



Wellington, Lower Hutt and Porirua District Courts: Duty Lawyer instructions applicable from 1 July 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 Wellington, Lower Hutt and Porirua district courts.

Rostering policy across the Wellington, Lower Hutt, Porirua and Upper Hutt District Courts

4. Duty lawyers are not eligible to be rostered at more than one of the Wellington, Lower Hutt or Porirua District 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. Only duty lawyers on a particular court's duty lawyer roster are eligible to act as replacement duty lawyers at that court.
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 33 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@justice.govt.nz

9. A duty lawyer supervisor will be rostered each criminal list day at Wellington, Porirua and Lower Hutt to manage the duty lawyers, the flow of work and take overall responsibility for the duty lawyer service on their rostered day.
10. If necessary, duty lawyers currently rostered at Wellington, Lower Hutt or Porirua may also be rostered at the Upper Hutt Court. This circumstance will only occur if a workable roster cannot be developed from the available pool of duty lawyers indicating Upper Hutt as their preferred court.

Role of the duty lawyer supervisor

11. 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

12. 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.

Wellington District Court

8.30 am on Mondays, Wednesdays and Fridays

9.00 am on Tuesdays and Thursdays

Lower Hutt District Court

8.30 am Monday through to Thursday

9.00 am Friday

Porirua District Court

9.00 am on Mondays, Wednesdays and Thursdays

8.30 am on Tuesdays and Fridays

13. 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 26 to 32 below).
14. Duty lawyers must be available to attend until notified by their supervisor, or on non-supervisor days, by the court, that they are no longer required. On non-supervisor days the remaining duty lawyer must confer with the duty lawyer team and the court, particularly at the lunch adjournment, to determine the court's duty lawyer coverage requirements into the afternoon. Once not required, duty lawyers must sign off.
15. 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

16. If a rostered duty lawyer has not contacted his or her supervisor and not signed on 15 minutes after the start time:

Supervisor days

- Supervisors will be entitled to sign on a replacement

Non-supervisor days

- The court contact staff member will contact the supervisor who will arrange a replacement and advise the court of the name of the replacement. The supervisor will also advise the Wellington Legal Aid Office of the name of the rostered duty lawyer who did not appear, and the name of the replacement.
17. Payment will not be made to a rostered duty lawyer who does not appear as required. Replacement paragraphs 26-32 apply.

Record of Attendance form

18. 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.
19. 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.

Supervisor days

20. 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.

Non Supervisor days

21. Duty lawyers should complete the *Duty Lawyer record of attendance* by entering their start and finish times, including the lunch break and any time spent on non-duty lawyer matters and verify with their signature.
22. The last duty lawyer to sign off for the day is responsible for seeking the designated court staff member's verifying signature on 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 the court member.
23. *Record of attendance* forms are available as follows:

Wellington District Court:	Bail room
Lower Hutt District Court:	Court counter
Porirua District Court:	Court counter
24. The designated court staff member who certifies the day's duty lawyer attendance on the *Record of attendance*:

Wellington District Court - Makes the *Record of attendance* available for collection by Grant's staff along with any legal aid applications

Lower Hutt & Porirua District Court – Forwards the *Record of attendance* form to the Wellington Legal Aid Office

Duty lawyer badges

25. 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 6th floor Reception or the Legal Aid Office at the Wellington District Court and from the court counter at the Porirua and Lower Hutt District Courts. They should be 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)

26. These instructions cover arrangements for duty lawyers rostered Monday to Friday only. See paragraph 38 for Saturday and public holiday replacement procedures.
27. 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.
28. Supervisor contact details & court staff member contact details are provided on the cover sheet of the duty lawyer roster.
29. 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.
30. 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.
31. Only duty lawyers on a particular court's roster are eligible to undertake sessions as a replacement.

32. “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

33. Duty lawyers appointed to the Saturday and public holiday roster must be rostered on that particular court’s weekday roster, or on another Wellington court’s weekday roster.
34. Rostered duty lawyers must be prepared to attend at the court by 9.00 am unless otherwise specified on the roster, but should contact the Police Watchhouse in advance to confirm the numbers appearing and any particular requirements for the day.
35. 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. If none is available a replacement may then be sought from the wider pool of Saturday/public holiday duty lawyers at the Wellington, Lower Hutt or Porirua Courts. The ICLS will provide the Saturday/public holiday lawyers with these contact details.

Completion of criminal legal aid application forms

36. A legal aid support officer will usually be present on list days at the Wellington and Lower Hutt Courts to assist defendants to complete legal aid application forms. At the start of the 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.
37. On days when the legal aid support officer is present, duty lawyers should not complete legal aid application forms when interviewing defendants unless the legal aid support officer requests them to do so.
38. 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 hand completed applications to court staff.
39. During periods when a legal aid support officer is not present – generally on non-list days and at the Porirua Court on all days– duty lawyers must assist defendants to complete legal aid application forms and should hand completed

application forms to the Supervisor if present or court staff when signing out for the day.

40. All legal aid applications completed for defendants appearing on the day must be handed in before leaving the court. Arrangements for forwarding application forms to the Wellington Legal Aid Office will differ depending on the individual court.

Assignment of lawyers

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

42. 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.

43. 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.
44. 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.

