

**ADVISORY MEMORANDUM
TO
THE SUPERIOR COUNCIL OF THE MAGISTRACY
REGARDING HOW TO HANDLE ETHICAL VIOLATIONS**

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**ADVISORY MEMORANDUM TO THE
SUPERIOR COUNCIL OF THE MAGISTRACY
REGARDING HOW TO HANDLE ETHICAL VIOLATIONS
REVISED VERSION**

QUESTION: How should the Superior Council of Magistracy (SCM) handle ethical violations on the part of Romanian judges and prosecutors in light of its recent decision to follow Opinion No. 3 (Opinion) of the Consultative Council of European Judges (CCJE).

SECTION ONE: ANALYSIS OF THE CCEJ OPINION

We begin with an analysis of Opinion to determine as precisely as possible how and to what it commits the SCM.

PART I: THE OPINION ADDRESSES THREE BROAD STANDARDS OF LIABILITY AGAINST WHICH JUDICIAL CONDUCT AND ACTIVITY MAY BE EVALUATED AND, WHERE APPROPRIATE, SANCTIONED.

- A. CRIMINAL LIABILITY:** The Opinion holds that when judges and prosecutors commit criminal acts, they cannot claim immunity from criminal prosecution and punishment. However, when they are acting in their official capacity, they should not be held criminally liable either in the form of financial penalties or imprisonment if, for example, a defendant is incarcerated for too long. Judges also deserve to be protected from litigants who instigate unwarranted and frivolous criminal charges against them. Where there is an obvious failure to show cause of criminal activity, some type of mechanism should be developed that either prevents such actions from being undertaken or dismisses them.

- B. CIVIL LIABILITY:** The Opinion holds that when judges are acting in their official capacity and in good faith, they should not be held civilly liable for omissions or commissions with regard to official acts that result in harm to parties. For example, if excessive delay in processing is attributable to a judge's inadvertent

mismanagement of the case and results in a financial loss for one of the parties, the judge should not be held civilly liable. If there is a basis for a claim, it should be raised against the state, not the individual judge, even if the judge was guilty of gross and inexcusable negligence. According to the CCJE, it is not appropriate for a judge to be exposed, in the exercise of judicial functions, to any personal liability, even by way of reimbursement of the state, except in cases of willful default.¹

C. **DISCIPLINARY LIABILITY:** The Opinion raises four questions and responds to them in succession:

- a. **WHAT CONDUCT JUSTIFIES DISCIPLINARY LIABILITY?** Two points are raised: *First*, breaches of professional conduct standards should not be correlated with misconduct that may justify disciplinary sanctions. Professional standards are aspirational and reflect best practices. They differ from the baseline or fundamental criteria of judicial behavior and activity; the failure to comply with such criteria equates to misconduct that justifies disciplinary proceedings. *Second*, notwithstanding the first point, the Opinion notes that “It is for each State to specify by law what conduct may give rise to disciplinary action.” The Opinion notes that approaches to disciplinary liability differ, sometimes significantly, from one country to another. However a State approaches defining disciplinary liability, the Opinion continues, it should recognize that it is not possible nor should States attempt to specify in with precision – at least at the European level – all of the prospective reasons for which disciplinary action would be justified.
- b. **BY WHOM AND HOW SHOULD SUCH PROCEEDINGS BE INITIATED?** Again, different countries have adopted diverging approaches. (The Opinion addresses only

¹ Romania already conforms to this practice. Article 52(3) of the Romanian Constitution protects judges and prosecutors from civil liability for actions undertaken in their professional capacity that inadvertently resulted in harm to litigants who subsequently seek relief. Efforts to obtain relief must be filed against the State. However, where it is shown that the prosecutorial or judicial action that resulted in harm was accompanied by ill will or grave negligence, the State may pursue civil liability against the judge or prosecutor to recover its loss.

externally initiated allegations from persons who claim to have been harmed as a result of judicial error; it offers no guidance on disciplinary proceedings commenced *sua sponte* by an internal disciplinary mechanism on the basis, for example, of evidence of misconduct proffered by judicial colleagues.) The opinion states that external allegations must be filtered through and reviewed by an officially designated body or person to make a sufficient cause determination before they are passed to a disciplinary authority. Presumably, this body or person would have the authority to dismiss those that do not meet that standard.

- c. BY WHOM AND HOW SHOULD SUCH DISCIPLINARY PROCEEDINGS BE DETERMINED? The Opinion specifies that disciplinary proceedings should be determined by an independent authority or tribunal and on the basis of due process operating procedures which guarantee full rights of those charged to mount a defense. The members of this authority or tribunal should be (i) appointed by an independent body with “substantial judicial representation” democratically selected by judges, and (ii) responsible for appointing judges.
- d. WHAT SANCTIONS SHOULD BE AVAILABLE FOR MISCONDUCT ESTABLISHED IN DISCIPLINARY PROCEEDINGS? Again, different countries have adopted diverging approaches. The Opinion offers no guidance as to specific sanctions for specific categories of misconduct. It endorses the need for each state to (i) identify what sanctions are acceptable within the framework of its disciplinary liability, and (ii) ensure that the sanctions are proportionate to the gravity of the misconduct.

PART II: THE OPINION ENDS BY LISTING ITS CONCLUSIONS IN EACH OF THE THREE LIABILITY STANDARDS. BRIEFLY SUMMARIZED, THEY ARE AS FOLLOWS:

- A. **CRIMINAL LIABILITY:** Judges should be criminally liable under penal law for offenses committed in their non-judicial capacity. They should not be criminally liable for unintentional failure in exercising their official functions.

- B. **CIVIL LIABILITY:** The remedy for judicial error in the areas of jurisdiction, substance, or procedure should lie in the appellate system. The remedy for failure in the administration of justice, such as failure to process cases in a timely manner, should lie only with the state. A judge acting in his or her official capacity should not be subject to any personal liability except where there is a showing of willful default.

- C. **DISCIPLINARY LIABILITY:** Each State's basic judicial statute should specifically define what misconduct may trigger disciplinary sanctions and what procedures must be followed. Complaints should be received by an officially designated group or person who is authorized to review them, to provide the named judge with opportunity to respond, and to determine whether there is sufficient cause to initiate disciplinary proceedings. Where a sufficient cause determination is made, proceedings should be conducted by an independent authority or tribunal that guarantees due process and provides the named judge opportunity to mount a full defense. Where this authority is other than a court, the members should be appointed by an independent authority with substantial judicial members democratically elected. Under either authority framework, the statute should provide for the right of an appeal to a court. The sanctions set forth in the applicable statute and available to the disciplinary authority should be specifically defined and applied in a manner that is proportionate to the misconduct.

SECTION TWO: ANALYSIS OF WHAT COMPRISES AN ETHICAL VIOLATION AND HOW SUCH VIOLATIONS SHOULD BE HANDLED

We begin by summarizing, for purposes of background, efforts on the part of the SCM to develop a code of ethics to cover magistrates - or judges and prosecutors. The initial effort culminated in the April 2004 Code of Ethics for Magistrates which included 26 separate articles

organized into seven chapters covering roughly five and one-half pages. We refer to that as the 2004 Code. A second effort, completed in early 2005 and titled The Code of Ethics for Judges and Prosecutors, includes 23 separate articles organized into the same general chapter headings. We refer to that as the 2005 Code. The difference in most of the chapter headings in the 2005 Code is that *judge and prosecutor* are substituted for *magistrate*. In addition, the 2005 Code, by comparison, is roughly three and one-half pages in length, a substantial reduction in the text of the 2004 Code. Another more significant difference is that a number of the provisions that were included in the 2004 Code were dropped from the 2005 Code.

When SCM committed itself to follow the Opinion, it did not issue a formal and public communication. For purposes of this analysis, we assume that the commitment was a general one. In light of that general commitment to follow the opinion, this analysis focuses and seeks to provide guidance to the SCM on three matters. First is the *specific* question: How should the SCM handle ethical violations on the part of Romanian judges and prosecutors in light of its decision to follow the Opinion? Second is a more *general* question: To what extent are the ethical provisions in either code replicated in existing laws and/or regulations governing the judicial system, and if they are, to what extent is disciplinary liability an outcome of failing to comply with them? Third are several recommendations that the SCM might consider in developing a coherent protocol to deal with ethical violations, including those that merit disciplinary sanctions.²

² It should be noted that Romania is among a minority of European countries that have adopted a definitive list of disciplinary offenses relating to judicial and prosecutorial conduct. A 2006 Report on Judicial Conduct/Deontologie issued by the European Network of the Councils for the Judiciary lists 16 countries that responded to a questionnaire on disciplinary practices. The 16 include Romania, Finland, Hungary, Belgium, France, Ireland, Cyprus, Germany, Denmark, Latvia, Spain, Sweden, Poland, Netherlands, England/Wales, and Italy. Of the 16, only four -- Romania, Latvia, Spain, and Netherlands - report having adopted a specific list of disciplinary offenses. Germany, by contrast, has a single general provision, "violation of service," that is applied to determine whether a violation subject to disciplinary review and possible sanctions has occurred. Such a general provision clearly is subject to broad interpretation that may or may not be favorable to judicial officials. Others such as France and Belgium have somewhat more definitive general provisions. In France, for example, Article 404 of the Judicial Code specifies that "...any failure on the part of a judge that involves the exercising of their duties, as well as honor and dignity, may constitute a disciplinary offense." From a variety of

A. **SPECIFIC QUESTION:** This question was raised by the SCM on the assumption that by committing itself to follow the Opinion, it thereby was precluded from imposing disciplinary sanctions for violations of the provisions of the 2005 Code of Ethics for Judges and Prosecutors (2005 Code). We assert that the assumption is mistaken. The Opinion does not require any member or prospective member state to commit to such a posture. As noted above in *Subsection a, What Conduct Justifies Disciplinary Liability*, of *Section C, Disciplinary Liability*, although the Opinion does urge that a difference be drawn between breaches of professional conduct standards and misconduct that may justify disciplinary sanctions, it also notes that approaches to this issue vary among States. Instead of a mandate, the Opinion leaves to each "...State to specify by law what conduct may give rise to disciplinary action." Our reading of the Opinion is that the SCM in fact may impose disciplinary sanctions for violations of the ethical conduct standards in its Ethics Code if it concludes that doing so is appropriate and necessary. Indeed, Romania is not the only country that links violations of deontological norms to performance assessments of its judges and prosecutors with possible sanctions. The results of the 2006 survey on judicial conduct/deontology conducted by the European Network of the Councils for the Judiciary indicate that Belgium, Latvia, Germany, France, Netherlands all link deontological violations to professional assessments and that negative consequences may follow.

The SCM appears to initially have adopted that position when the first draft of an ethics code was prepared. Sections 1 and 2 of Article 2 of the 2004 Code set forth a reasonable standard that provides for enforcement flexibility:

§ 1: Observance of conduct standards as specified by the Code of Ethics shall be assessed by competent bodies under the law.

perspectives, including fairness to those such as judges and prosecutors against whom disciplinary proceedings may be instituted, having a specific set of disciplinary guidelines or ethical standards is preferable to a single and very general provision subject to broad interpretation.

§ 2: Violation of conduct rules may result in enforcement, under the law, of disciplinary sanctions."

Pursuant to its subsequent decision to follow the Opinion, in the 2005 Code the SCM dropped that text of Section 2 and substantially modified the text of Section 1 of Article 2.

§ 1: Observance of conduct standards as specified by the Code of Ethics shall be a criterion to evaluate efficiency and quality of the activity of judges and prosecutors, as well as their integrity.

§ 2: The evaluation shall be conducted by authorized bodies, under the law.

By making this change, the SCM intended that its ethics code more closely reflect the suggestion made in the Opinion that failure to observe or comply with professional conduct standards should not result in enforcement that may justify disciplinary sanctions. In effect, the changes reflected in the 2005 Code were intended to reduce the likelihood that failure to comply with its provisions would lead to the imposition of disciplinary liability. Instead of being subject to possible enforcement of disciplinary sanctions for non-observance of the ethical standards, judges and prosecutors under the 2005 Code would have code compliance included in the criteria that are used to evaluate the "...efficiency and quality of the activity of judges and prosecutors, as well as their integrity." Moreover, "The evaluation shall be conducted by authorized bodies, under the law." In essence, it appears that code compliance is to be added to the criteria already in effect under the law to evaluate judicial and prosecutorial performance. Where existing law does address judicial and prosecutorial performance evaluation is in Articles 39-41³ of Chapter IV of the Law on the Statute of Magistrates (LSM).

