



UvA-DARE (Digital Academic Repository)

In the shadow of the judge

The involvement of judicial assistants in Dutch district courts

Holvast, N.L.

Publication date

2017

Document Version

Other version

License

Other

[Link to publication](#)

Citation for published version (APA):

Holvast, N. L. (2017). *In the shadow of the judge: The involvement of judicial assistants in Dutch district courts*. Eleven International Publishing.

General rights

It is not permitted to download or to forward/distribute the text or part of it without the consent of the author(s) and/or copyright holder(s), other than for strictly personal, individual use, unless the work is under an open content license (like Creative Commons).

Disclaimer/Complaints regulations

If you believe that digital publication of certain material infringes any of your rights or (privacy) interests, please let the Library know, stating your reasons. In case of a legitimate complaint, the Library will make the material inaccessible and/or remove it from the website. Please Ask the Library: <https://uba.uva.nl/en/contact>, or a letter to: Library of the University of Amsterdam, Secretariat, Singel 425, 1012 WP Amsterdam, The Netherlands. You will be contacted as soon as possible.

IN THE SHADOW OF THE JUDGE

The involvement of
judicial assistants in
Dutch district courts



Nina Holvast

eleven
international publishing

In the shadow of the judge

The commercial edition of this book is published by Eleven International Publishing.

ISBN 978-94-6236-777-7

ISBN 978-94-6274-745-6 (e-book)

© 2017 Nina Holvast | Eleven International Publishing

Published, sold and distributed by Eleven International Publishing

P.O. Box 85576

2508 CG The Hague

The Netherlands

Tel.: +31 70 33 070 33

Fax: +31 70 33 070 30

e-mail: sales@budh.nl

www.elevenpub.com

Sold and distributed in USA and Canada

International Specialized Book Services

920 NE 58th Avenue, Suite 300

Portland, OR 97213-3786, USA

Tel.: 1-800-944-6190 (toll-free)

Fax: +1-503-280-8832

orders@isbs.com

www.isbs.com

Eleven International Publishing is an imprint of Boom uitgevers Den Haag.

This publication is protected by international copyright law.

All rights reserved. No part of this publication may be reproduced, stored in a retrieval system, or transmitted in any form or by any means, electronic, mechanical, photocopying, recording or otherwise, without the prior permission of the publisher.

Printed in The Netherlands

IN THE SHADOW OF THE JUDGE

The involvement of judicial assistants in Dutch district courts

ACADEMISCH PROEFSCHRIFT

ter verkrijging van de graad van doctor
aan de Universiteit van Amsterdam
op gezag van de
Rector Magnificus prof. dr. ir. K.I.J. Maex
ten overstaan van een door het College voor Promoties ingestelde
commissie, in het openbaar te verdedigen in de Agnietenkapel
op vrijdag 22 september 2017, te 12.00 uur
door
Nina Leonie Holvast
geboren te Groningen

Promotiecommissie

Promotor:	Prof. dr. H.G. Van de Bunt	Erasmus Universiteit Rotterdam
Copromotor:	Dr. N. Doornbos	Universiteit van Amsterdam
Overige leden:	Prof. dr. E. Mak	Universiteit Utrecht
	Dr. mr. M. Malsch	Nederlands Studiecentrum Criminaliteit en Rechtshandhaving
	Prof. dr. P. Mascini	Erasmus Universiteit Rotterdam
	Dr. R.J.S. Schwitters	Universiteit van Amsterdam
	Prof. dr. mr. J.E. Soeharno	Universiteit van Amsterdam
	Prof. dr. M. de Wilde	Universiteit van Amsterdam

Faculteit der Rechtsgeleerdheid

TABLE OF CONTENTS

1	Introduction	11
1.1	Rise and expansion of the employment of judicial assistants	14
1.2	Concerns regarding judicial assistants' involvement in judicial decision-making	16
1.2.1	The judicial position and its safeguards	17
1.2.2	Sense of responsibility for the adjudication	18
1.2.3	Judges as editors of the assistants' work	19
1.2.4	Divergent goals and attempts to influence the outcome of cases	20
1.2.5	Reliance on statute, case law and judicial guidelines	21
1.2.6	Questioning the effectiveness and efficiency of judicial assistant employment	22
1.2.7	Legitimacy and trust in the judicial office	23
1.3	Research questions and approach	24
1.4	Structure of the book	26
2	Method of the empirical research	29
2.1	The qualitative multi-method approach and its challenges	29
2.1.1	Multi-method approach	30
2.1.2	Modification of the research approach and research focus during the data collection	30
2.1.3	External validity and verification of the research results	31
2.1.4	Respondents' behaviour related to the presence of the researcher	32
2.1.5	Research timeline	33
2.2	Following cases in the Dutch district courts	34
2.2.1	Court selection and access	34
2.2.2	Participant observations and document analyses in the followed cases	37
2.2.3	Interviews with the judges and judicial assistants involved	40
2.2.4	Additional gathering of information during the research stay	42
2.2.5	Data analyses	42
2.3	Additional interviews with respondents outside of the Dutch district courts	43

