

VIRGINIA:

**BEFORE THE FOURTH DISTRICT –SECTION I COMMITTEE
OF THE VIRGINIA STATE BAR**

**IN THE MATTER OF
CLAUDIA JOY ZUCKER**

VSB Docket No. 07-041-0908

**FOURTH DISTRICT – SECTION I COMMITTEE DETERMINATION
(PUBLIC REPRIMAND WITHOUT TERMS)**

On August 12, 2009 and November 19, 2009, hearings in this matter were held before a duly convened Fourth District - Section I Committee of the Virginia State Bar (“Committee”) panel consisting of R. Frances O’Brien, Esq. Chair, Jason S. Rucker, Esq., Dennis W. Cuppy, lay member, Lisa A. Wilson, Esq., Brendan K. Feeley, Esq., Julia A. Connally, lay member, Patricia E. Bruce, Esq..

Respondent appeared in person with counsel Bernard J. DiMuro, Esq., Stanley S. Lieberman, Esq. and Stacey Rose Harris, Esq. Debra Fitzgerald-O’Connell, Esq. appeared as Acting Assistant Bar Counsel for the Virginia State Bar. Crystal Y. Twitty, Esq., Assistant Attorney General appeared on behalf of Virginia State Bar Counsel Seth Guggenheim and Barbara Balogh, Assistant Ethics Counsel.

Pursuant to Part 6, Section IV, Paragraph 13-16 (Z)(2) of the Rules of the Virginia Supreme Court, the herein named Committee of the Virginia State Bar hereby serves upon the Respondent the following Public Reprimand, as set forth below:

I. FINDINGS OF FACT

1. At all time relevant, Respondent was an attorney licensed to practice law in the Commonwealth of Virginia.

2. On August 15, 2006, Respondent testified as an expert witness for Respondent Patrick Tzeuton, in a practitioner disciplinary proceeding styled as *In the Matter of Patrick Tzeuton Disciplinary No. D 2005-291*, in the United States Department of Justice, Executive Office for Immigration Review, Board of Immigration Appeals, the Honorable Thomas L. Pullen, presiding.

3. During cross-examination of Respondent, Jennifer Barnes, Esq., Bar Counsel for U.S. Department of Justice, Executive Office of Immigration Review, Office of the General Counsel, questioned Respondent regarding Respondent's disciplinary history with the Virginia State Bar as follows: . . . "To your knowledge, have you ever had a complaint filed against you with the Virginia bar or any other state bar authorities?"

An objection was made and overruled, after which Respondent replied as follows:

A. "Yes, and I have never been found guilty of anything."

Counsel then inquired, and Respondent replied as follows:

Q. "I have a follow, I have a follow-up question for you. Could you tell me the nature of the complaint filed against you?"

A. "No, I cannot."

Q. "You don't know?"

A. "I believe it's irrelevant."

The Court overruled the objections to the follow-up question to Respondent and directed Respondent to respond. Respondent requested that counsel restate the question. As follows is the subsequent line of questioning:

Q. "What was the nature of the complaint filed against you?"

A. "Which one?"

Q. "All of them."

A. "I don't know. It's been years."

Q. "You don't recall the complaint, the basis of the complaint. Well then, tell me what the result of the complaint was. Were there --"

A. "Dismissed."

Q. "-- any sanctions imposed?"

A. "No."

Q. "No confidential discipline?"

A. "No."

Q. "And were you represented by counsel on those proceedings?"

A. "No."

Q. "You represented yourself?"

A. "Yeah."¹

4. At the time of her testimony Respondent had in fact received confidential discipline, and had a disciplinary record consisting of a Private Reprimand with terms dated November 30, 2004.

5. In addition to the foregoing, and contrary to her testimony, Respondent was represented by Joseph F. Cunningham, Esq. and his law firm, Joseph F. Cunningham & Associates, PLC in the 2004 proceeding for which she received a Private Reprimand.

