

**VIRGINIA:**

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

**IN THE MATTERS OF  
KENT STEPHEN BENNINGER**

**VS B Docket No. 24-031-130113**

**VS B Docket No. 24-031-130493**

**SUBCOMMITTEE DETERMINATION  
(PUBLIC REPRIMAND)**

On September 11 and 20, 2024, meetings in this matter were held before a duly convened Third District, Section I Subcommittee consisting of Erin L. T. Ranney, Esq, Chair; James H. Ritchie, Jr., Esq., Member; and R. Douglas Robbins, Lay Member. During the meetings, the Subcommittee voted to approve an agreed disposition for a Public Reprimand pursuant to Part 6, § IV, ¶ 13-15.B.4. of the Rules of the Supreme Court of Virginia. The agreed disposition was entered into by the Virginia State Bar, by Renu M. Brennan, Bar Counsel, and Kent Stephen Benninger (“Respondent”), pro se.

WHEREFORE, the Third District, Section I Subcommittee of the Virginia State Bar hereby serves upon Respondent the following Public Reprimand:

**VS B DOCKET NO. 24-031-130113 – COMPLAINANT SB**

**I. FINDINGS OF FACT**

1. In April 2017, Respondent Kent Stephen Benninger (“Respondent”) was licensed to practice law in the Commonwealth of Virginia. Respondent initially worked with United Lex, then did criminal appointed defense work for several months, and has since been with the law firm of Cravens & Noll, P.C.. At all times relevant Respondent has been an active member, in good standing, with the Virginia State Bar.
2. From September 2021 to September 2023, the law firm of Cravens & Noll, P.C. represented SB in her divorce. Respondent, a junior associate employed by Cravens & Noll, P.C., primarily handled the representation of SB.
3. SB and her husband shared three children and resided in Chesterfield County prior to their separation in August 2021.

4. From October 2021 to September 2022, Respondent represented SB in unsuccessful attempts to negotiate a property settlement agreement. During this time the parties engaged in extensive informal discovery, and SB provided Respondent with documents.
5. On September 23, 2022, Respondent, on ██████ SB's behalf, filed a complaint for divorce on cruelty grounds and a motion for *pendente lite* relief in the Circuit Court of Chesterfield County ("Court"). ██████ SB's husband filed an answer and counterclaim for adultery and a motion for *pendente lite* relief. Respondent filed an answer to husband's counterclaim.
6. SB sought 50% of the marital home and the net proceeds of husband's retirement account/401(k). The parties stipulated that the marital property consisted of the parties' home and husband's retirement account which had \$134,049.83 prior to the parties' separation.
7. The day after SB filed for divorce, husband cashed out his 401(k) account. Husband received \$97,928.88 after taxes.
8. Respondent did nothing to discover or address the dissipation of the 401(k) during his representation of ██████ SB.
9. Respondent never propounded any discovery on husband and thus did not require husband to address his handling of marital property, including the 401(k). As was subsequently discovered, seven months later at the May 2023 deposition of husband, husband spent all the 401(k) funds by May 25, 2023.
10. On December 7, 2022, husband's counsel propounded the first set of interrogatories and requests for production of documents on ██████ SB. Respondent explained to SB that she needed to update information previously provided such as providing tax stubs, etc., yet Respondent did not request updated, or any, information from husband in discovery.
11. Respondent did not produce the documents SB had previously provided to him when the parties were trying to resolve the matter. Respondent asserts that his then legal assistant failed to scan and lost some of ██████ SB's documents. Respondent did not tell SB that the documents that she had previously produced were not scanned and that he did not have them.
12. Respondent did not timely respond to the discovery, nor did he respond to husband's counsel's attempts to resolve the discovery dispute.
13. On January 20, 2023, husband's counsel filed a motion to compel. Husband's counsel also requested \$3,500 in attorneys' fees as a result of the motion and order to compel discovery.

