



# DISCIPLINARY RESPONSIBILITY OF LEGAL PROFESSIONALS (attorneys-at-law)

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# **Assessment of disciplinary bodies and disciplinary proceedings of the Niš Bar Association**

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All terms used in this document in the masculine grammatical gender should be understood as referring to persons of both the male and the female sex.

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\* The English-language version of this assessment presents three case studies (cases 4, 7, and 14) of the total of 39 featured in the Serbian original.

## FOREWORD

The community of experts and the Serbian public at large share the impression that significant responsibility for the troubles which have for years faced the country's judiciary rests not only with the legislative and executive power, but also with the judiciary itself. This study aims at investigating the disciplinary accountability of the legal profession and bar associations. Perceptions of how attorneys-at-law and bar associations operate are often based on superficial views rather than on findings of professional research, with one strand of opinion holding that bar associations protect their members and do not pursue disciplinary charges against individual attorneys-at-law efficiently and impartially. In that context, this research was designed to gain documented, fact-based insight into those issues. The Niš Bar Association and its President, Goran Pantić, showed great openness and consideration in allowing the researchers to review the case listings and case files of the Bar Association's disciplinary bodies in August 2020. The research was designed and the report produced by Prof. dr Nevena Petrušić, professor at the Law School in Niš, while Mr. Pantić served as research consultant. Legal professionals Bojana Arsenijević and Katarina Mirović were also involved in the research, working to the instructions and under the mentorship of the author to collect, process, and analyze data relating to 40 cases. The researchers wish to thank Katarina Ristić, administrative clerk at the Niš Bar Association, for her invaluable contribution to the data collection effort.

Translating the Serbian word *advokatura* posed a dilemma. We decided to follow the official English-language version of the Legal Profession Act as published on the Serbian Bar Association website, where *advokatura* is translated as "legal profession", even though the two terms are not exactly equivalent as there are other legal professions besides *advokatura*.

The findings of this pilot research reveal the features of disciplinary offences perpetrated by legal professionals and how these infringements are prosecuted and sanctioned. The results constitute a sound foundation on which to develop assumptions and base broader, more comprehensive research into the disciplinary accountability of attorneys-at-law in Serbia. This report was completed in 2021.

Mihajlo Čolak

# **1. STATUTORY FRAMEWORK GOVERNING THE LEGAL PROFESSION IN SERBIA**

## **1.1. Introduction**

Democratic societies based on the rule of law give the legal profession a key role in protecting and ensuring access to human rights and freedoms and the rule of law. Attorneys-at-law defend those accused of breaking the law, represent litigants in civil and administrative cases, and provide various types of legal assistance, including free legal aid to those in need of it. The legal profession is both a liberal and regulated, serving the public order. It is primarily a public service that seeks to deliver good justice. As such, any restrictions, duties, rights, and powers exercised by attorneys-at-law are not objectives in and of themselves – rather, they are the preconditions and means for attaining the purpose of the legal profession, namely a better and more equitable judiciary.

Regulations and self-regulatory principles of the practice of law envisage a number of conditions that attorneys-at-law need to meet before being able to practice law, as well as numerous standards and requirements for how law is practiced.

The prerequisites for success of the legal profession are the independence and expertise of attorneys-at-law, as well as their accountability and respect for professional ethical standards, especially since clients of legal services are generally ignorant of regulations, practice, and the legal system. For that reason, an independent, professional, conscientious, and autonomous legal profession guarantees the exercise and protection of clients' rights, so contributing to the rule of law and the legality and equity of social interactions.

Bar associations play a key role in regulating legal services and ensuring their efficiency, quality, and accessibility. These are professional associations of attorneys-at-law that advance their interests, promote continuing professional development and training, and safeguard the professional integrity of legal professionals. Bar associations are an integral part of the legal protection and act in the interests of their individual attorney-at-law members and society at large. They work for the good of the legal profession, enhancing the quality, professionalism, and ethics of attorneys-at-law and protecting the profession from unqualified practitioners, and their proficient actions contribute to implementation of laws. Key

roles of the professional associations of attorneys-at-law include laying down codes of professional conduct for attorneys-at-law and determining disciplinary accountability of their members.

There are both many similarities and differences between countries as to the roles of their bar associations and the functions they perform.<sup>1</sup> A crucial power they all share is the ability to set standards of conduct and determine accountability for their infringement, which enhances the integrity of the legal profession and increases public trust in it.

## 1.2. International standards

International standards concerning the legal profession are set out in a number of universal and regional documents. The 1990 Basic Principles on the Role of Attorneys-at-law<sup>2</sup> provide general standards on the availability of attorneys-at-law and legal services, the qualifications, duties, and responsibilities of attorneys-at-law, guarantees for their functioning, freedom of expression and association, professional associations, and disciplinary accountability.

European standards for the establishment, role, and activities of bar associations are contained in the 1950 Convention for the Protection of Human Rights and Fundamental Freedoms and Recommendation No. R(2000)21 of the Committee of Ministers of the Council of Europe to member States on the freedom of exercise of the profession of attorney-at-law.<sup>3</sup> Also significant are documents adopted by the Council of Bars and Law Societies of Europe (CCBE),<sup>4</sup>

<sup>1</sup> For a detailed discussion, see Comparative Analysis of Bar Associations and Law Societies in Select European Jurisdictions, Multi-Donor Trust Fund for Justice Sector Support in Serbia, World Bank. Available online at [mdtfjss.org.rs/archive//file/Bar%20Associations%20report\\_clean.pdf](http://mdtfjss.org.rs/archive//file/Bar%20Associations%20report_clean.pdf).

<sup>2</sup> The Basic Principles were adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders held in 1990. Their Serbian translation is available online at [aks.org.rs/cir/osnovni-principi-o-ulozi-advokata-3](http://aks.org.rs/cir/osnovni-principi-o-ulozi-advokata-3). See Para. 24 of the Basic Principles.

<sup>3</sup> A Serbian translation of Recommendation No. R(2000)21 is available online at [akv.org.rs/wp-content/uploads/2018/10/Sloboda-obavljanja-advokatske-profesije.pdf](http://akv.org.rs/wp-content/uploads/2018/10/Sloboda-obavljanja-advokatske-profesije.pdf).

<sup>4</sup> The CCBE, founded in 1960, is an international non-profit association whose goal is to advance the views of European attorneys-at-law and defend the legal principles upon which democracy and the rule of law are based. The CCBE's membership includes the bars and law societies of 45 countries from the European Union, the European Economic Area, and wider Europe. The organisation consists of 32 member countries and 13 further associate and observer countries. The CCBE represents European bars and law societies in their common interests before European and other international institutions. It regularly acts as a liaison between its members and the European institutions,



the 2006 Charter of Core Principles of the European Legal Profession,<sup>5</sup> which sets out ten core principles common to national and international instruments regulating the legal profession, and the 1988 Code of Conduct for European Attorneys-at-law and its subsequent revisions.<sup>6</sup> The Code governs relationships between lawyers and clients, courts, and other attorneys-at-law, and contains a set of common provisions on legal fees, and serves as a reliable bellwether for standards and practices in member countries. The standards ensure the independence and integrity of the legal profession; quality of legal services; ability of attorneys-at-law to join together into professional associations, which are self-regulating and independent of the authorities and the general public; right of bar associations to conduct disciplinary proceedings; the right to legal assistance.

A key instrument for the European Union (EU) is the European Parliament resolution on the legal professions and the general interest in the functioning of legal systems of March 23rd, 2016,<sup>7</sup> which recognizes the rules required to ensure the independence, competence, integrity, and responsibility of members of the legal professions so as to guarantee the quality of their services, to the benefit of their clients and society in general, and in order to safeguard the public interest.

Relevant EU standards on the mobility of attorneys-at-law across the EU legal space are contained in Council Directive 77/249/EEC of March 22nd, 1977 to facilitate the effective exercise by attorneys-at-law of freedom to provide services,<sup>8</sup> Directive 98/5/EC of the European Parliament and of the Council of February

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international organisations, and other legal organisations around the world. The regulation of the profession, the defence of the rule of law, human rights and democratic values are the most important missions of the CCBE. Areas of special concern include the right of access to justice, the digitisation of justice processes, the development of the rule of law, and the protection of the client through the promotion and defence of the core values of the profession. More information is available online at [ccbe.eu](http://ccbe.eu).

<sup>5</sup> The Charter was adopted by a plenary session of the CCBE on November 24th, 2006, and is available online at [ccbe.eu/fileadmin/speciality\\_distribution/public/documents/DEONTOLOGY/DEON\\_CoC/EN\\_DEON\\_CoC.pdf](http://ccbe.eu/fileadmin/speciality_distribution/public/documents/DEONTOLOGY/DEON_CoC/EN_DEON_CoC.pdf).

<sup>6</sup> This document was adopted by a plenary session of the CCBE on October 28th, 1988, and amended on November 28th, 1998, December 6th, 2002, and May 19th, 2006. Available online in Serbian at [akv.org.rs/wp-content/uploads/2018/10/Kod-eks-advokatske-etike-evropske-unije.pdf](http://akv.org.rs/wp-content/uploads/2018/10/Kod-eks-advokatske-etike-evropske-unije.pdf).

<sup>7</sup> Available online at [eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:52006IP0108&rid=10](http://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:52006IP0108&rid=10).

<sup>8</sup> OJ L 78, 26.03.1977. Available online at: [eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX%3A31977L0249](http://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX%3A31977L0249).

16, 1998 to facilitate practice of the profession of attorney-at-law on a permanent basis in a Member State other than that in which the qualification was obtained,<sup>9</sup> Directive 2005/36/EC of the European Parliament and of the Council of September 7th, 2005 on the recognition of professional qualifications,<sup>10</sup> Directive 2006/123/EC of the European Parliament and of the Council of December 12th, 2006 on services in the internal market,<sup>11</sup> Services directive 2006/36/EC,<sup>12</sup> Directive on electronic commerce 2000/31/EC,<sup>13</sup> and individual rulings of the Court of Justice of the EU.<sup>14</sup>

### 1.3. Serbian regulations governing the legal profession

Article 67 of the Constitution of the Republic of Serbia<sup>15</sup> guarantees everyone the right to legal assistance provided by legal professionals and legal aid offices established by local authorities, and defines the legal profession as an independent and autonomous service.

The 2011 Legal Profession Act<sup>16</sup> defines the legal profession as “an independent and autonomous activity of providing legal aid to physical and legal persons” through independent performance of the legal profession, the client’s right to free choice of attorney-at-law, association of attorneys-at-law in the Serbian Bar Association (SBA) and bar associations under it, as autonomous and independent organizations of attorneys-at-law, adoption of byel-

<sup>9</sup> OJ L 77, 14.03.1998. Available online at [eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX%3A31998L0005](http://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX%3A31998L0005).

<sup>10</sup> OJ L 255, 30.09.2005. Available online at [eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32005L0036](http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32005L0036).

<sup>11</sup> OJ L 376, 27.12.2006. Available online at [eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32006L0123](http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32006L0123).

<sup>12</sup> OJ L 88, 25.03.2006, OJ L 330M, 28.11.2006. Available online at [eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32006L0036](http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32006L0036).

<sup>13</sup> OJ L 178, 17. 07. 2000. Available online at [eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX%3A32000L0031](http://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX%3A32000L0031).

<sup>14</sup> See, for instance, the cases of Angelo Alberto Torresi and Pierfrancesco Torresi v Consiglio dell’Ordine degli Avvocati di Macerata, C-58/13 and C-59/13; Birutė Šiba v Arūnas Devėnas, C- 537/13; Grand Duchy of Luxembourg v European Parliament and Council of the European Union, C-168/98; Reyners, 2/74; Wouters, C-309/99; Morgenbesser, C-313/01; Graham J. Wilson v Ordre des avocats du barreau de Luxembourg, C506/04; Donat Cornelius Ebert v Budapesti Ügyvédi Kamara, C-359/09; and Commission of the European Communities v Grand Duchy of Luxembourg, C-193/05.

<sup>15</sup> *Official Gazette of the Republic of Serbia* No. 98/2006.

<sup>16</sup> *Official Gazette of the Republic of Serbia* Nos. 31/2011 and 24/2012 – Constitutional Court ruling.

aws by the bar associations, and deciding on admission to the legal profession and disbarment.

The bar association system is comprised of nine bar associations under the SBA, which is the umbrella professional organization for all attorneys-at-law and law trainees.

One of these nine organizations is the Niš Bar Association (NBA), which is an independent and autonomous professional association, with mandatory membership, of attorneys-at-law whose practices are located in municipalities within the area of jurisdiction of the Higher Courts of Niš, Pirot, Vranje, Prokuplje, and Leskovac.<sup>17</sup> The NBA is Serbia's third-largest bar association after those of Belgrade and Vojvodina. The register of attorneys-at-law numbers 1,155, of which 617 are based in Niš, 197 in Vranje, 181 in Leskovac, 58 in Pirot, 66 in Prokuplje, 36 in Aleksinac, and three in Kosovo. Numbers of law trainees registered with the NBA are not publicly available.<sup>18</sup>

Attorneys-at-law are permitted to practice law, as are law trainees, under conditions set out by legislation. Article 4 of the Legal Profession Act defines "attorney-at-law" as a "person who is registered in the directory of attorneys-at-law and took the Bar oath and practices law", and "law trainee" as a "graduate lawyer listed in the directory of law trainees, who is performing the exercises for trainee lawyers, trained to work in the legal profession". The required level of attorney-at-law competence is ensured by means of professional qualification requirements for practicing law and rules that mandate attorneys-at-law to continuously acquire and improve their skills necessary for competent, independent, autonomous, effective, and ethical practice of law pursuant to a professional development curriculum enacted by the SBA.<sup>19</sup> In addition to law trainees being required to meet professional qualification rules before they can be registered with the register of law trainees, the principals that employ them also must provide appropriate working and training conditions designed to achieve the goals of these internships, implement training curricula, and supervise the practice and professional development of law trainees.<sup>20</sup>

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<sup>17</sup> Article 2 of the 2019 NBA Statute (Statute of the Niš Bar Association, Consolidated Text, *Official Gazette of the City of Niš* No. 96/2019). It ought to be noted that the 2012 NBA Statute was in force at the time the disciplinary proceedings were pursued (*Official Gazette of the City of Niš* Nos. 8/2012 and 99/2015).

