SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 06-084
District Docket No. IV-05-028E

IN THE MATTER OF	
SALVATORE LA RUSSA, JR.	
AN ATTORNEY AT LAW	

Decision

Argued: May 18, 2006

Decided: July 25, 2006

Efrain Nieves appeared on behalf of the District IV Ethics Committee.

Carl Poplar appeared on behalf of respondent.

To the Honorable Chief Justice and Associate Justices of the Supreme Court of New Jersey.

This matter came before us on a recommendation for discipline (reprimand) by the District IV Ethics Committee ("DEC"). The complaint alleged that respondent took an improper jurat and failed to communicate with a client. For the reasons detailed below, we determine to impose a reprimand.

Respondent was admitted to the New Jersey bar in 1992.[1] He has no prior discipline.

The complaint charged respondent with having violated RPC 8.4(c) (conduct involving dishonesty, fraud, deceit or misrepresentation), RPC 8.4(d) (conduct prejudicial to the administration of justice), RPC 1.4(b) (failure to keep client reasonably informed about status of the matter and to promptly comply with reasonable requests for information), and RPC 1.4(c) (failure to explain matter to extent reasonably necessary to permit client to make informed decisions regarding the representation).

In October 1999, Yolanda Massey retained the law firm of Stephen W. Bruccoleri to represent her in connection with injuries stemming from a bus accident almost two years earlier, when returning from a church-outing to Atlantic City. Bruccoleri is Yolanda's nephew. Respondent is an associate attorney in Bruccoleri's law firm.

At the DEC hearing, Bruccoleri testified that he had been summoned to Yolanda's Philadelphia home about a week after the 1997 accident to discuss filing a lawsuit against the bus company. He recalled that Yolanda's husband, John ("Jack") Massey, was not home when he arrived, but was present during

[1] He is also admitted to the Pennsylvania bar.

the latter portion of their initial consultation.

Bruccoleri recalled Jack's reluctance to become involved in the matter, for fear that the couple's insurance rates would go up. For this reason, Jack refused to give Bruccoleri, and later respondent, the declarations page from the couple's insurance policy. Although the record is not entirely clear, it appears that Jack refused to produce the insurance document until the statute of limitations was about to run out, in October 1999, at which time he finally turned over the documents.

On October 7, 1999, Bruccoleri's firm filed a complaint, which was drafted by Bruccoleri. Jack was made a co-plaintiff for his per quod claim for lack of consortium.[2]

Bruccoleri then turned the case over to respondent, who testified that, from the time he took over responsibility for the case, he dealt exclusively with Yolanda. In fact, he conceded that he did not meet Jack until after the case was settled.

Thereafter, interrogatories were served upon the parties. Before Jack answered his, however, respondent obtained a settlement of their case for $22,500. Therefore, Jack was

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[2] The record does not reveal who filed the complaint – Bruccoleri or respondent.

never required to answer the interrogatories regarding his per quod claim.

On April 23, 2001, a settlement took place. Yolanda and Pasquale Bruccoleri (her brother and the father of Stephen Bruccoleri) met respondent at the Philadelphia office.[3] Respondent testified about Jack's absence that day:

> And then when she showed up with [Pasquale Bruccoleri] I turned around and said, where's your husband? Where's your – John Massey? She said, you know, that he was home or he couldn't make it, for whatever reason, I don't know if he was working or he just didn't want to be bothered, but that she had his full permission to sign whatever forms were necessary to effectuate the settlement.
> And I turned to [Pasquale Bruccoleri], I said, Pat, were you there? He said, yeah. I said, is that right? And Pat said, yeah.
>
> [T88.][4]

On the basis of that exchange, and despite Jack's absence, respondent allowed Yolanda to sign Jack's name to the release. Thereafter, respondent affixed his jurat to the document.

Respondent explained his actions:

> Can I say this? If it wasn't family, if this wasn't Mr. Bruccoleri's family I

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[3] Bruccoleri maintains a dual practice, with an office in Philadelphia, Pennsylvania, and Voorhees, New Jersey.

[4] "T" refers to the transcript of the February 6, 2006 DEC hearing.

> would have never did [sic] this. Okay? It wouldn't have happened. Okay? But because it was Mr. Bruccoleri's aunt, okay.
> And I was very fond of the woman, and Pat Bruccoleri was there, who I had known since I started working for his son, you know, I had no reason in the world to believe that – you know, if Pat Bruccoleri told me something that wasn't true that would be a first.
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> [T90-7 to 17.]

Respondent explained his actions, but couched them in terms of his understanding of Pennsylvania law, under which he believed that he could notarize the signature as long as he later obtained a written power of attorney from Jack; he thought that he could act similarly in a New Jersey matter.

For his part, Jack testified that he never authorized the Bruccoleri law firm to name him in his wife's action and that he specifically refused to participate in the matter. According to Jack, he knew that Yolanda had filed a lawsuit for the bus accident, was aware that the matter was an ongoing litigation, but was unaware of his own involvement and of the settlement until he discovered the settlement documents in his wife's personal papers.[5]

Jack's recollection of the attorneys' involvement differed from that of Bruccoleri and respondent. He recalled

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[5] Yolanda passed away in February 2003.

