

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

IN RE: SUSAN GORDON GUNTER
Arkansas Bar ID # 81078
CPC Docket No. 2012-026

CONSENT FINDINGS AND ORDER

The formal charges of misconduct upon which this Findings and Order is based were developed from information provided to the Committee by Darlene Carvin in May 2010. The information related to the representation of Carvin in 2001-2008 by Respondent Susan Gordon Gunter, an attorney practicing primarily in Little Rock, Pulaski County, Arkansas. On May 25, 2012, Respondent was served with a formal Complaint, to which she filed a Response, and to which rebuttal was filed. Panel B considered the case on August 17, 2012. Respondent Gunter was notified of the panel action and requested a hearing. "Consent" negotiations ensued between Gunter and the Executive Director which led to the submission of a proposed disposition to Panel A.

Carvin was divorced in 1991 from the late Melvyn Bell, a prominent Arkansas businessman. Prior to 1997, Carvin employed Hot Springs attorney Janie Evins to represent Carvin in certain legal matters. In early 1997, to finance an office real estate purchase, Evins borrowed \$142,000 from a company owned by her client Carvin. Evins did not repay the loan according to its terms, they had other problems, and by 2001 Carvin had terminated her relationship with Evins. By 2000, Carvin had employed Gunter, then a partner in a North Little Rock law firm, for legal services on a variety of matters, including collection of the Evins note. Gunter negotiated a settlement with Evins, drafted the Settlement Agreement, and on January 16, 2002, witnessed the execution of the Settlement Agreement by Evins and Carvin. From early

2002 through 2008, Gunter provided various legal services to Carvin, including filing suit for Carvin against Evins in June 2007, in Garland County Circuit Court when Evins failed to fulfill the terms of the 2002 Settlement Agreement.

In January 2004, Gunter and an LLC owned by Gunter borrowed \$100,000 from a business owned by Carvin, for use by Gunter in a real estate purchase. Gunter prepared the note for the loan and a mortgage, which was never recorded. In April 2006, Gunter borrowed \$20,000 from Carvin for use in a new real estate deal. There was no mortgage as security for this loan. This loan was repaid within two weeks. Relations grew strained between Carvin and Gunter, and by October 2008, Carvin was writing Gunter requesting the return of Carvin's files entrusted to Gunter and repayment of the \$100,000 loan from 2004. Gunter stated that on January 7, 2007, she executed a Replacement Promissory Note of \$100,000 for the original loan Note dated January 7, 2004. Carvin denied knowing of the existence of this alleged 2007 Replacement Note until October 2010 when her attorney, Jeff Pence, received a copy from Gunter in discovery in litigation between Carvin and Gunter.

As a result of the continuing difficulties, Carvin's suit against Evins was dismissed without prejudice in August 2008 for lack of prosecution. Carvin then employed Little Rock attorney James Smith, who refiled the Evins suit in Garland County on August 25, 2009. Carvin then approached Smith about pursuing Gunter on the unpaid \$100,000 loan from 2004. Smith declined, informing Carvin that he would not sue Gunter. Carvin's second suit against Evins in Garland County was dismissed without prejudice in October 2010. Carvin then employed Little Rock attorney Steve Niswanger to refile the Evins case on April 12, 2011, in Pulaski County. Carvin was awarded a judgment of \$166,231 against Evins after a trial on December 6, 2011. In

2013, the judgment was vacated on an appeal by Evins and the case dismissed due to a procedural issue.

After Smith declined to pursue Carvin's claims against Gunter, Carvin employed Little Rock attorney Jeff Pence. Pence wrote Gunter on March 27, 2009, and again on April 22, 2009, about the \$100,000 loan, the files Carvin needed to take possession of from Gunter, and other matters. Gunter did not respond to Pence and these issues were not resolved. On July 1, 2009, Pence filed three lawsuits in Pulaski County Circuit Court for Carvin against Gunter, one on the \$100,000 loan in 2004, one on the files that had not been returned, and a third suit. Pence thereafter communicated with Gunter regularly about the files Carvin needed. Carvin filed her grievance against Gunter at the Office of Professional Conduct (OPC) on May 24, 2010.

Pence had to obtain an Order of Delivery in October 2010, directing the Sheriff to try to obtain Carvin's files from Gunter. That effort was not successful. An Order of February 1, 2011, gave Gunter until February 9, 2011, to deliver Carvin's files or face contempt proceedings. With a trial date of June 6, 2011, looming in the suit on the \$100,000 loan, some files Gunter had were delivered to Pence. Carvin's suit against Gunter, regarding the \$100,000 loan made in 2004, was settled on June 1, 2011, with Gunter giving Carvin a new Note for \$100,000 and a mortgage on a suitably valued property as security.

From June 13, 2011, through November 11, 2011, Pence wrote Gunter frequently, seeking delivery of the remaining Carvin files Gunter was thought to still have. In early 2012, OPC e-mailed Gunter about the remaining Carvin files. On March 5, 2012, Gunter wrote that she had located some older files and would try to get them delivered, and that she would continue to look through her stored files for Carvin files. Between January 30 and May 24, 2012, Stark

Ligon and Gunter exchanged several e-mails, and they had a meeting as Ligon attempted to obtain information from Gunter that might have a bearing on what Rule violation charges should be included in the Complaint being drafted.

At all times from 2000 through 2008, Gunter acted in a fiduciary capacity toward her client Carvin and Carvin's business entities for which Gunter did work, with regard to safeguarding Carvin's property entrusted to Gunter. This property included documents delivered to Gunter by Carvin and Carvin's legal matter files.

