

**Waitakere District Court:  
Consolidated Duty Lawyer Instructions<sup>1</sup>  
Effective from 30 March 2009**

**Authority for the duty lawyer service**

1. The Secretary for Justice has, under section 68(2)(b) of the Legal Services Act 2011, gazetted the duty lawyer service as a specified legal service.
2. The Gazette notice sets out the object of the duty lawyer service which is to ensure that a sufficient number of lawyers is available in each district court to assist, advise and represent unrepresented defendants charged with an offence.
3. The Duty Lawyer Service operational policy sets out the responsibilities of duty lawyers and broadly describes the administration of the service. These instructions detail the particular administrative arrangements for the duty lawyer service at the Waitakere district court.

**Application of greater Auckland rostering policy**

4. Duty lawyers rostered at the Waitakere District Court are not eligible to be rostered at the other Auckland courts.
5. Only duty lawyers on the Waitakere District Court duty lawyer roster are eligible to act as replacement duty lawyers at the Waitakere District Court.
6. For new applications, entry to a duty lawyer roster is governed by the *Policy for admission to duty lawyer rosters at specific district courts*.
7. A separate policy operates for the Saturday and public holiday roster. Entry to the Saturday and public holiday roster is by appointment only. See paragraphs 32 to 35 for further details.
8. Rosters are prepared by Initial Criminal Legal Services Unit staff in consultation with duty lawyer supervisors and Ministry of Justice Courts staff. Contact details are: [duty.lawyer@pds.govt.nz](mailto:duty.lawyer@pds.govt.nz)

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<sup>1</sup> These consolidated instructions incorporate earlier instructions and are adjusted for the shift of legal aid administration to the Ministry of Justice.

## Role of the duty lawyer supervisor

9. The role of the duty lawyer supervisor is to oversee the duty lawyer service to ensure a high-quality service is provided to clients and the court. The supervisor is responsible for:
- organising the flow of work and managing the team and the service on their rostered days
  - liaising with the court and other agencies to ensure the duty lawyer service meets the court's needs
  - assessing, inducting and mentoring new entrants to the roster
  - assuming responsibility for some administrative matters, including controlling replacements to ensure substitute lawyers are suitable, and ensuring that duty lawyers are signed on or off according to court need
  - working with the administrators to manage the composition of the roster so that it meets the needs of the court
  - being the first point of contact for complaints about the duty lawyer performance.

## Hours of work

10. Duty lawyers must report to their supervisor by 8.30 am on their rostered day. Any duty lawyer wishing to arrange an alternative starting time should discuss this with their supervisor and seek their agreement to another time.
11. Supervisors will be entitled to sign on a replacement if a rostered duty lawyer has not contacted his or her supervisor and has not signed on 15 minutes after the start time. In this case, payment will not be made to the rostered duty lawyer.
12. Duty lawyers must be available to attend until notified by their supervisor that they are no longer required for the day.
13. Duty lawyers should programme their other commitments outside rostered duty lawyer sessions. In the event that duty lawyers are unavoidably required to attend to other commitments during their rostered session they should notify their supervisor of time spent with their own clients, and ensure that the time is recorded as a deduction on the *Record of Attendance* form.
14. On Fridays:
- duty lawyers must report to the designated court staff member at their rostered start time (8.30 am or 9.00 am).
  - If a duty lawyer has not reported by 15 minutes after their start time and has not contacted the court, the court staff member will contact the supervisor who will arrange a replacement and advise the court of the name of the replacement. In this case, payment will not be made to the rostered duty lawyer. The supervisor will advise the court and the

Waitakere Legal Aid office of the name of the rostered duty lawyer who did not appear, and the name of the replacement.

- Duty lawyers must be available to attend at the court until notified by court staff that they are no longer required.

## **Record of Attendance/ Payment Voucher**

15. Each day the responsible duty lawyer supervisor will complete a *Duty Lawyer Record of Attendance*. The form is used by the Legal Aid Office as the basis for processing payments to duty lawyers and serves as a record of total duty lawyer hours worked each day, and of any replacements. The *Record of Attendance* form replaces the individual duty solicitor payment voucher.

