

**PAPER PRESENTED BY JUSTICE (RTD) VICTOR JONES MAWULOM
DOTSE AT THE 2023/2024 ANNUAL CONFERENCE OF THE GHANA BAR
ASSOCIATION ON TUESDAY, 12 SEPTEMBER, 2023 AT 9.00 AM**

VENUE: EXAMINATION HALL, UNIVERSITY OF CAPE-COAST

**TOPIC: "ENSURING HIGH STANDARDS AND INTEGRITY IN PUBLIC
LIFE, THE ROLE OF THE LEGAL PROFESSION"**

For this beautiful day

"Let us give thanks for this life.

Let us give thanks for the water.

Without which life would not be possible

Let us give thanks for Grandmother Earth

Who protects and nourishes us."

Daily prayer of the Lakota American Indian.

On my own part, let me give thanks to the Almighty Father for making it possible for us to gather here this morning as well as the National Executive of the Ghana Bar Association for giving me this platform to address them.

WHAT DOES THE TOPIC ENTAIL?

Chambers, 21st Century Dictionary (Revised Edition) defines ensure/ensuring as follows:-

- a. To make something certain, to assure or guarantee and
- b. To make (a thing a person) safe and secure.

The same Dictionary defines High as follows:-

- a. Elevated, tall,
- b. Significant, exalted or revered

The same Dictionary defines *standard* as (a) a degree or level of excellence, diligence, value, quality etc. e.g. *"a principle of morality, integrity, of moral standards"*.

Integrity is defined and explained by the same Dictionary as

"strict adherence to moral values and principles, uprightness" and

"the quality or state of being whole or unimpaired."

Put in the context of the meanings ascribed to the key words in the topic, the topic might very well be said to encompass the following *"Guaranteeing, a diligent and strict adherence to moral values and principles in public life, The role of the Legal Profession."*

This topic as explained above is capable of being dealt with in a variety of ways

1. One way of dealing with it is to look at the broad application of the topic in all aspects of public life and how the legal profession will impact it.
2. The second way of dealing with it, is to consider the fact that, **if fish should rot, it will start from the head**. In that instance, it will be proper to look at the broad principles of the topic through the lense of the legal profession. In that respect, the laws, Rules and Practices of the Legal Profession would be digested in detail and apply them broadly to the

principles enunciated in the topic. This is because, in Ghana, Lawyers are always in leadership positions and their work impacts the public.

1. CODE OF CONDUCT FOR OFFICERS

Let me deal with the first method briefly as follows:-

Chapter 24 of the Constitution 1992 deals with code of conduct for public officers from Articles 284 – 288. I will therefore set out the said Articles which provides thus:-

284 CONFLICT OF INTEREST

“A public officer shall not put himself in a position where his personal interest conflicts or is likely to conflict with the performance of the functions of his office.

285 OTHER PUBLIC APPOINTMENTS

No person shall be appointed or act as the Chairman of the governing body of a public corporation or authority while he holds a position in the service of that corporation or authority.

286 DECLARATION OF ASSETS AND LIABILITIES

(1) A person who holds a public office mentioned in clause (5) of this article shall submit to the Auditor-General a written declaration of all property or assets owned by, or liabilities owed by, him whether directly or indirectly –

(a) within three months after the coming into force of this Constitution or before taking office, as the case may be,

(b) at the end of every four years; and

(c) at the end of his term of office.

(2) Failure to declare or knowingly making false declaration shall be a contravention of this Constitution and shall be dealt with in accordance with article 287 of this Constitution.

(3) The declaration made under clause (1) of this article shall, on demand, be produced in evidence –

(a) before a court of competent jurisdiction; or

(b) before a commission of inquiry appointed under article 278 of this Constitution; or

(c) before an investigator appointed by the Commissioner for Human Rights and Administrative Justice.

(4) Any property or assets acquired by a public officer after the initial declaration required by clause (1) of this article and which is not reasonably attributable to income, gift, loan, inheritance or any other reasonable source shall be deemed to have been acquired in contravention of this Constitution.

(5) The public offices to which the provisions of this article apply are those of –

(a) the President of the Republic;

(b) the Vice-President of the Republic;

(c) the Speaker, the Deputy Speaker and a member of Parliament;

(d) Minister of State or Deputy Minister;

(e) Chief Justice, Justice of the Superior Court of Judicature, Chairman of a Regional Tribunal, the Commissioner for Human Rights and Administrative Justice and his Deputies and all judicial officers;

(f) Ambassador or High Commissioner;

(g) Secretary to the Cabinet;

(h) Head of Ministry or government department or equivalent office in the Civil Service;

(i) Chairman, managing director, general manager and departmental head of a public corporation or company in which the State has a controlling interest; and

(j) Such officers in the public service and any other public institution as Parliament may prescribe.

(6) The Auditor-General shall make a written declaration of his assets and liabilities to the President in the manner and subject to the conditions provided in clauses (1) to (3) of this article.

(7) Before entering upon the duties of his office, a person appointed to an office to which the provisions of this article apply, shall take and subscribe the oath of allegiance, the oath of secrecy and the official oath set out in the Second Schedule to this Constitution, or any other oath appropriate to his office.

287 COMPLAINTS OF CONTRAVENTION

(1) An allegation that a public officer has contravened or has not complied with a provision of this Chapter shall be made to the Commissioner for Human Rights and Administrative Justice and, in the case of the Commissioner of Human Rights and Administrative Justice, to the Chief Justice who shall, unless the person concerned makes a written admission of the contravention or non-compliance, cause the matter to be investigated.

(2) The Commissioner for Human Rights and Administrative Justice or the Chief Justice as the case may be, may take such action as he considers appropriate in respect of the results of the investigation and intendment.

288 INTERPRETATION

In this Chapter, unless the context otherwise requires, "**public officer**" means a **person who holds a public office.**"

The above high sounding constitutional provisions are well intended, but could remain in abstract terms or a mirage if we do not take real concrete action to practicalise their application and output.

Justice Samuel Kofi Date-Bah, a distinguished retired Justice of the Supreme Court and my former lecturer, in his seminal book, *"Selected Papers and Lectures on Ghanaian Law"* in part III of the Book, which deals with *"Human Rights and Governance"* particularly chapter 12, pages 167-189, in a paper titled *"Building a robust ethics infrastructure to promote integrity in Ghana"* which was a key note

address he delivered to the National Integrity Conference, held in October 2011 in Accra and organized by the Commission on Human Rights and Administrative Justice (CHRAJ) stated on

Pages 167 to 168, as follows:-

“According to one of the Directive Principles of State Policy, contained in chapter 6 of the 1992 Constitution of Ghana (Article 35 (8)):-

***The state shall take steps to eradicate corrupt practices and the abuse of power”.** Furthermore, this obligation to promote probity and integrity is reinforced by another of the directive principles of state policy, contained in Article 37 (1) of the same Constitution, which provides as follows:-*

*“The state shall endeavor to secure and protect a social order founded on the ideals and principles of freedom, equality, justice, **probity** and **accountability** as enshrined in Chapter 5 of this Constitution, and in particular, the state shall direct its policy towards ensuring that every citizen has equality of rights, obligations and opportunities before the law.” Emphasis supplied*

The learned and distinguished Judge, further explained these provisions eloquently as follows:-

