

**NO. 10 OF 2017**

**PUBLIC SERVICE COMMISSION ACT**

SUBSIDIARY LEGISLATION

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**PUBLIC SERVICE COMMISSION (REMOVAL OF THE  
DIRECTOR OF PUBLIC PROSECUTIONS) REGULATIONS, 2017**

[L.N. 168/2017.]

## PART I — PRELIMINARY

**1. Citation**

These Regulations may be cited as the Public Service Commission (Removal of the Director of Public Prosecutions) Regulations, 2017.

**2. Purpose**

The purpose of these Regulations is to give effect to Article 158(2) of the Constitution by providing a procedure for receiving, processing, hearing and determining a petition for the removal of the Director of Public Prosecutions.

**3. Interpretation**

In these Regulations —

**"Act"** means the Public Service Commission Act (No. 13 of 2012);

**"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;

**"Director"** means the Director of Public Prosecutions;

**"hearing"** means an oral or written representation;

**"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; and

**"respondent"** means the Director of Public Prosecutions.

**4. Guiding principles**

The Commission hearing the petition for removal of the Director shall be guided by the following principles —

- (a) respect and promotion of the values and principles prescribed in the Constitution;
- (b) fairness and respect for the rule of law;
- (c) adherence to the rules of natural justice; and
- (d) the application of substantive justice, without undue regard to technicalities of procedure and without undue delay to the decisions of the Commission.

**5. Saving of inherent powers of the Commission**

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.

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## **6. Co-ordination of petition Process**

The Chairperson shall —

- (a) with the approval of the Commission, constitute a Committee to hear and determine a petition for removal of the Director;
- (b) assign the petitions for removal of the director to the committees; and
- (c) perform such other functions as are necessary for hearing and determination of a petition for the removal of the Director.

## **7. Jurisdiction**

The Commission shall have the power to receive and hear all the petitions for removal of the Director.

## **8. Grounds for removal**

The Commission shall consider petitions under these Regulations based on the grounds set out in Article 158(1) of the Constitution.

## **9. Filing a petition**

(1) A person desiring the removal of the Director of Public Prosecutions may present a petition to the Public Service Commission which, shall be in writing, setting out the alleged facts constituting the grounds for the removal of the Director.

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

## **10. Processing the petition**

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

- (a) disallow it summarily for lacking in merit or for failing to disclose any valid ground for removal of the Director;
- (b) require the petitioner to provide further particulars; or
- (c) require the Director to respond to the allegations.

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

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

(4) The Committee shall, within fourteen days of receipt of the response by the Director, convene a preliminary meeting to determine whether the Commission shall —

- (a) call for additional documents or information;
- (b) undertake further investigations;
- (c) hear the petitioner and the Director in person; and
- (d) if the Commission decides to hold a hearing, set 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 meeting, the Commission may —

- (a) call for additional documents from the parties;
- (b) facilitate investigations into the allegations made in the petition; or
- (c) 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 twenty-one days from the date of the preliminary meeting.

### **11. Form of Notice**

When the Committee determines a hearing date, the Commission shall, within seven days issue a hearing notice in Form PDPP 1 set out in the Schedule.

### **12. Service of notices**

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

- (a) personal service;
- (b) registered mail to the last known postal address of the petitioner and the Director and shall be deemed to have been received within seven days from the date of postage; the Public Service Commission website; or
- (c) 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.

### **13. Hearing the petition**

(1) The Commission shall determine the venue and time for hearing of a petition.

(2) A petition may be heard orally or through written submissions.

(3) Where the petition is heard through written submissions, the Commission shall require —

- (a) the petitioner to first file written submissions within fourteen days of the Commission's direction for the same and which shall be forwarded to the Director within seven days of receipt thereof; and
- (b) the Director to file written submissions in response to the petitioner's submissions within fourteen days of receipt thereof.

### **14. Oral hearing**

(1) An oral hearing shall take place —

- (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.

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

### **15. Absence of the parties**

If the petitioner or the Director is absent during the hearing, the Committee may —

- (a) adjourn the hearing; or
- (b) hear and determine the petition in the absence of either party or both parties.

### **16. Indisposition of a member**

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 shall appoint another member to the Committee and order either the rehearing or continuation of the proceedings.

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**17. Recordings of proceedings**

- (1) The proceedings of a petition heard orally shall be recorded in verbatim.
- (2) Proceedings of a petition heard through written submissions shall be recorded in the minutes of the meetings of the Committee.

**18. Findings and recommendations**

- (1) The Committee shall make its recommendations to the Commission within twenty-one days of hearing the petition.
- (2) The Commission shall consider the recommendations of the Committee and shall make a final decision on the petition within seven days of receipt of recommendations of the Committee.

**19. Powers of the Commission on receipt of recommendations**

- (1) 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 in the interest of justice.
- (2) If the Commission finds that the petition discloses sufficient grounds for removal of the Director, the Commission shall, within twenty one 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.
- (3) The decision of the Commission shall be communicated to the petitioner and the Director in writing within seven days from the date the Commission makes the decision.

**20. Delivery of documents of the Commission**

- (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;
  - (c) facsimile; or
  - (d) 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.
- (4) The sender of a document by email shall produce the original document and proof of the date and time of transmission of the email.

**21. Powers of the Commission in relation to service of documents**

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

- (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.

**22. Rights of the parties**

The parties have a right to—

- (a) be heard in person subject to the provisions of Regulation 14(1)(b);
- (b) legal representation;

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- (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) apply for review of the Commission's decision in writing within seven days from the date of receipt of the Commission's decision.

**23. Commission to keep full records of proceedings**

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.

SCHEDULE

FORM PDPP. I

[Rule 11.]

THE 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 the ..... day of ..... 20 ..... at ..... O'clock in the ..... noon.

The hearing shall be held at

.....  
.....

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 .....

.....  
BY ORDER OF THE COMMISSION

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