

BOARD NOTICE 907 OF 2026



An Effective Regulator Assuring Engineering Excellence


**Rules for the Management of
Improper Conduct Matters**

27 November 2025

ENGINEERING COUNCIL OF SOUTH AFRICA

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Document No.: ICE_RULE_003	Revision No.: 1	Effective Date: 28/11/2025	 ECSA <small>ENGINEERING COUNCIL OF SOUTH AFRICA</small>
Subject: Rules for the Management of Improper Conduct Matters			
Compiler: Manager: Improper Conduct & Enforcement Reviewer: Executive: Improper Conduct & Enforcement	Approver: Governing Council	Next Review Date: 27/11/2028	Page 2 of 36

Revision 1 dated **27/11/2025** and consisting of **37** pages has been reviewed for adequacy by the Executive of Improper Conduct & Enforcement and approved by the Council Committee.

Controls

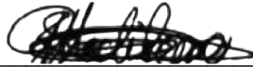
The signatures below certify that this document has been reviewed and accepted and demonstrates that the signatories are aware of all the requirements contained herein and are committed to ensuring their provision



04 March 2026

The Acting CEO: Ms. Tabisa Mtati

Date



11 March 2026

The President

Date

The definitive version of this **Rules** is available to all ECSA staff and is maintained in PDF format in Document Management System.

Printed copies of this management system policy may be issued under controlled conditions (see QM_POL_002) and will be replaced in entirety when any changes or revisions are made.

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1. INTRODUCTION AND OVERVIEW


- 1.1. The Engineering Council of South Africa ("ECSA") is a statutory body established in terms of Section 2 of the Engineering Profession Act, 46 of 2000 ("the Act"). It is one of the regulatory councils operating within the Built Environment, as recognised under the Council for the Built Environment Act, 43 of 2000. ECSA exercises jurisdiction over the engineering profession in the Republic of South Africa, with its regulatory authority derived from the Act and further supported by principles of administrative justice, legality, and good governance.
- 1.2. ECSA's mandate is to serve and protect the public interest through the regulation of professional engineering practice. This mandate includes the registration of persons in various categories, the accreditation of engineering educational programmes, and the setting and maintenance of standards of professional competence and conduct. ECSA is further empowered to investigate and adjudicate matters of Improper Conduct by Registered Persons to ensure accountability, uphold professional ethics, and enhance public trust in the engineering profession.
- 1.3. In carrying out its functions, ECSA aligns its operations with constitutional imperatives, international accords (such as the Washington, Sydney, and Dublin Accords), and applicable national legislation including the Promotion of Administrative Justice Act, 3 of 2000 (PAJA); the Promotion of Access to Information Act, 2 of 2000 (PAIA); the Constitution of the Republic of South Africa Act, 108 1996 (Constitution); and other laws regulating public administration and ethical governance.

2. PURPOSE, LEGAL STATUS, AND REGULATORY FRAMEWORK

- 2.1. These Rules are promulgated by the Council of ECSA in accordance with Section 36(1) of the Act. They constitute a form of subordinate legislation with binding effect on all Registered Persons and other relevant stakeholders.
- 2.2. The primary purpose of these Rules is to create a comprehensive, lawful, and procedurally fair framework for the Management of Improper Conduct Matters, in support of ECSA's mandate to maintain the integrity of the profession and safeguard the public interest.
- 2.3. These Rules operationalise Section 33 of the Constitution, which guarantees the right to lawful, reasonable, and procedurally fair administrative action. They give effect to this right in tandem with the procedural safeguards set out in PAJA, and they must be read and interpreted in a manner consistent with the Constitution, including the values of human dignity, equality, freedom, openness, and accountability.
- 2.4. These Rules complement ECSA's broader regulatory framework, including its Rules of Conduct for Registered Persons, and must be interpreted harmoniously with the Act and other instruments issued by ECSA. In the event of a conflict between these Rules and the Act, the provisions of the Act shall prevail.

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2.5 All references to provisions of the Act in these Rules are intended to aid interpretation and do not constitute binding legal text. For authoritative interpretation, reference must be made directly to the Act.

2.6 These Rules are binding on all Registered Persons, regardless of their registration category, be it professional, candidate, or specified category. They apply to all individuals and entities who are subject to ECSA's regulatory authority and who may be involved in improper conduct proceedings, including legal representatives, complainants, and witnesses.

3. APPLICATION, SCOPE, AND INTERPRETIVE GUIDANCE

3.1 These Rules govern all matters relating to the initiation, investigation, adjudication, and disposition of cases involving alleged Improper Conduct by Registered Persons. They also govern procedural rights and duties of stakeholders engaged in such proceedings.

3.2 All Registered Persons have an affirmative obligation to familiarise themselves with these Rules and to conduct themselves at all times in a manner that is consistent with the standards and expectations articulated herein.

3.3 These Rules are to be interpreted purposively and contextually, with regard to:

- 3.3.1 the language used;
- 3.3.2 the regulatory purpose served;
- 3.3.3 the overarching statutory framework; and
- 3.3.4 the foundational values of the Constitution.

3.4 The common law rules of statutory interpretation, including the presumptions against absurdity, surplusage, and conflict with constitutional rights, are applicable unless displaced by higher authority.


3.5 In the event of ambiguity, these Rules must be construed in favour of ensuring transparency, fairness, proportionality, and the advancement of public confidence in the regulatory process.

3.6 These Rules must be read in conjunction with the following:

- 3.6.1 the Rules of Conduct for Registered Persons;
- 3.6.2 the Rules for the Management of Enforcement Matters;
- 3.6.3 the Rules for the Management of Appeal Matters;
- 3.6.4 ECSA's Delegation of Authority Framework (DoA);
- 3.6.5 the Standard Operating Procedure (SOP) for the Management of Improper Conduct Matters;
- 3.6.6 the Service Charter for the Management of Improper Conduct Matters; and
- 3.6.7 the Glossary of Terms for Improper Conduct, Enforcement, and Appeals.

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3.7 Where any rules, policies, guidelines, instruments, or other documents, to the exception of the aforementioned instruments, conflict with these Rules, the provisions of these Rules shall prevail, except where otherwise provided by law.

3.8 ECSA may, from time to time, issue explanatory guidelines to support the understanding and application of these Rules. Such guidance does not carry the force of law and shall not be construed as binding legal advice or interpretation.

4 PROFESSIONAL OBLIGATIONS AND PROCEDURAL REQUIREMENTS

4.1 Registered Persons must notify ECSA in writing of any change in their contact details, representation, or any matter that may impact the proper administration of proceedings. Communications from ECSA will be deemed duly delivered if transmitted via the last known email address provided by the Registered Person, unless an alternative method of service is specified in writing.

4.2 Where a Registered Person elects to be represented, a written mandate must be submitted to ECSA. From the moment representation is acknowledged, communication shall be directed solely to the representative, and it shall be the duty of the Registered Person to ensure that their representative is adequately briefed.

4.3 Failure to comply with procedural duties, including communication protocols and notification requirements, does not constitute a valid defence to non-compliance. ECSA's processes operate on the presumption of professionalism, reasonableness, and diligence from all parties involved.

4.4 These Rules are designed to give effect to the *audi alteram partem* principle. A Registered Person alleged to have engaged in Improper Conduct must be provided with sufficient notice of the allegations, an opportunity to respond, access to relevant evidence, and a hearing before an independent and impartial Disciplinary Tribunal.

4.5 All decision-making under these Rules must be guided by the principle of proportionality. Sanctions or remedial action must be reasonable, necessary, and appropriate to the nature and seriousness of the conduct in question.


5 ENFORCEMENT, TRIBUNAL POWERS, AND CORRECTIVE MEASURES

5.1 These Rules form part of a layered enforcement system that includes both adjudicative and administrative components. The Disciplinary Tribunal, appointed in accordance with the Act and governed by these Rules, is empowered to impose sanctions in accordance with Section 32(3) of the Act, and to direct additional measures aimed at preventing recurrence and promoting professional rehabilitation.

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5.2 The Disciplinary Tribunal may, where warranted, impose supplementary measures including, but not limited to, mandatory ethics training, professional mentorship, supervised practice, peer reviews, and independent audits of engineering outputs. These interventions are rehabilitative in nature and are intended to support professional competence while safeguarding the public interest.

5.3 All confirmed findings of Improper Conduct are recorded in ECSA's internal system, and where publication is legally required or deemed appropriate in the public interest, such publication shall occur in a manner consistent with PAIA, applicable privacy legislation, and the Act.

5.4 Nothing in these Rules prevents concurrent or subsequent enforcement action under the Rules for the Management of Enforcement Matters. Where breaches of statutory obligations unrelated to professional conduct are identified, such matters may be referred to the enforcement framework or to external regulatory or law enforcement authorities, where appropriate.

