

VIRGINIA:

**BEFORE THE THIRD DISTRICT, SECTION I, COMMITTEE
OF THE VIRGINIA STATE BAR**

**IN THE MATTER OF
NEIL KUCHINSKY**

VS. B Docket No. 11-031-085428

**DISTRICT COMMITTEE DETERMINATION
(PUBLIC REPRIMAND WITHOUT TERMS)**

On October 18, 2012, a hearing in this matter was held before a duly convened Third District Committee, Section I panel consisting of Mary K. Martin, Esquire, Chair; Stephanie E. Grana, Esquire, Vice Chair; Larry A. Pochucha, Esquire, Secretary; James F. Andrews, Esquire, Member; Carolyn V. Grady, Esquire, Member; Victoria N. Pearson, Esquire, Member; Rev. Daniel R. Greenwood, III, Lay Member; and Robert M. South, Lay Member.

Respondent Neil Kuchinsky appeared in person with counsel, Michael Rigsby, Esquire. Kara L. McGehee, Assistant Bar Counsel, appeared as counsel for the Virginia State Bar. The Committee heard testimony from V.S.B. investigator Robert Heinzman, Jr. and Respondent; received exhibits introduced by the parties; heard arguments of counsel; and met in private to consider its decision.

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 serves upon the Respondent the following Public Reprimand without Terms:

I. FINDINGS OF FACT

1. At all times relevant hereto, Neil Kuchinsky ("Respondent"), has been an attorney licensed to practice law in the Commonwealth of Virginia.

2. Dillwyn Person ("Person") hired Respondent to represent him in an estate matter in March 2008. Person and Respondent entered into a contingency fee agreement wherein Respondent would get one third of the first \$50,000.00 recovered or its value and one fourth of the value of anything recovered in excess of that amount. Person's father had died intestate in 2007, and he had five children and numerous assets at the time of his death.

3. Respondent drafted and Person signed a "Quitclaim Deed" on June 27, 2008, giving Respondent a 25% interest in six specific parcels of land, "as well as 25% of any other real estate

interest I may have that may appear of record.” This deed was recorded in the Greenville County Clerk’s office on September 3, 2008.

4. Person discharged Respondent in the summer of 2008, after Respondent had filed suit on his behalf and entered an appearance. Before Respondent formally withdrew or had new counsel substituted, Person re-hired him. Respondent and Person entered into a new “Retention Agreement” on November 3, 2008. That agreement acknowledged that Respondent had earned his “25% real estate quitclaim from Mr. Kuchinsky (sic.)”

5. On December 8, 2008, the Virginia State Bar received a Complaint submitted by Clinton Person, Dillwyn Person’s brother, against Mr. Kuchinsky. The Complaint concerned the Quitclaim Deed prepared by Respondent and signed by Dillwyn Person on June 27, 2008 (paragraph 3, above) A subcommittee of the Third District Committee, Section 1, found that Respondent had violated Rule 1.8(j) of the Rules of Professional Conduct by acquiring a proprietary interest in the cause of action or subject matter of litigation. It issued a Private Admonition without terms (“the Admonition”) to Respondent. The Admonition was served on Respondent on March 3, 2010. Respondent informed Person of the Admonition during a later conversation.

6. An order was entered on March 24, 2010 in the matter of Dillwyn Person v. Lyndia P. Ramsey, et als, appointing C. Ridley Bain as Special Commissioner for the purpose of conveying certain property. On March 30, 2010, the commissioner executed a Special Commissioner’s Deed, conveying 25% of the interest in two parcels of real estate to Respondent and 75% to Person. The deed was recorded on May 5, 2010.

7. Respondent continued to be Person’s attorney of record for several months after the March 24, 2010 order was entered, although he did not make any additional court appearances on Person’s behalf.

8. Respondent filed a Warrant in Debt in the Greenville General District Court on May 10, 2010. He obtained a default judgment against Person on June 8, 2010 in the amount of \$2,896 in principal, \$6,756 in attorney’s fees, and \$53 in court costs. He recorded the judgment as a lien against the jointly owned real estate (hereinafter, “the properties,”) the same day.

9. Respondent filed a partition suit in the Greenville County Circuit Court on May 18, 2010, (Kuchinsky v. Person, CL2010-136). He did not serve Person immediately, but attempted to negotiate an agreement with him wherein Person would pay Respondent for Respondent’s interest in the properties. Prior to the completion of that transaction, Person filed the subject complaint with the Virginia State Bar. Person enclosed a copy of the March 30, 2010 deed with the complaint.

10. After being unable to resolve the matter by agreement, Respondent obtained service on Person in January 2011. The Greenville County Circuit Court referred the case to a Commissioner in Chancery, Charles G. Butts, Jr. Commissioner Butts conducted a hearing on May 25, 2011.

11. During that hearing, Respondent testified about his attempts to get Person to cooperate in determining a value for the properties and stated that the houses were both uninhabitable. Respondent and Person also testified that they had each made payments toward the cost of maintenance and taxes for the property.

12. In late 2011, Person and Respondent negotiated an agreement whereby Person was to sign a Promissory Note for fees and costs owed to Respondent under the Retainer Agreement dated November 3, 2008, secured by a deed of trust. On November 3, 2011, Respondent executed and recorded a deed conveying his 25% interest in the properties back to Person.

13. On December 8, 2011, the Circuit Court entered an order of nonsuit in Kuchinsky v. Person, CL2010-136,) at Respondent's request.

II. NATURE OF MISCONDUCT

Such conduct by Neil Kuchinsky constitutes misconduct in violation of the following provisions of the Rules of Professional Conduct:

A. Rule 1.8 - Conflict of Interest and Prohibited Transactions

(a) A lawyer shall not enter into a business transaction with a client or knowingly acquire an ownership, possessory, security or other pecuniary interest adverse to a client unless:

- (1) the transaction and terms on which the lawyer acquires the interest are fair and reasonable to the client and are fully disclosed and transmitted in writing to the client in a manner which can be reasonably understood by the client;
- (2) the client is given a reasonable opportunity to seek the advice of independent counsel in the transaction; and
- (3) the client consents in writing thereto.

Respondent's actions that violated this rule include, but are not limited to, the following:

1. Respondent's continued ownership interest in the property and his pursuit of a partition of the property pursuant to his interest as set forth in the deed
2. Respondent's failure to formally terminate his representation prior to filing suit against Person in district court and circuit court.

