

SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 06-343
District Docket No. XIV-2006-0065E

IN THE MATTER OF
ANTHONY LaRUSSO
AN ATTORNEY AT LAW

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Decision

Argued: February 15, 2007

Decided: March 30, 2007

Melissa Czartoryski appeared on behalf of the Office of Attorney Ethics.

Respondent appeared pro se.

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

This matter came before us on a disciplinary stipulation between respondent and the Office of Attorney Ethics ("OAE"). Respondent admitted violating RPC 1.7(a)(2) (conflict of interest - representing a client when the representation is directly adverse to another client); and RPC 1.16(a)(3) (a lawyer shall not represent a client or, where representation has commenced, shall withdraw from the representation if the lawyer is discharged).

These charges stem from respondent's dual representation of funeral homes and their patrons, and respondent's use of "non-revocable" retainer agreements. The OAE recommended that respondent be reprimanded. We determine to impose a censure.

Respondent was admitted to the New Jersey bar in 1969. He maintains a law office in West Caldwell, New Jersey. He has no history of discipline.

The factual basis for respondent's ethics violations was set forth in an OAE investigative report, which was incorporated by reference into the disciplinary stipulation.

This matter was referred to the OAE by the Assistant Director for the State Division of Pensions and Benefits ("Division" or "State"). After receiving an attorney complaint questioning respondent's practices, the Division reviewed five years of data, from which it determined that, between 2000 and 2004, respondent had been designated to represent forty-five claimants seeking pension and insurance death benefits for public employees who were members of the State-administered retirement system. According to the Assistant Director, in 2005 alone, twenty-four claimants designated respondent as their attorney.

Respondent performed collection work for several funeral homes, including Carnie P. Bragg Funeral Home in Paterson, Plinton Curry Funeral Home in Westfield, Funerarias Las Americas

in Newark, and Campbell Funeral Home in Trenton. The majority of his referrals, however, came from the Perry Funeral Home in Newark. These funeral homes purportedly referred their clients (beneficiaries of State employees enrolled in the State-administered retirement systems) to respondent if they were unable to satisfy funeral home expenses.

According to the investigative report, although the Perry and Bragg funeral home treated their clients somewhat differently, generally the process was as follows:

[R]espondent is contacted via telephone by the funeral home at the time the funeral arrangements are being made; respondent faxes to the funeral home, his retainer agreement and a form letter addressed to the State, for the beneficiary's signature; the funeral home obtains the signatures of respondent's 'client' on the retainer agreement and letter to the State; respondent processes the death claim with the State on behalf of the beneficiary; and when respondent receives the beneficiary's check(s) from the State, he processes payments to the funeral home and himself, with the beneficiary receiving the remainder of the funds.

[IR3.]¹

Respondent routinely used forms for his "letter of representation" forwarded to the Division. His typical letter form, drafted for his clients' signature, stated in relevant part:

¹ IR refers to the OAE investigative report, dated September 29, 2006.

This is to confirm that I have retained Anthony J. La Russo, Esq., 175 Fairfield Avenue, Unit 5A, West Caldwell, New Jersey 07006, for the purpose of processing and receiving payment of life insurance or death benefits payable to me in connection with your recently deceased member, _____.

This letter shall serve as your authorization to remit payment of any benefits or proceeds [sic] care of said attorney, payable to me in my name.

I/We have made this arrangement for the purpose of securing payment of the balance due on the decedent's funeral bill to the _____ Funeral Home, _____, New Jersey. I have agreed that this arrangement may not be revoked by me without written consent of my said attorney.

[IREx.10]

The letter was notarized by funeral home personnel. Respondent admitted that the "non-revocability clause" was not legally binding, claiming that he used it "for effect."

The retainer agreement provided that respondent was being hired to process a claim for life insurance or death benefits. The arrangement was made "to secure payment of the balance due" to the funeral home for services the claimant "requested in connection with the subject decedent." Pursuant to the agreement, the client would pay the funeral bill from "my/our personal funds, if these benefits are not promptly paid to me for any reason." It further provided:

I am entitled to retain an attorney of my choice in connection with this matter, and I am satisfied to retain Anthony J. La Russo, Esq. for these services. I agree to pay \$350 to said attorney for his services in this regard.

[IREx.10].

