

DISCIPLINARY PROCEDURE

(Where reference is made in this document to the male sex, this automatically includes the female sex)

1. Procedure regarding disciplinary action against staff members

1.1. Terminology

Unless it appears otherwise in a specific context, the following definitions apply:

1.1. *Appeal Committee*

an ad hoc committee of at least three members constituted by the Chairman of Council;

1.2. *Disciplinary Committee*

a disciplinary committee of at least three members constituted by the Rector and Vice-Chancellor;

1.3. *Staff member*

any member of the academic or non-academic staff who was appointed in terms of the relevant conditions of service on a permanent, contract, temporary-full time or temporary-part time basis, but excluding employees described as an “employee” in terms of the acknowledgement agreement between the University and a recognised union;

1.4. *Rector and Vice-Chancellor*

includes a Vice-Rector

1.5. *Allowances*

any monetary payments to a staff member in addition to his basic salary and intended as a supplement to his basic salary;

1.6. *Provisional suspension without payment*

the suspension of the right and obligation of a staff member to fulfil his employment obligations with a view to a subsequent hearing, accompanied by the suspension of the University's obligation to pay the basic salary or any allowances to the staff member for the duration of the provisional suspension;

1.7. *Provisional suspension with payment:*

the suspension of the right and obligation of a staff member to fulfil his employment obligations with a view to a subsequent hearing, where the presence of the staff member at his place of work may negatively influence any investigation or work relations; provided that the University remains obliged to pay the basic salary and/or any allowances to the staff member for the duration of the provisional suspension.

2. **Misconduct**

A staff member in the employ of the University may be found guilty of misconduct if he:

2.1. wilfully or through negligence contravenes any procedure, regulation, rule or directive of the University or attempts to do so;

2.2. wilfully refuses or through negligence omits to give effect to a lawful order by an authorised person on behalf of the University or acts contrary to such an order;

2.3. steals, appropriates, illegally uses, abuses, or wrongfully destroys, damages or utilises any University property in such a manner that it may be detrimental, or is detrimental, to the University;

2.4. proceeds to, or be on University premises while he is

i. abusing alcohol or is under the influence of alcohol to the extent that it may have a negative effect on his job performance or work relations; or

ii. abusing other drugs without medical prescription or is under their influence;

2.5. abuses his official position or duties with a view to obtaining a privilege or advantage;

- 2.6. engages in sexual harassment or abuses, members for sexual purposes, a dependency relationship between himself and students and/or staff members;
- 2.7. makes any false or untrue statement that may prejudice or be detrimental to the University, knowing that such a statement is false or untrue;
- 2.8. continuously neglects to execute his duties;
- 2.9. provides to any person confidential information regarding any University activities without the permission of an authorised person on behalf of the University;
- 2.10. intentionally acts in such a manner so as to render himself unfit or incapable to fulfil his duties;
- 2.11. engages in improper conduct causing, or giving rise to, the probability that any of the following consequences may ensue where such consequences were anticipated or could possibly have been anticipated at the stage when the relevant transgression was committed:
 - i. prejudicially implicate the University's good name;
 - ii. prejudice or impede the administration of order, discipline or safety at the University;
 - iii. prejudice or imperil the normal progress of teaching, research, administration and general activities at the University;
 - iv. perform outside work without the necessary permission or exceed the bounds of such permission;
 - v. act otherwise or neglect acting as could reasonably be expected of him in accordance with his conditions of service.

3. Procedure in the event of misconduct

- 3.1 A staff member may not be accused of misconduct unless a written declaration, detailing the relevant allegations and signed by the accuser, has been lodged with the Rector and Vice-Chancellor.

