

VIRGINIA:

Before the Virginia State Bar Disciplinary Board

In the Matter of

Charles Everett Malone

Attorney at Law

On May 10, 2006, came Charles Everett Malone 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 resignation at a time when disciplinary charges are pending, he admits that the charges in the attached Certification and Affidavit Declaring Consent to Revocation are true.

The Board having considered the said Affidavit Declaring Consent to Revocation accepts his resignation. Accordingly, it is ordered that the license to practice law in the courts of this Commonwealth heretofore issued to the said Charles Everett Malone be and the same hereby is revoked, and that the name of the said Charles Everett Malone be stricken from the Roll of Attorneys of this Commonwealth.

Enter this Order this tenth day of May, 2006

For the Virginia State Bar Disciplinary Board

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

received

MAY 10 2006

VIRGINIA:

BEFORE THE VIRGINIA STATE BAR DISCIPLINARY BOARD
VSB CLERK'S OFFICE
CONSENT TO REVOCATION OF LICENSE TO PRACTICE LAW

TO THE HONORABLE MEMBERS OF THE VIRGINIA STATE BAR DISCIPLINARY BOARD:

Your Affiant, CHARLES EVERETT MALONE., first being duly sworn, upon his oath does respectfully represent unto the Disciplinary Board the following:

1. That he was licensed by the Board of Law Examiners on October 5, 1990 to practice law in the courts of the Commonwealth, and that he did on October 5, 1990, qualify before the Supreme Court of Virginia.

2. That this consent is freely and voluntarily tendered by him pursuant to Part 6, Section IV, Paragraph 13(L) of the Rules of the Supreme Court of Virginia, that he is not being subjected to coercion or duress, and that he is fully aware of the implications of consenting to Revocation.

3. That he is aware that there are proceedings currently pending involving allegations of Misconduct (VSB Docket Numbers 05-021-0992, 05-021-2018, 05-021-2184, 05-021-2186, 05-021-2603, 05-021-2623, 05-021-2810, 05-021-2929 and 05-021-3029), the nature of which are set forth in the attached District Committee Determination (Certification) issued by the Second District Committee, Section I, of the Virginia State Bar on January 30, 2006.

4. That the material facts upon which the allegations of Misconduct are predicated are true; and,

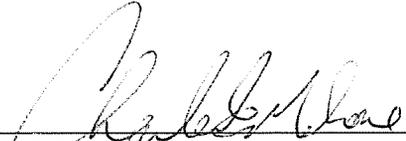
5. That he submits this consent to Revocation because he knows that if disciplinary Proceedings based on the alleged Misconduct were brought or prosecuted to a conclusion, he could not successfully defend them.

In accordance with Paragraph 13(L)(2), the admissions offered in this affidavit consenting to Revocation shall not be deemed an admission in any proceeding except one relating to the status of this attorney as a member of a bar.

WHEREFORE, your Affiant respectfully requests that he be allowed to consent to the Revocation of his license to practice law before this Honorable Board and before all other courts of the Commonwealth of Virginia, that his name be stricken from the roles of attorneys qualified to

practice law in the Commonwealth of Virginia, and that such orders and decrees as may be necessary or required in this regard may be entered.

GIVEN under my hand this 9th day of MAY, 2006.

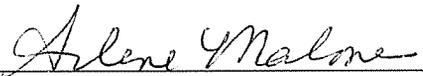

CHARLES EVERETT MALONE
Affiant

STATE OF VIRGINIA

City/County of Chenapeake, to wit:

I, Arlene Malone, a Notary Public in and for the city/county and state aforesaid, whose notarial commission expires on the 31 day of October, 2008, do hereby certify that CHARLES EVERETT MALONE, personally known to me, appeared before me on this 9th day of May, 2006, and was by me duly sworn and thereupon executed in my presence and acknowledged to me the truth and voluntariness of the foregoing Affidavit and Oath.

GIVEN under my hand this 9th day of May, 2008.


NOTARY PUBLIC

My commission expires the 31st day of October, 2008.

