

**THE MANAGEMENT OF WORKPLACE DISCIPLINE IN DEPARTMENT OF
JUSTICE, MALAMULELE CLUSTER COURTS, LIMPOPO PROVINCE**

by

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(i)

DECLARATION

I declare that the mini-dissertation hereby submitted to the University of Limpopo for the degree of Master of Public Administration in the Faculty of Management Sciences and Law has not been submitted by me for a degree at this or any other university: that is my work in design and in execution, and that all material contained herein has been duly acknowledged.

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(ii)

DEDICATION

This mini-dissertation is dedicated to my mother, Grace Sekgobela, who has been supportive throughout my life including during my studies. My husband, Mojapelo Paul, for babysitting our daughter Hlolo when I was busy with my studies, and to Hlolo Mojapelo, my little angel. This is for you my dear ones.

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ABSTRACT

The Department of Justice and Constitutional Development has been mandated by the government of the day to render accessible, fair, speedy and cost effective administration of justice in the interest of a safer and more secure South Africa. The department then set service standards to be able to achieve its goals. Like other departments in the country, the department of Justice has officials who perform duties to ensure that service is delivered to people. These officials have to conduct themselves in an acceptable manner prescribed by the employer. Since the code of conduct has been developed to promote and maintain high standard of professional ethics throughout the public service, the code of conduct is mandatory if effective service delivery is to reach all South Africans. Public servants must ensure that their conduct conforms to the basic values and principles governing public administration. The research focused on how discipline is managed in Malamulele cluster magistrate's courts, in Limpopo Province, South Africa. Qualitative research methodology was used. Results indicated that some structures and individuals know their roles and responsibilities in management of discipline, however the understanding is only to a certain extent. Managers have been made to believe that it is proper to attend only less serious misconducts and refer the serious ones to the labour relations section at the regional level. Recommendations were advanced on activities that need to be performed in order for discipline to be well managed.

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LIST OF ACRONYMS

| | | |
|-------|---|---|
| PDP | : | Personal Development Plan |
| JDAS | : | Justice Deposit Account System |
| ICMS | : | Integrated Case Management System |
| DCRS | : | Digital Case Recording System |
| LRO | : | Labour Relations Officer |
| DJINI | : | Department Of Justice Intranet |
| JYP | : | Justice Yellow Pages |
| PSCBC | : | Public Service Co-Ordinating Bargaining Council |

CHAPTER 1

INTRODUCTION AND BACKGROUND OF THE STUDY

1.1 INTRODUCTION

The management of workplace discipline remains a key problem in employee relations, and is one of the most discernible sources of conflict. In practise, organisations appear to have accepted the importance of formalizing their disciplinary arrangements (Fenley, 1998:349). Fenley (1998) further states that views as to what constitutes good employee relations are very much linked both to the specific goals which are being pursued and to an underlying set of values. This issue has been discussed by Dobson (1982) who notes that "little attention has been paid to the criteria which can be used to adjudicate whether the industrial relations of a firm or industry are good or bad .According to Grogan (2007:1), there are questions that confront employers, employees and their advisors with increasing frequency. When can an employee be dismissed and, if so, how should this be done?

The Public Service Commission is mandated in terms of the Constitution, 1996, to promote and maintain a high standard of professional ethics throughout the public service. In 1997 the Code of Conduct for the Public Service was promulgated and was subsequently promoted through workshops with officials at both national and provincial levels. It was also necessary to develop a practical guide on the Code of Conduct to generate a better understanding of its implications and applications. In 2002 the chairperson of the Public Service Commission, Prof. S. S. Sangweni presented an explanatory manual on the Code of Conduct for the Public Service to officials employed in the public service of South Africa. The Code of Conduct is an important pillar in the establishment of good governance and ethical conduct of public servants. It also raises issues such as respect for human rights, the rule of law, accountability and transparency in government, personal conduct, and private interests in that it stipulates clearly the relationship which public officials must have with the legislature and executive, the public, other officials, and how public officials should conduct themselves when performing their duties. For example, paragraph

c.4.8 states that officials must be honest and accountable in dealing with public funds.

Chapman (1993:18) remarks that a code of conduct is necessary to promote public trust and confidence in the ethical performance of public officials, to decrease, and if possible, to eliminate, unethical practices by discouraging and punishing them, to legitimize the imposition of sanctions for unethical behaviour, to sensitise both current and aspiring public officials to the ethical and value dimensions of bureaucratic decisions, reduce uncertainty as to what constitutes ethical or unethical behaviour, to develop skills in the analysis of ethical and value issues, to assist public officials, to resolve ethical and value dilemmas, and to promote moral development.

According to Hanekom, Rowland & Bain (1987:163), a code of conduct has the following objectives: promoting and maintaining responsible conduct of public officials, providing guidelines to public officials in their relationship with fellow public officials, elected representatives, and with members of the public, and providing guidelines to public officials in the exercise of the discretionary powers they have.

Sangweni (2002) points out that all public servants should ensure that their conduct conform to the basic values and principles governing public administration and that they acquaint themselves with the Code of Conduct. In terms of the collective agreement (Public Service Co-ordinating Bargaining Council Resolution 2 of 1999), all the employees in the public service have the responsibility to comply with the prescribed Code of Conduct. Since this forms the main basis on which pro-active, corrective and even disciplinary action rests. The employer must do everything possible to ensure that the contents of the Code of Conduct are known to all employees. Employees should be notified that they shall be guilty of misconduct if they contravene any provision of the Code of Conduct and may be dealt with in accordance with sections 18 to 27 as amended in the public Service Law Amended Bill 1997.

Since the Labour Relations Act 66 of 1995 does not contain specific guidelines as to the ways and means in which employees can or should be dismissed, it has been the task of the Industrial Court to determine and provide guidelines, in terms of

evolving case law, regarding the nature of fair and unfair dismissals (Nel & Van Rooyen, 1989:222).

Resolution 1 of 2003, which is the disciplinary code and procedures for the public service, has been agreed upon and the purpose of this code and procedures among other stipulations, is to promote acceptable conduct, to provide employees and the employer with a quick and easy reference for the application of discipline and to ensure that managers and employees share a common understanding of misconduct and discipline.

The disciplinary code and procedures state that discipline is a corrective measure and not a punitive one; discipline must be applied in a prompt, fair, consistent, and progressive manner since discipline is a management function. But despite the availability of the Code of Conduct, employees often conduct themselves in a manner that is not acceptable to the employer, they thus contravene the Code of Conduct. For example, at Tshitale Magistrate's Court there have been cases of employees engaging in fraudulent activities by stealing witness fees while line managers sometimes fail to implement the disciplinary code and procedures.

1.2 PROBLEM STATEMENT

There have been numerous cases of corruption reported to the labour relations section at the regional office for disciplinary process to commence which include theft of state monies, fraud, abuse of sick leave, past criminal offences and, habitual absenteeism. Such conduct has an impact on service delivery because employees are sometimes put on precautionary suspension pending the disciplinary hearings and those who steal money divert money intended for service delivery by enriching themselves.

1.3 AIM OF THE STUDY

The main aim of the study is to investigate the management of workplace discipline in the Department of Justice, Limpopo Province.

1.4 OBJECTIVES OF THE RESEARCH

The objectives of the study are:

- 1.4.1 To determine the causes of ill-discipline in the department.
- 1.4.2 To determine the role of line managers in managing workplace discipline in the department.
- 1.4.3 To investigate challenges and solutions of the management of discipline in the department.
- 1.4.4 To investigate the current managers' understanding of discipline within the department.
- 1.4.5 To investigate the availability of policies on discipline and their effectiveness.

1.5 RESEARCH QUESTIONS

The following research question will provide answers to the objectives of the study:

- 1.5.1 What are the causes of ill-discipline in the department?
- 1.5.2 What role should line managers play to minimize ill-discipline in the department?
- 1.5.3 What are the challenges and possible solutions of managing workplace discipline?
- 1.5.4 What is the current managers' understanding of discipline within the department?
- 1.5.5 What policies exist on discipline?

1.6 DEFINITION OF CONCEPTS

1.6.1 Discipline

Discipline is a means by which supervisory personnel correct deficiencies in behaviour and ensure adherence to established company rules. According to Bezuidenhout, Garbers & Potgieter (1998:199), disciplinary action is usually initiated by management in response to unacceptable behaviour on the part of employees. The intervention is aimed at encouraging, assisting, prompting or forcing the employee to be a committed and diligent supporter of the objectives of the employer.

This intervention includes training, counselling, verbal reprimands, written warnings serious or final written warnings.

Salamon (1992:592) defines formal discipline as “action taken by management against an individual or group who has failed to conform to the rules established by management within the organisation.” He further states that disciplinary action is usually initiated by management in response to unacceptable behaviour on the part of employees.

1.6.2 Corruption

This concept refers to the abuse of public power for private or personal gain. The public service anti-corruption strategy defines corruption as any conduct or behaviour in relation to persons entrusted with responsibility in public office which violates their duties as public officials and which is aimed at obtaining undue gratification of any kind for themselves or for others. Hanekom and Thornhill (1985:102-103) describe corruption as a kind of behaviour which deviates from the normal duties of a public role because of private-regarding (family, close private clique)pecuniary or status gain or anything that violates rules against the exercise of certain types of private-regarding influence.

1.6.3 Fraud

Fraud is the deliberate misrepresentation which causes another person to suffer damages, usually monetary losses. Grogan (2007:305) defines fraud as the “unlawful making, with intent to defraud, of a misrepresentation which causes actual prejudice or which is potentially prejudicial to another.”

1.6.4 Absenteeism

This is the habitual failure to appear, especially for work or other regular duty. Grogan (2007:291-292) defines absenteeism as the complete physical absence of employees from the workplace. Grogan further states that it can also occur if the employees are at the workplace but not at their actual workstations.

1.6.5 Senior manager

Senior managerial employee means an employee who has the authority to hire, discipline and dismiss employees and to represent the employer internally and externally (Du Plessis , Fouché and Van Wyk, 2002:35).

1.6.6 Conflict

Pondy (1967:298) defines conflict as antecedent conditions of conflicting behaviour, that is, scarcity of sources, policy differences. While Thomas (1976:891) defines conflict as the process which begins when one party perceives that the other has frustrated, or is about to frustrate some concern of his.

1.7 RESEARCH DESIGN

1.7.1 Choice and Rationale

Imenda and Muyangwa (2000:13) define research design as one's overall research approach and justification of the use of such an approach with regards to the problem under investigations. A qualitative research design will be utilized for this research. The purpose of conducting this study is to establish the causes of ill-discipline and what impact ill-discipline has on service delivery as well as the role of line managers as far as management of discipline is concerned. Qualitative design will be used because it is used in exploratory research. This method is associated with methods which are open, flexible and not strictly systemised. It focuses on the world of experience and feelings as seen from the participant's point of view.

1.8 RESEARCH METHODOLOGY

1.8.1 Study Area

The study will be conducted in the Department of Justice and Constitutional Development, Limpopo Province. There are six clusters in Limpopo: Tzaneen, Thabamopo, Malamulele, Polokwane, Thohoyandou and Modimolle. Malamulele cluster was selected for this study. This cluster comprises seven courts, which are Malamulele, Sekgosese, Bolobedu, Vuwani, Tshitale, Hlanganani, and Tiyani. Malamulele has a total number of 254 employees according to the staff

establishments and vacancy rate reports of the courts. Malamulele cluster is the only cluster that has Xitsonga, Tshivenda and Sepedi speaking officials.

1.8.2 Population

Population refers to the unit of analysis, which comprises individuals, groups of people, social artefacts or organisations with formal structures (Bliss & Higson-Smith, 1995:64). The population for this investigation is the officials of the Department of Justice, Malamulele cluster, administrative staff which consist of administration clerks, clerk of courts, interpreters, maintenance investigators, and court managers.

1.8.3 Sample Size and Selection Method

A research sample is a small group of subjects that possesses the main characteristics of the accessible population (Imenda and Muyandwa, 2000:118). Simple random sampling will be used because participants should get equal opportunity to be selected. A list of all officials in all Malamulele cluster will be obtained, numbers will be assigned to official and names will be put in a box for the selection to take place. A total of sixty (60) participants will be selected.

1.8.4 Data Collection Method

Fraenkel and Walen (1990:89) refer to the term 'data' as the kind of information that researchers obtain on subjects of the research. Questionnaires will be used to collect data for this research. Acknowledging that at the courts there are some officials who cannot write, structured interview and structured questionnaires methods will be used to obtain information from officials because there is completeness i.e. the interviewer can make sure that all questions are answered, and it has reliable and much better response rate than emailed questionnaire.

1.8.5 Data Analysis

According to De Vos (2002:339-340), this is the process of bringing order, structure and meaning to the mass of collected data. The process of data analysis and interpretation can be tedious, time consuming and necessarily interactive (Gay & Airasian, 2000:244) . The researcher will familiarize herself with the data and identify main themes in it, examine the data in-depth to provide detailed descriptions of the

setting, participants and activities, categorize and code pieces of data and physically grouping them into themes, interpret and synthesize the organized data into general conclusions or understandings. The data will be organized into categories analyzed, using a method described by (Cresswell, 2003).The transcribed interviews will be read to get a sense of the whole.

1.9 ETHICAL CONSIDERATIONS

This concept refers to a set of moral principles widely accepted to offer rules that promote correct conduct towards those directly and indirectly involved in the process of research (Strydom, 2002:63). In this study, the researcher will obtain permission from the Area Court Manager who is the cluster head of Malamulele. His permission will be transferred to the Court Managers to have access to their courts. Furthermore, permission to interview and distribute interview questionnaires will be obtained from the individual respondents. The purpose of the work will be explained clearly and the importance of their participation to the study will be explained to them. The respondents will be assured of confidentiality and anonymity. Voluntary participation will also be encouraged.

1.10 OUTLINE OF RESEARCH REPORT

Chapter 1: Background of the study

This chapter will introduce the study and provide background information. It will also focus on statement of the problem, aim of the study, research questions, objectives of the research, research design and research methodology.

Chapter 2: Literature Review

This chapter will present the background of study, discussions and the findings of local and international researchers.

Chapter 3: Research Design and Methodology.

In this chapter the research design, study area, population, sampling method, data collection, and ethical considerations will be discussed.

Chapter 4: Data Analysis and Presentation.

This will cover data analysis as well as the discussion and presentation of the research findings. The findings and analysis will provide answers to the problem statement and research questions raised in this study.

Chapter 5: Conclusion and Recommendations

This chapter will outline the summary of this research according to literature and empirical investigation conducted. Conclusion and recommendations concerning the research findings will be the focus of this chapter.

CHAPTER 2

LITERATURE REVIEW

2.1 INTRODUCTION AND BACKGROUND

Employers are entitled to satisfactory conduct and work performance from their employees. In order to achieve this, employers have the power to prescribe rules of conduct for the workplace and to take disciplinary steps against an employee who fails to observe such rules of conduct. However, if there is a workplace forum in the company or business, the employer must first consult and reach consensus with the workplace forum before implementing rules relating to the proper regulation of the workplace and disciplinary codes and procedures (Rossouw & Conradie, 1999:17). The function of discipline in the employment realms is to ensure that employees contribute effectively to the goals of the organisation. It is the employer's right to ensure that his/her employees adhere to reasonable standards of efficiency and conduct that contribute positively to the organisation. It is notable that the purpose of discipline under modern labour law is regarded as a corrective rather than punitive measure aiming to destroy than building labour characteristics. It is only when the courts are convinced that the actions of an employee are such that they have rendered the continuation of the employment relationship impossible or undesirable, or the organisation is in a position where it cannot reasonably be expected to continue employing an employee, will termination of employment be accepted. An example could be an employee employed by the Department of Home Affairs who commits fraud to issue fraudulent passports. Grossett (2002:21) further argues that it is in the interest of the employee to conduct himself/herself generally in accordance with the accepted practice and policy of the employer, as an employee who commits breach of contract and may be summarily dismissed by the employer upon legal disciplinary procedures.

Du Plessis , Fouché and Van Wyk (2002:16) and Grossett (2002) agree that the duties of the employees are to make his or her services available, to obey the employer, to be subordinate to the employer, to maintain bona fides, to exercise reasonable care when using the employers property and to refrain from any form of misconduct. Industrial Relations theory uses the term “employer” or “employer representative” as against “employee” and “employee representative”. While the

word employee is an accurate description of the party involved, the use of the word employer may be misleading in modern circumstances because very few modern business undertakings are owned and managed by a single employer/owner. Generally, they are either private or public companies owned by shareholders, headed by a board of directors and run by a management team. The shareholders are the actual employers but, since they take no active part in the day-to-day running of the company's affairs, they are rarely seen as such. Instead, the word management is now used synonymously with employer. This in itself is an anomaly as most managers are themselves employees. Nevertheless, those in positions of authority in an undertaking are seen by employees as representatives of the employer. They are the concrete manifestation of an unidentifiable group of shareholders, and it is towards and against them that their employees and their representative union will direct their requests and actions Bendix (1996:189). It is because of the above that the researcher found it necessary to also cover the evolution of labour relations in South Africa.

2.2 THE DEVELOPMENT OF EMPLOYMENT RELATIONS IN SOUTH AFRICA

The historical evolution of the country's employment relations system is usually shaped by that country's particular needs, while the employment relations system, in turn impacts on the country's historical evolution (Nel, Kirsten, Swanepoel, Erasmus and Poisat, 2008:75). This section discusses six eras of the evolution of the employment relations in South Africa.

