

GOVERNMENT NOTICE GOEWERMENTSKENNISGEWING

DEPARTMENT OF SAFETY AND SECURITY DEPARTEMENT VAN VEILIGHEID EN SEKURITEIT

No. R. 643

3 July 2006

REGULATIONS FOR THE SOUTH AFRICAN POLICE SERVICE

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

C. NQAKULA,
Minister for Safety and Security

SCHEDULE

THE SOUTH AFRICAN POLICE SERVICE DISCIPLINE REGULATIONS

1. Definitions

In these Regulations, unless the context otherwise indicates, —

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

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

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

“employer representative” means an employee designated in general or in a particular case by the *employer* in terms of regulation 6(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;

“fellow employee” means any *union representative* or an employee from the same unit, station or component of the employee charged with misconduct;

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

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

“*union official*” means a person employed by a *recognized trade union* in any capacity, either in a full-time or temporary capacity;

“*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

“*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 the all the unions admitted to the Safety and Security Sectoral Bargaining Council (SSSBC), these Regulations apply to the *employer* and all employees falling within the registered scope of the said Council.
- (2) These Regulations also apply to members of the Senior Management Service of the Service, excluding the National Commissioner and Provincial Commissioners.

3. Purpose

The purpose of these Regulations is to —

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

4. Principles

These Regulations are based on the following principles:

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

5. Nature of misconduct

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

6. Disciplinary officers

- (1) The National and Provincial Commissioner must each designate in writing an employee as a disciplinary officer.
- (2) The disciplinary officer designated by the National Commissioner or Provincial Commissioner may –
 - (a) upon a complaint of any person, initiate an investigation concerning alleged misconduct and, irrespective of any other provision of these Regulations, cause an employee to be charged for misconduct in accordance with these Regulations, irrespective of the rank of the employee; 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 Commissioners, after consulting with the disciplinary officer concerned, may in writing designate in general or in a specific case, an employee or category of employees 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 a 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 arrived at by an *employer representative* under his or her jurisdiction and may, in general or in respect of a specific matter, exercise any part of such power or perform any such function: Provided that the National Commissioner may issue orders and instructions to Provincial Commissioners and may reverse any decision arrived at by a Provincial Commissioner or an *employer representative* in terms of these Regulations, whether on his or her own initiative or upon receipt of representations by any person.

7. Less serious misconduct

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

8. Corrective counselling

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

- (a) interview the employee and bring the misconduct to the employee's attention;
- (b) determine the reasons for the misconduct and give the employee an opportunity to respond to the allegations;
- (c) seek to get agreement on how to remedy the conduct; and
- (d) take steps to implement the agreed course of action.

9. Verbal warning

- (1) In instances where the nature of the misconduct warrants a verbal warning, the supervisor of the employee may —

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

OR

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

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

10. Written warning

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

OR

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

- (2) The supervisor must give a copy of the written warning to the employee who must acknowledge receipt thereof. If the employee refuses to acknowledge receipt, the supervisor must hand over the warning to the employee in the presence of another employee, and both the supervisor and the other employee serving as witness must sign to confirm that the written warning was handed to the employee.
- (3) The written warning must be filed in the personal file of the employee.

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

11. Final written warning

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

OR

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

- (2) The supervisor must give a copy of the final written warning to the employee who must acknowledge receipt thereof. If the employee refuses to acknowledge receipt, the supervisor must hand over the final written warning to the employee in the presence of another employee, and both the supervisor and the other employee serving as witness must sign to confirm that the warning was handed to the employee.
- (3) The final written warning must be filed in the personal file of the employee.
- (4) A final written warning remains valid for six (6) months and at the expiry thereof, the final written warning must be removed from the personal file of the employee and destroyed.
- (5) Should the employee commit a similar or related act of misconduct before the expiry of the six (6) month period, the final written warning may be taken into account.

