



Christchurch Duty Lawyer instructions applicable from 17 December 2012

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 Christchurch district courts.

Rostering policy across the Nga hau e Wha Marae and Durham Street Courts

4. Duty lawyers are rostered across both Courts.
5. For new applications, entry to a duty lawyer roster is governed by the *Policy for admission to duty lawyer rosters at specific district courts*.
6. 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 28 to 30 for further details.
7. 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@justice.govt.nz
8. A duty lawyer supervisor will be rostered each day at the Nga hau E Wha and Durham Street Courts to manage the duty lawyers, the flow of work and take overall responsibility for the duty lawyer service on their rostered day.

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 managing replacements to ensure substitute lawyers are suitable.
 - 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.

Duty lawyer weekday hours of work

10. Duty lawyers must report on their rostered weekday to their supervisor, or to the court if no supervisor is present, at the times detailed below.

Nga hau e Wha Marae District Court

8.15 am morning and 1.15 pm afternoon Mondays to Friday

Durham Street District Court

8.30 am morning and 1.45 pm afternoon Monday to Friday

9.00 am Saturdays and Public holidays

11. Duty lawyers should programme their other commitments outside their rostered duty lawyer sessions. If duty lawyers are not going to be available for much of their rostered day they need to seek a replacement in advance (see paragraphs 22 to 27 below).
12. Duty lawyers must be available to attend until notified by their supervisor. Once not required, duty lawyers must sign off as directed by the Supervisor.
13. Duty lawyers should be aware that as a rostered duty lawyer their first priority is to the duty lawyer service. On list days the supervisor will be entitled to refuse to sign off duty lawyers during busy periods at the court.

- Duty lawyers should not act as an agent for other lawyers when rostered as a duty lawyer, except in exceptional circumstances. When a duty lawyer supervisor is present any requests from lawyers who need urgent assistance because they unexpectedly cannot attend must be referred to the supervisor.
- If duty lawyers wish to visit their own clients in the cells, they must first sign off as a duty lawyer.

Late arrival

14. If a rostered duty lawyer has not contacted his or her supervisor and not signed on 15 minutes after the start time Supervisors will be entitled to sign on a replacement
15. Payment will not be made to a rostered duty lawyer who does not appear as required. Replacement paragraphs 22-27 apply.

Record of Attendance form

16. Each day the hours worked by duty lawyers must be recorded on the *Duty lawyer record of attendance* form. The form is used by the Legal Aid Office as the basis for processing payments to duty lawyers and serves as a record of the duty lawyer who have worked that day (including replacements) and the total duty lawyer hours worked each day. No other invoicing is needed.
17. Duty lawyers should complete the Record of Attendance form by entering their start & finish times, including the lunch break, and any time taken on non-duty lawyer matters and verify their signature.
18. The supervisor will verify the hours recorded by the duty lawyer by countersigning the *Record of attendance* form. Payment will not be made to individual duty lawyers without the signatures on the form of both the duty lawyer and duty lawyer supervisor.
19. *Record of attendance* forms are available as follows:

Durham Street District Court:	Customer Service counter.
Nga hau e Wha Marae District Court:	Court meet and greet counter.
20. A court staff member will provide the record of attendance sheet to the legal services agency for payment.

Duty lawyer badges

21. All duty lawyers and duty lawyer supervisors are required to wear badges supplied by the Initial Criminal Legal Services Unit to identify them while providing duty lawyer services at the court. Badges should be collected from the duty lawyer supervisor and must be returned at the end of the day. If the supervisor is not present then please return to Court staff.

Arrangements when duty lawyers are unable to attend on a rostered day (Monday to Friday)

22. These instructions cover arrangements for duty lawyers rostered Monday to Friday only. See paragraph 30 for Saturday and public holiday replacement procedures.
23. Duty lawyers are expected to programme other commitments outside their rostered duty lawyer sessions. Where absence from a rostered session is unavoidable duty lawyers should contact a supervisor as soon as possible to discuss replacement. Supervisors will either:
 - advise the duty lawyer that the supervisor will arrange for a replacement;
 - request the duty lawyer to take responsibility for finding a replacement and discuss acceptable options for replacement; or
 - advise the duty lawyer that they do not see the need for a replacement because of the expected workload at the court.
24. Supervisor contact details & court staff member contact details are provided on the cover sheet of the duty lawyer roster.
25. Supervisors arranging replacements will refer to a list of the court's duty lawyers available for replacements, which the Initial Criminal Services Unit updates each new roster period.
26. 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.

27. “Swapping” of sessions is not permitted. Swapping involves changes to two rostered days each time there is a replacement, and undermines the overall objective of providing a roster that meets the court’s requirements.

Saturdays and public holidays

28. Duty lawyers appointed to the Saturday and public holiday roster must be rostered on that particular court’s weekday roster.
29. Rostered duty lawyers must be prepared to attend at the court by 9.00 am unless otherwise specified on the roster.
30. If unable to attend on their rostered day, Saturday and public holiday duty lawyers must arrange a replacement in advance and notify the court. Replacements must come from within the group of appointed Saturday and public holiday duty lawyers for the particular court.

Completion of criminal legal aid application forms

31. Duty lawyers must assist defendants to complete legal aid application forms and should hand any forms they have completed to the duty lawyer supervisor. If for some reason there is no duty lawyer supervisor present, they should hand completed applications to court staff.
32. It is essential that legal aid application forms are completed by duty lawyers if there is any prospect of aid being granted and the decision as to granting of aid is for Legal services to make upon receipt of the application.

Assignment of lawyers

33. The following instructions reflect policies effective from 29 November 2010 detailed in the document *Policy on Assignment, Termination of Assignment and Reassignment*.
34. 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.

35. 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.
36. 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.