



**GENERAL PUBLIC SERVICE SECTORIAL BARGAINING CHAMBER
FOR THE DEPARTMENT OF CORRECTIONAL SERVICES**

RESOLUTION NO 1 OF 2006

**DISCIPLINARY CODE AND PROCEDURE FOR THE DEPARTMENT OF
CORRECTIONAL SERVICES**

1. Scope:

This agreement binds the employer employees of the employer who are members of the trade union parties to this agreement and employees of the employer who are not members of any trade union party to this agreement, but who fall within the registered scope of Chamber.

2. Purpose:

Noting that to replace the collective agreement (Resolution 1/2001, annexures A, B and C) on the Disciplinary Code and Procedure of the Department of Correctional Services concluded in the former Bargaining Council for the Department of Correctional Services and ratified in the GPSSBC; and

further noting to accordingly amend the regulations on the Disciplinary Code and Procedure issued under the Correctional Services Act 111 of 1998 in order to ensure a more effective Disciplinary Code and Procedure consistent with PSCBC Resolution 1 of 2003.

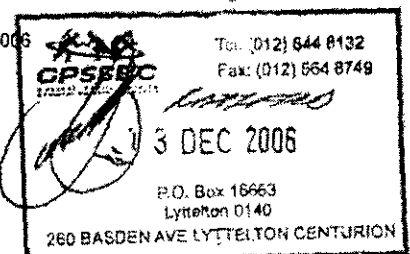
3. Agreement:

Therefore, the parties agree that –

- (3.1) The attached Annexure to this agreement replaces the Department of Correctional Services Disciplinary Code and Procedure – Resolution 1/2001 (Annexures A, B and C).

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DCS Disciplinary Code and Procedure: DBC Resolution 1_ of 2006



The contents of the attached Annexure are adopted as the amendment of the Regulations on the Disciplinary Code and Procedures issued under the Correctional Services Act 111 of 1998 and shall only be enforceable under, and to the extent of, such amended Regulations.

The agreement will come into effect on the date of signing.

The Department of Correctional Services undertakes to give effect to clause 3.2 of this agreement.

Any disciplinary proceedings instituted or commenced under the regulations prior to the signing of this agreement, must continue and be concluded in terms of the regulations.

The Chamber will monitor the implementation of this agreement.

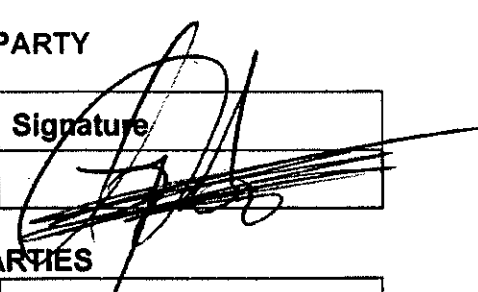
The Chamber will review the agreement after a period of twelve months.

4. Dispute Resolution:

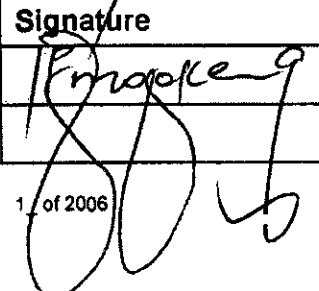
If there is a dispute about the interpretation or application of the contents of this agreement any party may refer the matter to the Council for resolution in terms of the dispute resolution procedure of the Council.

THIS DONE AND SIGNED AT CENTURION OF THIS 4th DAY
OF DECEMBER 2006.

