

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

IN RE: KENNETH G. FUCHS, Respondent

Arkansas Bar ID# 81063

CPC Docket No. 2002-009

**FINDINGS AND ORDER**

The formal charges of misconduct upon which this Findings and Order is based arose from information provided to the Committee by Paul Wayne McFall on August 31, 2002. The information related to certain pleadings filed in Faulkner County Court.

On February 21, 2002, Respondent was served with a formal complaint, supported by an affidavit from Mr. McFall. Respondent failed to file a response to the complaint, which 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.

The facts upon which the formal complaint was based are that on September 29, 2000, Keith Kimble was charged in Faulkner County Court, under case number CR2000-1201, with various felony counts including one aggravated assault against Mr. McFall's minor child. Mr. Kimble is married to Mr. McFall's ex-wife. A "No Contact Order" was entered on November 14, 2000, in the domestic violence court, ordering Mr. Kimble to stay away from Mr. McFall and the minor child and to stay away from the child's school. On October 23, 2000, Mr. McFall obtained temporary custody of his minor child. On July 20, 2001, Mr. Fuchs filed a motion to intervene, in a separate civil court, styled the case Paul McFall vs. Keith Kimble, and placed it under docket number CR2000-1201. There was no such case and the docket number actually belonged to the criminal case wherein Mr. Kimble was charged with various felony counts. The motion to intervene stated that custody of the child had changed to Mr. McFall's ex-wife, and that Mr. Kimble had undergone drug treatment and posed no danger whatsoever.

The same day Mr. Fuchs filed the motion to intervene, he took the motion and an order he had prepared to Judge David Reynolds, the judge handling the custody matter. Mr. Fuchs never served Mr. McFall with the motion. Without a hearing, the judge signed the order which purported to set aside the "No Contact Order" that the domestic violence court had previously entered. Someone also changed the case number on the order prepared by Mr. Fuchs to read E92-833, rather than the criminal case number which was originally handwritten on the order. The E92-833 number was the case number on Mr. McFall's petition to change custody.

Mr. McFall subsequently had to hire an attorney to rescind the bogus order that did away with the "No Contact Order." Judge Reynolds entered an order on August 2, 2001, explaining that the court had not intended to cancel the "No Contact Order," and that the July 20, 2001, order was canceled effective immediately.

Upon consideration of the formal complaint and attached exhibit materials, 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:

- That Mr. Fuchs' conduct violated Model Rule 3.1 when he prepared a pleading

styled Paul McFall v. Keith Kimble under docket number CR2000-1201, knowing that no such case existed and was in fact frivolous; when he presented the bogus pleading to the judge, thereby leading the judge to believe that said case was in his court, when in fact no such case existed; and when he intentionally failed to serve Mr. McFall with said pleading and failed to inform the judge that the alleged respondents were unaware of the pleading and order. Model Rule 3.1 provides, in pertinent part, that a lawyer shall not bring or defend a proceeding, or assert or controvert an issue therein, unless there is a basis for doing so that is not frivolous.

- That Mr. Fuchs' conduct violated Model Rules 3.3(a)(1) when he prepared a

pleading styled Paul McFall v. Keith Kimble under docket number CR2000-1201, knowing that no such case existed and was in fact frivolous; when he presented the bogus pleading to the judge, thereby leading the judge to believe that said case was in his court, when in fact no such case existed; and when he intentionally failed to serve Mr. McFall with said pleading and failed to inform the judge that the alleged respondents were unaware of the pleading and order. Model Rule 3.3(a)(1) provides, in pertinent part, that a lawyer shall not make a false statement of material fact or law to a tribunal.

- That Mr. Fuchs' conduct violated Model Rules 8.4(d) when he prepared a

pleading styled Paul McFall v. Keith Kimble under docket number CR2000-1201, knowing that no such case existed and was in fact frivolous; when he presented the bogus pleading to the judge, thereby leading the judge to believe that said case was in his court, when in fact no such case existed; and when he intentionally failed to serve Mr. McFall with said pleading and failed to inform the judge that the alleged respondents were unaware of the pleading and order. Model Rule 8.4(c) provides, in pertinent part, that a lawyer shall not engage in conduct involving dishonesty, fraud, deceit or misrepresentation.

- That Mr. Fuchs' conduct violated Model Rule 8.4(d), when he filed frivolous

pleadings in court and had an order of protection, which was entered by a separate court, set aside thereby causing Mr. McFall to have to hire an attorney to set aside the frivolous order. Model Rule 8.4(d) provides, in pertinent part, that a lawyer shall not engage in conduct that is prejudicial to the administration of justice.

WHEREFORE, it is the decision and order of the Arkansas Supreme Court Committee on Professional Conduct, acting through its authorized Panel A, that Kenneth G. Fuchs, Arkansas Bar ID# 81063, be, and hereby is, REPRIMANDED for his conduct in this matter. Mr. Fuchs is also ordered to pay a FINE of \$1,000, pursuant to Section 9.C, for failure to file a timely response. The fine 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: \_\_\_\_\_

Win Trafford, Chair, Panel A

Date: \_\_\_\_\_