

IN RE: Cllr. Gibson [2017] LRSC 5 (24 February, 2017)

In Re: REPORT OF THE Grievance and Ethics Committee on a complaint filed by GECCO, BY AND THROUGH ITS PRESIDENT, Mr. Anwar A. Saoud, against Cllr. Charles H. Gibson.

IN THE HONOURABLE SUPREME COURT OF THE REPUBLIC OF LIBERIA, SITTING IN ITS OCTOBER TERM, A.D. 2016.

Heard: September 7, 2016

Decided: February 24, 2017

Madam Justice Yuoh Delivered the Opinion of the Court

A review of the records from the Grievance and Ethics Committee, show that the present proceedings have their genesis from a 2013 final judgment rendered by the Debt Court for Montserrado County, awarding the complainant, GECCO represented by its President, Mr. Anwar Saoud the amount of US \$286,200.00 (Two Hundred Eighty-Six Thousand, Two Hundred United States Dollars) against the Global Bank Liberia Ltd. The parties agreed that said amount would be paid in five installments. The respondent herein, Counsellor Charles H. Gibson represented the complainant in that debt action.

On November 17, 2014, GECCO represented by its President filed a complaint with the Chief Justice, His Honor Francis S. Korkpor, Sr., alleging unethical and unprofessional conduct by its lawyer, Counsellor Charles H. Gibson. The crux of the complaint was that GECCO had authorized Counsellor Gibson to receive the installment payments in satisfaction of the aforementioned final judgment of the Debt Court and that he, Counsellor Charles H. Gibson retains 20% on each installment payment collected as compensation for his legal services.

The complainant also alleged that it agreed with Counsellor Gibson that upon receipt of the last installment payment in the amount of US \$31,653.33 (Thirty One Thousand Six Hundred Fifty Three United States Dollars and Thirty Three Cents), and after deduction of his 20% legal fees, Counsellor Gibson should remit the balance to Counsellor Johnny Momoh, who at the time was within the employment of

the Sherman & Sherman, Inc., for onward transfer to a named beneficiary, one Mr. George Koussa; but that upon receiving the last installment payment Counsellor Gibson failed to honor the agreement and instead retained possession of the entire amount of US \$31,653.33 and that all efforts asserted to retrieve same from Counsellor Gibson proved futile.

We quote below the complainant's letter, as follow:

*"His Honor, Francis S. Korkpor, Sr.
Chief Justice of the Honorable Supreme Court
Of the Republic of Liberia
Temple of Justice
Republic of Liberia*

Mr. Chief Justice:

Attached is a set of documents that is self-explanatory.

Cllr. Charles Gibson, a legal counsel representing my interest in a case between Global Bank and GECCO, received the final payment relative to the settlement from the Debt Court, Montserrado County, in the amount of US\$31,653.33 (thirty-one thousand six hundred fifty-three United States dollars thirty-three cents) to be turned to Counsellor Momoh of the Sherman & Sherman law firm, but have since failed to pay said amount to the beneficiary Mr. George Koussa. Several alerts made by me to retrieve the US\$31,653.33 (thirty-one thousand six hundred fifty-three United States dollars thirty-three cents) have failed. In fact, he claimed to have used the money personally even though he also has received 20% on each payment made in respect of this particular case as commission for representing my interest.

Hon. Chief Justice, please use your good office and ensure that I get redress.

Thank you.

Anwar Saoud/President"

Attached to the above quoted letter of complaint, was a receipt dated June 19, 2014, signed by Counsellor Charles H. Gibson in acknowledgment of the receipt of the US\$31,653.33 from the Sheriff of the Debt Court for Montserrado County. The said receipt being relevant to these proceedings, we herein below reproduce as follow:

“Received from the Sheriff of the Debt Court for Montserrado County, Captain Robert B. Toe, the amount of US \$31,653.33 (Thirty-One Thousand Six Hundred Fifty Three United States Dollars and Thirty Three Cents) representing final payment growing out of an action of Debt by attachment between GECCO as Judgment-creditor and Global Bank as Judgment-Debtor in compliance with the Debt Court’s final judgment in the above captioned case.

