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STATE OF NORTH CAROLINA  
CABARRUS COUNTY

FILED IN COURTROOM  
CABARRUS COUNTY

IN THE GENERAL COURT OF JUSTICE  
SUPERIOR COURT DIVISION

2 CV5 01802

DATE: 9-30-02

BY: BK  
Asst. / Deputy Clerk

IN RE: LICENSE OF  
J. MAXTON ELLIOTT,  
ATTORNEY AT LAW

) FINDINGS OF FACT,  
) CONCLUSIONS OF LAW &  
) CONSENT ORDER OF DISCIPLINE  
)

This cause coming on for hearing before the Honorable John R. Jolly, Jr., Superior Court Judge, presiding over the September 30, 2002 session of the Cabarrus County General Court of Justice, Superior Court Division, as a summary proceeding for the discipline of a member of the Bar of the State of North Carolina, the Court finds, based on the evidence presented and consent of the parties, the following facts by clear, cogent and convincing evidence:

**FINDINGS OF FACT**

1. Petitioner, the North Carolina State Bar (hereafter "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 there under.
2. Respondent, J. Maxton Elliott ("Elliott"), was admitted to the practice of law in North Carolina on or about August 5, 1960 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 Rules of Professional Conduct of the North Carolina State Bar and the laws of the State of North Carolina.
3. During the times relevant to this complaint, Elliott actively engaged in the practice of law in the State of North Carolina and maintained a law office in the city of Concord, Cabarrus County, North Carolina.
4. During his years in practice, Elliott drafted hundreds of wills.
5. Elliott drafted a last will and testament for Miriam Foil that was executed on October 30, 1992.
6. In Ms. Foil's will, Elliott drafted the following gifts to himself or his wife:
  - a. all Ms. Foil's Concord Telephone Company stock to Elliott, and
  - b. \$20,000 to Elliott's wife, Iris B. Elliott.
7. Ms. Foil was not related to either Elliott or his wife.

8. Elliott was designated as the executor of Ms. Foil's estate in her will.

9. Ms. Foil died on October 3, 1997.

10. Elliott, as executor of the estate, probated the will on October 7, 1997 in the Cabarrus County Clerk of Superior Court, file number 97 E 614.

11. Elliott distributed the gifts to himself and his wife, as well as Ms. Foil's other beneficiaries, during the administration of her estate.

12. At the time the Concord Telephone Company stock was distributed to Elliott on or about January 1999, it was valued at \$224,859.37.

13. The gifts to Elliott and his wife set forth above were substantial.

14. Elliott also drafted a last will and testament for Dollie Folkes Olcott that was executed on November 7, 1996.

15. In Ms. Olcott's will, Elliott drafted a \$7,500 gift to himself.

16. Ms. Olcott was not related to Elliott.

17. Elliott was designated as the executor of Ms. Olcott's estate in her will.

18. Ms. Olcott died on November 8, 1997.

19. Elliott, as executor of the estate, probated Ms. Olcott's will on or about November 12, 1997 in the Cabarrus County Clerk of Superior Court, file number 97 E 708.

20. Elliott distributed the gift to himself, as well as the gifts to Ms. Olcott's other beneficiaries, during the administration of her estate.

21. The gift to Elliott in Ms. Olcott's will was substantial.

22. Mr. Elliott presented evidence that the gifts from Ms. Foil and Ms. Olcott to he and his wife were voluntarily made.

23. The parties consent to the order being signed out of term and out of district.

BASED UPON THE FOREGOING FINDINGS OF FACT, THE COURT ENTERS THE  
FOLLOWING:

### CONCLUSIONS OF LAW

1. All parties are properly before the Court and were properly noticed to appear in Court to present any and all evidence deemed necessary by the parties for consideration by the Court respecting imposition of professional discipline against Elliott.

2. Pursuant to Chapter 84 of the North Carolina General Statutes and its inherent powers, the Court has authority to discipline Elliott.

3. Elliott has committed misconduct warranting imposition of discipline pursuant to North Carolina General Statutes Section 84-28(b) (2).

4. Elliott's drafting of the will of Miriam Foil containing substantial gifts to himself and his wife violated Rule 5.5 of the Rules of Professional Conduct.

5. Elliott's drafting of the will of Dollie Folkes Olcott containing a substantial gift to himself violated Rule 5.5 of the Rules of Professional Conduct.

BASED UPON THE FOREGOING FINDINGS OF FACT AND CONCLUSIONS OF LAW AND THE CONSENT OF THE PARTIES, THE HEARING COMMITTEE MAKES ADDITIONAL:

### FINDINGS OF FACT REGARDING DISCIPLINE

1. Elliott's misconduct is aggravated by the following factors:

- a. multiple offenses, and
- b. substantial experience in the practice of law.

2. Elliott's misconduct is mitigated by the following factors:

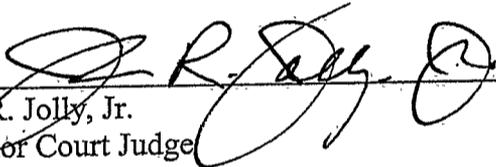
- a. absence of a prior disciplinary record,
- b. restitution to the estates of the substantial gifts to himself and his wife in connection with this consent order,
- c. cooperative attitude toward the proceedings, and
- d. good character and reputation.

BASED UPON THE FOREGOING FINDINGS OF FACT AND CONCLUSIONS OF LAW, ADDITIONAL FINDINGS OF FACT REGARDING DISCIPLINE, AND THE CONSENT OF THE PARTIES, THE COURT ENTERS THE FOLLOWING:

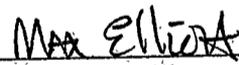
CONSENT ORDER OF DISCIPLINE

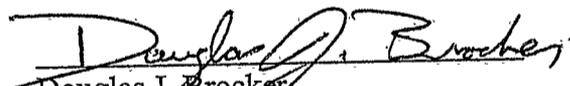
1. J. Maxton Elliott is hereby suspended from the practice of law in North Carolina for a period of 1 year effective thirty days from service of the order upon him.
2. The suspension is stayed for a period of 3 years as long as Elliott satisfies all of the following conditions:
  - a. Elliott shall not violate any provisions of the Revised Rules of Professional Conduct;
  - b. Elliott shall not violate any state or federal criminal laws;
  - c. Elliott shall pay the costs of this proceeding as assessed by the Secretary within 30 days of service of this order on him; and
  - d. Elliott shall attend 3 hours of continuing legal education ("CLE") on general ethics or the Revised Rules of Professional Conduct during each of the years of the stayed suspension in which he maintains an active license to practice law.
3. The Court shall retain jurisdiction over this cause for such other and further proceedings as might be deemed necessary by the Court, the North Carolina State Bar, or Elliott.

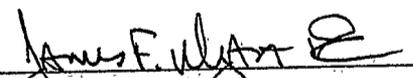
This 30<sup>th</sup> day of SEPT., 2002.

  
\_\_\_\_\_  
John R. Jolly, Jr.  
Superior Court Judge

We consent:

  
\_\_\_\_\_  
J. Maxton Elliott  
Respondent

  
\_\_\_\_\_  
Douglas J. Brocker  
Deputy Counsel  
North Carolina State Bar

  
\_\_\_\_\_  
James F. Wyatt, III  
Attorney for Defendant