

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, Executive Director
Office of Professional Conduct
625 Marshall Street, Room 110
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(501) 376-0313

BEFORE THE SUPREME COURT COMMITTEE ON PROFESSIONAL CONDUCT
PANEL C

IN RE: **FRANK DAVID REES**
Arkansas Bar ID #79238
CPC Docket No. 2007-031 (Papachristou)

FILED

FEB 23 2009

**LESLIE W. STEEN
CLERK**

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 Tom Papachristou through his attorney, Paul Ford. 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. From all of these materials and the hearing, Panel C finds:

In early 2004, Tom Papachristou (Papachristou) and Kim Crockett (Crockett), both residents of Crittenden County, Arkansas, had been long-time companions and had a minor son, Nicholas Papachristou, between them. Tom also had a young adult

son, Christopher Papachristou, who lived in Jonesboro at the time. Tom Papachristou was a Greek-American businessman engaged in business, including international sales activities, from his base in Crittenden County, Arkansas. Crockett functioned as the long-time office manager for these businesses. In 2004 there was an ongoing federal criminal investigation of Papachristou, and possibly of Crockett, for activities including alleged illegal transfer of registration or serial plates on certain aircraft used in their business.

In February 2004, Kent Rubens of West Memphis was representing Crockett and some businesses in which Papachristou and Crockett were involved, including Omni Holding & Development Corporation (Omni Holding). On March 4, 2004, Mr. Rubens was contacted by the FBI about an interview with his client Crockett. At a meeting with the FBI on March 10, 2004, Crockett, with Rubens present as her attorney, agreed to provide the FBI with information and signed a federal "Proffer Agreement," in effect making her a cooperating witness, with some degree of immunity, in an effort to help her avoid possible prosecution in the criminal matter under investigation involving Papachristou.

Due to circumstances that arose in the personal relationship between Crockett and Papachristou, on March 16, 2004, she sought and obtained a temporary Order of Protection against him in Crittenden County Circuit Court. A contact involving them on March 18, 2004, in West Memphis led to his being jailed that day for violation of the Order of Protection. At Tom's request, his son Christopher went to the Rees Law Firm

and arranged for legal representation by David Rees and the Rees Law Firm for Tom on the West Memphis charges. Certain financial arrangements for the legal representation with the Rees Law Firm were made. Tom Young, an attorney for the Rees Law Firm at its West Memphis office, represented Papachristou in the matters in West Memphis District Court and Crittenden County Circuit Court through their conclusion in mid-May 2004. Kent Rubens represented Crockett in resolving the matter involving the Order of Protection.

While these matters were pending, in May 2004 Papachristou agreed to retain the Rees Law Firm to represent him in the federal criminal investigation. Tom Papachristou paid the Rees Law Firm a \$125,000 retainer for the federal criminal matter by check on May 26, 2004. On May 31, 2004, he gave the Rees Law Firm another check for \$100,000 to hold as additional fee on the federal criminal matter, if he was actually charged. Through October 14, 2004, Papachristou made additional fee payments to the Rees Law Firm for matters other than the federal criminal matter, including representation for Omni Holding and other business matters.

As a result of contacts made by Crockett with Rees through her association with Papachristou, on May 27, 2004, at Rees's suggestion, she wrote Mr. Rubens, by letter drafted by the Rees Law Firm, terminating Rubens services and she became Rees client, as did businesses in which Papachristou and Crockett were involved. Communications among Rees, Kent Rubens, Assistant United States Attorney Joe Volpe, and others in late May-early June 2004, resulted in Rees writing Volpe and the

other attorneys a letter dated June 2, 2004, stating that Rees now represented both Tom Papachristou and Kim Crockett in the pending federal criminal investigation, and that Rubens was out as Crockett's attorney in the matter. On June 7, 2004, an agent for Papachristou and Crockett picked up all their client files from Rubens' office and delivered them to Rees's office. During this period, Rubens wrote David Cahoon, a Jonesboro attorney who had represented Rees in some matters, outlining to Cahoon, for Rees's benefit, the conflict of interest Rubens saw Rees had created by assuming dual representation of both Tom Papachristou and Crockett in the same federal criminal matter, and the risk this new dual representation posed to Crockett's probable immunity under her Proffer Agreement of March 10, 2004.

