



**PRINCIPAL YOUTH COURT JUDGE FOR NEW ZEALAND
TE KAIWHAKAWĀ MATUA O TE KŌTI TAIOHI**

Judge John Walker

After consultation with the New Zealand Law Society and Youth Court Judges the following Appointment and Review Procedure for Youth Advocates is issued by the Principal Youth Court Judge.

Appointment and Review Procedure for Youth Advocates

1 Background

- 1.1** A list of lawyers suitable to be appointed as Youth Advocates is maintained by the Court Services Manager of each Youth Court. From that list, a lawyer is assigned by the Court as a Youth Advocate in a particular case.
- 1.2** There is a need to maintain an appropriate number of Youth Advocates on the list for each Court. An appropriate number means no more than is necessary to ensure a sufficient volume of work for each Youth Advocate; to allow for the development of specialist knowledge; to maintain familiarity with local programmes, youth justice practitioners and other participants within the youth justice system; and to ensure current knowledge of Youth Court practices, legal provisions and case law.
- 1.3** There is also the need for regular review of the Youth Advocate list so that legal representation in the Youth Court does not become a “closed shop” and so as to permit other counsel with fresh ideas, energy and enthusiasm for this work to be periodically introduced to it.
- 1.4** There is also a need to establish clear guidelines for when additional Youth Advocates need to be appointed outside the regular reviews, and to establish a process to respond to any complaints that challenge a Youth Advocate’s fitness to practise in the Youth Court.
- 1.5** The Youth Court is free to appoint a Youth Advocate from outside the list, if the circumstances so require, in the exercise of its discretion under s 323 of The Children, Young Persons, and Their Families Act 1989 (the Act).

2 Number of Youth Advocates

- 2.1** In each Court there will be a list (“the list”) of counsel available to accept appointment as Youth Advocates.
- 2.2** The list is to be maintained by the Court Services Manager and should be available to be viewed upon request.

2.3 The size of the Youth Advocate list will necessarily be limited and is to be determined by the appropriate Administrative Youth Court Judge or his or her delegate (AYCJ), who may consult with a nominee of the President of the local branch of the New Zealand Law Society, Youth Court staff, existing Youth Advocates, a senior representative of the Youth Aid Section of the New Zealand Police, and a senior representative from the local branch of Child, Youth and Family with current experience in youth justice issues. If, following such consultation, the AYCJ determines that a vacancy has arisen in a Youth Advocate list, the procedure set out in these guidelines shall be used.

3 Establishment of an Appointment Panel

3.1 An Appointment Panel shall be established by the AYCJ or any Youth Court Judge appointed by the AYCJ for this purpose and shall consist of:

3.1.1 A senior Youth Advocate from the relevant Youth Court, who shall be recommended by the existing Youth Advocates by agreement. Failing such agreement, or where the size of the existing list makes it appropriate to do so, the AYCJ shall appoint a senior Youth Advocate who may be from outside the relevant Youth Court area;

3.1.2 A senior lawyer with knowledge of care and protection issues;

3.1.3 A senior representative from the local branch of Child, Youth and Family with current experience in youth justice issues;

3.1.4 A Kaumātua, Kuia or respected community representative from within the area, appointed by the AYCJ after consultation with the Chair of the Chief Judge's Kaupapa Māori Advisory Group (KMAG) ; and

3.1.5 The Court Services Manager responsible for the relevant Youth Court (also as Secretary).

3.2 The Appointment Panel's role is to conduct interviews with applicants and make recommendations in writing to the relevant AYCJ as to who should be included on the list to fill the vacancy or vacancies.

4 Procedure for Appointment of New Youth Advocates to the Youth Advocate List Where a Vacancy Exists

4.1 For the purposes of this Protocol, a vacancy arises if a current Youth Advocate retires, withdraws from the list, relocates, is removed from the list, or is not reappointed to the list. One or more vacancies may also arise where there is a need to increase the number of Youth Advocates on the list.

4.2 Where there is a vacancy, the Court Services Manager shall ask the local branch of the New Zealand Law Society that this be advertised. The vacancy may also be advertised in any other manner the AYCJ thinks appropriate.

4.3 Applicants must apply in writing for appointment to the list in a particular Court within one month of the advertisement. Any application is to be sent to the Court Services Manager as secretary of the Appointment Panel.

4.4 Any application must address the criteria in s 323(2) of the Act and the matters to be taken into account under paragraph 4.8 of this protocol.

4.5 Any applicant must also provide a Statutory Declaration in the following terms:

4.5.1 *I have not been the subject of any upheld complaint or proven disciplinary action by any former District Law Society or by the New Zealand Law Society or an equivalent overseas body, nor are there any unresolved complaints against me; or,*

4.5.2 *Details of upheld complaints and proven disciplinary action or unresolved complaints against me are as follows: [insert details]*

4.6 After the period allowed for applications has expired, the Court Services Manager shall forward all applications to an Appointment Panel for the relevant Youth Court.

