

BEFORE THE SUPREME COURT COMMITTEE ON PROFESSIONAL CONDUCT

PANEL A

IN RE: MICHAEL BURK DABNEY

Arkansas Bar ID # 76162

CPC Docket No. 2004-097

FINDINGS AND ORDER

The formal charges of misconduct upon which this Findings and Order is based arose from information provided to the Committee by Shawn Morgan of the Jonesboro District Office of the Social Security Administration (SSA). The information related to the representation of nine clients by Respondent in 1999-2003.

On June 3, 2004, Respondent was served with a formal complaint, supported by an affidavit from Shawn Morgan, Assistant District Manager of the Social Security District Office in Jonesboro. According to Mr. Morgan, as a general rule, an attorney usually enters into a fee agreement with a SSA benefits claimant client. The fees are strictly controlled by SSA regulation. The regulation applicable at the times of these cases handled by Mr. Dabney provided for a fee limit an attorney could collect to the lesser of 25% of lump sum back benefits paid up to a maximum of \$4,000.00 once eligibility is certified. (At a date after and not relevant to each of these cases, the maximum legal fee available was raised from \$4,000.00 to \$5,300.00.) For Social Security Disability (SSD) benefits, the SSA will issue two checks. One is to the attorney for the fee authorized by SSA on the SSD claim. The second check is to the claimant for the balance of the lump sum SSD benefits. The SSA will issue a letter to the claimant and the attorney notifying both of the maximum fee the attorney can collect for the case. For Supplemental Security Income (SSI) claims only one check is issued - to the claimant for the full lump sum calculated and awarded. The difference between the two types of claims is that in SSD claims the attorney's fee is "protected" by the fact that the attorney gets a separate check for the fee, whereas on SSI claims the attorney is "unprotected" and must rely on the claimant to pay the attorney's SSA-authorized

fee.

In what Mr. Morgan states are called “concurrent claims,” where the claimant seeks and is awarded both SSD and SSI benefits, the lump sum payments are calculated separately and usually not at the same time. There is also an “offset” calculation process that takes into consideration both awards and fixes the maximum legal fee. As a result, if the attorney takes a fee from the claimant client for the SSI benefits case, and then later receives the separate fee check for the attorney’s fee share of the SSD benefits award, the fee total collected by the attorney from the client and SSA may be in excess of the total amount SSA allows for the combined claims. Since a separate fee check will be issued later to the attorney for the SSD claim, the attorney who receives a fee first from the SSI claimant client would necessarily need to hold that fee in a trust account until the final fee authorization amount is provided by SSA, to make sure that the total fees received are not over the limit allowed by SSA for the claims. By placing the first fee in the trust account, the attorney can then properly make any refund of any excess fees to the client.

What Mr. Morgan called a standard information letter dated April 15, 1999, from the Larry Chase claim file, was sent to the claimant and Mr. Dabney about the lawyer’s fees in SSI claims, and clearly informed Mr. Dabney of the process by which SSI lawyer fees are handled and the maximum amount of fee he was authorized to collect from Mr. Chase, being \$741.00, on the SSI lump sum payment of \$4,958.00 to Mr. Chase made on March 12, 1999. Morgan stated this letter predated the excessive SSI fees Mr. Dabney is shown as collecting from all the other clients listed herein.

Edith Boyce was approved for SSD on 4-19-01 (with retro SSD backpay of \$18,136.66) and for SSI on 4-19-01 (with retro SSI backpay of \$5,477.44). The attorney fee approved and paid on 6-15-01 directly to Mr. Dabney for SSD was \$4,000.00. The attorney fee approved for SSI was \$00.00. Mr. Dabney received attorney fees of \$4,000.00 from SSA and \$1,457.00 from Ms. Boyce, being \$1,457.00 in excess of the total of \$4,000.00 in fees for which he was approved by the SSA.

Anthony Brown was approved for SSD on 5-26-00 (with retro SSD backpay of \$978.20) and for SSI on 5-26-00 (with retro SSI backpay of \$8,607.91). The attorney fee approved and paid on 7-10-00 directly to Mr.

Dabney for SSD was \$2,128.50. The attorney fee approved for SSI was \$620.65. Mr. Dabney received attorney fees of \$2,128.50 from SSA and \$1,536.00 from Mr. Brown, being \$915.35 in excess of the total of \$2,749.15 in fees for which he was approved by the SSA.

