



PUBLIC SERVICE COMMISSION ACT, 2017
(No. 10 of 2017)

**THE PUBLIC SERVICE COMMISSION (STATE CORPORATIONS AND PUBLIC
UNIVERSITIES DISCIPLINARY APPEALS PROCEDURES) REGULATIONS, 2022**
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Stakeholder Views - Receipt of Memoranda

IN EXERCISE of the powers conferred by section 92 of the Public Service Commission Act, 2017, the Public Service Commission makes the following Regulations: —

THE PUBLIC SERVICE COMMISSION (STATE CORPORATIONS AND PUBLIC UNIVERSITIES DISCIPLINARY APPEALS PROCEDURES) REGULATIONS, 2022

PART I - PRELIMINARY

Citation.	1. These Regulations may be cited as the Public Service Commission (State Corporations and Public Universities Disciplinary Appeals Procedures) Regulations, 2022.
Purpose.	2. The purpose of these Regulations is to regulate the hearing of appeals by the Commission in respect of disciplinary control decisions of a State Corporation or a Public University pursuant to the provisions of sections 74 and 75 of the Public Service Commission Act.
Interpretation.	3. In these Regulations, unless the context otherwise requires — “Act” means the Public Service Commission Act; “appeal” means a request for the re-examination of a decision of a State Corporation or a Public University; “appellant” means any person appealing against a decision of a State Corporation or a Public University; “applicant” means any person that has applied to the Commission for a review or directions or orders; “application” means any written representation made to the Commission seeking directions or interim orders during pendency of the appeal; “application for review” means a request to the Commission to reconsider its decision on appeal; “close of pleadings” means the end of the period granted in the regulations for filing and serving the last set of documents in an appeal, an application, an application for review or a preliminary objection;

“disciplinary control” means the due process in handling of discipline matters in accordance with the Constitution, legislation and these regulations;

“person” includes a company or association or body of persons, corporate or incorporate;

“pleadings” means documents filed by parties;

“Public University” means a state owned university to which a charter has been granted under the Universities Act and includes a constituent college of a Public University;

“respondent” means any person against whom an appeal or an application has been filed. and

“State Corporation” means-

- (a) a state corporation established under section 3 of the State Corporations Act;
- (b) a body corporate established before or after the commencement of the State Corporations Act by or under an Act of Parliament or other written law but not-
 - (i) the Permanent Secretary to the Treasury incorporated under the Permanent Secretary to the Treasury (Incorporation) Act;
 - (ii) a co-operative society established under the Cooperative Societies’ Act;
 - (iii) a building society established in accordance with the Building Societies Act;
 - (iv) a company incorporated under the Companies Act which is not wholly owned or controlled by the Government or by a state corporation;
 - (v) the Central Bank of Kenya established under the Central Bank of Kenya Act;
 - (vi) any other body corporate established by or under any written law declared by the President by notice in the Gazette not to be a State Corporation for the purposes of the State Corporations Act;
 - (vii) a bank or a financial institution licensed under the Banking Act or other company incorporated under the Companies Act the whole or the controlling majority of the shares or stock of which is owned by the Government or by another State Corporation;

	(c) a subsidiary of a State Corporation.
Scope	<p>4. These regulations shall apply to:</p> <ul style="list-style-type: none"> a) Any public officer working in a State Corporation or a Public University; b) Disciplinary control decisions of a Board of a State Corporation; c) Disciplinary control decisions of a Council of a Public University and d) Any other person dissatisfied or affected by the disciplinary control decisions of a State Corporation or a Public University.
Principles.	<p>5. The Commission shall be guided by the following principles when hearing and determining an appeal or when considering an application for review—</p> <ul style="list-style-type: none"> a) the promotion of the purposes of the Constitution, b) the promotion of values and principles in Articles 10 and 232 of the Constitution; c) justice and fairness for all parties appearing before the Commission; d) the application of the rules of natural justice; e) the application of substantive justice that does not rely on undue regard to technicalities of procedure; and f) timely disposal of appeals.
Inherent powers of the Commission	<p>6. The Commission may, on its own motion or on the application of any party, make such orders as are necessary for the—</p> <ul style="list-style-type: none"> a) fair and expeditious determination of an appeal or application under these Regulations; b) just conclusion of an appeal or application; or c) prevention of abuse of the processes of the Commission.
Conciliation, mediation and negotiation.	<p>7. (1) The Commission may, on its own motion or on the application of any party make such orders as are necessary for conciliation, mediation or negotiation.</p> <p>(2) The conciliation, mediation or negotiation referred to in subregulation (1) shall be concluded within sixty days after the order of the Commission.</p>

(3) Where the conciliation, mediation or negotiation in respect of an appeal fails, the Commission shall determine the appeal in accordance with these Regulations.

