

LEGAL NOTICE NO.

THE PUBLIC SERVICE COMMISSION ACT

IN EXERCISE of the powers conferred by Section 92(1) of the Public Service Commission Act, 2017 the Public Service Commission makes the following Regulations -

PUBLIC SERVICE COMMISSION (REMOVAL OF THE DIRECTOR OF PUBLIC PROSECUTIONS) REGULATIONS, 2024

PART I — PRELIMINARY

- Citation 1. These Regulations may be cited as Public service Commission (Removal of the Director of Public Prosecutions) Regulations, 2024.
- Purpose 2. The purpose of these Regulations is to regulate the procedure for handling petitions for removal of the Director of Public Prosecutions pursuant to Article 158(2) and (3) of the Constitution.
- Interpretation 3. In these Regulations;-
- 'Act' - means the Public Service Commission Act, 2017.
 - '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. The Commission shall be guided by the following principles:

- a) The promotion of the purposes, values and principles of the Constitution;
- b) Adherence to the rules of natural justice;
- c) Application of the substantive justice that does not rely on the undue regard to technicalities of procedure; and
- d) Timely disposal of petitions.

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.

Grounds for removal

6. The Commission shall, pursuant to the provisions of Article 158(1) of the Constitution, consider petitions on the following grounds;

- 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) misconduct 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;

PART II — PETITIONS

Filing a petition

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

(2) The petition shall be in writing setting out the alleged facts constituting grounds for the removal of the Director.

(3) A petition under these Regulations shall be in form PDPP 1 as set out in the schedule and shall specify—

- (a) The name of the petitioner;
- (b) Grounds in support of the petition;
- (c) Facts in support of the petition;

- (d) Prayers sought;
- (e) Contact details of the petitioner including postal address, email address and telephone number;

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

Petition to be served on the Director

8. (1) A petitioner shall, within three days after filing the petition, serve the Director.

(2) the Director shall, within fourteen days after being served—

- (a) Respond to the petition by filing with the Commission a replying affidavit or grounds of objection;
- (b) Attach to the replying affidavit any relevant records and documents regarding the Petition including any proceedings; and
- (c) Serve the response on the petitioner within three days after filing it at the Commission.

(3) The Petitioner may, where necessary, file a rejoinder within seven days after receipt of the Director's response.

Service of petition and notices

9.(1) Petitions 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) email 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 Messages Services and Mobile Application Service as may be approved by the Commission in writing.

(2) Petitions 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 petitions 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 petitions or notices are delivered by registered post or courier service, they shall be deemed to have been received on the seventh day after dispatch.

(5) Where petitions or notices are delivered by email, they shall be deemed to have been duly received on the twenty-fourth hour after dispatch.

(6) An affidavit of service in form PDDP 2 shall be filed by the person sending or serving petitions or notices accompanied by evidence of service in the prescribed modes.

Withdrawal of a Petition

10. A petitioner may, by written notice to the Commission and the Director, withdraw a petition

Consolidation of petitions

11. The Commission may, on its own motion or on application by a party to a petition, consolidate two or more petitions filed under these regulations on such terms as may be just in the circumstances.

PART III — HEARING

Hearing

12. (1) Pursuant to the provisions of section 12 of the Act, where the Commission establishes a Committee to hear the petition, the quorum of the committee shall be two Commissioners and the recommendations of the committee shall be presented to the Commission for consideration and determination.

(2) The Commission may—

- a. hold hearings before determining a petition; or
- b. receive and consider written submissions from parties before determining the petition.

(3) Where the Commission holds a hearing in respect of a Petition, it shall notify the parties of the date, time and venue of the hearing in PDDP 2 as set out in the Schedule.

(4) The hearing notice under subregulation (3) shall be served on the parties at least seven days before the date of the hearing.

(5) Where the Commission requires written submissions in respect of a Petition, it shall require the parties to make their written submissions in the following manner—

(a) the petitioner shall first file and serve written submissions within fourteen days after the directions of the Commission; and

(b) the Director shall file and serve written submissions within fourteen days after receipt of the petitioner's submissions or upon expiry of the time granted to the petitioner.

