

1 Present: Carrico, C.J., Lacy, Keenan, Koontz, and Kinser,
2 JJ., and Compton and Stephenson, Senior Justices

3
4 VICTOR ALAN MOTLEY

5
6 v. Record No. 000417

OPINION BY
CHIEF JUSTICE HARRY L. CARRICO
September 15, 2000

7
8 VIRGINIA STATE BAR

9
10 FROM THE VIRGINIA STATE BAR DISCIPLINARY BOARD

11
12 In this appeal of right, we review an order of the
13 Virginia State Bar Disciplinary Board (the Disciplinary
14 Board) involving Victor Alan Motley (Motley), a Richmond
15 attorney. Dated November 5, 1999, the order imposed upon
16 Motley an eighteen-month license suspension for mishandling
17 a real estate transaction and mismanaging a trust account.
18 Finding no error in the order, we will affirm.

19 1. The Real Estate Transaction

20
21 Background

22 The real estate transaction in question involved an
23 oral contract for the sale and purchase of a house and lot
24 in the City of Richmond, entered into in February of 1996
25 between Evelyn J. Davis (Davis),¹ the seller, and Rebecca
26 Gray (Gray), the purchaser. Motley's conduct with respect
27 to the real estate transaction implicates DR 6-101 of the
28 Virginia Code of Professional Responsibility, which was in

¹ Evelyn Davis is also referred to in the record as Evelyn Meade and Evelyn Steele. Because the Disciplinary Board in

1 effect at all times pertinent to this case.² DR 6-101 dealt
2 with competence and promptness and a lawyer's duty to keep
3 a client reasonably informed.³

4 Retained by a realtor to act as settlement attorney in
5 the transaction, Motley concedes he represented "both the
6 seller . . . and the buyer." Before consulting with
7 Motley, Davis and Gray had agreed that Davis would sell the
8 property to Gray for \$35,000. Gray agreed to pay \$4,000 in
9 cash at closing and assume an existing deed of trust held
10 by Suncoast Savings and Loan Association, FSA (Suncoast)
11 for the balance.

12 Motley undertook the drafting of the necessary
13 documents and the closing of the transaction. Closing was
14 scheduled for February 15, 1996. Shortly before that date,
15 Gray announced that she could pay only \$2,000 at closing.
16 Davis agreed to accept the \$2,000, provided that Gray
17 execute a deed of trust and note in favor of Davis to
18 secure payment of the remaining \$2,000 by May 15, 1996.

its order referred to her as Davis, we will use the same name in this opinion.

² Effective January 1, 2000, the Virginia Code of Professional Responsibility was replaced by the Virginia Rules of Professional Conduct.

³ The subjects of competence, promptness, and a duty to inform are now contained in Rules 1.1, 1.3(a), and 1.4(a),(b), and (c) of the new Rules of Professional Conduct, respectively.

1 On February 15, Motley, Davis, and Gray met to close
2 the transaction. Gray had no funds with her but stated she
3 would pay \$1,000 the next day and make another payment of
4 \$1,000 in a few days. The parties signed the closing
5 papers, but agreed that the deed would not be recorded
6 until the first payment of \$1,000 was made. Davis gave
7 Gray the keys to the house and agreed she could move in.

8 On February 17, Gray gave Motley a non-certified check
9 for \$1,000 drawn on the account of a third party in an out-
10 of-state bank. Motley told Davis the check was not
11 certified, but she agreed that the deed could be recorded.

12 Motley deposited the \$1,000 check in his personal
13 account, and the bank returned the check for "[n]ot
14 sufficient funds." Motley deposited in his trust account
15 the proceeds of a personal loan in the amount of \$3,026.27.
16 He wrote trust account checks payable to his own order for
17 a total of \$2,300, leaving a balance of \$726.27 of personal
18 funds in the trust account. In addition, he wrote three
19 trust account checks totaling \$550 relative to the Davis-
20 Gray transaction, including a check to Davis for \$319.80,
21 representing what Motley said was her part of the \$1,000
22 check that was returned for insufficient funds. These
23 checks were not paid from funds provided by Gray but from
24 Motley's personal funds.

