

**BEFORE THE SUPREME COURT COMMITTEE ON PROFESSIONAL CONDUCT
PANEL B**

IN RE: **GARLAND WATLINGTON**, Respondent
Arkansas Bar ID#95223
CPC Docket No. 2011-072

FILED

JUN 01 2012

**LESLIE W. STEEN
CLERK**

FINDINGS AND ORDER

The formal charges of misconduct upon which this Findings and Order is based arose from information provided to the Committee following audit of the IOLTA client trust account of Respondent Garland Watlington, a Jonesboro solo practitioner. The information related to certain activities of Watlington in the receipt and distribution of various client funds from his client trust account.

On August 18, 2011, Respondent was served with a formal complaint, supported by information obtained through subpoena to Mr. Watlington's bank and other information provided by Mr. Watlington based on the Order of the Committee to conduct a review and audit of Mr. Watlington's IOLTA trust account. After an extension of time, a timely response was submitted by Mr. Watlington and his counsel, Bart Virden. The matter then proceeded to ballot vote before Panel B of the Committee on Professional Conduct.

The alleged Rule violations generally dealt with Watlington's handling of settlement funds in 2007-2011 for eight (8) clients [note: with the number of dates per the bank statements on which the funds to be held for each client was 'short' of the required full amount following the client name] - Smolder/Fortune (25), Girard (1), Culbertson (26), Henley (3), Wood (94), Woodham/Whaley (76), Bersheid (3), and Reed (44). Rule 1.15 requires that an attorney protect the funds of a client by maintaining the full amount of the client's funds in the attorney's trust

account until distribution is made. The evidence here shows that Mr. Watlington failed to maintain the full amount of all client funds at all times in his trust account, mainly due to his withdrawing funds by checks payable to himself. Except one time on October 16, 2008, no check written from his trust account for distribution of client funds ever caused the overall trust account balance to go negative. However, the proof shows that his trust account was “short” the full amount of client funds it should have contained on many occasions during this several year period, including a maximum overall “shortage” of \$91,345.41 on June 12-14, 2009, for funds belonging to clients Culbertson, Wood, Henley, Woodham, Berscheid, and Reed. Each shortage of total client funds appears to have been cured by Watlington’s deposit of new client settlement funds. In April 2010, he closed his IOLTA trust account at Regions Bank and opened a new account at Liberty Bank. His trust account records for the new account were not part of this inquiry.

Mr. Watlington acknowledged in his response to the formal disciplinary complaint that he had made errors in handling of the various accounts at issue in the formal complaint. He went on to explain that the errors were mistakes in accounting and bookkeeping, and not misappropriation of client’s funds. This explanation was accepted by the Committee at ballot vote in this matter. According to Mr. Watlington, no client lost any money.

Mr. Watlington also assured the Committee that he had drastically changed his bookkeeping process in his operation to insure that there would never again be a repeat of this situation. He did admit that the balances of the trust account were at various times less than they should have been, but asserted that at no time was any client not paid the full amount of money when it was due.

The factual information before the Panel obtained from audit of the IOLTA trust account and the information provided by Respondent Watlington was as follows:

I. Janetta Fortune, Special Administrator of the Estate of Alan Ray Smolder

1. On January 2, 2007, Mr. Watlington deposited into his IOLTA trust account two checks which totaled \$35,000, payable to the Watlington Law Firm and Janetta Fortune, Special Administrator of the Estate of Alan Ray Smolder. Mr. Watlington's fee contract with Ms. Fortune is dated August 1, 2006, and allows for Mr. Watlington to receive \$8,500 on the first \$55,000 recovered and then 33 and 1/3 percent of any amount recovered over the \$55,000. A third check payable to Ms. Fortune as Special Administrator and Mr. Watlington as her attorney for \$25,000 was deposited into Mr. Watlington's IOLTA trust account on February 7, 2008. Mr. Watlington calculated his fee as \$10,165 and asserted costs in the amount of \$1,000. According to Mr. Watlington and the information he submitted pursuant to Committee Order, there was no settlement sheet in the matter.

Mr. Watlington explained that when this matter was resolved, he was not able to immediately disburse the funds to his client. He also advised the Committee that since his fee was a contingency fee, he was entitled to pay himself upon the funds clearing but could not prepare a settlement statement because it was impossible to know what funds would be available to his client until the medical provider claims were resolved.

2. Giving Mr. Watlington credit for the \$11,165 he asserts he was owed in the matter (although no check for that specific amount was written to him from his IOLTA trust account), there should have been present at all times in the trust account from January 2, 2007, until February 7, 2008 (when the additional \$25,000 was deposited), a minimum balance of \$23,835,

representing funds belonging to Ms. Fortune as Special Administrator of the Estate of Alan Ray Smolder. Although the funds were not the funds of Mr. Watlington, that minimum balance was not present in the IOLTA trust account on numerous occasions beginning on July 20, 2007.

In this response to the formal disciplinary complaint, Mr. Watlington did not address the funds not being present in his trust account. He merely explained that he paid Ms. Fortune in March 2008, after receiving an Order from the Court with regard to the disbursement of the funds in January 2008. Judge Irwin, the presiding Judge, had not ordered disbursement of the funds at those times when the funds were not present in Mr. Watlington's trust account.

3. Beginning on July 20, 2007, there was a shortage of "Fortune" funds in the Watlington IOLTA trust account.

DATE	Balance	Shortage of "Fortune" funds
07/20/2007 - 07/26/2007	\$22,246.61	-1,588.39
07/27/2007 - 07/30/2007	\$19,246.61	-4,588.39

4. The check which caused the balance to fall below that required to be present in order to safeguard the funds of Ms. Fortune was check no. 3258 payable to Garland Watlington. Check no. 3259 which caused the balance to fall even further below what should have been present in the account was also written to Garland Watlington. Both checks were written in the amount of \$3,000.

DATE	Balance	Shortage of "Fortune" Funds
08/01/2007	\$23,833.77	-1.23
08/02/2007 - 08/05/2007	\$22,803.77	-1,031.23

08/06/2007	\$18,186.89	-5,648.11
08/07/2007 - 08/08/2007	\$17,560.89	-6,274.11
08/09/2007 - 08/13/2007	\$21,060.89	-2,774.11
08/14/2007 - 08/15/2007	\$23,489.89	-345.11
08/16/2007	\$18,489.89	-5,345.11
08/17/2007 - 08/19/2007	\$19,379.89	-4,445.11
08/20/2007	\$15,044.71	-8,790.29
08/21/2007 - 08/26/2007	\$14,904.71	-8,930.29
08/27/2007	\$12,904.71	-10,930.29
08/28/2007 - 09/03/2007	\$10,904.71	-12,930.29

5. Beginning on August 6, 2007, as the shortage of funds owed to Ms. Fortune increased, Mr. Watlington continued to write trust checks to himself. There were six (6) checks paid to Mr. Watlington during August 2007, for a total of \$18,000. The full \$23,835 owing to Ms. Fortune was not present in the trust account from August 1 - 31, 2007, as those funds had been depleted by Mr. Watlington in checks to himself or to others with no connection with Ms. Fortune or the Estate of Alan Ray Smolder.

DATE	Balance	Shortage of "Fortune" Funds
09/04/2007 - 09/05/2007	\$8,904.71	-14,930.29
09/06/2007	\$11,454.71	-11,930.29
09/07/2007 - 09/10/2007	\$6,454.71	-16,930.29
09/11/2007	\$6,891.21	-16,493.79
09/12/2007 - 09/19/2007	\$6,737.71	-16,647.29
09/20/2007 - 09/23/2007	\$6,608.71	-16,776.29
09/24/2007	\$4,905.71	-18,479.29

09/25/2007 -		
09/27/2007	\$4,285.71	-19,099.29
09/28/2007 -		
10/02/2007	\$3,997.71	-19,387.29

6. During September 2007, there was never a date when Mr. Watlington had the full balance owed Ms. Fortune in his trust account, and he wrote to himself two checks from the IOLTA account totaling \$7,000.

DATE	Balance	Shortage of "Fortune" Funds
10/03/2007 -		
10/04/2007	\$497.71	-22,887.29

7. The balance available in the trust account (although not the actual funds deposited for Ms. Fortune) was enough to pay Ms. Fortune the amounts owed her from October 5, 2007, through December 23, 2007. The balance only rose above that necessary to have the entire "Fortune" balance available after Mr. Watlington deposited new funds, a check in the amount of \$120,000 payable to John Morgan and Mr. Watlington, into the account.

