

PUBLIC DEFENDER’S OFFICE (PDO) MANUAL TRAINING

25th – 26th JANUARY 2018, BRISTOL PALACE HOTEL KANO

BACKGROUND

The Rule of Law and Empowerment Initiative also known as Partners West Africa Nigeria (PWAN) organized a two day Training on the Public Defender’s office (PDO) Manual. This is in furtherance of the Greater Access to Defense and Justice (GADJET) project.

The project team developed a Manual, first of its kind, which is to serve as a state model capable of replication in other parts of Nigeria, the staff were enjoined to seek to incorporate the latest international standard into the PDO operations, including UN G.A. Resolution 67/187, United Nations Principles and Guidance on Access to Legal Aid in Criminal Justice Systems. In addition, to serve clients in Kano, PDO staffs will be expected to contribute to the Nigerian state level strategies that highlight and expose issues that may be appropriate for resolution through group representation and/or legislative, policy, or regulatory reforms. It is on the premise that the project team organized two day training for the PDO staff to go over the manual.

Day 1 Morning Session

Overview and Purpose of the PDO

The first session of the day was facilitated by PWAN’S program manager Barbara S. Maigari, who began by giving an overview and purpose of the PDO. The Public Defender’s Office (PDO) in Kano state was established to provide pro bono legal representation and mediation for indigent persons and is aimed at creating sustainable improvements to the criminal Justice system by increasing the availability of legal representation for indigents in Kano State. Another purpose of the PDO is hitched on the section 36 of the CFRN 1999 says that a “Person charged with a criminal offence is entitled to a fair hearing in public within a reasonable time. This is linked to the PDO because it handles criminal matters; it gives opportunity for a person charged to get fair hearing in a public place within reasonable time as stipulated in the Constitution of the Federal Republic of Nigeria. More so, Rule 38 of the Rules of Professional conducts for Legal Practitioners which says that “A lawyer who is assigned to defend an indigent prisoner or other potential client shall duly and diligently take up the case, except for substantial reason”. On the basis of this rule one would say that the PDO lawyers duly and diligently take up cases to serve the purpose of the PDO.

Furthermore, the Nigerian Bar Association (NBA) formally adopted a declaration in 1999 stating that association members have a responsibility to provide pro bono legal services. The PDO is solely established to provide pro-bono legal services to less privileged person in Kano hereby adopting and adhering to the declaration of the NBA. Also, the most important purpose which is the bedrock of the PDO is for everyone, regardless of status, should have equal access to justice; and a justice system that ensures justice for everyone regardless of class is in the interest and benefit of everyone within the society.

Method of Legal Aid Services

This session was facilitated by Barr Chukwuma Ochu a private legal practitioner. He began by talking about the work done by the PDO, which is to provide defense services for indigent persons, and for those matters in which a person is constitutionally required to be represented by counsel. Looking at the Nigerian constitution, there are cases and sections that supports the fact that, you must have legal representation.

Self-Application/referrals

There are two modes basically when seeking legal aid. First is the walk in, where the client approaches the PDO office and the second is done through referrals. The clients who walk into the office seeking for legal aid are given a form to fill. The lawyer will therefore, specify the importance of the form which defines the core aim and objectives of the PDO assisting the indigent and marginalized citizens of Kano state. The essence of the form cannot be over emphasized. Referral on the other hand can come from anywhere or anybody. The office of the Attorney General can refer cases to the PDO, the Judge in chambers or local court can refer cases, it also can come from other sister agencies to the PDO.

Qualifying for Legal Aid

Anyone who is resident in Kano state is qualified to seek Legal aid from the Public Defender's Office (PDO) and an indigent or marginalized person is identified through the filling of the form 1a which is the first step. This form contains and captures basic information about the potential client and the nature of the case. It also contains questions that confirm an applicant's indigent status, including an oath attesting to the fact that the applicant is indigent and requires PDO support in his/her case. But in the case where the indigent is not qualified for legal assistance because he/she can afford to pay for legal services, the PDO is expected to explain to the client why he or she is not qualified and also document such meeting. The second step looks at signing a consent form if the client's application presents a case that could be within the PDO mandate. While the third step involves the review of clients application within seven (7) business days to



enable the PDO determine whether to take up the case or not. In the situation where the PDO decides to take up the case after the review, the clients will be invited back to the PDO where they are interviewed fully about the facts and circumstances of their cases in accordance with the Client Interview Form.

