

NORTH CAROLINA
WAKE COUNTY



BEFORE THE
DISCIPLINARY HEARING COMMISSION
OF THE
NORTH CAROLINA STATE BAR
06 DHC 3

THE NORTH CAROLINA STATE BAR,

Plaintiff

v.

LYNETTE HICKS., Attorney,

Defendant

FINDINGS OF FACT,
CONCLUSIONS OF LAW,
AND CONSENT ORDER
OF DISCIPLINE

This matter was considered by a hearing committee of the Disciplinary Hearing Commission composed of Stephen E. Culbreth, Chair, and members M. Ann Reed and Rebecca Brownlee. Jennifer A. Porter represented the Plaintiff, the North Carolina State Bar. James B. Maxwell represented the Defendant, Lynette Hicks. Both parties stipulate and agree to the findings of fact and conclusions of law recited in this consent order and to the discipline imposed. Defendant freely and voluntarily waives any and all right to appeal the entry of this consent order of discipline. Based upon the stipulations of fact and the consent of the parties, the hearing committee hereby finds by clear, cogent, and convincing evidence the following:

FINDINGS OF FACT

1. Plaintiff, the North Carolina State Bar ("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 (Chapter 1 of Title 27 of the North Carolina Administrative Code).
2. Defendant, Lynette Hicks ("Hicks"), was admitted to the North Carolina State Bar in 1983, and is, and was at all times referred to herein, an attorney at law licensed to practice in North Carolina, subject to the laws of the State of North Carolina, the Rules and Regulations of the North Carolina State Bar and the Revised Rules of Professional Conduct.
3. During all or part of the relevant periods referred to herein, Hicks was engaged in the practice of law in the State of North Carolina and maintained a law office in Mocksville, Davie County, North Carolina.
4. Hicks was properly served with process, a hearing in this matter was set, and the matter comes before the hearing committee with due notice to all parties.

5. In the course of Hicks' practice of law, she maintained a trust account for client funds at BB&T under the name of Piedmont Legal Associates, PA IOLTA Account, account number ending in the digits 7124.

6. Hicks hired Janet Barbour ("Barbour") as a paralegal in her office in about 1994.

7. Prior to 2000, Hicks delegated bookkeeping responsibilities for the trust account to Barbour. These delegated duties included writing and signing trust account checks and reconciliation of the trust account.

8. At the time of this delegation, Hicks believed Barbour had the experience, training, qualifications, and integrity to handle these responsibilities.

9. Although Hicks delegated these duties to Barbour, Hicks remained responsible under Rules 1.15-2 and 1.15-3 of the North Carolina Revised Rules of Professional Responsibility to protect client funds, to maintain client ledgers for each client with funds in her trust account, and to reconcile her trust account quarterly.

10. Bruno E. DeMolli, a staff auditor with the North Carolina State Bar, conducted a random audit of Hicks' trust account on March 10, 2000. His audit consisted of a procedural review of trust account administrative recordkeeping procedures. He found several deficiencies, including failure to maintain client ledgers and failure to reconcile the trust account quarterly.

11. DeMolli did not discover shortages or funds missing from Hicks' trust account in his procedural audit nor did he conduct a substantive audit that would have enabled him to do so.

12. DeMolli provided Hicks with written notice of the procedural deficiencies he found in a document dated March 10, 2000. Both DeMolli and Hicks signed this document.

13. Despite these deficiencies, Hicks continued to have Barbour maintain the trust account.

14. After DeMolli's audit, Hicks met with Barbour and reviewed the results of the audit with her. Hicks anticipated Barbour would make the changes necessary to remedy the deficiencies. Hicks did not adequately follow-up in the supervision of Barbour after these discussions.

15. As of January 1, 2002, Hicks should have had a total of \$35,194.01 in her trust account for three estate client matters, as follows:

- | | | |
|----|------------------|-------------|
| a. | Ridenhour Estate | \$21,032.31 |
| b. | Parse Estate | \$11,806.89 |

c. Thompson Estate \$ 2,354.90

16. As of January 1, 2002, the balance of Hicks' trust account was \$10,441.05.

17. \$5,641.62 of the \$10,441.05 balance in Hicks' trust account as of January 1, 2002 was being held for matters other than the Ridenhour Estate, the Parse Estate, or the Thompson Estate, leaving only \$4,799.43 in Hicks' trust account that could be funds belonging to these estates.

