

GUIDELINES FOR APPOINTMENT AND RESPONSIBILITIES OF ASSIGNED COUNSEL IN CAPITAL CASES

1. Introduction

- 1.1. These Guidelines are issued by the Registrar of the Supreme Court and are to be read together with the Legal Profession (Professional Conduct) Rules 2015. They set out the criteria for the appointment of Counsel under the Legal Assistance Scheme for Capital Offences ('LASCO') and provide general guidance for the conduct of capital cases by such Counsel.
- 1.2. Where a case does not qualify for the assignment of Counsel under LASCO, the Accused person may wish to seek legal representation under the Criminal Legal Aid Scheme administered by the Law Society of Singapore.

2. Appointments to the LASCO Register of Counsel

- 2.1. A Register of LASCO Counsel ("the Register") is maintained by the Registrar, Supreme Court. There are three categories of LASCO Counsel, namely:
 - (a) Lead Counsel;
 - (b) Assisting Counsel; and
 - (c) Junior Assisting Counsel.
- 2.2. Any advocate and solicitor who is of good standing and reputation is eligible to apply to be emplaced on the Register. In addition, an applicant seeking to be emplaced within a particular category of LASCO Counsel must meet the criteria applicable to that category:

Category	Years in practice	Experience
Lead Counsel	7	<p>2 capital trials[^] and 2 capital appeals* before the Court of Appeal against conviction or acquittal.</p> <p>[^]Note:</p> <ul style="list-style-type: none"> (i) This would include a matter where the accused person eventually pleaded guilty or the matter was otherwise disposed of prior to judgment e.g. where an application for a Discharge not Amounting to an Acquittal or an application for a Discharge amounting to an Acquittal was granted, so long as the capital trial proceeded for a substantial period of time. <p>*Note:</p> <ul style="list-style-type: none"> (i) Such appeals cannot be against sentence only. (ii) This may include an application to review an earlier decision of an appellate court (but not an application for leave to make a review application) under Part XX, Division 1B of the Criminal Procedure Code.
Assisting Counsel	5	<p>(a) 2 capital trials[^]; OR (b) 1 capital trial and 1 capital appeal* before the Court of Appeal against conviction or acquittal.</p> <p>[^]Note:</p> <ul style="list-style-type: none"> (i) This would include a matter where the accused person eventually pleaded guilty or the matter was otherwise disposed of prior to judgment e.g. where an application for a Discharge not Amounting to an Acquittal or an application for a Discharge amounting to an Acquittal was granted, so long as the capital trial proceeded for a substantial period of time. <p>*Note:</p> <ul style="list-style-type: none"> (i) Such appeals cannot be against sentence only. (ii) This may include an application to review an earlier decision of an appellate court (but not an application for leave to make a review application) under Part XX, Division 1B of the Criminal Procedure Code.
Junior Assisting Counsel	-	1 criminal trial and 1 Plead Guilty mention (these can be non-capital matters and can be in the High Court or State Courts).

Apart from the above:

- (a) Counsel's previous experience from the Bench or as a Deputy Public Prosecutor and/or State Counsel may also be taken into account.
- (b) Senior Counsel who do not meet the above requirements may nevertheless be emplaced as Lead Counsel, at the discretion of the LASCO Appointment Panel and subject to such conditions as may be appropriate.
- (c) Counsel who have been in practice for at least 10 years and who have litigation experience in civil litigation in the High Court and Court of Appeal equivalent to that stipulated for qualification as Lead Counsel in the Table above may be emplaced as Lead Counsel, at the discretion of the LASCO Appointment Panel and subject to such conditions as may be appropriate.
- (d) The LASCO Appointment Panel has the overriding discretion to waive any or all of the criteria for emplacement of Lead Counsel, Assisting Counsel and Junior Assisting Counsel in a particular case.

