

IN THE SUPREME COURT OF FLORIDA  
(Before a Referee)

THE FLORIDA BAR,

Complainant,

v.

TONIA MARIE TROUTWINE,

Respondent.

Supreme Court Case  
No. SC16-1266

The Florida Bar File  
No. 2015-70,202 (11H)

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**FINAL REPORT OF REFEREE**

**I. SUMMARY OF PROCEEDINGS:**

Having been duly appointed as a Referee to conduct disciplinary proceedings as provided for by Rule 3-7.6 of the Rules Regulating The Florida Bar, a Final Hearing was held on March 6, 2017. All of the pleadings, notices, motions, orders, and exhibits are forwarded with this report and the foregoing constitute the record in this case.

The following attorneys appeared as counsel for the parties:

On behalf of The Florida Bar:

Tonya L. Avery  
444 Brickell Avenue, Suite M-100  
Miami, Florida 33131  
Tel: (305) 377-4445

On behalf of the Respondent:

Richard Baron

169 East Flagler Street, Suite 700  
Miami, Florida 33131  
Tel: (305) 577-4626

**II. FINDINGS OF FACT:**

**A. Jurisdictional Statement.**

Respondent is and was, at all times material herein, a member of The Florida Bar subject to the jurisdiction and disciplinary rules of the Supreme Court of Florida.

**B. Narrative Summary of Case.**

The following facts were determined from the sworn testimony taken and also from within the various exhibits admitted into evidence at the hearing. This Referee took testimony from Respondent Tonya Troutwine, as well as Lauren Pechacek, Broward County Sheriff's Office Deputy Zamora, Broward County Sheriff's Office Detective Schaefer, and notary Renee Escabi. The sworn testimony and exhibits admitted into evidence showed that on or about January 28, 2014, Respondent drafted and prepared a Limited Special Durable Power of Attorney to allow her to take over the financial and legal affairs of her elderly neighbor, Esther Miller, who was ill and suffering from dementia. Respondent took the power of attorney to George Miller, Esther's 92 year-old brother, who resided at the Royal Manor Nursing Home, for signature. After securing George Miller's signature on the instrument, Respondent and another individual, Dorothy Curtis, took the power of

attorney to Renee Escabi, a notary public at Pak Mail, for notarization. Respondent knew Escabi because she had used his services when she needed documents notarized in the past. Unlike the previous notarizations, Respondent this time asked Escabi to notarize the signature of the affiant, Mr. Miller, even though Miller was not present before the notary at the time.

Respondent told Escabi that "Ms. Curtis' brother" (referring to the affiant) was ill and in the hospital and asked Escabi to notarize the already-signed document. Escabi explained to Respondent that Mr. Miller needed to be present for notarization. Respondent then advised Escabi that the notary laws had changed in Florida and asked Escabi to speak with Mr. Miller by phone in order to satisfy the notary requirements. Escabi then spoke with someone who identified himself as Mr. Miller by phone. Mr. Miller, of course, was not personally known to Escabi; thus, Escabi did not know whether the person to whom he was speaking was in fact the affiant/signatory. Escabi nonetheless notarized the signature of George Miller.

The following day, Respondent contacted law enforcement in order to exercise the power of attorney, which would have granted Respondent virtually unfettered power over the financial and legal affairs of her elderly, ailing neighbor, Esther Miller. Respondent showed the power of attorney to Officer Zamora and advised him that Mr. Miller's sister's full-time caregiver's

services were no longer needed and requested that the caregiver be removed from the premises. In doing so, she relied upon the power of attorney.

Unbeknownst to Respondent, however, Esther Miller's daughter Sharon Thomas already had an enforceable power of attorney over her father, the 92 year-old nursing home resident George Miller. Miller had previously been found to be incompetent and lacking the mental capacity to authorize and sign the very power of attorney that Respondent had him execute. Respondent's power of attorney was a nullity, and Officer Zamora refused to enforce it.

