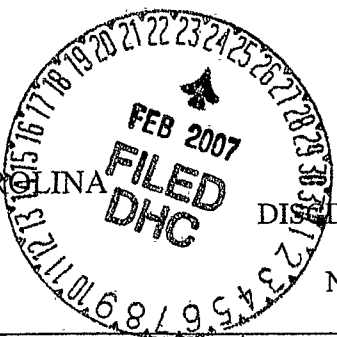


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STATE OF NORTH CAROLINA

BEFORE THE  
DISCIPLINARY HEARING COMMISSION  
OF THE  
NORTH CAROLINA STATE BAR  
05 DHC 15

WAKE COUNTY

THE NORTH CAROLINA STATE BAR,

Plaintiff

v.

ELIZABETH D. HICKMON, Attorney,

Defendant

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

This matter was heard on February 22-24, 2007 before a hearing committee of the Disciplinary Hearing Commission composed of the Chair, F. Lane Williamson, and members M. Ann Reed and Marguerite P. Watts. Jennifer A. Porter and Katherine E. Jean represented the Plaintiff, the North Carolina State Bar. Defendant, Elizabeth D. Hickmon, was represented by Bruce H. Jackson, Jr. Both parties stipulate and agree that the hearing committee found by clear, cogent, and convincing evidence the findings of fact and conclusions of law recited in this consent order after conducting a hearing in this matter. The parties consent to the discipline imposed herein. Defendant freely and voluntarily waives any and all right to appeal the entry of this consent order of discipline. Based upon the pleadings, the evidence presented at the hearing, and the stipulations of the parties, the hearing committee hereby finds by clear, cogent, and convincing evidence the following

FINDINGS OF FACT

1. The Plaintiff, the North Carolina 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 thereunder.

2. Defendant, Elizabeth D. Hickmon ("Hickmon"), was admitted to the North Carolina State Bar in 1981, 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, Hickmon was engaged in the practice of law in the State of North Carolina and maintained a law office in Wilmington, New Hanover County, North Carolina.

4. Hickmon was properly served with process, a hearing in this matter was set, and the matter came before the hearing committee with due notice to all parties.

5. In or about November 2001, Mary E. Taylor ("Taylor") hired Hickmon for estate planning, asset protection, and Medicaid application assistance.

6. Taylor signed a power of attorney appointing Hickmon as her attorney-in-fact in November 2001. Taylor continued paying her own bills until about July 2002. At about that time Hickmon began paying Taylor's bills, signing checks from Taylor's checking account pursuant to the power of attorney.

7. Hickmon prepared a will for Taylor, which Taylor executed in February 2002. Hickmon hired attorney John J. Peck ("Peck") to provide additional estate planning services for Taylor in about September 2002. Taylor signed another power of attorney prepared by Peck appointing Hickmon as attorney-in-fact in October 2002. In about October 2002, Peck created a trust for Taylor and Hickmon transferred Taylor's real property into the trust pursuant to the power of attorney.

8. In early 2003, Fay R. Mayo ("Mayo"), Taylor's niece, learned that Taylor was not current on her payments to The Commons at Brightmore, where Taylor resided. Mayo and others on behalf of Taylor called Hickmon about this. No one was able to communicate with Hickmon.

9. Thereafter, Taylor signed a new power of attorney appointing Mayo as her attorney-in-fact.

10. Mayo retained attorney Fred Turnage ("Turnage") to represent Taylor instead of Hickmon. At the time of discharge, Hickmon had not applied for Medicaid benefits for Taylor, one of the purposes for which she was hired.

11. One morning in August 2003, Hickmon was informed that Mayo would come to Hickmon's office that afternoon to pick up Taylor's file. The door to Hickmon's office was locked when Mayo arrived. Mayo called Hickmon's office and left a message that she was at Hickmon's office. Hickmon did not respond and her office door remained locked.

12. Turnage made several attempts to obtain Taylor's file from Hickmon. Turnage was unsuccessful in obtaining Taylor's file from Hickmon and referred Mayo to attorney Ryal W. Tayloe ("Tayloe").

13. Mayo hired Tayloe on behalf of Taylor to complete Taylor's estate planning and Medicaid application matters and to otherwise assist them.

14. Tayloe made numerous attempts to obtain Taylor's files from Hickmon, including written communication dated December 12, 2003, January 12, 2004, January 23, 2004, and February 4, 2004, electronic communication dated January 22, 2004, and several telephone calls. Hickmon did not return his telephone messages and did not return the files.

15. In December 2003, Tayloe demanded an accounting from Hickmon on behalf of Taylor reflecting her handling of Taylor's assets. Hickmon did not provide this accounting.

16. Taylor was not able to apply for Medicaid assistance until she received her files from Hickmon. Tayloe explicitly referenced Taylor's need to apply for Medicaid assistance and Taylor's inability to do so without her files in his correspondence to Hickmon.

