

VIRGINIA:

BEFORE THE CIRCUIT COURT OF THE CITY OF NORFOLK

VIRGINIA STATE BAR EX REL
SECOND DISTRICT COMMITTEE

v.

MARK MICHAEL KANTRO
VSB Docket No. 10-021-080833

RECEIVED
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Case No. CL11-601

MEMORANDUM ORDER

THIS MATTER came to be heard on May 12, 2011, before a Three-Judge Court duly impaneled pursuant to Section 54.1-3935 of the Code of Virginia, 1950, as amended, consisting of The Honorable James C. Hawks, Judge of the Third Judicial Circuit, Chief Judge presiding ("Chief Judge"), The Honorable William H. Shaw, III, Retired Judge of the Ninth Judicial Circuit, and The Honorable Theodore J. Markow, Retired Judge of the Thirteenth Judicial Circuit (collectively the "Panel"). The Virginia State Bar appeared through Assistant Bar Counsel M. Brent Saunders. Respondent appeared in person and through his counsel, Allan D. Zaleski, Esquire, and Andrew A. Protogyrou, Esquire.

WHEREUPON, a hearing was conducted upon the Rule to Show Cause issued against Respondent, Mark Michael Kantro, 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 why he should not otherwise be 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 Chief Judge swore the court reporter and polled the members of the Panel to

determine whether any member had a personal or financial interest that might affect or reasonably be perceived to affect his ability to be impartial in these matters. Each member, including the Chief Judge, verified they had no such interests.

The Panel accepted the parties' previously filed Partial Stipulation and admitted the parties' timely filed exhibits with the exception of the Virginia State Bar's Exhibit 13B which was withdrawn on the motion of the Virginia State Bar and the Virginia State Bar's Exhibit 20E to which Respondent's objection was sustained.

Following opening statements on behalf of the parties, the Virginia State Bar then presented its evidence, at the conclusion of which Respondent moved to strike the evidence as to certain of the violations of the Virginia Rules of Professional Conduct charged in this case. Following the receipt of arguments from the parties and deliberation, the Panel overruled Respondent's motion to strike.

Respondent then presented his evidence, at the conclusion of which Respondent renewed his motion to strike. Following the receipt of arguments from the parties and deliberation, the Panel overruled Respondent's renewed motion to strike and unanimously found by clear and convincing evidence the following material facts:

1. At all times relevant hereto, Respondent was an attorney licensed to practice law in the Commonwealth of Virginia.
2. In 2004, Sharon F. Leach (formerly Sharon L. Kantro) ("Leach") hired attorney Michael I. Ashe ("Ashe") to represent her in obtaining a divorce from Respondent.
3. In October 2004, Ashe filed on behalf of Leach in the Virginia Beach Circuit Court: i) a Bill of Complaint in which Leach prayed for, *inter alia*, a divorce from Respondent, custody of the parties' three (3) minor children, child support and spousal

support, and division of the marital property and debts; ii) a Notice of Pendente Lite Hearing in which Leach requested, *inter alia*, temporary child support and spousal support; and iii) a Request for Production of Documents in which Leach requested, *inter alia*, a statement of all compensation or other income received by Respondent from January 1, 2004 through the date of the *pendente lite* hearing (*Sharon Kantro v. Mark M. Kantro*, CH04-3312).

4. In November 2004, an Answer to the Bill of Complaint was filed on behalf of Respondent by attorney Dale Truitt Berrett ("Berrett"), who represented Respondent throughout the pendency of the divorce case.

5. On January 3, 2005, an order was entered in the divorce case enjoining the parties from, *inter alia*, concealing, transferring or disposing of any assets except in the normal course of business without the permission of the other party or the court. Respondent was notified of the entry of the order on January 14, 2005.

6. In early January 2005, Respondent received a \$161,000.00 legal fee payment in the form of a check dated January 4, 2005 issued from the trust account of attorney O.L. Gilbert ("Gilbert"). On the same date, Gilbert issued Respondent another check in the amount of \$4,119.00. The monies arose from Respondent's referral of a personal injury case to Gilbert in September 2003, pursuant to which the two agreed to equally split any fee earned. Gilbert subsequently took over the representation and, *inter alia*, prepared and filed a Motion for Judgment as sole counsel of record for the plaintiff, prepared and propounded discovery, conducted and defended depositions, participated in mediation and negotiated a settlement in late 2004. The \$161,000.00 check represented Respondent's 50% share of the total fee earned for the representation, and the \$4,119.00

check was a reimbursement to Respondent for costs he had advanced in the case prior to referring it to Gilbert.

