

SOUTH AFRICAN BASS ANGLING ASSOCIATION

BYLAW D TO THE CONSTITUTION



**PROCEDURE FOR AVOIDANCE AND RESOLUTION OF DISPUTES AND
DISCIPLINARY CODES**

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PART A - BROAD FRAMEWORK

1. Definitions

- 1.1. Any expression in these rules that is defined in the Constitution of the South African Bass Angling Association (SABAA) as amended from time to time has the same meaning as assigned therein unless, inconsistent with or otherwise indicated by the context: The Chairperson has a discretion to decide on whether there is need for a pre- hearing, and form thereof, and if it is decided that the pre hearing is necessary then the secretary not later than 10 (ten) days prior to the hearing day before the hearing notify the parties of the date, time and place for a pre-hearing meeting.
- 1.2. The following must be dealt with at the pre-hearing meeting:
 - 1.2.1. each party must provide admissions on certain issues;
 - 1.2.2. confirm that the referring party has exhausted internal remedies;
 - 1.2.3. any agreement which may be reached regarding the presentation of proof by means of an affidavit;
 - 1.2.4. any Disputes regarding the duty to begin or the onus of proof;
 - 1.2.5. which documents or copies of documents will, without further proof, serve as evidence of what they purport to be;
 - 1.2.6. which extracts may be proved without proving the whole document or any other agreement regarding the proof of such documents; and
- 1.3. Settlement attempt by both parties.
- 1.4. The following words and phrases that are used in this Procedure shall have the meaning ascribed to them in below.
 - 1.4.1. "Articles" means the Articles of Association of SASCOG;
 - 1.4.2. "Chairperson" means the President of the SABAA or member of the Confederation acting as chairperson at a meeting of the Confederation where the President is absent or for any reason unable to perform his or her functions;
 - 1.4.3. "Constitution" means the Constitution, Memorandum, and Regulations of SABAA;
 - 1.4.4. "Commission" means the commission as established in terms of this document for resolution of Disputes and conduct of disciplinary procedures in terms of the Disciplinary Code;

- 1.4.5. "Disciplinary Code" means the code regulating the discipline of Members and individuals falling under the jurisdiction of SABAA as contained in Part C of this Dispute and Disciplinary Code Procedure;
- 1.4.6. "Dispute" means (i) any Disputes contemplated to be resolved by SABAA in terms of the Act or any other applicable legislation; and (ii) Disputes contemplated in terms of the SABAA's Constitution to be resolved through SABAA structures;
- 1.4.7. "Dispute and Disciplinary Code Procedures" means this document comprising of the procedures for Disputes prevention and resolution as contemplated in the Constitution for disciplinary code applicable to everybody falling under the jurisdiction of SASCOC;
- 1.4.8. "Dispute Prevention and Resolution Procedures" means the procedures as set out in Part B-Dispute Prevention and Resolution procedures
- 1.4.9. "the Board" means the Board of Directors of SASCOC as contemplated by Article 9 of SASCOC's Articles of Association;
- 1.4.10. "Member" means a Member as contemplated in SABAA's Constitution;
- 1.4.11. "Referring Party or Applicant" means any Member who lodges a complaint or Dispute with SABAA;
- 1.4.12. "Respondent" means a Member against whom a complaint or Dispute is lodged;
- 1.4.13. "Rules" means these rules as applicable to resolution of Disputes and Disciplinary Code and includes these definitions and any footnote to a rule;
- 1.4.14. "Rules and Regulations" means rules and regulations of SABAA ;
- 1.4.15. "the Act" means the National Sport and Recreation Act, 1997 (Act No.18 of 1997), as amended from time to time and includes any regulation made in terms the Act .
- 1.4.16. "Commission" refers to a committee which are compiled for the completion of a Disputes resolution of a disciplinary committee for the completion of a disciplinary hearing of a member or a party.
- 1.5. Where a single gender is used in this document it shall be construed as to include both genders. Words used in the singular shall include the word in plural form .
- 1.6. These Rules shall, wherever possible, be construed in conformity with the Constitution; and
- 1.7. The headings to and any footnotes in these Rules shall be taken into account in the interpretation of these Rules.

1.8. All terms as defined in the Act, SABAA's Constitution shall when used in these Dispute and Disciplinary Procedure shall have the same meaning as ascribed to them in such documents.

2. **Object of the Dispute and Disciplinary Procedures**

2.1. Section 13 of the National Sport Amendment Act 18 of 2007 ("the Act") provides amongst others that: -

- (a) "Every sport or recreation body must in accordance with its internal procedure and remedies provided for in its Constitution, resolve any Disputes arising among its members or with its governing body."¹
- (b) The sport or recreation body must notify the Minister in writing of any Disputes contemplated in paragraph (a) as soon as it becomes aware of such Disputes.
- (c) Where the Disputes cannot be resolved in terms of subsection (1), any member of the sport or recreation body in question who feels aggrieved, or the sport or recreation body itself, may submit the Disputes to the Sport C o n f e d e r a t i o n .

2.2. The clauses of SABAA's articles of association provides that "every, body or individual falling under the jurisdiction of SABAA shall ensure that any Disputes it has with a body falling under the jurisdiction of SABAA is resolved in accordance with the Disputes prevention and resolution procedures set out in the C o n s t i t u t i o n ."²

2.3. In light of the aforesaid a Dispute and Disciplinary Code Procedure is hereby established, with the object of implementing a Disputes resolution and disciplinary code procedure for adjudication, determination and decision on any Disputes or disciplinary matters where it is empowered to do so in terms of the SABAA's Constitution.

3. **Establishment of the Dispute and Disciplinary Code Procedure**

3.1. The Dispute and Disciplinary Code Procedures are hereby established, and provide for;

3.1.1. the Broad framework applicable in respect of the Dispute and Disciplinary Code Procedure;

- 3.1.1.1. the recognition of the Legal and Arbitration Commission (Disciplinary Committee),
- 3.1.1.2. the establishment, structure, functions and its role in respect of the Commission in respect of the Dispute Prevention and Resolution of these p r o c e d u r e s
- 3.1.1.3. the rules and procedure in respect of the proceedings relating to Dispute Prevention and Resolution procedures; and

¹ For purposes of this document, Section (13)1 is interpreted to be governing disputes between (i) members of a sport and recreation body and (ii) a sport and recreation body and its mother body. In the context of SASCOC it will be dealing with disputes between (i) two National Confederations or other members of a National Confederation (iii) disputes between members of a National Confederation and such National Federation. SASCOC is enjoined by Legislation to provide a procedure in accordance with SASCOC Constitution to resolve such disputes.

- 3.1.1.4. the procedure for the conduct of disciplinary matters in terms of the disciplinary matters.

4. **Structure of the Procedures**

- 4.1. The procedure is made up of the following parts:

PART B: ESTABLISHMENT AND STRUCTURE OF THE COMMISSION

PART C: RULES FOR THE CONDUCT OF PROCEEDINGS IN RESPECT OF DISPUTES

PART D: DISCIPLINARY CODE

PART E: PROTOCOL FOR DISPUTE RESOLUTION

PART F: PRESCRIBED FORMS

PART B - ESTABLISHMENT AND STRUCTURE OF THE COMMISSION

1. **Purpose of Part B- Establishment and Structure of the Commission**

The purpose of this Part of the procedure is to establish the Commission and to set out its role and powers in relation to the resolution of Disputes and disciplinary procedures.

2. **Establishment and Status of the Commission**

2.1. The Commission is hereby established pursuant to the Act, and SABAA's Constitution to adjudicate all Disputes and implement the disciplinary code and to amongst others;

2.1.1. take decisions as to such Disputes or disciplinary measures as shall be appropriate in the circumstances, which are not decisions provided to be taken by the SABAA Board in terms of the Constitution.³

2.1.2. make recommendations to the SABAA Board regarding the suspension, fine or termination of membership of any individual as contemplated in clauses of the SABAA Constitution in respect of disciplinary matters;

2.2. The Commission shall be empowered to determine its own rules, procedures and, make any decisions concerning their rules and procedures, to the extent that such rules and procedures are not already contained in these Dispute and Disciplinary Code Procedures.

