5 August 2009

All Duty Lawyers
Auckland District Court

Dear Duty Lawyer

Duty lawyer consolidated instructions: Auckland District Court

Attached are the Legal Services Agency's revised duty lawyer instructions for the Auckland District Court. These are effective from Monday 10 August 2009.

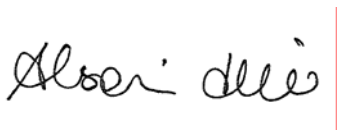
The instructions have been revised to incorporate the changed arrangements for the completion of legal aid applications with the introduction of Legal Aid Support Officers at the Auckland District Court. These Agency staff will be present every weekday morning until the lunch adjournment to assist defendants with the completion of legal aid applications. We are pleased to welcome Catherine and Francie, who will share the role at the Court.

Please note the new procedures for duty lawyers providing services for the completion of legal aid applications contained in paragraphs 26-29 of the instructions. In particular, duty lawyers should not complete legal aid application forms when a Legal Aid Support Officer is present, unless requested to do so by the duty lawyer supervisor or the Legal Aid Support Officer.

We have taken the opportunity to incorporate the two sets of instructions already issued: the initial set applicable from 16 October 2006 and the additional instructions issued on 1 March 2007. We have also incorporated relevant aspects of the greater Auckland rostering policy (paragraphs 3-7) so that this one document covers all administrative aspects of the scheme's operation at the Auckland District Court. This document therefore supersedes those issued earlier.

If you have any queries, please contact Angela Cook, the project manager, at angela.cook@lsa.govt.nz or telephone 04 4955964.

Yours sincerely



Alison Hill
Manager Policy and Development

Legal Services Agency
Pokapū Ratonga Ture

Auckland District Court: Consolidated Duty Lawyer Instructions[1]

Effective from 10 August 2009

Role of the Agency in administering the duty lawyer scheme

1. Relevant sections of the Legal Services Act 2000 are:

   Section 46 (2):

   > "The Agency must administer the duty solicitor scheme in accordance with this Act and any regulations made under it, and in particular must determine the conditions under which listed providers provide services under the scheme."; and

   Section 92 (a):

   > A function of the Agency is to "administer schemes in as consistent, accountable, inexpensive, and efficient a manner as is consistent with the purpose of this Act".

2. Under these two sections the Agency holds responsibility for rostering, and for issuing administrative instructions on the delivery of the scheme.

Application of greater Auckland rostering policy

3. Duty lawyers rostered at the Auckland District Court are not eligible to be rostered at other Auckland courts other than the North Shore District Court. As an interim measure, duty lawyers currently rostered at Auckland may also be rostered for a small number of sessions at the North Shore court so that they continue to be eligible for categories 1 & 2 rotation (ie non-preferred lawyer) assignments at that court. In order to accommodate all those wishing to participate on the North Shore roster, rostered sessions will usually be limited to two sessions every three months.

4. Entry to the Auckland duty lawyer roster for new applicants is dependant upon:

   - The applicant being recommended as suitable by a panel of duty lawyer supervisors, and
   - Suitable spaces being available (see: Policy for admission to the Auckland, Waitakere, Wellington, Lower Hutt and Porirua District Court duty lawyer rosters)

5. 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 31-34 for further details.

[1] These consolidated instructions incorporate earlier instructions applicable from 16 October 2006 and additional instructions issued on 1 March 2007.

6. Rosters are prepared by Agency staff in consultation with duty lawyer supervisors and Ministry of Justice (Court staff).

7. Only duty lawyers on the Auckland District Court duty lawyer roster are eligible to act as replacement duty lawyers at the Auckland District Court.

Duty lawyer supervisor role

8. A duty lawyer supervisor will be rostered each week day to manage the duty lawyers, the flow of work and take responsibility for their rostered day.

9. The duty lawyer supervisors will also take oversight of the duty solicitor scheme at the court, ie
    - Work with the Agency in managing the composition of the roster to ensure it meets the needs of the Court
    - Undertake assessment and induction of new entrants to the roster.

Duty lawyer hours of work

10. Duty lawyers must report to the supervisor on their rostered day at the times detailed below:
    - 8:30am on Mondays to Fridays
    - 9.00am on Saturdays

11. Duty lawyers must be available to attend at the court until notified by their supervisor that they are no longer required for the day.

12. 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 paragraph 21 below).

13. 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.

14. 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, and ensure that the time is recorded as a deduction on the *Record of Attendance* form.

Record of Attendance/ Payment Voucher

15. Each week day the responsible duty lawyer supervisor will complete a *Duty Lawyer Record of Attendance* form. The form is used by the Agency as the basis for processing payments to duty lawyers and serves as a record of total duty lawyer hours worked each day, and of any replacements.[2]

16. Rostered and replacement duty lawyers must:

    - Ensure that your supervisor is aware of your start and finish times, including the lunch break and any time taken to attend to your own clients
    - Verify the hours recorded by the supervisor by countersigning the *Record of Attendance* form when signing off for the day. Payment will not be made to individual duty lawyers without the signatures of both the duty lawyer and duty lawyer supervisor on the form.