Signed_____

Cllr. Charles H. Gibson”

In accordance with the principle of due process of law, the complaint was forwarded to the Grievance and Ethics Committee for investigation. Thereafter, the parties were duly cited and Counsellor Gibson was notified to file his response.

In his response, Counsellor Gibson admitted to the total judgment amount of US \$286,200.00(Two Hundred Eighty Six Thousand Two Hundred United States Dollars) in favor of his client, GECCO, represented by its President, Mr. Saoud; that said amount was to be paid in five installments; that the 20% commission on each installment payment was negotiated and agreed upon between he and GECCO; and that when he collected the last installment payment of US \$31,653.33 (Thirty One Thousand Six Hundred Fifty Three United States Dollars Thirty Three Cents), he deducted his 20% commission of US \$6,331.33 (Six Thousand Three Hundred Thirty One United States Dollars and Thirty Three Cents), thus leaving a balance of US \$25,322.00 (Twenty Five Thousand Three Hundred Thirty Two United States Dollars).According to Counsellor Gibson he retained said amount to discount debts allegedly owed him by Mr. Saoud for his legal services rendered in other unrelated matters in the amount of US \$16,750.00 (Sixteen Thousand Seven Hundred Fifty United States Dollars);which amount he also deducted from the US \$25,322.00 (Twenty Five Thousand Three Hundred Thirty Two United States Dollars) leaving a balance of US \$8,772.00 (Eight Thousand Seven Hundred Seventy Seven United States Dollars);that he issued a check for the US \$8,772.00 (Eight Thousand Seven

Hundred Seventy Seven United States Dollars) in favor of GECCO but that its President, Mr. Saoud refused same and demanded the full amount of the final payment of US \$31,653.33 (Thirty One Thousand Six Hundred Fifty Three United States Dollars Thirty Three Cents); that following GECCO's refusal to take delivery of the US\$8,772.00 (Eight Thousand Seven Hundred Seventy Seven United States Dollars) check, and later realizing that GECCO was still indebted to him in an outstanding amount of US \$9,000.00 (Nine Thousand United States Dollars) also from unrelated cases, he retained the US \$8,772.00 (Eight Thousand Seven Hundred Seventy Seven United States Dollars) as partial settlement against the US \$9,000.00 (Nine Thousand United States Dollars);and that upon completing said deduction GECCO still remained indebted to him in an amount of US \$427.00.(Four Hundred Twenty Seven United States Dollars).

Counsellor Gibson also challenged the authority of the Grievance and Ethics Committee, which challenge also extends to the authority of the Supreme Court to have forwarded the complaint to the Grievance and Ethics Committee for its review and subsequent recommendations. In his challenge, Counsellor Gibson contended that the allegations contained in GECCO'S complaint did not constitute ethical transgression but was of a purely judicial nature not cognizable before the Grievance and Ethics Committee in that as same involved the collection of money, GECCO had adequate remedy against him before a court of competent jurisdiction.

We quote herein below Counsellor Gibson's response filed before the Committee:

January 19, 2014

Mr. Michael F. Fayiah

Executive Secretary

Grievance & Ethics Committee

Supreme Court of Liberia

Temple of Justice

Monrovia, Liberia

IN RE: Complaint of Mr. Anwar Saoud/GECCO against Cllr. Charles H. Gibson

Dear Mr. Fayiah:

Mr. Anwar Saoud/GECCO complaint against me, the undersigned, that I am unjustly withholding his US\$31,653.33, is baseless and untrue.

Summary of Complaint:

Mr. Saoud's letter of complaint dated November 17, 2014, a copy of which was served me, alleges the followings:

1. That I am his legal counsel representing his interest in an Action of Debt against Global Bank Liberia, Limited.
2. That I signed for and received the final payment from Global Bank, in June 2014, thru the office of the Sheriff of the Debt Court for the Montserrado County, in the amount US\$31,653.33, which amount I have failed to remit to Cllr. Momo of Sherman & Sherman Law Firm for onward delivery to his partner, Mr. George Koussa.
3. That 20% of each collection goes for compensation for legal services "in respect of this particular case".