6 REPEAL, TRANSITIONAL MEASURES, AND LEGAL CONTINUITY

6.1 These Rules repeal and replace all prior regulatory instruments concerning Improper Conduct, including the document titled *Rules for Inquiry into Alleged Improper Conduct* published under Board Notice 42 of 2017 in Government Gazette No. 40691. Any references to the "Method of Inquiry" in ECSA's policies or other rules shall be interpreted as references to this revised instrument unless stated otherwise.

6.2 Notwithstanding the repeal of earlier Rules, all investigations or proceedings initiated under repealed instruments shall continue to be regulated in accordance with the version of the Rules applicable at the time the conduct occurred. This approach is consistent with Section 12(2) of the Interpretation Act 33 of 1957, which provides that the repeal of any law does not affect any right, duty, obligation, penalty, or proceeding instituted under the repealed instrument.

6.3 To ensure consistency and predictability, this transitional principle applies uniformly across all ECSA regulatory instruments, including those governing improper conduct, enforcement, and appeals. Any express transitional clauses in related instruments must be interpreted in a manner that preserves procedural fairness and legal certainty.


7 COMMENCEMENT, SHORT TITLE, AND PUBLICATION

7.1 These Rules are cited as the *Rules for the Management of Improper Conduct Matters* and shall come into effect on the date of their publication in the Government Gazette. They shall apply to all alleged improper conduct matters reported on or after the date of commencement.

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7.2 Prior to gazetting, the Council has undertaken all necessary consultations in terms of the Act and has ensured that all legal prerequisites for valid secondary legislation have been fulfilled. Upon promulgation, these Rules shall be communicated to all Registered Persons, stakeholders, and the public using ECSA's official channels.

7.3 All Registered Persons and stakeholders are required to familiarise themselves with these Rules. Ignorance of these Rules shall not constitute a defence to any non-compliance.

8. INVESTIGATION OF ALLEGED OR SUSPECTED IMPROPER CONDUCT OF A REGISTERED PERSON

8.1 In terms of Section 28 of the Act, the Council must refer any matter brought against a Registered Person to an Investigating Committee if the Council has reasonable grounds to suspect that a Registered Person has committed an act which may render him or her guilty of Improper Conduct, or a complaint, charge or allegation of Improper Conduct has been brought against a Registered Person by any person. At the request of the Council, the Investigating Committee must investigate the matter and obtain evidence to determine whether or not, in its opinion, the Registered Person concerned may be charged and, if so, recommend to the Council the charge or charges that may be preferred against that Registered Person.

8.2 An Investigating Committee may not question the Registered Person concerned unless the Investigating Committee informs that Registered Person that he or she has the right to be assisted or represented by another person and that he or she is not obliged to make any statement and that any statement so made may be used in evidence against the Registered Person.

8.3 The Investigating Committee must, after the conclusion of the Investigation, submit a report making its recommendations to the Council regarding any matter referred to it.

8.4 The authority of the Council to refer a matter to the Investigating Committee is delegated to the Improper Conduct Business Unit Manager.


8.5 ECSA is the party that has the authority to control the course and conduct of an Improper Conduct matter; therefore, once a complaint, charge, or allegation of Improper Conduct or information concerning suspected Improper Conduct has come to the attention of ECSA, the Improper Conduct matter will be managed in terms of these Rules.

8.6 The responsibility for managing the investigation of a matter by the Investigating Committee is delegated to the Improper Conduct Business Unit Manager, along with investigators appointed by the Improper Conduct Business Unit Manager, under the supervision and oversight of the Investigating Committee and in accordance with these Rules.

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- 8.7 The authority of ECSA to investigate suspected or alleged Improper Conduct is contingent upon whether the individual was a Registered Person at the time the alleged or suspected Improper Conduct was committed. The determining factor for the applicability of a specific version of the Code of Conduct and/or the Overarching Code of Practice, alongside the relevant Codes of Practice (if applicable), is informed by the date on which the alleged or suspected Improper Conduct was committed.
- 8.8 The effective date of these aforementioned instruments establishes the mandatory conduct expectations and compliance for and by the individual registered at the time of the alleged or suspected Improper Conduct.
- 8.9 The registration of a Registered Person being investigated may not be cancelled at the request of said Registered Person until the Investigation has been concluded, or such other terms as the Council may consider necessary.
- 8.10 ECSA does not possess the authority to adjudicate civil disputes, including matters involving compensation for damages, enforcement of specific performance, or contract breaches, unless these matters also relate to Improper Conduct committed by a Registered Person.
- 8.11 ECSA does not provide legal advice.
- 8.12 Complaints must be submitted in the prescribed format. Additional information, including documentary evidence, may be required in support of complaints at any stage of the process. It is to be noted that Complainants will not receive compensation for any time or expenses incurred due to their participation in the process.
- 8.13 ECSA acknowledges the possibility and importance of receiving complaints concerning alleged or suspected Improper Conduct by Registered Persons, even those submitted anonymously. Such complaints are valuable as they can indicate potential areas of concern within the engineering profession that require attention. However, the effectiveness of investigating and managing these complaints is significantly influenced by the detail and cooperation provided by the anonymous Complainant.
- 8.14 To facilitate the management of complaints concerning Improper Conduct, ECSA requests the cooperation of anonymous Complainants with the Improper Conduct Business Unit and the appointed Investigator, where applicable. While ECSA maintains a provision for the submission of anonymous complaints, it is crucial to emphasize the importance of comprehensive information being supplied in regard to these complaints.
- 8.15 Anonymous Complainants are strongly encouraged to provide as much detail as possible regarding the alleged Improper Conduct. The provision of detailed information, including specific incidents,

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dates, locations, and any available evidence, greatly enhances ECSA's ability to conduct a thorough and effective investigation.

- 8.16 While maintaining their anonymity, Complainants are urged to engage to the fullest extent possible with the appointed investigator. This cooperation might include providing detailed accounts of the incidents, answering follow-up queries to clarify the information submitted (while still preserving their anonymity), and providing any additional evidence that may support the Investigation.
- 8.17 ECSA is committed to ensuring that all complaints, including anonymous ones, are handled with the utmost seriousness and confidentiality. However, it is also essential to recognize that anonymity can present challenges in the Investigation process, particularly in gathering sufficient evidence to prove allegations of Improper Conduct. To address this, ECSA implements a balanced approach.
- 8.18 If the individual forming the subject matter of the alleged or suspected Improper Conduct was not a Registered Person at the time of the alleged Improper Conduct, or if ECSA lacks authority over the alleged or suspected Improper Conduct for any lawful reason, the matter will be concluded, and the Complainant will be informed in writing accordingly.
- 8.19 The Improper Conduct Business Unit Manager must ascertain whether ECSA possesses the requisite authority to conduct an investigation. If the authority to investigate is established, the Registered Person implicated will be notified in writing and called upon to provide a written response to the complaint, charge, or allegation of Improper Conduct or information concerning suspected Improper Conduct.
- 8.20 Non-cooperation or delays in responding may result in additional charge(s) being preferred against the Registered Person in terms of the Rules of Conduct for Registered Persons, as amended. Upon receipt of the response referred to above, or upon the lapse thereof of the timeframe allowed for such a response, an investigator will be appointed to conduct an investigation and gather evidence.
- 8.21 Investigators shall be suitably qualified, experienced, and independent persons, with assignments limited to those on the ECSA database or within the prescripts of the ECSA procurement processes.
- 8.22 The Complainant and the Registered Person will be informed of the individual or entity that has been appointed as an investigator. The investigator is responsible for collecting all relevant evidence, both incriminating and exonerating, to substantiate or refute the complaint, charge, or allegation of Improper Conduct or information concerning suspected Improper Conduct under investigation.
- 8.23 In conducting an investigation, the investigator may take any steps he/she/ considers necessary to gather any information relevant to the complaint, charge, or allegation of Improper Conduct or information concerning suspected Improper Conduct, including requesting disclosure of any relevant objects, Documents, or information, under the control or custody of any person, including the

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Registered Person, the Complainant, or any other person with specific knowledge of the matter under Investigation.

