



**Association of Certified Fraud Examiners  
South Africa Chapter (Number 91)**

**ACFE SA Disciplinary Procedure**

Disciplinary Procedures **Formal Complaints**

*Effective 1 April 2014*

**1. Introduction**

- 1.1. All members of the Association of Certified Fraud Examiners and the South African Chapter (ACFE SA) must at all times display responsible, professional, and socially accepted behaviour in the execution of their duties.
- 1.2. Every member of the ACFE SA must at all times adhere to the ACFE Professional Standards and Bylaws of the ACFE, applicable legislation and the Code of Ethics of the ACFE in the execution of their duties.
- 1.3. If any member of the ACFE SA fails to adhere to the aforementioned, reasonable steps must be taken by the ACFE SA protect the profession and the adherence to the standards required by the ACFE.
- 1.4. Where it is alleged that a member of the ACFE SA has contravened/not adhered to the applicable legislation, the Code of Ethics of the ACFE and/or the ACFE Professional Standards. It is the policy of the ACFE SA to evaluate and dispose of such allegation in terms of this Policy and Procedure.
- 1.5. The disciplinary action must be substantively as well as procedurally fair (defined below). The outcome of a disciplinary hearing will be considered substantively fair if it is proportional to the offence committed, mitigation and aggravating circumstances were considered, and it was based on evidence presented at the hearing.
- 1.6. The Board of Directors of the ACFE SA appoints the General Counsel, together with the Disciplinary Committee consisting of ACFE SA members. The General Counsel will be the Chairperson of the Disciplinary Committee. The Disciplinary Committee will comprise at least 3 members. The Disciplinary Committee is responsible for receiving, interpreting and investigating all complaints against members.
- 1.7. The purpose of this document is to define the processes to be used in the discharge of those responsibilities.

## 2. Definitions

- 2.1. Procedural fairness: This is achieved by the correct application of the disciplinary steps and ensuring fairness in the process, towards all involved.
- 2.2. Substantive fairness: This is achieved by measuring member's conduct against the Disciplinary Code, ACFE Professional Standards and applicable legislation, thereby ensuring that sanctions are only implemented where contraventions in fact occurred.
- 2.3. A complaint is negative information or allegation of impropriety concerning a member, alleging one or more of the following:
  - 2.3.1. Contravening any of the articles/items/clauses contained in the ACFE Code of Ethics, ACFE Professional Standards, or ACFE Bylaws (**as per Addendum A**)
  - 2.3.2. Conviction of a crime (Moral Turpitude);
  - 2.3.3. Removal from any office/position after a disciplinary process on account of misconduct or any act involving dishonesty;
  - 2.3.4. An offence in terms of a member's organisation's rules (the Employer of the member, e.g. Company, Department, etc.) and guidelines in the event that a serious trust breach has Occurred and was proven; and
  - 2.3.5. Any form of misconduct whereby the Board is of the opinion that the misconduct has a direct nexus in terms of the good name and reputation of the ACFE
- 2.4 Board of Directors: Those members elected to the ACFE SA Board from time to time, including those co-opted to any Board Committee.
- 2.5 General Counsel: A portfolio assigned to one of the ACFE SA Board of Directors who has a legal qualification and is a CFE.
- 2.6 Disciplinary Committee: This Board Committee comprises the General Counsel assisted by at least 2 Board members appointed to this Committee and/or suitably-qualified member/s who were co-opted for this purpose.
- 2.7 Moral turpitude: Conduct that is considered contrary to community standards, dishonest behaviour or good morals of society.

## 3. The Disciplinary Process

### ***Section I: Initiation of Complaint***

- 3.1. If a formal complaint is brought by the ACFE or ACFE SA against a Member in any membership category (collectively referred to as "Member/s"), the General Counsel or CEO of the ACFE SA may initiate the complaint procedure described below. A "formal complaint" is defined as a written statement from an identified individual or entity alleging conduct which, if proven, would constitute a violation of the ACFE Code of Ethics, ACFE Professional Standards, or Bylaws (collectively referred to

as “a violation”). The General Counsel or CEO of the ACFE SA may also initiate a formal complaint on its own authority if it otherwise receives credible evidence that a Member has committed a violation.

