

VIRGINIA:

*Before the Virginia State Bar Disciplinary Board*

*In the Matter of*

*Dale Alan Gipe*

*VSB Docket No. 06-031-0143*

*Attorney at Law*

*On August 4, 2008, came Dale Alan Gipe and presented to the Board an Affidavit Declaring Consent to Revocation of his license to practice law in the courts of this Commonwealth. By tendering his Consent to Revocation at a time when disciplinary charges are pending, he admits that the charges in the attached Affidavit Declaring Consent to Revocation and Certification document are true.*

*The Board having considered the said Affidavit Declaring Consent to Revocation, and Bar Counsel having no objection, the Board accepts his Consent to Revocation. Accordingly, it is ordered that the license to practice law in the courts of this Commonwealth heretofore issued to the said Dale Alan Gipe be and the same hereby is revoked, and that the name of the said Dale Alan Gipe be stricken from the Roll of Attorneys of this Commonwealth.*

*Enter this Order this 8<sup>th</sup> day of September, 20 08*

*For the Virginia State Bar Disciplinary Board*

*By Barbara S. Lanier  
Barbara Sayers Lanier, Clerk of the Disciplinary System*

VIRGINIA:

BEFORE THE VIRGINIA STATE BAR DISCIPLINARY BOARD **RECEIVED**

IN THE MATTER OF  
DALE ALAN GIPE

AUG - 6 2008

VSB Docket No. 06-031-0143

**VIRGINIA STATE BAR**

**AFFIDAVIT DECLARING CONSENT TO REVOCATION**

Dale Alan Gipe, after being duly sworn, states as follows:

1. That Dale Alan Gipe was licensed to practice law in the Commonwealth of Virginia on 06/03/1977;
2. That Dale Alan Gipe submits this Affidavit Declaring Consent to Revocation pursuant to Rule of Court, Part 6, Section IV, Paragraph 13.L.
3. That Dale Alan Gipe's consent to revocation is freely and voluntarily rendered, that Dale Alan Gipe is not being subjected to coercion or duress, and that Dale Alan Gipe is fully aware of the implications of consenting to the revocation of his license to practice law in the Commonwealth of Virginia;
4. Dale Alan Gipe is aware that there is currently pending a complaint which led to a Certification being issued by the Third District Committee Section I, the docket number for which is set forth above, and the specific nature of which is here set forth:
  - a. That Dale Alan Gipe did forge the signature of another party, without authority, on a title insurance commitment binder for a real estate closing transaction that he conducted and for which he was the responsible closing attorney.
  - b. That Dale Alan Gipe was the responsible closing attorney involving 27 closing transactions ("Closing Transactions") for which he collected funds and issued checks that were never cashed.
  - c. The total amount of the checks that Dale Alan Gipe issued in the Closing

Transactions that were never cashed was \$31,451.85.

d. That Dale Alan Gipe failed to keep sufficient accounting, escrow and closing records to determine what happened to the funds he was holding.

e. That Dale Alan Gipe failed to close each of the Closing Transactions in accordance with the instructions provided by the lenders in each of the transactions by failing to properly disburse all amounts or by otherwise failing to account for the funds collected from such lenders.

f. That Dale Alan Gipe failed to keep adequate books, ledgers, journals and records in accordance with Virginia Rule of Professional Conduct 1.15, and otherwise failed to conduct required audits, balances and reconciliations to keep track of the funds he held in connection with the Closing Transactions.

g. That during the time period between October of 2002 and March of 2006, Dale Alan Gipe began issuing himself checks from his escrow account in round numbers that he could neither explain nor for which he could provide justification.

h. That Dale Alan Gipe failed to keep adequate books, ledgers, journals and records in accordance with Virginia Rule of Professional Conduct 1.15, and otherwise failed to conduct required audits, balances and reconciliations to justify fees he alleged to have earned during that time period.

i. That the details of the allegations of Misconduct are more thoroughly set forth in the Certification issued by the Subcommittee of the Third District Committee, Section I dated June 26, 2008.

5. Dale Alan Gipe acknowledges that the material facts upon which the allegations of misconduct are predicated are true; and

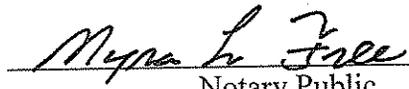
6. Dale Alan Gipe submits this Affidavit and consents to the revocation of his license to practice law in the Commonwealth of Virginia because he knows that if the disciplinary proceedings based on the said alleged misconduct were brought or prosecuted to a conclusion, he could not successfully defend them.

Executed and dated this 4th day of August, 2008.

  
Dale Alan Gipe  
Respondent

COMMONWEALTH OF VIRGINIA  
~~CITY~~/COUNTY OF Chesterfield, to wit:

The foregoing Affidavit Declaring Consent to Revocation was subscribed and sworn to before me by Dale Alan Gipe on this 4th day of August, 2008.

