



ELGEYO MARAKWET COUNTY GOVERNMENT

COUNTY PUBLIC SERVICE BOARD

DISCIPLINE MANUAL FOR THE COUNTY PUBLIC SERVICE

2023

CHAIRMAN
COUNTY PUBLIC SERVICE BOARD
ELGEYO MARAKWET COUNTY

10 AUG 2023

Sign.....
P. O. Box 665-30700, ITEN

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DEFINITION OF TERMS

<i>Authorized Officer</i>	Means any officer, body or authority in the public service to whom the Public Service Board has delegated any of its functions in writing.
<i>Allow</i>	Means to accept an appeal or review.
<i>Appellant</i>	Means an individual /organization appealing against a decision or process that is thought to be incorrect or unfair.
<i>Appeal process</i>	Means to apply for the re- examination of a decision.
<i>Applicant</i>	Means an individual requesting the Public Service Board to review its decision.
<i>Application for Review</i>	Means to request that a decision be reconsidered due to new facts, evidence or a mistake that has been noted.
<i>Authority</i>	Means institutionalized and legal power inherent in a particular job, function, or position that is meant to enable its holder to successfully carry out his or her responsibility.
<i>Public Service Board</i>	Means the Public Service Board established under Section 57 of the County Government Act.
<i>Constitution</i>	Means the Constitution of Kenya, 2010.
<i>Conviction</i>	Means being found guilty of a criminal offence by court of law.
<i>County Government</i>	Means the County Government provided for under Article 176 (1) of the Constitution.
<i>Criminal offence</i>	Means an offence under the penal code or any other legislation.
<i>Disallow</i>	Means to decline an appeal or application for review.

<i>Delegated powers</i>	Means those functions for which the Public Service have assigned to a member, an Authorized Officer, body or authority in the public service to exercise on its behalf.
<i>Discipline</i>	Means conforming to service rules and regulations, regulations and norms which prescribe expected conduct and behavior of individual officers.
<i>Disciplinary Control</i>	Means due process in handling of discipline matters in accordance with the Constitution, legislations and this Manual.
<i>Interdiction</i>	Means barring an accused officer from performing powers and functions of the public office to give room for further investigation of the case.
<i>Minor offence</i>	Means any crime which upon conviction the imprisonment is six months or below.
<i>Major offence</i>	Means a serious crime which upon conviction the imprisonment is over six months (6)
<i>Penalty</i>	Means a punishment imposed for a violation of law or rule.
<i>Public Office</i>	Means an office in the public service
<i>Public Officer</i>	Means any person other than a state officer holding or acting in any public office
<i>Show cause letter</i>	Means a letter requiring an officer to give representations on alledged misconduct.
<i>Suspension</i>	Barring an accused officer from performing the functions of a public office on account of gross misconduct which is likely to lead to dismissal, or upon having been convicted or charged with a serious criminal offence pending finalization of a case.

ABBREVIATIONS

CHMRAC County Human Resource
Management Advisory Committee

HRMAC Human Resource Management
Advisory Committee

HRM&D Human Resource Management and
Development

DHRMAC Departmental Human Resource
Management Advisory Committee

CPSB County Public Service Board

PREAMBLE

A professional, efficient and effective County public service is the aspiration of many Counties. It enables a County to achieve, with relative ease, the socio-economic progress that is the hallmark of a democratic society. The commitment of employees towards the goals and aspirations of the employer are dependent on how the employees are managed and developed. Central to this theme of people- management is training and capacity building. The County Public Service Board is conscious that human resource development is a catalyst in management and implementation of change, building learning organizations and creating a culture of performance. Effective training and development benefits both the individual and the County Government through sharing of ideas and dissemination of good practices resulting in efficient and effective performance. This policy is the Board's commitment to guide the process of handling disciplinary cases in the County Public Service. It defines standard procedures for uniformity in handling disciplinary cases and outlines the steps in disciplinary procedures and processes. Further, the policy provides a framework within which proper framing of charges is done, how cases are investigated, analysis and evaluation of cases, comprehensive recommendation on cases and implementation of decision based on different cases.

Where clarification is required in this policy, it should be sought from the Board Secretary/Chief Executive Officer, County Public Service Board.



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PART ONE

1.0 INTRODUCTION

The Public Service Board is constitutionally mandated to exercise disciplinary control over persons appointed to hold offices in the public service. To effectively deliver this function, the Public Service Board has developed the Discipline Manual to guide the process of handling disciplinary cases in the County Public Service.

The Manual does not substitute the service regulations made by the Public Service Board or any other legislations as the case maybe, but it is meant to guide the user. The user is therefore required to read the Manual alongside the following documents:

- (a) Constitution of Kenya, 2010
- (b) County Government Act, 2012
- (c) Fair Administrative Action Act, 2015
- (d) Public Service (Values and Principles) Act, 2015
- (e) Employment Act, 2007
- (f) Labour Institutions Act, 2007
- (g) Labour Relations Act, 2007
- (h)The Work Injury Benefits Act, 2007
- (i) The Occupational Safety and Health Act, 2007
- (j) Public Officer Ethics Act (2003)
- (k)Ethics and Anti-Corruption Public Act, 2011
- (m) Pensions Act (Cap189)
- (n) Code of Regulations
- (o) Penal Code Chapter 63
- (p) General circulars issued by the Government from time to time.
- (q)Any other Law governing public service and employment.

