

## ANNEXURE 5

### THE SAWF DISCIPLINARY CODE & RULES, INCLUDING GRIEVANCE PROCEDURE - 8<sup>th</sup> MAY 2004; 12/02/2005; 09/04/2005; 01/11/2008

#### **Article 1 INTRODUCTION**

Article 1.1 This disciplinary code is supplementary to the SAWF constitution and is to be read together with the SAWF Constitution and does not replace any provision in the SAWF Constitution.

Article 1.2 This code describes the process and procedures to be followed when matters that may result in disciplinary action, are addressed.

Article 1.3 In this code, discipline means the execution and development of a spirit to establish a culture of obedience, strict order and control of wrongful inclinations as well as subjection to authority. Disciplinary action is also indicative of reprimand or punishment of an individual or a group of people. Annexure 6 of the constitution contains a code of conduct of the SAWF which is a directive for the behavior of members of the SAWF.

#### **Article 2 PURPOSE OF THE CODE**

Article 2.1 To prescribe the process and procedures to be followed by the SAWF to investigate, charge, conduct hearings and apply appropriate disciplinary punishment where necessary in any matter over which the SAWF has jurisdiction.

#### **Article 3 STATUS OF THE CODE**

Article 3.1 This code is subject to the constitution of the Republic of South Africa, other applicable laws of the country as well as the SAWF constitution.

Article 3.2 The SAWF Management, Committees, Sub-Committees or any ad hoc committee appointed by the SAWF are subject to this code.

Article 3.3 Where the process and procedures prescribed in this code do not provide for a specific situation, the rules of natural justice shall be used.

Article 3.4 Where disciplinary activities occurred before this code came into force, the rules of natural justice shall apply in place of the process and procedures prescribed by this code.

#### **Article 4 JURISDICTION**

Article 4.1 In terms of its constitution, the SAWF has jurisdiction over any member of the SAWF, its committees, councils, affiliated wrestling associations, wrestling clubs and any subordinate hierarchical body. The SAWF also has jurisdiction over any disciplinary matter where the activity or activities of an individual, grouping of people and/or body with reference to the persons, grouping of persons and/or bodies mentioned in article 4 are involved in. This will be the case whether such activity happened inside or outside any wrestling situation and if such activity implicates or has implicated the name of the sport and/or the SAWF or has broken any rule of the SAWF or any controlling or subordinate body of the SAWF.

- Article 4.2 The SAWF, or any committee appointed by it, has the authority to investigate, prosecute, adjudicate and if found guilty, to punish any person, grouping of people and/or bodies referred to in article 4.1, in one or more of the following way(s):
- Article 4.2.1 warning and/or reprimand;
- Article 4.2.2 suspension of benefits;
- Article 4.2.3 degrading of a member's appropriate grading;
- Article 4.2.4 temporary suspension for a specific period;
- Article 4.2.5 permanent suspension of:
- Article 4.2.5.1 specific membership as for example official, coach, wrestler or administrator;
- Article 4.2.5.2 as member of the SAWF;
- Article 4.3 Banning or restricted participation and/or attendance of SAWF or any of its subordinate body's activities;
- Article 4.4 Any other appropriate punishment in the specific circumstances, to the judgment of the SAWF or its designated committee;
- including:
- Article 4.5 The authority to suspend such punishment or certain provisions for a specific period; and
- Article 4.6 To implement any minimum or maximum punishment for a specific contravention prescribed by the SAWF, any law or controlling body of the SAWF.
- Article 4.7. No person, grouping of people and/or bodies mentioned in Article 4.1 above, shall have an automatic right to appeal. A substantive application for leave to appeal shall be made in the form of heads of argument.
- Article 4.7.1 Should any person, grouping of people and/or bodies mentioned in Article 4.1 decide to apply for leave to appeal, the sentence imposed by the disciplinary tribunal shall not be affected and shall come into operation with immediate effect.

## **Article 5 PROCESS AND PROCEDURES**

- Article 5.1 When a complaint has been made to the executive management of the SAWF leading to a reasonable suspicion or where the executive management independently has a reasonable suspicion that any rule of the SAWF and/or any body of which the SAWF is an affiliated member, has been contravened, such activity or activities shall be investigated by the executive management of the SAWF or a person/s instructed by it to do so. Should there be, on the strength of the evidence submitted to the executive management with the complaint or after report back by the person or persons instructed to investigate the contravention, a reasonable possibility that the relevant activity or activities in fact do present a

contravention, a prosecutor shall be appointed to prepare a charge sheet and the matter shall be referred to a tribunal with due allowance for a proper procedure.

