

THE ADVOCATES COMPLAINTS COMMISSION BILL, 2022

A Bill for

AN ACT of Parliament to provide for the establishment of the Advocates Complaints Commission; to provide for the procedure for conducting inquiries into complaints against advocates, firms of advocates, or members or employees thereof; to amend the Advocates Act; and for connected purposes

ENACTED by the Parliament of Kenya as follows—

PART I—PRELIMINARY

Short title. **1.** This Act may be cited as the Advocates Complaints Commission Bill, 2022.

Interpretation. **2.** In this Act, unless the context otherwise requires—

Cap. 16. “advocate” has the meaning assigned to it in section 2 of the Advocates Act;

 “chairperson” means the chairperson of the Commission appointed in accordance to section 12;

 “Commission” means the Advocates Complaints Commission established by section 4;

 “Committee” means the Disciplinary Committee established by section 57 of the Advocates Act;

 “firm” means a firm of advocates; and

 “Salaries and Remuneration Commission” means the Salaries and Remuneration Commission established by Article 230 of the Constitution.

Guiding principles. **3.** In fulfilling its mandate, the Commission shall act in accordance with the values and principles set out in the Constitution and any other written law.

PART II—ADVOCATES COMPLAINTS COMMISSION

Establishment of
the Commission.

4. (1) There is established a commission to be known as the Advocates Complaints Commission which shall be a body corporate with perpetual succession and a common seal.

(2) The Commission shall, in its corporate name, be capable of—

- (a) suing and being sued;
- (b) taking, purchasing or otherwise acquiring, holding, charging or disposing of movable and immovable property;
- (c) entering into contracts;
- (d) borrowing and lending money; and
- (e) doing or performing all such things which may lawfully be done or performed by a body corporate that may be necessary for the proper performance of its functions under this Act.

Composition of
the Commission.

5. (1) The Commission shall consist of—

- (a) a Chairperson who shall be appointed by the President on the recommendation of the Attorney-General;
- (b) an advocate of the High Court with at least ten years' professional experience who shall be appointed by the Attorney-General; and
- (c) one other person with a degree from a recognized university, not being an advocate, who shall be appointed by the Attorney-General.

(2) The Chairperson and Commissioners shall be recruited through a competitive process and not more than two-thirds of the members of the Commission shall be of the

same gender.

Qualifications.

6. (1) A person shall be qualified to be appointed as the Chairperson of the Commission, if that person—

- (a) is qualified to be appointed as a judge of the High Court; and
- (b) meets the requirement of Chapter Six of the Constitution.

(2) A person shall be qualified to be appointed as a Commissioner under section 5 (b) or (c) if that person—

- (a) is qualified to be appointed as a judge of the High Court; or
- (b) has knowledge, has had a distinguished career, and has experience of at least ten years in any of the following fields—
 - (i) accounting;
 - (ii) finance;
 - (iii) economics;
 - (iv) monitoring and evaluation; or
 - (v) communication psychology; and
- (c) meets the requirement of Chapter Six of the Constitution.

Disqualifications.

7. A person shall not be qualified to be appointed as the Chairperson or a Commissioner, if that person—

- (a) is a member of the governing body of a political party;
- (b) is a member of the Council of the Law Society of Kenya;

- (c) is an undischarged bankrupt;
- (d) has been convicted of a criminal offence and sentenced to a term of imprisonment;
- (e) has been removed from any public office for contravening the provisions of the Constitution or any other written law;
- (f) is a member of Parliament or a county assembly;
or
- (g) has not met his or her legal obligations relating to tax and other statutory obligations.

Vacancy.

8. (1) The office of Chairperson or Commissioner shall fall vacant if the holder—

- (a) dies;
- (b) resigns from office by notice in writing to the appointing authority;
- (c) is convicted of a criminal offence and sentenced to a term of imprisonment;
- (d) is absent from three consecutive meetings of the Commission without good cause; or
- (e) is removed from office on any of the following grounds—
 - (i) violation of the Constitution or any other written law;
 - (ii) gross misconduct or behaviour;
 - (iii) inability to perform the functions of the office arising out of physical or mental infirmity;
 - (iv) incompetence or neglect of duty; or

(v) bankruptcy.

(2) Where a vacancy occurs in the office of Chairperson or Commissioner, the President, in the case of the chairperson, or the Attorney-General, in the case of a Commissioner, shall request the Public Service Commission to cause a notice to be published in the *Gazette* and in at least one newspaper with a nationwide circulation inviting qualified persons to apply for the vacant position.

(3) The notice under subsection (2) shall specify the period within which, and the address where, the applications shall be submitted.