14. On February 13, 2023, the Court heard and granted the motion and ordered SB to fully comply and respond to discovery by March 15. The Court took the issue of attorneys' fees under advisement.
15. Also, on February 13, 2023<sup>1</sup>, the Court heard the parties' reciprocal motions for *pendente lite* relief. The *pendente lite* order, to which Respondent agreed, addressed *pendente lite* custody and visitation arrangements for the three children and gave husband exclusive use of the marital home. The *pendente lite* order did not address the 401(k). The Court set a support and fees hearing on April 13, 2023, and the Court set the final hearing for June 2, 2023.
16. On April 13, 2023, the parties advised the Court that SB withdrew her request for spousal support. On April 25, 2023, the Court entered an order reflecting that SB withdrew her request for spousal support.
17. SB believed that husband wasted some of the 401(k) funds on travel for husband and his girlfriend. In December 2022, and then after a settlement conference in the late spring of 2023, SB requested that Respondent depose husband's girlfriend.
18. In May 2023, Respondent noticed husband's girlfriend for deposition to establish husband's waste of marital assets. Respondent subpoenaed the girlfriend five (5) days prior to the deposition as required by statute.<sup>2</sup> The girlfriend did not appear at deposition. Opposing counsel incorrectly argued that girlfriend did not have to appear because 10 days' notice was required. Notwithstanding that Respondent's subpoena was timely, he did not move to enforce the subpoena or otherwise raise the issue to the Court or make any effort to obtain the testimony or other evidence to establish waste. Respondent states that he "was iffy on this rule and did not take a hard stance on the issue since I did not want to challenge and be wrong..."
19. Also, during the May depositions, husband's counsel referenced documents that she had argued that Respondent failed to produce as part of her motion to compel and for attorneys' fees. Respondent opted to attempt to have opposing counsel "pull back on

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<sup>1</sup> While Respondent had filed a motion for *pendente lite* relief in September 2022, the *pendente lite* hearing was not held until February 2023. Respondent did not address the 401(k) or dissipation of assets even in February 2023.

<sup>2</sup> § 8.01-407. How summons for witness issued and to whom directed; how witness released from subpoena; prior permission of court to summon certain officials and judges.

- A. .... A summons shall express on whose behalf, and in what case or about what matter, the witness is to attend. Failure to respond to any such summons shall be punishable by the court in which the proceeding is pending as for contempt. When any subpoena is served less than five calendar days before appearance is required, the court may, after considering all of the circumstances, refuse to enforce the subpoena for lack of adequate notice. If any subpoena is served less than five calendar days before appearance is required upon any judicial officer generally incompetent to testify pursuant to § 19.2-271, such subpoena shall be without legal force or effect unless the subpoena has been issued by a judge.

her motion to compel” rather than raise to the Court, in a filing or otherwise, that husband’s counsel clearly had the documents that she claimed SB did not provide. At the equitable distribution hearing on June 2, 2023, husband’s counsel did not “pull back,” rather she requested, and the Court ordered, SB to pay husband \$3,500.00 in attorney’s fees for the motion to compel.

20. It was not until husband’s deposition on May 25, 2023, one week prior to the final hearing on June 2, that husband testified that he drained the 401(k)-account beginning in September 2022 and that the 401(k) account had a zero balance as of May 25.
21. Va. Code Section 20.107.3(A) requires a court to determine the value of property as of the date of the evidentiary hearing. The court may, upon motion of either party made no less than 21 days before the evidentiary hearing, for good cause shown, in order to attain the ends of justice, order that a different valuation date be used.
22. As of May 25, absent a continuance, it was too late to file a motion for alternate valuation which must be filed 21 days before the hearing.
23. Respondent had not propounded discovery and thus did not know until the deposition that the 401(k) account was depleted.
24. Respondent never filed a motion for an alternative valuation date.
25. Notwithstanding that Respondent had not filed a motion for alternate valuation, in a May 31 email two days before the June 2 equitable distribution and divorce hearing, Respondent advised SB as follows:

Since we are going to trial on Friday we are asking for both the half of the house and half of the 401k. I’m unsure if the judge will award you half of the \$134,000 or half the \$97,000, but you are entitled to half. I went over the things you’ve sent us, and the things we sent OC when I got back to the office. We did send the documents you sent us to OC in February, she missed it. You do need to update a few things for her, but updates the judge won’t get mad about. It’s him who is being unreasonable about paying you money. I discussed the case with a partner here after our depositions and he affirmed that I am correct about him owing you the 401k and house, and none of the offsets he talked about are legitimate. I hope for his sake he has some more evidence if he’s going to be looking forward to the hearing so much.

