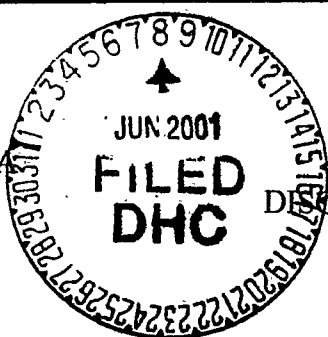


NORTH CAROLINA  
WAKE COUNTY



21042  
BEFORE THE  
DISCIPLINARY HEARING COMMISSION  
OF THE  
NORTH CAROLINA STATE BAR  
00 DHC 19

THE NORTH CAROLINA STATE BAR, )  
Plaintiff )  
v. )  
SELANA R. SEARLES, Attorney )  
Defendant )

FINDINGS OF FACT  
AND CONCLUSIONS OF LAW  
AND ORDER OF DISCIPLINE

This matter was heard on the 1<sup>st</sup> day of March, 2001, before a hearing committee of the Disciplinary Hearing Commission composed of Richard T. Gammon, Chair; Fred H. Moody Jr., and Robert B. Frantz. The plaintiff was represented by Fern Gunn Simeon. The defendant, Selana R. Searles, was represented by Lawrence U. Davidson III. Based upon the pleadings, the stipulations and the evidence introduced at the hearing, the hearing committee hereby enters the following:

#### FINDINGS OF FACT

1. 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 North Carolina General Statutes and the Rules and Regulations of the North Carolina State Bar.
2. The defendant was admitted to the North Carolina State Bar on August 26, 1994 and was at all times relevant hereto licensed to practice law in North Carolina, subject to the rules, regulations, Rules of Professional Conduct, and Revised Rules of Professional Conduct of the North Carolina State Bar.
3. During all times relevant hereto the defendant was actively engaged in the practice of law in Charlotte, North Carolina, and maintained a law office in Charlotte.
4. The defendant was properly served with process and the hearing was held with due notice to all parties.
5. Prior to June 1, 1997, the defendant opened a trust account, account number 0001905660 (hereafter 5660-trust account), at NationsBank.
6. The defendant opened another trust account, account number 0657116901 (hereafter, 6901-trust account), at NationsBank on May 16, 1997, before the 5660 trust account was closed.

7. The North Carolina State Bar (hereafter State Bar) audited the defendant's 5660-trust account for the period of June 1, 1997 to October 24, 1997. The State Bar audited the defendant's 6901-trust account for the period of May 13, 1997 to September 8, 1998.

8. On June 1, 1997, the balance in the defendant's 5660-trust account was \$163,579.77.

9. From June 2, 1997 to August 21, 1997, a total of \$177,005.00 was disbursed from the defendant's 5660-trust account on behalf of her clients in real estate closings.

10. After June 1, 1997, there were no funds on deposit in the defendant's 5660-trust account on behalf of those clients for whom a total of \$177,005.00 was disbursed.

11. There was a deficit of \$13,425.23 in the defendant's 5660-trust account.

12. The defendant appropriated her clients' money for the benefit or use of other clients.

13. The defendant did not have her clients' permission to use or spend their funds for any purpose other than paying the expenses of the clients' own closings.

14. On June 4, 1997, the defendant handled two real estate closings: one involving Pinpoint Investments' purchase of property from Charles Vaughns and the other involving Pinpoint Investments' sale of property to Melvin Dorsey and wife.

15. Funds for the Pinpoint Investments/Vaughns/Dorsey closings were deposited into the defendant's 6901-trust account as follows: \$36,472.15 was deposited on June 4, 1997 and \$1,298.29 was deposited on June 9, 1997.

16. According to the HUD-1 statements prepared by the defendant, Pinpoint Investments was supposed to receive \$19,370.12.

17. However, the defendant disbursed \$26,164.12 to Pinpoint Investments, \$6,794.00 more than Pinpoint Investments was entitled to receive.

18. The defendant did not know that she had overpaid Pinpoint Investments at the time she disbursed the money on June 4, 1997. She learned of the overpayment to Pinpoint Investments as a result of the State Bar's audit of her trust accounts in 1999.

