

NO. **11 CI03080**

JEFFERSON CIRCUIT COURT
DIVISION TEN (10)

JEFFERSON CIRCUIT COURT

DIVISION _____

JUDGE _____

**MICHELLE MILLER
AND
DONALD LEE MILLER, II**

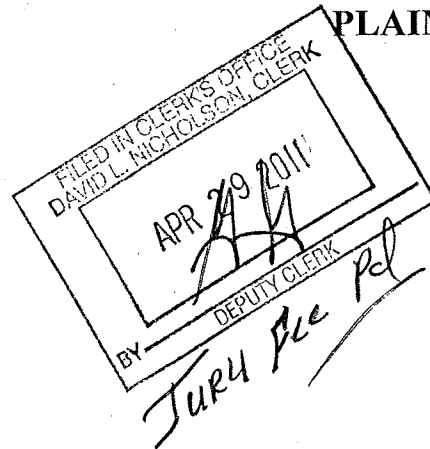
PLAINTIFFS

V.

REMINER CO., L.P.A. 505
1400 Midland Building
101 Prospect Avenue, West
Cleveland, Ohio 44115-1093

SERVE:

Service of Summons
Office of the Secretary of State
Summonses Branch
700 Capital Avenue
Frankfort, Kentucky 40601



AND

SHEA CONLEY CM
269 West Main Street, Suite 700
Lexington, Kentucky 40507

DEFENDANTS

SERVE:

Shea Conley
269 West Main Street, Suite 700
Lexington, Kentucky 40507

JURY TRIAL DEMANDED

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COMPLAINT

Come the Plaintiffs, Donald L. Miller, II, and Michelle Miller, and for their complaint herein state as follows:

INTRODUCTION

1. This Complaint is intended to remedy injuries personal to Donald and Michelle Miller, current and former clients of Defendant Reminger and to the legal profession as a whole. In addition to requesting damages for their personal losses, Plaintiffs also seek a proper accounting and repayment of all attorney fees improperly billed by Defendant Reminger.

PARTIES

2. The Plaintiffs, Donald L. Miller, II (hereinafter referred to as "Mr. Miller"), and Michelle Miller (hereinafter referred to as "Mrs. Miller"), are and have been during all times relevant to this Complaint residents and citizens of Jefferson County, Kentucky. Mr. Miller was continuously employed by Defendant, Reminger Co., L.P.A. (hereinafter "Reminger") from March 2009 until his termination effective December 15, 2010. He was employed by Reminger in Louisville, Kentucky, from July 2009 until his said termination by Reminger. Mrs. Miller, among other things, was subjected to an unwanted physical contact by a senior Reminger attorney at a Reminger

event.

3. Defendant, Reminger, is a Legal Professional Association, incorporated under the laws of Ohio. Reminger is a law firm with offices located throughout Ohio and Kentucky.
4. Defendant, Shea Conley (“Mr. Conley”), is a managing partner of Reminger’s Lexington, Kentucky office. He is a resident and citizen of Kentucky. The Reminger Kentucky offices are located at 269 West Main Street, Suite 700, Lexington, Kentucky 40507.

JURISDICTION AND VENUE

5. Mr. Miller’s and Mrs. Miller’s causes of action against Reminger and Mr. Conley arise under a common nucleus of facts, and are brought pursuant to the Kentucky Civil Rights Act, KRS 344 et seq., and the common law of the Commonwealth of Kentucky.
6. Jurisdiction is proper in the Jefferson Circuit Court, inter alia, pursuant to KRS 23A.010(1), KRS 454.210, and KRS 344.450.
7. Venue in this action is proper, inter alia, in the Jefferson Circuit Court, pursuant to KRS 454.210, and KRS 452.460(1).
8. Service herein on the Defendants is proper pursuant to CR 4.04(2), CR 4.04(5), and KRS 454.210.

