

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

IN RE: JANIE M. EVINS, Respondent
Arkansas Bar ID#92068
CPC Docket No. 2010-023

FILED

JUN 24 2010

**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 investigation into a grievance filed by Tina Fisher against Janie Evins, an attorney practicing primarily in Hot Springs, Arkansas. The information related to audit and review of Ms. Evins' IOLTA trust account, solely with regard to the funds obtained for representation of Ms. Fisher in a divorce proceeding, which funds included costs to be expended as a later date.

On March 10, 2010, Respondent was served with a formal complaint, supported by IOLTA Trust Account Records and letters to and from Ms. Evins concerning her trust account and the funds supplied to her by Ms. Fisher. Ms. Evins did not submit a response within the time allowed to do so. Her failure to timely respond, pursuant to Section 9.C(4) of the Procedures, constitutes an admission of the factual allegations of the formal complaint and extinguishes Respondent's right to a public hearing.

Tina Fisher contacted Ms. Evins during January 2008 regarding a divorce proceeding she wished to pursue. Ms. Evins requested payment of \$1740 from Ms. Fisher, which represented \$140 in costs and \$1600 in fees to be earned in the future. Ms. Fisher paid Ms. Evins on January 11, 2008. The account number listed on the check as the account in which the funds were deposited appears to end in the last four digits of 1549. Ms. Evins' IOLTA- registered trust

account ends in the last four digits of 7593. Although at least a portion of these funds remained Ms. Fisher's at the time of receipt by Ms. Evins, they were not placed in an IOLTA trust account as required by the Arkansas Rules of Professional Conduct.

Over the course of the next few months after Ms. Fisher hired Ms. Evins, she changed her mind on various occasions about pursuing a divorce from her husband. She requested a refund on several occasions as well. Finally, in September 2009, Ms. Fisher wrote Ms. Evins requesting a refund. Ms. Evins did not respond to the letter.

After initial review of the grievance of Ms. Fisher, Ms. Evins was written and asked to provide certain information to the Office of Professional Conduct. The information provided by Ms. Evins contains various contacts that Ms. Fisher did not include in her initial grievance form. Those issues appear to be properly addressed by Ms. Evins in her letter of December 28, 2009. Ms. Evins also provided the work log compiled by her concerning Ms. Fisher's legal matter.

In her responsive letter to the Office of Professional Conduct, Ms. Evins averred that the \$140 for costs of filing a divorce action had been maintained in her trust account since receipt from Ms. Evins. She, however, did not provide the January 2008 statement to demonstrate deposit of those funds into her trust account. She was written again and asked to provide that specific documentation. Ms. Evins provided all the trust account monthly statements when requested the second time.

The records demonstrate clearly that there is no deposit of \$1740 into Ms. Evins' trust account during January 2008, one of the monthly statements which Ms. Evins did not supply upon first request. In order for the \$140 costs paid by Ms. Fisher to be present in the trust account, the entire time since payment, those costs would first have to be deposited into the

account. Clearly they were not. As such, the statement by Ms. Evins that those funds were present in her trust account the entire time since receipt from Ms. Fisher is false and misleading.

Further on the monthly statement ending June 30, 2008, (a statement which was not provided by Ms. Evins initially but had to be requested a second time by the Office of Professional Conduct), the daily balance present from June 10, 2008, through June 29, 2008, is \$96.50. Clearly that balance is below the \$140 costs payment made to Ms. Evins by Ms. Fisher and never expended because no divorce action was filed. In addition, from July 2, 2008, through July 7, 2008, the \$140 balance is not present and maintained in the IOLTA trust account. The same is true from September 8, 2008, through September 26, 2008. The September 2008 monthly statement is another statement which was not initially provided but provided after the second request.

The information contained in the IOLTA trust account monthly statements demonstrates at the very least that Ms. Fisher's funds, to be used solely for costs in filing a divorce action, were not properly safeguarded as required by the Arkansas Rules of Professional Conduct. Each instance of the account balance falling below the required balance is also an act of dishonesty because those costs, which belonged to Ms. Fisher until expended, were to be safeguarded by Ms. Fisher.

Given that the advanced payment of fees was not placed in the trust account until earned, the funds belonging to Ms. Fisher were never properly safeguarded by Ms. Evins following receipt. Funds advanced by a client, which Ms. Fisher was, regardless of whether they are for costs to be incurred, legal services to be provided, or future disbursements to third parties, must go into the attorney's trust account. Funds are to be withdrawn when earned and when costs are

expended.

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

1. That Ms. Evins' conduct violated Rule 1.15(a)(1), because upon receipt of the \$1,740 retainer from Ms. Fisher, which was for services to be rendered in the future and also filing fee costs associated with the representation, Ms. Evins failed to place the funds in her IOLTA trust account. Ms. Fisher's funds were not kept separate in a trust account. 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.

2. That Ms. Evins' conduct violated Rule 1.15(b)(2), when she failed to deposit the \$1,740 advanced payment of fee and costs made to her by Ms. Fisher in January 2008, in her IOLTA trust account. Rule 1.15(b)(2) requires that a lawyer shall deposit into a client trust account legal fees and expenses that have been paid in advance, to be withdrawn by the lawyer only as fees are earned or expenses incurred.


3. That Ms. Evins' conduct violated Rule 8.1(a), when she advised in correspondence to the Office of Professional Conduct that the costs paid her by Ms. Fisher were present in her trust account the entire time after receipt, however, those funds of Ms. Fisher were not deposited into the trust account and therefore were never present in the trust account. Rule 8.1(a) requires that a lawyer in connection with a disciplinary matter shall not knowingly make a false statement of material fact.

4. That Ms. Evins' conduct violated Rule 8.4(c), because the failure to place and maintain Ms. Fisher's funds in her trust account from the date of receipt, January 11, 2008, is an act of dishonesty and / or deceit and because Ms. Evins provided a false and misleading statement to the Office of Professional Conduct when she informed OPC in her letter of December 28, 2009, that the advance costs paid by Ms. Fisher was always present in her trust account. The costs were never placed in her trust account. 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 JANIE M. EVINS, Arkansas Bar ID# 92068, be, and hereby is, REPRIMANDED for her conduct in this matter. In addition, pursuant to Section 18.A. of the Procedures, Ms. Evins is assessed the costs of this proceeding in the amount of FIFTY DOLLARS (\$50). Ms. Evins is also ordered to make restitution, pursuant to Section 18.C, for the benefit of Tina Fisher in the amount of ONE HUNDRED FORTY DOLLARS (\$140). Pursuant to Section 18.B. of the Procedures, Ms. Evins is also ordered to pay a fine in the amount of FIVE HUNDRED DOLLARS (\$500). In imposing the sanction in this matter, the Committee specifically considered Ms. Evins' prior disciplinary history pursuant to Section 19.L of the Procedures of the Arkansas Supreme Court Regulating Professional Conduct of Attorneys at Law. For failing to respond to the formal complaint, the Committee, pursuant to Section 9C(3) imposes a separate sanction of a REPRIMAND. The fine, restitution, and costs assessed herein, TOTALING SIX HUNDRED NINETY DOLLARS (\$690), 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: 
T. Benton Smith, Jr., Chair, Panel A

Date: June 2, 2010