2.3. In relation to para 2.2:

- (a) The experience for each category of Counsel set out at para 2.2 above must be gained separately at each level. For example, an Assisting Counsel seeking emplacement as a Lead Counsel cannot rely on the same cases which were relied on for the earlier emplacement as Assisting Counsel.
- (b) Experience in any trial or appeal will be taken into account only if Counsel was substantially involved* in the entire process, up to the conclusion of the trial or appeal. When an application for emplacement is made and Counsel indicates that he has the requisite experience, he is expected to list only the cases in which he was substantially involved. If it subsequently comes to light that Counsel relied on a matter to qualify for emplacement when he was not substantially involved in the matter, the LASCO Appointment Panel may remove his name from the Register.

* See the following illustrations on when Counsel is "substantially involved" in a matter.

Illustration (i): If Counsel was involved in preparing the appeal papers but was discharged before the hearing of an appeal, he was not "substantially involved" in the matter.

Illustration (ii): If a matter was fixed for 10 days' trial but Counsel only attended trial on 3 days, he was not "substantially involved" in the trial.

- (c) To qualify as Lead Counsel, the requisite experience in capital trials or capital appeals as Assisting Counsel (or the equivalent in briefed cases) is required. Experience in capital trials or capital appeals only as Junior Assisting Counsel (or the equivalent in briefed cases) will not be sufficient to qualify as Lead Counsel.

2.4. Counsel will be appointed to the Register for a fixed term of two years. At the expiry of their 2-year term, LASCO Counsel will have to apply to the Supreme Court for re-appointment for a fresh term of 2 years, if they choose to remain on the Register. Administratively there will be four expiry points in a year:

- (a) 31st January;
- (b) 30th April;
- (c) 31st July; and
- (d) 31st October.

This can be illustrated by the example of a lawyer who, in February 2016, applies to be on the Register for the first time. If his application is accepted and his appointment is effective March 2016, his 2-year term will expire on 31st January 2018.

2.5. Existing LASCO Counsel must write to the Supreme Court at least 2 months before the expiry of their 2-year term, if they are seeking re-appointment. Re-appointment will depend on:

- (a) how active Counsel was in responding to calls to take up cases; and
- (b) feedback on Counsel's performance, during Counsel's incumbent 2-year term.

2.6. During the course of LASCO Counsel's term, feedback will be sought from:

- (a) Judges / Judges of Appeal; and
- (b) Co-Counsel with whom LASCO Counsel was paired, at the end of every case assignment.

2.7. Appointment/Re-appointment of lawyers to the Register will be decided by the LASCO Appointment Panel, which comprises members of the Supreme Court Bench, as well as a representative of the Law Society. The LASCO Appointment Panel retains the discretion to approve or reject an applicant for appointment or re-appointment to the Register, without assigning any reasons.

2.8. The LASCO Appointment Panel may in its discretion also remove any name from the Register. For example,

- (a) Counsel may be removed or suspended from the Register if, *inter alia*:
 - i) he has been disbarred, suspended, ordered to pay a penalty or censured;
 - ii) he is unfit for practice by reason of ss 26(1)(e)–(h) of the Legal Profession Act; or
 - iii) any other reason which the LASCO Appointment Panel deems sufficient.
- (b) If an Inquiry Committee has been appointed as a result of adverse complaints with regards to Counsel's discharge of duties, any pending LASCO case assignment(s) may be revoked, with no new assignments being made to the Counsel pending the disciplinary proceedings. Counsel may then be reinstated if the proceedings do not culminate in disciplinary measures.

- 2.9. The Council of the Law Society of Singapore may write to the Registrar, Supreme Court, requesting that a name be added or removed from the Register and setting out the reasons for the addition or removal.
- 2.10. All LASCO Counsel must *immediately* inform the Supreme Court if his Practising Certificate has expired or if he is intending to cease practice and not renew his Practising Certificate for the forthcoming Practice Year. LASCO Counsel who have ceased to practice may be removed from the Register with immediate effect.

