

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

IN RE: J. F. Valley

Arkansas Bar ID# 96052

CPC Docket No. 2001-096

FINDINGS AND ORDER

The formal charges of misconduct upon which this Findings and Order is based arose from information provided to the Committee by referral from the Arkansas Supreme Court. The information related to the representation of Don R. Etherly by Respondent in the matter of Don R. Etherly and Earnest Simes v. Honorable Charles H. Eddy, Judge, et al., Arkansas Supreme Court Case No. 2000-1407.

In November 2000, the Phillips County Circuit Court entered a declaratory judgment and mandamus that (1) declared Don R. Etherly and Earnest Simes to be ineligible as candidates for Justice of the Peace, District 5, Phillips County, and (2) ordered the Phillips County Election Commission "not to count any vote cast for the Defendants, Earnest Simes and Don Etherly, in the General Election to be held on Tuesday, November 7, 2000." Simes and Etherly, appellants, were represented by J.F. Valley, Attorney at Law, Helena, Arkansas. A notice of appeal was filed by Mr. Valley on November 9, 2000.

On December 8, 2000, Valley filed a motion for stay, motion for expedited appeal and petition for writ of certiorari, prohibition, or mandamus. In the motion for stay, Mr. Valley asked that certiorari be issued so that a decision could be rendered and a mandate be issued prior to January 1, 2001, the starting date for the new term of office for the Justice of the Peace. The Arkansas Supreme Court granted the motion for expedited appeal, denied the motion for stay and granted the petition for writ of certiorari. The record from the Phillips County Circuit Court was filed with the Arkansas Supreme Court on January 11, 2001 and the appellants' brief was due to be filed on or before forty days from January 11, 2001.

Mr. Valley asked for a seven-day clerk's extension and received an extension to file his brief on or before February 14, 2001. Mr. Valley thereafter telephoned the Arkansas Supreme Court Clerk on February 14, 2001 and requested a two-week extension of time to file the brief. The request was granted and Mr. Valley was permitted to file the brief on or before February 27, 2001.

On February 23, 2001, Mr. Valley filed a Motion for Extension of Time to file a brief on behalf of his clients. According to the Motion, Mr. Valley requested the extension due to his trial schedule and deadlines imposed by the court in other appellate cases. The Arkansas Supreme Court granted the motion and extended the time to file the brief to April 13, 2001.

On April 13, 2001, a Motion for Extension of Time was filed. In his April 23, 2001, motion, Mr. Valley stated that he needed the extension of time because of the death of his father in March and the funeral, burial and other matters attendant thereto. The Arkansas Supreme Court granted the motion and extended the time to file the brief to April 28, 2001.

On April 30, 2001, Mr. Valley filed a Motion for Extension of Time. In his April 30 motion, Mr. Valley stated that he was overwhelmed with appellate and trial work; that his law partner had settled a case involving more than three hundred (300) clients which involved forty-five (45) guardianships and because of other appeals pending he had before the Arkansas Supreme Court. The Arkansas Supreme Court granted the motion and extended the time to file the brief to May 15, 2001. Mr. Valley filed a Motion for Extension of Time on May 11, 2001. In his May 11 Motion, Mr. Valley stated that his brother-in-law died in an accident which has caused him to spend time out of the office attending to funeral arrangements and other legal matters concerning the brother-in-law's death. The Arkansas Supreme Court granted the motion and extended the time to file the brief to June 14, 2001.

Mr. Valley filed a Motion for Extension of Time on June 14, 2001. In the June 14 motion, Mr. Valley stated that it would be his final request for an extension of time. Mr. Valley stated that the death of his father, his brother-in-law, and the upcoming surgery on his client was cause for an extension of time. The Arkansas Supreme Court granted the motion and extended the time to file the brief to July 1, 2001.

On July 2, 2001, Mr. Valley filed a Motion for Extension of Time to file a brief on behalf of Etherly and Simes. Mr. Valley stated that the extension was necessary because he had a significantly laden law practice and several incidents which had caused delay in the completion of the brief. The Arkansas Supreme Court granted the motion and extended the time to file the brief to July 5, 2001. On July 5, 2001, Mr. Valley filed a Motion for Extension of Time. Mr. Valley stated that an extension was necessary because he and his partners had been overwhelmed with appellate and trial work and unable to complete the task at hand. The Arkansas Supreme Court granted the motion and extended the time to file the brief to July 9, 2001. The extension was designated as a final extension. No brief was filed on or before July 9, 2001.

On July 11, 2001, Mr. Valley filed a Motion for Extension of Time. Mr. Valley stated that he was suffering from an unexpected illness and was unable to file the brief on time. The motion was not ruled upon by the Arkansas Supreme Court.

On August 10, 2001, Mr. Valley filed a Motion for Belated Brief. On August 13, 2001, the Appellees filed a Motion to Dismiss Appeal. In a Per Curiam Order dated September 20, 2001, the Arkansas Supreme Court stated that it was "clear to this court that the appellants have not acted responsibly or with due diligence in this election matter." Further, the Arkansas Supreme Court stated that the case involved an election matter and "prompt consideration is often important in such matters." The Arkansas Supreme Court denied the motion for belated brief; granted the appellees' motion to dismiss; and forwarded a copy of the Per Curiam Order to the Arkansas Supreme Court Office of Professional Conduct.

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. Mr. Valley's conduct violated Model Rule 1.3 when he failed to submit, in a timely manner, a brief to the Arkansas Supreme Court on behalf of his clients, Don Etherly and Earnest Simes, despite eight granted extensions of time spanning from February 27, 2001 to July 9, 2001. Model Rule 1.3 requires that a lawyer act with reasonable diligence and promptness in representing a client.
2. Mr. Valley's conduct violated Model Rule 3.2 when, despite the urgency as stated in his Motion for Expedited Appeal, he failed to prepare a brief and file it with the Arkansas Supreme Court in a timely manner. Model Rule 3.2 requires that a lawyer make reasonable efforts to expedite litigation consistent with the interests of the client.
3. Mr. Valley's conduct violated Model Rule 8.4(d) when his failure to file a timely brief on his clients' behalf resulted in the denial of his clients' opportunity to have their case heard by the Arkansas Supreme Court. 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 J. F. VALLEY, Arkansas Bar ID# 96052, be, and hereby is, REPRIMANDED for his conduct in this matter.

ARKANSAS SUPREME COURT COMMITTEE ON PROFESSIONAL CONDUCT - PANEL A

By: _____

Win Trafford, Chair, Panel A

Date: _____