1.1 SCOPE

This Manual provides general guidelines and instruments to be used by the Public Service Board and departments in handling disciplinary cases.

1.2 OBJECTIVES OF THE MANUAL

Under Section 59 (1)(a) of the County Government Act, No. 17 of 2012, the Board has been given the mandate to exercise disciplinary control. In an effort to enhance the processing and presentation of discipline cases, the Public Service Board has developed the Manual for use by the Board and Departments in the County.

The objectives of the Manual are to:-

- (a) Define discipline and understand its meaning in the context of the existing public service regulations.
- (b) Prescribe standard procedures for uniformity in handling disciplinary cases.
- (c) Outline the steps in disciplinary procedures and processes.
- (d) Define roles and responsibilities of different actors in handling of the disciplinary cases.
- (e) Guide on handling of court cases arising from disciplinary process

Further the manual provides guidelines on the following—

- (i) Alternative interventions in the disciplinary process;
- (ii) Carry out investigation;
- (iii) Disciplinary Hearings;
- (iv) Application of other forms of punishment other than dismissal ;and
- (v) Lodging of an appeal or application of review.

PART TWO - GUIDING PRINCIPLES

2.0 INTRODUCTION

The County Government Act, No.17, 2012 ,Section 59 (c), vests in the Public Service Board the power to exercise disciplinary control over public officers. Disciplinary control is an integral part in the management of human resource in the public service. It is intended to help and encourage public officers to achieve and maintain standards of conduct, contribute to improved performance and productivity. It is based on principles of fairness as envisaged in the Constitution and other enabling legislations. Where applicable, other alternative intervention mechanisms need to be explored.

2.1 GUIDING PRINCIPLES

The disciplinary control in the public service is governed by the following principles:

(a) The rules of natural justice:

- (i) Procedural fairness, where an officer must be allowed adequate opportunity to prepare and present his/her case;
- (ii) Impartiality of the deciding authority when hearing and making decisions;
- (iii) Decisions must be based upon logical proof or evidential material.

(b) Fair administrative action which is expeditious, efficient, lawful, reasonable and procedurally fair. Every officer to whom disciplinary action is taken has a right to:

- (i) Written reasons for any disciplinary action that is taken against him;
- (ii) Prior and adequate notice of the nature and reasons for the intended disciplinary action;
- (iii) An opportunity to be heard and to make representations in that regard;
- (iv) An opportunity to attend proceedings in person or in the company of an expert of his/her choice, cross examine persons who give adverse evidence against him and request for adjournment of proceedings where necessary;
- (v) Legal representation, where the affected officer so requests;
- (vi) Notice of a right to an appeal or review against a disciplinary decision;

- (vii) Information, materials and evidence to be relied upon in making a decision or taking a disciplinary action.
- (c) Thorough investigations on the alleged misconduct shall be undertaken before any disciplinary action is taken.
- (d) Application of other interventions in resolving discipline cases such as training, guidance and counseling
- (e) Right of appeal and application for review of disciplinary related decisions

2.2. ALTERNATIVE INTERVENTIONS IN THE DISCIPLINE PROCESS

Psycho- social challenges may impact negatively on an officers' overall work performance, resulting to cases of indiscipline. As such, alternative maybe undertaken by the employer to address employee misconduct in place of traditional punitive disciplinary action. This may, under the right circumstance, be a more efficient and more effective approach than traditional discipline.

While alternative intervention requires more thoughtful decision-making and thus poses a greater challenge for supervisors than traditional discipline, the results can be worth the time and effort. Alternative intervention may result in modified behavior if used early on in the discipline process for minor offences but may not be effective in more serious issues or habitual offences. The appropriateness of a certain approach will vary, based upon the nature of the misconduct and personality of the individual who second act needs correcting.

Alternative discipline interventions in the public service can take many forms such as workplace guidance and counseling and training.

(a) Workplace Guidance and Counseling

Some issues which manifest as indiscipline could be as a result of psycho- social challenges an employee may be undergoing. It could be also be due to lack of clarity of the assignment or rules and regulations. Understanding the root cause of the problem will ensure application of the correct remedy. Punishing such an employee will not improve the situation but may aggravate it. Where it is established that that the cause of indiscipline is psycho- social related, public institutions are encouraged to adopt workplace guidance and counseling as a first option.

To address the challenge of lack of clarity, the supervisor has the responsibility to hold regular meeting with employees to clarify assignments and explain workplace rules.

With regard to psycho- social challenges, work place counseling will be adopted; the main objective being to bring about a voluntary change in the employee, and help the employee overcome immediate problems and cope with future challenges.

