

SOUTH AFRICAN GOLF ASSOCIATION

DRAFT DISCIPLINARY HEARING GUIDE

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INTRODUCTION

South African law requires that no person may be deprived of his or her rights without a fair process

1. What are consequences of not complying with the law?

- legal action and all the attendant risks and costs
- damage to a club or association
- imposition on management time and relationships
- uncertainty, insecurity and disruption to players

2. Other reasons to ensure fair process

- to ensure that justice is done and seen to be done
- to do justice to the accused
- to do justice to the complainant
- to do justice to the club or association
- to do justice to all players
- to maintain harmonious relations
- to maintain trust in the club or association
- to enhance the legitimacy of the disciplinary system
- to communicate the unacceptable nature of certain behaviour
- to be corrective as opposed to punitive
- to prevent conflict
- to enhance the chances of the outcome being regarded as legitimate and acceptable
- to enhance the levels of trust between players, management and leaders

3. What are the essential legal requirements of a fair disciplinary process?

- compliance with a club or association's rules and constitution
- compliance with a club or association's disciplinary guidelines

- Compliance with principles of natural justice, namely:
 - The right against self incrimination
 - The right to be informed of the complaint
 - The right to be represented
 - The right to prepare a case
 - The right to face accusers
 - The right to question the accusers and to hear their comment on the accused's version
 - The right to state a case
 - The right to a clear finding which is rationally based on facts as found and evidence and argument as presented
 - The right to lead evidence in mitigation or aggravation
 - The right to a fair and consistent sanction

CHECKLIST FOR PROCEDURAL FAIRNESS

- did the club or association conduct an investigation to determine whether there are grounds for disciplinary action?
- did the club or association notify the player of the allegations of misconduct using a form and language that the player could reasonably understand?
- did the club or association allow the player an opportunity to state a case in response to the allegations?
- was the player allowed a reasonable time to prepare a response?
- was the player allowed the assistance of a representative?
- after the enquiry, did the club or association communicate the decision taken, and furnish the player with written notification of that decision?
- was the player given a reason for the disciplinary action?
- was the player reminded of any rights to dispute the disciplinary action?
- did the club or association comply with its disciplinary procedure?
- were the principles of natural justice adhered to?

**SUGGESTED COMPREHENSIVE PROCEDURE
FOR A DISCIPLINARY HEARING**

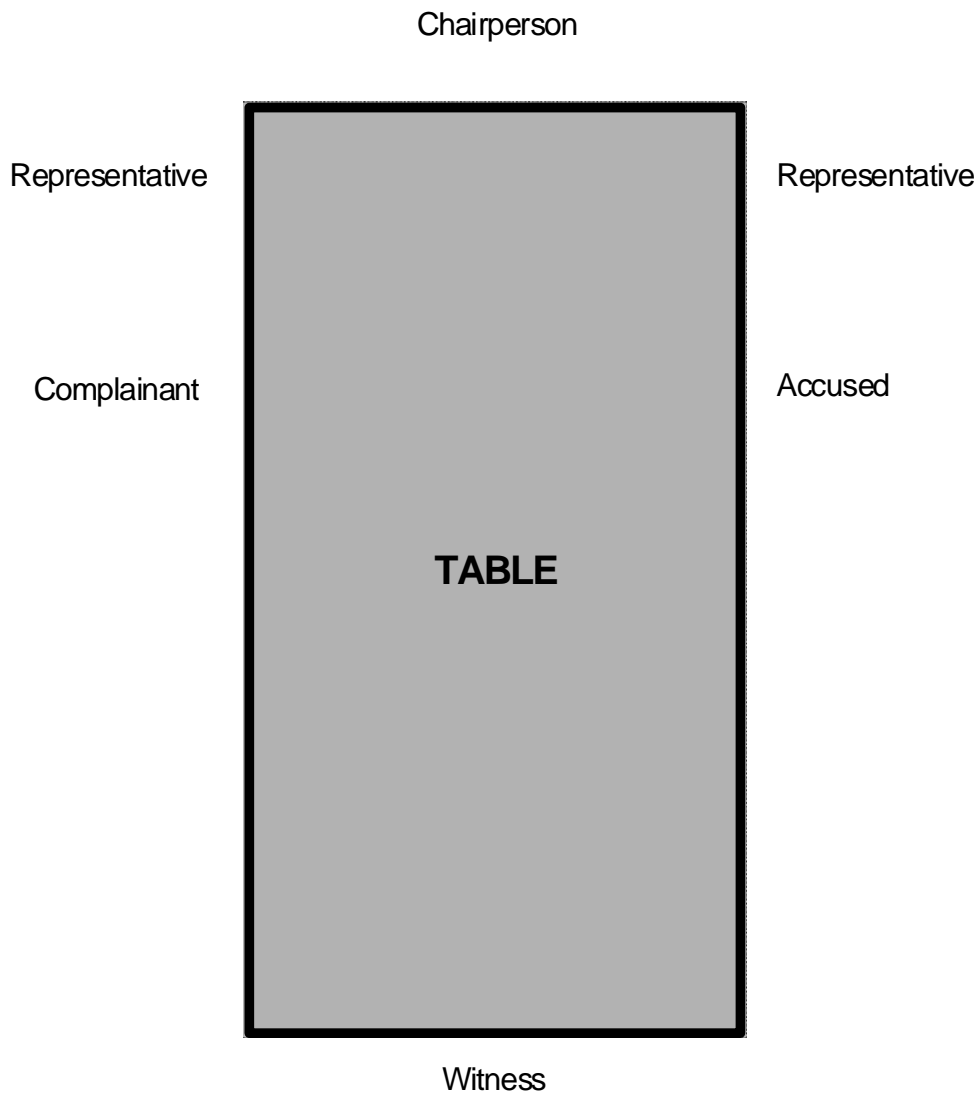
1. Welcome
2. Check on recording of proceedings
3. Check on language
4. Check on representation
5. Check on pre-hearing procedures
6. Explain the procedure to be followed
7. Hear opening statements
 - 7.1 club or association's representative puts complaint and makes opening statement
 - 7.2 player's representative responds to complaints and makes opening statement
8. Narrow the issues
9. Explain the rules of evidence to be followed
10. Hear the club or association's evidence through witnesses
 - 10.1 examination
 - 10.2 cross-examination
 - 10.3 re-examination
11. Hear the accused player's evidence through witnesses
 - 11.1 examination
 - 11.2 cross-examination

