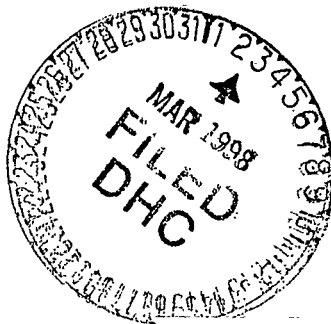


WAKE COUNTY  
NORTH CAROLINA



BEFORE THE  
DISCIPLINARY HEARING COMMISSION  
OF THE  
NORTH CAROLINA STATE BAR  
97 DHC 5

THE NORTH CAROLINA STATE BAR,  
Plaintiff

2852

ORDER OF DISCIPLINE

vs.

C. C. MALONE, JR., Attorney,  
Defendant

This matter was calendared for trial and heard on the 30th day of October, 1997 before a duly appointed committee of the Disciplinary Hearing Commission consisting of Richard T. Garmon, Chair, James R. Fox, and Robert B. Frantz. The Plaintiff was represented by Clayton W. Davidson III, Deputy Counsel. The Defendant was represented by Eric C. Michaux. Based upon the Findings of Fact and Conclusions of Law entered by the hearing committee at the first phase of the hearing and based upon the evidence and arguments presented in the second phase of the hearing, the hearing committee makes the following additional:

**FINDINGS OF FACT CONCERNING DISCIPLINE**

1. The Defendant's conduct is aggravated by the following factors:
  - a. Substantial prior disciplinary offenses,
  - b. Substantial experience in the practice of law,
2. The Defendant's conduct is mitigated by the following factors:
  - a. Absence of a prior disciplinary record,
  - b. Timely good faith efforts to make restitution or to rectify the consequences of the Defendant's conduct,
  - c. Full and free disclosure to the hearing committee and a cooperative attitude toward the proceedings,
  - d. Good character and reputation,
  - e. Remorse.

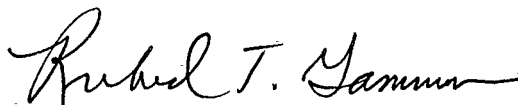
BASED UPON the foregoing Findings of Fact Concerning Discipline, the hearing committee makes the following:

## ORDER OF DISCIPLINE

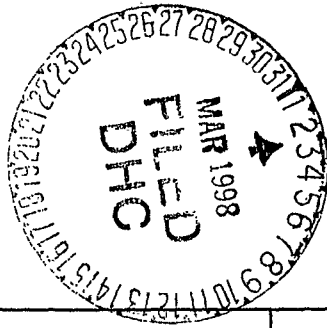
1. The Defendant, C.C. Malone, Jr., is hereby suspended from the practice of law for a period of two years, effective thirty (30) days from the date of service of this order.
2. The two year suspension is stayed for three years on the following conditions:
  - a. The Defendant shall respond to all letters of notices, subpoenas and reasonable requests for information from any district grievance committee and the North Carolina State Bar by the deadline stated in the communication, or if none is so stated, by the deadline provided by any applicable law or rules.
  - b. The Defendant shall not violate the North Carolina Revised Rules of Professional Conduct. Any violation of the rules shall be sufficient to activate this suspension.
  - c. The Defendant shall not violate the laws of the State of North Carolina, the United States, or the various states that make up the United States.
  - d. The Defendant shall handle all client matters promptly, shall respond to requests for information from clients in a timely fashion, and shall ensure that the Defendant's case load remains of a manageable size.
  - e. The Defendant shall select a member of the Durham County Bar, to be approved by the Secretary of the North Carolina State Bar (the "Supervising Attorney"), to supervise the Defendant's practice during the three-year stay period. The Defendant shall designate a Supervising Attorney and obtain the approval of the Secretary within fifteen (15) days from the date of this order.
  - f. The Defendant shall meet with the Supervising Attorney at least once a month, and shall report to the Supervising Attorney as to the status of all current pending client matters, and shall further cooperate with the Supervising Attorney and shall provide any additional information requested by the Supervising Attorney which the Supervising Attorney feels is reasonably necessary to ensure that the Defendant's case load remains of a manageable size, that the Defendant handles matters promptly, and that the Defendant responds to requests for information from clients and the North Carolina State Bar in a timely fashion. The cost, if any, of retaining the Supervising Attorney shall be borne by the Defendant.
  - g. The Defendant shall provide quarterly reports to the North Carolina State Bar in a form approved by the Secretary of the North Carolina State Bar signed by the Supervising Attorney and the Defendant which certify that the Defendant is in compliance with the terms and conditions of this order. The reports must be received by the Bar on or before the first day of January, April, July, and October of each year that the stay of the suspension remains in effect.

