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**BOARD NOTICES • RAADSKENNISGEWINGS**


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**BOARD NOTICE 98 OF 2018**

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**NOTICE OF REQUEST FOR PUBLIC COMMENT****ON**
**THE AMENDMENT TO THE DISCIPLINARY RULES MADE UNDER THE AUDITING  
 PROFESSION ACT, 26 OF 2005**

*In terms of Section 10(2)(a) of the Auditing Profession Act, 26 of 2005*

In compliance with section 10(2)(a) of the Auditing Profession Act, 26 of 2005, the Independent Regulatory Board for Auditors hereby publishes the amended Disciplinary Rules for public comment. Following the recommendations of the World Bank Report on Observance of Standards and Codes to strengthen our investigations function, the legal department was split into two separate departments – Legal and Investigations. These amendments to the Disciplinary Rules are required as a result of a separation of the two departments and an alignment to current practice and process flow.

The format of the amendments is as follows: insertions are in [brackets] and deletions are in ~~strikethrough~~.

Interested and Affected Parties are hereby invited to submit written representations of the amended rules within 30 days of publication of this notice. The aforesaid representations must be emailed to [board@irba.co.za](mailto:board@irba.co.za)

**DISCIPLINARY RULES AMENDED ON 25 JULY 2018**

	<b>Page</b>
1. Definitions	2 of 19
2. Commencement of an inquiry into alleged improper conduct	3 of 19
3. Investigation of a complaint or allegations of improper conduct	4 of 19
4. Decision whether to charge a registered auditor with improper conduct	6 of 19
5. The Charge Sheet	7 of 19
6. The plea and consequences of an admission or denial of guilt	8 of 19
7. The Notification	9 of 19
8. Subpoenas	10 of 19
9. Amendment of the charge sheet prior to hearing	10 of 19
10. The hearing on the merits	10 of 19
11. Hearing on sentencing	14 of 19
12. Competent sentences, publication, costs and notice to the board	18 of 19

**~~REPEAL OF THE DISCIPLINARY RULES MADE UNDER THE PUBLIC ACCOUNTANTS' AND AUDITORS [AUDITING PROFESSION] ACT, 80 OF 1991 [26 OF 2005] AND ADOPTION [ADOPTED] OF NEW DISCIPLINARY RULES ON 7 JUNE 2007, [AS AMENDED ON 25 JULY 2018]~~**

~~Having published its intention to do so for comment in the *Government Gazette* on 26 April 2007, the Board now resolves under section 10(1) of the Auditing Profession Act, 26 of 2005 (~~the Act~~) read with section 4(1)(a)(i), (ii) and (iii) of the Act to (i) the repeal of the Disciplinary Regulations referred to in section 59(8)(b) of the Act and (ii) the prescription by the Board of the following Disciplinary Rules:~~

**1. DEFINITIONS**

[1.1 In these Rules, unless the context indicates otherwise –]

- 1.1.1 **"the Act"** means the Auditing Profession Act, 26 of 2005 and any expression used in these Rules which is defined in the Act bears, unless the context indicates the contrary, the meaning assigned to it in the Act;
- 1.1.2 **"the Board"** means the Independent Regulatory Board for Auditors established by section 3;
- 1.1.3 **"the CEO"** means the person appointed by the Board as Chief Executive Officer under section 9(a) or any person acting in that capacity;
- 1.1.4 **"the chairperson of the Disciplinary Committee"** means the retired judge or senior advocate who is appointed by the Board as such and includes a deputy chairperson of the Disciplinary Committee acting as chairperson at a meeting of the Disciplinary Committee where the chairperson is absent or for any reason unable to perform his or her functions;<sup>1</sup>
- 1.1.5 **"the Code"** means the *Code of Professional Conduct* prescribed by the Board under section 4(1)(c); and includes the *Code of Professional Conduct* referred to in section 59(8)(c), until it has been repealed by the Board;
- [1.1.6 **"the Director: Investigations"** means the person designated as such, who is an employee of the Board, or any person acting in that capacity, or any employee of the Board, notwithstanding his or her designation, who is appointed or charged by the Board to perform the functions performed by the Director: Investigations as at the amendment of these rules;]
- ~~1.1.6~~[1.1.7] **"the Director: Legal"** means the person designated as such, who is an employee of the Board, or any person acting in that capacity, or any employee of the Board, notwithstanding his or her designation, who is appointed or charged by the Board to perform the functions performed by the Director: Legal as at the promulgation of these rules;
- ~~1.1.7~~[1.1.8] **"the Disciplinary Advisory Committee"** means a sub-committee of the Board established by the Board on 20 June 2006 under section 20(1);

<sup>1</sup> Section 24(2)(a) read with the resolutions by the Board on 20 June 2006

- ~~1.1.8~~[1.1.9] "**the Disciplinary Committee**" means the committee established by the Board under section 20(2)(f);
- ~~1.1.9~~[1.1.10] "**firm**", in the context of these Rules, means a partnership, company or sole proprietor referred to in section 38;<sup>2</sup>
- ~~1.1.10~~[1.1.11] "**the Investigating Committee**" means the committee established by the Board under section 20(2)(e);
- ~~1.1.11~~[1.1.12] "**pro forma complainant**" means the person appointed under section 50(2)(a) to present the charge to the Disciplinary Committee;
- ~~1.1.12~~[1.1.13] "**registered auditor**", in the context of these Rules, means an individual or firm registered as an auditor with the Board or who was so registered at the time that the alleged improper conduct took place, whether that registered auditor is or was in public practice or not, and includes the duly authorised representative of the registered auditor if the registered auditor concerned is a firm;
- ~~1.1.13~~[1.1.14] "**the respondent**" means a registered auditor whose conduct is the subject of any proceedings (of whatsoever nature, including a complaint or a decision whether or not to refer such conduct to investigation) under these Rules as well as the legal representative of such a registered auditor, if any;
- ~~1.1.14~~[1.1.15] "**these Rules**" means the *Disciplinary Rules* prescribed under section 10(1) and includes these definitions; and
- 1.2 any reference to any section in these Rules is a reference to the corresponding section of the Act;
- 1.3 these Rules shall, wherever possible, be construed in conformity with the Act; and
- 1.4 the headings to and any footnotes in these Rules shall be taken into account in the interpretation of these Rules.