- 8.24 The Investigator may employ any means he/she considers necessary for the proper and expeditious Investigation of the complaint, charge, or allegation of Improper Conduct or information concerning suspected Improper Conduct.
- 8.25 The conclusions of the investigation must be based solely on the facts and evidence collected, with all relevant evidence presented in the Investigation report alongside the analysis that informed the findings and conclusions.
- 8.26 Upon receipt of the Investigation Report, ECSA will provide the Complainant and the Registered Person with an update on the matter.
- 8.27 Investigation reports are to be kept strictly confidential, with disclosure permitted only in compliance with these Rules or for transmitting information to one of the other statutory Councils of the Built Environment, if applicable, or as required by law or otherwise.
- 8.28 Requests for information related to any matters governed by these Rules, which are not explicitly made provision for within these Rules, must be referred to the ECSA information officer. Details and policies regarding this process are available on the ECSA Website.
- 8.29 Upon the conclusion of the investigation, the matter will be tabled for consideration by the Investigating Committee at its next sitting. The Investigating Committee will then decide on the appropriate directives for ECSA to ensure a comprehensive conclusion of the Investigation, enabling it to make an informed recommendation to the Council regarding the matter at hand.
- 8.30 If, having considered a matter tabled before it, the Investigating Committee requires further information on the matter, then it must cause the investigator to conduct a further Investigation on the matter, the outcomes of which must be re-tabled at any subsequent Investigating Committee meeting for consideration.
- 8.31 If the Investigating Committee is satisfied that the matter has been thoroughly investigated, it may proceed to submit its report and recommendations to the Council regarding the matter under Investigation.
- 8.32 If the Investigating Committee finds, after investigation that steps are necessary for the improvement of the standards of service rendered by the Registered Person, but the conduct of the Registered Person does not justify a recommendation to prefer charges, the Investigation Committee may engage the Registered Person by way of an interview or written advisory note to advise the Registered Person of identified lapses in service standards. This power is delegated to the Investigating Committee by the Council.

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8.33 The Investigating Committee is empowered with the authority to resolve on its recommendations to the Council regarding Improper Conduct. In exercising this discretion, the Investigating Committee is not conclusively bound by the findings or conclusions presented within the Investigation Report.

8.34 It is within the Investigating Committee's purview to weigh the evidence and information presented throughout the investigative process and, accordingly, to derive its recommendations based on an evaluation of all relevant information, irrespective of the investigation report's conclusions. Such recommendations, while informed by the Investigation, reflect the Investigation Committee's independent consideration of the appropriate recommendation to the Council.

8.35 Complaints and subsequent action in terms of these Rules are executed against one Registered Person. Complaints by the same complainant against more than one Registered Person are dealt with as separate complaints. The same Investigator may conduct separate investigations but prepare separate reports while maintaining objectivity and fairness in assessing the evidence.

9. CHARGE(S) OF IMPROPER CONDUCT

9.1 In terms of Section 29 of the Act, the Council must, after considering a report of the Investigating Committee, charge a Registered Person with Improper Conduct if the Council is convinced that sufficient grounds exist for a charge(s) to be preferred against such a Registered Person. The Council must furnish a charge sheet to the Registered Person concerned.

9.2 A charge sheet must inform the Registered Person charged of the details and nature of the charge, that he or she must in writing, admit or deny the charge(s), and that he or she may, together with the admission or denial submit a written explanation regarding the Improper Conduct with which he or she is charged, and of the period, which must be reasonable, within which his or her plea, if any, must be submitted to the Council. If a Registered Person charged admits that he or she is guilty of the charge(s), he or she is considered to have been found guilty of Improper Conduct as charged, after he or she has explained his or her conduct. The Council may impose a penalty on a Registered Person who has admitted guilt in terms of the above.

9.3 The delegation of functions specified above is articulated as follows:


9.3.1 The responsibility of the Council to issue a charge sheet to a Registered Person and to solicit a written explanation from the Registered Person is hereby delegated to the Pro forma Complainant.

9.3.2 The referral of a matter to the Investigation Committee for investigation is delegated to the Improper Conduct Business Unit Manager.

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9.3.3 After considering a report from the Investigating Committee, the matter will be tabled in the subsequent sitting of the Council. The resolution of the Council will be communicated in writing to the Complainant and the Registered Person.

9.3.4 If the Council resolves that insufficient grounds exist to charge the registered person with Improper Conduct, the matter will be closed. If a matter is closed, the Complainant and the Registered Person will be notified in writing. A council resolution not to prefer charges is subject to appeal to the Council for the Built Environment (the CBE) in terms of Section 35 of the Act, and the complainant should be notified of this right accordingly.

9.3.5 It is important to note that the Council's decision to prefer charge(s) does not constitute a final administrative action. Therefore, it does not fall within the scope of appeal as provided under the Act. A decision becomes final and subject to appeal only after the Disciplinary Hearing.

9.4 The Complainant must take notice of the provisions of Section 35 of the Act which reads as follows, any member of the public whose interests and rights are affected by a decision made by the Council may within thirty Days from that person becoming aware of the decision, request the Council in writing to furnish him or her in writing with its reasons for that decision. Within ninety Days from the date on which the Council furnished him or her with its reasons for that decision and after giving notice to the Council, the above-mentioned person may appeal to the CBE against that decision in terms of Section 21 of the Council for the Built Environment Act.

9.5 The above-mentioned person may, after giving notice to the Council or the CBE, as the case may be, lodge a notice of appeal with the registrar of the appropriate High Court within one Month from the date of the decision of the Council or the CBE.

9.6 Should the Council resolve that the Registered Person must be charged, a Pro Forma Complainant will be appointed.

9.7 Pro Forma Complainants shall be suitably qualified, experienced, and independent, with appointments limited to those on the ECSA database or within the prescripts of the ECSA procurement processes.


9.8 The Complainant and Registered Person will be informed of the individual who has been appointed as the Pro Forma Complainant.

9.9 The Pro Forma Complainant must furnish a charge sheet to the Registered Person concerned.

9.10 A charge sheet must inform the Registered Person of the details and nature of the charge(s), that he or she must, in writing, admit or deny the charge(s), that he or she may, together with the admission or denial, submit a written explanation regarding the Improper Conduct with which he or she is charged, and of the period, which must be reasonable, within which his or her plea must be submitted to the Council.

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- 9.11 After receipt of the charge sheet, the Registered Person has the opportunity to request further particulars to the charge sheet, in the prescribed format.
- 9.12 The Pro Forma Complainant must furnish his or her written reply to a request for the furnishing of further particulars to the Registered Person.
- 9.13 If a Registered Person admits that he or she is guilty of the charge(s), he or she is considered to have been found guilty of Improper Conduct as charged, after he or she has explained his or her conduct, and the Council may impose a sentence.
- 9.14 The acquittal or the conviction of a Registered Person by a court of law on a criminal charge(s) is not a bar to proceedings against him or her under the Act on a charge(s) of Improper Conduct, even if the facts stated in the charge(s) of Improper Conduct would if proved, constitute the offence stated in the criminal charge(s) on which he or she was acquitted or convicted or any other offence of which he or she might have been acquitted or convicted at his or her trial on the criminal charge(s).
- 9.15 A Registered Person desirous to plead guilty in terms of Section 29(4) of the Act may enter into a plea agreement with the Pro Forma Complainant.
- 9.16 If a Registered Person charged admits that he or she is guilty of the charge(s), he or she is considered to have been found guilty of Improper Conduct as charged after he or she has explained his or her conduct. If this explanation of the Registered Person provides reasonable doubt of whether the Registered Person is indeed guilty of the Improper Conduct they have been charged with, the Disciplinary Tribunal may reject the plea of guilty and enter a plea of not guilty on behalf of the Registered Person.
- 9.17 After a plea agreement is reached with the Pro Forma Complainant, a Disciplinary Tribunal will be appointed to hear arguments that either mitigate or aggravate the Sanction. Both the Pro Forma Complainant, representing the Council, and the Registered Person have the option to call witnesses to present evidence that may influence the severity of the sentence. The decision rendered by the Disciplinary Tribunal will be recognized as a decision made by the Council, in accordance with Section 29(4)(b).
- 9.18 If the Registered Person fails, in writing, to plead to the charge(s), or denies the charge(s) in writing, the Registered Person will be deemed to have denied the charge(s) and entered a plea of not guilty.
- 9.19 The Pro Forma Complainant may at any time after a charge sheet is furnished to the Registered Person but before the matter is set down for hearing, amend such a charge(s). Amendments may include, but are not limited to errors in formulation or articulation as well as the addition or deletion of charges.

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9.20 The amendments shall be affected by furnishing an amended charge sheet to the Registered Person and the provisions relating to Section 29(3) and (4) articulated above shall apply with the necessary changes after receipt of an amended charge sheet by the Registered Person, even of the Registered Person has pleaded guilty to the original charge sheet, except that the amended plea must be filed within the stipulated period.

10. APPOINTMENT OF A DISCIPLINARY TRIBUNAL

10.1 In terms of Section 30, the Council must appoint a Disciplinary Tribunal to hear a charge(s) of Improper Conduct if a person charged denies the charge(s) or fails to comply with Section 29(3)(b). The Disciplinary Tribunal must consist of at least one person who specializes in the professional field concerning the charge(s), a professional who has appropriate experience, and a person qualified in law and who has appropriate experience.

10.2 The authority of the Council to appoint a Disciplinary Tribunal is hereby delegated to the Executive: Improper Conduct.

