

NATIONAL ASSOCIATION OF BEE CONSULTANTS “NABC”

CODE OF CONDUCT AND DISCIPLINARY MATTERS

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1. Introduction

- 1.1 The aim of the Code of Conduct is to ensure a high level of professionalism and the quality of service rendered to the public, to enhance the credibility of the BEE consultancy profession, and to increase the confidence of the public in the profession.
- 1.2 Breaches of the Code of Conduct may be considered punishable offences.
- 1.3 A member may be held accountable should he breach the Code of Conduct by failing to comply with the Code and/or the Constitution in respect of all parties he interacts with within the course of his business as a member, or if such breach results from the action of for example:
- His employees; or
 - Persons under his supervision; or
 - His partners; or
 - His fellow shareholders, fellow directors, or fellow employees in a company or any other business entity offering professional services to the public. (For these purposes a company will be deemed to be controlled by members if members between them hold directly or indirectly, more than half of the voting rights attached to the shares of the company or directly or indirectly and either alone or together with anyone else are entitled to exercise the *de facto* right to control the manner in which the business of the company is carried on, including but without limitation, the right to appoint the majority of the persons entitled to exercise control over its management and affairs); or
- 1.4 The Code shall apply to all classes of members, and shall be interpreted from a broad perspective.
- 1.5 Unless inconsistent with the context, words and expressions in the masculine gender include the feminine and words signifying the singular shall include the plural.
- 1.6 The definitions as set out in the Constitution shall have a corresponding meaning in the Code of Conduct, unless the contrary is indicated by the context.

2. Fundamental principles

The fundamental principles to which members of NABC subscribe are:

- 2.1 “**Integrity**” which means that members should be open and honest in their dealings, and truthful in the performance of their services.
- 2.2 “**Objectivity**” which means that members should be impartial and not allow prejudice or bias, conflict of interest or the influence of others to override their objective

judgment.

2.3 **“Professional competence and due care”** which means that members should perform their services with due care, competence and diligence, and have a continuing duty to maintain their professional knowledge and skills at a level sufficient to ensure that all relevant stakeholders, e.g. clients and parties which rely on their work receive the advantage of competent service based on the latest developments in the profession and in keeping with current legislation and other applicable regulations and principles arising there from.

2.4 **“Confidentiality”** which means that members should respect the confidentiality of information acquired during the course of performing professional services and should not use or disclose any such information without proper and specific authority, unless there is a legal or professional right or duty to disclose such information.

It is noted that the duty of confidentiality continues beyond the end of the relationship between the member and the client.

2.5 **“Professional behaviour”** which means that members should act in a manner consistent with the good reputation of NABC and the BEE Practitioners profession taken in its wider context, refraining from any conduct that might bring the NABC and/or the BEE practitioners profession into disrepute. Members should conduct themselves professionally with due consideration towards clients, third parties, other members of the profession, staff, employers and the general public.

2.6 **“Technical standards”** which means that members should perform their services in accordance with the relevant technical and acceptable standards applicable from time to time at the time and with due regard to the legislative requirements that may apply. Members are duty-bound to perform their services with care and skill, taking note of the instructions of the client or employer insofar as these instructions are compatible with the requirement to act with integrity, objectivity and independence at all times.

3. Independence

3.1 When members undertake a consultancy assignment, they should act and be seen to act in a manner that is free of any interest or conflict of interest and which may be regarded, whatever its actual effect, as incompatible with their commitment to integrity, objectivity and independence.

3.2 A member who has reason to believe that his involvement in an assignment could possibly cause a conflict of interest should immediately disclose this possibility to his client. Where it is clear that a material conflict of interest exists, a member should decline the assignment.

3.3 A member should not concurrently engage in any business, occupation or activity that impairs or may impair his integrity, objectivity, independence or the good reputation of the NABC or the BEE profession, and that would therefore be incompatible with the requirements for the rendering of acceptable professional services.

