

DRAFT



REPUBLIC OF KENYA

PUBLIC SERVICE COMMISSION

**DISCIPLINE MANUAL FOR THE PUBLIC SERVICE
(REVISED 2020)**

**A PUBLICATION OF THE
PUBLIC SERVICE COMMISSION**



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FOREWORD

Disciplinary control in the public service is one of the Public Service Commission's functions as provided under Article 234(2) (b) of the Constitution. Public officers are expected to maintain integrity and uphold the dignity of the office to which they are appointed. It is therefore imperative that every public officer adheres to the rules of conduct and ethics as laid out in the law. The Commission, while exercising the powers of disciplinary control, takes cognizance of the fundamental principles of natural justice.

The ultimate objective of discipline is to create a motivated and dedicated officer who upholds proper work ethics for optimal service delivery. I consider that discipline in the service should be viewed not only from the aspect of imposing a punishment against an officer or deterring other officers from committing similar misconducts but also as a way of moulding and developing a positive attitude in the officer. The easiest way to uphold discipline is to emphasize on self-discipline, that is, the conscious deliberate decision to comply with what is expected.

The first discipline manual was developed in September 2007 to guide the process of handling disciplinary cases in the public service. A subsequent review of the manual was carried out in May 2016 to realign the procedures to the provisions of the Constitution and other relevant legislation following the promulgation of the Constitution of Kenya, 2010, the enactment of the Public Service Commission Act, 2012 and the Fair Administrative Action Act, 2015. The current review has been necessitated by the need to incorporate the provisions of the Public Service Commission Act, 2017 and the [Public Service Commission Regulations, 2020](#).

It is expected that the Manual will address any inconsistencies in handling and determination of discipline cases in the public service. The Manual, however, is not exhaustive and is supposed to be read alongside the Service regulations and any other relevant laws.

It is my hope, that this revised Manual will play a vital role in the exercise of disciplinary control in the public service.

STEPHEN K. KIROGO, CBS
CHAIRPERSON
PUBLIC SERVICE COMMISSION

PREFACE

The enactment of the Public Service Commission Act, 2017, the Fair Administrative Action Act, 2015 and the review of the Public Service Commission regulations have necessitated revision of the Discipline Manual for the Public Service, 2016. The objective of the Manual is to guide and ensure consistency in the discharge of disciplinary control in the service.

The Manual provides general guidelines and procedures to be followed in handling and determining discipline cases. I am convinced that the revised Manual will facilitate efficient and effective discharge of the disciplinary control function in the public service.

SIMON K. ROTICH, CBS
SECRETARY/CEO
PUBLIC SERVICE COMMISSION

DEFINITION OF TERMS

In this manual, unless the context otherwise requires-

- 'Allow'* - Means to accept an appeal or review.
- 'Appeal'* - Means to apply for the re-examination of a decision or process.
- 'Appellant'* - Means an individual/organization appealing against a decision or process that is thought to be incorrect, unfair or unfavourable.
- 'Applicant'* - Means an individual requesting the Commission to review its decision on appeal.
- 'Application for Review'* - Means a request to the Commission to reconsider its decision on appeal due to new facts, evidence or an error that has been noted.
- 'Authority'* - Means institutionalized and legal power inherent in a particular job, function, or position that is meant to enable its holder to successfully carry out his or her responsibility.
- 'Authorized Officer'* - Means any officer, body or authority appointed by the Commission to perform its delegated functions in a Ministry or State department, or any member of the Commission.
- 'Commission'* - Means the Public Service Commission established under Article 233 (1) of the Constitution.
- 'Constitution'* - Means the Constitution of Kenya, 2010
- 'Conviction'* - Means being found guilty of a criminal offence by a court of law.
- 'Criminal offence'* - Means an offence under the penal code or any other legislations.
- 'Disallow'* - Means to decline an appeal or application for review.
- 'Defer increment'* - Means to postpone annual increment for a specified period not exceeding one (1) year.
- 'Delegated powers'* - Means the Public Service Commission functions that have been assigned to a member, an Authorized Officer, body or authority in the public service to exercise on its behalf.
- 'Discipline'* - Means conforming to service rules, regulations and norms which prescribe expected conduct and behaviour of individual officers.
- 'Disciplinary Control'* - Means the due process in handling of discipline matters in accordance with the Constitution, legislation, regulations and this manual.

- 'Interdiction'* - Means barring an accused officer from performing powers and functions of the public office to give room for further investigation of the case.
- 'Penalty'* - Means a punishment imposed for a violation of law, regulation or rules of conduct.
- 'Public Office'* - Means an office in the public service.
- 'Public Officer'* - Means any person other than a state officer holding or acting in any public office.
- 'Reprimand'* - Means severe written rebuke to an officer after disciplinary process that determines an officer's improper conduct.
- 'Show cause letter'* - Means a letter requiring an officer to give representations on alleged misconduct.
- 'Suspension'* - Barring an accused officer from performing the functions of a public office on account of gross misconduct or having been charged with a serious criminal offence pending finalization of a case.
- 'Stop increment'* - Means to halt annual increment for a specified period.
- 'State officer'* - Means a person holding a state office as defined in the Constitution or other legislations.
- 'withhold increment'* - Means to deny annual increment for a specified period until the officer's conduct improves.

ABBREVIATIONS

CHRMAC	County Human Resource Management Advisory Committee
HRMAC	Human Resource Management Advisory Committee
HRM&D	Human Resource Management and Development
M/DHRMAC	Ministerial/Departmental Human Resource Management Advisory Committee
PSC	Public Service Commission

PART ONE - BACKGROUND

1.0 INTRODUCTION

The Public Service Commission is constitutionally mandated to exercise disciplinary control over persons appointed to hold offices in the public service. To effectively discharge this function, the Commission developed the first Discipline Manual in September, 2007 to guide the process of handling disciplinary cases in the public service.

Consequent to the promulgation of the Constitution of Kenya, 2010, enactment of the Public Service Commission Act, 2012 and the Fair Administrative Action Act, 2015, the Commission reviewed the manual in 2016. The current review has been necessitated by enactment of the Public Service Commission Act, 2017 [and the Public Service Commission Regulations, 2020](#).