It appears that the SCM's intent in Section 1 of Article 2 is to include code compliance as a criterion for the evaluation process as set forth in Chapter IV of the LSM. The existing criteria for that process include evaluating judges and prosecutors "...on their effectiveness, on the quality of their activity and on their

³ Article numbers in the text refer to the Romanian version of the laws as published on 13/09/2005 in the Official Journal of Romania.

integrity..." If that is its intent, the SCM has not successfully removed the element of disciplinary liability for non-compliance. Indeed, by doing so it may have increased non-compliance liability. Pursuant to Article 41, any judge or prosecutor who receives an *unsatisfactory* evaluation rating is automatically required to complete special courses over a period of three to six months⁴ at the National Institute for Magistrates (NIM) and pass an examination. A judge or prosecutor who receives a *satisfactory* rating for two successive evaluations also must undergo over a three to six months period special NIM courses and pass the examination. A judge or prosecutor who receives two successive *unsatisfactory* ratings or who fails to pass the examination following the special NIM courses shall be released from office for professional incapacity. These are very rigorous performance-based standards with serious consequences for those who fail to achieve the minimum levels. To the extent that the evaluation system is properly administered, and to the extent that its standards are properly enforced, it entails considerable disciplinary liability with significant consequences. If, on the other hand, the evaluation process is not properly administered and its standards not properly enforced, effectively creating a situation where all judges and prosecutors routinely are evaluated either at the *very good* or *good* levels, then the SCM will have achieved its intent *de facto* of eliminating a functional link between code compliance and disciplinary liability.

If the SCM's intent is to factor code-compliance into the existing evaluation requirement for judges and prosecutors, doing so should be a relatively uncomplicated matter. The procedures that provide guidance to the evaluation boards on how to conduct the evaluations will need to be modified to reflect (i) the additional criterion, and (ii) weight they should attach various levels of code compliance and non-compliance. To the extent that such evaluation procedures have not yet been prepared, the SCM might want to consider those that are set forth in the third section, below, of this analysis.

It may be that the language of Article 2 in the 2005 Code is not to link the code compliance evaluation with the performance

⁴ These courses typically involve a few hours per week/month.

evaluation process set forth in Chapter VI of the LSM but to create a separate evaluation requirement and process. If that is the case, then the SCM needs to (i) articulate what this additional requirement is; (ii) describe the evaluation process; (iii) determine where in existing law it should be added, and (iv) draft appropriate amendments.

- B. GENERAL QUESTION:** Quite apart from the evaluation process, we need to examine the individual articles and sections of the ethics code to determine whether (i) any of the conduct and attitudes they either prescribe or proscribe are contained elsewhere in laws and/or regulations that deal with judges and prosecutors, and (ii) to what extent those laws and regulations attach specific disciplinary liability to the failure to comply with them. To the extent that there is such replication, the SCM's intent to comply with the Opinion may require either:
- a. The deletion from the 2005 Code of any provisions that (i) replicate those of existing laws and regulations, and (ii) have disciplinary liability attached to them; or
 - b. The deletion of (i) any provisions from existing laws and regulations that replicate those of the 2005 Code, or (ii) the disciplinary liability attached to any of those provisions.

We have analyzed the Law on Judicial Organization (LJO), the LSM, the 2004 Code, and the 2005 Code. We have prepared two separate comparative tables, one for the 2004 Code (Attachment A) and one for the 2005 Code (Attachment B). Each table lists individually the provisions of the code and any related provisions in the LSM.⁵ Each table also lists any disciplinary sanctions set forth in the LMS for failure to comply with those provisions. Some of the relationships reflect their converse. For example, where an ethics code prescribes a particular kind of ethical conduct or behavior, the LJO or LSM proscribes and attaches disciplinary liability to the failure to behave or conduct oneself accordingly, to the opposite conduct or behavior. The tables are attached to this analysis.

⁵ The tables also each contain two references to the Law on Judicial Organization.

Although some may disagree with some of the proposed relationships, most are fairly obvious assuming the translations are relatively precise. The tables illustrate that the level of replication is very high; almost all of the provisions in the LSM and, to a much lesser degree in the LJO, are recapped in the 2004 Code and 2005 Code. Moreover, a large majority of them can be linked to disciplinary liability provisions and the sanctions set forth in Article 98 of the LSM.

To the extent that the comparisons set forth in these tables are relatively accurate, the answer to the question posed at the beginning of this analysis is that the SCM *already* has a mechanism set forth under law for handling ethical violations. Indeed, it has two mechanisms. The first is the performance evaluation process set forth in Articles 39-41 of the LSM which provides for scaled sanctions and, as set forth in Article 2 of the 2005 Code, must include compliance with that code as an evaluative criterion. The second mechanism which covers many of the provisions of the 2005 Code comprises the disciplinary offenses set forth in Article 99 and the scaled sanctions set forth in Article 100 of the LSM. We recommend that those mechanisms be retained for the time being and that they be elaborated with descriptions of the procedures and the criteria. Proposed procedures for handling violations are set forth below for review by the SCM.

To the extent that the SCM is interested in articulating specific process guidelines, standards, and criteria, it may want to exercise caution. It is unclear what specific procedural guidelines, if any, exist beyond what is in the LSM, to instruct and lead the evaluation boards. Reference is made in Section 5 of Article 39 to criteria for evaluating the professional activity of judges and prosecutors; it notes that such criteria are "...provided in the annex that is part of this law..." To date, those criteria have not been articulated. Section 6 of Article 39 indicates that the "...regulation on the procedure for evaluating the professional activity of judges and prosecutors shall be approved by decision..." of the SCM. Given the SCM's numerous substantive responsibilities, it has not yet completed defining this procedure. During the interim, the evaluation boards have been using an outdated form to record their findings.

- C. **RECOMMENDATIONS:** As noted above, although there is a general framework for dealing with ethical violations, there are no specific procedures. The Law on the Superior Council of the Magistracy (LSCM) is only partially helpful in this regard by outlining some of the elements of the evaluation process. Section 3 of Article 30 of the LSCM provides that the SCM "...shall ensure the observance of the law and of the criteria of competence and professional ethics in the course of the professional career of judges and prosecutors. Section 1f of Article 36 directs the SCM to appoint the boards for the evaluation of the professional activity of judges and prosecutors, according to the law. Section 1 of Article 38 directs the SCM to adopt the "...Deontological Code for judges and prosecutors, ... the Interior Regulations for law courts, as well as other regulations and decisions provided in Law No. 303/2004 on the statute of judges and prosecutors and in Law No. 304/3004 on the organization of the Judiciary" (emphasis added). In light of the lack of a detailed process, we propose the following framework for how a system might approach ethical issues. These recommendations go beyond simply prescribing how to handle ethical violations.
- a. **PROPOSED EVALUATION PROTOCOL:** We begin by assuming that Article 2 of the 2005 Code anticipates that observance of the code's provisions will be made a criterion in the existing protocol that requires the SCM to evaluate the efficiency, quality, and integrity of the activity of judges and prosecutors on a regular schedule. Judges and prosecutors would be evaluated pursuant to Article 39 of the LSM on the basis of various performance criteria yet to be fully articulated⁶ and on their compliance with the ethics code provisions. The evaluation will be conducted after their second year on the job and, subsequently, every three years throughout their tenure. The SCM might want to consider authorizing special evaluations at the recommendation of the governing board of a court or prosecutorial office where there is clear evidence of a serious ethical violation that

⁶ Section 5 of LSM Article 39 provides that the "...criteria for evaluating the professional activity of judges and prosecutors are provided in the annex that is part of this law." Such annex has not yet been drafted.

should not wait until the next scheduled evaluation to be addressed. Since no formal regulation on procedure for conducting the evaluations has been developed by the SCM, we propose the following:

- b. **ETHICAL VIOLATION COMPLAINT PROCESS:** It is not clear whether the SCM has instituted a national procedure that provides for an orderly and standard process whereby allegations of ethical violations against judges and prosecutors are to be formally submitted in writing. Such a process has been or is in the process of being instituted with useful results in a number of judicial systems,⁷ and we recommend it be implemented in Romania. Preparation for implementation of such a process entails the following steps:
 1. **RULES:** The first step is to prepare a set of rules that govern the preparation and submission of complaints against judges and prosecutors. The rules should provide guidance about submitting a complaint, including such topics as:
 - a. **When the complaint process may be used;**
 - i. **Who may be the subject of a complaint;**
 - ii. **What may be the subject of a complaint;**
 - iii. **Time frames for filing complaints;**
 - iv. **Purposes the process may not be used for;⁸**
and

⁷ For example, the Hashemite Kingdom of Jordan is now reworking its judicial complaint procedure to require that all complaints be submitted to one source rather than to the several that historically have received them. England has an independent Judicial Complaints Office and has established a website that guides those who wish to file a complaint in the process of how to do so. See address below. The Serbian Government adopted in March 2006 a judicial reform strategy that includes reworking how complaints against judges are solicited and processed. <http://www.judicialcomplaints.gov.uk/complaints/complaints.htm>

⁸ For example, the complaint process might provide that it may not be used as a means for (i) compelling a review of a judge's decision or ruling in a case; the complainant must follow the formal appeals procedure; (ii) forcing a judge to rule on a particular matter that has been under review for an extended time; (iii) requesting that a judge be disqualified from sitting on a particular case or that the case be reassigned to another judge; (iv) harassing and/or threatening a judge or prosecutor

- v. What constitutes abuse of the process.⁹
- b. How to file a complaint
 - i. What form to use;
 - ii. Preparing a statement of the facts;
 - iii. Signature and oath, and a description of what they entail, including possible liability for false statements or charges that are identified as a result of the investigation; and
 - iv. Where to submit the complaint.

The rules also should specify the process by which complaints will be reviewed, by whom they will be reviewed, what the possible outcomes are such as dismissal, corrective action, appointment of a special review committee where appropriate to further investigate the matter, and notification of the action taken by the reviewing body. The rules should describe the rights of those against whom complaints are made. The rules should provide for an appeals process if the person making the complaint is dissatisfied with the action the designated body has taken. The rules also should specify when the appeal

for a ruling with which the complainant did not agree, or (v) addressing the conduct of or treatment by a non-judicial staff member. The rules need to be carefully drafted to ensure that individuals with legitimate complaints are not intimidated from engaging the process.

⁹ There will be complainants who submit grievances or complaints that are vexatious, repetitive, frivolous, harassing, without merit, or any combination of these characteristics that, in the judgment of reviewing board, constitute an abuse of the complaint procedure. The public guidelines governing the complaint process should advise prospective complainants about such abuses and provide appropriate cautions. Where a complainant persists in filing such meritless complaints, the review board should reserve the right to issue an order to show cause in writing as to why his or her right to file additional complaints should not be restricted or suspended. If the complainant does not respond, or if the reviewing board determines that the response is inadequate, it may impose restrictive conditions on the complainant's use of the complaint procedure. The complaint procedure should provide the option for such a complainant of requesting that the SCM review or withdraw any restrictions imposed by the review board.

process concludes. Finally, the rules should address confidentiality.

2. **COMPLAINT FORM:** Once the rules have been drafted and reviewed, the complaint forms designed, and an understandable explanation of the complaint procedure prepared, they should be released for a limited period of public review and comment. Following the comment period and after any final modifications, they should be approved by the SCM and made available in a packet form throughout the judicial system. The packet should be posted on the SCM and all other court and prosecutorial system websites from where they can be downloaded with the option of completing the form on screen. For those courts and prosecutorial offices that do not have websites, the packet should be available in paper format. All courts and presumably prosecution offices, particularly those in smaller and more remote locations, should be open at least once a week and provide citizens opportunity to register complaints in person via the paper packets. Also included in these packets, paper and electronic, should be the ethics code.

The design of the form should require those who claim to have been harmed as a consequence of judicial misconduct to certify by executing their signature at the end of the form to the truthfulness of their statements. Doing so is not legally binding under Romanian law, and there may be some who do not hesitate to sign even if the allegations are false or grossly exaggerated. For most, however, awareness of the certification requirement is likely to diminish the likelihood that they will submit frivolous and irresponsible complaints. It is likely to give pause to those who prepare and submit complaints to be more circumspect and to exercise due care in formulating

the charges they level against judicial and prosecutorial officers.¹⁰

- c. **RECORDS OF JUDICIAL MISCONDUCT COMPLAINTS:** Article 34 of the LSCM requires the SCM to compile and keep the professional records of judges and prosecutors. Once a formal complaint process has been instituted, this record-keeping function should include maintaining a confidential database of all judicial misconduct complaints about ethics violations submitted to and processed by the SCM, including the disposition of the complaint. This database would be accessible only to those specifically authorized to conduct the ethics-related evaluations of judges and prosecutors – presumably the judicial and prosecutorial inspectors. The procedures that eventually are drafted to govern the evaluation process should provide that use of the confidential information in this database is limited to those who evaluate judges and prosecutors only for purposes of confidential constructive review and advisory discussions. If the database, once designed and operational, is diligently maintained with appropriate quality control standards, it has the potential to become over time a functional means for informing the evaluation process. Whenever a judge or prosecutor is up for the evaluative review, the evaluating official will be able to check the database and produce a summary report of any and all complaints submitted against the subject of the interview. This report will serve as the basis for reviewing the subject’s compliance with the ethical standards set forth in the code. If, in the three-year period between the evaluations there are no complaints registered in the database, the ethics segment of the evaluation review should be relatively short unless the local governing board has evidence of non-compliance from other sources such as other judges or court employees. The database should be useful to the SCM in identifying judges and prosecutors who need remedial assistance if they are drawing repeated

¹⁰ If members of the SCM are squeamish about including a certification requirement, it need not be included. At a minimum, however, the form should include a requirement that the complainant must sign his or her name.

complaints of the same type from different persons over a period of time.

