

# Practice Standards for Legal Aid Providers

---

September 2016



MINISTRY OF  
**JUSTICE**  
*Tabu o te Iure*

New Zealand Government

# Contents

- General Practice Standards..... 3**
  - General Principles ..... 4
- General Responsibilities to Clients..... 5**
  - Legal Aid Funding..... 5
  - Relations with Clients..... 6
  - Conduct of Matter ..... 7
  - Evidence and submissions ..... 7
  - Experts ..... 7
  - Without notice applications ..... 7
  - Settlement and dispute resolution ..... 8
  - Conflicts of interest ..... 8
  - Dealings with Other People..... 8
  - File Maintenance ..... 9
  - Other Obligations..... 10
- Criminal Practice Standards..... 11**
  - Responsibilities to Clients and the Prosecution..... 11
  - Hearings ..... 12
  - Appeals to Court of Appeal or Supreme Court ..... 12
- Family Practice Standards..... 15**
  - Statement of Principles ..... 15
  - Responsibilities to Clients ..... 15
  - Without Notice Applications ..... 16
  - Care of Children Act 2004..... 17
  - Children, Young Persons, and Their Families Act 1989 ..... 17
  - Domestic Violence Act 1995 ..... 18
  - Property (Relationships) Act 1976..... 19

File Maintenance .....	19
Protecting the Commissioner's interests .....	19
<b>Māori Land Court/Māori Appellate Court Practice Standards .....</b>	<b>19</b>
General Principles .....	21
Māori Land Act 1993: Conduct of Matter.....	21
<b>Waitangi Tribunal Practice Standards .....</b>	<b>23</b>
General Principles .....	23
General Responsibilities to Clients.....	23
Treaty of Waitangi Act 1975: Conduct of Matter .....	23
Evidence and submissions .....	24
Experts .....	24
<b>Mental Health Practice Standards .....</b>	<b>26</b>
General Principles .....	26
Responsibilities to Clients .....	26
Preparing for the Hearing.....	27

# General Practice Standards

1. These practice standards set out principles and procedures to assist lawyers in the effective, efficient and economic delivery of high quality legal aid services. For many lawyers the practice standards will reflect the way they currently practise.

The practice standards form two parts, namely:

- 1.1 General practice standards that are applicable to all areas of law, and
- 1.2 Additional standards that are applicable to the following areas of law:
  - 1.2.1 Criminal
  - 1.2.2 Family
  - 1.2.3 Māori Land Court/ Māori Appellate Court proceedings
  - 1.2.4 Waitangi Tribunal proceedings
  - 1.2.5 Mental Health proceedings.
- 1.3 If you have doubts about how the standards apply, or what they mean, you should contact an experienced lawyer to discuss them.
- 1.4 These practice standards are not a comprehensive code. In addition to these standards lawyers need to know and comply with their obligations as lawyers as set out in:
  - 1.4.1 The Lawyers and Conveyancers Act 2006;
  - 1.4.2 The rules and regulations made pursuant to the above Act, including the Lawyers and Conveyancers Act (Lawyers: Conduct and Client Care) Rules 2008;
  - 1.4.3 The Legal Services Act 2011;
  - 1.4.4 The regulations and policies made pursuant to the above Act;
  - 1.4.5 The general legislation and rules applicable to the relevant court including the Family Courts Act 1980 and the Family Court Rules 2002, the District Courts Act 1947 and the District Court Rules 2009, and the Judicature Act 1908 and the High Court Rules;
  - 1.4.6 The specific legislation, case-law;
  - 1.4.7 Common law (in particular the lawyer's duty as an officer of the Court and to the client); and
  - 1.4.8 Relevant practice notes.
- 1.5 Lawyers acting under a legal aid contract are expected to act and conduct cases in accordance with the above, as well as any applicable additional practice standards, such as the Family Law Practice Standards or Mental Health Practice Standards, where the provider is approved to provide those legal aid services. A failure to do so may raise disciplinary issues, and may impact on both payment to the lawyer for work on the particular matter and the lawyer's continued eligibility to provide services pursuant to legal aid funding.

- 1.6 It is recognised that the lawyer's role is determined by the instructions of her or his client, subject to the lawyer's fundamental obligation to uphold the rule of law and facilitate the administration of justice.

## General Principles

### 2. A lawyer must:

- 2.1 Have knowledge and understanding of the substantive law that applies in the area of law being undertaken pursuant to legal aid and be in a position to address any substantive issue as it arises.
- 2.2 Have knowledge and understanding of the procedural law that applies in the area of law being undertaken pursuant to legal aid and be in a position to address any procedural issue as it arises.
- 2.3 Have up to date knowledge of relevant legal aid legislation and processes and inform clients of their rights and obligations in relation to legal aid.
- 2.4 Recognise cross-cultural issues and issues facing socially and economically disadvantaged people.
- 2.5 Decline to accept, or return for re-assignment, any matter for which he or she has insufficient experience or skill to competently represent the client, or is too busy to undertake.
- 2.6 Exercise independent professional judgment on a client's behalf and exercise due care in giving appropriate advice to a client that is legally correct and appropriate, including on calling evidence, the use of experts, dispute resolution and options following the outcome of the case.
- 2.7 Communicate with the client in a way that is clear, appropriate and tailored to the client's circumstances and keeps the client informed about the progress of their case, the procedure and substantive issues.
- 2.8 Maintain a record of important advice given and a record of key instructions.
- 2.9 Conduct him or herself in a way that respects the parties involved and does not inflame the dispute between the parties. Lawyers should avoid conducting proceedings in a manner that will increase distrust, hostility or animosity between the parties without achieving any significant and legitimate benefit for the client.
- 2.10 Maintain networks of support to provide adequate back up in case of illness or other genuine unavailability.
- 2.11 Supervise adequately and have a plan for the review and supervision of any person undertaking legal aid work under their supervision.
- 2.12 Take care to maintain the privacy interests of people named in Court documents so that unintended parties do not obtain access to personal information.