A counseling intervention is not a discipline action, as its purpose is not to create a negative experience, but rather to communicate helpful information and provide necessary support in management of psycho – social challenges. Counseling shall ordinarily be conducted by the department of Public Service Management and

Administration. The department will provide appropriate services in accordance with the Public Service Guidance and Counseling Policy. However, an officer is at liberty to undergo counseling in a private institution at own cost.

Where preliminary investigations establish that an officer is experiencing psycho social challenges:

- a) The County Public Service Board, CHRAC (County Human Resource Advisory Committee) and Departmental Human Resource Committee shall recommend to the authorized officer that the officer undergoes counseling.
- b) The authorized officer shall inform the affected officer of the recommendation to refer him/her for counseling.
- c) Upon consent by the affected officer, the authorized officer shall make arrangement for the officer to undergo counseling.
- d) Where the counselor recommends for an officer to undergo rehabilitation, the authorized officer shall refer the officer to a recognized rehabilitation centre.
- e) Where an officer declines to undergo counseling or rehabilitation, then the normal disciplinary process shall be initiated.

(b) Guidance and Training

Persistent under achievement of performance targets by an employee can be a ground for dismissal. Sometimes an employee may not meet the set targets despite having best efforts. Before severe punishment of dismissal for under performance is taken, and if the officer is not guilty of any other misconduct, public institutions should first train the officer with the objective of improving performance.

Supervisors are responsible for indentifying individual officers' training needs which will lead to improved performance and productivity. The training intervention may include; role play, coaching, mentoring, induction and job rotation.

PART THREE—DELEGATION OF POWERS AND INSTITUTIONAL FRAMEWORK

3.0 DELEGATION OF POWERS TO AUTHORIZED OFFICERS

Section 86 of the County Government Act, 2012 stipulates that the County Public Service Board may delegate in writing any of its functions to any one or more of its members. In reference to the above, the Public Service Board has delegated the following disciplinary powers to Authorized Officers as per the laws , regulations and instructions issued to the service from time to time—

3.1 INSTITUTIONAL FRAMEWORK

The institutional framework for handling disciplinary cases is as follows:

(a) In respect of officers in job Group 'M' and below

Immediate supervisor reports the misconduct to the Authorized Officer in the Department who;

- i. Analyzes the misconduct and commences the disciplinary action by issuing a show cause letter;
- ii. Interdict any public officer;
- iii. Inflict a severe reprimand or a reprimand on any officer;
- iv. Stop any public officer's pay or salary;
- v. Recovery of the cost or part of the cost of any loser breakage caused by default or negligence, provided no such cost has been recovered by surcharge action under the appropriate financial instructions or regulations;
- vi. Withholding, deferment and stoppage of salary increment
- vii. Recommend Reduction in rank or seniority for all officers to the county public service board.
- viii. He/she also forwards cases with comments and recommendations to CHRMAC and the Public Service Board for decision where applicable.
- ix. Communicates decisions to affected officers.

Where the powers have been delegated, the cases shall be considered and finalized at the Department level through the County Human Resource Management Advisory Committee (CHRMAC) and a report forwarded to the County Public Service Board.

(b) CHRMAC:

County secretary is the chair

Members consist of all Chief Officers.

Secretary is the director County Human Resource

Functions of Director, HRM&D:

Provide technical advice to CHRMAC;

Receive cases from departments and presents to the CHRMAC

Submits the summarized report to CHRMAC for deliberations.

Communicates the decisions of CHRMAC to the respective authorized officer and a copy to the CPSB

CHRMAC; Deliberates on the case and makes recommendations to the Authorized Officer on the next course of action.

A person who is dissatisfied with a decision made in exercise of delegated powers has a right of appeal to the Public Service Board through the Authorized Officer within a period of Ninety (90) calendar days.

(e) County Public Service Board:

(i) Considers the recommendations of the Authorized Officers and makes decisions related to powers which are not delegated.

(ii) Hears and determines appeals and applications for review.

(iii) Communicates decisions to Authorized Officers for implementation.

(iv) Forward appeals and communicates decisions of Public Service Commission to the affected officers

PART FOUR–DISCIPLINARY PROCEDURE

4.0 GENERAL PROVISIONS

The following shall be observed while processing discipline cases:

- (a) Disciplinary cases dealt with under delegated powers shall be processed through the county Human Resource Management Advisory Committee.
- (b) If criminal proceedings are instituted against an officer or where an officer has been acquitted of a criminal charge in a court of law, the Authorized Officer shall not be prevented from dismissing him or otherwise punishing him on any other charge arising out of his conduct in the matter.
- (c) Where an officer has been charged with desertion of duty, the letter shall be addressed to his/her last known address by registered mail.
- (d) There should be proper framing of charges with full particulars of the case including the applicable provision of the Constitution, legislation or code of conduct alleged to have been breached.
- (e) The officer should be notified in writing, be given the particulars of the misconduct as preferred and reasonable opportunity to respond to the allegations.
- (f) Thorough investigation of an alleged offence shall be undertaken before any disciplinary action is taken.
- (g) Application of other interventions in resolving discipline cases such as counseling and dispute resolution mechanisms.
- (h) Right of appeal and application for review of disciplinary related decisions.
- (i) Disciplinary cases shall be dealt with promptly and finalized within a period of six (6) months. Where it is found impracticable to do so the Authorized Officer shall report individual cases to the Public Service Public Service Board explaining the reason for the delay.