Bruccoleri's early involvement in the case, but had no recollection of Bruccoleri's visit to his house for a supper-meeting, early in the case.

Jack also had no recollection of meeting respondent prior to the DEC hearing. He did not recall meeting respondent at his wife's funeral, but noted that over 200 people had attended her funeral service.[6]

Jack's testimony was inconsistent regarding his discovery of the settlement. Initially, he testified that he had found the settlement papers a year after Yolanda's death. He later testified that, within a month of his wife's death, he learned of a joint bank account by Pasquale and Yolanda, which contained the personal injury settlement funds.

On the other hand, Pasquale Bruccoleri testified that respondent was aware of the settlement before his wife's death, and knew how the funds had been spent. According to Pasquale, Yolanda and Jack had purchased appliances for the couple's daughter, as a wedding gift, with the proceeds from the accident case. He stated that Jack was present at a Thanksgiving Day gathering at which Yolanda had explained the funding for the appliances. Jack, in turn, denied any

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[6] Respondent testified that he gave his condolences to Jack at Yolanda's funeral, and that Jack thanked him for helping out Yolanda.

knowledge of those large wedding gifts to his daughter.

With regard to the allegation that respondent failed to communicate with Jack, respondent conceded that he had no direct contact with Jack about his claim. He testified that he communicated with Yolanda on a regular basis, believing that she was relaying information to Jack. Respondent also believed that Jack was satisfied with his representation:

> Q. Did there come a time that John or Jack Massey and Yolanda gave you a gift?
> A. Yes, the following Christmas Aunt Yolanda came up — it was a gift set with two little shot glasses and package of Sambucca. See, I — my relationship with Aunt Yolanda went further than this case.
> Q. Now, tell me what was said by —
> A. She said, this is from me and Jack, thank you very much for all you did, we really appreciate it.
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> [T91-22 to T92-7.]

Indeed, Jack did not assert that respondent had failed to comply with any requests for information about his case. Rather, he stated that he knew little about Yolanda's case, was not concerned about it, and did not ask his wife about the matter.

As to Jack's assertion that he was never consulted about being a plaintiff in the case, neither respondent nor Bruccoleri was questioned about this issue.

The DEC determined that Jack "had made it clear to all

concerned that he did not wish to participate in that lawsuit." The DEC found that, thereafter, Jack's signature was improperly notarized. The DEC did not cite an RPC for this infraction, deciding to dismiss the RPC 8.4(c) and (d) charges for lack of clear and convincing evidence. However, the DEC found that respondent violated RPC 1.4(b) and (c) by failing to communicate with Jack while the lawsuit was pending.

Without citing precedent, the DEC recommended a reprimand.

Upon a de novo review of the record, we are satisfied that the evidence clearly and convincingly establishes that respondent was guilty of unethical conduct.

Bruccoleri had assigned to respondent a matter involving his aunt and uncle. Upon the conclusion of the case, when asked to affix his jurat to a document containing an illegitimate signature, respondent made an unwise choice, albeit under the pressure of the moment. His superior's father, as well as Yolanda, assured him that Jack had approved of the signature. There is no substitute, however, for the presence of the person whose signature should be affixed to a document.

The Court has long held that the execution of jurats and the taking of acknowledgments must be met in all respects. In

re Surgent, 79 N.J. 529, 532 (1979). Five steps are involved in notarizing documents:

> (1) the personal appearance by the party before the attorney;
> (2) the identification of the party;
> (3) the assurance by the party signing that he is aware of the contents of the documents;
> (4) the administration of the oath or acknowledgment by the attorney; and
> (5) execution of the jurat or certificate of acknowledgment by the attorney in presence of the party.
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> [Jurats and Acknowledgments, Disciplinary Review Board Notice to the Bar, 112 N.J.L.J. 30 (July 14, 1983).]

Clearly, respondent did not abide by the above requirements.[7] Attorneys who have taken improper jurats or signed the names of others, with authorization, are guilty of misrepresentation, a violation of RPC 8.4(c). In re Hock, 172 N.J. 349 (2002). Respondent, too, is guilty of violating that rule. In addition, his conduct was prejudicial to the administration of justice, a violation of RPC 8.4(d), in that the adversary, the carrier, and the court believed that the release had been properly executed.

It matters not that a release might not require negotiation, an argument raised by respondent's counsel in

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[7] The ancillary Pennsylvania law arguments raised by respondent and his counsel have no bearing in this New Jersey case.

order to justify his position that, in this case, there was no violation of any RPC. By representing to the world that the signing and the notarization of the release had been properly undertaken, respondent compromised the integrity of that document and impeded the proper administration of justice.