DATE	Balance	Shortage of "Fortune" Funds
12/24/2007 -		
12/31/2007	\$21,150.18	-2,234.82

8. In December 2007, the trust check which caused the balance to fall below that required to be held for Ms. Fortune was payable to Mr. Watlington for \$5,000. From January 2, 2008, until March 12, 2008, when Ms. Fortune was paid the remaining funds due her for the Estate of Alan Smolder, the balance in the trust account remained above that necessary to deliver full payment to Ms. Fortune.

An unsworn Affidavit from Ms. Fortune was attached to Mr. Watlington's response to the

Committee, explaining that neither The Med or Medicaid were paid after the Judge decided that the payments were not required. Ms. Fortune explained that when the Judge allowed him to do so, Mr. Watlington gave her the proceeds in her son's matter. She expressed her belief that Mr. Watlington did a fine job and was timely and professional in all matters. There is no information in her Affidavit to show that Ms. Fortune was aware that the proceeds due her were not protected by Mr. Watlington at all times in his trust account before the Court said he could disburse them.

II. Johnny Girard Funds

Mr. Watlington settled a matter for Johnny Girard and deposited \$60,000 into his IOLTA trust account on October 31, 2007. On August 1, 2008, Mr. Watlington interplead a total of \$11,028 of the Girard settlement funds into the Craighead County Circuit Court. The \$11,028, which clearly did not belong to Mr. Watlington, should be present in his trust account at all times from the date of deposit on October 31, 2007, until August 1, 2008, when the funds were placed in the registry of the Court. However, the funds did not remain safeguarded in his trust account. From June 9, 2008, through June 16, 2008, the balance in the trust account was \$3,624.11, demonstrating a shortage of Girard funds in the amount of -\$7,403.89.

Instead of addressing the clear fact that the Girard funds were not always held in his trust account and maintained until paid, Mr. Watlington explained that this was a simple example of being unable to promptly distribute client funds upon settling the matter. According to Mr. Watlington, he held the funds in trust account as long as possible.

III. Jeffrey Culbertson Funds

1. On December 19, 2007, Mr. Watlington deposited a \$25,000 check payable to Jeffrey Culbertson, Garland Watlington, and Baxter Regional Hospital into his IOLTA trust

account. The Culbertson settlement statement, provided by Mr. Watlington, for the December 19, 2007, deposit shows \$6,598.07 payable to Mr. Culbertson, \$8,250 payable to Mr. Watlington, and the remaining amount of \$10,001.93 payable to Baxter Regional Medical Center on various accounts.

2. A second \$25,000 deposit was made in the Culbertson matter on February 15, 2008, also made payable to Jeff Culbertson, Garland Watlington, and Baxter Regional Medical Center. On that same date, Mr. Watlington wrote a check for "cash" for \$5,000, which he noted as being for Jeff Culbertson. With Mr. Watlington being paid an additional \$8,250 from the second \$25,000 settlement, there remained a balance of \$11,750 to be paid to Mr. Culbertson. On March 7, 2008, Mr. Culbertson was written a check for \$11,675.00.

3. Again Mr. Watlington did not address the fact that he did not maintain Mr. Culbertson's funds in his trust account as the Rules of Professional Conduct require. He stated that the delay in providing the funds to Culbertson was a result of his trying somehow to maximize Culbertson's recovery. Mr. Watlington also explained in his response that Culbertson and he agreed for Watlington to hold some of the funds for payment for work performed by Watlington on other, unidentified matters for Mr. Culbertson.

4. An unsworn Affidavit of Jeff Culbertson is attached to the Response of Mr. Watlington. There is no mention that he has knowledge that for periods of time the full funds owed to him were not present and maintained in the trust account. He stated that he received funds from Mr. Watlington and that he (Culbertson) believes Mr. Watlington to be a good lawyer and a good person. The affidavit does not mention other legal work Watlington allegedly was to do for Culbertson.

5. From the time of deposit of the first settlement check, which was endorsed by Mr. Watlington on behalf of Baxter Regional Medical Center, \$10,001.93 should have remained present at all times in the IOLTA trust account until paid to Baxter Regional Medical Center or Mr. Culbertson, if Baxter Regional Medical Center released its claim on the funds.

6. Beginning on June 9, 2008, there was a shortage of the Culbertson /Baxter funds in the Watlington Trust Account.

Date	Balance	Shortage of Culbertson / Baxter Regional Funds
06/09/2008 - 06/16/2008	\$3,624.11	-6,377.82

7. The balance only rose about the required minimum following deposit by Mr. Watlington of new funds from other clients' recoveries. There remained enough funds to pay Mr. Culbertson's bills as listed on the settlement statement prepared by Mr. Watlington from June 17, 2008, until August 25, 2008. The funds which made this possible were not the funds of Mr. Culbertson's settlement, as those had already been depleted by Mr. Watlington.

Date	Balance	Shortage of Culbertson / Baxter Regional Funds
08/25/2008	\$7,449.87	-2,552.06
08/26/2008 - 09/24/2008	\$1.87	-10,000.06

8. During the period of time when the full balance was not being maintained to pay the Culbertson bills to Baxter Regional Medical Center, Mr. Watlington wrote checks to himself totaling \$20,000 and also made an unidentifiable transfer from his IOLTA account in the amount of \$7,448 on August 26, 2008.

Date	Balance	Shortage of Culbertson / Baxter Regional Funds
09/25/2008	911.87	-9,090.06
09/26/2008 - 10/05/2008	7,111.87	-2,890.06

9. There was never a time in September 2008 when the balance in Mr. Watlington's trust account was sufficient to pay the medical bills which Mr. Watlington listed on the settlement statement as being paid from the Culbertson settlement funds.

Date	Balance	Shortage of Culbertson / Baxter Regional Funds
10/06/2008	3,876.87	-6,125.26
10/07/2008 - 10/15/2008	876.87	-9,125.26
10/16/2008	-1,123.13	-11,125.06
10/17/2008 - 10/20/2008	-1,992.13	-11,994.06

10. From October 21 - 27, 2008, the balance was sufficient to pay the Culbertson / Baxter Regional Medical Center bills as listed on the settlement sheet prepared by Mr. Watlington and presented to his client, Mr. Culbertson, but only because of new deposits made on behalf of other clients, not Mr. Culbertson.

Date	Balance	Shortage of Culbertson / Baxter Regional Funds
10/28/2008	7,060.00	-2,941.93

11. The check which caused the IOLTA trust account balance to be in the overall negative, on October 16 - 17, 2008, which is never permissible or allowed pursuant to the Rules of Professional Conduct, was a check Mr. Watlington wrote to himself in the amount of \$2,000.

12. From October 29, 2008, until April 9, 2009, the balance in Mr. Watlington's

IOLTA trust account (because of other new client funds) was sufficient to pay the Culbertson / Baxter Regional Medical Center bills set forth on the settlement statement prepared by Mr. Watlington.

Date	Balance	Shortage of Culbertson / Baxter Regional Funds
04/10/2009 - 04/22/2009	\$7,429.92	-2,572.01

13. The check which caused the funds to fall below the minimum required in the Culbertson matter was a \$5,000 check written by Mr. Watlington to himself. The balance in the IOLTA trust account rose above the balance required to pay the Culbertson medical bills following deposit of \$50,000 of new settlement funds paid to Shannon Reed and Attorney Garland Watlington. The balance remained above the \$10,001.93 until May 28, 2009.

Date	Balance	Shortage of Culbertson / Baxter Regional Funds
05/28/2009 - 06/03/2009	\$879.92	-9,122.01

14. The next check which caused the balance to fall below the required amount owed to either Mr. Culbertson or Baxter Regional was a \$10,000 check Mr. Watlington wrote to himself.

Date	Balance	Shortage of Culbertson / Baxter Regional Funds
06/04/2009 - 06/10/2009	\$2,879.92	-7,122.01
06/11/2009	\$-2,120.08	-12,122.01
06/12/2009 - 06/14/2009	\$-9,120.08	-19,122.01
06/15/2009	\$3,579.92	-6,422.01

15. The next check which caused the account balance to return to a negative balance was a \$5,000 check written to Watlington. Mr. Watlington also wrote himself a \$5,000 check two

days later which was returned that same date of June 12, 2009, with no reason given. The bank statement merely says credit - returned check number 3478. The balance remained above that necessary to pay the Culbertson / Baxter Regional Medical bills as listed on the settlement sheet prepared by Mr. Watlington from June 16, 2009, because of a \$11,000 deposit of settlement funds from Safeco Insurance Company to another Watlington client. The overall balance remained above the \$10,001.93 associated solely with the Culbertson settlement from June 16 - July 14, 2009.