4.7 The Appointment Panel must convene as soon as practicable for the purpose of considering the application(s) and must provide the applicant(s) with an opportunity to appear before the Panel in person.

4.8 The Appointment Panel, in making its recommendation, shall have regard to the criteria in s 323(2) of the Act, and in its consideration of those criteria, the following further factors are to be taken into account:

- Knowledge of, and experience in, criminal law (see 4.11 – 4.12 below);
- Knowledge of the objects, principles and provisions of the Act, including a knowledge of the provisions relating to child offenders before the Youth Court;
- Knowledge of police obligations and requirements as they apply to the arrest, questioning and processing of young people;
- Knowledge of the roles of the various participants in the youth justice system;
- Knowledge of care and protection issues as they apply to youth justice procedures;
- Ability to relate to and communicate with young persons and their families;
- Awareness of community groups and resources available;
- Knowledge of education and training facilities available in local areas;
- Evidence of knowledge and experience of local cultural organisations;
- Knowledge of restorative justice principles and practice;
- Relevant qualifications, and training and a commitment after appointment to attend all relevant training and education programmes offered by the New Zealand Law Society at a local, regional or national level;
- Knowledge of cultural matters; and

- Any other evidence, including references.

4.9 On receipt of the Appointment Panel's recommendations, the AYCJ may:

4.9.1 Approve an appointment of counsel to the list as a Youth Advocate;

4.9.2 Give such approval subject to specified conditions, for example, that a Youth Advocate may not be assigned in respect of Category 3 or higher offences, or that specific training and mentoring programmes need to be completed;
or

4.9.3 Decline to approve appointment to the list.

4.10 Ordinarily, a successful applicant would only be appointed to one Youth Court. A Youth Advocate may, at the discretion of the AYCJ, be appointed to more than one Youth Court.

4.11 A Youth Advocate who is a legal aid provider would be able to demonstrate competence to act in a particular PAL category of case by the fact of having the corresponding legal aid lead or supervised provider approval.

4.12 A Youth Advocate who is not a legal aid provider may be able to demonstrate competence by meeting the corresponding competence and experience requirements set out in the Schedule to the Legal Services (Quality Assurance) Regulations 2011 and by providing case examples and work samples to the Appointment or Review Panel.

4.13 The AYCJ shall provide reasons in writing for his/her decision.

5 Review of Decision

5.1 In the event of an applicant not being included on the Youth Advocate list, the applicant may within one month of the date of the decision apply to the Principal Youth Court Judge (PYCJ) for a review of the decision.

5.2 In any such case the PYCJ will advise the Appointment Panel and AYCJ of the request for review. The Secretary of the Appointment Panel shall forward to the PYCJ and the applicant a copy of all documents and information received by the Panel including the application and supporting documents, a copy of the recommendation made to the AYCJ and a copy of the decision of the AYCJ.

5.3 The applicant is to have a reasonable opportunity after receipt of the information referred to in 5.2 to address any information by way of written submissions to the PYCJ.

5.4 The PYCJ will review and reconsider the decision made and advise the applicant, the AYCJ and the Appointment Panel of the final decision in writing.

5.5 Where the PYCJ carries out a review of any decision of an AYCJ such a review shall be by way of a rehearing on the information which was before the AYCJ and such further material and submissions which are provided by the applicant. The PYCJ may confirm, modify, or reverse the decision and may direct that the application be reheard by the panel subject to such directions as the PYCJ may make.

5.6 In any case where the PYCJ is unavailable to deal with the review for any reason including recusal, the PYCJ may delegate the review process to another Youth Court Judge.

6 Procedure for Review of Youth Advocate Lists

6.1 Every three years there will be a review of existing Youth Advocate lists. The Court Services Manager is to administer and organise the review in consultation with the relevant AYCJ. The Court Services Manager shall ask the local branch of the New Zealand Law Society to advertise the review. The review may also be advertised in any other manner the AYCJ thinks appropriate.

6.2 Counsel seeking to be considered for appointment as Youth Advocates at the time of such review must comply with the procedure set out in paragraphs 4.3 to 4.5.

6.3 The Court Services Manager shall send a letter to all Youth Advocates currently on the list, asking them to indicate whether or not they wish to be considered for reappointment, and providing a time limit for a response.

6.4 The Court Services Manager shall send a list of all new applicants and a list of those seeking to be reappointed to a Review Panel for consideration.

6.5 A Review Panel established to conduct the review shall be constituted in accordance with paragraph 3.

6.6 The Review Panel's role is to conduct interviews with all applicants and recommend to the AYCJ who should be included on the Court's list of Youth Advocates.