(4) The Public Service Commission shall—

(a) within seven days of the deadline for receiving applications, prepare and publish in the *Gazette* and in at least two newspapers with a nationwide circulation a shortlist of qualified candidates;

(b) at least seven days after the notice under paragraph (a), invite the shortlisted candidates for an interview; and

(c) within seven days after the interviews under paragraph (b) have been conducted, submit—

(i) to the President, in the case of the Chairperson, the name of the person it recommends to be appointed, and the President shall, if satisfied with the recommendation, appoint the person by notice in the *Gazette*; or

(ii) to the Attorney-General, in the case of a Commissioner, the name of the person it recommends to be appointed and the Attorney-General shall appoint the person by notice in the *Gazette*.

(5) Where the President or Attorney-General is not satisfied by the choice of the Public Service Commission, the

provisions of subsection (2), (3) and (4) shall apply, with the necessary modifications.

Investigations by
the Commission.

9. (1) The Commission shall investigate any complaints against an advocate, a firm of advocates or an employee or member of the advocate or firm, as the case may be.

(2) A person aggrieved by the conduct of an advocate, a firm of advocates or an employee or member of the advocate or firm may lodge a complaint with the Commission in the prescribed form.

(3) The Commission shall receive and consider a complaint made under subsection (2) and—

(a) if it appears to the Commission that the complaint has no substance, it shall reject the complaint and notify the complainant of the rejection and the reasons for it in writing;

(b) if it appears to the Commission, whether before or after an investigation, that the complaint has substance but that the substance of the complaint constitutes or appears to constitute a disciplinary offence, it shall refer the matter to the Disciplinary Committee and notify the advocate or firm of advocates and complainant of the referral in writing specifying the reasons for the referral; or

(c) if it appears to the Commission that the complaint has substance but it does not constitute a disciplinary offence, it shall notify the advocate or firm against whom the complaint has been made of the particulars of the complaint in writing and invite the advocate or firm to answer the complaint within such reasonable period as shall be specified by the Commission in the notification.

(4) After the expiration of the period specified under subsection (3) (c), the Commission shall proceed to

investigate the complaint for which purpose it shall have power to—

- (a) summon witnesses;
- (b) require the production of such documents as it may deem necessary;
- (c) examine witnesses on oath;
- (d) generally, take all such steps as may be proper and necessary for the purpose of the investigation; and
- (e) after hearing any submissions made to it by or on behalf of the complainant and the advocate or firm against whom the complaint has been made, make such an order or award in accordance with this section as may be just and proper.

(5) In all cases which do not appear to the Commission to be of a serious or aggravated nature, the Commission shall promote reconciliation and encourage and facilitate an amicable settlement between the parties through an appropriate alternative dispute resolution mechanism.

(6) If the Commission considers that the complainant has suffered loss or damage by reason of the advocate's or firm's conduct, the Commission may order the respondent to pay the complainant compensation or reimbursement not exceeding five million shillings.

(7) An order under subsection (6) shall be registered with the Court and shall thereupon be enforceable in the same manner as an order of the Court.

(8) Where the complaint relates to the surrender of funds or property by an advocate or firm to the complainant, the Commission may order the surrender of all funds or property which the advocate or firm does not dispute, except where the complainant has filed a civil suit against the advocate or firm in respect of the same funds or property.

(9) An advocate or firm against whom an order is made under this section may apply to the Disciplinary Committee for a review of the Order.

Powers of the Commission.

10. (1) The Commission may, as may be necessary and reasonably practicable, require any person to assist the Commission during the conduct of an investigation under this Act.

(2) Any person who, without lawful excuse, fails or refuses to assist the Commission when required to do so under subsection (1) commits an offence.

(3) The Commission may institute disciplinary proceedings against an advocate who refuses or fails to respond to a notification under section 9 (3) (c) regarding a complaint made against the advocate or the firm in which the advocate belongs or is employed.

(4) Any party aggrieved by a decision of the Commission under this section may appeal to the High Court and the decision of the High Court in any such appeal shall be final.

(5) The Commission shall, at least once in every three months, publish a report on the complaints dealt with by the Commission during that period in such manner and form as may be prescribed in Regulations.

Commission may tax advocates' bills of costs.

11. (1) The Commission may, during the investigation of a complaint against an advocate or firm, order such advocate or firm to produce an itemised fee note, within such period as may be specified in the order, for the purpose of taxation of the bill of costs.

(2) Where the advocate or firm fails to produce such fee note within the specified period, the Commission may assess the advocate's fee in such sum as it deems fit.

