

NEW ZEALAND LAW SOCIETY
LAWYERS COMPLAINTS SERVICE

No.	20494
Concerning	Part 7 of the Lawyers and Conveyancers Act 2006 ("the Act")
And	
Concerning	A complaint from Kelly Roe about Philip Cornegé

Notice of Decision by Central Standards Committee 1

Background:

1. Ms Roe wished to commence judicial review proceedings against the University of Waikato because it had refused to confer her degree.
2. She emailed Mr Cornegé on 25 February enclosing her draft proceedings and asking if he would assist her to obtain legal aid because she knew he had experience with judicial review.
3. Mr Cornegé initially agreed to seek an interim grant of legal aid to enable him to assess whether Ms Roe's claim had reasonable prospects of success. His junior emailed Ms Roe a completed application for an interim grant of legal aid on 21 April and asked her to advise when it could be filed.
4. However, Mr Cornegé emailed Ms Roe later the same day to apologise that he would not be able to file the application on her behalf because his wife acted for the University of Waikato. Mr Cornegé said he could not confirm whether his wife had advised the University in relation to Ms Roe's specific situation as they were both bound by privilege, but that there was a very good chance she had provided some advice since she typically advised on matters such as the decision to hold back a qualification.
5. Mr Cornegé said it would therefore be inappropriate for him to act for Ms Roe. He went on to state-

As you know, I had only ever agreed to seek an interim grant of aid to assess whether your claim has reasonable prospects of success. Even if I could act, I think it is very unlikely I would have agreed to take your substantive claim (which is not something I am required to do on legal aid in any case).

6. Mr Cornegé offered to assist Ms Roe to find an alternative legal aid lawyer. He named another civil legal aid lawyer in Hamilton and said he would provide further suggestions if requested.
7. Ms Roe was unwilling to accept Mr Cornegé's position and requested Mr Cornegé just focus on obtaining summary judgment. This caused Mr Cornegé to respond-

I need to be very clear. I am not and will not be acting for you. There is no point in your continuing to email me "instructions" because they will not be acted on. First, I am not required to accept your instructions on legal aid. Given I consider your claim has no merit I am not prepared to do so. Secondly, I am not permitted to accept your case, even had I wanted to. My wife has advised the University in relation to your case. I am therefore conflicted.

Complaint:

8. Against this background, Ms Roe complains that Mr Cornegé refused to file her application for legal aid and therefore declined to look at the evidence she had supplied to determine whether her case had merit.
9. Ms Roe requests that the two-month delay before Mr Cornegé advised he was conflicted is investigated and asks for him to be removed from the Legal Aid list if he will not act when instructed.

Opportunity to respond:

10. The Standards Committee can confirm that Mr Cornegé was invited to provide a response to the complaint and expressed his willingness to provide any information or response that the Standards Committee required.
11. The Standards Committee, having first read the complaint and its supporting information, found no additional issues or questions that necessitated any further information from Ms Roe or a formal response from Mr Cornegé and considered that the complaint could be adequately decided with the information it held.

Issue for consideration by the Standards Committee:

12. The Standards Committee must consider whether Mr Cornegé has breached his professional obligations by refusing to accept Ms Roe's instructions to file the application for interim legal aid.
13. Rule 4 of the Lawyers and Conveyancers Act (Lawyers: Conduct and Client Care) Rules 2008 (the "Rules") provides that a lawyer must not refuse to accept instructions for work that is within the lawyer's field of practice without good cause. Rule 4.1 goes on to state that good cause to refuse to accept instructions includes:

Instructions that could require the lawyer to breach any professional obligation.

14. Rule 5.6 deals with third party conflicts of interests and provides that a lawyer must ensure that the existence of a close personal relationship with a third party does not compromise the discharge of duties owed to a client. Rule 5.6.1 specifically provides-

A lawyer must not act if there is a conflict of interest or an appearance of a conflict of interest between a client and a third party with whom the lawyer has a close personal relationship.