17. Hickmon did not provide Taylor's files until June 2004.

18. Tayloe applied for Medicaid assistance for Taylor after receiving Taylor's files from Hickmon in June 2004. Taylor qualified for Medicaid benefits in July 2004.

19. On or about October 28, 2003, Hickmon met with Samuel Robinson, Jr. ("Robinson"). Robinson hired Hickmon to assist him and his wife with estate planning and with their planning and application for Medicaid benefits. Robinson paid Hickmon \$2,572.50 on or about that date and supplied her with the information she requested.

20. Robinson was given another appointment with Hickmon to provide Hickmon with additional information. On December 9, 2003, Robinson went to Hickmon's office for this appointment. When he went to her office, however, her office was locked. Robinson slid a note under her door asking her to contact him.

21. Hickmon did not notify Robinson that she would not be able to keep that appointment in advance of the appointment. Hickmon did not respond to Robinson's note.

22. From about December 2003 through February 2004, Robinson tried to communicate with Hickmon by telephone. He left voicemail messages but Hickmon did not return his calls.

23. Robinson sent Hickmon a letter by certified mail to her Wilmington office on or about February 7, 2004. It was returned unclaimed.

24. On or about March 4, 2004, Robinson sent Hickmon a letter by certified mail to her Raleigh office with Alexander & Peck, PLLC. This letter was signed for by Marjory Hinchy. Hickmon did not respond to Robinson's letter.

25. Robinson filed a Petition for Resolution of Disputed Fee ("fee dispute") on or about July 16, 2004.

26. The State Bar sent Hickmon a notice of fee dispute by certified mail on or about July 19, 2004 to Hickmon's Wilmington office. Hickmon signed for this letter on July 21, 2004. Hickmon was required to respond to the notice of fee dispute within fifteen (15) days of receipt, as specified in the letter. Hickmon failed to respond to the fee dispute within that time period.

27. Hickmon was sent a second notification letter of fee dispute by certified mail on or about August 12, 2004. Hickmon signed for this second letter on or about August 16, 2004. Hickmon was required to respond within ten (10) days of receipt of this second letter of notice. Hickmon did not provide any response to Robinson's fee dispute.

28. Hickmon did not provide the Robinsons with any estate planning documents and did not provide the Robinsons with any assistance with the requested Medicaid planning.

29. Hickmon did not communicate with the Robinsons regarding their estate and Medicaid matters.

30. Hickmon did not communicate to the Robinsons that she would not be able to represent them because of personal circumstances, nor did she return their files and deposit to allow them to seek alternate representation.

31. Kimberly Hoefler ("Hoefler") hired Hickmon to complete her deceased father's estate in 1999. Before the estate could be probated in North Carolina, certain matters needed to be handled in Oklahoma. An Oklahoma attorney completed the Oklahoma matters and provided the information to Hickmon in 2000. Hoefler paid Hickmon an advance fee of \$3,000.00.

32. Between 2000 and 2004, Hoefler attempted to communicate with Hickmon regarding Hoefler's father's estate. Initially Hickmon would call Hoefler after Hoefler left numerous messages. Eventually, Hickmon stopped returning Hoefler's calls. When Hickmon did talk with Hoefler, she would make excuses for why she had not been able to complete Hoefler's father's estate, such as Hickmon's secretary quitting, Hickmon's hot water heater breaking, or that she was out of town. Hickmon's reasons were based on events occurring in Hickmon's life and not on anything related to Hoefler's father's estate or information needed to complete the estate.

33. Hickmon did not communicate to Hoefler that she would not be able to represent her because of personal circumstances, nor did she return her files and deposit to her to allow her to seek alternate representation.

34. As of December 1, 2004, Hickmon had not closed Hoefler's father's estate.

35. On or about March 19, 2002, Thomas Harty ("Harty") hired Hickmon to handle his deceased mother's estate. On or about April 17, 2002, Harty gave Hickmon the documents Hickmon requested.

36. On or about May 13, 2002, Hickmon filed an Application for Probate and Letters. A Certificate of Probate and an Order Authorizing Issuance of Letters were issued on May 13, 2002.

37. From about mid-May 2002, Harty had difficulty reaching Hickmon by telephone or in person at her office. Hickmon would not return his telephone calls and Harty usually found Hickmon's office closed when he went there.

38. On February 27, 2003, Harty was finally able to meet with Hickmon to have Hickmon complete the estate inventory.

39. Hickmon filed an inventory for Harty's mother's estate, but it was not accepted. The New Hanover County Clerk's Office sent Hickmon a notice regarding the errors on the inventory that resulted in it being rejected on or about May 2, 2003.

40. Hickmon did not file a corrected inventory.

41. Hickmon did not close Harty's mother's estate.

42. Hickmon did not communicate to Harty that she would not be able to represent him because of personal circumstances, nor did she return his files to allow him to seek alternate representation.

