

STATE OF MICHIGAN  
KALAMAZOO COUNTY CIRCUIT COURT

SCOTTSDALE CAPITAL  
ADVISORS CORPORATION,

File No.: 2018—0153-CZ

Plaintiff,

Hon. Alexander C. Lipsey

v.

MORNINGLIGHTMOUNTAIN, LLC,  
MICHAEL GOODE, and DOES 1-10,

Defendants.

Charles J. Harder (CA #184593) (pro hac vice to be filed)  
Jordan Susman (CA #246116) (pro hac vice to be filed)  
Nicholas A. Kurtz (CA #232705) (pro hac vice filed)  
HARDER LLP  
Attorney for Plaintiff  
132 South Rodeo Dr., 4<sup>th</sup> Floor  
Beverly Hills, CA 90212  
424/203-1600

Joseph E. Richotte (P70902)  
BUTZEL LONG, PC  
Attorney for Defendants  
41000 Woodward Avenue  
Bloomfield Hills, MI 48304  
248/258-1616

H. Rhett Pinsky (P18920)  
PINSKY, SMITH, FAYETTE & KENNEDY, LLP  
Local Counsel for Plaintiff  
146 Monroe Center St., NW – Suite 805  
Grand Rapids, MI 49503  
616/451-8496

**PLAINTIFF'S MOTION FOR TEMPORARY ADMISSION OF OUT OF STATE  
ATTORNEY**

Plaintiff Scottsdale Capital Advisors Corp. ("SCA"), pursuant to Michigan Court Rule (MCR) 8.126, respectfully requests the temporary admission of out of state attorney, Nicholas A. Kurtz, in the above-referenced case.

The contact information for Mr. Kurtz is as follows:

Nicholas A. Kurtz  
HARDER LLP  
132 South Rodeo Dr., 4<sup>th</sup> Floor  
Beverly Hills, CA 90212  
424/203-1600  
[nkurtz@harderllp.com](mailto:nkurtz@harderllp.com)

Mr. Kurtz has associated with a local Michigan attorney, who has already entered an appearance, with contact information as follows:

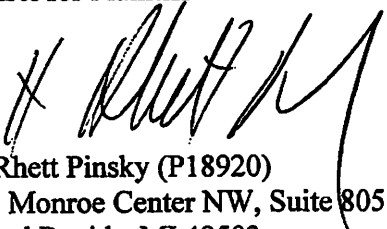
H. Rhett Pinsky  
PINSKY, SMITH, FAYETTE & KENNEDY, LLP  
146 Monroe Center St., NW – Suite 805  
Grand Rapids, MI 49503  
616/451-8496  
[hrpinsky@psfklaw.com](mailto:hrpinsky@psfklaw.com)

This motion is supported by the accompanying affidavits of Mr. Kurtz (with current certificate of good standing issued by California State Bar) and Mr. Pinsky and the document supplied by the State Bar of Michigan showing that the required fee has been paid.

PINSKY, SMITH, FAYETTE & KENNEDY, LLP  
Local Counsel for Plaintiff

Dated: August 15, 2018

By:

  
H. Rhett Pinsky (P18920)  
146 Monroe Center NW, Suite 805  
Grand Rapids, MI 49503  
(616) 451-8496

STATE OF MICHIGAN  
KALAMAZOO COUNTY CIRCUIT COURT

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SCOTTSDALE CAPITAL  
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H. Rhett Pinsky (P18920)  
PINSKY, SMITH, FAYETTE & KENNEDY, LLP  
Local Counsel for Plaintiff  
146 Monroe Center St., NW – Suite 805  
Grand Rapids, MI 49503  
616/451-8496

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**AFFIDAVIT OF NICHOLAS A. KURTZ IN SUPPORT OF PLAINTIFF'S MOTION  
FOR TEMPORARY ADMISSION OF OUT OF STATE ATTORNEY**

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I, Nicholas A. Kurtz, being first solemnly affirmed, on my affirmation, state that the foregoing is true and correct. If sworn as a witness, I can testify competently to the facts stated in this affidavit.