Respondent deposited the \$4,119.00 check into his law firm's operating account on January 14, 2005.

Respondent did not deposit the \$161,000.00 check into his law firm's operating account or any bank account. Instead, on or about February 1, 2005, in violation of the court's January 3, 2005 order, Respondent cashed the \$161,000.00 check and: i) retained \$11,000.00 for himself; and ii) used the remaining \$150,000.00 to purchase two (2) Cashier's Checks in the amounts of \$100,000.00 and \$50,000.00, respectively, made payable to his mother, Beatrice Kantro, who, with the assistance of Respondent, used that \$150,000.00 to open an account at Merrill Lynch in her name on which she designated Respondent as the transfer on death beneficiary. On four occasions between April 2005 and August 2010, Respondent received monies from the Merrill Lynch account totaling \$44,000.00.

7. In April 2005, Ashe, on behalf of Leach, propounded Interrogatories and Request for Production of Documents on Respondent requesting, *inter alia*, disclosure of the nature, value and date of all compensation Respondent had received in the prior two years and copies of documents: i) reflecting all gross receipts for any business in which Respondent held at least a five percent interest; and ii) relating to the gift or other transfer in the prior two years of any property valued at more than \$500.00 in which Respondent or Leach had any interest.

8. On June 2, 2005, a *pendente lite* hearing was conducted before The Honorable Glen A. Tyler ("Judge Tyler") on Leach's request for, *inter alia*, temporary spousal

support and child support.

At the time of the hearing, Respondent had not disclosed to Leach his receipt of the \$161,000.00 legal fee payment or the transfer of \$150,000.00 of those monies to his mother, Beatrice Kantro.

During the *pendente lite* hearing, Respondent did not disclose either his receipt of the \$161,000.00 fee payment or the transfer of the \$150,000.00 of those monies to his mother, Beatrice Kantro. Respondent, with the intent to deceive Judge Tyler as to Respondent's actual income and financial situation, testified under oath, *inter alia*, that: i) his income consisted of a salary of \$25,500.00 per year from his employment with the Norfolk Public Defender's Office and \$400.00 per week from the law firm Respondent owned and operated as a solo practitioner; ii) his best year of income was \$60,000.00; iii) his Monthly Income and Expenses sheet offered into evidence accurately reflected his average gross wages of \$4,859.00 per month; iv) he had to borrow \$10,000.00 from his parents (in April 2005) to pay his estimated taxes for tax year 2004¹; v) he "wish[ed]" he earned \$80,000.00 per year; vi) he earns \$60,000.00 per year and had never grossed more than that; and vii) he had to use some of the \$20,000.00 that had been set aside for payment of taxes and only about \$8,500.00 remained.

During the *pendente lite* hearing, Respondent offered into evidence, *inter alia*, a Monthly Income and Expenses sheet indicating that his average gross wages were \$4,859.00 per month. Respondent actively participated in the preparation of the Monthly Income and Expenses sheet.

¹ The source of the \$10,000.00 received by Respondent in April 2005 was the Merrill-Lynch account opened in the name of Respondent's mother, Beatrice Kantro, with the proceeds from the \$161,000.00 Respondent received in January 2005.

Judge Tyler, without knowledge of Respondent's receipt of the \$161,000.00 fee payment, ordered Respondent to pay Leach \$900.00 per month in child support and \$900.00 per month in spousal support. Had he known of Respondent's receipt of the \$161,000.00 fee payment, Judge Tyler would have factored it into his calculation of Respondent's temporary child and spousal support obligations.

9. In July 2005, Ashe, on behalf of Leach, propounded revised Requests for Production of Documents and Interrogatories on Respondent.

