

VIRGINIA:

BEFORE THE VIRGINIA STATE BAR DISCIPLINARY BOARD

**IN THE MATTER OF
EDWARD ALLEN MALONE**

**VSB Docket No. 20-041-117386
20-041-119014**

MEMORANDUM ORDER

THIS MATTER came to be heard on January 28, 2022, on the Subcommittee Determination for Certification by the Fourth District, Section I Subcommittee of the Virginia State Bar, before a panel of the Virginia State Bar Disciplinary Board (“Board”) consisting of Steven Novey, 2nd Vice Chair; Sandra Havrilak; Kamala H. Lannetti; Michael J. Sobey; and Reba Davis, Lay Member. The Virginia State Bar (the “VSB”) was represented by Assistant Bar Counsel Laura Booberg, (“Assistant Bar Counsel”). The Respondent Edward Allen Malone (hereinafter “the Respondent”) was present and appeared *pro se*. Jennifer Hairfield, court reporter, Chandler and Halasz, Inc., P.O. Box 9349, Richmond, Virginia 23227, (804) 730-1222, after being duly sworn, reported the hearing and transcribed the proceedings.

At the onset of the hearing, the Chair stated the following:

“For purposes of the record, notice of this meeting was posted on the VSB website on November 5, 2021. On January 20, 2022 the meeting materials were distributed to the members of the Virginia State Bar Disciplinary Board and were made available for public inspection on the VSB website. A public comment form prepared by the Virginia FOIA Advisory Council was also made available on the VSB website.”

“This hearing is being held electronically, pursuant to section 2.2-3708.2(A)(3) of the Code of Virginia, as amended effective July 1, 2021 by Chapter 490 of the 2021 Acts of Assembly of Virginia, during the COVID 19 pandemic, and Executive Order 84 (2022) issued on January 10, 2022, in order to provide for the continuity of operations of the Virginia State Bar Disciplinary Board and in order to discharge its lawful purposes, duties, and responsibilities. Because this hearing is being held electronically, utilizing Microsoft (MS) Teams, the Virginia Freedom of Information Act requires that certain information be included in the Memorandum Order of the hearing.”

At the outset of the hearing, the Chair polled the members of the panel as to whether any of them was aware of any personal or financial interest or bias which would preclude any of them

from fairly hearing this matter and serving on the panel, to which inquiry each member responded in the negative.

All legal notices of the date and place were timely sent by the Clerk of the Disciplinary System (“Clerk”) in the manner prescribed by Part Six, Section IV, Paragraph 13-18 of the Rules of the Supreme Court of Virginia. VSB Exhibits 1-45 were admitted into evidence by the Chair, without objection from the Respondent. Respondent Exhibits A-F were also admitted without objection. All of the factual findings of misconduct were made by stipulation of the parties as contained in VSB Exhibit 46, which was admitted without objection, as stated below, and is adopted by the Board as having been proven by clear and convincing evidence.

I. ALLEGATIONS OF FACT

1. Respondent has been a member of the Virginia State Bar (“VSB”) since October 14, 1999. He was also admitted to the Maryland Bar on December 15, 1999, and remains an active member.

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2. In June 2013, Respondent filed a sworn affidavit to waive in for admission to the Texas State Bar. Item 3 of the Application for Admission to the Bar of Texas (“the Application”) required Respondent to list all state, federal and foreign jurisdictions where he had been licensed or admitted to practice law. Respondent did not disclose his admission to the VSB and listed only his admission to the Maryland State Bar on December 15, 1999.
3. From November 15, 2007, to August 3, 2009 Respondent was administratively suspended by the VSB for failing to comply with a subpoena duces tecum. After a hearing on November 10, 2010, the Fourth District Committee, Section I of the VSB imposed a Public Reprimand with Terms on February 28, 2011. From April 28, 2011, to May 26, 2016, Respondent was administratively suspended for failing to pay costs assessed.
4. Item 17(c) of the Application asked, “Have you ever been ...suspended from practice, disciplined, disqualified...or has your license ever been qualified or conditioned in any way...?” Respondent falsely answered “No,” and failed to disclose that he had been disciplined by the VSB and was not in good standing at the time of the application. He also failed to disclose discipline by the US District Court for the District of Maryland.

