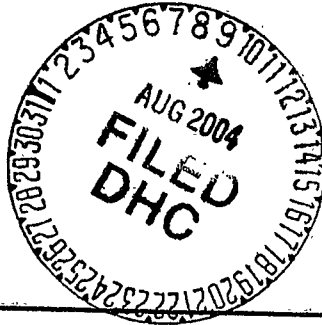


NORTH CAROLINA
WAKE COUNTY



BEFORE THE
DISCIPLINARY HEARING COMMISSION
OF THE
NORTH CAROLINA STATE BAR
03 DHC 18

<p>THE NORTH CAROLINA STATE BAR, Plaintiff</p> <p style="text-align: center;">v.</p> <p>HARRY L. SOUTHERLAND, Attorney, Defendant</p>	<p>))))))))</p>	<p>FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER OF DISCIPLINE</p>
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On June 18 and 29, 2004, this matter came on to be heard before a hearing committee of the Disciplinary Hearing Commission composed of T. Paul Messick, Jr., Chair; Karen Eady-Williams, and Betty Ann Knudsen. A. Root Edmonson represented the North Carolina State Bar and Glenn B. Adams represented Harry L. Southerland. Based upon the admissions in the Answer, the stipulations of fact in the Pre-Hearing Order and the evidence presented at the hearing, the hearing committee finds that the following has been established by clear, cogent and convincing evidence:

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. The defendant, Harry L. Southerland (hereinafter, Southerland), was admitted to the North Carolina State Bar on August 26, 1994 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, Southerland actively engaged in the private practice of law in the State of North Carolina and maintained a law office in the city of Raeford, Hoke County, North Carolina that was denominated the Southerland Law Firm, P.C.

- 4. From March 9, 1999 to February 28, 2003, Southerland maintained an attorney trust account at Centura Bank, account number 122 302-720-5 (hereinafter, trust account). All references hereafter to deposits made to the trust account were thereafter credited to the account and all references to checks written were thereafter debited unless specifically set out otherwise.

All references hereafter to checks that Southerland wrote to "himself" were either made payable to Southerland or to the Southerland Law Firm.

5. On May 20, 2001, Thaddeus McEachin, Jr. (hereinafter, McEachin) was killed while a passenger in a single car accident.

6. On June 8, 2001, McEachin's mother, Juanita Roberts (hereinafter, Roberts), retained Southerland to represent McEachin's heir(s) in pursuing a wrongful death claim against the driver and owner of the car involved in the accident, including underinsured claims. Roberts executed an employment agreement that provided for Southerland to receive a contingency fee of 25%.

7. On June 13, 2001, Southerland represented Roberts in filing an application for letters of administration of McEachin's estate in Scotland County file number 01E157.

8. The application for letters of administration listed Travon Cuffee (hereinafter, Cuffee), McEachin's minor son, as an heir. Pursuant to NCGS § 28A-18-2(a) and § 29-15, Cuffee was the sole beneficiary of any wrongful death proceeds recovered by the McEachin estate after payment of the estate's costs in pursuing the action, attorney fees, McEachin's burial expenses, and limited hospital and medical expenses incident to the injury resulting in death.

9. On June 13, 2001, Scotland County Clerk of Superior Court, C. Whitfield Gibson, appointed Roberts as administrator of McEachin's estate.

10. On July 12, 2001, an adjuster for the liability insurance company, Integon National Insurance Company (hereinafter, Integon) advised Southerland that Integon would tender its policy limits of \$30,000.00 to the McEachin estate. Integon also put the underinsured carriers on notice of Integon's offer.

11. On September 10, 2001, NC Farm Bureau Insurance Company (hereinafter, Farm Bureau) made an offer to settle an underinsured claim the estate had for \$20,000.00, which included \$1,000.00 pursuant to the med pay provisions of the policy.

12. Roberts accepted Farm Bureau's offer and Farm Bureau sent Southerland its check number 885979 for \$20,000.00 dated September 13, 2001.

13. Although NCGS §28A-13-3(a)(23) requires wrongful death settlements involving minor beneficiaries to be approved by the court, Southerland did not have the court approve the settlement of the McEachin estate's claim with Farm Bureau.

14. On September 17, 2001, Southerland deposited Farm Bureau's check into his trust account.

15. On September 20, 2001, after retaining what his settlement statement indicated was \$6,660.00 as attorney fee and \$450.00 in expenses, Southerland disbursed trust account check number 1324 in the amount of \$12,890.00 to Roberts. The check was not payable to Roberts in

her capacity of administrator for the McEachin estate, but did indicate that it was for "the Estate of Thaddeus McEachin." Trust account check number 1324 was negotiated and paid but was not deposited into the McEachin estate's account.

16. None of the \$12,890.00 was sent to Cuffee, or anyone on Cuffee's behalf.

17. On February 6, 2002, an attorney from Virginia wrote to Southerland advising Southerland that he represented Cuffee.

18. On February 11, 2002, Judge B. Craig Ellis approved a partial settlement of McEachin's wrongful death claim authorizing Roberts to accept Integon's \$30,000.00 liability policy limits in exchange for a covenant not to enforce any judgment the McEachin estate might get against Integon's insureds.