2.3. The proceedings of the Commission shall not be open to the public, unless Commission orders otherwise.

2.4. The Commission will observe the rules of natural justice but will have discretion regarding admissibility of evidence notwithstanding an enactment or rule of law to the contrary, relating to the admissibility of evidence in proceedings before a court of law where such admission would be appropriate and not unduly unfair or prejudicial to one or more parties to the Disputes or disciplinary proceedings.

2.5. The Commission has authority, inherent powers and standing, in relation to the matters under its jurisdiction.

2.6. The rules and procedures regulating the functioning of the Commission shall be as set forth in the Disputes and disciplinary Code.

3. Jurisdiction and Powers of the Commission

3.1. The Commission shall have jurisdiction:

3.1.1. over a Member(s) and individual athlete(s), officials, coaches and technical staff in the Republic and abroad wherever they may be at any time engaging in activities under the jurisdiction of SABAA;

3.1.2. in respect of Disputes or alleged Disputes in the Republic and abroad;

³ Note in terms of clause 9.3.1.5 of the SABAA's Constitution the decision to suspend, fine and terminate membership of any individual or member lies with SABAA.

3.1.3. in respect of any Disputes or complaint referred to it by the Board;

3.1.4. over any complaint or allegations, in respect of members and individuals over whom SABAA has jurisdiction not otherwise expressly provided for in the Constitution or these rules and includes, a breach of, the Constitution, rules, regulations of SABAA, directives, code of conduct, an order or instruction of SABAA, statutes or regulations;

3.1.5. to condone the late delivery of any documents or referral of a Disputes or non-compliance by a member with the procedures set out in the Dispute Prevention and Resolution Procedure and make any appropriate order.

3.2. A party referring a Disputes or complaint to SABAA must have exhausted all available internal remedies, as provided for in the constitution or regulations of the Member applicable to such a party, as may be applicable to such a Disputes or complaint

3.3. Where such internal remedies of a Member applicable to a party have not been made, available or are not accessible to, such a party the SABAA will have discretion to allow or refuse to hear the Disputes.

3.4. The Commission shall not have jurisdiction in respect of: -

3.4.1. matters in respect of which the referring party or Applicant has not complied with 3.2, in exhausting internal remedies.

3.4.2. the Disputes or complaint that has been heard decided or ruled upon by the Commission.

4. Composition of the Commission

4.1. The Commission shall be convened by the SABAA Action Committee of Sub Committee from time to time to deal with Disputes, complaints or allegations or disciplinary matters referred for resolution by SABAA and shall consist of: -

4.1.1. the Chairperson as appointed by SABAA's Action Committee or another Member of the Sub Committee appointed to chair the proceedings;

4.1.2. one or more Member(s) of SABAA management or Sub Committee shall be designated by the Chairperson;

4.1.3. an independent external person if such person(s) participation is deemed necessary by the Action Committee, to assist with the adjudication of a Dispute; and/or

4.1.4. the Secretary appointed by Action Committee of Sub Committee shall provide secretarial services to the Commission.

5. Quorum

5.1. In order to constitute a Commission for a hearing or consideration of a Disputes at least (3) three members must be present. However, in the event that the hearing commences with (3) three members and one (1) Member does not seat through the proceedings to their completion, the decision of the remaining (2) two Members shall not be nullified.

5.2. In circumstances: -

5.2.1. involving resolution of a Disputes in relation to a sporting event taking place outside South Africa and which needs to be resolved during the course of such event; or

5.2.2. other exceptional circumstances as determined by the decision of the Commission,

one Member of the Commission may, initiate and/or constitute a quorum for purposes hearing of such a Dispute.

6. Passing the decisions

6.1. Decisions are passed either by consensus or a simple majority of the members of the Commission present.

6.2. Decision passed by consensus of all members and signed by all the members shall constitute a decision for purposes of 6.1 above even when it is not passed in a meeting.

6.3. Decisions passed by votes must be in a meeting of the Commission.

6.4. Every member of the Commission present shall be entitled to v o t e .

6.5. All hearings of the Commission will be presided over by a Chairperson, in the absence of the Chairperson, one of the members appointed by the Chairperson to represent him or she shall act as Chairperson.

6.6. The Commission may appoint any independent person, with specific specialty, to sit in a hearing if that person may assist the process although that person cannot vote.

6.7. The Commission will apply the Constitution of the Republic of South Africa, Constitution of SABAA, Rules and Regulations of SABAA and the peremptory prescripts of SABAA.

6.8. The Commission may adopt its own procedure (without deviating from Dispute Prevention and Resolution Rules) with the minimum of legal formalities but complying with the principles of natural justice.

6.9. The Commission must conduct its proceedings in a fair manner and efficiently with the minimum formalities in compliance with the rules of natural justice.

7. Conflict of Interest

7.1. Members of the Commission must decline to participate in any hearing where their participation will result in conflict of interest or will raise serious doubts regarding their impartiality. This applies in the following cases (among others) where: -

7.1.1. the member(s) in question has a direct interest in the outcome of the matter;

7.1.2. if he/she is associated with any of the parties;

7.1.3. if he/she is the member of the party in respect of whom a Dispute arose; and

7.1.4. if he/she has already dealt with the case under different circumstances.

- 7.2. Members who decline to participate in a hearing on any of the above grounds or any other ground not listed herein shall notify the Chairman immediately.
- 7.3. Member(s) of the Commission or parties involved in a Dispute may also raise an objection to a member of the Commission that they believe to be biased or whose participation will result in conflict of interest or will raise serious doubts regarding their impartiality.
- 7.4. The Chairman shall decide on any such claim of bias, provided that, if the objection is raised against the Chairman, the SABAA Action Committee or Sub Committee shall decide on the bias.
- 7.5. Proceedings that have involved someone whom the Chairman has ordered not to participate will be considered null and void.

8. Confidentiality

- 8.1. The members of the Commission shall ensure that everything disclosed to them during the course of their duty remains confidential (facts of the case, contents of the deliberations and decisions taken).
- 8.2. Only the contents of those decisions already notified to the addressees may be made public.

9. Powers of the Commission

- 9.1. Upon hearing of a Dispute or implementing the Disciplinary Code the Commission shall have the powers to -
 - 9.1.1. warn or reprimand a party; and/or
 - 9.1.2. recommend a suspension of a Member; and/or
 - 9.1.3. recommend a fine to be imposed in respect of a Member; and/or
 - 9.1.4. recommend termination of membership of any individual affiliated through their respective Province or member;
 - 9.1.5. dismiss a complaint or Disputes if it is vexatious, frivolous or does not set out a prima facie case or for any grounds as shall be appropriate in law; and/or
 - 9.1.6. make any appropriate order including an order that a party pay the costs of the other party.

10. Supplementary Powers of the Commission

For purposes of determining or deciding, or resolving a Dispute the Commission may also:

- 10.1. consult or seek further information evidence and/or expert evidence regarding the Disputes from the complainant or any person or body, including the Respondent;
- 10.2. seek legal or other advice or assistance from any person or body;
- 10.3. order any Member to produce documents or information as may be relevant to the Dispute; and/or
- 10.4. order any Member to appear in person in respect of a Dispute where such an individual's evidence may be relevant to the Dispute.

11. Issuing a subpoena

The Commission may at any stage subpoena any person or body bound by the Constitution or the constitution of that member and these rules to appear before the Commission to, give evidence or produce any book, paper or document in the hearing.

