
LEGAL ETHICS RULES

Pursuant to rule 1 of the Legal Profession (Professional Conduct and Etiquette) Rules, 2020 L.I 2423, the rules are to be interpreted in a manner to:

- (i) That recognise the duty of the lawyer to the client
- (ii) That recognise the duty of the lawyer to the public
- (iii) That recognise the duty of the lawyer to the court.
- (iv) That recognise the special responsibility of the lawyer in society and of the respect of the fundamental human rights in society.

Rule 1 of GBA rules.

Ward-Brew v. Ghana Bar Association (no.2)

The applicant initiated legal action in December 1989 against the respondent-association, seeking declarations regarding the validity of a resolution barring its members from attending public tribunals. The respondent filed an interlocutory application to strike out the applicant's writ, claiming it was vexatious and an abuse of court process. However, the court rejected this application on August 20, 1990, ordering the respondent to defend the action. As the respondent failed to file a defense within a reasonable time, the applicant filed an interlocutory application for summary judgment. During the hearing, the applicant sought permission to rely on various legal documents and arguments presented during the previous ruling on August 20, 1990. The respondent opposed the application, arguing that it was defective and inappropriate under the relevant court rules, which pertained only to liquidated damages.

Held: **The General Legal Council, as mandated by the Legal Profession Act, 1960, was responsible for regulating the education, training, enrollment, discipline, and professional conduct of practicing lawyers in Ghana.** Acting within its authority under this Act and relevant regulations, the Council made rules governing the legal profession. One such rule, found in LI 613, affirmed a lawyer's discretion to accept or refuse briefs in courts where they practiced. **Therefore, the respondent-association lacked legal authority to prohibit its members from appearing before public tribunals. Such a resolution infringed on lawyers' legal discretion and contravened the General Legal Council's jurisdiction, as outlined in LI 613. Consequently, the resolution was deemed null and void.**

Who is a lawyer in practice?

Pursuant to rule 2 of LI 2423, a lawyer in practice is

- (i) one who is entitled to practice and represents that he is able and ready to practice.
- (ii) One who is employed in a whole practice of providing legal services
- (iii) One who is an editor or reporter of series of law reports.
- (iv) One who is engaged in the teaching of law
- (v) One who by the terms of his employment is required to offer legal advice.

A lawyer in practice cannot be the managing director of a company or an active partner otherwise than the partner in a lawyer. This was seen in the case of ***Northern Engineering Company v. Djokoto.***

A lawyer in practice shall not engage in a business or activity where this a conflict or serious risk of conflict with his duties as a lawyer or be an active partner in any business other than the practice of law. Rule 2(2)(c). Where there is a doubt, the lawyer shall seek guidance from the Council.

Rule 3 deals with the professional stationery and name plate of a lawyer. A lawyer shall not permit any person to appear on his name plate or professional stationery where that person is not a lawyer. Where a lawyer of the firm is in public service, during the period where he is in public service, his name cannot be used on the professional stationery of the firm

A lawyer is, however, permitted to use the names of former partners on the stationery of the firm.

A firm shall not indicate in their professional stationery any client approval ratings; any misrepresentation about the status of the firm's incorporation.

Naming of Law Chambers: Rule 4.

The Council must approve the name of a chambers used by a lawyer.

Where the name of the chambers is misleading or similar to that used by another firm, the Council shall not approve of same.

The name of the firm shall not be descriptive of the services provided, nor shall it comprise only of acronyms or indicate a connection with a particular geographical area or with a government agency or indicate that the law firm is the best in town. Rule 4(10)

Pursuant to rule 4(11) a lawyer shall not practice except where he is a member of a Chambers.

See rule 10 of GBA rules.

A lawyer who is a part of a chamber may use part of his private residence which is separate from his actual residence for his practice.

Further, a lawyer shall not receive into the chamber of that lawyer, a pupil, unless the lawyer is not less than seven years standing at the Bar.

Representation by a Lawyer: Rule 5.; rule 33

A lawyer is a representative of the client, an officer of the legal system, a public citizen with a special responsibility of the delivery of quality of justice.

A lawyer, when representing a client shall act as:

- (a) **A counselor.** In this role, the lawyer is required to have a deep appraisal of the facts laid by the Client before him, and advise the client as to the options open to him having regards to the relevant law. The lawyer is not to choose the options for the client, but rather, to permit the client to choose from the range of possible causes of action available to the client. The lawyer must explain the legal rights and liabilities of the client and the implications of same.
- (b) An advocate, to zealously assert, argue, and put forward the case of the client in a forceful, but courteous, diligent, and respectful manner before the Court. Bearing in

mind the need to do so in utmost good faith and not misleading the Court. **Akufo Addo v. Catherline**, in that case, the Court observed that: *Counsel appearing in an appeal owes a duty to his client to do all he possibly can to convince the appellate court that the lower court's decision is wrong. He must do this within acceptable limits. It is perfectly within his rights to say the decision is mistaken or erroneous and offer reasonable argument or expostulation against it. This I think must be done with as much courtesy as possible and the personality of the individual judges kept out. Arguments ad hominem are not, in my view, part of the legitimate duties of counsel who is on appeal.*; **Republic v. Court of Appeal, Ex parte Amponsah**.

(c) A negotiator to put forward the best interest of the client and not submit to a settlement that will not advance the interest of the client. The objective should be to achieve a fair and balanced results. The lawyer must act in a manner consistent with honest dealings.

(d) As an evaluator to evaluate the affairs of the client, and report same to the client.

Pursuant to rule 5(3), a lawyer shall not represent a group of people without their knowledge, and shall ensure that the group is informed about that representation. This is further emphasized in rule 68. This can also be seen in rule 34 of the GBA rules.

In representing a client, a lawyer is required to exercise independent judgment, when acting as a counselor for a client.

Competence: Rule 6.

Before taking a case, a lawyer must ensure that he is professionally competent to prosecute that case, and must conduct the case with such skill and care as any lawyer of ordinary competence will do. This requires the lawyer to act with skill, thoroughness, and preparedness that any ordinary lawyer will act in the circumstances. See: **Emmanuel Tetteh v. Goerge Larbi Addo**.

See: **Fodwoo v. Law Chambers** wherein the Court of appeal held that a lawyer and a law firm can be held liable in negligence for failure to act with competence in the conduct of a client's case.

See: **Otoo v. Biney**: The plaintiff purchased a plot of land from S, who was the administrator de bonis non of P's estate. After S's death, the co-defendant took over administration and sold a portion of the land to the defendant. The plaintiff, who had not registered her conveyance, claimed damages for trespass and sought an injunction, arguing that the co-defendant lacked authority to convey the land and relying on her possession and Section 24 of the Land Registry Ordinance. The defendant argued he was a bona fide purchaser without notice and had priority due to registration under Section 21(1) of the Land Registry Ordinance.

The Court held that the Plaintiff could take an action against his lawyer under negligence for failing to advise him to register the land.

Courtesy: Rule 7; 76; (rule 48 of GBA)

A lawyer must be courteous, fair and respectful, and must act in good faith towards, the court, other lawyers or parties to the proceedings. Rule 7.

Under rule 41, A lawyer must not, in the course of representing a client, knowingly:

1. Make a false statement of important fact or law to someone else.
2. Fail to disclose an important fact to someone else if not disclosing it would help a client commit a crime or fraud, unless the rules prohibit disclosure.

Also, rule 76(1) provides that:

A lawyer shall be courteous, civil, and act in good faith with all persons with whom the lawyer has dealings in the course of practice.

Sub-rule 2 provides that a lawyer shall not engage in unethical behaviour; or take advantage of or act without fair warning on a slip, irregularity or mistake on the part of another lawyer without going into the merits of the case or which involve the sacrifice of right of a client.

This is reinforced by rule 48 of the GBA rules.

For instance, in one of the cases before the disciplinary committee of the GLC, the GLC suspended lawyer Francisca Serwaa Boateng, for among other things, using intemperate words against a client in a manner which brought the profession and her own dignity to disrepute. This is also consistent with rule 89(1)(c) of L.I 2423. See also: rule 1 of GBA rules.