The period 1652-1870

According to Finnemore and Van Rensburg (2000:25), since the first Dutch settlers arrived at the Cape, the need for labour has been a pressing issue, not only was the indigenous population subordinated to provide labour for the settlers, but in 1658 the Cape Colony participated directly in the East African and East Indies slave trade. Nel (2002:36) agrees by indicating that the importation of slaves and other workers (Indians and Chinese between approximately 1850 and 1910) consequently complicated the evolution of South Africa's industrial relations system. The natural increase in the country's population, the large numbers of freed slaves (slavery was abolished in 1834), and the expansion of the economy necessitated the formal regulation of employer-worker relations and gave rise to the Masters and Servants

Act of 1841. The Act was amended in 1856 to provide for harsh punishment of black servants who defaulted in their work. The Master and Servants Act governed the rules of work, particularly with regard to black employees. There were no collective labour relations or concerted attempts at organisation by workers. Some workers, such as those employed in the printing industry in the Cape, did show an interest in the establishing forms of collective representation, but these were random attempts, as were the occasional strikes which occurred before 1870 (Bendix, 1992:324).

The period 1870-1924

This period required urgent need for engineering and mining skills to extract the minerals gold and diamond which were discovered Nel (2002:37). The skilled workers needed most were artisans, and were mainly recruited from overseas, Europe and Australia. According to Fennimore and Van Rensburg (2000:26), many employers were paid high wages for skills which were scarce in South Africa. These artisans brought with them not only the knowledge and skills necessary for mining, but also British trade unionism, which provided them with a power base in the work environment when interacting with their employers.

After the discovery of diamonds and gold, many thousands of black workers were drawn into South Africa's industrialization process, but no formal trade unionism was recorded, and the employer-worker relationship was conducted mainly on an individual basis. Originally, black workers were not involved in the trade union struggle, but they soon realized that involvement in such a system could have distinct advantages. The first recorded strike among black mine workers took place in 1896 at the mines in Witwatersrand in reaction to a decision by mine managers to reduce wages. It was followed by more strikes after the Anglo-Boer war and by protest actions such as boycotts of the mines, desertion and non-co-operation. In 1911 the *Native Labour Regulation Act* No 15 of 1911 was passed making it a crime for blacks to leave their jobs and strikes were prohibited (Finnermore *et al.*, 2000:27). The *Black Labour Regulations Act* (No.15 of 1911) was promulgated as one of the first items of legislation designed to regulate black labour matters in the changed labour environment. This Act placed the recruitment and employment of black workers on a more satisfactory basis. Following the black mine workers strike of 1913, a number of improvements were introduced in the mine compounds where

black African employees lived, but protest actions continued. As prices rose in comparison to wages, dissatisfaction among black workers spread to other industries and led to the formation of in 1918 of the Industrial workers of Africa, generally believed to be the first union for Black workers (Bendix, 2010:61).

The period 1924-1956

The Smuts government passed the Industrial Conciliation Act (No.11 of 1924).The primary purpose of the Industrial Conciliation Act was to prevent industrial unrest by providing the machinery for collective bargaining and for conciliation in the event of dispute between the employers and employees (Bendix, 1992:328). Section 24 of the Act is of particular importance, since the term “employee” was defined as excluding a person whose contract of service or labour was regulated by any Black pass laws and regulations, or by the Black Labour Regulations Act (No.15 of 1911).

Bendix (1992:329) further states that although the Industrial Conciliation Act provided a very sound basis for the more orderly conduct of the labour relationship, no union representing Black African males could register under the Act, the exclusion had the effect that Black unions, not being allowed to register were also not allowed to join industrial councils or apply for conciliation boards and could not therefore institute legal strike action.

The period 1956-1979

During this period the Black Labour Relations Amendment Act was promulgated and sought to improve the position of black workers, particularly with regard to the machinery for negotiation. In terms of the Act, it became possible for many more Black workers to fill jobs previously held by White workers. By 1976 it had become obvious that the provisions of the Black Labour Relations Regulations Act of 1973 had not solved the problem of Black worker militancy. Also, South Africa ‘s major trading partners had, partly because of representations made to overseas bodies by local unions and partly because of the 1976 uprisings, become more aware of the position of Black workers. The threat of sanctions and disinvestment had increased and various codes of employment practice, the European Economic Community Code, the Sullivan Code and British Code of Employment Practise had been issued to multinational companies in South Africa. In 1977 the Wiehahn Commission was

appointed into Labour Legislation (Bendix, 1992:341). Excluding the chairman, twelve commissioners were appointed. The appointment of one Black, one Coloured and one Indian commissioner made the Wiehahn Commission the first multiracial commission ever to represent, at least symbolically, all four officially designated population groups in South Africa. The mandate of the Wiehahn Commission was to investigate the inadequacies of the existing labour legislative structures and propose possible remedies (Venter, Grossett and Hills, 2003:41).

The findings of the Commission were reported in six parts, the last report appearing sometime after legislation implementing previous recommendations had been passed. Part one of the report dealt mainly with the labour relationship and the then Industrial Conciliation Act. Many of the recommendations made were theoretically backed up or elaborated upon in Part V, which appeared much later. Part II of the report pertained mainly to training and manpower utilization, while Parts III and IV concerned themselves with job and social security, health and safety issues and conditions of employment (Bendix, 1992:341).

According to Fennimore *et al.* (2000:29) the recommendations of the Wiehahn Commission were:

- Granting freedom of association to all workers irrespective of race and status as migrants or commuters.
- Autonomy of unions in deciding membership criteria.
- Apprenticeships to be open to all races.
- Appointment of national manpower commission to serve as an on-going monitor and study group of the changing labour process.
- Restructuring of the previous Industrial Tribunal into an Industrial Court to adjudicate on disputes of rights or interests and to create a body of case law. Many of the recommendations of the Commission were accepted and implemented by the government, thus substantially changing South African labour legislation. By the time all the recommendations had been implemented, the *Industrial Conciliation Act*, later becoming the *Labour Relations Act*, had been subjected to significant amendments (Bendix, 1992:341).

The period 1979-1994

Fennimore *et al.* (2000:29) state that the government responded to the Wiehahn commission's recommendations with caution. In 1979 it introduced a number of amendments to the *Industrial Conciliation Act* which, while including Black employees for the first time, were seen by Black trade unions as more concerned with controls than reforms. In 1979, Black labour was permitted by the state to organize itself into trade unions for the first time. Although several million workers had subsequently become enfranchised in the labour relations system, they had not had parallel representation in the arena of national politics (Tustin & Gildenhuys, 2000:79).

As a result of the government's racially based policies, the international climate changed from friendly to hostile during this period, because it became increasingly clear that such policies were not acceptable to the rest of the world. Consequently, the government accepted that it had to pay attention to international condemnation by changing its employment relations policy and by implication its human resources policy in particular, in order to align itself with international principles (Nel, 2000:45).

The period 1994 onwards

The first fully democratic elections in April 1994 paved the way for the establishment of the Government of National Unity which was sworn in on May 1994. The Labour Minister's five-year plan emerged as the driving force behind the shaping of the employment relations environment and what followed was the roll out of a series of legislation changes. South Africa was formally restored to the international community with its readmission to the International Labour Organisation in June 1994. The promulgated *Labour Relations Act* (No. 66 of 1995) was one of the first fruits of the five-year plan. It was the first piece of post-apartheid labour legislation fully negotiated between the state, labour and business in National Economic Development and Labour Council in 1995. Public sector employment relations assumed a high profile in 1995, and this trend was to continue through to 2001. The Basic Conditions of Employment Act No 77 of 1997 was negotiated and became effective in 1998. The Employment Equity Act and the Skills Development Act were promulgated in 1998. The combination of Labour Relations Act, Basic Conditions of Employment Act, Employment Equity Act and Skills Development Act were seen as

the engine of social economic policy espoused by the ANC government (Finnemore, 2002:36). In August 2001 Cosatu federation staged the first national strike involving 1 million workers.

2.3 LABOUR RELATIONS IN THE PUBLIC HUMAN RESOURCE MANAGEMENT

The term “labour relations” refers to all aspects and matters connected with the relationship between employer and employee. It includes matters relating to negotiations in respect of remuneration and other conditions of employment, the prevention and settlement of disputes, the application, interpretation and effect of legislation and collective agreements, employers’ organisations, federations and industrial councils (Bezuidenhout, Garbers & Potgieter, 1998:4).

Slabbert (1987:5) sees labour relations as the establishment, development and maintenance of an acceptable, mutually advantageous interaction system between employers and employees under the protection of the state. According to Steele (1993:20) labour relations is the process of control dominating work relations. Through the institution of job regulation and the processes of control over work relations, attempts are made to ameliorate conflicts arising from interacting employers and employees. Labour relations involve employers and employees as parties to the relation and the state as regulating authority. Furthermore, the government and its institutions clearly fulfil the role of an employer and engage in labour relations. Characteristics of the relationship’s dynamic are its frequent linkage to conflict between employer and employee. Employer and employees are engaged in a power struggle. This conflict requires institutions and processes to be able to regulate power and conflict. In the public sector, labour relations are developed according to contextual variables from specific points of departure.

2.4 THE DEVELOPMENT AND NATURE OF THE PUBLIC SECTOR LABOUR RELATIONS

For many years, the Labour Relations Act of 1956 was the only statute which provided for and regulated collective bargaining in South Africa. The Act was primarily applicable to employers and employees in the private sector. Several groups of employees were excluded from the ambit of the Act inter alia, civil servants, school teachers, lecturers at universities, technikons and colleges, farm

labourers and domestic workers. It became necessary to introduce legislation to grant rights similar to those enjoyed under the Labour Relations Act of 1956 to the excluded groups of employees. This resulted in the enactment of the Public Service Labour Relations Act and the Education Labour Relations Acts (Du Plessis, Fouche and Van Wyk, 2002:383).

The public sector has traditionally been regarded as a unique employer. This has led to the adoption of labour relations policies in the public sector that differ from those of the private sector. This has restricted collective bargaining and the right to strike in the public sector. It is also significant that the service contract between the state as the employer and its employees contains elements regulated through the normal service contract, statutory provision and common law rules of administrative law. The employment and the motive for existence differ between public and private sector employers, particularly with regard to the profit motive or lack thereof. Employment is also differently approached as far as remuneration aspects and the right to strike are concerned. The Department of Public Service and Administration usually represents the state as an employer in the Public Service Coordinating Bargaining Council when negotiations take place with recognized unions (Nel et al., 2008:69).

2.5 LEGISLATION IMPACTING ON THE EMPLOYMENT RELATIONSHIP IN THE PUBLIC SERVICE

Eight legislative frameworks are discussed under this section namely, the *Constitution of the Republic of South Africa, 1996*, the *Labour Relations Act No 66 of 1995*, the *Basic Conditions of Employment Act No 75 of 1997*, the *Occupational Health and Safety Act of 1993*, the *Compensation of Occupational Injuries and Diseases Act No 130 of 1993*, the *Public Service Act 103 of 1994*, the *Public Finance Management Act No 1 of 1999* and the *Employment Equity Act No 55 of 1998*.

2.5.1 The *Constitution of Republic South Africa, 1996*

The *Constitution of the Republic of South Africa, 1996* is not the first constitution that South Africa has had. The main difference in terms of the other constitutions is the supremacy of the present Constitution and also the fact that it was drawn up by a democratically elected body. (Fennimore *et al.*, 2000:250). It is the supreme law of the country and all other legislations are derived from it. Since the Constitution is

such an important document, specific procedures have been laid down in terms of which amendments may be effected. Most democratic countries make use of referendums to obtain the public's approval for amendments. The governing party, which constitutes the government of the day does not in fact have mastery over the Constitution, but is merely its servants. The government must therefore respect the provisions and guide-lines of the constitution (Van Der Waldt & Helmbod, 1995:26).

Rossouw (2004:12) and Van der Waldt (1995:26) state that like all other legislations in South Africa, labour frameworks originate from the Constitution. It should be kept in mind that the Constitution of South Africa is the supreme law of the country. Rossouw (2004:12) further states that the basic prominent labour rights are stipulated in Section 23. In summary, Section 23 stipulates the following labour rights:

The right to strike: the right of employees to form or join a union, and to participate in its activities; the right of employers to form or join employer's organisations and participate in its activities; the right of unions and employers organisations to organize form and join a federation and the right of unions and employers organisations to engage in collective bargaining. Most employers respect the rights of employees as enshrined in the Constitution for example, the right to strike because if employees are not satisfied and they have exhausted all the avenues they do strike but they must ensure that their strike is a protected one and the principle of no work no salary applies. Collective bargaining do take place especially in the public sector, hence there are lot of resolutions for example Resolution 1 Of 2003, the disciplinary code and procedures for the public service.

2.5.2 The *Labour Relations Act* (Act No. 66 of 1995)

The aim of the Labour Relations Act is to advance economic development, social justice, labour peace and democracy in the workplace. The Labour Relation Act has the following objectives directly related to workplace discipline: to realize and regulate the fundamental rights of workers and employers in the Constitution (Section 23); to provide a framework for trade unions and employees, and employers and their organisations to bargain collectively on terms and conditions of employment, wages and other matters of mutual interest and to formulate industrial policy and to promote orderly collective bargaining, employee participation in

decision making in the workplace and the effective resolution of labour disputes (Nel *et. al.* 2002:58). Bezuidenhout *et al.* (1998:44) further state that the Act tries to protect the individual employees against unfair conduct during all the stages of the employment process - during application for a job, the period of employment as well as termination of employment.

2.5.3 The *Basic Conditions of Employment Act* (Act No. 75 of 1997)

The Act was promulgated after intense negotiations in Nedlac. The aim of the Act is to spell out clearly the basic terms and conditions on which individuals must be employed so that the individual employer can enter into an employment agreement without fear of violating the common law rights of his employees (de Villiers, 1989:29). The purpose of this Act is to advance economic development and social justice by establishing and enforcing basic conditions of employment. The Act applies to all employees and employers except members of the South African Defence Force, National Intelligence Agency, South African Secret Service and unpaid charitable workers. The Act covers details such as working time, leave, termination of employment and administrative obligations (Nel, Swanepoel, Erasmus, Tsabadi, & Katz, 2002:88).

Du Plessis, Fouche & Van Wyk (2002:33) states that the purpose of the Act is to advance economic development and social justice by ensuring that working conditions of unorganised and vulnerable workers meet minimum standards that are socially acceptable and by removing rigidities and inefficiencies from the regulation of minimum employment conditions by the promotion of flexibility.

2.5.4 The *Occupational Health and Safety Act* of 1993

This Act provides for the health and safety of persons at work and for the health and safety of persons in connection with the use of plant and machinery. Section 12 of the Act stipulates the general duties of employers and Section 14 stipulates the general duties of employees. Du Plessis *et al.* (2002:169) state that the duties of the employee as far as the Act is concerned is to take reasonable care for the and safety of himself and other workers, co-operate with the employer or other designated person with regard to health and safety matters, obey the health and safety rules and procedures laid down by the employer, report any unsafe or unhealthy situation or

any incident which may affect his health or safety to the employer or health and safety representative.

2.5.5 The *Compensation of Occupational Injuries and Diseases Act 130 of 1993*

The Act is intended to enable compensation to workmen who earn less than the amount determined by the fund from time to time (or their dependants) to be made from an established accident fund, administered by a special commission, against loss of earnings because of workplace accidents. It is a form of insurance against accidents and implies an insurance relationship (contract) between the commissioner and the workman and his dependants. The compensation is given only for actual injury, disablement or death and no provision is made for compensation for pain, suffering or shock (de Villiers, 1989:66).

Because compensation is given to employees who were injured while on duty it is sometimes difficult to prove or ascertain if an employee was acting in the context of employment. For example, is the employee still acting in the course of employment using an elevator when leaving the employers premises after a day's work? In *Rauff v Standard Bank Properties* it was held that the place (namely, on or of the premises of the employer) where the accident occurred, is not the determining factor, but rather whether the employee was in the course of going about what the employer expected of him or her to do in the capacity as an employee. The court further held that using an elevator when leaving after work is an action outside the contract of employment which is not covered by OHSA.

2.5.6 The *Public Service Act 103 of 1994*

The *Public Service Act 103 of 1994* provides for an overarching structure, organisation and administration of the public service on national and provincial levels, the regulation of conditions of employment terms of office, discipline, retirement and discharge of members of the public service. The Act regulates a variety of aspects pertaining to the functioning of the public service as a whole (Van Jaarsveld & van Eck, 2005:134). It is further argued that It should be noted, that the powers regarding the internal organisation of an office or department still remain with the relevant executing authority, namely ministers in relation to their national

departments and premiers in relation to their provinces. The Public Service Act specifically provides for appointment, promotions and transfers, unlike other legislations such as the Basic Conditions of Employment Act and the Labour Relations Act that are silent on these issues. In making appointments, equality, other democratic values and principles enshrined in the Constitution must be considered (du Plessis *et al.*, 2006:380).

2.5.7 The Public Finance Management Act No 1 of 1999

The Public Finance Management Act ensures that all revenue, expenditure, assets and liabilities of government are managed efficiently and effectively, and to provide for the responsibilities of persons entrusted with financial management in the government. Chapter 10 of the Act clearly indicates what the financial misconducts are and how they should be dealt with.

2.5.8 The Employment Equity Act 55 of 1998

The purpose of the Employment Equity Act is to achieve equality in the workplace by promoting equal opportunities and fair treatment in employment through the elimination of unfair discrimination and by implementing affirmative action measures. These measures are aimed at redressing the disadvantages in employment experienced by designated groups, in order to ensure equitable representation in all occupational categories and levels in the workforce. Designated groups means Black people, women, and people with disabilities (Venter, 2003:209-210)

2.6 THE ROLE OF DISCIPLINE IN A WORKING ENVIRONMENT

The role of discipline in the employment context is to ensure that individual employees contribute effectively and efficiently to the goals of the common enterprise. Production and the provision of services would be impeded if employees were free to stay away from work when they please, to work at their own pace, to fight with their fellow employees, or to disobey their employers' instructions (Grogan, 2009:130). In the Department of Justice and Constitutional Development there are service standards which officials are expected to achieve, for example in the domestic violence section a client will not spend more than 2 hours in the queue before being attended to, interim order will be issued within a day granted and final protection order will be granted within sixty working days after the date of the issuing

of the interim protection order, while in the maintenance services a customer will not spend more than two hours in the queue before being attended to. Therefore, officials have to be disciplined in order for them to achieve the said standards.

