

VIRGINIA:

RECEIVED

IN THE CIRCUIT COURT FOR THE CITY OF NORFOLK

DEC 2 2005

VIRGINIA STATE BAR EX REL  
SECOND DISTRICT COMMITTEE

VSB CLERK'S OFFICE

Complainant

v.

Case No. L05-1740

KENAN MICHAEL PINKARD

Respondent

**ORDER OF SUSPENSION**

**THIS CAUSE** came to be heard on the 25<sup>th</sup> day of October, 2005, by a Three-Judge Court impaneled by the Supreme Court of Virginia on October 6, 2005, by designation of the Chief Justice of the Supreme Court of Virginia, pursuant to Section 54.1-3935 of the Code of Virginia (1950) as Amended, consisting of the Honorable Robert G. O'Hara, Jr., Retired Judge of the Sixth Judicial Circuit, the Honorable James E. Kulp, Retired Judge of the Fourteenth Judicial Circuit, and the Honorable Louis R. Lerner, Judge of the Eighth Judicial Circuit, designated Chief Judge.

The Virginia State Bar appeared through its Assistant Bar Counsel, Edward L. Davis. The Respondent attorney, Kenan Michael Pinkard, was duly noticed and appeared in person, *pro se*.

**WHEREUPON**, a hearing was conducted upon the Rule to Show Cause issued against the Respondent, Kenan Michael Pinkard, which Rule directed him to appear and to show cause why his license to practice law in the Commonwealth of Virginia should not be suspended, revoked, or otherwise sanctioned by reason of allegations of ethical misconduct set forth in the

Certification issued by a subcommittee of the Second District Committee of the Virginia State Bar.

The Complainant and the Respondent presented evidence in open court separately in each of three individual complaints.

Following closing arguments by the parties, the Three-Judge Court retired to deliberate on each of the three complaints separately, and thereafter returned and announced that it had found, unanimously, and by clear and convincing evidence, as set forth hereinafter, that:

1. During all times relevant hereto, the Respondent, Kenan Michael Pinkard, was an attorney licensed to practice law in the Commonwealth of Virginia.

**04-021-2415**

***Complainant: VSB/Judicial***

2. Mr. Pinkard was appointed to serve as Guardian *ad Litem* (GAL) in two child support enforcement cases pending in the Chesapeake Juvenile and Domestic Relations District Court: *Kathryn Swann v. Keith Stewart*, JA 059918-01-00 and *Sheretha Jones v. Merritt M. Lane*, JA 060771-01-00.

3. On December 5, 2003, the Court appointed Mr. Pinkard to serve as GAL in the *Swann* matter, a paternity claim against his client, Keith Stewart, a sixteen-year-old minor. The child's mother, Kathryn Swann, had petitioned for child support, and the court ordered a paternity test.

4. On February 2, 2004, before the case had been heard by the Court, Mr. Pinkard submitted a payment request for \$5,641.00, claiming that he had worked 101.2 hours out-of-court and one hour in-court on the case. (He erroneously reversed these figures on his claim form.)

5. Chief Judge Rufus Banks rejected the claim and by letter, dated February 6, 2004, advised Mr. Pinkard that his claim was unreasonable in light of the nature of the case, a determination of paternity by DNA testing. He asked him to resubmit his claim at the conclusion of the case, and suggested that he consult with other attorneys and the Court Clerk before he did so.

6. By letter, dated February 8, 2004, Mr. Pinkard responded to Judge Banks, advising him that he would not reconsider his claim, arguing with Judge Banks over the hourly reimbursement rates, and threatening to sue the Court under 42 U.S.C. 1983.

