

BOARD NOTICE YYY OF 2020
SOUTH AFRICAN COUNCIL FOR THE ARCHITECTURAL PROFESSION



RULES FOR INQUIRY INTO ALLEGED IMPROPER CONDUCT
Architectural Profession Act 44 of 2000

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DRAFT
17 SEPTEMBER 2020

1 Introduction

- 1.1 It is acknowledged that the South African Council for the Architectural Profession (“SACAP” or “the Council”) is mandated by the Architectural Profession Act 44 of 2000 (“the Act”) to take any reasonable steps for the protection of the environment and the public in the latter’s dealings with Registered Persons.
- 1.2 It is furthermore acknowledged that the Council may take any steps it considers necessary where, as a result of architectural-related undertakings, public health and safety could be prejudiced.
- 1.3 It is additionally acknowledged that the SACAP may take any reasonable steps in order to maintain the integrity and enhance the status of the profession, and to improve the standards of services rendered by Registered Persons.
- 1.4 In pursuance of the rights and obligations mentioned in 1.1, 1.2, and 1.3, Council must investigate any act of alleged improper conduct by a Registered Person and/or any complaint, charge or allegation of improper conduct against such Registered Person brought by any person.
- 1.5 An investigation mentioned in 1.4 is aimed at and directed toward the professional conduct of a Registered Person and is not intended to recover damages on behalf of any complainant, or enforce specific performance against any person and as such is not meant to replace civil and/or criminal litigation.
- 1.6 Where a Registered Person or persons registered with the different Built Environment professions are involved in the same subject of investigation, SACAP undertakes to share relevant information with other such councils and with stakeholders.
- 1.7 These rules must be read with and are subjective to the Act and to be interpreted and applied in a manner that is lawful, reasonable, and procedurally fair.
- 1.8 The Council acknowledges that misunderstandings and disputes can arise between Registered Persons and their clients and other stakeholders they encounter through their professional dealings and obligations, but that these sometimes do not amount to a breach of the Code of Professional Conduct, in which instances, SACAP may take steps to resolve these amicably.
 - 1.8.1 Thus, SACAP has introduced a peer review mechanism to resolve disputes between members of the public and registered persons promptly and inexpensively. Through this process, parties are full participants in the process and can express their own opinions and concerns without restrictions. Peer review allows the opportunity for parties to work together and reach a settlement and continue to work together to complete the construction project

2 Definitions

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

“**Act**” means the Architectural Profession Act 44 of 2000;

“**Advisory letter**” means correspondence with a respondent advising of concerns raised by the Investigating Committee regarding the respondent’s professional behaviour;

“**Complainant**” means a person or body lodging a complaint against a Registered Person;

“**Council**” means the South African Council for the Architectural Profession established in terms of Section 2 of the Act, also referred to as the “SACAP”;

“**Days**” means business days;

“**Disciplinary tribunal**” means the tribunal appointed by the Council in terms section 30 of the Act;

“**Improper conduct**” means a transgression of the Code of Conduct published in terms of the Act;

“**Investigating Committee**” means a committee appointed by Council under section 17(1)(a) of the Act;

“**Investigation**” means the process of investigation by the Investigating Committee in terms of Section 28;

“**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 19 of the Act;

“**Registrar**” means the person appointed by Council under section 8(1)(a) of the Act; and

“**Respondent**” means a Registered Person whose conduct is the subject of an investigation.

3 Delegation of powers

3.1 Council by resolution, may delegate the following functions to the Registrar or other staff member:

- (a) The referral of matters brought against a Registered Person to the Investigating Committee for investigation;
- (b) The charging of Registered Persons and the furnishing of charge sheets to them;
- (c) The appointment of disciplinary tribunals; and
- (d) The appointment of a pro-forma complainant.

4 Information on and complaints of improper conduct

4.1 Any person or body lodging a complaint of improper conduct against a Registered Person with the Council must do so in the form of an affidavit or an affirmation

detailing the specific act or acts relating to the alleged improper conduct, and must attached evidence in support of it.