*“The Supreme Court has held that there is a presumption of justiciability that applies to the principles. Accordingly, **the state is under a legally enforceable obligation to eradicate corrupt practices and abuse of power.** These constitutional provisions are thus a point of departure from which we should explore the theme of **building a robust ethics infrastructure for Ghana.** Their net effect is that every government in Ghana has a constitutional*

obligation to have the political will to eradicate corruption. Constructing an ethics infrastructure usually requires a two pronged approach, a compliance orientation and an integrity based approach. Compliance stresses adherence to strict rules intended to promote ethical standards, sanctions for breach of these rules, and monitoring and control systems designed to ensure that the strict rules are obeyed. The compliance orientation aims to deter unethical behavior through the fear of punishment. The integrity based approach on the other hand, lays emphasis on promoting ethical conduct and provides incentives for such conduct. The approach which has also been called the "values approach" has the objective of increasing integrity and probity through promoting moral values and ethical principles. Both approaches need to be built into an ethics infrastructure." Emphasis supplied

The distinguished jurist, after setting out the principles which under pin a robust ethics regime in fighting corruption which is focused on probity, accountability and integrity, provided the following solutions:-

"In considering the building of a robust ethics infrastructure for Ghana, Ghana will need to enforce, or, where necessary, enact additional rules which are adequate for sanctioning unethical behavior. Ethics infrastructure thus entails drawing coherently upon a range of legal and moral instruments, principles and standards to meet the ethical expectations of Ghanaian society. It implies identifying the most appropriate ways of achieving high ethical standards in public life. A high standard set in public life is likely to have a knock – on effect on the private sector." Emphasis supplied

It is however regrettable to observe that, the Code of Ethics anticipated by the author to drive the ethics infrastructure which would have also complemented the constitutional provisions referred to in Articles 284 to 288 supra of the Constitution 1992 to give those provisions teeth to bite have to date not been enacted.

The Assets Declarations regime mentioned in the Constitution 1992 and referred to supra has so many draw backs.

For example, these declarations are only made in a sealed envelope to the Auditor-General. It is even doubtful if the Auditor-General examines the paper in the envelope to see if there are any writings on them. It is thus possible for a declarant to put in the sealed envelope a blank paper.

Secondly, because the said Declarations are not made public, the contents are not subject to any verification.

There is an anticipated danger, that making such declarations public might expose to the public, the state of wealth of the Declarants. There is therefore an urgent need for the state to open up discussions on the Assets Declaration regime with a view to sanitizing it to make it more robust to fight the indecent acquisition of wealth by public servants. Maybe, this is the time to start discussing the principle of *"unexplained wealth"*. On page 169 of the book, Justice Date-Bah writes thus:-

"The formation of Codes of Conduct is very useful in crystallizing moral values and ethical principles. Effective measures have to be adopted for the diffusion of these moral values and ethical principles."

The distinguished author also had something very useful to state on the current weak assets declaration regime in Ghana on page 175 of this book as follows:-

“This system of declarations has been criticized since the assets declaration forms are not accessible by the public. There are pros and cons to making the declaration forms accessible to the public. In building an ethics infrastructure, it is open to Parliament to expand and tighten this system through appropriate legislation. The declarations could be made open to inspection by the public under specified conditions.” Emphasis supplied

REMARKS

In the absence of any codified system of rules and regulations to guide the ethical infrastructure in the public service, it is my view that, The Office of the Special Prosecutor under Act 959 of 2017 to investigate specific cases of alleged or suspected corruption or corruption – related offences involving public officers and politically – exposed persons might ensure high ethical standards in public office.

Secondly, the assets declaration regime must be sanitized with a view to making it more responsive to ensuring high and dignified standards by all persons in public office.

2. SECOND METHOD OF DEALING WITH THE TOPIC

Legal profession as used in the topic will be deemed to derive the meaning ascribed to it as set out in the Legal Profession Act, 1960 (Act 32) An Act to consolidate and amend the law relating to the legal profession.

ORGANISATION OF THE PROFESSION

1. The General Legal Council

(i) The General Legal Council, as established and in existence before the commencement of this Act is responsible for the legal profession and, in particular,

(a) for the organization of legal education, and

(b) for upholding standards of professional conduct.”

It is therefore very clear that the word “*Legal Profession*” refers to all category of lawyers, be they in private practice, in the Legal Service, corporate practice and in academia. The term also refers to Lawyers who work in the Judicial Service/Judiciary.

Since this a conference of lawyers, I will limit my presentation to all lawyers in private practice, Lawyers in the Legal Service i.e. Office of Attorney-General and Ministry of Justice, and all other public service lawyers including law lecturers in the various law faculties/law schools who have been called to the Bar as well as in corporate practice.

Why is this topic necessary at this time of our national development?

My very distinguished sister, Justice Henrietta Mensa-Bonsu, in a paper published in Vol. xxx, University of Ghana Law Journal (pages 90-108) stated as follows in a paper delivered on the topic, “*On Counting-And being Counted On-The Lawyer and Responsibilities of Social Privilege*”

“That lawyers are a privileged breed in almost every modern society cannot be controverted. This “*privilege*” is not just a product of the adage

“knowledge is power”, but actively reflects the reality that in most societies lawyers are people of great influence in every facet of life, and tend to belong to the socio-economic elite on account of the resources that the practice of the profession brings to them. Like the older and more traditional professions, only those within it control who can be accepted into the profession, and prescribe whatever conditions pertains thereto.

For this reason, even the mode by which one can enter the profession depends on stringent intellectual requirements set mostly by the profession, as well as other restrictive practices imposed by the leaders of the profession.” Emphasis supplied

I have already referred to the Legal Profession Act, 1960 Act 32 supra.

In order to regulate the conduct of Professional Legal Practice in Ghana, *Legal Profession (Professional Conduct and Etiquette) Rules 2020 L. I. 2423* has been passed to guarantee the significant levels of strict adherence to the professional standards set out in the regulations to guide the Legal Profession in their dealing with the public.

The Long title to this L.I. 2423 states as follows:-

“In exercise of the power conferred on the General Legal Council by sections 23 and 53 of the Legal Profession Act, 1960 Act 32 and with the approval of the Minister responsible for justice, these Rules are made this 1st day of October 2020.

Regulation 1 (a) (b) and (c) of L.I. 2423 sets the tone for this very important piece of legislation. It states as follows:

1. These Rules shall be interpreted in a manner that recognises that
 - (a) a lawyer has a duty in the practice to discharge the responsibilities of the lawyer to a **client, the court, the public** and any other lawyer *honourably* and with *integrity*,
 - (b) a lawyer has a special responsibility by virtue of the privileges afforded the **legal profession and the important role the profession plays in a free and democratic society and in the administration of justice, including a special responsibility to recognise the diversity of the Ghanaian community, to protect the dignity of individuals and to respect human rights laws in force in the country;** and
 - (c) it is the **duty of a lawyer at all times to uphold the dignity and standing of the legal profession.**” Emphasis supplied

It is therefore imperative that the role of a lawyer in the practice of the law in whatever form is premised on **integrity** and **honourable** discharge of **professional services by the lawyer to his clients, to the court, the general public and his professional colleague lawyers with whom he deals with in the case or negotiations and or generally comes into contact with in the discharge of his or her roles as a lawyer.** This proviso is a tacit recognition that the practice of the law by sole practitioner can have direct references and bearings to the public by virtue of the work of the legal professional.

Secondly, the courts have been urged to interpret these Rules with the understanding of the pivotal role the legal profession plays in the enforcement of the fundamental and human rights of the individuals and guarantee of the enjoyment of democratic principles to all Ghanaians.

