



LAWS OF KENYA

VETTING OF JUDGES AND MAGISTRATES ACT

No. 2 of 2011

Revised Edition 2012 [2011]

Published by the National Council for Law Reporting
with the Authority of the Attorney-General

www.kenyalaw.org

NO. 2 OF 2011

VETTING OF JUDGES AND MAGISTRATES ACT

ARRANGEMENT OF SECTIONS

PART I – PRELIMINARY

Section

1. Short title.
2. Interpretation.
3. Object and purpose of the Act.
4. Application.
5. Guiding principles.

PART II – ESTABLISHMENT, MEMBERSHIP, FUNCTIONS AND POWERS OF THE
JUDGES AND MAGISTRATES VETTING BOARD

6. Establishment of the Board.
7. Membership of the Board.
8. Qualifications for appointment.
9. Procedure for appointment of members.
10. Election of deputy chairperson.
11. Functions of chairperson.
12. Tenure and vacancy of office of chairperson and members.
13. Function of the Board.
14. Powers of the Board.
15. Secretary and secretariat.
16. Assisting counsel and staff.

PART III – VETTING PROCEDURES

17. Panels.
18. Relevant considerations.
19. Vetting procedure.
20. Order of priority.
21. Determination.
22. Review.

PART IV – GENERAL

23. Time frame.
24. Voluntary retirement and terminal benefits.
25. Allowances for members.
26. Annual estimates.
27. Funds of the Board.
28. Accounts and audit.
29. Protection from personal liability.
30. Oath or affirmation of office.

Section

- 31. Disclosure of personal interest.
- 32. Conflict of interest.
- 33. Inherent powers of the Board.

SCHEDULE – OATH/AFFIRMATION OF THE OFFICE OF CHAIRPERSON/
DEPUTY CHAIRPERSON/MEMBER/SECRETARY

NO. 2 OF 2011

VETTING OF JUDGES AND MAGISTRATES ACT

[Date of assent: 21st March, 2011.]

[Date of commencement: 22nd March, 2011.]

An Act of Parliament to provide for the vetting of judges and magistrates pursuant to section 23 of the Sixth Schedule to the Constitution; to provide for the establishment, powers and functions of the Judges and Magistrates Vetting Board, and for connected purposes

[Act 6 of 2011, Act No. 12 of 2012.]

PART I – PRELIMINARY

1. Short title

This Act may be cited as the Vetting of Judges and Magistrates Act, 2011.

2. Interpretation

In this Act, unless the context otherwise requires—

“**Board**” means the Judges and Magistrates Vetting Board established by section 6;

“**chairperson**” means the chairperson of the Board appointed under section 9;

“**deputy chairperson**” means the deputy chairperson of the Board elected under section 10;

“**effective date**” means the 27th August of 2010;

“**judge or magistrate**” means a judge or magistrate to whom this Act applies in accordance with section 3, and includes the Registrar of the High Court and the Chief Court Administrator and their deputies, and persons seconded to administrative tribunals, in their capacity as judges or magistrates;

“**member**” means a member of the Board appointed under section 9, and includes the chairperson and the deputy chairperson;

“**Minister**” means the Minister for the time being responsible for matters relating to the Judiciary;

“**pending complaint**” means a complaint filed or registered with any person or body mentioned in section 18(e) at least fourteen days before the judge or magistrate is vetted;

“**secretary**” means the secretary of the Board appointed under section 15;

“**vetting**” means the process by which the suitability of a serving judge or magistrate to continue serving in the Judiciary is determined in accordance with this Act.

[Act No. 6 of 2011, s. 2.]

3. Object and purpose of the Act

The object and purpose of this Act is to establish mechanisms and procedures for the vetting of judges and magistrates pursuant to the requirements of section 23 of the Sixth Schedule to the Constitution.

4. Application

For the avoidance of doubt, the provisions of this Act shall apply only to persons who were serving as judges or magistrates and who were in office on or before the effective date.

5. Guiding principles

In the exercise of its powers or the performance of its functions under this Act, the Board shall at all times, be guided by the principles and standards of judicial independence, natural justice and international best practice.

PART II – ESTABLISHMENT, MEMBERSHIP, FUNCTIONS AND POWERS OF THE JUDGES AND MAGISTRATES VETTING BOARD

6. Establishment of the Board

(1) There is established an independent board to be known as the Judges and Magistrates Vetting Board.

(2) The Board shall be a body corporate with perpetual succession and a common seal and shall, in its corporate name, be capable of—

- (a) suing and being sued;
- (b) taking, purchasing or otherwise acquiring, holding, charging or disposing of movable and immovable property; and
- (c) doing or performing all such other things or acts for the proper discharge of its functions under the Constitution and this Act as may be lawfully done or performed by a body corporate.

(3) The provisions of the State Corporations Act (Cap. 446) shall not apply to the Board.

7. Membership of the Board

The Board shall consist of nine members, comprising a chairperson, a deputy chairperson and seven other members, of whom—

- (a) six shall be citizens of Kenya appointed in accordance with section 9 (1) to (12) and of whom three shall be lawyers; and
- (b) three shall be non-citizens of Kenya appointed in accordance with section 9(13).

8. Qualifications for appointment

(1) A person shall be qualified for appointment as a member if such person—

- (a) holds a degree from a university recognised in Kenya;

- (b) has at least fifteen years' distinguished post qualification experience in their field of study; and
- (c) satisfies the requirements of Chapter Six of the Constitution.

(2) A person shall not be qualified for appointment as the chairperson or deputy chairperson unless such person has at least twenty years' or an aggregate of twenty years' experience as a judge of a superior court, a distinguished legal academic, a judicial officer or other relevant legal practice in the public or the private sector in Kenya.

(3) A person shall not be qualified for appointment as a member if such person—

- (a) is a member of—
 - (i) Parliament; or
 - (ii) a local authority; or
 - (iii) the executive organ of a political party; or
- (b) was serving as a judge or magistrate in Kenya on the effective date.

