

**COMMONWEALTH OF KENTUCKY
JUDICIAL CONDUCT COMMISSION**

IN RE THE MATTER OF:

**JOHN A. SCHMIDT, MASTER COMMISSIONER (FORMER)
BULLITT COUNTY, KENTUCKY**

FORMAL PROCEEDINGS DOCKET ENTRIES

Date of Filing

1. August 18, 2020 - [Notice of Formal Proceedings and Charges](#)
2. September 21, 2020 - [Answer](#)
3. December 7, 2020 - [Notice of Time and Place for Hearing](#)
4. December 7, 2020 - [Order on Hearing](#)

**COMMONWEALTH OF KENTUCKY
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IN RE THE MATTER OF:

**JOHN A. SCHMIDT, MASTER COMMISSIONER (FORMER)
BULLITT COUNTY, KENTUCKY**

NOTICE OF FORMAL PROCEEDINGS AND CHARGES

Notice is hereby given of the initiation of formal proceedings under Rule 4.180 of Rules of the Supreme Court. At the times set out in this Notice, you were the Master Commissioner in Bullitt County, Kentucky and subject to the Code of Judicial Conduct as a Continuing Part-Time Judge. The charges are as follows:

Count I

In May 2019, you misappropriated \$81,000 in proceeds from a property sale in *Specialized Loan Servicing, LLC v. Noah E. Blunk (Deceased)*, Bullitt County Case No. 18-CI-00668. On May 7, 2019, you received a \$10,000 official bank check and a \$71,000 personal check for purchase of the property. Instead of depositing the funds into escrow, you altered the endorsement stamp and directed the funds to be deposited to an account which is not affiliated with the Bullitt County Master Commissioner's Office.

Your actions violate SCR 4.020(1)(b)(i) and constitute misconduct in office. Furthermore, your actions violate SCR 4.300 and the following Canons of the Code of Judicial Conduct, as they existed at the time of the violation:

- **Rule 1.1** which requires judicial officers to comply with the law.
- **Rule 1.2** which requires judicial officers to act at all times in a manner that promotes public confidence in the independence, integrity, and impartiality of the judiciary.
- **Rule 2.5** which requires judicial officers to perform judicial and administrative duties competently and diligently.

Count II

During your service as Master Commissioner, you impermissibly acted as a Public Administrator in a number of cases in Bullitt County.¹ KRS § 395.040(3) prohibits any master or other commissioner whose duty it is to settle the accounts of a personal representative from simultaneously acting as an administrator.

Your actions violate SCR 4.020(1)(b)(i) and constitute misconduct in office. Furthermore, your actions violate SCR 4.300 and the following Canons of the Code of Judicial Conduct, as they existed at the time of the violation:

- **Rule 1.1** which requires judicial officers to comply with the law.
- **Rule 1.2** which requires judicial officers to act at all times in a manner that promotes public confidence in the independence, integrity, and impartiality of the judiciary.
- **Rule 2.5** which requires judicial officers to perform judicial and administrative duties competently and diligently.

Count III

During your service as Master Commissioner, you routinely failed to collect and disburse the proceeds of judicial sales in a timely manner. In every Report from the AOC Division of Judicial Audits from 2013 through 2020, you were found to have repeatedly failed to collect judicial sale proceeds. In the most recent report dated February 12, 2020, the Auditor performed a detailed review of all cases referred for sale in 2018 and 2019, comparing sale activity to financial activity through your office's former escrow account. The Auditor identified over 24 cases with sale activity from March 20, 2018 through December 10, 2019 which failed to contain corresponding deposits of funds to cover costs, fees and

¹ For example, see Bullitt District Court Case Nos. 16-P-00102; 16-P-00241; 17-P-00350; and, 19-P-00045.

expenses of the scheduled sales in violation of the Rules of Administrative Procedure, AP Part IV, Section 5(4).