- 3.2 The Rector and Vice-Chancellor may at the earliest possible opportunity appoint a committee, consisting of one or more staff members, to conduct a provisional investigation into any allegations lodged with him, or into any conduct of a staff member that may constitute misconduct, and to submit a written report to him. The provisional investigative committee may consult with or obtain information from anyone including the person against which the complaint or allegations have been made.
- 3.3 Should the Rector and Vice-Chancellor be of the opinion that there are reasonable grounds for an indictment of misconduct against the staff member and that the alleged conduct by the staff member may justify steps being taken in accordance with sub paragraph (11), then he may constitute a Disciplinary Committee and order that a hearing be held by this committee.
- 3.4 Should the Rector and Vice-Chancellor be of the opinion that the alleged misconduct by the staff member does not justify a hearing by a Disciplinary Committee, but that it is nevertheless serious enough to justify a reprimand, he may, subsequent to considering any plea the staff member may wish to lodge, direct such a reprimand against the staff member.
- 3.5 Should it be decided to continue with a disciplinary hearing, the Rector and Vice-Chancellor appoints a staff member of the University to handle the indictment as pro-forma prosecutor; with the understanding that the Rector and Vice-Chancellor may appoint a legal representative in private practice as pro-forma prosecutor, if the relevant Disciplinary Committee has agreed in terms of sub paragraph (6)(b)(iii) that the accused staff member may be assisted by a legal representative in private practice.
- 3.6 For the purpose of a disciplinary hearing, the pro-forma prosecutor sends by registered mail, no less than ten days before the date of the hearing, a written notification to the accused's home address (as contained in the University's records) to appear on a specific date, time and place before the Disciplinary Committee. This notification also specifies:

3.6.1.the charge against him, including sufficient details regarding his alleged misconduct;

3.6.2.his right to

- i. attend the hearing when evidence is given and arguments are made;
- ii. reply in writing to the charge at least four working days before the hearing;
- iii. be assisted during the hearing by a staff member of the University or, with the permission of the relevant Disciplinary Committee, by a lawyer in private practice at his own cost;
- iv. appeal against a possible guilty finding in terms of paragraph 4;

3.6.3.the warning that, should he be absent from the hearing without good cause, he may be tried *in absentia*, and that the hearing will not be made invalid on these grounds.

3.73.7.1 Apart from the regulations contained in this chapter, the Chairman of the Disciplinary Committee, appointed by the Rector and Vice-Chancellor, may determine the procedure to be followed at a hearing. Such a hearing must be procedurally fair and meet the principles of natural justice. In particular, the accused staff member has the right to give his own evidence, call or have witnesses called, question witnesses giving evidence against him or have them questioned, cross-question his own witnesses or have them cross-questioned. After all evidence has been given, the accused staff member has the right to argue his own case or have it argued and to offer evidence in mitigation or to have it offered and to address the disciplinary committee or have it addressed as to the appropriate measure in accordance with subparagraph (11).

3.7.2The pro-forma prosecutor may call witnesses, re-examine his own witnesses, question the person or persons testifying against the accused staff member, interrogate the accused should he have testified, as well as any other person or persons testifying on behalf of the accused.

He may argue the case after all witnesses has been heard, but before the accused staff member or the person assisting him is afforded the opportunity to argue his case.

3.7.3 The Chairman of the Disciplinary Committee appoints someone to take a tape recording or minute the proceedings at the hearing and all the evidence given. This person is not a member of the Disciplinary Committee.

3.7.4 The hearing is held *in camera* and the proceedings of the Disciplinary Committee are not published, unless the Disciplinary Committee decides otherwise.

3.7.5 If the Disciplinary Committee cannot reach a unanimous verdict, then the majority of the member's votes are carried. The Chairman has a casting vote.

3.8.3.8.1 The Rector and Vice-Chancellor may provisionally suspend on full pay for a maximum of ninety days a staff member against which a pending charge of misconduct has been made, provided that the Rector and Vice-Chancellor investigate such an allegation expeditiously. In addition the suspended staff member should address written representations to the Rector and Vice-Chancellor within three working days after being informed in writing of his provisional suspension, furnishing reasons why he should not be suspended.

3.8.2 The Rector and Vice-Chancellor may, subsequent to the completion of a provisional investigation in terms of sub paragraph (2), suspend without pay a staff member against whom a serious criminal charge is pending or who has been arrested on such a serious criminal charge and where the University may financially be adversely affected, provided that the Rector and Vice-Chancellor orders that a hearing in terms of sub paragraph (3) be held as soon as possible after the completion of the criminal proceedings.

In addition, the suspended staff member should address written representations to the Rector and Vice-Chancellor within three working days after being informed in writing of his provisional suspension, furnishing reasons why he should not be suspended.

3.8.3 The Rector and Vice-Chancellor may at any time retrospectively rescind the staff member's provisional suspension. Notwithstanding such a rescission of a provisional suspension, steps may continue regarding the charge of misconduct.

3.9 If a staff member who has been charged pleads guilty, the disciplinary committee indicates whether or not any evidence relating to the charge is required.

3.10 If an accused staff member is found not guilty of the misconduct of which he was accused, he will be notified and if he was provisionally suspended, he will be reinstated in service immediately. Any basic salary and allowances that may have been withheld will be paid retrospectively.