# General Responsibilities to Clients

## Legal Aid Funding

3. Where a client may be eligible for legal aid, the lawyer shall:
  - 3.1 Advise the client of the availability of legal aid funding and his or her potential eligibility for that funding.
  - 3.2 If the client seeks legal aid funding, assist the client to apply for this funding or advise the client where he or she can receive assistance (for example, from another lawyer, the Ministry, a community law centre or the Citizens Advice Bureau).
  - 3.3 If assisting the client to make an application for legal aid funding agree with the client as to who (the lawyer or the client) will compile the relevant information and documentation and file the application with the Ministry. In addition, the lawyer shall, as appropriate:
    - 3.3.1 Seek instructions from or advise the client in sufficient detail to enable the application to be completed by the appropriate person;
    - 3.3.2 Inform the client of his or her initial and ongoing obligations and liabilities pursuant to legal aid funding (for example, the client's ongoing obligations to be honest in legal aid documentation and to disclose to the Ministry changes in financial circumstances, and give the client initial advice as to repayment obligations), or advise him or her where such information can be obtained (for example, from the Ministry, a community law centre or the Citizens Advice Bureau);
    - 3.3.3 Take reasonable steps to seek from the client any third party information that is needed for an application for legal aid funding, or obtain from the client the relevant written authorities for the lawyer to obtain that third party information and then seek that information in a timely manner, or advise the client of the third party information that he or she will need to provide with the application for legal aid funding;
    - 3.3.4 Provide, or advise the client to provide, the legal aid application and the relevant information to the Ministry in a timely manner; and
    - 3.3.5 In the event of funding being refused, advise the client of any right of reconsideration by the Legal Services Commissioner, review by the Legal Aid Tribunal and right of appeal to the courts.

## Relations with Clients

4. A lawyer in acting for a client must:
  - 4.1 When communicating with the client, endeavour to use language that is understandable, free from unnecessary jargon and appropriate to the age, gender and capacity of the client.
  - 4.2 If appropriate, seek the use of a qualified interpreter. If legal aid funding is required for this, apply for and obtain that funding in a timely manner in advance.
  - 4.3 Give timely, appropriate and sufficiently detailed advice and explanations to the client to enable him or her to make an informed decision about the matter.
  - 4.4 Advise the client of the steps that he or she can or ought to take in order to assist the efficient and effective conduct of the matter.
  - 4.5 Advise the client of relevant aspects of the matter, including the material evidence, risks, costs, liability and merits of settlement.
  - 4.6 At appropriate times, reassess and again advise the client of the relevant aspects of the matter.
  - 4.7 In a timely manner, keep the client informed of the progress of the matter, including advising the client of the stages through which a matter progresses and the opportunity a stage might provide to resolve matters.
  - 4.8 Where appropriate and practical, advice should be provided to the client in writing, subject to client instructions to the contrary. Some circumstances where it will not be practical include:
    - 4.8.1 Where there is a risk sensitive documents could be accessed by unintended recipients;
    - 4.8.2 Where there are issues of literacy or comprehension although remembering a client with such difficulties may be able to find a trusted person to explain such documents;
    - 4.8.3 Where a client's mental health could be an issue;
    - 4.8.4 Some criminal matters where there is not sufficient time to provide advice in writing due to guilty pleas and quick progression through first and second appearances;
    - 4.8.5 Some family matters where there is not sufficient time to provide advice in writing due to the urgent nature of the application, such as urgent protection orders; and
    - 4.8.6 There is no known address.
  - 4.9 On conclusion of a matter, in a timely manner, provide the client with a copy of the relevant agreement, order or judgment.
  - 4.10 Not make any public statements regarding a client's affairs without the client's specific consent.

# Conduct of Matter

## Evidence and submissions

5. In conducting proceedings the lawyer must:
  - 5.1 Advise the client of the right to give and/or call evidence on his or her behalf (whether by affidavit, brief of evidence, oral evidence or in some other form) that is relevant and legally admissible;
  - 5.2 Consider whether agreement might be reached with other parties to the proceeding that evidence could be introduced by consent or offered in a manner that is cost effective, and, if so, seek instructions to endeavour to reach agreement with the other party on that basis;
  - 5.3 Advise the client that a lawyer has a duty not to take any step the main purpose of which is to cause delay in the determination of any proceeding or interlocutory application;
  - 5.4 Record the client's factual instructions in a signed brief of evidence unless there is a good reason not to, for example where a client is not a witness or has already given a full account such as in a Police interview or where the evidence will be in an affidavit.

## Experts

6. A lawyer must:
  - 6.1 Consider whether expert evidence would be substantially helpful.
  - 6.2 If expert evidence would be substantially helpful apply for legal aid funding in a timely manner and in advance of engaging an expert. When seeking that funding it is important to set out the reason why expert evidence is appropriate and a realistic estimate of the cost that would be involved.
  - 6.3 Where the cost of an expert increases seek approval for the increase before the corresponding work is undertaken.
  - 6.4 Ensure the expert is aware that they are subject to the estimate and that they need to advise the engaging lawyer if the estimate is going to be exceeded.
  - 6.5 Help ensure that when an expert is preparing and giving evidence, the expert is aware of the need to conduct herself or himself in accordance with the applicable rules relating to the conduct of experts.

