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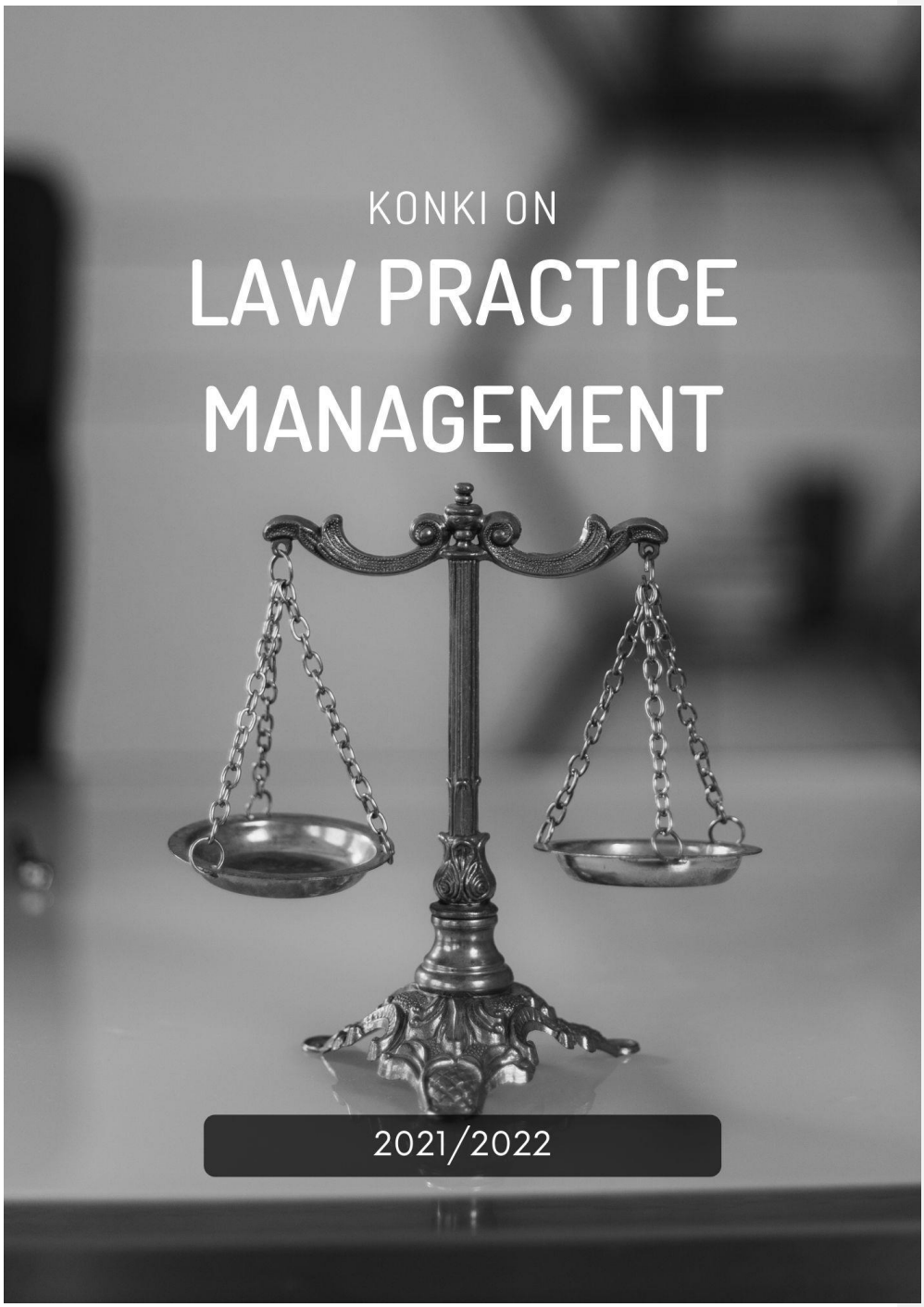

**GHANA SCHOOL OF LAW**

**LAW PRACTICE MANAGEMENT**

**KONKI NOTES**

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(Lol formalities aside – the stuff is good. Just don't overly/blindly rely on it. All the best with Part 1!!)

## INTRODUCTION – GLOSSARY/COMMON TERMINOLOGY

***Advocate*:** The advocate is one who speaks before a Court. In Ghana, all lawyers have right of audience before all Courts. In the UK, barristers and solicitor advocates are the ones that have audience in superior courts, solicitors have audience in lower courts. The advocate is thus the lawyer who speaks and argues cases before a Court.

***Ambulance chaser:*** A lawyer who specializes in personal injury cases. This refers to a lawyer who tries to get work by persuading someone who has been in an accident to claim money from the person or company responsible for the accident.

Some of these lawyers use agents known as **case runners**. These case runners are also ambulance chasers, doing the ambulance chasing for a fee or commission. They are typically unknown to the victim but will visit them in the hospital, call soon after an accident occurs, inquire about injuries, and refer accident victims to medical care and legal representation. They may even offer accident victims transportation or money.

Such conduct violates **Sections 15 and 62 of the Legal Profession (Professional Conduct & Etiquette Rules) 2020.**

**Section 62** says that a lawyer in offering legal services shall not use means that amount to coercion, duress or harassment, or takes advantage of a person who is either vulnerable or has suffered a traumatic experience and is yet to recover.

**Section 15(3)** also prohibits lawyers from hiring agents or case runners to instigate litigation or bring them cases.

***Attorney:*** A person appointed to act for another person in business or legal matters, not necessarily a lawyer. E.g. a person appointed under a Power of Attorney.

***Senior Counsel:*** In the UK these are barristers who have demonstrated outstanding skills as advocates and advisors in the administration of justice. They are informally called silks and they work on particularly complex cases. In some jurisdictions they are called Queen's Counsel.

***Special Counsel:*** In the US, they may also be called special prosecutors or independent counsel. They are appointed to investigate and potentially prosecute suspected cases of wrongdoing where there is a conflict of interest for the usual prosecuting authority.

***Judge Advocate:*** These are attorneys that perform legal duties while serving in the US Armed Forces. They provide legal advice to the brand of the armed forces to which they are assigned and may legally represent members of the armed forced before a tribunal.

***Counsel:*** Lawyers conducting a case

***Secondment*:** Where a lawyer temporarily joins an in-house legal team of an organization to help with a specific project, provide legal expertise, or simply give a lift to the existing team to help with day-to-day workload, without becoming a permanent member of the organization.

***Of-Counsel*:** This is a person who is neither a partner nor an associate at a law firm but has a close, continuous relationship with the firm. It is usually a lawyer with the experience of a partner but does not bear the workload or responsibility of one and may do some work for the firm from time to time.

***General lawyer/Generalist*:** A generalist lawyer typically works in different areas of law. Put simply, a generalist lawyer will develop all-rounder skills in each area of law. This is because generalist lawyers often work in small or general practice firms.

A generalist lawyer will refer you to a specialist lawyer if your legal situation requires specific skills and knowledge.

In practice though, the term general counsel is used to refer to the chief lawyer or the head of a a legal department in a company.

***Notary Public*:** Some jurisdictions allow for non-lawyers to be notary publics. Notary publics are persons authorized to perform certain legal formalities especially to draw up and certify certain documents for use in other jurisdictions.

***Trial lawyer*:** This is a lawyer who mainly engages in trying matters in court. He is involved mainly in litigation whether civil or criminal.

***City firm*:** This term describes the large commercial law firms based in the city of London with offices in other cities around the world. They usually have large renowned commercial, corporate and finance departments.

City firms are characterised by their large and renowned commercial, corporate and finance departments and they will often practise in related areas such as employment, intellectual property and real estate too. A few niche firms may also specialise in areas of law such as media or shipping. They also often operate on an international scale.

***Magic circle law firms*:** These are the 5 most prestigious London-headquartered multinational law firms which rank high in terms of profitability. All of them specialize primarily in commercial law. They are Allen & Overy, Clifford Chance, Linklaters, Slaughter & May and Freshfields Bruckhaus Deringer.

***White shoe law firms*:** These are the leading professional law firms in the United States, particularly firms that have either been in existence for more than a century and represent Fortune 500 companies. The term typically, though not always, refers to financial, law, and management consulting firms, traditionally those based in the Northeastern United States, including New York City and Boston.

***Silver circle firms*:** This is a group of elite corporate law firms headquartered in London with not as much turnover as the members of the Magic Circle.

***Professional services corporations*:** These are corporate entities under state law which provide a service that requires the work of licensed professionals e.g. accounting firms etc. Unlike a normal partnership, the partners are not personally liable for negligence or malpractice of the other partners. Each partner carries their own liability. This is not legally allowed in Ghana.

***Legal Zoom*:** This is an online legal technology tool that helps client create legal documents without necessarily hiring a lawyer. It also offers attorney referrals and registered agent services (business that is designated to receive service of legal processes on a party to a legal action).

***Settle It*:** This is a software that gives automated advice from legal precedents to clients seeking to sue on a matter. A study showed that 98% of the advice that it gave was accurate to settle the matter. This technology has been seen as a threat to the traditional legal industry in America.

***COIN*:** This is a contract reviewing software. COIN is short for contract intelligence. This software reviews the contract and summarises it for the lawyer. It eliminated about 72 million dollars in legal fees and saved time as it takes about 10 minutes to review 599 agreements.

***Queen's Counsel (QC)*:** Queen's Counsel (QC) are barristers or solicitor advocates who have been recognised for excellence in advocacy. They're often seen as leaders in their area of law and generally take on more complex cases that require a higher level of legal expertise.

***Fee-earner*:** Broadly speaking, the staff in a legal firm can be split into two categories: fee earners and non-fee earners (sometimes referred to as support staff). A fee-earner is a member of staff who directly generates income for the firm, other than counsel or partner. The role they play in the firm directly brings in money e.g. an associate. The associate does legal work which he records and subsequently bills the client, bringing in money.

So, if the work you are doing is charged to the client, such as drafting documents, meeting clients, or attending court, then you are a fee earner. The time you spend on each case will be billed and you will help generate income for your firm in this way.

If your duties involve tasks such as arranging meetings, dealing with paperwork, or carrying out instructions from a fee earner, then you are a non-fee earner. The work you do enables the fee earners to do their jobs and generate income.

***Eat what-you-kill:*** This is a pay model. Firms with an 'eat what you kill' approach base the compensation of its lawyers on the revenue that each individual generates. The partners share costs of operation and split profit based on performance. In this model, a firm may be more accurately described as a costs-sharing arrangement between individuals rather than a partnership.

***Boutique law firm*:** This is a collection of attorneys organized typically in an LLP or a professional corporation specializing in a niche area of practice.

It may refer to two types of firms. The first kind of "boutique" law firm has a small group of attorneys each specializing in and practicing a single yet different area of law. This kind of practice typically has a more "exclusive" clientele, so clients tend to pay more to receive a more personalized experience. For example, one pit bull family lawyer for a wealthy pastor, one big time celebrity fixer, one private adoption lawyer for an important businessman. So each specializes and is considered an expert in his field.

The other kind of boutique firm usually specialises in very few areas of law for which they have grown to have a great reputation. Generally, "boutique" means that you're looking at a smaller firm. Although there are no strict rules, you might be looking at 3 or fewer partners, and maybe 10 to 20 staff. But size isn't the only identifier. Sometimes, a "small" firm might just be a firm that hasn't yet grown large. If a firm is just starting out small but has plans to grow, it's unlikely to position itself as "boutique" because that will swiftly become true. These firms serve sophisticated clients with fairly high pricing.

Major characteristics of a boutique law firm include:

- Specialization - Attorneys in boutique law firms are experts in their fields. All lawyers on staff focus on a single specialty, such as not-for-profit organizations, commercial litigation, or SEC investigations
- Referral network - Should a client have a problem that doesn't fit into the firm's niche, his lawyer doesn't have the option of taking it on anyway. The client is referred to another boutique firm. Other firms then return this courtesy when their own clients need services outside their niche, creating a referral network among local firms.
- Small staff - Most, though not all, boutique law firms are small operations with limited staff.
- Competitive fees - Boutique law firms can charge lower fees by outsourcing many of the firm's business functions to external services rather than managing them in-house. This frees partners to focus on practicing law rather than dealing with administrative functions.
- Relationships - In addition to the referral network that boutique firms develop, they often foster closer relationships among the lawyers on staff. New lawyers have greater access to senior partners than they would at larger firms. This less formal structure and focus on relationship-building often appeal to clients

***Full-service law firm*:** These are firms that are large. They provide a wide variety of legal assistance to their clients. They have multiple practice areas and departments with specialist lawyers in that practice area.

***Global firms*:** These firms are engaged in cross-border legal services all over the world and have a variety of practice areas. They have foreign offices and affiliated lawyers in different countries as well.

***Lockstep*:** The lockstep compensation model is the most widely used among firms in both the UK and the US. In this system, equity partners' profit shares increase in line with their seniority within the firm (i.e, how long they have worked there). This means that all equity partners who joined the firm in the same year will be paid the same, all seventh-year associates are paid the same and so on, due to automatic annual pay increases. Strictly speaking, the lockstep model applies only to equity partners, but some lockstep firms apply the system to salaried partners and associates too.

## THE LEGAL MARKET & THE SCOPE OF PRACTICE

### The Legal Market

In economic terms, when we refer to the market, we mean the platform where buyers and sellers facilitate the exchange of goods and services.

So when we talk of the legal market, we are referring to the platform for the buying and selling of legal services.

In the legal market, Lawyers are service-providers, clients are consumers and legal services are akin to a commodity, commanding a market price and susceptible to forces of demand and supply.

### What Lawyers Do In Practice

Generally, lawyers offer a myriad of services, including:

- Representing clients in contentious issues (Dispute resolution)
- Providing advice and opinions
- Preparing and reviewing legal documents
- Research on relevant areas of law
- Act on behalf of clients in negotiations, and where necessary, represent them
- Acting as negotiators /arbitrators
- Provide legal training
- Act as Company Secretaries and sit on Boards

### Some Practice Areas of Lawyers

- Asset Management
- Banking and Finance
- Insurance
- Intellectual Property
- Real Estate
- Tax
- Energy
- Oil & Gas
- Mergers and Acquisitions
- Etc

**The Scope of Practice**

Here, we are considering where lawyers work and what they do. There are several career options available to a lawyer and the scope of practice is quite broad.

**Section 2 of the Legal Profession Act, 1960, Act 32** highlights that a lawyer may practice as a barrister, solicitor or both. Unlike in England where a distinction is made between a barrister and a solicitor, that distinction is not recognized in Ghana.

**Rule 2(1) (a-e)** and **Rule 5 of the Legal Profession (Professional Conduct and Etiquette) Rules, 2020, (LI 2423)**, also throws some light on the career options available to a lawyer:

- A lawyer can be engaged in **private practice**.

  Private practice would mean that the lawyer operates as a private practitioner, as opposed to public practice, which involves practice in the public sector, i.e. a lawyer may join the legal department of any Public/Governmental body.

- A lawyer may be employed in a whole-time occupation where the lawyer performs legal duties

  Here, lawyers serve as **In-House Counsel** that carry out legal work directly for their employer, as opposed to law firm or private practice.

- A lawyer may also act as an advisor or a negotiator or an evaluator.

- A lawyer may become an editor or reporter of Law Reports.

- A lawyer may enter academia, i.e. the teaching of law.

- The Judiciary

Now that we have looked at the various career options available to a lawyer, the next question is where would we typically find lawyers? We may find lawyers in;

- Private Practice
- In-house counsel
- Academia
- Central/Local Government legal departments (eg Ministries, Agencies etc.)
- Public Service Institutions (eg, Prisons service, Audit Service etc.)
- Judiciary

**Regulation of Law Practice in Ghana**

A regulated market is a controlled industry/sector of the economy. When we say a market is regulated, it means that there is some sort of governing body/bodies which exert some level of oversight and control over the market, and to some extent, regulate market actions. This can include tasks such as determining who is allowed to enter the market and/or what prices may be charged.

Regulation is important for the following reasons:

- To prevent misuse of monopoly power which can lead to delivery of poor services
- To protect consumers
- To ensure high standards of practice
- To provide rules of entry
- To provide licensing requirements
- To prescribe the powers and functions of the Regulator
- To prevent anti-competitive practices and promote healthy competition leading to efficiency in the market

Regulatory Framework

In Ghana, the legal profession is regulated primarily by:

- The Legal Profession Act, 1960 (**Act 32**)
- The Legal Profession (Professional Conduct & Etiquette) Rules, 2020 (**LI 2423**), and
- The Legal Profession Disciplinary Committee Rules.

These are the core legislation that govern the practice of law in Ghana. There are other pieces of legislation (non-core) that govern and impact the practice in Ghana, and these will be highlighted later.

**Act 32**, unlike the UK Legal Services Act, does not have regulatory objectives. However, the **LI 2423** sets out some regulatory guidelines in applying and interpreting the provisions of the Act. It provides that the rules be interpreted in a manner that recognizes that:

- The lawyer has a duty to the client, the court and a public
- The lawyer has a special responsibility to protect the dignity of individuals
- The lawyer has a special responsibility to uphold the dignity and standing of the legal profession, etc

Ghana's rules on regulation of the profession seeks to focus largely on behavior, conduct, etiquette and rights and duties. All of this is great, however, considering the way the legal profession is evolving, it is essential to begin looking regulating the profession beyond rights and duties and professionalism. UK's Legal Services Act for example, seeks to cater for promoting competition in the promotion of services, and encouraging an independent, strong and diverse legal profession.

## The Regulator

**Act 32** establishes the **General Legal Council (GLC)** as the regulator of legal practice in Ghana.

Per its mandate, it is established as the body concerned with the organisation of legal education and upholding the standards of professional conduct. It also prescribes rules on whether or not a business or profession conflicts with the duties of a practicing lawyer (upon application), and receives particulars of employment of non-practicing lawyers who also want to perform legal services.

With regards to disciplinary procedures, the GLC Disciplinary Committee hears and determines allegations of malpractice levelled against members of the legal profession. For example, in 2021, the disciplinary committee of the GLC, in line with **Section 18 of Act 32**, conducted an inquiry in a case of alleged misconduct by one lawyer Kwasi Afrifa.

**Commented [JE1]:** **Section 18** provides that complaints made by persons regarding the conduct of a lawyer are to be referred to the Disciplinary Committee of the GLC, who would determine whether an inquiry should be made into the matter.

The **Ghana Bar Association (GBA)** also exercises some regulatory oversight in respect of lawyers in Ghana. Although not established by statute, the GBA is recognised by the Constitution. For example, the Constitution requires GBA representatives to serve on the Judicial Council under Article 201, Prisons Service Council (Article 206) and the Lands Commission (Article 259).

## Bar Admission & Licensing Requirements

To become a lawyer, you have to qualify under **Section 3 of Act 32**, which requires that an aspiring lawyer must satisfy the GLC that;

i. He is of good character, and
ii. He holds a qualifying certificate granted by the Board of Legal Education, following the completion of the existing legal education regime under L.I 2355, or that he is a citizen of Ghana and is qualified to practice law in a country that has a sufficiently analogous legal system.

Once this is done, he must be called to the Bar under **Section 7** and have his name entered in the Roll of Lawyers by supplying the General Legal Council with an affidavit of identity and a duly authenticated copy of his qualifying certificate in accordance with Section 6.