- 3.4 Rendering two or more types of professional services concurrently does not in itself impair integrity, objectivity or independence. Simultaneous engagements in other businesses, occupations or activities unrelated to the professional services provided by the member, and which have the effect of not allowing the member to properly conduct his engagement in accordance with the fundamental principles of the BEE profession, should be regarded as being inconsistent with the BEE profession.

4. Professional competence

- 4.1 A member should not portray himself as having expertise or experience that he does not possess.
- 4.2 Members should ensure that their professional competence is maintained. This requires them to remain continuously aware of developments in the BEE profession, and to ensure that they have the requisite knowledge related to such developments, including an awareness of relevant pronouncements, and other relevant statutory requirements and regulations.
- 4.3 Members should adopt a programme designed to ensure quality control in the performance of their services, consistent with appropriate national pronouncements and norms.
- 4.4 A member shall not criticize the professional work, professional attainment, or professional fees charged by any other professional person. When a member is of the opinion that he has a duty to comment adversely about any of these matters with regard to any person, other than a member of public, he may only comment, after discussion of these matters with the colleague concerned.
- 4.5 A member shall not directly or indirectly offer employment to any employee of another member of the NABC without informing the member.

5. Stationery & letterheads

- 5.2.1 Stationery used by members should be of an acceptable professional standard.
- 5.2.2 The use of the NABC name and/or logo is permitted for use by members of the NABC. The logo may be used in conjunction with a members business' logo, provided that the impression is not be created that the NABC's logo is the member's logo, or that the member's business' logo does not purport to be a modified or adapted version of the NABC's logo or parts thereof. Where members are in doubt a ruling should be sought from the EXCO of the NABC.
- 5.2.3 The NABC's logo may not be modified, adapted, supplemented to or detracted from in any manner whatsoever. Representation of the NABC's logo shall be only in the colours of the NABC, or in black and white or in grey-scale contrast, or in such colours as the NABC may from time to time determine.
- 5.2.4 Apart from the name of the member's business, the logo (if any) and the customary

details regarding the address, telephone and fax numbers, a member's professional stationery shall also clearly indicate the nature of the entity through which he offers his services, whether it is a sole proprietorship, trust, partnership, close corporation or company etc. The stationery should also specify the registration number of the entity, the names of all partners, members, directors (as the case may be), and the names of all professional assistants and consultants.

- 5.2.5 Members should describe themselves as being a member of the National Association of BEE Consultants or NABC. This does not, however, prevent members from using other designations arising from academic and/or professional qualifications which they may hold.
- 5.2.6 Members may include references to any other person, firm or business with whom they are associated, provided that such references clearly distinguish the member offering the service and do not create the impression or mislead the public to believe that the other person, firm or business is in any way associated with the NABC, or that the member possess qualities or qualifications which he does not have or is not entitled to claim.

6. Fees & commissions

6.1 Fees

- 6.1 .1 Members who undertake professional services for a client assume the responsibility to perform such services with integrity and objectivity and in accordance with the appropriate technical standards. They should discharge this responsibility by applying the professional skills and knowledge that they as members and their staff have acquired through training and experience. For the services rendered, members are entitled to remuneration.
- 6.1 .2 Fees should be a fair reflection of the value of the professional services performed for the client, taking into account but not limited to:
 - 6.1 .2.1 The skill and knowledge required for the type of services involved;
 - 6.1 .2.2 The level of training and experience of the persons necessarily engaged in performing the services;
 - 6.1 .2.3 The time necessarily occupied by each person engaged in performing the professional services;
 - 6.1 .2.4 The degree of responsibility that performing those services entails; and
 - 6.1 .2.5 The level and extent of investments in technology.
- 6.1 .3 Fees should normally be computed based on appropriate rates per hour or per day for the time of each person engaged in performing the services. These rates should be based on the fundamental premise that the organization and the conduct of the

member and the services provided to clients are well planned, controlled and managed. They should take into account the factors set out above, and the influence of legal, social and economic conditions. It is up to each individual member to determine appropriate rates.