Such tribunal consisting of one or any number of persons to be appointed by the executive management, or its authorized representative, either from members of the SAWF or the general public with a view to resolving the specific contravention(s).

- Article 5.2 A person or persons appointed by the executive management of the SAWF, to investigate a matter, prepare a charge sheet and/or conduct the case before a tribunal, has all the powers necessary for the effective execution of their duties. These powers include the right to demand from any person, grouping of persons and/or bodies mentioned in article 4.1:
- Article 5.2.1 information in connection with the relevant matter;
- Article 5.2.2 documentation that relates to the relevant matter;
- Article 5.2.3 evidence and sworn affidavits in respect of the relevant matter;
- Article 5.2.4 to appear and give evidence before the tribunal.
- Article 6 When the matter is reported to the executive management or brought to its attention, the executive management and its members are compelled to maintain the highest degree of impartiality and avoid making any premature judgments or any other biased conduct.
- Article 7 Any matter of which notice has been taken and which may lead to a hearing must be treated as sub judice until after the hearing or until after completion of the investigation if no charge is to be laid.
- Article 8 The members of the tribunal must be impartial towards the matter over which they have to adjudicate. No member of the tribunal can be said to be impartial if such member of the tribunal is in possession of any information, regarding the matter before it, that could adversely influence him in reaching his decision or if any attempt is made to adversely influence such a member. If any member is adversely influenced in any way, such member will be required to recuse himself from the tribunal.
- Article 9 The transgressor (hereafter the accused) or his representative must be properly apprised of the nature of the charge that underlies the impending hearing. The accused must further receive 7 calendar days' notice and place of the hearing as well as his right to representation if he is not so represented.
- Article 10 The accused shall be afforded the opportunity to request copies of all written information at the disposal of the prosecutor within 7 calendar days after the accused has notified the Tribunal of his intention to defend the matter. The materiality of the information requested is an important consideration. Furthermore the rules of natural justice do not entail a general right to information.
- Article 11 The accused must within 7 calendar days of receiving the charge sheet indicate whether he intends defending the matter, as well as whether he will be represented or not.

Article 12 Should the accused prefer to do so he/she may before the start of the hearing hand in a plea of guilty in writing.

The prosecutor, reflecting the choice of the accused and confirming that to his/her best knowledge and belief, no improper influence was exerted on the accused to deliver that plea, will submit this plea to the tribunal under cover of an affidavit.

Where minor persons are involved, the prosecutor must indicate in the affidavit that the parent, guardian or coach of the person concerned had signed the plea of guilty, indicating agreement to the plea of guilty. The tribunal is authorized to accept such a plea of guilty in the absence of the accused and to decide on an appropriate sentence once the accused had the proper opportunity to submit written or verbal submissions for mitigation relating to the possible sentence.

Article 13 The hearing is held at a time and place as determined by the tribunal and should the accused be absent without acceptable reason the hearing shall be concluded in the absence of the accused. In the event that the hearing is to be concluded in the absence of the accused, the prosecution shall still be required to prove the charges levelled against the accused.

Article 14 The case must be held in camera should the accused be a minor or if, in the view of the tribunal, it will benefit the sport.

Article 15 The accused and/or representatives may not improperly interfere with witnesses before or during the hearing.

Article 16 The prosecutor and accused are responsible to ensure that witnesses testifying on their behalf before the tribunal are present at the hearing.

Article 17 The following procedure is followed during the hearing:

Article 17.1 The SAWF, through its appointed representative, shall be required to prove the charges against the accused on a balance of probabilities;

Article 17.2 explains the mandate/appointment of the tribunal;

Article 17.3 the accused is identified;

Article 17.4 the tribunal keeps proper record of its proceedings;

Article 17.5 the accused has the right to object against:

Article 17.5.1 the powers of the tribunal;

Article 17.5.2 the impartiality of members of the tribunal;

Article 17.5.3 the charge/s, it being not a contravention of any relevant rule;

Article 17.5.4 the jurisdiction of the tribunal in respect of the charge/s;

Article 17.6 In the event of an objection in terms of article 17.5 the tribunal has to reject or grant the objection.

