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NOTES AND GUIDELINES FOR COMPLAINT AFFIDAVIT/SWORN STATEMENT

1. The Engineering Council of South Africa (“ECSA”) is a statutory professional regulatory body established in terms of Section 2 of the Engineering Profession Act No. 46 of 2000 (“the Act”). ECSA operates within the ambit of the Built Environment Profession.
2. ECSA has a myriad of mandates embedded in the Act. Amongst these mandates, is a multi-faceted investigative legal mandate founded on the following legislative provisions:
 - Section 14(g): taking any steps considered necessary for the protection of the public in their dealings with Registered Persons for the maintenance, integrity, and enhancement of the status of the engineering profession;
 - Section 14 (j): taking any steps considered necessary, where, as a result of engineering-related undertakings, public health and safety is prejudiced;
 - Section 24: managing grievances (appeals) in relation to a decision to refuse to register an applicant;
 - Section 28: investigation of alleged improper conduct by Registered Persons;
 - Section 29: preferring charge(s) against Registered Persons, if sufficient grounds exist;

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Section 30: appointing a Disciplinary Tribunal to hear a charge(s) of improper conduct;

Section 31: to conduct a Disciplinary Hearing;



Section 33: managing grievances (appeals) in relation to the decisions of the Disciplinary Tribunal;

Section 35: managing appeals against certain decisions of Council; and

Section 41: to impose a sanction when a Registered Person is found guilty of improper conduct.

3. Any member of the public, an association, or an organisation may lodge a complaint against a Registered Person with ECSA if they are of the opinion that the Registered Person is guilty of improper/unprofessional conduct. ECSA will investigate complaints which prima facie evidence improper conduct by the Registered Person. ECSA will investigate the complaint on behalf of an individual (the Complainant) and if deemed necessary, implement such disciplinary action against the Registered Person.
4. For more information on alleged improper conduct of a Registered Person, kindly refer to, inter alia, Sections 27 to Section 35 and Section 41 of the Act, The Rules for Inquiry into Alleged Improper Conduct, The Code of Conduct for Registered Persons and The Overarching Code of Practice for Engineering Work¹. All of these resources are available on the Engineering Council of South Africa's website or can be sent to you upon request.
5. ECSA only has jurisdiction over individuals who were Registered Persons at the time the alleged improper conduct occurred. ECSA has jurisdiction irrespective of whether the individual is a Registered Person at the time of lodging the

¹ Code of Conduct for Registered Persons published in Government Gazette number 40691 on 17 March 2017 under Board Notice 41 of 2017 and promulgated in terms of the Engineering Profession Act, (EPA) (Act 46 of 2000, as amended) and/or in terms of the Overarching Code of Practice for the Performance of Engineering Work published in the Government Gazette number 44333 on 26 March 2021 under Board Notice 20 of 2021.

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complaint affidavit/sworn statement. The test is therefore whether the individual was a Registered Person at the time the alleged improper conduct occurred.

6. ECSA's jurisdiction includes, inter alia:

- 6.1.1 Ethical and technical complaints - against Registered Persons in the execution of engineering work as defined in the Code of Conduct for Registered Persons and/or the Overarching Code of Practice for Engineering Work.
- 6.1.2 Criminal Complaints - against persons who unlawfully practice in any of the professional categories for Registered Persons as listed in Section 18(2) of the Engineering Profession Act 46 of 2000.
- 6.1.3 Third party party investigations - complaints or matters that have been brought to the attention of ECSA by Registered Persons and/or members of the public that address potential issues that may arise as a result of engineering work that could pose a risk to the health and safety of the public and which does not necessarily relate to a complaint of alleged improper conduct by a specific Registered Person.


7. ECSA's jurisdiction excludes, inter alia:

- 7.1 ECSA is not in a position to assist with the recovery of monies as it is neither a Court of Law nor an alternative to the normal debt collection procedures. Furthermore, ECSA does not value property and therefore a valuation dispute as it relates to quantum, i.e. the valuation of the property is not a function of ECSA.
- 7.2 Commercial/Civil complaints. ECSA does not have jurisdiction to hand down rulings for the payment of damages, specific performance, breach of contract, and/or giving of general legal advice. The purpose of the mandate of ECSA is to investigate allegations of improper conduct by Registered Persons, enforce the Overarching Code of Practice for


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Engineering Work and/or the Code of Conduct for Registered Persons and give effect to contraventions of the above-mentioned Codes in the form of, amongst others, sanctions imposed on the Registered Person.