II. NATURE OF MISCONDUCT

The Committee unanimously finds that the following Rules of Professional Conduct have been violated by the Respondent:

RULE 3.3 CANDOR TOWARD THE TRIBUNAL

(a) A lawyer shall not knowingly:

(1) make a false statement of fact or law to a tribunal;

RULE 8.4 MISCONDUCT

It is professional misconduct for a lawyer to:

¹ A certified copy of the relevant portion of the August 15, 2006, transcript is attached hereto as Exhibit A.

(c) engage in conduct involving dishonesty, fraud, deceit or misrepresentation which reflects adversely on the lawyer's fitness to practice law;

III. PUBLIC REPRIMAND WITHOUT TERMS

Accordingly, it is the unanimous decision of the Fourth District – Section I Committee of the Virginia State Bar to impose upon Claudia Joy Zucker the sanction of a Public Reprimand Without Terms and the Respondent is hereby so sanctioned and reprimanded.

Pursuant to Paragraph 13-9.E.(1) of the Rules of Court, the Clerk of the Disciplinary System shall assess costs.

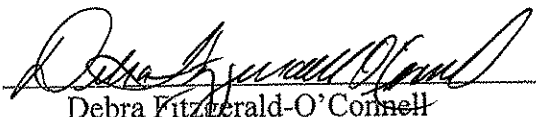
**FOURTH DISTRICT-SECTION I
COMMITTEE OF THE
VIRGINIA STATE BAR**

By 

R. Frances O'Brien, Chair

CERTIFICATE OF SERVICE

I certify that on December 11, 2009, 2009, a true copy of the Fourth District – Section I Committee Determination (Public Reprimand) was mailed to Claudia Joy Zucker, Respondent, by Certified Mail, Return Receipt Requested, at 1840 Wilson Boulevard, Suite 205, Arlington, VA 22201, Respondent's last address of record with the Virginia State Bar, and via regular first class mail to Bernard J. DiMuro, Esq., Respondent's Counsel, at DiMuro Ginsberg, PC, 908 King Street, Suite 200, Alexandria, Virginia 22314.



Debra Fitzgerald-O'Connell
Acting Assistant Bar Counsel



U.S. Department of Justice

Executive Office for Immigration Review

Office of the General Counsel

5107 Leesburg Pike, Suite 2600
Falls Church, Virginia 22041

RE: Claudia Zucker

I, Shelia Williams, declare as follows:

1. I am employed as a Program Specialist at the Executive Office for Immigration Review ("EOIR"), United States Department of Justice, Falls Church, VA. I am authorized to certify the authenticity of copies of the documents on file at the Board of Immigration Appeals, the Immigration Court and/or the Office of the General Counsel (Attorney Discipline).
2. The attached documents are true, correct, and complete copies of documents maintained in the Attorney Discipline file in the above-referenced case.

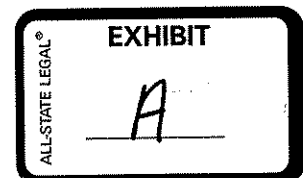
Pursuant to 28 U.S.C. §1746, I declare under penalty of perjury that the foregoing is true and correct.

Executed at Falls Church, Virginia, on this date:

DATED: August 13, 2009

SIGNED: Shelia Williams
Shelia Williams
Program Specialist

Seal:



U.S. Department of Justice
Executive Office for Immigration Review
United States Immigration Court

Matter of

File D2005-291

PATRICK TZEUTON

Respondent

)
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In ATTORNEY DISCIPLINE Proceedings

Transcript of Hearing

Before THOMAS L. PULLEN, Deputy Chief Immigration Judge

Date: August 15, 2006

Place: Falls Church, Virginia

Transcribed by FREE STATE REPORTING, INC., at Annapolis, Maryland

Official Interpreter:

Language:

Appearances:

For the Executive Office
of Immigration Review:

Jennifer Barnes

For the Respondent:

Herbert Dooben

1 (OFF THE RECORD)

2 (ON THE RECORD)

3 JUDGE TO MS. ZUCKER

4 Q. Would you please raise your right hand? Do you swear
5 the testimony that you will give in this hearing will be the
6 truth, the whole truth, and nothing but the truth, so help you
7 God?

