

19 March 2009

All Duty Lawyers
Waitakere District Court

Dear Duty Lawyer

Duty lawyer consolidated instructions: Waitakere District Court

Attached are the Agency's revised duty lawyer instructions for the Waitakere District Court. These are effective from the start of the next duty lawyer roster on Monday 30 March 2009.

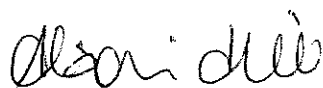
The instructions have been revised to cover Fridays at the Waitakere District Court, when a duty lawyer supervisor is no longer rostered. We have taken the opportunity to incorporate the two sets of instructions already issued: the initial set issued applicable from 16 October 2006 and the additional instructions on duty lawyer badges, which were issued on 28 November 2007. We have also incorporated relevant aspects of the greater Auckland rostering policy (paragraphs 3 and 4) so that this one document covers all administrative aspects of the scheme's operation at the Waitakere District Court.

Please note the new procedures for duty lawyers providing services on Fridays at the Waitakere Court (paragraphs 13-21 of the instructions):

- The Friday *Record of Attendance* form will be held at the Court's criminal counter. Each duty lawyer must record their start and finish times and any time not spent on duty lawyer services. The last duty lawyer to sign-off on Friday will have a deputy registrar certify the form and will deliver it to the Legal Aid Office at the Court.
- For each Friday there is a designated "contact" duty lawyer supervisor, who is responsible for any replacements required on that day. Please contact this supervisor if you are not available to attend as rostered or agreed.

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

Waitakere District Court: Consolidated Duty Lawyer Instructions¹ Effective from 30 March 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 Waitakere District Court are not eligible to be rostered at the other Auckland courts, other than at the North Shore District Court. As an interim measure, duty lawyers currently rostered at Waitakere 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. Only duty lawyers on the Waitakere District Court duty lawyer roster are eligible to act as replacement duty lawyers at the Waitakere District Court.

Procedures when a supervisor is rostered to attend at the court

Hours of work

5. Duty lawyers must report to their supervisor by 8.30 am on their rostered day. Any duty lawyer wishing to arrange an alternative starting time should discuss this with their supervisor and seek their agreement to another time.

¹ These consolidated instructions incorporate earlier instructions applicable from 16 October 2006 and the additional instructions issued on 28 Nov 2007.

6. 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.
7. Duty lawyers must be available to attend until notified by their supervisor that they are no longer required for the day.
8. Duty lawyers should programme their other commitments outside rostered duty lawyer sessions. 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

9. Each day the responsible duty lawyer supervisor will complete a *Duty Lawyer Record of Attendance* form (sample attached). 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. The *Record of Attendance* form replaces the individual duty solicitor payment voucher.
10. 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.
11. 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).
12. The Legal Services Agency will:
 - Enter LA Office reference and process payment to duty lawyers.
 - Make available within the LSA office copies of the record of attendance for inspection by duty lawyers on request.

Procedures when a supervisor is not rostered to attend at the court

13. These procedures apply to normal weekday Fridays. See paragraphs 37-40 below for Saturday and public holiday procedures.
14. On the weekday when a supervisor is not rostered (ie Friday), there is a designated contact duty lawyer supervisor to deal with any roster changes for the day.
15. Each roster will provide details of the Friday contact duty lawyer supervisor. This supervisor has responsibility for duty lawyer replacements for that day.

Hours of Work

16. On Friday duty lawyers must report to the designated court staff member at their rostered start time (8.30am or 9.00am).
17. If a duty lawyer has not reported by 15 minutes after their start time and has not contacted the court, the court staff member will contact the designated contact supervisor who will arrange a replacement and advise the court of the name of the replacement. In this case, payment will not be made to the rostered duty lawyer. The supervisor will advise the court and the Waitakere Legal Aid office of the name of the rostered duty lawyer who did not appear, and the name of the replacement.
18. Duty lawyers must be available to attend at the court until notified by court staff that they are no longer required.
19. Duty lawyers should programme their other commitments outside rostered duty lawyer sessions.

Record of Attendance

20. A Friday *Duty Lawyer Record of Attendance* form (sample attached) will be available at the Court's Criminal Counter.
21. Rostered and replacement duty lawyers must:
 - Ensure that the start and finish times, including the lunch break and any time taken to attend to your own clients, are recorded on the *Record of Attendance* form.
 - Sign the entry associated with the hours worked that day.
22. The last rostered duty lawyer will seek the Court Deputy Registrar's certification of the *Record of Attendance* form and deliver the form to the Legal Aid Office at the Court – in the slot if there is no Agency staff member present.
 - Payment will not be made to individual duty lawyers without the signatures of both the duty lawyer and Court Registrar (or Grants officer if still present at the court).

