

## **ANNEXURE 3 - MEDIATION AND DISCIPLINARY PROCESSES**

### **1. MEDIATION PROCESS**

- 1.1. Before formal disciplinary proceedings are instituted against any member, the matter will first be referred to an independent mediator appointed by the Management Committee. Such a mediator will then arrange a mediation session with the affected members with the objective to try and resolve the issue by way of agreement or further recommendation to the Management Committee. The following process will be followed during this mediation process:
  - 1.1.1. A formal meeting will be called by the appointed mediator;
  - 1.1.2. The affected member will be provided with 7 days' notice of such a meeting;
  - 1.1.3. The recommendation(s) of the mediator will be provided to the Secretary of the Management Committee and will serve as formal feedback to the Management Committee; and
  - 1.1.4. If mediation fails, the disciplinary process may be implemented.

### **1.2. DISCIPLINARY FUNDAMENTALS**

- 1.2.1. The following are the underlying fundamentals of the disciplinary process:
  - 1.2.1.1. The proceedings are formal in nature;
  - 1.2.1.2. Each disciplinary matter will be procedurally and substantially fair;
  - 1.2.1.3. Any disciplinary proceedings against a member of Sector 3, will first be dealt with in terms of Sector 3's Constitution, Code of Conduct and disciplinary proceedings;
  - 1.2.1.4. Any member or persons referred to in paragraph 1.1, as defined in Annexure 2, subjected to the disciplinary process, will:
    - 1.2.1.4.1. Be presumed innocent until proven guilty;
    - 1.2.1.4.2. Will have the right to defend himself or herself, which will include the right to be represented by a fellow member of Sector 3 during the disciplinary process; and
    - 1.2.1.4.3. Has a right to appeal the outcome of a disciplinary hearing to a higher level, as stipulated in this Constitution.
  - 1.2.1.5. Reasons will be given for any decision taken in respect of the disciplinary process;
  - 1.2.1.6. Any person acting as the Chairperson or member of a Disciplinary Panel or Disciplinary Appeal Panel, will perform his / her duties in an objective and unbiased manner; and
  - 1.2.1.7. Where Sector 3 fails to act against any person or fails to institute disciplinary proceedings against any of its members who contravene this Constitution and / or its Code of Conduct, the Forum's Exco will have the right to institute disciplinary proceedings, as provided for in this Constitution, against such member or persons.

### **1.3. THE DISCIPLINARY PROCESS**

- 1.3.1. Any complaint of alleged unacceptable behaviour must be made, in writing, to the Secretary of Sector 3, setting out the name/s of the member/s or persons referred to in paragraph 1.1, as defined in Annexure 2, involved in the unacceptable behaviour, as well as full details of such unacceptable behaviour.
- 1.3.2. The Secretary will provide the complainant with a reference number for the complaint within 24-hours of receipt of such a complaint.
- 1.3.3. The Secretary will lay such complaint before the Management Committee within 3 days from receipt of the charge and the Management Committee will appoint an independent person, to investigate the written complaint. This appointment will be done within 14 days from receipt of the complaint from the Secretary.
- 1.3.4. At this stage, and in considering the gravity of the complaint, the Management Committee will decide whether to implement the Suspension Policy (Annexure 4) or not.
- 1.3.5. The investigator will report back on his findings to the Management Committee within 10 days from appointment, except in situations where the complaint is of such a nature that more time is required to conclude the investigation, in which case extension will be granted, but for not more than 21 days.
- 1.3.6. The Management Committee will consider the findings of the investigator and may, thereupon, perform the following:
  - 1.3.6.1. Dismiss the complaint; or
  - 1.3.6.2. Recommend that the matter be referred to a full disciplinary process; or
  - 1.3.6.3. Refer the matter back to the same or another investigator for further investigation.
- 1.3.7. Where the Management Committee has dismissed the complaint, the Management Committee must provide reasons for dismissing the complaint and the complainant may then appeal the decision of the Management Committee to the Appeals Committee.
- 1.3.8. Where the Management Committee recommends that the matter be referred to a full disciplinary process, the following process will apply:
  - 1.3.8.1. Subject to paragraph 1.3.8.2 below, the Management Committee will appoint a Disciplinary Panel to adjudicate the matter; and
  - 1.3.8.2. The Disciplinary panel of 5 members, with the understanding that such members will not be from a legal background, will consist of:
    - (i) The Deputy-Chairperson, who will be the Chairperson of the Disciplinary Panel or another member, as appointed by the Management Committee; and
    - (ii) Any other member of the Management Committee; and
    - (iii) A Management Member of Sector 3, being not from the same Sub-Forum as the person/s brought before the Disciplinary Panel; and
    - (iv) A member of the Sinoville Police Station designated by the Station Commander or the Station Commander him / herself; and

