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Contents

No.	Gazette No.	Page No.
GOVERNMENT NOTICES • GOEWERMENTSKENNISGEWINGS		
Police, Department of/ Polisie, Departement van		
R. 1361	South African Police Service Act (68/1995): South African Police Service Discipline Regulations	40389 4
R. 1361	Wet op die Suid-Afrikaanse Polisiediens (68/1995): Die Suid-Afrikaanse Polisiediens Dissipline Regulasies	40389 23

GOVERNMENT NOTICES • GOEWERMENTSKENNISGEWINGS

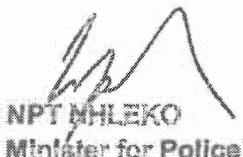
DEPARTMENT OF POLICE

NO. R. 1361

01 NOVEMBER 2016

REGULATIONS FOR THE SOUTH AFRICAN POLICE SERVICE

The Minister for Police has, under section 24(1) of the South African Police Service Act, 1995 (Act No. 38 of 1995), made the regulations in the Schedule.



SCHEDULE

THE SOUTH AFRICAN POLICE SERVICE DISCIPLINE REGULATIONS

1. Definitions

In these Regulations, unless the context otherwise indicates –

- (a) “*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;
- (b) “*Chairperson*” means the person appointed in terms of regulation 11(1) to preside at the disciplinary hearing;
- (c) “*employee*” means any person employed by the South African Police Service whether in terms of the South African Police Service Act, 1995 or the Public Service Act, 1994 excluding the National Commissioner and the Provincial Commissioners;
- (d) “*Employer*” means the National Commissioner or any person delegated by him or her to perform any function in terms of these Regulations;
- (e) “*employer representative*” means an *employee* designated in general or in a particular case by the *employer* in terms of regulation 6(4) 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;

Page 1 of 19

- (f) "*fellow employee*" means any *union representative* or an *employee* employed by the Service from the same unit, station or component of the *employee* charged with *misconduct*;
- (g) "*legal practitioner*" means a person who is admitted to practice as an advocate or an attorney in South Africa;
- (h) "*misconduct*" means conduct set out in regulation 5(3);
- (i) "*recognized trade union*" means all the unions admitted to the Safety and Security Sectoral Bargaining Council (SSBBC);
- (j) "*SSBBC*" means the Safety and Security Sectoral Bargaining Council;
- (k) "*supervisor*" means any *employee* assigned with the responsibility to exercise supervision over *employees* resorting directly under him or her;
- (l) "*union official*" means a person employed by a *recognized trade union* in any capacity, either in a full-time or temporary capacity;
- (m) "*union representative*" means a member of a *recognized trade union* who is elected to represent *employees* at a workplace, or a *union official* or a full-time shop steward; and
- (n) "*working day*" means any day other than a Saturday, Sunday or public holiday.

2. Scope of the Regulations

- (1) Based on the agreement reached between the *employer* and all the unions admitted to the SSSBC, these Regulations apply to the *employer* and all its *employees* falling within the registered scope of the said Council.
- (2) These Regulations apply to members of the Senior Management Service of the Service, excluding the National Commissioner and Provincial Commissioners.

3. Purpose

The purpose with 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 line management 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 a recourse against any finding of *misconduct* or sanction imposed at a disciplinary hearing;
- (e) an *employee* who is impartial and not in any way connected to the alleged *misconduct* must 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 equal or 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*;
- (k) in the event that the *employee* denies an allegation of less serious *misconduct*, a formal disciplinary hearing must be instituted;
- (l) a person appointed as a *chairperson* must act objectively, unbiased and protect the interest of both parties and at no stage must assume the role or act on behalf of any of the parties; and

- (m) the investigation into an alleged *misconduct* must be done independently and separate from any other investigation.

5. Nature of misconduct

- (1) Employee conduct that shall warrant disciplinary action is listed in regulation 5(3).
- (2) In applying regulation 5(3), 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 or the image of the Service, station, unit or component of the *employee*, and his or her colleagues;
 - (b) the nature of the work and responsibilities of the *employee*; and
 - (c) the circumstances in which the alleged *misconduct* took place.
- (3) An *employee* will be guilty of *misconduct* if he or she —
 - (a) fails to comply with, or contravenes an Act, regulation or legal obligation;
 - (b) performs any act or fails to perform any act with the intention —
 - (i) to cause harm to or prejudice the interests of the Service, be it financial or otherwise;
 - (ii) to undermine the policy of the Service; or
 - (iii) not to comply with his or her duties or responsibilities;
 - (c) wilfully or negligently mismanages the finances of the State;
 - (d) without permission possesses, uses or appropriates property of the State or property under the control of the State;
 - (e) intentionally or negligently damages and or causes loss of State property;
 - (f) endangers the lives of others by disregarding safety rules or regulations;
 - (g) prejudices the administration, discipline or efficiency of a department, office or institution of the State;
 - (h) misuses his or her position in the Service to promote or to prejudice the interest of any political party;
 - (i) accepts any compensation in cash or otherwise from a member of the public or another *employee* for performing his or her duties without written approval from the *employer*;
 - (j) fails to carry out a lawful order or routine instruction without just or reasonable cause;

- (k) absents himself or herself from work without reason or permission;
- (l) fails without sufficient cause, to report for duty at a stipulated time at his or her station, place of work or any other place stipulated by a commander or his or her superior;
- (m) commits an act of sexual harassment;
- (n) unfairly discriminates against others on the basis of race, gender, disability, sexuality or other grounds prohibited by the Constitution;
- (o) without written approval of the *employer*, performs work for compensation in a private capacity or for another person or organisation either during or outside working hours;
- (p) without authorisation, sleeps on duty;
- (q) accepts or demands in respect of the discharge, or the failure to discharge a function, any commission, fee, reward or favour, pecuniary or otherwise;
- (r)
 - (i) unlawfully and intentionally partake in the use of a narcotic drug;
 - (ii) unlawfully and intentionally partakes of liquor while on duty;
 - (iii) is under the influence of liquor whilst off duty in a public place and behaves in a manner which is detrimental to the image of the Service;
 - (iv) renders himself or herself unfit for duty or for the performance of his or her functions by the use of liquor or narcotic drugs; or
 - (v) reports for duty whilst under the influence of liquor or narcotic drugs;
- (s)
 - (i) pretends to be ill, infirmed, indisposed, injured or suffering from pain; or
 - (ii) obtains or attempts to obtain exemption from duty by advancing a false or exaggerated excuse on the grounds of illness, infirmity, indisposition, injury, pain;
- (t) conducts himself or herself in an improper, disgraceful and unacceptable manner;
- (u) contravenes any prescribed Code of Conduct of the Service or the Public Service, whichever may be applicable to him or her;
- (v) incites other *employees* to unlawful conduct or conduct in conflict with accepted procedure;
- (w) intimidates or victimises other *employees*;
- (x) assaults, or threatens to assault any other *employee*;
- (y) prevents another *employee* from belonging to any trade union;

- (z) operates any money lending scheme for employees during working hours or from the premises of the Service;
 - (aa) gives a false statement or evidence in the execution of his or her duties;
 - (bb) falsifies records or any other documentation;
 - (cc) participates in any unlawful labour or industrial action;
 - (dd) convicted of any common law or statutory offence;
 - (ee) without proper authority, releases a prisoner or other person from custody or willfully or negligently allows him or her to escape;
 - (ff) uses unlawful force against a prisoner or other person in custody or otherwise ill-treats such person;
 - (gg) neglects his or her duty or performs his or her functions in an improper manner;
 - (hh) leaves his or her post without permission or reason;
 - (ii) fails to submit his or her financial disclosure as may be required by the relevant prescripts and/or fails to disclose the required financial interests or provides false information in such disclosure; or
 - (jj) fails to report an act of *misconduct* committed in his or her presence by his or her commander or *fellow employee*.
- (4) The following forms of *misconduct* may warrant the institution of the expeditious procedure as provided for in regulation 9:
- (a) Aiding an escapee;
 - (b) Arson;
 - (c) Robbery;
 - (d) Assault GBH;
 - (e) Bribery;
 - (f) Corruption;
 - (g) Dealing in drugs;
 - (h) Defeating the course of justice;
 - (i) Extortion;
 - (j) Forgery and uttering;
 - (k) Fraud;
 - (l) Hijacking;
 - (m) Housebreaking and theft;
 - (n) Kidnapping;
 - (o) Malicious damage to property of a serious nature;
 - (p) Murder;
 - (q) Rape;
 - (r) Terrorism;
 - (s) Theft;

- (t) Treason;
- (u) Any attempt, conspiracy or incitement to commit any of the aforementioned offences;
- (v) Sexual harassment;
- (w) Unlawful possession of the *employer's* property;
- (x) Any act of *misconduct* which detrimentally affects the image of the Service or brings the Service into disrepute or which involves an element of dishonesty; or
- (y) Any contravention of the Firearms Controls Act.