ON BEHALF OF THE EMPLOYER PARTY

State as Employer	Name	Signature
	CHABA M.F	

ON BEHALF OF TRADE UNION PARTIES

Trade Union	Name	Signature
POPCRU	MOFOKENG P.A.	
PSA		

DISCIPLINARY CODE AND PROCEDURE FOR EMPLOYEES OF THE DEPARTMENT OF CORRECTIONAL SERVICES (LEVELS 2 TO 12)

1. PURPOSE AND SCOPE

The purpose of this Code and Procedures is:

- 1 To promote constructive labour relations in the DCS;
- 1.2 To promote mutual respect among employees and between employees and employer;
- 1.3 To ensure that managers and employees share a common understanding of misconduct and discipline;
- 1.4 To promote acceptable conduct;
- 1.5 To provide employees and the employer with a quick and easy reference for the application of discipline;
- 1.6 To avert and correct unacceptable conduct; and
- 1.7 To prevent arbitrary or discriminatory actions by managers toward employees.
- 1.8 To act in a preventative, progressive manner with the aim to correct unacceptable behavior.
- 1.9 It must be noted that this document is a collective agreement and that no party will deviate from all the provisions of this code.

2. PRINCIPLES

The following principles are embraced in the Code and Procedure and must inform any decision to discipline an employee.

2. Discipline is a corrective measure and not a punitive one.
- 2.2 Discipline must be applied in a prompt, fair, consistent, uniform, timely, impartial, confidential and progressive manner.
- 2.3 Discipline is a line management function.
- 2.4 A disciplinary code is necessary for the efficient delivery of service and the fair treatment of employees, and ensures that they:
 - 2.4.1 Have a fair hearing in a formal or informal setting;
 - 2.4.2 Are timeously informed of allegations of misconduct made against them;
 - 2.4.3 Receive written reasons for a decision taken; and
 - 2.4.4 Have the right to appeal against any decision.
- 2.5 As far as possible, disciplinary procedures shall take place in the place of work and be understandable to all employees.

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- 2.6 If an employee commits misconduct that is also a criminal offence, the criminal procedure and the disciplinary procedure will continue as separate and different proceedings.
- 2.7 Disciplinary proceedings do not replace or seek to imitate court proceedings.
- 2.8 The Disciplinary Code and Procedures constitutes a framework within which departmental policies may be developed to address appropriate circumstances, provided such policies do not deviate from the provisions of the framework.
- 2.9 In the event that the employee denies an allegation of less serious misconduct, a formal disciplinary hearing may be instituted.
- 2.10 Employees can only be disciplined for work related conduct

3. SCOPE OF APPLICATION

This Disciplinary Code and Procedure is applicable to all employees (levels 2 to 12) of the Department of Correctional Services employed in terms of the Correctional Services Act, Act 111 of 1998 and the Public Service Act, 1994.

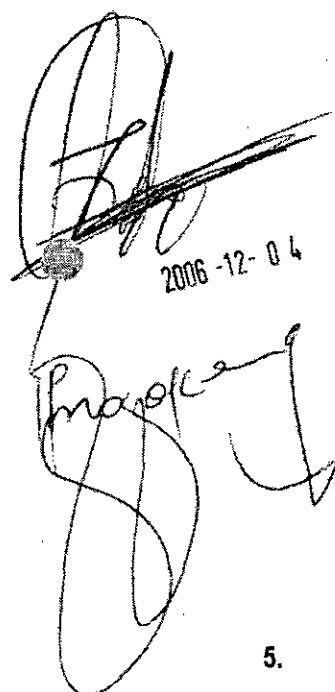
4. CODES, RULES AND STANDARDS

- 4.1 The Code of Good Practice: Dismissal contained in Schedule 8 of the Labour Relations Act, 1995, insofar as it relates to discipline, constitutes part of this Code and Procedure.
- 4.2 Employee conduct that may warrant a disciplinary action is listed in Annexure A. This list is not exhaustive. Management may discipline an employee in respect of other conduct, if the employee knew, or could be reasonably expected to have been aware, that the conduct constituted grounds for disciplinary action.
- 4.3 In applying Annexure A, management must assess the seriousness of the alleged misconduct by considering:
 - 4.3.1 The nature of the employee's work and responsibilities;
 - 4.3.2 The extent of the alleged misconduct or any dishonesty displayed by the employee;
 - 4.3.3 The actual or potential impact of the alleged misconduct on DCS, the employee's component, colleagues and/or the public;
 - 4.3.4 The regularity of the misconduct;
 - 4.3.5 The circumstances in which the misconduct occurred;
 - 4.3.6 Any other factor which, in the light of the peculiar circumstances prevailing at the place and time where the misconduct was committed, should be taken into consideration;
 - 4.3.7 Whether, objectively seen, the employer/employee relationship has been damaged or has become intolerable.