- 6.1 .4 It is in the best interests of both the client and the member that the range of services related to the fees are explained, as well as the basis on which fees are computed, together with any billing arrangements. This should preferably be done in writing before the commencement of the engagement to avoid misunderstandings regarding fees.
- 6.1 .5 A member should not make representations that indicate that specific services in current or future periods will be performed for a stated fee, estimated fee, or for a fee range if it is likely at the time of such representations that the stated or estimated fees or the fee range will be substantially increased and the prospective client is not advised of this likelihood.
- 6.1 .6 When performing professional services for a client it may be necessary or expedient to charge a prearranged fee, in which event the member should estimate a fee, taking into account the matters referred to above.
- 6.1 .7 It is not improper for a member to charge a client a lower fee than he charged previously for similar services, provided that this fee has been calculated in accordance with the factors referred to in the above paragraphs. Care should be taken to ensure that the client is not misled as to the precise range of services that the quoted fee is intended to cover and as to the level of fees anticipated to be charged for subsequent work at present-date prices.
- 6.1 .8 A member who obtains or retains work by quoting fees that are significantly lower than those charged by another member or those quoted by other tendering firms, should be aware that this practice may threaten his perceived independence. Such a member should take care that the appropriate quantity and quality of staff are allocated to an assignment both in terms of time and competence.
- 6.1 .9 Members should take care, whatever rate they charge, that they comply with all professional standards and guidelines, in particular with quality control procedures. In the event of a complaint being made to the NABC where fees were a feature in obtaining the work, such members should be prepared to demonstrate to the Disciplinary Committee that:
 - 6.1 .9.1 Their independence has not been compromised;
 - 6.1 .9.2 The resources allocated to the assignment were at least those that would have been allocated to work of a similar nature; and
 - 6.1 .9.3 The client was not misled as to the level of fees for the following and subsequent years.
- 6.1 .10 A member should, on request, furnish such details as are reasonable to enable a client to understand the basis upon which a fee account has been prepared. It follows that

time records should, where appropriate, be kept as a basis for determining fees, and that the rates used to calculate the fees should in the circumstances be fair and reasonable. The rates should be based on the fundamental premise that the organization and conduct of the member and the services provided to clients are well planned, controlled and managed.

- 6.1 .11 The abovementioned paragraphs relate to fees as distinct from reimbursement of expenses. Out-of-pocket expenses, in particular traveling expenses, attributable directly to the services performed for a particular client would normally be charged to that client in addition to the fees for services rendered.
- 6.1.12 Where fees are set by legislation or Government regulation, such fees shall be deemed to be in accordance with the NABC's rulings on fees and/or fee structures.

6.2 Commissions

- 6.2.1 The payment or receipt of a commission by a member could impair objectivity and independence. A member should therefore not pay a commission to obtain a client nor should a commission be accepted for referral of a client to a third party.
- 6.2.2 A member should not accept, directly or indirectly, a commission, brokerage fee or other remuneration for the referral of the products or services of others as an incident to his service to any client, except with the knowledge and consent of that client.

6.3 Contingent fees

- 6.3.1 A contingent fee is one that is negotiated for the performance of any professional services pursuant to an arrangement whereby a fee will not be charged unless a specified finding or result is obtained, or where the payment of the fee is otherwise dependent on the finding or result of the service.
- 6.3.2 Fees should not be regarded as being contingent if fixed by a court or other public authority. Fees charged on a percentage or similar basis, except where authorised by statute or approved by the NABC as a generally acceptable practice, should be regarded as contingent fees.
- 6.3.3 Professional services should not be offered or rendered to a client under an arrangement whereby no fee will be charged unless a specified finding or result is obtained or when the fee is otherwise contingent upon the findings or results of such services.
- 6.3.4 Where work is subject to a contingency fee, the capacity in which the member has worked and the basis of his remuneration should, where appropriate, be made clear in any document prepared by the member in contemplation that a third party may rely on it.

- 6.3.5 In the event of a complaint being lodged against a member where fees were a feature in obtaining the work, the member should be prepared to demonstrate to the Disciplinary Committee that:
- 6.3.5.1 His independence has not been impaired;
 - 6.3.5.2 Resources allocated to the assignment were at least those that would have been allocated to work of a similar nature; and
 - 6.3.5.3 The client was not misled as to the level of fees for the following and subsequent years.