Officer Zamora testified that Respondent told him that Escabi was present at the nursing home when he notarized Mr. Miller's signature. Officer Zamora then informed Respondent that the sign-in log at the nursing home only showed that she and Ms. Curtis had signed in to visit with Mr. Miller after hours that day. Respondent then told the officer that perhaps the notary forgot to sign the visitor's log. Officer Zamora's testimony, which this Referee found to be credible and consistent, demonstrates that Respondent misrepresented the facts to the officer in an attempt to circumvent the notary statute's requirement that the affiant appear in person before the notary at the time the affiant's signature is notarized.

Unsurprisingly, Respondent's account of the foregoing events differed significantly from that of Pechacek, Escabi and Zamora. But this Referee did not find convincing Respondent's account of her conversation with Zamora, nor did the Referee find compelling her testimony that "a notary never really knows who the affiant is, anyway – they're just someone who shows up and provides a driver's license." Moreover, the Referee received evidence (the sworn statement of Sharon Thomas) indicating the basest of motives underlying Respondent's conduct, to wit, an effort to gain control over an elderly neighbor's finances; her own neighbor from whom she had previously borrowed (according to Thomas) substantial sums of money. This the Referee finds particularly troubling. The Broward County Sheriff's Office took the matter seriously enough to seek an opinion from the Broward State Attorney's Office concerning possible criminal prosecution of Respondent as well, but prosecution was declined according to Detective Schaefer.

Escabi's hearing testimony also did not square with Respondent's concerning how she obtained the false notarization. Escabi testified that Respondent told him the signature was necessary for a living will. He also testified that he recalls notarizing and initialing each page of a two page instrument; not an uninitialed three page instrument like the power of attorney that the court received in evidence (coincidentally, Dorothy Curtis in her

sworn statement to Detective Schaefer also said that the power of attorney notarized by Escabi looked different to her than the instrument that she saw George Miller sign at the nursing home). Although Escabi has lost his notary license from his conduct in this case, the Referee found his testimony that Respondent improperly told him that Florida law had changed, allowing him to notarize the signature, to be convincing and truthful. This in conjunction with the other evidence and testimony described herein leads the Referee to find that Respondent knowingly facilitated, assisted, and/or induced Mr. Escabi to violate a law or statute: to wit: Florida Statute 117.107(9).

#### **RECOMMENDATIONS AS TO GUILT:**

Based on the foregoing, this Referee finds Respondent guilty by clear and convincing evidence of violating the following Rules Regulating the Florida Bar: Rule 4-8.4(a) (A lawyer shall not violate or attempt to violate the Rules of Professional Conduct, knowingly assist or induce another to do so, or do so through the acts of another) and Rule 4-8.4(c) (A lawyer shall not engage in conduct involving dishonesty, fraud, deceit, or misrepresentation...). The foregoing facts amply justify these findings.

#### **III. RECOMMENDATION AS TO DISCIPLINARY MEASURES TO BE APPLIED:**

The Referee herein recommends that Respondent be disciplined as follows:  
Public Reprimand to be administered by publication.

**IV. STANDARDS FOR IMPOSING LAWYER SANCTIONS:**

In making this disciplinary recommendation, this Referee considered the following Standards for Imposing Lawyer Sanctions and case law, and found the following aggravating factors:

**A. Aggravation:**

- 9.22 (b) dishonest or selfish motive;
- 9.22(g) refusal to acknowledge the wrongful nature of conduct;
- 9.22(h) vulnerability of victim;

**B. Florida Standards for Imposing Lawyer Sanctions:**

I considered the following standards prior to recommending discipline:

- Standard 5.13: Public reprimand is appropriate when a lawyer knowingly engages in any other conduct that involves dishonesty, fraud, deceit, or misrepresentation and that adversely reflects on the lawyer's fitness to practice law.
- Standard 7.3: Public reprimand is appropriate when a lawyer negligently engages in conduct that is a violation of a duty owed as a professional and causes injury or potential injury to a client, the public, or the legal system.

