

# Representation where roster member previously provided duty counsel services



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## Subsequent representation in the same matter

As set out in subsection 69(1) of the Legal Aid Services Rules (Rules), a roster member who provided duty counsel services to an individual may not subsequently represent that individual in the same matter or in a related or ancillary matter, other than as duty counsel, except as provided in subsection 69(2) of the Rules and in accordance with this Policy. The roster member's associates in the practice of law are subject to the same restriction.

Neither a roster member nor the roster member's associates in the practice of law may represent an individual whom the roster member previously assisted in their capacity as duty counsel in the same matter or in a related or ancillary matter, unless the roster member or their associate in the practice of law:

- has obtained prior approval from LAO;
- has certified to LAO that there was a solicitor-client relationship between the roster member and the individual before the roster member provided duty counsel services to the individual; or
- provided advice to the individual under the "Advice Lawyer – Family Violence 2 Hour Authorization".

## Prior Approval

A roster member shall request LAO's approval to provide subsequent representation by completing the form entitled "Duty Counsel and Subsequent Representation Certification/ Request". The roster member must obtain written authorization from LAO before acknowledging a certificate, accepting an order for court ordered representation, or entering into a private retainer with an individual whom the roster member previously assisted in their capacity as duty counsel.

Upon receipt of such request, LAO may authorize the roster member to provide subsequent representation for any of the following reasons:

1. there is limited availability of roster members in the individual's geographic area
2. language and/or cultural competencies of the roster member
3. any other special skills or expertise of the roster member
4. any other reason related to the individual's circumstances

## **Certifying Prior Relationship**

Using the form entitled "Duty Counsel and Subsequent Representation Certification/Request", the roster member shall certify in writing that a prior solicitor-client relationship existed. The roster member shall provide such certification to LAO prior to entering into a subsequent retainer for the same matter or a related or ancillary matter.

## **Advice under the "Advice Lawyer - Family Violence 2 Hour Authorization"**

For clarity, if a roster member provided advice to an individual in their capacity as duty counsel under the "Advice Lawyer – Family Violence 2 Hour Authorization", the prohibition in subsection 69(1) of the Rules against representing the individual in a subsequent related or ancillary proceeding does not apply.

## **Subsequent representation in a separate matter**

A roster member may represent an individual to whom the roster member previously provided duty counsel services in a separate, unrelated matter provided the roster member did not attempt to solicit or promote their subsequent service while acting as duty counsel, and provided that any prior solicitor-client relationship was not generated through a violation of this Policy.

Roster members acting as duty counsel may not distribute their business cards, or that of their associates in the practice of law, to individuals seeking legal aid services or otherwise solicit business on the day and location of their duty counsel assignment.

## **Violation of the policy**

If a roster member violates this Policy, LAO may take compliance action including reducing or recovering all or a portion of the fees payable on the subsequent certificate; reducing or recovering all or a portion of the fees payable for the roster member's duty counsel services for the dates upon which the roster member assisted the individual; and undertaking roster management action, up to and including roster removal.