1.1 SCOPE

This Manual provides general guidelines and instruments to be used by Ministries/State Departments in handling disciplinary cases.

Other public service organizations may adopt and domesticate this manual for uniformity in approach.

1.2 OBJECTIVES OF THE MANUAL

Under Section 92 of the Public Service Commission's Act, 2017, the Commission is empowered to make regulations for better carrying out of its functions. The Commission has developed regulations including those that govern disciplinary control, powers to issue instructions and to prescribe instruments on disciplinary action. To enhance the processing and determination of discipline cases, the Commission has revised the Manual for use by Ministries/State Departments.

The objectives of the Manual are to:-

- (a) Define discipline and understand its meaning in the context of the existing public service regulations.
- (b) Define standard procedures for uniformity in handling disciplinary cases.
- (c) Outline the steps in disciplinary procedures and processes.
- (d) Create understanding on the roles and responsibilities of the Public Service Commission and Authorized Officers in handling of the disciplinary cases.
- (e) Guide on handling of Court cases arising from disciplinary process.

Further the manual provides guidelines on the following:

- (i) Prompt handling of cases;

- (ii) Alternative interventions in the discipline process;
- (iii) Proper framing of charges;
- (iv) Investigation of cases;
- (v) Disciplinary Hearings;
- (vi) Analysis and evaluation of cases;
- (vii) Making comprehensive comments and recommendations on cases;
- (viii) Application of other forms of punishment other than dismissal;
- (ix) Prompt implementation of decisions.

1.3 Reference Documents

The Manual does not substitute the service regulations made by the Commission or any law made by Parliament as the case may be, but it is meant to guide the user. The user is therefore required to read the Manual alongside the following documents:

- (a) Constitution of Kenya, 2010
- (b) Public Service Commission Act, 2017
- (c) Access to information Act, 2016
- (d) Anti-Corruption and Economic Crimes Act, Revised 2016
- (e) Fair Administrative Action Act, 2015
- (f) Public Service (Values and Principles) Act, 2015
- (g) Leadership and Integrity Act, 2012
- (h) Ethics and Anti-Corruption Commission Act, 2011
- (i) Employment Act, 2007
- (d) Labour Institutions Act, 2007
- (e) Labour Relations Act, 2007
- (f) The Work Injury Benefits Act, 2007
- (g) The Occupational Safety and Health Act, 2007
- (h) Public Officer Ethics Act (2003)
- (i) Prisons Act (Cap 90)
- (l) Pensions Act (Cap 189)
- (m) Human Resource Policies and Procedures Manual for the Public Service, 2016
- (n) Penal code
- (o) General circulars issued by the Government from time to time.
- (p) Any other law governing public service and employment.

PART TWO – GUIDING PRINCIPLES

2.0 INTRODUCTION

The Constitution, under Article 234 (2) (b), vests in the Commission the power to exercise disciplinary control over public officers. Disciplinary control is an integral part in the management of human resource in the public service. It is intended to help and encourage public officers to achieve and maintain standards of conduct, contribute to improved performance and productivity. It is based on principles envisaged in the Constitution and other enabling legislations. Where applicable, other alternative intervention mechanisms need to be explored.

2.1 GUIDING PRINCIPLES

The disciplinary control in the public service is governed by the following principles:

- (a) The rules of natural justice which include:
 - (i) Procedural fairness, where an officer must be allowed adequate opportunity to prepare and present his/her case;
 - (ii) Impartiality of the deciding authority when hearing and making decisions; and
 - (iii) Decisions which are based on logical proof or evidential material.
- (b) Fair administrative action which is expeditious, efficient, lawful, reasonable and procedurally fair. Every officer to whom disciplinary action is taken has a right to:
 - (i) Written reasons for any disciplinary action that is taken against him/her;
 - (ii) Prior and adequate notice of the nature and reasons for the intended disciplinary action;
 - (iii) An opportunity to be heard and to make representations in that regard;
 - (iv) An opportunity to attend proceedings in person or in the company of an expert of his/her choice, cross examine persons who give adverse evidence against him/her and request for adjournment of proceedings where necessary;
 - (v) Notice of the right to legal representation, where applicable;
 - (vi) Notice of a right to an appeal or review against a disciplinary decision;
 - (vii) Information, materials and evidence to be relied upon in making a decision or taking a disciplinary action.
- (c) Thorough investigation of alleged offence shall be undertaken before any disciplinary action is taken.
- (d) Application of other interventions in resolving discipline cases such as counseling and dispute resolution mechanisms.
- (e) Prompt implementation of decisions.
- (f) Right of appeal and application for review of disciplinary related decisions.

2.2 ALTERNATIVE INTERVENTIONS IN THE DISCIPLINARY PROCESS

2.2.1 Alternative Discipline Interventions

Alternative interventions are an effort, undertaken by an employer, to address employee misconduct using a method other than traditional disciplinary action. This may, under the right circumstances, be a more efficient and more effective approach than traditional discipline. While alternative intervention requires more thoughtful decision-making and thus poses a greater challenge for supervisors than traditional discipline, the results can be worth the time and effort. Alternative intervention may result in modified behavior if used early in the disciplinary process for minor offences but may not be effective in serious issues or habitual offences. The appropriateness of a certain approach will vary based upon the nature of the offence and personality of the individual whose conduct needs correcting.

Alternative discipline interventions in the public service may take various forms such as counseling, guidance, training or dispute resolution.

(a) Counselling

Workplace counseling is the provision of counseling services to employees by employers. The main objective is to bring about a voluntary change in the individual with the goal of helping him/her overcome immediate problems and equip the person to cope with future challenges. It further assists in identifying employees with social, psychological, or health related problems and providing appropriate interventions or referrals.

A counseling intervention is not a discipline action, as its purpose is not to create a negative experience, but rather to communicate helpful information and provide necessary support in management of psychological challenges. The Authorized Officer shall refer officers to the Guidance and Counselling Services Unit which will provide appropriate services in accordance with the Public Service Guidance and Counselling Policy.