Larry Chase was approved for SSD on 3-23-99 (with retro SSD backpay of \$1,590.00) and for SSI on 3-23-99 (with retro SSI backpay of \$4,958.00). The attorney fee approved and paid on 04-99 directly to Mr. Dabney for SSD was \$826.00. The attorney fee approved for SSI was \$741.00. Mr. Dabney received attorney fees of \$826.00 from SSA and \$1,239.50 from Mr. Chase, being \$498.50 in excess of the total of \$2,065.50 in fees for which he was approved by the SSA.

Robin Griggs was approved for SSD on 12-4-00 (with retro SSD backpay of \$820.00) and for SSI on 12-4-00 (with retro SSI backpay of \$7,470.00). The attorney fee approved and paid on 4-1-01 and 9-1-01 directly to Mr. Dabney for SSD was \$3,736.00. The attorney fee approved for SSI was \$264.00. Mr. Dabney received attorney fees of \$3,736.00 from SSA and \$1,867.50 from Ms. Griggs, being \$1,603.50 in excess of the total of \$4,000.00 in fees for which he was approved by the SSA.

Deborah Jones was approved for SSD on 8-24-00 (with retro SSD backpay of \$752.73) and for SSI on 8-24-00 (with retro SSI backpay of \$5,960.04). The attorney fee approved and paid on 9-15-00 and 5-7-01 directly to Mr. Dabney for SSD was \$1,333.25. The attorney fee approved for SSI was \$490.67. Mr. Dabney received attorney fees of \$1,333.25 from SSA and \$1,490.00 from Ms. Jones, being \$999.33 in excess of the total of \$1,823.92 in fees for which he was approved by the SSA.

Barbara Mathis was approved for SSD on 5-25-99 (with retro SSD backpay of \$9,691.90) and for SSI on 5-25-99 (with retro SSI backpay of \$14,166.92). The attorney fee approved and paid on 11-10-99 directly to Mr. Dabney for SSD was \$4,000.00. The attorney fee approved for SSI was \$00.00. Mr. Dabney received attorney fees of \$4,000.00 from SSA and \$1,500.00 from Ms. Mathis, being \$1,500.00 in excess of the total of \$4,000.00 in fees for which he was approved by the SSA.

Lou Don Turpen was approved for SSD on 11-20-00 (with retro SSD backpay of \$176.74) and for SSI on 11-20-00 (with retro SSI backpay of \$5,100.01). The attorney fee approved and paid on 12-12-00 directly to

Mr. Dabney for SSD was \$1,076.25. The attorney fee approved for SSI was \$512.00. Mr. Dabney received attorney fees of \$1,076.25 from SSA and \$1,275.00 from Ms. Turpen, being \$763.00 in excess of the total of \$1,588.25 in fees for which he was approved by the SSA.

Sarah Vaughn was approved for SSD on 6-29-00 (with retro SSD backpay of \$1,955.75) and for SSI on 6-29-00 (with retro SSI backpay of \$9,084.00). The attorney fee approved and paid on 08-00 directly to Mr. Dabney for SSD was \$1,170.00. The attorney fee approved for SSI was \$1,376.75. Mr. Dabney received attorney fees of \$1,170.00 from SSA and \$2,271.00 from Ms. Vaughn, being \$894.25 in excess of the total of \$2,546.75 in fees for which he was approved by the SSA.

James Michael Griffin was approved for SSD on 12-30-99 (with retro SSD backpay of \$13,055.00) and for SSI on 02-00 (with retro SSI backpay of \$6,144.00). The attorney fee approved and paid on 7-31-00 and 10-29-02 directly to Mr. Dabney for SSD was a total of \$4,000.00. The attorney fee approved for SSI was \$00.00. Mr. Dabney received attorney fees of \$4,000.00 from SSA and a net of \$2,363.75 from Mr. Griffin, being \$2,363.75 in excess of the total of \$4,000.00 in fees for which he was approved by the SSA.

Mr. Dabney responded that these cases occurred early in his law practice in Arkansas, when he returned from out-of-state to take over a number of Social Security cases in his late father's law practice. He stated he was confused by the SSA process on fees and "setoff" and should not have held the excess monies as long as he has, and he is ready to make restitution.

