

LEGAL NOTICE NO. 54

THE PUBLIC OFFICER ETHICS ACT, 2003

(No. 4 of 2003)

THE PUBLIC SERVICE CODE OF CONDUCT AND ETHICS, 2016

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THE PUBLIC OFFICER ETHICS ACT

(No. 4 of 2003)

IN EXERCISE of powers conferred by section 5(1) of the Public Officer Ethics Act, 2003, the Public Service Commission makes the following Code of Conduct and Ethics:—

THE PUBLIC SERVICE CODE OF CONDUCT AND ETHICS, 2016

PART I—PRELIMINARY

1. This Code of Conduct and Ethics may be cited as the Public Service Code of Conduct and Ethics, 2016, and shall come into operation on such date as the Commission may appoint by notice in the *Gazette*.

Citation.

2. This Code shall apply to all public officers for whom the Commission is the responsible Commission.

Application.

3. In this Code, unless the context otherwise requires—

Interpretation.

“authorised officer” means an officer of a public entity responsible for the discipline of public officers serving in that public entity;

“Commission” means the Public Service Commission established under Article 233(1) of the Constitution;

“gainful employment” means employment that a public officer pursues or performs for money or for other compensation or remuneration which is incompatible with the responsibilities of his or her office or which results in the impairment of his or her judgment or results in a conflict of interest;

“harambee” means the public collection of funds;

“Member” means the Chairperson, Vice-chairperson or a Commissioner of the Commission;

“public officer” means a public officer as defined in Article 260 of the Constitution; and

“Secretary” means the Secretary and chief executive officer of the Commission.

4. The general objective of the Code is to give effect to the provisions of Chapter Six of the Constitution.

General objective.

5. The specific objectives of this Code shall include—

Specific objectives.

- (a) to ensure accountability by a public officer for his or her decisions or actions;
- (b) to promote discipline;
- (c) to promote honesty;
- (d) to provide mechanisms for the management of conflicts of interest;

- (e) to protect the integrity of the public service; and
- (f) to provide a framework for reporting of misconduct by a public officer.

PART II—SPECIFIC CODE OF CONDUCT AND ETHICS FOR PUBLIC OFFICERS

6. A public officer, who is a professional in the public service, shall be bound by, and observe, the professional code of conduct he or she might be required to subscribe to.

Professional and statutory codes to be binding.

7. A public officer shall carry out his or her duties in accordance with the law.

Rule of law.

8. A public officer shall be responsible for the reasonably foreseeable consequences of any acts or omissions arising from the performance of his or her duties.

Responsibility and duties.

9. A public officer shall—

Performance of duties.

- (a) carry out his or her duties efficiently and honestly;
- (b) carry out his or her duties in a transparent and accountable manner;
- (c) keep accurate records and documents relating to his or her duties;
- (d) not be absent from duty without official permission; and
- (e) not engage in private business during official working hours.

10. A public officer shall—

Professionalism.

- (a) carry out his or her duties in a manner that protects the integrity of his or her office;
- (b) treat members of the public and other public officers with courtesy and respect;
- (c) not discriminate against any person;
- (d) ensure the efficient, effective and economic use of resources in his or her charge;
- (e) be accountable for his or her administrative acts;
- (f) maintain an appropriate standard of dress and personal hygiene;
- (g) discharge any professional responsibilities in a professional manner; and
- (h) where the public officer is a member of a professional body, observe and subscribe to the ethical and professional requirements of that body:

Provided that those ethical and professional requirements shall not contravene the Constitution, this Code or any other written law.

11. A public officer shall conduct private affairs in a manner that maintains public confidence in his or her integrity.

Conduct of private affairs.

12. (1) A public officer shall not use his or her office to unlawfully or wrongfully enrich himself, herself or any other person.

Financial integrity.

(2) A public officer shall not seek or accept a personal loan or benefit that may compromise his or her integrity.

(3) A public officer shall live within his or her means and shall not incur any financial liability that he or she cannot satisfy.

13. (1) A public officer shall pay any taxes due from him or her within the prescribed period.

Tax, financial and legal obligations.

(2) A public officer shall not neglect his or her financial or legal obligations.

14. A public officer shall—

Moral and ethical requirements.

- (a) be honest in the conduct of public affairs;
- (b) not engage in activities that amount to abuse of office;
- (c) accurately and honestly present information to the public;
- (d) not engage in wrongful conduct in furtherance of personal benefit;
- (e) not misuse public resources;
- (f) not falsify any records; and
- (g) not engage in actions that may lead to his or her removal from the membership of a professional body to which he or she may belong.