6. Disciplinary officers

- (1) The National - and Provincial Commissioner must each designate in writing an *employee* as a disciplinary officer.
- (2) The disciplinary officer designated by the National - or Provincial Commissioner may —
 - (a) upon a complaint of any person, initiate an investigation concerning alleged *misconduct* and cause an *employee* to be charged for *misconduct* in accordance with these Regulations; and
 - (b) perform all functions relating to the exercise of such power.
- (3) The disciplinary officer designated 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 that may arise between disciplinary officers.
- (4) The National - and Provincial Commissioner, after consulting with the disciplinary officer concerned, may in writing designate in general or in a specific case, an *employee* or category of *employees* 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.
- (5) The National- or Provincial Commissioner may, in exceptional circumstances, after consulting with the disciplinary officer concerned, in writing designate a person other than an *employee* as *employer representative* to represent the *employer* in a particular case and who may, as the representative of the disciplinary officer concerned 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.
- (6) 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.
- (7) The National - or relevant Provincial Commissioner may reverse any decision before a formal hearing 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:

(1) 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.

(2) Verbal warning

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

- (d) if the *employee* denies having committed the *misconduct*, initiate a disciplinary hearing as set out in regulation 11.
- (e) The verbal warning must be recorded on the conduct sheet.

(3) Written warning

- (a) In instances where the nature of the *misconduct* warrants a written warning, the *supervisor* must —
- (i) 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;
 - (ii) allow the *employee* an opportunity to respond to the allegations;
 - (iii) 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 11.

- (b) The *supervisor* must give a copy of the written warning to the *employee* if he or she admits to the *misconduct* in terms of this regulation and he or she 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*.

- (c) The written warning must be filed in the personnel file of the *employee*.
- (d) 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.
- (e) 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.

(4) Final written warning

- (a) In instances where the seriousness of the *misconduct* warrants a final written warning, the *supervisor* must —
- (i) 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;
 - (ii) allow the *employee* an opportunity to respond to the allegations;

- (iii) 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 a disciplinary hearing

OR

If the *employee* denies having committed the *misconduct*, initiate a disciplinary hearing as set out in regulation 11.

- (b) The *supervisor* must give a copy of the final written warning to the *employee* who must acknowledge receipt thereof if the *employee* admits the *misconduct*. 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*.
- (c) The final written warning must be filed in the personnel file of the *employee*.
- (d) 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.
- (e) 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.
- (5) The *employee* may at any stage be represented during the above-mentioned procedures.
- (6) In the event that the *employee* who has denied commission of the *misconduct* decides to admit at any stage before the commencement of the formal proceedings the matter must immediately be returned to the *supervisor* of the *employee* concerned who must immediately invoke the informal process and finalise it.

8. Serious misconduct

- (1) A *supervisor* must ensure that the investigation into the allegations of *misconduct* is completed within thirty (30) calendar days or as soon as practically possible thereafter, and if satisfied that the alleged *misconduct* is of a serious nature and justifies the holding of a disciplinary hearing, refer the outcome of the investigation to the *employer representative* within seven (7) working days to initiate a disciplinary enquiry. The *employee* must be informed of the alleged *misconduct* and pending investigation.
- (2) The *employer representative* must within fifteen (15) working days, charge the *employee* with *misconduct*, by serving a written notice to attend the disciplinary hearing in the form determined by the National Commissioner.

- (3) The written notice of the disciplinary hearing must provide for —
- (a) a description of the allegations of *misconduct* and all the evidence including statements upon which the *employer* will rely;
 - (b) details of the date, time and venue of the hearing;
 - (c) information stating the rights of the *employee* to representation by a *fellow employee*, *union representative* or *union official*, and the right to bring witnesses to the hearing; and
 - (d) the place where, the period during which and the circumstances and conditions in terms of which an *employee* shall be given an opportunity to examine any physical or documentary evidence or any report that will be produced in evidence and must free of charge, served with one copy of any statement or report relating to the subject matter of the hearing and one copy of any document that will be presented as evidence during 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 sub-regulation (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*.

9. Expedited Process

- (1) A *supervisor* who is satisfied that the alleged *misconduct* is of a serious nature and or falls within the ambit of regulation 5(4) he or she must ensure that the expedited process is initiated, and a full substantiated report is submitted to the National Commissioner or a person designated by him or her, which person may not hold a rank lower than that of Brigadier and assumes the power of the *employer* for purposes of this regulation.

- (2) The said person must —
- (a) on receipt of the full substantiated report satisfy himself or herself that the alleged *misconduct* is *misconduct* as contemplated in regulation 5(4) and that the nature of the *misconduct* justifies an expeditious procedure;
 - (b) if satisfied that the *misconduct* justifies an expeditious procedure he or she must notify the *employee* of the allegations of *misconduct* and instruct the *employee* to appear before him or her to answer to the allegations of *misconduct*. The notice must contain a description of the allegations of *misconduct*, that he or she has the right to be represented, the date and time when the *employee* must appear, and supporting documents and statements (if available). The notice period may not be less than five (5) *calendar days*, and it must be served in the manner set out in these Regulations. If not satisfied that the *misconduct* justifies an expeditious procedure he or she must refer the matter back to the *supervisor* for it to be dealt with in accordance with the normal procedure;
 - (c) when the *employee* appears before him or her, he or she must inform the *employee* of the allegations of *misconduct* and allow the *employee* to defend himself or herself against the allegations (as provided in the expeditious procedure). The said person may take any steps deemed necessary to finalise the matter provided for in these Regulations;
 - (d) consider the evidence of the *employee* and make a finding within five (5) *calendar days* with regard to the alleged *misconduct*; and
 - (e) if he or she finds that the *employee* has committed the *misconduct*, after hearing mitigating and aggravating circumstances impose a sanction referred to in regulation 12.
- (3) Following a sanction of dismissal being imposed on the *employee*, the designated person must within twenty four (24) hours of his or her determination, notify the National Commissioner or Provincial Commissioner or Divisional Commissioner of the reasons for his or her finding and for imposing such a sanction.
- (4) The National Commissioner or Provincial Commissioner or Divisional Commissioner may in exceptional circumstances and in the interest of the Service vary any sanction imposed on an *employee*: Provided that the decision to vary the sanction is taken within three (3) *working days* after the *employee* has been informed thereof and the decision to vary has been fully motivated.
- (5) The *employee* must immediately be informed in writing of the decision of the National Commissioner or Provincial Commissioner or Divisional Commissioner.
- (6) In the event of the sanction of dismissal being confirmed by the National Commissioner or Provincial Commissioner or Divisional Commissioner such dismissal shall take effect on the day of the decision of the National Commissioner or Provincial Commissioner or Divisional Commissioner.