B. Rule 3.4 - Fairness to Opposing Party and Counsel

A lawyer shall not:

(d) Knowingly disobey or advise a client to disregard a standing rule or a ruling of a tribunal made in the course of a proceeding, but the lawyer may take steps, in good faith, to test the validity of such rule or ruling.

Respondent's actions that violated this rule include, but are not limited to, the following:

1. Respondent disregarded the Admonition from the Virginia State Bar as he continued to pursue his ownership interest in Person's property after March 3, 2010.
2. Respondent did not divest himself of his ownership interest until one year after he received Person's complaint to the Virginia State Bar.
3. Mr. Andrews dissented from this finding on the ground that he did not believe that the Committee is a "tribunal" within the contemplation of the rule.

And

C. Rule 8.4 - Misconduct

It is professional misconduct for a lawyer to:

(a) violate or attempt to violate the Rules of Professional Conduct, knowingly assist or induce another to do so, or do so through the acts of another.

Respondent's actions that violated this rule include, but are not limited to, the following:

1. Respondent accepted and recorded the deed after receiving the Admonition.
2. Respondent filed suit to partition the property after receiving the Admonition, thereby using the court system to enforce the deeded interest he knew violated the Rules of Professional Conduct.

III. PUBLIC REPRIMAND WITHOUT TERMS

Accordingly, it is the decision of the district committee to impose a Public Reprimand Without Terms and the Respondent is hereby so reprimanded.

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



Mary K. Martin, Chair

CERTIFICATE OF SERVICE

I certify that on November 16, 2012, a true copy of the District Committee Determination (Public Reprimand) was sent by certified mail to Neil Kuchinsky, Respondent, at Kuchinsky & Yeamans, P.C., Suite B, 200 Lakeview Avenue, Colonial Heights, VA 23834-0125, Respondent's last address of record with the Virginia State Bar, and to Michael Rigsby, Esquire, Respondent's Counsel, at Michael L. Rigsby, PC, P.O. Box 29328, Henrico, Virginia, 23242.



VIRGINIA:

BEFORE THE CIRCUIT COURT FOR THE CITY OF COLONIAL HEIGHTS

VIRGINIA STATE BAR EX REL
THIRD DISTRICT COMMITTEE,
Complainant,

v.

NEIL KUCHINSKY,
Respondent

AUG 19 2013
Case No. CL13-71

MEMORANDUM ORDER

This cause came to be heard on the 19th day of June 2013, before a Three-Judge Court duly impaneled pursuant to Section 54.1-3935 of the Court of Virginia, 1950, as amended, consisting of the Honorable Ann Hunter Simpson, Judge Designate, the Honorable Walter W. Stout, III, Judge Designate, and the Honorable Charles E. Poston, Chief Judge Designate. The Virginia State Bar appeared through its Assistant Bar Counsel Kara L. McGehee, and the Respondent/Appellant appeared in person and through his counsel, Melvin Yeamans.

The panel dismissed the Bar's Motion to Strike and/or Exclude Certain Items from the Appellate Record and to Strike Arguments Not Preserved Below, and overruled the Bar's Objection to Appellant's Statement of Facts and Exhibits. The panel considered the record, as well as the arguments contained in the briefs and oral arguments by counsel.

A. Standard of Review

The standard of review in an appeal from a District Committee determination is whether there is substantial evidence in the record upon which the District Committee

could reasonably have found as it did. See Part 6, §IV, Paragraph 13-19(E) of the Rules of the Supreme Court of Virginia.

B. The Proceedings

The transcript and record having been filed, and the matter having been briefed in accordance with the Rules of the Supreme Court of Virginia, the Panel proceeded to hear argument from Assistant Bar Counsel and Appellant's counsel.

The issue before the Panel is whether there is substantial evidence in the record to support the District Committee's findings that the Appellant's conduct violated the following Rules of Professional Conduct:

Rule 1.8 - Conflict of Interest and Prohibited Transactions

(a) A lawyer shall not enter into a business transaction with a client or knowingly acquire an ownership, possessory, security or other pecuniary interest adverse to a client unless:

- (1) the transaction and terms on which the lawyer acquires the interest are fair and reasonable to the client and are fully disclosed and transmitted in writing to the client in a manner which can be reasonably understood by the client;
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Rule 8.4 - Misconduct

It is professional misconduct for a lawyer to:

(a) violate or attempt to violate the Rules of Professional Conduct, knowingly assist or induce another to do so, or do so through the acts of another.

C. The Record and Findings of Fact

The record indicates that the District Committee convened on October 18, 2012, and took testimony of the Respondent/Appellant, Neil Kuchinsky, and Virginia State Bar

Investigator Robert Heinzman. The District Committee also received Exhibits into evidence. The testimony of the witnesses, along with the exhibits admitted, provided a substantial evidentiary basis for the factual finding made by the District Committee. Those factual findings appear in the District Committee Determination and are quoted here in full:

1. At all times relevant hereto, Neil Kuchinsky ("Respondent"), has been an attorney licensed to practice law in the Commonwealth of Virginia.

2. Dillwyn Person ("Person") hired Respondent to represent him in an estate matter in March 2008. Person and Respondent entered into a contingency fee agreement wherein Respondent would get one third of the first \$50,000 recovered, or its value, and one fourth of the value of anything recovered in excess of that amount. Person's father died intestate in 2007, and he had five children and numerous assets at the time of his death.

3. Respondent drafted and Person signed a "Quitclaim Deed" on June 27, 2008, giving Respondent a 25% interest in six specific parcels of land, "as well as 25% of any other real estate interest I may have that may appear of record." This deed was recorded in the Greensville County Clerk's office on September 3, 2008.

4. Person discharged Respondent in the summer of 2008, after Respondent had filed suit on his behalf and entered an appearance. Before Respondent formally withdrew or had new counsel substituted, Person re-hired him. Respondent and Person entered into a new "Retention Agreement" on November 3, 2008. That agreement acknowledged that Respondent had earned his "25% real estate quitclaim from Mr. Kuchinsky (sic.)"

5. On December 8, 2008, the Virginia State Bar received a Complaint

submitted by Clinton Person, Dillwyn Person's brother, against Mr. Kuchinsky. The Complaint concerned the Quitclaim Deed prepared by Respondent and signed by Dillwyn Person on June 27, 2008 (paragraph 3, above). A subcommittee of the Third District Committee, Section 1, found that Respondent had violated Rule 1.8(j) of the Rules of Professional Conduct by acquiring a proprietary interest in the cause of action or subject matter of litigation. It issued a Private Admonition without terms ("the Admonition") to Respondent. The Admonition was served on Respondent on March 3, 2010. Respondent informed Person of the Admonition during a later conversation.

