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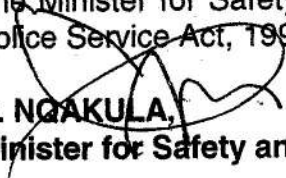
DEPARTMENT OF SAFETY AND SECURITY DEPARTEMENT VAN VEILIGHEID EN SEKURITEIT

No. R. 864

31 August 2005

REGULATIONS FOR THE SOUTH AFRICAN POLICE SERVICE

The Minister for Safety and Security has, under section 24(1) of the South African Police Service Act, 1995 (Act No. 68 of 1995), made the regulations in the Schedule.



C. NGAKULA

Minister for Safety and Security

SCHEDULE

THE SOUTH AFRICAN POLICE SERVICE DISCIPLINE REGULATIONS

1. Definitions

In these Regulations, unless the context otherwise indicates, —

"appeals authority" means a person or body of persons appointed by the National Commissioner to consider appeals in terms of these Regulations;

"calendar day" means any day including a Saturday, Sunday and a public holiday and any period of *calendar days* must be calculated by excluding the first day of the period and including the last day of the period, unless the last day falls on a Saturday, Sunday or a public holiday, in which case the last day will be deemed to be the first *working day* following upon that day;

"employer" means the National Commissioner or any person delegated by him or her to perform any function in terms of these Regulations;

"employer representative" means an employee designated in general or in a particular case by the *employer* in terms of regulation 6(3) to consider whether to charge an employee for misconduct in a disciplinary hearing and, in the event of serious misconduct, to represent the employer during the whole disciplinary process;

"fellow employee" means an employee from the same unit, station or component of the employee charged with misconduct, including a union representative;

"legal practitioner" means a person who is admitted to practice as an advocate or an attorney in South Africa;

"recognized trade union" means all the unions admitted to the Safety and Security Sectoral Bargaining Council (SSSBC);

"union official" means a person employed as a secretary, assistant secretary or organiser of a trade union or in any other capacity whether or not that person is employed in a full-time capacity or not; and

"union representative" means a member of a trade union who is elected to represent employees at a workplace;

"working day" means any day other than a Saturday, Sunday or public holiday.

2. **Scope of the Regulations**

Based on the agreement reached between the *employer* and the all the unions admitted to the Safety and Security Sectoral Bargaining Council (SSSBC), these Regulations apply to the *employer* and all employees falling within the registered scope of the said Council.

3. **Purpose**

The purpose of these Regulations is to —

- (a) support constructive labour relations in the Service;
- (b) promote mutual respect between employees and between employees and the *employer*;
- (c) ensure that supervisors and employees share a common understanding of misconduct and discipline, to —
 - (i) promote acceptable conduct in terms of the provisions of these Regulations;
 - (ii) provide a user friendly framework in the application of discipline; and
 - (iii) prevent possible arbitrary actions by supervisors towards employees in the event of misconduct.

4. **Principles**

These Regulations are based on the following principles:

- (a) discipline is a corrective and not a punitive measure;
- (b) discipline must be applied in a prompt, fair, consistent and progressive manner;
- (c) discipline is a managerial function;
- (d) the fair treatment of employees by ensuring that they —
 - (i) enjoy a fair hearing in both the formal and informal proceedings;
 - (ii) are timeously informed of allegations of misconduct made against them;

- (iii) receive written reasons explaining the rationale for any decision taken; and
- (iv) have the right to appeal against any finding of misconduct made at a disciplinary hearing or sanction imposed at such a hearing;
- (e) an employee who is impartial and not in any way connected to the alleged misconduct may represent the *employer* at, preside over the disciplinary hearing or investigate alleged misconduct against an employee;
- (f) as far as possible, the disciplinary proceedings must take place in the workplace and must be understandable to all employees;
- (g) the disciplinary proceedings will be instituted and finalised notwithstanding the fact that the act of misconduct is also a criminal offence;
- (h) disciplinary proceedings should not emulate court proceedings;
- (i) the employee appointed to investigate the alleged misconduct must be of higher rank than the employee being investigated;
- (j) in all disciplinary proceedings the employee has the right to be represented by a *union representative* or a *fellow employee*; and
- (k) in the event that the employee denies an allegation of less serious misconduct, a formal disciplinary hearing must be instituted.

5. Nature of misconduct

- (1) Employee conduct that may warrant disciplinary action is listed in regulation 20.
- (2) In applying regulation 20, the *employer* must assess the seriousness of the alleged misconduct after considering –
 - (a) the actual or potential impact of the alleged misconduct on the work of the Service, the component of the employee, his or her colleagues and the public;
 - (b) the nature of the work and responsibilities of the employee; and
 - (c) the circumstances in which the alleged misconduct took place.

6. Disciplinary officers

- (1) The National and Provincial Commissioners must each designate in writing an employee as a disciplinary officer, who –
 - (a) has the power to initiate an investigation concerning alleged misconduct and, irrespective of any other provision of these

Regulations, charge an employee for misconduct in accordance with these Regulations, irrespective of the rank of the employee; and

- (b) may perform all functions relating to the exercise of such power.
- (2) The disciplinary officer appointed by the National Commissioner is responsible for administrative matters including the development and maintenance of uniform standards relating to the functions of provincial disciplinary officers and *employer representatives* and has the final say in respect of all disputes including jurisdictional disputes that may arise.
- (3) The National and Provincial Commissioners, after consulting with the disciplinary officer concerned, may in writing designate in general or in a specific case, an employee or category of employees or person or category of persons as *employer representatives*, who may, as the representatives of such disciplinary officer and subject to his or her control and directions, charge any employee with misconduct and perform all functions relating to the exercise of such power.
- (4) An *employer representative* must exercise his or her powers and perform his or her functions subject to the control, orders and instructions of the National Commissioner and the relevant Provincial Commissioner. The National or relevant Provincial Commissioner may reverse any decision arrived at by an *employer representative* under his or her jurisdiction and may, in general or in respect of a specific matter, exercise any part of such power or perform any such function: Provided that the National Commissioner may issue orders and instructions to Provincial Commissioners and may reverse any decision arrived at by a Provincial Commissioner or an *employer representative* in terms of these Regulations, whether on his or her own initiative or upon receipt of representations by any person.

7. Less serious misconduct

In the event of less serious misconduct, the supervisor may invoke any one of the procedures outlined in regulations 8 - 11 which he or she deems appropriate.

8. Corrective counselling

In instances where the nature of the misconduct warrants counselling, the supervisor of the employee must —

- (a) interview the employee and bring the misconduct to the employee's attention;
- (b) determine the reasons for the misconduct and give the employee an opportunity to respond to the allegations;
- (c) seek to get agreement on how to remedy the conduct; and

- (d) take steps to implement the agreed course of action.

9. Verbal warning

- (1) In instances where the nature of the misconduct warrants a verbal warning, the supervisor of the employee must –
 - (a) bring the misconduct to the attention of the employee and inform the employee that he or she is of the opinion that the misconduct warrants a verbal warning;
 - (b) allow the employee an opportunity to respond to the allegations;
 - (c) if the employee admits to having committed the misconduct, give the employee a verbal warning and inform the employee that further misconduct may result in harsher disciplinary action being taken;

OR

if the employee denies having committed the misconduct, initiate a disciplinary hearing as set out in regulation 12.

- (2) The verbal warning may not be reduced to writing.

10. Written warning

- (1) In instances where the nature of the misconduct warrants a written warning, the supervisor must –
 - (a) bring the misconduct to the attention of the employee and inform the employee that he or she is of the opinion that the misconduct warrants a written warning;
 - (b) allow the employee an opportunity to respond to the allegations;
 - (c) if the employee admits to having committed the misconduct, give the employee a written warning in the form determined by the National Commissioner and inform the employee that further misconduct may result in harsher disciplinary action being taken;

OR

if the employee denies having committed the misconduct, initiate a disciplinary hearing as set out in regulation 12.
- (2) The supervisor must give a copy of the written warning to the employee who must acknowledge receipt thereof. If the employee refuses to acknowledge receipt, the supervisor must hand over the warning to the employee in the presence of another employee, and both the supervisor and the other employee serving as witness must sign to confirm that the written warning was handed to the employee.
- (3) The written warning must be filed in the personal file of the employee.

- (4) A written warning remains valid for six (6) months and at the expiry thereof the written warning must be removed from the personal file of the employee and destroyed.
- (5) Should the employee commit a similar or related act of misconduct before the expiry of the six (6) months' period, the written warning may be taken into account.