After all this, the aspiring lawyer-turned-lawyer, is still not qualified to practise until he has been issued with his solicitor's license. The solicitor's license is granted after the lawyer has satisfied the GLC that;

- he has studied in the chambers of another lawyer for a minimum period of six months since his qualification as a lawyer and,
- he has not been found guilty of professional misconduct anywhere else in the world

**Commented [JE2]:** This is what is known as Pupillage.

Unless a person is a military advocate (i.e. representing a member of the Armed Forces), if any person practises law, holds himself out as a lawyer or prepares any legal document for use in any cause or matter before a court, without a license, he is liable to a fine.

## Establishment of Law Practice

**Rule 4 of LI 2423** deals with the naming of Chambers and Law Firms.

The Rule provides that Chambers must be approved by and registered with the GLC.

The Council would not grant approval for the name of a Chambers if among other things, the name is:

- misleading or detracts from the dignity of the legal profession, or
- similar to the name of an existing chambers or entity

Thus, there are some restrictions placed on the description of Chambers and Law Firms. Examples are highlighted below:

| Chambers | Law Firm |
|---|---|
| The name must not be misleading | The name should not be specifically prohibited by any other enactment |
| The name must not detract from the dignity of the legal profession | The name should not be too general or only descriptive |
| The name must not be similar to the name of an existing Chambers or entity | The name should not be descriptive of services provided or the area of practice |
| Ordinarily, the name of the Chambers must be stated in English | The name should not indicate the existence of a partnership, association or affiliation between a group of lawyers when such relationship does not exist |
| | The name should generally not consist of acronyms or solely of initials |

## Professional Conduct and Etiquette

The core legislation governing professional conduct and ethics are **Act 32**, **LI 2423** and the **Code of Ethics** at the Ghana Bar Association.

Under the **LI 2423**, a lawyer is required to avoid conduct that is calculated or is likely to a material degree, to be prejudicial to the administration of justice or that would adversely prejudice the ability of the lawyer to practice in accordance with the Rules.

Some examples of unethical conduct include:

- undisclosed conflict of interest
- theft, misuse or unauthorized use of client's funds
- violation of confidentiality
- exploitation of clients (financial, sexual etc)
- overbilling
- touting
- solicitation

Under **Section 18 of Act 32**, aggrieved clients/persons may lodge complaints relating to the conduct of a lawyer before the Disciplinary Committee of the GLC.

**Rule 5 of LI 2423** sets out the duty of a lawyer to a client.

The sanctions for a lawyer's breach of duty to his client include;

- striking off the lawyer's name from the Roll of Lawyers after disciplinary enquiry, subject to right of appeal
- striking off the lawyer's name from the Roll of Lawyers without holding a disciplinary enquiry where the lawyer is convicted of a crime involving dishonesty/moral turpitude.
- suspension

Non-Core Legislation

As mentioned earlier, there are other pieces of legislation which impact on the legal profession and its scope of practice. We have the core legislation, already highlighted above, and then non-core legislation, which is equally important. Examples include:

1. The Companies Act, 2019 (Act 992)
2. Incorporated Private Partnerships Act, 1962 (Act 152)
3. Article 190 of 1992 Constitution -Public Service
4. Council for Law Reporting Act 1972, NRCD 64
5. Petroleum (Local Content and Local Participation) Regulations 2013 LI 2204
6. Legal Aid Scheme Act 1997 (Act 542)
7. Local Governance Service Act 2016, Act 936
8. Alternative Dispute Resolution Act, 2010 Act 798
9. Data Protection Act, 2012 (Act 843).
10. Anti Money Laundering Act, 2007 (Act 749)
11. Labour Act 2003, Act 654
12. Regulations

**Commented [JE3]:** If the law practice structure adopted is a company, the rules in the Companies Act would apply.

**Commented [JE4]:** If the Law firm/lawyer is operating as a partnership, the Partnership Act will govern the practice of that firm or lawyer.

**Commented [JE5]:** Under the **Data Protection Act, 2012 (Act 843)**, a Data Controller is a person who either alone, jointly with other persons or in common with other persons, or as a statutory duty, determines the purposes for and the manner in which personal data is processed or is to be processed.
Thus a lawyer / firm would be deemed a Data Controller under the Act, and the Act imposes obligations on data controllers.

The Act sets out the rules and principles governing the collection, use, disclosure and care for your personal data or information by a data controller or processor. It recognises a person's right (data subject rights) to protect their personal data or information by mandating a data controller or processor to process (collect, use, disclose, erase, etc.) such personal data or information in accordance with the individual's rights.

So information that lawyers receive from their client is supposed to be protected and kept confidential.

**Commented [JE6]:** Under the **Anti-Money Laundering Act**, lawyers are classified as ***accountable institutions*** and the Act requires lawyers to conduct client due diligence at the time of engagement and during the period of the engagement. It further provides that lawyers/law firms should institute measures to identify politically exposed persons (PEPs) and other persons whose actions may pose a high risk of money laundering, terrorism, financing of proliferation of weapons of mass destruction/and how those risks can be managed through due diligence.

**Globalization and its Impact on Practice**

Globalization is a process or a set of processes characterised by the free movement of people, ideas, information, capital, technology and goods and services across national boundaries, in such a way that different nation-states are organised into a single global community through networking.

In essence, it is about the world becoming increasingly interconnected.

Now, we know that legal practice is generally national in character because a lawyer enrolled to practice law in one jurisdiction does not have an automatic right to practice law in another

jurisdiction. However, due to the increase in volume of global trade and commerce and other trans-border transactions and interactions, there has been the demand for the services of both local and foreign lawyers by clients located in different jurisdictions, and this has contributed towards establishing a globalized legal practice.

Due to globalization, there is a new growing trend in globalized provision of legal services. We have law firms that are not incorporated in Ghana working here, and lawyers not licensed in Ghana practising here.

Global law firms, now more than ever, have emerged on the global scene, rendering legal services to clients outside of the countries where they are head-quartered. Foreign lawyers are participating in business negotiations and concluding transactions in local jurisdictions where they are not legally licensed to practice law.

So how does globalization impact legal practice and regulation in Africa?;

- Increase in foreign direct investments in Africa, consequently increased demand for legal services
- Businesses operating in multiple jurisdictions all over Africa, therefore multijurisdictional advice
- More international law firms have recognized that there is income generation potential from their clients seeking to do business in Africa.
- Due to mergers and acquisitions and other arrangements, there is the need for international and African law firms to collaborate.
- Increased complexity of legal developments and assignments
- Increased demand for African law firms to meet international
- Creative law firm setups (management of practice by COOs and whatnots)
- Increase legal and tech savvy clients
- Impact of legal technology.

## LAW FIRM RISK MANAGEMENT

Risk is the uncertainty caused by the occurrence of an event that might affect the achievement of objectives.

Risk management can be defined as the process of identifying, monitoring and managing potential risks in order to minimize the negative impact they may have on an organization.

A key function of the lawyer's work, although it is not highlighted in the regulatory framework, is to assist clients to limit/manage their risk. This is a major function and the mindset of the lawyer should always be geared towards the risk of their clients.

However, lawyers themselves and law firms, also have risk to manage. These may be classified as Strategic, Operational and Regulatory. There are other areas of risk that may factor in as well.

### Strategic Risk

These are the internal or external factors/events that make it difficult or impossible for an organization to achieve its objectives and goals. In essence, strategic risk refers to the events or decisions that could potentially stop an organisation from achieving its goals.

They arise from fundamental decisions that directors take concerning an organization's objectives, so essentially, strategic risks are the risks of failing to achieve those objectives.

They are the potential risks involved with decisions that impact the strategic direction of a business. Thus, businesses need to be aware of the possible circumstances that could put an obstacle between the organization and its objectives.

An example may be mergers or acquisitions which prove unsuccessful, or changes in senior management and leadership.

### Operational Risk

These are risks associated with the day-to-day activities and management of the business.

A good example of an operational risk is the failure to protect sensitive data. IT risk is a major operational risk for law firms especially since they hold data and client information. In June 2018, Dixon Carphone (not a law firm), experienced this kind of risk when it announced that the personal information, names, addresses and email addresses of 10 million of its customers may have been hacked and accessed since 2017.

**Legal/Regulatory Risk**

These are risks that a business might face from non-compliance with regulatory obligations, i.e. non-compliance with laws and regulation affecting the firm's practice.

Other examples include:

- financial risk – work in progress (clients)
- Practice management risk – conflict
- Reputational risk (the damage to a business/professional as a result of some conduct which generates a negative perception of the business/professional by clients and stakeholders)

**How to manage risk?**

Risks can have serious consequences for a business or organization if they materialize. Thus, it is important to be able to manage risk.

One way for lawyers and law firms to manage their risk is to do an assessment to determine what kind of risks they have or may come up against. This enables them to identify the risk, determine the likelihood of it occurring and the impact it may have, which will then help the business understand how to address it.

Another way is to manage professional risk is through Insurance. In some jurisdictions like the UK and the US, it is mandatory for a law firm or lawyer to take Professional Indemnity Insurance..

The Insurance Act makes the following types of insurance mandatory;

- Public liability insurance for certain places (including offices, shops, factories), insuring against negligence and destruction of life and property.

- Professional indemnity insurance, required for a list of specific occupations including lawyers.

It is also important to have a Business continuity plan,

**Benefits of having a risk management plan in place**

1. It helps the firm to be proactive in handling risks
2. Mitigates losses of the firm
3. Cost saving (lowers cost in terms of professional liability insurance etc)
4. Clients trust the firm more, which increases client base
5. Makes the firm efficient
6. Enhances the reputation of the firm
7. Grants the firm a competitive edge

## LAW FIRM STRUCTURES

This chapter deals with law firm structures, or law firm set-ups.

We know that a law firm is usually a large firm or an entity formed by one or more practicing lawyers in order to engage in the practice of law. They offer many services including advising clients with regards to their legal services and responsibilities, their business transactions, and other matters that require legal assistance.

Law firms take different structures, and in making the decision to start a law practice, it is essential to decide the type of structure that you will operate. Some issues to consider include;

- The vision of the founder
- Focus and objective of the practice
- Regulatory requirements
- Extent of liability
- Issues of continuity and legacy
- Size of the practice
- Start-up capital
- Taxes

These are the things to consider when deciding on a law firm structure. Additionally, the pros and cons of each structure must be considered before the choice of law firm structure is made. **Rule 4 of LI 2423** governs the establishment of law practice in Ghana.

### Types of law firm set-ups

There are 4 types of law firm structures found in Ghana:

1. **Solo Practitioner**

A solo practitioner is a licensed legal practitioner who works alone in the provision of legal services to the public. With this structure, a lawyer decides to do business under his own name and not as a separate legal entity

A sole practitioner:

- Is unattached to a law firm
- Does not partner with any other lawyer but may hire support staff e.g. clerks, office assistants
- Has full control over the profits and losses of his/her law practice

A Solo Practitioner may register under the **Registration of Business Names Act 1962, Act 151**.

| Pros | Cons |
|---|---|
| No bureaucracy in decision-making so the process is faster | No continuity for the business so the practice typically dies with the death of the lawyer |
| Enjoys 100% profit/reward | Suffers 100% loss/risk/liability (unlimited liability) |
| Fewer regulatory requirements | Limited capacity to work on major assignments |
| Greater freedom to operate | No opportunities to leverage on the abilities of others |

**2. Office Sharing Arrangement (Chamber System)**

This structure, commonly known as the Chamber system, consists of professionals (lawyers) who have come together to share office space and facilities. So for instance, you can have a chamber consisting of solo practitioners.

Although office space and facilities are shared, everyone operates independently.

**Rule 102 of LI 2423** defines chambers as a registered room or office used by a lawyer or a group of lawyers for professional work.

It is important to keep in mind that office sharing arrangements are **not** the same as partnerships.

Some key things to note with this structure are:

- Each lawyer maintains his/her independence
- Conflict of interest check and ensuring confidentiality is required
- Clients must be informed that the office is a shared one
- There is a need for the Office Sharing Agreement to be in writing. The Agreement must;

  i. Contain the contribution required from each lawyer
  ii. Have an indemnity provision.
  iii. Have confidentiality and non-disclosure provisions.
  iv. State expressly that the arrangement is not a partnership.
  v. State which resources are to be shared and which ones may be maintained individually.
  vi. Include the modalities of the office sharing. E.g. schedules to use the conference room etc.

| Pros | Cons |
|---|---|
| Less costly as costs are shared | Risk of breach of confidentiality |
| Ability to learn from other lawyers | Risk of poaching of clients |
| Freedom to operate | Data protection is at risk due to shared facilities |
| Lawyers are entitled to all income generated | No shared risks of the operation of the practice |
| No bureaucracy in decision-making | |
| The presence of senior lawyers in the OSA may serve as a "mentoring" system for younger lawyers who tap into the knowledge and experience of these senior lawyers | Limited opportunities to leverage on the expertise of others where the members of the Chamber are practicing the same area of law |

Checklist for Office Sharing Agreement

The terms and conditions of an Office Sharing Agreement must be reduced into writing, and must contain key items including;

- A statement that lawyers in the Chambers are solo practitioners or in limited circumstances groups of Lawyers (not necessarily as a Partnership) working from the firm registered Chambers.

- A strict prohibition against a lawyer representing the OSA as a Partnership. (**Rule 4 (10) (e) of LI 2423** places a restriction on indicating the existence of a Partnership, Association or affiliation between a group of lawyers when it does not exist)

- An agreement not to take adversarial positions in a case. (Using shared employees may result in a breach of confidentiality when lawyers represent adversaries)

- A statement on the preservation of confidentiality at all times e.g. the use of locked file cabinets or locked file rooms, locked folders on shared computers.

- A clear understanding on the use of office equipment, its maintenance, repair and replacement.

- A clear understanding on the deployment of support staff, payment of salaries, hiring, deployment, evaluation, etc.

- Policy for exiting the OSA, For e.g. length of advance notice required.

- A clear understanding on the financial responsibilities of each lawyer and consequences for failure to meet those obligations.

- A plan for sharing facilities, conference rooms, libraries and the schedule for the use of the conference room etc.

- A clear understanding on the need to maintain a ledger account.

### 3. Partnerships

Partnerships in Ghana, are regulated under the **Incorporated Private Partnership Act, 1962 (Act 152)**.

Mutual understanding between two or more parties that are interested in running a law firm together, creates this structure. They work together by having a shared purpose in the form of some arrangement.

A Partnership means 'two or more individuals carrying on business jointly for the purpose of making profit'.

**Section 3 of Act 152** outlines what constitutes a partnership and what does not.

There are 2 kinds of partnerships, i.e. Unlimited Liability partnerships and Limited Liability Partnerships (LLPs).

With unlimited liability partnerships, the liability of the partners is not limited. On the other hand, Limited Liability Partnerships (LLPs) have the liability of partners limited to what has been agreed. The number of partners however is not limited. This thus allows a corporate entity to be a partner.

It is important to note that in Ghana, the only kind of partnerships allowed are unlimited liability partnerships. So in Ghana, partners have unlimited liabilities. However in other jurisdictions, liability can either be limited or unlimited.

Some key features to note include:

- Partnerships are restricted to ***individuals only***. It cannot include companies, joint ventures, and unincorporated associations.

- In spite of corporate personality of Partnership, the liability of each partner is unlimited.

- Partners are jointly and severally liable with the firm and the other partners for all debts and obligations of the partnership.

- Number of partners range from **2-20** (If you want to exceed, its best to dissolve the partnership and form a company).

- Name of firm is usually that of named partners.

Most law firms are organized as Partnerships so that when a lawyer makes partner, the lawyer transitions from being an employee of the firm to becoming part owner of the firm and shares in the firm's profits and liabilities.

The role of partners include bringing in clients, managing clients, supervising work, making decisions on the overall direction(s) of the firm, among others.

| Pros | Cons |
|---|---|
| Risks are shared | No 100% profit |
| Financial burdens and liabilities are shared | Unlimited liability of partners |
| Opportunity to leverage on the capabilities of other partners | Potential for disagreements and termination of Partnership (especially if not well structured) |
| | Decision-making is slower |

## Checklist for Partnership Agreement

Lawyers, just like anyone else entering into a partnership, must negotiate and execute a **Partnership Agreement**. This is necessary in order to meet the requirements of the Partnership Act, provide clarity about the roles and functions of Partners and to reduce the potential for disagreement and dispute.

Thus, a typical partnership agreement must contain and indicate;

1. Name, address and occupation of the partners
2. Partnership name
3. Purpose and objectives of the partnership
4. Term / duration of the partnership
5. Principal office of partnership
6. Date of commencement of operations
7. Partners meetings procedures
8. Respective interest of each partner in the assets, obligations and revenues of the partnership
9. Amount of contribution to capital by each partner
10. Liability of partners
11. Matters relating to tax payable by partners for tax purposes
12. Distribution of profits and losses
13. Right of a partner to buy partnership
14. Relations between partners and clients of the partnership outside business ventures.
15. Admission of additional partners
16. Methods of winding up the partnership
17. Expulsion , voluntary or forced withdrawal of a partner, death or incapacity of a partner
18. Distribution of income and capital in event of dissolution
19. Right to use the name of partners even if they retire or after death

20. Methods of resolving disputes between partners or between the partnership and any individual partner (arbitration)
21. Amendment to the partnership agreement
22. Prohibition of a partner to transfer his or her interest in the partnership or to create a partnership for his or her right title and with respect to interest in the partnership

### 4. Companies

Law firms can also be set up as a company in accordance with the **Companies Act, 2019, Act 992**. Law firms can form companies in Ghana but cannot form limited companies.

Setting up a law firm as a private company allows for up to fifty (50) shareholders (advantage). Professional services companies are required to set up with unlimited liability (disadvantage) and it may be important to take professional liability insurance to cover the risks associated with unlimited liability.

**Other Law firm set-ups not found in Ghana**

### 1. Limited Liability Partnerships (LLPs)

LLPs are not allowed in Ghana.

In jurisdictions that allow LLPs, the liability of the partners are limited. In the UK and US, the typical structure is one where there are 1 or 2 individual partners (one of whom must have unlimited liability), who are partners with a corporate entity (with unlimited liability) within which exists many partners (equity or non- equity).

Insurance is taken to cover the partners who do not have limited liability.

### 2. Multi-disciplinary corporations

Lawyers and licensed paralegals may form a multi-disciplinary practice with professionals from other disciplines whose work supports or supplements the provision of legal service (e.g., accountants, tax consultants, trademark and patent agents, etc.)

| Pros | Cons |
|---|---|
| Meets the needs of the new sophisticated client | Differences in professional competencies could drag out the provision of advice |
| Convenience: a multidisciplinary law firm is a one-stop shop for all professional needs | Differences in professional backgrounds/ compliance requirements may create conflict |
| Fosters synergy: the combined effect of resources creates greater opportunities among lawyers / professionals | |

### 3. Swiss Vereins

A Swiss verein is a formal legal structure recognized under Swiss law, which consists of a number of independent firms operating in different countries, each of which has limited liability vis a vis each other but operating under one brand.

Examples include Baker & McKenzie (numerous international partnerships), and DLA Piper (US and international partnerships).

| Pros | Cons |
|---|---|
| Attractive when pitching equally enormous, multinational clients | Greater chance of conflicts of interest |
| Provides more access to legal services | Prone to ethical exposure |
| Each office has limited liability as to the acts of other offices | |

### 4. Professional Corporations

A professional corporation is an entity formed by professional service providers such as doctors, lawyers, accountants, consultants, engineers and architects. So a range of professionals join to form one corporation.

In most countries where this form of structure is allowed, the corporations are allowed special privileges prescribed by statute. For e.g. limits on personal liability for business debts and claims.

## MANAGEMENT OF LAW PRACTICE

**What is management?**

Management is a process of planning, decision making, organizing, leading, motivating and controlling the human, financial, physical, and information resources of an organization to reach its goals efficiently and effectively.