## Without notice applications

7. A lawyer must:
  - 7.1 Consider whether the circumstances are sufficient to justify the client being advised to make an application without notice and whether it is desirable to make an application on this basis.
  - 7.2 If the client wishes to make an application without notice, advise the client



that he or she owes to the court a duty of utmost good faith to make full disclosure to the court of all facts relevant to the application. That duty extends to:

- 7.2.1 All matters relevant to the application, including prejudicial information, whether or not the applicant considers them important; and
- 7.2.2 Disclosing to the Court any known defence to the application together with the facts on which it is based.

## Settlement and dispute resolution

- 8. A lawyer must:
  - 8.1 Encourage the client to resolve the matter where appropriate. This will be in most cases, with the exception of some cases affecting the safety of a person and criminal cases for which there are limitations and specific processes, such as restorative justice conferences. It may include making or considering settlement offers and, where available, using other appropriate dispute resolution methods, for example; alternative dispute resolution (ADR), mediation, arbitration and settlement conferences.
  - 8.2 Avoid knowingly taking steps to promote conflict or to artificially prolong proceedings.
  - 8.3 Where appropriate dispute resolution is to take place, advise the client to approach appropriate dispute resolution in a manner consistent with the philosophy of appropriate dispute resolution and take reasonable steps to ensure that he or she is properly informed about the matter and relevant process to enable meaningful and effective participation by him or her.

## Conflicts of interest

- 9. A lawyer must:
  - 9.1 Take steps to avoid an actual or potential conflict of interest and to identify any actual or potential conflict of interest at the earliest possible opportunity.
  - 9.2 If an actual or potential conflict of interest arises, advise the client and the Ministry of Justice in a timely manner and, if appropriate, cease acting. Explain to the client that in some circumstances a lawyer cannot continue to act where there is an actual or potential conflict of interest, even if informed consent can be obtained.
  - 9.3 Avoid giving evidence about, or being a witness in, a matter in which the lawyer is either solicitor or counsel. Where any such evidence is contentious then the solicitor or counsel will need to seek leave to withdraw and the Ministry should be advised promptly.

## Dealings with Other People

- 10. A lawyer must:
  - 10.1 In dealing with Judges, other lawyers, litigants in person, experts, court staff

and the Ministry of Justice, conduct him or herself in a courteous and professional manner in order to encourage and not impede good working relationships.

- 10.2 Be punctual at court and arrange for alternative counsel if unable to appear (with approval from the Ministry, if required).
- 10.3 Answer or respond to telephone inquiries promptly.
- 10.4 Provide a timely and meaningful reply to correspondence, reply promptly to all urgent matters and advise clients that a detailed response for advice might require more time.
- 10.5 When dealing with litigants in person, endeavour to communicate using language that is understandable, free of unnecessary jargon and appropriate to the age, gender and capacity of the person.
- 10.6 Avoid criticising other lawyers involved in the case except where the other lawyer's conduct materially affects the case. This provision does not prevent a lawyer from the appropriate use of complaints mechanisms such as those under the Legal Services Act 2011 or the Lawyers and Conveyancers Act 2006.

## File Maintenance

11. A lawyer must use best endeavour to ensure that:
  - 11.1 Files are kept in such a way that if anyone, other than the lawyer conducting the matter, assumes management of the file it is possible for that person promptly to ascertain relevant matters. Relevant matters include:
    - 11.1.1 Any client instructions;
    - 11.1.2 The purpose and extent of legal aid funding;
    - 11.1.3 The stage the matter is at, including when the matter is next before the court or scheduled, for example, for ADR; and
    - 11.1.4 The relevant orders or agreements in respect of the matter.
  - 11.2 All relevant documents, correspondence received and a copy of correspondence sent is kept on the file including:
    - 11.2.1 Correspondence in relation to legal aid with the Ministry and the client. It is preferable that the correspondence be kept in a separate part of the file so that it is easily identifiable and accessible;
    - 11.2.2 All other correspondence;
    - 11.2.3 A copy of all court documents filed, served or issued in the matter. It is preferable that the documents are in a separate bundle or brief file, and indexed;
    - 11.2.4 File notes of all material telephone conversations and personal attendances in relation to the matter, preferably with the date, name of person spoken to, material details of the conversation and noting if it was held on a without prejudice basis;
    - 11.2.5 A record of all court attendances, including the name of the Judge(s), counsel and parties present, a summary of any

negotiations or submissions, orders or directions made and the time involved; and

- 11.2.6 Records of all proceeds of proceedings and associated transactions.
- 11.3 Any disbursement properly incurred is paid in a timely manner. Where payment of a disbursement is dependent on legal aid funding (approval for which must be obtained in advance), the lawyer must seek payment from the Ministry of Justice in a timely manner. A record of receipts and expenditure is to be included in the file, or in a separate system (for example, a trust account system) that records receipts and expenditure.
- 11.4 Where lawyers are charging in full or part based on time spent on a matter a time recording system (preferably electronic) is used to record all time spent by the lawyer(s) approved by the Ministry to act on the matter. Any time spent by non-lawyers on the matter is to also be recorded.
- 11.5 All legal aid files must be retained for a minimum of seven (7) years from the date of closure or the last activity on the matter. Files can be retained in either hard copy or electronic form.

## Other Obligations

- 12. A lawyer acting in a matter subject to a grant of legal aid must:
  - 12.1 Use his or her best endeavours to comply with the terms and conditions of the grant of legal aid insofar as they are imposed on him or her.
  - 12.2 Where a professional negligence claim has been determined against the lawyer, notify the Ministry of Justice promptly of that determination.
  - 12.3 Comply promptly with any request by the Ministry for files to be provided to it for a legitimate and authorised statutory purpose (such as, for the purpose of an audit or to enable an informed granting decision to be made on that file).
  - 12.4 Notify the Ministry promptly of any potential or actual costs claimed under section 45 of the Legal Services Act 2011 and comply promptly with any reasonable Ministry requests for information or assistance in relation to that claim.
  - 12.5 Review all files for legal aid services on completion of the matter to ensure that, subject to client instructions, all appropriate steps have been taken to conclude the matter, before notifying the Ministry that the matter is finished.

