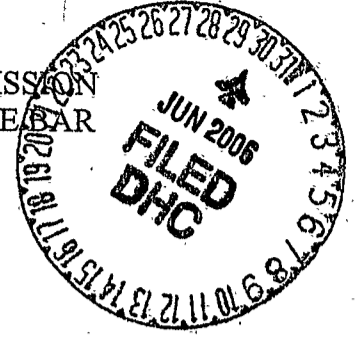


19988

NORTH CAROLINA  
WAKE COUNTY

BEFORE THE  
DISCIPLINARY HEARING COMMISSION  
OF THE NORTH CAROLINA STATE BAR  
06 DHC 7



The North Carolina State Bar, )  
 )  
 Plaintiff, )  
 )  
 v. )  
 )  
 Robert C. Howes, )  
 )  
 Defendant. )

ORDER OF DISCIPLINE

THIS MATTER was heard on May 19, 2006 before a Hearing Committee of the Disciplinary Hearing Commission composed of Chair F. Lane Williamson and members Sharon B. Alexander and Marguerite P. Watts, pursuant to North Carolina Administrative Code, Title 27, Chapter 1, Subchapter B, § .0114(h). The Plaintiff was represented by William Farrell, Deputy Counsel. Defendant Robert C. Howes was present and represented himself. Based upon the record and the evidence introduced at the hearing, the Hearing Committee, by clear, and cogent, and convincing evidence, hereby makes the following:

FINDINGS OF FACT

1. 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, Robert C. Howes, (hereinafter "Defendant"), was admitted to the North Carolina State Bar on August 20, 1993, 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 State of North Carolina State Bar and the laws of the State of North Carolina.
3. During all of the relevant periods referred to herein, Defendant was actively engaged in the practice of law in the City of Statesville, Iredell County, North Carolina.
4. From 2000 until May 2004 various clients engaged Defendant to close real property transactions for purchase or refinance of real property. For each such closing defendant had duties and responsibilities with respect to each of the parties to the transaction, including the buyer/borrower, sellers and lenders. For each closing Defendant was to perform services and prepare documents as required by the lender,

when a lender was involved, including obtaining a commitment for title insurance before each closing and a final title insurance policy after each closing.

5. In or about February 2000, Defendant established an attorney-client relationship with Dennis L. and Angela D. Ledford (hereinafter "the Ledfords"). The Ledfords retained Defendant to represent them in the purchase of a trailer and land located in Burke County from Mark Wayne Ledford and Rebecca Ann Jenkins.

6. Defendant performed a title search on the subject property and conducted a closing on February 16, 2000.

7. Subsequent to the closing defendant failed to record the deed from Mark Wayne Ledford and Rebecca Ann Jenkins to his clients, the Ledfords.

8. On or about February 17, 2004 the Ledfords called Defendant's office regarding Defendant's failure to record the deed.

9. One of Defendant's employees advised the Ledfords that the matter would be checked into and that the Ledfords would receive a return call.

10. The Ledfords were not contacted again by Defendant's office until on or about March 1, 2004, after Mr. Ledford called the N.C. State Bar.

11. The Ledfords received a call from Defendant's office on or about March 1, 2004 and were advised the deed had never been recorded.

12. As of the date of this hearing, Defendant has not recorded the deed from the February 16, 2000 closing. The Ledfords have been unable to sell this property because they are not the owners of record and have therefore been harmed.

13. In or about October 2001, Defendant established an attorney client relationship with Christopher Hedrick and wife, Alicia Hedrick (hereinafter "the Hedricks").

14. The Hedricks entered into a real estate transaction with Jose and April Reyes (hereinafter "the Reyes") where the Hedricks were to sell a 9.24 tract for a total purchase price of \$33,750. The agreement called for \$17,000 of the total purchase price to be paid in cash at closing. The Reyes were to obtain the funds through a loan. The balance of the purchase price, \$16,750, was to be paid pursuant to the terms of a Purchase Money Promissory Note. This Note was secured by a Purchase Money Deed of Trust, which carried an interest rate of 8%.