9. Procedure for appointment of members

(1) The President, in consultation with the Prime Minister and with the approval of the National Assembly, shall appoint the nine members of the Board in accordance with the procedure set out in this section.

(2) Within seven days of the commencement of this Act, the President, in consultation with the Prime Minister shall, by notice in the *Gazette* and in at least two newspapers of national circulation, declare vacancies in the Board under section 7(a) and call for applications.

(3) An application in respect of a vacancy declared under subsection (2) shall be forwarded to the Public Service Commission within fourteen days of the publication of the notice and may be made by—

- (a) any qualified person; or
- (b) any person, organisation or group of persons proposing the nomination of any qualified person.

(4) The names of all applicants under subsection (3) shall be published in the *Gazette*.

(5) The Public Service Commission shall, within seven days of the expiry of the period prescribed under subsection (3), convene a selection Committee comprising one representative each of the—

- (a) Cabinet Office;
- (b) Office of the Prime Minister;
- (c) Ministry for the time being responsible for matters relating to the Judiciary;
- (d) office of the Attorney-General;
- (e) Ministry for the time being responsible for matters relating to the public service;

- (f) Public Service Commission;
- (g) Judicial Service Commission, not being a serving judge or magistrate; and
- (h) Law Society of Kenya,

for the purpose of considering the applications, interviewing and selecting at least three candidates qualified for appointment as chairperson and eighteen candidates, of whom at least six shall be lawyers, qualified for appointment as members:

Provided that not more than two-thirds of the candidates shall be of one gender.

(6) The Public Service Commission shall, within seven days of the selection of candidates under subsection (5), forward the names of the selected candidates to the President and the Prime Minister for nomination.

(7) The President, in consultation with the Prime Minister shall, within seven days of receipt of the names of the selected candidates under subsection (6), nominate a chairperson and five other persons for appointment as members of the Board and forward the names to the National Assembly.

(8) The National Assembly shall, within fourteen days of the receipt of the nominees under subsection (7), consider all the nominations received and may approve or reject any nomination.

(9) Where the National Assembly—

- (a) approves the nominees, the Speaker shall, within three days of the approval, forward the names of the approved nominees to the President for appointment;
- (b) rejects any nomination, the Speaker shall, within three days of the rejection, communicate the decision to the President, who in consultation with the Prime Minister, shall submit a fresh nominee from amongst the candidates selected and forwarded by the Public Service Commission under subsection (6).

(10) If the National Assembly rejects all or any subsequent nominee submitted by the President for approval under subsection (9), the provisions of subsections (1) to (8) shall, with necessary modifications, apply.

(11) The President shall, within seven days of the receipt of the approved nominees from the National Assembly, by notice in the *Gazette*, appoint the chairperson and members approved by the National Assembly.

(12) In selecting, nominating, approving or appointing the chairperson and members of the Board, the selection Committee, the National Assembly, the President and the Prime Minister shall ensure that the Board reflects the regional and ethnic diversity of the people of Kenya and not more than two-thirds of the members are of the same gender.

(13) The President, in consultation with the Prime Minister and subject to the approval of the National Assembly shall, in respect of the vacancies in the Board under section 7(b), appoint three distinguished non-citizen serving or retired judges, each of whom has served as a Chief Justice or judge of a superior court in the Commonwealth, to be members of the Board.

(14) Despite the foregoing provisions of this section, the President, in consultation with the Prime Minister may, by notice in the *Gazette*, extend the period specified in respect of any matter under this section by a period not exceeding twenty-one days.

[Act No. 6 of 2011, s. 3.]

10. Election of deputy chairperson

(1) The chairperson shall, within seven days of the appointment of the members, convene the first meeting of the Board at which the members shall elect the deputy chairperson of the Board from amongst their number.

(2) The chairperson and the deputy chairperson shall be of opposite gender.

11. Functions of chairperson

(1) The chairperson shall—

- (a) preside over all meetings of the Board;
- (b) be the spokesperson of the Board; and
- (c) supervise and direct the work of the Board.

(2) In the absence of the chairperson, the deputy chairperson shall perform the functions of the chairperson under subsection (1).

12. Tenure and vacancy of office of chairperson and members

(1) The term of office of the chairperson or a member shall be from the date of appointment and shall, unless the office falls vacant earlier owing to any reason specified in the Constitution or in subsection (2), terminate on the dissolution of the Board.

(2) The office of the chairperson or a member shall become vacant if the holder—

- (a) dies;
- (b) by a notice in writing addressed to the President, resigns from office;
- (c) is removed from office under subsection (3);
- (d) is convicted of an offence and sentenced to imprisonment for a term of six months or more, without the option of a fine;
- (e) is unable to discharge the functions of his office by reason of physical or mental infirmity;
- (f) is absent from three consecutive meetings of the Board without good cause; or
- (g) is adjudged bankrupt.

(3) The chairperson or a member may be removed from office for misbehaviour or misconduct incompatible with the functions of the Board.

(4) The President shall notify every resignation, vacancy or removal from office in the *Gazette* within seven days thereof.

(5) Where a vacancy occurs in the membership of the Board, the President shall, in consultation with the Prime Minister, nominate a candidate from the list of candidates forwarded by the Public Service Commission under section 9(6), for approval by the National Assembly.

(6) A member appointed to fill a vacancy under this section shall serve for the unexpired term of the member in respect of whom the vacancy arose.

13. Function of the Board

The function of the Board shall be to vet judges and magistrates in accordance with the provisions of the Constitution and this Act.

14. Powers of the Board

(1) Subject to section 18, the Board shall have all the powers necessary for the execution of its functions under the Constitution and this Act, and without prejudice to the generality of the foregoing, the Board shall have the power to—

- (a) gather relevant information, including requisition of reports, records, documents or any information from any source, including governmental authorities, and to compel the production of such information as and when necessary;
- (b) interview any individual, group or members of organisations or institutions and, at the Board's discretion, to conduct such interviews; and
- (c) hold inquiries for the purposes of performing its functions under this Act.