7. Mr. Pinkard's claim for payment included multiple hours trying to locate his client, preparing grounds of defense, preparing a discovery request in which he sought a "non-formal" deposition, and researching applicable law. He also claimed several hours for a legal memorandum containing various case authorities, calling it his Guardian ad Litem Report. A GAL Report, however, is a narrative report explaining the GAL's factual findings and recommendations to the court.
8. Upon request of the court clerk, Mr. Pinkard deleted the fourteen hours devoted to research, reducing his claim to 87 hours, but did not adjust his claim any further.
9. Judge Banks authorized compensation for two hours in-court and one hour out-of court for Mr. Pinkard, and removed Mr. Pinkard from the court-appointed list. The blood draw took place on March 26, 2004, and the test was performed on April 2, 2004.
10. On January 15, 2004, the Court appointed Mr. Pinkard to serve as GAL for the father in the matter of *Sheretha Jones v. Merritt M. Lane*, another child support matter brought by the Division of Child Support Enforcement (DCSE). His client, Mr. Lane, was incarcerated.
11. The same day that Mr. Pinkard was appointed, January 15, 2004, the case was called to hearing and finished sometime between 9:00 a.m. and 12:10 p.m., when the DCSE docket was concluded.
12. Mr. Pinkard, however, submitted a claim for twenty hours out-of-court, and two hours in court, for a total of \$1,250.
13. Mr. Pinkard's claim included six-and-one-half hours for pretrial client interviews and case preparation. (The case was concluded less than two hours after he received it.)
14. He also billed for responsive pleadings and for composing an Answer for the client on dates after the case was closed. (There was no appeal or any other post-trial matter pending.)
15. Finally, he claimed five hours for an interview with his client nine days after the case was closed. (There was no appeal or any other post-trial matter pending.)
16. By letter, dated February 9, 2004, Judge Banks expressed the same concerns to Mr. Pinkard as he did in the *Swann* matter.
17. Mr. Pinkard responded by letter, dated February 11, 2004, accusing the judge of making an improper *ex parte* communication with him "not within the bounds of professional responsibility."
18. Mr. Pinkard reduced his claim in response to the Judge's letter; however, he still claimed payment for more hours than he could have possibly spent on the case before it was closed.

UPON CONSIDERATION WHEREOF, the Three-Judge Court found unanimously, by clear and convincing evidence, that the Respondent violated the following provisions of the Virginia Rules of Professional Conduct;

**RULE 1.5 Fees**

(a) A lawyer's fee shall be reasonable. The factors to be considered in determining the reasonableness of a fee include the following:

- (1) the time and labor required, the novelty and difficulty of the questions involved, and the skill requisite to perform the legal service properly;
- (2) the likelihood, if apparent to the client, that the acceptance of the particular employment will preclude other employment by the lawyer;
- (3) the fee customarily charged in the locality for similar legal services;
- ~~(4) the amount involved and the results obtained;~~
- ~~(5) the time limitations imposed by the client or by the circumstances;~~
- (6) the nature and length of the professional relationship with the client;
- ~~(7) the experience, reputation, and ability of the lawyer or lawyers performing the services;~~  
and
- ~~(8) whether the fee is fixed or contingent.~~

**RULE 3.3 Candor Toward The Tribunal**

(a) A lawyer shall not knowingly:

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

**RULE 8.4 Misconduct**

It is professional misconduct for a lawyer to:

- (b) commit a ..... deliberately wrongful act that reflects adversely on the lawyer's honesty, trustworthiness or fitness as a lawyer;
- (c) engage in professional conduct involving dishonesty, fraud, deceit or misrepresentation;

The Court did not find that the Respondent violated Rules 1.1 or 3.1 of the Rules of Professional Conduct, and dismissed those counts accordingly.

**VSB DOCKET NO. 04-021-2731**  
***Complainant: VSB/Anonymous***

Following the presentation of evidence and closing arguments by the parties in the above-captioned complaint, the Three-Judge Court retired to deliberate, and thereafter returned and announced that it had found, unanimously, and by clear and convincing evidence, that:

- 19. Mr. Pinkard was licensed to practice law in the Commonwealth of Virginia on October 16, 2001.
- 20. In April 2003, Mr. Pinkard opened his own law practice in Norfolk, Virginia, using letterhead styled:

***THE PINKARD LEGAL GROUP, P.C.***  
***ATTORNEYS AT LAW***

- 21. By letter, dated June 18, 2003, Mr. Pinkard asked to be placed on the court-appointed list for the Chesapeake Juvenile and Domestic Relations District Court. He introduced himself by saying:  

*..I am an attorney for the Pinkard Legal Group, P.C., a full service law firm specializing in Corporate law, Bankruptcy, and General litigation..*

22. Understanding that Mr. Pinkard was a sole practitioner, the bar chose to investigate the matter.

23. The bar's investigation revealed that Mr. Pinkard was always a sole practitioner, although his letterhead read "Legal Group" and "Attorneys at Law."

