

IN THE SUPREME COURT OF FLORIDA
(Before a Referee)

THE FLORIDA BAR,
Complainant,

v.

LINDA SCHNEIDER FAINGOLD,
Respondent.

Supreme Court Case
No. SC19-259

The Florida Bar File
No. 2018-10,440 (6D)

CONDITIONAL GUILTY PLEA FOR CONSENT JUDGMENT

COMES NOW, the undersigned respondent, Linda Schneider Faingold, and files this Conditional Guilty Plea pursuant to Rule 3-7.9 of the Rules Regulating The Florida Bar.

1. Respondent is, and at all times mentioned herein was, a member of The Florida Bar, subject to the jurisdiction of the Supreme Court of Florida.
2. Respondent is acting freely and voluntarily in this matter, and tenders this Plea without fear or threat of coercion. Respondent is represented in this matter by Henry Lee Paul, Esq.
3. Respondent is currently the subject of a Florida Bar disciplinary matter which has been assigned The Florida Bar File No. 2018-10,440 (6D). There has been a finding of probable cause by the grievance committee in this matter as to Rule 4-8.4(d) (Misconduct: A lawyer shall not engage in conduct in connection

with the practice of law that is prejudicial to the administration of justice), and Respondent has waived probable cause as to Rule 4-3.4(c) (Fairness to Opposing Party and Counsel: A lawyer must 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).

4. The disciplinary measures to be imposed upon respondent are as follows:

A. Respondent shall receive a public reprimand to be administered by publication in the Southern Reporter.

B. Respondent shall attend and complete The Florida Bar's Ethics School within six (6) months from the date of the of the Court's order approving this consent judgment. Respondent is responsible for payment of the \$750.00 program fee.

C. Payment of The Florida Bar's costs as noted below.

5. The following allegations and rules provide the basis for respondent's guilty plea and for the discipline to be imposed in this matter:

Respondent represented James E. Troutman in estate planning matters to the extent that the initial representation involved assisting Mr. Troutman in obtaining veterans pension benefits. Mr. Troutman learned that his wife, Anna Naomi Mason, passed away after a formal administration was initiated to probate her estate in *In Re: Estate of Anna Naomi Mason*, Case No. 16-CP-003574, in the Circuit Court of the Thirteenth Judicial Circuit, and in for Hillsborough County, Florida. Mr. Troutman also learned that Ms. Mason left behind a will that

essentially left nothing or very little to him.

Respondent contacted the late Kenneth R. Mathews, Esq. to ask if he would assist in representing Mr. Troutman. Respondent had minimal litigation experience and referred the case to him because she had met him as a fellow student in the elder law program at Stetson University College of Law in 2016. Mr. Mathews advised that he had 30 years of litigation experience and that if she had a litigation case to refer to him that he would serve as first chair and teach her how to litigate. This is the first case that Respondent worked with Mr. Mathews. Mr. Mathews and Respondent assisted Mr. Troutman in filing claims to entitlement to part of the Mason estate. Respondent and Mr. Mathews were co-counsel only in this matter and did not otherwise have an employment relationship. Mr. Mathews acted as lead counsel in the case as to matters pertaining to litigation. The personal representative of Ms. Mason's estate was Ms. Mason's daughter, who was also Mr. Troutman's stepdaughter.

Respondent learned of Mr. Troutman's death on April 23, 2017, which was on a Sunday, one day before the court-ordered mediation scheduled for April 24, 2017. Neither Respondent nor Mr. Mathews disclosed the death of Mr. Troutman to either the court or the other parties in advance of the mediation. Mr. Mathews took the position that the death was confidential, private, and privileged and could not be disclosed. Respondent had a mistaken belief that disclosure was not necessary, and that under Florida Statute §733.601 (Duties and Powers of the Personal Representative -Time of Accrual of Duties and Powers) the putative personal representative, Mr. Troutman's daughter, could take actions for the benefit of the estate prior to appointment by the court. On April 24, 2017, Respondent and Mr. Mathews appeared at the mediation on behalf of Mr. Troutman. According to Respondent, Mr. Mathews took the lead in the mediation and advised Respondent to "keep her mouth shut" during the mediation. Mr. Troutman's daughter also appeared on Mr. Troutman's behalf via a power of attorney, which she held prior to his death, however the power of attorney expired upon the death of Mr. Troutman.