19. State Bar auditor David Frederick suggested that the defendant contact Pinpoint Investments and ask that the company return the overpayment to the defendant. The defendant wrote a letter dated March 12, 1999 to Pinpoint Investments and requested the return of the \$6,794.00.

20. The defendant spent other clients' money on deposit in her trust account when she paid Pinpoint Investments \$6,794.00 more than Pinpoint Investments should have received.

21. The defendant did not have her other clients' permission to use or spend their funds for the benefit of the Pinpoint Investments/Vaughns/Dorsey closings.
22. The defendant has not returned the \$6,794.00 to her trust account.
23. On June 12, 1997, the defendant represented Tracey Turner (hereafter Turner) in a real estate closing.
24. According to the HUD-1 statement that the defendant prepared, Turner paid \$500.00 in earnest money to Prestige Realty outside the closing.
25. The defendant did not deduct the \$500.00 earnest money paid outside the closing from Prestige Realty's commission check.
26. On June 16, 1997, the defendant disbursed \$1,812.50 to Prestige Realty, when only \$1,312.50 should have been paid to the company.
27. The defendant did not know that she had overpaid Prestige Realty at the time she disbursed the money on June 16, 1997. She learned of the overpayment to Pinpoint Investments as a result of the State Bar's audit of her trust accounts in 1999.
28. The defendant spent other clients' money on deposit in her trust account when she paid Prestige Realty \$500.00 more than Prestige Realty should have received.
29. The defendant did not have her other clients' permission to use or spend their funds for Turner's benefit.
30. The defendant has not returned the \$500.00 to her trust account.
31. On June 30, 1997, the defendant represented Kelvin Benfield (hereafter Benfield) in a real estate closing.
32. According to the HUD-1 statement that the defendant prepared, Benfield paid \$1,000.00 in earnest money to Prestige Realty outside the closing.
33. The defendant did not deduct the \$1,000.00 earnest money paid outside the closing from Prestige Realty's commission check.
34. On July 3, 1997, the defendant disbursed \$3,125.00 to Prestige Realty, when only \$2,125.00 should have been paid to the company.
35. The defendant did not know that she had overpaid Prestige Realty at the time she disbursed the money on July 3, 1997. She learned of the overpayment to Pinpoint Investments as a result of the State Bar's audit of her trust accounts in 1999.
36. The defendant spent other clients' money on deposit in her trust account when she paid Prestige Realty \$1,000.00 more than Prestige Realty should have received.

37. The defendant did not have her other clients' permission to use or spend their funds for Benfield's benefit.

38. The defendant has not returned the \$1,000.00 to her trust account.

39. On July 31, 1997, the defendant represented Robbin Barnhill (hereafter Barnhill) in a real estate closing.

40. According to the HUD-1 statement that the defendant prepared, the following amounts should have been disbursed on Barnhill's behalf:

<u>Amount</u>	<u>Payee</u>
\$104,068.26	NationsBank
0.00	Gary Moen
286.00	Register of Deeds

41. However, the defendant disbursed the following amounts in the Barnhill closing:

<u>Amount</u>	<u>Payee</u>
\$104,667.12	NationsBank
275.00	Gary Moen
290.00	Register of Deeds

42. The defendant disbursed a total of \$877.86 more than she had on deposit in her trust account for the Barnhill closing.

43. The defendant did not know that she over-disbursed in the Barnhill closing at the time of the closing. David Frederick brought the excess disbursements to the defendant's attention after he audited her trust account in 1999.

44. The defendant spent other clients' money on deposit in her trust account when she paid \$877.86 more than she had on deposit for the Barnhill closing.

45. The defendant did not have her other clients' permission to use or spend their funds for Barnhill's benefit.

46. The defendant has not returned the \$877.86 to her trust account.

47. The defendant represented Donna Chalmers (hereafter Chalmers) in a real estate closing in 1997.

48. On June 20, 1997, the lender wired \$30,983.87 into the defendant's 5660-trust account to fund the Chalmers closing.

49. On June 27, 1997, \$2,232.00 was deposited into the defendant's 6901-trust account for Chalmers.

50. From June 23, 1997 to September 5, 1997, the defendant disbursed \$33,209.87 from her 6901-trust account to pay Chalmers' closing expenses. There was not enough of Chalmers' money in the 6901-trust account to pay Chalmers' closing expenses at the time those expenses were paid.