VIRGINIA:

**BEFORE THE FIRST DISTRICT SUBCOMMITTEE
OF THE VIRGINIA STATE BAR**

IN THE MATTER OF CHARLES EVERETT MALONE

**VSB DOCKET NO. 05-021-0992
 05-021-2018
 05-021-2184
 05-021-2186
 05-021-2603
 05-021-2623
 05-021-2810
 05-021-2929
 05-021-3029**

**SUBCOMMITTEE DETERMINATION
(CERTIFICATION)**

On May 25, 2005, a meeting in these matters was held before a duly convened subcommittee of the Second District Committee, Section I, consisting of David J. McDonald, Lay Member; James Lang, Esquire, Member; and Paul K. Campsen, Esquire, Chair, presiding.

Pursuant to Part Six, Section IV, Paragraph 13.G.1 (b) of the Rules of the Supreme Court, the Second District Subcommittee of the Virginia State Bar hereby serves upon the Respondent the following Certification:

I. ALLEGATIONS OF FACT

1. During all times relevant hereto, except as otherwise noted, the Respondent, Charles Everett Malone (hereinafter Respondent or Mr. Malone) was an attorney licensed to practice law in the Commonwealth of Virginia.

***05-021-0992
Complainant: VSB/Trust Account***

2. On August 31, 2004, Mr. Malone presented for payment check number 1037 in the amount of \$635, drawn against his attorney trust account at SunTrust Bank.

3. At the time, there was only \$513.92 on account at the bank, causing an overdraft of \$121.08 that the bank reported to the Virginia State Bar.
4. Mr. Malone made a deposit the same day in an attempt to cover the check, but the deposit was not credited until the next business day in accordance with SunTrust's standard practice, causing the overdraft.
5. On Friday, September 10, 2004, Mr. Malone ordered a wire transfer in the amount of \$875 against the same trust account, also against insufficient funds, resulting in an overdraft of \$296.30 that the bank reported to the Virginia State Bar.
6. As in the previous situation, Mr. Malone made a deposit to his trust account in an attempt to cover the withdrawal, but did not do so until after 2:00 p.m. For this reason, the deposit was not credited until the following Monday, September 13, 2004.
7. By letter, dated September 7, 2004, the Virginia State Bar's Intake Department forwarded a copy of the first overdraft notice to Mr. Malone and demanded that he provide an explanation. Mr. Malone failed to respond.
8. By letter, dated September 16, 2004, the Virginia State Bar's Intake Department forwarded a copy of the second overdraft notice to Mr. Malone, reminding him that he had not responded to the bar's previous request for information, and requesting an explanation. Mr. Malone failed to respond to this letter as well.
9. On September 23, 2004, the Virginia State Bar issued a subpoena duces tecum to Mr. Malone at his address of record, commanding him to produce copies of his trust account records and bank records from the previous six months by October 15, 2004.
10. On September 24, 2004, Wilfredo Bonilla, Esquire, an attorney in practice with Mr. Malone, signed for the subpoena.
11. Without explanation, Mr. Malone never responded to the subpoena, never contacted the bar about it, nor asked for an extension, causing the Virginia State Bar to subpoena the records from SunTrust bank directly at expense to the bar.
12. Despite repeated telephonic requests for an interview at his business, home, and cellular telephones, and by letter dated January 24, 2005, Mr. Malone failed to provide any information about this case to the Virginia State Bar investigator, and failed to respond to the bar's letter of complaint.

II. RULE VIOLATIONS

*(Case Number 05-021-0922
Complainant: VSB/Trust Account)*

The following Rules of Professional Conduct are alleged to have been violated:

RULE 1.15 Safekeeping Property

- (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.

RULE 8.1 Bar Admission And Disciplinary Matters

An applicant for admission to the bar, or a lawyer in connection with a bar admission application, in connection with any certification required to be filed as a condition of maintaining or renewing a license to practice law, in connection with a disciplinary matter, shall not:

- (c) fail to respond to a lawful demand for information from an admissions or disciplinary authority, except that this Rule does not require disclosure of information otherwise protected by Rule 1.6; or

I. ALLEGATIONS OF FACT (continued)

*05-021-2018
Complainant: VSB/Trust Account*

13. On November 16, 2004, Mr. Malone transferred \$1,000 by wire from his trust account at SunTrust Bank against insufficient funds, and his bank reported the overdraft to the Virginia State Bar.

14. Mr. Malone made a deposit to cover the transfer about one hour later, but after 2:00 p.m., so it was not credited until the next day.

15. Despite repeated telephonic requests for Mr. Malone at his business, home, and cellular telephones, and by letter, dated January 24, 2005, Mr. Malone failed to meet with the Virginia State Bar investigator to provide any information about this case, and failed to respond to the bar's letter of complaint.