7. Resolution of ethical disputes

- 7.1 Members may from time to time encounter situations that give rise to conflicts of interest. A wide variety of such conflicts may arise, ranging from a relatively trivial dilemma to an extreme case of fraud and similar illegal activities.
- 7.2 Members should at all times be conscious of factors that may give rise to conflicts of interest. It should, however, be noted that an honest difference of opinion between a member and another party is not in itself necessarily an ethical issue. The facts and circumstances of each case need to be investigated by the parties concerned.
- 7.3 It is, however, recognized that situations may arise where the responsibilities of a member may conflict with internal or external demands of one type or another, hence:
- 7.3.1 There may be the danger of pressure from an overbearing supervisor, manager, director or partner; or from family or personal relationships that can give rise to the possibility of pressures being exerted. Consequently, those relationships or interests that could adversely influence, impair or threaten a member's integrity should be discouraged;
 - 7.3.2 A member may be requested to act in a manner contrary to technical and/or acceptable standards;
 - 7.3.3 Divided loyalty between a member's superior and the required standards of conduct could occur; and,
 - 7.3.4 Conflict could arise when misleading information is published, which may be to the advantage of the employer or client, but which may or may not benefit the member.
- 7.4 In applying standards of ethical conduct, members may encounter problems in identifying unethical behaviour or in resolving ethical conflict. When faced with significant ethical issues, members should therefore follow the established policies of their organizations when seeking to resolve such conflict. If those policies do not resolve the ethical conflict, the following should be considered:
- 7.4.1 Review the conflict with the immediate superior. Where the conflict cannot be

resolved with the immediate superior, and the member thus decides to refer the conflict to the next higher managerial level, the immediate superior should be notified of this decision.

- 7.4.2 Should it appear that the superior is involved in the conflict, the member should raise the issue with the next higher level of management. If the immediate superior is the Chief Executive (or equivalent), the next higher level of review may be the Executive Committee, Board of Directors, Non-executive Directors, Trustees, Partners' Management Committee or Shareholders.
- 7.4.3 Seeking counseling and advice on a confidential basis from an independent advisor or the EXCO of the NABC to ascertain possible courses of action.
- 7.5 Should the ethical conflict still exist after fully exhausting all levels of internal review, the member, as a last resort, may, in respect of significant matters, e.g. fraud, have no other recourse than to resign and submit information to an appropriate representative of that organisation.
- 7.6 Where relationships or interests, whether direct or indirect, could adversely influence, impair or threaten a member's capacity to act with integrity and objectivity, such relationships and interests should be avoided, even if this requires the sacrifice of personal advantage.

8. Relations with other members & other professional persons

8.1 Professional advisors

- 8.1 .1 Members should only undertake such services as they can expect to complete with competence. It is therefore essential that members, where appropriate, are encouraged to obtain advice, from other persons competent to provide such advice.
- 8.1 .2 A member without a particular skill may, however, be reluctant to refer a client to another person who may possess that skill, because of the fear of losing existing business to the other person. As a result, clients may be deprived of the benefit of advice that they are entitled to receive.
- 8.1 .3 The wishes of the client should be paramount in the choice of professional advisors, whether special skills are involved or not. Accordingly, a member should not in any way attempt to restrict a client's freedom of choice in respect of obtaining special advice, and should, when appropriate, encourage the client to exercise such a choice.

8.2 Other professional persons

- 8.2.1 A member should assist fellow members in complying with the Code of Conduct, and should cooperate with the appropriate disciplinary authorities in applying this Code.

Condoning a serious fault could be as bad as committing such a fault. In fact, since some errors may result from ignorance rather than intent, and would probably be repeated if allowed to pass without response, it is important that in such situations the welfare of the profession as a whole should guide the action of members.

