Did you determine during that
2 bracketed time frame the total amount of interest?

3 A During that same frame of 13
4 months there was \$606.64 of interest credited to the
5 account.

6 Q All right.

7 A On the Geri Jones case on
8 11-16-95, there was \$36,098.63 deposited. On
9 11-20-95, there was \$11,785 deposited, totaling
10 \$47,883.63. If you go down to the first paragraph
11 after all of the check, amount, issued and cleared,
12 it says, as indicated above, checks numbered 4558,
13 4559, 4560, 4561, 4563, 4564, and 4569, total \$5,718.
14 They cleared the bank, prior to November 30, 1995.
15 Now, after these checks cleared the bank -- Remember
16 now, there was \$47,883.63 deposited for Geri Jones.

17 When these checks cleared the bank, there
18 remained \$42,865.83 in the Geri Jones escrow account.
19 That's how much money should have been in the bank
20 for Mr. Jones.

21 Q As of what date?

22 A As of November 30, 1995.

23 Q Okay.

24 A Now, if you'll go to the monthly
25 escrow bank statement, between November 20, and

1 November 30, there were 5 checks totaling \$7,389.26
2 deposited into the trust account that did not relate
3 to the Geri Jones case.

4 Now, on that date, on 11-30, the bank
5 statement showed there was \$45,845 in trust, in the
6 bank account. If you subtract the \$7,389.26 of the
7 deposit unrelated to the Jones account, that leaves
8 in the trust account for Geri Jones, \$38,459.74.
9 However, there should have been \$42,845.83 in the
10 Jones escrow account. So, if you subtract \$38,459.74
11 from what was actually in the Geri Jones bank account
12 on that date, it shows that he was out of trust
13 \$4,409.09 in that particular case.

14 Q On what date?

15 A November 30, 1995. That is in
16 addition to the other amounts on the other cases.
17 This was a separate date.

18 Q All right. Mr. Campbell, did you
19 also attempt to reconstruct the subsidiaries for the
20 Meade to Gray transaction?

21 A There were three checks.

22 Q You did that, right?

23 A Yes.

24 Q Let me refer you to Exhibit V, as
25 in Victor. This is the last one. This is the last

1 question.

2 What did your investigation show?

3 A The investigation showed that
4 there were three checks issued in the Evelyn J. Davis
5 Meade case. Two of them were issued on 2-20-96, and
6 the other was 2-28-96. The first was for \$105.90,
7 the second was for \$125. The third one issued on the
8 28th was \$319.80.

9 Q Keep going.

10 A Okay. If you will go back to the
11 bank statements, --

12 Q That's Exhibit T?

13 A Exhibit T. For the period of
14 January 31, 1996, through February 29, 1996.

15 Q January 31, 1996?

16 A Yes.

17 Q To February 29?

18 A Yes. On February 6, 1996,
19 Mr. Motley deposited \$3,026.27 of his personal funds
20 into the trust account.

21 Q Okay?

22 A He then wrote himself checks
23 totaling \$2,300 of that. He left an amount of his
24 personal funds in the trust account of \$726.27. If
25 you'll go to -- On that same page.

1 On February 20, 1996, it shows a balance in
2 the trust account of \$652. Of that \$652, \$7,026.27
3 is his personal funds that he deposited. So, that's
4 a negative balance.

5 Then, if you'll go over to the subsidiary
6 ledger, Exhibit V, he issued two checks totaling
7 \$230.20, on that date, in which he had a negative
8 balance in the trust account on that date.

9 Also, if you'll go over to Exhibit DD,
10 keeping this same case in mind, on that date, on
11 2-20-96, there were four checks outstanding in the
12 amount of \$760.25, so he was further out of trust
13 with that amount of money.

14 Q Where are we? Mary Green?

15 A Yes. So, on the date of February
16 20, when he wrote those two checks, he had personal
17 funds in his account for \$714. Plus he wrote these
18 checks, and there was limited funds in it. He was
19 again, out of trust in this and in the Davis Meade
20 case.