Also, in **Watalah v. Ghana Primewood Products**, On 15 August 1972 the plaintiff filed his writ for damages for personal injuries arising from the defendant company's negligence. The statement of defence was filed on 15 November and summons for directions and reply on 18 November. The case was put down for hearing on 23 January 1973 but adjourned at the instance of counsel for the defendants. It was again fixed for hearing on 8 February. Hearing notices were served on counsel for the defendants, and counsel for the plaintiff also wrote to inform him of the hearing date. When the case was called, the defendants' counsel was absent, but a representative of the company told the presiding judge from the well of the court that their counsel had said the company should be in court that day. The case proceeded. The plaintiff gave evidence and the defendants' representative was given the opportunity to cross-examine and to lead evidence but he did neither. Judgment was entered for the plaintiff.

The defendant company sought to have the judgment set aside as a default judgment under Order 36, r. 18. The basis for the application was that counsel had not appeared in court because he was trying to negotiate the claim out of court and he expected counsel for the plaintiff to inform the court of those steps to negotiate.

Held: **Lawyers had a duty to fearlessly defend the interests of their clients but in so doing they should not allow personal feelings to affect that duty. It was their duty to treat with courtesy and respect the court and opposing counsel as well as witnesses. Counsel for the defendants had been guilty of conduct so gross as to damage the interests of his client and to bring discredit on the profession. If other interests prevented him from taking that diligent interest required of him, then he had allowed those other interests to interfere with and prejudice the interests of his clients.** Such conduct was improper and against the ethics of the profession.

Akufo-Addo v. Catherline.

Conduct of Public Officers: rule 8, 40 (25 of GBA rules)

Pursuant to rule 8, a lawyer in public service is bound by the rules of professional conduct and that lawyer, shall not act in a manner where his personal or professional interest may conflict with the interest of his duties.

In **Marfo v. the Republic**, a lawyer who was employed with the state Gold mining Corporation applied for bail for an accused person who was standing trial for defrauding by false pretences contrary to section 132 of Act 29. Consequently, it was argued for the prosecution that the bail should be discharged as having been granted in an irregular manner. The Court, however, held that: **"The legal practitioner who represented the accused would be clearly guilty of a gross misconduct, if the assertion that he was at the time he advocated for bail a public officer, was true. But it was the legal practitioner who by his act, rendered himself liable to disciplinary sanctions; and consequently, his misconduct ought not to inure to diffuse the jurisdiction of the High Court. It was certainly not proper for the court to vacate an order granting bail to an accused person merely on the ground that the lawyer who appeared for him was a public officer prohibited from engaging in private practice. Dictum of Justice Vinson in Stack v. Boyle 342 U.S. 1. (1951) applied."**

In **Watalah v. Ghana Primewood Products**, the Court noted that: "We would like to make the point that lawyers engaged in the public service and who are called upon to represent public institutions in law-suits have the responsibility to ensure that public funds are not improperly expended through their default, and that they must exhibit the same degree of diligence as is required of a private practitioner. There cannot be one standard of professional conduct for the lawyer in the public service and another for the lawyer in private practice." It is a proverb of large equity which declares that what is "sauce for the goose is sauce for the gander." I must say that the conduct of counsel for the defendants in this case falls far below that degree of diligence required of him in the discharge of his responsibilities to this court, to his clients, to the administration of justice as referred to by the Court of Appeal."

See also: **Samuel Nerquaye Tetteh case where he received 40,000 cedis from an accused he was prosecuting. The GLC accordingly disbarred him for acting in a manner in conflict with his duties as a public officer.**

Under rule 40 of the rules, a lawyer who is a prosecutor is required to act resolutely and honourably and in candour, honesty, respect, fairness and courtesy towards the Court.

Pursuant to rule 40(2) a prosecutor in a criminal case must:

1. Only pursue charges that are backed by evidence.
2. Ensure the accused knows their right to counsel and help/assist the accused procure or get one.
3. Not pressure an accused without a lawyer to give up important rights before trial.

4. Share any evidence that could show the accused is innocent or less guilty with the defense promptly.
5. Share any information that could lessen the punishment with both the defense and the court during sentencing.
6. Avoid making public comments that could unfairly make people think worse of the accused.
7. Take steps to stop anyone working with them from saying things outside of court that the prosecutor couldn't say.
8. Only refer a client to the Legal Aid Commission and not to specific law firms.

Pursuant to rule 40(3)(4) where a prosecutor becomes aware of new, believable, and important evidence suggesting that a convicted person may be innocent, they must:

1. Quickly share this evidence with the appropriate court or authority.
2. If the conviction was based on evidence provided by the prosecutor, they must promptly inform the accused about this evidence, unless a court permits delay.
3. They must either investigate further or ensure that an investigation is conducted to determine if the accused was wrongly convicted.

Additionally, if a prosecutor becomes aware of clear and convincing evidence that someone in their court has been wrongly convicted, they must take action to get that conviction overturned.

Again, pursuant to rule 56, a public prosecutor has a duty to the Court to disclose any material known by him to the Court to assist the Court in the prosecution of the matter. In so doing, a prosecutor is to assist the Court in finding the truth by presenting all relevant evidence clearly and providing legal arguments for proper application of the law.

A prosecutor shall not:

- Push for a conviction beyond what the evidence supports.
- Try to sway the Court against the accused through language or behavior.
- Argue facts or laws they don't reasonably believe support the accused's guilt.
- Communicate with or interview the accused person.

Pursuant to rule 57 of L.I 2423, a prosecutor has a duty to disclose every material in his possession to the opposing party, including:

- (i) The means of finding prospective witnesses who may be in connection with the material.
- (ii) Any other information relative to the guilt or innocence of the accused.

Accordingly, prosecutor must promptly share all relevant evidence with the opposing party, including the names of potential witnesses and any other information that could affect the guilt

or innocence of the accused. However, this rule doesn't apply if disclosing everything could harm the fairness of the proceedings or someone's safety.

If the prosecutor, however, suspects that evidence was obtained unlawfully, they must inform the opposing party, provide a copy if it's a document, and explain why they believe it was obtained improperly.

See also rule 25 of GBA rules.

Scope of Representation: Rule 9.

According to rule 9(1) a lawyer shall not counsel a client or assist a client in a conduct that the lawyer knows to be fraudulent or criminal.

Pursuant to rule 9(2) a lawyer can talk to a client about what might happen legally if they do something and can help the client figure out if what they want to do is legal and what the law means or how it applies.

Further, under rule 54(1)(2) of LI 2423, a lawyer must not advise or assist a client to give false evidence; or suggest to or condone a client or another person suggesting to a prospective witness, the content of any particular evidence which the witness should give at any stage in a proceeding.

Subrules (1) and (2) don't apply if the lawyer:

1. Advises the client to tell the truth generally.
2. Discusses and evaluates the evidence with witnesses.
3. Points out any inconsistencies or problems with a witness's testimony.

However, even though the lawyer can point out inconsistencies, they must not push or encourage a witness to give false evidence.

Again, under rule 67 of L.I 2423, it is a duty of a lawyer, if a lawyer knows that their client plans to act dishonestly, fraudulently, or illegally in a matter, the lawyer must advise the client that such conduct is wrong. If the client refuses to stop, the lawyer must then inform the chief legal officer or the chief executive officer of the organization. If they also refuse to stop, the lawyer must inform the board of directors. If the organization insists on the wrongful conduct despite the lawyer's advice, the lawyer must withdraw from the case according to the rules. See rule 87 on withdrawal.

Diligence; Rule 10

A lawyer must act with reasonable diligence, promptness and skill in a manner that an ordinarily competent lawyer would act when representing a client.

Therefore, the lawyer is expected to expedite litigation and not unreasonably delay litigation in accordance with Rule 34 of LI 2423.

See: **Fodwoo v. Law Chambers; Emmanuel Tetteh v. George Larbi Addo.**

Communication by a lawyer with a Client; Other Lawyer and third Parties. Rule 11-14.

Pursuant to rule 11 a lawyer must:

1. Quickly tell the client about any decisions or situations where the client's consent is needed.
2. Discuss with the client how to achieve their goals in a reasonable way.
3. Respond promptly to reasonable requests for information from the client.
4. **Talk to the client about any restrictions on what the lawyer can do if the client expects something not allowed by the rules.**
5. Explain things clearly so the client can make informed decisions.
6. Avoid using offensive language and always be polite when communicating with the client.

Note: **Francisca Serwaa Boateng;**

Under rule 12,

A lawyer must:

- (1) Avoid being rude, offensive, or unprofessional when communicating with other lawyers or anyone else.
- (2) Respond reasonably quickly to letters or messages from other lawyers that need a reply.