1. I submit this affidavit in support of the motion of Plaintiff Scottsdale Capital Advisors Corp. ("SCA"), pursuant to Michigan Court Rule (MCR) 8.126, for the temporary admission of me as an out of state attorney in the above-referenced case.

2. I have associated with a local Michigan attorney, Rhett Pinsky, who has already entered an appearance in this case.

3. The following are all jurisdictions in which I have sought licensure and have been licensed, including the corresponding bar numbers and licensure date:

- a. California – State Bar No. 232705 – December 1, 2004
- b. District of Columbia – State Bar No. 980091 – May 9, 2008
- c. Virginia – State Bar No. 79326 – June 7, 2010
- d. Illinois – State Bar No. 6320053 – October 13, 2015

4. I am currently eligible to practice law in all Courts within the States of California and Illinois. In 2017, I elected to change my status to inactive in the District of Columbia and Virginia. Accordingly, while I am licensed and in good standing in the District of Columbia and Virginia, I am currently not eligible to practice law in those two jurisdictions without first changing my designation to active (and paying the corresponding costs).

5. Attached as Exhibit 1 hereto is a true and correct copy my certificate of good standing issued by the California State Bar on July 30, 2018.


6. I am not, nor have ever been, disbarred or suspended in any jurisdiction. I am not the subject of any pending disciplinary action.

7. I have had two bar complaints filed against me, both in 2011. After reviewing the complaints (and my responses), the jurisdictions found no violation of any rules and dismissed the complaints with no further action. Attached as Exhibit 2 hereto are true and correct copies of the dispositions of those complaints.

8. I have not sought permission to appear temporarily in Michigan within the past 365 days.

9. I am familiar with the Michigan Rules of Professional Conduct, Michigan Court Rules, and the Michigan Rules of Evidence.

10. By seeking permission to appear under MCR 8.126, I consent to the jurisdiction of Michigan's attorney disciplinary system.

  
\_\_\_\_\_  
Nicholas A. Kurtz  
HARDER LLP  
132 South Rodeo Dr., 4<sup>th</sup> Floor  
Beverly Hills, CA 90212  
424/203-1600  
[nkurtz@harderllp.com](mailto:nkurtz@harderllp.com)

Acknowledged before me in Cook County, Illinois, on August 15, 2018 by

  
\_\_\_\_\_

Notary Public, State of Illinois, Cook County

My commission expires \_\_\_\_\_



**EXHIBIT 1**



# THE STATE BAR OF CALIFORNIA

180 HOWARD STREET, SAN FRANCISCO, CALIFORNIA 94105-1617

TELEPHONE: 888-800-3400

## CERTIFICATE OF STANDING

(With Complaint Check Attached)

July 30, 2018

### TO WHOM IT MAY CONCERN:

This is to certify that according to the records of the State Bar, NICHOLAS ALLEN KURTZ, #232705 was admitted to the practice of law in this state by the Supreme Court of California on December 1, 2004; and has been since that date, and is at date hereof, an ACTIVE member of the State Bar of California; that no charges of professional or other misconduct have been filed with the State Bar, nor any proceedings instituted by the State Bar; and that no recommendation for discipline for professional or other misconduct has ever been made by the Board of Trustees or a Disciplinary Board to the Supreme Court of the State of California.

THE STATE BAR OF CALIFORNIA

Denise Velasco  
Custodian of Records

STATE BAR OF CALIFORNIA  
OFFICE OF CHIEF TRIAL COUNSEL  
COMPLAINT HISTORY REPORT (CONFIDENTIAL)

State Bar No: 232705 Name: Nicholas A. Kurtz

<u>Case Number</u>	<u>Stage</u>	<u>Status</u>	<u>Complaint Date</u>	<u>Date Closed</u>	<u>Complainant</u>
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NO COMPLAINTS TO REPORT

Please note that a complaint is defined as "a communication alleging misconduct by a State Bar member sufficient to warrant an investigation that may result in discipline of the member if allegations are proved." (Rules Proc. of State Bar, rule 5.4(13).) Therefore, allegations closed with the determination that the matter does not warrant investigation or allegations pending review to determine if they warrant investigation, are not included in Complaint History Reports.

