

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

**PANEL B**

**IN RE: MARK E. VELASQUEZ**

Arkansas Bar ID # 98149

CPC Docket No. 2005-127

**CONSENT FINDINGS & ORDER**

The formal charges of misconduct upon which this Consent Order is premised, involving respondent attorney Mark E. Velasquez of Fayetteville, Arkansas, arose from information initially brought to the attention of the Committee on Professional Conduct by a trust account “overdraft” report from his bank. 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).

This matter came to the attention of the Office of Professional Conduct (OPC) when an “overdraft” notice on Respondent’s attorney trust account was received from Arvest Bank on February 22, 2005. The notice showed that his trust check #1758 for \$33,008.00 dated February 9, 2005 payable to Crystal C. Kirk, his client, in full settlement, was dishonored when presented to his bank on February 11, 2005, for payment, as his trust account balance was only \$16,234.26 at the time. Respondent received a written request from OPC for an explanation for this “overdraft” situation. Through exchanges of correspondence, e-mails, and documents, information was developed that Ms. Kirk was his client in a workers compensation claim that settled on February 9, 2005, for \$40,000.00. In a “settlement sheet” provided to OPC, Respondent showed that, among other charges, he deducted \$5,000.00 he had “advanced” Ms. Kirk on January 10, 2005, by his trust check #1753, leaving her a net settlement of \$33,008.00. This \$5,000.00 “advance” to Ms. Kirk came from other non-client funds Respondent had previously deposited into his trust account. Respondent explained that he deposited four “earned fees” totaling \$15,827.14 into his trust account from February 1 - 11, 2005. In a further

explanation of the status of his overdrawn trust account, he showed the deposit into his trust account on or about February 14, 2005, of a check from Franklin Templeton Investments for \$14,316.27, payable to his wife, Amanda Velasquez, which deposit was necessary to bring his account balance back to the level at which Ms. Kirk's check would be paid when presented again on February 16, 2005, according to his bank statement.

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. Velasquez's conduct violated Model Rule 1.8(e) in that by advancing Crystal Kirk \$5,000.00 from his trust account on January 10, 2005, against her future workers' compensation claim settlement, he provided her financial assistance not permitted by the Arkansas Model Rules of Professional Conduct. Model Rule 1.8(e) provides that a lawyer shall not provide financial assistance to a client in connection with pending or contemplated litigation, except that: (1) a lawyer may advance court costs and expenses of litigation, the repayment of which may be contingent on the outcome of the matter; and (2) a lawyer representing an indigent client may pay court costs and expenses of litigation on behalf of the client.

B. Mr. Velasquez's conduct violated Model Rule 1.15(a) in that on February 14, 2005, he deposited \$14,316.27 in funds from Franklin Templeton Investments belonging to his wife into his trust account, commingling non-client funds with client funds. Between February 1 and 11, 2005, he made four deposits totaling \$15,827.14 from what he characterized as 'earned fees' into his trust account, thus commingling non-client funds with client funds. 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.

C. Mr. Velasquez's conduct violated Model Rule 1.15(d) in that his trust check #1758 for \$33,008.00 for her full settlement to Crystal Kirk was not honored by his bank when she first presented the check for payment on February 11, 2005, because his account balance was only \$16,234.26 at the time. Model Rule 1.15(d) provides that a lawyer trust account shall not be permitted to contain insufficient funds to permit

payment of all instruments presented for payment against the account.

WHEREFORE, in accordance with the consent to discipline presented by Respondent and Executive Director, it is the decision and order of the Arkansas Supreme Court Committee on Professional Conduct that Respondent Mark E. Velasquez Arkansas Bar No. 98149, be, and hereby is, **REPRIMANDED** for his conduct in this matter, assessed Committee costs of \$50.00 and fined \$400.00. 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 B

By \_\_\_\_\_

J. Michael Cogbill, Chairperson, Panel B

Date \_\_\_\_\_