26. Contrary to Respondent’s advice to ██████ SB and because Respondent failed to file a motion for alternate valuation of the 401(k), the Court did not award SB any funds for the 401(k). In pertinent part, the Court’s letter opinion dated June 23, 2023 (“Letter Opinion”) states:

## 2. Husband's Mr. FIX-IT 401(k) Plan

The parties agree that this asset was marital property. Husband cashed out the 401(k) in September of 2022. At that time, the balance was \$134,049.83—of this amount, Husband received \$97,928.88 after taxes and penalties, although Husband's uncontroverted testimony was that, as a result of this cash-out, he now owes \$20,000 in federal taxes for 2022. The account balance at the date of the hearing was zero, as it was entirely liquidated. There was no motion for an alternative valuation date; thus, the Court has before it a 401(k) that was marital property but has no value.

27. By divorce decree ("Decree") entered August 30, 2023, the Court did not award SB any of the 401(k) funds because Respondent did not file a motion for alternate valuation:

B. *HUSBAND'S MR. FIX-IT 401(K)*: Husband's 401(k) funds were all spent by the June 2, 2023 final hearing. The plaintiff did not file a Motion for Alternate Valuation Date. The 401(k) was marital, but has no value to distribute.

28. In his response to the bar complaint, contrary to what the Court clearly stated in the Letter Opinion and in the Decree, Respondent stated that "the judge agreed an alternate valuation was unnecessary."

[SB] speaks of a motion for alternate valuation of the retirement account that she wanted compensated for. This was an unnecessary step. Opposing counsel argued about this at the ED hearing, but the judge agreed an alternate valuation was unnecessary.

29. Respondent told the bar investigator that he did not know about the option of a motion for alternate valuation at the time he represented [REDACTED] SB.
30. By the Decree, the Court also awarded 60% of the proceeds of the sale of the marital residence to husband and 40% to SB minus \$4,250. The \$4,250 awarded to husband included the cost of appraisal of the home, 50% of the federal taxes related to the 401(k) cash out, and \$3,500 in attorney's fees for the motion to compel. The court subtracted \$2,280 from husband's share of the 401(k) as his portion of the 401(k) used for nonmarital purposes and \$10,000 for [REDACTED] SB's attorney's fees.
31. Respondent told SB she could appeal, however, Respondent endorsed the Decree as "seen and agreed" and did not preserve any objections.
32. Respondent did not provide SB with the Decree within 21 days or at all. Respondent asserts that he did not receive the decree from the Court. As of September 30, the

date SB filed the bar complaint, SB did not have the Decree, which she subsequently obtained from the Court.

33. The firm refunded SB some fees including \$3,500 for the attorneys' fees awarded for the motion to compel.

## II. NATURE OF MISCONDUCT

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

### **Rule 1.1 Competence**

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

### **Rule 1.3 Diligence**

- (a) A lawyer shall act with reasonable diligence and promptness in representing a client.

*By failing to:*

- (1) *propound any discovery on husband regarding the marital assets after Respondent filed for divorce on ██████ SB's behalf;*
- (2) *take any steps to address husband's dissipation of the assets and/or to set a prompt hearing on the motion for pendente lite relief;*
- (3) *address husband's dissipation of assets at the hearing on pendente lite relief and after he learned of the same;*
- (4) *inform SB that his legal assistant had lost and failed to scan documents that SB had previously provided to Respondent;*
- (5) *produce the documents until ordered to do so, subjecting his client to an order compelling production and for \$3,500.00 in attorneys' fees;*
- (6) *move to enforce the subpoena for husband's girlfriend to establish waste;*
- (7) *file a motion for alternate valuation of the 401(k) account so that the Court could award SB a percentage of the 401(k) account); and*
- (8) *preserve objections in the Decree, and by telling SB that he could appeal when he had not preserved objections in the Decree,*