19. On February 11, 2002, Southerland deposited Integon's \$30,000.00 liability settlement check and a \$1,000.00 med-pay check from Integon into his trust account.

20. On February 11, 2002, after depositing the \$31,000.00 into his trust account, Southerland wrote his trust account check number 1554 to the Estate of Thaddeus McEachin for \$31,000.00. That check was credited to the McEachin estate's checking account on February 12, 2002.

21. On February 13, 2002 Southerland deposited McEachin estate check number 582 in the amount of \$10,232.00 payable to Southerland's law firm as an attorney fee for the wrongful death settlement into his trust account. That amount was 33% of the \$31,000.00 received from Integon.

22. On February 14, 2002, Southerland wrote trust account check number 1556 to Roberts for \$2,482.00. That amount represented the difference between the \$10,232.00 the McEachin estate had paid Southerland as a fee for the Integon settlement and the \$7,750.00 fee Southerland's contract actually called for. Southerland's check number 1556 was negotiated and paid but was not deposited into the McEachin estate's account.

23. On March 22, 2002, Southerland forwarded McEachin estate check number 589 in the amount of \$10,529.60 to Cuffee's Virginia attorney. Southerland also included copies of other estate account checks to demonstrate that the \$10,529.60 was the net amount of the \$31,000.00 liability and med-pay settlement with Integon. Although Southerland's transmittal letter advised the Virginia attorney that the copied checks reflected the bills that the estate had paid, Southerland failed to advise the Virginia attorney that he had made a refund to Roberts for \$2,482.00 of the fee the estate had paid to him. Southerland also failed to advise the Virginia attorney that he had previously settled the Farm Bureau underinsured claim or that an underinsured claim was pending with State Farm Mutual Automobile Insurance Company (hereinafter, State Farm).

24. By failing to disclose the receipt of the Farm Bureau settlement and by misrepresenting the actual fee that the McEachin estate had paid to him from the Integon

settlement, Southerland intentionally misrepresented the McEachin estate's receipts and disbursements to the Virginia attorney for Cuffee.

25. On April 16, 2002, Southerland wrote trust account check number 1663 to himself for \$6,000.00. Southerland wrote on the face of that check that the disbursement was made on behalf of James Leach, a client and business associate who had no funds on deposit in Southerland's trust account on that date. Southerland later changed the designation on the check to show that \$2,340.00 of check number 1663 was for a client named Boone and \$3,660.00 of that check was for McEachin.

26. At the time that Southerland wrote trust account check number 1663 to himself and charged it as a McEachin disbursement, the most that Southerland could claim that the McEachin estate owed him in fees was \$1,060.00. Also, Southerland only had \$360.00 of the McEachin estate's funds remaining in his trust account when he wrote trust account check number 1663.

27. By taking \$3,660.00 from his trust account as a fee for representing McEachin after Southerland had been paid all but \$1,060.00 of his fee and when the McEachin estate had no more than \$360.00 remaining in Southerland's trust account, Southerland appropriated entrusted funds he should have held in a fiduciary capacity for the McEachin estate and other clients' entrusted funds to his own use.

28. On April 17, 2002, Southerland wrote trust account check number 1681 to himself for \$200.00 that he charged to the McEachin estate. Because the McEachin estate had no more funds on deposit in Southerland's trust account, Southerland appropriated entrusted funds he should have held in a fiduciary capacity for other clients to his own use to pay this check.

29. On June 4, 2002, Judge B. Craig Ellis entered another order relating to the settlement of McEachin's wrongful death claim. This order acknowledged the previous settlement of the liability claim and authorized settlement of a \$70,000.00 underinsured claim being paid by State Farm. In paragraph 5 of that order, Judge Ellis ordered the administrator, Roberts, to use the entire \$100,000.00 of liability and underinsured coverage to satisfy funeral and burial expenses, medical expenses and other costs of administration, and ordered the administrator to hold the balance for the use and benefit of the heir of the estate.

30. On June 4, 2002, Southerland deposited the \$70,000.00 received from State Farm into his trust account.

31. On June 18, 2002, Southerland wrote trust account check number 1793 to Roberts as administrator of the McEachin estate for \$45,000.00.

32. On November 15, 2002, Roberts wrote McEachin estate check number 102 payable to the Southerland Law Firm for \$10,000.00. On the same day, Roberts wrote McEachin estate check number 103 to the Southerland Law Firm for \$34,950.00. These two McEachin estate checks were drawn on a new estate account that was not the same account that Roberts used to disburse the Integon settlement funds.

33. On November 15, 2002, Southerland deposited McEachin estate checks 102 and 103 to a commercial account Southerland maintained at Bank of America, account number 0006 8806 1830 (hereinafter, commercial account). This commercial account was not an attorney trust account, but was used for Southerland's personal or business purposes.

