



GOVERNMENT GAZETTE

OF THE

REPUBLIC OF NAMIBIA

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General Notice

JUDICIAL SERVICE COMMISSION

No. 60

2011

JUDICIAL SERVICE COMMISSION REGULATIONS: ARTICLE 85(3) OF THE NAMIBIAN CONSTITUTION

I give notice that the Judicial Service Commission has, under Article 85(3) of the Namibian Constitution -

- (a) made the regulations set out in the Schedule; and
- (b) determined that the said regulations come into effect on 1 April 2011.

P. S. SHIVUTE
CHIEF JUSTICE OF THE
SUPREME COURT OF NAMIBIA

Windhoek, 9 March 2011

SCHEDULE

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Definitions

1. In these regulations, any word or expression to which a meaning has been given in the Namibian Constitution or the Act bears that meaning, and unless the context otherwise indicates -

“chairperson” means the Chief Justice or, in his or her absence, the judge appointed by the President as a member of the Commission in terms of Article 85(1) of the Namibian Constitution;

“complaint” means a complaint or allegation of mental incapacity or gross misconduct against a judge or any other holder of judicial office, and includes any documents relied on by the complainant and any further information furnished in terms of regulation 6(8);

“complainant” means a person who has lodged a complaint;

“committee” means an *ad hoc* committee established by the Commission to investigate a complaint or any other matter which the Commission may deal with in terms of the Act;

“day” means any calendar day, and

- (a) when any particular number of days is prescribed for the performance of any act, it must be reckoned exclusive of the first and inclusive of the last day; and
- (b) the last day of any period must be excluded if it falls on a Saturday, Sunday or public holiday;

“designated organisation” means the Law Society, any other professional organisation representing the interests of the legal profession in Namibia referred to in Article 85(1) of the Namibian Constitution, the Magistrates Commission or such other organisation with interest in the work of the Commission as the Commission may identify from time to time;

“heads of court” means the Chief Justice and the Judge-President;

“inquiry” means a disciplinary inquiry held by the Commission;

“investigation report” means a written report of findings of a committee after carrying out investigations in terms of these regulations;

“judicial officer” for the purposes of these regulations, means a person who holds judicial office;

“Law Society” means the Law Society of Namibia established by section 40 of the Legal Practitioners Act, 1995 (Act No. 15 of 1995);

“Magistrates Commission” means the Magistrates Commission established by section 2 of the Magistrates Act, 2003 (Act No. 3 of 2003);

“meeting” includes an inquiry;

“Minister” means the Minister responsible for justice;

“registrar” means the registrar of the Supreme Court and, in his or her absence, the registrar of the High Court;

“secretary” means the secretary of the Commission appointed in terms of regulation 19;

“the Act” means the Judicial Service Commission Act, 1995 (Act No. 18 of 1995); and

“the Commission” means the Judicial Service Commission.

Recommendations with regard to appointment of Judges of the Supreme Court

2. (1) The procedure for the recommendation of persons for appointment as additional judges of the Supreme Court is as set out in this regulation.

(2) The Chief Justice must inform the Commission when a vacancy has occurred or will occur in the Supreme Court.

(3) After it has received the information referred to in subregulation (2), the Commission must as soon as practicable inform the designated organisations of the vacancy and invite them to submit any nomination by a specified closing date.

(4) A nomination referred in subregulation (3) must contain the following -

- (a) a letter of nomination signed by an authorised representative of a designated organisation making the nomination;
- (b) the nominee’s written acceptance of the nomination; and
- (c) a detailed *curriculum vitae* prepared by the nominee, together with any questionnaire that the Commission may send to a designated organisation and, duly, completed by the nominee.

(5) In addition to the procedure prescribed in subregulations (3) and (4), the Chief Justice may identify suitable persons for the Commission’s consideration, and in that event, the Chief Justice may privately contact suitable persons and may privately consult interested parties, including the Minister and, if necessary to do so, individual persons and comparable institutions and bodies in other Commonwealth states.

(6) The Chief Justice must compile a list of suitable persons as he or she is able to identify in terms of subregulation (3) and (5) and submit the list, together with detailed *curriculum vitae*, prepared by each such person of himself or herself, to the Commission.

(7) The Commission may, if it deems it necessary, call any such person nominated in terms of subregulation (3) or identified in terms of subregulation (5) for an oral interview, which must be conducted in private.

(8) The Commission must deliberate the suitability of each person in private and thereafter may make recommendations to the President with regard to the appointment of any such person as additional judge of the Supreme Court, except that despite anything contained in any law, it is not required of the Commission to give reasons to any person, apart from the President, for its recommendations.