(3) The Commission may investigate the accounts of an advocate or firm against whom a complaint has been made and, for that purpose, may order the advocate or firm to submit all relevant books and documents to the Commission

or an accountant engaged by the Commission in that behalf.

(4) The Commission may issue a warrant for the levy of the amount of any sum ordered to be paid by virtue of this section on the immovable and movable property of the advocate or firm by whom the compensation is ordered to be paid by distress and sale under warrant, and such warrant shall be enforced as if it was a warrant issued by the Court.

Term of office.

12. (1) The Chairperson and each Commissioner shall be appointed for a term which shall not exceed six years and shall not be eligible for reappointment.

(2) The Chairperson and Commissioners shall serve on a full-time basis.

(3) Subject to subsection (1), the Chairperson and Commissioners shall serve for such periods such that their terms of office shall not expire at the same time.

Oath of office.

13. Before assuming office, the chairperson and members of the Commission shall take and subscribe to the oath of office as prescribed in the First Schedule.

Remuneration of chairperson and members.

14. (1) There shall be paid to the chairperson and commissioners such remuneration by way of salary, allowance, pension or gratuity as the Attorney-General may, on the advice of the Salaries Remuneration Commission, determine.

(2) The remuneration referred to in subsection (1) shall be paid out of moneys provided by Parliament.

Procedure of the Commission.

15. (1) The business and affairs of the Commission shall be conducted in accordance with the Second Schedule.

(2) Except as provided in the Second Schedule, the Commission may regulate its own procedure.

Quorum.

16. Any two Commissioners present at a meeting of the Commission shall constitute a quorum.

Secretary to the

17. (1) There shall be a Secretary to the Commission

Commission. who shall be appointed by the Commission through an open, transparent and competitive process.

(2) A person shall be qualified to be appointed as the Secretary if that person—

- (a) is a citizen of Kenya;
- (b) is an advocate of the High Court of Kenya with at least ten years' professional experience;
- (c) holds a postgraduate degree from a university recognized in Kenya;
- (d) has at least five years proven experience at management level;
- (e) has proven experience in ethics and governance and corporate governance; and
- (f) meets the requirements of Chapter Six of the Constitution.

(3) The Secretary shall—

- (a) be the chief executive officer of the Commission;
- (b) be the accounting officer of the Commission;
- (c) be responsible for—
 - (i) carrying into effect the decisions of the Commission;
 - (ii) the day-to-day administration and management of the affairs of the Commission; and
 - (iii) supervision of the staff of the Commission; and
- (d) perform such other duties as may be assigned by

the Commission.

(4) The Secretary shall serve on such terms and conditions as the Commission may determine.

(5) The Secretary shall hold office for a term which shall not exceed three years and shall be eligible for reappointment for one further term which shall not exceed three years.

Vacancy in the office of the Secretary.

18. (1) The office of the Secretary shall fall vacant if the person holding the office—

- (a) dies;
- (b) resigns in writing addressed to the Commission;
- (c) is removed from office in accordance with section 19;
- (d) is convicted of an offence for which the penalty is a term of imprisonment of at least six months;
- (e) is found to have violated any provision of the Constitution or any other written law; or
- (f) is adjudged bankrupt by a court of competent jurisdiction.

(2) Where a vacancy occurs in the office of the Secretary, the Commission shall cause a notice to be published in the *Gazette* and in at least one newspaper with a nationwide circulation inviting qualified persons to apply for the vacant position.

(3) The notice under subsection (2) shall specify the period within which, and the address where, the applications shall be submitted.

(4) The Commission shall—

- (a) within seven days of the deadline for receiving applications, prepare and publish in the *Gazette*

and in at least two newspapers with a nationwide circulation a shortlist of qualified candidates;

- (b) at least seven days after the notice under paragraph (a), invite the shortlisted candidates for an interview; and
- (c) within seven days after the interviews under paragraph (b) have been conducted appoint the successful candidate as the Secretary.

Removal from office of the Secretary.

19. (1) The Secretary may be removed from office in accordance with the terms and condition of service on any of the following grounds—

- (a) inability to perform the functions of the office arising out of physical or mental infirmity;
- (b) gross misconduct or misbehaviour;
- (c) incompetence or negligence of duty;
- (d) violation of the Constitution and any other written law; or
- (e) any other ground as may be specified in the terms and conditions of service.

(2) Where the question of the removal of the Secretary under subsection (1) arises, the Commission shall—

- (a) inform the Secretary in writing of the reasons for the intended removal; and
- (b) give the Secretary the opportunity to be heard and make representations in writing, or in person or through a representative, as to why the secretary should not be removed from office.

Staff of the Commission.

20. (1) The Commission shall appoint such staff as may be necessary for the effective performance of its functions.