6. An order was entered on March 24, 2010, in the matter of *Dillwyn Person v. Lyndia P. Ramsey, et als*, appointing C. Ridley Bain as Special Commissioner for the purpose of conveying certain property. On March 30, 2010, the commissioner executed a Special Commissioner's Deed, conveying 25% of the interest in two parcels of real estate to Respondent and 75% to Person. The deed was recorded on May 5, 2010.

7. Respondent continued to be Person's attorney of record for several months after the March 24, 2010 order was entered, although he did not make any additional court appearances on Person's behalf.

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9. Respondent filed a partition suit in the Greenville County Circuit Court on May 18, 2010, (*Kuchinsky v. Person*, CL2010-136). He did not serve Person

immediately, but attempted to negotiate an agreement with him wherein Person would pay Respondent for Respondent's interest in the properties. Prior to the completion of that transaction, Person filed the subject complaint with the Virginia State Bar. Person enclosed a copy of the March 30, 2010 deed with the complaint.

10. After being unable to resolve the matter by agreement, Respondent obtained service on Person in January 2011. The Greensville County Circuit Court referred the case to a Commissioner in Chancery, Charles G. Butts, Jr. Commissioner Butts conducted a hearing on May 25, 2011.

11. During that hearing, Respondent testified about his attempts to get Person to cooperate in determining a value for the properties and stated that the houses were both uninhabitable. Respondent and Person also testified that they had each made payments toward the cost of maintenance and taxes for the property.

12. In late 2011, Person and Respondent negotiated an agreement whereby Person was to sign a Promissory Note for fees and costs owed to Respondent under the Retainer Agreement dated November 3, 2008, secured by a deed of trust. On November 3, 2011, Respondent executed and recorded a deed conveying his 25% interest in the properties back to Person.

13. On December 8, 2011, the Circuit Court entered an order of nonsuit in *Kuchinsky v. Person*, CL2010-136, at Respondent's request.

The District Committee further found that it based its findings of misconduct, in part, on the following facts:

1. Appellant continued ownership interest in the property and pursued a partition of the property pursuant to his interest as set forth in the deed.

2. Appellant failed to formally terminate his representation prior to filing suit against Person in district court and circuit court.

3. Appellant disregarded the Admonition from the Virginia State Bar as he continued to pursue his ownership interest in Person's property after March 3, 2010.

4. Appellant did not divest himself of his ownership interest until one year after he received Person's complaint to the Virginia State Bar.

5. Appellant accepted and recorded the deed after receiving the Admonition.

6. Appellant filed suit to partition the property after receiving the Admonition, thereby using the court system to enforce the deeded interest he knew violated the Rules of Professional Conduct.

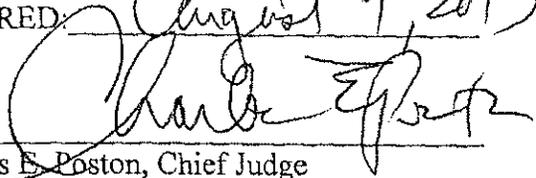
D. Decision

Upon completion of argument, the hearing was recessed to give the Panel the opportunity to further review the record and to deliberate. The Chief Judge announced that it was the unanimous decision of the Panel that there is substantial evidence in the record upon which the District Committee could reasonably found as it did. The District Committee's determination that Appellant's conduct violated Rules 1.8(a), 3.4(d), and 8.4(a) and its Public Reprimand of Respondent/Appellant are, therefore, affirmed.

It is FURTHER ORDERED that the Clerk of this Circuit Court shall send a copy *teste* of this Order to the Respondent by Certified Mail, at Kuchinsky & Yeamans, P.C., 200 Lakeview Ave., Suite B, Colonial Heights, Virginia 23834, the Respondent's last address of record with the Virginia State Bar, and send copies *teste*, by first class mail to Assistant Bar Counsel, Kara L. McGehee, Esquire, at 707 East Main Street, Suite 1500, Richmond, Virginia 23219, to Respondent's counsel, Melvin E. Yeamans, Jr., Esquire, at

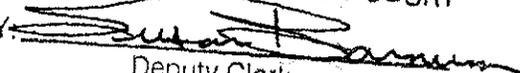
Kuchinsky & Yeamans, P.C., 200 Lakeview Avenue, Suite B, Colonial Heights, Virginia
23834 and to Barbara Sayers Lanier, Clerk of the Disciplinary System, Virginia State
Bar, at 707 East Main Street, Suite 1500, Richmond, Virginia 23219.

ENTERED:

August 9, 2013


Charles E. Poston, Chief Judge

A COPY, TESTE:
STACY L. STAFFORD, CLERK
COLONIAL HEIGHTS CIRCUIT COURT

BY: 
Deputy Clerk

SEEN:



Kara L. McGehee, Assistant Bar Counsel
Virginia State Bar
707 East Main St., Ste. 1500
Richmond, VA 23219
804-775-0560

SEEN AND OBJECTED TO FOR THE REASONS SET FORTH IN THE
ATTACHED APPELLANT'S OBJECTIONS:



Melvin E. Yeaman
Counsel for Appellant
Kuchinsky and Yeaman, PC
200 Lavenue Ave., Ste. B
Colonial Heights, VA 23834-0125

OBJECTIONS OF RESPONDENT NEIL KUCHINSKY TO
MEMORANDUM ORDER IN CASE NUMBER CL 13-71

Respondent Neil Kuchinsky, by counsel, objects to the Memorandum Order of the Three-Judge Court (hereinafter, "the Panel"), for the following reasons:

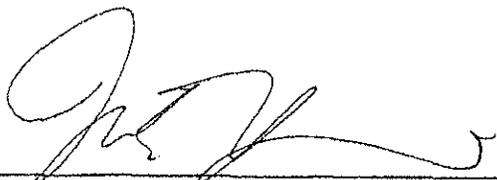
1. The Panel's Memorandum Order fails to include any of its own findings of fact and conclusions of law, much less all the relevant facts and conclusions of law (only what the VSB itself, *sua sponte*, added to this Order); it therefore fails to address the respondent's arguments set forth in its brief and before the panel, the most important fact being the *entirety* of the content of the second contract between the attorney and his client, which make clear his reasonable and bona fide efforts to comply with the very rule he stands charged with violating. Conclusions of law that merely state, in essence, 'it was all reasonable', do not provide a proper framework for appeal and for setting forth Assignments of Error to the Virginia Supreme Court.