10. On or about December 29, 2005, Berrett provided Ashe with answers to the interrogatories Ashe had propounded on Respondent in which Berrett, on behalf of Respondent, stated, *inter alia*, that: i) he had borrowed \$20,000.00 from his mother Beatrice Kantro to pay his estimated taxes for tax year 2004 and attorneys' fees² and \$5,000.00 from Meryl Kantro "which has allowed me to make my court ordered obligations;" ii) his income from his law firm was \$22,241.00 in 2004 "and is currently at \$20,800.00;" iii) he had received no other compensation in the prior two years; and iv) since January 1, 2004, he had not disposed of any property valued at more than \$500.00 that Respondent or Leach previously owned with the exception of a single parcel of real estate. Respondent also attached to his interrogatory answers a Monthly Income and Expenses sheet indicating that his average gross wages were \$1,733.00 per month and his income for 2005 was \$32,578.00.

On or about January 30, 2006, Berrett, on behalf of Respondent, provided Ashe

² The source of these monies was also the Merrill-Lynch account opened in the name of Respondent's mother, Beatrice Kantro, with the proceeds from the \$161,000.00 Respondent received in January 2005. In addition to the \$10,000.00 transferred to Respondent from the Merrill-Lynch account in April 2005, Respondent received from the Merrill-Lynch account \$10,000.00 in January 2006, \$12,000.00 in October 2009, and \$12,000.00 in August 2010.

with supplemental answers to the interrogatories Ashe had propounded on Respondent in which she again made each of the foregoing statements. Berrett also attached to the supplemental interrogatory answers a Monthly Income and Expenses sheet indicating that Respondent's average gross wages were \$1,733.00 per month.

Respondent: i) provided to Berrett all of the information that was included in his initial and supplemental discovery responses; ii) actively participated in the formulation of those responses; and iii) received contemporaneous copies of the responses from Berrett.

11. By letter dated February 17, 2006, Berrett, on behalf of Respondent, represented to Ashe that Respondent had advised her that in 2005, his wages from his law firm totaled \$19,600.00, his law firm received gross fees of only \$83,667.00 and experienced a loss of \$500.00 after expenses, and his income from the Norfolk Public Defender's Office was approximately \$26,000.00. Respondent: i) provided to Berrett all of the information that was included in Berrett's February 17, 2006 letter; ii) actively participated in the formulation of the letter; and iii) received a contemporaneous copy of the letter from Berrett.

12. In August 2006, Berrett filed with the court and provided to Ashe: i) a supplemental designation of experts in which it was represented that a Certified Public Accountant and business valuator hired by Respondent as an expert would testify that Respondent's law firm "would not make any profit as his cash flow would be negative for those years and therefore the value of his company is zero"; and ii) a Pretrial Conference Brief to which was attached, *inter alia*, a Personal Information Schedule and Factors for Equitable Distribution in which it was represented that Respondent's total

annual earned income in 2005 had been only \$32,578.00. Respondent provided to Berrett all of the information that was included in the aforementioned pleadings and was contemporaneously notified of their filing with the court.

13. By order entered on August 7, 2006, the parties were ordered to participate in mediation of the disputed matters in the divorce case, i.e., child custody, visitation and support; spousal support; and equitable distribution. The parties participated in mediation before The Honorable Frederick Aucamp, Retired Judge, which resulted in the parties reaching a settlement of all disputed issues in the divorce case.

On September 7, 2006, Leach and Respondent entered into a Separation Agreement pursuant to which, *inter alia*: i) Respondent was required to pay Leach \$800.00 per month in child support and \$1,000.00 per month in spousal support with a reduction of such amounts based upon the occurrence of certain defined events; ii) Leach agreed to pay Respondent the sum of \$100,000.00 and pay 40% of any tax liability for tax year 2005; iii) the remaining marital assets known to Leach were divided; and iv) the parties waived equitable distribution of the marital assets.

14. On November 14, 2006, a Final Decree of Divorce was entered that, *inter alia*, incorporated the parties' Separation Agreement.

15. Respondent at no time prior to entry of the Final Decree of Divorce disclosed to Leach, in discovery or otherwise, his receipt of the \$161,000.00 in January 2005 or the transfer of \$150,000.00 of those monies to his mother, Beatrice Kantro. Leach did not discover Respondent's receipt of the \$161,000.00 fee payment until approximately August 2007, when Respondent provided to Leach a Form 1040 joint tax return for tax year 2005 declaring Respondent's receipt of the \$161,000.00 fee payment that

Respondent asked Leach to sign.