*Respondent violated Rules 1.1 and 1.3(a).*

**VSb DOCKET NO. 24-031-130493 - COMPLAINANT MK**

**I. FINDINGS OF FACT**

1. At all times relevant, Respondent was licensed to practice law in the Commonwealth of Virginia and was an active member, in good standing, with the Virginia State Bar.
2. On December 28, 2021, MK entered into a client engagement agreement with Cravens & Noll, P.C. to represent him on a child custody/support hearing. MK, who then resided in Pittsburgh, Pennsylvania, sought legal representation because his ex-wife, through counsel, had filed a motion to amend the parties' custody and visitation order to allow her to move the children to Georgia and to eliminate MK's weekend visitation in exchange for expanded visitation at holidays and in the summer.
3. The divorce decree and custody and visitation orders were entered by the Alexandria Circuit Court in 2019 and 2021. By order entered February 26, 2021, the Circuit Court of Alexandria transferred jurisdiction to the Circuit Court of Louisa. MK's ex-wife subsequently moved to Colonial Heights.
4. Respondent was the associate assigned to represent MK.
5. MK requested, and Respondent agreed, to file a request for an expedited hearing regarding custody of MK's three young children. MK had concerns about his ex-wife's husband. MK understood that Respondent was promptly filing the request for expedited hearing.
6. By email dated February 9, 2022, MK expressed his heightened concerns about his children to Respondent and asked about the status of court filings which would enable MK to keep his kids the following weekend of February 12, 2022. MK stated in part:

We need to get this before a judge because the situation is becoming more volatile .... This is not a good situation and I am becoming increasingly frustrated. What can I do to get the kids this weekend? It appears that there hasn't been any news on the filing and I am curious as to what is going on. I don't understand why the case number we had is closed in Louisa County supposedly but online in the case portal that number says its active. Do we have any idea when this will be heard?
7. By email dated February 9, 2022, Respondent answered that MK should keep the children with him once he got them that weekend and that he thought MK was  

justified in keeping [MK's children] until the case is heard.  
I've been trying to make sure I file the right document with the court this time since they have been so difficult so I did

some research and I have the documents ready to refile and should be filing them today or tomorrow.

8. As set forth, Respondent never successfully filed the petition for expedited hearing on MK's behalf.
9. By email dated February 11, 2022, MK updated Respondent that he picked his children up from school as discussed with Respondent, and his ex-wife called the police and that MK went to the police station to explain the situation.
10. On February 11, 2022, Respondent mailed a request for expedited hearing and initial custody petitions with the Colonial Heights Juvenile and Domestic Relations District (J&D) Court. The Colonial Heights J&D Court did not have jurisdiction of the matter. The Louisa County Circuit Court still had jurisdiction over the custody of MK's children. Respondent attempted to file in Louisa, but he was told that he could not file in Louisa because the children no longer resided there.
11. The petition for expedited hearing was deficient in several significant respects:  
  
Respondent did not explain or state the basis for the petition for expedited hearing.  
  
Respondent did not have the petition notarized as required.  
  
Respondent did not file the required affidavits.  
  
While the request for expedited hearing was received and file stamped on February 17, 2022, the Clerk of Colonial Heights J&D Court ("Clerk") did not set a hearing because Respondent did not state the basis of the hearing; the petition was not notarized; and Respondent did not submit the required affidavits. On February 23, 2022, the Clerk returned the incomplete petition to Respondent.
12. On Sunday February 13, 2022, MK emailed Respondent stating in part, "We informed my ex wife that we are keeping the children until a court date..." MK held his children past their normal visitation based on Respondent's advice.
13. By email dated Monday February 14, 2022, Respondent emailed MK that Respondent had left his information with the Colonial Heights Police Department on MK's behalf.
14. By email the night of Tuesday February 15, 2022, MK advised Respondent that his ex-wife took the children to Georgia after drop off and asked whether "anything could be done about this?" By email dated February 15, 2022, Respondent responded, "That's another show cause."



