

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

IN RE: **FRANK DAVID REES**
Arkansas Bar ID #79238
CPC Docket No. 2007-113 (Brandon)

FILED

FEB 23 2009

**LESLIE W. STEEN
CLERK**

HEARING FINDINGS & ORDER

The formal charges of misconduct upon which this Consent 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 Kyle Brandon of Paragould, Arkansas. The Respondent Attorney was served with a formal complaint, he responded, and rebuttals were filed. 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. From all of these materials and the hearing, Panel C finds:

Kyle Brandon was seriously injured in a vehicle collision on September 6, 2003. The Rees Law Firm was retained two days later by Brandon to represent him in his claims for personal injury and other elements of damages, on a contingency fee basis. The fee agreement called for the Rees Law Firm to receive a fee of one-third of any recovery, or, if the matter went to trial, the fee became 40% of any recovery. The case was settled before trial for \$300,000.00,

and the Rees Law Firm issued settlement sheets or accountings to Brandon on February 17 and on March 31, 2006, reflecting the firm had made three payments to Brandon during the course of the Rees representation of Brandon in which the firm advanced or loaned Brandon the following sums for his personal use and needs, even though such advances or loans to clients are prohibited by Rule 1.8(e): \$1,000.00 on April 12, 2004 by firm check #43287, \$500.00 on December 17, 2004, by firm check #46018, and \$100.00 on November 15, 2005, by firm check #48609.

Upon consideration of the formal complaint and attached exhibit materials, the response to it, testimony, and 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 Rule 1.1, as alleged in Count A.1 of the Complaint.
2. By a unanimous vote, that the conduct of Frank David Rees did not violate Rule 1.1, as alleged in Count A.2 of the Complaint.
3. By a unanimous vote, that the conduct of Frank David Rees did not violate Rule 1.1, as alleged in Count A.3 of the Complaint.
4. By a unanimous vote, that the conduct of Frank David Rees did not violate Rule 1.1, as alleged in Count A.4 of the Complaint.
5. By a unanimous vote, that the conduct of Frank David Rees did not violate Rule 1.5(c), as alleged in Count B.1 of the Complaint.
6. By a unanimous vote, that the conduct of Frank David Rees did not violate Rule 1.5(c), as alleged in Count B.2 of the Complaint.

7. By a unanimous vote, that the conduct of Frank David Rees did violate Rule 1.8(e), as alleged in Count C.1 of the Complaint, in that in connection with Rees's representation of Brandon in a personal injury claim, Rees's law firm provided Brandon with financial assistance prohibited by Rule 1.8(e), being \$1,000.00 on April 12, 2004 by firm check #43287. Arkansas Rule 1.8(e) requires that a lawyer shall not provide financial assistance to a client in connection with pending or contemplated litigation, except that: (1) a lawyer may advance court costs and expenses of litigation, the repayment of which may be contingent on the outcome of the matter; and (2) a lawyer representing an indigent client may pay court costs and expenses of litigation on behalf of the client.

8. By a unanimous vote, that the conduct of Frank David Rees did violate Rule 1.8(e), as alleged in Count C.2 of the Complaint, in that in connection Rees's representation of Brandon in a personal injury claim, Rees's law firm and provided Brandon with financial assistance prohibited by Rule 1.8(e), being \$500.00 on December 17, 2004, by firm check #46018. Arkansas Rule 1.8(e) requires that a lawyer shall not provide financial assistance to a client in connection with pending or contemplated litigation, except that: (1) a lawyer may advance court costs and expenses of litigation, the repayment of which may be contingent on the outcome of the matter; and (2) a lawyer representing an indigent client may pay court costs and expenses of litigation on behalf of the client.

9. By a unanimous vote, that the conduct of Frank David Rees did violate Rule 1.8(e), as alleged in Count C.3 of the Complaint, in that in connection with Rees's representation of Brandon in a personal injury claim, Rees's law firm provided Brandon with financial assistance prohibited by Rule 1.8(e), being \$100.00 on November 15, 2005, by firm check #48609.

Arkansas Rule 1.8(e) requires that a lawyer shall not provide financial assistance to a client in connection with pending or contemplated litigation, except that: (1) a lawyer may advance court costs and expenses of litigation, the repayment of which may be contingent on the outcome of the matter; and (2) a lawyer representing an indigent client may pay court costs and expenses of litigation on behalf of the client.

WHEREFORE, it is the decision and order of the Arkansas Supreme Court Committee on Professional Conduct, by a vote of 7-0, that Respondent **FRANK DAVID REES**, Arkansas Bar No. 79238, be, and hereby is, **Cautioned** for his conduct in this matter, **fined \$1,000.00**, and ordered to pay **\$417.80 hearing costs for this case**. 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 C

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

CPC 2007-113

Date *2-18-09*