

BOARD NOTICE 127 OF 2005**SOUTH AFRICAN COUNCIL FOR THE ARCHITECTURAL PROFESSION****RULES FOR DISCIPLINARY PROCEEDINGS**

Notice is hereby given that the South African Council for the Architectural Profession proposes, in terms of section 36 of the Architectural Profession Act, 2000 (Act 44 of 2000), to make the rules set out in the Schedule hereto. Comment must be submitted within 30 (thirty) days from the date of publication of this notice to The Registrar, Private Bag X02, Randpark Ridge 2156. Tel 011 794 8333 Fax 011 794 8339 e-mail admin@architecturalcouncilsa.com

SCHEDULE**1. Definitions**

In these rules any word or expression to which a meaning has been assigned in *the Act* shall bear the same meaning, and unless the context otherwise indicates -

"appellant" means a **registered person** who has been found guilty of contravening the **code of professional conduct** and who has appealed against the decision of the tribunal;

"code of professional conduct" means the code published in Board Notice 28 of 2004 as amended from time to time;

"complainant" means a person who lodges a **complaint**, brings a charge or makes an allegation;

"complaint" means any information regarding the improper conduct by a person registered in terms of *the Act*, which comes to the attention of the registrar of the council, or a complaint, charge or allegation of improper conduct against such person;

"**executive committee**" means a committee appointed by the Council and to whom powers are delegated in terms of section 40(2) of the Act

"investigating committee" means a committee established in terms of section 17 of *the Act*;

"mentor" means a professional registered in terms of section 21(1)(a)-(d) of the Act under whose supervision and control a candidate performs his or her work in the architectural profession;

"respondent" means a registered person charged with improper conduct in terms of section 29 of *the Act*;

"*the Act*" means the Architectural Profession Act, 2000 (Act No. 44 of 2000);

**COMPWNT
(Section 28(1))****2 Lodging of Complaint**

- (a) Any person who **feels** aggrieved by an act or omission by a **registered person** or who reasonably believes that a **registered person** is guilty of misconduct, may lodge a **complaint** with the Council.
- (b) **A complaint** shall –
 - (i) **be** in writing and in the form of an affidavit or an affirmation;
 - (ii) contain the full name, business, postal and e-mail addresses, where applicable, of **the complainant**;

- (iii) specify the act or omission relating to the alleged improper conduct by the registered person;
 - (iv) include **all** supporting evidence relating to **the complaint**;
 - (v) identify witnesses who may be able to provide evidence in support of **the complaint**;
 - (vi) indicate **the complainant's** willingness to –
 - (aa) assist an **investigating committee** with the investigation or with the obtaining of material information in respect of the **complaint**; and
 - (bb) appear before a **disciplinary tribunal** at the time and place specified in a subpoena, to be questioned or to produce a **book**, document or object; and
 - (vii) be signed by **the complainant** or by his or her duly authorised representative.
- (c) The **Council** or **Registrar** may of their own accord refer any information which comes to their notice and which **prima facie** demonstrates improper conduct on the part of a **registered person**, to an **investigating committee**,

INVESTIGATING COMMITTEE

(Section 28)

3. Composition of Investigating Committee

- (a) An **investigating committee** shall consist of a minimum of **one** and a maximum of **five** persons.
- (b) The Council shall appoint the chairperson of an **investigating committee** where such a committee consists of more than one person.
- (c) If, during an investigation of a **complaint**, a member of an **investigating committee** dies or becomes disqualified or vacates his or her office for any of the reasons specified in section **6** of **the Act**, the investigation shall –
 - (i) in the case of an **investigating committee** consisting of one member, be discontinued and shall start anew before another **investigating committee** to be established by **the Council**; or
 - (ii) in the case of an **investigating committee** consisting of more than one member, proceed before the remaining member or members.
- (d) The recommendation of the majority of an **investigating committee** consisting of three or more members shall be the recommendation of such a committee.
- (e) Where the members of an **investigating committee** consisting of **two** members cannot agree on a recommendation, the recommendation by the chairperson shall be the recommendation by the committee.

