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GOVERNMENT NOTICE

DEPARTMENT OF JUSTICE AND CONSTITUTIONAL DEVELOPMENT

No. 844

11 October 2012

RULES MADE IN TERMS OF SECTION 25(1) OF THE JUDICIAL SERVICE COMMISSION ACT, 1994 (ACT NO. 9 OF 1994), TO REGULATE PROCEDURES BEFORE JUDICIAL CONDUCT TRIBUNALS

The Chief Justice has, under section 25(1) of the Judicial Service Commission Act, 1994 (Act No. 9 of 1994), made the rules in the Schedule.

SCHEDULE

Definitions

1. In these Rules, any word or expression to which a meaning has been assigned in the Act bears that meaning and, unless the context otherwise indicates—

"**day**" means a calendar day;

"**evidence leader**" means a member of the National Prosecuting Authority appointed in terms of section 24(1) of the Act;

"**notice of hearing**" means a notice of hearing served in terms of section 28(1) of the Act;

"**the Act**" means the Judicial Service Commission Act, 1994 (Act No. 9 of 1994); and

"**Tribunal President**" means the Tribunal President designated as such by the Chief Justice in terms of section 22(1)(a) of the Act.

Non-judicial member of Tribunal to take prescribed oath

2. (1) Any person serving on a Tribunal in terms of section 22(1)(b) of the Act, before commencing with his or her functions in terms of the Act for the first time, must take an oath or make an affirmation subscribed by him or her in the form set out below:

I, (full name and surname), do hereby swear/solemnly and sincerely affirm that whenever I am called upon to perform the functions of a non-judicial

member of the Tribunal, I will administer justice to all persons alike, without fear, favour or prejudice and, as circumstances of a particular matter may require, in accordance with the law and customs of the Republic of South Africa applying to the matter concerned.

(2) Any oath or affirmation referred to in subrule (1) must be taken by, or made before, the Tribunal President.

Appointment of evidence leader and giving of notice of hearing

3. (1) The Tribunal President must within five days of his or her appointment—

(a) direct the Secretary of the Commission to cause a notice of hearing, which must correspond substantially with Form 1 of the Annexure, to be served in accordance with section 28(1) of the Act on the respondent and complainant, specifying the date, time and place of the hearing; and

(b) where he or she deems it necessary, appoint an evidence leader.

(2) The notice of hearing must determine a date on which the hearing commences, which date may not be less than 90 days from the date of service of the notice of hearing.

(3) Service of the notice of hearing must be effected by the sheriff in the manner prescribed by law for the service of process in terms of the Supreme Court Act, 1959 (Act No. 59 of 1959), or such other manner as the Tribunal President may consider suitable in the circumstances.

Information to be provided to respondent before hearing

4. (1) The Tribunal President must, not later than 60 days before the date on which the hearing is to commence before the Tribunal, direct the Secretary of the Commission to cause a notice, which must correspond substantially with Form 2 of the Annexure, to be served on the respondent, which notice must contain—

(a) the facts which are alleged to constitute a complaint of incapacity, gross incompetence or gross misconduct against the respondent;

(b) a concise summary of the evidence and any other information which substantiate the complaint of incapacity, gross incompetence or gross misconduct;

(c) a copy of any book, document or statement which is to be produced to the Tribunal; and

(d) a photograph of any object which is to be produced to the Tribunal.

(2) Service of the notice in terms of subrule (1) must be effected by the sheriff in the manner prescribed by law for the service of process in terms of the Supreme Court Act, 1959 (Act No. 59 of 1959), or such other manner as the Tribunal President may consider suitable in the circumstances.

(3) The respondent may with the written permission of the Tribunal President and in the presence of the evidence leader and Secretary of the Commission, at any time before the commencement of the Tribunal hearing, inspect any original book, document, statement or object referred to in subrule (1)(c) and (d).

Inquiry conference

5. (1) The Tribunal may, at its own instance or at the request of the respondent or evidence leader, at any stage before or during a hearing convene an inquiry conference of the parties with a view to clarify issues, the possibility of obtaining admissions of fact and of documents to avoid unnecessary proof, the limitation of the number of witnesses and in general anything that might expedite the hearing.

(2) The Tribunal may, after the holding of such an inquiry conference, make an order which recites the actions taken at the inquiry conference, the agreements made by the parties as to any of the matters considered, and which limits the issues for consideration by the Tribunal to those not disposed of by admissions or agreements of the parties.

Subpoena of witnesses

6. (1) A subpoena in terms of section 30 of the Act must correspond substantially with Form 3 of the Annexure.

- (2) A subpoena must be signed by the Tribunal President and must—
- (a) specifically require the person named in it to appear before the Tribunal;
 - (b) state the date, time and place when and at which the person must appear;
 - (c) state the reason why such person must appear before the Tribunal; and
 - (d) sufficiently identify any book, document, statement or object to be produced by that person.