<sup>18</sup> Available online at [advokatskakomoranis.rs/imenik.php?lang=ci](http://advokatskakomoranis.rs/imenik.php?lang=ci).

<sup>19</sup> Legal Profession Act, Article 17.

<sup>20</sup> Legal Profession Act, Article 17.

The Legal Profession Act requires attorneys-at-law to genuinely and permanently practice law, provide legal assistance competently and in good faith, pursuant to the Law, statute of their bar association, and Code of Professional Ethics for Attorneys-at-law, adhere to the principle of legal professional privilege, and uphold the reputation of the legal profession in their work and private life insofar this is open to public scrutiny. The Law also makes attorneys-at-law and law trainees accountable for competently practicing law in good faith and safeguarding the reputation of the legal profession, and calls for the SBA to lay down rules on serious and minor breaches of duty and violations of professional reputation that govern their disciplinary accountability.<sup>21</sup> Statutes of the SBA and the NBA also require attorneys-at-law and law trainees to practice law responsibly, competently, and in good faith and safeguard the reputation of the legal profession, with infringements carrying disciplinary penalties pursuant to the Legal Profession Act and rules of the autonomous bar associations.<sup>22</sup>

Some rights and powers of attorneys-at-law are regulated by the Legal Profession Act, the 2011 SBA Statute,<sup>23</sup> and statutes of its constituent bar associations, while professional ethics are governed by the Code of Professional Ethics for Attorneys-at-law, enacted by the SBA in 2012.<sup>24</sup>

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<sup>21</sup> Legal Profession Act, Article 75.

<sup>22</sup> SBA Statute, Article 197, and NBA Statute, Article 164.

<sup>23</sup> *Official Gazette of the Republic of Serbia* Nos. 85/2011, 78/2012, and 86/2013.

<sup>24</sup> It is worth noting that the Constitutional Court of Serbia has set aside as unconstitutional the provision of the Code of Professional Ethics for Attorneys-at-law that permitted attorneys-at-law to refuse to represent a client that had or continues to have legal representation in the same case where such client fails to produce written confirmation from the other attorney-at-law(s) that no outstanding legal fees remain unpaid (22.5.13); the provision that required attorneys-at-law approached by clients to replace any other attorney-at-law in the same case to inform such clients they were unable to take on their cases before the present attorney-at-law's power of attorney is revoked and before the present attorney-at-law provided confirmation that no outstanding legal fees remained unpaid (33.1.2); and the provision that required an attorney-at-law approached by a party claiming a previous attorney-at-law was no longer representing them to verify that no legal fees remained unpaid to such previous attorney-at-law by inspecting the previous attorney-at-law's confirmation before taking on a case (33.2.2). According to the Constitutional Court, these requirements in effect sought to introduce payment of outstanding legal fees as a precondition for legal assistance. Given that outstanding financial claims between agent and principal could not constitute preconditions for accessing legal assistance, as these issues are dealt with by the courts pursuant to the appropriate legislation, the Constitutional Court found that the contested provisions of the Code violated the right to legal assistance enshrined in Article 67 of the Constitution that

The Code of Professional Ethics for Attorneys-at-law stipulates that the professional ethics and high degree of professional accountability applicable to the legal profession are founded upon the assumption that the legal profession is a liberal profession of particular significance for the maintenance public order and a key component of the judiciary, the accountability of attorneys-at-law to their clients, and the interests of justice and the rule of law. The Code of Ethics views attorneys-at-law as independent, autonomous, and competent actors that protect and advance freedoms and rights where these are threatened, and that actions of attorneys-at-law affect the importance and reputation of the legal profession as a whole. The Code underscores the fact that attorneys-at-law are accountable for their actions and omissions.

The Legal Professionals' Tariff of Fees regulates fee awards and reimbursement of expenses charged by attorneys-at-law and law partnerships.<sup>25</sup>

#### **1.4. Serbian regulations governing disciplinary accountability of attorneys-at-law**

In accordance with a key principle of disciplinary accountability, that of *nulla poena sine lege* ("no penalty without law"), the Legal Profession Act provides general definitions of serious and minor breaches of duty and violations of professional reputation. Serious breaches of duty include any breach of duty and violation of professional reputation as defined by law, the statute of the SBA, and the Code of Professional Ethics for Attorneys-at-law, in particular practicing law in evident bad faith; providing legal aid in cases where an attorney-at-law is obliged to refuse to provide legal aid; engaging in activity incompatible with the reputation and independence of the legal profession, breach of legal professional privilege, seeking compensation in excess of that prescribed in the Tariff of Fees, and refusing to provide clients with a breakdown of their fee award and cost reimbursement. Any breach of duty of lesser significance is considered a minor breach.<sup>26</sup>

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was guaranteed to all under conditions set out by law (Decision IUo-213/2019, *Official Gazette of the Republic of Serbia* No. 159/2020).

<sup>25</sup> Legal Professionals' Tariff of Fees (*Official Gazette of the Republic of Serbia* Nos. 121/2012 and 99/2020).

<sup>26</sup> Legal Professions Law, Article 75(2).

## The SBA Statute prescribes a total of 44 serious<sup>27</sup> and two

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<sup>27</sup> Serious breaches are: 1) practicing law in evident bad faith; 2) providing legal aid in cases where an attorney-at-law is obliged to refuse to provide legal aid; 3) engaging in activity incompatible with the reputation and independence of the legal profession; 4) seeking compensation in excess of that prescribed in the Tariff of Fees; 5) refusing to provide clients with a breakdown of fee award and cost reimbursement where so requested; 6) engaging in representation before courts, public authorities, and other organisations in contravention of the law, the SBA Statute, and the Code of Professional Ethics for Attorneys-at-law; 7) engaging in representation in bad faith; 8) failing to return case files and documents to a client where requested to do so; 9) failing to abide by decisions made by bodies of the Chamber; 10) failing to abide by requests made by bodies of the Chamber; 11) actions or public appearances by officers of the SBA that present inaccurate information or contravene the Code of Professional Ethics for Attorneys-at-law or injure the reputation and position of the legal profession; 12) failure of an attorney-at-law to attend two consecutive meetings of bodies of the Bar Association of which he is member or bodies of the SBA; 13) action taken by an attorney-at-law who is member of a political party or a body thereof that injures the legal profession or jeopardises its independence or autonomy; 14) inappropriate behaviour towards another attorney-at-law, law trainee, opposing or own client, court, witness, expert witness, court interpreter, or other participant in a proceeding enjoying official status; 15) inappropriate behaviour in public and private life, insofar this is open to public scrutiny, that harms the reputation of the legal profession; 16) providing inaccurate information that misleads bodies of the Bar Association when making decisions; 17) acting as interim deputy or receiver of the law practice of another attorney-at-law in bad faith; 18) managing the affairs of a client in bad faith or misplacing a client's documents; 19) retaining money collected on behalf of a client; 20) purchasing for himself or another person items put up for sale in a public auction in which he represents a client; 21) violating the rights of a law trainee undergoing internship in his practice; 22) allowing a law trainee to work unsupervised; 23) placing the stamp of his legal practice on submissions made by another person; 24) failing to pay charges levied by the Bar Association; 25) making public statements and appearances for purposes of advertising and personal promotion; 26) simultaneously representing two clients with opposing interests; 27) abusing the trust of a client he represents; 28) unfairly poaching clients from other attorneys-at-law; 29) engaging in activities other than practicing law excepting those permitted by the Legal Profession Act; 30) unjustifiably refusing to provide legal assistance; 31) engaging in representation before courts or other authorities without being in possession of valid attorney-at-law identification; 32) engaging in representation before courts or other authorities while under the influence of alcohol or narcotics; 33) contracting excessive fee award or cost reimbursement in contravention of the Legal Professionals' Tariff of Fees or seeking fee award from a client he is required to represent free of charge; 34) disclosing information protected by legal profession privilege or otherwise confidential information; 35) falsifying minutes or other documents; 36) practicing law directly or indirectly while temporarily absent or temporarily barred from practicing law; 37) soliciting clients through intermediaries; 38) operating a branch office of one's legal practice; 39) failing to notify the Bar Association of any interruption or cessation of legal practice within 30 days; 40) any action taken by the President, Vice-President, or member of the Governing Board to prevent a General Assembly from taking place; 41) any action taken by members of one body to hinder the operation of another body; 42) any serious infringement of the Code of

minor breaches of duty.<sup>28</sup> Similarly, the NBA Statute envisages 49 serious reaches<sup>29</sup> and four minor ones.<sup>30</sup>

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Professional Ethics for Attorneys-at-law; 42) failure to notify the change in the registered address of a law practice; 44) practicing law by an attorney-at-law or member of a law partnership when temporarily barred from practicing law or being temporarily stripped of their right to practice law (SBA Statute, Article 241).

<sup>28</sup> Minor breaches are: 1) any minor breach of statutory duties in relation to a law trainee; and 2) any minor breach of the Code of Professional Ethics for Attorneys-at-law (SBA Statute, Article 240).

<sup>29</sup> As set out in the NBA Statute, Article 196, serious breaches are: 1) practicing law in evident bad faith; 2) providing legal aid in cases where an attorney-at-law is obliged to refuse to provide legal aid; 3) engaging in activity incompatible with the reputation and independence of the legal profession; 4) contracting compensation in excess of that prescribed in the Tariff of Fees or seeking compensation from a client entitled to representation free of charge; 5) refusing to provide clients with a breakdown of fee award and cost reimbursement where so requested; 6) engaging in representation before courts, public authorities, and other organisations in contravention of the law, the SBA Statute, the NBA Statute, and the Code of Professional Ethics for Attorneys-at-law; 7) engaging in representation in bad faith; 8) failing to return case files and documents to a client where requested to do so; 9) failing to abide by decisions made by bodies of the Chamber; 10) failing to abide by requests made by bodies of the Chamber; 11) actions or public appearances by officers of the NBA that present inaccurate information or contravene the Code of Professional Ethics for Attorneys-at-law or injure the reputation and position of the legal profession; 12) failure of an attorney-at-law to attend two consecutive meetings of bodies of the Bar Association of which he is member or bodies of the SBA; 13) action taken by an attorney-at-law who is member of a political party or a body thereof that harms the legal profession or jeopardises its independence and autonomy; 14) inappropriate behaviour towards another attorney-at-law, law trainee, opposing or own client, court, witness, expert witness, court interpreter, or other participant in a proceeding enjoying official status; 15) inappropriate behaviour in public and private life, insofar this is open to public scrutiny, that harms the reputation of the legal profession; 16) providing inaccurate information that misleads bodies of the Bar Association when making decisions; 17) acting as interim deputy or receiver of the law practice of another attorney-at-law in bad faith; 18) managing the affairs of a client in bad faith or misplacing a client's documents; 19) retaining money collected on behalf of a client; 20) purchasing for himself or another person items put up for sale in a public auction in which he represents a client; 21) violating the rights of a law trainee undergoing internship in his practice; 22) allowing a law trainee to work unsupervised; 23) placing the stamp of his legal practice on submissions made by another person; 24) failing to pay charges levied by the Bar Association for a period of time in excess of three months; 25) making public statements and appearances for purposes of advertising and personal promotion; 26) simultaneously representing two clients with opposing interests in a single case; 27) abusing the trust of a client he represents; 28) unfairly poaching clients from other attorneys-at-law; 29) taking undignified action in the course of representation before a court or other body; 30) engaging in activities other than practicing law excepting those permitted by the Legal Profession Act; 31) unjustifiably refusing to provide legal assistance; 32) engaging in representation before courts or other authorities without being in possession of valid attorney-at-law identification; 33) engaging in representation before courts or oth-

The Legal Profession Act stipulates a statute of limitations for disciplinary proceedings of six months after a breach becomes known (this is the subjective or relative statute of limitations), and two years after the breach is committed (objective or absolute statute of limitations). The relative statute of limitations is interrupted by any procedural action taken in pursuit of disciplinary proceedings, as well as where an attorney-at-law makes an equally serious or more serious breach of duty or violation of professional reputation before the statute of limitations expires.<sup>31</sup> In effect, this interruption due to disciplinary proceedings resets the clock on the statute of limitations by restarting this period, as explicitly stipulated in the Legal Profession Act.<sup>32</sup>

Under the Legal Profession Act,<sup>33</sup> penalties that may be imposed for breaches of duty and violations of professional reputa-

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er authorities while under the influence of alcohol or narcotics; 35) disclosing information protected by legal profession privilege or otherwise confidential information; 36) falsifying minutes or other documents; 37) practicing law directly or indirectly while temporarily absent or temporarily barred from practicing law; 38) soliciting clients through intermediaries; 39) operating a branch office of one's legal practice; 40) failing to notify the Bar Association of any interruption or cessation of legal practice within 30 days; 41) being unjustifiably absent from meetings of bodies of the NBA on three consecutive occasions; 42) any action taken by the President, Vice-President, or member of the Governing Board of the NBA to prevent a General Assembly from taking place; 43) any action taken by members of one body to hinder the operation of another body; 44) any serious infringement of the Code of Professional Ethics for Attorneys-at-law; 45) failure to notify the change in the registered address of a law practice; 46) practicing law by an attorney-at-law or member of a law partnership when temporarily barred from practicing law or being temporarily stripped of their right to practice law; 47) non-compliance with jointly agreed measures designed to protect the professional rights and interests of attorneys-at-law adopted by the General Assembly or Governing Board; 48) making false statements about the NBA or its bodies or officers in the media (print, television, radio, online), official submissions, social media, and messaging apps (Viber, Facebook, WhatsApp, Twitter, Instagram, and the like) to mislead or misinform other attorneys-at-law as to the decisions or positions of such bodies or officers; and 49) making insulting statements about attorneys-at-law in the media (print, television, radio, online), official submissions, social media, and messaging apps (Viber, Facebook, WhatsApp, Twitter, Instagram, and the like).