2. It is not reasonable, as a matter of law, to expect the respondent to be able to meaningfully respond to or appeal from District Committee findings that include the words, "Respondent's actions that violated this rule include, *but are not limited to* the following..." (emphasis added), as in the alleged violations of Rule 3.4 and Rule 8.4; it is not reasonable to discipline an attorney "for failure to formally terminate his representation" prior to filing suit against the client, where nothing remains to be done in the underlying cases; to find (implicitly) that respondent's creation of a new contract with his client were not "steps taken in good faith" to comply with rules or the "ruling of a tribunal"; to find that the respondent "disregarded" the prior private admonition, when the new disciplinary action alleged a different violation of the

rules under the same underlying facts; it is unreasonable, and a blatant untruth, to find that the respondent "accepted and recorded" the deed in question, when in fact this was accomplished by way of a court order objected to by the respondent, and then drafted and recorded by a special commissioner under that order; to find that the respondent "new" he violated the rules of professional conduct, when a cogent, unrebutted explanation was provided for his actions (i.e., drafting, in good faith, a new agreement with his client); *where the client in question could find no other attorney to represent him because he had no cash up front*; where the rule the respondent is now charged with violating offers precisely the roadmap counsel sought to use in cases where the alternative is that *the client would go unrepresented*; and where, despite all that has transpired, the respondent has still not been fully paid.

3. Furthermore, the record lacked "substantial evidence" upon which the District Committee could have reasonably found as it did.

WHEREFORE, the respondent, by Counsel, objects to the entry of the proposed Memorandum Order.



Melvin E. Yeamans, Jr. VSB#31373
Counsel for the Respondent
Kuchinsky & Yeamans, PC
200 Lakeview Ave, Suite B
Colonial Heights, VA 23834
Phone: (804)526-2101
Fax: (804) 526-0328
melvinyeamans@yahoo.com

PRESENT: All the Justices

NEIL KUCHINSKY

v. Record No. 131656

OPINION BY
JUSTICE ELIZABETH A. McCLANAHAN
April 17, 2014

VIRGINIA STATE BAR, EX REL.
THIRD DISTRICT COMMITTEE

FROM THE CIRCUIT COURT OF THE CITY OF COLONIAL HEIGHTS
Charles E. Poston, Chief Judge Designate, Ann Hunter Simpson
and Walter W. Stout III, Judges Designate

In this appeal of right from an attorney disciplinary proceeding before a three-judge panel appointed pursuant to Code § 54.1-3935, we consider whether an attorney violated Rules 1.8(a), 3.4(d), and 8.4(a) of the Virginia Rules of Professional Conduct.

I. Facts and Proceedings

A. Background and Prior Private Admonition

Neil Kuchinsky is an attorney licensed to practice law in the Commonwealth. In March 2008, Dillwyn T. Person ("Person" or "Dillwyn") hired Kuchinsky to represent him in connection with Dillwyn's claim for a portion of his father's estate.¹ Person and Kuchinsky entered into a contingency fee agreement providing that Kuchinsky would receive one-third of the first \$50,000 recovered, or its fair market value, and one-fourth of anything recovered in excess of that amount, or its fair market value.

¹ Person's father, Thomas McCoy Person, died intestate. At the time of his passing, Thomas Person owned several parcels of land in the City of Emporia and Greensville County, Virginia.

Kuchinsky then filed a partition suit on behalf of Person against Person's siblings in the Greensville County Circuit Court. After filing the partition suit, Kuchinsky drafted a quitclaim deed, which was executed by Person. The quitclaim deed granted Kuchinsky a 25% interest in any "right, title, and interest" Person may possess in the six parcels of land that were the subject matter of the partition suit against Person's siblings "as well as 25% of any other real estate interest [Person] may have that may appear of record." The quitclaim deed was recorded in the Greensville County Circuit Court.²

In December 2008, the Virginia State Bar ("VSB") received a complaint submitted by Dillwyn's brother, Clinton Person. The complaint alleged that Kuchinsky's acquisition of a 25% quitclaim interest in the subject matter of the underlying partition suit was a "clear conflict of interest." In an agreed-upon disposition, a subcommittee of the Third District Committee, Section I, of the VSB, found that Kuchinsky violated Rule 1.8(j) of the Virginia Rules of Professional Conduct by

² Sometime after the quitclaim deed was recorded, Person dismissed Kuchinsky as his counsel. However, later that year, Person re-employed Kuchinsky and executed a second fee agreement which stated that Person would pay Kuchinsky's attorney's fees for any unproven bar complaints lodged against Kuchinsky, reaffirmed that Kuchinsky had earned "all prior fees" (including the 25% quitclaim interest), and waived potential conflicts of interest in the renewed representation.

acquiring "a proprietary interest in the cause of action or subject matter of litigation."³ As a result, Kuchinsky was issued a private admonition without terms on February 18, 2010.

B. Events Occurring After the Private Admonition

On March 24, 2010, an Order was entered in the partition suit between Person and his siblings appointing a Special Commissioner for the purpose of conveying the property that was subject to the suit. The Special Commissioner then executed a deed conveying to Kuchinsky a 25% interest and to Person a 75% interest in two specific parcels of real estate, 211 Wadlow Street and 640 Clay Street in Emporia, Virginia. After the deed was issued, Kuchinsky wrote to the Special Commissioner and asked him to "[p]lease file 'our' deed as soon as possible."⁴ The Special Commissioner's Deed was then recorded in the Greensville County Circuit Court.

After the Special Commissioner's deed was recorded, Kuchinsky proceeded to file two actions against Person. First,

³ The subcommittee's determination was based on Kuchinsky's acquisition of the quitclaim deed from Person, as well as his acquisition of a similar interest from another client.

⁴ Initially, Kuchinsky had objected to the Special Commissioner's deed, stating that he intended his 25% quitclaim interest to be a "springing attorney's lien for legal work, not as a proprietary interest." Therefore, Kuchinsky argued, "conveyances and debts set forth by the Commissioner as transferable or payable to Neil Kuchinsky should be permitted to be converted to a deed of trust and note" between himself and Person.

Kuchinsky filed a Warrant in Debt against Person in the Greenville County General District Court. The court entered a default judgment against Person for \$2,896 in principal, \$6,756 in attorney's fees, and \$53 in court costs. The same day, Kuchinsky recorded the default judgment as a lien against the jointly owned properties. Secondly, Kuchinsky filed a suit against Person in the Greenville County Circuit Court to partition the jointly owned properties.