5. The Texas Board of Bar Examiners (“the Texas Board”) staff notified Mr. Malone that in order to apply for admission without examination, he would need to provide documentary proof that he had been admitted in another jurisdiction and practicing law full-time for five straight years.
6. Respondent elected to convert his application to a general application and took the February 2014 Texas Bar Examination (“Texas Bar Exam”) and failed. On May 9, 2014, he filed a sworn Re-Application and did not disclose the above-referenced VSB admission and discipline imposed by the VSB and the Maryland District Court.
7. Respondent took the July 2014 Texas Bar Exam and failed. He filed another sworn Re-Application on December 5, 2014, and again did not make the above disclosures.
8. Respondent took the Texas State Bar Exam again in February 2015 and passed. He was licensed to practice law in Texas beginning April 30, 2015.
9. On January 26, 2016, a third-party informed the Texas Board that Respondent was a member of the VSB and had previously been disciplined by the VSB. The Texas Board contacted the VSB Clerk’s Office and obtained proof of Respondent’s VSB membership and his disciplinary record, which included the above-referenced February 28, 2011 Public Reprimand with Terms.
10. Respondent told the Texas Board that he did not read the questions carefully enough, but also stated, “My understanding of what questions 3 and 17(c) required was probably biased by my apprehension to disclose anything negative about myself.”
11. After a May 13, 2016 hearing and by Order dated May 24, 2016, the Texas Board recommended to the Supreme Court of Texas that Respondent’s law license be withdrawn and canceled, and that his name be stricken from the roll of attorneys pursuant to Texas Rule XVII(b), which provides for the cancellation of a license when an applicant has obtained a license fraudulently.
12. In the May 24, 2016 Order, the Texas Board specifically found that Respondent’s intentional failure to disclose his VSB Admission and discipline was indicative of dishonesty and a lack of trustworthiness in carrying out responsibilities.
13. From March 2016 to May 2016, Respondent attended continuing legal education classes in an effort to reinstate his law license in Virginia. Following the May 13, 2016 hearing, Respondent completed the steps necessary to reinstate his license to practice law in Virginia.
14. On June 15, 2016, Respondent renewed his request for admission to the Texas State Bar and requested that he not be required to take the Texas Bar Exam. Given that Respondent’s passing score was still valid at the time of his request, the Texas Board

commenced a character and fitness investigation in connection with Respondent's renewed request.

15. The Texas Board investigated, considered Respondent's failure to disclose his disciplinary history in other jurisdictions, and made a preliminary determination that Respondent "lacked the present good moral character required for admission to the practice of law in Texas."
16. The Texas Board conducted a hearing on July 7, 2017, in which Respondent testified regarding his failure to disclose admission and discipline in other jurisdictions. By Order dated July 21, 2017, the Texas Board concluded:

There is a clear and rational connection between Mr. Malone's lack of trustworthiness in carrying out his responsibilities, as evidenced by his Virginia State Bar disciplinary history, as found above, and the likelihood that he would harm a client, obstruct the administration of justice, or violate the *Texas Disciplinary Rules of Professional Conduct* if he were recommended for a license to practice law in this time.

17. The Texas Board prohibited Respondent from applying to take the Texas Bar Exam any earlier than July 2018, and imposed curative measures, including providing a copy of the Texas Board's Order to any other jurisdictions in which he was admitted to practice law.¹
18. On July 7, 2017, the Supreme Court of Texas entered an Order Nunc Pro Tunc, effective June 7, 2016, clarifying that Respondent's license to practice law in Texas was withdrawn and canceled and his name was stricken from the roll of Texas attorneys. The Order further prohibited Respondent from holding himself out as a Texas attorney.²
19. The Texas Board also declined to renew Respondent's passing score from the February 2015 bar exam and invalidated the score, requiring Respondent to retake the exam to reapply for admission.
20. The Texas Board found that Respondent's taking of the February 2015 Texas Bar Exam would still count toward the five maximum times an applicant is permitted to take the Texas Bar Exam.
21. Respondent appealed the decision of the Texas Board to the District Court of Travis County. Respondent decided to withdraw his appeal, reapply for admission, and take the Texas Bar Exam again.

