

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

IN RE:           MARK E. VELASQUEZ, Respondent  
                  Arkansas Bar ID#98149  
                  CPC Docket No. 2003-172

**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 Cristobal A. Mancía on June 23, 2003. The information related to the representation of Mirna Valle-Montes by Respondent in late 2002.

On December 4, 2003, Respondent was served with a formal complaint, supported by affidavits from Cristobal A. Mancía and Armindá Ferguson. A response was filed. The Respondent and the Executive Director negotiated a discipline by consent proposal, which was submitted to this Panel.

The information before the Panel revealed that during October 2002, Mr. Velasquez, an attorney practicing primarily in Fayetteville, Arkansas, was contacted by Mr. Mancía, who was also a client of his, about representing Ms. Valle-Montes who is the fiancé of Mr. Mancía. Ms. Valle-Montes was also involved in the contact with Mr. Velasquez. The contact was made following Ms. Valle-Montes' arrest by the U.S. Department of Justice, Immigration and Naturalization. Mr. Mancía was the main direct contact with Mr. Velasquez about Ms. Valle-Montes' situation with her knowledge and approval. Mr. Velasquez agreed to represent Ms. Valle-Montes before the Immigration Court. According to Mr. Velasquez, he would first file a Motion for Change of Venue to Memphis. In addition, Mr. Mancía understood from Mr. Velasquez that Ms. Valle-Montes would not have to attend court personally because he would file a Motion for Telephonic Hearing. As a result of that action, Mr. Velasquez advised that the hearing would be held via telephone conference in his office. On November 25, 2002, a Contract for Professional Services was signed along with a Promissory Note.

In Immigration proceedings, there is a requirement that attorneys wishing to appear in proceedings file a EOIR-28 form. There are certain requirements which must be met in order for the form to be accepted and approved. Mr. Velasquez failed to comply with those requirements and therefore his Entry of Appearance was canceled and not considered by the Immigration Court.

In early December 2002, Ms. Valle-Montes received a Notice of Hearing in Removal Proceedings from the San Antonio Immigration Court. The Notice was immediately delivered to Mr. Velasquez. Shortly after the Notice was delivered to Mr. Velasquez, Mr. Mancina and Ms. Valle-Montes were notified by Mr. Velasquez that the Motion to Change Venue had been denied. Mr. Velasquez based upon client request, filed a second Motion for Change of Venue. The second Motion was also denied. Believing that this meant only that the hearing would take place by telephone, Ms. Valle-Montes and Mr. Mancina prepared for the hearing to be conducted by telephone in Mr. Velasquez' office. They were not advised to the contrary by Mr. Velasquez until the day before the scheduled hearing. Ms. Valle-Montes was unable to attend the hearing on short notice and was subsequently arrested again for failing to appear at her hearing.

Mr. Mancina learned through subsequent counsel that Mr. Velasquez had submitted the forms incorrectly and that they were returned by the Immigration Court in San Antonio twice. The Immigration Court had refused to consider the forms because of Mr. Velasquez' errors. The fact of the errors was never revealed to Mr. Mancina or Ms. Valle-Montes by Mr. Velasquez. After hiring new counsel, a Motion to Reopen for Ineffective Assistance of Counsel was filed specifically setting out the errors made by Mr. Velasquez. The Immigration Judge did reopen the proceedings after Mr. Velasquez failed to respond to the Motion. Ultimately in October 2003, Mr. Velasquez returned to Mr. Mancina \$750 of the fee paid to him.

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

1. That Mr. Velasquez' conduct violated Model Rule 1.1 when he failed to be thorough enough in his representation of Ms. Valle-Montes to be certain that the EOIR-28 form he submitted to the

San Antonio Immigration Court contained the date of submission, an explanation of whether he was or was not subject to an order of any court or administrative agency, the date on the signature line, and verification of the certificate of service, all of which were required for the form to be in proper form and complete; when he failed to be thorough enough in his representation of Ms. Valle-Montes to be certain that the Motion for Change of Venue contained a statement of what relief, if any, would be sought in the new venue location; when he failed to be thorough enough in his representation of Ms. Valle-Montes to be certain that she received notice of the documents he filed and the actions taken by the Immigration Court with regard to those documents; and, when he failed to be thorough enough in his representation of Ms. Valle-Montes to ensure that he advised her that the Court would not consider a Motion for Telephonic Hearing in her matter. 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. Velasquez' conduct violated Model Rule 1.3 when he did not ever file a proper and complete EOIR-28 form while representing Ms. Valle-Montes in her immigration proceedings and when he did not provide Ms. Valle-Montes or anyone acting on her behalf notice of the decision that the Court would not consider having a telephone hearing in Ms. Valle-Montes' matter until the time for hearing was impending. Model Rule 1.3 requires that a lawyer act with reasonable diligence and promptness in representing a client.
3. That Mr. Velasquez' conduct violated Model Rule 1.4(b) when he did not explain to Ms. Valle-Montes or Mr. Mancina in an adequate amount of time that she would have to appear in San Antonio for her immigration hearing on January 7, 2003, thereby depriving her of the opportunity to seek other counsel to determine if a continuance might be granted or the opportunity to make arrangements to attend the hearing. Model Rule 1.4(b) requires that a lawyer explain a matter to the extent reasonably necessary to permit the client to make informed

decisions regarding the representation.

4. That Mr. Velasquez' conduct violated Model Rule 3.4(c) when he failed to follow all the requirements of the Immigration and Naturalization Service with regard to the filing of a EOIR-28, Entry of Appearance, thereby causing the same to be canceled and not considered by the Immigration Court. 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 B, that MARK E. VELASQUEZ, Arkansas Bar ID# 98149, be, and hereby is, CAUTIONED 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. Velasquez is assessed the costs of this proceeding 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 B

By: \_\_\_\_\_

J. Michael Cogbill, Chair, Panel B

Date: \_\_\_\_\_