

VIRGINIA:

BEFORE THE VIRGINIA STATE BAR DISCIPLINARY BOARD

IN THE MATTER OF EDWARD ALLEN MALONE

VSB DOCKET NO. 07-041-1222

ORDER OF SUSPENSION

_____ **THIS MATTER** came before the Virginia State Bar Disciplinary Board (“Board”) for hearing on October 26, 2007, upon a Certified Notice of Hearing for Non-Compliance with a summons and subpoena duces tecum dated September 13, 2007. A duly convened panel of the Board consisting of William E. Glover, Chair presiding, Martha J.P. McQuade, Robert E. Eicher, Russell W. Updike and V. Max Beard, lay member, heard the matter. Kathleen M. Uston, Assistant Bar Counsel, appeared on behalf of the Virginia State Bar (“VSB”). The Respondent, Edward Allen Malone, was not present and was not represented by counsel. The court reporter for the proceeding, Donna T. Chandler, Chandler & Halasz, P.O. Box 9349, Richmond, Virginia, 23227, telephone number (804) 730-1222, was duly sworn by the Chair.

It being apparent that Mr. Malone was not present, the Chair asked the Clerk to call Mr. Malone’s name three times in the hall prior to commencement of the hearing. The Clerk received no response. Since the matter was originally scheduled to be heard at the State Corporation Commission, an Assistant Clerk was at that location and called Mr. Malone’s name three times in the hall with no response. The hearing proceeded in Mr. Malone’s absence.

The Chair opened the hearing by polling the Board members to ascertain whether any member had any personal or financial interest or bias which would interfere with or influence each such member’s determination, and each member responded that there were no such

conflicts.

All legal notices of the date and place of hearing were timely sent by the Clerk of the Disciplinary System (“Clerk”) in the manner prescribed by law.

Part Six, § IV, ¶ 13(B)(7)(a)(5) of the Rules of the Supreme Court provides that Bar Counsel shall have the authority “to issue such summons for the attendance of witnesses and subpoena for the production of documents necessary or material to any Investigation, District Committee or Disciplinary Board proceeding.”

Part Six § IV, ¶ 13(B)(6)(a)(4) provides, in relevant part, that “a subpoena duces tecum which compels the Respondent to produce documents may be served upon the Respondent by certified mail, return receipt requested, at the Respondent’s last address of record with the Bar.”

Part Six, § IV, ¶ 13(B)(5)(b)(3) grants the Board the authority to impose an interim suspension if an attorney fails to comply with a summons or subpoena issued by any member of the Board, the Clerk of the Disciplinary System, Bar Counsel or any lawyer member of a District Committee for trust account, estate account, fiduciary account, operating account or other records maintained by the Attorney or the Attorney’s law firm. In the event of alleged noncompliance, Bar Counsel may file with the Board, and serve on the Attorney, a Notice of Noncompliance requesting the Board to suspend the Attorney’s license. The noncompliance notice must advise the Attorney that he or she may petition the Board within 10 days of service of the notice to withhold entry of a suspension order and to hold a hearing, at which time the Attorney shall have the burden of proving good cause for the alleged noncompliance.

Assistant Bar Counsel Uston made an opening statement after which the Bar introduced the documentary evidence in to the record. The Board then retired to deliberate in its decision.

FINDINGS OF FACT

Having considered the record and having heard argument of Assistant Bar Counsel Uston, the Board unanimously found as follows:

- (1) Bar Counsel issued to Respondent a summons and subpoena duces tecum on July 25, 2007, commanding Respondent to appear before the Fourth District - Section 1 Committee of the Virginia State Bar at 100 North Pitt Street, Suite 310, Alexandria, Virginia, 22314, on Tuesday, August 23, 2007, at 11:00 a.m., and to produce the following:

All materials in your possession pertaining to work performed by Edward Allen Malone, Esquire, for Derrick J. Clayton, including but not limited to any employment agreement(s), the entire client file(s), all billing statements and billing records, including the subsidiary or individual client ledger cards, correspondence received from and/or generated on behalf of said client, memoranda and writings of whatever nature regarding Derrick J. Clayton's divorce case, office notes, telephone messages, and research notes and memoranda, or any documents of whatever type or description, or true copies of the same, in your possession, custody or control, omitting nothing therefrom, pertaining to your representation of the above-named entities or their clients.

- (2) Respondent was properly served by certified mail, return receipt requested, at his last address of record with the Virginia State Bar. The Summons and subpoena duces tecum were accepted by Respondent on July 27, 2007.
- (3) Bar Counsel filed with the Board a Notice of Noncompliance and Request for Interim Suspension on August 30, 2007.
- (4) Respondent filed a Petition for Stay of Interim Suspension dated September 6, 2007.

(5) The Clerk of the Disciplinary System entered an Order dated September 13, 2007, setting a hearing before the Board on October 26, 2007, at 9:00 a.m., in the State Corporation Commission, Courtroom A, Tyler Building, Second Floor, 1300 East Main Street, Richmond, Virginia, 23219. The Order was mailed by certified mail, return receipt requested, to the Respondent at his address of record. The Order was accepted by Myrtle Malone on September 17, 2007.

(6) The Clerk of the Disciplinary System entered an Order dated October 17, 2007, moving the location of the hearing to the General Assembly Building, House Room D (first floor), 10 Capitol Street, Richmond, Virginia, 23219, at 9:00 a.m. The Order was mailed by certified mail, return receipt requested, to Respondent at his address of record, as well as to 812 South 6th Avenue, Maywood, Illinois, 60153.

(7) Respondent failed to produce any evidence to establish that there was good cause for failing to comply with the Summons and subpoena duces tecum.

DISPOSITION

_____ Upon consideration of the testimony and documentary evidence, it is ORDERED that Respondent's license to practice law in the Commonwealth of Virginia is SUSPENDED, administratively effective October 26, 2007, until such time as he fully complies with the Summons and subpoena duces tecum.

It is further ORDERED that Respondent must comply with the requirements of Part Six,

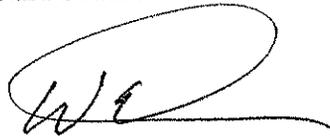
§IV, ¶ 13(M) of the Rules of the Supreme Court of Virginia. The Respondent shall forthwith give notice by certified mail, return receipt requested, of the suspension of his license to practice law in the Commonwealth of Virginia to all clients for whom he is currently handling matters, and to all opposing attorneys and presiding judges in pending litigation. The Respondent shall also make appropriate arrangements for the disposition of matters then in his care in conformity with the wishes of his clients.

It is further ORDERED that if the Respondent is not handling any client matters on the effective date of suspension, he shall submit an Affidavit to that effect to the Clerk of the Disciplinary System at the Virginia State Bar. All issues concerning the adequacy of the notice and arrangements required by ¶13(M) shall be determined by the Virginia State Bar Disciplinary Board, unless the Respondent makes a timely request for hearing before a three-judge court.

It is further ORDERED that the Clerk of the Disciplinary System shall mail an attested copy of this Order to Respondent at his address of record with the Virginia State Bar, being 2400 South Glebe Road #816, Arlington, Virginia, 22206, by certified mail, return receipt requested, and by regular mail to Kathleen Maureen Uston, Assistant Bar Counsel, Virginia State Bar, 100 North Pitt Street, Suite 310, Alexandria, Virginia, 22314-3133.

ENTERED this 17th day of December, 2007

VIRGINIA STATE BAR DISCIPLINARY BOARD



By: William E. Glover, Acting Chair