18. As of November 11, 2002, Hicks should have had a total of \$127,088.33 in her trust account for client matters, as follows:

a.	Ridenhour Estate	\$20,895.31
b.	Parse Estate	\$ 9,791.89
c.	Thompson Estate	\$ 2,354.90
d.	Floyd Greene (#1)	\$10,000.00
e.	Floyd Greene (#2)	\$ 107.50
f.	Garcia Cruz	\$78,540.53
g.	W. Jones	\$ 75.00
h.	McMillan	\$ 273.00
i.	Payne	\$ 60.50
j.	Taylor	\$ 119.28
k.	Taylor	\$ 330.26
l.	Link	\$ 14.00
m.	S. James	\$ 90.02
n.	Bledsoe	\$ 203.00
o.	Brittan	\$ 139.25
p.	Howell	\$ 420.50
q.	Cockerham	\$ 1,107.75
r.	Creason	\$ 167.00

s.	Blank	\$ 54.52
t.	Santos	\$ 118.00
u.	C. Charles	\$ 2,162.28
v.	Keller	\$ 28.00
w.	Phillips	\$ 35.00

19. As of November 11, 2002, the balance of Hicks' trust account was \$101,269.08.

20. As of November 11, 2002, Hicks' trust account held \$25,819.25 less than it should have held in client funds.

21. Between November 2002 and January 2003, Hicks discovered discrepancies in her trust account, including missing entries in the check register. Hicks discovered instances where Barbour had written trust account checks to pay Barbour's personal expenses.

22. Hicks revoked Barbour's signatory authority over the trust account in November 2002 and reported her to the Mocksville Police Department in November 2002.

23. Barbour was convicted on January 6, 2005 of several charges of obtaining property by false pretenses from Hicks' trust account, with offense dates ranging from February 26, 2001 through November 28, 2001.

24. Additionally, Barbour wrote approximately 53 checks from Hicks' trust account for Barbour's personal expenses from about February 11, 2002 through about November 11, 2002.

25. Hicks did not personally conduct quarterly reconciliations of her trust account between February 26, 2001 and November 11, 2002.

26. Hicks did not ensure Barbour conducted accurate quarterly reconciliations of Hicks' trust account between February 26, 2001 and November 11, 2002.

27. Hicks did not personally maintain ledgers containing a record of receipts and disbursements for each person or entity from whom and for whom funds were received and held in trust along with a current client balance per client from February 26, 2001 through November 11, 2002.

28. Hicks did not ensure Barbour maintained accurate ledgers containing a record of receipts and disbursements for each person or entity from whom and for whom funds were received and held in trust along with a current client balance per client from February 26, 2001 through November 11, 2002.

CONCLUSIONS OF LAW

1. All the parties are properly before the hearing committee and the committee has jurisdiction over the Defendant, Lynnette Hicks, and the subject matter.

2. Hicks' conduct, as set out in the Findings of Fact above, constitutes grounds for discipline as follows:

- a. By failing to personally conduct quarterly reconciliations of her trust account and/or by failing to ensure staff to whom she delegated the duty of conducting quarterly reconciliations did so accurately, Hicks failed to fulfill her duty to conduct quarterly reconciliations of her trust account in violation of Rule 1.15-3;
- b. By failing to personally maintain ledgers containing a record of receipts and disbursements for each person or entity from whom and for whom funds were received and held in trust along with the current client balance per client and/or by failing to ensure staff to whom she delegated the duty of maintaining such client ledgers did so accurately, Hicks failed to fulfill her duty to maintain a record of receipts and disbursements per client with a current client balance for the funds in her trust account in violation of Rule 1.15-3; and
- c. By delegating bookkeeping and check writing authority for her trust account to Barbour and failing to provide the supervision necessary to prevent Barbour from embezzling client funds, Hicks failed to make reasonable efforts to ensure that the nonlawyer's conduct was compatible with the professional obligations of Hicks in violation of Rule 5.3.

