

VIRGINIA :

**BEFORE THE THREE-JUDGE COURT PRESIDING  
IN THE CIRCUIT COURT FOR FAIRFAX COUNTY**

**VIRGINIA STATE BAR, *ex rel.*  
FIFTH DISTRICT- SECTION III COMMITTEE,**

Complainant/Petitioner,

v.

**BRADLEY R. COURY, ESQ,**

Respondent.

Chancery No. 191542  
[VSB Docket No.: 03-053-1165]

**ORDER**

This matter came before the Three-Judge Court empaneled on December 13, 2004, by designation of the Chief Justice of the Supreme Court of Virginia, pursuant to §54.1-3935 of the 1950 Code of Virginia, as amended. A fully endorsed Agreed Disposition, dated the 10<sup>th</sup> day of February 2005, was tendered by the parties, and was considered by the Three-Judge Court, consisting of the Honorable Marc Jacobson and Alfred D. Swersky, retired Judges of the Fourth and Eighteenth Judicial Circuits, respectively, and by the Honorable James F. Almand, Judge of the Seventeenth Judicial Circuit and Chief Judge of the Three-Judge Court.

Having considered the Agreed Disposition, it is the decision of the Three-Judge Court that the Agreed Disposition be accepted, and said Court finds by clear and convincing evidence as follows:

1. At all times relevant to the matters set forth herein, Bradley R. Coury, Esquire

(hereafter "Respondent"), was an attorney licensed to practice law in the Commonwealth of Virginia.

2. On or about November 3, 1999, Ms. Delmy I. Lemus (hereafter "Complainant") executed a "Retainer Agreement" furnished by the Respondent for legal services pertaining to "Labor Certification / Permanent Residency".

3. The Retainer Agreement contained ethically impermissible provisions calling for all or a portion of advanced fees being nonrefundable in the event the Complainant were to terminate the Respondent's services, under certain circumstances, prior to the time that all such fees were earned.

4. The Retainer Agreement called for payment of a "retainer" of \$4,000.00, with "\$1000.00 upon signing on 11/03/99 and \$150.00 monthly payments commencing on 12/03/99 and thereafter." The Respondent collected the initial payment of \$1,000.00 from the Complainant, but failed to deposit such payment into an attorney trust account, as required, pending the performance of legal services. The Respondent also collected installment payments from the Complainant between December 13, 1999, and April 3, 2001, inclusive, none of which was deposited into an attorney trust account.

5. The Respondent filed an "Application for Alien Employment Certification" with the Virginia Employment Commission on June 28, 2000, approximately eight months after having been retained.

6. By letter dated July 31, 2000, an Alien Labor Certification Specialist notified the Respondent of approximately twenty "deficiencies" in the application, which required correction before the application could be further processed.

7. By letter dated September 12, 2000, the Alien Labor Certification Specialist notified the Respondent of “deficiencies” in the resubmitted application, some of which pertained to subject areas earlier deemed deficient by the same Alien Labor Certification Specialist.

8. By letter dated October 30, 2000, the Alien Labor Certification Specialist notified the Respondent of “deficiencies” in the newly resubmitted application. The deficiency noted pertained to Complainant’s employer’s job training and experience requirements, a subject covered in the Alien Labor Certification Specialist’s earlier letters to the Respondent.

9. By letter dated February 2, 2001, the Alien Labor Certification Specialist informed the Respondent that the Application for Alien Employment Certification was being returned to Respondent and that such Application was canceled because all advertisements for Complainant’s job position were not published within the required time period. The letter further informed the Respondent that a subsequent resubmission of the Application would be treated as a new application. The investigation of this matter conducted by the Virginia State Bar suggests that the Complainant’s proposed employer failed to place the required advertisements in a timely manner.

10. In April of 2001, the Respondent resubmitted the Application, commencing the process anew. By letter dated February 20, 2002, the Complainant informed the Respondent that she had engaged other counsel, and requested that Respondent forward her file to her new counsel.

11. During the period that Respondent was representing the Complainant, he sent her letter reminders concerning her installment payment obligations. One such letter, dated June 30,

2001, stated:

Until we receive payment, nothing further will be done on your case which is now pending before the Department of Labor. You have an obligation to us, pursuant to your promissory note and [sic] Retainer Agreement. We have been, and are, doing work for you and expect to be paid.

When questioned by a Virginia State Bar investigator concerning his letter, the Respondent stated, *inter alia*, that the purpose of the letter was to stimulate the Complainant to pay her bill, that he never withdrew from, or stopped working on, her case, and that had he received anything from the Department of Labor, he would have acted.

