**GUIDE for Staff members**

**Facing a Disciplinary Hearing**

1. **The Importance of Discipline**

In order to provide an environment conducive to staff and student well-being that allows them to thrive and prosper and that the institution remains viable today and in the future, the University needs to ensure that the institution is well governed, that threats to this are addressed and that student, employee and employer rights are protected. Discipline is one mechanism available to Rhodes as an employer to address situations where staff do not abide by acceptable rules of conduct and do not discharge their duties faithfully and diligently.

1. **The Rhodes Disciplinary Code**

The disciplinary code of the institution governs all disciplinary processes within the institution. This code was a result of negotiation with both unions and signed off by them and the University.

This code specifies:

1. That there are 3 types of discipline: level 1 (minor offences), level 2 (more serious offences) and level 3 (serious offences). The latter may lead to dismissal. The code gives examples of these types offences;
2. The process that is followed depending on the level of discipline. Please note that in the case of level 3 offences or where the University[[1]](#footnote-1) is moving for dismissal (e.g. if a staff member has had repeated level 1 offences) or with cases of harassment, the University representative who argues the University’s case is usually a lawyer. This is allowed in terms of the disciplinary code;
3. The likely sanctions if a staff member is found guilty depending on the level of offence.

The full disciplinary code is available at the following website: http:/

If you would like a copy of this, please contact the IR&EE Specialist in the HR Division.

1. **Your Rights**

In any disciplinary process, the staff member has a right to fairness.

There are two key types of fairness:

1. Substantive fairness: This means that the sanction must be appropriate to the offence. The reason and purpose of the sanction must be reasonable in relation to the misconduct.

You have a right to present *mitigating circumstances* that may influence the sanction. A mitigating circumstance is a consideration/reason like you have been a good employee in the past, you have many years of service, you often go the extra mile, you have been honest in the hearing and acknowledged that you were in the wrong.

The University has the right to present *aggravating circumstances* e.g. you have a track record of past offences, you only do the bare minimum at work, you have been given second chances in the past, you were drunk at the time, you have been dishonest in the hearing etc.

1. Procedural fairness: This means that the process was conducted in a fair way.

This includes that the staff member has a right:

* To be represented. In the case of level 1 and 2 offences, this can be a union representative (if you belong to a union) or another staff member. If the case of a disciplinary enquiry (this is what the hearing is called at level 3), you have a right to a legal representative;
* To be advised of the charge and given any documentation that has been gathered and that will be presented by the University in the hearing/enquiry. You should receive a letter or notification of the charge;
* To be given sufficient warning of the disciplinary hearing or enquiry. In general, you should be given at least two working days for level 1 and 2 offences and at least five working days for level 3 offences. If for any legitimate reason you are unable to prepare adequately for the hearing or you have been unable to get representation, go to the hearing/enquiry and ask for a postponement of the hearing/enquiry. Do not ignore the hearing/enquiry and not arrive as the hearing/enquiry can go ahead without you. This is allowed legally. At the hearing/enquiry, you can ask for a postponement but the Chairperson will expect to show that you have taken steps to prepare and find representation.
* To involve any witnesses that may support your case. You are responsible for organising the witnesses that you wish to call. They must be available on the date of the hearing/enquiry. The University is responsible for organising its witnesses;
* To question the University’s witnesses. The University will call one witness at a time. After each witness has been questioned by the University representative, you or your representative will have an opportunity to also question that witness. The University has the same right and may question any witnesses that you call;
* To present mitigating circumstances for the determination of the sanction. The University has the right to present aggravating circumstances;
* To receive the outcome of the hearing in writing;
* To be advised of your right to appeal. For level 1 and 2 offences, there is an internal appeal process. This has to be done within two working days. For level 3 offences where the staff member has been dismissed, the person will refer the matter to the CCMA. You need to be aware that you only have a month after the decision or implementation of the decision to make this appeal to the CCMA.

If you are unclear on any of this information, please feel free to contact the IR& EE Specialist in the HR Division.

1. **The role of Human Resources**

It is the HR Division’s role to ensure the provision of a fair and effective disciplinary procedure, that employee and employer rights are protected and that the employer responsibilities are appropriately executed by the University representatives.

As such the HR Division plays a facilitative role. The IR&EE Specialist is available to both staff and managers to provide advice on the disciplinary process and the rights of the two parties. You as a staff member must feel free to contact this Specialist or your HR generalist. The HR person cannot discuss with you the details of the case. They can discuss how the process works, what you can expect to happen in the hearing, how you need to prepare.

1. **The role of the union**

If the staff member belongs to a union, s/he may elect to have a union representative at the hearing/enquiry. The union’s role is to ensure that the process is fair and that your rights are protected. The union representatives participate fairly regularly in disciplinary processes and so should have a good understanding of these processes. They should be able to advise you on the process, how you need to prepare. The union should be encouraging you to be honest in your conduct and respectful in the hearing. Being dishonest or disruptive will not serve your interests in this process as this can be used as an aggravating circumstance in the determination of a sanction should you be found guilty of the offence/s.

1. **Suspension**

A staff member may be suspended prior to a disciplinary hearing/enquiry taking place. This means that the staff member continues to be paid but does not come to work. The University will require the person to be at home during this period so that s/he is available for the disciplinary processes. This is legal provided the University can demonstrate that the presence of that staff member is a risk to the institution or others staff. Examples of this are cases of theft and fraud; cases where the institution is concerned that the staff member can negatively impact records, paper trails that are critical to the investigation for disciplinary case; where the staff member has made threats to the institution or to other staff or students.

**Written: HR Division**

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1. This refers to those who represent the University, either a Head of Department, Dean, Head of Department/Division/Unit/Institute etc. [↑](#footnote-ref-1)