Before serving Person in the partition suit, Kuchinsky sought to negotiate an agreement by which Person would pay Kuchinsky for his interest in the properties. Prior to the completion of that transaction, however, Person filed a complaint with the VSB in September 2010 alleging that Kuchinsky "took total advantage of my faith and ignorance in him for his self-interest." Subsequently, during the pendency of the VSB's investigation into Person's complaint, Kuchinsky served Person with notice of the partition suit. The case was referred to the Commissioner in Chancery for Greenville County, who conducted a hearing.⁵

⁵ Kuchinsky and Person eventually reached an agreement whereby Person signed a promissory note for fees and costs owed to Kuchinsky, secured by a deed of trust. Finally, in November 2011, Kuchinsky executed and recorded a deed conveying his 25% interest in the jointly owned properties back to Person. Subsequently, pursuant to Kuchinsky's request, the Greenville County Circuit Court issued an order of nonsuit in Kuchinsky's partition suit against Person.

In June 2012, the VSB filed a Charge of Misconduct against Kuchinsky pursuant to the Rules of the Virginia Supreme Court, Part 6, § IV, ¶ 13-16(A). Specifically, the VSB alleged that Kuchinsky violated Rules 1.8(a), 3.4(d), and 8.4(a)⁶ through his conduct towards Person after the issuance of the prior

⁶ In relevant part, the rules Kuchinsky was charged with violating, all of which appear in Part 6, § II of the Rules of Court, read as follows:

Rule 1.8 - Conflict of Interest: Prohibited Transactions

(a) A lawyer shall not enter into a business transaction with a client or knowingly acquire an ownership, possessory, security, or other pecuniary interest adverse to a client unless:

- (1) the transaction and terms on which the lawyer acquires the interest are fair and reasonable to the client and are fully disclosed and transmitted in writing to the client in a manner which can be reasonably understood by the client;
- (2) the client is given a reasonable opportunity to seek the advice of independent counsel in the transaction; and
- (3) the client consents in writing thereto.

Rule 3.4 - Fairness to Opposing Party and Counsel
A lawyer shall not:

(d) Knowingly disobey or advise a client to disregard a standing rule or a ruling of a tribunal made in the course of a proceeding, but the lawyer may take steps, in good faith, to test the validity of such rule or ruling.

Rule 8.4 - Misconduct

It is professional misconduct for a lawyer to:

(a) violate or attempt to violate the Rules of Professional Conduct, knowingly assist or induce another to do so, or do so through the acts of another.

admonition. After referral to the Third District Committee, which conducted a hearing, the Committee found, by clear and convincing evidence, that Kuchinsky had violated Rules 1.8(a), 3.4(d), and 8.4(a) of the Rules of Professional Conduct and issued Kuchinsky a public reprimand without terms. The District Committee then issued a Written Determination explaining its decision. In its Determination, the District Committee made several findings of fact. Then, in a section titled "Nature of Misconduct," the District Committee listed the rules that it found Kuchinsky had violated. Under each rule, the District Committee stated that "[r]espondent's actions that violated this rule include, but are not limited to, the following" and provided a non-exhaustive list of Kuchinsky's actions it found to be in violation of each rule.⁷

Kuchinsky filed a notice of appeal and demand for review of the District Committee's determination by a three-judge panel, pursuant to Code § 54.1-3935.⁸ After each party submitted

⁷ The Written Determination also noted that one member of the Committee dissented from the District Committee's finding that Kuchinsky violated Rule 3.4(d) by disregarding the VSB's prior admonition on the basis that the Committee member "did not believe that the Committee is a 'tribunal' within the contemplation of the rule."

⁸ On the same day, Kuchinsky also filed a Motion to Reconsider the District Committee's determination on the basis that one of the Committee members should have recused himself from the proceedings. The District Committee denied Kuchinsky's Motion

briefs, the panel heard argument and issued an Order holding that there was substantial evidence in the record to support the District Committee's decision. Subsequently, the panel issued a Memorandum Order incorporating the District Committee's findings of fact in full and affirming its decision.

Kuchinsky appeals.

II. Analysis

A. Standard of Review

To prove that an attorney violated the Rules of Professional Conduct, the VSB must present clear and convincing evidence of the violation. Livingston v. Virginia State Bar, 286 Va. 1, 10, 744 S.E.2d 220, 224 (2013). When reviewing a disciplinary decision by a three-judge panel:

"[W]e will make an independent examination of the whole record, giving the factual findings . . . substantial weight and viewing them as prima facie correct. While not given the weight of a jury verdict, those conclusions will be sustained unless it appears they are not justified by a reasonable view of the evidence or are contrary to law."

Green v. Virginia State Bar ex rel. Seventh Dist. Comm., 274 Va. 775, 783, 652 S.E.2d 118, 121 (2007) (quoting El-Amin v. Virginia State Bar, 257 Va. 608, 612, 514 S.E.2d 163, 165 (1999)). Furthermore, "[c]onsistent with well-established

to Reconsider, and the issue raised therein is not before this Court on appeal.

appellate principles, we view the evidence and all reasonable inferences that may be drawn therefrom in the light most favorable to the Bar, the prevailing party below." Id.

B. Kuchinsky's "Right to a Meaningful Appeal"

In his first assignment of error, Kuchinsky argues that he was deprived of his right to a meaningful appeal because the District Committee's Determination stated under each finding of a Rule violation: "Respondent's actions that violated this rule include, but are not limited to, the following." (Emphasis added.) Because the listings of facts which followed were not exhaustive, Kuchinsky asserts that the three-judge panel could not properly determine which facts the District Committee considered in making its decision.

An attorney subject to disciplinary proceedings is entitled to notice and the opportunity to be heard. Pappas v. Virginia State Bar, 271 Va. 580, 587, 628 S.E.2d 534, 538 (2006). In construing this right, we have held that "it is only necessary that the attorney be informed of the nature of the charge preferred against him and be given an opportunity to answer." Moseley v. Virginia State Bar, 280 Va. 1, 3, 694 S.E.2d 586, 589 (2010) (internal quotation marks omitted). Although we have not previously considered the extent of an attorney's due process rights in the context of an appeal, we have held that "[t]he procedures outlined in Part Six [of the Rules of the Supreme

Court of Virginia] ensure the integrity of the disciplinary process and protect the rights of the attorney." Pappas, 271 Va. at 587, 628 S.E.2d at 538.