We are unable to provide copies of the actual complaint(s) as such communications to the State Bar of California are privileged pursuant to California Business and Professions Code, section 6094(a).

This report identifies complaints and allegations received by the State Bar and not findings by the State Bar Court. Therefore, even where this report indicates the disposition of "Discipline," the report does not identify the findings supporting that discipline, which may differ substantially from the allegations received by the State Bar. Please consult the specific discipline documents to learn what findings of misconduct were made by the court. In most cases, such documents may be found on the public profile page for the attorney under Attorney Search at [www.calbar.ca.gov](http://www.calbar.ca.gov).



**EXHIBIT 2**



# OFFICE OF BAR COUNSEL

January 20, 2012

## CONFIDENTIAL

Wallace E. Shipp, Jr.  
*Bar Counsel*

Elizabeth A. Herman  
*Deputy Bar Counsel*

*Senior Assistant Bar Counsel*  
Judith Metheron  
Julia L. Porter

*Assistant Bar Counsel*  
Joseph N. Bowman  
Ross T. Dicker  
Gayle Marie Brown Driver  
Hamilton P. Fox, III  
Catherine L. Kello  
Becky Neal  
William Ross  
H. Cloy Smith, III  
Traci M. Tait

*Senior Staff Attorney*  
Lawrence K. Bloom  
Dolores Dorsainvil  
Joseph C. Perry  
Mary-Helen Perry

Blair B. Chintella, Esquire  
1600 Alexandria Court, SE  
Atlanta, GA 30067

Re: **Kurtz/Chintella**  
**Bar Docket No. 2011-D302**

Dear Mr. Chintella:

This office has completed its investigation of the complaint you filed against Nicolas Kurtz, Esquire. We have evaluated this matter in light of an attorney's obligations as set forth in the District of Columbia Rules of Professional Conduct (the "Rules"). It is the burden of our office to find clear and convincing evidence of a violation of the Rules in order to sustain a disciplinary proceeding against an attorney. Clear and convincing evidence is more than a mere preponderance of the evidence, which would be sufficient in a civil proceeding. We do not find such evidence in our investigation and therefore, we must dismiss the matter.

We opened an investigation based on your complaint, which this office received on July 26, 2011. You state that Mr. Kurtz represents plaintiffs who have brought copyright infringement claims against your clients. You allege that Mr. Kurtz violated Rule 4.2 when he, on two occasions, sent settlement letters directly to your clients after he was made aware of the fact that you represented them.

In his response, which this office received on August 8, 2011, Mr. Kurtz denies misconduct. To summarize, he states that, in both instances, the settlement letters were sent to your clients in error. He further states that he was not responsible for sending the second of the two letters, although it bore his signature. Mr. Kurtz states that in the first matter, although you sent him a communication notifying him that you represented one of the "John Doe" defendants,<sup>1</sup> you identified an incorrect Internet Protocol "IP" address that could not properly be attributed to your client. Mr. Kurtz provided a statement from

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<sup>1</sup> Mr. Kurtz states that he is only able to identify John Doe defendants by their IP address and the date and time of the alleged infringement. He further states that he is only able to determine a defendant's actual name by subpoenaing that information from the Internet Service Provider ("ISP").

Blair B. Chintella, Esquire  
Kurtz/Chintella  
Bar Docket No. 2011-D302  
Page 2

Jeffrey W. Weaver, Esquire, a managing partner of Mr. Kurtz's firm, in support of his statement that he was not the attorney responsible for the second contact letter that was sent to another one of your clients. Mr. Kurtz further states that upon further investigation, his firm has no internal record demonstrating that the firm sent a letter to your client. Mr. Kurtz further states that the letter sent to your client was a technical error and that the firm did not intend to directly contact your client.