11. Final written warning

- (1) In instances where the seriousness of the misconduct warrants a final written warning, the supervisor must –
 - (a) bring the misconduct to the attention of the employee and inform the employee that he or she is of the opinion that the misconduct warrants a final written warning;
 - (b) allow the employee an opportunity to respond to the allegations;
 - (c) if the employee admits to having committed the misconduct, give the employee a final written warning in the form determined by the National Commissioner and inform the employee that further misconduct may result in harsher disciplinary action being taken;
OR
if the employee denies having committed the misconduct, initiate a disciplinary hearing as set out in regulation 12.
- (2) The supervisor must give a copy of the final written warning to the employee who must acknowledge receipt thereof. If the employee refuses to acknowledge receipt, the supervisor must hand over the final written warning to the employee in the presence of another employee, and both the supervisor and the other employee serving as witness must sign to confirm that the warning was handed to the employee.
- (3) The final written warning must be filed in the personal file of the employee.
- (4) A final written warning remains valid for six (6) months and at the expiry thereof, the final written warning must be removed from the personal file of the employee and destroyed.
- (5) Should the employee commit a similar or related act of misconduct before the expiry of the six (6) month period, the final written warning may be taken into account.

12. Serious misconduct

- (1) If the supervisor is satisfied that the alleged misconduct is of a serious nature and justifies a harsher form of disciplinary action, he or she must ensure that the investigation into the alleged misconduct is completed and refer the documentation to the *employer representative*.

- (2) The *employer representative*, if satisfied that the employee has committed misconduct, must charge the employee with misconduct by having a written notice to attend the disciplinary hearing, in the form determined by the National Commissioner, served on him or her.
- (3) The written notice of the disciplinary hearing must provide for —
 - (a) a description of the allegations of misconduct and the main evidence (including statements if available) upon which the *employer* will rely;
 - (b) details of the date, time and venue of the hearing; and
 - (c) information stating the rights of the employee to representation by a *fellow employee* or a *union representative* or *union official*, and the right to bring witnesses to the hearing.
- (4)
 - (a) The notice to appear at the hearing must be served on the employee at least ten (10) *calendar days* before the date of the hearing.
 - (b) The notice must be served by delivering a copy thereof to the employee referred to therein or, if he or she cannot be found, by delivering it at his or her residence or place of employment to a person who is apparently over the age of 16 years and is apparently residing or employed there.
 - (c) A return of service of a notice by the employee serving the notice to the effect that it took place as mentioned in paragraph (b) may be handed in at the hearing and shall on its mere production be proof of the service thereof.
 - (d) An employee is obliged to accept delivery of any notice served on him or her.
- (5) The employee must acknowledge receipt of the notice if handed to him or her personally. Should the employee refuse to acknowledge receipt, the notice must be handed over to the employee in the presence of another employee, and both the employee handing over the notice and another employee must sign in confirmation that the notice was served on the employee.

13. Precautionary suspension

- (1) The *employer* may suspend with full remuneration or temporarily transfer an employee on conditions determined by the National Commissioner.
- (2) The National or the Provincial or Divisional Commissioner (the Commissioner) may suspend the employee without remuneration, if the Commissioner on reasonable grounds, is satisfied that the misconduct

which the employee is alleged to have committed, is misconduct as described in Annexure A and that the case against the employee is so strong that it is likely that the employee will be convicted of a crime and be dismissed: Provided that —

- (a) before suspending an employee without remuneration, the employee is afforded a reasonable opportunity to make written representations;
 - (b) the Commissioner considers the representations;
 - (c) the disciplinary process must be initiated within fourteen (14) *calendar days* of the date of the decision to suspend the employee without remuneration; and
 - (d) if the disciplinary process is not completed within sixty (60) *calendar days* from the commencement of the suspension, the question of continued suspension without remuneration must be considered by the Commissioner and the employee may again make written representations which the Commissioner must consider, the Commissioner must take any such decision on continued suspension within seven (7) *calendar days* of receiving written representations on continued suspension and a decision that the suspension continues may only be for a further period of thirty (30) *calendar days*.
- (3) A suspension is a precautionary measure.
 - (4) If an employee is suspended with full remuneration or transferred as a precautionary measure, the *employer* must hold a disciplinary hearing within sixty (60) *calendar days* from the commencement of the suspension. Upon the expiry of the sixty (60) days, the chairperson of the hearing must take a decision on whether the suspension or temporary transfer should continue or be terminated.

14. Conducting the disciplinary hearing

- (1) The *employer* must appoint the chairperson of the hearing who must be of a higher rank than the employee charged with misconduct.
- (2) The *employer* or the employee may, with the consent of the other party, request the Safety and Security Sectoral Bargaining Council (SSSBC) to appoint an arbitrator to chair the disciplinary hearing. The decision of the arbitrator will be final and binding and only open to review in terms of the Labour Relations Act, 1995 (Act No. 66 of 1995). All the provisions applicable to disciplinary hearings in terms of these Regulations will apply for purposes of these hearings. The party requesting this procedure will be responsible for the payment of the arbitration costs.

- (3) An employee may be represented in the hearing by a *fellow employee* or a person employed by a *recognised trade union*.
- (4) In a disciplinary hearing, neither the *employer* nor the employee may be represented by a *legal practitioner*, unless –
 - (a) the *legal practitioner* is employed by a recognised trade union; or
 - (b) the chairperson, after hearing the *employer representative* and the employee or his or her representative, is of the opinion that the matter to be heard is of a serious nature, in which case both the employee and *employer* may be represented by a *legal practitioner*.
- (5) If necessary, the *employer representative* must arrange for an interpreter to attend the hearing and the interpreter must be properly sworn in by the chairperson.
- (6) The chairperson must ensure that record is kept of the proceedings at the disciplinary hearing .
- (7) The *employer representative* will lead evidence on the conduct giving rise to the hearing. The employee or the representative of the employee may question any witness called by the *employer representative*.
- (8) The employee will be given an opportunity to lead evidence. The *employer representative* may question any witnesses called.
- (9) The chairperson may ask any question for clarification.
- (10) The chairperson may, of his or her own accord or on request by any party, subpoena any person to testify at a disciplinary hearing.
- (11) Should the chairperson find that the employee has committed misconduct, the chairperson must inform the employee of the finding and the reasons thereof.
- (12) Before deciding on a sanction, the chairperson must give the employee an opportunity to present relevant circumstances in mitigation. The *employer representative* may also present aggravating circumstances.
- (13) If the chairperson finds that an employee has committed misconduct, the chairperson must pronounce a sanction on the day of the hearing or within five (5) *working days* thereafter. The seriousness of the misconduct, the previous record of the employee and any mitigating or aggravating circumstances must be taken into account.
- (14) A disciplinary hearing must as far as practically possible, be finalised within sixty (60) *calendar days*.

15. Sanctions

- (1) Any of the following sanctions may be imposed —
 - (a) counselling;
 - (b) a written warning which will be valid for six (6) months;
 - (c) a final written warning which will be valid for six (6) months;
 - (d) demotion by one salary level for a period not exceeding twelve (12) months, provided that the employee retains his or her rank or post level;
 - (e) suspension without remuneration for no longer than three (3) months, subject to the consent of the employee;
 - (f) dismissal;
 - (g) suspended dismissal for a period not exceeding six (6) months;
 - (h) any of the above sanctions but suspended for a period not exceeding six (6) months;
 - (i) a fine of up to R 500,00 to be deducted in instalments; or
 - (j) a combination of the above.
- (2) The *employer* may not implement the sanction during an appeal by the employee.
- (3) The chairperson must communicate the final outcome of the hearing to the employee within five (5) *working days* after the conclusion of the disciplinary hearing, and the outcome must be recorded on the personal file of the employee.
- (4)
 - (a) In the event of the sanction of dismissal being imposed on the employee, such discharge shall take effect twenty one (21) *calendar days* after the determination is made: Provided that such employee shall be deemed to have been suspended with immediate effect without any remuneration.
 - (b) If an employee referred to in paragraph (a), lodges an appeal against the finding or determination in terms of regulation 17, the employee shall be deemed to have been suspended, as provided for in paragraph (a), until the conclusion of the appeal proceedings: Provided that if the *appeals authority* confirms the discharge, the discharge of such employee shall take immediate effect.

- (c) In the event of the *appeals authority* setting the sanction aside, the employee shall be deemed not to have been suspended as provided for in paragraphs (a) and (b).

16. Procedure after a finding of misconduct.

If an employee is found to have committed misconduct and a disciplinary sanction referred to in regulation 15(1)(d), (e) or (f) is imposed upon him or her, the chairperson must, within five (5) *working days* of his or her determination, notify the National Commissioner of the reasons for his or her finding and for imposing the sanction. The National Commissioner may, within five (5) *working days* of receipt of such notice, vary the sanction by either reducing it or setting it aside and provide full reasons therefore: Provided that the National Commissioner may only take such steps in respect of an employee under the command of a Provincial or Divisional Commissioner after consultation with the Commissioner concerned.

