



REPUBLIC OF SAN MARINO

The Italian text shall be legally binding

**We the Captains Regent
of the Most Serene Republic of San Marino**

Having regard to Article 4 of Constitutional Law no. 185/2005 and to Article 6 of Qualified Law no. 186/2005;

Promulgate and make public the following Ordinary Law approved by the Great and General Council in its sitting of 15 September 2011:

LAW NO. 139 OF 16 SEPTEMBER 2011

RULES OF PROCEDURE CONCERNING THE ABSTENTION AND OBJECTION OF MAGISTRATES

Art. 1

This Law shall govern the procedure concerning the abstention and objection of Magistrates established by Article 10 of Qualified Law no. 145 of 30 October 2003, as modified by Article 9 of Qualified Law no. 2 of 16 September 2011.

Art. 2

The Magistrate who has incurred in one of the causes for mandatory abstention established by Article 10 of Qualified Law no. 145 of 30 October 2003, as modified by Article 9 of Qualified Law no. 2 of 16 September 2011, shall declare it, by requesting the competent Judge to relieve him/her of the conduct and decision relative to the proceeding in which incompatibility exists.

Following notification to the parties, the application shall be transmitted to the competent Judge, together with the documents of the proceeding. Evidence shall be indicated and produced in the application.

The judgment shall be deposited together with the file of the proceeding and shall be notified *ex officio* to the parties and the magistrate.

The same provisions shall apply also in case of optional abstention.

The request for objection may be made at any stage and time during the proceeding.

The request for objection shall be added to the file of the proceeding and shall indicate in detail the reasons for objection provided for by the law and evidence supporting such reasons.

Upon receipt of the request, the Judge shall inform the Head Magistrate thereof and shall order the Registry to transmit the request to the competent Judge, together with copy of the

documents before the court. If the request for objection is made during the adversarial stage of the criminal proceeding, the judge shall fulfil the tasks envisaged for that hearing, except for the final decision pertaining to the judgement.

The request for objection shall be submitted through a qualified attorney enrolled in the Register of Lawyers and Notaries of the Republic of San Marino.

If the party or the accused submits the request personally, the judge responsible for the judgment pertaining to the objection shall order the notification of the request to the advocates of the objector in the proceeding where the request is submitted. If the latter continue to defend the objector, the request for objection shall be intended as submitted through these advocates.

The request for objection shall suspend the proceeding. However, if the request seems to be a waiting strategy or reiterates preceding requests, even only substantially, the objected Magistrate shall be entitled to carry on the proceeding or, although convinced that the objection is unjustified and for reasons of expediency, he/she may ask the Head Magistrate to be replaced to enable a swift continuation of the proceeding.

If, following the deposit of the request for objection, the magistrate declares his/her intention to abstain, the provisions on abstention shall apply and the objection proceeding shall be extinguished.

Upon receipt of the request, the Judge competent for the judgment pertaining to the objection shall assign, within the following three days, a time-limit of ten current days for the parties and the objected magistrate to deposit statements and submissions, as well as documentary evidence. The statements and evidence shall be available to the parties and the judge, who shall be entitled to take copy thereof. If witness evidence is requested, the competent Judge shall fix a hearing to hear such evidence, which shall be *inter partes*. Once the above-mentioned time-limit has expired and any evidence has been taken, the final statements shall be deposited within ten days. Once this time-limit has expired, the proceeding shall be suspended to adopt the decision, which shall be deposited within thirty days.

The judgment shall be deposited together with a copy of the file of the proceeding and shall be notified *ex officio* to the parties and the magistrate.

The judgment upholding the objection shall also establish which acts of the proceeding, in which the objected Magistrate has participated, shall be renewed.

With the judgement declaring the objection inadmissible or rejected, the party submitting the request for objection may be ordered to pay, as court costs, an amount ranging from 1,000 to 10,000 euro, without prejudice to any civil or criminal action.

The preceding provisions shall apply also in case of objection to a member of the Guarantors' Panel and to the Judge of Extraordinary Remedies.

Without prejudice to the case referred to in the preceding tenth paragraph, in criminal proceedings the limitation period shall be suspended starting from the day on which the request for abstention or objection is deposited until, at the investigation stage, the day on which the decision is notified to the applicant and, at the deciding stage, until the day of the following hearing.

In criminal judgments, requests for objection shall not be submitted once all acts referred to in Article 179 of the Code of Criminal Procedure have been performed; the deciding judge shall declare such requests inadmissible.

If, at this stage, a judgment pertaining to the objection is pending, the deciding judge shall make the judgment public by depositing the decision with the Registry within five days following the notification to the deciding judge of the decision adopted by the judge responsible for the objection.

The Registry shall notify *ex officio* the decision to the private parties, to the *Procuratore del Fisco* (prosecuting magistrate) and to the accused.

Art. 3

This Law shall enter into force on the fifth day following that of its legal publication.

Done at Our Residence, on 16 September 2011/1711 since the Foundation of the Republic.

THE CAPTAINS REGENT
Maria Luisa Berti – Filippo Tamagnini

THE SECRETARY OF STATE
FOR INTERNAL AFFAIRS
Valeria Ciavatta