

SUPREME COURT OF THE STATE OF NEW YORK
APPELLATE DIVISION: FIRST DEPARTMENT

-----X
JOSEPH RAKOFSKY, and
RAKOFSKY LAW FIRM, P.C.,

Plaintiffs,

Index Number 105573/11

-against-

AFFIRMATION

THE WASHINGTON POST COMPANY, et al.,

Defendants.
-----X

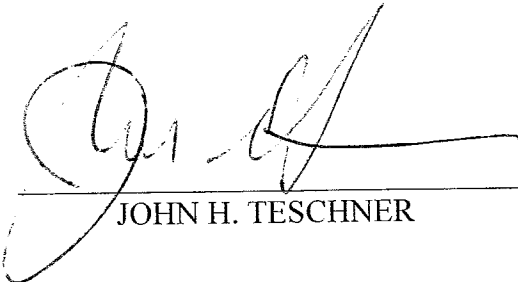
JOHN H. TESCHNER, an attorney admitted to practice law before the Courts of the State of New York, affirms under penalty of perjury that:

1. I am the attorney for defendants, MACE J. YAMPOLSKY, *individually* and MACE J. YAMPOLSKY LTD., sued herein as MACE J. YAMPOLSKY & ASSOCIATES.
2. I make this affirmation in opposition to plaintiff's motion pursuant to CPLR 5704.
3. My client, Mr. Yampolsky, is an attorney, who lives and practices law in Las Vegas, Nevada.
4. Mr. Yampolsky also writes for a newspaper named the Las Vegas Tribune, which is distributed for free in the Las Vegas area and published over the internet.
5. Mr. Yampolsky published an article in the Las Vegas Tribune reporting the conduct of Mr. Rakofsky during a murder trial as described by the presiding Judge (Exhibit "A").
6. Mr. Rakofsky, an attorney, believes that Mr. Yampolsky's article defamed him and that he can obtain personal jurisdiction over Mr. Yampolsky in New York despite the fact that

Mr. Yampolsky has absolutely no connection with the State of New York.¹

7. I appeared and answered for Mr. Yampolsky and among other defenses objected to the personal jurisdiction over Mr. Yampolsky (see copy notice of appearance and answer attached hereto as Exhibit "B").
8. I have read the affidavit and memorandum of law submitted by Eric Turkewitz, Esq. and Marc J. Randazza, Esq., who represent a group of other defendants sued herein by Mr. Rakofsky.
9. For the reasons set forth by Mr. Turkewitz and Mr. Randazza, I join in the opposition to Mr. Rakofsky's request for a partial lifting of the stay previously granted by Judge Emily Goodman.
10. If this Court is inclined to do modify the stay in any respect then it should be lifted as to all parties so plaintiff's merit less action can finally be addressed by the Court below.

Affirmed this 27th day of January 2012



JOHN H. TESCHNER

¹Upon information and belief, Mr. Rakofsky is admitted to practice law in the State of New Jersey but he is ineligible to do so. Further, upon information and belief, Mr. Rakofsky has passed the New York State Bar and his application for admission is pending before the character and fitness committee of this Court.

I never tried a case before ...but what's the big deal?

Last Updated on Friday, 22 April 2011 15:48

Written by Mace Yampolsky

Wednesday, 13 April 2011 00:00



Commentary - Mace Yampolsky

User Rating: / 2

Poor Best

A judge declared in a 2008 murder case - and allowed the defendant to fire his New York-based attorney - that counsel exhibited what he said were numerous signs that said attorney lacked knowledge of proper trial procedure, including telling the jury during his opening statements that he had never tried a case before. Judge William Jackson told attorney Joseph Rakofsky during a hearing that he was "astonished" at his performance and at his "not having a good grasp of legal procedures" before dismissing him.

What angered Jackson even more was a filing he received early Friday from an investigator hired by Rakofsky in which the attorney told the investigator via an attached e-mail to "trick" a government witness into testifying in court that she did not see his client at the murder scene.

According to the filing, Rakofsky had fired the investigator and refused to pay him after the investigator refused to carry out his orders with the witness. The filing included an e-mail that the investigator said was from Rakofsky, saying: "Thank you for your help. Please trick the old lady to say that she did not see the shooting or provide information to the lawyers about the shooting." (If it were only that easy!) The e-mail came from Rakofsky's e-mail account, which is registered to Rakofsky Law Firm in Freehold, N.J. After the hearing, Rakofsky, 33, declined to comment on the case as he rushed down the escalators and out of the courthouse.