## 2. COMMENCEMENT OF AN INQUIRY INTO ALLEGED IMPROPER CONDUCT

- 2.1 If an allegation of improper conduct against a registered auditor comes to the attention of the Director: ~~Legal~~ [Investigations]<sup>3</sup> or the CEO, he or she must refer it to the Investigating Committee if –
- 2.1.1 the allegations are in the public domain and he or she on reasonable grounds (including a report from a foreign regulator) suspects that a respondent has committed an act which may render such respondent guilty of improper conduct; or
- 2.1.2 the allegations are referred to him or her by the Inspection Committee established under section 20(2)(d); or
- 2.1.3 a court or appropriate regulator sends (or directs to be sent) a record or report under section 48(2); or
- 2.1.4 a member of the public lodges a complaint with him or her and he or she:

<sup>2</sup> Section 1 v. "firm"

<sup>3</sup> See the Board's Resolution on 20 June 2006 as amended on 17 February 2016

- 2.1.4.1 establishes that the person or firm complained about is a registered auditor;
- 2.1.4.2 establishes that the complaint falls within the jurisdiction of the Board; and
- 2.1.4.3 is of the opinion that the complaint of improper conduct appears to be justified.<sup>4</sup>
- 2.2 Members of the public who wish to lodge a complaint of improper conduct against a registered auditor shall do so on affidavit, unless the Director: ~~Legal~~ [Investigations]<sup>5</sup> or the CEO decides otherwise. A complaint shall set out clearly and concisely the specific acts or failures to act giving rise to the complaint of improper conduct.
- 2.3 In order to establish whether the grounds for referral to the Investigating Committee referred to in 2.1.1 or 2.1.4 are present, the Director: ~~Legal~~ [Investigations]<sup>6</sup> or the CEO may, in his or her discretion:
- 2.3.1 notify the respondent in writing of the nature of the complaint and call upon that respondent to furnish a written explanation in answer to the complaint within 30 days of such notice; and
- 2.3.2 request a complainant to provide further particulars on any aspect of the complaint [; and]
- [2.3.3 correspond with any other party, in respect of the matter, he or she considers appropriate.]

### 3. INVESTIGATION OF A COMPLAINT OR ALLEGATIONS OF IMPROPER CONDUCT

- 3.1 When a complaint or allegation of improper conduct against a respondent is referred to the Investigating Committee, the Investigating Committee must investigate such complaint or allegation<sup>7</sup> and may:
- 3.1.1 take any steps which are not prohibited by law to gather information with regard to the complaint or allegation;<sup>8</sup>
- 3.1.2 request a complainant to provide further particulars on any aspect of the complaint;
- ~~3.1.3 request the respondent to appear before the Investigating Committee<sup>9</sup> in order to assist it to formulate its recommendations to the Board<sup>10</sup> by notice specifying the time and place of the meeting of the Investigating Committee, provided that the notice shall inform the respondent:~~
- ~~3.1.3.1 that the respondent has the right to be assisted or represented by another person;<sup>11</sup>~~
- ~~3.1.3.2 that any statement made by the respondent to the Investigating Committee may be used in evidence<sup>12</sup> and that the proceedings of the Investigating Committee will be recorded; and~~

<sup>4</sup> Section 48(1) and (2)

<sup>5</sup> See the Board's Resolution on 20 June 2006 as amended on 17 February 2016

<sup>6</sup> See the Board's Resolution on 20 June 2006 as amended on 17 February 2016

<sup>7</sup> Section 48(3)

<sup>8</sup> Section 48(3)(b)

~~<sup>9</sup> Section 48(4)~~

~~<sup>10</sup> Section 48(7)~~

~~<sup>11</sup> Section 48(4)(a)~~

~~<sup>12</sup> Section 48(4)(b)~~

- ~~3.1.3.3~~ that section 51(4) of the Act provides that a respondent may be ordered to pay the reasonable costs incurred by the Investigating Committee and the Disciplinary Committee in connection with an investigation and hearing, if appropriate, and that a failure to appear before the Investigating Committee may increase the costs likely to be incurred by the Investigating Committee and the Disciplinary Committee;
- 3.1.4[3] require, by notice in writing, the registered auditor to whom the complaint or allegation of improper conduct relates or any other person to produce to the Investigating Committee at a time and place stipulated in the notice any information including, but not limited to, any working papers, statements, correspondence, books or other documents, which is in the possession or under the control of that registered auditor or other person and which relates to the subject matter of the charge(s), including specifically, but without limitation, any working papers of the registered auditor;<sup>13</sup>
- 3.1.5[4] request the CEO to institute legal action<sup>14</sup> against any person who fails to produce to the Investigating Committee the information referred to in ~~3.1.4~~[3.1.3] at the time and place stipulated in the notice; and
- 3.1.6[5] inspect and, if the Investigating Committee considers it appropriate, retain any information obtained pursuant to ~~3.1.4~~[3.1.3] and ~~3.1.5~~[3.1.4] and make copies of and take extracts from such information.<sup>15</sup>
- ~~3.2~~ Notwithstanding the provisions in ~~3.1.3.1~~ and ~~3.1.3.2~~, the Investigating Committee and the respondent may agree to declare any appearance or part of an appearance of the respondent before the Committee to be "without prejudice". In such a case:
- ~~3.2.1~~ The evidence presented or the discussions at such appearance or part of the appearance will not be recorded;
- ~~3.2.2~~ the discussions between the Investigating Committee and the respondent will not be used in evidence against the respondent; and
- ~~3.2.3~~ the respondent and the Investigating Committee may agree that the respondent would not be assisted or represented by any other person.
- 3.3[2] The Investigating Committee shall not be obliged to disclose the source of a complaint.
- 3.4[3] If, in the course of its investigations, the respondent admits to the Investigating Committee that the respondent is guilty of improper conduct and the Investigating Committee and the respondent agree on a [the recommended] punishment to be imposed for such improper conduct, or if it appears to the Investigating Committee [to] be appropriate, the Investigating Committee may recommend to the Board that a specific sanction is imposed on, and the payment of a specific amount in costs is required from, the respondent and that the name of, charge(s) against and finding in respect of the respondent is published by the Board or not.