15. On February 16, 2022, opposing counsel filed with the Colonial Heights J&D Court a preliminary petition for family abuse protective order along with the necessary affidavit.
16. A hearing on ex-wife's petition against MK for preliminary petition for family abuse protective order was scheduled for March 3, 2022. Respondent had failed to set any hearing on any motion for MK.
17. By email at 1:38 a.m. on February 18, 2022, MK informed Respondent that the police had served the petition for family abuse and preliminary protective order on MK and that he was "uncertain as to how she was able to do this as I have never been abusive to my children or anyone else. Please advise what to do next."
18. By email at 9:12 a.m., on February 18, 2022, Respondent said that the earliest MK could challenge the petition was at the hearing March 3 and that he could not see or contact his children until the March 3 hearing.
19. On February 18, 2022, MK entered into a second client engagement agreement. The scope was for domestic matter protective order for a flat fee of \$750 to begin work and an additional \$500 if a hearing was required. MK's aunt paid this legal fee on MK's behalf.
20. On February 23, 2022, the Clerk returned to Respondent the petition for expedited hearing and petitions for custody because Respondent never provided the required affidavits.
21. By email dated February 24, 2022, Respondent's assistant emailed the Clerk to find out "what the court date assigned to this matter is."
22. By email dated February 24, 2022, to Respondent's assistant the Clerk advised,

I actually mailed the paperwork back to you yesterday because we never received the affidavits. I mailed affidavits along with your paperwork. I also confirmed with Louisa County Circuit Court that there is a current order for custody, visitation, and support in place in their court. If you wish to file the petitions for custody and visitation in our court, it is \$25 for filing, not \$25 per child."
23. On February 28, 2022, Respondent filed a second petition for expedited hearing and custody petitions and affidavits with the Colonial Heights J&D Court. Respondent did not address the fact that Louisa County still had jurisdiction over the matter or otherwise move to transfer jurisdiction.
24. Respondent also failed to submit the required filing fee with his second petition, resulting in its rejection and return, as set forth. As is further set forth, Respondent

did not submit the filing fee, and a third petition for expedited hearing, until one month later, March 30, 2023, despite his client's expressed concerns about his children and access to his children.

25. After a hearing on March 3, 2022, and by order entered that day, the Colonial Heights J&D Court dismissed ex-wife's preliminary petition for family abuse protective order.
26. By phone call to Respondent's office on March 4, the Clerk requested that Respondent provide a transfer order from Louisa County Circuit Court or MK's petitions for custody would be dismissed.
27. Meanwhile, also on March 4, ex-wife's counsel filed in Louisa Circuit Court a praecipe and motion to amend the final order of the Circuit Court of Alexandria and requested a hearing date of March 14, 2022.
28. By email dated March 6, MK told Respondent that he had not had contact with his children since the March 3 hearing.
29. Not having received the transfer order requested five days earlier, by email dated March 9, 2022 from the Clerk to Respondent, the Clerk advised Respondent that she had spoken with his assistant (on March 4) in reference to the MK petition and that the judge asked that Respondent forward a copy of the transfer order from Louisa Circuit Court, and that if there were no order, the judge would dismiss the petitions.
30. By email dated March 9, 2022, Respondent responded to the Clerk that he had filed a motion to transfer from Louisa Circuit Court, which should be agreed by both counsel, and Respondent requested the matters stay on file with Colonial Heights J&D Court until the case was transferred.
31. By email dated March 9, 2022, the Clerk responded that she would forward the information to the judge who, however, had said that if there was no order of transfer by March 3, 2022, he would dismiss the petitions.
32. The motion to transfer was filed March 10, 2022.
33. By email dated March 10, 2022, MK told Respondent that he believed he should wait to get the children until he had a court date and asked for "any news on a court date?" Respondent stated he would go to court on Monday to transfer the case from Louisa to Colonial Heights, and that once the case was transferred, the Colonial Heights J&D Court would schedule the hearing.
34. On March 10, 2022, having received no order transferring the matter from Louisa County Circuit Court, the Colonial Heights J&D Court dismissed the petitions.