16. Leach would not have agreed to the terms of the Separation Agreement had she known of Respondent's receipt of the \$161,000.00 in January 2005.

17. Respondent at no time prior to the entry of the Final Decree of Divorce disclosed to Judge Tyler, Berrett, his business valuation expert David S. Timms or the mediator his receipt of the \$161,000.00 in January 2005 or his subsequent transfer of \$150,000.00 of those monies to his mother, Beatrice Kantro.

18. Respondent's receipt of the \$161,000 was material to several contested issues in the divorce proceeding, including: i) the determination of Respondent's temporary and permanent child support and spousal support obligations; ii) the division of the marital assets, debts and tax liabilities; and iii) Respondent's liability for the payment of Leach's attorneys' fees.

19. Respondent knowingly signed and filed with the United States Internal Revenue Service a tax return for his law firm for tax year 2005 that did not declare the \$161,000.00 fee payment and instead declared gross receipts or sales of only \$83,267.00.

The Panel unanimously found that the evidence established under the clear and convincing evidentiary standard violations of the following provisions of the Virginia Rules of Professional Conduct on the part of Respondent:

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;

(4) offer evidence that the lawyer knows to be false. If a lawyer has offered material evidence and comes to know of its falsity, the lawyer shall take reasonable remedial measures.

RULE 3.4 Fairness To Opposing Party And Counsel

A lawyer shall not:

(a) Obstruct another party's access to evidence or alter, destroy or conceal a document or

other material having potential evidentiary value for the purpose of obstructing a party's access to evidence. A lawyer shall not counsel or assist another person to do any such act.

(c) Falsify evidence . . .

(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;

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

(c) engage in conduct involving dishonesty, fraud, deceit or misrepresentation which reflects adversely on the lawyer's fitness to practice law

The Panel unanimously found that the evidence failed to show under the clear and convincing evidentiary standard that Respondent violated Rule 3.4(e) of the Virginia Rules of Professional Conduct, and dismissed that charge accordingly.

THEREAFTER, the Virginia State Bar and Respondent presented evidence and argument regarding the sanction to be imposed upon Respondent, and the Panel then retired to deliberate. **AFTER DUE CONSIDERATION** of the evidence, including Respondent's disciplinary record consisting of a private admonition without terms and two public reprimands with terms, the nature of the ethical misconduct committed by Respondent, and arguments of counsel, the Panel reached the unanimous decision that Respondent's license to practice law in the Commonwealth of Virginia should be **REVOKED**. Therefore, it is hereby **ORDERED** that the license of Respondent, Mark Michael Kantro, to practice law in the Commonwealth of Virginia, be, and the same hereby is, **REVOKED** effective June 11, 2011. The effective date of the revocation is

delayed to June 11, 2011 for the sole purpose of allowing for the winding up of Respondent's law practice, and Respondent shall not accept any new clients or undertake any new matters between May 12, 2011 and June 11, 2011.

It is further **ORDERED**, pursuant to the provisions of Part Six, Section IV, Paragraph 13-29 of the Rules of the Supreme Court of Virginia, that Respondent shall forthwith give notice, by certified mail, return receipt requested, of the revocation 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. Respondent shall also make appropriate arrangements for the disposition of matters then in his care, in conformity with the wishes of his clients. Respondent shall give such notice within 14 days of the effective date of the license revocation, and make such arrangements as are required herein within 45 days of this effective date of the license revocation. The Respondent shall furnish proof to the Virginia State Bar within 60 days of the effective date of the license revocation 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 arrangements required herein shall be determined by the Virginia State Bar Disciplinary Board.


Pursuant to Part Six, Section IV, Paragraph 13-9 of the Rules 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 the Clerk of this Court shall send a copy *teste* of this order to Respondent by regular mail at Suite 807, 142 West York Street, Norfolk, VA 23510, his address of record with the Virginia State Bar; and send copies *teste* by regular

mail to counsel of record and to Barbara Sayers Lanier, Clerk of the Disciplinary System,
Virginia State Bar, Eighth and Main Building, Suite 1500, 707 East Main Street,
Richmond, Virginia 23219.