PART II – APPEALS

Appeals

8. (1) A person who is dissatisfied with a disciplinary control decision of a State Corporation or a Public University may appeal to the Commission against that decision.

(2) Any person who wishes to file an appeal with the Commission shall do so after all internal processes of the State Corporation or Public University have been exhausted.

Filing of appeals

9. (1) A person shall file an appeal against a decision of a State Corporation or Public University with the Commission within ninety days after the making of the decision by the State Corporation or Public University.

(2) Notwithstanding the provisions of subregulation (1), the Commission may, upon written request, allow a person to file an appeal out of time, if the Commission determines that the circumstances of the case warrant it.

(3) (a) An appeal under these regulations shall be in Form A in the schedule and shall provide therein –

- i. the name and date of birth of the public officer;
- ii. the name of the respondent;
- iii. the public officer's personal number;
- iv. the public officer's designation;
- v. the public officer's terms of service;
- vi. the public officer's job group;
- vii. a declaration on whether there are or have been proceedings or decisions before any court or tribunal on the subject matter of the appeal;
- viii. the grounds of the appeal;
- ix. the facts in support of the appeal;
- x. the documents in support of the appeal;
- xi. the prayers sought; and

	<p>xii. the contact details of the public officer including postal address, email address and telephone number; or</p>
	<p>(b) Where the appeal has been filed on behalf of the affected public officer, the appellant shall, in addition to the requirements in paragraph (a), provide a description of the appellant, the appellant's postal address, email address and telephone number.</p>
Service of the appeal.	<p>10. (1) An appellant shall serve the appeal on the respondent after filing the appeal with the Commission.</p>
	<p>(2) Upon service of the appeal, the appellant shall, within seven days, file an affidavit of service stating the date, time, mode and place of service of the appeal.</p>
	<p>(3) The respondent who has been served with an appeal under subregulation (1) shall, within twenty one days after being served—</p>
	<p>(a) respond to the appeal by filing with the Commission a replying affidavit or grounds of objection;</p> <p>(b) attach to the replying affidavit any relevant records and documents regarding the appeal including any proceedings; and</p> <p>(c) serve the response on the appellant within seven days after filing it with the Commission.</p>
	<p>(4) The appellant may, where necessary, file a rejoinder within seven days after receipt of the respondent's response.</p>
	<p>PART III – PRELIMINARY PROCEEDINGS, INTERIM APPLICATIONS AND PRELIMINARY OBJECTIONS</p>
Preliminary proceedings.	<p>11. After the filing of the response under regulation 10(3), the Commission shall, within twenty-one days—</p>
	<p>a) Where there is insufficient information, require the appellant or the respondent to provide additional information or documents in relation to the appeal; or</p> <p>b) Where it determines that there is need for an investigation, investigate the matter further in order to obtain the required information; or</p>

	<p>c) Where it is necessary to hold an oral hearing or where a party requests to be heard in person, set down the matter for hearing.</p>
Interlocutory applications.	<p>12. (1) A party to an appeal may, at any time after the filing of an appeal with the Commission but before the final hearing and determination of the appeal, apply in writing to the Commission for directions or orders.</p> <p>(2) An application under this regulation shall be served on the other party or parties within seven days after filing.</p> <p>(3) A party served with an application under subregulation (2) shall file with the Commission and serve the applicant with a replying affidavit or grounds of objection within seven days after being served with the application.</p> <p>(4) Where the Commission determines that there is need for parties to file written submissions regarding an application under this regulation, the provisions of regulation 17(5) shall, with the necessary modifications, apply.</p> <p>(5) The Commission shall determine an application under this regulation—</p> <p>a) within thirty days after the filing of the replying affidavit or grounds of objection under subregulation (3); or</p> <p>b) where the Commission requires the parties to file written submissions under subregulation (4), within thirty days after the written submissions have been so filed.</p>
Preliminary objections.	<p>13. (1) A party to an appeal filed under these Regulations may raise an objection on any point of law at any time before the appeal is finally heard and determined by the Commission.</p> <p>(2) The objection referred to in subregulation (1) shall—</p> <p>(a) be in writing;</p> <p>(b) state the points of law and grounds for the preliminary objection; and</p> <p>(c) be served on the other party or parties to the appeal within seven days after being filed with the Commission.</p>

(3) A party served with an objection shall file a written response with the Commission within seven days after receipt of the objection.

