

# **MONTENEGRO JUDICIAL COUNCIL**

Pursuant to Article 25. of the Law on Judicial Council of Montenegro ("Official Gazette of Montenegro", no. 13/08 and 39/2011) The Judicial Council at its session held on 18.11. 2011, have passed the

## **RULES OF JUDICIAL COUNCIL**

### **Basic provisions**

#### ***Subject of Rules***

##### ***Article 1.***

These Rules shall regulate the organization and operation of the Judicial Council, the procedure of the election of judges and lay judges, disciplinary procedure, the procedure of removal of judges and other issues of importance for the work of the Judicial Council.

#### ***Place of holding the sessions***

##### ***Article 2***

The Judicial Council may decide to sustain individual sessions outside Podgorica.

#### ***Logo***

##### ***Article 3***

The Judicial Council shall have the logo.  
Appearance of the logo shall be regulated by the Rules on the logo, passed by the Judicial Council.

## ***The use of gender-sensitive language***

### ***Article 4***

Expressions used in these Rules for a natural person in the masculine gender shall include the feminine expressions of the same gender.

## **The organization and work of the Judicial Council**

### ***Organization***

#### ***Article 5***

The Judicial Council shall be composed of the President and the members, in accordance with the Constitution and the Law on Judicial Council.

The Judicial Council shall have the Deputy of the President, Commission for testing, Disciplinary Commission and the Secretariat.

The Judicial Council may, where appropriate, form Expert teams and Working groups to carry out specific tasks within their competence.

### ***President of the Judicial Council***

#### ***Article 6***

President of the Judicial Council shall:

- Represent the Judicial Council before the State bodies, International organizations and Institutions and all third parties,
- Ensure the organization and the legality of work of the Judicial Council and the Secretariat,
- Convene the Judicial Council, propose the agenda for the sessions and preside the sessions,
- Ensure the application of the Rules of Judicial Council,
- Inform the public on matters of importance to the work of the Judicial Council,
- Sign the documents on behalf of the Judicial Council and the Judicial Council acts.

The President may transfer certain duties and powers to the Deputy of the President of the Judicial Council.

The President may appoint another member of the Judicial Council to carry out his/her duties during a period in which neither the President nor the Deputy can perform their duties.

The President may authorize the Director or Deputy Director of the

Secretariat to sign documents of the Judicial Council relating to daily operational issues.

Documents that have budgetary implications shall be signed by the President after the Director and authorized officer of the Secretariat verifies by their signature that financial obligations undertaken by these documents are in accordance with the budget approved by the Judicial Council.

The President shall perform other functions and duties prescribed by the Law, the Rules, other provisions and internal regulations of the Council.

### ***Deputy of the President of the Judicial Council***

#### ***Article 7***

Deputy of the President of the Judicial Council shall be elected by the Judicial Council at the inaugural session.

The mandate of the Deputy of the President shall be four years.

Deputy of the President shall replace the President during the absence or inability to perform its duties.

Deputy shall assist the President in carrying out the tasks required for the efficient and effective operation of the Judicial Council.

Deputy of the President may resign from his post.

Deputy of the President may be removed from his office on the proposal of the President of the Judicial Council.

### ***The rights and duties of members of the Judicial Council***

#### ***Article 8***

Members of the Judicial Council, in addition to the rights under Article 18 of the Law on Judicial Council, shall have the following rights and duties:

- To regularly attend the sessions of the Judicial Council, unless in cases of excused absence about which, to the extent possible, they shall be obliged to inform in advance the President or the Director of the Secretariat;

- To participate in the discussion of any matter on the agenda and vote for their opinion on any proposal to be decided upon at the session of the Judicial Council;

- To perform all duties and tasks assigned by the Judicial Council, and in particular to participate in interviews, Disciplinary cases, special meetings of Commissions and Expert teams, Working group meetings, etc.;

- To provide necessary informations to Administrative and Financial department of the Secretariat in relation with calculating the amount of related fees;

- To maintain the confidentiality of data, which were ordered as a secret by the Judicial Council.

The Secretariat shall keep the record of the date of the appointment, termination of office and all other administrative and financial data concerning the members of the Judicial Council.

### ***Exemption of the President and members of the Judicial Council***

#### ***Article 9***

President or a member of the Judicial Council shall be exempted from participation in reviewing and making decisions on issues which regards:

- Himself/herself;
- Relatives in the direct line;
- Relatives in the collateral line up to the fourth degree;
- Relatives by marriage up to the second degree;
- Spouse or extramarital partner or adopted children;
- Or if there are other circumstances that raise doubts about the impartiality of the President or a member of the Judicial Council.

President of the Judicial Council or a member is obliged to notify the Judicial Council about the existence of grounds for the exemption, immediately upon learning of same, in writing or orally at the session of the Judicial Council. Oral statements shall be recorded in the Minutes of the session.

Request for exemption of the President or a member of the Judicial Council may be submitted by a person whose rights and obligations are decided upon.

The request shall be submitted in written form.

Before deciding on the submitted request a statement of the person whose exemption is requested shall be obtained.

The President or a member of the Judicial Council whose exemption is discussed, may participate in the discussion of the matter, but can not vote on the decision about the exemption.

Decision on the exemption of the member of the Judicial Council shall be passed by the President of the Judicial Council, and on his/her exemption the Judicial Council by a majority vote.

Member who is exempted may not participate in any proceeding or hearing relating to the matter for which he/she was exempted.

### ***Commissions of the Judicial Council***

#### ***Article 10***

The Judicial Council shall appoint:

- Commission for testing,
- Disciplinary Commission

### ***Commission for testing***

#### ***Article 11***

The Judicial Council shall appoint the Commission for testing.  
The Commission shall have a President and two members.  
Decision on the appointment shall designate the Deputy of the President and Commission members.