Based upon the stipulations of fact and the consent of the parties, the hearing committee hereby finds by clear, cogent, and convincing evidence the following additional

FINDINGS OF FACT REGARDING DISCIPLINE

1. Hicks' misconduct is aggravated by the following factors:
 - a. Multiple offenses; and
 - b. Substantial experience in the practice of law.
2. Hicks' misconduct is mitigated by the following factors:

- a. Absence of a prior disciplinary record;
 - b. Absence of a dishonest or selfish motive;
 - c. Personal health problems which distracted her attention from the management of her law office;
 - d. Remorse;
 - e. Timely good faith efforts to make restitution or rectify consequences of misconduct, including notifying the police of Barbour's embezzlement, self-reporting to the State Bar, opening a new trust account to ensure the protection of client funds, and expending personal funds to remedy the financial harm caused by Barbour; and
 - f. Full and free disclosure to the hearing committee and a cooperative attitude toward the proceedings.
3. The mitigating factors outweigh the aggravating factors.
 4. Hicks derived no personal benefit from Barbour's embezzlements and expended substantial personal funds to ensure all client funds were replaced and to remedy other financial harm caused by Barbour's actions.
 5. Upon discovery of Barbour's misconduct, Hicks immediately terminated her employment. Hicks subsequently hired two assistants with substantial banking experience whom she believes have the training and experience to properly maintain and reconcile her trust account.
 6. Hicks' failure to properly supervise Barbour and to ensure her clients' funds were being properly protected enabled Barbour to commit the embezzlement of client funds described herein. Although no client disbursement was disallowed for insufficient funds during this timeframe, due to the timing of disbursements and the usage of funds that were in the trust account, this happenstance does not cure the harm caused by Hicks' failure to supervise Barbour and failure to protect her clients' funds.
 7. Hicks' failure to supervise her non-attorney assistant and failure to protect client funds posed a significant threat of harm to her clients and, if repeated, poses significant potential harm to future clients and the reputation of the profession.
 8. Based upon the foregoing facts, entry of an order of discipline with a significant suspension of Hicks' law license that is stayed only as long as Hicks complies with reasonable conditions is necessary to protect the public.

Based upon the foregoing factors and with the consent of the parties, the hearing committee hereby enters the following

ORDER OF DISCIPLINE

1. The license of the Defendant, Lynette Hicks, is hereby suspended for three (3) years, effective 30 days from service of this order upon Hicks.

2. The three-year suspension is stayed for a period of three years as long as Hicks complies, and continues to comply during the period of the stay, with the following conditions:

- a. Hicks, at her own expense, will have her trust account audited by a Certified Public Accountant (CPA) within sixty days of service of this order. Hicks will provide the CPA's audit report to the State Bar within ten days of receipt. Hicks will remedy any deficiencies identified in the CPA's audit and will bring her trust account into compliance with the Revised Rules of Professional Conduct within thirty days of receipt of the audit report. Hicks will submit proof of any remedial action to the State Bar and to the CPA no later than fifteen days after receipt of the CPA's report. If remedial action was required, the CPA will prepare a final audit report certifying that Hicks' trust account is in compliance with the Revised Rules of Professional Conduct without qualification or reservation to the Office of Counsel of the State Bar no later than thirty days after receipt of the remedial information from Hicks. All evaluations, reports, and services of the CPA will be at Hicks' expense;
- b. Hicks will have a CPA audit her trust account on a quarterly basis. This audit will occur no later than ten days after the last day of each quarter (April 10, July 10, October 10, and January 10) and the CPA will submit the audit report to Hicks and the State Bar no later than fifteen (15) days after conducting the audit. All evaluations, reports, and services of the CPA will be at Hicks' expense;
- c. Hicks will complete an accounting course, either a continuing legal education course teaching trust account accounting practices or other accounting course with an emphasis on trust accounts and/or fiduciary funds approved in advance by the Office of Counsel of the State Bar. Hicks will complete this course within six months of service of this order upon her. Hicks will provide the Office of

Counsel of the State Bar with proof of completion of this course within ten days of completion.