<sup>13</sup> Section 48(5)(a)(i)<sup>14</sup> Section 9(n) read with the Board's resolutions on 20 June 2006<sup>15</sup> Section 48(5)(a)(ii) and (iii)

[3.4 If in the course of its investigations, the Investigating Committee determines that a matter should be referred directly to a disciplinary hearing, it may make such recommendation.]<sup>16</sup>

#### **Recommendation to Disciplinary Advisory Committee**

3.5 After investigating the allegations of improper conduct against the respondent, the Investigating Committee:

3.5.1 shall report and recommend to the Disciplinary Advisory Committee whether or not the respondent should be charged with improper conduct.<sup>17</sup> If the Investigating Committee recommends to the Disciplinary Advisory Committee that the respondent should not be charged with improper conduct, it should state its finding whether:

3.5.1.1 the respondent is not guilty of improper conduct; or

3.5.1.2 there is a reasonable explanation for the respondent's conduct; or

3.5.1.3 the conduct of which the respondent may be guilty is of negligible nature or consequence; or

3.5.1.4 there are no reasonable prospects of success to succeed with a charge of improper conduct against the respondent; or

3.5.1.5 in all the circumstances it is not appropriate to charge the respondent with improper conduct;~~and~~  
[or]-

3.5.2 may make a recommendation under ~~3.4~~[3.3] to the Disciplinary Advisory Committee; [or]

[3.5.3 may make a recommendation under 3.4 to the Disciplinary Advisory Committee.]

#### **4. DECISION WHETHER TO CHARGE A REGISTERED AUDITOR WITH IMPROPER CONDUCT**

4.1 When the Disciplinary Advisory Committee receives a recommendation under 3.5 from the Investigating Committee, it shall consider this and:

4.1.1 if the Investigating Committee recommended that the respondent should be charged, shall formally charge the respondent;<sup>18</sup>

4.1.2 if the Investigating Committee recommended that the respondent should not be charged, the Disciplinary Advisory Committee may:

4.1.2.1 refer the recommendation to be considered by the Board; or

4.1.2.2 decline to prefer any charge(s) against the respondent.

4.2 Should the Disciplinary Advisory Committee refer the matter to the Board, the Board may:

<sup>16</sup> Section 50

<sup>17</sup> Section 48(7) read with the Board's resolutions on 20 June 2006

<sup>18</sup> Section 49(1) read with the Board's resolutions on 20 June 2006

- 4.2.1 formally charge the respondent with such charge(s) as it may formulate in its discretion;<sup>19</sup> or
- 4.2.2 decline to prefer any charge(s) against the respondent.
- 4.3 If the Disciplinary Advisory Committee or the Board, as the case may be, decides not to charge a respondent whose conduct was the subject of an investigation with improper conduct, the Director: ~~Legal~~[Investigations]<sup>20</sup> or the CEO must notify the respondent, and ~~may~~[must] notify the complainant, in writing of this decision.
- 4.4 If a respondent is formally charged with any charge(s) of improper conduct, the Disciplinary Advisory Committee shall cause a notification (if applicable) and a charge sheet to be furnished to the respondent by hand (whether by service by sheriff or on the respondent's legal representatives or otherwise) or by registered mail to the respondent's address or last known address.<sup>21</sup>

#### [5] THE CHARGE SHEET

- ~~4.9~~[5.1] A charge sheet may contain more than one charge of improper conduct, whether formulated cumulatively or in the alternative.
- ~~4.10~~[5.2] The charge sheet shall:
- ~~4.10.1~~[5.2.1] set out the nature of the charge(s);<sup>22</sup>
- ~~4.10.2~~[5.2.2] set out the relevant facts upon which the charge(s) are based with sufficient particularity as to allow the respondent to plead;
- ~~4.10.3~~[5.2.3] inform the respondent that the respondent may, in writing, admit or deny the charge(s);<sup>23</sup>
- ~~4.10.4~~[5.2.4] inform the respondent that the respondent may, together with the admission or denial referred to in ~~4.10.3~~[5.2.3], submit a written explanation regarding the charge(s);<sup>24</sup>
- ~~4.10.5~~[5.2.5] inform the respondent of the date by which the respondent must admit or deny the charge(s), which date must give the respondent a reasonable time (but not exceeding 60 days) to respond;<sup>25</sup>
- ~~4.10.6~~[5.2.6] inform the respondent that:
- ~~4.10.6.1~~[5.2.6.1] should the respondent not admit or deny the charge(s) by the date referred to in ~~4.10.5~~[5.2.5] the respondent would be considered to have denied those charge(s) and that those charge(s) would be referred to a disciplinary hearing under Rule ~~6~~[10]; or

<sup>19</sup> Section 49(1) read with section 19(4) and the Board's resolutions on 20 June 2006

<sup>20</sup> See the Board's Resolution on 20 June 2006 as amended on 17 February 2016

<sup>21</sup> Section 49(2)

<sup>22</sup> Section 49(3)(a)

<sup>23</sup> Section 49(3)(b)

<sup>24</sup> Section 49(3)(c)

<sup>25</sup> Section 49(3)(d)

- ~~4.10.6.2~~[5.2.6.2] should the respondent deny the charge(s), but fail to submit a written explanation, together with the denial, the charge(s) would be referred to a disciplinary hearing under Rule ~~6~~[10] without such an explanation;
- ~~4.10.7~~[5.2.7] inform the respondent that section 51(4) of the Act provides that a respondent may be ordered to pay the reasonable costs incurred by the Investigating Committee and the Disciplinary Committee in connection with an investigation and hearing and that a failure to submit a plea under ~~4.10.3~~[5.2.3] or a written explanation under ~~4.10.4~~[5.2.4] may increase the costs likely to be incurred by the [Investigating Committee and the] Disciplinary Committee.