4. Recording of Proceedings and Conveying of Recommendation

- (a) Any proceedings by or before an **investigating Committee**, may be recorded in the manner determined by the chairperson of the **investigating committee**.
- (b) The chairperson of an **investigating committee** shall convey the recommendation of the committee to **the Registrar**.

5. Supplementary Powers of Investigating Committee

- (a) Subject to subsection (3) of section **28** of **the Act**, an **investigating committee** may, for the purposes of its investigation –

- (i) consult or seek further information or evidence regarding the **complaint** from the **complainant** or any person or body, including **the registered person** against whom the complaint has been brought, his or her employer or mentor; and
- (ii) seek legal or other advice or assistance from any person or body.

CHARGE OF IMPROPER CONDUCT (Section 29)

6. Dismissal of Charge

- (a) The Council or the executive committee may, after considering a report of the **investigating committee**, dismiss **the complaint** and inform the **complainant** accordingly in writing, if it is convinced that no sufficient ground or grounds exist for a charge of improper conduct to be preferred against a **registered person**.
- (b) The decision of the Council or the executive committee, as the case may be, shall be final and no appeal may be entered against such decision.

7. Charge of Improper Conduct and Assistance

- (a) If, after considering a report by the **investigating committee**, the **Council** or the executive committee is convinced that sufficient ground or grounds exist for a charge to be preferred against a **registered person**, a charge sheet must be furnished to the **registered person** concerned as described in section 29(2) and (3) of **the Act**.
- (b) The Council may, for the purposes of section 29 of **the Act**, appoint a person to assist it in the performance of its functions in terms of that section.

8. Additional Documents and Information

- (a) The following additional documents and information shall be attached to a charge sheet referred to in section 29(3) of **the Act** -
 - (i) a copy of the code of professional conduct;
 - (ii) an extract containing sections 28 to 33 of **the Act**; and
 - (iii) a copy of these rules.

DISCIPLINARY TRIBUNAL (Section 30)

9. Appointment of Members of Tribunal and Presiding Officer

The Council shall appoint a **disciplinary tribunal** consisting of a minimum of three and a maximum of five members in terms of section 30 of **the Act** whenever necessary, and it shall designate one of the members thereof as the presiding officer.

DISCIPLINARY HEARING (Section 31)

10. Procedure

- (a) The person appointed in terms of section 31(2) of **the Act** who will lead the evidence on behalf of the **Council** and the **respondent** or his or her representative shall give each other notice of an intention to call witnesses, who they will be and, in the case of expert witnesses, particulars of the evidence that they will give.

- (b) The presiding officer of a disciplinary tribunal –
 - (i) shall, subject to section 31 of the Act, and having regard to the seriousness, complexity or urgency of a charge referred to the disciplinary tribunal, determine the procedure to be followed at the hearing before it; and
 - (ii) may determine the manner in which the hearing shall be recorded and convey that determination to the Registrar.
- (c) At the start of the hearing the presiding officer shall put the charge or charges to the **respondent** and request him or her to plead to such charge or charges.
- (d) If the **respondent** pleads guilty to the charge or charges, the **disciplinary tribunal** may find the **respondent** guilty without hearing evidence or, if it deems it necessary, after hearing evidence and/or argument by the person appointed in terms of section 31(2) of **the Act**.
- (e) If the **respondent** pleads not guilty to the charge or charges, the **disciplinary tribunal** shall hear evidence and argument pertaining to the charge or charges by the person appointed in terms of section 31(2) of **the Act**.
- (9) After a finding of guilty and before punishment, any previous convictions of the **respondent** may be presented to the **disciplinary tribunal**.
- (g) Should the **respondent** fail to attend the hearing without good cause, the **disciplinary tribunal** may proceed to hear evidence and argument, and may find the **respondent** guilty, provided that the **disciplinary tribunal** is convinced that the charge sheet has been served on the **respondent**.

