



# **Disciplinary Code: Rules regarding Disciplinary Action against Staff Members**

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Aim	To establish rules for the governance of disciplinary action against staff members
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Owner of these rules	Vice-Rector: Social Impact, Transformation and Personnel
Institutional functionary (curator) responsible for these rules	Chief Director: Strategic Initiatives and Human Resources
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## **The core of the rules**

Stellenbosch University (SU) considers this disciplinary code as the rules according to which behaviour can be rectified, rather than a set of punitive measures.

### **1. Introduction**

In order to protect the interests of its staff and those of the institution, the University strives at all times to act ethically, transparently, equitably and in accordance with the provisions of the Labour Relations Act, the Basic Conditions of Employment Act and other relevant legislation.

### **2. Application of the rules**

These rules apply to all permanent staff who are in the University's employ.

### **3. Definitions**

In these rules the following expressions have the meanings as defined below, unless the context indicates otherwise:

- 3.1 Appeals Committee: an ad hoc committee consisting of at least three members who are appointed, upon request by the Council chair, by the Vice-Rector: Social Impact, Transformation and Personnel or his or her delegate
- 3.2 Disciplinary Committee: a disciplinary committee consisting of at least three members who are appointed by the Vice-Rector: Social Impact, Transformation and Personnel or his/her delegate
- 3.3 CCMA: the Commission for Reconciliation, Mediation and Arbitration
- 3.4 Staff member: any member of the academic or support service staff who has been appointed on a permanent, contract, temporary full-time or temporary part-time basis in terms of the conditions of service that apply
- 3.5 Council: the Council of Stellenbosch University
- 3.6 Rector and Vice-Chancellor: the Rector and Vice-Chancellor of Stellenbosch University
- 3.7 Allowance: any financial payment to any staff member in addition to his or her cost of employment and which serves as a supplement to his or her total cost of employment
- 3.8 Provisional suspension with payment: the suspension, in anticipation of a hearing that is to follow, of a staff member's right and duty to fulfil his or her work obligations because the person's filling his or her post may be detrimental to any investigation or to the staff member's work relationships; provided that the University remains obliged to keep paying the cost of employment or any allowance, or both, to the staff member concerned for the duration of the period of provisional suspension
- 3.9 Temporary suspension without pay: suspension, in anticipation of a hearing that is to follow, of a staff member's right and duty to fulfil his or her work obligations, along

with the suspension of the University's obligation to pay the cost of employment or any allowance, or both, to the staff member concerned for the duration of the temporary suspension

#### **4. Aim of the rules**

The aim of these rules is to establish procedures and guidelines for dealing with misconduct, to promote discipline and to create a climate that is conducive to the flourishing of healthy labour relations.

#### **5. Objectives of these rules**

These rules have the following objectives:

- 5.1 Ensure discipline in the workplace.
- 5.2 Do enquiries if staff members do not meet expectations regarding work obligations or performance.
- 5.3 Rectify misconduct.
- 5.4 Ensure that the policies and procedures of the University as employer are complied with.
- 5.5 Ensure that SU fulfils the legal requirements regarding the management of discipline in the workplace.

#### **6. Principles of the rules**

These rules are based on the principles of equity, justice and transparency, and on the premise that SU wants to act within the guidelines of the law and free of discrimination and victimisation.

#### **7. Provisions of the rules**

##### **Examples of misconduct:**

SU staff members may be found guilty of misconduct in the following cases, among others:

- 7.1 Intentionally or negligently contravene or attempt to contravene a rule, regulation or stipulation of the University's.
- 7.2 Wilfully refuse or through negligence fail to execute a lawful instruction by an authorised person on behalf of the University, or act contrary to such instruction.
- 7.3 Steal, illegally appropriate for themselves, illegally or improperly use or illegally destroy, damage or handle or use University property in such a manner that it may be or indeed is detrimental to the University.
- 7.4 Enter or find themselves on University premises, or are otherwise on duty, while they:

- 7.4.1 abuse or are under the influence of alcohol to the extent that it is or may be detrimental to their work performance or relationships; or
- 7.4.2 use drugs without a medical prescription or are under the influence of drugs to the extent that it is or may be detrimental to their work performance or relationships.
- 7.5 Abuse their official position to obtain a privilege or benefit.
- 7.6 Commit sexual harassment or abuse a relationship of dependence with students or staff members, or both, for sexual purposes.
- 7.7 Make any false or untrue statement that may be detrimental to or prejudice the University, knowing that such statement is false or untrue.
- 7.8 Persist in their failure to perform their duties.
- 7.9 Disclose confidential information about SU's activities to any person without having obtained the permission of an authorised person on behalf of the University.
- 7.10 Intentionally render themselves incompetent or unfit for performing their duties.
- 7.11 Act in a manner that results or may reasonably result in any of the following, where such results were foreseen or reasonably foreseeable at the time when such act was done:
  - 7.11.1 The University's good name is compromised.
  - 7.11.2 The maintenance of order, discipline or safety at the University is detrimentally affected or jeopardised.
  - 7.11.3 The unimpeded course of teaching, research, administration or general functions at the University is detrimentally affected or jeopardised.
- 7.12 Perform external work without the necessary permission or exceed the bounds of permission in this regard.
- 7.13 Act or fail to act in accordance with reasonable expectations based on their conditions of employment.

## **8. Procedure in case of less serious offences or misconduct**

- 8.1 Should staff members commit an offence or misbehave regarding a less serious matter, their line manager may reprimand them by means of an oral warning. In cases where a written warning may be appropriate, a disciplinary committee may handle the procedure. The disciplinary actions or sanctions that the Disciplinary Committee may recommend can vary from a verbal warning to a final written warning.
- 8.1 The Vice-Rector: Social Impact, Transformation and Personnel or her or his delegate must ratify the appointment of the Disciplinary Committee, which is to consist of the following members:
  - 8.2.1 the senior manager of the environment or department where the accused staff member is employed – the chair of the committee;
  - 8.2.2 at least two members from (an)other environment(s); and

8.2.3 a pro forma prosecutor, who may be SU's investigating officer or the staff member's direct line manager.

Should the senior manager her- or himself be involved in a matter that has resulted in disciplinary action, the Vice-Rector: Social Impact, Transformation and Personnel or her or his delegate must appoint another chair.

8.3 Should a disciplinary hearing be necessary, the pro forma prosecutor must serve a written notification on the accused staff member at least five workdays before the date of the hearing to appear before the Disciplinary Committee on a certain date and at a certain time and place, and stating the following:

8.3.1 the complaint lodged against the staff member, as well as sufficient details of the alleged misconduct;

8.3.2 the staff member's right to –

8.3.2.1 attend the hearing when evidence is given and arguments are made;

8.3.2.2 respond to the complaint in writing two working days before the hearing;

8.3.2.3 be assisted at the hearing by an SU staff member or by a representative of a trade union that either is registered or has an agreement of recognition with the University, and

8.3.2.4 appeal under subparagraph 12 against a potential guilty verdict; and

8.3.3 a warning that, should the staff member fail to attend the hearing without good reason, the hearing may proceed in his or her absence and the proceedings will not be invalid as a result of the staff member being in absentia.

8.4 If the accused staff member is absent or suspended from the workplace, the written notice as described in paragraph 8.3 must be delivered at the staff member's home address captured on the University's system.

8.5 Subject to the provisions of these rules, the chair of the Disciplinary Committee – the members of which the Vice-Rector: Social Impact, Transformation and Personnel or her or his delegated officer has appointed – must determine the procedure to be followed at the hearing. Such hearing must be procedurally fair and must conform to the principles of natural justice. This entails, in particular, that accused staff members have the right to testify themselves, to call witnesses or have them called and to question them or have them questioned, to question witnesses who testify against them or to have such witnesses questioned, to cross-examine their own witnesses or to have them cross-examined after all witnesses have testified, to argue their case themselves or to have it argued, to submit evidence in mitigation or to have it submitted and to address the Disciplinary Committee or to have it addressed regarding the appropriate measures.