- (v) A member of Sector 3 nominated by the accused. If the accused does not nominate a member, the Chairperson of the panel will have the deciding vote in the event of a stay.
- 1.3.8.3. The unanimous decision by 3 or more members of a Disciplinary Panel as above, will be deemed to be the decision of the Disciplinary Panel.
- 1.3.9. In the event of disciplinary charges being made against a member of the Management Committee, the Disciplinary Panel of 5 members, with the understanding that such members will not be from a legal background, will consist of the following:
  - 1.3.9.1. An externally appointed person will act as the Chairperson of the Disciplinary Panel;
  - 1.3.9.2. Two Management Members of another sub-Forum;
  - 1.3.9.3. A member of the Sinoville Police Station designated by the Station Commander or the Station Commander him / herself, provided that such member will be a commissioned officer;
  - 1.3.9.4. The member of Sector 3 nominated by the accused. If the accused does not nominate a member, the Chairperson of the panel will have the deciding vote in case of a stay; and
  - 1.3.9.5. The unanimous decision by 3 or more members of a Disciplinary Panel, will be deemed to be the decision of the Disciplinary Panel.
- 1.3.10. The Disciplinary Panel will appoint a prosecutor, who will be responsible to lay the complaint before the Disciplinary Panel.
- 1.3.11. The prosecutor will have the right to call any witness, including the complainant, to come and testify before the Disciplinary Panel.
- 1.3.12. The prosecutor will also have the right to place any evidence before the Disciplinary Panel, provided that such evidence was obtained in a lawful manner;
- 1.3.13. No hearsay evidence will be permissible.
- 1.3.14. The accused will have the right to cross-examine any witness called to testify or to challenge the validity of the evidence presented.
- 1.3.15. The prosecutor will declare his / her case closed, where-after all witnesses have testified and / or all evidence have been presented.
- 1.3.16. The accused will then present his case, and will have the right to call any witness to come and testify before the Disciplinary Panel and also have the right to place any evidence before the Disciplinary Panel, provided that such evidence was obtained in a lawful manner.
- 1.3.17. The prosecutor will have the right to cross-examine any witness called to testify for the accused or to challenge the validity of the evidence presented.
- 1.3.18. After hearing both sides, the Disciplinary Panel will retire to consider the evidence presented.
- 1.3.19. The members of the Disciplinary Panel may request such time necessary as to properly apply their minds before announcing their decision, but not longer than 24 hours after the closure of hearing of the evidence.