(2) In the performance of its function, the Board—

- (a) may inform itself in such manner as it thinks fit;
- (b) may receive on oath, written or oral statements;
- (c) shall not be bound by strict rules of evidence; and
- (d) shall not be subject to the direction or control of any person or authority.

15. Secretary and secretariat

(1) There shall be a secretariat of the Board which shall be headed by a secretary who shall be competitively recruited and appointed by the Board in accordance with this section.

(2) No person shall be qualified for appointment as a secretary unless such person—

- (a) holds at least a degree from a university recognised in Kenya;
- (b) has at least ten years' post-qualification experience;
- (c) has demonstrated competence in the performance of administrative duties for not less than five years; and
- (d) was not serving as a judge or magistrate on the effective date.

(3) The secretary shall be the administrator of the secretariat and shall serve on a full-time basis.

(4) The secretary shall, among other things, be responsible to the chairperson for—

- (a) the day to day administration of the affairs of the Board;

- (b) the co-ordination of the Board's studies, reviews, research and evaluations;
- (c) the recording of the Board's proceedings;
- (d) providing the Board with accurate information on the status of facilities and services required for the proper conduct of the vetting process;
- (e) securing the maintenance and provision of facilities and services required for the discharge of the Board's functions;
- (f) providing the Board with accurate records and information regarding the judges and magistrates undergoing vetting;
- (g) maintaining accurate records on financial matters and resource use;
- (h) ensuring the drawing up and approval of the required budget;
- (i) the custody of all records and documents of the Board; and
- (j) performing any other duties as may be assigned by the Board from time to time.

(5) Subject to the provisions of the Constitution or any other written law, the Board may delegate such of its functions as are necessary for the day to day management of its processes.

16. Assisting counsel and staff

(1) The staff of the Board shall comprise of—

- (a) such number of assisting counsel and staff as the Board may appoint to assist it in the discharge of its functions under the Constitution and this Act; and
- (b) such public officers as may, upon the request of the Board, be seconded to the Board.

(2) A public officer who is seconded to the Board under subsection (1) shall, during the secondment, be deemed to be an officer of the Board and subject to its direction and control.

PART III – VETTING PROCEDURES

17. Panels

(1) The chairperson may, in order to ensure expeditious disposal of matters, constitute three panels comprising three members each, which shall work concurrently.

(2) The chairperson shall ensure that each panel constituted under subsection (1) consists of at least a non-citizen serving or retired judge, a lawyer and a non-lawyer.

18. Relevant considerations

(1) The Board shall, in determining the suitability of a judge or magistrate, consider—

- (a) whether the judge or magistrate meets the constitutional criteria for appointment as a judge of the superior courts or as a magistrate;

- (b) the past work record of the judge or magistrate, including prior judicial pronouncements, competence and diligence;
- (c) any pending or concluded criminal cases before a court of law against the Judge or Magistrate;
- (d) any recommendations for prosecution of the Judge or Magistrate by the Attorney-General or the Kenya Anti-Corruption Commission; and
- (e) pending complaints or other relevant information received from any person or body, including the—
 - (i) Law Society of Kenya;
 - (ii) Kenya Anti-Corruption Commission;
 - (iii) Advocates Disciplinary Committee;
 - (iv) Advocates Complaints Commission;
 - (v) Attorney-General;
 - (vi) Public Complaints Standing Committee;
 - (vii) Kenya National Human Rights and Equality Commission;
 - (viii) National Intelligence Service;
 - (ix) Police; or
 - (x) Judicial Service Commission.

(2) In considering the matters set out in subsection (1)(a) and (b), the Board shall take into account the following—

- (a) professional competence, the elements of which shall include—
 - (i) intellectual capacity;
 - (ii) legal judgment;
 - (iii) diligence;
 - (iv) substantive and procedural knowledge of the law;
 - (v) organisational and administrative skills; and
 - (vi) the ability to work well with a variety of people;
- (b) written and oral communication skills, the elements of which shall include—
 - (i) the ability to communicate orally and in writing;
 - (ii) the ability to discuss factual and legal issues in clear, logical and accurate legal writing; and
 - (iii) effectiveness in communicating orally in away that will readily be understood and respected by people from all walks of life;
- (c) integrity, the elements of which shall include—
 - (i) a demonstrable consistent history of honesty and high moral character in professional and personal life;
 - (ii) respect for professional duties, arising under the codes of professional and judicial conduct; and
 - (iii) ability to understand the need to maintain propriety and the appearance of propriety;

- (d) fairness, the elements of which shall include—
 - (i) a demonstrable ability to be impartial to all persons and commitment to equal justice under the law; and
 - (ii) open-mindedness and capacity to decide issues according to the law, even when the law conflicts with personal views;
- (e) temperament, the elements of which shall include—
 - (i) demonstrable possession of compassion and humility;
 - (ii) history of courtesy and civility in dealing with others;
 - (iii) ability to maintain composure under stress; and
 - (iv) ability to control anger and maintain calmness and order;
- (f) good judgment, including common sense, elements of which shall include a sound balance between abstract knowledge and practical reality and in particular, demonstrable ability to make prompt decisions that resolve difficult problems in a way that makes practical sense within the constraints of any applicable rules or governing principles;
- (g) legal and life experience, the elements of which shall include—
 - (i) the amount and breadth of legal experience and the suitability of that experience for the position, including trial and other courtroom experience and administrative skills; and
 - (ii) broader qualities reflected in life experiences, such as the diversity of personal and educational history, exposure to persons of different ethnic and cultural backgrounds, and demonstrable interests in areas outside the legal field; and
- (h) demonstrable commitment to public and community service, the elements of which shall include the extent to which a judge or magistrate has demonstrated a commitment to the community generally and to improving access to the justice system in particular.

