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

IN RE: JANICE W. VAUGHN
ARKANSAS BAR ID #84161
CPC Docket No. 2013-027

BALLOT VOTE 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 James Cameron Lohstoeter on May 1, 2013. The information related to the representation of Janice Lohstoeter Hutchinson and Lori Lohstoeter from 2008 to 2011 by Respondent, Janice W. Vaughn, an attorney practicing primarily in Little Rock, Arkansas. Respondent was served with a formal complaint, supported by the affidavit of James Cameron Lohstoeter and exhibits, to which Vaughn filed a timely response.

1. Vaughn was employed on and since October 15, 2001, as a full-time attorney for the Capital, Conflicts and Appellate Office of the Arkansas Public Defender Commission.

2. Vaughn represented private clients Janice Lohstoeter Hutchinson and Lori Lohstoeter in two lawsuits brought first in May 2008 and refiled in August 2009 against their remaining siblings, and other defendants, involving trusts created by the siblings' parents, who were both deceased prior to the 2008 litigation. The litigation concluded in September 2011.

3. According to Vaughn, and her supervisor and Executive Director at the Public Defender Commission, Didi Sallings, Vaughn represented Ms. Hutchinson and Ms. Lohstoeter *pro bono* in the long litigation and dealings with the feuding family members.

4. According to Ms. Sallings, Vaughn is prohibited in her employment with the

Arkansas Public Defender Commission from conducting the private practice of law for compensation. Vaughn is, likewise, prohibited from using State resources in connection with any legal representation she may undertake *pro bono*.

5. The remaining three Lohstoeter siblings, plus family friend Glenn Geiger, as a trustee, involved in the litigation were required to hire counsel of their own to defend themselves in the actions brought by Vaughn on behalf of her private Lohstoeter clients.

6. Cameron Lohstoeter and Glenn Geiger, as trustees, incurred legal bills totaling \$38,707 in defending the two lawsuits brought by Vaughn, bills which were eventually paid by the Lohstoeter Trust.

7. Sisters Susan Ford and Geia Lohstoeter, sued only in their individual capacities, incurred total legal and expenses bills of \$46,546, for which they were personally responsible.

8. Although Sallings advised that Vaughn is prohibited from engaging in the private practice of law for compensation, the law in that area is much more restrictive. Arkansas Code Annotated section 16-87-304 specifically sets out in section (c)4(C) that “no person who serves as a full-time public defender may engage in the private practice of law.” That provision has been present in the statute at least as far back as 2001, when that specific language was included in Act 1799 of 2001. Despite the clear prohibition against full-time public defenders engaging in the private practice of law, Vaughn has engaged in the private practice of law in two Lohstoeter cases and in approximately fifteen (15) other cases in just Pulaski County, Arkansas, since October 2001. At the time this Complaint was filed, Vaughn had most recently represented a client in a divorce case where the Decree for her client was filed on August 16, 2012.

9. The issues which caused the Lohstoeter family dispute and the litigation revolved around the manner in which the Lohstoeter trusts would be administered following the death of the siblings' mother, Audrey, in 2007. The first lawsuit, Pulaski Circuit No. CV-2008-4915, was filed by Ms. Vaughn on May 7, 2008.

10. On March 1, 2008, two months prior to filing the lawsuit, the telephone records for the Arkansas Public Defender Commission demonstrate that there was an eighty- minute conversation by Vaughn with Lori Lohstoeter, one of Vaughn's private practice clients. While Vaughn was at her job for the Arkansas Public Defender Commission, she was using State resources to speak with Lori Lohstoeter for an extended period of time. Vaughn's telephone communications with Lori Lohstoeter were not related to the work of the Public Defender Commission.

11. Vaughn filed an initial Petition on May 7, 2008, seeking to have Cameron Lohstoeter and Glenn Geiger removed as trustees of the remaining trusts following the death of Audrey Lohstoeter. In addition, although she was not allowed under the terms of her employment with the State to charge a fee for private practice, Vaughn asked for an award of attorney's fees.

12. Shortly after trial commenced, Vaughn moved to non-suit the lawsuit. At the suggestion of the trial court, the parties attempted mediation the day following the non-suit. There was no resolution in or following the mediation.

13. A second, apparently identical, lawsuit, Pulaski Circuit No. 60CV-09-5501, was filed by Vaughn on August 7, 2009, again seeking to remove the trustees.

14. Matters in the litigation concerning the Estate property continued into February

2010.

15. A trial on all issues was held in late August 2010. Judge Moody took the matter under advisement. The Order and Judgment was entered on February 6, 2011. An Amended Order was entered ten (10) days later. Vaughn filed another Motion seeking reconsideration, additional findings of fact and conclusions of law, to reopen and modify judgment and for new trial. Judge Moody entered an Order denying the Motion on March 14, 2011.

16. Three months later, on June 15, 2011, Vaughn filed a Motion to Enforce Judgment and for Contempt. Following a hearing on September 9, 2011, Judge Moody granted the Motion in part and prepared the Orders himself.

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

A. Ms. Vaughn's conduct violated Rule 1.16(a)(1) in that she engaged in the private practice of law on behalf of Janice Lynn (Lohstoeter) Hutchinson and Lori Anne Lohstoeter at a time when she was employed as a full-time public defender with the Arkansas Public Defender Commission. Act 1799 of 2001, codified at Arkansas Code Annotated section 16-87-304, prohibits a full-time public defender from engaging in the private practice of law. Rule 1.16(a)(1) requires that, except as stated in paragraph (c), a lawyer shall not represent a client, or, where representation has commenced, shall withdraw from representation of a client if the representation will result in violation of the Rules of Professional Conduct or other law.

B. Ms. Vaughn's conduct violated Rule 8.4(c) in that (1) she used state resources (*i.e.*, telephone, e-mail, and her office time) for engaging in the private practice of law on behalf of

Lori Lohstoeter and Janice Hutchinson, an improper use of state resources; and (2) she used State authorized "sick leave" on a date when she was attending a lengthy meeting at the Mitchell Law Firm on behalf of Lori Lohstoeter and Janice Hutchinson, individuals for whom Ms. Vaughn was engaging in the private practice of law, while employed full time with the Arkansas Public Defender Commission. Ms. Vaughn's request for sick leave when the leave from her employment as a full-time public defender was not for illness or other reason allowed for use of sick leave is dishonest and a misrepresentation of the purpose of the "sick leave" time available from her public employment. Rule 8.4(c) requires that a lawyer not engage in conduct involving dishonesty, fraud, deceit or misrepresentation.

WHEREFORE, it is the decision and order of the Arkansas Supreme Court Committee on Professional Conduct, acting through its authorized Panel A, that Respondent, **JANICE W. VAUGHN**, Arkansas Bar ID# 84161, be, and hereby is, **CAUTIONED** for her conduct in this matter.

ARKANSAS SUPREME COURT COMMITTEE
ON PROFESSIONAL CONDUCT - PANEL A

By: Steven Shults
Steven Shults, Vice Chair, Panel A

Date: September 26, 2016