43. Harty filed a corrected inventory and the final account for his mother's estate on his own on March 30, 2004.

44. On or about September 11, 2003, Nelson Zabransky ("Zabransky") hired Hickmon to prepare wills for him and his wife. Zabransky paid Hickmon a \$300.00 deposit on Hickmon's attorney fee.

45. Zabransky began calling Hickmon on or about October 13, 2003 for a status on the wills. Hickmon did not return Zabransky's calls.

46. Zabransky went to Hickmon's office on or about November 3, 2003. Hickmon was not there. Zabransky left Hickmon a note to contact him. Hickmon did not respond to that note.

47. Zabransky filed a Petition for Resolution of Disputed Fee ("fee dispute") on or about December 19, 2003.

48. The State Bar sent Hickmon a notice of fee dispute by certified mail on or about December 19, 2004 to Hickmon's Wilmington office. This letter was not claimed.

49. The State Bar then sent the notice of fee dispute by certified mail to Hickmon's Raleigh office with Alexander & Peck, PLLC on or about January 22, 2004. It was signed for by Bill Alexander on January 27, 2004. Hickmon was required to respond to the notice of fee dispute within fifteen (15) days of receipt, as specified in the letter. Hickmon failed to respond to the fee dispute within that time period.

50. Hickmon was sent a second notification letter of fee dispute by certified mail on or about February 24, 2004 to her Raleigh office address. Elizabeth Ray signed for this second letter on or about February 25, 2004. Hickmon was required to respond

within ten (10) days of receipt of this second letter of notice. Hickmon did not provide any response to Zabransky's fee dispute.

51. Hickmon did not provide Zabransky with wills for him and his wife.
52. Hickmon did not communicate with Zabransky regarding the wills.
53. Hickmon did not communicate to Zabransky that she would not be able to represent him because of personal circumstances, nor did she return his files and deposit to him to allow him to seek alternate representation.
54. On or about October 30, 2003, Hickmon met with JoAnn H. Gorman and J. Duane Gorman ("Gormans"). The Gormans hired Hickmon to update their wills, update JoAnn's trust and establish a trust for Duane. The Gormans left several documents with Hickmon.
55. The Gormans were not able to communicate with Hickmon after that meeting. Hickmon did not respond to their many telephone calls. When they went to her office, it was locked.
56. Consequently, the Gormans retained another attorney, W. Berry Trice ("Trice"). The Gormans sent Hickmon a letter discharging her on or about January 27, 2004 and asked Hickmon to return their file to them or Trice.
57. Hickmon did not respond to this letter and did not return the Gormans' file.
58. Trice called Hickmon numerous times, wrote letters, and sent emails attempting to get the Gormans' documents, with no success.
59. On or about May 5, 2004, the Gormans filed a grievance against Hickmon.
60. The Grievance Committee of the State Bar sent Hickmon a letter of notice regarding the Gormans' grievance. Hickmon responded and stated that the Gormans or Trice were welcome to contact her office and collect the Gormans' file.
61. This message was communicated to the Gormans and Trice by the State Bar on or about June 23, 2004. Trice's assistant attempted to make arrangements to collect the Gormans' file but Hickmon would not respond to the assistant's messages.
62. The State Bar ultimately subpoenaed the Gormans' client file from Hickmon to provide to the Gormans. A State Bar investigator served the subpoena on August 3, 2004 and Hickmon produced the Gormans' file on that date to the State Bar investigator.
63. Hickmon did not communicate to the Gormans that she would not be able to represent them because of personal circumstances, nor did she return their files to allow them to seek alternate representation prior to intervention by the State Bar.

64. On or about August 11, 2003, William Michael Fayle ("Fayle") hired Hickmon to represent him in protesting disbursements made by the executor of his mother's estate. He paid her \$500.00.

65. Hickmon did not communicate with Fayle after that meeting. Fayle called Hickmon's Wilmington office on numerous occasions and left telephone messages. Hickmon did not respond to his telephone messages. Fayle's son went to Hickmon's Wilmington office a couple of times but found the office locked. Fayle sent Hickmon a letter by certified mail at her Wilmington office on or about November 25, 2003. The letter was returned unclaimed.

66. Fayle also attempted to contact Hickmon at her Raleigh office with Alexander & Peck, PLLC. Fayle's numerous calls to that number were not returned by Hickmon.

67. Hickmon did not communicate to Fayle that she would not be able to represent him because of personal circumstances, nor did she return his file and deposit to him to allow him to seek alternate representation.

68. On or about July 31, 2003, Hickmon met with Debra H. Shulse ("Shulse"). Shulse informed Hickmon that she wanted to protect the assets of her mother, Audrey E. Harding ("Harding"), and wanted to qualify her mother for Medicaid. Hickmon stated she could assist Shulse and Harding with that. Shulse retained Hickmon and paid her a flat fee of \$9,600.00.