19. Vetting procedure

(1) The Board shall consider information gathered in the course of personal interviews with the affected judges and magistrates as well as their records.

(2) All information obtained by the Board during personal interviews and records of the Judge or Magistrate being vetted shall be confidential.

(3) Every judge or magistrate to be vetted shall be given sufficient notice.

(4) The notice referred to under subsection (3) shall include a summary of complaints, if any, against the Judge or Magistrate.

(5) The hearing by the Board shall not be conducted in public, unless the concerned judge or magistrate requests a public hearing.

(6) The rules of natural justice shall apply to the Board's proceedings.

20. Order of priority

The first judges and magistrates to be vetted shall be the Court of Appeal Judges, followed by Judges of the High Court, the Registrar of the High Court, the Chief Court Administrator, Chief Magistrates and others magistrates, in that order.

21. Determination

(1) The Board shall, upon determining the unsuitability of a judge or magistrate to continue serving in the Judiciary, within thirty days of the determination, inform the concerned judge or magistrate of the determination, in writing, specifying the reasons for the determination.

(2) Once informed of the decision under subsection (1), the Judge or Magistrate shall, subject to section 22, be deemed to have been removed from service.

(3) The decision to remove a judge or magistrate from service shall be made public.

22. Review

(1) A judge or magistrate who has undergone the vetting process and is dissatisfied with the determination of the Board may request for a review by the same panel within seven days of being informed of the final determination under section 21(1).

(2) The Board shall not grant a request for review under this section unless the request is based—

- (a) on the discovery of a new and important matter which was not within the knowledge of, or could not be produced by the Judge or Magistrate at the time the determination or finding sought to be reviewed was made, provided that such lack of knowledge on the part of the Judge or Magistrate was not due to lack of due diligence; or
- (b) on some mistake or error apparent on the face of the record.

(3) The decision by the Board under this section shall be final.

PART IV – GENERAL**23. Time frame**

(1) The vetting process once commenced shall not exceed a period of one year, save that the National Assembly may, on the request of the Board, extend the period for not more than one year.

(2) The Board shall be divided into three panels for purposes of vetting, and the three panels shall vet the judges simultaneously while the Judicial Service Commission shall vet the Magistrates.

(3) The vetting process once commenced shall be concluded not later than the 28th February, 2013, and any review of the decision of the Board or of the Judicial Service Commission shall be heard and concluded within the above specified period.

(4) The Board shall stand dissolved within thirty days of the execution of its mandate upon which this Act shall lapse.

(5) During the period prescribed in subsection (4), the Board shall ensure that its affairs are wound up in an orderly manner and, in particular, shall ensure that—

- (a) those aspects of its work that will be of value to other institutions are preserved, documented and transferred to the relevant institutions; and
- (b) its files and records are preserved and transferred to the Kenya National Archives and Documentation Service.

[Act No. 12 of 2012, Sch.]

24. Voluntary retirement and terminal benefits

(1) A judge or magistrate shall, within three months of the commencement of this Act, elect—

- (a) whether to be subjected to the vetting process; or
- (b) to leave the judicial service voluntarily.

(2) A judge or magistrate who elects to leave the judicial service voluntarily or is found unsuitable after vetting shall be entitled to terminal benefits for early retirement.

(3) For the avoidance of doubt, a judge or magistrate who voluntarily leaves service or is found unsuitable after vetting shall be deemed qualified for early retirement.

25. Allowances for members

The Board shall pay to its members such allowances for expenses as may be determined by the Minister in charge of finance.

26. Annual estimates

(1) The financial year of the Board shall be the period of twelve months ending on the 30th of June in each year.

(2) At least three months before the commencement of each financial year, the Board shall cause estimates of the expenditure of the Board for that year to be prepared and submitted to the Minister who shall present them for consideration and approval by the National Assembly.

(3) The annual estimates shall make provision for all the estimated expenditure of the Board for that year.

27. Funds of the Board

(1) The expenses incurred by the Board in accordance with this Act shall be charged on and issued out of the Consolidated Fund and the appropriation for the expenses shall be included in the Appropriation Bill introduced in the National Assembly to authorise the withdrawal from the Consolidated Fund.

(2) Without prejudice to subsection (1), there may be made to the Board grants, gifts, donations or bequests towards the achievement of the objects of the vetting process specified in section 3.

(3) The Board shall not accept any grant, gift, donation or bequest made on any condition that the Board performs any function or discharges any duty or obligation other than duties under this Act.

28. Accounts and audit

(1) The Board shall cause to be kept proper books and records of accounts of its income, expenditure, assets and liabilities.

(2) The annual accounts of the Board shall be prepared, audited and reported upon in accordance with the Public Audit Act, 2003 (No. 12 of 2003).

29. Protection from personal liability

(1) No matter or thing done by a member of the Board, or any officer, employee or agent of the Board shall, if the matter or thing is done in good faith for executing the functions, powers or duties of the Board, render the member, officer, employee or agent personally liable to any action claim or demand whatsoever.

(2) The provisions of subsection (1) shall not relieve the Board of liability to pay compensation for damage to any person for any personal or proprietary interest sustained by the person as a result of the exercise of any power conferred by this Act or by the failure, whether wholly or partially, of any works.

30. Oath or affirmation of office

The chairperson, the deputy chairperson, the members and the secretary shall, before assuming office, make and subscribe, before the Chief Justice, the respective oath or affirmation prescribed in the Schedule.

31. Disclosure of personal interest

(1) A member of the Board who has a direct or indirect personal interest in a matter being considered or to be considered by the Board shall, as soon as reasonably practicable after the relevant facts concerning the matter have come to their knowledge, disclose the nature of the interest to the Board.