21 MR. HIRSCH: Mr. Campbell, would
22 you please answer any questions Mr. Gregory
23 has, or the panel has?

24 THE WITNESS: Yes, sir.

25 CHAIRMAN CUSTIS: Mr. Gregory,

1 any cross?

2

3

CROSS-EXAMINATION

4

BY MR. GREGORY:

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saying -- For example. I just want to show you this.

1 Does that look like what you copied?

2 A Yes.

3 Q Does it say Myrtle Cooper on the
4 top?

5 A Yes.

6 Q You said it wasn't attached, but
7 they were attached, weren't they?

8 A Oh. Yes. They were all
9 attached. The only difference between your sheet and
10 mine is the name at the top.

11 Q Right. The numbers -- The
12 amounts correlated for Victor Motley, did they not?

13 A There's no check for \$500.

14 Q No. In terms of the checks that
15 you have. What checks do you have?

16 A I have the ones that he supplied.

17 Q Okay. What are the amounts?

18 A One is for --

19 MR. HIRSCH: The exhibits speak
20 for themselves.

21 MR. GREGORY: I thought so too.
22 You are the one who went through it.

23 On cross-examination can't
24 I -- If I can't do it, I'll just sit down.

25 CHAIRMAN CUSTIS: No, no. You

1 certainly can.

2 MR. GREGORY: I thought this was
3 cross-examination. I thought I could do
4 that.

5 CHAIRMAN CUSTIS: You can.

6 BY MR. GREGORY: (Continuing)

7 Q What is the amount?

8 A The amount of what?

9 Q The checks that you have for
10 Victor Motley?

11 MR. HIRSCH: Are you talking
12 about AA?

13 MR. GREGORY: Right.

14 BY MR. GREGORY: (Continuing)

15 Q Go ahead.

16 A One check for \$1,300 and one
17 check for \$450.

18 Q All right. So, they do match the
19 amount on the ledger, correct? Two of the amounts on
20 there?

21 A Yes.

22 Q The answer was, there was no way
23 you could tell, because there was nothing on there
24 that matched.

25 A I had know way of knowing what

1 those amounts were for.

2 Q But, they were attached, were
3 they not?

4 A Yes.

5 Q Now, let's get back to the date
6 that you base a lot of this on. I'm sure I must be
7 missing something. Maybe you can explain it to me.

8 Go to Exhibit T. Going back to your
9 pivotal date of August 23, when you keep repeatedly
10 saying it was only \$18 in the account. It's the
11 third sheet, behind -- The one he referred to several
12 times. Do you see that one?

13 A Yes.

14 Q Now, make sure I'm correct.
15 You're telling the panel that this sheet represents
16 that there was only \$18 in the account, correct?

17 A That's what the sheet shows.

18 Q So, the next deposit was \$1,500,
19 correct? Does it not show the next deposit being
20 \$1,500?

21 A No.

22 Q I must be missing something.

23 A That deposit would be after the
24 23rd. The next deposit after the 23rd would be the
25 24th, where it shows \$2,100 being deposited.

1 Q The amount of the deposit is
2 \$1,500. I must be reading something wrong. It says,
3 amount. That's the deposit. The other one is the
4 daily balance. Am I reading it wrong?

5 A Yes, sir. You are.

6 Q I'm sorry?

7 A You've got to look to the left to
8 see the deposit date.

9 Q Okay. So, the next deposit --
10 Where is there a deposit before that?

11 CHAIRMAN CUSTIS: The left-hand
12 column, Mr. Gregory, is the deposits, and
13 the left-hand --

14 MR. GREGORY: Okay. I see it.

15 BY MR. GREGORY: (Continued)

16 Q The next deposit is \$2,100,
17 correct?

18 A 8-24 is the next deposit.

19 Q Okay. 8-24. So, you're saying
20 then, that he was \$12,000 out of trust at that point?

21 A According to my -- If I add up
22 these cases I enumerated, it has the out-of-trust
23 amount on each one. It totals \$12,036.32.

24 Q Where in your analysis is that
25 made up? Show me the deposit that made up that

1 \$12,000 deficit.

