

# Supreme Court of Kentucky

2018-SC-000607-KB

KENTUCKY BAR ASSOCIATION

MOVANT

V.

IN SUPREME COURT

CHRISTY HANLEY SHIRCLIFF

RESPONDENT

## **OPINION AND ORDER**

Respondent, Christy Shircliff, Kentucky Bar Association (“KBA”) Member No. 91769, was charged in KBA File 18-DIS-0059 for her mishandling of a child-custody case and her failure to respond to a corresponding Bar Complaint. In an Opinion and Order dated February 14, 2019, we granted the KBA’s motion for indefinite suspension under SCR<sup>1</sup> 3.380(2) for Shircliff’s failure to respond to the disciplinary charge. We also ordered Shircliff to cancel any pending advertisements, notify all courts in which she has matters pending and all clients of the suspension and provide a copy of such notification to the Office of Bar Counsel, not accept any new clients or collect unearned fees, and take reasonable steps to protect the interests of her clients.

In addition to imposing an indefinite suspension, we erroneously found Shircliff guilty of all rule violations alleged in the disciplinary charge and

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<sup>1</sup> Supreme Court Rule.

required her to provide her former client an accounting, repay any unearned portion of his fee, return his file, and pay all costs associated with the disciplinary proceedings. Since the order of February 14, 2018, both the KBA and Shircliff have filed new motions with this Court. A brief recitation of the facts and history of this case is necessary.

The Office of Bar Counsel initially served Shircliff with the Bar Complaint on April 25, 2018, at her bar roster address. Along with the Bar Complaint, Shircliff received a letter advising her she was required to respond within 20 days of receipt of the complaint.<sup>2</sup> On May 22, 2018, the Office of Bar Counsel sent Shircliff a letter again requesting her response.

After Shircliff failed to respond within the required 20-day period, the Inquiry Commission filed a four-count Charge against her. The KBA contends that the Jefferson County Sheriff's office served Shircliff with the Charge at her bar roster address on October 5, 2018. But Shircliff contends that the sheriff instead left the Charge with her assistant.<sup>3</sup> After Shircliff failed to respond to the Charge within the required 20-day period,<sup>4</sup> the KBA filed with this Court on November 7, 2018, a Motion for Suspension Pursuant to SCR 3.380(2) for Failure to File Answer to Charge. Shircliff never responded to that motion, and we issued an order granting the KBA's motion and imposing indefinite suspension on February 14, 2019.

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<sup>2</sup> See SCR 3.160(1) (stating that an attorney has "20 days to respond to the complaint" after being notified by the Office of Bar Counsel).

<sup>3</sup> Shircliff has provided this Court with an affidavit in which her assistant, Morganne Parker, states that she received the sealed envelope containing the Charge from the sheriff on October 5, 2018 and signed for it with her own name.

<sup>4</sup> See SCR 3.200 (stating that an attorney has 20 days after receipt of notice to file an answer to a charge).

While the KBA's Motion for Suspension was pending before us, the underlying disciplinary proceeding progressed at the KBA. The case was scheduled to be presented to the KBA's Board of Governors ("Board") as a default case on January 18, 2019. Shortly before the Board was scheduled to review the case, Shircliff emailed an unsigned Motion for Extension of Time to File Response to the KBA's Director of Administration. Along with that motion, Shircliff tendered an unsigned Response to Complaint. Over the Office of Bar Counsel's objection, the KBA issued an order on January 22, 2019, granting Shircliff's Motion for Extension of Time to File Response and permitting her Response to Complaint to be filed and "deemed to be Respondent's Answer to Charge."

Now, both Shircliff and the KBA have filed motions with this Court. First, the KBA filed a Motion to Amend Order Entered February 14, 2019, requesting that we set aside the findings of guilt on the underlying disciplinary charges and rescind the requirement to provide an accounting, refund the unearned portion of the prepaid fee, return the client file, and pay all costs associated with the disciplinary proceedings. Shircliff filed a Response to the KBA's Motion in which she did not contest the KBA's request. Because we improperly found Shircliff guilty of the underlying charge, we grant the KBA's Motion to Amend our February 14, 2019 Order.

Second, Shircliff has filed a Motion to Alter, Amend, or Vacate Order of February 14, 2018, in which she asks us to vacate her indefinite suspension. She argues that we should vacate her indefinite suspension because she has now filed an Answer to the Charge and is no longer in default in the underlying disciplinary proceeding. She also appears to argue that she was not properly

served with the Charge because the sheriff left the document with her assistant instead of her.

We first note that the fact that Shircliff's assistant, rather than Shircliff herself, was served with the Charge at Shircliff's bar address does not make the service improper. Per SCR 3.200, the KBA was only required to send "by certified mail return receipt requested" to Shircliff's bar address a copy of the Charge for Shircliff to have notice of the Charge and for the 20-day period to begin to run. The record reflects that the KBA provided the Jefferson County Sheriff with a copy of the Charge in a sealed envelope, and the sheriff delivered it to Shircliff's bar roster address, where her assistant signed for it. And nothing more was needed for the KBA to comply with the notice requirement. We find that Shircliff received notice of the Charge on October 5, 2018, and she was required to respond within 20 days.