The pro forma prosecutor may call and question witnesses, question the person or persons who testify against the accused staff member, question the accused staff member (if she or he testifies) and any other person or persons who testify on

behalf of the accused, cross-examine her or his own witnesses and argue the case after all witnesses have testified but before the accused staff member or person assisting her or him is given the opportunity to argue the case for the accused.

- 8.7 In the case of a tie of votes (i.e. if the Disciplinary Committee cannot reach a unanimous decision), the decision of the majority of the committee members holds. The chair, however, has a casting vote.
- 8.8 The sanction must be communicated to the Human Relations Office in the Division of Human Resources (HR), and served on the staff member concerned under the signature of the Chief Director: Strategic Initiatives and Human Resources. A copy of the sanction and the above-mentioned communication must be entered on the staff member's personal record.
- 8.9 A staff member found guilty of misconduct has the right to appeal against the findings in accordance with the prescribed procedure of appeal.

## **9. Procedure in case of serious offences or misconduct**

- 9.1 A staff member may not be accused of serious misconduct before a written statement, signed by the accuser and setting out the allegations against the person, has been submitted before the Vice-Rector: Social Impact, Transformation and Personnel or her or his delegate.
- 9.2 The Vice-Rector: Social Impact, Transformation and Personnel or her or his delegate can appoint a committee consisting of one or more staff members or (an) expert(s) from outside the University, or both, as soon as possible. This committee must do a preliminary inquiry into any allegations made to the above-mentioned Vice-Rector or his or her delegate, and into any behaviour by a staff member that may constitute misconduct, with the task to report in writing to the Vice-Rector or his or her delegate. The provisional investigative committee may consult with or obtain information from any person, including the staff member against whom the complaint has been or allegations have been made.
- 9.3 If the Vice-Rector: Social Impact, Transformation and Personnel or her or his delegate reckons that reasonable grounds have been shown for a complaint of serious misconduct against a staff member, she or he may appoint a disciplinary committee and task it to conduct a hearing of the staff member concerned.
- 9.4 The Vice-Rector: Social Impact, Transformation and Personnel or her or his delegate may reach the conclusion that a staff member's alleged misconduct is not serious enough to justify a disciplinary hearing, but nonetheless serious enough that the staff member must be reprimanded. In such instances, the above-mentioned Vice-Rector or his or her delegate may, after having heard any presentations submitted by the staff member in this regard, reprimand the person appropriately; or, if the Vice-Rector or his or her delegate is convinced that the misconduct was not that serious, refer the matter back to the line manager.
- 9.4 If a disciplinary hearing is to be held, the Vice-Rector: Social Impact, Transformation and Personnel or her or his delegate must appoint a lawyer from outside the University as pro forma prosecutor to handle the accusation from that point onwards.

- 9.6 If the Vice-Rector: Social Impact, Transformation and Personnel or her or his delegate deems a complaint against a staff member to be so serious that it may lead to dismissal, she or he may appoint a disciplinary committee comprising legal practitioners and other experts from outside the University to hear the case and make recommendations regarding disciplinary actions or sanctions against the staff member. The above-mentioned Vice-Rector or his or her delegate must appoint a chair from among the members of this committee. The final decision regarding the sanctions or decision by the Disciplinary Committee rests with the Vice-Rector: Social Impact, Transformation and Personnel or her or his delegate. The sanctions or recommendations by the Disciplinary Committee become an official decision by the University only after the above-mentioned Vice-Rector or his or her delegate has ratified it. The Vice-Rector: Social Impact, Transformation and Personnel or her or his delegate may also be of the opinion that the recommendations or sanctions are deficient, and may refer them back to the Disciplinary Committee for clarification.
- 9.7 If a disciplinary hearing is to be held, the pro forma prosecutor must serve a written notification on the accused staff member (or, if the accused is absent or suspended from the workplace, at her or his home address captured on the University's system) at least five working days before the date of the hearing to appear before the Disciplinary Committee on a specified date and time at a specified place, which notification must state the following:
- 9.7.1 the complaint against the staff member, as well as sufficient details of the alleged misconduct, together with copies of all relevant documentary evidence;
  - 9.7.2 the staff member's right to –
    - 9.7.2.1 attend the hearing when evidence is given and arguments are made;
    - 9.7.2.2 respond to the complaint in writing two working days before the hearing;
    - 9.7.2.3 be assisted at the hearing by an SU staff member or, with notice to the above-mentioned Disciplinary Committee, by a representative of a trade union or a lawyer in private practice (the latter for the accused's own account); and
    - 9.7.2.4 appeal under subparagraph 12 against a potential guilty verdict; and
  - 9.7.3 a warning that, should the staff member fail to attend the hearing without good reason, the hearing may proceed in his or her absence and the proceedings will not be invalid as a result of the staff member being in absentia.
- 9.8 Subject to the provisions of these rules, the chair of the Disciplinary Committee – the members of which the Vice-Rector: Social Impact, Transformation and Personnel or her or his delegated officer has appointed – must determine the procedure to be followed at the hearing. Such hearing must be procedurally fair and must conform to the principles of natural justice (see subparagraph 8.5 above).