69. During the first week of August 2003, Shulse delivered the documents Hickmon requested to Hickmon's office.

70. Between August 2003 and October 2003, Shulse made numerous telephone calls to Hickmon's office about the status of this matter. Hickmon did not return her calls. Shulse also went to Hickmon's office during this time period and found it closed.

71. Shulse sent Hickmon a letter by certified mail, for which Hickmon signed on November 3, 2003. Hickmon did not respond to the letter. Hickmon also failed to respond to the numerous telephone calls Shulse made to Hickmon after that time.

72. Hickmon did not provide Shulse with any estate planning documents for Harding and did not provide Harding with any assistance with her Medicaid application.

73. Hickmon did not communicate to Shulse or Harding that she would not be able to represent Harding because of personal circumstances, nor did she return her file and deposit to her or Shulse to allow her to seek alternate representation.

74. On or about January 14, 2000, Hickmon began representing her mother, Ovater K. Doggett ("Doggett"), regarding a deed of trust held by Doggett for property located in Carolina Beach, New Hanover County, North Carolina.

75. Under the terms of the promissory note secured by this deed of trust, the grantor, Pleasure Island Corporation, owed Doggett \$1,129.19 a month. Pleasure Island Corporation did not consistently make these payments in a timely manner and Hickmon began representing Doggett in that matter.

76. Eventually, Hickmon arranged for foreclosure action on the deed of trust. Hickmon served as substitute trustee from May 25, 2000 through November 6, 2000. Hickmon then arranged for attorney David Huffine to be appointed substitute trustee. Hickmon continued to represent her mother in the foreclosure matter.

77. At the conclusion of the foreclosure sale, Hickmon filed a petition for attorney's fees with the Clerk of Court on March 12, 2001. Her petition contained a schedule of activities with respective time spent to justify an attorney's fee of \$13,382.51.

78. The buyer and holder of secondary deeds of trust on the property, Klaus Goettel ("Goettel"), filed an objection to her petition on March 19, 2001.

79. Goettel and Hickmon engaged in negotiations and Goettel agreed to pay Hickmon attorney's fees in the amount of \$5,000.00 from the surplus proceeds of the foreclosure sale held by the Clerk. The Clerk entered an order stating that "From the surplus funds held by the Clerk of Superior Court in file no. 00 SP 700, Elizabeth D. Hickmon shall be paid the sum of \$5,000.00 in full satisfaction of any claims for attorney fees asserted by Elizabeth D. Hickmon in this matter or in file no. 00 SP 700." This order was filed June 12, 2001.

80. While her petition for attorney's fees and the objection were still pending and with knowledge that her petition was contested, Hickmon collected the amount she claimed in attorney's fees, \$13,382.51, from Doggett on or about March 26, 2001.

81. Hickmon then collected an additional \$5,000.00 in attorney's fees for the foreclosure from the New Hanover Clerk of Court pursuant to the Clerk's order filed June 12, 2001.

82. Hickmon had been appointed attorney-in-fact for Doggett in a 1995 power of attorney. Hickmon used this authority to collect the \$13,382.51 attorney fee from Doggett's checking account.

83. Hickmon also used the authority from the power of attorney to write a check to herself from Doggett's money market account in the amount of \$107,800.00. She wrote this check to herself on or about April 4, 2001, after depositing Doggett's proceeds from the foreclosure sale in the amount of \$128,703.79 into Doggett's bank accounts.

84. Hickmon deposited the \$107,800.00 into her checking account on or about April 4, 2001. On or about April 5, 2001, Hickmon transferred \$105,700.00 to her savings account. Between approximately April 9, 2001 and December 10, 2002, Hickmon transferred various amounts from her savings account into her checking account, totaling approximately \$89,360.00. The source of most of the \$89,360.00



transferred from Hickmon's savings account to her checking account between April 9, 2001 and December 10, 2002 was the \$107,800.00 Hickmon took from Doggett's account.

85. Hickmon's expenditures from her personal checking account between April 9, 2001 and December 10, 2002 included expenditures for Hickmon's personal and business expenses.

86. Doggett did not intend to give Hickmon the \$107,800.00 that Hickmon took from Doggett's account and signed an affidavit regarding this matter on March 20, 2004.

87. To the extent Hickmon may have been authorized to disburse money from Doggett's account under a power of attorney, Hickmon had fiduciary duties regarding actions taken as attorney-in-fact for Doggett. The transfer of \$107,800.00 to Hickmon personally for Hickmon's personal use is a breach of the fiduciary duty she owed to Doggett as her attorney-in-fact.