We sent you a copy of Mr. Kurtz's response on August 11, 2011. In your reply, which we received on August 24, 2011 you take issue with Mr. Kurtz's statements and reiterate the allegations of your complaint. On September 26, 2011, we received additional materials from you, namely, a written statement from David S. Kerr, Esquire in which Mr. Kerr states that his clients also had been contacted directly by a firm affiliated with Mr. Kurtz's law firm, though he "did not assume bad faith, intentional or fraudulent conduct" on the part of Mr. Kurtz's firm.

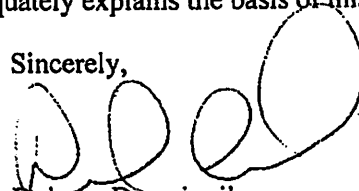
Based on all the information and documents that have been reviewed in connection with your complaint, we have determined that we do not have sufficient evidence to prove that Mr. Kurtz violated any of the D.C. Rules of Professional Conduct.

Rule 4.2(a) states that, "[d]uring the course of representing a client, a lawyer shall not communicate or cause another to communicate about the subject of the representation with a person known to be represented by another lawyer in the matter, unless the lawyer has the prior consent of the lawyer representing such other person or is authorized by law or a court order to do so." We are concerned that represented parties have been contacted by Mr. Kurtz, or others at his firm using a letter signed by him, and we acknowledge that this contact risks disrupting the relationship between you and your clients. We do not find, however, that Mr. Kurtz's conduct in this instance rises to the level of a violation of the Rules. We credit his explanation that the two settlement letters at issue were sent in error, and without any intent to undermine the relationship between you and your clients or with any other improper motive. We also credit his statement that his firm takes precautions in an effort to prevent errors such as these; however, we suggest that those precautions need to be revisited, particularly in light of the complex and ongoing nature of the underlying infringement litigation and the absence of any record in the firm's database used to track such matters of the second letter having been sent. Because we could not prove, by clear and convincing evidence, that Mr. Kurtz intentionally or recklessly violated the Rules, we are terminating our investigation of this matter and closing our file. If we receive

Blair B. Chintella, Esquire  
Kurtz/Chintella  
Bar Docket No. 2011-D302  
Page 3

similar complaints in the future, we may take different action as we would not give Mr. Kurtz the "benefit of the doubt." We trust that this letter adequately explains the basis of this decision.

Sincerely,

A handwritten signature in black ink, consisting of several loops and curves, positioned above the printed name.

Dolores Dorsainvil  
Senior Staff Attorney

cc: Nicolas Kurtz, Esquire

DD:MHP:itm



# Virginia State Bar

Eighth and Main Building  
707 East Main Street, Suite 1500  
Richmond, Virginia 23219-2800  
Telephone: (804) 775-0500

Facsimile: (804) 775-0597 TDD (804) 775-0502

August 18, 2011

## PERSONAL AND CONFIDENTIAL

Benjamin Wright Haile, Esquire  
Portland Law Collective LLP  
1130 SW Morrison, Ste. 407  
Portland, OR 97205

Re: In the Matter of Nicholas Allen Kurtz  
VSB Docket No. 11-070-087776

Dear Mr. Haile:

This is in response to your complaint received on May 2, 2011. Nicholas Allen Kurtz was given the opportunity to respond to your complaint and did so through his counsel by letter dated July 5, 2011. You were then sent a copy of the response for comment. You provided a rebuttal letter dated July 20, 2011.

Based upon the preliminary investigation of your complaint, it is my decision to dismiss the matter pursuant to Rules of Court, Part Six, Section IV, Paragraph 13-10.E.[4.] which states that:

[4] the evidence available could not reasonably be expected to support any allegation of misconduct under the required evidentiary standard of clear and convincing evidence.

Your complaint questions whether a letter sent by the Respondent's firm to individuals whose identities were obtained from their internet service providers and who may have been involved in copyright infringement violates Virginia Rule of Professional Conduct 4.3.

The letter from the Respondent attached to your complaint was reviewed in light of Rule 4.3, particularly paragraph (b) dealing with giving advice to unrepresented persons. While it may have been more appropriate to place all references directing the recipient to seek the advice of an attorney before entering into a settlement agreement at the outset of the letter, the letter in and of itself does not violate Rule 4.3.