- 4.2 The Registrar, upon receipt of any complaint referred to in paragraph 4.1 or on information which prima facie 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.
- 4.3 The Registrar must refer a matter to the Investigating Committee upon reasonable grounds that a Registered Person has committed an act which may render him or her guilty of improper conduct in terms of the Code of Conduct.
- 4.4 The Investigating Committee may investigate any matter brought against a registered person and/or initiate and investigate any matter it has reasonable grounds to suspect that a registered person has committed an act which may render him or her guilty of improper conduct in terms of Code of Conduct.

5 Investigation

- 5.1 The Registrar must upon receipt of the complaint/information, 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.
- 5.2 The Registrar must inform the Registered Person –
 - (a) of his or her right to be represented or assisted by another person; and
 - (b) 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.
- 5.3 The Registrar must submit all complaints and other available information related to the alleged improper conduct to the Investigating Committee.
- 5.4 The Investigating Committee must afford the Registered Person the opportunity to respond in writing to the complaint and all other evidence considered against him or her.
- 5.5 The Investigating Committee or persons assigned by it, including people appointed to investigate the complaint, may, with due consideration of the provision of section 28(3) of the Act, question the Registered Person concerned for the purpose of gathering further information.
- 5.6 The Investigating Committee must investigate the matter and obtain evidence to determine within a reasonable time considering the nature and complexity of the

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.

- 5.7 Council may suspend an investigation pending the outcome of any civil or criminal proceedings where this is necessary in the interests of justice.

6 Pre-hearing meeting

- 6.1 A Registered Person who received a notice to attend a hearing may call for a pre-hearing meeting which notice shall include the date, time, and the proposed venue for the meeting.

- 6.2 In the event a pre-meeting hearing is held, the purpose of such meeting shall be to curtail and limit the issues in dispute and agree on those not in dispute. The discussions may include but is not limited to the following headings:

- (a) Prejudice;
- (b) Settlement;
- (c) Admissions sought;
- (d) Disputes regarding the duty to present evidence first and onus of proof;
- (e) Proof by Affidavit;
- (f) Responsibility for copying and preparation of bundles;
- (g) Status of the documents; and
- (h) Estimated duration of the hearing.

7 Preparation for disciplinary hearing

- 7.1 In the event Council decides to constitute a disciplinary tribunal, the person delegated by Council shall appoint a pro forma complainant who must formulate the charge(s) in writing, arrange a disciplinary hearing and at such hearing, present all evidence in support of the charge.

- 7.2 The Registrar may appoint one or more persons to assist the pro forma complainant

- 7.3 The pro forma complainant must serve a copy of the charge sheet on the respondent:

- (a) informing the respondent of the charge(s); and
- (b) inviting the respondent to file a plea to the charge sheet by no later than 14 (fourteen) days after receipt of the charge sheet.

- 7.4 Where applicable, 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.

- 7.5 The disciplinary hearing shall be conducted in English. Where a Registered Person charged with improper conduct requires an interpreter, the pro-forma complainant shall obtain the service of such interpreter, provided the Registered Person notifies the pro forma complainant at least 4 (four) working days before the date of the hearing.
- 7.6 The notice of the hearing must substantially comply with Annexure A of the Rules and must be served on the respondent in any of the ways described in section 7.7.
- 7.7 A notice (subpoena) for the witness to attend a disciplinary hearing contemplated in section 31(3) of the Act must be substantially in the form of Annexure B.

8 Service of documents

- 8.1 A party must serve a document on the other party by either:
- (a) 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 18 (eighteen) years old and in charge of the person's place of residence, business premises or place of employment at the time;
 - (b) **by emailing a copy of the document to the person email address or any other electronic transmission** by that person to receive service and/or;
 - (c) by sending a copy of the document by registered post/courier to the last known address of the party or an address chosen by the party to receive service.