88. The affidavit described above also pertained to certain transfers of Doggett's land, addressed concomitantly in a will Doggett executed on March 20, 2004. In this will, in the course of exercising a power of appointment under Article V, Doggett recites the following:

"Under certain deeds recorded in Wake County (Book 9588, Page 1771, Wake County Registry; Book 9588, Page 1775, Wake County Registry; Book 10705, Page 1193, Wake County Registry; Book 10705, Page 1200, Wake County Registry) and in Harnett County (Book 1667, Page 265, Harnett County Registry; Book 1667, Page 269, Harnett County Registry) certain interests in property were transferred. Such transfers were not knowingly authorized or executed by me."

89. The deeds referenced in the above paragraph were prepared by Hickmon and transferred property formerly owned by Doggett to Hickmon under terms leaving Doggett only a power of appointment interest in the properties.

90. As an attorney preparing deeds for Doggett, Hickmon had fiduciary duties to Doggett in these transactions. By transferring Doggett's property in a manner Doggett did not intend to herself, Hickmon breached her fiduciary duties to Doggett.

91. On or about May 31, 2005, Doreen Tartamella ("Tartamella") hired Hickmon to handle her deceased husband's estate and paid her \$500.00 for her fee. On or about June 15, 2005, Tartamella gave Hickmon the documents Hickmon requested for the representation.

92. On June 1 and June 6, 2005, Hickmon mailed affidavits verifying necessary facts surrounding the execution of the will to the two witnesses on Mr. Tartamella's will for execution.

93. The affidavit sent to one of the witnesses, Geanine Baldino, was returned to Hickmon in June 2005.

94. Hickmon next tried the address listed in Mr. Tartamella's will for Ms. Baldino. Hickmon had been given the will in June 2005. Hickmon did not re-send the affidavit to the address in the will until August 10, 2005.

95. Hickmon's August 10, 2005 mail to Ms. Baldino was also returned. Hickmon obtained a third address for Ms. Baldino and sent the affidavit to her again on or about September 8, 2005. The affidavit was eventually signed by Ms. Baldino on September 14, 2005.

96. Tartamella called Hickmon and left telephone messages for Hickmon on June 29, July 15, August 3, August 10, August 19, and August 22, 2005. Hickmon did not return her telephone calls.

97. On or about July 27, 2005, Tartamella sent a certified letter to Hickmon, which was returned after three (3) attempts to deliver it to her office failed.

98. In the beginning of September 2005, Tartamella spoke with Hickmon's secretary and insisted on setting an appointment to come to the office and complete the estate paperwork. On September 8, 2005, Tartamella met with Hickmon's secretary to complete and sign estate documents.

99. On September 9, 2005 and September 20, 2005 Tartamella left telephone messages for Hickmon. Hickmon did not return these calls

100. Hickmon sent the initial estate paperwork to the Brunswick County Clerk's Office on September 22, 2005 and it was filed on September 26, 2005.

101. On October 10, 2005, Tartamella went to Hickmon's office to deliver some documents and found that Hickmon had moved out of the office to another location on October 6, 2005.

102. Hickmon had not notified Tartamella of her intended move or of her new location.

103. On October 10, 2005, Tartamella spoke with Hickmon and requested a copy of her file as well as an accounting of the money she had paid to Hickmon. Hickmon informed Tartamella that she did not have her computer installed and therefore could not give her the information she requested.

104. On October 19, 2005 and October 26, 2005 Tartamella left telephone messages for Hickmon that were not returned.

105. Hickmon did not provide any further response to Tartamella regarding her request for an accounting or her request for her file.

106. On or about April 3, 2000, Hickmon was appointed as Executrix of the Estate of Charlotte Elizabeth Duffy Stone ("Stone Estate"). The Stone Estate was being administered through the Office of the Clerk of Superior Court for New Hanover County ("Clerk's Office").

107. On or about August 18, 2000, attorney Sharon A. Hatton ("Hatton") made an appearance in the case on behalf of the daughter and son of the decedent.

108. Hickmon was required to file the 90 day inventory for the Stone Estate within 90 days of her qualification as Executrix. The 90 day inventory was due on or about July 2, 2000. Hickmon did not file the inventory by that date.

109. On September 7, 2000, Kimberly Ayers ("Ayers"), an Assistant Clerk of Superior Court for New Hanover County, sent Hickmon a notice that she needed to file the inventory of assets within 30 days.

110. Hickmon failed to file the inventory within 30 days.

111. On October 10, 2000, Ayers issued an order to Hickmon to file the inventory.

112. On or about October 26, 2000, Hickmon established an estate trust account for the Stone Estate at Wachovia Bank, account number ending in 22362 (hereinafter "Stone Estate account").

113. Hickmon submitted the 90 day inventory on October 26, 2000.

114. Ayers returned the inventory to Hickmon with a notice dated December 14, 2000 due to non-payment of associated costs.

115. Hickmon returned the inventory and the required costs between February 23, 2001 and April 21, 2001. The inventory was file stamped April 21, 2001.

