

LEGAL NOTICE NO. 70

PUBLIC SERVICE COMMISSION ACT, 2012

(No. 13 of 2012)

THE PUBLIC SERVICE COMMISSION (COUNTY  
GOVERNMENT PUBLIC SERVICES APPEALS PROCEDURES)  
REGULATIONS, 2016

ARRANGEMENT OF REGULATIONS

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**THE PUBLIC SERVICE COMMISSION ACT**

(No. 13 of 2012)

IN EXERCISE of the powers conferred by section 31 of the Public Service Commission Act, 2012, the Public Service Commission makes the following Regulations:—

**THE PUBLIC SERVICE COMMISSION (COUNTY GOVERNMENT PUBLIC SERVICES APPEALS PROCEDURES) REGULATIONS, 2016**

1. These Regulations may be cited as the Public Service Commission (County Government Public Services Appeals Procedures) Regulations, 2016. Citation.

2. The purpose of these Regulations is to regulate the hearing of appeals by the Commission that have been filed by public officers or any other person against the decisions of county governments public service. Purpose.

3. In these Regulations, unless the context otherwise requires— Interpretation.

“appeal” means to apply for the re-examination of a decision or process of a county government public service;

“appellant” means an individual or an organisation appealing against a county government public service decision or process;

“applicant” means an individual or organisation that has applied to the Commission to review the Commission’s decision;

“application” means an application for review;

“Chairperson: means the Chairperson of the Public Service Commission;

“Committee” means the County Appeals Committee of the Commission;

“County Appeals Unit” means the Appeals Unit within the Commission;

“county government public service” includes a county assembly service; and

“respondent” means a county government public service whose decision or process has been appealed against.

4. The Commission shall be guided by the following principles when hearing and determining an appeal or when considering an application for a review of its determination in relation to an appeal— Principles.

(a) the promotion of the purposes, values and principles of the Constitution;

(b) justice and fairness for all parties appearing before the Commission;

- (c) the application of the rules of natural justice; (d) the application of substantive justice that does not rely on undue regard to technicalities of procedure; and
- (d) the avoidance of undue delay.

5. Notwithstanding any other provision in these Regulations, the Commission may, on its own motion or the application of a person, make such orders as are necessary for—

Inherent powers of the Commission.

- (a) the fair and expeditious determination of an appeal or application under these Regulations;
- (b) the just conclusion of an appeal or application; or
- (c) the prevention of the abuse of the processes of the Commission.

6. An appeal shall be heard by a Committee and the Chairperson shall be responsible for—

Co-ordination of appeal process.

- (a) constituting each Committee;
- (b) assigning appeals and applications for review to Committees; and
- (c) such other functions as are necessary for the hearing and determination of appeals or applications for review.

7. (1) A person who is dissatisfied with a decision of the county government public service in its discharge of a human resource function may appeal to the Commission against that decision.

Jurisdiction.

(2) A public officer who makes an appeal in accordance with these Regulations shall appeal after all the appeals and processes of the county government public service have been exhausted.

(3) A State officer in a county government public service shall not appeal against a decision of a county government public service under these Regulations.

8. The Commission may hear and determine an appeal from a public officer in a county government public service regarding any decision relating to the engagement of the person in the county government, including an appeal in respect of—

Appealable matters.

- (a) the recruitment, selection, appointment, promotion, re-designation, deployment and qualifications attached to any office;
- (b) the remuneration, and terms and conditions of service;
- (c) disciplinary control including imposition of any punishment including dismissal;
- (d) the national values and principles of governance and the values and principles of public service as provided for in the Constitution;
- (e) retirement;

- (f) other forms of removal from service except on account of dismissal;
- (g) pension benefits, gratuity and other terminal benefits; and
- (h) any other decision that the Commission considers to fall within its constitutional jurisdiction to hear and determine an appeal in that regard.

9. (1) A public officer shall lodge an appeal against a decision of a county government public service with the Commission within ninety days of the making of the decision by the county government public service.

Lodging an appeal.

(2) Notwithstanding the requirements of sub-regulation (1), the Commission may allow a public officer to lodge an appeal after the expiry of ninety days, if the Commission is persuaded that the circumstances warrant it.