3. The Defendant shall pay all costs of this proceeding permitted by law within thirty days of service of notice of the amount of costs as assessed by the Secretary.

Signed by the undersigned chair with the full knowledge and consent of all other members of the hearing committee this 5<sup>th</sup> day of January, 1998.

  
Richard T. Gammon, Chair

WAKE COUNTY  
NORTH CAROLINA



BEFORE THE  
DISCIPLINARY HEARING COMMISSION  
OF THE  
NORTH CAROLINA STATE BAR  
97 DHC 5

THE NORTH CAROLINA STATE BAR,  
Plaintiff

vs.

C. C. MALONE, JR., Attorney,  
Defendant

ORDER

This matter was calendared for trial and heard on the 30th day of October, 1997 before a duly appointed committee of the Disciplinary Hearing Commission consisting of Richard T. Gammon, Chair, James R. Fox, and Robert B. Frantz. The Plaintiff was represented by Clayton W. Davidson III, Deputy Counsel. The Defendant was represented by Eric C. Michaux. At the close of the Plaintiff's evidence in this matter the Defendant brought a motion for directed verdict and for involuntary dismissal as to all claims in the Plaintiff's Complaint in this matter, which motion was DENIED as to the First Claim for relief alleged in the Complaint in this matter, and the decision on which the panel elected to defer until the close of all evidence as to the Second Claim for Relief.

Following the close of all evidence, the committee unanimously decided to consider the Defendant's motion under Rule 41(b) of the North Carolina Rules of Civil Procedure, and, based on all the evidence presented at the trial of this matter, and the pleadings and pre-trial stipulations of record, makes the following:

FINDINGS OF FACT

1. In *The North Carolina State Bar v. Clarence C. Malone, Jr.*, 95 DHC 11, in an order of discipline signed by Henry C. Babb, Jr. Chair of the Panel, and entered on the 6<sup>th</sup> day of January, 1996 (the "Order of Discipline"), the Defendant was suspended from the practice of law for a period of five years, which order further provided that any time after the first year of the five-year suspension, the remaining portion of the five-year suspension could be stayed, so long as the Defendant complied with certain conditions. One of the conditions for the stay was that the Defendant not violate the North Carolina Rules of Professional Conduct.

2. Subsequent to the order being entered, the North Carolina Court of Appeals entered an order temporarily staying the Order of Discipline during the pendency of an appeal of the matter, which stay remained in effect until March 29, 1996.

3. The violations of the North Carolina Rules of Professional Conduct alleged in the Complaint in this matter occurred on or about December, January, and up until March 18<sup>th</sup>, 1996.

BASED UPON the foregoing Findings of Fact, the hearing committee makes the following:

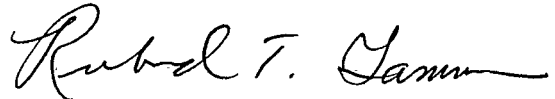
#### CONCLUSIONS OF LAW

1. The Order of Discipline had no full force and effect of law until after the stay of the Order of Discipline was lifted on March 29<sup>th</sup>, 1996.

2. Any and all alleged misconduct that occurred before the Order of Discipline had full force and effect of law could not be a violation of the Order of Discipline.

NOW, THEREFORE, IT IS HEREBY ORDERED that the Second Claim for Relief alleged in the Complaint in this matter is DISMISSED WITH PREJUDICE pursuant to Rule 41(b) of the North Carolina Rules of Civil Procedure.

Signed by the undersigned chair with the full knowledge and consent of all other members of the hearing committee this 5<sup>th</sup> day of January, 1996.



Richard T. Gammon  
Chair