12. **Form and Content of the Decision**

The decision or award of the Commission shall contain:

- 12.1. the composition of the Commission;
- 12.2. the names of the parties;
- 12.3. a summary of the facts;
- 12.4. the legal reasons for the decision;
- 12.5. the terms of the decision; and
- 12.6. be signed by the chairperson and secretary.

13. **Recordings of the Proceedings of the Commission**

13.1. The Secretary must keep a record of—

13.1.1. any evidence given in the hearing;

13.1.2. any sworn testimony given in any proceedings before the Commission;

13.1.3. any award or ruling made by a Commission.

13.1.4. any descending judgement(s) which are not part of the award.

13.2. The record may be kept by legible hand-written notes or by means of an electronic recording.

13.3. Any party may request a copy of the transcript of a record or a portion of a record, on payment of the reasonable costs of the transcription.

13.4. After the person who makes the transcript of the record has certified that it is correct, the record must be returned to the Secretary.

13.5. The transcript of a record certified as correct in terms of .13.4 above it is presumed to be correct, unless the Chairperson decides otherwise.

PART C – RULES FOR THE CONDUCT OF PROCEEDINGS IN RESPECT OF DISPUTES

1. Purpose of Part C- Rules for Conduct of Proceedings in Respect of Disputes.
Purpose of this Part C – Dispute Prevention and Resolution Procedure, is to provide a procedure to prevent and/or resolve any Dispute involving a Member or individual falling under the jurisdiction of SABAA, as contemplated in the Constitution.
2. Establishment of the Dispute Prevention and Resolution Procedures. These Dispute Prevention and Resolution Procedures are established to apply as the Disputes resolution procedures contemplated in the Constitution and shall apply in respect to a Dispute, complaint or allegation(s) lodged by a Member or individual over whom SABAA has jurisdiction.
3. Commission (Disciplinary Committee).
 - 3.1. The procedures recognises the existence of the Commission as established by SABAA Action Committee or Sub Committee with the mandate to –
 - 3.1.1. advise and provide recommendations on the formulation of policy documents;
 - 3.1.2. consider and advise on legislation and other regulatory matters which may be of relevance to SABAA;
 - 3.1.3. consider, advise and make recommendation with respect to legal issues brought to it by the Chairmen of SABAA or Convener Sub Committee;
 - 3.1.4. advise on Governance matters pertaining to S A B A A ;
 - 3.1.5. consider matters for arbitration, Disputes resolution and disciplinary procedures;
 - 3.1.6. make recommendations for the appointment of panels(s) for the purpose of conducting arbitration proceedings; and
 - 3.1.7. advise on matters to be referred for arbitration or litigation.
 - 3.2. Pursuant to its mandate the SABAA Action Committee or Sub Committee shall, carry out the primary responsibilities of avoidance of Disputes and assist with implementation of the Disciplinary Code, which it shall carry out, inter alia, as follows-
 - 3.2.1. considering and recommending measures that can be adopted by SABAA to avoid Disputes;
 - 3.2.2. introduce policy documents that can avoid Disputes;
 - 3.2.3. propose policies, procedure including amendments to these Disputes Prevention and Resolution Procedure, for purposes of dealing with Disputes prevention and resolution;
 - 3.2.4. consider Disputes, complaints or allegations as referred to SABAA Action Committee and Sub Committee as the first point of reference and determine whether-

- 3.2.4.1. there are possible measures of resolution of such Disputes without the need for Arbitration, including dialogue between the parties to a Dispute.
 - 3.2.4.2. consider and recommend where appropriate mediation of Disputes as a possible step for resolving the Disputes; and
 - 3.2.4.3. consider and recommend possible mediators; and
 - 3.2.4.4. decide on dismissal of a Dispute referred by a Member, upon initial consideration on the basis of that is frivolous or vexatious or does not set out a prima facie case ;
 - 3.2.4.5. such Disputes should be referred to the Commission and the establishment of the Commission for purposes of adjudicating Disputes or disciplinary procedures.
- 3.2.5. exercise functions relating to convening and composition of the Commission from time to time as contemplated in these Dispute Prevention and Disciplinary Code Procedures, for purposes of avoidance and/or resolution of Disputes and/or implementation of the Disciplinary Code.

4. Establishment of the Commission (Disciplinary Committee)

- 4.1. Establishment and Structure of the Commission, establishes the Commission with the jurisdiction and powers to consider and make decisions in respect of Disputes referred to it by SABAA Action Committee and Sub Committee.
- 4.2. The Commission is established to give effect to the prescripts of the Act, SABAA Constitution with the jurisdictional powers as set out in PART B.

5. Referral of Disputes, serving and Filing Documents

- 5.1. All Disputes shall be referred of a Member or individual over whom SABAA has jurisdiction to the office of the secretary of SABAA, with a request that such Dispute be handled in terms of this Dispute Resolution and Disciplinary Code Procedure .
- 5.2. A Member or individual referring a Dispute to SABAA, shall not do so without first having exhausted all available internal remedies, as provided for in the constitution or regulations of Member applicable to, such a party as may be applicable to such a Dispute or complaint, unless such a Member or individual can demonstrate as part of its referral that the relevant internal remedies, have not been made available or are not accessible to, such a party the Commission will have a discretion to allow or refuse to hear the Dispute.
- 5.3. The referral of Dispute by a Member or individual referring a Dispute, shall be in a prescribed format and send by electronic mail, telefax or registered mail, provided that it shall be the responsibility of the referring party to make telephonic enquiries with SABAA and ascertain that such has been received by SABAA.
- 5.4. The referring party must set out in detail, the full facts on which the complaint or Disputes is based and refer to the alleged clause(s) which have allegedly been contravened or provide a full set of transcripts of Disputes or disciplinary procedures which was completed by the referring Member.
- 5.5. No Disputes shall be considered by the Action Committee or Sub Committee unless it is lodged in the prescribed format and accompanied by the relevant documents.
- 5.6. The addresses, telephone and telefax numbers of the office of the Secretary of SABAA are as follows: -

Physical address:

Postal address:

Telephone:

Fax:

E-Mail:

- 5.7. The Secretary shall upon receipt of the referral of a Dispute arrange for the Action Committee to stipulate the procedure to be followed by the party referring the Dispute and any other party affected by the Dispute, for purposes of getting the Dispute ready for hearing or adjudication of the Commission.

6. Calculation of Time Periods

For the purpose of calculating any period of time: -

- 6.1. a day means a business day; and
- 6.2. the first day is excluded and the last day is included, if the last day of any period falls on a Saturday, Sunday, Public Holiday or on a day during the next working day.

7. Hearing of Disputes or disciplinary procedures

- 7.1. Dispute referred by SABAA to the Commission will be heard within a reasonable time, subject to compliance with the requirements of these procedures or directives issued by the Action Committee or Sub Committee, with regard to Dispute(s) resolution process.
- 7.2. The Chairperson of the Commission in consultation with the members of the Commission shall determine the procedure to be followed in the hearing of any Dispute(s) to the extent not already provided for in the Dispute Prevention and Resolution Procedure.
- 7.3. The secretary of the Commission shall after consultation with Chairperson shall notify the parties of the date, time and place of the hearing.
- 7.4. A registered post that has been sent to a party's last-known domicile address or the address of that party's last-known representative or an email with a send & receive notification will be deemed to be sufficient notice of the date, time and place of the hearing for the purposes of this rule.