Finally, all lawyers are duty bound to uphold the dignity and place of honour of the legal profession in the country.

Regulation 2 (1) deals in substance with who are qualified to be referred to as belonging to the legal profession. It states as follows:-

2 (1) “ A lawyer in practice is a lawyer

- (a) who is entitled to practice and who represents that that lawyer is ready to practice;**
- (b) who is employed in a whole-time occupation where the lawyer performs legal duties;**
- (c) whose regular occupation is that of an editor or reporter of a series of law reports entirely written and edited by lawyers for use by the legal profession;**
- (d) who, by the terms of employment of that lawyer, is obliged to offer legal advice; or**
- (e) who is engaged in the teaching of law.” Emphasis supplied**

It is therefore imperative that, any lawyer employed in an establishment to perform any legal task, like conduct of prosecutions, practice of the law in any manner, whether in private or public, editing of judicial decisions into a Law Report and the teaching of law is duly qualified to be considered as a lawyer and as someone belonging to the Legal Profession.

Regulation 2(2) sets out clearly what a lawyer in practice shall not do, and these are stated as follows:-

2 (2) A lawyer in practice shall

- (a) not be a managing director or executive chairperson of a company;**

(b) be an active partner in any business other than law practice; or

(c) carry on a profession or business which conflicts or involves a risk of conflict with the duties of the lawyer as a lawyer in practice.

Sub-rule 3 (3) sets out what should be done where there is a doubt as to whether a profession or business might conflict with the duties of a person as a lawyer in practice. It sets it out as follows:-

3 (3) where there is a doubt as to whether a profession or business conflicts or involves a risk of conflict with the duties of a person as a lawyer in practice, **the Council may give a ruling on an application made to the Council in writing by the lawyer or any other person.**

PHILOSOPHICAL UNDERPINNINGS OF L.I. 2423 LEGAL PROFESSION (PROFESSIONAL CONDUCT AND ETIQUETTE) RULES, 2020 AND THE TOPIC HEREIN

A walk through the entire L.I. 2423 shows clearly that its philosophical underpinnings are tied up with the topic we are dealing with.

Responsibilities of a Lawyer

For example, Regulations 29 through to 40 deal with the important issues of what constitutes the responsibilities of a lawyer. Of particular importance are Regulations 29 which deals with duty of a lawyer to his client, and 30 with improper relationships and contacts whilst, Regulation 34 provides and emphasizes expediting litigation.

Public Service

Regulations 49 through to 52 provides rules on a lawyers' relationship with the Public Service with Regulations 49 and 52 dealing with appointment of the lawyer by the Court under some conditions and 52 deals with reckless statements or utterances made by a lawyer against an officer of the Court, i.e. a judge or a colleague etc, which he knows to be false or untrue.

Duties of a Prosecutor

Regulations 56 and 57 provides very important provisions on the duties and responsibilities of a Prosecuting Attorney to the court and the general public.

Law Practice

Regulations on Law Practice are so detailed and especially relevant to the topic we are dealing with that there is the real need for these to be considered as the engine regulating the entire practice of the Law by all Lawyers. Regulations 61 to 84 deal specifically with these important provisions. See especially Regulations 61, 67, 72, 73, 75, 78 and 79 just to mention a few.

Professional Misconduct

Regulations 89 through to 98 deal with acts which constitute professional misconduct and I will set them out in detail for comment and discussion.

“General acts of professional misconduct

89. A lawyer commits professional misconduct, where the lawyer

- (a) violates the rules of professional conduct, or knowingly assists or induces another lawyer to do so;
- (b) engages in a conduct which involves dishonesty, fraud, deceit or misrepresentation;
- (c) engages in a conduct that is prejudicial to the administration of justice; or
- (d) 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.

Improper Communication

90. A lawyer commits professional misconduct if the lawyer, in the course of practice, **communicates to a client, another lawyer or any other person, in a matter which is abusive, offensive or otherwise inconsistent with the proper ethics of the professional communication from a lawyer.**

Deception of Court or Disciplinary Committee

91. A lawyer commits professional misconduct where the lawyer
- (a) deliberately deceives a court**
 - (b) knowingly permits a client to attempt to deceive a court;**
 - (c) attempts to or deliberately deceives or makes a false representation to the Disciplinary Committee or in any other manner misleads the Disciplinary Committee; or**

(d) acts contrary to an undertaking given to a court or to the Disciplinary Committee.

Signing of documents

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

The above Regulation is honoured more in the breach than by its observation. The Ghana Bar Association has been helpless in dealing with this. Refer to the Supreme Court case involving a lawyer/politician that exemplifies this phenomenon.

Agreements and undertakings

93 (1) A lawyer commits professional misconduct if that lawyer

(a) fails to honour a written undertaking given by that lawyer or the firm of that lawyer to any person, unless on the face of the undertaking it is clear beyond doubt that that lawyer was not accepting personal responsibility;

(b) issues a cheque either on behalf of that lawyer or on behalf of the firm, and the cheque is not honoured due to lack of funds; or

(c) makes an oral agreement on behalf of that lawyer or the law firm of that lawyer and fails without reasonable cause to honour that oral agreement, even at financial cost to that lawyer

(2) For the purposes of paragraph (c) of subrule (1), a lawyer has a duty in so far as is reasonably practicable having regard to the circumstances, to

honour an oral agreement that affects the rights of a client although that agreement is legally unenforceable unless reduced to writing .

Failure to attend Court

98. A lawyer commits professional misconduct if without reasonable excuse that lawyer does not

- (a) personally attend Court proceedings in relation to a matter, or
- (b) 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.

This is also another common form of misconduct that is also prevalent.

Report of professional misconduct

100. (1) A lawyer who knows that another lawyer has committed a violation of the rules of professional conduct that raises a substantial question as to the honesty, trustworthiness or fitness of that other lawyer as a lawyer in other respects, shall inform the Disciplinary Committee.
- (2) A lawyer who knows that a judge has committed a violation of the rules of judicial conduct that raises a substantial question as to the fitness of the judge for office shall inform the appropriate authority.

Disciplinary authority

- 101. (1) A lawyer who is admitted to practice law in this jurisdiction is subject to the disciplinary authority of this jurisdiction regardless of where the professional misconduct occurs.**
- (2) A lawyer who is not admitted to practice law in this jurisdiction is subject to the disciplinary authority of this jurisdiction if that lawyer provides or offers to provide any legal services in this jurisdiction.
- (3) A lawyer may be subject to the disciplinary authority of both this jurisdiction and another jurisdiction for the same misconduct.

Miscellaneous Provisions

Regulations 99 through to 103 deal with miscellaneous provisions. I will in this respect emphasise Regulations 100 and 101 on “Report of professional misconduct and Disciplinary authority” already referred to supra.

DILIGENCE OF A LAWYER

A LAWYER MUST BE DILIGENT IN THE CONDUCT OF HIS PRACTICE

A thorough reading of the Legal Profession Act, 1960, Act 32 and the regulations made under it show clearly that a lawyer must be very diligent in the conduct of his professional relations.