(3) A person who lodges an appeal under these Regulations shall provide the relevant documents or information to support the appeal, including the documents and information provided by the public officer during the processes undertaken by the county government public service.

10. The Commission shall notify a county government public service, within seven days of the lodging of an appeal, that the appeal has been lodged by a public officer against a decision of that county government public service in accordance with these Regulations and shall require that county government public service to submit all records in relation to the appeal, including proceedings that led to the decision being appealed against.

Commission to notify county government public service of appeal.

11. (1) A county government public service that has been notified of an appeal under regulation 10 shall forward to the Commission the relevant records in relation to the appeal, including proceedings, within fourteen days of receiving the notice.

Processing an appeal.

(2) The notice shall be in Form CA1 as set out in the Schedule.

(3) An appeal under these Regulations shall be processed by the County Appeals Unit.

(4) The Committee shall hold a preliminary meeting to review the appeal file within twenty one days of the reply being filed.

(5) At a preliminary meeting, the Committee may—

- (a) require the appellant or the respondent to provide additional information or documents in relation to the appeal;
- (b) re-examine the process or proceedings that led to the appeal and whether or not there is sufficient information in relation to the appeal to make a determination; or
- (c) set down a date when the appellant and the respondent shall appear before the Committee and be examined in relation to the appeal.

(6) Where there is insufficient information to make a determination in relation to an appeal, the Commission may investigate the matter further in order to obtain the required information necessary to make a determination.

(7) The Committee may hold a hearing at which the appellant and the respondent shall be examined by the Committee and given an opportunity to make further submissions in relation to the appeal.

(8) The appellant and the respondent shall be notified of the hearing date by the Committee in the prescribed Form CA2 set out in the Schedule.

(9) The preliminary meeting shall commence despite the absence of one of the parties.

(10) Within twenty one days of the preliminary meeting or within fourteen days of obtaining findings under sub-regulation (6), the Committee shall convene a final meeting to consider all the information and documents in relation to the appeal and shall then make a final determination.

12. (1) Any notice issued under these Regulations may be served through— Service of notices.

- (a) personal service;
- (b) registered mail to the last known postal address of the party;
- (c) the Public Service Commission website; or
- (d) advertisement in at least two daily newspapers with a nationwide circulation.

(2) Where a notice is served by way of the last known postal address of the person being served, the notice shall be deemed to have been received seven days after the notice is dispatched.

(3) The County Appeals Unit shall place a copy of the newspaper advertisement in the appeal file where a notice is served through an advertisement.

(4) Where a notice is served personally, the County Appeals Unit shall make a record in the appeal file stating the time and manner in which the notice was served.

(5) The Commission shall take the necessary steps to ensure that the most cost-effective method of service is employed.

13. (1) The Commission shall at least seven days prior to the hearing date, notify in writing the parties to an appeal of the date and place where the hearing shall be held. Hearings.

(2) An appeal may be heard orally or through written representation.

(3) In exercising the power to hear an appeal through written representation, the Commission shall require the appellant and the respondent to make written submission as follows—

(a) the appellant shall first lodge written submissions which shall be forwarded to the respondent within seven days of receipt thereof;

(b) the respondent shall lodge written submissions in response to the appellant's submissions within fourteen days of receipt thereof.

(4) The Committee may hold an oral hearing—

(a) where it determines that it is necessary to hear the appellant in the matter; or

(b) where the appellant makes a written request to the Commission, to be heard orally that request shall be considered and allowed at the discretion of the Committee.

(5) Where the appeal is heard orally, both parties shall be given an opportunity to address the Committee and shall, where the Committee finds it necessary, present any witnesses before the Committee.

(6) If the appellant or respondent is absent during the hearing, after having been served with a hearing notice, the Committee may—

(a) adjourn the hearing to a specific date; or

(b) hear and determine the appeal.

14. Where, before an appeal is fully heard and determined, and a member of the Committee is unable to discharge his or her functions under the Act or these Regulations, the Chairperson shall—

Vacancy in the appeals committee before appeal is determined.