<sup>30</sup> Minor breaches are: 1) any minor breach of statutory duties in relation to a law trainee; and 2) any minor breach of the Code of Professional Ethics for Attorneys-at-law; 3) being absent from meetings of bodies of a Bar Association of which one is member or failing to perform or performing in bad faith one's duties in a body or other working party of such Bar Association; and 4) failing to pay any charges levied by the NBA for a period of up to three months (NBA Statute, Article 195).

<sup>31</sup> Legal Profession Act, Article 78.

<sup>32</sup> Legal Profession Act, Article 198(4).

<sup>33</sup> Legal Profession Act, Article 77.



tion are reprimand, fine, and being struck off the register of attorneys-at-law. Reprimand and fine may be imposed for minor breaches and violations, while fine and being struck off the register are reserved for serious infractions. The fine for a minor infraction may not be lower than ten times the amount of the lowest fee award envisaged in the Tariff of Fees nor higher than thirty times the amount of the lowest fee award as of the date the fee is imposed. An attorney-at-law may be struck off the register for a period of at least six months or permanently; anyone struck off for a particular period of time may apply for re-registration after the expiry of that period.

Both the SBA Statute<sup>34</sup> and the NBA Statute<sup>35</sup> stipulate reprimands or fines as penalties for minor breaches, and fines or striking the offender off the register as penalties for serious infractions.

## **1.5. Disciplinary proceedings**

Organizational and operational aspects of disciplinary proceedings are governed by the Legal Profession Act and the statutes of the SBA and its constituent Bar Associations.

### *1.5.1. Disciplinary bodies*

The Disciplinary Prosecutor and the Disciplinary Court of the SBA or other Bar Association are the disciplinary bodies.

According to the NBA Statute, the NBA's disciplinary body is the NBA Disciplinary Prosecutor,<sup>36</sup> who has six Deputy Prosecutors that enjoy the same rights and have the same duties in dis-

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<sup>34</sup> SBA Statute, Article 242.

<sup>35</sup> NBA Statute, Article 197.

<sup>36</sup> The Disciplinary Prosecutor and Deputy Disciplinary Prosecutors of the NBA, and the President, Deputy President, and Judges of the Disciplinary Court of the NBA are appointed by the NBA General Assembly to a four-year term of office. Any attorney-at-law with at least 15 years of uninterrupted experience in the practice of law who has served at least one term of office with a body of the SBA or the NBA may stand for these offices, provided that he was not held accountable for a disciplinary offence in the ten years preceding his nomination or convicted of a criminal offence making him incompatible with the practice of law, and is not member of the body of a political party (NBA Statute, Article 61). The same criteria apply to Deputy Public Prosecutor candidates, but here the minimum length of professional experience is ten years, and no prior service with the SBA or NBA is required (NBA Statute, Article 62). Candidates for President and Deputy President of the Disciplinary Court must meet the same requirements as candidates for Disciplinary Prosecutor (NBA

ciplinary proceedings as the Disciplinary Prosecutor and are required to follow the Disciplinary Prosecutor's binding instructions. The Disciplinary Prosecutor is empowered to initiate disciplinary proceedings, bring charges, and represent the prosecution before the Disciplinary Court, appeal decisions, and move that the NBA Governing Board strike off a member.

The Disciplinary Court is comprised of a President, Deputy President, and nine Judges.<sup>37</sup> The Decisions are made by a majority vote of three-member panels of the Disciplinary Court. The president and members of each panel are appointed by the President of the Disciplinary Court.<sup>38</sup>

### *1.5.2. Course of disciplinary proceedings*

Disciplinary proceedings before the NBA's disciplinary bodies are governed by provisions of Articles 165 to 187 of the NBA Statute, which are essentially the same as those of the SBA Statute, albeit with minor differences.<sup>39</sup> The SBA Statute envisages application, as appropriate, of the Criminal Procedure Code to disciplinary proceedings in matters not regulated by the Legal Profession Act and the SBA Statute, whereas the NBA Statute does not provide for this.

Under the SBA Statute, disciplinary proceedings are brought by the Disciplinary Prosecutor of the relevant Bar Association after a complaint is made by an interested natural or legal person or public authority, based on a petition made by a body of the Bar Association, or *proprio motu*.<sup>40</sup> According to the NBA Statute, proceedings are initiated by complaint only, and public authorities are not listed amongst the possible complainants.<sup>41</sup>

A disciplinary complaint must be lodged in writing, with two copies submitted and accompanied by appropriate evidence. The Disciplinary Prosecutor is required to notify the attorney-at-law against whom a complaint has been lodged of the complaint, must provide them with a copy of the complaint and the supporting ev-

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Statute, Articles 63 and 64), whereas those for Disciplinary Court Judge must meet criteria for Deputy Public Prosecutor candidates (NBA Statute, Article 65).

<sup>37</sup> NBA Statute, Article 42(2).

<sup>38</sup> NBA Statute, Article 42(4).

<sup>39</sup> SBA Statute, Articles 201 to 238.

<sup>40</sup> SBA Statute, Article 202(3).

<sup>41</sup> NBA Statute, Article 165

idence, and will invite the attorney-at-law to respond to the allegations. Once these actions have been completed, disciplinary proceedings are considered to have been initiated. If the respondent does not respond within the period of time allotted for doing so, the Disciplinary Prosecutor will make a decision on the complaint without such response, based on the available evidence.<sup>42</sup>

The respondent may conduct their own defense or engage one counsel, who must be an attorney-at-law registered with the SBA register of attorneys-at-law.<sup>43</sup>

The Disciplinary Prosecutor may seek additional explanations and evidence from the complainant or other public authorities and natural and legal persons. After receiving the response from the respondent or noting that no response is forthcoming, and after any additional explanations or evidence from the complainant is received, the Disciplinary Prosecutor will deliver a decision to either bring an indictment or reject the complaint.<sup>44</sup>

Where the Disciplinary Prosecutor rejects a complaint, the complainant may not pursue the case before the NBA Disciplinary Court, but may lodge an objection, within eight days of receiving the decision to reject the complaint, with the SBA Disciplinary Prosecutor, who shall make the final decision.<sup>45</sup>

The Disciplinary Prosecutor provides the indictment to the Disciplinary Court accompanied by all supporting evidence. The respondent may not object to the indictment. The President of the Disciplinary Court will then appoint a panel of judges to consider the indictment. The panel will provide the indictment to the respondent within eight days and summon them to attend a disciplinary hearing.<sup>46</sup> Strict personal service of process rules apply that are analogous to those used in judicial proceedings; these are designed to prevent respondents from obstructing the procedure,<sup>47</sup> as is the rule whereby the Court can hold a disciplinary hearing in the absence of the respondent and their attorney-at-law if they were duly summoned but absent without justification.<sup>48</sup>

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<sup>42</sup> SBA Statute, Article 202, and NBA Statute, Article 166.

<sup>43</sup> SBA Statute, Article 293, and NBA Statute, Article 167.

<sup>44</sup> SBA Statute, Article 205, and NBA Statute, Article 169.

<sup>45</sup> SBA Statute, Article 206, and NBA Statute, Article 170.

<sup>46</sup> SBA Statute, Article 209, and NBA Statute, Article 173.

<sup>47</sup> SBA Statute, Article 210, and NBA Statute, Article 174.

<sup>48</sup> SBA Statute, Article 211, and NBA Statute, Article 175.

In the interests of efficiency, disciplinary proceedings are deemed to be urgent, and any evidence previously presented will not be presented again if the main hearing is postponed or if any panel members are replaced. Instead, the record of the evidence presented will only be read, unless the panel decides otherwise.

The panel president is charged with maintaining order in the main hearing and may remove anyone behaving disorderly from the hearing.

Disciplinary proceedings are based on the principles of legality, substantial truth, free appraisal of evidence, presumption of innocence, independence, publicity, right to defense counsel, immediacy, that parties should be heard, urgency, and two-instance procedure. These principles are envisaged by both the SBA Statute and the NBA Statute, and there are no major differences either between the provisions of these two byelaws that regulate the course of the proceeding.

There are recusal rules applicable to the panel president and members that ensure the impartiality of the Disciplinary Court. Decisions on motions for recusal of the panel president and members are made by the President of the NBA Disciplinary Court, whereas motions for recusal of the President of the SBA Disciplinary Court are decided on by the President of the SBA Disciplinary Court.<sup>49</sup> Recusal decisions may not be appealed.<sup>50</sup> No motions may be made for recusal of the Disciplinary Prosecutor or Deputy Disciplinary Prosecutors.

Statutes of both the SBA and NBA explicitly state that no motions for compensation for damage caused by a disciplinary infraction may be considered in disciplinary proceedings.<sup>51</sup>

A ruling of the NBA Disciplinary Court may be appealed by the respondent, their counsel, and the Disciplinary Prosecutor, and this appeal is considered by the SBA Disciplinary Court. The time limit for this appeal is eight days from being served the ruling, for minor breaches, and 15 days in case of a serious infraction. This time runs from the time the ruling is served on the respondent, and, where the respondent has engaged legal representation, from the day of the initial service. A copy of the appeal is also served on

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<sup>49</sup> SBA Statute, Article 228, and NBA Statute, Article 184.

<sup>50</sup> NBA Statute, Article 14.

<sup>51</sup> SBA Statute, Article 216, and NBA Statute, Article 180.

the complainant, who may respond within three days in the event of a minor infraction or eight days in serious cases.<sup>52</sup>

Once a disciplinary indictment has been brought, the Governing Board of an attorney-at-law's Bar Association may temporarily exclude an attorney-at-law from practicing law at the motion of a Disciplinary Prosecutor, acting panel of the Disciplinary Court, or *proprio motu*. A decision of the Governing Board of a Bar Association to temporarily exclude an attorney-at-law from practicing law may be appealed with the SBA within 15 days of service.<sup>53</sup>

## 1.6. Enforcement of disciplinary penalties

The NBA Governing Board is responsible for enforcing final rulings imposing disciplinary penalties on attorneys-at-law registered with the NBA register.<sup>54</sup> A final ruling by the Disciplinary Court striking an attorney-at-law off the register is enforced by the NBA Governing Board directly, in an urgent procedure and *proprio motu*, where the Governing Board will adopt a decision striking the attorney-at-law off the register. To enforce a final ruling imposing a fine and requiring payment of legal fees, once the period for voluntary performance has expired, the Governing Board will present a motion for enforced collection with the relevant court.<sup>55</sup>

The Law also envisages a statute of limitations period for a disciplinary penalty of one year from the time the decision imposing such penalty has become final. This statute of limitations is interrupted by any action taken to enforce the penalty and expires completely two years from the time the decision imposing such penalty has become final.<sup>56</sup> Statutes of both the SBA and the NBA contain identical statute of limitations provisions.

Disciplinary penalties that have become final are registered with a register of disciplinary penalties, with a copy of the relevant decision being inserted in the personal file of the attorney-at-law found guilty of a disciplinary offence.<sup>57</sup> The NBA Statute also provides for deletion of disciplinary penalties from this record.<sup>58</sup>

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<sup>52</sup> NBA Statute, Article 182.

<sup>53</sup> SBA Statute, Article 195, and NBA Statute, Article 161.

<sup>54</sup> SBA Statute, Article 233, and NBA Statute, Article 188.

<sup>55</sup> SBA Statute, Article 236, and NBA Statute, Article 191.

<sup>56</sup> Legal Profession Act, Article 79.

<sup>57</sup> Legal Profession Act, Article 77(8), and NBA Statute, Article 193.

<sup>58</sup> NBA Statute, Article 200.

## 1.7. Appeals against final decisions

It remains unclear whether final decisions on objections to decisions to reject disciplinary complaints made by the SBA Disciplinary Prosecutor may be contested in administrative proceedings. Under the Administrative Dispute Law,<sup>59</sup> bringing an administrative dispute is intended to ensure legality of final administrative enactments, excepting those subject to other judicial safeguards.

