

Session title: Due Process and Beyond: General Counsel Roundtable

Moderator/Panelists:

Natalia Luna Ashley, Special Counsel, Texas Ethics Commission

Date and time: Monday, December 9 2013, 3:30 pm

Rapporteur: Isabelle Giroux

Session Summary

This round-table discussion brought together representatives of ethics commissions and other agencies from various U.S. states and Canadian provinces. Participants discussed their idea of “due process” and the way that this principle is applied in their respective organizations.

The round-table facilitator, Natalia Luna Ashley, started by defining the term “due process” as it appears in *Blacks Law Dictionary: The conduct of legal proceedings according to established rules and principles for the protection and enforcement of private rights, including notice and the right to a fair hearing before a tribunal with power to decide the case.* It is a principle holding that legal procedures must be fair and equitable and that each person must be able to defend him or herself and have a chance to be heard before the government can remove his or her life, liberty or property. The concept of “due process” is profoundly rooted in the U.S. Constitution, as it is mentioned in the 5th and 14th amendments. Different cases heard by the U.S. Supreme Court have led “due process” to be better defined and framed.

According to the round-table participants, the concept of “due process” is especially relevant in the context of the processes that are followed to file complaints, launch investigations, and eventually initiate legal proceedings. Participants compared their organizations’ due processes and their practices. Several issues were raised: When does “due process” apply? How much proof is needed to establish that a violation took place? Does the complainant have a certain status in the case? Is the complainant allowed to disclose his or her complaint? Can the complainant be kept abreast of the evolution of his or her complaint? At which point and in which manner should the responding party (the accused) be informed of the complaint? Must the confidentiality of the complainant be protected? Must the investigation be kept apart from the decision-making process?

The participants in the discussion noted similarities, as well as numerous differences, between the procedures in place in their respective organizations.

The facilitator provides ten rights that participants may want to consider when talking about due process.

1. Unbiased tribunal
2. Notice of the proposed action and the grounds asserted for it.

3. Opportunity to present reasons why the proposed action should not be taken.
4. The right to present evidence, including the right to call witnesses.
5. The right to know opposing evidence.
6. The right to cross-examine adverse witnesses.
7. A decision based exclusively on the evidence presented.
8. Opportunity to be represented by counsel
9. Requirement that the tribunal prepare a record of the evidence presented.
10. Requirement that the tribunal prepare written findings of fact and reasons for its decision.