4.1 SPECIFIC PROVISIONS

(a) Procedure to be followed in initial disciplinary action

In the event of initial instance(s) of minor offences committed by an officer, his/her supervisor will issue a verbal warning. The verbal warning should be in form of structured discussion which may entail counseling. The officer should be informed of the alleged offence and what is likely to befall him or her in case the offence(s) is repeated in future. A copy of the record for such a warning indicating that there was a meeting between the supervisor and the officer should be kept by the supervisor.

In the event the officer repeatedly commits minor offences irrespective of (3) verbal warning(s), a written warning should be given to the officer by his other supervisor. The warning letter should state the exact nature of offence(s) and indicate future disciplinary action which will be taken against the officer if the offence is repeated.

Where an officer fails to reform despite being issued with verbal and written warnings, or where he or she commits serious offence(s) as those referred to in Section 4.6 of this Manual, the following procedure shall apply:

(b) The Procedure to be followed by the Authorized Officers in respect of officers in Job Group 'N' and above:

- i. Carry out a preliminary investigation and consultation as to the circumstances surrounding the act of misconduct.

Or

Review the persistent offences of which the officer has been warned severally but failed to reform.

- ii. Issue the officer with a 'show cause letter' on the alleged offence and the charges framed against him/her and invite him to state in writing the grounds, if any, on which he lies to exculpate himself/herself.
- iii. The period within which to respond to the charges must be specified in the statement.
- iv. On expiry of the specified period of response to the

'show cause letter', whether or not the officer has responded, the case shall be presented to the county Human Resource Management Advisory Committee(CHRMAC) for deliberation and recommendation.

v. In the event the investigation reveals further offence(s) against the officer, a new show cause letter shall be issued to him or her and the steps in (iii) to (iv) above shall apply.

vi. Thereafter, the case shall be forwarded to the Public Service Board with the Authorized Officer's comments, recommendation, material evidence, records and other requirements as outlined in Section 4.9 of this Manual.

vii. However, if the Public Service Board is of the opinion that further investigation is necessary before a decision is made, it will direct the Authorized Officer to do so.

(c) The procedure to be followed in respect of officers in Job Groups 'N' and below but who have qualified for pension:

All cases of dismissal from the service, reduction in rank or seniority in respect of officers in Job Groups 'N' and below who have qualified for pension benefits, shall be dealt with by the Authorized Officer as is in cases of officers in Job Groups 'N' and above as outlined in (b) above.

(d) The procedure to be followed in respect of officers in Job Groups 'N' and below but who have not qualified for pension:

i. All the steps in (b) (i-iv) above shall be observed and where the Authorized Officer is of the opinion that further investigation is not necessary, he/she shall decide on the punishment to be inflicted on the accused officer.

ii. Where the Authorized Officer finds it necessary to carry out further investigation, the requirements for carrying out investigations as indicated in Section 4.8 of this manual shall be observed.

iii. On receipt of the investigation report, the Authorized Officer shall decide on the appropriate action based on the recommendations of the CHRMAC.

4.2 INTERDICTION

The interdiction process entails the following:

- (a) An officer may be interdicted where gross misconduct which is likely to lead to dismissal is reported and requires investigation or a report that an officer has been charged in criminal proceedings is received.
- (b) If the case relates to a criminal charge, the officer is served with an interdiction letter, a sample of which is provided in Appendix I.
- (c) If the misconduct is one which can lead to dismissal but is not of criminal nature the officer shall be served with a 'show cause letter' which shall also contain a communication on interdiction, a sample of which is provided in Appendix II.
- (d) A public officer on interdiction shall be entitled to half of his basic salary, full house allowance and medical insurance cover.
- (e) A public officer who is on interdiction should not leave the duty station without the permission of the Authorized Officer or any other public officer who is empowered to give such permission.
- (f) A public officer whose interdiction has been lifted shall promptly be served with a decision letter, a sample of which is provided in Appendix III. Any withheld salary, allowances and benefits will be restored with effect from the date it was withheld.

4.3 SUSPENSION

Suspension process is as follows:

- (a) If a public officer has been convicted of a serious criminal offence or is found culpable of a gross misconduct which can lead to dismissal, he or she shall be served with a suspension letter, a sample of which is provided in Appendix IV.
- (b) A public officer who is on suspension shall not leave the duty station without the permission of the Authorized Officer or any other public officer who is empowered to give such permission.
- (c) A public officer who is on suspension shall not be entitled to any salary but shall be paid full house allowance, and medical allowance or medical insurance premium remitted whichever is the case.

(d) A public officer whose suspension has been lifted shall promptly be served with a decision letter, a sample of which is provided in Appendix V. Any withheld salary, allowances and benefits shall be restored with effect from the date it was withheld.