51. The defendant spent other clients' money that was on deposit in her 6901-trust account when she disbursed \$30,977.87 to pay Chalmers' closing expenses.

52. The defendant represented Genevieve Kinard (hereafter Kinard) in a real estate closing in 1997.

53. On July 30, 1997, the lender wired \$38,830.17 into the defendant's 5660-trust account to fund the Kinard closing.

54. On August 13, 1997, \$338.49 was deposited into the defendant's 6901-trust account for Kinard.

55. From August 1, 1997 to September 4, 1997, the defendant disbursed \$39,180.66 from her trust account to pay Kinard's closing expenses. There was not enough of Kinard's money in the 6901-trust account to pay Kinard's closing expenses at the time those expenses were paid.

56. The defendant spent other clients' money that was on deposit in her 6901-trust account when she disbursed \$38,842.17 to pay Kinard's closing expenses.

57. The defendant represented Randy Mobley (hereafter Mobley) in a real estate closing in 1997.

58. On September 26, 1997, the lender wired \$93,015.00 into the defendant's 5660-trust account to fund the Mobley closing.

59. From September 29, 1997 to October 8, 1997, the defendant disbursed \$5,578.07 from her 6901-trust account to pay Mobley's closing expenses.

60. There were no funds belonging to Mobley in the defendant's 6901-trust account from September 26, 1997 to October 9, 1997.

61. The defendant spent other clients' money that was on deposit in her 6901-trust account when she disbursed \$5,578.07 to pay Mobley's closing expenses.

62. The defendant represented Hayley Goode (hereafter Goode) in a real estate closing in 1997.

63. On September 26, 1997, the lender wired \$69,584.87 into the defendant's 5660-trust account to fund the Goode closing.

64. On September 1, 1997, \$4,477.15 was deposited into the defendant's 6901-trust account to pay Goode's closing expenses.

65. From September 26, 1997 to October 9, 1997, the defendant disbursed \$67,045.05 from her 6901-trust account to pay Goode's closing expenses. There was not enough of Goode's money in the 6901-trust account to pay Goode's closing expenses at the time those expenses were paid.

66. The defendant spent other clients' money that was on deposit in her 6901-trust account when she disbursed \$62,567.90 to pay Goode's closing expenses.

67. The defendant represented Sandra Miller (hereafter Miller) in a real estate closing in 1997.

68. From December 24, 1997 to January 2, 1998, the defendant disbursed \$55,413.75 from her 6901-trust account on Miller's behalf.

69. On January 5, 1998, \$4,876.00 was deposited into the defendant's 6901-trust account for Miller's closing. Also, on January 7, 1998, \$57,429.96 was deposited into the defendant's 6901-trust account to fund the Miller closing.

70. Prior to the deposits on January 5 and 7, 1998, there were no funds on deposit in the defendant's 6901-trust account for Miller's closing.

71. The defendant spent other clients' money that was on deposit in her 6901-trust account when she disbursed \$55,413.75 to pay Miller's closing expenses.

72. The defendant did not have her other clients' permission to use or spend their funds to pay the closing expenses of Chalmers, Kinard, Mobley, Goode, and Miller.

73. In those instances where the lender wired closing funds into the defendant's 5660-trust account instead of her 6901-trust account, the defendant testified that she did not confirm with the bank that the closing funds had been wired into her 6901-trust account before she disbursed funds for the closings from the 6901-trust account.

74. The defendant disbursed \$357.00 from her 6901-trust account for Gerald Lewis' closing from July 17, 1997 to January 22, 1998.

75. The defendant disbursed \$14,296.50 from her 6901-trust account for Alton Bridges' closing from August 13, 1997 to November 28, 1997.

76. There were no funds belonging to Gerald Lewis in the defendant's 6901-trust account at the time disbursements were made on his behalf.

77. There were no funds belonging to Alton Bridges in the defendant's 6901-trust account at the time disbursements were made on his behalf.