Part 6, § IV, ¶ 13-16(Y) of the Rules of Court establishes what a District Committee must include in its written determination. Specifically, the Rule states:

If a District Committee finds that the evidence shows the Respondent engaged in Misconduct by clear and convincing evidence, then the Chair shall issue the District Committee's Determination, in writing, setting forth the following:

1. Brief findings of the facts established by the evidence;
2. The nature of the Misconduct shown by the facts so established, including the Disciplinary Rules violated by the Respondent; and
3. The sanctions imposed, if any, by the District Committee.

In the case at bar, the District Committee's Determination satisfied each of the three requirements. It included findings of fact, explained the nature of Kuchinsky's misconduct that was established by those facts, and stated what sanction was to be imposed. Part 6, § IV, ¶ 13-16(Y) does not require that a District Committee list the specific facts relied upon in finding individual rule violations. Therefore, the District Committee did not err by failing to include an exhaustive list for each violation.

Furthermore, Kuchinsky's argument that the three-judge panel could not ascertain what facts the District Committee considered in making its decision lacks merit. A three-judge panel appointed pursuant to Code § 54.1-3935 reviews a District Committee determination to determine "whether there is substantial evidence in the record upon which the District Committee could reasonably have found as it did." Va. Sup. Ct. R., Part 6, § IV, ¶ 13-19(E) (emphasis added). Thus, in addition to the District Committee's findings of fact, a three-judge panel has the benefit of considering the entire record in reviewing a District Committee's Determination. Accordingly, we hold that Kuchinsky was not deprived of his right to a meaningful appeal in this case.

C. Rule 1.8(a)

Rule 1.8(a) of the Rules of Professional Conduct states that:

(a) A lawyer shall not enter into a business transaction with a client or knowingly acquire an ownership, possessory, security or other pecuniary interest adverse to a client unless:

(1) the transaction and terms on which the lawyer acquires the interest are fair and reasonable to the client and are fully disclosed and transmitted in writing to the client in a manner which can be reasonably understood by the client;

(2) the client is given a reasonable opportunity to seek the advice of independent counsel in the transaction; and

(3) the client consents in writing thereto.

The District Committee found that Kuchinsky violated Rule 1.8(a) through his "continued ownership interest in [Person's] property and his pursuit of a partition of the property pursuant to his interest as set forth in the deed" and through his "failure to formally terminate his representation prior to filing suit against Person in district court and circuit court."

1. Kuchinsky Acquired a 25% Interest in Two Specific Properties Through the Special Commissioner's Deed

Kuchinsky argues that his continued interest in Person's property was not an acquisition of an interest in the property. To violate Rule 1.8(a), an attorney must "knowingly acquire an ownership, possessory, security or other pecuniary interest adverse to a client." (Emphasis added.)

While the quitclaim deed gave Kuchinsky a 25% interest in Person's undivided ownership interests in the six properties at issue in the underlying partition suit against Person's siblings, the Special Commissioner partitioned, at Kuchinsky's request as counsel for Person, the various interests in those properties. The Special Commissioner's Deed then conveyed to Kuchinsky a 25% interest and to Person a 75% interest in two of the six properties - to the exclusion of Kuchinsky's other co-tenants' interests implicated by the execution of the quitclaim deed, and to the exclusion of Kuchinsky's interests in the other

four properties. Accordingly, Kuchinsky and Person thereafter exclusively owned the two properties as tenants in common. Thus, only Kuchinsky and Person had the "right to possess, use and enjoy [these two] common propert[ies]," City of Richmond v. Suntrust Bank, 283 Va. 439, 443, 722 S.E.2d 268, 271 (2012) (quoting Graham v. Pierce, 60 Va. (19 Gratt.) 28, 38 (1869)). Moreover, although Kuchinsky initially objected to the Special Commissioner's Deed, he later wrote a letter to the Special Commissioner encouraging him to record it; and Kuchinsky did not disclaim the deed after it was recorded. Through these actions, Kuchinsky "knowingly acquire[d]" an interest in Person's property for purposes of Rule 1.8(a).

2. The Common Law Exceptions to the Rules of Champerty and Maintenance do not apply to Rule 1.8(a)

Alternatively, Kuchinsky contends that his actions are protected by the common law exception to the doctrine of champerty and maintenance for aiding the indigent. See 3B Michie's Jurisprudence, Champerty and Maintenance, § 2 ("Aiding the indigent is one of the generally recognized exceptions to the law of maintenance."). Because Person could not afford to pay an attorney in advance, Kuchinsky argues that his fee arrangement with Person falls within the exception. We disagree.

In relevant part, Comment 16 to Rule 1.8 explains that "Paragraph (j) states the traditional general rule that lawyers are prohibited from acquiring a proprietary interest in litigation. This general rule, which has its basis in common law champerty and maintenance, is subject to specific exceptions developed in decisional law and continued in these Rules." (Emphasis added.) However, unlike the earlier disciplinary proceeding against Kuchinsky, the case at bar does not involve a Rule 1.8(j) violation. There is no common law doctrine which permits an attorney to "knowingly acquire an ownership, possessory, security or other pecuniary interest adverse to a client" in violation of Rule 1.8(a) simply because the client is indigent.

3. Person was Still Kuchinsky's Client at the Time the Offending Conduct Occurred

Finally, Kuchinsky asserts that Person was no longer his client at the time the offending conduct took place because "nothing remained to be done in Person's case" and because Person allegedly informed Kuchinsky that he did not intend to pay Kuchinsky for his services. We reject this argument.

During the hearing before the District Committee, Kuchinsky testified that by the time he filed the partition suit against Person on May 18, 2010 "[t]here may have been some rents that remained to be divided, cash assets" from the underlying

partition suit between Person and his siblings. Additionally, Kuchinsky acknowledges on brief that no final order had been entered in the underlying partition suit when he acquired the Special Commissioner's deed and filed his partition suit against Person. Finally, Kuchinsky took no steps to formally withdraw from his representation of Person in accordance with Rule 1.16(b) before engaging in the violative conduct.⁹

Therefore, Person was still Kuchinsky's client at the time he knowingly acquired an interest in Person's property, and we hold that the three-judge panel did not err in affirming the District Committee's finding that Kuchinsky violated Rule 1.8(a) of the Rules of Professional Conduct.