(2) A disclosure of any such interest in a matter shall be recorded in the minutes of the meeting of the Board and the member shall not be present while that matter is being dealt with by the Board and shall not take part in any deliberations or vote relating to the matter.

32. Conflict of interest

A person who serves on the Board as the chairperson, deputy chairperson, member or secretary shall be precluded from being appointed as a judge or judicial officer for a period of five years from the close of the vetting process.

33. Inherent powers of the Board

(1) Subject to the provisions of this Act, the Board may regulate its own procedure and make regulations generally for the better carrying into effect the provisions of this Act.

(2) Without prejudice to the generality of subsection (1), such regulations may provide for among others—

- (a) the conduct of the Board's operations and proceedings;

- (b) the manner of receiving and processing complaints;
- (c) any summary procedure the Board may adopt under sections 19 and 23; and
- (d) the steps that may be taken by the Board before a determination.

(3) The chairperson may issue directions for the just, efficient and economical determination of proceedings in relation to the procedures provided for by the regulations made under subsection (1).

(4) Nothing in this Act shall limit or otherwise affect the power of the Board conferred by the Constitution or under this Act, either on its own motion or on the application of a judge or magistrate, to make such orders as may be necessary for the ends of justice or to prevent abuse of the process of the Board.

SCHEDULE

[Section 30.]

OATH/AFFIRMATION OF THE OFFICE OF CHAIRPERSON/DEPUTY
CHAIRPERSON/ MEMBER/SECRETARY

I having been appointed (the Chairperson/Deputy Chairperson/Member/Secretary) of the Judges and Magistrates Vetting Board under the Vetting of Judges and Magistrates Act, 2011, do solemnly (swear/declare and affirm) that I will at all times obey, respect and uphold the Constitution of Kenya and all other laws of the Republic; that I will faithfully and fully, impartially and to the best of my ability, discharge the trust and perform the functions and exercise the powers devolving upon me by virtue of this appointment without fear, favour, bias, affection, ill-will or prejudice.

(SO HELP ME GOD).

Sworn/Declared by the said

Before me this day of

.....
Chief Justice

NO. 2 OF 2011

VETTING OF JUDGES AND MAGISTRATES ACT

SUBSIDIARY LEGISLATION

List of Subsidiary Legislation

	<i>Page</i>
1. Vetting of Judges And Magistrates (Procedure) Regulations, 2011	21
2. Vetting Board Extension of Period, 2011	

**VETTING OF JUDGES AND MAGISTRATES
(PROCEDURE) REGULATIONS**

ARRANGEMENT OF REGULATIONS

Regulation

1. Citation.
 2. Purpose.
 3. Interpretation.
 4. Purposes and principles of the Constitution and substantive justice to apply.
 5. Saving of inherent powers of the Board.
 6. Chairperson to co-ordinate work of the Board.
 7. All matters arising from the vetting process to be heard.
 8. Board to call for complaints and other relevant information.
 9. All matters arising from vetting process to be heard.
 10. Judge or magistrate to complete questionnaire on suitability to serve in Judiciary.
 11. Preservation and inspection of property.
 12. Board may make pre-trial orders or directions.
 13. Judge or magistrate, when in default in relation to vetting proceedings.
 14. Consequences of default.
 15. Board may adjourn proceedings or make final determination if judge or magistrate absent.
 16. Complainant to personally attend proceedings.
 17. Requirements as to delivery of documents to the Board.
 18. Sittings of the Board, when and where held.
 19. Extension of time.
 20. Powers of the Board in relation to service.
 21. Representation by Advocate.
 22. Decisions of the Board to be in writing.
 23. Board may proceed in absence of a judge or magistrate.
 24. Absence of a Board member.
 25. Board to keep full records of proceedings.
-

[Subsidiary]

**VETTING OF JUDGES AND MAGISTRATES
(PROCEDURE) REGULATIONS**

[L.N. 189/2011, L.N. 10/2012.]

1. Citation

These Regulations may be cited as the Vetting of Judges and Magistrates (Procedure) Regulations, 2011.

2. Purpose

The purpose of these Regulations is to regulate the procedures of the Judges and Magistrates Vetting Board for the better carrying into effect the provisions of the Act and to provide a fair and just vetting process for the Judges and Magistrates.

3. Interpretation

In these Regulations—

“**Act**” means the Vetting of Judges and Magistrates Act, 2011;

“**Board**” means the Judges and Magistrates Vetting Board established under section 6 of the Act and includes a Panel or a Member where the context so requires;

“**Chairperson**” means the Chairperson of the Board appointed under section 9 of the Act, or any person for the time being designated to act as chairperson;

“**Constitution**” means the Constitution of the Republic of Kenya promulgated on 27th August, 2010;

“**document**” includes any written, printed, or electronic matter that provides information or evidence or that serves as an official record in respect of any proceedings before the Board;

“**Judiciary**” means the structure and system of courts, tribunals and courts martial established under Chapter Ten of the Constitution and shall for the purposes of these Regulations include the Judicial Service Commission and such other adjudicative body as may be established under Article 169(1)(d) of the Constitution;

“**member of the public**” means any person not contemplated by section 18 (1)(e) of the Act and includes a natural person, a company or association or body of persons incorporated or unincorporated;

“**panel**” means a division of the Board and shall include at least a non-citizen serving or retired judge, a lawyer and a non-lawyer;

“**party**” means a party to any proceedings under the Act and includes a person claiming through or under a party;

“**pending complaint**” means a complaint and or any adverse information filed or registered with any person or body referred to in section 18(1)(e) of the Act;

“**response**” means the formal expression of an answer to the summary of a complaint against a judge or magistrate;

“**Secretary**” means the Secretary of the Board and includes any person empowered to carry out the functions of the Secretary;

“**Secretariat**” means the secretariat of the Board;

“**vetting**” means the process by which the suitability of a serving judge or magistrate to continue serving in the Judiciary is determined as provided in the Act.