# Criminal Practice Standards

## Responsibilities to Clients and the Prosecution

13. A lawyer who receives a legal aid assignment must:
  - 13.1 Decline to accept or return for reassignment any matter where he or she has a conflict or potential conflict of interest.
  - 13.2 When acting for more than one co-accused, take particular care to ensure she or he has considered the duties owed to each client and any potential conflicts, and, if any doubt that there may be conflicting duties, she or he must decline to accept the matter or return it for reassignment.
  - 13.3 Make all reasonable effort to make contact with the client by the most practical method.
  - 13.4 On assignment, and subsequently if necessary, consider the appropriateness of applications for name suppression and/or bail, and make any application in a timely fashion.
  - 13.5 Advise the prosecution that she or he is acting and request relevant disclosure.
  - 13.6 Meet with the client as soon as reasonably practicable, and, preferably before the first court appearance after assignment. Where the client is remanded in custody, the first meeting may be immediately prior to court.
  - 13.7 Take particular care to ensure that any client remanded in custody is kept fully informed of the progress of the proceeding.
  - 13.8 Advise the client at the first reasonable opportunity and throughout the case about the sentencing discounts for pleas of guilty in terms of *R v Hessel* [2011] 1 NZLR 607 (SC). The lawyer will remind the client of the discounts prior to any status hearing or call-over, and before any trial or hearing.
  - 13.9 Before the client enters any election or plea:
    - 13.9.1 Obtain relevant disclosure from the prosecution, and discuss it with the client; and
    - 13.9.2 Advise the client of defence disclosure obligations.
  - 13.10 Assist the client to enter the plea or election at the earliest practicable time.
  - 13.11 If more than one lawyer is assigned, advise the client of the role each lawyer will take in the proceeding.
  - 13.12 Consider whether the client may present with any issues that raise the following questions in relation to the client:
    - 13.12.1 Does the client have any intellectual disability or mental health issues and, if so, when and how are they to be addressed?

- 13.12.2 Does the client have any addiction, alcohol or drug issues and, if so, when and how are they to be addressed?
- 13.12.3 Is the matter suitable for restorative justice?
- 13.12.4 Is domestic violence involved?
- 13.12.5 Is the matter suitable for diversion?
- 13.13 Wherever practicable, obtain instructions in writing concerning the incident or events giving rise to the charge(s). Details as to the client's background, physical health and other relevant details should be obtained. When it is not possible to obtain instructions in writing, a lawyer should make clear file notes of instructions (or the lack of instructions).
- 13.14 Be familiar with a client's previous convictions before a plea is entered.
- 13.15 Where appropriate discuss the availability of a sentencing indication hearing with the client.
- 13.16 Retain written copies of advice given to the client on matters of particular significance or that may be contentious.

## Hearings

- 14. A lawyer must:
  - 14.1 Subject to client instructions, give appropriate consideration to notifying the prosecution of any issues the defence intends to raise at a status hearing. Where appropriate, the notification must be given in sufficient time for the prosecution to be able to respond at the status hearing.
  - 14.2 Advise the client as to relevant defences in the light of witness statements. On receipt of the prosecution's briefs of evidence, the lawyer must discuss the briefs with the client.
  - 14.3 Take instructions from the client as to whether the defence will call or give evidence.
  - 14.4 Comply with the relevant Practice Notes.

## Appeals to Court of Appeal or Supreme Court

- 15. A lawyer must:
  - 15.1 Be familiar with, and comply with, the relevant Court Rules, and Practice Notes procedures set out in authorities relating to appeal proceedings.
  - 15.2 Where the client wishes to appeal, consider whether it is proper to act;
  - 15.3 Where the client wishes to appeal, or the lawyer considers there is merit in an appeal (whether against conviction or sentence or both), take instructions from the client in sufficient time for a notice of appeal, or an application for leave to appeal, to be filed within the statutory time limit.
  - 15.4 Consider whether there are grounds for seeking bail pending appeal.
  - 15.5 Provide advice on grounds that appear arguable, and assist the client to draft those grounds and complete the notice of appeal or application for

leave to appeal and file with the Court of Appeal or Supreme Court.

- 15.6 Advise the client of the availability of legal aid, the need to complete an application for legal aid for the appeal, the time limits for filing an appeal, and the need for an explanation of the delay that may be needed for a late appeal.
- 15.7 Where assisting an appellant to complete a notice of appeal, ensure that any information relevant to the mode of hearing is included in the notice to appeal. A copy of the notice must be provided to the Ministry of Justice as part of any application for a grant of full aid for the appeal.
- 15.8 Counsel drafting the grounds of appeal in a notice for appeal or an application for leave to appeal to the Supreme Court must seek from the Ministry and obtain in advance adequate funding, and on receipt of funding, ensure that the notice or application gives sufficient information to properly support the grounds of appeal/leave to apply for appeal, by reference to the grounds available in the Crimes Act 1961 and the Supreme Court Act 2003.
- 15.9 On receipt of appropriate instructions, where trial counsel is not assigned to an appeal, then that trial counsel shall forthwith on provision of instruction from the client/former client provide to new counsel the entirety of his or her file in a form that ensures that new counsel will be able to identify:
  - 15.9.1 The court, judge and date of the proceedings at first instance;
  - 15.9.2 The charges;
  - 15.9.3 The outcome in relation to each charge;
  - 15.9.4 The date of filing the appeal;
  - 15.9.5 Any particular or unusual features;
  - 15.9.6 A brief outline of any particular matters raised by the client;
  - 15.9.7 The note of any material missing from the brief and the reason;
  - 15.9.8 The date of expiry of the notice of intention to appeal; and
  - 15.9.9 The current custodial status and place of custody of the client.
- 15.10 The brief to counsel in a Court of Appeal matter should include:
  - 15.10.1 The notice of intention to appeal;
  - 15.10.2 Any application for extension of time;
  - 15.10.3 Any appeal report obtained from trial counsel;
  - 15.10.4 The transcript of the proceedings at trial and sentence;
  - 15.10.5 Any interlocutory judgments;
  - 15.10.6 The transcript of the summing up;
  - 15.10.7 The sentencing notes;
  - 15.10.8 Any relevant correspondence;
  - 15.10.9 Any fresh evidence; and
  - 15.10.10 Any comments of the client regarding the appeal.
- 15.11 Subject to client instructions, counsel acting in an appeal is to ensure that the client is provided with copies of all documents filed in the court, and copies of all judgments and minutes, providing advice as to the availability of