17. Appeal

- (1) An *appeals authority* is hereby established.
- (2) The *appeals authority* comprises of a person or persons appointed by the National Commissioner to consider appeals or a specific appeal in terms of these Regulations.
- (3) An employee may appeal a finding or sanction in the form determined by the National Commissioner.
- (4) The employee must, within ten (10) *working days* of receiving the notice of the final outcome of the hearing, submit the appeal to the relevant commander of Discipline Management.
- (5) The *appeals authority* may, on good cause shown, condone the late lodging of an appeal.
- (6) The *appeals authority* must consider the appeal and, in the event that the *appeals authority* decides that a hearing is required, the *appeals authority* must notify the appellant of the date and place of the hearing.
- (7) The *appeals authority* may —
- (a) uphold the appeal; or
 - (b) reduce the sanction to any lesser sanction allowed in terms of regulation 15(1); or
 - (c) confirm the outcome of the disciplinary hearing.
- (8) The *employer* must immediately implement the decision of the *appeals authority*. Where the *appeals authority* decides to reduce the sanction or to confirm the outcome of the disciplinary hearing, the sanction will be

implemented by the *employer* from the date of the decision of the *appeals authority*.

- (9) The *appeals authority* must finalise an appeal within thirty (30) *working days* from the date of the receipt of the appeal, failing which, in cases where the employee is on precautionary suspension or temporarily transferred, he or she must resume duties immediately and await the outcome of the appeal.

18. Securing the attendance of an employee at a disciplinary hearing

- (1) (a) An employee who is served with a notice in terms of regulation 12(4), must attend the disciplinary hearing at the place, date and time specified in such notice.
- (b) The employee may at any time after receipt of the notice, but not later than two (2) *working days* before the date of such hearing, liaise with the *employer representative* with a view to reschedule such a hearing to an agreed place, date and time: Provided that the final decision on this matter ultimately rests with the *employer representative*.
- (c) If the hearing is rescheduled, the *employer representative* must inform the chairperson thereof on or before the date stated in the notice, and the chairperson must endorse the original notice to this effect.
- (2) In the event that the employee fails to —
- (a) appear at the place, date and time specified in the notice or such rescheduled place, date and time; or
- (b) remain in attendance at the disciplinary hearing, such failure shall, subject to subregulation (3) and (4), constitute misconduct.
- (3) (a) Upon a failure as contemplated in subregulation (2), the chairperson must postpone the hearing for not less than seven (7) *calendar days* and the notice of the postponement, issued by the chairperson, must be served on the employee.
- (b) The notice, in the form determined by the National Commissioner, must comply with regulation 12(3).
- (4) On the date to which the disciplinary hearing has been postponed, the chairperson must summarily inquire into the failure of the employee to appear or remain in attendance at the disciplinary hearing and, in the absence of good cause shown, make a finding that the employee committed misconduct.

- (5) (a) In the event that the employee fails to appear at the disciplinary hearing on any date to which the disciplinary hearing has been postponed, or a date to which it was postponed in terms of subregulation (3) —
- (i) the employee shall, from the date of such failure to appear or remain in attendance, be deemed to be suspended without remuneration; and
 - (ii) the chairperson must postpone the disciplinary hearing indefinitely, and the disciplinary hearing shall only reconvene at the instance of the employee concerned, after liaising with the *employer representative*, as contemplated in subregulation (1)(b): Provided that in the event that the employee fails to take steps to reconvene the hearing within two (2) months of such date, the chairperson must record such failure on the record of the disciplinary hearing and the employee shall forthwith be deemed to be discharged from the Service in terms of regulation 15(1)(f).
- (b) In the event of a hearing being reconvened in terms of subregulation (5)(a)(ii) the chairperson must summarily inquire into the reasons for the employee's failure to appear or remain in attendance at the disciplinary hearing and confirm or set aside the suspension as contemplated in subregulation (5)(a)(i).
- (c) Notwithstanding paragraphs (a) and (b), the chairperson may, on good cause shown, at any time set aside a suspension contemplated in subregulation (5)(a)(i).
- (d) Notwithstanding paragraphs (a) and (b), the chairperson may, upon good cause shown, decide that the employee must not be suspended and that the hearing be postponed to a later date.

19. Witnesses at disciplinary hearings

- (1) (a) For the purposes of a disciplinary hearing, the *employer representative* or chairperson may, in the form determined by the National Commissioner, subpoena any person to appear as a witness on the date, time and place specified in the subpoena in order to testify, answer questions or to produce any book, document, object or article relevant to the disciplinary hearing.
- (b) Such subpoena may be served upon any person by an employee in accordance with subregulation (9).
- (2) The chairperson must administer the oath or affirmation to a witness and may require from such a witness to answer questions or to produce any relevant book, document, object or article under his or her control.

- (3) The chairperson must ensure that adequate arrangements are made to secure the attendance of witnesses at a hearing, including any witnesses whose presence the employee deems necessary for the purposes of the disciplinary hearing.
- (4) The law relating to privilege, as applicable to a witness summoned to give evidence or to produce a book, document, object or article before a court of law, applies in relation to the examination of witnesses or production of any book, document, object or article to the chairperson to any person called as a witness in terms of these Regulations.
- (5) A person who, after having been sworn in or having been affirmed as a witness, makes a false statement on any matter, knowing such statement to be false, is guilty of an offence and liable upon conviction to the penalties which may lawfully be imposed for the offence of perjury.
- (6) A person who unlawfully and intentionally prevents another person from obeying a notice or subpoena issued in terms of these Regulations, or from giving evidence or producing a book, document, object, or article which he or she is in terms of these Regulations required to give or produce, is guilty of an offence and liable upon conviction to a fine or imprisonment for a period not exceeding six (6) months.
- (7) A witness at a disciplinary hearing who —
 - (a) after having been duly subpoenaed, fails to appear at the place, date and time specified in the subpoena or fails to remain in attendance until he or she has been excused from further attendance by the chairperson.
 - (b) refuses to take an oath or to make an affirmation as required in terms of subregulation (2);
 - (c) refuses or fails to answer all questions which are lawfully put to him or her; or
 - (d) refuses or fails to produce a book, document, object or article which he or she is lawfully required to produce,is, subject to the law relating to the compellability, competence and privilege of a witness in a court of law, unless he or she shows good cause for such failure or refusal, guilty of an offence and liable on conviction to a fine or imprisonment for a period not exceeding three (3) months.
- (8) Any book, document, object or article given or produced in evidence must, within a reasonable time after the disciplinary proceedings have been finalised, and on request be handed over by the chairperson or *appeals authority*, as the case may be, to the person who gave or

produced such items: Provided that such person may lawfully be in possession of such book, document, object or article.

- (9) (a) The subpoena contemplated in subregulation (1) must be served by delivering a copy thereof to the person referred to therein or, if he or she cannot be found, by delivering it at his or her residence or place of employment to a person who is apparently over the age of 16 years and is apparently residing or employed there.
- (b) A return of service of a notice by the employee serving the notice to the effect that it took place as mentioned in paragraph (a) may be handed in at the disciplinary hearing and shall on its mere production be proof of the service thereof.
- (10) (a) An employee who has been notified to attend a disciplinary hearing, is entitled to the prescribed travelling and subsistence allowances.
- (b) Any person other than an employee, who has been subpoenaed or notified to attend a disciplinary hearing, shall be entitled to the privileges and allowances applicable to witnesses at a criminal trial in a Magistrate's Court.

20. Misconduct

An employee will be guilty of misconduct if he or she, among other things, –

- (a) fails to comply with, or contravenes an Act, regulation or legal obligation;
- (b) wilfully or negligently mismanages the finances of the State;
- (c) without permission possesses or uses the property of the State, another employee or a visitor;
- (d) intentionally or negligently damages and or causes loss of State property;
- (e) endangers the lives of self or others by disregarding safety rules or regulations;
- (f) prejudices the administration, discipline or efficiency of a department, office or institution of the State;
- (g) misuses his or her position in the Service to promote or to prejudice the interest of any political party;
- (h) accepts any compensation in cash or otherwise from a member of the public or another employee for performing her or his duties without written approval from the employer;

- (i) fails to carry out a lawful order or routine instruction without just or reasonable cause;
- (j) absents himself or herself from work without reason or permission;
- (k) commits an act of sexual harassment;
- (l) discriminates against others on the basis of race, gender, disability, sexuality or other grounds prohibited by the Constitution;
- (m) without written approval of the *employer* performs work for compensation in a private capacity for another person or organisation either during or outside working hours;
- (n) without authorisation, sleeps on duty;
- (o) while on duty, is under the influence of intoxicating, illegal, unauthorised, habit-forming drugs, including alcohol;
- (p) while on duty, conducts herself or himself in an improper, disgraceful and unacceptable manner;
- (q) contravenes any prescribed Code of Conduct for the Service or the Public Service, whichever may be applicable to him or her;
- (r) incites other employees to unlawful conduct or conduct in conflict with accepted procedure;
- (s) displays disrespect towards others in the workplace or demonstrates abusive or insolent behaviour;
- (t) intimidates or victimises other employees;
- (u) prevent other employees from belonging to any trade union;
- (v) operates any money lending scheme for employees during working hours or from the premises of Service;
- (w) gives a false statement or evidence in the execution of his or her duties;
- (x) falsifies records or any other documentation;
- (y) participates in any unlawful labour or industrial action; or
- (z) commits any common law or statutory offence.