5. PROCEDURES: DISCIPLINARY ACTIONS

Less serious misconduct

In the event of less serious misconduct, the supervisor may invoke any one of the procedures outlined in clauses 5.1 to 5.5 which he or she deems appropriate.

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5.1 **Corrective counseling.** In cases where the seriousness of the misconduct warrants counseling, the manager of the employee must:

- 5.1.1 Bring the misconduct to the employee's attention;
- 5.1.2 Determine the reasons for the misconduct and give the employee an opportunity to respond to the allegations, through himself/herself or by a union representative;
- 5.1.3 Seek to get agreement on how to remedy the conduct; and
- 5.1.4 Take steps to implement the agreed course of action.

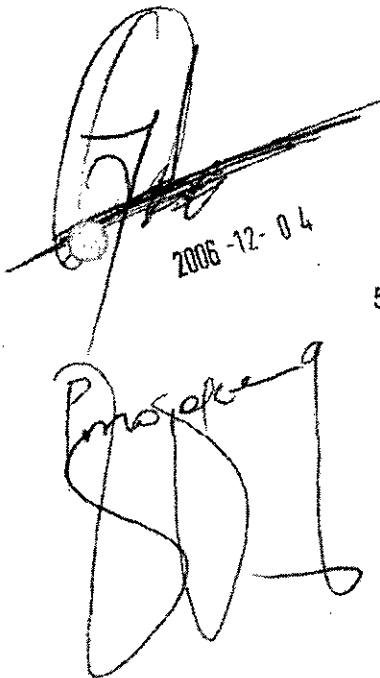
5.2 **Verbal warnings.** In cases where the seriousness of the misconduct warrants a verbal warning, the supervisor/manager of the employee may give a verbal warning. The steps in clauses 5.1.1 and 5.1.2 must be followed. The supervisor/manager must inform the employee that further misconduct may result in more serious disciplinary action, and record the warning. The verbal warning will only be valid for 03 months.

5.3 **Written warnings.** In cases where the seriousness of the misconduct warrants a written warning, the supervisor/manager may give the employee a written warning. The steps in clause 5.1.1 and 5.1.2 must be followed. The following provisions apply to written warnings:

- 5.3.1 The written warning may use the form of Annexure B.
- 5.3.2 The supervisor/manager must give a copy of the written warning to the employee, who must sign receipt of it. If the employee refuses to sign receipt, the supervisor/manager must hand the warning to the employee in the presence of another employee; both the supervisor and the other employee must sign in confirmation that the written warning was conveyed to the employee.
- 5.3.3 The written warning must be filed in the employee's personal file.
- 5.3.4 A written warning remains valid for six months. At the expiry of the six months, the written warning must be removed from the employee's personal file and destroyed.
- 5.3.5 If during the six-month period, the employee is subjected to disciplinary action on a same or related offence, the written warning may be taken into account in deciding an appropriate sanction.

5.4 **Final written warnings.** In cases where the seriousness of the misconduct warrants a final written warning, the manager may give the employee a final written warning. The steps in clause 5.1.1 and 5.1.2 must be followed. The following provisions apply to final written warnings:

- 5.4.1 The final written warning may use the form of Annexure C.
- 5.4.2 The manager must give a copy of the final written warning to the employee, who must sign receipt of it. If the employee refuses to sign receipt, the manager must hand the warning to the employee in the presence of another employee; both the supervisor and the other employee must sign in confirmation that the final written warning was conveyed to the employee.
- 5.4.3 The final written warning must be filed in the employee's personal file.
- 5.4.4 A final written warning remains valid for six months. At the expiry of the six months, the final written warning must be removed from the employee's personal file and destroyed.