Decisions made by Bar Associations in procedures connected with rights, duties, and standing can certainly be contested in administrative proceedings, since those procedures are subject to legislation governing general administrative procedure, as explicitly envisaged by the Legal Profession Act.<sup>60</sup> The Law also explicitly states that a final second-instance decision of the SBA may be contested in an administrative proceeding. The sole possible restriction here is whether the Administrative Court may fully set aside decisions made by bodies exercising freedom of assessment and pursuant to, within the limits of, and in accordance with the purpose of their statutory powers.<sup>61</sup> This might suggest that administrative disputes may be brought to contest final decisions of all bodies of the SBA, including the Disciplinary Prosecutor. However, doubt is cast on this conclusion by provisions of the SBA Statute that explicitly allow some decisions made by bodies of Bar Associations to be contested in administrative proceedings. Here, for instance, the SBA Statute stipulates that no administrative dispute may be brought to contest a final decision of the SBA Governing Board rejecting an application for registration or reversing registration with the register of attorneys-at-law;<sup>62</sup> a final decision of the SBA Governing Board rejecting an application for registration with the register of law partnerships;<sup>63</sup> and the like. If administrative disputes may be brought to contest any decision of the SBA, the purpose of the exhaustive list of contestable rulings made by SBA bodies is unclear.

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<sup>59</sup> Administrative Dispute Law (*Official Gazette of the Republic of Serbia* No. 111/2009), Article 3.

<sup>60</sup> Legal Profession Act, Article 84(1).

<sup>61</sup> Legal Profession Act, Article 85.

<sup>62</sup> SBA Statute, Article 137(7).

<sup>63</sup> SBA Statute, Article 156(2) *et seq.*

The procedure pursued by the SBA Disciplinary Prosecutor clearly does not concern rights, duties, or standing, as suggested by the provision of the SBA Statute that envisages application, as appropriate, of the Criminal Procedure Code on all issues of disciplinary proceedings that are not regulated by the Legal Profession Act and the SBA Statute.<sup>64</sup> As such, in the opinion of the author, a final decision of the SBA Disciplinary Prosecutor on an objection to a decision by a Disciplinary Prosecutor rejecting a disciplinary complaint may not be considered an administrative enactment that may be contested in an administrative dispute.

There is clearly no single position with regard to this issue. A review of the sample of case files suggests that the SBA Disciplinary Prosecutor has not been acting consistently in terms of instructing complainants as to what recourse they have against final decisions of Disciplinary Prosecutors on objections to decisions to dismiss disciplinary complaints. In some instances, decisions adopted by the SBA Disciplinary Prosecutor dismissing objections to decisions to reject complaints notify the complainant that they may contest the decision in an administrative dispute, while in other cases this clause is not included. For instance, in the random sample used in this study, the SBA Disciplinary Prosecutor included the clause that an administrative dispute could be brought within 30 days in decisions issued in some cases (case studies 9, 13, 25, 29, 31, 33, and 37), whereas the other decisions (case studies 5 and 7) lack this clause.

There is no consistent case law as to whether administrative disputes may be brought to contest final judgments of the SBA Disciplinary Court. In 2004, at the time the 1999 SBA Statute was in effect, the Supreme Court of Serbia took the view that these rulings could not be contested in administrative proceedings.<sup>65</sup> The Supreme Court held that “[...] a ruling of the Disciplinary Court of the Serbian Bar Association on the disciplinary accountability of an attorney-at-law member of the Bar Association is not an administrative enactment within the meaning of Article 6 of the Administrative Disputes Law and such enactment may not be contested in an administrative dispute. This reasoning is based on the fact that the contested ruling (regardless of the fact that it was made following appeal by the complainant) did not deal with a statu-

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<sup>64</sup> SBA Statute, Article 232.

<sup>65</sup> Supreme Court of Serbia, Ruling U. 4306/2004 of December 23rd, 2004.

tory right or duty of the complainant in a legal matter, but, rather, concerned the disciplinary accountability of the complainant for breaches of the Statute of the Serbian Bar Association and the Code of Professional Ethics for Attorneys-at-law, after an indictment had been brought by the Disciplinary Prosecutor. In pursuing this proceeding, in other words also when deciding on the disciplinary accountability of the complainant, as an attorney-at-law and a member of the Bar Association, the disciplinary bodies of the Bar Association, as envisaged by Article 72, Paragraph (3) read in conjunction with Paragraph (3), Item (1) of the Statute of the Serbian Bar Association, are required to apply provisions of the Code of Criminal Procedure, as appropriate, rather than the provisions of the General Administrative Procedure Law [...]"

An administrative dispute was brought to contest a decision of the SBA Disciplinary Court in only one of the sample of cases analyzed in this study (see case study 1).



## 2. RESEARCH METHODOLOGY

### 2.1. Scope, goal, and objectives of the research

The general public are almost wholly ignorant about the operation of the disciplinary bodies of the SBA and its constituent Bar Associations, as well as about how disciplinary procedures were pursued and what their outcomes were. There is no aggregated and publicly available information about the number of disciplinary complaints filed against attorneys-at-law and law trainees, nor is there information about the number of indictments brought or rulings made and types of administrative penalties imposed. Even though Disciplinary Prosecutors and Disciplinary Courts are required to, and actually do, report to the Bar Associations' General Assemblies annually,<sup>66</sup> these reports are rarely accessible by the general public;<sup>67</sup> in the rare instances where the reports are available, they provide only a bare minimum of information about the number of complaints filed, numbers and types of decisions, and numbers of ongoing cases.<sup>68</sup>

To date, there has been no independent, professional assessment or evaluation of how disciplinary accountability rules for attorneys-at-law and law trainees are applied. As a result, there is limited information about the most common breaches of duty and violations of professional reputation and the frequency, efficiency, and effectiveness of disciplinary proceedings. Some egregious breaches of duty and unethical behavior become known to the general public when reported in the media, but the responses of the relevant bodies and outcomes of any prosecution generally remain undisclosed. In view of the role of the legal profession and the limited awareness of the practices employed by Bar Asso-

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<sup>66</sup> SBA Statute, Article 40(5), and NBA Statute, Article 38(5).

<sup>67</sup> In common with most Bar Associations, the NBA does not publish activity reports of its disciplinary bodies on its web site ([advokatskakomoranis.rs/galerija.php?lang=ci](http://advokatskakomoranis.rs/galerija.php?lang=ci)).

<sup>68</sup> See, for instance, the Activity Report of the Disciplinary Prosecutor and Deputy Disciplinary Prosecutor of the Belgrade Bar Association, March 29th, 2019 to May 29th, 2020 (available online at [akb.org.rs/wp-content/uploads/2020/09/7.-IZ-VE%C5%A0TAJ-O-RADU-DISC.-TU%C5%BDIOCA.pdf](http://akb.org.rs/wp-content/uploads/2020/09/7.-IZ-VE%C5%A0TAJ-O-RADU-DISC.-TU%C5%BDIOCA.pdf)) and the Activity Report of the Disciplinary Court of the Belgrade Bar Association, March 29th, 2019 to May 29th, 2020 (available online at [akb.org.rs/wp-content/uploads/2020/09/8.-IZ-VE%C5%A0TAJ-O-RADU-DISC.-SUDA.pdf](http://akb.org.rs/wp-content/uploads/2020/09/8.-IZ-VE%C5%A0TAJ-O-RADU-DISC.-SUDA.pdf)).

ciations' disciplinary bodies, there is a justified need to comprehensively and thoroughly investigate the operation of disciplinary bodies and the outcomes of disciplinary proceedings and so contribute to their transparency.

In line with objectives of the project Strengthening Capacity for Rule of Law – Southern Serbia, which this research was part of, the study aimed at assessing the practices employed by disciplinary bodies of the NBA. The goal of the research was to learn about the frequency and types of disciplinary offences (breaches of duty and violations of professional reputation), efficiency and effectiveness of disciplinary proceedings, and approaches the relevant disciplinary bodies took when sanctioning these disciplinary offences.

Given this goal, the immediate objectives of the research were to:

- collect, aggregate, and analyze information about disciplinary complaints/petitions, disciplinary proceedings initiated, indictments brought, legal characterization of offences, perpetrators, outcome of disciplinary proceedings, disciplinary penalties imposed, and duration of disciplinary proceedings pursued against attorneys-at-law and law trainees who were members of the NBA;
- gain insight into the practice of the relevant disciplinary bodies in prosecuting and penalizing breaches of duty and violations of professional reputation; and
- understand the efficiency of disciplinary proceedings pursued by the relevant disciplinary bodies.

Since the research was exploratory in nature, no underlying hypotheses were assumed, since with these types of studies the hypotheses are posited only after initial results have been obtained to facilitate further examination of the issue at hand. The research was based on the following assumptions:

1. Disciplinary complaints are lodged infrequently.
2. Most disciplinary complaints involve serious breaches of duty.
3. Most disciplinary complaints are lodged by men.
4. Most disciplinary complaints are lodged against attorneys-at-law who are men.

5. Most disciplinary complaints are dismissed.
6. Most decisions dismissing disciplinary complaints are objected to.
7. Most objections to decisions dismissing disciplinary complaints are rejected.
8. Disciplinary proceedings are efficient in all of their stages.
9. The statute of limitations on initiating disciplinary proceedings rarely expires.
10. The statute of limitations on pursuing disciplinary proceedings rarely expires.
11. Most first-instance disciplinary proceedings end in convictions.
12. Fines account for the majority of penalties imposed in disciplinary proceedings.
13. Most first-instance judgments are appealed.
14. Most first-instance judgments are upheld on appeal.

The findings of this research will inform recommendations for improvements to disciplinary bodies of the NBA so as to enable them to prosecute breaches of duty and violations of professional reputation more efficiently and effectively.

## **2.2. Sample, research design, and research methodology**

In view of the available resources, the sample was comprised of all disciplinary proceedings against attorneys-at-law and law trainees registered with the NBA register finally completed in 2018 and 2019, regardless of when they were initiated. The data were collected from the NBA case listing and through a direct review of the disciplinary case files.

The design and methodology of this pilot study were determined by the scope and goal of the research, limited number of researchers available, and time constraints. The research comprised two segments, as described below.

*Segment 1* involved collecting and analyzing statistics of disciplinary complaints for breaches of duty and violations of professional reputation and information about the course, duration, and outcome of the resulting disciplinary proceedings. Statistics on the number of disciplinary complaints; underlying causes; suspect/re-

spondent profiles; course, duration, and outcome of proceedings; disciplinary penalties imposed; and the like, were collected from the NBA case listings using a specifically designed form. A dedicated questionnaire designed for this research was employed to collect the data.

*Segment 2* consisted of an in-depth analysis of the disciplinary cases. This qualitative research method covered 40 completed disciplinary cases selected at random.

The research was conducted in three stages. At the preparatory stage, the sample was constructed, the methodology developed, the research plan prepared, and questionnaires created to collect data from case listings and case files. In the second stage the data were collected, processed, and aggregated, while in the third stage the data were analyzed, and a research report produced.

The size of the sample and the nature of the investigation preclude extrapolating the findings to the legal profession in Serbia as a whole, but do provide a basis for developing a valid set of hypotheses for further, broader and deeper research into practices of Bar Associations' disciplinary bodies when prosecuting breaches of duty and violations of professional reputation.

### 3. FINDINGS AND INTERPRETATION

#### 3.1. General findings about disciplinary proceedings

##### 3.1.1. Disciplinary complaints

Under Article 165(2) of the NBA Statute, a disciplinary proceeding may be brought at the complaint or petition of a natural or legal person with the requisite standing, including government authorities; at the petition of a body of the NBA, or at the initiative (*proprio motu*) of the Disciplinary Prosecutor.

A total of 272 disciplinary complaints were filed in the reporting period, with 38 fewer lodged in 2019 than in 2018. Most complaints (88.6 percent) were made by natural persons, and this percentage was greater in 2018 (92 percent) than in 2019 (88.8 percent). Only 4 complaints were filed by legal persons in 2018, and no more than 2 in 2019. Public authorities made a total of 16 petitions, as little as 5.8 percent of all complaints and petitions, but this figure was nearly twice as high in 2018 as in 2019. Bodies of the Bar Association filed only five petitions (1.8 percent of the total), but the figure was much higher in 2019 (4) than in 2018 (only 1). See Table 1.

Table 1. Number of disciplinary complaints/petitions

Year	2018.		2019.		Ukupno	
	Number	%	Number	%	Number	%
Complaints/petitions filed	160	100	112	100	272	100
Complaints filed by natural persons	145	92	96	88,8	241	88,6
Complaints filed by legal persons	4	2,5	2	1,8	6	2,2
Petitions filed by public authorities	10	6,4	6	5,5	16	5,8
Petitions filed by Bar Association bodies	1	0,6	4	3,7	5	1,8
<b>Petitions filed <i>proprio motu</i></b>	0	0	0	0	0	0

These data suggest most complaints are lodged by natural persons, with bodies of the NBA exercising their right to file petitions the least commonly.

### 3.1.2. Proceedings initiated and completed

Article 166(3) of the NBA Statute stipulates that a disciplinary proceeding is deemed to be initiated once the complaint is served on the respondent attorney-at-law by the Disciplinary Prosecutor and the respondent’s response sought. A total of 220 proceedings were initiated in 2018 and 2019, while 264 were completed, of which 40 (15.15 percent) had been initiated in previous calendar years and completed in 2018 (38) and 2019 (2), respectively. See Table 2.

Table 2. Proceedings initiated and completed

Year	2018.		2019.		Ukupno	
	Number	%	Number	%	Number	%
Proceedings completed	156	100	108	100	264	100
Proceedings initiated in previous years	38	24,35	2	1,85	40	15,15
Proceedings initiated in year for which data was collected	114	75,65	106	98,15	220	84,85

The greatest number of disciplinary cases were completed within the calendar year in which they were initiated. As many as 75.65 percent of proceedings completed in 2018 had been initiated in the same year, and in 2019 as many as 98 percent of all completed proceedings had been initiated in that year. These figures suggest the disciplinary bodies were fairly efficient, with performance improving in 2019 relative to 2018.