- d. **JUDICIAL PROTECTION:** A complaint system based on standard rules and procedures that are implemented uniformly and consistently throughout the country is likely to generate both complaints and civil suits based on harm inadvertently triggered as a consequence of judicial or prosecutorial error in the performance of official functions. Judges and prosecutors are human beings who occasionally make mistakes, and it is the nature of the judicial and prosecutorial businesses that the mistakes they make occasionally will result in unintended but harmful consequences. To the extent that the SCM institutes a national rule-based model for accepting and reviewing complaints about judicial and prosecutorial activity, demeanor, and conduct as specified in an ethics code, it also should establish some means whereby judges and prosecutors who, in performing their official functions, commit inadvertent error that results in demonstrable harm to litigants, have some form of state support if, for example, a litigant files a civil or criminal suit against him.

Even though Romanian law diverts civil liability in such instances to the state, there may be instances in which judges and prosecutors named in actions require legal assistance to prepare court documents and to argue that the complaint against them should be dismissed for lack of jurisdiction or other reasons. There also may be instances in which magistrates, acting in their official capacity, require legal assistance in suits filed against them by prospective, active, or retired court employees in matters alleging job-based discrimination, harassment, or other violations relating to their employment. Apart from cases in which the evidence suggests willful violation or gross negligence, the SCM may be obligated under its general protection mandate to assist with legal representation. Such legal assistance could be provided on request and approval by the SCM

through government attorneys.¹¹ Alternatively, the SCM might fund a portion of the premium for personal liability insurance, assuming it is commercially available to magistrates in Romania. The SCM, under its general mandate as specified in Section 1 of Article 30 of the LSCM and Section 1 of Article 75 of the LSM to protect judges, should consider providing for some form of protection in exchange for the professional risks that service as a judge or a prosecutor entails. Moreover, the SCM's commitment to follow the CCJE Opinion obligates it to follow the specific conclusion set forth in Paragraph 57: "The CCJE's conclusion is that it is not appropriate for a judge to be exposed, in respect of the purported exercise of judicial functions, to any personal liability, even by the way of reimbursement of the state, except in a case of willful default."

An open question is whether the SCM through the state also should be responsible for providing legal assistance to judges and prosecutors under other circumstances in which existing laws provide little or no guidance. Examples include:

1. Is the SCM obligated to provide counsel or funding for counsel when a judge or prosecutor is summoned to appear before a section of the SCM for a disciplinary hearing? Article 47 of the LSCM provides that the defendant may be represented by a judge, prosecutor, or lawyer. Although these are judicial as opposed to administrative hearings,¹² representation is optional.¹³ We recommend that the defendant, if

¹¹ For example, in the federal courts of the United States, cases filed against judges or court executives for actions taken in their official capacity trigger the right to representation by attorneys employed in the United States Attorneys Office. These are government attorneys who normally prosecute or defend the United States in civil and criminal cases to which it is a party. They are neither court-appointed nor legal aid attorneys.

¹² See Section 2 of Article 134 of the Romanian Constitution.

¹³ Article 47 of LSCM provides that "The judge or prosecutor may be represented by another judge or prosecutor or may be assisted or represented by a lawyer." A number of other countries provide the same option. For example, in Hungary, the defendant judge at his or her discretion may call on the assistance or another judge or

represented, be responsible for any charges and costs associated with the assistance of counsel if the disciplinary charges are upheld. Alternatively, if the charges are dismissed, we recommend that the defendant be reimbursed by the SCM for any such charges and costs. If the findings reduce the disciplinary charges, then a cost-sharing arrangement might be worked out between the defendant and the SCM.

2. Is the SCM obligated to provide counsel or funding for counsel when a judge or prosecutor elects to file suit against the SCM for alleged failure to adequately support and protect him or her under law? We recommend that the plaintiff, opting to pursue legal action against the government, be responsible for acquiring and paying counsel. Presumably the action can include a request for costs.
3. Is the SCM obligated to provide defense counsel or funding for counsel when a judge or prosecutor is charged with violation of penal law(s)? We would recommend no. However, if the criminal charges have to do with a actions undertaken by the magistrate in his or her official capacity and the case results in the charges being dismissed, the SCM may consider retaining discretionary authority to reimburse some or all of the costs incurred by the defendant in mounting a defense.
4. Is the SCM obligated to provide defense counsel or funding for counsel when a judge or prosecutor is charged with willful default or the equivalent of the duties and obligations of office? Assume for example that a plaintiff prevails in a civil matter against the state for the willful failure of a magistrate to follow

an advisor. In Belgium, likewise, the judge at his or her discretion may request the assistance of an attorney, judge, professor, or other. Germany, Denmark, Ireland, France and Italy all provide for a right to representation in formal proceedings, but it is not clear that any of them provide representation at state expense.

through on official responsibilities and is awarded damages that are a direct consequence of that default. Assume further that the state, on the basis of the willful default, seeks to recover its losses from the culpable magistrate. We find no obligation on the part of the SCM to provide any legal representation or funding in such instances.

- e. **JUDICIAL AND PROSECUTORIAL EVALUATOR QUALIFICATIONS AND TRAINING REQUIREMENTS:** As noted earlier, we assume from the language of Section 1 of Article 2 that the evaluation of judicial and prosecutorial observance of the 2005 Code will be integrated into the general performance evaluation process set forth in Article 39 of the LSM. These performance evaluations are to be conducted by boards comprising the head of the office and two governing board members. These three-person boards, given the serious sanctions attached to *satisfactory* and *unsatisfactory* ratings, wield significant power over the professional status and prospects for promotion of judges and prosecutors. As such, it is essential that they be carefully vetted and prepared to perform this important function. Ideally, board members should represent the more mature, competent, fair, emotionally stable respected judges and prosecutors who are held in high regard by their colleagues. To ensure that board members are well prepared, trained, and qualified for this responsibility, we would recommend that the SCM authorize the NIM to develop a special two- to three-week training curriculum specifically for prospective evaluation board members.¹⁴ It may be that funding for developing

¹⁴ The training would be designed for groups or no more than 20 participants and should be highly interactive, relying on principles of adult education rather than lecture. The curriculum should include sessions that equip board members with the skills necessary to (i) conduct constructive evaluations that focus on identifying areas in which improvement is needed; (ii) crafting individual development plans with specific goals and objectives and a timeframe for achieving them; and (iii) serve as effective coaches and mentors to those they evaluate. If this system of evaluations is to succeed, the negative elements of the process should be minimized. The training should include role play and simulation sessions in which the participants engage in mock evaluation sessions that compel them to address sensitive and confidential subject matter, including complaints alleging serious ethical violations. The training should conclude with an examination that includes conducting an evaluation that is

and funding such training is available through the international donor community. In the interim, however, given resource constraints, the NIM's already full plate, and the large number of evaluators who need training, a more economical approach may be necessary. We offer several options, each of which may stand alone or may be combined with the others. To the extent that resources for the development of such training materials are limited, we recommend that the SCM consider approaching various international community donors for possible assistance.

1. **Option 1:** We recommend development of a basic evaluator's training manual or handbook that covers the various elements of the evaluation process. The manual would begin with a chapter that orients new evaluators to their role, explains the purpose for the evaluation process, and outlines the various steps of the evaluation process. It should include a chapter or section on how to explain the evaluation process to new magistrates undergoing their initial review and offer suggestions and examples on how to reduce tension and create an advisory as opposed to adversarial context for the review. The manual should outline what areas of performance should be included in the review, once the formal criteria have been developed. Included in the manual should be an advisory section that evaluators can utilize to explain to the magistrate being reviewed areas in which he or she might be deficient and what assistance is available to improve performance in those areas. The manual should provide examples of how evaluators might approach sensitive topics that need to be reviewed. To assist magistrates to prepare for the evaluation process, the SCM might consider developing a small booklet that describes the evaluation process, lays out the areas that the evaluation will cover, and sets forth the various

videotaped and critiqued by the program participants under the supervision of the faculty.

outcomes. A copy of this booklet would be given to all magistrates.

2. **Option 2:** In addition to or in place of a handbook, the SCM might pursue development of a three-hour online training course that would cover essentially the same material but in an interactive format that would permit the SCM to gauge how well the evaluators understand the process and their role in it. Prospective evaluators would be required to take the course. The course could be structured, subject to SCM approval, into various levels, and passage from one level to the next would require achieving a passing score on the review at the end of each level.
3. **Option 3:** Either the NIM or a contractor could develop a three- to five-day train-the-trainer program in which small groups of selected magistrates would be trained to deliver a one-day training session to evaluators in the courts in their regions. The burden on the NIM would be minimal as would the costs of administering the program. The one-day course would cover in summary fashion the topics in the handbook, and copies of the handbook would be provided to all participants.

- f. **TRAINING IN ETHICS FOR JUDGES AND PROSECUTORS:** Section 2 of Article 38 requires the SCM to publish the ethics code, in part presumably so copies can be distributed to judges and prosecutors to alert them of their responsibilities. Article 35 of the LSM sets forth ambitious continuing education and training provisions for all judges and prosecutors in a variety of topical areas, including "deontological norms." Article 37 requires judges and prosecutors to participate in NIM or other sponsored training programs at least once every three years. In addition, Article 38 provides that training programs shall be organized periodically in the courts and prosecutors offices. We recommend that this training requirement be enhanced in the areas of ethics and professional responsibility to include an annual obligation on the part of both judges and

prosecutors. Under this enhanced requirement, judges and prosecutors would complete the equivalent of four hours of training in ethics and professional responsibility each year. The venue for such training might be classes taught in local courts and prosecutors' offices or at regional judges' or prosecutors' conferences. Alternatively, it could be made available on line or consist of a series of annual readings. Participation in such training would be recorded and records maintained for each judge and prosecutor by the SCM. These records would be made available to the evaluation board.

- g. **CHARACTER AND TONE OF THE ETHICS SEGMENT OF THE EVALUATION:** As the criteria for evaluating the professional activity of judges and prosecutors are developed, we recommend that they provide that the ethics compliance portion be conducted in a positive and constructive manner. The subject of the evaluation, when discussing ethical conduct, should feel that the review is designed to help him or her develop professionally in order to function more effectively, provide a higher level of service, and, overall, improve the public image of the judiciary.¹⁵ There will be occasional cases in which the evaluation board may have evidence indicative of serious non-compliance with or violations of the ethical standards. In such sessions, where there is a likelihood of serious consequences resulting from the evaluation, the SCM may want to establish a

¹⁵ We recognize that the Romanian judicial system is wrestling with numerous institutional challenges that include inadequate and run-down facilities, a shortage of judges and prosecutors, lack of access to legal research sources, large caseloads, and lack of access to information management technology. Those challenges notwithstanding, the magistracy has the potential to improve how it is perceived by the public through the services it provides, the manner in which judges and prosecutors interact with the public, and the level of integrity the magistracy reflects in its effort to fairly and independently administer justice. Where judges and prosecutors are perceived as honest, trustworthy, responsible, and immune from corrupting influences, public confidence in the rule of law will increase, and increased public confidence in the magistracy will strengthen it as an institution vis-à-vis the other powers of government. Indeed, the Ministry of Justice recently proposed a new disciplinary offense in this context, referring to it as "behavior that might infringe on the magistrate's dignity in society and in the exercise of his/her position."

requirement that the evaluation interview be electronically recorded for purposes of the record.

- h. **ILLUSTRATIVE SANCTIONS:** Presumably, the large majority of performance evaluations conducted by the boards will not result in the need to impose sanctions for violations of the ethics code provisions. Pursuant to Article 41 of the LSM, sanctions imposable for a single overall rating of unsatisfactory or for two successive ratings of satisfactory call for three to six months of special NIM courses and a follow-up examination. Sanctions imposable for two successive unsatisfactory ratings or for failure to pass the follow-up examination will result in the SCM proposing to the President of Romania that the subject be released from office. These are fairly radical and punitive sanctions if the evaluations are rigorous and cover all areas of judicial performance, including compliance with ethical standards. We propose additional lesser sanctions, the invoking of which would precede those set forth in Article 35. These lesser sanctions could be applied to judges and prosecutors either for lower overall evaluation ratings or for the lower ratings they received in the category of compliance with the provisions of the ethics code. We also propose that for the category of ethics evaluation, judges and prosecutors be given a separate rating that, when the overall evaluation is completed, can be factored into overall rating. We also propose that the rating scale for ethics compliance comprise the same four categories as the overall evaluation: *very good, good, satisfactory, and unsatisfactory*. We recommend that the SCM consider developing a tiered schedule of some type to guide the determination and application of the sanctions along the lines of this illustration.

