
BOARD NOTICES • RAADSKENNISGEWINGS

BOARD NOTICE 176 OF 2019



SOUTH AFRICAN COUNCIL FOR THE ARCHITECTURAL PROFESSION

Proposed amendments to the rules

In terms of Section 27 (1) of the Architectural Profession Act, 2000 (Act No 44 of 2000), the Council must, in consultation with the Council for the Built Environment, Voluntary Associations and Registered Persons, draw up a Code of Conduct for registered persons.

In terms of section 36 (1) of the Act, Council is empowered to make rules with regard to any matter that is required or permitted to be prescribed in terms of the Act and any other matter for the better execution of the Act.

Section 36 (2) (a) of the Act provides that before the Council makes any rule under this section, it must publish a draft of the proposed rule in the *Gazette* together with a notice calling on interested persons to comment in writing within a period stated in the notice, but the period may not be less than 30 days from the date of publication of the notice

Notice inviting comments in writing

Notice is hereby given in terms of Section 36 (2) (a) of the Act that Council has prepared draft rules and all interested and affected persons are requested within 30 business days from the date of the publication of this notice to make written representations on the proposed Code of Conduct and rules for inquiry into alleged improper conduct.

Written representation must be submitted to the details below on or before 28 November 2019

Submission details:

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CODE OF CONDUCT FOR REGISTERED PERSONS

Architectural Profession Act 44 of 2000

In terms of section 36 of the Architectural Profession Act 44 of 2000 ("the Act"), the South African Council for the Architectural Profession ("SACAP" or the "Council") hereby makes known that in compliance with section 27 of the Act, it made the Rules for Professional Conduct set out hereunder.

Preamble

Registered Persons are subject to the disciplinary supervision of the Council. The Rules lay down standards of professional conduct and practice which must be complied with. Failure to do so could lead to an investigation which may result in a disciplinary hearing.

Section 27 of the Act requires Council to draw up a Code of Conduct ("Code") for Registered Persons. All such persons shall comply with the Code and failure to do so may constitute improper conduct.

Any failure to comply with the provisions of this Code shall not automatically be regarded as unacceptable professional conduct or professional incompetence, but unprofessional conduct or professional incompetence (as a consequence of the failure to uphold these rules) may be considered in any disciplinary proceedings.

Where a particular conduct is not specifically stipulated in this Code it does not mean that such conduct cannot form the basis of disciplinary proceedings. Each case shall be judged on its facts, and there may be circumstances in which unacceptable or improper conduct or serious professional incompetence is found even where there has been no clear breach of the express terms of this Code.

A disciplinary order may be made against any Registered Person convicted of a criminal offence that has material relevance to such person's fitness to practise as a Registered Person.

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1 Definitions

In these Rules, unless the context indicates otherwise –

- (a) any word or expression to which a meaning has been assigned in the Act shall bear the same meaning; and
- (b) the use of the masculine gender shall include the feminine and/or neuter genders and the singular shall include the plural, and vice versa, and the word “person” shall include any corporation, firm, partnership or other form of association.

‘Act’ means the Architectural Profession Act 44 of 2000;

‘architectural practice’ means the business of a Registered Person conducted within the architectural profession as a sole proprietorship, partnership, and/or any other legal entity. Where the word ‘practice’ is used on its own in these Rules, it shall bear the same meaning;

‘architectural work’ includes, but is not limited to, planning, design, drawings, specifications, technical documentation, contract administration, and inspection of construction work;

‘candidate’ means a person who is registered in terms of section 19(2)(b) of the Act and who is undergoing practical vocational training with the intention to become a Registered Professional;

‘complaint’ means any applicable information or allegation regarding improper conduct by a Registered Person that comes to the attention of the Council;

‘code of conduct’ means this document, which describes the set of rules and standard of professional conduct required of a Registered Person when performing their architectural work;

‘Council’ means the South African Council for the Architectural Profession, established by section 2 of the Act, also referred to as “SACAP”;

‘information’ means architectural documents and data produced or relied upon by a Registered Person in the performance of work, which documents or data forms a material part of the project records, including, but not limited to, designs, specification, design calculation drawings, and inspection certificates, whether in electronic format or otherwise;

‘member of a closely allied profession’ means a person registered in terms of the

Architectural Profession Act No 44 of 2000.