The investigative report detailed respondent's representation of three clients and the substance of the investigator's interviews with two funeral home principals.

The Funeral Homes

The OAE's interview of Perry Funeral Home's manager, Samuel Arnold, disclosed that Arnold has dealt with respondent since 1975, but does not have any writing memorializing their arrangement. As Perry's attorney, respondent assisted in the "set-up" of corporations, "problems with the leasing company," taking families to court for non-payment of bills and collection activities.

Because the Division would not accept Perry as an assignee for death benefits, the funeral home secured its payments "via an attorney." The funeral home referred its clients to respondent when a client did not have the financial means to pay the funeral home's costs, "and/or if they have an attorney that is not acceptable to the funeral home, i.e., if the funeral home had worked with the attorney before, and did not get paid."

Lana Royal, the office manager of Carnie P. Bragg Funeral Homes, Inc., similarly referred clients to respondent, when they were unable to pay the funeral home's bills, did not have an attorney, and were entitled to State death benefits. According to Royal, beneficiaries who received checks directly from the State would not always pay the funeral home bills. Royal stated that, by referring clients to respondent, payment to the funeral home would be guaranteed. The cost of respondent's services was included on the funeral home's bills. Royal explained that the funeral home's verbal agreement with respondent was that, if the funeral home did not get paid, respondent, too, would not get paid.

The Baker Case

Funi Baker used the Plinton Curry Funeral Home for funeral arrangements for her husband, Wade. Funeral Director Curry gave her a stack of documents to sign, including respondent's form letter to the Division and retainer agreement. Curry instructed Baker to contact respondent with any questions she might have. According to the investigative report, Baker was so upset over the death of her husband that, without posing any questions, she signed all of the papers Curry had given her. No one explained the retainer agreement to her, which was included in the stack of papers that the funeral director asked her to sign.

When Baker examined her funeral home bill, she noticed a \$350 attorney fee charge. She then reviewed her papers and discovered that she had signed a form letter retaining respondent to process her husband's pension benefits. Thereafter, she notified the funeral home that she already had an attorney and did not need respondent's services. The funeral home eliminated the attorney's fee from her bill.

Earlier, when Baker's attorney, John Bruder, had contacted the Division to request the paperwork needed to file for Wade's death benefits, someone had informed him that the Division had already mailed the necessary forms to respondent. On December 15, 2005, Bruder wrote to and also telephoned respondent, requesting that he stop working on Baker's case. Respondent agreed. He informed Bruder that the funeral home "just wanted to get paid."

Bruder was counsel to Baker, as the executrix of Wade's estate, on "all legal matters." Bruder's December 15, 2005 letter to respondent highlighted that, while Baker was "at a point of perhaps the most extreme distress in her life," Plinton Curry representatives had neither explained the significance of the document naming respondent as her attorney, nor had they been forthright in providing information to her regarding respondent's proposed role.

The Ragland Case

Beneficiary Willie Ragland ("Ragland") used the Perry Funeral Home for funeral arrangements for Linda Ragland. Because Ragland paid the funeral bill "up front," the funeral home did not require an attorney's services to secure its payment. According to the investigative report, Ragland had already completed the necessary "beneficiary paperwork" required by the Division. Nevertheless, respondent obtained Ragland's benefits without Ragland's knowledge or authorization.

Thereafter, respondent telephoned Ragland and told him that he was "ready to do business" because he had Ragland's check and needed to obtain his signature. Ragland informed respondent that he had his own attorney.

On April 22, 2005, Ragland's attorney, MeLinda Taylor, telephoned respondent to determine how he had obtained Ragland's check. When respondent told her that Ragland had signed a retainer agreement for his services, she requested copies of all "paperwork" that respondent had relating to Ragland, as well as a copy of the retainer agreement. Respondent, however, forwarded only Ragland's check to Taylor.

At some later time, the funeral home instructed Ragland to stop by to pick up his check. When he arrived, the manager told him that there was no check. Instead, the manager presented him

with paperwork that respondent had faxed to the funeral home for Ragland's signature "regarding hiring respondent." The manager told Ragland that respondent would get him "the State check, less his fee." Ragland refused to sign the paperwork.

When the OAE reviewed respondent's file, it did not find an executed retainer agreement or letter of representation - only paperwork from the Division to respondent and a copy of the State's check payable to Ragland.

