



**CODE OF ETHICS AND CONDUCT**

**OF**

**COMENSA NPC**

**REGISTRATION NUMBER 2005/017895/08**

## Contents

<b>A. DEFINITIONS AND INTERPRETATIONS .....</b>	<b>3</b>
<b>B. THE PRINCIPLES OF THE CODE OF ETHICS AND CONDUCT .....</b>	<b>5</b>
CONTEXT OF THE CODE OF ETHICS AND CONDUCT .....	5
PURPOSE .....	5
APPLICABILITY AND ENFORCEMENT .....	6
COMENSA'S ETHICAL APPROACH .....	6
ETHICAL STANDARDS .....	7
KEY ETHICAL RISKS AND ONGOING MONITORING .....	10
CONSEQUENCES FOR MISCONDUCT OR BREACH OF THE CODE .....	10
COMPLAINTS.....	10
ANONYMOUS WHISTLEBLOWERS AND MEDIA REPORTS.....	11
DISCIPLINARY STRUCTURES .....	11
AUTHORITY .....	12
<b>C. DISCIPLINARY PROCESSES .....</b>	<b>14</b>
RECEIPT OF COMPLAINTS AND JURISDICTION.....	14
INVESTIGATIONS AND REFERRAL TO THE DISCIPLINARY COMMITTEE.....	14
DISCIPLINARY COMMITTEE .....	16
DISCIPLINARY ENQUIRY.....	18
SANCTIONS.....	20
CONSIDERATIONS .....	20
APPEALS PROCEDURE .....	21
RECORD KEEPING .....	23
CONFIDENTIALITY .....	23
PUBLISHING OF GUILTY VERDICTS .....	24

## **A. DEFINITIONS AND INTERPRETATIONS**

In this Code of Ethics and Conduct (hereinafter referred to as the Code), unless the content implies otherwise:

- i. one gender includes the others;
- ii. the singular includes the plural and the plural includes the singular;
- iii. 'writing' includes typing, printing, and any other mode representing or reproducing words or figures in a visible form, including words or figures displayed on an electronic screen. A requirement that a document, notice or information should be given in writing will be met if the document, notice or information is in the form of a data message and accessible in a manner usable for subsequent reference. "Written" has a corresponding meaning;
- iv. a 'month' refers to a calendar month;
- v. 'including' and similar expressions are not words of limitation;
- vi. all currency is South African Rands; and
- vii. the table of contents and any headings are to assist with the reading of the Code and should not affect the interpretation of this Code.
- viii. If any terms is defined within the context of any particular clause in the Code, the term so defined, unless it is clear from the clause in question that the term so defined has limited application to the relevant clause, shall bear the meaning ascribed to it for all purposes in terms of this Code, notwithstanding that that term has not been defined in this interpretation provision;
- ix. When a particular number of Business Days is provided for between the happening of one event and another, the number of days must be calculated by:
  - a. excluding the day on which the first such event occurs;
  - b. including the day on or by which the second event is to occur; and

**CODE OF ETHICS AND CONDUCT**

- c. excluding any public holiday, Saturday or Sunday that falls on or between the days.

<b>Board</b>	The Board of Directors of COMENSA, who have the authority to act on behalf of COMENSA
<b>Case Manager</b>	The individual assigned to receive complaints against Members and provide secretarial support to the Investigations and Disciplinary Committee as well as the Enquiry Panel
<b>Chair</b>	Chair of the Board of Directors of COMENSA
<b>Client</b>	Anyone using the services of a coach/mentor; and is taken to be interchangeable with any other term that the parties to the coaching/mentoring relationship may prefer, including 'coachee', 'mentee', 'partner', 'protégé'.
<b>Coach</b>	All coaching activities which fall within any one of the categories for membership of COMENSA.
<b>Code of Ethics and Conduct</b>	The COMENSA guidelines set by the Board for Members on ethics, expected ethical conduct and the enforcement thereof
<b>COMENSA</b>	Coaches and Mentors of South Africa, an association incorporated under the Act, with registration number Registration Number 2005/017895/08
<b>Complainant</b>	Any natural or juristic person who lodges a complaint against a Member of COMENSA
<b>Respondent</b>	Any Member or Former Member of COMENSA against whom a complaint has been lodged with COMENSA
<b>Individual</b>	A natural person
<b>Law</b>	Any constitutional provision, treaty, decree, convention, statute, act, code, regulation, rule, order, ordinance, proclamation, subordinate legislation, by-law, judgement, rule of common law or equity, rule, ruling or guideline made by a competent entity exercising jurisdiction in the relevant matter or any government body
<b>Member</b>	A person who holds Membership with COMENSA as outlined in the Bylaws
<b>Mentor</b>	All mentoring activities which fall within any one of the categories for membership of COMENSA.
<b>MOI</b>	Memorandum of Incorporation of COMENSA
<b>President</b>	Chairman of the National Board
<b>Profession</b>	Coaches and Mentors Profession
<b>Pro forma prosecutor</b>	An individual appointed by the Disciplinary Committee who represents the Disciplinary Committee in prosecuting a case
<b>Sign</b>	Includes the reproduction of a signature lithography, printing with an india-rubber stamp, or any other mechanical or electronic process, or partly the one and partly the other process and "signature" has the corresponding meaning
<b>Sponsor</b>	The organisation which has contracted the coaching/mentoring service for an employee/s