Should the objection be granted in terms of article 17.5.1 the case is to be postponed to a specific date to enable the executive management to appoint a tribunal.

Should the objection be granted in terms of article 17.5.2, the member/s in question must recuse him/her/ themselves and the case be postponed to a specific date to enable the executive management to appoint a new member/s to the tribunal.

Should the objection be granted in terms of article 17.5.3, the case is concluded and deemed that the accused was never prosecuted.

Should the objection be granted in terms of article 17.5.4, the matter can be referred to the correct forum by the tribunal and the case is considered to be concluded.

Should any objection in terms of article 17.5.1 to 17.5.4 be rejected, the case will continue.

- Article 17.7 the charge sheet is put to the accused;
- Article 17.8 The accused is requested to plead on every separate charge. The following pleas can be made:
- Article 17.8.1 a plea of guilty;
- Article 17.8.2 a plea of not guilty;
- Article 17.8.3 a plea of having been previously convicted on the same charge;
- Article 17.8.4 a plea of having been previously acquitted of the same charge;
- Article 17.8.5 a plea in terms of 17.8.3/4 may be made together with a plea of not guilty in terms of 17.8.2.
- Article 17.9 In the event of a failure to plead, a plea of not guilty is recorded;
- Article 17.10 In the event of a plea of guilty, it is recorded as such and the prosecutor can lead evidence with a view to an appropriate sentence. The accused has the same right, to put evidence relative to the sentence, to the tribunal;
- Article 17.11 In the event of a plea of not guilty, the hearing continues by the leading of evidence by the prosecutor;
- Article 17.12 Should the presence of a witness (whether on behalf of the prosecutor or accused) not be possible for well-founded reasons and where the tribunal is of the opinion that it will be in the interest of justice and of the sport when it is evident that the evidence is essential, the evidence can be submitted in writing to the tribunal. This power will only be exercised by the tribunal in highly exceptional instances.
- Article 17.13 After a witness has given evidence, the accused or his/her representative has the opportunity to cross-examine the witness. There after the prosecutor has the opportunity to re-examine the witness in relation to aspects of the evidence by the witness already delivered, that in the opinion of the prosecutor need clarification. No new evidence may be produced by the prosecution during re-examination.

- Article 17.14 Once all the evidence necessary has been led by the prosecutor and put before the tribunal, he closes his case and the accused or his/her representative has the opportunity to address the tribunal with a view to an application for dismissal of the accused on the basis that no case was proved against the accused. Should the tribunal grant the application, the accused goes free and if the application is rejected (for which the tribunal does not have to provide reasons) the case proceeds normally.
- Article 17.15 The accused then has the opportunity to state his/her side of the case by giving evidence and calling witnesses to give evidence on his/her behalf. Should the accused choose to give evidence in person, he/ she must testify first before other witnesses are called to testify on behalf of the defence. The defence is also allowed to submit other relevant documentary evidence, to the tribunal.
- After the evidence of every witness on behalf of the defence, the prosecutor gets the opportunity to cross examine the witness/es on aspects of the evidence by the witness/es already delivered, that in the opinion of the prosecutor need clarification. Thereafter the accused or his representative has the opportunity to re-examine the witness in relation to aspects of the evidence by the witness already delivered, that in the opinion of the accused or his representative need clarification. No new evidence may be produced by the accused or his representative during re-examination. Once all the evidence deemed necessary, has been put to the tribunal by the defence, the accused or his/her representative closes the case on behalf of the defence;
- Article 17.16 The prosecutor then has the opportunity to address the tribunal and ask for conviction of the accused. Thereafter the accused or his/her representative gets the opportunity to address the tribunal in this regard and ask for acquittal;
- Article 17.17 The tribunal may adjourn or postpone the case to consider the verdict;
- Article 17.18 If found not guilty, the case is concluded and the accused acquitted. If found guilty the case continues;
- Article 17.19 If the accused is found guilty, the prosecution and the accused have the opportunity to lead evidence for conviction with aggravating circumstances or mitigating punishment respectively;
- Article 17.20 The tribunal may adjourn or postpone the case to consider the sentence;
- Article 17.21 The accused's/SAWF's right to apply for leave to appeal against the decision of the tribunal should be explained to the accused/SAWF and should the accused/SAWF elect to apply for leave to appeal, such notice confirming his/her/its intention to apply for leave to appeal must be given to the executive management/the accused's appointed representative within 48 hours from the date the sentence was passed. The Applicant shall be required to furnish the tribunal appointed to hear the application with written grounds upon which the application shall be based within 14 calendar days after receipt of the transcription of proceedings and written reasons for the verdict from the tribunal;
- Article 17.22 The application for leave to appeal shall be considered by the presiding officer who presided over the initial hearing. The application shall be considered solely on the written Heads of Argument handed in by the Applicant and Respondent.
- Article 17.23 The Applicant shall hand to the Respondent and Presiding Officer, written Heads of Argument within 5 calendar days before the date set by the presiding officer