8 A. I do.

9 Q. Please be seated.

10 MR. DOOBEN TO MS. ZUCKER

11 Q. Good afternoon. Would you please state your name for
12 the record?

13 A. Claudia J. Zucker.

14 JUDGE TO MS. ZUCKER

15 Q. Would you please spell that?

16 A. Claudia, C L A U D I A, J period, Zucker, Z U C K E R.

17 MR. DOOBEN TO MS. ZUCKER

18 Q. What is your business address?

19 A. 1840 Wilson Boulevard (phonetic sp.). Suite 205.
20 Arlington, Virginia, 22201.

21 Q. And what is your occupation?

22 A. I am an attorney.

23 Q. What is your bar membership?

24 A. I am a member of the Virginia state bar.

25 Q. Are you a member in good standing?

1 A. I am.

2 Q. I hate to ask a woman, yes I'm still a sexist, but how
3 long you been, how long you been a member of the bar?

4 A. I believe it was 1991.

5 Q. Okay. What, approximately what percentage of your
6 practice is Immigration Law?

7 A. Somewhere between 50 and 60%.

8 Q. And do you -- does your practice include asylum
9 appeals?

10 A. It does.

11 Q. And about what percentage of your practice, or number
12 do you appeal to the BIA?

13 A. That would be hard to answer. I have done appeals to
14 the BIA over the past ten years. I certainly couldn't put a
15 percentage on it --

16 Q. Okay.

17 A. -- but I have filed cases with the BIA and do legal
18 research on a regular basis on issues concerning appeals to the
19 BIA.

20 Q. Did you read the eight notices of appeals and the
21 attachments thereto that I supplied to you, and represented to
22 you are the exhibits in this case?

23 A. I did look at them, yes.

24 Q. In your opinion, did those notices of appeal and the
25 attachments adequately apprise the Board of the nature of the

1 appeal so as to avoid summary dismissal solely because a brief
2 has not been filed?

3 A. In my opinion, it was not proper to summarily dismiss
4 those cases based on the notice of appeals. The case law in this
5 area is current on this issue, the (indiscernible) --

6 MS. BARNES TO JUDGE

7 Your Honor, I object. I don't think we need a witness to
8 testify as to what the current case law is.

9 MR. DOOBEN TO MS. BARNES

10 That's why I brought her as an expert witness.

11 MS. ZUCKER TO MS. BARNES

12 -- the basis of my --

13 JUDGE TO MR. DOOBEN

14 I'm sorry?

15 MR. DOOBEN TO JUDGE

16 That's why she's here. She's an expert witness in
17 Immigration Law.

18 JUDGE TO MR. DOOBEN

19 Okay, we need to qualify her as an expert witness.

20 MR. DOOBEN TO JUDGE

21 I did, well, she said 50, 60% of her practice in Immigration
22 Law. She's been an attorney admitted to the bar since 1991, and
23 she follows this on a regular basis. I think that qualifies her.

24 JUDGE TO MS. BARNES

25 Ms. Barnes?

1 MS. BARNES TO JUDGE

2 Your Honor, that's just one individual Immigration
3 attorney --

4 JUDGE TO MS. BARNES

5 I'm aware of that.

6 MS. BARNES TO JUDGE

7 -- I'm not sure that that's really an expert.

8 JUDGE TO MS. BARNES

9 And I'm, well, I'm -- there's two different things. That's
10 one, the testimony of one individual, I am aware of that. Please
11 continue.

12 MS. ZUCKER TO JUDGE

13 A. Okay, I may say that I have been called as an expert
14 witness in Immigration --

15 JUDGE TO MS. ZUCKER

16 Q. Just please answer Mr. Dooben's question.

17 A. Okay, okay.

18 MS. ZUCKER TO MR. DOOBEN

19 A. Could you ask the question?

20 MS. DOOBEN TO MS. ZUCKER

21 Q. In your opinion, did those notices of appeal and
22 attachments adequately, adequately apprise the Board of the
23 nature of the appeal, so as to avoid summary dismissal solely
24 because a brief has not been filed?