15. In or about early October, 2001, the Reyes told the Hedricks that Defendant would be handling the closing for the Reyes. Soon thereafter, the Hedricks spoke with Defendant's paralegal concerning the transaction. The Defendant's paralegal asked the Hedricks to bring her a copy of the Offer to Purchase and Contract and the Hedricks complied with this request.

16. The deed for the closing of the transaction from the Hedricks to the Reyes was delivered to Defendant's office prior to the closing date.

17. The settlement statement for the Hedricks to Reyes closing was executed by Defendant as the closing attorney.

18. No documents, other than the closing statement, were given to the Hedricks at the closing.

19. Defendant's paralegal kept the Purchase Money Deed of Trust for recording along with the other closing documents.

20. In the summer of 2002, the Reyes defaulted in making payments on the Purchase Money Note. In an attempt to collect on the obligation, the Hedricks retained attorney William P. Pope to write a demand letter in September 2002. When no response was received, the Plaintiff's requested that attorney Pope begin foreclosure proceedings.

21. Pope carefully searched the records in the Office of the Register of Deeds of Iredell County and found that the Purchase Money Deed of Trust had not been recorded.

22. Upon learning that the Purchase Money Deed of Trust was not recorded, the Hedricks contacted the Defendant's firm and attempted to get in touch with the firm's paralegal. From October 2002 through February 2003, Alicia Hedrick called the firm several times a month. The Hedricks did not receive a call back from the firm's paralegal or Defendant.

23. About the same time as the Readling phone call, the Hedricks finally received a phone call from the Defendant's paralegal asking whether the Reyes had paid the Hedricks for the land. The Hedricks explained the situation, stating that they had never been paid the balance of the purchase price and that the Deed of Trust had not been recorded. The Defendant's paralegal responded that she would inform Readling of the attempted foreclosure and look for the Deed of Trust in question.

24. Thereafter, the Hedricks discovered that a Purchase Money Deed of Trust executed by the Reyes to Pope as trustee for the Hedricks, apparently the original Purchase Money Deed of Trust, had been recorded on June 16, 2003. The recording date of June 16, 2003, is about nineteen (19) months after the date of the original closing. The notary acknowledgment on the recorded Deed of Trust was dated November 19, 2001, and the instrument reflected that it was drafted by the Defendant.

25. After the Hedricks discovered that the Purchase Money Deed of Trust was recorded on June 16, 2003, the Hedricks learned that before the recording of the Purchase Money Deed of Trust, the Reyes had sold the property which was to have been subject to the lien of the Purchase Money Deed of Trust to the Readlings on or about April 17, 2003, thus preventing the perfection of the security interest in the property in favor of the

Hedricks under the Purchase Money Deed of Trust. The Hedricks were required to bring suit against Defendant to recover some of the money owed by the Reyes.

26. In or about July 2002, Defendant was retained by Delric Devan Inabinett, (hereinafter "Inabinett"), to close a loan to refinance real property owned by him. Defendant was to perform services and prepare documents required by Inabinett's lender, U.S. Bank, N.A., including obtaining a commitment for title insurance before the closing and a final title insurance policy after the closing.

27. Before the closing, Defendant obtained a commitment for title insurance from Statewide Title Company (hereinafter "Statewide"). The premium for the final title insurance policy was to be paid from the proceeds of the loan. The final title policy would be issued by Statewide after the closing upon receipt of the premium amount and final title opinion prepared and signed by Defendant.

28. The Inabinett loan closing took place on or about July 22, 2002 and Defendant deposited the loan proceeds in his trust account. Defendant deducted \$102.00 from the loan proceeds for the title insurance premium due Statewide and indicated on the settlement statement that the \$102.00 had been paid at settlement to Statewide.

29. Between July 22, 2002 and March 2005, Defendant failed to disburse \$102.00 to Statewide for the title insurance premium and failed to provide Statewide a final title opinion.

30. Inabinett's lender, U.S. Bank, N.A., contacted Defendant in March 2005 inquiring about the status of the final title insurance policy. Defendant did not respond by phone or by correspondence to the inquiry of U.S. Bank, N.A. On or about April 2005, U.S. Bank retained other counsel to obtain a final title policy. U.S. Bank paid \$102.00 for the title insurance premium and \$250.00 for its other counsel's services in obtaining the final title opinion.