## **B. THE PRINCIPLES OF THE CODE OF ETHICS AND CONDUCT**

### **CONTEXT OF THE CODE OF ETHICS AND CONDUCT**

1. A key mandate of COMENSA is to protect the interest of the public.
2. As prescribed in its MOI, COMENSA must maintain a *Code of Ethics and Conduct (hereinafter referred to as the Code)* which contains a set of principles all Members are required to abide by.
3. The COMENSA Board sets the direction for organisational ethics as well as provides ongoing oversight to ensure that an ethical culture is upheld. The Board therefore must ensure that COMENSA addresses its key ethical risks issues and provides suitable sanctions for breach of or non-compliance with the codes of conduct and related policies and procedures.
4. COMENSA is the custodian of this Code and the Board oversees the policies and procedures of this Code.

### **PURPOSE**

5. The Code of Ethics and Conduct of COMENSA (Coaches and Mentors of South Africa) aims to clarify the ethical standards which its Members are expected to uphold and the general standard by which they are expected to conduct themselves as Members.
6. The Code outlines the values and principles on which the ethical standards are grounded.
7. The Code provides a guide and standard for ethical coaching and mentoring work conduct and accountable service delivery.
8. The Code provides COMENSA Members with a foundation for ethical reflection and decision making.
9. The Code serves as a means with which to hold members accountable for their ethical practices and act as a basis for investigation and adjudication of formal complaints about

## CODE OF ETHICS AND CONDUCT

unethical conduct.

10. The Code does not include conflict resolution, which is addressed in the Dispute Resolution Policy.

### **APPLICABILITY AND ENFORCEMENT**

11. This Code applies to all Members of COMENSA as well as those who are no longer Members of COMENSA, but were members during the time the breach or infringement had taken place.
12. COMENSA retains the right to hold Members accountable against this Code and apply sanctions as it sees fit based on the guidelines provided in this Code.

### **COMENSA'S ETHICAL APPROACH**

13. COMENSA expects the highest ethical conduct from its Board, Committee Members, Employees, Members as well as its Suppliers and those associated with COMENSA through agreements, whether verbal or written.
14. COMENSA has a Code of Conduct for all employees as well as a whistle-blowing policy in order to encourage ethical conduct and interaction. That Code of Conduct is accompanied by a disciplinary procedures outlining the processes to be followed and sanctions that must be applied should that Code of Conduct be breached by an employee of COMENSA.
15. COMENSA has a Board and Committee Code of Conduct that regulates the conduct of Board and Committee members and includes the requirement that interests should be declared in each Board and Committee meeting. The Code of Conduct for Board and Committee Members is in addition to this Code and does not replace it for the affected Members.
16. The conduct of COMENSA Members is regulated through the provisions of this Code and the Disciplinary Procedures included herein. All Members must, at all times, display responsible, lawful and professional behaviour and adhere to the ethical standards outlined

## CODE OF ETHICS AND CONDUCT

in this Code.

17. COMENSA provides its Members with guidance in its Ethics Toolkit for Coaches and Mentors.
18. Members are expected to adopt the Ethics Pledge for Coaches and Mentors.
19. COMENSA retains the right to terminate relationships with suppliers and other stakeholders if it becomes aware of unethical behaviour by an individual or organisation associated with COMENSA. The following offences are considered serious and warrant, at COMENSA's discretion, termination of a relationship with COMENSA:
  - 19.1. Theft;
  - 19.2. Fraud or corrupt practices;
  - 19.3. Dishonesty;
  - 19.4. Misconduct in or misuse of confidential and personal information of or in the care of COMENSA.
20. COMENSA takes a strict zero-tolerance approach towards ethical misconduct or offences and shall seek to hold those who breach the Code accountable without fear or favour.
21. COMENSA has a Social and Ethics Committee which specifically deals with ethics related matters in order to encourage ethical conduct and interaction within the organisation and the Profession.

