

(1 December 2014 – to date)

**LABOUR RELATIONS ACT 66 OF 1995**

*(Gazette No. 16861, Notice No. 1877, dated 13 December 1995. Refer to the Act for commencement dates.)*

**COMMISSION FOR CONCILIATION MEDIATION AND ARBITRATION [sic]  
CODE OF CONDUCT FOR COMMISSIONERS**

*Government Notice 918 in Government Gazette 38230 dated 21 November 2014. Commencement date:  
1 December 2014.*

The Governing Body of the Commission for Conciliation, Mediation and Arbitration hereby publish the Code of Conduct for Commissioners in terms of the Labour Relations Act, 1995 (Act No. 66 of 1995), as amended, effective from the 1<sup>st</sup> December 2014.

**LABOUR RELATIONS ACT, 1995 (ACT NO 66 of 1995), as amended**

**COMMISSION FOR CONCILIATION MEDIATION AND ARBITRATION [sic]  
CODE OF CONDUCT FOR COMMISSIONERS**

Under section 117(6) of the Labour Relations Act 1995 (Act No. 66 of 1995), as amended the Commission for Conciliation, Mediation and Arbitration hereby publish the Code of Conduct for Commissioners as established by the Governing Body in the Annexure attached, effective from the 1<sup>st</sup> of December 2014.



**CCMA**

## **CODE OF CONDUCT FOR COMMISSIONERS**

### **Preamble**

This code is developed in terms of Section 117(6) of the Labour Relations Act No 66 of 1995 ("the LRA"). It must be read together with the Policy on Ethics and policies of the CCMA applicable to commissioners.

### **1. PURPOSE**

The purpose of this code is to [sic]:

- 1.1 To give effect to section 117(6) of the LRA.
- 1.2 To provide a code for the ethical conduct of commissioners at all times, in the pursuit of conduct that is beyond reproach.

### **2. COMPLIANCE WITH THE CODE**

A material violation of the provisions of this code of conduct, or a serious failure to comply with its terms, may constitute grounds for removing a commissioner from office in terms of the provisions of section 117(7)(c) of the LRA.

### **3. GENERAL OBLIGATIONS OF COMMISSIONERS**

To ensure that all processes which commissioners conduct are seen to be fair, impartial, independent and ensure that they promote the principles of equity and social justice in order to maintain the confidence of the public, and all CCMA users, commissioners must:

- 3.1 act with honesty, impartiality, due diligence and independently of any outside pressure in the discharge of their statutory functions;
- 3.2 conduct themselves in a manner that is fair to all CCMA users and the public at large;
- 3.3 not be swayed by fear of criticism or by self-interest;
- 3.3 ensure that they remain abreast of relevant dispute resolution techniques policies and guidelines issued by the CCMA and relevant developments in statute and case-law.  
*(Publisher's note – Numbering error (duplication of 3.3) as published in the original Gazette)*
- 3.4 ensure that their conduct reflects the values of the CCMA<sup>1</sup>.

#### **4. GENERAL CONDUCT OF COMMISSIONERS**

- 4.1 Commissioners must conduct themselves, both in relation to the processes of the CCMA and outside of their working activities on behalf of the CCMA, in a manner that is consistent with the office and standing of the CCMA and its commissioners<sup>2</sup>.

##### **Prohibited conduct**

- 4.2 Commissioners must not
  - 4.2.1 solicit appointment for themselves; this shall not, however, preclude commissioners from indicating a willingness to serve in any capacity;
  - 4.2.2 accept appointments unless they are available to conduct the process promptly and are competent to undertake the assignment;
  - 4.2.3 enter into any financial, business or other relationship which is likely to affect their impartiality or which might reasonably create a perception of partiality or bias;
  - 4.2.4 influence CCMA officials or employees by improper means, including gifts or other inducements.

##### **Conflict of interests and disclosure**

- 4.3. Commissioners should disclose any interest or relationship that is likely to affect their impartiality or which might create a perception of partiality. The duty to disclose rests on the commissioner.

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<sup>1</sup> CCMA Values; Respect, Excellence, Accountability, Diversity, Integrity, Transparency

<sup>2</sup> This means, for example, that commissioners should not fraternise inappropriately or engage in intimate relationships with junior staff members or parties to processes before the CCMA, or seek to do so, in a manner that may reflect negatively on the CCMA.

- 4.4 Commissioners appointed to intervene in any matter should, before accepting, disclose directly to the CCMA or through their accredited agents:
- 4.4.1 any direct or indirect financial or personal interest in the matter; and
  - 4.4.2 any existing or past financial, business, professional, family or social relationship which is likely to affect impartiality or may lead to a reasonable perception of partiality or bias.
- 4.5 If the circumstances requiring disclosure become known to a commissioner after the appointment is made, disclosure must be made as soon as these circumstances become known to the commissioner. Without limiting this obligation, disclosure may be required in arbitration proceedings if a witness is called who has a relationship with the commissioner of the kind referred to in 4.4.2.
- 4.6 After appropriate disclosure, commissioners may serve if both parties agree to this, but if they believe that a conflict of interest exists they should recuse themselves, irrespective of the views expressed by the parties.
- 4.7 If there is a request for recusal, commissioners should require the parties to follow any procedure provided for in any applicable terms of reference or rules for the conduct of proceedings before making a ruling on the matter.
- 4.8 If commissioners, after carefully considering the matter, determine that there is not a reasonable apprehension of bias and that they can nevertheless act impartially and fairly, and that the withdrawal would cause unfair delay or would be contrary to the ends of justice, they should not recuse themselves.