2.6.1 Responsibility for discipline

There is a school of thought amongst certain academics and business leaders that disciplinary action is the responsibility of a committee that comprises employee and management representatives, implying that authority is not vested in management only. The Labour Relations Act, 1995 is not specific in this regard. It only refers to “any person” who needs to decide if a dismissal will be fair or not (Swanepoel *et al.*, 1999:206). Resolution 1 of 2003 of the Public Service Co-ordinating Bargaining Council states that discipline is a management function, but in fact it is not the case. In the department of Justice and Constitutional Development, cases are referred by managers to the regional office for investigation and instituting disciplinary measures.

It is further argued that the traditional philosophy is, however, practised by the majority of companies, which hold that discipline is a management prerogative (Swanepoel *et al.*, 1999). According to Bendix (2000:220), the disciplinary procedure authorises certain persons to take certain forms of disciplinary action. Warnings are usually the responsibility of the immediate supervisor while hearings pending dismissal are undertaken by senior managers. Bendix (2010:315) further stresses that the non-administrative content of personnel management is not the function solely of the industrial relations or human resources management department. Appointees in human resources departments perform merely the role of advisers, facilitators and co-ordinators because in the final analysis, it is the function of line management to manage, motivate and satisfy those who work under them. While Bezuidenhout, Garbers, & Potgieter (1998:196) argue that the rights of managers to discipline and discharge employees are increasingly limited because there is a great need for managers at all levels to understand disciplinary matters and procedures. Disciplinary action taken against an employee must be for justifiable reasons and there must be effective policies and procedures to govern its use. Grogan (2000:91) states that the employee’s duty to obey rules lies at the heart of employment

relationship. Obedience implies discipline, discipline implies rules, and rules, to be effective, imply the power to impose sanctions on those who do not abide by them.

2.6.2 Employment relations and training

Employment relations and training are necessary for the successful implementation of the various employment relations policies and procedures. The appropriate levels of management and supervisors, as well as employee representatives, should receive skills training in the application of policies. In a unionized environment, management should also afford union representatives the opportunity to attend training programmes conducted by the union (Swanepoel *et al.*, 1999:52).

2.7 APPROACHES TO DISCIPLINE

Many employees regard discipline as a negative and threatening instrument in the hands of management. However, it must be explained that discipline has a positive side and that it can support morale, decrease labour turnover and create a more satisfied and efficient workforce in general. If the process of corrective discipline is properly applied, it may contribute to the achievement of organisational objectives by ensuring the co-operation of employees. According to Ehlers (2004:161) there are two approaches to discipline namely, negative and positive approach to discipline.

2.7.1 The negative approach

As far as this approach is concerned, discipline is mainly regarded as a method to punish employees. Employers adopting this approach will therefore often act on half-truth and take arbitrary decisions regarding discipline and dismissals. An attempt is therefore not made to act in a preventative or rehabilitating way or to obtain the co-operation of employees. This approach creates tension and will almost always cultivate industrial unrest. It is argued that this approach is indeed negative since the intention of discipline is to correct rather than punish, and with this approach because the employer is not willing to rehabilitate, it means employees will be dismissed even for minor misconducts, for example dismissing an administration clerk who absented himself or herself for one day without even offering him or her the opportunity to tell his side of the story. In South Africa, this kind of approach is likely to be utilized at the organisations where unions do not exist, where there is no

disciplinary code and where the employers or employees are not cognizant of labour laws.

2.7.2 The positive approach

Positive discipline starts with the job advertisement and continues through the relationship. It requires the creation of a climate in which employees accept the leadership of management and supervisors in a positive manner. Workers are motivated to obey the rules of the undertaking, since they understand the rules and accept the role of management and supervisors. The risk of industrial unrest is therefore reduced. In South Africa employers have code of conducts, for example the Code of Conduct for the Public Service which all public officials have to comply with. The code must be brought to the attention of the officer during the appointment phase and the employee must acknowledge receipt. The code will then guide the employee as to how to conduct himself. It will also assist the employer should the employee misconduct himself or herself because the employee would have known the rule.

2.8 THE PURPOSE OF DISCIPLINARY ACTION

Bezuidenhout *et al.* (1998:196) argue that disciplinary action taken against an employee must be for justifiable reasons, and there must be effective policies and procedures to govern its use. Such policies and procedures serve to assist those responsible for taking disciplinary action and will help to ensure that employees will receive fair and constructive treatment in the process conducted.

The purposes of discipline process are as follows:

- To create order. The organisation or work requires rules and conformity in order to function successfully. For instance, at organisational level in a hospital it is an accepted practice that all staff working in theatre wear protective theatre clothing to protect both the patients and themselves.
- To make employees aware of what is acceptable or unacceptable behaviour in the workplace. In so doing they learn to avoid problems and create security for themselves.

- To motivate the employee, who is able to behave in an acceptable manner but refrains from doing so in order to conform to standards set for behaviour and performance.

Only if and when there is no doubt that an employee cannot or will not change his or her unacceptable behaviour then serious disciplinary actions are appropriate in order to save the organisation from disorder (Barker, 1996:1).

2.9 FACTORS TO BE CONSIDERED IN APPLYING DISCIPLINE AND IMPLEMENTING AN APPROPRIATE PENALTY

There are basically three factors to be considered in applying discipline and implementing suitable penalty namely, the nature and seriousness of the infringement, circumstances of the employee and the nature of the job.

2.9.1 The nature and seriousness of the infringement

According to Rossouw & Conradie (1999:250), the Code of Good Practice suggests that dismissal for a first offence is inappropriate unless the misconduct is of such a serious nature that it makes the continued employment relationship impossible, for example dismissing the switchboard operator for answering one call incorrectly, that does not make the continued employment relationship impossible, unlike an officer who commits fraud. Dismissal can be justified for the first offence because the employer will no longer trust such an employee.

2.9.2 The circumstances of the employee

The following factors should be taken into account when ascertaining the circumstances of the employee, personal circumstances, and length of service with the employer and previous disciplinary record. Grogan (2007:285) argues that an employee's disciplinary record may be taken into account when considering whether the employee should be dismissed for a particular offence. It is argued that the mitigating factors can be aggravating factors for the employer when imposing a penalty or a sanction. For example, if an employee working as a stationery clerk was caught stealing one pen and she or he has been with the organisation for 10 years the employer might argue that it is possible that for the 10 years he or she worked at the organisation he or she had stolen many pen because in labour

relations a case is proved on the balance of probability not beyond reasonable doubts. The circumstances of the employee must be taken into account, for example an employee who resorts to drinking because he lost a family member. In any nature of things, a dismissal will affect employees in different ways. Employees of more advanced years may have greater difficulty obtaining other employment, and they may lose their right to their pensions. Dismissal of employees with dependants affects a greater number of people than the dismissal of young, unattached employees. The loss of status resulting from dismissal for misconduct may affect professional employees more than menial workers (Grogan, 2007:290).

2.9.3 The nature of the job

Each employee has his or her own abilities, capacities and level of training. In addition, different jobs place different demands as well as different levels of responsibility on the employee. An employee who occupies a position of trust in a workplace and who is guilty of dishonesty will be dealt with more harshly than another employee. Although Grogan (2009:208-209) agrees with Rossow and Conradie that the circumstances surrounding the commission of the offence, the employee's past disciplinary record and length of service should be considered, he states that a clean disciplinary record and long service will not always help employees. In a case involving De Beers Consolidated Mines (Pty) Ltd v Commission for Conciliation, Mediation & others, the Labour Appeal Court went so far as to say that these factors are not really mitigating circumstances at all in the sense in which a clean record in the employment context, said the court, is the extent to which it indicates that the employee is likely to repeat the offence. Whereas in De Beers, the employees concerned had shown no remorse and had, by their conduct, done nothing to show that they would not repeat their acts of dishonesty, there was no reason why the employer should have shown leniency.

Ehlers (2004:164) argues that the circumstances of the employer must also be considered to ensure fairness. For example:

- Did the employer suffer losses due to the employee's behaviour? There are misconducts where an employer also suffers a loss in the department, for example loss of records, if a DCRS clerk in court does not record the court proceedings and the convicted person appeals, records will be required to

start the process of appeal. If the records cannot be provided then the convicted person can sue the department. Such a misconduct may result in the employer suffering a loss and it can be avoided should the DCRS ensure that she or he record the court proceedings.

- Can an employer in fairness be expected to continue in an intolerable service relationship? Some officials come to work late and that affects service delivery, supervisors of those officials will issue warnings, but if the conduct continues it can reach a point whereby an employer cannot tolerate the behaviour anymore.
- Has the trust relationship inherent to the service relationship been damaged to such an extent that the parties cannot continue with the relationship? In the Department of Justice there are officials who steal state monies or monies in trust like bail money. If such employees are not dismissed during the disciplinary hearing it will be difficult to trust them; the trust would have been broken.

2.10 DISCIPLINARY POLICY

Bezuidenhout, Garbers, & Potgieter (1998:199) point out that the objective in developing a disciplinary policy is to set the organisational climate in which disciplinary matters are dealt with. It provides managers and supervisors with clear guidelines as to the organisation's expectations of them regarding the handling of discipline. It may be a separate policy document or incorporated into the preamble of the disciplinary procedure. It is further advised that when devising a disciplinary policy the management needs to consider the objective of the disciplinary process and the role expected from the managers.

Dewar (1991:52) and Bezuidenhout *et al.* (1998:199) contend that the primary objective of the disciplinary policy is to initiate corrective action where work performance is unsatisfactory or employee behaviour is unacceptable. (Bendix 2000:180) argues that it is the duty of the labour relations practitioner to initiate and draft the labour relations policy and sub policies. This is usually done in consultation with senior management and in some cases employee representatives. The wider the consensus, the greater the possibility of effective implementation. Gill (1974:28)

goes on to say that “The overriding objective of any industrial relations policy must be to assist management to establish an ordered and consistent framework for the conduct of industrial relations within the enterprise. This means a formulation of principles or settled rules of action to which operating management is subjected to.

A policy statement on disciplinary matters could include the following principles underlying the disciplinary action:

- Management has the right to take disciplinary action against employees.
- The disciplinary procedure and the code of conduct form part of the organisation’s contract of service and are applicable to all employees.
- Employees are required to follow institutional rules and working procedures.
- The application of disciplinary action is the responsibility of line management and is delegated downward to the first level of management.
- It is management’s intention to correct employee’s behaviour through informal counselling and corrective measures instead of punishment.
- Management will apply the formal disciplinary process only when informal counselling has been unsuccessful, or the action of the employee is such that counselling is inappropriate.
- Disciplinary matters will be handled without bias
- No employee will be formally disciplined without a fair hearing and the opportunity to state his or her case.
- Management will seek to act fairly and consistently when administering discipline.
- Where a majority representative trade union is present, the whole disciplinary process is usually negotiated with the trade union. In the Department of Justice officials are expected to comply with the code of conduct for the public service and should they not comply then action is taken. The department complies with all the principles because discipline is managed according to the resolution 1 of 2003 the disciplinary code and procedures. Officials are

issued with verbal and written warnings for less serious matters such as late coming, while those who committed serious misconduct undergo a disciplinary hearing.

2.10.1 THE DISCIPLINARY PROCESS

The disciplinary process consists of rules and regulations, disciplinary codes and disciplinary procedures. Disciplinary rules and procedures are necessary for promoting fairness and order in the treatment of individuals and in the conduct of industrial relations. It is argued that the rules and procedures assist an organisation to operate effectively because rules set standards of conduct at work, while procedures help to ensure that the standards are adhered to and also provide a fair method of dealing with alleged failures to observe them. The process is simplified as follows:

The availability of the rules or Code of Conduct, The misconduct, Preliminary investigation, Notification and Attendance of the hearing.

2.10.1.1 Organisational Rules, Regulations or Code of Conduct

According to common law, the employee has duty to obey lawful and reasonable instructions “and a duty to refrain from misconduct”, thus incorporating rules, regulations and codes of conduct. The setting of organisational rules is the foundation for an effective disciplinary system. The rules govern the type of behaviour and performance expected from employees (Bezuidenhout *et al.*, 1998:200-201).

Guidelines in applying organisational rules are as follows:

- Rules should be widely disseminated and known to all employees. This may be best achieved by giving every employee a copy of the rules and by explaining them orally.
- The reasons for a rule should always be explained.
- Rules should always be in a written format.
- Rules must be reasonable and relate to the safe and efficient operation of the organisation.

- If management has been lax in the enforcement of a rule, the rule must be restated along with the consequences of its violation before disciplinary action can begin.
- Employees should also be made aware of the likely consequences of breaking rules, and in particular, they should be given a clear indication of the type of conduct which may warrant dismissal or even summary dismissal (Sherman, Bohlander & Snell, 1996:586).

It is important that when management determines the reasons for unsatisfactory behaviour, they must firstly keep in mind that employee may not be aware of certain rules. Secondly, aspects that are important in this regard are: did the employee know about the rule and, has the rule been consistently applied in the organisation?

2.10.1.2 The disciplinary code

A disciplinary code applies to a breach of established regulations or practices, or negligence within the individual's control. Guidelines for the application of disciplinary sanctions are normally found in a disciplinary code. A disciplinary code specifies which forms of employee behaviour the employer regards as misconduct. It further shows the type of disciplinary sanction the employer can apply in the case of an employee breaching the disciplinary code. According to Basson *et al.* (2006:112), a disciplinary code may take the form of a collective agreement between the employer and a trade union or unions; it may be a unilaterally imposed policy by the employer, or it may be incorporated into employees' terms and conditions of employment.

Table 1: An example of disciplinary code

| TRANSGRESSION | FIRST OFFENCE | SECOND OFFENCE |
|------------------------------|---------------------------------|-----------------------|
| Assault | Final written warning | Dismissal |
| Absence without leave | Written warning and counselling | Dismissal |
| Fraud | Dismissal | Dismissal |
| Theft of state monies | Dismissal | |
| Misuse of government vehicle | Final written warning | Dismissal |
| Failure to submit reports | Written warning | Final written warning |

Bendix (2000:200) states that absenteeism is one of the most prevalent and worrisome problems in South African organisations. A high absenteeism rate reduces productivity and impacts negatively on the morale of both supervisors and co-employees. It is therefore essential to monitor absenteeism and to take steps to reduce its occurrence.

2.10.1.3 The Interpretation of Disciplinary Codes

Different opinions exist about the manner in which disciplinary codes must be interpreted. In a number of instances the courts have interpreted codes in the same way as contracts. The employer was therefore usually held to the terms of the code. However, the courts were prepared to interfere where the employer's standard of industrial justice (in the disciplinary code) fell short of the standard which the courts thought should have applied under the circumstances (Basson *et al.*, 2006:113).

2.11 DISCIPLINARY PROCEDURE

According to Bendix (2001:252) disciplinary procedure is not intended merely to ensure that employees are properly disciplined. The use of a disciplinary procedure ensures that all employees are treated in the same manner, that an employee is not disciplined or dismissed at the whim of a supervisor or manager. The code of Good Practice: Dismissal specifically provides that formal procedures do not have to be invoked every time a rule is broken or a standard is not met. Bezuidenhout *et al.* (1998:207) argue that the purpose of the disciplinary procedure is to provide an acceptable mechanism with which management may exercise its control over employees when their performance or behaviour does not reach the required standards. Procedures also ensure that disciplinary action taken will be consistent, uniform and reasonable, by providing guidelines for supervisors and managers to use and apply at their discretion. In terms of the LRA, the employer must act fairly. If a dismissal is procedurally or substantively unfair, the employer runs the risk of having the decision overruled by the Labour Court. In this event, not only will the employer face substantial legal expenses, but will probably have to compensate the employee as well.

2.11.1 Procedural Fairness

Disciplinary procedures should follow a prescribed course of action rather than vary from day to day and from supervisor to supervisor. The following aspects are therefore essential in ensuring procedural fairness. According to Bezuidenhout *et al.* (1998:207-2010) an employee is entitled to the following:

- Prior knowledge of rules and regulations, the disciplinary code or code of conduct.
- Prior notification of the inquiry and a timeous hearing.
- Sufficient time to prepare (at least 24 hours).
- Written notification of allegations or charges.
- Put his or her case to an impartial chairperson.
- A representative of his or her choice from within the organisation.
- The right to an interpreter.
- The right to bring and question witnesses.
- The right to hear evidence and to respond to the allegations.

Basson *et al.*, (2006:126-129) listed the following as elements of procedural fairness, namely:

Investigation: Notice of the charge and the investigation, reasonable time to prepare a response, employee entitled to state a case in response, the employee is entitled to assistance, the decision, communicating the decision, The employee must be informed of the reason for dismissal, appeal and dispensing with pre-dismissal procedures.

2.11.2 Substantive fairness

Substantive fairness is concerned with the reasons for and the sufficiency of the disciplinary action imposed on an employee. The underlying principle of substantive fairness is that the employee is actually guilty of misconduct and that the sanction meted out to the employee must be commensurate with his or her misconduct.

Item 7 of the Code of Good Practice in the LRA stipulates the following guidelines in determining the substantive fairness of a dismissal for misconduct:

- Did the employee contravene a rule?
- Does a rule which regulates conduct in, or of relevance to, the workplace exist?
- Was the employee aware, or could he or she reasonably be expected to have been aware, of the rule?
- Has the rule been applied consistently by the employer?
- Is dismissal the appropriate sanction for the contravention of the rule?

According to Grossett (1995:13), substantive fairness relates to the underlying reason for the disciplinary action, and has two elements that must be satisfied, namely validity and sufficiency.

Validity

This implies that there must be a valid reason for discipline. The employer must provide sufficient proof that the employee has committed the alleged misconduct. The onus is therefore on the employer to prove (on the balance of probability) the guilt of the employee. Validity implies that the employer's reasons for treating the employee's actions as misconduct must be lawful. The employee must not have acted under duress, coercion or intimidation in committing the acts charged (Bezuidenhout *et al.*, 1998:212).

