

Supreme Court of Kentucky

2020-SC-0123-KB



CHRISTY HANLEY SHIRCLIFF

V. IN SUPREME COURT

KENTUCKY BAR ASSOCIATION

RESPONDENT

OPINION AND ORDER

Movant, Christy Hanley Shircliff,¹ moves this Court to enter a negotiated sanction pursuant to SCR² 3.480(2) in resolution of the pending disciplinary proceedings against her in three separate files (KBA³ File Nos. 18-DIS-0059, 19- DIS-0059, and 19-DIS-0113). The negotiated sanction (to which the KBA has no objection) would impose a one-year suspension, effective as of the date of this Opinion and Order. Finding this sanction addresses all of the issues presented, we grant Shircliff's motion and issue the following Opinion and Order.

¹ Shircliff was admitted to the practice of law in the Commonwealth of Kentucky on May 1, 2007. Her Kentucky Bar Association (KBA) number is 91769 and her current bar roster address is 436 South 7th Street, Suite 200, Louisville, Kentucky 40203-1966.

² Kentucky Rules of the Supreme Court.

³ Kentucky Bar Association.

I. FACTUAL AND PROCEDURAL BACKGROUND.

A. *KBA File 18-DIS-0059 (Rowe)*.⁴

Cameron Rowe hired Shircliff to represent him in a child custody case on December 19, 2017. Rowe paid Shircliff a \$1,800 retainer fee for work on his case, which included Shircliff filing a petition to register a foreign judgment. On January 29, 2018, Rowe asked Shircliff if she had filed the petition to register a foreign judgment and she had not. She told Rowe she needed his ex-wife's address to serve her with the petition. Two days later, Rowe sent Shircliff an email terminating her representation. Shircliff did not reply. On both February 5 and February 9, 2018, Rowe unsuccessfully attempted to reach Shircliff by telephone. She did not return his calls. Rowe sent letters to Shircliff on both February 20 and March 20, 2018, asking for an accounting, a refund of his \$1,800 retainer fee, and any documents in his client file. Shircliff never responded.

On April 25, 2018, Shircliff was personally served with a bar complaint related to her representation of Rowe. Accompanying the bar complaint was a letter informing her that the Inquiry Commission required additional information regarding the bar complaint and advising her that her failure to respond to the complaint could result in an additional charge of misconduct pursuant to SCR 3.130 (8.1). Shircliff did not respond to the bar complaint.

⁴ This bar complaint was the subject of our previous opinions with respect to Shircliff. *Ky. Bar Ass'n v. Shircliff*, 600 S.W.3d 257 (Ky. 2019); *Ky. Bar Ass'n v. Shircliff*, 600 S.W.3d 252 (Ky. 2019); *Ky. Bar Ass'n v. Shircliff*, 579 S.W.3d 194 (Ky. 2019).

Shircliff did not respond to either phone calls or letters from Bar Counsel in the ensuing months. On July 16, 2018, the Inquiry Commission issued a charge against Shircliff. She was personally served with the charge on October 5, 2018 but failed to file an answer to the charge.

On November 5, 2018, the Inquiry Commission submitted the case to the Board of Governors as a default case pursuant to SCR 3.210(1). Two days later, the KBA filed a motion for indefinite suspension pursuant to 3.380(2).⁵ On the same day her case was scheduled to be reviewed by the Board of Governors as a default matter, January 18, 2019, Shircliff filed a motion requesting an extension of time to file her response. She also tendered a response to the charge. The KBA objected to the late filing of Shircliff's response, but the Board allowed the entry of Shircliff's answer to the charge. On February 18, 2019, the Board entered an order remanding the case to the Inquiry Commission for further proceedings.

In the meantime, Shircliff had never filed a response to the KBA's motion to this Court for suspension pursuant to SCR 3.380(2) and that motion proceeded in this Court. This Court granted the KBA's motion and entered an order, on February 14, 2019, indefinitely suspending Shircliff. 600 S.W.3d at 254.