31. In or about October 2002, Defendant was retained by Kim Goodson and Marcus Goodson (hereinafter "the Goodsons") to represent them in the purchase of real estate known as Lot 30 Holly Springs Subdivision, Caldwell Township, Catawba County, North Carolina. Defendant was to perform services and prepare documents as required by the Goodsons' lender, Commscope Credit Union, including obtaining a commitment for title insurance before the closing and a final title insurance policy after the closing.

32. Defendant's title examination of the subject property revealed a judgment lien against the property in the principal amount of \$800.00. This judgment was listed on the commitment for title insurance issued by Stewart Title (Statewide Title) in this matter. Cancellation or release of this judgment was a requirement for the issuance of the final title policy.

33. The Goodson closing took place on or about October 7, 2002, and Defendant deposited the loan proceeds in his trust account. Defendant deducted \$288.00 from the

loan proceeds for the title insurance premium to be paid to Stewart Title and indicated on the HUD-1 that the \$288.00 had been disbursed to Stewart Title (Statewide Title).

34. At the closing Defendant failed to require the seller to pay off the judgment referred to in paragraph number 32 above or retain a sufficient amount of the loan proceeds to payoff the judgment. Defendant did not otherwise obtain the cancellation of the judgment during or subsequent to the closing. As a result of this failure to pay off the judgment lien, the new lender, Commscope Credit Union, did not obtain a first lien on the subject property and the Goodsons did not obtain clear title to their property. The judgment of \$800.00 was still outstanding and unpaid as of the date of this hearing.

35. Defendant did not send the title insurance premium to Stewart Title (Statewide Title) and did not provide a final title opinion after the Goodsons' October 7, 2002 closing.

36. Between September and November 2003, Kendrick B. Miles (hereinafter "Miles") retained Defendant to close a real estate transaction concerning a construction loan and a permanent loan, involving real property known as Lot 25, Section Two of the Southern Oaks Subdivision, Lincoln County, North Carolina.

37. The construction lender was Home One Credit Corporation, which was to be paid in full upon completion of construction on the subject property.

38. In November 2003, upon completion of the construction, Defendant performed a second closing for the permanent financing of the subject property on behalf of Miles and received funds in his trust account to pay off the construction loan.

39. The payoff for the construction loan to Home One Credit Corporation was \$97,410.14 at the time of closing. Defendant failed to disburse, or cause to be disbursed within a reasonable time following the closing, the \$97,410.14 to Home One Credit Corporation. Defendant also failed to provide a final title policy and copy of a recorded deed of trust to Home One Credit Corporation within a reasonable time following the closing and failed to maintain a sufficient balance in his trust account at all time to account for the \$97,410.00 in undisbursed loan proceeds.

40. On or about December 31, 2003, Defendant closed a construction loan for William A. Shepherd, Jr., (hereinafter "Shepherd"), on real property located at 5335 Otto Lane, Conover, North Carolina. The construction lender was Home One Credit Corporation, which was to be paid in full upon completion of construction on the subject property.

41. On March 3, 2004, upon completion of the construction, Defendant closed a final loan for permanent financing of the subject property on behalf of Shepherd and received funds in his trust account to pay off the construction loan. The payoff for the construction loan to Home One Credit Corporation was \$88,026.00 at the time of closing.

42. Defendant failed to disburse or caused to be disbursed the \$88,026.00 to Home One Credit Corporation within a reasonable time following the closing and failed to maintain a sufficient balance in his trust account at all times to account for the \$88,026.00 in undisbursed loan proceeds. Defendant also failed to provide a final title policy and copy of a recorded deed of trust to Home One Credit Corporation within a reasonable period of time following the closing.

43. Defendant failed to timely close the following real estate transactions involving other loans from Home One Credit Corporation by failing to provide a final title policy and copies of recorded deeds of trust as follows:

- a. Brad Wilt Loan Closed on July 28, 2003;
- b. Randy McClough Loan Closed on August 14, 2003;
- c. Raymond Chandler Loan Closed on February 4, 2004; and
- d. Sherry Hudson Loan Closed on February 17, 2004.

