

STATE OF NORTH CAROLINA

WAKE COUNTY

BEFORE THE
DISCIPLINARY HEARING COMMISSION
OF THE
NORTH CAROLINA STATE BAR
90 DHC 12

THE NORTH CAROLINA STATE BAR)
Plaintiff)

v.)

C. C. MALONE, ATTORNEY)
Defendant)

FINDINGS OF FACT & CONCLUSIONS
OF LAW

This matter coming before the undersigned Hearing Committee of the Disciplinary Hearing Commission pursuant to Section 14(8) of Article IX of the Rules & Regulations of the N.C. State Bar; and it appearing that both parties have agreed to waive a formal hearing in this matter; and it further appearing that both parties stipulate and agree to the following Findings of Fact and Conclusions of Law recited in this Consent Order and to the discipline imposed, the Hearing Committee therefore enters the following:

FINDINGS OF FACT

1. Plaintiff, the N.C. State Bar, is a body duly organized under the laws of North Carolina and is the proper party to bring this proceeding under the authority granted it in Chapter 84 of the General Statutes of North Carolina and the rules and regulations of the North Carolina State Bar promulgated thereunder.

2. The Defendant, C. C. Malone, was admitted to the North Carolina State Bar in 1961 and is, and was at all times referred to herein, an attorney at law licensed to practice in North Carolina, subject to the rules, regulations and the Rules of Professional Conduct of the North Carolina State Bar and the laws of the State of North Carolina.

3. During all of the periods referred to herein, Malone was engaged in the practice of law in the State of North Carolina and maintained a law office in the city of Durham, N.C.

4. On or about April 13, 1987, Malone was appointed to represent Wilbert Gerald respecting several drug-related charges pending against Gerald in Durham County.

5. Gerald ultimately pled guilty to trafficking in cocaine.

6. A sentencing hearing in Gerald's case was set for July 31, 1989 in

Durham County Superior Court. Malone and Gerald appeared for court on July 31, 1989.

7. Gerald's case was not reached on July 31, 1989 and he was placed on telephone standby.

8. Mary Dombalis Winstead, the assistant district attorney assigned to Gerald's case, notified Malone prior to August 2, 1989, that Gerald's case would be reached on August 2, 1989.

9. Malone failed to notify Gerald to be in court and Gerald was arrested on August 3, 1989 for failing to appear in court for the sentencing hearing.

10. Between August 9 and September 6, 1989, Malone was appointed to represent Dennis Daye respecting two charges of assault on a female.

11. Malone failed to respond adequately to Daye's requests for information regarding his cases.

12. On Sept. 28, 1989, Daye filed a grievance against Malone with the N.C. State Bar.

13. Daye's grievance was referred to the 14th Judicial District Grievance Committee on Oct. 2, 1989 and the matter was assigned to Robert A. Beason for investigation.

14. On Oct. 6, 1989, William Mills, the chairman of the 14th Judicial District Grievance Committee, wrote Malone a letter, notifying him of Daye's grievance and asking him to send a written response to Beason.

15. Between Oct. 6, 1989 and Nov. 16, 1989, Beason personally contacted Malone twice and asked him to file a response to the local grievance committee. Beason also left one message with Malone's office, asking him to respond to the local grievance committee. Beason cannot recall if he mentioned the Daye grievance by name.

16. Malone failed to file a written response to Daye's grievance to the 14th Judicial District Grievance Committee.

17. On Dec. 27, 1989, the N.C. State Bar sent Malone a letter of notice respecting Daye's grievance and asked him to file a written response. The letter of notice was received in Malone's office on Dec. 29, 1989.

18. On Jan. 22, 1990, the N.C. State Bar sent Malone a follow up letter, asking him to respond to the Dec. 27, 1990 letter of notice regarding Daye.

19. On Feb. 12, 1990, the N.C. State Bar issued a subpoena to Malone, requiring him to appear and respond to Daye's grievance. On Feb. 26, 1990, Malone appeared in compliance with the Bar's subpoena.

20. Malone failed to file a written response to the Bar's Dec. 27,

1989 letter of notice or the follow up letter of Jan. 22, 1990 until March 12, 1990.

Based upon the foregoing FINDINGS OF FACT, the Committee makes the following:

CONCLUSIONS OF LAW

1. By failing to respond to the inquiries of the 14th Judicial District Grievance Committee and by failing to respond to the State Bar's letter of notice of Dec. 27, 1989 and the Jan. 22, 1990 follow up letter, the Defendant knowingly failed to respond to a lawful demand for information of a disciplinary authority in violation of Rule 1.1(B).

2. By failing to respond adequately to reasonable requests for information by Dennis Daye, the Defendant failed to communicate with a client in violation of Rule 6(B)(1).

3. By failing to notify Wilbert Gerald to be appear in court for his sentencing hearing on August 2, 1989, the Defendant failed to communicate with a client in violation of Rule 6(B)(1).