On March 7, 2019, the KBA filed a motion for Shircliff to show cause, alleging she had failed to comply with this Court's February 14, 2019 order

⁵ In pertinent part, SCR 3.380(2) provides: "In cases in which the Respondent has failed to answer a charge filed pursuant to Rule 3.200, or having answered, has thereafter declined to participate in the disciplinary process the Court may in its discretion, sua sponte or on motion by the Office of Bar Counsel, suspend the Respondent from the practice of law for an indefinite period of time."

indefinitely suspending her from the practice of law. It also alleged Shircliff had failed to comply with the portion of the order requiring her to notify courts in which she had pending matters and all clients of her inability to represent them within 10 days of the order and to provide a copy of the letters to the Office of Bar Counsel. The KBA also alleged Shircliff had not stopped her advertisements to the extent possible for the duration of her suspension or promptly taken all reasonable steps to protect her clients' interests, including not accepting new clients or collecting unearned fees. Shircliff filed a response to the motion to show cause on March 21, 2019, and a motion asking this Court to alter, amend, or vacate our February Opinion and Order indefinitely suspending her from the practice of law.

This Court then entered an Opinion and Order on April 18, 2019, a) amending and vacating our February Opinion and Order in part,⁶ b) denying Shircliff's motion to alter, amend or vacate, and c) granting the KBA's motion to show cause. 600 S.W.3d 257. We ordered Shircliff to "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." *Id.* at 262. On May 3, 2019, Shircliff filed a response to the show cause order.

A week after filing her response to this Court's show cause order, Shircliff filed a motion asking us to terminate her indefinite suspension. We denied her motion to terminate the suspension and stated: "[a]lthough Shircliff has offered an account for her failure to respond to the original disciplinary charge, her

⁶ The vacated portions of our prior order do not impact the current matter.

motion to terminate indefinite suspension before this Court is premature because the underlying disciplinary proceeding and an additional bar complaint are pending at the Kentucky Bar Association.” 579 S.W.3d at 194. The KBA continued its procedures related to the current charge and continued investigating the matter, adding the two additional KBA files, 19- DIS-0059, and 19-DIS-0113, pursuant to its investigation.

Related to her charged misconduct, for purposes of this negotiated sanction, Shircliff admits she violated the four Rules of Professional Conduct contained in the Inquiry Commission’s charge. First, Shircliff admits she violated SCR 3.130 (8. 1(b)), which provides, a lawyer shall not “knowingly fail to respond to a lawful demand for information from an admissions or disciplinary authority,” when she failed to respond to the bar complaint issued against her. Shircliff also admits that she violated SCR 3.130 (1.3), which states, “[a] lawyer shall act with reasonable diligence and promptness in representing a client,” when she failed to file the petition to register a foreign judgment in Rowe’s case. Furthermore, Shircliff admits she violated SCR 3.130 (1.4(a)(4)), which reads, “[a] lawyer shall . . . promptly comply with reasonable requests for information,” when she failed to respond to Rowe’s phone calls, and letters. Finally, Shircliff admits she violated SCR 3.130 (1.16(d)), which reads,

[u]pon termination of representation, a lawyer shall take steps to the extent reasonably practicable to protect a client’s interests, such as . . . surrendering papers and property to which the client is entitled and refunding any advance payment of fee or expense that has not been earned or incurred,

when she failed to return Rowe’s file and refund the \$1,800 unearned retainer he had paid.

B. KBA File 19-DIS-0059 (Violation of Order of Suspension).

Although this Court suspended Shircliff indefinitely on February 14, 2019, she continued to practice law and represent a client in a case scheduled for a jury trial on March 19, 2019, before Jefferson Family Court Judge Deborah Deweese. On February 26, 2019, Shircliff's legal assistant, Morganne Parker, sent opposing counsel in the case an email attaching documents relevant to Shircliff's representation in the matter. The signature line in Parker's email read "Legal Assistant to Attorney Christy Shircliff."