Interdiction and suspension shall be lifted by the Authorized Officer on recommendation by the CHRMAC.

4.4 ABSENCE FROM DUTY WITHOUT LEAVE

Where an officer is absent from duty without leave, reasonable or lawful cause, the following steps shall apply:

(a) Establish the exact dates the officer was absent from duty. If not traced through personal contacts and next of kin within a period of ten (10) days from the commencement of such absence, the salary and other remunerative allowances shall be stopped with effect from the date of absence, and a report of the missing officer be made to the nearest police station and the Public Service Board for appropriate action.

(b) The officer shall be addressed a registered 'show cause letter' through his/her last known address, giving a reasonable period within which to respond but not less than ten (10) days. The nature of the offence and the contemplated action shall be stated clearly in the letter. A scanned copy of the show cause letter may be sent to the officer through electronic mail. (Sample letter is provided as Appendix VI.

(c) If the officer does not respond, the case shall be submitted to the relevant Human Resource Management Advisory Committee which shall make a recommendation to the relevant authority empowered under the regulations for decision.

(d) If the officer has responded, the representations shall be analyzed alongside the charges and the findings submitted to the relevant committee for recommendation to the Authorized Officer.

(e) The decision of the Public Service Board or Authorized Officer and the right of appeal or application for review shall promptly be communicated to the officer.

(f) Such decisions will also be communicated to the relevant professional body, where applicable.

4.5 RETIREMENT IN THE PUBLIC INTEREST

Retirement in the public interest maybe allowed instead of the prescribed punishments if the Public Service Board or Authorized Officer considers upon proof of them is conduct that:

- (a) The public officer has nevertheless raised a mitigating factor which renders imposition of a punishment too harsh in view of the circumstances of the case;
- (b) The length of service, benefits accrued and previous good record of the public officer justifies the retirement;
- (c) Imposing a punishment against the public officer is likely to adversely affect the reputation of the public body concerned or the public service generally:

In retiring a public officer in the public interest, the following process shall apply:

(1) If a county chief officer, after having considered the report of the Complaint against a public officer and it is apparent that it is desirable to retire the officer on the ground of public interest; the county chief officer shall—

- (a) address the public officer a letter, sample of which is provided in Appendix VII, requiring an officer to show cause within fourteen (14) days why he or she should not be retired on grounds of public interest.
- (b) upon receipt of the representation or if none is received within thirty (30) days, submit the representations to CHRMAC for deliberations and recommendations
- (c) the Chief Officer shall within (14) days submit his/her recommendations including relevant records and documents to the County Public Service Board for decision.

(2) Unless the County Public Service Board considers that further inquiry into the complaint is necessary, in which case it shall issue direction to the county chief officer accordingly, it shall decide forthwith whether the public officer should be retired on the ground of public interest.

(3) For a complaint or report to justify retirement on the ground of public interest, it shall be established that the public officer, offended public policy protected in prescribed government policy, Act of Parliament or binding decision made by a competent court of law.

(4) Where the Public Service Board is of the opinion that an alternative punishment be applied, the case shall be returned to the Authorized Officer with instructions that a fresh show cause letter be issued in line with the contemplated disciplinary action.

(5) Where the Public Service Board concurs with the recommendation, the Authorized officer shall within (7) days convey the Public Service Board's decision

to the officer, informing him/her of the benefits ,if any and the right of application for review within the time provided for in the regulations as per the sample letter provided in Appendix VIII.

4.6 OFFENCES UNDER GROSS MISCONDUCT

An officer who is found to have committed gross misconduct is liable for summary dismissal. Cases that amount to gross misconduct which may lead to summary dismissal as drawn from the following Acts among others; the Employment Act ,2007,the Public Officer Ethics Act, the Leadership and Integrity Act,2012,the Anti- Corruption and Economic Crimes Act,2003,the Public Service (Values and Principles) Act,2015 include,

- (a) Absence from duty without leave or other lawful cause;
- (b) Negligence of duty;
- (b) Intoxication during working hours;
- (c)Using abusive or insulting language or behaving in a manner likely to cause a breach of the peace;
- (d) Insubordination;
- (e) Criminal conviction;
- (f) Incarceration for more than fourteen (14) days following arrest for cognizable offence;
- (g) Willful destruction of government property;
- (h) Theft by public servant;
- (i)Unauthorized use or disclosure of confidential information;
- (j) Falsification of information or references on appointment; and
- (k) Acceptance of any bribe and secret profit.

4.7 PUNISHMENTS

All punishments inflicted on a public officer shall be within the law and existing regulations. The following are the punishments which may be inflicted on an officer facing disciplinary action:

- (a) Recovery of cost or part of the cost of any loss or breakage caused by default or negligence provided that no such cost has been recovered by surcharge under the appropriate financial instructions or regulations.
- (b) Reprimand.
- (c) Stoppage, withholding and deferment of salary increment.
- (d) Deferment of promotion.
- (e) Reduction in rank or seniority, provided that the reduction should not be more than one grade or rank.