(4) Where the Commission determines that there is need for parties to file written submissions regarding a preliminary objection, the provisions of regulation 17(5) shall apply with the necessary modifications.

- (5) The Commission shall determine a preliminary objection—
- (a) within thirty days after the filing of the response under subregulation (3); or
 - (b) where the Commission requires the parties to file written submissions under subregulation (4), within thirty days after the written submissions have been so filed.

PART IV—WITHDRAWAL OF APPEALS OR APPLICATIONS, CONSOLIDATION OF APPEALS AND TEST APPEALS

Withdrawal of
appeals or
applications

14. (1) An appellant or applicant may, by written notice to the Commission and respondent, withdraw an appeal or an application or a preliminary objection filed under these Regulations.

(2) Upon receipt of the notice of withdrawal, the Commission shall by written notice to the parties, mark the matter as withdrawn.

Consolidation
of appeals

15. The Commission may, on its own motion or on application by a party to an appeal, consolidate two or more appeals filed under these Regulations on such terms as may be just in the circumstances.

Test appeals

16. (1) Where two or more persons have filed appeals against the same respondent, the Commission may, on its own motion or on application by any party to the appeal, with written notice to the other party or parties, where it is satisfied that the issues to be determined in each appeal are similar, issue directions that one of the appeals be determined as the test appeal, and the other proceedings in respect of the other appeals shall be stayed until the test appeal is finally heard and determined.

(2) The Commission's decision on the test appeal under subregulation (1) shall apply to the other appeals.

PART V—HEARINGS

Hearings.	<p>17. (1) Pursuant to the provisions of section 12 of the Act, the Commission may establish a Committee to orally hear an appeal or an application and the recommendations of the committee shall be presented to the Commission for consideration and determination.</p>
	<p>(2) The Commission may—</p> <ul style="list-style-type: none">(a) hold oral hearings before determining an appeal; or(b) receive and consider written submissions from parties to an appeal before determining the appeal.
	<p>(3) Where the Commission decides to hold an oral hearing in respect of an appeal, it shall notify the parties to the appeal of the date, time and venue of the hearing in Form B as set out in the Schedule.</p>
	<p>(4) The hearing notice under subregulation (3) shall be served on the parties to the appeal at least seven days before the date of the hearing.</p>
	<p>(5) Where the Commission requires written submissions in respect of an appeal, it shall require the parties to the appeal to make their written submissions in the following manner—</p>
	<ul style="list-style-type: none">a) the appellant shall first file and serve written submissions within fourteen days after the directions of the Commission; andb) the respondent shall file and serve written submissions within fourteen days after receipt of the appellant’s submissions or upon expiry of the time granted to the appellant.
	<p>(6) The appellant may file supplementary submissions within seven days after receipt of the respondent’s submissions under subregulation (5)(b).</p>
Parties with special needs.	<p>18. Where a party to an appeal is a person with disability and requires special arrangements for purposes of an oral hearing, that party shall notify the Commission of that party’s requirements at least three days before the date of the hearing.</p>

Absence of parties.	<p>19. Where a party to an appeal, after being duly notified of the hearing in accordance with regulation 17(3) fails to attend the hearing, the Commission may—</p> <p>(a) adjourn the hearing to another date, which date shall be notified to the parties in accordance with regulation 17(3); or</p> <p>(b) if the circumstances of the case warrant it, conduct the hearing in the absence of the party.</p>
Decision to be made after hearing or receipt of written submissions.	<p>20. (1) The Commission shall, within sixty days after the conclusion of a hearing or after receiving written submissions in respect of an appeal, make a decision on the appeal.</p> <p>(2) Where a decision is not made within the period under subregulation (1), the Commission shall notify the parties to the appeal, in writing, the reasons for the delay.</p>
Decisions of the Commission on appeal.	<p>21. After considering an appeal, the Commission may —</p> <p>a) uphold the decision;</p> <p>b) set the decision aside;</p> <p>c) vary the decision as it considers to be just;</p> <p>d) give such directions as it may consider appropriate with respect to the decision;</p> <p>e) direct the refund, reinstatement of remuneration or release of any withheld payment due to the public officer as it considers to be just;</p> <p>f) direct that disciplinary action be taken against any public officer who has failed to discharge a duty that was the public officer’s responsibility to perform in relation to the disciplinary case and the concerned public body has suffered a loss; or</p> <p>g) make any other appropriate decision in view of the circumstances of the case.</p>
Review of decisions.	<p>22. (1) A person who is dissatisfied or affected by a decision made by the Commission on an appeal may apply for review and the Commission may admit the application if—</p>

- 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.