44. Defendant deducted title insurance premiums from the closings described in paragraph 43 above and indicated on the respective HUD-1 Forms that the premium would be disbursed to the respective title insurance companies. Defendant did not disburse these premiums in a timely fashion and retained same in his trust account.

45. Between 2000 and May 2004 Defendant conducted real estate closings for which he did not obtain final title insurance policies to complete the real estate closings as shown on Exhibit 4 attached to the complaint.

46. For many of the real estate closings described in paragraph 45 above, Defendant received funds from lenders and/or clients to close the transactions. Defendant placed these funds in his real estate trust account and deducted specific sums for title insurance premiums, city/county taxes, recording fees, payoffs of mortgages and other expenses typically associated with real estate closings. Defendant failed to disburse these funds as shown on Exhibit 3 attached to the complaint.

47. As of October 20, 2005, Defendant had clients with fund balances in the real estate trust account in the total amount of \$120,074.83, as shown on Exhibit 1 attached to the complaint.

48. As of October 20, 2005, Defendant had outstanding real estate trust account checks in the total amount of \$115,188.82, as shown in Exhibit 3 attached to the complaint.

49. The real estate trust account should have had the total amount of the client funds, (\$120,074.83) and the total amount of the outstanding checks (\$115,188.82) in the real estate trust account as of October 20, 2005. There was only a balance of \$80,844.25 in the real estate trust account as of October 20, 2005, as shown on Exhibit 2 attached to the complaint.

50. Some of the shortage in the real estate trust account resulted from an embezzlement from the real estate trust account by Lori Owen, a non-lawyer assistant employed by Defendant. The exact amount embezzled by the paralegal is unknown but Defendant recovered a total of \$127,000.00 in restitution from Owen and another individual who received some of the proceeds from the embezzlement.
51. Defendant failed in a timely manner to disburse or cause to be disbursed mortgage payoffs in the real estate transactions as shown in Exhibit 5 attached to the complaint. This failure contributed to the shortage in the real estate trust account.
52. During the period covered by Exhibit 6, attached to the Complaint, Defendant closed real estate transactions where his disbursements from his real estate trust account exceeded the funds received into the real estate trust account to close the specific transactions as shown on said Exhibit 6.
53. As a result of the untimely mortgage payoffs as shown in said Exhibit 6, Defendant used the entrusted funds of other clients for the benefit of other persons or entities other than the legal or beneficial owner of the funds to fully pay off certain mortgages.
54. Between 2000 and December 2004, Defendant did not reconcile his trust account. Defendant had a computer program which would reconcile the trust account, but he did not personally reconcile the trust account nor did he require that Owen reconcile the account.
55. In or about July 2002, Defendant was retained to close a real estate transaction for Lot 33, Village Point Subdivision, Iredell County, North Carolina.
56. The seller in this transaction was Allied Partners, LLC ("Allied Partners") and the buyer was Tina M. Powell ("Powell").
57. The closing required a release deed from Branch Banking and Trust (hereinafter "BB&T") and a release payment of \$12,500.00 to BB&T. Allied Partners had at an earlier time borrowed money from BB&T to develop the subdivision in which the lot in question was being sold by Allied Partners to Powell.
58. Allied Partners and BB&T had an agreement that called for Allied Partners to pay BB&T \$12,500.00 each time a lot was sold in the subdivision and BB&T would, in turn, release that lot from the development deed of trust.
59. The closing for Lot 33, Village Point Subdivision took place on July 23, 2002, and Defendant deposited the funds received to close the transaction in his trust account.
60. The settlement statement for this closing lists a payoff of \$12,500.00 to BB&T. Defendant failed to disburse or cause to be disbursed the \$12,500.00 to BB&T within a reasonable time following the closing and retained same in his trust account.