Your actions violate SCR 4.020(1)(b)(i) and constitute misconduct in office. Furthermore, your actions violate SCR 4.300 and the following Canons of the Code of Judicial Conduct, as they existed at the time of the violation:

- **Rule 1.1** which requires judicial officers to comply with the law.
- **Rule 1.2** which requires judicial officers to act at all times in a manner that promotes public confidence in the independence, integrity, and impartiality of the judiciary.
- **Rule 2.5** which requires judicial officers to perform judicial and administrative duties competently and diligently.

The jurisdiction of the Judicial Conduct Commission in this matter is under SCR 4.020(1)(b)(i) and (v), and (1)(c) which read in pertinent part as follows:

- (1) Commission shall have authority:
 - (b) To impose the sanctions, separately or collectively of (1) admonition, private reprimand, public reprimand or censure; (2) suspension without pay or removal or retirement from judicial office, upon any judge of the Court of Justice or lawyer while a candidate for judicial office, who after notice and hearing the Commission finds guilty of any one or more of the following:
 - (i) Misconduct in office.
 - (v) Violation of the code of Judicial Conduct, Rule 4.300.
 - (c) After notice and hearing, to remove a judge whom it finds to lack the constitutional statutory qualifications for the judgeship in question.

For your information, the Commission wishes to call your attention to the following Supreme Court Rule:

RULE 4.180 FORMAL PROCEEDINGS

If the Commission concludes that formal proceedings should be initiated, it shall notify the judge. He may file an answer within 15 days after service of

the notice. Upon the filing of his answer, or the expiration of time for so filing, the Commission shall set a time and place for the hearing and shall give reasonable notice thereof to the judge.

Please mail your answer to: Ms. Jimmy Shaffer, Executive Secretary, Kentucky Judicial Conduct Commission, P.O. Box 4266, Frankfort, Kentucky 40604-4266.

August 18th, 2020.


R. MICHAEL SULLIVAN, CHAIR

I hereby certify that copy hereof was served on John A. Schmidt, Former Master Commissioner, 208 Lazy River Rd., Shepherdsville, KY 40165, this 18th day of August, 2020.


JIMMY SHAFFER, EXECUTIVE SECRETARY

**COMMONWEALTH OF KENTUCKY
JUDICIAL CONDUCT COMMISSION**

**IN RE JOHN A. SCHMIDT, MASTER COMMISSIONER (FORMER) BULLITT
COUNTY, KENTUCKY**

ANSWER TO NOTICE OF FORMAL PROCEEDINGS AND CHARGES

Comes John Anthony Schmidt, (“Mr. Schmidt”), by counsel, pursuant to SCR 4.180 and states as follows:

INTRODUCTION

Mr. Schmidt is currently licensed as an attorney in Kentucky. He voluntarily ceased practicing law in February of this year following the wind-down and closing of his law practice from late December of last year to early February of this year. He shortly anticipates filing with the Kentucky Bar Association a Notice and Memorandum to request a transfer of his KBA Membership status to Disabled Inactive Member pursuant to SCR 3.030(5)(a).

On December 9, 2019, Mr. Schmidt disappeared, with his location unknown to friends and family. On December 21, 2019 Mr. Schmidt was found, and he was admitted on an emergency basis at Our Lady of Peace, a mental health facility in Louisville, where he stayed until December 24, 2019. Thereafter, he began receiving ongoing counseling by a Licensed Clinical Social Worker, Mr. Drouet, and receiving treatment from a psychiatrist, Dr. Kissel. An August 18, 2020 Edelson Neuropsychological Evaluation Report regarding Mr. Schmidt concluded that based on a number of medical reasons, including Mr. Schmidt’s diminished

attention, concentration and memory, cognitive difficulty regarding verbal and visual memory, severe depression, and diagnosed Mild Cognitive Impairment, Mr. Schmidt satisfies the criteria for transfer to Disabled Inactive Member status. And, these conditions predated the time Mr. Schmidt went missing in December of last year.

As set out in more detail below, Mr. Schmidt is in the position at the present time to address some, but not all, of the allegations of the Charge. Mr. Schmidt respectfully requests that the present proceeding be resolved consistent with the interests of the Judicial Conduct Commission, Mr. Schmidt, and the public generally.

