



COMMONWEALTH of VIRGINIA

Office of the Attorney General

Kenneth T. Cucinelli, II
Attorney General

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900 East Main Street
Richmond, Virginia 23219
804-786-2000
FAX 804-786-1900
Virginia Relay Service
800-828-1111

The Honorable Barbara J. Gaden
Judge, Richmond General District Court
John Marshall Courts Building
400 North Ninth Street, Suite 203
Richmond, Virginia 23219-1546

Dear Judge Gaden:

I am responding to your request for an official advisory opinion in accordance with § 2.2-505 of the *Code of Virginia*.

Issues Presented

You inquire regarding the authority of general district courts and juvenile and domestic relations district courts (collectively, "district courts"), to regulate, limit or prohibit a person from practicing or appearing in those courts. Specifically, you ask, first, whether a Virginia district court has jurisdiction to impose a pre-filing review requirement if it finds such a sanction to be "appropriate" under Code § 8.01-271.1. Second, you ask if a court has the inherent authority to limit or prevent an attorney or a litigant from appearing before it in the event the court determines, after a hearing, that the attorney or litigant has engaged in the unauthorized practice of law or otherwise has engaged in unprofessional or unethical conduct. Finally, if the district courts lack such authority, you inquire whether a circuit court can impose a pre-filing review requirement on an action filed in the district court and, further, whether the circuit court can restrict a litigant or attorney from appearing in the district court based on the litigant's or attorney's improper conduct in the district court.

Response

It is my opinion that a district court may, pursuant to § 8.01-271.1, impose a pre-filing review requirement if such a sanction is appropriate. It is further my opinion that a district court has the inherent authority to limit or prevent an attorney or a litigant from practicing before it in the event the court determines, after a hearing, that the attorney or litigant has engaged in the unauthorized practice of law or otherwise has engaged in unprofessional or unethical conduct.

Background

You relate that your court has encountered a *pro se* litigant with a known history of initiating harassing and frivolous litigation who already has been barred by various circuit and federal courts from filing suit without first obtaining leave of court. You note that these filing restrictions apply only to those specific courts but do not apply to your district court, where this litigant will file frivolous cases and then

nonsuit them when a defendant appears. You further report that a non-attorney has appeared before the court and has engaged in the unauthorized practice of law. Finally, you have observed attorneys engaged in unprofessional, potentially unethical conduct.

Applicable Law and Discussion

Section 8.01-271.1 provides that the signature of an attorney or a party on a pleading constitutes a certification by the signatory that

(i) he has read the pleading, motion or other paper; (ii) to the best of his knowledge, information and belief, formed after reasonable inquiry, it is well grounded in fact and is warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law, and (iii) it is not interposed for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation.

If a pleading is signed in violation of these provisions, a court is authorized to impose "an appropriate sanction."¹

First, § 8.01-271.1 is not limited to circuit courts. By its terms, it applies to "every pleading." The only limitation on sanctions is that a sanction be "appropriate." Therefore, where appropriate, a district court may impose upon an abusive litigant a requirement of pre-filing review. Although the appropriateness of a sanction necessarily is fact specific, when a litigant repeatedly has filed frivolous or harassing pleadings, requiring pre-filing review is appropriate. Section 8.01-271.1 also allows a court, where appropriate, to sanction an attorney or litigant who has violated the strictures of this statute by, for example, filing a pleading for the purpose of harassing or causing unnecessary delay.

I note that engaging in unprofessional or unethical conduct, or engaging in the unauthorized practice of law, would not by itself trigger the application of § 8.01-271.1. This statute, by its plain terms, is limited to actions taken with respect to pleadings and motions. Therefore, § 8.01-271.1 is limited in its application and does not authorize a court to impose sanctions for all manner of misconduct.

The Supreme Court of Virginia has held that courts have the inherent power, independent of statutory authority, to "suspend or annul the license of an attorney practicing in the particular court which pronounces the sentence of disbarment."² At times, the Court has limited its discussion of such powers to "courts of record."³ In other opinions, the Court has spoken more broadly of such powers as inherent in all courts.⁴ The Supreme Court of Virginia explained that the purpose underlying this inherent authority is to protect the public and the courts.⁵ The need to protect the public and the integrity of the judicial process is no less in district courts than in other courts. Therefore, I conclude that district courts possess the inherent authority to bar an attorney or a litigant from practicing before that court if the facts warrant such a sanction.⁶

¹ VA. CODE ANN. § 8.01-271.1 (Supp. 2010).

² See *In re: Moseley*, 273 Va. 688, 696, 643 S.E.2d 190, 194 (2007) (quoting *Legal Club of Lynchburg v. Light*, 137 Va. 249, 119 S.E. 55 (1923)).

³ *Id.*

⁴ *Nusbaum v. Berlin*, 273 Va. 385, 399, 641 S.E.2d 494, 501 (2007).

⁵ *Id.* at 400, 641 S.E.2d at 502.

⁶ Because I answer your first two questions in the affirmative, I need not answer your remaining questions concerning an alternate procedure through the circuit court.

Of course, the power of all Virginia courts to discipline attorneys and parties is not without limits. For example, the inherent power of a trial court “to supervise the conduct of attorneys practicing before it and to discipline any attorney who engages in misconduct does not include the power to impose as a sanction an award of attorney’s fees and costs to the opposing party.”⁷ Such sanctions serve to punish rather than to protect the public, and run counter to Virginia’s strong adherence to the “American rule.”⁸

Finally, I note that the Code expressly provides the power of a district court to punish for summary contempt.⁹ To the extent that a party, an attorney or a *pro se* litigant engages in conduct worthy of contempt in the presence of the court, the court may sanction such conduct.¹⁰

Conclusion

Accordingly, it is my opinion that a district court may, pursuant to § 8.01-271.1, impose a pre-filing review requirement if such a sanction is appropriate. It is further my opinion that a district court has the inherent authority to limit or prevent an attorney or a litigant from practicing before it in the event the court determines, after a hearing, that the attorney or litigant has engaged in the unauthorized practice of law or otherwise has engaged in unprofessional or unethical conduct.

With kindest regards, I am

Very truly yours,

A handwritten signature in black ink, appearing to read "Ken C. II". The signature is stylized and written in a cursive-like font.

Kenneth T. Cuccinelli, II
Attorney General

1:485; 1:941/10-068

⁷ *Id.*

⁸ *Id.*

⁹ VA. CODE ANN. §§ 16.1-69.24 (2010); 18.2-458 (2009).

¹⁰ *Judicial Inquiry & Review Comm'n of Va. v. Peatross*, 269 Va. 428, 447, 611 S.E.2d 392, 402 (2005) (noting the inherent authority of “any judge in Virginia” “to supervise the conduct of attorneys practicing before him and to discipline an attorney who engages in misconduct, which includes the right to remove an attorney of record in a case.”); *Nusbaum*, 273 Va. at 399, 641 S.E.2d at 501 (noting that “the courts of this Commonwealth have the inherent power to supervise the conduct of attorneys practicing before them and to discipline any attorney who engages in misconduct.”).