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If during the six-month period, the employee is subject to disciplinary action on a same or related offence, the final written warning may be taken into account in deciding an appropriate sanction.

- 5.5 For the purpose of determining appropriate disciplinary actions, valid warnings for similar offences by the employee shall be taken into account.

6. SERIOUS MISCONDUCT

If the alleged misconduct justifies a more serious form of disciplinary action than provided in paragraph 5, the employer must initiate a disciplinary enquiry. The employer must appoint an employee as a representative (Initiator) in writing, who as far as possible should be the manager/ supervisor of the employee, to initiate the enquiry.

7. DISCIPLINARY HEARING

7.1 Notice of hearing

- 7.1.1 The employee must be given notice at least seven working days before the date of the hearing.

The employee must sign receipt of the notice. If the employee refuses to sign receipt of the notice, it must be given to the employee in the presence of a fellow employee who can sign in confirmation that the notice was conveyed to the employee.

The written notice of the disciplinary meeting must use the form of Annexure D, and provide:

- 7.1.3.1 A clear description of the allegations of misconduct and the main evidence on which the employer will rely;

- 7.1.3.2 Details of the time, place and venue of the hearing; and

- 7.1.3.3 Information on the rights of the employee to representation by a fellow employee or a representative or officials of a recognized trade union, and to bring witnesses to the hearing;

- 7.1.3.4 A summary of the investigation report and statements to be used by the employer.

NB: SUMMARY of the investigation report should contain the following: the facts established, a conclusion and a decision.

NNB: Finalization of investigation shall be the date on which the delegated authority takes the decision whether to charge or not to charge the employee.

7.2 Precautionary suspension

- 7.2.1. The employer may suspend an employee on full pay or transfer the employee if

- 7.2.1.1 The employee is alleged to have committed a serious offence; and

- 7.2.1.2 The employer believes that the presence of an employee at the workplace might jeopardize any investigation into the alleged misconduct, or endanger the well being or safety of any person or state property.

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A suspension of this kind is a precautionary measure that does not constitute a judgment. An employee shall not be suspended without salary or normal benefits. Benefits shall not include overtime payment or danger and/or special danger allowances.

If an employee is suspended or transferred as a precautionary measure, the employer must hold a disciplinary hearing within 60 calendar days, depending on the complexity of the matter and the length of the investigation. If after 60 days of suspension the disciplinary hearing has not been instituted the suspended employee may return to work. Depending on the seriousness of the alleged misconduct, the Employer may extend the suspension with a further 30 day's. If after such period the Disciplinary hearing has not been instituted the employee must return to work. If the disciplinary hearing has been instituted the employer shall determine when the employee can return to work.

7.3 Conducting the disciplinary hearing

- 7.3.1 The disciplinary hearing must be held within ten working days after the notice referred to in paragraph 7.1.1 is delivered to the employee.

The formal disciplinary hearing should be finalized within a period of 60 days from the date of finalization of the investigation. If the time frame cannot be met, the parties involved must be informed accordingly with reasons for the delay. If the employer, without good reason, fails to institute disciplinary proceedings within a period of 4 months after completion of the investigation, disciplinary action shall fall away.

- 7.3.3 The chair of the hearing must be appointed by the employer and be an employee on a higher grade than the alleged transgressor.

- 7.3.4 The Initiator, if appointed from the same Management Area, must be of equal or higher rank than the alleged transgressor. If appointed from another Management Area, the Initiator need not be of equal or higher rank than the alleged transgressor, but competency shall be the determining factor.

- 7.3.5 The employer and the employee charged with misconduct may agree that the disciplinary hearing will be chaired by an arbitrator from the relevant sectoral bargaining council appointed by the council. The decision of the arbitrator will be final and binding and only open to review in terms of the *Labour Relations Act, 1995*. All the provisions applicable to disciplinary hearings in terms of this Code will apply for purposes of these hearings. The Employer will be responsible to pay the costs of the arbitrator.