12. Serious misconduct

- (1) Subject to regulation 6(2), a supervisor who is satisfied that the alleged misconduct is of a serious nature and justifies the holding of a disciplinary hearing, must ensure that the investigation into the alleged misconduct is completed as soon as reasonably possible and refer the documentation to the *employer representative* to initiate a disciplinary enquiry.
- (2) The *employer representative*, if satisfied that the employee has committed misconduct, must charge the employee with misconduct as soon as reasonably possible by having a written notice to attend the disciplinary hearing, in the form determined by the National Commissioner, served on him or her.
- (3) The written notice of the disciplinary hearing must provide for —
 - (a) a description of the allegations of misconduct and the main evidence (including statements if available) upon which the *employer* will rely;
 - (b) details of the date, time and venue of the hearing;
 - (c) information stating the rights of the employee to representation by a *fellow employee* or a *union representative* or *union official*, and the right to bring witnesses to the hearing; 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 may, free of charge, obtain 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 paragraph (b) may be handed in at the hearing and shall on its mere production be proof of the service thereof.

- (d) An employee is obliged to accept delivery of any notice served on him or her.
- (5) The employee must acknowledge receipt of the notice if handed to him or her personally. Should the employee refuse to acknowledge receipt, the notice must be handed over to the employee in the presence of another employee, and both the employee handing over the notice and another employee must sign in confirmation that the notice was served on the employee.

13. Precautionary suspension

- (1) The employer may suspend with full remuneration or temporarily transfer an employee on conditions, if any, determined by the National Commissioner.
- (2) The National or the Provincial or Divisional Commissioner (the Commissioner) may suspend the employee without remuneration, if the Commissioner on reasonable grounds, is satisfied that the misconduct which the employee is alleged to have committed, is misconduct as described in Annexure A and that the case against the employee is so strong that it is likely that the employee will be convicted of a crime and be dismissed: Provided that —
 - (a) before suspending an employee without remuneration, the employee is afforded a reasonable opportunity to make written representations;
 - (b) the Commissioner considers the representations and inform the employee of the outcome of the representations;
 - (c) the disciplinary process must be initiated within fourteen (14) calendar days of the date of the decision to suspend the employee without remuneration; and
 - (d) if the disciplinary process is not completed within sixty (60) calendar days from the commencement of the suspension, the question of continued suspension without remuneration must be considered by the Commissioner and the employee may again make written representations which the Commissioner must consider. The Commissioner must take any decision on continued suspension within seven (7) calendar days of receiving written representations on continued suspension and inform the employee of the outcome of the representations. A decision that the suspension continues, may only be for a further period of thirty (30) calendar days.
- (3) A suspension is a precautionary measure.

- (4) If an employee is suspended with full remuneration or transferred as a precautionary measure, the employer must hold a disciplinary hearing within sixty (60) calendar days from the commencement of the suspension or transfer. Upon the expiry of the sixty (60) days, the chairperson of the hearing must take a decision on whether the suspension or temporary transfer should continue or be terminated.

14. Conducting the disciplinary hearing

- (1) The employer must appoint a person as the chairperson of the hearing. Such person must be an employee: Provided that the National or a 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) The employer or the employee may, with the consent of the other party, request the Safety and Security Sectoral Bargaining Council (**SSSBC**) to appoint an arbitrator to chair the disciplinary hearing. The decision of the arbitrator will be final and binding and only open to review in terms of the Labour Relations Act, 1995 (Act No. 66 of 1995). All the provisions applicable to disciplinary hearings in terms of these Regulations will apply for purposes of these hearings. The party requesting this procedure will be responsible for the payment of the arbitration costs.
- (4) An employee may be represented in the hearing by a *fellow* employee or a person employed by a recognized trade union.
- (5) 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 recognized 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.
- (6) 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.

