

VIRGINIA:

BEFORE THE VIRGINIA STATE BAR DISCIPLINARY BOARD

**IN THE MATTER OF:
JOHN ARTHUR SUTHERLAND, JR.**

VSb DOCKET NO. 09-053-079278

ORDER OF REVOCATION

THIS MATTER came on to be heard on December 9, 2011, before a panel of the Disciplinary Board consisting of Richard J. Colten, Acting Chair, Robert W. Carter, Lay Member, Whitney G. Saunders, Samuel R. Walker, and Tyler E. Williams. The Virginia State Bar was represented by Seth M. Guggenheim, Senior Assistant Bar Counsel. The respondent, John Arthur Sutherland, Jr., failed to appear in person and was not represented by counsel. Prior to the beginning of the hearing, the Respondent's name was called in the hearing room and, in addition, announced three times in the hallway by the Assistant Clerk of the Virginia State Bar. The Chair polled the members of the Board Panel as to whether any of them was conscious of any personal or financial interest or bias which would preclude any of them from fairly hearing this matter and serving on the panel, to which inquiry each member responded in the negative. Angela N. Sidener, court reporter, of Chandler & Halasz, P. O. Box 9849, Richmond, Virginia 23227, telephone number 804/730-1222, after being duly sworn, reported the hearing.

The matter came before the Board on the District Committee Determination for Certification by the Fifth District, Section III, Subcommittee.

I. FINDINGS OF FACT

VSb Exhibits 1 - 9 were admitted without objection. The Board makes the following findings of fact on the basis of clear and convincing evidence:

1. At all times relevant to the conduct set forth herein, John Arthur Sutherland, Jr., ("Respondent") was an attorney licensed to practice law in the Commonwealth of Virginia, although not at all times in good standing.

2. In October of 2003, Ms. Kathryn L. Cassidy ("Complainant") retained the Respondent to represent her in both a contract matter involving a builder and a personal injury claim arising from an automobile accident which occurred on September 27, 2003, in which she sustained serious injuries.

3. In July of 2004 the Respondent advised the Complainant that he had made a demand upon Allstate Insurance Company that the company make payment on the Complainant's personal injury claim in the sum of the insured tortfeasor's policy limit of \$25,000.00.

4. The insurance carrier accepted the policy limit demand, and so advised the Respondent in April of 2007, who, in turn, informed the Complainant. The Complainant then authorized Respondent's acceptance of the insurance carrier's policy limit offer.

5. The Respondent took no action at any time thereafter to consummate a settlement with Allstate Insurance Company, although he did take some steps to procure information from Travelers Insurance, another carrier and potential source of funds for underinsured motorist's coverage for the Complainant's personal injury claim.

6. On January 12, 2009, the Complainant sent a certified letter to the Respondent because she had been attempting to reach him by telephone almost daily since the first week of November, 2008, without success. The letter was sent via certified mail, and was signed for by someone other than the Respondent at the Respondent's office address. In her letter, the Complainant stated, among other things, that "It is imperative that I hear from you right away upon receipt of this letter." The Respondent did not respond to the letter.

7. Having not heard from the Respondent following delivery of her certified letter of January 12, 2009, the Complainant terminated the Respondent's legal representation via a further letter to him, dated February 10, 2009, wherein she also stated that she would appear in the Respondent's office on

February 23, 2009, to retrieve her files. The Complainant's successor counsel also sent a letter to the Respondent, dated February 14, 2009, via certified and regular mail, stating, among other things, that the Complainant would be appearing in his office on February 23, 2009, to retrieve her files.

8. The Complainant appeared in the Respondent's office on February 23, 2009. The Respondent was not present and no files pertaining to her legal matters were available for her to retrieve. Via letter dated March 15, 2009, sent by certified and regular mail, the Complainant's successor counsel insisted that the Complainant's files be delivered to successor counsel, and made further inquiry of the Respondent regarding the status of the Complainant's cases.

9. The Respondent made no response whatever to the Complainant's and her successor counsel's letters. While the contract claim was successfully concluded by successor counsel, the personal injury claim was no longer sustainable because the Respondent took no action on the Complainant's behalf to preserve her claim prior to the expiration of the statute of limitations. Allstate Insurance Company informed Complainant's successor counsel by letter in March of 2009 that the Complainant's personal injury claim was no longer viable because the statute of limitations had expired. Accordingly, the sum of \$25,000.00, which had been previously offered to the Complainant, was no longer recoverable from Allstate Insurance Company.

10. The Complainant filed a bar complaint against the Respondent on April 21, 2009. On April 23, 2009, Bar Counsel sent a letter to Respondent, demanding an answer to the Complainant's bar complaint within 21 days following said date. The Respondent failed to respond to Bar Counsel within the 21 day period, or at any time thereafter. On May 27, 2009, Bar Counsel issued a subpoena *duces tecum* to the Respondent, who did not respond thereto. On

June 29, 2009, Bar Counsel issued to the Respondent a Notice of Noncompliance and Request for Suspension of Respondent's License to Practice Law, pursuant to which the Respondent's license to practice law was suspended on an interim basis on July 13, 2009, which said suspension has at no time thereafter been lifted and remains in force and effect.

11. Despite his diligent efforts to contact the Respondent, the Virginia State Bar investigator assigned to investigate the Complainant's bar complaint was unable to reach the Respondent.

II. MISCONDUCT

The Certification charged violations of the following provisions of the Virginia Rules of Professional Conduct:

RULE 1.3 Diligence

- (a) A lawyer shall act with reasonable diligence and promptness in representing a client.
- (b) A lawyer shall not intentionally fail to carry out a contract of employment entered into with a client for professional services, but may withdraw as permitted under Rule 1.16.
- (c) A lawyer shall not intentionally prejudice or damage a client during the course of the professional relationship, except as required or permitted under Rule 1.6 and Rule 3.3.