116. An annual or final account came due in the Stone Estate in April 2001. On April 12, 2001, another Assistant Clerk, Debra Langley ("Langley"), sent Hickmon a notice to file final account within 30 days.

117. Hickmon failed to file the final account within 30 days and on May 16, 2001 Ayers issued an order to file. Another order to file the final account was issued on June 11, 2001.

118. Hickmon filed an annual account but not a final account. She did not file the annual accounting until August 15, 2001.

119. During a meeting on or about August 15, 2001, Hickmon advised Langley and Hatton that distribution of assets would be forthcoming.

120. On December 3, 2001, Hatton sent a letter to Hickmon demanding the distribution of assets.

121. On December 6, 2001, Langley sent Hickmon a notice to file the final account within 30 days.

122. On January 4, 2002, Hickmon filed a motion for a thirty (30) day extension of time to file the final account. On that date, Ayers granted Hickmon's motion and extended the deadline to February 6, 2002.

123. Hickmon did not file the final account by February 6, 2002.

124. On February 7, 2002, Langley issued Hickmon an order to file the final account.

125. Hickmon submitted an annual account on February 8, 2002 but it could not be filed and was returned to her because the Clerk's Office was awaiting several documents from Hickmon including, but not limited to, copies of cancelled checks numbered 14-17, proofs of distributions, and proof of balances being held. Langley gave Hickmon a handwritten note listing the required items on February 8, 2002 and the Clerk's Office sent notices to Hickmon for missing items or necessary modifications on March 15, 2002 and April 17, 2002.

126. Hickmon failed to file the final account and failed to submit a revised annual account with the documents identified by the Clerk's Office.

127. On October 8, 2002, Ayers issued an order to file final account and submit the missing documents as described in the notices previously sent.

128. The Clerk's Office was unable to serve Hickmon and another order to file the final account was issued to Hickmon on November 14, 2002. This order was served on Hickmon on December 18, 2002.

129. Hickmon did not file a final account. She did file an annual account on or about January 14, 2003. Langley approved this annual account on or about January 28, 2003.

130. On January 8, 2003 Hatton filed a motion requesting either that the final account of the estate be completed or that Hickmon be discharged and a new Executrix be appointed based upon the nearly three years that had passed since Hickmon's appointment as Executrix.

131. On January 9, 2003, Langley issued an order to appear and show cause for failure to file a final account. The order required Hickmon to appear on February 5, 2003. Hickmon was served with the order on February 3, 2003.

132. On January 28, 2003, Langley notified Hickmon by handwritten note that the annual account Hickmon submitted on January 14, 2003 had been approved but the hearing for February 5, 2003 would still be held unless the Clerk received an approved final account prior to that date.

133. The handwritten note also stated that the Assistant Clerk was returning Hickmon's Petition and Order for Payment of Executor's Commissions and that it would be considered upon submission of the final account.

134. On February 5, 2003, Hatton filed a motion requesting that the Executor's Commission be reduced from the statutory 5% to 3% for waste of the estate and failure to file annual reports and final reports in a timely fashion.

135. On March 13, 2003, Hatton filed a motion to disallow the approval of the February 2002 inventory and to require the Executor to provide the 2002 inventory to a certified accountant due to inaccuracies.

136. Langley and the parties agreed to have accountant Vance Moore appointed to review the final account.

137. At some point in February or March 2003, Hatton and Hickmon reached an agreement that Hickmon could receive an executor's commission in the amount of \$8,000.00.

138. In March 2003, the balance in the Stone Estate account was \$8,059.57.

139. Pursuant to N.C. Gen. Stat. § 28A-23-3, the personal representative or executor/executrix of an estate is entitled to commissions to be fixed in the discretion of the Clerk of Superior Court and not to exceed five percent. The award of such commission and the amount to be paid is determined by the Clerk and may be adjusted or disallowed based upon the factors listed in the statute. The statute does not permit an executor or executrix to determine the amount of commission he or she should receive or to pay him or herself a commission without the Clerk's express approval.

140. The Clerk of Superior Court of New Hanover County, Brenda A. Tucker ("the Clerk of Court"), did not allow Hickmon to file her petition for commission because an approved final account had not been filed.

141. At the same point in time in about February or March 2003, Langley orally informed Hickmon that the Clerk of Court would not approve any commission for Hickmon at that time and that Hickmon could not collect any commission.

142. On February 6, 2004, Langley sent Hickmon a letter stating that the accountant, Vance Moore, had been unable to get the documents he needed from Hickmon in order to close the estate. Langley gave Hickmon a deadline of February 27, 2004 to contact Mr. Moore and provide the necessary documents to close the estate.

143. Hickmon did not provide Moore with the necessary information. Moore was unable to analyze Hickmon's final account as requested.

