

LEGAL NOTICE NO.

THE PUBLIC SERVICE COMMISSION ACT

IN EXERCISE of the powers conferred by Section 31 of the Public Service Commission Act, the Public Service Commission makes the following Regulations -

PUBLIC SERVICE COMMISSION (REMOVAL OF THE DIRECTOR OF PUBLIC PROSECUTIONS) REGULATIONS, 2016

- Citation** 1. These Regulations may be cited as Public service Commission (Removal of the Director of Public Prosecutions) Regulations, 2016
- Purpose** 2. The purpose of these Regulations is to regulate the procedure of the Public Service Commission for the better carrying into effect the provisions of Article 158 of the Constitution and to provide a fair and just process.
- Interpretation** 3. In these Regulations;-
- 'Act'* - means the Public Service Commission Act
- 'Board'* - means the full sitting of the Commission
- 'Chairperson'* - means the chairperson of the Commission
- 'Commission'* - means the Public Service Commission
- 'Committee'* - means an adhoc committee of the Commission constituted to hear a petition

- 'Determine'* - means to make a final finding on a petition
- 'Director'* - means Director of Public Prosecutions
- 'Hearing'* - means oral or written representations.
- "Parties"* - means the Director of Public Prosecutions and the Petitioner
- 'Petition'* - means a complaint referred to the Commission under the provisions of Article 158 of the Constitution
- 'Petitioner'* - means a person who has presented a petition to the Commission under the provisions of Article 158 of the Constitution
- 'Respondent'* - means the Director of Public Prosecutions

- Guiding Principles**
4. (1) The procedure to be followed by the Commission is as provided in these Regulations.
 - (2) The Commission in hearing the petition for removal of the Director of Public Prosecutions shall be guided by the following principles:
 - a) Respect and promotion of values and principles prescribed in the Constitution as far as is applicable;
 - b) Fairness and respect for the rule of law;

- c) Adherence to the rules of natural justice; and
- d) all matters before the Commission shall be decided according to substantive justice, without undue regard to technicalities of procedure and without undue delay.

Saving of inherent powers of the Commission

5. Nothing in these Regulations shall limit or otherwise affect the inherent power of the Commission either on its own motion or on the application of a party to make such orders as may be necessary for the fair and expeditious disposal of a petition or to prevent an abuse of its process.

Coordination of petition process

6. The Chairperson is responsible for —
- a) constituting such Committee or Committees of the Commission necessary for the fair and expeditious disposal of the petitions with the approval of the Commission;
 - b) assigning petitions to the committees; and
 - c) such other functions as are necessary for the attainment of the mandate conferred by the Constitution and the Act.

Jurisdiction

7. The Commission has power to receive and hear all petitions for removal of the Director of Public Prosecutions.

Grounds for removal

8. Subject to the provisions of Article 158(1) of the Constitution, the Commission shall consider petitions on the following;

a) Inability to perform the functions of office arising from mental or physical incapacity;

b) Non-compliance with Chapter Six of the Constitution and the General Leadership and Integrity Code as provided in Part II of the Leadership and Integrity Act which includes;

- (i) dishonesty in the execution of public duty;
- (ii) immoral conduct in professional and personal life;
- (iii) disregard for professional duties, arising under the codes of professional conduct;
- (iv) impropriety;
- (v) lack of objectivity and impartiality;
- (vi) corruption;
- (vii) failure to disclose a conflict of interest;
- (viii) failure to be accountable to the public for decisions or actions taken;
- (ix) lack of discipline and commitment to public service;

c) Bankruptcy

d) Incompetence, the elements of which include;

- (i) lack of intellectual capacity;
- (ii) poor legal judgment;
- (iii) lack of diligence;
- (iv) lack of substantive and procedural knowledge of the law;
- (v) lack of organisational and administrative skills; and
- (vi) lack of interpersonal skills and the ability to work well with a variety of people;

- e) Gross misconduct or misbehavior the elements of which include;
 - (i) absenteeism;
 - (ii) being Intoxicated during working hours;
 - (iii) neglect of duty;
 - (iv) use of abusive or insulting language or behaving in a manner insulting to public officers or members of the public;
 - (v) being arrested for a cognizable offence punishable by imprisonment and not being, within fourteen days, released on bail or bond or otherwise lawfully set at liberty; or
 - (vi) committing or being suspected, on reasonable and sufficient grounds, of having committed a criminal offence against or to the substantial detriment of the Government or the Government's property.

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Filing a petition

9 (1) A person desiring the removal of the Director of Public Prosecutions may present a petition to the Commission.

(2) The petition shall be:

- a) in writing;
- b) supported by an affidavit setting out the alleged facts constituting the grounds for removal;

(3) The petitioner shall , where applicable , attach copies of all material or documentary evidence supporting the petition.

Processing the petition

10 (1) The Commission shall, within fourteen days of receipt of the petition, consider it in the first instance and shall either;

- a) summarily disallow it for lacking in merit or for failing to disclose a cause of action; or
- b) require that the Director of Public Prosecutions responds to the allegations.

(2) Where the Commission requires the Director to respond to the allegations, the Commission shall forward the petition together with the affidavit and all other supporting documents to the Director.

(3) The Director shall, within 14 days of the date of the Commission's letter, respond to the petition in writing.

(4) The Chairperson shall, upon receipt of the response from the Director, constitute the Committee

(5) The Committee shall, within 14 days of receipt of the response, convene a preliminary meeting to determine whether there is need;-

- a) to call for additional documents or information;
- b) for further investigations
- c) to hear the petitioner and the Director of Public Prosecutions in person; and
- d) The hearing date and venue.

