

Ethics, Bias and Conflict of Interest in the County Koori Court

Key messages from the speech of Justice Geoffrey Eames, Koori Court Conference May 2009

The Elders and Respected Persons of the Koori Court (ERPs) give free, honest and fearless advice to the Court, which is informed by their wisdom and experience. The Koori Court process joins together the wisdom of the ERPs and that of the Judge.

This document aims to provide information and guidance on ethical issues that might arise for ERPs.

Bias

Where a reasonably well informed, fair minded member of the public might suspect that an ERP or a Judge could be biased against an Accused person, that ERP or Judge should excuse him or herself.

If you are asked to excuse yourself due to the perception of bias, it is not a personal attack. Excusing yourself is not an admission that you are *actually* biased. It simply means you could be *seen to be biased*.

It can be difficult to know when to 'stay in' a matter and when to excuse yourself, particularly because ERPs will often have knowledge of an Accused person or their family, or even know them personally. Contemplating the following can help you make a decision:

1. If you feel that you are inclined to favour one side in a matter over the other, *regardless of the evidence presented*, you should excuse yourself. This accounts for the presence of actual bias.
2. If you think you might be seen by the community to be giving biased advice to the Judge, even if you know you will not, you should excuse yourself. This accounts for perceived bias.

If you're uncertain about whether you should excuse yourself, raise the matter with the Court. The Judge can assist in determining whether you should excuse yourself or not.

Conflict of Interest

Conflict of interest arises when the outcome of a case affects you in some way personally. If, for example, the Victim is a personal friend who will be outraged if the Accused does not receive a long gaol sentence, and this will affect the way you act in the Sentencing Conversation, you should excuse yourself.

Natural Justice

Natural Justice dictates that the information or evidence conveyed to the Judge is also conveyed to the Accused, so that he or she has a chance to answer that information or evidence. The Judge is bound to apply the principle of natural justice.

ERPs have to be careful not to *give the impression* that private information is being conveyed outside the courtroom to the Judge, which the Accused does not have a chance to hear or answer.

If an ERP has something to say about an Accused person, it needs to be said publically in the courtroom.

Enhancing public respect for and confidence in the judiciary

ERPs as well as Judges need to be cautious about conducting themselves in a way that maintains the dignity of the Court.

It is best to avoid having private conversations with people appearing in Court on the day of their appearance. It is appropriate to be friendly and say "Hello, we'll see you in Court", however being overly affectionate or familiar might give the wrong impression.

To ensure that public confidence in the integrity of the Court is maintained, ERPs and Judges need to be wary of the language they use. While a great strength of Koori Court is its informality, the language used in Court needs to remain dignified and convey the seriousness of the proceedings.

Excessive humiliation and shaming

While it is important to condemn the criminal behaviour of the accused person, they should not be subjected to excessive humiliation or shaming during the Sentencing Conversation. All accused people, as well as victims, are entitled to the respect of the Court.

Condemn the behavior, but validate the person – the Koori Court operates as far as possible in an objective and fair manner. ERPs and Judges should be vigilant not to abuse their power in the courtroom.