10.3 Disciplinary Tribunal Members shall be suitably qualified, experienced, and independent, with appointments limited to those on the ECSA database or within the prescripts of the ECSA procurement processes.

10.4 The Disciplinary Tribunal, on good cause shown and in the interest of justice, may condone any departure from these Rules on the condition that such departure is not prohibited by the Act and is in accordance with the provisions of the Promotion of Administrative Justice Act 3 of 2000 (PAJA).

10.5 Unless a departure from these Rules is formally raised at the Disciplinary Hearing, it shall not be necessary for the Disciplinary Tribunal to formally condone such a departure, and such departure shall not invalidate any action or decision taken, or purportedly taken under these Rules.

10.6 The Disciplinary Tribunal is not obligated to adhere to the strict rules of evidence that are enforced in courtrooms during its administrative decision-making process but must adhere to the provisions of PAJA.


10.7 Should a member of the Disciplinary Tribunal pass away or become incapacitated for any reason at any point during the Disciplinary Hearing, a new member with similar attributes must be appointed as a replacement. The replacement member must be provided with a transcript of the proceedings up to that stage. The Chairperson of the Disciplinary Tribunal may order the recall of a witness or witnesses at the request of the replacement member.

10.8 If more than one member of the Disciplinary passes away or becomes incapacitated, a new Disciplinary Tribunal will be constituted to hear the matter de novo. Consequently, all proceedings conducted before the formation of the new Disciplinary Tribunal must be revisited, and any decisions rendered by the original Disciplinary Tribunal will not hold any authority over the proceedings of the newly established Disciplinary Tribunal.

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11. THE DISCIPLINARY HEARING

- 11.1 Section 31 of the Act reads as follows: “*The Disciplinary Hearing must be conducted by the Disciplinary Tribunal. The Disciplinary Tribunal may, for the purposes of this Section, appoint a person to assist it in the performance of its functions.*”
- 11.2 The Disciplinary Tribunal may, for the purposes of a Disciplinary Hearing, Subpoena any person who in its opinion may be able to give material information concerning the subject of the Disciplinary Hearing, or who it suspects or believes has in his or her possession or custody or under his or her control any book, document or object which has any bearing on the matter before the Disciplinary Hearing, to appear before the Disciplinary Tribunal at the time and place specified in the Subpoena, to be questioned or to produce a book, document or object. A Subpoena issued must be in the prescribed form, be signed by the Chairperson of the Disciplinary Tribunal or, in his or her absence, any member of the Disciplinary Tribunal; and be served on the Person concerned personally by sending it by registered mail and/or served by way of the Sheriff of the Court.
- 11.3 A witness subpoenaed by the Disciplinary Tribunal must note that the following conduct amounts to a criminal offence:
- 11.3.1 A witness who has been subpoenaed may not, without sufficient cause, fail to attend the hearing at the time and place specified in the subpoena;
- 11.3.2 refuse to be sworn in or to be affirmed as a witness;
- 11.3.3 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
- 11.3.4 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.
- 11.4 A witness who has been subpoenaed must remain in attendance until excused by the chairperson of the disciplinary Tribunal.
- 11.5 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.
- 11.6 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.

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- 11.7 The Disciplinary Tribunal may retain a book, document, or object produced for the duration of the Disciplinary Hearing. The Chairperson of the Disciplinary Tribunal may call upon and administer an Oath to, or take an affirmation from, any witness at the Disciplinary Hearing who was subpoenaed.
- 11.8 At a Disciplinary Hearing the Registered Person charged may personally be present at the Disciplinary Hearing of the proceedings and may be assisted or represented by another person in conducting the proceedings has the right to be heard may call witnesses, may cross-examine any person called as a witness in support of the charge(s) and may have access to Documents produced in evidence; may admit at any time before conviction that he or she is guilty of the charge(s) despite the fact that he or she denied the charge(s) or failed to react in terms of Section 29(3)(b) or (c), may, in the case where he or she makes an admission, be deemed to be guilty of Improper Conduct as charged.
- 11.9 The Pro Forma Complainant may, during a Disciplinary Hearing, lead evidence and advance arguments in support of the charge(s) and cross-examine witnesses, question any person who was Subpoenaed, or call anyone to give evidence or to produce any book, document or object in his or her possession or custody or 'under his & her control which the Pro Forma Complainant suspects or believes to have a bearing on the subject of the Disciplinary Hearing.
- 11.10 A witness who has been subpoenaed may not without sufficient cause, fail to attend the Disciplinary Hearing at the time and place specified in the Subpoena, refuse to be sworn in or to be affirmed as a witness 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 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.
- 11.11 A witness who has been subpoenaed must remain in attendance until excused by the Chairperson of the Disciplinary Tribunal from further attendance. 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.
- 11.12 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 at the Disciplinary Tribunal by, any person called in terms of this section as a witness. 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.
- 11.13 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. The record of evidence which has a bearing on the charge(s) before the Disciplinary Tribunal, and which was presented before any commission which investigated an event or conduct is admissible without further evidence being led if the record is accompanied by a certificate from the

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Chairperson, and the certificate certifies that the Investigation was lawful, reasonable and conducted procedurally fairly.


- 11.14 If the Improper Conduct with which the Registered Person is charged amounts to an offence of which he or she has been convicted by a court of law, a certified copy of the record of his or her trial and conviction by that court is, on the identification of the Registered Person as the person referred to in the record, sufficient proof of the commission by him or her of that offence, unless the conviction has been set aside by a superior court.
- 11.15 The person appointed by the Disciplinary Tribunal to assist it in the performance of its functions is referred to as the Pro Forma Complainant, and the appointment of the Pro Forma Complainant is delegated as per the provisions of these Rules.

Pre-Hearing Meeting

- 11.16 To streamline the Disciplinary Hearing, the Pro Forma Complainant is tasked with arranging a Pre-Hearing Meeting. This meeting, aimed at identifying and narrowing down the disputed issues, requires the participation of the Registered Person or their Representative.
- 11.17 A Pre-Hearing Meeting notice must be prepared by the Pro Forma Complainant and delivered to the Registered Person.
- 11.18 The Pre-Hearing meeting shall focus on: -
- 11.18.1 Formulating and simplifying the issues and disputes and eliminating frivolous defences.
- 11.18.2 The Registered Person must indicate the exceptions and/or objections (including an objection to the power or mandate of the Disciplinary Tribunal to hear the matter and/or points *in limine* he or she intends to raise.
- 11.18.3 Obtaining admissions and/or stipulations about facts and/or Documents to avoid the leading of evidence as to the proof thereof at the Disciplinary Hearing.
- 11.18.4 Presentation and/or admissibility of any documentation, reports, notes, photographs, and/or other exhibits which either party intends to use during the Disciplinary Hearing.
- 11.18.5 Identify witnesses who may be called upon during the Disciplinary Hearing.
- 11.18.6 Addressing any additional concerns deemed relevant by either party.
- 11.18.7 Documenting the proceedings of the Pre-Hearing Meeting through a recital, which should be endorsed by both parties and then submitted to ECSA for forwarding to the Disciplinary Tribunal Members.

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The Disciplinary Hearing Bundle

- 11.19 After the Registered Person, in writing, admitting or denying the charge(s) against him or her, or after the lapse of time prescribed for the Registered Person to do so, a Notice of Set down together with the Disciplinary Hearing Bundle shall be served in terms of these Rules.
- 11.20 The scheduling of the set down date falls exclusively under the purview of ECSA.
- 11.21 The Notice of Set Down, as included in the Disciplinary Hearing Bundle, must be remitted timeously.
- 11.22 All evidence intended to be used by the Pro Forma Complainant and the Registered Person must be disclosed and forwarded to ECSA unless otherwise provided for in these Rules, within the prescribed period of the Registered Person failing, in writing, in admitting or denying the charge(s) against him or her, or within the prescribed period within which the Registered Person, in writing, admits or denies the charge(s) against him or her.
- 11.23 Should either the Pro Forma Complainant or the Registered Person decide to present new evidence after the period specified has passed, they are required to submit a request to the Chairperson during the Disciplinary Hearing. The Chairperson will then determine whether this new evidence is permissible for inclusion in the Disciplinary Hearing record.
- 11.24 Introduction of new evidence or documents is prohibited once both parties have concluded their case presentations, and the Disciplinary Hearing has advanced to the stage of closing arguments, unless the Chairperson decides to allow it.
- 11.25 The Pro Forma Complainant is responsible for compiling a Disciplinary Hearing Bundle and ensuring it is delivered to the Registered Person, the Complainant, Disciplinary Tribunal Members, and Expert witnesses. A copy, or relevant portions thereof, must also be distributed by the Pro Forma Complainant to any other individuals the Pro Forma Complainant deemed essential to receive this information for the disciplinary hearing.
- 11.26 If the Registered Person does not inform the Council in writing of their intention to attend the Disciplinary Hearing within the prescribed period of receiving the Notice of Set Down, the Disciplinary Hearing will proceed via remote means. This arrangement does not necessitate physical attendance by the Disciplinary Tribunal Member(s), or any other party required at the Disciplinary Hearing.
- 11.27 The Disciplinary Hearing Bundle must include all relevant annexures to these Rules, any plea and/or documents, books, records, notes, photographs, and/or submissions by the Council and the Registered Person, and any other Documents that may be deemed necessary, including but not limited to: -