any further appeal and any grounds that may exist to support any further appeal.

- 15.12 Where issues of trial counsel incompetence arise counsel is to seek legal aid funding to enable them to undertake due diligence, and advise the client and Ministry of the merits of the proposed ground, in accordance with the Court of Appeal's directions in *R v Clode* [2009] 1 NZLR 312.
- 15.13 If an appeal court makes a finding that trial counsel was incompetent, trial counsel must notify the Ministry of that finding in a timely manner.

# Family Practice Standards

## Statement of Principles

16. A lawyer must:
  - 16.1 Recognise that family violence is a serious problem. The safety of children and parents is to be considered at all stages of a family law dispute.
  - 16.2 Recognise the principles set out in the Care of Children Act 2004, and, in particular, that the welfare and best interests of the child, in his or her circumstances, are the paramount consideration.
  - 16.3 Recognise the need for parents to consult and cooperate with each other, and to reach their own decisions in matters affecting their children.
  - 16.4 Be aware of their obligation under the Family Proceedings Act 1980 to promote reconciliation, or where this is not possible, conciliation in all family law matters.
  - 16.5 Encourage the client to take a conciliatory rather than a litigious approach to family disputes where appropriate. This will be in most cases, other than those affecting the safety of the client and/or their children, and/or where statutory provisions set out a mandatory approach. Parties should be encouraged to find their own solutions, because this has a positive impact on the parties and any children involved.
  - 16.6 Be aware of the special need in family law matters for them to conduct themselves in a way that does not inflame the dispute between the parties. They should endeavour to avoid conducting themselves in a manner that will increase distrust or animosity between the parties, and ensure that their own personal emotions or opinions do not influence the advice given to a client.

## Responsibilities to Clients

17. A lawyer must:
  - 17.1 Inform the client of the requirements of, and ensure compliance with, any current and/or local procedures in court proceedings where applicable.
  - 17.2 Subject to the client's instructions provide the client with copies of all applications, affidavits and reports filed in the proceedings (subject to any court restrictions as to release of documents). When the matter is concluded the client must be provided with a sealed copy of any order or agreement, and a copy of any judgment. The client must be advised about the basis for any appeal, the chances of success of the appeal, and time limits for review or appeal.
  - 17.3 Explain to the client what processes are available within the Family Court for resolution of disputes, counseling, mediation, and types of hearings, and, once a matter is in the Family Court system, provide an appropriate explanation of the applicable process in a way the client can understand.



- 17.4 Keep the client informed of the progress of their matter in a timely manner and ensure that the client is aware of the stages through which a matter progresses in the court system, and of opportunities that each stage may provide to resolve matters.
- 17.5 Where the matter proceeds to a hearing, mediation or settlement conference, ensure that the client is properly briefed on the process, including on how evidence is given, how the hearing is run, and the basic conduct expected of litigants and counsel in the Family Court.
- 17.6 Advise the client of the necessity for compliance with rules, regulations and statutory provisions concerning publication of family law proceedings, including providing advice as to the effect of such provisions, and warn clients of any sanctions that may be imposed for the publication of family law proceedings.
- 17.7 Where the client is seeking to be a welfare guardian or property manager under the Protection of Personal and Property Rights Act 1988, advise the client of the limitations and obligations they may be subject to under the Act.
- 17.8 If the other party is a litigant in person, a lawyer should advise the client of the differences in process in the courtroom, and the mechanisms available for avoiding direct, intrusive questioning by the self-represented party.

## Without Notice Applications

18. A lawyer must take particular care when advising family clients on without notice applications and comply with any specific relevant provisions of the Family Courts Rules, the High Court Rules, and any associated legislation over which the Family Court has jurisdiction. A lawyer must:
  - 18.1 Consider whether the circumstances are sufficient to justify the client being advised to make an application without notice and whether it is desirable to make an application on this basis.
    - 18.1.1 If the client wishes to make an application without notice, advise the client that he or she owes to the court a duty of utmost good faith to make full disclosure to the court of all facts relevant to the application. That duty extends to:
      - 18.1.2 All matters relevant to the application, whether or not the applicant considers them important; and
      - 18.1.3 Disclosing to the court all relevant circumstances, whether they are advantageous to the applicant (and any other person for whose benefit the order is sought) as well as meeting any other disclosure requirements.
  - 18.2 Advise of the possible consequences of a failure to disclose a relevant circumstance (including, but not limited to, the fact that any order made on a without notice basis where it is later revealed that a material fact was not disclosed may be rescinded or overturned on re-hearing or appeal as well as the jeopardy of having an adverse cost order being made).
  - 18.3 Advise the client of the consequences of the order sought not being made on a without notice basis (that is, the order will be put on notice and served on the respondent).