3. Case Assignments

- 3.1. Assignment of cases to LASCO Counsel is done by the Case Assignment Panel, comprising representatives from the Senior Counsel Forum, the Law Society of Singapore and the Supreme Court.
- 3.2. Counsel will be assigned for all cases where an Accused person faces trial for a capital charge. The Case Assignment Panel may also extend the assignment of Counsel to the conduct of appeals to the Court of Appeal where capital punishment is in issue, e.g.
 - (a) where an Accused person sentenced to capital punishment appeals against sentence and/or conviction; or
 - (b) where an Accused person has either been acquitted or sentenced to non-capital punishment but the Prosecution appeals, and a successful appeal carries the prospect of capital punishment being imposed.

LASCO Counsel will thus not be assigned where an Accused sentenced to non-capital punishment appeals against sentence, and there is no corresponding appeal by the Prosecution falling under (b) above.

- 3.3. The decision as to whom a case should be assigned to will depend on a range of factors, including:
 - (a) Counsel's existing caseload;
 - (b) language compatibility between Counsel and the Accused person; and
 - (c) any prior feedback on Counsel.
- 3.4. As regards Counsel's existing caseload, Counsel who have:
 - (a) 3 or more pending assignments at any one time; and/or
 - (b) completed 6 or more LASCO assignments during their 2-year termare apt to be accorded lower priority in the assignment of cases as compared to Counsel with comparatively lighter caseloads. However, Counsel with heavy caseloads may still be assigned a case, depending on the response rate from LASCO Counsel for that case.
- 3.5. As regards language compatibility, Counsel who speak the same language as the Accused may be given priority in the allocation of assignments, albeit that language differences between Counsel and the Accused will not be a bar to assignment (in which case the services of an interpreter will have to be engaged).

- 3.6. Lead Counsel may propose (subject to the Case Assignment Panel's approval) the name of an Assisting Counsel that satisfies the criteria in paragraph 2.2 above. Where he does not do so, the Case Assignment Panel may assign an Assisting Counsel from the Register.
- 3.7. The assignment of Counsel may be done at any stage of the criminal proceedings, within the discretion of the Case Assignment Panel. Where there is an indication from the Prosecution at a very early stage that the charge may be reduced, the Case Assignment Panel may assign LASCO Counsel to make representations to the Attorney General's Chambers on behalf of the Accused person.
- 3.8. Counsel may continue to represent the Accused person under LASCO in the following instances:
- (a) Where the Prosecution has indicated that it is not seeking capital punishment but *the charge remains a capital one*, i.e. punishable with death as a possible penalty (e.g. a charge for murder under limb (b), (c) or (d) of s.300 of the Penal Code) – representation under LASCO may continue regardless of whether the Accused person claims trial or pleads guilty to the capital charge.
 - (b) When the charge has been reduced to a non-capital one and the Accused person indicates he will plead guilty to the reduced non-capital charge (whether in the High Court or State Courts).

No further written approval is required from the Case Assignment Panel for LASCO Counsel to continue with the assignment under (a) or (b) above. In the case of (b), the Lead Counsel may continue with the assignment for the purposes of representing the Accused person in pleading guilty in the High Court or State Courts to the reduced charge (and for mitigating on his behalf) but any Assisting or Junior Assisting Counsel may be discharged.

- 3.9. However, where
- (a) the charge is reduced to a non-capital charge, to be heard in the High Court, and the Accused person seeks to *claim trial*; or
 - (b) the charge is delisted to be heard in the State Courts and the Accused person seeks to claim trial,

the assignment will not be continued. Any claims for disbursements, court attendance or honorarium under (a) or (b) above will not be allowed. In case of doubt, Counsel should seek clarification from the Case Assignment Panel in writing.

- 3.10. For the avoidance of doubt, LASCO Counsel's assignment will cease immediately upon the following:
- In the case of LASCO assignments for the purpose of trial or other applications before the High Court, upon the pronouncement of the sentence after trial or verdict disposing of the application, as the case may be; and

- In the case of LASCO assignments for the purpose of appeals or other applications before the Court of Appeal, upon the pronouncement of the verdict disposing of the appeal or application.