Engineering Profession Act No 46 of 2000.

Landscape Architectural Profession Act no 45 of 2000.

Project and Construction Management Professions Act No 48 of 2000.

Property Valuers Profession Act 47 of 2000.

Quantity Surveying Profession Act No 49 of 2000

‘professional’ means a person registered in one of the categories of professionals referred to in section 19(2)(b);

‘Registered Person’ means a person registered in one of the categories of professionals and candidates referred to in section 18 of the Act;

'registered principal' means the Registered Person in control and management of any architectural practice registered as such with the Council; and

'type of practice' means the category in which the registered principal of the practice can practise architecture.

2 Application

The Code of Conduct applies to a Registered Person in whatever capacity they may work or act in, as a natural person, whether in private or public practice, as sole practitioner, partner, director or employee (whether as a professional or a candidate) and whether in the employ of another Registered Person or not.

If a Registered Person fails to comply with any provision of the Act or Rule published in terms thereof, which is deemed by the Council to constitute improper conduct, it shall proceed with disciplinary action against such Registered Person.

In the event of any improper conduct committed prior to the effective date of this Code of Conduct, the Council shall have an election to either charge the Registered Person in terms of this Schedule or under the 2009 Code of Conduct.

Rule 1 Integrity

Registered Persons –

- 1.1 shall take into consideration the standard of honesty and integrity that underpin this Code of Conduct when performing architectural work;
- 1.2 shall at all times act with honesty and integrity and avoid any action or situation which may be detrimental to the esteem and dignity of the profession; or conduct which brings the profession into disrepute
- 1.3 shall not make any statement which is contrary to their professional opinion or which they know or ought to have known to be misleading, unfair to others or discreditable to the profession;
- 1.4 shall not knowingly undertake work under conditions or terms that would compromise their ability to carry out their responsibilities;
- 1.5 shall not misrepresent, or knowingly permit misrepresentation of their own or any other persons' academic or professional qualification or competency, nor exaggerate their degree of responsibility for any architectural work;
- 1.6 shall not negligently issue any certificate in connection with any building project on which they are professionally engaged in;
- 1.7 shall notify Council without delay if they become subject to any disqualification as contemplated in section 19(3) of the Act as failure to do so may be deemed by Council as improper conduct;
- 1.8 shall not receive, directly or indirectly, any commission or remuneration for recommending a particular contractor to a client for work on a building project;
- 1.9 shall declare to any potential client any business interests, including any interest in the business of trading in land or business of property developers, property auctioneers, estate agents, building contractors, subcontractors, suppliers in or to the building industry, or in a design-and-build practice, the existence of which interest, if not declared, could raise or may be likely to raise doubts about their integrity and impartiality as independent professionals;
- 1.10 shall remain bound by these rules, even after the occurrence of non-payment of the annual registration fees and after suspension of registration in terms of section 20(1)(a)(iii) of the Act, due to failure to pay prescribed annual registration fees;
- 1.11 shall not practice architecture during the period in which their registration has been suspended in terms of section 20(1)(a)(iii) of the Act, due to failure to pay prescribed annual registration fees.
- 1.12 shall not practice architecture after their registration has been suspended in terms of section 32(3)(iii) of the Act due to being found guilty of improper conduct by a disciplinary tribunal;
- 1.13 shall not practice architecture after their registration has been cancelled in terms of section 32 (3) (a) (iv) of the Act due to being found guilty of improper conduct by a Disciplinary Tribunal;
- 1.14 shall not practice architecture after their registration has been cancelled in terms of section 20(1)(a)

- 1.15 shall treat clients and fellow registered persons with due dignity, respect, and courtesy;
- 1.16 shall in giving advice, exercise impartiality and independent professional judgement; and
- 1.17 shall not engage in any act of dishonesty, corruption or bribery.