- 8.2.2 Although it is understandable that a member may be reluctant to testify, if such testimony may be damaging to a colleague, the obligation of professional courtesy and fraternal consideration may never be an excuse for the lack of complete candour when a member is testifying as a witness (expert or otherwise) in a judicial proceeding or properly constituted enquiry.
- 8.2.3 A member should not irresponsibly criticize another member. Although it is natural for a member in delivering a service to the public to seek to optimally develop his business, a member should not in so doing seek to displace another member in a client relationship in a manner that will lessen the effectiveness of the technical performance he or another member renders, and which will in particular negatively impact on the integrity and objectivity expected of members. Furthermore, a member should not act in any way that negatively reflects on fellow members.

9 Agreements with other professional bodies

- 9.1 The NABC may from time to time, as it may deem necessary for the furtherance of the objectives, enter into agreements with other professional bodies regarding the joint regulation of members, members' compliance with Codes of Conduct, the professional services rendered to the public, and professional and academic standards.

10. Disciplinary Committee

- 10.1 The EXCO of the NABC shall appoint a Disciplinary Committee which shall carry out the duties and exercise the functions and powers granted to them under this Code. The Disciplinary Committee (DISCOM), which shall consist of at least three (3) members at least one of which shall have legal training and for whom the quorum shall from time to time be determined by EXCO. DISCOM shall have the right at any time to co-opt additional members whenever it deems such additional appointments necessary. The chairperson of DISCOM shall be authorised to delegate the Committee's authority to any appropriately qualified person with regard to any matter before it;
- 10.2 The Disciplinary Committees shall be entitled to retain the services of an attorney or advocate counsel to serve on the Committee, with the prior approval of EXCO, and to render advice with regard to points of law and procedure should it be necessary.
- 10.3 The Disciplinary Committee appointed in terms of this Code shall remain in office and function until the date of the appointment of their successors in office, provided that, if at that date either of the said committees still has before it for investigation or hearing an incomplete case, those members who comprise such a Committee shall continue to act as such for the purpose of completing such case/s only.
- 10.4 Any vacancies occurring at any time in any of the aforementioned Committees may be

filled by EXCO.

11. Powers & duties of the Disciplinary Committee

- 11.1 The Disciplinary Committee shall be duty bound to take note of and investigate any matter in order to ensure that members comply with the spirit and letter of the Constitution and the Code of Conduct.
- 11.2 It shall be the duty of the EXCO of the NABC and the right of any member or any aggrieved person to lay before the Disciplinary Committee any facts or circumstances indicating that a member or non-member of NABC may have committed an offence under this Code or the Constitution of the NABC. Such complaints shall be in writing.
- 11.3 The Disciplinary Committee may also, at its own volition, take note of and investigate any matter where it appears that any of the provisions of the Constitution or the Code of Conduct may have been breached and may consider any document or evidence it deems to be relevant to the investigation at hand.
- 11.4 The Disciplinary Committee shall fully consider the facts or circumstances under which the alleged misconduct took place. For that purpose, it may carry out whatever preliminary investigations it may deem necessary and shall have the power to order the production for inspection of any books, documents and papers in the possession of or under the control of the member alleged to have committed an offence.
- 11.5 If the Disciplinary Committee considers that there appear to be grounds for the complaint, it shall advise the member or non-member concerned of the conduct imputed to him by notice in writing and afford him an opportunity of giving, within twenty-one (21) days from the date of such notice, an explanation in writing. The member shall be warned that such explanation or answer may be used in evidence against him.
- 11.6 If, on receipt of the explanation, the Disciplinary Committee is not satisfied with such explanation, or if no explanation is forthcoming, the Disciplinary Committee shall consider that the member accepts the allegation as being factually correct and proceed to appropriate disciplinary action.
- 11.7 The Disciplinary Committee may recommend to EXCO that the member be offered the option of a reprimand and/or such additional terms as the Disciplinary Committee may determine in accordance with the guidance of EXCO as an alternative in the less serious cases investigated.
- 11.8 The Disciplinary Committee may request a member of the NABC (who may be a member of the Disciplinary Committee) to present the formal complaint of the Disciplinary Committee or may instruct an attorney to present, or to brief counsel to present, such a complaint.
- 11.9 The Disciplinary Committee, on receipt of a formal complaint shall forthwith give to the

member or non-member notice of the complaint and the way in which it intends to deal with the matter.