24. The investigation also revealed that he never registered as a Professional Corporation (P.C.) with the Virginia State Bar, in accordance with the Rules of the Supreme Court of Virginia, Part 6, Section IV, Subparagraph 14, and the Code of Virginia, Sections 13.1-549.2, and 54.1-3902, although his letterhead read "P.C.," and he described his practice as a "P.C." in the body of his letter to the Chesapeake Court.

25. In a written response to questions posed by the Virginia State Bar investigator, Mr. Pinkard acknowledged that he had been practicing by himself since his return to Virginia in April 2003, that he had never practiced with other attorneys in a law firm, and that he had always been a sole practitioner. He said that "there are no other attorneys, whom (sic) practice with me, its (sic) just singular plural verbiage..."

26. In response to being asked whether he had ever registered with the State Corporation Commission as a professional corporation, he said that a physical address is required but that he had a home-based practice (suggesting that he had not registered with the SCC).

27. Mr. Pinkard also said that "Pinkard Legal Group" was accurate because he and another individual were a group, "one attorney and one volunteer defacto employee" who volunteered her time to answer the phone and type. He said that he changed the letterhead after the bar complaint in February 2004.

28. In his written response to the bar complaint, undated, and received April 1, 2004, Mr. Pinkard said that he was not engaging in deceptive conduct with the letterhead because the Code of Virginia does not require a professional corporation to use the initials "PC." (The Code of Virginia and Rules of the Supreme Court, however, require a Professional Corporation to obtain a registration certificate from the Virginia State Bar before engaging in the practice of law.)

**UPON CONSIDERATION WHEREOF**, the Three-Judge Court found unanimously, by clear and convincing evidence, that the Respondent violated the following provisions of the Virginia Rules of Professional Conduct;

**RULE 7.5 Firm Names And Letterheads**

(a) A lawyer or law firm may use or participate in the use of a professional card, professional announcement card, office sign, letterheads, telephone directory listing, law list, legal directory listing, or a similar professional notice or device unless it includes a statement or claim that is ..... misleading, or deceptive. A trade name may be used by a lawyer in private practice if it does not imply a connection with a government agency or with a public or charitable legal services organization and is not otherwise in violation of Rule 7.1.

**RULE 8.4 Misconduct**

- (c) engage in professional conduct involving ..... deceit or misrepresentation;

The Court did not find that the Respondent violated Rule 8.4 (b), and dismissed that charge accordingly.

**VSB DOCKET NO. 05-021-0053**  
***Complainant: VSB/Judicial***

Following the presentation of evidence and closing arguments by the parties in the above-captioned complaint, the Three-Judge Court retired to deliberate, and thereafter returned and announced that it had found, unanimously, and by clear and convincing evidence, that:

29. Mr. Pinkard undertook to represent his mother in a slip-and-fall case resulting from injuries sustained on February 12, 2004.

30. Mrs. Pinkard saw a treating physician the same day.

31. Six days later, on February 18, 2004, Mr. Pinkard filed a motion for judgment against the defendant, Tidewater Scales and Butchers Suppliers, Inc., seeking \$50,000 in compensatory damages and \$80,000 in punitive damages.

32. Upon filing the motion for judgment, Mr. Pinkard unilaterally set a trial date of April 5, 2004 without consulting the defense counsel or any agent of the defendant, and before a responsive pleading could be filed.

33. When the defense counsel requested Mr. Pinkard's cooperation in changing the trial date, Mr. Pinkard responded with several rude voicemail messages, and a sarcastic facsimile letter stating his refusal to cooperate, although no discovery had been conducted.

34. The Clerk of Court's office ultimately removed the April 5 trial date on its own initiative after the defense counsel filed a motion for a continuance and sanctions, which he withdrew upon the removal of the trial date.

35. When the defense counsel issued subpoenas duces tecum for treatment records to the plaintiff's health care providers, Mr. Pinkard, on March 10, 2004, filed a frivolous motion to quash the subpoenas and motion for sanctions on the ground that the plaintiff had not authorized the release of the records.

36. Mr. Pinkard filed two other motions for sanctions against the defense counsel on March 5 and 8, 2004.

37. Mr. Pinkard did not furnish opposing counsel with copies of any of the motions for sanctions, and the defense counsel did not see the motion for sanctions and to quash until the court ordered Mr. Pinkard to produce it at a hearing on another matter on March 19, 2004.