Rule 2 Competency

Registered Persons –

- 2.1 shall discharge their duties to the employer, client, agent, associate, and the public with due skill and competence;
- 2.2 shall where reasonably possible, make appropriate arrangements for the fulfilment of professional obligations in the event of incapacity and/or absence from work, and/or inability to perform work;
- 2.3 shall only undertake architectural work which is identified for the category of registration in which they are registered in terms of section 18 of the Act and in accordance with the registration categories in force;
- 2.4 shall, where work is carried out by a registered candidate under their supervision, take responsibility for ensuring that such candidate is appropriately registered, competent to perform the task, and is adequately supervised;
- 2.5 shall ensure that registered candidates do not have any financial interest in the practice other than in respect of bona fide remuneration for their services; and
- 2.6 a registered candidate must perform work under the direction, control and/or continual supervision of a registered professional entitled to perform such work and who must assume responsibility for any such work performed by the candidate.
- 2.7 shall regularly undertake continuing professional development activities in order to ensure that he/she keeps up to date with developments in the practice of architecture and to enhance and maintain his/her professional expertise and competence.

Rule 3 Honest promotion of services

Registered Persons –

- 3.1 may only promote their professional services with honesty, describing them in a manner that is related only to the work of the professional categories of registration represented in a practice;
- 3.2 shall credit the work done during a period as a principal or employee of another architectural practice and shall make clear reference and description to such practice;
- 3.3 shall ensure that the name under which an architectural practice operates is not misleading or capable of being confused with that of another practice; and
- 3.4 shall not use the architectural work prepared by another registered professional without written authority or communication with the originating registered professional or confirmation from the client that fees for all work done have been paid.

Rule 4 Administrative functions

Registered Persons –

- 4.1 are expected to ensure that before they undertake any professional work, they have entered into a written agreement with the client which must, inter alia, include:
 - (a) the scope of the work;
 - (b) the services to be provided;
 - (c) the allocation and limitation of responsibilities;
 - (d) fees payable for the work or services, the method of calculating them (if appropriate), and the stage(s) at which it/they will be payable;
 - (e) the budget, if applicable, and other cost limit for the project, work or service and the method and implication of estimating costs;
 - (f) provision for dispute resolution and/or termination of the agreement;
 - (g) details of professional indemnity insurance, including –
 - (i) name of the insurer;
 - (ii) the name of the insured;
 - (iii) amount of cover;
 - (iv) policy number; and
 - (v) provision for termination of the agreement;

- 4.2 Where the terms of appointment are prepared by a client who provides standardised terms of appointment, the registered person shall not be absolved from complying with Rule 4.1.
- 4.3 shall not change the scope of work without the written approval of the client;
- 4.4 shall ensure that at the completion of each milestone the client signs off where the scope of work involves more than one phase or stage;
- 4.5 shall issue any drawings, specifications or documents in respect of work performed or administered by them or by a person in their employ which bears their name and/or registration number or the name of their architectural practice;
- 4.6 shall sign or otherwise identify as having been issued by them any building plan or document of which their architectural practice is the bona fide author or where such building plan or document has been prepared under their direct supervision;
- 4.7 shall attend to all corrections requested by the local authority on the drawings prepared by them within a reasonable time;
- 4.8 shall issue certificates that are based on the correct fact on site;
- 4.9 shall take adequate and appropriate professional indemnity insurance to cover all architectural work undertaken by the practice;
- 4.10 shall, when requested by the SACAP, provide it with evidence of professional indemnity insurance in accordance with its standard and within specified time;
- 4.11 shall, within 30 (thirty) days of change of personal details, such as email address, physical and postal addresses, telephone and numbers of the practice, inform Council in writing thereof and ensure that such details are kept updated;
- 4.12. shall keep all plans, records, certificates, and/or drawings commencing from the start of work and up to a period of 5 (five) years from date of completion;
- 4.13. shall protect the confidentiality of information obtained from clients;
- 4.14 shall carry out professional work within the agreed time or within a reasonable time;
- 4.15 shall keep their clients informed about the progress on work undertaken on their behalf and of any issue which may significantly affect its quality or cost, and any other considerations; and
- 4.16 shall take responsibility for work carried out by their subordinates, including persons registered as candidates.