It is the administration, organization and coordination of the activities of an organization to achieve the desired goal of that establishment.

Management in law practice, therefore means the organization of the activities of a law firm or practice in such a manner as to maximize benefits. In a law firm, the management is steered by the partners firm and is spearheaded by the Managing Partner.

**Does management matter in law practice?**

Law is a profession that needs to be managed, and law practices suffer as a result of poor management.

Professionals, and lawyers in particular, have always struggled with proper management and this is because they lack certain skills. In the course of their training, lawyers acquire **technical skills**, (i.e. knowledge of the law and its application), and they believe that this alone is enough to carry them on in life. However, it is important to go beyond that and acquire:

- **Human skills** – The ability to deal with other people. How you relate to other people and vice versa. Human skills also explain why someone should be led by you or you to be led by them. The ability of a lawyer to work with other people determines the ability to grow and work with other people.

- **Conceptual skills** – that which enables you to connect unconnected things, and see them as a whole. The ability to see more than just individual parts (i.e. see them as a whole, but at the same time, seeing the individual parts. Lack of conceptual skills makes one overlook things that are connected.

Lawyers are not taught these skills (human skills & conceptual skills) at law schools. Hence, the teaching of management is important to the practice of law. Management is of essence to the study and practice of law as it equips the law student with the requisite skills and knowledge that will aid him or her to set up his/her firm and also be part of the working environment in law firms.

**The History and Evolution of Management**

Prior to the Industrial Age, management was thought to be a simple affair that involved two basic tactics, which together, are known as the ***Carrot-and-Stick Approach***. So people were managed in two ways;

i. By way of incentive/motivation (carrot), or
ii. By way of punishment (stick)

If dangling the metaphorical carrot in front of the employee did not motivate them to work, then you beat them with the metaphorical stick to make them work. So basically, the concept of management was thought to reside in either incentivizing or instilling a fear of punishment. This was workable at the time because companies and firms did not generally employ more than a few dozen employees, and it was possible for the manager to know each member of his staff personally and assess which tactic worked best on which member of his staff.

Then in the Industrial Age, the gap between managers and workers began to widen. The Industrial Age brought better and faster technology allowing companies to perform more efficiently than ever before and gave them the ability to dramatically increase their output. However, increased output meant lower prices which increased demand which in turn required more employees.

Companies that once had a couple dozen employees were now growing into gigantic corporations, with national markets. No longer was it possible for a manager to know each and every one of their employees on a personal level. No longer could managers make on-the-spot decisions and maintain records in their heads. This was what led to the formal study of management. By 1890, it has become abundantly clear that previous management methods were no longer applicable to U.S. industry. This was when management theory truly began to blossom.

Management Theories

**A. Classical Scientific Theory- Frederick Taylor [1856 - 1915]**

Frederick Taylor is often called the "father of scientific management theory" as he is credited to have developed the **Scientific Management Theory**. He wanted to make organizations more standardized, efficient and productive by studying their work process, and he believed that the primary job of management was to optimize the way work was done to increase output.

Taylor's scientific management theory consisted of testing the completion of various tasks to determine the optimal amount of work that could be accomplished within a certain time period. He measured work output by humans and machines and developed standard times for completing tasks. His goal was to measure productivity, and thus, his theory is largely based on the concept of time (i.e. the amount of hours allocated for the productivity of a person performing per hour)

Taylor sought to measure how productive humans were against machines, and he developed a standard; productivity per man hour (measured by time) and machine hour. So the efficiency of a worker should be determined based on the amount of work he or she can do within an hour. He

also compared the efficiency of machine per hour to that of man to determine which was more productive. Based on this, one could determine the productivity per man hour and that of machine per hour. That is what shaped the concept of time for wages, and informs the remuneration for overtime. (Overtime means working over/beyond the time you are supposed to).

Taylor also sought to change managers from whip bearers to supervisors, a situation where they manage resources. To him, the manager's role was to ensure that people were productive over time.

(On how this theory might be applicable to law practice, you may note that in modern times, the time theory is used as a means of billing clients for work done)

### B. Classical Administrative theory - Henri Fayol [184 - 1925]

Then came Jules Henri Fayol, an engineer in a company that owned coal, steel and iron mines. From 1860-1866, Fayol improved techniques for fighting underground coal fires. Because he worked so hard, he was rewarded with a promotion to management. Six years later, he was again promoted to Chief Executive Officer (CEO). As the CEO, he was responsible for improving operations for the company.

Although Fayol's training was in engineering, he realized that managing thousands of employees at different locations required skills that he had not learned in school. He viewed management as more than just supervising people. For Fayol, management involved all of the activities associated with producing, distributing, and selling products. He also realized that a manager needed to be able to strategize, organize equipment, deal with people, and much, much more.

Fayol agreed with Frederick Taylor's theory. He however disagreed with Taylor on the idea that management was confined to the workplace, but postulated that management was central and common, and it applied in homes and should be taught in schools. Taylor focused on the best way to maximize employee efficiency and productivity of employees, but management had to encompass more than that. The necessity to manage not just worker output but to link the entire organization toward a common objective began to emerge. Management, out of necessity, had to organize multiple complex processes for increasingly large industries. Thus, the administrative approach began to emerge. Where the scientific management approach had focused on the productivity of individuals, the classical administrative approach concentrated on the total organization.

Prior to his work, there was a general notion that people were "born managers". Fayol believed that no one was born with management skills, but it was a skill that could be learned. According to Fayol, "to manage is to forecast and plan, to organize, to command, to co-ordinate and to control."

Within managerial activities, Fayol specified **5 primary functions of management**:

Commented [JE7]: These are the **historical functions** of management postulated by Fayol. Do not confuse them with the **modern functions** of management.

i. Planning
ii. Organizing
iii. Commanding
iv. Coordinating
v. Controlling

**POC**[3]

| | |
|---|---|
| Planning | Deciding what needs to happen in the future and generating plans for action (deciding in advance) |
| Organizing | Making sure the human and nonhuman resources are put into place. |
| Commanding | Determining what must be done in a situation and getting people to do it. |
| Coordinating | Coordinating is about ensuring everything works well together, by having the right resources in the right place at the right time. Managers should co-ordinate team procedures and actions so that the objectives are achieved in an effective and efficient manner. |
| Controlling | Evaluate how well you are achieving your goals, improving performance, taking actions. Put processes in place to help you establish standards, so you can measure, compare, and make decisions. |

(Today many professionals and lawyers believe that management is a skill that ought to be acquired and that has become a very important part of law practice over the period)

Fayol also laid out **14 Principles of Management,** which identified the skills that were needed to manage well. These principles provide modern-day managers with general guidelines on how a supervisor should organize her department and manage her staff;

1. ***Division of work (Specialization)***

   For management to function, it is important that work is divided among individuals and departments.

2. ***Parity between authority and responsibility***

   There must be a balance between authority and responsibility. Managers must possess the authority to give orders, and recognize that with authority comes responsibility.

Authority without responsibility is abuse, and responsibility without authority leads to frustration.

***3. Discipline***

There must be respect for rules, obeying procedures and self-discipline.

***4. Unity of command***

Subordinates in one organization must report to one supervisor, and where there are multiple supervisors, there is confusion.

***5. Unity of direction***

If the organization sets a goal/vision, all activities must lead towards that and must be focused on that goal.

***6. Subordination of individual interest to general interest***

Individuals should pursue team interests over personal ones – including managers. If the organization agrees to go a particular direction, then individual interests must be subordinated.

***7. Remuneration***

There must be fair remuneration/compensation for employees. Employee satisfaction depends on fair remuneration for everyone.

***8. Effective centralization***

An organization must be de-centralized but there should be some degree of centralization.

***9. Scalar chain***

There must be a clear chain of command. Employees should know where they stand in the organization's hierarchy and who to speak to within a chain of command.

**10. Order**

Everything in the right place at the right time, with the right people for the right function

**11. Equity**

Managers should be fair to all employees through a "combination of kindness and justice." Only then will the team ‘carry out its duties with devotion and loyalty’

**12. Stability in the tenure of personnel**

Organizations should minimize staff turnover and role changes to maximize efficiency. If people are secure and good at their jobs, they are happier and more productive.

**13. Initiative**

Initiative should be encouraged. Employees should not always be commanded but should be be encouraged to make suggestions, and develop and carry out plans for improvement.

**14. Esprit de corps (union is strength)**

A good manager should encourage teamwork. Organizations should strive to promote team spirit, unity, and morale.

### C. Max Weber [1864 – 1920]

Unlike Taylor and Fayol, Max Weber was not an engineer. He was a German Sociologist and he postulated that organizations must have a structure, and ideally, that structure must be hierarchical. He approached management by focusing on organizational structure, dividing organizations into hierarchies with clear lines of authority and control. This means that managers were given "legal authority" based on their position in the organizational structure, to enforce rule and policy. He was concerned with the importance of authority in any social structure.

To him, there must be a well-defined hierarchy of authority with clear lines of authority and control concentrated at the top. Each level of management should be controlled by the level of management above it in the hierarchy and they should control the lower management below them. This will help the organization proceed in a single direction.

He set out 6 points for management to be effective:

1. A formal hierarchical structure
2. Rules-based management ( the organization must be rules-based)
3. Functional speciality
4. Focus on mission ( an organization must focus on its mission)
5. The rules must be impersonal
6. Merit ( employment must be based on technical qualification)

Weber also introduced the concept of 'legal authority' based on position, which he later reformed to the concept of bureaucracy.

The concept of legal authority, according to Weber, is that every position must be backed by a legal authority to occupy that position.

The concept of bureaucracy in general terms is a system of governance in which the most important decisions of the State, are taken by officials and not necessarily elected representatives. Weber expanded the concept of bureaucracy from politics to the management level to mean a highly structured, formalized and impersonal organization with defined hierarchical structure and clear lines of authority to govern it. The concept of his principle of bureaucracy is that there should be centralization of power in terms of planning and decision making in the organization.

The reason behind developing this concept of bureaucracy, according to Weber, is to stabilize large organizations and minimize charisma-based management. He says that for large organizations to be stable, and to minimize charisma-based management, bureaucracy is necessary.

As a sociologist, Weber emphasized something important in relation to management. He emphasized that in determining efficiency, 'logical factors were far less important than emotional factors', and for example, 'group pressure' had a better impact on productivity than the other strategies of managers. According to him, the under-performance of people should not be based on the logic of measurement, but could be attributed to certain emotional factors such as having lost a loved one. He also argued that group pressure is paramount in determining the productivity of people. For instance, in a law firm, the performance of partners may force associates and paralegals to put in their maximum best.

To him "personal" and "social needs" are important to the "organization goals" so e.g., managers must consult workers on changes to be made and factor in their views. Thus, before decisions are made, there is the need for managers to consult and engage workers. They should therefore not seek to impose the ideas and others but rather before taking any decision , the workers should feel that their ideas are respected and considered.

### D. Robert Greenleaf [1904 – 1990]

Robert Greenleaf postulated the concept of 'servant-leadership', which he says must have 3 elements;

i. The natural desire to serve
ii. The conscious choice to lead through serving (leadership by example)
iii. Those served grow as persons to become leaders (the best test of management)

Therefore, because their duty is to grow leaders, it is important for leaders to place the priority of followers before their own. He also differentiates "management" from "leadership", evidenced in two of his essays published which are "The Servant Leader" in 1970, and "The Servant Leader Organisation".

He advocated that collaboration and trust are important.

He believes that where the leader behaves like the servant he attains the set goals. Greenleaf spelt out some actions and activities that servant-leaders do. These include: care, know their followers well, focus on followers and their needs, listen, provide vision, grow and develop followers, persuade, build strong and loving relationships with followers, display humility.

Therefore, Greenleaf postulates that leaders must grow followers and that the leader must be measured to the extent that his followers grow. Hence in a law firm, a partner will be measured high if it can be seen that he is able to train a pupil efficiently to become a better associate.

### E. Peter Drucker [ 1909 – 2005]

Peter Drucker postulated that managers should first be leaders. He is most famous for his concept of Management by Objectives (MoB), also known as Management by Results, and for having invented the SMART principle.

He drew a distinction between management and leadership. According to Drucker, "management is doing things right, and leadership is doing the right things". That is, the manager is supposed to follow laid down procedures in executing his tasks. Whether or not the task is right does not arise. Rather, the rightness or wrongness of the task must be the concern of the leader. He is supposed to do what is right.

Some say he invented modern management, and his first major work is titled "The End of The Economic Man". In this book, he postulates that the breakdown of social and political structures led to the rise of Nazism in Europe and social upheavance, and resulted in many of the riots and revolutions. He advocated that lessons should be learned in order not to repeat them.

Following this, his next famous work was titled "The Practice of Management", in which he brought about the concept of Management by Objectives. He defines MoB as the process of refining and improving performance by setting clear objectives, and the objectives must be agreed to by both managers and employees.

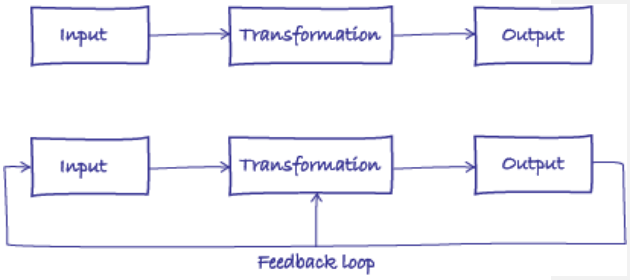
(MBO - defining specific objectives and defining a sequence to achieve it)

He set out a sequence on how to arrive at organizational objectives by involving everybody. He says that when employees are given a say in setting objectives of the organization, it improves their commitment and aligns them with the stated objectives.

**What is Management? (Modern Perspectives)**

The scope of modern management consists of

- Planning
- Organising
- Staffing
- Directing
- Leading
- Controlling
- Monitoring




It deals with taking input, processing it, and giving output.

Input would include people, finance, materials and resources.

Output would include goods, services, reputation, etc.

For a lawyer, input will consist of instructions by a client, lawyers in the firm, material resources such as law reports etc. After receiving the client's instructions and processing same to take the needed steps to bring about an output, the client will also give his feedback.

**PLANNING:** This is setting the overall direction of work. It is setting the objectives of the organization and outlining the course of action to achieve those objectives. Planning is important to keep up with the work that lawyers do. Examples of what managers plan in law firms include;

- The people (how many to hire)
- Each case
- The cost and cost control (finances)
- Completion schedule
- Non-law activities

**ORGANIZING:** Organizing involves defining the responsibilities of each person who plays a role in the task, for eg, in a trial, and allocating resources, time and effort required for each. So in a law firm, managers would organize by allocating resources, time and effort in relation to how cases are handled, getting the team together and assigning them roles, time spent on cases and compliance with deadlines, etc.

**LEADING:** Leading involves getting the commitment of others towards the objectives, and giving direction. Giving direction on what a firm must do is important. It involves ensuring that the organization remains focused on its mission and vision. So in a law firm, leading will involve outlining the scope of practice of the firm. For example, the firm AB & David makes it clear that criminal law is excluded from their scope of practice.

**CONTROLLING:** Controlling is a function that follows the function of monitoring. It is the systematic action taken after the review/monitoring function in order to ensure that actions are taken based on the developments that the manager has noticed.

So in a law firm, managers will control works in progress, and the impact of deadlines, among other things. (Work in Progress is when the lawyer is working continuously and has not yet billed)

**MONITORING:** Monitoring consists of assessing performance of institutions, staff, or the goals of the firm, with the view to ensuring efficiency and compliance. It means checking to ensure that the objectives are being met. Eg. Monitoring by giving deadlines. If addresses are to be filed on a particular date, you must monitor and ensure that objectives, deadlines etc are being attained.

It consists of several things, eg, use of resources, monitoring client satisfaction and monitoring deadlines.

**DIRECTING:** Directing is the function of ensuring that things are done correctly as it should be, ensuring that tasks are executed the way they should be executed. It also involves giving clarity and at times, giving instruction on how strategy should be implemented.

**STAFFING:** Staffing is the function of ensuring availability of human resources fit for the task. It also involves the recruitment process, retention and exit of staff, and managing staff turnover. It also includes equipping staff with the tools they need to enable them to work.

**Why Management is a daily process**

Management is a daily process, and as part of the management process, an efficient manager must be concerned with the following:

1) **Internal Elements**

Internal elements of the organization must always be achieved.

These are elements that operate within the organization and are usually within the control of the manager. Managers must be careful to consider these things in exercising the different functions of management. Examples include the staff, assets, stationery, capital, etc)

2) **External Elements**

It is important to manage the impact of external factors in the constantly changing wider environment, i.e. everything outside the firm and the firm's control.

An efficient manager should, as much as possible, apply the principles of management to manage the impact that external factors may have on the firm. Examples of external elements may be newly enacted legislation, new statutory regimes, change in government, competition, trends, etc.

3) **Historical Elements**

Managing response to past and present events.

These are elements usually from the past that tend to influence the present or the future. Managers are advised to consider these past happenings in the execution of their functions as managers in order to prevent mistakes or generate better and more efficient ways of getting the job done.

4) **The readiness to respond to changing times and unforeseen future events**.

Managers anticipate ahead of likely future occurrences in order to be prepared when they do happen. It is this act of preemption that can ensure the survival of a business, especially in today's fast changing world.

**The importance of the management role in law firms**

There are diverse ways in which management helps in the work of law firms:

1. Adds value to resources
2. Helps manage the human activity within the law firm
3. Helps manage the practice
4. Helps manage clients
5. Helps manage staff
6. Helps manage relationship with colleagues
7. Helps manage resources
8. Helps the firm respond to daily events in an organized manner
9. Helps to understand changes in the practice of the profession
10. Helps the lawyer to survive in a competitive world
11. Helps utilize the technical knowledge acquired for the practice
12. Helps in making daily choices based on the perspective
13. Helps in good governance
14. Helps in meeting statutory obligations
15. Helps in managing time

**Some Key Management concepts**

**1. Goals**

This comes under the "leading" function of management. Goals are part of every aspect of business/life and provide a sense of direction, motivation, a clear focus.

Management goals consist of 2 things:

i. **Mission** – Mission is the reason why an organization exists; the objective of setting up. For instance, why you set up a law firm.

ii. **Vision** – Vision is where you want to go; the desired future outcome.

So Mission is the 'Why?', and Vision is the 'Where?'

Objectives flow from both mission and vision, and together, they constitute the goals of the organization.

**2. Strategy and Tactics**

Both are important tools employed to achieve the goals of the organization.

Strategy is the general plan taken to achieve a goal, whereas tactics are the steps taken to implement the plan.

### 3. SMART


SMART is an acronym that stands for Specific, Measurable, Achievable, Realistic, and Time Bound. It is a concept for the development of strategy that helps to measure the goals and objectives of the organization and their achievements.

In essence, the goals and objectives of the business should be **SMART**:

***Specific*** – Goals should be well defined, clear and unambiguous. You cannot set a goal which is not specific.

***Measurable*** – You should be able to monitor the goal to see if it is being achieved. With the use of specific criteria, you should be able to measure progress towards the accomplishment of the goal.

***Achievable*** – The goal should be attainable and not impossible to achieve.

***Realistic*** – The goal must be realistic in that the goal can be realistically achieved given the available resources and time.

***Time Bound*** – the goal should have a clearly defined timeline. If the goal is not time-constrained, there will be no sense of urgency and, therefore, less motivation to achieve the goal

### 4. Stakeholders (Environment/Ecosystem)

Stakeholders are the entities and human beings who in one way or another, impact on the organization.

They may be internal or external, and they may be core and non-core.