8. Postponement of a Hearing or disciplinary procedures

- 8.1. A scheduled hearing may be postponed by: –

- 8.1.1. the Chairperson of the commission in consultation with the parties; or
- 8.1.2. application from a party who has given notice to the Commission at least 6 (six) days prior to the hearing on notice to the other parties.
- 8.2. The Chairperson must postpone a hearing without the parties appearing if: –
 - 8.2.1. all the parties to the Disputes agree in writing to the postponement; and
 - 8.2.2. the written agreement for the postponement is received by the Secretary at least 6 (six) working days prior to the scheduled date of the hearing.
- 8.3. A party that does not agree to a postponement as contemplated in clause 8.1.2 may make written representations to the Chairperson at least 4(four) days before the scheduled date of the hearing with a full motivation.
 - 8.3.1. After due consideration of any written representations received, Chairperson must decide whether or not to grant a request for postponement and convey his decision in writing to the Commission and all parties to the Disputes.
 - 8.3.2. In the event that the Chairperson decides to grant the postponement as requested, the notice of postponement must be delivered to the Parties at least 2 (two) days before the date on which the Hearing was scheduled.
 - 8.3.3. The Notice of postponement must be in a prescribed format.⁴
 - 8.3.4. If a party, bringing an application for a postponement to a Disputes fails to comply with the time periods referred to in 8.1.2 above the hearing must take place on the scheduled date, unless the Chairperson on good cause shown grants a postponement and conveys his decision in writing to the Commission and all parties to the Disputes.

9. **Representation Before the Commission**

In any proceedings before the Commission, a party to the proceedings may at its own costs: -

- 9.1. appear in person; or
- 9.2. be represented by a legal practitioner; or
- 9.3. a chairperson or players' representative of the party's Province or any member, office-bearer or official of that party's Province may accompany the party/person.
- 9.4. an "alleged offender" may be represented by any person of his choice or a legal practitioner at his or her own cost.

⁴DPRC FORM 6: PART D

10. Signing of Documents

- 10.1. Any document that a party must sign in terms of these rules may be signed by the party or by a person entitled, in terms these rules, to represent that party in the proceedings.
- 10.2. If proceedings are jointly instituted or opposed by more than one person or Member(s) documents must be signed by an individual who is mandated by the Member or individual concerned, to sign documents. A name list in writing of the Members or individuals who have mandated the member to sign on their behalf must be attached to the Dispute Referral Form.

11. Preliminary Inquiry

- 11.1. The Commission may decide on whether a Dispute has been properly referred and to be dealt with in terms of these procedures, if the Commission decides that a Dispute has not been properly referred, it may decide not to hear such a Dispute or disciplinary procedure or give direction as to how such a Disputes should be dealt with .
- 11.2. The Commission may, decide, after considering the Dispute, whether to dismiss the Dispute if it is found to be frivolous or vexatious or does not set out a prima facie case .
- 11.3. The Commission may, in order to decide whether or not to dismiss the Dispute call for further information or affidavits from the referring party; and should the referring party fail to furnish such information, the Commission may dismiss the Dispute.
- 11.4. If the Dispute is dismissed the Secretary of SABAA and the referring party must within 10 (ten) days after the dismissal of the Dispute inform of the referring party of such a dismissal and the reasons for it .
- 11.5. The Chairperson may contact the parties by telephone or other electronic means, prior to the commencement of the hearing, in order to seek to resolve the Disputes.

12. Pre-hearing Meeting

- 12.1. The Chairperson has a discretion to decide on whether there is need for a pre- hearing, and form thereof, and if it is decided that the pre-hearing is necessary then the secretary not later than 10 (ten) prior to the hearing days before the hearing notify the parties of the date, time and place for a pre-hearing meeting.
- 12.2. The following must be dealt with at the pre-hearing meeting:
- 12.2.1. each party must provide admissions on certain issues;
- 12.2.2. confirm that the referring party has exhausted internal remedies;
- 12.2.3. any agreement which may be reached regarding the presentation of proof by means of an affidavit;
- 12.2.4. any Disputes regarding the duty to begin or the onus of proof ;
- 12.2.5. which documents or copies of documents will, without further proof, serve as evidence of what they purport to be;

12.2.6. which extracts may be proved without proving the whole document or any other agreement regarding the proof of such documents; and settlement attempt by both parties

13. **Minutes of the Pre-hearing Meeting**

13.1. after the pre-hearing meeting, has been held the minutes or the written record of the meeting must be prepared and signed by or on behalf of every party;

13.2. the minutes must contain the date, place and duration of the conference and the names of the parties present.

13.3. the minutes of the pre-trial meeting must be filed by the Secretary .

14. **Hearing of a Disputes**

14.1. Subject to clause 12.2 above if the Dispute is not dismissed, the Chairperson must within a reasonable time after the pre-hearing, notify the Parties of the date of hearing.

14.2. The Secretary must send a notice of set down of hearing to the Parties.

14.3. The hearing must be set down in accordance with PART B –Conduct of Proceedings before the Commission.

15. **Failure of a Party to attend Hearing of the Commission**

15.1. If either party fails to attend at any proceedings before the Commission, the Commission may dismiss the matter by issuing a ruling.

15.2. If either party fails to attend or be represented at any proceedings before the Commission, the Commission may-:

15.2.1. continue with the proceedings in the absence of the such a party; or

15.2.2. adjourn the proceedings to a later date.

15.3. the Commission must be satisfied that the party had been properly notified of the date, time and venue of the proceedings, before making any decision in terms of sub rule 20.2. If a matter is dismissed, the Secretary must send a copy of the ruling to all the Parties.

16. **Issuing a subpoena**

16.1. The Commission may at any stage subpoena any person or body bound by the Constitution of SABAA and/or these rules, to give evidence or produce any book, paper or document in the hearing.

16.2. The Commission may also issue a subpoena at the request of either party, where such request is made in terms of these rules. The requesting party must send a subpoena in a prescribed format⁵ together with a written motivation setting out why the evidence of the person to be subpoenaed is necessary.

⁵DPRC FORM 4: PART E.

16.3. A request for a subpoena must be send to the Secretary of SABAA at least (14) fourteen days before the hearing, or as directed by the Commission.

17. Refusal to issue a Subpoena

17.1. The Commission may refuse to issue a subpoena if–

17.1.1. the requesting party does not establish why the evidence of the person is necessary;

17.1.2. the party subpoenaed does not have a reasonable period in which to comply with the subpoena;

17.1.3. the subpoena is not issued in accordance as prescribed format; or

17.1.4. The Chairperson of the Commission is not satisfied that the party has made arrangements to pay the reasonable witness fees and the reasonable travel costs of the person subpoenaed.

18. Service of a Subpoena

18.1. A subpoena must be served on the witness (es) subpoenaed by the Secretary or by any person so, directed by the Secretary or the Commission at least (14) fourteen days before the date of the hearing.

18.2. The subpoena must be served by sending a registered mail, telefax at the witness domicile address or email with a send & receive setting.

19. Conduct of Witness(es)

19.1. A witness subpoenaed to attend a hearing of the Commission, who fails to attend or to remain in attendance at such hearing until excused by the Commission, shall be guilty of Misconduct.

19.2. If any witness, after being subpoenaed, present at the hearing is required to give evidence at such hearing and refuse to answer any question(s) put to him or her, or refuses or fails to produce any book, paper or document required to be produced by him or her, the Commission may in summary manner enquire into such refusal or failure, and unless the person refusing or failing has a just excuse for the refusal or failure, shall impose a fine not exceeding R 5 000,00 (five thousand rand) over and above any sentence it deems appropriate in accordance with the Constitution and these rules.

19.3. No party other than the Referring party, its representative, the Respondent or called as a witness to appear before the Commission shall be entitled to attend a hearing, except with the permission of the Commission.

20. Appliance with penalties imposed by the Commission

Any penalties, orders or awards imposed by the Commission or the Secretary of the Commission shall become effective (30) thirty days when the internal remedies available to a party (ies) so sentenced have been exhausted, or when the prescribed time limit to exercise the next available internal remedy has lapsed.

21. Communicating the outcome of the Disputes

Decisions, rulings or awards may be communicated to the parties by registered mail or an email with send & receive settings and shall be legally binding.

22. Appeal

The member may appeal a finding of a Disciplinary Committee. The decision of the Mancom or Appeal's Authority who will consider the appeal, is final and binding. This means thus that there is no right to appeal the ruling of the Mancom of Appeal Authority. The guidelines and procedure of the appeal process is contained in PART F of this policy.