(9) Where it is the office of the Chief Justice that has fallen, or will fall, vacant, the procedure in subregulations (2) to (8) must be carried out -

- (a) by the judge appointed by the President and that judge must act in consultation with the Attorney-General, and if the Attorney-General is one of the candidates, with any member of the Commission, appointed by the Commission, so long as such a member is not a candidate;
- (b) if the judge appointed by the President is one of the candidates, by the Attorney-General in consultation with any member of the Commission, appointed by the Commission, so long as such a member is not a candidate; or
- (c) in any other case, by the Minister in consultation with any member of the Commission, appointed by the Commission, so long as such a member is not a candidate.

Recommendations with regard to appointment of Judges of the High Court

3. (1) The procedure for the recommendation of persons for appointment as judges of the High Court is as set out in this regulation.

(2) The Judge-President must inform the Commission when a vacancy has occurred or will occur in the High Court.

(3) After it has received the information referred to in subregulation (2), the Commission must as soon as practicable inform the designated organisations of the vacancy and invite them to submit any nomination by a specified closing date.

(4) A nomination referred in subregulation (3) must contain the following -

- (a) a letter of nomination signed by an authorised representative of a designated organisation making the nomination;
- (b) the nominee's written acceptance of the nomination; and
- (c) a detailed *curriculum vitae* prepared by the nominee, together with any questionnaire that the Commission may send to a designated organisation and, duly, completed by the nominee.

(5) In addition to the procedures referred to in subregulations (3) and (4), the Judge-President may identify suitable persons for the Commission's consideration, and in that event, the Judge-President may privately contact any suitable person and may privately consult interested parties, including the Minister and, if necessary to do so, individual persons and comparable institutions and bodies in other Commonwealth states.

(6) The Judge-President must compile a list of suitable persons as he or she is able to identify in terms of subregulation (3) and (5) and submit the list, together with detailed *curriculum vitae*, prepared by each such person of himself or herself, to the Commission.

(7) The Commission may, if it deems it necessary, call any person nominated in terms of subregulation (3) or identified in terms of subregulation (5) for an oral interview, which must be conducted in private.

(8) The Commission must deliberate the candidature of each person in private and thereafter may make a recommendation to the President with regard to the appointment of any such person as additional judge of the High Court, except that despite anything contained in any law, it is not required of the Commission to give reasons to any person, apart from the President, for its recommendations.

(9) Where it is the office of Judge-President that has fallen, or will fall, vacant, the procedure in subregulations (2) to (8) must be carried out by the Chief Justice.

Reasons for recommendations with regard to appointment

4. The secretary of the Commission, or in his or her absence any member requested by the chairperson to do so, must record the essence of the Commission's reasons for recommending any person for appointment and such reasons must accompany the Commission's recommendations to the President.

Recommendations with regard to conditions of service

5. (1) The Commission may from time to time appoint a committee to investigate and consider any matter relating to the remuneration, benefits and other conditions of service of judicial officers, and after consulting with the Minister and the Minister responsible for finance, make recommendations in that regard to the President for his or her consideration.

(2) A committee appointed in terms of subregulation (1) may, with the approval of the Commission, seek assistance from any fit and proper person whose expertise can, in the opinion of the committee, lead to the proper and expeditious investigation of the matter and in that event regulation 9(6) and (7) applies with necessary modifications.

Lodging of complaint

6. (1) A person who wishes to lodge a complaint as contemplated in section 4(1)(c) of the Act, including a member of the Commission, must lodge such complaint with the chairperson.

(2) The chairperson must immediately bring the complaint to the attention of the other members of the Commission for its consideration in terms of these regulations.

(3) A complaint must be -

(a) based on the ground of mental incapacity or gross misconduct, or both, referred to in Article 84(2) of the Namibian Constitution; and

(b) lodged by means of an affidavit or affirmed statement, specifying the nature of the complaint and the facts on which the complainant relies.

(4) The Commission may dismiss a complaint without any investigation if -

(a) it is made anonymously; or

(b) in the opinion of the Commission, the complaint does not disclose a *prima facie* case of mental incapacity or gross misconduct on the part of the judicial officer concerned.

(5) If a complaint is dismissed in terms of subregulation (4), the secretary of the Commission must inform the complainant in writing of the Commission's decision.

(6) If, in the opinion of the Commission, the complaint merits investigation, the Commission must submit a copy of the complaint to the judicial officer complained against and invite him or her to respond in writing to the complaint within a specified time.

