

VIRGINIA:

BEFORE THE SIXTH DISTRICT COMMITTEE OF THE VIRGINIA STATE BAR

**IN THE MATTER OF
NEIL KUCHINSKY**

VSB DOCKET NO. 04-060-0661

DISTRICT COMMITTEE DETERMINATION
(Dismissal)

On June 4, 2004, a hearing in the above-styled matter was held before a duly convened panel of the Sixth District Committee, Christopher A. Abel, Esquire; Russell E. Allen, Esquire; Gilbert A. Bartlett, Esquire; Richard H. Stuart, Esquire; George C. Hutter, lay member, Third District Committee, Section III; and William E. Glover, Esquire, chair and presiding officer.

The respondent, Neil Kuchinsky, appeared with his counsel R. Paul Childress, Jr. Barbara Ann Williams, Bar Counsel, appeared as counsel for the Virginia State Bar. The court reporter was Kimberly L. Grewe, with Lewis & DeBerry Reporting Service, P.O. Box 1293, Williamsburg, Virginia 23187; (804) 874-6394.

The allegations of fact were as follows:

1. The respondent, Neil Kuchinsky, was admitted to the practice of law in the Commonwealth of Virginia on May 8, 1984.
2. At all times relevant to this proceeding, Mr. Kuchinsky was an attorney in good standing to practice law in the Commonwealth of Virginia.
3. On July 23, 2003, Mr. Kuchinsky filed a Petition for Access to Grand Jury in the Circuit Court of the City of Petersburg on behalf of unnamed citizens of Petersburg and the Commonwealth of Virginia in their capacity as individuals and members of an unincorporated association.
4. Among other things, the Petition states: "Your Petitioners seek to bring to the attention of Petersburg Grand Jury or Special Grand Jury certain information concerning conditions which involve or tend to promote criminal activity, either in the community or by governmental authority, agency, or official thereof, so that the Grand Jury panel might determine whether they wish to investigate and make a report thereon; or otherwise vote as to whether they recommend that a Special Grand Jury be impaneled to perform such functions, all in accordance with Virginia Code §§ 19.2-191(2) and 19.2-200, as amended." A copy of the Petition is attached as VSB Exhibit 1 and is incorporated by reference.
5. When the Petersburg Circuit Court did not act on the Petition, a letter from Mr. Kuchinsky dated August 19, 2003, was delivered to eight prospective grand jurors' homes before a regular grand jury was convened in Petersburg on August 21, 2003. A copy of Mr.

Kuchinsky's letter and the attachments accompanying it are attached as VSB Exhibit 2 and are incorporated by reference.

6. Mr. Kuchinsky's letter is printed on his law firm letterhead and signed by him.

7. The opening paragraph of Mr. Kuchinsky's letter states, among other things, that he is a lawyer in private practice and is writing on behalf of "several persons" who wish to provide the grand jury evidence of purported criminal activity by governmental authorities, agencies and officials in Petersburg.

8. Mr. Kuchinsky's letter describes, among other things, what a grand jury could allegedly do about the allegations of criminal activity in accordance with selected provisions of the Virginia Code, which Mr. Kuchinsky copied, highlighted and enclosed with his letter.

9. Mr. Kuchinsky's letter advises the prospective grand jurors that they can call two individuals, who are identified by name, to testify before the grand jury.

10. Mr. Kuchinsky's letter states, among other things, that the prospective grand jurors were not obligated to accept any advice from the Commonwealth's Attorney or any other person about whether a grand jury should look into the purported criminal activity.

11. Mr. Kuchinsky's letter suggests, among other things, that the prospective grand jurors consider requesting that a lawyer not associated with the Petersburg Commonwealth Attorney's Office or the Attorney General's Office be assigned to the grand jury.

12. Mr. Kuchinsky's letter also suggests, among other things, that the prospective grand jurors consider requesting that a judge without conflicts of interest work with the grand jury.

13. In addition to selected provisions of the Virginia Code, summaries of anticipated testimony and other information relating to the purported criminal activities of certain governmental authorities, agencies and officials in Petersburg were enclosed with Mr. Kuchinsky's letter.

14. Mr. Kuchinsky's letter concludes with the following statements:

NOTHING I HAVE WRITTEN HEREIN SHOULD BE CONSIDERED
"LEGAL ADVICE" TO THE GRAND JURY.

NOTHING I HAVE ENCLOSED WITH THIS LETTER SHOULD BE
CONSIDERED "EVIDENCE"; YOU SHOULD OBTAIN EVIDENCE
FROM THE NAMED WITNESSES AND OTHER WITNESSES YOU
MAY CHOOSE TO CALL, OR DOCUMENTS YOU MAY CHOOSE
TO SUBPOENAE [sic].

