

CESA DISCIPLINARY COMMITTEE

Streamlined Disciplinary Procedure (January 2010) (with reference to Advisory Note 97/7)

1. Complaint or allegation of 'breach of conduct'

Any member firm of CESA or any individual or interested party having reason to allege that a member firm (or applicant to be a member) of CESA has breached the CESA's Code of Conduct, Constitution or Bye-Laws may submit a complaint in writing to the Chief Executive Officer of the CESA, referring specifically to:

- i. Details of the alleged breach
- ii. Specific clauses of the Constitution, Code of Conduct or By-laws transgressed
- iii. Relationship between the complainant and the accused party, in the matter.

The Chief Executive Officer shall:

- i. Acknowledge the complaint and inform the Chairman of the Disciplinary Committee, including any comments on the alleged seriousness of the alleged breach
- ii. Inform the Respondent of the complaint and forward copy of the complaint to the Respondent, inviting comment
- iii. Endeavour to arrange a conciliatory meeting between the parties, unless the complaint or alleged breach is, in the opinion of the Chairman of the Disciplinary Committee, of a such serious nature that this cannot be achieved
- iv. In absence of conciliation, refer the matter to the Disciplinary Committee for formal investigation.

The Chairman of the Disciplinary Committee shall:

- i. Inform the committee members of the matter at a forthcoming meeting
- ii. Formally request a written detailed response to the allegations from the Respondent, within 3 weeks of the request
- iii. After receipt of the response, formally request written comments on this response from the Complainant, to be received within 3 weeks of the request
- iv. After receipt of these comments, formally request a second response from the Respondent, again within 3 weeks, being the final submission to be received by the committee
- v. If at any time the Complainant or Respondent fails or chooses not to make a written response after being requested to do so, the submissions received up to that point shall be used to carry forward the committee's consideration of the matter, after duly informing the non-responding party.
- vi. Nominate two members of the committee at its next, or at a special meeting of the committee, to investigate the complaint by considering the submissions received, and if deemed necessary, conducting interviews with the parties and/or holding inspections in loco
- vii. Receive the report of the committee members investigating the matter within 3 weeks of nomination, which report is to include recommendations for appropriate action
- viii. With approval of the Disciplinary Committee the Chairman shall submit the report to Council.

Council shall:

- i. At its first meeting after receiving the Disciplinary Committee's report, be addressed by the Chairman of the Disciplinary Committee on the

- circumstances surrounding the case, including the steps taken in the investigation, and the Committee's recommendations to Council in its report
- ii. If appropriate in light of previous submissions by or meetings with the Respondent, call for a statement or explanation in writing by the Respondent and/or invite the Respondent to address the Council, and thereafter take a decision on action to be taken
 - iii. If the Committee's findings and recommendations are accepted, these shall be implemented forthwith by the Chief Executive Officer, in consultation with the Chairmen of the Disciplinary Committee and Tribunal
 - iv. If the Committee's findings and recommendations are not accepted, these shall be modified by Council, with a decision on the course(s) of action to be taken by the Chief Executive Officer, or, referral of the matter back to the Disciplinary Committee for further investigation and report back at the next Council meeting.

The Chief Executive Officer and Council shall:

- i. Inform the Respondent, through the Chief Executive Officer, of Council's decision and offer opportunity to the Respondent to submit a statement or explanation in writing and/or attending a Council meeting to do so
- ii. Following such submission, or if the Respondent has declined the offer, Council shall take a final decision and this shall be implemented by the Chief Executive Officer

2. Possible Disciplinary Actions

Actions which may be taken by Council against a member firm or Retired Principal, in terms of the Constitution and By-laws (see Appendix below), include:

- i. Reprimand
- ii. A fine
- iii. Suspension of membership
- iv. Termination of membership

Notwithstanding the above, a complaint against any employee of a member firm registered with the Engineering Council of South Africa (ECSA) may be lodged with ECSA by any person if Council is of the opinion that the rules of conduct of ECSA have been transgressed.

It is not considered necessary for the investigation of a complaint against a member firm by the Disciplinary Committee and actions subsequently resolved to be taken, to be suspended pending any ECSA investigation of a person arising from the same complaint, but that the two matters be allowed to proceed in parallel.

Appendix

The CESA Bye-Laws require Council to publish such details of action taken against a Member or Retired Principal, in regard to the Constitution and Bye-Laws, as it considers appropriate (see Bye-Laws clause 7.5)

Recommended actions for four sanctions are tabled below.

1. Terminate Membership

Publish the following on the CESA website:

- Name of firm and region of office(s)
- Details of contravention (e.g. Code of Conduct clause)
- Detail of action taken

2. Suspend Membership

Publish the following on the CESA website:

- Name of firm and region of office(s)
- Details of contravention (e.g. Code of Conduct clause)
- Detail of action taken

3. Impose Fine

Publish the following on the CESA website:

- The fact that action was taken against a member firm (no names mentioned)
- Region of office(s)
- Details of contravention (e.g. Code of Conduct clause)
- Detail of action taken

4. Reprimand

Publish the following on the CESA website:

- The fact that action was taken against a member firm (no names mentioned)
- Region of office(s)
- Details of contravention (e.g. Code of Conduct clause)
- Detail of action taken

Note: In addition to publication on the website, publication in the CESA Newsletter shall be at the discretion of Council.