#### **Commissioners with outside interests**

- 4.9 Commissioners who have a financial interest in or serve as panellists for a private dispute resolution agency (whether accredited or not) or who have a financial interest in or work for or run their own consultancy or law firm must give particular consideration to the potential for actual or perceived conflicts of interest arising from their conduct or that of their colleagues.
- 4.10 A commissioner must fully disclose any role or interest referred to in clause 4.8 -
- 4.10.1 to the CCMA during any interview or selection process and must advise the CCMA of any relevant change in their role or interest; and
  - 4.10.2 to the parties in a matter in the circumstances contemplated by clauses 4.3 to 4.5.
- 4.11 No commissioner may, while acting in the capacity as commissioner, promote the use by parties of any agency, consultancy or firm in which he or she has a role or interest contemplated by clause 4.9.

- 4.12 No commissioner may serve in the capacity as commissioner in any CCMA process concerning a dispute or matter in which any agency, consultancy or firm for which that commissioner works or in which that commissioner has an interest has advised or assisted a party to the dispute unless the Convening Senior Commissioner has been advised and all parties to the dispute expressly consent to this after full disclosure.

### **CCMA Commissioner Responsibilities**

- 4.13 Commissioners should not use their status as commissioners to seek work or work opportunities outside the CCMA, except to the extent that this may reasonably be referred to as part of a commissioner's *curriculum vitae* or *resume*.
- 4.14 The title of commissioner or CCMA commissioner may not be used other than in the ordinary course of discharging the business of the CCMA, and any reference to a commissioner's status must, if the commissioner is a part-time commissioner, state this.
- 4.15 A part-time commissioner acting as employee, agent or consultant for any person other than the CCMA must make it clear at all material times that he or she is acting in that capacity and not in the capacity as a part-time commissioner.
- 4.16 Commissioners must ensure that their personal financial matters are in order in relation to tax and other legal compliance.
- 4.17 Commissioners must ensure that as they become available disclose any civil or criminal judgements against them to the CCMA.
- 4.18 Commissioners must use all available dispute resolution and grievance resolution processes in accordance with their contractual obligations.

*(Publisher's note – Numbering error (nonappearance of 4.19) as published in the original Gazette)*

- 4.20 Commissioners must ensure that they maintain a fit and proper status to hold the office of commissioner.

### **Jurisdiction**

- 4.21 Commissioners must observe faithfully both the limitation and inclusions of the jurisdiction conferred by an agreement or by a statutory provision under which they serve.
- 4.22 A direct settlement by the parties of some or all issues in a case, at any stage of the proceedings, should be accepted by a commissioner as relieving him or her of further jurisdiction in respect of such

issues. This does not prevent the Commissioner from scrutinising the settlement, in appropriate cases, to ascertain if the parties understand the terms and implications of the settlement. If the parties request that a settlement agreement be made an arbitration award, the Commissioner must ensure that such an award is legally competent and capable of being enforced.

### **Competence**

4.23 Commissioners should decline appointment, withdraw or request technical assistance if they believe that a matter is beyond their competence.

4.24 Commissioners acting as conciliators or mediators must understand the issues which form part of the dispute before endeavouring to assist the parties to settle the dispute. In this regard, commissioners should spend time at the beginning of the proceedings to ensure that they understand the positions, needs and expectations of the parties.

### **Availability**

4.25 Part-time commissioners must make themselves available to the CCMA for the whole period for which they are reserved by the CCMA unless excused by the Convening Senior Commissioner (CSC), delegate of the CSC or other authorised manager, and should notify the relevant manager if they need to leave the CCMA premises early for any reason.

### **Recording equipment**

4.26 All Commissioners must ensure that they have suitable audio recording equipment available at all times, maintained in good working order, as a tool of their profession. They must ensure that the equipment is available for recording arbitration proceedings and any other proceedings required to be recorded. A Commissioner who is provided with recording equipment by the CCMA must maintain that equipment in good working order.

4.27 Commissioners must ensure that all proceedings required to be audio recorded are properly recorded and must ensure that recordings are stored securely according to standard operating procedures applicable within the CCMA from time to time.

### **Access to electronic communication**

4.28 Commissioners must have access to a working computer and a working email address for communication with the CCMA and for the submission of awards and rulings. Commissioners must check and respond to email correspondence timeously and on a regular basis.