Response to Complaint:

1. That I am the lead lawyer, along with Cllr. Thompson Jargba, who successfully represented GECCO in an Action of Debt by Attachment against Global Bank in which 20% of each collection is retained and/paid as compensation for legal services rendered. An aggregate of US\$286,200 was collected in five disbursements over a period of 10 months (September 2013-June 2014).
2. That I also represented and/or representing GECCO and/GECCO and his partner's interest in seven other cases in the Commercial Court, Civil Law Court, Monthly and Probate Court for Montserrado County and the Honourable Supreme Court of Liberia, with accumulative invoices for legal services now amounts to nearly US\$16,750. See attached a list metric cases and specimens of the case files marked as Exhibit P/1, in bulk.

3. That GECCO had an unpaid outstanding for me in the amount of US\$9,000 from earliest collections from Global Bank.

4. That with regards to the seven other cases, GECCO acknowledged my invoices for services rendered and/or being rendered and deducted the full amount of US\$29,500 as opposed to the due payment invoices totaling US\$16,750. In essence, the Complainant acknowledged and deducted half of the said US\$29,500 from his partner's (George Koussa) from earlier collection from Global Bank but neglected to deliver same to me. Cllr. T.C. Gould and I handled one of the cases and GECCO paid Cllr. Gould but repeating deferred making payment to me on appeal and I should wait for the final payment from Global Bank. Cllr. Thompson Jargba and Cllr. Joseph Constance assisted three of the seven cases. See attached copy of GECCO acknowledgment on his own letter head submitted to his partner Mr. George Koussa, through letter addressed to his partner's lawyer Cllr. Momo. See letter marked Exhibit P/2, as a cogent part of my response.

5. That when June 2014, final payment was received in the amount of US\$31,653.33 the usual 20% legal fee (US\$6,330.66) was collected thus leaving a balance of US\$25,322.

6. That further to count five above, the due legal fee for the seven cases US\$16,750 was deducted from the US\$25,522 leaving a balance US\$8,772. A check of US\$8,000 was offered to GECCO in late October 2014 by Cllr. Gibson but GECCO refused it demanding the full US\$31,653.33.

7. That thereafter it was discovered that GECCO still had an outstanding of US\$9,000 for me from earlier collection in March 2014. Therefore the US\$9,000 was deducted from the US\$8,772 thus leaving an unpaid balance of US\$427.00 due Cllr. Gibson by [GECCO].

8. That prior to count four above, the complainant appealed that his company (GECCO) and Vision Industries, Inc. wherein I am a major shareholder, but bills and that the difference deducted from his due payment for legal services be disbursed in kinds with building materials from his store to enable him have some so as to get some cash from the final payment to give to his cousin/partner (Mr. George Koussa). However, when the Good Note was prepared, GECCO's refused to sign and to supply building materials in lieu for payments for legal services for the seven other

cases, hence, the proposal became ineffectual. Also it was later discovered that GECCO inflated his invoices to Vision Industries, Inc., and that it was not proper to intermingle to unrelated transactions, that is to say payment for legal services with supply of goods. Attached copy of adjusted invoices and draft GOOD NOTE which proposal GECCO back off from consummating marked as Exhibit P/3.

9. That Mr. George Koussa, Cllr. Momo, Cllr. Jargba, Cllr. T.C. Gould and the Administrators of the Intestate Estate of the late Momoh Sando, GECCO's Lessor, be summoned to testify to the veracity of Respondent's response to GECCO's complaint as contained herein.

10. That the issue of the complainant is not ethical but purely judicial; for which he has adequate remedy at law. The issue borders on the determination whether or not a person who collects money for another for a mutually agreed fee/acknowledged invoices, shall or shall not deduct his fee/invoices before remittance of the difference to the principal. I say he shall, especially so as prior deduction upon collection has been the custom of their transaction for a reasonable period extending over a year.

Wherefore and in view of the foregoing, Respondent submits the following:

1. That the complaint of the complainant be dismissed
2. That complainant be advised to seek judicial remedy if he strongly believes in the rightness of his claim.
3. That the client - lawyer relationship between the complainant and Cllr. Gibson be terminated for all on-going and appealed cases in accordance with the controlling statute.

Respectfully submitted:

Charles H. Gibson
COUNSELLOR-AT-LAW"

Following the review of the facts, testimonies and evidence adduced by both parties, and in consonance with the requisite rule of the Supreme Court, the Grievance

and Ethics Committee submitted its report to the full Bench for review and final determination.