considering the application. The Respondent shall be required to hand to the Applicant and Presiding Officer, written Heads of Argument within 3 calendar days before the date set by the presiding officer considering the application.

- Article 17.24 In order for leave to appeal to be granted, the Applicant shall need to prove that another presiding officer presiding over the hearing would have come to a different conclusion.
- Article 17.25 A party requiring the proceedings to be transcribed shall be liable for the costs of such transcription.
- Article 18.1 The accused shall be liable for his own costs as well as the costs of the proceedings (which proceedings shall include but not be limited to the disciplinary hearing and the appeal hearing) as specified in 18.3, in the event that the tribunal finds in favour of the SAWF.
- Article 18.2 In the event that the accused successfully defends the disciplinary hearing or successfully appeals the findings of the disciplinary tribunal, the SAWF shall be liable for its own costs as well as the costs incurred by the accused up to a maximum amount of R5 000.00.
- Article 18.3 The costs shall be as follows:
- Article 18.3.1 R 5 000.00 per person appointed to constitute a tribunal;
- Article 18.3.2 R 5 000.00 per person appointed as prosecutor on behalf of the SAWF.
- Article 18.4.1 In the event that the accused is found guilty, the accused shall have until noon (12:00) on the day preceding the appeal hearing to pay the costs as contemplated in paragraph 18.3 above.
- Article 18.4.2 Should the accused fail to pay the costs as contemplated in paragraph 18.3 timeously, as stipulated in paragraph 18.4.1, his right to appeal shall lapse and a renewed application for leave to appeal must be brought, together with an explanation, under oath, as to why the costs as contemplated in paragraph 18.3 above had not been paid timeously.
- Article 18.4.3 Should the accused provide a satisfactory explanation as to why he had not paid the costs as contemplated in paragraph 18.3 above timeously, he shall be granted leave to appeal.
- Article 18.4.4 The accused shall be required to pay the costs as contemplated in paragraph 18.3 above within one week of being granted leave to appeal, failing which the accused's right to appeal shall lapse once again and the accused shall no longer have the right for leave to appeal.
- Article 18.4.5 A second date for the appeal hearing shall be set only once the accused has paid the costs, as contemplated in paragraph 18.3 above, within one week period prescribed by paragraph 18.4.4.
- Article 19 In the event that the accused/SAWF is granted leave to appeal, an appeal committee is to be appointed for the hearing by the executive management in terms of the constitution of the SAWF. The accused or his/her representative has the right to present written grounds of appeal, verbally to the appeal committee and the prosecutor (or another prosecutor appointed for this purpose by the executive management) or its authorized representative, also has the right

to appear before the appeal committee with a view to presenting argument for the upholding of the conviction and/or sentence;

Article 20 The Appellant shall hand in written Heads of Argument to the appointed appeal tribunal as well as to the Respondent within 5 (five) calendar days before the hearing of the appeal. The Respondent shall be required to hand in written Heads of Argument to the appointed appeal tribunal as well as to the Appellant within 3 (three) calendar days before the hearing of the appeal.

Article 21 The appeal committee decides on the matter based only on the documentation before them, taking into consideration verbal argument, if any and the decision of the appeal committee is final, except where rules of a body to which the SAWF is affiliated, provide differently for specific cases. In such instances the accused has the right to make use of such procedures against the upholding of the conviction and/or sentence, on condition that the sentence is implemented as stipulated in article 4.7 above pending any further measures by the accused.