PART D – DISCIPLINARY CODE

1. Purpose of Part D – Disciplinary Code

The Disciplinary Code is established to regulate the exercise of disciplinary proceedings by SABAA against a Member or individual falling under the jurisdiction of SABAA.

2. Notice of a Disciplinary Hearing

In cases where: -

2.1. charges are preferred by SABAA against a Member and such a party has been charged with any offence within the jurisdiction of the Commission: -

2.1.1. SABAA shall deliver to such a party a Notice of disciplinary hearing in the prescribed format 15 (fifteen) days before the date of hearing.

2.1.2. The Commission may, in certain circumstances, suspend or extend the delivery of a Notice of disciplinary hearing for a reasonable time.

2.1.3. The Notice of disciplinary hearing shall be signed by SABAA Action Committee.

2.1.4. The Notice of disciplinary hearing shall be in a prescribed format.

3. The Charge Sheet

Where charges are brought by SABAA against a Member, they shall be initiated by the notice of a disciplinary hearing and formulated by way of a charge sheet which shall: -

3.1. contain a concise summary of the facts;

3.2. set out concisely the charge(s) preferred against such a party; and

3.3. set out a possible sanction that may be imposed flowing from such charge(s).

4. Sanctions of the Commission

4.1. When a charge is proved to the satisfaction of the Commission the following sanctions may be imposed:

4.1.1 warn or reprimand; and/or

4.1.2 recommend a suspension of a Member; and/or

4.1.3 recommend a fine to be imposed in respect of a Member; and/or

4.1.4 recommend termination of membership of any individual affiliated through their respective Province or Member;

4.1.5 dismiss a complaint or Disputes if it is vexatious, frivolous or does not set out a prima facie case or for any grounds as shall be appropriate in law; and/or

4.1.6 make any appropriate order.

5. Procedure before the Commission

5.1. The ordinary procedure as outlined hereunder shall be applicable in cases where the Commission institutes a charge(s), against a Member, wherever they may be at any time engaging in activities under the jurisdiction of SABAA, relating to the following:

5.1.1. the alleged infringement of the Constitution, the rules, Regulations, directives, or resolution of SABAA;

5.1.2. any act of misconduct;

5.1.3. improper practices;

5.1.4. misdemeanor;

5.1.5. acts of defiance; and/or

5.1.6. generally bringing SABAA into disrepute.

5.2. The onus of proving the charge shall lie with SABAA, which must prove the charge on a preponderance of probabilities.

5.3. The SABAA Action Committee shall, subject to this Rules have the power to delegate to a commission by electing one or more of its member(s) to initiate and/or conduct disciplinary proceedings against a Member.

5.4. Appoint a pro-forma prosecutor and/or nominee to represent SABAA in the disciplinary hearing before the Commission.

5.5. All the parties to the disciplinary proceedings shall be notified by Secretary of the date, time and place of the hearing.

5.6. The charge sheet shall be dispatched within reasonable (at the discretion of the Chairperson before the date of the hearing and shall be on the prescribed format.

5.7. No party other than a party summoned or called as a witness to appear before the disciplinary Commission shall be entitled to attend a hearing except with permission of the Commission.

6. The pro-forma prosecutor conducting the prosecution may:

6.1. Before the accused pleads guilty to a charge, withdraw the charge, in which event the accused shall not be entitled to a verdict of acquittal in respect of that charge; and

6.2. At any time before or after an accused has pleaded to a charge, but before conviction, stop the prosecution in respect of that charge, in which event the Commission will acquit the accused in respect of that charge(s).

6.3. The pro-forma prosecutor conducting a prosecution shall:

- 6.3.1. read out the charge sheet addressed to the accused and the accused will then be asked by the Chairman of the Commission to plead "guilty" or "not guilty" to the charges;
- 6.3.2. a plea by the accused that he has already been convicted or acquitted of the offence with which he is being charged may be pleaded together with a plea of "not guilty";
- 6.4. Where the accused pleads guilty to the charges:
 - the Commission shall, if satisfied that the accused is guilty of the offence to which he has pleaded "guilty", convict the accused on the accused's plea of "guilty". Nothing in this rule will prevent the pro-forma prosecutor from presenting evidence on any aspect of the charge, for the purposes of determining an appropriate sentence.
- 6.5. Where the accused pleads not guilty the following procedures will be followed by the commission:
 - 6.5.1. where the accused pleads "not guilty" the Commission may, in its discretion, enquire from the accused whether he wishes to make a statement indicating the basis of his defense;
 - 6.5.2. where the accused elects not to make a statement, or does so, and it is not clear from the statement to what extent the accused denies or admits the issues raised by his plea, the Commission may question the accused in order to establish which allegations in the charge are in Disputes. The Commission may in its discretion, put any question to the accused to clarify any matter raised under this provision, and will enquire from the accused whether an allegation which is not placed in issue by the plea of "not guilty" may be recorded as an admission by the accused of the allegation, and if the accused so consents, such admission will be recorded and will be sufficient proof of such fact.
 - 6.5.3. The accused may then call witness(es) to each of whom questions may be put by the accused, in which event they may be cross examined by the accused, the pro-forma prosecutor and the Commission.
 - 6.5.4. At any time, the Chairperson and through him, members of the Commission may question witnesses giving evidence on behalf of SABAA.
 - 6.5.5. The pro forma prosecutor may then call other witnesses in support of the charge/s.
 - 6.5.6. The accused will have the right to ask questions of such other witnesses. Such other witnesses may also be questioned by the pro forma prosecutor and members of the Commission.
 - 6.5.7. At the conclusion of such evidence, the prosecution's case will be closed.
 - 6.5.8. The Accused shall have the right to apply for a discharge on the basis that no prima facie case has been made out by the pro-forma prosecutor.
 - 6.5.9. The accused may then give evidence on his own behalf and in such event, he may be cross examined by the pro-forma prosecutor and the Commission.

- 6.5.10. At the conclusion of such evidence the accused's case will be closed.
- 6.5.11. The disciplinary Commission may if it thinks it is desirable, or on application by pro-forma prosecutor, or the accused, allow further evidence to be led by either the pro-forma prosecutor or the accused, or by both, after their cases are already closed.
- 6.5.12. "Hearsay" evidence as well television and video recordings may be allowed to be used by any party to the proceedings with permission of the Chairperson.
- 6.5.13. No evidence on any previous misconduct of the accused will be admitted, unless, it's an element of the current charge or relevant to it the accused will have put his character in issue.
- 6.5.14. After all evidence, has been led, the pro-forma prosecutor will be allowed to address the Commission on the evidence and the legal position, and this will be allowed irrespective of whether the accused has led evidence or not.
- 6.5.15. Thereafter, the accused will likewise be allowed to address the Commission. The pro-forma prosecutor may reply on any question, which the accused has raised in his address.
- 6.5.16. Upon the conclusion of the case, the Commission will deliberate thereon.
- 6.5.17. Once a decision has been reached the Chairman will notify the parties of the verdict.
- 6.5.18. If the accused is found "not guilty" the proceeding will be declared closed.
- 6.5.19. If the accused is found "guilty" or the accused has pleaded "guilty", the pro-forma prosecutor will be entitled to address the Commission regarding a suitable sentence to be imposed and the accused will be entitled to address the Commission in mitigation of sentence.
- 6.5.20. Thereupon, the Commission will deliberate upon the most suitable sentence to be imposed.
- 6.5.21. Once a decision has been reached, the parties will be recalled and the Chairperson will announce the sentence.
- 6.5.22. The chairmen will give the accused notice that he has the right to hand in an appeal to the findings within 21 (twenty-one) days in at the chairperson.