### ***Mandate and its limitations***

#### ***Article 12***

Commission for testing shall be appointed for a term of one year.  
Member of the Commission may be re-appointed to the Commission for testing upon expiry of one year after the termination of the previous term.

### ***The competences of the Commission for testing***

#### ***Article 13***

Commission for testing shall:

- check the timeliness and completeness of the enclosed documentation;
- draw up the test, conduct the testing of candidates and evaluate the test results;
- determine the average number of points based on the scores of each member of the Judicial Council;
- draw up a list of candidates for the election.

### ***The work of the Commissions***

#### ***Article 14***

The President of the commission shall convene the sessions, propose the agenda for each session, manage the session and submit a report on the work of the Commission to the Judicial Council.

A representative of the Secretariat participates in the work of the Commission, who is responsible for keeping records and the preparation and delivery of materials for the session.

Administrative and technical tasks for the Commission shall be performed by the Secretariat.

The Judicial Council may appoint experts outside the court and the Judicial Council to participate as advisors in Commissions.

At the end of each calendar year, the Judicial Council shall adopt a decision determining the amount of compensation to the Commission members for the activities in the upcoming year.

### ***Exemption of the member of the Commission***

#### ***Article 15***

The provisions on the exemption of the President and members of the Judicial Council, shall be applied for the President and the members of the Commission.

### ***Decision-making***

#### ***Article 16***

Commissions shall pass the decisions by a majority vote.

### ***Expert teams and working groups***

#### ***Article 17***

The Judicial Council may establish expert teams and working groups to carry out specific tasks within their competence, in particular:

- Judicial administration;
- Education of Judges
- Normative activities;
- Court budgets, statistics, etc..

In a decision to establish a professional team or a working group the Judicial Council shall designate, the President, a brief description of the tasks, duties and rights, manner of work and time for implementation of the task.

The President and members of the professional team or work group do not have to be the members of the Judicial Council.

### ***The sessions of the Judicial Council***

## ***Article 18***

Judicial Council sessions shall be held in an open atmosphere and an atmosphere of mutual respect of opinions

The Judicial Council in its discussions shall make efforts to carry out complete analysis and cover all aspects of the issues.

The Judicial Council shall focus in the discussion on its duty to ensure the preservation of an independent, accountable, professional and efficient judiciary in Montenegro.

## ***Regular and Irregular sessions***

### ***Article 19***

Regular sessions of the Judicial Council, as a rule, shall be held at least once a month.

The annual plan of the regular sessions for the next year shall be adopted by the Judicial Council each year in December.

Judicial Council sessions may last longer than one working day.

Irregular session shall be convened by the President of the Judicial Council, when considers it necessary to address urgent issues.

Irregular session of the Judicial Council shall be convened also at the request of at least three members of the Judicial Council.

## ***Convening of a session of the Judicial Council***

### ***Article 20***

The sessions of the Judicial Council shall be convened by the President.

Notice on the session shall include: the name of the person summoned, the capacity in which he/she is summoned, venue of the session, the date and time of the session.

In addition to summons for the session, the proposal of the agenda and materials for the session shall be delivered.

The summons with the materials shall be submitted to members of the Judicial Council at least five days prior to the date of the session.

The proposal of the agenda and written materials shall be submitted to members of the Judicial Council by post office, by the employees of the Secretariat, or by electronic means, upon the choice of the member of the Judicial Council.

Exceptionally, the agenda and complete printed materials for the members of the Judicial Council shall be made available at the beginning of the session.

## ***The agenda of the Judicial Council***

### ***Article 21***

The proposal of the agenda shall be proposed by the President.

Each member of the Judicial Council may propose a specific item of the agenda.

The proposal shall be submitted to the President at least five days prior to the date of the session.

The proposed agenda shall be published on the *website* of the Judicial Council before the session.

The Judicial Council shall declare on proposed agenda as a whole.

The proposed agenda shall be adopted if majority of the members of the Judicial Council voted for.

Exceptionally each member of the Judicial Council may propose at the session that the proposed agenda should be changed or amended and he/she shall be required to reason the proposal.

On that proposal the Judicial Council shall decide by majority vote without debate.

## ***Presence at the session of the Judicial Council***

### ***Article 22***

The President and members of the Judicial Council are obliged to attend the session and participate in its work and decision-making.

Member of the Judicial Council who was unable to attend the session, shall be required to promptly notify the President of the Judicial Council, and President of the Judicial Council to notify his deputy.

Director or Deputy Director shall attend the sessions of the Judicial Council, except the sessions which decides on the appointment and dismissal of judges and their disciplinary responsibilities.

The Judicial Council may decide to invite representatives of other institutions to present informations on the item of the agenda at the session.

Persons who attend the session of the Judicial Council, and not its members may participate in the debate, but they can not participate in decision making.

## ***Chairing the session***

### ***Article 23***

The session of the Judicial Council shall be chaired by the President, and in case of his/her absence the Deputy.



President of the Judicial Council in the event of his/her and the Deputy's absence may authorize another member to chair the meeting.

### ***The course of the session***

#### ***Article 24***

The Chairman shall open the session and determine whether there is a majority necessary for the work.

In the event that the session does not have a required majority of the members, the session shall be disposed and as a rule immediately established the day and the hour of holding the session.

At the beginning of the session, before the adoption of the agenda, the minutes of the previous session shall be adopted.

Member of the Judicial Council may raise objections to the minutes and ask to make the appropriate changes in latter.

The Judicial Council shall decide immediately on the merits of the objections to the minutes, without a debate.

The Chairman shall notify that the minutes were adopted without objection, i.e. with the excepted changes.

Following the adoption of the minutes, the agenda shall be determined, in accordance with the Article 23 of these Rules.

The Chairman shall announce the established agenda, after which the discussion and decision on the agenda items will follow.