D. Rule 8.4(a)

Rule 8.4(a) of the Rules of Professional Conduct establishes that "[i]t is professional misconduct for a lawyer to . . . violate or attempt to violate the Rules of Professional Conduct, knowingly assist or induce another to do so, or do so through the acts of another."

As we explained in Part II.C., supra, Kuchinsky violated Rule 1.8(a) by acquiring an interest in Person's property

⁹ In relevant part, Comment 8 to Rule 1.16 states that "[a] lawyer may withdraw if the client refuses to abide by the terms of an agreement relating to the representation, such as an agreement concerning fees or court costs." Thus, although Person allegedly informed Kuchinsky that he would not honor their fee agreement, the representation continued absent Kuchinsky's withdrawal.

through the Special Commissioner's Deed, by asking that the Special Commissioner record the deed, and by pursuing a partition of Person's property once the deed had been recorded. Therefore, he also committed professional misconduct under Rule 8.4(a) by violating the Rules of Professional Conduct, both through his own acts and through the acts of the Special Commissioner.

However, Kuchinsky argues that we should reverse the three-judge panel's finding that he violated Rule 8.4(a) because "a redundancy of charges in disciplinary proceedings is disfavored." In support, Kuchinsky cites Morrissey v. Virginia State Bar, 248 Va. 334, 448 S.E.2d 615 (1994). In Morrissey, a three-judge panel found that Respondent violated DR 1-102(A)(4) of the former Virginia Rules of Professional Responsibility, which stated that "[a] lawyer shall not . . . [e]ngage in conduct involving dishonesty, fraud, deceit, or misrepresentation which reflects adversely on a lawyer's fitness to practice law."¹⁰ Id. at 336, 448 S.E.2d at 616. On appeal, the VSB assigned as cross-error the panel's failure to also find that Respondent had violated former DR 1-102(A)(3), which

¹⁰ The panel also found that Respondent violated former DR 8-101, which prohibited a lawyer serving in public office from "[a]ccept[ing] anything of value" when the lawyer "knows or it is obvious that the offer is for the purpose of influencing his action as a public official." However, that portion of the opinion is not relevant to the issue presented by the case at bar.

established that "[a] lawyer shall not [c]ommit a crime or other deliberately wrongful act that reflects adversely on the lawyer's fitness to practice law." Id. at 334, 448 S.E.2d at 621. We rejected the VSB's argument and affirmed the panel's decision, holding that "[a]lthough Morrissey's concealments were deliberate and wrongful, we do not think that the language of DR 1-102(A)(3) indicates a clear intent to provide multiple punishment for such acts under the circumstances of this case." Id. (citing Fitzgerald v. Commonwealth, 223 Va. 615, 635, 292 S.E.2d 798, 810 (1982)).

In contrast to the rules at issue in Morrissey, Rule 8.4(a) clearly supports a finding that an attorney has committed professional misconduct under Rule 8.4(a) in addition to a finding that the attorney violated another underlying Rule of Professional Conduct. Rule 8.4(a) states that a violation or attempted violation of another rule is professional misconduct. This misconduct provision would be rendered meaningless if it did not provide for the imposition of a separate and additional violation. It is a "well established rule of construction that a statute ought to be interpreted in such manner that it may have effect, and not be found vain and elusive." McFadden v. McNorton, 193 Va. 455, 461, 69 S.E.2d 445, 449 (1952). We believe that the same principle applies to our interpretation of the Rules of Professional Conduct. Accordingly, we hold that

the three-judge panel did not err in affirming the District Committee's finding that Kuchinsky violated Rule 8.4(a) of the Rules of Professional Conduct.

E. Rule 3.4(d)

In relevant part, Rule 3.4(d) of the Rules of Professional Conduct states that "[a] lawyer shall not . . . [k]nowingly disobey . . . a standing rule or a ruling of a tribunal made in the course of a proceeding, but the lawyer may take steps, in good faith, to test the validity of such rule or ruling."

The District Committee found that Kuchinsky violated Rule 3.4(d) by "continu[ing] to pursue his ownership interest in Person's property" after receiving the prior admonition from the VSB and by failing to "divest himself of his ownership interest [in Person's property] until one year after he received Person's [bar] complaint." However, the admonition issued to Kuchinsky was a private admonition without terms. The admonition did not require that Kuchinsky divest himself of his interest in Person's property, nor did it indicate that he must refrain from taking additional steps to secure his interest. Rather, it merely stated that Kuchinsky violated Rule 1.8(j) by acquiring the original quitclaim deed from Person. Because the private admonition issued to Kuchinsky did not include terms requiring that Kuchinsky either take or refrain from taking any action, he could not "knowingly disobey" the admonition. Accordingly, we

hold that the three-judge panel erred in affirming the District Committee's finding that Kuchinsky violated Rule 3.4(d) of the Rules of Professional Conduct.¹¹

III. Conclusion

We affirm the three-judge panel's decision with regard to Rules 1.8(a) and 8.4(a), reverse its decision with regard to Rule 3.4(d), and remand the case for reconsideration of the sanction to be imposed.

Affirmed in part,
reversed in part,
and remanded.

¹¹ The related issue of whether a disciplinary arm of the VSB constitutes a "tribunal" for purposes of Rule 3.4(d) is not before this Court on appeal.

VIRGINIA:

*In the Supreme Court of Virginia held at the Supreme Court Building in the
City of Richmond on Wednesday the 7th day of May, 2014.*

Neil Kuchinsky, Appellant,

against Record No. 131656
Circuit Court No. CL13-71

Virginia State Bar, ex rel.
Third District Committee, Appellee.

Upon an appeal of right
from a judgment rendered by the
Circuit Court of the City of
Colonial Heights.

For reasons stated in writing and filed with the record, the
Court is of opinion that there is error in part in the judgment
from which the appeal was filed. Accordingly, the judgment is
affirmed in part, reversed in part, and the case is remanded for
further proceedings consistent with the views expressed in the
written opinion of this Court.

This order shall be certified to the said circuit court.

A Copy,

Teste:

Pat L Hamister

Clerk

JUL 8 2014

VIRGINIA:

IN THE CIRCUIT COURT OF THE CITY OF COLONIAL HEIGHTS

VIRGINIA STATE BAR, EX REL
THIRD DISTRICT COMMITTEE
VSB Docket No. 11-031-085428

Complainant

v.

Case No. CL13-71

NEIL KUCHINSKY

Respondent

ORDER

On February 19, 2015, this matter was heard by this Court pursuant to the mandate of the Supreme Court of Virginia entered May 7, 2014.