### ETHICAL STANDARDS

22. COMENSA's ethical standards and values are:
  - 22.1. **Accountability**, which is the cornerstone of any coaching or mentoring relationship; both on the part of coaches and mentors and of their clients. Coaches and mentors should undertake their tasks and responsibilities with an unwavering commitment to be held accountable for their actions and activities. To this effect,
    - 22.1.1. Members must be accountable for their actions, behaviours and the direct results

## CODE OF ETHICS AND CONDUCT

thereof.

- 22.1.2. The primary accountability of coach and mentors is to their clients.
- 22.1.3. A secondary, but equally important, accountability of Members is to COMENSA.
- 22.1.4. A third accountability of Members is in relation to their duty to protect the interest of the public.
- 22.2. **Inclusivity**, which should be a non-negotiable principle applied by all coaches and mentors. Being non-judgemental, accommodating and unconditionally inclusive of all people they interact with, should underpin the values and ethos of all coaches and mentors. To this effect, Members must:
  - 22.2.1. Show respect for the inherent worth of all people, regardless of perceived differences in opinions, personal beliefs and values, cultural background, race, gender, sexual orientation or social status; on the basis that respect for people is a cornerstone of the coaching or mentoring relationship.
- 22.3. **Integrity**. Trust is at the core of the coaching or mentoring relationship. It is expected that COMENSA Members will always act with integrity towards their clients, COMENSA, other Members and other coaches and mentors. In this regard, Members must:
  - 22.3.1. Conduct the coaching/mentoring relationship in an honest manner and guard against any misuse of their influence within the coaching/mentoring relationship.
  - 22.3.2. Ensure that any claim of professional competence, qualifications or accreditation is clearly and accurately explained to potential clients and that no false or misleading claims are made or implied.
  - 22.3.3. Not bring COMENSA into disrepute through any behaviour, action or conduct which would constitute a transgression of this Code.
  - 22.3.4. Be aware of the potential for conflicts of interest of either a commercial or emotional nature to arise through the coaching or mentoring relationship and deal with them promptly and effectively to ensure that the client or sponsor is not

## CODE OF ETHICS AND CONDUCT

prejudiced.

- 22.3.5. Not engage in any unethical, unprofessional or inappropriate conduct with coaching or mentoring clients. This includes inappropriate or demeaning language or any form of harassment. It is acknowledged that the coach/mentor is in a relationship of trust with the client; and therefore such conduct, including any of a sexual nature, is unethical and unprofessional.
- 22.3.6. Act within applicable laws and not assist, encourage or collude with others engaged in conduct which may be considered dishonest, unlawful, unprofessional or discriminatory.
- 22.4. **Professional** competence pertains to qualifications, skills, attitude and behaviour that coaches and mentors bring to the coaching or mentoring relationship. Professional competence and disposition should be embedded in and reflect in all dealings, processes and activities, with no exception. Members must:
- 22.4.1. Be focused primarily on maximising the effectiveness of the client in their life and/or work context, and guard against any form of exploitation or manipulation of the client in any manner, including in respect of the financial aspects of a coaching/mentoring relationship.
- 22.4.2. Ensure that the coaching/mentoring contract is appropriate and proportional to the objectives of the coaching/mentoring relationship (e.g. fees, coaching/mentoring objectives, duration).
- 22.4.3. Make every effort to resolve conflicts of interest with due regard for the best interests of the client and compliance with this Code, if he finds that, due to unforeseen factors, a potential conflict of interest has arisen.

**KEY ETHICAL RISKS AND ONGOING MONITORING**

23. It is acknowledged that ethics is applied in an environment that is evolving in its complexity. COMENSA therefore identifies its ethical risks in relation to both the organisation and the Profession on a continual basis.
24. The Social and Ethics Committee continually monitors COMENSA's ethical standards within the organisation and the Profession as a whole.