In her Response to the Complaint filed by OPC, Gunter offered that several significant financial issues remaining from Carvin's 1991 divorce from Melvyn Bell led Carvin to employ Gunter in 2000. Gunter stated she no longer had her files from her representation of Gunter in many matters, having either turned the files over without making copies or being unable to locate the files. Gunter offered short summaries of twelve (12) matters in which she represented Carvin in some fashion into 2008. Gunter acknowledged representing Carvin in her efforts to settle, collect, and then later sue on the \$142,000 loan to attorney Evins. Gunter claimed she provided Carvin cumulative legal services over a five year period of at least \$25,000 for which Gunter should have credit against any amounts Gunter owed Carvin on the \$100,000 loan.

Gunter claimed the 2007 Replacement Note of \$100,000 allowed Gunter to offset the \$25,000 in fees against the new Note and begin paying interest on the new lower balance or utilize the \$25,000 as interest payments. Gunter claimed she prepared the 2004 mortgage but Carvin did not want it recorded, for reasons having to do with Carvin's potential creditors or judgments. Gunter stated that Carvin got the original 2004 mortgage. Gunter stated she prepared a mortgage with the 2007 Replacement Note, but Carvin did not want it recorded due to

outstanding judgment claims.

Gunter acknowledged the civil case was settled on June 1, 2011, when Gunter gave Carvin a new \$100,000 one-year note and a mortgage on a residential property in North Little Rock. She admitted that the one-year note had not been paid when due on June 1, 2012, and that Gunter was seeking to get Carvin to extend the note while Gunter tried to sell properties to pay the note. Gunter admitted she had failed to timely return Carvin's files that Gunter had in her possession.

Upon consideration of the formal complaint and attached exhibit materials, the "consent" documents, and other matters before it, and the Arkansas Model Rules of Professional Conduct, and the later Arkansas Rules of Professional Conduct, Panel A of the Arkansas Supreme Court Committee on Professional Conduct, with Steven Shults recusing and Michael Mayton sitting in his place, finds:

A. The conduct of Susan G. Gunter violated Model Rule 1.8(a) (2004), in that in January 2004, Gunter borrowed \$100,000 from her then client, Darlene Carvin, through Carvin's business, Atlantis Beauty & Body, LLC, claiming to give Carvin the security of a mortgage on valuable real property in North Little Rock, Pulaski County, Arkansas, owned by Gunter or by an LLC owned by Gunter, when no such a mortgage has ever been recorded of public record; Gunter failed to inform Carvin that the terms of the overall transaction were not fair and reasonable to Carvin, if Carvin was not given the security of a recorded mortgage; Carvin was not informed by Gunter that Carvin should be given a reasonable opportunity to seek the advice of independent counsel in the transaction; and Carvin did not consent in writing thereto to what turned out to be the actual terms of the loan, Note, and what proved to be an unrecorded

mortgage. Model Rule 1.8(a) provides that a lawyer shall not enter into a business transaction with a client or knowingly acquire an ownership, possessory, security or other pecuniary interest adverse to a client [except as permitted herein] - (1) the transaction and terms on which the lawyer acquires the interest are fair and reasonable to the client and are fully disclosed and transmitted in writing to the client in a manner which can be understood by the client; (2) the client is given a reasonable opportunity to seek the advice of independent counsel in the transaction; and (3) the client consents in writing thereto.

B. The conduct of Susan G. Gunter violated Arkansas Rule 1.16(d), in that: (1) By written communications dated October 1, 2008, November 12, 2008, and January 27, 2009, as part of a process that involved Carvin terminating her attorney-client relationship with Gunter, Carvin requested that Gunter deliver to or make available to Carvin files in at least eight client matters of Carvin's. Some of these files were not delivered to Carvin or her designated agent, Jeff Pence, until about March 2011; (2) By a written communication dated March 27, 2009, Carvin's new counsel, Jeff Pence, requested that Gunter immediately transfer to Pence Carvin's many files listed in that letter. Some of these files were not delivered to Carvin or her designated agent until about March 2011; and (3) Unable to obtain Carvin's files, Pence had to file suit on July 1, 2009, to seek the replevin/possession of Carvin's files from Gunter. On September 8, 2009, Pence wrote Gunter asking for immediate delivery of Carvin's files to another Little Rock attorney who officed next door to Gunter. No files were delivered. Thereafter, Pence had to obtain an Order of Delivery from the court on October 1, 2009, for the Pulaski Sheriff to go seize the files from Gunter. The files were not obtained. On April 20, 2010, May 27, 2010, and November 1, 2010, Pence wrote Gunter outlining the Sheriff's inability to obtain the Carvin

files, and again requesting that Gunter deliver the Carvin files. Arkansas Rule 1.16(d) (2005) requires that, upon termination of representation, a lawyer shall take steps to the extent reasonably practicable to protect a client's interests, such as giving reasonable notice to the client, allowing time for employment of other counsel, surrendering papers and property to which the client is entitled and refunding any advance payment of fee or expense that has not been earned or incurred. The lawyer may retain papers relating to the client to the extent permitted by other law.

WHEREFORE, it is the decision and order of the Arkansas Supreme Court Committee on Professional Conduct, acting through its authorized Panel A, that **SUSAN GORDON GUNTER**, Arkansas Bar ID# 81078, be, and hereby is, **REPRIMANDED** for her conduct in this matter, **FINED \$1,000.00**, and assessed \$50.00 case costs. In agreeing to this result, the Panel considered that Respondent had no prior disciplinary sanctions. The fine and costs assessed herein, totaling \$1,050.00, 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.

ARKANSAS SUPREME COURT COMMITTEE
ON PROFESSIONAL CONDUCT - PANEL A

By: /s/ Danyelle Walker, Chair, Panel A

Date: May 17, 2013

Original filed with the Arkansas Supreme Court on
May 17, 2013.