FACTS

9. Mr. Miller is a member in good standing of the Kentucky Bar, the Indiana Bar, and all applicable federal courts. For almost a quarter of a century, from 1984 to 2007, he was at Brown, Todd & Heyburn, which became Frost Brown Todd ("FBT"), Kentucky's largest law firm. Mr. Miller began there in 1984, and was a partner with them for eighteen years, from 1989 to 2007. He was their Trial Practice Chair from 2003 until 2007. He has been named a Kentucky Super Lawyer every year since 2007. While at FBT, Reminger offered Mr. Miller an opportunity to practice at Reminger.
10. Mr. Miller formed his own practice group in 2007, along with a number of other lawyers and staff members from FBT. Unfortunately, other partners in that start-up firm ended their relationship with Mr. Miller. Ultimately, in February and March of 2009, Mr. Miller spoke with the managing partner of the Reminger's Lexington, Kentucky office, Shea Conley ("Mr. Conley"), and after additional discussions with several of Reminger's Ohio partners, agreed to take a position with Reminger. Because of the personally difficult circumstances of the attempted separation by his friends from FBT, Mr. Miller agreed to a reduced salary that the partners of Reminger assured him

would be made up by performance-based bonuses if his business generation was commensurate with his past history. Mr. Miller disclosed intimate personal and medical information to Reminger, including its managing partner, Stephen Walters, so that Reminger could make an informed decision about Mr. Miller.

11. Mr. Miller started work with Reminger in March 2009. Mr. Miller opened a Louisville office for Reminger in July 2009. Mr. Miller had long served as outside counsel for a number of large companies, of which fact Reminger was aware, and those clients were very loyal to Mr. Miller. Most of those clients followed Mr. Miller to Reminger.
12. Mr. Miller soon created a large number of new client accounts, adding approximately 120 cases in one year, but could not obtain approval from the Reminger decision makers for the necessary staffing resources to practice those cases as he felt they should be practiced. Mr. Miller was growing the legal business apace, but was not receiving the necessary support from Reminger to maintain it. Indeed, instead of allowing Mr. Miller to appropriately hire lawyers with the familiarity and experience level to practice the cases, Reminger forced Mr. Miller to accept work from other offices – including from lawyers not licensed in Kentucky.

13. In addition, Mr. Miller was not paid bonuses commensurate with the income he generated for the firm as he had been promised. This was particularly so given that he was on pace to generate more than \$2 million annually in revenue for the firm, even without the staffing he had requested. Mr. Miller received a congratulatory email from Mr. Conley, a member of the management group, as late as October 14, 2010, for Mr. Miller's client revenues and business generation, but still received no appropriate promised bonus.
14. Mr. Miller was often urged by Reminger decision makers to surrender ongoing involvement with, and, therefore, proper control of, his client matters to other attorneys in Reminger, but this was not satisfactory to the clients or to Mr. Miller, who had been looking after these clients' interests for an extended period of time. Mr. Miller began to be concerned about the motivation behind the pressure being placed on him by Reminger to reassign these long term clients out of his control. At one point, Richard Rymond, a member of the Executive Group of Reminger, told Mr. Miller, in the presence of Mrs. Miller – "you must trust us [Reminger] completely—you are all in or all out."
15. In October 2010, Mr. Miller was approached by a client with a concern about billing irregularities from the Ohio Reminger attorneys, which Mr. Miller

investigated. In particular, the client presented Mr. Miller and Reminger statistics showing that Reminger's numbers were skewed; Reminger was the more expensive of its firms, and there was an absence of use of paralegals, as well as more hours than customary for similar matters. Mr. Miller had Mr. Conley look at the accounting numbers. Mr. Miller confirmed that time spent working by paralegals, and entered into the time keeping system by the paralegals with their initials, had been changed improperly by Reminger to read as time worked by attorneys in the firm, which was untrue, unethical, and created higher charges to his client. Mr. Miller had protested this practice by Reminger, and was told by Stephanie Henry, office manager, that this was Reminger's habitual business practice. For example, work performed by a paralegal for whom the client had agreed to pay less than \$100/hour, was charged to the client at a lawyer rate of more than \$200/hour. Indeed, staff who followed Mr. Miller from Reminger to his new firm have confirmed these and other irregularities of which he was not aware at the time. Mr. Miller gave standing and emphatic direction to the Reminger billing staff that bills to his clients should always accurately reflect the hourly rate level of the person performing the task. Mr. Miller reported specifics of these irregularities to his client, which has stood by him since the day he began

practicing law. The client assured him that they had already intended to conduct an investigation of the billing by conducting an audit. Mr. Miller was further concerned that this may have been done by Reminger as to other clients, and he specifically protested this unethical and illegal billing practice to the firm.