21. Transitional arrangements

- (1) Any disciplinary proceedings which were instituted prior to the coming into operation of these Regulations in terms of the South African Police Service Discipline Regulations, 1996 or the Public Service Bargaining Council Resolution 2 of 1999 against an employee, must be dealt with and be finalized in terms of the said Regulations or Resolution as if these Regulations have not come into operation.
- (2) Any *employer representative*, chairperson, or a disciplinary, prosecuting, trial or defence officer or his or her delegate, or appeals authority or a member of an appeals authority appointed in terms of the South African Police Service Discipline Regulations, 1996 or the Public Service Bargaining Council Resolution 2 of 1999 prior to the coming into operation of these Regulations, shall continue to act as such in terms of such Regulations or Resolution until such time as all functions have been finalized in terms thereof as if these Regulations have not been promulgated.
- (3) Any disciplinary proceedings against an employee in respect of an act or omission committed before the promulgation of these Regulations, may be instituted against the employee concerned in terms of these Regulations: Provided that such act or omission would have constituted misconduct in terms of these Regulations.
- (4) The National Commissioner may, for the purposes referred to in subregulation (1), perform any act which may be necessary for the finalization of such disciplinary proceedings as if these Regulations have not been promulgated.

22. Repeal and short title

- (1) The South African Police Service Discipline Regulations, 1996 are repealed.
- (2) These Regulations shall be known as the South African Police Service Discipline Regulations, 2005 and shall come into operation on 1 September 2005.

ANNEXURE A**OFFENCES IN RESPECT OF WHICH SUSPENSION WITHOUT REMUNERATION
MAY BE CONSIDERED**

Aiding an escapee

Arson

Robbery with aggravating circumstances

Assault GBH

Bribery

Corruption

Dealing in drugs

Defeating the course of justice

Extortion

Forgery and uttering

Fraud

Hijacking

Housebreaking and theft

Kidnapping

Malicious damage to property of a serious nature

Murder

Rape

Terrorism

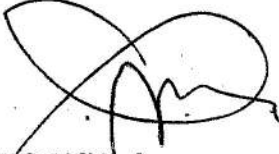
Theft of a serious nature

Treason

Any attempt, conspiracy or incitement to commit any of the aforementioned offences.

REGULASIES VIR DIE SUID-AFRIKAANSE POLISIEDIENS

Die Minister van Veiligheid en Sekuriteit het kragtens artikel 24(1) van die Wet op die Suid-Afrikaanse Polisie, 1995 (Wet No. 68 van 1995) die regulasies in die Bylae gemaak.



C NQAKULA,
Minister vir Veiligheid en Sekuriteit

BYLAE

DIE SUID-AFRIKAANSE POLISIEDIENS DISSCIPLINE REGULASIES

1. Woordomsrywings

In hierdie Regulasies, tensy uit die konteks anders blyk, beteken —
“*appèlowerheid*” ’n persoon of groep persone deur die Nasionale Kommissaris aangestel om appèlle kragtens hierdie Regulasies te oorweeg;

“*erkende vakbond*” al die vakbonde wat tot die Veiligheid en Sekuriteit Sektorale Onderhandelingsforum toegelaat is;

“*kalenderdag*” enige dag insluitende ’n Saterdag, Sondag en openbare vakansiedag en enige tydperk *kalenderdae* moet bereken word met uitsluiting van die eerste dag van die tydperk en insluiting van die laaste dag van die tydperk, tensy die laaste dag op ’n Saterdag, Sondag of openbare vakansiedag val, in welke geval die laaste dag geag sal word die eerste *werksdag* te wees wat op sodanige dag volg;

“*mede werknemer*” ’n werknemer van dieselfde eenheid, stasie of komponent van die werknemer wat van wangedrag aangekla is, insluitend ’n voltydse vakbondvertegenwoordiger;

“*regspraktisyn*” ’n persoon wat toegelaat is om as ’n advokaat of prokureur in Suid-Afrika te praktiseer;

“*vakbond beampte*” ’n persoon in diens van ’n vakbond as sekretaris, assistent-sekretaris of organiseerder of in enige ander hoedanigheid ongeag of so ’n persoon in ’n voltydse hoedanigheid in diens is of nie;

“*vakbondverteenwoordiger*” ‘n lid van ‘n vakbond wat verkies is om werknemers by die werksplek te verteenwoordig;

“*werkgewer*” die Nasionale Kommissaris of enige persoon deur hom of haar gedelegeer om enige funksie kragtens hierdie Regulasies te verrig;

“*werkgewersverteenwoordiger*” ‘n werknemer wat in die algemeen of in ‘n spesifieke geval deur die *werkgewer* kragtens regulasie 6(3) aangewys is om te oorweeg of ‘n werknemer van wangedrag in ‘n dissiplinêre verhoor aangekla moet word en, in die geval van ernstige wangedrag, die *werkgewer* gedurende die hele dissiplinêre proses te verteenwoordig; en

“*werksdag*” enige dag van die week anders as ‘n Saterdag, Sondag of openbare vakansiedag.

2. **Toepassingsbestek van die Regulasies**

Gebaseer op die ooreenkoms wat bereik is tussen die *werkgewer* en al die vakbonde wat tot die Veiligheid en Sekuriteit Sektorale Onderhandelingsforum toegelaat is, is hierdie Regulasies van toepassing op die *werkgewer* en alle werknemers wat binne die geregistreerde raamwerk van genoemde Forum val.

3. **Doel**

Die doel van hierdie Regulasies is om —

- (a) konstruktiewe arbeidsverhoudinge in die Diens te ondersteun;
- (b) wedersydse respek tussen werknemers en tussen werknemers en die *werkgewer* te bevorder;
- (c) te verseker dat toesighouers en werknemers ‘n gemeenskaplike begrip van wangedrag en dissipline deel, ten einde —
 - (i) aanvaarbare gedrag kragtens die bepalings van hierdie Regulasies te bevorder;
 - (ii) ‘n gebruikersvriendelike raamwerk vir die toepassing van dissipline daar te stel; en
 - (iii) moontlike arbitrêre optrede deur toesighouers teenoor werknemers in die geval van wangedrag te voorkom.

4. **Beginsels**

Hierdie Regulasies is op die volgende beginsels gebaseer:

- (a) dissipline is ‘n korrektiewe en nie ‘n strafmaatreël nie;
- (b) dissipline moet spoedig, billik, konsekwent en op ‘n progressiewe wyse toegepas word;
- (c) dissipline is ‘n bestuursfunksie;

- (d) die billike behandeling van werknemers deur te verseker dat hulle —
 - (i) 'n billike verhoor in beide die formele en informele prosesse kry;
 - (ii) betyds van bewerings van wangedrag wat teen hulle gemaak is, ingelig word;
 - (iii) skriftelike redes ontvang wat die grondslag verduidelik waarop enige besluit gebaseer is; en
 - (iv) die reg tot appèl het teen enige bevinding van wangedrag wat by 'n dissiplinêre verhoor gemaak is of teen 'n sanksie wat by so 'n verhoor opgelê is;
- (e) 'n werknemer wat onpartydig is en nie op enige wyse aan die beweerde wangedrag gekoppel is nie, kan die *werkgewer* by die dissiplinêre verhoor verteenwoordig, daarby voorsit of die beweerde wangedrag teen 'n werknemer ondersoek;
- (f) sover moontlik moet die dissiplinêre verrigtinge by die werksplek plaasvind en vir alle werknemers verstaanbaar wees;
- (g) die dissiplinêre verrigtinge sal ingestel en gefinaliseer word ongeag die feit dat die wangedrag ook 'n kriminele oortreding is;
- (h) dissiplinêre verrigtinge behoort nie hofverrigtinge na te boots nie;
- (i) die werknemer wat aangestel is om die beweerde wangedrag te ondersoek, moet 'n hoër rang hê as die werknemer wat ondersoek word;
- (j) in alle dissiplinêre verrigtinge het die werknemer die reg om deur 'n *vakbondverteenwoordiger* of 'n medewerknemer verteenwoordig te word; en
- (k) in die geval waar 'n werknemer 'n bewering van minder ernstige wangedrag ontken, moet 'n formele dissiplinêre verhoor ingestel word.

5. Aard van wangedrag

- (1) Die gedrag van 'n werknemer wat dissiplinêre stappe regverdig, is in regulasie 20 gelys.
- (2) By die toepassing van regulasie 20, moet die *werkgewer* die ernstigheid van die beweerde wangedrag bepaal na oorweging van —
 - (a) die werklike of potensiële uitwerking van die beweerde wangedrag op die werk van die Diens, die komponent van die werknemer, sy of haar kollegas en die publiek;

- (b) die aard van die werk en verantwoordelikhede van die werknemer; en
- (c) die omstandighede waaronder die beweerde wangedrag plaasgevind het.

