
In The
Supreme Court of Virginia

RECORD NO. _____

MARTIN ARIF & GREENE, PLC,

Petitioner – Appellant,

v.

**JENNIFER FLANAGAN, CLERK OF
THE FAIRFAX COUNTY
JUVENILE & DOMESTIC RELATIONS
DISTRICT COURT,**

Respondent – Appellee.

PETITION FOR WRIT OF MANDAMUS

Michael S. Arif (VSB No. 20999)
Matthew W. Greene (VSB No. 37538)
MARTIN, ARIF & GREENE, PLC
8001 Braddock Road, Suite 100
Springfield, Virginia 22151
(703) 323-1200 (Telephone)
(703) 978-1040 (Facsimile)
msa323@aol.com
mgreene@mnalegal.com

Counsel for Petitioner – Appellant

TABLE OF CONTENTS

	<u>Page</u>
TABLE OF AUTHORITIES	ii
PETITION FOR WRIT OF MANDAMUS	1
Factual Background	2
Legal Argument	5
CERTIFICATION	11

TABLE OF AUTHORITIES

Page(s)

CASES

<u>Dovel v. Bertram,</u> 184 Va. 19, 34 S.E.2d 369 (1945)	6
<u>In Re. Commonwealth’s Attorney for the City of Roanoke,</u> 265 Va. 313, 576 S.E.2d 458 (2003).....	6, 7
<u>Richlands Med. Ass’n. v. Commonwealth,</u> 230 Va. 384, 337 S.E.2d 737 (1985).....	6

STATUTES

Va. Code § 17.1-309.....	1
Va. Code § 19.2-163.....	2, 7, 8, 9

RULE

VA. SUP. CT. R. 5:7.....	1, 2
--------------------------	------

OTHER AUTHORITY

The Merriam-Webster Online Dictionary.....	7
--	---

V I R G I N I A:

IN THE SUPREME COURT OF THE COMMONWEALTH OF VIRGINIA

_____)	
MARTIN ARIF & GREENE, PLC)	
)	
Petitioner)	
)	
v.)	Case No.
)	
JENNIFER FLANAGAN, CLERK)	
OF THE FAIRFAX COUNTY)	
JUVENILE & DOMESTIC)	
RELATIONS DISTRICT COURT)	
)	
Respondent.)	
_____)	

PETITION FOR WRIT OF MANDAMUS

COMES NOW, the undersigned, the Law Offices of Martin Arif & Greene, PLC and, pursuant to Virginia Code § 17.1-309, and Rule 5:7, et seq. of the Rules of the Supreme Court of Virginia, respectfully move this Honorable Court to issue a writ of mandamus to Jennifer Flanagan, Clerk of the Juvenile & Domestic Relations District Court for the 19th Judicial Circuit of the Commonwealth of Virginia. Specifically, the undersigned move that this Court issue a writ of mandamus directing Ms. Flanagan

to comply with her ministerial duty as stated in Virginia Code § 19.2-163 and forward forthwith to this Court the outstanding vouchers submitted by the undersigned for legal services rendered so that payment of said vouchers may occur. In the opinion of the undersigned, and pursuant to *Rule 5:7* of the Rules of the Supreme Court of Virginia, the taking of evidence will be necessary for the proper disposition of this petition. In support thereof, the undersigned state as follows:

Factual Background

Martin Arif & Greene, PLC is a law office operating in Northern Virginia. As part of its practice, the firm accepts appointments pursuant to the Criminal Justice Act (hereinafter "CJA"), primarily from the Fairfax County Juvenile & Domestic Relations District Court (hereinafter "Fairfax JDR"). These CJA appointments range from criminal to civil to abuse and neglect cases, and the attorneys of Martin Arif & Greene, PLC accept appointments as court appointed counsel and as Guardians *Ad Litem* for children and individuals under legal disabilities (collectively "CJA cases").

When appointed to CJA cases, the attorneys of Martin Arif & Greene, PLC track their time expended and provide vouchers along with necessary time and expense tracking documentation to the Fairfax JDR at appropriate intervals of each particular CJA case. It is the practice of the Fairfax JDR for the judge overseeing the particular case to review the voucher submitted by counsel and to decide whether to authorize said voucher for payment. It is the understanding and belief of undersigned counsel that the unpaid vouchers relevant to the case at bar have all been timely reviewed by the particular judge responsible for each case and accordingly authorized for payment.

