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SUPREME COURT OF NEW JERSEY  
Disciplinary Review Board  
Docket No. DRB 93-014

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IN THE MATTER OF :  
: :  
ALFRED A. PORRO, JR. :  
: :  
AN ATTORNEY AT LAW :  
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Decision and Recommendation  
of the  
Disciplinary Review Board

Argued: February 25, 1993

Decided: April 19, 1993

Walton W. Kingsbery, III appeared on behalf of the Office of Attorney Ethics.

Respondent waived oral argument.

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

This matter was before the Board based on a recommendation for public discipline filed by the District IIA Ethics Committee.

The formal complaint charged respondent with (1) conflict of interest, by representing a developer operating in a municipality where respondent was both the attorney for the Borough and for the Sewerage Authority (Count One); (2) conflict of interest, by representing the Borough and the Sewerage Authority at the same time that an associate in his law firm served on the Borough Planning Board (Count Two); and (3) conflict of interest, by representing the Borough in a lawsuit in which the Sewerage Authority was its co-defendant (Count Three).

\* \* \*

Respondent was admitted to the New Jersey bar in 1959. He is a member of the law firm of Porro and Porro in Lyndhurst, New Jersey. As an expert in municipal and public law, respondent has acted as special counsel to dozens of municipal agencies, authored numerous publications (including fifty legal articles) and taught at several universities and law schools (including the University of Baltimore School of Law, where he taught Professional Responsibility).

Respondent has been the attorney for the Borough of East Rutherford for over thirty years. He also acted as counsel for the East Rutherford Sewerage Authority (ERSA) for twenty years, having resigned from that position in December 1988, after ERSA's Administrator, Richard DeLauro, filed the within ethics grievance against him.

The facts that gave rise to these proceedings are as follows:

Count One

In December 1987, while holding the position of Borough attorney and ERSA attorney, respondent represented a limited partnership, Willow Wood Square (Willow Wood), the partners of which were the Borough Mayor, James Plosia, and one of ERSA's Commissioners, Henry Cheval. The purpose of the partnership was to develop land in East Rutherford. After all municipal approvals were obtained by Willow Wood through the representation of another attorney, in December 1987 respondent represented Willow Wood in the closing of a construction loan.

### Count Two

In October 1987, when the Willow Wood subdivision was approved by the Borough Planning Board, an associate of respondent served as attorney for the Planning Board. Although respondent explained that the associate was in the process of leaving his office and setting up her own practice at that time, and that all fees received from her position as Planning Board attorney had been paid directly to her, it was not until June 1988, after respondent began his representation and after Willow Wood had obtained a Planning Board approval, that the associate actually left respondent's employment.

### Count Three

In June 1987, grievant, Richard DeLauro, filed a lawsuit against the Borough of East Rutherford, ERSA, and the New Jersey Sports and Exposition Authority, alleging in part that the Borough had acted unlawfully by usurping the independent authority and powers of ERSA to collect service charges for sewerage treatment and to negotiate those charges directly with the New Jersey Sports and Exposition Authority. Respondent filed an answer on behalf of the Borough, but recommended that ERSA retain other counsel to represent it in the lawsuit. ERSA's counsel then filed a cross-claim for indemnity and contribution against the Borough. On February 26, 1988, a summary judgment was entered in favor of the New Jersey Sports and Exposition Authority. Simultaneously, the complaint, counterclaim and crossclaim were dismissed without

prejudice.

The ethics complaint alleged that respondent's representation of the Borough in the lawsuit created a conflict of interest situation inasmuch as neither the Borough nor ERSA, as public bodies, could have consented to respondent's representation.

\* \* \*

At the conclusion of the ethics hearing, the DEC found that respondent's conduct had violated RPC 1.7 and 1.11(a), by engaging in an impermissible conflict of interest. Specifically, respondent represented Willow Wood while holding the position of both Borough attorney and ERSA attorney in the same municipality where Willow Wood was transacting. The DEC also found that respondent had violated RPC 1.10(a) when an associate in his law firm served as attorney for the East Rutherford Planning Board at the same time that respondent served as attorney for both the Borough and ERSA and, moreover, at the same time that the Willow Wood subdivision was approved by the Planning Board.

The DEC dismissed Count Three of the complaint. The DEC concluded that respondent's conduct had not risen to the level of an ethics violation "given the fact that respondent did not represent both parties and that the counterclaims were dismissed fairly rapidly after the institution of the lawsuit...."