In addition, the fact that Shircliff was no longer in default in the underlying disciplinary proceeding before the Board did not relieve her of the initial duty to respond to the KBA's Motion for Suspension before this Court. The KBA filed its Motion for Suspension on November 7, 2018, at which point Shircliff was clearly in default for failing to respond to the Charge within 20 days after she received the October 5 notice. Shircliff failed to file a response to that motion, which was due in this Court on November 27, 2018. The fact that she was later deemed by the Board to have answered the Charge and was no longer in default on January 22, 2018, did not make the KBA's November 27, 2018 Motion for Suspension disappear. And even though the KBA did not attempt to apprise this Court of Shircliff's January 18, 2019 Answer while the Motion for Suspension was still pending before us, neither did Shircliff.

SCR 3.380(2) allows this Court to suspend indefinitely an attorney who fails to answer a charge until the attorney, by motion, accounts for her failure to respond. Shircliff was properly suspended under that rule by our February 14, 2019 Order. Shircliff has provided us a brief explanation for why she failed to respond to the April 25, 2018 Bar Complaint and has advised that she returned the client file and refunded the retainer plus interest. But Shircliff has still not accounted for her failure to respond to the Charge within the required 20-day period as required by our February 14, 2019 Order. Accordingly, we deny Shircliff's Motion to Alter, Amend, or Vacate Order of February 14, 2019.

Finally, the KBA has moved this Court to issue an order requiring Shircliff to show cause as to why she should not be held in contempt of this Court for violating the order of indefinite suspension we issued on February 14, 2019. The KBA notes that, on March 5, 2019, Jefferson Family Court Judge Dewese reported that Shircliff was continuing to practice law and represent a client in Jefferson Family Court. Specifically, the KBA alleges that Shircliff violated the Order by continuing to practice law in the following ways: (1) On February 26, 2019, Shircliff sent, through her legal assistant, an email to opposing counsel attaching documents relevant to her representation of a client; (2) on March 4, 2019, Shircliff sent an email to opposing counsel establishing her client's position, attempting to negotiate on behalf of her client, and requesting opposing counsel let her know whether opposing counsel would be willing to mediate the case; (3) on March 4, 2019, Shircliff gave documents relating to this representation to opposing counsel and included a note requesting opposing counsel to contact Shircliff's assistant about mediation; and (4) on March 5, 2019, by having her assistant leave a phone

message with opposing counsel requesting a call back to discuss “mediation that will be occurring next week for this case.” Further, the KBA alleges that Shircliff violated the Order by failing to notify Judge Deweese of the suspension when Shircliff had matters pending before the judge and by failing to provide copies of any such notice to the Office of Bar Counsel.

Shircliff filed a Response to the KBA’s show-cause motion in which she denied engaging in the practice of law after the suspension and argues that she was merely taking steps to protect her client’s interests by attempting to schedule a mediation. Shircliff does not contest that she failed to notify Judge Deweese and send copies of such notification to the Office of Bar Counsel. Instead, she argues that she was not yet required to do so because “the Court’s February 14, 2019, order is not final and the time for taking such steps has not yet even begun to run.”<sup>5</sup>

First, we note that the February 14, 2019 Order was effective upon entry and Shircliff was suspended at the time the alleged conduct occurred on February 26, 2019, March 4, 2019, and March 5, 2019. Further, the Order specifically required Shircliff to “*within 10 days after issuance of this order of suspension from the practice of law . . . notify, by letter duly placed with the United States Postal Service, all courts or tribunals in which she has matters pending, and all clients of her inability to represent them and of the necessity and urgency to promptly obtain new counsel.*” Because the Order was issued

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<sup>5</sup> Shircliff does not explain why she believes the Order is not final, but we suspect it is because both she and the KBA filed motions to amend the Order in some way shortly after it was issued on February 14, 2019. The fact that those motions were pending did not affect that finality of the original Order.

on February 14, 2019, Shircliff was required to provide such a notice to Judge Deweese within 10 days of that date.

We find Shircliff's alleged conduct on February 26, 2019, March 4, 2019, and March 5, 2019, constituted the practice of law and therefore violated the February 14, 2019 Order. Further, we find Shircliff also violated the February 14, 2019 Order by failing to provide to Judge Deweese a notification of her suspension within 10 days of that date and by failing to provide the Office of Bar Counsel with copies of any such notice. Accordingly, we grant the KBA's Motion to Show Cause and order Shircliff to provide to this Court within 20 days of the issuance of this Order any legally satisfactory reason she has to explain why her conduct did not violate the February 14, 2019 Order and why she should not be held in contempt of this Court.


The Court hereby ORDERS that:

1. KBA's Motion for Leave to File Motion to Amend Order Entered February 14, 2019, is GRANTED and FILED OF RECORD.
2. KBA's Motion to Amend Order Entered February 14, 2019, is GRANTED, and we VACATE:
  - (a) the findings of guilt contained in Paragraph 1;
  - (b) the requirement to provide an accounting, refund the unearned portion of the prepaid fee, and return the client file contained in Paragraph 3; and
  - (c) the requirement to pay all costs associated with these disciplinary proceedings contained in Paragraph 6.

3. KBA's Motion for Leave to File Tendered Reply to Respondent's Verified Response to KBA's Tendered Motion to Alter, Amend or Vacate Order of February 14, 2019, is GRANTED.
4. Respondent's Verified Motion to Alter, Amend or Vacate Order of February 14, 2019 is DENIED.
5. KBA's Motion to Show Cause is GRANTED. Within 20 days of the date of the entry of this Order, Shircliff must show this Court all legally satisfactory reasons she has why she should not be held in contempt of this Court for her failure to comply with the suspension order entered February 14, 2019.

Minton, C.J., Hughes, Keller, Lambert, VanMeter and Wright, JJ., sitting.  
All concur. Buckingham, J., not sitting.

ENTERED: April 18, 2019.

  
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CHIEF JUSTICE