## 6. THE PLEA AND CONSEQUENCES OF AN ADMISSION OR DENIAL OF GUILT

- ~~4~~[6.1] A respondent that is formally charged must in writing plead to all of the charges before or on the date referred to in ~~4.10.5~~[5.2.5].
- ~~5.2~~[6.2] Should the respondent not plead to the charge(s) before or on the date referred to in ~~4.10.5~~[5.2.5], the respondent will be considered to have denied the charge(s) and such charge(s) will be referred to a hearing on the merits under Rule ~~6~~[10].
- ~~5.3~~[6.3] If a respondent pleads guilty to the charge (should there be only one), or all the charges (should there be more than one), contained in the charge sheet, the respondent must notify the Director: ~~Legal~~ [Investigations]<sup>26</sup> or the CEO. In such a case, the respondent is considered to be guilty of that charge(s)<sup>27</sup> and:
- ~~5.3.1~~[6.3.1] if the ~~Investigating Committee has recommended~~ [Disciplinary Advisory Committee has determined] that a specific sanction is imposed on, the payment of a specific amount in costs is required from, and a specific arrangement regarding publication is made with respect to, a respondent, the Director: ~~Legal~~ [Investigations]<sup>28</sup> or the CEO will automatically impose that sanction on the respondent, order the respondent to pay that amount in costs and implement that arrangement with regard to publication<sup>29</sup>;
- ~~5.3.2~~ if the ~~Investigating Committee did not recommend that a specific sanction is imposed on, and the payment of a specific amount in costs is required from, a respondent, the matter will be referred to the Disciplinary Committee to act under Rule 7 at the hearing determined under 4.6.~~
- ~~5.4~~[6.4] If a respondent pleads guilty to one or more, but not all, of the charges in the charge sheet (should there have been more), the respondent must notify the Director: ~~Legal~~ [Investigations]<sup>30</sup> or the CEO, clearly indicating in respect of which charge(s) the respondent admits and denies guilt.
- ~~5.5~~[6.5] If a respondent denies guilt to one or more of the charges in a charge sheet, and the Investigating Committee has made no recommendation under ~~3.4~~[3.3], that charge(s) to which such respondent has denied guilt will

<sup>26</sup> See the Board's Resolution on 20 June 2006 as amended on 17 February 2016

<sup>27</sup> Section 49(4)

<sup>28</sup> See the Board's Resolution on 20 June 2006 as amended on 17 February 2016

<sup>29</sup> See the Board's Resolutions on 20 June 2006 and the resolution of the Disciplinary Committee on 16 September 2006

<sup>30</sup> See the Board's Resolution on 20 June 2006 as amended on 17 February 2016

be referred to the Disciplinary Committee for a hearing on the merits under Rule 6[10], unless the charge sheet is amended by the Disciplinary Advisory Committee under ~~4.14~~[9.1] to remove the charge(s) to which the respondent denied guilt. The respondent will be considered to be guilty of those charges to which the respondent admitted guilt, which will be referred to the Disciplinary Committee to act under Rule 7[11].

~~5.6~~[6.6] If a respondent denies guilt to one or more of the charges in a charge sheet, and the Investigating Committee has made a recommendation under ~~3.4~~[3.3]:

~~5.6.1~~[6.6.1] the Disciplinary Advisory Committee may exercise its powers under ~~4.14~~[9.1], in which case ~~4.12~~[9.2] and ~~4.13~~[9.3] will apply *mutatis mutandis*. Should there be no charges in the charge sheet, as amended, to which the respondent pleads not guilty, the charges to which the respondent pleaded guilty are referred to the CEO or the Director: Legal [Investigations]<sup>31</sup> to act in terms of ~~5.3.1~~[6.3.1];

~~5.6.2~~[6.6.2] if the Disciplinary Advisory Committee does not exercise its powers under ~~4.14~~[9.1], or if – despite its exercise of its powers under ~~4.14~~[9.1] there are charges in the charge sheet as amended to which the respondent pleads not guilty, ~~4.5 to 4.8~~[Rule 7 & 8] will apply *mutatis mutandis* and all charge(s) in the charge sheet will be referred to the Disciplinary Committee. That charge(s) to which the respondent denied guilt will be referred for a hearing on the merits under Rule 6[10]. The respondent will be considered to be guilty of those charges to which the respondent admitted guilt, which will be referred to the Disciplinary Committee to act under Rule 7[11].

## 7. THE NOTIFICATION

~~4.5~~[7.1] When a respondent is formally charged with any charge(s) of improper conduct, such respondent shall receive a notice of the time and place at which a hearing of the charges under Rule 6[10] and Rule 7[11] (if applicable) will be conducted, unless the Investigating Committee made a recommendation under ~~3.4~~[3.3].

~~4.6~~[7.2] Subject to ~~6.3.11~~[10.3.11], ~~6.3.12~~[10.3.12] and ~~6.4~~[10.4], a hearing under Rule 6[10] and / or Rule 7[11] is conducted at such time and place as is determined by the Director: Legal or the CEO.

~~4.7~~[7.3] The notice shall state:

~~4.7.1~~[7.3.1] that, at the hearing under Rule 6[10] and Rule 7[11] (if applicable), the respondent:

~~4.7.1.1~~[7.3.1.1] may be assisted or represented by another person in conducting a defence;

~~4.7.1.2~~[7.3.1.2] has the right to be heard;

~~4.7.1.3~~[7.3.1.3] may call witnesses;

~~4.7.1.4~~[7.3.1.4] may cross-examine any person called as a witness by the *pro forma* complainant;

~~4.7.1.5~~[7.3.1.5] may have access to documents produced in evidence; and

<sup>31</sup> See the Board's Resolution on 20 June 2006 as amended on 17 February 2016

- ~~4.7.1.6~~[7.3.1.6] may admit at any time before the conclusion of the disciplinary hearing under Rule ~~6~~[10] that the respondent is guilty of the charge(s) referred to the Disciplinary Committee despite the fact that the respondent denied such charge(s) or failed to admit or deny such charge(s); and
- ~~4.7.1.7~~[7.3.1.7] will be regarded as guilty of the charge(s) to which the respondent admitted guilt under ~~4.7.1.6~~[7.3.1.6];
- ~~4.7.2~~[7.4] that the respondent must inform the Director: Legal or the CEO at least one (1) month before the date for the hearing under Rule ~~6~~[10] and Rule ~~7~~[11] (if applicable) is determined under ~~4.6~~[7.2], or on good cause shown, such shorter period as the Director: Legal or CEO may determine, of the names, ~~physical addresses and postal addresses~~ [and all known contact details] of any witness(es) that the respondent wishes to give evidence at the hearing under Rule ~~6~~[10] and Rule ~~7~~[11] (if applicable).<sup>32</sup>

## 8. SUBPOENAS

- ~~4.8~~[8.1] The Director: Legal or the CEO must cause subpoenas in the prescribed form to be served on the witness(es), if any, nominated by the respondent and may cause such subpoenas to be served on such witness(es), if any, whom the *pro forma* complainant and the Disciplinary Committee wish to call.

