

VIRGINIA :

BEFORE THE VIRGINIA STATE BAR DISCIPLINARY BOARD

IN THE MATTER OF:  
LINDSEY OWEN SUTHERLAND

VS B Docket No. 09-051-078380

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**ORDER OF REVOCATION**

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THIS MATTER came to be heard on October 28, 2011, before a duly convened panel of the Disciplinary Board consisting of Martha JP McQuade, First Vice Chair, presiding, Timothy A. Coyle, Samuel R. Walker, Richard J. Colten, and Lay Member Stephen A. Wannall. The Virginia State Bar (the "Bar") was represented by Assistant Bar Counsel Kathleen M. Uston. Respondent Lindsey Owen Sutherland, failed to appear in person and was not represented by Counsel. Prior to beginning 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 Lily Norman. The proceedings were recorded and transcribed by Tracy J. Stroh, a court reporter employed by Chandler & Halasz, Inc., Post Office Box 9349, Richmond, Virginia 23227, phone number (804) 730-1222.

The Chair opened the hearing by polling the members of the Board Panel as to whether any member had a personal or financial interest or bias which would, or could reasonably be perceived to, preclude them from fairly hearing this matter, to which inquiry each Member, including the Chair, responded in the negative.

In accordance with Pre-Hearing Conference ruling, and without objection by the Respondent, the Bar's Exhibit A, tabs 1 through 7, were admitted into evidence. The Bar then presented the following witnesses: the Complainant, Angela R. Queen, and the Bar's

Investigator, William H. Sterling, III. Both presented testimony in support of the Fifth District Section I Subcommittee Determination (Certification) upon which the matter had come before the Board and which contained the following:

### **FINDINGS OF FACT**

1. At all times relevant hereto, Lindsey Owen Sutherland (hereinafter the "Respondent") was an attorney licensed to practice law in the Commonwealth of Virginia.

2. In or around September, 2007, Complainant, Angela R. Queen, retained Respondent to assist her with a collection matter. On September 28, 2007, Complainant's father paid Respondent \$2,000.00 as an advance against fees. On October 8, 2007, Complainant delivered all necessary paperwork to Respondent that was required by him in order to file suit, including current contact information for the defendant.

3. After October 8, 2007, Complainant attempted to reach Respondent by telephone to inquire as to the status of her case without success or any response from Respondent. Complainant's father, John A. Reed, therefore wrote to Respondent on December 18, 2007, and asked that he contact them to advise as to the status of the case. Respondent contacted Complainant in January, 2008, and represented to her that he had filed suit on her behalf and that a court date was scheduled in the case for April 2, 2008. Respondent advised Complainant that she did not need to attend this hearing, and she therefore did not do so.

4. After April 2, 2008, Complainant began telephoning Respondent again to inquire as to the outcome of the hearing. In mid-April, Respondent finally returned Complainant's telephone calls and advised her that, while the defendant did not show up at the hearing on April 2, 2008, evidence of service upon him had been "lost" due to renovations at the courthouse. As a result, Respondent advised that the case had been continued until May, 2008.

5. Respondent contacted Complainant after May, 2008, and advised that the hearing had gone forward, the defendant had not appeared, and that he had obtained a judgment against him on Complainant's behalf. Respondent advised Complainant further that he needed to wait for the appeal period to expire before commencing collection efforts.

6. On May 30, 2008, Respondent telephoned Complainant and advised that he had filed a garnishment action against the defendant and the amount that Complainant had been awarded would be debited from his paychecks beginning immediately and would continue for six (6) months. Respondent further advised that a hearing was scheduled for August 18, 2008,

to examine the defendant's assets for collection purposes. Again Respondent advised Complainant that she did not need to attend this hearing, and as a result she did not do so.

7. Thereafter, Complainant followed up with Respondent by telephone to inquire as to the status of the case, and regarding whether any funds had been received from the defendant. Respondent failed to return her telephone calls. This prompted Complainant to contact the attorney who had originally referred her to Respondent who checked the court records and learned that the Clerk's Office had no record of any case ever having been filed on Complainant's behalf.

8. On October 9, 2008, Complainant wrote again to Respondent to demand that he advise her of the status of her case and provide her with documentation of the judgment obtained on her behalf. Respondent finally responded to Complainant by telephone in December, 2008, at which time he advised her that her case had been "vacated" and he offered to pay her \$5,000.00 to find another attorney. This is the last time Complainant had any contact with Respondent.