The Chairman may make amendments in the order of discussion of certain agenda items, or combine the discussion on specific agenda items.

### ***Minutes of the meeting of the Judicial Council***

#### ***Article 25***

Minutes shall be taken on the work of the session.

The minutes shall include: the date, time and venue of the session, names of the members present and absent, the name of the Chairman of the session, the names of persons who attend the session by invitation, proposed and adopted agenda of the session, basic information about the course of the session with a summary of the discussions, decisions adopted, i.e. conclusions from the results of the voting.

After the meeting the minutes shall be sent electronically to all members of the Judicial Council.

At the beginning of each session, the Judicial Council shall approve the minutes of the previous meeting. Approved minutes shall be signed by the

person who chaired the session at which the minutes relates, and the person who kept the minutes.

Minutes of the session shall be kept by the Secretariat.

Minutes of the session of the Judicial Council by rule is not available to the public.

The Judicial Council may decide that minutes, or certain parts of the minutes shall be available to the public.

Sessions may be audio-visually recorded. Audio visual recordings shall be stored in the Secretariat, and not available to the public.

### ***Deciding***

#### ***Article 26***

Member of the Judicial Council shall have the right and duty to decide and vote on each proposal to be decided upon at the session of the Judicial Council.

The voting shall be open.

During the voting in a premises of the Judicial Council may attend only the President and the members of the Judicial Council.

The decision was made if the majority of all the members of the Judicial Council voted for.

### ***Annual Report of the Judicial Council***

#### ***Article 27***

Director and Deputy Director of the Secretariat shall be responsible for preparing a draft of the Annual report. The Secretariat shall submit a draft report to the President of the Judicial Council no later than 1. March of each year.

The Secretariat shall submit a draft Annual report to all courts. On a draft report, the courts can give their comments and suggestions by 15. March of the current year.

The Judicial Council reviews and approves the Annual report no later than 25. March of the current year.

The Annual report is presented to the public by publishing on the website [www.sudovi.me](http://www.sudovi.me), and through the annual press conference.

### ***Internal regulations of the Judicial Council***

#### ***Article 28***

The Judicial Council shall adopt the internal regulations necessary for the efficient and effective operation of the Council.

All Heads of the departments of the Secretariat and the Presidents of the Commissions of the Judicial Council may, in accordance with the internal regulations issued by the Judicial Council, adopt internal guidelines that they consider appropriate.

## **The procedure of the appointment of judges**

### ***The announcement of vacancies***

#### ***Article 29***

President of the court is required to notify the Judicial Council within 15 days on a vacancy position of the judge, or the court president.

The Judicial Council shall be obliged to declare a vacancy for the judge or the president of the court, within 15 days of receipt of the notification referred to in paragraph 1. of this Article.

Vacancies for judges and court presidents shall be advertised on the website, [www.sudovi.me](http://www.sudovi.me).

### ***The form and content of the public announcement***

#### ***Article 30***

The announcement shall contain the following:

- The number and name of the vacancies;
- The basic legal requirements for application on vacancies in accordance with Article 31, 32 and 32 of the Law on courts;
- The process of application to vacant positions;
- A place to take over an application;
- The manner and place of submitting the application;
- Deadline for submission of applications.

### ***Public announcement***

#### ***Article 31***

Application on public announcement represents a standard pattern, whose form and content are determined by the decision of the Judicial Council (form no.1).

The application form contains a warning that giving untrue or false informations shall result in exclusion of candidates from consideration or a disciplinary procedure.

With a completed and signed application form a candidate submits the following documents:

- A certified copy of the certificate on citizenship of Montenegro;
- Medical certificate;
- A certified copy of all university diplomas;
- A certified copy of certificate of having passed the bar exam;
- Proof of the work experience;
- A certified copy of the certificate for completion of educational courses;
- The belief that there is no criminal procedure against him/her;
- The candidate's statement as to whether he/she was imposed with a disciplinary measure, whether he/she was misdemeanored and penalized or convicted of any criminal offense and, if so, when, where and for which criminal offense;
- A statement that he/she is not a member of any political organization.

### ***Location and accessibility of applications***

#### ***Article 32***

Application forms shall be available to candidates in the premises of all courts, the offices of the Judicial Council, the portal [www.sudovi.me](http://www.sudovi.me), as well as in other places designated by the Judicial Council.

### ***Incomplete and late applications***

#### ***Article 33***

Commission for testing shall submit the incomplete and late applications to the Judicial Council.

### ***Obtaining opinions about candidates***

#### ***Article 34***

For each applicant whose application is timely and complete it necessary to obtain the full opinion in accordance with Article 31 of the Law on Judicial Council in the form number 2.

### ***Written testing***

#### ***Article 35***

Written testing shall be compiled by the Commission for testing.

The candidates shall be notified on the date, time and place of testing at least ten days prior to the date of the testing.

### ***Test content***

#### ***Article 36***

Test for the candidates who are appointed for the first time contains the questions:

- for a judge of the Basic Court the questions of Criminal substantive and procedural law, Civil substantive and procedural law, the European Convention for the Protection of Human Rights and Freedoms, Law on Courts and the Law on Judicial Council;

- for a judge of the Commercial Court the Civil substantive and procedural law, Commercial law, the European Convention for the Protection of Human Rights and Freedoms, the case law of European Court of Human Rights, Law on Courts and the Law on Judicial Council;

- for a judge of the High Court the Criminal substantive and procedural law, Civil substantive and procedural law, the European Convention for the Protection of Human Rights and Freedoms, case law of the European Court of Human Rights, the understanding and application of International agreements, the Law on the provision of mutual legal assistance in criminal matters, Law on Courts and the Law on Judicial Council;

