



Napier and Hastings District Courts: Duty Lawyer Instructions applicable from 28 May 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 Napier and Hastings District Courts.

Rostering policy at the Napier and Hastings District Courts

4. New admissions to the Napier and Hastings duty lawyer rosters are governed by the *Policy for Admission to Duty Lawyer Rosters at Specified District Courts*.
5. Only duty lawyers appointed to the Napier or Hastings duty lawyer rosters are eligible to act as replacement duty lawyers.
6. Duty lawyers rostered at the Napier or Hastings District Court are not eligible to be rostered at courts other than the satellite courts (Dannevirke, Waipukurau).
7. Rosters are prepared by Initial Criminal 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.
8. A duty lawyer supervisor ("the supervisor") will be present each criminal list day to manage the duty lawyers, the flow of work and take overall responsibility for the duty lawyer service on the day.

Role of the Duty Lawyer Supervisor

9. 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 will:
 - organise the flow of work and manage the team and the service;

- uplift initial disclosure from Prosecutions where available;
- liaise with the court and other agencies to ensure the duty lawyer service meets the court's needs;
- assess, induct and mentor new entrants to the roster;
- assume responsibility for some administrative matters, including managing replacements to ensure suitable substitute lawyers are arranged and ensuring that duty lawyers are signed on or off according to court need;
- work with the administrators to manage the composition of the roster so that it meets the needs of the court; and
- be the first point of contact for complaints about duty lawyer performance.

Duty lawyer hours of work: weekdays

10. On list days the main duty lawyers rostered must report by 8.30 am to the supervisor or to the court if the supervisor is not present.
11. The duty lawyer assigned to the Hastings registrar's list must report by 9 am and stay until the end of the registrar's list.
12. On non list days:
 - At Hastings the rostered duty lawyer will contact the police court orderly (tel 873 0572 or 027 278 5517) by 9.00 am to ascertain if there are any arrests. The duty lawyer will then liaise with the court during the day as to when they are required to attend and appear for any persons arrested.
 - At Napier the rostered duty lawyer will contact the court by 9.00 am to ascertain if there are any arrests. The duty lawyer will then liaise with the court as to when they are required to attend and appear for any persons arrested.
13. Duty lawyers must be available to attend until notified by the supervisor, or when the supervisor is not present, by the court, that they are no longer required. When the supervisor is not present, the senior duty lawyer 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 policy applies:

- When rostered as a duty lawyer, duty lawyers may act as an agent for other lawyers only in exceptional circumstances. On list days any request to act as an agent must be referred to the supervisor; and
 - If duty lawyers wish to visit their own clients in the cells, they must advise the supervisor and deduct the time from their attendance record.
15. Duty lawyers with other client commitments during their rostered duty lawyer session should discuss with the supervisor how those other commitments are managed and ensure that any time spent on non-duty lawyer matters is recorded and deducted from their record of attendance. The supervisor may decide the duty lawyer should be replaced for that day. (see paragraphs 26 to 32 below).

Late Arrival

16. If a rostered duty lawyer has not contacted the supervisor and not signed on 15 minutes after the start time, the supervisor or the court is entitled to sign on a replacement.
17. Payment will be withheld if a rostered duty lawyer does not appear as required and fulfil the requirements under these instructions, as well as their other responsibilities to the duty lawyer roster scheme.

Record of Attendance Form

18. Hours worked for each rostered day must be accurately recorded by duty lawyers on the *Record of Attendance* form. The form is used by Legal Services 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.
19. 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. No other invoicing is required.
20. On list days the supervisor will verify the hours recorded by the duty lawyer by countersigning the *Record of Attendance* form. On other days, the court manager or court registrar will verify the hours recorded by the duty lawyer by countersigning the *Record of Attendance* form. The supervisor will ensure that signed *Record of Attendance* forms are delivered to the Legal Aid office promptly for payment. See paragraph 37 for Saturdays and public holidays.
21. Payment will not be made to individual duty lawyers without the signatures on the form of both the duty lawyer and the supervisor or court representative.
22. *Record of Attendance* forms will be available from the court counter.

Duty Lawyer Requirements

23. 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 court counter and returned at the end of the session.
24. Court etiquette must be observed by duty lawyers in the courtroom. If mobile phones and electronic devices are used in the courtroom they should be used in such a way as to not disrupt court proceedings.

Disclosure

25. Except for the summary of facts and conviction histories, duty lawyers are requested not to take disclosure off Prosecution files unless the charges are going to be resolved that same day. If disclosure is taken and it subsequently becomes apparent that the charges are not going to be resolved that same day, the duty lawyer should return the disclosure items to the Prosecutor.

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

26. This section covers arrangements for duty lawyers rostered Monday to Friday only. See paragraphs 35 to 36 to 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 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.
28. Supervisor and court staff member contact details are provided on the cover sheet of the duty lawyer roster.
29. The supervisor will refer to a list of the court's duty lawyers available for replacements. The ICLS unit will update this list each new roster period.
30. The supervisor will take the following criteria into account when considering the list of available duty lawyers:
 - experience;

- competence;
 - the particular skills the duty lawyer can bring to the team as a whole; and
 - the court requirement on the day.
31. Only duty lawyers on the Napier and Hastings District Courts rosters are eligible to undertake sessions as a replacement. Replacements will be sought from the original court where possible but occasionally, a replacement may be drawn from the other court's roster.
 32. Duty lawyers may not swap their rostered sessions with duty lawyers rostered to appear on another day unless authorised by the supervisor.

Saturdays and public holidays

33. To be eligible to appear on the Saturday and public holiday roster, duty lawyers must be rostered on either Napier or Hastings court's weekday roster.
34. Rostered duty lawyers are required to be available at the Hastings court by 9.30 am for 10.00 am start unless otherwise advised by the court.
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.
36. Replacements should come from within the group of appointed Saturday and public holiday duty lawyers for the Napier and Hastings District Courts if possible. The ICLS unit will provide Saturday and public holiday lawyers with those contact details.
37. On completion of a Saturday or public holiday session, duty lawyers should complete the *Record of Attendance* form. The court registrar will verify the hours recorded by the duty lawyer by countersigning the *Record of Attendance* form and then fax it to the Legal Aid office.

Completion of criminal legal aid application forms

38. All legal aid applications must be completed fully and accurately. This includes all sections of the form.
39. 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 reasons why legal aid should be granted.
40. On list days in both courts all completed legal aid applications will be collected by the duty lawyer supervisor who will deliver them to the Legal Aid office.
41. On non list days:

- In the Hastings court, duty lawyers are required to fax legal aid applications to the Legal Aid office and place the originals in the PDS office upstairs. The supervisor will ensure the originals are delivered to the Legal Aid office.
- In the Napier court, legal aid applications must be left in the designated tray for collection by the Legal Aid Office. Any urgent applications must be faxed.

Assignment of lawyers

42. The following instructions reflect policies effective from 29 November 2010 that are detailed in the document *Policy on Assignment, Termination of Assignment and Reassignment*
43. 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 Legal Aid Services 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 Legal Aid Services, unless the defendant has a genuine preferred lawyer.

44. 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 Legal Aid Services decides who will be appointed to the assignment. Duty lawyers who 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.
45. 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 Legal Aid Services 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.