II. RULE VIOLATIONS

*(Case Number 05-021-2018
Complainant: VSB/Trust Account)*

RULE 1.15 Safekeeping Property

- (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.

RULE 8.1 Bar Admission And Disciplinary Matters

An applicant for admission to the bar, or a lawyer in connection with a bar admission application, in connection with any certification required to be filed as a condition of maintaining or renewing a license to practice law, in connection with a disciplinary matter, shall not:

- (c) fail to respond to a lawful demand for information from an admissions or disciplinary authority, except that this Rule does not require disclosure of information otherwise protected by Rule 1.6; or

I. ALLEGATIONS OF FACT (continued)

*05-021-2184
Complainant: VSB/Court of Appeals*

16. From about February 2000 to January 2003, Mr. Malone represented Anthony Epps and his business, Apex Financial Group of Virginia, in a civil suit brought against them in the Circuit Court for the City of Norfolk by Ruth Blazemore, who sought \$40,000 in damages for an alleged investment fraud.

17. The matter was tried and Ms. Blazemore won a \$40,000 judgment plus \$5,128.98 in attorney's fees against Mr. Malone's clients. The court entered the judgment on January 5, 2001.

18. His clients requested an appeal; however, Mr. Malone appealed the judgment to the wrong court, the Court of Appeals, instead of the Supreme Court of Virginia.

19. Mr. Malone was also one-day late in paying the filing fee, causing the court to dismiss the appeal.

20. To atone for his error, Mr. Malone agreed to pay the judgment on behalf of his client in the amount of \$200 per month, and did so until January 2004 when, without explanation, he stopped.

21. When Mr. Malone stopped making the payments, Ms. Blazemore's attorney obtained a garnishment against Mr. Malone's client.

22. Despite repeated telephonic requests for Mr. Malone at his business, home, and cellular telephones, and by letter, dated January 24, 2005, Mr. Malone failed to meet with the Virginia State Bar investigator to provide any information about this case, and failed to respond to the bar's letter of complaint.

II. RULE VIOLATIONS

*(Case Number 05-021-2184
Complainant: VSB/Court of Appeals)*

RULE 1.1 Competence

A lawyer shall provide competent representation to a client. Competent representation requires the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation.

RULE 1.3 Diligence

- (a) A lawyer shall act with reasonable diligence and promptness in representing a client.
- (b) A lawyer shall not intentionally fail to carry out a contract of employment entered into with a client for professional services, but may withdraw as permitted under Rule 1.16.
- (c) A lawyer shall not intentionally prejudice or damage a client during the course of the professional relationship, except as required or permitted under Rule 1.6 and Rule 3.3.

RULE 8.1 Bar Admission And Disciplinary Matters

An applicant for admission to the bar, or a lawyer already admitted to the bar, in connection with a bar admission application, any certification required to be filed as a condition of maintaining or renewing a license to practice law, or in connection with a disciplinary matter, shall not:

- (c) fail to respond to a lawful demand for information from an admissions or disciplinary authority, except that this Rule does not require disclosure of information otherwise protected by Rule 1.6; or

I. ALLEGATIONS OF FACT (continued)

05-021-2186

Complainant: VSB/Court of Appeals

23. On March 4, 2002, a grand jury sitting in the Circuit Court for the City of Virginia Beach indicted Ramey Devonne Richardson on charges of abduction and robbery.

24. Dissatisfied with his appointed counsel, Mr. Richardson's family hired Mr. Malone, and on August 21, 2002, Mr. Malone was substituted as counsel.

25. A jury convicted Mr. Richardson as charged and, on November 18, 2002, the court entered a sentence of twelve years to serve with no time suspended.

26. Mr. Richardson asked Mr. Malone to appeal, and on December 11, 2002, Mr. Malone filed a notice of appeal.

27. By letter, dated December 12, 2002, Mr. Malone informed Mr. Richardson's family that the transcript would cost \$900.

28. Neither Mr. Richardson nor his family could afford the transcript.

29. The Public Defender's office, however, filed a copy of the sentencing transcript, and on January 15, 2003, the court issued a notice that it had been filed.

30. No one, however, ever filed the trial transcript, and no one requested an extension of time to do so.

31. Accordingly, the Court of Appeals issued a rule to show cause why the appeal should not be dismissed.

32. Mr. Malone responded to the rule, conceding that the transcript was indispensable, but requesting that the court treat his client as indigent for purposes of the transcript.

