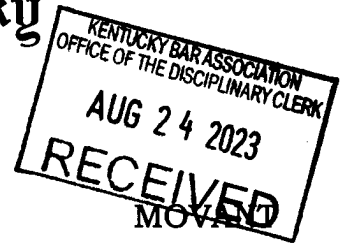


# Supreme Court of Kentucky

2023-SC-0219-KB



TONY BRANDON MILLER

V.

IN SUPREME COURT

KENTUCKY BAR ASSOCIATION

RESPONDENT

## **OPINION AND ORDER**

On May 19, 2023, Tony Brandon Miller (Miller), moved this Court for the entry of an order suspending him from the practice of law for 181 days, probated for one year with conditions, for violating SCR<sup>1</sup> 3.130(1.7)(a)(2), SCR 3.130(3.3)(a)(1), SCR 3.130(4.2), and SCR 3.130(8.1)(b) from KBA disciplinary case 21-DIS-0203 and SCR 3.130(1.3), SCR 3.130(1.4)(a), SCR 3.130(1.16)(d) and SCR 3.130(8.1)(b) from KBA discipline case 22-DIS-0215<sup>2</sup>. Thereafter, the Kentucky Bar Association (KBA) filed a response stating that it had no objection to the order as requested. This Court hereby enters said 181 day suspension, for violating 3.130(1.7)(a)(2), SCR 3.130(3.3)(a)(1), SCR 3.130(4.2), SCR 3.130(8.1)(b), SCR 3.130(1.3), SCR 3.130(1.4)(a), and SCR 3.130(1.16)(d).

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<sup>1</sup> Kentucky Rule of the Supreme Court.

<sup>2</sup> 21-DIS-0203 and 22-DIS-0215 were consolidated into one file and are under the lead case of 21-DIS-0203.

## **I. BACKGROUND**

Miller's KBA member number is 96164. He was admitted to practice law in the Commonwealth on October 17, 2014. His address is 2331 Midland Trail, Rush, Kentucky 41168.

### **21-DIS-0203:**

Miller's former client (Client) was referred to the Fayette Mental Health Treatment Court in June 2021 in conjunction with a probation violation charge from Fayette District Court. She was represented by Hon. Edward Dove in that criminal matter. The Client has a history of trauma, has been diagnosed with PTSD, and has reported being a sex industry worker. The Client's daughter was in the custody of the Cabinet for Health and Family Services due to a dependency, neglect, and abuse case, and she also had several domestic violence cases that were pending in family court before Judge Libby Messer. Miller represented the Client in these family court matters. Many of the Client's criminal matters arose as violations of IPOs issued by the family court.

The Mental Health Court team discovered that Miller had been communicating with the Client on the website "Only Fans," a platform that provides adult images and videos. The team addressed concerns regarding an unprofessional relationship between Miller and the Client with presiding Judge John Tackett.

On October 20, 2021, Miller appeared by Zoom for the Client in Mental Health Treatment Court, although he was not her attorney of record in that matter, and she was still being represented by another attorney. Miller notified

the court that the Client was not present due to illness, which was not accurate. At that time, Judge Tackett notified Miller that the Client had made allegations of inappropriate conduct on the part of Miller and that Miller should not say anything regarding the allegations. Miller then left the Zoom call.

The next day, October 21, 2021, Miller appeared before Family Court Judge Messer and advised her that the Client could not attend due to illness; this was also incorrect. The court date was rescheduled for October 25, 2021, and neither Miller nor the Client appeared on that date.

**22-DIS-0215:**

Miller was hired by Madison Miller, (Madison) in September 2021 to represent her in a family court case regarding custody and child support. Madison paid Miller a \$1,500.00 retainer and service fees totaling \$2,000.00. Madison attempted to contact Miller but was unable to reach him for several months in the latter part of 2021. Madison claims that Miller performed no work on her case and did not file any motions during this time.

Madison discovered that Miller had been suspended from the practice of law, due to an order<sup>3</sup> that was issued by this Court on February 24, 2022, pursuant to SCR 3.165(1)(a)(b), and (d).

Madison filed a bar complaint in August 2022. Miller was served with the bar complaint by the Boyd County Sheriff's office on September 28, 2022.

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<sup>3</sup> Ky. Bar Ass'n v. Miller, 641 S.W.3d 181(Ky. 2022).

Miller failed to respond to the bar complaint, however, he refunded Madison's legal fees around the time he was served.