(g) Dismissal from service.

4.8 REQUIREMENTS FOR CARRYING OUT INVESTIGATIONS

Verifiable evidence is the foundation of fairness in disciplinary cases and this can be achieved through investigation of alleged offences. Such investigations should be carried out by committees appointed in writing by the Authorized Officer.

While carrying out the investigations the following shall be observed:

- a) Investigating committee should comprise officers senior to the accused officer and should not have dealt with the case before.
- b) The authorized officer shall give clear terms of reference and specific timelines within which to carry out the investigations.
- c) The team should comprise of not less than three (3) officers (where the team is more than three members, the team shall consist of an odd number).
- d) The officer under investigation must be interviewed by the investigating committee.
- e) The investigating committee shall record details of any matters which may aggravate or mitigate the case.
- f) After listening to all witnesses and studying all the documents, the committee shall sum up the case and record its findings as evaluated against the evidence.
- g) The investigation report submitted to the relevant HRMAC shall not contain any recommendation on the form of punishment to be inflicted on the accused officer but should contain:
 - I. A statement on whether the charges against the officer have been proved.
 - II. Evidence collected by the team, including any statements by witnesses;
 - III. Analysis of the evidence and statements; and
 - IV. Details on any matter that may affect the gravity of the case If any.

- h) Where further investigations are required as provided for in the regulations, such investigations shall be conducted in accordance with the process in (a) to (f) above.

4.9 CHECKLIST FOR SUBMISSION OF CASES TO THE PUBLIC SERVICE BOARD

The authorized officer shall present cases to the Public Service Board in the format prescribed, a sample of which is provided in Appendix IX. When submitting cases to the Public Service Board, the following must be provided:

- i. The officer's personal files.
- ii. Authorized Officer's comments on each and every issue raised by the accused officer and recommendations.
- iii. Disciplinary hearing proceedings where applicable
- iv. Investigation report and material evidence where applicable.
- v. Certified copy of approved CHRMAC minutes.
- vi. All correspondence related to the case.
- vii. Details of any matter which may aggravate or mitigate the gravity of the case.

PART FIVE—APPEALS AND REVIEWS

5.0 RIGHT OF APPEAL AND APPLICATION FOR REVIEW

Any officer dissatisfied by the decision of the Authorized Officer may decide to appeal to the Public Service Board. If an officer is dissatisfied with the decision of the Public Service Board he/she may apply to the Public Service Board for review of the decision. A right of appeal or review shall be communicated to the concerned officer in the letter containing a decision which may be appealed against or reviewed as the case maybe. If the officer is not satisfied with decision of County Public Service Board the officer can appeal to the public service Commission.

The application for review shall be made within a period of six (6) months.

The County Public Service Board shall admit the application for review if;

- (a) fresh material facts arise which with due diligence could not be presented when the decision was initially made; or
- (b) There is an error apparent on the record of the earlier decision.

5.1 LODGING AND APPEAL OR APPLICATION FOR REVIEW

The process of lodging an appeal or application for review is as follows:

- (a) All appeals and applications for review shall be in writing and made within a period of ninety (90) calendar days from the date of the letter conveying the decision. The Public Service Board may entertain an appeal or application for review out of time if, in the opinion of the Public Service Board, the circumstances warrant it.
- (b) All applications for review shall be in writing and made within a period of six (6) months from the date of the letter conveying the decision.
- (c) All appeals and reviews shall be addressed to the Secretary, County Public Service Board through the Authorized Officer, who shall give comments and a recommendation on issues raised in the form provided for in Appendix X. While forwarding his/her appeal or application for review, an officer may submit an advance copy to the Public Service Board.
- (c) An appeal or an application for review shall be accompanied by copies of all material evidence or documents that the appellant wishes to rely on.
- (d) All appeals and applications for review shall be forwarded to the County Public Service Board even where they are made out of time.
- (d) Decisions on appeals for application for review shall be conveyed within seven (7) days and the officer informed of the right of application for review where applicable.
- (e) Appeal and applications for review shall only be entertained once.
- (f) Decisions on disciplinary action shall not be deferred or suspended pending the determination of the appeal or application for review.

PART SIX—COURTCASES

6.0 HANDLING COURT CASES

In the event that the county Government is sued in matter arising from the exercise of the County Public Service Board's disciplinary powers, including delegated authority, the following shall apply:

- (a) The authorized officer shall within two (2) days of being served with the court papers notify the County Attorney's Office the filing of such court cases and forward all relevant information and documents.
- (b) the authorized officer shall cooperate with the County Public Service Board and the County Attorney's office in handling of all court cases
- (c) the authorized officer shall ensure that all witnesses are available to give evidence in court .An officer who fails to appear in court when directed by the authorized officer will be held liable.
- (d) Court decisions shall be complied with unless a notice of appeal has been lodged and an order has been obtained.
- (d) The authorized officer in consultation with the Board shall promptly instruct the office of the County Attorney to appeal against a decision of the court when dissatisfied with the decision.
- (e) The authorized officer or any other public officer who occasions loss of public funds arising out of failure to comply with court orders shall be held personally responsible.
- (f) The authorized officer shall promptly notify the Board ,judgments entered against the government on matters arising from disciplinary proceedings including certified copies of judgments.
- (g) The authorized officer shall monitor and report the status of all court cases to the Board on quarterly basis.