4. Purposes and principles of the Constitution and substantive justice to apply

(1) The procedure to be followed by the Board shall be as provided in these Regulations.

(2) The Board shall be guided by the following principles in fulfilling its mandate.

- (a) the purposes, values and principles of the Constitution shall be protected and promoted;
- (b) justice shall be done to all, irrespective of status; and
- (c) all matters before the Board shall be decided according to substantive justice, without undue regard to technicalities of procedure and without undue delay.

5. Saving of inherent powers of the Board

Nothing in these Regulations shall limit or otherwise affect the inherent power of the Board either on its own motion or on the application of judge or magistrate to make such orders as may be necessary for the fair and expeditious disposal of a case or to do justice to the parties, or to prevent an abuse of its process.

6. Chairperson to co-ordinate work of the Board

The Chairperson shall co-ordinate the work of the Board and shall be responsible for—

- (a) constituting of such Panel or Panels of the Board as shall be necessary for the fair and expeditious disposal of the business of the Board;
- (b) assigning the business of the Board to the members;
- (c) overseeing and generally directing the operations of the Board; and
- (d) such other functions as are necessary for the attainment of the mandate conferred by the Constitution and the Act.

7. All matters arising from the vetting process to be heard

(1) The Board shall hear and determine all matters arising from the vetting process and maintain a file or record relating to each judge or magistrate.

(2) An objection alleging that the Board is exceeding the scope of its jurisdiction shall be raised as soon as the matter alleged to be beyond the scope of its jurisdiction arises in the proceedings.

8. Board to call for complaints and other relevant information

(1) Subject to sub-regulation (3) the Board shall, as soon as is reasonably practicable—

- (a) write to each person or body referred to in section 18(1)(e) of the Act and to such other person or body as it may consider necessary seeking information on the existence of any complaint or other relevant information filed with such person or body against a judge or magistrate; and
- (b) place an advertisement in at least two daily newspapers with nationwide circulation inviting members of the public to file any complaints or other relevant information against the Judges or Magistrates within the period specified in the advertisement.

(2) The Board shall specify the period within which any person or body referred to in section 18 (1)(e) of the Act shall confirm the existence of any complaint or other relevant information filed with such person or body against a judge or magistrate.

[Subsidiary]

(3) Notwithstanding regulation 12(2), where there are reasonable grounds to believe that there exists a complaint or other relevant information against a judge or magistrate filed with a person or body referred to in section 18(1)(e) of the Act and that such complaint or information has not, after the expiry of the period specified by the Board, been brought to the attention of the Board, the Board may issue a summons to the person or principal officer of the body, with a view to satisfying itself of the existence or non-existence of such complaint or other information.

(4) A complaint by any person or body other than the persons or bodies referred to in by section 18(1)(e) of the Act shall be in Form JMVB 1 set out in the Schedule.

9. All matters arising from vetting process to be heard

(1) Any notices issued under these Regulations shall be served upon a judge or magistrate—

- (a) through personal service;
- (b) through the Chief Registrar of the Judiciary; or
- (c) through advertising in at least two daily newspapers with nationwide circulation:

Provided that the advertised version of the Notice to appear may be collectively addressed to a number of judges or magistrates.

(2) Where a Notice is served through an advertisement, a copy of the newspaper advertisements shall be placed in the file of the Judge or Magistrate concerned.

(3) Where a Notice is served personally or through the Chief Registrar, the Secretary shall record the same in the file of the Judge or Magistrate concerned stating the time and manner in which the Notice was served.

(4) A judge or magistrate shall file a notice of address of service in Form JMVB 3 set out in the Schedule.

10. Judge or magistrate to complete questionnaire on suitability to serve in Judiciary

(1) A judge or magistrate who is subject to vetting shall fully and truthfully supply all the information required regarding their suitability to continue serving in the Judiciary in Form JMVB 5 set out in the Schedule.

(2) Where a complaint or any adverse information has been received by the Board against a judge or magistrate, the summary of the complaint (or complaints, as the case may be) shall be served upon the Judge or Magistrate in Form JMVB 2 set out in the Schedule.

(3) *Response to complaint.*—Where a summary of the complaint or complaints has been served, the Judge or Magistrate shall lodge a response within the period specified by the Board in the notice.

(4) *Response to be in summary form.*—The response shall contain a summary of the material facts, on which the Judge or Magistrate wishes to rely in answer to the complaint or complaints, which shall be as brief as the nature of the case admits:

Provided that the Judge or Magistrate may annex to the response true certified copies of any documentary evidence.

(5) A judge or magistrate who wishes to cross-examine any of the persons who have lodged a complaint shall indicate the intention at the time of lodging the response.

(6) *Time for lodging questionnaire and response.*—The questionnaire on Pertinent Information Regarding Suitability to Continue Serving in the Judiciary and the response to the summary of complaint or complaints shall be lodged with the Board within the period specified in the notice.

11. Preservation and inspection of property

Subject to the Act, the Board may make any order for the purpose of preserving, inspecting, staying and preventing the wasting, damaging, alienation, sale, removal, or disposition of any property or evidence relating to any proceedings before the Board.

12. Board may make pre-trial orders or directions

The Board may make orders—

- (a) requiring a judge or magistrate to appear before it on a date or time specified in a notice to appear in Form JMVB 4 set out in the Schedule.
- (b) for the filing and admissibility of documents that it considers irrelevant, frivolous or lacking in probative value;
- (c) for the filing of written submissions; and
- (d) for any other matter that the Board considers appropriate, without prejudice to the Board's power as may be necessary for the ends of justice or to prevent abuse of its process.

13. Judge or magistrate, when in default in relation to vetting proceedings

A judge or magistrate is in default if they fail to—

- (a) comply with a notice of the Board;
- (b) file or serve a document as directed by the Board or as required under these Regulations; or
- (c) do any act required to be done by these Regulations.

14. Consequences of default

If a judge or magistrate is in default, the Board may make such orders as the circumstances require.