Date	Balance	Shortage of Culbertson / Baxter Regional Funds
07/14/2009 - 07/15/2009	\$7,631.78	-2,370.15

16. The balance rose above the necessary minimum balance of the Culbertson / Baxter Regional funds following deposit of \$8,250 on July 16, 2009, funds of another Watlington client. The balance remained above that necessary to pay the Culbertson medical bills from July 16 - August 20, 2009.

Date	Balance	Shortage of Culbertson / Baxter Regional Funds
08/21/2009 - 08/27/2009	\$7,865.03	-2,316.90
08/28/2009 - 08/30/2009	\$4,365.03	-5,636.90
08/31/2009 - 09/08/2009	\$3,865.03	-6,136.90

17. The balance in Mr. Watlington's trust account rose above the minimum balance required for the Culbertson / Baxter Regional Medical bills on September 9, 2009, following a deposit by Mr. Watlington of \$25,238.94, consisting of two checks - one payable to Jesse George, Angela George, and Garland Watlington, and the other to Joseph D. Hughes and

Associates and Attorney Garland Watlington. The balance remained above the minimum which should have been held in the Culbertson funds from September 9, 2009, until April 23, 2010.

Date	Balance	Shortage of Culbertson / Baxter Regional Funds
04/23/2010 - 04/25/2010	\$9,214.05	-787.88

18. The check which caused the balance to once again fall below the required amount for Culbertson was a \$2,500 check to Garland Watlington PLLC on April 23, 2010. The balance was sufficient to pay the Culbertson / Baxter Regional Medical Center bills following a deposit of \$10,496.19 on April 26, 2010, from the “White” matter. The balance remained sufficient to pay all Culbertson requirements until July 22, 2010.

Date	Balance	Shortage of Culbertson / Baxter Regional Funds
07/22/2010 - 08/04/2010	\$8,563.68	-1,438.25

19. On August 5, 2010, a \$3,750 deposit caused the overall trust account balance to again be sufficient to pay the Culbertson / Baxter Regional funds. However, on September 13, 2010, the overall account balance once again fell below that which should have been properly maintained for Culbertson.

Date	Balance	Shortage of Culbertson / Baxter Regional Funds
09/13/2010	\$7,057.99	-2,939.94
09/14/2010 - 09/23/2010	\$4,146.51	-5,855.42
09/24/2010 - 10/03/2010	\$9,146.51	-855.42
10/04/2010 - 10/07/2010	\$6,856.47	-3,145.46

The balance rose above that necessary to pay the Culbertson / Baxter Regional balance following

a \$50,274 deposit of funds of another client on October 8, 2010.

20. There is no payment to Jeff Culbertson or Baxter Regional Medical Center on behalf of Jeff Culbertson made from the IOLTA trust account through April 29, 2011.

In his Response, Mr. Watlington included a statement shown to be signed by Jeff Culbertson on June 11, 2011, showing that Mr. Culbertson told Mr. Watlington not to pay the medical bills. Mr. Watlington says in his own response Baxter Regional would not accept payment from him because they had written the Culbertson debt off. Mr. Watlington gives no specifics just that he was finally able to obtain direct information from Baxter Regional Medical that they had charged off Culbertson's debt and would not accept payment on the account.l

IV. Lois Henley Funds

1. Lois Henley was a client of Mr. Watlington whose settlement funds were not properly maintained and safeguarded at all times in his IOLTA trust account. On August 21 2008, an \$890 deposit was made from AAA Auto Club for the benefit of Lois Henley. The check distributing those funds to one of Ms. Henley's medical providers was dated January 20, 2009. Another \$5,354.00 deposit was made of settlement funds payable to Ms. Henley and Mr. Watlington on October 21, 2008.

2. Pursuant to the unsigned settlement closing statement provided by Mr. Watlington to the Office of Professional Conduct, his attorney's fees plus costs totaled \$1,816.82. Ms. Henley received a \$872.78 trust check on October 23, 2008. With those deductions, there remained a \$2,644.40 balance, to be safeguarded and maintained by Mr. Watlington until paid to the listed medical providers or to Ms. Henley. There is no record of the listed Henley medical providers having been paid from the funds.

3. Ms. Henley received a second check from Mr. Watlington on August 4, 2009, for \$1,774.40, which cleared on August 7, 2009. From October 23, 2008, until August 6, 2009, a “Henley” balance of \$2,644.40 should have always been present in the trust account.

4. Following is a list of the dates and shortage in the account during that time period:

Date	Balance	Shortage of Henley Funds
05/28/2009 - 06/10/2009	\$879.92	-1,764.48

5. The trust account overall balance fell below the \$2,644.00 required amount owed to Ms. Henley when Watlington wrote check #3475 for \$10,000 to himself on may 27, 2009.

Date	Balance	Shortage of Henley Funds
06/11/2009	\$-2,120.08	-4,764.48
06/12/2009 - 06/14/2009	\$-9,120.08	-11,764.48

6. The account balance returned to a negative balance with a \$5,000 check written to Mr. Watlington. Watlington also wrote himself a \$5,000 check two days later which was returned that same date of June 12, 2009. No reason given for the return of the second check, the bank statement merely says credit - returned check #3478. The balance remained above that necessary to pay Ms. Henley until she was paid on August 4, 2009.

7. In addressing this matter, Mr. Watlington asserted that the balance never fell below what should have been present in the account for Ms. Henley. This assertion is in spite of the fact that on at least four (4) days in June 2009, there was a negative overall balance in his trust account. (Emphasis supplied by OPC.)

V. Carolyn Wood Funds

1. Carolyn Woods was a Watlington client whose total funds were not maintained and safeguarded in the IOLTA trust account after deposit. On November 5, 2008, Mr. Watlington deposited a \$50,000 settlement check payable to Carolyn Wood, Mr. Watlington, and Medicare, into his IOLTA trust account. Watlington provided OPC no settlement statement for the Wood matter. Mr. Watlington asserted in information provided to OPC and in a letter to Medicare that the attorney's fees were \$20,000 and costs were \$2,521. This leaves a balance of \$27,479 to be always maintained in his IOLTA trust account until paid to Medicare or Ms. Wood. Neither of them received any funds from his IOLTA trust account from the period of time November 5, 2008, through May 31, 2010.

2. It appears from Mr. Watlington's response that he asserts the fault in the funds not being present in his trust account for the entire time until paid is because Medicare would not advise what their claimed lien was. He also asserts that there would not be an imbalance if he had deposited the Arroyo and Marquez checks totaling \$9,307.00. This assertion overlooks the fact that there were negative balances in his trust account at these times much larger than \$9,307.

3. The full "Wood" \$27,479 was not present in his IOLTA account after November 5, 2008, as shown below.

Date	Balance	Shortage of Wood / Medicare Funds
01/30/2009 - 02/02/2009	\$25,763.67	-1,985.33

4. A \$2,000 check payable to Mr. Watlington caused the total balance in the IOLTA trust account to fall below the amount which should be maintained on behalf of Ms. Wood and / or

Medicare. Following a \$10,000 deposit for another client, the balance was again sufficient to pay Ms. Wood and / or Medicare until February 19, 2009.

Date	Balance	Shortage of Wood / Medicare Funds
02/19/2009 -		
02/24/2009	\$21,379.92	-6,099.08
02/25/2009	\$13,379.92	-14,099.98

5. The total trust balance remained below the amount which should have been present until February 26, 2009, when Mr. Watlington made a deposit of another client's funds into the account. During a month when the funds owed to Ms. Wood and / or Medicare was continuing to be depleted, Mr. Watlington wrote checks to himself or his law firm totaling \$16,000.

Date	Balance	Shortage of Wood / Medicare Funds
03/18/2009 -		
03/22/2009	\$25,792.17	-1,686.83
03/23/2009 -		
03/24/2009	\$15,792.17	-11,686.83
03/25/2009 -		
03/31/2009	\$15,069.92	-12,409.08

6. The trust account continued to show checks written to Mr. Watlington when the balance owed to his client or clients was not being fully maintained. Trust checks totaling \$21,000 were written to Mr. Watlington during March 2009.

Date	Balance	Shortage of Wood / Medicare Funds
04/01/2009 -		
04/08/2009	\$12,569.92	-14,909.08
04/09/2009	\$12,429.92	-15,049.08
04/10/2009 -		
04/22/2009	\$7,429.92	-20,049.08

7. The balance in his IOLTA trust account rose above the total balance required to pay

Ms. Wood and / or Medicare the funds belonging to one or both of them following deposit of \$50,000, funds not related to Ms. Wood, until May 7, 2009.

