

LEGAL NOTICE NO. 189

THE VETTING OF JUDGES AND MAGISTRATES ACT, 2011

(No. 2 of 2011)

IN EXERCISE of the powers conferred by section 33 of the Vetting of Judges and Magistrates Act, 2011, the Judges and Magistrates Vetting Board makes the following Regulations:—

THE VETTING OF JUDGES AND MAGISTRATES (PROCEDURE) REGULATIONS, 2011

Citation.

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

Purpose.

2. 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.

Interpretation

3. In these Regulations—

“the 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;

“the 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 noncitizen 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.

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

4. (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.

Saving of inherent powers of the Board.

5. 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.

Chairperson to co-ordinate work of the Board.

6. 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.

All matters arising from vetting process to be heard.

7. (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.

Board to call for complaints and other relevant information.

8. (1) Subject to paragraph (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.

(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 JMVB1 set out in the Schedule.

Service of Notices.

9. (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 JMVB3 set out in the Schedule.

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

10. (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.

Response to complaint.

(3) 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.

Response to be in summary form.

(4) 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.

Time for lodging questionnaire and response.

(6) 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.

Preservation, inspection of property.

11. 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.

Board may make pre-trial orders or directions.

12. 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.

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

13. 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.

Consequences of default.

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

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

15. 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.

Complainant to personally attend proceedings.

16. 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.

Requirements as to delivery of documents to the Board.

17. (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.

(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.

Sittings of the Board, when and where held.

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

Extension of time.

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

Powers of the Board in relation to service.

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

(a) authorize service of a document in a manner that is not expressly provided for in these Regulations; or

(b) find that a document served in a manner not expressly provided for in these Regulations has been duly served;

Representation by Advocate.

21. (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.

Decisions of the Board to be in writing.

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

(2) Where a panelist 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 panelists.

Board may proceed in absence of a Judge or Magistrate.

23. 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.

Absence of a Board member.

24. 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.

Board to keep full records of proceedings.

25. 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))

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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 & 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 organization 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 finalized?
.....

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

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:.....

THE JUDGES AND MAGISTRATES VETTING BOARD
NOTICE TO FILE RESPONSE.

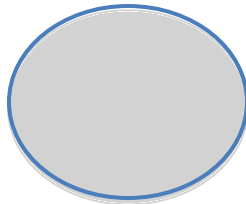
To:
.....
.....
.....

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 thirty (30) days from the date of this notice.

Given under my hand and the seal of the Board thisday of 20....



BY ORDER OF THE BOARD.

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

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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

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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
thenoon . 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, your absence notwithstanding.

DATED at this day of, 20

.....
BY ORDER OF THE BOARD

FORM JMVB.

5(r. 10(1))

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THE JUDGES AND MAGISTRATES VETTING BOARD

VETTING QUESTIONNAIRE TO BE COMPLETED BY ALL PERSONS TO BE VETTED

Section 1: BIODATA	
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.
7. Your written and oral communication skills. The elements of which shall include:
 - 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;
8. Your integrity, the elements of which shall include:
 - 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.
9. Your fairness, elements of which include:
 - 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.

10. Your temperament whose elements include:
- 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.

11. 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.
12. Your legal and life experiences elements of which shall include:
- 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.
13. 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.

Section Three:

Wealth Declaration

PLEASE ATTACH WEALTH DECLARATION FORM PSC 2, OBTAINABLE

AT www.publicservice.go.ke

I DECLARE THAT THE INFORMATION I HAVE SUPPLIED IS TRUE,
CORRECT AND COMPLETE TO THE BEST OF MY KNOWLEDGE
INFORMATION AND BELIEF.

NAME:

SIGNATURE:

DATE:

Note.—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.

Made on the 30th November, 2011.

SHARAD RAO,
Chairperson, Judges and Magistrates Vetting Board.