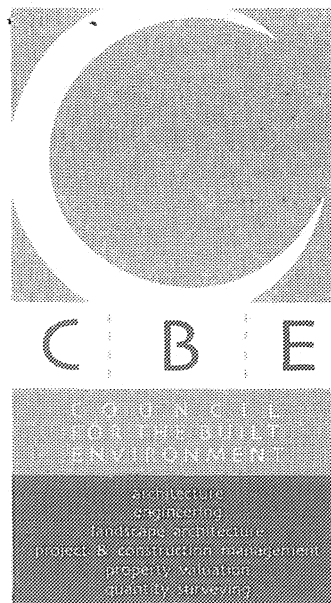


**BOARD NOTICE 100 OF 2015**

The **Council for the Built Environment (CBE)** is a statutory body established under the Council for the Built Environment Act (No. 43 of 2000). It is an overarching body that coordinates the six built environment Professional Councils (Architecture, Engineering, Landscape Architecture, Project and Construction Management, Property Valuation and Quantity Surveying) for the purpose of instilling good conduct within the professions, transforming the professions and advising the South African government



**CALLS FOR PUBLIC COMMENT ON RULES AND REGULATIONS: BEST PRACTICE  
FOR CONDUCTING DISCIPLINARY PROCEEDINGS AND APPEALS**

The CBE, on behalf of the South African Council for the Landscape Architectural Profession, South African Council for the Project and Construction Management Professions and South African Council for the Property Valuers Profession, invites written comments and inputs from all interested persons on developing procedures and guidelines that constitute best practice for conducting disciplinary proceedings and appeals on built environment related matters.

The South African Council for the Landscape Architectural Profession (SACLAP) is empowered, in terms of Section 36 (1) of the Landscape Architectural Professions Act (No. 45 of 2000) to make rules with regard to any matter that is required or permitted to be prescribed in terms of this Act.

The South African Council for the Project and Construction Management Professions (SACPCMP) is empowered in terms of section 36 (1) of the Project and Construction Management Professions Act (No. 48 of 2000), to make rules with regard to any matter that is required or permitted to be prescribed in terms of this Act.

The South African Council for the Property Valuers Profession (SACPVP) is empowered in terms of section 37 (1) of the Property Valuers Profession Act (No. 47 of 2000), to make

rules with regard to any matter that is required or permitted to be prescribed in terms of this Act.

The South African Council for the Quantity Surveying Profession (SACQSP) is empowered in terms of section 36 (1) of the Quantity Surveying Profession Act (No. 49 of 2000), to make rules with regard to any matter that is required or permitted to be prescribed in terms of this Act.

**Comments may be submitted as follows:**

**SACLAP: Ms. Bernadette Vollmer**

Position: Registrar

E-mail: registrar@saclap.org.za

Tel: 082 567 7592

Physical Address: 4 Karen Street Bryanston West Gauteng

Postal Address: P.O Box 868 Ferndale 2160 South Africa

**SACPCMP: Ms. Nomvula Rakolote**

Position: Registrar

E-mail: registrar@sacpcmp.co.za

Tel: 011 318 3402/3/4

Fax: 011 318 3405

Physical Address: 1<sup>st</sup> Floor Gateway Creek Corner New Road & 6<sup>th</sup> Road Midrand

Postal Address: P.O Box 6286 Halfway House 1685

**SACPVP: Mr MC Seota**

Position: Registrar

E-mail: matsobane.seota@sacpvp.co.za

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**SACPVP: Mr MC Seota**  
**Position:** Registrar  
**E-mail:** matsobane.seota@sacpvp.co.za  
**Tel:** 012 348 8643  
**Fax:** 012 348 7528  
**Physical Address:** 77 Kariba Street, Lynwood Glen, Pretoria 0081  
**Postal Address:** P.O Box 114, Menlyn, 0063

**SACQSP: Steven Lyons**  
**Position:** Registrar  
**E-mail:** admin@sacqsp.co.za  
**Tel:** 011 312 2560/1  
**Fax:** 011 312 2562  
**Physical Address:** Unit C27, Block C, Lone Creek Waterfall Office Park, Bekker Road, Vorna Valley Ext 21, Midrand  
**Postal Address:** P.O Box 654 Halfway House 1685