Date	Balance	Shortage of Wood / Medicare Funds
05/07/2009 -		
05/10/2009	\$19,145.30	-8,333.70
05/11/2009	\$15,879.92	-11,599.08
05/12/2009 -		
05/17/2009	\$21,879.92	-5,599.08
05/18/2009	\$18,879.92	-8,599.08
05/19/2009 -		
05/21/2009	\$15,879.92	-11,599.08
05/22/2009 -		
05/27/2009	\$10,879.92	-16,599.08
05/28/2009 -		
06/03/2009	\$879.92	-26,599.08

8. While the balance belonging to Ms. Wood and / or Medicare was once again being depleted, Mr. Watlington issued checks to himself totaling \$18,000, causing the following overall trust account client funds balances.

Date	Balance	Shortage of Wood / Medicare Funds
06/04/2009 -		
06/10/2009	\$2,879.92	-24,599.08
06/11/2009	-\$2,120.08	-29,599.80
06/12/2009 -		
06/14/2009	-\$9,120.08	-36,599.80
06/15/2009	\$3,579.92	-23,899.08
06/16/2009 -		
06/18/2009	\$14,579.92	-12,899.08
06/19/2009 -		
06/25/2009	\$27,079.92	-399.08
06/26/2009 -		
07/01/2009	\$17,087.53	-10,391.47

9. At no time during July 2009 were there sufficient funds to remit to Ms. Wood and / or Medicare the full funds belonging to them, while Mr. Watlington wrote checks to

himself from his IOLTA trust account totaling \$17,500.

Date	Balance	Shortage of Wood / Medicare Funds
07/02/2009 - 07/09/2009	\$14,587.53	-12,891.47
07/10/2009 - 07/13/2009	\$12,587.53	-14,891.47
07/14/2009 - 07/16/2009	\$7,631.78	-19,847.22
07/17/2009 - 07/19/2009	\$21,581.78	-5,897.22
07/20/2009 - 07/21/2009	\$19,456.78	-8,022.22

10. The total trust account balance remained above that sufficient to pay the balance owing Ms. Wood and / or Medicare from July 22 - 28, 2009, following deposit of \$15,000, funds made payable to Timothy B. Crawford, Garland Watlington, and Spine Arkansas.

Date	Balance	Shortage of Wood / Medicare Funds
07/29/2009	\$20,061.28	-7,417.72
07/30/2009 - 08/03/2009	\$17,376.78	-10,102.22

11. During August 2009, there were only seven (7) days when the overall balance was sufficient to remit to Ms. Wood and / or Medicare the full funds belonging to either one or both of them, and Mr. Watlington issued trust checks to himself totaling \$15,375.

Date	Balance	Shortage of Wood / Medicare Funds
08/04/2009	\$10,830.18	-16,648.82
08/05/2009	\$18,830.18	-8,648.82
08/06/2009	\$18,044.18	-9,434.82
08/07/2009 - 08/09/2009	\$13,769.78	-13,709.22
08/10/2009	\$12,720.78	-14,758.22

12. The total balance in the IOLTA trust account was above the amount necessary to pay Ms. Wood and / or Medicare the full amount belonging to one or both of them from August 11 - 16, 2009, following two deposits made into the IOLTA trust account. Neither of these new deposits had any connection to the funds owing Ms. Wood and / or Medicare.

Date	Balance	Shortage of Wood / Medicare Funds
08/17/2009 -		
08/20/2009	\$24,177.78	-3,301.22
08/21/2009 -		
08/27/2009	\$7,865.03	-19,613.97
08/28/2009 -		
08/30/2009	\$4,365.03	-23,113.97
08/31/2009 -		
09/08/2009	\$3,865.03	-23,613.97

13. A total of \$13,000 was paid out to Mr. Watlington from his IOLTA trust account during the month of August, when the full funds belonging to his client, Ms. Wood, were not present in the account.

14. On September 9, 2009, a \$25,238.94 deposit was made into the Watlington IOLTA trust account. Although it had no connection to Ms. Wood and / or Medicare, that deposit did allow for the total account balance to become more than the minimum necessary to pay the balance owing Ms. Wood and / or Medicare. However, on September 28, 2009, the balance once again fell below that belonging to Ms. Wood and / or Medicare.

Date	Balance	Shortage of Wood / Medicare Funds
09/28/2009 -		
09/30/;2009	\$15,940.81	-11,538.19

15. During September 2009 when the total trust balance owing to Ms. Wood and / or Medicare should have been maintained by Mr. Watlington, he was paid five of the seven checks

issued from his trust account with the five checks totaling \$24,787.82.

16. Following an October 1, 2009, \$32,000 deposit into his trust account, Watlington's balance remained above that belonging to Ms. Wood and / or Medicare until October 20, 2009. There were additional deposits made from October 6 - 16, 2009, totaling \$25,198. On October 20, 2009, the total account balance again fell below the minimum required to fully satisfy the balance owed to Ms. Wood and / or Medicare.

Date	Balance	Shortage of Wood / Medicare Funds
10/20/2009 -		
10/25/2009	\$25,158.72	-2,300.28
10/26/2009	\$21,600.48	-5,878.52

17. Following a \$10,000 deposit of funds of another of Watlington client, on October 27, 2009, the overall account balance was again above that necessary to remit the full balance owing Ms. Wood and / or Medicare.

18. The balance remained above that necessary to pay Ms. Wood and / or Medicare in full only until November 4, 2009.

Date	Balance	Shortage of Wood / Medicare Funds
11/04/2009 -		
11/09/2009	\$26,515.98	-963.02
11/10/2009 -		
11/15/2009	\$23,982.28	-3,496.72
11/16/2009	\$19,982.28	-7,496.72
11/17/2009 -		
11/18/2009	\$15,135.86	-12,343.14
11/19/2009 -		
11/22/2009	\$18,035.86	-9,443.14
11/23/2009	\$17,035.86	-10,443.14
11/24/2009	\$16,036.86	-11,442.14
11/25/2009 -		
12/02/009	\$13,536.86	-13,942.14

19. In December 2009, when once again Mr. Watlington did not protect his client Wood's full funds, he wrote checks totaling \$12,000 to himself from his IOLTA trust account.

Date	Balance	Shortage of Wood / Medicare Funds
12/03/2009 -		
12/14/2009	\$12,402.36	-15,076.64
12/15/2009	\$17,402.36	-10,076.64
12/16/2009 -		
12/17/2009	\$26,333.36	-1,145.64
12/18/2009 -		
12/22/2009	\$25,294.36	-2,184.64
12/23/2009 -		
12/28/2009	\$25,002.66	-2,476.34
12/29/2009	\$20,002.66	-7,476.34
12/30/2009		
01/04/2010	\$17,241.40	-10,237.60

20. In January 2010, when the total trust account balance was never sufficient to pay Ms. Wood and / or Medicare in full, four of the six checks issued from his account, totaling \$14,039, went to Watlington.

Date	Balance	Shortage of Wood / Medicare Funds
01/05/2010 -		
01/07/2010	\$26,548.40	-930.60
01/08/2010 -		
01/13/2010	\$21,548.40	-5,930.60
01/14/2010 -		
01/19/2010	\$21,305.40	-6,173.60

21. On January 20, 2010, the total trust balance again became more than required to pay Ms. Wood and / or Medicare the full funds belonging to one or both of them. The balance remained above the minimum required after deposits of \$19,459.76, \$2,750 and \$50,000, all of funds of other Watlington clients.

22. The total trust account balance remained above that necessary to pay the full funds

owing to Ms. Wood and / or Medicare until March 30, 2010.

Date	Balance	Shortage of Wood / Medicare Funds
03/30/2011	\$26,629.75	-849.25

23. During April 2010, when Mr. Watlington should have held a trust account amount sufficient to remit to Ms. Wood and / or Medicare the full balance owing to one or both of them, he issued to himself or his law firm trust checks totaling \$16,608.50.

Date	Balance	Shortage of Wood / Medicare Funds
04/01/2010	\$22,629.75	-4,849.25

24. The overall trust account balance remained above the \$27,479 owing Ms. Wood and / or Medicare from April 2 - 4, 2010, following a deposit consisting of funds belonging to other Watlington clients.

Date	Balance	Shortage of Wood / Medicare Funds
04/05/2010 - 04/12/2010	\$23,664.05	-3,814.95
04/13/2010 - 04/15/2010	\$15,714.05	-11,764.95
04/16/2010 - 04/22/2010	\$11,714.05	-15,764.95
04/23/2010 - 04/25/2010	\$9,214.05	-18,264.95
04/26/2010 - 04/27/2010	\$19,710.24	-7,768.76
04/28/2010	\$14,710.24	-12,768.76
04/29/2010 - 05/05/2010	\$14,000.24	-13,478.76

25. Of the eight (8) checks issued in April 2010 from Mr. Watlington's IOLTA trust account, six (6), totaling \$23,450, were paid to Mr. Watlington's law firm.