	<u>SEVERITY OF VIOLATION AND SANCTION</u>		
<u>RATING</u>	<u>LEVEL 1</u>	<u>LEVEL 2</u>	<u>LEVEL 3</u>
SATISFACTORY	SANCTION A	SANCTION B	
UNSATISFACTORY		SANCTION C	SANCTION D

A rating of satisfactory will be a result of a Level 1 violation. Such violations fall under the least serious category and might include actions such as the following:

- i. Providing legal advice to a court employee on a personal matter involving another court employee; or
- ii. Expressing personal criticism against an unprepared attorney in an open court proceeding.

Sanction A would entail a formal written warning issued by the board that is placed in the subject's personnel file and a requirement to complete a five-hour self-study ethics program offered through the NIM. A subsequent Level 1 violation within three years would result in a formal reprimand.

A rating of satisfactory would also be the result of a Level 2 violation which reflects a more serious category based largely on negligence and might include such actions as the following:

- i. Repeated failure to fulfill administrative obligations;
or
- ii. Failure to recuse oneself from a case involving a company in which a spouse has a small financial interest.

Sanction B would entail two consequences; first, a formal reprimand with the condition that if the subject commits a similar Level 2 or 3 violation within a one-year period, he or she will be subject to a two week suspension without pay. Second, attendance at a one-week remedial ethics training program conducted by the NIM followed by successful completion of an examination, both of which must be completed within two months of the board's evaluation.

A rating of unsatisfactory would be the result of a more serious Level 2 violation for which there is evidence of specific intent and might include such actions as the following:

- i. Making repeated, aggressive, overt, and unwelcome sexual advancements toward a subordinate employee over whom the judge or prosecutor may exercise supervisory authority; or
- ii. Chronic and unjustified failure to process cases within specified or reasonable time frames.

Sanction C would entail a one- or two- week suspension without pay, attendance at a full-time one-week remedial ethics training program conducted by the NIM, and successful completion of an examination at the end of the week of training. The week of training would coincide with the leave-without-pay period, and both would have to be completed before the subject returns to work. The subject also would be informed in writing that any subsequent violation within three years may result in a recommendation to the SCM that his or her appointment as judge or prosecutor be terminated.

A rating of unsatisfactory would be the result of any Level 3 violation. These violations should be considered the most serious and call into question the ability of the subject to retain his or her appointment. Examples of such violations might include the following:

- i. Intentional and repeated efforts on the part of a judge or prosecutor in a leadership position to intervene in or dictate the progress or outcome of pending cases assigned to others;
- ii. Inadvertent disclosure of confidential information by leaving documents in an unsecured location;
- iii. Serving as a trainer for the NIM and using the position as a platform to espouse political doctrines; to indoctrinate young judges and/or prosecutors in one's political beliefs; and to persuade them to join one's political party;
- iv. Engaging in recurring discriminatory practices against a certain class of defendants in criminal cases by willfully ignoring evidence that supports their innocence and by imposing harsher sentences than are

imposed for defendants from other ethnic backgrounds for the same types of crimes.

Sanction D would entail suspension from work for four weeks without pay, attendance at a two-week remedial ethics training program conducted by the NIM, and successful completion of a program examination, all of which must be completed prior to the subject returning to work. The subject also would be placed in probationary status for a period of three years during which any additional ethics violation, Level 1 through 3, will result in a recommendation to the SCM that the subject's appointment as a judge or prosecutor be terminated.

Judges and prosecutors charged by a board with an ethics violation at Level 2 and Level 3 would have a right to appeal the charge pursuant to the provisions of Articles 44-51 of the LSCM, as summarized below.

In evaluating the merits of particularly complex or difficult allegations of serious ethical misconduct, a board would have the option of requesting the advice and guidance of the SCM or a committee created and designated by the SCM to deal with code of ethics-related issues, procedures, and requests for advice. Formation of such a committee is set forth below.

- i. **PERMANENT ADVISORY COMMITTEE:** The SCM, as set forth in Attachment C to this Advisory Memorandum, is tasked with a number of significant leadership and administrative responsibilities relating to the Romanian judicial system. The sheer commitment of time and effort required to attend to these responsibilities and to participate in frequently scheduled sessions, conferences, and meetings imposes a significant burden on SCM members.¹⁶ To that extent, we

¹⁶ The leadership and administrative responsibilities for which the SCM is responsible, apart from the ethics compliance matters discussed in this memorandum, are being reviewed by the Resident Twining Advisor. It would be helpful if the review can analyze in some depth how the SCM operates and carries out those varied responsibilities, how the administrative framework that supports the SCM is organized, and what specific responsibilities and authorities are delegated to that

propose creation of a permanent Committee on Judicial and Prosecutorial Ethics and Conduct to assist the SCM in matters relating to the following:

- i. Proposing to the SCM amendments as necessary to keep current and up to date the Code of Ethics for Judges and Prosecutors and the Code of Ethics for Judicial Staff and to ensure their compliance with all official laws and regulations relating to ethical conduct;
- ii. Proposing to the SCM modifications and enhancements to the criteria and procedures for evaluating judges, prosecutors, and judicial staff for compliance with the ethics standards;
- iii. Proposing to the SCM modifications to the offense levels and sanctions for violations of the Code of Ethics for Judges and Prosecutors and the Code of Ethics for Judicial Staff;
- iv. Maintaining the confidential database of judicial misconduct complaints based on alleged ethical violations; also proposing the procedures for the design, development, implementation, and operation of the database;
- v. Preparing and publishing for distribution to all judges and prosecutors occasional advisory memoranda on ethical and conduct-related issues and questions frequently raised by them. These memoranda would not be based on ethical violations but, rather, serve to clarify specific issues not covered in detail either in the ethics codes or in ethics-related laws and regulations. Examples might include:
 - a. Acceptance of complementary memberships in professional and social clubs;
 - b. Disqualification or recusal when a former judge represents a litigant;¹⁷

administrative framework. Such a review also might recommend how the organizational framework might be realigned and strengthened to improve the SCM's ability to handle its responsibilities.

¹⁷ Assume, for example, that a judge in a particular court is assigned a case in which counsel for the plaintiff or defendant is a former judge who recently retired but was a

- c. Political involvement of a judge's spouse;
 - d. Participation of a judge in the fund-raising campaign of his or her local church;
 - e. Appearance of a judge before a formal body of the legislative or executive branch; and
 - f. Membership in social action organizations such as environmental protection groups, women's rights groups, minority rights groups, etc.
- vi. Preparing and publishing for distribution to all judges and prosecutors a compendium of selected opinions issued by the Committee from time to time in response to requests for advice and guidance from the evaluation boards of the SCM. These would be summaries of such advice and guidance provided to the boards on a confidential basis with regard to alleged violations of specific provisions of the Code of Ethics for Judges and Prosecutors, the Code of Ethics for Judicial Personnel, and any other ethics-related laws and regulations that govern officials of the various institutions of government. They would be organized according to the ethical provisions and regulations they interpret. Examples might include:
- a. Avoiding nepotism and favoritism;
 - b. Benefits received from entities doing business with the courts;
 - c. Membership in discriminatory organizations;
 - d. Gifts that create an appearance of impropriety;
 - e. Relationships with elected officials;
 - f. Serving as an arbitrator or mediator;
 - g. Participation in a family-owned business; and
 - h. Belated discovery or appearance of a disqualifying interest

j. **APPEALS PROCESS:** The LSCM articulates a fair and functional procedure for processing and adjudicating complaints that may

close judicial colleague and has remained a close friend since becoming a private attorney. Does the assigned judge have an ethical obligation to recuse or disqualify him- or herself from the case because of that close relationship?

warrant disciplinary action. This procedure ensures due process, and we recommend that the SCM consider utilizing this procedure for adjudicating Level 2 and 3 violations of the Code of Ethics for Judges and Prosecutors. The procedure can be summarized as follows:

Article 44 directs the SCM to function in the role of a law court in the processing of matters involving the disciplinary liability of judges and prosecutors as set forth in the LSM.¹⁸ Pursuant to Section 1 of Article 45, the SCM exercises its disciplinary authority through the disciplinary boards it appoints. Section 4 directs the boards to accept information regarding the commission of disciplinary transgressions by judges and prosecutors from any person, but it also authorizes the boards to act *ex officio* or by virtue of its own status.

Article 46 outlines some of the due process provisions that the boards must observe in conducting their business. The first is the requirement for a preliminary investigation conducted by inspectors whose purpose are to establish the facts, the consequences, the circumstances, and any other evidence that may inform a decision as to innocence or culpability. This process requires interviewing the person making the charge. The rights of the charged judge or prosecutor include

- i. Having access to the charges and evidence;
- ii. Having opportunity to gather evidence and prepare a defense; and
- iii. Presenting a defense and supporting evidence.

The results and conclusions of the preliminary inquiry are prepared and forwarded within 60 days to a disciplinary board for its review. The board then has 20 days to either (i) notify the appropriate section of the SCM with its recommendation for resolution of the disciplinary action, or (ii) reach a finding that

¹⁸ Section 2 of Article 134 of the Romanian Constitution provides similar authority: "The Superior Council of Magistracy shall perform the role of a court of law, by means of its sections, as regards the disciplinary liability of judges and public prosecutors, based on the procedures set up by its organic law."

additional verification is required and designate a judicial inspector to complete the inquiry and submit results and conclusions to the board within 30 days. The board then has 20 days to determine whether disciplinary action is warranted. If it decides that no discipline is required, it will order the charges be dismissed. If the board elects to not dismiss the charges and recommend disciplinary sanction, the official charged shall ask that the matter be referred to the SCM section to further adjudicate the matter.

Article 47 - 50 set forth the procedure the SCM is to follow when a disciplinary action matter is referred to it by a disciplinary board. The adjudicative process requires that the designated SCM section summon the judge or prosecutor charged with the infraction to appear before it. The charged official may be represented either by another judge or prosecutor or by a private lawyer. As in the preliminary investigation stage, the charged official and, where applicable, representative are entitled to access to all documents in the matter and to request the opportunity to present evidence on the charged official's behalf. The SCM section then has the option of either dismissing the matter or applying one of the disciplinary sanctions set forth in the law in Article 100 of the LSM. The principle of proportionality shall be applied, based on the seriousness of the disciplinary violation and the relevant circumstances attending that violation. Article 49 requires the SCM section to prepare a decision within 20 days of concluding the proceedings. The decision must include the following:

- i. A description of the activity comprising the disciplinary violation and the legal basis for it;
- ii. The legal basis for applying the sanction;
- iii. A justification for dismissal of the defense that was mounted;
- iv. The applicable sanction and the justification for it;
- v. The legal remedy and the time frame within which any appeal may be taken; and
- vi. The competent court to which the appeal can be made.

Once the decision has been completed, it shall be served forthwith in writing on the judge or prosecutor who then has 15 days to determine whether to appeal the matter to the nine-judge panel of the High Court or Cassation and Justice. If an appeal is taken, it must be based on points of law and submitted. While the appeal is running, enforcement of the SCM section decision is suspended. The decision of the nine-judge panel is final and cannot be appealed.