1 Gray took possession of the property in late February
2 or early March of 1996. In May 1996, Motley informed Davis
3 that he had received from Gray a certified check for
4 \$1,500. Motley also told Davis that she owed him an
5 additional \$200 because Gray had only made good to the
6 extent of \$800 on the \$1,000 check that was returned for
7 "[n]ot sufficient funds." After consulting another
8 attorney, Davis agreed to accept the check, but she refused
9 Motley's demand that she pay him the extra \$200. Although
10 Davis should have received a total of \$3,373.23 in cash
11 from the sale of her property, she received only \$1,819.80.

12 Two documents Motley prepared and had Davis sign at
13 the closing formed part of the basis for the Disciplinary
14 Board's finding that Motley had violated DR 6-101. The two
15 documents were a promissory note dated February 15, 1996,
16 and made payable to Gray for \$3,366.78 and a deed of trust
17 purportedly securing payment of the note. According to
18 Motley, these documents were ostensibly designed to give
19 Gray "security" for a debt in the sum of \$3,366.78 Davis
20 owed to a finance company for windows she had installed in
21 the house at some point in time prior to the closing.⁴

⁴ The deed of trust that was to provide this "security" is not part of the record, but the evidence shows it did not describe any property that was to stand as security for payment of the promissory note Davis signed in favor of

1 Also forming part of the basis for the Disciplinary
2 Board's finding of a violation of DR 6-101 was Motley's
3 alleged failure to comply promptly with instructions of
4 Suncoast to forward documentation necessary to complete
5 Gray's assumption of the existing deed of trust on the
6 property. As late as March 21, 1996, Motley had not sent
7 Suncoast "Proof of Insurance coverage and paid receipt."
8 Apparently, Motley never did send the information, but Gray
9 did.

10 2. Trust Account Problems

11 Background

12 Motley's questionable handling of his trust account in
13 the Davis-Gray transaction led to a broader investigation
14 into his management of the account. Motley's conduct with
15 respect to the trust account implicates former DR 9-102,
16 which dealt with preserving the identity of funds and
17 property of a client, and DR 9-103, which prescribed
18 record-keeping requirements.⁵

19 Lacy O. Campbell, a State Bar investigator, made an
20 analysis of Motley's records for the period July 1, 1995,

Gray. Apparently, it was Motley's intent that property
Davis obtained at some time in the future would later on be
included in the deed of trust.

⁵ The subjects of preserving identity and keeping records
are now contained in Rule 1.15 of the new Rules of
Professional Conduct.

1 through June 30, 1996. The analysis revealed numerous
2 deficiencies in Motley's record-keeping and accounting
3 practices. We will detail the results of the analysis
4 infra.

5 On June 5, 1996, Davis filed with the Virginia State
6 Bar a complaint against Motley for his handling of the real
7 estate transaction. On June 25, 1999, the Third District
8 Subcommittee, Section Two, certified to the Disciplinary
9 Board charges of misconduct against Motley relating both to
10 his handling of the Davis-Gray real estate transaction and
11 the management of his trust account. On July 8, 1999, the
12 State Bar served Motley with the Subcommittee's
13 certification. On September 24, 1999, the Disciplinary
14 Board held a hearing in the matter, and by order dated
15 November 5, 1999, suspended Motley's license to practice
16 law for eighteen months.

17 3. Issues on Appeal

18 A. Motions to Dismiss

19 1. Delayed Notice

20 Motley argues that the Disciplinary Board erred in
21 denying his motion to dismiss the charges against him on
22 the ground the charges were before the Disciplinary Board
23 in violation of Part 6, Section IV, Paragraph 13

1 (B)(5)(c)(ii)(c) and Subsection (12) of the Rules of this
2 Court. Subsection (12) contains the pertinent language:

3 If the Subcommittee has elected to certify the
4 Complaint . . . to the Board, it will promptly mail to
5 the Clerk of the Disciplinary System a statement of
6 the certified charges which shall include sufficient
7 facts to reasonably notify Bar Counsel and the
8 Respondent of the basis for such certification and the
9 Disciplinary Rules alleged to have been violated.