2 A It's very simple. I explained it
3 in my testimony.

4 Q Let me ask you this question.

5 Did you see anywhere where a client did not
6 get their money? Do you have any evidence that any
7 client did not get their money, in terms of checks?

8 A No, sir.

9 Q All right. Do you see any
10 evidence here that Mr. Motley stole any money from
11 this trust account?

12 A Yes, sir.

13 Q Stole it?

14 A It's short.

15 Q So, you're saying every short is
16 stolen money?

17 MR. HIRSCH: Mr. Chairman, I
18 think he's trying to get a legal conclusion
19 from the investigator.

20 CHAIRMAN CUSTIS: That is to be
21 decided by this panel, Mr. Gregory.

22 BY MR. GREGORY: (Continuing)

23 Q Can you tell me where he wrote
24 himself a fee that was more than he was entitled to?

25 A I have no way of knowing. He

1 didn't give me all of the checks.

2 Q So, you don't know? You don't
3 have any evidence of that?

4 CHAIRMAN CUSTIS: That's not an
5 issue. The issue is that he's out of
6 trust. We don't know where that money
7 went. He can't determine that. He can't
8 determine where that money went, based upon
9 the records supplied by your client to the
10 Bar.

11 MR. GREGORY: That being
12 incomplete.

13 BY MR. GREGORY: (Continuing)

14 Q Mr. Campbell, when you first
15 investigated this matter as a real estate matter, did
16 you say that you had concluded that investigation
17 before you requested the subpoena for the one year --

18 A I think you and I had a
19 conversation, asking -- I think you had supplied me
20 everything. That investigation was --

21 Q It was Mr. Hirsch who asked you
22 to go back after you finished your investigation to
23 ask for the 12 months escrow account, wasn't it?

24 A After receiving my report, Mr.
25 Hirsch, I assume reviewed it and thought there were

1 too many unanswered questions in this case, and that
2 we should look into the trust account. Yes, sir.

3 Q And, before you concluded your
4 investigation, didn't Mr. Motley give you three
5 months of his accounting, before you subpoenaed them?
6 Bank statements?

7 A I have no recollection. He could
8 have. I just don't have any recollection.

9 Q Your notes wouldn't reflect that?
10 That he had given you the three months that you had
11 asked for and you looked at those and concluded your
12 investigation?

13 CHAIRMAN CUSTIS: Mr. Gregory,
14 what difference does it make?

15 MR. GREGORY: I take it from your
16 question, none. To you.

17 CHAIRMAN CUSTIS: The records
18 were either given voluntarily by your
19 client or they were gotten by subpoena.
20 The records are records.

21 MR. GREGORY: I'm questioning
22 him, because I want the record to reflect
23 that Mr. Motley had given him three months
24 prior to this, and that he had concluded
25 his investigation.

1 I'll move on.

2 BY MR. GREGORY: (Continuing)

3 Q Now, Mr. Campbell, you said that
4 in Exhibit GG, that those deposits of some \$7,000 did
5 not relate to this matter? The Geri Jones matter.

6 A There was no evidence from the
7 information given to me that it related to it.

8 Q But, you don't know that, do you?

9 A No, sir.

10 Q But, that's the premise on which
11 you're saying he was out of trust, is it not?

12 A Yes, sir. That's correct.

13 Q But, you don't know that they
14 aren't?

15 A No, sir.

16 Q Do you have any evidence that
17 Mr. Motley received money from Ms. Gray that he did
18 not make an accounting to, as to Ms. Steele? Do you
19 have any evidence that he received more monies than
20 was testified to by Ms. Steele? It was \$1,500 and
21 \$1,000. Do you have any evidence of that?

22 A That's the only monies I know of.
23 The checks I know of. Yes.

24 Q You don't have any evidence that
25 Ms. Gray wrote some checks that Mr. Motley kept, or

1 that he didn't account for, do you?

2 A No.

3 BOARD MEMBER GOULD: Mr. Gregory,
4 according to your question regarding
5 Exhibit GG, are you making the
6 representation that the deposits amounting
7 to \$7,389 are related to the Geri Jones
8 account?