- 1.3.20. After applying their minds to the evidence presented, the Disciplinary Panel will return to the place where the hearing has taken place or postpone it to such date, time and place as they deem necessary, but within of 7 days.
- 1.3.21. The Disciplinary Panel will then announce their verdict.
- 1.3.22. In the event of a finding of not-guilty, the Chairperson of the Disciplinary Panel will convey the decision to the Secretary and the latter must minute such decision at the next Management Committee meeting.
- 1.3.23. The Chairperson of the Disciplinary Panel will give reasons for the decision of the Disciplinary Panel.
- 1.3.24. In the event of a verdict of guilty, the prosecutor will have the right, but are not obliged, to address the Disciplinary Panel on aggravating circumstances.
- 1.3.25. The prosecutor may call any victim of the action / neglect for which the member was found guilty, to address the Disciplinary Panel on aggravating circumstances.
- 1.3.26. The person found guilty will then have the right, but are not obliged, to address the Disciplinary Panel on mitigating circumstances.
- 1.3.27. The person found guilty, may call any person to testify on mitigating circumstances on his behalf.
- 1.3.28. After having heard both the prosecutor and the person found guilty as well as persons testifying in aggravation and mitigation, the Disciplinary Panel will apply its mind as to an appropriate sanction, taking into account:
  - (i) The sanction/s prescribed by this Constitution for the offence of which the person was found guilty; and
  - (ii) Evidence presented in aggravation and mitigation.
- 1.3.29. The members of the Disciplinary Panel may request such time necessary as to properly apply their minds before announcing their decision, but not longer than 24 hours after delivering its verdict.
- 1.3.30. After applying their minds, the Disciplinary Panel will return to the place where the hearing has taken place or postpone it to such date, time and place as they deem necessary, provided that it takes place within 24 hours from date of verdict.
- 1.3.31. The Disciplinary Panel will then announce the sanction and will also provide reason for their findings.
- 1.3.32. The complete disciplinary proceedings will be recorded and be made available to the accused in the event that they wish to appeal the verdict.
- 1.3.33. A Disciplinary Hearing can also take place in absence of the members or persons referred to in paragraph 1.1m as defined in Annexure 2m in the event that the Disciplinary Committee is satisfied that the member and / or designated members were properly informed and no valid excuse for the absence was tendered.

## **2. APPEAL PROCESS**

- 2.1. The member or person referred to in paragraph 1.1, as defined in Annexure 2, found guilty, will have the right to appeal against both the verdict and sanction, but must do so within 7 days of the handing down of the sanction. The terms of the suspension implemented, will remain intact till the outcome of the Appeal.
- 2.2. The Appeal must be lodged, in writing, with the Secretary of Sector 3 within the 7 day period.
- 2.3. The secretary of Sector 3 will forward the appeal to the Forum's Exco.
- 2.4. All recordings of the disciplinary hearings i.e. statements, verdicts and sanctions, will be forwarded to the Forum's Exco.
- 2.5. The Disciplinary Appeal Panel, as appointed as set out below, will consider the appeal based on the evidence presented at the disciplinary hearing and no new evidence will be allowed.
- 2.6. No legal representation will be allowed at this stage of the disciplinary process.

## **3. APPEAL BODY**

- 3.1. In the event of an appeal from a Disciplinary Panel as envisaged in paragraph 1.3.8.2, the Disciplinary Appeal Panel will consist of such members as determined by the Forum's Constitution.
- 3.2. Any further appeals will be to the next level in the Community Police Forum hierarchy, to wit, Provincial Board, Office of the MEC for Safety and Security, National Board.
- 3.3. A Member or person referred to in paragraph 1.1 as defined in Annexure 2 above, may also elect to take the decision of any body, including a Disciplinary Appeal Panel, on review to a competent Court, provided that all internal avenues have been exhausted.
- 3.4. Any dispute resulting from the interpretation of the Constitution, will be referred to the Arbitration Foundation of South Africa, who will appoint an independent legal arbitrator.

## **4. PENALTIES AND SANCTIONS**

- 4.1. The Disciplinary Panel and Disciplinary Appeal Panel can lay down the following sanctions where a person has been found guilty during a due disciplinary process as contained in Annexure 3 – Mediation and Disciplinary Proceedings.
- 4.2. Where an individual has been found guilty, the Disciplinary Panel or Disciplinary Appeal Panel may:
  - 4.2.1.1. Instruct that such member's membership of Sector 3 be terminated; and / or
  - 4.2.1.2. Instruct that such member's membership of Sector 3 be suspended for a period not exceeding 12 months and that, during this period, he / she may not be involved in any Sector 3 activities whatsoever; and / or
  - 4.2.1.3. Give a final written warning that will be valid for a period not exceeding 12 months since date of issue, provided that, if the person is found guilty of the same or another offence as per the Code of Conduct, the Disciplinary Panel or Disciplinary

Appeal Panel may impose the sanctions as per paragraph 4 of Annexure 3; and / or

- 4.3. Give a written warning that will be valid for a period of not exceeding 12 months since date of issue.

In addition to the above-mentioned sanctions, Sector 3 also has the right to pursue civil or criminal actions against the individual/s concerned.