16. Rostered and replacement duty lawyers must:

- Ensure that your supervisor is aware of your start and finish times, including the lunch break and any time taken to attend to your own clients
- Verify the hours recorded by the supervisor by countersigning the *Record of Attendance* form when signing off for the day. Payment will not be made to individual duty lawyers without the signatures of both the duty lawyer and duty lawyer supervisor on the form.

17. Supervisors must:

- Enter start and finish times for duty lawyers, including lunch breaks and times when they have signed off to attend to their own clients
- Sign the *Record of Attendance* form to certify that duty lawyer services have been provided on the date stated. Payment will not be made to individual duty lawyers without the signatures of both the duty lawyer and duty lawyer supervisor on the form
- Ensure the form is able to be accessed by Legal Aid staff the following morning (arrangements for access to be agreed between Legal Aid staff and supervisors).

18. The Legal Aid Office will:

- Enter the reference and process payment to duty lawyers.
- Make available within the Legal Aid office copies of the record of attendance for inspection by duty lawyers on request.

## **Record of Attendance - Fridays**

19. Friday *Duty Lawyer Record of Attendance* form will be available at the Court's Criminal Counter.

20. Rostered and replacement duty lawyers must:

- Ensure that the start and finish times, including the lunch break and any time taken to attend to your own clients, are recorded on the *Record of Attendance* form.
  - Sign the entry associated with the hours worked that day.
21. The last rostered duty lawyer will seek the Court Deputy Registrar's certification of the *Record of Attendance* form and deliver the form to the Legal Aid Office at the Court – in the slot if there is no Agency staff member present.
- Payment will not be made to individual duty lawyers without the signatures of both the duty lawyer and Court Registrar (or Grants officer if still present at the court).

### **Duty lawyer badges**

22. All duty lawyers and duty lawyer supervisors are required to wear badges supplied by the Initial Criminal Legal Services unit to identify them as duty lawyers while providing duty lawyer services at the court. Badges should be collected from and returned to duty lawyer supervisors (when present) or returned to the Legal Aid Office at the Court at the beginning and end of each session

### **Arrangements when duty lawyers are unable to attend on a rostered day**

23. These instructions cover arrangements for duty lawyers rostered Monday to Friday only. See paragraph 34 for Saturday and public holiday replacement procedures.
24. Duty lawyers are expected to programme other commitments outside rostered duty lawyer sessions.
25. Where absence from a rostered session is unavoidable, duty lawyers should contact the supervisor to discuss replacement. Supervisors will either:
- ask the duty lawyer to take responsibility for finding a replacement and discuss acceptable options for replacement; or
  - advise the duty lawyer that they would prefer to arrange for a replacement themselves; or
  - advise the duty lawyer that they do not see the need for a replacement because of the expected workload at the court.
26. Supervisors arranging replacements for non-supervisor days will ensure that court staff are aware of the name of the replacement duty lawyer.
27. Duty lawyers should contact the appropriate supervisor as soon as possible about the need for a replacement. Supervisor contact details are provided on the cover sheet of the duty lawyer roster.

28. Supervisors arranging replacements will refer to a list of Waitakere duty lawyers available for replacements. Supervisors will be forwarded an updated list by the Initial Criminal Legal Services unit each new roster period.
29. Supervisors will take the following criteria into account when considering the list of available duty lawyers:
  - dependability
  - experience
  - competence
  - the particular skills the duty lawyer can bring to the team as a whole.
30. Supervisors will ensure that members of their own firm or chambers are not given opportunities for replacement over and above those provided to other available duty lawyers.
31. “Swapping” of sessions will not be permitted. Swapping involves changes to two rostered days each time there is a replacement, and undermines the overall objectives of team-based rostering – ie setting up teams of duty lawyers who have the desired range of skills and attributes, who all attend on the same day, and who work well together.