**THE CLOSING DATE FOR THE SUBMISSION OF COMMENTS: 8 / 06 / 2015**

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## DRAFT RULES FOR INVESTIGATIONS, DISCIPLINARY HEARINGS AND APPEALS

### INVESTIGATIONS AND DISCIPLINARY HEARINGS

#### Preamble

1. It is acknowledged that the six Built Environment Professional Councils (councils) are mandated to take any steps they consider necessary for the protection of the public and the environment in their dealings with registered persons for the maintenance of the integrity and the enhancement of the status of the councils.
2. In pursuance of the councils' rights and obligations mentioned in 1 above, the councils must investigate an act of alleged improper conduct by a registered person and/or investigate a complaint, charge or allegation of improper conduct against a registered person brought by any person.
3. Investigations mentioned in 2 above are directed towards the professional conduct of registered persons, and do not intend to recover damages on behalf of any person, or enforce specific performance against any person and as such, is not meant to replace civil and/or criminal litigation.
4. It is acknowledged that a council may take any reasonable steps which it considers necessary where, as a result of built environment profession related undertakings, public health and safety is prejudiced.
5. It is furthermore acknowledged that a council may take any steps which it considers necessary to protect the public in their dealings with registered persons, maintain the integrity and enhance the status of the professions and to improve the standards of services rendered by registered persons.
6. Where a *registered person* or persons registered with different Built Environment Professions are involved in the same subject of investigation, the *councils* will share relevant information with one another and stakeholders.
7. These rules must be read with and subjective to the Built Environment Professions Acts and interpreted and applied in a manner that is lawful, reasonable and procedurally fair
8. Councils are encouraged to publish their procedures as rules in terms of section 36 of the Acts.

#### Definitions

In this document, any expression or word which has been defined in *the Act* has that meaning and, unless the context otherwise, indicates –

**“Acts”** means the Built Environment Professions Acts.(and “Act means the enabling Act of a particular Built Environment Professional Council.)

**“Advisory letter”** means correspondence with a *respondent* advising of concerns raised by the *council* regarding the *respondent's* professional behaviour.

**“Registrar”** means the persons appointed as *Registrars* or *Chief Executive Officers* in terms of the *Act*

**“Complainant”** means a person or body lodging a complaint, against a registered person.

**"Councils"** means the Built Environment Professional Councils established in terms of the Acts (and council has a corresponding meaning)

**"Disciplinary tribunal"** means the tribunal appointed by the *Council* in terms of the *Act*.

**"Improper conduct"** means a transgression of the Code of Conduct published in terms of the *Act*.

**"Inquiry"** means the process of investigation by the Investigating Committee

**"Investigating Committee"** means a committee appointed by the *Council* under section 17 of the *Act* and to which the power to inquire into the conduct of a *registered person* under section 28 of the *Act* is delegated.

**"Pro forma complainant"** means a person appointed to perform the duties required in terms of the *Act* to conduct disciplinary hearings.

**"Registered person"** means a person registered in terms of section 18 of the *Act*.

**"Respondent"** means a *registered person* whose conduct is the subject of an *inquiry*.

#### **Delegation of Powers**

Councils need to, through, council resolutions delegate the following functions to the Registrar / CEO / or other staff member):

1. The referral of matters brought against a Registered person to Investigating Committees for investigation.
2. The charging of Registered persons and the furnishing of charge sheets to Registered persons.
3. The appointment of Disciplinary tribunals.
4. The appointment of Pro-forma complaint

#### **Appointment and Meetings of an Investigating Committee**

1. Councils must appoint Investigating Committees capable of investigating the professional conduct of Registered persons.
2. Councils must ensure clear terms of reference and delegation of powers for Investigating Committees and sufficient meetings of Investigating Committees to investigate matters and refer to Council.

