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GENERAL NOTICES • ALGEMENE KENNISGEWINGS

DEPARTMENT OF JUSTICE AND CONSTITUTIONAL DEVELOPMENT

NOTICE 396 OF 2018



REPUBLIC OF SOUTH AFRICA

RULES GOVERNING PROCEEDINGS

OF

THE JUDICIAL COMMISSION OF INQUIRY INTO ALLEGATIONS OF STATE

CAPTURE, CORRUPTION AND FRAUD IN THE PUBLIC SECTOR

INCLUDING ORGANS OF STATE

Introduction

The Judicial Commission of Inquiry Into State Capture, Corruption and Fraud In the Public Sector Including Organs of State (Commission) was appointed by the President of the Republic of South Africa in terms of section 84(2)(f) of the Constitution of the Republic of South Africa by way of Proclamation No 3 of 2018 published in the Government Gazette of 25 January 2018 (Government No 41436). The terms of reference of the Commission appear as a Schedule to the Proclamation. In terms of section 1 of the Commissions Act, 1947 (Act No 8 of 1947), the President declared the provisions of that Act applicable with reference to the Commission and made regulations applicable to the Commission.¹

Regulation 13 of the Regulations confers on the Commission the power to determine its own procedures.² The Commission has determined the Rules set out herein as the Rules that govern its procedures. The proceedings of the Commission will be conducted in accordance with the Constitution, the Commissions Act 8 of 1947, the Commission's Terms of Reference, the Regulations, any other applicable law and these Rules.

¹ The Regulations appear as a Schedule in Government Notice 41436.

² The Regulations were published in the Government Gazette of 9 February 2018 by way of Government Notice No. 41436

1. Definitions

Unless otherwise stated or the context indicates otherwise, in these Rules-

- 1.1. "Act" means the Commissions Act 8 of 1947;
- 1.2. "Chairperson" means Deputy Chief Justice Zondo in his capacity as Chairperson of the Commission;
- 1.3. "Commission" means the Judicial Commission of Inquiry Into Allegations of State Capture, Corruption and Fraud In the Public Sector Including Organs of State, as constituted by the President of Republic of South Africa in terms of Government Gazette Notices 41403 dated 25 January 2018 and No. 41436 on 9 February 2018;
- 1.4. "Commission's Legal Team" means the team of lawyers appointed by the Chairperson to assist the Commission in the investigation and with the presentation of evidence and arguments before the Commission in regard to the matters referred to in the Terms of Reference;
- 1.5. "Constitution" means the Constitution of the Republic of South Africa, 1996.
- 1.6. "Evidence" includes but is not limited to any document, affidavit, video, sound recording or oral testimony submitted to the Commission;
- 1.7. "legal representative" means a practising advocate or attorney;
- 1.8. "Person" includes both a natural and a juristic person;

- 1.9. "Personal information" means all information of a personal and private nature pertaining to an individual including but not limited to private addresses, private telephone numbers, private family information and details of medical conditions.
- 1.10. "Regulations" mean the regulations of the Commission published in the Schedule to Proclamation No. 105 published in Government Gazette No. 41436 (as amended).
- 1.11. "Rules" means these rules as amended from time to time
- 1.12. "Secretary of the Commission" or "Secretary" means the person appointed by the Chairperson as Secretary of the Commission.
- 1.13. "Terms of Reference" mean the terms of reference of the Commission published in the schedule to Proclamation No. 3 in Government Gazette No. 41403 dated 25 January 2018.

2. Commission to keep the public informed

- 2.1. The Commission must regularly inform the public of the matters to be covered at its hearings by publishing relevant information on its website.

3. Witnesses presented by the Commission's Legal Team and implicated persons and their evidence

- 3.1. Subject to anything to the contrary contained in these Rules or to the Chairperson's directions in regard to any specific witness, the Commission's Legal Team bears the overall responsibility to present the evidence of witnesses to the Commission.

3.2. A member of the Commission's Legal Team may put questions to a witness whose evidence is presented to the Commission by the Commission's Legal Team including questions aimed at assisting the Commission in assessing the truthfulness of the evidence of a witness. Subject to the directions of the Chairperson, the Commission's Legal Team may ask leading questions.