(b) Guidance and Training

Traditional disciplinary action is not appropriate for situations in which an officer is trying hard to do well but performs poorly despite his/her best efforts. Guidance and training is an intervention which can be used by supervisors to address poor performance of an officer when there is no misconduct contributing to the problem. Supervisors have the responsibility to have regular meetings with employees to explain workplace rules or whenever an employee is unclear about management expectations. Supervisors should also identify individual officer's shortcomings which can be addressed through training and recommend appropriate training. The training intervention may include; role play, coaching, mentoring, induction or job rotation.

(c) Dispute resolution mechanism

Dispute Resolution Mechanisms can be used effectively to resolve, reduce, or even eliminate workplace disputes that might come from a circumstance where disciplinary action is appropriate. Alternative dispute resolution affords an opportunity to create solutions that are uniquely tailored to address issues at hand. The method shall be applied in accordance with the Guidelines for Mediation, Conciliation and Negotiation in the Public Service.

2.2.2 Key Considerations

When applying alternative interventions, the following should be observed:

- i. The specific offense/shortcoming that needs to be addressed;
- ii. Officer's admission of wrongdoing/willingness to participate in the appropriate intervention;
- iii. The specific form of alternative intervention that will be used and its duration; and
- iv. Notification of the possible penalty for a subsequent offense.

PART THREE - DELEGATION OF POWERS AND INSTITUTIONAL FRAMEWORK

3.0 DELEGATION OF POWERS TO AUTHORIZED OFFICERS

The Commission has delegated the following disciplinary powers to Authorized Officers in Ministries/State Departments as provided in Section 65 of the PSC Act, the PSC Regulations and instructions issued by the Commission to the service from time to time: -

a) In respect of all public officers, the power to:

(i) Initiate disciplinary process

(ii) Interdict;

(iii) Suspend;

(iv) Reprimand;

(v) Stop pay or salary; and

(vi) Stop, withhold or defer a normal increment:-

(a) Where annual increment is stopped, the officer shall forfeit the increment for that year and it will be reinstated the following year without change of incremental date.

(b) Where annual increment is withheld the officer shall be denied the increment for a maximum period of one year and it will be restored, and arrears paid on fulfilment of the conditions set. The officer shall retain the incremental date.

(c) Where annual increment is deferred the officer's increment shall be postponed for a period not exceeding (1) year. Incremental date will not change upon restoration.

(vii) Recover the cost or part of the cost of any loss or breakage caused by default or negligence, provided no such cost has been recovered by surcharge action under the appropriate financial instructions or regulations;

(viii) Defer promotion;

Where deferment of a promotion is imposed, the imposition shall not persist for a period exceeding one year (1) and the deferred promotion shall take effect on the date the deferment lapsed.

b) In respect of officers in Civil Service Grade 8 (JG 'M/N') and below who have not served for an aggregate of fifteen years, the power to:

(i) Reduce rank or seniority; and

(ii) Dismiss

All discipline cases handled under delegated powers shall be considered and determined through the Human Resource Management Advisory Committee (HRMAC).

A person who is dissatisfied with a decision made in exercise of delegated powers has a right of appeal to the Commission through the Authorized Officer within a period of ninety calendar days. An advance copy of the appeal may be submitted to the Commission.

3.1 INSTITUTIONAL FRAMEWORK

The institutional framework for handling disciplinary cases is as follows:

(a) In respect of officers in Ministry/State Departments headquarters

- a. Head of Department:
Reports the misconduct to the Authorized Officer at the Ministry/State department.
- b. Head, HRM&D:
 - i. He/she is the secretary to the HRMAC and provides technical advice;
 - ii. Analyzes the misconduct and commences the disciplinary action by issuing a show cause letter.
 - iii. Summarizes the cases upon receipt of the officers' representations, if any, and submits the case to the HRMAC.
 - iv. Implements the decisions of the Commission and the Authorized Officer.
- c. HRMAC:
Deliberates on the case and submits their findings and recommendations to the Authorized Officer on the next course of action.
- d. Authorized Officer:
 - i. Considers recommendations of the HRMAC and makes decisions.
 - ii. He/she also forwards cases with comments and recommendations to the Commission for decision where applicable.
 - iii. Communicates decisions to affected officers.
- e. Public Service Commission:
 - i. Considers the recommendations of the Authorized Officers and make decisions related to powers which are not delegated.
 - ii. Determines appeals and applications for review.
 - iii. Communicates decisions to Authorized Officers for implementation.

(b) In respect of officers performing National Government functions in Counties

- a. Head of Department in the County:
Reports the misconduct to the County Commissioner.
- b. Head, HRM&D:
 - i. He/she is the secretary to the CHRMAC and provides technical advice.
 - ii. Analyzes the misconduct and commences the disciplinary action by issuing a show cause letter.
 - iii. Summarizes the case upon receipt of the officers' representations, if any, and submits the case to the CHRMAC.
- c. CHRMAC:

Deliberates on the case and submits findings and recommendations to the respective Authorized Officer on the next course of action.

d. County Commissioner:

ii. Chairs the CHRMAC

iii. Forwards the recommendations of the CHRMAC to the respective Authorized Officers for submission to the HRMAC.

e. Respective HRMAC:

Deliberates on HRMAC's findings and recommendations and advises the Authorized Officer on the next course of action.

