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SPECIAL REPORT: FALSE NOTARY CONVICTED, SENTENCED IN THEFTS FROM ATTORNEYS

Tangipahoa DA's law firm among several victimized, but his firm recovers from a title insurer in a fortuitous transaction.

To my readers: This report is published in June 2009. It reports on the following story as of fall 2007. It has taken well over a year to verify some of the facts and details reported below. The members in the firm of Rolling, Perrilloux, and Sledge, L.L.C., the Hammond law firm that was the victim in the crime, include Scott Perrilloux the 21st JDC District Attorney, and Tangipahoa Parish Sheriff's office attorney Scott Sledge.

For over a year, the probable-cause affidavits and the warrants for Monson's arrest were unavailable to the public. I had hoped to be able to report this story in the fall of 2007, but I could not verify key information I had obtained from sources inside Perrilloux's organization.

Finally, this year, with the help of the attorney general, I was able to get a look into the criminal case records, match things up with other court records, and verify the information. What is written here is the story as of November 2007, followed by 2009 updates. The original story covering Perrilloux's knowledge of his firm's employee being a notary usurper was published in 2006 and follows this report.

In the Fall 2006 issue of Louisiana Notary, I reported on the saga of Rhonda Faye Smith Monson, aka the notary who is not a notary. The full text of the report is reprinted below.

At that time, Monson had left her employment with Rolling, Perrilloux, and Sledge, L.L.C., a Hammond law firm. Monson's departure occurred shortly after I informed 21st JDC District Attorney Scott Perrilloux, who is a partner in the law firm, about Monson's 2003 conviction for theft from a previous employer, a Baton Rouge attorney.

Since then, things turned worse for Ms. Monson, the three law firms who employed her after 2003, and a major national title-insurance company. Monson has finally been charged with 15 criminal counts in East Baton Rouge and Tangipahoa parishes.

Monson has not, however, been charged for falsely representing herself as a notary public; that's not an offense that Perrilloux is willing to tackle. The current criminal charges are strictly limited to the alleged thefts from her three most recent employers. What's more, it's the Attorney General's office, not 21st JDC DA Scott Perrilloux, who is prosecuting Monson; Perrilloux's firm is a victim, and he is recused as prosecutor.

Out of the frying pan, into the fire

During her employment with the first of these law firms, Rolling, Perrilloux, & Sledge in Hammond, Monson was doing notary work in the firm, although she was not a notary. At that time she was also on probation for a felony-theft conviction in Baton Rouge in 2003.

Livingston parish sheriff's deputies arrested Monson on September 29, 2006 based on a Tangipahoa warrant alleging theft of \$2000. The investigation into the thefts was not complete when the first warrant was issued, but the court nevertheless set bond at \$250,000.

Monson was held in jail in Tangipahoa parish for about a week. She was released on October 5, 2006, the same day she tendered a bearer note for \$150,000 to Rolling, Perrilloux, and Sledge, L.L.C. Monson secured this note with a mortgage on her home. Evidence would later surface of the theft from the DA's law firm of approximately \$178,000.

Easy money

The next day (Oct. 6, 2006), Monson closed on a mortgage-loan refinance on the same property she had just mortgaged to Rolling, Perrilloux, and Sledge. Also on this day, Perrilloux's firm recorded the \$150,000 mortgage Monson granted them the day before, beating her refinance lender to the recordation time clock at the clerk of court's office.

Officials at the Baton Rouge offices of Household Financial Corporation II told me that not only did Monson fail to disclose the day-old \$150,000 mortgage on October 6, 2006 when she closed on the refinance, she had also never made any payments on her new mortgage loan!

It took a few months for Monson's failure to pay anything on her refinance to cause her any problems. Things didn't start happening on that until May of 2007. Meanwhile, in November 2006, the 21st JDC issued seven more warrants based on the evidence that Monson stole another \$176,000 from the D.A.'s private law firm, bringing the total alleged theft from the Perrilloux law firm to about \$178,000.

Back to Baton Rouge

In April, 2007, Monson secured employment in Baton Rouge with attorney William "Bill" Adcock of Gulf Coast Title Co.

Adcock told *Louisiana Notary* that about a month after hiring Monson, he realized something wasn't quite right with his money. He said that it wasn't unusual to see a large payment to "Diamond" in the checkbook because they had occasion to make payments to a local real-estate broker with a similar name. But when he found out that the check payable to "Diamond" was tendered to Diamond Mazda to pay for the new car Monson was driving to work, the game was up.