DISCUSSION

Until December of last year, Mr. Schmidt was a solo practitioner in the private practice of law in Shepherdsville, Kentucky. Mr. Schmidt is sixty-three years old.

In 1992, Mr. Schmidt was appointed Master Commissioner in the Bullitt Circuit Court. Late last year, he was removed by the Circuit Court from that position. As Master Commissioner, almost 100% of his duties and responsibilities concerned conducting court-ordered sales, primarily in foreclosure proceedings. Occasionally, the Court-ordered sale might arise from some other real estate action, such as a partition proceeding, or from a court-directed sale stemming from a divorce proceeding. Mr. Schmidt, over his time as Master Commissioner, may have conducted a handful of evidentiary hearings arising from real estate proceedings, which was a rare occurrence.

Until 2006, the duties of Master Commissioner also included serving as a Domestic

Relations Commissioner. The responsibilities and Family Court proceedings ended with the creation of the Family Court system.

His job duties and responsibilities as Master Commissioner did not include the settling of accounts of personal representatives in intestate probate proceedings. This latter category of duties and responsibilities which Mr. Schmidt, as Master Commissioner, did not have, is relevant regarding Count 2 of the Charge, discussed in more detail below.

On Monday, December 9, 2019, Mr. Schmidt went missing. His wife, family, friends and others in the community had no idea where he was. He was not found until several weeks later, on December 21, 2019. He was in poor physical and mental condition when he was found.

That same day, Mr. Schmidt was taken to Our Lady of Peace, a mental health facility in Louisville. After the initial intake, Mr. Schmidt was advised that if he did not voluntarily check himself into the facility, Our Lady of Peace would place an involuntarily hold on him. Mr. Schmidt agreed to being admitted and remained at Our Lady of Peace for several days. He was discharged on December 24, 2019.

During his stay at Our Lady of Peace, Mr. Schmidt underwent a preliminary assessment to determine the scope of any mental health or physical health issues. He was diagnosed as suffering from severe depression and an anxiety disorder. He was prescribed medicine to address issues regarding depression and to stabilize his mood.

After Mr. Schmidt was discharged, he began counseling with Mr. Drouet, a Licensed Clinical Social Worker. That counseling remains ongoing. Mr. Schmidt also received

treatment from a psychiatrist, Dr. Kissel, who has prescribed medication to address Mr. Schmidt's ongoing mental health issues.

During the time Mr. Schmidt was missing, from December 9 to December 21, 2019, his professional liability carrier, Lawyer's Mutual, was contacted. Lawyer's Mutual retained an attorney to oversee the wind-down of Mr. Schmidt's law practice and to notify Mr. Schmidt's then-active clients of his inability to represent them, their need to retain another attorney and to make arrangements to pick up their file from Mr. Schmidt's office.

After Mr. Schmidt was found on December 21, 2019 and following his discharge from Our Lady of Peace on December 24, 2019, he did not resume the active practice of law. His limited activity in January and early February of 2020, was to assist in the wind-down of his law practice. His law office was formally closed on February 7, 2020. And, the office building in which Mr. Schmidt's law practice was located was sold at that time.

Mr. Schmidt's treating counselor, Mr. Drouet, a Licensed Clinical Social Worker, has recommended Mr. Schmidt not resume the active practice of law at this time since in his opinion, Mr. Schmidt is not presently capable of actively practicing law in Kentucky as a result of his ongoing mental health issues.

On June 4 and 8, 2020, Mr. Schmidt underwent a neuropsychological evaluation by Edelson Forensics, PLLC. The August 18, 2020 Report notes the forensic evaluation by Edelson Forensics was to determine whether Mr. Schmidt met the criteria for requesting a KBA membership status change to Disabled Inactive member.