- 7.3 Complaints of alleged improper conduct which occurred at a time that an individual was not a Registered Person.
 - 7.4 Complaints that are objectively evaluated as frivolous, vexatious, or driven by malicious intent.
8. The complaint affidavit/sworn statement must be in English, preferably typed for legibility purposes. If hand-written, it should be legible for ease of reading.
 9. Each and every page, including annexures and/or supporting documents must be initialled by the Complainant and the Commissioner.
 10. No electronic and/or copied and pasted signatures are acceptable.
 11. Please do not remove or omit any of the pages in the document upon submission.
 12. Kindly enquire from our offices, before completing and submitting the complaint affidavit/sworn statement, whether the person against whom the complaint is being made, was at the time of the alleged improper conduct a Registered Person in terms of the Act.
 13. Annexures and/or supporting documents that are copies of the original must as far as reasonably possible be certified copies.
 14. Each annexure and/or supporting document must be referenced at the top right-hand corner and correspond with the attachments listed in the complaint affidavit/sworn statement. Please do not change the manner in which the annexures should be referenced. **Example Attachment 1.**
 15. Each annexure and/or supporting document must be in colour format, as far as possible, to promote the legibility thereof, this includes photographs.

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16. The subject of the complaint must clearly state the facts relevant to the alleged improper conduct by the Registered Person.
17. The complaint must provide specific information such as dates, the work agreed on, and whether this was agreed upon verbally or in writing.
18. It is advisable that the Complainant record, in his/her opinion which of the Rule(s) of Conduct (Board Notice 41 of 2017) and/or Rule(s) of the Overarching Code of Practice for Engineering Work (Board Notice 20 of 2021) the Registered Person has/have allegedly transgressed.
19. If any of the space on the complaint affidavit/sworn statement provided is insufficient, please use a continuation sheet.
20. Any information and/or documents relevant to a matter brought to the attention of ECSA in terms of any allegation of improper conduct is strictly confidential. Complainants, Registered Persons, and any other party are urged to adhere to the confidential nature of the process and are cautioned as to what information may be processed/divulged. Unlawful handling/processing/sharing of information may be found to be a contravention of, inter alia, the Protection of Personal Information Act 4 of 2013, which is a privacy law that safeguards the integrity and sensitivity of private information.
21. If an allegation(s) of improper conduct is made against more than one Registered Person, a separate complaint affidavit/sworn statement must be completed.
22. ECSA reserves the right to request further information from the Complainant, if necessary.
23. If you, as the Complainant are a Registered Person, please include your registration number and discipline/category of registration.
24. A copy of the complaint affidavit/sworn statement and supporting evidence will be made available to the Registered Person concerned in terms of the *audi alteram partem* rule.

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25. A complaint affidavit/sworn statement must be signed by a Commissioner of Oaths. A Commissioner of Oaths may be, for example, an attorney, a police officer, or a bank manager.
26. By submitting a complaint affidavit/sworn statement, you confirm your willingness to:-
 - 26.1 Assist the Investigating Committee with the investigation or with obtaining material information in respect of the matter concerned;
 - 26.2 Appear before a Disciplinary Tribunal at the time and place specified in the Subpoena, to be questioned or to produce any book, document, or object.
27. Complainants must understand that derogative and/or offensive statements as well as subjective unsubstantiated allegations can be considered defamatory by the Registered Person against whom such statements are made. To make a defamatory statement simply means to make a statement that is slanderous in nature and can be considered as damaging to a person's reputation and good name. To avoid your complaint being considered defamatory, you should restrict yourself to the objective facts of the matter and try not to include any emotional and unsupported allegations.
28. The facts of the matter should be stated simply, truthfully, and without unnecessary elaboration and supported only by relevant documentation. While every effort is made to obtain a timeous turnaround time with complaints, it is important to understand that the process of an investigation is not a rapid one. By its very nature, an investigation may take time if it is to be performed thoroughly and correctly.
29. It is recommended that any scanned documentation is scanned with a high-resolution scanner.
30. Please send the completed affidavit/sworn statement and supporting documents and/or any questions you may have to our offices via email, courier, or hand