## 9. AMENDMENT OF CHARGE SHEET PRIOR TO HEARING

- ~~4.11~~[9.1] The Disciplinary Advisory Committee may at any time after a charge sheet or amended charge sheet was furnished to a respondent under 4.4 and before the commencement of a hearing under Rule ~~6~~[10] further amend such charge sheet or amended charge sheet.<sup>33</sup> Amendments may include, but are not limited to, the addition or deletion of charges.
- ~~4.12~~[9.2] The amendment shall be effected by furnishing an amended charge sheet which meets the requirements set out in ~~4.10~~[5.2] to the respondent under 4.4.
- ~~4.13~~[9.3] The provisions of Rule ~~5~~[6] apply *mutatis mutandis* to a respondent after receipt of an amended charge sheet even if the respondent has pleaded to the original charge sheet.

## [10.] THE HEARING ON THE MERITS

### ~~6.4~~[10.1] General matters

- [10.1.1] The standard of proof that the Disciplinary Committee must apply for deciding the outcome of a hearing must be on a balance of probabilities.
- 10.1.2 Subject to 10.1.1 the Disciplinary Committee may from time to time adopt a procedure that the Committee deems fit provided the procedure is in accordance with the rules of natural justice and is not prohibited by this Act.]
- ~~6.4.4~~[10.1.3] The Disciplinary Committee may upon good cause shown and in the interests of justice sanction or condone any departure from these Rules ~~or from the strict rules of evidence~~ which is not prohibited by

<sup>32</sup> The IRBA will issue the subpoenas but cannot guarantee service of the subpoena or the attendance of the witness. All costs incurred in relation to the subpoena and the witness are for the account of the respondent.

<sup>33</sup> ~~The powers of the Disciplinary Committee to amend a charge sheet is dealt with in 6.3.8~~

the Act. Unless any departure from these Rules ~~or from the strict rules of evidence~~ is raised at a hearing, it shall not be necessary for the Disciplinary Committee formally to sanction or condone such departure and such departure shall not in and of itself invalidate any action or decision taken, or purportedly taken, under these Rules.

~~6.1.2~~[10.1.4] If a respondent who is formally charged with any charge(s) of improper conduct under 4.1.1 or 4.2.1, does not in writing admit or deny the charge(s) before or on the date referred to in ~~4.10.5~~[5.2.5] or should that respondent deny the charge (if there is only one or) or one or more of the charges (if there are more than one), the ~~Director: Legal or the CEO~~[Disciplinary Advisory Committee] shall refer the charge(s) which were denied or to which the respondent did not plead, together with the plea and written explanation (if any) to the Disciplinary Committee for a hearing under this Rule, subject to ~~5.5~~[6.5] and ~~5.6~~[6.6].

~~6.1.3~~[10.1.5] Pursuant to a referral under ~~6.1.2~~[10.1.4], the Director: Legal or the CEO shall appoint any person ("the *pro forma* complainant"), in his or her discretion, to present the charge(s) to the Disciplinary Committee at the hearing under this Rule and under Rule 7[11] (if any). The *pro forma* complainant may be assisted by one or more persons with legal or auditing experience.

#### ~~6.2~~[10.2] Documents to be adduced in evidence

~~6.2.1~~[10.2.1] The Director: Legal or the CEO shall cause bundles of documents to be adduced in evidence in the hearing under this Rule and under Rule 7[11] (if any) to be distributed to such members of the Disciplinary Committee who indicated that they would attend the hearing under this Rule, to the respondent and to the *pro forma* complainant.

~~6.2.2~~[10.2.2] The bundles shall comprise:

~~6.2.2.1~~[10.2.2.1] the notice and charge sheet(s) sent to the respondent under 4.4;

~~6.2.2.2~~[10.2.2.2] any plea(s) and written explanation(s) furnished by the respondent;

~~6.2.2.3~~[10.2.2.3] any documents which the *pro forma* complainant and the respondent ~~may agree are admissible in~~ [will use as] evidence;

~~6.2.2.4~~[10.2.2.4] at the discretion of the *pro forma* complainant, a certified copy of the record of the trial and conviction of the respondent if the respondent is charged with improper conduct which amounts to the offence of which the respondent was convicted, unless the conviction has been set aside by a superior court.

~~6.2.3~~[10.2.3] Nothing in ~~6.2~~[10.2] shall prevent any evidence not included in any bundle referred to in those sub-rules from being adduced at the hearing under this Rule or Rule 7[11].

#### ~~6.3~~[10.3] The conduct of the hearing

~~6.3.1~~[10.3.1] Should the respondent not be present at the place and time for the hearing determined under ~~4.6~~[7.2] and still not be present within thirty (30) minutes from the time set for the start of the hearing, the

hearing under this Rule and Rule 7[11] (if any) may proceed in the respondent's absence if the Disciplinary Committee is satisfied that the notice under 4.4[7.1] was served on the respondent by hand (whether by service by sheriff or otherwise) or by registered mail.

- ~~6.3.2~~[10.3.2] This Rule shall apply *mutatis mutandis* to the situation where a hearing proceeds in a respondent's absence.
- ~~6.3.3~~[10.3.3] If a registered auditor is not present at a hearing, a registered auditor may only be represented by another person at the hearing if the registered auditor has authorised such person in writing to do so.
- ~~6.3.4~~[10.3.4] Any application for the hearing under this Rule, or any part of the hearing, to be held *in camera* shall be brought at the outset of the hearing unless the chairperson of the Disciplinary Committee determines otherwise.<sup>34</sup>
- ~~6.3.5~~[10.3.5] Any witness at a hearing shall give evidence after the chairperson of the Disciplinary Committee or a person designated by him or her administered an oath or affirmation to such witness.
- ~~6.3.6~~[10.3.6] The order of procedure at a hearing under this Rule shall be as follows:
- ~~6.3.6.1~~[10.3.6.1] The chairperson of the Disciplinary Committee shall read the notice and charge sheet referred to in 4.4 to the respondent, unless the respondent agrees to dispense with the reading of such notice and charge sheet.
- ~~6.3.6.2~~[10.3.6.2] The chairperson of the Disciplinary Committee shall ask the respondent to confirm which of the charges set out in the charge sheet (or in the charge sheet as amended) the respondent admits or denies, provided that the Disciplinary Committee shall not ask such confirmation with respect to any charge(s) that the respondent may have admitted under ~~5.3~~[6.6.2].
- ~~6.3.6.2~~[10.3.6.3] The respondent will be considered to be guilty as charged to any charge(s) to which such respondent admits guilt under ~~6.3.6.2~~[10.3.6.2] and such charge(s) will be heard by the Disciplinary Committee under Rule 7[11].
- ~~6.3.6.3~~[10.3.6.4] Should the respondent not admit or deny the charge(s) when asked to do under ~~6.3.6.2~~[10.3.6.2] or should it appear to the Chairperson that the respondent may admit the facts but may not admit the charge(s) or should the respondent not be present at the hearing under this Rule, the respondent will be considered to have denied the charge(s).
- ~~6.3.6.5~~[10.3.6.5] The *pro forma* complainant shall state his or her case with regard to the charge(s) denied under ~~6.3.6.2~~[10.3.6.2] and ~~6.3.6.4~~[10.3.6.4] and produce evidence in support of it.
- ~~6.3.6.6~~[10.3.6.6] The respondent may cross-examine any witnesses produced by the *pro forma* complainant and may have access to any documents adduced in evidence by the *pro forma* complainant.