See **Assemblies of God v. Ransford Obeng**, where the Court speaking through Dotse JSC noted that: **Counsel must avoid abusive and insulting language not suitable for use in a Court of law such as this Supreme Court. It is to be noted that learned Counsel can still make their points and arguments very strongly without the use of language that is sometimes associated with persons in some other vocations. Not so however in a Court of law.**

Odonkor v. Amartei Per Francois JSC, however emotionally overheated one may be, members of the legal fraternity have a duty to conform to the time-honoured practice of comporting themselves always with **decorum and dignity. This must be reflected in the language they employ which should be of measured elegance and sobriety.**

In the case of **The Republic v. High Court Judge, Kumasi: Ex Parte Hansen Kwadwo Koduah; Paragon Investment Limited – Interested Party**, the Court per Akoto Bamfo and Ani Yeboah noted thus:

Akoto Bamfo JSC said:

“Practicing lawyers should never lose sight of the fact that they belong to an honorable profession which places them on a pedestal in society and such a high standing in society

should, at all times be reflected in their language and comportment. It is not for nothing that they address each other as learned friends. They are not only expected to display a deep and scholarly knowledge of the law, they must be seen to have risen above emotional outbursts particularly in their work, for scholarship and intemperate or abusive language cannot be housed together”.

His Lordship Anin Yeboah JSC also opined that:

“I think that lawyers owe it as a duty to assist the court in maintaining that litigation is conducted in a manner which would project the profession as the most Honourable one. Care must be taken not to abuse the privileges and immunities conferred on lawyers by law only to pursue a course not befitting the ethics of the profession in pursuit of justice for litigants”

See: Republic v. Richard Hlormador Ex parte Abdul Azziz Abdulai.

Under rule 13, in circumstances where a lawyer is communicating with a represented person, the lawyer shall not approach or negotiate with that person about the case except through or with the permission of that person's lawyer. Thus, a lawyer must follow certain rules when communicating with represented individuals:

1. They cannot approach or negotiate with someone who already has a lawyer, unless they get permission from that person's lawyer.
2. While representing a client, they cannot discuss the case with someone they know has their own lawyer, unless allowed by law or a court order.

Additionally, if a lawyer is handling a matter outside of court, they cannot directly communicate with someone who has their own lawyer, unless:

- (i) They've informed the other lawyer and received no response after a reasonable time.
- (ii) The communication is solely to inform the other party of the lack of response and to request them to contact their lawyer.
- (iii) The other lawyer agrees.
- (iv) The circumstances demand communication and it's not unfair to the other party.

Again, **under rule 14**, a lawyer must not make false or misleading statements about another lawyer or their services. This includes:

- Making untrue statements about facts or laws.
- Leaving out important information that would change the overall meaning of the statement, unless doing so would be misleading.

Solicitation Rule 15 (Rule 9, 17 of GBA).

This rule outlines guidelines for lawyers and law firms regarding solicitation of clients and the creation of websites:

LEGAL ETHICS NOTES| MARTIN WAANA-ANG

1. Lawyers or law firms cannot solicit clients for financial gain unless the person contacted is a lawyer, or has a prior relationship with the lawyer or firm, and solicitation isn't against their wishes or involves coercion. Where solicitation involves coercion, duress or harassment, the lawyer shall not contact that person.

Under rule 15(3):

2. A lawyer cannot use agents, runners for purposes of instigating litigation or rewards directly or indirectly, persons who influence the bringing of professional employment to that lawyer.
3. A lawyer cannot pay individuals like police, court officials, or hospital staff to recommend their services.
4. Creating a website is allowed as long as it meets specific requirements:
 - (i) Full name, business address, contact information, and photos of lawyers.
 - (ii) History and areas of practice of the firm.
 - (iii) Listing former and current clients with their approval.
 - (iv) **Avoiding misleading language, inaccurate statements, criticism of other lawyers, boasting about success rates, and intrusive statements.**

Under rule 15(8), social media isn't considered part of the website for these rules. Rule 102 defines social media to include LinkedIn, Facebook, WhatsApp, My Space, Twitter, Del.icio.us, Simpy.

See also: Rule 30 of LI 2423.

Professional Fees of a Lawyer: rule 16; 17 (rule 31 of GBA)

Pursuant to rule 16 of LI 2423, a lawyer shall not charge unreasonable fees. In determining the reasonableness of the fees, one must have regard to the value of time created by that lawyer in relation to the client's work (GBA Scale of Fees). Accordingly, to determine reasonableness, lawyers must consider factors like the time and effort required, the novelty and difficulty of the questions involved and the skills requisite for purposes of doing the work, the complexity of the legal work, potential impact on other employment, customary fees in the area, results achieved, client's time constraints, nature of the relationship, lawyer's reputation and skill, fixed or contingent fee, and approved fee scales.

3. Lawyers must provide clients with a written description of the representation's scope and the fee structure before or shortly after starting the work.
4. This doesn't apply if the lawyer charges a regular client the same way.
5. If there's any change in the fee or expense structure, lawyers must inform the client.

On contingent fee, under rule 17 of L.I 2423,

1. Lawyers can agree to receive payment based on the outcome of a case. This is called contingent fee.

2. They can set up a reasonable contingent fee agreement for civil cases.
3. The agreement must be in writing and signed by the client, specifying:
 - How the fee will be calculated (usually a percentage of the recovery).
 - **Any expenses to be deducted from the recovery, and whether they're deducted before or after the contingent fee.**
 - **Clear specification of client's liability for expenses, regardless of the case's outcome.**
4. After concluding a contingent fee matter, the lawyer must provide the client with a written statement detailing the case's outcome, any recovery, and how the client's portion was calculated and paid.

Sharing of Professional Fees: Rule 18 (Rule 5 of GBA)

Under rule 18 of LI 2423, a lawyer shall not share his professional fees with a person who is not a lawyer. This rule prohibits lawyers or law firms from sharing legal fees with non-lawyers, except in these specific cases:

1. If there's an agreement within the lawyer's firm that allows for payments to be made over a reasonable period after the lawyer's death to their estate or other specified individuals.
2. **If an employee who isn't a lawyer is included in a compensation or retirement plan that may involve profit-sharing.**
3. If the lawyer shares legal fees awarded by the court with a nonprofit organization that employed, retained, or recommended the lawyer for the case.

Confidentiality: Rule 19 (Rule 38 of GBA)

This rule outlines when a lawyer can and cannot reveal information about a client's representation:

1. A lawyer cannot disclose information about a client unless:
 - The client agrees to the disclosure.
 - Disclosure is necessary to carry out the representation.
 - Disclosure is permitted by these rules or other laws.
2. **However, a lawyer may disclose information if they reasonably believe it's necessary to:**
 - **Prevent imminent death or serious harm.**

- Stop the client from committing a crime or fraud that harms someone else's financial interests.

- Prevent or rectify financial harm caused by the client's crime or fraud.

- Seek legal advice on following these rules.

- Defend themselves in a dispute with the client.

- Comply with the law or a court order.

3. This rule applies even after the lawyer-client relationship ends.

In ***Republic v. Armah Ex parte Amugi***, the applicants and respondents, belonging to different factions of the Korle We family, had a dispute over family land ownership. Respondents filed a High Court case against applicants and later sought to hold them in contempt. Applicants hired J R as counsel, but respondents objected, claiming he had prior knowledge of the disputed land from a previous case involving the entire Korle We family. High Court upheld the objection, leading applicants to appeal and request a stay of proceedings, initially denied by the High Court and then repeated in the Court of Appeal.

The Court held as follows: **The applicants and respondents, belonging to different factions of the Korle We family, had a dispute over family land ownership. Respondents filed a High Court case against applicants and later sought to hold them in contempt. Applicants hired J R as counsel, but respondents objected, claiming he had prior knowledge of the disputed land from a previous case involving the entire Korle We family. High Court upheld the objection, leading applicants to appeal and request a stay of proceedings, initially denied by the High Court and then repeated in the Court of Appeal.**

J R's mere representation of the applicants in the contempt matter and not in the substantive litigation over title to the land in dispute [p.118] was not a circumstance that could attract the protection of privilege because he does not by that representation in any way threaten a disclosure of any confidential communication obtained by him when he acted as solicitor for both parties against a third party in 1973. In any event, the proper stage to pursue the privilege is when disclosure of the communication is threatened or imminent. There is no evidence that J R was about to testify as regards any confidential communication nor had any process been served on him compelling him to disclose any confidential communication as would be the case in pre-trial discoveries or interrogatories. **The claim of lawyer-client privilege is, in the instant case, purely illusory and had no reasonable chance of succeeding.**

Conflict of Interest and Avoidance of Conflict of Interest

Pursuant to Rule 20(14) of LI 2423, conflict of interest means:

- a. an interest (a) that would be likely to adversely affect the judgment of the lawyer on behalf of, or loyalty to, a client or prospective client; or

b. that a lawyer might prefer to the interest of a client or prospective client.

