

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

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

SCHEDULE**1. Definitions**

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

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

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

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

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

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

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

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

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

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

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

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

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

INVESTIGATING COMMITTEE

(Section 28)

3. Composition of Investigating Committee

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

4. Recording of Proceedings and Conveying of Recommendation

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

5. Supplementary Powers of Investigating Committee

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

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

CHARGE OF IMPROPER CONDUCT (Section 29)

6. Dismissal of Charge

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

7. Charge of Improper Conduct and Assistance

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

8. Additional Documents and Information

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

DISCIPLINARY TRIBUNAL (Section 30)

9. Appointment of Members of Tribunal and Presiding Officer

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

DISCIPLINARY HEARING (Section 31)

10. Procedure

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