ATTACHMENT A

COMPARATIVE TABLE OF DUTIES THAT FALL UNDER DISCIPLINARY LIABILITY
IN THE 2004 CODE OF ETHICS FOR MAGISTRATES
AND THE LAW ON THE STATUTE OF MAGISTRATES

DUTIES OF JUDGES AND PROSECUTORS	2004 ETHICS CODE REFERENCE	MAGISTRATES LAW REFERENCE	MAGISTRATES LAW APPLICABLE SANCTIONS
UPHOLD INDEPENDENCE OF THE JUDICIARY	ARTICLE 4, SECTION 1	ARTICLE 96, SECTION 1	ARTICLE 98
FULFILL PROFESSIONAL DUTIES OBJECTIVELY AND IMPARTIALLY	ARTICLE 4, SECTION 2	ARTICLE 3, SECTION 1 ARTICLE 97, SECTION 1j-m	ARTICLE 98
REPORT EXTERNAL PRESSURE AND INTERFERENCE WITH OFFICIAL DUTIES	ARTICLE 4, SECTION 3	ARTICLE 74, SECTION 2	
DO NOT BE AFFECTED BY POLITICAL DOCTRINES	ARTICLE 5, SECTION 1	ARTICLE 97, SECTION 1d	ARTICLE 98
DO NOT ENCOURAGE OTHERS TO JOIN POLITICAL PARTIES	ARTICLE 5, SECTION 2	ARTICLE 97, SECTION 1d	ARTICLE 98
DO NOT PARTICIPATE IN FUNDRAISING FOR POLITICAL PARTIES OR PERMIT ONE'S PRESTIGE OR IMAGE TO BE USED FOR SUCH PURPOSES	ARTICLE 5, SECTION 2	ARTICLE 8, SECTION 1 ARTICLE 97, SECTION 1d	ARTICLE 98
DO NOT SUPPORT ANY POLITICAL CANDIDATE	ARTICLE 5, SECTION 3	ARTICLE 97, SECTION 1d	ARTICLE 98
DO NOT MAKE USE OF ONE'S POSITION TO SHOW OR EXPRESS POLITICAL BELIEFS	ARTICLE 6, SECTION 1	ARTICLE 8, SECTION 2 ARTICLE 97, SECTION 1d	ARTICLE 98
MAY TAKE PART IN PUBLIC GATHERINGS WITHOUT EXPRESSING POLITICAL BELIEFS	ARTICLE 6, SECTION 2	ARTICLE 8, SECTION 2	
MAY PARTICIPATE IN ORCONSULT ON DRAFTING OF LAWS, REGULATIONS, TREATIES OR CONVENTIONS UNLESS DOING SO AFFECTS INDEPENDENCE AND IMPARTIALITY	ARTICLE 7	ARTICLE 10, SECTION 1	
CONTRIBUTE TO GUARANTEEING THE RULE OF LAW, THE LAW STATE & CITIZEN RIGHTS & LIBERTIES	ARTICLE 8	ARTICLE 1 ARTICLE 5, SECTION 1	

DUTIES OF JUDGES AND PROSECUTORS	2004 ETHICS CODE REFERENCE	MAGISTRATES LAW REFERENCE	MAGISTRATES LAW APPLICABLE SANCTIONS
CONDUCT PROCEEDINGS WITH AN UNBIASED ATTITUDE AND NO PREJUDICES RELATING TO RACE, SEX, RELIGION, NATIONALITY & SOCIO-ECONOMIC, POLITICAL & CULTURAL STATUS	ARTICLE 9, SECTION 1	ARTICLE 5, SECTION 1 ARTICLE 97, SECTION 1j&m	ARTICLE 98
PROTECT EQUALITY THRU NON-DISCRIMINATORY LEGAL PROCESS	ARTICLE 9, SECTION 2	ARTICLE 5, SECTION 1	
DEFEND THE DIGNITY AND INTEGRITY OF ALL PARTIES IN JUDICIAL PROCEDURES	ARTICLE 9, SECTION 2	ARTICLE 97, SECTION 1m	ARTICLE 98
DO NOT REFUSE CASES FOR WHICH THE LAW PROVIDES NO CLEAR OR SUFFICIENT SOLUTION	ARTICLE 9, SECTION 2	ARTICLE 5, SECTION 2 ARTICLE 97, SECTION 1i	ARTICLE 98
BE IMPARTIAL; DECIDE CASES OBJECTIVELY & FREE OF BIAS, CONNECTIONS & INFLUENCE	ARTICLE 10, SECTION 1	ARTICLE 97, SECTION 1j & m	ARTICLE 98
FULFILL PROFESSIONAL DUTIES MINDFUL OF THE DIGNITY OF THE INSTITUTION & ALL PARTIES	ARTICLE 10, SECTION 2	ARTICLE 97, SECTION 1i-k & m	ARTICLE 98
REFRAIN FROM CONDUCT AND ACTION THAT MIGHT UNDERMINE PUBLIC CONFIDENCE IN MAGISTRATE IMPARTIALITY & INDEPENDENCE	ARTICLE 10, SECTION 3	ARTICLE 89, SECTION 1 ARTICLE 97, SECTION 1j, m-n	ARTICLE 98
RECUSE ONESELF WHERE REQUIRED BY LAW & REQUEST COMPETENT BODIES TO REVIEW ONE'S SELF-RECUSAL	ARTICLE 11, SECTION 1	ARTICLE 6, SECTION 2 ARTICLE 97, SECTION 1a	ARTICLE 98
REPORT TO COURT/PROSECUTORIAL LEADERS ALL ACTUAL & PROSPECTIVE CONFLICTS OF INTEREST	ARTICLE 11, SECTION 2	ARTICLE 6, SECTION 2 ARTICLE 97, SECTION 1a	ARTICLE 98
PROVIDE LEGAL ADVICE ONLY TO PERSONAL RELATIVES & OTHERS AS DEFINED IN LAW	ARTICLE 12, SECTION 1	ARTICLE 9, SECTIONS 2-3 ARTICLE 97, SECTION 1c & j	ARTICLE 98
DO NOT USE ONE'S POSITION TO INFLUENCE OR CREATE THE APPEARANCE OF SEEKING TO INFLUENCE A JUDGE 'S OR PROSECUTOR'S DECISION	ARTICLE 12, SECTION 1	ARTICLE 9, SECTION 3 ARTICLE 97, SECTION 1c (ARTICLE 64, SECTION 2 JUDICIAL ORG. LAW)	ARTICLE 98

DUTIES OF JUDGES AND PROSECUTORS	2004 ETHICS CODE REFERENCE	MAGISTRATES LAW REFERENCE	MAGISTRATES LAW APPLICABLE SANCTIONS
DO NOT PERMIT ONE’S FAMILY/SOCIAL RELATIONS TO INFLUENCE ONE’S PROFESSIONAL DECISION MAKING	ARTICLE 12, SECTION 2	ARTICLE 9, SECTION 3 ARTICLE 97, SECTION 1c	ARTICLE 98
PERFORM PROFESSIONAL DUTIES WITH PROPRIETY AND COMPETENCE	ARTICLE 13	ARTICLE 97, SECTION 1i-o	ARTICLE 98
PERFORM ADMINISTRATIVE DUTIES AS REQUIRED BY LAW, REGULATIONS & DUTY ORDERS	ARTICLE 13	ARTICLE 50, SECTION 5 ARTICLE 97, SECTION 1i-o	ARTICLE 50, SECTION 2 ARTICLE 98
DECIDE ASSIGNED CASES IN A SPEEDY MANNER BY OBSERVING STATUTORY GUIDELINES; WHERE NONE EXIST, DO SO WITHIN REASONABLE TERMS	ARTICLE 14	ARTICLE 90, SECTION 1 ARTICLE 97, SECTION 1f&k	ARTICLE 98
IMPOSE ORDER & SOLEMNITY IN COURT SESSIONS	ARTICLE 15	ARTICLE 97, SECTION 1m	ARTICLE 98
ADOPT DIGNIFIED, CIVIL & IMPARTIAL CONDUCT IN PROCEEDINGS & BEFORE ALL PERSONS; REQUIRE PROPER CONDUCT OF ALL	ARTICLE 15	ARTICLE 89, SECTION 1 ARTICLE 97, SECTION 1m	ARTICLE 98
REFRAIN FROM OR GIVE UP ACTIVITIES THAT DIVERT ONE FROM PERFORMING ONE’S PROFESSIONAL AND OFFICIAL DUTIES TO AVOID HARMING THE JUDICIARY’S PUBLIC IMAGE	ARTICLE 15	ARTICLE 89, SECTION 1 ARTICLE 97, SECTION 1j	ARTICLE 98
APART FROM THE CONNECTION WITH ONE’S OFFICIAL DUTIES, DO NOT DISCLOSE ANY INFORMATION OBTAINED VIA OFFICIAL SOURCES	ARTICLE 16, SECTION 1	ARTICLE 90, SECTION 2 ARTICLE 97, SECTION 1e	ARTICLE 98
RETAIN ALL CONFIDENTIAL DOCUMENTS IN COURT/PROSECUTOR OFFICES & PERMIT REVIEW ONLY AS REQUIRED BY LAW & REGULATIONS	ARTICLE 16, SECTION 2	ARTICLE 97, SECTION 1e	ARTICLE 98
UTILIZE RESOURCES AND MATERIALS PROVIDED SOLELY FOR INTENDED PURPOSES IN COURT & PROSECUTOR OFFICES	ARTICLE 17	ARTICLE 50, SECTION 3 ARTICLE 97, SECTION 1n	POSSIBLE PENAL VIOLATION ARTICLE 98

DUTIES OF JUDGES AND PROSECUTORS	2004 ETHICS CODE REFERENCE	MAGISTRATES LAW REFERENCE	MAGISTRATES LAW APPLICABLE SANCTIONS
CONTINUOUSLY IMPROVE & UPDATE PROFESSIONAL KNOWLEDGE & MAINTAIN PROFESSIONAL COMPETENCE	ARTICLE 18	ARTICLE 33, ARTICLE 35, SECTIONS 1-2 ARTICLE 97, SECTION 1j	ARTICLE 39 ARTICLE 98
LEADERS ORGANIZE STAFF ACTIVITY; DEMONSTRATE INITIATIVE AND RESPONSIBILITY; GIVE PRIORITY TO INTERESTS OF COURT, PROSECUTION & THE ADMINISTRATION OF JUSTICE	ARTICLE 19, SECTION 1	ARTICLE 37, SECTION 1 ARTICLE 50, SECTIONS 3-6 ARTICLE 97, SECTION 1j	ARTICLE 50, SECTIONS 2-6 ARTICLE 98
LEADERS MAY NOT INTERVENE IN THE PROGRESS OF PENDING CASES NOT ASSIGNED TO THEM	ARTICLE 19, SECTION 2	ARTICLE 9, SECTIONS 1-2 (ARTICLE 64, SECTION 2 JUDICIAL ORG. LAW) ARTICLE 97, SECTION 1c	ARTICLE 50, SECTIONS 2 & 5 ARTICLE 98
ALWAYS REFRAIN FROM ACTS OR DEEDS THAT MIGHT COMPROMISE ONE'S DIGNITY IN COURT & IN SOCIETY	ARTICLE 20, SECTION 1	ARTICLE 6, SECTION 2 ARTICLE 89, SECTION 1 ARTICLE 97, SECTION 1m	ARTICLE 98
UPHOLD JUDICIARY'S PRESTIGE & STRENGTHEN PUBLIC CONFIDENCE IN ONE'S INTEGRITY & IMPARTIALITY	ARTICLE 20, SECTION 2	ARTICLE 97, SECTION 1j	ARTICLE 98
DO NOT CLAIM OR ACCEPT THAT ONE'S FAMILY, PERSONAL, OR FRIENDS' INTERESTS CAN BE RESOLVED OUTSIDE OF LEGAL PROVISIONS ESTABLISHED FOR ALL CITIZENS	ARTICLE 21	ARTICLE 9, SECTION 3 ARTICLE 97, SECTION 1c	ARTICLE 98
RELATIONS WITH OTHER JUDGES & PROSECUTORS ARE TO BE BASED ON RESPECT & GOOD FAITH, REGARDLESS OF DIFFERENCES IN EXPERIENCE & POSITION.	ARTICLE 22, SECTION 1	ARTICLE 89, SECTION 2 ARTICLE 97, SECTION 1m-n	ARTICLE 98
DO NOT EXPRESS OPINIONS ON THE MORAL & PROFESSIONAL PROBITY OF ONE'S COLLEAGUES EXCEPT WHERE IT AFFECTS THE IMAGE OF THE JUDICIARY	ARTICLE 22, SECTION 2	ARTICLE 97, SECTION 1m	ARTICLE 98

DUTIES OF JUDGES AND PROSECUTORS	2004 ETHICS CODE REFERENCE	MAGISTRATES LAW REFERENCE	MAGISTRATES LAW APPLICABLE SANCTIONS
REPORT TO THE SCM ANY DATA & INFORMATION ON THE LACK OF MORAL PROBITY OF ANY COLLEAGUES	ARTICLE 22, SECTION 3	ARTICLE 95, SECTION 1	
PARTICIPATE IN DRAFTING PUBLICATIONS, STUDIES, LITERARY WORKS, OR BROADCASTS WITH NO POLITICAL CONTENT	ARTICLE 23, SECTION 1	ARTICLE 10	
MAKE AVAILABLE INFORMATION ON PENDING COURT OR PROSECUTORIAL CASES OR ON JUDICIAL OR PROSECUTORIAL ACTIVITIES TO THE PRESS VIA PUBLIC INFORMATION & MEDIA OFFICES UNDER THE LAW	ARTICLE 23, SECTION 2	(ARTICLE 107, SECTION 1, JUDICIAL ORGANIZATION LAW)	
MAY EXPRESS OPINIONS UNDER RIGHT TO REPLY WHERE NEWSPAPER, RADIO, OR TV COVERAGE INCLUDES SLANDEROUS STATEMENTS MADE AGAINST ONESELF	ARTICLE 23, SECTION 3		
DO NOT CARRY OUT ANY ACTIVITIES THAT, BY THEIR CHARACTER, FUNDING, OR EXECUTION, COULD AFFECT THE PERFORMANCE OF ONE'S PROFESSIONAL DUTIES WITH IMPARTIALITY, CORRECTNESS & LEGAL DEADLINES	ARTICLE 24	ARTICLE 6, SECTION 2	
DO NOT HOLD ANY PUBLIC OR PRIVATE POSITION IN ADDITION TO ONE'S JUDICIAL POSITION EXCEPT FOR TEACHING POSITIONS AS SPECIFIED BY LAW, EXCLUDING EXECUTIVE POSITIONS IN HIGHER EDUCATIONAL INSTITUTIONS	ARTICLE 25, SECTION 1	ARTICLE 6, SECTION 1	
MAY SERVE AS TRAINERS FOR THE NATIONAL INSTITUTE OF MAGISTRATES & THE NATIONAL SCHOOL OF COURT CLERKS	ARTICLE 25, SECTION 2	ARTICLE 6, SECTION 1	