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- 11.27.1 The Notice of Set Down.
- 11.27.2 The Investigation Report and Supplementary Investigation reports, if any.
- 11.27.3 The initial response, if any, by the Registered Person to the complaint.
- 11.27.4 The resolution by the Council to prefer charge(s) against the Registered Person.
- 11.27.5 The Charge Sheet.
- 11.27.6 Any pleas or written explanations by the Registered Person.
- 11.27.7 List of witnesses (es), including Expert notices and Expert summaries.
- 11.27.8 List of documents to be produced at the Disciplinary Hearing.
- 11.27.9 A copy of these Rules.
- 11.27.10 A copy of the Code of Conduct and/or Code of Practice and/or the Identification of Engineering Work.
- 11.27.11 Subpoenas issued by the Disciplinary Tribunal.
- 11.27.12 A copy of the Act.

Heads of Arguments


- 11.28 Within the prescribed period and before the Disciplinary Hearing date, both the Pro Forma Complainant and the Registered Person must submit their Heads of Argument, limited to a maximum of five typed pages (Arial font, font size 11). The Heads of Argument are intended to provide a concise, structured presentation of each party's legal and factual assertions, helping to clarify the issues at hand.

Overview of the duties and responsibilities of the role players in a Disciplinary Hearing

- 11.29 **The Chairperson.** The Chairperson oversees the Disciplinary Hearing, ensuring that it proceeds in an orderly and structured manner and is conducted in accordance with the provisions of PAJA. This includes opening and closing the Disciplinary Hearing, maintaining decorum, and ensuring that the Disciplinary Hearing adheres to scheduled times. A fundamental duty is to oversee that the Disciplinary Hearing is conducted impartially, allowing an equal opportunity to present the respective cases, including evidence, witnesses, and arguments.

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- 11.30 The Chairperson directs the flow of the Disciplinary Hearing, deciding on the admissibility of evidence, the relevance of arguments, and the order in which witnesses are called and examined. They may also need to make rulings on procedural issues, such as objections raised by either party. The Chairperson acts as the facilitator of communication between the parties, witnesses, and the Disciplinary Tribunal. They ensure that questions are asked and answered in a manner that is respectful and conducive.
- 11.31 The Chairperson is responsible for communicating the Disciplinary Tribunal's decision to the parties involved, reading out the Remote Hearing Protocol, reading out the charge(s) and requesting the Registered Person to plead to the charge(s), which Plea must be recorded, administer an Oath and/or affirmation to any witness summoned to provide evidence to the Disciplinary Tribunal, to provide a certificate in terms of Section 31(9) of the Act and inform the Registered Person of his or her right to appeal against the decision of a Disciplinary Tribunal as provided for in these Rules.
- 11.32 Upon the request of the Pro Forma Complainant, or a Registered Person, a Disciplinary Tribunal may issue or consider such a request to issue Subpoena/s, summoning a person/s to attend the Disciplinary Hearing as a witness to provide oral evidence and/or to produce any book, record, and/or Documents.
- 11.33 **The Pro Forma Complainant.** He/she is responsible for presenting the case against the Registered Person, assuming the role of the Council in presenting the matter, including outlining the alleged or suspected Improper Conduct and providing evidence to support these allegations. Preparing and submitting the necessary documentation in terms of these Rules. Leading evidence and advancing arguments in support of the charge(s). Cross-examining witnesses. Questioning any person who was subpoenaed. Calling anyone, including the Registered Person, to give evidence or to produce any book, document, or object in his or her possession or custody or under his or her control which the Pro Forma Complainant suspects or believes to have a bearing on the subject of the Disciplinary Hearing. Making legal and factual submissions to the Disciplinary Tribunal, arguing why the evidence presented supports a finding of Improper Conduct, and preparing and presenting factors in aggravation of sentence. Drafting and submitting/presenting verbal and/or written closing arguments.
- 11.34 **Expert Witness(es).** ECSA and the Registered Person are entitled to appoint and call expert witnesses. If the Registered Person appoints and calls expert witnesses, it shall be at his or her own expense. In the event of a party intending to appoint an expert witness, such a party is required to provide the other party notice of their intention to call an expert witness and provide a summary of such expert evidence.
- 11.35 **The Improper Conduct Business Unit.** The Improper Conduct Business Unit is responsible for the case management of Disciplinary Hearings, which entails overseeing the entire process as outlined by the Act and these Rules. This includes organizing and facilitating Disciplinary Hearings, ensuring all participants are well-informed, and that the process is scheduled properly.

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11.36 The Improper Conduct Business Unit also maintains detailed and confidential records of the disciplinary proceedings, oversees the welfare of all parties involved, and ensures matters of Improper Conduct are managed with professionalism. Although the Improper Conduct Business Unit facilitates the application of these Rules, it does not offer legal advice or interpretations of the law.

11.37 **The Registered Person.** The Registered Person's responsibilities encompass but are not limited to adhering to the specified Rules and the Act. Preparing for and attending the Disciplinary Hearing as mandated by ECSA or under directives from the Disciplinary Tribunal, he/she is entitled to be present at the Disciplinary Hearing, may seek assistance or representation, and have the right to voice his / her perspective. In terms of these Rules, Subpoena witnesses, question any witness, and access evidence Documents. Additionally, he/she can concede guilt at any stage before conviction and is expected to prepare and deliver closing arguments. The Registered Person must maintain professionalism and complying with the Disciplinary Hearing's outcome.

Subpoenas

11.38 The issuing of a subpoena for a witness to attend a Disciplinary Hearing contemplated in Section 31(3) of the Act must be in the prescribed form.

11.39 The Disciplinary Tribunal, may, for the purposes of a Disciplinary Hearing, subpoena any person upon the request of a party to the proceedings, alternatively upon its own volition who in its opinion may be able to give material information concerning the subject of the Disciplinary Hearing, who it suspects or believes has in his or her possession or custody or under his or her control information or a document, photograph, computer record, contract, book, item, article, administrative or financial record, computer data, audio and/or video recording relevant to the Complaint which has any bearing on the subject of the Disciplinary Hearing, and/or to appear before the Disciplinary Tribunal at the time and place specified in the subpoena to be questioned or to produce any of the items referred to hereinabove.

11.40 The person so Subpoenaed must make available for the Disciplinary Hearing and/or for inspection by any party and may be requested to produce same, any such document, photograph, computer record, contract, book, item, article, administrative or financial record, computer data, audio and/or video recording relevant to the Complaint which has any bearing on the subject of the Disciplinary Hearing.


11.41 The Disciplinary Tribunal may retain a book, document, or object produced for the duration of the Disciplinary Hearing.

11.42 A subpoena issued must be in the prescribed form, be signed by the Chairperson of the Disciplinary Tribunal or, in his or her absence, any member of the Disciplinary Tribunal, and be served on the person concerned.

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- 11.43 A witness who has been subpoenaed may not without sufficient cause, fail to attend the Disciplinary Hearing at the time and place set out in the subpoena, refuse to be sworn in or to be affirmed as a witness, 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 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.
- 11.44 A witness who has been subpoenaed must remain in attendance until excused by the Chairperson of the Disciplinary Tribunal.
- 11.45 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 as a witness.
- 11.46 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.
- 11.47 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 required to give or produce.
- 11.48 A person contravening Section 31(8)(a), (b), (e), or (f) is guilty of an offence as prescribed in terms of Section 41(1) of the Act.

Admission in terms of Section 32 of the Act

- 11.49 A Registered Person may admit that he/she is guilty of the charge/s at any time after receipt of the charge sheet and before conviction, despite the fact that he or she denied the charge(s) or failed to react to the charge(s) in terms of the Act.
- 11.50 Upon receipt of a plea of guilty, and /or an admission of guilt, the Chairperson may decide whether to hear further evidence relating to the charge(s) of Improper Conduct or dispense with the hearing of such evidence on the charge(s) to which the Registered Person has pleaded guilty and/or admitted that he/she is guilty. However, arguments in mitigation and aggravation of the Sanction may not be dispensed with.
- 11.51 If a Registered Person pleads guilty, or admits guilt due consideration shall be given to, inter alia, the following factors:- the nature and circumstances of the transgression, personal circumstances of the Registered Person, whether the Registered Person is represented or whether he/she is representing him/herself, whether the Registered Person has been found guilty of any similar transgressions in the past, the interest of the public, remedial work done and/or required to rectify or remedy the condition caused by the Registered Person conduct, and/or any other relevant considerations.