<sup>34</sup> Section 50(4) provides that a hearing before the Disciplinary Committee is open to the public except where, in the opinion of the chairperson of the Disciplinary Committee, any part of the hearing should be held *in camera*.

- ~~6.3.6.7~~[10.3.6.7] The *pro forma* complainant may re-examine any witnesses cross-examined by the respondent.
- ~~6.3.6.8~~[10.3.6.8] At the conclusion of the case presented by the *pro forma* complainant, the respondent shall state the case with regard to the charge(s) denied under ~~6.3.6.2~~[10.3.6.2] and ~~6.3.6.4~~[10.3.6.4] and produce evidence in support of it.
- ~~6.3.6.9~~[10.3.6.9] The *pro forma* complainant may cross-examine any witnesses produced on behalf of the respondent (including the respondent registered auditor if that registered auditor has elected to give evidence) and may have access to any documents adduced in evidence by the respondent.
- ~~6.3.6.10~~[10.3.6.10] The respondent may re-examine any witnesses cross-examined by the *pro forma* complainant.
- ~~6.3.6.11~~[10.3.6.11] At the conclusion of the case presented by the respondent,
- (i) the *pro forma* complainant may address the Disciplinary Committee on the case generally;
  - (ii) the respondent may reply to the *pro forma* complainant; and
  - (iii) the *pro forma* complainant may reply to any new matter raised by the respondent.
- ~~6.3.7~~[10.3.7] The Disciplinary Committee shall not hear any further evidence from the *pro forma* complainant or from the respondent after the conclusion of their case unless the interests of justice so dictates, in which case ~~6.3.6.5~~[10.3.6.5] to ~~6.3.6.11~~[10.3.6.11] shall apply *mutatis mutandis*.
- ~~6.3.8~~[10.3.8] The Disciplinary Committee may at any time after the *pro forma* complainant started to state his or her case and prior to the conclusion of the hearing under this Rule amend the charge sheet in accordance with section 50(3) after which it may regulate its proceedings as it deems fit in the interests of justice.<sup>35</sup>
- ~~6.3.9~~[10.3.9] The respondent may at any time after the *pro forma* complainant started to state his or her case and prior to the conclusion of the hearing under this Rule admit guilt to any charge(s) which has not previously been admitted, upon which such respondent will be considered to be guilty of such charge(s). Such charge(s) will be heard by the Disciplinary Committee under Rule 7[11]. The Disciplinary Committee may regulate its proceedings with respect to any remaining charge(s) to which guilt has not been admitted as it deems fit in the interests of justice.
- ~~6.3.10~~[10.3.10] The *pro forma* complainant may, with the leave of the Disciplinary Committee, at any time after he or she started to state his or her case and prior to the conclusion of the hearing withdraw any charge(s) against the respondent. The Disciplinary Committee may regulate its proceedings with respect to any remaining charge(s) as it deems fit in the interests of justice.
- ~~6.3.11~~[10.3.11] If the Disciplinary Committee is not seized of any further charge(s) as a result of an admission under ~~6.3.9~~[10.3.9] or a withdrawal under ~~6.3.10~~[10.3.10], and if the respondent is guilty of any charge(s) under section 49(4)<sup>36</sup> or section 50(8)(b)(ii)<sup>37</sup>, the Disciplinary Committee shall proceed to hear such

<sup>35</sup> See also 4.11

<sup>36</sup> This is the case when a registered auditor admitted guilt to one or more charges in a reply to the charge sheet before a hearing.

<sup>37</sup> This is the case when a registered auditor admitted guilt to one or more charges at a hearing on the merits of the matter.

charge(s) of which the respondent is guilty under Rule 7[11], or, in exceptional circumstances, shall determine anew a place and time (not more than 30 days from the date of the announcement) at which the Disciplinary Committee will hear such charge(s) under Rule 7[11].

~~6.3.12~~[10.3.12] The Disciplinary Committee may at any time after the commencement and before the conclusion of the hearing order the postponement of the remainder of the hearing under this Rule to a time and place determined or to be determined in its discretion, provided that only members present at the commencement of the hearing under this Rule may take part in the remainder of the hearing under this Rule.

~~6.3.13~~[10.3.13] The Disciplinary Committee may at any time after the commencement and before the conclusion of the hearing under this Rule call as a witness any person the evidence of whom it considers material and who has not been called by the *pro forma* complainant or the respondent. The Disciplinary Committee may regulate its proceedings with respect to the cross-examination of such witness and the right to address the Disciplinary Committee on the evidence given by such witness as it deems fit in the interests of justice.

~~6.3.14~~[10.3.14] Any member of the Disciplinary Committee taking part in the hearing under this Rule may, with the permission of the chairperson of the Disciplinary Committee, put a question to any witness, to the respondent registered auditor (if such registered auditor elected to give evidence), to the *pro forma* complainant and to the legal representative of the respondent registered auditor (if any).

~~6.3.15~~[10.3.15] The Disciplinary Committee may make any decision with regard to any matter arising in connection with, or in the course of a hearing under this Rule, *in camera*.

#### **6.4[10.4] Conclusion of hearing under this Rule**

[10.4.1] At the conclusion of a hearing under this Rule, the chairperson of the Disciplinary Committee shall announce when and in which manner the Disciplinary Committee will inform the respondent of its finding as to the guilt or innocence of the respondent on the charge(s) with which the Disciplinary Committee is still seized at the conclusion of the hearing under this Rule. The Disciplinary Committee may inform the respondent of its finding on the day of the hearing under this Rule or, in exceptional circumstances, later, but in any event not more than 30 days<sup>38</sup> after the conclusion of the hearing under this Rule.