Adcock said Monson begged him not to prosecute her, promising she would pay him back. According to Adcock, she did just that. Adcock told *Louisiana Notary* that he later discovered that Monson's repayments were coming in while Monson was allegedly relieving yet another Baton Rouge attorney of his cash. That attorney was Donnie Stelly, who hired Monson in July 2007. By September, Donnie Stelly had discovered Monson's forgeries in his own accounts. In September 2007, a Baton Rouge police detective signed an affidavit of probable cause alleging that the evidence supports a charge that Monson forged checks drawn on Stelly's account and deposited them into her personal account. This probable-cause affidavit supporting the arrest warrant states that the detective viewed evidence that the amount allegedly stolen from Stelly exceeds \$48,000.

Rolling in the money

Meanwhile, back to spring of '07 in Tangipahoa, where things are not going well for Ms. Monson. Although out of jail since October and without any bond to limit her movement, she still had several theft charges pending. On April 30, Perrilloux's firm was ready to collect, and filed suit for executory process to seize the property and have it sold to satisfy the debt.

With recovery of the amount owed to his firm practically guaranteed, on May 1 Perrilloux issued a letter "To whom it may concern" stating that on November 27, 2006, he had rejected the charges for which Monson had been arrested in September of that year. He cited "insufficient evidence."

At first glance, that may sound good for Monson, but the May 1 declaration included no mention of the November 2006 charges for theft of the additional \$176,000.

Insurer pays Perrilloux law firm

In July, shortly after Perrilloux decided not to prosecute Monson, the victim who will bear the single biggest financial loss in this scenario emerged on the public record.

That was when Perrilloux's law firm sold the note and mortgage that Monson had given them the day she left jail to Ticor Title Insurance Company of Florida, Household's title-insurance company.

Ticor officials confirmed that Ticor paid Rolling, Perrilloux, and Sledge L.L.C. just under \$200,000 for the \$150,000 note and mortgage.

Now, Household's mortgage is at the head of the line thanks to having a good title-insurance policy. In September, Household filed notice of seizure and suit for executory process.

It now looks like everybody is happy except for Monson and Ticor.

The saga continues

As 2007 comes to a close, Monson faces charges on 15 counts of theft or forgery, and is in jeopardy of losing her home.

Ticor is out nearly \$200,000, but may have some recourse. Being part of a conglomerate that writes over half the title insurance in the country, Ticor has a sophisticated recovery division, and a payout of nearly \$200,000 is likely to get some follow-up.

Rolling, Perrilloux, and Sledge L.L.C. collected more money than it even reported was stolen; Ticor paid the bill.

Donnie Stelly, the Baton Rouge lawyer from whom Monson allegedly stole over \$48,000 in early 2007, is hopeful for restitution coming from the pressure the EBR parish DA is exerting on Monson.

Adcock did get paid back, although, it appears, with money Monson allegedly stole from Stelly.

Adcock told *Louisiana Notary* that Monson had never represented herself as a notary public while in his employ. He is thankful for small favors.

2009 update — In November, 2008, Monson was convicted for theft and forgery in East Baton Rouge parish and sentenced to 5 years probation. In January 2009, she was convicted of 11 counts of felony theft in Tangipahoa parish and was sentenced to 18 months imprisonment followed by 3 1/2 years probation.

Following is the initial report referenced above

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SPECIAL REPORT: ATTORNEY GENERAL INVESTIGATES FALSE NOTARY

The attorney general's criminal division is trying to determine whether criminal charges can be brought against a woman for falsely representing herself as a notary public and signing numerous notarial documents as a notary public over a period of at least five years.

In early 2005 the secretary of state's office informed Scott Perrilloux, district attorney for Tangipahoa, Livingston, and St. Helena parishes, that one Rhonda Monson was reportedly signing papers as a notary public, and that according to their records, she was not a notary. Monson was an employee of the Hammond law firm of Rolling, Perrilloux, and Sledge LLC, of which Perrilloux is a principal.

Perrilloux's law firm employed Monson while she was on probation for a felony theft conviction in 2003 in East Baton Rouge parish. *Louisiana Notary* was unable to determine whether the firm's principals knew of her criminal conviction. According to Monson's probation officer, a person on probation must report details of her employment to the probation officer, and the probation office must notify the employer of the conviction and probation status. But the officer advised that he was prohibited from answering case-specific questions.

The secretary of state's office first received the information about Monson's activities in the spring of 2005, when *Louisiana Notary* referred a complainant to the notary division.

Louisiana Notary followed up with notary division administrator Cynthia Cotten, who confirmed receipt of the complaint. Cotten explained to *Louisiana Notary* that although the secretary of state's office has no regulatory or enforcement powers in connection with notaries public, she had verified that Monson was not a commissioned notary and contacted Perrilloux to inform him of the situation. After informing him that Monson reportedly had been executing notarial acts as a notary public in the course of her employment with his law firm, and that she was not in fact a notary public, Perrilloux asked, "Why are you telling me this?" Cotten explained that since Perrilloux was not only district attorney but also a partner in the firm where Monson was employed, it seemed the proper thing to do. She reminded him that the secretary of state's role is to administer the commissioning process and maintain the notary registry, but that it otherwise has no prosecutorial powers.

