

4th Asia Pro Bono Conference and Legal Ethics Forum Session Presentation Plan Template

E2 4th APBCLEF Regulation and sanctions of the legal profession

Name of Session: Regulation and sanctions of the legal profession

Session Description/Aim:

This session will explore the variety of ways in which legal professionals are monitored and professional legal quality can be assured in the region.

Total Session Minutes: (60 min)

Facilitator:

Freda Grealy, (Law Society of Ireland) fredagrealy@gmail.com

Co-Presenters:

1. Freda Grealy, (Law Society of Ireland) fredagrealy@gmail.com

2. Mae Tanner, (International Bar Association's Human Rights Institute) mae.tanner@int-bar.org

3. Suwajak Chandaphan, (Mae Fah Luang University) suwajak.cha@mfu.ac.th

Session Plan:

Activity Step	Activity Description	Time (Min)	Presenters	Materials Needed
1	Introductions	5	All	
2	Small group discussion (groups of 3) Discuss in your groups the following: 1. Why is it important to monitor lawyers? 2. Why is it important to monitor judges? 3. List the ways in which legal professionals are monitored & regulated.	15	All presenters are moving around the room and assisting with groups if any questions arise	10 large pieces of paper 10 markers for groups Tape I will put the questions on PPT
3	Debrief and feedback	5	Suwajak doing debrief? I can write up flipchart	Flipchart

4	Mini presentation– sharing from each presenter/ jurisdiction on how lawyers & judges are regulated and sanctioned in the region.	15	<p>Mae 7 mins</p> <p>The challenges facing regulation in Myanmar, eg, government/judiciary control over regulation and lack of clarity and due process in disciplinary procedures. To lead into the small group discussion session I would mention some of the things we are working with the lawyers on to improve the situation, eg: reform of the laws regulating the profession to reintroduce a role for lawyers in co-regulation or self-regulation and improve certainty in disciplinary procedures and ethical standards; improve education for lawyers on legal ethics; encourage lawyers to take more responsibility for professional ethics through an independent bar association.</p> <p>Suwijak 7 mins</p> <p>I'll share the challenges of the judicial ethics in Thailand during 2006 - 2015. There are many point that I think it 's very</p>	<p>PowerPoint</p> <p>Visuals/charts</p>
---	--	----	---	---

			interesting i.g. the judicial code of conduct, the status of the defendant, the legal sanction and the future of the judicial ethic in Thailand. To lead into the small group discussion session I 'll share to the audience about the social status, legal ethic and the legal sanction of the Judges in Thailand and ask them in the same issues. - I 'll spent the time about 5-7 minutes.	
5	<p>Small group discussion</p> <ol style="list-style-type: none"> 1. Can professional legal quality can be assured and how? <p>Ask the participants to draw on experiences in their own countries and address the questions</p> <ol style="list-style-type: none"> 1. Does the system in their jurisdictions work? 2. What are the challenges? 3. What can be done to improve the regulatory system? 	15	Mae – can you lead this and the debrief and of course we will also pitch in.	Paper & pens
6	Debrief and wrap up	5		
Total Time:		60		



the global voice of
the legal profession

Regulating the Legal Profession

International standards
and the example of Myanmar

What is regulation?

- Standards to guide ethical and professional conduct
- Mechanisms for monitoring and enforcing the standards

Why do we need regulation?

- Ensure quality legal services and genuine access to justice
- Judges and lawyers must be trusted to safeguard the rule of law and properly administer justice:
 - Duty to the client
 - Duty to the court
 - Duty to administer justice according to the law
- Maintain the dignity of the profession

UN Basic Principles on the Role of Lawyers

Article 12

Lawyers shall at all times maintain the **honour and dignity of their profession** as essential **agents of the administration of justice**.

Article 13

Duties of the lawyer towards the client

How do we regulate? (1)

- Making clear and fair rules
- Making lawyers and their clients aware of those rules
- Having a fair procedure with reasonable sanctions/penalties

UN Basic Principles on the Role of Lawyers

Article 26

Codes of professional conduct for lawyers shall be **established by the legal profession** through its appropriate organs, **or by legislation**, in accordance with **national law and custom** and recognized **international standards and norms**.

Article 27

Charges or complaints made against lawyers in their professional capacity shall be processed **expeditiously and fairly** under appropriate procedures. Lawyers shall have the right to a **fair hearing**, including the right to be assisted by a lawyer of their choice.