In the Matter of Nicholas Allen Kurtz  
VSB Docket No. 11-070-087776  
Page 2

The referenced letter was also reviewed in light of Rules 4.1, 4.4 and 7.1, governing transactions with persons other than clients, respect for rights of third persons, and communication concerning a lawyer's services. I likewise find no violation of the Rules cited.

In the absence of the required clear and convincing evidence to continue with this case, the complaint against Nicholas Allen Kurtz has been dismissed, the Virginia State Bar has closed its file, and no further action will be taken. Thank you for bringing this matter to our attention.

Very truly yours,



Marian L. Beckett  
Assistant Bar Counsel

MLB

cc: David Ross Rosenfeld, Esquire, counsel for the Respondent

# SBM STATE BAR OF MICHIGAN

## Pro Hac Vice New Case/Matter

- 1 Court
- 2 Judge
- 3 Michigan Lawyer
- 4 Upload Documents
- 5 Process Fees
- 6 Receipt

### Pro Hac Vice Admission Receipt

Nicholas Kurtz

A copy of this receipt must be attached to the motion. The motion must be filed by the Michigan attorney in the court, administrative tribunal or agency, or in the arbitration in which you are seeking temporary admission.

By submitting these documents, you are NOT temporarily admitted. The motion and documents required by MCR 8.126 must be filed with the court, administrative tribunal or agency, or in the arbitration in which you are seeking temporary admission and the filing fee, if any, must be paid.

Only the court, administrative tribunal or agency, or arbitrator may enter an order allowing temporary admission. Once the order is entered, the Michigan attorney must email a copy of the order to ProHacVice@mail.michbar.org as soon as practicable.

Your payment was charged to Credit Card: \*\*\*\*\*4739

Payment Date: 08/15/2018

Description	Amount
Pro Hac Vice	\$105.00
CPF-Pro Hac Vice	\$15.00
<b>Total:</b>	<b>\$120.00</b>

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STATE OF MICHIGAN  
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SCOTTSDALE CAPITAL  
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Grand Rapids, MI 49503

616/451-8496

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**AFFIDAVIT OF H. RHETT PINSKY IN SUPPORT OF PLAINTIFF'S MOTION FOR  
TEMPORARY ADMISSION OF OUT OF STATE ATTORNEY**

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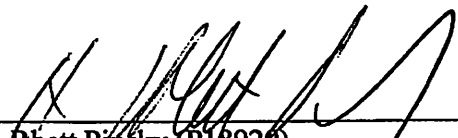


I, H. Rhett Pinsky, being first solemnly affirmed, on my affirmation, state that the foregoing is true and correct. If sworn as a witness, I can testify competently to the facts stated in this affidavit.

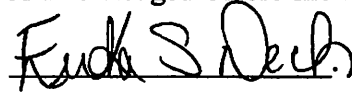
1. I submit this affidavit in support of the motion of Plaintiff Scottsdale Capital Advisors Corp. ("SCA"), pursuant to Michigan Court Rule (MCR) 8.126, for the temporary admission of out of state attorney, Nicholas A. Kurtz, in the above-referenced case.

2. I am an attorney licensed to practice law in all Courts within the State of Michigan. I am local counsel of record for Plaintiff SCA in this matter and have filed an appearance.

3. I have read Mr. Kurtz's affidavit in support of the motion and made a reasonable inquiry concerning the averments made therein. I believe Mr. Kurtz's representations are true, and I agree to ensure that the procedures of MCR 8.126 are followed.

  
\_\_\_\_\_  
H. Rhett Pinsky (P18920)  
PINSKY, SMITH, FAYETTE & KENNEDY, LLP  
146 Monroe Center St., NW - Suite 805  
Grand Rapids, MI 49503  
616/451-8496  
hrpinsky@psfklaw.com

Acknowledged before me in <sup>Kent</sup>~~Kalamazoo~~ County, Michigan, on August 15, 2018 by



<sup>Ottawa</sup>  
~~Kalamazoo~~  
Notary Public, State of Michigan, <sup>Kent</sup>~~Kalamazoo~~ County

My commission expires 7/27/24