Date	Balance	Shortage of Wood / Medicare Funds
05/06/2010 -		
05/10/2010	\$12,000.24	-15,478.76
05/11/2010	\$15,625.24	-11,853.76
05/12/2010 -		
05/16/2010	\$13,625.24	-13,853.76
05/17/2010 -		
05/19/2010	\$18,844.24	-8,634.76
05/20/2010 -		
05/24/2010	\$16,844.24	-10,634.76

26. The overall balance in Mr. Watlington's IOLTA trust account again became enough to pay to Ms. Wood and / or Medicare the full funds belonging to one or both of them following a \$20,000 deposit on May 25, 2010, in a check payable to Garland Watlington from Sheri Allgeier, Estate of Bernard C. Low.

27. All four checks issued on his IOLTA trust account during May 2010, were to Mr. Watlington and totaled \$13,500.

28. On June 2, 2010, the overall trust account balance again fell below the \$27,479, which Watlington was required to maintain for the Wood / Medicare funds.

Date	Balance	Shortage of Wood / Medicare Funds
06/02/2010 -		
06/03/2010	\$27,075.49	-400.51
06/04/2010 -		
06/08/2010	\$25,075.49	-2,400.51
06/09/2010 -		
06/15/2010	\$23,075.49	-4,400.51
06/16/2010 -		
06/17/2010	\$21,075.49	-6,400.79

29. The overall balance rose above the \$27,479, owed to Ms. Wood and / or Medicare on June 18, 2010, following a deposit of \$25,000. By June 25, 2010, the overall account was below

that amount again.

Date	Balance	Shortage of Wood / Medicare Funds
06/25/2010 - 06/30/2010	\$17,503.49	-9,975.51
07/01/2010 - 07/05/2010	\$16,285.49	-11,193.51
07/06/2010	\$26,128.49	-1,350.51
07/07/2010	\$24,628.49	-2,850.51
07/08/2010	\$22,128.49	-5,350.51
07/09/2010 - 07/20/2010	\$18,128.49	-9,350.51
07/21/2010	\$16,128.49	-11,350.51
07/22/2010 - 08/04/2010	\$8,563.58	-18,915.42

30. In August 2010, when the full balance owing Ms. Wood and / or Medicare was never present in his trust account, Mr. Watlington wrote himself checks totaling \$11,000.

Date	Balance	Shortage of Wood / Medicare Funds
08/05/2010 - 08/09/2010	\$12,313.68	-15,165.32
08/10/2010 - 08/12/2010	\$10,988.48	-16,490.52

31. The overall balance in the trust account rose above the \$27,479 following deposit of \$26,000 of another client's funds on August 13, 2010.

32. Although Mr. Watlington was aware of the OPC trust account audit by August 2010, and knew client funds were missing in the account, he wrote checks to himself totaling \$26,452.52 out of his trust account in August 2010,

Date	Balance	Shortage of Wood / Medicare Funds
09/02/2010 - 09/09/2010	\$14,657.99	-12,821.01

09/10/2010 -		
09/12/2010	\$26,657.99	-821.01
09/13/2010	\$7,057.99	-20,421.01
09/14/2010 -		
09/23/2010	\$4,146.51	-23,332.49
09/24/2010 -		
10/03/2010	\$9,146.51	-18,332.49
10/04/2010 -		
10/07/2010	\$6,856.47	-20,622.53

33. On October 8, 2010, Mr. Watlington deposited \$50,274 (SOURCE?) into his trust account. From those funds, Mr. Watlington wrote a check to Carolyn Wood for \$12,805.88. The Medicare portion of the funds, \$14,673.12, was paid through the account on November 9, 2010. It took a deposit of either funds belonging to Mr. Watlington or to another client before Mr. Watlington could pay to Ms. Wood and Medicare the \$27,479.00 balance owing both, although he should have been properly safeguarding those funds since the Wood deposit on November 2008.

VI. Virginia Woodham / Estate of Lucy Whaley Funds

1. On November 20, 2008, Mr. Watlington deposited into his IOLTA trust account \$41,000 payable to Virginia Woodham, Administratrix, and Garland Watlington. The funds were to be held until an Order of Distribution, in the *Estate of Lucy Whaley, Deceased*, Cleburne County Probate Case PR2006-25-2, was entered by the presiding Judge.

2. Mr. Watlington responded to the Committee that Ms. Woodham was paid as soon as the Court allowed him to do so. He explained that there was no issue with there not being enough funds in his trust account at all times, and that Ms. Woodham had no complaints. He did not address that the full Woodham/Whaley funds were not maintained in the trust account from the time of deposit until the date of the Order allowing distribution. In fact, on the date

recited in the body of the Order allowing distribution, Mr. Watlington's trust account did not have a balance sufficient to pay all the funds owed to Ms. Whaley.

3. Mr. Watlington has asserted that \$16,400 of the Whaley Estate funds were costs and fees, so giving credit for that amount, the Whaley Estate funds in his trust account from November 20, 2008, until August 18, 2010, (the date the Order was entered allowing distribution of the funds) should have been never less than \$24,600.

Date	Balance	Shortage of Whaley Estate Funds
02/19/2009 -		
02/24/2009	\$21,379.92	-3,220.08
02/25/2009	\$13,379.92	-11,220.08

4. The overall trust balance remained below the amount which should have been present until February 26, 2009, when Mr. Watlington made deposit of another client's funds into the account. During a month when the funds owed to Ms. Wood and / or the Whaley Estate was continuing to be depleted, Mr. Watlington wrote checks to himself or his law firm totaling \$16,000.

Date	Balance	Shortage of Whaley Estate Funds
03/23/2009 -		
03/24/2009	\$15,792.17	-8,807.83
03/25/2009 -		
03/31/2009	\$15,069.92	-9,530.08

5. Again, when the full balance owed to his client Woods / Whaley was not being maintained, trust checks to Mr. Watlington totaling \$21,000 were written during March 2009.

Date	Balance	Shortage of Whaley Estate Funds
04/01/2009 -		
04/08/20009	\$12,569.92	-12,030.08

04/09/2009	\$12,429.92	-12,170.08
04/10/2009 - 04/22/2009	\$7,429.92	-17,170.08

6. The overall balance in the IOLTA trust account rose above the amount required to pay the Whaley Estate Distribution only following deposit of \$50,000 in a settlement paid to Shannon Reed and Attorney Garland Watlington. Until May 7, 2009, the overall account balance remained above that required (with funds belonging to others) for the Whaley Estate.

Date	Balance	Shortage of Whaley Estate Funds
05/07/2009 - 05/10/2009	\$19,145.30	-5,454.70
05/11/2009	\$15,879.92	-8,720.08
05/12/2009 - 05/17/2009	\$21,879.92	-2,720.08
05/18/2009	\$18,879.92	-5,720.08
05/19/2009 - 05/21/2009	\$15,879.92	-8,720.08
05/22/2009 - 05/27/2009	\$10,879.92	-13,720.08
05/28/2009 - 06/03/2009	\$879.92	-23,720.08

7. While the balance belonging to Ms. Woodam /Whaley Estate was once again being depleted, Mr. Watlington issued trust to himself totaling \$18,000.

Date	Balance	Shortage of Whaley Estate Funds
06/04/2009 - 06/10/2009	\$2,879.92	-21,720.08
06/11/2009	-\$2,120.08	-26,720.08
06/12/2009 - 06/14/2009	-\$9,120.08	-35,720.08
06/15/2009	\$3,579.92	-21,020.08
06/16/2009 - 06/18/2009	\$14,579.92	-10,020.08

(The balance was sufficient to pay the Estate as per the Order of Distribution from June 19, 2009,

through June 25, 2009).

06/26/2009 - 07/01/2009	\$17,087.53	-7,512.47
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8. During July 2009, when there were only six (6) days where there were sufficient funds to remit to the Whaley Estate/Woodham the full funds belonging to them, Mr. Watlington issued trust checks to himself totaling \$17,500.

Date	Balance	Shortage of Whaley Estate Funds
07/02/2009 - 07/09/2009	\$14,587.53	-10,012.47
07/10/2009 - 07/13/2009	\$12,587.53	-12,012.47
07/14/2009 - 07/16/2009	\$7,631.78	-16,968.22
07/17/2009 - 07/19/2009	\$21,581.78	-3,018.22
07/20/2009 - 07/21/2009	\$19,456.78	-5,143.22

9. The overall trust balance remained above that required to pay in full the Whaley Estate / Woodham from July 22 - 28, 2009, following deposit of \$15,000, which were funds payable to Timothy B. Crawford, Garland Watlington, and Spine Arkansas.