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- 11.3 re-examination
 - 12. Hear closing arguments
 - 12.1 club or association's representative
 - 12.2 player's representative
 - 13. Decide on whether the player is guilty
 - 14. Hear evidence and argument on appropriateness of sanction including mitigating and aggravating circumstances
 - 15. Decide on sanction.
 - 16. Inform the player of the right to appeal

CONSIDERATIONS FOR SUBSTANTIVE FAIRNESS

1. Does a rule exist?
2. Is there knowledge of the rule?
3. Is the rule legitimate?
4. Is the rule consistently applied?
5. Is there breach of the rule?
6. What sanction is appropriate bearing in mind :
 - 6.1 aggravating circumstances
 - 6.2 mitigating circumstances
 - 6.3 consistency of sanction

**A SUGGESTED PHYSICAL LAYOUT
OF A DISCIPLINARY ENQUIRY**



**WHAT A REPRESENTATIVE'S
OPENING STATEMENT SHOULD INCLUDE**

1. Put the complaint.
2. Give a brief summary of the approach to each substantive requirement of fairness.

SUGGESTED DO'S AND DON'TS OF EXAMINING A WITNESS

DO:

- * let a witness settle down by answering straightforward questions before answering the more important questions
- * frame questions carefully and clearly
- * ask questions off a pre-prepared statement
- * extract all the evidence that is needed from a witness during examination

DON'T:

- * ask questions that, in their asking, suggest an answer
- * ask questions that extract hearsay answers
- * ask irrelevant questions
- * ask witnesses for opinion evidence unless the witness is an expert
- * cross-examine your own witness

PURPOSES OF CROSS-EXAMINATION

- * To obtain evidence favourable to your case
- * To show that unfavourable evidence is
 - Unreliable e.g. hearsay
 - Mistaken
 - Confused
 - Contradictory
 - Inaccurate
 - Biased
 - Improbable
 - False
- * To put your case to the witnesses of the other side.

SUGGESTED DO'S AND DON'TS OF CROSS-EXAMINING A WITNESS

DO:

- * obtain facts favourable to the case
- * show that adverse evidence is vague, contradictory, improbable, mistaken, biased or untruthful
- * put so much of one's own case as concerns a witness to that witness so that ones case may be known and commented upon
- * elicit facts which may be used to cross-examine other witnesses
- * cross-examine only for gain. If a witness has done no harm leave well alone
- * ask clear and concise questions
- * ask one question at a time
- * ask leading questions if appropriate

DON'T:

- * ask questions to which one does not know the answer
- * try to improve on a favourable answer
- * make speeches
- * answer a question put to one by a witness unless it is for clarity
- * be rude and unnecessarily aggressive

SUGGESTED DO'S AND DON'TS OF RE-EXAMINING A WITNESS

DO:

- * only ask questions of clarity or that place evidence in a relevant context

DON'T:

- * extract new evidence
- * cross-examine your own witness

(see also the points under “don’t” on examining a witness)

WHAT A CLOSING STATEMENT SHOULD INCLUDE

1. Reference to the complaint.
2. Reference to the evidence that has been led on each disputed requirement of fairness.
3. Why the committee should prefer your evidence to your opponent's evidence.
4. Reference to the preferred outcome.

