

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

IN RE: PAUL A. SCHMIDT, SR., Respondent  
Arkansas Bar ID# 67048  
CPC Docket No. 2012-015

**FILED**

JUN 15 2012

**LESLIE W. STEEN  
CLERK**

**CONSENT FINDINGS AND ORDER**

The formal charges of misconduct upon which this Findings and Order is based arose from information provided to the Committee by Morgan Ash. The information related to the representation of Mr. Ash by Respondent's firm and then representation by Respondent of the mother of Mr. Ash's child in the same matter years later.

Respondent was served with a formal complaint, supported by affidavit from Mr. Ash. A response was filed. The Respondent, through counsel, Edwin Lowther, Jr., and the Executive Director negotiated a discipline by consent proposal, which was submitted to this Panel.

During 2006, the Schmidt Law Firm represented Mr. Ash in a matter in Pulaski County Circuit Court wherein he sought to establish paternity of his child. A specific visitation Order was entered during the time of representation. No other pleadings were filed following the Agreed Order in November 2006, until Paul Schmidt, Sr. filed a Motion to Reopen with regard to custody and visitation in October 2011. However, Mr. Schmidt did not file the Motion to Reopen for Morgan Ash, he filed it for the opposing party and had the Motion served on his former client, Morgan Ash. Not only is Mr. Ash a former client, he is a former client in the very same Circuit Court proceeding.

Mr. Schmidt was contacted by Mr. Ash immediately upon being served with the Motion. Mr. Schmidt reportedly told Mr. Ash that there was no conflict because of the length of time

involved since the Order that he was seeking to modify had been entered.

After trying to have Mr. Schmidt remove himself from the matter, Mr. Ash contacted the Office of Professional Conduct by filing a grievance in October 2011. Noting that there was a conflict of interest present, Mr. Schmidt was written at the direction of the Executive Director. Mr. Schmidt caused the Return of Service to be filed in the Circuit Court matter after having been contacted about the conflict.

Mr. Schmidt submitted information to the Office of Professional Conduct by way of a letter dated January 31, 2012. Mr. Schmidt addressed his belief that no conflict is present because of the length of time present since the prior representation.

Having not recognized that a conflict is present, Mr. Schmidt did not seek to obtain informed consent for the representation of the opposing party from Mr. Ash, in writing or otherwise. As such there is no informed consent given in writing by Mr. Ash for Mr. Schmidt to represent the opposing party in the matter in Pulaski County Circuit Court.

The specific rule which is at issue in this matter is Rule 1.9(a). Rule 1.9(a) would clearly prohibit Heath Ramsey who is still listed as a part of the Schmidt Law Firm as of January 2012 from representing Ms. Calcaterra, the opposing party in the Ash matter, because (1) he previously represented Morgan Ash in the Pulaski County Circuit Court matter; (2) in 2011 and 2012, the matter is the same and the Order sought to be modified is from the prior representation; (3) the interests of Ms. Calcaterra and Mr. Ash are obviously adverse as they are opposing parties to both actions; and (4) there is no written informed consent from Mr. Ash. Then with regard to Mr. Schmidt, Rule 1.10 is the applicable Rule of Professional Conduct. Mr. Schmidt and Mr. Ramsey were clearly associated with the Schmidt Law Firm in 2006 and also in 2011-12 as

evidenced by the letterheads used by Mr. Ramsey in 2006 and that on which Mr. Schmidt submitted his responsive correspondence to the Office of Professional Conduct on January 31, 2012. Mr. Schmidt knows that Mr. Ramsey represented Mr. Ash in the Pulaski County matter in 2006 when the Order was entered which Mr. Schmidt is now attempting to modify on behalf of Ms. Calcaterra. Mr. Ramsey is prohibited from representing Ms. Calcaterra by the language of Rule 1.9. The prohibition is not because of a personal interest of Mr. Ramsey, it is clearly because the former firm client, Mr. Ash, is the opposing party in the same action now about the same matter.

Upon consideration of the formal complaint and attached exhibit materials, the consent proposal, 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 1.10(a) because Mr. Schmidt undertook and continued representation of Marie Calcaterra in a Pulaski County Circuit Court matter wherein Heath Ramsey, an attorney with the Schmidt Law Firm, PLC, previously represented Morgan Ash, the opposing party in the very same matter in 2006. Mr. Ramsey is prohibited from representing Ms. Calcaterra and the prohibition is imputed to Mr. Schmidt. There is no written informed consent from Morgan Ash for the representation of the opposing party. Rule 1.10(a) mandates that while lawyers are associated in a firm, none of them shall knowingly represent a client when any one of them practicing alone would be prohibited from doing so by Rules 1.7, 1.9 or 3.7, unless the prohibition is based on a personal interest of the prohibited lawyer and does not present a significant risk of materially limiting the representation of the client by the remaining lawyers in the firm.

evidenced by the letterheads used by Mr. Ramsey in 2006 and that on which Mr. Schdmidt submitted his responsive correspondence to the Office of Professional Conduct on January 31, 2012. Mr. Schmidt knows that Mr. Ramsey represented Mr. Ash in the Pulaski County matter in 2006 when the Order was entered which Mr. Schmidt is now attempting to modify on behalf of Ms. Calcaterra. Mr. Ramsey is prohibited from representing Ms. Calcaterra by the language of Rule 1.9. The prohibition is not because of a personal interest of Mr. Ramsey, it is clearly because the former firm client, Mr. Ash, is the opposing party in the same action now about the same matter.

Upon consideration of the formal complaint and attached exhibit materials, the consent proposal, 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 1.10(a) because Mr. Schmidt undertook and continued representation of Marie Calcaterra in a Pulaski County Circuit Court matter wherein Heath Ramsey, an attorney with the Schmidt Law Firm, PLC, previously represented Morgan Ash, the opposing party in the very same matter in 2006. Mr. Ramsey is prohibited from representing Ms. Calcaterra and the prohibition is imputed to Mr. Schmidt. There is no written informed consent from Morgan Ash for the representation of the opposing party. Rule 1.10(a) mandates that while lawyers are associated in a firm, none of them shall knowingly represent a client when any one of them practicing alone would be prohibited from doing so by Rules 1.7, 1.9 or 3.7, unless the prohibition is based on a personal interest of the prohibited lawyer and does not present a significant risk of materially limiting the representation of the client by the remaining lawyers in the firm.

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, CAUTIONED for his conduct in this matter. Pursuant to Section 18.A. of the Arkansas Supreme Court Procedures Regulating Professional Conduct of Attorneys at Law (2012), Mr. Schmidt is assessed the costs of the proceedings in the amount of ONE HUNDRED DOLLARS. The 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 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:   
Barry Deacon, Chair, Panel B

Date: 6/15/12

(13.M, Rev.5-26-11)