

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

IN RE: PAUL A. SCHMIDT, SR., Respondent  
Arkansas Bar ID# 67048  
CPC Docket No. 2011-040

**FILED**

SEP 21 2011

**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 by Dr. Joe Abrams in an Affidavit dated May 17, 2011. The information related to the representation of Abrams Enterprizes, LLC and Dr. Abrams with regard to a bankruptcy proceeding by Respondent beginning in 2009.

On May 21, 2011, Respondent was served with a formal complaint, supported by affidavit from Dr. Abrams. Through counsel, Respondent filed a Response to the formal disciplinary complaint. The matter proceeded to ballot vote before Panel B of the Committee on Professional Conduct.

The information before the Panel reflected that during 2009, Paul A. Schmidt, Sr., of Cabot, Arkansas, represented Abrams Enterprizes, LLC and Dr. Abrams with regard to a bankruptcy proceeding. After the filing of the bankruptcy, Mr. Schmidt filed a Statement pursuant to Rule 2016(B) which demonstrated that attorney's fees had been paid in the amount of \$3,561. Mr. Schmidt did not disclose that Dr. Abrams had paid the attorney's fees, not the debtor, Abrams Enterprizes, LLC. In responding to the formal disciplinary complaint, Mr. Schmidt advised that the unintentional errors made in the Rule 2016(B) Statement were caused because of the urgency of the situation with regard to a sale date for certain property and a pending foreclosure on property owned by Abrams Enterprizes, LLC.

Shortly thereafter Mr. Schmidt filed an Application to Employ Attorney Under General Retainer. A hearing was held on June 9, 2009, with regard to Application to Employ Attorney, Debtor's Motion to Sell, and Application to Employ Real Estate Broker. Following the hearing, Judge Taylor entered an Order to Appear and Show Cause.

The Show Cause was entered to determine whether Mr. Schmidt should be required to disgorge the attorney fees paid to him, and to determine whether Dr. Abrams and Mr. Schmidt should be held in contempt or sanctioned by the Court. With regard to the fee, the issues set out by the Court were that Mr. Schmidt did not disclose that the source of the retainer was not the debtor and that Mr. Schmidt failed to disclose the source of payment and Abrams' ownership in Funtastic, Inc., when filing his Application to Employ Attorney under General Retainer on June 3, 2009. There were other issues with the pleadings filed in the bankruptcy but Dr. Abrams' complaint centers on what happened with regard to the two issues as set out with regard to the attorney's fees paid to Mr. Schmidt. According to Mr. Schmidt, if Dr. Abrams told him of the ownership in Funtastic, it was an honest oversight on his (Schmidt's) behalf to fail to include that information. He also offered that it was his office staff who deposited the check for Attorney Fees so it was an inadvertent oversight that he did not notice who remitted the payment for attorney's fees in the bankruptcy.

On July 29, 2009, Judge Taylor entered an Order which directed Mr. Schmidt to disgorge the attorneys fees paid by Dr. Abrams. The fees were to be paid directly to Dr. Abrams from Mr. Schmidt.

Although Dr. Abrams contacted Mr. Schmidt numerous times over the last almost two years, Mr. Schmidt did not comply with the Order of the Court and did not returned the fees to

Dr. Abrams. Mr. Schmidt admitted in his Response that he had not returned the fees to Dr. Abrams as of the date of his Response (June 27, 2011). He denied that Dr. Abrams had made numerous attempts to contact him about the fees. Mr. Schmidt went on to explain that he had discussed a monthly payment plan but Dr. Abrams never returned calls about setting up the schedule of payments.

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

1. That Mr. Schmidt's conduct violated Rule 1.3, because while still representing Dr. Abrams, Mr. Schmidt was directed and ordered by the Bankruptcy Court to disgorge the attorney's fees paid to him by Dr. Abrams to Dr. Abrams, but Mr. Schmidt failed to do so in a timely manner, and he has not done so to date, almost two (2) years after entry of the Order directing him to do so. Rule 1.3 requires that a lawyer shall act reasonable diligence and promptness in representing a client.

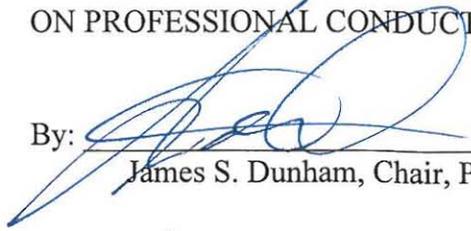
2. That Mr. Schmidt's conduct violated Rule 3.4(c), because as of the date of the formal disciplinary complaint, Mr. Schmidt has not complied with the Order of Judge Taylor entered July 29, 2009, directing him to disgorge the attorney's fees paid to him by Dr. Abrams (\$3,561) back to Dr. Abrams. Rule 3.4(c) requires that a lawyer not knowingly disobey an obligation under the rules of a tribunal except for an open refusal based on an assertion no valid obligation exists.

3. That Mr. Schmidt's conduct violated Rule 8.4(d), because Mr. Schmidt's failure to comply with the Order of the Bankruptcy Court directing him to disgorge his fees has caused

Dr. Abrams to be without the benefit of his \$3,561 for almost two years and because Mr. Schmidt's failure to comply with the Order of the Bankruptcy Court directing him to disgorge his fees demonstrates a complete disregard for the administration and Order of the Bankruptcy Court. Rule 8.4(d) requires that a lawyer 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 B, that PAUL A. SCHMIDT, SR, Arkansas Bar ID# 67048, be, and hereby is, REPRIMANDED for his conduct in this matter. Mr. Schmidt is also assessed the costs of this proceeding in the amount of FIFTY DOLLARS (\$50) pursuant to Section 18.A of the Procedures of the Arkansas Supreme Court Regulating Professional Conduct of Law. Further, the Committee imposes a fine, pursuant to Section 18.B. of the Procedures in the amount of ONE THOUSAND DOLLARS (\$1,000). Mr. Schmidt's prior disciplinary history, if any, was considered in arriving at the determination of sanction. The fine and costs assessed herein, totaling ONE THOUSAND FIFTY DOLLARS (\$1,050) 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 B

By: 

James S. Dunham, Chair, Panel B

Date: August 29, 2011