

SUPREME COURT OF VERMONT

In re McCoy-Jacien

204 A.3d 660 (Vt. 2018) · No. 18-075 · Decided December 17, 2018

SUMMARY

The Vermont Supreme Court addressed respondent Phyllis McCoy-Jacien's failure to comply with an earlier contempt order and her failure to appear at the purge hearing. The Court issued a daytime-only arrest warrant and specified conditions for purging the contempt, including providing client and financial information to the appointed trustee and allowing access to client files.

CASE DETAILS

COURT	Supreme Court of Vermont
WRITING FOR THE COURT	Paul L. Reiber, Chief Justice; Marilyn S. Skoglund, Associate Justice; Beth Robinson, Associate Justice; Harold E. Eaton, Jr., Associate Justice; Karen R. Carroll, Associate Justice
JURISDICTION	Vermont
DECIDED	December 17, 2018
DOCKET	18-075
DISPOSITION	other
PROCEDURAL POSTURE	Original-jurisdiction contempt enforcement proceeding arising from respondent's failure to comply with a Vermont Supreme Court order.
PRECEDENTIAL VALUE	Published Vermont Supreme Court opinion

TOPICS

contempt sanctions civil procedure remedies

PRACTICE AREAS

attorney discipline contempt client protection

QUESTIONS PRESENTED

1. Whether respondent had failed to purge the contempt arising from her noncompliance with the Vermont Supreme Court's prior order.

2. What enforcement and purge conditions were appropriate to secure respondent's compliance with the court's client-protection and accounting requirements.

HOLDINGS

1. Respondent failed to purge the contempt because she did not appear at the purge hearing and did not complete the required actions.
2. The court authorized respondent's arrest and continued incarceration, subject to release upon satisfaction of the specified purge conditions, including disclosure of client information, accounting for client funds and unearned fees, and permitting the trustee access to Vermont client files.

KEY QUOTATIONS

“Unless otherwise ordered, respondent will be released from custody following the hearing if she does the following, to the extent not addressed during the hearing, to purge her contempt:” (662)

“If respondent fails to comply with ANY of these purge conditions, she is subject to re-arrest and incarceration until she fully complies with this Court's order.” (663)

FACTUAL BACKGROUND

Respondent, a Vermont attorney, failed to comply with prior orders requiring her to provide information and access concerning Vermont clients, client files, client property, and client funds. She did not appear at the scheduled purge hearing and failed to purge the contempt by the court-ordered deadline. The court required her to provide client and counsel contact information, identify client property and funds, account for unearned fees, and permit the trustee physical access to Vermont client files.

PROCEDURAL HISTORY

The Vermont Supreme Court previously held Phyllis McCoy-Jacien in contempt for failing to comply with a court order and gave her until November 30, 2018, to purge the contempt. A purge hearing was held on December 4, 2018; respondent did not appear and had not completed the required actions. The court simultaneously issued a daytime-only arrest warrant and specified conditions for purging the contempt after arrest.

DISPOSITION

other

OPINION

PER CURIAM.

Respondent is no longer in contempt of this Court's September 12, 2018 order. Attachment
ENTRY ORDER SUPREME COURT DOCKET NO. 18-075 DECEMBER TERM, 2018
VERMONT SUPREME COURT FILED IN CLERK'S OFFICE DEC 10 2018 In re Phyllis

McCoy-Jacien, Esq. (Office of Disciplinary Counsel) APPEALED FROM: Original Jurisdiction PRB DOCKET NO. 2018-024 On October 18, 2018, this Court held respondent Phyllis McCoy-Jacien, Esq. in contempt for failing to comply with an order of this Court.

Respondent was provided the opportunity to purge her contempt by November 30, 2018 by taking certain actions. She was also given the opportunity to request the appointment of counsel, which she did not do. In accordance with the notice served upon respondent, a purge hearing was held on December 4, 2018. Respondent did not appear and she failed to purge her contempt.

A daytime-only warrant for her arrest is being issued simultaneously with this order. This order will be personally served on respondent. As set forth in the arrest warrant, upon her arrest, respondent will be brought to the Superior Court, Rutland Unit, Criminal/Family Division for a hearing before the Justices of the Vermont Supreme Court, or some of them.

The superior court will contact the Vermont Supreme Court and the trustee in this case, Jess Schwidde, Esq. after being notified of respondent's arrest. Unless otherwise ordered by the Supreme Court, respondent will be held at the superior court until the arrival of the trustee in this matter, Jess Schwidde, Esq., and a hearing shall be held. Unless otherwise ordered, respondent will be released from custody following the hearing if she does the following, to the extent not addressed during the hearing, to purge her contempt: Consistent with the trustee's Demand Letter of May 7, 2018, with respect to pending Vermont matters immediately: 1.

Provide a list of the names, addresses, phone numbers, and emails for all Vermont clients being represented in all pending matters (and shall call attention to any urgency for action on the client's part); 2. Provide a list of the names, addresses, phone numbers, and emails for any co-counsel in pending matters; and 3. Provide a list of the names, addresses, phone numbers, and emails for any opposing counsel in pending matters, or in the absence of such counsel, the names and addresses of adverse parties.

Respondent must also immediately: 1. Provide a list of the names, addresses, phone numbers, and emails for all Vermont clients for whom she has papers, other property, and files; and 2. Provide a description of the contents of papers or other property to which *663the clients are entitled to have returned to them, including and not limited to original documents, deeds, wills, trusts for the return of said papers, other property and files.

She must also immediately provide the trustee with an accounting of client funds, specifically: 1. Provide a list of the names, addresses, phone numbers, and emails for all Vermont clients for whom she is holding funds in IOLTA accounts; and 2. Provide a list of the names, addresses, phone numbers, and emails for all Vermont clients and accounting for any fees paid in advance which have not been earned.

After providing such information to the trustee, and after her release, respondent shall immediately allow the trustee to have physical access to the files of her Vermont clients at the location where the files are kept. * *If respondent fails to comply with ANY of these purge conditions, she is subject to re-arrest and incarceration until she fully complies with this Court's order.* * The trustee is directed to file an affidavit with this Court of respondent's compliance or noncompliance with these purge conditions within one business day of respondent's arrest.

BY THE COURT: /s/ Paul L. Reiber, Chief Justice /s/ Marilyn S. Skoglund, Associate Justice /s/ Beth Robinson, Associate Justice /s/ Harold E. Eaton, Jr., Associate Justice /s/ Karen R. Carroll, Associate Justice