61. The \$12,500.00 was ultimately disbursed to Allied Partners, Inc. on or about August 25, 2005, after Defendant discovered that this money had not been disbursed to BB&T in connection with the closing on July 23, 2002. Allied Partners received the money in August 2005 rather than BB&T, because BB&T's note and deed of trust to develop the subdivision had been paid and satisfied in full from other closings that followed the closing of Lot 33 on July 23, 2002.

62. Defendant employed Lori Owen as a non-lawyer assistant in his office and delegated certain duties to her during relevant time periods covered in this order. These delegated duties included recording of various real estate documents, preparation and transmission of title opinions to title insurance companies, writing, signing and disbursement of real estate trust checks, and other tasks related to real estate closings.

63. At the time of this delegation of duties to Owen, Defendant believed she had the experience, training, qualifications, and integrity to handle these responsibilities.

64. Although Defendant delegated these responsibilities to Owen, Defendant remained responsible to act with reasonable diligence in representing his clients, to protect client funds, and to reconcile his trust account quarterly.

65. Defendant did not personally reconcile his real estate trust account.

66. Defendant did not ensure Owen conducted quarterly reconciliations.

67. Defendant did not ensure Owen timely and appropriately recorded deeds and deeds of trust. Defendant did not ensure Owen prepared and transmitted final title closings to various title companies. Defendant did not ensure Owen timely disbursed funds to the appropriate parties from funds received to close real estate transactions.

68. Defendant failed to provide the supervision necessary to prevent Owen from embezzling client funds.

Based upon the foregoing Findings of Fact, the Hearing Committee enters the following:

#### CONCLUSIONS OF LAW

1. All parties are properly before the Hearing Committee and the committee has jurisdiction over Defendant Robert C. Howes and the subject matter. By appearing and participating in the proceedings without objection, Defendant waived any and all defects in the service of the summons and complaint and in the Notice of the Hearing.

2. Defendant's conduct, as set out in the Findings of Fact above constitute grounds for discipline pursuant to N.C. Gen. Stat. § 84-28 (b) (2) as follows:
- a. By failing to provide the necessary services to represent the Ledfords in their real estate transaction, including but not limited to failing to record the deed and failing to promptly take the steps necessary to correct this failure, Defendant failed to act with reasonable diligence and promptness in representing a client in violation of Rule 1.3 of the Revised Rules of Professional Conduct.
  - b. By failing to provide the necessary services to represent the Hedricks in their real estate transaction, including but not limited to failing to supervise the closing and failing to cause the Purchase Money Deed of Trust to be recorded, Defendant failed to act with reasonable diligence and promptness in representing a client in violation of Rule 1.3 of the Revised Rules of Professional Conduct.
  - c. By failing to communicate with the Hedricks on a timely basis concerning the Reyes default on the Purchase Money Note, the Defendant failed to reasonably consult with a client about the means by which the client's objectives were to be accomplished, failed to keep a client reasonably informed about the status of a legal matter, and failed to promptly comply with reasonable requests for information in violation of Rule 1.3 and Rule 1.4 of the Revised Rules of Professional Conduct.
  - d. By failing to properly supervise non-lawyer assistants in connection with the Hedrick's real estate transaction, Defendant failed in his responsibilities regarding non-lawyer assistants in violation of Rule 5.3 of the Revised Rules of Professional Conduct.
  - e. By failing to obtain a final title insurance policy in the Inabinett closing and by failing to obtain the final title insurance policy within a reasonable time, Defendant did not act with reasonable diligence and promptness in representing a client in violation of Rule 1.3 of the Revised Rules of Professional Conduct.
  - f. By failing to respond to U.S. Bank, N.A.'s inquiry as to the status of the final title policy, Defendant failed to promptly comply with reasonable requests for information in violation of Rule 1.4(a)(4) of the Revised Rules of Professional Conduct.
  - g. By holding in his trust account and failing to disburse the \$102.00 payable to Statewide for title insurance, Defendant did not promptly pay or deliver entrusted property to third persons as directed by his client in violation of Rule 1.15-2(m) of the Revised Rules of Professional Conduct.