After cessation of the assignment as determined above, LASCO Counsel may, in the case of trials or applications before the High Court, file an appeal to the Court of Appeal against the result of the trial or application, where such a right of appeal exists at law and LASCO Counsel has obtained prior instructions from the Accused to file such an appeal. The filing of such appeals will constitute part of the LASCO Counsel's mandate – prior written approval of the LASCO Case Assignment Panel will not be required. Apart from this:

- (a) LASCO Counsel, wishing to file any further application under the auspices of LASCO will need to first seek prior written approval. Such approval will likely be given if LASCO Counsel currently representing the Accused seeks to continue with the representation for the following consequential matters:
 - i) Filing the Petition for Clemency to the President; and
 - ii) Disposal inquiries.
- (b) LASCO Counsel will not be assigned to file applications to the court entailing a stay of execution after the Court of Appeal has:
 - i) affirmed the sentence of death, upon dismissal of the Accused's appeal; or
 - ii) imposed the sentence of death, upon allowing the Prosecution's appeal.

3.11. For avoidance of doubt:

- (a) LASCO will assign **only one LASCO Counsel** to file an Accused person's Petition for Clemency:

If the LASCO Counsel is discharged prior to the filing of the Petition for Clemency, no more LASCO Counsel will be assigned to file the Petition for Clemency, unless:

- i) it was the LASCO Counsel who discharged himself (rather than the Accused person discharging him); *and*
- ii) LASCO Counsel confirms that the discharge was due to personal reasons not related to the case (e.g. health, or if the LASCO Counsel's practice needs to stop abruptly). In this respect, LASCO Counsel are expected to refrain from taking on any assignments to file the Petition for Clemency if they foresee any personal reasons that may necessitate them having to discharge themselves.

Fresh LASCO Counsel will thus **not** be assigned if LASCO Counsel discharged himself from acting in the filing of the Petition for Clemency as a result of difficulties in taking instructions from the Accused person. LASCO Counsel who discharge themselves will thus be required to furnish the reasons for their

discharge.

- (b) LASCO will assign LASCO Counsel to file ***only one Petition for Clemency*** per Accused person:

Once a Petition for Clemency has been filed by LASCO Counsel on the Accused person's behalf, no further LASCO Counsel will be assigned for the filing of any subsequent Petition for Clemency.

3.12. If the Lead Counsel is

- (a) not satisfied with the work of his Assisting Counsel or Junior Assisting Counsel; or
- (b) satisfied that the Assisting Counsel is not competent, or has provided inadequate professional services,

that Lead Counsel may report this in writing to the Case Assignment Panel and request for a change of Assisting Counsel, so long as this is done within a reasonable time before the hearing of a trial or an appeal therefrom or for any other application.

An Assisting Counsel may also inform the Registrar, Supreme Court, if the Lead Counsel has conducted the case incompetently or has provided inadequate professional services.

The Case Assignment Panel will consider both the interests of the Accused person and the administration of justice in deciding whether to allow the change requested. In appropriate cases, the Case Assignment Panel may refer the matter to the Court for a decision.

- 3.13. The Case Assignment Panel or the Court may discharge LASCO Counsel from his assignment at any time after taking into account the interests of the Accused person and the administration of justice.

4. Responsibilities of LASCO Counsel Upon Being Assigned a Case

- 4.1. Where more than one Counsel represents an Accused person, their duties and responsibilities shall be discharged jointly, whether they are assigned or briefed, or one is briefed and the other assigned.

General Responsibilities

- 4.2. Once an assignment is accepted, LASCO Counsel shall ensure that he is available to represent the Accused person at all stages of the proceedings.
- 4.3. All assigned Counsel shall work as a team and shall attend together – as far as possible – all meetings with the Accused person or with the Deputy Public Prosecutor, as well as all Court proceedings (including pre-trial conferences, Committal Hearings, Preliminary Inquiries, or otherwise).
- 4.4. When defending an Accused person, both Lead and Assisting Counsel shall endeavour to provide, in their professional opinion, the best possible defence available under law

to the Accused person. It shall be the duty of LASCO Counsel to ensure that he has sufficient ability, and that he has thorough, comprehensive and up-to-date knowledge of criminal law, procedure and practice (including the law of evidence).