- for a judge of the Appellate Court the Criminal substantive and procedural law, Civil substantive and procedural law, Commercial law, the European Convention for the Protection of Human Rights and Freedoms, case law of the European Court of Human Rights, the understanding and application of International agreements, the Law on the provision of mutual legal assistance in Criminal Matters, Law on Courts and Law on Judicial Council;

- for a judge of the Administrative Court the Civil substantive and procedural law, general Administrative proceedings, Administrative dispute, the European Convention for the Protection of Human Rights and Freedoms, case law of the European Court of Human Rights, the understanding and application of International agreements, Law on Courts and Law on Judicial Council;

- for a judge of the Supreme Court the Criminal substantive and procedural law, Civil substantive and procedural law, Commercial law, general Administrative procedure and Administrative dispute, the European Convention for the Protection of Human Rights and Freedoms, case law of the European Court of Human Rights, the understanding and application of International agreements, Law on the provision of mutual legal assistance in criminal matters, Law on Courts and Law on Judicial Council.

The test must indicate how many points can be achieved for each individual question.

## ***Identity and rules***

### ***Article 37***

Prior the beginning of testing the Commission shall determine the identity of the candidates by examining the ID card or other document, and introduce them with the rules they must abide by during testing.

## ***Anonymity of testing***

### ***Article 38***

Prior the beginning the examination, each candidate draws a sealed envelope which contains the mark for identification.

Mark for identification represents the number from 1 up to the total number of candidates to be tested.

During the test, the candidate writes the drawn number on the latter.

After the test is graded, and just before the beginning of the interview with the candidate, the candidate shows his number.

## ***Method of making the test***

### ***Article 39***

During the examination, the candidates are not allowed to mutually communicate, to use the personal computers and mobile phones, or leave the premises where the test is performed.

At least one member of the Commission for testing shall be required to be in the premises where the test is done, during the entire duration of testing.

## ***Time for testing***

### ***Article 40***

Time for writing the test shall be established by the Commission based on the number of questions, and the number of questions depends on the court in which the candidate is applying for.

The candidate is required to submit the test to the Commission no later than the time set for its writing.

After handing over the test a candidate is required to leave the premises where the test was maintained.

## ***Assessment of the test***

### ***Article 41***

Number of points for each question shall be determined by a majority vote of the members of the Commission.

Based on the total number of points, the Commission evaluates the test by a majority of votes.

Test grades are:

- 1 (one) if the candidate has less than 55% of the possible points;
- 2 (two) if the candidate has 55-65% of the possible points;
- 3 (three) if the candidate has 65-75% of the possible points;
- 4 (four) if the candidate has 75-85% of the possible points;
- 5 (five) if a candidate has 85-100% of the possible points.

## ***Interview with the candidates***

### ***Article 42***

The Judicial Council shall inform the candidates of the date, time and place determined for the interview, at least eight days prior to interview.

During the interview with the candidate for a judge or President of the court, the facts and circumstances of the assessment of sub-criteria "communication skills and personal appearance " shall be examined.

During the interview with the candidate for the President of the court, we shall specifically examine his/her views on the problems in the functioning of the court to which applies, manner of solving these problems and ideas for improving the work of the court.

Each candidate for the President of the court may file a written program of its work.

### ***The number of points upon sub-criteria for a judge who was first time elected.***

### ***Article 43***

Candidate for the election of a judge, who is elected for the first time is rated:

- Average score and length of study ..... 5 - 0 points
- Professional development (completed initial training, seminars and workshops) ..... 5 - 0 points
- Scientific degree (MSc, MA, PhD) ..... 5 - 0 points
- Computer skills and knowledge of foreign languages ..... 5 - 0 points
- Assessment of written test ..... 0 - 50 points
- Working experience ..... 0 - 5 points
- Communication skills and personal appearance ..... 0 - 5 points
- The fact that he/she was not convicted of a criminal offence or penalized for violations which makes him/her unworthy for the judicial office ..... 0 - 4 points
- Reputation and irreproachable behavior ..... 0 - 10 points
- Relationship with colleagues and parties ..... : 0 - 6 points

Points upon average score of studying, if the length of study was four years are:

- From 6 - 7 ..... 1 point
- More than 7 - 8 ..... 2 points
- More than 8 - 9 ..... 3 points
- Over 9 to 9.50 ..... 4 points
- Over 9.50 to 10 ..... 5 points.

Points from paragraph 2. shall be reduced by 0.5 points for every six months of studying over four years.

Points on the written test are:

- 0 to 39 points if the test of the candidate is evaluated as grades 1 and 2;
- 40 points if the test of the candidate is evaluated as grade 3;
- 45 points if the test of the candidate is evaluated as grade 4;
- 50 points if the test of the candidate is evaluated as grade 5

***The number of points per sub-criteria for a judge who is career advancing***

***Article 44***

Candidate for the election of a judge who is career advancing shall be rated as:

- Professional development ..... 0-5 points
- Scientific degree (MSc, MA, PhD) ..... 0-5 points
- Published scientific papers and other professional activities..... 0-5 points
- Computer skills and knowledge of foreign languages ..... 0-5 points
- Working experience ..... 0-25 points
- The results of the work in last three years ..... 0-25 points
- Communication skills and personal appearance ..... 0-10 points
- Violation of Code of Ethics for judges ..... . 0-8 points



- Relationship with colleagues and parties, ..... 0-4 points
- Reputation and irreproachable behavior ..... 0-8 points

***The number of points per sub-criteria for the election of the President***

***Article 45***

Candidate for the election of the President of the court shall be rated as:

- Professional development ..... 0-5 points
- Scientific degree (MSc, MA, PhD) ..... 0-5 points
- Published scientific papers and other professional activities ..... 0-5 points
- Computer skills and knowledge of foreign languages ..... 0-5 points
- Working experience ..... 0-10 points
- The results of the work in last three years ..... 0-20 points
- Communication skills and personal appearance ..... 0-10 points
- Ability to organize the work..... 0-10 points
- Knowledge of the work of court administration..... 0-10 points
- Violation of Code of Ethics for judges ..... 0-4 points
- Relationship with colleagues and parties, ..... 0-4 points
- Reputation and irreproachable behavior ..... 0-4 points
- Reputation which the candidate enjoys in the court in which performs the function..... 0-4 points
- Commitment to preserve the independence of court and judges..... 0-4 points

***Evaluation of candidates***

***Article 46***

After the interview, obtained opinion from the Article 31 of the Law on Judicial Council, each member of the Judicial Council shall fulfill the candidate assessment form (Form 3, 4 and 5).