- 7.3.6 If the employee wishes, she or he may be represented in the hearing by a fellow employee or a representative of a recognized trade union.

If necessary, an interpreter may attend the hearing.

In a disciplinary hearing, neither the employer nor the employee may be represented by a legal practitioner, unless –

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7.3.8. The employee is a legal practitioner or the representative of the employer is a legal practitioner and the direct supervisor of the employee charged with misconduct;

7.3.8.2 The disciplinary hearing is conducted in terms of paragraph 7.3.5.

For the purposes of this agreement, a legal practitioner is defined as a person who is admitted to practice as an advocate or an attorney in South Africa.

If the employee fails to attend the hearing and the chair concludes that the employee did not have a valid reason, the hearing may continue in the employee's absence.

The chair must keep a record of the notice of the disciplinary hearing and the proceedings of the meeting.

The chair will read the notice for the record and start the hearing.

7.3.12 The representative of the employer will lead evidence on the conduct giving rise to the hearing. The employee or the employee's representative may question any witness introduced by the representative of the employer.

The employee will be given an opportunity to lead evidence. The representative of the employer may question the witnesses.

7.3.14 The chair may ask any witness questions for clarification.

7.3.15 If the chair decides that the employee has committed misconduct, the chair must inform the employee of the finding and the reasons for it.

7.3.16 Before deciding on a sanction, the chair must give the employee an opportunity to present relevant circumstances in mitigation. The representative of the employer may also present aggravating circumstances.

7.3.17 The chair must communicate the final outcome of the hearing to the employee within five working days after the conclusion of the disciplinary enquiry, and the outcome must be recorded on the employee's personal file.

7.4 Sanctions

7.4.1 If the chair finds an employee has committed misconduct, the chair must pronounce a sanction (within the period referred to in clause 7.3.17), depending on the nature of the case and the seriousness of the misconduct, the employee's previous record and any mitigating or aggravating circumstances. Sanctions consist of:

7.4.1.1 Counseling;

7.4.1.2 Verbal warning;

7.4.1.3 A written warning valid for six months;

7.4.1.4 A final written warning valid for six months;

7.4.1.5 Suspension without pay, for no longer than three months;

- 7.4.1.6 Demotion by a post level as an alternative to dismissal, such demotion shall be consented to by the employee
- 7.4.1.7 Dismissal.

(7.4.1.5; and 7.4.1.6 as alternatives to dismissal)

The employer shall not implement the sanction during an appeal by the employee.

The chairperson must communicate the final outcome of the hearing to the employee within five (5) *working days* after the conclusion of the disciplinary hearing, and the outcome must be recorded on the personal file (and the relevant Registration file and Persal records must be updated) of the employee.

8. Appeal

- 8.1 An employee may appeal a finding or sanction by completing Annexure E.

The appeal shall be in the form of a documentary (paper appeal).

- 8.2 The employee must, within five working days of the receiving notice of the final outcome of a hearing or other disciplinary procedure, submit the appeal form to her or his Personnel Office or to her or his manager/supervisor, who must acknowledge receipt thereof and who shall then forward it to the appeal authority.

- 8.3 The appeal authority may, on good cause shown, condone the late lodging of an appeal.

- 8.4 The appeal authority, who shall consider the appeal in non-dismissal cases, shall be:

- 8.4.1 A manager of higher grade than the chairperson of the original hearing; and

- 8.4.1.1 Who was not involved in the decision to institute the disciplinary proceeding.

- 8.5 The appeal authority, who shall consider the appeal in dismissal cases, shall be:

- 8.5.1 The Deputy Regional Commissioner/Deputy Commissioner may be assisted by the Regional Head Corporate Services and Regional Co-ordinators of Employee Relations and Legal Services, and who

- 8.5.1.1 Was not involved in the decision to institute the disciplinary proceeding.