34. As counsel for the fiduciary in the McEachin estate, Southerland had a duty to ensure that Roberts disbursed the estate's proceeds as directed by the court and pursuant to law, including payment of the \$44,950.00 that he received from the McEachin estate to Cuffee or someone else on his behalf.

35. Southerland did not advise the Virginia attorney who represented Cuffee that he had settled the State Farm underinsured claim and did not forward any of the State Farm settlement funds to the Virginia attorney for Cuffee or anyone else on Cuffee's behalf.

36. Southerland appropriated the \$44,950.00 in entrusted funds he received in a fiduciary capacity from the McEachin estate that should have been disbursed for the benefit of Cuffee to his own use.

37. On January 24, 2000, the two minor daughters of Cynthia Jo Hannon (hereinafter, Hannon) and William McNeill, Teah McNeill and Crystal McNeill, were injured in an accident while riding in a van operated by a daycare center.

38. On or before November 17, 2000, Hannon retained Southerland to represent Teah and Crystal McNeill in pursuing personal injury claims against the negligent driver and owner of the van.

39. On August 1, 2001, Judge B. Craig Ellis approved a structured settlement of Teah McNeill's personal injury claim calling for an immediate payment of \$85,000.00. From the \$85,000.00, the court's order authorized an attorney fee to be paid to Southerland of \$46,915.50, an attorney fee to be paid to Luther Douglas of \$1,500.00, a guardian fee to be paid to Hannon of \$2,300.00, reimbursement of costs of the action to be paid to Southerland of \$75.00, and, based upon information that had previously been supplied by Southerland, ordered that the following medical providers be paid the following amounts:

<u>Medical Provider</u>	<u>Amount</u>
Scotland County EMS	\$ 290.00
Scotland Memorial Hospital	18,000.00
Scotland Orthopedics	3,000.00
Laurinburg Radiology	244.00
Scotland Anesthesiology	840.00
Duke & St. Joseph Home Care	4,000.00

40. The court's order authorized \$77,164.50 in disbursements to be made from Teah McNeill's settlement. There was \$7,835.50 that the court did not order disbursed.

41. On August 1, 2001, Southerland deposited Teah McNeill's \$85,000.00 settlement check into his trust account.

42. Between August 1, 2001 and August 7, 2001, Southerland wrote 5 trust account checks payable to himself for the \$46,915.50 in attorney fee and the \$75.00 in costs to which he was entitled.

43. On August 7, 2001, Southerland wrote trust account checks to pay Scotland County EMS, Laurinburg Radiology and Scotland Anesthesiology the amounts that they were owed.

44. Southerland did not pay the other medical providers the amounts listed in the court's order except as set out below.

45. On August 8, 2001, Southerland wrote trust account check number 1286 to Hannon in the amount of \$10,135.50. This sum included the \$2,300.00 guardianship fee and the \$7,835.50 that the court's order didn't disburse.

46. On August 10, 2001, Southerland wrote trust account check number 1308 in the amount of \$2,134.00 to Moore Regional Hospital and charged that as a disbursement on behalf of Teah McNeill. That disbursement was actually made to Moore Regional Hospital to pay one of the hospital bills for another client that Southerland had settled a personal injury case for, Vinson Grace. Although Southerland had settled a claim for Vinson Grace that arose from an October 1998 accident, Southerland never deposited any funds into his trust account that he credited to Vinson Grace.

47. By writing trust account check number 1308 to Moore Regional Hospital to pay an obligation he had on behalf of Vinson Grace and charging that disbursement to Teah McNeill, Southerland appropriated entrusted funds that he held in a fiduciary capacity on behalf of Teah McNeill to his own use.

48. On the dates listed below, after already receiving all of the funds that he was entitled to from the Teah McNeill settlement, Southerland wrote the trust account checks listed below payable to himself that he charged as disbursements of Teah McNeill's settlement funds:

Date	Check #	Amount
August 24, 2001	1304	\$ 500.00
March 25, 2002	1623	2,000.00
March 28, 2002	1625	2,000.00
April 25, 2002	1689	1,000.00
April, 30, 2002	1691	1,000.00
April, 30, 2002	1692	1,000.00

49. On January 21, 2002, Southerland wrote trust account check number 1482 in the amount of \$6,000.00 to ACES that he charged as a disbursement of Teah McNeill's funds. ACES refers to ACE Enterprises, Inc., a corporation that leases commercial property.

50. By writing trust account checks numbered 1304, 1623, 1625, 1689, 1691, 1692 and 1482 to himself or a corporation and charging those disbursements to Teah McNeill, Southerland appropriated \$13,500.00 of entrusted funds he held in a fiduciary capacity for Teah McNeill to his own use or the use of another that was not authorized.

51. On July 22, 2002, Southerland wrote trust account check number 1886 to Scotland Orthopedics in the amount of \$6,227.00 that he charged as a Teah McNeill disbursement. The amount of that disbursement was \$3,227.00 more than the court's order had authorized to be paid to Scotland Orthopedics, but was the actual amount of Teah McNeill's bill.

