

Providing Legal Aid to clients subject to Mental Health assessment or treatment

Guidance for legal aid lawyers

Introduction

The Ministry is aware of the challenges that can come up when working with clients subject to assessment or compulsory treatment under the Mental Health Act, and the differences between this and providing legal aid services in the criminal or family jurisdictions.

This document outlines the Ministry's expectations of lawyer working in the mental health jurisdiction and provides a quick reference guide for best practice.

The Ministry's expectations

The Ministry expects legal aid lawyers to work in line with current legislation, the provider contract, practice standard, and the Mental Health Roster Guidelines.

General principles

- Ensure not to
 - increase any distrust a client may feel towards the responsible clinician or any other mental health professionals; or
 - damage the therapeutic relationship that exists between the responsible clinician and any other health professionals.
- Represent the client in a professional manner and without the use of inappropriately emotive language.
- Presume every client is competent to make informed choice and give informed instructions, unless there are reasonable grounds.
- Consider whether there are reasonable grounds for believing that a client is not competent. They may arise as a result of

factors such as the type and level of medication, or the symptoms of an illness.

- Where a client is not competent or cannot give instructions, consider whether it is appropriate and in the client's interests to seek appointment as amicus curiae or invite the court to appoint another counsel as amicus curiae and/or to advise the District Inspector of Mental Health.
- Decline to accept or return for re-assignment any matter for which you have insufficient experience or skill or are too busy to undertake.

Responsibilities to Clients

- Contact the client as soon as practicable after accepting a case/referral.
- Where possible, review all reports prior to a hearing.
- After the initial interview, advise the client of:
 - the provisions of the Act under which the client is being assessed or treated
 - the legal options available to the client
 - the likely implications of a client's instructions, including appropriate warnings and "reality testing" the desired options;
 - the court process.
- obtain clients consent in writing prior to seeking medical information.
- act on the instructions of the client and not on those of the client's family or whanau.
- proceed with instructions given by the client, regardless of the medical perspective.

- Take care to avoid any potential or actual conflict. For example, information obtained from the client in the mental health context cannot be disclosed for any purpose without the client's consent.
- If actual or potential conflict arises, advise the client and the Ministry in a timely manner and if appropriate, cease acting.

Preparing for the hearing

- Where appropriate and on the instructions from the client, you should liaise with:
 - the responsible clinician, including discussing the order sought, whether an alternative order could be sought, and if there is any benefit in seeking an adjournment of the hearing
 - other relevant health professionals including nursing staff and social workers; and
 - the family or whanau of the client.
- Obtain relevant medical information with the client's consent.
- Seek any second psychiatric opinion in a timely manner.
- Make any other inquiries necessary for the purpose of the hearing.

Mental Health Roster Guidelines

If working in a region where there is a mental health roster distributed by Legal Aid Services (LAS),¹ you must:

- arrange a roster replacement if unavailable to take work arising from the roster and notify LAS in advance of your rostered week
- arrange a roster replacement if unavailable to take work arising from the roster and notify LAS
- respond promptly to the mental health administrator or District Inspector of Mental

Health to confirm acceptable of referral or if not available to accept a patient referral

- contact the client promptly
- if representing multiple patients on any given day, request for the clients to be called in a staggered order where possible. This is to allow proper debriefing and preparation for the next.

Maintaining best practice

The Ministry encourages lawyers providing mental health legal aid to keep up to date with any legislative or practice standards and explore options for further training or guidance where possible.

New Zealand Law Society Continuing Legal Education (NZLS CLE) have hosted seminars for providing legal aid to those subject to the Mental Health (Compulsory Assessment and Treatment) Act 1992. While these are limited, please keep up to date with the Ministry's 'What's New for Legal Aid Lawyers' page for news of any upcoming events.

CLE also have resources online which are available to be purchased as a PDF online. These are:

- [Mental Health Intensive](#): this covers the legal and medical issues involved in advocacy in this area of law; and
- [Mental Health Advocacy](#): this discusses when a person should be released from assessment or compulsory status under the Mental Health Act, and a beginner's guide to mental health advocacy.

¹ Auckland, South Auckland, Wellington, Porirua, Lower Hutt, and Christchurch have rosters of providers that are created by the Ministry of Justice.