25 A. In my opinion, based on my own personal knowledge and

1 experience, the recent case law coming out of the Fourth Circuit,
2 which is the circuit applicable to this geographic location,
3 specifically states that if the EOIR 26 form adequately states
4 sufficient grounds to put the Board on notice for the reasons for
5 the appeal, the failure to file a brief after check-marking item
6 number 6 is not a reason for summary dismissal. And that case is
7 Bovovo, which is current law on the issue, and it specifically
8 states, if I may read it into the record, "if the basis for
9 Bovovo's appeal was sufficiently stated on the notice of appeal,
10 the Board should consider the merits of his appeal". In other
11 words, it's not sufficient to summarily dismiss alone because
12 someone fails to file a brief after check-marking on the form
13 that they're going to file a brief, so long as there are
14 sufficient reasons stated on the appeal notice to state why
15 you're filing the appeal. And when I looked at those appeal
16 notices in those eight cases, although they are not briefs, they
17 are similar to briefs. They state case law --

18 JUDGE TO MS. ZUCKER

19 Q. I think you're exceeding the question Mr. Dooben asked.

20 A. Okay.

21 MR. DOOBEN TO MS. ZUCKER

22 Q. Okay. Have you ever had a BIA case in which you were
23 the attorney of record in which DHS filed a notice of appeal but
24 not a brief?

25 A. I certainly have.

1 Q. And what did you do?

2 MS. BARNES TO JUDGE

3 Objection, Your Honor. I don't understand the relevance
4 with DHS not filing an appeal.

5 JUDGE TO MR. DOOBEN

6 Mr. Dooben?

7 MR. DOOBEN TO JUDGE

8 Your Honor, the essence, if I understand this notice of
9 intent to discipline, is that by failing to file a brief, the
10 respondent was engaging in frivolous conduct. I think the shoe
11 fits two ways. Let's see if it's frivolous conduct on the part
12 of DHS if they fail to file a brief. There's a case right on
13 point.

14 JUDGE TO MR. DOOBEN

15 We'll have to file a notice of intent to discipline the DHS
16 before we get into that.

17 MR. DOOBEN TO JUDGE

18 I'm not asking for discipline. I'm asking for you to
19 consider the shoe is on the other foot. What's frivolous
20 behavior? And in that regard, we do have a case that addresses
21 it, and that's what -- Ms. Zucker was the attorney of record in
22 that case, and I want to ask you to admit that.

23 JUDGE TO MR. DOOBEN

24 Please continue.

25 MR. DOOBEN TO MS. ZUCKER

1 Q. Go ahead.

2 A. May I respond?

3 JUDGE TO MS. ZUCKER

4 Q. Yes.

5 MR. DOOBEN TO MS. ZUCKER

6 Q. Yes.

7 A. Okay. Yes. I had a case where the CIS (phonetic sp.)
8 filed not one, but two motions for an extension of time in order
9 to file a brief. The first one passed, no brief was filed. They
10 filed a late request for an extension of time to file a brief,
11 they still didn't file a brief. I filed a motion for summary
12 dismissal to the Board, and the CIS, instead of filing an
13 extension for -- excuse me, instead of filing a brief, even
14 though they check-marked box 6 on the EOIR 26 form, and by the
15 way, also failed to state sufficient reasons when adequately
16 explain the reasons for filing an appeal in this particular case,
17 they didn't file a brief. They didn't state the reasons for the
18 appeal. They filed the brief -- I mean, excuse me, filed the
19 appeal, failed to ever file a brief, made two motions for
20 extension of time to file a brief, never filed a brief, and then
21 filed a motion to remand the case, and the Board said, we don't
22 need to look at the merits of the appeal, we're not going to
23 summarily dismiss because they filed a motion to remand, so then
24 they sent the case back to the EOIEO -- excuse me, to the EOIR
25 Immigration Judge. And it didn't matter that they filed two

1 motions for an extension of time to file a brief. It didn't
2 matter that they check-marked box number 6. It didn't matter
3 that I asked for summarily dismissal on the case. It didn't
4 matter that they failed to state sufficient reasons for filing
5 the appeal. All that mattered was that they filed a motion to
6 remand, which this Board granted.