78. The defendant spent other clients' money that was on deposit in her 6901-trust account when she paid the closing expenses of Gerald Lewis and Alton Bridges.

79. The defendant did not have her other clients' permission to use or spend their money on deposit in her 6901-trust account for the benefit of Gerald Lewis and Alton Bridges.

80. The defendant represented Max Terry (hereafter Terry) in a real estate closing in 1998.

81. On February 4, 1998, \$72,000.00 was deposited into the defendant's 6901-trust account for the Terry closing.

82. In 1998, the defendant disbursed a total of \$70,910.72 from her 6901-trust account on Terry's behalf.

83. According to the HUD-1 statement that the defendant prepared, she has failed to disburse a total of \$1,089.28 in Terry's closing: \$165.00 for the defendant, \$144.00 for Investors Title, \$542.32 for 1997 taxes, \$.96 for Superior Mortgage, \$195.00 for Decision One, \$40.00 for Guardian, and \$2.00 for the Register of Deeds.

84. The defendant represented Clevetta Ward (hereafter Ward) in a real estate closing in 1998.

85. The defendant was holding \$64,381.50 for Ward to settle a lawsuit with Chase Manhattan Bank.

86. The defendant has not disbursed \$64,381.50 to Ward or as directed by Ward.

87. The defendant represented Donald McDaniel (hereafter McDaniel) in a real estate closing in 1997.

88. On August 8, 1997, \$99,200.00 was deposited into the defendant's 6901-trust account on behalf of McDaniel.

89. In 1997, the defendant disbursed a total of \$97,771.33 from her 6901-trust account on McDaniel's behalf.

90. According to the HUD-1 statement that the defendant prepared, she has failed to disburse at least \$1,318.36 in McDaniel's closing: \$198.90 for Investors Title and \$1,119.46 for 1997 real estate taxes.

91. The defendant represented Arnita Johnson (Johnson) in a real estate closing in 1998.

92. On April 30, 1998, \$119,550.63 was deposited into Defendant's 6901-trust account.

93. In 1998, Defendant disbursed a total of \$117,416.64 from her 6901-trust account on Johnson's behalf.

94. According to the HUD-1 statement that the defendant prepared, she has failed to disburse at least \$2,073.86 in Johnson's closing: \$1,830.86 for Central Carolina Bank, \$240.00 for The Title Co., and \$3.00 for Overnight Mailing Fees.

95. The defendant represented Cynthia James (hereafter James) in a real estate closing in 1998.

96. On January 30, 1998, \$174,055.13 was deposited into the defendant's 6901-trust account for the James closing.

97. In 1998, the defendant disbursed a total of \$172,433.91 from her 6901-trust account on James' behalf.

98. According to the HUD-1 statement that the defendant prepared, she has failed to disburse a total of \$1,621.22 in the James closing: \$25.00 for Overnight Mailing Fee, \$272.50 for Investors Title, and \$1,323.72 for Miscellaneous Items.

99. According to the HUD-1 statements that the defendant prepared, she was supposed to receive \$375.00 as her attorney's fee in the James closing.

100. The HUD-1 statements that the defendant prepared do not show Attorney Paul Hemphill (hereafter Hemphill) receiving any fee or compensation.

101. The defendant received a total of \$575.00 from the James closing by check number 3096 in the amount of \$325.00 and check number 3271 in the amount of 250.00. The defendant paid herself \$200.00 more than she was supposed to receive from the closing.

102. The defendant paid Hemphill \$180.00 from the James closing funds. The defendant testified that Hemphill did the title searches for the closings she handled and she usually paid Hemphill out of the fee she received. In this instance, she did not pay Hemphill out of the attorney's fee she received.

103. Defendant appropriated her client's funds to her own use or benefit or the use or benefit of a third party when she overpaid herself in the amount of \$200.00 and paid Hemphill \$180.00.

104. Defendant did not have her client's permission to use or spend her funds for any purpose other than that designated by her client.

105. The defendant represented Sandra Miller (hereafter Miller) in a real estate closing in 1997.

106. From December 24, 1997 to January 2, 1998, the defendant disbursed \$55,413.75 from her 6901-trust account on Miller's behalf.