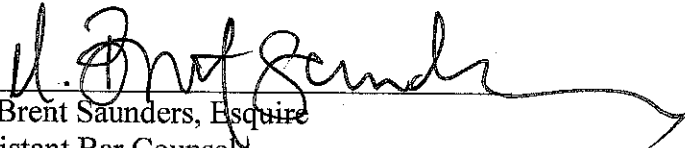
These proceedings were recorded by Biggs & Fleet Court Reporters, 125 St.
Paul's Blvd., Ste. 309, Norfolk, VA 23510, telephone number (757) 622-2049.

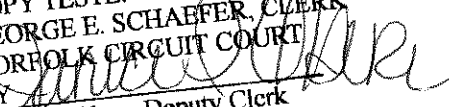
ENTERED this 6th day of June, 2011.


James C. Hawks
Chief Judge

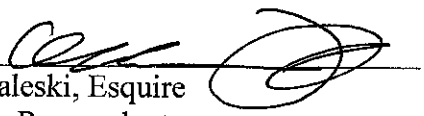
SEEN:

VIRGINIA STATE BAR

By: 
M. Brent Saunders, Esquire
Assistant Bar Counsel

COPY TESTE:
GEORGE E. SCHAEFER, CLERK
NORFOLK CIRCUIT COURT
BY 
Janice O'Hern, Deputy Clerk
Authorized to sign on behalf
of George E. Schaefer
Date: 6-14-11

SEEN and OBJECTIONED TO - OBJECTIONS
NOTED AS PER ATTACHMENT


Allan D. Zaleski, Esquire
Counsel for Respondent

VIRGINIA: IN THE CIRCUIT COURT OF THE CITY OF NORFOLK

VIRGINIA STATE BAR,

v.

CASE NO.: CL11-601

MARK MICHAEL KANTRO,

Respondent.

SPECIFIC OBJECTIONS TO THE ENTRY OF THE MEMORANDUM ORDER

Objected to as follows:

The Defendant objects to the finding of the Court that there was sufficient evidence to find by clear and convincing evidence that he had violated Rule 3.3 (a), (1), (4), Rule 3.4 (a), (c), (d) and Rule 8.4 (a), (b), (c).

The Defendant objects to the finding of the Court that his license to practice law should be revoked in that such penalty for the violations found is excessive, inconsistent and not proportionate to the harm done, not does any of the conduct found relate to his conduct as an attorney.

The Defendant objects to the Court overruling his Motion in Limine regarding the testimony of Judge Glen Tyler.

The Defendant objects to the Court overruling his Motion to Quash a subpoena issued by the bar for portions of the file of attorney Dale Berrett, who was the Defendant's attorney in his divorce proceeding.

The Defendant objects to the Court's permitting attorney Dale Berrett to testify, over his objection to matter involving attorney-client privilege.

The Defendant objects to the Court's according testimony concerning what occurred at a Court ordered mediation in his divorce case same being confidential by Virginia Law.

The Defendant objects to the Court's evidentiary rulings during the trial of this matter on May 12, 2011 regarding the testimony of Judge Glen Tyler, Dale Berrett, Sharon Leigh, and Michael Ashe.

The Defendant's other and further objections are stated in the record of pre-trial hearings and the trial of this case.

The Defendant's objects to the Court factual findings as follows:

5. Defendant objects to the finding that he was notified of the entry of the Order of January 3, 2005.

6. Defendant objects to the finding that his handling of the \$161,000 check was in violation of the Court Order of January 3, 2005.

7. Defendant objects to the finding that he had any intent to deceive Judge Tyler or that his testimony was false. Defendant objects to the finding of facts that the Defendant operated it's law firm as the sole practioner when it was operated as "Mark M. Kantro, P.C."


10. The Defendant objects to the finding that the Defendant filed responses to the discovery of Ashe.

11. The Defendant objects to this finding as not relevant to the violations herein.

12. The Defendant objects to the finding that he provided such information and that the information was filed with the Court.

15. The Defendant objects to any finding relating to what happen at the Court ordered mediation.

16. The Defendant objects to the findings in that it calls for speculation.



Allan D. Zaleski, Esquire