The Division's file revealed that respondent had reported the death to the Division. The file included paperwork listing respondent as Ragland's attorney as well as the following:

PLEASE WATCH AND MAKE SURE FORMS ARE SIGNED
BY BENE THERE IS ATTY INVOLVED THAT IS
WORKING FOR THE FUNERAL HOME. FAMILY IS NOT
SURE WHO THE ATT IS.

[IR6;IREx.17.]

The Dunn Case

As in the Ragland matter, the Division's file showed that respondent reported Dunn's death to the Division, was listed as the beneficiary's attorney on the Division's forms, and received "financial information about the decedent" from the Division. The file also included the notation "CASE NOT BEING HANDLED BY LARUSSO."

A January 3, 2006 letter to the Division from Dunn's daughter stated, in relevant part:

I was told by two of your employees . . . that a gentleman named Anthony Larusso [sic], called and reported my mothers death, and stated he is executor of her estate. My mother did not speak to me concerning Mr. Larusso [sic], and I am not sure of his intentions . . . I am asking that my mothers [sic] pension benefits be paid out to me in full also.

. . . .

I would also be grateful to be contacted at any of the above numbers concerning any of Mr. Larusso [sic] intentions.

[IREx.19.]

Respondent's file in this matter included an unsigned retainer agreement and an unsigned letter to the Division indicating that respondent represented Dunn's beneficiary.

Following a de novo review of the record, we are satisfied that the record contains clear and convincing evidence that respondent's conduct was unethical.

Respondent's form letter to the Division and his retainer agreement stated that he had been retained by the beneficiaries for the purpose of obtaining death benefits from the State to ensure payment of the balance due to the funeral home. Clearly, respondent's primary allegiance was to the funeral homes. In fact, respondent's verbal agreement with Bragg Funeral Home was,

if the funeral home did not get paid, he would not get paid. Thus, respondent's representation of the funeral homes' clients for the sole purpose of obtaining their benefits to pay for funeral expenses, while also acting as attorney for the funeral homes, constituted a conflict of interest. In fact, respondent stipulated that he violated RPC 1.7(a)(2), which provides that a concurrent conflict of interest exists if "there is a significant risk that the representation of one or more clients will be materially limited by the lawyer's responsibilities to another client, a former client, or a third person or by a personal interest of the lawyer." Unquestionably, respondent's representation of the beneficiaries was materially limited by his responsibilities to the funeral homes, as well as by his own interests - the collection of a legal fee.

Exhibit 2 (the Division's list of forty-five deceased pension fund members for whom respondent was listed as the attorney of record) and Exhibit 6 (the OAE's list, which includes the same forty-five names, as well as the funeral homes involved) demonstrate that respondent engaged in a conflict of interest forty-five times, thereby displaying a pattern of misconduct.

Respondent's actions were exacerbated by the fact that, in the Baker, Ragland and Dunn matters, the beneficiaries did not intend to retain him. Baker, in an extremely vulnerable and emotional state,

was unaware that she had signed a retainer agreement until she received the funeral home's bill. As to Ragland, it appears from the record that he never signed a retainer agreement. However, because of respondent's longstanding relationship with the Division, respondent was able to start the process with a mere telephone call. Thus, the State listed respondent both as Ragland's attorney and as the informant reporting the death. Also, the Division forwarded Ragland's benefits to respondent's care.

As to the Dunn matter, the Division's files showed that respondent reported the death, was listed in the Division's records as the beneficiary's attorney, and obtained financial information about the decedent. Dunn's daughter, however, did not know respondent or of his involvement in her mother's matter, until she was so informed by the Division's employees.

We note, however, that, once the beneficiaries' representatives contacted respondent, he withdrew from the representation.

Respondent also stipulated a violation of RPC 1.16(a)(3), based on the form letter to the Division providing that the "client" could not revoke their "arrangement" without respondent's written consent. Respondent was aware that the language was not legally binding, but claimed that he used it "for effect." Because we find this rule inapplicable in this context, we dismiss this charge.