WHEREFORE, upon consideration of the testimony, documentary evidence, and arguments of counsel, it is hereby ORDERED:

The Respondent shall receive a(n):

_____ Public Dismissal *De Minimis*

_____ Public Dismissal for Exceptional Circumstances, such circumstances are:

_____ Public Admonition without Terms

_____ Public Admonition with Terms, the Terms being:

Terms Compliance Time Period _____

Alternative Disposition _____

X

Public Reprimand without Terms

Public Reprimand with Terms, the Terms being:

Terms Compliance Time Period _____

Alternative Disposition _____

This Summary Order is effective on:

X

the date of this Summary Order.

_____, 2015

The Court notes for the record in this matter that

X

the Respondent was present in person and was advised of the imposition of the sanction.

the Respondent was not present in person, but the Clerk of the Circuit Court is directed to communicate promptly to the Respondent the actions of the Court.

The Clerk of the Disciplinary System shall comply with all requirements of Part Six, Section IV, Paragraph 13 of the Rules of the Supreme Court of Virginia, including but not limited to assessing costs pursuant to Paragraph 13-9.E. of the Rules of Court and complying with the public notice requirements of Paragraph 13-9.G. of the Rules of Court.

The Clerk of the Circuit Court shall mail a copy teste of this Order by certified mail to the Respondent, Neil Kuchinsky, at Kuchinsky & Rosenstock, P.C., Suite B, 200 Lakeview Avenue, Colonial Heights, Virginia 23834-0125, and by regular mail to the counsel of record, and the Clerk of the Disciplinary System, Virginia State Bar, 1111 East Main Street, Suite 700, Richmond, VA 23219-3565.

ENTERED: Feb 19, 2015

Charles Porter
Chief Judge Designate

William W. Stewart
Judge

Ann Hunter Simpson
Judge

SEEN: *and agreed*

VIRGINIA STATE BAR

By: Kathryn R. Montgomery
Kathryn R. Montgomery
Deputy Bar Counsel
Bar No. 42380
Virginia State Bar
1111 E. Main Street, Ste. 700
Richmond, VA 23219-3565
Tel. 804.775.0543
Montgomery@vsb.org

A COPY, TESTE:
STACY L STAFFORD, CLERK

BY: Stacy L. Stafford
Deputy Clerk

SEEN: *I objected to for all reasons stated in the record.*
NEIL KUCHINSKY, RESPONDENT

By: L.A. Rosenstock III
L.A. Rosenstock, Esquire
Bar No. 1268
Kuchinsky & Rosenstock, P.C.
200 Lakeview Ave., Suite B
P.O. Box 125
Colonial Heights, VA 23834
Tel. 804.526.2010
Fax 804.526.0328

VIRGINIA:

In the Supreme Court of Virginia held at the Supreme Court Building in the City of Richmond on Thursday the 29th day of October, 2015.

Neil Kuchinsky, Appellant,

against Record No. 150878
 Circuit Court No. CL13-71

Virginia State Bar, ex rel.
Third District Committee, Appellee.

Upon an appeal from a judgment rendered by the Circuit Court of the City of Colonial Heights.

In Kuchinsky v. Virginia State Bar, 287 Va. 491, 506, 756 S.E.2d 475, 483 (2014), we remanded this case to the three-judge court to consider appropriate sanctions for two violations of the Rules of Professional Conduct that we affirmed on appeal. On remand, the three-judge court imposed public reprimands for the two rule violations. Exercising his appeal of right, pursuant to Code § 54.1-3935(E), Neil Kuchinsky now contends that the three-judge court had no “jurisdiction to hear evidence and determine a sanction on remand.” Appellant’s Br. at 2. We disagree and affirm.

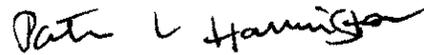
Our mandate remanded the case to the three-judge court “for reconsideration of the sanction to be imposed” for the two rule violations affirmed on appeal. Kuchinsky, 287 Va. at 506, 756 S.E.2d at 483. The three-judge court’s jurisdiction on remand was exactly the same as the jurisdiction Kuchinsky invoked when he appealed to the three-judge court from the determination made by the State Bar District Committee. See Cilman v. Virginia State Bar, 266 Va. 66, 72, 580 S.E.2d 830, 833 (2003) (explaining that “when an attorney makes a timely demand for the matter to be tried by a three-judge court, the proceedings before the Board shall terminate”); see also Code §§ 54.1-3915, 54.1-3935(D); accord Va. Sup. Ct. R., Part 6, § IV, ¶ 13-17(A). The three-judge court, therefore, had jurisdiction to reconsider and impose sanctions

on remand.* We thus affirm the judgment of the Circuit Court of the City of Colonial Heights. Appellant shall pay to the appellee two hundred and fifty dollars damages.

This order shall be certified to the said circuit court.

A Copy,

Teste:



Clerk

* Kuchinsky also argues on appeal that the exercise of remand jurisdiction by the three-judge court violates his right to a jury trial guaranteed by Article I, Section 8 of the Constitution of Virginia. See also Va. Const. art. VI, § 5 (requiring rules of court to not “be in conflict with the general law”); but cf. Seventh Dist. Comm. v. Gunter, 212 Va. 278, 284, 183 S.E.2d 713, 717 (1971) (“A proceeding to discipline an attorney . . . is a special proceeding, civil and disciplinary in nature, and of a summary character.”). We do not address this issue because it was not raised below, see Rule 5:25, and is not fairly encompassed in Kuchinsky’s single assignment of error, see Rule 5:17(c)(1)(i).

VIRGINIA:

In the Supreme Court of Virginia held at the Supreme Court Building in the City of Richmond on Wednesday the 18th day of November, 2015.

Neil Kuchinsky,

Appellant,

against

Record No. 150878
Circuit Court No. CL13-71

Virginia State Bar, ex rel.
Third District Committee,

Appellee.

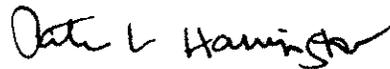
Upon an appeal from a judgment rendered by the Circuit Court of the City of Colonial Heights.

For reasons stated in this Court's order dated October 29, 2015 and filed with the record, the Court is of opinion that there is no reversible error in the judgment from which the appeal was filed. Accordingly, the judgment is affirmed. The appellant shall pay to the appellee two hundred and fifty dollars damages.

This order shall be certified to the said circuit court.

A Copy,

Teste:



Clerk