  
Notary Public

My Commission expires: 10-31-11.

VIRGINIA:

BEFORE THE THIRD DISTRICT SUBCOMMITTEE  
OF THE VIRGINIA STATE BAR

IN THE MATTER OF  
DALE ALAN GIPE

VSB Docket No. 06-031-0143

**SUBCOMMITTEE DETERMINATION**  
**(CERTIFICATION)**

On September 8, 2007, a meeting in this matter was held before a duly convened Third District Section I Subcommittee consisting of Graham C. Daniels, Chair, Nelson C. Fisher, Esquire and William Manns, lay member.

Pursuant to Part 6, Section IV, Paragraph 13.G.1.c. of the Rules of the Virginia Supreme Court, the Third District Subcommittee of the Virginia State Bar hereby serves upon the Respondent the following Certification:

**I. FINDINGS OF FACT**

1. At all times relevant, Dale Alan Gipe ("Respondent") was an attorney licensed to practice law in the Commonwealth of Virginia.
2. Respondent was admitted to the practice of law in the Commonwealth of Virginia on June 3, 1977.
3. Respondent was an attorney approved to conduct real estate closing transactions for Stewart Title Guaranty Company ("Stewart Title") until Stewart Title advised him on July 15, 2005 that he was no longer an approved attorney.
4. As an approved attorney, Respondent was authorized to conduct closings in which Stewart Title would issue title policies.
5. As the closing attorney, Respondent was responsible for collecting all necessary funds to conduct the closing, pay off all liens, taxes and other costs.
6. Jeannie Martin was at all times relevant an authorized title insurance agent used by Stewart Title and was the owner of Chesterfield Title Agency ("Chesterfield Title").

7. In transactions conducted by Respondent where Stewart Title was to issue a title policy, Respondent was also responsible for conducting a title search and the fees for purchasing title insurance.

8. During the time when Respondent was an authorized attorney, Stewart Title, through its District Manager for Central Virginia, Timothy L. Akers, became aware that Respondent was delinquent in delivering payment for title policies that had been purchased and where he had been the closing agent.

9. Mr. Akers informed Steve Blizzard, corporate counsel for Stewart of the problem. Mr. Blizzard contacted Respondent and advised him that if he did not resolve these issues he would be dropped as an approved attorney.

10. Respondent failed to take corrective action satisfactory to Stewart Title, and on May 6, 2005, Mr. Akers informed Respondent he was no longer an approved attorney for Stewart Title.

11. In July of 2005, Mr. Akers was contacted by Lynn Dressler, a representative of Village Bank Mortgage Corporation.

12. Ms. Dressler had received a package of closing documents concerning a real estate transaction between Norman Borthwick and Jean M. Roma in which Respondent was the closing attorney, including a title commitment from Chesterfield Title.

13. Ms. Dressler suspected that Respondent had forged the title commitment form and advised Mr. Akers of the same.

14. Mr. Akers confronted Respondent about the apparent forgery and Respondent admitted that he had in fact forged the document and Ms. Martin's signature.

15. Respondent told Mr. Akers it would not happen again and requested that Mr. Akers not contact the Virginia State Bar.

16. Mr. Akers declined, sent Respondent an official letter of termination and filed the instant complaint with the Virginia State Bar.

17. As a result of the complaint, Respondent was interviewed by Investigator Robert Heinzman. In an interview on July 7, 2006, Respondent admitted to Investigator Heinzman that he had in fact forged Ms. Martin's signature on the title commitment binder for the Borthwick/Roma transaction.

18. The Virginia State Bar also subpoenaed Respondent's escrow and accounting records and the files involving the real estate closings ("Closing Files") for which Chesterfield Title had not received timely payment from Respondent.

19. After a thorough examination of the Closing Files, Investigator Heinzman discovered that Respondent had issued checks for payments as part of the closings that were never cashed. In addition to examining the closing files, Investigator Heinzman personally interviewed participants of the closings and received documents in connection with the closings from those participants.

20. As a result of his investigation, Investigator Heinzman discovered that Respondent issued \$14,874.42 in checks payable to Chesterfield Title for title insurance, which were never cashed; issued checks totaling \$1,200.00 payable to Chesterfield Title for title binder fees; issued checks totaling \$3,182.12 to the clerks of various courts which were never cashed; and issued checks to different parties totaling \$12,195.31 that were never cashed.

21. The total amount of money not accounted for by the uncashed checks total \$31,451.85.

22. As a result of his interviews with participants in the closings, Investigator Heinzman determined that several of the HUD-1s issued to the participants were different from the HUD-1s Respondent produced in response to the Bar's subpoena.

23. Investigator Heinzman discovered that in at least nine separate closings, Line 1104 of the HUD-1 that Respondent provided the purchaser was captioned title insurance binder payable to Chesterfield Title for \$50.00. The HUD-1 Respondent prepared and maintained in his file for those nine closings reflected Line 1104 as a document preparation fee payable to Dale A. Gipe.

