



Hamilton District Court: Final Duty Lawyer Instructions applicable from 13 February 2012

Authority for the duty lawyer service

1. Under section 68(2)(b) of the Legal Services Act 2011, the Secretary for Justice has gazetted by notice the duty lawyer service as a specified legal service.
2. The Gazette notice specifies that the object of the duty lawyer service is to ensure that a sufficient number of lawyers are 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 Hamilton District Court.

Rostering policy at the Hamilton District Court

4. New admissions to the Hamilton duty lawyer roster are governed by the *Policy for Admission to Duty Lawyer Rosters at Specified District Courts*.
5. Only duty lawyers on the Hamilton duty lawyer roster are eligible to act as replacement duty lawyers at that court.
6. Duty lawyers rostered at the Hamilton District Court are not eligible to be rostered at courts other than the Hamilton satellite courts (i.e. Huntly, Morrinsville, Te Awamutu, Te Kuiti, Thames and Taumaranui).
7. Replacements for Saturdays and public holidays must come from within the pool of duty lawyers appointed to the Saturday and public holiday roster. See paragraphs 29 to 32 for further details.
8. Rosters are prepared by Initial Legal Services Unit (ICLS) staff in consultation with duty lawyer supervisors and Ministry of Justice courts staff. Contact details are: duty.lawyer@justice.govt.nz.
9. A duty lawyer supervisor ("the supervisor") will be rostered each criminal list day 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

10. The role of the 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; and
 - being the first point of contact for complaints about duty lawyer performance.

Duty lawyer hours of work

11. Duty lawyers must report by 9.00am to the supervisor, on their rostered day on weekdays, and, by 9.00am to the liaison lawyer on Saturdays and public holidays.
12. Duty lawyers should schedule other commitments outside their rostered duty lawyer session. If duty lawyers have other commitments on their rostered day, they need to contact the supervisor as soon as possible to discuss how those other commitments are managed or whether they need to be replaced for that day (see paragraphs 22 to 28 below).
13. Duty lawyers must be available to attend until notified by their supervisor, or when the supervisor is not present, by the Court, that they are no longer required. When the supervisor is not present, the remaining duty lawyers must confer with the Court, particularly at the lunch adjournment, to determine the court's duty lawyer coverage requirements into the afternoon. If it has been determined that a duty lawyer is not required, they must sign off.
14. 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 is entitled to refuse to sign off duty lawyers during busy periods at the court. The following applies to duty lawyers:

- Duty lawyers must not act as an agent for other lawyers when rostered as a duty lawyer, unless exceptional circumstances apply. Any request for exceptional circumstances must be referred to the supervisor who will consider the circumstances of each case on its merits; and
- If duty lawyers wish to visit their own clients in the cells, they must first advise the supervisor and be signed off as a duty lawyer.

Late Arrival

15. If a rostered duty lawyer has not contacted the supervisor and not signed on 15 minutes after the start time, the supervisor is entitled to sign on a replacement.
16. Payment may not be made to a rostered duty lawyer who does not appear as required and fulfil the requirements under these instructions, in addition to their other responsibilities to the duty lawyer roster scheme.

Record of Attendance Form

17. Hours worked for each rostered day must be accurately recorded by duty lawyers on the *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 lawyers who have worked that day (including replacements), in addition to the total duty lawyer hours worked each day. No other invoicing is required.
18. Duty lawyers should complete the *Record of Attendance* form by entering their start and finish times, including any lunch break, any time taken on non-duty lawyer matters and the dollar value of service (GST inclusive). This must be verified with their signature.
19. The supervisor will verify the hours recorded by the duty lawyer by countersigning the *Record of Attendance* form.
20. Payment will not be made to individual duty lawyers without the signatures on the form of both the duty lawyer and the supervisor.

Duty Lawyer Badges

21. All duty lawyers and supervisors are required to wear badges to identify them while providing duty lawyer services at the court. Badges can be collected from the criminal counter at the court and returned to the same location at the end of the session.

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 paragraphs 29 to 32 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 the supervisor as soon as possible to discuss a replacement. The supervisor will either:
 - advise the duty lawyer that the supervisor will arrange for a replacement;
 - request the duty lawyer take responsibility for finding a replacement and discuss acceptable options for replacement; or
 - advise the duty lawyer that a replacement is not required because of the expected workload at the court.
24. Supervisor and court staff member contact details are provided on the cover sheet of the duty lawyer roster.
25. The supervisor arranging replacements will refer to a list of the court's duty lawyers available for replacements, which the ICLS is responsible for updating each new roster period.
26. The supervisor will take the following criteria into account when considering the list of available duty lawyers:
 - Dependability;
 - Experience;
 - Competence; and
 - The particular skills the duty lawyer can bring to the team as a whole.
27. Only duty lawyers on the Hamilton District Court's roster are eligible to undertake sessions as a replacement.
28. There is a prohibition on duty lawyers swapping their rostered sessions with duty lawyers rostered to appear on another day. Swapping undermines the aims of consistency and accountability of the scheme.

