**Human Resources Division:**

**Guide on being a Witness**

**in the Disciplinary Process**

1. **PREAMBLE**
2. Rhodes University is committed to a fair disciplinary process for accused employees and also all witnesses involved in a disciplinary enquiry and testifying in a disciplinary hearing. To achieve this, the University commits itself to an equitable process to ensure fairness for all its employees.
3. The University recognizes its responsibility to employees and in line with the Codes of Good Practice as are found in the Labour Relations Act. In line with this all disciplinary proceedings should be handled with sensitivity, commitment and fairness.
4. The process of discipline is also driven by the various departments and the Human Resources Division.
   1. The Head of Department and manager (herafter referred to as the manager) is responsible to ensuring that timeous, appropriate action is taken consistently and fairly, in line with the policies and procedures of the institution.
   2. It is the HR Division’s role to ensure that provision of a fair and effective disciplinary procedure is provided, that employee and employer rights are protected and that the employer responsibilities are executed by the manager, supporting the manager in doing so. This manual constitutes one form of this support. It seeks to inform all witnesses of their rights and obligations in the area of discipline so as to improve the disciplinary process within Rhodes University. All witnesses should avail themselves with the contents of this manual and ensure that they perform their functions as witnesses in compliance with the manual.
   3. All staff members are required to report all disciplinary infringements to the Managers of the Departments and / or to the Human Resources Generalist for the relevant work area so that disciplinary action can be taken in terms of the University's Disciplinary Code and policies. Where relevant, staff members must also make themselves available to be witnesses in disciplinary hearings.
5. **GENERAL PRINCIPLES**
6. Sound employment relations and the management of performance can only be achieved by means of an effective and fair process of progressive discipline.
7. To pursue an agenda of progressive discipline, it is essential that all Managers uphold the principles of substantive and procedural fairness in execution of actions in terms of this manual.
8. Substantive fairness 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. Discipline should always be applied equally to all staff.
9. Procedural fairness relates to how the disciplinary process is executed. The following principles apply:
   1. A Chairperson of a disciplinary hearing is required to listen to both sides and this is known as the "*audi alteram partem*" principle, in law.
   2. Witnesses are required to give evidence in all enquiries and disciplinary hearings so that the Chairperson can avail him/herself of all relevant facts prior to making a decision regarding discipline.
   3. The accused employee is entitled to be represented by a fellow employee or trade representative working at the University.
   4. The accused employee and/or their representative has a right to question the accuracy of the witnesses’ statements or responses.
   5. All evidence presented including that of the witnesses will be recorded.
10. **IMPORTANT RULES TO REMEMBER FOR ALL WITNESSES**

1. If you are the University’s witness, you will be called by the University Attorney or the Manager to give witness. You will be asked a series of questions about what happened. After the University representative has finished asking you questions, the opposing representative (representing the employee) will ask you questions. After that, the University representative can ask questions again. The purpose of the second lot of questions from the University’s representative is usually to clarify something that may have been asked by the opposing representative. At times, the Chairperson may also ask you questions to clarify your responses or to explore the facts.
2. Listen carefully to the question being asked. Think and compose your answer before speaking.
3. Pause and think about the answer before you respond.
4. Do not answer a question if you did not hear the complete question or if you do not understand the question. Ask the opposing representative to restate the question as many times as needed. If the opposing representative asks a number of questions one after the other, and you can’t remember what was asked, say something like: “Sorry but I have not kept track of all the questions. Could I ask that the first question be repeated”.
5. Never speculate or guess the answer to a question. If you are the witness do not know the answer to a question, you should simply state "I do not know." If you do not remember a fact, you should simply state, "I do not recall" or "I do not remember."
6. Answer only the question asked; do not go into any explanation. It is the opposing representative's job to ask the right question/s. For example, if you are asked, "Do you know what time it is?" you should either say "yes" or "no". If you answer "3:00pm", you are volunteering information.
7. Only answer what you know and have seen or heard. Hearsay (what you heard others say) is generally not admissible.
8. Always be truthful and forthcoming in your testimony and with the University’s Attorney.
9. Purposeful dishonesty will likely be discovered at some point. This will discredit you as a witness and will undermine the University’s case.
10. Be serious and respectful. Attempts at humour and joking may be misunderstood when your testimony is reviewed later.
11. Do not get distracted. The opposing representative may try to make you angry or emotional. Try and not fall into this trap. Do not lose your temper even if the opposing representative is aggressive and purposefully attempts to upset or anger you. Do not be intimidated by the opposing representative’s conduct. Remain confident. If you believe that the opposing representative is being disrespectful or rude, ask the University’s representative or the Chairperson to intervene. If you need to take a break e.g. you feel yourself getting tearful, ask the Chairperson if you may have a break.
12. Remain calm. Do not argue with the opposing representative.
13. If you make a mistake in your testimony, correct this as soon as you discover/realist the error.
14. Before your testimony, do not consume alcohol or drugs. Be careful of taking any over the counter mediation to calm you unless you have used it before and are aware of how it will impact you.
15. Never refuse to answer a question unless advised by the University's representative.
16. If the University's Attorney objects to a question that has been asked of you by the opposing representative, don’t answer. Wait for the Chairperson to decide if the question must be answered. If the Chairperson agrees that the question is to be answered, only then answer it.
17. In the presenting of evidence and alternative explanations, the opposing representative will make statements that may appear offensive e.g. “I think you are lying about what happened. Is this not true?” or “It is not true that the reason you are seeking to dismiss this employee is because he criticizes your management style and has queried your decisions?” The questions have to be posed in this way in order for the representative to be able to use this information later in making a case. Try to not take offence by this. Be confident in your own behavior and track record.

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