Rakofsky's Web page says he specializes in criminal law, DUIs, traffic law, malpractice law and negligence. He lists his firm's address as 14 Wall St. in Manhattan, but the New York state attorney registration offices have no record of Rakofsky being licensed in New York. Rakofsky, who received his law degree from Touro College in Brooklyn, N.Y., in 2009, has been licensed in New Jersey since April 29, 2010.

Confusion between Rakofsky and his client began early in the case and escalated, according to sources familiar with the case, U.S. v. Dontrell Deaner. Deaner, 21, of Southeast Washington, was charged with six counts involving the fatal shooting of Frank J. Elliot, in the 4200 block of Pitts Place SE on June 16, 2008.

News of the mistrial spread throughout the courthouse as observers raced into Jackson's third-floor courtroom Friday to watch the proceedings. The judge, now obviously angry and frustrated, told Rakofsky that his performance in the trial was "below what any reasonable person would expect in a murder trial."

"There was not a good grasp of legal procedures of what was, and was not, allowed to be admitted in trial, to the detriment of Mr. Deaner," Jackson told Rakofsky.

Jackson said the most evident sign of Rakofsky's inexperience came during his rambling opening statements before the jury Wednesday, which lasted more than an hour, more than 30 minutes longer than most attorneys' openings. During his opening statements, Rakofsky repeatedly made reference to children playing "in the projects of Southeast D.C., where there was always gambling, guns and drugs."

"There are drugs in the projects of Southeast D.C. There are guns all the time and drugs," Rakofsky told the jury. The prosecutor repeatedly objected over the relevance of Rakofsky's statements. Rakofsky said the "children" were a symbol of what his client had endured growing up in that neighborhood. Jackson told Rakofsky to focus on the case, especially because none of the "children" he referred to was scheduled to testify.

Later during his statement, Rakofsky informed the jury that the case was his first trial. The revelation shocked Jackson, the judge revealed at Friday's hearing. "I was astonished someone would represent someone in a murder case who has never tried a case before," the judge said.

The client, Deaner, became visibly frustrated with Rakofsky's performance after witnessing disagreements between Rakofsky and Sherlock Grigsby. Grigsby is a Washington-based lawyer who Rakofsky hired as local counsel to advise him on D.C. law practices during the trial because Rakofsky is not licensed to practice in the District. On Friday, Deaner told the judge that he wanted a new attorney.

After Friday's hearing, Grigsby said that Deaner's family hired Rakofsky and that he and Rakofsky "disagreed more than a couple of times" on how to proceed with the case. "He was the attorney of record. I would offer what I thought was the best advice, and he wouldn't accept it," Grigsby

said. Jackson said he would appoint a new attorney for Deaner.

Rakofsky appeared pleased in a Facebook post after a Washington, D.C. judge declared a mistrial due to the defense lawyer's trial performance. "1st-Degree Murder. MISTRIAL!" Rakofsky wrote. Well, if you subscribe to the theory that if they can't try you, they can't convict you, this is a win. But I would sure hate to win that way. Rakofsky admitted he was "humiliated" by a press account of the proceeding.

It's interesting the thought processes that people go through when they hire a lawyer. Some people believe in "Spend the money, hire the best and cry only once." Other people believe lawyers are fungible and that it doesn't matter whom you hire. So they will look for the cheapest lawyer they can find. Sometimes that works. Oftentimes it does not.

I'm not saying that the most expensive lawyer is always the best choice, but experience does make a difference. I tell people to hire the best lawyer they can afford. I also tell them that for the most part "good lawyers aren't cheap and cheap lawyers aren't good." Another thing that really gets me is when they say that a particular lawyer says he will do it for X dollars, and then tells me that's much cheaper than what I charge.

Okay. But does he specialize in this type of case as I do? No. Has he been practicing for over 30 years as I have? No. Well, then I tell the person he has a choice to make. You can't drive a Mercedes when you pay for a Kia. T

he best ones are when someone is unjustly accused. I spoke for about 20 minutes with this man who had a very successful jewelry business who allegedly passed a counterfeit \$50 bill. He said he had plenty of money and it must have been a misunderstanding. Be that as it may, he was charged with two felonies. When I quoted him what I thought a fair fee was, he balked. "But it will be an easy case," he said. I suggested he hire a much more inexperienced lawyer because his fees would be much cheaper. He didn't want to do that. I suggested that he try the case himself, but he was too wise to do that. I wish him well but I can envision one unhappy camper at the end of the day. My advice? Don't hire a foot doctor for a heart problem.

-Mace

Mace J. Yampolsky is a Board Certified Criminal Law Specialist, 625 South Sixth St., Las Vegas, NV. He can be reached at: 702-385-9777. His website is located at: www.macelaw.com.