6. **Dissiplinêre offisiere**

- (1) Die Nasionale en Provinsiale Kommissaris moet elk skriftelik 'n werknemer as dissiplinêre offisier aanwys, wat —
 - (a) die bevoegdheid het om 'n ondersoek te begin betreffende beweerde wangedrag en om 'n werknemer, ondanks enige ander bepaling van hierdie Regulasies en ongeag die rang van die werknemer, in ooreenstemming met hierdie Regulasies van wangedrag aan te kla; en
 - (b) alle funksies in verband met die uitoefening van sodanige bevoegdheid kan verrig.
- (2) Die dissiplinêre offisier wat deur die Nasionale Kommissaris aangestel is, is verantwoordelik vir administratiewe aangeleenthede insluitende die ontwikkeling en handhawing van eenvormige standaarde in verband met die werksaamhede van provinsiale dissiplinêre offisiere en *werkgewersverteenwoordigers* en het finale seggenskap ten opsigte van alle geskille, insluitende jurisdiksionele geskille wat mag ontstaan.
- (3) Die Nasionale en Provinsiale Kommissaris kan, na oorleg met die betrokke dissiplinêre offisiere, in die algemeen of in 'n spesifieke geval, 'n werknemer of kategorie werknemers of persoon of kategorie persone, skriftelik as *werkgewersverteenwoordigers* aanwys, wat as die verteenwoordigers van sodanige dissiplinêre offisier en onderworpe aan sy of haar voorskrifte, enige werknemer van wangedrag kan aankla en alle werksaamhede in verband met die uitoefening van sodanige bevoegdheid, kan verrig.
- (4) 'n *Werkgewersverteenwoordiger* moet sy of haar bevoegdhede uitoefen en sy of haar werksaamhede verrig onderhewig aan die beheer, opdragte en instruksies van die Nasionale Kommissaris en relevante Provinsiale Kommissaris. Die Nasionale of relevante Provinsiale Kommissaris kan enige beslissing van 'n *werkgewersverteenwoordiger* onder sy of haar jurisdiksie verander en, in die algemeen of ten opsigte van 'n spesifieke geval, enige deel van sodanige bevoegdheid uitoefen of enige sodanige werksaamheid verrig. Met dien verstande dat die Nasionale Kommissaris opdragte en instruksies aan Provinsiale Kommissarisse kan uitreik en enige beslissing van 'n Provinsiale Kommissaris of 'n *werkgewersverteenwoordiger*, wat ooreenkomstig hierdie Regulasies geneem is, kan verander, hetsy op sy of haar eie inisiatief of by ontvangs van versoë deur enige persoon.

7. Minder ernstige wangedrag

In die geval van minder ernstige wangedrag, kan die toesighouer enige een van die prosedures wat in regulasies 8 - 11 uiteengesit is en wat hy of sy gepas ag, toepas.

8. Korrektiewe berading

In gevalle waar die aard van die wangedrag berading regverdig, moet die toesighouer van die werknemer —

- (a) 'n onderhoud met die werknemer voer en die wangedrag onder die werknemer se aandag bring;
- (b) die redes vir die wangedrag vasstel en die werknemer 'n geleentheid bied om op die bewerings te antwoord;
- (c) poog om ooreen te kom oor hoe om die gedrag reg te stel; en
- (d) stappe doen om die ooreengekome plan van aksie te implementeer.

9. Mondelingse waarskuwing

(1) In gevalle waar die aard van die wangedrag 'n mondelingse waarskuwing regverdig, moet die toesighouer van die werknemer —

- (a) die wangedrag onder die aandag van die werknemer bring en die werknemer inlig dat hy of sy van mening is dat die wangedrag 'n mondelingse waarskuwing regverdig;
- (b) die werknemer die geleentheid bied om op die bewerings te antwoord;
- (c) indien die werknemer erken dat hy of sy die wangedrag gepleeg het, die werknemer 'n mondelingse waarskuwing gee en die werknemer inlig dat verdere wangedrag tot gevolg kan hê dat ernstiger dissiplinêre stappe gedoen word;

OF

indien die werknemer ontken dat hy of sy die wangedrag gepleeg het, 'n dissiplinêre verhoor soos in regulasie 12 uiteengesit, inisieer.

- (2) Die mondelingse waarskuwing mag nie op skrif gestel word nie.

10. Skriftelike waarskuwing

(1) In gevalle waar die aard van die wangedrag 'n skriftelike waarskuwing regverdig, moet die toesighouer —

- (a) die wangedrag onder die aandag van die werknemer bring en die werknemer inlig dat hy of sy van mening is dat die wangedrag 'n skriftelike waarskuwing regverdig;
- (b) die werknemer die geleentheid bied om op die bewerings te antwoord;

- (c) indien die werknemer erken dat hy of sy die wangedrag gepleeg het, die werknemer 'n skriftelike waarskuwing gee in die vorm deur die Nasionale Kommissaris bepaal en die werknemer inlig dat verdere wangedrag tot gevolg kan hê dat ernstiger dissiplinêre stappe gedoen word;

OF

indien die werknemer ontken dat hy of sy die wangedrag gepleeg het, 'n dissiplinêre verhoor soos in regulasie 12 uiteengesit, inisieer.

- (2) Die toesighouer moet 'n afskrif van die skriftelike waarskuwing aan die werknemer oorhandig, wat ontvangs daarvan moet erken. Indien die werknemer weier om ontvangs te erken, moet die toesighouer die waarskuwing aan die werknemer in die teenwoordigheid van 'n ander werknemer oorhandig en beide sodanige toesighouer en die ander werknemer, wat as getuie dien, moet teken om te bevestig dat die skriftelike waarskuwing aan die werknemer oorhandig is.
- (3) Die skriftelike waarskuwing moet in die werknemer se persoonlike lêer geliasseer word.
- (4) 'n Skriftelike waarskuwing bly geldig vir ses (6) maande en by die verstryking daarvan moet die skriftelike waarskuwing van die werknemer se persoonlike lêer verwyder en vernietig word.
- (5) Indien die werknemer soortgelyke of verbandhoudende wangedrag voor die verstryking van die tydperk van ses (6) maande pleeg, mag die skriftelike waarskuwing in ag geneem word.

11. Finale skriftelike waarskuwing

- (1) In gevalle waar die ernstigheid van die wangedrag 'n finale skriftelike waarskuwing regverdig, moet die toesighouer —
- (a) die wangedrag onder die aandag van die werknemer bring en die werknemer inlig dat hy of sy van mening is dat die wangedrag 'n finale skriftelike waarskuwing regverdig;
- (b) die werknemer die geleentheid bied om op die bewerings te antwoord;
- (c) indien die werknemer erken dat hy of sy die wangedrag gepleeg het, die werknemer 'n finale skriftelike waarskuwing gee in die vorm wat deur die Nasionale Kommissaris bepaal is en die werknemer inlig dat verdere wangedrag tot gevolg kan hê dat ernstiger dissiplinêre stappe gedoen word;

OF

indien die werknemer ontken dat hy of sy die wangedrag gepleeg het, 'n dissiplinêre verhoor soos in regulasie 12 uiteengesit, inisieer.

- (2) Die toesighouer moet 'n afskrif van die finale skriftelike waarskuwing aan die werknemer oorhandig, wat ontvangs daarvan moet erken. Indien die werknemer weier om ontvangs te erken, moet die toesighouer die finale skriftelike waarskuwing aan die werknemer in die teenwoordigheid van 'n ander werknemer oorhandig en beide sodanige toesighouer en die ander werknemer, wat as getuie dien, moet teken om te bevestig dat die waarskuwing aan die werknemer oorhandig is.
- (3) Die finale skriftelike waarskuwing moet in die werknemer se persoonlike lêer geliasseer word.
- (4) 'n Finale skriftelike waarskuwing bly geldig vir ses (6) maande en by die verstryking daarvan moet die finale skriftelike waarskuwing van die werknemer se persoonlike lêer verwyder en vernietig word.
- (5) Indien die werknemer soortgelyke of verbandhoudende wangedrag voor die verstryking van die tydperk van ses (6) maande pleeg, mag die finale skriftelike waarskuwing in ag geneem word.

12. Ernstige wangedrag

- (1) Indien die toesighouer tevrede is dat die beweerde wangedrag van 'n ernstige aard is en 'n ernstiger vorm van dissiplinêre aksie regverdig, moet hy of sy verseker dat die ondersoek na die beweerde wangedrag voltooi is en die dokumentasie na die *werkgewersverteenvoordiger* verwys.
- (2) Indien hy of sy tevrede is dat die werknemer wangedrag gepleeg het, moet die *werkgewersverteenvoordiger* die werknemer van wangedrag aankla deur 'n skriftelike kennisgewing om die dissiplinêre verhoor by te woon, in die vorm deur die Nasionale Kommissaris bepaal, op hom of haar te beteken.
- (3) Die skriftelike kennisgewing van die dissiplinêre verhoor moet voorsiening maak vir —
 - (a) 'n beskrywing van die bewerings van wangedrag en die hoof getuïenis (insluitende verklarings indien beskikbaar) waarop die *werkgewer* sal steun;
 - (b) besonderhede van die datum, tyd, en plek van die verhoor; en
 - (c) inligting wat die regte van die werknemer tot verteenwoordiging deur 'n *medewerknemer* of *vakbondverteenvoordiger* of *vakbondbeampte* en die reg om getuies na die verhoor te bring, uiteensit.
- (4) (a) Die kennisgewing om by die verhoor te verskyn moet ten minste tien (10) *kalenderdae* voor die datum van die verhoor op die werknemer beteken word.