**CONSEQUENCES FOR MISCONDUCT OR BREACH OF THE CODE**

25. The Board is responsible for ensuring that the provisions of this Code are implemented and adhered to.
26. This Code sets out how COMENSA will deal with possible breaches of the Code by a Member or former Member.
27. This Code applies to disciplinary proceedings of Members of all membership classes in respect of evidence of any alleged or potential breach of the Code deriving from complaints or any other source.

**COMPLAINTS**

28. Complaints of, or any other information pertaining to, a breach of this Code from any source whatsoever must be investigated, and, insofar as applicable, prosecuted in accordance with this Code.
29. Any natural or juristic person or association of persons or institution, whether they are a Member or not, may bring a complaint to COMENSA. All complaints must be lodged in writing, in the format prescribed by the Board, with the Case Manager.

**ANONYMOUS WHISTLEBLOWERS AND MEDIA REPORTS**

30. In the interest of justice and protecting the interest of the public, notwithstanding the provision in clause 29, COMENSA may accept and choose to investigate a complaint lodged by an anonymous source.
31. COMENSA retains the right to investigate the conduct of a Member based on media reports, without a formal complaint having been lodged with COMENSA. In the interest of justice, the Member may however not be expelled purely based on media reports.
32. COMENSA retains the right to utilise cautionary suspensions should there be reason to believe that perceived inaction or a protracted investigation of a case may have an adverse effect on the reputation of the Profession and/or COMENSA.
33. The Board retains the right to notify the Members of COMENSA in the event of a widely publicised matter being investigated to avoid a perceived inaction by COMENSA.

**DISCIPLINARY STRUCTURES**

34. The Case Manager, appointed by the Board, is responsible for receiving all complaints and provides secretarial support to the Investigations and Disciplinary Committees as well as the Enquiry Panel.
35. The Investigations Committee, appointed by the Board, is responsible for interpreting and investigating complaints.
36. The Investigations Committee shall consist of as many members as the Board may determine, of which at least one must be a member of the Board. The President of COMENSA may not be a member of this Committee. The Chairman of the Investigations Committee will be appointed by the Board, who has appropriate skills and experience.
37. The Disciplinary Committee, appointed by the Board, is responsible for evaluating Complaints which the Investigations Committee has determined as having enough *prima*

## CODE OF ETHICS AND CONDUCT

*facie* evidence of breach of the Code and referring, when deemed appropriate, matters for hearing to a Disciplinary Enquiry.

38. The Disciplinary Committee shall consist of as many members as the Board may determine, of which at least one must be a member of the Board. The Disciplinary Committee shall be chaired by a person appointed by the Board, who has the appropriate skills and experience. The President may not be a member of this Committee.
39. The Disciplinary Enquiry Panel shall consist of as many members as the Board may determine. The Disciplinary Enquiry Panel shall be chaired by a person appointed by the Board, who has the appropriate skills and experience. The President may not be a member of this Panel.
40. The Appeal Committee is responsible for dealing with and adjudicating all appeals under this Disciplinary Code.
41. The Appeal Committee is appointed from time to time by the Board and shall consist of as many members as the Board may determine. The Appeal Committee shall be chaired by the President.
42. All individuals involved in the disciplinary structures must ensure that they evaluate whether there are any conflicts of interest in relation to the Respondent or the Complainant. Where a conflict of interest exists, the individual must recuse himself.
43. In the event that the Respondent is a Board Member, none of the Board members, including the President, may be part of any of the processes. Where Board Members are members of either the Investigations or Disciplinary Committee, they must recuse themselves. This is to ensure that the Board is not perceived as protecting one of their own. The Board may appoint independent individuals to fill gaps created by recusals.

### **AUTHORITY**

44. In disciplinary proceedings the standard of proof is proof on a balance of probabilities. The

## CODE OF ETHICS AND CONDUCT

Disciplinary Enquiry Panel, described in clause 68 below need not adhere to strict rules of evidence and, insofar as not expressly prescribed in this Code, may regulate its own process.