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- 11.52 Plea agreements must be in writing and signed by the Pro Forma Complainant and the Registered Person or his or her Representative.
- 11.53 If a Registered Person charged admits that he or she is guilty of the charge, he or she is considered to have been found guilty of Improper Conduct as charged, after he or she has explained the nature of his or her conduct.
- 11.54 The Disciplinary Tribunal must consider and accept or reject a plea agreement entered into.
- 11.55 If the plea agreement is accepted, the Council may, subject to Section 32(2), impose a Sanction contemplated in terms of Section 32(3)(a).
- 11.56 The charge(s) that the Registered Person has not pleaded guilty to will then form the only subject of an Investigation and/or Disciplinary Hearing, as the case may be, against the Registered Person and follow the full disciplinary processes outlined in these Rules.
- 11.57 If the Plea Agreement is rejected, the matter shall be referred to a different Disciplinary Hearing as if the Registered Person had pleaded not guilty.
- 11.58 Should the Registered Person fail to attend the Disciplinary Hearing without good cause having been served with the Notice of Set Down, the Disciplinary Tribunal may proceed to hear evidence and argument in the absence of the Registered Person.
- 11.59 The Chairperson 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 charge(s), determine the procedure to be followed at the Disciplinary Hearing before it, after hearing both sides.
- 11.60 The Registered Person or his or her Representative, if present, shall then be asked by the Chairperson to plead guilty or not guilty to the charges preferred against him or her. Provided that if, before the commencement of the Disciplinary Hearing, the Registered Person has pleaded guilty, such plea of guilty may be entered as a plea in his or her absence for those charge(s) the Registered Person has pleaded guilty to.
- 11.61 If the Registered Person pleads not guilty, the Disciplinary Tribunal shall proceed to hear evidence pertaining to the preferred charge(s).
- 11.62 If the Registered Person, subsequent to the commencement of the Disciplinary Hearing, pleads guilty during the course thereof, the Disciplinary Tribunal shall decide whether or not any evidence should be led regarding the charge(s).

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11.63 If the Registered Person refuses or fails to plead directly to the preferred charge(s), or if the Registered Person is absent and the Notice of Set Down has been served on or forwarded to him or her as prescribed and he or she has not informed the Chairperson or Pro Forma Complainant, in writing, that he or she pleads guilty, the Chairperson shall make a note of such fact and enter a plea of not guilty on behalf of the Registered Person, and a plea thus entered shall have the same effect as if it had been so pleaded.

11.64 If the Registered Person is absent and the Notice of Set Down has been served on him or her and he or she has informed the Chairperson, through the Pro Forma Complainant, in writing, that he or she pleads guilty, the Chairperson shall make a note of such fact and enter a plea of guilty on behalf of the Registered Person, and a plea thus entered shall have the same effect as if it had been so pleaded.

12. CONDUCTING OF THE DISCIPLINARY HEARING

12.1 The following outlines the procedural guidelines for conducting a Disciplinary Hearing, which may be adapted as per the discretion of the Chairperson.

12.2 The Chairperson of the Disciplinary Tribunal shall: -

12.2.1 Open the Disciplinary Hearing, introduce themselves and all parties present, and outline the Disciplinary Hearing's purpose and procedure to ensure everyone understands the process.

12.2.2 Record attendance.

12.2.3 Establish the designation and capacity of each attendee. Record the remote hearing protocol.

12.2.4 Confirm the recording of proceedings.

12.2.5 Confirm that the Registered Person was properly notified of the nature of the charge(s) preferred against him or her and record that confirmation.

12.2.6 Confirm that the Registered Person has had sufficient opportunity to prepare his or her case and record that confirmation.


12.2.7 Confirm that the Registered Person has been informed of his or her right to representation.

12.2.8 Confirm that the Registered Person is satisfied with the interpreter (if the services of the same were previously requested).

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- 12.2.9 Inform all attendees of the necessity to direct any question/query via the Chairperson as and when the opportunity and/or need arises, and any other procedural aspects of decorum during the Disciplinary Hearing.
- 12.2.10 Read the charge sheet to the Registered Person and ensure that the charge(s) are understood.
- 12.2.11 Call upon the Registered Person to plead to the charge(s) and formally record the plea.
- 12.2.12 Call for the presentation of the opening statement by the Pro forma Complainant and thereafter the Registered Person.
- 12.2.13 Call upon the Pro Forma Complainant to present the case against the Registered Person.
- 12.2.14 Call upon the Pro forma Complainant to call witnesses, including Expert witnesses.
- 12.2.15 Call Upon the Registered Person to cross-examine the Pro Forma Complainant's witnesses.
- 12.2.16 Call upon the Pro Forma Complainant to re-examine their witnesses. Provide the Disciplinary Tribunal Members with an opportunity to address any clarifying questions to any witnesses called by the Pro Forma Complainant and/or address any clarifying questions concerning the Pro Forma Complainant's case.
- 12.2.17 Call upon the Registered Person to present the case against the charge(s) preferred against him or her.
- 12.2.18 Call upon the Registered Person to call witnesses, including Expert witnesses. Call upon the Pro Forma Complainant to cross-examine the Registered Person's witnesses.
- 12.2.19 Call upon the Registered Person to re-examine their witnesses.
- 12.2.20 Provide the Disciplinary Tribunal Members with an opportunity to address any clarifying questions to any witnesses called by the Registered Person and/or to address any clarifying questions concerning the Registered Person's case.
- 12.2.21 Call upon and administer an Oath to, or take an affirmation from, any witness giving evidence at the Disciplinary Hearing, whether he or she was Subpoenaed or not.
- 12.2.22 Request any witness who has not yet given evidence to leave the Disciplinary Hearing and to remain in attendance until called upon to give evidence.

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- 12.3 When all the evidence has been heard, the Pro Forma Complainant and the Registered Person will present their closing arguments as directed by the Chairperson. The arguments will cover issues of fact and/or law but will not speak to mitigating and/or aggravating factors in respect of Sanction. The Disciplinary Hearing may be postponed by the Chairperson to afford the Parties an adequate opportunity to present closing arguments.
- 12.4 The Pro Forma Complainant shall be allowed to address the Disciplinary Tribunal on the evidence presented and any relevant legal precepts that may have arisen in regard thereto.
- 12.5 All verbal evidence shall be given under Oath or on affirmation, and the Disciplinary Tribunal may decline to admit as evidence a document where the person who gives evidence regarding the document is not present to be cross-examined or who declines to submit thereto.
- 12.6 The record of evidence that has a bearing on the charge before the Disciplinary Tribunal, and which was presented before any commission that investigated an event or conduct is admissible without further evidence being led if the record is accompanied by a certificate from the Chairperson, and the certificate certifies that the Investigation was lawful, reasonable and procedurally fair.
- 12.7 A statement that a Complainant or witness, not present in person, makes in support of a Complaint shall be in the form of an Affidavit, but the Registered Person may object to the submission of such evidence if he or she is not allowed to cross-examine such witness. Provided that, where such statement or complaint is based on the record of a lawfully constituted court proceeding, a copy of such record shall be accepted as prima facie evidence if it has been certified to be a true copy or if acceptance thereof has been agreed to by the Pro Forma Complainant and the Registered Person.
- 12.8 If practicable and to satisfy the precepts of equity and /or fairness, the Disciplinary Tribunal may postpone the Disciplinary Hearing to Subpoena, for purposes of cross-examination of any witnesses whose evidence appears before the Disciplinary Hearing.
- 12.9 Should a Complainant not be subpoenaed as a witness, he or she may be granted the opportunity to address the Disciplinary Tribunal, but his or her witness(es) must be permitted to be tested by the Registered Person via cross-examination.
- 12.10 If the Disciplinary Tribunal deems it advisable that further evidence be adduced to enable it to arrive at a just and equitable decision, it may call further witnesses as it deems fit and may allow further evidence to be led either by the Pro Forma Complainant or the Registered Person or his or her Representative, or by both Parties, even after they have attended to close their respective cases.
- 12.11 In the event of the Improper Conduct with which the Registered Person has been charged arises from the same incident and/or circumstances in terms of which he or she has been convicted by a court of law, a Certified Copy of the record of his or her trial and conviction by that court is, on confirmation of the identification of the Registered Person as being the person referred to in the record, sufficient proof

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of the commission by him or her of that offence, unless the conviction has been set aside by a superior court.

