

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. 88 of 1995), made the regulations in the Schedule.



NPT MHLEKO
Minister for Police

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 (SSSBC);
- (j) "SSSBC" 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 \pm 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
 - (ij) 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.

5. 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. Expeditious 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 expeditious 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.