15. (1) A gift or donation given to a public officer in his or her official capacity shall be treated as a gift or donation to his or her office.

Gifts and benefits in kind.

(2) Notwithstanding sub-paragraph (1), a public officer may receive a gift given in his or her official capacity provided that—

- (a) the gift is within the ordinary bounds of propriety;
- (b) the gift is an ordinary expression of courtesy or protocol, or within the ordinary standards of hospitality;
- (c) the gift is not in monetary form; and
- (d) the gift does not exceed such value as may be prescribed by the Ethics and Anti-Corruption Commission.

(3) Without limiting the generality of sub-paragraph (2), a public officer shall not—

- (a) accept or solicit gifts, hospitality or other benefits from a person who—
 - (i) has an interest that may be achieved by the carrying out or not carrying out of the public officer's duties;
 - (ii) carries on regulated activities with respect to which the public entity has a role; or

(iii) has a contractual or legal relationship with the public entity;

(b) accept or offer gifts of jewelry or other gifts comprising precious metals or stones, ivory or any other animal part protected under the Convention on International Trade in Endangered Species of Wild Fauna and Flora; or

(c) any other type of gift specified by the Ethics and Anti-Corruption Commission.

(4) A public officer shall not receive a gift which is given with an intention of compromising his or her integrity, objectivity or impartiality.

(5) Subject to sub-paragraph (2), a public officer who receives a gift or donation shall declare the gift or donation to the public entity.

(6) Whereas a public officer can accept gifts dictated by custom such gifts shall not be given or accepted in the public office.

(7) The public entity shall keep a register in the form set out in the Second Schedule to this Code of—

(a) all gifts received by public officers in that public entity; and

(b) all gifts given by the public entity.

(8) The public entity shall comply with the Ethics and Anti-Corruption Commission Regulations on the receiving and disposal of gifts.

16. A public officer shall not use his or her office to wrongfully or unlawfully acquire or influence the acquisition of property.

Wrongful and unlawful acquisition of property.

17. (1) A public officer shall use the best efforts to avoid being in a situation where that public officer's personal interests conflict with or appear to conflict with the officer's official duties.

Conflict of interest.

(2) Without limiting the generality of sub-paragraph (1), a public officer shall not hold shares or have any other interest in a company, partnership or other body, directly or through another person, if the holding of those shares or having that interest would result in a conflict with his or her official duties.

(3) A public officer whose personal interests are or may be in conflict with his or her official duties shall declare those personal interests to the public entity.

(4) The public entity may give directions on the appropriate action to be taken by the officer to avoid the conflict of interest and the officer shall—

(a) comply with the directions; and

(b) refrain from participating in any deliberations with respect to the matter.

(5) Notwithstanding any directions to the contrary under sub-paragraph (4), a public officer shall not award or influence the award of a contract to—

- (a) himself or herself;
- (b) his or her spouse or child; or
- (c) a business associate or agent.

(6) In this paragraph, a “conflict of interest” includes the interest of a spouse, a child, a business associate or an agent, or any other matter in which the public officer has a direct or indirect pecuniary or non-pecuniary interest.

(7) Where a public officer is present at a meeting where an issue that is likely to result in a conflict of interest is to be discussed, he or she shall declare the interest at the beginning of the meeting or before the issue is deliberated upon.

(8) A declaration of a conflict of interest under sub-paragraph (7) shall be recorded in the minutes of that meeting.

(9) The public entity shall maintain a register of conflicts of interest in the form set out in the Third Schedule to this Code in which an affected officer shall register the particulars of registrable interests, stating the nature and extent of the conflict.

(10) For the purposes of sub-paragraph (9), the registrable interests include the interests set out in the First Schedule to this Code.

(11) The public entity shall keep the register of conflicts of interests for five years after the last entry in each volume of the register.

(12) A public officer shall amend the record of his or her registrable interest in the register maintained under sub-paragraph (9) whenever there is a change in those registrable interest and such an amendment shall be made within thirty days of the change in the conflict of interest.

18. A public officer shall not, in his or her private capacity, participate in a tender for the supply of goods or services to the public entity in which he/she serves.

Participation in tenders.

19. (1) A public officer shall not—

- (a) use his or her office or place of work as a venue for soliciting or collecting harambees;
- (b) either as a collector or a promoter of collection harambee, obtain money or other property from a person by using his or her official position in any way to exert pressure;
- (c) preside at a harambee, or play a central role in the organization of a harambee, or appear as a guest of honour at a harambee; or
- (d) participate at a harambee in such a way as to reflect adversely on his integrity or impartiality or interfere with the performance of his or her duties.