PROCEDURAL CHALLENGES

Members of a disciplinary committee may be faced with the following typical procedural challenges.

1. Would you accept the job as a member of a disciplinary committee if the player is a good friend of yours but you believe you are able to distance yourself from him or her and be objective?

- No, because the test for bias is not only whether you are in fact biased but also whether interested parties can perceive you to be objective. No matter how objective you may in fact be it is unlikely that, if the learner's parents are known to be personal friends of yours, you will be perceived to be objective. In all probability you would also find it difficult to be objective. If there is an objection to you, you need to explore the reasons for the objection and if you are satisfied that you are not biased and that objectively no reasonable person could find that you are biased then you would proceed. You should record the objection and your reasons for proceeding in your finding

2. What kind of venue would you choose for a hearing?

- The venue should be a room capable of seating parties in the format already described. It should be quiet, well ventilated and comfortable.

3. What do you consider to be the most important dos and don'ts of record keeping in an enquiry?

When using mechanical recording you should:-

- agree that in the event that the record is transcribed all parties will be given a copy;

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- test recording machine to ensure that it is working effectively;
 - state the commencing time and date of process;
 - state attendance;
 - state purpose of process;
 - state ending time of process;
 - ensure that recording device is turned off during breaks and back on upon the resumption of the process – note times of breaks;
 - name and number cassette tapes;
 - store cassettes in a safe place;

when taking written minutes you should:-

- always record the date and time of the process;
- write the minutes as the time of the enquiry;
- write neatly and legibly;
- always record who is present;
- give the document a heading so that it is easy to identify at a glance;
- number pages consecutively;
- write in black pen;
- use pre-lined paper;
- record all offers of a procedural nature;
- record what documents and evidence are presented;
- write names of witnesses in bold;
- underline when witnesses are first called;
- record when the enquiry ends or is postponed;
- ensure the minute records all important aspects of the process;
- do not write in the margins or below the lines;

- do not write personal comments or remarks.

4. What would you do if the player and his or her representatives failed to appear at the enquiry?

The chairperson should check the following:

- whether the player has been properly notified of the enquiry
- whether the player was informed that if s/he did not attend the enquiry it would proceed in her/his absence;
- where the player is and why s/he is not present
- the prejudice to either party if the case was to proceed or to be postponed.

In this regard the chairperson should consider:

- how many postponements have been granted already;
- how easy it will be to reschedule;
- whether the player is suspended;
- whether it will be possible to schedule a new date for the enquiry soon;

The members should then decide whether to postpone or to proceed. The chairperson should minute the considerations that have been taken into account in deciding to proceed with or to postpone the process

5. What would you do if the player asks to be represented by a qualified lawyer?

- Unless the club or association procedure provides for representation of this type the chairperson should limit representation to non lawyer representation of the player's choice.

6. What would you do if the player requested a two-week postponement for his or her representative to be available?

- The postponement may be refused although the members need to carefully weigh-up the respective prejudice to the club or association and the player before making a final decision

7. What would you do if the player's representative became very angry when you give a ruling on his objections and rudely accuses you of bias and threatens to walk out of the enquiry?

- The members should, if the representative is not too angry, invite the representative to raise a formal objection about bias. The members should handle the objection in the following manner:
 - the chairperson must allow the representative to voice her objection. The chairperson must then allow the investigator to answer that objection
 - the chairperson must then give the representative an opportunity to reply to what the investigator has said – the members should then make up their minds noting the objection and decision in the minutes

The members should probably not uphold the objection because the rulings display neither actual nor reasonably perceived bias. If the representative is extremely angry and rude then it may be appropriate to take a break to allow the representative to calm down before proceeding further.

8. What would you do if, when the player's representative regains his composure, he informs you that he wishes to reserve his cross-examination of all witnesses until he has called all his witnesses?

- They should not permit the representative to reserve cross-examination until he has called all his witnesses. The cross examination should take place after each witness has been examined by the representative who

called the witness. This procedure should have been explained fully at the outset of the enquiry.

9. What would you do if the club or association's representative calls the club chairman to give evidence of the player's disciplinary record. The player's representative objects on the basis that this evidence should only be led after there has been a finding of guilt against the player?

- The chairperson should handle the objection in the same procedural manner described above. The members should probably uphold the objection as it is unfair and impermissible to lead evidence of previous misconduct prior to a finding of guilt.