A week later, Shircliff sent an email to opposing counsel establishing her client's position, attempting to negotiate on her client's behalf, and seeking opposing counsel's thoughts regarding mediation. That same day, Shircliff gave documents relating to this representation to opposing counsel and included a note reading, "[p]lease contact my assistant Morganne to schedule mediation." The next day, opposing counsel in the matter received a phone message from Shircliff's assistant requesting a call back to discuss "mediation that will be occurring next week for this case." In addition to never notifying her client in this matter of her suspension, Shircliff also failed to notify Judge Deweese and provide copies of such notification to the Office of Bar Counsel, as ordered in our February 14, 2019, Opinion and Order imposing an indefinite suspension.

The Inquiry Commission authorized a complaint in this matter on July 8, 2019 and Shircliff filed a response on August 13, 2019. For purposes of this negotiated sanction, Shircliff admits she violated the four Rules of Professional Conduct contained in the Inquiry Commission's charge. Namely, Shircliff

admits she violated SCR 3.130(5.5(a)), which provides, “[a] lawyer shall not practice law in a jurisdiction in violation of the regulation of the legal profession in that jurisdiction or assist another in doing so,” when she continued to practice law after this Court indefinitely suspended her from the practice of law. Shircliff also admits she violated SCR 3.130 (5.5(b)), which states,

[a] lawyer who is not admitted to practice in this jurisdiction shall not: (1) except as authorized by these Rules or other law, establish or maintain an office or other presence in this jurisdiction for the practice of law; or (2) hold out to the public or otherwise represent that the lawyer is admitted to practice law in this jurisdiction,

when she continued to represent to Judge Deweese, opposing counsel, and her client that she was admitted to the practice of law after this Court had indefinitely suspended her. Further, Shircliff admits she violated SCR 3.130 (5.7(a)), which provides,

[d]uring a period of suspension a suspended lawyer may not perform any of the following acts:

(1) render legal consultation or legal advice to any person;

...

(4) negotiate or transact any matter or on behalf of another person with third parties;

(5) receive, disburse, or otherwise handle a client’s funds; or

(6) engage in activities that constitute the practice of law[,]

when she provided legal advice, negotiated a matter on behalf of her client, handled client funds, and practiced law after her suspension. Finally, Shircliff admits she violated SCR 3.130 (3.4(c)), which reads, “[a] lawyer shall not . . . knowingly disobey an obligation under the rules of a tribunal except for an

open refusal based on an assertion that no valid obligation exists,” when she knowingly disobeyed this Court’s order of suspension, continued to practice law, and failed to notify Judge Deweese of her suspension.

C. KBA File 19-DIS-0113 (Shekie).

Although indefinitely suspended from the practice of law by Order of this Court, Shircliff continued to represent her client, Hawa Shekie, and to communicate with her through her legal assistant, Parker.

This Court’s February 14, 2019, order of suspension instructed Shircliff to “promptly take all reasonable steps to protect the interests of her clients. She must not, during the term of suspension, accept new clients or collect unearned fees, and she shall comply with the provisions of SCR 3.130 (7.50(5)).” 600 S.W.3d at 254-55.⁷ On March 11, 2019, Parker wrote Shekie an email reading:

[Shircliff] received your emails over the weekend about your missed visitation. The opposing counsel has filed a motion to ask the judge how to handle visitations where your daughter claims not to want to go. This should also give you and [Shircliff] an opportunity to ask the judge to address the missed phone calls as well. The motion is scheduled for this Tuesday at 1:00 p.m. However, [Shircliff] has a conflict and is actively looking for someone who can stand in for her to address these issues or ask for a brief continuance. I will update you as soon as I know more about Tuesday’s court appearance. In the meantime, please feel free to contact the office with any questions.

⁷ SCR3.130 (7.50(5)) provides,

The name of a lawyer who is suspended by the Supreme Court from the practice of law may not be used by the law firm in any manner until the lawyer is reinstated. A lawyer who has been permanently disbarred shall not be included in a firm name, letterhead, or any other professional designation, or advertisement.