### **PROCEDURE PRIOR TO INQUIRY**

#### **1 Information and complaints of improper conduct**

- (1) (a) Any person lodging a complaint of *improper conduct* against a *registered person* with a council must lodge the complaint in the form of an affidavit or an affirmation detailing the specific act or acts relating to the alleged *improper conduct*, and must submit evidence in support of it.
- (b) The *Registrar*, upon receipt of any complaint referred to in paragraph (a) which points to the *improper conduct* by a *registered person* or information of conduct which points to *improper conduct* by a *registered person*, must refer the complaint or the information to the *investigating committee* to determine whether the *registered person* should be charged.
- (c) The Registrar must refer a matter to the Investigating Committee upon reasonable grounds to suspect that a registered person has committed an act which may render him or her guilty of improper conduct.

## 2 Investigation

- (1) The *Registrar* must within three working days furnish any *registered person* whose conduct is the subject of a complaint or who has committed an act which may render him or her guilty of *improper conduct*, a written copy of the complaint and/or information related to the conduct.
- (2) The *Registrar* must inform the *registered person* –
  - (a) of the right to be represented or assisted by another person; and
  - (b) that he/she is not obliged to make any statement and any statement so made may be used in evidence against the *registered person*.
- (3) the *Registrar* must submit all complaints and other available information related to complaints to the Investigating Committee.
- (4) The *Investigating Committee* must afford the *registered person* the opportunity to respond in writing to the complaint and all other evidence considered against him/her.
- (5) The *Investigating Committee* or persons assigned by the *investigating committee* including people appointed to investigate the complaint may, with due consideration of the provision section 28(3) of the *Act*, question, for the purpose of gathering further information, the *registered person* concerned.
- (6) The *Investigating Committee* must investigate the matter and obtain evidence to determine within a reasonable time considering the nature, complexity and investigation, whether or not, in its opinion, the *registered person* concerned should be charged and if so, recommend to the *Council* the charge or charges that should be preferred against that *registered person*.
- (7) The *Investigating Committee*, may when it becomes aware of built environment profession related undertakings that may prejudice public health and safety, investigate such undertakings and report to the *CEO / Registrar* on its findings and recommendations.
- (8) The *Investigating Committee* must consider whether the matter ought to be reported to any of the other *Councils* in the Built Environment or to any other stakeholder.

## 3 Preparation for disciplinary hearing

- (1) In the event of a disciplinary hearing being decided upon by the *Council* -
  - (a) the *person delegated by council* must appoint a *pro forma complainant* who must formulate the charge in writing, arrange a disciplinary hearing and, at the disciplinary hearing, adduce all evidence in support of the charge;
  - (b) the *Registrar* may appoint one or more persons to assist the *pro forma complainant*;
  - (c) the *pro forma complainant* must cause a copy of the charge sheet to be served on the *respondent*-
    - (i) informing the *respondent* of the charge;
    - (ii) inviting the *respondent* to file a plea to the charge sheet by no later than 14 days after receipt of the charge sheet.
  - (d) The parties shall give each other notice of the intention to call expert witnesses and by not later than 7 (seven) days before the hearing, provide a written summary of such

expert evidence to the other party.

- (2) The summons for the *respondent* must be substantially in the form of Annexure A, and must be served on the *respondent* by the sheriff of the magistrate court concerned or in any of the manners described in 5 below.
- (3) The summons for a witness to attend a disciplinary hearing contemplated in section 31(3) of the *Act* must be substantially in the form of Annexure B.
- (4) a notice of setdown will be served on the respondent requiring the respondent to attend the hearing at a stated place, date and time which will may not be earlier than 30 days after the date of service of the charge sheet

#### **4 Service of documents**

- (1) A party must serve a document on the other party:
  - (a) by handing a copy of the document to-
    - (i) the person concerned;
    - (ii) a representative authorised in writing to accept service on behalf of the person;
    - (iii) a person who appears to be at least 16 years old and in charge of the person's place of residence, business premises or place of employment at the time;
  - (b) by leaving a copy of the document at an address chosen by the person to receive service;
  - (c) by faxing or emailing a copy of the document to the person's fax number or email address or a number chosen by that person to receive service;
  - (d) by sending a copy of the document by registered post or telegram to the last known address of the party or an address chosen by the party to receive service.