(7) The judicial officer must submit his or her response in writing to the chairperson within the specified time.

(8) The Commission may in writing request the judicial officer or complainant, or both, to give the Commission further information in writing within a specified time.

Consideration of complaint

7. After the expiration of the time limits referred to in regulation 6(7) and (8) the Commission must consider in private the complaint and the judicial officer's response thereto, if any, and any other information furnished in terms of regulation 6(8).

Procedure where conduct does not warrant removal from office

8. (1) If, in the opinion of the Commission, considering the nature of the complaint and the facts and surrounding circumstances, the conduct of the judicial officer complained of does not warrant making a recommendation for the judicial officer's removal in terms of Article 84 of the Namibian Constitution -

- (a) the Commission may take any one or more of the following remedial measures -
 - (i) request the judicial officer to apologise to the complainant;
 - (ii) counselling of the judicial officer by the Commission, if the judicial officer is the Chief Justice, and by the Chief Justice, if the judicial officer is the Judge-President, additional judge, acting judge or *ad hoc* judge of the Supreme Court, the Prosecutor General or the Ombudsman, and by the Judge-President, if the judicial officer is an additional judge or acting judge of the High Court; or
 - (iii) request the judicial officer to remedy any wrong complained of or carry out any task within a specified time, which it is his or her judicial function to carry out and which is the subject matter of the complaint; or
- (b) the chairperson may reprimand the judicial officer, but if the judicial officer is the Chief-Justice, the Commission may reprimand the Chief-Justice.

(2) The chairperson must inform the complainant in writing of the Commission's decision, including any remedial measure.

Procedure where conduct warrants removal from office

9. (1) If, after it has considered the complaint and the response thereto, the Commission is of the opinion that it may recommend the removal of the judicial officer in terms of Article 84 of the Namibian Constitution, the Commission must establish a committee consisting of at least two members of the Commission to investigate the complaint and request the committee to submit its investigation report within a specified time.

(2) In order to facilitate the carrying out of investigations by the committee under these regulations, the chairperson may, by notice in writing, require -

- (a) a person to furnish to the committee, despite the provisions of any other law to the contrary, information in that person's possession relating to the affairs of the judicial officer being investigated and to produce any document or certified true copy of any document relating to such judicial officer which is in the possession or under the control of the person required to furnish the information; and
- (b) the manager or other person in charge of a bank, building society or other financial institution, in addition to furnishing the information specified in paragraph (a), to furnish any other information or the originals, or certified true copies of the accounts or the statements of account at the bank, building society or financial institution of any judicial officer being investigated despite the provisions of any other law to the contrary.
- (3) Despite an oath or other obligation of secrecy imposed by law or otherwise, a person on whom a notice referred to in this regulation is served must comply with the requirements of that notice within the time specified in the notice.
- (4) A committee may, with the concurrence of the Commission, seek assistance from any fit and proper person whose expertise can, in the opinion of the committee, lead to the proper and expeditious investigation of the complaint.
- (5) A person referred to in subregulation (4) must, before assisting a committee, take an oath or make an affirmation before a commissioner of oaths that he or she will only use information that may come to his or her knowledge in connection with, or related to, investigating the complaint solely for the purpose of assisting the committee.
- (6) A person who assists the committee in terms of these regulations may be paid an allowance to be determined by the Minister, in consultation with the Minister responsible for finance.
- (7) If, after considering the investigation report, the Commission is of the opinion that it should not recommend the removal of the judicial officer concerned, it must take action in terms of regulation 8, otherwise the Commission must establish an inquiry consisting of all the members of the Commission to inquire into the complaint.

Inquiry

10. (1) Where the Commission decides to conduct an inquiry into the complaint, the chairperson must inform the judicial officer concerned and complainant about the time and place of the inquiry.

(2) The inquiry must be held *in camera*.

Procedure at inquiry

11. (1) The chairperson of the inquiry must ask the judicial officer to plead guilty or not guilty to the complaint, and the chairperson must record the plea or cause the plea to be recorded.

(2) The judicial officer and complainant may each be represented by a legal representative at the judicial officer's or complainant's own cost.

(3) If the judicial officer refuses or fails to plead to the complaint, the refusal or failure must be so recorded, and a plea of not guilty be entered, and a plea so entered has the same effect as if it had so been pleaded by the judicial officer.

(4) If a plea of guilty is entered the inquiry must decide whether or not evidence is to be led and if a plea of not guilty is entered evidence must be led.

(5) The complainant or his or her legal representative must be given the opportunity of stating the case against the judicial officer and of leading evidence in support thereof, after which the judicial officer or his or her legal representative has the right of stating the judicial officer's case and of leading evidence in support thereof.