3.3. If the Commission's Legal Team intends to present to the Commission a witness, whose evidence implicates or may implicate another person, it must, through the Secretary of the Commission, notify that person ("*implicated person*") in writing within a reasonable time before the witness gives evidence:

3.3.1. that he or she is, or may be, implicated by the witness's evidence;

3.3.2. in what way he or she is, or may be, implicated and furnish him or her with the witness's statement or relevant portions of the statement;

3.3.3. of the date when and the venue where the witness will give the evidence;

3.3.4. that he or she may attend the hearing at which the witness gives evidence;

3.3.5. that he or she may be assisted by a legal representative when the witness gives evidence;

3.3.6. that, if he or she wishes:

3.3.6.1. to give evidence himself or herself;

3.3.6.2. to call any witness to give evidence on his or her behalf: or

3.3.6.3. to cross-examine the witness;

he or she must, within two weeks from the date of notice, apply in writing to the Commission for leave to do so; and

3.3.7. that the Chairperson will decide the application.

3.4. An application in terms of Rule 3.3.6 above must be submitted in writing to the Secretary of the Commission with fourteen calendar days from the date of the notice referred to in Rule 3.3. The application must be accompanied by a statement from the implicated person responding to the witness's statement in so far as it implicates him or her. The statement must make it clear what parts of the witness's statement are disputed or denied and the grounds upon which those parts are disputed or denied.

3.5. If an implicated person believes that the Commission's Legal Team did not give him or her the notice referred to in Rule 3.3 within a reasonable time before the witness could or was to give evidence and that this may be prejudicial to him or her, he or she may apply to the Commission for such order as will ensure that he or she is not seriously prejudiced.

3.6. In deciding an application contemplated in Rule 3.3.6, the Chairperson may, in his discretion and on such terms and conditions as he may deem appropriate, grant leave to an implicated person: (a) to give evidence; (b) to call a witness to give evidence on his behalf and/or (c) to cross-examine the witness implicating him or her.

3.7. In accordance with Regulations 8(3), there is no right to cross-examine a witness before the Commission but the Chairperson may permit cross-examination should he deem it necessary and in the best interests of the work of the Commission to do so.

3.8. If the Chairperson grants leave to an implicated person in terms of Rule 3.6, a member of the Commission's Legal Team may put questions to any witness who gives evidence

pursuant to that ruling, including questions aimed at assisting the Commission in assessing the truthfulness of the evidence of a witness. Subject to the directions of the Chairperson, the Commission's Legal Team may ask leading questions.

3.9. An implicated person may apply to the Commission for leave to make written and/or oral submissions on the findings or conclusions that the Chairperson should make on the evidence placed before the Commission that relates to him or her.

3.10. The Chairperson may, at any time, direct any person against whom allegations are made in a witness's statement or evidence to respond in writing to the allegations relating to him or her in that statement or evidence and/or to answer in writing specific questions put to him or her by the Chairperson arising from the witness's statement.

4. Hearings to be held in public

4.1. Subject to Rule 4.2, the hearings of the Commission will be held in public.

4.2. In an appropriate case, the Chairperson may make an order that a hearing be held *in camera*. In such a case, the Chairperson shall specify in the order those persons who will be permitted to attend the hearing *in camera*.

4.3. At the request of the witness whose evidence is to be heard *in camera*, or, *mero moto*, the Chairperson must order that nobody may, directly or indirectly, disclose the identity of the witness who is to give evidence *in camera*.

5. Venue for hearings

5.1. Subject to Rule 5.2, the hearings of the Commission will be held at a venue designated for this purpose at 4th Floor, Hill on Empire, 16 Empire Road, Parktown, Johannesburg.

5.2. The Chairperson may, in his discretion, direct that a hearing or certain hearings of the Commission will be held at a venue other than the venue referred to in Rule 5.1.

6. Evidence presented to the Commission

6.1. The Commission may receive any evidence that is relevant to its mandate, including evidence that might otherwise be inadmissible in a court of law. The rules of evidence applicable in a court of law need not be strictly applied to the determination of the admissibility of evidence before the Commission.

6.2. Anyone who has knowledge of the matters that fall within the Terms of Reference of the Commission may deliver to the Secretary of the Commission a statement or affidavit setting out that information and the Secretary of the Commission will hand it over to the Commission's Legal Team for consideration.

6.3. Affidavits or statements that are submitted to the Commission should:

6.3.1. be formatted in numbered paragraphs, and

6.3.2. include an index and subject matter headings if the statement or affidavit is more than five pages in length.

6.4. Where a person seeks to provide expert evidence to the Commission, his or her evidence must include a summary of relevant qualifications and experience, a summary of the expert's opinion, as well as an explanation of the relevance of the expert's testimony to the work of the Commission.

6.5. Where the evidence intended to be placed before the Commission has previously been placed before another Commission or tribunal or Court or body, that fact must be disclosed by the person submitting that evidence in order for the Commission to secure the relevant transcript in respect of those proceedings.