Sufficiency

The misconduct must be sufficiently serious to warrant the disciplinary action meted out. The general principle is that the offence and its punishment must be directly commensurate. In order to determine what discipline is considered sufficient, the individual circumstances of each case must be taken into consideration with regard to the general practice within that industry.

Disciplinary action will, in all likelihood, be regarded as substantively unfair in any or the following cases:

The sanction is too severe for the offence committed, The disciplined employee was unaware of the rule broken by him or her. The sanction imposed on the employee is inconsistent with the treatment of other employees who committed the same or similar offence, In deciding on the sanction, no account was taken of mitigating factors, such as the previous record of the employee and there was insufficient proof of misconduct (Grossett, 1995 13-14).

2.12 DISCIPLINARY HEARING OR INQUIRY

The prime purpose of procedural fairness is to ensure that the employer ascertains the correct and relevant facts prior to making a decision about the guilt of the employee who is alleged to have committed a disciplinary offence. A hearing into the allegations provides the employee with an opportunity to state his or her case and for the employer to make a considered decision concerning the disciplinary sanction to be imposed. Grossett (1995:27) states that, as a general rule, management is compelled to hold a hearing when an employee is given any form of written warning, ranging from the first to a final warning.

Bruniquel and Associates (1993:25) indicate that in most organisations a disciplinary inquiry is triggered when either a serious breach of rules has occurred or there has been accumulation of minor transgressions. Grossett (1995:38) emphasizes the importance of distinguishing between non-attendance and late arrival for hearing. To accommodate late arrival, a leeway of 30-45 minutes before the start of the proceedings is generally regarded as sufficient. If the employee fails to attend a hearing or notifies management that he will not be attending the hearing without a valid excuse, the general rule is that the employer may not simply dispense with the hearing and dismiss the employee.

If management has notified the employee that he is being charged with a particular offence and that he is required to attend a hearing or he may give no indication of his intentions but then not arriving to answer the charges, management maybe faced with one of the situations: either the employee may notify management that he will not attend the disciplinary hearing or he may give no indication of his intention but then simply not arrive (Bezuidenhout *et al.*, 1998:231). On discovering that the employee will not be attending the hearing management may continue with the hearing in the absence of the employee, where after a summary of the evidence

presented at the hearing would be sent to the employee for comment, before a finding is made.

2.13 FORMS OF DISCIPLINARY ACTION

Bezuidenhout *et al.* (1998:216) argues that there are four types of warnings namely oral reprimands, verbal warnings, written warnings and final written warnings.

2.13.1 Oral reprimands

An oral reprimand seldom constitutes a formal warning. Oral reprimands generally constitute a preliminary phase to disciplinary action and are aimed at informing the employee about required standards of performance and correcting minor instances of misconduct, rather than serving as a formal warning. Usually it is accompanied with counselling and guidance by the supervisor.

2.13.2 Verbal Warnings

Verbal warnings are issued with regard to minor infractions as the first step in progressive discipline. This is considered the lightest form of disciplinary action and it is generally valid for a maximum of six months.

2.13.3 Written warnings

Written warnings are issued for more serious infractions, or in the event of previous oral reprimands or verbal warnings, if the warnings have failed to achieve the desired effect. A written warning is a documented record of a reprimand. A copy of such a written warning should be filed in the employee's personal file. Full details of the transgression should be recorded together with any relevant previous warnings. The original of the complaint form must be given to the employee. If he or she refuses to accept the action, witnesses must confirm that they were present when it was handed to him or her.

2.13.4 Final written warnings

Persistent misconduct or more serious isolated misconduct may expose an employee to a final written warning as a penultimate step prior to dismissal. Even though Levy *et al.*, (2009:295) argues that there are three types of warnings which are verbal, written and final written warning. They concur that warnings are usually

graded and matched to the circumstances, a less severe warning being used in a less serious act of misconduct. They further states that in certain limited circumstances warnings for different offences are cumulative, in that a warning given for one offence can also be valid for certain other offences however our courts have not approved this approach.

Grogan (2009:136) concurs with Bezuidenhout, Garbers & Potgieter (1998:218) pointing out that final written warnings are the last warning an employee can expect before dismissal. He further states that their purpose is to give employees a final chance to correct their behaviour. He also warns that final written warnings should not be issued lightly or prematurely. To relent later might break the logic of the disciplinary system.

It should be noted that many disciplinary codes provide that written and final written warnings remain in force for a specific period; usually six months. The courts have endorsed this period, the rationale being that offences of employees should not be held against them in perpetuity. Whether this means that a lapsed warning cannot be taken into account when considering the appropriate penalty for a later offence is uncertain. In *Shoprite Checkers (Pty) Ltd v Ramdaw NO & others*, the Labour Court held that the fact that a person no longer has a final warning hanging over his head no more extinguishes prior misconduct than the lapsing of a suspended prison sentence extinguishes the conviction from a person's criminal record. However, relying on lapsed disciplinary warnings is impermissible if the applicable code provides that the employer may not do so. That was the case in *NUMSA & others v Atlantis Forge (Pty) Ltd*.

2.14 OTHER FORMS OF DISCIPLINARY ACTIONS

Bezuidenhout, Garber & Potgieter (1998:218) notes other forms of disciplinary actions as being suspension, demotion, transfer and dismissal.

2.14.1 Suspension

Suspension means that an employee is not permitted to be at the workplace for a stipulated period of time. There are two types of suspensions: suspension with full pay and suspension without pay.

(a) Suspension with full pay

The employer is obliged to pay employees who render their service a wage, but is not compelled to make use of such services. Therefore, under common law an employer is permitted to suspend an employee unilaterally, providing that he or she pays the employee a wage as long as the employee continues to make his services available. According to Resolution 1 of 2003 of the Public Service Co-ordinating Bargaining Council, a suspension of this kind is a precautionary measure and does not constitute a judgement. It is usually used in instances where the employee is alleged to have committed a serious offence and the employer believes that the presence of an employee at the workplace might jeopardise any investigation into the alleged misconduct or endanger the wellbeing or safety of any person or state property. Suspension is justified only if there is a threat to other employees, the danger of sabotage or a possibility that the employee could tamper with evidence. Suspension is a serious step which could prejudice the employee or cause unnecessary psychological stress (Bendix ,2001:363).

(b) Suspension without pay

Suspension without pay may amount to the withholding of both work and pay. Such suspension may be agreed upon by the affected employee at the time when the penalty is being imposed or there might be a clause in the employment contract which provides for it. It is unlawful for an employer to withhold both work and wages without an agreement (employee consent) or statutory authorization to do so. The suspension of an employee without pay as a disciplinary measure is a serious punitive step and should, as a general rule, only be considered in the following circumstances:

Sufficient evidence to warrant dismissal has been established in a disciplinary inquiry, the reason for dismissal is not the accumulation of a number of minor offences, circumstances mitigating against dismissal are present which suggested that leniency should be considered, particularly if the employee concerned has a record of long service with the organisation, but a final warning is too lenient as a sanction, the employee, his or her representative requests that alternatives to dismissal be considered and the employee gives his or her written consent to such a suspension.

2.14.2 Demotion

Demotion is the reverse of promotion, meaning that an employee is moved to a lower rank or level. Demotion can be used as a disciplinary measure in case of misconduct, but is also a viable alternative to termination of employment for operational reasons (Bezuidenhout *et al.*, 1998:220). Demotion as a disciplinary sanction should therefore only be considered as an alternative to dismissal.

2.14.3 Transfer

Transferring an employee means that he or she is moved to another section or to another branch of the same organisation. This option is often not desirable, because to transfer an employee as a disciplinary measure often simply means transferring the problem to another manager. Levy *et al.* (2009:298) argue that transferring an employee by moving him or her to another section within the same organisation or another branch of the same organisation has very limited application as a disciplinary tool. It is further argued that transfer should be on terms and conditions of employment at least equal to those that existed prior to the transfer.

2.14.4 Dismissal

Dismissal is the most severe form of disciplinary action that can be meted out to employees. It should only be imposed in extreme cases, and only the most senior manager should have the authority to dismiss a person after all aspects of procedural and substantive fairness have been taken into account. A counter clerk in the Department of Justice who defrauded the department by transferring money from the department's account to her account for months, such kind of misconduct warrants dismissal as a sanction but the disciplinary hearing must be held. No amount of reasons can mitigate such conduct and the behaviour will render the relationship between employee and employer completely irreparable. Another example is the officer who colluded with the petrol attendant to utilize the garage card for a state vehicle to put fuel in his car.

2.15 THE RIGHT TO CHALLENGE DISCIPLINE

There is no provision in the Code of Good Practice, dismissal that allows the employee to appeal after a disciplinary hearing. However, many employers continue to permit appeals as many disciplinary codes and procedures still provides for an appeal hearing following the first disciplinary action (Bezuinedhout *et al.*, 2007:177). While it may be the case that in certain organisations the chairman presiding over appeal process, if correctly handled, can rectify irregularities both in procedure and substance, thus preventing a possible dispute. Consequently, it is in the organisation's interest to establish a proper and unbiased appeals procedures and if necessary to appoint an outside neutral person to preside during this stage of procedure (Bendix, 2001:371).

2.16 CONCLUSION

One of the common law duties of an employee is to maintain levels of good conduct, so employees are duty bound to refrain from all forms of misconduct because some misconduct are so severe that only dismissal will be appropriate as the relationship between them and their employers would have been broken. Different authors acknowledge the fact that even if it is often said that the specific purpose of discipline in modern labour law is to be corrective rather than punitive, this is not always strictly true. One of the purposes of sanction in any society is to demonstrate that there are consequences that follow from a refusal to comply with the norms of behaviour.

In handling discipline it should be noted that the existence of a disciplinary code and procedure should not be taken as an excuse for rigid, mechanistic handling of disciplinary issues. Like all labour relations processes, discipline is interactive in nature. It requires clear, honest and empathetic communication, constant follow-up, and counselling. The code and procedure should merely serve as a guideline and ensure consistency, but should not be used to make discipline impersonal, merely taking the form of penned warnings. The principles of discipline, rather than the form, are of importance. This is substantiated by the Code of Good Practice which explains that even final hearings need not be excessively formal, as long as the principles of Procedural and Substantive Fairness are obeyed.

CHAPTER 3

RESEARCH METHODOLOGY

3.1 INTRODUCTION

According to Welman, Kruger & Mitchell (2005:2), research methodology considers and explains the logic behind research methods and techniques. The researcher needs to select a research method or methods as part of the research design that will allow the researcher to conduct the research in such a way that he/she will find answers to his/her study. Research methodology is a way in which the researcher collects and analyses data. This chapter will outline the research design, population and sample, data collection, data analysis and ethical considerations, thus indicating how the research was conducted.

3.2 RESEARCH DESIGN

There are two major aspects of research design. First, the researcher must specify precisely what he or she wants to find out and determine the best way to do that (Babbie, 1995:83). A qualitative research design was utilized for this research. Qualitative approach was used because it is used in exploratory research; it is also fundamentally a descriptive form of research. Qualitative research methods are used to establish the socially constructed nature of reality to stress the relationship between the researcher and the object of study, as well as to emphasize the value-laden nature of the inquiry (Welman, Kruger & Mitchell and 2005:8). The researcher wanted to understand how discipline is managed from the perspective of line managers who are supposed to manage it. The research method was descriptive because descriptive study allows the researcher to describe as clearly as possible the current status regarding how discipline is managed in the courts in the Department of Justice and Constitutional Development in the Malamulele cluster, Limpopo Province.

3.3 POPULATION AND SAMPLING

The population is the study object and consists of individuals, groups, organisations, human products and events or the conditions to which they are exposed (Welman *et al.*, 2005:52). The population for this study was the officials of the Department of

Justice in the Malamulele cluster. Malamulele has a total of seven courts, which have a total number of 254 employees. Structured questionnaires and interviews were administered in all the seven courts in Malamule. The total number of sample needed was 60. Simple random sampling was used to select participants. The researcher wanted to give every officer in the cluster equal opportunity to be selected. The second step was for the researcher to obtain a list of all officers in the Malamulele cluster. Numbers assigned to official names were put in a box, a draw was conducted and a total of seventy (70) names were drawn.

Seventy structured interview questionnaires were administered at the seven courts. The additional questionnaires were a provision in case some of the participants chose not to take part or if they decided to withdraw during the interview. Ten questionnaires were sent to each court. From the questionnaires that were sent out, 7 court managers, 26 supervisors and 37 level three to six officers participated and returned the questionnaires. Sixty (60) interview questionnaires were analysed, seven court managers, twenty-one (21) supervisors and thirty-two (32) officials from level three to six.

3.4 DATA COLLECTION

Data were collected by means of structured interview questionnaires and by document study. Three different questionnaires were administered to court managers, supervisors and officials (level 3-6). To minimize ambiguity in the phrasing of words, the structured interview questionnaires were administered to 8 respondents at one court as a pilot project. Then amendments were made to the initial questionnaire. Each respondent answered on his/her own capacity as a court manager or supervisor or official. Because of the level of literacy of the respondents chosen during the random sampling, respondents were able to write down responses on their own except for one cleaner in one court who was assisted through the interview. The researcher was also permitted by some court managers to study the personal files. The personal files, which disciplinary matters like warnings are filed, were studied at the courts. The exercise played an important role because some of the supervisors did not indicate cases where they warned their subordinates verbally. In one court there was an instance where an official was

referred to EAP and given a verbal warning. This was detected through the exercise of perusing the personal files.

3.5 DATA ANALYSIS

The purpose of analysing the data was to understand how discipline is managed in the courts, what causes ill-discipline, the role and responsibilities of line managers in managing discipline, investigating the challenges faced by court managers and supervisors in managing discipline, the understanding of all court officials' understanding of discipline and the policies that exist in courts to manage discipline.

The first step was to read or study all data collected. Acknowledging that the process can be tedious, the researcher familiarized herself with the data and identified the main themes in it and examined the data in depth to provide detailed descriptions of the settings and participants and activities. Classification was done by categorizing and coding pieces of data. Lastly, the researcher focused on interpreting and synthesizing the organized data into general conclusions or understanding of how discipline is managed in courts in the Malamulele cluster

3.6 ETHICAL CONSIDERATIONS

In research it is required that informed consent be obtained from the subjects or relevant institutions. When conducting a social scientific research it is important to be aware of the general agreements shared by researchers about what is proper and improper in the conduct of scientific inquiry. The following ethical issues were considered:

3.6.1 Informed consent

Permission to conduct the study was obtained from the Area Court Manager of the Malamulele cluster and the court managers concerned, from the seven (7) courts after they were thoroughly and truthfully informed about the purpose of the investigation (copies of letters attached to that effect - Annexure A).

3.6.2 Voluntary participation

Respondents were given a choice of participating in the study. As such, they were allowed to participate voluntarily and were also informed that if they wished to withdraw from the study anytime they could do so.

3.6.3 Anonymity and confidentiality

The clearest concern in the protection of the subjects' interests and well-being is the protection of their identity. A respondent may be considered anonymous when the researcher cannot identify a given response with a given respondent. During the study, respondents were required to reveal personal information about themselves, information that might have been unknown to their friends and associates. Anonymity and confidentiality was assured to the respondents by giving them an option of writing their names and their courts in the questionnaire. They were also assured that should they write their information their identity would remain anonymous.

3.7 CONCLUSION

This chapter outlined the research methodology of this study. The next chapter will describe in detail the findings of the collected data as to whether the court managers, supervisors and any structures responsible for management of workplace discipline at the courts know their roles and responsibilities, the challenges they come across in managing discipline and their understanding of discipline.

CHAPTER 4

RESEARCH FINDINGS, ANALYSIS AND INTERPRETATION

4.1 INTRODUCTION

This chapter presents key findings and analysis of data collected for the study at Vuwani, Sekgosese, Bolobedu, Malamulele, Tshitale, Hlanganani and Tiyani magistrates courts. These findings and analysis will provide answers to the problem statement and research questions raised in this study. The researcher aimed at investigating the management of workplace discipline in the Department of Justice in Limpopo Province. The focused area of study was on magistrate's offices of Vuwani, Sekgosese, Bolobedu, Malamulele, Tshitale, Hlanganani and Tiyani.

4.2 RESEARCH FINDINGS

Structured interview questionnaires were administered to collect data: one for the court managers: one for the supervisors and one for the staff levels three (3) to six (6). In the first part of the questionnaire the respondents were required to give information on their gender, experience in the position, the skills that they possessed to enable them to perform their duties, number of units they supervised and the number of committees that they served in the case of court managers. The information was useful in determining the work experience of the respondents and their workloads. The second part of the structured interview questionnaire aimed at collecting information that would answer the research questions of the study. Questions were formulated to probe causes of ill-discipline in the department; roles of line managers to minimize ill-discipline; challenges and possible solutions in management of workplace discipline; understanding of discipline, and policies on discipline. The order of presentation of analysis will follow the following logic namely, data from court managers, supervisors and employees from level (3) to level (6).

4.2.1 DATA FROM COURT MANAGERS

One Court Manager was selected for each study area. A structured interview questionnaire was developed and consisted of two parts in which the first part probed biographical information and the second part probed general relevant

information. Seven court managers participated in the structured interview and their responses are presented below.

4.2.1.1 Biographical information

This part of the structured interview questionnaire required information about the court manager's gender, experience in years as a court manager, skills that they possess to enable them to manage well, total number of staff in their establishment and the number of committees where they serve as chairpersons and members.

(i) Gender

The information about the gender was needed by the researcher to have knowledge and understanding as to how many male court managers are in existence and how many female court managers exist in the Malamulele cluster. This information was also needed to determine how many females and how many males are in leadership positions. Below are the findings:

Table 2: Gender of Court Managers

| Court Managers | Number |
|----------------|--------|
| Male | 5 |
| Female | 2 |

The reason for a smaller number of female court managers in the cluster is that potential women court managers do not apply for advertised posts in the Malamulele cluster. The document study showed that when posts become vacant the department advertises the post targeting female staff members as part of the Employment Equity Act, but still fail to get female court manager because women do not apply.

