

BEFORE THE SUPREME COURT COMMITTEE ON PROFESSIONAL CONDUCT

PANEL A

IN RE: JIM ROSE, III, Respondent
 Arkansas Bar ID#79247
 CPC Docket No. 2003-036

CONSENT FINDINGS AND ORDER

The formal charges of misconduct upon which this Findings and Order is based arose from information provided to the Committee by Dr. Richard Back on October 10, 2002. The information related to the representation of Dr. Back by Respondent in 1997 and 1998.

During April 2003, Respondent was served with a formal complaint, supported by affidavits from Dr. Back and Timothy O. Dudley, an attorney practicing in Little Rock, Arkansas. A response was filed. The Respondent and the Executive Director negotiated a discipline by consent proposal, which was submitted to this Panel.

The information submitted by Dr. Back reflected that during 1997, he hired Jim Rose, III, an attorney practicing in Fayetteville, to assist him with a matter he was experiencing with his then wife. Dr. Back requested that Mr. Rose prepare a contract for his wife, who was also his business partner, to sign regarding her embezzlement of funds from the joint business. Instead of preparing the document Dr. Back had requested, Mr. Rose prepared what was termed a “post nuptial” agreement. The agreement was signed by Dr. Back’s wife on May 28, 1997. Mr. Rose, in responding to the formal disciplinary complaint, advised that none of the parties ever anticipated that the agreement would be used in a divorce proceeding. He also stated that he advised Dr. Back that its use “to insure the marriage stayed intact” might convince his wife that the document would be considered valid upon challenge.

In 1998, Dr. Back’s wife sued him for divorce. Dr. Back hired Mr. Rose to represent him in the divorce proceeding. The fee agreement entered into between Dr. Back and Mr. Rose was that Mr. Rose would receive

\$150 per hour for his services in the matter. As the divorce proceeding progressed, Dr. Back was presented with a settlement offer from opposing counsel. Dr. Back declined the offer based upon the “post nuptial” agreement and his belief that it was valid. However, that ended up not being the situation. Judge Lineberger who heard the matter found specifically that the agreement was not enforceable.

When Dr. Back’s divorce proceeding was concluded, he hired another attorney, Mr. Dudley, to assist him with pursuing a legal malpractice action against Mr. Rose. The legal malpractice action was filed on May 24, 2000. When he presented his defense to the lawsuit, Mr. Rose asserted that Dr. Back had come to him with the “post nuptial” idea and that he had merely placed it in legal terms. During the course of the malpractice proceeding, Mr. Rose’s deposition was taken by Dr. Back’s attorney. In response to a direct question whether he had ever told Dr. Back that in his opinion the agreement was enforceable, Mr. Rose said no, that he told Dr. Back it wasn’t enforceable. It was revealed that Dr. Back had tape recorded two conversations wherein Mr. Rose did aver his belief that the agreement was enforceable. Mr. Rose acknowledged that there was a discrepancy between his answers in the deposition and what Dr. Back has produced on the tape, however, he explained that the only reason the statements were made which Dr. Back taped was because Dr. Back had rejected the settlement offer and had decided to go to Court. At that point, Mr. Rose explained that they had begun to take a positive attitude about the Agreement Dr. Back and Dr. Bettye Back had signed and the conversations on the tape reflected that positive attitude. At some point later in the proceeding, the matter was settled. An Order of Dismissal was entered in the malpractice action on November 26, 2001.

In the information submitted to the Committee, Mr. Dudley provided an Affidavit explaining that after reviewing Dr. Back’s information and his divorce file, he determined that Dr. Back had a valid malpractice claim against Mr. Rose. Mr. Dudley also advised that during the deposition of Mr. Rose, he specifically inquired about Mr. Rose’s advice to Dr. Back with regard to the “post nuptial” agreement which was prepared for Dr. Back at Dr. Back’s request. No one was at liberty to provide a copy of the settlement agreement since the malpractice case was settled as confidential. Mr. Dudley did affirm that the information provided by Dr. Back was true and correct to the best of his knowledge.

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

1. That Mr. Rose's conduct violated Model Rule 1.1 when he failed to be thorough enough in his representation of Dr. Back to be certain that the Agreement he prepared for Dr. Back at Dr. Back's request contained appropriate consideration so that it could be considered valid when challenged; and when he failed to be thorough enough to research the area of contracts and divorce proceedings so that he could properly advise Dr. Back with regard to the issue of whether the "Post Nuptial" Agreement would be enforceable. Model Rule 1.1 requires that a lawyer provide competent representation to a client, including the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation.
2. That Mr. Rose's conduct violated Model Rule 3.4(c) because as an officer of the Court, he is charged with the duty of complete honesty; he breached that duty by providing testimony during his deposition taken in the legal malpractice action brought against him by Dr. Back, with regard to statements made concerning whether he told Dr. Back that he believed the agreement would be enforceable, which were not truthful. Model Rule 3.4(c) requires that a lawyer not knowingly disobey an obligation under the rules of a tribunal except for an open refusal based on an assertion that no valid obligation exists.

WHEREFORE, it is the decision and order of the Arkansas Supreme Court Committee on Professional Conduct, acting through its authorized Panel A, that JIM ROSE, III, Arkansas Bar ID# 79246, be, and hereby is, REPRIMANDED for his conduct in this matter. Further, pursuant to Section 18.A of the Procedures of the Arkansas Supreme Court Regulating Professional Conduct of Attorneys at Law, Mr. Rose is ordered to pay costs in this matter in the amount of \$469. In addition, pursuant to Section 18.B of the Procedures, Mr. Rose is ordered to pay a fine in the amount of \$2500. The costs and fine 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 A

By: _____

Gwendolyn D. Hodge, Chair, Panel A

Date: _____

(13.M, Rev.1-1-02)