The stakeholders of the industry impact the organization and so it is important that the manager acknowledge these factors and manage accordingly. Managers make assumptions and decisions, taking stakeholders into account. It affects how managers plan, lead and control.

### 5. PESTEL

PESTEL is an acronym for a management tool used to analyze stakeholders and the environment in order to determine whether any goal/objective is relevant or realistic. It is used to identify the macro (external) forces facing an organisation.


**Political** – Analyze the political environment to determine whether it is conducive for what the organizations wants to do. These political factors determine the extent to which government and government policy may impact on an organisation. This would include political policy and stability, as well as trade, fiscal and taxation policies too.

**E**conomic – Analyze the economic factors that may affect the organization. Economic factors have a direct impact on the economy and its performance, which in turn directly impacts on the organisation and its profitability. Such factors include interest rates, employment or unemployment rates, raw material costs and foreign exchange rates.

**S**ocial - The focus here is on the social environment and identifying emerging trends. This helps a marketer to further understand consumer needs and wants in a social setting. Factors include changing family demographics, education levels, cultural trends, attitude changes and changes in lifestyles.

**T**echnology - Technological factors consider the rate of technological innovation and development that could affect a market or industry. It is important to consider to what extent is technology impacting the organization? Factors could include changes in digital or mobile technology, automation, research and development.

**E**nvironment – What are the environmental issues that need to be taken into account? Environmental factors are important due to the increasing scarcity of raw materials, pollution targets, doing business as an ethical and sustainable company, carbon footprint targets.

**L**egal - An organisation must understand what is legal and allowed within the territories they operate in. They also must be aware of any change in legislation and the impact this may have on business operations. Factors include employment legislation, consumer law, healthy and safety, international as well as trade regulation and restrictions.

### 6. Competition

It is important to recognise this if the organisation/firm is in a competitive environment. The legal profession/law practice is not a monopoly, but rather it is a competitive environment.

Porter's Five Forces (The 5 Forces of Michael Porter) is a framework for analyzing an organization's competitive environment. This framework is relevant in understanding competition and how it impacts law practice.

According to Porter, there are five forces that represent the key sources of competitive pressure within an industry. They are:

- **Supplier power**

In the legal market, Law firms and lawyers are the suppliers of services.

- How powerful are the suppliers?
- Does the supplier have a competitive advantage?

The more powerful the supplier, the more competitive.

In the law practice, this has to do with the ability of the lawyer or the firm to call the shots in that they have the competitive advantage on the market. Such law firms usually stand out and have better and bigger clients because of their competitive advantage. Where such firms are few, they are likely not to be in much competition. The manager must ensure that his firm has the competitive advantage.

- **Competitive rivalry**

This looks at the number and strength of competitors in the industry.

- How many rivals are there?
- How does the quality of their products/services compare with yours?

Depending on the services that they offer, law firms may have a niche practice and not really have any rivals. They may also have a general practice and have many rivals. It is up to the manager to determine who these rivals are and how to make his firm stand out from the rivals.

- **Threat of new entry**
- What is the time and cost of entry?
- Are there specific barriers to entry?

An organization's power is also affected by the force of new entrants into its market. The less time and money it costs for a competitor to enter the market and be an effective competitor, the more an established organization's position could be significantly weakened. And unless the manager takes steps to either eliminate the threat of new entrants or design services in such a way that makes them competitive, the firm might suffer.

In the law services industry, the threat of new entrants comes in various forms, like new lawyers being called to bar in huge numbers each year, the gradual encroachment of international law firms into the Ghanaian legal services space, etc.

For example, when the Menzgold was initially suspended from operations, the organization hired international law firm Baker McKenzie to join forces with Ghanaian firm, Kwame Akuffo & Co. to represent it in matters with the SEC. More and more international law firms are finding their way into the Ghanaian market and this promotes competition in the industry, A good manager must either find a way to offer the quality of service being offered by these international law firms or join forces with them to remain relevant.

- **Threat of substitution**

- Can the service being provided/the product being offered, be easily substituted?

Substitute goods or services that can be used in place of a company's products or services pose a threat. Likelihood of substitution makes the market less competitive.

For example, the introduction of Artificial Intelligence (AI) into the legal industry has increased competition in that, rather than pay lawyers to spend hours reviewing a contract, COIN software may be used to review a contract in minutes. AI is currently the biggest threat in terms of substitutes for legal services and a good manager must ensure that his firm finds a way to remain competitive in spite of AI.

Asides that, there is also a growth in the number of multi-service firms that offer tax and legal and an array of other services to their clients. They are essentially a one-stop shop, making them competitive with firms that offer only legal services. A manager who takes note of these trends can come up with a solution that makes his firm just as competitive.

- **Bargaining power of buyers**

- Are there a lot of customers or there are only a few customers that all the suppliers are chasing?
- What are the sizes of orders placed by customers?
- How price sensitive are the buyers?
- Do buyers have the ability to switch to substitutes?

This has to do with the ability of the buyers or clients to freely determine which firm they would rather go for

## 7. SWOT

This is a tool in planning.

While PESTEL allows an organization to analyse the external environment, **SWOT** is a tool used to asses the organization itself. It examines the internal and external factors that affect the organization.

A SWOT analysis is used to highlight both internal and external factors affecting the business. The Strengths and Weaknesses are Internal, whilst Opportunities and Threats are External.


**Strengths** can be identified by asking what advantages the organisation has and what its unique selling proposition (USP) is. It is important to consider what other people in your market see as your strengths i.e. a brand name, patient or a workforce with a particular skillset.

**Weaknesses** would include: what your organisation could do to improve, what you should avoid (be it due to brand name/reputation, resource etc.) and what factors ultimately lose your organisation sales.

When identifying strengths and weaknesses, it's important to compare your organisation to its competitors.

With **opportunities**, you need to identify what good opportunities are open to the organization – some of these will come via the organisation's strengths.

Finally, a SWOT analysis should assess your **threats**. What are the threats facing your business right now, and what are your competitors doing? For example, how is technology affecting your business?

### 8. Knowledge management

Multidisciplinary approach to achieve objectives by the use of knowledge.

This concept involves the organization developing knowledge in matters over time and capturing this knowledge, processing it, evaluating it, utilizing it and storing it in a way that can be retrieved at a later time. Managers should learn to manage organizational data as well as the people and the work being done.

### 9. Human Capital

The concept that human beings can increase their value and capacity through the use of knowledge and application of skills, and that organizations such as law firms, should improve the capacity of their staff in order that they give greater value.

Professional services rest mainly on knowledge and are based on knowledge-based industries. Thus, the quality of staff gives value to the organization.

Since the legal services industry is one that is knowledge-based, it is essential that a manager understand the impact of the quality of staff chosen to do the job. It is the quality of staff that give value to the organization. This ties in with the staffing and organizing functions of management.

**10. The concept of management as a specialist occupation**

This is when management is separated from core-work.

The whole job of a manager can be separated and shared between persons with specialization in different fields in order to ensure that the company has a more holistic view on matters.

In some areas, including small law practice, and to a large extent, in big law firms, the separation is not possible.

Over time, specialist managers have constituted the basis of what is known as external agent of the entrepreneur, the capitalist, and they possess the skill to grow enterprises.

In modern times, management expertise has been specialized such that we have management consultants. These are expert managers who help organizations to solve problems, grow, scale up or execute specific projects.

## THE LAWYER-CLIENT RELATIONSHIP

### Introduction

It is important for lawyers to maintain a healthy balanced lawyer-client relationship. This is one of the most significant aspects of legal practice. A lawyer's ability to effectively manage the lawyer-client relationship is key to the success of his practice.

The failure to effectively manage the Lawyer-Client relationship can result in:

- Dissatisfaction
- Termination of the relationship
- Reduction in referrals
- Reputational damage
- Exposure to complaints and disciplinary action by the General Legal Council and legal suits

Therefore, appropriate steps must be taken to maintain the relationship and ensure clients are satisfied.

### Types of clients

A client may be an individual, a partnership, a company, a government institution, international organization etc. that engages the services of a Lawyer.

Lawyers need to appreciate that they will encounter different types of clients. A prior appreciation of this puts the Lawyer in control of the relationship and equips the Lawyer with how to manage the different types of Clients.

There are several types of clients;

❖ **High Value Clients**

These are clients on whom the survival and profitability of the Lawyer's practice may depend. They are less price sensitive and have the means to pay the fees of the lawyer, and as such, require the best of services.

They require a Lawyer to:

- Provide exceptional advice that is commercially and technically sound.
- Offer excellent client service.
- Be extremely responsive.

❖ **Key Clients**

These are also known as the star clients. They are the ones likely to give the lawyer repeat business and likely to refer the lawyer in their network. Additionally, their presence on the Lawyer's clients list may be used as a good reference point for attracting prospective clients.

**NB**: It is important for the lawyer to build strong relationships with Key and High Value Clients and invest time to retain them. For eg. Lawyers may send industry articles or wish a client a happy birthday or extend holiday greetings as the context may require.

❖ **Regular clients**

Regular clients typically engage the Lawyer on a consistent basis and may enter a Retainer Agreement with the Lawyer due to the frequency of the services they require.

The Retainer Agreement sets out the general scope of the advice the client would be receiving under the Agreement. Litigation is not usually included in the agreement.

❖ **One-off clients**

These are clients who engage the Lawyer for a one-time assignment or service.

❖ **Low value clients**

Clients who the lawyer/ firm provides services for at heavily discounted rates – this is usually based on the nature of the matter/ services or the source of the referral. For e.g. a Lawyer / firm may decide to accept to represent a low value client because the service is commoditized and may not require any special expertise.

❖ **Itinerant clients**

They are described as 'promiscuous clients' because they hop from Lawyer to Lawyer, seeking opinions usually on the same matter. This client typically complains about previous Lawyers they have engaged and may provide facts in a manner geared towards the outcome that the Client is seeking based on advice previously received.

❖ **Difficult clients**

Difficult clients may include clients who:

- Think they know more than the Lawyer (usually because of information they may have read)
- Are dishonest
- Want you to lie, distort / stray from the rules
- Alter documents themselves and require you to validate their altered documents
- Second guess your advice because they have sought advice from several lawyers (usually without providing all the facts)

- Research an issue and suggest solutions usually pertaining to jurisdictions, other than the county to which the matter relates
- Complain about fees for services provided no matter how heavily discounted the fees are.

Difficult clients can take away valuable time that could have been spent marketing your services or working for other Clients.

❖ **Demanding clients**

These are clients who believe that because they are paying you to work for them, the Lawyer is at their beck and call. They don't consider that personal life and time are off-limits. Whilst it is a client's right to seek clarification and the Lawyer's responsibility to provide it, demanding clients will usually seek clarification on every single issue which will require that you spend time (which the Lawyer may not be able to bill for) responding to the endless clarifications requested.

❖ **Non-responsive clients**

These are clients who don't acknowledge or respond to information provided to them about the matter being handled e.g. a court date or deadline. Typically, these clients tend to blame the Lawyer should they be exposed to some risk or liability because of their non-responsiveness. A Lawyer must reduce exposure to claims by documenting all verbal exchanges in writing / keeping a record of all correspondence.

❖ **Illiterate clients**

These are clients who do not speak or understand English. In order to protect their interests and ensure the client is satisfied, the lawyer/firm will usually request the client to designate a person who will communicate the client's instructions to the lawyer, and translate the discussions.

Where a Lawyer seeks to enter into a Terms of Engagement with the Client, the use of a Jurat stating that the contents of the Terms of Engagement were explained to the client in a language understood by the client is important.

❖ **Clients with apparent mental disorders**

These are clients who exhibit signs of mental disorders either through their behavior, speech or written communication. Lawyers, in the interest of their safety and that of the people they work with, may decline representation of such clients. Where possible, Lawyers may request for guidance from a mental health facility on how that client may be helped.

**Note: Rule 25 of LI 2423** on Clients with diminished capacity

**Lawyer – Client Engagement**

When a lawyer meets a client, and decides to represent him, it becomes important to draw up what is known as **Terms of Engagement**. This is essentially a contract between the client and the lawyer, that sets out the arrangement between the parties involved and regulates the relationship. It would touch on the scope of work to be provided, the fees arrangement, and termination of the agreement, among other things.

The Engagement Agreement is important because it helps the client and the lawyer to set expectations and reduce risk. Entering into an engagement with a client brings into play responsibilities, expectations and rights for both parties. These should be documented in an agreement as soon as a mutual understanding of the matter is reached, so that the parties understand what is required of each of them.

The life cycle of a lawyer-client engagement is broken into two stages:

| Pre-Engagement Protocols | Post Engagement Protocols |
|---|---|
| This covers the key issues that need to be considered before the Terms of Engagement are executed, up until they are drawn up.<br><br>It involves:<br>- The Client Conference<br>- Assessment of Conflict of Interest<br>- Know your Customer requirements<br>- Scoping of Services<br>- Determination of fees/cost<br><br>These protocols are key to ensuring compliance with the rules and regulations that must govern the Lawyer/Client relationship and are integral to the development of a professional relationship between the lawyer/law firm and the Client | This covers the processes that take place after engagement.<br><br>It involves:<br>- Execution of the Terms of Engagement<br>- Execution of the tasks<br>- Monitoring deadlines & deliverables<br>- Billing, invoicing and payment<br>- Termination/Expiration of the Terms of Engagement<br>- Closure of matter (return/ storage of documents, submission of reports, client surveys) |

These are discussed further in detail.

**Pre-Engagement Protocols**

When a lawyer is approached by a client, the first thing to do is to decide whether or not to represent the client in that particular matter. The decision would be based largely on whether or not there is a conflict of interest, and information available after the lawyer has conducted due diligence on the client.

Where the lawyer seeks to decline representation, the lawyer must communicate that decision to the prospective client immediately and in writing. Where the lawyer decides to represent the client, the lawyer must negotiate and execute the Terms of Engagement with the client.

It must be noted that, the client may reject, accept or negotiate the Terms of Engagement proposed by the lawyer / firm.

**Conflict Check:**

Before a lawyer represents a client, there must be an assessment of whether any conflict of interest exists. This may be done ***before the client conference***, or as ***an introductory matter in the client conference***, depending on the mode/nature of the client enquiry.

A Lawyer cannot ethically represent a client in a matter where a conflict of interest arises. Before making the decision to represent the client, the Lawyer must obtain relevant information so as to determine conflict. Conflict of Interest deals with the risk that a lawyer's representation of a client would adversely be affected by that Lawyer's own interest, or by that Lawyer's duty to an existing or former client or to a third person.

**Rule 20(14) of L.I. 2423** defines conflict of interest as an interest that is likely to affect the judgment or loyalty of a lawyer either to his client or to his prospective client. It also occurs where the interest is one that the lawyer will actually, or is likely to, prioritize over the interest of his client or his prospective client.

Examples include representation of plaintiff and defendant, acting for more than one party in a transaction, etc.

In assessing any conflict of interest situation, the key determinant is whether the independent judgment of the lawyer could be compromised by the other interest.

A firm or Lawyer must have a mechanism for checking conflict of interest. In most law firms, this may involve a system where the lawyers in the firm are requested (can be by email or other documented process) to assess conflict based on the client, the counterparties and the services requested by the client. The preferred option for conducting conflict check is through the use of a software. It is important to note that a conflict of interest is only as good as the information that has been entered into any system for checking conflict.

**Know Your Customer (Due Dilligence Check):**

Once the conflict check is cleared, the lawyer must fulfil 'Know Your Customer" (KYC) requirements. This is an obligation on lawyers and law firms to conduct due diligence on clients. The purpose of a due diligence check is to:

- Verify the identity of the client
- Meet the legal obligations under the Anti-Money laundering Act

- Assess whether or not any risk arises in the representation of a particular client or advising on a particular matter / transaction

Under the **Anti-Money Laundering Act**, lawyers are classified as ***accountable institutions*** and the Act requires lawyers to conduct client due diligence at the time of engagement and during the period of the engagement. It further provides that lawyers/law firms should institute measures to identify politically exposed persons (PEPs) and other persons whose actions may pose a high risk of money laundering, terrorism, financing of proliferation of weapons of mass destruction/and how those risks can be managed through due diligence.

Below are the requirements of the Anti-Money Laundering Act which impact the lawyer-client relationship;

- Customer Due Diligence by Accountable Institutions (which includes lawyers) – Know Your Client (KYC) Requirements
- Obligation on lawyers to implement internal rules for the establishment and verification of the identity of persons
- Obligation to institute measures to identify politically exposed persons and other persons whose activities may pose a high risk of money laundering or terrorism, high risk persons require enhanced identification, verification and due diligence procedures.
- Keeping books and records with respect to their clients and ensure that such records and underlying information are available/Submission of records to Public Record & Archives after 5 years.
- Reporting of Suspicious Transactions

The decision to accept to represent the client may be based on both the outcome of the conflict check and KYC.

**Client Conference:**

The goal of the client conference is to:

- Assess whether or not there is conflict of interest. In some instances, conflict may be assessed prior to the client conference.
- Get an understanding of the client's requirements and the solution that the client is seeking.
- Assess the client's goals and/expectations
- Provide the client with an understanding of how the client/lawyer relationship will proceed.

It is important that a lawyer is professional and courteous throughout the meeting but not cowed. Clients, however powerful they are, come to a lawyer because they believe the lawyer could have a solution for whatever challenge they have. The lawyer should be open-minded and listen attentively.

The **stages in the client conference** are as follows:

- **Step 1 – Information Gathering**

Prior to the meeting, it is important to find out as much as you can about the client especially if this is the initial/first contact. This builds confidence and enables the lawyer establish a rapport with the client. The information gathered may also determine the venue of the meeting. For example, a lawyer may have to meet a client at a venue other than the lawyer's office depending on the particular circumstances of the client. For e.g. meeting an ailing client in his/her home.

- **Step 2 – Starting the Interview (Introduction)**

The client conference begins with an introduction. It is important to take note of cultural nuances because clients may have different backgrounds, attitudes and cultures which can influence the first impression a lawyer makes on them. The information gathering will alert the lawyer on whether there are any particular cultural or business issues he/she must note before interacting with the client. Note for example the conduct of the Japanese in business meetings and how a business card must be received with both hands.

Where conflict has not been assessed prior to the client conference, the lawyer must request for the details of the party and/or matter in order to determine whether or not conflict of interest exists. Where the non- existence of a conflict has already been established prior to the conference or the lawyer is able to assess in the conference that no conflict of interest exists then, the lawyer may proceed with the conference.

Where there is conflict, the lawyer must decline the brief or provide the client with the different options through which the conflict may be waived.

- **Step 3 – Opening the Interview**

At this stage, it is useful for the lawyer to emphasize on the duty of confidentiality. This helps put the client at ease, allowing them to open up more and provide the lawyer with the necessary information.

The lawyer must use open-ended questions in questioning the client. This gets the client to tell the whole story, and gives the lawyer the opportunity to get more relevant information.

The lawyer must:

- Inform the client that he/she will interject to ask questions in the course of the client's delivery, and
- Listen attentively while noting down key points. The lawyer must not concentrate on the note-taking too much to the point where the client has the impression that the lawyer is not listening. Depending on the law firm structure, other colleagues will typically take notes, whilst the assigned lawyer interviews the client.

The lawyer may use a checklist to guide the interview.

- **Step 4 – Conducting the Client Conference**

The lawyer must control the meeting to ensure that the relevant information is provided by the client. This also helps the lawyer improve his/her perspective on the matter and assess the client's credibility.

- **Step 5 – Double Check & Highlighting of key points**

At this stage, it is important for the lawyer to clarify or double check his/her understanding of the key points of the matter before closing the conference.