- (7) If the *employee* fails to appear before the said person referred to in regulation 9(1) on the date set out in the notification or any other date determined —
- (a) the *employee* shall, from the date of such failure to appear, be deemed to be suspended without remuneration;
 - (b) the said person must postpone the matter indefinitely, and it shall only reconvene at the instance of the *employee* concerned, after liaising with such person: Provided that in the event that the *employee* fails to take steps to reconvene the matter within ten (10) *working days* of such date, the said person must record such failure and the *employee* shall forthwith be deemed to be discharged from the Service; and
 - (c) in the event of the matter being reconvened the said person must inquire into the reasons for the *employee*'s failure to appear and in the absence of good cause shown, confirm or set aside the suspension and finalise the matter.
- (8) If the alleged *misconduct* does not justify an expeditious procedure, the procedure as per regulation 8(1), (2), (3), (4) and (5) must be followed.

10. Suspension

- (1) A suspension or temporary transfer is a precautionary measure.
- (2) The National-, Provincial- or Divisional Commissioner may suspend or temporarily transfer an *employee*, provided that before effecting such a suspension or transfer such an *employee* is afforded a reasonable opportunity to make written representations.
- (3) The *employer* may after having afforded an *employee* a reasonable opportunity to make written representations and after consideration of the representations, suspend with full remuneration, or temporarily transfer an *employee* as a precautionary measure on conditions, as may be determined.
- (4) After an *employee* is suspended with full remuneration or temporarily 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) *calendar days* the *chairperson* of the hearing must decide whether the suspension or temporary transfer should continue or be terminated and if the suspension or temporary transfer continues, it should not be more than thirty (30) *calendar days* where after, the suspension or temporary transfer is automatically uplifted.

11. Conducting the disciplinary hearing

- (1) The *employer* must appoint a person as the *chairperson* of the hearing. Such person must be an *employee*: Provided that the National- or Provincial Commissioner may, in exceptional circumstances, appoint a person other than an *employee* as *chairperson* of the hearing.

- (2) In the event of an *employee* being appointed as *chairperson*, the *employee* must be of a higher rank than the *employee* charged with *misconduct*.
- (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 the *fellow employee* or person appointed by a *recognized trade union*, 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 only ask any question for clarification on evidence led.
- (10) The *chairperson* may on request by any party, subpoena any person to testify at a disciplinary hearing and such a request may not be unreasonably denied.
- (11) Should the *chairperson* find that the *employee* has committed *misconduct*, the *chairperson* must inform the *employee* of the finding and the reasons therefor.
- (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 from the commencement of the hearing.

12. **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) suspension without salary for a period of between one (1) month and not more than two (2) months; or
 - (e) dismissal.
- (2) In instances where the sanctions referred to in (b) or (c) are imposed, the *chairperson* may on conditions as he or she may determine refer the *employee* also to professional counselling.
- (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*.

13. **Dispute resolution**

In the event that an *employee* has been found guilty and sanctioned, such *employee* may within the time period determined in the SSSBC Constitution and Rules refer the matter to the SSSBC for resolution.

14. **Procedure after a finding of misconduct**

- (1) If an *employee* is found to have committed *misconduct* and a disciplinary sanction referred to in regulation 12(1)(e) 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.
- (2) The National Commissioner or the delegated authority 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 therefor.
- (3) The *employee* referred to in sub-regulation (1) must immediately be informed in writing of the decision of the National Commissioner.

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

- (1) (a) An *employee* who is served with a notice in terms of regulation 8(4) to attend the disciplinary hearing at the place, date and time specified in such notice, is regarded to be on duty.
- (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*. Such request should not be unreasonably denied.
- (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 sub-regulation (3) and (4), constitute *misconduct*.
- (3) (a) Upon a failure as contemplated in sub-regulation (2), the *chairperson* must agree to 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 of postponement must be in a form determined by the National Commissioner.
- (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 sub-Regulation (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 sub-regulation (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 this regulation.

- (b) In the event of a hearing being reconvened in terms of sub-regulation (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 sub-regulation (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 sub-regulation (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.

16. Witnesses at disciplinary hearings

- (1) (a) For the purposes of a disciplinary hearing, the *chairperson* may in the format determined by the National Commissioner, at the request of the *employer* - or *employee representative*, subpoena any person whose statement appears as a witness, to appear before the hearing 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) The *chairperson* may on own accord recall any witnesses to clarify issues on evidence being led.
 - (c) Such subpoena may be served upon any person by an *employee* in accordance with sub-regulation (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 *employer representative* 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 sub-regulation (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 of five hundred Rand (R500,00).

- (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 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 sub-regulation (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 sub-regulation (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.

17. Conduct sheets

- (1) A conduct sheet in respect of every *employee* shall be maintained in the manner and form determined by the National Commissioner.
- (2) All findings, sanctions and disciplinary measures imposed on an *employee* on account of *misconduct*, shall be recorded on the conduct sheet.
- (3) A finding and determination recorded on the conduct sheet of an *employee*, shall not be taken into account as previous record, for purposes of subsequent disciplinary proceedings, if no findings or sanctions have been recorded in respect of similar or related *misconduct* during a period of six (6) months.

18. 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, 2006, against an *employee*, must be dealt with and be finalized in terms of the said Regulations as if these Regulations have not come into operation.
- (2) Any *employer representative*, *chairperson*, or a disciplinary, prosecuting or trial officer or his or her delegate, appointed in terms of the South African Police Service Discipline Regulations, 2006 prior to the coming into operation of these Regulations shall continue to act as such in terms of such Regulations 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 sub-Regulation (1), perform any act which may be necessary for the finalization of such disciplinary proceedings as if these Regulations have not been promulgated.

19. Repeal and short title

- (1) The South African Police Service Discipline Regulations, 2006 are repealed.
- (2) These Regulations shall be known as the South African Police Service Discipline Regulations, 2016, and shall come into operation on the date of publication.

DEPARTEMENT VAN POLISIE

NO. R. 1361

01 NOVEMBER 2016

REGULASIES VIR DIE SUID-AFRIKAANSE POLISIEDIENS

Die Minister van Polisie het, ingevolge artikel 24(1) van die Wet op die Suid-Afrikaanse Polisiediens, 1995 (Wet No. 68 van 1995), die regulasies in die Bylae uitgevaardig.

NPT NHLEKO
Minister van Polisie

BYLAE

DIE SUID-AFRIKAANSE POLISIEDIENS
DISSIPLINE REGULASIES

1. Woordomskrywings

In hierdie Regulasies, tensy uit die konteks anders blyk, beteken —

- (a) "erkende vakbond" al die vakbonde wat tot die Veiligheid en Sekuriteit Sektorale Onderhandelingsforum (SSSBC) toegelaat is;
- (b) "kalenderdag" enige dag insluitende 'n Saterdag, Sondag en 'n openbare vakansiedag en enige tydperk *kalenderdae* moet bereken word met uitsluiting van die eerste dag van die tydperk en met 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;
- (c) "medewerknemer" enige vakbondverteenvoerdiger of 'n werknemer in die diens van die Diens van dieselfde eenheid, stasie of komponent as die werknemer wat van *wangedrag* aangekla is;
- (d) "regspraktisyn" 'n persoon wat toegelaat is om as 'n advokaat of prokureur in Suid-Afrika te praktiseer;
- (e) "toesighouer" enige werknemer waaraan die verantwoordelikheid toegewys is om toesig uit te oefen oor werknemers wat direk onder hom of haar ressorteer;
- (f) "vakbondbeampte" 'n persoon in diens van 'n erkende vakbond in enige hoedanigheid, ongeag of so 'n persoon in 'n voltydse of tydelike hoedanigheid in diens is;

Bladsy 1 van 21

- (g) "vakbondverteenwoordiger" 'n lid van 'n erkende vakbond wat verkies is om werknekmers by die werksplek te verteenwoordig of 'n vakbondbeampie of 'n voltydse werksplekbemiddelaar;
- (h) "voorsitter" die persoon wat ingevolge regulasie 11(1) aangestel is om by die dissiplinêre verhoor voor te sit;
- (i) "wangedrag" gedrag soos wat in regulasie 5(3) uiteengesit is;
- (j) "werkgewersverteenwoordiger" 'n werknekmer wat in die algemeen of in 'n bepaalde geval deur die werkgewer ingevolge regulasie 6(4) aangewys is om te oorweeg of 'n werknekmer van wangedrag in 'n dissiplinêre verhoor aangekla moet word en, in die geval van ernstige wangedrag, om die werkgewer gedurende die hele dissiplinêre proses te verteenwoordig;
- (k) "werkgewer" die Nasionale Kommissaris of enige persoon wat deur hom of haar gedelegeer is om enige funksie ingevolge hierdie Regulasies te verrig;
- (l) "werknekmer" enige persoon in die diens van die Suid-Afrikaanse Polisiediens, ongeag of die persoon ingevolge die Wet op die Suid-Afrikaanse Polisiediens, 1995 of die Staatsdienswet, 1994 aangestel is, uitgeslot die Nasionale Kommissaris en die Proviniale Kommissarisse; en
- (m) "werksdag" enige dag, anders as 'n Saterdag, Sondag of openbare vakansiedag.