The following disciplinary procedures will apply in handling complaints and cases of alleged misconduct:

3.1.1. Persons wishing to file a complaint against a member of ACFE may do so by sending a written statement of their complaint to the attention of the ACFE SA General Counsel, or the CEO of the ACFE SA.

3.1.2. All complaints must be in writing, there is no specific form the complaint must take and a letter or email is acceptable. The Complainant should include a full explanation of the alleged misconduct, supported by any evidence that he or she may have to support the allegations.

3.1.3. If a complaint is made orally, for example in terms of a Whistle Blowing report, and the person that made the report would like to stay anonymous, such complaints must be put in writing by the person who had received such a complaint, where after it shall be investigated further.

3.1.4. The Chairman of the ACFE SA Disciplinary Committee or CEO of the ACFE SA will acknowledge receipt of the complaint and provide copies of the complaint to the members of the Disciplinary Committee.

3.1.5. The Disciplinary Committee will consider the complaint and decide whether/what action and/or response is required.

3.1.6. The President of the ACFE SA will remain independent of the process so as to provide the alleged transgressor with an avenue of appeal should this be required.

3.1.7. The Disciplinary Committee shall consider the complaint and determine if it is within the Association’s jurisdiction in terms of a possible violation of one or more of the articles contained in the Bylaws, Professional Standards, Code of Ethics, conviction of a crime, or removal from any office/position on account of misconduct or dishonest behaviour.

3.1.8. A decision not to continue with the complaint must be communicated to the Board.

## ***Section II: Pre-Hearing Investigation***

4.1. A pre-hearing investigation is defined as follows: A complaint will be investigated in order to decide if a formal disciplinary hearing is justified, based on the available evidence.

4.2. Additional investigation may be done to determine whether there are sufficient grounds for further action.

4.3. The General Counsel will evaluate the complaint to determine if it is supported by available evidence.

In order to conduct the evaluation, the General Counsel is authorised to:

(1) if required, appoint one or more qualified and independent members of the ACFE SA to assist in conducting such investigation.

- (2) require the Complainant to supply additional information;
- (3) independently seek out information to support or refute the Complainant's allegations;
- (4) take any other steps deemed necessary to determine if there is credible evidence of a violation.

The General Counsel, in consultation with the Disciplinary Committee, shall have the authority to dismiss the complaint if no credible evidence is found. The General Counsel and/or the Disciplinary Committee may take into consideration, but shall not be bound by, any prior ruling on the matter made by any governmental, regulatory, or professional body.

- 4.4. A Member will not be subjected to a charge of misconduct unless there is *prima facie* indications of misconduct, contraventions or offences.
- 4.5. The Member, who is the subject of the enquiry, shall be requested to provide a voluntary response to the complaint in writing within 60 days from receiving the complaint from the ACFE SA. If the Member chooses not to submit any representation pertaining to the complaint, or if the Notice of Complaint is not answered satisfactorily, or at all, the ACFE SA Disciplinary Committee must initiate a formal hearing to determine and document the facts pertaining to the complaint, unless the General Counsel finds enough other evidence to dismiss the complaint.
- 4.6. Upon receipt of the representation from the Member as indicated above, or in the event of failure to provide within the specified time limit, the Committee shall decide whether further action is warranted:
  - 4.6.1 If no further action is warranted, the Disciplinary Committee will advise the Board accordingly, and the Chairman of the Disciplinary Committee will advise the Complainant and the individual named in the complaint promptly.
  - 4.6.2 If the General Counsel and Disciplinary Committee determines that there is credible evidence of a possible violation, or where there is a decision by the ACFE SA Disciplinary Committee to continue with the complaint, such complaint shall be investigated by a member of the Disciplinary Committee who shall not act as the Chairman of the disciplinary hearing. General Counsel shall promptly notify the individual named in the complaint by a Notice of Disciplinary Hearing by registered mail as well as by e-mail (sent to the individual's last addresses known to the Association). The Notice of Disciplinary Hearing will include details of the complaint, copies of the evidence in support thereof and the procedure for handling the complaint and the possible consequences (sanctions).
- 4.7 Once the General Counsel has completed the evaluation, he or she shall deliver the evidence that has been gathered in evaluation of the complaint, including the original complaint and the Member's answer, to each Disciplinary Committee member.
- 4.8 If at any time during the evaluation of the complaint, the General Counsel finds compelling evidence that the nature of the alleged actions by the member poses a serious threat to the reputation of the

Association or to the members of the public, the General Counsel may recommend that the ACFE SA Directors or the ACFE Board of Regents temporarily suspend the member pending the outcome of the disciplinary process. This sanction, if ordered, shall not be published by the ACFE SA.