(a) appoint another member to that Committee; and

(b) direct that—

(i) the appeal be heard afresh; or

(ii) the appeal be heard from the point at which the member was unable to discharge his or her duties.

15. The proceedings of an appeal where the Committee receives written testimony shall be recorded in the minutes of the meeting of the Committee.

Proceedings to be recorded.

16. The Committee shall deliberate and make its findings and recommendations to the Commission within fourteen days of the final hearing or the final written submissions made in relation to an appeal.

Findings and recommendations.

17. The Commission shall consider the recommendations of the Committee and shall make a final decision on the appeal within fourteen days of receiving the recommendations of the Committee.

Determination of the appeal.

18. The Commission may, in relation to an appeal—

Powers of the Commission on appeal.

(a) uphold the decision of the county government public service;

(b) set aside the decision of the county government public service;

- (c) vary the decision of the county government public service as the Commission considers just; or
- (d) give such directions as the Commission may consider appropriate.

19. The decision of the Commission shall be communicated to the appellant and the respondent in writing within seven days from the date the Commission makes the decision. Communication of the determination.

20. The Commission shall receive, hear and determine an appeal within four months of receiving the appeal. Time.

21. (1) Any person who is dissatisfied or affected by the decision made by the Commission in relation to an appeal may apply for a review of the decision and the Commission may admit and consider the review if— Review.

- (a) the person presents new information that could not be presented at the time the decision was made by the Commission; or
- (b) the Commission has made an apparent error in its decision in relation to the appeal.

(2) An application for review shall be in writing and shall be made within three months from the date of the decision of the Commission.

(3) The Commission may consider an application for review out of time if, in the opinion of the Commission, the circumstance warrants the consideration.

22. The Commission may, after considering an application for a review of its decision— Powers of the Commission on review.

- (a) uphold the decision;
- (b) set aside the decision;
- (c) vary the decision as it considers just; or
- (d) give such directions as it may consider appropriate.

23. The Commission shall inform in writing a person who has applied for a review of a decision of the Commission within fourteen days of the making of the decision. Communication of the decision on review.

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

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

(2) A document is deemed lodged on the date it is received and stamped by the Commission. Delivery of documents to the Commission.

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

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

Powers of the Commission in relation to service of documents.

- (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 properly served.

26. Every appellant, applicant or respondent shall have the right to—

Rights of appellants and applicants.

- (a) be heard in person;
- (b) be represented by an advocate of his or her own choice and at their own expense;
- (c) be accompanied by a representative of the relevant trade union or any person of his or her choice;
- (d) be assisted by an interpreter if he or she does not understand the language being used during the proceedings;
- (e) access information relevant to the appeal; and
- (f) have adequate time to prepare evidence.

27. The Commission shall maintain and preserve an accurate record of all its proceedings including handwritten or typed transcripts and, where applicable, audio and video recordings.

Commission to keep full records of proceedings.

SCHEDULE

FORM CA 1

(r. 11(2))

PUBLIC SERVICE COMMISSION

COUNTY APPEAL NO.....OF 20.....

BETWEEN

.....APPELLANT

AND

.....RESPONDENT

NOTICE TO SUBMIT DOCUMENTS

To:

.....  
.....

WHEREAS the Commission has received an appeal against your decision made on the  
.....of 20..... against  
.....on the issue of  
.....  
.....  
.....

(Copy attached)

NOW THIS NOTICE IS TO REQUIRE YOU—

- (a) to file a response to the appeal; and
- (ii) to forward all relevant documents within your possession including the record of the proceedings, minutes and decisions made on the matter.

TAKE NOTICE that you are required to respond to this notice within fourteen days from the date of receipt of this notice.

Dated at ..... on this .....day of ..... 20....

.....  
for the Commission.

FORM CA 2

(r.11(8))

**PUBLIC SERVICE COMMISSION**

COUNTY APPEAL NO.....OF 20.....

**BETWEEN**

.....APPELLANT

**AND**

.....RESPONDENT

**HEARING NOTICE**

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

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

Dated at ..... on this .....day of ..... 20....

.....  
for the Commission.

Made on the ....., 2016.

**MARGARET KOBIA,**  
*Chairperson,*  
*Public Service Commission.*