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

A. Mr. Dabney's conduct violated Model Rule 1.5(a) in that: (1) the total fee he requested and collected for representing Edith Boyce in her Social Security claims was \$1,457.00 in excess of the fee authorized to him by the Social Security Administration, and he failed to refund the excess fee when notified by Social Security Administration of the fee limit he was authorized; (2) the total fee he requested and collected for representing Anthony Brown in his Social Security claims was \$915.35 in excess of the fee authorized to him by the Social

Security Administration, and he failed to refund the excess fee when notified by Social Security Administration of the fee limit he was authorized; (3) the total fee he requested and collected for representing Larry Chase in his Social Security claims was \$498.50 in excess of the fee authorized to him by the Social Security Administration, and he failed to refund the excess fee when notified by Social Security Administration of the fee limit he was authorized; (4) the total fee he requested and collected for representing Robin Griggs in her Social Security claims was \$1,603.50 in excess of the fee authorized to him by the Social Security Administration, and he failed to refund the excess fee when notified by Social Security Administration of the fee limit he was authorized; (5) the total fee he requested and collected for representing Deborah Jones in her Social Security claims was \$999.33 in excess of the fee authorized to him by the Social Security Administration, and he failed to refund the excess fee when notified by Social Security Administration of the fee limit he was authorized; (6) the total fee he requested and collected for representing Barbara Mathis in her Social Security claims was \$1,500.00 in excess of the fee authorized to him by the Social Security Administration, and he failed to refund the excess fee when notified by Social Security Administration of the fee limit he was authorized; (7) the total fee he requested and collected for representing Loudone Turpen in her Social Security claims was \$763.00 in excess of the fee authorized to him by the Social Security Administration, and he failed to refund the excess fee when notified by Social Security Administration of the fee limit he was authorized; (8) the total fee he requested and collected for representing Sarah Vaughn in her Social Security claims was \$894.25 in excess of the fee authorized to him by the Social Security Administration, and he failed to refund the excess fee when notified by Social Security Administration of the fee limit he was authorized; and (9) the total fee he requested and collected for representing James Griffin in his Social Security claims was \$2,363.75 in excess of the fee authorized to him by the Social Security Administration, and he failed to refund the excess fee when notified by Social Security Administration of the fee limit he was authorized. Model Rule 1.5(a) requires that a lawyer's fee shall be reasonable. The factors to be considered in determining the reasonableness of a fee include the following:

(1) the time and labor required, the novelty and difficulty of the questions involved, and the skill requisite to perform the legal service properly;

(2) the likelihood, if apparent to the client, that the acceptance of the particular employment will preclude other employment by the lawyer;

(3) the fee customarily charged in the locality for similar legal services;

(4) the amount involved and the results obtained;

(5) the time limitations imposed by the client or by the circumstances;

(6) the nature and length of the professional relationship with the client;

(7) the experience, reputation, and ability of the lawyer or lawyers performing the services; and (8) whether the fee is fixed or contingent.

B. Mr. Dabney's conduct violated Model Rule 1.15(a) in that: (1) he failed to place attorney fees collected from his Social Security client Edith Boyce in his attorney trust account until he received the final attorney fee award confirmation letter from the Social Security Administration, thereby failing to maintain the \$1,457.00 excess portion of the attorney fees he collected, and which belonged to his client, in a trust account until the final attorney fee was determined and approved by the Social Security Administration; (2) he failed to place attorney fees collected from his Social Security client Anthony Brown in his attorney trust account until he received the final attorney fee award confirmation letter from the Social Security Administration, thereby failing to maintain the \$915.35 excess portion of the attorney fees he collected, and which belonged to his client, in a trust account until the final attorney fee was determined and approved by the Social Security Administration; (3) he failed to place attorney fees collected from his Social Security client Larry Chase in his attorney trust account until he received the final attorney fee award confirmation letter from the Social Security Administration, thereby failing to maintain the \$498.50 excess portion of the attorney fees he collected, and which belonged to his client, in a trust account until the final attorney fee was determined and approved by the Social Security Administration; (4) he failed to place attorney fees collected from his Social Security client Robin Griggs in his attorney trust account until he received the final attorney fee award confirmation letter from the Social Security Administration, thereby failing to maintain the \$1,603.50 excess portion of the attorney fees he collected, and which belonged to his client, in a trust account until the final attorney fee was

