

**GUIDELINE MANUAL**  
**DISCIPLINARY PROCEEDINGS**  
**SOUTH AFRICAN COUNCIL FOR PLANNERS (“SACPLAN”)**  
**IN TERMS OF THE**  
**PLANNING PROFESSION ACT, 2002 (ACT 36 OF 2002)**  
**(THE “ACT”)**



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**GUIDELINES TO ASSIST COMPLAINANTS AND RESPONDENTS INVOLVED IN DISCIPLINARY  
DISPUTES TO BE ADJUDICATED BY THE SOUTH AFRICAN COUNCIL FOR PLANNERS**

**2018**

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**1. INTRODUCTORY REMARKS**

- 1.1 This manual contains a set of guidelines to assist persons or bodies (**Complainants**) who have registered a complaint against a planner in his / her capacity as a registered person (**Respondent**) contemplated in the Planning Profession Act, 2002 (Act 36 of 2002). The same guidelines are aimed at assisting a **Respondent** (typically a registered person in terms of the aforesaid Act) to respond appropriately to the complaint by the **Complainant** and to adhere to the requirements of the Act.
- 1.2 Where a **Complainant** is aggrieved by the conduct of a planner and wishes to register such complaint in a formal manner by alleging misconduct on the part of the planner, such a matter requires to be conducted in a formal and structured manner, to accord with the statutory requirements of the Act. It is also necessary to afford affected parties (including the **Respondent**) a reasonable opportunity to respond to such allegation(s) and, to the extent required, defend his / her position during the disciplinary proceedings before SACPLAN.
- 1.3 These guidelines do not replace the provisions of the Act and parties to a disciplinary dispute are cautioned to familiarise themselves with the content of the Act and to comply with such provisions to the extent required. These guidelines are provided solely to assist the participating parties (the **Complainant** and **Respondent**) so as to participate in a structured manner and to adhere to whatever timeframes may be relevant which, in turn, may assist in facilitating a speedy conclusion to the matter under consideration.
- 1.4 The reader is invited to study the manual and to utilise the guidelines to navigate the disciplinary process contemplated in the Act, with a view to avoiding delays and unnecessary frustrations.

**2. DEFINITIONS AND ACRONYMS**

The following definitions and acronyms are used in the body of this manual and, unless the context specifically dictates differently, same shall have the meanings described hereunder.

- 2.1 **Act:** Planning Profession Act, 2002 (Act 36 of 2002)
- 2.2 **Appeal Tribunal:** The Appeal Tribunal appointed in terms of the Act, to whom a party aggrieved by a decision of the Disciplinary Tribunal may lodge an appeal in terms of the Act.

- 2.3 **Code of Conduct:** The Code of Conduct adopted by SACPLAN in terms of the Act and published in the Government Gazette. This must be read in the context of the Act which also pronounces on professional misconduct.
- 2.4 **Complainant:** A person or body who has registered a written complaint of alleged professional misconduct against a registered person.
- 2.5 **Cost Order:** The Disciplinary Tribunal is authorised to make a cost order against any party to a disciplinary hearing, which cost order does not include a claim for damages by a Complainant against a Respondent. The costs contemplated in any such possible cost order will be limited to the costs associated with the hearing and may typically include the costs incurred by a party as a result of the conduct of the other. The costs of having to appoint a legal representative (either an attorney or an advocate or other representative), the costs of having to call upon an expert witness and associated reasonable costs may form part of such a cost order. For the purposes of same, the party seeking the cost order must present arguments with regard thereto for consideration by the Disciplinary Tribunal.
- 2.6 **Disciplinary Tribunal:** A tribunal appointed by SACPLAN in terms of the Act to consider complaints of alleged professional misconduct on the part of registered persons and to conduct disciplinary hearings (where relevant) and to make decisions with regard to any charges of professional misconduct in terms of the Act.
- 2.7 **Investigating Officer:** A person appointed by SACPLAN to investigate a complaint of professional misconduct. Typically the Investigating Officer will be a registered person in terms of the Act with appropriate experience.
- 2.8 **Investigation Report:** A report prepared by the appointed Investigating Officer following the conclusion of an investigation into the alleged professional misconduct forming part of the complaint of a complainant. Such report shall typically include recommendations for consideration by the Disciplinary Tribunal, including possible charges to be directed to the Respondent (where relevant). Such report will form the basis upon which the Disciplinary Tribunal will consider to proceed to conduct a Disciplinary Hearing in the matter (or not).
- 2.9 **Registered Person:** A person registered as a Professional Planner, alternatively, a Technical Planner, alternatively, a Candidate Planner, as contemplated in the Act.
- 2.10 **Respondent:** A registered person accused of professional misconduct by a Complainant.
- 2.11 **Rules:** The Rules adopted by SACPLAN in terms of the Act and published in the Government Gazette.
- 2.12 **SACPLAN:** The South African Council for Planners
- 2.13 **Sanction:** In the event of a registered person being found guilty of professional misconduct, the Disciplinary Tribunal may impose punitive measures against any such person found guilty, described as a "sanction" in the Act and set out in Section 23 thereof.
- 2.14 **Sworn Affidavit:** A statement by a party participating in a Disciplinary Hearing, attested to before a Commissioner of Oaths.