- **Step 6 – Closing the conference**

Here, the lawyer must ask the client if there are further issues that require his assistance. He then explains the next steps to the clients, and makes copies of relevant documents.

As much as possible, no conclusive advice or opinion should be offered unless all the documentation and relevant cases have been reviewed.

**Scoping of Services:**

After the lawyer has listened to the client, he will have a fair idea of how much work is required as relates to the client's need. He has to determine whether he or his firm can cope with the work, given his schedule and resources. This also involves a determination as to whether he can meet the deadlines. Typically, at this stage, he must start mulling questions as to what he can delegate (to people within and without the firm), whether what is needed can be recycled from previous jobs (e.g. case briefs and arguments, commoditized documents etc.) he can recycle and what he himself must do, and how much of his own resources he can invest in the short-term or whether he can find a way out of doing that.

**Determination of Fees/Cost:**

Given the amount of work needed, and his assessment of the depth of his client's pockets, the lawyer must also determine how much he will charge and what the billing method will be.

**Rule 16 of L.I 2423** provides guidelines on what a lawyer must consider when determining his bills, and all of those things can only be considered when the lawyer does his scoping properly. This includes;

- Time and labour required
- Novelty/complexity of the matter
- Opportunity cost to lawyer

The scope of the representation must also be communicated to the client under Rule 16(3), such that where additional work comes up, additional fees would be charged.

**Drawing up the Terms of Engagement**

In generating the terms of the agreement, it is important to take note of key issues and legislative rules and guidelines in respect of pertinent provisions of the agreement.

The terms of engagement must be arranged in a chronological order;

- **Introduction:**

Acceptance of the offer to work for the client

- **Scope of Services:**

Spell out the scope of work to be done. Seek clarifications when instructions are ambiguous.

- **Conflict of Interest:**

Indicate that there is no conflict of interest or that there is conflict but the client has waived it.

- **Fees & Cost:**

Specify the fees and how they are calculated.

- **Validity**

Sets out the duration for which the fees are valid

- **Payment plan:**

State what the agreed payment plan is.

The Agreement must set out;

- The period after the completion of a task/ matter within which an invoice will be issued
- The number of days within which the client is required to settle an invoice from the date of issue of the invoice e.g. 14 days, 30 days.

- **Commencement of services:**

State the date of commencement of services, or if it is dependent on the occurrence of an event or to be determined in any other manner, specify that.

This is necessary to ensure that timelines for deliverables can be measured.

- **Cessation of services:**

State the date of cessation of services, or if it is dependent on the occurrence of an event or to be determined in any other manner, specify that.

This provision in the Agreement captures the right of the lawyer to cease performance of services, and this does not automatically result in a termination of the lawyer client relationship.

The clause on cessation gives the lawyer/law firm the right to suspend the provision of services until the Client performs prescribed contractual obligations, the most common being the non – payment of fees/costs.

- **Termination of engagement:**

The Terms Of Engagement must set out the events that will result in the termination of the services e.g. failure to pay fees within stipulated time, breach of Anti-Money Laundering law requirements.

This clause is exercisable by either the lawyer or the client.

- **Confidentiality:**

The Terms Of Engagement must expressly confirm a lawyer's duty of confidentiality.

Indicate that during the term and following the termination or expiration of the agreement, all non-public or confidential information of the client shall be kept confidential in accordance with the applicable rules of professional conduct.

- **Complaints:**

Whilst a client has the right to refer any complaints directly to the General Legal Council, a firm or lawyer may preferably notify a client about its internal complaints handling procedures. It is best practice to inform a new Client about these protocols so the Client is confident that there is an avenue for complaint if an issue arises.

- **Anti-Money Laundering Requirements:**

Money Laundering is the method by which criminals disguise the illegal origins of their wealth and protect their asset base so as to avoid the suspicion of the law enforcement agencies and prevent leaving a trail of incriminating evidence.

Providers of professional services including lawyers are key players in the business world, facilitating transactions for various businesses in diverse industries and sectors locally and across borders, and this makes it easy for lawyers to facilitate money laundering, whether knowingly or unknowingly.

Lawyers should particularly watch out for high risk transactions, which could entail:

- Complex transactions with no apparent economic or legal purpose
- Large payments going in and out of Ghana
- Negative press surrounding the client

- Requirement to hold large sums of cash in a client account either pending further instructions from the client or for no other purpose than for onward transmission to a third party
- Sending funds to multiple accounts or jurisdictions unconnected with the client or the transaction, etc.

Thus, under the **Anti-Money Laundering Act, 2008 (Act 749)**, all accountable institutions (lawyers included) have specific compliance obligations.

In the Agreement, you must specify that you will comply with the Act 749 which requires that satisfactory evidence is obtained of the client. The Act also requires that any suspicions financial transaction be reported to the Financial Intelligence Unit.

- **Data Protection / Record Keeping:**

Under the **Data Protection Act, 2012 (Act 843)**, a Data Controller is a person who either alone, jointly with other persons or in common with other persons, or as a statutory duty, determines the purposes for and the manner in which personal data is processed or is to be processed.

Thus a lawyer / firm would be deemed a Data Controller under the Act, and the Act imposes obligations on data controllers.

In the Agreement, you must emphasize that the use of the information is subject to the Data Protection Act, 2012 (Act 843) and the confidential duties.

- **Dispute Resolution:**

A law firm /lawyer may have different levels of dispute resolution. This may include an amicable settlement in the first instance and the employment of other dispute resolution mechanisms where amicable settlement fails including but not limited to mediation, arbitration or litigation.

- **Storage of Documents:**

Documents be kept at least for 6 years unless there are instructions for same to be kept in safe custody.

- **Force Majeure:**

Specify that in certain circumstances that occur beyond the control of the parties, the terms of the contract will be suspended

- **Signature of the lawyer/firm and client**

**Post Engagement Protocols**

**Execution of Terms of Engagement/Agreement:**

Once the terms are acceptable to the lawyer/law firm and the Client, the Terms of Engagement will be executed.

**Execution of the tasks/Monitoring deadlines & deliverables:**

The execution of the tasks required for the performance of the services will be based on the timelines agreed with the Client and these will need to be monitored to ensure that the services are delivered as agreed.

**Billing/Invoicing/Payment:**

The billing for services will be based on the fees and costs agreed. Invoices must include the necessary taxes and payment and indication of the deadline for payment as agreed in the Terms of Engagement.

**Termination/Expiration of the Terms of Engagement:**

In the absence of a renewal, the Terms of Engagement will expire on the conclusion of the services or on the expiration of the term set out in the Terms of Engagement. The Terms of Engagement may also be terminated without cause or with cause i.e based on prescribed events of default.

**Closure of Matter: Return/Storage of documents, submission of reports, client surveys:**

Where the matter ends, files and documents must be returned to client. Client surveys may be administered to assess the level of client satisfaction with the services.

BELOW IS A DRAFT SAMPLE OF TERMS OF ENGAGEMENT:

**SAMPLE ENGAGEMENT LETTER**

14th May 2021
The Managing Director,
Astrograde Bank Limited
Accra, Ghana

Dear Sir/ Madam

**TERMS OF ENGAGEMENT**

This letter sets out the terms under which Sedinam & Co. agrees to provide legal services to you.

1. **Scope of Engagement**
   Astrograde Bank Limited ("the Client") agrees to engage Sedinam & Co. to undertake routine business, litigation and other major transactions that it may be involved in. if any additional work beyond the scope of services required arises, we will obtain prior written consent from the Client before commencing any additional work.

2. **Conflict of Interest**
   Sedinam & Co. has conducted the necessary conflict of interest checks and confirms that there is no conflict of interest exists as at the date of execution of this letter of engagement.

   However, where a conflict of interest arises in the subsistence of this agreement, Sedinam &Co will consult with the Client and agree on the next steps.

3. **Fees and Costs**
   Sedinam &Co. shall charge the client for the legal services rendered under this engagement in any of the following alternative fee structures:

a. A lump sum on the completion of a task,
b. A flat rate pursuant to the execution of a standard procedure, and
c. A success rate contingent on the victory of a litigation on behalf of the Client.

4. **Payment and Invoices**
   Sedinam & Co shall send invoices to the client upon the completion of a required task under the scope of services. The Client is obligated to settle the payments within 14 working days of receiving the invoice.

5. **Validity of Agreement**
   The fees set out are valid for a period of 2 years. After this period elapses, Sedinam &Co reserves the right to review the fees upwards.

6. **Commencement of Services**
   This Agreement shall commence on 17th May 2021 and shall be valid unless terminated by either party to the engagement.

7. **Cessation of Services**
   Sedinam &Co reserves the right to suspend provision of legal services contained in Clause I if the client defaults in payment of outstanding invoices and withhold documents prepared for the Client's assignment until full payment of the amount overdue.

8. **Termination of Services**
   The Client may terminate the Agreement at any time by providing Sedinam &Co with at least 30 days' notice in writing or in a format that is reproducible in writing.

   Sedinam & Co may terminate the Agreement at any time by serving at least 30 days' notice in writing on the Client if it comes to Sedinam & Co's knowledge that:

   a) The Client has submitted falsified information to Sedinam & Co to protect its interests or
   b) The Client has acted contrary to the instructions of Sedinam & Co in a manner that shows that the Client has lost trust in Sedinam & Co.

9. **Limitation of Liability**
   The Client agrees that in the event of any loss occasioned by reliance on the services provided by Sedinam &Co, the liability of Sedinam &Co is limited to 2 times of the fees charged for that service.

10. **Confidentiality**
    All information regarding the Client's business and affairs obtained during the subsistence of the engagement and immediately following the termination or expiration of this Agreement will be kept confidential at all times unless Sedinam &Co is instructed otherwise by the Client or Rule 19 of the Legal Profession (Professional Conduct and Etiquette) Rules, 2020 (LI 2423) necessitates it.

**11. Applicable law**

This Agreement is governed by the laws of Ghana

**12. Dispute Resolution**

Any disputes arising from this Agreement shall be resolved through arbitration.

**13. Anti-Money Laundering**

The Client shall comply with the requirements of the Anti-Money Laundering Act, 2020 (Act 1044).

**14. Data Protection**

Sedinam &Co shall use information obtained from the Client in accordance with client's instructions and the Data Protection Act, 2012 (Act 843).

**15. Storage of Documents**

Sedinam &Co will store all copies pertaining to the agreement for a period of 6 months except documents the clients request to be returned to them

**16. Force Majeure**

The parties agree that in the event of an external circumstance through which the enforcement or execution of this agreement is rendered impossible through no fault of the parties, both parties will be deemed discharged of their liabilities/obligations under this agreement.

FOR AND ON BEHALF OF :

ASTROGRADE BANK LTD.

_____

NAME

SEDINAM &CO LTD

_____

LAWYER PAULA

**DRAFT COMPLAINTS PROCEDURE**
**[Firm's Name]**
**Complaints Handling Policy**
**Our complaints policy**
We are committed to providing a high-quality legal service to all our clients. When something goes wrong, we need you to tell us about it. This will help us to improve our standards.
If you have a complaint, please contact us with the details. We have eight weeks to consider your complaint. If we have not resolved it within this time you may complain to the Legal Ombudsman.
**What will happen next?**
1. We will send you a letter acknowledging receipt of your complaint within three days of receiving it, enclosing a copy of this procedure.
2. We will then investigate your complaint. This will normally involve passing your complaint to our client care partner, [name], who will review your matter file and speak to the member of staff who acted for you.
3. [Name] will then invite you to a meeting to discuss and hopefully resolve your complaint. S/he will do this within 14 days of sending you the acknowledgement letter.
4. Within three days of the meeting, [name] will write to you to confirm what took place and any solutions s/he has agreed with you.
5. If you do not want a meeting or it is not possible, [name] will send you a detailed written reply to your complaint, including his/her suggestions for resolving the matter, within 21 days of sending you the acknowledgement letter.
6. At this stage, if you are still not satisfied, you should contact us again and we will arrange for [another partner …or… someone unconnected with the matter at the firm …or, for a sole practitioner: [name] to review his/her own decision …or… appropriate alternative such as review by another local solicitor or mediation] to review the decision.
7. We will write to you within 14 days of receiving your request for a review, confirming our final position on your complaint and explaining our reasons.

8. If you are still not satisfied, you can then contact the General Legal Council.

## HUMAN RESOURCE MANAGEMENT & ITS APPLICATION IN LAW PRACTICE

### What is Human Resource Management (HRM)?

Human Resource Management can be defined as the management of an organization's people to individually and collectively contribute to the achievement of the organization's vision, mission and strategic objectives.

Another important dimension of HRM involves an organization's ability to support employees achieve their personal goals/ career aspirations.

People are an organization's key resource, and the performance of the organization depends on them. They are considered to be the organization's most valuable asset.

According to Walter Wriston, the former chairman and CEO of Citicorp, "***if you have the right person in the right place you don't have to do anything else. If you have the wrong person in the job, there is not a management system known to man that can save you***".

Generally, people perform well when:

- They have the required capacity and skills (technical/soft skills)
- They have the motivation to work i.e. incentives
- Their work environment provides the necessary support e.g. functioning technology, tools, culture etc.

A law firm's human resource may comprise the lawyers, support staff, employees, consultants or providers of outsourced services such as IT services.

### Objectives of HRM

HRM is an organizational development management system, designed to ensure that an organization:

- has the people with the requisite skills set
- builds a good work culture and ethics
- has systems which promote an equal opportunity environment/culture
- has a fair and transparent system for incentives/benefits
- has a fair / transparent system for addressing complaints / grievances
- safeguards the health (physical & mental) and safety of its employees

**HRM in Law Practice**

Human Resource Management is particularly important for law firms. This is because of the following:

- Challenges of managing professionals generally
- With respect to lawyers, the lawyer is indistinguishable from the provision of the service and therefore proper management is necessary to ensure the delivery of services that meets the needs and standards of a law firm's clientele
- Changing client demands
- Changes in employee expectation
- Technology
- Career mobility for lawyers
- The generation mix / expectations of Millennial/Generation Z in particular
- The increasing importance of non – lawyers in supporting lawyers to deliver high levels of service

**Scope & Function of HRM**

The core **functions** of HRM are:

a) Planning
b) Staffing (this encompasses Recruitment & Selection)
c) Management of relations between employer/employee and between employees themselves
d) Compensation
e) Training & Development
f) Performance management

**Commented [JE8]:** To perform these functions, the **scope** of HRM covers:
-Planning
-Recruitment and selection
-People / talent development / management
-Career advancement
-Performance and productivity
-Transfers, demotions, secondments
-Compensation and incentives
-Motivation
-Training and capacity development
-Retention
-Complaints and grievance procedures
-Discipline
-Terminations / exits/ resignation / dismissals /retirement
-Dispute resolution

**Human Resource Planning**

Human Resource planning is the process where the manager identifies and evaluates the present and future human resource capacity need of an organization, necessary for the achievement of its present, medium or long term goals.

This will usually be documented in a plan that identifies the organization's human resource needs and how to provide it over a specified period.

**The Staffing Process**

The staffing process involves a number of tasks:

- Planning for the recruitment and selection process
- The identification of the roles that must be performed
- An assessment of the skills-set and qualifications required to fill those roles

- Recruitment and Selection

Before a recruitment process is commenced, ideally a firm will undertake the following:

(a) **Job Analysis** - Analysis / determination of the skills and knowledge required to perform the requirements of a job.

(b) **Job Description** - This sets out the basic details of the job, the overall objective, main duties/ tasks so the applicants know what is expected of them. Job description also forms the basis for job evaluation.

(c) **Job Specification** - Profile of your ideal employees including skills, experience, personality type; e.g. good team player, professional, innovative.

Recruitment:

It is the process by which a job vacancy is made accessible to potential employees.

The **purpose** of recruitment is to "staff" the organization. The process is subject to general employment law principles and statutory provisions under the **Labour Act, 2002**.

The recruitment process is important in an organization, and particularly more important for a law firm because the kind of people you bring into the organization, or move from one role to another (in the case of an internal recruitment/re-organization), can either make or mar the organization.

The **recruitment process** includes:

- Demonstration of suitability through application forms, application letter or Curriculum Vitae (CV) ,career statement, etc
- Shortlisting and screening of applications
- Arrangement of Interviews for applicants
- Reference/background checks on short listed applicants
- Selection or rejection
- Selection/engagement
- Orientation and induction

It is important for the recruitment process to be transparent and fair.

The **sources of recruitment** are divided into two; internal sources and external sources:

| Internal sources | External sources |
|---|---|
| Present employees<br>Friends of employees<br>Former employees<br>Previous applicants<br>Promotions/demotions<br>Transfers<br>Secondments | Advertisements<br>Head hunting<br>Agency services<br>Outsourcing<br><br>(Places of advertisement/announcement include newspapers, magazines, trade papers, |

| | |
|---|---|
| | internal vacancy, announcement at industry fora– e.g. GBA office and GBA press) |

Selection:

Depending on the interest shown in a position or the selection process of a firm, a firm may employ a pre-selection process. This may include:

- Pre interview (screening)
- Ability/Aptitude Tests
- Personality psychometric tests

The pre- selection screening is designed to determine how well the applicant will match or fit the needs of the organization and / or the particular position.

Regarding questions asked at an interview, there are some questions that may be considered discriminatory. In some countries, whether before or after the interview, the interviewer may not ask questions such as/pertaining to:

i. Marital status
ii. Age
iii. Sex check
iv. Religion
v. Disability (eg. How will you make it up the stairs?)
vi. Previous convictions
vii. Race (eg; is that an African or European name?)
viii. Personal Appearance (eg, what do you call that haircut?)

Engagement:

Where the employee is selected, the employer may provide the employee with an offer on the terms and conditions, which the employee may accept with or without additional requirements. These requirements may include undergoing a medical examination, contacting referees etc. Subject to the completion of the prescribed requirements, a Contract of Employment will be executed. Employee may be required to execute a separate Confidentiality Agreement or provisions on confidentiality may be incorporated in the Employment Contract.

Orientation:

Where an employee is selected, orientation is designed to assist the employee understand their role and how it fits into their career plans and the plans of the organization. Orientation covers:

- firm vision, mission and culture
- Understanding of firm policies and procedures
- Avenue to motivate employee to start on a high note
- Explaining the reasons for hiring employees
- An opportunity to present firm's strategic goals

**Management of Relations between Employer/Employeee & between Employees**

Under **Section 13** and the **First Schedule to the Labour Act**, an employer is supposed to furnish his employee with a contract of employment within 2 months after the commencement of the employment, and as regards the ***terms of employment***, it should cover the following, as a minimum:

- Probation
- Job description
- Remuneration / taxes and levies
- Confidentiality
- Conditions of sick leave
- Fair / unfair termination
- Grievance handling
- Redundancy
- Fringe benefits
- Employer / employee relationship
- Legal obligation
- Performance management

Conflict & Discipline:

Conflict and disagreement is common in all work places, and in every social setting, disagreements are likely to happen.

It is important for an employer and a good HR Manager to recognise this and institute systems to address them when they occur. A wide range of procedures and steps are required in dealing with workplace conflict, covering matters such as:

- Relationship with colleagues
- Lawyers and paralegals
- Relationships with seniors, managers, bosses
- Gossip and office politics, etc

It is also important to have a disciplinary procedure to deal with office misconduct. Examples of office misconduct include;

- Poor performance

**Rule 95 of LI 2423** states that it is professional misconduct to conduct client's business with negligence or delays to cause damage to the interests of the client or to bring the legal profession into disrepute.