Following the above email from Parker regarding Shekie's case, Parker sent another email to Shekie on March 22, 2019, in response to Shekie's question about whether she should expect an email from Shircliff. In this email, Parker finally informed Shekie of Shircliff's suspension (albeit incompletely), writing in pertinent part:

[Shircliff] will not be able to call you. There has been a screw-up with the Kentucky Bar Association and her law license has been temporarily suspended. She is working on resolving the issue and is expected to be reinstated hopefully next week. [Shircliff] has been able to find an attorney that is willing to step-in [sic] for her and appear with you at your court date on the 26th. . . . In the meantime, you can send any questions/concerns to me and I will do what I can to address them.

In another email on March 25, 2019, Parker wrote,

I just wanted to clarify and make sure you know that [Shircliff] is still on your case and will resume representation as soon as the Bar issues has [sic] been corrected. [Shircliff] found a stand-in attorney to help keep your case moving until she can step back in. I will be sending you the stand-in attorney's information soon.

A month later, on April 29, 2019, Shekie sent Shircliff and Parker an email saying, "I am needing guidance as to how to proceed with preparing for court. I will also like to know who will be representing me, and the course of action we are going to follow." In response, Parker emailed Shekie the next day, stating, in pertinent part:

I know that previously I explained [Shircliff's] situation in regards to her temporary suspension. This past Friday the Supreme Court handed down another order in her case that basically said she was not guilty, but they [sic] did not lift her suspension. We are unsure of what this means, so [Shircliff] is still actively working with her attorney to get things solved. But because we do not have a timeline of when the suspension will be lifted, [Shircliff] wants to be proactive in your case and release you from her services so you can find another attorney to represent you in the upcoming hearing.

In addition to the above emails from her assistant, Shircliff sent Shekie a “Statement of Services” detailing the legal services she provided in Shekie’s case after March 1, 2019. As Parker explained to Shekie by email on May 2, 2019, “[a]s the Statements show, work continued to be performed in your case, but we did not charge you for [Shircliff’s] time in March and April.” Shircliff received payments from Shekie during her indefinite suspension totaling \$700. Finally, on May 6, 2019, Shircliff sent Shekie’s employer a letter on letterhead from “Christy Shircliff Law Office.”

Shircliff received a copy of the bar complaint related to this KBA file on May 10, 2019 and responded on May 20. For purposes of this negotiated sanction, she admits she violated the Rules of Professional Conduct mentioned in the complaint. Specifically, Shircliff admits she violated SCR 3.130 (5.5(a)), which provides, “[a] lawyer shall not practice law in a jurisdiction in violation of the regulation of the legal profession in that jurisdiction, or assist another in doing so,” when she continued to work on Shekie’s case and practice law after this Court indefinitely suspended her from the practice of law on February 14, 2019. She also admits she violated SCR 3.130 (3.4(c)), which states, “[a] lawyer shall not . . . knowingly disobey an obligation under the rules of a tribunal except for an open refusal based on an assertion that no valid obligation exists,” when she knowingly disobeyed this Court’s order of suspension by failing to notify Shekie of her suspension. Further, Shircliff admits she violated SCR 3.130 (1.4(a)(5)) which reads, “[a] lawyer shall . . . consult with the client about any relevant limitation on the lawyer’s conduct when the lawyer knows that the client expects assistance not permitted by the