#### **5 Proof of service**

- (1) A party must prove to the *disciplinary tribunal* that a document was served, providing the *tribunal*:
  - (a) with a copy of proof of mailing the document by registered post to the other party; or
  - (b) with a telegram or fax communicating the document to the other party; or
  - (c) with a copy of the fax transmission report indicating the successful transmission to the other party of the whole document; or
  - (d) if a document was served by hand-
    - (i) with a copy of a receipt signed by, or on behalf of, the other party clearly indicating the name and designation of the recipient and the place, time and date of service; or
    - (ii) with a statement confirming service signed by the person who delivered a copy of the document to the other party or left it at any premises; or
  - (e) if a document was sent by electronic mail, electronic acknowledgement of receipt by the *respondent* or other party.

- (2) If proof of service in accordance with (1) is provided, it is presumed, until the contrary is proved, that the party on whom it was served has knowledge of the contents of the document.
- (3) The *disciplinary tribunal* may accept proof of service in any other manner as sufficient.

#### PLEA OF GUILTY IN TERMS OF SECTION 30 (4) (A) OF THE ACT

- (1) A *respondent* desirous to plead guilty, may enter into a plea agreement with the *pro forma complainant* with due consideration to the following factors:
  - (a) the nature and circumstances of the transgression;
  - (b) personal circumstances of the *respondent*;
  - (c) whether the *respondent* was found guilty of related transgressions in the past;
  - (d) the interest of the community;
  - (e) remedial work done and/or required to rectify the condition caused by the *respondent's* conduct; and/or
  - (f) any other relevant considerations.
- (2) Plea agreements:
  - (a) must be in writing and signed by the *pro forma complainant* and the *respondent* or his/her legal representative.
  - (b) are subject to approval by the *disciplinary tribunal*.
- (3) The *disciplinary tribunal* must consider and approve or reject a plea agreement entered into in terms of (2) above. If the plea agreement is approved, a sanction is imposed in accordance with the plea agreement. If the agreement is rejected, the matter shall be referred to a disciplinary hearing as if the *respondent* had pleaded not guilty.

#### PROCEDURES AT DISCIPLINARY HEARINGS IN TERMS OF SECTION 32

- (1) The *pro forma complainant* shall present the case on behalf of the *Council* to the Presiding Officer.
- (2) The presiding officer of a *disciplinary tribunal* shall, subject to sections 31 and 32 of the Act, and having regard to the seriousness, complexity and urgency of the charges, determine the procedure to be followed at the hearing before it, after hearing both sides.
- (3) 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.
- (4) 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 argument.
- (5) After a finding of guilty and before sanction, any previous convictions of the *respondent* may be presented to the *disciplinary tribunal*.
- (6) 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*.



### PROCEDURE AFTER VERDICT

*After the conclusion of the hearing the disciplinary tribunal must, within 30 days—*

- (a) decide whether or not the registered person charged is guilty of improper conduct;*
- (b) if the disciplinary tribunal finds that the registered person charged is guilty of improper conduct, take cognisance of any aggravating or mitigating circumstances;*
- (c) inform the registered person charged and the council of the finding; and*
- (d) inform the registered person of his or her right of appeal in terms of section 33 of the act .*

*(2) A registered person found guilty of improper conduct in terms of this section may—*

- (a) address the disciplinary tribunal in mitigation of sentence; and*
- (b) call witnesses to give evidence on his or her behalf in mitigation of the sentence.*

*(3) (a) If the registered person charged is found guilty of improper conduct, or if he or she admits that he or she is guilty of the charge, the disciplinary tribunal must either—*

- (i) caution or reprimand the registered person;*
- (ii) impose on him or her a fine not exceeding the amount calculated according to the ratio for one year imprisonment determined in terms of the Adjustment of Fines Act, 1991 (Act No. 101 of 1991);*
- (iii) suspend the registration of the registered person concerned for a period not exceeding one year; or*
- (iv) cancel the registration of the registered person concerned and remove his or her name from the register referred to in section 11(c).*