## **Saturdays and public holidays**

32. A separate policy operates for Saturdays and public holidays. Admission to rosters is by appointment only. There is generally a team of two duty lawyers, one of whom is designated as the supervisor, who takes responsibility for signing off the *Record of Attendance* form on that day.
33. Rostered duty lawyers must be at the court by 9.00 am unless otherwise advised by the Court.
34. Replacements must occur within the group of appointed Saturday and public holiday duty lawyers for the court. Designated Saturday/ public holiday supervisors should be replaced by another Saturday/ public holiday supervisor.
35. On completion of a Saturday or public holiday session duty lawyers should complete the *Record of Attendance* form – the form is available in the grey cabinet in the Cell area. After certification by the supervisor, the form should be placed in the slot in the Legal Aid Office at the Waitakere Court for processing.

## **Completion of criminal legal aid application forms**

36. A Legal Aid staff member (legal aid support officer) may be present each day to assist defendants to complete legal application aid forms.
37. As far as possible, the legal aid support officer will complete all legal aid application forms. However, there may be busy days when this is not possible. On days when

the legal aid support officer is present, duty lawyers should not complete legal aid application forms when interviewing defendants, unless requested to do so by the duty lawyer supervisor or by the legal aid assistant.

38. On days when the legal aid support officer is not present, duty lawyers must assist defendants to complete application forms.
39. Duty lawyers should hand any forms they have completed to the legal aid support officer or duty lawyer supervisor. If there is no legal aid support officer or duty lawyer supervisor present, they should:
  - If Legal Aid staff still present at the court, hand the application forms to them
  - If Legal Aid staff are not present, fax the application form(s) to the Waitakere Legal Aid Office, note on the form(s) they have been faxed and place them in the slot at the Legal Aid Office at the Court.

### **Attendance of duty lawyers in the Police cells**

40. Lawyers must not enter the cells in their role as duty lawyer, to interview or otherwise make contact with defendants, unless instructed to do so by the duty lawyer supervisor of the day or, on Fridays, if they are the duty lawyer(s) who have been allocated the cells.
41. If duty lawyers wish to visit their own clients in the cells, they must first sign off as a duty lawyer. They should be aware, however, that as a rostered duty lawyer their first priority is to the duty lawyer service. Supervisors will be entitled to refuse to sign off duty lawyers during busy periods at the court.

### **Assignment of lawyers**

42. The following instructions reflect policies effective from 29 November 2010 detailed in the document *Policy on Assignment, Termination of Assignment and Reassignment*.
43. Duty lawyers assisting people to complete legal aid application forms must advise defendants that:

#### For all criminal case categories

- The lawyer is unable to nominate or recommend a lawyer (or firm/chambers)

#### For categories 1 and 2 cases

- The defendant will be assigned a lawyer by the Legal Aid Office off a list of available lawyers, ie the defendant cannot choose their own lawyer.

For categories 3 and 4 cases only

- The defendant will be assigned a lawyer by the Legal Aid Office if the defendant does not have a genuine preferred lawyer.
44. Assignment as preferred lawyer is available only for categories 3 and 4 cases. Duty lawyers completing legal aid forms for categories 3 and 4 cases cannot seek nomination as a preferred lawyer. In cases where the applicant has genuinely asked the duty lawyer to be their lawyer, the duty lawyer should tell the defendant that they will note this preference on the application form, but that the Legal Aid Office will make the final assignment. Duty lawyers must provide details as to why they have been nominated as preferred lawyer, e.g. previous representation by the lawyer, and on supervisor days must advise the duty lawyer supervisor of this request.
45. Abuse of the preferred lawyer process in criminal cases is viewed as a very serious matter. Preferred lawyer assignment rates for individual duty lawyers at each court are closely monitored. If the Legal Aid Office has information that raises concerns about a specific case of abuse of the process by duty lawyers when completing the application form it reserves the right not to assign the preferred lawyer, or to terminate the assignment and to assign from an assignment roster.