Rules of Professional Conduct or other law,” when she failed to tell Shekie she was unable to continue representing her because this Court suspended her from the practice of law indefinitely. Shircliff also admits she violated SCR 3.130 (5.7(a)) which provides, “[d]uring a period of suspension a suspended lawyer may not perform any of the following acts: . . . (5) receive, disburse, or otherwise handle a client’s funds; or (6) engage in activities that constitute the practice of law,” when she received \$700 in legal fees from Shekie and continued to practice law while under an order of indefinite suspension from this Court. Moreover, Shircliff admits she violated SCR 3.130 (8.4(a)) which states, “[i]t is professional misconduct for a lawyer to . . . violate or attempt to violate the Rules of Professional Conduct . . . through the acts of another,” when she violated the Rules of Professional Conduct through the actions of Parker. Specifically, she admits she violated SCR 3.130 (5.5(b)(2)) which reads, “[a] lawyer who is not admitted to practice in this jurisdiction shall not . . . hold out to the public or otherwise represent that the lawyer is admitted to the practice of law in this jurisdiction,” through Parker when Parker falsely represented to Shekie Shircliff’s ability to practice law even though, in fact, Shircliff was under an indefinite suspension by this Court’s order. Lastly, Shircliff admits she violated SCR 3.130 (8.4(c)), which provides, “[i]t is professional misconduct for a lawyer to . . . engage in conduct involving dishonesty, fraud, deceit or misrepresentation” when she misrepresented to Shekie she would be able to continue her representation even though she had been indefinitely suspended from the practice of law.

II. ANALYSIS.

The parties have agreed upon a negotiated sanction pursuant to SCR 3.480(2)⁸ to resolve the three KBA Files described above. In response to this Court's April 30, 2020, Order rejecting the previously proposed negotiated sanction,⁹ the parties have agreed to a second negotiated sanction in order to resolve this matter. In contrast to the earlier negotiated sanction to be imposed retroactively, the parties have agreed to a one-year suspension to become effective upon entry of the Court's order imposing this requested sanction. For the reasons that follow, we find the current negotiated sanction to be appropriate.

A. Remedial Measures.

While Shircliff's original misconduct, 18-DIS-0059, likely would not have warranted a one-year suspension from the practice of law or any greater punishment, she repeatedly ignored requests for information, beginning with her original bar complaint and continuing through the negotiation process with the KBA. For instance, Shircliff never provided any proof of refunding Rowe's

⁸ Although two of the three pending disciplinary matters are still at the complaint stage, SCR 3.480(2) provides,

The Court may consider negotiated sanctions of disciplinary investigations, complaints or charges prior to the commencement of a hearing before a Trial Commissioner under SCR 3.240. Any member who is under investigation pursuant to SCR 3.160(2) or who has a complaint or charge pending in this jurisdiction, and who desires to terminate such investigation or disciplinary proceedings at any stage of it may request Bar Counsel to consider a negotiated sanction. If the member and Bar Counsel agree upon the specifics of the facts, the rules violated, and the appropriate sanction, the member shall file a motion with the Court which states such agreement[.] . . . The Court may approve the sanction agreed to by the parties, or may remand the case for hearing or other proceedings specified in the order of remand.

⁹ Since we rejected the previously negotiated sanction and remanded the matter back to the KBA, our April 30, 2020, Order was Confidential and not published. Virtually all of the issues addressed in that Order are addressed herein.

\$1,800 fee to the Office of Bar Counsel, even after it had requested it four times. She also failed to comply with the Office of Bar Counsel's requests for certain information about the webpage she maintained. Shircliff lengthened and complicated this process at every turn through her non-responsiveness. In addition, as noted, Shircliff continued to practice law in violation of this Court's Order of indefinite suspension.

Because of these failures to respond and additional violations, we rejected an earlier negotiated sanction of a one-year suspension from the practice of law **retroactive** to the date of Shircliff's indefinite suspension. In our view, such a retroactive date would have resulted in a meaningless sanction. Shircliff admitted that she continued to practice law in defiance of this Court's orders well after that date. Reflecting any period of her continued practice of law in violation of our Opinions and Orders and in violation of our Rules of Professional Conduct will not be countenanced by this Court.

In addition to the inadequacy of the sanction, at the time of our most recent Opinion and Order, a number of remedial measures required of Shircliff had not been clearly undertaken. The KBA, in expressing its agreement with the negotiated sanction, has now advised of the following actions.

By April 29, 2019, Movant had adequately notified her clients and courts in which she had matters pending of her suspension in compliance with the Court's Order.

Shircliff provided notice and terminated her representation of Ms. Shekie relating to KBA File 19-DIS-0113. On May 6, 2019, Movant refunded Ms. Shekie \$710 in legal fees that she improperly received during her suspension in

violation of SCR 3.130(5.7)(a)(6) and she sent Ms. Shekie a termination letter dated April 29, 2019.