## Care of Children Act 2004

19. In addition to advising clients of the provisions relevant to their specific case, a lawyer must:
  - 19.1 Where the matter involves the guardianship of, or the provision of day-to-day care for, or contact with, children, advise the client (subject to any safety issues, including family violence issues) of the benefits of making arrangements for children in co-operation with the other party rather than through a court hearing.
  - 19.2 Advise the client in matters involving the guardianship of, the role of providing day-to-day care for, or contact with children, of the provisions of sections 4, 5 and 6 of the Care of Children Act 2004.
  - 19.3 Explain to the client the role of lawyer for the child or any other court-appointed counsel, any costs associated with such an appointment, and the circumstances in which a contribution towards such costs may be directed by the court.
  - 19.4 Advise the client of the requirements in section 6 that the child be given a reasonable opportunity to express her or his view, and the methods by which this is generally done (including through lawyer for child, and the child/ren meeting with a Judge).
  - 19.5 Ascertain whether or not there are any allegations of violence to which sections 59 to 61 would apply. If there are any such allegations, the lawyer must advise as to court processes which must be completed in accordance with the above provisions.
  - 19.6 At all stages of the process and, where appropriate (subject to sections 59 to 61), advise clients of alternatives to parenting orders and other ways in which parenting arrangements can be agreed and recorded.
  - 19.7 Where an interim parenting order has been made, advise the client of the requirement that all reasonable steps should be taken to obtain a final order within 12 months of the making of the interim order, and that any interim order will, unless an application is made, expire 12 months after the date upon which it was made.
  - 19.8 Once a parenting order (whether interim or final) has been made, advise the client of the consequences of a breach of such an order.
  - 19.9 Explain to the client the provisions relating to the release of specialist reports and take all reasonable steps to ensure compliance.
  - 19.10 Subject to the client's instructions, where appropriate and practicable, ensure that written copies of advice are provided to the client and placed on the client's file.

## Children, Young Persons, and Their Families Act 1989

20. A lawyer must:
  - 20.1 Advise the client of the requirement for the child's welfare and interests to be

the paramount consideration, and the principles in the Act that are relevant to the client's matter.

- 20.2 Explain restrictions on counsel for a party attending a family group conference, the need to seek permission from the coordinator to attend the conference, and the need to seek specific legal aid funding.
- 20.3 If instructed to do so, apply for legal aid to appear at a family group conference.
- 20.4 Explain the process and the need to reapply for legal aid for each review of a family group conference order and the limited availability of legal aid funding for this.
- 20.5 Subject to the client's instructions, where appropriate and practical, ensure that written copies of advice are provided to the client and placed on the client's file.

## Domestic Violence Act 1995

21. A lawyer must:

- 21.1 Advise the client fully of the consequences of the making of any order under the Domestic Violence Act 1995 and (when acting for applicants) that the respondent will be informed of the application and receive a copy of any affidavit in support.
- 21.2 When acting for an applicant, advise of the provisions whereby they may withhold their address and contact details from the service copy of documents, and, when instructed to do so, ensure that the service copy provided to the court does not contain such details.
- 21.3 When acting for an applicant, advise of the limits of any order under the Act, and the need to take other practical steps to ensure their safety.
- 21.4 Advise the client of the need to authorise access to any family violence records so they can be attached to an application under the Act.
- 21.5 Advise the client of the need to obtain copies of any relevant medical information (when appropriate) and, where there is any such information, the need to authorise access.
- 21.6 When acting for an applicant, advise the client of any known programmes available for themselves and their children.
- 21.7 When acting for a respondent, advise the client of the timeframe for objecting to attending a domestic violence programme, and ensure that, if they are instructed to file an objection, it is filed within the requisite time if possible otherwise make an application to file an objection out of time if there are good reasons why the objection could not be filed on time.
- 21.8 Subject to the client's instructions, where appropriate and practical, ensure that written copies of advice are provided to the client and placed on the client's file.

## Property (Relationships) Act 1976

22. A lawyer must:

- 22.1 Advise the client of the need to make full disclosure of relevant information, including documentary evidence, and that this obligation extends to disclosure of all property or interests in property (including trust and company assets) whether the client considers that property to be relationship property or not.
- 22.2 Advise the client of the provisions in the Legal Services Act 2011 relating to charges over property and the need to repay legal aid from proceeds of relationship property settlements.
- 22.3 Subject to the client's instructions, where appropriate and practical, ensure that written copies of advice are provided to the client and placed on the client's file.

## File Maintenance

23. A lawyer must:

- 23.1 Where a file contains a section 133 Care of Children Act 2004 or section 178 Children, Young Persons, and Their Families Act 1989 report, or any other report the release of which is restricted by statute, ensure that such report is kept on the file in such a manner that it cannot be inadvertently released to any person (including the client). This includes ensuring that such report is removed from the file, if a client seeks to uplift the file, before the file is handed over, unless the specific consent of the court to release the report has been obtained.

## Protecting the Commissioner's interests

24. A lawyer must:

- 24.1 Take all reasonable steps to protect the interests of the Commissioner under a charge, including not doing or permitting anything that would or might effect the transfer of the property without the charge being satisfied (section 107(2)(a) and (b) Legal Services Act 2011)
- 24.2 Advise the Commissioner if he or she is aware that an aided person has, is, or is attempting, to avoid making payments to the Commissioner from proceeds of proceedings (section 107(2)(c) Legal Services Act 2011).
- 24.3 Ensure that any instructing solicitor or any other relevant person (including the person(s) responsible for payments from the lawyer/firm's trust account) is aware of the obligations in 24.1. and 24.2.
- 24.4 Take all reasonable steps to ensure that any proceeds of proceedings are received by the lawyer or his or her firm, and particularly that any proceeds in the form of money is paid into the lawyer/firm's trust account.

