

# Supreme Court of Kentucky

2023-SC-0480-KB

MARY ANN MIRANDA

MOVANT

V.

IN SUPREME COURT

KENTUCKY BAR ASSOCIATION

RESPONDENT

## **OPINION AND ORDER**

Pursuant to SCR<sup>1</sup> 3.480(2), Mary Ann Miranda moved this Court to impose a negotiated sanction of 181 days to be probated, with conditions, for a period of two years beginning from the commencement of her KYLAP agreement on July 21, 2023. The Kentucky Bar Association (KBA) does not oppose Miranda's motion. We grant the motion for negotiated sanction.

Miranda was admitted to the practice of law in the Commonwealth of Kentucky on October 17, 2003. Her bar roster address is University of Kentucky, 301 Main Building, Lexington, Kentucky, 40506. The subject-matter of the present motion for negotiated sanctions arises from two separate disciplinary actions.

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

## **FACTS**

### **A. KBA FILE 22-DIS-0142**

On November 12, 2020, Miranda entered her appearance to represent the plaintiff in a federal disability discrimination case against the University of Kentucky. On June 2, 2021, the University filed a motion for summary judgment. The same day, Miranda filed a motion for enlargement of time to file a motion for summary judgment on behalf of her client. Miranda, however, neither filed the motion nor responded to the University's motion. On August 11, 2021, the federal court granted summary judgment in favor of the University and dismissed the complaint.

On September 9, 2021, Miranda filed a motion requesting the court to reconsider its order granting summary judgment. In this motion, Miranda asked the court to grant her request for relief because of excusable neglect and stated, “[s]he prepared her response with the intent of filing it and, indeed, believed that she had filed it with the court.” While the federal court did not accept Miranda's claim of excusable neglect, it nevertheless granted her motion on equitable grounds because it did not wish to punish the client for the mistakes of counsel. The court ordered Miranda to respond “with specificity” to the analysis underlying the order of summary judgment. Miranda again failed to respond.

On November 2, 2021, the federal court entered an order requiring Miranda to show cause within ten days why she should not be subject to discipline under the Joint Local Rules of Civil Practice for the United States

District Courts for the Eastern and Western Districts of Kentucky (LR) 83.3(c), which authorizes a federal district court to discipline an attorney for violating the Kentucky Rules of Professional Conduct as set forth in Supreme Court Rules (SCR) 3.130 *et seq.*<sup>2</sup> Miranda untimely filed a response to the show cause order stating that she was simultaneously filing a response to the motion for summary judgment and a declaration setting forth the reasons why discipline was not appropriate. However, Miranda neither filed the response to the motion for summary judgment nor the declaration concerning attorney discipline. The federal court ultimately reinstated its prior order granting summary judgment in favor of the University.

Throughout the course of representation, Miranda failed to keep the client or her mother, who was the client's contact for most communications with Miranda, reasonably informed about the status of the case. The client and her mother sent Miranda emails, calls, and texts requesting information about the representation. Miranda, however, failed to reply to these requests. Miranda was eventually informed that she would no longer be lead counsel on

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<sup>2</sup> LR 83.3(c) states:

If it appears to the Court that an attorney practicing before the Court has violated the rules of the Kentucky Supreme Court governing professional conduct or is guilty of other conduct unbecoming an officer of the Court, any judge may order an attorney to show cause -- within a specified time -- why the Court should not discipline the attorney. Upon the expiration of the period specified or upon the attorney's response to the show cause order, the Court will enter an appropriate order. If requested by the responding attorney, the Court will conduct a hearing prior to determining the appropriate order.

the case and was asked to return the file relating to the representation.

Miranda never returned the file.

Miranda was personally served with a bar complaint on July 1, 2022. Along with the complaint, Miranda received a request for additional information from the Inquiry Commission. Miranda was notified that her failure to respond to either the complaint or the request for information could result in additional charges. Miranda neither responded to the complaint nor the request for information.

On September 14, 2022, the Inquiry Commission issued formal charges that Miranda failed to:

- act with reasonable diligence and promptness in representing a client in violation of SCR 3.130(1.3);
- keep the client reasonably informed about the status of the matter in violation of SCR 3.130(1.4)(a)(3);
- return the client's file upon request in violation of SCR 3.130(1.16)(d); and
- respond to a lawful demand for information from an admissions or disciplinary authority in violation of SCR 3.130(8.1)(b).