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delivery to: (we do not advise using post, due to the lengthy duration it might take to reach our offices and thus delay the processing of the complaint):

Ms. Carla de Beer

Legal Practitioner – Improper Conduct and Investigation Business Unit, Legal Services Division

Engineering Council of South Africa, Waterview Corner Building

2 Ernest Oppenheimer Avenue, Bruma Lake Office Park, Bruma, 2198


Email: Carla@ecsa.co.za

Cc: Tsholofelo@ecsa.co.za


CHECKLIST FOR COMPLAINT AFFIDAVIT/SWORN STATEMENT

(The checklist may be used as a guideline)


1. Does the complaint affidavit/sworn statement relate to a Registered Person in terms of the Act?
2. Was the Registered Person registered at the time of the alleged improper conduct? If not, ECSA does not have jurisdiction to investigate the matter.
3. Does ECSA have jurisdiction to adjudicate the complaint/hear the matter?
4. Is the complaint affidavit/sworn statement in English?
5. Is there only one deponent to the complaint affidavit/sworn statement?

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6. Is the complaint against more than one Registered Person? If yes, a separate complaint affidavit/sworn statement must be completed for each Registered Person.
7. Is the complaint affidavit/sworn statement legible?
8. Are all pages of the complaint affidavit/sworn statement initialled by both the Complainant and the Commissioner?
9. No electronic or copied and pasted signatures are acceptable.
10. Has the Complainant/Deponent signed in full where required? Refer to the last page of the complaint affidavit/sworn statement.
11. Has the Commissioner completed the Commissioner's section in full?
12. Does the date of signature of the Complainant/Deponent correspond with the date of signature of the Commissioner?
13. Are the annexures, if any, also initialled by the Complainant/Deponent and the Commissioner?
14. Are the annexures, if any, legible and marked?
15. Are the annexures, if any, properly referenced, and does such reference correspond with the reference in the complaint affidavit/sworn statement? Annexures must be marked as Attachment 1, Attachment 2, and so forth.
16. Are there any alterations to the complaint affidavit /sworn statement and if so, have they been initialled by the Complainant/Deponent and the Commissioner?
17. Has the complaint affidavit/sworn statement been commissioned by an individual that carries the status of a Commissioner?
18. Has the gender of the Complainant/Deponent been selected/deleted where necessary by the Commissioner?

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19. Is the designation of the Commissioner evident as well as his/her full name, address, and signature?
20. Has the manner, date, and place of the sworn statement/affidavit been completed?
21. Is the complaint affidavit/sworn statement complete without missing pages?
22. Has the selection regarding the A19 form been completed?
23. Extracts of documents and/or supporting documents should not form part of the content of the complaint affidavit/sworn statement, they should form part of the properly referenced annexures.
24. The complaint affidavit/sworn statement must contain a provision whether or not the alleged improper conduct has the actual or potential threat that requires immediate attention.
25. Has the date of the alleged improper conduct or, the date on which the Complainant became aware of the alleged improper conduct been clearly identified?
26. Is the date of receipt of the complaint and the date of the alleged improper conduct, or the date on which the Complainant became aware of the alleged improper conduct in excess of 6 (six) months? If yes, the complaint affidavit/sworn statement must include an application for condonation for late filing which must be considered by the Chairperson of the Disciplinary Tribunal if the matter is to proceed to the disciplinary stage.
27. Does the Complainant have a direct relationship to the alleged improper conduct, alternatively, has or is the Complainant affected by the alleged improper conduct? If not, it must be noted that ECSA may reject the complaint.

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28. Does the complaint relate to alleged improper conduct in terms of the Code of Conduct for Registered Persons and/or the Overarching Code of Practice?
29. Has the discipline of the Registered Person been identified?
30. Is the spelling of the Registered Person's full name correct?