After authorization, it is the practice of the Fairfax JDR to return said voucher to the Clerk's Office; currently administered by Ms. Jennifer Flanagan, Clerk of the Fairfax JDR. Upon receipt of the authorized vouchers, it becomes the duty of Clerk Flanagan to ensure that said vouchers are transmitted forthwith to the Supreme Court of Virginia, to be processed for payment.

Attached as **Exhibit A** to this pleading, and incorporated herein by reference, is a listing of outstanding vouchers

submitted by the undersigned for payment. Said list contains the case numbers, the voucher numbers, and amounts billed. At this point all such vouchers (some dating back two years) remain unpaid. Additionally, upon information and belief, the Supreme Court of Virginia has never received the vast majority of the vouchers listed in **Exhibit A**. Those vouchers that have an asterisk next to them were received by the Supreme Court of Virginia but returned to the Fairfax JDR with a request for further information. Undersigned counsel state and aver that they have no records of being advised of the fact that the asterisked vouchers were returned, nor have they been given any opportunity to address the reasons for the return of the vouchers in question.

During the course of their appointed work for the Fairfax JDR over the years, undersigned counsel have regularly contacted Clerk Flanagan's office and attempted to contact Clerk Flanagan directly, to ascertain the status of the outstanding vouchers. Unfortunately, Clerk Flanagan has failed to respond to

undersigned counsel in their requests for information as to the outstanding vouchers.

Given Clerk Flanagan's failure to respond to repeated requests for information, undersigned counsel have contacted the Office of the Executive Secretary of this Court seeking information on the status of their unpaid vouchers. The Office of the Executive Secretary of this Court has, in every instance, promptly responded to undersigned counsel's request for information. Unfortunately, the Office of the Executive Secretary of this Court has only been able to confirm that their office has not received nor processed the vouchers referenced in this petition.

As of the drafting of this pleading, Martin Arif & Greene, PLC is owed Seventy Three Thousand Three Hundred & Seventeen and 60/100 (\$73,317.60) Dollars.

Legal Argument

Simply stated, the undersigned request this Court to issue a writ of mandamus compelling Clerk Flanagan to comply with her statutory and ministerial duty to submit forthwith the above

referenced outstanding vouchers to this Court for processing and payment.

It is settled law that mandamus is an extraordinary remedy used to compel a public official to exercise a purely ministerial duty imposed upon her by law. Richlands Med. Ass'n. v. Commonwealth, 230 Va. 384, 386, 337 S.E.2d 737, 739 (1985); accord In Re. Commonwealth's Attorney for the City of Roanoke, 265 Va. 313, 317, 576 S.E.2d 458, 461 (2003). Specifically, a ministerial act is a duty which an individual performs within a given state of facts and in a prescribed manner so as to obey the mandate of legal authority. The performance of this duty is without regard to, or in the exercise, of said person's own judgment or discretion as to the propriety of the act being done. Richlands Med. Ass'n., supra, 230 Va. At 386, 337 S.E.2d at 739. See also, Dovel v. Bertram, 184 Va. 19, 22, 34 S.E.2d 369, 370 (1945). Crucial to the propriety of an action in mandamus is the determination that the act to be performed by an individual imposed by a duty of law is where the exercise of judgment and/or discretion is not involved. In Re. Commonwealth's

Attorney for the City of Roanoke, supra, 265 Va. At 318, 567

S.E.2d at 461.

Virginia Code § 19.2-163 states in relevant part:

Any statement submitted by an attorney for payments due him for indigent representation or for representation of a child pursuant to Section 16.1-266 shall, after the submission of the statement, be forwarded **forthwith** by the clerk to the Commonwealth, county, city or town, as the case may be, responsible for payment.¹

(emphasis added).

In the case at bar, the undersigned have submitted vouchers for their legal services rendered. Upon information and belief, the case assigned judges have reviewed said vouchers and authorized their payment. Consequently, undersigned counsel have complied with their implied duty as stated in Virginia Code § 19.2-163 in that they have submitted their statements for legal services rendered. Thereafter, it became the statutory and ministerial duty of Clerk Flanagan to forward forthwith those vouchers to this Court.