determined and approved by the Social Security Administration; (5) he failed to place attorney fees collected from his Social Security client Deborah Jones in his attorney trust account until he received the final attorney fee award confirmation letter from the Social Security Administration, thereby failing to maintain the \$999.33 excess portion of the attorney fees he collected, and which belonged to his client, in a trust account until the final attorney fee was determined and approved by the Social Security Administration; (6) he failed to place attorney fees collected from his Social Security client Barbara Mathis in his attorney trust account until he received the final attorney fee award confirmation letter from the Social Security Administration, thereby failing to maintain the \$1,500.00 excess portion of the attorney fees he collected, and which belonged to his client, in a trust account until the final attorney fee was determined and approved by the Social Security Administration; (7) he failed to place attorney fees collected from his Social Security client Loudone Turpen in his attorney trust account until he received the final attorney fee award confirmation letter from the Social Security Administration, thereby failing to maintain the \$763.00 excess portion of the attorney fees he collected, and which belonged to his client, in a trust account until the final attorney fee was determined and approved by the Social Security Administration; (8) he failed to place attorney fees collected from his Social Security client Sarah Vaughn in his attorney trust account until he received the final attorney fee award confirmation letter from the Social Security Administration, thereby failing to maintain the \$894.25 excess portion of the attorney fees he collected, and which belonged to his client, in a trust account until the final attorney fee was determined and approved by the Social Security Administration; and (9) he failed to place attorney fees collected from his Social Security client James Griffin in his attorney trust account until he received the final attorney fee award confirmation letter from the Social Security Administration, thereby failing to maintain the \$2,363.75 excess portion of the attorney fees he collected, and which belonged to his client, in a trust account until the final attorney fee was determined and approved by the Social Security Administration. Model Rule 1.15(a) requires that an lawyer shall hold property of clients or third persons that is in a lawyer's possession in connection with a representation separate from the lawyer's own property. Funds of a client shall be deposited and maintained in one or more identifiable trust accounts in the state where the lawyer's office is situated, or elsewhere with the consent of the client or third person. The lawyer or law firm

may not deposit funds belonging to the lawyer or law firm in any account designated as the trust account, other than the amount necessary to cover bank charges, or comply with the minimum balance required for the waiver of bank charges. Other property shall be identified as such and appropriately safeguarded. Complete records of such account funds and other property shall be kept by the lawyer and shall be preserved for a period of five years after termination of the representation.

C. Mr. Dabney's conduct violated Model Rule 3.4(c) in that being acquainted with the rules of the Social Security Administration governing the amount of attorney fees a lawyer could charge and collect that were in place at the time he handled each of these nine cases, he disregarded these rules and collected excessive attorney fees in each case. In disregard of the Social Security Administration award letter amount, he failed to refund to the client the difference in the fee paid him and the fee authorized to him once he received the final fee award letter from Social Security Administration in each case. Model Rule 3.4(c) requires that a lawyer shall not knowingly disobey an obligation under the rules of a tribunal except for an open refusal based on an assertion that no valid obligation exists.

D. Mr. Dabney's conduct violated Model Rule 8.4(c) in that being aware, by letter from the Social Security Administration, of the maximum attorneys fee to which he was entitled in each of the nine (9) cases, and knowing he had collected and held excessive funds in each case, he failed to refund the excess funds he held to each of these clients, thereby knowingly depriving these clients of funds to which they were entitled by law. Model Rule 8.4(c) requires that a lawyer shall 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 **Michael Burk Dabney**, Arkansas Bar ID# 76162, be, and hereby is, **reprimanded** for his conduct in this matter and assessed costs of \$50.00. He is also ordered to pay restitution totaling \$10,994.68 for the benefit of Edith Boyce (\$1,457.00), Anthony Brown (\$915.35), Larry J. Chase (\$498.50), Robin Griggs (\$1,603.50), Deborah Jones (\$999.33), Barbara Mathis (\$1,500.00), Lou Don

Turpen (\$763.00), Sarah Vaughn (\$894.25), and James M. Griffin (\$2,363.75). The restitution and 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 A

By: _____

Gwendolyn D. Hodge, Chair, Panel A

Date: _____