

## **Papakura and Pukekohe District Courts: Duty Lawyer instructions applicable from 29 November 2010<sup>1</sup>**

### **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 Papakura and Pukekohe district courts.

### **Rostering policy across the Papakura and Pukekohe District Courts**

4. Duty lawyers rostered at the Papakura and/or Pukekohe District courts are not eligible to be rostered at other courts.
5. As far as possible duty lawyers will be rostered at one court. If there are insufficient duty lawyers available in the Papakura and Pukekohe roster pool to satisfy those courts' duty lawyer roster requirements the Ministry of Justice will consider exceptions to this policy.
6. Entry to either of the Papakura and Pukekohe duty lawyer rosters for new applicants is dependent upon:
  - suitable spaces being available (see: Policy for admission to duty lawyer rosters), and
  - the applicant being recommended as suitable by a panel of duty lawyer supervisors.
7. Rosters are prepared by the Ministry of Justice's Initial Criminal Legal Services (ICLS) unit in consultation with duty lawyer supervisors and Ministry of Justice (Courts) staff.

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

## **Duty lawyer supervisor role**

8. A Public Defence Service (PDS) duty lawyer supervisor will take oversight of the duty lawyer service at the court and will be rostered on list days at Pukekohe and Papakura to oversee the team of rostered duty lawyers.
9. The duty lawyer supervisor will also:
  - work with the Initial Criminal Legal Services (ICLS) unit in managing the composition of the roster to make sure it meets the needs of the courts
  - undertake assessment and induction of new entrants to the roster in conjunction with other PDS duty lawyer supervisors, and
  - manage replacements for all weekdays.

## **Duty lawyer hours of work**

10. Duty lawyers must report to the court on their rostered day at the times detailed below.

### Papakura District Court

9.00 am on Mondays, Tuesdays, Wednesdays and Fridays (unless the Court calls and notifies otherwise)

8.30 am on Thursdays

### Pukekohe District Court

1.30 pm on Mondays, Tuesdays, Thursdays and Fridays for the scheduled 2.15 pm Court start, unless the Court calls and notifies otherwise.

8.30 am on Wednesdays

11. Duty lawyers must be available to attend at the court until no longer required. Duty lawyers should programme 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 paragraph 22 below).
12. 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.
13. Duty lawyers should also note that they should not be acting as an agent for other lawyers when rostered as a duty lawyer, except in exceptional circumstances. On list days any requests from lawyers who need urgent assistance because they unexpectedly cannot attend must be referred to the duty lawyer supervisor.

### **Non-list days**

14. On non-list days at Papakura and Pukekohe the rostered duty lawyer must confer with the court to determine the court's duty lawyer coverage requirements into the afternoon. Before leaving, the rostered duty lawyer must confirm with the court that they are no longer required. Once not required, the duty lawyer must sign off.

### **Record of Attendance form**

15. Each day the rostered duty lawyer/s must complete a *Duty Lawyer Record of Attendance* form. The forms are used by Legal Aid staff as the basis for processing payments to duty lawyers and are held at the court counter on non-list days, and by the duty lawyer supervisor on list days.
16. The responsibilities of rostered and replacement duty lawyers concerning the *Record of Attendance* form are to accurately record:
- start time
  - their lunch break
  - any other time taken, particularly to attend to their own clients or when acting as an agent (ensuring that the time is recorded as a deduction on the Record of attendance form), and
  - finish time (with signature).
17. Payment will be made to individual duty lawyers only if they have certified their hours by signing the *Record of Attendance* form.

### **Non-list days**

18. When signing off for the day on non-list days the duty lawyer (or replacement) is responsible for seeking the verifying signature on the *Record of Attendance* form of the court staff member at the counter.

### **List days**

19. On list days the duty lawyer supervisor will complete the *Record of Attendance* form.
20. On list days rostered and replacement duty lawyers must:
- ensure that the supervisor is aware of their start and finish times, including the lunch break and any time taken to attend to their own clients or as an agent for another lawyer.
  - certify 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 on the form of both the duty lawyer and duty lawyer supervisor.

### ***Duty lawyer payments***

21. After verification by the designated court staff (on non-list days) or the duty lawyer supervisor (on list days) the *Record of Attendance* forms are forwarded for processing to the Manukau Legal Aid Office at the end of each week, along with the week's legal aid applications.