***The decision on the selection***

***Article 47***

The Judicial Council shall decide on the selection in a closed session. The decision on the selection shall be made in the form established by the Judicial Council.

***Restoring the documents***

### ***Article 48***

The original documents, submitted with the application to the announcement, shall be restored to the candidates who were not elected, after the final decision about election.

### ***Selection of lay judges***

#### ***Article 49***

List of candidates for lay judges contain the following:

- Name of the candidate;
- Personal information for each candidate, including age, occupation and work experience;
- Opinion of the judges on each candidate;

The decision to elect a lay judge shall be in the form established by the Judicial Council and shall state the name of lay judge, the court in which the election was made, the day of the beginning and the end of the term.

## **Disciplinary responsibility of judges**

### ***A complaint against a judge***

#### ***Filing a complaint***

#### ***Article 50***

Every natural and legal person is entitled to file a complaint on the work and conduct of a judge.

The complaint shall be submitted in writing.

The complaint may also be anonymous.

The complaint shall be submitted to the Judicial Council.

### ***Verifying the allegations of the complaint***

#### ***Article 51***

The Judicial Council shall submit the complaint to the President of the court where a judge against whom the complaint was filed is working, in order to verify the allegations of the later.

President of the Court in verifying the allegations of the complaint may:

- Require from any person or organization any documents or other information which considers necessary;
- Examine the person who had filed the complaint, a judge against whom the complaint was filed and any other person who may provide useful information, on which he/she shall make a report;
- Take any other action which considers necessary in order to thoroughly examine the complaint;

A judge will be allowed to be familiar with the allegations against him.  
During the examination a judge may have a defense lawyer.

### ***Decision on complaint***

#### ***Article 52***

President of the Court shall submit to the Disciplinary Commission the entire file with the proposal for disciplinary proceedings, if after the conducted verification finds that there were grounds for disciplinary proceedings.

Of its decision to initiate disciplinary proceedings the President of the court shall inform the complainant and a judge against whom the complaint was filed.

President of the Court shall submit the entire case file to the Judicial Council, if finds that there were no grounds for disciplinary action, with indicating the reasons why there were no grounds for disciplinary action.

Regarding the complaint referred to in paragraph 3 of this Article, the Judicial Council shall take a position and inform thereof the complainant and a judge against whom the complaint was filed.

### ***False complaint***

#### ***Article 53***

If after the examination of the complaint filed, the President of the court assesses that the latter was false, he/she shall submit it to the competent public prosecutor.

## **Initiation of disciplinary proceedings**

### ***Proposal for initiation of disciplinary proceedings***

#### ***Article 54***

The proposal should include:

- Name, function, title and address of a judge against whom the disciplinary proceedings was initiated, and other personal information, as well as telephone number, fax, e-mail address, as well as the same above mentioned informations for his defense counsel, if available;

- A description of the essential facts constituting the disciplinary offense;
- The legal qualification of a disciplinary offense;
- The provisions of the laws and other regulations that should be applied;
- Proposal of evidences to be presented at the hearing;

Written evidences on which the proposal is based must be submitted with the proposal.

If written evidence were not submitted with the proposal, Disciplinary Commission shall invite the complainant to submit evidence in the deadline. The Disciplinary Commission shall reject the proposal if the submitter fails to submit the required evidence.

### ***Register of the disciplinary proceedings***

#### ***Article 55***

The Disciplinary Commission shall keep a register of disciplinary proceedings for initiating the disciplinary action, and shall form the case labeled "DP" on any proposal.

### ***Withdrawal of the proposal***

#### ***Article 56***

The submitter of the proposal may withdraw the proposal before the commencement of the oral hearing.

After the commencement of the oral hearing the proposal may be withdrawn only with the consent of a judge against whom the proposal was submitted.

If the proposal is withdrawn, the Disciplinary Commission shall suspend the proceedings.

On the basis of the same facts a new proposal for disciplinary proceedings can not be submitted.

### ***Submitting the proposal to a judge***

#### ***Article 57***

Proposal for initiating the disciplinary proceedings shall be submitted to a judge against whom it was filed, with the information that he/she may submit a written response and that he/she is entitled to a defense counsel.

A counsel may only be a lawyer.

A written response shall be submitted within eight days of receipt of the proposal.

A judge is obliged to the propose evidence in response which should be carried out, and enclose the documents which proposes as evidences, with the response.

## ***Oral hearings***

### ***Article 58***

After the deadline for giving response has expired, the President of the Disciplinary Commission shall schedule an oral hearing within 15 days after the deadline for responses expired.

Submitter of the proposal and a judge against whom the proposal was filed (hereinafter referred to as Parties in disciplinary proceedings) shall be summoned to oral hearing, as well as a defense counsel (if the judge engaged one), witnesses and experts, whose hearing was proposed in the proposal for initiation of disciplinary proceedings, or in the response to a proposal, if the Commission concluded that these evidences should be carried out.

Invitation to oral hearing must be submitted to a judge at least eight days prior to the date of the hearing.