107. According to the HUD-1 statement that the defendant prepared, she failed to disburse a total of \$1,970.80 in Miller's closing: \$569.99 for 1997 taxes, \$282.33 for First Beneficial, \$266.00 for Geico Insurance, and \$45.00 for Pestech.



108. There is an additional \$807.48 belonging to Miller that has not been disbursed to Miller or on her behalf to third parties and that amount remains in her trust account.

109. On March 9, 1998, check number 3437 in the amount of \$50,865.56 drawn on Defendant's 6901-trust account was returned due to insufficient funds (NSF) in her trust account.

110. The defendant told David Frederick of the State Bar that check number 3437 bounced because she received two closing checks and she failed to deposit one of them into her trust account. The defendant told Frederick that when she discovered her error, she deposited the second check into her trust account.

111. Frederick testified that his audit showed that there was only one closing check deposited into the defendant's trust account for that particular closing. Check number 3437 was presented again to the bank for payment. The check cleared the bank because of a deposit of another client's money into the defendant's trust account.

112. The North Carolina State Bar was notified of the NSF check drawn on the defendant's 6901-trust account.

113. By letter dated May 26, 1998, H. B. Warren (hereafter Warren) of the North Carolina State Bar asked the defendant for an explanation regarding the NSF check.

114. The defendant did not respond to Warren's May 26, 1998 letter.

115. Warren sent another letter dated July 27, 1998 to the defendant and asked that she explain the bounced check drawn on her trust account.

116. The defendant did not respond to Warren's July 27, 1998 letter.

117. From November 18, 1996 to April 26, 1999, the defendant closed real estate loans for her clients and requested title insurance from Investors Title Insurance Company (hereafter Investors Title).

118. The defendant collected title insurance premiums from her clients at their closings.

119. However, in over 100 closings, the defendant failed to submit final title opinions to Investors Title and she failed to remit title insurance premiums to Investors Title. She also failed to pay real estate taxes in a number of real estate closings.

120. Daniel Rebeor (hereafter Rebeor), a former claims attorney for Investors Title, testified that he was assigned to oversee the clean-up of many real estate closings that the defendant did not complete.

121. Rebeor testified that the defendant owed in excess of \$5,000.00 in unpaid title insurance premiums to Investors Title.

122. Investors Title hired several attorneys to finish the work that the defendant did not complete respecting the various real estate closings.

123. Investors Title issued title insurance in the various real estate closings that the defendant neglected.

124. Investors Title paid at least \$32,432.34 to attorneys to perform various legal services occasioned by the defendant's abandonment of her law practice. Senior Resident Superior Court Judge Shirley L. Fulton ordered on November 5, 1999 that the defendant reimburse Investors Title and the law firm of Poyner & Spruill, as their interests may appear, in the amount of \$32,432.34. (In re Selana R. Searles, Attorney at Law, file number 98 SP 1773). As of the date of the hearing, the defendant had not complied with the court's order.

125. On December 19, 1997, the defendant represented William F. Walters' (hereafter Walters), the borrower, and PinnFund USA, the lender, in the refinance of Walters' mortgage.

126. The prior lender, The Money Centre Inc., was supposed to be paid off in the amount of \$58,192.81 at the closing.

127. The defendant prepared the HUD-1 settlement statement in Walters' closing. She indicated on the HUD-1 that \$58,192.81 would be disbursed to Federal Republic Mortgage Corporation (hereafter FRMC).

128. The defendant paid FRMC \$58,192.81 by check number 2856, dated 12-23-97, drawn on the defendant's 6901-trust account.

129. FRMC was not entitled to receive \$58,192.81. The Money Centre Inc. was supposed to receive the payoff amount of \$58,192.81.

130. Investors Title Insurance Company (hereafter Investors Title) issued a commitment in the Walters' closing on December 4, 1997. On page 2, Schedule B, Section I, paragraph 3, The Money Centre Inc.'s lien of a deed of trust is noted by the book and page number at the register of deeds office.

