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LESLIE W. STEEN
CLERK

BEFORE THE SUPREME COURT COMMITTEE ON PROFESSIONAL CONDUCT
PANEL B

IN RE: **FRANK DAVID REES**
Arkansas Bar ID # 79238
CPC Docket No. 2008-082

FINDINGS AND ORDER

The formal charges of misconduct upon which this Findings and Order is based were developed from information provided to the Committee by Connie Dixon in June 2008. The information related to the representation of Ms. Dixon in 2004-2005 by Respondent Frank David Rees, an attorney practicing primarily in Jonesboro, Arkansas. On September 22, 2008, Respondent was served with a formal complaint, supported by the affidavit of Connie Dixon and other related materials and transcripts. Respondent filed a response to the complaint, and the case was submitted to Panel B for a ballot vote.

In 2004, Connie Dixon had physical problems which she related to her prior use of the drug Vioxx. Prior to going to Mr. Rees, in May 2003 she had suffered a heart attack, which she attributed to her Vioxx use. In October 2004, at the suggestion of a friend, she went to see David Rees of the Rees Law Firm in Jonesboro for legal representation on a possible Vioxx injury claim. An attorney-client relationship was formed between Rees and Dixon and a fee agreement was signed on October 31, 2004, calling for a legal fee to Rees and his law firm of one-third of any recovery made for Dixon. Rees called her back to his office later that same day, stating to her that he needed her signature on papers. Rees used coercive tactics on a vulnerable client, as described by Ms. Dixon's affidavit, including intimidating her until she had sex with him, to which she states she did not

willingly consent. The unwanted sexual activity was accomplished by Rees on that date in his law office after regular business hours and after his staff had departed. Rees then began using his position as her attorney to attempt to coerce Dixon into meeting him at various locations under the guise of discussing her case and to sign papers. He would then turn the conversation to personal matters. He had sex with her at least one more time, in a vehicle on a gravel road out toward Harrisburg. After one sexual incident with Rees, Dixon was so upset that she stated a friend took her to the local mental health hospital for help.

For her protection, by early February 2005, Dixon decided she needed to take the precaution of taping their live conversations and the messages Rees left on her home telephone answering machine. Rees offered to reduce his fee percentage in her Vioxx case substantially if she would accompany him and, impliedly, have sex with him at various locations, including an overnight stay at the Memphis Peabody Hotel. Rees told her of his great success as a plaintiff's attorney; how few lawyers could handle her suit to a successful conclusion as he could; and how good her Vioxx claim was. Rees continuously told Dixon that her Vioxx suit was about to be filed, but none ever was filed for her by Rees or his law firm. The taped calls were transcribed by a West Memphis court reporter, and the 144 page transcript is attached to the Complaint.

In some of his taped conversations with Dixon, Rees asked her if she knew Sandra Smith, and if Dixon could provide Rees with negative information about Smith for his use in defending a sexual misconduct-type suit Smith had filed on August 17, 2004, against Rees and his law firm as Craighead Circuit No. CV-2004-592.

On February 21, 2005, the Rees Law Firm sent Ms. Dixon a "status" letter on her Vioxx claim and a new contract for legal representation that reduced her contingent fee from the previous

33.3% (one-third) down to 25% of any recovery. She never signed this new contract.

Dixon consulted with attorney Lohnes Tiner about her situation with Rees. On April 25, 2005, Tiner filed suit for Connie Dixon against David Rees in Craighead Circuit Court No. CV-2005-284, seeking damages for his wrongful sexual conduct with her after Rees became her attorney in October 2004.

Sandra Smith's attorney took depositions of Rees on April 6, 2007, and on September 11, 2007. These transcripts, along with transcript of the *Smith v. Rees* trial in September 2007, mention Ms. Dixon and Mr. Rees. In September 2007, *Smith v. Rees* was tried to a jury, resulting in a verdict for Ms. Smith. This judgment is now on appeal by Rees in Case No. CA 08-293. Dixon testified at Smith's trial that her sex with Rees was not consensual. In the September 11, 2007, deposition and the Smith trial transcript, Mr. Rees acknowledged having sex with Dixon while she was his client.

Dixon's suit against Rees was set for trial on April 22, 2008, in Jonesboro. After a jury was selected, the case was resolved by the parties, and dismissed with prejudice, in a confidential settlement. Thereafter, Ms. Dixon filed her grievance with the Committee in June 2008.

The sexual conduct alleged in this case occurred prior to the May 1, 2005, effective date of Arkansas Rule 1.8(j) which now directly prohibits an attorney from having sexual relations with a client unless a consensual sexual relationship existed between them at the time when the client-lawyer relationship commenced. The former Arkansas Model Rules of Professional Conduct apply.

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

A. The conduct of F. David Rees violated Model Rule 1.2(a) in that (1) when Connie Dixon

employed Rees in October 2004, it was her objective that he timely pursue a recovery for her on her Vioxx claim, by litigation, if necessary, and he failed to pursue the claim by litigation even after telling her that she had a good claim and that he was a lawyer uniquely qualified to pursue and obtain a good recovery for such a claim, and (2) in employing Rees as her lawyer, it was not Dixon's objective that he take advantage of his position of trust, and of her, by coercing her into having sexual relations with him against her desire or will. Model Rule 1.2 (a) requires that a lawyer shall abide by a client's decisions concerning the objectives of representation, subject to paragraphs (c), (d) and (e), and shall consult with the client as to the means by which they are to be pursued.

B. The conduct of F. David Rees violated Model Rule 1.7(b) in that, (1) as her attorney, Rees could not reasonably believe that his demanding sex from his client Dixon on several occasions would not materially limit his responsibilities to Dixon; (2) as her attorney, Rees could not reasonably believe that his demanding sex from his client Dixon on several occasions would not adversely affect his representation of Dixon; (3) Dixon did not freely consent to have sex with Rees after being afforded the opportunity for any consultation with another attorney; and (4) in his demands and requests for sex from Dixon, Rees placed his personal interests ahead of those of his client Dixon. Model Rule 1.7(b) provides that a lawyer shall not represent a client if the representation of that client may be materially limited by the lawyer's responsibilities to another client or to a third person, or by the lawyer's own interests, unless: (1) the lawyer reasonably believes the representation will not be adversely affected; and (2) the client consents after consultation.

C. The conduct of F. David Rees violated Model Rule 8.4(c) in that (1) by coercing Dixon into having sexual relations with him under the guise or pretext of his alleged imminent filing of her

Vioxx lawsuit, Rees engaged in conduct involving dishonesty, fraud, deceit or misrepresentation toward Dixon, and (2) by coercing Dixon into having sexual relations with him under the guise or pretext of his needing her to meet with him to sign documents related to her legal matter, Rees engaged in conduct involving dishonesty, fraud, deceit or misrepresentation toward Dixon. Model Rule 8.4(c) requires that a lawyer shall not engage in conduct involving dishonesty, fraud, deceit or misrepresentation.

WHEREFORE, it is the decision and order of the Arkansas Supreme Court Committee on Professional Conduct, acting through its authorized Panel B, that **FRANK DAVID REES**, Arkansas Bar ID# 79238, be, and hereby is, **REPRIMANDED** for his conduct in this matter, **FINED $2,500.00**, and assessed case costs of $50.00. The fine and costs assessed herein, totaling $2,550.00, shall be payable by cashier's check or money order payable to the "Clerk, Arkansas Supreme Court" delivered to the Office of Professional Conduct with 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: Valerie L. Kelly
Valerie L. Kelly, Chair, Panel B

Date: February 24, 2009