52. On October 21, 2002, Southerland wrote trust account check number 1961 to Scotland Memorial Hospital in the amount of \$500.00 to pay a portion of Teah McNeill's bill.

53. On December 4, 2002, Southerland wrote trust account check number 2110 to Scotland Memorial Hospital in the amount of \$2,026.10 to pay the balance of Teah McNeill's bill.

54. Southerland never paid the \$15,473.90 balance of the \$18,000.00 that he retained to pay to Scotland Memorial Hospital pursuant to the court's order to anyone on behalf of Teah McNeill. Southerland never accounted to Hannon or the court for the \$15,473.90 he didn't disburse to Scotland Memorial Hospital.

55. Because he had made unauthorized disbursements of Teah McNeill's funds, when Southerland paid trust account checks numbered 1961 and 2110 to Scotland Memorial Hospital on Teah McNeill's behalf, there were no funds remaining in Southerland's trust account for Teah McNeill.

56. By writing trust account checks numbered 1961 and 2110 to pay Teah McNeill's medical bill to Scotland Memorial Hospital after already having taken Teah McNeill's funds for unauthorized purposes, Southerland appropriated entrusted funds of other clients that he held in a fiduciary capacity for a purpose that was not intended.

57. On August 1, 2001, Judge B. Craig Ellis approved a structured settlement of Crystal McNeill's personal injury claim calling for an immediate payment of \$45,000.00. From the \$45,000.00, the court's order authorized an attorney fee to be paid to Southerland of \$30,115.50, an attorney fee to be paid to Luther Douglas of \$1,000.00, a guardian fee to be paid to Hannon of \$1,200.00, reimbursement of costs of the action to be paid to Southerland of \$75.00, and, based upon information that had previously been supplied by Southerland, ordered that the following medical providers be paid the following amounts:

<u>Medical Provider</u>	<u>Amount</u>
Scotland County EMS	\$ 290.00

Scotland Memorial Hospital	2,000.00
McLeod Regional Medical Center	7,000.00
Pee Dee Surgical Group	400.00
Rhea & Naso, M.D.	45.00
Duke University Hospital	1,400.00
McLeod Pediatric Critical Care	400.00
Florence Radiological Associates	600.00
Laurinburg Radiology	47.00

58. The court's order authorized a total of \$44,572.50 in disbursements to be made from Crystal McNeill's settlement. The remaining \$427.50 that the court did not order disbursed from the minor's funds was disbursed to Hannon for Crystal McNeill.

59. On August 1, 2001, Southerland deposited Crystal McNeill's \$45,000.00 settlement check into his trust account.

60. Between August 1, 2001 and August 7, 2001, Southerland wrote 4 trust account checks payable to himself for the \$30,115.50 in attorney fee and the \$75.00 in costs to which he was entitled.

61. On August 7, 2001, Southerland wrote trust account checks to pay Rhea & Naso, M.D. and Florence Radiological Associates the amounts that they were owed.

62. Southerland did not pay the other medical providers the amounts listed in the court's order except as may be set out below.

63. On August 8, 2001, Southerland wrote trust account check number 1255 to Cynthia Hannon in the amount of \$4,864.50, which was more than the \$1,200.00 the court authorized Hannon to receive from the funds of Crystal McNeill.

64. On August 10, 2001, Southerland wrote trust account check number 1309 in the amount of \$1,178.00 to Moore Regional Hospital and charged that as a disbursement on behalf of Crystal McNeill. That disbursement was actually made to Moore Regional Hospital to pay another of the hospital bills for Southerland's client, Vinson Grace. Although Southerland had settled an accident case for Vinson Grace, Southerland never deposited any funds into his trust account that he credited to Vinson Grace.

65. By writing trust account check number 1309 to Moore Regional Hospital to pay an obligation he had on behalf of Vinson Grace and charging that disbursement to Crystal McNeill, Southerland appropriated entrusted funds that he held in a fiduciary capacity on behalf of Crystal McNeill to his own use.

66. On January 22, 2002, Southerland wrote trust account check number 1485 in the amount of \$3,000.00 to Paula Callahan that he charged as a disbursement of Crystal McNeill's funds. As further set out below, this disbursement was made to cover a personal obligation that

Southerland had to return funds to Paula Callahan and was not properly charged to Crystal McNeill.

67. On the dates listed, after already receiving all of the funds that he was entitled to from the Crystal McNeill settlement, Southerland wrote the trust account checks listed below payable to himself that he charged as disbursements of Crystal McNeill's settlement funds:

<u>Date</u>	<u>Check #</u>	<u>Amount</u>
January 10, 2002	1475	\$ 500.00
February 26, 2002	1584	375.00
February 26, 2002	1585	375.00

69. By writing trust account checks numbered 1475, 1584, and 1585 to himself to his own use, and charging those disbursements to Crystal McNeill, Southerland appropriated \$1,250.00 in entrusted funds he held in a fiduciary capacity for Crystal McNeill to his own use.