10
11 Motley points out that the Third District Subcommittee
12 determined on July 17, 1998, to certify charges of
13 misconduct against him but did not send the certification
14 to the Clerk of the Disciplinary System until June 25,
15 1999, some eleven months later, and he was not served until
16 July 8, 1999. This delay, Motley says, "violated
17 procedural requirements under the [Rules] and prejudiced
18 [his] right to a fair and prompt hearing."

19 Motley does not explain, however, what prejudice he
20 suffered as a result of the delay. In the absence of a
21 showing of prejudice resulting to Motley from the failure
22 to comply with the procedural requirement of prompt mailing
23 contained in Subsection (12), dismissal of the charges
24 against him would be inappropriate. See Jamborsky v.
25 Baskins, 247 Va. 506, 511, 442 S.E.2d 636, 638-39 (1994)
26 (delay of circuit court in complying with procedural
27 requirement in juvenile transfer statute does not divest
28 court of jurisdiction if no prejudice results); see also

1 Horne v. Commonwealth, 230 Va. 512, 518-19, 339 S.E.2d 186,
2 191 (1986) (delay in taking accused before magistrate not
3 ground for excluding evidence without resulting prejudice);
4 Potter v. Commonwealth, 10 Va. App. 113, 116, 390 S.E.2d
5 196, 198 (1990) (delay in filing habitual offender
6 information not ground for dismissal in absence of showing
7 of prejudice resulting from the delay).

8 2. General Investigation of Trust Account

9 Motley also moved for dismissal of the charges against
10 him on the ground the enlargement of the investigation of
11 misconduct from the original scope of the Davis-Gray real
12 estate closing to a general investigation of his trust
13 account "without due cause" violated his rights to due
14 process and equal protection of the law under the
15 Fourteenth Amendment. He was denied due process and equal
16 protection, Motley says, "in that Bar Counsel exercised
17 undue discretion by converting an investigation of a
18 complaint relating to a single real estate closing into a
19 general perusal of an attorney's trust account."

20 Part 6, Section IV, Paragraph 13(B)(3) of the Rules of
21 this Court provides in pertinent part that the authority of
22 Bar Counsel to investigate and prosecute complaints

23 includes the authority to examine the financial books
24 and records maintained by an attorney . . . including,
25 without limitation, any and all trust accounts . . .

1 maintained by the attorney Bar Counsel may
2 also examine an attorney's trust account whenever Bar
3 Counsel reasonably believes that the trust account may
4 not be in compliance with the . . . Code of
5 Professional Responsibility.

6
7 Although Motley's argument is not clear, he does not
8 appear to attack the facial validity of the Rule quoted
9 above. In any event, the Rule is presumed to be valid, see
10 Pulliam v. Coastal Emergency Servs., Inc., 257 Va. 1, 9,
11 509 S.E.2d 307, 311 (1999), and Motley has not demonstrated
12 in what manner or to what extent it suffers from facial
13 invalidity. Accordingly, we will consider only the as-
14 applied aspect of Motley's attack upon the Rule, consisting
15 of his argument that the investigation was transformed from
16 its original limited scope into a general investigation of
17 his trust account without due cause.

18 In Seventh Dist. Comm. v. Gunter, 212 Va. 278, 183
19 S.E.2d 713 (1971), we said:

20 A proceeding to discipline an attorney is not a
21 criminal proceeding and the purpose is not to punish
22 him but to protect the public. It is a special
23 proceeding, civil and disciplinary in nature, and of a
24 summary character. . . . Being an informal proceeding
25 it is only necessary that the attorney be informed of
26 the nature of the charge preferred against him and is
27 given an opportunity to answer.

28
29 Id. at 284, 183 S.E.2d at 717.