Following the Court's April 30, 2020 Order, Shircliff responded to the KBA's request and provided documentation that appears to show she refunded a total of \$2,500 to Mr. Rowe on September 21, 2018 after he terminated her representation and after the Inquiry Commission issued the charge in KBA File 18-DIS-0059. She apparently refunded \$2,000 from her IOLTA account for "retainer refund," even though his retainer was only \$1,800, and she refunded \$500 from her operating account for "retainer interest and cost [reimbursement]." Although Shircliff failed to provide these records to the KBA in response to its four requests, as described earlier, Shircliff attached these records to a motion filed on February 18, 2019.

Additionally, while investigating these matters, the KBA discovered that Shircliff continued to maintain her website at www.shirclifffamilylaw.com, as described in our April 30, 2020 Order. Following that Order, Shircliff provided proof that she turned off the website on May 3, 2020.

B. Relevant Case Law.

The proposed one-year suspension is consistent with discipline the Court imposed in similar cases. In *Kentucky Bar Association v. Grider*, 324 S.W.3d 411 (Ky. 2010), the Court suspended Grider for one year for violations of SCR 3.130(5.5)(a) (unauthorized practice of law), 3.4(c) (practicing law in direct disobedience of the Court's order of suspension for failure to comply with continuing legal education requirements and the Court's order of a 30-day suspension in a separate disciplinary matter), and 8.1(b) (failing to respond to

an informational request from the Office of Bar Counsel, the complaint, and the charge). While Shircliff does not have a disciplinary history like Grider, who had previously received a private admonition, a thirty-day suspension, and a CLE suspension, Shircliff's three pending disciplinary cases and continued violations of the Court orders support a similar sanction.

Similarly, in *Kentucky Bar Association v. Poteat*, 511 S.W.3d 909 (Ky. 2017), the Court imposed a one-year suspension for Poteat's violations of SCR 3.130(1.4)(a)(5) (failing to consult with a client about any relevant limitation on the lawyer's conduct when the lawyer knows the client expects assistance not permitted by the Rules of Professional Conduct or other law), 5.5(a) (unauthorized practice of law), 5.5(b)(2) (falsely holding out to the public or otherwise representing the lawyer is admitted to practice law), 8.4(c) (conduct involving dishonesty, fraud, deceit or misrepresentation), and 8.1(b) (knowingly failing to respond to a lawful demand for information from a disciplinary authority). Again, while Shircliff does not have a disciplinary history like Poteat, who had two private admonitions, one private reprimand, and a CLE suspension, Shircliff's pattern of similar misconduct supports a similar sanction.

In the present case, Shircliff failed to adequately participate in the disciplinary process, and this misconduct caused the Court to enter an order indefinitely suspending her. Shircliff then continued practicing law in direct violation of that order, and this misconduct caused the subsequent two disciplinary matters. Her compounding misconduct resulting in these three,

separate disciplinary matters has converged to warrant a one-year suspension to resolve all three files.

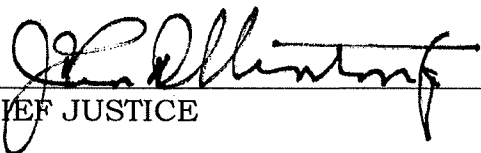
III. ORDER.

ACCORDINGLY, IT IS ORDERED THAT:

1. Christy Hanley Shircliff's motion for this Court to accept her negotiated sanction with the KBA and impose a one-year suspension effective from the date of this Order is granted.¹⁰ Shircliff's suspension shall continue until she is reinstated to the practice of law by Order of the Court pursuant to SCR 3.510, and
2. Shircliff shall pay all costs associated with this disciplinary proceeding, as provided in SCR 3.450.

All sitting. All concur.

ENTERED: October 29, 2020.



CHIEF JUSTICE

¹⁰ The contempt matter relating to Movant's violations of the Court's Order of indefinite suspension is still pending.