- Failure to carry out either a verbal or written instruction
- Insubordination

- Persistent lateness
- Absence from work without permission
- Willful damage to employer's equipment
- Being present on duty whilst under the influence of alcohol or drugs
- Refusal to perform legitimate instructions
- Stealing
- Sexual harassment

**Rule 75 of LI 2423** expressly prohibits sexual harassment in the firm.

It defines sexual harassment as one incident or series of incidents, which involve unwelcome sexual advances, requests for sexual favours or other verbal or physical conduct of a sexual nature where:

- This conduct is reasonably expected to cause insecurity, discomfort, offence or humiliation to the recipient of the conduct
- A submission to the conduct is made implicitly or explicitly a condition for the provision of a professional service
- A submission to the conduct is made implicitly or explicitly a condition of the employment
- Submission or rejection to the conduct is used as a basis for employment decisions (e.g. allocation of work, promotions, raises in salary, job security and benefits)
- The conduct has the effect of interfering with the work performance of the person or creation of a work environment which is intimidating, hostile or offensive.

- Disclosure of confidential information of client to third parties

Further, under **LI 2423, Rule 89** provides the following as examples of misconduct:

- Induces another lawyer to violate the rules of professional misconduct
- Engages in conduct that involves dishonesty, fraud, deceit or misrepresentation
- Engages in conduct that is prejudicial to the administration of justice
- States or implies an ability to improperly influence a government agency or official to achieve results by means that violate a law or the rules of professional conduct.
- Communicating to a client or a fellow lawyer in a manner that is abusive, offensive or otherwise inconsistent with the proper ethics, among others.

The disciplinary procedure could entail any or a combination of the following:

a) Arraignment before a Disciplinary Committee
b) Verbal warnings
c) Written warnings
d) Queries
e) Termination of employment
f) Grievance procedures
g) Dismissal

**Compensation**

Compensation may be determined by:

- Industry factors
- Firm specific incentives: income generation /retention/incentive policy
- Country specific factors

The structure of compensation may be:

- Salary
- Allowances, eg; housing, lunch, utility, communication etc
- Fringe benefits

Some challenges associated with compensation models in law firms include:

- Uncertainty in income sources
- Cost control challenges
- Competition with non-law firm compensation

Some compensation models include:

- Case-based compensation method
- Incentive-based schemes
- Level of effort arrangement
- Time-based compensation (often for “counsel” / “of counsel”)
- Partner compensation
- Lockstep based
- Eat-what-you-kill
- Profit based concept
- Contribution to business

**Personal Growth, Training & Development**

The concept of human capital:

Human capital has been defined as, "the human factor in the organization, the combined intelligence, skills and expertise that gives the organization its distinctive character."

These elements are capable of changing, refining and innovating. It is this human factor that is essential to ensuring the long-term survival of the organization.

Michael Armstrong also defines human capital as the "knowledge and skills which individuals create, maintain and use."

Factors that determine human capital include:

- Skills and qualifications
- Education levels
- Work experience
- Social skills – communication
- Generation of employee
- Intelligence
- Emotional intelligence
- Judgment
- Personality /habits
- Creativity
- Brand/ image
- Geography –expectations and attitudes of the community

The Importance of investing in Human capital:

It is important to invest in human capital. For employees to work to their potential and in furtherance of an organization's goals, the organization must invest in them. Some of the benefits of investing in human capital are the following:

- Enhance job satisfaction
- Provide employees with the opportunity to realize their potential
- Reduces employee attrition
- Foster employee/employer engagement for productivity
- Foster better engagement with an organization's stakeholder e.g. law firm clients
- Contributes to employee efficiency and productivity and ultimately profitability.
- Improves organizational culture
- Enhances communication within the organization e.g. through motivation, mentorships/coaching
- Creates a go- to work place

Modes of investing in human capital:

An organization may invest in its human capital in any or a combination of the under listed ways:

a) Mentorship
b) Formal education
c) Training and capacity building e.g; ***Continuing Professional Development (CPD)*** or **Continuing Legal Education (CLE)**
d) Promotions
e) Coaching, counselling to enable them develop their potential
f) Secondments
g) Occupation, physical and mental health policies and procedures

It is important to note that under **Rule 84**, a lawyer who holds a practicing certificate issued by the Council is required to complete a minimum of 12 hours of CPD in a calendar year and submit details of the CPD in a prescribed form and at a time specified by the Council.

Training & Development:

Part of development:

- Provides new skills for the employee
- Keeps the employee up to date with changes in the field
- Improve individual and organisational efficiency
- Can be external or 'in-house'
- Development of specialisation

Counselling, Mentoring & Coaching:

An organisation may provide coaching and mentoring for its staff or different categories of staff to equip/ support them preform their job functions better / develop their leadership / management potential.

**Performance Assessment**

This is a way of measuring the performance (productivity) of an employee by evaluating their contribution in an independent, non-judgmental manner. It can be difficult to properly assess the contribution of workers in some industries especially where services are being provided and not goods being produced.

With a law firm for example, even though lawyers may fill timesheets and log time spent on work, there is no guarantee that the work being churned out will be to the client's satisfaction until it actually reaches the client and so even though the lawyer might seem to be doing a lot within a specified time period, how will his performance actually be appraised unless the client reports with feedback or the court grants his motion in court.

Also, performance assessment entails making the employees feel a sense of accomplishment in their hard work. Knowing that their work counts in the big picture is important to helping them remain motivated and encouraged to keep performing even harder.

**Employment Regulation**

Employment of lawyers and other law firm personnel is regulated by law.

Below is a chart indicating the various laws and employment regulations under different headings.

| | |
|---|---|
| **NON-DISCRIMINATION & EQUALITY** | **THE 1992 CONSTITUTION:**<br><br>**Article 12(2)** guarantees the fundamental human rights and freedoms of the individual.<br><br>**Article 17** guarantees freedom from discrimination.<br><br>**Article 24(1)** provides the right to work under satisfactory, safe and healthy conditions and receive equal pay for work done without distinction.<br><br>**Article 27(3)** provides for equal right to training for women without any impediments.<br><br>**Article 35(5)** calls on the State to promote the integration of Ghanaians and prohibit discrimination and prejudice.<br><br>**THE LABOUR ACT, 2003 (ACT 651):**<br><br>**Section 68** also guarantees the worker equal pay for equal work without distinction of any kind.<br><br>**Section 14(e)** guarantees the employee the freedom from discrimination on grounds of gender, race, colour, ethnic origin, religion, creed, social or economic status, disability or politics.<br><br>**Section 87** further guarantees freedom from discrimination but from trade unions or from employer's organization.<br><br>**Section 127** makes discrimination an unfair labour practice that can be brought before the National Labour Commission for consideration and subsequent rectification which can involve |

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| | payment of compensation or restoring the worker to their original position. |
| **DISABILITY** | **THE 1992 CONSTITUTION:**<br><br>**Article 29(4)** provides disabled persons protection from exploitative, discriminatory, abusive or degrading treatment.<br><br>**Article 29(6)** mandates that there must be right of access to appropriate facilities for disabled persons.<br><br>**Article 29(7)** requires provision of special incentives to be given to businesses started by disabled persons or businesses that employ disabled persons in significant numbers.<br><br>**THE LABOUR ACT, 2003 (ACT 651):**<br><br>**Section 14(e)** prohibits discrimination on grounds of disability.<br><br>**PERSONS WITH DISABILITY ACT, 2006, ACT 715:**<br><br>**Section 1** guarantees a right to participate in social, political, economic, creative or recreational activities.<br><br>**Section 4(1)** covers prohibition of discrimination, exploitation and degrading treatment of disabled persons.<br><br>**Section 4(2)** states that an employer shall not discriminate against a prospective employee or an employee on grounds of disability unless the disability is in respect of the relevant employment.<br><br>**Section 6** creates an obligation to provide appropriate facilities to ensure accessibility of public places by disabled persons.<br><br>**Section 11** places an obligation on the employer of a person with disability to provide them with the relevant working tools and appropriate facilities required by that person for the efficient performance of the functions required by the employment.<br><br>**Section 12(2)** states that where a person in employment becomes disabled as a result of the employment, the employer shall counsel, retrain and redeploy that person to another section more suited to their disability, and this must be in addition to any other relief that the person is entitled to. |

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| | **Section 37** makes it an offence to call a person with disability derogatory names because of their disability. |
| **PENSIONS & RETIREMENT** | **NATIONAL PENSIONS ACT, 2008 (ACT 766) AS AMENDED:**<br><br>It establishes a 3 tier pension system, which mandates the employers to contribute on the employees' behalf to the 1st and 2nd tiers, an amount that is equivalent to 13.5% of their basic salary.<br><br>**L.I. 2423**<br><br>**Rule 18(b) of LI 2423** is to the effect that a lawyer in a firm, including non-lawyers, can engage in a retirement plan for both lawyers and non-lawyers, even if this involves a profit sharing scheme.<br><br>(LI 2324 encourages pension schemes which is made an exception to the rules prohibiting a lawyer or firm from sharing legal fees with a non-lawyer.) |
| **HEALTH & SAFETY** | **THE 1992 CONSTITUTION:**<br><br>**Article 24(1)** provides the right to work under safe and healthy conditions.<br><br>**FACTORIES, OFFICES AND SHOPS ACT, 1970 (ACT 328) AS AMENDED:**<br><br>**Section 1** mandates that the workplace, together with its furniture, furnishings and fittings shall be kept in a clean state.<br><br>**Section 15** requires that provision should be made to secure and maintain the circulation of fresh air and adequate ventilation in each workroom.<br><br>**Section 16** calls for provision of of adequate and suitable washing facilities.<br><br>**Section 20** calls for provision of an adequate supply of drinking water at suitable points that are conveniently accessible to employees.<br><br>**Section 22** calls for provision for appropriate seating facilities, for both factory workers and desk workers. |

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| | **GHANA AIDS COMMISISON ACT, 2016 (ACT 938):**<br><br>**Section 28** calls for the protection of the fundamental human rights of persons living with HIV or AIDS. |
| **SEXUAL HARRASSMENT** | **L.I. 2423:**<br><br>**Rule 75** prohibits sexual harassment. A lawyer shall not sexually harass another lawyer, a staff or a client.<br><br>**THE 1992 CONSTITUTION:**<br><br>CHRAJ found in the cases of Mansov Novor and Tetteh v Norvor that sexual harassment is included within the meaning of sexual discrimination and was within the letter and spirit of Article 17 of the Constitution.<br><br>**THE LABOUR ACT, 2003 (ACT 651):**<br><br>The Act defines sexual harassment to mean any unwelcome, offensive or importunate sexual advances or request made by an employer or superior officer or a co-worker to a worker, whether the worker is a man or woman.<br><br>Sexual harassment constitutes a ground for the termination of a contract of employment.<br><br>**THE CRIMINAL OFFENCES ACT 1960 (ACT 29):**<br><br>**Section 103** touches on indecent assault.<br>A person commits the offence of indecent assault if, without the consent of the other person he—forcibly makes any sexual bodily contact with that other person. |

**Other Emerging Issues and Policies**

1. **South Africa's Broad Based Black Economic Empowerment:** This is an integration programme that was launched by the South African government to reconcile South Africans and to address the inequalities of apartheid. The programme encourages businesses to integrate more black South Africans into the work environment, train and mentor them, support black businesses and give to poor communities cross the country that remain poor due to land repossession. Under this programme, the more the business does, the more BBBEE points it receives. The points entitle the business to a chance to be awarded government contracts.

2. **Local content:** in transactions involving foreign participation, there is usually a local content requirement that either requires the enterprise to hire local persons or to use local materials and resources in its work. So for example, where a foreigner wishes to set up a trading enterprise, he will be required to hire at least 20 Ghanaians. In the petroleum industry and mining industries, this is also very prevalent.
3. **Affirmative action:** This is where a systemically marginalized group of people are treated preferentially to ensure that they are able to access the opportunities that they have been denied over the years. Policies hiring women and disabled persons or subjecting them to less stringent selection procedures.
4. **Life work balance :** Giving equal priority to career demands and personal life demands.
5. **Job satisfaction** : Measure of employee's contentedness with the job.
6. **Working remotely:** Allowing professionals to work outside a traditional office environment.

**The Impact of Generational Differences on workplace environment and culture**

Law firms are increasingly noting the importance of understanding generational differences in its lawyers / staff and how that impacts innovation, career progression, compensation and retention.

While generational conflict is not a new issue, longer life times and later retirements have created an environment where more generations work together than ever before. At the same time, rapid technological, parenting and lifestyle changes have sharpened the differences between generations. Conflicts over work/life issues, billable hours, communication issues and even dress code have become commonplace in many law firms.

Firms that take the time to understand generational differences and create an environment that honours these differences will minimize these conflicts and be better positioned to attract and retain new attorneys in the years ahead.

Different Generations Likely to Exist:

1. **Traditionalists (born within 1925 – 1945):** Many of them should be on retirement but there are some who happen to be founding or senior partners of law firms. They value face to face interaction and outward evidence of hard work. They believe in remaining loyal to a job for life and strong work ethics or respect for authority.
2. **Baby Boomers (1946 – 1964):** Baby Boomers identify themselves with their work and tend to be suspect of anyone doesn't share their driven approach to their career. They grew up with telephone and face-to-face interaction. They have strong ties to their work, and are used to going above and beyond to stand out.
3. **Generation X (1965-1980):** they are independent and self-reliant, striving for work/life balance after realizing that there is more to life than just work.

4. **Generation Y/Millenials (1980 – 1995):** This generation grew up with the Internet, cell phones, computer and video games and constant stimulation. They were brought up with the notion that they deserve the best of everything and that they could do anything and be anything. They are multi-taskers, confident, demanding their worth, knowing their rights, questioning authority, comfortable with diversity and very socially conscious.

When Generations Collide:

A study conducted by the Society of Human Resource Managers found that the most often reported conflict between generations revolved around differences in work ethic. This conflict may be magnified in law firms where billable hours are an important measurement of success.

Older generations of attorneys may feel that younger attorneys are not working hard, while younger attorneys may feel that a work/life balance and feeling fulfilled is more important than clocking as many hours as possible.

Young attorneys, who have been raised by their Boomer parents to believe that they can do anything, will not hesitate to question authority, ask for what they want and insist on meaningful work that makes them feel as if they are making a significant contribution to the firm. They want to take on more pro bono work, work closely with partners and have an opportunity to share their ideas with the rest of the firm. They love using technology to multi-task, and some might think nothing of typing away on a Blackberry while chatting with a senior partner.

That senior partner, on the other hand, would probably be offended by the texting and might feel that young attorneys expect rewards without paying their dues. Meanwhile, the interest in teamwork and collaboration might hold no appeal for a driven Boomer accustomed to working as an island. If problems are not resolved at a firm, young attorneys have a quick solution: they go somewhere else.

It therefore behooves the organization to find a way to strike common grounds among the employees to keep them from jumping ship.

## ROLE OF SUPPORT STAFF IN A LAW FIRM

A law firm's human resource may comprise the support staff, i.e. non-lawyers.

They play an important role in the law firm;

- They support the provision of legal services
- They undertake increasingly commoditized work so that lawyers can concentrate on their core areas of expertise
-

**The Paralegal**

The American Association for Paralegal Education (AAfPE) defines a paralegal as someone who "performs substantive and procedural legal work as authorized by law, which work, in the absence of the paralegal, would be performed by an attorney".

Paralegals have knowledge of the law gained through education, or education and work experience, which qualifies them to perform legal work. Paralegals adhere to recognized ethical standards and rules of professional responsibility.

The **general duties** of a paralegal are as follows:

- Legal Research
- Help lawyers in preparing for trials, hearings, and closings
- Conducting legal research
- Gathering relevant information
- Judicial decisions
- Legal articles relevant to the case
- Analyzes information
- Taking notes in client interviews
- Summarizing client testimony for the lawyer
- Prepare written reports
- Prepare correspondence
- Build and maintain databases and files
- Organize and track case files
- Maintain law library (where no librarian)
- Co-ordinate law office activities
- Help with trial preparation including witness lists, exhibits and trial binders
- In some jurisdictions - assist the lawyer in the courtroom
- In some jurisdictions - draft legal documents including briefs, pleadings, appeals, agreements, contracts and legal memoranda

**Roles Of Various Paralegals In A Barrister Setting**

**A. The barrister clerk or advocates clerk**

1. Diary and practice Management: This involves all activities relating to the barrister getting to and from court like managing court diaries, planning workload etc

2. Fees Management: Ensuring barrister's fees are created for the work they do and are collected; keeping accounts and arranging for the collection of fees

3. Business Development

4. Compliance Matters

5. Administrative duties

**B. Senior clerk Aka the Head clerk**

1. Check for the potential of conflict of interests where barristers from the same chambers are representing opposite sides

2. Discussion with clients to pair up the clients with the most suitable barristers for their problems

3. keeping of records of specialisation, skills and experience of barristers

4. Planning the timetable of cases to avoid clashes in the timetables of each barrister andbetween them as well

5. Proactively seeking work for the barristers

6. informing clients of progresses in their cases

7. Monitoring of accounts and fees collection

8. Arranging meetings on behalf of barristers

9. Negotiation of fees to be charged

10. Referral of cases to a more suitable chamber where there is a lack in the expertise needed to address the clients problem

**C. Junior Barrister Clerk**

1. Finding statutory and case law materials

2. Carrying books, papers and robes to and from court rooms

3. Delivering urgent documents to other chambers

4. Making travel and accommodation arrangements

5. General administrative duties

**D. Chief Financial Officer (CFO)**

The CFO is a high-level financial manager. CFO roles primarily exist in the largest firms, often those operating at a global level who have high revenues and require savvy financial management is critical.

1. He directs and oversees the financial aspects of the firm including accounting, forecasting, financial planning and analysis, budgeting and financial reporting.

2. He shapes the firm's financial future and establishing operating policies, exploring growth opportunities and protecting the firm's financial stability.

**E. Law Firm Administrator**

Sitting at the executive level, law firm administrators; also known as executive directors, chief managing officers (CMOs) or chief operating officers (COOs); are highly skilled non-lawyer 28 professionals. In small firms, this position might be called an office manager and held by a senior level paralegal or secretary.

1. Their role is to manage the business side of law practice.

2. Their role encompasses everything from strategic vision, competitive intelligence, knowledge management, hiring, branding, marketing, human resources, compensation, benefits, business development, technology and client service.

**F. Legal Secretary**

A legal secretary (also known as an administrative assistant, legal assistant or executive assistant) is a secretary who is trained in law office procedure, legal technology and legal terminology.

1. While legal secretaries perform clerical functions such as filing, typing, answer the phone and organising files,

2. They also possess specialised, practice-specific skills and knowledge that help lawyers' practices run smoothly. Legal secretaries usually work for one or more paralegals and/or attorneys.

**G. Court Runner**

Also known as a law firm messenger.

1. The court runner files documents with the court and performs other errands for law firm lawyers and staff.

**H. Law Librarian**

1. A law librarian conducts legal research using both computerised and manual methods;

2. Acquires and preserves library materials;

3. Is an expert in legal and nonlegal research methods/tools; advises attorneys and legal professionals on legal research methods;

4. Maintains, classifies, indexes, and stores library materials;

5. Manages the library/legal research budget and may coordinate the use of electronic resources, such as West-law, LexisNexis, and other services.

## SOCIAL MEDIA IN LAW FIRMS AND THE IMPACT ON THE PRACTICE OF LAW

**Rule 102 of LI 2423** defines social media as an internet tool that affords the opportunity for a subscriber of the tool to communicate with the contacts, friends and peers of that subscriber about issues of interest and may be in the nature of Facebook, LinkedIn, Myspace, WhatsApp, Del.cio.us, Dig, SimPy and Twitter among others.