24. As a result of Investigator Heinzman's review of the Closing Files, he discovered the following specific irregularities:

a. An examination of the documents provided by Stewart Title concerning the Norman D. Borthwick and Jean M. Roma closing revealed suspicious markings indicative of forgery on the Insured Closing Letter. When confronted in his interview with the Bar's Investigator, Respondent admitted that he forged Jeannie Martin's name to the Insured Closing Letter.

b. An examination of Brian R. and Catherine J. Johnson's closing file disclosed that Respondent issued one check for \$50.00 to himself which was cashed. The check issued to Chesterfield Title for \$914.00 for title insurance was not cashed. A check to the Clerk of Court for \$19.00 was issued but not cashed. A check for \$50.00 payable to Chesterfield Title for a title insurance binder was not issued.

c. An examination of Willard and Ellen Mayes' closing file disclosed that a check for \$326.64 for title insurance was issued to Chesterfield Title but not cashed. A check to the Clerk of Court for \$392.80 was issued but not cashed. A check to Clerk of Court for \$19.00 was issued but not cashed.

d. An examination of the closing file on the Bryan Wynn closing disclosed that upon comparing the original HUD-1 provided by Mr. Wynn with the HUD-1 provided by Respondent in response to the Bar's subpoena, it was noted that line 1104 on the original HUD-1 was listed as Title Insurance Binder for \$50.00 payable to Chesterfield Title Agency, Inc. The HUD-1 Respondent provided reflects line 1104 as a Document Preparation Fee for \$50.00 payable to Respondent. The HUD-1 for this transaction indicates that Respondent was also to have paid Chesterfield Title \$1,327.80 for title insurance. He issued a check for that amount; however, the check was never cashed. A check to Wells Fargo Bank for \$1,172.54 was issued but not cashed.

e. A review of the closing file for Mr. Jessee A. Hopkins and Ms. Della R. Hopkins disclosed that Respondent failed to issue a check to Chesterfield Title pursuant to line 1104 of the HUD-1 for a title insurance binder for \$50.00 despite having collected those funds. He did issue a check for \$796.00 to Chesterfield Title for title insurance that was not cashed.

f. An examination of the closing file for Carol L. Wray disclosed Respondent failed to write a check to Chesterfield Title Agency as per line 1104 of the HUD-1 for \$50.00 despite having collected those funds. His Disbursement Summary reflects he kept the title binder fee and included it in the check written he wrote to himself. Respondent wrote one check to Chesterfield Title for \$224.00 for title insurance which was not cashed despite having collected the funds for the same.

g. An examination of the closing file on the Mendi Leann Hamilton-McDowell closing disclosed Respondent failed to write a check to Chesterfield Title as per line 1104 of the HUD-1 for \$50.00 and that Respondent wrote one check to Chesterfield Title for \$466.60 for title insurance that was not cashed despite Respondent having collected those funds at closing.

h. An examination of the closing file on the Cynthia R. Eythell closing disclosed that line 1104 had been changed on Respondent's HUD-1 Settlement Statement from title binder fee to document preparation fee for \$50.00. Respondent issued a check for \$1,056.80 to Chesterfield Title Agency as payment for title insurance (\$956.80) and for line 1102 Abstract or Title Search (\$100). This check was never cashed. A check to Clerk of Court for \$62.00 was issued but not cashed.

i. An examination of the closing file on the Douglas E. Synan closing for the property located at 1325 Covington Road, Colonial Heights disclosed that line 1104 on the HUD-1 form provided by Mr. Synan was listed as Title Insurance Binder for \$50.00 payable to Chesterfield Title. Line 1104 on Respondent's copy of the HUD-1 was listed as document preparation fee for \$50.00 payable to Dale A. Gipe. Respondent issued a check to Chesterfield Title for \$915.00 for title insurance but the check was never cashed. Respondent issued a check to the Clerk of Court for \$31.00 but it was not cashed. Respondent issued a check to GMAC mortgage Corp. for \$3,275.18 but it was not cashed.

j. An examination of the closing file on the Douglas E. Synan for the property located at 118 Kennon Point Court, Colonial Heights, Va. disclosed that that line 1104 on the HUD -1 form provided by Mr. Synan was listed as title insurance binder for \$50.00 payable to Chesterfield Title. Line 1104 on Respondent's copy of the HUD-1 was listed as title insurance binder for \$50.00 payable to Respondent as document preparation fee. Respondent identified Line 1108 on the HUD-1 as title insurance for \$549.20 payable to Chesterfield Title Agency. Respondent issued a check to Chesterfield Title for \$549.20 for title insurance but the check was never cashed. Respondent issued a check to Clerk of Court for \$38.00 that was never cashed.