## **Article 22 GRIEVANCE PROCEDURE**

### **Article 22.1 Introduction**

Article 22.1.1 Where a member wishes to lodge a grievance or complaint, he/she shall do so in accordance with the SA Wrestling Federation's Grievance Procedure. The aim is to enable members to have their grievances resolved fairly and speedily, as this is in the best interests of both the member and the SAWF.

Article 22.1.2 Members may lodge their grievances without fear of victimisation.

### **Article 22.2 Definition**

Article 22.2.1 A grievance is any dissatisfaction or feeling of injustice or perceived unfair treatment in connection with a member's membership or related situation that is brought to the attention of an office bearer of the SAWF or affiliated wrestling association or wrestling club, with the exception of the outcome of any disciplinary procedure or inquiry.

Article 22.2.2 Members can submit grievances without any prejudice whatsoever regarding their membership and related conditions.

### **Article 22.3 Grievance procedure**

#### ***Stage 1***

Article 22.3.1 Members who wish to raise any issue in which they are directly concerned must first verbally raise it with their office bearer in the next higher line of authority in the SAWF hierarchy, from club level upwards, making it clear that this is the first step in the procedure. The principle is to respect the lines of authority within the SAWF structure.

Article 22.3.2 If any issue affects more than two members, not more than two of the members concerned will raise the issue on the rest of the members' behalf.

Article 22.3.3 The office bearer concerned will use his/her best endeavours to resolve the issue and communicate the outcome to the member/s as soon as possible.

Article 22.3.4 Only when a satisfactory solution is not reached, will *Stage 2* come into operation.



**Article 22.4 Stage 2 – Senior Authorised Office Bearers**

Club Level – Club Chairperson

Association Level – Association President

Council Level – Respective SAWF Council Chairpersons

Federation Level – SAWF President

Article 22.4.1 Should any of the above Senior Authorised Office Bearers not be available, or personally involved on a specific occasion, the person who normally acts on behalf of the senior office bearer concerned will be mandated as being the Senior Authorised Office Bearer for that particular occasion.

Article 22.4.2 The aggrieved member/s may now submit a written grievance/s to a senior authorised office bearer in line with the above hierarchical organisation who will deal with the matter. The written grievance must also include proposed solutions for the senior office bearer to consider.

Article 22.4.3 The senior office bearer will consider the written grievance/s and proposed solution and may have discussions with the involved party/parties. The senior office bearer will attempt to resolve the grievance/s through mutual consensus.

Article 22.4.4 Should the matter not be resolved through mutual consensus, the senior office bearer's decision in solving the grievance shall be final and binding on the parties involved.

Article 22.4.5 If the member's line of authority is through his/her senior office bearer, this stage shall be the only stage available.

Article 22.4.6 It would be in the senior office bearer's discretion to involve an unbiased outsider to attend to the grievance. The unbiased outsider can make recommendations to solve the grievance. However, the senior office bearer's decision to accept or reject the recommendation in full or in part shall be final.

**Article 22.5 Procedural aspects**

Article 22.5.1 Records of the proceedings will be kept.

Article 22.5.2 The records will be placed on the member/s file/s and the grievance file/s with the Secretary-General of the SAWF.

**Article 22.6 Interpretation**

In the event of any dispute as to the interpretation of this Grievance Procedure, or rules of the SAWF, or any dispute flowing from this Grievance Procedure or rules, the decision of the President of the SAWF or the Senior Office Bearer who normally acts on his behalf when the President is not available or is personally involved, shall be final and binding.

**Article 23 AMENDMENTS TO THE DISCIPLINARY CODE & GRIEVANCE PROCEDURE**

The executive management of the SAWF approves the disciplinary code/grievance procedure and any amendment thereof on recommendation of the legal advisory committee.

S J (Sarel) Steyn  
Chairman, Legal advisory committee.

Adv. Pieter v d Schyf  
Legal Advisor

Amended and recommended by the legal advisory committee, approved by the executive management on 8<sup>th</sup> May 2004 and 12<sup>th</sup> February 2005, and ratified by the general management on 9<sup>th</sup> April 2005, including the grievance procedure approved by the executive management on 1<sup>st</sup> November 2008.

Original document signed and kept on file by the secretary-general.

Signed: DAVE VAN DER MERWE  
PRESIDENT

1st NOVEMBER 2008  
DATE

MANIE VAN DEN BERG  
SECRETARY-GENERAL