2. Omvang van die Regulasies

- (1) 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 werknekmers wat binne die geregistreerde raamwerk van genoemde Forum val.
- (2) Hierdie Regulasies is ook van toepassing op lede van die Senior Bestuursdiens van die Diens, uitgeslot die Nasionale Kommissaris en Proviniale Kommissarisse.

3. Doel

Die doel van hierdie Regulasies is om —

- (a) konstruktiewe arbeidsverhoudinge in die Diens te ondersteun;
- (b) wedersydse respek tussen werknekmers en tussen werknekmers en die werkgewer te bevorder;
- (c) te verseker dat *toesighouers* en werknekmers '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 arbitrale optrede deur *toesighouers* teenoor *werknekmers* 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 lynbestuursfunksie;
- (d) die billike behandeling van *werknekmers* deur te verseker dat hulle —
 - (i) 'n billike verhoor in beide die formele en informele prosesse geniet;
 - (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 toevlug 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 *werknekmer* wat onpartydig is en nie op enige wyse aan die beweerde *wangedrag* gekoppel is nie, moet die *werkgewer* by die dissiplinêre verhoor verteenwoordig, daarby voorsit of die beweerde *wangedrag* teen 'n *werknekmer* ondersoek;
- (f) sover moontlik, moet die dissiplinêre verrigtinge by die werkplek plaasvind en vir alle *werknekmers* 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 *werknekmer* wat aangestel is om die beweerde *wangedrag* te ondersoek, moet 'n gelyke of hoër rang beklee as die *werknekmer* wat ondersoek word;
- (j) in alle dissiplinêre verrigtinge het die *werknekmer* die reg om deur 'n *vakbondverteenwoordiger* of 'n *medewerknekmer* verteenwoordig te word;
- (k) in die geval waar 'n *werknekmer* 'n bewering van minder ernstige *wangedrag* ontken, moet 'n formele dissiplinêre verhoor ingestel word;

- (l) 'n persoon wat as *voorsitter* aangestel is, moet objektief en onpartydig optree en die belang van beide partye beskerm en mag op geen stadium die rol aanneem, of namens enige van die partye optree nie; en
- (m) die ondersoek na die beweerde *wangedrag* moet onafhanklik en apart van enige ander ondersoek gedoen word.

5. Aard van wangedrag

- (1) Die gedrag van 'n *werknemer* wat dissiplinêre stappe regverdig, word in regulasie 5(3) gelys.
- (2) By die toepassing van regulasie 5(3), moet die *werkewer* die erns van die beweerde *wangedrag* bepaal na oorweging van —
 - (a) die werklike of potensiële uitwerking van die beweerde *wangedrag* op die werk of beeld van die Diens, die stasie, eenheid of komponent van die *werknemer*, sy of haar kollegas;
 - (b) die aard van die werk en verantwoordelikhede van die *werknemer*; en
 - (c) die omstandighede waaronder die beweerde *wangedrag* plaasgevind het.
- (3) 'n *Werknemer* sal skuldig wees aan *wangedrag* indien hy of sy —
 - (a) versuim om 'n Wet, regulasie of ander regspieg na te kom of dit oortree;
 - (b) enige handeling verrig of versuim om te handel met die oogmerk om —
 - (i) skade or nadeel aan die belang van die Diens, hetsy finansieel or andersins, te veroorsaak;
 - (ii) die beleid van die Diens te ondermyn; of
 - (iii) nie sy of haar pligte of verantwoordelikhede na te kom nie;
 - (c) opsetlik of nalatig die finansies van die staat wanbestuur;
 - (d) sonder toestemming, eiendom van die staat of onder die beheer van die staat, besit, gebruik of toe-eien;
 - (e) opsetlik of nalatig eiendom van die staat beschadig of verloor;
 - (f) die lewe van ander in gevaar stel deur veiligheidsreëls of -regulasies te verontgaam;
 - (g) die administrasie, dissipline of doeltreffendheid van 'n departement, kantoor of instelling van die staat benadeel;
 - (h) sy of haar posisie in die Diens misbruik om die belang van enige politieke party te bevorder of te benadeel;

- (i) sonder die skriftelike goedkeuring van die *werkgewer*, enige vergoeding in kontant of andersins van 'n lid van die publiek of 'n ander *werknemer* aanvaar vir die verrigting van sy of haar werksaamhede;
- (j) versuim om 'n regmatige opdrag of roetine instruksie, sonder 'n geldige of redelike rede, uit te voer;
- (k) homself of haarself sonder rede of toestemming van diens verskoon;
- (l) versuim, sonder voldoende rede, om op 'n bepaalde tyd by sy of haar stasie, werkplek of enige ander plek soos bepaal deur 'n bevelvoerder of sy of haar senior, vir diens te rapporteer;
- (m) 'n handeling verrig wat seksuele teistering daarstel;
- (n) onbillik teen ander op grond van ras, geslag, ongeskiktheid, seksualiteit of ander gronde wat deur die Grondwet verbied word, diskrimineer;
- (o) 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;
- (p) sonder magtiging aan diens slaap;
- (q) enige kommissie, fooi, vergoeding of guns, van 'n geldelike aard of nie, aanvaar of daarop aandring, ten opsigte van die verrigting van, of versuim om, 'n funksie te verrig;
- (r) (i) onregmatig en opsetlik deelneem aan die gebruik van 'n narkotiese middel;
(ii) onregmatig en opsetlik drank drink terwyl hy of sy aan diens is;
(iii) terwyl hy of sy van diens is by 'n openbare plek, onder die invloed van drank, hom of haar op so 'n wyse gedra wat die beeld van die Diens benadeel;
(v) homself of haarself ongeskik maak vir diens of vir die verrigting van sy of haar funksies weens die gebruik van drank of narkotiese middels; of
(vi) vir diens rapporteer terwyl hy of sy onder die invloed van drank of narkotiese middels is;
- (s) (i) maak of hy of sy siek, sieklik, ongeskik, beseer is of pyn het; of
(ii) vrystelling van werk verkry of poog om dit te verkry, deur 'n vals of oordrewe verskoning op grond van siekte, sieklikheid, ongeskikheid, besering of pyn voor te hou;
- (t) homself of haarself op 'n onbehoorlike, aanstootlike en onaanvaarbare wyse gedra;
- (u) enige voorgeskrewe Gedragskode vir die Diens of die Staatsdiens, welke op hom of haar van toepassing is, oortree;

