

**VIRGINIA:**

**BEFORE THE THIRD DISTRICT COMMITTEE  
OF THE VIRGINIA STATE BAR**

**IN THE MATTER OF  
THOMAS HUNT ROBERTS**

**VS** Docket No. 09-032-078878

**COMMITTEE DETERMINATION  
PUBLIC ADMONITION WITH TERMS**

On March 11, 2011, a meeting in this matter was held before a duly convened Third District Committee consisting of Thomas Casselton (lay member), Esther Windmueller, Esq., Cliona Robb, Esq., Steven McCallum, Esq., and Tony Pham, Esq. Chair, presiding.

Respondent appeared in person, represented by Mr. Jeffrey Geiger, counsel of record. Renu Brennan, Assistant Bar Counsel, appeared for the Virginia State Bar.

The matter proceeded upon the Charge of Misconduct, dated January 3, 2011, setting forth allegations that the Respondent violated Rules of Professional Conduct 1.5, *Reasonableness*, 1.5(a), *Adequate Explanation*, 1.5(b), and *Contingency*, 1.5(c).

The Chair polled each member of the hearing panel as to whether they had any personal or financial interest that might affect or reasonably be perceived to affect their ability to be impartial. Upon receiving answers in the negative, and upon the Chair affirming that he had no such interest, the Chair advised the parties of the hearing procedures.

Thereafter, the parties made opening statements and the panel received the testimony of Cheri L. Lewis, Kendall Lewis, Colleen M. Quinn, Esq., and the

Respondent. The panel also received Virginia State Bar Exhibits 1-13 and Respondent's Exhibits 1-10.

Upon the conclusion of the Bar's case, the Respondent moved to strike the Bar's evidence, and counsel argued the matter. Upon due deliberation, the panel overruled the motion with respect to the alleged Rule violations. Thereafter, the panel received testimony from the Respondent. At the conclusion of all of the evidence, the Respondent renewed his motion to strike, which the panel overruled. The parties presented closing arguments, and the panel adjourned to deliberate the Charge of Misconduct.

Upon due deliberation, the panel found that the bar proved by clear and convincing evidence violations of Rule 1.5(a) and 1.5(c). The panel did not find that the bar proved by clear and convincing evidence that the Respondent violated Rule 1.5(b). The panel then received, the Respondent's prior disciplinary record.

Pursuant to Part 6, Section IV, Paragraph 13-16.Z of the Rules of the Virginia Supreme Court, the Third District Committee of the Virginia State Bar hereby served upon the Respondent the following Public Admonition with Terms:

### **I. FINDINGS OF FACT**

1. At all times relevant hereto, Thomas Hunt Roberts ("Respondent"), has been an attorney licensed to practice law in the Commonwealth of Virginia.
2. On July 10, 2008, Complainant Cheri Lewis engaged Mr. Roberts of the law firm of Thomas H. Roberts & Associates, P.C. (the "Firm") to represent her in a matter involving alleged "assault and battery, sexual harassment, and termination from employment against Thomas O'Kelly and Jewels, Inc."
3. In the July 10, 2008, meeting, Mr. Roberts presented his Representation Agreement to Ms. Lewis for her signature, and on July 10, 2008, Ms. Lewis initialed and signed the Representation Agreement.