12. During the course of the representation, the Complainant paid to the Respondent at least the sum of \$3,250.00, *excluding* a fee of \$750.00 which she paid to the Respondent to “study” her employment status before she retained him, as aforesaid. The Respondent failed to account to the Complainant as to how sums paid to him as fees had been applied to charges for legal services rendered, and the Respondent made no refund of unearned fees at the conclusion of his representation.

13. Subsequent to the filing of this complaint, an audit was conducted of randomly selected open and closed files of Respondent by an attorney engaged by the Respondent. The attorney so engaged is experienced in the field of immigration law, and he reported to the Virginia State Bar that each of the matters reviewed disclosed that Respondent was conducting his law practice with that degree of skill, care, and diligence required of a practitioner undertaking representation of clients in the area of immigration law.

THE THREE-JUDGE COURT finds by clear and convincing evidence that such conduct on the part of the Respondent, Bradley R. Coury, Esquire, constitutes a violation of the following

provisions of the revised Virginia Code of Professional Responsibility and the Rules of Professional Conduct:

**DR 2-105. Fees.**

- (A) A lawyer's fees shall be reasonable and adequately explained to the client.

**DR 9-102. Preserving Identity of Funds and Property of a Client.**

- (A) All funds received or held by a lawyer or law firm on behalf of a client, estate or a ward, residing in this State or from a transaction arising in this State, other than reimbursement of advances for costs and expenses, shall be deposited in one or more identifiable trust accounts and, as to client funds, maintained at a financial institution in a state in which the lawyer maintains a law office, and no funds belonging to the lawyer or law firm shall be deposited therein except as follows:

- (2) Funds belonging in part to a client and in part presently or potentially to the lawyer or law firm must be deposited therein, and the portion belonging to the lawyer or law firm must be withdrawn promptly after they are due unless the right of the lawyer or law firm to receive it is disputed by the client, in which event the disputed portion shall not be withdrawn until the dispute is finally resolved.

- (B) A lawyer shall:

- (3) Maintain complete records of all funds, securities, and other properties of a client coming into the possession of the lawyer and render appropriate accounts to his client regarding them.

**RULE 1.1 Competence**

A lawyer shall provide competent representation to a client. Competent representation requires the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation.

**RULE 1.15 Safekeeping Property**

- (a) All funds received or held by a lawyer or law firm on behalf of a client, other than reimbursement of advances for costs and expenses, shall be deposited in one or more identifiable escrow accounts maintained at a financial institution in the state in which the law office is situated and no funds belonging to the lawyer or law firm shall be deposited therein except as follows:

- (2) funds belonging in part to a client and in part presently or potentially to the lawyer or law firm must be deposited therein, and the portion belonging to the lawyer or law firm must be withdrawn promptly after it is due unless the right of the lawyer or law firm to receive it is disputed by the client, in which event the disputed portion shall not be withdrawn until the dispute is finally resolved.
- (c) A lawyer shall:
- (3) maintain complete records of all funds, securities, and other properties of a client coming into the possession of the lawyer and render appropriate accounts to the client regarding them[.]

UPON CONSIDERATION WHEREOF, the Three-Judge Court hereby ORDERS that the Respondent shall receive a **PUBLIC REPRIMAND, WITH TERMS**, subject to the imposition of the sanction referred to below as an alternative disposition of this matter should Respondent fail to comply with the Terms referred to herein. The Terms which shall be met in accordance with the deadlines set forth below are:

1. The Respondent shall, within thirty (30) days following entry of an Order approving the Agreed Disposition, engage the services of

Janean S. Johnston, Esquire  
250 South Reynolds Street, #710  
Alexandria, Virginia 22304-4421  
Phone: (703) 567-0088,

or other law office management consultant acceptable to the Virginia State Bar, to review samples of all of Respondent's fee agreements and current attorney trust account record-keeping, accounting, and reconciliation methods and procedures to ensure compliance with Rule 1.15 of the Rules of Professional Conduct. In the event the consultant determines that Respondent is in

compliance with the said Rule, the consultant shall so certify in writing to the Respondent and the Virginia State Bar. In the event the consultant determines that Respondent is not in compliance with Rule 1.15, then, and in that event, the consultant shall notify the Respondent and the Virginia State Bar, in writing, of the measures that Respondent must take to bring himself into compliance with the said Rule.

2. The Respondent shall be obligated to pay when due the consultant's fees and costs for its services (including provision to the Bar and to Respondent of information concerning this matter).

3. In the event the Respondent is determined by the consultant to be not in compliance with Rule 1.15, he shall have sixty (60) days following the date the consultant issues its written statement of the measures Respondent must take to comply with Rule 1.15 within which to bring himself into compliance. The consultant shall be granted access to Respondent's trust account books and records, and sample fee agreements following the passage of the sixty (60) day period to determine whether Respondent has brought himself into compliance, as required. The consultant shall thereafter certify in writing to the Virginia State Bar and to the Respondent either that the Respondent has brought himself into compliance with the said Rule within the sixty day (60) period, or that he has failed to do so. Respondent's failure to bring himself into compliance with Rule 1.15 as of the conclusion of the aforesaid sixty (60) day period shall be considered a violation of the Terms set forth herein.