- (7) The chairperson must ensure that record is kept of the proceedings at the disciplinary hearing .
- (8) 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*.
- (9) The employee will be given an opportunity to lead evidence. The *employer representative* may question any witnesses called.
- (10) The chairperson may ask any question for clarification.
- (11) The chairperson may, of his or her own accord or on request by any party, subpoena any person to testify at a disciplinary hearing.
- (12) Should the chairperson find that the employee has committed misconduct, the chairperson must inform the employee of the finding and the reasons thereof.
- (13) 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.
- (14) 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.
- (15) A disciplinary hearing must as far as practically possible, be finalised within sixty (60) *calendar days*.

15. Sanctions

- (1) Any of the following sanctions may be imposed —
 - (a) counselling;
 - (b) a written warning which will be valid for six (6) months;
 - (c) a final written warning which will be valid for six (6) months;
 - (d) suspension without remuneration for no longer than three (3) months, subject to the consent of the employee;
 - (e) dismissal;
 - (f) suspended dismissal for a period not exceeding six (6) months;

- (g) any of the above sanctions but suspended for a period not exceeding six (6) months;
 - (h) a fine of up to R 500,00 to be deducted in instalments; or
 - (i) a combination of the above.
- (2) The *employer* may not implement the sanction during an appeal by the employee.
- (3) The chairperson must communicate the final outcome of the hearing to the employee within five (5) *working days* after the conclusion of the disciplinary hearing, and the outcome must be recorded on the personal file of the employee.

16. Procedure after a finding of misconduct.

- (1) If an employee is found to have committed misconduct and a disciplinary sanction referred to in regulation 15(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 may, within five (5) *working days* of receipt of such notice, vary the sanction by either reducing it or setting it aside and provide full reasons therefore: Provided that the National Commissioner may only take such steps in respect of an employee under the command of a Provincial or Divisional Commissioner after consultation with the Commissioner concerned.
- (3) The employee referred to in subregulation (1) must immediately be informed in writing of the decision of the National Commissioner.
- (4) (a) In the event of the sanction of dismissal being imposed on the employee, such dismissal shall take effect twenty one (21) *calendar days* after the determination is made: Provided that such employee shall be deemed to have been suspended with immediate effect with full remuneration, unless the employee is under suspension without remuneration in accordance with regulation 13(2), in which case the suspension without remuneration will continue.
- (b) If an employee referred to in paragraph (a), lodges an appeal against the finding or determination in terms of regulation 17, the employee shall be deemed to have been suspended, as provided for in paragraph (a), until the conclusion of the appeal proceedings: Provided that if the *appeals authority* confirms the

discharge, the discharge of such employee shall take immediate effect.

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

17. Appeal

- (1) An appeals authority is hereby established.
- (2) The appeals authority comprises of a person or persons appointed by the National Commissioner to consider appeals or a specific appeal in terms of these Regulations.
- (3) An employee may appeal a finding or sanction in the form determined by the National Commissioner.
- (4) The employee must, within ten (10) *working* days of receiving the notice of the final outcome of the hearing, submit the appeal to the administrative *office* of the appeals authority.
- (5) The appeals *authority* may, on good cause shown, condone the late lodging of an appeal.
- (6) The appeals *authority* must consider the appeal and, in the event that the appeals *authority* decides that a hearing is required, the appeals authority must notify the appellant of the date and place of the hearing.
- (7) The appeals authority may —
 - (a) uphold the appeal; or
 - (b) reduce the sanction to any lesser sanction allowed in terms of regulation 15(1); or
 - (c) confirm the outcome of the disciplinary hearing.
- (8) The employer must immediately implement the decision of the appeals authority. Where the appeals *authority* decides to reduce the sanction or to confirm the outcome of the disciplinary hearing, the sanction will be implemented by the employer from the date of the decision of the appeals *authority*.
- (9) The appeals authority must finalise an appeal within thirty (30) *working* days from the date of the receipt of the appeal, failing which, in cases where the employee is on precautionary suspension or temporarily

transferred, he or she must resume duties immediately and await the outcome of the appeal.