- (b) Die kennisgewing moet beteken word deur oorhandiging van 'n kopie daarvan aan die werknemer waarna daarin verwys word of, indien hy of sy nie gevind kan word nie, deur oorhandiging daarvan by sy of haar woonplek of werksplek aan 'n persoon wat blykbaar oor die ouderdom van 16 jaar is en blykbaar daar woonagtig of werksaam is.
 - (c) 'n Relas van betekening van 'n kennisgewing deur die werknemer wat die kennisgewing beteken het, tot dien effekte dat dit geskied het soos vermeld in paragraaf (b), kan by die verhoor ingedien word en sal by blote voorlegging daarvan ter bewys van betekening daarvan dien.
 - (d) 'n Werknemer is verplig om enige kennisgewing wat aan hom of haar beteken word, in ontvangs te neem.
- (5) Die werknemer moet ontvangs van die kennisgewing erken indien dit aan hom of haar persoonlik oorhandig is. Indien die werknemer weier om ontvangs te erken, moet die kennisgewing in die teenwoordigheid van 'n ander werknemer aan die werknemer oorhandig word en beide die werknemer wat die kennisgewing oorhandig en die ander werknemer moet ter bevestiging teken dat die kennisgewing op die werknemer beteken is.

13. Skorsing as voorsorgmaatreël

- (1) Die *werkgewer* kan 'n werknemer op die voorwaardes wat die Nasionale Kommissaris bepaal met volle vergoeding skors of tydelik verplaas.
- (2) Die Nasionale of die Provinsiale of die Afdelingskommissaris (die Kommissaris) kan 'n werknemer sonder vergoeding skors, indien die Kommissaris op redelike gronde tevrede is dat die wangedrag wat die werknemer na bewering gepleeg het, wangedrag is soos beskryf in Aanhangsel A en dat die saak teen die werknemer so sterk is dat dit waarskynlik is dat die werknemer aan 'n misdryf skuldig bevind en ontslaan sal word: Met dien verstande dat —
 - (a) voordat die werknemer sonder vergoeding geskors word, die werknemer 'n redelike geleentheid gebied word om skriftelike verhoë te rig;
 - (b) die Kommissaris die verhoë oorweeg;
 - (c) die dissiplinêre proses binne veertien (14) *kalenderdae* vanaf die datum van die besluit om die werknemer sonder vergoeding te skors, geïnisieer word; en
 - (d) indien die dissiplinêre proses nie binne sestig (60) *kalenderdae* vanaf die aanvang van die skorsing voltooi is nie, die vraag na die voortgesette skorsing sonder vergoeding deur die Kommissaris

oorweeg moet word en dat die werknemer weer eens skriftelike vertoë mag rig wat die Kommissaris moet oorweeg en die Kommissaris moet 'n besluit oor voortgesette skorsing binne sewe (7) *kalenderdae* na ontvangs van die skriftelike vertoë oor die voortgesette skorsing oorweeg en 'n besluit dat die skorsing voortduur, slegs vir 'n verdere tydperk van dertig (30) *kalenderdae* kan wees.

- (3) 'n Skorsing is 'n voorsorgmaatreël.
- (4) Indien 'n werknemer met volle vergoeding geskors of verplaas is as 'n voorsorgmaatreël, moet die *werkgewer* 'n dissiplinêre verhoor binne sestig (60) *kalenderdae* vanaf die aanvang van die skorsing hou. By verstryking van die sestig (60) dae moet die voorsitter van die verhoor 'n besluit neem of die skorsing voortduur of beëindig word.

14. Voer van die dissiplinêre verhoor

- (1) Die *werkgewer* moet 'n voorsitter van die verhoor aanstel wat 'n hoër rang het as die werknemer wat van wangedrag aangekla word.
- (2) Die *werkgewer* of die werknemer kan, met die goedkeuring van die ander party, die Veiligheid en Sekuriteit Sektorale Onderhandelingsforum versoek om 'n arbiter aan te stel om by die dissiplinêre verhoor voor te sit. Die besluit van die arbiter sal finaal en bindend wees en slegs vatbaar wees vir hersiening kragtens die Wet op Arbeidsverhoudinge, 1995 (Wet No. 66 van 1995). Al die bepalings wat van toepassing is op dissiplinêre verhore kragtens hierdie Regulasies sal van toepassing wees vir doeleindes van sodanige verhore. Die party wat hierdie prosedure versoek, sal vir die betaling van die arbitrasiekoste verantwoordelik wees.
- (3) 'n Werknemer kan by die verhoor deur 'n *medewerknemer* of 'n persoon in diens van 'n *erkende vakbond* verteenwoordig word.
- (4) In 'n dissiplinêre verhoor kan nóg die *werkgewer* nóg die werknemer deur 'n *regspraktisyn* verteenwoordig word, tensy —
 - (a) die *regspraktisyn* in diens van 'n *erkende vakbond* is; of
 - (b) die voorsitter, na aanhoor van die *werkgewersverteenwoordiger* en die werknemer of sy of haar verteenwoordiger, van mening is dat die aangeleentheid wat aangehoor word, van 'n ernstige aard is; in welke geval die werknemer en die *werkgewer* deur 'n *regspraktisyn* verteenwoordig mag word.
- (5) Indien nodig, moet die *werkgewersverteenwoordiger* reël dat 'n tolk die verhoor bywoon en die tolk moet behoorlik deur die voorsitter ingesweer word.

- (6) Die voorsitter moet verseker dat rekord van die verrigtinge by die dissiplinêre verhoor gehou word.
- (7) Die *werkgewersverteenvoordiger* sal getuienis lei oor die gedrag wat aanleiding tot die verhoor gegee het. Die werknemer of die verteenwoordiger van die werknemer mag enige getuie deur die *werkgewersverteenvoordiger* geroep, ondervra.
- (8) Die werknemer sal die geleentheid gebied word om getuienis te lei. Die *werkgewersverteenvoordiger* mag enige getuies wat geroep word, ondervra.
- (9) Die voorsitter kan enige vraag ter opheldering vra.
- (10) Die voorsitter kan uit eie beweging of op versoek van enige party enige persoon dagvaar om by 'n dissiplinêre verhoor te getuig.
- (11) Indien die voorsitter bevind dat die werknemer wangedrag gepleeg het, moet die voorsitter die werknemer van die bevinding en van die redes daarvoor inlig.
- (12) Voordat op 'n sanksie besluit word, moet die voorsitter die werknemer 'n geleentheid bied om relevante omstandighede ter versagting voor te lê. Die *werkgewersverteenvoordiger* kan ook verswarende omstandighede aanbied.
- (13) Indien die voorsitter bevind dat die werknemer wangedrag gepleeg het, moet die voorsitter die sanksie op die dag van die verhoor of binne vyf (5) *werksdae* daarna bekend maak. Die ernstigheid van die wangedrag, vorige rekord van die werknemer en enige versagtende of verswarende omstandighede moet in ag geneem word.
- (14) 'n Dissiplinêre verhoor moet sover prakties moontlik, binne sestig (60) *kalenderdae* gefinaliseer word.

15. Sanksies

- (1) Enige van die volgende sanksies kan opgelê word —
 - (a) berading;
 - (b) 'n skriftelike waarskuwing wat vir ses (6) maande geldig is;
 - (c) 'n finale skriftelike waarskuwing wat vir ses (6) maande geldig is;
 - (d) 'n verlaging van een salarisvlak vir 'n tydperk wat nie twaalf (12) maande oorskry nie, op voorwaarde dat die werknemer sy of haar rang of posvlak behou;

- (e) skorsing sonder vergoeding vir nie langer nie as drie (3) maande, onderworpe aan die instemming van die werknemer;
 - (f) ontslag;
 - (g) opgeskorte ontslag vir 'n tydperk wat nie ses (6) maande oorskry nie;
 - (h) enige van die voormelde sanksies, maar opgeskort vir 'n tydperk wat nie ses (6) maande oorskry nie;
 - (i) 'n boete van tot R 500,00 wat in paalemente afgetrek word; of
 - (j) 'n kombinasie van bogemelde.
- (2) Die *werkgewer* mag nie 'n sanksie gedurende die appèl deur 'n werknemer implementeer nie.
- (3) Die voorsitter moet die finale uitslag van die verhoor binne vyf (5) *werksdae* na die voltooiing van die dissiplinêre verhoor aan die werknemer oordra en die uitslag moet op die werknemer se persoonlike lêer aangeteken word.
- (4) (a) In die geval waar die sanksie van ontslag aan die werknemer opgelê word, sal sodanige ontslag een en twintig (21) *kalenderdae* nadat die beslissing gemaak is, in werking tree: Met dien verstande dat sodanige werknemer geag sal word met onmiddellike effek sonder enige vergoeding geskors te wees.
- (b) Indien 'n werknemer, waarna in paragraaf (a) verwys word, ooreenkomstig regulasie 17 teen die bevinding of beslissing appèl aanteken, sal die werknemer tot na afhandeling van die appèlverrigtinge geag word geskors te wees soos in paragraaf (a) bepaal: Met dien verstande dat indien die *appèlowerheid* die ontslag bevestig, die ontslag van sodanige werknemer onmiddellik in werking sal tree.
- (c) Indien die *appèlowerheid* die sanksie ter syde stel, sal die werknemer geag word nie, soos in paragrawe (a) en (b) bepaal, geskors te gewees het nie.

