

COMMISSIONS OF INQUIRY
(PRACTICE AND PROCEDURE) RULES, 2010

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**COMMISSIONS OF INQUIRY
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IN EXERCISE of the powers conferred on the Rules of Court Committee by clause (2) of article 281 of the Constitution, these Rules are hereby made this 12th day of November, 2009.

Administration

Powers of a Commission

1. (1) A Commission of Inquiry pursuant to clause (2) of article 280 of the Constitution, has the powers of the High Court specified in article 279 of the Constitution

(2) A Commission, for the purposes of an inquiry,

- (a) shall have access to information and records which relate to the performance of the functions of the Commission;
- (b) may visit an establishment or a place in order to conduct an inquiry;
- (c) may question a person in respect of a subject matter under inquiry by the Commission;
- (d) may require a person to disclose truthfully information within that person's knowledge relevant to a subject matter under inquiry by the Commission;
- (e) may require a person to produce a document or an article in whatever form which, in the opinion of the members of the Commission, relates to an inquiry under these Rules and which is in the possession or control of that person.

(3) A Commission shall have the powers of the police for the purposes of entry, search, seizure and removal of a document or an article relevant to the inquiry by the Commission.

(4) A Commission or a person authorised by the Commission may enter, search, seize and remove a document or an article with a search warrant or with the consent of the occupier of the premises.

(5) A document, an article or an information obtained by the inquiry shall not be made public unless authorised by the Commission.

(6) For the purposes of the conduct of the proceedings, a Commission has the power

- (a) to require a person to disclose truthfully, an information within the knowledge of that person and which is relevant to the proceedings;

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- (b) to examine a witness on oath or affirmation and to administer the oath or affirmation;
- (c) to issue subpoena requiring the attendance of a person before the Commission and require the production of an article, a document or any other record relevant to the proceedings;
- (d) to cause a person who refuses to comply with an order or a directive of the Commission or acts in a manner contemptuous of the Commission to be charged by the Attorney-General with contempt of court and for that person to be tried by the High Court; and
- (e) to require a person to fill a form providing the information required by and within the period specified in the form.

Independence of the Commission

2. (1) A Commission is, in the performance of its functions, independent and is not subject to the direction or control of a person or any authority.

(2) The members and staff of the Commission

(a) shall serve impartially and independently, and

(b) shall perform the functions of office in good faith and without fear, favour, bias or prejudice.

Meetings of the Commission

3. (1) A Commission shall meet at the times and at the places the chairperson considers necessary.

(2) The chairperson shall preside at the meetings of the Commission.

(3) Where a Commission consists of more than three members,

(a) the members shall elect one of their number to preside at the meeting of the Commission in the absence of the chairperson,

(b) the quorum at a meeting of the Commission shall not be less than three members, where there are five members, nor less than two-thirds of all of the members of the Commission in any other case,

(c) a decision of the Commission shall, as far as possible, be taken by consensus or in the absence of a consensus, by a majority of the members, but where there is a tie in the votes the chairperson shall have a casting vote.

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(4) Where a member of the Commission discovers during a meeting or the proceedings of the Commission that the member has or may have a financial or personal interest in the matter before the Commission which is likely to cause a conflict of interest for that member,

- (a) the member shall make a full disclosure in writing of the nature of the interest and shall not be present during the discussion of, or participate in a decision on, the matter; and
- (b) the disclosure shall be entered in the record of the proceedings.

(5) A member who does not comply with subrule (4) ceases to be a member of the Commission.

(6) Where a person ceases to be a member under subrule (5) the chairperson shall inform the President of the vacancy that has occurred.

(7) The failure to disclose interest as required by subrule (4) shall not affect the validity of the meeting nor of the proceedings of the Commission.

(8) Where a member fails to disclose interest as required by subrule (4), the other members of the Commission may review a decision taken at the meeting or during the proceedings at which the defaulting member was present.

Committees of the Commission

4. (1) A Commission may appoint committees, consisting of persons who are or are not members of the Commission, to perform a function of the Commission assigned to the committee by the Commission.

(2) A member of the Commission shall be chairperson of a committee of the Commission.