30 We are of opinion that Motley has failed to
31 demonstrate that he suffered a deprivation of due process

1 or equal protection rights as a result of the broadened
2 investigation itself or from the admission into evidence of
3 certain exhibits obtained in the investigation.⁶ He was
4 fully informed of the nature of the charges stemming from
5 the broadened investigation, and he was given ample
6 opportunity to answer. Furthermore, Bar Counsel had due
7 cause from the investigation of Motley's trust account in
8 connection with the Davis-Gray real estate transaction for
9 a reasonable belief that the account may not have been in
10 compliance with the Rules in other respects as well.

11 Bar Counsel would have learned from the investigation
12 into the Davis-Gray real estate transaction that Motley
13 deposited proceeds from a personal loan into his trust
14 account and deposited a check from a client (Gray) into his
15 personal account. Indeed, Motley conceded as much during
16 the proceedings below.⁷

17 Former DR 9-102(A), styled "Preserving Identity of
18 Funds and Property of a Client," provided that all funds
19 received or held by a lawyer on behalf of a client residing

⁶ Motley contends that the Disciplinary Board erred in admitting into evidence two exhibits over his objection that they were obtained in violation of his rights of due process and equal protection under the Fourteenth Amendment.

⁷ Motley's counsel conceded these facts in a letter dated December 9, 1996, to Campbell, the investigator for the State Bar.

1 in this state shall be deposited in a trust account and no
2 funds belonging to the lawyer shall be deposited therein
3 except under circumstances not pertinent here.⁸ Given this
4 Rule and the information disclosed by the investigation
5 into the Davis-Gray real estate transaction, we find no
6 abuse of discretion in Bar Counsel's broadening of the
7 scope of the investigation into Motley's trust account.

8 B. Continuance

9 Motley obtained a summons and had it served on Gray to
10 appear as a witness at the hearing before the Disciplinary
11 Board. Gray failed to appear, and Motley moved for a
12 continuance. The Board denied the motion, stating that
13 "the panel does not believe that Ms. Gray's testimony would
14 be material."

15 Motley argues that Gray's testimony was material and
16 that it was reversible error for the Disciplinary Board to
17 refuse to continue the case when she failed to appear.
18 However, Motley's counsel conceded during argument on the
19 motion for a continuance that he had "never spoken to Ms.
20 Gray," and he even said "[s]he's adverse." Therefore,

⁸ The exceptions are that funds reasonably sufficient to pay service or other charges of the financial institution may be deposited in the trust account and that funds belonging in part to a client and part to the lawyer must be deposited in the account but the portion belonging to the lawyer must be withdrawn promptly after it is due.

1 Motley was hardly in a position to assert the materiality
2 of Gray's testimony or to claim prejudice from her failure
3 to appear.

4 Even so, with the Disciplinary Board's permission,
5 Motley's counsel made a proffer of what Gray would say "if
6 [she] was here to testify." Counsel said that Gray would
7 corroborate Davis that "both agreed . . . that [with
8 respect to the indebtedness Davis owed for the windows]
9 they were going to have this note and hold it in good faith
10 [and] that when it was over and there was no more risk to
11 [Gray] as being the new property owner, then it would be
12 torn up."

13 However, assuming Gray would have testified in this
14 manner, the testimony would have been completely beside the
15 point. The crucial question is not whether Davis and Gray
16 agreed to have a note. The question is whether Motley was
17 incompetent in fashioning the arrangement between the
18 parties in the manner that he did. We will deal with that
19 question shortly, but it suffices to say at this point
20 that, even had Gray testified as Motley says she would, the
21 outcome of the inquiry into Motley's competence would be
22 the same. Hence, Gray's testimony would not have been
23 material.