4.9 If, because of the identity of the person against whom the complaint was lodged or for any other reason, the General Counsel has a conflict of interest in the case or there is the appearance of a conflict of interest, the General Counsel shall recuse him/herself from the case and shall be replaced by the ACFE SA Board by another Member of the ACFE SA that has been so authorised and holds suitable qualifications and/or experience, or by an Independent Counsel appointed by the Board. If an Independent Counsel is appointed, he or she will operate in the same capacity as would the General Counsel under these ACFE SA Disciplinary Procedures.

## **5. Formal Hearing**

5.1. If the General Counsel and/or Disciplinary Committee deems it necessary that a formal hearing will be conducted, the Board shall be advised accordingly. The hearing will be held at a location and time determined by the General Counsel. Notice of the hearing shall be communicated to the individual named in the complaint at least 14 days prior to the hearing by registered mail and/or e-mail.

5.2. Should the individual be unable to attend the hearing at the time appointed by the General Counsel, the General Counsel shall consider a postponement of the hearing based on the merit of the individual's submission.

5.3. The formal hearing shall be held before a Chairperson who is a Member and has the appropriate skills and experience, whom will be appointed by the Disciplinary Committee. Where appropriate, the Disciplinary Committee may appoint Assessors who will assist the Chairperson and execute their duties in the form of a disciplinary Panel. The Chairperson and/or members of the Panel may not have been involved in the preliminary investigation.

5.4. In cases where the member does not appear at the disciplinary hearing without proper reason, or if the matter has been postponed previously in cases where the member cannot be forced, the disciplinary will be conducted in absentia, as if the member was present at the disciplinary hearing.

5.5. Evidence shall be presented and the defendant may respond to the complaint and question the evidence presented. The defendant shall be entitled to scrutinise all evidence and to cross-examine all witnesses. The defendant shall be entitled to submit evidence which may be scrutinised by the Committee and witnesses who may be cross-examined by the Committee.

5.6. The defendant will have a right to legal representation (at own cost), or to be represented by a fellow-member of the ACFE SA. Should a member of the ACFE Board represent any member in a disciplinary

hearing, he/she must recuse themselves from any Board or Committee meetings where the matter is considered or discussed.

5.7. The hearing proceedings will be recorded.

### ***Section III: Finding of the Disciplinary Hearing***

5.7 The Chairperson of the disciplinary hearing/Panel will prepare a recommendation to the ACFE SA Board within 14 days of completion of the hearing. The letter of recommendation shall include a complete statement of the factual findings and conclusions reached for the Board's action.

5.8 The Board shall make a final decision within 14 days of the written report being received.

5.9 A copy of the decision shall be sent to the individual named in the complaint. The Complainant will be informed that the matter was concluded and advised of the sanction, but specific results will not be disclosed.

5.10 Should the ACFE SA Board finds the Member guilty, a formal report outlining the process and findings should be forwarded by the General Counsel to the ACFE Board of Regents.

### ***Section IV: Authority and Action of the Board***

As further specified in the Bylaws of the Association, the rights and privileges of all Members are subject to qualifications and requirements determined from time-to-time by the ACFE Board of Regents, within its exclusive control and authority. All of the Members accept the exclusive control and authority of the Board as a fundamental condition of the rights and privileges of membership. All disciplinary actions are within the exclusive authority and discretion of the Board.