6.7 The Review Panel, in making its recommendation shall consider all matters set out at paragraph 4.8 and in the case of existing Youth Advocates additionally take into account the following:

- The recent performance of the Youth Advocate;
- The regularity of appearances by the Youth Advocate in the Youth Court;
- Any upheld complaints that have been received about the Youth Advocate;
- The extent to which the Youth Advocate has attended and participated in local, regional, and national Youth Advocate training seminars and workshops; and
- Any other matters it considers relevant.

6.8 On receipt of the Panel's recommendations, the AYCJ will consider the recommendation and will approve or modify the list as appropriate. Reappointment of existing Youth Advocates may be subject to specified conditions, for example, that specific training and mentoring programmes must be completed.

The AYCJ shall provide reasons in writing for his or her decision.

6.9 The Review Panel is not bound by any presumption of reappointment of current Youth Advocates to the reviewed list. The Review Panel may balance the need for experienced

Youth Advocates against the need to refresh the list with new Youth Advocates from time to time.

6.10 In the event of an applicant not being included on the Youth Advocate list, the applicant may apply to the PYCJ within one month of the date of the decision for the matter to be reconsidered.

6.11 Where an applicant seeks reconsideration of the decision the provisions of paragraph 5 apply.

7 Complaints about a Youth Advocate and Removal of a Youth Advocate from the Youth Advocate List

7.1 Any complaint about a Youth Advocate must be in writing and sent to the relevant AYCJ.

7.2 If the AYCJ considers that the complaint raises issues regarding the suitability of a Youth Advocate to continue in the role of Youth Advocate, the complaint shall be referred to a Complaint Panel for consideration and the Youth Advocate will be advised immediately.

7.3 In addition to 7.2, if the AYCJ believes that the complaint raises issues of sufficient seriousness as to require immediate suspension of the Youth Advocate's duties in that role, he or she may suspend the Youth Advocate from the list pending further investigation and resolution of the complaint. In such a case, the investigation and resolution of the complaint shall be completed as soon as practicable.

7.4 If the AYCJ considers that the complaint does not warrant referral to a Complaint Panel, the AYCJ shall discuss the complaint directly with the Youth Advocate for the purpose of addressing any issue raised and advise the complainant accordingly.

7.5 The Complaint Panel will be comprised in the same way as an Appointment Panel and Review Panel in paragraph 3 except that the membership shall be made up of persons from outside the area where the Youth Advocate, against whom a complaint is made, usually practices.

7.6 The Complaint Panel shall investigate the complaint and the Youth Advocate must be given the opportunity to be represented and to be heard before the Panel.

7.7 The Complaint Panel's role is to make a recommendation to the AYCJ in respect of the complaint. It may recommend that the name of the Youth Advocate be:

- a. Retained on the list; or
- b. Retained on the list but subject to reasonable conditions for a period of time if appropriate; or
- c. Suspended from the list until specified conditions are complied with, such as completion of training or gaining a certain amount of experience; or
- d. Removed from the list.

7.8 The AYJC shall consider any recommendation made by the Complaint Panel and shall make a decision and advise the Youth Advocate and Complaint Panel in writing accordingly.

7.9 If the AYJC decides that there are grounds for removal from the list the AYJC must consider whether the reasons for removal may amount to misconduct or unsatisfactory conduct under the Lawyers and Conveyancers Act 2006 and consider whether to refer the matter to the Lawyers Complaint Service of the New Zealand Law Society.

7.10 In the case of any decision under paragraph 7.8, the Youth Advocate may apply to the PYCJ for the matter to be reconsidered. In such a case the provisions of paragraph 5, with such amendments as are required, will apply.

8 Transfer of a Youth Advocate to a New Region or a New Court

8.1 In the case of a Youth Advocate who is listed on a Youth Advocate list in one Youth Court wishing to practise in another Youth Court, the following shall apply:

8.1.1 There shall be no presumption that the Youth Advocate will automatically be appointed to the list for the Court in the area in which the Youth Advocate wishes to work. The Youth Advocate will notify the relevant AYJC that he or she seeks inclusion on the Youth Advocate list in the new Court, and lodge his or her CV with the Court Services Manager.

8.1.2 If there is an existing vacancy in the Youth Advocate list, or a need for a new Youth Advocate to be appointed, the transferring Youth Advocate will be considered according to the procedures set out in paragraph 3. However, the transferring Youth Advocate will not have to satisfy the Appointment Panel of the matters set out in paragraph 4.8, other than those matters requiring knowledge of local facilities and resources, and cultural knowledge. The Appointment Panel may have regard to the matters listed in paragraph 6.7.

Dated: 04 April 2017