PART FOUR – DISCIPLINARY PROCEDURE

4.0 GENERAL PROVISIONS

The following shall be observed while processing discipline cases:

- (a) Disciplinary cases dealt with under delegated powers shall be processed through the respective Human Resource Management Advisory Committee.
- (b) If criminal proceedings are instituted against an officer or where an officer has been acquitted of a criminal charge in a court of law, the Authorized Officer may institute a disciplinary action on any other charge arising out of his conduct in the matter and impose an appropriate penalty provided that the charge is not similar to the one in court.
- (c) Where an officer has administratively been charged with an offence of a criminal nature, the Authorized Officer shall report the matter to the Directorate of Criminal Investigation, or Ethics and Anti-Corruption Commission whichever is applicable.
- (d) Where an officer has been charged with desertion of duty, the letter shall be addressed to his/her last known address by registered mail and a copy through electronic mail where address is available.
- (e) In all disciplinary cases, evidence of delivery/dispatch of letter(s) to the officer should be maintained.
- (f) There should be proper framing of charges with full particulars of the case including the applicable provision of the Constitution, legislation or code of conduct alleged to have been breached.
- (g) The officer should be notified in writing, be given the particulars of the misconduct as preferred and reasonable opportunity to respond to the allegations.
- (h) Thorough investigation of an alleged offence shall be undertaken before any disciplinary action is taken.
- (i) The officer shall be given an opportunity to be heard in person during the disciplinary process.
- (j) Application of other interventions in resolving discipline cases such as counseling, guidance and training and dispute resolution mechanisms shall be considered.
- (k) Communication of right of appeal and application for review.
- (l) Cases shall be dealt with promptly and finalized within a period of six (6) months. Where it is found impracticable to do so the Authorized Officer shall report individual cases to the Commission explaining the reason for the delay.
- (m) Where an officer dies prior to finalization of the disciplinary proceedings the case shall be terminated by the relevant authority.
- (n) Where disciplinary process has not been concluded administratively, including the appeal process, the authorized Officer shall not recruit an officer to substantively fill the position.
- (o) Where an officer attains the mandatory retirement age while undergoing disciplinary proceedings, the proceedings shall be terminated, and the officer shall retire with applicable pension benefits.
- (p) The Authorized officer shall provide to the Commission a quarterly report on the status of interdicted and suspended officers.

4.1 SPECIFIC PROVISIONS

4.1.1 Procedure to be followed in initial disciplinary action

In the event of initial minor offences committed by an officer, the supervisor will issue a verbal warning to inform the officer of what is likely to befall him/her in case the offence(s) is repeated in future. The verbal warning should be in form of structured discussion which may entail counseling. A copy of the record for such a warning indicating that there was a meeting between the supervisor and the officer should be kept by the supervisor.

In the event the officer repeatedly commits minor offences irrespective of verbal warning(s), a written warning should be given to the officer by his or her supervisor. The warning letter should state the exact nature of offence(s) and indicate future disciplinary action which will be taken against the officer if the offence is repeated.

4.1.2 Disciplinary Procedure

Where an officer fails to reform despite being issued with verbal and written warnings, or where he/she commits serious offence(s) as those referred to in Section 4.6 of this Manual, the following procedure shall apply.

(a) The Procedure to be followed by the Authorized Officers in respect of officers in Civil Service Grade 7 (JG ‘P’) and above:

- i. Carry out a preliminary investigation and consultation as to the circumstances surrounding the alleged act of misconduct or review the persistent offences of which the officer has been warned severally but failed to reform, as applicable.
- ii. Issue the officer with a ‘show cause letter’ on the alleged offences and invite the officer to state in writing the grounds, if any, on which he/she relies to exculpate himself/herself.
- iii. Where it is found necessary to interdict or suspend an officer, the officer shall be informed of the decision.
- iv. The period within which to respond to the charges must be specified in the show cause letter.
- v. The officer’s response, if any, shall be forwarded through the supervisor who is expected to comment on the representations and make a recommendation.
- vi. On expiry of the specified period for response to the ‘show cause letter’, whether or not the officer has responded, the case shall be presented to the HRMAC for deliberation and recommendation.
- vii. Where the HRMAC is of the opinion that the matter needs further investigations, the Authorized Officer shall appoint a team to investigate the case within a stipulated period.

- viii. The investigation report shall be presented to the HRMAC for deliberation and recommendation.
- ix. In the event the investigation reveals further offence(s) against the officer, a new show cause letter shall be issued to him or her and the steps in (iii) to (vii) above shall apply.
- x. The HRMAC shall appoint a panel to hear the case within a stipulated period and notice of the hearing shall be issued to the relevant parties.
- xi. The panel shall conduct the hearing and present a report to the HRMAC for deliberation and recommendation.
- xii. The HRMAC shall, within 30 days, deliberate on the case and submit recommendation to the Authorized Officer.
- xiii. The Authorized Officer shall consider the HRMAC recommendations and within 14 days submit the case to the Commission with comments, recommendation, material evidence, records and other requirements as outlined in Section 5.2 of this Manual.
- xiv. If the Commission is of the opinion that further investigation is necessary before a decision is made, it will direct the Authorized Officer to do so.
- xv. The decision of the Commission including the right of appeal shall be communicated to the affected person by the Authorized officer.
- xvi. The Authorized Officer shall ensure that all decisions of the Commission are fully implemented within 14 days.
- xvii. Where a public officer is found culpable of a disciplinary offence, the decision shall be communicated to the relevant professional body, where applicable.

(c) The procedure to be followed in respect of officers in Civil Service Grade 8 (Job Groups ‘N’) and below but have served for an aggregate of fifteen years or more:

All cases of dismissal from the service, reduction in rank or seniority in respect of officers in Civil Service Grade 8 Job Groups ‘N’ and below who have served for an aggregate of fifteen years or more, shall be dealt with by the Authorized Officer as is in cases of officers in Civil Service Grade 7 Job Groups ‘P’ and above as outlined in (b) above.

(c) The procedure to be followed in respect of officers in Civil Service Grade 8 (Job Groups ‘N’) and below but have not served for an aggregate of fifteen years or more:

- i. All the steps in (b)(i-xi, and xv) above shall be observed and where the Authorized Officer is of the opinion that further investigation is not necessary, he/she shall decide on the punishment to be inflicted on the accused officer.
- ii. Where the Authorized Officer finds it necessary to carry out further investigation, the requirements for carrying out investigations as indicated in Section 4.8 of this Manual shall be observed.
- iii. On receipt of the investigation report, the Authorized Officer shall decide on the appropriate action based on the recommendations of the HRMAC.

4.2 INTERDICTION AND SUSPENSION

Interdiction and suspension are an integral part of the disciplinary process in the public service.