Representation by a lawyer

- 5. (1) A lawyer is a representative of a client, an officer of the legal system and a public citizen with special responsibility for the delivery of quality justice.**

(2) A lawyer has a duty to a client

(a) as an advisor, to provide the client with an informed understanding of the legal rights and obligations of the client and to explain the practical implications of the legal rights and obligations;

(b) as an advocate, to zealously assert the position of the client under the rules of the adversarial system;

(c) as a negotiator, to seek a result advantageous to the client but consistent with requirements of honest dealings with others;

(d) as an evaluator, to examine the legal affairs of the client and report about the affairs to the client; and

(e) to promptly and diligently perform professional functions.

(3) A lawyer shall not represent a group of persons without the knowledge of the members of the group of persons and shall notify the members of the group of persons of the representation by the lawyer.

Competence

6. A lawyer shall provide competent representation to a client in the form of legal knowledge, skill, thoroughness and preparations reasonably necessary for the representation.

From the above regulations, it is very clear that a lawyer is deemed as a competent person trained on the law and an officer of the legal system and a public citizen with special responsibility for the delivery of quality justice.

From all the obligations and duties that a lawyer owes his clients as spelt out in Regulations 5 (2) (a) (b) (c) (d) and (e), it is quite apparent that a lawyer is someone who is deemed to have total and complete understanding of the legal rights and obligations of the clients on whose behalf he purports to act.

Writing in the paper referred to earlier by Justice Prof. Mensa- Bonsu in the UGLJ supra, on this vexed subject of diligence, she writes as follows:-

“A failure to pursue a client’s interest with diligence would not only result in damages if the client thereby sustains an injury, but would also call into question the competence of the lawyer. In a profession which relies on sound knowledge of the law, a lawyer of repute cannot afford to be tagged as incompetent.” In *Fodwoo v Law Chambers* [1965] GLR 363, the Plaintiff/Appellant has sued an insurance company on which he had taken out a burglary insurance policy on his shop. After his shop had been broken into, the company repudiated liability. Consequently, the Plaintiff/Appellant retained the defendant-respondent firm of lawyers to take an action for the recovery of his losses. The case was so badly handled that it was dismissed upon the ground, inter alia, that he had failed to prove his losses. **He contended that documents that could have proved his losses had been all the while in the possession of the lawyer from the firm representing him which could have made the difference had they been tendered at the trial.**

Consequently, he brought this action against the firm for negligent breach of contract. The trial Judge dismissed the action.

An appeal to the Supreme Court, turned on whether the firm had used reasonable skill or care in the conduct of the case which the plaintiff retained them to undertake. Evidence available on the record suggested that the lawyer had not tendered them in because he had not even appreciated the relevance of the documents to the claim being made. The court, thus found enough evidence to conclude that the lawyer had been negligent and the firm was liable." Emphasis supplied

On the duty of a Solicitor to a client, the court relied on *Halsburys Laws of England* and cited with approval the following:-

"A Solicitor holds himself out to his clients as possessing adequate skill, knowledge and learning for the purpose of properly conducting all business that he undertakes, whether contentious or not contentious. If, therefore he causes loss or damage to his client owing to want of such care as he ought to exercise, he is guilty of negligence giving rise to an action for damages by his client." Halsbury's Laws of England, page 99, paragraph 135.

In consequence, it concluded that,

"In undertaking a client's business, an attorney undertakes on his own part for the existence and the due employment of skill and diligence[and that] this is a clear instance of such want of skill – as to make the firm ...liable to the plaintiff in negligence at page 372. These no doubt constitute very serious and damning comments by a court against the law firm. Indeed, the current indecent haste with which some of the lawyers rush to

*court to conduct their cases without any indepth research is consistent with the observation of Sophia Akuffo JSC (as she then was) in the case of **Skyway Travels Ltd v Ghana Commercial Bank [2005-2006] SCGLR 724 at 731** where she held thus:*

“It is regrettable that, increasingly, it is becoming apparent that many legal practitioners do not take the trouble to conduct any research, or apply any logical analysis before bringing matters before this court.” Emphasis supplied

What damning comments by the Bench against lawyers.

Having discussed the broad policy measures and guidelines in the Legal Profession Act, 1960 (Act 32) and the Legal Profession and (Professional Conduct and Etiquette) Rules, 2020 (L.I. 2423) it is now perhaps necessary to turn on to some specific provisions and apply it to the topic.

This is important because, from my understanding, the role assigned to the legal profession constitutionally and statutorily and especially as envisaged in the principles of the topic can only be achieved if the Bar applies itself scrupulously to the principles underpinning the Professional Etiquette Rules.

MANDATE OF THE DISCIPLINARY COMMITTEE OF THE GENERAL LEGAL COUNCIL

As has already been stated, the General Legal Council is mandated by the Legal Profession Act, to uphold standards of professional conduct.

The Disciplinary Committee of the General Legal Council (hereinafter) referred to as the Committee is the body charged with that responsibility under Act 32.

The Committee therefore receives and investigates complaints against lawyers from the public to determine whether there is a case for the lawyers to answer.

It is in this respect that every duly qualified applicant for enrolment and call to the Bar of Ghana gives a signed undertaking to abide by these Rules and uphold the dignity and honour of the Legal Profession so long as they remain legal practitioners, in Ghana. This is to ensure strict compliance with the Rules and the sanctions that are applicable in case of a breach.

The existing Rules of standards of Professional Etiquette and Conduct for Lawyers as prescribed by the General Legal Council is L.I. 2423 already referred to supra and Legal Profession (Disciplinary Committee) Rules 2020 (L.I. 2424).

Even though I have referred generally to some of the acts of misconduct of Lawyers which might affect the attainment of High Standards and Integrity in Public Life in Ghana, it is perhaps pertinent at this stage to deal with some of the recurrent and pernicious acts of misconduct that affect the general public.

1. Professional Incompetence

This relates to incompetence of the lawyer and or the improper or inadequate supervision of junior lawyers by their seniors in the conduct of cases and non representation of clients in court after taking legal fees.

This conduct is contrary to Rule 6 of L.I. 2423 which states as follows:-

“Competence

6. A lawyer shall provide competent representation to a client in the form of legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation.”

In the case of *Aboagye da Costa v Disciplinary Committee of General Legal Council [1991] 2 GLR 313*, the Court had cause to criticise the lack of integrity that a lawyer had exhibited.

Rule 98 (a) (b)

Failure to attend court

98. A lawyer commits professional misconduct if without reasonable excuse that lawyer does not
 - (a) personally attend Court proceedings in relation to a matter, or
 - (b) 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.

Rule 10

Diligence

A lawyer shall act with reasonable diligence and promptness in representing a client.

Rule 26 (5)

Subject to an agreement with the client or to an enactment, a lawyer shall promptly deliver to a client or a third party moneys or other property that the client or third party is entitled to receive and promptly render a full account regarding the moneys or property upon request by the client or third party.

These Rules referred to supra constitute the bedrock of the ethical standards of integrity that members of the legal profession are mandated to comply with.

From practice, many clients have in the past couple of years brought complaints against their lawyers for improper representation and conduct of their cases or refusal to pay them their entitlements after those monies have been paid to their lawyers. Some of the parties have used the Disciplinary Committee as platforms to ensure the payment of monies due their clients which had been paid them.