We quote herein below pertinent portions from the Committee's Report regarding its findings and recommendation:

“Having carefully reviewed the facts and considered the testimonies as related to the facts, the Committee highlights the following observations:

1. That duty was upon Cllr. Gibson to have drawn a contract to clearly stipulate how his payment would have been made.
2. That the settlement in question in the amount of US\$286,200.00 was too huge an amount to have been managed without a written contract as a lawyer-client relationship where money is involved cannot be dealt with solely on the doctrine of good faith.
3. That Cllr. Gibson did not breach any ethical standard when he deducted his 20% commission from the US\$31,653.33 as this has been the practice between himself and his client.
4. That the lawyer-client relationship was based on two distinct and separate cases. The first was with the Global bank in an action of debt and the second set of 7 cases were unrelated to the case at bar.
5. That against count 4 of the observation, Cllr. Gibson should have returned the balance US\$25,322.00 as agreed, to his client after deducting his 20% commission and then request from his client or sue his client for his payment for the services rendered related to the other seven cases.

Against the five point observations highlighted above, it is the view of the Committee that Cllr. Gibson breached the confidence of his client which is against Rule 15 of a lawyer's duty to his client. The rule states:

“A lawyer should refrain from any act whereby for his personal benefit or gain he abuses or takes advantage of the confidence reposed in by his client. Money collected

for his client, or other money or property of his said client coming into his possession as a result of his professional duty to his client, should be reported and accounted for promptly, and should not under any circumstances be commingled with his own or be used by him”.

The committee recognizes that the money in question was not commingled but that the confidence reposed in Cllr. Gibson was breached thereby raising ethical issues of a duty of a lawyer to his client.

CONCLUSION

In view of the foregoing, it is the opinion of the Committee that there was an ethical breach and that the matter was not judicial as claimed by Cllr. Gibson in his answer to the complaint. The committee recommends to the Supreme Court that Cllr. Gibson pays back his client the US\$25,322.00 and then he has the liberty to pursue his client for money owed him from other legal services provided and linked to the other 7 cases.”

It has always been the procedure adopted by this Court, to review and render final Judgment on the report and recommendations from the Grievance and Ethics Committee, which conducts investigation into allegations of ethical transgressions against lawyers and the Judicial Inquiry Commission which investigates ethical transgressions levied against judges. Also in consonance with the rules and procedures of this Court, amici curiae were appointed, to include, Counsellors Tiawan S. Gongloe, N. Oswald Tweh and Katherine P. Makor. Amici Curiae being translated, ‘friends of the court’ are appointed to offer candid and independent opinion or advice to the Court based on the facts and the laws controlling in order to aid the Court in judiciously rendering a decision. The Court is therefore grateful to the Amici Curiae for yielding the call of the Court.

On August 31, 2016, a notice of assignment was ordered issued by the assistant clerk of this Court and same placed in the hands of the Marshall for service on Counsellor Charles H. Gibson, mandating him to appear and file on September 5, 2016, a response to the Committee’s report and recommendations, if he so desires. The Marshall’s returns show that all efforts to serve Counsellor Gibson with the notice of

assignment and the Committee's report proved futile, as his law offices remained closed. Hence, the Court ordered the case re-assigned for September 7, 2016.

When the case was called on September 7, 2016 the Court observed that in addition to Counsellor Gibson's absence from the hearing, he did not file any formal response or legal brief, neither did he file an excuse explaining his absence. The Chief Justice ascertained from the Marshall as to whether the respondent, Counsellor Charles H. Gibson was served with a copy of the notice of assignment and the attendant documents, and was informed that all efforts to have Counsellor Gibson personally served were unsuccessful as his office continued to remain closed; that he the Marshall had no alternative but to make several telephone calls from his phone to the phone number of Counsellor Gibson but received no response; that he thereafter buttressed his efforts by sending several text messages from his phone to the phone of Counsellor Gibson informing of the assignment but still received no response. The Marshall further informed the Court that he then decided to use an unknown number to call Counsellor Gibson to which call, he, Counsellor Gibson promptly responded and was notified about these proceedings. We quote below the Marshall's returns, to wit:

"This is to certify that the notice of assignment was prepared on the 31st day of August A.D. 2016 by the Assistant Clerk of the Supreme Court and placed in the hands of the Marshall of this Honorable Court for service.