Rule 5 Establishment of an architectural practice

- 5.1 Any registered principal who practices architecture in any form shall within 30 (thirty) days of the establishment of the practice, register it with Council, giving full details of the practice name, address from which the practice is conducted, type of practice supported with corresponding registration details, and names of partners, shareholders, directors, and employees undertaking architectural work in the practice.
- 5.2 The Council shall be informed in writing of any changes in name, type, address, and composition of a practice and its termination, within 30 (thirty) days of the relevant occurrence.
- 5.3 The registered principals of a practice shall display their registration certificates in a prominent place in their office.
- 5.4 Registered professionals may not describe or name their practice as an architectural firm unless the majority shareholding or voting powers are held by the registered professionals.
- 5.5 In any multi-disciplinary professional firm which also practises architecture, a registered person shall be responsible for the architectural work.
- 5.6 A registered person shall not, except with the permission of the Council and under such conditions as the Council may prescribe, enter into any professional relationship or association with any person who is not a registered person or a registered professional of a closely allied profession. Permission will not be granted if the person concerned:
- 5.6.1 is disqualified from registration under any provisions of the Act or from membership of any closely allied profession;
- 5.6.2 is qualified to register under any category provided for under the Act but has not done so.
- 5.7 The Council may order that an architectural practice be dissolved if any partner, member or shareholder who is not a registered person but is eligible for registration, has been guilty of any act which, had he/she been a registered person, would have constituted a breach of any provision of the Act or these rules.
- 5.8 Every office established for the purpose of conducting an architectural practice shall be under the continuous, direct, and personal supervision of a Registered Professional, except where the Registrar, on application by the relevant Registered Professional, gives written permission in writing for such office to be supervised on an intermittent basis for such period and additional conditions as the Registrar may deem it necessary. The Registered Professional shall be present at such office for a period of at least one full day per week

during normal office hours. Further the Registered Professional shall prominently display that specific time of attendance prominently outside the said office. The Registrar may grant permission to allow time for, inter alia, the replacement of a Registered Professional who has left the practice or for the employment of professional staff where an office has to be established to provide services for a project.

5.9 The type of practice shall be determined by the registration category of a registered principal actively engaged in the practice.

5.10 The practice shall not use a type which portrays itself by name to be in a more senior category than the registered principals who owns the practice.

5.11. A person registered in the category of candidate shall not establish an architectural practice.

5.12 Letterhead

The letterheads of the practice shall display the following:

- (a) Name of the architectural practice, practice number, and type of practice; and the names of the principals and their registration numbers;
- (b) The category of registration of the principals, using the prescribed titles:
 - (i) Professional Architectural Draughtsperson (PrArchDraught)
 - (ii) Professional Architectural Technologist (PrArchT)
 - (iii) Professional Senior Architectural Technologist (PrSArchT)
 - (iv) Professional Architect (PrArch)
- (c) The professional designation and qualifications of all principals who are not registered with the Council.

Rule 6 Public interest and environmental protection

Registered Persons –

shall, in the performance of their duties –

- 6.1 have due regard to the health and safety of the public;
- 6.2 take all reasonable measures to the best of their knowledge/expertise to minimise any adverse impact on the environment;
- 6.3 respect the constitutional rights of individuals and the community that could be affected by their work;
- 6.4 comply with the National Building Regulations and Standards Act 103 of 1977, National Building Regulations, Town Planning Schemes, and South African Nation

Standards 10400 and any other built environment regulation or law;

- 6.5 advise a client in writing how best to conserve and enhance the quality of the environment and its natural resources; and
- 6.6 when providing professional advice to a client or employer, and such advice is not accepted, inform them of any consequences which may be detrimental to the health, safety or interests of the public, and at the same time inform the Council of their action.

Rule 7 Regulation of foreign architectural professionals

- 7.1 No foreign architectural professional shall be authorised to practise architecture in South African unless he or she has applied and has been granted temporary registration by Council;
- 7.2 No foreign architectural practice shall operate in South Africa without being registered in terms of Rule 5.1 and having entered into a joint venture agreement with a South African registered architectural practice or local registered professionals.

Rule 8 Disciplinary procedures

Disciplinary procedures are set out in sections 28 to 33 of the Act and in the Investigations and Disciplinary Hearings and Appeal procedure published under Board Notice 64 of 2017.

Repeal of Rules

The Rules published under Board Notice 154 of 2009 are hereby repealed, subject to section 12(2) of the Interpretation Act 33 of 1957.

Short Title

This Schedule is called the Code of Conduct for Registered Persons.

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

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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 faxing or emailing a copy of the document to the person's fax number or email address or a number chosen by that person to receive service 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 (illness or accident) and reasonable notice, the disciplinary tribunal may proceed to hear evidence and argument, and may find the respondent guilty, provided that the disciplinary tribunal is convinced that the charge sheet 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.

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:

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 2..... 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.