15. After the prospective grand jurors reported for duty on August 21, 2003, one of them brought Mr. Kuchinsky's letter and the enclosed information to the attention of the Honorable Pamela S. Baskerville, the presiding judge.

16. Judge Baskerville questioned each prospective grand juror and discovered that all of them had received Mr. Kuchinsky's letter and the enclosed materials.

17. Judge Baskerville found that Mr. Kuchinsky's contact with the prospective grand jurors at their homes before the grand jury was impaneled was improper and ruled that the grand jury could not receive testimony about the matters raised in Mr. Kuchinsky's letter dated August 19, 2003.

18. On August 25, 2003, Mr. Kuchinsky filed a motion requesting Judge Baskerville to recuse herself from the trial of the petition Mr. Kuchinsky had filed on July 23, 2002, along with a notice that he would argue the petition on September 3, 2003.

19. On September 3, 2003, the hearing went forward before the Honorable James F. D'Alton.

20. Judge D'Alton stated on the record that the grand jury had been tampered with and indicated that there would be an investigation to determine whether justice had been obstructed or a crime committed.

21. On September 10, 2003, the Virginia State Bar received a complaint from Judge D'Alton regarding Mr. Kuchinsky's improper and possibly criminal contact with the prospective grand jurors.

22. On October 10, 2003, Judge D'Alton entered an order, making no ruling on petitioners' motion for Judge Baskerville to recuse herself from hearing the petition and deferring any hearing on the petition until the Commonwealth Attorney's office completes its investigation of Mr. Kuchinsky's contact with the prospective grand jurors.

The respondent, his counsel and bar counsel stipulated to the following findings of fact:

7. The opening paragraph of Mr. Kuchinsky's letter states, among other things, that he is a lawyer in private practice and is writing on behalf of "several persons" who wish to provide the grand jury evidence which they claim involves or tends to promote criminal activity by governmental authorities, agencies and officials in Petersburg."

18. On August 25, 2003, Mr. Kuchinsky filed a motion requesting Judge Baskerville to recuse herself from the trial of the petition Mr. Kuchinsky had filed on July 23, 2003, along with a notice that he would argue the petition on September 3, 2003.

The Virginia State Bar withdrew a charge that the respondent had violated Rule of

Professional Conduct 3.5(e). The respondent was charged with violating the following Rules of Professional Conduct:

RULE 3.5 Impartiality And Decorum Of The Tribunal

* * *

(f) A lawyer shall not engage in conduct intended to disrupt a tribunal.

RULE 4.1 Truthfulness In Statements To Others

In the course of representing a client a lawyer shall not knowingly:

* * *

(b) fail to disclose a fact when disclosure is necessary to avoid assisting a criminal or fraudulent act by a client.

RULE 4.3 Dealing With Unrepresented Persons

* * *

(b) A lawyer shall not give advice to a person who is not represented by a lawyer, other than the advice to secure counsel, if the interests of such person are or have a reasonable possibility of being in conflict with the interest of the client.

RULE 8.4 Misconduct

It is professional misconduct for a lawyer to:

* * *

(b) commit a criminal or deliberately wrongful act that reflects adversely on the lawyer's honesty, trustworthiness or fitness as a lawyer;

* * *

Following the presentation of the Virginia State Bar's case, respondent's counsel moved to strike all the charges of misconduct except the respondent's alleged violation of Rule of Professional Conduct 8.4(b). The hearing panel granted the motion to strike the charge of misconduct alleging that the respondent had violated Rule of Professional Conduct 4.1(b).

Following the presentation of the respondent's case, the hearing panel heard closing arguments and retired to deliberate the remaining charges of misconduct. The hearing panel was unable to reach a decision by a majority vote of those constituting the panel. Therefore, pursuant to Part Six, Section IV, Paragraph 13.H.2.1.(1) of the Rules of Court, the remaining charges of misconduct were dismissed on the basis that the evidence did not reasonably support the charges of misconduct under the clear and convincing evidentiary standard applicable to bar proceedings.

**SIXTH DISTRICT COMMITTEE
OF THE VIRGINIA STATE BAR**

William E. Glover, Chair

CERTIFICATE OF SERVICE

I hereby certify that on the ____ day of _____, 2004, a copy of the foregoing District Committee Determination (Dismissal) was mailed to the respondent, Neil Kuchinsky, Esquire, 200 Lakeview Avenue, Post Office Box 125, Colonial Heights, Virginia 23834-0125, his last address of record with the Virginia State Bar, by certified mail, return receipt requested; and was mailed to respondent's counsel, R. Paul Childress, Jr., Esquire, Thompson, Smithers, Newman, Wade & Childress, Post Office Box 6357, Richmond, Virginia, 23230; and to Barbara Ann Williams, Bar Counsel, Virginia State Bar, 707 East Main Street, Suite 1500, Richmond, Virginia 23219.