45. Whilst the Complainant retains the right to withdraw a Complaint, in any disciplinary process before COMENSA, the Investigations or Disciplinary Committee and/or the Panel continues unless COMENSA, the relevant Committee or the Panel, as the case may be, decides otherwise.
46. The Investigations and Disciplinary Committees have the discretion to suspend a Respondent's membership of COMENSA pending the outcome of any investigation, disciplinary process and/or Disciplinary Enquiry under this Code.
47. The Investigations Committee, the Disciplinary Committee and the Disciplinary Enquiry Panel retain the discretion to postpone any investigation, disciplinary process or Disciplinary Enquiry for any period, if the conduct which forms the subject matter of the Complaint does or is likely to form the subject of legal proceedings, or proceedings before another professional or regulatory body.
48. Where a decision to postpone is made, the Complainant and the Respondent will be notified in writing by the Case Manager.
49. The acquittal of the Respondent or any other person on any charges before, and any findings of, a criminal court, civil court and/or any tribunal in disciplinary or any other proceedings before a regulatory body other than COMENSA shall not be binding on COMENSA in its disciplinary proceedings.
50. All Committees contemplated in this Code may, subject to the provisions of this Code and any directions of the Board, regulate their own processes.
51. Terms of reference for all the Committees contemplated in this Code must be approved by the Board.

## **C. DISCIPLINARY PROCESSES**

### **RECEIPT OF COMPLAINTS AND JURISDICTION**

52. All Complaints contemplated in clause 34 must, unless the Case Manager directs otherwise, be in writing and must be sent to the Case Manager. There is no prescribed method for the receipt of all other Complaints.
53. Should the Respondent not be a Member at the time when the complaint is received, or not have been a Member when the alleged unprofessional conduct was committed, with the exception of the circumstances contemplated in clause 11 and 54, the Case Manager will inform the Complainant that COMENSA will not take the Complaint further as it has no jurisdiction over the matter.
54. COMENSA, however, has full jurisdiction to investigate, pursue and prosecute alleged unprofessional conduct which is the subject of any Complaint, even where the Member in question is no longer a Member, but the alleged unprofessional conduct took place while he was still a Member.
55. The Case Manager will refer the Complaint to the Investigations Committee.
56. COMENSA retains the right to take disciplinary action against a Complainant, if the Complainant is a Member and it comes to light that the complaint was a fabricated allegation lodged with malicious intent.

### **INVESTIGATIONS AND REFERRAL TO THE DISCIPLINARY COMMITTEE**

57. After the referral by the Case Manager, an investigation is conducted by the Investigations Committee to determine whether there are sufficient grounds for further action to be taken in respect of Complaints.
58. The Investigations Committee considers Complaints and determines if there is evidence of

## CODE OF ETHICS AND CONDUCT

violation of the Code.

59. The Investigations Committee gathers, assesses and considers the evidence and the nature of the Complaint and may do all that is necessary or desirable to investigate the matter, including:
- 59.1. Consultation with the Respondent, Complainant and other parties as appropriate;
  - 59.2. Appointing one or more investigators to investigate the matter; and
  - 59.3. Calling for such information, including papers and records, as is necessary or desirable in any investigation of a Complaint. It is the duty of any Member or former Member who is subject to an investigation or disciplinary process under this Code to provide such information or documents as he/she may be called upon to provide by the Investigations Committee within the time period specified by the Investigations Committee.
60. The Investigations Committee may, to the extent that it comes across (in the course of its investigations) any evidence of breaches of the Relevant Instruments or unprofessional conduct other than the breaches and conduct referred to in the Complaint, investigate and collect evidence in relation to such further breaches and conduct, and include charges relating to such further breaches and conduct in any charge sheet.
61. The Investigations Committee may seek legal counsel and may appoint experts where necessary or desirable, provided that the Board has approved the costs thereof.
62. Unless the Investigations Committee has enough reason to outright dismiss the Complaint, the Committee (through the Case Manager) must send a copy of the Complaint to the Respondent by registered mail or email (to the Respondent's last addresses known to COMENSA or any other address provided by the Respondent in respect of the Complaint to notify the Respondent of the Complaint and to ask for a response. The Respondent will be requested to respond to the Complaint in writing, within 30 days of the sending of the email or within 37 days of the sending of the registered mail by COMENSA. The Investigations

## CODE OF ETHICS AND CONDUCT

Committee may, on good cause, extend or shorten the period afforded to the Respondent to respond to the Complaint.