144. As of April 6, 2005, the Stone Estate account maintained by Hickmon in her fiduciary capacity as executrix of the Estate had a balance of \$7,994.57. The decline in balance from March 2003 was due to administrative charges by the bank.

145. On April 6, 2005, Hickmon withdrew all funds remaining in the Stone Estate account, in the amount of \$7,994.57, and deposited the funds into her checking account at Wachovia Bank, account ending in the digits 87188 ("account 87188")(previously referred to in the Ninth Claim for Relief as Hickmon's personal checking account).

146. Hickmon did not maintain account 87188 as an attorney trust account.

147. As of April 6, 2005, the final account for the Stone Estate had not been approved by the Clerk of Court.

148. As of April 6, 2005, the Clerk of Court had not issued any order approving an executor's commission for Hickmon or setting the amount of compensation as required under N.C. Gen. Stat. § 28A-23-3.

149. Hickmon's collection of the \$7,994.57 from the Stone Estate was in defiance of the instructions of the Clerk of Court.

150. Hickmon's collection of the \$7,994.57 from the Stone Estate without having received the authorization from the Clerk of Court required by N.C. Gen. Stat. § 28A-23-3 was in violation of N.C. Gen. Stat. § 28A-23-3.

151. By collecting \$7,994.57 from the Stone Estate without having received the authorization from the Clerk of Court required by N.C. Gen. Stat. § 28A-23-3, Hickmon embezzled funds held by her as a fiduciary.

152. As of January 2006, the Stone Estate remained open.

153. In January 2006, Langley contacted Wachovia to determine the balance in the Stone Estate account in preparation of compensating Moore for his efforts. Langley learned that Hickmon had closed the account.

154. At no time has the Clerk of Court or any authorized representative of the Clerk's Office issued any order authorizing Hickmon to collect any amount as executor's commission in the Stone Estate matter.

#### CONCLUSIONS OF LAW

1. All the parties are properly before the hearing committee and the committee has jurisdiction over the Defendant, Elizabeth D. Hickmon, and the subject matter.

2. The Defendant's conduct, as set out in the Findings of Fact above, constitutes grounds for discipline pursuant to N.C. Gen. Stat. §§ 84-28(b)(2) as follows:

(a) By failing to provide the legal services for which she was hired for clients Taylor, Robinson, Hoefler, Harty, Zabransky, Gorman, Fayle, Shulse, and the Stone estate, Hickmon failed to act with reasonable diligence and promptness in representing clients in violation of Rule 1.3;

(b) By failing to respond to telephone calls, messages, and/or correspondence left by clients Taylor, Robinson, Hoefler, Harty, Zabransky, Gorman, Fayle, Shulse, and Tartamella, Hickmon failed to keep her clients reasonably informed and failed to comply with reasonable requests for information in violation of Rule 1.4;

(c) By failing to provide Taylor's authorized representative with an accounting upon request, Hickmon failed to render the requisite accounting upon client request in violation of Rule 1.15-3(d);

(d) By failing to return client files upon request for Taylor and Gorman, Hickmon failed to take steps to protect her clients' interests in violation of Rule 1.16(d);

(e) By failing to respond to the State Bar's notices of fee dispute concerning her representation of Robinson and Zabransky, Hickmon failed to participate in good faith in the fee dispute resolution process in violation of Rule 1.5(f);

(f) By collecting \$13,382.51 from Doggett for legal fees for services related to the foreclosure sale of the Carolina Beach property, after submitting a petition for payment of the same legal fees for the same legal services to the Clerk and for which she was ultimately paid by the Clerk from the surplus proceeds of the sale, Hickmon collected a clearly excessive fee from Doggett in violation of Rule 1.5(a) and engaged in conduct involving dishonesty, fraud, deceit, or misrepresentation in violation of Rule 8.4(c);

(g) By transferring \$107,800.00 from Doggett to herself without Doggett's consent, Hickmon embezzled Doggett's property by virtue of her office or employment and thereby engaged in a criminal act in violation of Rule 8.4(b) and in conduct involving dishonesty, fraud, deceit, or misrepresentation in violation of Rule 8.4(c);

(h) By transferring Doggett's land in Wake and Harnett County to herself in a manner not intended by Doggett while acting as attorney for Doggett, Hickmon engaged in conduct involving dishonesty, fraud, deceit, or misrepresentation in violation of Rule 8.4(c); and

(i) By transferring \$7,994.57 from the Stone Estate account to herself without authorization from the Clerk of Court and in direct defiance of the Clerk's instructions, Hickmon engaged in conduct involving dishonesty, fraud, deceit, or misrepresentation in violation of Rule 8.4(c) and embezzled funds belonging to the Stone Estate by virtue of her office or employment and thereby engaged in a criminal act in violation of Rule 8.4(b).

