

Do Lawyers

Lie?

Professional and Ethical Implications for the Georgian Legal System

Within the ongoing debate over the role - and potential dangers - of AI in different sectors, the legal profession found itself at the center of this discussion as widespread media reports recently detailed the case of New York lawyer Steven A. Schwartz, who is currently facing potential sanctions over citing fake cases generated by ChatGPT in a legal brief. While it is worth noting that Schwartz appears to have had no intention of presenting false information to the court, his neglect in verifying the outputs produced by AI begs another important question - what happens when a lawyer lies?

When a lawyer lies in court, it not only diminishes their credibility for future cases and tarnishes their reputation among peers, but it can also negatively affect the outcome of the case. Once a lawyer is caught lying, a judge may become skeptical of their other assertions and even shift the burden of proof. Consequently, the cost of lying can be quite significant. However, there is an even greater issue stemming from lawyers who lack truthfulness in court: the damage to the reputation of the entire legal profession.

It's worth noting that the legal profession holds honesty and integrity as core principles, and lawyers are expected to adhere to strict ethical standards. The legal profession strives to maintain the integrity of the judicial system. In a judicial system where some lawyers lie, lawyers' statements are not presumed to be true. The judge or opposing counsel are more likely to suspect an intention to delay proceedings or gain some other unfair advantage. Because of this, lawyers would then be required to present actual evidence for everything they assert, including minor procedural matters. For the judicial system to work more effectively, it is imperative that the reverse be true: a lawyer must be presumed honest unless proven otherwise.

But what are the consequences for lawyers who lie within the Georgian legal system? Anecdotally, I can recall an instance in which opposing counsel once addressed me during a hearing in front of a judge. "Mr. Tabatadze, I will share a secret with you. In Georgia, lying in court is not punishable," he asserted, after I had exposed his contradictory and misleading factual statements in two

ongoing cases. In this case, while no official sanctions were levied for this statement or his use of falsehoods, the opposing counsel lost credibility in the eyes of the judge, which ultimately resulted in him losing the case. However, his lack of formal censure could be the result of an effect brought about by three factors within Georgia's legal system.

1. Ambiguity in the Ethics Code of the Georgian Bar Association (GBA).

While it is universally acknowledged that dishonesty is not acceptable, the legal consequences for such behavior are not clearly defined. According to Article 9 (l) of the Ethics Code of the GBA, a lawyer who is involved in a case before the Georgian or foreign courts and tribunals shall respect and uphold the rules of that court and tribunal. Section 3 of the same article states that a lawyer shall not knowingly offer evidence that the lawyer knows to be false. This provision is problematic in two material respects. One, it does not cover any other possible scenario of dishonesty, of which there could be multiple, nor does it provide for an open-ended list. Two, the general statements in the Code are insufficient to tackle such a complex and delicate issue. To address this, it is imperative that the Code of Ethics be thoroughly reviewed and its articles revised. The GBA could, for instance, adopt Rule 3 of the Model Rules of Professional Conduct by American Bar Association, which provides more comprehensive standard of conduct in front of the tribunal.

2. Failure of judges to condemn and punish dishonesty and recognize honesty.

Currently, judges have powerful tools to punish and prevent deceitful actions by lawyers. Despite the absence of specific regulations in the Code of Civil Procedure to address such cases, judges still possess the authority and ability to penalize deceitful behavior and acknowledge and reward those who exhibit honesty. For example, if a judge detects dishonesty from a lawyer, he can reject the lawyer's explanations as persuasive evidence, consequently shifting the burden of proof. Furthermore, judges have the authority to report such lawyers to the Georgian Bar Association, which holds the power to impose sanctions on its members. However, Georgian judges rarely, if ever, use such tools to display greater assertiveness in acting against dishonest lawyers.

3. A fundamental misunderstanding of the role and purpose of a lawyer in protecting the legal interests of their client.

Certain lawyers may hold the belief that their primary duty is to safeguard their clients' interests at all costs, even if it means employing deceptive tactics. Such lawyers need to understand that building a strong reputation and maintaining integrity prove to be more advantageous in

the long run than trying to achieve a single success through deceitful actions.

Consequently, although improvements are needed in regulations and practices, the existing remedies can be sufficient to address this issue. It is crucial to emphasize that lawyers have a professional obligation to uphold truth, fairness, and justice, which are essential for the effective functioning of the legal system and the preservation of public trust.



Davit Tabatadze
Head of Litigation

FOR MORE INFORMATION AND ADVISE
PLEASE CONTACT US:
129th David Aghmashenebeli Ave, Tbilisi, 0102, Georgia
Tel.: +995 32 292 24 91, 292 00 86, 200 04 91
blc@blc.ge blc.ge