As a result of conversations between Crockett and Rees, Rees procured the services of an attorney friend, Joe Hughes, to represent Crockett in a suit filed June 23, 2004, for her against Rubens for damages allegedly arising out of his previous representation of her. This suit was voluntarily dismissed by Hughes on November 22, 2004, and never refiled. The fact that an immunity agreement for Crockett's benefit had been entered into in the ongoing federal criminal investigation involving Papachristou is specifically acknowledged in ¶ 8 of the suit filed for Crockett by Hughes in June 2004.

In early October 2004, while Papachristou was overseas, one evening Rees went to the residence Papachristou and Crockett shared in Marion, Arkansas. An incident occurred there which personally upset her. Crockett told Papachristou of the incident upon his return, and they consulted with attorney Paul Ford. On October 13, 2004, they

jointly wrote Rees, terminating his services in all their legal matters. Rees was instructed to turn over all their files to their new attorney, Paul Ford. Mr. Ford wrote Rees on October 14, 2004, demanding a return of all their files, an accounting from Rees, and a refund of unearned fees paid to the Rees firm by Tom Papachristou. Rees replied on October 29, 2004, and returned the undeposited \$100,000 check from Papachristou that Rees had been holding since May 31, 2004. Rees stated no further refund of fee was due to Papachristou, and made no further fee refund.

In the Rees letter of October 29, 2004, he stated that the Rees team had worked long and hard on Tom's federal criminal matter and that Rees shut that down, implying that the Rees efforts were successful in helping Tom Papachristou avoid federal criminal charges. To the contrary, the federal investigation of Papachristou was never shut down. He was charged by Information with a felony in June 2006, entered a guilty plea to a felony in August 2006, and was sentenced to one year of probation, with six months of that time to be spent at a residential re-entry center in Memphis, and he was fined \$2,000, on that plea in March 2007. Joe Volpe's July 15, 2005, deposition makes it clear that Volpe was unaware of the investigation of Papachristou ever being shut down, whether by reason of Rees's involvement or for any other reason. In his July 2005 deposition, Volpe stated the investigation of Tom Papachristou was ongoing.

On January 10, 2005, Ford sued Rees and his firm for Tom Papachristou, in Craighead Circuit No. CV-2005-018, for the repayment of \$125,000 in advanced fees Tom had paid Rees. Arlon Woodruff represented Rees in this suit. Ford deposed Rees

on April 18 and May 31, 2005, in this case. Joe Volpe was deposed in mid-2005. John Wesley Hall, Jr., a veteran Little Rock criminal defense attorney, was deposed in mid-2005 as Mr. Ford's expert witness on criminal cases. Hall testified that Rees should not have represented Crockett and Papachristou at the same time in the same federal criminal investigation.

The actual office file Rees built on the Tom Papachristou federal criminal matter from May-October 2004, contained a total of fifteen (15) sheets (including duplicates, and including within the fifteen sheets were eight (8) sheets which were letters generated by other attorneys. Rees turned this office file over to Paul Ford in late October 2004.

Upon consideration of the formal complaint and attached exhibit materials, the response to it, hearing 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 Model 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 Model Rule 1.5(a), as alleged in Count B.1 of the Complaint.
3. By a unanimous vote, that the conduct of Frank David Rees did violate Model Rule 1.7(a), as alleged in Count C.1 and Count C.2 of the Complaint, in that on March 10, 2004, Kim Crockett, represented by Kent Rubens, entered into a Proffer