15. Board may adjourn proceedings or make final determination if judge or magistrate absent

Without prejudice to section 33(4) of the Act, if a judge or magistrate is absent during the hearing of the vetting proceedings, the Board may—

- (a) adjourn the hearing to a specific date; or
- (b) hear and make a final determination on the vetting proceedings in relation to the Judge or Magistrate.

16. Complainant to personally attend proceedings

A person who has lodged a complaint against a judge or magistrate, may be required to attend the vetting proceedings as may be determined by the Board.

17. Requirements as to delivery of documents to the Board

(1) A document may be lodged at the Secretariat by—

- (a) delivering it to the registry; or
- (b) sending it to the registry by registered post, or by courier service providing proof of delivery; or
- (c) with fax or by e-mail with the permission of the Board.

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

[Subsidiary]

(3) The sender of a document to the registry by fax shall produce the original document or the transmission report if directed by the Board.

18. Sittings of the Board, when and where held

The Board shall sit at such times and place as it may determine.

19. Extension of time

A time fixed by these Regulations or by any decision of the Board may be extended with leave of the Board.

20. Powers of the Board in relation to service

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

- (a) authorise 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.

21. Representation by Advocate

(1) A judge or magistrate may be represented by an advocate at their own expense.

(2) Representation by an advocate shall not dispense with the personal attendance of the Judge or Magistrate during the vetting proceedings.

22. Decisions of the Board to be in writing

(1) The decisions of the Board shall be recorded in writing, signed by the Panel who heard the matter and sealed.

(2) Where a panellist is, for reasons beyond the control of the Board, is unable to sign the decision, the reason shall be recorded, and the decision signed by the other panellists.

23. Board may proceed in absence of a judge or magistrate

The Board may determine any vetting proceedings in the absence of the Judge or Magistrate if it considers it appropriate and in the interests of justice to do so.

24. Absence of a Board member

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

25. Board to keep full records of proceedings

The Board 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 JMVB. 1

(r. 8(4))

PRIVATE AND CONFIDENTIAL

THE JUDGES AND MAGISTRATES VETTING BOARD

FORM FOR SUBMITTING INFORMATION

SECTION ONE: CONTACT DETAILS

(Please complete in block letters)

- 1. (a) Full name
- (b) Identification No.
- 2. Address
- 3. Telephone
- 4. Any Other Contact Details

Submissions of information relating to a judge or magistrate is NOT restricted to a person or body directly affected and may be availed by anyone who wishes to submit information that is relevant to the Board to consider.

SECTION TWO: DETAILS OF JUDGE OR MAGISTRATE TO WHOM INFORMATION RELATES

- 5. Name of the Judge or Magistrate
- 6. Station serving presently
- Station serving at when complaint arose
- 7. Postal and Physical Address (If known)
- 8. Telephone numbers (If known)
- 9. Are you making this complaint?
 - (a) As a litigant against a judge or magistrate who has dealt with your case/matter?
 - (b) On behalf of another person whose case or matter was dealt with by the Judge or Magistrate you are complaining about?
 - (c) As a person with information on the conduct of the Judge or Magistrate you are complaining about?
- 10. Were there any advocates on record in the matter/case? Yes/No
- If yes give their names and the party(s) they were representing
- 11. If the Judge or Magistrate you are complaining about was dealing with or has dealt with your case or matter, answer these questions:
 - (a) Have you already raised your complaint in writing either with the Judge or Magistrate himself or a senior officer in the Judiciary or any other organisation or entity? If so, give details
 - If yes, enclose copies of all relevant correspondence: Enclosed/Not enclosed.
 - (i) If not, please briefly advise why you have not raised the matter.
 - (b) Is the matter you are complaining about finalised?
 - If so, have you received a fair ruling or judgment in your estimation

(please attach a copy if possible)
- 12. Have you at any time asked the Judge or Magistrate to withdraw from handling the matter?
- If yes, briefly explain what transpired upon such application

Vetting of Judges and Magistrates

[Subsidiary]

SCHEDULE—continued

SECTION THREE: WHAT EXACTLY IS YOUR COMPLAINT?

13. Please say briefly what you are dissatisfied with and why, and or what you think the Judge or Magistrate had failed to do (Attach any evidence in your possession):

.....
.....

14. Are there any other persons privy to these facts who can support your averments. Please give their names, telephone, e-mail, postal and physical contacts:

- (a)
- (b)
- (c)
- (d)

(Please attach a separate sheet if space provided is not sufficient)

I, of

declare that the facts contained in this Statement are true to the best of my knowledge, belief and information. I confirm that I may be called to testify and or provide further information.

Name:

Signature

Date:

Form JMVB. 2

(r. 10(2))

PRIVATE AND CONFIDENTIAL

THE JUDGES AND MAGISTRATES VETTING BOARD

NOTICE TO FILE RESPONSE

To:

.....
.....
.....

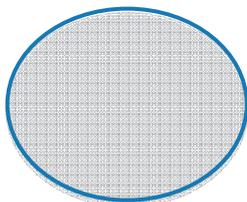
WHEREAS the Board has received the following complaint or complaints against you:

.....
.....

NOW THIS NOTICE IS TO REQUIRE YOU:

- (i) To file response to the complaints outlined above within from the date of this notice.

Given under my hand and the seal of the Board this day of 20



BY ORDER OF THE BOARD.

