

**PRACTICE NOTE: INTELLECTUAL DISABILITY (COMPULSORY
CARE AND REHABILITATION) ACT 2003**
(Selection and review of 'Counsel for intended care recipient' list)

1 SELECTION AND REVIEW OF 'COUNSEL FOR INTENDED CARE RECIPIENT' LIST

- 1.1 In the Courts at Auckland, Manukau, Hamilton, Wellington, Christchurch and Dunedin (the primary Courts of filing) there will be a list of counsel who are available to accept appointments from the Court as counsel for intended care recipients. Counsel may be appointed in individual cases from this list.
- 1.2 Appointment of counsel for proceedings in a Court which is not a primary Court of filing will be at the discretion of a Judge of that Court, who may have regard to the lists.
- 1.3 The Ministry of Justice and the Family Law Section of the New Zealand Law Society have agreed to this process.
- 1.4 The Registrars of the primary Courts will each convene a panel to consider applications for inclusion in the list of counsel for the intended care recipient available to undertake Family Court appointments. This panel will consist of a Caseflow Manager or a Family Court Co-ordinator as chair, two nominees from the Family Law Section of the New Zealand Law Society, and a Family Court Judge nominated by the Regional Administrative Family Court Judge (Administrative Judge). The panel should normally sit with four members, but a panel of three may be convened in some circumstances (for example, where an interview would be unable to be arranged within a reasonable timeframe). Any panel of three must include a Family Court Judge, a nominee from the Family Law Section and the Caseflow Manager or Family Court Co-ordinator.
- 1.5 Panels will be convened as required, but no less than twice a year if there are applications waiting to be considered and a need for counsel to be appointed.
- 1.6 The following appointment process should be followed.
 - (a) Counsel must submit an application form to the Registrar in the Court region in which they wish to practise, nominating the particular Court or Courts where they wish to be on the list. The application is referred to a panel convened by the Registrar.
 - (b) The application does not have to be in any particular form but should address the criteria detailed in paragraph 1.7. The application should be accompanied by any references or testimonials that the applicant would like the panel to consider and the names of other referees who can provide professional, confidential comment.
 - (c) The Registrar shall serve copies of the application and any supporting documentation on the Administrative Judge, who shall be given seven days to make any comments in writing relating to the application.
 - (d) Panel members may make such enquiries as may be needed for them to be informed about the applicant's ability to meet the criteria, including enquiries of referees.
 - (e) On completion of its enquiries, the panel may arrange for the applicant to be interviewed at such time and place as may be determined by the Registrar.
 - (f) At least seven days before the interview, the Registrar shall forward a report to the applicant detailing the enquiries made by the panel, including details of any response that is adverse to the applicant. In the event of there being insufficient time available to consider the application, the panel may adjourn the interview or otherwise arrange a hearing to consider the application.

- (g) The role of the other members of the panel is to advise the Judge. The Family Court Judge on the panel makes the appointment to the list.
 - (h) An unsuccessful applicant shall be provided with reasons for not being included in the list.
 - (i) The Registrar will advise of the recommendation in writing to the following people: the applicant, the Court, the Family Law Section and, in the event that the application is successful, the National Office of the Ministry of Justice.
- 1.7 Counsel for the intended care recipient should meet one or more of the following criteria, depending on the needs of the case.
- Counsel should:
- (a) have appropriate knowledge of the objects, principles and provisions of the Intellectual Disability (Compulsory Care and Rehabilitation) Act 2003 and the Mental Health (Compulsory Care and Treatment) Act 1992;
 - (b) be experienced in proceedings under the Mental Health (Compulsory Care and Treatment) Act 1992;
 - (c) have an understanding of mental illnesses and disabilities generally;
 - (d) have an ability to communicate with people with disabilities;
 - (e) have general litigation experience;
 - (f) have any relevant specialist training that would be of benefit to counsel; and
 - (g) have appropriate cultural awareness and experience.

