

**BEFORE THE SUPREME COURT COMMITTEE ON PROFESSIONAL CONDUCT**

**PANEL B**

IN RE: ALVIN Q. MALONE, RESPONDENT

Arkansas Bar ID# 2001-051

CPC Docket No. 2003-148

**CONSENT FINDINGS AND ORDER**

The formal charges of misconduct upon which this Findings and Order is based arose from a referral of the Arkansas Supreme Court in the case of Jason B. Rogers v. State of Arkansas, CR 2003-785. The information related to the representation of Jason Rogers by Respondent in an appeal from Crittenden County Circuit Court.

In 2001, Rogers entered a plea of guilty to one count of Robbery and was placed on probation for ten years, conditioned on certain terms and conditions. On March 28, 2002, a Judgment and Commitment Order was entered in Crittenden County Circuit Court finding that Rogers had violated the terms of probation. Rogers was sentenced to two hundred and forty (240) months in the Arkansas Department of Correction. Rogers was represented by Alvin Malone, an attorney licensed in Arkansas but employed by a firm in Memphis, Tennessee. Malone filed a timely notice of appeal on Rogers' behalf on April 26, 2002. No further steps were taken to perfect the appeal.

At the time Malone filed the notice of appeal, Malone had not paid his annual license fee as required by Rule VII.A of the Rules Governing Admission to the Bar for the year 2002. Pursuant to Rule VII.C, an attorney's license to practice law in the State of Arkansas is suspended for failure to comply with Rule VII.C. Malone was suspended from the practice of law for the failure to pay his license fee. Malone paid his license fee for the year 2002 in 2003.

Rogers filed a *pro se* Motion for Belated Appeal with the Arkansas Supreme Court on May 1, 2003. The Court treated the Motion as a Motion for Rule on the Clerk and directed Malone to file a motion and affidavit accepting full responsibility for failing to file the transcript. The Court restated Rule 16 of the Rules of

Appellate Procedure–Criminal, which provides that trial counsel, whether retained or court-appointed, shall continue to represent a convicted defendant throughout any appeal to the Arkansas Supreme Court, unless permitted by the trial court or the Arkansas Supreme Court to withdraw in the interest of justice or for other sufficient cause. No order was entered relieving Malone of his obligation to perfect the appeal.

On June 23, 2003, Malone filed a Motion for Rule on the Clerk and accepted responsibility for the failure to have the appeal perfected. The Arkansas Supreme Court granted the motion and referred the matter to the Office of Professional Conduct.

Upon consideration of the formal complaint and attached exhibits, the response, the consent proposal, and other matters before it, and the Arkansas Model Rules of Professional Conduct, Panel B of the Arkansas Supreme Court Committee on Professional Conduct finds:

1. That Respondent Alvin Q. Malone violated Model Rule 1.3 when he failed, in a timely manner, to perfect the appeal on behalf of Jason B. Rogers, his client. Model Rule 1.3 requires that a lawyer act with reasonable diligence and promptness in representing a client.

2. That Respondent Alvin Q. Malone violated Model Rule 5.5 when he failed to pay his 2002 license fee and was suspended from the practice of law automatically pursuant to Rule VII.C of the Rule Governing Admission to the Bar. Model Rule 5.5 requires that a lawyer not practice law in a jurisdiction where doing so violates the regulation of the legal profession in that jurisdiction.

WHEREFORE, it is the decision and order of the Arkansas Supreme Court Committee on Professional Conduct, acting through its authorized Panel B, that ALVIN Q. MALONE, Arkansas Bar ID#2001-051, be, and hereby is, CAUTIONED for his conduct in this matter and is assessed costs in the amount of FIFTY (\$50.00) DOLLARS. The costs assessed herein shall be payable by cashier's check or money order payable to the "Clerk, Arkansas Supreme Court" delivered to the Office of Professional Conduct within thirty (30) days of the date this Findings and Order is filed of record with the Clerk of the Arkansas Supreme Court.

ARKANSAS SUPREME COURT COMMITTEE ON  
PROFESSIONAL CONDUCT - PANEL B

By: \_\_\_\_\_

J. Michael Cogbill, Chair, Panel B

Date: \_\_\_\_\_