131. PinnFund, USA, indicated in its closing instructions to the defendant that she had an obligation to investigate the validity of the lien being refinanced to insure that the lien was valid against Walters' property. PinnFund, USA also required the defendant, as the closing attorney, to verify "in writing" all payoffs, with itemization of outstanding principal, accrued and delinquent interest, late charges, fees and per diem amounts.

132. The defendant testified that she could not remember who told her that FRMC should receive the payoff amount. The defendant testified that she could not find any information or documentation in the Walters' file to indicate that FRMC should be paid \$58,192.81.

133. The defendant did not make an independent investigation by checking the liens of record at the register of deeds office to determine that The Money Centre Inc. was the lienholder and not FRMC.

134. Walters' obligation to The Money Centre Inc. was not satisfied and The Money Centre Inc. foreclosed on Walters' home.

135. Investors Title paid the prior loan to The Money Centre Inc. to remedy the problem.

136. In 1997 and 1998, the defendant closed loans for EquiFirst Corporation (hereafter EquiFirst).

137. The defendant did not submit all necessary documents to EquiFirst so that the loans could be finalized.

138. Equifirst asked the defendant to submit the documents, but she failed to do so.

139. The defendant represented Glenn M. Riccio (hereafter Riccio), the buyer, in a real estate closing on October 30, 1997.

140. The defendant collected \$1,705.60 at closing to pay 1997 city taxes that were due.

141. After the closing, the defendant learned that the 1997 city taxes were paid prior to the closing. The sellers, Scott T. Linn and Theresa M. Linn (hereafter the Linns), were entitled to receive a refund of \$1,705.60.

142. Instead of disbursing the \$1,705.00 to the Linns, the defendant disbursed the money to the buyer, Glenn M. Riccio. Riccio was not entitled to receive the money.

143. The Linns contacted the defendant many times and requested the return of their money.

144. The defendant represented Valerie Nelson (hereafter Nelson) in a real estate closing on October 31, 1997.

145. Attorney T. J. Hooper (hereafter Hooper) asked the defendant for a copy of Nelsons' real estate file in letters dated February 5, 1998, March 30, 1998, and May 29, 1998.

146. The defendant did not respond to Hooper's letters.

147. The defendant did not return the file to Nelson or Hooper.

148. Dr. Paul Eagle (hereafter Eagle) filed a grievance against the defendant with the 26<sup>th</sup> Judicial District Bar (hereafter local grievance committee).

149. A member of the local grievance committee notified the defendant about Eagle's grievance and asked that the defendant respond to his allegations.

150. The defendant did not respond to Eagle's grievance, despite four attempts by the local grievance committee to get a response from her.

151. Beverly Brandon (hereafter Brandon) filed a grievance against the defendant on May 25, 1999 with the North Carolina State Bar (State Bar).

152. On July 1 and 15, 1999, the defendant was served with a letter of notice and substance of grievance from the State Bar that apprised her of Brandon's allegations.

153. Pursuant to State Bar rules, the defendant was required to respond to Brandon's grievance within 15 days of receiving it.

154. The defendant did not seek an extension to respond to Brandon's grievance.

155. The defendant did not respond timely to Brandon's grievance.

156. The defendant finally responded to Brandon's grievance on September 10, 1999.

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 the defendant, Selana R. Searles, 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)(1)(2) as follows:

a. By appropriating \$13,425.23 of her clients' money to her own use or benefit or the use or benefit of a third party and without the clients' consent, the defendant failed to maintain client funds in her trust account in violation of Rule 10.1(a) and (c) and Revised Rule 1.15-1(a) and (c).

b. By misappropriating and spending other clients' money when she overpaid parties in real estate closings or disbursed more money for a client than the client had on deposit in her trust account, the defendant failed to maintain client funds in her trust account in violation of Rule 10.1(a) and (c) and Revised Rule 1.15-1(a) and (c).

c. By misappropriating and spending other clients' money to pay the closing expenses of Chalmers, Kinard, Mobley, and Goode, the defendant failed to maintain client funds in her trust account in violation of Rule 10.1(a) and (c) and Revised Rule 1.15-1(a) and (c).