### **Property of the CCMA**

- 4.29 Commissioners must exercise due care to protect all CCMA property in their possession or to which they have access, including without limitation laptops and vehicles, and must take reasonable steps to prevent loss of or damage to CCMA property.

## **5. HEARING CONDUCT**

### **General**

- 5.1 Commissioners should conduct proceedings fairly, diligently and in an even-handed manner.
- 5.2 Commissioners should have no casual contact with any of the parties or their representatives while handling a matter without the presence or consent of the other, This does not preclude exchanges of greetings or conversation unrelated to the matter with one of the parties prior to the matter commencing, during an adjournment, or at its completion.
- 5.3 Commissioners should be patient and courteous to the parties and their representatives or witnesses and should encourage similar behaviour by all participants in the proceedings.
- 5.4 Commissioners must ensure that the proceedings of an arbitration are recorded in accordance with the policy of the Commission.
- 5.5 In determining whether to conduct a hearing in the absence of a party, an arbitrator must consider the relevant legal, contractual and other pertinent circumstances.
- 5.6 A commissioner must be satisfied before proceeding in the absence of a party that the party refusing or failing to attend the hearing has been given adequate notice of the time, place and purpose of the hearing in accordance with the relevant rule or statutory provision.
- 5.7 In an event of more than one commissioner acting as either a conciliator, mediator or arbitrator, commissioners should afford each other a full opportunity to participate in the proceedings.
- 5.8 Commissioners may not delegate their duty to intervene in any matter to any other person without prior notice to, and with the consent of, the CCMA.

### **Basis of conciliation proceedings**

- 5.9 Commissioners acting as conciliators or mediators should ensure that all parties are aware of the confidentiality of the proceedings and that the proceedings will take place on a "without prejudice" basis.
- 5.10 Commissioners may not disclose the contents of conciliation or mediation proceedings, unless the parties consent to the disclosure or it is ordered by a court of law.

## **Confidentiality**

- 5.11 Information disclosed to commissioners in confidence by a party during the course of conciliation or mediation should be kept by commissioners in the strictest confidence and should not be disclosed to the other party or to third parties, unless consent is obtained for such disclosure.

## **Conciliation by commissioners acting as arbitrators**

- 5.12 Commissioners acting as arbitrators may suggest to the parties that they should conciliate if they are of the view that conciliation is appropriate. Commissioners should not pursue the matter if the parties do not agree or if conciliation is attempted and does not lead to a resolution of the matter.

## **Avoidance of delays**

- 5.13 Commissioners have a duty to plan their work schedules in a manner that ensures that commitments to the CCMA are fulfilled timeously.
- 5.14 Commissioners should co-operate with the parties and the CCMA to avoid delays.
- 5.15 On completion of a hearing, commissioners must adhere to the time limits for issuing an award.

## **Compliance with time limits and standard operating procedures**

- 5.16 Commissioners must comply with all statutory time limits applicable to them, and with all CCMA policies and standard operating procedures in place from time to time. This includes, without limitation, policies and procedures relating to the postponement of matters, adjournments, extensions for the submission of closing argument, and the time period for the submission of awards including any request for extension of that period.

## **6. POST-HEARING**

- 6.1 Commissioners should not disclose a prospective award to either party prior to it being issued by the CCMA to both parties.
- 6.2 Commissioners issuing advisory or binding awards may have regard to other arbitrators' awards, decided cases or independent research but must assume full and unimpaired responsibility in each matter for the decision reached.
- 6.3 Commissioners' awards should be definite, certain and as concise as possible.



- 6.4 No clarification or interpretation of an award is permissible without the consent of both parties, other than in circumstances justified in law.
- 6.5 Under agreements which permit or require clarification or interpretation of an award, commissioners shall afford each party an opportunity to be heard.
- 6.6 Commissioners must study any review instituted of any award or other ruling that they have made and, if necessary, file an affidavit dealing with any issue raised in the review.
- 6.7 Commissioners must cooperate with the CCMA in ensuring that a record of any arbitration proceedings in respect of which a review is instituted is filed with the Court timeously.

## **7. FEES AND EXPENSES**

- 7.1 Part-time commissioners acting in that capacity are subject to the fee structure of the CCMA and may not enter into any arrangement with the parties regarding fees.
- 7.2 Commissioners must maintain adequate records to support claims for services and expenses and must account timeously to the CCMA.
- 7.3 Claims may only be submitted for services actually rendered, travel actually undertaken, or accommodation actually used in the course of rendering services to the CCMA.

## **8. ADMINISTRATION OF THE CODE**

### **Review of the Code of Conduct for Commissioners**

- 8.1 This Code will be reviewed biennially or as necessary to address a void in conduct or practice.

### **Approval of the Code of Conduct for Commissioners**

- 9.1 This Code must be approved by the Governing Body of the CCMA.
- 9.2 Duly approved, and signed on behalf of the CCMA Governing Body, by

(Signed)

**Daniel Dube**

**Governing Body Chairperson**

**Date: 24.09.2014**