63. If no response is received from the Respondent within the above period or if the Respondent decides that he/she will not submit any representation pertaining to the Complaint and communicates this to the Investigations Committee, whichever is the earlier, the investigation shall proceed on the basis of the information available.
64. If (at any stage of the investigation) the Investigations Committee considers that the Complaint is insufficiently meritorious or that there is insufficient evidence to sustain the Complaint, it may decide not to continue with the investigation of a Complaint, to dismiss the Complaint or not to refer the Complaint to the Disciplinary Committee.
65. A decision not to continue with the investigation of, not to refer or to dismiss a Complaint must be communicated in writing to the Complainant and, if the Respondent has been notified of the Complaint, the Respondent.
66. If further action in respect of the Complaint is warranted, the Investigations Committee may refer the matter to the Disciplinary Committee.
67. When it refers a matter to the Disciplinary Committee, the Investigations Committee shall prepare a draft charge sheet laying out the charges proposed to be proffered against the Respondent and may prepare a report that lays out the findings and conclusions, which may include an opinion on the facts of the Complaint. The Disciplinary Committee may amend the charge sheet at any time before or during the Disciplinary Enquiry.

### **DISCIPLINARY COMMITTEE**

68. The Disciplinary Committee decides whether the Complaint or any other evidence of professional misconduct warrants a formal Disciplinary Enquiry. If the Committee is of the view that a Disciplinary Enquiry is warranted, it may convene such Enquiry, prescribe the date, time and location of the hearing in such Enquiry and shall request the Board to

## CODE OF ETHICS AND CONDUCT

appoint a Disciplinary Enquiry Panel, comprising no fewer than three appropriately qualified persons. Notice of the hearing shall be sent to the Respondent at the Respondent's Address by the Case Manager, acting on behalf of the Disciplinary Committee, at least, 30 days prior to the hearing.

69. After the commencement of the hearing, the Disciplinary Enquiry Panel may regulate its own process in relation to the date, time and location of the hearing as it deems fit.
70. The Disciplinary Committee may investigate any aspect or issue relating in any way to a matter referred to it by the Investigations Committee or which may appear from the Investigation Committee's report or draft charge sheet; and may enlist the assistance of any person or service provider, without any limitation, to do so.
71. The Disciplinary Committee may, to the extent that it comes across (in the course of its deliberations or investigations) any evidence of breaches of the Relevant Instruments or unprofessional conduct other than the breaches and conduct referred to in the Complaint, investigate and collect evidence in relation to such further breaches and conduct, and include charges relating to such further breaches and conduct in any charge sheet.
72. The Disciplinary Committee will finalise any charge sheet in respect of the charges to be lodged against the Respondent at the Disciplinary Enquiry. Such charge sheet will be furnished by the Case Manager to the Respondent at the Respondent's Address. The Respondent may deliver a plea or explanation to the Disciplinary Committee within 30 days of the sending of the email or within 37 days of the sending of the registered mail by COMENSA to the Respondent's Address. The Disciplinary Committee may, on good cause, extend or shorten the period afforded to the Respondent to respond to the Complaint.
73. The Disciplinary Committee may incur any expense it deems appropriate for the just and appropriate conduct of the disciplinary process, including the Disciplinary Enquiry.
74. The Disciplinary Committee may agree to any plea bargain with the Respondent in respect of any alleged unprofessional conduct and therein agree to any sanction it deems fit after

**CODE OF ETHICS AND CONDUCT**

the first of the Rulings referred to in clause 85, provided that such a plea bargain will only become final and binding on the Respondent, COMENSA and the Disciplinary Enquiry Panel if and when the Disciplinary Enquiry Panel approves it

**DISCIPLINARY ENQUIRY**

75. The Respondent will have the right to attend the hearing. The Complainant may also attend the Disciplinary Enquiry, except to the extent that the Disciplinary Enquiry Panel orders otherwise. The Disciplinary Enquiry Panel may allow any other party to attend the Disciplinary Enquiry, at its discretion. The general rule is, however, that the hearings of the Disciplinary Enquiry are to be held in private.
76. The Disciplinary Enquiry Panel may decide, in its sole discretion, to conduct its hearing virtually on a platform approved by the Board.
77. If the Respondent and/or his/her representatives do not attend at the hearing of the Disciplinary Enquiry, the Enquiry may proceed in their absence, as directed by the Disciplinary Enquiry Panel.
78. Subject to these Rules, the procedure of the Disciplinary Enquiry will be determined by the Disciplinary Enquiry Panel.
79. The Disciplinary Committee is responsible for prosecuting the case against the Respondent before the Disciplinary Enquiry Panel. The Disciplinary Committee may appoint legal and other advisers, experts and expert witnesses to assist in the investigation and prosecution of the Respondent's conduct in the Disciplinary Enquiry and may appoint a person to act as a *pro forma* prosecutor in respect of prosecuting the Complaint, including examining and cross-examining witnesses or introducing evidence, before the Disciplinary Enquiry Panel.
80. The Disciplinary Committee and/or the *pro forma* prosecutor may themselves, call the Respondent or other witnesses and introduce other evidence.
81. The Respondent may be represented by legal advisers at the Disciplinary Enquiry and shall

## CODE OF ETHICS AND CONDUCT

be entitled to lead and challenge evidence and lead and cross-examine witnesses.

