

Dunedin District Court: Duty Lawyer instructions applicable from 7 November 2011

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 Dunedin District Court.

Rostering policy at the Dunedin District Court

4. For new applications, entry to a duty lawyer roster is governed by the *Policy for admission to duty lawyer rosters at specific district courts*.
5. Only duty lawyers on the Dunedin duty lawyer roster are eligible to act as replacement duty lawyers at that court.
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 32 to 34 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 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

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:

9.am on Monday to Saturday
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 25 to 31 below).
12. 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 lawyer must confer with 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.
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:

Supervisor days

- The supervisor 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 Dunedin Legal Aid Office of the name of the rostered duty lawyer who did not appear, and the name of the replacement.

If the supervisor cannot be contacted - the court staff member will arrange a replacement, or direct the duty lawyer rostered to arrange a replacement and advise both the court staff and the supervisor who that replacement is. (Replacement Rules paragraphs 26-32 apply – noting paragraph 31 where only those lawyers already on the roster are eligible)

15. Payment will not be made to a rostered duty lawyer who does not appear as required. Replacement paragraphs 25-31 apply.

Record of Attendance form

16. Each day the hours worked by duty lawyers must be recorded 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) 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 and finish times, including the lunch break and any time taken on non-duty lawyer matters and verify with their signature.

When the supervisor is present

18. The supervisor will verify the hours recorded by the duty lawyer by countersigning the *Record of Attendance* form.

When the supervisor is not present

19. The last duty lawyer to sign off for the day must seek the designated court staff member's sign-off of the *Record of Attendance* form.
20. The designated court staff member who signs the day's duty lawyer attendance on the *Record of Attendance* makes that form available for collection by legal Aid staff.

21. Pre-printed copies of the *Record of Attendance* forms are available for collection from the criminal counter at the Courthouse.
22. Payment will not be made to individual duty lawyers without the signatures on the form of both the duty lawyer and the duty lawyer supervisor or court staff member.

Duty lawyer badges

23. All duty lawyers and duty lawyer supervisors are required to wear badges to identify them while providing duty lawyer services at the court. Badges should 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)

24. These instructions cover arrangements for duty lawyers rostered Monday to Friday only. See paragraph 34 for Saturday and public holiday replacement procedures.
25. 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 duty lawyer supervisor as soon as possible to discuss replacement. The supervisor 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.
26. Supervisor and court staff member contact details are provided on the cover sheet of the duty lawyer roster.
27. The supervisor arranging replacements will refer to a list of the court's duty lawyers available for replacements, which the Initial Criminal legal Services Unit (ICLS) updates each new roster period.
28. The supervisor 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.

29. Only duty lawyers on the Dunedin District Court's roster are eligible to undertake sessions as a replacement.
30. "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

31. Duty lawyers appointed to the Saturday and public holiday roster must be rostered on that particular court's weekday roster.
32. Rostered duty lawyers must be prepared to attend at the court by 9 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.
33. 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 Dunedin District Court. The Initial Criminal Legal Services Unit (ICLS) will provide Saturday and public holiday lawyers with those contact details.

Completion of criminal legal aid application forms

34. Duty lawyers must assist defendants to complete legal aid application forms and when signing out for the day should:
 - Post completed applications in the Legal Aid drop-box at the criminal counter – regardless of whether this is a list day or not.
 - Legal Aid staff will pick up applications from the drop-box.

Assignment of lawyers

35. The following instructions reflect policies effective from 29 November 2010 detailed in the document *Policy on Assignment, Termination of Assignment and Reassignment*.
36. 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, i.e. 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.
37. 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.
38. 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.