With regard to respondent's communications with Jack, two issues bear mention. First, Jack never authorized the representation – the record contains no evidence that he was ever consulted about being a plaintiff. However, Bruccoleri, not respondent, drafted the complaint. Because Bruccoleri handled this aspect of his aunt and uncle's matter, respondent could hardly be faulted for assuming that Jack had been consulted about his participation in the lawsuit.

Thereafter, respondent testified, he was in constant communication with "Aunt Yolanda," with whom he had become close. Respondent reasonably thought that she was communicating with her husband about the important events in the case.

So, too, respondent's belief that Jack was satisfied with the case was understandable. Yolanda gave him a gift upon the conclusion of the matter, explaining that it was from her and Jack. In addition, Jack thanked him at the funeral for all he had done for Yolanda. Finally, this is not a case where the

client was seeking information about its progress and the attorney ignored the client's requests. Jack admitted that he did not ask his wife about the case and was not interested in the process. Here, the client, Jack, avoided the attorney's communications about the matter. Under the circumstances, we cannot conclude, by clear and convincing evidence, that respondent violated the communication RPCs. Therefore, we dismiss the charged violations of RPC 1.4(b) and (c).

The level of discipline in cases dealing with the improper execution of jurats, without more, is ordinarily an admonition or a reprimand. When an attorney witnesses and notarizes a document that has not been signed in the attorney's presence, but is signed by the legitimate party, the discipline is usually an admonition. See, e.g., In the Matter of Robert Simons, DRB 98-189 (July 28, 1998) (admonition imposed on attorney who signed a friend's name on an affidavit, notarized the "signature," and then submitted the document to a court) and In the Matter of Stephen H. Rosen, DRB 96-070 (April 29, 1996) (admonition for attorney who witnessed and notarized the signature of an individual on closing documents signed outside his presence; in addition, he failed to cooperate with disciplinary authorities). In 1990, a private reprimand – now an admonition – was imposed on an

attorney who witnessed and notarized a client's signature on a deed signed outside his presence. In a 1989 case, a private reprimand, too, was imposed where the attorney executed a jurat on an affidavit not signed in his presence, after he read the contents of the affidavit to the affiant and inquired whether the affiant had signed the document in the presence of a third party.[8]

If there are aggravating factors, such as, for instance, the attorney's signing of a party's name, the direction that a secretary sign the party's name on a document that the attorney then notarizes, or the attorney's knowledge that the party has not signed the document, then the appropriate discipline is a reprimand. See, e.g., In re Uchendu, 177 N.J. 509 (2003) (reprimand for attorney who signed clients' names on documents filed with the Probate Division of the District of Columbia Superior Court and notarized some of his own signatures on these documents); In re Giusti, 147 N.J. 265 (1997) (reprimand for attorney who forged the signature of his client on a medical record release form; the attorney then forged the signature of a notary public to the jurat and used the notary's seal); In re Reilly, 143 N.J. 34 (1995) (reprimand imposed on

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[8] Because private reprimands are confidential, this decision does not disclose the identity of those respondents.

attorney who improperly witnessed a signature on a power of attorney and then forged a signature on a document); In re Weiner, 140 N.J. 621 (1995) (reprimand for excessive delegation of authority to non-lawyer staff and for condoning his staff's signing of clients' names on documents); In re Rinaldo, 86 N.J. 640 (1981) (public reprimand for attorney who permitted his secretaries to sign two affidavits and a certification in lieu of oath); and In re Conti, 75 N.J. 114 (1977) (public reprimand for attorney whose clients told his secretary that it was impossible for them to come to the attorney's office to sign a deed and instructed the secretary to do "whatever had to be done" to record the deed; the attorney had the secretary sign the clients' names on the deed; the attorney then witnessed the signatures and took the acknowledgment).

Here, we find that respondent's conduct was more serious than that displayed in the private reprimand/admonition cases, because respondent witnessed Yolanda's signing of Jack's signature to the document. He knew, thus, that the legitimate party had not signed the release. Respondent's infraction is akin to Uchendo's, who received a reprimand for affixing his jurat to a document, knowing that the correct party had not signed it. We, therefore, determine to impose a reprimand on respondent.

Members Boylan and Baugh did not participate.

We also determine to require respondent to reimburse the Disciplinary Oversight Committee for administrative costs.

Disciplinary Review Board
William J. O'Shaughnessy, Chair

By: Julianne K. DeCore
Julianne K. DeCore
Chief Counsel

SUPREME COURT OF NEW JERSEY
DISCIPLINARY REVIEW BOARD
VOTING RECORD

In the Matter of Salvatore LaRussa, Jr.
Docket No. DRB 06-084

Argued: May 18, 2006

Decided: July 25, 2006

Disposition: Reprimand

Members	Suspension	Reprimand	Admonition	Disqualified	Did not participate
O'Shaughnessy		X			
Pashman		X			
Baugh					X
Boylan					X
Frost		X			
Lolla		X			
Pashman		X			
Stanton		X			
Wissinger		X			
Total:		7			2

Julianne K. DeCore
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Chief Counsel