If a Party notifies the Disciplinary Commission of the reasons for the absence and the Disciplinary Commission finds that the reasons are justified, the hearing will be postponed.

An oral hearing is chaired by the President of the Disciplinary Commission.

Public may be excluded from the hearing only at the request of a judge against whom the disciplinary proceeding was initiated.

## ***Modification and expansion of the proposal***

### ***Article 59***

If the presented evidences points to the change in the factual situation in relation to what was stated in the proposal for disciplinary action, or that the judge against whom the disciplinary procedure was initiated have done some other disciplinary misconduct, the submitter of the proposal shall:

- Orally amend or extend the proposal at the hearing;
- Request that the hearing is postponed, in order to prepare a revised or expanded proposal.

If the proposal is orally amended or expanded in the course of the hearing at the request of a judge against whom the proceeding is conducted, the hearing will be postponed to prepare the response.

In the case referred to in paragraph 1 item 2 of this Article, amended or extended proposal must be submitted to the judge at least three days before the next oral hearing.

### ***The burden of proof***

#### ***Article 60***

The authorized proponent has the burden of proof.

### ***Statement on admission of violation***

#### ***Article 61***

At every stage of the procedure a judge against whom the disciplinary proceeding is conducted, may admit that he/she has committed violation for which he/she was charged. In that case, other evidences will not be presented, a confession may be considered as a mitigating factor in imposing a disciplinary measure.

### ***Minutes of the hearing***

#### ***Article 62***

The parties and defense counsel are entitled to be served with a copy of the minutes.

A copy shall be served immediately after the conclusion of the hearing.

### ***Adoption, publication and written preparation of the decision***

#### ***Article 63***

After the conclusion of the oral hearing the President of the Disciplinary Commission shall notify the parties of the date and time of the public announcement of the decision.

The decision shall be published immediately after the hearing, as a rule.

Publication of the decision may be postponed up to three days.

Commission shall pass the decision by a majority vote.

The minutes shall be prepared on deliberations and voting which, after the signature by the Commission members and the clerk, shall be placed in an envelope.

The decision of the Disciplinary Commission must be made in writing within 15 days from the date of adoption.

A written copy of the decision shall be signed by the President of the Disciplinary Commission.

### ***Content of the decision***

#### ***Article 64***

The decision of the Disciplinary Commission shall include:

- Introduction
- Proverb
- Reasoning and
- A legal remedy.

In the proverb part of the decision which adopts the proposal shall be imposed that the judge is responsible for a disciplinary violation, this violation will be factually and legally described and the legal qualification of the offense specified, and then the disciplinary measure will be imposed.

### ***Objection to the decision of the Disciplinary Commission***

#### ***Article 65***

Objection to the decision of the Commission shall include:

- Designation of the decision against which it was declared;
- In which part the decision was contested;
- The basis and reasons for the objection;
- The signature of the submitter of the proposal;

### ***Reasons for challenging the decision***

#### ***Article 66***

The decision may be challenged:

- For the violation of the rules of procedure that could affect the decision making process;
- Due to incorrect or incomplete determination of the facts;
- Due to incorrect application of the substantive law;
- Because of the decision on the disciplinary measure.

The objection may not present new facts and propose new evidences, unless a party could not have known of these evidences previously, for justified reasons.

The objection shall be submitted to the opposing party who may give response within three days of the receipt.

The Disciplinary Commission shall submit the objection with the documents to the Judicial Council.

### ***Decision on Objection***

#### ***Article 67***

The objection is decided on at the session of the Judicial Council.

Parties and the defense counsel shall be informed about the session of the Judicial Council, if the request for the presence at the session was put in the objection or response to the objection.

If the objection was stated only by a judge, the decision of the Disciplinary Commission can not be amended to his/her detriment.

The decision of the Judicial Council shall be drafted in writing within 15 days from the date of issuance.

Decisions of the Judicial Council shall be served to the parties by the rules of personal delivery.

### ***Expenditures, costs and fees***

#### ***Article 68***

The party shall bear its own costs, including the costs of witnesses and expert witnesses which the party proposed.

If the disciplinary procedure is completed by the decision to suspend the proceedings or reject the proposal, the Disciplinary Commission, at the request of a judge, shall make a decision on reimbursement of eligible costs at the expense of the Judicial Council.

Against the decision under paragraph 2, the objection to the Judicial Council shall be allowed, within eight days of delivering the decision.

### ***Records of disciplinary responsibility and imposed measures***

#### ***Article 69***

Established disciplinary responsibility and measures issued shall be entered in the personal file of a judge, which is conducted by the Secretariat of the Council.

## **Temporary suspension from office**



## ***The principle of urgency***

### ***Article 70***

The procedure for the temporary suspension of a judge from office is an emergency.

### ***Initiating the procedure of temporary suspension from office***

#### ***Article 71***

Procedure for temporary suspension may be initiated:

- At the request of the President of the court in which a judge works, President of the higher court and the President of the Supreme Court (hereinafter authorized proposer)

- By the Judicial Council ex officio.

Request of an authorized proposer for temporary suspension shall be submitted to the Judicial Council in writing.

On the content of the request for suspension, the provisions of the Rules relating to the content of the proposal for disciplinary proceeding shall be applied accordingly.

### ***Decision on request***

#### ***Article 72***

The Judicial Council shall decide on temporary suspension from office for reasons stipulated in Article 69., paragraph 1., point 1. of the Law on Judicial Council, on the basis of the decision on custody.

In the process of temporary suspension for the reasons referred to in Article 69. para. 1. point 2. of the Law on Judicial Council, the judge shall be enabled to plea about the reasons for the suspension.

The judge may submit his/her declaration within 48 hours from the moment when the Judicial Council delivered the decision on initiation of the investigation.

## ***Judicial Protection***

### ***Article 73***

Decision of the Judicial Council on temporary suspension from office of a judge is final.