9. In January, 2009, Complainant had an attorney contact Respondent on her behalf. Respondent represented to this attorney that he had prepared the suit on Complainant's behalf but had been unable to obtain a service address for the defendant. As noted above, at all relevant times, Respondent had current contact information for the defendant.

10. On February 4, 2009, Complainant filed her complaint with the Virginia State Bar and on February 17, 2009, a copy of this complaint was sent to Respondent under cover of a letter from Assistant Bar Counsel Kathleen M. Uston which demanded his written response thereto within twenty-one (21) days pursuant to his obligations under Rule of Professional Conduct 8.1(c) to do so. Respondent failed to respond to the complaint despite his obligation to do so.

11. Accordingly, on March 26, 2009, this matter was referred for a more detailed investigation and Respondent was so advised by letter of that date. On July 13, 2009, a subpoena *duces tecum* was served upon Respondent demanding a copy of his file on Complainant's case, including all attorney trust account records. Respondent failed to respond to this duly issued subpoena *duces tecum* despite his obligation to do so. Accordingly, a Notice of Non-Compliance was issued on August 26, 2009, and Respondent was notified of same by letter on that date. Again, Respondent failed to respond, or request a hearing on the matter, and an Interim Suspension was therefore imposed upon him due to his non-compliance on September 10, 2009, which suspension has been in place continuously since that date. All required notices were sent to Respondent as required under applicable rules.

12. Also in furtherance of the investigation of this matter, Virginia State Bar Investigator William H. Sterling, III, attempted to contact the Respondent to obtain his response to the allegations made in this case. After several unsuccessful attempts to reach him, Investigator Sterling was able to schedule an interview with the Respondent, which Respondent canceled at the last minute. Following this cancellation, Investigator Sterling attempted unsuccessfully to reschedule an interview with Respondent. Respondent has failed to meet or speak with Investigator Sterling despite his obligation to do so under applicable rules.

13. Investigator Sterling also contacted the Clerks of both the General District and Circuit Courts for Fairfax County. Neither court has any record of any suit having been filed on Complainant's behalf by Respondent.

After hearing all 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 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 1.3 Diligence**

- (a) A lawyer shall act with reasonable diligence and promptness in representing a client.
- (b) 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.
  - (b) A lawyer shall explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation.
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#### **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:

- (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 Board then received evidence of the Respondent's disciplinary record and heard argument as to the sanction sought by the Bar as well as aggravating and/or mitigating factors. After again recessing to deliberate, the Board reconvened and the Chair announced the Panel's unanimous determination that the Respondent's license to practice law in the Commonwealth of Virginia be revoked immediately.

Accordingly, and in conformance with the Board's Summary Order previously entered, it is ORDERED that the license of the Respondent, Lindsey Owen Sutherland, to practice law in the Commonwealth of Virginia is **REVOKED** as of October 28, 2011.

It is FURTHER ORDERED that the Respondent must comply with the requirements of Part Six, Section IV, Paragraphs 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 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 each client. Respondent shall give such notice within fourteen (14) days of the effective date of the revocation, and make such arrangements as are required herein within forty-five (45) days of the revocation. The Respondent shall furnish proof to the Virginia State Bar within sixty (60) days of the revocation that such notices have been timely given and such arrangements made for the disposition of matters. The Board shall decide all issues concerning the adequacy of the notice and arrangements required herein and may impose additional sanctions for failure to comply.

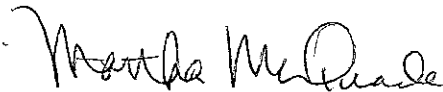
It is FURTHER ORDERED that, if the Respondent is not handling any client matters on the effective date of the revocation, he shall submit an Affidavit to that effect to the Clerk of the Disciplinary System at the Virginia State Bar.

It is FURTHER ORDERED that pursuant to Part Six, Section IV, Paragraph 13-9 E of the Rules of the Supreme Court of Virginia, the Clerk of the Disciplinary System shall assess all costs in this matter against the Respondent.

It is FURTHER ORDERED that the Clerk of the Disciplinary System shall send an attested copy of this Order by certified mail to the Respondent, Lindsey Owen Sutherland, at his address of record with the Virginia State Bar, that being 4085 Chain Bridge Road, Suite 300, Fairfax, Virginia 22030, and by regular mail to Kathleen M. Uston, Assistant Bar Counsel, Virginia State Bar, 707 East Main Street, Suite 1500, Richmond, Virginia 23219.

ENTERED November 15, 2011.

VIRGINIA STATE BAR DISCIPLINARY BOARD



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Martha JP McQuade, First Vice Chair