1 Motley's counsel also proffered that Gray would
2 corroborate Motley "about insurance being kept in place
3 that [Davis] had on the property." This related to
4 Motley's alleged failure, noted supra, promptly to furnish
5 "Proof of Insurance coverage and paid receipt" to Suncoast
6 in connection with Gray's assumption of the existing deed
7 of trust on the property. Motley seeks to excuse his
8 failure by saying that Gray and Davis "agreed that Davis'
9 existing hazard insurance would remain in force and[,]
10 therefore, it would not be necessary to send a new hazard
11 insurance policy to the lender." But the fact that the
12 parties agreed a new policy would not be obtained does not
13 excuse Motley's failure to furnish proof to Suncoast that
14 the existing policy would remain in force and that the
15 premium was current. Hence, Gray's testimony would not
16 have been material on this point either.

17 Motley acknowledges that whether a continuance should
18 have been granted was a matter for the exercise of
19 discretion on the part of the Disciplinary Board. Under
20 the circumstances, we find no abuse of discretion in the
21 denial of Motley's motion for a continuance.

22 C. Recusal

23 Motley sought to have two members of the Disciplinary
24 Board recuse themselves from hearing the present proceeding

1 because they had participated in a previous disciplinary
2 matter involving Motley that, at the time of the hearing,
3 was before this Court on appeal. Motley argued that the
4 two members became privy to information as a result of the
5 prior proceeding that was inadmissible in the present case
6 because the prior proceeding was on appeal and thus not
7 final. The two members refused to step down, stating they
8 felt "very strongly" that the "facts . . . raised" by
9 Motley would not affect their impartiality and fairness in
10 the present case.

11 Motley makes the same argument on appeal that he made
12 before the Disciplinary Board. In addition, he says that
13 "[i]t was highly prejudicial to have two panel members who
14 had personal involvement with past disciplinary matters
15 relating to [him]" and that "[i]t constituted error to deny
16 [his] motion for [recusal]."

17 We disagree. In the first place, we think a member of
18 the Disciplinary Board is subject to the same rules
19 regarding recusal as are applicable to a trial judge, and
20 Motley tacitly concedes this point. The fact that a trial
21 judge is "'familiar with a party and his legal difficulties
22 through prior judicial hearings . . . does not
23 automatically or inferentially raise the issue of bias.'" Deahl v. Winchester Dep't of Soc. Servs., 224 Va. 664, 672-

1 73, 299 S.E.2d 863, 867 (1983) (quoting Barry v. Sigler,
2 373 F.2d 835, 836 (8th Cir. 1967)).

3 Whether a trial judge should recuse himself or herself
4 involves the exercise of discretion. Deahl, 224 Va. at
5 672, 299 S.E.2d at 867. Nothing in this record indicates
6 that the two members of the Disciplinary Board abused their
7 discretion in refusing to recuse themselves. See Stockton
8 v. Commonwealth, 227 Va. 124, 141, 314 S.E.2d 371, 382
9 (1984) (no abuse of discretion for trial judge to refuse to
10 recuse himself because he had presided over previous trial
11 in which defendant cursed him).

12 D. Sufficiency of Evidence

13 1. The Real Estate Transaction

14 Motley's conduct in the real estate transaction
15 implicates former DR 6-101, which was styled "Competence
16 and Promptness." DR 6-101(A) provided that a lawyer "shall
17 undertake representation only in matters in which [he or
18 she] can act with competence." DR 6-101(B) required that a
19 lawyer "shall attend promptly to matters undertaken for a
20 client," and DR 6-101(C) required a lawyer to "keep a
21 client reasonably informed about matters in which the
22 lawyer's services are being rendered."

23 In discussing the Disciplinary Board's finding that
24 his conduct in handling the Davis-Gray real estate

1 transaction constituted incompetence, Motley reminds us
2 that a violation of disciplinary rules must be established
3 by clear proof, Blue v. Seventh Dist. Comm., 220 Va. 1056,
4 1062, 265 S.E.2d 753, 757 (1980), and he maintains that the
5 finding of incompetence against him is not supported by
6 such proof. Motley says "[t]he evidence is that Davis and
7 [Gray] agreed to the transaction and Motley was carrying
8 out their requests."