DUTIES OF JUDGES AND PROSECUTORS	2004 ETHICS CODE REFERENCE	MAGISTRATES LAW REFERENCE	APPLICABLE SANCTIONS
DO NOT PARTICIPATE, DIRECTLY OR THROUGH INTERMEDIARIES, IN PYRAMID SCHEMES, GAMBLING, OR INVESTMENT ENTERPRISES IN WHICH TRANSPARENT FINANCIAL PROCESSES & FUNDING ARE NOT ENSURED	ARTICLE 26	ARTICLE 97, SECTION 2p	ARTICLE 98

ATTACHMENT B

COMPARATIVE TABLE OF JUDGE AND PROSECUTOR DUTIES THAT FALL UNDER DISCIPLINARY LIABILITY IN THE 2005 CODE OF ETHICS FOR MAGISTRATES AND THE LAW ON THE STATUTE OF MAGISTRATES

DUTIES OF JUDGES AND PROSECUTORS	REFERENCE IN 2005 ETHICS CODE	REFERENCE IN LAW ON MAGISTRATES	MAGISTRATES LAW APPLICABLE SANCTIONS
UPHOLD INDEPENDENCE OF THE JUDICIARY	ARTICLE 3, SECTION 1	ARTICLE 96, SECTION 1	ARTICLE 98
FULFILL PROFESSIONAL DUTIES OBJECTIVELY AND IMPARTIALLY; DO NOT YIELD TO PRESSURES OR INFLUENCES	ARTICLE 3, SECTION 2	ARTICLE 3, SECTION 1 ARTICLE 97, SECTION 1j-m	ARTICLE 98
REPORT TO SCM DEEDS THAT MAY AFFECT THEIR INDEPENDENCE, IMPARTIALITY OR REPUTATION	ARTICLE 3, SECTION 3	ARTICLE 74, SECTION 2	
DO NOT BE INFLUENCED BY POLITICAL DOCTRINES	ARTICLE 4, SECTION 1	ARTICLE 97, SECTION 1d	ARTICLE 98
DO NOT ENCOURAGE OTHERS TO JOIN POLITICAL PARTIES, PARTICIPATE IN POLITICAL PARTY FUNDRAISING OR PERMIT USE OF ONE'S PRESTIGE OR IMAGE FOR SUCH PURPOSES	ARTICLE 4, SECTION 2	ARTICLE 8, SECTION 1 ARTICLE 97, SECTION 1d	ARTICLE 98
DO NOT SUPPORT ANY CANDIDATE FOR A PUBLIC POLITICAL POSITION	ARTICLE 4, SECTION 3	ARTICLE 8	
DO NOT MAKE USE OF POSITION TO SHOW OR EXPRESS POLITICAL BELIEFS	ARTICLE 5, SECTION 1	ARTICLE 8, SECTION 2 ARTICLE 97, SECTION 1d	ARTICLE 98
DO NOT PARTICIPATE IN PUBLIC GATHERINGS OF A POLITICAL NATURE	ARTICLE 5, SECTION 2	ARTICLE 8, SECTION 1 ARTICLE 97, SECTION 1d	ARTICLE 98
MAY WRITE NON-POLITICAL ARTICLES, STUDIES, OR WORKS; MAY ATTEND NON-POLITICAL SHOWS THAT DON'T UNDERMINE THE IMAGE OF JUSTICE	ARTICLE 6, SECTION 1	ARTICLE 10, SECTION 1	
MAY BE MEMBER OF EXAMINATION OR LAW-DRAFTING COMMISSION, CIVIL & ACADEMIC SOCIETY & NON-PROFIT PRIVATE LEGAL ENTITY	ARTICLE 6, SECTIONS 2-3	ARTICLE 10, SECTIONS 2-3	

DUTIES OF JUDGES AND PROSECUTORS	REFERENCE IN 2005 ETHICS CODE	REFERENCE IN LAW ON MAGISTRATES	MAGISTRATES LAW APPLICABLE SANCTIONS
PROMOTE THE RULE OF LAW & THE LAW STATE; PROTECT CITIZEN RIGHTS & LIBERTIES	ARTICLE 7	ARTICLE 1 ARTICLE 5, SECTION 1	
CONDUCT JUDICIAL PROCEEDINGS THAT RESPECT THE EQUALITY, DIGNITY & PHYSICAL & MORAL INTEGRITY OF ALL CITIZENS; TREAT ALL IN A LEGAL NON-DISCRIMINATORY MANNER	ARTICLE 8	ARTICLE 5, SECTION 1 ARTICLE 97, SECTION 1j-n	ARTICLE 98
BE IMPARTIAL; DECIDE CASES OBJECTIVELY AND FREE FROM ANY INFLUENCES	ARTICLE 9, SECTION 1	ARTICLE 97, SECTION 1m	ARTICLE 98
REFRAIN FROM CONDUCT, ACTION & ACTS THAT MIGHT ALTER PUBLIC CONFIDENCE IN ONE'S IMPARTIALITY & INDEPENDENCE	ARTICLE 9, SECTION 2	ARTICLE 89, SECTION 1 ARTICLE 97, SECTION 1j, m-n	ARTICLE 98
RECUSE ONESELF IN INCOMPATIBLE OR CONFLICT SITUATIONS UNDER THE LAW	ARTICLE 10	ARTICLE 6, SECTION 2 ARTICLE 97, SECTION 1a	ARTICLE 98
PROVIDE LEGAL ADVICE ONLY TO PERSONAL RELATIVES & OTHERS AS DEFINED IN THE LAW	ARTICLE 11, SECTION 1	ARTICLE 9, SECTIONS 2-3 ARTICLE 97, SECTION 1c	ARTICLE 98
DO NOT USE ONE'S POSITION TO INFLUENCE OR CREATE THE APPEARANCE OF SEEKING TO INFLUENCE A JUDGE'S OR PROSECUTOR'S DECISION	ARTICLE 11, SECTION 1	ARTICLE 9, SECTION 3 ARTICLE 97, SECTION 1c (ARTICLE 64, SECTION 2 JUDICIAL ORG. LAW)	ARTICLE 98
DO NOT PERMIT ONE'S FAMILY OR SOCIAL RELATIONS TO INFLUENCE ONE'S PROFESSIONAL DECISION MAKING	ARTICLE 11, SECTION 2	ARTICLE 9, SECTION 3 ARTICLE 97, SECTION 1c	ARTICLE 98
DO NOT INTERVENE IN, REQUEST, OR ACCEPT RESOLUTION OF PERSONAL OR FAMILY INTERESTS OR THOSE OF OTHER PERSONS OUTSIDE OF THE LEGAL FRAMEWORK	ARTICLE 11, SECTION 3	ARTICLE 97, SECTION 1c	ARTICLE 98
PERFORM PROFESSIONAL DUTIES WITH PROPRIETY AND COMPETENCE	ARTICLE 12	ARTICLE 97, SECTION 1i-m	ARTICLE 98

DUTIES OF JUDGES AND PROSECUTORS	REFERENCE IN 2005 ETHICS CODE	REFERENCE IN LAW ON MAGISTRATES	MAGISTRATES LAW APPLICABLE SANCTIONS
PERFORM ADMINISTRATIVE DUTIES AS REQUIRED BY LAW, REGULATIONS, & DUTY ORDERS	ARTICLE 12	ARTICLE 50, SECTION 5 ARTICLE 97, SECTION 1i-m	ARTICLE 50, SECTION 2 ARTICLE 98
EXERCISE DILIGENCE IN DECIDING CASES BY OBSERVING STATUTORY DEADLINES OR IN THEIR ABSENCE, REASONABLE PROCESSING TIMES	ARTICLE 13	ARTICLE 90, SECTION 1 ARTICLE 97, SECTION 1f&k	ARTICLE 98
IMPOSE ORDER & SOLEMNITY IN COURT SESSIONS	ARTICLE 14	ARTICLE 97, SECTION 1m	ARTICLE 98
ADOPT DIGNIFIED, CIVIL & IMPARTIAL CONDUCT IN PROCEEDINGS & BEFORE ALL PERSONS; REQUIRE PROPER CONDUCT OF ALL	ARTICLE 14	ARTICLE 89, SECTION 1 ARTICLE 97, SECTION 1m	ARTICLE 98
APART FROM THE CONNECTION WITH ONE'S OFFICIAL DUTIES, DO NOT DISCLOSE ANY INFORMATION OBTAINED IN OFFICIAL POSITION	ARTICLE 15, SECTION 1	ARTICLE 90, SECTION 2 ARTICLE 97, SECTION 1e	ARTICLE 98
RETAIN ALL CONFIDENTIAL DOCUMENTS IN COURT/PROSECUTOR OFFICES & PERMIT REVIEW ONLY AS REQUIRED BY LAW & REGULATIONS	ARTICLE 15, SECTION 2	ARTICLE 97, SECTION 1e	ARTICLE 98
LEADERS ORGANIZE STAFF ACTIVITY; DEMONSTRATE INITIATIVE AND RESPONSIBILITY; GIVE PRIORITY TO INTERESTS OF COURT, PROSECUTION, & ADMINISTRATION OF JUSTICE	ARTICLE 16, SECTION 1	ARTICLE 37, SECTION 1 ARTICLE 50, SECTIONS 3-6	ARTICLE 50, SECTIONS 2-6
LEADERS MAY NOT INTERVENE IN THE PROGRESS OF PENDING CASES NOT ASSIGNED TO THEM	ARTICLE 16, SECTION 2	ARTICLE 9, SECTIONS 1-2 ARTICLE 97, SECTION 1e ARTICLE 64, SECTION 2 LJO	ARTICLE 50, SECTIONS 2&5 ARTICLE 98
ALWAYS REFRAIN FROM ACTS OR DEEDS THAT MIGHT COMPROMISE ONE'S DIGNITY IN COURT & IN SOCIETY	ARTICLE 17	ARTICLE 6, SECTION 2 ARTICLE 89, SECTION 1 ARTICLE 97, SECTION 1m	ARTICLE 98
RELATIONS WITH JUDGES & PROSECUTORS MUST BE BASED ON RESPECT & GOOD FAITH REGARDLESS OF EXPERIENCE & POSITION.	ARTICLE 18, SECTION 1	ARTICLE 89, SECTION 2 ARTICLE 97, SECTION 1j&n	ARTICLE 98

DUTIES OF JUDGES AND PROSECUTORS	REFERENCE IN 2005 ETHICS CODE	REFERENCE IN LAW ON MAGISTRATES	MAGISTRATES LAW APPLICABLE SANCTIONS
DO NOT EXPRESS OPINIONS ON PROFESSIONAL & MORAL PROBITY OF COLLEAGUES	ARTICLE 18, SECTION 2	ARTICLE 97, SECTION 1m	ARTICLE 98
MAY EXPRESS OPINIONS UNDER RIGHT TO REPLY WHERE NEWSPAPER, RADIO, OR TV COVERAGE INCLUDES SLANDEROUS STATEMENTS MADE ABOUT THEM	ARTICLE 19		
MAY NOT CARRY OUT ANY ACTIVITIES THAT, BY THEIR CHARACTER, FINANCING, OR EXECUTION, COULD AFFECT PERFORMANCE OF ONE'S PROFESSIONAL DUTIES WITH IMPARTIALITY, CORRECTNESS & WITHIN LEGAL DEADLINES	ARTICLE 20	ARTICLE 6, SECTION 2	
MAY NOT HOLD ANY PUBLIC OR PRIVATE POSITION IN ADDITION TO A JUDICIAL POSITION EXCEPT FOR TEACHING POSITIONS IN HIGHER EDUCATION INSTITUTIONS	ARTICLE 21, SECTION 1	ARTICLE 6, SECTION 1	
MAY SERVE AS TRAINERS OF THE NATIONAL INSTITUTE OF MAGISTRATES & NATIONAL SCHOOL OF COURT CLERKS	ARTICLE 21, SECTION 2	ARTICLE 6, SECTION 1	
SHALL NOT PARTICIPATE, DIRECTLY OR THROUGH INTERMEDIARIES, IN PYRAMID SCHEMES, GAMBLING, OR INVESTMENT ENTERPRISES IN WHICH TRANSPARENT FINANCIAL PROCESSES & FUNDING ARE NOT ENSURED	ARTICLE 22	ARTICLE 97, SECTION 2p	ARTICLE 98
REFRAIN FROM ANY JUSTICE-RELATED ACTIVITY THAT IMPLIES A POTENTIAL CONFLICT BETWEEN ONE'S PERSONAL INTERESTS AND THE PUBLIC INTEREST IN DELIVERING JUSTICE OR PROTECTING SOCIETY'S INTERESTS	ARTICLE 23	ARTICLE 6, SECTION 2 ARTICLE 97, SECTION 1c	ARTICLE 98