Miranda responded to the formal charges and admitted to the alleged professional misconduct.

#### **B. KBA FILE 22-DIS-0219**

On September 2, 2021, a client paid Miranda \$1,000.00 to probate her father's will and prepare a quitclaim deed. Miranda told the client she would hold the check until the representation was complete, but she cashed the

check the next day. Miranda and the client did not enter into a written representation or fee agreement.

After communicating with the client by text messages at the outset of the representation, Miranda did not respond to several messages sent between October 2021 and January 2022. Miranda finally replied after the client requested a refund and threatened to contact the KBA. On February 7, 2022, Miranda sent the client a text message about scheduling a court date. They did not communicate again until the client requested additional information about the court date on March 7 and 9, 2022.

Miranda filed the Petition for Probate on March 10, 2022. Miranda sent the client a text message on March 10, 2022, and notified her that the hearing was scheduled for April 21, 2022. At the hearing, Miranda informed the judge that she did not have the case file with her and asked for a continuance. Miranda also agreed to deliver the original will to the clerk for placement in the court record.

Miranda did not reply to text messages sent by the client on April 26 and 28, and May 2 and 3. On May 5, 2022, the client filed an amended petition for probate and appointment of administrator/executor. On May 6, 2022, the client sent Miranda a letter terminating the representation and requesting Miranda return the \$1,000.00 prepaid fee and any documents in her possession. Miranda neither replied to the letter nor returned the fee and documents.

A court notice was issued to Miranda notifying her to appear at the next hearing on May 19, 2022. Miranda, however, did not appear. Miranda also failed to deliver the original will to the clerk as she previously agreed. At the hearing on May 19, 2022, the client tendered a copy of the will, and the court admitted it into the record. Further, the court entered an order requiring Miranda to appear on June 23, 2022, to show cause why she should not be held in contempt of court for her failure to produce the original will.

On June 23, 2022, Miranda appeared in court and admitted she misplaced the original will. The court instructed Miranda to file an affidavit explaining that she misplaced the will. Miranda failed to file the affidavit.

Miranda was personally served with a bar complaint on September 20, 2022. The complaint contained a request for additional information from the Inquiry Commission. Miranda was notified her failure to respond to the complaint or the request for information could result in additional charges. Miranda did not respond to the bar complaint or the request for information.

On November 7, 2022, the Inquiry Commission issued formal charges that Miranda failed to:

- act with reasonable diligence and promptness in representing a client in violation of SCR 3.130(1.3);
- promptly comply with reasonable requests for information in violation of SCR 3.130(1.4)(a)(4);
- return documentation and any unearned portion of her prepaid fee in violation of SCR 3.130(1.16)(d); and
- respond to a lawful demand for information from an admissions or disciplinary authority in violation of SCR 3.130(8.1)(b).

Miranda responded to the charges and admitted to the alleged professional misconduct.

### **ANALYSIS**

SCR 3.480(2) authorizes this Court to “consider negotiated sanctions of disciplinary investigations, complaints or charges prior to the commencement of a hearing before a Trial Commissioner under SCR 3.240.” For the purpose of this rule, the parties agree to a negotiated sanction when “the member and Bar Counsel agree upon the specifics of the facts, the rules violated, and the appropriate sanction.” *Id.* This “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.” *Id.* “Thus, acceptance of the proposed negotiated sanction still falls within the discretion of the Court.” *Tejeda v. Kentucky Bar Ass’n*, 456 S.W.3d 405, 406 (Ky. 2015).

The proposed sanction in the present matter falls within the range of appropriate discipline established by our precedents. In *Kentucky Bar Ass’n v. Quesinberry*, 250 S.W.3d 308 (Ky. 2008), we suspended an attorney for 181 days upon a determination the attorney:

violated SCR 3.130–1.3 by failing to diligently represent her client in a divorce proceeding, SCR 3.130–1.4 by failing to adequately communicate with her client regarding the status of the client’s case, SCR 3.130–1.6(d) by abandoning the representation without notice to her client and failing to refund the unearned portion of the fee, and SCR 3.130–8.1(b) for knowingly failing to respond to a lawful demand for information from an admissions or disciplinary authority.