### 3. THE COMPLAINANT

3.1 A person or body aggrieved by the conduct of a planner (the **Complainant**) who wishes to register a formal complaint with regard to alleged professional misconduct is required to follow the steps listed below:

■ ***Step 1: Complete the complaint form and attest thereto before a Commissioner of Oaths***

**Form SAC 01** attached hereto, has been prepared by SACPLAN for the purpose of assisting the **Complainant** to provide the required details of the complaint of alleged professional misconduct and to provide the information required by SACPLAN, so as to conduct a proper investigation into the matter.

Given the serious nature of a complaint of alleged professional misconduct and the potential consequences thereof for the **Respondent**, and considering the quasi legal nature of a disciplinary enquiry as contemplated in the Act, it is necessary for the complaint to be presented in the form of a sworn affidavit. In other words, the complaint form SAC 01 is required to be presented to a Commissioner of Oaths such that the **Complainant** may attest thereto for the reasons aforesaid.

Please consider that a sworn affidavit of this nature must not be confused with the requirement to have a document certified by a Commissioner of Oaths as being a true copy of the original document. The **Complainant** is required to attest to the content of the complaint form by appearing before the Commissioner of Oaths and taking the required oath before completing and signing the document.

■ ***Step 2: Submit the Complaint Form to SACPLAN***

The sworn affidavit must be submitted to SACPLAN. A scanned version may be sent via e-mail or via fax transmission or posted to the address identified in the form. The **Complainant** is reminded to retain the original affidavit and must provide SACPLAN with such document on request.

■ ***Step 3: Additional Information***

Upon receipt of the complaint form under sworn affidavit, SACPLAN will peruse the documentation and, to the extent that it may be necessary, inform the **Complainant** of any further documentation or information required before further investigating the complaint. SACPLAN will typically request the **Complainant** to respond to any such requirement within a period of 30 days from such notice in order not to delay the further processing of the complaint.

■ ***Step 4: Receipt of and perusal of documentation bundle before hearing***

Should SACPLAN find that sufficient grounds exist to charge the **Respondent** with having committed professional misconduct, it follows that SACPLAN will arrange a hearing to be conducted for such purpose. Parties to the matter will be informed of the hearing and, simultaneously, will receive a document bundle containing:

- a copy of the complaint;
- a response by the Respondent (also under affidavit);
- a copy of the Investigating Officer's Report'
- a copy of the Charge Sheet; and
- any other relevant documentation / information required for the purposes of the hearing.

The **Complainant** is required to peruse the documents and to prepare for the hearing based on same.

Depending on the nature of the complaint, it may be prudent for the **Complainant** to consider involving the services of a legal representative. Although this is not required *per se*, the often legal and technical nature of a disciplinary dispute may require legal advice / assistance. This is left to be decided by the **Complainant**.

■ **Step 5: Attend the Disciplinary Hearing and participate**

The **Complainant** is required to be present at the disciplinary enquiry (whether represented or not). During the hearing, the parties in attendance will be offered the opportunity to present their respective cases, alternatively to confirm for the record that they shall abide by their affidavits.

The Disciplinary Tribunal members will be offered the opportunity to pose questions for clarity to the **Complainant** (where relevant) and the **Respondent** will be offered the same opportunity.

Due to the nature of a disciplinary hearing, legal representatives of either party will not be permitted to enter into cross-examination of a person presenting his / her case to the tribunal. Only questions for clarity will be entertained.

■ **Step 6: Arguments in aggravation / mitigation of sanction**

Should the Disciplinary Tribunal find the **Respondent** guilty of professional misconduct, the parties on record (including the **Complainant**) will be informed of such decision in writing and be offered an opportunity to present further arguments in aggravation / mitigation of the possible sanction to be imposed by SACPLAN.