## **6. Sanctions**

When the Board receives the recommendation letter from the Disciplinary Committee pursuant to Section III, it will examine the recommendation and decide on the action, if any, to be taken. The procedures for such examination, including without limitation review of the original case file and the conduct of further investigation, will be at the discretion of the Board as it may deem appropriate on a case-by-case basis. The Board may order revocation of membership, suspension for up to two years, probation, public or private reprimand, or any other disciplinary, remedial, or corrective action it deems appropriate. The decision of the Board shall become effective at the time it is made.

6.1. **Censure** - This sanction takes the form of a warning or reprimand placed in the Association's file. Notice shall be in writing and clearly outline the consequences in the event of a repetition of the conduct in question. The period of censure will be in the discretion of the Board, but between 3 and 24 months.

- 6.2. **Revocation of Membership** - If the severity of the offence warrants more than censure, the individual may be expelled from the Association and may have his/her CFE Designation and International membership revoked, although this will require ratification by the International Board of Review of the ACFE.
- 6.3. **Reporting** – except for the compulsory reporting of suspected crimes to the relevant authorities as required by the Board, the Disciplinary Panel may decide to make such report if their findings indicate *prima facie* evidence that a crime has been committed.
- 6.4. **Publication** – In the event where a Member is expelled from the ACFE SA after following due procedure and after allowing for the appeal of the matter, the name of such an individual will be published in the newsletter of the ACFE SA, without details of the contravention.

## 7. Appeal Procedure

The decision of the Board is final. Any decision by the Board will be promptly communicated to the Chairman of the Disciplinary Committee to be carried out. The General Counsel will notify the Member and the Complainant of the Board' decision without undue delay. Notice of sanctions other than a private reprimand may be published in the Fraud Magazine or Chapter Newsletter once the time for notice to appeal has lapsed, except as provided in paragraph four of Section II.

- 7.1. The appeal process is a separate facet of the disciplinary procedure and will be presented the President of the ACFE SA Board.
- 7.2. An appeal process will be considered only if the merits of the case allows for such process to take effect.
- 7.3. The President of the Board will decide whether the merits put forward for an appeal, warrants an appeal.
- 7.4. The alleged transgressor shall advise the Chairman in writing within 48 hours, after sanction was handed down in the initial disciplinary hearing, that an intention to appeal will be brought forward.
- 7.5. The appeal will be heard by the President of the ACFE SA.
- 7.6. Should representation be made to the President to conduct an appeal process for whatever reason, the President is mandated to appoint a competent independent person to Chair such an appeal process, if deemed necessary.
- 7.7. If such an appeal has not been filed within 48 hours, the President may consider condoning such late filing based on merits.
- 7.8. An appeal will be allowed in the narrow sense which implies that it is confined to the records of the proceedings a quo, but the President may substitute his/her own conclusion based on the merits from that of the lower tribunal.

7.9. The President will inform the Appellant of the outcome within 21 days after finalisation of the appeal process

***Section V: Cases not Requiring General Counsel Evaluation or Board of Review Deliberation***

If a member is found guilty by a court of competent jurisdiction of a crime punishable by imprisonment of more than one year, a felony, or any crime involving moral turpitude (as that term is defined in Section 5.07 of the ACFE Bylaws), a complaint against that member may be presented directly to the Board without regard for Sections II and III of these procedures, except that the General Counsel shall conduct such evaluation as is necessary to verify that the member was, in fact, found guilty of such a crime. In such circumstance, the Board of Regents may expel the member without a hearing, suspend the member pending an investigation of the complaint, or take any other disciplinary, remedial, or corrective action it deems appropriate.

***Section VI: Status Reports***

The General Counsel and the Committee shall provide the Board with a written status report at each of the Board's meetings. The report shall include a list of complaints currently pending, including the name of the CFE that is referenced in the complaint, the person(s)/entity submitting the complaint, a brief description as to the nature of the complaint, and the current status of the complaint. The Board may request the General Counsel and the Board of Review to provide an interim status report at any time, as deemed necessary.

***Section VII: Retention of Records***

The General Counsel will retain in a confidential and secure manner all pertinent records regarding the complaint. All documents pertaining to disciplinary investigations are the property of the Association. Other than the publication of the Regents' decision as set forth in Section IV, no disclosure or dissemination of any such documents shall be made except by a specific directive from the Board of Regents or pursuant to an order of a legal authority with competent jurisdiction.