The Black's law dictionary, 9th edition, par 1843 defines conflict of interest as: "1. A real or seeming incompatibility between one's private interests and one's public or fiduciary duties. 2. A real or seeming incompatibility between the interests of two of a lawyer's clients, such that the lawyer is disqualified from representing both clients if the dual representation adversely affects either client or if the clients do not consent. The law in England, as it relates to conflicts of interest facing lawyers, is expressed in *Bolkiah v. KPMG* [1999] 2 AC 222, where Lord Millett stated as follows: "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. **Thus, conflict of interest rules dictate that a lawyer cannot act at the same time for clients with conflicting interests or act for one subsequent to his engagement with the other.**

Consequently, a lawyer in his dealings with clients or prospective clients is supposed to avoid acts which are or would likely conflict with the interest of his clients.

Pursuant to Rule 20 of LI2423, some of the instances of Conflict of interest have been enumerated and catered for by the LI.2423.

Under Rule 20(1), of LI 2423, a lawyer, shall not in a dispute, represent both the plaintiff and the Defendant. Since the plaintiff are at an opposing sides, it would be a gross misconduct to seek to represent both the Plaintiff and the Defendant in the same action. Accordingly, in the case of ***Aboagye Da Costa v. The Disciplinary Committee of the General Legal Council***. In that case, the appellant was the legal advisor of the complainant in the purchase of the land in dispute. Subsequent to the purchase, the Presbyterian Church of Ghana issued a writ against the Complainant for Declaration of title to the land. Plaintiff initially represented the Complainant and wrote to the Presbyterian Church asserting ownership and refuting the claims of the Church. Subsequently, the Appellant connived with the vendor of the land to sue the Complainant and the Presbyterian Church as well. The Court held that, by representing the plaintiff and the defendant in the same matter, the Appellant had committed professional misconduct and the disciplinary committee of the GLC was justified in imposing sanctions on the Appellant.

In that case, the Court further held that, general legal advise without any obligation of retainer, does not make one liable to the other party whom he casually advise especially where the advice was not of such a frequency to create that close relationship between the parties. The Court observed thus: **"Except for one area of instructions, we would agree with the appellant and hold that there was no general retainer creating a legal obligation which would prohibit the appellant from acting against Bosompem. Where the appellant had given advice in the past, we are satisfied it had been offered on a purely friendly basis. Moreover, the advice given was not of such a manner and frequency as to create a special relationship amounting to a retainer. The aspect of a general retainer or its equivalent, binding the appellant to the complainant, we dismiss outright as, unfounded."**

Further, in the case of ***Jones v. Buckles and ors***, the Court held that, lawyer client relationship creates a fiduciary relationship, accordingly, once a fiduciary relationship is established, even

if the case is withdrawn from the lawyer, he cannot go back to represent the other opposing party to the suit based on the confidential information that may have been divulged to him.

The Court noted that: *“The relationship existing between a solicitor and his client is recognised in equity as a fiduciary one imposing on the solicitor special obligations. In his dealings with his client the solicitor must exercise the utmost good faith, and in any financial transaction with his client (save as to costs for work done) there will be a presumption that such transaction should not be upheld unless the solicitor can establish that it was effected by the free exercise of the client’s will and without any influence on the part of the solicitor.”*

2. 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.** Accordingly, in the case of *United Foams Product v. Opobiya*, where there was a dispute concerning the shareholding structure of a company, the retained counsel sought to represent the company. The court held that the Counsel ought to have sought independent legal representation since his representation of the company was likely to create issues of conflict of interest. The Court observed as follows: ***“as legal adviser to the 1st defendant and retained counsel to the company and by inference to directors, among whom is the plaintiff, over all issues of legal conduct of the company, the learned senior counsel should have known that even the trouble or internal conflicts of the company relating to the shareholding structure, etc. which became the subject matter of the litigation, must have defied or outgrown his legal counsel and that was why it became an issue for litigation; that it would be proper for a detached solicitor (not one already dyed in the controversy) to handle the suit for the company and its directors, to give each a fair chance.”***

3. Rule 20(3) of LI 2423 provides that, a lawyer shall not:

a. enter into any business relations with the client. *Republic v. High Court Ex parte Ploetner*.

b. Knowingly acquire any ownership, possessory rights or pecuniary interest in any property adverse to the interest of the client: Unless

c. 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;

d. The lawyer must advise the client in writing of the desirability of seeking independent legal advice and must afford the client adequate opportunity to seek independent legal counsel regarding the transaction, and

e. the client gives an 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 the transaction. Over here, the consent given by the client would be vitiated where he was not given full disclosures of all the material facts regarding the transaction. In that case, the consent so given would not be informed. Also, a client at the time of giving the consent must be competent in body and mind and should have understood the nature of the transaction before consenting by marking his signature thereon.

4. A lawyer is also prohibited from using any information received from clients to the detriment of the client. This rule applies even when the lawyer client relationship ceases to exist, because of the overriding principle of confidentiality as provided in Rule 19 of LI 2423. Further, in the case of ***Jones v. Buckles*** and ors, the Court held that the mere fact that the services of Counsel was withdrawn did not mean he could use information received from the client to the detriment of the client.

5. Pursuant to rule 20(5), a lawyer is not entitled to solicit from the client any gift in the course of representing the client, including a testamentary gift, or prepare on behalf of a client an instrument giving *the lawyer or a person related to the lawyer a gift* unless the lawyer or other recipient of the gift is related to the client.

6. Pursuant to Rule 20(6) of LI 2423, a lawyer shall not provide financial assistance to a client *in connection with pending or contemplated litigation*, except that

(a) ***a lawyer may advance Court costs and expenses of litigation, the repayment of which may be contingent on the outcome of the litigation;*** and

(b) a lawyer representing an indigent client may pay Court costs and expenses of litigation on behalf of the client.

Pursuant to Rule 20(7) of LI2423, a lawyer must not receive any compensation from a third party other than the client he represents except where:

- a. client consents to the receipt of the compensation by the lawyer
- b. That the independent professional judgement of the lawyer is not interfered with by the receipt of the compensation.

Under Rule 20(8) of LI 2423, A lawyer shall not

(a) enter into an agreement with a client to limit the liability of the lawyer to the client **for malpractice unless the client is independently represented in making the agreement;**

(b) **settle a claim or potential claim in respect of the liability of the lawyer for malpractice with an unrepresented client or former client unless**

(i) the client is advised in writing of the desirability of seeking independent legal counsel in connection with the claim, and

(ii) is given a reasonable opportunity to seek the advice of an independent legal counsel in connection with the claim; or

(c) acquire a proprietary interest in the cause of action or subject matter of litigation the lawyer is conducting for a client.

(9) Subrule (8) does not affect the right of lawyer to a lien to secure the fee or expenses of the lawyer.

Under rule 20(10), a lawyer shall not have amorous relationship with a client of that lawyer, unless the relationship existed before the commencement of the lawyer-client relationship.

Again, under rule 20(11), a lawyer shall not have amorous relationship with the client of the lawyer on the opposing side.

Under rule 20(12) of LI 2423, where an amorous relation commences between the lawyer and (a) the client of the lawyer, or (b) the client of the lawyer on the opposing side, the lawyer **shall cease to act for that client immediately**.

This provision is applicable to lawyers in associated firms. Rule 20(13).

Duty to Avoid Conflict of Interests to Former Clients

Pursuant to Rule 21(1) of LI 2423, a lawyer who has formerly represented a client shall not represent **any other person in respect of the same matter or substantially the same matter, in which the interest of the person is averse to that of the client.**

Subrule 2 of rule 21 provides that, a lawyer shall not represent a person which the lawyer knows, his former firm had represented a client in respect of the same or substantially the same matter

(a) whose interest is materially adverse to the interest of that person; and

(b) about whom the lawyer had acquired information protected by these Rules that is material to the matter.

(3) A lawyer who has formerly represented a client in a matter or whose present or former firm has formerly represented a client in a matter shall not

(a) use information relating to the representation to the disadvantage of the former client except as permitted by these Rules with respect to the client, or when the information has become generally known; or

(b) reveal information relating to the representation of the client except as permitted by these Rules.