33. On March 31, 2003, the Court of Appeals dismissed the appeal for failure to timely file a transcript, noting that, despite Mr. Malone's claim of indigence, no one ever filed a motion for an extension of the time to file the transcript by the date on which the transcript was due to be filed.

34. Mr. Richardson told the bar that Mr. Malone never discussed the appeal with him and never informed him about the dismissal of the appeal, that he never learned about it until he contacted the Court of Appeals himself.

35. Despite repeated telephonic requests for Mr. Malone at his business, home, and cellular telephones, and by letter, dated January 24, 2005, Mr. Malone failed to meet with the Virginia State Bar investigator to provide any information about this case, and failed to respond to the bar's letter of complaint.

II. RULE VIOLATIONS

*(Case Number 05-021-2286, VSB/
Court of Appeals)*

RULE 1.1 Competence

A lawyer shall provide competent representation to a client. Competent representation requires the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation.

RULE 1.3 Diligence

- (a) A lawyer shall act with reasonable diligence and promptness in representing a client.
- (b) A lawyer shall not intentionally fail to carry out a contract of employment entered into with a client for professional services, but may withdraw as permitted under Rule 1.16.

RULE 1.4 Communication

- (a) A lawyer shall keep a client reasonably informed about the status of a matter and promptly comply with reasonable requests for information.
- (b) A lawyer shall explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation.
- (c) A lawyer shall inform the client of facts pertinent to the matter and of communications from another party that may significantly affect settlement or resolution of the matter.

RULE 8.1 Bar Admission And Disciplinary Matters

An applicant for admission to the bar, or a lawyer already admitted to the bar, in connection with a bar admission application, any certification required to be filed as a condition

of maintaining or renewing a license to practice law, or in connection with a disciplinary matter, shall not:

- (c) fail to respond to a lawful demand for information from an admissions or disciplinary authority, except that this Rule does not require disclosure of information otherwise protected by Rule 1.6; or

I. ALLEGATIONS OF FACT (continued)

05-021-2603

Complainant: VSB/Trust Account

36. During 2004, Kelly A. Cook hired Mr. Malone for a divorce. On April 22, 2004, she paid him \$750 as a “retainer,” and paid an additional \$250 “retainer” on May 7, 2004. Mr. Malone kept the funds in his custody.

37. Mr. Malone assigned the case to a salaried associate, Mr. Wilfredo Bonilla, who commenced work on the case.

38. On December 10, 2004, by agreement, the Virginia State Bar Disciplinary Board suspended Mr. Malone’s license to practice law for two years.

39. Thereafter, Mr. Bonilla informed Ms. Cook that \$275 of her \$1,000 had been earned, and that she could continue with Bonilla after Malone’s practice closed if Malone issued her a refund of the unspent retainer, and if she then paid it to Bonilla.

40. Accordingly, on December 14, 2004, Malone issued Ms. Cook a check drawn on his trust account in the amount of \$725, representing a refund. The check, however, was returned because it was drawn against insufficient funds.

41. The investigation revealed that Malone never deposited Ms. Cook’s two checks into his attorney trust account.

42. Despite repeated telephonic requests for Mr. Malone at his business, home, and cellular telephones, and by letter, dated January 24, 2005, Mr. Malone failed to meet with the Virginia State Bar investigator to provide any information about this case, and failed to respond to the bar’s letter of complaint.

II. RULE VIOLATIONS

(Case Number 05-021-2603

Complainant: VSB/Trust Account)

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.

- (c) A lawyer shall:
 - (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 the client regarding them; and
 - (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.

RULE 8.1 Bar Admission And Disciplinary Matters

An applicant for admission to the bar, or a lawyer already admitted to the bar, in connection with a bar admission application, any certification required to be filed as a condition of maintaining or renewing a license to practice law, or in connection with a disciplinary matter, shall not:

- (c) fail to respond to a lawful demand for information from an admissions or disciplinary authority, except that this Rule does not require disclosure of information otherwise protected by Rule 1.6; 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;