9 MR. GREGORY: I'm on
10 cross-examination. I'm just asking --

11 BOARD MEMBER GOULD: Do you have
12 any evidence that indeed they are related
13 to the Geri Jones account?

14 MR. GREGORY: Quite frankly, I'm
15 having a hard time keeping an accounting of
16 what he's talking about. Every time he was
17 testifying -- If you'll point to the
18 exhibit, I may be able to --

19 BOARD MEMBER GOULD: Sir, Exhibit
20 GG. These deposits right here in the
21 middle of page 1121, 1127, 1129 and 1130
22 amount to \$7,389. Do you have evidence
23 that they indeed were deposited for the
24 benefit of the Geri Jones account? Yes, or
25 no?

1 MR. GREGORY: At this point, I
2 don't know of any.

3 BOARD MEMBER GOULD: Thank you.

4 MR. GREGORY: Again, I need to
5 clear this up because I think it's very
6 important. My question was whether we have
7 it. My question is of this whole theory to
8 which this witness is testifying to.

9 Sometimes he says there's
10 evidence that it is related, but then, when
11 it's convenient to prove his point, he's
12 saying he has no evidence that it is. I'm
13 not saying whether it was or it wasn't.
14 Certainly I wouldn't misrepresent that it
15 is.

16 On cross-examination I think it's
17 appropriate, since this witness is being
18 able to testify as an expert, to question
19 the theory of his methodology. That's why,
20 as he said on cross-examination, no, Mr.
21 Gregory. I assumed that they weren't.

22 CHAIRMAN CUSTIS: Nobody is
23 asking you to stop.

24 MR. GREGORY: I'm answering the
25 panel member's question. I think, in a

1 sense, that it was directed as if I was
2 asserting it. I'm questioning the
3 methodology. That's all. I am not
4 representing anything, in terms of whether
5 it is or is not.

6 BY MR. GREGORY: (Continued).

7 Q Mr. Campbell, I think you
8 explained the reason why you are saying that these
9 are not related, and they very well may not be, but
10 your theory is that there is nothing that you see in
11 the record that reflects what they are related to?

12 A I have no idea.

13 Q Now, didn't Mr. Motley give you
14 more information than what you have in these
15 exhibits?

16 A Yes.

17 Q But, they are not exhibits.

18 A No.

19 Q Okay. As a matter of fact, you
20 mentioned a cash journal, didn't you?

21 A Cash disbursements journal. Yes.

22 Q That was given to you?

23 A Yes.

24 Q Mr. Campbell, you're testifying,
25 I assume, as an expert on trust accounts?

1 MR. HIRSCH: Mr. Chairman, Mr.
2 Campbell hasn't been offered as an expert,
3 and has not testified as one. I don't know
4 where we're going with this.

5 CHAIRMAN CUSTIS: You raised the
6 issue about an expert.

7 He's just a bar investigator, and
8 is employed by the Virginia State Bar.

9 BY MR. GREGORY: (Continued)

10 Q Did you not testify that you made
11 an audit? You tried to make an audit?

12 A I attempted to, yes. My
13 intention was to do an audit. It was my intention.

14 Q Okay. And, you know how to do an
15 audit of a trust account?

16 A Yes.

17 Q Okay. Now, can you tell me, for
18 example -- To be out of trust. For example, you
19 said, co-mingling. You're not supposed to have money
20 in the account that belongs to the lawyer, correct?

21 A That would be out-of-trust.

22 Q All right. How much money can an
23 attorney keep in his or her escrow account?

24 MR. HIRSCH: Mr. Chairman, again,
25 I don't know where we're going with this.

1 I think he's trying to get Mr.
2 Campbell to make some judgment calls about
3 the conditions in Canon 9.

4 CHAIRMAN CUSTIS: I don't know --

5 MR. HIRSCH: It goes beyond his
6 investigation.

7 CHAIRMAN CUSTIS: I don't see the
8 relevancy.

9 MR. GREGORY: All right. In
10 light of that ruling, I have no further
11 questions.

12 CHAIRMAN CUSTIS: Redirect?

13 MR. HIRSCH: Just a couple.

14 REDIRECT EXAMINATION

15 BY MR. HIRSCH:

16 Q Mr. Campbell, you testified that
17 you received other records from Mr. Motley?

18 A Yes.

19 Q Did you examine those records as
20 well?

21 A Yes, I did.

22 Q Did you find them to be useful in
23 your investigation of Mr. Motley's trust accounts?

24 A No. I found them just like the
25 one's I used here. Most of them were insignificant

1 amounts of money in trust. Like, a couple hundred
2 here.