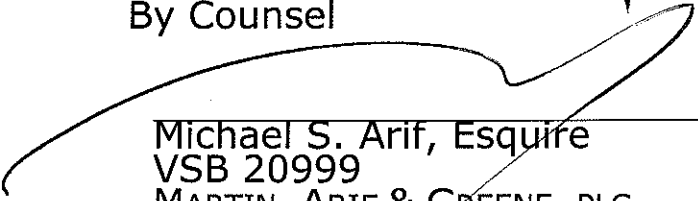
¹ The Merriam-Webster Online Dictionary defines forthwith as "immediately."

Undersigned counsel has engaged in extensive document review and research and have also had numerous communications with the Office of the Executive Secretary of this Court. This research and communication have resulted in the conclusion that the non-asterisked vouchers listed in **Exhibit A** have never been sent to this Court by Clerk Flanagan. Of those vouchers that have been sent to this Court and returned for questions/further information (the asterisked vouchers), none have been provided to undersigned counsel so that this Court's questions and/or requests for further information may be answered.

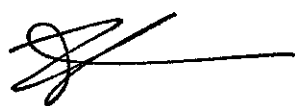
In sum, given that she has failed in her statutory and ministerial duty, a writ of mandamus must be issued by this Court to Clerk Flanagan directing her to comply with her ministerial duty as stated in Virginia Code § 19.2-163 and forward forthwith to this Court the outstanding vouchers submitted by the undersigned for legal services rendered so that payment of said vouchers may occur.

WHEREFORE, for the above stated reasons, and for those reasons to be submitted at any oral argument scheduled in this matter, Petitioner, Martin Arif & Greene, PLC respectfully move this Honorable Court to issue a writ of mandamus to Jennifer Flanagan, Clerk of the Juvenile & Domestic Relations District Court for the 19th Judicial Circuit of the Commonwealth of Virginia. Specifically, the undersigned move that this Court issue a writ of mandamus directing Ms. Flanagan to comply with her ministerial duty as stated in Virginia Code § 19.2-163 and forward forthwith to this Court the outstanding vouchers submitted by the undersigned for legal services rendered so that payment of said vouchers may occur. Petitioner further respectfully requests reimbursement of its out of pocket actual expense expended in the course of this litigation.

Respectfully submitted,
MARTIN ARIF & GREENE, PLC
By Counsel



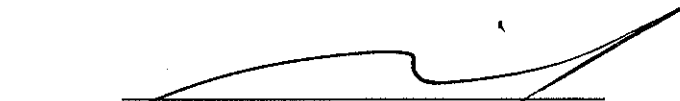
Michael S. Arif, Esquire
VSB 20999
MARTIN, ARIF & GREENE, PLC
8001 Braddock Road,
Suite 100
Springfield, VA 22151
Tel. (703) 323-1200
Fax (703) 978-1040




Matthew W. Greene, Esquire
VSB 37538
MARTIN, ARIF & GREENE, PLC
8001 Braddock Road,
Suite 100
Springfield, VA 22151
Tel. (703) 323-1200
Fax (703) 978-1040

CERTIFICATION

I HEREBY CERTIFY, pursuant to Rule 5:7 of the Rules of the Supreme Court of Virginia, under penalty of law, that the facts and argument contained in the above pleading are true and accurate to the best of my knowledge, information and belief. I further certify that I will cause the Respondent to receive service of process at 4110 Chain Bridge Road, Fairfax, VA 22030 via private process server.

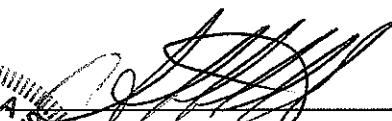


Michael S. Arif, Esq.



Matthew W. Greene, Esq.

SUBSCRIBED AND SWORN TO before me in my jurisdiction aforesaid this 8th day of September, 2009.