(ii) Experience as court managers

The information was needed to find out the level of experience of the respondents as court managers in terms of years. This information gave the researcher a better understanding of the court managers' knowledge of issues and ways to maintain or manage discipline in their courts.

Table 3: Experience in Court Management

| EXPERIENCE IN YEARS | NUMBER OF COURT MANAGERS |
|---------------------|--------------------------|
| 0-3 | None |
| 4-6 | 5 |
| 7-10 | 2 |
| >10 | None |

The above table indicates that no court manager has been employed for less than three years but most court managers have been in the system for more than four years, such that they have experience and knowledge on managing discipline in their respective court.

(iii) Skills to enable proper management

Table 4: Court Managers' skills

This information was needed to determine the skills that court managers have to enable them to perform their duties as required.

| SKILL | THEORY | PRACTICAL | RESPONDS |
|---------------------------------|--------|-----------|----------|
| Interpersonal | X | x | 7 |
| Investigation | X | | 4 |
| Report | X | x | 7 |
| Chairing a disciplinary Hearing | | x | 3 |

All the respondents have both theory and practical interpersonal skills, Four has theory investigation skills, all seven has report writing skills and only three have skills to chair a disciplinary hearing. The literature study demonstrated that they previously handled misconduct matters where they issued warnings to their subordinates.

(iv) **Staff Establishment**

This information was needed to determine the total number of employees that the court managers have to manage/supervise and also to determine the workload. Court managers were required to give statistics of staff level 3 to 6, supervisors and nominal supervisors if they had any.

Table 5: Courts staff establishment

| OFFICE | NUMBER OF SUPERVISORS | STAFF LEVEL 3 TO LEVEL 6 | TOTAL |
|------------|-----------------------|--------------------------|-------|
| Vuwani | 3 | 18 | 21 |
| Sekgosese | 2 | 20 | 22 |
| Malamulele | 7 | 77 | 84 |
| Tshitale | 1 | 14 | 15 |
| Hlanganani | 8 | 63 | 71 |
| Bolobedu | 3 | 24 | 27 |
| Tiyani | 2 | 12 | 14 |

Vuwani has a total of twenty-one administration staff, Sekgosese has twenty-two, Malamulele has a total of eighty-four, Tshitale has fifteen, Hlanganani has seventy-one, Bolobedu has twenty-seven and Tiyani has a total of fourteen staff. Tshitale courts has a total of 15 administrative staff, while Malamulele has a total of 84. In both courts it is the court manager's responsibility to manage discipline. Also, and the court managers are on the same salary level. The larger number of staff establishment has an effect on the morale of the court managers in Hlanganani and Malamulele because they feel their workload is more than that of court managers working in the other offices like Tshitale and Vuwani, yet they still get the same salary or a different salary because they are not on the same level. There are court managers who are on level nine and others on level 10. That difference is not determined by the size of the court, but it depends on the period which the court managers were appointed. Court managers appointed after resolution 3 of 2009 are at level nine irrespective of the size of their court.

(v) **Number of committees that the court managers serve as chairpersons and members**

The intention of this information was to determine the workload of the court managers. Out of seven respondents all of them indicated that they served in committees either as chairperson or members.

4.2.1.2 Causes of ill-discipline in the department

To determine the causes of ill-discipline in the department, the respondents were asked whether they had any misconduct cases reported in the past 3 months in their unit, whether in their opinion they knew the causes of ill-discipline in their unit and why and what they thought needed to be done to minimize ill-discipline in their unit. The findings showed the following:

(i) **Misconduct cases in the last 3 months**

Court managers were asked if they had misconduct cases in their courts in the past 3 months. Most court managers (6) indicated that they did not have misconduct cases in the past 3 months. Only one court manager indicated that she had a case of late coming to work and the official was issued with a final written warning.

(ii) **Causes of ill-discipline**

Court managers were asked to name the causes of ill-discipline in their courts

Table 6: Causes of ill-discipline

| CAUSE OF ILL-DISCIPLINE | RESPONSE | TOTAL |
|--------------------------|----------|-------|
| UNDERSTAFF | X | 4 |
| UNRELIABLE SYSTEMS | X | 6 |
| WONT GET CAUGHT ATTITUDE | X | 7 |

Three court managers believe that officials misconduct themselves because of shortage of staff and that leads to one officer performing a number of duties and in some instances there is no segregation of duties. Four court managers mentioned systems used in the department like JDAS which is used for financial transactions and JYP used for supply chain management has many flaws and officials capitalize on that. All court managers indicated that officials misconduct themselves thinking they will not get caught. In terms of understaffing, the respondents said that when a law is passed by parliament courts are not given additional staff. For example, the passing of the Harassment Act which has lot of activities and for it to be implemented correctly it needs devoted officials to be appointed.

(iii) **What can be done to minimise ill-discipline?**

This question wanted to probe whether the court managers know what they have to do to minimise ill-discipline. The court managers' responses were clear that they knew what they had to do, they indicated that employees have to know the rules of the employer so that if they break those rules then employees must be given relevant warnings and if the misconduct is a major one employees have to appear before a disciplinary committee. Job rotation was also indicated because the respondents felt that if employees work in one section for a long time they end up manipulating the situation, so employees must be rotated. Two respondents indicated that employees must take their leave and managers must guard against that. From the literature analysis it shows that most of the employees who were dismissed because they committed fraud did not take their leave. They did so may be because they did not want other people to discover their dealings.

One respondent indicated the issue of vetting of officials, especially those who work with money (cash hall staff) or important information (DCRS clerks). With vetting the department can know what kind of people they have employed and where to post them. For example, it is not safe nor advisable to place someone with a criminal record of theft or fraud to work with money.

4.2.1.3 Roles of line managers to minimise ill-discipline

To determine the roles and responsibilities of line managers in managing workplace discipline court managers were asked five questions: (i) Whether they have ever acted as employer representative or a chairperson in any misconduct case (ii) What their role is and responsibilities in the management of workplace discipline in their institution (iii) Whether they saw themselves as carrying out their roles and responsibilities as expected in managing discipline (iv) Whether officials/structures carry out their roles and responsibilities as expected in managing of discipline (v) What could be the reasons for these structures not to carry out their duties as expected? The findings showed the following:

(i) Acting as an employer representative or chairperson

This question probed the involvement of court managers in disciplinary hearings as indicated in the resolution 1 of 2003, of the disciplinary code and procedure for the public service because, according to the resolution managers, they should be appointed to initiate cases during disciplinary hearings when the employee appearing or charged with misconduct is their direct subordinate. They can be appointed to chair disciplinary hearings. The results showed that of the seven respondents, all have either acted as employer representative or chairperson in a misconduct case.

(ii) Role and responsibilities in management of discipline

Court managers were asked to indicate their roles and responsibilities in management of discipline. Most respondents cited that they had to ensure that employees were aware of the code of conduct, to enforce good practice and ensure compliance and issue warnings when so required. There was one respondent who also indicated that from her experience as a labour relations practitioner she also investigates allegations of misconduct and writes reports so that the necessary steps can be taken against employees; for example employees must undergo disciplinary hearing for major misconduct such as fraud. The respondent also indicated that during the investigation if she felt that the employee might interfere with the investigation then a precautionary suspension would be implemented.

(iii) Discharging roles and responsibilities as expected

Court managers were asked if they saw themselves carrying out their roles and responsibilities as expected in management of discipline and why they said so. Six respondents indicated that they did not carry out their roles as expected because the cases that they were able to deal with were minor cases like late coming and absenteeism. As for major misconduct such as fraud, theft of state monies respondents indicated that they referred the matters to the regional office labour relations section for investigation. One respondent claimed to carry out her roles and responsibilities as expected. From the background information, it was clear that besides managing the courts the court managers had to oversee everything in their courts, manage the finance of the institution, support the Prosecution and Judiciary. The researcher may conclude that although the court managers know what is expected of them, their workload responsibility forces them to refer major cases to the regional labour relations office section and therefore not discharging all their duties as expected.

(iv) Roles and responsibilities of structures in management of workplace discipline

The question probed the opinion of the court managers as to whether the following structures were carrying out their roles and responsibilities as expected in management of discipline: supervisors, court managers and LRO in the regional office. Table 7 indicates the responses given.

Table 7: Carrying of roles and responsibilities of structures in the management of workplace discipline

| STRUCTURE | YES | NO |
|----------------------------|-----|----|
| Supervisors | 6 | 1 |
| Court managers | 6 | 1 |
| LRO in the regional office | 2 | 5 |

From the responses Court Managers generally sees supervisors as carrying their roles and responsibilities as expected. The LRO at the regional level are generally perceived by Court Managers as not to be executing their roles as expected because

they say they take long to finalise cases referred to the labour relations section and that affects service delivery. Literature analysis also confirmed that cases referred to the labour relations section takes long to be finalized. The opinion of the court managers about the LRO at the regional office might be true because there were cases which were pending for more than twelve months.

Court managers who said any structure was not carrying their role in table 7 were required to give reasons and some of the reasons are: the five court manager who said the labour relation officers in the region do not carry their roles said cases referred to the labour relations section at the regional office take long to be finalized. The reason for this thinking is because court mangers were made to believe that major cases must be referred to the regional office labour relations section.

4.2.1.4 Challenges encountered and possible solutions in the management of workplace discipline

Challenges encountered by the court managers in management of discipline were probed by the following questions: (i) Does management of workplace discipline pose a challenge to your courts? (ii) What are those challenges? (iii) Do you think management of workplace discipline also poses challenges to you as the court manager? (iv) What are those challenges? (v) Have you attended any training as far as managing workplace discipline is concerned? (vi) What developmental needs, if any, do you have, and if you do have them, have you indicated them in your personal development plan?

(i) Management of workplace discipline as a challenge to courts

Court managers were asked if in their opinion management of workplace discipline posed challenges to their courts. Table 8 below shows the responses:

Table 8: Challenges of management of workplace to courts

| RESPONSES | YES | NO |
|-----------|-----|----|
| | 1 | 6 |

The majority of court managers think that management of workplace discipline does not pose any challenges to their courts. Only one Court Manager who had a challenge in her court and the reason might be that in her court there are about 84 administrative staff and the more the number of employees one has the likelihood of ill-discipline. The respondent who responded in the affirmative is managing over 84 officials, which makes managing discipline a challenge. The situation is even exacerbated by a limited number of supervisors. There are only four supervisors and the other three are nominal, meaning they have been requested to supervise but they are not supervisors by rank, and in some instances they supervise officers of the same rank as theirs. The fact that the regional office takes long to finalize cases which are referred to them might be one of the challenges.

(ii) **Management of workplace discipline as a challenge to court managers**

The question asked was: do you think management of workplace discipline poses challenges to you as the court manager? Table 5 below presents their responses:

Table 9: Challenges of court managers

| RESPONSES | YES | NO |
|-----------|-----|----|
| | 2 | 5 |

From the table above, 5 respondents are of the opinion that management of workplace discipline does not pose a challenge to them as court managers. The respondents indicated that they are able to maintain a harmonious workplace. The two respondents who indicated that management of discipline poses a challenge, one indicated the reason that labour relations section takes long to finalize disciplinary cases and sometimes the officer will be on precautionary suspension leaving the office understaffed as the office cannot employ a replacement given that the post is not vacant. The other respondent mentioned victimization, pointing out that after being fired the culprits threaten their families.

(iii) **Training**

Court managers were asked if they had attended any labour relations or management of workplace discipline training. The findings showed that all the

respondents attended labour relations training provided by the employer. The researcher concluded that the court managers indeed have the skills to manage workplace discipline.

(iv) Personal development plan

In this question the researcher wanted to know whether the court managers needed training in management of workplace discipline or labour relations and whether they indicated that in their personal development plans. The findings showed that none of the respondents needed any training in labour relations matters to enable them to manage discipline as expected. The researcher conclude that the reason might be that the respondents are not aware that they are supposed to act as employer reps for cases which involve their immediate subordinate rather than referring all serious or/ complicated matters to the regional office labour relations section so they were going to indicate that they needed advanced training in labour relations for example, cross-examination skills.

4.2.1.5 Understanding discipline

The purpose of this question was to probe the general understanding of court managers as to what discipline is and the following questions were asked:

(i) What is your understanding of discipline?

Respondents seem to have a clear understanding of discipline because they all indicated that the employee must be made aware of the code of conduct for the public service and should they break those rules disciplinary measures must be taken against such employee to correct such conduct and that it must be applied in a prompt, fair, consistent and progressive manner.

(ii) Reasons why officials misconduct themselves

This question probed their opinion in the form of a table as to according to them what are the reasons for officials to misconduct themselves. The responses are indicated in table 9 below

Table 10: Reasons of official's misconduct

| REASON | RESPONSE | TOTAL |
|--------------------------------------|----------|-------|
| Poor management | X | 1 |
| I will never get caught attitude | X | 7 |
| Peer Pressure | Nil | - |
| Not aware what is expected from them | X | 3 |
| Personal circumstances | X | 1 |
| Other(specify) | X | 2 |

All Court Managers believe that officials misconduct themselves because they think they won't get caught. From document analysis some of the cases of fraud and theft of state monies it was evident that the culprits thought they will never get caught. One respondent believe that poor management is another cause of ill-discipline, this might be because where there is poor management officials do as they please, they come to work late, leave early, no adherence to official hours and if they are absent leave forms are not submitted all that is the order of the day. No Court Manager thinks that peer pressure can cause officials to misconduct themselves. Three Court Managers felt that even when officials are not aware of what is expected from them they tend to misconduct themselves. One respondent gave bad attitude as another reason officials misconduct themselves and the systems that are used in the department like JDAS which is used for financial transactions, it can easily be manipulated so employees who think are smart capitalize on that but they are eventually caught.

4.2.1.6 Policies on discipline

To determine if the policies to manage workplace discipline are known, the Court Managers were asked two questions: (i) whether they knew the Resolution 1 of 2003 of the PSCBC? (ii) Whether they managed discipline in their courts as indicated in the disciplinary code Resolution 1 of 2003? The findings showed the following:

(i) Knowledge of the Resolution 1 of 2003

Respondents were asked if they know resolution 1 of 2003. Their responses are indicated in table 10 below:

Table 11: knowledge of Resolution 1 of 2003 of the PSCBC?

| RESPONSES | YES | NO |
|-----------|-----|-----|
| | 7 | nil |

All Court Managers know the disciplinary code and procedures for the public service resolution 1 of 2003. Court Managers know that they must manage discipline in their respective courts according to the resolution although they only attend to less serious forms of misconducts.

(ii) Management discipline as indicated in the Resolution 1 of 2003

Court Managers were asked if they manage discipline in their court as indicated in the disciplinary code and procedure Resolution 1 of 2003. Their responses are indicated below in table 11.

Table 12: Management of discipline as indicated in resolution 1 of 2003

| RESPONSES | YES | NO |
|-----------|-----|-----|
| | 7 | nil |

All respondents are of the opinion that they are managing discipline at their courts as indicated in the disciplinary code and procedure for the public service. This may be because currently all managers only deal with the less serious forms of misconduct cases, where no formal enquiry shall be held and refer the major ones like fraud or theft to the regional office labour relations section for investigation and initiation of a disciplinary enquiry. The department then appoints an employee as a representative, in most cases it is not the manager for the employee as advised in the disciplinary code and procedure for the public service.

4.2.2 SUPERVISORS

The structured interview questionnaire for the court sectional Supervisors also consisted of two parts. The first part required biographical information while the other part consisted of questions categorised into five themes, with each theme consisting of between two to six questions each. Three supervisors per court were chosen as participants. Twenty-one (21) interview questionnaires are analysed as follows:

4.2.2.1 Biographical information

This part of the structured interview questionnaire required information about the sectional supervisors's gender, experience as a supervisor, skills that they possess to enable them to supervise, number of officials they supervise and the number of sections they supervise.

(i) Gender

This information was needed to determine the gender of sectional Supervisors so that the researcher can have a general knowledge as to how many males and females are supervisors.

Table 13 : Gender of the Sectional Supervisors

| GENDER | NUMBER |
|--------|--------|
| FEMALE | 15 |
| MALE | 6 |

The larger number of female sectional supervisors may be as a result of implementation of Employment Equity Act. The department is having a programme whereby it plans to achieve its employment equity goals, therefore women were given a priority in supervisory positions.

(ii) Supervisory experience

This information was needed to find out the supervisory experience of sectional supervisors in years. This information gave the researcher a better understanding of the supervisor's knowledge and experience in supervising officials. The findings are showed below.

Table 14: Experience as a Supervisor

| EXPERINCE IN YEARS | NUMBER OF SUPERVISORS |
|--------------------|-----------------------|
| 0-3 | 1 |
| 4-6 | 3 |
| 7-10 | 12 |
| >10 | 5 |

The findings showed that most sectional supervisors have been appointed as supervisors for a long period such that they have experience in managing discipline in their respective sections. Only one supervisor has been a supervisor for less than three years.

(iii) Skills to enable proper management

The information was needed to determine the skills that sectional Supervisors have to enable them to perform their duties as required.

Table 15: Skills to enable proper management

| SKILL | THEORY | PRACTICAL | RESPONSES |
|---------------------|--------|-----------|-----------|
| Interpersonal | | X | 21 |
| Investigation | x | x | 20 |
| Report writing | x | x | 21 |
| Conflict Management | x | x | 21 |

All the respondents indicated that they have the skills to enable them to manage discipline which are: Interpersonal, investigation, report writing and conflict management. With the exclusion of one supervisor who does not have the investigation skills, this might be as a result of the period that he has been a supervisor.

(iv) Number of subordinates

This information was needed to determine the workloads of sectional supervisors at the courts. The findings are presented below.