(3) If the Tribunal, evidence leader or respondent wishes to have a witness subpoenaed, the Secretary of the Commission must, not later than 21 days before the hearing, be requested to issue a subpoena, and the Secretary of the Commission must, subject to subrule (2), forthwith issue the subpoena and, unless otherwise directed by the Tribunal President, address it to the sheriff for service.

(4) Service of a subpoena must be effected by the sheriff in the manner prescribed by law for the service of process in terms of the Supreme Court Act, 1959 (Act No. 59 of 1959), or such other manner as the Tribunal President may consider suitable in the circumstances.

(5) A subpoena must be served on a person at least 14 days before the date on which that person is required to appear before the Tribunal.

Hearing

7. (1) The evidence leader may at the hearing, before any evidence is adduced, address the Tribunal, without comment, for the purpose of explaining the allegations against the respondent and what evidence he or she intends adducing in support of these allegations.

(2) The evidence leader may then examine the witnesses which he or she intends to call to prove that the respondent is suffering from an incapacity, is grossly incompetent or is guilty of gross misconduct, and may adduce such evidence as may be admissible.

(3) Where any book, document or statement, produced in evidence by the evidence leader, may be received in evidence by the Tribunal upon its mere production, the evidence leader must read out such book, document or statement in the Tribunal unless the respondent is in possession of a copy of such book, document or statement or dispenses with the reading out thereof.

(4) The respondent may at the hearing, after the evidence leader has addressed the Tribunal in terms of subrule (1) and before any evidence is adduced, address the Tribunal, without comment, for the purpose of explaining why he or she is not suffering from an incapacity, is not grossly incompetent or is not guilty of gross misconduct, and what evidence he or she intends adducing to refute these allegations.

(5) The respondent may examine the witnesses which he or she intends to call to refute the allegations against him or her, and may adduce such other evidence as may be admissible.

(6) Where any book, document or statement, produced in evidence by the respondent, may be received in evidence by the Tribunal upon its mere production, the respondent must read out such book, document or statement in the Tribunal unless the evidence leader is in possession of a copy of such book, document or statement or dispenses with the reading out thereof.

(7) Where a hearing begins or continues in the absence of the respondent in terms of section 28(2) of the Act, the respondent may, when he or she subsequently attends

that hearing, unless he or she was legally represented during his or her absence, with permission of the Tribunal and on good cause shown that his or her absence from the hearing was as a result of illness or other cause deemed sufficient by the Tribunal, examine any witness who testified during his or her absence, and inspect the record of the proceedings or require the Tribunal to have such record read over to him or her.

(8) Any witness at a Tribunal hearing must give his or her evidence orally.

(9) The evidence leader may—

(a) cross-examine any witness called on behalf of the respondent;

(b) re-examine any witness called in terms of subrule (2) on any matter raised during the cross-examination of that witness; and

(c) examine or cross-examine any witness called by the Tribunal at the hearing.

(10) The respondent may—

(a) cross-examine any witness called by the evidence leader;

(b) re-examine any witness called in terms of subrule (5) on any matter raised during the cross-examination of that witness; and

(c) examine or cross-examine any witness called by the Tribunal at the hearing.

(11) If it appears to the Tribunal that any cross-examination is being protracted unreasonably and thereby causing the proceedings to be delayed unreasonably, the Tribunal may request the cross-examiner to disclose the relevancy of any particular line of examination and may impose reasonable limits on the examination regarding the length thereof or regarding any particular line of examination.

(12) The Tribunal may, at any stage of the hearing, examine any person, who has been subpoenaed to attend such proceedings or who is in attendance at such proceedings or a person contemplated in section 29(1)(g) of the Act, and may recall and re-examine any person already examined at the proceedings, and the Tribunal must examine, or recall and re-examine the person concerned if his or her evidence appears to the Tribunal essential to the just decision of the case.

(13) (a) After all the evidence has been adduced, the evidence leader may address the court, and thereafter the respondent may address the court.

(b) The evidence leader may reply on any matter of law or fact raised by the respondent in his or her address.

(c) At the request of the Tribunal, or with the permission of the Tribunal, the evidence leader or respondent may furnish written submissions to the Tribunal before or after oral submissions.

(d) The Tribunal may on application by the evidence leader or respondent, but subject to section 27(1)(b) of the Act, adjourn the proceedings to a specific date in order to afford the party concerned the opportunity to prepare oral or written submissions.

Oath by interpreter

8. (1) Before any interpreter may interpret in a hearing of the Tribunal he or she must take an oath or make an affirmation in the following form:

'I,, do hereby swear/truly affirm that whenever I may be called upon to perform the functions of an interpreter in any proceedings in the Tribunal, I shall truly and correctly and to the best of my ability interpret from the language into the language and *vice versa*.'

(2) Such oath or affirmation must be taken or made in the manner prescribed by law for taking an oath or making an affirmation, and must be signed by the interpreter.

Recording of proceedings

9. (1) Any proceedings before the Tribunal must be taken down in shorthand or recorded by mechanical means by a person assigned to the Tribunal in terms of section 24(2) of the Act or such other person as the Tribunal President may designate, and may only be transcribed if the Tribunal President so directs or where required by the Act.