ATTACHMENT C

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THE SUPERIOR COUNCIL OF THE MAGISTRACY OF ROMANIA

A REVIEW OF ITS RESPONSIBILITY TO GUARANTEE THE INDEPENDENT ADMINISTRATION OF JUSTICE AND ITS ROLE AND RESPONSIBILITIES WITH REGARD TO THE SELECTION, ORIENTATION, APPOINTMENT, EDUCATION, EVALUATION, PROMOTION, AND DISCIPLINE OF JUDGES AND PROSECUTORS IN THE ROMANIAN JUDICIAL SYSTEM

SECTION I: PROVISIONS IN THE LAW ON JUDICIAL ORGANIZATION

- A. SUPERIOR COUNCIL OF THE MAGISTRACY IS THE GUARANTOR OF THE INDEPENDENCE OF JUSTICE:** In Section 2 of Article 1, the Superior Council of the Magistracy (SCM) is charged with serving as the “guarantor of the independence of justice.” This ranks among the most fundamental challenges of civil government: to ensure the independent administration of justice. The challenge of properly executing this charge is extremely difficult because it entails administering justice as human enterprise. Unlike the pure sciences, whose functionality does not depend on human value judgments, the administration of justice falls under the framework of the social sciences where human value judgments are determined and applied based on fact situations and other aggravating and mitigating factors that confound precise objective analyses. Although the exercise of such judgment must be in accord with applicable law, human beings have not yet produced a rigorously consistent and systematic corpus of law that prescribes appropriate remedies for every conceivable category of human interaction and enterprise. As a consequence, the administration of justice is a process in which human beings are appointed to exercise government authority by applying imperfect systems of law, the limits of human understanding, and the frailties of human judgment to resolving disputes and to ensuring the safety and security of the society. Those who are appointed to exercise prosecutorial and judicial authority to administer justice must do so in a manner that not only is independent of external and extrinsic influences, but also in a manner that carefully and deliberately informs and is aware of the value judgments that play into the administration of justice.

- B. JUSTICE TO BE ADMINISTERED IMPARTIALLY AND EQUALLY:** Section 1 of Article 2 provides that “Justice is carried out in the name of the law, is unique, impartial and equal for all.” This provision emphasizes the SCM’s challenge of guaranteeing administering justice not only in an independent manner but, in addition, in a manner that promotes the fundamental values of impartiality and equality under the law. This notion of equality is defined in Section 2 of Article 7, providing that there be no distinction of race, nationality, ethnic origin, language, religion, sex or sexual orientation, opinion, political affiliation, fortune, social origin or status or any other such discriminating criteria.
- C. SCM ROLE IN OVERSIGHT OF PROSECUTION:** Section 2 of Article 67 extends the SCM’s responsibility for guaranteeing the administration of justice by authorizing prosecutors to lodge objections with the SCM against any interventions by higher ranked prosecutors aimed at influencing the conclusions they draw from arguments made in court proceedings. Section 1 of Article 69 authorizes the SCM to request the Minister of Justice to exercise control over prosecutors by reviewing how they fulfill the requirements of their work and how they relate to their litigants and others involved in the work of the prosecution. Sections 3 and 10 of Article 75 empower the SCM to endorse or withhold endorsement of appointments and revocations of appointments to prosecutorial positions in the Directorate for Investigation of Offenses of Organized Crime and Terrorism. Article 79 requires the Prosecutor’s Office attached to the High Court of Causation and Justice to prepare and transmit annual reports on its activity to the SCM.
- D. SCM ROLE IN JUDICIAL EDUCATION AND TRAINING:** Section 1 of Article 103 charges the SCM with “coordinating” the National Institute for Magistrates (NIM). Section 1 of Article 104 authorized the SCM to designate four of the 13 members of the Scientific Council of the National Institute of Magistrates which is charged with managing the NIM. Section 2 of Article 104 authorizes the SCM to appoint the NIM director and deputy directors. Assigning these critical responsibilities to the SCM comports with its role as the guarantor of the administration of justice that is independent and equal. To the extent that judges are charged by the SCM with administering justice equally and independently, it follows that their continuing professional education and training should be subject to the oversight and monitoring of the SCM through the representatives it designates to direct and manage the NIM.
- E. SCM ROLE IN REGULATIONS RELATING TO THE INNER ORDER OF THE LAW COURTS AND PROSECUTORS’ OFFICES:** Section 2 of Article 139

directs the SCM both to elaborate and to approve the Regulations of the Inner Order of the Law Courts. Pursuant to the SCM's role as the guarantor of the independence of the judiciary, this function includes ensuring that cases are randomly assigned to judicial panels, thereby minimizing the risks of external influence and internal manipulation of the case assignment process. Section 2 of Article 140 assigns to the SCM the authority to endorse the Regulations on Inner Order of Prosecutors' Offices. This authority also empowers the SCM to refuse to endorse any proposed Regulations that, in its collective judgment, compromise or endanger the independent administration of justice.

SECTION II: PROVISIONS IN THE LAW ON THE STATUTE OF MAGISTRATES

A. FUNDAMENTAL OBLIGATIONS THAT PERTAIN TO ALL JUDGES AND PROSECUTORS: Section 3 of Article 2 proclaims that judges are independent, subject only to the law, and required to be impartial. As the judicial system oversight body, the SCM bears ultimate responsibility for guaranteeing the independence and impartiality of the administration of justice; by extension, the SCM is responsible for ensuring the independence and impartiality of those who administer justice, namely judges. Pursuant to Article 3, prosecutors also are independent. It thereby follows that the SCM also is responsible for ensuring prosecutorial autonomy to guarantee the independent administration of justice. Section 1 of Article 4 obligates judges and prosecutors to observe a number of fundamental principles associated with the administration of justice. Among other duties, they are to:

- a. Safeguard the rule of law;
- b. Respect the rights, freedoms, and equality of persons before the law;
- c. Treat all participants in judicial proceedings without discrimination, regardless of their capacity;
- d. Respect and adhere to the Deontological Code for judges; and
- e. Engage in continuing professional training.

All of these obligations fall within the general concept of the effective and independent administration of justice. To that extent, the SCM is responsible for ensuring that judges discharge these obligations and conform their performance and conduct to the principles that underlie them.

B. FUNDAMENTAL PROHIBITIONS THAT PERTAIN TO ALL JUDGES AND PROSECUTORS: Articles 5 – 10 outline various categories of activities, positions, and memberships in which judges and prosecutors are prohibited

from participating for reasons having to do with maintaining their independence. The articles also outline the types and forms of expression, advice, and counsel which judges and prosecutors are prohibited from providing other than in very limited circumstances. In addition, the articles impose affirmative obligations on judges and prosecutors to reveal specific personal information as a means of certifying that they observe these prohibitions and constraints. They must:

- a. Submit annual statements identifying any persons who are related to them who occupy a legal position, perform legal activities, or conduct criminal investigations or research. The identification must include their workplace.
- b. Certify that they have not previously served as members, agents, or collaborators in any intelligence bodies such as the political police:
- c. Submit annual authenticated statements to the effect that they are not operative employees – undercover or other, informers, or collaborators of intelligence services.

Article 11 outlines the types of non-political activities in which judges may participate and the kinds of organizations in which they may participate either as members or as board representatives.

Chapter II, which comprises Articles 5-11, does not prescribe any sanctions or punishments for the failure of either judges or prosecutors to conform to these prohibitions.

- C. **PREPARATION OF CANDIDATES FOR JUDICIAL AND PROSECUTORIAL POSITIONS:** The emphasis that the laws governing magistrates, the judiciary, and the SCM place on the issue of the independent administration of justice is illustrated in Section 1 of Article 14 which prescribes that the process for admission to the National Institute of Magistracy (NIM) must reflect the principles of transparency and equality. The effort to ensure that candidates for judicial and prosecutorial positions meet the standards required for those professional careers begins with their application for admission to the NIM. Those who are admitted are to be characterized according to Section 1 of Article 16 as justice auditors. Article 18 provides that justice auditors will be held to certain disciplinary standards of conduct. Article 18 also specifies the sanctions that attach to failure to observe them. Those sanctions range from a small and temporary reduction in a justice auditor's scholarship to expulsion from the NIM and the obligation to repay disbursed scholarship funds and tuition fees. In essence, in the earliest stages of their preparation for a judicial or prosecutorial position, candidates are subject both to disciplinary rules of conduct and sanctions for violations of those rules.

Candidates who complete the course of study at the NIM and are appointed to judicial and prosecutorial positions are referred to in Section 1 of Article 21 as debutant judges and debutant prosecutors. Section 1 of Article 22 provides that they remain in that status for a probationary period of one year. Following that probationary year, they must take the capacity examination provided for in Section 1 of Article 25. The examination, as described in Article 28 tests theoretical and practical knowledge. The theoretical test covers four areas: constitutional foundations of the legal state, basic legal institutions, judicial organization, and the Deontological Code or Code of Ethics for judges and prosecutors. Here again, the importance of standards of conduct for judges is manifested by the Romanian Parliament where it specifies that the Deontological Code as one of the four primary areas in which prospective judges and prosecutors must demonstrate their mastery of the subject matter. Candidates are reminded of these deontological principles that are to govern their conduct when they take the oath of office set forth in Section 1 of Article 34: *I swear...to fulfill my duties with honor, scruples, and no bias*. Section 2 provides that if a candidate refuses to take the oath, the appointment will automatically be nullified.

D. CONTINUING PROFESSIONAL TRAINING FOR JUDGES AND PROSECUTORS: Section 1 of Article 35 provides that the continuing professional training of judges will serve to safeguard their independence and impartiality as they administer justice. Section 2 previews the numerous subject areas that this continuing professional education must address. They include:

- a. The dynamics of the legislative process and internal legislation;
- b. The European and International treaties and agreements to which Romania is a Party;
- c. The case law of the law courts and the Constitutional Court;
- d. The case law of the European Court of Human Rights and the European Court of Justice;
- e. Deontological norms;
- f. The multi-disciplinary approach of new institutions;
- g. Foreign languages; and
- h. Operating PCs.

This training will be organized and made available through several sources, as set forth in Section 2 of Article 37: NIM, courts/prosecutor offices, universities in Romania and abroad, and other specialized institutions. In addition, pursuant to Article 38, presidents of the appeals courts and the chief prosecutors of the offices attached to the appeals courts shall be responsible for organizing continuing training sessions in various formats

such as consultations, debates, seminars, sessions, and round tables with the assistance of NIM. The SCM has a prominent role in this continuing professional training enterprise through its authority to approve the curriculum developed by the NIM and the training topics proposed for the court and prosecutor office training sessions.

- E. CYCLICAL PROFESSIONAL EVALUATIONS OF JUDGES AND PROSECUTORS:** Unlike many judicial systems in both civil and common law jurisdictions which provide for continuing professional education for judges and prosecutors, the Romanian system is bound by provisions in Article 39 that direct it to determine whether the professional competence and output requirements associated with this training endeavor have been met. The mechanism is a three-year evaluation cycle conducted by special boards of judges for judicial evaluations and prosecutors for prosecutorial evaluations. The focus of these evaluations is four-fold. They are evaluated on the bases of (i) their activity; (ii) their integrity; (iii) their obligation to participate in continuing professional training, and (iv) their obligation to complete and graduate from specialized courses. Those who serve in leadership positions also are evaluated on how well they perform their management duties.

Section 5 of Article 39 indicates that the evaluation criteria are provided in the annex to the Law on the Statute of Magistrates. Although the annex is not yet available, work on it is being undertaken. In the interim, SCM evaluation teams are utilizing in the meantime the standard form annexed to the previous law to document their findings. We recommend that in order to ensure consistent evaluations that are based on uniform criteria equally applied to all judges and prosecutors, completion of the annex should be given a high priority.

As the guarantor of the independent administration of justice, the SCM has a prominent role in this evaluative process. It approves (i) the magistrate evaluation boards and (ii) the procedural regulations for evaluating the professional activities of magistrates. The SCM's responsibility, in exercising this authority, is to ensure that the evaluation process is a meaningful one and that as a consequence of the training they receive, judges and prosecutors will safeguard independence and impartiality in the administration of justice. The evaluation process concludes with the reviewing board preparing a report and assigning one of four possible ratings: *very good, good, satisfactory, or unsatisfactory*. The consequences of not achieving a rating of very good or good can be serious. A judge or prosecutor who receives:

- a. A rating of unsatisfactory must complete three to six months of special NIM courses, then pass an examination;
- b. Two consecutive satisfactory ratings must complete three to six months of special NIM courses, then pass an examination; and,
- c. A rating of unsatisfactory after two consecutive evaluations or who fails to pass the examination after completing the special NIM courses will be relieved of his or her office on the basis of professional incapacity by the President of Romania on the recommendation of the SCM.

The commitment to inculcating in judges and prosecutors both a deep-seated understanding of and ability to apply to their work deontological norms in general (and their Deontological Code in particular) is manifest in the topics for continuing professional training set forth in Section 2 of Article 35 and in the four areas on which judges and prosecutors are evaluated as set forth in Section 1 of Article 39.