Table 16: Number of subordinates

| SUBORDINATES | RESPONDENTS |
|--------------|-------------|
| 1-5 | 2 |
| 5-10 | 17 |
| 10-20 | 2 |
| >20 | Nil |

From the responses above, two supervisors have up to five subordinates to supervise while seventeen have up to ten subordinates. There were two respondents who are supervising up to twenty subordinates. The larger number of subordinates might be because of the size of the court and the number of staff in the establishment

(v) Number of sections

This information also was to determine the workload of the supervisors. The findings show that most supervisors on average supervise one section with the exception of one who supervises five sections.

4.2.2.2 Causes of ill-discipline in the department

To determine the causes of ill-discipline in the department respondents were asked whether they had any misconduct cases in your sections, if they have answered yes they had to indicate the type of misconduct you had, they were asked in their opinion what are the causes of ill-discipline in their court and why? and what did they think need to be done to minimize ill-discipline in your court? The findings showed the following:

(i) Misconduct cases in the section

Table 17: Misconduct in the section.

| RESPONSE | YES | NO |
|----------|-----|----|
| | 20 | 1 |

Supervisors were asked if they had misconduct cases in their sections. Most (20) supervisors indicated that they had misconduct cases handled in their sections. Only one respondent who indicated that he never had misconduct case in his section. This might be as a result of officials not yet caught or their actions might not have been yet discovered or that he is supervising disciplined officials.

(ii) Type of misconduct

Respondents who said they had misconduct in their sections were requested to indicate the types of misconducts they had. The information was needed to determine what types of misconducts are rife at the courts/department.

Table 18: Types of misconduct

| MISCONDUCT | RESPONDENTS |
|-----------------------|-------------|
| Absenteeism | 4 |
| Theft of state monies | 9 |
| Fraud | 8 |
| Abuse of sick leave | 1 |
| Other(specify) | 12 |

From the table of responses above, late coming tops the list with twelve cases, respondents indicated that officers arrive late at work and that hampers service delivery because sometimes the courts starts late. Second is theft of state monies, followed by fraud then a total of four absenteeism cases have been encountered by supervisors. There was only one respondent who had one case of abuse of sick leave.

(iii) Causes of ill-discipline

Supervisors were asked in their opinions what are the causes of ill-discipline in their courts. Different reasons were given: Low morale, negative perception about the organisation, workload, and treatment of supervisors towards their subordinates. But all (21) respondents indicated that officials misconduct themselves because of improper checking due to high volume of work that need to be checked daily by one

checking officer in some instance. So officials get comfortable and do as they please thinking they won't get caught.

One respondent indicated that greed (corruption) was also the cause of ill-discipline, for example some DCRS clerks collude with the attorneys especially in high profile cases, instead of recording cases in court they don't record, the accused is found guilty sentenced and then appeal knowing exactly that there are no records, and if there are no records the sentence is set aside and the appellant can even sue the department

(iii) What can be done to minimise ill-discipline?

This question wanted to probe whether the supervisors know what they have to do to minimise ill-discipline. From their response's it was clear that they know what they have to do. One respondent indicated that there must be segregation of duties and work must be checked daily. Four supervisors indicated that due to the work load they sometimes take work home. Most indicated that employees must be given relevant warnings and if the misconduct is a major one employee will have to appear before a disciplinary committee.

4.2.2.3 Roles of line managers to minimise ill-discipline

To determine the roles and responsibilities of line managers in managing workplace discipline Supervisors were asked five questions: (i) whether did they ever acted as employer representative or a chairperson in any misconduct case? (ii) What is their role and responsibilities in the management of workplace discipline in their institution? (iii) Whether they saw themselves carrying out their roles and responsibilities as expected, in management of discipline? (iv) Whether the following officials/structures carry out their roles and responsibilities as expected, in management of discipline? (v) What could be the reasons for these structures not to carry out their duties as expected? The findings showed the following

(i) Acting as an employer representative or chairperson

Table 19: Appointment as employer representative or chairperson

| | YES | NO |
|--------------------------|-----|----|
| CHAIRPERSON | nil | 21 |
| EMPLOYER REPRESENTATIVES | 1 | 20 |

This question probed the role of supervisors in disciplinary hearings as indicated in the resolution 1 Of 2003, the disciplinary code and procedure for the public service because according to the resolution managers should be appointed to initiate cases during disciplinary hearings when the employee appearing or charged with misconduct is their direct subordinate and the can be appointed to chair disciplinary hearings. The results showed that of the twenty one respondents, none has never been appointed as a chairperson but only one acted as employer representative. The cause of the reason is that they have been made to believe that they are supposed to deal or attend less serious forms of misconducts and refer the serious one to the regional office.

(ii) Roles and responsibilities in management of discipline

Supervisors were asked to indicate their roles and responsibilities in management of discipline. Most respondents cited that they have to ensure that employees are aware of the code of conduct, to enforce good practice and ensure compliance even to the departmental policies. If there is no compliance warning can be issued.

(iii) Discharging roles and responsibilities as expected

Supervisors were asked if they see themselves carrying out their roles and responsibilities as expected in management of discipline and why they say so. All twenty one respondents indicated that they carry out their roles as expected because they instil discipline in their sections. One respondent went on further to say he knows the results of ignoring his responsibilities because that might divide his section because his subordinates won't trust him and that will result in low morale.

From the background information, it was clear that besides checking the daily work, for example criminal record books criminal section supervisors have to ensure that there is enough court officials to run the courts daily and since the sick leaves, family responsibility leaves are not planned they are usually a challenge but for the sake of service delivery one official maybe rotated to assist in a position whereby a colleague is on sick leave and sometimes employees capitalise on that, they don't perform their duties as expected. For example if one official is requested to assist as a DCRS clerk in a court that she/he normally does not work the work is usually not performed satisfactory, supervisors then get complaints from the stakeholders, Prosecution and Judiciary.

(iv) **Roles and responsibilities of structures in management of workplace discipline**

The question probed the opinion of the supervisors as to whether the following structures were carrying out their roles and responsibilities as expected in management of discipline: Supervisors, Court Managers and LRO in the regional office. Below is the responses indicated on the table.

Table 20: Carrying of roles and responsibilities as expected in management of workplace discipline

| STRUCTURE | YES | NO |
|----------------------------|-----|----|
| Supervisors | 20 | 1 |
| Court Managers | 20 | 1 |
| LRO in the regional office | 20 | 1 |

From the responses Supervisors generally sees all the structures as carrying their roles and responsibilities as expected. There was only one respondent who indicated that they are not carrying out their roles as expected. The respondents who answered No were required to give reasons, the one who answered No his reasons are: Supervisors, Court Managers are not carrying their responsibilities because they want to look good in the eyes of the subordinates and be loved, favouritism and some supervisors are afraid of their subordinates. The labour relations officer takes long to finalise the cases.

4.2.2.4 Challenges encountered and possible solutions in management of workplace discipline

Challenges encountered by the Supervisors in management of discipline were probed by the following questions: (i) whether management of discipline poses a challenge to their section? (ii) What are those challenges? (iii) Whether management of discipline also poses challenges to them as the Supervisors? (iv) If yes what are those challenges? (v) Whether they have attended any training as far as managing workplace discipline is concerned? (vi) What developmental needs, if any did they have or have they indicated in their personal development plan?

(i) Management of workplace discipline poses challenges to your section

Supervisors were asked if in their opinion management of workplace discipline posed challenges to their section. Below in Table 21 is their response.

Table 21: Management of workplace discipline as a challenge to your section

| RESPONSE | YES | NO |
|----------|-----|----|
| | 2 | 19 |

The majority of Supervisors (19) think that management of workplace discipline does not pose any challenges to their sections. Only two supervisors who said discipline poses a challenge to their sections. The respondents who said yes were required to give reasons, the first one indicated absenteeism, late coming and not adhering to departmental policies. The second respondent's challenges are that his subordinates know more than him as a supervisor and it is difficult to supervise something that you don't know, he even gave an example of recording of cases in courts by DCRS clerks and the capturing of cases on the Integrated Case Management System.

(iii) Management of workplace discipline poses challenges to supervisor

The question that was asked was, do you think management of workplace discipline poses challenges to you as the Supervisor? Table 22 below present their responses

Table 22: Does management of workplace discipline pose challenges to you, as the Supervisor?

| RESPONSES | YES | NO |
|-----------|-----|----|
| | 3 | 18 |

From the table above, 18 respondents are of the opinion that management of workplace discipline does not pose a challenge to them as supervisors. The respondents indicated that they are able to maintain a peaceful workplace. Three respondents indicated that discipline poses a challenge to them as supervisors. The three respondents who indicated that management of discipline poses a challenge give the following reasons: disciplining a subordinate for the same misconduct over and over, direct supervision - checking everything if it is done according to prescripts, supervising more than five sections making it difficult to master all the duties of each and every section, and the subordinates end up doing as they please because they know more than their supervisor.

(v) Training

Supervisors were asked if they had attended any labour relations or management of workplace discipline training, the findings showed that most respondents had not attended labour relations training despite training of this nature being conducted in the department previously.

(vi) Personal development plan

In this question the researcher wanted to know whether the supervisors needed training in management of workplace discipline or labour relations and whether they indicated that in their personal development plans. The findings showed that the respondents who attended labour relations training indicated other training needs on their personal development plans, while those who never attended labour relations training said that they did not indicate which training they wanted.

4.2.2.5 Understanding discipline

The purpose of this question was to probe the general understanding of supervisors as to what discipline is and the following questions were asked:

(i) What is your understanding of discipline?

Out of twenty-one (21), sixteen (16) respondents seem to have a clear understanding of discipline because they all indicated that an employee must adhere to the policies of the department and that should they break any rules, disciplinary measures must be taken against such employee to correct such conduct. Two respondents, although they seemed to understand what discipline is, one said it was meant to positively correct a subordinate to act or perform as expected, while the other respondent said discipline occurs when any official does not adhere to the policy and departmental procedures, in which case disciplinary measures must be taken.

(ii) Reasons why officials misconduct themselves

This question probed the opinion of the supervisors in the form of a table as to, what according to them, are the reasons for officials to misconduct themselves. The responses are indicated in table 16 below:

Table 23: Opinions of supervisors as to why officials misconduct themselves

| REASON | RESPONSE | TOTAL |
|---|----------|-------|
| Poor management | x | 1 |
| I will never get caught attitude | x | 16 |
| Peer pressure | nil | |
| Not aware of what is expected from them | x | 6 |
| Personal circumstances | x | 13 |
| Other(specify | x | 10 |

Sixteen (16) supervisors believe that officials misconduct themselves because they think they will not get caught. From document analysis of some cases of fraud and theft of state monies, it was evident that the culprits thought they would never get caught. One respondent believed that poor management was another cause of ill-discipline, this might be because where there is poor management officials do as they please, coming to work late, leaving early and not adhering to official hours and

not submitting leave forms when they are absent. None of the respondents thinks that peer pressure can cause officials to misconduct themselves. Six supervisors felt that even when officials are not aware of what is expected from them they tend to misconduct themselves. Ten respondents mentioned the issue of unreliable systems used in the department like JDAS for financial transaction, pointing out that it has a number of flaws and officials capitalise on that. They manipulate the system, commit fraud and steal state monies and third party funds like maintenance and admission of guilt.

4.2.2.6 Policies on discipline

To determine if the policies to manage workplace discipline are known, the supervisors were asked questions pertaining to the following: knowledge of the Resolution 1 of 2003 of the PSCBC (ii) Whether they managed discipline in their units as indicated in the disciplinary code Resolution 1 of 2003? (iii) And if they are not managing as indicated, what the reasons are (iv) If they ever conducted a briefing session to their subordinates about the code of conduct for the public service? (v) If they answered in the negative what are their reasons were. The findings showed the following:

(i) Knowledge of the Resolution 1 of 2003

Respondents were asked if they knew resolution 1 of 2003. Their responses are indicated in table 24 below:

Table 24: Knowledge of resolution 1 of 2003

| RESPONSE | YES | NO |
|----------|-----|----|
| | 20 | 1 |

All respondents except one indicated that they knew the disciplinary code and procedures resolution 1 Of 2003. Twenty had seen it and they were managing discipline in their units as indicated, they only attended to less serious forms of misconduct such as late coming and referred serious ones to the regional office labour relations section.

(ii) Manage discipline as indicated in the Resolution 1 of 2003

Supervisors were asked if they managed discipline in their court as indicated in the disciplinary code and procedure Resolution 1 of 2003. Their responses are indicated below in table 25.

Table 25: Management of discipline in your section

| RESPONSES | YES | NO |
|-----------|-----|----|
| | 20 | 1 |

Twenty respondents are of the opinion that they are managing discipline at their courts as indicated in the disciplinary code and procedure for the public service. This may be because currently all supervisors only deal with the less serious forms of misconduct cases, where no formal enquiry is held and refer the major ones like fraud or theft to the regional office labour relations section for investigation and initiation of a disciplinary enquiry. The department then appoints an employee as a representative; in most cases it is not the manager/supervisor of the employee as advised in the disciplinary code and procedure for public service. One respondent indicated that she was not managing discipline in her section as indicated in the disciplinary code. The respondent who answered “No” in the previous question indicated that officials in her section did not give her a reason for disciplining.

(iv) Code of conduct briefing

Supervisors were asked if they ever conducted a code of conduct for the public service briefing session to their subordinates. Below is their response.

Table 26: Code of conduct briefing sessions

| RESPONSE | YES | NO |
|----------|-----|----|
| | 18 | 3 |

Eighteen supervisors indicated that they did with one respondent saying he even gave them booklets and posted the acts of misconducts on the notice boards. The supervisors who answered “No” gave the following reasons: officials know it is on

DJINI and only printed as instructed by the regional office to ensure that officials sign to acknowledge receipt. All officers are given a copy when they are appointed and therefore they saw no need for a briefing session.

4.2.3 OFFICIALS - LEVEL 3-6

The structured interview questionnaire for officials of level three (3) to six (6) consisted of two parts. The first part of the questionnaire as indicated earlier required biographical information and the second part consisted of questions categorized into five themes, each consisting of between two and five questions. Thirty-two (32) officials participated in the structured interview and their responses are presented as follows.

4.2.3.1 Biographical information

This part of the structured interview questionnaire required information about the officials' gender, experience in current section, skills that they possess to enable them to perform their duties and how many sections they can work in.

(i) Gender

This information was needed to determine the gender of officials so that the researcher can have a general knowledge as to which gender is more likely to commit misconduct.

Table 27: Gender of officers - level 3-6

| OFFICIALS | NUMBER |
|-----------|--------|
| Male | 12 |
| Female | 20 |

Out of the thirty-two respondents who took part in the study twenty were females. The larger number of female officials may be as a result of the fact that there are more women than men in South Africa and the world. Document study has also indicated that if there is an advertised post, most of the applicants are female. Another reason might be that women prefer soft jobs like working in the offices while men apply for hard jobs like working in the mines.

(ii) Work experience in the current section

This information was needed to find out the experience of officers within the sections that they are working. This information gave the researcher a better understanding of the official's knowledge and experience in their respective section, and after how long are they rotated. The findings are shown below.

Table 28: Experience of officials in the current section

| EXPERIENCE | RESPONDENTS |
|------------|-------------|
| 0-3 | 4 |
| 4-6 | 7 |
| 7-10 | 12 |
| >10 | 9 |

The findings showed that most officials have been working in their current section for over four (4) years, seven(7) have been working between four (4) and six (6) years while twelve have been working between seven and ten years which made the researcher to believe that they have experience in performing their duties as expected. Only four (4) officials have been working in their current sections for less than three years.

(iii) Work experience in previous sections

The information was needed to determine how long the respondents had been employed in the department, and to also determine if job rotation was done in the department and how often it was done.

Table 29: Experience in previous sections

| EXPERIENCE | RESPONDENTS |
|------------|-------------|
| 0-3 | 2 |
| 4-6 | 16 |
| 7-10 | 8 |
| >10 | |

From the table above it is evident that most respondents worked in other sections for a long time, which means most employees can perform work in different sections therefore it is possible to rotate staff at the courts.

(iv) Skills to enable performance of duties

The information was needed to determine the skills that the respondents have to enable them to perform their duties.

Table 30 : Skills which officials level 3 to 6 possess to enable them to perform their duties

| SKILLS | | RESPONDENTS |
|----------------------|---|-------------|
| Interpersonal skills | X | 11 |
| Typing | X | 4 |
| Finance | X | 5 |
| Interpreting | X | 5 |
| Report writing | X | 4 |

Most officials have typing skills, interpersonal skills, interpreting skills, report writing skills and finance. Eleven respondents have interpersonal skills, four have typing skills and can type 45 words in a minute, five respondents have financial skills and can work in the cash hall as counter clerks receiving monies and making pay-outs, five respondents have interpretation skills and can interpret in court and four respondents have report writing skills. Only one respondent who is a cleaner had only interpersonal skills because her level of education is ABET.

(v) Sections

This information was needed to find out how many sections a respondent can work in, the researcher wanted to get an understanding as to whether multi-tasking is allowed in the department.

Table 31: Sections that officials can work in

| SECTION | RESPONDENTS |
|------------|-------------|
| Family | 18 |
| Finance | 15 |
| Civil | 7 |
| DCRS clerk | 13 |
| Criminal | 22 |

The findings revealed that most of the employees at level three (3) to six (6) can work in different sections, which means that they can multi task. Out of the eighteen officials who are working in the family section six are able to work in civil section, which means that should there be a shortage of staff due to unplanned leave the officials can be posted in a section where there is a shortage. Ten officials who are working in criminal sections can even work as DCRS clerks recording court proceedings in court.

4.2.3.2 Causes of ill-discipline in the department

To determine the causes of ill-discipline in the department respondents were asked four questions: (i) Were disciplinary steps taken against them in the past three months? (ii) For those who said Yes, what misconduct did they commit? (iii) In their opinion what are the causes of ill-discipline in their institution and why? (iv) What do they think needed to be done to minimize ill-discipline in their court? The findings showed the following:

(i) Disciplinary steps in the last 3 months

Officials were asked whether any disciplinary steps were taken against them in the last three months. The responses are indicated in table 32 below.