2.3.1	Exploratory and broadening interviews in other Dutch court settings	43
2.3.2	Interviews and observations conducted in England and Wales	44
3	Reflections on the Dutch judicial assistance model from an inter-jurisdictional perspective	45
3.1	The organisation of judicial assistance in the Netherlands	47
3.1.1	The history of Dutch judicial assistants	47
3.1.2	The Dutch judicial assistance models in district courts and criminal and civil Courts of Appeal	49
3.1.3	Judicial assistants at the courts of final appeal	53
3.2	Judicial assistance models in the US and England and Wales	56
3.2.1	US law clerks: young and ambitious personal assistants to judges	56
3.2.2	Traditional clerks as legal advisers of lay Magistrates	59
3.2.3	The recently introduced function of Judicial Assistants	62
3.3	Distinguishing features of the judicial assistance models	66
3.3.1	Reasons for employing judicial assistants	66
3.3.2	Ratio of judicial assistants to judges	68
3.3.3	The qualifications of judicial assistants and the terms of their employment	68
3.3.4	Duties of assistants and their participation in various stages of the judicial process	70
3.3.5	Judicial assistants' assignment to individual judges or the entire court	71
3.3.6	Judicial assistants working with professional or lay judges	72
3.4	Conclusion	72
4	Normative viewpoints on the involvement of judicial assistants: the rule of law versus the managerial perspective	75
4.1	The rule of law perspective on the judiciary	78
4.1.1	The notion of rule of law	78
4.1.2	Rule of law principles incorporated into the Dutch judicial organisation	80
4.2	The managerial perspective on the judiciary	89
4.2.1	Managerial concepts regarding court organisation	89
4.2.2	Managerialism in court practice in the Netherlands	92
4.3	A theoretical assessment of different types of involvement of judicial assistants	97
4.3.1	Rule of law evaluation	98
4.3.2	Managerial evaluation	99

5	Collecting the materials for reaching the judgment: the run up to the hearing and the hearing	103
5.1	The run up to the hearing	103
5.1.1	Deciding if, when and how to adjudicate a case	104
5.1.2	Judgments without a hearing	105
5.1.3	Allotment of cases	106
5.1.4	Preparing the memo and structuring the files	107
5.1.5	Communication and deliberation prior to the hearing	117
5.1.6	Contact with the parties	118
5.1.7	Analysis of the involvement of judicial assistants in the run up to the hearing	120
5.2	The hearing	122
5.2.1	Role of the memo during the hearing	122
5.2.2	Creating the record and other administrative duties	123
5.2.3	Involvement of assistants during the hearing	124
5.2.4	Providing feedback on the judge's approach	127
5.2.5	Adjournments of cases and making interim-decisions	128
5.2.6	Informal discussion on the day of the hearing	129
5.2.7	Analysis of the involvement of judicial assistants during the hearing	130
5.3	Conclusion	131
6	Deciding the judgment: deliberations and writing the judgment	133
6.1	Deliberations	133
6.1.1	Role of the memo during deliberations	134
6.1.2	The involvement of assistants during panel deliberations	134
6.1.3	Roles of participants in panel deliberations	138
6.1.4	'Deliberating' in single-judge cases	140
6.1.5	The duty of assistants to participate and the perceived boundaries of their involvement	141
6.1.6	Providing instructions for writing the judgment	142
6.1.7	Consulting a third party	144
6.1.8	Analyses of the involvement of judicial assistants in deliberations	145
6.2	Writing of the judgment	147
6.2.1	The practice of drafting by the assistant	147
6.2.2	Using the information from deliberations in the drafting	149
6.2.3	The memo and other materials that can be employed in judgment writing	150
6.2.4	Judicial assistants' individual styles of judgment writing	150
6.2.5	Rethinking and altering a judicial decision	151
6.2.6	Checking and adjusting draft judgments by judges	154

6.2.7	Analyses of the involvement of judicial assistants in judgment writing	157
6.3	Conclusion	158
7	Factors that determine the involvement and impact of judicial assistants	161
7.1	Determining factors	162
7.1.1	Trust	163
7.1.2	Role perceptions	165
7.1.3	Experience and expertise	167
7.1.4	Career perspectives and ambitions	171
7.1.5	Type of case: complexity-level and degree of routine	173
7.1.6	Single-judge or panel decision-making	176
7.1.7	Time pressure and workload	179
7.2	Differences and similarities in the studied courts and court divisions	181
7.2.1	Court location characteristics	181
7.2.2	Criminal versus administrative law divisions	183
7.3	Conclusion	188
8	Conclusions and reflections on the involvement of judicial assistants	191
8.1	Empirical findings of the research	193
8.1.1	Discrepancy between the formal position of judicial assistants and the wide variation in their actual involvement	193
8.1.2	Ambiguity in the judge–judicial assistant relationship: a cautious search for the right balance	196
8.1.3	Judicial assistants’ involvement affects the judicial decision-making practice in various ways	200
8.2	Normative evaluation of the involvement of judicial assistants in judicial decision-making	205
8.2.1	Theoretical evaluation of different types of duties of judicial assistants	206
8.2.2	Evaluation of the involvement of judicial assistants in practice	207
8.3	Implications for the judicial decision-making practice	210
8.3.1	Embracing the benefits of judicial assistance	210
8.3.2	Minimising the hazards of judicial assistance	214
8.3.3	Creating professional standards and guidelines	217
	Acknowledgements	221
	Summary	223

<i>Table of Contents</i>	9
Samenvatting	233
Bibliography	243
Appendix 1 – Key information regarding the observed hearings	253
Appendix 2 – Conducted research activities per hearing	255
Appendix 3 – Interviewed respondents during the fieldwork (anonymised)	257
Appendix 4 – Interviewed respondents additional interviews (anonymised)	261
Appendix 5 – Members of the Steering committee	263
Appendix 6 – Checklist for assessing the memo	265
Appendix 7 – Checklist for assessing the hearing and deliberation sessions	267
Appendix 8 – Checklist for assessing the draft- and final judgments of the hearing	269
Appendix 9 – Example of an item list used for the interviews with respondents involved in the hearing	271
Appendix 10 – List of codes used for the analysis in Atlas.ti	277
Appendix 11 – Hierarchy of the Dutch courts	281
Appendix 12 – Overview of literature regarding heuristics, and cognitive and social biases in judicial decision-making	283