## **II. CHARGES**

### **21-DIS-0203:**

Count I. Violation of SCR 3.130(1.2)(d) – Concerning engaging in criminal conduct with a client. Miller has denied those allegations and that Count will be dismissed by agreement.

Count II. Violation of SCR 3.130(1.7)(a)(2) – Conflict of interest, which Miller admits.

Count III. Violation of SCR 3.130(3.3)(a)(1) – Making false statements to a tribunal, which Miller admits.

Count IV. Violation of SCR 3.130(4.2) – Communicating with a represented person about the subject of a matter in which that person is represented by another lawyer, which Miller admits.

Count V. Violation of SCR 3.130(8.4)(b) – Dishonest or fraudulent statements made to Mental Health Court personnel. Miller has denied those allegations and that Count will be dismissed by agreement.

Count VI. Violation of SCR 3.130(8.1)(b) – Failing to respond to a lawful request for information in disciplinary process, which Miller admits.

### **22-DIS-0215:**

Count I. Violation of SCR 3.130(1.3) - Miller's lack of diligence in representing Madison, which Miller admits.

Count II. Violation of SCR 3.130(1.4)(a)(4)- Lapses in communication between Miller and Madison. Miller admits this violation.

Count III. Violation of SCR 3.130(1.16)(d) – Failure to timely refund the unearned fees back to his client. Miller admits this violation.

Count IV. Violation of SCR 3.130(8.1)(b) – Failing to respond to a lawful demand for information in a disciplinary proceeding, Miller admits to this violation.

## II. ANALYSIS

The KBA cites several cases in support of its conclusion that a 181-day suspension is appropriate. Preliminarily, we note that Miller's history of attorney discipline includes one private admonition by the Inquiry Commission on February 8, 2022. In mitigation, Miller acknowledges that he was having personal and/or emotional problems during the relevant time period discussed herein. He relates this to family struggles, anxiety, and depression. No evidence of a formal diagnosis has been provided. Miller has been temporarily suspended from practicing law for over a year under the order entered in February, 2022, and claims he has been compliant during the period of suspension.

In the first case cited by the KBA, *Kentucky Bar Ass'n v. Meredith*,<sup>4</sup> Meredith's personal and emotional involvement with a client had adverse effect on advice or services rendered during Meredith's representation. Meredith was

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<sup>4</sup> 641 S.W.3d 181.

found to have revealed confidential information from the client during court proceedings to the detriment of the client. The court found that a public reprimand was warranted for Meredith. Miller has substantially more violation counts than Meredith did.

In *Riley v. Kentucky Bar Ass'n*,<sup>5</sup> this Court issued a sanction of a public reprimand for Riley's admitted misconduct of engaging a client in sexually explicit telephone conversations, and for making a sexual advance toward the client while he was representing the client in a class action case, violating SCR 3.130(1.7). The client turned down Riley's advances and Riley was soon taken off the case. *Riley* had a similar conflict of interest as Miller's, but Riley had many fewer violations than Miller.

In *Kentucky Bar Ass'n v. Matthews*,<sup>6</sup> this Court upheld a 181-day suspension against Matthews for multiple violations of the rules of professional conduct. Matthews violated SCR 3.130(1.4)(a), SCR 3.130(3.4)(c), SCR 3.130(1.16)(d), SCR 3.130(8.1)(b) and SCR 3.130(1.3). SCR 3.130(1.3) requires a lawyer to act with reasonable diligence and promptness in representing a client. Matthews accepted payment to represent a client in a civil lawsuit but failed to file the pleadings in time.

In *Coorssen v. Kentucky Bar Ass'n*,<sup>7</sup> this Court ruled that Coorssen had violated several rules of professional conduct. Coorssen failed to return client

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<sup>5</sup> 349 S.W.3d 301(Ky. 2011).

<sup>6</sup> 283 S.W.3d 741 (Ky. 2009).

<sup>7</sup> 266 S.W.3d 237(Ky. 2008).

telephone calls, failed to provide client with information concerning the status of her divorce, failed to return an unearned client fee, and failed to withdraw from a case. The court issued a suspension from practice of law for one year, with 181 days to be served and the remainder probated for two years subject to certain conditions.

This Court also held in *Kentucky Bar Ass'n v. Bader*,<sup>8</sup> that Bader would be suspended for thirty days for violation of SCR 3.130(3.4)(c), and SCR 3.130(b). Bader failed to respond to a lawful demand for information related to a disciplinary authority.