Notary Public
23437

License Number
01/31/11

My Commission Expires

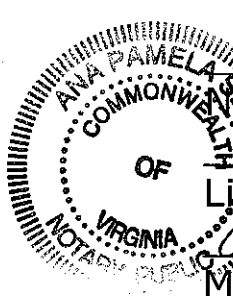


EXHIBIT A

Voucher Number	Case Number	Amount Owed
489560	JJ302178-08-01	\$ 120.00
489581	JJ377004-01-01	\$ 112.00
4111950	JJ379905-03-01	\$ 120.00
4272651	JA335429-01-02	\$ 315.14
4626776	JJ383821-03-01	\$ 360.00
4629236	JJ389012-01-01 & 02-01	\$ 240.00
4629647	JJ390114-02-01	\$ 120.00
4893736	JJ357381-03-01	\$ 1,002.49
4893847	JJ388680-02-01 *	\$ 120.00
4894342	JJ386950-05-01	\$ 505.81
4894535	JJ388379-01-02	\$ 775.33
4894536	JJ324644-05-01	\$ 1,544.11
4894547	JJ390676-01-01 *	\$ 3,000.84
4894549	JJ378664-05-01	\$ 4,947.83
4894556	JJ392515-01-01	\$ 240.00
4894643	JJ381592-03-01	\$ 480.00
4894736	JJ358307-14-01 *	\$ 120.00
4895276	JA338330-02-03 *	\$ 130.00
4895378	JA306384-03-02	\$ 158.00
4895658	JJ342416-03-01 & 02-01	\$ 224.00
4895659	JJ375373-08-01	\$ 161.05
4895661	JJ375527-02-01, 04-01 & 05-01	\$ 336.00
4895662	JA384369-02-01	\$ 150.00
4895663	JJ389562-01-01	\$ 179.46
4895669	JJ373842-01-01 & 02-01	\$ 584.57
4895675	JJ389028-02-01	\$ 120.00
4895682	JJ350438	\$ 108.05
4895683	JJ382227-01-01	\$ 481.22
4895684	JJ383511-01-01	\$ 398.08
4895684	JJ387847-01-01	\$ 120.00
4895686	JJ384507-01-01	\$ 336.27
4895706	JJ387313-06-01 *	\$ 120.00
4896212	JJ390353-01-01	\$ 594.76
4896451	JJ351380-03-01	\$ 1,602.47
4896585	JJ356278-05-01	\$ 1,464.76
4896683	JA388760-02-01	\$ 120.00
4896751	JJ365434-03-02	\$ 2,440.50
4897258	JJ353462-04-01 *	\$ 2,288.19
4897507	JJ379021-06-01	\$ 120.00
4897805	JA389032-01-01	\$ 2,535.55
4898200	JJ374281-03-01	\$ 120.00
4898300	JJ391908-02-01	\$ 120.00
4898343	JJ215708-14-01	\$ 189.50
4898344	JJ215709-12-01	\$ 97.05
4898345	JJ344493-09-01	\$ 336.00
4898346	JJ379011-01-01	\$ 224.00
4898347	JJ198583-02-01	\$ 389.05
4898348	JJ379828-01-02	\$ 189.96

Voucher Number	Case Number	Amount Owed
5092183	JJ394252-01-03	\$ 120.00
5179585	JJ352702-02-01	\$ 1,261.48
5180360	JJ346310-09-03	\$ 1,023.71
5180366	JJ389664-02-03	\$ 697.50
5181510	JJ381136	\$ 2,627.30
5182755	JJ392113-03-01	\$ 1,663.16
5188804	JJ206236-13-01	\$ 120.00
5189621	JJ381592-04-01	\$ 323.05
5189664	JA392645-05-01	\$ 1,118.18
5429725	JJ379052-03-01	\$ 1,168.00
5433057	JJ395653-01-01	\$ 2,672.18
5559970	JJ386950-06-01	\$ 207.00
5566910	JJ361047-01-04	\$ 185.00
5569231	JJ391921-04-01	\$ 120.00
5569705	JJ395643	\$ 244.07
5569712	JJ382702-03-01	\$ 651.50
5569852	JJ381745-05-01	\$ 332.71
5569853	JJ337047-08-01	\$ 431.71
5569857	JJ387246-05-01	\$ 824.39
5569858	JJ384247-05-01	\$ 775.00
5569859	JJ387245-05-01	\$ 760.00
5569861	JJ380854-08-01	\$ 382.30
5569862	JJ385010-06-01	\$ 120.00
5569987	JJ384567-10-01	\$ 14,103.36
5572964	JJ353462-05-01	\$ 2,744.50
5572979	JJ325537-18-01	\$ 767.00
5572988	JJ388618-07-01	\$ 2,797.59
5572989	JJ335694	\$ 4,274.87
5572990	JJ387396-05-01	\$ 240.00
	TOTAL:	\$ 73,317.60