- i. Where a public officer has been interdicted or suspended, the public officer may, in writing, request the Authorized Officer to communicate the progress and action taken towards conclusion of the disciplinary case and the Authorized Officer shall reply within thirty (30) days from the date of receipt of the officer's request.
- ii. Where an officer has made such a request and the Authorized Officer fails to respond within the specified period or the officer is dissatisfied with the response, he/she may apply to the Commission for lifting of the interdiction or suspension.
- iii. The Commission, shall upon receipt of the application, make a decision which may include termination of the disciplinary proceedings.

4.2.1 Interdiction

An officer may be interdicted from exercise of the functions and powers of the public office where;

- i. Gross misconduct which is likely to lead to dismissal is reported and requires investigation.
- ii. Criminal proceedings are being instituted.

The interdiction process entails the following:

- (a) If the misconduct is one which can lead to dismissal or criminal proceedings are being instituted, the officer shall be served with a 'show cause letter' which shall also contain a communication on interdiction, a sample of which is provided in *Appendix I*.
- (b) A public officer on interdiction shall be entitled to half of his/her basic salary, full house allowance, and medical insurance cover.
- (c) A public officer who is on interdiction should not leave the duty station without the permission of the Authorized Officer or any other public officer who is empowered to give such permission.
- (d) Where disciplinary or criminal proceedings have been instituted against an officer under interdiction and the officer is not dismissed or otherwise punished, any withheld salary, allowances and benefits shall be restored with effect from the date it was withheld.
- (e) Interdiction shall be lifted by the Authorized Officer on recommendation of the HRMAC or the Commission's directive.
- (f) A public officer whose interdiction has been lifted shall promptly be served with a decision letter, a sample of which is provided in *Appendix II/III*.

4.2.2 Suspension

1. The circumstances under which an officer may be suspended from exercise of powers and functions of the office include:
 - i. When charged with serious criminal offence in a court of law
 - ii. Charged under the Anti-Corruption and Economic Crimes Act

- iii. Upon conviction of a criminal offence
 - iv. When proceedings for dismissal have been instituted and the Authorized Officer determines that the public officer ought to be dismissed.
2. Where a decision has been made to suspend an officer, he/she shall, within seven (7) days, be served with a suspension letter, a sample of which is provided in *Appendix IV* and shall:
 - (a) Not leave the duty station without the permission of the Authorized Officer or any other public officer who is empowered to give such permission.
 - (b) Be entitled to half of his/her basic salary, full house allowance, and medical insurance cover.
 3. An officer whose suspension has been lifted;
 - a. Shall within seven (7) days be served with a decision letter, a sample of which is provided in *Appendix II/III*.
 - b. Shall be reinstated to the public office held before suspension upon lifting of suspension and termination of disciplinary proceedings where the officer has not been otherwise punished.
 - c. Any withheld salary, allowances and benefits shall, within seven (7) days be restored with effect from the date it was withheld where the public officer has been found not culpable of the offence.
 - d. Where a public officer under suspension is not dismissed but any penalty prescribed in the Manual is imposed upon termination of the proceedings, any withheld salary, allowances and other benefits shall not be restored
 - e. Suspension shall be lifted by the Authorized Officer on recommendation of the HRMAC or the Commission's directive.

4.2.3 Compulsory Leave

An Authorized Officer, may with the approval of the Commission, send an officer undergoing investigations on compulsory leave for a period not exceeding thirty (30) working days where it is feared that the officer may influence or interfere with the investigation. The following conditions shall apply in cases of compulsory leave:

- (a) The officer being sent on compulsory leave shall be notified in writing the reasons for the decision and the duration of the leave.
- (b) An officer on compulsory leave shall be entitled to full pay and benefits.
- (c) Compulsory leave shall not be counted as part of an officer's annual leave
- (d) Where the stipulated period of compulsory leave lapses and investigations have not be concluded, the officer shall be placed on interdiction.

4.3 ABSENCE FROM DUTY WITHOUT LEAVE OR LAWFUL CAUSE

Where an officer is absent from duty without leave, reasonable or lawful cause, the following steps shall apply:

- (a) Establish the exact dates the officer was absent from duty. If not traced through personal contacts and next of kin within a period of ten (10) days from the commencement of such

absence, the salary and other remunerative allowances shall be stopped with effect from the date of absence, and disciplinary action instituted against the officer.

- (b) The officer shall be addressed a registered 'show cause letter' through his/her last known address, giving a reasonable period within which to respond but not less than ten (10) days. The nature of the offence and the contemplated action shall be stated clearly in the letter. A scanned copy of the show cause letter may be sent to the officer through electronic mail. (Sample letter is provided as *Appendix V*).
- (c) If the officer does not respond, or where his/her response is found to be unsatisfactory, the process in section 4.1.2(a) (vi-xv) shall apply.
- (d) The decision of the Commission or Authorized Officer and the right of appeal or application for review shall promptly be communicated to the officer.
- (e) When an officer has been absent from duty without permission and subsequently resumes duty, he shall not be eligible for payment of salary for the period of absence and any amount erroneously paid to him shall be recovered from his salary.
- (f) In cases of delay in stoppage of salary and an officer is subsequently dismissed on account of desertion, the erroneous payment shall be recovered from the officer who occasioned the payment.

4.4 RETIREMENT FROM THE PUBLIC SERVICE

The Commission or any other lawful authority discharging a disciplinary function may, instead of imposing a penalty, require a public officer to retire from the public service on any of the grounds of retirement prescribed under the Public Service Commission Act. Retirement on any ground may be allowed instead of a penalty if the prescribed conditions and procedures for such retirement as prescribed under the Act have been satisfied and the Commission or any other lawful authority considers upon proof of the misconduct that: -

- a) the public officer has raised a mitigating factor which renders imposition of a penalty too harsh in view of the circumstances of the case;
- b) the length of service, benefits accrued, and previous good record of the public officer justifies the retirement;
- c) imposing a penalty against the officer is likely to adversely affect the reputation of the public body concerned or the public service generally:

In retiring a public officer, the following process shall apply:

- (a) The Authorized Officer shall address a letter, a sample of which is provided in *Appendix VI*, requiring an officer to show cause within twenty one (21) days why he or she should not be retired.
- (b) The public officer's representations shall within thirty (30) days be submitted to the relevant HRMAC for deliberation and recommendation to the Authorized Officer.
- (c) The Authorized Officer shall within fourteen (14) days submit his/her recommendations including relevant records and documents to the Commission for decision.