16. After it became clear that Reminger would continue to plan to improperly terminate Mr. Miller in an attempt, among other things, to retain some or all of his practice, Mr. Miller received a text message from Mr. Conley on November 18, 2010 at 3:37PM that read: "Don, my friend, please consider admitting yourself for help. I will support you every way I can." This was a continuation of the attempt to remove Mr. Miller from competition and inform clients of Mr. Miller's fabricated inabilities, the same tactic used by the group with whom Mr. Miller left FBT, and which tactic was known to Mr. Conley.
17. In mid-2010, Mr. Miller was informed of a mandatory firm retreat to the Bahamas for the firm's attorneys, to be held in November 2010. While not everyone attended, not attending was frowned upon. Given the recent billing issues and Mr. Conley's continued, expressed sentiments, Mr. Miller and his wife were reluctant to attend this firm "retreat." Mr. Miller also had client

obligations, and he and his wife were not looking forward to the uninhibited partying other Reminger lawyers had displayed at prior Reminger lawyer meetings or leaving the Millers' children at home without either parent while the Millers attended this event. Nevertheless, Mr. Miller had been told by Stephen Walters, Shea Conley, and others, that Mr. and Mrs. Miller must attend the retreat. Accordingly, they attended this event, which, on information and belief, cost the firm over half a million dollars, not including lost attorney time.

18. During the first evening of the event, at a dinner, Mario Ciano, a Reminger principal, and his wife were sitting at a table with the Millers. Mr. Miller was mingling, and Mr. Ciano talked with Mrs. Miller for at least 45 minutes. Among other comments he made, Mr. Ciano said "Look Michelle, we took a chance on Don. We just don't hire old guys like Don, look around you. We hire young people, and brain wash them, and keep them for years. We do have our token black man, too." When Mrs. Miller looked around, she realized that she indeed was surrounded by substantially younger Reminger employees.
19. At this retreat Mr. Miller and his wife were further exposed to entirely inappropriate statements made by a Reminger principal about female anatomy

For example, during a formal presentation to all attorneys present, Mario Ciano encouraged touching secretaries on their “back but not on their breasts.” At one dinner, partners (Roy Hulme, Michelle Sheehan, and her husband, Cuyahoga County Court of Common Pleas Judge Brendon Sheehan) discussed renting mopeds to visit the grave of Anna Nicole Smith, to see the “‘titties’ on her headstone.” These sexist comments, created a thoroughly embarrassing and hostile environment, and continued throughout the event.

20. Shea Conley said directly to Mrs. Miller, while on the Reminger trip to the Bahamas: “Why can’t Don just fall into line with this paralegal stuff?” (referring to the above-stated fraudulent changes of paralegal billing time to appear as that of attorneys at Reminger).
21. At the final dinner and dance for the retreat, Mr. Miller’s wife, Michelle, who already had been made to feel very uncomfortable by the previous onslaught of tasteless remarks, was still doing her best to make pleasant conversation with her husband’s colleagues and their spouses. After dinner, Mrs. Miller was watching people dance. Shortly after the band started, Mr. Mario Ciano became insistent that Mrs. Miller dance. Mr. Ciano grabbed Mrs. Miller’s left upper arm to pull her to the dance floor and said “Get your fat ass out there & dance.” Mrs. Miller pulled away, looked at Mr. Ciano and said “You just

called me a fat ass, oh my God, why would you do that?" Mrs. Miller then walked away, as she was starting to cry. Mr. Miller, who had been having a conversation with another individual, saw what had happened and observed his wife start crying before she left the area. He immediately asked Mr. Ciano what he had done. Mrs. Miller feels an overwhelming sense of humiliation about this extremely embarrassing event to this day.