Said assignment could not be served on Counsellor Charles Gibson due to the fact that, Counsellor Gibson office has been locked from the date of the issuance of this assignment up to the date of this return. That is, the 5th day of September A.D. 2016. All effort to contact him by phone proved futile. In other words, his phone will ring and he will never answer nor return the call even though the Marshall was able to send text messages in this regard.

On the 5th of September another assignment was prepared by the Clerk on order of Court assigning said matter for the 7th of September at 10 A.M. Immediately upon receipt of said assignment, I again sent a bailiff to Counsellor Gibson's office but said office was still lock.

Based on said report/information of the bailiff I decided this time to call Counsellor Gibson by a different cell number which he responded to. I [immediately] informed him about his case; the date of the hearing and the time. I also informed him of the number of times we had visited his office and [found the office locked]. He informed me that he has no staff; he runs his Law Firm alone and that he is presently in Harper City [Maryland County]conducting a workshop.

In view of the above, Counsellor Gibson was notified/informed of this assignment.

Hence this return.

Dated this 6th Day of September, A.D. 2016

Brg. Gen. Amos B.K Dickson, Sr.

Marshall

Note: In consideration of the above, I have sent him another text detailing all information relating to said notice of assignment.”

Given the detailed returns of the Marshall quoted supra, and the extra efforts he exerted by texting the full content of the notice of assignment, to which Counsellor Gibson did not even have the courtesy to tender a response, this Court can only conclude and rightly so, that Counsellor Gibson, being one of the many lawyers familiar with the telephone number of the Marshall of this Honorable Court, was deliberately ignoring the Marshall’s calls and text messages in order to avoid an appearance before this Court. This act of Counsellor Gibson shall be addressed later in this Opinion.

In consultation with the Amici Curiae and applying the rules, the Court proceeded to hear and make a determination on the Grievance and Ethics Committee’s report. In their brief, the amici curiae agreed with the findings of the Committee and urged this Court to endorse the recommendation that Counsellor Gibson be ordered to pay back his client the US\$25,322.00 (Twenty-Five Thousand Three Hundred Twenty Two United States Dollars), representing the balance from the amount of US\$31,653.33 due GECCO less his 20% commission. The amici curiae also concurred with the

Committee that Counsellor Gibson did not commingle the amount in question but instead he breached the confidence reposed in him by his client when he retained the money collected in satisfaction of unrelated legal fees allegedly owed him by his client. The amici curiae further stated that since the amount allegedly owed him by GECCO from unrelated matters was in excess of the amount withheld by him; that the act of Counsellor Gibson not accompanied by deceit, fraud or other aggravating factors, Counsellor Gibson be made to repay his client theUS\$25,322.00 (Twenty Five Thousand Three Hundred Twenty Two United States Dollars) and that he be at liberty to sue his client for the alleged debt from those other unrelated cases.

Having reviewed the records of the case and findings as presented by the Committee, including the brief filed by the amici curiae, we have determined one issue, which is, whether or not Counsellor Charles H. Gibson's conduct was unethical and unprofessional against his client, GECCO, represented by its President, Mr. Anwar Saoud.

We must however, first address the contention raised by Counsellor Gibson that the allegations levied against him did not constitute ethical transgression, therefore not cognizable before the Grievance and Ethics Committee, but rather before a court of law, where he believes that GECCO had adequate remedy. The below excerpt is how Counsellor Gibson framed his contention in count 10 of his response filed before the Committee:

“that the issue complained of by the complainant is not ethical but purely judicial; for which he has adequate remedy at law. The issue borders on the determination whether or not a person who collects money for another for a mutually agreed/fee acknowledged invoices, shall or shall not deduct his fee/invoices before remittance of the difference to the principal. I say he shall, especially so as prior deduction upon collection has been the custom of their transaction for a reasonable period extending over a year.”

