

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

IN RE: **JAMES F. VALLEY**
Arkansas Bar ID # 96052
CPC Docket No. 2006-086

CONSENT FINDINGS AND ORDER

The formal charges of misconduct upon which this Findings and Order is based were developed from information provided to the Committee by Sam Gilmore, through his daughter Shirley Gilmore, on April 22, 2005. The information related to the representation of Sam Gilmore from June 2002 forward by Respondent James F. Valley, an attorney practicing primarily in Helena, Phillips County, Arkansas. On August 25, 2006, Respondent Valley was served with a formal complaint, supported by affidavits from Sam Gilmore, Shirley Gilmore, Denise Parks of the Arkansas Supreme Court Clerk's office, Floyd "Beau" Pederson of the Office of Professional Conduct, and Jim Mencer of the Arkansas Supreme Court's Administrative Office of the Courts.

Sam Gilmore of Elaine, Arkansas, is the father of a daughter, LaSandra Gilmore Cockerham, born in July 1989 in Clarksdale, Mississippi. Her Mississippi birth certificate lists her name as LaSandra Gilmore Cockerham. Mr. Gilmore is now married to her mother, Annie Cockerham. He desired to have LaSandra's last name changed to Gilmore on her birth certificate. On June 14, 2002, he hired Mr. Valley, to perform this legal work, and paid him by check the \$455.00 Valley quoted him as his legal fee and the advance payment of any court costs or filing fees that might be needed for the work. There is no indicia on Gilmore's check to show Valley deposited it into a trust account, as required by Rule since it contained payment in advance of court costs to be expended by Valley

in the future. Mr. Valley prepared a Complaint to Correct Birth Certificate, which Mr. and Mrs. Gilmore signed, and Valley, who is also licensed in Mississippi, then filed it in the Chancery Court in Clarksdale, Coahoma County, Mississippi on August 22, 2002. No further action was taken by Mr. Valley in the case. Over the intervening years Mr. Gilmore attempted to obtain from Valley or his office information about the status of this matter, without success.

The action Mr. Valley filed in August 2002 in Mississippi for Mr. Gilmore was dismissed “for want of prosecution” on December 15, 2003, after notice to Valley on September 10, 2003, of this impending action, as shown by the court papers attached to Mr. Pederson’s Affidavit, Exhibit D. Mr. Valley failed to inform his client of this adverse action, caused by Valley’s failure to take care of the legal business Mr. Gilmore had entrusted to him.

Mr. Gilmore filed his disciplinary complaint April 22, 2005. The Office of Professional Conduct wrote Mr. Valley on January 25, 2006, about this matter. He responded on May 1, 2006, by letter, stating he had mailed Mr. Gilmore a \$300 refund check, and that he had paid the Mississippi case filing fees from the \$455.00. In his letter he failed to mention that the Mississippi action had been dismissed for his “want of prosecution” over two years previously.

Further investigation revealed that Mr. Valley’s annual law license fee to the Arkansas Supreme Court, due by March 1 each year, was not paid for 2005 until June 10, 2005, and his 2006 fee was not paid until June 15, 2006. Mr. Valley practiced law in Arkansas during these two time periods when his Arkansas law license was administratively suspended for failure to timely pay his license fee as required by Court rule and order. Specific evidence of his litigation practice during these time periods is contained in the Affidavits of Denise Parks and Jim Mencer. Mr. Valley was

counsel of record who filed the appeal docketed as No. 05-268 on March 11, 2005, in *Katrina Valley et al. v. National Zinc Processors et al.* According to Mr. Mencer's Affidavit, Mr. Valley filed at least nine (9) cases in Phillips County Circuit Court alone during the two time periods here when his Arkansas law license was in suspended status.

Following Respondent Attorney's receipt of the formal complaint and a ballot vote by Panel A, the attorney entered into negotiation with the Executive Director which has resulted in an agreement to discipline by consent pursuant to Section 20.B of the Arkansas Supreme Court Procedures Regulating Professional Conduct of Attorneys at Law (2002). Upon consideration of the formal complaint and attached exhibits, admissions made by the respondent attorney, the terms of the written consent, the approval of Panel B of the Committee on Professional Conduct, and the Arkansas Model Rules of Professional Conduct, the Committee on Professional Conduct finds:

A. Mr. Valley's conduct violated Model Rule 1.3 in that from August 22, 2002, through May 2006, he failed to act with reasonable diligence and promptness in representing his client Sam Gilmore in the civil action Mr. Valley filed for him in Mississippi to change his daughter's name on her birth certificate. Model Rule 1.3 requires that a lawyer shall act with reasonable diligence and promptness in representing a client.

B. Mr. Valley's conduct violated Model Rule 1.15(a) in that on June 14, 2002, he received \$455.00 by check from his client Sam Gilmore, which included some amount for a future case filing fee, and Mr. Valley failed to deposit these client funds into a trust account until either earned by him as legal fees or expended for a filing fee for the client. Model Rule 1.15(a) requires that a lawyer shall hold property of clients or third persons that is in a lawyer's possession in connection with a

representation separate from the lawyer's own property. Funds of a client shall be deposited and maintained in one or more identifiable trust accounts in the state where the lawyer's office is situated, or elsewhere with the consent of the client or third person.

C. Mr. Valley's conduct violated Model Rule 5.5(a) in that by failing to timely pay his 2005 Arkansas bar license fee, from March 2, 2005, to June 10, 2005, when he paid his 2005 license fee, Mr. Valley practiced law in Arkansas at a time when doing so violated the regulation of the legal profession in that jurisdiction, because of the automatic administrative suspension of his Arkansas law license on March 2, 2005. By failing to timely pay his 2006 Arkansas bar license fee, from March 2, 2006, to June 15, 2006, when he paid his 2006 license fee, Mr. Valley practiced law in Arkansas at a time when doing so violated the regulation of the legal profession in that jurisdiction, because of the automatic administrative suspension of his Arkansas law license on March 2, 2006. Model Rule 5.5(a) provides that a lawyer shall not practice law in a jurisdiction where doing so violates the regulation of the legal profession in that jurisdiction.

WHEREFORE, it is the decision and order of the Arkansas Supreme Court Committee on Professional Conduct, acting through its authorized Panel B, that **JAMES F. VALLEY**, Arkansas Bar ID# 96052, be, and hereby is, **REPRIMANDED** for his conduct in this matter, assessed costs of \$50.00, and ordered to pay additional restitution to Sam Gilmore of \$60.00. The \$60.00 restitution and \$50.00 costs assessed herein, totaling \$110.00, 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 B

By _____
Henry Hodges, Chairperson, Panel B

Date _____