9 Proof of service

- 9.1 A party must prove to the disciplinary tribunal that a document was served, by providing:
- (a) a copy of proof of mailing the document by registered post/courier to the other party;
or
 - (b) a copy of the fax transmission report indicating the successful transmission to the other party of the entire document; or
 - (c) if a document was served by hand –
 - (i) 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) 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
 - (d) if a document was sent by electronic mail, electronic acknowledgement of receipt by the respondent or other party.

- 9.2 If proof of service in accordance with section 9.1 is provided, it is presumed, until the contrary is proved, that the Registered Person received the document.
- 9.3 The disciplinary tribunal may accept proof of service in any other manner as sufficient.

10 Plea of guilty

- 10.1 A respondent desirous to plead guilty in terms of section 29(4)(a) of the Act may enter into a plea agreement with the pro forma complainant with due consideration of 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.
- 10.2 Plea agreements must be in writing and signed by the pro forma complainant and the respondent or his or her legal representative.
- 10.3 If the parties enter into a guilty plea agreement, a sanction shall be imposed in accordance with such plea agreement.

11 Procedure at disciplinary hearing

- 11.1 The presiding officer of a disciplinary tribunal shall, subject to section 31 of the Act, determine the procedure to be followed at the disciplinary tribunal after hearing both sides.
- 11.2 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.
- 11.3 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.
- 11.4 After a finding of guilt and before any sanction is imposed, the parties may present mitigating and aggravating circumstances to the disciplinary tribunal.
- 11.5 **Should the respondent fail to attend the hearing without good cause 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 had been served on the respondent.**

12 Procedure after verdict

- 12.1 After the conclusion of the hearing the disciplinary tribunal must, within 30 (thirty) business 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.
- 12.2 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 sentence.
- 12.3 If the Registered Person charged is found guilty of improper conduct or admits guilt to the charge, the disciplinary tribunal must either –
- (a) caution or reprimand the Registered Person; or
 - (b) 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; or
 - (c) suspend the registration of the Registered Person concerned for a period not exceeding 1 (one) year; and/or
 - (d) 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.
 - (c) The disciplinary tribunal may take decisions under more than one of the subparagraphs of paragraph 12.3
- 12.4 The Council must publish the finding and the sanction imposed in terms of section 32(3)(5) of the Act in the Government Gazette.
- 12.5 The Council must give effect to the decision of the disciplinary tribunal.

13 Notice of right to appeal

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

14 Appeals

- 14.1 A registered person found guilty by a disciplinary tribunal may appeal to Council against such finding, or against the sentence imposed, or both.

- 14.2 All appeals must be lodged within 30 (thirty) days of the decision coming to the knowledge of the registered person.
- 14.3 Council may not delegate its function to hear appeals.
- 14.4 Council must conduct appeals in a lawful, reasonable, and procedurally fair manner.
- 14.5 A Council member hearing an appeal must not have been a member of the Investigation Committee which dealt with the matter.
- 14.6 An aggrieved Registered Person whose appeal was dismissed by the Council may appeal to the Council for the Built Environment.

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17 SEPTEMBER 2020

FORM A

NOTICE TO ATTEND A HEARING

To

You are hereby notified that a disciplinary hearing in terms of section 31 of the Architectural Profession Act 44 of 2000 ("the Act) 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 notified to appear at the hearing in person, and informed that you are entitled to be represented by some other person, and that you may present evidence, call and examine witnesses on your behalf, and cross-examine other witnesses.

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 Rules is enclosed.

Signed on this day of2.....

.....
Signature and capacity

Received by

Date:

Time:

DRAFT
17 SEPTEMBER 2020

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 44 of 2000 ("the Act") will be held at on the day of 20..... at, when a charge of alleged improper conduct againstwill be considered.

The Council is of the opinion that you may be able to give material information concerning this hearing. 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 or recording of any of the matters related to this hearing.
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 Act, you are hereby summoned to appear before the disciplinary tribunal at the time and place specified above, to be examined or cross-examined 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 Act, a copy of which is enclosed.

.....
Signature and capacity

Served on

DOCUMENT LIST

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

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

17 SEPTEMBER 2020