22. Mr. Miller, who has two daughters, and a deep affection for his wife, restrained himself from reacting physically to this shocking behavior towards Mrs. Miller. In retrospect, this behavior towards Mr. Miller's wife appears to have been substantially motivated by Mr. Miller's inquiries into and protest of Reminger's billing irregularities, calculated to incite Mr. Miller into in a way to set the scene for his ouster from the firm.
23. Sometime during the night or early morning after this humiliating event at the retreat, all of Mr. Miller's computer access, and, therefore, his ability to review client files or communications from courts, was cut off. Bruce Hillier, the firm's information technology director, who also attended the function, acted as if he did not know why, when Mr. Miller phoned him to inquire, as Mr. Miller attempted to attend to client matters. On Sunday, November 7, 2010, Reminger principals Stephen Walters ("Mr. Walters") and

William Meadows met with Mr. Miller and his wife. Mr. Walters told Mr. Miller that he had decided that Mr. Miller and the firm should part ways for “cultural” reasons. Mr. Miller responded that he was fifty-one years old, with two little girls to take care of. Mr. Walters’ response was: “So what? I am over 50 and have three daughters.” Of course, Mr. Walters wasn’t being terminated, supposedly for simply opposing the indignity visited on his spouse by a Reminger Principal, Mr. Ciano. Mr. Walters, in fact, had been intoxicated during the events of the previous evening.

24. On Monday, November 8, 2010, Mr. Conley falsely told the staff that Mr. Miller had resigned, but equivocated later that same day to tell the staff things were being worked out. Mr. Miller’s computer access was restored, Reminger recognizing that Mr. Miller had not resigned, of course.
25. Mr. Miller fought to make sure that his clients were being taken care of during this process. Reminger initially had denied him access to his computer and files. Only after Mr. Miller obtained counsel was he able to regain access to his clients’ files, needed to protect their legal interests.
26. Mr. Miller’s move to obtain counsel to protect himself from Reminger’s actions apparently resulted in an accelerated effort to manufacture reprehensible lies about Mr. Miller. Reminger, for the first time, and only

after Mr. Miller's termination, falsely claimed that Mr. Miller had been complained of twice for his treatment of women employees. This was completely untrue. Mr. Miller was appalled at these untruths. Indeed, the women whom Mr. Miller allegedly mistreated have joined him at his current firm.

27. The ouster of Mr. Miller not only appears to have been intentional, but cynically premeditated, in an effort by Reminger, at least in substantial part, to reap the financial rewards of Mr. Miller's efforts without properly compensating him, to attempt to retain his clients for themselves, and to rid themselves of an older lawyer who was opposing Reminger's unethical billing practices. Indeed, after Mr. Miller was informed he was no longer welcome at the firm. In response to Mr. Miller's request for additional time, Reminger, through Richard Rymond, offered to give Mr. Miller a "forgivable loan" if Mr. Miller would transfer his nursing home clients to Reminger and keep only his bad faith insurance company representations. Reminger made this offer in direct contravention of SCR 3.130 (5.6), prohibiting a lawyer from agreeing to restrict their right to practice and, thereby, limiting the right of a client to choose a lawyer. Indeed, the timing of the ouster, by December 1, with the last day in the office being Thanksgiving eve, was premeditated to

take advantage of the difficulties Mr. Miller would have during that holiday time of year to make suitable arrangements to continue his practice.

CAUSES OF ACTION
FIRST CAUSE OF ACTION
PUBLIC POLICY WRONGFUL DISCHARGE

28. Plaintiffs incorporate, as if fully realleged, all paragraphs 1 through 26 of this complaint.
29. Reminger was intentionally falsifying its billing, and thereby overcharging clients in violation of state and federal law and ethical rules, including, but not limited to, laws regarding theft by deception and ethical obligations to be truthful with, and a fiduciary of, the interests of clients. Mr. Miller was wrongfully terminated by Reminger in violation of public policy for reporting these inaccuracies and refusing to acquiesce in them.