**C. Case Law:**

I considered the following case law prior to recommending discipline:

- The Florida Bar v. Farinas*, 608 So.2d 22 (Fla. 1992);

- *The Florida Bar v. Santiago Eliaiek, III*; The Florida Bar File No. 2013-70,336(11L); Supreme Court Case No. SC15-629; dated February 18, 2016; and
- *The Florida Bar v. Fredericks*, 731 So.2d 1249 (Fla. 1999).

This Referee after hearing the evidence considered the possibility of a greater sanction (suspension) given the indications that Respondent's motive for obtaining the power of attorney may have been to gain control over her elderly and sick neighbor's money, and the testimony that respondent and her mother had previously borrowed money from her neighbor; sometimes paying it back, and sometimes not. The Referee was also struck by the fear of retaliatory lawsuits, restraining orders and the like expressed by Sharon Thomas when asked by Detective Schaefer whether she would consider pressing charges against respondent. (Exhibit 7). Thomas' fear of retaliation was seemingly justified in light of Respondent's track record.

Lauren Pechacek, knew very well the potential consequences of taking on the Respondent. Pechacek testified that Respondent has filed for no less than *three* restraining orders against board members at her condominium association and against her neighbor's caretaker and has made at least *eight* complaints to the Department of Professional Regulation (all dismissed). Pechacek initiated this bar complaint because, according to her, two other persons had already been the victims of bogus notarizations procured by Troutwine in the past. Although Pechacek was cross-examined about potential bias related to her own role in a foreclosure action



against Troutwine, and her own inappropriate filing of pleadings as a non-lawyer, the Referee yet found Pechacek to be quite truthful and consistent in her testimony. In sum, the witnesses seemed to fear how Ms. Troutwine would respond if they took any actions against her. Even Officer Zamora had to deal with an internal affairs complaint brought by respondent (for failing to take a witness' statement). Virtually no one who "crossed" her, it seems, avoided some sort of retaliatory wrath.

Furthermore, there was absolutely no contrition in the testimony of respondent. She rather characterized her own actions as selfless and heroic in the face of a life or death emergency situation, -- an effort to "become George Miller's legs to go and throw [an abusive and neglectful] caretaker out." She cast herself as the victim of a group of scheming, unreasonable, uncaring relatives, condo board members and caregiver. She called Escabi a liar or confused, and called Detective Schaefer a confused witness who once called her by the caretaker's name at an injunction hearing. This Referee could discern no agenda among these witnesses, however, to malign or harm Respondent's reputation of career. If anything, most seemed reluctant to testify against her.

Notwithstanding the foregoing facts, the Referee is mindful that Ms. Troutwine is a relatively young lawyer with no previous disciplinary record. The Florida Bar, moreover, is recommending a public reprimand as the appropriate discipline in this case. The Referee has given great weight to that recommendation,

and is sincerely hopeful that this incident is an aberration in an otherwise ethical and rule-abiding career.

Although not sought by bar counsel nor by Respondent's counsel, this Referee also considered lesser sanctions such as admonishment, and/or probation. The Referee finds, however, that such sanctions are not commensurate with the seriousness of the offenses and their destructive impact on the integrity of the profession and our legal system.

**VI. PERSONAL HISTORY AND PAST DISCIPLINARY RECORD:**

Age: 43

Date admitted to the Bar: December 11, 2003

Prior Discipline: None

**VII. STATEMENT OF COSTS AND MANNER IN WHICH COSTS SHOULD BE TAXED:**

The Florida Bar shall be awarded their necessary and reasonable taxable costs in these proceedings and shall submit their statement of costs, as well as a request for payment of same.

Dated this 31<sup>st</sup> day of March, 2017.

  
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**HONORABLE JOHN CHARLES SCHLESINGER,**  
Referee

**Original to:**

Clerk of the Supreme Court of Florida; Supreme Court Building; 500 South Duval Street, Tallahassee, Florida, 32399-1927.

**Conformed copies to:**

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