Collections and harambees.

Cap. 106.

(2) For the purposes of this rule, “collection”, “collector” and “promoter” have the same meanings as are assigned to them in section 2 of the Public Collections Act.

20. A public officer shall not maintain a bank account outside Kenya except with the approval of the Ethics and Anti-Corruption Commission or in accordance with any written law.

Bank accounts
outside Kenya.

21. A public officer shall not be an agent of, or further the interests of a foreign government, organisation or individual in a manner that may be detrimental to the interests of Kenya.

Acting for
foreigners.

22. (1) A public officer shall take all reasonable steps to ensure that any public property in his or her custody, possession or control is taken care of and is in good repair and condition.

Care of property.

(2) A public officer shall not use public property, funds or services that are acquired in the course of, or as a result of, the official duties for activities for which they were not intended.

(3) A public officer shall return to the issuing authority all the public property in his or her custody, possession or control at the end of his or her appointment or employment.

(4) A public officer who contravenes sub-paragraph (2) or (3) shall, in addition to any other penalties provided for under the Constitution or any other written law, be personally liable for any loss or damage of the public property.

23. (1) A public officer shall not use or allow any person under the officer's authority to use any information obtained through or in connection with the office, which is not available to the public, for the furthering of any private interest.

Misuse of official
information.

(2) Sub-paragraph (1) shall not apply where the information is used for—

- (a) furthering the purposes of this Code; or
- (b) education, research, literary, scientific or other purposes not prohibited by law.

(3) Notwithstanding the generality of sub-paragraph (1), a public officer shall take all reasonable steps to ensure that confidential or secret information or documents entrusted to his or her care are adequately protected from improper or inadvertent disclosure.

24. (1) A public officer shall not, in the performance of his or her duties—

Political neutrality.

- (a) act as an agent for, or further the interests of, a political party or a political candidate at an election; or
- (b) manifest support for, or opposition to, any political party or political candidate at an election.

(2) A public officer shall remain politically neutral during his or her term of employment.

(3) Without prejudice to the generality of sub-paragraph (2) a public officer shall not—

- (a) engage in the activities of any political party or political candidate or act as an agent of a political party or a political candidate at an election; or

- (b) publicly indicate support for or opposition against any political party or political candidate at an election.
25. A public officer shall— Impartiality.
- (a) at all times carry out his or her duties with impartiality and neutrality; and
- (b) not practice favouritism, nepotism, tribalism, cronyism, religious bias or any other kind of bias or discrimination, or engage in corrupt or unethical practices.
26. A public officer who is serving on a full-time basis shall not participate in any other gainful employment during his term of employment. Gainful employment.
27. (1) A public officer shall not be influenced in the performance of his or her duties by plans or expectations for or offers of future employment or benefits from any person. Offers of future employment.
- (2) A public officer shall disclose in writing to the public entity all offers of future employment or benefits that may place him or her in a situation of a conflict of interest.
28. A former public officer shall not be engaged by or act for a person or in a manner in which the former officer was originally engaged in as an officer of the public entity for at least two years after his or her employment with the public entity ends. Former public officer acting in a Government or public entity matter.
29. (1) A public officer shall not bully any person. Bullying.
- (2) For the purposes of sub-paragraph (1), “bullying” shall include offensive behavior which is vindictive, cruel, malicious or humiliating and which is intended to undermine another person.
30. (1) A public officer shall not sexually harass a member of the public or another public officer. Sexual harassment.
- (2) For the purposes of sub-paragraph (1), “sexual harassment” shall include—
- (a) making a request or exerting pressure for sexual activity or favours;
- (b) making intentional or careless physical contact that is sexual in nature; or
- (c) making gestures, noises, jokes or comments including innuendos regarding another person’s sexuality.
- (a) sending of sexually suggestive texts, pictures or videos
31. A public officer shall submit any declaration or clarification required under Part IV of the Public Officer Ethics Act, 2003. Submitting of declarations.
32. (1) A public officer shall not— Acting though others.
- (a) cause anything to be done through another person that would constitute a contravention of any provision of this Code if such thing was done by the officer; or

- (b) allow or direct a person under his or her supervision or control to do anything that would be in contravention of this Code.

(2) Sub-paragraph (1)(b) shall not apply where anything is done without the officer's knowledge or consent, or where the officer has taken reasonable steps to prevent the doing of that thing.

(3) A public officer who acts under an unlawful direction shall be personally responsible for his or her acts.

33. (1) Where a public officer considers that anything required of him or her is a contravention of this Code or is otherwise improper or unethical, the officer shall report the matter to the authorized officer.