(2) An application for review under subregulation (1) shall be in writing and made within six months from the date of the decision to be reviewed.

(3) The Commission may, upon written request, consider an application for review out of time if, in the opinion of the Commission, the circumstances warrant the consideration.

(4) An application for review under these regulations shall be in Form C as set out in the schedule.

(5) The applicant shall serve the respondent with the application under subregulation (1) within seven days after filing the application with the Commission.

(6) The respondent shall file a response to the application for review with the Commission and serve the applicant with a copy thereof within seven days after receipt of the application.

(7) Where the Commission determines that there is need for the parties to the application to file written representations, the provisions of regulation 17(5) shall apply thereto with the necessary modifications.

(8) After considering an application for review, the Commission may

- a) uphold the decision;
- b) set the decision aside;
- c) vary the decision as it considers to be just;
- d) give such directions as it may consider appropriate with respect to the decision;
- e) direct the refund, reinstatement of remuneration or release of any withheld payment due to the public officer as it considers to be just;
- f) direct that disciplinary action be taken against any public officer who has failed to discharge a duty that was the public officer's responsibility to perform in relation to the disciplinary case and the concerned public body has suffered a loss; or

	g) make any other appropriate decision in view of the circumstances of the case.
	(9) The Commission’s decision regarding an application for review shall be made within sixty days after the hearing of the application or receipt of written submissions regarding the application.
	(10) Where a decision is not made within the time prescribed under subregulation (9), the Commission shall notify the parties to the application in writing the reasons for the delay.
Communication of decisions.	23. The Commission shall communicate its decisions on appeal or review to the parties within seven days after making the decision.
PART VI—MISCELLANEOUS PROVISIONS	
Filing of pleadings	24(1) Each party to an appeal shall file with the Commission its pleadings by delivering three copies of the pleadings to the Commission.
	(2) In addition to the copies of the pleadings filed under subregulation (1), each party to an appeal shall electronically file its pleadings through the Commission’s official email address.
	(3) Each party shall file its pleadings with the Commission within the period prescribed by these Regulations or as may be permitted by the Commission by order in writing.
Service of Pleadings and Notices	25. (1) Pleadings or notices may be served by—
	a) hand delivery;
	b) sending it to the last known address of the recipient by registered post or by courier service;
	c) e-mail to the recipient’s last known email address;
	d) advertisement in a daily newspaper with nationwide circulation as may be approved by the Commission in writing; or
	e) Short Message Services and Mobile Application Service as may be approved by the Commission in writing.

	(2) Pleadings or notices shall be deemed to have been delivered or served on the date they are received or stamped by the Commission or recipient as the case may be.
	(3) Where pleadings or notices are delivered in person, the same shall be deemed to have been duly served if acknowledged by signing and dating and, where applicable, stamping.
	(4) Where pleadings or notices are delivered by registered post, they shall be deemed to have been received on the seventh day after dispatch.
	(5) Where pleadings or notices are delivered by courier service, they shall be deemed to have been received on the second day after dispatch.
	(6) Where pleadings or notices are delivered by email, they shall be deemed to have been duly received on the twenty-fourth hour after dispatch.
	(7) An affidavit of service shall be filed by the person sending or serving pleadings or notices accompanied by evidence of service in the prescribed modes.
	(8) The affidavit referred to in subregulation (7) shall be filed with the Commission within seven days of service.
Powers of the Commission in relation to service.	<p>26. Nothing in these Regulations shall affect the power of the Commission, if the circumstances so permit or in the interest of justice, to—</p> <p>a) authorize service of pleadings in a manner that is not expressly provided for in these Regulations; or</p> <p>b) find that pleadings served in a manner not expressly provided for in these regulations have been properly served.</p>
Rights of the parties to an appeal.	<p>27. A party to an appeal filed with the Commission shall have the right to—</p> <p>a) be heard in person;</p> <p>b) be represented by an advocate of the party's choice and at the party's expense;</p>

	<ul style="list-style-type: none"> c) be accompanied by a representative of the relevant trade union or any other person of the party's choice; d) be assisted by an interpreter if the party does not understand the language being used during the proceedings; and e) access information held by the Commission, State Corporation or Public University that may be relevant to the determination of the appeal.
Record of proceedings.	28. The Commission shall keep and maintain an accurate record of its proceedings relating to an appeal.