Based upon the foregoing Findings of Fact and Conclusions of Law and the stipulations of the parties, the hearing committee hereby finds by clear, cogent, and convincing evidence the following additional

#### FINDINGS OF FACT REGARDING DISCIPLINE

1. Hickmon's misconduct is aggravated by the following factors:
  - a. Prior discipline, to wit: an admonition issued March 13, 2000;
  - b. Dishonest or selfish motive;
  - c. A pattern of misconduct;
  - d. Multiple offenses;
  - e. Vulnerability of the victims; and
  - f. Substantial experience in the practice of law.



2. Hickmon's misconduct is mitigated by the following factors:
  - a. Personal or emotional problems;
  - b. Good faith efforts to make restitution in certain instances;
  - c. Good character or reputation as an attorney in her community prior to the conduct described herein;
  - d. Mental impairment, to wit: Psychiatrist Dr. Nicholas E. Stratas examined Hickmon. He found she was not disabled at that time. He did diagnose her as suffering from a depressive disorder that was in remission at that time with medication. Dr. Stratas opined that prior to her medical treatment for her depression, which began in November 2004, that Hickmon's judgment was likely impaired for a period of time due to her mother's illness beginning in September 2003.
  - e. Remorse, to wit: Hickmon wrote letters of apology to some of her clients.
3. The aggravating factors outweigh the mitigating factors.
4. Hickmon's conduct has resulted in significant harm to the profession. Hickmon's neglect and failure to communicate with clients caused her clients to feel their trust had been betrayed. Several of Hickmon's former clients expressed a sense of hesitancy when they needed to hire another attorney to complete the work Hickmon failed to do resulting from Hickmon's conduct toward them.
5. Hickmon's conduct resulted in potential significant harm to the profession. The legal profession is entrusted with the privilege of self-regulation. The State Bar can only regulate the profession if its members respond to inquiries of the State Bar and otherwise participate in this self-regulation. Hickmon's failure to participate in the fee dispute program impairs the State Bar from assisting clients and attorneys through this program and poses a risk to the profession's ability to remain self-regulating.
6. Hickmon's misappropriation resulted in significant harm to the Stone estate and to Mrs. Doggett. An attorney's duty to preserve entrusted funds is one of the most fundamental duties that an attorney undertakes. Hickmon violated that duty, harming the Stone estate, Mrs. Doggett, and the legal profession.
7. The hearing committee has considered lesser sanctions and finds that disbarment is the only appropriate discipline in this case. The hearing committee finds that disbarment is the only sanction that can adequately serve to protect the public from future transgressions by this attorney given the clear demonstration of

misappropriation of client funds, the substantial pattern of neglect resulting in significant client harm, and the pattern of dishonesty established by the evidence.

8. The hearing committee finds that imposing lesser discipline would fail to acknowledge the seriousness of the offenses committed and would send the wrong message to attorneys and the public regarding the conduct expected of members of the Bar of this State.

Based upon the foregoing Findings of Fact, Conclusions of Law, and Findings of Fact Regarding Discipline, the hearing committee hereby enters the following

#### ORDER OF DISCIPLINE

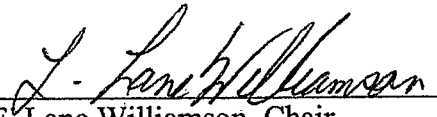
1. The Defendant, Elizabeth D. Hickmon, is hereby DISBARRED from the practice of law in North Carolina.

2. The costs of this action are taxed to Hickmon, including the costs of depositions taken in this matter. She must pay the costs within 1 year of service of the statement of costs by the Secretary unless the time period is extended in writing by the State Bar.


3. Hickmon may not seek reinstatement of her license to practice law until she submits a written certification from a duly qualified psychiatrist or other mental health professional approved by the State Bar that she does not suffer from any mental disease or defect or psychological condition that would interfere with her ability to practice law and that she will not cause harm to the public if she is allowed to practice law. Defendant will ensure that this certification is provided to the State Bar at least 30

days prior to filing any petition for reinstatement.

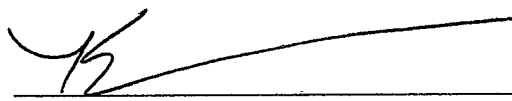
Signed by the Chair with the consent of the other hearing committee members,  
this the 24<sup>th</sup> day of February, 2007.

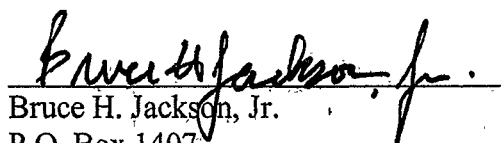
  
F. Lane Williamson, Chair  
Disciplinary Hearing Committee

CONSENTED TO BY:

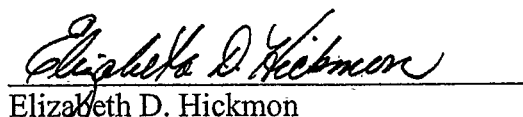
  
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