05-021-2623

Complainant: VSB/Douglas S. Mackall, III, Esquire

43. On August 29, 2003, Mr. Malone conducted a real estate closing for sellers Michael K. Lambert and Sharon P. Lambert, an estranged couple.
44. The couple and Mr. Malone reached an agreement for Malone to hold the sales proceeds, \$20,322.27, in escrow pending a resolution of their dispute.
45. Malone did not deposit the funds into an escrow account, placing them instead into his operating account.
46. On September 18, 2003, Michael Lambert murdered his wife, Sharon P. Lambert.
47. Mr. Lambert pled guilty to second-degree murder and was sentenced to thirty years in prison on September 16, 2004.
48. The complainant, Douglas M. Mackall, III, Esquire, is counsel for the late Mrs. Lambert's two daughters, her only surviving heirs.
49. By letter, dated October 7, 2004, citing proper legal authorities, Mr. Mackall asked Mr. Malone to deliver the escrowed funds to the daughters. Mr. Malone failed to respond to this and to two subsequent requests from Mr. Mackall for the funds.
50. Mr. Malone subsequently spent down the funds that he deposited in his attorney operating account, in further violation of the escrow agreement.
51. Despite repeated telephonic requests for Mr. Malone at his business, home, and cellular telephones, and by letter, dated January 24, 2005, Mr. Malone failed to meet with the Virginia State Bar investigator to provide any information about this case, and failed to respond to the bar's letter of complaint.

II. RULE VIOLATIONS

(Case Number 05-021-2623

Complainant: VSB/ Douglas S. Mackall, III, Esquire)

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.

RULE 1.15 Safekeeping Property

- (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.

RULE 8.1 Bar Admission And Disciplinary Matters

An applicant for admission to the bar, or a lawyer already admitted to the bar, in connection with a bar admission application, any certification required to be filed as a condition of maintaining or renewing a license to practice law, or in connection with a disciplinary matter, shall not:

- (c) fail to respond to a lawful demand for information from an admissions or disciplinary authority, except that this Rule does not require disclosure of information otherwise protected by Rule 1.6; 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;

I. ALLEGATIONS OF FACT (continued)

05-021-2810

Complainant: VSB/Wilfredo Bonilla, Esquire

52. During 2004, Mr. Malone received advanced fees from four divorce clients and did not deposit the funds into his attorney trust account. He had a salaried associate, Wilfredo Bonilla, work the cases.

53. When Mr. Malone closed his practice in December 2004 because of the suspension of his license, Mr. Bonilla could not get him to issue refunds or the files, except in one case, Kelly Cook, mentioned above, when he issued a worthless check.

54. Despite repeated telephonic requests for Mr. Malone at his business, home, and cellular telephones, and by letter, dated January 24, 2005, Mr. Malone failed to meet with the Virginia State Bar investigator to provide any information about this case, and failed to respond to the bar's letter of complaint.

II. RULE VIOLATIONS

(Case Number 05-021-2810

Complainant: VSB/Wilfredo Bonilla, Esquire)

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.

RULE 1.15 Safekeeping Property

- (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.

RULE 1.16 Declining Or Terminating Representation

- (d) Upon termination of representation, a lawyer shall take steps to the extent reasonably practicable to protect a client's interests, such as giving reasonable notice to the client, allowing time for employment of other counsel, refunding any advance payment of fee that has not been earned and handling records as indicated in paragraph (e).
- (e) All original, client-furnished documents and any originals of legal instruments or official documents which are in the lawyer's possession (wills, corporate minutes, etc.) are the property of the client and, therefore, upon termination of the representation, those items shall be returned within a reasonable time to the client or the client's new counsel upon request, whether or not the client has paid the fees and costs owed the lawyer. If the lawyer wants to keep a copy of such original documents, the lawyer must incur the cost of duplication. Also upon termination, the client, upon request, must also be provided within a reasonable time copies of the following documents from the lawyer's file, whether or not the client has paid the fees and costs owed the lawyer: lawyer/client and lawyer/third-party communications; the lawyer's copies of client-furnished documents (unless the originals have been returned to the client pursuant to this paragraph); transcripts, pleadings and discovery responses; working and final drafts of legal instruments, official documents, investigative reports, legal memoranda, and other attorney work product documents prepared or collected for the client in the course of the representation; research materials; and bills previously submitted to the client. Although the lawyer may bill and seek to collect from the client the costs associated with making a copy of these materials,

the lawyer may not use the client's refusal to pay for such materials as a basis to refuse the client's request. The lawyer, however, is not required under this Rule to provide the client copies of billing records and documents intended only for internal use, such as memoranda prepared by the lawyer discussing conflicts of interest, staffing considerations, or difficulties arising from the lawyer/client relationship. The lawyer has met his or her obligation under this paragraph by furnishing these items one time at client request upon termination; provision of multiple copies is not required. The lawyer has not met his or her obligation under this paragraph by the mere provision of copies of documents on an item-by-item basis during the course of the representation.