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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

-----X Index No. 105573/11

JOSEPH RAKOFSKY, and
RAKOFKY LAW FIRM, P.C.,

Plaintiffs,

-against-

**NOTICE OF APPEARANCE,
DEMAND and ANSWER**

THE WASHINGTON POST COMPANY,
KEITH L. ALEXANDER,
JENNIFER JENKINS,
CREATIVE LOAFING MEDIA,
WASHINGTON CITY PAPER,
REND SMITH,
BREAKING MEDIA, LLC,
ABOVETHELAW.COM,
ELIE MYSTAL,
AMERICAN BAR ASSOCIATION,
ABAJOURNAL.COM,
DEBRA CASSENS WEISS,
SARAH RANDAG,
MYSHINGLE.COM,
CAROLUN ELEFANT,
SIMPLE JUSTICE NY, LLC,
BLOG.SIMPLEJUSTICE.US,
KRAVET & VOGEL, LLP,
SCOTT H. GREENFIELD,
LAW OFFICE OF ERIC L. MAYER,
ERIC L. MAYER, *individually*,
GAMSO, HELMICK & HOOLAHAN,
JEFF GAMSO, *individually*,
CRIMEANDFEDERALISM.COM,
"JOHN DOE #1",
ORLANDO-ACCIDENTLAWYER.COM,
"JOHN DOE #2",
LAW OFFICE OF FARAJI A. ROSENTHALL,
FARAJI A. ROSENTHAL, *individually*,
BENNETT AND BENNETT,
MARK BENNETT, *individually*,
SEDDIQ LAW,
MIRRIAM SEDDIQ, *individually*,
THE MARTHA SPERRY DAILY,
ADVANTAGE ADVOCATES
MARTHA SPERRY, *individually*,
ALLBRITTON COMMUNICATIONS COMPANY,

TBD.COM,
RESTORINGDIGNITYTOTHELAW.BLOGSPOT.COM,
"J.DOG84@YMAIL.COM",
ADRIAN K. BEAN,
HESLEP & ASSOCIATES,
KOEHLER LAW,
JAMISON KOEHLER, *individually*,
THE TURKEWITZ LAW FIRM,
ERIC TURKEWITZ, *individually*,
THE BEASLEY FIRM, LLC,
MAXWELL S. KENNERLY,
STEINBERG MORTON HOPE & ISRAEL, LLP,
ANTONIN I. PRIBETIC,
PALMIERI LAW,
LORI D. PALMIERI, *individually*,
TANNEBAUM WEISS, PL,
BRIAN TANNEBAUM, *individually*,
WALLACE, BROWN & SCHWARTZ,
GEORGE M. WALLACE, *individually*,
DAVID C. WELLS, P.C. and
DAVID C. WELLS, *individually*,
ROB MCKINNEY, ATTORNEY-AT-LAW,
ROB MCKINNEY, *individually*,
THOMSON REUTERS,
DAN SLATER,
BANNER VENTURES, LLC,
BANNINATION.COM,
"TARRANT84",
UNIVERSITY OF ST. THOMAS SCHOOL OF LAW,
DEBORAH K. HACKERSON,
LAW OFFICES OF MICHAEL T. DOUDNA,
MICHAEL T. DOUDNA, *individually*,
MACE J. YAMPOLSKY & ASSOCIATES,
MACE J. YAMPOLSKY, *individually*,
THE LAW OFFICE OF JEANNE O'HALLERAN, LLC,
JEANNE O'HALLERAN, *individually*,
REITER & SCHILLER, P.A.,
LEAH K. WEAVER,
AVVO CORPORAION,
JOSHUA KING,
ACCELA, INC.,
COLIN SAMUELS,
THE BURNEY LAW FIRM, LLC and
NATHANIEL BURNEY, *individually*,

Defendants.

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C O U N S E L :

PLEASE TAKE NOTICE, that MACE J. YAMPOLSKY, *individually* and MACE J. YAMPOLSKY LTD., sued herein as MACE J. YAMPOLSKY & ASSOCIATES, the above named defendants herein, hereby appears through their attorney, JOHN H. TESCHNER, ESQ. in this action and demand that all further papers in this proceeding be served upon the undersigned at the address stated below.

PLEASE TAKE FURTHER NOTICE, that MACE J. YAMPOLSKY, *individually* and MACE J. YAMPOLSKY LTD., defendants herein, in answer to the Complaint and Amended Complaint, respectfully states:

1. Denies knowledge or information sufficient to form a belief as to the allegations contained in the following enumerated paragraphs of the complaint: "1" through "187", "189" through "194", "198" through "206", "209", "211".
2. Denies the allegations of paragraphs "188", "196", "197", "207", "210", "212", "213", "215", "216", "217" and "218" of the complaint.