The participants were asked to share experiences between themselves on cases handled and also refer cases to each other. They were also advised to be confidential when dealing with client and also ensure that the clients tell the truth always so as to help in the speedy dispensation of their cases.

Granting and Terminating Legal Aid

The PDO in this regard has the right and absolute discretion to refuse legal aid to all persons who do not strictly qualify under the means test. The means test is done when the client fills the form 1a which helps in determining the indigence of a client seeking legal aid. It also has discretion to decline legal aid for cases that fall outside of its geographic or substantive jurisdiction.

Afternoon Session

Choices of Legal Representation

This session talks about the choices of Legal representation in the PDO and it provides that no legal aid applicant has the right to choose the PDO legal practitioner who will handle his or her case. There are no exceptions to this rule, and it applies to all criminal and human rights matters. This is because the applicant is not paying for the services being rendered. Only the PDO has the discretionary power to assign the cases to the lawyers.

Bail Applications & Appeal

When it comes to bail appeal, legal aid may be granted if the PDO is satisfied that, on a balance of probabilities, there is a chance that the bail appeal will succeed. This is the only time the PDO can represent the indigent person in the case of appeal on bail. The issues of limited resources can be over flogged and cases on appeal are usually not eligible for legal aid knowing how the Nigerian justice system is, therefore, the limited resources available to the PDO make it necessary to limit the right to legal aid and in appeals to;

- An application for leave to appeal to the trial court that sentenced the client;

- An application/petition for leave to appeal to a higher court if leave to appeal is refused by the trial court;
- An appeal, if leave to appeal is granted or the accused has an automatic right of appeal.
- Any further assistance with an appeal should only be granted if the PDO determines that there are prospects of success in proceeding further with the appeal.

Outline of the PDO

This session was facilitated by Scott Carlson, Principal of New Rule, and the discussion was on the outline of structure and mission of the PDO presented via skype. In presenting the outline of the PDO, he began by talking about who an indigent person is, saying that a person is indigent if he or she is unable to pay for an attorney without prejudicing his financial ability to provide the necessities of life, such as food, clothing, shelter and medical care for himself or his legal dependent.

Looking at the outline of the PDO Kano structure, PWAN is the supervisory authority of the PDO and the organization is doing a lot of work behind the scenes. It also established and maintains the PDO, and seeks to expand its capacity through networking and funding. The staffs are saddled with the responsibility to serve clients and behave in a very professional manner. PDO staffs should ensure confidentiality and privacy of clients while handling cases, work and support each other as a team, identify and avoid conflict of interest etc.

More so the PDO staff has an external responsibility to serve as ambassadors of the PDO in Kano and elsewhere, they should be able to bring back opportunities and challenges to discuss among themselves and also strive to make partnership work with other sister agencies or stakeholders of the Justice sector.

Missions Visions and Objectives of the PDO

The mission of PDO is to protect, safeguard and defend the fundamental human rights and freedoms of vulnerable and disadvantaged individuals and groups by providing high quality pro bono legal aid services delivered in collaboration with stakeholders at community, local, state, national and international levels

The vision of the PDO is access to justice for all indigent, disadvantaged, vulnerable and marginalized residents of Kano State and was compared vis a vis the vision of the Republic of Kosovo which says that people with disabilities and marginalized groups in the Republic of Kosovo have equal access to justice, and free legal aid is provided by the FLAA and its partners.

The PDO's vision provides legal aid to all indigent, regardless of whom you are as long as you are an indigent but that of Kosovo caters only for marginalized groups and people with disability.

The objectives of the PDO is to provide quality legal aid through free representation in court and legal advice to promote respect for rights and freedoms, the laws, and the constitution while ensuring that all persons resident in Kano State have access to justice, irrespective of means, gender, tribe or religion as compared to the that of Kosovo's values. Legal aid Agency is committed to providing legal aid to people in need in accordance with the following values; devotion to justice, more efficient services for parties, effective implementation of all agreements reached and transparency and accountability to the public. The PDO's mandate is to provide pro-bono legal services while Kosovo do not provide pro bono legal services to its citizens.

Day Two

Session 1

This session was focused on processing legal aid applications and it was facilitated by Barbara Maigari, Program Manager PWAN.