## **11. HEARING ON SENTENCING<sup>39</sup>**

### **7.4[11.1] Application of this rule**

~~7.1.1~~[11.1.1] This rule does not apply when a respondent admitted guilt to the charge (should there be only one), or all the charges (should there be more than one), contained in the charge sheet, and the Director:

<sup>38</sup> See section 51(1)

<sup>39</sup> It is envisaged that a hearing on the merits and on sentencing would normally take place at the same time. In exceptional circumstances, however, the Disciplinary Committee may determine otherwise: see ~~6.3.11~~[10.3.11], ~~6.3.12~~[10.3.12] and ~~6.4~~[10.4]

~~Legal~~[Investigations]<sup>40</sup> or the CEO automatically imposed a sanction on the respondent under ~~5.3.4~~[6.3.1]<sup>41</sup>.

~~7.1.2~~[11.1.2] Subject to ~~7.1.4~~[11.1.1], this rule applies when a respondent is found guilty of any charge(s) under section 49(4)<sup>42</sup>, 50(8)(b)(ii)<sup>43</sup> or 51(1)(a)<sup>44</sup> regardless of whether a hearing under Rule ~~6~~[10] took place.

~~7.2~~[11.2] **Hearing under this Rule when a hearing under Rule ~~6~~[10] took place**

[11.2.1] If a respondent is found guilty of a charge(s) under section 49(4)<sup>45</sup>, 50(8)(b)(ii)<sup>46</sup> or 51(1)(a)<sup>47</sup> and a hearing under Rule ~~6~~[10] took place, the Disciplinary Committee will hold a hearing under this Rule:

~~7.2.4~~[11.2.1.1] at the time and place appointed by the chairperson of the Disciplinary Committee under ~~6.3.4~~[10.3.11] or ~~6.4~~[10.4];

~~7.2.2~~[11.2.1.2] as a continuation of the hearing under Rule ~~6~~[10]; and

~~7.2.3~~[11.2.1.3] with only such members of the Disciplinary Committee as took part in the hearing under Rule ~~6~~[10] taking part in the hearing under this Rule.

~~7.3~~[11.3] **Hearing under this Rule when a hearing under Rule ~~6~~[10] did not take place<sup>48</sup>**

[11.3.1] The provisions of this sub-Rule ~~7.3~~[11.3] apply only if a respondent is guilty of a charge(s) and a hearing under Rule ~~6~~[10] did not take place. In such a case;

~~7.3.4~~[11.3.1.1] the Director: Legal or the CEO may appoint a *pro forma* complainant, in his or her discretion, to present any aggravating or mitigating circumstances to the Disciplinary Committee at the hearing under this Rule. The *pro forma* complainant may be assisted by one or more persons with legal or auditing experience;

~~7.3.2~~[11.3.1.2] the Disciplinary Committee conducts the hearing under this Rule at such time and place as is determined by the Director: Legal or the CEO under ~~4.6~~[7.2].

~~7.4~~[11.4] **General power relating to hearing under Rule ~~7~~[11]**

[11.4.1] The Disciplinary Committee may upon good cause shown and in the interests of justice sanction or condone any departure from these Rules ~~or from the strict rules of evidence~~ which is not prohibited by the Act. Unless

<sup>40</sup> See the Board's Resolution on 20 June 2006 as amended on 17 February 2016

<sup>41</sup> See the Board's Resolutions on 20 June 2006 and the resolution of the Disciplinary Committee on 16 September 2006

<sup>42</sup> This is the case when a registered auditor admitted guilt to one or more charges in a reply to the charge sheet before a hearing.

<sup>43</sup> This is the case when a registered auditor admitted guilt to one or more charges at a hearing on the merits of the matter.

<sup>44</sup> This is the case when the Disciplinary Committee finds a registered auditor guilty after a hearing on the merits of the matter.

<sup>45</sup> See fn 42 above.

<sup>46</sup> See fn 43 above.

<sup>47</sup> See fn 44 above.

<sup>48</sup> This is the case when a registered auditor admits guilt to the charge (should there be only one), or all the charges (should there be more than one), contained in the charge sheet and the Investigating Committee did not recommend that a specific sanction is imposed.

any departure from these Rules ~~or from the strict rules of evidence~~ is raised at a hearing, it shall not be necessary for the Disciplinary Committee formally to sanction or condone such departure and such departure shall not in and of itself invalidate any action or decision taken, or purportedly taken, under these Rules.

~~7.5~~**[11.5] The conduct of the hearing**

- ~~7.5.1~~[11.5.1] Should the respondent not be present at the place and time for the hearing determined under ~~6.3.11~~[10.3.11], ~~6.4~~[10.4] or ~~7.3.2~~[11.3.1.2] and still not be present within thirty (30) minutes from the time set for the start of the hearing, the hearing under this Rule may proceed in the respondent's absence, provided that if the place and time for the hearing was determined under ~~7.3.2~~[11.3.1.2], the hearing under this Rule may only proceed in the respondent's absence if the Disciplinary Committee is satisfied that the notice under ~~4.4~~[7.1] was served on the respondent by hand (whether by service by sheriff or otherwise) or by registered mail.
- ~~7.5.2~~[11.5.2] This Rule shall apply *mutatis mutandis* to the situation where a hearing proceeds in a respondent's absence.
- ~~7.5.3~~[11.5.3] If a registered auditor is not present at a hearing, a registered auditor may only be represented by another person at the hearing, if the registered auditor has authorised such person in writing to do so.
- ~~7.5.4~~[11.5.4] Any application for the hearing under this Rule, or any part of the hearing, to be held *in camera* shall be brought at the outset of the hearing unless good cause, in the opinion of the chairperson of the Disciplinary Committee, is shown.<sup>49</sup>
- ~~7.5.5~~[11.5.5] Any witness at a hearing shall give evidence after the chairperson of the Disciplinary Committee or a person designated by him or her administered an oath or affirmation to such witness.
- ~~7.5.6~~[11.5.6] The order of procedure at a hearing under this Rule shall be as follows:
- ~~7.5.6.1~~[11.5.6.1] The chairperson of the Disciplinary Committee shall read the charge(s) of which the respondent is guilty, unless the respondent agrees to dispense with the reading of the charge(s).
- ~~7.5.6.2~~[11.5.6.2] The *pro forma* complainant shall state his or her case with regard to mitigating or aggravating circumstances in respect of the charge(s) of which the respondent is guilty and produce evidence in support of it (if any).
- ~~7.5.6.3~~[11.5.6.3] The respondent may cross-examine any witnesses produced by the *pro forma* complainant and may have access to any documents adduced in evidence by the *pro forma* complainant.
- ~~7.5.6.4~~[11.5.6.4] The *pro forma* complainant may re-examine any witnesses cross-examined by the respondent.