AS AND FOR A FIRST AFFIRMATIVE DEFENSE

3. Defendant, Mace J. Yampolsky is a resident of the State of Nevada and has never resided in the State of New York.
4. Defendant, Mace J. Yampolsky, is an attorney licensed to practice law in the State of Nevada.
5. Defendant, Mace J. Yampolsky, does not do business in the State of New York and derives no revenue from any activity within the State of New York..
6. Defendant, MACE J. YAMPOLSKY LTD., is a corporation organized under the laws of the State of Nevada.
7. Defendant, MACE J. YAMPOLSKY LTD., does not do business in the State of

New York and derives no revenue from any activity within the State of New York.

8. Defendants do not own or possess any real property situated within the State of New York.
9. Defendants do not contract anywhere to supply goods or services within the State of New York.
8. Upon information and belief, plaintiff is not a resident of the State of New York.
9. Plaintiffs' cause of actions did not arise in the State of New York.
10. Defendants did not commit a tortious act without the State of New York which caused injury to person or property within the State of New York.
11. Defendants were not served with the summons, complaint and amended complaint within the State of New York.
12. This Court is without personal jurisdiction over the defendants.

AS AND FOR A SECOND AFFIRMATIVE DEFENSE

13. Defendant, Mace J. Yampolsky is a resident of the State of Nevada and has never resided in the State of New York.
14. Defendant, Mace J. Yampolsky, is an attorney licensed to practice law in the State of Nevada.
15. Defendant, Mace J. Yampolsky, does not do business in the State of New York and derives no revenue from any activity within the State of New York..
16. Defendant, MACE J. YAMPOLSKY LTD., is a corporation organized under the laws of the State of Nevada.
17. Defendant, MACE J. YAMPOLSKY LTD., does not do business in the State of New York and derives no revenue from any activity within the State of New

York.

18. Defendants do not own or possess any real property situated within the State of New York.
19. Defendants do not contract anywhere to supply goods or services within the State of New York.
20. Upon information and belief, plaintiff is not a resident of the State of New York.
21. Plaintiffs' cause of actions did not arise in the State of New York.
22. Defendants did not commit a tortious act without the State of New York which caused injury to person or property within the State of New York.
23. Defendants from time to time publish articles in The Las Vegas Tribune, which is a free newspaper, distributed to the public in the Las Vegas, Nevada and is published on the internet.
24. On April 13, 2011, defendants published an article in The Las Vegas Tribune entitled "*I never tried a case before ... but what's the big deal?*".
25. The following is the link to defendants published article:
<http://www.lasvegastribune.com/index.php/commentary/mace-yampolsky/1766-i-never-tried-a-case-before-but-whats-the-big-deal> .
26. It is this article which forms the basis of plaintiffs' cause of action for defamation.
27. Pursuant to Sections CPLR 302(2) and (3), defamation actions are exempt from the long arm jurisdiction of the State of New York.
28. This Court is without personal jurisdiction over the defendants.

**AS AND FOR A THIRD AFFIRMATIVE DEFENSE
TO BOTH PLAINTIFF'S CAUSES OF ACTION**

29. The complaint fails to state a cause of action for which relief can be granted.

AS AND FOR A FOURTH AFFIRMATIVE DEFENSE

30. The plaintiffs allegations of damages in the complaint, if any, are attributable in whole or in part, to the culpable conduct of the plaintiffs.

AS AND FOR A FIFTH AFFIRMATIVE DEFENSE

31. Plaintiffs' claims are barred by documentary evidence.

AS AND FOR A SIXTH AFFIRMATIVE DEFENSE

32. This Court does not have subject matter jurisdiction over plaintiffs' cause of actions.

AS AND FOR A SEVENTH AFFIRMATIVE DEFENSE

33. Defendant, Mace J. Yampolsky is a resident of the State of Nevada and has never resided in the State of New York.
34. Defendant, Mace J. Yampolsky, is an attorney licensed to practice law in the State of Nevada.
35. Defendant, Mace J. Yampolsky, does not do business in the State of New York and derives no revenue from any activity within the State of New York..
36. Defendant, MACE J. YAMPOLSKY LTD., is a corporation organized under the laws of the State of Nevada.
37. Defendant, MACE J. YAMPOLSKY LTD., does not do business in the State of New York and derives no revenue from any activity within the State of New York.