PART SEVEN – APPENDICES

Appendix I - Generic Show cause letter.

Appendix II - Sample Interdiction Letter.

Appendix III - Letter Lifting Interdiction/suspension.

Appendix IV - Letter Lifting Interdiction/suspension (where any other Penalty is imposed).

Appendix V - Suspension Letter.

Appendix VI - Show Cause Letter (absence from duty without reasonable cause).

Appendix VII - Notice of intention to retire from the service.

Appendix VIII - Decision letter on retirement from the service.

Appendix IX - Notice of hearing.

Appendix X - Format for Presenting Disciplinary Cases, Appeals and Reviews by the Authorized Officer to the Commission.

Appendix XI – Verbal Warning Form (EMCPSB-012)

APPENDIX I – Generic Show Cause Letter

(Letter Head)

To

.....

Thro'

(Supervisor)

Dear Sir or Madam,

(specify misconduct e.g intoxication during working hours,negligence of duty, e.t.c in title)

It has been reported that on(state the date) you..... (State the particulars of the misconduct and the provisions of legislation or code of conduct contravened)

In view of the above, disciplinary action which may lead to dismissal from the service on account of.....(state the misconduct) is contemplated. However, before this is done, you are hereby called upon to show cause why the intended action should not be taken against you.

Your representation if any, should reach this office within twenty one (21) days from the date of this letter failure to which the contemplated action will be taken without further reference to you.

Authorized Officer

Copy to: Supervisor

APPENDIX II – Sample Interdiction letter (Letter head)

To

.....

(Registered mail to last known address and scanned copy sent by electronic mail)

Dear Sir/Madam,

INTERDICTION

It has been reported to this office that you..... (Set out particulars).

In view of the foregoing, you are hereby interdicted from exercising the duties of your office with effect from the date of this letter pending finalization of your case.

While on interdiction, you will be eligible for half salary, full house allowance and medical insurance cover. You should not leave your duty station without the express permission from your immediate supervisor.

(Signed) Authorized Officer

Copy to: Supervisor

APPENDIX III – Letter Lifting Interdiction/Suspension

(Letter head)

To

.....

Thro'.....

(Supervisor)

.....

Dear Sir/Madam

LIFTING OF INTERDICTION/SUSPENSION

Further to our letter Ref. No..... dated(the interdiction/suspension letter) and after due consideration of your case, it has been decided that the interdiction/ suspension imposed on you be and is hereby lifted with effect from..... (the date of the interdiction/suspension). Your half salary, allowances and benefits which had been withheld during your interdiction/suspension shall be released. This is in accordance with section 71(4) of the Public Service Commission Act, 2017.

You should report for duty within seven (7) days from the date of this letter

(Signed)

Authorized Officer

APPENDIX IV – Letter Lifting Interdiction/suspension (where any other penalty is imposed)

(Letter head)

To

.....
Thro'.....
(Supervisor)

.....
Dear Sir/Madam

LIFTING OF INTERDICTION/SUSPENSION

Further to our letter Ref. No..... and after considering your letter dated..... and hearing conducted on(date).....(where applicable), it has been decided that you be(state the punishment as clarified under section 3.0 and 4.6 of this manual).

As the disciplinary process has been concluded, your interdiction/suspension is hereby lifted. In view of the punishment imposed on you, your salary, allowances and benefits which had been withheld during interdiction/suspension shall not be released. This is in accordance with section 71(5) of the Public Service Commission Act, 2017.

However, you are hereby notified that a repeat of the same or similar misconduct in future may lead to commencement of proceedings for your dismissal from the service.

You should report for duty within seven (7) days from the date of this letter.

(Signed)
Authorized Officer

APPENDIX V - Suspension Letter

(Letter Head)

To

.....

Thro'

(Supervisor)

Dear Sir or Madam,

SUSPENSION LETTER

It has been reported to this office that you were charged of a serious criminal offence namely (set out particulars). Or Reference is made to our letter Ref No.datedand the representations in your letter dated

This is to inform you that having considered your representations, investigation report and the hearing proceedings, you have been found culpable of (state alleged offence), and your dismissal from the service is being contemplated.

Consequently, it has been decided that you be and are hereby suspended from exercising the duties of your office from the date of this letter pending finalization of your case. While on suspension, you will be eligible for half salary, full house allowance and medical insurance cover and you should not leave your duty station without the express permission from your immediate supervisor.

(Signed)

Authorized Officer

***APPENDIX VI – Show Cause Letter – absence from duty without
leave, reasonable or lawful cause***

Letter head

To.....