In relation to duty to former clients, the following cases are exquisite:

In *Ankrah v. Ofori*, the defendant's lawyer had, at one time, represented the plaintiff in respect of the same subject matter. The Court held that: Counsel for the defendant, who had at one time acted for the plaintiff against the defendant **in respect of the same subject-matter, could not represent the defendant in this case. The facts upon which counsel submitted that the plaintiff acted mala fides in erecting the building existed at the time when he had acted for the plaintiff and he had then contended that the possession of the plaintiff's house by the defendant was both unlawful and contemptuous of the court. That being so, counsel cannot now be heard to say something to the contrary.**

Charlotte Osei v Maxwell Opoku Agyemang

In this case, the Plaintiff sued the Defendant for libel of certain statements made in a Facebook post. Defendant/Applicant brought an application to restrain plaintiff's lawyer and his firm from representing the plaintiff on grounds of conflict of interest. That is, that sorry@law represents

the EC and therefore, since Mr. Sory is rhetorical head of chambers of Sory@law he's in conflict representing the plaintiff who's the chairperson of the EC.

The Court dismissed the application on grounds that it was unsupported by the rules and that there was no conflict of interest on grounds of:

- a. The EC was not a party to the suit
- b. Applicant did not lead any evidence of confidential information that plaintiff's lawyer may use to prosecute his case.
- c. That applicant did not have capacity to raise that objection but rather the commission.

Citing Ekwan v Ewusie, the Court noted that it would restrain a lawyer where:

1. He had presented both parties formally.
2. He did not obtain any knowledge or confidential information from the representation.
3. That the second proceeding did not arise out of the first or was not connected to it.

Yaw Boakye v Edward Osei Boakye and Thaddeus Sory.

In this case, Mr. Sory previous represented the Defendant/Applicant (therein as 4th plaintiff) concerning certain plots of land. He was now representing the Plaintiffs/Respondent. Defendant argued that the two suits are substantially the same and the parties were the same took and this breached Rule 21(1) of LI 2423.

Sory argued that the suits are not substantially the same and that in the previous suit he did not obtain confidential information.

The court found that:

1. The previous suit is substantially related to the present.
2. The court found that there was a risk of conflict as th

Duty to Avoid Representing Multiple Persons

This rule outlines when a lawyer or law firm cannot represent multiple parties in the same transaction:

1. Lawyers cannot represent both sides in certain transactions:

- Sale of land or business.
- Lease agreements.
- Loans or financing arrangements.
- Purchase of land and financing secured by a mortgage.

2. Lawyers cannot represent a guarantor if they're also representing the borrower or financier in the same loan transaction, unless the guarantor is closely related to the borrower or financier.

3. Lawyers cannot represent builders, developers, or subdividers in transactions involving land if the other party is contracting with them in the same business context.

Conflict of interest in relation to government officers and employees

Rule 23 is to the effect that:

This rule prohibits certain activities by lawyers who have served as public officers or held specific positions:

1. Lawyers who previously worked for the government cannot represent clients in matters they were involved in while working for the government. This applies to all lawyers in the same firm as the government-employed lawyer.

2. They cannot use any confidential information obtained during their government employment to harm another person in any matter.

3. Confidential government information is defined as information obtained under governmental authority that the government is legally prohibited from disclosing to the public.

4. Lawyers employed as public officers cannot participate in matters they were involved in before their employment or negotiate employment with parties involved in those matters.

5. If a member of a law firm takes up a public office, they cannot practice privately, except in specific circumstances:

- Ministers of State, Deputy Ministers, or Members of Parliament may practice law with permission from the Speaker.

- Lecturers in law may practice law.

6. Rule 24 prohibits lawyers from representing clients or negotiating employment in matters where they previously served as judges, adjudicative officers, law clerks, arbitrators, mediators, or third-party neutrals. This also applies to other lawyers associated with the same firm.

In *Affail v. the Republic*, A consigned cases of thread to be transported by train from Koforidua to Kumasi, but upon delivery, it was discovered that some thread was missing. Suspicion fell on B, the guard on the train, who was later found in possession of some of the missing thread. B was arrested, charged with theft, and convicted. On appeal, B's counsel faced a preliminary objection due to his recent appointment as counsel for the Ashanti Regional House of Chiefs in the Ghana Civil Service, which could pose a conflict of interest. Despite the objection, B's counsel argued the appeal, citing a moral obligation to continue the case. The objection was overruled, but the reasons for this decision were deferred to be included in the judgment on the substantive appeal.

The Court held as follows: **"The objection based on conflict of interest in criminal trials and appeals was considered, noting that while it's generally impermissible for counsel**

to switch from defending to prosecuting the same case, exceptions may exist in specific situations. Regarding the appellant's counsel's civil service status, it was argued that it didn't inherently disqualify him from representation, as engaging in gainful employment was not prohibited by law but could result in disciplinary action. Additionally, the court viewed the appellant's case as having priority over the government appointment, likening the counsel's role to that of an independent contractor, and emphasizing the obligation to the appellant from the time of being briefed until the conclusion of the appeal."

Rule 24 provides that a lawyer cannot:

1. Represent someone in a matter in which the lawyer **was previously involved as a judge, adjudicative officer, law clerk, arbitrator, mediator, or third-party neutral.**
2. Negotiate for employment with someone who is involved in a matter where the lawyer acted as a judge, adjudicative officer, arbitrator, mediator, or third-party neutral.

These restrictions also apply to other lawyers in the same firm as the lawyer mentioned in the rule.

Clients with Diminished Capacity: Rule 25.

This rule addresses situations where a client's ability to make decisions about their representation is impaired:

1. If a client's decision-making ability is diminished due to mental impairment or any other reason, the lawyer should maintain a normal client-lawyer relationship as much as possible.
2. If a lawyer reasonably believes that a client:
 - Has diminished capacity, or
 - Is at risk of substantial harm and cannot act in their own interest,
3. The lawyer must take necessary protective actions, which may include:
 - Consulting with someone who can help protect the client.
 - Seeking the appointment of a guardian or conservator for the client in appropriate cases.

Safekeeping of Client Property: Rule 26 (Rule 28 GBA)

This rule outlines how lawyers should handle property belonging to clients or third parties:

1. Lawyers must keep property belonging to clients or third parties separate from their own property.
2. Money belonging to clients must be kept in a separate account.
3. Lawyers can only deposit their own money into a client's trust account to cover bank service charges.

4. If a lawyer receives money or property for a client or third party, they must promptly notify them.
5. Unless there's an agreement or law stating otherwise, lawyers must promptly deliver money or property to clients or third parties when they're entitled to it and provide a full account upon request.
6. If a lawyer comes into possession of property claimed by multiple parties, they must keep it separate until the dispute is resolved and promptly distribute uncontested portions.

Accounts of Lawyers: Rule 27 (Rule 29; 30 of GBA)

Pursuant to section 48 of LI 2423, the GLC may by an LI prescribe lawyers to keep separate books of accounts for lawyers, and to require them to keep proper records of monies received, paid and held by them. Where a lawyer fails to comply with the rules, a person may, in accordance with section 18 of Act 32 make a report to the disciplinary committee of the GLC.

In pursuance of this, the GLC promulgated LI 2423, and rule 27 provides as follows:

1. Lawyers must provide a receipt for each payment received and specify the purpose of the payment.
2. They must maintain proper books of account to track client funds separately from other money.

Thus, lawyers are required to maintain detailed financial records to track:

- (a) Transactions involving client funds, including money held, received, or paid by the lawyer.
- (b) Any other funds managed through a client's account
- (c) These records must clearly distinguish between:
 - (i) Funds handled for each individual client.
 - (ii) Client funds versus other funds managed by the lawyer.
3. Record-keeping should be organized using a cashbook or ledger, distinguishing transactions for each client.
4. Other business transactions related to the lawyer's practice must also be recorded.
5. Records must be preserved for at least six years.
6. This rule doesn't affect the lawyer's right to recover owed money from client accounts.
7. Terms like "book," "ledger," and "record" include both physical and electronic documents necessary for record-keeping.

Sale or Purchase of Law Practice: Rule 28

Under rule 28 of the rules, a lawyer or law firm can sell or buy a law practice or a specific area of practice, including its reputation, under the following conditions:

1. The selling lawyer stops practicing law or the specific area of practice being sold.
2. The entire practice or area of practice is sold to one or more lawyers or law firms.
3. The seller informs each client in writing about the sale, including:
 - The plan to sell the practice.
 - The client's option to hire the buyer as their new lawyer or to take their case file.
 - The client's agreement to the file transfer unless they object within ninety days.
4. If a client can't be notified, their representation can only be transferred with a court order.
5. The fees charged to clients should not increase because of the sale.

