

BEFORE THE BOARD OF PROFESSIONAL CONDUCT
OF
THE SUPREME COURT OF OHIO

FILED

JUN 02 2016

BOARD OF PROFESSIONAL CONDUCT

In re:

Andrew Robert Schuman, Esq.
Andrew R. Schuman LLC
610 Fifth St.
Bowling Green, Ohio 43402

16 - 02 1

No. _____

Attorney Registration No. (0072950)

COMPLAINT AND CERTIFICATE

Respondent,

(Rule V of the Supreme Court Rules for
the Government of the Bar of Ohio.)

Disciplinary Counsel
250 Civic Center Drive, Suite 325
Columbus, Ohio 43215-7411

Relator.

Now comes relator, Disciplinary Counsel, and alleges that respondent, Andrew Robert Schuman, an attorney at law, duly admitted to the practice of law in the State of Ohio, is guilty of the following misconduct:

1. Respondent was admitted to the practice of law in the State of Ohio on November 20, 2000.
2. As an attorney, respondent is subject to the Ohio Rules of Professional Conduct and the Supreme Court Rules for the Government of the Bar of Ohio.
3. On December 22, 2010, respondent was appointed as the Guardian Ad Litem (GAL) in Hancock County Juvenile Court Case No. 20640339, *Heidi E. Walter v. Derek O. Smith*.
4. Heidi Walter and Derek Smith had previously paid a \$500 deposit towards GAL fees in the case. Walter had paid \$350 of the \$500 and Smith had paid \$150. These funds were

being held in trust by the Hancock County Juvenile Court Clerk's Office pending authorization from the court that they be disbursed to respondent.

5. On July 13, 2011, respondent filed a *Motion for Payment of Guardian's Bill* with the Hancock County Juvenile Court. Attached to respondent's motion was a copy of his guardian's bill, which indicated that he had worked 42.7 hours on the case at the rate of \$80/hour for a total fee of \$3,416.
6. On September 9, 2011, the Hancock County Juvenile Court approved respondent's guardian's bill and ordered that Walter and Smith split the bill equally. After crediting Walter with her \$350 deposit and Smith with his \$150 deposit, Walter owed respondent \$1,358 and Smith owed respondent \$1,558.
7. On or about October 14, 2011, the Hancock County Juvenile Court released the \$500 deposit that Walter and Smith had paid to respondent.
8. On November 3, 2011 and November 20, 2011, respondent sent Walter and Smith letters reminding them of their obligation to pay the above-mentioned amounts; however, neither party paid respondent.
9. On February 27, 2012, respondent filed a *Motion to Show Cause, Reduce to Judgment, and Memorandum in Support* with the Hancock County Juvenile Court. In his motion, respondent requested that Smith and Walter be ordered to appear and show cause why they should not be held in contempt for failing to pay his GAL fees. Respondent also requested that his \$3,416 fee be reduced to a joint and several judgment so that he would have a remedy and means of collection absent voluntary payment by the parties.

10. On May 29, 2012, respondent, Walter, and Smith appeared before Magistrate Kristen K. Johnson on respondent's *Motion to Show Cause, Reduce to Judgment, and Memorandum in Support*.
11. At the hearing, respondent advised Magistrate Johnson that the parties had entered into an agreement whereby Walter and Smith would each pay \$100 per month towards respondent's outstanding GAL fees. In light of this agreement, Magistrate Johnson ordered that respondent's *Motion to Show Cause, Reduce to Judgment, and Memorandum in Support* be held in abeyance for 90 days and that it be automatically dismissed on August 26, 2012 unless respondent filed a motion prior to that time indicating that he wanted to proceed on the motion.
12. Between May 29, 2012 and July 24, 2012, Walter and Smith failed to make any payments towards respondent's outstanding GAL fees; therefore, on July 24, 2012, respondent filed a *Motion to Proceed on Previously Filed Show Cause Motion*.
13. Upon receipt of this motion, Smith contacted respondent and inquired into why he had filed a *Motion to Proceed on Previously Filed Show Cause Motion*. Smith claimed that he had sent a check to respondent on July 5, 2012, but the check had not been cashed. In response, respondent stated that he "would not engage in game playing," and he assured Smith that he would "collect the entire amount [he was] due."
14. On August 28, 2012, Smith paid respondent \$100 towards his share of the outstanding GAL fees. Smith also made an additional cash payment of \$100; however, the date of this payment is unknown.

