



## The Case of the Disappearing Lawyer

By Gordon Hickey

In December of 2008, a young man we'll call Chris won a personal injury case in Alexandria General District Court and was awarded \$11,053. The opposing attorney in the case promptly sent a check for the full amount from the insurance company to Chris's attorney, John Arthur Sutherland Jr. The check, dated Christmas Eve 2008, was made payable to Chris and Sutherland.

Though the case had ended in December 2008, Sutherland told Chris that he'd have to wait until the appeal period ran out before he could receive his money. Chris didn't know how long that would be, so he waited. That was the last time he ever heard from Sutherland.

Years went by with no communication.

Chris was in college, so his mother and grandmother took up the quest to get in touch with Sutherland. Despite repeated attempts, they couldn't reach him. It wasn't until years later that they found out why.

In January 2016, Chris got a job in the Fairfax County Clerk's office where he processes files. Later that year, Chris went back on the hunt for Sutherland. He contacted the Virginia State Bar to get Sutherland's phone number, which he called. He reached a different lawyer at that location who followed up on the \$11,053 check and who learned that it had been cashed.

Chris, whose name was on the check, had never signed it.

The second lawyer took up Chris's cause and on October 18, 2016, helped Chris file a petition with the VSB Clients' Protection Fund (CPF).

In the meantime, Sutherland had also gone missing from a different case. In that one, Sutherland represented a woman in a personal injury case where the insurance carrier had agreed to pay \$25,000 in 2007 to settle the claim. Unfortunately, Sutherland took no further action on the case, and the client was unable to find him, despite calls, certified letters, and visits to his office.

The statute of limitations eventually expired and the client was unable to collect the \$25,000. She then filed a bar complaint against Sutherland and in July 2009 – a year after Chris won his personal injury case – Sutherland's license was suspended. On December 9, 2011, after a VSB investigator also tried and failed to find Sutherland, his license was revoked.

In September 2017, the Clients' Protection Fund Board awarded Chris \$7,333.33, two-thirds of the \$11,053 check that he had won in his personal injury case, which is approximately what he would have received once he paid a lawyer.

Clients' Protection Fund member Mary Grace O'Malley served as the investigator on Chris's petition for reimbursement. "What I learned from this is that in a self-regulated profession, we take our jobs very seriously," she said.

She pointed out that a lawyer who shared office space with Sutherland helped Chris file his petition to the CPF board, while the lawyer who opposed Sutherland in Chris's personal injury case did the research that revealed Sutherland had cashed the check intended for Chris. "The fact that Sutherland put a fraudulent check through really drove (the opposing) lawyer crazy," O'Malley said.

It is the lawyers' desire to make things right and their willingness to aid in the investigation that most impresses O'Malley. "That's what I got out of the Sutherland case, and I got that out of several other cases as well."

Chris's award was one of 13 made by the board at its September 15, 2017, meeting. The total compensation awarded came to \$38,168.33 and involved nine lawyers, two of whom had died and seven whose licenses were suspended or revoked by the VSB Disciplinary Board.

Without the CPF, Chris and the other 12 victims would have simply lost their money. And the entire Bar would have been that much poorer for their loss.

The CPF remains a last resort for clients like Chris who have suffered financial losses because of the actions of lawyers who have been disbarred, or in some cases have died. By preventing offending lawyers like Sutherland from doing any further harm, the disbarment or suspension often takes care of the Bar's obligation as a self-regulating agency, but the CPF is what completes Virginia lawyers' efforts to help people harmed by lawyer misconduct.

The money in the CPF comes from an annual assessment that for 10 years has been \$25 but will be reduced to \$10 next year. This past fiscal year, the Bar paid out approximately \$343,000 in claims. Payments average about \$300,000 a year.

Virginia lawyers have much to be proud of, and one of the most worthy things they have done has been providing the money for the Clients' Protection Fund. By rectifying the dishonest actions of a few bad lawyers, the CPF elevates the reputation of the Virginia legal community and speaks to the ongoing efforts of Virginia lawyers to remain at the forefront of ethical practice.

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