

23846

NORTH CAROLINA
WAKE COUNTY



BEFORE THE
DISCIPLINARY HEARING COMMISSION
OF THE
NORTH CAROLINA STATE BAR
03 DHC 13

THE NORTH CAROLINA STATE BAR,)
Plaintiff,)
v.)
ARCANGELA MAZZARIELLO, Attorney,)
Defendant.)

CONSENT ORDER OF
DISCIPLINE DISMISSING
COMPLAINT WITH A LETTER
OF WARNING

This matter was heard before a Hearing Committee of the Disciplinary Hearing Commission composed of Elizabeth Bunting, Chair; M. Ann Reed and Betty Ann Knudsen. The defendant, Arcangela Mazzariello ("Mazzariello" or the "Defendant") was represented by R. Daniel Boyce and William E. Moore, Jr. The plaintiff, the North Carolina State Bar ("State Bar"), was represented by Thomas F. Moffitt. After extensive discovery, including eleven depositions, both parties stipulate and agree to the findings of fact and conclusions of law recited in this Consent Order and to the discipline imposed. Based upon the consent of the parties the Hearing Committee hereby enters the following:

FINDINGS OF FACT

1. The North Carolina State Bar is a body duly organized under the laws of North Carolina and is the proper party to bring this proceeding under the authority granted it in Chapter 84 of the North Carolina General Statutes and the Rules and Regulations of the North Carolina State Bar.
2. Mazzariello, was admitted to the North Carolina State Bar on March 22, 1997, and was at all times relevant hereto licensed to practice law in North Carolina, subject to the rules, regulations and Revised Rules of Professional Conduct of the North Carolina State Bar.
3. During all times relevant hereto Mazzariello was actively engaged in the practice of law and maintained a law office in Gastonia, North Carolina.
4. Mazzariello was properly served with process and has waived her right to a formal hearing.

COUNT ONE

5. The first count of the Complaint alleged that on or about October 8, 2001, Mazzariello represented David Simmons, a defendant charged with several traffic violations. She appeared before District Judge John K. Greenlee and requested a continuance. In support of her motion, Mazzariello tendered an unsigned and undated letter on a doctor's stationery that stated that her client had been instructed not to go to court because he was too ill with a contagious disease to attend court that day.

6. Judge Greenlee refused to accept the letter because it was not signed and dated; instead, he held the matter open until Mazzariello could return with a signed and dated letter. Mazzariello returned later that day. She told Judge Greenlee that she had not been able to obtain a signed and dated copy of the letter because the doctor was unavailable. She said that the doctor had dictated the letter but had not had an opportunity to sign it. Based on Mazzariello's statements, Judge Greenlee granted the motion and continued Simmons' cases until December 13, 2001.

7. There was a miscommunication between Judge Greenlee and Mazzariello. Before accepting the letter and granting the continuance, Judge Greenlee testified that he inquired whether Mazzariello had personally verified the genuineness of the letter. Mazzariello had verified the letter by asking her legal assistant, Joey Groves, to check with the doctor's office to assure that the letter was genuine and its contents were true. Mazzariello testified that she believed her response satisfied Judge Greenlee's request for verification.

8. It is undisputed that the letter was not genuine. Neither the doctor nor anyone in his office had prepared the letter. Instead, Groves fabricated the false letter without Mazzariello's knowledge. During his deposition, Judge Greenlee testified that he did not believe that Mazzariello had intended to defraud the Court when she presented the doctor's letter to him and that she should have contacted the doctor's office herself to verify the letter rather than relying on Groves.

9. Count one of the Complaint alleges that Mazzariello engaged in professional misconduct by knowingly making false statements to Judge Greenlee to obtain the continuance for her client in violation of Revised Rules of Professional Conduct 3.3 (a)(1) and 8.4 (c) & (d).

COUNT TWO

10. In October 1996, Darren Jerome Adams ("Adams") was convicted of armed robbery, kidnapping and burglary and sent to prison. His trial counsel was Thomas A. Will, Jr. ("Will"). Several years later, Adams' mother hired Mazzariello to gather evidence to help her have her son's conviction overturned.

11. Based on information she received from Will's legal secretary, Virginia Bradshaw, and former paralegal, Sonia Propst Roseberry, Mazzariello asked Will to sign an affidavit stating that he had been impaired and/or under the influence of alcohol when he tried the Adams case. Will told Mazzariello that he had not been drinking during the Adams trial and refused to sign the affidavit. At the time, Will believed that Mazzariello was asking him to sign an affidavit that was false simply in order to obtain a new trial for Adams.

12. In a hearing on a motion for appropriate relief regarding Adams that was held on June 10, 2002, Will testified that Mazzariello had asked him to sign an affidavit that would have been false.

13. During his deposition, Will learned for first time about the information Bradshaw and Roseberry had provided to Mazzariello before she asked him to sign the affidavit in question. Will testified that, based on this knowledge, he now believes that Mazzariello had a good faith basis for asking him to sign the affidavit, and that Mazzariello did not ask him to sign a false affidavit.