82. Insofar as practicable, a pre-hearing conference with the Respondent will be convened by the Disciplinary Committee at least 5 (five) days before the date of the hearing, with a view, among other things, to regulating the process of the hearing, the calling and cross-examination of witnesses and the adducing of evidence.
83. The hearings at the Disciplinary Enquiry shall be minuted or transcribed. The Case Manager or her delegate will act as secretary to the Disciplinary Enquiry hearing and will be responsible for ensuring that a record of the hearing is kept. Such record will, on request to the Case Manager, which request must be received within 1 month of the date of hearing, be furnished to the Respondent.
84. The Disciplinary Enquiry Panel may postpone or adjourn the hearing at any point on good cause.
85. The Disciplinary Enquiry Panel will deliver one or more written rulings, including reasons, as to its findings in respect of any of the charges in the charge sheet and any procedural matters.
86. If the Respondent is found guilty of any breach of the Relevant Instruments in any of the Rulings, the Disciplinary Enquiry Panel will decide on the appropriate process and timing for the determination of the sanction to be imposed on the Respondent. In deciding on the appropriate sanction, the Disciplinary Enquiry Panel must take into account any past convictions of and sanctions imposed on the Respondent.
87. The Disciplinary Enquiry Panel will deliver one or more written rulings on the sanctions to be imposed.
88. Copies of the Rulings and any Sanctions Decisions shall be sent to the Respondent at the Respondent's Address and the Complainant within 21 (twenty days) working days of such Ruling or Decision.
89. The Rulings and Sanctions Decisions may be appealed, and such appeals would be

## CODE OF ETHICS AND CONDUCT

considered by the Appeal Committee.

90. The Disciplinary Enquiry Panel may order any deviation from this Code (insofar as it relates to the Disciplinary Enquiry) that it deems fit, having regard to the interests of justice.

### **SANCTIONS**

91. Any single factor, if severe enough, may be sufficient to justify the sanction(s) imposed. A combination of several factors may justify elevated or combined sanctions. The Disciplinary Enquiry Panel may impose one or more of the following sanctions:
- 91.1. Censure of the conduct of the Respondent. This sanction takes the form of a warning or reprimand placed in COMENSA's file.
  - 91.2. Suspension of the Respondent from membership of COMENSA, for a specific period and/or subject to any conditions. The Respondent's membership may be suspended for an appropriate time period; and/or any suspension may be subject to suspensive or resolutive conditions, within the discretion of the Disciplinary Enquiry Panel;
  - 91.3. Termination of Membership of COMENSA and expulsion of the Respondent from COMENSA. The Respondent may be expelled from COMENSA and his Membership may be terminated.
  - 91.4. Costs award against the Respondent. The Respondent may be ordered to pay any and all costs and expenses incurred by COMENSA in dealing with the Complaint and the disciplinary process, on whatever scale and in whatever amount the Disciplinary Enquiry Panel deems fit.

### **CONSIDERATIONS**

92. Any sanction imposed against a Respondent must be proportionate and reasonable, relative to the breach that has occurred, taking into account previous disciplinary actions.
93. Progressive discipline is not required as a single occurrence of a breach of the Code and can

## CODE OF ETHICS AND CONDUCT

lead to a very significant sanction.

94. Factors relevant to determining appropriate sanctions for a Respondent include, without limitation:
- 94.1. The nature and duration of the Respondent's relationship with the Complainant, including whether there is an imbalance of power;
  - 94.2. The Respondent's prior history and any pattern of unethical conduct;
  - 94.3. The Respondent's voluntary admission of the offense(s), acceptance of responsibility for the unethical behaviour, and/or cooperation in the investigation and/or hearing process;
  - 94.4. Real or perceived impact of the incident on the Complainant and/or the public;
  - 94.5. Circumstances specific to the Respondent being sanctioned (e.g. lack of appropriate knowledge or training; illness);
95. Other mitigating and aggravating circumstances.