k. A review of the Marlon F. Marshall closing file disclosed that line 1104 of the HUD-1 Settlement Statement that Respondent prepared was listed as document preparation fee for \$50.00 payable to Dale A. Gipe. Respondent listed Line 1108 as title insurance for \$436.00 payable to Chesterfield Title. Respondent issued a check to Chesterfield Title for \$436.00 but this check was never cashed. Respondent also issued a check to Principal Residential Mortgage for \$50.00 that was not cashed.

l. A review of the Jesus N. and Maria E. Barillas closing file disclosed that line 1104 of the HUD-1 Settlement Statement in Respondent's file was listed as document preparation fee for \$50.00 payable to Dale A. Gipe. Respondent listed Line 1108 as title Insurance fee for \$287.20 payable to Chesterfield Title. Respondent issued a check to Chesterfield Title for \$287.20 but this check was never cashed. Respondent issued a check to the Clerk of Court for \$31.00 that was not cashed.

m. A review of the William E. Bixby closing disclosed that line 1104 of the HUD-1 Settlement Statement in Respondent's file was listed as Document Preparation Fee for \$50.00 payable to Dale A. Gipe. Respondent listed Line 1108 as title insurance for \$646.40 payable to Chesterfield Title Agency. Respondent issued a check for \$646.40 to Chesterfield Title Agency but that check was never cashed. Respondent also issued a check to the Clerk of Court for \$62.00 that was never cashed.

n. A review of the Maxine E. Daniely closing disclosed that line 1104 of the HUD-1 Settlement Statement in Respondent's file was listed as Document Preparation Fee for \$50.00 payable to Dale A. Gipe. Line 1108 was listed as Title Insurance for \$447.20 payable to Chesterfield Title Agency, Inc. A check for \$447.20 was issued to Chesterfield Title Agency, Inc. for Title Insurance but never cashed. A check to Clerk of Court for \$31.00 was issued but not cashed.

o. A review of the Wilbur F. Peterson closing disclosed that line 1104 of the HUD-1 Settlement Statement in Respondent's file was listed as document preparation fee for \$50.00. Respondent listed Line 1108 as title insurance for \$416.80 payable to Chesterfield Title. Respondent issued a check for \$416.80 to Chesterfield Title that was never cashed. Respondent issued a check to the Clerk of Court for \$31.00 that was never cashed. Respondent issued a check to Treasurer of Henrico County for \$408.90 that was

never cashed. Respondent also issued a check to the Clerk of Court for \$349.64 that was never cashed.

p. An examination of the closing file on the Cynthia E. Reid closing disclosed that line 1104 on the HUD-1 form Ms. Reid provided was listed as Title Insurance Binder for \$50.00 payable to Chesterfield Title. Line 1104 on Respondent's copy of the HUD-1 was listed as document preparation fee for \$50.00 payable to Dale A. Gipe. Respondent listed Line 1108 on both HUD-1s as title insurance for \$319.70 payable to Chesterfield Title. Respondent issued a check to Chesterfield Title for \$319.70 but this check was never cashed. Respondent also issued a check for \$1,055.02 payable to Treasurer that was never cashed. Ms. Reid stated to Investigator Heinzman that \$1,055.22 is the same amount that she was informed that she owed. Respondent made that payment after Ms. Reid complained to him.

q. A review of the Karen M. Kent closing disclosed that line 1104 on the HUD-1 Settlement Statement in Respondent's file was listed as document preparation fee for \$50.00 payable to Dale A. Gipe. Respondent listed Line 1108 as title insurance for \$310.40 payable to Chesterfield Title. Respondent issued a check to Chesterfield Title for \$310.40 for title insurance that was never cashed. Respondent issued a check for \$903.62 to Treasurer, Chesterfield County that was never cashed.

r. A review of the Gilbert L. Maddox closing disclosed that line 1104 on the HUD-1 Settlement Statement in Respondent's file was listed as document preparation fee for \$50.00 payable to Dale A. Gipe. Respondent listed Line 1108 as title insurance for \$337.76 payable to Chesterfield Title. Respondent issued a check to Chesterfield Title for \$337.76 that was never cashed. Respondent also issued a check for \$62.00 issued to the Clerk of Court that was also never cashed.

s. A review of the Daniel C. and Geraldine K. Mihalco closing file showed no HUD-1 available for review. The Disbursement Summary/Balance Sheet Respondent prepared disclosed that Respondent issued a check for \$150.00 on December 8, 2004 to Chesterfield Title for \$150.00 that was not cashed. Respondent did not issue a check for title binder fee which should have been paid to Chesterfield Title.

t. A review of the Susan Ryan closing disclosed that line 1104 on the HUD-1 Settlement Statement in Respondent's file was listed as document preparation fee for \$50.00 payable to Dale A. Gipe. Respondent listed Line 1108 as title insurance for \$688.72 payable to Chesterfield Title. Respondent issued a check to Chesterfield Title for \$688.72 that was never cashed.