70. In October 2002, a Durham lawyer, Edward L. Embree, III (hereinafter Embree) contacted Southerland's office to advise that he had been retained to collect the amount owed to Duke University Hospital for services rendered to Crystal McNeill. The balance of the bill was \$2,389.75.

71. On October 24, Southerland mailed trust account check number 1962 to Embree payable to Duke University in the amount of \$500.00. In his cover letter, Southerland stated that he believed that Medicaid had paid Duke University's bill.

72. Duke University never deposited Southerland's trust account check number 1962 and it was never debited by Southerland's bank against his trust account balance.

73. On November 7, 2002, Embree wrote to Southerland asking whether Crystal McNeill's claim had been resolved and how the settlement funds had been disbursed.

74. On November 11, 2002, Southerland sent Embree his trust account check number 2056 payable to Duke University in the amount of \$2,339.75 as payment in full of Crystal McNeill's bill.

75. Because he had made unauthorized disbursements of Crystal McNeill's funds, at the time that Southerland wrote trust account checks 1962 and 2056 to Duke University from his trust account, there was no more than \$307.00 remaining in Southerland's trust account for Crystal McNeill.

76. By writing trust account checks numbered 1962 and 2056 to pay Crystal McNeill's medical bill after already having taken Crystal McNeill's funds for unauthorized purposes, Southerland appropriated entrusted funds, or attempted to appropriate entrusted funds, of other clients that he held in a fiduciary capacity for a purpose that was not intended.

77. On April 1, 2001, Anna Paula Callahan (hereinafter, Callahan) delivered \$3,000.00 to Southerland for expenses in investigating a medical negligence claim for Callahan. Southerland deposited Callahan's \$3,000.00 into his trust account.

78. On April 2, 2001, Southerland wrote trust account check number 804 in the amount of \$500.00 to Spiro Comis and charged that disbursement to Callahan. That disbursement to Spiro Comis was actually for a client named Bertha Hart. All but \$8.77 of Hart's funds had been disbursed by January 2001.

79. On April 3, 2001, Southerland wrote trust account check number 1631 to himself in the amount of \$2,000.00 that he charged to Callahan.

80. On April 4, 2001, Southerland wrote trust account check number 805 to himself in the amount of \$500.00 that he charged to Callahan.

81. By writing trust account checks 804, 1631 and 805, and charging those disbursements to Callahan without her consent, Southerland appropriated entrusted funds he held in a fiduciary capacity for Callahan to his own use or the use of another that was not authorized.

82. Callahan subsequently terminated Southerland's representation.

83. On January 22, 2002, Southerland wrote trust account check number 1485 in the amount of \$3,000.00 to Callahan.

84. By writing trust account check numbered 1485 to make his refund of unused expenses to Callahan after already having taken Callahan's funds for unauthorized purposes, and as specifically set out above, Southerland appropriated entrusted funds of Crystal McNeill that he held in a fiduciary capacity for a purpose that was not intended.

85. On July 6, 2000, John Robert Avery (hereinafter, Avery) died as a result of injuries he had received while a passenger in an automobile accident in which several persons were injured.

86. On or before August 22, 2000, Avery's mother, Deborah Peagues (hereinafter, Peagues) retained Southerland to represent Avery's heir(s) in pursuing a wrongful death claim against the driver responsible for the accident.

87. On August 22, 2000, Southerland represented Peagues in filing an application for letters of administration of Avery's estate in Scotland County, file number 00E212.

88. The application for letters of administration listed Filazona Terry (hereinafter, Terry), Avery's minor daughter, as an heir.

89. On August 22, 2000, Scotland County Clerk of Superior Court, C. Whitfield Gibson, appointed Peagues as administrator of Avery's estate.

90. On July 25, 2001, upon settling the Avery estate's wrongful death claim, Southerland deposited the \$18,166.67 settlement proceeds check, received from GMAC Insurance Company, into his trust account.

91. On July 26, 2001, Southerland wrote trust account check number 1263 to himself in the amount of \$1,000.00 and charged that disbursement to the Avery estate.

92. On July 31, 2001, Southerland wrote trust account check number 1265 to himself in the amount of \$2,600.00 and charged that disbursement to the Avery estate.

93. Southerland failed to promptly pay any of the remaining Avery settlement funds to the Clerk or to the Avery estate or to anyone on behalf of Terry where those funds could have been invested or placed into an interest-bearing account.

94. On May 30, 2002, the Clerk sent Peagues a notice to appear and show cause for her failure to file an accounting in the Avery estate after being ordered to do so. Peagues was ordered to appear on June 12, 2002. A copy of that notice was sent to Southerland.

95. On June 4, 2002, Southerland wrote trust account check number 1773 to the Clerk in the amount of \$18,166.67 on behalf of the Avery estate.

96. By sending \$18,166.67 to the Clerk on behalf of Avery after he had already taken \$3,600.00 of Avery's funds as his fee, Southerland appropriated entrusted funds of other clients that he held in a fiduciary capacity for a purpose that was not intended.

