

4th Asia Pro Bono Conference and Legal Ethics Forum

Session E5: A lawyer's duty to the client and using a client-centered lawyering approach

Client-Centered Lawyering: meaningful exchange between lawyer and client

- Ask the clients to define the problem. Listen carefully to what concerns them most about their situation and resolving their legal problems, what outcomes they want.
- Communicate with the client. Get to know him/her (background, likes, how she/he landed in the situation). Use plain language often. Find out about the context of the client's life.
- Respect client autonomy, in society and in the lawyer-client relationship. Stay alert to the line between advising /counseling and substituting your values or judgment for the client's.
- Foster client decision-making. The lawyer provides legal perspectives and probes to help the client be sure that what the client says she/he wants is consistent with her/his values.
- Discuss expectations for your work together. Discuss cooperation you need from the client, decisions you will bring to the client about the course of the case, how you will meet/talk, when the client should be sure to contact you (e.g., new information, unexpected occurrence on the case).
- Bring sensitive tactical decisions to your client's attention for input.
- Client objectives may change over the course of a case/matter.
- Be careful in making promises to your clients, and keep the promises you make.

Further reading:

Katherine R. Kruse, Engaged Client Centered Representation and the Moral Foundation of the Lawyer-Client Relationship, 36 Hofstra L. Rev. 577 (2011),
<http://scholars.law.unlv.edu/cgi/viewcontent.cgi?article=1659&context=facpub>

Robert D. Dinerstein, Client-Centered Counseling: Reappraisal and Refinement, *in* Susan D. Carle, ed., *LAWYERS' ETHICS AND THE PURSUIT OF SOCIAL JUSTICE: A CRITICAL READER* (New York: NYU Press Critical America Series 2005).
<http://www.law.indiana.edu/instruction/profession/2010/doc/dinerstein.pdf>

Session co-Presenters:

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A Lawyer's Duty to the Client

Client-centered Lawyering Approach

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Aims of the session

Be better able to:

- Describe client-centered lawyering in the context of pro bono representation of disadvantaged/poor persons
- Spot situations that give rise to ethical dilemmas, analyze the conflicts of interest in these situations, and understand the basic considerations in analyzing the situation
- Practice client counseling / lawyer decision-making in situations of conflict of duties, conflict of interests

Opening discussion

What are the key ethical duties a lawyer owes to his/her client?

Buzz: 10 min. in groups of 3 or 4 people

Discuss the key duties and potential conflicts that can arise for a lawyer and a client.

Each group is to come up with three examples from their jurisdictions.

Ethical Dilemmas in Poverty Lawyering

Presumption: Lawyers are bound by multiple duties

- **Zealous representation of the client**, i.e. furthering the client's expressed wishes and interest.
- **Duty to the justice system** – client representation must be provided “within the bounds of law”, i.e., the lawyer may not become a participant in the client's unlawful activity.
- **Duty to third parties and public**, that might be harmed from client's activity to which lawyer assisted.

Question no.1:

How do we reconcile these competing duties when client asks the lawyer' to assist in conduct that might entail the violation of a valid legal norm?

Question no. 2 (pursuant to question no. 1):

Does it matter that the client is poor? If so – how?

Case Study – Eve’s Baking Entrepreneurship

Eve is a 38 old single mother, who has been on welfare for years. Following a process of personal and professional training and empowerment, she decides to try to move out of welfare dependence.

Eve wishes to establish a small baking/prepared food business, and sell her products to nearby customers. At first she will operate her business from home.

Eve has begun selling her baking goods to businesses in the neighborhood. Things are slow, but she is very encouraged about prospects.

Remaining in the informal economy

Lawyer Liz has been assisting Eve. Liz clarified that starting a business requires registration with the Tax Authorities, and applying for a business permit. In your district there are no “grace periods” to transition from welfare to a small business. It is also not possible to receive a business permit for food manufactured at home.

Liz conveys this information to Eve.

However:

Eve is concerned she might lose her welfare entitlement as soon as she receives some income, and that her business is too fragile to be relied upon. She decides to begin her operations as an informal business – not notifying the tax authorities, nor applying for a business license.

DISCUSSION AND ROLE PLAY

Liz (lawyer) discusses the situation with her client.

What will she say?

Eve (client): explaining to Liz what her worries are.

What will she say?

Ethical advisor:

What should Liz consider when forming her ethical position?

Partial move to formal status

As Eve's business expands, she wants to register it with the tax and other official authorities, and comply with the formal requirements. But she is still highly concerned about losing her welfare.

Therefore, she wants to register the business in her daughter's name.

The daughter, unemployed with no income, will assist in the business, as needed. She will pay the taxes and the business will therefore be progressing towards becoming formal.