Date	Balance	Shortage of Whaley Estate Funds
07/29/2009	\$20,061.28	-4,538.72
07/30/2009 - 08/03/2009	\$17,376.78	-7,223.22

10. During August 2009, when there were only seven (7) days when the overall trust account balance was sufficient to fully pay to the Whaley Estate/Woodham the funds belonging to either one or both of them, Mr. Watlington issued trust checks to himself totaling \$15,375.

Date	Balance	Shortage of Whaley Estate Funds
08/04/2009	\$10,830.18	-13,769.82
08/05/2009	\$18,830.18	-5,769.82
08/06/2009	\$18,044.18	-6,555.82
08/07/2009 - 08/09/2009	\$13,769.78	-10,830.22
08/10/2009	\$12,720.78	-11,879.22

11. The trust account balance was above the amount necessary to fully pay the Whaley Estate/Woodham from August 11 - 16, 2009, following two deposits made into the trust account, neither deposit having connection to the funds owing the Whaley Estate/Woodham.

Date	Balance	Shortage of Whaley Estate Funds
08/17/2009 - 08/20/2009	\$24,177.78	-422.22
08/21/2009 - 08/27/2009	\$7,865.03	-16,734.97
08/28/2009 - 08/30/2009	\$4,365.03	-20,234.97
08/31/2009 - 09/08/2009	\$3,865.03	-20,734.97

12. Trust checks totaling \$13,000 was issued to Mr. Watlington during August 2009, when full funds of the Whaley Estate/Woodham were not present in the trust account.

13. On September 9, 2009, a \$25,238.94 deposit was made into the Watlington trust account. Although the deposit had no connection to the Whaley Estate, that deposit did allow for the overall trust balance to again exceed the minimum necessary to pay the full balance of the Whaley Estate Funds. On September 28, 2009, the overall trust balance once again fell below that belonging to the Whaley Estate/Woodham.

Date	Balance	Shortage of Whaley Estate Funds
09/28/2009 - 09/30/2009	\$15,940.81	-8,659.19

14. During September 2009, when the \$24,600 balance of Whaley Estate Funds should have been maintained by Mr. Watlington, he was paid five of the seven checks from the trust account totaling \$24,787.82. (????)

15. Following an October 1, 2009, deposit into his trust account, Mr. Watlington's balance remained above the amount belonging to the Whaley Estate/Woodham until October 26, 2009. There were additional deposits made from October 6 - 16, 2009, totaling \$25,198. On October 26, 2009, the overall trust account balance again fell below the Whaley Estate full balance.

Date	Balance	Shortage of Whaley Estate Funds
10/26/2009	\$21,600.48	-2,999.52

16. On October 27, 2009, the overall trust balance again exceeded the amount required to pay the full balance owed the Whaley Estate, following a \$10,000 deposit of \$10,000 of funds of another Watlington client.

17. The overall trust balance remained above that necessary to fully pay the Whaley Estate until November 10, 2009.

Date	Balance	Shortage of Whaley Estate Funds
11/10/2009 - 11/15/2009	\$23,982.28	-627.72
11/16/2009	\$19,982.28	-4,627.72
11/17/2009 - 11/18/2009	\$15,135.86	-9,464.14
11/19/2009 - 11/22/2009	\$18,035.86	-6,564.14

11/23/2009	\$17,035.86	-7,564.14
11/24/2009	\$16,036.86	-8,563.14
11/25/2009 - 12/02/2009	\$13,536.86	-11,063.14

18. In December 2009, when Mr. Watlington again did not maintain the full amount of Whaley Estate funds, he issued trust checks to himself totaling \$12,000.

Date	Balance	Shortage of Whaley Estate Funds
12/03/2009 - 12/14/2009	\$12,402.36	-12,197.64
12/15/2009	\$17,402.36	-7,197.64
(Balance above \$24,600 from 12/16/2009 until 12/29/2009)		
12/29/2009	\$20,002.66	-4,597.34
12/30/2009 - 01/07/2010	\$17,241.40	-7,358.60

19. In January 2010, when the trust balance was only sufficient to fully pay the Whaley Estate for thirteen days, four checks, totaling \$14,039, of the six checks paid from the account were payable to Mr. Watlington,

Date	Balance	Shortage of Whaley Estate Funds
01/08/2010 - 01/13/2010	\$21,548.40	-3,051.60
01/14/2010 - 01/19/2010	\$21,305.40	-3,294.60

20. On January 20, 2010, the overall trust balance again became more than the \$24,600 required to fully pay the Whaley Estate. The balance reached this minimum required only after deposits of \$19,459.76, \$2,750 and \$50,000, all for other clients of Mr. Watlington. The balance remained above that necessary to pay the full funds owing to the Whaley Estate until April 1, 2010.

Date	Balance	Shortage of Whaley Estate Funds
04/01/2010	\$22,629.75	-1,970.25

21. The balance remained above the \$24,600 which were clearly the Whaley Estate funds from April 2, 2010, following a deposit consisting of payment for other Watlington Law Firm clients, until April 4, 2010.

Date	Balance	Shortage of Whaley Estate Funds
04/05/2010 - 04/12/2010	\$23,664.05	-935.95
04/13/2010 - 04/15/2010	\$15,714.05	-8,885.95
04/16/2010 - 04/22/2010	\$11,714.05	-12,885.95
04/23/2010 - 04/25/2010	\$9,214.05	-15,385.95
04/26/2010 - 04/27/2010	\$19,710.24	-4,889.76
04/28/2010	\$14,710.24	-9,889.76
04/29/2010 - 05/05/2010	\$14,000.24	-10,599.76

22. Of the eight (8) checks issued by Watlington's trust account in April 2010, six (6) checks, totaling \$23,450, were payable to Mr. Watlington's law firm.

Date	Balance	Shortage of Whaley Estate Funds
05/06/2010 - 05/10/2010	\$12,000.24	-12,599.76
05/11/2010	\$15,625.24	-8,974.76
05/12/2010 - 05/16/2010	\$13,625.24	-10,974.76
05/17/2010 - 05/19/2010	\$18,844.24	-5,755.76
05/20/2010 - 05/24/2010	\$16,844.24	-7,755.76

23. The balance in Watlington's trust account again became enough to pay in full the

Whaley Estate following a \$20,000 deposit on May 25, 2010. All four trust checks issued during May 2010, were payable to Mr. Watlington and totaled \$13,500.

24. The overall balance in the trust account remained above the required Whaley \$24,600 until June 9, 2010.

Date	Balance	Shortage of Whaley Estate Funds
06/09/2010 -		
06/15/2010	\$23,075.49	-1,524.51
06/16/2010 -		
06/17/2010	\$21,075.49	-3,524.51

25. A \$25,000 trust deposit on June 18, 2010, caused the account balance to again exceed the full Whaley Estate balance. On June 25, 2010, the balance once again fell below the full Whaley Estate balance.

Date	Balance	Shortage of Whaley Estate Funds
06/25/2010 -		
06/30/2010	\$17,503.49	-7,096.51
07/01/2010 -		
07/05/2010	\$16,285.49	-8,314.51

26. Following a \$9,843 deposit July 6, 2010, the overall trust balance remained above the Whaley Estate required \$24,600 minimum until July 8, 2010.

Date	Balance	Shortage of Whaley Estate Funds
07/08/2010	\$22,128.49	-2,471.51
07/09/2010 -		
07/20/2010	\$18,128.49	-6,471.51
07/21/2010	\$16,128.49	-8,471.51
07/22/2010 -		
08/04/2010	\$8,563.68	-16,036.32
08/05/2010 -		
08/09/2010	\$12,313.68	-12,286.32

08/10/2010 -		
08/12/2010	\$10,988.48	-13,611.52

27. On August 13, 2010, Mr. Watlington made a deposit into his trust account which brought the overall balance above the \$24,600 owed to the Whaley Estate.

28. On August 31, 2010, the overall trust balance again fell below the \$24,600 owed to the Whaley Estate.

Date	Balance	Shortage of Whaley Estate Funds
08/31/2010 -		
09/01/2010	\$18,205.47	-6,394.53
09/02/2010 -		
09/09/2010	\$14,657.99	-9,942.01

29. On September 10, 2010, Mr. Watlington made a \$12,000 deposit to his trust account which brought the overall balance over the \$24,600 necessary to fully pay to Virginia Woodham as ordered by the probate court. On September 13, 2010, Ms. Woodham was paid the \$24,600 in Whaley Estate funds.