Table 32: Officials whom disciplinary measures were taken against in the last 3 months

| RESPONSES | YES | NO |
|-----------|-----|----|
| | 1 | 32 |

The results indicated that of all the respondents (32) who took part in the study disciplinary measures were taken against only one (1) in the last three months. This may have been due to the possibility that others had been caught or they complied with the code of conduct.

(ii) Types of misconduct

Types of misconducts were probed by this question. Officials who indicated that disciplinary measures were taken against them were required to indicate the type of misconduct. The responses are indicated in table 33 below

Table 33: Types of misconduct that officials committed in the last 3 months

| MISCONDUCT | RESPONSE |
|-----------------------|----------|
| Absenteeism | None |
| Theft of state monies | None |
| Fraud | None |
| Abuse of sick leave | None |
| Other (specify) | 1 |

Officials who indicated that disciplinary measures were taken against them in the last three (3) months were required to indicate the type of misconduct they had committed. The one respondent who responded with a “Yes” indicated that she was given a final written warning for late coming. The respondent mentioned the issue of being a single parent as contributing to her conduct. She said she does not come to work late deliberately, but the challenge is that every morning before she comes to work she must prepare her one year old child and take her to day care, then take a taxi to work.

(iii) Causes of ill-discipline

This question probed the reasons why officials misconduct themselves. Respondents were asked to indicate from their opinion the causes of ill-discipline in their institutions, different reasons were given: poor performance, non-adherence to the code of conduct, poor management, underpayment of clerk and personal circumstances. But all thirty-two (32) respondents indicated that officials misconduct

themselves because of improper checking due to high volume of work that needed to be checked daily by one checking officer in some instances. So officials get comfortable and do as they please thinking they will not get caught.

(iv) What can be done to minimise ill-discipline?

This question wanted to probe whether the officials know what they have to do in terms of their conduct and their colleagues in minimising ill-discipline. Secondly whether they knew what their supervisors have to do to minimize ill-discipline.

Table 34: Ways to minimise ill-discipline

| | |
|--------------------------------------|----|
| Competitive salaries | 13 |
| Proper training | 32 |
| Supervisors befriending Subordinates | 1 |
| Comply with policies | 32 |

From their response it was clear that they know what they have to do. All of them (32) said they have to comply with the policies of the department and they must be properly trained to perform their duties. Some respondents (10) said competitive salaries must be offered to employees to minimise misconduct such as theft of state monies because they earn little money while they are handling thousands of monies daily. One respondent indicated that supervisors must stop befriending subordinates because if they are friends it is difficult to discipline them.

4.2.3.3 Roles of line managers to minimise ill-discipline

To determine the roles and responsibilities of line managers in managing workplace discipline officials were asked five questions: (i) Whether they think court managers and supervisors are doing their job properly as far as management of discipline is concerned and why? (ii) In their opinion what is the role and responsibilities of court managers and supervisors in the management of workplace discipline in their institution? (iii) Do they see their daily conduct in line with the expectation of the employer? (iv) In their opinion, do the following officials/structures carry out their

roles and responsibilities as expected, in management of discipline?(v) What could be the reasons for these structures not to carry out their duties as expected? The findings showed the following:

(i) Performance of Court Managers and Supervisors

This question wanted to probe the view of officials as far as the performance of court managers and supervisors in terms of managing discipline is concerned. Their responses are indicated in table 35 below.

Table 35: Performance of court managers and supervisors in management of discipline

| RESPONSES | YES | NO |
|-----------|-----|----|
| | 29 | 3 |

From the responses most officials (29) believe that court managers and supervisors are doing their job properly as far as management of discipline is concerned. One from the twenty-nine even said the regional office is notified timeously of ill-discipline, which makes the researcher to confirm that indeed cases are referred to the regional office. Only three respondents believe court managers and supervisors are not doing their jobs properly and their reasons are: some supervisors favour certain officials over others, some supervisors are afraid of their subordinates and lack of supervisory skills.

(ii) Roles and responsibilities of Court Managers and Supervisors

Officials were asked what their opinions were on the role and responsibilities of court managers and supervisors in the management of discipline in their institution. Most respondents said: lead, manage, supervise and develop staff. They said line managers should maintain integrity making sure that the operational objectives are met. One respondent said court managers and supervisors' roles is to inform officials what is expected of them while conducting their duties.

(iii) Daily conduct

Respondents were asked if they see their daily conduct to be in line with the expectation of the employer. And they were required to give reasons.

Table 36: Daily Conduct of officials

| DAILY CONDUCT | YES | NO |
|---------------|-----|----|
| | 31 | 1 |

Thirty-one respondents said “Yes” and only one said “No” and her reasons were because of her personal circumstances she sometimes arrived late at work, she has been given a written warning in the past and now she has received a final written warning. The respondent said even though she acknowledges that her conduct is wrong it is her personal circumstances which lead to her non-compliance.

(iv) Roles and responsibilities of structures in management of workplace discipline

The question probed the opinion of the official as to whether the following structures were carrying out their roles and responsibilities as expected in management of discipline: supervisors, court managers and LRO in the regional office. Below are the responses indicated in table 37:

Table 37: Roles and responsibilities of structures as expected in management of discipline

| STRUCTURE | YES | NO |
|---------------|-----|----|
| Supervisor | | 1 |
| Court Manager | 32 | |
| LRO | | 2 |

All respondents said court managers carry responsibilities as expected; most officials generally perceive all structures in the department to be carrying out their roles and responsibilities as expected. This might be because every quarter statistics of cases are sent to all court managers who then forward by email to their staff, so from the

list officers are convinced that structures do carry out their responsibilities. Officials were asked to give reasons for answering No in the previous question. Only one respondent indicated favouritism and lack of training by supervisors to be what led officials to perform their duties incorrectly. The two (2) respondents who indicated that the labour relations officers were not carrying their roles as expected indicated that it is only now that the labour relations officers are conducting visits and training to the courts.

4.2.3.4 Challenges encountered and possible solutions in management of workplace discipline

Challenges encountered by the officials that makes them not to conduct themselves properly were probed. The respondents were asked (i) If they had any challenges that made them not to conduct themselves properly (ii) What those challenges were (iii) Whether they had attended any training as far as workplace discipline was concerned (iv) What developmental needs, if any, they indicated in their PDP.

(i) Challenges in conduct

Officials were asked if they had any challenge that made them not to conduct themselves properly as expected. Their responses are indicated in Table 38 below.

Table 38: Challenges that makes officials to misconduct

| RESPONSES | YES | NO |
|-----------|-----|----|
| | 31 | 1 |

From the responses, thirty one officials indicated that they don't have any challenge that makes them not to conduct themselves properly; only one respondent said she had challenges. Respondents who answered Yes were asked to name those challenges. The official who said she had challenges mentioned personal circumstances as her challenge that mad her not to conduct herself properly. It is the same official who had been given a final written warning for late coming. She said it was not her choice to be late, but the circumstances that she found herself in. She came to work late because she was a single parent, she first had to prepare her child for day care, drop her at the day care before she took a taxi to work.

(iii) Training

Respondents were asked if they had attended any training as far as workplace discipline was concerned. Their responses are given in table 39 below.

Table 39: Training in workplace discipline

| RESPONSES | YES | NO |
|-----------|-----|----|
| | 5 | 27 |

Only five officials' attended training as far as workplace discipline is concerned. This might be caused by the fact that some supervisors acknowledged that they have never conducted any code of conduct briefing because the officials can access it on DJINI. Some supervisors just printed the code of conduct and gave to the officials as instructed by the regional office.

(iv) Developmental needs

Respondents were asked what their developmental needs are if they have any and they were asked if they have indicated them in their personal development plans to assist them to perform their duties and ensure that discipline is maintained.

Table 40 : Developmental needs of the officials

| TRAINING | RESPONDENCE |
|-----------------|-------------|
| Code of conduct | 27 |
| Small claims | 3 |
| Estates | 3 |
| Finance | 3 |
| Other policies | 27 |

From the responses twenty-nine (27) indicated that they need a briefing on code of conduct and the other policies of the department which can assist them as to what is expected from them, how should they treat the public members, how should they conduct themselves towards other colleagues. Three respondents indicated that they require training on: small claims, estates and finance. They also indicated that they

have indicated in their PDPs. There were two respondents who did not want to answer this part of the questionnaire, so the researcher concluded that they do not have developmental needs.

4.2.3.5 Understanding discipline

The purpose of this question was to probe the general understanding of officials as to what discipline is and the following questions were asked:

(i) What is your understanding of discipline?

All the respondents (32) seem to have a clear understanding of discipline because they all indicated that an employee must adhere to the policies of the department and should he/she break those rules disciplinary measures must be taken against such employee to correct such conduct. One respondent even went on to say it has to do with one's good conduct and have good relationship with co-workers.

(ii) Reasons why officials misconduct themselves

This question probed the opinion of the officials in the form of a table asking them to say why officials misconduct themselves. Unlike the previous questions they were required to list reasons in their opinions. In this question they were required to select reasons from the given ones. The responses are indicated in table 41 below:

Table 41: Reasons for officials' misconduct

| REASON | RESPONSES | TOTAL |
|---|-----------|-------|
| Poor management | X | 26 |
| I will never get caught attitude | x | 3 |
| Peer pressure | | |
| Not aware of what is expected from them | x | 16 |
| Personal circumstances | x | 2 |
| Other(specify) | | |

Three (3) officials believe that officials misconduct themselves because they think they won't get caught. From document analysis some of the cases of fraud and theft of state monies it was evident that the culprits thought they would never get caught. Most respondents (26) believe that poor management is another cause of ill-discipline, although this might be because where there is poor management as officials do as they please: they come to work late, leave early, no adherence to official hours and if they are absent leave forms are not submitted. Officials generally forget that discipline starts with them; they have to conduct themselves properly before they can blame management. None of the respondents thinks that peer pressure can cause officials to misconduct themselves. Sixteen (16) officials felt that even when officials are not aware of what is expected from them they tend to misconduct themselves. Two respondents mentioned personal circumstances as the cause of misconduct.

4.2.3.6 Policies on discipline

To determine if the officials know the policies to manage workplace discipline respondents were asked five questions: (i) Whether they knew Resolution 1 of 2003 of the PSCBC (ii) Whether in their opinion cases of misconduct in their court dealt with as indicated in the disciplinary code Resolution 1 of 2003? Why? (iii) Those who said "No" what are their reasons? (iv) Whether they have ever attended a briefing session at their court about the code of conduct for the public service. The findings showed the following:

(i) Knowledge of the Resolution 1 of 2003

Respondents were asked if they know Resolution 1 of 2003. The researcher wanted to know whether the respondents know how disciplinary measures can be taken against them, what kind of sanctions can be given, and if they are getting a fair sanction. Their responses are indicated in table 42 below:

Table 42: Knowledge of the Resolution 1 of 2003 of the PSCBC

| RESPONSES | YES | NO |
|-----------|-----|----|
| | 30 | 2 |

Thirty respondents indicated that they know the disciplinary code and procedures contained in Resolution 1 of 2003. Only two do not know the disciplinary code and procedure which means they misconduct themselves and they would not know whether the disciplinary method imposed is fair, severe, or correct.

(ii) Is discipline managed as indicated in Resolution 1 of 2003?

Officials were asked if in their opinion misconduct cases in their court were dealt with as indicated in the disciplinary code and procedure Resolution 1 of 2003. Their responses are indicated below in table 43.

Table 43: Compliance to the resolution 1 of 2003

| RESPONSES | YES | NO | DON'TKNOW |
|-----------|-----|----|-----------|
| | 25 | 5 | 2 |

Twenty-five (25) respondents are of the opinion that cases of misconduct in their courts are dealt with as indicated in the disciplinary code and procedure for public service. Five (5) are of the view that it is not. Two (2) respondents indicated that they do not know because they do not know the resolution. The five (5) respondents who answered No their reasons are: nothing has been done in terms of official misconduct so officials can get away with anything. Supervisors are biased.

(iv) Code of conduct briefing

Respondents were asked if they ever attended a briefing session about the code of conduct in their courts. Their responses are indicated in table 44 below.

Table 44: Code of conduct briefing session

| RESPONSES | YES | NO |
|-----------|-----|----|
| | 8 | 24 |

Only eight (8) respondents indicated that they have attended code of conduct briefing sessions at their court. Twenty four (24) said they have never attended such a briefing. Respondents who responded with a No were required to provide reasons

and their reasons are that no briefing sessions were held in their courts. The researcher believes them because some supervisors earlier indicated that the code of conduct is available on DJINI that is why she did not conduct briefing sessions.

4.3 CONCLUSION

This chapter focused on the findings from the respondents of selected courts on the management of workplace discipline at their respective courts, and documents studied at these courts. Findings on causes of ill-discipline in the department: challenges encountered and possible solutions in management: understanding of officials about discipline and policies on discipline, were discussed and analysed. The next chapter will give an overview of the research summary, recommendations and conclusions.

CHAPTER 5

CONCLUSION, SUMMARY OF RESEARCH AND RECOMMENDATIONS

5.1 INTRODUCTION

This chapter will outline the summary of present research according to literature and empirical investigation conducted. Conclusions and recommendations on the overall management of workplace discipline in courts in the Malamulele cluster, Limpopo Province, will be given. These conclusions and recommendations were drawn from data collected by means of literature review, structured interview questionnaires and document study.

5.2 SUMMARY OF RESEARCH

The aim of the study was to investigate the management of workplace discipline in the Department of Justice, Limpopo Province. The literature provided a framework of this study. Empirical investigation done by means of structured interview questionnaires and document study provided the researcher with the data that indicated the status quo. The summary on literature review and empirical investigation are discussed below.

5.2.1 Literature review

The literature review presented in this study indicated how labour relations has evolved in South Africa, from the pre-democratic South Africa to the present. Legislation impacting on the employment relationship in the public service was also discussed. The literature also discussed the responsibility of discipline. The literature proved that discipline is a corrective measure and not a punitive one.

The code of conduct, disciplinary code and procedures were dealt with in detail in the literature review. The disciplinary code and procedures as given by different authors were discussed. The procedural fairness and substantive fairness were also discussed in detail. Other aspects that were discussed and backed by literature are the forms of disciplinary actions: oral reprimands, verbal warning, written warning, final written warning, suspension, demotion, transfer and dismissal.

5.2.2 Empirical investigation

As indicated earlier, empirical investigation aimed at providing the facts as experienced by the respondents in managing workplace discipline. These experiences are summarised below.

5.2.2.1 Causes of ill-discipline in the department

The researcher concludes that the cause of ill-discipline in the department is the environment that officials find themselves in. The department offers a number of services to the community at large, therefore requires that one court must have different sections. Also, when a law is passed by politicians they do not consider whether there will be resources to implement the new law or not. Moreover, the courts are understaffed, which leads to workload for the implementers and their supervisors who end up not able to perform daily checking as required, which is poor management and consequently subordinates end up doing as they please. This is evident in biographical information that it is possible for some supervisors to supervise up to 5 sections.

The systems used in the department like JDAS has a number of flaws and officials capitalize on that. Even though they end up being caught, by the time they are caught millions of rands have already been stolen. Officials misconduct themselves because of personal circumstances.

5.2.2.2 Roles of line managers to minimise ill-discipline

Court managers have attended training of management of workplace discipline and they are attending to less serious offences. However, the training did not prepare them to deal with serious matters like fraud and theft of state monies. This might be the reason why they refer serious cases to the regional office, and they have been led to believe that this practice is proper. Despite the workload daily check is done and some supervisors even take work home. Generally line managers are carrying out their roles in minimizing ill-discipline because some managers even take work home.

5.2.2.3 Challenges encountered and possible solutions in management of workplace discipline

Court managers generally experience challenges in management of discipline because at the court level they only deal with less serious forms of misconduct like late coming and refer serious cases like fraud or theft of state monies to the regional office labour relations section for investigation and disciplinary processes. When the regional office takes time to finalize the matters, court managers in turn complain because in some instances the official might be on precautionary suspension and the court is not given a replacement, leading to workload increase. Supervisors experience the same challenge as court managers. Court managers, supervisors and their families are sometimes victimized by some officers who are dismissed. Supervisors also experience a challenge in situations where a subordinate knows more than a supervisor.

Generally officials do not have major challenges that they encounter in conducting themselves as expected except in isolated cases where personal circumstances forces an official not to comply.

5.2.2.4 Understanding discipline

Generally, court managers, supervisors and officials understand discipline. They know that there are rules and policies that all employees have to comply with and that should they not comply corrective measures must be taken. Some officials believe that discipline is not applied fairly and that favouritism exists. The disciplinary code and procedure Resolution 1 of 2003 stresses that discipline must be applied in a prompt, fair, consistent and progressive manner.

5.2.2.5 Policies on discipline

Court managers generally know the disciplinary code and procedure Resolution 1 of 2003, but they seem not to understand it because one of the principles of the resolution is that discipline is a management function. Because of this misunderstanding court managers refer serious misconduct cases to the labour relations section at the regional office and when such matters are in the process of a hearing the supervisor is not even appointed as employer representative as

indicated in the disciplinary code and procedures. Supervisors understand the resolution the same way as the court managers.

Generally, officials do not know the policies of the department as briefing sessions are not done. Copies of the code of conduct are given to the employees who have to acknowledge receipt, but that does not mean that they read it and know the rules. To ensure that employees know what is expected of them they must also be told about the rules of the game. Supervisors must conduct briefing sessions and not merely say officials have access to DJINI because that will assist them in case of a disciplinary hearing, as the chairperson must determine the substantive fairness of the matter.