Appointment of staff

5. (1) The President shall appoint for a Commission

- (a) a lawyer of not less than ten years standing at the Bar to act as the legal adviser to the Commission, and
- (b) any other staff necessary to provide administrative support and assistance to the Commission.

(2) The lawyer and the other staff

- (a) shall hold office on the terms and conditions specified in their letters of appointment, and
- (b) shall perform the functions determined by the members of the Commission.

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Public and private hearings

6. (1) The proceedings of a Commission shall be held in public, but the Commission may for good reason have private hearings.

(2) A person may apply to the Commission to have a hearing involving that person to be held in private and the application itself shall be heard in private by the Commission.

(3) The Commission shall, in its proceedings both in private and in public, permit the presence of

- (a) a person whose conduct is the subject of the inquiry, and
- (b) any other persons whose presence the members of the Commission consider necessary.

(4) Except where the Commission for good reason directs otherwise, in proceedings held in private, the Commission shall direct that,

- (a) information from the proceedings shall not be made public,
- (b) a person shall not disclose the identity of a witness in the proceedings, and
- (c) the records of the proceedings shall be kept in the manner that will protect the identity of a witness.

Collection of statements

7. (1) On the appointment of a Commission, the chairperson

- (a) may establish an investigation unit to which the Commission shall assign the investigative functions of the Commission, and
- (b) may issue a statement inviting the public to submit memoranda.

(2) A memorandum submitted under subrule (1) shall contain

- (a) information in respect of the matters which relate to the subject matter of the inquiry,
- (b) a list of the documentary evidence to support the information provided under paragraph (a) where applicable,
- (c) certified true copies of the relevant documents, and
- (d) an affidavit in support of the matters referred to in paragraph (a),

(3) An investigation unit established under subrule (1) shall gather information from persons who may wish to appear before the Commission.

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Proceedings

Notice of hearing

8. (1) The lawyer for the Commission shall,

- (a) within three weeks after the appointment of the Commission, or
- (b) at any time during the proceedings of the Commission, as is appropriate, serve a notice to appear before the Commission and give evidence to a person
 - (i) whose conduct is the subject of the inquiry, or
 - (ii) who has an interest, personal or otherwise, in the inquiry, or
 - (iii) who the members of the Commission consider should appear before the Commission to give evidence.

(2) The notice shall

- (a) include a statement of the reasons for the invitation and the questions which the person invited is likely to be required to answer;
- (b) indicate clearly the place where and the time at which or period within which that person is required to attend the inquiry;
- (c) state, in accordance with article 282 of the Constitution, the right of that person
 - (i) to be represented by a lawyer of that person's choice, and
 - (ii) to be assisted by an expert as is reasonably necessary for the purpose of protecting that person's interest;
- (d) inform the person invited of the requirement to submit
 - (i) a statement of that person's case,
 - (ii) the records and documents which that person intends to rely on, and
 - (iii) the names, addresses and any other particulars of witnesses, who that person intends to call to support that person's case, and
- (e) require the person invited to state the name, address and any other particulars of that person's lawyer to enable future communication to be sent to that lawyer.

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- (3) For the purposes of these Rules, the notice is duly served if
- (a) it is sent by fax, or electronic mail, or any other electronic device, or
 - (b) it is delivered by hand, or
 - (c) it is sent by registered mail through the post, to the last known address or place of residence of the person required to be served, or
 - (d) it is published in a medium of mass communication which has national coverage or circulation, or
 - (e) in any other manner that the Commission may direct.

Response to notice

9. (1) A person on whom a notice of inquiry is served shall, within two weeks after the service, submit to the Commission a response to the notice.

(2) Where, before or at any stage of the hearing it appears to the members of the Commission that a notice is defective, the Commission shall give directions for the amendment of the notice.

- (3) Where the notice is amended, the person invited to the inquiry
- (a) shall be served with the amendment, and
 - (b) shall be given two weeks within which to respond to the amendment.

Statement of the chairperson

10. The chairperson of a Commission shall, before the formal taking of evidence, address the public, explaining the purposes of the Commission.