Saturdays and public holidays

29. To be eligible to appear on the Saturday and public holiday roster, a duty lawyer must be rostered on that particular court's weekday roster.
30. Rostered duty lawyers must be prepared to attend at the court by 9 am, unless otherwise specified on the roster. A nominated rostered duty lawyer should

contact the Police Watch house in advance to confirm the numbers appearing and any particular requirements for the day.

31. 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 Hamilton District Court. The ICLS shall provide Saturday and public holiday lawyers with those contact details.
32. On completion of a Saturday or public holiday session, duty lawyers should complete the *Duty Lawyer Record of Attendance* form. After certification by the deputy registrar at court, the form should be delivered to the Legal Aid Office at the court for processing.

Requirements of duty lawyers on duty on the week day roster

33. Defendants must be informed by the duty lawyer who takes their initial instructions that they may not be the duty lawyer who will appear in court for them.
34. Duty lawyers must ensure that duty solicitor instruction sheets are completed as fully as is required in the circumstances of each case to enable another duty lawyer to appear in court on those matters.
35. Duty lawyers are not to approach the dock for further instructions unless absolutely necessary.
36. Instruction sheets must be made available in a timely way to the duty lawyer who is assigned to the courtroom to ensure a smooth flow of work through the court.

In Court

37. Duty lawyers assigned to appear in court are required to provide the court registrar with a list advising which defendants, that have been seen by a duty lawyer, are ready to be called and identifying defendants who are in the cells (as these are given priority).
38. Court etiquette must be observed by duty lawyers in the courtroom.

Completion of criminal legal aid application forms

39. The legal aid officer will be present Monday to Friday to assist defendants to complete legal aid application forms. At the start of the day, the legal aid officer and the supervisor shall confer in relation to the court workload and any other requirements.
40. The legal aid officer shall complete as many legal aid applications as possible, in addition to administering legal aid applications. If other duties preclude the legal

aid officer from completing forms, the supervisor shall notify duty lawyers that they may be required to assist with completing legal aid applications.

41. On days or during periods when a legal aid officer is not present, duty lawyers must assist defendants to complete legal aid application forms.
42. In cases where the maximum penalty is less than 6 months' imprisonment, and legal aid is being sought on interests of justice grounds, a duty lawyer must provide in the *Criminal charges* section of the application form, reasons why legal aid should be granted.
43. Legal aid applications should accompany duty lawyer instructions. This enables future court dates and correct address details to be added to applications before filing in the Legal Aid Office.
44. Duty lawyers shall file all completed legal aid applications with the Legal Aid Office at the court, or, where there is no legal aid officer available, they should leave applications at the court counter. Urgent applications are to be faxed by the court to the Hamilton Legal Aid Office with the originals being collected by legal aid staff the following day.

Assignment of lawyers

45. The following instructions reflect policies effective from 29 November 2010 that are detailed in the document *Policy on Assignment, Termination of Assignment and Reassignment*¹
46. Duty lawyers assisting people to complete legal aid application forms must advise defendants that:

For all criminal case categories:

- they are unable to nominate or recommend a lawyer (or firm/chambers).

For category 1 and 2 cases:

- the defendant will be assigned a lawyer by the Legal Aid Service from a list of available lawyers. It must be clearly communicated to the defendant that they are unable to choose their own lawyer.

For category 3 and 4 cases:

- the defendant will be assigned a lawyer by the Legal Aid Service, unless the defendant has a genuine preferred lawyer.

47. 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 Service decide who will be appointed to the assignment. Duty lawyers

³ A full copy of the policy on Assignment, Termination of Assignment and Reassignment can be accessed through www.lsa.govt.nz (follow the path Home Page / Information for Lawyers / General Policies).

that are listed as preferred lawyer on any application must advise the supervisor as soon as possible and provide details as to why they have been nominated as preferred lawyer. The most relevant reason will be that they have previously represented the applicant.

48. Abuse of the preferred lawyer process in criminal cases is viewed seriously. Preferred lawyer assignment rates for individual duty lawyers at each court are closely monitored. If the Legal Aid Service has information that raises concerns about a specific case of abuse of the process by a duty lawyer when completing the application form, it may exercise the right to assign another lawyer or to terminate an assignment that has been made, in which case, it may make a new assignment from an assignment roster.