These include:

- forums and comment spaces on information-based websites, for example BBC Have Your Say, myjoyonline platform.
- social networking websites such as Facebook, LinkedIn and Twitter
- video and photo sharing websites such as Instagram, Flickr and YouTube
- weblogs, including corporate and personal blogs
- forums and discussion boards such as Yahoo! Groups or Google Groups
- Any other websites that allow individual users or companies to use simple publishing tools

**Benefits of Social media**

Social media is an increasingly popular and growing area and it is important for the profession to keep up-to-date with developments in social media which present real opportunities if harnessed effectively.

There are several benefits of social media to the practice of law;

- Facilitates the sharing of thoughts and ideas
- Can be used to debate, share opinions and share experiences
- Marketing tool
- Point of contact for clients
- Source of recruitment
- Engagement with clients and other professionals
- Allows greater access to legal information and resources
- Provides greater opportunities for professional networking
- Enables geographical barriers to be broken
- Increased visibility

**Disadvantages/risks of Social media**

Just as there are certain benefits, there are certain risks/disadvantages associated with social media and the practice of law;

- Blurring of the boundaries between personal and professional use
- Exposure to reputational risk
- Propensity to breach confidentiality

- Proliferation of social media tools may not necessarily increase your visibility content that gets little to no engagement.
- Requires commitment to build a following and loyalty
- Addictive.
- Negative feedback displayed for everyone to see
- Absence of control – no control on how your information is presented
- Lack of ownership. The platform controls the content you publish through its terms and conditions control.

**GBA guidelines for Lawyers to create websites and place their profile on the internet**

- An intended internet profile, must include the following:

- The full name of the legal firm or lawyer.
- The location address and postal address.
- The particulars of telephone contacts.
- The email address
- The passport pictures of the partners, associates and juniors.
- The history of the firm.
- The profile and areas of practice of the firm and or individual members of the firm

- The firm or lawyer may subject to the approval of their clients, list the names of former and current clients in the profile.

- Firms and lawyers cannot add phrases, adjectives and description such as “best”, “expert” among other such phrases.

- Firms cannot add statements which are inaccurate or likely to mislead, diminish public confidence in the legal profession, the administration of justice or otherwise bring the legal profession into disrepute.

- Firms cannot criticize other legal firms or lawyers.

- Firms cannot put out statements about their success rate.

- Firms cannot put statements which are obtrusive as to cause annoyance to those to whom it is directed.

- A portal will be opened at the GBA website for firms who want to put in their profile at a discounted rate to do so through the GBA. Individual firms will also be permitted to create their own websites.

- For the avoidance of doubt, social media is not website.

- The breach of these guidelines to internet profiles would amount to misconduct.

**Social Media and the Practice of Law**

Social media is having a significant impact on the practice of law.

In the case of **IFS Financial Services Limited v Jonathan Mensah & Another**, the Court allowed substituted service of the Writ of Summons and Statement of Claim via the Defendant's verified Facebook account).

In **Ursula Owusu-Ekuful v Kwame Asare-Obeng (a.k.a A-Plus)**, the Court allowed substituted service of the Writ of Summons and Statement of Claim to be posted on A-Plus's Facebook wall)

Again, in **Kwabena Ofori Addo v Hidalgo Energy & Julian Gyimah**, the High court approved application for substituted service via WhatsApp.

There are several other instances where the use of social media has impacted on the practice of law.

In December 2008, the BBC reported that an Australian couple were served with legal documents via the popular social networking site Facebook.

In October, 2009 a British High Court ordered its first injunction via Twitter, saying the social website and micro-blogging service was the best way to reach an anonymous Tweeter who had been impersonating someone, Reuters reported.

In April 2015, in what the Daily News of New York described as a landmark ruling, a Manhattan Supreme Court Justice, Matthew Cooper allowed a nurse named Ellanora Baidoo to serve her elusive husband with divorce papers via a Facebook message. The woman got the judge's approval to legally change her relationship status to "single" via Facebook.

**Social Media and Marketing/Business Development**

Social media has also pervaded the marketing and business development world.

Examples include;

**Linkedin** - It presents an opportunity for lawyers in various fields to share useful content with potential clients.

**Facebook** - Facebook present a larger audience.

**Twitter** - resource for networking.

**Reddit, Quora, Digg** - find, discuss, and share news, information, and opinions. These networks can be excellent resources for market research.

**Pinterest, Flipboard:** To discover, save, share, and discuss new and trending content and media.

**WordPress, Tumblr, Medium:** Blogging and publishing networks. Used to publish, discover, and comment on content online.

**Impact of social media on the lawyer's adherence to ethical rules**

The same ethical obligations that lawyers adhere to professionally are to apply equally to their conduct in an online environment. Thus, the rules of professional conduct apply with equal force.

Many ethical concerns involving the use of social media are centered around confidentiality, conflict of interests, creating lawyer-client relationships, advertising, solicitation and touting.

It is imperative therefore that any lawyer with an online presence be sure to comply with the ethical rules.

The key duties to be observed by lawyers in using social media are as follows:

1) **Confidentiality**

A lawyers conduct on social media platforms must not compromise confidentiality, for example, inadvertent disclosure of client information

**Rule 19 of LI 2423** provides that a lawyer shall not reveal information relating to the representation of a client unless;

- The client consents to the disclosure
- The disclosure is necessary in order to carry out the representation, or
- The disclosure is permitted under the Rules or any other law

2) **Advertising and touting**

Note that touting and advertisement is prohibited under the Legal Profession. Lawyers in Ghana are guided to ensure that their use of social media does not cross the thin lines of personal advertisement and touting.

In 2017, the Disciplinary Committee of the General Legal Council formally charged a practicing lawyer under Rule 2 of the then LI 613, after he posted on Facebook the Writ of Summons of a case and made comments to the public with his firm's name, address and telephone numbers attached, with the primary motive of personal advertisement and touting. He further posted pictures of the parties and made comments on the case to the public with his firm's name, address and telephone numbers attached. This Lawyer was suspended for three years. The 3-year ban was quashed by the Human Rights Courts.

**3) Solicitation**

Under **Rule 15 of LI 2423**, a lawyer or law firm shall not personally or through other means of communication, solicit for professional employment from a prospective client where the motive for the solicitation is the pecuniary gain of the lawyer or the law firm unless the person contacted;

- Is a lawyer, or
- Has a family, personal or prior professional relationship with the lawyer or the law firm

**4) Conduct prejudicial to the administration of justice**

**Rule 55(2) of LI 2423** states that a lawyer shall not publish or cause to be published a material **concerning current or potential proceedings including** proceedings for which the lawyer is engaged or seeks to be engaged which;

- is inaccurate or has received comment or unnecessary description
- identifies the lawyer as a lawyer and appears to express an opinion of the lawyer on a matter relevant to the case other than in an article or case note in a publication circulated primarily to other lawyers or legal academicians; or
- is calculated or is likely, to a material degree, to diminish or be prejudicial to the public confidence in the administration of justice

Again, **Rule 38(2)** states that a lawyer who is participating or has participated in the investigation or litigation of a matter that is still pending before a Court shall not make an out of Court statement or grant an interview to the media on the matter.

**5) Provision of Legal advice**

Lawyers should avoid posting information that could be interpreted as legal advice on a public platform.

In conclusion, lawyers should understand how social media sites function and the information that can be shared by each site used. Privacy settings on social media sites can play an important role in limiting the disclose of information. These filters and settings must be used to the extent possible. It may also be useful to divide personal and professional networks in order to avoid issues relating to contact sharing.

While technology positively impacts the legal profession and improves workflows, a lawyer must also master digital communications skills and know that all existing rules of ethics still apply while navigating the brave new world of status updates, tweets, Instagram followers, and YouTube uploads.

## CONFLICT OF INTEREST CHECK

**What is Conflict of Interest?**

A lawyer cannot proceed with any matter if there is a conflict of interest. For a legal practitioner, conflict of interest arises in several ways.

**Rule 20(14) of L.I. 2423** defines conflict of interest as an interest that would be likely to adversely affect the judgment of the lawyer on behalf of, or loyalty to, a client or prospective client; or an interest that a lawyer might prefer to the interest of a client or prospective client.

Similar definitions exist in other jurisdictions.

In the USA, conflict of interest is defined as a situation where "there is a substantial risk that the lawyer's representation of the client would be materially and adversely affected by the lawyer's own interest or by the lawyer's duties to another current client, a former client or a third person".

Several cases have touched on the issue of conflict of interest

In **Bolkiah v KPMG**[1], Lord Millett had this to say;

"*A [lawyer] cannot act at the same time both for and against the same client, and his firm is in no better position. A man cannot without the consent of both clients act for one client while his partner is acting for another in the opposite interest. His disqualification has nothing to do with the confidentiality of client information. It is based on the inescapable conflict of interest which is inherent in the situation.*"

In **AO Afrifa V GLC**, a lawyer was suspended by the GLC for 4 years after being accused of playing double agent by acting as counsel for different individuals in a litigation over a common property. He was charged with 2 counts under Rule 5(10) of the then Legal Profession (Professional Conduct and Etiquette) Rules, 1969(LI 613) and one count under Rule 994.

The first count was that AO Afrifa had previously acted as Counsel for one party in a probate action concerning her mother's estate, helping her to obtain LA in respect of that state. He subsequently represented her brother against the first party in action over property that forms part of the said estate.

The second count involved AO Afrifa acting as counsel for the legal owner of a property in civil proceedings to evict his tenant and subsequently acting as the lawyer for his brother in action concerning the said property which formed a part of the estate in the first count.

The GLC held that this was a clear violation of the conflict of interest rules, constituting professional misconduct and therefore suspended him.

[1] [1999] 2 AC 222

**Marks and Spencers Plc v Freshfields Bruckhaus Derringer**, Freshfields had acted as lawyer for Marks and Spencers, and subsequently had agreed to represent a client in a bid for the potential acquisition of M & S. On this basis, M&S sought an injunction to restrain Freshfields from doing so, alleging that it created a conflict of interest situation. The court held that though the transactions were different, there remained a sufficient risk of conflict. As to the possible use of Chinese Wall arrangements, the court highlighted that it would not be possible to put up effective information barriers given the very large number of people involved, and that so far as confidential information is concerned, it is obviously a huge amount of confidential information within Freshfields in relation to Marks and Spencer's affairs through acting for it over the years.

**Commented [JE9]:**
A Chinese Wall refers to an ethical concept that acts as a virtual barrier prohibiting groups or individuals within the same organization from sharing information that could create a conflict of interest.

It is an information barrier protocol within an organization designed to prevent exchange of information or communication that could lead to conflicts of interest

In determining whether conflict of interest exists, the key determinant is to ask whether the lawyer's independent professional judgement is/would be influenced by another interest?, i.e. is the lawyer likely to do something different from what he/she would do if that influencing factor were not present? If the answer is yes, then there is conflict.

**Importance of looking out for conflict of interest**

Loyalty and independence of judgment are essential to the effective representation of a client. Therefore, identifying and checking for a conflict of interest situation is a key step in client representation.

It is important to look out for conflict for various reasons, including;

- There is the need for the lawyer to continuously make decision on whether or not to represent a client or prospective client in a matter.
- The ability of the lawyer to safeguard the interests of a client and his reputation as a lawyer.
- Potential of being suspended.

**Examples of Conflict of interest Situations**

1. **Personal interest**: Representing a client in a matter where the lawyer has personal interest other than the expectation of income (legal fees). E.g., where the interest is family interest, or being a beneficiary under a will drafted for the client.
2. **Use of information**: Using information obtained during the representation of a client, in an unethical manner against the one from whom the information is obtained.
3. **Contentious matters**: Representing both sides in a dispute is an offence. There is no exception to this rule.
4. **Non-contentious matters**: In non-contentious matters, acting for opposing sides in an unethical manner (a lender and borrower at the same time) except where the 2 parties have consented that it is in their interest to represent them.

5. **Lending transactions:** Representing the lender in a suit against the borrower where the borrower was an initial client of the lawyer in respect of the lending transaction that is the subject matter of the present dispute.
6. **Bank-customer relationship:** Using information procured in respect of a customer of a bank while representing a bank and using the information against the customer in another matter.
7. For **corporate clients,** conflict may arise from shareholders and directors in certain situations. **M&S v. Freshfields. Remember to always know who is behind the corporate veil. Check the shareholders' shareholder.**
8. **Government entity:** Acting for the government and a private party on the same matter, except where they both consent to it in their mutual interest.
9. In a **sales agreement**, a lawyer cannot represent the buyer and the seller at the same time.
10. In a **conveyance,** a lawyer cannot represent both the lessor and the lessee at the same time in respect of the same transaction.

**Preventing Conflict of Interest: How to check for conflict**

In order to prevent conflict of interest, a lawyer must always know their client, and this is done by doing a KYC check. The lawyer must also conduct a basic conflict of interest check before taking the decision to represent the client.

To do so, one needs to collect basic data on the client. In the case of corporate clients, the lawyer would need to obtain information on who the directors and shareholders are,

It is also important for the lawyer to take note of the nature and scope of the brief and how that may impact on conflict.

After collecting information in keeping with the KYC and CDD requirements under the AML Act, the lawyer should carefully check whether based on the knowledge of the client/prospective client, a case of conflict of interest arises. Here, what the lawyer is looking out for is the personal details of the client and the nature of the scope of service to be provided.

Once the information is obtained, it is important for the lawyer to check with colleagues to see if there is any conflict. (For example, in an Office Sharing Arrangement, lawyers can not represent both sides of the parties. Checking with colleagues might reveal a conflict situation). It is also best to use a software suited for this purpose to ensure that the check is thorough.

So the lawyer must:

1. Identify the client
2. Determine whether Conflict of Interest exists

3. Determine whether the representation maybe undertaken despite the existence of the conflict i.e. whether conflict can be waived or consented to
4. If yes, discuss with client
5. Obtain their informed consent in writing

A Conflict of Interest may exist before representation in which case the representation must be declined unless the lawyer obtains the informed consent of the client.

If a conflict arises after representation, the lawyer must withdraw her/his services unless the lawyer obtains the informed consent of the client.

**When to conduct a Conflict of Interest Check**

1. When the prospective client informs the lawyer of his intention to hire them
2. When the client gives you an idea of the nature and scope of the brief
3. When the client gives the lawyer an idea of the parties involved in the litigation or transaction.
4. After the first client conference/consultation.
5. When a new issue arises in the matter (joinder of a new party, decision on an interlocutory matter, new events leading to change of scope of services)
6. Before opening the client's file.
7. Where the lawyer on his own discovers information that may lead to conflict, he should check to be sure.

It is important to be very mindful of the hypothetical queries that some prospective clients make especially at the first client conference.

**What should a lawyer do where he suspects that there is a potential conflict of interest?**

If the lawyer has not met the client already, he must decide on whether to meet the client or not.

If the lawyer has met the client already, he must decide whether to collect further information from the client or not.

If the lawyer has already collected further information already, he must determine whether to represent the client or not.

If the lawyer is already representing the client, he must determine whether to continue representing the client or not.

Where there is a conflict, the lawyer has the following options open to him in accordance with the law:

1. Reject the brief
2. Inform the client where it arises in the course of the rendering of the service and ask what the client would like to be done.
3. Ask for waiver where it can be done (e.g. in non-contentious matters)
4. Where the waiver is denied, the lawyer should cease work, inform the potential client/client and refuse representation.
5. With the consent of the client, recommend an alternative lawyer to the client to handle the matter.
6. Erect Chinese walls within the firm, subject to the necessary risks this entails.

A lawyer may ask for a waiver where the interests of the parties are aligned. Unless this waiver is granted, the lawyer should not collect any confidential information from the client.

**Conflict of Interest under L.I. 2423**

**Rule 20(14)** views conflict of interest from 2 viewpoints:

- An interest that might adversely affect a lawyer's judgment or loyalty in relation to his prospective client/client or
- An interest that the lawyer might prefer to the interest of his prospective client/client.

**Rule 20(1):** A lawyer is precluded form representing both the plaintiff and a defendant in respect of a dispute.

**Rule 20(2)** provides that a lawyer shall not act in a matter when there is or is likely to be a conflicting interest unless, after disclosure adequate to make an informed decision, the client or prospective client consents. This is the backing behind the provision in the engagement letter that allows the lawyer to consult with the client where the conflict arises.

**Rule 20(3)** further restrains a lawyer from doing any of the following:

a) Entering into a business transaction with a client, or

b) Knowingly acquiring an ownership, possessory, security or other pecuniary interest adverse to a client, unless

- The transaction and terms on which the lawyer acquires the interest are fair and reasonable to the client and are fully disclosed and reduced in writing in a manner that can be reasonably understood by the client;
- The client is advised in writing of the desirability of seeking and is given a reasonable opportunity to seek the advice of independent legal counsel on the transaction and
- The client gives informed consent in writing, signed by the client to the essential terms of the transaction and the role of the lawyer in the transaction, including whether the lawyer is representing the client in a transaction

**20(4)** – A lawyer shall not use information relating to the representation of a client to the disadvantage of the client unless the client gives informed consent.

**20(5)** – Lawyers cannot solicit gifts from client (including testamentary gifts) or prepare on behalf of a client an instrument that gives the lawyer or person a gift unless the lawyer or the other recipient of the gift is related to the client.

**20(6)** – Lawyers cannot provide financial assistance to a client in connection with pending or contemplated litigation, except that he may advance court costs and litigation expenses to repaid to him on the outcome of the litigation and where his client is indigent, he may pay the court costs and litigation expenses on the client's behalf.

**20(7) –** Lawyers must not accept compensation for representing a client from any person who is not the client unless the client consents to this and there is no interference with the lawyer's independent professional judgment or with the lawyer-client relationship.

**20(8)** – Lawyers cannot attempt to limit their liability for malpractice in agreements with the client unless the client is independently represented in the making of the agreement. They cannot attempt to settle a claim or potential claim in respect of liability for malpractice with a former client or an unrepresented client unless the client is advised in writing of the desirability of seeking independent legal counsel in connection with the claim and si given a reasonable opportunity to seek the advice of an independent legal counsel in connection with the claim.

**20(10) –** Lawyer shall not have amorous relations with their clients unless the amorous relationship existed before the commencement of the lawyer-client relationship .

**20(11)** – Lawyers shall not have amorous relationship with the client of lawyer on the opposing side.

**20(12) –** Where an amorous relationship commences in any of the above cases, the lawyer is advised to cease to act for his client immediately.

## EXPENSES, INCOME GENERATION AND COMPENSATION MODELS IN LAW FIRMS

Like all enterprises, the management functions of legal practitioners involve handling expenses and generating income. It also involves the remuneration of the staff.

Income in the firm is from the following sources:

- Capital (this includes the partner's capital)
- Client's money (receivables)
- Credit
- Loans

It is important to consider the following:

1) **Receivables** – this comes from work done for clients. It is the lawyer's core income. (Income may be core or non-core.)
   As long as there is work in progress, the firm will be due money. These monies are known as receivables. Receivables are the monies payable to the firm (or lawyer) as a result of its work.

2) **Expenses** – A good practice manager needs to be able to properly categorize the expenses under certain heads. Expenses are incurred with the expectation that income will be generated.

3) **Accounts** – Apart from the firm's own accounts, it is important that the firm keep a **client ledger** and a **client account**. The client account is where money remitted by the client to the firm, for the purposes of handling expenses and managing the case will be kept. The client ledger records all the transactions that are made using that account.