(2) Any shorthand notes, or transcription thereof, or any mechanical recording of the proceedings, or transcription thereof, must be certified as true notes or a true record taken, or a true transcription thereof, whereafter such notes, record or transcription becomes part of the record of the proceedings.

Short title

10. These rules are called the Rules regulating Procedures before Judicial Conduct Tribunals, 2012.

ANNEXURE

Form 1

NOTICE OF HEARING BEFORE JUDICIAL CONDUCT TRIBUNAL IN TERMS OF SECTION 28(1) OF THE JUDICIAL SERVICE COMMISSION ACT, 1994

Reference number:

In the complaint between:

.....

Complainant

and

.....

Respondent

To: Particulars of * complainant/*respondent:

(a) Name and surname:

(b) Physical address where notice may be served:

.....
.....
.....

(c) Contact phone number:

1. A copy of the notice of the Chief Justice in terms of section 21(4) of the Judicial Service Commission Act, 1994 (Act No. 9 of 1994), is attached.

2. You are hereby informed that the hearing of the complaint will commence on (date) at (time).

3. The venue for the hearing is:
.....
.....

.....
.....
..... (name of place, room number and physical address).

SIGNED at this day of 20....

.....
President of Judicial Conduct Tribunal

Enquiries may be addressed to:
..... (name and surname of Secretary of the
Commission) with the following contact details:

Telephone number:

Fax number:

E-mail address:

*** Delete whichever is not applicable**

FORM 2
NOTICE IN TERMS OF RULE 4 OF THE RULES REGULATING PROCEDURES BEFORE
JUDICIAL CONDUCT TRIBUNALS, 2012

Reference number:

In the complaint between:

.....

Complainant

and

.....

Respondent

To: Particulars of respondent:

- (a) Name and surname: The Honourable
-
- (b) Physical address where notice may be served:.....
-
-
-
- (c) Contact phone number:

Please take note:

With reference to the notice of hearing before the Judicial Conduct Tribunal which was served on you on, the following information is provided in terms of rule 4 of the Rules regulating Procedures before Judicial Conduct Tribunals, 2012:

- (a) It is alleged that the facts set out in Annexure A to this notice constitute a complaint of incapacity, gross incompetence or gross misconduct against you.
- (b) A concise summary of the evidence and any other information which substantiate the complaint against you is set out in Annexure B.
- (c)* A copy of the following book(s), document(s) or statement(s) which is/are to be presented to the Tribunal is attached as Annexures C1 to
- (d)* Photographs of the following object(s) which is/are to be presented to the Tribunal is/are attached as Annexures D1 to

(You may with the written permission of the Tribunal President and in the presence of the evidence leader and Secretary of the Commission, at any time before the commencement of the Tribunal hearing inspect any original book, document, statement or object referred to in Rule 4(1)(c) and (d).)

SIGNED at this day of 20....

.....
President of Judicial Conduct Tribunal

*** Delete whichever is not applicable**

Enquiries may be addressed to:
 (name and surname of Secretary of the
 Commission) with the following contact details:
 Telephone number:
 Fax number:
 E-mail address:

FORM 3

**SUBPOENA TO ATTEND HEARING BEFORE JUDICIAL CONDUCT TRIBUNAL IN
TERMS OF SECTION 30 OF THE JUDICIAL SERVICE COMMISSION ACT, 1994**

Reference number:

In the complaint between:

.....

Complainant

and

.....

Respondent

To:

(a) Name and surname of witness:

(b) Physical address for service of subpoena:

.....

.....

.....

.....

(c) Contact phone number:.....

You are hereby subpoenaed in terms of section 30 of the Judicial Service Commission Act, 1994 (Act No. 9 of 1994), read with rule 6 of the Rules regulating Procedures before Judicial Conduct Tribunals, 2012, to appear before the Judicial Conduct Tribunal on

.....(date) (time), at

.....
.....

..... (address) -

(a) to give evidence in connection with:

.....
.....
.....
.....

..... (specify reason why witness must appear before the Tribunal); and/or

(b) to produce the following book(s), document(s), statement(s) or object(s):

.....
.....
.....
.....

SIGNED at this day of 20....

.....
President of Judicial Conduct Tribunal

Take note:

In terms of section 34 of the Judicial Service Commission Act, 1994 (Act No. 9 of 1994), a person is guilty of an offence if he or she, having been subpoenaed to appear before a Tribunal, fails without reasonable excuse to—

- (a) attend a hearing of a Tribunal;**
- (b) remain in attendance until excused by the Tribunal; or**
- (c) produce any book, document, statement or object relating to the hearing which he or she has been subpoenaed to produce.**

A person convicted of such an offence is liable to a fine or to imprisonment not exceeding five years.

Enquiries may be addressed to:

..... (name and surname of Secretary of the Commission) with the following contact details:

Telephone number:

Fax number:

E-mail address:

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