

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

IN RE: **JANIE M. EVINS**  
Arkansas Bar ID # 92068  
CPC Docket No. 2012-014

**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 October 2010. The information related to the representation of Ms. Carvin in 1997 by Respondent Evins, an attorney practicing primarily in Hot Springs, Garland County, Arkansas, and the conduct of Evins since then. On April 11, 2012, Respondent Evins was served with a formal complaint, to which she filed a *pro se* response, and rebuttal was then filed. The case was considered at the ballot vote stage by Panel A on July 20, 2012. Thereafter Evins requested a public hearing. Negotiations between the Respondent and her hearing counsel, James H. Williams, III, and the Executive Director resulted in a “discipline by consent” agreement that was presented to Panel B on December 14, 2012, and approved by the Panel. As a license suspension was involved, the case was then presented to the Arkansas Supreme Court, which approved the consent disposition.

**I. FACTUAL BASIS FOR COMPLAINT**

1. In 1997, Janie M. Evins was representing Darlene Carvin in some legal matters. On July 10, 1997, Evins formed Blue Horizon, Inc. for Carvin and registered the new business corporation with the Arkansas Secretary of State, listing Evins as registered agent for service for the corporation. Carvin was the sole owner and source of funds of Blue Horizon. Evins held a position of fiduciary trust regarding Blue Horizon and Carvin, as Evins was an authorized

signatory on the Blue Horizon bank account, and legal counsel to Carvin and Blue Horizon.

2. On July 17, 1997, Blue Horizon/Carvin loaned Evins \$142,000.00 by check payable to “Janie Evins Building Fund” and noted as being for “loan,” for the purchase by Evins of real property owned by William Green at 809 West Grand Avenue, Hot Springs, AR, which Evins would then remodel and use as her law office. Evins entered into this business arrangement and transaction with her current client, Darlene Carvin, without advising her client Carvin in writing of the specific terms of their financial transaction and of the desirability of Carvin seeking the advice of independent legal counsel in the loan transaction.

3. On September 3, 1997, two deeds were obtained by Evins from the Green Family Living Trust (Lot 5) and from William W. Green (part of Lot 4), both to Janie M. Evins as grantee. Evins did not record the deeds. A survey dated March 1984 was also available which showed a boundary line issue on the Southeast corner of the property over onto Lot 4.

4. Nearly two months after the loan, Evins presented Carvin with an executed Note dated September 3, 1997, for the \$142,000 loan, and a mortgage from Evins securing payment of the loan with only Lot 5 of the Green property. Lot 4 was not mentioned in the Mortgage, and was an “encroachment” or boundary issue that had to be dealt with. Evins prepared the Note and Mortgage. The Note called for Evins to make 179 monthly payments of \$960.84 to Blue Horizon, Inc. and a final “balloon” payment of \$100,961.33 by August 1, 2012.

5. Evins and Carvin disagreed over the terms of the note and mortgage, as Carvin originally understood from Evins that after the property had been refurbished by Evins, Evins would refinance the property with a loan from a local lender, repaying Evins’ loan from Carvin in full upon such refinancing and within about ninety (90) days. As a result of this disagreement,

Evins did not record the mortgage. Evins also discovered that tax liens had been filed against her, and that her recording the deeds without recording the mortgage would cloud title to the Green property.

6. On August 3, 1998, attorney William G. Almand, representing Darlene Carvin, wrote Evins setting out the disputed issues between Carvin and Evins regarding the \$142,000 loan and the note and mortgage. Evins made irregular and intermittent payments on the loan until May 1999.

7. On June 14, 1999, William Green died. Evins was the attorney for Green probate estate, Garland Probate No. PR-99-629.

8. On January 16, 2002, Evins and Carvin entered into a Settlement Agreement, prepared by and witnessed by Susan Gunter, by then counsel for Carvin, resolving Carvin's damages claims against Evins. On January 22, 2002, a Warranty Deed (Corrected) was recorded by which the Green Family Trust conveyed the same Lot 5 and part of Lot 4 to Darlene Carvin, pursuant to the terms of the January 2002 Settlement Agreement. On February 22, 2002, Susan Gunter, counsel for Ms. Carvin in the matter, wrote Evins transmitting a copy of a proposed Motion for Corrected Deed to be filed in the Estate of William Green, Garland PR-99-629, to get the Estate to clear a title issue by conveying the Green properties to Ms. Carvin, since the 1997 deeds to Evins from the Green Family Trust were never recorded by Evins. Evins never took action to file the motion in the Green Estate or to obtain corrected deeds from the Green Estate to Carvin.

9. After the 2002 Settlement Agreement was executed, Evins made payments totaling only \$11,000 to Carvin between February 14, 2002, and July 23, 2003, when Evins owed Carvin

\$1,000 per month in payment. On July 29, 2003, Evins sent her Memorandum to Ms. Gunter discussing options to clear up the title discrepancy on the small strip of land in the rear of 809 West Grand on Ms. Carvin's property. By Quitclaim Deed executed April 13, 2005, Carvin obtained title from a Green heir to the part of Lot 4 that was involved in the encroachment issue with her property, as mentioned in paragraph 2 of the 2002 Settlement Agreement.

10. On May 19, 2005, Susan Gunter registered Phoenix Properties of Arkansas, LLC, in which Darlene Carvin was the sole member and held 100% voting interest. On June 22, 2005, Carvin conveyed the "Green-Evins-Carvin" 809 West Grand property to Phoenix Properties of Arkansas, LLC for no exchange of value.