- 8.6 If the persons referred to in paragraphs 8.4 and 8.5 require a hearing [new evidence], she or he shall notify the employee of the date and place.

- 8.7 The appeal authority may:

- 8.7.1. Find the appellant not guilty and set aside the verdict and sanction; or

Confirm the verdict of the disciplinary hearing and reduce the sanction; or

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8.7.3. Confirm the verdict and sanction of the disciplinary proceeding; or

8.7.4. Order a hearing de novo i.e. a complete re-hearing by a new impartial chairperson, only if found that the initial hearing contained gross procedural errors that were material to the employee's dismissal.

The appeal authority must provide reasons for his or her decision.

The Department must finalize appeals within 30 working days from the date of the receipt of the appeal, failing which, in cases where the employee is on suspension after dismissal, he/she (after the expiry of the 30 working days) must resume duties immediately and await the outcome of the appeal. The Area Commissioner shall decide on the placement of the employee.

9. General

9.1 Desertion/abscondment

An employee who absents him/herself for **30** consecutive (calendar) days without permission or without notifying the employer shall be summarily dismissed. However, before dismissing the employee, the employer must endeavor to establish the whereabouts of the employee. Upon the employee's reappearance after desertion, he/she may not be reinstated. The employee must make written representations to the delegated authority within 5 days from his/her reappearance should he/she wishes reinstatement/re-employment to be considered.

DEFINITIONS

In this procedure, references to the male gender include the female gender.

"employer" means the head of department or any member of his/her department designated to perform the specific action, unless the context indicates otherwise.

"fellow employee" means an employee from the same office/institution/Management Area than the employee charged with misconduct, except full-time shop stewards.

"recognized trade union" means all the unions admitted to the DCS Bargaining Chamber and recognized in the DCS.

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ANNEXURE A

CODE OF CONDUCT / ACTS OF MISCONDUCT

An employee will be guilty of misconduct if she or he, among other things (this list is not exhaustive):

- (a) Fails to comply with, or contravenes an Act, regulation or legal obligation.
- (b) Mismanages the finances of the State.
- (c) Without permission possesses or wrongfully uses the property of the State, another employees and/or a visitor.
- (d) Misuse/abuse of movable/immovable property of the State.
- (e) Damage to and or cause loss of state property.
- (f) Endangers the lives of self or others by disregarding safety rules or regulations.
- (g) Prejudice the administration, discipline or efficiency of a department, office or institution of the State.
- (h) Misuse of position in the DCS to promote or to prejudice the interest of any political party organization, company or individual.
- (i) Theft, bribery, fraud, corruption or any combination thereof.
- (j) Accepts any compensation in cash or otherwise from a member of the public, another employee or an offender for performing her or his duties without written approval from the department.
- (k) Fails to carry out a lawful order or routine instruction without just or reasonable cause.
- (l) Absence or repeated absence from work without a valid reason or permission.
- (m) Commits an act of sexual harassment.
- (n) Discriminates on the basis of race, gender, disability, sexuality or other grounds outlawed by the Constitution.
- (o) Poor or inadequate performance for reasons other than incapacity.
- (p) Dereliction of duties.
- (q) Allowing a disciplinary hearing to fall away (Refer to clause 7.3.2 of the Procedure).
- (r) Performing of work for compensation in a private capacity for another person or organization either during or outside working hours without written approval.
- (s) Breaching the conditions pertaining to authorized private work.
- (t) Sleeping on duty.
- (u) While on duty, is under the influence of an intoxicating, illegal, unauthorized, habit-forming and/or stupefying drug, including alcohol.