- (v) ander *werkneemers* tot onregmatige optrede of optrede wat in stryd is met aanvaarde prosedure, aanhits;
 - (w) ander *werkneemers* intimideer of viktimiseer;
 - (x) enige ander *werkneemer* aanrand of dreig om hom of haar aan te rand;
 - (y) 'n ander *werkneemer* verhinder om aan enige vakbond te behoort;
 - (z) enige geldleenskema vir *werkneemers* gedurende werksure of vanaf 'n perseel van die Diens bedryf;
 - (aa) 'n valse verklaring of getuienis in die uitvoering van sy of haar pligte aflê;
 - (bb) rekords of enige ander dokumentasie vervals;
 - (cc) aan enige onwettige arbeidsoptrede of industriële aksie deelneem;
 - (dd) aan enige gemeenregtelike of statutêre misdryf skuldig bevind word;
 - (ee) sonder behoorlike magtiging, 'n prisoner of ander persoon uit aanhouding vrylaat of opsetlik or nalatig toelaat dat sodanige persoon ontsnap;
 - (ff) onregmatige geweld gebruik teen 'n prisoner of ander persoon wat in aanhouding is of sodanige persoon andersins sleg behandel;
 - (gg) sy of haar plig versuim of sy of haar funksies op 'n onbehoorlike wyse verrig;
 - (hh) sy of haar pos sonder toestemming of rede verlaat;
 - (ii) versuim om sy of haar finansiële belang te openbaar soos vereis mag word deur die bepaalde voorskrifte en/of versuim om die vereiste finansiële belang te verklaar of false inligting in sodanige openbaarmaking verskaf; of
 - (jj) versuim om 'n handeling van *wangedrag* te rapporteer wat deur sy of haar bevelvoerder of *medewerknemers* wat in sy of haar teenwoordigheid gepleeg is.
- (4) Die volgende vorms van *wangedrag* mag die instelling van die versnelde prosedure, soos beoog in regulasie 9, vereis:
- (a) Hulpverlening aan 'n ontsnapte;
 - (b) Brandstigting;
 - (c) Roof;
 - (d) Aanranding met die opset om ernstig te beseer;
 - (e) Omkopery;
 - (f) Korrupsie;
 - (g) Handeldryf in dwelmmiddels;
 - (h) Regsverdeling;

- (i) Afpersing;
- (j) Vervalsing en uitgifte;
- (k) Bedrog;
- (l) Kaping;
- (m) Huisbraak en diefstal;
- (n) Ontvoering;
- (o) Opsetlike saakbeskadiging van 'n ernstige aard;
- (p) Moord;
- (q) Verkragting;
- (r) Terrorisme;
- (s) Diefstal;
- (t) Hoogverraad;
- (u) Enige poging, sameswering of aanstigting om enige van voorgenoemde misdade te pleeg;
- (v) Seksuele teistering;
- (w) Onregmatige besit van die *werkgewer se eiendom*;
- (x) Enige handeling van *wangedrag* wat die beeld van die Diens nadelig raak of die Diens in oneer bring of waarby 'n element van oneerlikheid betrokke is; of
- (y) Enige oortreding van die Wet op die Beheer van Vuurwapens.

6. Dissiplinêre offisiere

- (1) Die Nasionale - en Proviniale Kommissaris moet elkeen skriftelik 'n *werknemer* as dissiplinêre offisier aanwys.
- (2) Die dissiplinêre offisier wat deur die Nasionale Kommissaris of 'n Proviniale Kommissaris aangewys is, kan —
 - (a) by ontvangs van 'n klagte van enige persoon, 'n ondersoek begin aangaande beweerde *wangedrag* en toesien dat die *werknemer* in ooreenstemming met hierdie Regulasies van *wangedrag* aangekla word; en
 - (b) alle funksies in verband met die uitoefening van sodanige bevoegdheid verrig.
- (3) Die dissiplinêre offisier wat deur die Nasionale Kommissaris aangewys is, is verantwoordelik vir administratiewe aangeleenthede insluitende die ontwikkeling en handhawing van eenvormige standarde in verband met die werksaamhede van provinsiale dissiplinêre offisiere en *werkgewersverteenvwoerdigers* en het finale seggenskap ten opsigte van alle geskille wat tussen dissiplinêre offisiere mag ontstaan.
- (4) Die Nasionale Kommissaris en Proviniale Kommissaris kan, na oorleg met die betrokke dissiplinêre offisier, in die algemeen of in 'n bepaalde geval, 'n *werknemer* of kategorie *werknemers*, skriftelik as *werkgewersverteenvwoerdigers* aanwys, wat as die verteenvwoerdigers van sodanige dissiplinêre offisier en onderworpe aan sy of haar beheer en voorskrifte, enige *werknemer* van *wangedrag* kan aankla en alle werksaamhede in verband met die uitoefening van sodanige bevoegdheid, kan verrig.

- (5) Die Nasionale Kommissaris of Proviniale Kommissaris kan, in uitsonderlike omstandighede, na oorlegpleging met die betrokke dissiplinêre offisier skriftelik 'n persoon, anders as 'n *werknomer*, as *werkgewersverteenwoordiger* aanwys om die *werkgewer* in 'n bepaalde geval te verteenwoordig, wat as die verteenwoordiger van die betrokke dissiplinêre offisier en onderworpe aan sy of haar beheer en voorskrifte, enige *werknomer* van *wangedrag* kan aankla en alle werksaamhede in verband met die uitoefening van sodanige bevoegdheid, kan verrig.
- (6) '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 die betrokke Proviniale Kommissaris.
- (7) Die Nasionale Kommissaris of betrokke Proviniale Kommissaris kan enige beslissing van 'n *werkgewersverteenwoordiger* onder sy of haar jurisdiksie voor 'n formele verhoor verander en kan, in die algemeen of ten opsigte van 'n bepaalde geval, enige deel van sodanige bevoegdheid uitoefen of enige sodanige werksaamheid verrig: Met dien verstande dat die Nasionale Kommissaris opdragte en instruksies aan Proviniale Kommissarisse kan uitreik en enige beslissing van 'n Proviniale Kommissaris of 'n *werkgewersverteenwoordiger*, wat ooreenkomsdig hierdie Regulasies geneem is, hetsy op sy of haar eie inisiatief of by ontvangs van vertoë deur enige persoon, kan verander.

7. Minder ernstige wangedrag

In die geval van minder ernstige *wangedrag*, kan die *toesighouer* enigeen van die procedures toepas:

(1) Korrektiewe berading

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

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

(2) Mondelingse waarskuwing

In gevalle waar die aard van die *wangedrag* 'n mondelingse waarskuwing regverdig, kan 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* strenger dissiplinêre stapte tot gevolg kan hê;

OF

- (d) indien die *werknemer* ontken dat hy of sy die *wangedrag* gepleeg het, 'n dissiplinêre verhoor soos in regulasie 11 uiteengesit, inisieer.
- (e) Die mondelingse waarskuwing moet op die gedragsertifikaat aangeteken word.

(3) Skriftelike waarskuwing

- (a) In gevalle waar die aard van die *wangedrag* 'n skriftelike waarskuwing regverdig, moet die *toesighouer* —
 - (i) 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;
 - (ii) die *werknemer* die geleentheid bied om op die bewerings te antwoord;
 - (iii) indien die *werknemer* erken dat hy of sy die *wangedrag* gepleeg het, die *werknemer*'n skriftelike waarskuwing gee in die vorm soos deur die Nasionale Kommissaris bepaal en die *werknemer* inlig dat verdere *wangedrag* strenger dissiplinêre stappe tot gevolg kan hê;

OF

indien die *werknemer* ontken dat hy of sy die *wangedrag* gepleeg het, 'n dissiplinêre verhoor soos in regulasie 11 uiteengesit, inisieer.

- (b) Die *toesighouer* moet 'n afskrif van die skriftelike waarskuwing aan die *werknemer* oorhandig, indien hy of sy die *wangedrag* ingevalge hierdie regulasie erken en hy of sy moet ontvangs daarvan 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 die *toesighouer* en die ander *werknemer*, wat as getuie dien, moet teken om te bevestig dat die skriftelike waarskuwing aan die *werknemer* oorhandig is.