Miller has a history of prior discipline in that he was issued a private reprimand by the Inquiry Commission on February 8, 2022, after these violations occurred. Miller acknowledges that he was having personal and/or emotional problems. He relates this to family struggles, anxiety and depression. No formal diagnosis has been provided. Miller has been temporarily suspended from practicing law for over a year under the February, 2022 order.

Miller admits that he violated SCR 3.130(1.7)(a)(2), SCR 3.130(3.3)(a)(1), SCR 3.130(4.2), SCR 3.130(8.1)(b), SCR 3.130(1.3), SCR 3.130(1.4)(a)(4), SCR 3.130(1.16)(d), and SCR 3.130(8.1)(b). Miller and the KBA agree to an order suspending him from the practice of law for 181 days, retroactive to his temporary suspension commencement from 2021-SC-0527-KB, and we agree

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<sup>8</sup> 529 S.W.3d 774 (Ky. 2017).

that this sanction is appropriate. Miller shall be referred to the Kentucky Lawyer's Assistance Program (KYLAP), as he has acknowledged struggles with his mental health.

Therefore, the Court Orders:

1. Miller is hereby suspended from the practice of law for 181 days, retroactively.
2. Miller is hereby ordered to pay all costs of these proceedings pursuant to SCR 3.450.
3. Miller shall not commit any crimes, including misdemeanors or felonies.
4. Within 10 days of the entry of this order, Miller must contact KYLAP to schedule an assessment, complete the assessment and comply with any recommendations made by KYLAP. Miller must also sign an authorization allowing Office of Bar Counsel (OBC) to directly communicate with and obtain information from the Director of KYLAP. Miller shall also provide quarterly reports to the OBC showing his compliance with any terms and conditions set by KYLAP regarding his mental health assessment.

All sitting. All concur.

ENTERED: August 24, 2023.

  
CHIEF JUSTICE

# Supreme Court of Kentucky

2021-SC-0527-KB

KENTUCKY BAR ASSOCIATION

MOVANT

V.

IN SUPREME COURT

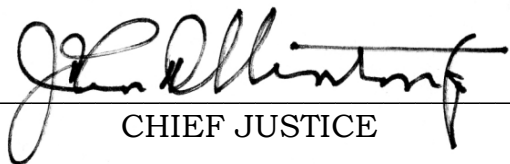
TONY BRANDON MILLER

RESPONDENT

## **ORDER MODIFYING OPINION AND ORDER**

The Opinion and Order issued on February 24, 2022, in the above-styled matter, is hereby modified on the Court's own motion to identify a participant in a confidential court proceeding by the participant's initials. This modification does not affect the holding of the Opinion and Order.

ENTERED: February 25, 2022

  
CHIEF JUSTICE

# Supreme Court of Kentucky

2021-SC-0527-KB

KENTUCKY BAR ASSOCIATION

MOVANT

V.

IN SUPREME COURT

TONY BRANDON MILLER

RESPONDENT

## **OPINION AND ORDER**

Pursuant to SCR 3.165(1)(a), (b), and (d), the Inquiry Commission of the Kentucky Bar Association (KBA) has petitioned this Court to enter an order temporarily suspending Respondent, Tony Brandon Miller, from the practice of law in the Commonwealth of Kentucky. Miller was admitted to the practice of law in the Commonwealth of Kentucky on October 17, 2014. His KBA number is 96164 and his last known bar roster address is 2331 Midland Trail, Rush, Kentucky 41168.

The Inquiry Commission asserts there is probable cause to believe Miller is or has been misappropriating funds held for others to his own use or has been otherwise improperly dealing with said funds. The Inquiry Commission further asserts probable cause exists to believe Miller's conduct poses a substantial threat of harm to his clients or the public. The Inquiry Commission also asserts there is probable cause to believe Miller is addicted to intoxicants or drugs which deprives him of the physical and mental fitness to

continue to practice law. Miller has not responded to this Court's December 28, 2021, order to show cause why he should not be subject to the requested temporary suspension.

In its petition, the Inquiry Commission sets forth the facts underlying its request for a temporary suspension. On October 22, 2021, the Office of Bar Counsel (OBC) received a bar complaint against Miller filed by his former law partner, Alexander Alan Ferrara, asserting Miller had been taking payment for legal services but failed to deposit the funds into client accounts at the firm or credit the clients for the payments. The complaint further asserted Miller failed to perform legal work for which he had been retained and also missed court appearances because of his use of intoxicants. Attached to the complaint were email communications from one of Miller's clients, M. M., evidencing proof of payment for legal services, payments which were not received by the firm.