- F. JUDICIAL AND PROSECUTORIAL PROMOTION POLICIES:** As set forth in Section 1 of Article 43, the sole means by which a judge or prosecutor may be promoted when vacancies or new judgeships have been authorized, is on the basis of a competitive national examination. Section 1 of Article 44 requires that candidates for the examination, in addition to length of service standards, must (i) have received a rating of *very good* in their last evaluation, (ii) must not have been sanctioned for disciplinary violations within the past three years. Section 3 of Article 44 requires the SCM to verify that successful candidates have met these requirements. Section 2 of Article 46 specifies what topics the examination should cover. Although the range of topics is similar to those specified in the mandatory continuing professional training curriculum for all judges and prosecutors, the topic of deontological norms is not included.

If a judge or prosecutor wishes to be considered for promotion to a position of leadership in a court or prosecutorial office, Article 48 provides that they meet the same requirements of (i) having received a *very good* rating at their most recent evaluation, and (ii) not having been sanctioned for any disciplinary violation in the past three years. If they do meet those requirements and have the required tenure, they must sit for a competitive examination, the subject areas of which are set forth in Section 4:

- a. Presentation of a project on the exercise of leadership duties;

- b. Written tests on management, communication, human resources, decision making, assumption of responsibility, and resistance to stress; and
- c. Psychological stress test.

Here again, competence and knowledge in the area of deontological norms or the Deontological Code for Judges and Prosecutors is not measured. This is a matter of some concern because court presidents and vice-presidents typically are the first-line of inquiry, advice, and counseling for judges who have questions or concerns about prospective ethical or deontological conflicts. A court president or vice-president may meet all of the technical qualifications required to function as an effective manager, but have little or no competence in the discipline of ethical conduct and appropriate behavioral norms. The same applies to a prosecutor who is in a leadership position. Presumably, where a judicial or prosecutorial leader fails to adequately advise, counsel, or monitor the conduct – ethical and otherwise -- of those who serve under him or her, that leader conceivably could be held responsible for a failure or inappropriate exercise of leadership and management duties under the provisions of Article 51.

The SCM has important responsibilities in the process of selecting, testing, and validating candidates for leadership positions in the courts and in prosecutors' offices. Under Sections 5-7 of Articles 48 and 49, the SCM is responsible for the following:

- a. Appoints the examination board;
- b. Approves the date, place, and Regulation for conducting the examination; and
- c. Validates the results of the examination and proposes to the President of Romania the appointment of the successful candidates.

Under Section 9 of both Articles, the SCM determines whether the three-year term of office shall be renewed for any judge or prosecutor in a leadership position.

Under Section 2 of Article 51, the SCM also plays an important role in the revocation of leadership positions for various violations relating to the inappropriate exercise of management responsibilities or application of a disciplinary sanction. As noted above, if a judge or prosecutor in a leadership position fails to provide appropriate oversight in the areas of judicial and prosecutorial conduct vis-à-vis the Deontological Code for Judges and Prosecutors, such failure conceivably could be sufficiently serious that it might result in disciplinary sanctions or even revocation. To

that extent, the SCM might seek to amend Articles 48 and 51 to provide that the leadership examination and evaluation specifically include competence in the Deontological Code and the ability to provide appropriate counseling and advice on its provisions and their interpretation in real-life situations. The same applies to the high-level leadership positions described in Articles 52-54. Even though no examination is required of prospective candidates for those positions, the SCM should include a review of those competencies in its general consideration of their qualifications.

G. JUDICIAL AND PROSECUTORIAL DISCIPLINARY LIABILITY: Section 1 of Article 98 provides that judges and prosecutors shall be disciplinary liable for transgressions of service duties and for acts that adversely affect the administration of justice. Article 99 lists the specific categories of offenses that will incur disciplinary liability.

- a. Violation of legal provisions regarding declarations of wealth, declarations of interests, incompatibilities and interdictions regarding judges and prosecutors;
- b. Intercessions to resolve requests, requesting, or accepting resolution of one's personal interests or those of one's family or of other persons, otherwise than within the legally regulated framework for all citizens, as well as interference in the activity of another judge or prosecutor;
- c. Carrying out public political activities or expressing political opinions in the exercising of professional duties;
- d. Violating the secrecy of judges' deliberations or disclosing acts or documents that have a secret status;
- e. Recurring failure for imputable reasons to comply with the legal provisions on the prompt resolution of cases;
- f. Unjustified refusal to accept applications, conclusions, memoranda or documents filed by the parties to a trial;
- g. Unjustified refusal to fulfil a service duty;
- h. Exercising the duties of the office in bad faith or serious negligence, unless the act is an offence;
- i. Delay for imputable reasons in carrying out duties of the office;
- j. Recurrent unjustifiable absence from work;
- k. Undignified attitude during the exercise of service duties with regard to colleagues, lawyers, experts, witnesses or litigants;
- l. Failure to observe the obligation related to transferring the basic office norm to the court or prosecutor's office where they work;
- m. Failure to comply with the provisions on random case assignment; and

- n. Direct participation or participation through intermediaries in pyramid-type games, gambling or investments systems for which the transparency of funds is not ensured according to the law.

Article 100 outlines the disciplinary sanctions that may be imposed on judges and prosecutors for commission of these offenses. They include warning, temporary reduction in salary, temporary disciplinary transfer, and loss of position. The gravity of the sanction is to be a function of the severity of the offense. Pursuant to Article 101, the determination of what sanctions to impose falls to sections of the SCM.

SECTION III: PROVISIONS IN THE LAW ON THE SUPERIOR COUNCIL OF MAGISTRACY

- A. **GENERAL OBLIGATIONS OF THE SCM:** Section 1 of Article 30 obligates the SCM to protect judges and prosecutors from actions that either could affect or rouse suspicion regarding their independence or impartiality. It also is obligated to safeguard their professional reputation. *Comment: Conceivably, this is a difficult mandate to enforce. Presumably, most such actions fall into one of two general categories. First are criticisms and condemnations that originate with officials in other branches of the government, with candidates running for political office, or with political parties and are motivated by the intent to gain political ground. Second are denunciations in the media for:*

- a. *Unpopular decisions rendered by judges in high-profile cases;*
- b. *Unpopular action taken by prosecutors; or*
- c. *Failure by prosecutors to have taken action.*

Responding publicly to charges from politicians generally accomplishes little in the way of changing public opinion about whether judges and prosecutors are independent and impartial. What it typically does is promote a negative interchange in which both sides end up losing the regard and respect of the public. Responding publicly to media criticisms also tends to generate a negative interchange which risks undermining public trust. Members of the SCM should bear in mind that of the three powers of government, the judicial power is by far the weakest and most vulnerable. The executive branch has the power of the sword through its control of the police, the military, and various security agencies. The legislative branch has the power of the purse through its control and distribution of government revenues. The judicial branch, by contrast, is dependent on the executive branch for its security and protection, and on the legislative branch for the funding of its operations and administration. To that extent, the judicial branch is much more dependent on the

deference and respect of the general public that are either of the other two branches. To earn and maintain that deference and respect, the judicial branch must engage the public on a higher and more profound level than the other two branches. It must establish a higher standard of professionalism, performance, and public service than the other branches. One means of achieving that objective is to refuse on principle to demean or lower itself by responding to politically motivated criticism and condemnation that is lacking in both fact and substance. The same applies to media-based expressions of dissatisfaction with the outcome of the judicial process. As a matter of best practice, the SCM should respond on behalf of the judiciary or prosecution only when a serious and high-profile attack is mounted on the basis of factual claims that can clearly and profoundly be refuted with hard evidence. Even in such cases, the response should restrict itself to a clear, precise, and objective refutation without mounting a counterattack or other disparaging views.

Section 3 of Article 30 directs the SCM to ensure that judges and prosecutors observe the law and that they demonstrate competence in and adhere to the ethics of their respective professions throughout their careers. Section 4 reminds the SCM that the exercise of these prerogatives must proceed through the mechanisms set forth in the Law on the Statute of Magistrates. Section 1 of Article 31 authorizes the SCM to request other institutions of the government to provide it with documents and other information relevant to its role of overseeing and monitoring judicial and prosecutorial performance and competence. Section 2 of Article 31 authorizes members of the SCM to visit courts and prosecutors offices and to organize meetings with judges, prosecutors, other officials, and the general public to review judicial and prosecutorial performance and competence.

Article 35 outlines the general responsibilities of the SCM with regard to judicial and prosecutorial candidates and incumbents:

- a. Proposing to the President of Romania their appointment to and removal from office;
- b. Appointing debutant judges and debutant prosecutors, based on their NIM examination results;
- c. Ordaining the promotion of judges and prosecutors;
- d. Removing debutant judges and debutant prosecutors from office;
- e. Proposing to the President of Romania the bestowing of distinctions upon judges and prosecutors, according to the law; and
- f. Other duties set forth by law or regulation.

Virtually all of these responsibilities relate to the SCM's fundamental responsibility of ensuring the independent administration of justice. In doing so, it directs or oversees virtually all aspects of the judicial selection, retention, discipline, and removal processes. One of the most important elements of the mission of the SCM is to ensure that of those candidates who are attracted to and apply for appointment to the judicial and prosecutorial professions in Romania, only those should be selected and retained in office who clearly demonstrate the intellectual capacity, moral integrity, personal self-confidence, and deep personal commitment to the principles of justice necessary to carry them through a career that easily might span 30-40 years of professional service under less than ideal working conditions. This is a daunting task by any standard.

Article 36 sets forth the SCM's duties relating to the processes by which prospective judges and magistrates are selected for admission to the NIM; their selection for appointment to the professional ranks of judges and prosecutors; their continuing professional education requirements; their evaluation; the various examinations for promotion and for leadership positions. It also sets forth the SCM's responsibilities relating to the designation of evaluation boards, the appointment and revocation of appointment of NIM officials, designation of members of the Scientific Council of the National Institute for Magistrates, and other related organizational duties.

Section 1 of Article 38 mandates, among other duties, that the SCM adopt the Deontological (or ethics) Code for Judges and Prosecutors. Section 2 directs the SCM to publish this Code in the Official Journal of Romania and on the SCM webpage.

- B. ROLE OF THE SCM IN REVIEWING AND DETERMINING APPROPRIATE ACTION IN RESPONSE TO DISCIPLINARY VIOLATIONS BY JUDGES AND PROSECUTORS:** Section f of Article 40 directs the SCM to resolve claims from litigants and other persons relating to the inappropriate conduct of judges and prosecutors. Presumably this includes alleged violations of the Code of Ethics for Magistrates in addition to a variety of other categories of inappropriate conduct. Sections 1 and 2 of Article 42 authorize the SCM to approve the search for, apprehension, and custody of judges, assistant magistrates, and prosecutors for non-flagrant offences. As it reviews disciplinary liability acts that fall within the authority of the Law on the Statute of Magistrates, the SCM is directed in Section 1 of Article 44 to function as a law court. Disciplinary proceedings are conducted and disciplinary action is exercised by the SCM's disciplinary boards pursuant to Section 1 of Article 45. Section 4 provides that charges of disciplinary

transgressions may be brought to the disciplinary boards by any concerned persons. Alternatively, the disciplinary boards may act *ex officio*. Article 46 sets forth the process for the investigation by the designated disciplinary board inspectors of the alleged violation, including relevant inquiries and opportunity for the named judge or prosecutor to respond to the allegations and to gather evidence for his or her defence. After the process has been completed and a determination made the board will either dismiss the allegations or summon the charged judge or prosecutor to appear before it with the option of either bringing another judge or prosecutor to provide assistance or retaining a lawyer for purposes of representation. Where the SCM disciplinary board determines that a violation under the law has occurred, it is authorized to impose the appropriate disciplinary sanction provided for under law. The matter will be resolved upon preparation of a decision that sets forth the nature of the violation, the legal basis for applying the sanction, the reasons for the inadequacy of the defense, the sanction imposed and the legal justification for it, the legal remedy and time frame within which it may be appealed, and the court to which the appeal should be directed. Appeals will be reviewed by the Panel of nine judges of the High court of Cassation and Justice. Where the sanction imposed is expulsion of a judge or a prosecutor from his or her position, the decree of removal from office shall be submitted to the President of Romania.

- C. LIABILITY OF THE MEMBERS OF THE SCM:** This Law on the SCM makes it clear in Section 1 of Article 53 that elected members of the SCM shall be civilly, disciplinarily, and criminally liable under the law. Moreover, under Section 2, any person may notify the SCM either directly or through officials in charge of courts or prosecutorial offices, of:
- a. Any inappropriate activity or conduct of any SCM member;
 - b. Any violation of professional obligations; or
 - c. Any commission of a disciplinary transgression.

Any SCM member so charged will be subject to proceedings by an SCM disciplinary board and to appropriate disciplinary sanctions as set forth in Article 97 of the Law on Statutes of Magistrates.