(supervisor)

Dear Sir or Madam,

ABSENCE FROM DUTY WITHOUT LEAVE, REASONABLE OR LAWFUL CAUSE

It has been reported that you absented yourself from duty with effect from (State the particulars of the absence including number of days Your attention is drawn to Section of the Employment Act,(year) which provide that an employee who absents himself/herself from the workplace without leave or other lawful cause, is liable for summary dismissal. In view of the above, your dismissal from the service on account of absence from duty without leave, reasonable or lawful cause is contemplated, but before this is done, you are hereby called upon to show cause why the intended action should not be taken. Your representation if any, should reach this office within twenty one (21) days from the date of this letter failure to which the contemplated action will be taken without further reference to you.

(Signed)

Authorized Officer

APPENDIX VII – NOTICE OF INTENTION TO RETIRE FROM THE SERVICE

(Letter head)

To.....

.....

Thro'.....

(Supervisor)

Dear Sir or Madam,

NOTIFICATION OF RETIREMENT FROM THE SERVICE

Reference is made to our letter ref No.datedand the representations in your letter dated

This is to inform you that having considered your representations, investigation report and the hearing proceedings, you have been found culpable of (state alleged misconduct/s) that warrant dismissal. However, in view of (e.g. long service, mitigating factors, age, previous good record) it is contemplated that you be retired from the service in accordance with Section 68(3) of the Public Service Commission Act, 2017.

Consequently you are hereby required to make a written representation as to why you should not be retired from the service. Your representations, if any, should reach this office within twenty one (21) days from the date of this letter failure to which the contemplated action (indicated in the earlier show cause letter) will be taken without further reference to you.

(Signed)

Authorized Officer

APPENDIX VIII – DECISION LETTER ON RETIREMENT FROM THE SERVICE

(Letter head)

To.....

.....

Thro'.....

(Supervisor)

Dear Sir or Madam,

RETIREMENT FROM THE SERVICE

This is to inform you of the Public Service Commission's decision to retire you from the service (indicate grounds) with effect from(date).

This is following your acceptance to retire contained in your letter dated.....

In view of this decision, you are required to report to this office within thirty (30) days with a view to submitting a handover report and to conclude arrangements for processing your pension and other terminal benefits. To facilitate processing of your pension benefits, you are required to complete the following documents and return them to this office duly signed for further action:

1. Pension Commutation Form.
2. Official Secrets (Declaration) Act for officers leaving the service.
3. Final Declaration of Income, Assets and Liabilities Form.
4. Clearance Form.

(Signed)

Authorized Officer

(Signed)

Authorized Officer

APPENDIX IX – NOTICE OF HEARING

(Letter head)

To.....

.....

Thro'

(Supervisor)

Dear Sir or Madam,

HEARING NOTICE

TAKE NOTICE that you are required to appear before the (hearing body) for the hearing of your case on the day of20 at (time). The hearing shall be held at (venue). During the hearing, you may be represented by an advocate, a union member or an expert of choice, and you may also bring witnesses to testify on your behalf.

TAKE NOTICE that the hearing may proceed and a determination made your absence notwithstanding.

Dated thisday of20.....

(Signed)

Authroized Officer

**APPENDIX X –
FORMAT FOR PRESENTING DISCIPLINARY CASES, APPEALS AND REVIEWS
BY THE AUTHORIZED OFFICER TO THE COMMISSION**

- (i) Name
- (ii) Date of First appointment
- (iii) Personal Number
- (iv) Current designation
- (v) Civil Service Grade/Salary scale
- (vi) Terms of service
- (vii) Date of Birth
- (viii) Work Station

A. Nature of Charge, Offence or Misconduct against the officer

.....
.....

(Set out the particulars in full)

B. Discipline case/Appeal/Review

.....
..... (Specify)

C. Previous offences or misconduct and punishments (if any)

S/No. Offence and Date Punishment/Decision Date of decision

- 1.
- 2
- 3.
- 4.

D. Criminal convictions

(If any)

S/No. Criminal Judgment/Ruling/Order by court (include charge/offence date)

(include date)

- 1
- 2
- 3

E. Analysis of the Case on issues raised by the officer and the Authorized Officer's comments on each representation

Officer's Representations Authorized Officer's comments

- 1.
- 2.
- 3.

F. Findings and Recommendations of the HRMAC

.....
.....

G. Authorized Officer's comments and recommendation

.....
.....

H. List of Appendices

.....
.....

(List all documents attached to this form e.g. personal files, show cause letter, minutes of the relevant Committees, investigation report, hearing proceedings, court rulings/judgments etc.)

(Signed)
Authorized Office

APENDIX XI, SAMPLE OF VERBAL WARNING FORM

VERBAL WARNING FORM

Employee's Name.....

Date of Verbal warning.....

Specific offense or rule violation

Specific statement of the expected performance.....

.....

.....

.....

Any explanation given by the employee or othe significant information.....

.....

.....

.....

Employee name..... sign.....

date.....

Before

Supervisor Name

Signature.....

Date



**THE SECRETARY/CHIEF EXECUTIVE OFFICER
PUBLIC SERVICE BOARD
P.O BOX 665-30700
ITEN, KENYA**

Website : www.elgeyomarakwet.go.ke

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