38. When contacted by the defense counsel or his paralegal for available hearing dates, Mr. Pinkard repeatedly refused to provide them.

39. Mr. Pinkard had become so abusive and threatening to the clerks of the Norfolk Circuit Court in voicemail messages that the Honorable Joseph Leafe, Chief Judge, after hearing the recordings, felt compelled to admonish him. Nonetheless, Mr. Pinkard continued to leave abusive and rude voicemail messages for the court clerks.

40. Similarly, when the court reporter advised Mr. Pinkard that his mother's deposition was ready for review, Mr. Pinkard responded in a rude manner that he had 21 days to review it and that he could change whatever he wanted to on the errata sheet, even though no one challenged him on these issues. His behavior was such that the court reporter declined further involvement in the case.

41. During an office visit with the defense counsel's paralegal in May 2004 concerning the status of some records, the treating physician offered some unsolicited comments regarding the examination of the plaintiff, prompting the defense counsel to send a letter of explanation, dated June 2, 2004, to Mr. Pinkard and to the court.

42. Mr. Pinkard responded with a motion for sanctions accusing the defense counsel of "conduct interposed therewith improper purpose to unlawfully solicit opinions from Plaintiff's expert witness, Dr. Horwitz, and to Harass (sic) such witness at his place of employment by inquiring about pretrial and privileged information."

43. Mr. Pinkard's stated basis for the motion was the defense counsel's letter of explanation, dated June 2, 2004, although the letter was in complete contradiction to Mr. Pinkard's motion.

44. On July 15, 2004, the court summarily denied the motion, noting that the motion lacked any basis in law or fact, and that it was frivolous.

45. On July 6, 2004, Mr. Pinkard filed another motion for sanctions against the defense counsel, this time accusing him of materially false and fraudulent statements to the court, and of, *inter alia*, being a pathological liar

46. On July 15, 2004, the court specifically found that the motion lacked any basis in law or fact, that it was frivolous and, citing Chief Judge Leafe's previous counseling about Mr. Pinkard's treatment of court staff, and the trial court's repeated counseling to tone down his approach and to be more cooperative, sanctioned Mr. Pinkard \$500 for filing the motion.

47. During the course of the case, Mr. Pinkard repeatedly refused to endorse some orders prepared by the defense counsel, and/or marked them up and added matters not ordered by the court, and on one occasion, caused the court to have to restore language that he had lined out from the order.

48. Mr. Pinkard filed a list of witnesses the day before the discovery deadline, and then tried to prevent the defense counsel from deposing the witnesses on the basis that the deadline for discovery had passed

49. During the course of the case, Mr. Pinkard failed to comply with discovery, or prepare or plead his case correctly; causing most of his evidence and witnesses to be excluded.

50. Nonetheless, Mr. Pinkard chose to proceed with trial. The case was dismissed on a motion to strike.

51. Mr. Pinkard repeatedly interrupted the court while it was addressing him, going so far as to tell the court, on September 9, 2004, "I would caution you," about a point of law.

**UPON CONSIDERATION WHEREOF**, the Three-Judge Court found unanimously, by clear and convincing evidence, that the Respondent violated the following provisions of the Virginia 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 3.1 Meritorious Claims And Contentions**

A lawyer shall not bring or defend a proceeding, or assert or controvert an issue therein, unless there is a basis for doing so that is not frivolous, which includes a good faith

argument for an extension, modification or reversal of existing law. A lawyer for the defendant in a criminal proceeding, or the respondent in a proceeding that could result in incarceration, may nevertheless so defend the proceeding as to require that every element of the case be established.

**RULE 3.4 Fairness To Opposing Party And Counsel**

A lawyer shall not:

- (a) Obstruct another party's access to evidence....
- (e) .....fail to make reasonably diligent effort to comply with a legally proper discovery request by an opposing party.
- (j) .....assert a position or take other action on behalf of the client when the lawyer knows or when it is obvious that such action would serve merely to harass.....

**RULE 3.5 Impartiality And Decorum Of The Tribunal**

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

The Court did not find that the Respondent violated Rules 1.3 (a), 3.4 (d), or 3.5 (e) (2) or *P. 4* <sup>*JTK*</sup> the Rules of Professional Conduct, and dismissed those counts accordingly.

**THEREAFTER**, the Virginia State Bar and the Respondent presented argument regarding the sanction to be imposed upon the Respondent for the misconduct, and the Three-Judge Court recessed to deliberate.