### 3.1.3. Disciplinary complaints/petitions dismissed, indictments brought and withdrawn

In the reporting period, the NBA Disciplinary Prosecutor dismissed as many as 94.69 percent of all disciplinary complaints made. The dismissal rate was 97.43 percent in 2018 and a slightly lower 90.74 percent in 2019. Only 10 indictments were brought, meaning that no more than 3.78 percent of all disciplinary complaints resulted in indictments. See Table 3.

Table 3. Complaints filed and dismissed and indictments brought

Year	2018.		2019.		Ukupno	
	Number	%	Number	%	Number	%
Complaints filed	156	100	108	100	264	100
Complaints dismissed	152	97,43	98	90,77	250	94,69
Indictments brought	4	2,56	6	5,55	10	3,78
Indictments withdrawn	1	0,64	1	0,92	2	0,75

Even though a variety of reasons were cited for dismissing complaints, as discussed in the case studies below, it is telling that 94.69 percent of all complaints were dismissed, with indictments being brought in no more than 3.78 percent of cases. This could indicate clients are insufficiently aware of disciplinary regulations applicable to attorneys-at-law as well lacking evidence to substantiate allegations of disciplinary offences. However, in some cases the Disciplinary Prosecutor may have not made the full effort necessary to obtain additional explanations and evidence from complainants and/or public authorities and natural and legal persons. It ought to be noted here that complaints were mainly lodged by natural persons, who are not sophisticated in matters of law, so the Disciplinary Prosecutor’s reliance only on information and evidence supplied by the complainants without taking additional investigative action certainly does not constitute the right approach. The case studies present examples where circumstances surrounding the actions of attorneys-at-law have remained insufficiently clear, in which the Disciplinary Prosecutor was guided only on allegations made in the complaints and the respondent’s response to them, which resulted in the complaints being dismissed.

The NBA Disciplinary Prosecutor withdrew indictments in only two cases, no more than 0.75 percent of all completed disciplinary proceedings.

#### 3.1.4. Respondent status and gender

All respondents in the reporting period were attorneys-at-law. In 2018, all respondents were men, while in 2019 only 1 of the 6 respondents was a woman. See Table 4.

Although the figures suggest that women attorneys-at-law perpetrated disciplinary offences less commonly than their male

peers, the small size of the sample makes it difficult to make this assertion with any degree of certainty.

Table 4. Respondent status and gender

Year	2018.		2019.		Ukupno	
	Number	%	Number	%	Number	%
Total respondents	4	2,56	6	5,55	10	100
Attorneys-at-law	4	100	6	100	10	100
Law trainees	0	0,00	0	0,00	0	0,00
Men	4	2,56	5	83,33	9	90,00
Women	0	0	1	16,67	1	10,00

### 3.1.5. Legal characterization of offences

Most indictments characterize the offences as serious breaches of duty; see Table 5. It may be assumed that this finding corresponds to the types and nature of offences due to which clients file disciplinary complaints. Nonetheless, it ought to be borne in mind that minor offences mainly concern violations of the duties of attorneys-at-law towards law trainees and failure to meet requirements of the NBA and its bodies, and here it is the Bar Association, rather than any client, that should respond.

Table 5. Legal characterization of offences

Year	2018.		2019.		Ukupno	
	Number	%	Number	%	Number	%
Total indictments	4	100	6	100	10	100
Serious offences	4	100	2	33,33	6	60,00
Minor offences	0	0,00	4	66,66	4	40,00

### 3.1.6. Temporary exclusion from practice of law

The NBA Statute follows the Legal Profession Act and the SBA Statute in stipulating that attorneys-at-law can be temporarily excluded from practice of law in cases that include being prosecuted for a criminal or disciplinary offence for an action making the respondent unfit to practice law; obstructing or hindering a disciplinary proceeding initiated against them; and facing repeated indictment for a serious breach of duty.<sup>69</sup>

Decisions to temporarily exclude attorneys-at-law from the practice of law due to ongoing disciplinary or criminal prosecu-

<sup>69</sup> NBA Statute, Article 158.



tion are made by the NBA Governing Board, which also decides on how long the exclusion will last and appoints an interim replacement for the attorney-at-law in question. These decisions may be appealed within 15 days with the NBA Governing Board,<sup>70</sup> but an appeal does not stay enforcement of the decision. The NBA is required to notify all Serbian courts, public prosecutor’s offices, the SBA, and its constituent Bar Associations of the exclusion.<sup>71</sup>

No motion to temporarily exclude an attorney-at-law from the practice of law was found in the sample of cases. In one case the disciplinary proceeding was adjourned pending the resolution of a criminal case against the respondent. Nevertheless, the NBA Disciplinary Prosecutor did not seek temporary exclusion, even though the action in question made the respondent unfit to practice law.

### 3.1.7. Disciplinary Court rulings

Only two proceedings ended in convictions in 2018 and 2019, while two (both in 2018) resulted in acquittals. Two cases, one in each year, ended in dismissals after the Disciplinary Prosecutor withdrew the indictments, while in two cases (both in 2018) the indictments were dismissed as the statute of limitations expired. See Table 6.

Table 6. Disciplinary Court rulings

Year	2018.	2019.	Ukupno
	Number	Number	Number
Convictions	1	1	2
Acquittals	2	0	2
Dismissals due to indictments being withdrawn	1	1	2
Dismissals due to expiry of statute of limitations	2	0	2

A comparison between the number of complaints made and the number of final convictions reveals a less than ideal situation where, of the total of 264 disciplinary procedures pursued in 2018 and 2019, only 2 resulted in convictions, with the same number also ending in acquittals, dismissals due to withdrawal of indi-

<sup>70</sup> NBA Statute, Article 161.

<sup>71</sup> NBA Statute, Article 162.

ctment, and dismissals due to expiry of the statute of limitations. This outcome was primarily the consequence of the huge number of dismissed complaints (250), which accounted for 94.69 percent of all complaints filed.

### 3.1.8. Disciplinary penalties

Two reprimands and two fines were handed down in the sample of cases; see Table 7. The amounts of the fines are assessed in detail in the relevant case studies

Table 7. Disciplinary penalties

Year	2018.	2019.	Ukupno
	Number	Number	Number
Total disciplinary penalties	1	1	2
Reprimands	0	0	0
Fines	1	1	2
Being struck off the register	0	0	0

### 3.1.9. Appeals and rulings on appeal

In the sample of cases, only two of the first-instance NBA Administrative Court had been appealed; these appeals were considered by the SBA Disciplinary Court, the designated appellate body. Both appeals were dismissed and the original judgments upheld; see Table 8.

Table 8: Appeals and rulings on appeal

Year	2018.	2019.	Ukupno
	Number	Number	Number
Appeals lodged	1	1	2
Appeals dismissed	1	0	1
First-instance judgments upheld	1	1	2
First-instance judgments reversed	0	0	0

### 3.1.10. Enforced collection of fines and legal costs

Under the NBA Statute,<sup>72</sup> a final judgment of the Administrative Court is deemed to be an enforceable title for the purpose

<sup>72</sup> NBA Statute, Article 201

of collecting fines and legal costs, while the proceeds of the fines are considered revenue of the NBA. Once the window for voluntary payment has expired, the NBA Governing Board is required to file an enforcement motion with the relevant court so as to allow enforced collection.<sup>73</sup>

### 3.1.11. Time to completion

Disciplinary proceedings conducted in 2018 and 2019 were relatively efficient, although somewhat more so in 2019. Most cases (39.39 percent) ended within six months, slightly fewer (30.68 percent) took up to three months to complete, 21.21 percent ended within one year, and no more than 5.68 percent lasted up to two years. See Table 9.

Table 9. Time to completion of disciplinary proceedings

Year	2018.		2019.		Ukupno	
	Number	%	Number	%	Number	%
Up to 3 months	24	15,4%	57	52,8%	81	30,68
Between 3 and 6 months	62	39,7%	42	38,9%	104	39,39
Between 6 months and 1 year	55	35,3%	1	0,9%	56	21,21
Between 1 and 2 years	15	9,6%	0	0,00	15	5,68
More than 2 years	0	0	0	0,00	0	0,00

This rather favorable image of the efficiency of the NBA's disciplinary bodies ought to be set against the decisions made in the disciplinary cases. In the reporting period, indictments were brought in no more than 10 cases, while all other complaints were dismissed, primarily on the allegations made in them and the evidence supplied by the complainants.

<sup>73</sup> NBA Statute, Article 191.

## 4. CASE STUDIES<sup>74</sup>

### 4.1. Sample and methodology

A total of 40 completed disciplinary cases selected at random were analyzed in detail. This method permitted the researchers to collect and analyze information about the complainants and respondents and reveal the features of the offences that caused the initial complaints, better understand the circumstances under which the offences were committed, reconstruct the indictment and trial process, and review the disciplinary bodies' penal policy.

The relevant data were collected using a dedicated form based on direct inspection of the case files. The data subjected to this qualitative analysis were:

- complainants and respondents;
- perpetration and legal characterization of offences;
- preliminary proceedings: course, outcome, and time to completion;
- disciplinary proceedings: course, outcome, and time to completion;
- disciplinary penalties imposed; and
- procedural costs.

### 4.2. Case study findings

#### Case Study 4

##### 1. Complainants and respondent

The complainants were natural persons, a man and a woman. The respondent was an attorney-at-law aged 57 to 65, who had previously been subjected to a disciplinary proceeding that did not, however, result in indictment.

##### 2. Perpetration and legal characterization of offence

According to the complaint, the respondent represented the complainants as the injured parties in a criminal case over the

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<sup>74</sup> The English-language version of this assessment presents three case studies (cases 4, 7, and 14) of the total of 39 featured in the Serbian original.

death of the husband/father of the complainants. The complainants subsequently authorized the attorney-at-law to pursue a claim for damages. The respondent took on the power of attorney but did not provide any further information about the case. The complainants alleged they had spoken and written to the respondent on various occasions to inquire as to whether a claim had been filed. The complainants further inquired with the court, which told them no claim had been filed. The complainants sought to have the NBA require the respondent to say whether a claim had been filed, and, if it had not, to provide them with the case files so they could seek alternative representation.

No date of perpetration was cited in the complaint, and the complainants did not provide legal characterization of the offence.

### 3. Preliminary proceeding

The disciplinary complaint was lodged with the NBA on 4 August 2016 and was not accompanied by any substantiating evidence. The respondent took receipt of the complaint on September 5th, 2016 but did not respond to the allegations contained therein.

Without seeking any additional response from either the complainant or the respondent, the Disciplinary Prosecutor brought an indictment on November 21st, 2017. The Disciplinary Prosecutor characterized the offence as a minor breach of duty as set out in Article 23.4.5 and Article 24.3.7 of the Code of Professional Ethics for Attorneys-at-law, claiming that the respondent had not provided timely information to his clients of all major developments in the case nor returned to the clients all documentation received from them. The Disciplinary Prosecutor moved that a disciplinary measure be imposed on the respondent pursuant to the Legal Profession Act, the SBA Statute, and the NBA Statute.

The indictment was served on the respondent, who did not retain counsel during the proceeding.

One month elapsed from the filing of the complaint, on August 4th, 2016, to service of the complaint to the respondent on September 5th, 2016, while one year and nearly four months were to elapse before the indictment was brought on November 21st, 2017.

#### 4. Proceeding before Disciplinary Court

The disciplinary hearing scheduled for December 26th, 2017, was postponed as the respondent was away on business attending a hearing in the city of P, and the law trainee in the respondent's practice notified the court the respondent would submit evidence.

At the disciplinary hearing, held on October 26th, 2018, the case files were inspected, and it was found that the statute of limitations had expired. In its judgment, the disciplinary panel dismissed the indictment due to expiry of absolute statute of limitations for pursuing disciplinary proceedings. No decision about procedural costs was made. The judgment was not appealed.

It took nearly one year to issue the judgment from the time the indictment was brought, and two years and two months elapsed from the initial filing of the disciplinary complaint.

#### **OBSERVATIONS:**

The complaint demonstrates that the general public lack awareness of the purpose of disciplinary proceedings, which the complainants in this case saw as a means to – justifiably – obtain information and have their case files returned. This comes as no surprise, as information about the performance standards of attorneys-at-law and their disciplinary accountability is not widely available. By and large, web sites of Bar Associations are not aimed at existing or potential clients, but rather at their attorney-at-law members, also serving as instruments for enhancing transparency. Although Bar Associations do publish the relevant regulations online, there is a lack of appropriate explanations written in plain language that could help clients learn more about how to file complaints, what these ought to contain, what the standard of proof is, when statutes of limitations expire, and the like. Also absent is a disciplinary complaint form that could guide potential complainants, which could encourage members of the public to report instances of attorney-at-law misconduct.

This case is a glaring example of non-responsiveness on the part of the Disciplinary Court, which here had far-reaching consequences, resulting in the proceeding becoming time-barred. The Disciplinary Court scheduled a hearing after nearly a year had elapsed since the indictment had been brought, and then postponed it without there being any evidence that the respondent was absent for justified reasons. It ought to be noted that a disciplinary complaint had also been filed against the respondent previously, although no indictment had been brought, which should have raised another red flag for the court to act with a minimum of delay to stop the statute of limitations expiring. This approach to a case in which the relevant facts were fairly easy to ascertain certainly does nothing to strengthen public trust in the legal profession.

## Case Study 7

### 1. Petitioner and respondent

The petitioner was the Public Attorney's Office of the city of V.<sup>75</sup> The respondent was a male attorney-at-law aged between 33 and 40 who had not previously been subject to any disciplinary complaint.