Arrangements when duty lawyers are unable to attend on a rostered day

23. These instructions cover arrangements for duty lawyers rostered Monday to Friday only. See paragraphs 37-40 for Saturday and public holiday replacement procedures.
24. Duty lawyers are expected to programme other commitments outside rostered duty lawyer sessions.
25. Where absence from a rostered session is unavoidable, duty lawyers should contact a supervisor to discuss replacement. Duty lawyers rostered on days when a supervisor is present should contact the supervisor of their team. Duty lawyers rostered on a day when a supervisor is not present should contact the designated contact supervisor for the day. Supervisors will either:
 - ask the duty lawyer to take responsibility for finding a replacement and discuss acceptable options for replacement; or
 - 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.
26. Supervisors arranging replacements for non-supervisor days (ie they are the 'contact' supervisor for the week) will ensure that court staff are aware of the name of the replacement duty lawyer.
27. 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 and alongside the weeks on which they are contact supervisor for Friday.
28. Supervisors arranging replacements will refer to a list of Waitakere duty lawyers available for replacements. Supervisors will be forwarded an updated list by the Agency each new roster period.
29. 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.
30. 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.
31. "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

32. An Agency staff member (legal aid assistant) will be present each day to assist defendants to complete legal application aid forms.
33. As far as possible, the legal aid assistant will complete all legal aid application forms. However, there may be busy days when this is not possible. On days when the legal aid assistant 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 the legal aid assistant.
34. On days when the legal aid assistant is not present, duty lawyers must assist defendants to complete application forms.
35. Duty lawyers should hand any forms they have completed to the legal aid assistant or duty lawyer supervisor. If there is no legal aid assistant 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 Waitakere 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

36. Lawyers must not enter the cells in their role as duty lawyer, to interview or otherwise make contact with defendants, unless instructed to do so by the duty lawyer supervisor of the day or, on Fridays, if they are the duty lawyer(s) who have been allocated the 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.

Saturdays and public holidays

38. A separate policy operates for Saturdays and public holidays². Admission to rosters is by appointment only. There is generally a team of two duty lawyers, one of whom is designated as the supervisor, who takes responsibility for signing off the *Record of Attendance* form on that day.
39. Rostered duty lawyers must be at the court by 9.00 am unless otherwise advised by the Court.

² A full copy of the policy for Saturdays and public holidays can be accessed through www.lsa.govt.nz. (follow the path Home Page / Legal Services / Duty Solicitor).

40. 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.
41. On completion of a Saturday or public holiday session duty lawyers should complete the *Record of Attendance Waitakere District Court Saturday/Public Holiday roster* form – the form is available in the grey cabinet in the Cell area. After certification by the supervisor, the form should be placed in the slot in the Legal Aid Office at the Waitakere Court for processing.

The preferred lawyer scheme

42. 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*³. 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.
43. 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/whanau or friends or the defendant has asked the duty lawyer to be their lawyer.
44. 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.
45. 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 at each of the test courts. 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.

³ A full copy of the policy on Assignment, Termination of Assignment and Reassignment can be accessed through www.lsa.govt.nz (follow the path Home Page / For Listed Providers / General Policies).

Duty lawyer badges

46. 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 (when present) or returned to the Legal Aid Office at the Court at the beginning and end of each session.

Duty Lawyer Record of Attendance: Waitakere District Court



Tuesday Date/Month/Year _____

Supervisor: _____ (or replacement) _____

Please cross out the names of those not rostered. In the case of replacements please cross out the rostered duty lawyer's name and enter the replacement name.

	Start time	Sign off time	Sign on time	Sign off time	Sign on time	Finish time	Office use (LA Office ref.)	Duty lawyer signature
Andrew Rice								
Naomi Cramer								
Michael Kidd								
John Mackey (weeks 2 & 4)								
Bridie Murphy								
Fiona Patterson								
Daniel Shortland (weeks 1, 2 & 3)								

I hereby certify that the above named duty lawyers performed the services of Duty Lawyer on Tuesday (Date): _____

Supervisor signature: _____

Grants Officer signature: (Payment processed) _____

Duty Lawyer Record of Attendance: Waitakere District Court



Friday Date/Month/Year 1 May 2009

In the case of replacements please cross out the rostered duty lawyer's name and enter the replacement name.

	Start time	Sign off time	Sign on time	Sign off time	Sign on time	Finish time	Office use (LA Office ref.)	Duty lawyer signature
Brenda Donald								
Helen Bowen								
Poi Teei								

I hereby certify that the above named duty lawyers performed the services of Duty Lawyer on Friday (Date): _____

Deputy Registrar signature: _____

Grants Officer signature: (Payment processed) _____