Cotten also said that she had contacted Monson and advised her to cease and desist from representing herself as a notary public and exercising notarial functions.

Time marches on

For nearly a year, *LN* heard nothing about the case. Then, in June of 2006, the same complainant told *Louisiana Notary* that Monson had never produced a commission nor demonstrated that the secretary of state's records were in error, and that she was still signing off on notarial instruments as an employee with Perrilloux's law firm.

The complainant had again reported this to the secretary of state's office. That office confirmed the report and told *LN* that they contacted Mark Rolling, another principal of the firm, who replied that he would send Monson to the secretary of state's notary division office to "straighten it out."

A little over a month later, in August of 2006, *LN* received copies of two notarial instruments purportedly executed by Monson two months earlier. One of those instruments was a purported act of donation of immovable property. The other was a purported affidavit. The act of donation bore the masthead "Rolling, Perrilloux, and Sledge, LLC" in the lower left margin, and both the act of donation and the affidavit showed a notary identification number beside Monson's printed name.

The secretary of state's online notary search shows that the notary ID number used on the documents is assigned to James R. Hollingsworth of Rapides parish. Monson lives in Livingston parish.

The notary division of the secretary of state's office confirmed receipt of the same document copies and told *LN* that they had referred the matter to their election-fraud unit for review and recommendation for further action.

Louisiana Notary attempted to contact Rolling at his law office to ask directly how it was that Monson continued to act as a notary public at his firm, especially given that Perrilloux, Rolling, and Monson had all been put on notice that Monson was not a commissioned notary. The call was not returned.

Curiouser and curiouser!

In the course of developing its information, *LN* learned that Monson had been engaged in similar acts as a usurper of the office of notary public in Baton Rouge from 1999 to 2001 and possibly as late as 2003. But there was more: In a 2003 plea agreement in Baton Rouge, Monson was convicted for felony theft of funds from her employer in connection with her employment with attorney Robert G. "Bob" Jackson in Baton Rouge.

As part of Monson's plea agreement, similar charges in connection with her employment with Baton Rouge attorney Robert Gill were dismissed. Monson was sentenced to three years probation in 2003. Her probation ended in March 2006.

What's the crime?

After learning of Monson's conviction for felony theft, *LN* contacted Perrilloux and the secretary of state's fraud unit chief Fred Gwin.

Gwin stated that he was scheduled to meet with investigators in the attorney general's criminal division about Monson's alleged activities, and said that he would add the conviction information to his report.

Perrilloux, however, took the information about Monson's conviction matter-of-factly. Then, responding to questions about Monson's representation that she was a notary and acting as a notary at his firm's law office, he said that it was a matter for the secretary of state.

When reminded that the secretary of state had no law-enforcement authority, and when asked why he had not sought to prosecute Monson for falsely holding herself out as a notary public and signing documents in that capacity for his firm's clients, he replied by asking "What's the crime?"

When asked whether R.S. 14:112 (False personation) would apply, Perrilloux instructed that this particular statute didn't apply to those who falsely represent themselves as notaries. He then testily rebuked the reporter for venturing into matters best left to lawyers and stated that even if something Monson did was a crime, that the sheriff, not the district attorney, would be the proper official with whom to file the complaint.

Notary or not, however, Monson's employment with the law firm ended soon after Perrilloux's enlightenment.

Is there a crime?

That's the \$64,000 question. As Mr. Perrilloux pointed out, reporters are not lawyers. All reporters can do is ask the questions.

Question: If Monson signed the act of donation as the notary, as represented in the copy described above, does the donee own the property? The answer may depend upon other facts. But there is no doubt that there cannot exist an authentic act without a notary's signature. Monson was not a notary, but the recitations in the donation incorrectly state that the act is made before a notary public.

Question: Under La. R.S. 14:132, intentional falsification of any document filed with a public officer constitutes the crime of injuring public records. If the donation was recorded, is there a crime?

Question: If Monson signed a testament otherwise proper as to form for a notarial testament except for Monson's lack of a notary commission, is the testament valid? It's safe to say it can't be valid as a notarial testament.

Question: A source inside Perrilloux's law firm told *Louisiana Notary* that Monson, acting as notary, signed the purported notarial testament of one of the firm's clients in the spring of 2006. The testatrix died within a few months of signing her will. What, if any, are the obligations of the law firm as far as notifying the executor, heirs, legatees, or attorneys for the estate as to whether to file the purported testament in the succession proceedings?

Yet another question: Have the principals of the law firm any culpability or liability — criminal or civil — if there exists injury to the public record when an instrument was recorded with their knowledge, or under their direction, when the secretary of state had informed them Monson was not a notary?