### 2. Perpetration and legal characterization of offence

The case file revealed that the respondent, who held power of attorney from his clients, brought complaints seeking compensation for flooding damage to several farms in the city of V owned by the clients. The damage had been caused due to a blocked drainage canal that the complaints alleged the city of V was responsible for maintaining.

On 25 December 2018, the City Public Attorney's Office sent a letter titled "Notice" to the NBA, stating that criminal charges had been filed against the respondent with the Basic Public Prosecutor's Office of V for having brought a complaint against the City of V on behalf of AA using a power of attorney issued on May 30th, 2018, even though AA had died on June 10th, 2005. The letter claimed the power of attorney had been provided to the complainant on December 12th, 2018, at the main hearing in the civil case brought by AA.

The "Notice" was accompanied by photocopies of the following documents as evidence: complaint brought by AA on June 1st, 2018, with power of attorney dated May 30th, 2018; probate decision in the estate of AA dated June 27th, 2005, stating AA's date of death as June 10th, 2005; and criminal complaint filed by the City Public Attorney's Office of V with the Basic Public Prosecutor's Office of V on December 20th, 2018.

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<sup>75</sup> Public Attorney's Offices represent the Republic of Serbia, autonomous provinces, and local authorities in financial and property-related disputes before courts and other bodies. A City Public Attorney's Office represents the city and bodies funded from the city budget in financial and property-related disputes proceedings before courts and other authorities. See the Law on the Public Attorney's Office, Articles 2 and 51 (*Official Gazette of the Republic of Serbia* No. 55/2014).

### 3. Preliminary proceeding

The Disciplinary Prosecutor treated the letter as a disciplinary petition and forwarded it to the respondent on January 3rd, 2019. In his response, the respondent claimed the letter was not a disciplinary petition, adding he had received more than 300 signed powers of attorney from owners of farms in the flooded area to bring complaints for damages, including that of AA, which was accompanied by a title deed for the parcel of land in question. The respondent noted he did not know or could have known that AA had died, offering as proof the fact that he moved AA be examined at the main hearing in the damages case. The respondent explained that it was only after AA's death that the son informed the respondent of his father's death, after which the respondent amended the complaints, but this amended version had not yet been submitted to the City of V. The respondent moved that AA's son, the giver of the power of attorney, be examined.

The Disciplinary Prosecutor did not seek any additional information from either the petitioner or the respondent, but did ask the Basic Public Prosecutor's Office of V about how the criminal charges against the respondent were being handled, and received a response on June 19th, 2019. One day previously, on June 18th, 2019, the Disciplinary Prosecutor dismissed the disciplinary petition. The explanatory statement noted that there was no reason to suspect the respondent had committed a breach of duty or injured the petitioner by his actions. It was stated that the petitioner had failed to demonstrate it had received any injury and what that injury could have been, particularly in view of the fact that the complaint for damages had been amended before the petitioner had been involved in the case as a defendant.

On July 8th, 2019, the petitioner appealed the decision to dismiss the petition with the SBA Disciplinary Prosecutor, claiming the decision had been based on an erroneous interpretation of the evidence, since no communication had been received from the relevant Public Prosecutor's Office, the signature on the power of attorney had not been examined for authenticity, the case files of the complaint brought by AA or his son had not been inspected, nor had it been taken into account that the farm had been valued as part of the case, and that the valuer's opinion had noted the valuation had been made at the application of the farm's owner, AA.



The SBA Disciplinary Prosecutor held the objection was unfounded, and, on September 30th, 2019, adopted a decision dismissing the objection and upholding the first-instance decision dismissing the disciplinary petition.

The disciplinary proceeding took eight months and 27 days. Five months and 29 days elapsed from the filing of the disciplinary petition on December 25th, 2018, to its dismissal, and another nine months and five days elapsed until the objection to that dismissal was itself dismissed.

**OBSERVATIONS:**

In accordance with the legal maxim of *falsa demonstratio non nocet* (“a false description does not vitiate”), the NBA Disciplinary Prosecutor rightly treated the “Notice” of the City Public Attorney as a disciplinary petition.

This case also involved criminal charges brought due to the attorney-at-law’s actions. Interestingly, however, the Disciplinary Prosecutor sought information about the criminal case from the acting Public Prosecutor’s Office, but dismissed the complaint before a reply was received. In this context, it seems there is a need to comprehensively regulate disciplinary actions, including enacting appropriate statute of limitation rules, in situations where criminal and disciplinary proceedings are conducted concurrently with regard to the same event or action, given the likely outcomes of these cases.

This case illustrates the difficulties that can arise when the actual owner of property differs from the formal titleholder. In this example, it may be assumed that, at the time the power of attorney was made, in 2018, the title deed to the farm still listed AA as the owner, although he had been dead since 2005. No change to the title deed seems to have been made in spite of a final probate decision, and this is why the attorney-at-law’s client (the plaintiff in the damages case) gave his father’s name, rather than his own, in the power of attorney. The attorney-at-law claimed he was ignorant of AA’s death, substantiating this allegation by citing his motion to have AA examined in the damages case and his amendment of the complaint after having learnt that AA was dead. The question must be asked, though, of how it was possible that the attorney-at-law was unaware of the identity of a person who had issued him a power of attorney in 2018, since this constituted an *intuitu personae* (personal services) contract.

The attorney-at-law sought to explain this omission by claiming he had “received more than 300 signed powers of attorney from owners of flooded farms to bring complaints for damages”. These were obviously so-called “mass claims”, and it is not clear how the attorney-at-law managed to win such a large number of clients. The Disciplinary Prosecutor was authorized (and required) to investigate these circumstances and assess, *proprio motu*, whether this action constituted breach of professional ethics standards governing client

solicitation,<sup>76</sup> which the Disciplinary Prosecutor did not do.<sup>77</sup> This represents a missed opportunity to respond appropriately to behavior that is deeply harmful to the public reputation of the legal profession.

The explanatory statement to the decision dismissing the petition stated that there were “no reasonable grounds to suspect the respondent had breached his duty or injured the petitioner through his actions”, and that “the petitioner had failed to demonstrate it had come to any injury and what that injury could have been, particularly in view of the fact that the complaint for damages had been amended before the petitioner had been involved in the case as respondent.”

It remained completely unclear how one claimant was substituted for another in the damages case, an action erroneously termed “amendment” of the complaint in both the respondent’s response to the petition and the decision of the Disciplinary Prosecutor. This was, in point of fact, not an amendment, since this occurs where a claimant files a complaint against a person other than the original respondent, or where a claimant extends the scope of a complaint to include additional respondents.<sup>78</sup> In this example, the attorney-at-law identified the successor of the initial claimant as the claimant in the course of the case, and submitted a power of attorney issued by that successor at the actual hearing. Moreover, in its decision dismissing the petition the Disciplinary Prosecutor stated the petitioner had failed to demonstrate it had come to any injury and what that injury could have been, which could be construed to mean that injury to a petitioner was a prerequisite for a disciplinary offence and disciplinary accountability. It is particularly concerning to see that the Disciplinary Prosecutor held the petitioner had been required to demonstrate it had suffered harm, which is utterly unacceptable and without any support in disciplinary accountability rules.

The time to completion suggests the NBA Disciplinary Prosecutor was efficient in its handling of the case.

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<sup>76</sup> A key ethical problem with mass claims and litigation is how clients are solicited, as anecdotal evidence suggests this is often done in contravention of the Code of Professional Ethics for Lawyers. Violations of the Code include offering legal services, supplying blank powers of attorney, advertising, hiring intermediaries, promising particular outcomes, and engaging and/or nominating expert witnesses whose opinions of a disputed issue are known in advance. This research will restrict itself only to questions that may be answered through a review of case files or interviews. For a broader discussion, see Stanković, N. „Fenomen masovnih tužbi“, Koalicija Pravosudna baza jug, 2021, pp. 8–9.

<sup>77</sup> Research has found that, between January 1st, 2013, and December 31st, 2019, the NBA received a total of four disciplinary complaints about actions taken by attorneys-at-law in cases against the Serbian National Employment Service for alleged offences in assessing unemployment benefits. Two complaints were anonymous, while complainants were known for the other two. The Disciplinary Prosecutor dismissed all four complaints and all four dismissal decisions have since become final. Stanković, N. *op. cit.* p. 20.

<sup>78</sup> Code of Civil Procedure, Articles 201 and 205 (*Official Gazette of the Republic of Serbia* Nos. 72/2011, 49/2013 – Constitutional Court Ruling, 74/2013 – Constitutional Court Ruling, 55/2014, 87/2018, and 18/2020).

## Case Study 14

### 1. Complainant and respondent

The complainant was a man, while the respondent was an attorney-at-law aged between 49 and 56 who had not previously been subject to disciplinary proceedings.

### 2. Perpetration and legal characterization of offence

The complainant claimed the respondent had given him legal advice orally on September 26th, 2017, for which he charged the complainant 3,000 dinars without previously having mentioned this cost. The complainant alleged he had subsequently heard other attorneys-at-law charged 1,000 dinars for legal advice, and that 3,000 dinars was more than half of his monthly pension. The complainant also claimed the legal advice he received was not useful and sought a refund from the respondent.

### 3. Preliminary proceeding

The disciplinary complaint was filed on October 3rd, 2017, and was accompanied as evidence by a copy of a receipt for the amount of 3,000 dinars; copy of a pension slip of the petitioner; and certificate attesting that the National Pension and Disability Insurance was not making pension payments to the complainant's spouse.

The respondent received the disciplinary complaint on October 10th, 2017. In his response, the respondent claimed the complainant had been aware that legal advice was subject to payment, and that his conversation with the complainant lasted more than 60 minutes, with a subsequent telephone call lasted for another 26 minutes. The respondent believed the complaint was not merited.

Without seeking any additional information from either the complainant or the respondent, on March 7th, 2018, the Disciplinary Prosecutor dismissed the claim, stating that "the allegations made in the complaint and the findings of investigative action made it apparent there were no grounds to initiate a disciplinary proceeding against the respondent."

The complainant objected to the dismissal on March 5th, 2018, claiming that the dismissal had been wrongful and unjustified, that the respondent's response was factually erroneous, and

that the prosecutor had wrongfully accepted the respondent's response as credible. The SBA Disciplinary Prosecutor upheld the objection, set aside the dismissal decision, and returned the case to the NBA Disciplinary Prosecutor for reconsideration, holding that the first-instance decision had been based on an incomplete assessment of the facts. The NBA Disciplinary Prosecutor dismissed the complaint on May 20th, 2019. This dismissal was objected to by the complainant on June 3rd, 2019, and the objection was itself dismissed on June 5th, 2019, as lacking merit.

It took seven days for the complaint to be initially delivered to the respondent, and slightly over five months for the complaint to be dismissed. The objection to that dismissal was ruled on nearly eight months after the initial complaint had been filed. The decision in the repeated procedure was made nearly six months after the objection had been ruled on.

**OBSERVATIONS:**

This disciplinary case points to the importance of thorough fact-finding and detailed explanation of why a disciplinary complaint was dismissed. The fact that the complainant's objection was upheld shows that offhand comment made in the decision to dismiss the complaint that "the allegations made in the complaint and the findings of investigative action made it apparent there were no grounds to initiate a disciplinary proceeding against the respondent" was not sufficient to satisfy the proper justification test. Even though the decision of the NBA Disciplinary Prosecutor did not essentially change in the repeated procedure, the explanation was much improved, as it did make it plain why a disciplinary proceeding could not be initiated. This second, properly explained decision constituted a sort of lesson in law for the complainant, as well as improving the reputation of the NBA's disciplinary bodies and strengthening public trust.

The case also illustrates the difficulties materially deprived people face in their attempts to receive the legal assistance they need. In this context, in cases where clients may be entitled to free legal aid, pursuant to the Free Legal Aid Law, attorneys-at-law ought to inform those clients of this entitlement and how to access free legal aid.

In addition, the Code of Professional Ethics for Attorneys-at-law allows attorneys-at-law to reduce their fees to levels affordable for indigent clients for humanitarian reasons, as well as to take partial payment (Para. 30.3.1). It is not clear to what extent attorneys-at-law actually do so.

This case took one year and eight months to complete, which is a clear indication of inefficiency. The responsibility for the excessive duration of this proceeding is shared by both the first-instance and the second-instance disciplinary body.

## 5. KEY FINDINGS, CONCLUSIONS, AND RECOMMENDATIONS

1. The disciplinary accountability of attorneys-at-law is intended to ensure competent performance of the legal profession in good faith and safeguard its reputation. Article 75 of the Legal Profession Act treats attorneys-at-law and law trainees identically for the purposes of disciplinary accountability and envisages serious breaches of duty and violations of professional reputation while making the SBA responsible for regulating minor breaches and violations that attract fines and, as the ultimate penalty, being struck off the register (Article 77(7) of the Legal Profession Act). That being said, both minor and serious disciplinary offences are regulated by both the SBA Statute and the statutes of its constituent Bar Associations, the NBA included

2. Disciplinary rules of the NBA Statute are mostly analogous to those envisaged in the NBA Statute, but there are some differences. For instance, the NBA Statute includes a number of offences that the SBA does not recognize, such as failure to adhere to jointly agreed professional safeguards instituted by the General Assembly or Governing Board of the NBA; presenting inaccurate information about the NBA or its bodies and officers in the media (print, television, radio, online); and providing erroneous or inaccurate information to other attorneys-at-law about decisions or positions of bodies or officers of the NBA. Insulting other attorneys-at-law in news or social media or official submissions is also deemed a serious offence.

3. There is a clear need to combat such breaches of discipline, meaning they ought to be prescribed and penalized in accordance with the precept of *nulla poena sine lege*.