Lawyer's Duty to a Client: Rule 29.

A lawyer must, when suitable, inform the client about alternative options to fully contested adjudication of their case, **unless the lawyer reasonably believes the client is already aware of these alternatives and can make informed decisions about their best interests.**

Additionally, a lawyer must not act as surety to secure bail for a client.

In court, at the appropriate time during the case hearing, the lawyer must inform the court about:

- Binding legal precedents
- Previous court decisions by a Superior Court.
- Authorities related to the legislation in question
- Relevant laws that may be directly applicable to the client's case.

Exercise of Independent Professional Judgment: Rule 31, 47.

Under rule 31, a lawyer is required to exercise independent professional judgment for the purposes of rendering advice to a client.

Under rule 47(2), a lawyer cannot allow someone who recommends, employs, or pays them for legal services to control or influence their professional judgment.

Additionally, a lawyer cannot partner with a non-lawyer if any part of the partnership involves practicing law.

A lawyer serving as a third party neutral: Rule 32 of LI 2423.

When acting as a third-party neutral, a lawyer must:

1. Inform any party not represented by a lawyer that the lawyer is not representing them.
2. Clarify the difference between their role as a third-party neutral and the role of a lawyer representing a client if they know or reasonably believe that a party doesn't understand.

A lawyer serves as a third-party neutral when they help two or more individuals who are not their clients to resolve a dispute or matter, such as by acting as an arbitrator, mediator, or in any other capacity to assist in reaching a resolution.

Candour Towards the Court or Tribunal: Rule 35

A lawyer must always be honest and forthright with the court or tribunal. This means:

1. They cannot knowingly lie or fail to correct false statements made previously.
2. They must disclose legal authority that goes against their client's position if opposing counsel hasn't.
3. They cannot present evidence they know is false, and must take action if they become aware of inaccuracies.
4. They may refuse to present evidence they believe is fake, except for an accused person's testimony in criminal cases.
5. If they know of criminal or fraudulent conduct related to the proceeding, they must take steps to address it, including informing the court.
6. These duties continue until the conclusion of the proceeding, even if it means disclosing protected information.
7. In one-sided proceedings, they must inform the court of any material facts they know, even if it's not favorable to their case.

Fairness to Opposing Counsel: Rule 36

Under the rule, a lawyer must not:

1. Unlawfully obstruct access to evidence or tamper with documents that could be used as evidence.
2. Help someone else unlawfully alter, destroy, or hide evidence.
3. Fabricate evidence, encourage false testimony, or offer improper incentives to witnesses.
4. Knowingly violate court rules.

5. In pre-trial procedures, make baseless discovery requests or fail to comply with legitimate ones.
6. During a trial, claim personal knowledge of facts unless testifying, or express personal opinions on matters not before the court.
7. Tell someone, except a client's relative, employee, or agent, to withhold relevant information from another party, unless it's unlikely to harm them.

Impartiality and Decorum of the Court and Tribunal: Rule 37

Under rule 37, a lawyer must not:

1. Use illegal methods to influence a judge or court official.
2. Talk to a judge, juror, or court official during a proceeding unless permitted by law or court order.
3. Contact a juror after their duty is over unless it's allowed by law or court order, the juror has expressed a desire not to be contacted, or if the communication involves dishonesty, pressure, or harassment.
4. Disrupt court proceedings.

Commenting on Pending Matters 38 (Rule 8 of GBA).

Pursuant to rule 38, a lawyer who is participating or has participated in a matter cannot make an out of court statement whilst the matter is still pending in Court. It is a misconduct for a lawyer to communicate about a pending case in Court to the media, especially where it is likely to have adverse effects on the administration of justice.

Lawyer Acting as a Witness: Rule 39 (Rule 52 of GBA).

Under rule 39, a lawyer cannot serve as an advocate in a trial where they are expected to be a witness. However, they can serve as an advocate if another lawyer from their firm will be called as a witness.

Under rule 97 of the rules, a lawyer cannot represent a client in proceedings where they are likely to be called as a witness, except when they are giving formal evidence. If the lawyer is a necessary witness for other aspects of the proceedings, they must hand over the case to another lawyer.

It is a misconduct for a lawyer to act for a client in a case they are likely to be called as witnesses.

Dealing with an unrepresented Person: Rule 42.

A lawyer shall not deal with an unrepresented person in an unfair manner.

Dealing with third Parties: Rule 43.

Under rule 43, in representing a client, a lawyer must not use tactics that embarrass, delay, or burden others. They also can't use methods to gather evidence that violate the legal rights of others. If a lawyer receives a document meant for someone else, they must promptly inform the sender.

Law Firms: Rule 44-46

Lawyers in managerial roles must ensure that other lawyers in their firm follow the rules. This includes partners, lawyers with managerial authority, and those with direct supervisory roles over other lawyers. If a lawyer knows about misconduct by another lawyer and doesn't take reasonable steps to address it, they can be held responsible. Similarly, those who oversee non-lawyer assistants must ensure they also comply with professional obligations.

Unauthorised Practice of Law: Rule 48(rule 23 of GBA)

Under rule 47(1), a lawyer shall not form a partnership with a non-lawyer where any of the activities of the intended partnership involves the practice of law.

Under rule 48 a person not duly qualified to practise law shall not practise law in this jurisdiction. Thus, a lawyer cannot practice law or help someone else practice law in a way that goes against the rules of the legal profession. If a lawyer is not licensed to practice in Ghana, they cannot set up an office or claim to be authorized to practice law there. Similarly, anyone who isn't qualified to practice law in Ghana cannot do so there.

A person is qualified to practise law in Ghana if his name **entered into** the Roll of Lawyers called the Roll of the Supreme Court in accordance with section 6 of Act 32.

Under rule 79 of LI 2423, a lawyer shall assist in the prevention of unauthorised practices.

Under rule 80 a lawyer must not engage, share office space with, use services of, or partner with someone regarding legal practice without explicit approval from the Council if that person:

1. Has been disbarred or removed from the roll of lawyers.
2. Has an expired, revoked, or suspended license to practice law.
3. Has been involved in disciplinary action and allowed to resign or surrender their license without reinstatement.

Appointment by a Court: Rule 49 (rule 26 of GBA)

Under rule 49, a lawyer must accept a court appointment to represent a person unless:

1. Representing that person would break the rules of the profession or any other law.
2. Representing that person would impose an unreasonable financial burden on the lawyer.

3. Accepting the appointment would harm the client-lawyer relationship or the lawyer's ability to represent the client.

This is also reflected in rule **26 of the GBA** rules.

Statement about Judicial and Legal Officials: Rule 52.

A lawyer shall not make a statement which the lawyer knows to be false or with reckless disregard for its truth or falsity concerning the qualification or integrity of a judge; an adjudicative officer; a public legal officer; or a candidate for election or appointment to a judicial or legal office. Lawyer Kwasi Afrifa has been charged before the GLC in respect of comments made against the integrity of the former **Chief Justice, Kwasi Anin Yeboah**.

Use of Privileged Information: Rule 53.

A lawyer must not make allegations of criminality, fraud, or serious misconduct in court documents unless:

1. There is factual material supporting the allegation.
2. The evidence supporting the allegation is admissible and in written form.
3. The client insists on making the allegation after being informed of its seriousness and potential consequences.

Additionally, a lawyer must not assert an allegation as fact unless there is evidence to support it. When cross-examining a witness, a lawyer must not suggest criminality, fraud, or serious misconduct unless there is evidence supporting the suggestion and affirming it would weaken the witness's credibility.

Integrity of Hearing: Rule 55

A lawyer must not publish or cause to be published any material regarding ongoing legal proceedings unless it falls under specific exceptions, such as providing court documents, affidavits, transcripts, exhibits, written submissions, or objective information about the status of the proceedings. However, the lawyer must avoid publishing inaccurate or opinionated material that could diminish public confidence in the administration of justice.

Undertaking by a Lawyer: Rule 58, 93 (rule 22 of GBA).

A lawyer must fulfill any undertaking they give. If a lawyer communicates with another lawyer and makes an explicit or implicit promise to ensure the performance of an action or obligation, and it's reasonably expected that the other lawyer will rely on it, the lawyer must honor that promise within the specified time or within a reasonable time if no time is specified.