9 If, as is apparent, Motley is content to rest his
10 defense against the use of the disputed promissory note and
11 deed of trust upon the proposition that Davis and Gray
12 agreed to the transaction and Motley was merely carrying
13 out their requests, the defense simply will not suffice.
14 What Motley permitted Davis to sign does not even conform
15 to what he says the parties agreed to.

16 Motley says that "the parties agreed that Davis would
17 execute a deed of trust note in the amount of \$3,366.78 to
18 protect [Gray] in the event a lien was placed on the
19 property due to Davis' default on the debt" and that Gray
20 "would destroy the note when the debt for the windows was
21 satisfied." But nothing in the note Davis signed makes its
22 payment conditional upon the placing of a lien on the
23 property nor does the note contain any provision requiring

1 Gray to destroy it when the debt for the windows was
2 satisfied.

3 Rather, the note Motley permitted Davis to sign is a
4 fully negotiable instrument dated February 15, 1996,
5 containing an unconditional promise to pay the fixed sum of
6 \$3,366.78 in monthly installments of \$98 each beginning
7 March 1, 1996, with payment in full due June 1, 1998. The
8 note not only created an indebtedness requiring Davis to
9 pay Gray \$3,366.78 when Davis owed Gray no money at all,
10 but it also subjected Davis to the danger of double
11 liability if the note found its way into the hands of a
12 holder in due course.

13 Furthermore, it is obvious from a reading of Davis's
14 testimony that she had no idea what she was getting herself
15 into when she signed the note. She was asked by a member
16 of the Disciplinary Board why she "signed a note promising
17 to pay Ms. Gray money." She replied, "I wasn't paying Ms.
18 Gray money. I was continuing to pay that bill [to the
19 finance company]." Asked again why she signed the note,
20 she said "[b]ecause that was my bill. It was a bill that I
21 had created." Asked if she understood that the note
22 "doesn't say" that she "really didn't have to pay Ms. Gray"
23 but she "had to pay somebody else," she replied, "[n]o, I
24 didn't."

1 It is also obvious that Motley himself neither
2 understood the nature of the situation he created for Davis
3 nor appreciated the potential harm she could have suffered.
4 A member of the Disciplinary Board asked Motley whether he
5 had any concerns "that the note might be negotiated with a
6 holder in due course," and he replied, "I did, but you can
7 question anything, but can you win on it?"

8 Motley concedes Davis was his client. As a result of
9 that relationship, he owed her the duty to draft closing
10 papers that accurately reflected the conditional nature of
11 the liability she had agreed to undertake in favor of Gray.
12 He also owed her the duty, in any event, to explain to her
13 the true nature and potential consequences of what he
14 actually prepared for her to sign and to advise her against
15 signing anything to her prejudice. If this advice had
16 created a conflict of interest because of his dual role in
17 representing both Davis and Gray, then it would have been
18 his duty to withdraw from representation of both.

19 Motley's failure to prepare papers conforming to the
20 conditional nature of the liability Davis had agreed to
21 undertake constituted a violation of his duty under DR 6-
22 101(A)(1) to "act with competence," and his failure to
23 advise her of the true nature and potential consequences of
24 what he actually prepared is both incompetence under DR 6-

1 101(A)(1) and a violation of his duty under DR 6-101(C) to
2 "keep a client reasonably informed about matters in which
3 the lawyer's services are being rendered." And we think
4 all these violations have been established by clear proof.

5 We also think the evidence clearly and convincingly
6 established that Motley violated DR 6-101(B) by failing to
7 "attend promptly" to the matter of forwarding to Suncoast
8 "Proof of Insurance coverage and paid receipt." As noted
9 previously, Motley attempts to excuse this failure by
10 saying that, because Davis and Gray agreed to continue the
11 existing policy, there was no need to send the trust holder
12 a new policy. However, the trust holder did not require
13 proof of a new policy but only proof that there was
14 "Insurance coverage," a requirement that could have been
15 satisfied easily with proof that the existing policy
16 remained in force. And Motley clearly did not furnish that
17 proof.

