

VIRGINIA:

BEFORE THE VIRGINIA STATE BAR DISCIPLINARY BOARD

IN THE MATTER OF:
LINDSEY OWEN SUTHERLAND, ESQUIRE

VS
VS B DOCKET NUMBERS: 07-051-1150
07-051-2846

ORDER OF SUSPENSION

These matters came to be heard before a panel of the Virginia State Bar Disciplinary Board on December 12, 2008. The Panel convened at the State Corporation Commission, Courtroom A, Tyler Building, 1300 East Main Street, Richmond Virginia 23219. The Panel was comprised of William E. Glover, Chair; Jody D. Katz, Lay Member; Russell W. Updike; Bruce T. Clark and Sandra L. Havrilak. After being duly sworn, Donna T. Chandler, a registered professional court reporter, from Chandler and Halasz, P.O. Box 9349, Richmond, Virginia 23227, (804) 730-1222, reported the hearing and transcribed the proceeding.

The Chair inquired of the respective panel members whether any member had any personal or financial interest or bias which would preclude any of them from fairly hearing the matters and serving on the panel, to which inquiry each member, including the Chair, answered in the negative; the matter proceeded. Kathleen M. Uston, appeared as counsel for the Virginia State Bar; Respondent Lindsey O. Sutherland appeared, *pro se*. Respondent and Bar Counsel acknowledged they were familiar with the hearing procedure; and, the Respondent waived a formal explanation of the hearing process.

This matter came before the Board pursuant to a District Committee Determination for Certification by the Subcommittee of the Fifth District of the Virginia State Bar and a hearing pursuant to Part Six, § IV, ¶ 13.I.1.a of the Rules of the Supreme Court of Virginia.

The Certification to the Board charged Respondent with violations of Rules 1.3, 1.4 and 1.16 of the Virginia Rules of Professional Conduct.

On April 22, 2008, the Subcommittee of the Fifth District, Section I, held a meeting and certified two (2) Charges of Misconduct against the Respondent to the Virginia State Bar Disciplinary Board.

The Bar's Exhibits 1-11 were offered and received into evidence without objection.

A joint Stipulation of Facts, including a Stipulation As To Facts In Mitigation and Stipulation Of Misconduct, was admitted as the Bar's Exhibit 12, without objection.

A Certification of the Respondent's Disciplinary Record was received as the Bar's Exhibit 13, without objection.

STIPULATED FINDINGS OF FACT

1. At all times relevant hereto, Respondent has been an attorney duly licensed to practice law in the Commonwealth of Virginia and his address of record with the Bar is: 4085 Chain Bridge Road, Suite 300, Fairfax, Virginia 22030-4106. The Respondent has been licensed to practice law since 1987.

A. VSB Docket No. 07-051-1150

2. In approximately 2001, the adult daughter of the Complainant, Paul M. Sullivan, hired the Respondent to represent her in a personal injury claim arising out of an automobile accident.

3. The Respondent filed a motion for judgment on Ms. Sullivan's behalf. However, because the defendant could not be located, the Respondent could not effect service upon the defendant and the suit was eventually dismissed. The Respondent informed Mr. Sullivan that, since the defendant could not be located, he would file against the general fund of Mr. Sullivan's

own automobile insurance carrier. Subsequent to his providing the Respondent with information regarding his insurance carrier, Mr. Sullivan tried unsuccessfully to communicate with the Respondent, both by telephone and in writing.

4. Mr. Sullivan filed his complaint with the Virginia State Bar on October 12, 2006. On November 13, 2006, the Respondent sent a letter to Mr. Sullivan, forwarding to Mr. Sullivan what was left of his file on the case, which included only the fee agreement and opening correspondence. In the letter, the Respondent admitted that he lost the rest of his file in the case and could not explain how or when he lost it. The Respondent also provided Mr. Sullivan with information concerning his legal malpractice carrier.

5. Mr. Sullivan filed a claim with the Respondent's malpractice carrier and the matter was settled in favor of his daughter. The Respondent cooperated fully in the resolution of this claim.

6. Mr. Sullivan was satisfied with the resolution of the case.

B. VS B Docket No.07-051-2846

7. In April of 2006, the Complainant, David R. Dagenhart, Sr., owner of Dagenhart Sprinkler Company of Richmond, Inc. (hereinafter "Dagenhart Sprinkler"), retained the Respondent to assist his company in collecting a debt owed to the company by Blue Ridge Bible Church (hereinafter "the church").

8. The Respondent filed suit against the church in the Circuit Court of Loudoun County on behalf of Dagenhart Sprinkler, seeking \$26,000.00 in damages. The church filed a counterclaim alleging breach of contract, but the Respondent failed to file an answer. The church then moved for default judgment against Dagenhart Sprinkler as a result, noticing the matter for hearing on January 5, 2007.

9. The Respondent failed to appear at the January hearing and otherwise failed to defend against entry of default judgment against his client. Due to these failures on the part of the Respondent, the Court entered an Order awarding the church default judgment against Dagenhart Sprinkler in the amount of \$76,000.00. The Court also dismissed with prejudice Dagenhart Sprinkler's claim against the church.

10. In February of 2007, Mr. Dagenhart received a letter from the church's attorney informing him that the church had been awarded a judgment of \$76,000.00 against Dagenhart Sprinkler for breach of contract. The attorney explained that he was contacting Mr. Dagenhart directly due to the Respondent's failure to respond to his inquiries.

11. The Respondent did not inform Mr. Dagenhart of either the Counterclaim filed against Dagenhart Sprinkler or his failure to respond to same. The Respondent also failed to inform his client of the default judgment entered against his company and of the church's efforts to collect upon same.