Address by lawyer for the Commission

11. The lawyer for the Commission shall, after the statement of the chairperson, address the Commission outlining the evidence which would be placed before the Commission.

Procedure for examining witness

12. (1) The lawyer for the Commission is responsible for
- (a) calling a witness for the introduction of the statement made to the Commission by the witness as evidence before the Commission,
 - (b) the examination of the witness on the statement made to the Commission as given on oath by the witness, and

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(c) the re-examination of the witness after the cross-examination of the witness by any other lawyer appearing before the Commission.

(2) A lawyer or an expert witness appearing for a person whose conduct is the subject of the inquiry and any other lawyer appearing before the Commission may cross-examine a witness after the examination of the witness by the lawyer for the Commission having regard to article 282 of the Constitution.

(3) The chairperson or any other member of the Commission may examine a witness after the lawyers have cross-examined and re-examined the witness.

Privilege of witness and indemnity

13. A witness appearing before a Commission is entitled to the same privileges to which a witness before the High Court is entitled.

Compellable witness, admission of incriminating evidence

14. (1) Subject to subrule (2), in proceedings before a Commission, a person called as a non-target witness or as an expert witness shall be compelled to produce a document or an article and to answer a question with regard to the subject matter of the inquiry although the document, article or answer may incriminate that person.

(2) Where a person gives incriminatory evidence under subrule (1), the evidence shall not be used in criminal or civil proceedings against that person.

Production of official documents

15. Article 135 of the Constitution, which relates to the production of official documents in a Court, shall apply to proceedings before a Commission as it applies to proceedings before a Court.

Miscellaneous

Representation by lawyer at proceedings

16. (1) A person who has been subpoenaed or called to appear before the Commission at a hearing of the Commission may be represented by a lawyer.

(2) The Commission may, in order to expedite proceedings, place reasonable limitations with regard to the time allowed in respect of the cross-examination of a witness or an address to the Commission.

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(3) The Commission may appoint a lawyer to act on behalf of a person appearing before it where

- (a) in the opinion of the members of the Commission that person is not financially capable of appointing a lawyer, and
- (b) the members are of the opinion that it is in the interest of justice for that person to be represented by a lawyer.

(4) A person referred to in subrule (1) shall be informed of the right to be represented by a lawyer of that person's choice.

Disclosure of identity of applicants and witnesses

17. (1) Subject to rule 6, a Commission shall, with due regard to the purposes of these Rules and the object and functions of the Commission, decide whether, and to what extent, the identity of a person who makes an application under these Rules or gives evidence at the hearing of the application or at any other inquiry or investigation under these Rules may be disclosed in a report of the Commission.

(2) A person who believes that the personal safety of that person may be jeopardized by a disclosure made under these Rules in the course of an inquiry by a Commission, may request the Commission to take the measures that the members of the Commission consider adequate for the protection of that person.

Confidentiality

18. (1) A member of a Commission and a member of the staff of the Commission shall, with regard to

- (a) a matter dealt with by the Commission or that member of staff, or
- (b) information which comes to the knowledge of the Commission or the staff of the Commission in the performance of the functions of the Commission or of the member of staff,

preserve and assist in the preservation of those matters which are confidential in terms of these Rules or which have been declared confidential by the Commission.

(2) A person holding an office or an appointment under the Commission who is likely to have access to confidential information of the Commission shall, before proceeding to perform a function under these Rules, take or subscribe to the Oath of Secrecy set out in the Second Schedule to the Constitution.

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(3) A Commission shall determine the category of persons to whom subrule (2) is applicable.

(4) A member of a Commission shall not, except

(a) for the purposes of the performance of functions,

(b) when required by a Court to do so, or

(c) under an enactment,

disclose to a person an information acquired by the member by reason of being a member of the Commission.

(5) Subject to subrule (4) and to rule 17, a person shall not disclose or make known information which is confidential by virtue of a provision of these Rules.

(6) A person who is not authorised by the Commission does not have a right of access to information that is confidential by virtue of these Rules.