24.5 Before distributing proceeds of proceedings or assisting a legally aided person to dispose of any property subject to a charge in favour of the Commissioner, at a minimum:

- 24.5.1 check with the managing Legal Aid Office to ascertain the status of the client's legal aid debt, if any;
- 24.5.2 check whether deductions need to be made from the proceeds of proceedings or from the proceeds of the sale or transfer of the property subject to the charge; and
- 24.5.3 make any necessary arrangements for payment to the Commissioner before any residue is distributed to the legally aided person.

# Māori Land Court, Māori Appellate Court Practice Standards

## General Principles

1. A lawyer representing a legally aided client should recognise that:
  - 1.1 Notwithstanding some parties may have minor interests in land the subject to the proceedings, it will have a high cultural value that may outweigh the economic value of the land; and
  - 1.2 Any dispute that may exist in the proceedings will generally involve whānau/family. The collective nature of Māori land means the parties will have to preserve an ongoing relationship. Consequently a lawyer must conduct himself or herself in a way that does not inflame the dispute between the parties. The lawyer should endeavour to avoid conducting proceedings in a manner that will increase distrust or animosity between the parties without achieving any significant and legitimate benefit for the client.

## Māori Land Act 1993: Conduct of Matter

2. In conducting proceedings the lawyer must:
  - 2.1 Be aware of and advise the client of the principles and policy underlying the regulation of Māori land under the Māori Land/Te Ture Whenua Act 1993;
  - 2.2 Explain what processes are available once a matter is in the Māori Land Court, and provide an appropriate and full explanation of each process in a way the client can understand;
  - 2.3 Have regard to the rules, regulations, statutory provisions and practice notes relating to matters involving Māori land. A lawyer must advise any affected client of any such provisions and to act in accordance with them;
  - 2.4 Where the matter proceeds to a hearing, ensure that the client has knowledge of how evidence is given, how the hearing is run, and basic conduct expected of litigants and lawyers in the Māori Land Court;
  - 2.5 If another party is self-represented, advise the client of how the Judge and lawyer will deal with the other party throughout the hearing;
  - 2.6 Be able to manage the client's interests within a hearing process in which there should not be unnecessary formality and where participants in the hearing may not be "parties" in a formal sense;
  - 2.7 Be familiar with forms used in the Māori Land Court and the Māori Land Court pānui system;
  - 2.8 In dealings with clients, Māori land owners and members of their whānau and hapū, be cognisant of tikanga Māori and Māori protocol and be able to conduct proceedings where the Court applies marae kawa;

- 2.9 Be able to lead evidence and cross-examine on matters of tikanga Māori and be cognisant of customary rights, principles and practices;
- 2.10 Be cognisant of tikanga Māori, and preferably be able to conduct proceedings and effectively represent the client's interests where evidence is given, and other court processes carried out, in te reo Māori;
- 2.11 Recognise that many Māori Land Court proceedings do not involve disputes but relate to dealings in interests in land in accordance with the principles, policy and provisions underlying the regulation of Māori land;
- 2.12 Be cognisant of and able to work with, and advise the client about, the records of the Māori Land Court and the Māori land information system;
- 2.13 Be cognisant of the relationship between Māori Land Court orders, practices and procedures and the land transfer system; and
- 2.14 Be aware of, understand, and provide advice about the Māori Land Court special aid fund and the differences between assistance under that fund and legal aid (note: cannot apply for or be granted legal aid if in receipt of Māori Land Court special aid).

# Waitangi Tribunal Practice Standards

## General Principles

3. A lawyer representing a legally aided client in the Waitangi Tribunal should:
  - 3.1 Recognise, even though they may involve contest between individuals, iwi, and other groups, that the proceedings are not unlike most other litigation proceedings between private parties, but are brought against the Crown;
  - 3.2 Recognise that the Waitangi Tribunal is a Commission of Inquiry and its proceedings are regulated under the Commissions of Inquiry Act 1908 as well as the Treaty of Waitangi Act 1975. Consequently, its role and functions are different to that of the ordinary courts;
  - 3.3 Recognise that the Waitangi Tribunal has a specific function under the Treaty of Waitangi Act 1975 to make findings and recommendations in respect to actions, omissions and policies of the Crown as against the standard of the principles of the Treaty of Waitangi;
  - 3.4 In all dealings with clients and other claimants before the Waitangi Tribunal be cognisant of tikanga Māori and Māori protocol;
  - 3.5 Be informed of the historical issues affecting the client; and
  - 3.6 Ensure that legal aid is only claimed for work and attendance specifically required in relation to the client's claim.

## General Responsibilities to Clients

4. A lawyer representing a legally aided client should:
  - 4.1 Be aware that, although claimants before the Waitangi Tribunal are individuals, they may be there as representatives of a wider group of beneficiaries whether whānau, hapū, iwi or some other collective group; and
  - 4.2 Make an effort to diligently work with the wider group in the claims to the extent practicable.