VII. Randy Berscheid Funds

1. Mr. Watlington settled a claim for his client, Randy Berscheid, and deposited the \$25,000 settlement check into his trust account on February 26, 2009. Mr. Berscheid was paid his \$14,200 portion of the settlement in two payments, \$10,934.62 on April 28, 2009 and \$3,265.38 on May 11, 2009. The funds owing to Mr. Berscheid were not fully maintained in the trust account until delivered to him by Mr. Watlington.

Date	Balance	Shortage of Berscheid Funds
04/01/2009 -		
04/08/2009	\$12,569.92	-1,630.08
04/09/2009	\$12,429.92	-1,770.08

04/10/2009 -
04/23/2009 \$7,429.92 -6,770.08

2. On April 24, 2009, when Mr. Watlington wrote Mr. Berscheid the trust check for \$10,934.62 (which was paid by the bank on April 28, 2009), he was only able to do so because he had deposited \$50,000 of Shannon Reed's settlement funds on April 23, 2009.

3. Attached to Mr. Watlington's response to the formal disciplinary complaint is an unsworn Affidavit of Randy Berscheid. Mr. Berscheid set out his understanding that there were funds held back until they (he and Mr. Watlington) could be certain that all medical bills had been paid. There is no information in the Affidavit demonstrating that Mr. Berscheid was made aware that the funds which were to be held back were not present in the trust account at all times until funds were released to him by check issued on April 24, 2009.

VIII. Shannon Reed Funds

1. On April 23, 2009, Mr. Watlington deposited into his IOLTA trust account a \$50,000 settlement check for the benefit of Shannon Reed. According to Mr. Watlington, he wrote a check to Mr. Reed's girlfriend Bonnie Christenson for \$12,350 (at Mr. Reed's direction), Mr. Watlington's fees in the Reed matter were \$20,000, and that there was still \$17,650 left, because of an alleged lien from The Med (a hospital) in the matter. However, \$17,650 was not present in the trust account from April 23, 2009 through May 28, 2010.

2. Mr. Watlington explained that he had to file suit against the Med Hospital to have the lien determined invalid. He also explained that Mr. Reed moved and he (Watlington) had to hire a private investigator to find Reed in order to pay him the remaining funds owed to him in December 2011. What Mr. Watlington does not address, and what Mr. Reed's affidavit does not

mention, is that for long periods of time, the amount which was ultimately paid to Mr. Reed was not present in the trust account from deposit until paid.

3. Following is a breakdown of the dates, balances and shortages of Shannon Reed Funds with regard to the IOLTA trust account of Mr. Watlington.

Date	Balance	Shortage of Reed / The Med Funds
05/11/2009	\$15,879.92	-1,770.08
(05/12/2009 - 05/18/2009 - balance over \$17,650)		
05/19/2009 -		
05/21/2009	\$15,879.92	-1,770.08
05/22/2009 -		
05/27/2009	\$10,879.92	-6,770.08
05/28/2009 -		
06/03/2009	\$879.92	-16,770.08
06/04/2009 -		
06/10/2009	\$2,879.92	-14,770.08
06/11/2009 -	-\$2,120.08	-19,770.08
06/12/2009 -		
06/14/2009	\$-9,120.08	-26,770.08
06/15/2009	\$3,579.92	-14,070.08
06/16/2009 -		
06/18/2009	\$14,579.92	-3,070.08
(06/19/2009 - 06/25/2009 - balance over \$17,650)		
06/26/2009 -		
07/01/2009	\$17,087.53	-562.47
07/02/2009 -		
07/09/2009	\$14,587.53	-3,062.47
07/10/2009 -		
07/13/2009	\$12,587.53	-5,062.47
07/14/2009 -		
07/15/2009	\$7,631.78	-10,018.22
07/16/2009	\$15,881.78	-1,768.22
(07/17/2009 - 07/29/2009 - balance over \$17,650)		
07/30/2009 -		
08/03/2009	\$17,636.78	-13.22
08/04/2009	\$10,830.18	-6,819.82
(08/05/2009 - 08/06/2009 - balance over \$17,650)		
08/07/2009 -		
08/09/2009	\$13,769.78	-3,880.22

08/10/2009	\$12,720.78	-4,929.22
(08/11/2009 - 08/20/2009 - balance over \$17,650)		
08/21/2009 -		
08/27/2009	\$7,865.03	-9,784.97
08/28/2009 -		
08/30/2009	\$4,365.03	-13,284.97
08/31/2009 -		
09/08/2009	\$3,865.03	-13,784.97
(09/09/2009 - 09/27/2009 - balance over \$17,650)		
09/28/2009 -		
09/30/2009	\$15,940.81	-1,709.19
(10/01/2009 through 11/16/2009 - balance over \$17,650)		
11/17/2009	\$15,135.86	-2,514.14
(11/18/2009 through 11/22/2009 - balance over \$17,650)		
11/23/2009	\$17,035.86	-614.14
11/24/2009	\$16,036.86	-1,613.14
11/25/2009 -		
12/02/2009	\$13,536.86	-4,113.94
12/03/2009 -		
12/14/2009	\$12,402.36	-5,247.64
12/15/2009	\$17,402.36	-247.64
(12/16/2009 through 12/29/2009 - balance over \$17,650)		
12/30/2009 -		
01/04/2010	\$17,241.40	-408.60
(01/05/2010 through 05/05/2010 - balance over \$17,650)		
05/06/2010-		
05/10/2010	\$12,000.24	-5,649.76
05/11/2010	\$15,625.24	-2,024.76
05/12/2010 -		
05/16/2010	\$13,625.24	-4,024.76
(05/17/2010 through 05/19/2010 - balance over \$17,650)		
05/20/2010 -		
05/24/2010	\$16,844.24	-805.76
(05/25/2010 through 06/25/2010 - balance over \$17,650).		
06/25/2010 -		
06/30/2010	\$17,503.49	-146.51
07/01/2010 -		
07/05/2010	\$16,285.49	-1,364.51
(07/06/2010 through 07/20/2010 - balance over \$17,650)		
07/21/2010	\$16,128.49	-1,521.51
07/22/2010 -		
08/04/2010	\$8,563.68	-9,086.32

08/05/2010 -		
08/09/2010	\$12,313.68	-5,336.32
08/10/2010 -		
08/12/2010	\$10,988.48	-6,661.52
(08/13/2010 through 09/01/2010 - balance over \$17,650)		
09/02/2010 -		
09/09/2010	\$14,657.99	-2,992.01
(09/10/2010 through 09/12/2010 - balance over \$17,650)		
09/13/2010	\$7,057.99	-10,592.01
09/14/2010 -		
09/23/2010	\$4,146.51	-13,503.49
09/24/2010 -		
10/03/2010	\$9,146.51	-8,503.49
10/04/2010 -		
10/07/2010	\$6,856.47	-10,793.53
(10/08/2010 through 04/29/2011 - balance over \$17,650).		

4. Mr. Watlington provided a Reed settlement closing statement showing that he took another one-third attorney fee from the \$17,650 and paid Mr. Reed \$10,335 after deducting payment of \$235 in costs.

Mr. Watlington acknowledged that he may not have strictly complied with Rule 1.5(c) in all cases. He explained there was generally correspondence that verified all of the disbursements and distributions in the cases to all clients. He also admitted to an extent and denied to an extent that he violated Rule 1.5(a)(1). According to Mr. Watlington, the clients were never in jeopardy and there was never a lack of funds to pay the clients when they were due. He did acknowledge (strictly from an accounting point of view) that specifically identifiable funds were not always in the trust account at the level they should have been. Mr. Watlington asserted that he has implemented a strict record keeping and settlement process to prevent this sort of error from occurring again.

OVERALL TRUST ACCOUNT SHORTAGE

The OPC audit revealed a maximum overall trust account funds “shortage” of \$91,345.41 occurred on June 12-14, 2009, for funds belonging to clients Culbertson, Wood, Henley, Whaley Estate/Woodham, Berscheid, and Reed.