7 Q. Was there a finding that DHS's failure to file the
8 brief constitutes frivolous behavior?

9 MS. BARNES TO JUDGE

10 Again, Your Honor, I just don't see the relevance to
11 frivolous behavior on behalf of a DHS trial attorney. That's
12 really not the issue here.

13 JUDGE TO MS. BARNES

14 Correct.

15 MR. DOOBEN TO JUDGE

16 It is the issue. They're bringing the charge against an
17 attorney. And you look at the record that we have in this
18 proceeding. Here we're sitting in 2006. They brought their
19 notice of intent December 2005, and what did they do? They reach
20 back to 1999 for one case, 2000 for four cases, three or four
21 cases, 2002 for one, and 2003. They waited all these years.
22 They didn't think it was frivolous in '99 or 2000, 2001. They
23 waited because they have some other agenda against this
24 respondent.

25 JUDGE FOR THE RECORD

1 Objection sustained.

2 MR. DOOBEN TO MS. ZUCKER

3 Q. Let me show you what is an order, and ask if that's the
4 case you're referring to.

5 A. Yes, this is the ruling in the case I'm referring to.

6 Q. Excuse me. You want to offer that? This respondent's
7 exhibit, whatever number it is --

8 MS. BARNES TO JUDGE

9 Your Honor, I, I, I have to register this objection. I just
10 don't see the relevance in this line of questioning. I really
11 don't.

12 JUDGE TO MS. BARNES

13 It is escaping me at this point too, but I will admit it as
14 Exhibit no. 5.

15 MR. DOOBEN TO JUDGE

16 No further questions. She's available for cross-
17 examination.

18 JUDGE TO MS. BARNES

19 Cross-examination, Ms. Barnes.

20 MS. BARNES TO MS. ZUCKER

21 Q. Ms. Zucker, in your 15 years of experience as a, as an
22 Immigration lawyer, have you ever had an occasion to file an
23 appeal with the Board of Immigration Appeals?

24 A. Yes.

25 Q. And do you -- I know you couldn't say what percentage,

1 but do you know approximately how many appeals that you've filed?

2 A. I, I don't keep track of that sort of thing.

3 Q. More than a hundred?

4 A. Oh, less than that.

5 Q. And have any of these appeals ever been summarily
6 dismissed by the Board to your knowledge?

7 A. No.

8 Q. Well, I'm not sure then how you qualify as an expert to
9 testify about summary dismissals if you've never had a case
10 summarily dismissed by the Board.

11 A. I just had a case summarily -- excuse me, not summarily
12 dismissed by the Board that should have been, and I have done the
13 relevant case law research that it was improperly done.

14 Q. Well wouldn't you agree that it's within the Board's
15 discretion as to whether or not to summarily dismiss a case?

16 A. If it applies the appropriate --

17 Q. Yes, yes or no.

18 A. -- standards --

19 Q. Is it, is it within the Board's discretion to summarily
20 dismiss a case?

21 A. If they apply the appropriate standards.

22 Q. Is it within their discretion?

23 A. If they apply the appropriate standards.

24 Q. If you filed an appeal with the Board, and indicated
25 that you would file a brief, would you ever not file a brief?

1 A. Not purposefully, no.

2 Q. Okay.

3 A. I'm not saying that it's appropriate --

4 Q. That's fine, that's fine. To your knowledge, have you
5 ever had a complaint filed against you with the Virginia bar or
6 any other state bar authorities?

7 MR. DOOBEN TO JUDGE

8 Objection. Irrelevant.

9 JUDGE FOR THE RECORD

10 Overruled.

11 MS. ZUCKER TO MS. BARNES

12 A. Yes, and I have never been found guilty of anything.

13 MS. BARNES TO MS. ZUCKER

14 Q. That, that's fine. Which state bar?

15 A. Virginia.

16 Q. And do you know who filed the complaint?

17 A. No, I sometimes have four or five hundred clients a
18 year, and if I get one every few years, I think I'm doing good.

