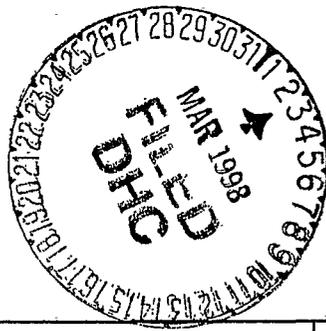


WAKE COUNTY
NORTH CAROLINA



2852

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

FINDINGS OF FACT AND
CONCLUSIONS OF LAW

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.

The Second Claim For Relief was dismissed pursuant to a separate order of this Panel. As the First Claim for Relief alleged in the Plaintiff's Complaint, based on the evidence presented at the trial of this matter, and the pleadings and pre-trial stipulations of record, the committee makes the following:

FINDINGS OF FACT

1. The Plaintiff, the North Carolina State Bar (the "State Bar") is a body duly organized under the laws of the State of North Carolina and is the proper body to bring this proceeding under the authority granted to it in Chapter 84 of the General Statutes of North Carolina and the rules and regulations of the State Bar promulgated pursuant thereto (the "State Bar Rules and Regulations").
2. The Defendant, C.C. Malone, Jr., (the "Defendant") was admitted to the State Bar on September 11, 1961 and is, and was at all times referred to herein, an attorney at law licensed to practice in North Carolina subject to the State Bar Rules and Regulations and the Rules of Professional Conduct of North Carolina.
3. During all or a part of the relevant periods referred to herein, Defendant was engaging in the practice of law in the State of North Carolina and maintained a law office in Durham County, North Carolina.

4. On or about November 9, 1995, the Complainant in this matter received a traffic citation for speeding which required her to be present in District Court at Wake Forest, North Carolina on December 22, 1995.

5. Defendant was retained to represent Complainant, and to appear in court on her behalf on December 22, 1995.

6. Defendant was paid a fee of \$150.00 to handle the matter.

7. On December 22, 1995, Defendant did not appear in District Court on behalf of Complainant because the Defendant had a matter pending before the Criminal Superior Court of Durham County, to wit: a motion to strike the called and failed of Mr. Harold Andrews, a defendant in *State v. Andrews* which was scheduled on that day.

8. On December 22, 1995, Defendant believed that no continuance had been granted in Complainant's matter, that the case had been called and failed, and that an order for her arrest had been entered.

9. The Defendant went to Wake Forest, North Carolina in the week following the 22nd day of December, 1995 to move to strike the called and failed, and the order for arrest that he thought had been issued.

10. Upon his arrival in Wake Forest during the week after 22 December, 1995, the Defendant discovered for the first time that District Court was only scheduled for one day of the week and that day being Friday, the Defendant could not get the called and failed stricken.

11. Complainant's matter originally scheduled for December 22, 1995, was in fact continued until January 12, 1996, but the Defendant was unaware of the continuance.

12. On January 12, 1996, Court was canceled in Wake County, North Carolina (both in Raleigh and in Wake Forest) because of inclement weather.

13. Complainant's matter was rescheduled until February 23, 1996, but Defendant was unaware of that court date.

14. On February 23, 1996, no one appeared on behalf of Complainant, and she was called and failed and an order for her arrest was entered.

15. Sometime after February 23, 1996, the Defendant went to the Office of the Wake County Clerk of Superior Court in Raleigh, North Carolina to attempt to have the called and failed stricken, and learned for the first time that no called and failed and order for arrest had been entered on December 22, 1995, and that court dates had been scheduled for January 12, 1996, and February 23rd, 1996.

16. At that time, the Defendant prepared a draft of a written motion to have the called and failed stricken which indicated that the missed court date had been February 23, 1996, but elected not to file it because he decided that the better course of action was to appear in Wake Forest on the following Friday.

17. The Defendant subsequently never appeared in Court in Wake Forest on behalf of the Complainant.

18. On the 15th day of March, 1996, Defendant filed a written Motion Requesting Court Date on Failure to Appear which was intended to strike the called and failed. This was the first time that a written or oral motion to strike the called and failed that had been made by the Defendant.

19. The motion to strike the called and failed was denied. The written motion and proposed order in the court file contained a notation that stated "Denied. JRF 2nd Court Date Missed."

20. On March 18, 1996, at 12:35 a.m. the Complainant was awakened by an officer who served the order for her arrest. She was driven to the Raleigh police station where she was fingerprinted, frisked, and a photograph was taken of her.

21. On March 21, 1996, Complainant retained the services of another attorney, G. Gregory Pozega.

22. After meeting with Complainant, Mr. Pozega proceeded to the Wake County District Courthouse where he obtained the consent of Judge Fullwood and the Wake County District Attorney to have the matter added on to the court's docket and heard. He then pleaded Complainant to a lesser charge, completely disposing of the matter on the same day that he was first retained.

23. At all times relevant to this hearing, there were three ways that an attorney, the defendant, or any other person could determine when a matter is scheduled for hearing in Wake County, North Carolina. The person could call the office of the Clerk of Superior Court in Wake County, North Carolina and would have been informed over the telephone of the status and court date. The person could check the court file and the court dates and disposition will be listed on the front of the court file. The person could also check a public access computer terminal maintained in the office of the Clerk of Superior Court which has the requisite information about the times that a matter is scheduled for trial.

24. After missing the first court date on December 22, 1995, the Defendant had a duty to determine the status of the matter, and to promptly take appropriate actions to timely correct the failure to appear. The Defendant failed to do so.

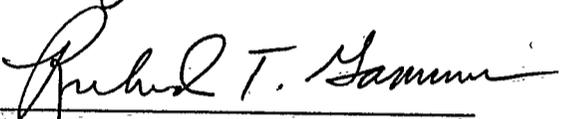
BASED UPON the foregoing Findings of Fact, the hearing committee makes the following:

CONCLUSIONS OF LAW

1. By failing to act with reasonable diligence and promptness in representing his client, the Defendant has violated Rule 6(b)(3) of the North Carolina Rules of Professional Conduct.

2. The Plaintiff, the North Carolina State Bar, has not carried its burden of proof as to the alleged violations of Rule 7.1(a)(1), Rule 7.1(a)(2), and Rule 7.1(a)(3) of the North Carolina Rules of Professional Conduct.

Signed by the undersigned chair with the full knowledge and consent of all other members of the hearing committee this 5th day of January 1993.



Richard T. Gammon
Chair