

Duty lawyer instructions: Manukau District Court Effective from 12 July 2010¹

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 Manukau district court.

Application of greater Auckland rostering policy

4. Duty lawyers rostered at the Manukau District Court are not eligible to be rostered at Auckland or Waitakere district courts.
5. Entry to the Manukau duty lawyer roster for new applicants is dependant upon:
 - a. the applicant being recommended as suitable by a panel of duty lawyer supervisors, and
 - b. suitable spaces being available (see: *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 27 to 31 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@pds.govt.nz.
8. Only duty lawyers on the Manukau District Court duty lawyer roster are eligible to act as replacement duty lawyers at the Manukau District Court.

¹ These instructions are adjusted for the shift of legal aid administration to the Ministry of Justice and are additional to other Ministry of Justice instructions issued in relation to assisting unrepresented defendants.

Duty lawyer supervisor role

9. A duty lawyer supervisor will be rostered each week day to manage the duty lawyers, the flow of work and take overall responsibility for the duty lawyer service on their rostered day.
10. The duty lawyer supervisors will also take oversight of the duty solicitor scheme at the court, including managing the composition of the roster to ensure it meets the needs of the Court, in conjunction with the administrators. Duty lawyer supervisors undertake assessment and induction of new applicants to the roster.

Duty lawyer hours of work

11. Duty lawyers must report to the supervisor on their rostered day at the times detailed below:
 - a. 8:30 am or, if requested, 8 am on weekdays
 - b. 8.30 am on Saturdays and public holidays.
12. Duty lawyers must be available to attend at the court until notified by their supervisor that they are no longer required for the day.
13. 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 paragraphs 21 to 26 below).
14. Supervisors will be entitled to sign on a replacement if a rostered duty lawyer has not contacted his or her supervisor and has not signed on 15 minutes after the start time. In this case, payment will not be made to the rostered duty lawyer.
15. In the event that duty lawyers are unavoidably required to attend to other commitments during their rostered session they should notify their supervisor of time spent with their own clients, or as an Agent, and ensure that the time is recorded as a deduction on the *Duty Lawyer Record of Attendance* form.
16. Duty lawyers should not be acting as Agents for other lawyers when rostered as duty lawyers, unless the supervisor has requested they do so. Any requests from lawyers who need urgent assistance because they unexpectedly cannot attend must be referred to the duty lawyer supervisor.

Record of Attendance/ Payment Voucher

17. Each weekday the responsible duty lawyer supervisor will complete a *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 lawyers who have worked that day (including replacements), the number of clients seen, and the total duty lawyer hours worked each day.
18. Rostered and replacement duty lawyers must:

- Ensure that their 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
- Verify the hours recorded by the supervisor by countersigning the *Duty Lawyer 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.

19. Supervisors will ensure that signed *Duty Lawyer Record of Attendance* forms are provided to Legal aid Office staff promptly for payment.

Duty lawyer badges

20. All duty lawyers and duty lawyer supervisors are required to wear badges supplied by the Initial Criminal Legal Services unit to identify them as duty lawyers while providing duty lawyer services at the court. Badges should be collected from and returned to duty lawyer supervisor, the Legal Aid Office at the court or, on Saturdays and public holidays, the court taker at the beginning and end of each session.

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

21. These instructions cover arrangements for duty lawyers rostered Monday to Friday only. See paragraphs 27 to 31 for Saturday and public holiday replacement procedures.

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 a supervisor 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.

23. Duty lawyers should contact the appropriate supervisor as soon as possible about the need for a replacement. Supervisor contact details are provided on the cover sheet of the duty lawyer roster.

24. Supervisors arranging replacements will refer to a list of Manukau duty lawyers available for replacements. Supervisors will be forwarded an updated list by the administrators each new roster period.

25. 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.

26. “Swapping” of sessions will not be permitted. Swapping involves changes to two rostered days each time there is a replacement, and undermines the overall objectives of team-based rostering – ie setting up teams of duty lawyers who have the desired range of skills and attributes, who all attend on the same day, and who work well together.

Saturdays and public holidays

27. A separate policy operates for Saturdays and public holidays. Admission to the Saturday and public holiday roster is by appointment only. There is generally a team of four duty lawyers, one of whom is designated as the liaison person and who takes responsibility for signing off the *Duty Lawyer Record of Attendance* form on that day.
28. Rostered duty lawyers must be at the court by 8.30 am unless otherwise advised by the Court.
29. Replacements must occur from within the appointed group of Manukau Saturday and public holiday duty lawyers. Designated Saturday/ public holiday liaison people should be replaced by another Saturday/ public holiday liaison person.
30. If a duty lawyer is unable to attend when rostered they must arrange a replacement in advance from within the appointed pool of Saturday and public holiday duty lawyers and notify the day’s liaison duty lawyer and the court.
31. On completion of a Saturday or public holiday session duty lawyers should complete the *Duty Lawyer Record of Attendance* form. After certification by the liaison person, the form should be delivered or faxed to the Legal Aid Office at the Manukau court for processing.

Completion of criminal legal aid application forms

32. Legal aid staff members (Legal Aid Support Officers) will be present each week day to assist defendants to complete legal application aid forms.
33. As far as possible, the Legal Aid Support Officer will complete all legal aid application forms. On days when a Legal Aid Support Officer is present, duty lawyers should not complete legal aid application forms when interviewing defendants, unless requested to do so by the duty lawyer supervisor or by a Legal Aid Support Officer.
34. In cases where the maximum penalty is less than 6 months imprisonment and legal aid is being sought on interests of justice grounds, the duty lawyers must

provide the reasons why legal aid should be granted (Q 24 on the legal aid application).

35. On days or during periods when a Legal Aid Support Officer is not present, duty lawyers must assist defendants to complete application forms.
36. 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:
 - if other Legal Aid staff are still present at the court, hand the application forms to them, or
 - if Legal Aid staff are not present, fax the application form(s) to the Manukau Legal Aid Office, note on the form(s) they have been faxed and place them under the door of the Legal Aid Office at the Court.

Attendance of duty lawyers in the Police cells

37. If duty lawyers wish to visit their own clients in the cells, they must first sign off as a duty lawyer. They should be aware, however, that as a rostered duty lawyer their first priority is to the duty lawyer service. Supervisors will be entitled to refuse to sign off duty lawyers during busy periods at the court.

Assignment of lawyers

38. The following instructions reflect policies effective from 29 November 2010 detailed in the document *Policy on Assignment, Termination of Assignment and Reassignment*².
39. 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.

² A full copy of the policy on Assignment, Termination of Assignment and Reassignment can be accessed through www.justice.govt.nz.

40. 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.

41. 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.