PART E – PRESCRIBED FORMS

DISPUTE REFERRAL [DPRC FORM 1]



1. Applicant/ Referring Party:

Name

Address

Tel _____ Fax _____

Cell _____ E-mail _____

Contact Person _____

Capacity _____

2. Details of other party

Name

Postal Address

Tel _____ Fax _____

Cell _____ Email _____

Contact Person _____

Capacity / Occupation _____

3. Nature of the Disputes

4. Summary of the facts of the Disputes you are referring:

5. Date Disputes arose

The Disputes arose on:

(Give the date, day, month and year)

The Disputes arose where:

(Give the city/ town in which the Disputes arose)

6. Details of the internal Disputes resolution procedures followed:

Have you followed and exhausted all internal grievance / disciplinary procedures before referring the Disputes to the Action Committee?

Describe the internal procedures followed and/or exhausted

Please attach the records or minutes of the internal procedures followed, i.e. the records of disciplinary hearing.

7. Results of Consultation

What outcome do you require?

Confirmation of above details

Signature of the Applicant

Signed at _____ on this _____
(place) (date)

APPLICATION FOR CONDONATION [DPRC FORM 2]



APPLICATION FOR CONDONATION/ NON-COMPLIANCE WITH THE RULES

(Applicant / Referring Party)

And

(Respondent)

I, the undersigned, _____

(full name of Applicant / Respondent)

Do hereby make oath and say:

1. BACKGROUND

1.1. The Disputes arose on _____ after all attempts to negotiate or follow other internal procedures the Disputes remains unresolved.

2. DEGREE OF LATENESS

2.1. The Applicant signed the referral form on _____

2.2. The referral is _____ days late.

3. REASONS FOR LATENESS

The reason/s why the Applicant referred the matter late is

4. PROSPECTS OF SUCCESS

Applicant believes that he/she has good cause because

5. PREJUDICE

As the Applicant, if condonation is not granted, I will be prejudiced because

6. GENERAL [ANY OTHER RELEVANT INFORMATION]

APPLICANT/REFERRING PARTY

Signed before me on _____ at _____ by the deponent who acknowledges that he/she knows and understands the contents of the affidavit, has no objection to taking the oath / affirmation and considers it binding upon his/her conscience.

COMMISSIONER OF OATHS: _____

NAME: _____

CAPACITY: _____

ADDRESS: _____

NOTICE OF SET DOWN OF HEARING [DPRC FORM – 3]



Matter No: _____

In the matter, between
The Referring Party/Applicant: _____

And
Respondent: _____

TAKE NOTICE THAT the hearing of the above matter has been set down for hearing on _____ at _____ or thereafter as soon as the Chairperson may order.

SIGNED at _____ on the _____ day of _____

Secretary (Commission)

(Name)

(Address)

TO: _____
Referring Party/Applicant

(Address)

AND TO: Respondent
(Address)

SUBPOENA [DPRC FORM 4]

SUBPOENA IN TERMS OF RULE 17



TO

(Name and address of person subpoenaed)

You are required to appear before the Dispute Prevention and Resolution Commission or Disciplinary Hearing for the SABAA at:

(Address)

on (date)_____ at (time)_____ and on any subsequent day to which the proceedings may be postponed.

You are subpoenaed in terms of Rule 17 of the Dispute Prevention and Resolution Commission for SABAA to:

(i.e. for questioning, to produce any book, document or object, to give evidence)

Concerning the matter between

(Name of Referring Party)

And

(Respondent)

Kindly note that in terms of Rule 20.1 the powers vested in SABAA pursuant to its Constitution, a witness subpoenaed to attend a hearing of the Commission or disciplinary committee, who fails to attend or to remain in attendance at such hearing until excused by the Commission, shall be guilty of misconduct. Further note that in terms of Rule 20.2 If any witness, after being subpoenaed, present at the hearing is required to give evidence at such hearing and refuse to answer any question(s) put to him or her, or refuses or fails to produce any book, paper or document required to be produced by him or her, the Commission may in summary manner enquire into such refusal or failure, and unless the person refusing or failing has a just excuse for the refusal or failure, shall impose a fine not exceeding R 5 000,00 [five

thousand rand] over and above any sentence it deems appropriate in accordance with the Constitution and these rules.

Signed by the Chairperson or Secretary of the Commission

NAME: _____

SIGNATURE: _____

DATE: _____

PLACE: _____

NB: If a person signed in another capacity, such capacity must be stated.



NOTICE OF POSTPONEMENT OF HEARING [DPRC VORM – 5]

Matter No: _____

In the matter, between

The Referring Party/Applicant

And

Respondent

TAKE NOTICE THAT that the hearing of the above matter has been postponed to be heard on _____ at _____ or thereafter as soon as the Commission may order.

SIGNED at _____ on the _____ day of _____

Secretary (Commission)
*(Name)
*(Address)

TO: Referring Party/Applicant
(Address)

AND TO: Respondent
(Address)



NOTICE OF DISCIPLINARY HEARING [DC FORM 1]

NOTICE OF DISCIPLINARY HEARING FOR CONTRAVENING OF THE DISCIPLINARY CODE

Date: _____
Time: _____

To: _____

You are hereby notified of a disciplinary enquiry that will be held on:

Date: _____
Time: _____
Venue: _____
Chairman: _____

ALLEGED OFFENCE/COMPLAINT

Please note that the following allegations have been preferred against you:

Date: _____
Time: _____
Place: _____
Details: _____

Your rights in terms of the disciplinary procedure are, inter alia, that:

- (a) You are entitled to be represented, at your cost. Your representative shall not, however, be a witness to the abovementioned alleged charge.
- (b) You and your representative will be given the opportunity to challenge evidence against you, by cross-examining the witnesses and examining any documents pertaining to the matter.
- (c) Kindly notify the chairperson at least 2 (two) days before the hearing as to who your representative is, so that the arrangements can be made for his/her attendance. Failure to notify the chairperson will be construed as a waiver of your right. No request for postponement will be entertained by your failure to notify the chairperson of your representative.
- (d) You or your representative will be entitled to put your case by presenting evidence yourself and by calling your own witnesses to testify at the hearing
- (e) Failure by yourself to attend the hearing, either in person, or through a representative, shall in no way invalidate the proceedings and the proceedings will commence in your absence. You are required to be present throughout the proceedings.
- (f) You and your representative will be given the opportunity to challenge the evidence brought against you at the enquiry. You will be allowed to cross-examine the witnesses of SABAA and any documents brought in evidence.
- (g) You are entitled to an interpreter at your cost.
- (h) You have the right to present evidence in mitigation.
- (i) The chairperson of the disciplinary enquiry shall within 7 (seven) days of the date on which the enquiry is completed, inform you of the Commission's findings.
- (j) The enquiry will be recorded.
- (k) Should you admit to the charge(s) before or during the disciplinary hearing, it shall be deemed that you are guilty of the charge(s).

- (l) Should a verdict of guilty be arrived at by the Commission, you will then be entitled to give evidence in mitigation of sentence, concerning your personal circumstances, length of service, previous disciplinary record. You are entitled to a reasonable opportunity to prepare your defense.

Yours faithfully

Chairperson

I hereby certify that I have received a copy of this notification, and that I understand the allegations/charges against me, and I understand that the allegations are of a serious nature.

Received by: _____

Signature: _____

Date: _____

Time: _____

PART F – GUIDELINES TO FOLLOW WHEN CONSIDERING THE MERITS OF AN APPEAL

1. Purpose of Part B – Guidelines to Follow When Considering the Merits of An Appeal

The guidelines were established to regulate the exercise of considering appeal proceedings by SABAA for an appeal lodged by a Member or individual falling under the jurisdiction of SABAA

2. The appeal authority

2.1. The appeal authority, who shall consider the appeal, shall be:

2.1.1. the Mancom of the SABAA, or

2.2.1. a disciplinary committee appointed by the Mancom, who

2.2.1.1. was not involved in the decision to institute the disciplinary proceeding,
and

2.2.1.2. who has a higher authority than the chair of the disciplinary hearing.