5.3 RECOMMENDATIONS

The objectives of this study were stated in chapter one, and based on those objectives and the discussions that followed, the following recommendations are advanced:

- Review of courts staff establishments must be conducted. This will address the issue of overload to both the supervisors and officials to enable supervisors to perform daily check and instil discipline on their subordinates.
- Security clearance must be conducted to the recommended candidates before appointment to avoid employing people with previous convictions like fraud or theft to work in sections like the cash hall and as DCRS clerk at court.
- Briefing sessions on departmental policies and code of conduct must be held to ensure that officials know the rules and what is expected from them. Supervisors must stop saying the policies are accessible on DJINI.
- All supervisors must be trained on labour relations matters. These must include advanced training like initiating the cases where their direct subordinates have been charged. This will avoid the time taken to finalise the disciplinary matters and they will be complying with the principle of the disciplinary code and procedures Resolution 1 Of 2003 of the PSBCS, that discipline is a management function.

- Court Managers to be trained on advanced labour relations courses like cross-examination skills, investigation skills to assist them to investigate cases in their courts and when they are appointed as employer representative.
- Labour Relations section at the regional office must play their role of advising both the employer and the employees of the department. They must stop receiving cases from courts but conduct investigations and facilitate disciplinary hearings.
- Officials who believe that there is favouritism in their courts must lodge grievances according to Resolution 14 of 2002 of the PSCBC rather than committing acts of misconduct thinking or hoping that nothing will be done to them.
- Departmental systems like JDAS need to be upgraded or changed because they have a lot of flaws and officials capitalise on that, committing fraudulent activities or stealing third party funds.
- Court managers' levels must be reviewed and be graded according to the size of the court. Currently there are court managers who are on level nine (9) while others are on level ten (10), but some of those who are on level nine are managing bigger courts.

From the results of this study, there are other issues that can be further researched on management of workplace discipline:

- Discipline as a management function.
- Causes of ill-discipline.
- The effect of ill-discipline on service delivery.

5.4 CONCLUSION

Workplace discipline is necessary for an organisation to have a competitive edge. Discipline will promote effectiveness and excellence at the workplace, qualities which can contribute to the development and growth of the organisation. And that is part of service delivery, serving the people in ways which benefit them. Officials who are disciplined will perform their duties as expected to advance the goals of their departments and consequently contribute to the overall development of the country socially and economically. It is therefore important that officials are empowered, and one of the ways to do so is by providing them with training and other relevant resources.

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ANNEXURE A

Tel: 016 349 1930/083 696 2323
e-mail: msekgobela@justice .gov.za

P.O. Box 3686
Tzaneen
0850
20 November 2013

The Area Court Manager
Department of Justice and Constitutional Development
Malamulele Cluster
Malamulele
0982

Dear Sir/Madam

RE: REQUEST TO COLLECT DATA AT THE CLUSTER S COURTS

The above matter refers:

1. I hereby request to collect data from court managers in your cluster for research purposes.
2. I am registered with the University of Limpopo for Master of Public Administration Degree (MPA), and my approved research topic is: **The Management of Workplace Discipline in the Department of Justice, Limpopo Province.**
3. I assure the cluster that information gathered will be used for the purposes of the present research only, and that the research findings and recommendations will be made available when requested.

Yours truly

.....

Ms Mmatapa Lizzer Sekgobela

ANNEXURE B

Tel: 016 349 1930/083 696 2323
e-mail: msekgobela@justice .gov.za

P.O Box 3286
Tzaneen
0850
20 November 2013

The Court Manager

.....
.....

Dear Sir/Madam

RE: REQUEST TO COLLECT DATA AT YOUR COURT FOR RESEARCH PURPOSES

The above matter refers:

1. I hereby request to collect data from supervisors and other staff members in your court for research purposes.
2. I am registered with the University of Limpopo for Master of Public Administration Degree (MPA), and my approved research topic is: **The management of Workplace Discipline in the Department of Justice, Limpopo Province.**
3. I assure the cluster that information gathered will be used for the purposes of the present research only, and that the research findings and recommendations will be made available when requested.

Yours truly

.....

Ms Mmatapa Sekgobela

ANNEXURE C

INTERVIEW QUESTIONNAIRE ON THE MANAGEMENT OF WORKPLACE DISCIPLINE IN THE DEPARTMENT OF JUSTICE LIMPOPO, MALAMULELE CLUSTER

N.B. COURT MANAGER S QUESTIONNAIRE

You are kindly requested to complete the following questionnaire, which consists of 5 pages (including this one), on the management of discipline in your institution.

PLEASE NOTE:

1. Do not write your name on the questionnaire
2. Completing this questionnaire is voluntary and you are assured anonymity and confidentiality.
3. Information gathered will be used for the research purposes only and research findings will be available when requested.
4. There are no correct or incorrect answers, only your honest opinion is required.
5. Please answer all questions honestly.

BIOGRAPHICAL INFORMATION

Please answer the following questions. Where applicable, please indicate your answer with an X.

1. Gender:

| | |
|---|---|
| M | F |
|---|---|

2. Experience as a Court Manager:

| | |
|--------------|--|
| 0 – 3 years | |
| 4 – 6 years | |
| 7 - 10 years | |
| >10 years | |

3. Which skills do you possess to enable you to manage discipline?

| SKILL | THEORY | PRACTICAL |
|---------------------------------|--------|-----------|
| Interpersonal | | |
| Investigation | | |
| Report | | |
| Chairing a disciplinary hearing | | |

4. Please complete the table (Court Staff)

| | |
|--|--|
| Total number of staff in your court level 3 -6 | |
| How many supervisors | |
| How many second supervisors | |

5. Number of committees you serve in as:

| | |
|-----------------|--|
| 5.1 Chairperson | |
| 5.2 Member | |

CAUSES OF ILL-DISCIPLINE IN THE DEPARTMENT

1.1 Have you had any misconduct cases in the past 3 months at your Court?

| | |
|-----|----|
| YES | NO |
|-----|----|

1.2 In your opinion, what are the causes of ill-discipline in your court and why?

.....

.....

.....

.....

1.3 What do you think need to be done to minimize ill-discipline in your Court?

.....

.....

.....

.....

2. ROLES OF LINE MANAGERS TO MINIMIZE ILL-DISCIPLINE

2.1 Have you ever acted as employer Representative or Chairperson in any misconduct case?

| | |
|-----|----|
| YES | NO |
|-----|----|

2.2 What is your role and responsibilities in the management of workplace discipline in your institution?

.....

.....

.....

.....

2.3 Do you see yourself carrying out your roles and responsibilities as expected, in management of discipline? Why?

.....

.....

2.4 In your opinion, do the following officials/structures carry out their roles and responsibilities as expected, in management of discipline?

| | YES | NO |
|---|-----|----|
| Supervisors | | |
| Court Managers | | |
| Labour Relations Officers in the Region | | |

2.5 For those that you answered NO in 2.4, what can be the reasons for such?

.....

.....

.....

.....

3. CHALLENGES AND POSSIBLE SOLUTIONS IN MANAGEMENT OF WORKPLACE DISCIPLINE

3.1 Are you of the opinion that management of discipline poses a challenge to your court?

| | |
|-----|----|
| YES | NO |
|-----|----|

3.2 If yes, what are those challenges?

.....

.....

.....

.....

3.3 Do you think management of discipline also poses challenges to you as the Court Manager?

| | |
|-----|----|
| YES | NO |
|-----|----|

3.4 If yes, what are the challenges?

.....
.....
.....
.....

3.5 Have you attended any training as far as managing workplace discipline is concerned?

| | |
|-----|----|
| YES | NO |
|-----|----|

3.6 What developmental needs, if any, do you have or have you indicated in your Personal Development Plan (PDP)?

.....
.....
.....
.....

4. UNDERSTANDING OF DISCIPLINE

4.1 What is your understanding of discipline?

.....
.....
.....
.....

4.2 In your opinion officials misconduct themselves because

| | |
|---|--|
| Poor management | |
| I will never get caught attitude | |
| Peer pressure | |
| Not aware of what is expected from them | |
| Personal circumstances | |
| Other (specify) | |

5. POLICIES ON DISCIPLINE

5.1 Do you know the Resolution 1 Of 2003 of the PSCBC?

| | |
|-----|----|
| YES | NO |
|-----|----|

5.2 Do you manage discipline in your court as indicated in the Disciplinary Code Resolution 1 Of 2003? Why?

| | |
|-----|----|
| YES | NO |
|-----|----|

5.3 If you have answered NO in 5.2 what are your reasons?

.....

.....

.....

.....

THANK YOU!!!

ANNEXURE D

INTERVIEW QUESTIONNAIRE ON THE MANAGEMENT OF WORKPLACE DISCIPLINE IN THE DEPARTMENT OF JUSTICE LIMPOPO, MALAMULELE CLUSTER

N.B.: SUPERVISORS S QUESTIONNAIRE

You are kindly requested to complete the following questionnaire, which consists of 6 pages (including this one), on the management of discipline in your institution.

PLEASE NOTE:

1. Do not write your name on the questionnaire
2. Completing this questionnaire is voluntary and you are assured anonymity and confidentiality.
3. Information gathered will be used for the research purpose only and research finding will be available when requested.
4. There are no correct or incorrect answers, only your honest opinion is required.
5. Please answer all questions honestly.

BIOGRAPHICAL INFORMATION

Please answer the following questions. Where applicable, please indicate your answer with X:

1. Gender:

| | |
|---|---|
| M | F |
|---|---|

2. Experience as a Supervisor:

| | |
|--------------|--|
| 0 – 3 years | |
| 4 – 6 years | |
| 7 - 10 years | |
| >10 years | |

3. Which skills do you possess to enable you to supervise?

| SKILL | THEORY | PRACTICAL |
|----------------------|--------|-----------|
| Interpersonal skills | | |
| Conflict management | | |
| Investigation | | |
| Report writing | | |

4. How many officials do you supervise?

| | |
|-------|--|
| 1-5 | |
| 5-10 | |
| 10-20 | |
| > 20 | |

5. Number of Sections you supervise?

1. CAUSES OF ILL-DISCIPLINE IN THE DEPARTMENT

1.1 Have you had any misconduct cases in the last 3 months in your section?

| | |
|-----|----|
| YES | NO |
|-----|----|

1.2 If you have answered YES in 1.1, please indicate the type of misconduct you had.

| | |
|-----------------------|--|
| Absenteeism | |
| Theft of state monies | |
| Fraud | |
| Abuse of sick leave | |
| Other (specify) | |

1.3 In your opinion, what are the causes of ill-discipline in your section/s and why?.....
.....
.....
.....

1.4 What do you think need to be done to minimize ill-discipline in your section/s?
.....
.....
.....
.....

2. ROLES OF LINE MANAGERS TO MINIMIZE ILL-DISCIPLINE

2.1 Have you ever acted as employer Representative or Chairperson in any misconduct case?

| | |
|-----|----|
| YES | NO |
|-----|----|

2.2 What is your role and responsibilities in the management of workplace discipline in your institution?

.....

.....

.....

.....

2.3 Do you see yourself carrying out your roles and responsibilities as expected, in management of discipline? Why?

.....

.....

.....

.....

2.4 In your opinion, do the following officials/structures carry out their roles and responsibilities as expected, in management of discipline in your institution?

| | YES | NO |
|---|-----|----|
| Supervisors | | |
| Court Managers | | |
| Labour Relations Officers in the Region | | |

2.5 For those that you answered NO in 2.4, what can be the reasons for such?.....

.....

.....

3. CHALLENGES AND POSSIBLE SOLUTIONS IN MANAGEMENT OF WORKPLACE DISCIPLINE

3.1 Are you of the opinion that management of discipline poses a challenge to your section/s?

| | |
|-----|----|
| YES | NO |
|-----|----|

3.2 If yes, what are these challenges?

.....
.....
.....
.....

3.3 Do you think management of discipline also poses challenges to you as the Supervisor?

| | |
|-----|----|
| YES | NO |
|-----|----|

3.4 If yes, what are the challenges?

.....
.....
.....
.....

3.5 Have you attended any training as far as managing workplace discipline is concerned?

| | |
|-----|----|
| YES | NO |
|-----|----|

3.6 What developmental needs, if any, do you have or have you indicated in your Personal Development Plan (PDP)?

.....
.....
.....
.....

4. UNDERSTANDING OF DISCIPLINE

4.1 What is your understanding of discipline?

.....
.....
.....
.....

4.2 In your opinion, officials misconduct themselves because

| | |
|---|--|
| Poor management | |
| I will never get caught attitude | |
| Peer pressure | |
| Not aware of what is expected from them | |
| Personal circumstances | |
| Other(specify) | |

5. POLICIES ON DISCIPLINE

5.1 Do you know the Resolution 1 Of 2003 of the PSCBC?

| | |
|-----|----|
| YES | NO |
|-----|----|

5.2 Do you manage discipline in your court as indicated in the Disciplinary Code Resolution 1 of 2003? Why?

| | |
|-----|----|
| YES | NO |
|-----|----|

5.3 If you have answered NO in 5.2 what are your reasons?

.....

.....

.....

.....

5.4 Have you ever conducted a briefing session to your subordinates about the code of conduct for the public service?

| | |
|-----|----|
| YES | NO |
|-----|----|

5.5 If you have answered NO in 5.4, what are your reasons?

.....
.....
.....

THANK YOU!!!

ANNEXURE E

INTERVIEW QUESTIONNAIRE ON THE MANAGEMENT OF WORKPLACE DISCIPLINE IN THE DEPARTMENT OF JUSTICE LIMPOPO, MALAMULELE CLUSTER

N.B. OFFICIALS S QUESTIONNAIRE (LEVEL 3 TO 6)

You are kindly requested to complete the following questionnaire, which consists of 6 pages (including this one), on the management of discipline in your institution.

PLEASE NOTE:

1. Do not write your name on the questionnaire.
2. Completing this questionnaire is voluntary and you are assured anonymity and confidentiality.
3. Information gathered will be used for the research purposes only and research findings will be available when requested.
4. There are no correct or incorrect answers, only your honest opinion is required.
5. Please answer all questions honestly.

BIOGRAPHICAL INFORMATION

Please answer the following questions. Where applicable, indicate your answer with X

1. Gender:

| | |
|---|---|
| M | F |
|---|---|

2. Experience in the current section

| | |
|--------------|--|
| 0 – 3 years | |
| 4 – 6 years | |
| 7 - 10 years | |
| >10 years | |

3. Experience in the previous section:

| | |
|--------------|--|
| 0 -3 years | |
| 4 – 6 years | |
| 7 – 10 years | |
| >10 years | |

4. Which skills do you possess to enable you to perform your duties?

| SKILL | THEORY | PRACTICAL |
|----------------------|--------|-----------|
| Interpersonal skills | | |
| Typing | | |
| Interpreting | | |
| Report writing | | |
| Finance | | |

5. How many sections can you work in?

| | |
|---|--|
| Family (divorce, maintenance, domestic violence etc.) | |
| Finance | |
| Civil | |
| As a DCRS clerk | |
| Criminal | |

1. CAUSES OF ILL-DISCIPLINE IN THE DEPARTMENT

1.1 Where any disciplinary steps taken against you in the past 3 months?

| | |
|-----|----|
| YES | NO |
|-----|----|

1.2 If you have answered YES in 1.1, please indicate the type of misconduct you committed.

| | |
|-----------------------|--|
| Absenteeism | |
| Theft of state monies | |
| Fraud | |
| Abuse of sick leave | |
| Other (specify) | |

1.3 In your opinion, what are the causes of ill-discipline in your institution and why?

.....
.....
.....
.....

1.4 What do you think needs to be done to minimize ill-discipline in your institution?

.....
.....
.....
.....

2. ROLES OF LINE MANAGERS TO MINIMISE ILL-DISCIPLINE

2.1 Do you think Court Managers and Supervisors are doing their job properly as far as management of discipline is concerned? Why?

| | |
|-----|----|
| YES | NO |
|-----|----|

.....
.....
.....

2.2 In your opinion, what is the role and responsibilities of Court Manager and Supervisors in the management of discipline in your institution?

.....

.....

.....

.....

.....

2.3 Do you see your daily conduct in line with the expectation of the employer? i.e being disciplined? Why?

.....

.....

.....

.....

2.4 In your opinion, do the following officials/structures carry out their roles and responsibilities as expected, in management of discipline in your institution?

| | YES | NO |
|---|-----|----|
| Supervisors | | |
| Court Managers | | |
| Labour Relations Officers in the Region | | |

2.5 For those that you answered NO in 2.4, what can be the reasons for such?.....

.....

.....

3. CHALLENGES AND POSSIBLE SOLUTIONS IN MANAGEMENT OF WORKPLACE DISCIPLINE

3.1 Do you have any challenge that makes you not to conduct yourself properly/as expected?

| | |
|-----|----|
| YES | NO |
|-----|----|

3.2 If yes, what are those challenges?.

.....
.....
.....
.....

3.3 Have you attended any training as far as workplace discipline is concerned?

| | |
|-----|----|
| YES | NO |
|-----|----|

3.4 What developmental needs, if any, do you have or have you indicated in your Personal Development Plan (PDP)?

.....
.....
.....
.....

4. UNDERSTANDING OF DISCIPLINE

4.1 What is your understanding of discipline?

.....
.....
.....
.....

4.2 In your opinion, officials misconduct themselves because of:

| | |
|---|--|
| Poor management | |
| I will never get caught attitude | |
| Peer pressure | |
| Not aware of what is expected from them | |
| Personal circumstances | |
| Other (specify) | |

5. POLICIES ON DISCIPLINE

5.1 Do you know the Resolution 1 Of 2003 of the PSBC?

| | |
|-----|----|
| YES | NO |
|-----|----|

5.2 In your opinion are cases of misconduct in your court dealt with as indicated in the Disciplinary Code Resolution 1 of 2003? Why?

| | |
|-----|----|
| YES | NO |
|-----|----|

5.3 If you have answered NO in 5.2 above, what are your reasons?

.....
.....
.....
.....

5.4 Have you ever attended a briefing session at your court about the code of conduct for the public service?

| | |
|-----|----|
| YES | NO |
|-----|----|

5.5 If you have answered NO in 5.4 above, what are your reasons?

.....
.....
.....
.....

THANK YOU!!!