

## Chapter 4

### Performance Evaluation System

An evaluation report on the performance and/or conduct of assigned counsel or solicitors is compiled under the following circumstances:

- (a) where the performance or conduct of counsel or solicitors is considered unsatisfactory, e.g. failure to comply with the provisions of the Legal Aid Ordinance, professional misconduct; or
- (b) where cases handled by counsel or solicitors on the Record of Unsatisfactory Performance/Conduct (“the Record”) are concluded; or
- (c) where counsel or solicitors who have not done any legal aid work before complete the first case assigned.

#### **Record of Unsatisfactory Performance/Conduct (“the Record”)**

2. Assigned counsel or solicitors whose performance is considered unsatisfactory by the Departmental Committee on Monitoring Assignments to Counsel and Solicitors (“the Departmental Monitoring Committee”) will be placed on the Record.

3. If an assigned counsel or solicitor subsequently receives two consecutive satisfactory reports in relation to his performance in the legal aid cases handled by him and such reports are in relation to performance which took place after a reasonable period has elapsed since the date the assigned counsel or solicitor was placed on the Record his name will be removed from the Record.

4. Counsel or solicitors whose names are placed on the Record for not less than 6 months may request a review to have their names removed from the record. The Departmental Monitoring Committee may undertake a review on its own initiative at any time. Counsel or solicitors who have been removed from the Record will be so informed.

5. Assignment of legal aid work to counsel or solicitors whose names are placed on the Record requires the approval of a directorate officer.

#### **Removal from the Legal Aid Panel**

6. Subject to the decision of the Departmental Monitoring Committee, counsel or solicitors may be removed from the Legal Aid Panel (“the Panel”) if the unsatisfactory performance is of a serious nature. An act or omission is of such a nature if it has

substantially prejudiced the client's interests or put the Legal Aid Fund at risk or brought the legal aid service into disrepute.

7. Counsel or solicitors may also be removed from the Panel if the counsel or solicitors:
  - (a) have been suspended from practice by the Barristers Disciplinary Tribunal or the Solicitors Disciplinary Tribunal, as the case may be;
  - (b) cease to hold a current practising certificate;
  - (c) cease to be in active practice and consents to be removed from the Panel; or
  - (d) request to be removed from the Panel.

### **Representations by Counsel or Solicitors**

8. Counsel or solicitors will be given an opportunity to make representations in respect of his performance which is considered unsatisfactory before the matter is reported to the Departmental Monitoring Committee.

9. If, having considered the unsatisfactory performance report, the Departmental Monitoring Committee intends to place a counsel or solicitor on the Record or to remove him or her from the Panel, the counsel or solicitor concerned will be given notice of such intention and an opportunity to make further representations.

10. Counsel or solicitors will be informed of the decision of the Departmental Monitoring Committee in writing.

### **Referral to Regulatory Bodies**

11. Where the performance of counsel or solicitors is considered unsatisfactory by reason of their misconduct when acting or assigned to act for persons receiving legal aid, the matter may be referred to the professional body concerned for investigation.

### **Departmental Monitoring Committee**

12. The Departmental Monitoring Committee formulates policy and guidelines on assignment to private practitioners and oversees the administration of assignments to private practitioners on the Legal Aid Panel in addition to considering reports on unsatisfactory performance or conduct of assigned counsel or solicitors. It is chaired by the Director of Legal Aid and comprises of directorate officers of the Department. The ICAC will be consulted when appropriate issues relating to corruption prevention are identified.