- h. By closing the loan without obtaining cancellation or release from the judgment lien and thereby failing to obtain a clear title for the Goodsons, Defendant failed to act with reasonable diligence in representing a client in violation of Rule 1.3 and damaged his client during the course of the professional relationship in violation of Rule 8.4(g) of the Revised Rules of Professional Conduct.
- i. By failing to obtain the final title insurance policy after the Goodson closing, Defendant failed to act with reasonable diligence in representing a client in violation of Rule 1.3 and damaged his client during the course of a professional relationship in violation of Rule 8.4(g) of the Revised Rules of Professional Conduct.
- j. By holding in his trust account and failing to disburse the \$288.00 payable to Stewart Title (Statewide Title) for title insurance in the Goodson closing, Defendant did not promptly pay or deliver entrusted property to third persons as directed by his client in violation of Rule 1.15-2(m) of the Revised Rules of Professional Conduct.
- k. By closing the Miles and Shepherd permanent loans without disbursing the payoffs of the construction loans to the construction lenders, Defendant failed to act with reasonable diligence in representing a client in violation of Rule 1.3 and damaged his clients during the course of a professional relationship in violation of Rule 8.4(g) of the Revised Rules of Professional Conduct.
- l. By closing the Miles, Shepherd, Wilt, McClough, Chandler, and Hudson loans without subsequently obtaining final title insurance policies and providing copies of recorded deeds of trust, as required by the lender within a reasonable period of time, defendant failed to act with reasonable diligence in representing a client in violation of Rule 1.3 and damaged his clients during the course of a professional relationship in violation of Rule 8.4(g) of the Revised Rules of Professional Conduct.
- m. By holding in his trust account and failing to disburse the title insurance premiums to the title insurance companies for the transactions described in paragraph 43 above, Defendant did not promptly pay or deliver entrusted property to third persons as directed by his clients in violation of Rule 1.15-2(m) of the Revised Rules of Professional Conduct.
- n. By failing to maintain a sufficient balance in his trust account at all times to pay off the construction loan in the Miles and ShepHerd closing, and by failing to protect the integrity of these funds, Defendant failed to properly maintain trust funds in violation of Rule 1.15-2(a) in violation of the Revised Rules of Professional Conduct.

- o. By failing to obtain final title insurance policies in the closings or failing to obtain the final title insurance policies within a reasonable time after the closings set forth in paragraph 45, Defendant did not act with reasonable diligence and promptness in representing clients in violation of Rule 1.3 of the Revised Rules of Professional Conduct.
- p. By holding in his trust account the funds payable in the closings set forth in Exhibit 3, attached to the Complaint, Defendant did not promptly pay or deliver entrusted property to third persons as directed by his clients in violation of Rule 1.15-2(m) of the Revised Rules of Professional Conduct.
- q. By failing to reconcile his real estate trust account quarterly, Defendant failed to balance his individual client balances and reconcile them with the current bank balance for the trust account as a whole in violation of Rule 1.15-3(c) of the Revised Rules of Professional Conduct.
- r. By failing to maintain sufficient funds in his real estate trust account, by failing to protect the integrity of those funds, and by disbursing funds from the trust account on behalf of clients using funds received on behalf of other clients, defendant failed to properly maintain or disburse trust funds in violation of Rule 1.15-2(a), improperly disbursed trust funds on behalf of a client to the funds in violation of Rule 1.15-2(m), and used entrusted property for the benefit of a party other than the legal or beneficial owner of the funds in violation of Rule 1.15-2(j) of the Revised Rules of Professional Conduct.
- s. By failing to disburse the \$12,500.00 to BB&T within a reasonable time of the closing, Defendant did not act with reasonable diligence and promptness in violation of Rule 1.3 of the Revised Rules of Professional Conduct.
- t. By holding in his trust account the \$12,500.00 payable to BB&T at the closing, Defendant did not promptly pay or deliver entrusted property to third persons as directed by his client in violation of Rule 1.15-2(m) of the Revised Rules of Professional Conduct.
- u. By failing to provide appropriate supervision to a non-lawyer assistant which resulted in the non lawyer's failure to record real estate deeds and deeds of trust, by failing to obtain required title insurance policies and documents, by failing to disburse loan proceeds as various real estate closings required, and by failing to provide the supervision necessary to prevent Owen from embezzling client funds, Defendant failed to make reasonable efforts to ensure that the non lawyer's conduct was compatible with the professional obligations of Defendant in violation of Rule 5.3 of the Revised Rules of Professional Conduct.