Provided that the Committee shall have the power to summarily determine the petition at the preliminary meeting.

(5) Within seven days of the preliminary Committee meeting, the Commission shall either call for additional documents or facilitate investigations or issue a hearing notice as determined by the Committee.

(6) The Committee shall convene a hearing of the petition or a meeting to consider the petition within 21 days from the date of the preliminary meeting referred to in regulation 10(4).

Service of Notices 11. Once the Committee determines the hearing date, the Commission shall, within seven days issue a hearing notice in form PDPP 1 set out in the schedule.

12. (1) Any notices issued under these Regulations shall be served through—

- a) personal service; or
- b) registered mail to the last known postal address of the petitioner or the Director and shall be deemed to have been received within seven days from the date of postage; or
- c) the Public Service Commission Website; or
- d) advertising in at least two daily newspapers with nationwide circulation:

Provided that the Commission shall at all times use the most cost efficient mode of service.

(2) Where a Notice is served through an advertisement, a copy of the newspaper advertisement shall be filed for record.

(3) Where a Notice is served personally the same shall be recorded stating the time and manner in which the Notice was served.

**Hearing the
petition**

13. The Commission shall determine the place and time for hearing of a petition.

14. A petition may be heard orally or through written representation.

15. Where the petition is heard through written representations, the Commission shall require the Parties to make written submissions as follows;-

- a) The Petitioner shall first file written submissions which shall be forwarded to the Director within seven days of receipt thereof.
- b) The Director shall file written submissions in response to the petitioner's submissions within 14 days of receipt thereof.

16. An oral hearing shall take place in the following instances;

- a) Where the Committee determines that it is necessary to hear witnesses in the matter; or
- b) Where the petitioner or the Director makes a written request to the Commission.

17. Where the petition is heard orally, both parties shall be given an opportunity to address the Committee and shall, present any witnesses before the Committee.

18. If the petitioner or the Director is absent during the hearing, after having been served with a hearing notice, the Committee may—

- (a) adjourn the hearing to a specific date; or
- (b) hear and make a finding on the petition.

19. If by reason of resignation from the Commission, illness, death, or for any other reason, a member of the Committee is unable to continue sitting in a part-heard petition, the Chairperson may assign another member to the proceedings and order either the rehearing or continuation of the proceedings from that point.

Recording of Proceedings

20. Proceedings of a petition heard orally shall be recorded verbatim.

21. Proceedings of a petition heard through written representations shall be recorded in minutes of the Committee meeting.

Findings and Recommendations

22. The Committee shall deliberate and make its findings and recommendations to the Commission within 21 days of hearing the petition.

Determination of the Petition

23. The Commission shall consider the recommendations of the Committee and shall make a final decision on the petition within 7 days of receipt of recommendations of the Committee.

Powers of the Commission on receipt of recommendations

24. Upon receiving the recommendations from the Committee, the Commission may;-

- a) Uphold the decision;
- b) Set aside the decision;

- c) Vary the decision as it considers just; or
- d) Give such directions as it may consider appropriate.

**Communication
of the
Determination**

25. (1) If the Commission finds that the petition discloses sufficient grounds for removal of the Director, the Commission shall, within 7 days of the finding, forward the decision together with the petition to the President in accordance with the provisions of Article 158(3) of the Constitution.
- (2) The decision of the Commission shall be communicated to the petitioner and the Director in writing within 7 days from the date the Commission makes the decision.

**Delivery of
documents to the
Commission.**

26. (1) A document may be lodged at the Commission by—
- (a) delivering it to the Commission registry; or
 - (b) sending it to the Commission by registered post, or by courier service providing proof of delivery; or
 - (c) by facsimile or e-mail.
- (2) A document is deemed lodged on the date it is received and stamped by the Commission.
- (3) The sender of a document by facsimile shall produce the original document or the transmission report if directed by the Commission.

**Powers of the
Commission in**

27. Nothing in these Regulations affects the power of the Commission, if the circumstances so permit and in the interests of justice to—

relation to service of documents.

- (a) authorize service of a document in a manner that is not expressly provided for in these Regulations; or
- (b) find that a document served in a manner not expressly provided for in these Regulations has been duly served;

Rights of the parties

28. The parties have the right to;
- (a) be heard in person subject to the provisions of Regulation 16(b) hereof;
 - (b) legal representation;
 - (c) access information, materials and evidence relevant to the petition;
 - (d) have adequate time to prepare evidence;
 - (e) request for adjournment of the case where necessary for fair hearing;
 - (f) appeal or apply for review of the commission's decision.

Commission to keep full records of proceedings.

29. The Commission shall cause to be made and preserved a full and accurate record of all its proceedings including handwritten or typed transcripts and, where applicable, audio and video recordings.

FORM PDPP . 2

(r. 11)

PUBLIC SERVICE COMMISSION
PETITION NO. OF 2....

..... PETITIONER

To:

HEARING NOTICE

TAKE NOTICE that you are required to appear before the Commission for hearing of the petition on theday of 20..... at O'clock in thenoon.

The hearing shall be held at

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TAKE NOTICE that the Commission may proceed to make such determination or take any action as it deems just and prudent, your absence notwithstanding.

DATED at this day of, 20

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BY ORDER OF THE COMMISSION

PROF. MARGARET KOBIA, PhD, CBS
CHAIRPERSON, PUBLIC SERVICE COMMISSION