Secondly another common and endemic complaint is the non-issuance of receipts for fees and funds in general and improper keeping of Accounts (bookkeeping) contrary to:-

Rule 27 of L.I 2423 which states as follows:-

Accounts of lawyers

27. (1) A lawyer shall

- (a) **give a receipt for each payment made to the lawyer, and**
- (b) **specify in the receipt, the purpose for which the payment was**

made

- (2) A lawyer shall keep books of account and proper records in relation to the accounts that may be necessary

- (a) to show the dealings of the lawyer with
 - (i) moneys of a client held, received or paid by the lawyer, and
 - (ii) any other moneys dealt with by the lawyer through an account of a client; and
 - (b) to distinguish
 - (i) moneys held, received or paid by the lawyer on account of each client, and
 - (ii) moneys of clients from other moneys held, received or paid by the lawyer on any other account.
3. A lawyer shall record the matters specified in paragraph (a) of subrule (2) in a form including in
 - (a) a cash book of clients, or a client's column of a cash book; and
 - (b) a ledger of clients, or a client's column of a ledger.
 4. A lawyer shall record other dealings of the lawyer in relation to the practice of that lawyer in a form including in a cash book, ledger or a
 5. A lawyer shall preserve the books, accounts and records kept by the lawyer under this rule for a period of not less than six years from the date of the last entry.
 6. This rule does not affect the right of a lawyer to recover moneys due to that lawyer, whether by way of lien, set-off, counter-claim, charge or otherwise, from moneys standing to the credit of a client account.

7. In this rule the expressions “book”, “ledger” and “record” include a loose-leaf book and a card or other permanent document that is necessary for the operation of a mechanical or computerized system of book-keeping.

This Rule is honoured in the breach more than it’s observance.

Thirdly over charging of clients including improper monetary demands on client’s contrary to Rule 16 of L. I. 2423 which states as follows:-

Legal fees

16. (1) A lawyer shall not make an agreement for, charge, or collect an unreasonable fee or an unreasonable amount for expenses.
(2) A lawyer shall, for purposes of determining the reasonableness or otherwise of a fee, take into consideration the following;
 - (a) the time and labour required;
 - (b) the novelty and difficulty of the questions involved, and the skill requisite to perform the legal service.
 - (c) the likelihood, if apparent to the client, that the acceptance of the particular employment shall preclude other employment by the lawyer;
 - (d) the fee customarily charged in the country for the provision of similar legal services;
 - (e) the amount involved and the results obtained;
 - (f) the time limitation imposed by the client or by the circumstances;
 - (g) the nature and length of the professional relationship with client;
 - (h) the experience, reputation, and ability of the lawyer performing the service;
 - (i) whether the fee is fixed or contingent; and
 - (j) whether the fees falls within the approved scale fees.

(3) A lawyer shall communicate in writing, the scope of the representation and the basis or rate of the fee and expenses for which the client is responsible to the client, before or within a reasonable time after commencing the representation.

(4) Subrule (3) does not apply where the lawyer charges a regularly represented client on the same basis or rate.

(5) A lawyer shall communicate a change in the basis or rate of the fee or expenses to the client.

This Rule is also honoured more in the breach than its observance.

Fourthly, another common complaint before the Disciplinary Committee is that of solicitation of client, touting and publicly on social media contrary to Rule 15 of L.I. 2423 which states as follows:-

Solicitation of client

15. (1) A lawyer or a 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

(a) is a lawyer; or

(b) has a family, personal or prior professional relationship with the lawyer or the law firm.

(2) Despite subrule (1), a lawyer or a law firm shall not personally or through other means of communication solicit for professional employment from a prospective client, where

(a) the prospective client has made it known to the lawyer or the law firm of the desire not to be solicited by that lawyer or the law firm, or

(b) the solicitation involves coercion, duress or harassment.

(3) A lawyer or a law firm shall not

(a) employ agents or runners for the purposes of instigation litigation;

(b) pay or reward directly or indirectly those who bring or influence the bringing of a case to that lawyer or the law firm; or

(c) remunerate a policeman, a court or prison official, a hospital attache or any other person who may succeed under the guise of giving disinterested friendly advice, in influencing a criminal, a sick or an injured person, an ignorant or any other person to seek the professional services of a lawyer or a law firm

(4) The creation of a website by a lawyer or a law firm in relation to the practice of the lawyer or the chambers does not contravene subrule

(1) where the lawyer or the law firm complies with the requirements specified in subrules (5) to (7).

(5) A lawyer or the head of a law firm shall ensure that the information published on the website of the lawyer or the chambers includes

(a) the full name of the lawyer or the law firm;

(b) the business address and postal address of the lawyer or the law firm

(c) the telephone numbers of the lawyer or the law firm;

- (d) the electronic mail address of the lawyer or the law firm
 - (e) the passport picture of the lawyer or of the partners, associates and juniors of the law firm;
 - (f) the history of the law firm; and
 - (g) the profile and areas of practice of the lawyer or of the law firm or of the lawyers of the law firm.
- (6) A lawyer or the head of a law firm may, subject to the approval of the clients of that lawyer or law firm, list the names of former and current clients on the website of that lawyer or law firm.
- (7) A lawyer or the head of a law firm shall not publish on the website of that lawyer or head of the law firm.
- (a) a description of the lawyer or the law firm that includes language that implies or connotes that the lawyer or the law firm is the best lawyer or law firm or has a high level of expertise;
 - (b) a statement that is inaccurate or likely to
 - (i) mislead the public
 - (ii) diminish public confidence in the legal profession and the administration of justice, or
 - (iii) otherwise bring the legal profession into disrepute;
 - (c) a criticism of another lawyer or law firm;
 - (d) a statement about the success rate of that lawyer or law firm;

Or

(e) a statement that is obtrusive and that may cause annoyance to the person to whom the statement is directed.

(8) for the purposes of this rule, the website of a lawyer or a law firm does not include social media

Information to be published on a lawyer's website

Rule 15 (5) –(7)

(5) A lawyer or the head of a law firm shall ensure that the information published on the website of the lawyer or the chambers includes

- (a) the full name of the lawyer or the law firm
- (b) the business address and postal address of the lawyer or the law firm;
- (c) the telephone numbers of the lawyer or the law firm;
- (d) the electronic mail address of the lawyer or the law firm;
- (e) the passport picture of the lawyer or of the partners, associates and juniors of the law firm;
- (f) the history of the law firm; and
- (g) the profile and areas of practice of the lawyers or of the law firm or of the lawyers of the law firm.

- (6) A lawyer or the head of a law firm may, subject to the approval of the clients of that lawyer or law firm, list the names of former and current clients on the website of that lawyer or law firm.
- (7) A lawyer or the head of a law firm shall not publish on the website of that lawyer or head of the law firm
 - (a) a description of the lawyer or the law firm that includes language that implies or connotes that the lawyer or the law firm is the best lawyer or law firm or has a high level of expertise;
 - (b) a statement that is inaccurate or likely to**
 - (i) mislead the public,**
 - (ii) diminish public confidence in the legal profession and the administration of justice, or**
 - (iii) otherwise bring the legal profession into disrepute;
 - (d) a criticism of another lawyer or law firm;**
 - (e) a statement that is obtrusive and that may cause annoyance to that person to whom the statement is directed.**
- (8) For purposes of this rule, the website of a lawyer or a law firm does not include social media

Maybe, in the current frenzy of various social media handles, it might be prudent to look again at some of the prescriptions against use of some of the social media handles if we are not to be considered to be archaic and far behind. Comparisons

might be made about some of the leading common law jurisdictions as well as our own social, customary and traditional practices and norms.