- 9.9 The pro forma prosecutor may call and question witnesses, question witnesses who testify against the accused, question the accused staff member (if she or he testifies) and the witnesses who testify on behalf of the accused, cross-examine her or his own witnesses and argue the case after all witnesses have testified but before the accused staff member or the person assisting her or him has been given the opportunity to argue the case for the accused.
- 9.10 HR must appoint a person to record the proceedings at the hearing and all the witnesses' testimonies given at the hearing by means of a digital recorder. A member of the Disciplinary Committee may not perform this function.
- 9.11 In the case of a tie of votes (i.e. if the Disciplinary Committee cannot reach a unanimous decision), the decision of the majority of the committee members holds. The chair, however, has a casting vote.

## **10. Process and provisions when a staff member is suspended**

Before a staff member may be informed officially of his or her proposed suspension, the University must have a conversation with the staff member concerned to inform the person of such proposed suspension and to afford him or her the opportunity to respond and to provide reasons why the proposed measure should not be taken. Only after such conversation has taken place it may be decided to proceed with the suspension.

- 10.1 The Vice-Rector: Social Impact, Transformation and Personnel or his or her delegate may provisionally suspend a staff member who has been accused of misconduct on full payment for a maximum of ninety days, provided that the above-mentioned Vice-Rector or his or her delegate has such complaint investigated at the earliest possible opportunity, and that the suspended staff member may submit written representations to the Vice-Rector concerned or his or her delegate within three working days of being notified in writing of her or his provisional suspension to furnish reasons why she or he should not be suspended.
- 10.2 The Vice-Rector: Social Impact, Transformation and Personnel or his or her delegate may, on completion of a provisional investigation under subparagraph 9.2, suspend without payment a staff member against whom a serious criminal charge has been brought or who has been arrested on a serious criminal charge, if the alleged offence may cause the University serious financial damages; provided that the above-mentioned Vice-Rector or his or her delegate has the case heard at the earliest possible opportunity once the criminal proceedings under paragraph 9 have been concluded. The suspended staff member must be able to submit written representations to the Vice-Rector concerned or his or her delegate within three working days of being notified in writing of her or his provisional suspension to furnish reasons why she or he should not be suspended.
- 10.3 The Vice-Rector: Social Impact, Transformation and Personnel or his or her delegate may retrospectively rescind the provisional suspension of a staff member at any time. Even if provisional suspension has been rescinded, the University may continue the process regarding the accusation.
- 10.4 If a staff member confesses to misconduct of which he or she has been accused,

the Disciplinary Committee must indicate whether any evidence is required in this regard.

- 10.5 If an accused staff member is found not guilty of misconduct of which she or he has been accused, the person must be duly notified and, if provisionally suspended, be reinstated in employment as from the time of notification of such acquittal and any cost of employment that has been withheld from the staff member must be allocated retrospectively.

