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| Lesson: 13 – Preparation for Evidentiary Hearing | **Duration: 120 Minutes** |
| **Resources required:**   * Laptop or PC running an operating system with an office suite (capable of showing pptx) * Projector and display screen * Internet access (if available) * Whiteboard * Whiteboard pens (at least 2 each of blue, black, red and green) * 2 Flipcharts with adequate paper * Student notepaper and pens * Stapler, hole punch and scissors * Blu tack or a similar product to allow for paper to be affixed to the walls temporarily * Printer to print the leaflet * Files: Session 13 – Preparation for Evidentiary Hearing.pptx   **Resources required for an on-line delivery:**   * Laptop or PC for each trainee (if attending from home) or for a groups of trainees, depending on availability * A strong internet connection * An online tool should be provided that allows video conferencing and is specifically aimed at providing training. Due to the fact that the trainers have to stay in visual contact with the trainees, it is important that when the slides are shown, the trainers still see the trainees (in some online video conferencing tools only the slide can be seen). It is in any case also a plus to be able to provide online break-out rooms. * Files: Session 13 – Preparation for Evidentiary Hearing.pptx | |
| **Aim:**  The purpose of this session is to divide the participants into new groups, in such a way that they will have to do a different thought exercise than the one they did in session 9 (Practical Exercise - Phase 2 - Assessment of Electronic Evidence). The shuffling of the groups creates a situation wherein the participants who had to be ‘the Devil’s Advocate’ in the assessment phase, now will have to defend the evidence. Those who defended the evidence in phase 2, now will have to attack it. Letting the participants rotate, will challenge the mind-set of the participants towards the electronic evidence they assessed in the previous phase.  In this session they will prepare themselves and their group for the Evidentiary Hearing that will take place. | |
| **Objectives:**  At the end of this session, delegates will be able to:   * (Further) assess the gathered electronic evidence * Identify the arguments and potential problems that can be raised with regard to electronic evidence * Develop arguments to attack the electronic evidence, as well as arguments to defend the electronic evidence * Prepare for the evidentiary hearing in court and the presentation in court of the arguments | |
| **Introduction**  This session is a practical session on the preparation for an evidential hearing.  The participants will continue their work on the case scenario and will prepare their plan, arguments and presentations (for which they can freely choose all means available: outlines, power point presentation, etc.) for the evidentiary hearing that will follow later on.  The evidentiary hearings will consist of the prosecution presenting their case and the electronic evidence, while the defence will cross-examine or question the prosecution’s (expert)witnesses. Additionally, all motions will be heard by the Court, which typically includes motions to exclude or admit to evidence. The parties will argue over what evidence should or should not be included at trial, as well as whether specific (expert)witnesses should be used at the trial. Further, the defence may also file a motion to dismiss the entirety of the prosecution’s case against the defendant. Motions of parties will be shared in real time, also with the judges, so the court and the parties can prepare the hearing.  The judges/ judges’ team will start to anticipate on potential defence arguments, electronic evidence assessment, the trial preparation, the hearing of witnesses. The judges will establish some basic rules.  In this phase the experts will point out what will be expected from the participants in the evidentiary hearing. Some information about this session is included in the PowerPoint presentation entitled “Session 13 – Preparation for Evidentiary Hearing.pptx” in the resource pack. The trainer is responsible for ensuring that the materials are up to date. Changes may be made, however the objectives should be achieved. | |
| **Practical Exercises**  Theparticipants may be divided in one of two different ways, taking into account cultural sensitivities and other factors:  ***Option 1:***  The participants will be divided in **3 groups**. After phase 2, three groups will be assigned as:   * The prosecution team * The judges team * The defence team   Hereby, cultural sensitivities will be taken into account. The groups can be created randomly or on a voluntary basis. If the number of the participants exceeds 30, a plural of three groups could be created, or a second defence or prosecution team could be created. However, it has to be noted that it will make the implementation of the Pre-Trial Hearing more complex. Every group needs to be guided and supported by an expert. Therefore, you will need as many experts as you will create groups (+ 1 additional).  Before the start of this phase, the participants will be shuffled and divided in new groups:   |  |  |  | | --- | --- | --- | | **Prosecutors** | Group 1.A | Group 2.A | | **Defence lawyers** | Group 1.B | Group 3.B | | **Judges** | Group 3.A | Group 2.B |   The shuffling of the groups creates a situation wherein the participants who had to be ‘the Devil’s Advocate’ in the assessment phase, now will have to defend the evidence. Those who defended the evidence in phase 2, now will have to attack it. **Letting the participants rotate**, will challenge the mindset of the participants towards the electronic evidence they assessed in the previous phase.  Depending on the number of participants, the choice can be made to split up the teams, in which case you will have two separate evidentiary hearings in separate rooms:   |  |  |  | | --- | --- | --- | |  | **Room 1** | **Room 2** | | **Prosecutors** | Group 1.A | Group 2.A | | **Defence lawyers** | Group 1.B | Group 3.B | | **Judges** | Group 3.A | Group 2.B |   ***Option 2:***  Participants will be divided into two rooms, each with one expert trainer. Assuming there are 32 participants, each room will have 16 participants. These will be subdivided into four groups of four participants each (a judge, prosecutor, forensic expert/police officer/expert witness, and possibly depending on the legal system a defense counsel). The possibility of two judges in a group may also be explored.   |  |  | | --- | --- | | **Room 1** | **Room 2** | | 4 groups, each consisting of:   * 1 judge * 1 prosecutor * 1 forensic expert / police officer / expert witness * 1 defence counsel | 4 groups, each consisting of:   * 1 judge * 1 prosecutor * 1 forensic expert / police officer / expert witness * 1 defence counsel |   It is recommended that both options be included in the course, and depending on cultural sensitivities, the most appropriate group formulation be considered on a country-by-country basis.  As laid out in the “Introduction” of this session, the participants will continue their work on the case scenario and will prepare their plan, arguments and presentations for the evidentiary hearing that will follow later on. | |