d. By misappropriating other clients' money to pay the expenses of Gerald Lewis and Alton Bridges, the defendant failed to maintain client funds in her trust account in violation of Rule 10.1(a) and (c) and Revised Rule 1.15-1(a) and (c).

e. By misappropriating her client funds to pay herself more attorney's fees than she was entitled to receive and paying Hemphill an attorney's fee that was not listed on the HUD-1 statement in the James closing, the defendant failed to maintain client funds in her trust account in violation of Rule 10.1(a) and (c) and Revised Rule 1.15-1(a) and (c).

f. By not paying her clients' expenses as indicated on the HUD-1 statements, the defendant failed to act with reasonable diligence and promptness in representing a client in violation of Rule 6(b)(3) and Revised Rule 1.3; failed to pay over sums owed to a client or third party as directed by a client in violation of Rule 10.2(e) and Revised Rule 1.15-2(h).

g. By not withdrawing her earned attorney's fee from the trust account the defendant has commingled client funds with her personal funds in violation of Rule 10.1(c) and Revised Rule 1.15-1(e).

h. By not having sufficient funds in her trust account to pay check number 3437 drawn on her trust account, the defendant failed to maintain client funds in her trust account in violation of Revised Rule 1.15-1(a) and (c).

i. By not responding to the North Carolina State Bar's letters requiring an explanation for the NSF check drawn on her 6901-trust account, the defendant violated Rule 8.1(b).

j. By not paying the title insurance premiums to Investors Title on behalf of her clients, the defendant failed to act with reasonable diligence and promptness in representing a client in violation of Rule 6(b)(3) and Revised Rule 1.3; failed to pay over sums owed to a client or third party as directed by a client in violation of Rule 10.2(e) and Revised Rule 1.15-2(h).

k. By not conducting an independent inquiry to determine the identity of the prior lienholder in William Walters' refinance, the defendant failed to act with reasonable diligence and promptness in representing her clients in violation of Revised Rule 1.3.

l. By not submitting all necessary documents to Equifirst so that her clients' loans could be processed, Defendant has failed to act with reasonable diligence and promptness in representing a client in violation of Rule 6(b)(3) and Revised Rule 1.3.

m. By disbursing the seller's funds to her client when her client was not entitled to receive the money, the defendant has failed to act with reasonable diligence and promptness in representing a client in violation of Revised Rule 1.3.

n. By not returning Nelson's file upon her request, the defendant failed to surrender papers and property to which the client is entitled in violation of Revised Rule 1.16(d).

o. By not responding to the 26<sup>th</sup> Judicial District Bar Grievance Committee about Eagle's grievance and not responding promptly to the North Carolina State Bar about Brandon's grievance, the defendant violated Rule 8.1(b).

Based upon the foregoing Findings of Fact and Conclusions of Law and upon the evidence and arguments of the parties concerning the appropriate discipline, the hearing committee hereby makes additional

#### FINDINGS OF FACT REGARDING DISCIPLINE

1. The defendant's misconduct is aggravated by the following factors:
  - a. a pattern of misconduct;
  - b. multiple offenses;
  - c. the defendant's actions or inactions resulted in gross financial injury to her clients and other individuals;
  - d. the defendant's actions or inactions resulted in the unintentional misappropriation of client funds;
  - e. the defendant's actions or inactions constituted gross negligence and showed an absolute incompetence to handle real estate transactions; and
  - f. the defendant has made no attempt to rectify the harm caused by her actions or inactions.
2. The defendant's misconduct is mitigated by the following factors:
  - a. absence of a prior disciplinary record;
  - b. absence of a dishonest or selfish motive;
  - c. personal or emotional problems; and
  - d. the defendant was inexperienced in the practice of law, particularly regarding real estate matters.
3. The aggravating factors outweigh the mitigating factors.