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22. On November 20, 2019, Respondent notified the VSB of the cancellation of his license and the instant complaint was opened.

¹ Order dated July 21, 2017 is attached as Exhibit A.

² Order dated July 7, 2017 is attached as Exhibit B.

23. In his response to the complaint, Respondent wrote, “I admit that I intentionally concealed the fact that I had been suspended by the Virginia State Bar in 2011. I was fully aware that my law license had been suspended in Virginia, and this was fresh in my mind when I applied for a Texas law license. In fact, the suspension was still in effect at the time I concealed it.”
24. In February 2020, Respondent took the Texas Bar Exam again and passed.
25. Despite Respondent passing the Texas Bar Exam and meeting the curative measure of the Texas Board, the Texas Board has taken no action towards readmitting Respondent to the Texas Bar.

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26. On September 30, 2019, after his license had been canceled for more than three years, Respondent represented Daphne D. Thomas (“Thomas”) in the Harris County Justice of the Peace Court (“the Justice Court”), essentially a traffic court, in four cases in which Thomas owed outstanding traffic fines.
27. Respondent had served as counsel of record for Thomas in these traffic cases before his Texas law license was canceled.
28. Thomas had previously been placed on payment plans and had defaulted or failed to appear, resulting in four bench warrants.
29. Respondent visited the Justice Court and asked Assistant District Attorney Guadalupe Ramirez (“Ramirez”) what Thomas could do to have the warrants recalled and Ramirez instructed Respondent concerning the sum that Thomas needed to pay to have the warrants recalled.
30. Ramirez told Virginia State Bar Investigator David Fennessey (“Investigator Fennessey”) that she met with Respondent in a hearing room outside of the courtroom and they negotiated a payment plan for Thomas. After the agreement was made, she told Respondent to note his appearance on a piece of paper. She did not recall whether Respondent informed her that he was an out-of-state attorney.
31. On October 1, 2019, the next day, the court clerk informed Ramirez that Respondent was not licensed to practice law in Texas. Ramirez informed her supervisor, who advised her that the case would have to be reset.
32. Debra Martinez (“Martinez”) is the Chief Clerk of the Justice of the Peace 4-1 Court located at 6831 Cypresswood Drive, Spring, TX 77379-7700, and serves Judge Lincoln Godwin. Ms. Martinez told Investigator Fennessey that Respondent represented himself to the staff court clerk as counsel for Thomas. The staff court clerk coordinated with

Ramirez after Ramirez reached an agreement with Respondent concerning the payment of Thomas' outstanding fines.

33. Respondent provided the court clerk with the above-referenced handwritten note of representation. Respondent signed the note with his Virginia State Bar number and the notation "pro hac." Respondent contended that Ramirez told him to make this notation, despite Respondent's failure to properly apply to the court to appear pro hac vice through local counsel. Ramirez stated that she only told Respondent to write his letter of representation on a piece of paper and provide it to the court clerk.
34. The clerk looked up Respondent's name to enter his Texas State Bar number and learned that his license had been canceled on June 7, 2016. When Martinez was informed, she filed a complaint against Respondent with the Texas UPL Commission.
35. Respondent acknowledged that he was aware of the procedure to appear pro hac vice and he did not follow it. He contended that he did not appear in court, never represented himself as a Texas attorney and did not negotiate a deal, but merely inquired about and received payment instructions from Ramirez. Although he was not paid a fee and personally paid the court fines, he now realizes that he could not represent Thomas and should have told her to retain other counsel.
36. On April 21, 2021, Respondent reached a Cease-and-Desist Agreement with the Texas UPL Committee, in which Respondent agreed that he would immediately cease and desist from activities that may constitute the unauthorized practice of law.³
37. Although the Chief Clerk of the Justice Court filed a complaint against Respondent, Harris County never refunded the \$400 he paid nor reset the case. According to Respondent, the warrants against Thomas are still quashed and the cases against her remain closed.

II. NATURE OF MISCONDUCT

Such conduct by Respondent constitutes misconduct in violation of the following provisions of the Rules of Professional Conduct:

Virginia Rule of Professional Conduct 8.5 provides that, while the VSB retains jurisdiction to impose discipline on Respondent, the Texas Disciplinary Rules of Professional Conduct apply to Respondent's conduct.⁴

³ Cease and Desist Agreement dated April 21, 2021 is attached as Exhibit C.