3. Steps to Be Taken Before Deliberating on The Merits of An Appeal

3.1. Determine whether the appeal has been lodged within the prescribed 21-day period. In terms of the Disciplinary Procedures for the SABAA, a member who has been found guilty of misconduct, may lodge an appeal against a finding or the imposition of punishment by the chair who conducted the disciplinary hearing, within twenty-one (21) working days after having received notice of the outcome of the hearing or other disciplinary procedure. In considering such an appeal, it is imperative to determine whether the appeal has been lodged within the prescribed 21-day period.

3.2. Ensure that the following documentation and information are available:

3.2.1. Personal information of the member.

3.2.2. Notice of the disciplinary hearing.

3.2.3. Appointment of the Disciplinary Committee for the disciplinary hearing.

3.2.4. Description of the allegations of misconduct (charge sheet).

3.2.5. Description of the main evidence on which the Disciplinary Committee relied.

3.2.6. If the member has been suspended, notice of such suspension.

3.2.7. Record of the proceedings of the hearing.

3.2.8. Finding, and reasons for the finding of the Disciplinary Committee.

3.2.9. Aggravating or mitigating circumstances presented by the representative of the member or the member himself.

3.2.10. Mitigating circumstances presented by the member charged with misconduct.

3.2.11. Aggravating and mitigating circumstances considered by the Disciplinary Committee.

3.2.12. Letter conveying the finding and the decision of the Disciplinary Committee to the member. It is extremely important that the member should acknowledge receipt of the said letter. Evidence of the exact date that he/she received the letter should also be indicated. If the member refuses to acknowledge receipt of the letter, evidence by a send email to the member's email address on record, would suffice.

3.2.13. Any additional evidence presented by the member that was not available at the time of the disciplinary proceedings.

3.2.14. Any valid warnings against the member on record, which should be taken into consideration as aggravating.

3.2.15. All other documentation and particulars relevant to the case in question.

- 3.3. Determine the grounds of appeal submitted by the member. The appeal committee has the power to consider the merits of each case anew with or without additional information. This is what is commonly known as a “wide appeal”. If grounds of appeal are submitted they must be addressed and reasoned individually, against the procedural and substantive fairness of the case. If no grounds of appeal are submitted, the appeal committee should consider the procedural and substantive fairness of the case.
- 3.4. Determine mitigating and aggravating circumstances. These circumstances should be reasoned to determine whether they are substantiated or not, and whether they should be taken into consideration as such.

4. Deliberation on The Merits of An Appeal

- 4.1. In terms of the provisions of the Disciplinary Policy a member can appeal against the finding and/ or the sanction imposed by the Disciplinary Commission of the disciplinary hearing. The following sanctions which could be imposed by the Disciplinary Committee of the disciplinary hearing:
 - 4.1.1.a written warning;
 - 4.1.2.a final written warning;
 - 4.1.3.suspension of membership for a period.
 - 4.1.4.suspension for life.
- 4.2. It is evident that there are several sanctions which can be imposed by the Disciplinary Committee during a hearing. Suspension for life is undoubtedly the most severe of those sanctions. In terms of the concept of progressive discipline, it should always be the last resort for a Disciplinary Committee, and should only be imposed in cases of serious misconduct, which does not warrant progressive discipline.
- 4.3. The merits of an appeal should always be considered by the appeal authority in terms of the principles of fair and sound procedures. In this regard the SABAA Disciplinary Procedure Policy provides guidelines to be followed in a disciplinary hearing and the determining whether a disciplinary case was dealt with in terms of a fair procedure, and whether the sanction imposed by the Disciplinary Committee, is substantively fair, and suits the contravention. Although the Policy specifically refers to suspension as a sanction, the principles provided, should be applied uniformly, no matter what the sanction.
- 4.4. The principles of procedural and substantive fairness are accordingly reasoned below:

4.4.1. Procedural fairness

The following guidelines may be followed in determining whether the procedure followed during the disciplinary case is fair:

- 4.4.1.1. The SABAA Disciplinary Procedure Policy provides for the procedure to be followed once a disciplinary hearing/enquiry is conducted. In considering the appeal of a member, it is necessary that the appeal authority consider the merits of the appeal against the background of this procedure, and specifically whether this procedure was followed fairly. The appeal authority should therefore determine whether the disciplinary case was dealt with in terms of the provisions of the above Policy.
- 4.4.1.2. It is therefore, evident that these guidelines should also be considered in determining the procedural fairness of a disciplinary case. The following guidelines should be considered to determine the procedural fairness of a hearing/investigation into alleged misconduct:
 - 4.4.1.2.1. The conducting of an investigation / enquiry should be conducted, it is not necessary that such investigation/ enquiry should be formal, but can be conducted informally. It is preferable that the investigation/ enquiry should be informal, as the parties usually have no or little knowledge of court proceedings and the rules of evidence. It will also ensure that the parties do not feel intimidated or threatened by the procedures, and can more comfortably participate in the proceedings.
 - 4.4.1.2.2. Notice of the charge and the investigation the member should be informed of the allegation(s) against him/her. The member should use the Notice Form. The charge will be in writing. If the member is illiterate, it is necessary that the charge(s) should be explained to him or her. It may also sometimes be necessary to use the services of an interpreter.
 - 4.4.1.2.3. Reasonable time to prepare a response was given to the member. This will depend on the guideline in the Disciplinary Policy.
 - 4.4.1.2.4. Opportunity to state case. The member should be allowed to state his/her case during the disciplinary hearing. The member should be given the opportunity to indicate whether he/she is guilty or not, and provide reasons therefore. Guidelines about the calling of witnesses are provided for in Policy, it is regarded good practice to allow a member/prosecutor to provide evidence/witnesses to substantiate the case.
 - 4.4.1.2.5. Assistance by a representative or a fellow member. The Disciplinary Procedures Policy does provide that a member may be assisted by his/her legal representative.
 - 4.4.1.2.6. Communication of the decision. A member should be informed of the decision as soon as possible, preferably during the hearing. Furthermore, reasons should be provided to the member for the above decision.

4.4.2. Substantive fairness

The following guidelines may be followed in determining whether the finding of guilty is substantively fair:

- 4.4.2.1. It must be proved on a balance of probabilities that the member contravened a rule or code. Such rule or code may be contained in the Constitution, Bylaws and Code of Conduct, or a rule which exists in terms of the common law, and which would mostly relate to the conduct of the member in relation to his/her sport structure. It should be noted that it should be proved on a balance of probabilities that the member contravened the specific rule or code. In a criminal case a contravention must be proved beyond reasonable doubt, which is not the requirement in a disciplinary case.
- 4.4.2.2. The rule or code must have been reasonable and the member should have been aware of the existence of the rules or code, or should reasonably have been aware of the rule or code, and that the contravention of such rule or code is unacceptable. Also, implied in this requirement is the fact that the member must have known that a transgression of the rule may lead to disciplinary action against him/her. Due to the nature of certain forms of misconduct, it may not be unnecessary to specifically inform the member that the relevant action constitutes misconduct. Examples in this regard are those that have their origin in the common law, like theft, assault, intimidation and insubordination.
- 4.4.2.3. To determine whether the sanction imposed by the Disciplinary Committee of the disciplinary case was substantively fair, the following factors should be considered:

4.4.2.3.1. Consistency. Members should as far as possible be treated the same if they have committed the same or similar offences. The Disciplinary Committee must in other words be consistent when meting out discipline. This also implies that the Disciplinary Committee must guard against being perceived by members to be biased. In some instances, the Disciplinary Committee would be able to justify being inconsistent, when factors such as the member's involvement in the sport, disciplinary record and personal circumstances are considered.