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- (v) Being in possession of alcohol in the workplace.
- (w) Being in possession of illegal, unauthorized, habit-forming and/or stupefying drug on departmental premises.
- (x) Permitting an offender to take alcohol or any prohibited drug or to have these substances in his/her possession.
- (y) While on duty, conducts herself or himself in an improper, disgraceful and unacceptable manner.
- (z) Contravention of the DCS Code of Conduct.
- (aa) Assault, attempt or threatens to assault, another employee or person while on duty.
- (bb) Incites other personnel to unprocedural and unlawful conduct.
- Displays disrespect towards others in the workplace or demonstrates abusive or insolent behaviour.
- (dd) Intimidation or victimization of fellow employees or other persons.
- (ee) Prevents/force other employees from belonging/not belonging to any trade union or employee organization.
- (ff) Operates any money lending scheme for employees for own benefit during working hours in the workplace.
- (gg) Carries or keeps firearms or other dangerous weapons in the workplace without the written authorization of the employer.
- (hh) Misuse of firearms and/or other dangerous weapons in the workplace
- (ii) Breaching of security measures.
- (jj) Furnishing of false statements or evidence in the execution of his or her duties.
- (kk) Falsification of records or any other documentation.
- (ll) Participation in unprocedural, unprotected and/or unlawful industrial action.
- (mm) Commitment of a common law or statutory offence whilst on duty and/or on state premises.

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ANNEXURE B

WRITTEN WARNING

[DATE]

[NAME OF EMPLOYEE]

[PERSONAL DETAILS OF THE EMPLOYEE]

This is a written warning in terms of the disciplinary procedure. Should you engage in further misconduct, the written warning may be taken into account in determining a more serious sanction. The written warning will be placed in your personal file and will remain valid for a period of six months from the date of the written warning. After six months the written warning will be removed from your personal file and be destroyed.

The nature of the misconduct is:

If you object the warning, you may direct an appeal to [name] within five working days.

The nature of the misconduct is:

SIGNATURE OF EMPLOYEE

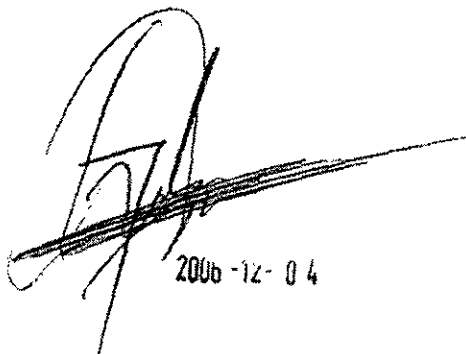
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SIGNATURE OF MANAGER

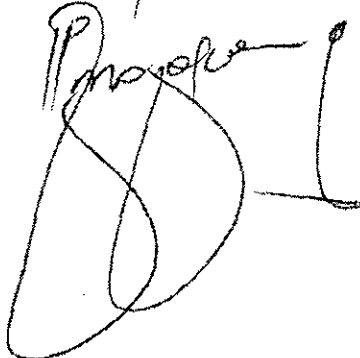
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SIGNATURE OF WITNESS (If applicable)

DATE



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FINAL WRITTEN WARNING

[DATE]

[NAME OF EMPLOYEE]

[PERSONAL DETAILS OF THE EMPLOYEE]

This is a written warning in terms of the disciplinary procedure. Should you engage in further transgressions, it could lead to formal misconduct proceedings being instituted against you.

This final written warning will be placed in your personal file and will remain valid for a period of six months from the date of the written warning. After six months the written warning will be removed from your personal file and be destroyed.

The nature of the misconduct is;

If you object the warning, you may direct an appeal to [name] within five working days.

SIGNATURE OF EMPLOYEE

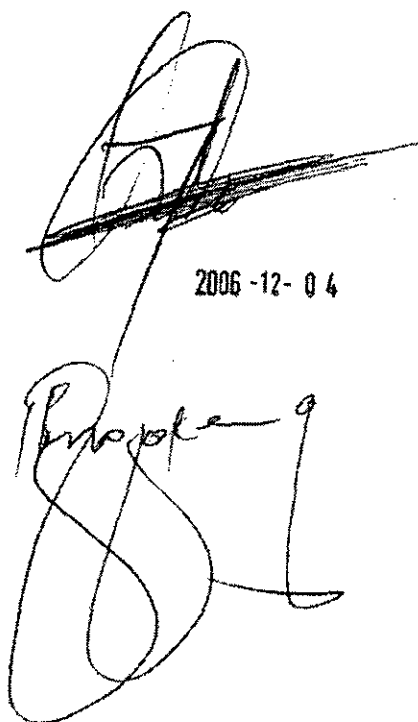
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SIGNATURE OF REPRESENTATIVE OF THE EMPLOYER

