ARKANSAS SUPREME COURT
COMMITTEE ON PROFESSIONAL CONDUCT

NOTICE OF SUSPENSION OF ATTORNEY'S PRIVILEGE TO PRACTICE LAW

IN RE: **FRANK DAVID REES**
ARKANSAS BAR ID #79238
CPC Docket No. 2006-156
CPC Docket No. 2007-021
CPC Docket No. 2007-031

Attorney Frank David Rees, an attorney practicing law primarily in Jonesboro has been suspended from the practice of law within the jurisdiction of this State.

The Committee on Professional Conduct suspended the Arkansas law license of Attorney Frank David Rees for a period of six (6) weeks in CPC Docket No. 2006-156. In CPC Docket No. 2007-021 the Committee suspended Mr. Rees for a period of thirty (30) days to be served consecutively. In CPC Docket No. 2007-031 Mr. Rees was suspended for thirty (30) days to be served consecutively. The total license suspension for Mr. Rees is one hundred-two (102) days effective February 23, 2009.

Please be advised that a suspended attorney shall not be reinstated to the practice of law in this State until the Arkansas Supreme Court has received an affirmative vote by a majority of the Committee. If, and at such time as the Committee may reinstate the attorney, you will be provided notice of the reinstatement and the effective date thereof.

If you have any questions in this regard or you have information evincing the attorney's continued practice contrary to the status of his license, please contact this office.

February 23, 2009

Stark Ligon

Stark Ligon, Executive Director
Office of Professional Conduct
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Little Rock, AR 72201
(501) 376-0313

BEFORE THE SUPREME COURT COMMITTEE ON PROFESSIONAL CONDUCT
PANEL C

FILED
FEB 23 2009
LESLIE W. STEEN
CLERK

IN RE: **FRANK DAVID REES**
Arkansas Bar ID #79238
CPC Docket No. 2006-156

HEARING FINDINGS & ORDER

The formal charges of misconduct upon which this Findings & Order is premised, involving respondent attorney Frank David Rees of Jonesboro, Craighead County, Arkansas, arose from information brought to the attention of the Committee on Professional Conduct by Circuit Judge John Fogleman.

Following Respondent Attorney's receipt of the formal complaint, Mr. Rees filed a response. After a ballot vote before Panel A, the matter proceeded to a public hearing before Panel C conducted on February 3-5, 2009. Stark Ligon represented the Office of Professional Conduct. Asa Hutchinson, Asa Hutchinson, III, and Don Bacon represented Respondent Rees. The hearing panel consisted of Panel C members Searcy W. Harrell, Jr. (chair), Robert D. Trammell, Rita M. Harvey, and L. Scott Stafford. Replacing Panel C members who were unavailable for the case were Panel D members William P. Watkins, III, James A. Ross, Jr., and Sue Winter.

The factual basis for the case, as alleged in the Complaint, was that in 1995, David Rees represented Johnny Ford on a murder charge in Poinsett County that was tried to a jury twice and resulted in a "hung" jury each time. He was never retried. Mr.

Rees claimed his fee for representing Mr. Ford in this case was $25,000, of which Ford only paid $5,000 in a lump sum and some other later payments.

On March 6, 1999, Johnny Ford was injured in Poinsett County when the backhoe he was driving was hit by a vehicle purchased by Donald Jones of Jonesboro and driven and occupied by his minor son and two other adult young men. The liability of the Jones vehicle was not a disputed issue under the circumstances. On or about March 8, 1999, Ford signed a representation contract for a 40% contingent fee with the Rees Law Firm. On April 23, 1999, Rees filed suit for Ford against Jones and his son. Early in Rees's representation of Ford, Farm Bureau made a policy limits $100,000 offer to Rees to settle the Ford case for Donald Jones and his son. Attorney Bill Bristow, who represented Donald Jones in a personal capacity, offered Rees $25,000 more from Mr. Jones personally to add to the insurance settlement and implied that Jones would pay more but he expected a counter-offer from Rees. Rees prepared an undated settlement sheet based on $100,000, which was signed by Mr. and Mrs. Ford and Rees in early April 1999. This settlement sheet was prepared with the knowledge by Rees that at least $25,000 was available for settlement and probably more. While Rees testified at the hearing that the purpose of the settlement sheet was to show Mr. Ford how a settlement worked, the evidence is conclusive that the purpose of preparing the settlement sheet was to show Mr. Ford's medical creditors, who had approximately $117,000 in liens, that only $100,000 was available for the settlement. In a taped