- 11.10 The Disciplinary Committee shall make its finding in accordance with the procedure determined by it, and shall give EXCO notice of its finding together with such recommended reprimand, caution, fine, cost recovery and/or additional terms as the Disciplinary Committee may determine. EXCO shall decide on the course of action which may deviate from the DISCOM recommendation.
- 11.11 If the Disciplinary Committee considers that the alleged offence is so serious that it might result in the member being either excluded or suspended from membership of the NABC, or if the member objects to the fine, penalty or cost recovery, or fails to pay what is indicated, then the Disciplinary Committee shall forthwith give the member notice of its intention to consider and enquire into the complaint, specifying the time and place of the enquiry.
- 11.12 The Disciplinary Committee shall give such member or non-member an opportunity of making representations to it and shall, if the member or non-member so desires, permit such member to be represented before it in oral or written representations by an attorney or by counsel or by a fellow member of the NABC.
- 11.13 The Disciplinary Committee shall have the power to recommend to EXCO that it exclude or cancel the membership of a member found guilty of an offence under this Code or the Constitution, and/or order him to pay a monetary penalty up to a maximum amount, determined by EXCO from time to time, and to pay such reasonable costs as the NABC may have incurred with the investigation by the Disciplinary Committee or such part of those costs that are considered just.
- 11.14 Should the member against whom any complaint is referred, neglect or fail to make representations in respect of the complaint to the Disciplinary Committee within the time indicated in the said notice, the Disciplinary Committee shall be entitled to proceed with its consideration of and any enquiry into the complaint without his representations.
- 11.15 All evidence given in consideration of a complaint by the Disciplinary Committee shall be considered but the Disciplinary Committee shall also be entitled to have regard to any affidavit filed by any of the parties, as well as any documentation placed before it by any affected party in the referral of the complaint. The Disciplinary Committee shall be entitled to obtain sworn affidavits from any necessary persons for the investigation of the complaint.
- 11.16 The Disciplinary Committee shall also have the power to order for inspection any books, documents and papers in the possession of or under the control of the member against whom the complaint has been made.
- 11.17 The chairperson of the Disciplinary Committee shall, with the permission of EXCO, be permitted to engage the services of an attorney or advocate counsel at any stage of consideration of the Disciplinary Committee to advise on points of law and procedure.
- 11.18 If the Disciplinary Committee is of the opinion that the member is guilty of a punishable

offence, it shall make a finding to that effect and thereupon it shall have full power to recommend to EXCO that the member concerned be excluded from membership of NABC or be suspended from membership for a period not exceeding five (5) years, provided always that if, in the opinion of the Disciplinary Committee, the offence shall have been proven, but member shall not have been guilty of conduct sufficiently serious to warrant exclusion or suspension, it shall have full power to recommend to EXCO that the member be reprimanded or cautioned.

- 11.19 Notice of the finding and the decision of EXCO shall be given forthwith in writing to the member concerned.
- 11.20 The Disciplinary Committee shall report to EXCO who will then request the Chairman to report the conviction or finding of the Committee to the membership of NABC at large.

12. Recording & publication of findings & decisions

- 12.1 All findings and decisions of the Disciplinary Committees shall take effect when EXCO approves thereof and shall be duly recorded.
- 12.2 Where the Disciplinary Committee has imposed a fine on a member the EXCO shall:
 - 12.2.1 In the case of a caution or reprimand, report such finding, without reference to the member's name, in the NABC's normal member's communications;
 - 12.2.2 In all cases where members have been suspended or excluded, inform members by circular for their exclusive and confidential information.
- 12.3 In the case of the suspension and/or cancellation of the membership of a member the Disciplinary Committee may report such suspension or cancellation to any other professional body or entity (such as the Department of Trade & Industry) for publication and for the attention of their members, personnel or other stakeholders as any such body may deem fit.