14. Count Two of the Complaint alleges that Mazzariello engaged in professional misconduct by attempting to procure a false affidavit for use in a court proceeding in violation of Revised Rules of Professional Conduct 3.4 (b) and 8.4 (c) & (d).

Based upon the consent of the parties and the foregoing Findings of Fact, the Hearing Committee enters the following:

CONCLUSIONS OF LAW

1. All parties are properly before the Hearing Committee, and the Committee has jurisdiction over the Defendant and the subject matter of this proceeding.

2. The State Bar cannot establish by clear, cogent and convincing evidence that Mazzariello engaged in professional misconduct by knowingly making false statements to Judge Greenlee to obtain the continuance for her client in violation of Revised Rules of Professional Conduct 3.3 (a)(1) and 8.4 (c) & (d).

3. The State Bar cannot establish by clear, cogent and convincing evidence that Mazzariello engaged in professional misconduct by attempting to procure a false affidavit for use in a court proceeding in violation of Revised Rules of Professional Conduct 3.4 (b) and 8.4 (c) & (d).

4. Counts One and Two of the Complaint should be dismissed.

Based upon the consent of the parties, the Hearing Committee also enters the following:

FINDINGS OF FACT REGARDING DISCIPLINE

1. Mazzariello acknowledges that she failed to properly supervise her non-lawyer assistant, Joey Groves, in the preparation and verification of the doctor's letter that is the basis for the allegations in Count One of the Complaint.
2. This failure constituted a technical and unintentional violation of Revised Rule of Professional Conduct 5.3, for which Mazzariello takes full responsibility.
3. Mazzariello consents to the Hearing Committee issuing her a Letter of Warning and understands that this conduct may be the basis for discipline if continued or repeated.
4. Mazzariello has shown remorse for her failure to properly supervise Groves.

ORDER OF DISCIPLINE

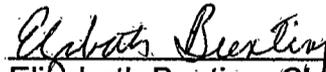
1. Counts One and Two of the Complaint are dismissed.
2. The parties shall bear their own costs.
3. The Hearing Committee hereby issues the following:

LETTER OF WARNING

You represented a defendant charged with several traffic offenses. Your non-lawyer assistant provided you with an unsigned and undated a doctor's letter that you tendered to the Court in support of a motion for a continuance. The letter provided by your non-lawyer assistant was suspect since it was undated and unsigned when you tendered the fabricated document to the Court. The judge declined to accept it and told you that he would not grant the continuance unless you obtained a dated and signed doctor's letter. When you returned to Court with the letter, still undated and unsigned, the judge asked if you verified its genuineness and you responded that you had done so. Your response was based on information your non-lawyer assistant provided to you. However, you made no inquiry and took no steps to check on what the non-lawyer legal assistant did or failed to do to assure the accuracy and genuineness of the letter. Subsequent events revealed that your non-lawyer assistant fabricated the letter without your knowledge, failed to take any steps to procure a factually correct and genuine letter and misled you into believing that the letter's accuracy and genuineness had been verified.

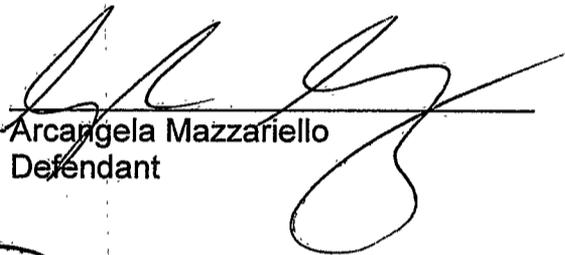
You conduct, while not the basis for discipline, is a technical and unintentional violation of Revised Rule of Professional Conduct 5.3, and may be the basis for discipline if continued or repeated.

Signed by the undersigned chairman with the full knowledge and consent of the other members, this the 5th day of ~~November~~ ^{December} 2003.

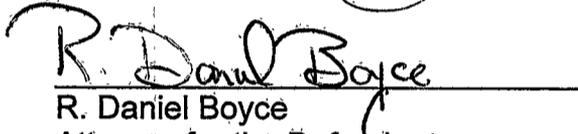


Elizabeth Bunting, Chair
Hearing Committee

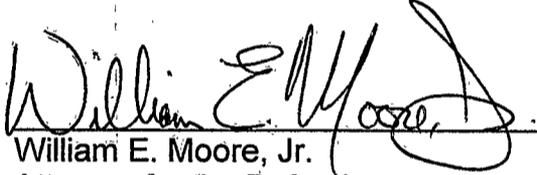
Agreed to and consented by:



Arcangela Mazzariello
Defendant



R. Daniel Boyce
Attorney for the Defendant



William E. Moore, Jr.
Attorney for the Defendant



Thomas F. Moffitt
Attorney for the Plaintiff
Mazzariello Consent Order of Discipline (11-13-03)