As stated earlier, this contention by Counsellor Gibson challenges the authority of the Grievance and Ethics Committee to investigate cases involving lawyers and their clients. This is not the first time that a lawyer has challenged the Committee's authority in this regard, especially when the matter involved the misappropriation of clients' money and the argument that there exist 'remedy' to the clients in a court of law and that the failure of the clients to pursue such 'remedy' cannot be cured by a

complaint to the Grievance and Ethics Committee. These arguments, similar to the one being advanced by Counsellor Gibson, suggest that the clients take recourse to the debt court or a court of competent jurisdiction since the matter involved the repayment of a sum of money. It is paradoxical and highly contradictory, that in one instance Counsellor Gibson would argue that GEECO should not have filed a complaint before the Grievance and Ethics Committee but instead should have sought legal redress in a court of law to recover its money, but on the another hand, he, Counsellor Gibson, would also ignore all such legal remedies available to recover his proclaimed 'legal fees and balance due on collection' from previous unrelated cases by assuming unto himself a self-help action in retaining his client's money and converting same for his personal use, on the pretext of the money being his entitlement for legal services rendered.

In the case, *In re Allison v Counsellor Marcus R. Jones*, Supreme Court Opinion, March Term, A.D. 2013, the facts therein show that Counsellor Marcus R. Jones commingled and misappropriated an amount of US \$182,000.00 which he had received from Kenya Airways as insurance benefits on behalf of his client, Reverend Allison for the latter's wife who died in a Kenya Airway plane crash. Upon forwarding Rev. Allison's complaint to the Grievance and Ethics Committee for the appropriate investigation, the Committee's report recommended that Counsellor Jones be suspended for a period of one (1) year and repay the aforesaid amount. When Counsellor Jones appeared before the Supreme Court, he contended that the case should be perceived from the stand point of a transaction between a Pastor and his Senior Evangelist; that the facts and circumstances of the matter did not partake of any unprofessional and unethical conduct on his part because he and Rev. Allison conducted themselves in a manner that took the form of a financial transaction; that the matter placed them in a debtor-creditor relationship and that the Supreme Court should not treat the matter as one of professional misconduct in the ordinary sense.

This Court in addressing Counsellor Jones' contentions reiterated the role of the Grievance and Ethics Committee and ruled that the Committee was authorized to investigate complaints of unethical nature against lawyers.

Our distinguished colleague, Mr. Chief Justice Korkpor Speaking for a unanimous Court espoused thus:

“The Grievance and Ethics Committee is one of two important organs of the Judiciary that deals with allegations of unethical and unprofessional conducts of members of the legal profession in our country. The other organ is the Judicial Inquiry Commission which sits and hears cases of unethical and unprofessional conducts against judges. The Committee has jurisdiction to inquire into and consider any complaint made against any lawyer involving his character, integrity, professional standing or conduct as a member of the bar.

It is within the competence of the Committee to employ the means of fact finding, conciliation, mediation, arbitration or adjudication in relation to any written complaint made against a lawyer and the Committee shall not be bound by the strict rules of evidence; however, every effort shall be made to accord the litigants due process, and any evidence offered or admitted shall be relevant and material within the res gestate. (See Procedure Governing the Operation of the National Bar Association of the Republic of Liberia in Matter of Unprofessional and Unethical Conduct of Lawyers, Code for the Moral and Ethical Conduct of Lawyers). We are therefore in full agreement with the Grievance and Ethics Committee when it determined that it had jurisdiction to hear and decide the complaint filed by Rev. Allison against Counsellor Jones. Certainly, the complaint made by Rev, Allison involved the character, professional standing and conduct of Counsellor Jones as a member of the Bar.”

We reaffirm and uphold the position taken by this Court in the Jones case and applying same to the present case hereby hold that the complaint by GECCO was properly cognizable before the Grievance and Ethics Committee as the Committee has jurisdiction to enquire and delve into any complaint against a lawyer whose character, integrity, professional standing or conduct as a member of the Bar is brought into question.

We now revert to the main issue which is whether or not Counsellor Charles H. Gibson committed unethical and unprofessional conduct against his client, GECCO represented by its President, Mr. Anwar Saoud.

The amici curiae argued in their Brief that the act of Counsellor Gibson in deducting the proclaimed legal fees for other unrelated cases from the US \$31,653.33 he had collected for his client, constituted a breach of his lawyer-client relationship in violation of the Code for Moral and Ethical Conduct of Lawyers. Counsellor Charles H. Gibson, on the other hand, in his formal response filed with the Grievance and Ethics Committee, asked that the Committee premise its investigation and findings on

the question of “whether or not a person who collects money for another for a mutually agreed fee, acknowledged invoices, shall or shall not deduct his fee/invoices before remittance of the difference to the principal. Counsellor Gibson emphatically responded in this manner “I say he shall...”