u. A review of the Jaafar and Johanna H. Awad closing disclosed that line 1104 on the HUD-1 Settlement Statement in Respondent's file was listed as document preparation fee for \$50.00 payable to Dale A. Gipe. Respondent listed Line 1108 as title insurance for \$510.40 payable to Chesterfield Title. Respondent issued a check to

Chesterfield Title for \$510.40 that was never cashed. Respondent also issued a check to Capital One for \$5,051.00 that was never cashed.

v. A review of the Robert A. and Susan Davenport closing disclosed that line 1104 on the HUD-1 Settlement Statement in Respondent's file was listed as document preparation fee for \$50.00 payable to Dale A. Gipe. Respondent listed Line 1108 as title insurance for \$440.80 payable to Chesterfield Title. Respondent issued a check to Chesterfield Title for \$440.80 but this check was never cashed.

w. A review of the S&C Properties closing disclosed that Respondent listed line 1108 as title insurance for \$522.40 payable to Chesterfield Title. Respondent issued a check to Chesterfield Title for \$522.40 but this check was never cashed.

x. A review of the Matthew G. and Shannon K. Anderson closing disclosed that line 1104 on the HUD-1 Settlement Statement in Respondent's file was listed as title insurance binder for \$50.00 payable to Chesterfield Title Agency, Inc. Respondent listed Line 1108 as title insurance for \$1,244.80 payable to Chesterfield Title. Respondent failed to issue a check for \$50.00 payable to Chesterfield Title. Respondent issued a check to Chesterfield Title for \$1,244.80 for title insurance but, this check was never cashed. Respondent issued a check for \$38.00 to the Clerk of Court and another check for \$19.00 to the Clerk of Court but neither of these checks were cashed.

y. A review of the Edmund H. and Chellie P. Polonitza closing disclosed that line 1104 on the HUD-1 Settlement Statement in Respondent's file was listed as Title Insurance Binder for \$50.00 payable to Chesterfield Title. Respondent listed Line 1108 as title insurance for \$372.40 payable to Chesterfield Title. Respondent failed to issue a check for \$50.00 payable to Chesterfield Title. Respondent issued a check to Chesterfield Title for \$372.40 for title insurance, but this check was never cashed. Respondent issued a check for \$2,646.59 to SunTrust Mortgage, Inc. but this check was never cashed.

z. A review of the Lloyd C. and Frances S. Johnson closing disclosed that line 1104 on the HUD-1 Settlement Statement in Respondent's file was listed as title insurance binder for \$50.00 payable to Chesterfield Title. Respondent listed Line 1108 as title insurance for \$610.00 payable to Chesterfield Title. Respondent failed to issue a check for \$50.00 payable to Chesterfield Title. Respondent issued a check to Chesterfield Title Agency, Inc for \$610.00 for title insurance, but this check was never cashed. Respondent issued a check for \$19.00 to the Clerk of Court but the check was never cashed.

aa. A review of the Curtis W. and Vernie L. Campbell closing disclosed that line 1104 on the HUD-1 Settlement Statement in Respondent's file was listed as title insurance binder for \$50.00 payable to Chesterfield Title. Respondent listed Line 1108 as title insurance for \$558.00 payable to Chesterfield Title. Respondent failed to issue Chesterfield Title a check for \$50.00. Respondent issued a check to Chesterfield Title

Agency, Inc for \$558.00 for title insurance, but this check was never cashed. Respondent issued a check for \$19.00 to the Clerk of Court that was not cashed. Respondent also issued a check for \$464.80 to Chesterfield Title on June 14, 2004 for \$464.80 for title charges. Chesterfield Title cashed this check.

25. Despite preparing all the of the HUD-1 statements, collecting the funds necessary for the closings enumerated in paragraphs 24 a-aa, Respondent failed to disburse or otherwise properly account for the funds marked for title insurance, title binders, clerk fees or treasurer fees.

26. As a result of Respondent's failure to turn over the funds for the purchase of title insurance in the closings in paragraph 24 a-aa, neither lenders nor purchasers received title insurance for which they paid.

27. When Ms. Martin asked Respondent about the fees that were due and owing Chesterfield Title, Respondent replied that he could not send her any money as he did not have it.

28. Respondent failed to keep adequate books, ledgers, journals and records in accordance with Virginia Rule of Professional Conduct 1.15, and otherwise failed to conduct required audits, balances and reconciliations to keep track of the funds he held in connection with the Closing Files.

29. Despite requests by the Bar and Investigator Heinzman to produce such records, Respondent indicated they were on a damaged computer and he could not produce them.

30. Ms. Martin kept a detailed ledger of checks she received from Respondent in connection with closings he conducted to make sure that fees for title insurance and binders due and owing Chesterfield Title were received.

31. Ms. Martin's ledger indicates that Chesterfield Title never received the checks that Respondent prepared to it in paragraphs 24a-aa.

32. Despite requests to produce the cancelled checks that Respondent issued to Chesterfield Title in paragraphs 24 a-aa, Respondent was unable to produce the same.