35. By order entered March 11, 2022, the Louisa County Circuit Court transferred jurisdiction of the custody, visitation, and support matters pertaining to the MK children to the Colonial Heights J&D Court.
36. By email dated March 14, 2022, Respondent told MK that the case had been transferred to Colonial Heights J&D Court and he awaited the order “in order to submit.”
37. By email dated March 22, 2022, MK again asked Respondent about the progress on a court date, to which Respondent responded that Louisa approved the transfer but he did not have the order yet and that Colonial Heights required the order before they would proceed.
38. By email dated March 22, 2022, MK’s ex-wife’s counsel asked the Clerk whether the case had been assigned a number because her client sought to file a Show Cause and that she (counsel) wished to obtain a court date and GAL appointment.
39. By emails exchanged between the Clerk and MK’s ex-wife’s counsel on March 24, 2022, the Clerk informed ex-wife’s counsel that the case was transferred but nothing had been filed; counsel asked whether her motion to amend the final order in Alexandria Circuit Court, which she filed in Louisa Circuit Court on March 4, 2022 “would not count?” The Clerk then reviewed the file, located the motion to amend the final order and asked for ex-wife’s counsel’s available dates. The Clerk set MK’s ex-wife’s motion to amend for hearing on April 29, 2022 for a two-hour contested hearing.
40. By email dated March 26, 2022, MK advised Respondent that he was becoming “very concerned about [his] daughters because [he had not] even been allowed to lay eyes on them to make sure they are safe.” He also attached a letter regarding family abuse by his ex-wife’s then husband<sup>3</sup>.
41. By email dated March 28, 2022, Respondent’s legal assistant asked the Clerk if she required additional documentation “to get a court date set for this matter.” As of March 28, Respondent had not submitted the filing fee and there was no request for expedited petition or custody petitions on behalf of MK before the Colonial Heights J&D Court.
42. By email dated March 28, 2022, the Clerk responded that she did not have any filings from Respondent, only from ex-wife’s counsel, and stated that ex-wife’s motion to amend had been set for hearing on April 29, 2022.
43. On March 29, 2022, over one month after the Clerk rejected Respondent’s second filings, Respondent mailed another request for expedited hearing and petitions for

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<sup>3</sup> Ex-wife’s husband was discharged by the military based on pleas and convictions of assault and domestic violence.

custody with the Colonial Heights J&D Court. The petitions were verified, and Respondent included the affidavits and filing fee. The request for expedited hearing, petitions, and supporting documents were filed March 30, 2022.

44. On March 29, 2022, counsel for ex-wife filed a show cause in Colonial Heights J&D Court against MK alleging a violation for MK's failure to return the kids on February 13, 2022. Hearing was set for April 15, 2022.
45. Ex-wife's motion to amend the visitation order to eliminate MK's weekend visitation in favor of extended visitation over holidays, Respondent's petitions for custody on MK's behalf, and the show cause against MK for keeping the children on February 13, 2022 were continued for hearing on July 14, 2022.
46. Respondent subpoenaed several witnesses, including members of MK's family and others, to testify on July 14 to the concerns about MK's ex-wife's husband and to meet MK's burden on the petitions. The Court allotted two hours, one for each side for the July 14 hearings. Respondent presented no evidence to support the petitions, which were denied. Respondent asserts that the Court imposed the time limitation the day of the hearing and that the time limitation adversely affected his ability to present the case.
47. MK lost weekend visitation of his children; his petitions for custody were denied; and the Court convicted him of the show cause and sentenced MK to 30 days in jail with 30 days suspended.
48. Respondent advised that MK could pursue an appeal. After already having paid Respondent's firm over \$11,000, MK declined an appeal because he could not afford to do so.
49. In his response to the bar complaint, Respondent stated that the hearing on the emergency custody petition was never set by the court. Respondent, however, did not explain that Respondent failed, in his first filing on February 11, 2022, to:
  - (1) state the basis for the petition for expedited hearing,
  - (2) have the petition notarized as required, and
  - (3) submit the required affidavits.

Furthermore, Respondent did not tell the bar that:

- (4) the Colonial Heights J&D Clerk advised him of the deficiencies,
- (5) Respondent submitted a second filing petition for expedited hearing by letter dated February 28, 2022 (which letter was not in his client file provided to the

bar) which the Clerk returned to Respondent because Respondent had not included the filing fee,

(6) in late February 2022 and early March 2022, the Clerk told Respondent's office that Louisa Circuit Court still had jurisdiction of the matter, and told Respondent's assistant by phone and Respondent by email that the Colonial Heights J&D Court required an order from Louisa County Circuit Court transferring the case in order to hear his request for expedited hearing and petitions,

(7) on March 28, 2022, the Clerk told Respondent's assistant that the Court did not have any filings from Respondent's office, only a motion from opposing counsel, and

(8) Respondent did not file a third emergency custody petition with the required filing fee until March 30, 2022.

