

BOARD NOTICE 165 OF 2016

SOUTH AFRICAN COUNCIL
for the
ARCHITECTURAL PROFESSION

PROPOSED RULES FOR INVESTIGATIONS, DISCIPLINARY HEARINGS AND APPEALS**CALL FOR PUBLIC COMMENT**

The South African Council for the Architectural Profession ("SACAP") is empowered in terms of section 36 (1) of the Architectural Profession Act, Act No.44 of 2000 ("the Act") to make rules with regard to any matter that is required or permitted to be prescribed in terms of the Act and any other matter for the better execution of the Act. Consequently, notice is hereby given that the SACAP" has formulated rules for Investigations, Disciplinary Hearings and Appeals.

Notice is hereby given in terms of Section 36 (2) (a) of the Act to allow interested and affected persons within 30 business days from the date of the publication of this notice to make written representations on the proposed Rules for Investigations, Disciplinary Hearings and Appeals.

Submission details:

The Registrar

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DRAFT RULES FOR INVESTIGATIONS, DISCIPLINARY HEARINGS AND APPEALS

INVESTIGATIONS AND DISCIPLINARY TRIBUNAL HEARINGS

Preamble

1. It is acknowledged that the six Built Environment Professional Councils (councils) are mandated to take any reasonable 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, SACAP 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 or body.
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 SACAP 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 SACAP may take any reasonable steps which it considers necessary to protect the public in their dealings with registered persons, in order to 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 are subjective to the Built Environment Professions Acts and interpreted and applied in a manner that is lawful, reasonable and procedurally fair.
8. The Council also accepts that misunderstandings and disputes can arise between members and their clients, and others they encounter through their professional obligations, but that these sometimes do not amount to a breach of the Code of Professional Conduct. Council can take steps to resolve these through a documented process.
9. Council was encouraged to publish its' procedures as rules in terms of section 36 of the Act.

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*.

“**Architectural work**”

Delegation of Powers

Council 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 the 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 a Pro-forma complainant

Appointment and Meetings of an Investigating Committee

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

PROCEDURE PRIOR TO INQUIRY

1 Information and complaints of improper conduct

- (a) Any person/ body 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/ notification 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 notification/ 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 upon receipt of the complaint/ notification, furnish the *registered person/s* 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 (save where anonymity is appropriate) 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 of 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, or breach of the professional code of conduct, investigate such undertakings and report to the *CEO / Registrar* on its findings and recommendations.
- (8) The *Investigating Committee*, may investigate any alleged breach of conduct, whether or not a complaint has been lodged.
- (9) 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.
- (10) Council may suspend an investigation pending the outcome of a civil or criminal proceedings where this is necessary in the interests of justice.

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 may not be earlier than 20 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 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 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 entire 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.

6. PLEA OF GUILT 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 actions taken 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 *Council*.
- (3) If the plea agreement is approved, a sanction is imposed in accordance with the plea agreement. If the agreement is rejected by Council, the matter shall be referred to a disciplinary hearing as if the *respondent* had pleaded not guilty.

7. PROCEDURES AT THE DISCIPLINARY HEARING 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 him/her, 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 guilt 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 (example illness or accident) and reasonable notice, 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*.

8. PROCEDURE AFTER VERDICT

- (1) 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) 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) of the Act.
- (4) The council must publish the finding and the sanction imposed in terms of subsection (3) of the Act in the Government Gazette.
- (5) The council must give effect to the decision of the disciplinary tribunal.

9. 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.

10. APPEALS

1. It is acknowledged that:
- I. An applicant for registration may appeal to council against the decision of a committee to refuse registration;

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- 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 of 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.
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- 2. All appeals must be lodged within 30 days of the decision coming to the knowledge of the aggrieved party. Council must hear an appeal related to registration within 60 days of receipt thereof and may prescribe a reasonable fee payable for appeals.
 - 3. Council may not delegate the function to hear appeals.
 - 4. Council must conduct appeals in a lawful, reasonable and procedurally fair manner.
 - 5. A person hearing an appeal must not have been a member of the Investigation Committee or Tribunal Panel, which dealt with the matter
 - 6. Persons appointed to the Appeals Committee should not be members of the Investigation Committee or Tribunal Panel.
 - 7. An aggrieved party whose appeal was dismissed by the Council may appeal to the Council of Built Environment.

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 Architectural Profession Act, 2000 (Act No. 44 of 2000), will be held at..... on the day of20.... 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 of20....

.....
Signature and capacity

Served on

.....
Sheriff

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

To

You are hereby notified that a disciplinary tribunal in terms of section 31 of the Architectural Profession Act, 2000 (*Act* No. 44 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 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.