13. PROCEEDINGS AFTER THE DISCIPLINARY HEARING

- 13.1 Section 32 of the Act reads as follows, after the conclusion of the Disciplinary Hearing the Disciplinary Tribunal must within thirty Days decide whether the Registered Person charged is guilty of Improper Conduct take, cognizance of any aggravating or mitigating circumstances, inform the Registered Person charged and the Council of the finding, and inform the Registered Person of his or her right of appeal in terms of Section 33.
- 13.2 The Chairperson may, subsequent to deliberation with Tribunal Members, adjourn the hearing to afford the Pro Forma Complainant and the Registered Person an opportunity to prepare arguments in aggravation and mitigation of sentence, respectively.
- 13.3 The Registered Person found guilty of Improper Conduct in terms of this Section may then address the Disciplinary Tribunal in mitigation of sentence to be imposed and call witnesses to give evidence on his or her behalf in mitigation of the sentence. 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 caution or reprimand the Registered Person, 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 101 of 1991, suspend the registration of the Registered Person concerned for a period not exceeding one year, or cancel the registration of the Registered Person concerned and remove his or her name from the register.
- 13.4 The Disciplinary Tribunal may impose under more than one of the prescribed Sanctions and/or a combination thereof. At the conclusion of the Disciplinary Hearing, the Disciplinary Tribunal must notify the Council of its findings.
- 13.5 The Council must publish the findings and the Sanction imposed in the Gazette. The Council must give effect to the decision of the Disciplinary Tribunal.
- 13.6 The following functions mentioned above are delegated as follows: -
- 13.6.1 The Disciplinary Tribunal's function to notify the Council of its finding is delegated to the Improper Conduct and Enforcement Executive.
- 13.6.2 The Council's function to publish the finding and the Sanction imposed is delegated to the Improper Conduct Business Unit Manager.

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13.6.3 The Council's function to give effect to the decision of the Disciplinary Tribunal is delegated to the Improper Conduct Business Unit Manager.

13.7 After the conclusion of the Disciplinary Hearing the Disciplinary Tribunal must, within thirty Days, decide whether the Registered Person charged is guilty of Improper Conduct take cognizance of any aggravating or mitigating circumstances, inform the Registered Person charged and the Council of the finding, and inform the Registered Person of his or her right of appeal in terms of Section 33.

13.8 Unless otherwise directed, the Disciplinary Tribunal must, via the Improper Conduct Business Manager, inform the Registered Person and the Pro Forma Complainant of the date, time, and place for the hearing of arguments in mitigation and/or aggravation of sentence, if it is not possible for the same to be presented on the day on which the Disciplinary Hearing is concluded, alternatively allow the parties to present such arguments in writing.

13.9 The Chairperson should record clearly and precisely the findings of the Disciplinary Tribunal and indicate the reasons for arriving at such findings in respect of each charge.

13.10 The Pro Forma Complainant shall address the Disciplinary Tribunal in aggravation of sentence and call witnesses to evidence if necessary. In addition, the Pro Forma Complainant shall adduce evidence of previous convictions.

13.11 If any such convictions have been recorded previously against the Registered Person, proof of previous convictions under the Act shall be adduced by means of a certificate to be issued under the hand of the Chairperson of that forum.

13.12 Such a certificate shall specify the complaint brought against the Registered Person at the time, as well as the finding, the date thereof, and the Sanction imposed.

13.13 The Chairperson shall afford the Pro Forma Complainant the opportunity to make a representation concerning the imposition of a suitable Sanction.

14. SANCTION


14.1 When imposing a Sanction, the Disciplinary Tribunal will consider mitigating and aggravating circumstances, balancing them together with the interests of society and the engineering profession to arrive at an appropriate Sanction.

14.2 As part of ECSA's broader regulatory strategy, the Council delegates to the Disciplinary Tribunal the power to, where appropriate, impose rehabilitative and monitoring measures as part of the Disciplinary Tribunal's sanctioning powers. This may include requiring the Registered Person found guilty of improper conduct to undergo ethics training, mentorship, periodic reporting, or independent reviews,

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amongst others. These interventions are intended to support reform, enhance professional conduct, and reduce the risk of future non-compliance.

- 14.3 In Disciplinary Hearings, when it comes to the mitigation and aggravation of Sanctions, several factors are considered to ensure that any disciplinary action taken is fair, appropriate, and proportional to the conduct in question. The Disciplinary Tribunal may take into account, amongst others: -
- 14.3.1 An absence of previous Improper Conduct suggests the Improper Conduct was out of character.
- 14.3.2 An early admission of Improper Conduct can indicate remorse and a willingness to take responsibility for one's actions, and genuine expressions of regret and understanding of the impact of one's actions can be mitigated.
- 14.3.3 Steps already taken by the Registered Person to rectify the damage caused by their actions or to improve their behaviour can be considered.
- 14.3.4 Personal circumstances, such as personal or family difficulties, health issues, or other stressors that may have contributed to the Improper Conduct.
- 14.3.5 Length of registration status with ECSA can be a mitigating factor, especially if the Improper Conduct is an isolated incident.
- 14.4 If the Registered Person acted under duress, this could reduce the severity of the Sanction. The more serious the breach of policy or conduct, the more severe the Sanction might be. Actions that were planned or premeditated can lead to harsher Sanctions.
- 14.5 A history of similar conduct or Improper Conduct suggests a pattern of behaviour and can aggravate the Sanction. The impact of the improper conduct of the Complainant, ECSA, the environment, the profession, and/or public interest must be taken into account. A failure to show genuine remorse or understand the impact of one's actions can lead to a harsher Sanction.
- 14.6 Attempts to conceal the Improper Conduct or lying during the Investigation can be considered as aggravating factors. If the Improper Conduct also constitutes a violation of law, it can be considered an aggravating factor. In deciding on Sanctions, the Disciplinary Tribunal aims to balance these factors to arrive at a decision that is just, equitable, and reflective of the seriousness of the Improper Conduct.

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15. HANDLING SPLIT DECISIONS IN DISCIPLINARY TRIBUNALS

- 15.1 The majority rule applies to decision-making. This means that if two of the three Members agree on a decision regarding the finding of the Disciplinary Tribunal and/or the sentence, the decision of the majority of Members stands as the Disciplinary Tribunal's decision.
- 15.2 In the event of initial disagreement, further deliberation is encouraged among the Disciplinary Tribunal Members to reach a consensus if possible. The Chairperson plays a pivotal role in facilitating these discussions, ensuring that all relevant aspects are thoroughly considered and that the decision is made based on the evidence, established facts, and applicable legal standards.
- 15.3 If, after further deliberation, a consensus cannot be reached, and a split decision remains, the decision shall be recorded to reflect the differing opinions. The Disciplinary Tribunal should document the majority decision as well as the dissenting opinion(s), including the reasons behind each position.
- 15.4 ECSA must give effect to the sentence imposed by the Disciplinary Tribunal and/or the Council in accordance with the Act and shall cause the publication of the finding and the Sanction imposed on a Registered Person in the Gazette (See Section 32(5) of the Act.) The content of the Gazette Notice will include the name and registration number of the Registered Person, the date of the Disciplinary Hearing, the charge(s), the finding of the Disciplinary Tribunal, and the Sanction imposed.
- 15.5 If a Registered Person found guilty of Improper Conduct lodges an appeal against a decision of the Disciplinary Tribunal, the decision of the Disciplinary Tribunal and the publication by the Council of the finding and the Sanction imposed on a Registered Person in the Gazette may not be put into effect before the Council or the CBE, or both have decided the appeal.


16. POSTPONEMENTS

- 16.1 The right to request a postponement upon reasonable grounds is acknowledged as a fair administrative process in terms of PAJA. The decision to grant or refuse a postponement should, however, be viewed as an indulgence requested from the Disciplinary Tribunal and not as a right and may not be readily granted, unless it is in the interest of justice to do so.
- 16.2 Some of the factors to be considered by the Disciplinary Tribunal are inter alia:
- 16.2.1 Any exceptional circumstances exist to allow the postponement.
- 16.2.2 Good cause has been shown by the applicant for postponement.
- 16.2.3 Whether the grounds for postponement forwarded by the applicant are complete and satisfactory.