38. Defendants do not own or possess any real property situated within the State of New York.
39. Defendants do not contract anywhere to supply goods or services within the State of New York.
40. Upon information and belief, plaintiff is not a resident of the State of New York.
41. Plaintiffs' cause of actions did not arise in the State of New York.
42. Defendants did not commit a tortious act without the State of New York which caused injury to person or property within the State of New York.
43. Defendants from time to time publish articles in The Las Vegas Tribune, which is a free newspaper, distributed to the public in the Las Vegas, Nevada and is published on the internet.
44. On April 13, 2011, defendants published an article in The Las Vegas Tribune entitled "*I never tried a case before ... but what's the big deal?*".
45. The following is the link to defendants published article:
<http://www.lasvegastribune.com/index.php/commentary/mace-yampolsky/1766-i-never-tried-a-case-before-but-whats-the-big-deal> .
46. It is this article which forms the basis of plaintiffs' cause of action for defamation.
47. New York State is an inconvenient forum to hear this action pursuant to CPLR Section 327.

AS AND FOR AN EIGHTH AFFIRMATIVE DEFENSE

48. All factual statements published by the defendants relating to plaintiffs in the The Las Vegas Tribune article entitled "*I never tried a case before ... but what's the big deal?*" are true statements of facts.

AS AND FOR AN NINTH AFFIRMATIVE DEFENSE

49. All statements published by the defendants relating to plaintiffs in the The Las Vegas Tribune article entitled "*I never tried a case before ... but what's the big deal?*" are fair comments of opinion protected by the First Amendment to the United States Constitution and the Constitution of the State of New York. Constitution .

AS AND FOR A TENTH AFFIRMATIVE DEFENSE

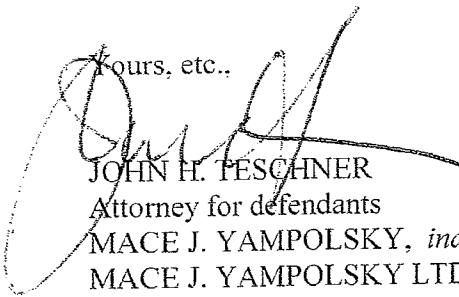
50. Plaintiffs commenced this action in bad faith solely to harass, annoy and maliciously injure defendants.
51. Plaintiffs commenced this action in bad faith without any reasonable basis in law or fact and the cause of action cannot be supported by a reasonable argument for reversal of existing law.
52. As a result of the complained of conduct plaintiffs claims are frivolous.

AS AND FOR AN NINTH AFFIRMATIVE DEFENSE

53. Plaintiffs commenced this action in bad faith solely to harass, annoy and maliciously injure defendants.
54. Plaintiffs commenced this action in bad faith without any reasonable basis in law or fact and the cause of action cannot be supported by a reasonable argument for reversal of existing law.
55. Plaintiffs' complaint asserts material factual statements that are false.
56. The commencement of this action, as complained herein, constitutes frivolous conduct within the meaning of Section 130.1-1 of the New York Court Rules.

Wherefore the summons, complaint and amended complaint must be dismissed together with costs, disbursements, sanctions and reasonable attorney fees necessary to defend this action and for such other and further relief as to this Court may deem just and proper.

Dated: New York, New York
June 15, 2011


ours, etc..
JOHN H. TESCHNER
Attorney for defendants
MACE J. YAMPOLSKY, *individually*, and
MACE J. YAMPOLSKY LTD.
132 Nassau Street, Suite 900
New York, NY 10038
(212) 925-1937

TO: RICHARD BORZOUYE, ESQ.
Borzouye Law Firm, P.C.
14 Wall Street, 20th Floor
New York, N.Y. 10005
1(212) 618-1459

AFFIDAVIT OF SERVICE BY MAIL

STATE OF NEW YORK)

: SS.:

COUNTY OF NEW YORK)

I, **JENNY SORIANO**, being duly sworn deposes and says:

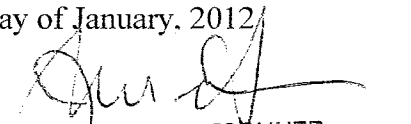
I am not a party to the action, am over 18 years of age and reside in NEW YORK COUNTY. On **JANUARY 27, 2012**, I served the within **AFFIRMATION**, by depositing a true copy thereof in a post-paid wrapper, in an official depository under the exclusive care and custody of the U.S. Postal Service within New York State, and addressed to each of the following person at the last known address set forth after each name:

JOSEPH RAKOFSKY
4400 U.S.-9
Freehold, N.J. 07728



JENNY SORIANO

Sworn to me on this
27th day of January, 2012


JOHN H. TESCHNER
Notary Public, State of New York
No. 02TE4880294
Qualified in Westchester County
Commission Expires 11/24/2014