11. On June 19, 2007, Carvin, and her corporation, represented by attorney Susan Gunter, filed Garland Circuit No. CV-07-689 against Janie Evins & the Estate of William Green over the Green property and Evins' \$142,000 loan from Carvin to purchase and remodel the Green property for Evins' law office location. On August 25, 2008, Garland CV-07-689 was dismissed without prejudice for lack of prosecution by Carvin's side. Shortly thereafter, Ms. Carvin terminated her attorney-client relationship with Susan Gunter.

12. On August 25, 2009, Carvin's suit against Evins was refiled by Little Rock attorney James Smith, as Garland Circuit No. CV-09-1251. In March 2010, James Smith withdrew and Josh Hurst of Hot Springs was substituted in as Carvin's attorney. On October 4, 2010, Garland CV-09-1251 was dismissed without prejudice for Carvin's side's failure to file a required and timely pre-trial brief with an approaching trial date of October 6, 2010.

13. On April 12, 2011, Little Rock attorney Steve Niswanger, filed Pulaski Circuit No. CV-11-1785 for Carvin against Evins on the same subject matter, the \$142,000 Note. Evins filed

a Motion to Dismiss, which was denied on July 28, 2001. Evins filed her Answer & Counterclaim on August 8, 2011, seeking credit for Carvin's 2009 sales price of the office property and other relief. 14. On December 6, 2011, the case was tried to the judge. On December 14, 2011, Judgment was filed for Carvin and against Evins for \$166,231.31 based on Evins' breach of the 2002 Settlement Agreement. The trial court allowed Evins no credit against the obligation and judgment amount for funds received by Carvin in selling the office property in 2005 to an LLC that Carvin solely owned and controlled, where no funds changed hands in the sale. Carvin gave Evins full credit for the actual \$85,000 sale price Carvin obtained in 2009 when she sold the property to a third party. The Court also found that Evins made total payments on the loan indebtedness of only \$11,000 from January 16, 2002, through July 23, 2003. On January 13, 2012, Evins filed her Notice of Appeal, and her appeal is pending.

In her Response, Evins contended she did not advise Carvin on legal matters related to Blue Horizon, Inc.; that Carvin, not Evins, was first interested in acquiring the property at 809 West Grand in Hot Springs; that Carvin wanted to operate her Blue Horizon from the property; they finally agreed to buy the property, make renovations, and "flip" the property after making significant improvements. Evins denied there was any "encroachment" on the back side of the property. She stated Carvin knew at the time of the loan that Evins was not in a position to obtain a commercial loan on the property and pay off Carvin. Evins claims attorney William G. "Greg" Almand represented Carvin in the loan transaction, to review the deeds, mortgage, and note Evins supplied to Carvin. Evins stated she vacated the property after Carvin and Evins were unable to work together regarding the note, and Evins thereafter listed the property with a local realtor for \$129,000. Evins claimed that after 2002 Carvin had sole possession of the property;

used it for her own purposes; the property should have produced a \$750 monthly rental if Carvin had rented it; Carvin later sold it; and Evins made the equivalent of full payment to Carvin via payments made to Carvin, the sale price of the property by Carvin, and credit due to Evins for legal work and fees for Carvin.

In rebuttal, Carvin contended she took the property back in the 2002 settlement with Evins; tried to rent it; had to make repairs; got an appraisal of only \$88,000 in August 2003; and listed it with a realtor but the best offer received was in the low \$80,000 range. Carvin finally sold the property to a third party in August 2009 for \$85,000 on a contract that is paying out monthly, and Evins was given full credit for the \$85,000 at trial in December 2011.

## **II. RULES VIOLATIONS**

Upon consideration of the formal Complaint and attached exhibit materials, the consent offer, and other matters before it, and the Arkansas Model Rules of Professional Conduct (1997), Panel B of the Arkansas Supreme Court Committee on Professional Conduct finds:

- A. The conduct of Janie M. Evins violated Model Rule 1.8(a) in that on July 17, 1997, while representing Darlene Carvin and Carvin's business, Blue Horizon, Inc., which corporation Evins formed for Carvin, and standing in a fiduciary and attorney capacity to both, Evins sought and received a loan of \$142,000.00 from Blue Horizon and Carvin for use for Evins' purposes, using legal instruments prepared by Evins, and on terms dictated by Evins and not totally acceptable to Carvin. Evins then failed to record the two Green deeds to Evins and failed to record the mortgage that would have given Blue Horizon/Carvin a perfected security interest in the real property Evins purchased using the loan proceeds from Blue Horizon/Carvin. Carvin

was not given a reasonable opportunity to seek the advice of independent counsel in the transaction.

- B. Model Rule 1.8(a) (1997) provided 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 unless: (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.

### **III. SANCTION**

WHEREFORE, it is the decision and order of the Arkansas Supreme Court Committee on Professional Conduct, acting through its authorized Panel A, that the Arkansas law license of **JANIE M. EVINS**, Arkansas Bar ID# 92068, be, and hereby is, **SUSPENDED FOR ONE (1) MONTH** for her conduct in this matter, and she is assessed standard minimum case costs of \$50.00.

The suspension shall become effective on the date this Findings and Order is filed of record with the Clerk of the Arkansas Supreme Court. The \$50.00 costs assessed herein shall be payable by cashier's check or money order payable to the "Clerk, Arkansas Supreme Court" delivered to the Office of Professional Conduct with 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 B

By: /s/ Barry Deacon, Chair, Panel B

Date: February 20, 2013

Original filed with the Arkansas Supreme Court  
on February 20, 2013.