How would the courts answer these questions? If the courts apply the law to the facts, and adhere to the long-standing principles of the de facto doctrine, the acts will not stand as notarial acts. The parties will, in that case, find themselves with less than they bargained for in terms of notarial services.

Concepts: The de facto doctrine

Most notaries learn at some point that if a notary fails to maintain de jure status, his acts will still be valid assuming he is unaware that his status has changed. The principle is that when an officer is acting in good faith, and believes that he possesses the office, the public should not suffer for the presence of a technical deficiency in the official's actual authority.

Henry J. Dauterive Jr., in *Defacto Public Officers in Louisiana*, 12 La. L. Rev. 200 (1952), writes:

The de jure officer is one who is duly qualified and appointed or elected in compliance with the law governing his position. Contrastingly, the usurper or intruder merely assumes an office to exercise its functions without any legal title or color of right to that office. Between these positions is the individual who is in possession of an office and discharging its duties under color of authority derived from some sort of election or appointment, however irregular or informal, or at least from general reputation. Such a situation has been given legal standing as a matter of public policy. Public acts, records, contracts and the like, participated in by a public officer who subsequently is found to be holding office under a nullifying irregularity, cannot be treated simply as void. It would place too great a burden on the public to require them, in their dealings with public officers, to inquire into their backgrounds for every act. Hence the de facto doctrine. (Footnotes omitted)

In this case, however, Monson has no good faith basis for assuming that she is a notary. This is not a technical deficiency in an otherwise valid commission. In fact, she must know she is not a notary because she used another notary's ID number on her acts.

Are the documents Monson signed valid as notarial instruments? If and when litigation ensues over the validity of acts signed by Monson that purport to be in authentic form, we'll know the court's answer.

In a telephone interview, Bob Jackson, the attorney who successfully pressed for Monson's conviction for theft from his firm, informed *Louisiana Notary* that when he found out that Monson was in fact not a commissioned notary, he spent considerable effort in reviewing the transactions with the assistance of another attorney to ensure that the interests of his clients were protected by having all the instruments acknowledged, ratified, confirmed or redone as necessary.

Under the de facto doctrine, instruments executed by a notary usurper are absolutely null as notarial acts. Juridical acts executed by a usurper of the office of notary may have standing as private acts, but, unlike the acts of a de facto notary—where the notary had been in possession at some time of the actual office or color of office—they are not valid as notarial acts.

Even with standing as private acts, some will not be sufficient for legal efficacy. For example, in the case of mortgages, executory process fails if the act is not an authentic act. An act of donation (and its acceptance) must be an authentic act.

In the case of a notarial testament, the testament fails if it is not executed in the presence of a notary public under the strict requirements of statutory form.

A person who is not a notary and who has never been a notary cannot be a de facto notary.

Dauterive, *supra*:

It is requisite to de facto status that the individual have achieved his position through some color of authority or title, that is, by virtue of some appointment or election, however irregular or informal. This would include the situations where the officer was elected or appointed when not qualified for the position, where the election or appointment was defective procedurally or substantively, where the officeholder has not complied with the legal requirements of the office.

Not a crime

Meanwhile, according to Scott Perrilloux, it is not a crime to falsely represent oneself as a notary public.

A prosecutor on Perrilloux's staff, however, did tell *Louisiana Notary* that, depending on the circumstances, one who engages in conduct like that of Monson might be chargeable with injuring public records or even the

unauthorized practice of law. But the most likely consequences are that the usurper would be liable to persons who sign a document expecting it to qualify as a notarial instrument.

The attorney general's office took the complaint from the secretary of state and assigned it to an investigator. The investigator's findings were recently assigned to Burton P. Guidry, assistant attorney general in the criminal division. Guidry told *Louisiana Notary* that the attorney general does not prosecute unless the district attorney in the parish where an alleged crime took place formally requests the attorney general's involvement.

When asked whether it is not a crime to falsely hold oneself out as a notary public and exercise notarial functions, Guidry said, "Don't say that yet. We're still working on it."

The wheels of justice indeed turn slowly. Maybe one of these days we will know whether under our law anyone who wants to declare, "I'm a notary public" and hang up a shingle and start performing notarial functions can do so without criminal sanction.

But for now, neither the attorney general nor the district attorney for the 21st judicial district is willing to say that it is criminal for a person who is not a notary public to perform notarial functions. In fact, right now, you can get in more trouble for littering. One thing, however, that this story makes painfully clear: if you hire a notary to work in your company, make sure you see the commission.

Editor's note: At press time, a source inside the district attorney's office in Hammond told Louisiana Notary that Monson was recently arrested in Livingston parish on charges that she embezzled from the law firm of Rolling, Perrilloux, and Sledge. A source at the law firm also reported that the firm has undertaken to correct the problems created for clients who relied on Monson's representation that she was a notary public. LN will follow up in the next issue with details as they are developed.

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