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

- (1)
 - (a) An employee who is served with a notice in terms of regulation 12(4), must attend the disciplinary hearing at the place, date and time specified in such notice.
 - (b) The employee may at any time after receipt of the notice, but not later than two (2) *working days* before the date of such hearing, liaise with the *employer representative* with a view to reschedule such a hearing to an agreed place, date and time: Provided that the final decision on this matter ultimately rests with the *employer representative*.
 - (c) If the hearing is rescheduled, the employer representative must inform the chairperson thereof on or before the date stated in the notice, and the chairperson must endorse the original notice to this effect.
- (2) In the event that the employee fails to —
 - (a) appear at the place, date and time specified in the notice or such rescheduled place, date and time; or
 - (b) remain in attendance at the disciplinary hearing,such failure shall, subject to subregulation (3) and (4), constitute misconduct.
- (3)
 - (a) Upon a failure as contemplated in subregulation (2), the chairperson must postpone the hearing for not less than ~~seven~~ (7) *calendar days* and the notice of the postponement, issued by the chairperson, must be served on the employee,
 - (b) The notice, in the form determined by the National Commissioner, must comply with regulation 12(3).
- (4) On the date to which the disciplinary hearing has been postponed, the chairperson must summarily inquire into the failure of the employee to appear or remain in attendance at the disciplinary hearing and, in the absence of good cause shown, make a finding that the employee committed misconduct,
- (5)
 - (a) In the event that the employee fails to appear at the disciplinary hearing on any date to which the disciplinary hearing has been

postponed, or a date to which it was postponed in terms of subregulation (3) —

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

19. Witnesses at disciplinary hearings

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

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

appeals authority, as the case may be, to the person who gave or produced such items: Provided that such person may lawfully be in possession of such book, document, object or article.

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

20. Misconduct

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

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

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

21. Transitional arrangements

- (1) Any disciplinary proceedings which were instituted prior to the coming into operation of these Regulations in terms of the South African Police Service Discipline Regulations, 1996, the South African Police Service Discipline Regulations, 2005, Agreement 3 of 2005 of the Safety and Security Sectoral Bargaining Council or Resolution 2 of 1999 of the Public Service Bargaining Council against an employee, must be dealt with and be finalized in terms of the said Regulations, Agreement or Resolution as if these Regulations have not come into operation.
- (2) Any *employer representative*, chairperson, or a disciplinary, prosecuting, trial or defence officer or his or her delegate, or *appeals authority* or a member of an appeals authority appointed in terms of the South African Police Service Discipline Regulations, 1996, the South African Police Service Discipline Regulations, 2005, or Resolution 2 of 1999 of the Public Service Bargaining Council prior to the coming into operation of these Regulations, shall continue to act as such in terms of such Regulations, Agreement or Resolution until such time as all functions have been finalized in terms thereof as if these Regulations have not been promulgated.
- (3) Any disciplinary proceedings against an employee in respect of an act or omission committed before the promulgation of these Regulations, may be instituted against the employee concerned in terms of these Regulations: Provided that such act or omission would have constituted misconduct in terms of these Regulations.
- (4) The National Commissioner may, for the purposes referred to in subregulation (1), perform any act which may be necessary for the finalization of such disciplinary proceedings as if these Regulations have not been promulgated.

22. Repeal and short title

- (1) The South African Police Service Discipline Regulations, 2005 are repealed.
- (2) These Regulations shall be known as the South African Police Service Discipline Regulations, 2006 and shall come into operation on the date of publication thereof.

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

Aiding an escapee

Arson

Robbery with aggravating circumstances

Assault GBH

Bribery

Corruption

Dealing in drugs

Defeating the course of justice

Extortion

Forgery and uttering

Fraud

Hijacking

Housebreaking and theft

Kidnapping

Malicious damage to property of a serious nature

Murder

Rape

Terrorism

Theft of a serious nature

Treason

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