(6) The petitioner may, with the leave of the Commission, file supplementary submissions within seven days after receipt of the Director's submissions under subregulation (5) (b).

Parties with special needs.

13. Where a party to a Petition is a person with disability and requires special arrangements for purposes of a hearing, that party shall notify the Commission of that party's requirements at least three days before the date of the hearing.

Absence of parties

14. Where a party to a Petition, after being duly notified of the hearing in accordance with regulation 12, fails to attend the hearing, the Commission may—

(a) adjourn the hearing to another date, which date shall be notified to the parties in accordance with regulation 12; or

(b) if the circumstances of the case warrant it, conduct the hearing in the absence of the absent party.

Decision to be made after hearing or receipt of written submissions.

15. (1) The Commission shall, within fourteen days after the conclusion of a hearing or after receiving written submissions in respect of a Petition, make a decision on the Petition.

(2) Where the Commission considers a petition and is satisfied that it discloses the existence of a ground for removal of the Director under Article 158(1) of the Constitution, the Commission shall send the Petition to the President.

Communication of decisions.

16. The Commission shall communicate its decision regarding a Petition to the parties in writing within seven days after making the decision.

PART IV — MISCELLANEOUS

Time

17. A Petition once received by the Commission shall be processed, heard and determined within a period of ninety (90) days from the date of receipt.

Filing of documents.

18.(1) A document may be filed 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 e-mail.

(2) A document is deemed filed on the date it is received and stamped by the Commission.

(3) The sender of a document shall produce the original document or the transmission report if directed by the Commission.

Powers of the Commission in relation to service of documents.

19. 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.

Rights of the parties

20. The parties have the right to;

- a) be heard in person;
- b) be represented by an advocate of the party's choice and expense;
- c) Be accompanied by 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;

- e) access information, materials and evidence relevant to the petition;
- f) cross examine witnesses;
- g) have adequate time to prepare evidence; and
- h) request for adjournment of the case where necessary for fair hearing.

Records of proceedings.

21. The Commission shall keep and maintain an accurate record of its proceedings relating to a petition, including handwritten or typed transcripts and, where applicable, audio and video recordings.

Revocation
L.N. 168/2017.

22. The Public Service Commission (Removal of the Director of Public Prosecutions) Regulations, 2017 are revoked.

DRAFT

PUBLIC SERVICE COMMISSION
THE PUBLIC SERVICE COMMISSION (REMOVAL OF THE DIRECTOR OF PUBLIC
PROSECUTIONS) REGULATIONS, 2024
PETITION NO. OF 20.....

BETWEEN

..... PETITIONER

AND

..... RESPONDENT

PETITION

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

The humble Petition of
(name of Petitioner) of P.O. Box in
the Republic of Kenya (or any other place) is as follows:

A. Name and description of the Petitioner

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B. Name and description of the Respondent

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C. Facts giving rise to the Petition

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D. Grounds in support of the Petition

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E. List and description of the documents to be relied upon in support of the Petition

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F. Reliefs sought by the Petitioner

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G. Contact details of the Petitioner

(Postal address)

(Email address)

(Phone Number)

DATED at this day of, 20.....

(Signed)

.....

Petitioner/Advocate for the Petitioner

DRAWN & FILED BY:

(Name, Postal address, email address, phone number, etc)

TO BE SERVED UPON:

(Name, Postal address, email address, phone number, etc)

PUBLIC SERVICE COMMISSION
THE PUBLIC SERVICE COMMISSION (REMOVAL OF THE DIRECTOR OF PUBLIC
PROSECUTIONS) REGULATIONS, 2024
PETITION NO. OF 20.....

BETWEEN

..... PETITIONER

AND

..... RESPONDENT

To:

HEARING NOTICE

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

The hearing shall be held at

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TAKE FURTHER 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 Petition and make such determination as it shall deem fit and just,
your absence notwithstanding.

DATED at this day of, 20

Signed:
For the Commission

ANTHONY M. MUCHIRI,
CHAIRPERSON,
PUBLIC SERVICE COMMISSION.