

COMPLAINTS PROCEDURE

28 August 2017

1. The SAMRA Board adjudicates upon all complaints and appeals. The interpretation of the Code of Conduct is vested in the Ethics Committee, as well as the Appeal Committee judge. The performance of the Ethics Committee and the Appeal Committee is supervised by the SAMRA Board.
2. The SAMRA Board has the sole right to decide, after considering the report of the Ethics Committee and/or the Appeal Committee, whether or not to implement the recommendation, including a recommendation to withdraw membership of any member. There is no right of appeal against such a decision.
3. The SAMRA Board appoints the Chair of the Ethics Committee and the Chairman must appoint two additional Ethics Committee members for the purpose of hearing, adjudicating upon, evaluating and ruling on a SAMRA Code of Conduct complaint received against a SAMRA member. When a dispute is brought to Board for adjudication the Chairman of the Ethics Committee will co-opt up to 3 additional Ethics Committee members who have special knowledge pertaining to the case in question.
4. Should any member(s) of the Ethics Committee be considered by the Ethics Committee Chairman to be involved either directly or indirectly in any dispute brought to the attention of the Committee, then such member(s) will be asked to stand down.
5. If the SAMRA Chairman is of the opinion that the Chairman of the Ethics Committee is involved in any dispute then he/she will be asked to stand down for the duration of that particular dispute, and a replacement Chairman must be appointed by the SAMRA Chairman. Such an appointed Ethics Committee Chairman must be a member of the SAMRA Board.
6. **Complaints Procedure**
 - 6.1 The Chair of the Ethics Committee may, if satisfied that no injustice will result, extend any time period contemplated in the rules pertaining to termination of membership in terms of the SAMRA Code of Conduct.
 - 6.2 Any interested party wishing to make a complaint (hereinafter called the complainant) against a SAMRA member in terms of the SAMRA Code of Conduct, must submit a written complaint to the Chair of the Ethics Committee. The complainant shall be provided with a copy of the Code of Conduct. The complaint must take the form of a written statement and must contain full particulars of the complaint, copies of all relevant correspondence, the names and addresses of any witnesses, if applicable, and any other evidence, including affidavits in support of the complaint.

6.3 The Chair of the Ethics Committee must submit a copy of any complainant's statement to the respondent¹. The respondent must within fourteen days of receipt of such statement submit a written statement to the Chair of the Ethics Committee which must set out fully his/her/their defence to the complaint together with reference to supporting evidence where necessary, including the names and addresses of witnesses, if applicable. The Chair of the Ethics Committee must submit a copy of the respondent's statement and supporting documents to the complainant.

6.4 The SAMRA Board will decide, based on the Complainant and Respondent submissions, whether a hearing is warranted.

a) If a hearing is warranted:

- i) The Chair of the Ethics Committee must determine a date, time and venue for the hearing of any Code of Conduct complaint against a SAMRA member.
- ii) The Chair of the Ethics Committee must notify the complainant and the respondent of the date, time and venue of the hearing at which a complaint will be adjudicated upon
- iii) The complainant and the respondent must both appear personally at the hearing of the complaint and will be permitted to give oral evidence and call witnesses.
- iv) The complainant and the respondent will not be entitled to legal representation at the hearing.
- v) Any party who gives oral evidence may be cross-examined and questioned by the Ethics Committee and may be re-examined in accordance with the procedure ordinarily applied in South African Courts of Law.
- vi) Any party giving evidence at a complaint hearing must take an oath or make affirmation.
- vii) All oral evidence given at a complaint hearing must be recorded.
- viii) After all the evidence has been given, both parties will be entitled to address the Ethics Committee in the order determined by the Chair of the Ethics Committee.
- ix) After a hearing has been completed, the Ethics Committee must draw its conclusion and prepare a report on its finding and recommendation. Copies of the report must then be sent to the complainant and the respondent.

b) If a hearing is not warranted, adjudication will commence with the existing evidence and without holding a hearing.

6.5 The complainant and the respondent will be informed that they have the right to appeal in writing within fourteen days against the finding and recommendation of the Ethics Committee. If no appeal is received, the finding and recommendation of the Ethics Committee will be conveyed to the SAMRA Board and a summary thereof will be made available to all Members.

6.6 Decisions made by the Ethics Committee will be by majority vote. Where an equality of voting occurs, the Chairman of the Ethics Committee will have a casting vote in addition to his/her deliberate vote. The quorum for meetings will be two thirds of Ethics Committee members in addition to the Ethics Committee Chairman.

7. Appeals Procedure

7.1 If an appeal is received following the report of the Ethics Committee hearing, the SAMRA Ethics Committee must within fourteen days furnish the Appeal Committee with a copy of the entire

¹ Respondent means one who responds to a SAMRA Code of Conduct complaint against him/her/them.

record of the complaint proceedings, including the written statements, correspondence, the recorded oral evidence, the written evidence and report.

- 7.2 The Chair of the Ethics Committee must constitute an Appeal Committee which must consist of a judge who must be an experienced member of the legal profession, and two co-opted assessors who must be Members. The assessors, who must not be members of the Ethics Committee nor the SAMRA Board, must be appointed by the SAMRA Board. The assessors do not have a vote and will simply advise the judge.
- 7.3 The appeal will take place within thirty days of receipt by the Appeal Committee of the documents referred to above.
- 7.4 The judge will review the evidence and make a decision. If the judge requires oral evidence, he/she may call on the parties and/or their witnesses to appear before him/her. If the judge does, the parties will not be entitled to legal representation and evidence must be given on oath or affirmation. The judge's finding and recommendation must be communicated to all parties involved in the dispute and to the SAMRA Board. There will be no further right of appeal.
- 7.5 The costs involved in securing and paying for the judge will be borne by the person losing the appeal. A complainant will not be permitted to lodge an appeal until he/she agrees in writing to pay the costs of the appeal in the event of him/her losing.
- 7.6 A summary of the finding and recommendation of the judge will be conveyed to Members, and by the press to the general public.
- 7.7 SAMRA will indemnify the members of the Appeal Committee against any claims which may be brought against them as a result of a decision handed down by the Appeal Committee.
- 7.8 The SAMRA Board has the sole right to decide, after considering the report of the Appeal Committee, whether or not to implement the recommendation, including a recommendation to withdraw membership of any member. There is no right of appeal against such a decision.