SECOND CAUSE OF ACTION
BREACH OF FIDUCIARY DUTIES

30. Plaintiffs incorporate, as if fully realleged, all paragraphs 1 through 28 of this complaint.
31. Defendants breached their common law fiduciary duties owed to Mr. Miller. The Defendants breached their fiduciary duties to Mr. Miller, inter alia, when they terminated Mr. Miller for false cause and for illegal reasons.

THIRD CAUSE OF ACTION

BREACH OF CONTRACT

32. Plaintiffs incorporate, as if fully realleged, all paragraphs 1 through 30 of this complaint.
33. When Reminger terminated Mr. Miller without legal cause and failed to pay him the bonuses he had been promised, commensurate with the income he was generating for Reminger, it breached its contract with Mr. Miller.

FOURTH CAUSE OF ACTION

BREACH OF IMPLIED OR QUASI-CONTRACT

34. Plaintiffs incorporate, as if fully realleged, all paragraphs 1 through 32 of this complaint.
35. When Reminger terminated Mr. Miller and failed to pay him the bonuses he had been promised, commensurate with the income he was generating for Reminger, it breached its implied contract, and/or quasi-contract with Mr. Miller.

FIFTH CAUSE OF ACTION

QUANTUM MERUIT

36. In the alternative, if the Court finds that there are any technical or formal

defenses to the contractual causes of action above, which defenses Plaintiffs herein specifically deny, Plaintiffs alternatively plead as follows:

37. Plaintiffs incorporate, as if fully realleged, all paragraphs 1 through 34 of this complaint.
38. Mr. Miller's years of service, positive performances, and the past representations and assurances of agents, officers, and employees of Reminger have all given rise to reasonable expectations of being provided bonus compensation that was commensurate with his generation of revenue for Reminger, and Mr. Miller is therefore now entitled to recovery under the principle of quantum meruit.

SIXTH CAUSE OF ACTION

PROMISSORY ESTOPPEL

39. In the alternative, if the Court finds that there are any technical or formal defenses to any of the foregoing causes of action, which defenses Plaintiffs herein specifically deny, Plaintiffs alternatively plead as follows:
40. Plaintiffs incorporate, as if fully realleged, all paragraphs 1 through 37 of this complaint.
41. Mr. Miller's years of service and positive performances and the representations and assurances of agents, officers, and employees of

Reminger described herein have all given rise to reasonable expectations of being provided bonus compensation that was commensurate with his generation of revenue for Reminger, and Mr. Miller, having reasonably relied on these representations and assurances to his detriment; therefore, now also is entitled to recover under the doctrine of promissory estoppel.

SEVENTH CAUSE OF ACTION

FRAUD

42. Plaintiffs incorporate, as if fully realleged, all paragraphs 1 through 40 of this complaint.
43. The Defendants knowingly induced Mr. Miller to work for Reminger, knowing that they intended to take Mr. Miller's clients for their own benefit and to terminate Mr. Miller thereafter. Mr. Miller reasonably relied on the initial and continuing promises and representations made to him, explicit and implied, and the material omissions of the Defendants, and came to work for Reminger. The Defendants knew at the time some or all of these promises, representations and omissions were made, continued, or committed that Defendants intended to benefit from obtaining Mr. Miller's clients and to terminate him once that was accomplished, thus working a fraud upon Mr. Miller and causing serious damages to Mr. Miller.

44. By way of examples only of the actions taken against Mr. Miller to force him out, while clearly hoping to retain his clients and the substantial income he had generated for Reminger during the prior year, without bonus or other proper adjustment being made, and to eliminate his opposition to their fraudulent billing practices, Reminger refused to compensate Mr. Miller's support staff properly, took and made reprehensible actions and statements toward his wife, urged him to surrender ongoing involvement with, and, therefore, proper control of, his client accounts, and deliberately tried to mischaracterize him as having resigned.
45. Mr. Miller has brought to Reminger a substantial book of business, so much so that Reminger has exhibited difficulty in keeping pace with the demand for legal services created by Mr. Miller's clients. The ouster of Mr. Miller not only appears to have been intentional, but cynically premeditated, in an effort by Reminger, at least in substantial part, to reap the rewards of Mr. Miller's substantial efforts without properly compensating him.