We are in partial agreement with that aspect of the Committee’s findings that Counsellor Gibson was within the pale of the law and ethically correct when he deducted his 20% commission from the US\$31,653.33 as this was agreed upon between himself and his client and which is not disputed.

The Committee’s suggestion of a more formal agreement between Counsellor Gibson and his client, cannot be upheld because Counsellor Gibson himself made admissions as to the fact that there existed an agreement with his client, albeit, oral, yet, each party complied therewith, until Counsellor Gibson *sua sponte* departed therefrom when he received and retained the full final installment payment. “All admissions made by a party himself or by his agent acting within the scope of his authority are admissible...” Civil Procedure Law, Rev Code 1:25.8(1). Also, this Court has said that it will infer an agreement from the conduct of the parties and in this case, the agreement of the 20% deduction not disputed by the parties. The law in this jurisdiction is that the relationship between a lawyer and his client begins with retainer, which is contractual in nature; that contract voluntarily made between competent persons is not to be taken lightly or set aside; and that the sanctity of contract is protected by the Constitution. *Ecobank v. Kakata Holding Company*, Supreme Court Opinion, October Term 2012; *Republic of Liberia V. LNBA 40 LLR 635 655 (2001)*; *Lib. Const. 1985*. We hold therefore, that the 20% commission on each installment payment, not being disputed by either party, constituted a contract.

We however, do not agree with the Committee’s finding that because Counsellor Gibson did not commingle his client’s money he should only refund the balance of US\$25,322.00 (Twenty Five Thousand Three Hundred Thirty Two United States Dollars). The amici curiae in their brief and argument before this Court agree with the Committee that Counsellor Gibson refund the balance of US\$25,322.00 (Twenty Five Thousand Three Hundred Thirty Two United States Dollars) absent what they referred to as “deceit, fraud and other aggravating circumstances.” We sternly disagree.

In the Jones case cited supra, this Court outlined three different culpability criteria when evaluating the act of a lawyer in the handling of a client's funds. These are:

“(1) commingling: which takes place when client's money is intermixed with an attorney's personal funds;

(2) Simple conversion: which occurs when a lawyer applies a client's money to a purpose other than that for which it was entrusted to the lawyer;

(3) Misappropriation: the most serious infraction, which involves an act of conversion, or similar wrongful taking when an attorney purposefully deprives a client of money by way of deceit and fraud.

That absent mitigating circumstances, the appropriate discipline in cases of attorney misappropriation, conversion or commingling of client funds is typically disbarment”

Rule 15 of the Code for the Moral and Ethical Conduct of Lawyers states thus:

“A lawyer should refrain from any act whereby for his personal benefit or gain he abuses or takes advantage of the confidence reposed in by his client.

Money collected for his client, or other money or property of his said client coming into his possession as a result of his professional duty to his client, should be reported and accounted for promptly, and should not under any circumstances be commingled with his own or be used by him.”

Our case laws are replete with instances where this Court has consistently ruled that:

“a lawyer owes a fiduciary duty to his client, and as such cannot take advantage of his professional duty to acquire interest in the client's property in litigation and that a lawyer is required by the Supreme Court to be not only professionally qualified and possessing the required legal knowledge and education as professional legal practitioner, but also requires the individual to be of a high standard of ethical conduct and behavior and of good moral character.” *Tulay v. Knight*, 41 LLR 262 271 (2002); *In re Wreh*, 20 LLR 535, 538(1971)

Also:

“A lawyer must maintain complete records of all funds and other properties of a client coming into his or her possession and render appropriate accounts to his or her client regarding them. Failure to maintain such records is grounds for professional discipline.

A lawyer must hold property of clients or third persons that is in a lawyer's possession in connection with a representation separate from the lawyer's own property. Funds must be kept in a separate account maintained in the state, in this case, the county where the lawyer's office is situated, or elsewhere with the consent of the client or third person...”*In re Allison v Counsellor Marcus R. Jones*, Supreme Court Opinion, March Term, A.D. 2013.