- (c) Die skriftelike waarskuwing moet in die *werknemer* se personeellêer geliasseer word.
- (d) 'n Skriftelike waarskuwing is vir 6 (ses) maande geldig en by die verstryking daarvan moet die skriftelike waarskuwing uit die *werknemer* se personeellêer verwijder, en vernietig word.
- (e) Indien die *werknemer* voor die verstryking van die tydperk van 6 (ses) maande 'n soortgelyke of verbandhoudende handeling van *wangedrag* pleeg, mag die skriftelike waarskuwing in ag geneem word.

(4) Finale skriftelike waarskuwing

- (a) In gevalle waar die erns van die *wangedrag* 'n finale skriftelike waarskuwing regverdig, moet die *toesighouer*—
 - (i) 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;
 - (ii) die *werknemer* die geleentheid bied om op die bewerings te antwoord;
 - (iii) 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* strenger dissiplinêre stappe tot gevolg kan hê;

OF

indien die *werknemer* ontken dat hy of sy die *wangedrag* gepleeg het, 'n dissiplinêre verhoor soos in regulasie 11 uiteengesit, inisieer.

- (b) Die *toesighouer* moet 'n afskrif van die finale skriftelike waarskuwing aan die *werknemer* oorhandig, wat ontvangs daarvan moet erken indien die *werknemer* die *wangedrag* 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 die *toesighouer* en die ander *werknemer*, wat as getuie dien, moet teken om te bevestig dat die waarskuwing aan die *werknemer* oorhandig is.
- (c) Die finale skriftelike waarskuwing moet in die *werknemer* se personeellêer geliasseer word.

- (d) 'n Finale skriftelike waarskuwing is vir 6 (ses) maande geldig en by die verstryking daarvan moet die finale skriftelike waarskuwing uit die werknemer se personeellêer verwyder, en vernietig word.
 - (e) Indien die werknemer voor die verstryking van die tydperk van 6 (ses) maande 'n soortgelyke of verbandhoudende wangedrag pleeg, mag die finale skriftelike waarskuwing in ag geneem word.
- (5) Die werknemer mag op enige stadium gedurende bovermelde prosedure verteenwoordig word.
- (6) In die geval waar die werknemer wat die wangedrag ontken het, op enige stadium voor die begin van formele verryttinge, besluit om dit te erken, moet die aangeleentheid onmiddellik na die die *toesighouer* van die betrokke werknemer terugverwys word, en die *toesighouer* moet onmiddellik die informale proses inisieer en die aangeleentheid finaliseer.

8. Ernstige wangedrag

- (1) 'n *Toesighouer* moet verseker dat die ondersoek na die bewering van wangedrag binne 30 (dertig) kalenderdae of so gou as wat prakties moontlik is daarna, voltooi word en indien hy of sy tevreden is dat die beweerde wangedrag van 'n ernstige aard is en die hou van 'n dissiplinêre verhoor regverdig, die uitslag van die ondersoek binne 7 (sewe) werksdae na die *werkgewersverteenwoordiger* verwys om 'n dissiplinêre ondersoek te inisieer. Die werknemer moet van die beweerde wangedrag en hangende ondersoek ingelig word.
- (2) Die *werkgewersverteenwoordiger* moet binne 15 (vyftien) werksdae, die werknemer van wangedrag aankla, deur 'n skriftelike kennisgewing om die dissiplinêre verhoor by te woon, in die vorm soos wat deur die Nasionale Kommissaris bepaal is, aan 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 al die getuienis, insluitende verklarings waarop die *werkgewer* sal steun;
 - (b) besonderhede van die datum, tyd, en plek van die verhoor;
 - (c) inligting wat die regte van die werknemer tot verteenwoordiging deur 'n medewerknemer, vakbondverteenwoordiger of vakbondbeampê en die reg om getuies na die verhoor te bring, uiteensit; en
 - (d) die plek waar, die tydperk waarbinne, die omstandighede waaronder en die voorwaardes waarop 'n werknemer die geleenthed gebied sal word om enige fisiese of dokumentêre getuienis of enige verslag, wat gedurende die verhoor as getuienis ingehandig sal word, na te gaan en moet een afskrif van enige verklaring of verslag betreffende die aangeleentheid waarop die verhoor betrekking het, of enige dokument wat gedurende die verhoor as getuienis ingehandig sal word, gratis

oorhandig.

- (4) (a) Die kennisgewing om by die verhoor te verskyn moet minstens 10 (tien) kalenderdae voor die datum van die verhoor op die *werknemer* beteken word.
 - (b) Die kennisgewing moet beteken word deur oorhandiging van 'n afskrif 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 werkplek aan 'n persoon wat blykbaar ouer as 16 jaar is en blykbaar daar woonagtig of werksaam is.
 - (c) 'n Relaas 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.

9. Versnelde proses

- (1) Indien 'n *toesighouer* tevrede is dat die beweerde *wangedrag* van 'n ernstige aard is of binne die omvang van regulasie 5(4) val, moet hy of sy verseker dat die versnelde proses geïnisieer word, en 'n volledige stawende verslag gestuur word na die Nasionale Kommissaris of 'n persoon wat deur hom of haar aangewys is, welke persoon nie 'n rang laer as die van 'n Brigadier mag beklee nie, en die bevoegdheid van die werkgever vir doeleindes van hierdie regulasie aanvaar.
- (2) Die vermelde persoon moet,—
 - (a) by ontvangs van die volledige stawende verslag, homself of haarself tevrede stel dat die beweerde *wangedrag*, *wangedrag* is soos beoog in regulasie 5(4) en dat die aard van die *wangedrag* die versnelde prosedure regverdig;
 - (b) indien hy of sy tevrede is dat die *wangedrag* 'n versnelde prosedure regverdig, moet hy of sy die *werknemer* in kennis stel van die bewerings van *wangedrag* en die *werknemer* opdrag gee om voor hom of haar te verskyn om op die bewerings van *wangedrag* te antwoord. Die kennisgewing moet 'n beskrywing vervat van die bewerings van *wangedrag*, dat hy of sy die reg het op verteenwoordiging, die datum en tyd wanneer die *werknemer* moet verskyn, en ondersteunende dokumente en verklarings (indien beskikbaar). Die kennisgewingstrydperk

- mag nie minder as 5 (vyf) kalenderdae wees nie, en moet beteken word op die wyse waarop in hierdie Regulasies vermeld word. Indien hy of sy nie tevrede is dat die *wangedrag* 'n versnelde prosedure regverdig nie, moet hy of sy die aangeleentheid na die *toesighouer* terugverwys sodat dit ingevolge die normale prosedure hanteer word;
- (c) wanneer die *werknemer* voor hom of haar verskyn, moet hy of sy die *werknemer* van die bewerings van *wangedrag* inlig en die *werknemer* toelaat om hom of haar teen die die bewerings te verdedig (soos beoog in die versnelde prosedure). Die vermelde persoon kan enige stappe doen soos beoog in hierdie Regulasies, wat nodig is om die aangeleentheid te finaliseer;
 - (d) die getuenis van die *werknemer* oorweeg en binne 5 (vyf) kalenderdae 'n bevinding aangaande die beweerde *wangedrag* maak; en
 - (e) indien daar bevind word dat die *werknemer* die *wangedrag* gepleeg het, na die aanhoor van versagtende en verswarende omstandighede, 'n sanksie oplê waarna in regulasie 12 verwys word.
- (3) Nadat 'n sanksie van ontslag op die *werknemer* opgelê is, moet die aangewese persoon binne 24 uur vanaf sy of haar besluit, die Nasionale Kommissaris of betrokke Proviniale Kommissaris of Afdelingskommissaris van die redes vir sy of haar bevinding en oplegging van sodanige sanksie in kennis stel.
- (4) Die Nasionale Kommissaris of Proviniale Kommissaris of Afdelingskommissaris mag, in uitsonderlike omstandighede en in die belang van die Diens, enige sanksie wat op 'n *werknemer* opgelê is, verander: Met dien verstande dat die besluit om die sanksie te verander, binne 3 (drie) werksdae geneem word nadat die *werknemer* daarvan in kennis gestel is en die besluit om dit te verander, volledig gemotiveer is.
- (5) Die *werknemer* moet onmiddellik skriftelik in kennis gestel word van die besluit van die Nasionale Kommissaris of Proviniale Kommissaris of Afdelingskommissaris.
- (6) In die geval waar 'n sanksie van ontslag deur die Nasionale Kommissaris of 'n Proviniale Kommissaris of Afdelingskommissaris bevestig word, sal sodanige ontslag in werking tree op die dag van die besluit van die Nasionale Kommissaris of Proviniale Kommissaris of Afdelingskommissaris.
- (7) Indien die *werknemer* versuim om voor die vermelde persoon, waarna in regulasie 9(1) verwys word, te verskyn op die datum soos vermeld in die kennisgewing of enige ander datum wat bepaal is, —
- (a) sal die *werknemer*, vanaf die datum van sodanige versuim om te verskyn, geag word geskors te wees sonder vergoeding;
 - (b) moet die vermelde persoon die aangeleentheid onbepaald uitstel, en dit sal slegs hervat word op versoek van die betrokke *werknemer*, na skakeling met sodanige persoon: Met dien verstande dat indien die *werknemer* versuim om stappe te doen om die verhoor binne 10 (tien)