Manner of Receiving and Processing Legal Aid Applications

This session solely talks about the method of receiving and processing all the legal applications that come to the PDO and it was emphasized that all applications must be processed in accordance with the provisions in the legal aid guide, the PDO engages in two case categories: criminal defense and Fundamental Human Rights applications. Also, while applications for legal aid are in hard copy, PDO staff must electronically process the application through PDO Case Management System (CMS) and it should be timely. This is because the PDO CMS is critical to back up and secure data, as well as monitor and tabulate the work of the office.

Completion and Management of Forms

While completing management forms, the PDO must deal with the original application forms, supporting documents, and interview forms with a high standard of care. Legal aid forms must be completed in full and should be in a clear and legible manner, the particulars of the action, charge or legal issues; the extent of the assistance required; and the name of the particular court must be stated and all forms must be stored in hard copy and electronic format for the duration of the case and a period of two years following final disposition.

Assisting Applicants

PDO staffs receiving legal aid applications must, where necessary, assist the applicant with

completing application forms, assembling additional information, and attesting to indigence. In the case where applicants are illiterate, PDO staff will take special care to orally explain all matters relevant to the assembly and processing of their case and will provide direct support in English, Hausa, and Pidgin. Furthermore, PDO staff will provide direct support to an applicant where he or she does not speak one of these languages and will seek to find adequate interpretation to communicate with the client.

The facilitator also talked about assisting applicants, classifying the applicants, duty of care, PDO practitioner's relationships with the client and ethical considerations.

Session 2

The discussion in this session was focused on the operations and general policy of the PDO and would talk about some of the most important parts of the discussion in the report.

Confidentiality and Privacy

In the case of confidentiality and privacy, any information that is communicated directly to the PDO by the legal aid applicant or comes to the attention of any PDO employee or representative of the PDO, must be treated at all times as confidential and it may only be disclosed when it relates to determining whether the legal aid applicant qualifies for legal aid or to the merits of the matter. Moreover, the lawyer-client privilege must be recognized and protected so that any information communicated in confidence to a PDO legal aid officer or staff member may not be communicated to any other person.

Conflict of Interest Policy

PDO requires its Advisory Board members, officers, employees and volunteers to maintain high standards of legal and personal ethics in the conduct of their duties and responsibilities. PWAN, recognizing that it has been entrusted with resources devoted to charitable purposes, has adopted a Conflict of Interest Policy (the "Policy") (Annex VI—PDO Conflict of Interest Policy), each Advisory Board member, officer, employee, and volunteer is required to review the Policy upon joining the PDO and sign a copy, indicating approval of its contents, as well as the intent to comply with its provisions.

The purpose of this Policy is to protect the PDO's interest when there is a potential transaction or arrangement that might benefit the private interest of an Advisory Board member, officer, employee, or volunteer working with the PDO. This Policy is intended to supplement, but not replace, any state and federal laws governing conflicts of interest applicable to Nigerian nonprofit and charitable organizations and the provision of legal services, including the Legal Practitioners Act of Nigeria (LPA) and Rules of Professional Conduct in the Legal Profession.

PDO employees are also required to comply with the conflict of interest provisions set forth in

the PDO Code of Conduct, which defines in Canon 3 a conflict of interest as arising when a PDO employee knows that he/she (or the spouse, minor child, or other close relative) might be personally or financially affected by a matter that a reasonable person with knowledge of the relevant facts would question the PDO employee's ability properly to provide legal services or perform administrative duties.

Efficiency and Avoidance of Delay

It is the duty of every legal practitioner acting on behalf of the PDO to ensure that each matter is dealt with as efficiently and speedily as possible. Every effort must be made to avoid any delay or postponement in proceeding with a case, particularly in respect of the right of an accused to a withdrawal of the charge, or to have the trial proceed.

Prohibition on Acceptance of Outside Funds

The legal practitioner or other PDO employee may not receive any compensation outside of his/her salary. In this context, 'received' includes monies deposited to a trust account. Such actions constitute unethical conduct by the legal practitioner, and may be referred to the NBA for investigation. In addition, any salaried legal practitioner or PDO employee who accepts any money from a legal aid applicant is guilty of misconduct. PDO staffs were asked to take this policy very serious.

Conclusion

The training was fruitful as the Program manager thanked all the participants for their time. The Executive Director also enjoined all participants to have good attitude towards work and also respect the hierarchy and be hardworking. The training ended at 2pm.



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