Based upon the foregoing aggravating and mitigating factors and the arguments of the parties, the hearing committee hereby enters the following

## ORDER OF DISCIPLINE

1. The license of the defendant, Selana R. Searles, is hereby suspended for five years. Three of the five years shall be an active suspension of the defendant's law license, with two years of the five-year suspension stayed upon the following terms and conditions:

- a. The defendant shall not violate any state or federal laws during the period of active suspension.
- b. The defendant shall not violate any provisions of the Revised Rules Rules of Professional Conduct or the rules of ethics in effect during the period of active suspension.
- c. The defendant shall satisfy the mandatory continuing legal education requirements of the North Carolina State Bar during each year of the three-year active suspension.
- d. The defendant shall obtain a mental assessment by a licensed psychiatrist. Prior to the defendant receiving the assessment from the licensed psychiatrist, she must submit the psychiatrist's name to the North Carolina State Bar to obtain the State Bar's approval of the psychiatrist. The purpose of the mental assessment is to determine the defendant's mental fitness to practice law. The defendant shall sign a waiver that allows her treating psychiatrist to release information to the North Carolina State Bar about her prognosis, treatment, and diagnosis.

2. Thereafter, the defendant may seek reinstatement of her law license upon filing a written petition and demonstrating compliance with the following conditions:

- a. The defendant shall not have violated any state or federal laws during the period of the active suspension.
- b. The defendant shall not have violated any provisions of the Revised Rules of Professional Conduct or the rules of ethics in effect during the period of the active suspension.
- c. The defendant shall have satisfied the mandatory continuing legal education requirements of the North Carolina State Bar during each year of the three-year active suspension.
- d. The defendant shall complete a course on trust account management that is offered by a North Carolina State Bar approved CLE provider, if such a course is offered during the three-year active suspension.
- e. The defendant shall have completed any recommended treatment by the assessing licensed psychiatrist and she shall have obtained an opinion that she does not suffer from any mental or emotional problems that would interfere with her performance of the obligations necessary to practice law.

f. The defendant shall have complied with and satisfied all court orders or judgments entered against her respecting restitution to the victims of her misconduct. In particular, she shall show that she have complied with Judge Fulton's November 5, 1999 order (file number 98 SP 1773, captioned In Re Selana R. Searles, Attorney at Law) requiring her to reimburse Investors Title and Poyner & Spruill, as their interests may appear, in the amount of \$32,432.34.

g. The defendant shall replace \$63,032.86 of client funds that she unintentionally misappropriated as a result of her gross negligence. A total of \$63,032.86 must be deposited into her trust account to pay back client funds that she unintentionally misappropriated.

h. The defendant shall have paid all costs incurred in this proceeding and taxed against her.

i. The defendant shall have complied with all provisions of Sections .0124 and .0125(b) of the North Carolina State Bar's Discipline and Disability Rules.

3. Upon entry of an order staying this suspension and granting the reinstatement of the defendant's license to practice law, the order of stayed suspension shall continue in force for the balance of the term of suspension, provided that the defendant complies with the following conditions:

a. The defendant shall violate no federal or state laws.

b. The defendant shall violate no provisions of the Revised Rules of Professional Conduct or the rules of ethics in effect at the time of the stayed suspension.

c. The defendant shall not handle client funds, except those funds paid as fees during the period of the stayed suspension.

d. The defendant shall not handle any real estate matters, including real estate closings, during the two-year stayed suspension.

e. The defendant shall satisfy the mandatory continuing legal education requirements of the North Carolina State Bar during each year of the two-year stayed suspension.

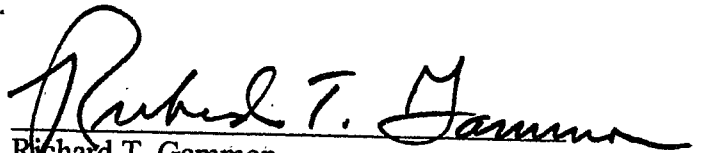
f. The defendant shall pay any costs incurred in connection with her reinstatement proceeding and assessed against the defendant.

4. The defendant shall pay the costs of this proceeding, including the cost of her deposition, as assessed by the Secretary of the N.C. State Bar prior to petitioning for a stay of the two years of the five-year suspension.

5. The defendant shall submit her law license and membership card to the Secretary of the North Carolina State Bar no later than 30 days from service of this order upon her.



Signed by the chair with the consent of the other hearing committee members, this  
the 17<sup>th</sup> day of June, 2001.



Richard T. Gammon  
Hearing Committee Chair