- (d) Where the Commission is of the opinion that an alternative punishment be applied, the case shall be returned to the Authorized Officer with instructions that a fresh show cause letter be issued in line with the contemplated disciplinary action.
- (e) Where the Commission concurs with the Authorized Officer's recommendation, a decision will be made and communicated to the Authorized Officer.
- (f) The Authorized officer shall within fourteen (14) days convey the Commission's decision to the officer, informing him/her of the benefits, if any and the right of application for review within the time provided for in the regulations as per the sample letter provided in *Appendix VII*.

4.5 OFFENCES UNDER GROSS MISCONDUCT

The offences that amount to gross misconduct which may lead to summary dismissal are, but not limited to the following:

- (a) Absence from duty without leave or other lawful cause;
- (b) Negligence of duty;
- (c) Intoxication during working hours;
- (d) Using abusive or insulting language or behaving in a manner likely to cause a breach of the peace;
- (e) Insubordination;
- (f) Criminal conviction;
- (g) Incarceration for more than fourteen (14) days following arrest for cognizable offence;
- (h) Willful destruction of government property;
- (i) Theft by public servant;
- (j) Unauthorized use or disclosure of confidential information;
- (k) Falsification of information or references on appointment; and
- (l) Acceptance of any bribe, secret profit or unauthorized commission.

4.6 PENALTIES

All penalties inflicted on a public officer shall be within the law and the Public Service Commission Regulations. The following are the penalties which may be inflicted on an officer facing disciplinary action:

- (a) Recovery of cost or part of the cost of any loss or breakage caused by default or negligence provided that no such cost has been recovered by surcharge under the appropriate financial instructions or regulations.
- (b) Reprimand.
- (c) Stoppage, withholding and deferment of salary increment.
- (d) Deferment of promotion.
- (e) Reduction in rank or seniority.
- (f) Dismissal/termination of contract.

4.7 REQUIREMENTS FOR CARRYING OUT INVESTIGATIONS

- a. Reliable evidence is the foundation of fairness in disciplinary cases and this can be achieved through investigation of alleged offences. Such investigations should be carried out by committees appointed in writing by the Authorized Officer. The Authorized Officer shall give clear terms of reference and specific timelines within which to carry out the investigation.

4.7.1 Investigating Committee

- b. Investigating committee shall comprise of officers senior to the accused officer and should not have dealt with the case before or have interest in the case.
- c. The team shall comprise of three (3) officers and where necessary, it may co-opt experts to assist in understanding technical aspects of the discipline case.
- d. The investigating committee shall include a human resource officer and a legal officer.
- e. The Authorized Officer or any appointed member of the HRMAC shall not be involved as an investigator of any disciplinary case.

4.7.2 Investigation Process

- (a) The officer under investigation shall be interviewed by the investigating committee and be given a chance to produce relevant documents, call and examine witnesses, and peruse any availed documents related to the case.
- (b) After listening to all witnesses and studying all the documents, the committee shall sum up the case and record its findings as evaluated against the evidence.
- (c) The investigating committee shall record details of any matters which may aggravate or mitigate the case.
- (d) The investigation report shall be submitted to the relevant HRMAC within the specified time and shall not contain any recommendation on the form of punishment to be inflicted on the accused officer but should contain:
 - i. A statement on whether the charges against the officer have been proved.
 - ii. evidence collected by the team, including any statements by witnesses;
 - iii. analysis of the evidence and statements; and
 - iv. Details on any matter that may affect the gravity of the case if any.
- f. Where further investigations are required as provided for in the regulations, such investigations shall be conducted in accordance with the process in (a) to (i) above.

4.8 DISCIPLINARY HEARING

Disciplinary hearing is an integral part of the Disciplinary Procedure as provided for in the Employment Act and the Fair Administrative Action Act.

4.8.1 Hearing panel

- i. The Disciplinary hearing panel shall be conducted by a committee appointed by the Authorized Officer or the County Commissioner as applicable.
- ii. The hearing panel shall comprise of three (3) officers senior to the accused officer who should not have dealt with the case before or have interest in the case.
- iii. The panel shall include a human resource officer as a technical advisor.
- iv. The panel may, where necessary, co-opt experts to assist in understanding of technical aspects of the discipline case.

4.8.2 Hearing proceedings

To effectively carry out the hearing the following procedure shall apply: -

- i. The panel shall give a notice for hearing of not less than seven (7) days to the accused officer and other interested parties prior to the hearing date as per the sample letter provided in *Appendix VIII*.
- ii. In the notice, the accused officer shall be informed of his right to access information, materials, and evidence related to the case.
- iii. The reporting officer and the accused officer together with their witnesses shall be required to attend the hearing proceedings at the same time.
- iv. The accused officer shall be given an opportunity to cross-examine the reporting officer, together with witnesses.
- v. The defence of the accused officer together with his/her witnesses shall be heard after which the reporting officer shall be given an opportunity to cross-examine.
- vi. Both parties may bring expert witnesses to testify on technical aspects of areas of expertise touching on the disciplinary case.
- vii. Adjournment of the hearing may be granted by the panel upon request by any of the parties provided that compelling reasons have been given.
- viii. The hearing proceedings shall be recorded verbatim.
- ix. At the end of the hearing, each party shall be given an opportunity to make their final submissions in writing.
- x. Where an officer is represented by an advocate, a union official or any other representative during the disciplinary hearing, the representative shall cross examine the witnesses of the complainant and make final submissions on behalf of the officer.
- xi. The hearing panel shall analyze the evidence gathered during the hearing proceedings and record its findings. While analyzing the evidence, the hearing panel shall consider the charges against the officer as captured in the show cause letter, written defence, witness statements, experts' statements among other relevant records.
- xii. The proceedings of the hearing and findings shall be submitted to the HRMAC or CHRMAC and shall not contain any recommendation on the form of punishment to be inflicted on the accused officer but should contain:
 - a) Evidence collected by the team, including any statements by witnesses;
 - b) Analysis of the evidence and statements;
 - c) Details on any matter that may mitigate or aggravate the case if any; and
 - d) A statement on whether the charges against the officer have been proved.