*(b) The disciplinary tribunal may take decisions under more than one of the subparagraphs of paragraph (a).*

*(4) At the conclusion of the hearing the disciplinary tribunal must notify the council of its finding.*

*(5) The council must publish the finding and the sanction imposed in terms of subsection (3) in the Gazette.*

*(6) The council must give effect to the decision of the disciplinary tribunal.*

### NOTICE OF THE RIGHT TO APPEAL

*The chairperson of the disciplinary tribunal must after imposing a sanction explain the respondent's right to appeal in terms of the Act and record such explanation.*

### APPEALS

1. It is acknowledged that:
  - I. An applicant for registration may appeal to the relevant council against the decision of a committee to refuse registration;
  - II. A registered person may appeal against cancellation of his or her registration, except where the cancellation was due to the registered person becoming disqualified from registration through legislation or the registration was cancelled as a result failure to pay the prescribed annual fee or portion thereof within the stipulated time period.
  - III. A registered person found guilty by a disciplinary tribunal may appeal against such finding, or against the sentence imposed or both.
2. All appeals must be lodged within 30 days of the decision coming to the knowledge of the aggrieved party. Councils must hear an appeal related to registration within 60 days of receipt thereof and may prescribe a reasonable fee payable for appeals.
3. Councils may not delegate the function to hear appeals.
4. Councils must conduct appeals in a lawful, reasonable and procedurally fair manner.

**ANNEXURE A****FORM OF NOTICE OF SET DOWN FOR *RESPONDENT*****[Rule 4]**

To .....

You are hereby notified that a disciplinary hearing in terms of section 31 of the Profession Act, 2000 (Act No. of 2000), will be held at..... on the ..... day of .....20.... at ....., when the charge against you, as set out in the charge sheet attached hereto, will be considered.

You are hereby summoned to appear at the hearing in person, and informed that you are entitled to be represented by some other person and that you may adduce evidence, call and examine witnesses on your behalf and cross-examine other witnesses.

You are to file a written plea to the charge(s) by no later than 14 (fourteen) days of receipt of this notice.

Should you fail to be present at the disciplinary hearing, or at the resumption of it after an adjournment, the *disciplinary tribunal* may consider and deal with the charge in your absence in accordance with the relevant *rules*.

A copy of the relevant *rules* is enclosed.

Given under the hand of the ....., on this ..... day of .....20....

.....  
**Signature and capacity**

Served on .....

.....  
Sheriff

**ANNEXURE B**  
**(SUBPOENA FOR WITNESS)**  
**[Section 31(3)]**

To .....

You are hereby notified that a disciplinary hearing in terms of section 31 of the Profession Act, 2000 (*Act of 2000*) (the *Act*), will be held at ..... on the ..... day of ..... 2..... at ....., when a charge of alleged *improper conduct* against ..... will be considered.

The Council of South Africa is of the opinion that you may be able to give material information concerning this *inquiry*. You are requested to provide the hearing with the following documents that you may have in your possession:-

1. All documents including electronic documents relating in any way to, or recording of any of the matters related to this *inquiry*.
2. Minutes and notes (including agendas and pre-meeting literature) et cetera relating to all and any meetings where any of the aforesaid matters were discussed.
3. Plans, specifications, designs and/or one or more of the documents as set out in the document list annexed hereto.

Therefore, in terms of section 31(3) of the said *Act*, you are hereby summoned to appear before the *disciplinary tribunal* at the time and place specified above, to be interrogated and to produce the items specified in the attached Annexure.

Your attention is respectfully directed to the provisions of section 19, and particularly subsections 31(3), (4), (5) and (8) of the said *Act*, a copy of which is enclosed.

.....  
*Signature and capacity*

Served on .....

.....  
Sheriff

**DOCUMENT LIST**

The following specific documents which may be directly or indirectly related to the *inquiry* should be produced:

- 1.
- 2.
- 3.
- 4.