4. The particular fee agreement at issue is no longer being used by Mr. Roberts or the Firm.
5. Per Respondent's fee agreement, in the section entitled "Legal Fees," Respondent's hourly fee was \$365.00, but Ms. Lewis could defer payment of \$265.00 of the hourly fee in exchange for an "additional 20% percent of the gross of any and all recovery (whether money or things of value<sup>1</sup>) in excess of the hourly fees, computed before any deductions, including but not limited to expenses or costs. If the recovery was within six weeks of the trial date or thereafter then the percentage increased to 25 percent." By her initials, Ms. Lewis indicated that she requested the fee modification.
6. In the above-referenced footnote in the Legal Fees section, Respondent included non-monetary relief in the gross upon which Respondent would calculate his contingency fee, but Respondent did not explain how the non-monetary relief was to be valued, and thus how the contingency would be derived.
7. Respondent's fee agreement, again in the section entitled "Legal Fees," further provided that if Ms. Lewis did not pay the non-deferred portion of the fees within 30 days of billing or notice or if Ms. Lewis failed to maintain the requisite trust balance within 30 days of notice or failed to pay costs within 30 days of billing or cost, then Respondent would recover 40 or 45 percent of the gross recovery, which obligation was in addition to the hourly fees.
8. Respondent's fee agreement, "Legal Fees" section, allowed Respondent, at his option, to demand the full hourly fee, irrespective of the final outcome of the case and irrespective of Ms. Lewis's election, if she "ended the representation", breached the representation agreement, or declined a settlement offer recommended by Respondent.
9. Respondent's fee agreement contained a provision labeled "Additional Fees for Non-Monetary Relief" which stated, in part: "In the event that a settlement is negotiated or a judgment entered in which equitable remedies such as reinstatement, re-employment, an injunction, or any similar equitable, non-monetary relief is accepted by or granted to me in lieu of or in addition to a monetary settlement or award, in whole or in part, then Client shall compensate the law firm at its option according to the hourly rates set forth in this agreement for the professional efforts expended on Client's behalf in obtaining such relief."

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<sup>1</sup> **Non-Monetary Relief:** The Client agrees to pay to the law firm fees for non-monetary relief obtained as part of a settlement or judgment. In the event that a settlement is negotiated or a judgment entered in which the Client receives real or personal property or equitable remedies such as reinstatement, re-employment, a good reference, an injunction, or any similar equitable, non-monetary relief is accepted by or granted to me in lieu of or in addition to a monetary settlement or award, in whole or in part, then in addition to the hourly fees set forth herein, these items shall be included in the gross upon which the percentage stated for the additional contingency shall be applied.

10. Respondent's fee agreement, "Termination of Fees" provision, also provided that if Ms. Lewis terminated the representation and she had elected the deferred fee option, Respondent would be entitled to "a fee quantum merit (sic) for services rendered. Client agrees that the reasonable value of the services rendered to it by the law firm shall not be less than the full hourly fees set forth in this Agreement plus 25% of all amounts ultimately recovered greater than the hourly fees."
11. According to the invoices, Ms. Lewis's first payment toward legal fees was for \$500.00 and was made August 1, 2008. The second payment, also for \$500.00, was made September 25, 2008. The first invoice is dated October 22, 2008. The second invoice is dated December 5, 2008. On December 22, 2008, Ms. Lewis forwarded \$6,000.00, check number 286978, which was deposited into trust. Mr. Roberts subsequently sent Ms. Lewis invoices dated January 16, 2009, and February 2, 2009.
12. On February 26, 2009, Ms. Lewis terminated Mr. Roberts' representation of her.
13. Ms. Lewis engaged Colleen Quinn, Esquire, to represent her in the case in connection with her termination of Mr. Roberts.
14. Upon termination, Mr. Roberts promptly provided the entire physical file to Ms. Lewis' newly engaged counsel, and circulated an order of substitution.
15. Mr. Roberts provided a final invoice dated March 3, 2009, to Ms. Lewis and notice to counsel of his lien of \$8,824.53 in fees computed upon the firm's non-deferred rates per the terms of the fee agreement.
16. Ms. Lewis did not receive a recovery in her case. In June 2009, the case was voluntarily dismissed with prejudice.
17. Each one of the Respondent's invoices sent to Ms. Lewis contained language under Item 2- Cumulative Total of Legal Fees Deferred to Date: . . . "making them contingent and agreeing to pay an additional contingency fee over and above the deferred and non-deferred legal fees. See Representation Agreement." Respondent's Ex. 2-6 & Bar's Ex. 3-7.
18. Each invoice delivered to Ms. Lewis contained a footnote which reads "See Representation Agreement- Deferred Fees and Additional Contingent Percentage Due from Recovery." Respondent's Ex. 2-6 & Bar's Ex. 3-7.