(7) Subject to the Public Records and Archives Administration Act, 1997 (Act 535), the Commission shall, on the conclusion of the performance of its functions, give directions as to the treatment, storage, safe-keeping and disposal of the information, material, record or document collected, gathered or used by the Commission in the course of the performance of its functions.

(8) A member of a Commission shall not

(a) through association, statement, conduct or in any other manner jeopardize the independence or damage the credibility, impartiality or integrity of the Commission,

(b) make use of or profit from confidential information gained as a result of the membership of the Commission, or

(c) divulge information relating to the functions of the Commission to any other person except in the course of the performance of the functions of the member.

(9) A member of a Commission who contravenes any of the provisions of subrule (8) commits an offence and is liable on summary conviction to a fine not exceeding five hundred penalty units or to a term of imprisonment not exceeding two years or to both.

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Completion of report

19. (1) A Commission shall, within sixty days of the conclusion of the performance of its functions submit its report to the President to be dealt with in accordance with clauses (3) to (6) of article 280 of the Constitution.

(2) The report shall comprise the findings and recommendations of the Commission and shall, among others,

(a) provide proper documentation and establish the nature and causes of the matters which form the subject matter of the inquiry, including

- (i) the witnesses called before the Commission, and
- (ii) the findings, the recommendations and the reasons for the findings and the recommendations, and

(b) provide an accurate historical record of matters inquired into by the Commission.

Application of Rules

20. (1) A Commission may deviate from the application of a provision of these Rules where, in the opinion of the members of the Commission, strict adherence to the provision is not compatible with, or is not essential to, the performance of the functions of the Commission.

(2) Subject to these Rules, the High Court (Civil Procedure) Rules, 2004 (C.I. 47) shall apply to the proceedings of a Commission with the modifications that are necessary for the effective performance of the functions of the Commission.

(3) The modifications may be in writing or verbal as determined by the chairperson.

Interpretation

21. In these Rules, unless the context otherwise requires,

“chairperson” includes a sole Commissioner appointed under clause (2) of article 278 of the Constitution;

“Commission” means a Commission appointed under clause (1) of article 278 of the Constitution;

“Court” means a court of competent jurisdiction;

“document” includes a record made or stored in physical or electronic form and written, electronic, audiotape, videotape,

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digital reproductions, photography, maps, graphs, microfiche and any other data or information recorded or shared by means of any other device;

“expert witness” means a court expert within the meaning of Order 26 of the High Court (Civil Procedure) Rules, 2004 (C.I. 41);

“functions” includes powers and duties;

“inquiry” includes an investigation;

“meetings” includes the proceedings of a Commission;

“non-target witness” means a person whose conduct is not the subject of an inquiry by a Commission, but

(a) who is implicated, concerned or in any other manner affected in a matter before a Commission, or

(b) who has possession of a document or an article or knowledge material to the functions of the Commission,

“target witness” means a person

(a) whose act, conduct or omission is the subject of the inquiry by the Commission, and

(b) who has possession of a document or an article or knowledge material to the functions of the Commission,

“officer” means a member of the Police Service not below the rank of inspector;

“search warrant” includes an order in writing issued by a Justice of the Superior Court of Judicature, a Judge of a Circuit Court or a Magistrate

(a) on an affidavit or sworn oral testimony, and

(b) in the name of the Republic or of the Attorney-General, directed to a police officer or a person specified by the Commission authorising that officer or that person to search for and seize any property or document relating to the subject matter of inquiry by the Commission; and

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“witness” includes an expert witness, a non-target witness and a target witness.

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(Signed)

Hon. Mrs. Georgina Wood
Chief Justice
Chairperson

(Signed)

Hon. Mrs. Betty Mould-Iddrisu
Attorney-General and Minister for
Justice
Member

(Signed)

Hon. Mr. Justice William Atuguba
Justice of the Supreme Court
Member

(Signed)

Hon. Mr. Justice J. B. Akamba
Justice of the Appeal Court
Member

(Signed)

Hon. Mr. Justice Senyo Dzamefe
Justice of the High Court
Member

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Brigadier-General T. Allotey
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Representative, Ghana Bar Association
Secretary/Member

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