DATE

SIGNATURE OF WITNESS (If applicable)

DATE



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ANNEXURE D

NOTICE OF DISCIPLINARY MEETING

[DATE]
[NAME OF EMPLOYEE]
[PERSONAL DETAILS OF THE EMPLOYEE]

You are hereby given notice to attend a disciplinary hearing in terms of clauses 6 and 7 of the Disciplinary Code.

The alleged misconduct and the available evidence are:

[A DETAILED DESCRIPTION OF MISCONDUCT MAY BE ATTACHED].

The meeting will be held at _____ [PLACE] on _____ [DATE] at _____ [TIME]. If you do not attend and cannot give reasonable grounds for failing to attend, the meeting will be held in your absence.

A fellow employee or a representative or official of a recognized union may represent you.

You may give evidence to the hearing in the form of documents or through witnesses. You will be entitled to question any witness introduced by the department.

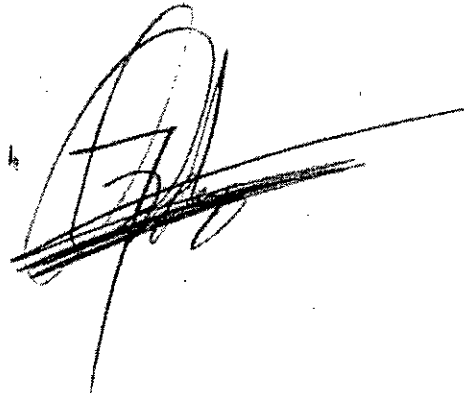
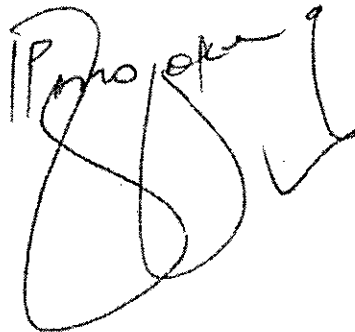
If the enquiry holds that you are guilty of misconduct, you may present any relevant circumstances in determining the disciplinary sanction.

SIGNATURE OF EMPLOYEE
DATE

SIGNATURE OF REPRESENTATIVE OF THE EMPLOYER
DATE

SIGNATURE OF WITNESS (If applicable)
DATE

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NOTICE OF APPEAL

[DATE]

[NAME OF APPEAL AUTHORITY]

I, _____, [NAME OF EMPLOYEE] am hereby appealing against a disciplinary action imposed on _____ [DATE] at _____ [PLACE].

I attach a copy of the notice of the disciplinary enquiry and/or the written warning. [THE APPEAL REQUEST IS NOT VALID UNLESS THESE DOCUMENTS ARE ATTACHED]

My reasons for appeal are:

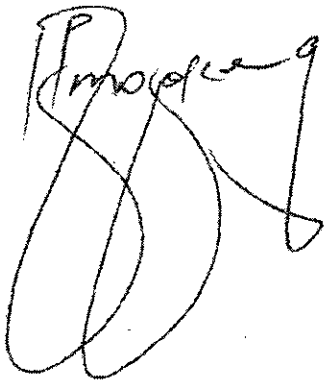
The desired outcome of the appeal is:

I wish/do not wish [CHOOSE ONE] to provide additional evidence not available at the time of the disciplinary proceeding.

SIGNATURE OF EMPLOYEE

DATE

[PERSONAL DETAILS OF THE EMPLOYEE]



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