Against the decision referred to in paragraph 1. of this Article an Administrative dispute may be initiated.

The action to initiate an Administrative dispute shall not delay the execution of the decision on temporary suspension from office of a judge.

### ***Duration of temporary suspension***

#### ***Article 74***

The Judicial Council shall be obliged ex officio or at the request of the judge to pass the decision which abolishes the suspension, as soon as the reasons for the suspension ceased to exist.

### ***Record***

#### ***Article 75***

Secretariat of the Judicial Council shall, no later than 60 days from the date of entry into force of these Rules, form a Personal list for each judge.

In addition to data referred to in Article 72. of the Law on Judicial Council, Personal list shall include the data on:

- Family circumstances,
- Housing situation,
- Other professional activities (participation in working groups for drafting laws, lectures at the Center for Education of Judicial function holders and others.).

Personal list is a standard form (Form number 6).

## **Final Provisions**

### ***Adoption of the Rules and the adoption of the amendments***

#### ***Article 76***

The Judicial Council passes the decision on adoption of the Rules.

A written proposal for the amendment of the Rules may be submitted by any member of the Judicial Council and the Secretariat of the Judicial Council.

A proposal is submitted to the President of the Judicial Council.

President of the Judicial Council shall submit the proposal to the members of the Judicial Council at least ten days prior to maintenance of the session.

***Entry into force***

***Article 77***

These Rules shall enter into force on the day of its publication in the "Official Gazette of Montenegro".

***Termination of the previous Rules***

***Article 78***

On the date of entering to force of these Rules, Rules of the Judicial Council ("Off. Gazette of Montenegro", no. 35/08 and 28/08) shall be terminated.

Su.R.no.1010/11  
Podgorica,18.XI.2011.

**JUDICIAL COUNCIL**  
**President,**  
**Vesna Medenica, mp**

**FORM OF THE INITIAL PROPOSAL FOR THE ELECTION OF THE  
MEMBER OF JUDICIAL COUNCIL FROM AMONG THE JUDGES**

(Article 11, para. 6 of the Law on Judicial Council "Off. Gazette of Montenegro", no.13/2008 and 39/2011)

For the member of the Judicial Council from among the judges of the Basic courts, I suggest:

1 \_\_\_\_\_, Judge of the Basic Court in \_\_\_\_\_,

(name and surname)

2 \_\_\_\_\_, Judge of the Basic Court in \_\_\_\_\_,

(name and surname)

**APPLICATION FOR PUBLIC ANNOUNCEMENT FOR THE  
ELECTION OF A JUDGE**

(Form no. 1 - Article 31, paragraph 1 of the Rules of the Judicial Council)

\_\_\_\_\_ am applying to a public announcement

(Name and surname)

No. \_\_\_\_\_ of \_\_\_\_\_ for the election of a  
judge\_\_\_\_\_.

(name of court)

Faculty of Law in \_\_\_\_\_ I have sign \_\_\_\_\_ year  
graduated in \_\_\_\_\_ year, with the score of \_\_\_\_\_.

Working experience: \_\_\_\_\_

(indicate where you have worked so far and in what period of time)

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Are you a member of any political organization:

---

Do you hold any political or other public office and what:

---

---

Are you professionally performing another activity and which:

---

---

Have you ever been imposed by a disciplinary measure, and if so, which and when (state the number of decision)

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---

Have you ever been penalized of a misdemeanor or convicted, and if so, for which misdemeanor or offense, (state the decision)

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I enclose with the application the following documents:

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In \_\_\_\_\_  
Date and year

Signature of applicant

\_\_\_\_\_  
Address  
\_\_\_\_\_

\_\_\_\_\_  
**WARNING**

Application of the candidate which contains false or untrue data shall not be considered.

**FORM FOR GIVING THE OPINION ON THE PROFESSIONAL AND WORKING QUALITIES OF THE CANDIDATE FOR A JUDGE OR THE PRESIDENT OF THE COURT**

(Form No. 2 - Article 34 of the Rules of Judicial Council)

Full name of the candidate \_\_\_\_\_

The judicial function (i.e. the post of the President of the court) to which the candidate applied \_\_\_\_\_

CRITERIA	DATA	REASONED OPINION
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1. WORKING EXPERIENCE		
2. TYPE OF WORK		
3. RESULTS OF THE WORK		
4. ATTITUDE TO WORK AND COLLEAGUES		
5. COMMUNICATION SKILLS		
6. WORKING RESULTS IN LAST THREE YEARS (on art. 32 of the Law on Judicial Council)		
7. ABILITY TO ORGANIZE THE WORK		
8. KNOWLEDGE OF COURTS ADMINISTRATION		
9. REPUTATION THE CANDIDATE ENJOYS IN THE COURT IN WHICH PERFORMS THE FUNCTION		
10. MAKING EFFORTS FOR PRESERVING THE INDEPENDENCE OF THE COURT AND A JUDGE		

PRESIDENT OF THE COURT  
I.E. OTHER AUTHORIZED PERSON

\_\_\_\_\_

p.s.

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Note:

The criteria numbered 1, 2, 3, 4 and 5 are completed for all candidates, for advancing career judge also the criteria under number 6, and for the President of the court the criteria numbered 7, 8, 9 and 10.