4. By failing to appear in court for Gerald's sentencing hearing in August, 1989, Malone neglected a legal matter entrusted to him, in violation of Rule 6(B)(3).

This the 12th day of September, 1990.

Signed by the Chairman for the Committee with the consent of all Committee members and all parties.

Karen P. Boyle
Karen P. Boyle, Chairman

STATE OF NORTH CAROLINA
WAKE COUNTY

BEFORE THE
DISCIPLINARY HEARING COMMISSION
OF THE
NORTH CAROLINA STATE BAR
90 DHC 12

THE NORTH CAROLINA STATE BAR)	
Plaintiff)	
)	
v.)	CONSENT ORDER OF DISCIPLINE
)	
C. C. MALONE, ATTORNEY)	
Defendant)	

Based upon the Findings of Fact and Conclusions of Law and the consent of the parties, the Committee makes the following findings relating to discipline:

1. C. C. Malone has been publicly disciplined by the N.C. State Bar on the following previous occasions:

a. 60-day suspension in 1982 for failing to respond to a letter of notice and subpoena from the N.C. State Bar.

b. Public censure on August 10, 1988, for failing to notify a client of a court date.

c. Public reprimand on July 28, 1989 for neglecting a client matter.

2. C. C. Malone received a letter of admonition on August 2, 1990 for failing to respond in a timely fashion to a letter of notice from the N.C. State Bar and to a request for further information from Counsel for the N.C. State Bar.

BASED UPON the foregoing Findings and the consent of all parties, the Hearing Committee enters the following Order of Discipline:

1. C. C. Malone shall be suspended from the practice of law in North Carolina for two years, effective 30 days from the date of service of this order upon Malone.

2. The two-year suspension is stayed for three years, based upon the following conditions:

a. Malone shall respond to all letters of notice and reasonable

requests for information from the 14th Judicial District Grievance Committee and the N.C. State Bar by the deadline stated within the communication.

b. Malone shall not violate any of the Rules of Professional Conduct or any of the laws of the State of North Carolina during the three-year stay period.

c. Malone shall select a member of the Durham County Bar, to be approved by the Secretary of the N.C. State Bar, who will supervise Malone's practice throughout the three-year stay period. Malone shall meet with the supervising attorney at least once each month to ensure that Malone handles client matters promptly, that his case load remains of a manageable size and that he responds to requests for information from clients and the N.C. State Bar in a timely fashion. Malone shall ensure that a written report is submitted to the Bar at least once each quarter during the stay period verifying that these meetings have taken place and that Malone is cooperating with the supervising attorney.

d. During the first year of the three-year stay period, Malone shall complete at least three hours of courses dealing with law office and/or caseload management. Malone shall submit written certification to the Bar of the name of the sponsor of the course, course title and dates of attendance, no later than the first day of the second year of the stay period. The courses used to satisfy this provision of the order may be applied toward Malone's existing continuing legal education requirements, subject to the approval of the Board of Continuing Legal Education of the N.C. State Bar.

e. Malone will submit himself for testing for alcohol and drug abuse to a qualified medical professional no later than the effective date of this order. Malone will ensure that a written report setting out the results of the evaluation is sent to the Secretary of the N.C. State Bar no later than two weeks after the evaluation is complete.

f. Malone shall follow any course of counseling and/or treatment recommended in the evaluation described in subparagraph a. Malone will bear the cost of all such counseling and/or treatment.


g. The Bar agrees to keep confidential the results of the evaluation but reserves the right to use it in any disability proceeding filed pursuant to Section 18 of the Discipline & Disbarment Rules of the N.C. State Bar.

h. At least once each quarter during the three-year stay period, Malone shall file a written report with the Secretary of the N.C. State Bar, confirming that he is complying with any such course of treatment and/or counseling.

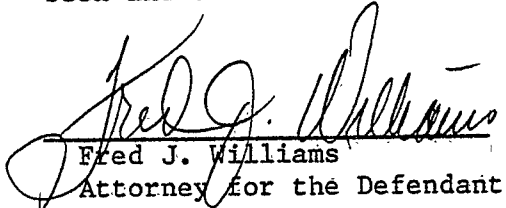
3. Malone shall pay the costs of this proceeding.

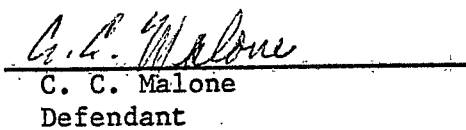
This the 1 day of September, 1990.

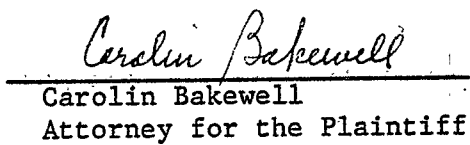
Signed by the Chairman for the Committee with the consent of the Committee.


Karen P. Boyle, Chairman

Seen and consented to:


Fred J. Williams
Attorney for the Defendant


C. C. Malone
Defendant


Carolin Bakewell
Attorney for the Plaintiff