werksdae vanaf sodanige datum te laat hervat, die vermelde persoon sodanige versuim moet aanteken en die *werkneemersal* onverwyld geag word uit die Diens ontslaan te wees; en

- (c) in die geval waar die aangeleentheid hervat word, moet die vermelde persoon ondersoek instel aangaande die redes vir die *werkneemersal* se versuim om te verskyn en in die afwesigheid van goeie gronde, die skorsing bekratig of ter syde stel en die aangeleentheid finaliseer.
- (8) Indien die beweerde *wangedrag* nie die versnelde prosedure regverdig nie, moet die prosedure soos uiteengesit in regulasie 8(1), (2), (3), (4) en (5) gevolg word.

10. Skorsing

- (1) 'n Skorsing of tydelike verplasing is 'n voorkomende maatreël.
- (2) Die Nasionale Kommissaris, Provinciale - of Afdelingskommissaris mag 'n *werkneemersal* skors of tydelik verplaas, mits sodanige *werkneemersal* 'n redelike geleentheid gegun is om skriftelik vertoë te rig voordat so 'n skorsing of verplasing uitgevoer word.
- (3) Die *werkgewer* kan, nadat 'n *werkneemersal* 'n redelike geleentheid gegun is om skriftelike vertoë te rig en na die oorweging van die vernoeging, as 'n voorsorgmaatreël 'n *werkneemersal* met volle voordele skors of tydelik verplaas op voorwaardes wat bepaal mag word.
- (4) Nadat 'n *werkneemersal* as 'n voorsorgmaatreël met volle vergoeding geskors of tydelik verplaas is, moet die *werkgewer* binne 60 (sestig) kalenderdae vanaf die aanvang van die skorsing of verplasing, 'n dissiplinêre verhoor hou. By verstryking van die 60 (sestig) kalenderdae, moet die *voorsitter* van die verhoor besluit of die skorsing of tydelike verplasing moet voortduur of beëindig moet word en indien die skorsing of tydelike verplasing voortduur, moet dit nie vir meer as 30 (dertig) kalenderdae wees nie, waarna die skorsing of tydelike verplasing outomaties opgehef sal word.

11. Voer van die dissiplinêre verhoor

- (1) Die *werkgewer* moet 'n *voorsitter* vir die verhoor aanstel. Sodanige persoon moet 'n *werkneemersal* wees: Met dien verstande dat die Nasionale Kommissaris of Provinciale Kommissaris, in uitsonderlike omstandighede, 'n persoon anders as 'n *werkneemersal* as *voorsitter* van die verhoor kan aanstel.
- (2) Indien 'n *werkneemersal* as *voorsitter* aangestel word, moet die *werkneemersal* 'n hoër rang beklee as die *werkneemersal* wat van *wangedrag* aangekla word.
- (3) 'n *Werkneemersal* kan by die verhoor deur 'n *medewerkneemersal* of 'n persoon in diens van 'n erkende vakbond verteenwoordig word.

- (4) In 'n dissiplinêre verhoor kan nóg die werkewer nóg die werknemer deur 'n *regspraktisyen* verteenwoordig word, tensy —
- (a) die *regspraktisyen* in diens van 'n erkende vakbond is; of
 - (b) die *voorsitter*, na aanhoor van die *werkgewersverteenwoordiger* en die *werknemer* of *medewerknemer* of persoon wat deur 'n erkende vakbond aangestel is, van mening is dat die aangeleentheid wat aangehoor word, van 'n ernstige aard is,
- in welke geval beide die *werknemer* en die *werkewer* deur 'n *regspraktisyen* verteenwoordig kan 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 *werkgewersverteenwoordiger* sal getuenis lei oor die gedrag wat aanleiding tot die verhoor gegee het. Die *werknemer* of die verteenwoordiger van die *werknemer* mag enige getuie deur die *werkgewersverteenwoordiger* geroep, ondervra.
- (8) Die *werknemer* sal die geleentheid gebied word om getuenis te lei. Die *werkgewersverteenwoordiger* kan enige getuie wat geroep word, ondervra.
- (9) Die *voorsitter* kan slegs vrae vra ter opheldering van getuenis wat gelei is.
- (10) Die *voorsitter* kan, op versoek van enige party, enige persoon dagvaar om by 'n dissiplinêre verhoor te getuig en so 'n versoek mag nie onredelik geweier word nie.
- (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 daar op 'n sanksie besluit word, moet die *voorsitter* die *werknemer* 'n geleentheid bied om relevante omstandighede ter versagting voor te lê. Die *werkgewersverteenwoordiger* 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 5 (vyf) werksdae daarna bekend maak. Die erns van die *wangedrag*, vorige rekord van die *werknemer* en enige versagtende of verswarende omstandighede moet in ag geneem word.
- (14) 'n Dissiplinêre verhoor moet so ver as prakties moontlik, binne 60 (sestig) kalenderdae vanaf die aanvang van die verhoor afgehandel word.

12. Sanksies

- (1) Enige van die volgende sanksies kan opgelê word:
- (a) berading;
 - (b) 'n skriftelike waarskuwing wat vir 6 (ses) maande geldig is;
 - (c) 'n finale skriftelike waarskuwing wat vir 6 (ses) maande geldig is;
 - (d) skorsing sonder vergoeding vir 'n tydperk tussen 1 (een) maand en nie langer nie as 2 (twee) maande; of
 - (e) ontslag.
- (2) In gevalle waar die sanksies waarna in (b) of (c) verwys word, opgelê word, kan die *voorsitter* op voorwaardes wat hy of sy bepaal, die *werkneemers* ook vir professionele berading verwys.
- (3) Die *voorsitter* moet die finale uitslag van die verhoor binne vyf (5) werksdae na die afhandeling van die dissiplinêre verhoor aan die *werkneemers* oordra en die uitslag moet op die *werkneemers* se persoonlike lêer aangeteken word.

13. Dispuut-oplossing

In die geval waar 'n *werkneemers* skuldig bevind en 'n sanksie opgelê is, kan sodanige *werkneemers* binne die voorgeskrewe tydperk, die aangeleentheid na die Veiligheid en Sekuriteit Sektorale Onderhandelingsforum vir oplossing stuur.