Fifthly, this deals with lawyers representing conflicting interest (including lawyers having amorous relationship with the partners of their clients in pending divorce cases, lawyers acting for and against their clients in relation to the same case and involving the same issues contrary to Rule 20 of L.I. 2423 which states as follows:-

Conflict of Interest

- 20(1) A lawyer shall not, in respect of a dispute, represent both a plaintiff and a defendant
- (2) 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.

Writing on conflict of interest in the paper referred to supra, my very respected and distinguished sister, Justice Henrietta Mensa-Bonsu (JSC) stated thus:-

*“A lawyer is enjoined, as are all persons in a fiduciary relationship, to avoid conflicts of interest in the discharge of responsibilities to the client. In **Aberdeen Ry v Blaikie, (1854) 1 Macq. HL.461, Lord Cranworth** stated the principles thus:*

“it is a rule of universal application that no one, having such [fiduciary) duties to discharge, shall be allowed to enter into engagements in which he has or can have, a personal interest conflicting or which possibly may conflict, with the interest of those to whom he is bound to protect.”

Thus a conflict of interest is said to exist when a lawyer could be influenced, or a reasonable person would perceive that a lawyer could be influenced, by a personal interest when carrying out duties as a lawyer for one party.” Jones v Buckle [1977] GLR 145.

In the said case, a lawyer who had once advised a family on an issue related to land purported to represent the other side when the family later sued on the land. An application to prevent the lawyer from representing the defendant in the suit was upheld per Owusu Addo J who held at page 151 that it was “most improper” of the lawyer to seek to represent the defendants after having once advised the Plaintiff family as regards the same subject matter.”

In general terms, there are two main types of principles on conflict of interest. These are (1) Pecuniary – (pertaining to money) and (2) Non pecuniary (non pecuniary).

From my experience, it appears that some instances of conflict of interest, allegations have been levelled against some lawyers by their clients. It might very well therefore be necessary for the Ghana Bar Association to conduct a continuing Legal Education on what really constitute conflicts of interest on regular basis to stem the tide from this dangerous developing phenomenon.

- (3) A lawyer shall not
 - (a) enter into a business transaction with a client, or
 - (b) knowingly acquire an ownership, possessory, security or other pecuniary interest adverse to a 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 client is advised in writing of the desirability of seeking and is given a reasonable opportunity to seek the advice of an independent legal counsel on 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.
- (4) Subject to these Rules 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.
- (5) A Lawyer shall not solicit a gift from a 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) 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.
- (7) A lawyer shall not accept compensations for representing a client from a person other than the client unless
 - (a) the client consents to the lawyer receiving the compensation; and
 - (b) there is no interference with the lawyer's independence of professional judgment or with the client-lawyer relationship.
- (8) 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 lawyers to a lien to secure the fee or expenses of the lawyer.

(10) A lawyer shall not have amorous relations with a client of the lawyer unless the amorous relationship existed between the lawyer and the client of the lawyer before the commencement of the client-lawyer relationship.

(11) A lawyer shall not have amorous relations with a client of the lawyer on the opposing side.

(12) Where an amorous relations 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

(13) Subrules (10), (11) and (12) apply to lawyers who are associated in a firm

(14) For purposes of this rule,

“conflict of interest” means 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 of client, and

“related persons” include a spouse, child, niece, nephew, grandchild, parent, grandparent or other relative or individual with whom the lawyer or the client maintains a close, familial relationship.

This is a vexed issue which the Ghana Bar Association must address swiftly.

This is because apart from being unethical, it is immoral. Scandalous and portrays a very bad reputation if proven.

Sixthly, another act of common misconduct which has become very rampant is the use of intemperate words on clients contrary to Rule 90 of L.I. 2423 which states as follows:-

Improper communication

90. A lawyer commits professional misconduct if the lawyer, in the course of practice, communicates to a client, another lawyer or any other person, in a manner which is abusive, offensive or otherwise inconsistent with the proper ethics of the professional communication from a lawyer.

This is also another red herring which needs to be addressed promptly.

See also rule 76 of L.I. 2423

Courtesy and good faith

76 (1) 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.

(2) A lawyer shall not

(a) engage in unethical behavior; or

(b) 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 a right of a client.

(3) A lawyer shall not record a conversation between the lawyer and a client or another lawyer without the prior approval of that client or that other lawyer.

Commentary

I think that, the above Rules are necessary to instill in the practice of the Legal profession our adherence of being learned. There is therefore the need to resist the use of abusive and intemperate language.

Once engaged by a client, the client reserves the right to withdraw the instructions so given at anytime subject to the Rules contained in Rule 59 of L.I. 2423. These Rules therefore specify the conditions under which a replacement of lawyer and or refusal to handover clients' briefs contrary to the said Rule 59 which states as follows:-

Replacement of lawyer

59. (1) Where the engagement of a lawyer is terminated before the completion of a matter, and the client instructs another lawyer to take over the conduct of the matter the first lawyer shall promptly, on receipt of a direction in writing from the client, deliver to the second lawyer, all relevant documents to which the client is entitled and any information which is necessary for the proper conduct of the matter.

(2) Where the client terminates the engagement, the first lawyer may retain possession of the documents until all costs owned by the client are paid, or the payment is secured by the lawyer.

(3) Where the first lawyer terminates the engagement and the documents of the client are essential to the defence or prosecution of current proceedings which are continuing before a court, the lawyer shall surrender possession of the documents to

(a) the client, on receipt of satisfactory security for the unpaid costs; or

- (b) to the second lawyer, if so directed by the client, and the second lawyer shall
- (i) hold the documents subject to the lien of the first lawyer, if practicable, and provide reasonable security for the payment of the cost of the first lawyer; or
 - (ii) enter into an agreement with the client and the first lawyer to ensure the payment of the cost of the first lawyer upon completion of the relevant proceedings.
- (4) A lawyer who receives the documents of a client from another lawyer pursuant to an agreement between the client and both lawyers which provides for the payment of the fees of the first lawyer from moneys recovered on behalf of the client in respect of the matter to which the documents relate, shall comply with the terms of the agreement.
- (5) This rule is subject to any order which may be made by a court of competent jurisdiction in respect of the delivery of the documents or the client.

The above Rule admits of no controversy and therefore no further comments.

Finally, the Rule I wish to emphasise again is Rule 35 (1) (a) of L.I. 2423 which provides as follows

Candour toward the court or tribunal

35 (1) A lawyer shall not knowingly

- (a) make a false statement of fact or law to a court or tribunal or fail to correct a false statement of material fact or law previously made to the Court or tribunal by the lawyer.

Then rule 58 which states as follows:-

“A lawyer shall fulfil an undertaking given by that lawyer.”

APPEAL AGAINST DECISIONS OF THE DISCIPLINARY COMMITTEE

My research has revealed that, apart from *Suit No. H126/2018, Kwasi Afrifa v General Legal Council* all substantive appeals against decisions of the Disciplinary Committee by convicted lawyers are normally abandoned midstream.

In the case referred to supra, the appellant’s appeal on oppressive punishment was successful and the Court of Appeal reduced his four (4) years suspension which commenced from 27th July 2017 to eighteen (18) months.

COMMENTS ON THE DISCIPLINARY COMMITTEE’S PROCEEDINGS

Section 17 (1) and (2) of the Legal Profession Act, 1960 Act 32, contains provisions on the Disciplinary Committee as follows:-

Section 17—Disciplinary Committee

- (1) The General Legal Council shall appoint from among their members, or persons who hold or have held high judicial office, or former members of the Council who are practising as lawyers, a Disciplinary Committee consisting of such number of persons, not being less than three nor more

than seven, as the Council think fit. [As Substituted by Legal Profession (Amendment) Decree, 1979 (AFRCD 53) s. 1(a)].