15. The Standards Committee considered that the fact Mr Cornegé's wife customarily advised the University of Waikato when it was considering withholding a qualification was sufficient to at least give rise to the appearance of a conflict of interest between Ms Roe and his wife. Rule 5.6.1 accordingly required that Mr Cornegé did not act for Ms Roe, which requirement provided good cause for his refusal to accept her instructions pursuant to Rule 4.
16. However, the Committee was concerned about the length of time which elapsed between Mr Cornegé's initial receipt of Ms Roe's instructions and his advice that he was unable to act due to both the conflict of interest involving his wife and because he did not consider that Ms Roe's case had sufficient merit.

17. The Committee understood that Mr Cornegé may have needed two months to form an initial view on the merits of Ms Roe's case. It also recognised that such an assessment was needed in order for Mr Cornegé to be able to advise Legal Aid he considered the application should be granted. It further appreciated that Mr Cornegé could not be obliged to accept instructions to act on legal aid in circumstances where he felt unable to advise Legal Aid that the matter had reasonable prospects of success.
18. Nevertheless, the Standards Committee believed that Mr Cornegé should have been able to advise Ms Roe more quickly that he would not be able to act for her because his wife habitually advised the University of Waikato on that sort of matter. The Committee considered this should have been apparent to Mr Cornegé once Ms Roe had outlined why she intended to file proceedings and before he had reviewed any evidence supplied to him by Ms Roe. Had Mr Cornegé acted more promptly, Ms Roe would have been able to take steps much earlier to progress her claim had she chosen to do so in light of Mr Cornegé's advice.
19. Having carefully considered the issues raised by Ms Roe, the Standards Committee concluded that although Mr Cornegé should have been able to recognise the conflict earlier, he was ultimately required to advise Legal Aid he believed her case had reasonable prospects of success. As he formed the opposite opinion, Mr Cornegé would not have been able to progress her case in any event.
20. The Committee also noted that Mr Cornegé had attempted to assist Ms Roe to find another legal aid lawyer as required under Rule 4.1.3. The Committee accordingly declined to take the matter any further.

Decision:

21. The Standards Committee, having considered Ms Roe's complaint, decided, in its discretion, to take no further action on it, pursuant to section 138 (2) of the Act. In the circumstances, no further action was necessary or appropriate as although it would have been preferable for Mr Cornegé to have advised Ms Roe sooner of his inability to act, he would ultimately have been unable to progress her substantive application for legal aid because he did not believe her case had sufficient merit.

Right to apply for review – Legal Complaints Review Officer ("LCRO")

You may be able to apply for a review of this decision by the LCRO. On review, the LCRO may:

- a. direct the Standards Committee to reconsider the whole or any part of the complaint;
- b. confirm, modify or reverse the decision of the Standards Committee; and/or
- c. exercise any of the powers the Standards Committee could have exercised in relation to this complaint.

Any application for a review of this decision must be lodged with the LCRO within 30 working days after a copy or notice is served on, given to, or otherwise brought to the attention of, the applicant for review. In the absence of proof to the contrary this is presumed to have occurred on the fifth working day after the date of this decision.

An application for review must be on the prescribed form and be accompanied by the prescribed fee of \$50.00. Contact details for the LCRO are:

Postal address:
Level 6
Auckland District Court

69 Albert Street
Auckland 1010
(Physical address; suitable for courier and hand delivery)

DX CX 10072
(Postal address only; not suitable for courier delivery)

Email:
LCRO@justice.govt.nz

For further information about the LCRO and the review process, call 0800 367 6838 (extn 2) or go to:
www.justice.govt.nz/tribunals/legal-complaints-review-officer/contact-us.

Unless the Standards Committee has directed otherwise this decision must remain confidential between the parties.



Charlotte von Dadelszen
Convenor, Central Standards Committee 1

Date: 22 June 2020

To: Ms Kelly Roe
Mr Phillip Cornegé
New Zealand Law Society