Reporting improper orders.

(2) The authorized officer shall investigate the matter reported under sub-paragraph (1) and take appropriate action within ninety days of receiving the report.

PART III—ENFORCEMENT OF THE CODE OF CONDUCT AND ETHICS FOR OFFICERS IN THE PUBLIC SERVICE.

34. (1) On appointment to a public entity, a public officer shall sign and commit to this Code in the form set out in the Fourth Schedule to this Code.

A public officer to sign and commit to the Code.

(2) A public officer who is in service at the time of the coming into force of this Code shall sign and commit to this Code within seven days of the coming into force of this Code.

35. (1) Subject to sub-paragraph (2), a breach of this Code shall be deemed to be an act of misconduct for which the public officer may be subject to disciplinary proceedings.

Disciplinary procedure, etc.

(2) Where an allegation of a breach of this Code has been made against a public officer in respect of whom the Constitution or a written law provides for the procedure of removal or dismissal, the question of the removal or dismissal of the public officer shall be determined in accordance with the Constitution or that other written law.

36. (1) A person who alleges that a public officer has committed a breach of this Code may notify the authorized officer of the public entity and the authorized officer shall register the complaint in the form set out in the Fifth Schedule to this Code and investigate the allegation.

Lodging of complaints and investigations.

(2) The authorized officer may assign any officer or a competent authority to inquire into the allegation and determine whether or not the public officer has contravened this Code.

(3) A public officer against whom an allegation has been made under this paragraph shall be informed of the allegation by the authorized officer and shall be given adequate opportunity to challenge the allegation.

(4) A person who makes an allegation against a public officer shall be entitled to be informed of any action taken in relation to the allegation.

(5) Where an investigation against a public officer under this paragraph has been initiated, and the public officer resigns his or her office before the investigation has been completed, the investigation may be continued even after the resignation of the public officer.

(6) Subject to any other written law, a public officer against whom an allegation has been made under this paragraph may be suspended from office while an inquiry is made regarding the allegation.

(7) The authorized officer may take disciplinary action against a public officer for the contravention of a provision of this Code.

37. If upon investigation under this Part the authorized officer is of the opinion that civil or criminal proceedings should be preferred against a public officer, the authorized officer shall refer the matter to—

Referral for possible civil or criminal proceedings.

- (a) the Ethics and Anti-Corruption Commission;
- (b) the Attorney-General;
- (c) the Director of Public Prosecutions; or
- (d) any other competent authority.

PART IV—OFFENCES AND PENALTIES

38. A public officer who contravenes any provision of this Code shall be liable to disciplinary action as may be prescribed in any written law.

Contravention of the Code.

PART V—MISCELLANEOUS MATTERS

39. The Public Service Commission Code of Conduct and Ethics, 2003, is revoked.

Revocation of Legal Notice No. 124 of 2003.

SCHEDULE

p. 15(10)

REGISTRABLE INTERESTS

1. Directorships in public or private companies, whether or not remunerated directly or indirectly.
2. Remunerated employment, including office, trade, professional, or vocational, or in which the public officer has any pecuniary interest.
3. Securities (shares, bonds, debentures or other similar holding) in a company, enterprise or undertaking the aggregate, nominal or market of a value which exceeds the value prescribed by the public entity.
4. Contracts for supply of goods and services to the public entity.
5. Offers of future employment.
6. Shareholdings in public or private companies amounting to a controlling interest.
7. Landholdings.
8. Gifts, benefits and hospitality, including to a spouse, child, partner or business associate, or other material benefit of a value prescribed by the public entity from a company, organisation or person within or outside Kenya which relates to the public office.
9. Pending civil claims against the public officer.
10. Pending criminal charges against the public officer.
11. Citizenship of another country.

FOURTH SCHEDULE
COMMITMENT FORM

p. 41(1)

Name of the Employee

Employee Number

Department:.....

Job Title:

I,....., hereby affirm that I have read, understood, and agree to adhere to the Public Service Code of Conduct and Ethics, 2016, and further affirm that I will comply fully to the extent that it is written.

Signature.....

Date

FIFTH SCHEDULE
REGISTER OF COMPLAINTS (TEMPLATE)

p. 43(1)

NAME OF STATE OFFICE.....

F/Y

<i>Name of Person Making Complaint</i>	<i>Date of Complaint</i>	<i>Particulars of Officer / Organization Complaint Against</i>	<i>Nature of Complaint</i>	<i>Decision Made on the Complaint</i>	<i>Particulars and Signature of Officer Attending to complaint</i>

MARGARET KOBIA,
Chairperson, Public Service Commission.