

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

[2014] NZERA Auckland 114
5442949

BETWEEN BRIAN ALEXANDER
 THOMAS DENHAM
 Applicant

A N D ANTHONY GEORGE
 SELMES
 Respondent

Member of Authority: T G Tetitaha

Counsel: Applicant in person
 A Holgate, Counsel for Respondent

Submissions received: 28 March 2014 from Applicant
 28 March 2014 from Respondent

Date of Minute: 31 March 2014

INTERIM DETERMINATION

[1] Following a teleconference on 24 March 2014, the parties filed submissions about the first issue for hearing, namely whether the Authority should exercise its discretion under s.160(1)(f) that Mr Holgate not continue to act for Mr Selmes in this proceedings given the alleged conflict of interest arising from his instructing solicitor George Swaneopol.

[2] The alleged conflict of interest arose from Mr Holgate's instructing solicitor, Mr George Swaneopol of Swanlaw. Mr Swaneopol has previously acted Mr Denham. Mr Holgate has now obtained a different instructing solicitor, The Conveyancing Shop in Manukau.

[3] Mr Denham advised by email because Mr Selmes changed his instructing solicitor "*this is fine with me*". There is apparent consent to Mr Holgate continuing to act in this proceeding.

[4] A lawyer must not act for more than 1 client on a matter in any circumstances where there is a more than negligible risk that the lawyer may be unable to discharge the obligations owed to 1 or more of the clients.¹ The affected lawyer in this case was Mr Swaneopol. Mr Swaneopol is no longer the instructing solicitor. This removed any apparent breach of the rules. There is no evidence Mr Holgate acted for Mr Denham at any stage. There is no evidence Mr Swaneopol disclosed any information about Mr Denham to Mr Holgate. Other than being the solicitor on record, it does not appear as though Mr Swaneopol took any active part in this proceeding.

[5] In the circumstances where Mr Denham consents to Mr Holgate continuing to act, there is a new instructing solicitor on record and no evidence information about Mr Denham has been supplied to Mr Holgate, the Authority declines to exercise its power under s160(1)(f) and the application is dismissed.

T G Tetitaha
Member of the Employment Relations Authority

¹ Rule 6.1 Lawyers and Conveyancers Act (Lawyers: Conduct and Client Care) Rules 2008.