

VIRGINIA:

BEFORE THE FOURTH DISTRICT COMMITTEE SECTION I
OF THE VIRGINIA STATE BAR

IN THE MATTER OF
EDWARD ALLEN MALONE

VSB Docket Nos. 07-041-1222 and 07-041-071135

DISTRICT COMMITTEE DETERMINATION
(PUBLIC REPRIMAND WITH TERMS)

On November 10, 2010, a hearing in this matter was held before a duly convened Fourth District Committee Section I Panel consisting of Debra Fitzgerald-O'Connell, Esquire, Matthew T. Foley, Esquire, Patricia E. Bruce, Esquire, Edward "Ted" Johnson, Lay Member, and Lisa A. Wilson, Esquire, presiding.

Respondent Edward Allen Malone did not appear. Kathleen M. Uston, Assistant Bar Counsel, appeared as counsel for the Virginia State Bar.

Pursuant to Part 6, Section IV, Paragraph 13-16.Z.2 of the Rules of the Virginia Supreme Court, the Fourth District Committee Section I of the Virginia State Bar hereby serves upon the Respondent the following Public Reprimand with Terms:

I. FINDINGS OF FACT

1. At all times relevant hereto, Edward Allan Malone (hereinafter the "Respondent") has been an attorney licensed to practice law in the Commonwealth of Virginia.

As to VSB Docket No. 07-041-1222

2. On or around June 26, 2006, the Complainant, Derrick J. Clayton (hereinafter the "Complainant") retained the Respondent's services to assist him in finalizing his divorce, paying him an advance against fees of \$1,000.00.

3. After he retained the Respondent, the Complainant was able to reach him to determine the status of his case on only one (1) occasion. Following that contact, the Respondent failed to respond to the Complainant's telephone calls, emails, and letters.

4. The Complainant therefore filed a complaint with the Virginia State Bar which was forwarded to the Respondent on or around December 13, 2006, sent to his last address of record with the Virginia State Bar. The Respondent was advised of his obligation to provide a

written response to the complaint within twenty-one (21) days of his receipt of the December 13, 2006, letter from Senior Assistant Bar Counsel Seth M. Guggenheim. The Respondent failed to respond to the complaint as is his obligation.

5. Thereafter, on or around July 25, 2007, a Summons and Subpoena *duces tecum* were served upon the Respondent demanding his appearance before the Fourth District Committee, Section I, and demanding that Respondent produce for inspection and copying his entire file concerning the Complainant's case.

6. The Respondent failed to appear at the appointed time, and failed to produce his file on the Complainant's case.

7. On August 28, 2007, as a result of the Respondent's failure to comply with the Subpoena *duces tecum*, the Respondent was served with a Notice of Noncompliance and Request for Interim Suspension. On September 6, 2007, the Respondent filed a Petition for Stay of Interim Suspension which petition was treated by the Disciplinary Board as Respondent's request for a hearing.

8. By letter dated September 13, 2007, the Clerk of the Disciplinary System notified the Respondent of the date and time of the hearing on the Request for Interim Suspension, enclosing with her letter a copy of the Order of the Disciplinary Board requiring the Respondent's attendance at this hearing scheduled to be held on October 26, 2007.

9. The Respondent failed to appear at the hearing which was convened on October 26, 2007. As a result, and based upon the bar's evidence, the Disciplinary Board suspended the Respondent's license to practice law in the Commonwealth of Virginia due to his non-compliance with the duly issued Subpoena *duces tecum*.

10. Subsequently, in or around June, 2009, the Respondent took the steps necessary to have the Interim Suspension lifted. The Respondent represented to the Virginia State Bar at that time that he would file a response to the Complainant's allegations against him, yet he has failed to do so.

As to VSB Docket No. 07-041-071135

11. In 2006, Respondent agreed to serve as co-counsel at Complainant, Keya Woods, husband's criminal trial, subsequently taking over the case as lead counsel when co-counsel withdrew. Following the trial, Complainant's husband was convicted, and Respondent agreed to

file an appeal, which he apparently did in a timely fashion. The appeal was dismissed in December, 2006, however, due to Respondent's failure to timely file the trial transcripts.