97. The Clerk subsequently disbursed portions of the Avery estate's settlement funds to Avery's medical providers and to others, including paying Southerland his entire \$4,541.67 fee. On June 13, 2002, Southerland deposited his Avery fee into his trust account.

98. On or about December 2, 2002, Duke University returned to the Clerk the \$3,973.50 disbursed to it by the Clerk because Medicaid had paid its bill in full.

99. An assistant clerk advised Southerland that Duke University had returned the \$3,973.50 to the Avery estate. Southerland asked the assistant clerk to send the \$3,973.50 to him.

100. On December 5, 2002, the assistant clerk sent the Clerk's check number 53535 in the amount of \$3,973.50 to Southerland.

101. On December 9, 2002, Southerland deposited check number 53535 into his trust account. On the deposit slip, Southerland first credited the deposit to Avery, but later substituted Lori Watkins' name on the deposit slip.

102. Southerland subsequently disbursed most of the Avery funds on behalf of Lori Watkins, including disbursing \$1,000.00 to himself. At the time that Southerland made

disbursements on behalf of Lori Watkins, Lori Watkins had no funds on deposit in Southerland's trust account.

103. Southerland did not notify anyone on behalf of Avery's minor child of the receipt of the refund from Duke University.

104. Southerland appropriated the \$3,973.50 received from the assistant clerk on behalf of the Avery estate to his own use or the use of another that was not authorized.

BASED UPON the foregoing Findings of Fact, the hearing committee makes the following:

CONCLUSIONS OF LAW

1. All parties are properly before the hearing committee of the Disciplinary Hearing Commission and the hearing committee has jurisdiction over Southerland and the subject matter.

2. Southerland's conduct, as set out above, constitutes grounds for discipline pursuant to N.C. Gen. Stat. § 84-28(a) & (b)(2) in that Southerland violated the Revised Rules of Professional Conduct as follows:

- (a) by failing to disclose the receipt of the Farm Bureau settlement and by misrepresenting the actual fee that the McEachin estate had paid to him from the Integon settlement to Cuffee's Virginia attorney, Southerland made a false statement of material fact while representing a client in violation of Rule 4.1 and engaged in conduct involving dishonesty, fraud, deceit or misrepresentation in violation of Rule 8.4(c);
- (b) by writing trust account check 1663 to himself as a fee from McEachin's Integon settlement when he was not entitled to the amount of the fee attributed by Southerland as being for McEachin, Southerland engaged in conduct involving dishonesty, fraud, deceit or misrepresentation in violation of Rule 8.4(c) and failed to maintain the McEachin estate's or other clients' entrusted property in his trust account in violation of Rule 1.15-2(a);
- (c) by writing trust account check 1681 to himself as a fee from McEachin's Integon settlement when he was not entitled to any additional fee for McEachin, and when the McEachin estate had no funds in his trust account, Southerland engaged in conduct involving dishonesty, fraud, deceit or misrepresentation in violation of Rule 8.4(c) and failed to maintain other clients' entrusted property in his trust account in violation of Rule 1.15-2(a);
- (d) by failing, as counsel for the McEachin estate, to ensure that the \$44,950.00 he received from Roberts from the State Farm settlement was

disbursed to Cuffee or someone on his behalf, Southerland engaged in conduct that was prejudicial to the administration of justice in violation of Rule 8.4(d);

- (e) by appropriating to his own use the \$44,950.00 he received from the McEachin estate represented by estate checks numbered 102 and 103, Southerland engaged in conduct involving dishonesty, fraud, deceit or misrepresentation in violation of Rule 8.4(c) and failed to deposit and maintain the McEachin estate's entrusted property in his trust account separate from his property in violation of Rule 1.15-2(a);
- (f) by failing to promptly pay to Teah McNeill's medical providers the entrusted funds he retained for that purpose, as ordered by Judge Ellis, Southerland failed to promptly pay or deliver to third persons as directed by the court on behalf of his client, Teah McNeill, the funds to which they were entitled in violation of Rule 1.15-2(m) and engaged in conduct prejudicial to the administration of justice in violation of Rule 8.4(d);
- (g) by appropriating Teah McNeill's entrusted funds to pay his obligation to Moore Regional Hospital on behalf of Vinson Grace, Southerland engaged in conduct involving dishonesty, fraud, deceit or misrepresentation in violation of Rule 8.4(c) and failed to maintain Teah McNeill's entrusted property in his trust account in violation of Rule 1.15-2(a);
- (h) by appropriating Teah McNeill's \$13,500.00 in entrusted funds represented by trust account checks numbered 1304, 1623, 1625, 1689, 1691, 1692 and 1482 to his own use, Southerland engaged in conduct involving dishonesty, fraud, deceit or misrepresentation in violation of Rule 8.4(c) and failed to maintain Teah McNeill's entrusted property in his trust account in violation of Rule 1.15-2(a);
- (i) by failing to account to Hannon or the court for the \$15,473.90 he didn't have to disburse to Scotland Memorial Hospital on Teah McNeill's behalf, and by failing to disburse the balance on Teah McNeill's behalf, Southerland engaged in conduct prejudicial to the administration of justice in violation of Rule 8.4(d) and intentionally prejudiced or damaged his client during the course of the professional relationship in violation of Rule 8.4(g);
- (j) by appropriating other clients' entrusted funds to his own use by writing trust account checks 1961 and 2110 to Scotland Memorial Hospital on behalf of Teah McNeill after he had already disbursed Teah McNeill's funds for unauthorized purposes, Southerland engaged in conduct involving dishonesty, fraud, deceit or misrepresentation in violation of Rule 8.4(c) and failed to maintain clients' entrusted property in his trust account in violation of Rule 1.15-2(a);