4.5. LASCO Counsel shall:

- (a) satisfy himself, if assigned to represent an Accused person or more than one Accused person, that no conflict of interest is likely to arise and that he is prepared to give diligent and effective representation at all material times to the client;
- (b) be apprised of when hearings shall be heard and ensure that the Accused person is represented at all hearings;
- (c) arrange for and carry out a series of interviews (as soon as practicable after being appointed) with the Accused person to obtain complete instructions before the commencement of the trial, and keep records of the same;
- (d) consider whether any witnesses for the Defence are required and, if so, prepare them for trial;
- (e) consider whether a Notice of Alibi is required and, if so, submit an appropriate notice within the prescribed time;
- (f) consider whether it shall be appropriate to call expert evidence for the Defence and, if so, notify the Registrar, Supreme Court of the need and likely costs, if any, and obtain the requisite prior approvals under paragraph 5.3 below;
- (g) consider whether any facts can be agreed with the Prosecution and properly admitted in accordance with his instructions, with a view to saving time and expense at trial;
- (h) consider whether any representations ought to be made to the Prosecution and, if so, to make them within reasonable time;
- (i) convey to the Accused person any communications with the Prosecution and keep records of the same;
- (j) consider, evaluate and promptly convey to the Accused person any offers of a negotiated plea and the consequences thereof and seek the decision of the Accused person, in writing, on the same;
- (k) ensure that the Accused person is able to follow the trial and the evidence, so that he is able to instruct Counsel further in areas that had not been covered in preparations prior to the trial;
- (l) ensure that the Accused person understands the consequences of a conviction;

- (m) not further assign the case to another Counsel, except with the express leave of the Case Assignment Panel.

Attendance of Counsel in Court

- 4.6. All LASCO Counsel shall be present throughout the hearing of the trial or appeal. The Accused person shall not be left unrepresented at any stage of his trial or appeal.
- 4.7. Where two Counsel are assigned, neither shall absent himself except for good reason. Any such absences should only be for a short period of time and with the prior permission of the Court and consent of the Accused person. Should either Counsel obtain the consent of the Court and the Accused person for his absence, the other ought to be able to continue with the trial for that duration of time.

Disclosure of Defence(s)

- 4.8. Counsel must advise the Accused person of all possible defences which may reasonably be raised to the charge(s) framed. Counsel must ensure that the Accused person understands that all evidence and arguments supporting his defence must be raised to the court at the hearing, as any attempt to raise them in a post-verdict application, when they could have been raised before, may constitute an abuse of process. If the Accused person wishes to plead guilty despite these defences, signed instructions must be obtained and retained on file, as the Prosecution is compelled to prove its case in all capital cases even if the Accused person wishes to plead guilty. Such instructions must also be obtained in instances when the Accused person does not wish to pursue an appeal.

Non-Testimonial Evidence

- 4.9. Counsel shall ensure that the police or Prosecution procedures for non-testimonial evidence (relating to matters such as identification parades, photo show-ups, specimens of blood, urine and semen, scientific tests, and the like) were conducted properly during investigations, failing which an appropriate challenge should be mounted if such procedures are material to the case.

Appeals, Criminal Motions and Petitions of Revision

- 4.10. LASCO Counsel shall not include any grounds of appeal in the Petition of Appeal unless he considers such grounds properly arguable.
- 4.11. Applications for Motions or Petitions of Revision should be made where it is proper to do so, subject to paragraph 3.10 above.

Petitions for Clemency

- 4.12. In the case of Petitions for Clemency, LASCO Counsel are reminded of their obligation to **strictly** comply with any deadline that has been set by Prisons for filing the Petition for Clemency.