APPEAL (Section 33)

11. Notice of Appeal

- (a) Subject to section 33 of **the Act**, ~~an appellant shall deliver to the Council~~ a written notice of appeal, dated and signed by or on behalf of him or her, containing at least the following:
 - (i) The name, postal and e-mail addresses and telephone and fax numbers of the **appellant** and his or her representative, if not already in the possession of the **Council**;
 - (ii) Whether the whole or part of the finding and/or the sentence is appealed against, and, if in part, which part;
 - (iii) The grounds on which the appeal is lodged, specifying the findings of fact and/or rulings of law appealed against.
- (b) The **Registrar** shall on receipt of a notice of appeal referred to in paragraph (a) -
 - (i) acknowledge receipt in writing; and
 - (ii) submit the notice to the **Council**.

12. The Hearing of an Appeal

- (a) The Council shall -
 - (i) within 30 days after receipt of a notice of appeal referred to in rule 11 determine the date on which the appeal shall be heard; and
 - (ii) notify **the appellant** concerned in writing of the place, date and time of the appeal hearing.
- (b) **An appellant** may be assisted or represented by another person at an appeal hearing.

GENERAL**13. Duties of Registrar**

The **Registrar** shall at the request of the chairperson of an **investigating committee** or the presiding officer of a **disciplinary tribunal**, render assistance to those functionaries, and to the persons referred to in rules 5(a)(ii), 7(b), and section 31(2) of the Act.

14. Subpoena

The subpoena referred to in section 31 of the Act shall be in the format set out in Annexure A.

15. Short title

These rules shall be called the Rules for Disciplinary Proceedings in the Architectural Profession, 2005.

ANNEXURE A**SOUTH AFRICAN COUNCIL FOR THE ARCHITECTURAL PROFESSION****SUBPOENA TO APPEAR BEFORE DISCIPLINARY TRIBUNAL**
(Section 31 of the Act)**To-**_____
(name of witness)_____
(address of witness)

You are hereby **summoned** in terms of section 31 of the Architectural Profession Act, 2000 (Act 44 of 2000), to

appear on _____ (date) _____ (time)

at _____ (address)

before a disciplinary tribunal to be questioned, to give evidence and to produce the following book(s), document(s) or object(s), namely

(specify, or delete if inapplicable)

in connection with a charge of improper conduct against

(name of respondent)

Signed this _____ day of _____ 20 _____

Presiding Officer of Disciplinary Tribunal

Place _____

Section 31(8) of the Architectural Profession Act, 2000 (Act 44 of 2000), reads as follows:

- "(8) (a) A witness who has been subpoenaed may not –
- (i) without sufficient cause, fail to attend the hearing at the time and place specified in the subpoena;
 - (ii) refuse to be sworn in or to be affirmed as a witness;
 - (iii) without sufficient cause, fail to answer fully and satisfactorily to the best of his or her knowledge to all questions lawfully put to him or her; or
 - (iv) fail to produce any book, document or object in his or her possession or custody or under his or her control which he or she has been required to produce.
- (b) A witness who has been subpoenaed must remain in attendance until excused by the chairperson of the disciplinary tribunal from further attendance.
- (c) A witness who has been subpoenaed may request that the names of the members of the disciplinary tribunal be made available to him or her.
- (d) The law relating to privilege, as applicable to a witness subpoenaed to give evidence or to produce a book, document or object in a civil trial before a court of law may, with the necessary changes, apply in relation to the examination of, or the production of any book, document or object to the disciplinary tribunal by, any person called in terms of this section as a witness.
- (e) A witness may not, after having been sworn in or having been affirmed as a witness, give a false statement on any matter, knowing that answer or statement to be false.
- (f) A person may not prevent another person from complying with a subpoena or from giving evidence or producing a book, document or object which he or she is in terms of this section required to give or produce."