3.113.11.1 Should a staff member be found guilty of misconduct, the Disciplinary Committee may decide that one or more of the following measures be implemented:

- i. a written warning, annotated in his staff record, be issued to the staff member;
- ii. any salary increase be withheld on a once off basis or that his right to leave of any kind (excepting sick leave), be temporarily or partially withheld;
- iii. he may be suspended from service for no more than ninety days without salary;
- iv. he may be transferred to another post or his rank and salary may be reduced;
- v. he should recompense the University within legal limits for the damage or prejudice caused by the misconduct;
- vi. he may be dismissed on terms the Disciplinary Committee deems reasonable.

3.11.2 In considering the application of the relevant measures the Disciplinary Committee is to ensure that those measures are reasonable and in relation to

the severity of the misconduct of which the staff member had been found guilty.

3.11.3 Without prejudice to the right to appeal provided for in paragraph (4), the findings of the Disciplinary Committee are final and the actions taken by such a committee need not be ratified by Council.

3.11.4 The Disciplinary Committee has the right to suspend the implementation of any measure on which it has decided for a certain period, subject to such condition or conditions it may deem reasonable.

4. Appeal

4.1 A staff member who has been found guilty of misconduct may, within fourteen working days after the date on which the written decision of the Disciplinary Committee was sent by registered mail to his home address (as contained in the University's records), appeal in writing to the Chairman of the committee against the decision, including the full reasons on which the appeal is based.

4.2 In handling an appeal in terms of this paragraph, a staff member is entitled at his own expense to the assistance of a person of his own choice, including a lawyer in private practice.

4.3 When an appeal is directed against a decision of the Disciplinary Committee in terms of sub-paragraph (1), then the disciplinary measures set in motion by the Disciplinary Committee in terms of paragraph 3 (11) (a), remain in force until the outcome of the appeal has been announced. If the appeal *in toto* is successful, then the staff member is retrospectively reinstated in service with all the concomitant rights and privileges backdated to the date on which the disciplinary measures were applied in terms of paragraph 3 (11) (a).

4.4 Upon receipt of a notification of appeal, the Chairman of the Disciplinary Committee receives a copy. With the assistance of the person referred to in paragraph (3) (5), the Disciplinary Committee should respond to the grounds of the appeal within a reasonable period and provide these to the Chairman of Council. Arrangements are then made for the Appeal Committee's hearing of the appeal

which should commence within thirty days after the receipt of the notification of appeal.

4.5 The appeal is considered exclusively in terms of the record kept during the investigation, together with any documents presented during the course of the investigation to the Appeal Committee, except in cases where the Appeal Committee, with consideration for the grounds of appeal, may grant leave for the submission of oral evidence or where the appeal rests on an allegation of fundamental procedural unfairness which would not be evident from the record.

4.6 After considering the appeal, the Appeal Committee may except in a case which falls under subparagraph (7) here below, uphold the appeal in its entirety or partially, and set aside or amend the findings of the Disciplinary Committee. The Appeal Committee may also, before reaching a final decision on the appeal, refer any question back to the same or a different Disciplinary Committee and direct that a report-back be made, or it may investigate the matter further and come to a decision.

4.7 If the Appeal Committee finds that fundamental irregularities have taken place during the proceedings of the relevant Disciplinary Committee, then it is to rescind the decisions of the Disciplinary Committee. The matter is then referred back to the Rector and Vice-Chancellor who will appoint a new Disciplinary Committee, constituted of members who did not serve in the original Disciplinary Committee, and who will then consider the relevant case anew.

4.8 The decision by the Appeal Committee is final; Council need not ratify any measures taken by this committee.

5. Time-limits

The time-limits to which reference is made in these rules of procedure, with the exception of the ninety days mentioned in paragraph 3 (8) (a) and (b), may be extended by the Rector and Vice-Chancellor, Council or the Disciplinary Committee, should they be of the opinion that there are sound reasons for such an extension.

6. Safekeeping of the records

6.1 The Division of Human Resources keeps all documents and tape recordings relating to the disciplinary case. The staff member has the right to obtain copies of such records and tape recordings at his own expense.

6.2 Such documents and tape recordings are kept for a period of at least five years after the Disciplinary Committee has announced its findings; or for a period of at least five years after the Appeal Committee's final decision in the event of an appeal by a staff member against a decision by the Disciplinary Committee; or for a period of at least five years after the Minister sets aside a staff member's appeal to him in terms of Article 13 of the Universities Act No 16 of 1955.