12. Mr. Dagenhart hired new counsel to assist him in having the judgment set aside but these efforts were unsuccessful. Ultimately, Mr. Dagenhart satisfied the judgment entered against his company which totaled approximately \$112,000.00 in principal, interest, and costs. Mr. Dagenhart later filed suit against the Respondent in Henrico County Circuit Court and obtained a default judgment of \$130,000.00. The Respondent has not satisfied this judgment and the amount he owes his former client remains unpaid.

13. Throughout the course of his representation of Mr. Dagenhart, the Respondent failed to respond to his client's request for information about the case despite Mr. Dagenhart's numerous attempts to reach him.

STIPULATION OF MISCONDUCT

Such conduct by the Respondent constitutes misconduct in violation of the following provisions of the 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 1.3 Diligence

- (a) A lawyer shall act with reasonable diligence and promptness in representing a client.

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.
- (b) A lawyer shall explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation.
- (c) A lawyer shall inform the client of facts pertinent to the matter and of communications from another party that may significantly affect settlement or resolution of the matter.

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).

STIPULATION AS TO FACTS IN MITIGATION

- 14. At or around the time that the above described misconduct occurred, the

Respondent was experiencing personal difficulties due to the near simultaneous deaths of three (3) close family members. During the Spring of 2007, the Respondent also suffered a severe break of his leg requiring surgeries and resulting in a great deal of time away from his office.

15. The Respondent has been working with his malpractice insurance carrier to have the Dagenhart's claim re-examined following initial denial of coverage by the carrier due to Respondent's inadvertent failure to disclose the matter on his renewal application.

16. The Respondent has the full support of his partner, who is aware of the facts and circumstances giving rise to these cases and is available to assist the Respondent with his caseload as necessary to avoid a reoccurrence of the events described herein.

17. The Respondent also has the support of two (2) family members who work in his firm as administrative assistants, and who are also aware of the facts and circumstances at issue herein. They have agreed to make themselves available to him to assist with management of his calendar, correspondence, and client communication to help avoid a reoccurrence of the events described herein.

In addition to the foregoing Stipulation, the panel was presented with the testimony of Respondent and his witnesses, David Reid, Esquire, a close friend and business colleague; and, his law partner, Robert Perry, Esquire. The testimony confirmed the facts submitted in the Stipulation as contained in Exhibit 13.

DISPOSITION

After considering the exhibits admitted into evidence on behalf of the Bar and the Respondent; and, upon evidence presented by Respondent in the form of his own testimony, and the argument of counsel, the Board recessed to deliberate. After due deliberation the Board reconvened and stated its findings as follows:

In VSB Docket No. 07-051-1150, the Bar proved, by clear and convincing evidence, the violations as set forth in the Stipulation of Misconduct.

In VSB Docket No.07-051-2846, the Bar proved by clear and convincing evidence the violations of misconduct as set for the Stipulation of Misconduct.

The Board received evidence of mitigation from the Bar and Respondent, including the Respondent's prior disciplinary record. The Board recessed to deliberate what sanction to impose upon its findings of misconduct. After due deliberation, the Board reconvened and the Chair announced the sanction to be imposed as suspension of the Respondent's license to practice law in the Commonwealth of Virginia for a period of thirty (30) days effective December 12, 2008. The panel was concerned that Respondent had a prior disciplinary record that consisted of Private Reprimand with Terms in May 2006, which terms required Respondent to develop and implement a written office policy relating to regular and informative client communication. The Respondent was also ordered to develop and implement a written docket contact system to ensure that he reviewed the status of all pending matters periodically and to serve as a malpractice tickle system. Both policies were to be implemented immediately. Due to the fact that the private reprimand occurred after the current charges the Panel hopes based on the Respondent's testimony that he will follow through with the terms set forth in the private reprimand., particularly since the Respondent testified that he did, in fact, implement these policies. Additionally, the panel hopes the Respondent will follow through with his testimony to receive the mental health treatment needed.

It is therefore ORDERED that the license of the Respondent, Lindsey Owen Sutherland, to practice law in the Commonwealth of Virginia be and the same hereby is suspended for a period of thirty (30) days, effective December 12, 2008.

It is further ORDERED that, as directed in the Board's December 12, 2008 Summary Order in this matter, Respondent must comply with the requirements of Part 6, § IV, ¶ 13 M. of the Rules of the Supreme Court of Virginia. 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 client. Respondent shall give such notice within fourteen (14) days of the effective date of the suspension, and make such arrangements as are required herein within forty-five (45) days of the effective date of the suspension. The Respondent shall also furnish proof to the Bar within sixty (60) days of the effective day of the suspension that such notices have been timely given and such arrangements made for the disposition of matters.

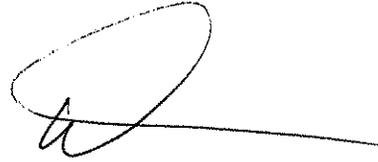
It is further ORDERED that if the Respondent is not handling any client matters on the effective date of the suspension, he shall submit an affidavit to that effect to the Clerk of the Disciplinary System at the Virginia State Bar. All issues concerning the adequacy of the notice and arrangements required by Paragraph 13 M. 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 6, § IV, ¶ 13.B.8.c. 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

Lindsey Owen Sutherland, 4085 Chain Bridge Road, Suite 30, Fairfax, Virginia 22030-4106 by certified mail, return receipt requested, and to Kathleen M. Uston, Assistant Bar Counsel, Virginia State Bar, 100 North Pitt Street, Suite 310, Alexandria, Virginia 22314.

ENTERED this 14th day of January, 2009.

A handwritten signature in black ink, appearing to read 'W. Glover', with a long horizontal flourish extending to the right.

WILLIAM E. GLOVER, Chair