- (k) by failing to promptly pay to Crystal McNeill's medical providers the entrusted funds he retained for that purpose, as ordered by Judge Ellis, Southerland failed to promptly pay or deliver to third persons as directed by the court on behalf of his client, Crystal McNeill, the funds to which they were entitled in violation of Rule 1.15-2(m) and engaged in conduct prejudicial to the administration of justice in violation of Rule 8.4(d);
- (l) by appropriating Crystal McNeill's entrusted funds to pay his obligation to Moore Regional Hospital on behalf of Vinson Grace, Southerland engaged in conduct involving dishonesty, fraud, deceit or misrepresentation in violation of Rule 8.4(c) and failed to maintain Crystal McNeill's entrusted property in his trust account in violation of Rule 1.15-2(a);
- (m) by appropriating Crystal McNeill's \$1,250.00 in entrusted funds represented by trust account checks numbered 1475, 1584, and 1585 to his own use, Southerland engaged in conduct involving dishonesty, fraud, deceit or misrepresentation in violation of Rule 8.4(c) and failed to maintain Crystal McNeill's entrusted property in his trust account in violation of Rule 1.15-2(a);
- (n) by attempting to appropriate other clients' funds to his own use by writing trust account check number 1962 to Duke University Hospital on behalf of Crystal McNeill after he had already disbursed Crystal McNeill's funds for unauthorized purposes, Southerland, in violation of Rule 8.4(a), attempted to engage in conduct involving dishonesty, fraud, deceit or misrepresentation in violation of Rule 8.4(c) and attempted to fail to maintain Crystal McNeill's entrusted property in his trust account in violation of Rule 1.15-2(a);
- (o) by appropriating other clients' funds to his own use by writing trust account check number 2056 to Duke University Hospital on behalf of Crystal McNeill after he had already disbursed Crystal McNeill's funds for unauthorized purposes, Southerland engaged in conduct involving dishonesty, fraud, deceit or misrepresentation in violation of Rule 8.4(c) and failed to maintain his clients' entrusted property in his trust account in violation of Rule 1.15-2(a);
- (p) by appropriating Callahan's entrusted funds represented by trust account checks numbered 804, 1631 and 805 to his own use, Southerland engaged in conduct involving dishonesty, fraud, deceit or misrepresentation in violation of Rule 8.4(c) and failed to maintain Callahan's entrusted property in his trust account in violation of Rule 1.15-2(a);
- (q) by writing trust account check numbered 1485 to make his refund of unused expenses to Callahan after already having taken Callahan's funds for

unauthorized purposes and using Crystal McNeill's entrusted funds for that purpose, Southerland engaged in conduct involving dishonesty, fraud, deceit or misrepresentation in violation of Rule 8.4(c) and failed to maintain Crystal McNeill's entrusted property in his trust account in violation of Rule 1.15-2(a);

- (r) by failing to promptly pay the \$18,166.67 he had received from GMAC to the Clerk, the Avery estate or someone on behalf of Terry where the funds could be invested or draw interest, Southerland engaged in conduct prejudicial to the administration of justice in violation of Rule 8.4(d) and intentionally prejudiced or damaged his client during the course of the professional relationship in violation of Rule 8.4(g);
- (s) by appropriating funds of other clients for a purpose that was not intended when he wrote trust account check number 1773 to the Clerk, after having already taken \$3,600.00 of Avery's funds as his fee, Southerland engaged in conduct involving dishonesty, fraud, deceit or misrepresentation in violation of Rule 8.4(c) and failed to maintain clients' entrusted property in his trust account in violation of Rule 1.15-2(a);
- (t) by appropriating the \$3,973.50 received from the Clerk on behalf of the Avery estate to his own use or the use of another that was not authorized, Southerland engaged in conduct involving dishonesty, fraud, deceit or misrepresentation in violation of Rule 8.4(c); and failed to maintain the Avery estate's entrusted property in his trust account in violation of Rule 1.15-2(a).

BASED UPON the foregoing Findings of Fact and Conclusions of Law, the evidence presented at the hearing and the arguments of counsel, the hearing committee hereby makes the following:

FINDINGS OF FACT REGARDING DISCIPLINE

1. Southerland's misconduct is aggravated by the following factors:
 - (a) dishonest or selfish motive;
 - (b) a pattern of misconduct;
 - (c) multiple offenses;
 - (d) refusal to acknowledge the wrongful nature of his conduct;
 - (e) the vulnerability of his victims; and
 - (f) indifference to making restitution.