33. Investigator Heinzman reviewed Respondent's relevant bank statements in which the checks identified in paragraphs 24 a-aa would have appeared had they in fact been cashed.

34. Investigator Heinzman's review of those bank statements revealed that the checks had in fact never been negotiated or presented for payment. The checks remain outstanding to this day.

35. Investigator Heinzman's review of Respondent's financial and accounting records also revealed that during the time period between October of 2002 and March of 2006,

Respondent began issuing himself checks from his escrow account in round numbers that he could neither explain nor for which he could provide justification.

36. Respondent advised Investigator Heinzman that he had earned the fees, but he could not recall the client, how the fee was earned or the work performed to earn such fee.

37. Specifically, Investigator Heinzman discovered the following transactions in which Respondent could not provide any information, justification or records to substantiate having earned monies which he withdrew from his escrow account and paid to himself when asked about them during an interview.

a. On April 18, 2004 Respondent issued himself check number 1132 for \$2,030.00. The check was drawn from his escrow account. Respondent was unable to properly account for this check to Investigator Heinzman.

b. Respondent was asked about a withdrawal from checking from the First Market Bank account, dated May 24, 2004, for \$3,357.03. Respondent advised he could not explain the withdrawal. There is no notation or other documentation to explain the withdrawal.

c. Respondent was asked about First Market Bank check 1357 dated June 26, 2004 for \$1,350.00. Respondent could not explain why that check was issued as he did not have the file.

d. Respondent was asked about First Market Bank check 1378 dated July 7, 2004 for \$2,000. Respondent said he did not know why that check was issued to him.

e. Respondent was asked about First Market Bank check 1522 dated September 5, 2004 for \$1,715.58. This check has the notation "TEST" to show what file it goes to. When he put in his computer software called Softpro, he used the notation "TEST" to set up the template. Whenever he had a closing that did not finalize or he had money for work done and there was no file to reference it to, he used "TEST" as the file name. He could not explain why this check was issued to him.

f. Respondent was asked about First Market Bank check 1580 for \$50.00. The date and "pay to the order of" was illegible. Respondent could not read the writing on the check and did not know why it was issued.

g. Respondent was asked about First Market Bank check 1715 dated January 14, 2005 for \$5,000.00. Respondent advised that when Mr. Peter Urganbright went to jail for embezzling \$200,000, he took over the company and ran it as a law office. He put personal funds into the escrow account so checks would not bounce. He was handling over thirty real estate closings every month and it was insane. When things finally slowed down, he realized there was more money in the escrow account than there should

have been and he realized it was his money; he began to withdraw the money and he thinks this may have been one of the withdrawal checks. However, he wasn't sure.

h. Respondent was asked about First Market Bank check 1786 dated December 17, 2004 for \$2,145.00. Respondent replied it was a Tomcliff check, but he did not know why it was issued to him.

i. Respondent was asked about First Market Bank check 1789 dated January 19, 2005 for \$1,935.00. Respondent advised he did not know why that check was issued to him.

j. Respondent was asked about a withdrawal from checking from the First Market Bank account, dated July 25, 2005 for \$1,200.00. Respondent stated he did not know why he withdrew that amount.

k. Respondent was asked about First Market Bank check 1927 dated June 17, 2005 for \$300.00. Respondent replied that in 2005, he moved his office to his home. He was doing other legal work, such as divorces, wills, etc, but he did not have a separate trust account as he was required by VSB rules. The check was probably for a will he did but he could not be sure. This also applied to check 1973, dated September 26, 2005 for \$200.00, check 1978 dated November 16, 2005 for \$100.00, check 1979 dated November 15, 2005 for \$300.00 and check 2000 dated September 26, 2005 for \$100.00.

l. Respondent was asked about First Market Bank check 1977 dated November 15, 2005, for \$4000.00. Respondent stated this check was probably a withdrawal of his money in the escrow account.

m. Respondent was asked about First Market Bank check 1981 dated November 15, 2005 for \$200.00. He replied that it was for legal fees for legal work performed but he was unable to provide any documentation to justify that he had earned the fee.

n. Respondent was asked about First Market Bank check 1992 dated January 9, 2006 for \$4,000.00. He believes that is his money which was in the escrow account and he was removing money that belonged to him but he had no records or documents to justify that assertion.

o. Respondent was asked about First Market Bank check 1995 dated February 25, 2006 for \$2,000.00. He had no idea why this check was issued.

p. Respondent was asked about First Market Bank check 1997 dated March 17, 2006 for \$38,000.00. Respondent advised he ran out of escrow checks and wrote the checks out of his personal account. He then received new checks and wrote himself a check to repay what he took from his personal funds. Looking at the file, he could not tell to what file that check amount corresponded to.

q. Respondent was asked about Central Virginia Bank check 1925 dated April 25, 2003 for \$2,000.00. This check was prepared on a typewriter. Respondent stated he had no idea why this check was issued to him.