PART FIVE - APPEALS AND REVIEWS

5.0 APPEALS AND APPLICATIONS FOR REVIEW

Any person dissatisfied by a decision of the Commission, Authorized Officer or any other authority arising from disciplinary proceedings, may appeal to the Commission as per the provision of Section 74 of the Public Service Commission Act within a period of ninety (90) days.

A person who is dissatisfied or affected by a decision made by the Commission on an appeal regarding a disciplinary case may apply for review of the decision as per the provision of Section 75 of the Public Service Commission Act within a period of six (6) months. The Commission shall admit the application for review if:

- (a) fresh material facts arise which with due diligence could not be presented when the decision was initially made; or
- (b) there is an error apparent on the record of the earlier decision.

5.1 LODGING AN APPEAL OR APPLICATION FOR REVIEW

The process of lodging an appeal or application for review is as follows:

- (a) All appeals and applications for review shall be in writing and made within a period of ninety (90) calendar days and six (6) months respectively, from the date of the letter conveying the decision. The Commission may entertain an appeal or application for review out of time if, in the opinion of the Commission, the circumstances warrant it.
- (b) All appeals and reviews shall be addressed to the Secretary, Public Service Commission through the Authorized Officer who shall give comments and a recommendation on issues raised in the form provided for in *Appendix IX*. While forwarding his/her appeal or application for review, an officer may submit an advance copy to the Commission.
- (c) An appeal shall be accompanied by copies of all material evidence or documents that the appellant wishes to rely on.
- (d) All appeals and applications for review shall be forwarded to the Commission even when they are not within the stipulated period provided that an explanation for late submission is given.
- (e) The Commission shall consider an appeal or application for review submitted out of time if justifiable reasons for late submission are provided.
- (f) Decisions on appeals shall promptly be conveyed within fourteen (14) days and the officer informed of the right of application for review where applicable.
- (g) Appeals and applications for review shall only be entertained once.
- (h) Decisions on disciplinary action shall not be deferred or suspended pending the determination of the appeal or application for review.

5.2 CHECKLIST FOR SUBMISSION OF CASES TO THE COMMISSION

The Authorized Officer shall present cases to the Commission in the prescribed format, a sample of which is provided in *Appendix IX*. When submitting cases to the Commission, the following must be provided:

- (a) The officer's personal files.
- (b) Authorized Officer's comments on each issue raised by the affected person.
- (c) Authorized Officer's recommendation on the case.
- (d) Investigation report and material evidence where applicable.
- (e) Disciplinary hearing proceedings, where applicable.
- (f) Certified copy of approved HRMAC minutes.
- (g) All correspondence related to the case.
- (h) Details of any matter which may aggravate or alleviate the gravity of the case.

PART SIX - COURT CASES

6.0 HANDLING COURT CASES

In the event that, the Government is taken to court in matters relating to the Commission's disciplinary powers, including where the powers have been delegated, the following shall apply:

- (a) The Authorized Officer shall within seven (7) days bring to the attention of the Commission and the office of the Attorney General the filing of such court cases and forward all the relevant information and documents.
- (b) Authorized Officers shall cooperate with the Commission and the office of the Attorney General in handling of all court cases.
- (c) The Authorized Officer shall ensure that evidence and witnesses are availed in all court cases failure to which they will be held personally liable.
- (d) Court decisions shall be complied with in consultation with the Commission and the office of the Attorney General unless an order of stay has been granted by the court.
- (e) The Authorized Officer in consultation with the Commission shall within seven (7) days instruct the office of the Attorney General to appeal against the decision of the court when dissatisfied with the decision.
- (f) The Authorized Officer or any other public officer who occasions loss of public funds arising out of failure to comply with court orders shall be held personally responsible.
- (g) The Authorized Officer shall promptly bring to the attention of the Commission, judgments entered against the government on matters arising from disciplinary proceedings including certified copies of the judgments.
- (h) The Authorized Officer shall monitor and report the status of all court cases to the Commission on quarterly basis.

PART SEVEN – APPENDICES

- Appendix I - Interdiction following gross misconduct
- Appendix II - Letter Lifting Interdiction/suspension
- Appendix III - Letter Lifting Interdiction/suspension (where any other penalty is imposed)
- Appendix IV - Suspension Letter
- Appendix V - Show Cause Letter (absence from duty without reasonable cause)
- Appendix VI - Notice of intention to retire from the service
- Appendix VII - Decision letter on retirement from the service
- Appendix VIII - Notice of hearing
- Appendix IX - Format for Presenting Disciplinary Cases, Appeals and Reviews by the Authorized Officer to the Commission

APPENDIX I– Interdiction following gross misconduct

(Letter head)

To

(Registered mail to last known address and scanned copy sent by electronic mail)

Dear Sir/Madam,

INTERDICTION UPON GROSS MISCONDUCT

It has been reported to this office that you (Set out particulars).

In view of the foregoing, you are hereby interdicted from exercising the duties of your office with effect from the date of this letter pending finalization of your case.

While on interdiction, you will be illegible for half salary, full house allowance and medical insurance cover and you should not leave your duty station without the express permission from your immediate supervisor.

(Signed)
Authorized Officer

Copy to: Supervisor

APPENDIX II- Letter Lifting Interdiction/Suspension

(Letter head)

To

.....

Thro'.....
(Supervisor)
.....

Dear Sir/Madam

LIFTING OF INTERDICTION/SUSPENSION

Further to our letter Ref. No..... dated(*the interdiction/ suspension letter*) and after due consideration of your case, it has been decided that the **interdiction/ suspension** imposed on you be and is hereby lifted with effect from..... (*the date of the interdiction/suspension*). Your salary withheld during the interdiction/ suspension shall be released.