3 The subsidiary ledgers on several would
4 show several entries to the sheriff's for fees and
5 things of that nature. I took the significant ones.
6 Most of the significant ones.

7 Q Why did you pick the ten files
8 that you testified to out of the ones that you had?

9 A They were --

10 MR. GREGORY: Objection. This is
11 not redirect on matters that were covered.

12 CHAIRMAN CUSTIS: Mr. Hirsch, you
13 may be going beyond what you presented on
14 direct.

15 BY MR. HIRSCH: (Continuing)

16 Q The cash disbursement journal
17 that you were asked of by Mr. Gregory, was it
18 complete?

19 A No.

20 MR. HIRSCH: Thank you.

21 CHAIRMAN CUSTIS: Any questions
22 Mr. Dezio?

23 BOARD MEMBER DEZIO: No
24 questions.

25 CHAIRMAN CUSTIS: Mr. Davidson?

1 BOARD MEMBER DAVIDSON: I just
2 want to establish -- The subsidiary ledgers
3 that you are including in these
4 double-lettered sections, and then the tape
5 that you supplied there. On some of them,
6 the amounts don't equal. Either there is
7 more being stashed on behalf of that
8 account -- Are you stating that that
9 represents an incomplete settlement of
10 those accounts?

11 In other words, there's monies
12 left in escrow that have not been accounted
13 for in those accounts?

14 THE WITNESS: No, sir. I
15 submitted them simply to show that the
16 amount deposited, the amount of his
17 subsidiary ledgers and the amount of his
18 checks almost never jived.

19 BOARD MEMBER DAVIDSON: If you
20 had a full accounting with the cash
21 ledgers, it is possible that it all could
22 jive.

23 THE WITNESS: If I had of been
24 supplied the cash receipts journal as is
25 supposed to have been kept, the cash

1 disbursement journal, and copies of all
2 checks, I could have given you an accurate
3 dollar figure.

4 BOARD MEMBER DAVIDSON: Okay.
5 That's all.

6 CHAIRMAN CUSTIS: Ms. Decorleto?

7 BOARD MEMBER DECORLETO: I just
8 want to understand. How many months were
9 there charges for returned checks for
10 insufficient funds? Do you know? That
11 would be on the total account? Is this
12 correct?

13 THE WITNESS: Each bank statement
14 would show bank charges here.

15 BOARD MEMBER DECORLETO: But,
16 they were \$25 each, is that correct?

17 THE WITNESS: Yes. They were \$25
18 each. There was a total of 11 overdraft
19 charges. Some of them obviously were more
20 than others. For this period of time,
21 there were 11.

22 BOARD MEMBER DECORLETO: This
23 does represent, to the best of our
24 understanding, all of the escrow that he
25 was in charge of?

1 THE WITNESS: With the
2 information furnished me and the copy of
3 the checks, that is as accurate as I could
4 get.

5 BOARD MEMBER DECORLETO: Thank
6 you.

7 CHAIRMAN CUSTIS: Ms. Gould?

8 BOARD MEMBER GOULD: I have no
9 questions.

10 CHAIRMAN CUSTIS: I have just one
11 question. In light of these overdraft
12 charges on this bank and on this trust
13 account, was the Bar ever notified by this
14 bank that there was an overdraft?

15 MR. HIRSCH: I can't say, Mr.
16 Chairman. I'd have to go back and look at
17 the records. It was in 1996. I don't
18 recall.

19 CHAIRMAN CUSTIS: Okay. Your
20 next witness?

21 MR. HIRSCH: That's the Bar's
22 case.

23 CHAIRMAN CUSTIS: Respondent's
24 counsel would you like to proceed, or would
25 you like to take a break?