We find, thus, only that respondent violated RPC 1.7(a)(2) by failing to comply with the requirements of RPC 1.7(b)(1), which states:

(b) Notwithstanding the existence of a concurrent conflict of interest under paragraph (a), a lawyer may represent a client if:

(1) each affected client gives informed consent, confirmed in writing, after full disclosure and consultation When the lawyer represents multiple clients in a single matter, the consultation shall include an explanation of the common representation and the advantages and risks involved

Here, respondent observed none of the above requirements. The "waiver" language in the retainer agreement was wholly insufficient to allow the claimants to make an informed decision about the representation, particularly because of the stress and emotions affecting the beneficiaries at that time.

We now turn to the issue of discipline.

It is well-settled that, absent egregious circumstances or economic injury to clients, a reprimand is sufficient discipline for a conflict of interest. In re Berkowitz, 136 N.J. 134, 148 (1994). Cases involving more serious conflict of interest situations, together with other violations, have resulted in suspensions. See, e.g., In re Welaj, 170 N.J. 408 (2002) (three-month suspension for former assistant prosecutor in Somerset County who engaged in conflicts of interests that adversely affected the administration

of justice by representing more than 120 criminal defendants in that county, while his former law partner was the prosecutor in that county; he also engaged in several business ventures with the Somerset County prosecutor knowing that it created an impermissible conflict of interest); In re Patel, 159 N.J. 527 (1999) (three-month suspension for attorney who engaged in multiple conflicts of interest, failed to maintain an attorney trust account, failed to maintain proper trust and business account records, and failed to provide his client with a closing statement after settling a matter); In re Guidone, 138 N.J. 273 (1994) (three-month suspension where the attorney deliberately concealed his involvement in a partnership that was purchasing property from the Lion's Club, when he was already representing the Lion's Club in the transaction); and In re Hurd, 69 N.J. 316 (1976) (three-month suspension where attorney advised his client to transfer title to property to attorney's sister for twenty percent of the property's value).

Although none of the above cases are squarely on point, they provide the context against which respondent's conduct may be examined and are helpful in fashioning the proper measure of discipline, taking into account the nature and severity of the conduct, as well as mitigating and aggravating factors.

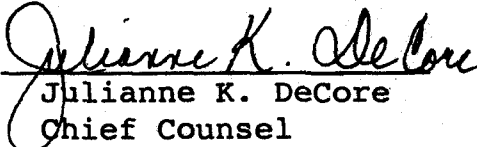
In mitigation, we note that, in almost forty years of practice, this is respondent's first brush with the ethics system. Also, although he collected a fee and guaranteed that his funeral home clients were paid, there is no evidence that his conduct caused economic harm to any beneficiary.

On the other hand, the sheer volume of cases involved in this matter (forty-five) elevates it beyond the reprimand recommended by the OAE. Although respondent's conduct was akin to that of Welaj, who was suspended for three months, the number of clients involved here, forty-five, is significantly less than the 120 implicated in Welaj. We, therefore, determine that a censure is the appropriate degree of discipline for respondent's conduct. We, however, caution respondent against engaging in these types of conflicts in the future.

Members Boylan and Lolla did not participate.

We further determine to require respondent to reimburse the Disciplinary Oversight Committee for administrative costs and actual expenses incurred in the prosecution of this matter, as provided in R. 1:20-17.

Disciplinary Review Board
William J. O'Shaughnessy, Chair

By: 
Julianne K. DeCore
Chief Counsel

SUPREME COURT OF NEW JERSEY
DISCIPLINARY REVIEW BOARD
VOTING RECORD

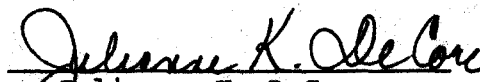
In the Matter of Anthony L. LaRusso
Docket No. DRB 06-343

Argued: February 15, 2007

Decided: March 30, 2007

Disposition: Censure

| Members | Disbar | Suspension | Censure | Dismiss | Disqualified | Did not participate |
|---------------|--------|------------|---------|---------|--------------|---------------------|
| O'Shaughnessy | | | X | | | |
| Pashman | | | X | | | |
| Baugh | | | X | | | |
| Boylan | | | | | | X |
| Frost | | | X | | | |
| Lolla | | | | | | X |
| Neuwirth | | | X | | | |
| Stanton | | | X | | | |
| Wissinger | | | X | | | |
| Total: | | | 7 | | | 2 |


Julianne K. DeCore
Chief Counsel