**FORM FOR THE ASSESSMENT OF THE CANDIDATE WHO IS  
FOR THE FIRST TIME ELECTED AS A JUDGE**

(Form number 3 - Article 46 of the Rules of the Judicial Council)

Full name of the candidate \_\_\_\_\_

Judicial position on which the candidate applied \_\_\_\_\_

Name and surname of the member of Judicial Council \_\_\_\_\_

<b>CRITERIA</b>	<b>NUMBER OF POINTS</b>
1. ACQUIRED KNOWLEDGE:  a) average score and length of study ..... 0 - 5 points	



<p>b) professional development ..... 0 - 5 points</p> <p>c) the scientific position ..... 0 - 5 points</p> <p>d) good computer skills and knowledge of foreign languages ..... 0 - 5 points</p>	
<p><b>2. ABILITY TO CARRY OUT THE FUNCTION:</b></p> <p>a) written evaluation ..... 0 - 50 points</p> <p>b) working experience ..... 0 - 5 points</p> <p>c) communication skills and personal performance ..... 0 - 5 points</p>	
<p><b>3 WORTHINESS TO PERFORM JUDICIAL FUNCTION:</b></p> <p>a) the fact that he/she was not convicted of a crime or penalized for violations which makes unworthy the exercise of the judicial function.....0 - 4 points</p> <p>b) the reputation and irreproachable behaviour ..... 0 - 10 points</p> <p>c) relationship with colleagues and parties..... : 0 - 6 points</p>	
<p><b>TOTAL</b></p>	

Signature of the member of Judicial Council

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# FORM FOR THE ASSESSMENT OF THE CAREER ADVANCING JUDGE

(Form number 4 - Article 46 of the Rules of the Judicial Council)

Full name of the candidate \_\_\_\_\_

Judicial position on which the candidate applied \_\_\_\_\_

Name and surname of the member of Judicial Council \_\_\_\_\_

CRITERIA	NUMBER OF POINTS
<p>1 ACQUIRED KNOWLEDGE:</p> <p>a) professional development (continuing and other forms of training) ..... 0-5 points</p> <p>b) Scientific degree (MSc, MA, PhD) ..... 0-5 points</p> <p>c) published scientific papers and other professional activities ..... 0-5 points</p> <p>d) good computer skills and knowledge of foreign languages ..... 0-5 points</p>	
<p>2. ABILITY TO PERFORM JUDICIAL FUNCTION</p> <p>a) working experience ..... 0 - 5 points</p> <p>b) working results in last three years ..... 0-25 points</p> <p>c) communication skills and personal performance ..... 0 - 10 points</p>	
<p>3 WORTHINESS TO PERFORM JUDICIAL FUNCTION:</p> <p>a) violation of Code of Ethics of judges .....0-8 points</p> <p>b) relationship with colleagues and parties..... : 0 - 4 points</p> <p>c) the reputation and irreproachable behaviour ..... 0 - 8 points</p>	
<p><b>T O T A L:</b></p>	

Signature of the member of Judicial Council

\_\_\_\_\_

## FORM FOR THE ASSESSMENT OF THE CANDIDATE FOR THE PRESIDENT OF THE COURT

(Form number 5 - Article 46 of the Rules of the Judicial Council)

Full name of the candidate \_\_\_\_\_

Court where the candidate applied for a position of the President \_\_\_\_\_

Name and surname of the member of Judicial Council \_\_\_\_\_

CRITERIA	NUMBER OF POINTS
<p><b>1 ACQUIRED KNOWLEDGE:</b></p> <p>a) professional development (continuing and other forms of training) ..... 0-5 points</p> <p>b) Scientific degree (MSc, MA, PhD) ..... 0-5 points</p> <p>c) published scientific papers and other professional activities ..... 0-5 points</p> <p>d) good computer skills and knowledge of foreign languages ..... 0-5 points</p>	
<p><b>2. ABILITY TO PERFORM JUDICIAL FUNCTION</b></p> <p>a) working experience ..... 0 - 10 points</p> <p>b) working results in last three years ..... 0-20 points</p> <p>c) communication skills and personal performance ..... 0 - 10 points</p> <p>d) ability to organize the work .....0-10 points</p> <p>e) knowledge of courts administration .....0-10 points</p>	
<p><b>3 WORTHINESS TO PERFORM JUDICIAL FUNCTION:</b></p> <p>a) violation of Code of Ethics of judges .....0-4 points</p> <p>b) relationship with colleagues and parties..... : 0 - 4 points</p>	

<p>c) the reputation and irreproachable behaviour ..... 0 - 4 points</p> <p>d) reputation the candidate enjoys in the court where performs the judicial function .....0-4 points</p> <p>e) making efforts for preserving the independence of court and judges .....0-4 points</p>	
<p><b>T O T A L:</b></p>	

Signature of the member of Judicial Council

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**JUDICIAL COUNCIL**

**Su.PI.**\_\_\_\_\_

**Podgorica**\_\_\_\_\_

**PERSONAL LIST**

(Form number 6 - Article 73 of the Rules of Judicial Council)

\_\_\_\_\_;  
Name and surname

\_\_\_\_\_;  
Nationality

\_\_\_\_\_;  
Mother tongue

\_\_\_\_\_;  
Address

\_\_\_\_\_;  
ID number

\_\_\_\_\_;  
Family circumstances

\_\_\_\_\_;  
The housing issue

\_\_\_\_\_;  
First time elected as a Judge

\_\_\_\_\_;  
Advancement

\_\_\_\_\_;  
Work experience

\_\_\_\_\_;  
Scientific degree (MSc, MA, PhD)

\_\_\_\_\_;  
Professional development

\_\_\_\_\_;  
Knowledge of foreign languages

\_\_\_\_\_;  
Published scientific papers

\_\_\_\_\_;

Other professional activities (participation in working groups for drafting laws, lectures at the Center for Education of Judicial function holders, etc.).

\_\_\_\_\_;  
Disciplinary responsibility and which sanction was imposed

\_\_\_\_\_;  
Termination of the function (date and grounds)

\_\_\_\_\_  
Dismissal (date and grounds)

\_\_\_\_\_  
Permission for access to classified information

\_\_\_\_\_  
Other information on the motion of a judge

\_\_\_\_\_  
Authorized employee of the Secretariat of the Judicial