- d. For the quarter following completion of this accounting course, Hicks will personally and without the assistance any other person:
 - i. Maintain a ledger containing a record of receipts and disbursements for each person or entity from whom and for whom funds are received in her trust account that shows the current balance of funds held in the trust account for each such person or entity;
 - ii. Maintain these client ledgers on an ongoing basis, updating each ledger contemporaneously with receipt or disbursement of trust account funds;
 - iii. Reconcile her trust account, totaling the individual client balances shown on the above described ledgers and reconciling that balance with the current bank balance for the trust account as a whole on a monthly basis.
- e. Hicks will provide copies of these client ledgers, her monthly reconciliations of her trust account, and the corresponding bank statements to the CPA conducting the audit of her trust account for that quarter and to the State Bar Office of Counsel, such documents being due 5 days after the end of that quarter;
- f. For the quarter in which Hicks performs the activities required in subsection d of this paragraph 2, the CPA will examine the ledgers and reconciliations created and/or maintained by Hicks during that quarter, in addition to performing an independent audit of the trust account. If the CPA finds any deficiencies in Hicks' recordkeeping, the CPA will issue a report describing the deficiencies. This report will be provided to Hicks and the State Bar in addition to the report of the CPA's independent audit of the trust account no later than 15 days after completion of the audit and review. All evaluations, reports, and services of the CPA will be at Hicks' expense;
- g. If the CPA finds any deficiencies in Hicks' recordkeeping, she will:
 - i. Correct any deficiencies within ten days of receipt of the CPA's report and provide documentation to the State Bar of the corrective action within ten days of accomplishing it; and
 - ii. Personally create and/or maintain the records described in subparagraph d of paragraph 2 for the subsequent quarter and fulfill the requirements of subparagraphs e, f, and this

subparagraph g of paragraph 2 for such quarter, until the CPA finds no deficiencies in Hicks' recordkeeping.

- h. The personal recordkeeping by Hicks described above can be in addition to any accounting or recordkeeping system Hicks has instituted in her office but must occur independently and without the assistance of others. This personal recordkeeping requirement in no way excuses Hicks from compliance with Rule 1.15 prior to taking the accounting course described above;
- i. Hicks will be the only signatory on her trust account and operating account(s). Hicks will provide documentation showing she is the sole signatory on these accounts no later than thirty (30) days from the effective date of this order. Hicks must sign all instruments disbursing funds from or depositing funds into his trust and operating account(s);
- j. Hicks will complete a law office management course within one year of service of this order upon her. Such course can be a session that is part of a bigger continuing legal education course or can be an independent course. The law office management course or session shall be approved in advance by the Office of Counsel of the State Bar;
- k. Hicks will not violate any of the Revised Rules of Professional Conduct in effect during the period of the stay;
- l. Hicks will not violate any laws of the State of North Carolina or of the United States during the period of the stay; and
- m. Hicks will pay all costs of this proceeding as assessed by the Secretary within 30 days after service of the statement of costs on her.

3. If Hicks fails to comply with any one or more conditions stated in paragraph 2 above at any point during the period of time the suspension is stayed, the stay of the suspension of her law license may be lifted as provided in § .0114(x) of the North Carolina State Bar Discipline and Disability Rules.

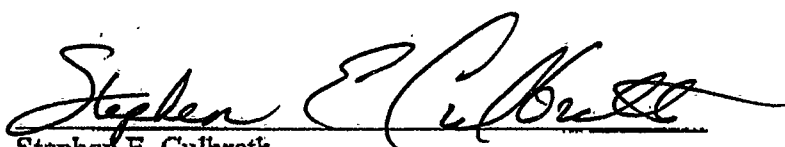
4. If the stay of the suspension is lifted and the suspension is activated for any reason, the DHC may enter an Order providing for such conditions it deems necessary for reinstatement of Hicks' license at the end of the three-year suspension. Furthermore, Hicks will have complied with each of the following conditions precedent to reinstatement:

- a. Submitted her license and membership card to the Secretary of the North Carolina State Bar no later than 30 days from the effective date of the order activating her suspension;


- b. Complied with all provisions of 27 N.C. Admin. Code Chapter 1, Subchapter B, § .0124 of the North Carolina State Bar Discipline and Disability Rules on a timely basis; and
- c. Taken the accounting and law office management courses described in paragraph 2 above.

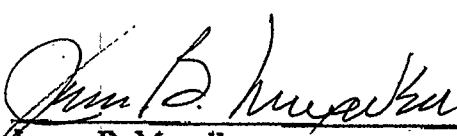
5. The Disciplinary Hearing Commission will retain jurisdiction of this matter pursuant to 27 N.C. Admin. Code Chapter 1, Subchapter B, § .0114(x) of the North Carolina State Bar Discipline and Disability Rules throughout the period of the stayed suspension.

Signed by the Chair with the consent of the other hearing committee members, this the 6 day of June, 2006.


Stephen E. Culbreth
Chair, Disciplinary Hearing Committee

CONSENTED TO BY:


Jennifer A. Porter
Deputy Counsel
Attorney for Plaintiff


James B. Maxell
Attorney for Defendant


Lynette Hicks
Defendant