16. Prosedure na 'n bevinding van wangedrag

Indien 'n werknemer bevind word wangedrag te gepleeg het en 'n dissiplinêre sanksie waarna in regulasie 15(1)(d), (e) of (f) verwys word, opgelê word, moet die voorsitter binne vyf (5) *werksdae* na sy of haar beslissing die Nasionale Kommissaris van sy of haar beslissing en die redes daarvoor in kennis stel. Die Nasionale Kommissaris kan binne vyf (5) *werksdae* na ontvangs van sodanige kennisgewing die sanksie verander deur dit óf te verminder óf ter syde te stel en

volledige redes daarvoor verstrek: Met dien verstande dat die Nasionale Kommissaris slegs sodanige stappe ten opsigte van 'n werknemer onder die bevel van 'n Provinsiale Kommissaris of Afdelingskommissaris, na oorleg met die betrokke Kommissaris mag neem.

17. **Appèl**

- (1) 'n *Appèlowerheid* word hierby ingestel.
- (2) Die *appèlowerheid* bestaan uit 'n persoon of persone deur die Nasionale Kommissaris aangestel om appèlle of 'n spesifieke appèl kragtens hierdie Regulasies te oorweeg.
- (3) 'n Werknemer kan teen 'n bevinding of sanksie appèlleer in die vorm deur die Nasionale Kommissaris bepaal.
- (4) Die werknemer moet binne tien (10) *werksdae* na ontvangs van die finale uitslag van die verhoor die appèl aan die relevante bevelvoerder van Dissiplinebestuur voorlê.
- (5) Die *appèlowerheid* kan die laat indiening van 'n appèl kondoneer indien goeie redes daarvoor aangevoer word.
- (6) Die *appèlowerheid* moet die appèl oorweeg en, indien die *appèlowerheid* besluit dat 'n verhoor vereis word, moet die *appèlowerheid* die appèllant van die datum en plek van die verhoor in kennis stel.
- (7) Die *appèlowerheid* kan –
 - (a) die appèl handhaaf; of
 - (b) die sanksie tot 'n ligter sanksie, toegelaat kragtens regulasie 15(1), verminder; of
 - (c) die uitslag van die dissiplinêre verhoor bekragtig.
- (8) Die *werkgewer* moet die besluit van die *appèlowerheid* onmiddellik implementeer. Waar die *appèlowerheid* besluit om die sanksie te verminder of die uitslag van die dissiplinêre verhoor te bekragtig, word die sanksie vanaf die datum van die besluit deur die *appèlowerheid* deur die *werkgewer* geïmplementeer.
- (9) Die *appèlowerheid* moet 'n appèl binne dertig (30) *werksdae* vanaf die datum van ontvangs van die appèl afhandel, by gebreke waarvan die werknemer, indien hy of sy as voorsorgmaatreël geskors of tydelik verplaas is, onmiddellik diens moet hervat en die uitslag van die appèl afwag.

18. Verkryging van die teenwoordigheid van 'n werknemer by 'n dissiplinêre verhoor

- (1) (a) 'n Werknemer op wie 'n kennisgewing ooreenkomstig regulasie 12(4) beteken is, moet die dissiplinêre verhoor op die plek, datum en tyd in sodanige kennisgewing vermeld, bywoon.
 - (b) Die werknemer kan te eniger tyd na ontvangs van die kennisgewing, maar nie later nie as twee (2) *werksdae* voor die datum van sodanige verhoor, met die betrokke *werkgewersverteenvoortwoordiger* skakel met die doel om sodanige verhoor tot 'n ooreengekome plek, datum en tyd te herskeduleer: Met dien verstande dat die finale beslissing oor hierdie aangeleentheid uiteindelik by die betrokke *werkgewersverteenvoortwoordiger* berus.
 - (c) Indien die verhoor geherskeduleer word, moet die *werkgewersverteenvoortwoordiger* die voorsitter daaromtrent inlig op of voor die datum vermeld in die kennisgewing, en die voorsitter moet die oorspronklike kennisgewing tot dien effekte endosseer.
- (2) Indien die werknemer versuim om –
 - (a) op die plek, datum en tyd in die kennisgewing vermeld of sodanige geherskeduleerde plek, datum en tyd te verskyn; of
 - (b) by die dissiplinêre verhoor teenwoordig te bly, sal sodanige versuim, onderworpe aan subregulasies (3) en (4), wangedrag daarstel.
- (3) (a) By 'n versuim soos in subregulasie (2) bedoel, moet die voorsitter die verhoor vir nie minder nie as sewe (7) *kalenderdae* uitstel en die kennisgewing van die uitstel, uitgereik deur die voorsitter, moet aan die werknemer beteken word.
 - (b) Die kennisgewing, in die vorm deur die Nasionale Kommissaris bepaal, moet aan regulasie 12(3) voldoen.
- (4) Op die datum waarna die dissiplinêre verhoor uitgestel is, moet die voorsitter summier ondersoek instel na die werknemer se versuim om by die dissiplinêre verhoor te verskyn of teenwoordig te bly en, in die afwesigheid van goeie gronde, 'n bevinding maak dat die werknemer wangedrag gepleeg het.
- (5) (a) Indien die werknemer versuim om by die dissiplinêre verhoor te verskyn op enige datum waarna die dissiplinêre verhoor uitgestel is, of op 'n datum waarna dit kragtens subregulasie (3) uitgestel is –
 - (i) sal die werknemer, vanaf die datum van sodanige versuim om te verskyn of teenwoordig te bly, geag word sonder vergoeding geskors te wees; en

- (ii) die voorsitter moet die dissiplinêre verhoor onbepaald uitstel, en die dissiplinêre verhoor sal slegs hervat op versoek van die betrokke werknemer, na skakeling met die *werkgewersverteenvoordiger* soos in subregulasie (1)(b) bedoel: Met dien verstande dat indien die werknemer versuim om stappe te doen om die verhoor binne twee (2) maande vanaf sodanige datum te laat hervat, die voorsitter sodanige versuim op die notule van die dissiplinêre verhoor moet aanteken en die werknemer onverwyld geag word uit die Diens ontslaan te wees ooreenkomstig regulasie 15(1)(f).
- (b) Indien 'n verhoor ooreenkomstig subregulasie (5)(a)(ii) hervat word, moet die voorsitter summier ondersoek instel na die redes vir die werknemer se versuim om by die dissiplinêre verhoor te verskyn of teenwoordig te bly en die skorsing, in subregulasie (5)(a)(i) bedoel, bekragtig of ter syde stel.
- (c) Ondanks die bepalings van paragrawe (a) en (b), kan die voorsitter te eniger tyd, op goeie gronde aangetoon, 'n skorsing in subregulasie (5)(a)(i) bedoel, ter syde stel.
- (d) Ondanks die bepalings van paragrawe (a) en (b), kan die voorsitter, indien goeie gronde aangetoon word, beslis dat die werknemer nie geskors word nie en dat die verhoor tot 'n latere datum uitgestel word.

19. Getuies by dissiplinêre verhore

- (1) (a) Die *werkgewersverteenvoordiger* of voorsitter, na gelang van die geval, kan vir die doeleindes van 'n dissiplinêre verhoor, in die vorm deur die Nasionale Kommissaris bepaal, enige persoon dagvaar om as getuie op die datum, tyd en plek in die dagvaarding vermeld, te verskyn, ten einde te getuig, vrae te beantwoord of enige boek, dokument, voorwerp of artikel wat relevant tot die dissiplinêre verhoor is, voor te lê.
- (b) Sodanige dagvaarding kan aan enige persoon deur 'n werknemer ooreenkomstig subregulasie (9) beteken word.
- (2) Die voorsitter moet die eed of bevestiging aan 'n getuie oplê en kan van sodanige getuie vereis om vrae te antwoord of enige relevante boek, dokument, voorwerp of artikel onder sy of haar beheer, voor te lê.
- (3) Die voorsitter moet verseker dat voldoende maatreëls getref word om bywoning van getuies by 'n verhoor te verseker, insluitende enige getuies wie se teenwoordigheid deur die werknemer nodig geag word vir doeleindes van die dissiplinêre verhoor.