14. Prosedure na 'n bevinding van wangedrag

- (1) Indien daar bevind word dat 'n *werkneemers* wangedrag gepleeg het en 'n dissiplinêre sanksie waarna in regulasie 12(1)(e) verwys word, opgelê word, moet die *voorsitter* binne 5 (vyf) werksdae na sy of haar beslissing, die Nasionale Kommissaris van sy of haar beslissing en die redes daarvoor in kennis stel.
- (2) Die Nasionale Kommissaris of die gedelegeerde gesag kan binne 5 (vyf) werksdae na ontvangs van sodanige kennisgewing, die sanksie verander deur dit óf te verminder óf ter syde te stel en volledige redes daarvoor verstrek.
- (3) Die *werkneemers* waarna in sub-regulasie (1) verwys word, moet onmiddellik skriftelik van die beslissing van die Nasionale Kommissaris in kennis gestel word.

15. Verkryging van die teenwoordiging van 'n *werkneemers* by 'n dissiplinêre verhoor

- (1) (a) 'n *Werkneemers* op wie 'n kennisgewing ooreenkomstig regulasie 8(4) beteken is, moet die dissiplinêre verhoor op die plek, datum en tyd in sodanige kennisgewing vermeld, bywoon en word geag aan diens te wees.

- (b) Die *werknemer* kan te eniger tyd na ontvangs van die kennisgewing, maar nie later nie as 2 (twee) werksdae voor die datum van sodanige verhoor, met die betrokke *werkgewersverteenwoordiger* skakel met die doel om sodanige verhoor tot 'n ooreengekome datum, tyd en plek te herskeduleer: Met dien verstande dat die finale beslissing oor hierdie aangeleentheid uiteindelik by die *werkgewersverteenwoordiger* berus. So 'n versoek behoort nie onredelik geweiер te word nie.
- (c) Indien die verhoor geherskeduleer word, moet die *werkgewersverteenwoordiger* die *voorsitter* daarvan op of voor die datum vermeld in die kennisgewing, inlig 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 beoog in subregulasie (2), moet die *voorsitter* instem om die verhoor vir nie minder nie as 7 (sewe) kalenderdae uit te stel en die kennisgewing van die uitstel, uitgereik deur die *voorsitter*, moet op die *werknemer* beteken word.
- (b) Die kennisgewing van uitstel moet in die vorm wees soos wat deur die Nasionale Kommissaris bepaal word.
- (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) moet die *voorsitter* die dissiplinêre verhoor onbepaald uitstel, en die dissiplinêre verhoor sal slegs hervat op versoek van die betrokke *werknemer*, na skakeling met die *werkgewersverteenwoordiger* 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*, ingevolge

hierdie regulasie, sal onverwyld geag word uit die Diens ontslaan te wees.

- (b) Indien 'n verhoor ooreenkomsdig 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.
- (d) Ondanks die bepalings van paragrawe (a) en (b), kan die *voorsitter* te eniger tyd, op goeie gronde, 'n skorsing in subregulasie (5)(a)(i) bedoel, ter syde stel.
- (e) 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.

16. Getuies by dissiplinêre verhore

- (1) (a) Vir doeleindes van 'n dissiplinêre verhoor, kan die *voorsitter* in die formaat bepaal deur die Nasionale Kommissaris, op die versoek van die *werkgewer-* of *werknemersverteenvoerdiger*, enige persoon wie se verklaring as getuenis verskyn, 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) Die *voorsitter* kan uit sy of haar eie, enige getuie terugroep om kwessies op te helder oor getuenis wat geleei is.
- (c) Sodanige dagvaarding kan aan enige persoon deur 'n *werknemer* ooreenkomsdig subregulasie (9) beteken word.
- (2) Die *voorsitter* moet die eed of bevestiging aan 'n getuie afneem en kan van sodanige getuie vereis om vroe te antwoord of enige relevante boek, dokument, voorwerp of artikel onder sy of haar beheer, voor te lê.
- (3) Die *werkgewersverteenvoerdiger* 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 gereghof voor te lê, sal op enige persoon wat ooreenkomsdig 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 meineed opgelê kan word.
- (6) 'n Persoon wat wederregtelik en opsetlik 'n ander persoon verhinder om 'n kennisgewing of dagvaarding wat ooreenkomsdig hierdie Regulasies uitgereik is, na te kom, of om te getuig of 'n boek, dokument, voorwerp of artikel voor te lê wat hy of sy ooreenkomsdig 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 6 (ses) maande oorskry nie.
- (7) 'n Getuie by 'n dissiplinêre verhoor wat —
- 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;
 - weier om die eed af te lê of 'n bevestiging te maak, soos deur subregulasie (2) vereis;
 - weier of versuim om alle vrae wat regtens aan hom of haar gestel is, te beantwoord; of
 - 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 gereghof, 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 van vyfhonderd Rand (R 500,00).
- (8) Enige boek, dokument, voorwerp of artikel wat in getuienis gegee of voorgelê is, moet binne 'n redelike tyd nadat die dissiplinêre verrigtinge afgehandel is, en op versoek, deur die voorsittende beampete of aan die persoon wat sodanige items gegee of voorgelê het, oorhandig word: 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) beoog, 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 werkplek aan 'n persoon wat blykbaar ouer is as 16 jaar en blykbaar daar woonagtig of werkzaam is.
- (b) 'n Relaas van betekening van 'n kennisgewing deur die werknaemer 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.

17. Gedragsertifikaat

- (1) 'n Gedragsertifikaat ten opsigte van elke *werknemer* sal bygehou word op die wyse en in die vorm soos bepaal deur die Nasionale Kommissaris.
- (2) Alle bevindinge, sanksies en dissiplinêre maatreëls wat weens *wangedrag* op 'n *werknemer* opgelê word, sal op sodanige gedragsertifikaat aangeteken word.
- (3) 'n Bevinding en besluit wat op die gedragsertifikaat van 'n *werknemer* aangeteken word, sal nie in ag geneem word as 'n vorige rekord vir doeleindeste van daaropvolgende dissiplinêre verrigtinge, indien geen bevinding of sanksies ten opsigte van soortgelyke of verbandhoudende *wangedrag* gedurende 'n tydperk van 6 (ses) maande aangeteken is nie.

18. Oorgangsbeplings

- (1) Enige dissiplinêre verrigtinge wat voor die inwerkingtreding van hierdie Regulasies kragtens die Suid-Afrikaanse Polisiediens Dissipline Regulasies, 2006, teen 'n *werknemer* ingestel was, moet mee gehandel en afgehandel word kragtens genoemde Regulasies asof hierdie Regulasies nie in werking getree het nie.
- (2) Enige *werkgewersverteenvoerdiger*, voorsitter of 'n dissipline-, vervolgings- of verhooroffisier of sy of haar gedelegeerde wat ingevolge die Suid-Afrikaanse Polisiediens Dissipline Regulasies, 2006 voor die inwerkingtreding van hierdie Regulasies aangestel is, sal voortgaan om as sodanig kragtens sodanige Regulasies op te tree, totdat al die werkzaamhede daarvolgens afgehandel is asof hierdie Regulasies nie aangekondig is nie.
- (3) Enige dissiplinêre verrigtinge teen 'n *werknemer* met betrekking tot 'n handeling of versuim wat gepleeg is voor die aankondiging van hierdie Regulasies, kan teen sodanige *werknemer* kragtens hierdie Regulasies ingestel word: Met dien verstande dat sodanige handeling of versuim *wangedrag* ingevolge hierdie Regulasies daar sou stel.
- (4) Die Nasionale Kommissaris kan, vir die doeleindeste waarna in subregulasie (1) verwys word, enige handeling verrig wat nodig mag wees vir die finalisering van sodanige dissiplinêre verrigtinge asof hierdie Regulasies nie aangekondig is nie.

19. Herroeping en kort titel

- (1) Die Suid-Afrikaanse Polisiediens Dissipline Regulasies, 2006, word hiermee herroep.
- (2) Hierdie Regulasies sal bekend staan as die Suid-Afrikaanse Polisiediens Dissipline Regulasies, 2016 en tree in werking op die datum van publikasie daarvan.

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