On the part of the **Complainant**, an opportunity will be granted to present arguments with regard to what the **Complainant** considers to be a reasonable sanction as contemplated in the Act and to present argument with regard to any aggravating circumstances which should be considered by the Disciplinary Tribunal.

For the purposes hereof, the different sanctions which may be imposed by the Disciplinary Tribunal of SACPLAN derive from Section 23(3)(a) of the Act and may be summarised as follows:

- (i) Cautioning or reprimanding the registered person;
- (ii) Imposing a fine not exceeding the amount calculated according to the ratio for one (1) year imprisonment as per the Adjustment of Fines Act, 1991;
- (iii) Suspending the registration of the registered person for a period not exceeding one (1) year;
- (iv) Cancelling the registration of the registered person and removing his/her name from the SACPLAN register.

In the alternative, should the **Complainant** not wish to enter into further arguments with regard to a possible sanction to be imposed by the Tribunal, same may be confirmed in writing within the period permitted by SACPLAN being 21 days from date of notice thereof.

#### 4. THE RESPONDENT

4.1 On a basis similar to the **Complainant**, the **Respondent** requires to attend to the following steps during the disciplinary enquiry.

■ **Step 1: Response to Complaint**

Upon the complaint being received from the **Complainant** (in the form of a sworn affidavit), and upon SACPLAN receiving all the required information, the **Respondent** will be informed accordingly, and, based on the *audi alterem partem* doctrine, will be offered an opportunity to respond in writing by either admitting to or denying the allegations of the **Complainant**.

Such written response must also be presented in the form of a sworn affidavit and for the purposes hereof, form **SAC 02** attached hereto may be used by the **Respondent**.

The aforesaid form may be used by the **Respondent** to provide the required information to SACPLAN and to respond to each allegation presented by the **Complainant**. Such response is also required to be presented in the form of a sworn affidavit and to be attested to before a Commissioner of Oaths.

The **Respondent** will be granted 30 days from date of notice to respond to the allegations of the **Complainant**.

■ **Step 2: Additional Information**

Upon receipt of the response form under sworn affidavit, SACPLAN will peruse the documentation and, to the extent that it may be necessary, inform the **Complainant** of any further documentation or information required before further investigating the matter. SACPLAN will typically request the **Respondent** to respond to any such requirement within a period of 21 days from such notice in order not to delay the further processing of the complaint.

■ **Step 3: Receipt of and perusal of documentation bundle before hearing**

Should SACPLAN find that sufficient grounds exist to charge the **Respondent** with having committed professional misconduct, it follows that SACPLAN will arrange a hearing to be conducted for such purpose. Parties to the matter will be informed of the hearing and, simultaneously, will receive a document bundle containing:

- a copy of the complaint;
- the response by the **Respondent** (also under affidavit);
- a copy of the Investigating Officer's Report'
- a copy of the Charge Sheet; and
- any other relevant documentation/information required for the purposes of hearing.

The **Respondent** is required to peruse the documents and to prepare for the hearing based on same.

Depending on the nature of the complaint, it may be prudent for the **Respondent** to consider involving the services of a legal representative. Although this is not required *per se* the often legal and technical nature of a disciplinary dispute may require legal advice/assistance. This is left to the **Respondent** to decide.

■ **Step 4: Attend the Disciplinary Hearing and participate**

The **Respondent** is required to be present at the disciplinary enquiry. During the hearing, the parties in attendance will be offered the opportunity to present their respective cases, alternatively to confirm for the record that they shall abide by their affidavits.

The Disciplinary Tribunal members will be offered the opportunity to pose questions for clarity to the **Respondent** (where relevant) and the **Complainant** will be offered the same opportunity.

Due to the nature of a disciplinary hearing, legal representatives of either party will not be permitted to enter into cross-examination of a person presenting his / her case to the tribunal. Only questions for clarity will be entertained.

■ **Step 5: Arguments in mitigation of sanction**

Should the Disciplinary Tribunal find the **Respondent** guilty of professional misconduct, the parties on record (including the **Complainant**) will be informed of such decision and be offered an opportunity to present further arguments in aggravation / mitigation of the possible sanction to be imposed by SACPLAN.

On the part of the **Respondent**, an opportunity will be granted to present arguments with regard to mitigating any possible sanction as contemplated in the Act and to present argument with regard to any such circumstances which should be considered by the Disciplinary Tribunal.