## II. NATURE OF MISCONDUCT

Such fee agreement used by Thomas Hunt Roberts constitutes misconduct in violation of the following provisions of the Rules of Professional Conduct:

RULE 1.5 FEES

- (a) A lawyer's fee shall be reasonable. The factors to be considered in determining the reasonableness of a fee include the following:
- (1) the time and labor required, the novelty and difficulty of the questions involved, and the skill requisite to perform the legal service properly;
  - (2) the likelihood, if apparent to the client, that the acceptance of the particular employment will preclude other employment by the lawyer;
  - (3) the fee customarily charged in the locality for similar legal services;
  - (4) the amount involved and the results obtained;
  - (5) the time limitations imposed by the client or by the circumstances;
  - (6) the nature and length of the professional relationship with the client;
  - (7) the experience, reputation, and ability of the lawyer or lawyers performing the services; and
  - (8) whether the fee is fixed or contingent.

RULE 1.5 FEES

(c) A fee may be contingent on the outcome of the matter for which the service is rendered, except in a matter in which a contingent fee is prohibited by paragraph (d) or other law. A contingent fee agreement shall state in writing the method by which the fee is to be determined, including the percentage or percentages that shall accrue to the lawyer in the event of settlement, trial or appeal, litigation and other expenses to be deducted from the recovery, and whether such expenses are to be deducted before or after the contingent fee is calculated. Upon conclusion of a contingent fee matter, the lawyer shall provide the client with a written statement stating the outcome of the matter and, if there is a recovery, showing the remittance to the client and the method of its determination.

**III. PUBLIC ADMONITION WITH TERMS**

Accordingly, it is the decision of the district committee to offer the Respondent an opportunity to comply with certain terms and conditions, compliance with which will be

a predicate for the disposition of an Admonition with Terms of this complaint. The terms and conditions are:

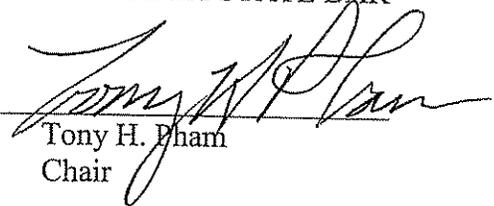
1. No later than ninety (90) days from the date of being served with this Order, the Respondent shall cooperate with the Virginia State Bar to draft a fee agreement which protects the interests of the Respondent and his clients that complies with the disciplinary rules.
2. The Virginia State Bar shall monitor compliance with the drafting requirements.
3. Respondent's failure to conform his fee agreement to the direction of the Virginia State Bar within the appropriate time frame shall be considered a violation of the Terms set forth herein.

Upon satisfactory proof that such terms and conditions have been met, this matter shall be closed. If however, the terms and conditions are not met by the specified date, the committee shall impose a Public Reprimand pursuant to Part Six, Section IV, Paragraph 13-16.CC of the Rules of the Virginia Supreme Court.

Pursuant to Paragraph 13-9.E of the Rules of Court, the Clerk of the Disciplinary System shall assess costs.

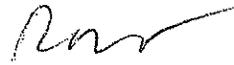
THIRD DISTRICT COMMITTEE  
OF THE VIRGINIA STATE BAR

By

  
Tony H. Pham  
Chair

**CERTIFICATE OF MAILING**

I certify that on March 25, 2011 I caused to be mailed by certified mail, a true and complete copy of the District Committee Determination (Public Admonition With Terms) to Thomas Hunt Roberts, Respondent, at Thomas H. Roberts & Associates, P.C., 105 South First Street, Richmond, VA 23219, Respondent's last address of record with the Virginia State Bar, and by first class mail, postage prepaid to Jeffrey Hamilton Geiger, Respondent's Counsel, at Sands Anderson, PC, Bank of America Plaza, Suite 2400, 1111 East Main Street, P.O. Box 1998, Richmond, VA 23218-1998.



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Renu M. Brennan, Assistant Bar Counsel