r. Respondent was asked about Central Virginia Bank check 2595 dated September 19, 2003 for \$2,810.00, which is a handwritten check. Respondent advised he wrote that check out and that it is his handwriting.

s. Respondent was asked about Central Virginia Bank check 2939 dated December 2003 (the date is not clear on the check) for \$1,200.00. Respondent advised the file reference on this check is "TEST" and he did not know why it was issued.

t. Respondent was asked about Central Virginia Bank check 2941 dated October 26, 2002, but cashed December 10, 2003 for \$500.00. Respondent replied that this check has the notation "TEST" on it and it may have been for a fee payment, but he wasn't sure and did not know.

u. Respondent was asked about Central Virginia Bank check 1953 dated November 14, 2003 for \$4,000.00. Respondent advised this check was issued during the period he was moving and may have been money which belonged to him that he was cashing from the escrow account. However, Respondent was unable to provide any documentation or other evidence to support that the money was rightfully his.

v. Respondent was asked about Central Virginia Bank check 2937 dated October 25, 2002 for \$3,000.00. Respondent stated this check was issued during the period when he was suspended by Stewart Title for six months. Respondent could not provide any documentation or justification to support that the money was rightfully his.

w. Respondent was asked about Central Virginia Bank check 2996 dated April 14, 2004 for \$5,000.00. He replied he did not know why this check was issued.

x. Respondent was asked about Central Virginia Bank checking/savings debit withdrawal dated July 29, 2004 for \$250.00. The notation on the sheet is: "Transfer to cover overdraft." Respondent advised he was moving from Mill Ridge to Ruthers Road. He hadn't closed his Central Virginia Bank account and he had removed too much money from the escrow account thinking it was his money. He needed to cover the overdraft and made this transfer.

38. In all of the transactions listed in paragraph 37 a-x, Respondent was unable to document, evidence or justify that they were fees earned or otherwise owed to him despite him having paid himself those funds.

## **II. NATURE OF MISCONDUCT**

Such conduct by Dale Alan Gipe constitutes misconduct in violation of the following provisions of the Rules of Professional Conduct:

**RULE 1.5 Fees**

- (a) A lawyer's fee shall be reasonable. The factors to be considered in determining the reasonableness of a fee include the following:
- (1) the time and labor required, the novelty and difficulty of the questions involved, and the skill requisite to perform the legal service properly;
  - (2) the likelihood, if apparent to the client, that the acceptance of the particular employment will preclude other employment by the lawyer;
  - (3) the fee customarily charged in the locality for similar legal services;
  - (4) the amount involved and the results obtained;
  - (5) the time limitations imposed by the client or by the circumstances;
  - (6) the nature and length of the professional relationship with the client;
  - (7) the experience, reputation, and ability of the lawyer or lawyers performing the services; and
  - (8) whether the fee is fixed or contingent.
- (b) The lawyer's fee shall be adequately explained to the client. When the lawyer has not regularly represented the client, the amount, basis or rate of the fee shall be communicated to the client, preferably in writing, before or within a reasonable time after commencing the representation.

\* \* \* \*

**RULE 1.15 Safekeeping Property**

- (a) All funds received or held by a lawyer or law firm on behalf of a client, other than reimbursement of advances for costs and expenses, shall be deposited in one or more identifiable escrow accounts maintained at a financial institution in the state in which the law office is situated 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; or

- (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 it is 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.
  
- (b) When in the course of representation a lawyer is in possession of property in which both the lawyer and another person claim interests, the property shall be kept separate by the lawyer until there is an accounting and severance of their interests. If a dispute arises concerning their respective interests, the portion in dispute shall be kept separate by the lawyer until the dispute is resolved.
  
- (c) A lawyer shall:
  - (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.
  
- (d) Funds, securities or other properties held by a lawyer or law firm as a fiduciary shall be maintained in separate fiduciary accounts, and the lawyer or law firm shall not commingle the assets of such fiduciary accounts in a common account (including a book-entry custody account), except in the following cases:
  - (1) funds may be maintained in a common escrow account subject to the provisions of Rule 1.15(a) and (c) in the following cases:
    - (i) funds that will likely be disbursed or distributed within thirty (30) days of deposit or receipt;
    - (ii) funds of \$5,000.00 or less with respect to each trust or other fiduciary relationship;
    - (ii) funds held temporarily for the purposes of paying insurance premiums or held for appropriate administration of trusts otherwise funded solely by life insurance policies; or
    - (iv) trusts established pursuant to deeds of trust to which the provisions of Code of Virginia Section 55-58 through 55-67 are applicable;
  - (2) funds, securities, or other properties may be maintained in a common

account:

- (i) where a common account is authorized by a will or trust instrument;
- (ii) where authorized by applicable state or federal laws or regulations or by order of a supervising court of competent jurisdiction; or
- (iii) where (a) a computerized or manual accounting system is established with record-keeping, accounting, clerical and administrative procedures to compute and credit or charge to each fiduciary interest its pro-rata share of common account income, expenses, receipts and disbursements and investment activities (requiring monthly balancing and reconciliation of such common accounts), (b) the fiduciary at all times shows upon its records the interests of each separate fiduciary interest in each fund, security or other property held in the common account, the totals of which assets reconcile with the totals of the common account, (c) all the assets comprising the common account are titled or held in the name of the common account, and (d) no funds or property of the lawyer or law firm or funds or property held by the lawyer or the law firm other than as a fiduciary are held in the common account.