<sup>49</sup> Section 50(4) provides that a hearing before the Disciplinary Committee is open to the public except where, in the opinion of the chairperson of the Disciplinary Committee, any part of the hearing should be held *in camera*.

- ~~7.5.6.5~~[11.5.6.5] At the conclusion of the case presented by the *pro forma* complainant, the respondent shall state the case with regard to mitigating or aggravating circumstances in respect of the charge(s) of which the respondent is guilty and produce evidence in support of it (if any).
- ~~7.5.6.6~~[11.5.6.6] The *pro forma* complainant may cross-examine any witnesses produced on behalf of the respondent (including the respondent registered auditor if that registered auditor has elected to give evidence) and may have access to any documents adduced in evidence by the respondent.
- ~~7.5.6.7~~[11.5.6.7] The respondent may re-examine any witnesses cross-examined by the *pro forma* complainant.
- ~~7.5.6.8~~[11.5.6.8] At the conclusion of the case presented by the respondent,
- (i) the *pro forma* complainant may address the Disciplinary Committee with respect to mitigating or aggravating circumstances;
  - (ii) the respondent may reply to the *pro forma* complainant; and
  - (iii) the *pro forma* complainant may reply to any new matter raised by the respondent.
- ~~7.5.7~~[11.5.7] The Disciplinary Committee shall not hear any further evidence from the *pro forma* complainant or from the respondent after the conclusion of their case on mitigating or aggravating circumstances unless the interests of justice so dictate, in which case ~~7.5.6.2~~[11.5.6.2] to ~~7.5.6.8~~[11.5.6.8] shall apply *mutatis mutandis*.
- ~~7.5.8~~[11.5.8] The Disciplinary Committee may at any time after the commencement and before the conclusion of the hearing under this Rule order the postponement of the remainder of the hearing under this Rule to a time and place determined or to be determined in its discretion, provided that only members present at the commencement of the hearing under this Rule may take part in the remainder of the hearing under this Rule.
- ~~7.5.9~~[11.5.9] The Disciplinary Committee may at any time after the commencement and before the conclusion of the hearing under this Rule call as a witness any person the evidence of whom it considers material and who has not been called by the *pro forma* complainant or the respondent. The Disciplinary Committee may regulate its proceedings with respect to the cross-examination of such witness and the right to address the Disciplinary Committee on the evidence given by such witness as it deems fit in the interests of justice.
- ~~7.5.10~~[11.5.10] Any member of the Disciplinary Committee taking part in the hearing under this Rule may, with the permission of the chairperson of the Disciplinary Committee, put a question to any witness, to the respondent registered auditor (if such registered auditor elected to give evidence), to the *pro forma* complainant and to the representative of the respondent registered auditor (if any).
- ~~7.5.11~~[11.5.11] The Disciplinary Committee may make any decision with regard to any matter arising in connection with, or in the course of a hearing under this Rule, *in camera*.

~~7.6~~[11.6] **Conclusion of hearing under this Rule**

[11.6.1] At the conclusion of a hearing under this Rule, the chairperson of the Disciplinary Committee shall announce when and in which manner the Disciplinary Committee will inform the respondent of its finding as to the sentence of the respondent. The Disciplinary Committee may inform the respondent of its finding on the day of the hearing under this Rule or, in exceptional circumstances, later, but in any event not more than 30 days after the conclusion of the hearing under Rule 6[10] (if any) or more than 30 days after the conclusion of the hearing under this Rule, whichever is the earlier.<sup>50</sup>

#### **10. 12 COMPETENT SENTENCES, PUBLICATION, COSTS AND NOTICE TO THE BOARD**

~~8.1~~[12.1] If a respondent is found guilty of a charge of improper conduct, one or more of the following sentences may be imposed under ~~5.3.1~~[6.3.1] or ~~7.6~~[11.6] with respect to each charge of which the respondent is found guilty<sup>51</sup>:

~~8.1.1~~[12.1.1] a caution or reprimand; and

~~8.1.2~~[12.1.2] a fine which shall not exceed either ~~R100 000~~[R200 000]<sup>52</sup> or such higher amount as may be applicable from time to time under section 51(3)(a)(ii); and

~~8.1.3~~[12.1.3] a suspension of the right to practice as a registered auditor for a specific period; and

~~8.1.4~~[12.1.4] the cancellation of the registration of the respondent with the Board and the removal of the name of the respondent from the register referred to in section 6.

~~8.2~~[12.2] A sentence under ~~8.1~~[12.1] may be suspended for a specific period and / or made subject to any lawful conditions set in the sentence.

~~8.3~~[12.3] If a respondent is found guilty of a charge of improper conduct, an order made under ~~5.3.1~~[6.3.1] or ~~7.6~~[11.6] may include:

~~8.3.1~~[12.3.1] that the name of the respondent; and / or

~~8.3.2~~[12.3.2] the name of the respondent's firm (if applicable); and / or

~~8.3.3~~[12.3.3] the charge against and finding in respect of the respondent; and / or

~~8.3.4~~[12.3.4] any other information that is considered appropriate is published by the Board or not, as the case may be.<sup>53</sup>

~~8.4~~[12.4] A respondent:

~~8.4.1~~[12.4.1] upon whom a sanction was imposed under ~~5.3.1~~[6.3.1]; or;

<sup>50</sup> See section 51(1)

<sup>51</sup> See section 51(3)(a)

<sup>52</sup> As per the notice published in the Government Gazette on 30 January 2013. Applying the ratio works out to be R40 000 per one year of imprisonment. The five year period as indicated in section 51(3)(ii) of the APA would be R200 000. The R100 000 fine per charge is still applicable to matters prior to 30 January 2013.

<sup>53</sup> Section 51(5)

8.4.2[12.4.2] whose conduct was the subject of a hearing under Rule 6[10], may be ordered to pay such reasonable costs as have been incurred by the Investigating Committee and the Disciplinary Committee in connection with the investigation and hearing in question, or such part thereof as may be considered just.