7. Oral Evidence at the Hearings

7.1. Witnesses will be called to give oral evidence before the Commission at the discretion of the Chairperson. The Chairperson's decision to call a witness will be informed by the likely significance of the evidence in advancing the work of the Commission.

7.2. A witness appearing before the Commission may be assisted by a legal representative.

7.3. The Chairperson or another person who is generally or specifically authorised by the Chairperson to do so, shall administer the oath or affirmation to a witness before the witness may commence giving evidence.

8. Order of evidence of a witness

8.1. The order or sequence in which witnesses will be called before the Commission will be subject to the discretion of the Chairperson.

8.2. The Chairperson may, in his discretion, direct the cross-examination of a witness by an implicated person or his legal representative to take place after the Commission's Legal Team and the Chairperson have exhausted their respective questions to the witness.

9. Other witnesses

9.1. If any person considers that a particular witness should be called to give oral evidence, a written request to this effect should be made to the Commission and shall include the reasons for the request and the likely value of the evidence of such witness. Such witness may be called at the discretion of the Chairperson.

9.2. A witness may apply to the Chairperson, at least two weeks before he or she is scheduled to appear at a hearing, to have his or her evidence taken *in camera*. Such application must be in writing and must give reasons why such an order should be made. The Chairperson will decide that application in his discretion.

10. Call for documents

10.1. In terms of section 3(1) of the Commissions Act, read with Regulation 10(6), the Chairperson may summon any person to produce a document in his or her possession or under his or her control which has a bearing on the matter being investigated.

10.2. Any person to whom such a summons to produce a document is directed must, within ten days of receiving the summons, produce the documents requested or submit an affidavit to the Commission explaining why those documents cannot be produced.

10.3. Should a person claim that a document referred to in the summons is subject to legal professional privilege, he or she must:

10.3.1. identify the document in respect of which privilege is claimed; and

10.3.2. explain the basis for the claim of privilege in relation to each document.

10.4. Should a person claim that a document referred to in the summons is confidential for a reason other than that it is subject to legal professional privilege, such as that it is commercially sensitive or includes personal information, he or she must produce the document but must specify that the document, or part of it, should not be made public and must make application for the document (or part of it) to be treated as confidential in the investigation of the Commission. The application must be in writing and must set out:

10.4.1. what portions of document are claimed to be confidential; and

10.4.2. why those portions should not be publicly disclosed.

10.5. The Chairperson shall consider all claims of confidentiality for documents provided to the Commission and shall rule on whether the document will be treated as confidential.

10.6. If the document (or part of it) is determined to be confidential, it will not be included (or included only in redacted form to protect the confidentiality) in any of the Commission's publications nor referred to, in relevant part, in public hearings.

10.7. If the document is determined not to be confidential, it may be referred to in the Commission's publications and at public hearings.

10.8. The Commission shall notify the person who made a claim of confidentiality for a document of the Chairperson's determination prior to the document being referred to in a publication or at a public hearing.

11. General

- 11.1. Any party wishing to make any application to the Commission which is not otherwise provided for in these rules must do so on at least seven calendar days' notice in writing to the Commission but the Chairperson may condone non-compliance with this notice period on *good cause* shown.
- 11.2. The Commission may condone non-compliance with, or extend, any time-frame provided for in these Rules on good cause shown or when it is in the interests of the work of the Commission to do so.
- 11.3. Wherever these rules make provision for any person to apply to the Commission or to the Chairperson, the application must be a substantive application on affidavit with a notice of motion. The affidavit must, among other things, reflect the relevant facts, the order sought and the grounds relied upon to seek that order.
- 11.4. The application must be lodged with the Secretary of the Commission who will ensure that the original is delivered to the Chairperson and a copy to the Commission's Legal Team. The applicant in that application must cite every other person whose rights may be adversely affected by the order sought and serve a copy on him, her or it.
- 11.5. As soon as possible after the Chairperson has become aware of such an application, he must issue such direction or order as to the future conduct of the matter as he may consider appropriate.

12. Practice directions

- 12.1. The Chairperson may issue practice directions from time to time in regard to the proceedings of the Commission.

13. Amendment of Rules

13.1. The Chairperson may amend these Rules from time to time.

14. Commencement date of the Rules

14.1 These Rules shall come into operation on the date of publication in the Government Gazette.

15. Citation of the Rules

15.1. These Rules shall be called the Rules of the Judicial Commission of Inquiry Into Allegations of State Capture, Corruption and Fraud In the Public Sector Including Organs of State.

Issued on 11 July 2018 for publication

Justice RMM Zondo

Deputy Chief Justice of the Republic of South Africa

And

Chairperson of the Commission

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