You should report for duty within fourteen (14) days from the date of this letter.

Your faithfully
(Signed)
Authorized Officer

APPENDIX III- Letter Lifting Interdiction/suspension (where any other penalty is imposed)

(Letter head)

To

.....

Thro'

(Supervisor)

.....

Dear Sir/Madam

LIFTING OF INTERDICTION/SUSPENSION

Further to our letter Ref. No..... dated(*the interdiction/suspension letter*) and after due consideration of your case, it has been decided that the interdiction/suspension imposed on you be and is hereby lifted with effect from..... (*the date of the interdiction/suspension*). However, it has been decided that you are hereby (*state the punishment*) with effect from (*the date of the decision*). Your salary withheld during the interdiction/suspension shall not be released.

However, you are hereby warned that a repeat of the same or similar misconduct in future may lead to commencement of proceedings for your dismissal from the service.

You should report for duty within fourteen (14) days from the date of this letter.

Your faithfully

(Signed)

Authorized Officer

APPENDIX IV - Suspension Letter

(Letter Head)

To

.....

Thro'

(Supervisor)

Dear Sir or Madam,

SUSPENSION LETTER

It has been reported to this office that you were charged of a serious criminal offence namely (set out particulars).

Or

Reference is made to our letter ref No.datedand the representations in your letter dated

This is to inform you that having considered your representations, investigation report and the hearing proceedings you have been found culpable of (*state alleged offence*), and your dismissal from the service is being contemplated.

Consequently, it has been decided that you be and are hereby suspended from exercising the duties of your office from the date of this letter pending finalization of your case. While on suspension, you will be eligible for half salary, full house allowance and medical insurance cover and you should not leave your duty station without the express permission from your immediate supervisor.

Your faithfully

(Signed)

Authorized Officer

APPENDIX V - Show Cause Letter – absence from duty without reasonable cause

(Letter Head)

To

.....

Thro'

(Supervisor)

Dear Sir or Madam,

ABSENCE FROM DUTY WITHOUT REASONABLE CAUSE

It has been reported that you absented yourself from duty with effect from.....
(State the particulars of the absence including number of days and specific dates and the provisions of legislation or code of conduct contravened)

In view of the above, your dismissal from the service on account of absence from duty without reasonable cause is contemplated, but before this is done, you are hereby called upon to show cause why the intended action should not be taken.

Your representation if any, should reach this office within..... *(State reasonable time)* from the date of this letter failure to which the contemplated action will be taken without further reference to you.

Your faithfully

(Signed)

Authorized Officer

APPENDIX VI - Notice of Intention to Retire from the Service

(Letter head)

To.....
.....

Thro'.....
(Supervisor)

Dear Sir or Madam,

NOTIFICATION OF RETIREMENT FROM THE SERVICE

Reference is made to our letter ref No.datedand the representations in your letter dated

This is to inform you that having considered your representations, investigation report and the hearing proceedings you have been found culpable of (*state alleged offence/s*) that warrant dismissal. However, in view of (e.g. long service, mitigating factors, age, previous good record) it is contemplated that you be retired from the service in accordance with the PSC Act.

Consequently you are hereby required to make a written representation as to why you should not be retired from the service. *Your representations, if any, should reach this office within (reasonable period) days from the date of this letter failure to which the contemplated action will be taken without further reference to you.*

Yours faithfully
(Signed)
Authorized Officer

APPENDIX VII - Decision Letter on Retirement from the Service

(Letter head)

To.....
.....

Thro'
(Supervisor)

Dear Sir or Madam,

RETIREMENT FROM THE SERVICE

This is to inform you of the Public Service Commission's decision to retire you from the service (*indicate grounds*) with effect from(*date*).

In view of this decision, you are required to report to this office within thirty days with a view to submitting a handover report and to conclude arrangements for processing your pensions and other terminal benefits. To facilitate processing of your pension benefits, you are required to complete the following documents and return them to this office duly signed for further action:

1. Pension Commutation Form.
2. **Official Secrets (Declaration) Act for officers leaving the service.**
3. Final Declaration of Income, Assets and Liabilities Form
4. Clearance Form

Please note that you have a right of application for review of the decision to the Commission within six (6) months from the date of this letter.

Your faithfully
(Signed)
Authorized Officer

APPENDIX VIII – Notice of Hearing

(Letter head)

To.....
.....

Thro'
(Supervisor)

Dear Sir or Madam,

HEARING NOTICE

TAKE NOTICE that you are required to appear before the (**hearing body**) for the hearing of your case on theday of 20 at (time). the hearing shall be held at (venue)

TAKE NOTICE that the **hearing** may proceed and a determination made your absence notwithstanding.

Dated thisday of20.....

Your faithfully
(Signed)
Authorized Officer

APPENDIX IX - Format for Presenting Disciplinary Cases, Appeals and Reviews by the Authorized Officer to the Commission

- (i) Name
- (ii) Date of First appointment.....
- (iii) Personal Number.....
- (iv) Current designation.....
- (v) Civil Service Grade/Salary scale.....
- (vi) Terms of service
- (vii) Date of Birth.....
- (viii) Work Station.....

B. Nature of Charge, Offence or Misconduct against the officer

.....

(Set out the particulars in full)

C. Discipline case/Appeal/Review

.....

 *(Specify)*

D. Previous offences or misconduct and punishments (if any)

Sno.	Offence and Date	Punishment/Decision	Date of decision
1.			
2			
3.			
4.			

E. Criminal convictions

(If any)

S/no.	Criminal charge/offence (include date)	Judgment/Ruling/Order by court (include date)
1		
2		
3		

F. Analysis of the Case on issues raised by the officer and the Authorized Officer's comments on each representation

Officer's Representations	Authorized Officer's comments
1.	
2.	
3.	

G. Findings and Recommendations of the HRMAC

.....
.....

H. Authorized Officer's comments and recommendation

.....
.....

J. List of Appendices

.....
.....

(List all documents attached to this form e.g. personal files, show cause letter, minutes of the relevant Committees, investigation report, hearing proceedings, court rulings/judgments etc.)

(Signed)
Authorized Officer