Stakeholder Views - Receipt of Memoranda

SCHEDULE

FORM A

r.9(3)

PUBLIC SERVICE COMMISSION

THE PUBLIC SERVICE COMMISSION (STATE CORPORATIONS AND PUBLIC UNIVERSITIES DISCIPLINARY APPEALS PROCEDURES) REGULATIONS, 2022

State Corporation/Public University Appeal No. of 20.....

BETWEEN

.....APPELLANT

AND

.....RESPONDENT

APPEAL

The Secretary/CEO
Public Service Commission
P O Box 30095- 00100
NAIROBI

The humble appeal of

.....
.....

(name of appellant)

of P O Box (insert address)..... in the
Republic of Kenya is as follows:

- (a) Name of the appellant:
- (b) Job description:
- (c) Personal number:
- (d) Job group:
- (e) Date of birth:
- (f) Designation:
- (g) Terms of service:

- (h) Name of the respondent:.....

(i) Facts giving rise to the appeal:

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(j) Grounds in support of the appeal:

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(k) Documents to be relied upon in support of the appeal:

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(l) Declaration as to whether there are/or have been any proceedings or decisions by or before any court or tribunal on the same subject matter.

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(m) Reliefs sought.

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Dated at, this Day of 2022

Signed.....
Appellant/Advocate for the Appellant

Drawn and filed by:

Name:

Postal Address:

Email address:

Telephone Number:

To be served upon:

Name:

Postal Address:

Email address:

Telephone Number:

Stakeholder Views - Receipt of Memoranda

SCHEDULE	
FORM B	r. 17(3)
PUBLIC SERVICE COMMISSION	
THE PUBLIC SERVICE COMMISSION (STATE CORPORATIONS AND PUBLIC UNIVERSITIES DISCIPLINARY APPEALS PROCEDURES) REGULATIONS, 2022	
State Corporation/Public University Appeal No. of 20.....	
BETWEEN	
.....APPELLANT	
AND	
.....RESPONDENT	
To:	
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HEARING NOTICE	
TAKE NOTICE THAT your appeal will be heard on the day of 20..... at o'clock in the noon.	
The hearing shall be held at—	
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.....	
TAKE NOTICE THAT should you or someone duly authorized by law fail to appear on your behalf at the time and place above mentioned, the Commission may proceed to hear the appeal and make such determination as it shall deem fit and just, your absence notwithstanding.	
Dated at on this day of20.....	
Signed..... For the Commission	

SCHEDULE	
FORM C	
r. 22(4)	
PUBLIC SERVICE COMMISSION	
THE PUBLIC SERVICE COMMISSION (STATE CORPORATIONS AND PUBLIC UNIVERSITIES DISCIPLINARY APPEALS PROCEDURES) REGULATIONS, 2022	
State Corporation/Public University Application No. of 20.....	
BETWEEN	
.....APPLICANT	
AND	
.....RESPONDENT	
APPLICATION FOR REVIEW (of the Commission's decision dated.....)	
The Secretary/CEO Public Service Commission P O Box 30095- 00100 <u>NAIROBI</u>	
The humble application of (name of applicant)	
of P O Box (insert address)..... in the Republic of Kenya is as follows:	
(a) Facts giving rise to the application:	
(b) State the fresh material facts arising or the error apparent on the face of the decision sought to be reviewed:	

(c) Grounds in support of the application (*explain the fresh material facts or the error apparent on the face of the earlier decision sought to be reviewed*).

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(d) Documents to be relied upon in support of the application:

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(e) Declaration as to whether there are/or have been any proceedings or decisions by or before any court or tribunal on the same subject matter.

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(f) Reliefs sought.

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Dated at, this Day of 2022

Signed.....
Applicant/Advocate for the Applicant

Drawn and filed by:

Name:
Postal Address:
Email address:
Telephone Number:

To be served upon:

Name:

Postal Address:

Email address:

Telephone Number:

Made on the2022

Anthony M. Muchiri,
Chairperson,
Public Service Commission.

Stakeholder Views - Receipt of Memoranda