DISCUSSION AND ROLE PLAY

- Liz needs to explain to her client the difficulties in this move – what will she say?
- Eve tries to persuade her lawyer that this is what SHE wants to do.
- Eve also asks Liz what the chances are of being caught.
- Liz knows chances are low – should she tell this to her client?
- Ethical Advisor: is telling about chances of enforcement the same as allowing the client to go ahead with an illegal act?

Contract between Eve & her daughter

Eve has asked Liz to assist her in drawing a contract/MOU between herself and her daughter.

The MOU would lay out the mutual understanding that even though the business would be registered under the daughter's name, Eve will be its executive manager, as well be responsible for all expenses, taxes and other liabilities. She will reimburse her daughter for any expense occurred.

This way the daughter would be at least partially protected.

DISCUSSION AND ROLE PLAY

Eve:

Try to explain to Liz why you really need the contract and why she should help you?

Liz:

Explain the difficulties in assisting Eve.

Ethical advisor:

What should Liz consider in order to make a good ethical decision?

Steps towards Formalization

Eve's business is growing, and she again turns to Liz asking for the following:

1. Assessment of a rental contract into which the baking business would move, provided by the landlord. The business is still registered under her daughter's name.
2. Assistance in filling out an application to a micro-lending fund, for a business loan. The fund is familiar with the difficulties entailed in moving from welfare to a business, and is willing to provide the loan despite the inadequate registration.
3. Legal opinion about the way to secure a trademark for Eve's Logo, which she had designed for her business.

DISCUSSION AND ROLE PLAY

Eve – asks Liz to

1. Go over rental contract provided by owner of a store to make sure rental terms are OK

- Liz – are you OK doing this?
- Ethical Advisor – what are the dilemmas?
- **2. Help file an application to a micro-lending fund**
- Liz – are you OK doing this?
- Ethical Advisor – what are the dilemmas?

3. Legal opinion about how to register trademark

- Liz – are you OK doing this?
- Ethical Advisor – what are the dilemmas?

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Session Plan for E5 A lawyer's duty to the client and using a client-centered lawyering approach

Session Description/Aim:

Participants should be able to:

1. Describe client-centered lawyering in the context of pro bono, meaning representation of disadvantaged/poor persons
 - what it means for communications, understanding context, client interests
2. Become sensitized to situations that give rise to ethical dilemmas, identify and recall the multiple considerations and duties of the lawyer, including ethical obligations of confidentiality, zeal in representation, duty to the court, the public and third parties – analyze the conflicts of interest in these situations and understand the basic considerations in analyzing the situation.
3. Practice client counseling / lawyer decision-making in situations of conflict of duties, conflict of interests

Total Session Minutes: (60 min)

Facilitator:

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Session Plan:

Activity Step	Activity Description	Time (Min)	Presenters	Materials Needed
1	Introductions	3	All	
2	Brainstorm with participants What are the key duties a lawyer owes to their client? Client/justice system/third	7	Jane	Flip chart

	<p>party duties</p> <p>What is meant by a client-centered lawyering approach?</p>			
3	<p>Small discussion groups of 3-4.</p> <p>Discuss the key duties and potential conflicts that can arise. Each group to come up with 3 examples of conflicts from their own jurisdictions. E.g. acting for 2 parties in the one transaction, acting with family members. Discuss similarities and differences.</p>	10	<p>Co-presenters</p> <p>circulate among groups</p>	
4	<p>Feedback in groups</p>	5	<p>Neta</p>	<p>Flip chart</p>
5	<p>Example from practice – real story</p>	5	<p>Lionel</p> <p>(or Jane, example at right)</p>	<p>+ PPT Screen</p> <p>Woman has been abused by her husband; leaves and stays with parents; expresses no opinion about “what she wants”; both her parents and her in-laws want her in their home.</p>
6	<p>Case study in same group of 3-4.</p> <p>Co presenters to devise a case study for groups to work through based on conflict and lawyer’s duty.</p>	15	<p>Neta</p>	<p>+PPT Screen</p> <p>Case study: A client establishes a small self-supporting, income-generating business. In reviewing financial records, the lawyer realizes that the client’s reports to tax authorities</p>

				<p>have not included all the income generated from the business. What should the lawyer do re. the past income tax return? The next income tax return?</p> <p>What if the lawyer is not directly involved in the tax filings?</p>
7	<p>Mini lecture</p> <p>What are the solutions to some of the issues or the negative lawyer behavior?</p> <p>Presenters to share their ideas having found innovative solutions or jurisdictions that have good examples of client focus and tight regulatory regimes.</p>	10	<p>Neta</p> <p>Lionel, Jane</p>	
8	Wrap up.	5	Jane	
Total Time:	60			

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