Instead, Respondent stated:

[MK] then asked me to file and [sic] emergency custody petition in Colonial Heights JDR. I did that, but Colonial Heights only has judges on certain days and overall is not staffed fully, and a hearing was never set by the court. I called and followed up multiple times but no progress was made by the court. I then filed a normal petition for custody, visitation, and support and got that ball rolling though it was several months later after the failed attempts at an emergency hearing. Once I did that, the judge picked up the case and had a hearing where he decided there was not an emergency and set a contested date. I told the judge we needed at least four hours for that hearing as we would have many witnesses... When we showed up on the day of the contested hearing, with [MK] in person with multiple witnesses from different states, the Court informed us we only had two hours and the judge would be keeping strict time. I knew there was no way my case would be done in that time and gave [MK] the choice to continue the case to a future date with adequate time, or be heard that day. He chose to be heard that day as it was a long trip for him and all his witnesses who showed up... Our entire hour was used up crossing both the ex and new bf who were obviously not cooperative... As a result neither [MK] nor his witnesses got to testify at all. The judge would not give me any leeway on the time despite multiple protests. A risk he knew when he agreed to try the case that day. The lack of evidence from [MK] meant the judge ruled against him. After over a year waiting for this hearing and thousands of dollars spent, he didn't get the results he wanted and he couldn't afford to retain for an appeal and start another year long process. So he was stuck with the answer he got that day....

Respondent's response concludes, "Things just didn't go his way and now he doesn't want to pay for those services." The firm refunded MK a portion of the fees paid.

50. Respondent did not review his file prior to responding to the bar complaint. His production to the bar's subpoena did not contain his second filing of the petition for expedited hearing sent February 28, 2022 or emails and correspondence which the bar subsequently obtained from the Colonial Heights J&D Court.

## **II. NATURE OF MISCONDUCT**

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

### **Rule 1.1 Competence**

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

### **Rule 1.3 Diligence**

- (a) A lawyer shall act with reasonable diligence and promptness in representing a client.

*By failing*

- (1) *to file the petition for expedited hearing in the proper court at a time when MK notified Respondent that he sought to keep his children after his allotted visitation, so that the petition was not pending in the proper court when MK kept the children in violation of the order;*
- (2) *to state the basis of the petition for expedited hearing;*
- (3) *To file the necessary affidavits in support of the petition;*
- (4) *to have the affidavits notarized when they were filed;*
- (5) *to promptly seek an order to transfer jurisdiction;*
- (6) *to file a filing fee for weeks after the Clerk informed Respondent's office about the reason for its rejection of Respondent's second filing;*
- (7) *to ever schedule a hearing on the petition for expedited hearing; and*

*(8) to put on any of the evidence in support of the petitions when they were finally heard over seven months after MK had sought the emergency relief,*

*Respondent violated Rules 1.1 and 1.3(a).*

**III. PUBLIC REPRIMAND**

Accordingly, it is the decision of the Subcommittee to impose a Public Reprimand, and Kent Stephen Benninger is so reprimanded. Pursuant to Part 6, § IV, ¶ 13-9.E of the Rules of the Supreme Court of Virginia, the Clerk of the Disciplinary System shall assess costs.

THIRD DISTRICT, SECTION I SUBCOMMITTEE  
OF THE VIRGINIA STATE BAR

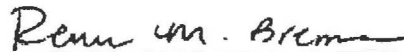


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Erin L. T. Ranney  
Subcommittee Chair

**CERTIFICATE OF SERVICE**

I hereby certify that on September 24, 2024, a true and complete copy of the foregoing Subcommittee Determination (Public Reprimand) was sent to Kent Stephen Benninger, Respondent, by certified mail at Cravens & Noll 15871 City View Dr Ste 300, Midlothian, Virginia 23113-7308, Respondent's last address of record with the Virginia State Bar, and by email to kbenninger@cravensnoll.com.



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Renu M. Brennan  
Bar Counsel