17. Supervisors must:

    - Enter start and finish times for duty lawyers, including lunch breaks and times when they have signed off to attend to their own clients
    - Sign the *Record of Attendance* form to certify that duty lawyer services have been provided on the date stated. Payment will not be made to individual duty lawyers without the signatures of both the duty lawyer and duty lawyer supervisor on the form
    - Ensure the form is able to be accessed by Agency staff the following morning (arrangements for Agency access to be agreed between Agency staff and supervisors).

18. The Legal Services Agency will:

    - Supply *Record of Attendance* forms to the Court
    - Process payment to duty lawyers.
    - Make available within the LSA office copies of the record of attendance for inspection by duty lawyers on request.

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

19. These instructions cover arrangements for duty lawyers rostered Monday to Friday only. See paragraphs 32-35 for Saturday and public holiday replacement procedures.

20. 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:

    - request the duty lawyer to take responsibility for finding a replacement and discuss acceptable options for replacement; or

[2] The *Record of Attendance* form replaces the individual duty solicitor payment voucher in use at other courts.

- advise the duty lawyer that they would prefer to arrange for a replacement themselves; or
- advise the duty lawyer that they do not see the need for a replacement because of the expected workload at the court.

21. 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.

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

23. 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.

24. Supervisors will ensure that members of their own firm or chambers are not given opportunities for replacement over and above those provided to other available duty lawyers.

25. "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.

Completion of criminal legal aid application forms

26. Agency staff members (Legal Aid Support Officers) will be present each week day to assist defendants to complete legal application aid forms.

27. As far as possible, the Legal Aid Support Officer will complete all legal aid application forms. However, there may be busy days when this is not possible. 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.

28. On days or during periods when a Legal Aid Support Officer is not present, duty lawyers must assist defendants to complete application forms.

29. 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 Agency staff still present at the court, hand the application forms to them
- If Agency staff are not present, fax the application form(s) to the Auckland Legal Aid Office, note on the form(s) they have been faxed and place them in the slot at the Legal Aid Office at the Court.

Attendance of duty lawyers in the Police cells

30. 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.

Saturdays and public holidays

31. A separate policy operates for Saturdays and public holidays[3]. Admission to the Saturday and public holiday roster is by appointment only. There is generally a team of two duty lawyers, one of whom is designated as the supervisor and who takes responsibility for signing off the *Record of Attendance* form on that day.

32. Rostered duty lawyers must be at the court by 8.30 am unless otherwise advised by the Court.

33. Replacements must occur within the group of appointed Saturday and public holiday duty lawyers for the court. Designated Saturday/ public holiday supervisors should be replaced by another Saturday/ public holiday supervisor.

34. On completion of a Saturday or public holiday session duty lawyers should complete the *Record of Attendance Auckland District Court Saturday/Public Holiday roster* form. After certification by the supervisor, the form should be delivered or faxed to the Legal Aid Office at the Auckland court for processing.

Preferred lawyer nominations

35. The following instructions reflect existing policies and instructions detailed in the documents *Protocols for Duty Solicitors* and *Policy on Assignment, Termination of Assignment and Reassignment*[4]. All duty lawyers were sent a copy of the protocol in June 2003. Duty lawyers approved for listing since June 2003 have been sent a copy of the protocol with their contract.

36. Duty lawyers completing legal aid forms cannot seek nomination as a preferred lawyer but may accept nomination if the defendant requests this, provided that the applicant has genuinely asked the duty lawyer to be their lawyer. In such cases, duty lawyers should tell the defendant that they will note this preference on the application form, but that the Agency 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 or recommendation by family/

---

[3] A full copy of the policy for Saturdays and public holidays can be accessed through www.lsa.govt.nz. (follow the path About Us / Legal Services / Duty Solicitor Scheme).

[4] A full copy of the policy on Assignment, Termination of Assignment and Reassignment can be accessed through www.lsa.govt.nz (follow the path Information for lawyers / General Policies).

whanau or friends or the defendant has asked the duty lawyer to be their lawyer.

37. Duty lawyers completing legal aid application forms must advise defendants that:

- they are unable to nominate or recommend any other lawyer (or firm/chambers) as the preferred lawyer
- at the Agency's discretion the duty lawyer who has assisted them may also be the lawyer who is assigned to them
- the defendant will be assigned a lawyer by the Agency if the defendant does not have a genuine preferred lawyer
- if the duty lawyer is a secondary provider, or does not have the appropriate listing approval, he or she cannot accept nomination as preferred lawyer.

38. The Agency views abuse of the preferred lawyer process in criminal cases as a very serious matter. It closely monitors preferred lawyer assignment rates for individual duty lawyers. If the Agency has information that raises concerns about abuse of the process by a duty lawyer 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.

Duty lawyer badges

39. All duty lawyers and duty lawyer supervisors are required to wear badges supplied by the Agency to identify them as duty lawyers while providing duty lawyer services at the court. Badges should be collected from and returned to duty lawyer supervisors or returned to the Duty Solicitor Room at the court at the beginning and end of each session.