2 REVIEW OF COUNSEL FOR INTENDED CARE RECIPIENT LISTS

- 2.1 A review of lists must be undertaken at intervals of not more than three years. The Registrar in each Court must ensure that its list of approved counsel is reviewed at such intervals.
- 2.2 The Registrar shall give notice to all counsel currently on the list. Such notice will include a requirement for all counsel whose names appear on the list to indicate within a period of not more than 28 days:
- (a) whether they wish to continue to receive appointments;
 - (b) whether they wish to withdraw from the list; or
 - (c) whether they have any matters relating to present or past appointments that they wish to draw to the attention of the panel.
- 2.3 The panel shall meet as soon as practicable and reconstitute the list of counsel for the intended care recipient. The panel shall also consider any matters raised by counsel that relate to the administration of the list.
- 2.4 The name of counsel may only be deleted from the list at counsel's request or as a result of counsel's failure to respond within the stipulated time. The panel shall notify all counsel on the reviewed list whether their names have been retained or deleted from the list, as the case may be, and the reasons for any deletion must be specified.
- 2.5 The Registrar shall send the reviewed list, with any revisions, to the National Office of the Ministry of Justice and the Family Law Section.

3 COMPLAINTS

- 3.1 Any complaints about counsel for the intended care recipient while proceedings are pending should be referred to the presiding Judge. If the party making a complaint is represented, the complaint should be made by that party's lawyer, on the client's behalf, in writing.
- 3.2 Copies of the complaint should be sent to counsel for the other parties and directly to any party that is not represented.
- 3.3 Complaints about counsel made after proceedings have been concluded should be referred to the Administrative Judge responsible for the Court in which the proceedings were filed.
- 3.4 On receipt of a complaint, the Administrative Judge may refer the complaint to a panel to recommend whether or not counsel should be removed from the list, in which case the provisions of paragraph 1 shall apply, with all necessary modifications.
- 3.5 It is not intended by this Practice Note to limit the jurisdiction of the Court to do whatever it considers to be appropriate in the circumstances or otherwise limit the right of the Law Society or other statutory authority to consider any complaint about counsel for intended care recipients.

4 REMOVAL OF COUNSEL FOR THE INTENDED CARE RECIPIENT

- 4.1 Counsel for the intended care recipient may be removed from the list and this shall occur by the same process used to select counsel for the intended care recipient in paragraph 1, with all necessary modifications.
- 4.2 Grounds upon which counsel can be removed shall be:
 - (a) professional misconduct in carrying out duties as counsel for the intended care recipient; or
 - (b) demonstrable failure to carry out duties responsibly and competently.
- 4.3 The panel shall advise counsel for the intended care recipient in writing that it is considering removing his or her name from the list.
- 4.4 The notice from the panel to counsel for the intended care recipient shall:
 - (a) specify the reasons why the panel is considering the removal of counsel from the list;
 - (b) state the right of counsel to make submissions or representations within 21 days from the date of service of the notice; and
 - (c) set out the intention of the panel to consider removing counsel from the list after 21 days unless counsel indicates in writing that he or she opposes removal.
- 4.5 When the 21-day period has expired, the panel shall convene to consider whether or not counsel should remain on the list. In the event that counsel has made submissions or representations opposing the removal, a hearing shall be convened by the Registrar.
- 4.6 At any defended hearing, counsel shall be entitled to be represented and shall be entitled to call witnesses in support.
- 4.7 The Registrar shall advise the Administrative Judge, counsel, the relevant Court, the Family Law Section and the National Office of the Ministry of Justice of the decision in writing.

COMMENCEMENT DATE

This revised Practice Note is issued on 24 March 2011 and comes into operation on 24 March 2011.

A handwritten signature in black ink that reads "Peter Boshier". The signature is written in a cursive style with a dot over the 'i' in "Boshier".

Judge P F Boshier
PRINCIPAL FAMILY COURT JUDGE