4. One open issue with disciplinary accountability of attorneys-at-law is whether the SBA's constituent Bar Associations are able to independently regulate serious and minor offences despite being independent and autonomous law societies. The Constitutional Court has seemingly answered this question in its ruling that found such provisions of the Statute of the Vojvodina Bar Association illegal,<sup>79</sup> holding that the Legal Profession Act regulated serious breaches of duty and violations of professional reputation

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<sup>79</sup> Constitutional Court of Serbia, Ruling IUo-213/2019.

and that the SBA, rather than its constituent Bar Associations, was responsible for stipulating other serious and minor offences. As such, the provisions on serious and minor offences adopted by the Bar Associations are illegal and should be deleted.

5. The NBA, like other constituent Bar Associations of the SBA, is empowered to adopt enactments which regulate the organization, composition, powers, decision-making procedure, and disciplinary proceedings conducted by its disciplinary bodies, as well as to rule on initiating and conducting disciplinary proceedings against attorneys-at-law or law trainees pursuant to public authority granted to it by the Legal Profession Act.

6. Disciplinary proceedings are regulated to a fair degree of detail in the SBA and NBA statutes. Procedural rules are by and large identical, but some differences can be observed between them. For instance, under the SBA Statute, disciplinary proceedings are initiated by the Disciplinary Prosecutor of the relevant Bar Association pursuant to a complaint or petition lodged by a natural or legal person with standing or a public authority, at the motion of a body of the Bar Association, and *proprio motu*. The NBA Statute, however, does not explicitly stipulate that a public authority is able to lodge a disciplinary petition. Further, the SBA Statute envisages that the Code of Criminal Procedure applies as appropriate in disciplinary proceedings to any matters not regulated by the Legal Profession Act and the SBA Statute (Article 232). No such rule is found in the NBA Statute. Disciplinary proceedings should be regulated consistently, and as such these differences in procedural provisions ought to be removed in the interests of legal predictability.

7. Statutes of limitations on initiating and pursuing disciplinary proceedings and on enforcing disciplinary penalties are all regulated by the Legal Profession Act, but identical statute of limitations provisions are contained in the NBA Statute as well. Important though they are, statutes of limitations are not governed comprehensively, with detailed rules lacking on when relative statute of limitations periods start in cases where the consequences of an offence extend over a period of time after its perpetration. Insofar as objective statutes of limitations are concerned, the adequacy of the general rule envisaging a two-year prescription time applicable to both serious and minor breaches should be re-assessed (whereas breaches considered to be criminal offences are subject to criminal statute of limitations rules). Even though they are not

deemed criminal offences, some serious disciplinary violations can cause incalculable damage to the reputation of the legal profession and are deeply at odds with its key tenets. Seemingly, the statute of limitations for these offences ought to be much longer, as is the case in many other jurisdictions.<sup>80</sup> Since disciplinary proceedings often become time-barred due to limited awareness of the general public, it would be desirable for the SBA and its constituent Bar Associations to take action to appropriately disseminate the relevant information.

8. A fairly large proportion of disciplinary cases lapse due to statute of limitations, even though statutes of both the SBA and the NBA call for urgency in pursuing these proceedings. As such, measures ought to be taken to prevent cases from becoming time-barred. The urgency requirement should be backed up by prescribing time limits for the Disciplinary Prosecutor to present a complaint to the respondent for his response, for the complaint to be decided on, for the SBA Disciplinary Prosecutor to rule on any objections to dismissals of complaints, and for the first-instance judgment in the case to be made if an indictment is brought. Also required is an interruption to the statute of limitations on initiating disciplinary proceedings in cases where criminal charges

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<sup>80</sup> For instance, in the Netherlands there is a limitation period of three years after the complainant learned about the offence or could have learned about the offence. In Spain, the statute of limitations varies between three months and two years depending on the seriousness of the offence. In Austria, the statute of limitations is five years after the disciplinary offence was committed, while in Lithuania it is only one year. In England and Wales, the prescription time for submitting a complaint is six years from when the violation occurred, or three years from when the complainant learned about it. See Comparative Analysis of Bar Associations and Law Societies in Select European Jurisdictions, Multi-Donor Trust Fund for Justice Sector Support in Serbia, World Bank. Available online at [mdtfjss.org.rs/archive//file/Bar%20Associations%20report\\_clean.pdf](http://mdtfjss.org.rs/archive//file/Bar%20Associations%20report_clean.pdf).

<sup>F</sup>ormer Yugoslav republics take varying approaches to statutes of limitations in disciplinary proceedings. According to Article 62 of the Legal Profession Act of the Federation of Bosnia and Herzegovina (*Official Journal of the Federation of Bosnia and Herzegovina* Nos. 40 of August 21st, 2002, 18/05, 68/05, and 42/11), the prescription time for initiating disciplinary proceedings is two years for minor offences and four years for serious ones; once opened, the proceeding itself is not subject to statute of limitations. Article 102 of the Republika Srpska Legal Profession Act (*Official Gazette of Republika Srpska* No. 80/2015) imposes a two-year prescription period for minor offences and a four-year period for serious ones. The Croatian Legal Profession Act (*Official Journal* Nos. 09/94, 117/08, 50/09, 75/09, and 18/11) envisages a single set of statutes of limitations for initiating and pursuing disciplinary proceedings, namely two years for minor breaches and four years for serious offences.

have been brought against the respondent, and, if a disciplinary proceeding is already open, the prescription period for pursuing it should be interrupted until the criminal case is concluded. Such rules are envisaged by enactments of some foreign law societies.<sup>81</sup>

9. The Legal Profession Act stipulates that only the Disciplinary Prosecutor and the respondent, but not the complainant, may appeal a ruling of the Disciplinary Court. This provision ought to be re-assessed, especially since injured parties in criminal cases are able to appeal rulings (Article 433(1) of the Criminal Procedure Code). There seems to be no reason why a complainant should be denied the right to appeal.

10. The Legal Profession Act does not require Bar Associations to notify foreign law societies of disciplinary proceedings opened against their members. Such a rule would be desirable.

11. The Legal Profession Act and Bar Association enactments do not indicate whether final decisions of disciplinary bodies can be contested in administrative disputes. Case law is neither consistent nor uniform. Some decisions made by the SBA Administrative Prosecutor contain clauses notifying parties they may contest decisions dismissing complaints in administrative proceedings, while others do not. The goal of disciplinary proceedings and the fact that criminal procedural rules apply to it as appropriate seems to suggest that decisions of disciplinary bodies are not to be considered administrative enactments that could be contested in administrative disputes. This position was also taken in the past by the Supreme Court of Serbia. To ensure legal predictability, a statutory ban should be imposed on administrative disputes brought to challenge final decisions of disciplinary bodies, and examples of foreign jurisdictions should be emulated when regulating how these rulings can be set aside.<sup>82</sup>

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<sup>81</sup> See, for instance, rules laid down in Article 85 of the Statute of the Slovenian Bar Association.

<sup>82</sup> In Austria, decisions of the Disciplinary Board can be appealed with the Supreme Court. In disciplinary matters the Supreme Court sits in a senate of four members. The senate consists of two attorneys-at-law of the Bar and two judges of the Supreme Court. No external disciplinary tribunal exists. The Cyprus Bar Association uses a self-regulatory disciplinary body and has its own Disciplinary Board of Advocates. There is no separate Disciplinary Tribunal Operating outside and independently from the Cyprus Bar Association with which decisions of the Disciplinary Board can be appealed. In the Czech Republic, final decisions made by disciplinary bodies of the Czech Bar Association may be appealed with the Supreme Court of the



12. Disciplinary complaints were lodged infrequently, with a total of 272 made in 2018 and 2019. Most complaints (88.6 percent) were lodged by natural persons, while legal persons made them only rarely (2.2 percent). No more than 16 petitions (5.8 percent) were lodged by public authorities, bodies of the NBA filed only five petitions (1.85 percent), and the Disciplinary Prosecutor did not initiate any proceedings *proprio motu*. The few petitions filed by the NBA and the absence of any *proprio motu* cases suggest attorneys-at-law were reluctant to act against their peers, thereby damaging efforts to prevent breaches of duty, harming public trust in the legal profession, and hurting its reputation. It should be borne in mind that investigating disciplinary accountability is a power devolved by the government on disciplinary bodies of Bar Associations with the aim of preventing and combating illegal, negligent, irresponsible and unethical conduct by attorneys-at-law and law trainees, which serves to safeguard interests of both the public and the legal profession.

13. A total of 220 proceedings were launched in 2018 and 2019, while 264 were completed, of which 40 (15.15 percent) had been initiated in previous years and completed in 2018 (38) and 2019 (2).

14. In the sample of 40 randomly selected cases, 34 involved complaints filed by natural persons, 10 of whom were women and the rest men. This is in all likelihood due to gender-based differences in readiness to use legal recourse to safeguard one's rights. Only one complaint had been filed by a legal person. Most of the natural persons who lodged complaints were clients of the attor-

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Czech Republic only if the respondent has been dismissed or struck off the register. In Estonia, disciplinary offences are dealt with by the Court of Ethics of the Estonian Bar Association. The Court of Ethics has seven members and four substitute members. Five members and three substitute members must be "sworn advocates" (the highest level of qualification within the Bar) with professional experience as sworn advocates for at least ten years. Two professional judges are elected by a general assembly of judges and an expert in law is appointed by Council of the Department of Law of the University of Tartu. Changes in law to increase the number of non-advocates (professional judges and legal scholars) are anticipated. Appeals against decisions of the Court of Ethics may be filed with the Administrative Court. See Summary of disciplinary proceedings and contact points in the EU and EEA member states, CCBE, 2016. Available online at [ccbe.eu/fileadmin/speciality\\_distribution/public/documents/EU\\_ATTORNEYS-AT-LAW/EUL\\_Position\\_papers/EN\\_EUL\\_20161128\\_Table\\_discipline.pdf](http://ccbe.eu/fileadmin/speciality_distribution/public/documents/EU_ATTORNEYS-AT-LAW/EUL_Position_papers/EN_EUL_20161128_Table_discipline.pdf). In Croatia, appeals may be lodged with the Supreme Court of Croatia only if the disciplinary penalty is temporary exclusion from the practice of law or being permanently struck off the register of legal professionals.

neys-at-law they reported. Only in two cases were the complainants the opponents of the attorneys' clients.

15. Few legal professionals, judicial officers, or judicial bodies filed complaints. An attorney-at-law was the complainant in one case, public enforcement officers filed complaints in two cases, and courts did so in another two. This finding may suggest individuals with law degrees are better placed to assess whether a particular action can be characterized as a disciplinary offence, but could also reflect comity and solidarity between legal practitioners and officers.

16. Male attorneys-at-law were the respondents in most (28) of the 40 cases, with women attorneys-at-law accounting for a far lower proportion (12). Only one complaint had been filed against a law trainee, the remainder all being directed against practicing attorneys-at-law.

17. It was concerning to see that, in 32 of the cases analyzed, the complaints had been filed against attorneys-at-law who had previously already been subject to disciplinary action. Most of these (27) had attracted complaints but no indictments had been brought, while indictments had been brought against five. This finding suggests some attorneys-at-law have been unable to find common ground with their clients, but complaints – and, indeed, indictments – had not made them more professional in their conduct and able to communicate better with clients to prevent conflict and misunderstanding.

18. Descriptions of attorney-at-law behavior towards complainants set out in some complaints point to a lack of communication skills on the part of some legal professionals. This is particularly true of skills such as active listening, empathy, establishing a trusting relationship, creating an environment of honesty and confidentiality, understanding client anger constructively, and the like. To address this issue, law trainee courses and continuing professional development programs for attorneys-at-law should include modules designed to develop and enhance communication skills.

19. The complaints are often unclear, incoherent, and difficult to understand. The complaints lodged by individuals without legal training clearly shows the public are inadequately aware of how attorneys-at-law work and what their performance standards, powers, and duties under powers of attorney are; this extends to ignorance of legal professionals' fees and cost compensation. In

some cases, this lack of information resulted in unmerited disciplinary complaints being made. The public evidently need to be better informed about the performance standards of attorneys-at-law, and attorneys-at-law, for their part, ought to give their clients more extensive information in plain language, with due regard to their educational attainment and ability to comprehend these details, and remain open to clients' questions. Doing so would help build trust and prevent disciplinary complaints.

20. The contents of the disciplinary complaints revealed clients were particularly poorly aware of their rights and duties in connection with legal fees, which leads to frequent misunderstandings, poorly managed expectations, and disciplinary complaints. Many such situations could be prevented if legal professionals provided exhaustive information and explanations, in a user-friendly manner and in plain language, about how the fees are assessed and collected, and, with as much accuracy as possible, what the amounts involved are, as envisaged in the Code of Professional Ethics for Attorneys-at-law. Attorneys-at-law would do well to observe their duty to warn their clients that courts can compel the client's opposing party to pay legal fees lower than what the client's attorney-at-law will seek as his award.

21. Clients are poorly informed about what the disciplinary accountability of attorneys-at-law entails and what its goals and purpose are, while also lacking awareness of the rules of the disciplinary procedure, including statutes of limitations for opening and pursuing disciplinary proceedings. This lack of information is thrown into sharp relief by the fact that some clients feel disciplinary proceedings are a means for them to seek damages from their attorneys-at-law. In this context, a mediation procedure could be considered that may prove a valid alternative to disciplinary procedure for some minor ethical infringements.