Vetting of Judges and Magistrates

[Subsidiary]

SCHEDULE—continued

Please confirm:

I WISH TO HAVE MY PROCEEDINGS CONDUCTED IN PUBLIC Yes/No

I DO NOT WISH TO HAVE MY PROCEEDINGS CONDUCTED IN PUBLIC Yes/No

Form JMVB. 3

(r. 9(4))

PRIVATE AND CONFIDENTIAL

THE JUDGES AND MAGISTRATES VETTING BOARD

NOTICE OF ADDRESS FOR SERVICE

TAKE NOTICE that the address for service of (name in full), (functional title), a judge/magistrate served with a Notice to Appear under Regulation 14 (1) of the Vetting of Judges and Magistrates (Practice and Procedure) Regulations, 2011, is care of (give physical address of the Judge or Magistrate's place of residence, or his duty station or his advocate's place of business, as the case may be),

P.O. Box (Number) (Town/City) (Postal Code)

Daytime telephone number:

Mobile telephone number:

E-mail Address:

Dated at this day of, 20

Signed: Judges or Magistrates

Form JMVB. 4

(r. 12(a))

PRIVATE AND CONFIDENTIAL

THE JUDGES AND MAGISTRATES VETTING BOARD

NOTICE TO APPEAR

TAKE NOTICE that you are required to appear before the Board for Vetting on the day of 20..... of o'clock in the noon. The hearing shall be held at

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

Dated at this day of 20

BY ORDER OF THE BOARD

Vetting of Judges and Magistrates

[Subsidiary]

SCHEDULE—continued

Form JMVB. 5

(r. 10(1))

PRIVATE AND CONFIDENTIAL

THE JUDGES AND MAGISTRATES VETTING BOARD

VETTING QUESTIONNAIRE TO BE COMPLETED BY ALL PERSONS TO BE VETTED

Section I: BIO-DATA	
Name of Judge /Magistrate:	Date of Birth:
Citizenship:	Marital Status
Post Office Address:	E-mail:
Mobile Phone Number:	Daytime Telephone:
ID/Passport Number:	PIN Number:
Date of First Appointment to the Judiciary:	PJ Number:
Position of first Appointment:	Duty Station
Current Position and Date promoted:	Duty Station:
Previous Positions held in the Judiciary/ Public Office:	Date(s)
Length of time served in the judiciary Years: Months:	
Other Relevant work experience:	
Please attach your curriculum vitae.	
Section II: The Board in determining the suitability of a judge or magistrate is required to consider the criteria set out in section 18(1) & (2) of the Judges and Magistrates Vetting Act: Please respond briefly to each of the respective criteria set out below: 1. Whether you meet the constitutional criteria for appointment as a Judge/Magistrate. 2. Your past work record, including prior judicial pronouncements, competence and diligence. Please attach five of your past judgments/ pronouncements. 3. Whether there are any pending or have there been any concluded criminal or civil cases against you. Please give details 4. Whether to your knowledge there is any recommendation to have you charged for any criminal offence. Please give details 5. Whether to your knowledge there are any complaints that have been made against you to any professional or public body about your conduct as a judge or magistrate. Please give details. 6. Your professional and development competence. The elements under these are: • intellectual capacity; • legal judgment, diligence; • substantive and procedural knowledge of the law; • organisational and administrative skills; • ability to work well with a variety of people.	

SCHEDULE—continued

<p>7. Your written and oral communication skills. The elements of which shall include:</p> <ul style="list-style-type: none">• the ability to communicate orally and in writing;• the ability to discuss factual and legal issues in clear;• logical and accurate legal writing; and• effectiveness in communicating orally in a way that will readily be understood and respected by people from all walks of life. <p>8. Your integrity, the elements of which shall include:</p> <ul style="list-style-type: none">• a demonstrable consistent history of honesty and high moral character in professional and personal life;• respect for professional duties, arising under the codes of professional and judicial conduct;• the ability to understand the need to maintain propriety and the appearance of propriety. <p>9. Your fairness, the elements of which include:</p> <ul style="list-style-type: none">• a demonstrable ability to be impartial to all persons and commitment to equal justices under the law;• open-mindedness and capacity to decide issues according to the law, even when the law conflicts with personal views. <p>10. Your temperament, which elements include:</p> <ul style="list-style-type: none">• demonstrable possession of compassion and humility;• history of courtesy and civility in dealing with others;• ability to maintain composure under stress;• ability to control anger and maintain calmness and order. <p>11. Good judgment including common sense, the elements of which shall include:</p> <ul style="list-style-type: none">• a sound balance between abstract knowledge and practical reality and in particular demonstrable ability to make prompt decisions that resolve difficult problems in a way that makes practical sense within the constraints of any applicable rules or governing principles. <p>12. Your legal and life experiences, the elements of which shall include:</p> <ul style="list-style-type: none">• the amount and breadth of legal experience and the suitability of that experience for the position including trial and other courtroom experience and administrative skills;• broader qualities reflected in life experiences, such as the diversity of personal and educational history, exposure to persons of different ethnic and cultural backgrounds and demonstrable interests in areas outside the legal field. <p>13. Commitment to public and community service the elements of which shall include:</p> <ul style="list-style-type: none">• the extent to which a judge or magistrate has demonstrated a commitment to the community generally and to improving access to system in particular. <p>Section III: WEALTH DECLARATION Please attach Wealth Declaration Form JSC 2b, obtainable at www.publicservice.go.ke I DECLARE THAT THE INFORMATION I HAVE SUPPLIED IS TRUE AND CORRECT <i>Note.</i> Please note that this Questionnaire is not exhaustive and the Board may require you to provide further information in writing or orally at the interview.</p>

**EXTENSION OF PERIOD FOR CONSIDERATION AND APPROVAL/REJECTION
OF MEMBERS OF THE VETTING BOARD**

[L.N. 106/2011]

IN EXERCISE of the powers conferred by section 9(14) of the Vetting of Judges and Magistrates Act, 2011, I, Mwai Kibaki, President and Commander-in-Chief of the Kenya Defence Forces, in consultation with the Prime Minister, extend the period prescribed under section 9(8) of the Act, in respect of consideration and approval/rejection for appointment of members to the Vetting of Judges and Magistrates Board, by twenty-one days with effect from the 18th August, 2011.

Dated the 18th August, 2011.

MWAI KIBAKI,
President.