RULE 1.4 Communication

- (a) A lawyer shall keep a client reasonably informed about the status of a matter and promptly comply with reasonable requests for information.

RULE 1.16 Declining Or Terminating Representation

- (d) Upon termination of representation, a lawyer shall take steps to the extent reasonably practicable to protect a client's interests, such as giving reasonable notice to the client, allowing time for employment of other counsel, refunding any advance payment of fee that has not been earned and handling records as indicated in paragraph (e).

- (e) All original, client-furnished documents and any originals of legal instruments or official documents which are in the lawyer's possession (wills, corporate minutes, etc.) are the property of the client and, therefore, upon termination of the representation, those items shall be returned within a reasonable time to the client or the client's new counsel upon request, whether or not the client has paid the fees and costs owed the lawyer. If the lawyer wants to keep a copy of such original documents, the lawyer must incur the cost of duplication. Also upon termination, the client, upon request, must also be provided within a reasonable time copies of the following documents from the lawyer's file, whether or not the client has paid the fees and costs owed the lawyer: lawyer/client and lawyer/third-party communications; the lawyer's copies of client-furnished documents (unless the originals have been returned to the client pursuant to this paragraph); transcripts, pleadings and discovery responses; working and final drafts of legal instruments, official documents, investigative reports, legal memoranda, and other attorney work product documents prepared or collected for the client in the course of the representation; research materials; and bills previously submitted to the client. Although the lawyer may bill and seek to collect from the client the costs associated with making a copy of these materials, the lawyer may not use the client's refusal to pay for such materials as a basis to refuse the client's request. The lawyer, however, is not required under this Rule to provide the client copies of billing records and documents intended only for internal use, such as memoranda prepared by the lawyer discussing conflicts of interest, staffing considerations, or difficulties arising from the lawyer/client relationship. The lawyer has met his or her obligation under this paragraph by furnishing these items one time at client request upon termination; provision of multiple copies is not required. The lawyer has not met his or her obligation under this paragraph by the mere provision of copies of documents on an item-by-item basis during the course of the representation.

RULE 8.1 Bar Admission And Disciplinary Matters

An applicant for admission to the bar, or a lawyer already admitted to the bar, in connection with a bar admission application, any certification required to be filed as a condition of maintaining or renewing a license to practice law, or in connection with a disciplinary matter, shall not:

- (c) fail to respond to a lawful demand for information from an admissions or disciplinary authority, except that this Rule does not require disclosure of information otherwise protected by Rule 1.6[.]

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[.]

III. DISPOSITION

After hearing all the evidence, the Board recessed to deliberate. After due deliberation, the Board reconvened and announced its finding that the Virginia State Bar had proven, by clear and convincing evidence, that the Respondent had violated the provisions of the Virginia Rules of Professional Conduct recited above.

Thereafter, the Board received further evidence of aggravation and mitigation from the Bar, including respondent's prior disciplinary record. The Board recessed to deliberate what sanction to impose upon its findings of misconduct by respondent. After due deliberation the Board reconvened to announce the Panel's determination that the Respondent's license to practice law in the Commonwealth of Virginia be revoked immediately.

Accordingly, it is ORDERED that the license of the respondent, John Arthur Sutherland, Jr., to practice law in the Commonwealth of Virginia is **REVOKED** as of December 9, 2011.

It is further ORDERED that, as directed in the Board's December 9, 2011, Summary Order in this matter, Respondent must comply with the requirements of Part Six, § IV, ¶ 13-29 of the Rules of the Supreme Court of Virginia. The 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 his 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. Respondent shall give such notice within 14 days of the effective date of the revocation and make such arrangements as are required herein within 45 days of the effective date of the revocation. The Respondent shall also furnish proof to the Bar within 60 days of the

effective day of the revocation that such notices have been timely given and such arrangements made for the disposition of matters.

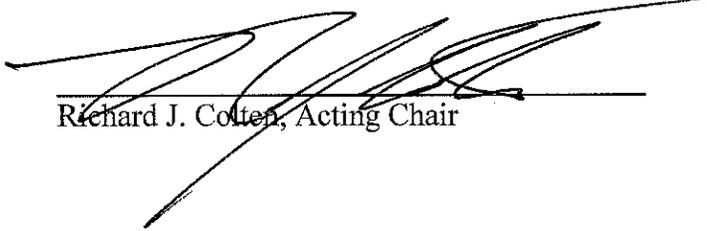
It is further ORDERED that if the Respondent is not handling any client matters on the effective date of the revocation, he shall submit an affidavit to that effect to the Clerk of the Disciplinary System at the Virginia State Bar. All issues concerning the adequacy of the notice and arrangements required by Paragraph 13-29 shall be determined by the Virginia State Bar Disciplinary Board, unless the Respondent makes a timely request for hearing before a three-judge court.

It is further ORDERED that pursuant to Part Six, § IV, ¶ 13-9 E. of the Rules of the Supreme Court of Virginia, the Clerk of the Disciplinary System shall assess all costs against the respondent.

It is further ORDERED that the Clerk of the Disciplinary System shall mail an attested copy of this order to respondent at his address of record with the Virginia State Bar, being Suite 250, 3930 Walnut Street, Fairfax, VA 22030, by certified mail and by regular mail to Seth M. Guggenheim, Senior Assistant Bar Counsel, Virginia State Bar, 707 East Main Street, Suite 1500, Richmond, Virginia 23219.

ENTERED this 15 day of ^{Feb 2012}~~December, 2011~~.

VIRGINIA STATE BAR DISCIPLINARY BOARD


Richard J. Colten, Acting Chair