Agreement of cooperation as a witness with the FBI and the United States Attorney Office's for the Eastern District of Arkansas in a federal criminal investigation into activities of her long-time live-in domestic partner and business associate, Tom Papachristou, businesses in which they were both involved, and possibly some activities that exposed her to some personal criminal liability. By May 26, 2004, Rees represented Tom Papachristou in the same federal criminal investigation. After Kim Crockett was induced to terminate the services of her attorney, Mr. Rubens, Rees informed the United States Attorney on June 2, 2004, by letter that he then represented both Tom Papachristou and Kim Crockett in the same federal criminal matter. Rees did not explain to Kim Crockett the risk to her, and to any benefit or immunity she might otherwise enjoy for her cooperation under her Proffer Agreement, in the federal criminal matter, due to Rees's dual representation of Tom Papachristou and Crockett, nor did Rees obtain her consent to the dual representation after any effective consultation with her on the conflict issue. Under the circumstances, and given Rees's experience as a criminal defense attorney, Rees could not have then reasonably believed that his existing representation of Tom Papachristou would not adversely affect his relationship with Kim Crockett as his new client in the same criminal investigation. Rees's lengthy testimony in a deposition taken by Attorney Paul Ford on April 18, 2005, establishes, in particular at pages 197 and 198, that his main interest in representing Kim Crockett was to benefit his other client, Tom Papachristou. Model Rule 1.7(a) provides that a lawyer shall not represent a client if the representation of that client will be directly adverse to

another client, unless: (1) the lawyer reasonably believes the representation will not adversely affect the relationship with the other client; and (2) each client consents after consultation.

4. By a unanimous vote, that the conduct of Frank David Rees did violate Model Rule 1.7(b), as alleged in Count D.1 of the Complaint, in that in June 2004, Mr. Rees undertook the new representation of Kim Crockett in an ongoing federal criminal investigation into the activities of a business Tom Papachristou and she jointly operated at a time when Tom Papachristou was already Mr. Rees client in the same matter, and after Ms. Crockett had cooperated with the federal authorities, receiving a Proffer Agreement in March 2004 and the benefits that might flow to her from it. Under the circumstances known to Mr. Rees at the time, and given his substantial experience as a criminal defense attorney, he could not have, at the time, reasonably believed his representation of Ms. Crockett would not be materially limited or adversely affected by his responsibilities to his existing client in the same matter, Tom Papachristou, Crockett's long-time business partner and paramour. 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.

5. By a unanimous vote, that the conduct of Frank David Rees did not violate Model Rule 1.15(a), as alleged in Count E.1 of the Complaint.

6. By a unanimous vote, that the conduct of Frank David Rees did not violate Model Rule 1.16(d), as alleged in Count F.1 of the Complaint.

7. By a unanimous vote, that the conduct of Frank David Rees did not violate Model Rule 1.16(d), as alleged in Count F.2 of the Complaint.

8. By a unanimous vote, that the conduct of Frank David Rees did not violate Model Rule 1.16(d), as alleged in Count F.3 of the Complaint.

9. By a unanimous vote, that the conduct of Frank David Rees did not violate Model Rule 3.1, as alleged in Count G.1 of the Complaint.

10. By a unanimous vote, that the conduct of Frank David Rees did not violate Model Rule 8.4(c), as alleged in Count H.1 of the Complaint.

11. By a unanimous vote, that the conduct of Frank David Rees did not violate Model Rule 8.4(c), as alleged in Count H.2 of the Complaint.

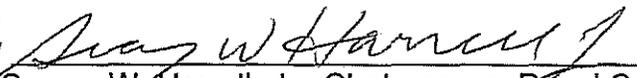
12. By a unanimous vote, that the conduct of Frank David Rees did not violate Model Rule 8.4(d), as alleged in Count I.1 of the Complaint.

WHEREFORE, it is the decision and order of the Arkansas Supreme Court Committee on Professional Conduct, by a 6-1 vote, that the Arkansas law license of Respondent FRANK DAVID REES, Arkansas Bar No. 79238, be, and hereby is, suspended for thirty (30) days for his conduct in this matter, which suspension shall be served consecutively with and to the forty-two (42) day suspension ordered in CPC 2006-156 and the thirty (30) day suspension ordered in CPC 2007-021, for a total license suspension period of one hundred-two (102) days. Panel members Harrell,

Harvey, Stafford, Watkins, Ross, and Winter voted for the suspension on this case. Panel member Trammell voted for a reprimand on this case. The suspension of 102 days 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 be 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 \$987.92 in Committee hearing costs for 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, Jr., Chairperson, Panel C

Date 7-18-09

H/PROF/REES/PAPACHRISTOU-F&O