Interpreters

- 4.13. If LASCO Counsel and the Accused person do not speak the same language, the services of an interpreter must be used and the interpreter should certify the minutes to the effect that there was no communication gap between the Counsel and Accused person.
- 4.14. Counsel must seek the approval of the Case Assignment Panel before engaging the services of an interpreter, failing which any claims for the interpreter's fees may be rejected.

5. Remuneration

- 5.1. LASCO Counsel will be paid an honorarium for their professional services rendered. The payment of the honorarium is from State funds and is administered by the Registrar, Supreme Court. The quantum of the honorarium paid to Lead Counsel is independent of whether Assisting Counsel has been appointed.
- 5.2. The discharge letter will remind LASCO Counsel that claims for an honorarium are to be submitted within one (1) month from the date of the last hearing on forms provided by the Supreme Court. As the honorarium claims are processed and paid on the basis of work done, LASCO Counsel are required to keep:
 - (a) a record of time spent in Court,
 - (b) a record of interviews with Accused persons and/or relevant witnesses outside the Court;
 - (c) a description of the amount of paperwork done; and
 - (d) copies of submissions and skeletal arguments tendered in Court.

These should be set out clearly in the honorarium claim form, so that a proper assessment of the work done by Counsel may be done.

- 5.3. LASCO Counsel may seek reimbursement of expenses that have been reasonably incurred. Counsel must seek approval from the Registrar, Supreme Court before incurring expenses that are substantial (including all expert reports) or not normally required, failing which any claims for such expenses may be rejected.
- 5.4. Where the expenses entail payment to a third party, Counsel should **not** be asking the Supreme Court to reimburse the third party directly. Counsel must pay the third party first, before seeking reimbursement from the Supreme Court. As some of these expenses may be sizeable (for the smaller firms, sums in excess \$1,000 may be considered sizeable), Counsel may seek reimbursement from the Supreme Court as and when they are incurred, rather than waiting till the conclusion of the trial. Where the expense for which Counsel has obtained prior approval under paragraph 5.3 above entails paying a fee in excess of \$1,000 to a third party service provider, Counsel can make a disbursement claim from the Supreme Court even *before* disbursing the fee to the service provider if, at the point of filing the disbursement claim, Counsel:

- (a) confirms that the service has already been rendered by the third party service provider (e.g. in the case of experts, the expert report has already been provided to Counsel);
- (b) furnishes to Supreme Court the invoice issued by the third party service provider; and
- (c) undertakes to close the loop with Supreme Court by sending to Supreme Court the cash receipt issued by the third party service provider when the latter is ultimately paid by Counsel.

So long as the the disbursement claim is regular and does not warrant significant queries or requests for justification, Supreme Court expects to process the disbursement claim within 30 working days.

- 5.5. In cases where LASCO Counsel was initially briefed by the Accused person or his family and has been paid some fees, LASCO Counsel will not be able to claim any honorarium for work done, or disbursements for expenses incurred, if he has been paid for the work / expenses in his capacity as briefed Counsel. LASCO Counsel shall not accept any remuneration or any other form of consideration from the family or friends of the Accused person for representing the Accused person, except the honorarium made by the Registrar, Supreme Court.
- 5.6. Claims for expenses will only be allowed if they were incurred at a point when either the Lead Counsel or the Assisting Counsel (or both) are LASCO-assigned. If only the Junior Assisting Counsel is assigned by LASCO:
 - (a) he will be allowed to claim for reimbursement of only those expenses that were personal to himself, e.g. his own transport costs and photocopying charges for the Junior Assisting Counsel's copies of documents.
 - (b) Claims for other expenses, such as interpreter fees and the engaging of medical or other experts, will not be allowed.

6. Residual matters

- 6.1. In any situation not covered by these Guidelines, Counsel should act in the best interests of the Accused person and at the same time remember that his paramount obligation, as an officer of the Court, is to assist the Court in the administration of justice.

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