

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

IN RE: JIM ROSE III, Respondent
Arkansas Bar ID#79247
CPC Docket No. 2007-049

FILED

AUG 17 2007

**LESLIE W. STEEN
CLERK**

FINDINGS AND ORDER

The formal charges of misconduct upon which this Findings and Order is based arose from information provided to the Committee by Pamela E. Fischer in an Affidavit dated May 3, 2007. The information related to the representation of Mrs. Fischer's husband, Walter Fischer by Respondent beginning in 2002 and continuing through 2004.

During May 2007, Respondent was served with a formal complaint, supported by affidavit from Pamela E. Fischer. Respondent filed a timely response and the matter continued through ballot vote before Panel A pursuant to the Procedures of the Arkansas Supreme Court Regulating the Professional Conduct of Attorneys at Law (2002).

The information before the Committee reflected that:

On April 3, 2002, Mr. and Mrs. Fischer hired Jim Rose, III, an attorney practicing primarily in Fayetteville, to represent them concerning an investigation being pursued by the Internal Revenue Service and any appeals arising out of any criminal charges which might be filed. Mr. Rose and another attorney, Rick E. Woods of Fayetteville, were paid a total of \$30,000. The check cleared the Fischers' bank the day after it was written. The Fischers were referred to Mr. Rose and Mr. Woods by Harry McDermott, another attorney practicing in Fayetteville.

When Mr. and Mrs. Fischer first met with Mr. Rose and Mr. Wood to discuss their

situation, they contacted the IRS. The Fischers were informed that the \$30,000 covered investigation, trial and appeals.

There was one meeting with the IRS and both Mr. Rose and Mr. Woods attended. During December 2003, Mr. Fischer was charged with income tax fraud. Mrs. Fischer was never charged.

In early May 2004, Mrs. Fischer's husband was advised to take a plea deal because the case was so huge and blatant that, if he did not take the deal, the government would file the charge of obstruction of justice against Mrs. Fischer. Charges were not filed against Mrs. Fischer. The sentence imposed after entry of the plea was harsher and not what had been explained to Mr. and Mrs. Fischer and they were extremely upset. As such, Mr. Fischer wanted an appeal of the sentence to be pursued by Mr. Rose.

Mr. Fischer filed a post-conviction proceeding after being sentenced to a much greater amount of time than he was informed by his attorneys, Mr. Rose and Mr. Woods. The hearing on the post-conviction pleading was held on November 15, 2005. Following the filing of the post-hearing briefs by both sides, Magistrate Judge Beverly Stites Jones sent a request that both sides submit briefs on the issue of a requested appeal. Magistrate Judge Stites denied the Section 2255 motion filed by Mr. Fischer. Judge Jimm Larry Hendren filed his Order in the matter on October 11, 2006. Judge Hendren specifically found that Mr. Fischer clearly conveyed his desire to appeal and that his attorneys (Rose and Woods) did not file a timely Notice of Appeal. Based upon this the Court found that Mr. Fischer received ineffective assistance of counsel. Based upon his findings, Judge Hendren set a re-sentencing. Following the re-sentencing, Mr. Fischer's time of incarceration was reduced from 46 months to 35 months. The fine and the restitution

remained the same.

In responding to the formal disciplinary complaint, Mr. Rose denied that he failed to file a timely Notice of Appeal and explained that his client, Mr. Fischer, never clearly conveyed his desire to appeal. According to Mr. Rose, the only time the word "appeal" was used was when his client asked immediately following sentencing "can we appeal this". Mr. Rose replied that "yes," Mr. Fischer could, but that was not the place to discuss it. Mr. Rose offered that he explained the futility of an appeal to Mr. Fischer and then suggested that he come to his office to discuss it further. Mr. Rose advised the Committee that Mr. Fischer did not ever come to his office or call him to discuss an appeal after they left the sentencing. Mr. Rose averred that he would have filed a Notice of Appeal if Mr. Fischer had ever requested him to do so.

Mr. Rose disputed the information provided that Mr. Fischer contacted his office three times following the sentencing. Mr. Rose said that if that had occurred, he would have returned the telephone call.

While remaining respectful of Judge Hendren's decision, Mr. Rose does not agree with it. He maintains that Mr. Fischer did not convey his desire to appeal.

Mr. Rose also explained that he did not remember making the statement that Mr. Fischer "no doubt wanted to appeal" during an interview with the Federal Public Defender and their investigator, as testified to by Mr. Woods and the investigator during the evidentiary hearing in November 2006. Mr. Rose stated that if he did make the statement he was only to say it was evident two (2) years after that Sentencing Hearing that Mr. Fischer had wanted to appeal.

In concluding his response, Mr. Rose offered that Mr. Fischer is actually better off that he would have been if an appeal had been filed. There is no doubt in Mr. Rose's mind that had

Judge Hendren's decision not to accept the plea bargain and to go with the new higher loss been appealed, it would have been affirmed because there was nothing faulty in the reasoning or decision. However, because Mr. Fischer filed the pleading he filed and was able to get back before Judge Hendren, he was granted a new sentencing hearing and Judge Hendren reduced Mr. Fischer's time of incarceration.

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 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 file a timely Notice of Appeal after Mr. Fischer conveyed his desire to appeal. Model Rule 1.1 requires that a lawyer shall provide competent representation to a client, including the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation.

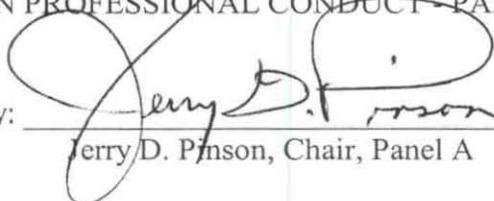
2. That Mr. Rose's conduct violated Model Rule 1.3, because after Mr. Fischer expressed his desire to appeal the sentence imposed at his hearing in September 2004, Mr. Rose failed to file a Notice of Appeal on Mr. Fischer's behalf. Model Rule 1.3 requires that a lawyer shall act with reasonable diligence and promptness in representing a client.

3. That Mr. Rose's conduct violated Model Rule 8.4(d), because his failure to file a Notice of Appeal on behalf of Mr. Fischer in connection with the sentence imposed, after being made aware of his desire to appeal, created the need for other proceedings and time spent in United States District Court which would not have been necessary otherwise. Model Rule 8.4(d) requires that a lawyer not engage in conduct that is prejudicial to the administration of justice.

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#79247, 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 (2002), Mr. Rose is ordered to pay costs in the amount of \$50. 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 A

By: _____


Jerry D. Pinson, Chair, Panel A

Date: _____

August 13, 2007