In the alternative, should the **Respondent** not wish to enter into further arguments with regard to a possible sanction to be imposed by the tribunal, same may be confirmed in writing within the period permitted by SACPLAN being 21 days from date of notice thereof.

**5. THE INVESTIGATING OFFICER**

5.1 In the event that SACPLAN considers that sufficient grounds exist to further investigate the alleged misconduct committed by the **Respondent**, an **Investigating Officer** may be appointed to further investigate the matter and to present the findings of such investigation to the Disciplinary Tribunal for further consideration.

5.2 The **Investigating Officer** will be appointed from a panel on record with SACPLAN and the officer will be placed in possession of both the complaint and the response thereto and whatever other documentation may be relevant to such investigation.

5.3 The following steps are to be taken by the **Investigating Officer** during the aforesaid process:

■ **Step 1: Receipt and perusal of documentation**

Upon accepting the appointment from SACPLAN, the appointed **Investigating Officer** is required to take possession of the documentation and to study same so as to be familiar with the facts of the matter under consideration.

■ **Step 2: Conducting the investigation**

The **Investigating Officer** is required to conduct the investigation and, in the process of doing so, to interview persons (either personally or telephonically) who may assist in providing information required for such investigation and to consider the facts presented by the parties on record in the context of the Act, the Regulations and the Rules of SACPLAN (inclusive of the Code of Conduct of SACPLAN).

### ■ **Step 3: Preparation of Investigation Report**

Following the investigation as aforesaid, the **Investigating Officer** will be required to prepare a report (based on a pro forma structure presented by SACPLAN) and to come to an informed conclusion with regard to the allegations on the part of the **Complainant** and to make recommendations to the Disciplinary Committee with regard to:

- whether or not *prima facie* evidence exists to suggest that the **Respondent** is indeed guilty of professional misconduct as alleged by the **Complainant**.
- whether or not it is necessary for a hearing to be conducted in the matter; and
- whether or not it is necessary to charge the **Respondent** with having committed such professional misconduct.

### ■ **Step 4: Preparing a Charge Sheet**

In the event that the **Investigating Officer** recommends that the **Respondent** be charged with committing professional misconduct, the Investigating Officer will be required to prepare a charge sheet (based on a pro forma structure to be presented by SACPLAN), alluding to the relevant sections of the Act and the Code of Conduct which may have been breached.

The **Investigating Officer** will be granted a period of 30 days (or such longer timeframe as may be approved by the Chief Executive Officer / Registrar) to conclude the investigation and to present the report and charge sheet (if relevant) from date of being appointed.

## 6. GENERAL MATTERS

6.1 Parties to a disciplinary enquiry are reminded thereof that:

- (i) SACPLAN is not authorised to make any finding against a **Respondent** with regard to claims for damages incurred by the **Complainant**. This remains a civil matter to be decided by a competent court and is not the province of SACPLAN or the Disciplinary Tribunal.
- (ii) The Disciplinary Tribunal may indeed award costs against any participating party with regard to the hearing *per se* (on a scale to be determined by the Tribunal which may include party and party costs) and, in the event that a participating party requires such an order from the Tribunal, such arguments must be presented to the Disciplinary Tribunal during a hearing conducted for such purpose.
- (iii) The possible sanction to be imposed by the Tribunal against a guilty **Respondent** is governed by the Act and the Tribunal is not authorised to act beyond such ambit. However, the Tribunal is indeed authorised to impose one or more of the identified sanctions in Section 23 of the Act (or a combination thereof) to the extent that same may be relevant to the matter under consideration.

6.2 The Tribunal may look favourably upon any attempt by disputing parties to reach some form of reasonable settlement prior to concluding the disciplinary hearing. However, parties are forewarned that the Tribunal is not obliged to accept any such settlement in the process of arriving at its decision with regard to the matter under consideration.

6.3 Parties are advised in advance that where a party may be aggrieved by the decision of the Disciplinary Tribunal it has the right to lodge an appeal against such decision with the Appeal Board,

details of which will be provided by SACPLAN when informing parties of the decision of the Disciplinary Tribunal.

For further enquiries, please contact SACPLAN at:

- Tel: +27(11)318 0460 / 0437
  - Fax: +27(11)318 0405 or 086 617 4012
  - Email: [mlewis@sacplan.co.za](mailto:mlewis@sacplan.co.za)
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**ENCLOSURES:**

- **Form SAC 01:** Complaint Form
- **Form SAC 02:** Reply by Respondent