However, a lawyer should not give an undertaking to another lawyer if it requires the cooperation of a third party who is not involved in the undertaking and whose cooperation cannot be guaranteed. Similarly, a lawyer should not seek an undertaking from another lawyer or their employee if it requires the cooperation of a third party that cannot be guaranteed by the lawyer or their employee.

Under rule 93, a lawyer commits a misconduct if they:

1. Fail to honor a written undertaking given by themselves or their law firm, unless it's unmistakably clear from the undertaking that the lawyer was not personally responsible.
2. Issue a check, either on their behalf or on behalf of their firm, which bounces due to insufficient funds.
3. Make an oral agreement on behalf of themselves or their law firm and fail, without reasonable cause, to honor that agreement, even if it results in financial loss to the lawyer.

Regarding oral agreements, a lawyer must, to the extent reasonably possible given the circumstances, honor an oral agreement that affects the rights of a client, even if the agreement is not legally enforceable unless it's put into writing.

Standard of Conduct by a Lawyer: Rule 61 (rule 47 & 48 of GBA)

A lawyer shall not engage in conduct whether in the course of practice or otherwise, which is dishonest; or calculated, or likely to a material degree to be prejudicial to the administration of justice; diminish public confidence in the administration of justice; or adversely prejudice the ability of the lawyer to practise in accordance with these Rules.

See: Agbemashior v. SIC.

Offer of Legal Services: Rule 62

In offering legal services, a lawyer must not:

1. Use false or misleading means.
2. Employ coercion, duress, or harassment.
3. Exploit a vulnerable person or someone who has undergone a traumatic experience and hasn't yet recovered.

4. Attempt to persuade a person who has already hired another lawyer for a specific matter to switch lawyers, unless the person or the current lawyer initiates the change.
5. Engage in actions that tarnish the reputation of the legal profession or the administration of justice.

Lawyer as an Advocate: Rule 63

When acting as an advocate, a lawyer must:

1. Represent the client firmly and honorably within legal limits, while treating the Court with candor, fairness, courtesy, and respect.
- 2. Avoid abusing the court process for malicious purposes or to harm the other party.**
- 3. Prevent the client from acting dishonestly or dishonorably.**
4. Refrain from appearing before a judicial officer if there's a personal or business relationship that might compromise the officer's impartiality.
5. Avoid attempting to influence the court or its officials through improper means.
6. Refrain from presenting false evidence, misstating facts or law, or engaging in deceptive practices.
7. Ensure accuracy when presenting information or arguments to the court.
8. Disclose relevant legal authorities to the court, even if they are unfavorable to the client's case.
9. Not dissuade witnesses from giving evidence or advise them to be absent.
10. Prevent witnesses or parties from being presented falsely or misleadingly.
11. Avoid abusing or harassing witnesses.
12. Refrain from seeking benefits for a complainant by threatening criminal charges or offering to withdraw them.
13. Not inconvenience witnesses unnecessarily.

Encouraging Settlements of Disputes: Rule 66 (Rule 43 of GBA).

A lawyer must:

- Advise and encourage a client to settle a dispute reasonably if possible and discourage frivolous legal actions.
- Consider alternative dispute resolution methods and inform the client of these options.
- If the client chooses alternative dispute resolution, the lawyer must follow through with that choice.

Pursuant to Rule 96 of L.I 2423, A lawyer must:

- Advise a client to avoid or end litigation if a fair settlement is possible.
- Face professional misconduct if they don't explain settlement terms to the client or miss a chance to resolve the dispute through settlement instead of legal action.

This implies that, if the case admits of peaceable settlement, a lawyer must not undertake frivolous litigation without any basis. This is consistent with Rule 33 and 63 of LI 2423.

Joint Retainer: Rule 68(Rule 34 of GBA)

When a lawyer represents multiple clients in a case:

- The lawyer must inform all clients that they represent everyone involved.
- Information shared by one client can't be kept confidential from the others.
- If a conflict arises that can't be resolved, the lawyer must withdraw from representing all parties.
- If the lawyer already has an ongoing relationship with one client, they must inform the other client and suggest they get separate legal advice before proceeding with joint representation.
- Written consent from all parties is needed if they agree to the lawyer representing them all.

In *Republic v. Armah ex parte Amugi*, the Court held that: Counsel appearing in an appeal owes a duty to his client to do all he possibly can to convince the appellate court that the lower court's decision is wrong. He must do this within acceptable limits. It is perfectly within his rights to say the decision is mistaken or erroneous, and offer reasonable argument or expostulation against it. This I think must be done with as much courtesy as possible and the personality of the individual judges kept out. Arguments ad hominem are not, in my view, part of the legitimate duties of counsel who is on appeal. For it must b

Borrowing from a Client and Guarantee by a Lawyer: Rule 70 & 71.

A lawyer should not borrow money from a client unless the client is a lending institution. If there's an existing debt between the lawyer and a third party, the lawyer shouldn't represent that third party.

Also, a lawyer shouldn't personally guarantee or provide security for any debt where the client is involved as a borrower or lender. However, there are exceptions:

1. If the lender is a public lending institution and the funds are solely for the lawyer, their spouse, parent, or child.

2. If it's for a non-profit or charitable institution, and the lawyer is asked, along with others, to provide a guarantee.
3. If it's part of a business venture with a client and all parties in the venture provide personal guarantees, following rules on conflicts of interest and ensuring all parties receive independent legal advice.

Communication with Witnesses Giving Evidence & Jurors: Rule 72, 73

The rules regarding communication with witnesses and jurors during legal proceedings are as follows:

Communication with Witnesses:

- During examination-in-chief, lawyers can discuss any matters not yet covered in the examination.
- When another lawyer examines an adverse witness, the observing lawyer can discuss the evidence with their own witness.
- After examination-in-chief but before cross-examination, lawyers cannot discuss evidence introduced during examination-in-chief.
- During cross-examination by opposing lawyers, no communication between the lawyer and witness about the evidence or issues in the proceeding is allowed.
- Between completion of cross-examination and commencement of re-examination, the lawyer conducting re-examination cannot discuss evidence related to re-examination.
- During cross-examination of an unsympathetic witness, the lawyer may discuss evidence with the witness.
- During cross-examination of a sympathetic witness, conversations are restricted similar to those during examination-in-chief.
- During re-examination of a sympathetic witness called by opposing counsel, the lawyer cannot discuss the evidence to be given during re-examination.

Communication with Jurors:

- Before a trial, lawyers cannot communicate with known jurors or cause others to do so.
- Lawyers must promptly disclose to the court any information about improper conduct by a juror towards another juror or their family.
- Lawyers not involved in a case before the court cannot communicate with jurors about the case.

Direct Supervision & Responsibility: Rule 74, 94

Under rule 74, a lawyer shall assume complete professional responsibility for the practice of that lawyer, and directly supervise non-lawyers to whom a duty is assigned.

Under rule 83 of LI 2423, when conducting proceedings in court, a lawyer:

1. Is personally responsible for the case's conduct and presentation.
2. Must use personal judgment in statements and questions.
3. Shouldn't assert personal opinions unless requested by the Court or necessary. (Rule 36)
4. Must avoid deliberately misleading submissions.
5. Shouldn't make scandalous statements or insulting questions.
6. Should avoid naming a third party whose character might be impugned.
7. Must not suggest guilt or defame others unless it's relevant to the case and supported by reasonable grounds.

Under rule 94, a lawyer commits professional misconduct if that lawyer fails to exercise proper supervision of the members of staff of that lawyer to the detriment of a client of that lawyer.

Prohibition of Sexual Harassment: Rule 75.

A lawyer must not sexually harass colleagues, staff members, or clients. Sexual harassment includes unwelcome sexual advances, requests for sexual favors, or other sexual conduct that:

1. Causes insecurity, discomfort, offense, or humiliation to the recipient.
2. Makes submission to the conduct a condition for professional service or employment.
3. Uses submission to or rejection of the conduct as a basis for employment decisions.
4. Interferes with the work performance or creates an intimidating, hostile, or offensive work environment.

See: **Solicitor Regulatory Authority v. Frederick Adams**, where a junior lawyer in the UK was suspended for three(3) months for sexually harassing a colleague at the firm's Christmas party.

Appearance by a Judge: Rule 81.