telephone conversation, Rees told Mr. Ford that Rees did not want to tell people that I have got over $100,000. I want to tell them that we settled for $100,000. Mr. Ford eventually terminated the Rees representation and retained Attorney Kent Rubens, who negotiated a $200,000 settlement with additional personal contributions for Mr. and Mrs. Jones and from the carrier of one of the passengers.

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

1. By a unanimous vote, that the conduct of Frank David Rees did not violate Model Rule 1.1 as alleged in Count A.1 of the Complaint.

2. By a unanimous vote, the conduct of Frank David Rees violated Model Rule 1.2(d), Count B.1 of the Complaint, in that he advised Johnny Ford to go along with a scheme Rees devised by which the medical lien claimants of approximately $117,000 against Ford would be told that only $100,000 was recovered in his suit, when Rees knew Bill Bristow had offered to pay at least $25,000 more in settlement from Donald Jones personally, and implied that other funds might be available for settlement. Model Rule 1.2(d) provides that a lawyer shall not counsel a client to engage, or assist a client, in conduct that the lawyer knows is criminal or fraudulent, but a lawyer may discuss the legal consequences of any proposed course of conduct with a client and

may counsel or assist a client to make a good faith effort to determine the validity, scope, meaning or application of the law.

3. Having found a violation of Rule 1.2(d), in Count B.1 of the Complaint, the panel did not vote separately on Count B.2.

4. By a unanimous vote, that the conduct of Frank David Rees did not violate Model Rule 1.5(a) as alleged in Count C.1 of the Complaint.

5. By a unanimous vote, that the conduct of Frank David Rees did not violate Model Rule 1.5(a) as alleged in Count C.2 of the Complaint.

6. By a unanimous vote, that the conduct of Frank David Rees did not violate Model Rule 4.4 as alleged in Count D.1 of the Complaint.

7. By a unanimous vote, that the conduct of Frank David Rees did violate Model Rule 8.4(c) as alleged in Count E.1 of the Complaint, in that Rees engaged in conduct involving dishonesty, fraud, deceit or misrepresentation when he advised Johnny Ford to go along with a scheme Rees devised by which the medical lien claimants of approximately $117,000 against Ford would be told that only $100,000 was recovered in his suit, when Rees knew Bill Bristow had offered at least $25,000 more in settlement from Donald Jones personally, which funds Rees told Ford that Rees would collect after the $100,000 settlement was done and Mr. Ford lienors had been dealt with. Model Rule 8.4(c) requires that a lawyer shall not engage in conduct involving dishonesty, fraud, deceit or misrepresentation.

8. Having found a violation of Rule 8.4(c), in Count E.1 of the Complaint, the panel did not vote separately on Count E.2.

WHEREFORE, it is the decision and order of the Arkansas Supreme Court Committee on Professional Conduct that the Arkansas law license of Respondent FRANK DAVID REES, Arkansas Bar No. 79238, be, and hereby is, suspended for six weeks (forty-two days) for his conduct in this matter, which shall be effective on the date this Findings & Order is filed with the Clerk of the Arkansas Supreme Court. At the end of his period of suspension, the Respondent must petition this Panel for reinstatement and an order of reinstatement must be issued and filed before his law license is restored to good standing and he is permitted to practice law again in the courts of the State of Arkansas.

Respondent is also assessed and ordered to pay $1,022.82 in Committee hearing costs in this case. The costs assessed herein shall be payable by cashier 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 C

By Searcy W. Harrell
Searcy W. Harrell, Jr., Chairperson, Panel C

Date 2-18-09