15. On September 17, 2012, respondent withdrew his *Motion to Proceed on Previously Filed Show Cause Motion*. By doing so, he also withdrew his request that his GAL fees be reduced to a joint and several judgment.
16. Between September 17, 2012 and February 25, 2013, respondent did not receive any additional payments from Walter or Smith towards his outstanding GAL fees.
17. On February 25, 2013, respondent filed a complaint against Walter and Smith in the Findlay Municipal Court to collect his GAL fees. This case was docketed as case number 13 CVF 00421 and assigned to the docket of Judge Jonathan Starn.
18. At the time that he filed this complaint, respondent was owed \$2,716 in GAL fees since he had already received the \$500 deposit from the court and two \$100 payments from Smith.
19. Despite only being owed \$2,716, respondent demanded a joint and several judgment against Walter and Smith for \$6,405.
20. Although he included some facts from the underlying *Walter v. Smith* case in his complaint, respondent failed to mention that his total GAL fees were \$3,416, that he had already received \$700 of his fees, or that the Hancock County Juvenile Court had ordered Walter and Smith to split his GAL fees equally. *See* Paragraphs 6, 7, and 14.
21. On April 22, 2013, respondent filed a *Motion for Default Judgment against Defendant Heidi Walter*. The court granted respondent's motion on the same day; however, it set the matter for a hearing on May 31, 2013 because it did not have sufficient information to make a determination as to the amount of the judgment.
22. On May 1, 2013, respondent filed *Additional Authority in Support of the Motion for Default with Respect to Heidi Walter*. In this pleading, respondent stated that he was

simultaneously filing a motion for default judgment against Derek Smith and that the information attached to that motion applied equally to Derek Smith and Heidi Walter. Accordingly, respondent suggested that a hearing on respondent's *Motion for Default Judgment against Defendant Heidi Walter* was not necessary.

23. As stated in his *Additional Authority in Support of the Motion for Default with Respect to Heidi Walter*, respondent did file a *Motion for Default Judgment against Defendant Derek Smith* on May 1, 2013.
24. Attached to respondent's motion was a misleading affidavit from respondent that stated he had performed 42.7 hours of "legal services" on the case and that the "reasonable rate of legal services in Findlay, Ohio was at all relevant times \$150.00 per hour."
25. Respondent's affidavit also stated that he had kept a contemporaneous time record while working on the *Walter v. Smith* case, which was attached to his affidavit as Exhibit 1. Exhibit 1 was the exact same document that respondent had attached to his *Motion for Payment of Guardian's Bill*, except that respondent had altered the document to delete the juvenile court case caption and the portion of the document that showed that his total GAL fees were \$3,416. See Paragraph 5.
26. On May 28, 2013, the Findlay Municipal Court granted respondent a joint and several judgment against Walter and Smith and ordered that Walter and Smith pay respondent \$6,405, plus 4% interest from December 10, 2010 to December 31, 2011, 3% interest thereafter, and the costs of the action. The court also cancelled the hearing scheduled for May 31, 2013.
27. On May 30, 2013, and believing that the hearing on May 31, 2013 was still scheduled to occur, Smith filed a *Motion for Continuance* due to a family emergency. Attached to