**AFTER DUE CONSIDERATION** of the evidence and the nature of the ethical misconduct committed by the Respondent, the Three-Judge Court reached the unanimous decision that the Respondent's license to practice law in the Commonwealth of Virginia should be suspended for two (2) years, effective November 1, 2005. Therefore, it is hereby **ORDERED** that the license of the Respondent, Kenan Michael Pinkard, to practice law in the Commonwealth of Virginia be, and the same hereby is, **SUSPENDED** for a period of two (2) years, effective November 1, 2005.

It is further **ORDERED**, pursuant to the provisions of Part Six, Section IV, Paragraph 13.M of the Rules of the Supreme Court of Virginia, that the Respondent shall forthwith give notice, by certified mail, return receipt requested, of the suspension of his license to practice law in the Commonwealth of Virginia to all clients for whom he is currently handling matters and to all opposing attorneys and presiding judges in pending litigation. The Respondent shall also make appropriate arrangements for the disposition of matters then in his care, in conformity with the wishes of his clients. The Respondent shall give such notice within 14 days of the effective date of the order, and make such arrangements as are required herein within 45 days of this effective date of the order. The Respondent shall furnish proof to the Bar within 60 days of the effective date of the order that such notices have been timely given and such arrangements for the disposition of matters made. Issues concerning the adequacy of the notice and the arrangement required herein shall be determined by the Virginia State Bar Disciplinary Board, which may impose a sanction of revocation or suspension for failure to comply with these requirements.

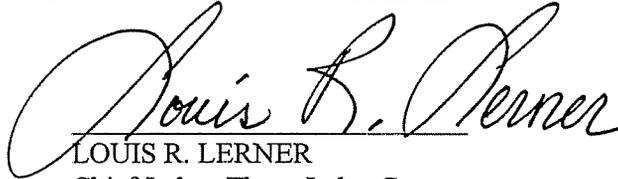
Pursuant to Part Six, Section IV, Paragraph 13.B.8.c of the Rule of the Supreme Court of Virginia, the Clerk of the Disciplinary System of the Virginia State Bar shall assess costs.

It is further **ORDERED** that a copy teste of this order shall be served by the Clerk of this Court upon the Respondent, Kenan Michael Pinkard, by certified mail, return receipt requested, at Post Office Box 41419, Norfolk, Virginia 23502, his address of record with the Virginia State Bar; and by regular mail to Edward L. Davis, Assistant Bar Counsel, at the Virginia State Bar, Eighth and Main Building, Suite 1500, 707 East Main Street, Richmond, Virginia 23219.

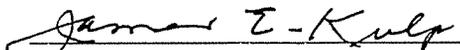
The court reporter who transcribed these proceedings is Catherine Edwards, Ronald

Graham and Associates, Inc., 5344 Hickory Ridge, Virginia Beach, Virginia 23455-6680 (757)  
490-1100.

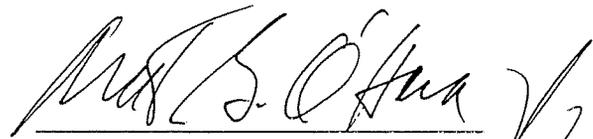
ENTERED this 30<sup>th</sup> day of November, 2005.



LOUIS R. LERNER  
Chief Judge, Three-Judge Court



JAMES E. KULP  
Retired Judge, Three-Judge Court



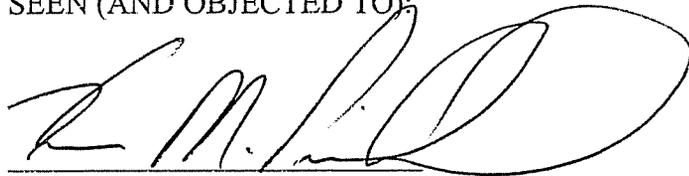
ROBERT G. O'HARA, Jr.  
Retired Judge, Three-Judge Court

I ASK FOR THIS:



Edward L. Davis  
Assistant Bar Counsel  
Virginia State Bar  
Eight and Main Building  
707 East Main Street, Suite 1500  
Richmond, Virginia 23219-2800

SEEN (AND OBJECTED TO):



Kenan Michael Pinkard, Esquire  
Respondent  
Post Office Box 41419  
Norfolk, Virginia 23502  
(757) 747-1604