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- 16.2.4 Whether a postponement will be prejudicial to any of the parties.
- 16.2.5 Whether the application is opposed and in the broader public interest.
- 16.2.6 Any previous delays/requests for postponement and the reasons for these.
- 16.3 The unavailability of a Registered Person to appear on the day of the Disciplinary Hearing will not afford a basis for a postponement.
- 16.4 The application for postponement must be in writing, and the evidence on which it is based must be set out. In the event of an application/request for a postponement, the Disciplinary Tribunal will be notified of the proposed application/request for postponement as well as the full reasons for it.
- 16.5 This is necessary for the Disciplinary Tribunal to decide whether it is appropriate for it to grant the Application (and this will depend on the grounds advanced, and the period until the date of the scheduled Disciplinary Hearing), or whether the postponement application should be heard in a sitting of the Disciplinary Tribunal. The Disciplinary Tribunal must, as soon as reasonably possible, consider the request for a postponement or direct such further action as may be necessary to consider the postponement.
- 16.6 Under no circumstances should it be assumed that a postponement will be, or has been, granted unless this is specifically communicated by ECSA in writing.
- 16.7 Registered Persons are cautioned against submitting vague and general sick notes in support of postponement applications. A sick note should indicate the capacity of the applicant to be present at the hearing and participate in proceedings.
- 16.8 A vague sick note will justify a requirement for the applicant to be present at the disciplinary hearing for the Disciplinary Tribunal to enquire into the applicant's capacity to participate in the proceedings. The medical practitioner who issued the sick note must be available to answer questions about the applicant's inability to attend and participate.
- 16.9 The Registered Person is also required to inform the doctor at the time of the consultation that he/she is expected to appear before a Disciplinary Tribunal during the period covered by the sick note, that the doctor will be required to provide evidence regarding the status of the Registered Person's health for the intended application for postponement and that the doctor has the Registered Person's consent to provide this evidence.

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16.10 It might be sufficient that the doctor is examined by telephone, but on occasion, it could be necessary for him or her to appear before the Disciplinary Tribunal in person to answer questions under Oath. The unavailability of the doctor to be questioned could prejudice the application.

17. COSTS

17.1 In terms of Section 12 of the Act, the Council may with regard to fees and charges, which are payable to the Council, determine any other fee or charge it considers necessary.

17.2 Council delegates its power to determine fees or charges in terms of Section 12(1)(i) of the Act related to wasted costs, as described below, to the Disciplinary Tribunal.

17.3 If the Registered Person, in the absence of good cause shown, does not attend proceedings as and when required by a Notice of Set Down or after the postponement of a matter that has commenced before a Disciplinary Tribunal, the Pro forma Complainant may apply to the Disciplinary Tribunal for an order for wasted costs to be granted against the Registered Person.

17.4 Wasted costs are the actual wasted costs incurred by ECSA, being the costs of the tribunal Members and Pro Forma Complainant and/or any other costs incurred in connection with the convening of the Disciplinary Hearing, because of the late request for a postponement and/or the absence of the Registered Person.

17.5 The above analysis will be subject to the precepts of truth, reasonableness, and fairness and made by the Disciplinary Tribunal after affording the Registered Person and the Pro Forma Complainant an opportunity to make representations to the Disciplinary Tribunal.

17.6 No person will be compensated for his or her time and/or expenses concerning the matter in the absence of an agreement with ECSA.

18. REMOTE HEARING PROTOCOL FOR DISCIPLINARY HEARINGS


18.1 The purpose of the Protocol is to outline the procedure that will be followed during the Disciplinary Hearings. The Protocol does not seek to alter any Rules in the management of Improper Conduct.

18.2 All authorized parties will be provided with a Microsoft Teams meeting link and are required to join the meeting fifteen minutes before the scheduled start time.

18.3 Subsequent to the Chairperson having concluded the formal introductions of the parties, and the witnesses have been excused, the witnesses will be called telephonically by the Improper Conduct

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Business Unit when the Chairperson directs that he or she may join the proceedings. Witnesses must therefore ensure that they are contactable telephonically for the duration of the time for which the Disciplinary Hearing has been set down as specified in the Notice of Set Down.

- 18.4 The Disciplinary Hearing will be recorded for record-keeping purposes. The recording will be managed by ECSA.
- 18.5 All parties must maintain the confidentiality of the proceedings and any sensitive information disclosed during the Disciplinary Hearing and may be required to sign non-disclosure agreements.
- 18.6 In case of technical difficulties leading to interruptions, the Chairperson may adjourn the Disciplinary Hearing temporarily to resolve the issue. Repeated and long-term disruptions may necessitate in-person proceedings.
- 18.7 Participants are expected to behave professionally and respectfully throughout the Disciplinary Hearing. The Chairperson has the authority to remove any participant from the Disciplinary Hearing for disruptive behaviour.
- 18.8 All processes of sharing, handling, and storing information obtained during the Disciplinary Hearing will comply with the applicable laws of South Africa, including but not limited to the Protection of Personal Information Act of 2013 (POPIA).
- 18.9 Information collected during the Disciplinary Hearing process, including personal data, evidence, and testimonies, will only be used to conduct the Disciplinary Hearing, reach a decision, and any subsequent appeals or related proceedings, and for no other purpose.
- 18.10 By participating in the remote Disciplinary Hearing, all parties consent to the sharing of information as necessary among the participants entitled thereto, strictly to give effect to these Rules and or the Act.
- 18.11 Post-introductions, participants, except for the Chairperson, are to disable their video and microphone to ensure optimal audio-visual quality. The Chairperson remains visible and audible throughout the proceeding.
- 18.12 If the Disciplinary Hearing is stood down on the directive of the Chairperson, all parties in attendance shall remain in the Disciplinary Hearing and disable their video and audio until such time that the Disciplinary Hearing reconvenes in terms of the directive of the Chairperson. The Chairperson may request participants to leave the proceedings at any stage of the hearing to enable him/her to caucus with his / her fellow Tribunal Members. Participants will be called telephonically by the improper Business Unit Representative when the Chairperson directs that the participants may rejoin the proceedings.

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Document No.: ICE_RULE_003	Revision No.: 1	Effective Date: 28/11/2025	 ECSA <small>ENGINEERING COUNCIL OF SOUTH AFRICA</small>
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- 18.13 Unless otherwise directed by the Chairperson, witnesses will be permitted into the Disciplinary Hearing only when it is their turn to give evidence.
- 18.14 Any person wishing to address the Chairperson, the Disciplinary Tribunal, and/or any other party to the Disciplinary Hearing will do so by raising a hand sign on the screen to request permission to speak or activate their video (for their face-to-show) to request permission to speak.
- 18.15 Once permission to speak is granted, the person will state their name before addressing the Chairperson.
- 18.16 The voice and video mode must be reactivated when addressing the Chairperson.
- 18.17 The hand sign, voice, and video mode must be turned off once the address is complete.
- 18.18 If any of the parties are disconnected from the Disciplinary Hearing for an extended period and are therefore prejudiced, the Disciplinary Hearing may be adjourned until a full connection is restored.
- 18.19 The information captured on the chat box will not form part of the record.
- 18.20 The remote hearing will be recorded, and the recording will be made available to all parties entitled thereto after the hearing.
- 18.21 It is the responsibility of the parties to ensure a continuous, uninterrupted, and stable connection to the remote hearing for the duration of the Disciplinary Hearing. The Improper Conduct Business Unit will be available to assist any party as far as possible. However, the responsibility to comply with this Rule remains the responsibility of each party to the Disciplinary Hearing.
- 18.22 Each party will bear their own costs for the remote proceedings.
- 18.23 Attending the remote hearing will be deemed as consent to the terms which are contained in the Protocol.
- 18.24 Witnesses are granted access to the Disciplinary Hearing only when called upon to testify.
- 18.25 During cross-examination, the video and microphone of the Chairperson, the cross-examiner, and the witness under examination will be enabled.
- 18.26 Upon receiving permission to speak, participants must state their name before proceeding with their address.

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18.27 Disciplinary Hearings will be conducted only via MS Teams. User information on how to install and use MS Teams can be accessed at the following link <https://support.microsoft.com/en-gb/office/join-a-meeting-in-microsoft-teams-1613bb53-f3fa-431e-85a9-d6a91e3468c9#:~:text=If%20you're%20signed%20in,Join%20with%20a%20meeting%20ID%20,\>

18.28 This protocol establishes the procedures for conducting remote Disciplinary Hearings via Microsoft Teams. It is designed to ensure that all participants can engage in the Disciplinary Hearings effectively and fairly, maintaining the integrity of the disciplinary process in a virtual environment.

19. CONFIDENTIALITY AND PROTECTION OF INFORMATION

19.1 All stakeholders are obligated to treat all matters, information, and Documents related to the proceedings of Improper Conduct with the utmost confidentiality, as prescribed by the applicable legislation and these Rules.

19.2 Stakeholders must ensure the safeguarding of personal and sensitive information as required by, inter alia, POPIA), ensuring that such information is accessed only by authorized individuals and used solely for the purpose of these Rules.

19.3 Stakeholders are required to comply with any injunctions and legal directives aimed at protecting confidential information. They must take all necessary measures to prevent unauthorized disclosure, misuse, or alteration of confidential and personal information, respecting the legal framework established by South African law.

19.4 This clause imposes a legal and ethical duty on all stakeholders to maintain confidentiality and protect personal information throughout and beyond the conclusion of any proceedings related to Improper Conduct.

17. DOCUMENT REVISION HISTORY

Revision Number	Revision Date	Revision Details	Approved By
00	29/10/2025	New Document	Investigation Committee
01	27/11/2025	Document reviewed at its entirety	Governing Council

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