- (2) The Council may remove any member from the Disciplinary Committee, but not while he is hearing a disciplinary case, and fill any vacancy therein and, subject to the limit in subsection (1), increase the number of members of the Disciplinary Committee.

Section 18 of Act 32 deals with how complaints against lawyers are referred to the Disciplinary Committee. These state as follows:-

Section 18 - Reference of Disciplinary Cases to Disciplinary Committee

Any complaint by a person relating to the conduct of a lawyer shall be referred to the Disciplinary Committee and, if it appears to the Disciplinary Committee that an inquiry ought to be held into the complaint, they shall proceed to hold the inquiry.

RULES OF PROCEDURE

These are contained in Sections 19, 20 and 21 of Act 32

Section 19 - Rules of Procedure, Etc.

- (1) The Disciplinary Committee may by legislative instrument make rules as to the times and places of the meetings of the Committee, the manner of summoning members, and the procedure to be followed and rules of evidence to be observed in an inquiry, and in particular,—
 - (a) for securing that any party to the inquiry shall, if he so requires, be entitled to be heard by the Committee, and

- (b) for enabling any party to the inquiry to be represented by a lawyer, and (c) for the allowance to witnesses of their expenses subject to such limits as may be prescribed, and (d) for prescribing the number of members to hold an inquiry in a disciplinary case, and the cases in which their decision must be unanimous.
- (2) The Disciplinary Committee shall have the powers of the High Court to summon witnesses, and to call for the production of documents, and to examine witnesses and parties concerned on oath; and oaths may be administered for that purpose by any member of the Disciplinary Committee.
- (3) All persons summoned to attend and give evidence, or to produce documents, at any sitting of the Disciplinary Committee in an inquiry under this Act shall be bound to obey the summons to attend as fully in all respects as witnesses are bound to obey subpoenas issued from the High Court, and every person failing without reasonable excuse to attend at the time and place mentioned in the summons served on him, or withdrawing without the permission of the Disciplinary Committee, or refusing without reasonable excuse to answer any question put to him in the course of the inquiry, or to produce any documents which he has been required to produce shall be liable on summary conviction to a fine not exceeding £G50.
- (4) A person giving evidence in an inquiry under this Act shall not be compelled to incriminate himself, and shall, in respect of any evidence so

given, be entitled to all privileges to which a witness giving evidence before the High Court is entitled.

- (5) A person who at any sitting of the Disciplinary Committee wilfully insults any member of the Disciplinary Committee, or any officer of the Disciplinary Committee, or wilfully interrupts the proceedings of the Disciplinary Committee shall be liable on summary conviction to a fine not exceeding £100, or to imprisonment for a term not exceeding one year, or to both. (6) For the purposes of the law relating to the offence of perjury the Disciplinary Committee holding an inquiry under this Act shall be deemed to be a court.

Section 20 - Decision of Disciplinary Committee.

- (1) After holding an inquiry into a disciplinary case, the Disciplinary Committee shall decide whether the allegations enquired into are proved and if they decide that those allegations are proved they may direct the taking of any such disciplinary measures as are specified in section 16 of this Act and make such order as to costs as they may think fit.
- (2) The Disciplinary Committee may if they think fit postpone either indefinitely or for a specified period the making of their decision whether to take any such disciplinary measures.

Section 21 - Right of Appeal

Where the Disciplinary Committee on the conclusion of an inquiry into a disciplinary case has directed the taking of disciplinary measures or has postponed its decision under section 20 of this Act, the lawyer into whose

conduct the inquiry was made or the complainant into whose complaint the inquiry was made may, within twenty-one days from the date on which the decision of the Disciplinary Committee is communicated to him by the Committee, appeal to the Court of Appeal—

(a) on any question of law, or

(b) with leave of the Disciplinary Committee or the Court of Appeal, on any question of fact. [*As Substituted by Legal Profession (Amendment) Decree, 1979 (AFRCD 53) s. 1 (b)*].

It should however be noted that, the *Legal Profession (Disciplinary Committee) Rules, 2020 L.I. 2424* has been elevated to regulate the complaints procedure, and all the other relevant processes until the decision of the Disciplinary Committee is announced.

At this stage, it is considered worthwhile to refer particularly to the following Rules which provide thus:-

Rule 1

Complaint against lawyer

1. (1) A person dissatisfied with the professional conduct of a lawyer may lodge a complaint with the disciplinary committee.
- (2) A complaint under subrule (1) shall be in writing and accompanied with the relevant documents in support of the complaint.

(3) The disciplinary committee shall, on receipt of a complaint under subule (1), forward a copy of the complaint and the attachments to the lawyer against whom the complaint has been lodge.

Mode of Service of complaint

2 (1) A copy of the complaint and all the documents in support, if any, shall be served personally on the lawyer.

(2) Where personal service on the lawyer is not possible after one week of attempt, service may be effected by

(a) leaving a copy of the complaint at the chambers of the lawyer;

(b) sending a copy of the complaint by registered post bearing a return address and addressed to the lawyer to be served;

(c) posting a notice of the complaint on the notice boards of the courts; or

(d) posting a notice of the complaint on the website of the Council.

Preliminary inquiry by disciplinary committee

Rule 5

(1) The disciplinary committee shall consider the complaint and

(a) Communicate the decision of the disciplinary committee in writing to the parties; or

(b) invite the parties for a preliminary inquiry on a scheduled date.

(2) The disciplinary committee shall, after holding a preliminary inquiry, decide whether a prima facie case has been made against the lawyer.

- (3) Where a prima facie case has been made against the lawyer, the disciplinary committee shall give the parties notice of hearing into the matter.
- (4) The complaint, the response of the lawyer and the findings at the preliminary hearing shall constitute the evidence-in-chief of the parties at the inquiry.
- (5) The evidence-in-chief referred to in subrule (4) is subject to cross-examination by the parties.

Constitution of disciplinary panel for inquiry

- 6 (1) For the purpose of holding an inquiry into a complaint of professional misconduct against a lawyer, the disciplinary committee shall constitute a disciplinary panel
- (2) The disciplinary panel constituted under subrule (1) shall consist of a chairperson and two other members of the disciplinary committee.
- (3) Where it is impracticable for a member of the disciplinary panel to continue to attend an inquiry, the matter shall be referred to the disciplinary committee to
 - (a) constitute a new disciplinary panel; or
 - (b) refer the matter to another disciplinary panel.

Rule 15

Inquiry to be held in camera

- 15 (1) An inquiry into a complaint of professional misconduct against a lawyer shall be held in camera**
- (2) Despite subrule (1), a disciplinary panel may hold an inquiry in public**
- (a) if it appears to that disciplinary panel, to be in the interest of justice; or
 - (b) for any other reason

Rule 16

Powers of disciplinary committee

16. (1) The disciplinary committee may
- (a) order a lawyer who is the subject of a complaint to settle the complaint;**
 - (b) order a lawyer who is found guilty of misconduct to pay a minimum cost of fifty penalty units; or**
 - (c) order a party to a complaint to pay costs and expenses concerning the hearing and determination of the complaint as the disciplinary committee considers appropriate.
- (2) Where the disciplinary committee orders a lawyer to perform an act which determines the complaint, the disciplinary committee may order the lawyer to pay the expenses concerning the hearing of the complaint.**
- (3) Where a lawyer fails to pay a cost awarded by the disciplinary committee, the Council may

- (a) suspend or revoke the solicitor's license of the lawyer; or
- (b) not grant a solicitor's license to a person where the person does not have a solicitor's license.