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

- (a) absence of a prior disciplinary record;
- (b) evidence of good character and reputation in his community.

3. The fact that no particular client complained about Southerland and the fact that no trust account check was returned for insufficient funds were neither mitigating factors nor defenses in this matter.

4. The aggravating factors outweigh the mitigating factors.

5. The State Bar's auditor, Bruno E. DeMolli, conducted a procedural audit of Southerland's trust account in July 2001 that disclosed that Southerland had commingled his fees with his clients' funds in the trust account and had failed to promptly disburse funds for his clients. On August 27, 2001, Southerland wrote to Mr. DeMolli listing corrective measures that he had taken to correct these deficiencies. Yet, the evidence presented in this case shows that Southerland continued to ignore the requirements of the Revised Rules of Professional Conduct in the handling of his clients' funds.

CONCLUSIONS OF LAW REGARDING DISCIPLINE

An order calling for any discipline short of disbarment would not sufficiently protect the public for the following reasons:

(a) An attorney's duty to preserve a client's funds entrusted to the attorney is one of the most sacred duties that an attorney undertakes. An attorney should never violate that duty or the trust the client has in the attorney to honor that duty.

(b) On several different occasions and in numerous respects, Southerland violated that duty and his clients' trust. In doing so, Southerland caused significant harm to his clients. It is particularly troubling that minor children were victims of Southerland's misconduct.

(c) Southerland's failure to truthfully communicate to the Cuffee's Virginia attorney concerning the refund of a portion of his fee and settlement of the underinsured claims violated the trust and honesty that all officers of the court owe to each other, causing significant harm to our system of jurisprudence.

(d) Southerland's violation of his duty to preserve his clients' entrusted funds and his violation of the duty of honesty that all officers of the court owe to each other caused significant harm to the legal profession.

(e) Several of the medical providers in the McNeill cases were not paid a penny out of the funds that Southerland was ordered by the court to pay, causing significant harm to members of the public in Southerland's community.

(f) Southerland engaged in multiple violations of the Revised Rules of Professional Conduct in the handling of clients' funds after he advised the State Bar's auditor that he had taken measures to correct the deficiencies that the auditor had uncovered. The hearing committee concludes that there is substantial risk to the public that Southerland would continue to engage in misconduct if allowed to continue to practice law.

(g) Entry of an order imposing lesser discipline would fail to acknowledge the seriousness of the offenses that Southerland committed and would send the wrong message to attorneys and the public regarding the conduct expected of members of the Bar in this State.

(h) The protection of the public requires that Southerland not be permitted to resume the practice of law until he demonstrates that he has reformed, that he understands his obligations to his clients and that reinstatement would not injure the standing of the legal profession. Disbarred attorneys must show reformation, among other things, before they resume the practice of law, whereas no such showing of reformation is required of an attorney whose license is merely suspended for a term certain.

BASED UPON the foregoing Findings of Fact Regarding Discipline and the arguments of counsel, the hearing committee hereby enters the following:

ORDER OF DISCIPLINE

1. The Defendant, Harry L. Southerland, is hereby DISBARRED.
2. Southerland shall surrender his license and membership card to the Secretary within 30 days of the effective date of this order.
3. Southerland shall comply with the requirements of 27 NCAC 1B, §.0124.
4. In addition to the requirements set out in 27 NCAC 1B, §.0125, as a condition precedent to reinstatement Southerland must prove to the hearing committee assigned to hear any reinstatement petition the following:
 - (a) that he has fully and properly accounted to the Virginia attorney for Cuffee the receipt of all settlement funds for the wrongful death of McEachin and the disbursement of the proceeds of each of the McEachin settlements;
 - (b) that he has fully and properly accounted to Hannon for the funds he retained from the settlements of Teah and Crystal McNeill for their medical providers;
 - (c) that he has fully reimbursed Cuffee's representative the proper amount of the McEachin settlements that Cuffee was entitled to receive;

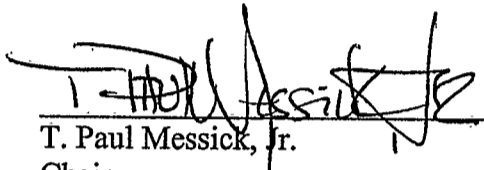
(d) that he has appropriately paid all funds that he retained from Teah and Crystal McNeill's settlements for the benefit of Teah and Crystal McNeill.

(e) that he completed the requirements of paragraph 4 (a) through (d) above within 90 days of the effective date of this order;

(f) that, in addition to any other Continuing Legal Education requirement that may exist for a disbarred attorney at the time of his reinstatement, he has taken an additional six hours of Continuing Legal Education concerning the proper handling of a trust account.

5. The costs of this proceeding are taxed to Southerland and shall be paid as assessed by the Secretary with 90 days of the effective date of this order.

Signed with the Chair with the consent of the other members of the hearing committee this the 5th day of August, 2004.



T. Paul Messick, Jr.
Chair
Hearing Committee