Based upon the foregoing Findings of Fact and Conclusions of Law, the Hearing Committee hereby makes the following:

FINDINGS REGARDING DISCIPLINE

1. Defendant's misconduct is aggravated by the following factors:
  - a. A pattern of misconduct;
  - b. Multiple offenses; and
  - c. Prior discipline, an admonition in 2003.
2. Defendant's misconduct is mitigated by the following factors:
  - d. Absence of a dishonest or selfish motive;
  - e. Employment of an auditor, at his expense to make a forensic analysis of the trust account;
  - f. Remorse;
  - g. Full and free disclosure to the hearing committee and a cooperative attitude toward the proceedings;
  - h. Good character and reputation.
3. The mitigating factors outweigh the aggravating factors.
4. Defendant's failure to properly supervise his non-lawyer assistant and to ensure his clients' funds were being properly protected enabled the non-lawyer assistant to commit the embezzlement of client funds. Although no client disbursement was disallowed for insufficient funds, due to the timing of disbursements and the usage of funds that were in the trust account, this does not cure the harm caused by Defendant's failure to supervise the non-lawyer assistant and failure to protect his clients' funds.
5. Defendant's failure to supervise his non-lawyer assistant and failure to protect client funds caused significant harm to his clients and the legal profession and, if repeated, poses significant potential harm to future clients and the reputation of the legal profession.
6. To that end, the Hearing Committee has carefully considered all of the forms of discipline available to it and finds that any discipline less than suspension of Defendant's law license would not be appropriate in this case. An Order of Discipline less than suspension would not sufficiently protect the public because of the neglect in this matter and because the failure to supervise a non-lawyer assistant resulted in the embezzlement of client money by the assistant. Entry of any order imposing lesser discipline than suspension would fail to acknowledge the seriousness of the misconduct that Defendant has committed and would send the wrong message to attorneys and the public regarding the conduct expected of the members of the Bar.

Based upon the foregoing FINDINGS REGARDING DISCIPLINE the Hearing Committee hereby enters the following:

ORDER OF DISCIPLINE

1. The law license of Defendant, Robert C. Howes, is hereby suspended for two (2) years, effective thirty (30) days after service of the order upon Defendant.
2. The two-year suspension is stayed for a period of five (5) years as long as Defendant complies, and continues to comply, with the following conditions during the period of the stay:
  - a. Within one (1) year after service of this order, Defendant will satisfactorily complete at his own expense an accounting course, either a continuing legal education course teaching trust account accounting practices or accounting course of at least eight (8) hours approved in advance by the Office of Counsel of the State Bar. Defendant will provide the Office of Counsel of the State Bar with proof of completion of the course within ten days of completion.
  - b. Within one (1) year after service of this order, Defendant will satisfactorily complete, at his own expense, a law office management course of at least eight (8) hours approved in advance by the Office of Counsel of the State Bar. Defendant will provide the Office of Counsel of the State Bar with proof of completion of this course within ten days of completion.
  - c. Defendant will make diligent efforts to appropriately correct the closing for the real estate transaction involving Dennis L. and Angela D. Ledford, including the recording of additional documents and correction deeds that can be accomplished with due diligence. Defendant shall provide documentation to the Office of Counsel that he has appropriately closed this matter or provide documentation why he has not done so within six months after service of this order.
  - d. Within six months after service of this order Defendant shall make restitution to U.S. Bank, N.A., in the amount of \$352.00 regarding the Delric Inabinett closing. Defendant will provide the office of Counsel with documentation that this has been done.
  - e. Within twelve months after service of the order Defendant shall provide to the N.C. State Bar documentation satisfactorily to the Office of Counsel that he has appropriately corrected the closing for the real estate transaction involving Kim Goodson and Marcus Goodson. This correction is to include satisfaction or release of the \$800.00 judgment in favor of Darrin L. Moore and obtaining a final policy of title insurance with disbursement of funds held initially for such purpose or refund of same to the client.