RULE 8.1 Bar Admission And Disciplinary Matters

An applicant for admission to the bar, or a lawyer already admitted to the bar, in connection with a bar admission application, any certification required to be filed as a condition of maintaining or renewing a license to practice law, or in connection with a disciplinary matter, shall not:

- (c) fail to respond to a lawful demand for information from an admissions or disciplinary authority, except that this Rule does not require disclosure of information otherwise protected by Rule 1.6; 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;

I. ALLEGATIONS OF FACT (continued)

05-021-2929

Complainant: VSB/Court of Appeals

52. In January-February 2004, Mr. Malone was hired to prosecute the appeal of one Sabrina Davis, sentenced to five years on various convictions of armed robbery and use of a firearm during the course of a robbery.

53. The Court of Appeals reported a procedural default that the bar investigated.

54. The bar's investigation found that Mr. Malone played no role in the procedural default.

54. The bar's investigation also revealed, however, that Mr. Malone never deposited the client's advance fees into his attorney trust account, but into his operating account instead while the appeal was pending.

55. Despite repeated telephonic requests for Mr. Malone at his business, home, and cellular telephones, and by letter, dated January 24, 2005, Mr. Malone failed to meet with the Virginia State Bar investigator to provide any information about this case, and failed to respond to the bar's letter of complaint.

II. RULE VIOLATIONS

*(Case Number 05-021-2929
Complainant: VSB/Court of Appeals)*

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.

RULE 8.1 Bar Admission And Disciplinary Matters

An applicant for admission to the bar, or a lawyer already admitted to the bar, in connection with a bar admission application, any certification required to be filed as a condition of maintaining or renewing a license to practice law, or in connection with a disciplinary matter, shall not:

- (c) fail to respond to a lawful demand for information from an admissions or disciplinary authority, except that this Rule does not require disclosure of information otherwise protected by Rule 1.6; or

I. ALLEGATIONS OF FACT (continued)

05-021-3029

Complainant: Melissa B. Black

54. During 2004, Ms. Black hired Mr. Malone for her divorce and paid \$1,000 in installments. Mr. Bonilla worked the case as a paid associate of Mr. Malone.

55. When Mr. Malone closed his practice because of his license suspension, he did not issue any refund to Ms. Black, and was unresponsive to requests from Mr. Bonilla to do so.

56. The bar's investigation revealed that Mr. Malone never deposited any of the fees into his attorney trust account, but into his operating account instead.

57. Despite repeated telephonic requests for Mr. Malone at his business, home, and cellular telephones, and by letter, dated January 24, 2005, Mr. Malone failed to meet with the Virginia State Bar investigator to provide any information about this case, and failed to respond to the bar's letter of complaint.

II. RULE VIOLATIONS

(Case Number 05-021-3029

Complainant: Melissa B. Black)

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.

RULE 1.15 Safekeeping Property

- (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.

RULE 8.1 Bar Admission And Disciplinary Matters

An applicant for admission to the bar, or a lawyer already admitted to the bar, in connection with a bar admission application, any certification required to be filed as a condition of maintaining or renewing a license to practice law, or in connection with a disciplinary matter, shall not:

- (c) fail to respond to a lawful demand for information from an admissions or disciplinary authority, except that this Rule does not require disclosure of information otherwise protected by Rule 1.6; 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 charges of misconduct to the Virginia State Bar Disciplinary Board.

SECOND DISTRICT COMMITTEE
OF THE VIRGINIA STATE BAR

By Paul K. Campsen
Paul K. Campsen, Esquire
Subcommittee Chair

CERTIFICATE OF SERVICE

I certify that I have this 30th day of January, 2006 caused to be mailed by CERTIFIED MAIL, RETURN RECEIPT REQUESTED, a true and correct copy of the foregoing Subcommittee Determination (Certification) to Charles Everett Malone, Esquire, Respondent, at Suite 1218, 500 East Main Street, Norfolk, Virginia 23510, his address of record with the Virginia State Bar.



Assistant Bar Counsel