- Smith's *Motion for Continuance* was a copy of the Juvenile Court's September 9, 2011 order. *See* Paragraph 6.
28. Having already granted the default judgment, the Findlay Municipal Court denied Smith's motion as moot.
 29. On or about October 23, 2013, respondent initiated garnishment proceedings against Smith in the amount of \$7,273.55, which represented the default judgment of \$6,405 plus interest and costs. Respondent also attempted to garnish the same amount from Heidi Walter; however, he was advised that she was no longer employed at her last known place of business.
 30. On January 22, 2014, Smith filed a pro se *Motion for Ex-Parte Order to Reestablish Juvenile Court Order* along with supporting documentation. In his motion, Smith stated that the Hancock County Juvenile Court had approved \$3,416 in GAL fees for respondent, that he had been ordered to pay half the amount, that he had already made two payments of \$100 each, and that \$1,170.62 had been garnished from his wages, which was approaching the amount that he owed respondent.
 31. On January 27, 2014, the Findlay Municipal Court denied Smith's motion stating that only the juvenile court could enforce its previous order. The court served a copy of its judgment entry on Smith, Walter, and respondent.
 32. Despite having received Smith's *Motion for Ex-Parte Order to Reestablish Juvenile Court Order* and the court's judgment entry, respondent failed to avail himself of the opportunity to notify the Findlay Municipal Court of the Hancock County Juvenile Court's prior order, the fact that his GAL fees had only been \$3,416, or the fact that Smith and Walter had been ordered to pay his GAL fees equally.

33. Thereafter and continuing until approximately December 31, 2014, respondent garnished Smith's wages from his employer, Whirlpool.
34. On December 31, 2014, respondent filed an *Affidavit of Current Balance Due on Garnishment*. Per respondent's affidavit, respondent had collected \$7,127.87 through the garnishment, but was still owed \$369.78.
35. On January 5, 2015, Smith filed a *Request for Hearing* stating that he disputed the amount claimed in respondent's *Affidavit of Current Balance Due on Garnishment*.
36. On January 6, 2015, the Findlay Municipal Court set the matter for hearing on January 15, 2015.
37. On January 15, 2015, respondent and Smith spoke prior to appearing before Judge Starn. Respondent suggested that he and Smith come to an agreement on the amount owed; however, Smith told respondent that he did not owe him anything else because he had already paid over \$7,000 through the garnishment despite the fact that respondent's original GAL fees were \$3,416, of which Smith was only ordered to pay half. Respondent told Smith that because there was already a judgment in place, Judge Starn would order Smith to pay the entire amount requested – \$369.78 – if they did not reach an agreement as to the amount owed. Accordingly, Smith agreed to pay respondent an additional \$250.
38. Respondent and Smith then appeared before Judge Starn and advised him of their agreement. Once again, respondent failed to avail himself of the opportunity to notify the Findlay Municipal Court of the Hancock County Juvenile Court's prior order, and instead, continued to perpetrate a fraud on the Findlay Municipal Court by claiming that he was still entitled to additional fees from Smith.

39. On January 16, 2015, Judge Starn dissolved the garnishment order in light of Smith's agreement to pay respondent an additional \$250. Judge Starn further ordered respondent to file a notice of satisfaction upon receipt of the \$250 or to request a hearing if he did not receive payment.
40. Having not received the \$250 from Smith, respondent filed a *Motion to Reinstate Garnishment* on May 21, 2015.
41. On June 22, 2015, the Findlay Municipal Court granted respondent's *Motion to Reinstate Garnishment* and ordered Whirlpool to withhold \$369.78 from Smith's wages. By this time, however, Smith was no longer employed at Whirlpool. Respondent then attempted to garnish \$369.78 from Smith's bank account; however, he was advised that there were insufficient funds in the account.
42. Respondent never collected the final \$369.78 from Smith.
43. On November 16, 2015, Smith filed a grievance against respondent.
44. Upon receipt of this grievance, respondent retained counsel and immediately refunded Smith \$2,989, which represented the difference between his GAL rate of \$80/hour and the legal rate of \$150/hour that he requested in the Findlay Municipal Court action. Respondent also filed a *Notice of Satisfaction of Judgment*.
45. Later in the investigation, respondent refunded Smith \$119.56 as a partial interest reimbursement, \$1,708 for the amount that should have been paid by or collected from Heidi Walter, and \$1,078.50 for the remaining interest and costs of the municipal court action that should have been split between Smith and Walter.
46. Respondent's conduct as outlined above violates the following Rules of Professional Conduct, specifically:

