

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

IN RE: **MARK E. VELASQUEZ**

Arkansas Bar ID #98149

CPC Docket No. 2005-167

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 Juan Mendoza of Fayetteville on June 30, 2005. The information related to the representation of Mr. Mendoza in 2003-2004 by Respondent Mark E. Velasquez, an attorney practicing primarily in Fayetteville, Washington County, Arkansas.

Mr. Mendoza received a Notice to Appear dated April 3, 2003, for violations of Section 212 (a)(6)(A)(i) and Section 212(a)(9)(C)(i)(I) of the Immigration and Nationality Act. Respondent was an alien present in the United States without being admitted or paroled, or who arrived in the United States at any time or place other than as designated by the Attorney General. Mr. Medoza had been unlawfully present in the United States for an aggregate period of more than one year, and one who enters or attempts to reenter the United States under such circumstances faces a lengthy, if not lifetime, bar to entry.

A Notice to Obligor to Deliver Alien was issued on September 17, 2003. Mr. Mendoza received A Notice of Hearing in Removal Proceedings that was issued on May 13, 2003 and a Master Hearing was scheduled on September 9, 2003.

Mr. Mendoza retained Mark E. Velasquez from the Velasquez Law Firm, located in Fayetteville, Arkansas to represent him in the immigration proceedings before the Oklahoma City Immigration Court. A Notice of Entry of Appearance as Attorney or Representative filed by Mark E. Velasquez on August 19, 2003.

Mr. Velasquez submitted the EOIR-28 to notify the Immigration Court that he was the Attorney Representative for Respondent. Mr. Velasquez additionally submitted a Motion for Telephonic Appearance filed on August 19, 2003. The Immigration Judge conducted a hearing on September 9, 2003 and found that Mr. Mendoza was not eligible to adjust his status based on a 245(i) petition, hardship waiver. The Court concluded that section 212(a)(9)(C)(ii) carried no waiver. Judge Brown did recognize the hardships that would face the family by the Respondent's removal, however, he held that there was no discretion to circumvent the grounds of inadmissibility. The Respondent stated that Mr. Velasquez filed a Notice of Appeal on October 6, 2003, with the cover letter of that date in which Mr. Velasquez stated he was filing forms EOIR-26 and EOIR-27, as well as enclosing the filing fee. A Briefing Schedule was sent to Mr. Velasquez dated July 15, 2004, however, Mr. Velasquez never filed a brief for the Appeal, arguing the merits of Respondent's Appeal. On February 3, 2005, the Board of Immigration Appeals dismissed the Respondent's Appeal.

Mr. Velasquez never informed the Respondent of the Board's decision or that he had 30 days to depart from the United States from the date of the Board's order which increased the length of time he could possibly reenter the United States since he did not voluntarily leave during the requisite period of time. In addition, Mr. Velasquez never communicated with the Respondent about any of his options, such as filing an appeal to the Federal Circuit Court. This resulted in the time limit to file the appeal expiring before the Respondent had an opportunity to take action. Mr. Mendoza stated that if he had known in time that the Broad of Immigration Appeals had dismissed his appeal there, he would have pursued an appeal to the Federal Circuit Court of Appeals. He was advised by new counsel that such action, even if not ultimately successful, could possibly delay his deportation by up to one year, and allow him additional time to pursue other options.

Mr. Velasquez responded that Mr. Mendoza moved and never gave the Velasquez office his new address or telephone number. When Velasquez received the BIA decision, his office called all numbers they had, but all were disconnected except a number for Mr. Mendoza's mother-in-law. A voice message was left there. However, according to Mr. Velasquez, Mr. Mendoza and his wife were estranged at the time, and the message apparently never reached Mr. Mendoza.

Following Respondent Attorney's receipt of the formal complaint, the attorney entered into discussion 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 A of the Committee on Professional Conduct, and the Arkansas Model Rules of Professional Conduct, the Committee on Professional Conduct finds:

A. Mr. Velasquez's conduct violated Model Rule 1.2(a) in that it was his client's objective to pursue his full legal remedies, including an appeal to federal court if his appeal at the Board of Immigration Appeals (BOIA) was not successful, but Mr. Velasquez failed to comply with his objective when he failed to inform the client his BOIA appeal was dismissed, thereby denying the client the ability to timely file a federal court appeal. Model Rule 1.2 (a) requires that a lawyer shall abide by a client's decisions concerning the objectives of representation, subject to paragraphs (c), (d) and (e), and shall consult with the client as to the means by which they are to be pursued.

B. Mr. Velasquez's conduct violated Model Rule 1.3 in that he failed to notify Mr. Mendoza of the dismissal of his appeal on February 3, 2005, at the Board of Immigration Appeals, thereby denying him the opportunity to file a timely appeal in the federal courts. Model Rule 1.3 requires that a lawyer shall act with reasonable diligence and promptness in representing a client.

C. Mr. Velasquez's conduct violated Model Rule 1.4(a) in that he failed to notify Mr. Mendoza of the dismissal of his appeal on February 3, 2005, at the Board of Immigration Appeals, thereby denying him the opportunity to file a timely appeal in the federal courts. Model Rule 1.4(a) requires that a lawyer shall keep a client reasonably informed about the status of a matter and promptly comply with reasonable requests for information.

WHEREFORE, in accordance with the consent to discipline presented by Mr. Velasquez and the Executive Director, it is the decision and order of the Arkansas Supreme Court Committee on Professional Conduct, acting through its authorized Panel A, that MARK E. VELASQUEZ, Arkansas Bar ID# 98149, be, and hereby is, CAUTIONED and assessed Committee costs of \$50.00 for his conduct in this matter. The fine and 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 with 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: _____
Phillip D. Hout, Chair, Panel A

Date: _____