

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

4th APBCLEF A lawyer's duty to the court and the court's duty to administer justice according to law

Name of Session: F3: A lawyer's duty to the court and the court's duty to administer justice according to law.

Session Description/Aim:

This is an interactive and practical skill building session which will address the core elements of a practitioner's overriding duty to the court and the court's duty to administer justice fairly, expediently and with the objective of maintaining and upholding the rule of law.

Total Session Minutes: (75 min)

Facilitator:

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

Co-Presenters:

1. Debrah Mercurio, (Mawlamyine Justice Center/ MLaw) mercurio.debrah@gmail.com
2. Freda Grealy, (Law Society of Ireland) fredagrealy@gmail.com
3. Nahum Mushin, (Monash University) nahum.mushin@monash.edu
4. U Htin Win, (Advocate Myanmar) hteinwin959@gmail.com

Session Plan:

Activity Step	Activity Description	Time (Min)	Materials Needed
1 All	Introductions	5	With pictures – anything visual, your workplace, colleagues, something funny
2 Freda	Small group session (groups of 3) 1. Participants to discuss their understandings of lawyers duties to the courts. Is there an overriding duty to the court?	15	Flipcharts/pens/paper Questions will be up on PowerPoint

	<p>2. And the court's duty to administer justice according to law.</p> <p>3. Why do we think that these duties exist?</p>		
3. Freda & panel	Debrief from small group session	5	Freda will write up on flipcharts – can others 'talk to' some of points raised.
4. Derah, Nahum & Htein	<p>Wider discussion from Panel their thoughts own experience – with examples. Debrah this is your opp to introduce wider discussion.</p> <p>Nahum as you mention “the court's duty to administer justice according to law.” To my mind this incorporates access to justice, the rule of law and, in particular, application of the rules of natural justice which includes procedural fairness.”</p> <p>Nahum and Debrah – the two of you could discuss this in advance and do something together? When Htein gets in touch we get involve them too.</p> <p>Freda – to introduce some other pointers, elements of discussion.</p> <p>E.g. The court needs to have the case in the first place, you need a lawyer to take the case otherwise how can a court decide?</p> <p>“It is no use having rights unless you have access to a court in order to enforce them. Your right to claim redress is valueless unless you can be represented in court.”</p> <p>(South African born Sir Sydney Kentridge Q.C. said this in 2013)</p>	25	

	<p>A related question is – is the lawyer prepared to take on a state authority for example or a controversial or troublesome cases in the name of the public interest that may challenge the state. Will they do this without fear of retribution?</p>		
5.	<p>Audience contributions to the panel. Will need to keep an eye on the clock so we have time to move to the next exercise.</p>	10	
6. All – Freda doing lead facilitation but with all pitching in	<p>To introduce the discussion of Rule of law - we could do in groups of 3 or else each of us could take a small group and go through this. This might ensure that the quieter ones get to talk? What do you think? There may only be about 20/30 in the room so we'd have 5/7 each in the groups.</p> <p>To frame the next exercise we will look at some famous trials and read some of the transcripts. The 'Chicago Seven trial, Nelson Mandela trial, Saddam Hussein trial to bring home the message of the role of lawyers, judges and accused persons. This Historical perspective might help bring alive some of the issues and assist in considering the impact when the Rule of Law/Court is in jeopardy. I am trying to think of a way of introducing rule of law sensitively as some of the audience may be very reluctant to speak openly or be seen to be</p>	15	<p>I will do up an abbreviated sheet and put the questions on it so it will be easier to manage (! I hope) but these sessions are meant to be like workshops so it's okay if it's a bit messy. I think it will stick in their heads more if we use the scripts. It certainly stuck in mine.</p>

	<p>critical of the courts in their own countries.</p> <p>Small group continued -</p> <ul style="list-style-type: none"> • What can lawyers do in these circumstances? • What could you do now as a lawyer if this happened? 		
7.	Group discussion - Consider the impact when the Rule of Law/Court is in jeopardy.	10	
8.	Wrap up	5	
Total Time:	75	75	

A lawyer's duty to the court and the court's duty to administer justice according to law.

FREDA GREALY, (LAW SOCIETY OF IRELAND)
U HTAIN WIN, (ADVOCATE MYANMAR)

DEBRAH MERCURIO, (MAWLAMYINE JUSTICE
CENTER/ MLAW)

NAHUM MUSHIN, (MONASH UNIVERSITY)

A lawyer's duty to the court and the court's duty to administer justice according to law.



‘Fiat justitia ruat caelum’



“let justice be done, though
the heavens fall”

Lawyers' duty to the Court



- Duty to the Court is higher than the duty to the client and the community
- Only higher duty is to obey the law
- Act ethically
- Thorough knowledge of all relevant law, facts and procedural rules
- Duty to the Court extends outside courtroom to dealings with client:
 - Advise client about the law and the court process
 - Act independently and exercise forensic judgment
 - Not to be a mere mouthpiece for client

Court's duty to administer justice



- Application of requirements of natural justice
 - All parties aware of opposing case and have appropriate opportunity to advance evidence and submissions – enable all reasonable propositions to be heard
 - Procedural fairness
 - Freedom from pre-judgment and bias
 - Importance of judicial temperament

Why are these duties important?



- Lawyers' duties – limits on pursuit of client's interests at any cost
- Court's duties – fair, independent and transparent justice system
- Together, these duties:
 - ensure fair and equitable justice system in which people have faith that they can have effective access to justice
 - help to promote rule of law

Small group session (groups of 3)



Please discuss in groups of 3 the following questions:

1. What is your understanding of lawyers' duties to the courts. Is there an overriding duty to the court?
2. What is the court's duty to administer justice according to law.
3. Why do we think that these duties exist?

(10 minutes for discussion)

Report & debrief (5 minutes)