After retiring, resigning, or being removed from office, a judge cannot:

1. Join a law firm.
2. Appear as counsel or advocate before the Court where they served or any lower Court.
3. Appear as counsel or advocate before an administrative board or tribunal under the jurisdiction of the Court they served for two years from the date of retirement, resignation, or removal without approval from the Council.

The Council may grant approval under exceptional circumstances and impose necessary conditions.

Contact of a Witness: Rule 82

A lawyer shall not coach a witness in relation to the evidence of the witness; encourage a witness to give evidence which is untruthful or which is not the whole truth; communicate directly or indirectly about a case with a witness, once that witness has begun to give evidence and until the evidence of that witness has been concluded, except with the consent of the representative of the opposing party or of the Court.

Continuing Professional Development: Rule 84

Lawyers with a practising certificate must:

1. Complete a minimum of twelve hours of professional development each calendar year.
2. Submit details of their professional development to the Council as specified.
3. The Council can define the nature, content, and format of acceptable courses and activities.
4. The Council can increase the minimum hours required after consultation with relevant bodies.

Withdrawal and Termination of Representation: Rule 85, 86,87

Conditions for withdrawal of representation:

1. A lawyer cannot withdraw from representing a client unless there is good cause.
2. If withdrawal is necessary, the lawyer must give notice to the client.
3. **Under rule 86,** optional withdrawal is allowed if:
 - The client loses confidence in the lawyer.
 - The client fails to provide funds after reasonable notice.
4. **Under rule 87,** mandatory withdrawal is required if:

LEGAL ETHICS NOTES| MARTIN WAANA-ANG

- Representation violates rules or laws.
- The lawyer's physical or mental condition impairs representation.
- The lawyer is discharged (disbarred or suspended).

5. A lawyer may also withdraw if:

- Withdrawal doesn't harm the client's interests.
- The client's actions are criminal or fraudulent.
- The client's actions are repugnant or fundamentally disagreeable to the lawyer.
- The client fails to fulfill obligations to the lawyer.
- Representation imposes unreasonable financial burden or difficulty.
- Other good cause exists.

6. Compliance with legal requirements for termination of representation is mandatory.

7. If ordered by a court, the lawyer must continue to represent the client.

8. Upon termination of representation, the lawyer must:

- Give reasonable notice to the client.
- Allow time for the client to find another lawyer.
- Return client's papers and property.
- Refund any unearned advance payments.

9. The lawyer may retain papers as permitted by law.

10. Mandatory withdrawal is necessary if:

- The lawyer is discharged by the client.
- The client's instructions are inconsistent with the lawyer's duty to the court.
- The client acts dishonorably or harasses others during proceedings.
- Continuing representation would breach the rules.

See **Jones v. Buckle**, the Court held that a lawyer has a duty, upon withdrawal from a case, to notify the client and return all papers belonging to the client.

Withdrawal on Non-Payment of Fees/Other Cause: Rule 88

Withdrawal on non-payment of fees or other cause:

1. If a lawyer agrees to represent a client but the client cannot pay the agreed fee or for other adequate reasons, the lawyer can withdraw if:

- Notice is given to the client in writing.
- An account of received money is provided to the client.
- Written notice of withdrawal is given to the court if the lawyer's name is on court records.

2. If the date set for the case doesn't allow the client to get another lawyer or prepare adequately, and an adjournment isn't possible without harming the client's interests, the lawyer cannot withdraw due to non-payment of fees.

3. If a lawyer needs to withdraw for reasons other than non-payment of fees, and there's not enough time for the client to find another lawyer and request an adjournment, the lawyer can withdraw only with permission from the court where the case will be heard.

General acts of Misconducts: Rule 89.

A lawyer commits professional misconduct,

- (i) where the lawyer violates the rules of professional conduct, or knowingly assists or induces another lawyer to do so;
- (ii) engages in a conduct which involves dishonesty, fraud, deceit or misrepresentation;
- (iii) engages in a conduct that is prejudicial to the administration of justice; or
- (iv) states or implies an ability to improperly influence a government agency or official or to achieve results by means that violate the rules of professional conduct or other law.

In **Joseph v. Jebeile**, the Court held that "It is perhaps unnecessary to stress the principle that the duty of a legal practitioner who has been engaged by a litigant is not only to his client but also to the court of which he is an officer, and it is essential that he should not permit these two facets of his duty to be in conflict with each other. When an application is made to a court for an interim order that court becomes seised of the matter to the extent covered by the prayer contained in the application, and until the court makes an order in the matter it is an improper conduct for a legal practitioner to advise the doing of the very act which the application is intended to prevent, for it amounts to flouting the authority of the court. It is not a legitimate exercise of a legal practitioner's duty either to his client or to the court."

See: **Ex parte Abdul Azziz**.

Samuel Neequaye Tetteh case. Where the Council held that he had engaged in a conduct prejudicial to the administration of Justice.

Deception of the Court or Disciplinary Committee: Rule 91(14 & 46 of GBA).

1. A lawyer commits professional misconduct if they:

- Deliberately deceive a court.
- Knowingly allow a client to try to deceive a court.

- Try to deceive or mislead a Disciplinary Committee.
- Act against an undertaking given to a court or Disciplinary Committee.

In **Republic v. Richard Hlormado Ex parte Abdul Azziz**, the Court in deprecating counsel for an attempted deceit of the Court held opined that: Lawyers ought to know that the Court and the public depend on the utmost honesty and integrity of all lawyers who practice before the Court. In my respectful view, any Lawyer, who breaches one of the commandments of the legal profession must be condemned in no uncertain terms. It ought to be stressed to Counsel and others like him that the importance of public confidence in the integrity and trustworthiness of members of the legal profession is of utmost importance because it must always be observed that the reputation of the profession is more important than the fortunes of any individual member.

It **was further stated that, I think that as officers of the Court, barristers must know that they owe a duty to the Court and the public not to undermine the integrity of the court and bring administration of justice into disrepute. While barristers are duty-bound to zealously protect the interests of their clients, there are ethical boundaries which must not be crossed. If those boundaries are crossed, a party to a suit should not be allowed to benefit from their own ethical/legal breaches.**

Signing of Documents: Rule 92 (Rule 16 of GBA).

A lawyer commits professional misconduct if the lawyer signs a document not prepared by or under the supervision of that lawyer.

Negligence and Delay: Rule 95(rule 36 of GBA).

A lawyer commits professional misconduct if that lawyer conducts the business of a client with negligence or delays as to damage the interest of the client; or bring the legal profession into disrepute or discredit.

See: **Fodwoo v. Law Chambers**

Also, in **Agbemashior v. State Insurance Company**, A. an insurance claims agent, contacted the plaintiffs who had been involved in a motor accident and offered to make on their behalf a claim against the insurance company of the driver who was responsible for the accident. A.'s offer was accepted. A contacted K., a lawyer who, acting on the instructions of A. succeeded in recovering N\$3,900.00 from the insurance company and paid the same (less his professional fee of N\$100.00) to A. for onward payment to the plaintiffs. The money did not get to the plaintiffs who therefore sued the insurance company, the lawyer and the claims agent for its recovery. Before summons for directions was taken the plaintiffs discontinued the action against the insurance company but proceeded against A. and K.

Held: **A lawyer owes a duty to his client to be honest, skilful and careful and his only other duty is not to take advantage of the presumed influence of a solicitor over his**

client. His liability for negligence is the same as anybody else's liability. On the facts K. never failed in his duty as a lawyer by paying the money to A. as the lawful agent or representative of the plaintiffs. There was no evidence that K. knew that A. was a fraudulent person and K. cannot be blamed for A.'s fraudulent conduct. K. was therefore not liable for the amount claimed or at all.

In the case of **Nocton v. Ashburton** [1914] A.C. 932 at p. 956, H.L. Viscount Haldane L.C. in his well-known speech, observed as follows: "My Lords, the solicitor contracts with his client to be skilful and careful. For failure to perform his obligation he may be made liable at law in contract or even in tort, for negligence in breach of a duty imposed on him.

See also: **Otoo v. Biney**.

Failure to Attend Court: rule 98 (rule 53 of GBA)

A lawyer commits professional misconduct if without reasonable excuse that lawyer does not personally attend Court proceedings in relation to a matter, or arrange for another lawyer or a representative of the firm of that lawyer or an agent of that lawyer to be present throughout in Court proceedings in relation to a matter in which that lawyer is acting.

Watalah v. Ghana Primewood Products.

Dafeamakpor v. The AG and Speaker. The Court deprecated the conduct of lawyers for the plaintiff for failing to show up for the hearing of the interlocutory injunction.