EIGHTH CAUSE OF ACTION

INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS

46. Plaintiffs incorporate, as if fully realleged, all paragraphs 1 through 44 of this complaint.

47. The conduct of Defendants, including the breaching of fiduciary duties, wrongful discharge, acts of fraud, and battery of Mrs. Miller was intentional or reckless conduct. The Defendants had the specific purpose of inflicting emotional distress on the Millers, or acted recklessly and in deliberate disregard of a high degree of probability that the emotional distress would result.
48. The aforestated conduct of the Defendants was extreme and outrageous conduct. Such conduct went beyond all possible bounds of decency, was atrocious, and utterly intolerable in a civilized community. The emotional distress caused to Mr. Miller and Mrs. Miller was so severe that no reasonable person should be expected to endure it.

NINTH CAUSE OF ACTION

AGE DISCRIMINATION

49. Plaintiffs incorporate, as if fully realleged, all paragraphs 1 through 47 of this complaint.
50. Mr. Miller's age was a motivating factor in deciding, and did make a difference in the decisions, to take the above described adverse employment actions against him. In light of the foregoing, Reminger has committed against Mr. Miller the unlawful practice of discrimination against an

individual because of his age, pursuant to KRS 344.040 *et seq.*

TENTH CAUSE OF ACTION

ASSAULT AND BATTERY

51. Plaintiffs incorporate, as if fully realleged, all paragraphs 1 through 49 of this complaint.
52. When the Reminger attorney partner offensively physically touched Mrs. Miller, which was highly unwelcome, he intended to cause and did cause an offensive and unwelcome contact with Mrs. Miller's person. Mrs. Miller did not consent to said contact.
53. Mrs. Miller found said illegal contact offensive and an affront to her personal sense of dignity, as any reasonable person would.
54. This offensive and unwelcome physical contact amounts to an illegal and tortious assault and battery against Mrs. Miller.

PRAYER FOR RELIEF

55. Plaintiffs incorporate, as if fully realleged, all paragraphs 1 through 53 of this complaint.
56. **WHEREFORE**, Plaintiffs, Donald L. Miller, II, and Michelle Miller, pray that this Court:
 - A. Order a proper accounting and repayment of all attorney fees

improperly billed by Defendant Reminger; and,

- B. Declare Defendants' conduct in violation of Mr. Miller's and Mrs. Miller's rights; and,
- C. Award them against Defendants compensatory damages in sums in excess of the amount necessary to establish jurisdiction of this Court, with the evidence of damages to be presented at a jury trial, including, but not limited to, any and all compensatory damages suffered and/or consequential damages resulting from Reminger's wrongful termination of Mr. Miller, breach of Defendant's obligations to deal with Mr. Miller in good faith, breach of contract, intentional infliction of emotional distress on Mr. Miller and Mrs. Miller, and any and all other damages to which they are entitled resulting from the above alleged conduct relating to the same; and,
- D. Award Mr. Miller and Mrs. Miller damages against Defendant Reminger in an amount to be proved at trial for the humiliation, embarrassment, personal indignity, apprehension about their and their family's past, current and future economic well-being, emotional distress, and mental anguish, which have been inflicted upon Mr. Miller and Mrs. Miller by Reminger's wrongful acts; and,

- E. Award Mr. Miller and Mrs. Miller punitive damages for Defendants' intentional, oppressive, fraudulent and/or malicious conduct toward them; and,
- F. Award Mr. Miller and Mrs. Miller pre-judgment and post-judgment statutory interest, costs, and attorney fees;
- G. Award Mr. Miller his attorneys' fees and costs pursuant to KRS 344, and,
- H. Grant the Millers such further relief as this Court may deem just and proper.

JURY DEMAND

57. Plaintiffs, Donald L. Miller, II, and Michelle Miller, demand a jury to try all issues triable by jury.

Respectfully Submitted,

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