### APPEALS PROCEDURE

96. If the Respondent, the Disciplinary Committee or the *pro forma* prosecutor wishes to appeal any of the Rulings or the Sanctions Decisions, the appeal should be made in writing, addressed to the President and submitted to the Case Manager who shall inform the President and the Disciplinary Enquiry Panel. The notice of appeal must be submitted within 30 (thirty) days of receipt of the relevant Ruling or Decision of the Disciplinary Enquiry Panel by the Appellant. The notice of appeal must set out, in detail and on oath, in writing the grounds of appeal and must include all supporting documents.
97. The President may condone the late filing of an Appeal.
98. An appeal may only be heard if there are sufficient grounds for appeal. Sufficient grounds include:
- 98.1. COMENSA did not have the authority or jurisdiction to make a particular decision;

**CODE OF ETHICS AND CONDUCT**

- 98.2. COMENSA failed to follow its own procedures;
  - 98.3. The Disciplinary Enquiry Panel made a decision that was influenced by bias and have not considered other views;
  - 98.4. The Disciplinary Enquiry Panel failed to consider relevant information or took into account irrelevant information in making the decision; or
  - 98.5. The Disciplinary Enquiry Panel made a decision that was grossly unreasonable.
99. The Appellant must demonstrate, on a balance of probabilities, that a procedural error has been made and that this error had, or may reasonably have had, a material effect on the decision.
100. Any Appeal does not suspend the operation of the relevant Ruling or Sanctions Decision against which an appeal is lodged, unless the Disciplinary Enquiry Panel, in the interests of justice, orders otherwise.
101. The Appeal will be considered by the Appeal Committee of COMENSA which may decide the Appeal only on the papers or decide to hold an appeal hearing, the form and process of which is to be determined by the Appeal Committee. The Appeal Committee may call witnesses.
102. The Appeal Committee will afford the *pro forma* prosecutor and the Disciplinary Committee an opportunity to make representations in relation to any Appeal lodged by the Respondent; and will afford the Respondent an opportunity to make representations in relation to any Appeal lodged by the *pro forma* prosecutor or the Disciplinary Committee. The Appeal Committee may also allow, in appropriate circumstances, the Disciplinary Enquiry Panel to make representations to the Appeal Committee.
103. The Appeal is confined to the records of the proceedings *a quo*, but interested parties may present new arguments to the Appeal Committee and the Appeal Committee may substitute its own findings and conclusions for those of the Disciplinary Enquiry Panel, and may make any ruling or decision, including (without any limitation), a ruling ordering the

## CODE OF ETHICS AND CONDUCT

matter to be referred for a re-hearing to the same or a differently constituted Disciplinary Enquiry Panel, or to change any Ruling and/or Sanctions Decision in any respect.

104. The Appeal Committee will render its decision in writing, and provide reasons.
105. The Case Manager will inform the Respondent, the Disciplinary Committee, the *pro forma* prosecutor and the Disciplinary Enquiry Panel in writing of the outcome of the Appeal within 21 (twenty one) days after the Appeal Committee's decision has been rendered, on behalf of the Appeal Committee.

### RECORD KEEPING

106. Records of all investigations and decisions must be maintained by COMENSA.
107. Any disciplinary sanctions imposed on a Member must be recorded in that Member's file.
108. All records will be kept confidential to the extent possible and except as required by law. The records will not be disclosed unless necessary to investigate a complaint, take corrective action or otherwise as required by law. However, this does not apply to final determinations of the Disciplinary Enquiry Panel.

### CONFIDENTIALITY

109. The disciplinary process is confidential and involves only COMENSA, the parties to the complaint, their legal counsel (if applicable), the Case Manager, the Investigations Committee Members, the Disciplinary Committee Members, the Disciplinary Enquiry Panel, and any independent advisors to the Panel (if applicable).
110. While a Member has the right to obtain legal counsel at his own cost, COMENSA retains the right to not allow legal counsel in the hearings.
111. None of the parties may disclose confidential information relating to the process to any person not involved in the proceedings, once initiated and until a decision is released.
112. Any failure to respect the above confidentiality requirement may result in disciplinary action.

**PUBLISHING OF GUILTY VERDICTS**

113. The Board must publish the number of complaints received, how many have been concluded and the nature of the complains received in the Annual Report.
114. The Board retains the right to publish the names of Members who have been expelled.
115. The Board retains the right to inform relevant stakeholders of the expulsion of a Member if it deems it necessary in the interest of protecting the interest of the public.