12. Exhibits introduced by the Virginia State Bar established that Respondent agreed to undertake the appeal on behalf of Complainant's husband and continue his attorney-client relationship with him.

13. The Complainant therefore filed a complaint with the Virginia State Bar which was forwarded to the Respondent on or around June 29, 2007, sent to his last address of record with the Virginia State Bar. The Respondent was advised of his obligation to provide a written response to the complaint within twenty-one (21) days of his receipt of the June 29, 2007, letter from Assistant Intake Counsel Mary W. Martelino. The Respondent failed to respond to the complaint as is his obligation.

14. Thereafter, on or around September 12, 2007, a Summons and Subpoena *duces tecum* were served upon the Respondent demanding his appearance before the Fourth District Committee, Section I, and demanding that Respondent produce for inspection and copying his entire file concerning the Complainant's case.

15. The Respondent failed to appear at the appointed time, and failed to produce his file on the Complainant's case.

16. On October 31, 2007, as a result of the Respondent's failure to comply with the Subpoena *duces tecum*, the Respondent was served with a Notice of Noncompliance and Request for Interim Suspension. The Respondent did not respond to the Notice of Noncompliance, nor did he request a hearing thereon.

17. As a result, on November 15, 2007, the Disciplinary Board suspended the Respondent's license to practice law in the Commonwealth of Virginia due to his non-compliance with the duly issued Subpoena *duces tecum*.

18. Subsequently, in or around June, 2009, the Respondent took the steps necessary to have the Interim Suspensions lifted. The Respondent represented to the Virginia State Bar at that time that he would file a response to the Complainant's allegations against him, yet he has failed to do so.

19. The District Committee also took note of the fact that Respondent failed to appear at the hearing in this case, despite having received notice of same, and this failure to appear was further evidence of Respondent's violation of RPC 8.1(c).

II. NATURE OF MISCONDUCT

Such conduct by Edward Allen Malone constitutes misconduct in violation of the following provisions of the Rules of Professional Conduct:

RULE 1.3 Diligence

(a) A lawyer shall act with reasonable diligence and promptness in representing a client.

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).

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[.]

III. PUBLIC REPRIMAND WITH TERMS

Accordingly, it is the decision of the committee to offer the Respondent an opportunity to comply with certain terms and conditions, compliance with which will be a predicate for the disposition of a Public Reprimand with Terms of this complaint. The terms and conditions are:

1. Within six (6) months of the date of this Determination, Respondent shall attend and complete six (6) hours of Continuing Legal Education, which qualifies for credit in the Commonwealth of Virginia, in the field of ethics, which six (6) hours shall **not** be counted

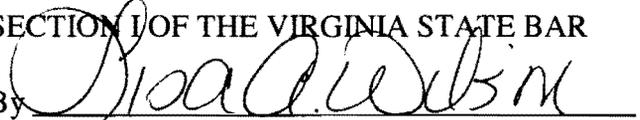
towards Respondent's annual MCLE requirement. The Respondent shall attend **in-person program(s)** and **may not** satisfy this term through attendance at either telephonic or internet Continuing Legal Education program(s).

Upon satisfactory proof that such terms and conditions have been met, this matter shall be closed. If, however, the terms and conditions are not met by the date specified, this matter shall be certified to the Disciplinary Board for Sanction Determination pursuant to Part Six, Section IV, Paragraph 13-15.G of the Rules of the Virginia Supreme Court.

Pursuant to Part Six, Section IV, Paragraph 13-9.E of the Rules of the Virginia Supreme Court, the Clerk of the Disciplinary System shall assess costs.

FOURTH DISTRICT COMMITTEE
SECTION I OF THE VIRGINIA STATE BAR

By



Lisa Ann Wilson, Esquire
Chair

CERTIFICATE OF SERVICE

I certify that on this the 28th day of February, 2011, I caused to be mailed by Certified Mail, Return Receipt Requested, a true copy of the foregoing District Committee Determination (Public Reprimand with Terms) to Edward Allen Malone, Respondent, at 812 S. 6th Ave, Maywood, IL 60153, Respondent's last address of record with the Virginia State Bar.



Kathleen M. Uston, Esquire
Assistant Bar Counsel