## Treaty of Waitangi Act 1975: Conduct of Matter

5. In conducting proceedings, the lawyer must:
  - 5.1 Explain what processes are available once a claim is before the Waitangi Tribunal, and provide an appropriate and full explanation of each process in



- a way the client can understand;
- 5.2 Ensure that, where the claims of the clients are similar or identical, submissions or evidence in support of these claims are not unnecessarily duplicated and are tailored to the individuals concerned as much as possible;
  - 5.3 Ensure that, where multiple claims are filed on behalf of the same claimant group, repetitive evidence is not laid before the Tribunal unnecessarily extending the time required to give a proper hearing to these related claims;
  - 5.4 Observe and meet deadlines set by the Tribunal in all but extraordinary circumstances;
  - 5.5 Have regard to the rules, regulations, statutory provisions and practice notes relating to matters involving Treaty of Waitangi claims. Lawyers shall advise any affected client of any such provisions;
  - 5.6 Where the matter proceeds to a hearing, ensure that the client has knowledge of how evidence is given, how the hearing is run, and basic conduct expected of claimants and counsel in the Waitangi Tribunal; and
  - 5.7 Ensure compliance with any directions concerning the restrictions on publication and circulation of certain evidence (such as that relating to wāhi tapu) and advise the client of the effect of such directions and warn them of any sanctions that may be imposed for the publication of any such material.

## Evidence and submissions

6. A lawyer must:
  - 6.1 Advise the client of the need to adduce evidence (whether by affidavit, brief of evidence, oral evidence or in some other form) that is relevant to the claims against the Crown;
  - 6.2 Ensure that:
    - 6.2.1 The primary focus of the evidence relates to the identified claims against the Crown;
    - 6.2.2 Where the evidence is culturally sensitive, advise clients of the options to ensure its restricted circulation; and
    - 6.2.3 Where the claims are on behalf of a wider group, that the evidence of individual members and of the group reflects the experience of that group to the greatest extent possible.
  - 6.3 Be willing to work cooperatively with other claimant counsel and consider whether a collaborative approach might be appropriate.

## Experts

7. A lawyer must:
  - 7.1 Consider what expert evidence would be appropriate and relevant;
  - 7.2 Advise the client of the need to obtain or access specialist historical evidence which relates to the particular claims as well as their wider historical context; and

- 
- 7.3 Assist the client in obtaining support for and commissioning of the necessary expert evidence from recognised funding agencies (such as the Crown Forestry Rental Trust) or from the Tribunal.

# Mental Health Practice Standards

## General Principles

8. Where appropriate, lawyers should be mindful of the best practice guidelines set out in the Mental Health Roster Guidelines, issued by the Auckland District Law Society (Inc).
9. A lawyer must:
  - 9.1 Use reasonable endeavours to conduct the proceedings in a manner that does not unnecessarily:
    - 9.2 Increase any distrust a client may feel towards the responsible clinician and any other mental health professionals involved in the proceedings; or
    - 9.3 Damage the therapeutic relationship that exists between the client and the responsible clinician and any other mental health professional(s) involved in the proceedings.
  - 9.4 Represent the client in a professional manner and without the use of inappropriately emotive language.
  - 9.5 Presume every client is competent to make an informed choice and give informed instructions, unless there are reasonable grounds for believing that the client is not competent.
  - 9.6 Consider whether there are reasonable grounds for believing that a client is not competent. They may arise as a result of factors such as the type and level of medication and the symptoms of any illness of the patient.
  - 9.7 Where a client is not competent or cannot give instructions, consider whether it is appropriate and in the client's interests to seek appointment as amicus curiae or invite the court to appoint another counsel as amicus curiae and/or to advise the relevant District Inspector of Mental Health.

## Responsibilities to Clients

10. A lawyer must:
  - 10.1 Make contact with the client as soon as practicable after instructions are received.
  - 10.2 At the initial interview, to the extent relevant and practicable, advise the client of:
    - 10.2.1 The provisions of the Act under which the client is being assessed or treated;
    - 10.2.2 The legal options available to the client in respect of that assessment or treatment;
    - 10.2.3 Any application under the Act to which the client is subject or that the client may make, including the nature and effect of any

order that might be made as a result of that application; and

- 10.2.4 The court process.
- 10.3 If the lawyer seeks to obtain medical information about the client, obtain the client's consent to that, preferably in writing.
- 10.4 Act on the instructions of the client and not those of the client's family or whānau.
- 10.5 Take care to avoid any potential or actual conflict. For example, information obtained from the client in the mental health context may not be disclosed for any purpose, without the client's consent. That can cause difficulties where the lawyer holds information gathered in the mental health context that is relevant to another context in which the lawyer is acting (e.g., the family or criminal context) but the client does not authorise disclosure.
- 10.6 If an actual or potential conflict of interest arises, advise the client and the Ministry of Justice in a timely manner and, if appropriate, cease acting. To the extent practicable he or she must explain to the client that in some circumstances a lawyer cannot continue to act where there is an actual or potential conflict of interest, even if informed consent can be obtained.

## Preparing for the Hearing

- 11. A lawyer must, where appropriate and on the instructions from the client:
  - 11.1 Liaise with:
    - 11.1.1 The responsible clinician, including discussing the nature of the order to be sought, whether an alternative order might be sought and whether there is any benefit in seeking an adjournment of the hearing;
    - 11.1.2 Other relevant health professionals including nursing staff and social workers; and
    - 11.1.3 The family or whānau of the client.
  - 11.2 Obtain relevant medical information about the client including, with the client's consent, accessing the client's mental health medical file.
  - 11.3 Seek any second psychiatric opinion in a timely manner (including obtaining any legal aid funding, if required, in a timely manner and in advance of engaging the second opinion writer).
  - 11.4 Make any other inquiries necessary for the purpose of a hearing (e.g., inquiries as to a possible community placement if that is to be submitted to the hearing Judge).

**Ministry of Justice**  
**Tāhū o te Ture**

**justice.govt.nz**

info@justice.govt.nz

0800 2 LEGAL AID  
0800 253 425

0800 COURTS  
0800 268 787

National Office  
Justice Centre | 19 Aitken St  
DX SX10088 | Wellington | New Zealand



New Zealand Government

September 2016