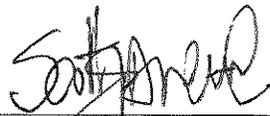
- Prof. Cond. R. 1.5(a) (prohibiting a lawyer from making an agreement for, charging, or collecting an illegal or clearly excessive fee) by alleging in the Findlay Municipal Court complaint that the value of his services was \$150/hour rather than the \$80/hour he had charged in the Hancock County Juvenile Court case and by collecting \$7,127.87 through a garnishment when his total GAL fees were only \$3,416;
- Prof. Cond. R. 3.3(a)(1) (prohibiting a lawyer from making a false statement of material fact or law or failing to correct a false statement of fact or law previously made by the lawyer) by omitting material facts from the complaint that he filed with the Findlay Municipal Court, by submitting a misleading affidavit in support of his Motions for Default Judgment against Walter and Smith, and by failing at any time during the pendency of Case No. 13 CVF 00421 to notify the Findlay Municipal Court of the Hancock County Juvenile Court's prior order, the fact that his GAL fees were only \$3,416, or the fact that Smith and Walter had been ordered to pay his GAL fees equally;
- Prof. Cond. R. 8.4(d) (prohibiting a lawyer from engaging in conduct that is prejudicial to the administration of justice) by using the court process and procedures to collect a clearly excessive fee; and
- Prof. Cond. R. 8.4(h) (prohibiting a lawyer from engaging in conduct that adversely reflects on the lawyer's fitness to practice law) by pursuing a joint and several judgment against Walter and Smith when the Hancock County Juvenile Court had specifically ordered Walter and Smith to pay his GAL fees equally.

Statement of Restitution Pursuant to Gov. Bar R. V(10)(E)(1)(b)

47. In light of the fact that respondent has refunded Smith a total of \$5,895.06, no additional restitution is owed in this matter.

CONCLUSION

Wherefore, pursuant to Gov. Bar R. V and the Rules of Professional Conduct, relator alleges that respondent is chargeable with misconduct and requests that respondent be disciplined pursuant to Gov. Bar R. V.



Scott J. Drexel (0091467)
Disciplinary Counsel
Relator

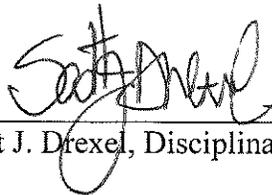


Karen H. Osmond (0082202)
Assistant Disciplinary Counsel
250 Civic Center Drive, Suite 325
Columbus, Ohio 43215-7411
(614) 461-0256 (Phone)
(614) 461-7205 (Facsimile)
Karen.Osmond@sc.ohio.gov
Counsel for Relator

CERTIFICATE

The undersigned, Scott J. Drexel, Disciplinary Counsel, of the Office of Disciplinary Counsel of the Supreme Court of Ohio, hereby certifies that Karen H. Osmond is duly authorized to represent relator in the premises and has accepted the responsibility of prosecuting the complaint to its conclusion. After investigation, relator believes reasonable cause exists to warrant a hearing on such complaint.

Dated: June 2, 2016



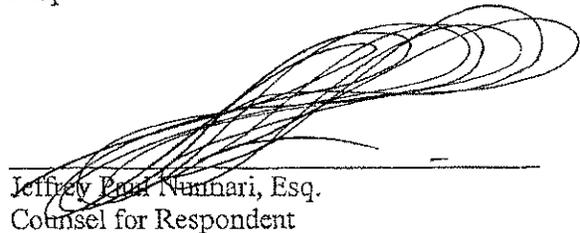
Scott J. Drexel, Disciplinary Counsel

Waiver of Probable Cause Determination Pursuant to Gov. Bar. R V(11)(B)

I, Andrew Robert Schuman, have received a copy of the complaint that the Office of Disciplinary Counsel intends to file against me based on a grievance filed against me by Derek O. Smith. I have reviewed this complaint, and I agree that there is probable cause for filing of the complaint against me. Accordingly, I hereby waive a probable cause review of the complaint by a panel of the Board of Professional Conduct.



Andrew Robert Schuman, Esq.
Respondent



Jeffrey Paul Nunnari, Esq.
Counsel for Respondent