   The client account is distinct from the **Trust Account**, which although holds money on behalf of/belonging to the client, is not used for the management of the case. (Money in the client account would be used for the management and conduct of the case, such as administrative and filing fees, whereas money in the Trust Account is simply money being held for the client. It is not used for the management of the case. For example, if the client is successful and is a judgement creditor in the case, the opposing party may pay the money owed to the lawyer, who would deposit it in the Trust Account since it is being held on behalf of the client)

**Heads of Expenditure**

The heads of expenditure differ according to the type of practice or law firm structure;

**1) Chambers/Office Sharing Arrangement**

With this set-up, there is a common account (aka the common pot) kept for the whole, which every lawyer has to contribute to for the maintenance of certain shared items.

Out of the common pot, the following items are paid for:

- Rent
- Stationery
- Utilities
- Salaries and wages
- Repairs of shared facilities
- Staff cost of shared support staff

It is important to note that the payment of taxes is not from the common pot, but rather forms part of the personal expenses of each lawyer.

The individual lawyers may incur the following expenses:

- Client related expenses ( eg, administrative and statutory expenses)
- Individual taxes
- License renewal fees

**2) Solo Practitioner**

Unlike in the Office Sharing Arrangement, there is no common pot. All the expenses incurred above are borne by the solo practitioner.

**3) Law Firm**

There is no common pot. All the expenses come from one account. Such expenses include:

- IT (Internet services, telephone bills)
- Office equipment
- Transportation
- Furniture and fittings
- Salaries and wages
- Office cleaning and security
- Staff cost
- Statutory expenses
- Medical expenses

- Insurance
- Corporate taxes
- Etc

**Income Generation – How does the Firm get money?**

Income comes from fees, i.e. payment for services rendered. Legal fees is the money the lawyer receives for his/her services and related charges.

The type of fees and structure of fees vary in jurisdictions, depending on the nature of regulation and established practices. In Ghana, fees are not regulated.

Income may be core or non-core. Core income is the revenue that the firm receives as a result of what it charges for its services. Non-core income refers to other ways the firm (or lawyer) may generate income e.g. renting out space in its office building.

The Ghana Bar Association has a scale of fees, and according to that, legal services must be compensated in accordance with the worth of the time spent or the value created, as defined by the economic situation in which the service is delivered.

**Rule 16 of LI 2423** on fees, states that a lawyer shall not charge an unreasonable amount for expenses. In determining the reasonableness of the fee, the lawyer must consider;

- Time and labour required
- The novelty and difficulty of the questions involved and the skills requisite to perform the legal service
- The likelihood if apparent to the client that the acceptance of a particular employment shall preclude other employment of the lawyer
- The customary fee charged for such services in the country.
- The amount involved and the results obtained
- The time limitations imposed by the client or by the circumstances
- The nature and length of the professional relationship with the client
- The experience, reputation and ability of the lawyer performing the service
- Whether the fee is fixed or contingent and
- Whether the fee falls within the approved scale of fees.

**16(3)** provides that the lawyer should communicate in writing, the scope of the representation and the basis of the fees and expenses to the client before or within a reasonable time after commencing the representation. This is not applicable whether the lawyer charges a regularly represented client on the same basis or rate. Whenever there is a change in the basis or rate of the fee or expenses to the client, the lawyer must communicate this to the client.

The need to agree with the client on the fees is very important as was portrayed in the case of **Lawyer Francis Xavier Sosu v. GLC**. In this case, the appellant had been suspended from legal

practice for 3 years following a report made to the Disciplinary Committee of the General Legal Council that he had over-estimated services that he had rendered to a client.

The facts were that he had told his client that he was offering pro bono services but charged him 25% of the success fee from the matter that his client had engaged him on. He was suspended and appealed against his conviction. This conviction was subsequently quashed by the High Court which held that the Disciplinary Committee had abused its jurisdiction.

**Types of Fees to be charged**

The Ghana Bar Association recommends certain methods of billing that include:

1) **Fixed Fee**

The fixed fee is a flat/set fee to handle either an entire matter or a whole portfolio of work. It does not change with the time the work takes or the amount of service used. It is particularly useful with more routinized work, especially for a specific client.

2) **Fixed Fee + Success Fee**

Here, you may have a lower fixed fee than the lawyer typically charges + a success fee that could raise the total fees charged above what the lawyer would have charged had he charged only a fixed fee.

Here, a contingency becomes payable upon the occurrence of a certain event which both the lawyer and the client agree on. The Success Fee is a type of contingency fee charged when the lawyer attains the objectives of the client. It is typically resorted to in personal injury cases, property damage cases, or other cases where a large amount of money is involved. Note: the definition of contingency fee restricts it to civil matters.

The contingency/success fee arrangement can be lucrative but it is also risky since a lawyer cannot generally predict the outcome of the work he undertakes to do; especially in cases where success of the work does not depend on the lawyer i.e. negotiating a transaction with the government that is subject to parliamentary approval. To manage this risk, it is wise for the lawyer and the client to agree on what constitutes "success", and ensure that "success" as much as possible does not depend on a third party.

3) **Hourly Fees**

This is where the fee is measured according to the time (measured in hours) spent on the job

4) **Hourly Fees + Success Fee**

The fee is measured according to the time spent on the job, but there are also fees contingent on certain "successes"

5) **Fixed Fees + Hourly Fees**

Where the lawyer charges a fixed fee in addition to computing an hourly fee for some of the work

**Rule 17** confirms the GBA Scale of Fees in allowing lawyers to charge contingent fees (fees due on the occurrence of a future event). A contingent fee agreement shall state the method by which the fee is to be determined, the expenses to be deducted from the recovery and whether these expenses are to be deducted before or after the contingent fee is calculated.

**Invoicing**

The fees are to be charged through the use of invoices under **Rule 27**. There are 3 critical ingredients contained in a lawyer's invoice:

- **Fees/legal fees** which may be based on time and other methods.
- **Statutory expenses** (e.g. filing fees, these are expenses payable as a result of a statute or law that makes them payable)
- **Administrative expenses** (transportation to court, etc.)

It is important to take note of overheads. These are expenses that cannot be charged to one particular client even though it is incurred on their behalf. e.g. utility costs like electricity for the conference room AC.

**Time-based billing**

Time is very important and might be the lawyer's most important resource.

It is important for the lawyer to take time input seriously for the following reasons:

1) Rule 16 (2)(a) requires that in assessing the reasonableness of fees to be charged, the lawyer must take into account the time required

2) Competing demands – Lawyers have competing demands for their time. As such, a lawyer must always record his time, whether using time-based billing or not.

3) Client Perception

4) Non tangible nature of the profession and its impact on the proximity between the service and to the client.

5) Deadlines and compliance requirements

6) Impact of not meeting deadlines

7) The need to monitor work in progress

8) Multiple clients demanding time

9) Time helps as a measure of productivity and a determinant of value.

Computing Billable time (How is time recorded?):

**NB**: whenever we talk of ***rate***, we mean an hour.

Because time is the most important resource a lawyer or law firm has, its use has to be tracked.

Time tracking is common in law firms. The time worked on business matter that will be charged to a client according to a contractual rate is what is known as **billable time**, a concept which evolved from Frederick Taylor's concept of time. To determine what qualifies as billable time, it is important to first record all the time related to the work done by the lawyer. This is done on the basis of rounding up.

Computing billable time is dependent on **rounding up** not **rounding off**.

So lawyers **round up**; they don't round off.

The rounding up method calculates a fraction of an hour as the unit of the lawyer's time, and applies charges on multiples of that unit.

Initially, the hour (60 minutes) was the base or minimum time for billing. Then in 1973, there was a client revolt in the US. Following this, lawyers were advised to bill using units of time, i.e. parts of time. Some lawyers started to state that they were working for half an hour and so they would charge using the half of an hour. This is the **half rule**. Clients protested this half rule. The lawyers then divided the hour into 4 parts and charged based on every 15 minutes - this was the **quarter rule**. The **1/6$^{th}$ rule** was also developed and still subsists in Canada. Time was divided in 6 parts and billed every 10 minutes. Others followed still.

The most popular rounding up method is the **1/10$^{th}$ rule**, which divides an hourly rate into 10 six-minute units. It assumes that the minimum amount of time a lawyer works is 6 minutes.

Other common ones are the **1/12th**, the **1/6th** and the **1/5th**.

Thus, the total of the time recorded is rounded up to the nearest minimum unit of time applicable to the firm/lawyer.

Based on this, **how then do we record time?**

**Step 1:** Based on the rule being used, apply the fraction to the number of minutes in an hour to derive a unit of billable time. For instance;

- $1/10^{th}$ of 60 minutes is 6 minutes.
- $1/12^{th}$ of 60 minutes is 5 minutes.
- $1/6^{th}$ of 60 minutes is 10 minutes.
- $1/5^{th}$ of 60 minutes is 12 minutes
- $1/4^{th}$ of 60 minutes is 15 minutes (quarter rule)
- ½ of 60 minutes is 30 minutes (half rule)

**Step 2:** Determine the amount of money attached to each unit. For instance, I will be charging 10 cedis for unit of billable time.

So applying the 1/10th method, for every 6 minutes I spend working on your case, I will charge 10 cedis. Applying the 1/12th method, for every 5 minutes I spend working on your case, I will charge 10 cedis. Applying the 1/6th method, for every 10 minutes I spend on your case, I will charge 10 cedis. Applying the 1/5th method, for every 12 minutes I spend on your case, I will charge 10 cedis.

**Step 3:** Apply the amount of money attached to multiples of the unit. Assuming we are employing the 1/10th method which treats a unit of billable time as 6 minutes, what that will mean is that I will charge you every time we begin counting 6 minutes afresh. So everything that I do on your case from the very first 1 second to the 6th minute costs 10 cedis. If I finish in the second minute, it still costs 10 cedis. If I use 5 minutes to do the work, it still costs 10 cedis. Even if I use 10 seconds to do the work it still costs 10 cedis. Because everything that I do from the first 1 second to the 6th minute will cost you 10 cedis.

But the moment I cross the 6th minute, I will start counting again, because that will mean we have entered another 6 minutes. Even if I cross the first 6 minute mark by just 10 seconds, I will charge you 20 cedis, because we have started counting into another six minutes, and the rule is that we apply the charge every time we start counting afresh.

The entire reason I am recording the time is to know how much to charge you. So since I charge every 6 minutes, if we cross the first six minutes and enter the second 6 minutes, even if it's just by 5 seconds, it means we have entered another 6 minutes so I will record it as 12 minutes until the second 6 minutes finishes. If the actual time I spend is 6 minutes and 6 seconds, I will record it as 12 minutes. If the actual time I spend is 11 minutes and 55 seconds, that will also be 12 minutes. But if I cross 12 minutes and start counting afresh again, that's another 6 minutes. So until that third 6 minutes finishes and I start counting afresh again, everything that happens will be recorded as having happened within 18 minutes

Components of good timekeeping transactions:

A good timekeeping transaction should:

- State the name (and sometimes, the position) of the lawyer performing the task.
- Record the date on which each task was performed
- State the actual time you spent doing the task (the actual time, not the round up time, unless you spent less than the minimum unit on the work, then you can state the round up time)
- Provide a concise description of how much time you spent doing the task.
    a. Avoid grouping tasks, e.g. spent 4 hours drafting documents and client conferencing
    b. Avoid vague descriptions of the work
- Indicate the total time on each task/input
- Indicate the overall time, 40-70% of which will be converted to monetary terms and billed to the client in an invoice.

The reason only 40-70% of the time is billed is because of non-billable time. Time spent on internal meetings, calls, fixing bugs etc are not billed to the client.

So the key things to note in the recording of time is:

1) Describe the task performed in a concise manner

2) Avoid the sins of time recording (vague descriptions e.g. review and research, block time i.e. group time – putting a group of tasks under one period of time, and unethical time billing)

3) Convert the billable part of the time into invoices and send to the client. Not every time is billable. The average time is 40-70% billable. The actual bill is subject to the firm's policy on billing. Bills may be forwarded on the achievement of a milestone. The milestones are determined by the nature of the contract by the client.

Once the time spent is recorded, it is converted into invoices and submitted to the client to scrutinize.

The due date for invoice/Time Sheets is usually determined by the firm or the lawyer's billing policies. They may be due daily, weekly, monthly, quarterly, on the achievement of a milestone, or based on specific engagement terms.

**NB:** Lawyers may also charge pre-engagement or consultation fees as a way to weed out forum shoppers.

**Other time-based billing forms not captured in the GBA Scale of Fees**

The GBA scale of fees emphasizes time as an input for billing. However, common types of time-based fees not covered by the GBA scale of fees include:

1. **Average rate** – total rate of all the lawyers divided by the number of lawyers in the practice/firm.
2. **Blended rate** – Here the fee is determined by striking an average of the rates that each lawyer that worked on the case charges and then applying that figure.

   So if Associate Kofi bills 50 cedis an hour, Associate Ama bills 100 cedis an hour and Partner Akwei bills 200 cedis an hour, and they all worked on the case till its conclusion, then the blended rate would be 117 cedis an hour for each lawyer on the team.

   But assuming Associate Kofi was taken off the team halfway through and replaced with Partner Teye who bills 300 cedis an hour, then the 117 cedis will apply up until the point where Associate Kofi left. Subsequently, a new blended rate will have to be calculated and the client will have to be informed.

   Sometimes the average may be struck according to band. The firm may charge a certain rate for all partners (e.g 50 cedis), and a certain rate for all associates (e.g. 25 cedis), and certain rate for all juniors (e.g. 15 cedis). So if one of each works on the case, then the average will be struck according to the rate per band (which would give us 30 cedis in this case).

   Usually, if a client asks for a blended rate, this may mean that the client wants more partner time but wants to pay less for that.
3. **Flat rate** – this falls within the range of the charges of the firm irrespective of who does the work. It is a time-based rate which is determined without blending or averaging and is negotiated with the client.
4. **The daily rate/ the man day rate** – this rate stems from the ideas of Frederick Taylor. Multiplies the hourly rate by 8 hours.
5. **The weekly rate** – Daily rate x 5 days
6. **The monthly rate** – daily rate x 22 days
7. **The capped fee** – This is a time-based fee with a cap. It is an hourly based fee which sets a cap (an upper ceiling) on how much a lawyer can charge per hour, irrespective of the number of hours he/she works.

   It is applicable where the client requests a lawyer to provide a budget for the service. This could include a consultation fee. Most firms charge a flat rate for consultation. The lawyer may say that he's charging 10 cedis on every 6 minutes, but he won't charge more than 50 cedis an hour. So even if he does work for 42 minutes, he can only charge 50 cedis and not 70 cedis as he would have been entitled to. The cap may be strict or flexible.

**Non-time based billing**

1) **Consultation Fee** – This is a pre-engagement charge, i.e. the fee charged by the lawyer in the first meeting with the client. It is a fixed sum the lawyer charges for that initial engagement.

   The consultation is the initial meeting where the lawyers listen to the client and where;

- The client determines if he/she will hire the lawyer
- The lawyer determines if he/she will take the case

   At this stage, no legal advice is given. The average consultation time ranges from 15-30 minutes.

2) **Retainer** – this is a down-payment on fees to secure the lawyer's availability and commitment to work on client matters, except where there is conflict.

   A retainer fee is not based on time. There is a commitment fee (to signify that you have been hired and work may come as and when) and fees for the actual work done.

3) Contingency fees / Success fees

4) No cure, no fee

5) Transactions with borrowers and lenders

6) Loser pays

7) Percentage based charges

8) Lump sum

There are certain factors that must be taken into account with non-time based billing;

- **Experience:** This applies to both of the firm and the individual doing the work.
- **Reputation of the firm or the lawyer**
- **Specialization:** This is not necessarily the same as a niche practice, which is where very few people are/can be in the area.
- **Whether the fee being charged falls within the approved scale of fees** (not necessarily the GBA Scale of fees)
- **Whether the fee being charged is contingent or not.**
- **Time and labour required.** This is not in reference to time-based charges.
- **The novelty of the matter:** Where the matter is novel, more work goes into it

- **The likelihood that the transaction will preclude the lawyer from any other assignment. E.g.** representing a certain political party.
- **The nature and length of the relationship with the client.**
- The extent of effort required
- Whether additional skills beyond law are required to perform the task

**Billing Abuses and Unethical Billing Practices**

Lawyers must at all times avoid unethical issues in billing or charging. Lawyers are sanctioned a lot for billing abuses.

Such abuses include;

1. **Padding:** This happens where the lawyer consciously piles the time in order to enable him bill more.
2. **Charging a lawyer's rate for paralegal work/work done by junior lawyers.**
3. **Making up false expenses. E.g.** claiming you flew first class when indeed, you flew economy.
4. **Charging an unconscionably high percentage after representing differently to the client.** (Francis Sosu case)
5. **False records/forgery of records**
6. **Charging for training pupils/the law firm's lawyers**
7. **Time-dragging:** Ways and means to make extend the time spent on a matter for a client.

There are several disciplinary cases illustrating examples of disciplinary actions taken against lawyers for billing abuses.

Note the example of **James Spiotto** who billed clients for such outrageous amounts of time spent on certain matters. He claimed to have pulled 52 all-nighters in a row, charging his clients about 6000 hours in one particular year.

There is also the case of a lawyer by name **Hasen Kodwo Koduah** who was suspended by the GLC for 3 years for overbilling his client Grace Nana Ama Oparah, whom he represented in the case of **Mrs. Grace Nana Ama Oparah v National Investment Bank & 2 ors**. He had represented to her that she was required to pay a filing fee in the sum of GH₵50,000.00 when he knew or ought to have known that the statutory fee was GH₵748.00.

As indicated earlier, there is the case of **Lawyer Francis Xavier Sosu v. GLC**. In this case, the appellant had been suspended from legal practice for 3 years following a report made to the

Disciplinary Committee of the General Legal Council that he had over-estimated services that he had rendered to a client.

In June 2022, **Lawyer Francisca Serwaa Boateng** was suspended for 7 years after being charged with 7 counts of professional misconduct. Among other things, she had 35% on all recoveries made contrary to an agreement for 20% by the parties before the commencement of the suit. It was also found that the legal fees she charged was excessive and an over-estimation of the services rendered.

**Compensation Models in Law Firms**

This is simply how lawyers are paid.

There are several challenges with compensation. Some of the challenges are;

- Compensation among lawyers is competitive
- No reference point to use as a benchmark for assessing competitiveness of competition
- Uncertainty of income
- Competition with non-law salaries or non-law firm persons
- Cost control challenges
- Industry factors are difficult to set out

The categories of persons to be compensated are:

- Non-lawyers
- Lawyers but not partners
- Partners

So how does law firm compensation happen? How are these persons compensated?:

1) **Non-lawyers**

They are paid a salary or wages, incentives, bonus or other compensation applicable in similar places.

2) **Non-Partner Lawyers**

They are usually paid a salary, incentive schemes, case-based compensation (this relates to the contribution of the person to the success of the litigation), level of effort compensation (this is usually in respect of a transaction where the person contributes to the success of the transaction), time-based compensation (this is usually used for of counsel).

3) **Partners**

There are 2 main compensation models for partners;

- **Eat-what-you-kill** (more common in America): the partner is compensated on the number of cases he/she brings in. Due to globalization however, the lockstep system is more widespread. The partner may take drawings (in the accounting sense).

- **Lockstep** (more common in the UK): This is a salary-based compensation system, 10 years at the bar example. The salary difference will be close to each other.

**Factors Influencing Partner Compensation**

- **Drawings of the partner**. (Use accounting understanding of drawings.)
- **Productivity:** Income generated as a lawyer and the expenditure in generating that income.
- **Contribution to business:** Whether people come to the firm because of your name or reputation.
- **The PPP (profit per partner) and the PEP (profit per equity partner):** Not every partner is an equity partner. Equity partners are the ones who have a monetary stake in the firm.