(6) If the judicial officer fails or refuses to be present at the inquiry his or her written response to the complaint submitted in terms of regulation 6(7) and any further information given in terms of regulation 6(8) constitute his or her defence and they will be considered by the inquiry.

(7) Any member of the inquiry may put questions to the complainant, the judicial officer or any other person who testifies, and the inquiry may order a person giving evidence to produce any article or document.

(8) No person may testify or be questioned by a member of the inquiry unless an oath or affirmation that is administered or accepted in a court of law has been administered or accepted from that person by the chairperson.

(9) Any person who gives evidence may be cross-examined and re-examined.

(10) The cases for the complainant and for the judicial officer close after evidence has been led and after questioning by members of the inquiry as contemplated in these regulations.

(11) The chairperson may allow further evidence to be led or witnesses to be recalled by either the complainant or the judicial officer after their cases have closed.

(12) The inquiry may of its own accord or at the request of either the complainant or his or her legal representative or the judicial officer or his or her legal representative, adjourn proceedings of the inquiry to such date, time and place as the chairperson may determine.

(13) The inquiry may, if practicable and if it appears necessary, for the purpose of clarifying any evidence, recall a witness who has already given evidence for further questioning by members of the inquiry.

(14) After all evidence has been given, the complainant or his or her legal representative has the right to address the inquiry on the evidence and any legal questions involved after which, the judicial officer or his or her legal representative also has the right to address the inquiry on the evidence and any legal question involved.

(15) The complainant or his or her legal representative has the right to reply to points of law raised by the judicial officer or his or her legal representative in his or her address.

Conclusion of inquiry and decision

12. (1) The inquiry must, after the conclusion of a case, deliberate thereon *in camera*.

(2) If the judicial officer is found not guilty the inquiry must inform him or her and the complainant accordingly, giving reasons for the decision.

(3) The inquiry may make a finding of not guilty of the complaint even if the judicial officer has pleaded guilty.

(4) If the inquiry finds the judicial officer guilty, it must within 14 days of making such finding inform the judicial officer and the complainant of its decision, giving reasons for the decision, and also inform them that an appropriate recommendation will be made to the President, but the inquiry may receive any evidence in mitigation or in aggravation on the matter of the recommendation.

Recommendation where judicial officer found guilty

13. (1) If the inquiry finds the judicial officer guilty, the inquiry must make recommendations to the President within 30 days of arriving at its finding of guilt with regard to -

- (a) the judicial officer's removal from office; or
- (b) any other measure not inconsistent with the Namibian Constitution or any other written law.

(2) Any recommendation made in terms of subregulation (1) must be communicated to the President in the strictest confidence.

Meeting and decisions of Commission

14. (1) The Commission must meet at such times and places as the chairperson may determine.

(2) The chairperson must, at the written request of a majority of all the members of the Commission, including the chairperson, convene a special meeting of the Commission.

(3) No meeting may take place unless the chairperson is present.

(4) A majority of all the members of the Commission constitutes a quorum.

(5) A decision of a majority of members of the Commission present at a meeting is the decision of the Commission and, if there is an equality of votes, the chairperson has a casting vote in addition to his or her deliberative vote.

Rules of ethical judicial conduct

15. Any rules of ethical judicial conduct compiled by the heads of court after consultation with the judges of the Supreme Court or the High Court, as the case may be, and approved by the Commission may be taken into account by the Commission to determine whether a judicial officer's conduct complained of amounts to gross misconduct.

Subpoena

16. A summons to appear as a witness before an inquiry or to produce a book, record, document or thing must be substantially in the form of a subpoena issued by the registrar to secure the attendance of a witness in civil proceedings in the High Court and has the same effect and consequences as such subpoena.

Penalties

17. A person who infringes or fails to comply with an order made or notice served on him or her by the chairperson or the Commission under these regulations commits an offence and is liable on conviction to a fine not exceeding N\$10 000 or imprisonment for a period not exceeding two years, or to both such fine and such imprisonment.

Departure from procedure

18. (1) The Commission may, when in its opinion it is appropriate to do so, depart from a procedure under these regulations.

(2) The Commission may, on good cause shown, condone any departure from a procedure under these regulations.

Secretary of the Commission

19. Members of the Commission must appoint as secretary of the Commission from among their number one of the members representing the interests of the legal profession.

Administrative work

20. Administrative work of the Commission is performed by staff members of the Ministry responsible for justice made available for that purpose by the registrar.