4. The Respondent shall read *Lawyers and Other People's Money* by Frank A. Thomas, III, (Third Edition, Virginia CLE Publications), and he shall certify to Bar Counsel in writing that he has done so. Respondent's written certification shall be delivered, within thirty

(30) days following issuance of the Order approving the Agreed Disposition, to: Seth M. Guggenheim, Assistant Bar Counsel, at 100 North Pitt Street, Suite 310, Alexandria, Virginia 22314.

5. Respondent shall pay, via a check drawn on the attorney trust account of his counsel, made payable to the order of Delmy I. Lemus, the sum of \$2,000.00, representing a partial refund of legal fees charged by the Respondent in this matter. The payment that is due hereunder shall be made by delivery of the check, as aforesaid, to Seth M. Guggenheim, Assistant Bar Counsel, 100 North Pitt Street, Suite 310, Alexandria, Virginia 22314-3133, no later than March 15, 2005.

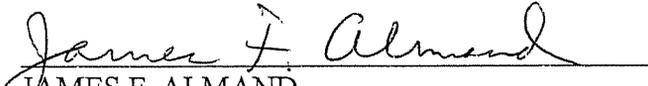
Upon satisfactory proof furnished by Respondent to the Virginia State Bar that the above Terms have been complied with, in full, a **PUBLIC REPRIMAND, WITH TERMS** shall then be imposed. If, however, Respondent fails to comply with any of the Terms set forth herein, as and when his obligation with respect to any such Term has accrued, then, and in such event, the Virginia State Bar Disciplinary Board shall be authorized, by agreement of the parties, to conduct a show cause hearing to determine if a sixty (60) day suspension of Respondent's license to practice law in the Commonwealth of Virginia should be imposed as an alternative disposition to the Public Reprimand, with Terms provided for herein; and it is further

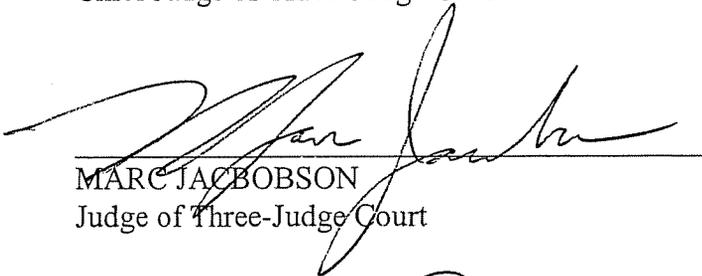
ORDERED that pursuant to Part Six, § IV, ¶ 13(B)(8)(c) of the Rules of the Supreme Court of Virginia, the Clerk of the Disciplinary System shall assess costs against the Respondent; and it is further

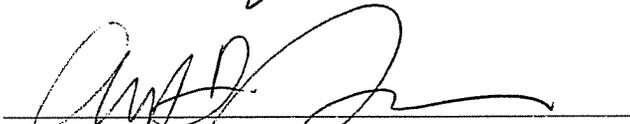
ORDERED that four (4) copies of this Order be certified by the Clerk of the Circuit Court of Fairfax County, Virginia, and be thereafter mailed by said Clerk to the Clerk of the

Disciplinary System of the Virginia State Bar at 707 East Main Street, Suite 1500, Richmond, Virginia 23219-2800, for further service upon the Respondent and Bar Counsel consistent with the rules and procedures governing the Virginia State Bar Disciplinary System.

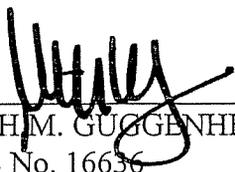
ENTERED this 10 day of March, 2005.

  
JAMES F. ALMAND  
Chief Judge of Three-Judge Court

  
MARC JACOBSON  
Judge of Three-Judge Court

  
ALFRED D. SWERSKY  
Judge of Three-Judge Court

WE ASK FOR THIS:

  
SETH M. GUGGENHEIM  
VSB No. 16636  
Assistant Bar Counsel  
Virginia State Bar  
100 N. Pitt Street, Suite 310  
Alexandria, Virginia 22314  
Phone: (703) 518-8045  
Fax: (703) 518-8052



DAVID ROSS ROSENFELD, ESQ.

Counsel for Respondent

VSB No. 2982

David Ross Rosenfeld, P.C.

Second Floor

118 South Royal Street

Alexandria, Virginia 22314-3392

Phone: (703) 548-2600

Fax: (703) 549-8664