RULE VIOLATIONS

Upon consideration of the formal complaint and attached exhibit materials, the response to it, other matters before it, and the Arkansas Rules of Professional Conduct, Panel B of the Arkansas Supreme Court Committee on Professional Conduct finds:

1. That Mr. Watlington’s conduct violated Rule 1.5(c), when Mr. Watlington did not prepare and provide his client with a statement advising the outcome of the matter and displaying the remittance due the client and the method of its determination in the Janetta Fortune / Alan Ray Smolder Estate matter; when Mr. Watlington did not prepare and provide his client, Lois Henley, with a statement advising the outcome of her legal matter and displaying the remittance due her and the method of its determination at the time of final settlement of her legal matter, although his representation of her was based on a contingent fee contract; when , although the fee was contingent in nature, Mr. Watlington did not prepare and provide his client, Carolyn Wood, with a statement advising the outcome of her legal matter and showing the remittance due her and the method of its determination at the time of her recovery; when there was no statement prepared at the time of settlement or recovery in the Virginia Woodham / Estate of Lucy Whaley matter by Mr. Watlington although his fee was contingent in nature; when following settlement of the Randy Berscheid matter, Mr. Watlington did not prepare and provide Mr. Berscheid with a statement advising the outcome of the matter and the remittance due the client and the method of

its determination; and, when following settlement of the Shannon Reed matter, Mr. Watlington did not prepare and provide Mr. Reed with a statement advising the outcome of the matter and the remittance of the client and the method of its determination. Rule 1.5(c) requires that upon completion of a contingent fee matter, the lawyer shall provide the client with a written statement stating the outcome of the matter and, if there is a recovery, showing the remittance to the client and the method of its determination.

2. That Mr. Watlington's conduct violated Rule 1.15(a)(1), because Mr. Watlington failed to hold the funds of Janetta Fortune, Special Administrator of the Estate of Alan Ray Smolder, in his trust account separate from his own funds from the time of deposit until the time of full payment to Ms. Fortune; because Mr. Watlington failed to hold the funds of Johnny Girard in his trust account and separate from his own funds from the time of deposit on October 31, 2007, until the balance of \$11,028 was deposited into the registry of the court; because Mr. Watlington failed to hold the funds of Jeffrey Culbertson and or Baxter Regional Medical Center in his trust account and separate from his own funds from the time of deposit. \$10,001.93 should have been present in the trust account from the date of deposit of December 19, 2007, but by June 9, 2008, the full balance was not present; because Mr. Watlington failed to hold the funds of Lois Henley in his trust account and separate from his own funds from the time of deposit on October 23, 2008, until the full amount was paid to Ms. Henley; because Mr. Watlington failed to hold the funds of Carolyn Wood and / or Medicare in his trust account and separate from his own funds from the time of deposit until the full amount was paid to Ms. Wood and Medicare; because Mr. Watlington failed to hold the funds of Virginia Woodham / Estate of Lucy Whaley in his trust account and separate from his own funds from the time of deposit until the full amount was paid

to Virginia Woodham as ordered by the Cleburne County Probate Judge; because Mr. Watlington failed to hold the funds of Randy Berscheid in his trust account and separate from his own funds from the time of deposit on February 2, 2009; and, because Mr. Watlington failed to hold the funds of Shannon Reed or The Med in his trust account and separate from his own funds from the time of deposit on April 23, 2009, until paid out much later. Rule 1.15(a)(1) requires that a lawyer hold property of clients or third persons, including prospective clients, that is in a lawyer's possession in connection with a representation separate from the lawyer's own property.

3. That Mr. Watlington's conduct violated Rule 1.15(a)(5) because after receiving funds on December 19, 2007, \$10,001.93 of which belonged to Mr. Watlington's client, Jeffrey Culbertson or Mr. Culbertson's medical provider, Baxter Regional Medical Center, Mr. Watlington failed to promptly deliver to Mr. Culbertson and /or Baxter Regional Medical Center the funds received, deposited into his account but then used for purposes other than to promptly deliver to those entitled to the funds; because after receiving funds on October 21, 2008, for the benefit of Lois Henley and / or her medical providers, Mr. Watlington did not promptly deliver the full amount of funds owing to Ms. Henley, but rather used the funds for purposes other than to deliver the funds to his client, Lois Henley, until August 2009, when Ms. Henley received another check from Mr. Watlington; because after receiving funds on November 5, 2008, which included \$27,479 to be paid to Carolyn Wood and / or Medicare, Mr. Watlington did not promptly deliver the funds to his client Ms. Wood, or to Medicare the portions due each, Ms. Wood did not receive any funds from Mr. Watlington until October 2010 and Medicare did not receive the funds to which it was entitled until November 9, 2010; because after receiving funds on November 20, 2008, a portion of which was due and owing Virginia Woodham in the Estate of Lucy Whaley,

and after receiving an Order from the Probate Judge on August 18, 2010, to release the funds to Ms. Woodham, Mr. Watlington did not promptly deliver the funds to Ms. Woodham, who did not receive the funds until September 13, 2010; because after receiving funds on February 26, 2009, for settlement of a claim pursued by Mr. Watlington for his client, Randy Berscheid, Mr. Watlington did not promptly deliver the funds to Mr. Berscheid; and, because after receiving funds on April 23, 2009, for settlement of a claim for his client, Shannon Reed, Mr. Watlington failed to promptly deliver to Shannon Reed and / or The Med, the remaining balance of the funds in the amount of \$17,650. Rule 1.15(a)(5) requires that upon receiving funds or other property in which a client or third person has an interest, a lawyer shall notify the client or third person in writing. Except as stated in this Rule or otherwise permitted by law or by agreement with the client, a lawyer shall promptly deliver to the client or third person any funds or other property that the client or third person is entitled to receive.

4. That Mr. Watlington's conduct violated Rule 1.15(b)(1), when Mr. Watlington failed to maintain the funds of Janetta Fortune, Special Administrator of the Estate of Alan Ray Smolder, in his trust account from the time of deposit until the time of full payment to Ms. Fortune; when Mr. Watlington failed to maintain the funds of Johnny Girard in his trust account and separate from his own funds from the time of deposit, October 31, 2007, until the balance of \$11,028 was deposited into the registry of the court on August 1, 2008; when Mr. Watlington failed to maintain the funds of Jeffrey Culbertson and or Baxter Regional Medical Center in his trust account from the time of deposit until complete disbursement was made; when Mr. Watlington failed to maintain the funds of Lois Henley in his trust account from the time of deposit, October 23, 2008, until the full amount was paid to Ms. Henley; when Mr. Watlington

failed to maintain the funds of Carolyn Wood and / or Medicare in his trust account from the time of deposit, November 5, 2008, until the full amount was paid to Ms. Wood and Medicare; when Mr. Watlington failed to maintain the funds of Virginia Woodham / Estate of Lucy Whaley in his trust account from the time of deposit, November 28, 2008, until the full amount was paid to Virginia Woodham as ordered by the Cleburne County Probate Judge; when Mr. Watlington failed to maintain the funds of Randy Berscheid in his trust account from the time of deposit, February 2, 2009 until full payment was made; and, when Mr. Watlington failed to maintain the funds of Shannon Reed or The Med in his trust account from the time of deposit, April 23, 2009, until complete disbursement was made. Rule 1.15(b)(1) requires that funds of a client be deposited and maintained in one of more separate and clearly identifiable trust accounts in the state where the lawyer's office is situated, or elsewhere with the consent of the client or third person.

WHEREFORE, it is the decision and order of the Arkansas Supreme Court Committee on Professional Conduct, acting through its authorized Panel B, that **GARLAND WATLINGTON**, Arkansas Bar ID# 95223, be, and hereby is, **REPRIMANDED** for his conduct in this matter. In addition, Mr. Watlington is ordered to pay costs in this matter pursuant to Section 18.A. of the Procedures in the amount of \$50. Further, Mr. Watlington is ordered to pay a **\$7,500.00 FINE** pursuant to Section 18.B of the Procedures. The fine and costs assessed herein, totaling \$7,550, shall be payable by cashier's check or money order payable to the "Clerk, Arkansas Supreme Court" delivered to the Office of Professional Conduct within thirty (30) days of the date this Findings and Order is filed of record with the Clerk of the Arkansas Supreme Court.

Panel B has also ordered Mr. Watlington to provide monthly audits of his trust account to

the Office of Professional Conduct by the 15th of each month for a period of twenty-four (24) months. The audits are to be conducted by a Certified Professional Accountant and Mr. Watlington shall bear the costs of the CPA's audit. The monthly audits shall demonstrate with specificity the opening balance for each month with the amount owed to each client, a complete list of activity in the account including pay out and receipt of funds for each specific client, and the ending balance each month with the amount owed in each client's specific matter. Settlement statements for each client in each case settled during the month settled and any disbursements from the total settlement shall be provided with the monthly audit information as well.

ARKANSAS SUPREME COURT COMMITTEE ON
PROFESSIONAL CONDUCT - PANEL B

By: Henry Hodges
Henry Hodges, Acting Chair, Panel B

Date: 5-2-12