⁴ VIRGINIA RULE 8.5 Disciplinary Authority; Choice Of Law

(a) Disciplinary Authority. A lawyer admitted to practice in this jurisdiction is subject to the disciplinary authority of Virginia, regardless of where the lawyer's conduct occurs. A lawyer not admitted in Virginia is also subject to the disciplinary authority of Virginia if the lawyer provides, holds himself out as providing, or offers to provide legal services in Virginia. By doing so, such lawyer consents to the appointment of the Clerk of the Supreme

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TEXAS DISCIPLINARY RULE OF PROFESSIONAL CONDUCT 3.03: CANDOR
TOWARD THE TRIBUNAL

(a) A lawyer shall not knowingly:

(1) make a false statement of material fact or law to a tribunal;

TEXAS DISCIPLINARY RULE OF PROFESSIONAL CONDUCT 8.04: MISCONDUCT

(a) A lawyer shall not:

(3) engage in conduct involving dishonesty, fraud, deceit or misrepresentation;

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TEXAS DISCIPLINARY RULE OF PROFESSIONAL CONDUCT 8.04: MISCONDUCT

(b) A lawyer shall not:

(11) engage in the practice of law when the lawyer is on inactive status, except as permitted by section 81.053 of the Government Code and Article XIII of the State Bar Rules, or when the lawyer's right to practice has been suspended or terminated, including, but not limited to, situations where a lawyer's right to practice has been administratively suspended for failure to timely pay required fees or assessments or for failure to comply with

Court of Virginia as his or her agent for purposes of notices of any disciplinary action by the Virginia State Bar. A lawyer may be subject for the same conduct to the disciplinary authority of Virginia and any other jurisdiction where the lawyer is admitted.

(b) Choice of Law. In any exercise of the disciplinary authority of Virginia, the rules of professional conduct to be applied shall be as follows:

(1) for conduct in connection with a proceeding in a court, agency, or other tribunal before which a lawyer appears, the rules to be applied shall be the rules of the jurisdiction in which the court, agency, or other tribunal sits, unless the rules of the court, agency, or other tribunal provide otherwise;

(2) for any other conduct, the rules of the jurisdiction in which the lawyer's conduct occurred; and

(3) notwithstanding subparagraphs (b)(1) and (b)(2), for conduct in the course of providing, holding out as providing, or offering to provide legal services in Virginia, the Virginia Rules of Professional Conduct shall apply.

Article XII of the State Bar Rules relating to Mandatory Continuing Legal Education; or

(12) violate any other laws of this state relating to the professional conduct of lawyers and to the practice of law.⁵

SANCTIONS PHASE OF HEARING

Having found misconduct as alleged in the certification by stipulation, the Board then provided the VSB and the Respondent the opportunity to provide additional evidence regarding aggravating and mitigating factors applicable to the appropriate sanction to be imposed. VSB Exhibit 47, the Respondent's disciplinary history, was admitted without objection from the Respondent.

The VSB called the Respondent as a witness in this phase of the proceedings and addressed matters in aggravation and mitigation. The Board then rested. Respondent then was given the opportunity to present evidence in mitigation and testified on his own behalf. The respondent testified that he has worked on accepting responsibility for his lies and how he had changed from this experience. He denied that he ever committed any dishonesty towards his clients and that they were always satisfied with his work. He further testified to his volunteer activities in his community, such as writing informative articles for his local community newspaper to inform citizens of their legal rights in certain matters.

In the course of cross-examination, the Respondent moved to withdraw his stipulations as to misconduct. This motion was DENIED as being untimely since the Board had already found

violations based on the stipulations.

Respondent then called one witness, Ms. Taylor Bastiano Woodyard, on his behalf, who testified to the character and integrity of the Respondent. She further testified that she did not know what circumstances brought the Respondent before the Board but, upon learning that it was because he had lied, she stated that was out of character for him.