19 Q. That's fine.

20 A. Yeah.

21 Q. Just answer the question for me please. What was
22 the --

23 A. You asked the question, I think I should be allowed to
24 respond in full once a question has been --

25 Q. I have a follow, I have a follow-up question for you.

1 Could you tell me the nature of the complaint filed against you?

2 A. No, I cannot.

3 Q. You don't know?

4 A. I believe it's irrelevant.

5 MR. DOOBEN TO JUDGE

6 Bar complaints are confidential proceedings. She's
7 testified they were dismissed. They become closed and
8 confidential.

9 MS. BARNES TO JUDGE

10 Your Honor, I think this goes to the credibility of an
11 expert witness.

12 JUDGE FOR THE RECORD

13 Objection overruled.

14 MS. ZUCKER TO MS. BARNES

15 A. I personally don't know where that involves my
16 credibility because I've never been found guilty of any ethical
17 disciplinary action in my entire career.

18 JUDGE TO MS. ZUCKER

19 Q. That's not -- ask the question Ms. -- answer the
20 question Ms. Barnes asked.

21 JUDGE TO MS. BARNES

22 Please restate the question.

23 MS. BARNES TO MS. ZUCKER

24 Q. What was the nature of the complaint filed against you?

25 A. Which one?

1 Q. All of them.

2 A. I don't know. It's been years.

3 Q. You don't recall the complaint, the basis of the
4 complaint. Well then, tell me what the result of the complaint
5 was. Were there --

6 A. Dismissed.

7 Q. -- any sanctions imposed?

8 A. No.

9 Q. No confidential discipline?

10 A. No.

11 Q. And were you represented by counsel on those
12 proceedings?

13 A. No.

14 Q. You represented yourself?

15 A. Yeah.

16 MS. BARNES TO JUDGE

17 That's all I have, Your Honor.

18 JUDGE TO MR. DOOBEN

19 Re-direction.

20 MR. DOOBEN TO JUDGE

21 No further questions.

22 JUDGE TO MS. ZUCKER

23 Thank you very much.

24 MR. DOOBEN TO JUDGE

25 May she be excused?

1 JUDGE TO MR. DOOBEN

2 Yes, she may.

3 MR. DOOBEN TO JUDGE

4 Okay, I've got someone --

5 JUDGE TO MS. ZUCKER

6 Thank you very much.

7 MS. ZUCKER TO JUDGE

8 All right. Thank you.

9 MR. DOOBEN TO JUDGE

10 I've got someone else outside.

11 JUDGE TO MR. SCHLEMMER

12 Q. Would you raise your right hand, sir? Do you swear the
13 testimony that you will give at this hearing will be the truth,
14 the whole truth, and nothing but the truth, so help you God?

15 A. I do.

16 Q. Please be seated.

17 A. Thank you.

18 JUDGE TO MR. DOOBEN

19 Please go ahead.

20 MR. DOOBEN TO MR. SCHLEMMER

21 Q. Would you please state your name?

22 A. Donald Schlemmer.

23 JUDGE TO MR. SCHLEMMER

24 Q. Could you spell that please?

25 A. S C H L E M M E R.

CERTIFICATE PAGE


I hereby certify that the attached proceeding before
JUDGE THOMAS L. PULLEN, in the matter of:

PATRICK TZEUTON

D2005-291

Falls Church, Virginia

is an accurate, verbatim transcript of the cassette tape as
provided by the Executive Office for Immigration Review and that
this is the original transcript thereof for the file of the
Executive Office for Immigration Review.



Erin Millford, Transcriber

Free State Reporting, Inc.
1378 Cape St. Claire Road
Annapolis, Maryland 21401
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August 29, 2006
(completion date)

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to transcribe the Record of Proceeding shown in the above
paragraph.