The Edelson Report sets out the testing performed and the results and conclusions

from that testing. The Report, in relevant part may be summarized as follows:

- Testing revealed Mr. Schmidt had considerable difficulty with verbal and visual memory from a cognitive point of view.
- Mr. Schmidt had word-finding problems and decreased motor speed attributed to his severe depression.
- Mr. Schmidt diagnosed with Mild Cognitive Impairment
- Since Mr. Schmidt has participated in psychiatric and psychological treatment since the beginning of this year, and he still demonstrates a high level of emotional distress, his mental health condition will likely persist “for some time,” a reasonable estimate being “at least one year.”
- Mr. Schmidt possesses strong analytical skills but he is unlikely to be an effective communicator at the present time given the result of the Personality Assessment Inventory given the significant compromise in Mr. Schmidt’s ability to concentrate.
- Neuropsychological testing indicates significant reduction in Mr. Schmidt’s memory skills.
- Memory tests show Mr. Schmidt tested in the Low Average range.

The Report concludes that within a reasonable degree of neuropsychological probability, Mr. Schmidt’s “current cognitive and emotional dysfunction substantially impairs his ability to practice law.” The Report of Dr. Sublett and Dr. Edelson recommend Mr. Schmidt be transferred to being a Disabled Inactive Member of the Kentucky Bar Association.

The Notice of Formal Proceedings and Charges from the Judicial Conduct Commission sets out three Counts.

Count I concerns an alleged misappropriation of the sale proceeds from a court-

ordered sale in March of 2019. At the present time, Mr. Schmidt is not in a position to address the particular substance of the allegations raised. There are concurrent inquiries concerning that transaction in another forum which preclude, for legal and practical reasons, Mr. Schmidt from responding to that Count. Mr. Schmidt wishes he was presently in a position to address the merits of the allegations. However, Mr. Schmidt has been advised by his counsel to not provide a detailed explanation at this point as a consequence of a pending collateral inquiry.

Count 2 concerns an alleged violation of KRS 395.040(3). That statute concerns persons entitled to be appointed as the administrator of a decedent's intestate estate. That statute provides, in part, that "no master or other commissioner whose duty it is to settle the accounts of a personal representative shall be appointed administrator." This Count alleges Mr. Schmidt, during his time as Master Commissioner, "impermissibly acted as a Public Administrator in a number of cases in Bullitt County."

However, as noted earlier in this Answer, the actual duties and responsibilities of Mr. Schmidt, as Master Commissioner, did not include reviewing and settling the accounts of such Personal Representatives. Mr. Schmidt was not called upon to engage in such review during his time as Master Commissioner. As a result, since Mr. Schmidt did not violate the statute, KRS 395.040(3), he did not act in violation of the allegations set forth in Count 2.


Count 3 alleges Mr. Schmidt did not timely collect and disperse judicial sale proceeds, an apparent violation of a cited Rule of Administrative Procedure. According to the recollection of Mr. Schmidt, there may have been occasion when judicial sale proceeds were

not collected or dispersed within the originally-contemplated timeframe. However, to the knowledge of Mr. Schmidt, there was no pattern or institutional issue concerning the timeliness of the collection and dispersal of such proceeds.

CONCLUSION

Based on the foregoing, Mr. Schmidt, by counsel, respectfully that the present proceeding be resolved consistent with the interests of the Judicial Conduct Commission, Mr. Schmidt, and the public generally.

Respectfully submitted,



Peter L. Ostermiller
1303 Clear Springs Trace, Suite 100
Louisville, Kentucky 40223
(502) 426-1798
(502) 426-1755 fax
peterlo@ploesq.com

Attorney for John A. Schmidt

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing document was mailed this 21st day of September, 2020, to:

Ms. Jimmy Shaffer
Executive Secretary, Judicial Conduct Commission
P.O. Box 4266
Frankfort, KY 40604-4266



Peter L. Ostermiller

**COMMONWEALTH OF KENTUCKY
JUDICIAL CONDUCT COMMISSION**

IN RE THE MATTER OF:

**JOHN A. SCHMIDT, MASTER COMMISSIONER (FORMER)
BULLITT COUNTY, KENTUCKY**

NOTICE OF TIME AND PLACE FOR HEARING

NOTICE is hereby given that the hearing in these formal proceedings will be held commencing February 12, 2021, at 9:00 a.m. in the courtroom of the Kentucky Court of Appeals, 360 Democrat Drive, Frankfort, Kentucky. The hearing will be conducted consistent with all COVID-19 mandates of the Supreme Court of Kentucky in effect at on the date of the hearing.