For purposes of this Rule, the term "fiduciary" includes only personal representative, trustee, receiver, guardian, committee, custodian and attorney-in-fact.

- (e) Record-Keeping Requirements, Required Books and Records. As a minimum requirement every lawyer engaged in the private practice of law in Virginia, hereinafter called "lawyer," shall maintain or cause to be maintained, on a current basis, books and records which establish compliance with Rule 1.15(a) and (c). Whether a lawyer or law firm maintains computerized records or a manual accounting system, such system must produce the records and information required by this Rule.
  - (1) In the case of funds held in an escrow account subject to this Rule, the required books and records include:
    - (i) 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 escrow and non-escrow funds, then the consolidated cash receipts journal shall contain separate columns for escrow and non-escrow receipts;
    - (ii) a cash disbursements journal listing and identifying all disbursements from the escrow 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 escrow and non-escrow disbursements then the consolidated disbursements journal shall contain separate columns for escrow and non-escrow disbursements;

- (ii) 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 escrow shall be maintained. The ledger account shall by separate columns or otherwise clearly identify escrow funds disbursed, and escrow 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;
- (iv) reconciliations and supporting records required under this Rule;
- (v) the records required under this paragraph shall be preserved for at least five full calendar years following the termination of the fiduciary relationship.

(2) in the case of funds or property held by a lawyer or law firm as a fiduciary subject to Rule 1.15(d), the required books and records include:

- (i) an annual summary of all receipts and disbursements and changes in assets comparable to an accounting that would be required of a court supervised fiduciary in the same or similar capacity. Such annual summary shall be in sufficient detail as to allow a reasonable person to determine whether the lawyer is properly discharging the obligations of the fiduciary relationship;
  - (ii) original source documents sufficient to substantiate and, when necessary, to explain the annual summary required under (i), above;
  - (ii) the records required under this paragraph shall be preserved for at least five full calendar years following the termination of the fiduciary relationship.
- (f) Required Escrow Accounting Procedures. The following minimum escrow accounting procedures are applicable to all escrow accounts subject to Rule 1.15(a) and (c) by lawyers practicing in Virginia.

- (2) Deposits. All receipts of escrow 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;
- (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 escrow account balance of the client or other person at the end of each period.
  - (i) 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 escrow for the period and deducting the total of escrow monies disbursed for the period; and
  - (ii) The trial balance shall identify the preparer and be approved by the lawyer or one of the lawyers in the law firm.
- (5) Reconciliations.
  - (i) 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 escrow account checkbook balance, and the escrow account bank statement balance;
  - (ii) 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;
  - (iii) Reconciliations shall identify the preparer and be approved by the lawyer or one of the lawyers in the law firm.
- (6) Receipts and disbursements explained. The purpose of all receipts and disbursements of escrow funds reported in the escrow journals and subsidiary ledgers shall be fully explained and supported by adequate records.

\* \* \* \*

**RULE 4.1 Truthfulness In Statements To Others**

In the course of representing a client a lawyer shall not knowingly:

- (a) make a false statement of fact or law; or

\* \* \* \*

**RULE 8.4 Misconduct**

It is professional misconduct for a lawyer to:

(b) commit a criminal or deliberately wrongful act that reflects adversely on the lawyer's honesty, trustworthiness or fitness to practice law;

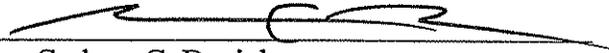
(c) engage in conduct involving dishonesty, fraud, deceit or misrepresentation which reflects adversely on the lawyers fitness to practice law.

\* \* \* \*

**III. CERTIFICATION**

Accordingly, it is the decision of the subcommittee to certify the above matters to the Virginia State Bar Disciplinary Board.

THIRD DISTRICT SUBCOMMITTEE  
OF THE VIRGINIA STATE BAR

By   
Graham C. Daniels  
Chair

**CERTIFICATE OF SERVICE**

I certify that on this 26<sup>th</sup> day of June, 2008, I mailed by Certified Mail, Return Receipt Requested, a true and correct copy of the foregoing Subcommittee Determination (Certification) to Dale Alan Gipe, Esquire, Respondent, *pro se*, at 3610 Marquette Road, Richmond, VA 23234, the Respondent's last address of record with the Virginia State Bar.

  
Paulo E. Franco, Jr.  
Assistant Bar Counsel