On November 16, 2021, the OBC received a complaint from Fayette County District Court Judge John Tackett against Miller. Judge Tackett presides over the Fayette Mental Health Treatment Court. Miller's client M.M. is a participant in that diversionary court but she is represented by different counsel; Miller represented M.M. in connection with several unrelated cases in Fayette Family Court. The Mental Health Treatment Court team discovered Miller contacted M.M. on the website "Only Fans" to solicit and purchase explicit images of M.M. Copies of communications between the two were provided to the team. M.M. informed the team she had consumed "a line of cocaine" with Miller before her court date the following day, Miller had provided

her with “a bag of cocaine” which she did not consume, and she and Miller had consumed cocaine at his home during what she thought was to be a meeting regarding her Family Court cases.

Although he was not the attorney of record, Miller appeared the following day by Zoom for M.M. in Mental Health Treatment Court asserting she could not attend due to an illness; M.M.’s hands were visible on-screen during the appearance. Judge Tackett advised Miller it would be in his best interest to say nothing more and informed Miller of the allegations M.M. had levied against him regarding cocaine usage. Judge Tackett also indicated the asserted criminal activities would likely disqualify Miller from any further representation of M.M. Miller ended his participation in the Zoom session rather than responding to Judge Tackett’s statements.

The following day, Miller appeared on M.M.’s behalf in Family Court before Judge Libby Messer and again asserted M.M. could not appear due to an illness. Judge Messer, having been made aware of the prior day’s proceedings by Judge Tackett, inquired of Miller about the conflict of interest. Miller evidenced no concern over any potential conflict and discounted Judge Tackett’s comments as being made “off the cuff.” Upon receipt of this information, the Inquiry Commission filed the instant petition.

SCR 3.165(1)(a) permits the Inquiry Commission to petition this Court for an order of temporary suspension if “[i]t appears that probable cause exists to believe that an attorney is or has been misappropriating funds the attorney holds for others to his/her own use or has been otherwise improperly dealing

with said funds[.]” Further, SCR 3.165(1)(b) permits temporarily suspending an attorney if “[i]t appears that probable cause exists to believe that an attorney’s conduct poses a substantial threat of harm to his clients or to the public[.]” In addition, SCR 3.165(1)(d) permits temporarily suspending an attorney if “[i]t appears that probable cause exists to believe that an attorney is mentally disabled or is addicted to intoxicants or drugs and probable cause exists to believe he/she does not have the physical or mental fitness to continue to practice law.” The Inquiry Commission believes the facts set forth above are sufficient to meet this burden in requesting Miller be suspended pending the outcome of the disciplinary proceedings currently underway.

This Court has reviewed the uncontroverted allegations of the Inquiry Commission and agrees probable cause exists to believe Miller is or has been misappropriating funds or has been otherwise improperly dealing with said funds as required by SCR 3.165(1)(a). We further agree a reasonable basis exists to believe Miller’s conduct poses a substantial threat of harm to his clients as required by SCR 3.165(1)(b). In addition, we agree probable cause exists to believe Miller is addicted to intoxicants or drugs resulting in a lack of physical or mental fitness to continue practicing law as required by SCR 3.165(1)(d). Consequently, we agree with the Inquiry Commission that Miller’s license to practice law should be temporarily suspended pursuant to SCR 3.165(1).

ACCORDINGLY, IT IS HEREBY ORDERED as follows:

1. Tony Brandon Miller is temporarily suspended from the practice of

law in the Commonwealth of Kentucky, effective upon the date of entry of this order, pending further orders from this Court;

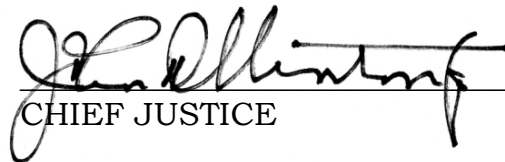
2. Disciplinary proceedings against Miller may be initiated by the Inquiry Commission pursuant to SCR 3.160, unless already begun or unless Miller resigns under terms of disbarment;

3. Pursuant to SCR 3.165(5), Miller shall, within twenty (20) days from the date of the entry of this Opinion and Order, notify in writing all clients of his inability to provide further legal services and furnish the Director of the Kentucky Bar Association with copies of all such letters;

4. Pursuant to SCR 3.165(6), Miller shall immediately, to the extent reasonably possible, cancel and cease any advertising activities in which he is engaged.

All sitting. All concur.

ENTERED: February 24, 2022.

  
CHIEF JUSTICE