Neither Respondent nor Mr. Mathews took timely action to substitute the proper party into the case. Mr. Mathews took the position that the death was confidential. Mr. Mathews and Respondent had an obligation to promptly disclose Mr. Troutman's death at or before the mediation, but they both failed to do so. During the mediation, the parties reached a settlement whereby Ms. Mason's personal representative agreed to pay Mr. Troutman \$237,500 on behalf of the estate. On the same day, Respondent signed a stipulation memorializing the

settlement. Respondent asserts that she signed the stipulation at Mr. Mathew's direction. Respondent filed the stipulation for ratification, which was approved by the court by order dated April 26, 2017. Respondent accepted the settlement proceeds on behalf of Mr. Troutman and asserts that, at the direction of Mr. Mathews and approval of Mr. Troutman's daughter, who was the sole heir and personal representative of his estate, retained \$95,000 in attorney's fees for herself and Mr. Mathews without leave of the court or depositing the funds into Mr. Troutman's estate account. Respondent deposited the funds into her trust account before disbursing fees to herself and Mr. Mathews. The probate court ultimately approved the final distribution of proceeds in the Troutman Estate. Neither Respondent nor Mr. Mathews filed a suggestion of death with the court, or otherwise timely notified the court of Mr. Troutman's death.

By not informing opposing counsel about the death at or before mediation and by not filing a suggestion of death, Respondent violated the obligation to comply with Rule 1.260(a)(2), Fla. R. Civ. P., thus disobeying an obligation under the rules of a tribunal.

On April 24, 2017, Respondent also initiated a probate proceeding for Mr. Troutman in *In Re: James Edward Troutman*, Case No. 17-CP-000591, in the Sixth Judicial Circuit, in and for Pasco County, Florida. Respondent did not advise the personal representative for the estate of Ms. Mason of the probate proceeding for Mr. Troutman. In August 2017, the personal representative for Ms. Mason's estate was in the process of selling Ms. Mason's home and the title company requested the death certificate for Mr. Troutman from Ms. Mason's personal representative. Since Ms. Mason's personal representative was unaware of Mr. Troutman's death, her counsel contacted Respondent's office to inquire about the death certificate. On or about August 15, 2017, Respondent provided the death certificate to the title company, at which time Ms. Mason's personal representative discovered that Mr. Troutman had passed away two days before the mediation. Mr. Mathews berated Respondent for making this disclosure and threatened to sue her for doing so. On August 28, 2017, Ms. Mason's personal representative filed a motion for sanctions and a petition to void the settlement agreement for fraudulent inducement on October 2, 2017.

At a hearing on these matters on January 9, 2018, Mr. Mathews, with Respondent present, argued to the court that Mr. Troutman's death was privileged client information. The court granted Ms. Mason's personal representative's petition and voided the initial settlement that was reached at the mediation. On January 15, 2018, the parties entered into another settlement agreement resolving

all disputes and agreeing that \$130,000 of the settlement funds would be returned to the personal representative of Ms. Mason's estate. The new settlement was ratified by the court pursuant to the court's order dated January 19, 2018. The claim changed as Mr. Troutman had a claim as the surviving spouse and when he passed away, his Estate had a claim. Respondent's failure to promptly disclose Mr. Troutman's death directly led to the parties and the court expending additional time and resources in obtaining a new settlement concerning Ms. Mason's estate, thus obstructing the administration of justice.

By reason of the foregoing, Respondent admits that she has violated the following Rules Regulating The Florida Bar: Rule 4-3.4(c) (Fairness to Opposing Party and Counsel: A lawyer must 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); and Rule 4-8.4(d) (Misconduct: A lawyer shall not engage in conduct in connection with the practice of law that is prejudicial to the administration of justice).

6. The Florida Bar has approved this proposed plea in the manner required by Rule 3-7.9.

7. If this plea is not finally approved by the referee and the Supreme Court of Florida, then it shall be of no effect and may not be used by the parties in any way.

8. If this plea is approved, then respondent agrees to pay all reasonable costs associated with this case pursuant to Rule 3-7.6(q) in the amount of \$1,264.17. These costs are due within 30 days of the court order. Respondent agrees that if the costs are not paid within 30 days of this court's order becoming final, respondent shall pay interest on any unpaid costs at the statutory rate.

Respondent further agrees not to attempt to discharge the obligation for payment of the Bar's costs in any future proceedings, including but not limited to, a petition for

bankruptcy. Respondent shall be deemed delinquent and ineligible to practice law pursuant to Rule 1-3.6 if the cost judgment is not satisfied within 30 days of the final court order, unless deferred by the Board of Governors of The Florida Bar.

9. Respondent acknowledges the obligation to pay the costs of this proceeding and that payment is evidence of strict compliance with the conditions of any disciplinary order or agreement, and is also evidence of good faith and fiscal responsibility. Respondent understands that failure to pay the costs of this proceeding or restitution may reflect adversely on any reinstatement proceedings or any other bar disciplinary matter in which respondent is involved.

10. This Conditional Guilty Plea for Consent Judgment fully complies with all requirements of the Rules Regulating The Florida Bar.

Dated this 31st day of May, 2019.



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Dated this 31 day of May, 2019.



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Dated this 3rd day of June, 2019.

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