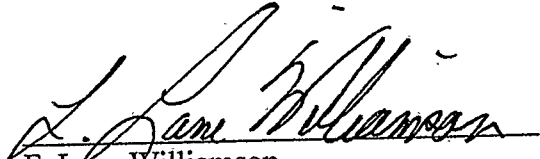
- f. Within 30 days after service of this order Defendant will begin to make reasonable and diligent efforts to complete and obtain the final title policies for each of the instances listed in Exhibit 4 attached to the Complaint in this matter. Defendant will provide written progress reports to the Office of Counsel regarding his efforts to complete and obtain final title policies according to the following schedule for every year in which the suspension is stayed:
- (a) April 30 for January – March;
  - (b) July 30 for April – June;
  - (c) October 30 for July – September;
  - (d) January 30 for October – December of the previous year.
- g. Defendant, at his own expense, will have his trust account audited on a quarterly basis by a certified Public Accountant. These audits will occur and the audit reports will be submitted to the State Bar according to the following schedule for every year in which the suspensions is stayed:
- (a) April 30 for January – March;
  - (b) July 30 for April – June;
  - (c) October 30 for July – September;
  - (d) January 30 for October – December of the previous year.
- h. Within 30 days after service of this order, Defendant will:
- (a) Maintain a ledger containing a record of receipts and disbursements for each person or entity from whom and for whom funds are received in his trust account that shows the current balance of funds held in the trust account for each such person or entity;
  - (b) Maintain these client ledgers on an ongoing basis updating it contemporaneously with receipt or disbursement of trust account funds;
  - (c) Reconcile his 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.
- i. Defendant will restore to the real estate trust account the entire amount that the account is short. Within twelve months after service of this order, Howes will report to the N.C. State Bar the total amount of the shortage and what individual amounts are owed to each client.
- j. Only Defendant may be a signatory on his trust and operating account(s) and must personally sign all instruments disbursing funds from or depositing funds into his trust and operating account(s).
- k. Upon request by the Office of Counsel of the N.C. State Bar, Defendant will furnish a valid, signed form permitting the Office of Counsel to obtain records of

any bank account maintained by him or in which he deposits any funds received by any client.

- l. During the period of the stay, Defendant will permit random audits of any of his trust or operating account by the Office of Counsel of the N.C. State Bar upon ten days advance written notice by the Office of Counsel. Such audit will be conducted at Defendant expense.
  - m. Defendant will keep the N.C. State Bar Membership Department advised of his current business and home address.
  - n. Defendant will respond to all communications from the N.C. State Bar within 30 days of receipt or by the deadline stated in the communication, whichever is sooner.
  - o. Defendant will not violate the Revised Rules of Professional Conduct or any local, state, or federal laws during his suspension.
  - p. Defendant will pay all membership dues and client security fund assessments and comply with all Continuing Legal Education (CLE) requirements on a timely basis.
  - q. Defendant will pay all costs of this proceeding including the cost of the witness expenses within 90 days of service upon him of the statement of costs as assessed by the
3. If the stayed 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 Defendant's license at the end of the two-year suspension. Furthermore, Defendant will have complied with each of the following conditions precedent to reinstatement following the completion of the suspension.
- (a) Submitted his license and membership card to the Secretary of the N.C. State Bar no later than 30 days from the effective date of the order activating his suspension;
  - (b) Complied with all provisions of 27 N.C. Admin. Code Chapter 1, Subchapter B, § .0124 of the N.C. State Bar Discipline and Disability Rules on a timely basis; and
  - (c) Complied with conditions (a) through (q) of paragraph 2 of this Order.
4. The DHC will retain jurisdiction of this matter pursuant to 27 N.C. Admin. Code Chapter 1, Subchapter B, § .0114 (x) of the N.C. State Bar Discipline and Disability Rules throughout the period of stayed suspension.

Signed by the Chair with the full knowledge and consent of the other members of the Hearing Committee.

This the 27<sup>th</sup> day of June, 2006.



F. Lane Williamson  
Chair, Disciplinary Hearing Committee