As to the appropriate discipline, the DEC reasoned that "[i]t maybe to the benefit of the system of attorney discipline to have this matter remain with a private reprimand because a public reprimand may be used for improper purposes by the complainant or

others other than those for which the system exists." The DEC concluded, however, that a public reprimand might be more appropriate as "it will serve notice that the monopolization of all or most of the attorney positions in a small municipality is fraught with potential disaster."

#### CONCLUSION AND RECOMMENDATION

Upon a de novo review of the record, the Board is satisfied that the DEC's conclusion that respondent acted unethically is fully supported by clear and convincing evidence. The Board cannot agree, however, that RPC 1.11 is applicable to this case, as conceded also by the presenter before the Board.

The Board is also unable to agree with the DEC's conclusion that respondent's conduct, described in the Third Count of the complaint, did not violate the disciplinary rules, as seen below. The Board agrees, however, with the balance of the DEC's findings.

Indeed, in representing a builder involved in land development in the same municipality where he held the position of Borough attorney and ERSA attorney, respondent violated RPC 1.7 and the principle enunciated in In re A. and B., 44 N.J. 331 (1967), and In re Dolan, 76 N.J. 1 (1978).

In In re A. and B., the Court discharged an order to show cause issued against an attorney who, while serving as municipal attorney, represented a developer whose projects were located in the same municipality. In that case, the attorney was not disciplined because the Court was unable to conclude that the

evidence clearly and convincingly demonstrated that the attorney had represented the developer in his dealings and transactions with the municipality. The Court ruled that

the subject of land development is one in which the likelihood of transactions with the municipality and the room for public misunderstanding are so great that a member of the bar should not represent a developer operating in a municipality in which the member of the bar is the municipal attorney or the holder of any other municipal office of apparent influence.

[Id. at 334-335]

Similarly, in In re Dolan, the attorney was retained by a developer to represent him in the mortgage financing phase of the transaction; by that time, the developer had successfully processed all applications before the appropriate municipal bodies and obtained final approvals to the project. The attorney's representation of the developer continued throughout the initial construction stage of the project. At all times, the attorney was also holding the position of Borough attorney. Although, as in this case, the attorney did not represent the developer in any dealings or transactions with the Borough, the Court found that his conduct was directly contrary to the mandate of In re A. and B. The Court publicly reprimanded the attorney.

In addition to creating a conflict of interest situation by representing Willow Wood, respondent acted unethically when he served as attorney for the Borough and ERSA while his associate served as attorney for the Planning Board and at the same time that the Planning Board approved the Willow Woods subdivision. A

municipal attorney is prohibited by statute from serving as attorney for the Planning Board. N.J.S.A. 40:44D-24. If an attorney is required to decline employment because of a potential or actual conflict, then no partner or associate may accept or continue such employment. Opinion 366, 100 N.J.L.J. 290 (1977). Thus, just as respondent could not have held both the position of Borough attorney and Planning Board attorney, so too he could not have continued to represent the Borough when his associate served as Planning Board attorney. His conduct in this regard was clearly unethical and violative of RPC 1.7 and RPC 1.10.


Lastly, the fact that the counterclaim and crossclaim were dismissed shortly after the institution of the lawsuit against two public entities whom respondent represented should not serve to exonerate him. The mere filing of a pleading by respondent on behalf of the Borough, which subsequently was the subject of a crossclaim by ERSA, created a conflict of interest situation.

The Board considered, in mitigation, respondent's involvement in numerous civic and community activities, his demonstrated dedication to the legal profession, his thirty-three year membership in the profession without incident, and the fact that all fees generated from his associate's position with the Planning Board were paid directly to her. The Board, however, could not ignore the fact that respondent, an attorney of perhaps unmatched experience in the field of municipal and public law, who had to be aware of the prohibitions against multiple representation in the within instances, elected nevertheless to proceed with the

representation. In light of the foregoing, the Board unanimously recommends that respondent receive a public reprimand. See In re Dolan, supra, 76 N.J. 1 (1978). One member dissented, believing a private reprimand to be sufficient discipline for this respondent, who had an unblemished thirty-three-year career. In that member's view, a private reprimand will have the same effect of a public reprimand because of respondent's thirty-three year membership in the profession and of the adverse publicity generated by these ethics proceedings. One member recused himself.

The Board further recommends that respondent be required to reimburse the Ethics Financial Committee for administrative costs.

Dated: 4/19/1993

By:   
Raymond R. Trombadore  
Chair  
Disciplinary Review Board