CERTIFICATE OF SERVICE

I hereby certify that a copy hereof was served on John A. Schmidt, by serving the same to his attorney, Peter L. Ostermiller, 1303 Clear Springs Trace, Suite 100, Louisville, KY 40223; and on counsel for the Judicial Conduct Commission, Jeffrey C. Mando, 40 West Pike Street, Covington, KY 41011, this 7th day of December, 2020.


JIMMY SHAFNER,
EXECUTIVE SECRETARY

**COMMONWEALTH OF KENTUCKY
JUDICIAL CONDUCT COMMISSION**

IN RE THE MATTER OF:

**JOHN A. SCHMIDT, MASTER COMMISSIONER (FORMER)
BULLITT COUNTY, KENTUCKY**

PRE-HEARING ORDER

The Judicial Conduct Commission (“Commission”) enters this pre-hearing order in this case.

IT IS ORDERED AS FOLLOWS:

1. That this case is assigned for a hearing on *February 12, 2021, at 9:00 a.m., EST*. The hearing will be held in compliance with all COVID-19 orders from the Kentucky Supreme Court in effect at the time of the hearing. The Chairperson of the Commission will preside in person and it is expected that attorneys will also appear in person. However, the Commission members shall appear via Zoom to hear the evidence. The hearing will be broadcast to the public on YouTube. Any objection to this procedure shall be filed on or before 30 days after the date of entry of this order.
3. Thirty (30) days before the hearing, the attorneys for each party shall exchange, and file with the Commission, a list of the names and addresses of all persons who will testify at the hearing. If a party intends to offer any witness as an expert witness, then the party shall also disclose the substance of the facts and opinions to which the witness is expected to testify and a summary of the grounds for each opinion.
6. Counsel for each party shall make available to opposing counsel all documentary evidence and exhibits of any kind to be presented at the hearing for inspection and copying at least thirty (30) days before the hearing.
7. Objections to any exhibits shall be in writing and filed with the Commission on or before twenty (20) days before the hearing. Such objections shall state with specificity the bases for the objections and shall refer to specific authority with copies of such authorities attached. Responses to any objections shall be in writing and filed on or before ten (10) days before the hearing.

8. All motions in limine shall be filed not later than twenty (20) days before the hearing and any responses shall be filed on or before ten (10) days before the hearing.
9. Exhibits to be used at the hearing shall be marked with the case number and appropriate adhesive labels prior to the hearing. These labels are available to the attorneys if requested at least one (1) week in advance of the hearing. The number of the exhibit will be entered on the label at the time of introduction into evidence. Pursuant to Rule 98(2)(c), a photograph must be taken of any exhibit, other than documents, to be introduced at the hearing. Said photograph will be included in the Commission file and the exhibit will be returned to the party.
10. Failure on the part of any attorney/party to comply with any requirements outlined hereinabove may result in exclusion of the evidence sought to be introduced at the hearing, waiver of objection, or any other sanctions against the offending party as deemed appropriate by the Commission.

KENTUCKY JUDICIAL CONDUCT COMMISSION


R. MICHAEL SULLIVAN, CHAIR

Date: 12/7/2020

CERTIFICATE OF SERVICE

I hereby certify that a copy hereof was served on John A. Schmidt, by serving the same to his attorney, Peter L. Ostermiller, 1303 Clear Springs Trace, Suite 100, Louisville, KY 40223; and on counsel for the Judicial Conduct Commission, Jeffrey C. Mando, 40 West Pike Street, Covington, KY 41011, this 7th day of December, 2020.


JIMMY SHAFFER,
EXECUTIVE SECRETARY