## **11. Disciplinary sanctions and accompanying processes**

- 11.1 If a staff member is found guilty of misconduct, the Disciplinary Committee must make a recommendation to the Vice-Rector: Social Impact, Transformation and Personnel regarding one or more of the following sanctions that in the committee's opinion should be applied:
- 11.1.1 The staff member receives a written warning that has been documented on his or her personal record. The committee must also recommend for what period such warning should apply.
  - 11.1.2 The staff member is deprived, either temporarily or partially, of the right to take any leave of any category to which he or she is entitled (except for sick, maternity and accrued leave).
  - 11.1.3 The staff member is suspended from her or his post for a maximum of ninety days without payment.
  - 11.1.4 The staff member's rank is lowered or cost of employment is reduced.
  - 11.1.5 The staff member must reimburse the University within the legal limits for damages or harm caused by the misconduct.
  - 11.1.6 The staff member is dismissed on terms deemed fair by the Disciplinary Committee (accompanied by a communication of the dismissed person's right to appeal and, should the appeal fail, to institute a dispute with the CCMA).
- 11.2 The Vice-Rector: Social Impact, Transformation and Personnel or his or her delegate must consider the recommendations concerning the appropriate measures that the Disciplinary Committee has deemed fair. In the process, the context must be taken into account of the misconduct of which the staff member has been found guilty, as well as the reasons that the Disciplinary Committee mentions in its report. Subsequently the above-mentioned Vice-Rector or his or her delegate may ratify the recommendations or amend them, or appoint another committee without prejudice to any rights.
- 11.3 The decision by the Disciplinary Committee is final, subject to the right to appeal as provided in paragraph 12; the measures taken by the committee need not be ratified by Council.
- 11.4 The Disciplinary Committee may suspend for a specified period the implementation of any measure decided upon, subject to any condition(s) that the committee deems reasonable.

## 12. Appeal

- 12.1 A staff member found guilty of misconduct may appeal against such finding by submitting grounds for appeal, set out in full in writing, before the Vice-Rector: Social Impact, Transformation and Personnel or his or her delegate within fourteen working days after the decision by the Disciplinary Committee has been communicated to him or her in writing – or, should the staff member be absent from the workplace, has been sent to his or her home address captured on the University's system. This provision excludes all hearings where a commissioner acted as chair appointed under section 188A of the Labour Relations Act 66 of 1995.
- 12.2 A staff member who wants to exercise the right to appeal must draft a clear, written summary of the considerations that form the basis for the appeal. Below are some examples of such considerations:
  - 12.2.1 lack of jurisdiction
  - 12.2.2 procedural irregularity
  - 12.2.3 evidential irregularities
  - 12.2.4 errors of fact regarding the finding by the Disciplinary Committee
  - 12.2.5 defects in the finding that was delivered
  - 12.2.6 lack of impartiality on the part of the Disciplinary Committee
- 12.3 If a staff member appeals under this paragraph, he or she has no right to any costs or support by a person of his or her choice, or to a lawyer in private practice, except in circumstances as described in subparagraph 12.6.
- 12.4 When an appeal is made under subparagraph 12.1 against the finding by the Disciplinary Committee, the disciplinary measures that the committee has applied under subparagraph 11.1 remain effective until a decision has been made in the appeal hearing. If the appeal is upheld in its entirety, the staff member is reinstated in her or his employment, with all the concomitant rights and privileges, backdated to the date on which the disciplinary process was imposed on her or him under subparagraph 11.1.
- 12.5 When a notice of appeal is received, the chair of the Disciplinary Committee must receive a copy. Subsequently the Disciplinary Committee, assisted by the pro forma prosecutor, must formulate its response to the proposed grounds for appeal within a reasonable time and submit it before the Vice-Rector: Social Impact, Transformation and Personnel or his or her delegate. Subsequently arrangements must be made for the appeal hearing, which must begin within fourteen working days after the notice of appeal has been received.
- 12.6 Appeals are heard exclusively based on the record of the investigation, together with any documents that are submitted before the Appeals Committee in the course of the investigation. Exceptions may be made when the Appeals Committee allows oral testimony in light of the grounds for appeal, and when an appeal rests on alleged material irregularities that supposedly occurred during the proceedings and that are not apparent from the record of investigation itself. In the latter case, the

staff member may be represented, with due notification to the Appeals Committee, by a person of her or his choice.