How do we regulate? (2)

- Impartially
- According to the rules

UN Basic Principles on the Role of Lawyers

Article 28

Disciplinary proceedings against lawyers shall be brought before an **impartial disciplinary committee established by the legal profession**, before an **independent statutory authority**, or before a **court**, and shall be subject to an **independent judicial review**.

Article 29

All disciplinary proceedings shall be determined in accordance with the code of professional conduct and other recognized standards and ethics of the legal profession and in the light of these principles.

Who regulates, and what sanctions?

- The profession? (self-regulation)
- The government and/or courts?
- Both? (co-regulation)
- Fine, reprimand, suspend, disbar, imprison, public notice

Myanmar Bar Council

Role

- Makes rules about qualifications, admission procedures, rights and duties of advocates, conditions for practice, legal education
- Investigates misconduct

Composition

- Attorney-General (Chair)
- Deputy Attorney-General (Vice Chair)
- Supreme Court Judge
- Six advocates nominated by Supreme Court
- Director-General, Supreme Court
- Director-General, Attorney-General's Office (Secretary)

Disciplinary Processes and Sanctions in Myanmar

- Supreme Court refers case to Bar Council for inquiry
- Tribunal of three appointed by Chief Justice
- Bar Council submits its finding to the Supreme Court
- Advocate and Bar Council have right of hearing
- Orders passed (reprimand, suspend, disbar)
- Court **may** review
- Punishment recorded in roll of advocates

How can we ensure professional legal quality?

- Education for lawyers and the public

*‘Governments, professional associations of lawyers and educational institutions shall ensure that lawyers have **appropriate education and training** and be made **aware of the ideals and ethical duties of the lawyer** and of human rights and fundamental freedoms recognized by national and international law’ (art 9, Basic Principles)*

- Reform Bar Council Act
- Self-regulation through independent bar associations
- Other ideas? What are the weaknesses in your jurisdiction?

4th APBCLEF

Regulation and sanctions of the legal profession



**Freda Grealy, (Law Society of
Ireland) Mae Tanner, (International Bar
Association's Human Rights Institute)
Suwajak Chandaphan, (Mae Fah Luang
University) suwajak.cha@mfu.ac.th**

THE CHALLENGES OF THE JUDICIAL ETHICS IN THAILAND



SUWIJAK CHANDAPHAN
SCHOOL OF LAW, MAE FAH LUANG
UNIVERSITY, THAILAND

The Basic Principle of the Profession of Judges



- Independence
- Impartiality
- Integrity
- Propriety
- Equality
- Competence

**THE BANGALORE
PRINCIPLES
OF JUDICIAL CONDUCT
2002**

The Judicial Code of Conduct in Thailand

- Ideology for Judges
- Conduct in Court Proceeding
- Ethics in Administrative Duties
- Ethics regarding other activities
- Ethics relating to General Conduct and Family
- Ethics for Judge-Trainees, Kadis, and Lay Judges

The Challenges of the Judicial Profession



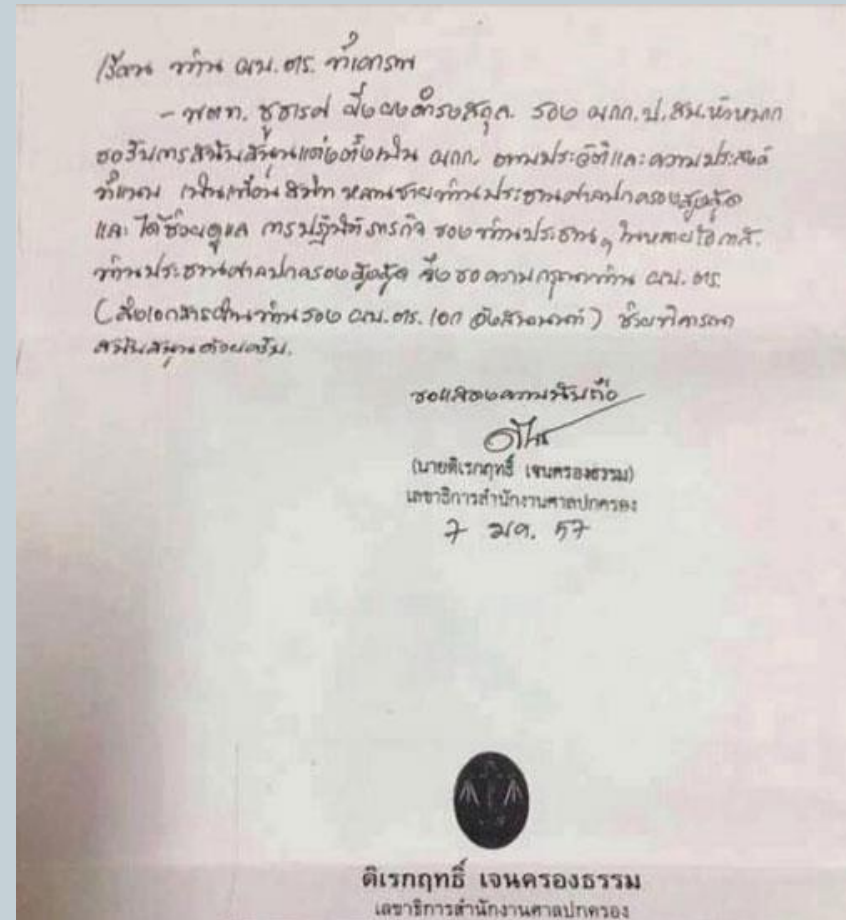
- The bribe for do not dissolution of the party case