The argument presented by the VSB during the sanctions phase addressed the Respondent's prior disciplinary record and his pattern of behavior, his continued deceit and lies, despite numerous opportunities to correct himself, and his lack of remorse. The Bar further argued that the Respondent has not shown any change and that he cut corners to get what he wanted. The Bar argued that in aggravation, the motive was selfish and dishonest; that he had in prior disciplinary matters refused to cooperate; his actions were in bad faith; the Respondent, by his own admission has substantial experience in the practice of law; and that the Respondent refused to acknowledge the wrongful nature of his actions. The Board addressed his duty to the public and that the potential injury is extreme. In mitigation, the Board noted that the Respondent was fully cooperative in these proceedings.

Respondent acknowledged the serious nature of the misconduct and stated that he had changed since the events which resulted in the current charges. He noted that he used to run from conflict but has learned to "embrace the negative." He also stated that he is now more transparent in his dealings. Respondent further argued that the State of Texas does not have "clean hands" in this matter. Although the Board understood, and took into consideration, the difficulty of the Respondent appearing *pro se*, thus having to represent his own interest while also being his own witness, the Board did not find that Respondent was remorseful for his actions. During the hearing he often equivocated as to whether he understood and accepted that

his actions were wrongful and at times blamed others for wrongdoing (i.e his former counsel, the State of Texas). Moreover, during his examination by the Board, the Respondent became argumentative with the Board. He stated that he did not think it was deceitful, nor did he consider it the practice of law, to sign a notice of appearance as “pro hac” knowing that he was, in fact, not *pro hac*. He further stated that he did not feel he was being dishonest with his clients while representing them on a Texas license that he knowingly obtained fraudulently.

The Respondent offered numerous exhibits. Exhibits G-O, Q, and S-U were refused by the Board. Exhibits P, R, V, X, Y, Z, and AA were admitted without objection.

DISPOSITION

At the conclusion of the evidence in the sanctions phase of this proceeding, the Board recessed to deliberate. After due deliberation and review of the foregoing findings of fact, upon review of exhibits presented by Bar Counsel on behalf of the VSB, upon review of the exhibits presented by Respondent, upon Respondent’s testimony and argument of Respondent and Bar Counsel, the Board reconvened and announced that during its deliberation and in determining the appropriate sanction to impose, the Board considered the mitigating and aggravating factors set forth herein above as well as the American Bar Association’s Standards for Imposing Lawyer Sanctions.¹

Upon consideration of the evidence and the nature of the misconduct committed by Respondent, it is ORDERED, by unanimous vote of the Board, that Respondent’s license to practice law in the Commonwealth of Virginia be REVOKED.

¹ ABA ANNOTATED STANDARDS FOR IMPOSING LAWYER SANCTIONS (2015).

It is further ORDERED that Respondent must comply with the requirements of Part 6, Section § IV, ¶ 13-29 of the *Rules of Supreme Court of Virginia*. Respondent shall forthwith give notice by certified mail, return receipt requested, of the revocation 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. Respondent shall also make appropriate arrangements for the disposition of matters then in his care in conformity with the wishes of his clients. Respondent shall give such notice immediately and in no event later than fourteen (14) days of the effective date of the revocation and make such arrangements as are required herein as soon as is practicable and in no event later than forty-five (45) days of the effective date of the revocation. Respondent shall also furnish proof to the Clerk of the VSB within sixty (60) days of the effective day of the revocation that such notices have been timely given and such arrangements made for the disposition of matters.

It is further ORDERED that if 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 within sixty (60) days of the effective day of the revocation. All issues concerning the adequacy of the notice and arrangements required by Paragraph 13-29 shall be determined by the Virginia State Bar Disciplinary Board, which may impose additional sanctions for failure to comply with the requirements of this subparagraph.


It is further ORDERED that pursuant to Part 6, Section, § IV, ¶ 13-9(E) of the *Rules of Supreme Court of Virginia*, the Clerk of the Disciplinary System shall assess all costs against Respondent.

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 by

certified mail, return receipt requested, with the Virginia State Bar, and a copy shall be hand-delivered to Laura Booberg, Assistant Bar Counsel, Virginia State Bar, 1111 East Main Street, Suite 700, Richmond, VA 23219-0026.

ENTERED this 11th day of February, 2022.

VIRGINIA STATE BAR DISCIPLINARY BOARD



Steven Novey., 2nd Vice Chair