Rules 19

Decision of the disciplinary panel

19. (1) The disciplinary panel shall

- (a) make a decision on whether the charge preferred against the lawyer has been proven; and
- (b) recommend to the disciplinary committee the appropriate sanction to be taken against the lawyer.

(2) The decision of a disciplinary panel holding an inquiry on whether a charge against a lawyer is proven shall be by the decision of the majority of the members of the disciplinary panel.

Sanction against a lawyer

20. Where a disciplinary panel makes a recommendation under paragraph (b) of subrule (1) of rule 19, the disciplinary committee shall make a decision on the sanction to be imposed on the lawyer.

Publication of Sanction

21. The disciplinary committee shall, further to the decision under rule 20 publish the sanction imposed on the lawyer, on the website of the Council.

COMMENT ON THE PROVISIONS IN ACT 32 AND L.I 2424

My observations on the provisions on holding of Disciplinary Proceedings and imposition of sanctions under Act 32 and L. I. 2424 are that they are generally effective, deterrent and capable of having the desired effect.

My only problem is the delay associated with the hearings. Even though I have never been on the Disciplinary Committee, I have been well informed on the delays associated with the hearings because of my membership of the General Legal Council since 2016 to June 2023. This has made some clients to conclude that because the committee is composed of lawyers, we handle the lawyers with kid gloves.

In order to stem the tide, I am recommending that the composition of the panel should have more retired Judges and Senior lawyers who can afford to hear the cases from day to day and complete within maximum two weeks. The situations where some of these Disciplinary cases drag on for periods exceeding months and years is an indictment on the profession. Even though there is the adage that *“Justice hurried is justice buried”* the reverse that *“justice delayed is justice denied”* can also be exploited to an unfair advantage. In all of these instances, we must always strive to maintain high standards of integrity and honour to the profession.

Justice Henrietta Mensa-Bonsu JSC in the paper referred to supra stated on Integrity as follows:-

“The Code of Ethics of the Ghana Bar Association (GBA) provides in the first Rule that “It is the duty of a lawyer to maintain his own dignity, honor and integrity”.

Section 1(c) of the Code of Ethics of the Ghana Bar Association

Another emerging phenomenon which has the potential of affecting the high standards and dignity that lawyers are held in public life, is the indiscriminate leakage of court documents and proceedings most often with inaccurate reportage within the public domain.

This conduct is engaged in recklessly with some lawyers assuming notoriety for becoming media personalities. This finds expression in the lawyers urging their views in the cases in the media to the general public sometimes with the wrong narrative, analysis and conclusions.

I believe that the time is also ripe for the Ghana Bar Association, to crack the whip on this development as a matter of urgency.

Commenting on this emerging development, Justice Henrietta Mensa-Bonsu in the paper referred to supra commented as follows:-

*“Legal professionals must be aware that creating confusion in the public mind by putting conflicting reports into circulation only end up undermining public confidence in the judicial process. **Having influence over others because we count, means we should not betray public confidence when we are being counted on**”.* Emphasis supplied

I totally agree with her comments and would appeal to the Ghana Bar Association to take these comments very seriously and stop these from festering any further.

In conclusion, let me end this presentation by quoting from the distinguished author, Justice Samuel Kofi Date-Bah on page 187 of the Book referred to supra:-

*“It sounds like a platitude, but the truth is that **integrity is needed to fight corruption**. Any government that wants to fight corruption in Ghana will **therefore need to adopt measures intended to boost integrity in the country**. Since the 1998 conference, (this is a reference to National Integrity Conference held in 1998 by CHRAJ **measures have been adopted in Ghana to shore up integrity**).*

*This should be a continuing process, going forward. **The Code of conduct process will continue to be an important element in this respect. A culture that is hostile to corruption needs to be established and maintained in the public sector.**” Emphasis supplied.*

As leaders of the public, lawyers in Ghana must take up this challenge and lead in the fight to guarantee high ethical values and standards in public life.

RECOMMENDATIONS

In view of all that I have stated supra, I wish to appeal to the General Council of the Bar to uphold the following tenets scrupulously. These are:-

1. Discipline

This is a profession where seniority and discipline at the Bar is the order of the day. These days, it appears some persons, because of their status in life before they are called to the Bar do not respect seniority. I wish to urge the leadership of the Bar to ensure that seniority and discipline are adhered to by all lawyers at the Bar.

2. Similarly, the Dress Code of both male and female lawyers in court must also be enforced.
3. The Bar must resume its advocacy and public awareness agenda which it abandoned because of the understanding that with the introduction of democratic rule, political parties would take up this mantle or role.

However, it appears that the voice of the political parties are always tainted with their party political lenses. I have thus been emboldened by the powerful speech of the National President, yesterday 11th September 2023 at the opening of the 2023/2024 conference to request the Bar to become the voice of the voiceless on a whole range of issues such as the following:

- a. Insolence and gross disrespect of some political and or public office holders to the citizenry.
- b. Incessant and resilient fight against corruption in the public office. This must lead to reforms in the Assets Declarations regime in the Constitution 1992 by public officials named therein.
- (c) The free S.H.S concept and matters associated with it must be sanitised.
- (d) Legal Education i.e. Professional Law and the role of the GTEC in the accreditation of several mushroom Universities to offer law.

- (e) The Ghana Bar Association must ensure that all lawyers feel relevant in the Association. This is because, there are many lawyers who are not politically active or do not belong to any of the two major political parties, NDC and NPP. These category of lawyers might even be in the majority. These are the lawyers, whose views on national events and issues might be more objective than the partisan lawyers.
- (f) From August 2017 to December 2019, I was the representative of the Supreme Court on the Judicial Council, and as a result, the Chairman of the Appointments Committee, I can state with all the emphasis at my disposal that, during the said period, political party consideration did not play any role in the appointment process of Judges. During the same period, several factors accounted for the increase in the number of Judges and Magistrates that were appointed to the trial and appellate courts.

This was the creation of the six new Regions, construction of new courts in all the District capitals and phenomenal increase in the number of cases filed in the courts. (*Reference the statistics in the Judicial Service Annual Reports for the years under consideration*).

These accounted for the appointment of more Judges and Magistrates to preside over these courts to bring justice to the door steps of the people. I respectfully want to urge all those who want to address the subject of the phenomenal increase in the appointment of Judges to understand the basis upon which the appointments have been made.

I have thus been emboldened by the powerful speech of the National president, yesterday, 11th September 2023 at the opening of the 2023/2024 conference.

EPILOGUE

I thank the National Executives of the Ghana Bar Association for giving me this platform. I wish you a successful conference.

Let me however share these thoughts with you from my small Book entitled "*Together is Better*" by Simon Sinek on pages 107-110.

"Be the leader you wish you had"

The greatest joy a leader has is to become the one who helps others find the vision they are looking for.

To see those in their charge do more than they thought they were capable of

To watch the group take care of each other. To see the team work together to solve unsolvable problems.

This is what it means to become a leader. It is not a journey to rise in the ranks, it is a journey to help those around us rise.

The mind can be convinced but the heart must be won.

A star wants to see himself rise to the top. A leader wants to see those around him become stars."

Thank you.