The Committee has recommended that absent the element of comingling the punishment to the lawyer should be limited to reimbursement of the client's money, to which the *Amici Curiae* agreed. However, the above cited laws and principles, strongly advocate for more severe measure of punishment against a lawyer who is found to have acted inappropriately regarding his client's money.

The records show clearly that Counsellor Gibson abused the confidence reposed in him by collecting his client's money, deviating from their agreement and converting same to his own, albeit on the pretext of paying himself for services rendered in other unrelated matters. The law terms this act as misappropriation which is inclusive of the act of simple conversion. Also, Counsellor Gibson by his own admissions as contained in his formal response filed with the Grievance and Ethics Committee stated that he issued a check in the amount of US \$8,772.00, to the complainant, an amount far less than the agreed amount of US \$25,322.00. Additionally, Counsellor Gibson applied his client's money to an unintended purpose other than that which was agreed upon; that he, Counsellor Gibson deliberately and purposefully misappropriated and converted his client's funds to his own personal use in that there are no mitigating circumstances to justify his actions. We observed that in attempting to justify retention of his client's money Counsellor Gibson attached to his response, a document captioned summary of “GECCO & GECCO Related Cases.” In that document, he outlined eight (8) cases, seven of which are completely distinct and separate from the current case. Interestingly, Counsellor Gibson presented a mathematical summation of his claim and based upon which he retained the entire US

\$31,653.33 he had collected as final installment payment on behalf of the client. The summation reads as follows:

“1. Final Payment collected from Global Bank US\$31,653.33

2. Minus 20% collection fee US\$6,330.66

Minus invoices for other casesUS\$16,750.00

Minus old balance due on collectionUS\$9,000.00

3. Total Final collectionUS\$31,653.33

Total Deductions for Legal ServicesUS\$32,080.66

GECCO outstanding to Cllr. GibsonUS \$427.33

Without affirming or disaffirming Counsellor Gibson’s claims listed above this Court is bemused firstly, as to how the learned Counsellor established these claims and secondly, how he expects this Court to accept his claims without same being proven.

As stated earlier, it is highly contradictory that Counsellor Gibson would urge the GECCO, to proceed to a court of law in settling claims against him but then on the other hand he, Counsellor Gibson did not proceed to a court of competent jurisdiction to pursue his claims for alleged unpaid legal fees from other unrelated cases in which he represented GECCO.

In view of all that we have stated supra we hold that the conversion and misappropriation of GECCO’s money by Counsellor Gibson was deliberate and well calculated and same constitutes serious ethical infraction that demands a more severe punishment than what is being recommended by the Grievance and Ethics Committee and the amici curiae, in order to not only penalize Counsellor Gibson but to also serve as a deterrent to would be violators.

Moreover, and as stated earlier the behavior of Counsellor Gibson in deliberately avoiding service of assignments and refusal to respond to the Marshall’s text messages and calls, constitutes gross disrespect to this Honorable Court.

WHEREFORE, and in view of the foregoing, the findings of the Grievance and Ethics Committee are affirmed and confirmed but with modifications stated herein below:

That for his calculated conversion and misappropriation of the said US\$25,322.00 (Twenty Five Thousand Three Hundred Thirty Two United States Dollars) Counsellor Charles H. Gibson be, and is hereby suspended from the practice of law directly and indirectly in Liberia for the period of two (2) months.

1) That he is ordered to pay the amount of US\$25,322.00 (Twenty Five Thousand Three Hundred Thirty Two United States Dollars) to GECCO through its President, Anwar A. Saoud, within two(2) months as of the rendition of this Opinion and furnish receipt of payment to the Marshall of this Court.

2) That failure by Counsellor Gibson to pay the said amount within the two(2) months period specified herein, his suspension shall remain in full force and effect until the amount is fully paid.

3) The Clerk of this Court is ordered to send a mandate to all courts of the Republic informing them of this decision.**IT IS HEREBY SO ORDERED.**

Counsellors Tiawan S. Gongloe, N. Oswald Tweh and Katheleen P. Makor APPEARED AS AMICI CURIAE.

COUNSELLOR CHARLES H. GIBSON DID NOT APPEAR, EITHER IN PERSON OR BY COUNSEL.