*Id.* at 309. While the misconduct in *Quesinberry* was similar to the present appeal, the attorney did not receive probation. *Id.* However, unlike Miranda, the attorney in *Quesinberry* did not respond to the charges, and the disciplinary action proceeded against her by default. *Id.*

In *Kentucky Bar Ass'n v. Cook*, 281 S.W.3d 290, 292 (Ky. 2009), we imposed a suspension of two years with thirty days to serve and the remainder probated for two years where an attorney violated SCR 3.130(1.3) by failing to act with reasonable diligence and SCR 3.130(1.4)(a) by failing to keep the client reasonably informed about the case. In a separate disciplinary file, the attorney was also found guilty of violating SCR 3.130–1.4(a) by failing to keep a client reasonably informed about a case and SCR 3.130–1.16(d) by failing to return an unearned portion of his fee. *Id.* at 292. As a condition of the probated suspension, the attorney was ordered to enter into a KYLAP supervision agreement, participate in KYLAP, and be evaluated and continue to seek treatment for depression. *Id.*

As in *Cook*, Miranda has produced legitimate, mitigating evidence. At the time of her misconduct, she was experiencing the effects of severe depression and generalized anxiety disorder. Miranda has candidly acknowledged her guilt of the present charges. She entered into a KYLAP agreement on July 21, 2023, to ensure the prompt and consistent treatment of her mental health issues. We further note the negotiated sanction in this matter was reviewed



and approved by the Past President of the KBA.<sup>3</sup> After reviewing the allegations, Miranda's previous disciplinary record, and the caselaw cited by the KBA, we conclude the negotiated sanction is appropriate.

Therefore, in accordance with the terms of the negotiated sanction, the Court ORDERS:

1. Mary Ann Miranda's motion for negotiated sanction is hereby granted pursuant to SCR 3.480(2).
2. Miranda is adjudged guilty of the above described and admitted violations of SCR 3.130(1.3); SCR 3.130(1.4)(a)(3); SCR 3.130(1.4)(a)(4); 3.130(1.16)(d); and 3.130(8.1)(b).
3. Miranda is hereby suspended from the practice of law in Kentucky for 181 days, probated for a period of two years beginning from the commencement of her KYLAP agreement on July 21, 2023.
4. Miranda shall adhere to the provisions of her KYLAP Supervision Agreement.
5. Miranda shall provide quarterly reports to the Office of Bar Counsel confirming her compliance with the KYLAP Supervision Agreement.
6. Miranda has signed authorizations allowing the KBA and KYLAP to communicate regarding her involvement with KYLAP.
7. If at any time the KYLAP Director becomes aware of Miranda's violations of **any** of the terms of her motion for negotiated sanction, the Supervision Agreement, or this Court's Order, she **shall** immediately file a notice of such violations with the Disciplinary Clerk of the KBA for distribution to the Office of Bar Counsel and Miranda.
8. Miranda shall receive no new disciplinary charges authorized by the Inquiry Commission.

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<sup>3</sup> In a typical case, the Office of Bar Counsel's standard procedure provides that the Chair of the Inquiry Commission will also review and approve the negotiated sanction. However, in the present case, the Chair recused due to conflict.

9. Miranda shall refund \$1,000.00 in unearned prepaid fees to Rikka Wallin and she will provide proof of the refund to the Office of Bar Counsel within 30 days of the date of this Order.
10. Miranda shall timely pay her KBA membership dues.
11. Miranda shall timely satisfy all continuing legal education requirements.
12. Miranda shall pay all costs associated with the investigation and prosecution of this proceeding, pursuant to SCR 3.450, in the amount of \$992.10. Additionally, Miranda shall pay all costs required by the Supervision Agreement.
13. If Miranda violates any of the terms of her probation as set forth in this Order or in her Supervision Agreement, or receives any additional charges of professional misconduct during the probationary period, the KBA may file a motion with the Court requesting the issuance of a show cause order directing Miranda to show cause, if any, why the 181-day suspension should not be imposed.

All sitting. All concur.

ENTERED: December 14, 2023.



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CHIEF JUSTICE