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

22. Duty lawyers are expected to programme other commitments outside rostered duty lawyer sessions. Where absence from a rostered session is unavoidable duty lawyers should contact the duty lawyer supervisor as soon as possible to discuss replacement. The duty lawyer supervisor will either:
- advise the duty lawyer that the supervisor will arrange for a replacement; or
  - request that the duty lawyer take responsibility for finding a replacement and discuss acceptable options for replacement.

23. The supervisor contact details are provided on the cover sheet of the duty lawyer roster.

24. When arranging replacements the supervisor will refer to a list of Papakura and/or Pukekohe duty lawyers available for replacements. Each new roster period the ICLS unit will provide the supervisor with an updated list of duty lawyers available for replacements.

Note: Only duty lawyers on the Papakura and Pukekohe court rosters are eligible to undertake sessions as a replacement at these courts.

25. For replacements on non-list days the duty lawyer supervisor must ensure that the following people are notified when a replacement is arranged:

- designated contact person at the relevant court
- designated ICLS unit staff.

26. If the duty lawyer supervisor requests that the duty lawyer take responsibility for finding a replacement, then the duty lawyer who is not attending is responsible for advising the supervisor, the court, and the ICLS unit of the name of the replacement duty lawyer.

27. The duty lawyer supervisor arranging replacements 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 on a list day, or suitability to meet the requirements of non-list days.

28. “Swapping” of sessions is no longer permitted. Swapping involves changes to two rostered days each time there is a replacement, and undermines the overall objectives of providing a roster that meets the courts’ requirements.

### **Non-attendance or non-availability when rostered**

29. Duty lawyers are required to attend on time. If a duty lawyer has not signed on within 15 minutes of their given start time they will be replaced and not paid. A replacement duty lawyer may be arranged by the supervisor if required if a duty lawyer’s other business is compromising the delivery of the duty lawyer service on the day because of their non-availability.

30. If a duty lawyer does not attend on a list day the duty lawyer supervisor will arrange for a replacement.

31. If a duty lawyer does not attend on a non-list day court staff will contact the duty lawyer supervisor, or if not available, the Initial Criminal Legal Services unit. The duty lawyer supervisor may then call in another duty lawyer who is available.

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

32. A Legal Aid staff member, the legal aid support officer, will be present on list days at Pukekohe and Papakura until the lunch adjournment to assist defendants to complete legal aid application forms. At the start of the list day the legal aid support officer will liaise with the duty lawyer supervisor about the court workload, and establish any particular requirements for the day.

33. The legal aid support officer is an integral part of the service at the court, and is expected to complete almost all legal aid application forms on list days. On days when the legal aid support officer is present, duty lawyers should not complete legal aid application forms when interviewing defendants unless the duty lawyer supervisor requests them to do so.

34. On non-list days duty lawyers should fax completed application forms to the relevant Legal Aid Office, then hand the day’s applications to court staff before signing off at the end of the day.

35. Court staff will forward the week’s completed applications to the Manukau Legal Aid Office at the end of each week. Papakura & Pukekohe legal aid applications and duty lawyer payments are processed at the Manukau Legal Aid Office.

### **Assignment of lawyers**

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

### *Reassignment<sup>2</sup>*

37. 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 Agency 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 Agency if the defendant does not have a genuine preferred lawyer
- if the duty lawyer is a secondary provider or does not have the appropriate listing approval he or she cannot accept nomination as preferred lawyer.

38. 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 Agency 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.

39. The Agency views abuse of the preferred lawyer process in criminal cases as a very serious matter. It is closely monitoring preferred lawyer assignment rates for individual duty lawyers at each court. If the Agency 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.

### **Duty lawyer badges**

40. All duty lawyers are required to wear badges while providing duty lawyer services at the court. Badges are supplied by the Initial Criminal Legal Services unit and should be collected from the court counter at the Papakura or Pukekohe District Court. They should be returned to the same location at the end of the session.

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<sup>3</sup> A full copy of the policy on Assignment, Termination of Assignment and Reassignment can be accessed through [www.justice.govt.nz](http://www.justice.govt.nz).