- 12.7 Upon consideration of the matter the Appeals Committee may, except in cases as set out in subparagraph 12.8 below, uphold the appeal in its entirety or in part and set aside or amend the finding by the Disciplinary Committee; it may reject the appeal and ratify the finding by the Disciplinary Committee in its entirety or in part; it may refer any questions or ambiguity about the hearing back to the same disciplinary committee and direct them to report on the issues, or it may constitute another investigative committee with the directive to conduct further investigations and deliver a verdict on the representations.
- 12.8 If the Appeals Committee finds that material irregularities occurred during the proceedings of a particular disciplinary committee, the Appeals Committee must set aside the disciplinary committee concerned and refer the matter back to the Vice-Rector: Social Impact, Transformation and Personnel or his or her delegate, who must convene another disciplinary committee with different members than the original committee who must hear the case anew.
- 12.9 The decision by the Appeals Committee is final; the measures that the committee takes need not be ratified by Council.

### **13. Periods**

The Vice-Rector: Social Impact, Transformation and Personnel, Council or the Disciplinary Committee may extend the periods referred to in these rules, except the period of ninety days mentioned in subparagraph 11.1.3, if the duly authorised person or body is of the opinion that good reasons exist for such extension.

### **14. Safekeeping of the record of investigation**

- 14.1 SU HR stores all documents and digital recordings relating to a disciplinary matter. However, accused staff members have the right to obtain copies of such documents and recordings at their own expense.
- 14.2 Such documents and recordings are kept for at least five years after the Disciplinary Committee has announced its decision, or for at least five years after the Appeals Committee has made its final decision (in cases where staff members brought an appeal against the decision by the Disciplinary Committee) or for at least five years after the minister has rejected an appeal by a staff member under section 13 of the Universities Act 61 of 1955.

### **15. Function of the Division of Human Resources (HR)**

- 15.1 An HR staff member should preferably be present at all hearings where a staff member is accused of serious misconduct. The absence of such HR person will not, however, prejudice the proceedings of a hearing.
- 15.2 The primary function of the HR staff member mentioned in subparagraph 15.1 is the following:

- 15.2.1 Advise the Disciplinary Committee and the prosecutor, where it seems necessary, on the implementation and interpretation of University policy and procedures.
- 15.2.2 Inform the Disciplinary Committee of relevant precedents from decisions by the CCMA, Labour Court, Labour Appeal Court and University.
- 15.3 The HR staff member may pose pertinent questions to obtain clarity regarding substantive points that have been raised.

## 16. Conflict resolution

These rules provide for an appeals procedure should the finding by the Disciplinary Committee be rejected. Under the Labour Relations Act staff members also have the right to refer the matter for resolution to the CMMA.

## 17. Control over the rules

### 17.1 Functions

All staff members who belong to the SU Management corps are obliged to ensure that misconduct by employees who are under their supervision be reported in accordance with the provisions of these rules.

### 17.2 Implementation

The duty rests with HR to ensure that the rules are applied and that the guidelines and requirements are adhered to.

### 17.3 Monitoring and reporting

The owner of these rules is accountable and the curator is responsible for the necessary controls being established to monitor and report on the rules and to change or amend the rules where and when necessary according to the University's needs, and to report on it to the RMT (Rector's Management Team), the Human Resources (HR) Committee of Council and to Council.

### 17.4 Reviewing

These rules must be reviewed ad hoc as required by legislation or changing operational needs from time to time.

### 17.5 Noncompliance

In the case of noncompliance with these rules the Labour Relations Act, the Basic Conditions of Employment Act and the normal line management practices at SU will apply.

## 18. Supporting documents

Item no.	Name of document	Status <i>(e.g. identified, in process or approved)</i>

IR0152	Disciplinary Code	Approved
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## 19. Related documents

<b>Item no.</b>	<b>Name of document</b>	<b>Status</b> <i>(e.g. identified, in process or approved)</i>

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