4.4.2.3.2. The gravity of the misconduct. The more serious the misconduct the greater are the chances that suspension would be the appropriate sanction. The Policy determines that suspension may be the appropriate sanction if the misconduct is serious and of such gravity that it makes the continued membership relationship intolerable. This will also include offences which constitute serious breach of the trust relationship between the member and the sport structure. Examples of such misconduct are theft, gross dishonesty, willful damage to the property of the sport structure, willful endangering the safety of the lives of others and physical assault.

4.4.2.3.3. The circumstances of the infringement itself. There may be circumstances which have a tempering effect on the severity of the sanction imposed, although it may not lessen the seriousness of the transgression. Although theft warrants suspension, as it directly relates to dishonesty, the object that has been stolen may be of such little value that suspension may be too harsh a penalty.

4.4.2.3.4. The member's status within the organization. The Disciplinary Committee would normally not expect the same degree of responsible behavior from an ordinary member as it would from a member in a management position or a national angler.

4.4.2.3.5. The member's previous disciplinary record. The purpose of discipline should be a means to correct the behavior of members and therefore, a system of progressive disciplinary measures should be followed in cases of misconduct. This entails that a member should endeavor to first correct the behavior of a member through warnings before suspension is considered. A warning by the Disciplinary Committee that the member would be dismissed if the same offence is committed in future is proof of the Disciplinary Committee's disapproval of such conduct. If the member thereafter commits the same offence, dismissal may be a fair sanction. It should, however, be noted that whether dismissal is a fair sanction, also depends on other factors (see factors already discussed). A warning does not remain valid indefinitely. In this regard note, should be taken of the periods stipulated in the sanction of the warning. It

should be noted that the above factors should not be considered in isolation, but must be considered together to determine whether the sanction imposed is appropriate, or whether another sanction would be more appropriate.

5. **Suggested format and process to assist the appeal authority to take a decision**

The appeal authority considered the merits of an appeal referred to it, by means of a documentary assessment. The appeal authority considers an appeal on the merits of it by deliberating on the procedural and substantive fairness of the finding of guilty and the sanction imposed, against the background of fair labour relations, common law and administrative principles. The following is an example of the format which should be used by the appeal authority in taking a decision about the merits of an appeal:

5.1. Purpose

5.1.1. State the personal detail of the member.

5.1.2. State the purpose of the deliberation, namely to consider the appeal of the member against the finding and /or decision of the Disciplinary Committee, in terms of the Disciplinary Procedures Policy of SABAA.

5.2. Background

5.2.1. Give the involvement level of the member in the organization.

5.2.2. If there was an investigation, particulars should be furnished in summary form about the appointment of the representative of the member/investigating officer, the course of his/her investigation and his/her findings.

5.2.3. Indicate and describe the allegations of misconduct and evidence furnished by the prosecutor, against the member.

5.2.4. Indicate as to whether the member admitted or denied guilt to the allegations of misconduct.

5.2.5. Indicate particulars about the appointment of the Disciplinary Committee and the notice of the disciplinary hearing. Indicate the findings of the Disciplinary Committee, and the decision about punishment.

5.2.6. Mention the date of letter in which the member was informed of the decision of the Disciplinary Committee, as well as the date of receipt of the said letter by the member. Mention must then be made when the appeal of the relevant member was in actual fact received by the appeal authority and a calculation must be done to determine whether it was received within the 21 days as prescribed by the Policy.

- 5.2.7. Mention the grounds of appeal of the member, as well as any other new evidence presented by the prosecutor.
- 5.2.8. Attach all documents referred to in the guidelines, under the “Steps to be taken before deliberating on the merits of an appeal.”

5.3. Reasoning

- 5.3.1. Refer to appeal authority's power to consider the appeal in terms of the Policy which states that, after having considered the documents relating to the appeal, the appeal authority may;
 - 5.3.1.1. uphold the appeal, and/or
 - 5.3.1.2. reduce the sanction, or
 - 5.3.1.3. confirm the outcome of the disciplinary proceeding.
- 5.3.2. Deal with each ground of appeal against the finding of guilty or sanction by the Disciplinary Committee by separately quoting the ground(s) of appeal. Regarding facts contained in the documentation, argue the validity of each ground and come to a reasoned conclusion.
- 5.3.3. In reasoning the grounds of appeal, it is advisable to analyse the procedures followed during the investigation of the allegations of misconduct; the facts of the case as presented during the hearing; the findings and decisions of the Disciplinary Committee in order to determine whether the Disciplinary Committee complied with prescribed requirements and procedures; whether it was reasonable, objective and fair; whether common, labour and administrative law principles were applied; and what the facts indicate, absolutely or in preponderance. An important principle which should always be considered is the adherence to the audi alteram partem rule (that is, “hear the other side”). The principles contained in the Code of Conduct are important criteria that should be used in deliberating the seriousness of the transgression(s) committed by the member. If the grounds of appeal against the finding and/or decision of the Disciplinary Committee are found to be substantiated, it is unnecessary to reason mitigating and aggravating circumstances. It should also be noted that, if it is found that the procedures followed in the case have been grossly unprocedural, the appeal must be upheld.
- 5.3.4. After the grounds of appeal have been reasoned, detail the mitigating circumstances advanced by the member, as well as the mitigating and aggravating circumstances advanced by the prosecutor, and advance your own considered opinion or conclusion(s). Although each case is unique, the following may be regarded as mitigating and aggravating circumstances:
 - 5.3.4.1. Mitigating Circumstances
 - 5.3.4.1.1. Personal circumstances of the member.
 - 5.3.4.1.2. If the member is a first offender.
 - 5.3.4.1.3. The nature of the contravention (less serious with relative or no damage).
 - 5.3.4.1.4. The degree of remorse shown.
 - 5.3.4.1.5. The involvement in the sport of the member.
 - 5.3.4.1.6. The degree of influence by other members and the position of authority of such members.
 - 5.3.4.1.7. The degree of the member’s ignorance about the contravention committed.
 - 5.3.4.1.8. The extent of co-operation given during the investigation.
 - 5.3.4.1.9. The extent to which the member has already repaid the organization where the organization suffered a loss.

5.3.4.2. Aggravating Circumstances

- 5.3.4.2.1. Frequent occurrence of contraventions may indicate premeditation.
- 5.3.4.2.2. A Disciplinary record may indicate a member's disposition to render himself or herself guilty of undesired action.
- 5.3.4.2.3. An unsatisfactory sport involvement record.
- 5.3.4.2.4. The extent by which other member's economical interest is affected by the contravention.
- 5.3.4.2.5. The possibility that the contravention can be repeated.
- 5.3.4.2.6. The nature of the position of trust which the member held.
- 5.3.4.2.7. The manner, degree of planning, extent of dishonesty and the unscrupulousness with which the act was committed.
- 5.3.4.2.8. The damage caused to the organization's image.
- 5.3.4.2.9. Conclude whether the decision taken by the Disciplinary Committee was procedurally and substantively fair or not. If in opinion not, propose alternative action to be taken against the member regarding the provisions provided for in the Disciplinary Procedures Policy.

5.3.5. Weigh the seriousness of the transgression(s) against the reasoned mitigating and aggravating circumstances. Although an appeal authority is not bound by precedents or decisions previously taken about a specific case, the appeal authority may refer to other similar cases to substantiate the proposed action against the member in question. The principle of consistency therefore, applies. It should, however, be kept in mind that every case must be considered on its own merits, as each case is unique.

6. Proposal

After having reasoned the aspects around the appeal of the member as described above, a proposal must be made. This will entail that it is proposed that;

- 6.1. the appeal be upheld, and/or
- 6.2. the sanction be reduced, or
- 6.3. the outcome of the disciplinary hearing be confirmed.

7. Decision

- 7.1. Approval of the proposal as discussed in the above paragraph;
- 7.2. A letter addressed to the member/and or representative, containing the decision of the appeal authority, as well as the reasons for the decision taken, should be drafted and signed by the appeal authority. It should be noted that the decision of the appeal authority is final and is not open for review by the appeal authority.