18 2. Trust Account Problems

19 (a) DR 9-102(A) and (B) - Preserving Identity of Funds

20 Motley argues there is no clear and convincing
21 evidence that he put client funds into his personal
22 account. However, as noted previously, Motley conceded
23 before the Disciplinary Board that he deposited the \$1,000
24 check he received from Gray into his personal account. He

1 says now that he "inadvertently" made this deposit. Also,
2 he argues that because the \$1,000 check was subsequently
3 returned for insufficient funds and a check is not legal
4 tender, no client funds were actually deposited into his
5 personal account. This is an ingenious argument, but
6 lacking in merit. Furthermore, the argument ignores the
7 fact, also conceded by Motley, that he deposited \$3,026.27
8 of personal funds into his trust account, which is likewise
9 prohibited by DR 9-102(A) except in circumstances not
10 pertinent here.

11 Motley also argues there is no clear and convincing
12 evidence that he failed to keep a record of client funds
13 coming into his possession, as required by DR 9-102(B)(3).
14 He says his records are incomplete but do indicate
15 "whenever [he] deposited client funds into his account."
16 However, the record shows clearly that Motley failed to
17 maintain a subsidiary ledger card or an equivalent for the
18 Davis-Gray real estate transaction, as required by DR 9-
19 103(A).

20 (b) DR 9-103 - Record-Keeping Requirements

21 The Disciplinary Board found that Motley had violated
22 DRs 9-102(A), -102(B)(3), -103(A)(1),(2), and (3), and -
23 103(B)(2),(3),(4),(5), and (6), all relating to record-
24 keeping and accounting procedures. Motley says that he had

1 trust ledger cards, bank statements, and other records
2 "that were used to account for client funds deposited in
3 trust and disbursements" which, "[a]llthough . . .
4 incomplete," did provide "a good faith attempt to account
5 for the deposit and disbursement of client funds held in
6 trust."

7 However, the analysis made of Motley's records by
8 Campbell, the State Bar investigator, for the period July
9 1, 1995, through June 30, 1996, disclosed numerous
10 instances of incompleteness in subsidiary ledgers and cash
11 disbursement journals. Similarly, cash receipts journals
12 or equivalent records failed to provide identification of
13 the sources of funds deposited. Also, Motley would deposit
14 one amount but "[h]is ledger denote[d] another amount."

15 Campbell found that "Motley was out of trust, on
16 numerous occasions, on each of [numerous] clients." A
17 "look at . . . the checks that were pending, and . . . how
18 much money was in the checking account [showed] there was
19 not enough money to cover the checks." For example, with
20 respect to the handling of a settlement for one client,
21 there were insufficient funds in the trust account to cover
22 checks written on the settlement on thirty-two different
23 occasions between August 15, 1995, and November 13, 1995,
24 and, for another client, there were insufficient funds to

1 cover checks written on the settlement on at least twenty-
2 seven separate occasions between October 19, 1995, and
3 March 25, 1996.

4 F. Mitigating Circumstances and Excessiveness of Sanction

5 Motley argues that the eighteen-month license
6 suspension "imposed by the [Disciplinary] Board was
7 excessive and contrary to law because the Board failed to
8 consider mitigating evidence." According to Motley, the
9 Disciplinary Board failed to consider evidence that he
10 engaged in no deliberate conduct; did not violate any court
11 order; did not steal any client funds or cause harm to any
12 client; no longer handles real estate matters; and
13 acknowledged the need for improvement in the handling of
14 his trust accounts, has instituted improved accounting
15 procedures, and is willing to make other necessary
16 improvements.

17 It is true, as Motley says, that neither in the
18 Disciplinary Board's oral decision nor in its written order
19 is there any mention of mitigating evidence. However, we
20 are aware of no requirement that the Board state that it
21 considered mitigating evidence when announcing a decision
22 or issuing an order that disciplines an attorney. And a
23 failure to state that mitigating evidence was considered
24 does not mean that it was not considered.