- (4) Die reg in verband met privilegie, soos van toepassing op 'n getuie wat gedagvaar is om te getuig of 'n boek, dokument, voorwerp of artikel aan 'n geregshof voor te lê, sal op enige persoon wat ooreenkomstig hierdie Regulasies as getuie geroep word met betrekking tot die ondersoek van, of die voorlegging van enige boek, dokument, voorwerp of artikel aan 'n voorsitter van toepassing wees.
- (5) 'n Persoon wat, nadat hy of sy ingesweer of as 'n getuie bevestig is, 'n valse verklaring oor enige aangeleentheid aflê, wetende dat sodanige verklaring vals is, is skuldig aan 'n misdryf en by skuldigbevinding strafbaar met die strawwe wat regtens vir die misdryf van meened opgelê kan word.
- (6) Persoon wat wederregtelik en opsetlik 'n ander persoon verhinder om 'n kennisgewing of dagvaarding ooreenkomstig hierdie Regulasies uitgereik, na te kom, of om te getuig of 'n boek, dokument, voorwerp of artikel voor te lê wat hy of sy ooreenkomstig hierdie Regulasies vereis word af te lê of voor te lê, is skuldig aan 'n misdryf en by skuldigbevinding strafbaar met 'n boete of gevangenisstraf vir 'n tydperk wat nie ses (6) maande oorskry nie.
- (7) 'n Getuie by 'n dissiplinêre verhoor wat –
- (a) nadat hy of sy behoorlik gedagvaar is, versuim om op die plek, datum en tyd vermeld in die dagvaarding te verskyn of versuim om teenwoordig te bly totdat hy of sy van verdere bywoning deur die voorsitter verskoon is;
 - (b) weier om die eed te neem of 'n bevestiging te maak soos vereis ooreenkomstig subregulasie (2);
 - (c) weier of versuim om alle vrae wat regtens aan hom of haar gestel is, te beantwoord; of
 - (d) weier of versuim om 'n boek, dokument, voorwerp of artikel voor te lê wat hy of sy regtens verplig is om voor te lê, sal, onderhewig aan die reg met betrekking tot verpligbaarheid, bevoegdheid en privilegie van 'n getuie in 'n geregshof, tensy hy of sy goeie gronde vir sodanige versuim of weiering kan aanvoer, skuldig wees aan 'n misdryf en by skuldigbevinding strafbaar wees met 'n boete of gevangenisstraf vir 'n tydperk wat nie drie (3) maande oorskry nie.
- (8) Die voorsitter of *appèlowerheid*, na die gelang van die geval, moet op versoek enige boek, dokument, voorwerp of artikel gegee of voorgelê in getuienis binne 'n redelike tyd nadat dissiplinêre verrigtinge afgehandel is, aan die persoon wat sodanige items gegee of voorgelê het, oorhandig: Met dien verstande dat sodanige persoon regtens in besit van sodanige boek, dokument, voorwerp of artikel mag wees.

- (9) (a) Die dagvaarding in subregulasie(1) bedoel, moet beteken word deur oorhandiging van 'n afskrif daarvan aan die persoon daarin verwys of, indien hy of sy nie gevind kan word nie, deur oorhandiging daarvan by sy of haar woonplek of werksplek aan 'n persoon wat blykbaar oor die ouderdom van 16 jaar is en blykbaar daar woonagtig of werksaam is.
- (b) 'n Relas van betekening van 'n kennisgewing deur die werknemer wat die kennisgewing beteken het, tot dien effekte dat dit geskied het soos in paragraaf (a) vermeld, kan by die dissiplinêre verhoor ingehandig word en sal by blote voorlegging ter bewys van betekening daarvan dien.
- (10) (a) 'n Werknemer wat in kennis gestel is om 'n dissiplinêre verhoor by te woon, is geregtig op die voorgeskrewe reis en verblyftoelae.
- (b) Enige persoon, anders as 'n werknemer, wat gedagvaar of in kennis gestel is om 'n dissiplinêre verhoor by te woon, is geregtig op die voordele en toelae van toepassing op 'n getuie in 'n strafverhoor in 'n Landdroshof.

20. Wangedrag

'n Werknemer sal skuldig wees aan wangedrag indien hy of sy onder andere –

- (a) versuim om aan 'n Wet, regulasie of ander regsplig te voldoen of dit oortree;
- (b) opsetlik of nalatig die finansies van die Staat wanbestuur;
- (c) sonder toestemming eiendom van die Staat, 'n ander werknemer of 'n besoeker besit of gebruik;
- (d) opsetlik of nalatig eiendom van die Staat beskadig of verloor;
- (e) sy of haar lewe of die van ander in gevaar stel deur veiligheidsreëls of -regulasies te verontagsaam;
- (f) die administrasie, dissipline of doeltreffendheid van 'n departement, kantoor of instelling van die Staat benadeel;
- (g) sy of haar posisie in die Diens misbruik om die belange van enige politieke party te bevorder of te benadeel;
- (h) sonder die skriftelike goedkeuring van die *werkgewer*, enige vergoeding in kontant of andersins van 'n lid van die publiek of 'n ander werknemer aanneem vir die verrigting van sy of haar werksaamhede;
- (i) versuim om 'n regmatige opdrag of roetine instruksie sonder 'n geldige of redelike rede uit te voer;

- (j) homself of haarself sonder rede of toestemming van diens verskoon;
- (k) 'n handeling verrig wat seksuele teistering daarstel;
- (l) teen ander op die basis van ras, geslag, ongeskiktheid, seksualiteit of ander gronde deur die Grondwet verbied, diskrimineer;
- (m) sonder die skriftelike goedkeuring van die *werkgewer* enige besoldigde werk in 'n private hoedanigheid vir 'n ander persoon of organisasie of gedurende of buite werksure verrig;
- (n) sonder magtiging aan diens slaap;
- (o) terwyl aan diens onder die invloed is van bedwelmdede, onwettige, ongemagtigde of gewoontevormende middels insluitende alkohol;
- (p) terwyl aan diens, homself of haarself op 'n onbehoorlike, aanstootlike en onaanvaarbare wyse gedra;
- (q) enige voorgeskrewe Gedragskode vir die Diens of die Staatsdiens, welke op hom of haar van toepassing is, oortree;
- (r) ander werknemers tot onregmatige gedrag of gedrag teenstrydig met aanvaarbare prosedure aanhits;
- (s) minagting teenoor ander in die werksplek toon of beledigende of onbeskofte gedrag openbaar;
- (t) ander werknemers intimideer of viktimiseer;
- (u) ander werknemers verhinder om aan enige vakbond te behoort;
- (v) enige geldleenskema gedurende werksure of vanaf 'n perseel van die Diens bedryf;
- (w) 'n valse verklaring of getuienis in die uitvoering van sy of haar pligte aflê;
- (x) rekords of enige ander dokumentasie vervals;
- (y) aan enige onwettige arbeidsoptrede of industriële aksie deelneem; of
- (z) enige gemeenregtelike of stature misdryf pleeg.

21. Oorgangsmatreëls

- (1) Enige dissiplinêre verrigtinge wat voor die inwerkingtreding van hierdie Regulasies kragtens Die Suid-Afrikaanse Polisie diens Dissipline Regulasies, 1996, of die Staatsdiens Sentrale Onderhandelingsforum Resolusie 2 van 1999 teen 'n werknemer ingestel was, moet mee

gehandel en afgehandel word kragtens genoemde Regulasies of Resolusie asof hierdie Regulasies nie in werking getree het nie.

- (2) Enige *werkgewersverteenwoordiger*, voorsitter of 'n dissipline, vervolgings, verhoor of verdedigingsoffisier of sy of haar gedelegeerde of appèlowerheid of 'n lid van 'n appèlowerheid kragtens die Suid-Afrikaanse Polisie diens Dissipline Regulasies, 1996 of die Staatsdiens Sentrale Onderhandelingsforum Resolusie 2 van 1999 wat voor die inwerkingtreding van die hierdie Regulasies aangestel is, sal voortgaan om as sodanig kragtens sodanige Regulasies of Resolusie op te tree totdat al die werksaamhede daarvolgens afgehandel is asof hierdie Regulasies nie afgekondig is nie.
- (3) Enige dissiplinêre verrigtinge teen 'n werknemer met betrekking tot 'n handeling of versuim wat gepleeg is voor die afkondiging van hierdie Regulasies, kan teen sodanige werknemer kragtens hierdie Regulasies ingestel word: Met dien verstande dat sodanige handeling of versuim wangedrag ingevolge hierdie Regulasies daarstel.
- (4) Die Nasionale Kommissaris kan, vir die doeleindes waarna in subregulasie (1) verwys word, enige handeling verrig wat nodig mag wees vir die finalisering van sodanige dissiplinêre verrigtinge asof hierdie Regulasies nie afgekondig is nie.

22. Herroeping en kort titel

- (1) Die Suid-Afrikaanse Polisie diens Dissipline Regulasies, 1996 word herroep.
- (2) Hierdie Regulasies sal bekend staan as die Suid-Afrikaanse Polisie diens Dissipline Regulasies, 2005 en tree op 1 September 2005 in werking.

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