22. Information about the performance standards and disciplinary accountability of attorneys-at-law is not widely available. Web sites of Bar Associations are not aimed at existing or potential clients, but rather at their attorney-at-law members, also serving as instruments for enhancing transparency. Although Bar Associations do publish the relevant regulations online, there is a lack of appropriate explanations written in plain language that could help clients learn more about how to file complaints, what these ought to contain, what the standard of proof is, when statutes of

limitations expire, and the like. In addition, since many clients lack access to the internet, brochures and leaflets could be printed and made available at legal practices, the NBA, and elsewhere. Also useful would be a disciplinary complaint form that could guide potential complainants in preparing complaints that were neither too brief nor excessively detailed, which could encourage members of the public to report instances of attorney-at-law misconduct.

23. The Disciplinary Prosecutor dismissed as many as 94.69 percent of complaints filed in 2018 and 2019, with the percentage standing at 97.43 percent in 2018 and a somewhat lower 90.74 percent in 2019. Only ten indictments were made, translating to only 3.78 percent of all complaints; moreover, two of those indictments were withdrawn in the course of the proceedings.

24. Complaints were dismissed in 34 of the 40 cases selected for closer analysis. In 26 of these 34, the dismissals were due to the lack of reasonable grounds to believe a disciplinary offence had been perpetrated, while in the remaining eight the complaints were dismissed as time-barred.

25. In the vast majority of the cases, the decision to dismiss was made only on the basis of the allegations made and evidence submitted in the complaint and the response. The Disciplinary Prosecutor rarely sought additional explanations or evidence from complainants, respondents, public authorities, and other natural and legal persons. In this context it ought to be recalled that most complaints were filed by lay persons, so the reliance by Disciplinary Prosecutors only on the original allegations and evidence, without taking investigative action to collect additional information, is assuredly not the appropriate approach. Moreover, in some cases, circumstances surrounding actions by respondents remained insufficiently explained. Since disciplinary proceedings are based on the investigation principle, Disciplinary Prosecutors should be far more active in gathering facts and securing evidence.

26. In deciding on the disciplinary complaints, the Disciplinary Prosecutors as a rule focused only on the facts and evidence concerning offences alleged by the complainant. In no case did the Disciplinary Prosecutor investigate possible offences not alleged by the complainant but that may have been suspected given the respondent's overall conduct as described in the complaint. This approach may have been due to professional comity and/or concerns that broadening the investigation to other offences may

cause adverse reactions from respondents. The sample contained cases where the allegations suggested the respondents used unlawful means to solicit clients (such as providing blank powers of attorney, hiring intermediaries, and the like), especially in mass claims. The Disciplinary Prosecutors, however, failed to use their powers to investigate whether those offences had in fact been committed, restricting themselves instead only to examining the breaches alleged in the complaints.

27. Substantiating their views that no reasonable grounds existed to believe that an offence had been perpetrated, in their statements of explanation accompanying dismissal decisions the Disciplinary Prosecutors often claimed that no injury to the complainant resulted from the respondent's action or inaction. The absence of injury does not, however, necessarily imply there are no grounds to believe an offence had been perpetrated, because disciplinary offences are inherently unable to cause injury to the complainant. Moreover, a disciplinary complaint alleging unethical behavior by an attorney-at-law, even when it had not been directed at the complainant, may contain information that ought to be closely examined before a decision is made as to whether an offence is reasonably suspected to have been perpetrated. Complainants may be motivated by various factors, including to defame or discredit an attorney-at-law. Any consideration of a disciplinary complaint should, nevertheless, start from the assumption that it was filed in good faith and that it seeks to safeguard professional standards and prevent violations of professional reputation.

28. Statements of explanation accompanying dismissal decisions based on the absence of reasonable grounds to believe offences had been perpetrated are very sparse, with some even lacking clear and specific reasoning for making that decision. Most explanations only cite allegations from the complaint and the response, followed by the conclusion that there are no reasonable grounds to believe the alleged offence had been committed. In very few cases did the Disciplinary Prosecutor engage in legal analysis in the context of the facts and evidence presented, and in even fewer did the Disciplinary Prosecutor go out of his way to collect additional relevant facts and evidence. Where the complainant and the respondent held mutually opposed views, the explanations generally lacked the Disciplinary Prosecutor's reasoning in choosing to regard a particular piece of evidence as authentic and

credible. Citing such reasons would certainly strengthen public trust in disciplinary bodies and their readiness to consider all disciplinary complaints carefully and with due attention, and could thereby also enhance the reputation of the legal profession.

29. The review of the sample found that decisions by the NBA Disciplinary Prosecutor to dismiss complaints were frequently appealed. As many as 12 of the 26 dismissals due to absence of reasonable grounds to believe an offence had been perpetrated were appealed. In two of these cases the SBA Disciplinary Prosecutor overturned the NBA Disciplinary Prosecutor's decisions due to failure to provide proper justification.

30. Only one of the cases analyzed led to a conviction and two resulted in acquittals. One indictment was dismissed after it had been withdrawn, and another was dismissed as being time-barred. One appeal against a judgment of the NBA Disciplinary Court was dismissed by the SBA Disciplinary Court, while two appeals were rejected, and the first-instance judgments upheld.

31. On the whole, the NBA's disciplinary bodies were fairly efficient. Some improvement in efficiency was also noted in 2019 relative to 2018. Most disciplinary proceedings ended in the same calendar year in which they had been initiated (84.85 percent). A total of 75.65 percent of proceedings initiated in 2018 were also completed in the same year, with this proportion being as high as 98 percent in 2019. Nevertheless, in some cases the statute of limitations for pursuing disciplinary proceedings had expired due to faults on the part of all disciplinary bodies. It ought to be noted, however, that some proceedings took unreasonably long to complete, which was especially true of fairly simple disciplinary cases involving limited quantities of evidence.

## 6. APPENDIX: DATA COLLECTION INSTRUMENTS

Assessment of disciplinary bodies and disciplinary proceedings of  
the Niš Bar Association

### CASE LISTING DATA COLLECTION FORM

Year: _____		Number	%
No.	Type of data		
1	Complaints/petitions filed		
2	Complaints filed by natural persons		
3	Complaints filed by legal persons		
4	Petitions filed by public authorities		
5	Petitions filed by Bar Association bodies		
6	Proceedings initiated <i>proprio motu</i>		
7	Total proceedings conducted		
8	Proceedings initiated in prior years		
9	Proceedings initiated in year for which data are collected		
10	Complaints/petitions dismissed		
11	Indictments brought		
12	Law trainees indicted		
13	Male law trainees indicted		
14	Female law trainees indicted		
15	Indictments for serious offences		
16	Indictments for minor offences		
17	Motions for temporary exclusion from practice of law		
18	Motions for temporary exclusion from practice of law made by Disciplinary Prosecutor		
19	Motions for temporary exclusion from practice of law made by Court		
20	Temporary exclusions from practice of law imposed		
21	Appeals against temporary exclusion from practice of law		
22	Indictments withdrawn		
23	Total judgments		
24	Convictions		
25	Acquittals		
26	Judgments dismissing indictments due to withdrawal		
27	Judgments dismissing indictments due to statute of limitations		
28	Total disciplinary penalties imposed		

29	Reprimands imposed
30	Fines imposed
31	Strike offs
32	Appeals lodged
33	Appeals dismissed
34	First-instance judgments upheld
35	First-instance judgments reversed
36	Enforcement proceedings initiated to collect fees and procedural costs
37	Proceedings completed in up to three months
38	Proceedings completed in three to six months
39	Proceedings completed in six months to one year
40	Proceedings completed in one to two years
41	Proceedings completed in over two years

## ASSESSMENT OF DISCIPLINARY BODIES AND DISCIPLINARY PROCEEDINGS OF THE NIŠ BAR ASSOCIATION

Collection date: \_\_\_\_\_

Case number: \_\_\_\_\_

### DISCIPLINARY CASE FILE DATA COLLECTION FORM

#### I. COMPLAINANT/PETITIONER INFORMATION

##### 1) Legal status

1. Natural person
2. Legal person
3. Public authority \_\_\_\_\_ (write in name)
4. Bar Association body \_\_\_\_\_ (write in name)
5. Disciplinary Prosecutor of the Niš Bar Association
6. Disciplinary Prosecutor of the Serbian Bar Association

#### II. RESPONDENT INFORMATION

##### 2) Status

1. Attorney-at-law
2. Law trainee

##### 3) Gender

1. Male
2. Female



4) Age cohort (if available)

1. 18-25      2. 25-32      3. 33-40      4. 41-48  
5. 49-56      6. 57-65      7. 65+

5) Was the respondent previously subject to disciplinary action?

1. Yes      2. No      3. Unknown

III. GROUNDS FOR COMPLAINT/PETITION AND EVIDENCE  
SUBMITTED

6) Provide a detailed description of how the offence alleged in the complaint/petition was perpetrated (copy from complaint/petition).

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7) Provide a detailed description of how the offence was perpetrated for which a disciplinary petition was filed *motu proprio* (copy from indictment)

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8) How did the Disciplinary Prosecutor learn of the offence? (copy from indictment) \_\_\_\_\_

9) What evidence was submitted to accompany the complaint/petition?

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10) How was the offence legally characterized in the complaint/petition? (if any)

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IV. PRELIMINARY PROCEEDING

11) How did the respondent respond?

1. Yes      2. No

12) What were the key arguments made in the response?

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13) Did the Disciplinary Prosecutor seek any additional explanations or evidence from the complainant/petitioner?

1. Yes                      2. No

14) What additional explanations and evidence did the Disciplinary Prosecutor seek?

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15) Was a temporary exclusion from the practice of law sought?

1. Yes                      2. No

16) Was a temporary exclusion from the practice of law imposed?

1. Yes, for a period of \_\_\_\_\_                      2. No

17) How did the Disciplinary Prosecutor decide?

1. Complaint dismissed                      2. Indictment brought

18) What grounds were given for dismissing the complaint? (copy from decision to dismiss complaint)

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19) Was the decision dismissing the complaint/petition objected to?

1. Yes                      2. No

20) What grounds were given in the objection to the decision dismissing the complaint/petition? (copy from objection to decision dismissing complaint/petition)

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21) How was the objection decided on?

1. Dismissed due to untimely filing  
2. Upheld  
3. Rejected

22) How was the disciplinary offence legally characterized in the indictment? (copy from indictment, cite not just relevant article but give full title of offence)

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23) What facts did the Disciplinary Prosecutor cite to argue that a minor or serious offence had been perpetrated? (copy from indictment)

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24) What disciplinary penalty did the Disciplinary Prosecutor seek? (copy from indictment)

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V. PROCEEDING BEFORE DISCIPLINARY COURT

25) How was the indictment served on the respondent?

1. By personal service
2. On the respondent's agent (holder of power of attorney)
3. By substituted service through publication on the notice board of the Bar Association

26) Did the respondent have a defense counsel?

1. Yes
2. No

27) Did the respondent's defense counsel attend the disciplinary hearing?

1. Yes
2. No

28) Was the disciplinary hearing postponed?

1. Yes
2. No

29) Why was the disciplinary hearing postponed? (copy from record of disciplinary hearing)

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30) Was a motion made for recusal of a disciplinary judge?

1. Yes, on grounds of \_\_\_\_\_
2. No

31) What evidence was presented at the disciplinary hearing? (copy from record of disciplinary hearing)

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32) What were the key arguments of the respondent's defense? (copy from record of disciplinary hearing)

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33) How was the disciplinary offence legally characterized in the indictment? (copy from indictment)

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34) What facts did the Court cite to argue that a minor or serious offence had been perpetrated? (copy from indictments)

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35) The judgment of the disciplinary panel:

1. convicted the respondent
2. acquitted the respondent
3. dismissed the indictment due to it being withdrawn by the Disciplinary Prosecutor
4. dismissed the indictment due to expiry of statute of limitations

36) What penalty was imposed? (copy from judgment)

1. Reprimand
2. Fine
3. Being struck off the register of attorneys-at-law for a period of \_\_\_\_\_

37) What was the amount of the fine? (copy from judgment)

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38) What extenuating or aggravating circumstances did the disciplinary panel take into consideration when assessing and imposing the disciplinary penalty? (copy from judgment)

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39) What were the costs of the disciplinary proceeding? \_\_\_\_\_

40) Was the first-instance judgment appealed?

1. Yes
2. No

41) Who lodged the appeal?

1. Respondent
2. Respondent's defense counsel
3. Disciplinary Prosecutor

42) What were the grounds for the appeal? (copy from appeal)

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43) How was the appeal decided?

1. Appeal was dismissed
2. First-instance judgment was upheld
3. First-instance judgment was reversed

44) What were the key arguments used to substantiate the appeal decision?

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45) Was an enforcement proceeding pursued to collect fine and procedural costs?

1. Yes                      2. No

46) Time to completion

1. Date disciplinary offence was perpetrated (as set out in complaint/petition) \_\_\_\_\_
2. Date complaint/petition was filed \_\_\_\_\_
3. Date complaint/petition was dismissed \_\_\_\_\_
4. Date of objection to complaint/petition dismissal \_\_\_\_\_
5. Date of decision on objection to complaint/petition dismissal \_\_\_\_\_
6. Date indictment was brought \_\_\_\_\_
7. Date of disciplinary hearing \_\_\_\_\_
8. Date of first-instance judgment \_\_\_\_\_
9. Date first-instance judgment was served \_\_\_\_\_
10. Date of appeal \_\_\_\_\_
11. Date of second-instance judgment \_\_\_\_\_
12. Date second-instance judgment was served \_\_\_\_\_

Observations:

Write in any observations with regard to a particular feature of the case.

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