The Challenges of the Judicial Profession



- In 2015, Crisis to the Administrative court



Conclusion



- Lifting the profession of judge to be as people of integrity, there is high expectation of the profession. When the personal fault has occurred, people always question the whole system of hearing proceedings of the judges.
- Although there is high level of determination regarding judicial ethics, it is unable to control the behaviors of every judge. Likewise, to follow or not to follow the ethics depend on each judge. Therefore, Thai people should not judge the judicial ethics of the judges based on a person, as they should focus on the whole picture.

Regulating the Legal Profession



the global voice of
the legal profession



INTERNATIONAL STANDARDS AND THE EXAMPLE OF MYANMAR

MAE TANNER

UN Basic Principles on the Role of Lawyers



Qualifications and training

Article 9

Governments, professional associations of lawyers and educational institutions shall ensure that lawyers have **appropriate education and training** and be made **aware of the ideals and ethical duties of the lawyer** and of human rights and fundamental freedoms recognized by national and international law.

UN Basic Principles on the Role of Lawyers



Duties and responsibilities

Article 12

Lawyers shall at all times maintain the **honour and dignity of their profession** as essential **agents of the administration of justice**.

Article 13

Duties of the lawyer towards to client

UN Basic Principles on the Role of Lawyers



Ethical standards and disciplinary processes

Article 26

Codes of professional conduct for lawyers shall be **established by the legal profession** through its appropriate organs, **or by legislation**, in accordance with **national law and custom** and recognized **international standards and norms**.

Article 27

Charges or complaints made against lawyers in their professional capacity shall be processed **expeditiously and fairly** under appropriate procedures. Lawyers shall have the right to a **fair hearing**, including the right to be assisted by a lawyer of their choice.

UN Basic Principles on the Role of Lawyers



Ethical standards and disciplinary processes

Article 28

Disciplinary proceedings against lawyers shall be brought before an **impartial disciplinary committee established by the legal profession**, before an **independent statutory authority**, or before a **court**, and shall be subject to an **independent judicial review**.

Article 29

All disciplinary proceedings shall be determined in accordance with the code of professional conduct and other recognized standards and ethics of the legal profession and in the light of these principles.

Myanmar Bar Council



Role

- Makes rules about qualifications, admission procedures, rights and duties of advocates, conditions for practice, legal education
- Investigates misconduct

Composition

- Attorney-General (Chair)
- Deputy Attorney-General (Vice Chair)
- Supreme Court Judge
- Six advocates nominated by Supreme Court
- Director-General, Supreme Court
- Director-General, Attorney-General's Office (Secretary)

Disciplinary Processes and Sanctions in Myanmar



- Supreme Court may reprimand, suspend, remove from practice a lawyer guilty of misconduct
- Tribunal of three appointed by Chief Justice
- Supreme Court refers case to Bar Council for inquiry
- Bar Council submits its finding to the Supreme Court
- Advocate and Bar Council have right of hearing
- Orders passed
- Court **may** review
- Punishment recorded in roll of advocates

How can we ensure professional legal quality?



- Education for lawyers and the public
- Reform Bar Council Act
- Self-regulation through independent bar associations
- Other ideas? What are the weaknesses in your jurisdiction?



- Questions and discussion



Thanks you all!
Kyae Zu Tin Ba Tal!