- (2) The staff of the Commission shall comprise of—
 - (a) such professional, technical and administrative officers and other staff as may be appointed by the Commission; and
 - (b) such persons as may be seconded by the Public Service Commission to the Commission.

Secondment of staff.

21. (1) The Public Service Commission may, on the request of the Commission, second to the Commission such number of public officers as may be necessary for the performance of the Commission’s functions.

(2) A public officer seconded to the Commission shall, during the period of secondment, be deemed to be an officer of the Commission and shall be subject only to the direction and control of the Commission.

Seal of the Commission.

22. (1) The seal of the Commission shall be such device as may be determined by the Commission and kept in the custody of the Secretary to the Commission.

(2) The affixing of the seal shall be authenticated by the chairperson or any other person authorized in that behalf by resolution of the Commission.

(3) Any document purporting to be under the seal of the Commission or issued on behalf of the Commission shall be admissible in evidence in the absence of any proof to the contrary, and shall be deemed to be so executed or issued, as the case may be, without further proof.

Protection from personal liability.

23. (1) Nothing done by a member of the Commission or by any person working under the instructions of the Commission shall, if done in good faith for the purpose of executing the powers, functions or duties of the Commission under this Act, render such member or officer personally liable for any action, claim or demand.

(2) Any expenses incurred by any person in any suit or prosecution brought against him or her in any court, in

respect of any act which is done or purported to be done by him or her under the direction of the Commission, shall if the court holds that such act was done in good faith, be paid out of the funds of the Commission, unless such expenses are recovered by him or her in such suit or prosecution.

(3) Notwithstanding subsection (1), nothing in this section shall exempt a member of the Commission, officer, employee or agent of the Commission from individual responsibility for unlawful or criminal acts committed by that member of the Commission, officer, employee or agent of the Commission.

Records of the Commission.

24. The Commission shall keep a record of the proceedings of every meeting of the Commission.

Headquarters and offices of the Commission.

25. (1) The headquarters of the Commission shall be in Nairobi.

(2) The Commission shall ensure access to its services in all parts of Kenya and in this regard, the Commission may establish offices in any place in Kenya.

PART III—FINANCIAL PROVISIONS

Funds of the Commission.

26. The funds of the Commission shall consist of—

- (a) monies allocated by Parliament;
- (b) loans, grants, gifts, donations or other endowments borrowed by or given to the Commission; and
- (c) such funds as may vest in or accrue to the Commission in the performance of its functions under this Act or any other written law.

Annual estimates.

27. (1) At least three months before the commencement of each financial year, the Commission shall cause the secretary to the Commission to prepare the estimates of the revenue and expenditure of the Commission for that year.

(2) The annual estimates shall make provision for all the estimated expenditure of the Commission for the financial year concerned and, in particular, shall make provision for the—

- (a) payment of remuneration in respect of the members and staff of the Commission;
- (b) payment of pensions, gratuities and other charges in respect of benefits which are payable out of the funds of the Commission;
- (c) maintenance of the buildings and grounds of the Commission;
- (d) training, research and development of activities of the Commission;
- (e) creation of such reserve funds to meet future or contingent liabilities in respect of benefits, insurance or replacement of buildings, installations or equipment of the Commission, and in respect of such other matters as the Commission may think fit; and
- (f) any other expenditure necessary or for purposes of this Act.

(3) The annual estimates shall be approved by the Commission before the commencement of the financial year to which they relate and be submitted to the Attorney-General for tabling in Parliament.

Financial year.

28. The financial year of the Commission shall be the period of twelve months ending on the 30th June of each year.

Accounts and audit.

29. (1) The Commission shall cause to be kept all proper books and records of account of the income, expenditure, assets and liabilities of the Commission.

(2) Within a period of three months after the end of

each financial year, the Commission shall submit to the Auditor-General the accounts of the Commission in respect of that year together with a—

- (a) statement of the income and expenditure of the Commission during that year; and
- (b) statement of the assets and liabilities of the Commission on the last day of that financial year.

(3) The annual accounts of the Commission shall be prepared, audited and reported upon in accordance with the provisions of the Public Audit Act, 2015.

No. 34 of 2015.

Annual reports.

30. (1) The Commission shall, at the end of each financial year, cause an annual report of the Commission's activities to be prepared.

(2) The Commission shall submit the annual report to the Attorney-General and Parliament within a period of three months after the end of the year to which it relates and the report shall include—

- (a) the financial statements of the Commission;
- (b) a description of the activities of the Commission;
- (c) such other statistical information relating to the Commission's functions as the Commission may consider appropriate;
- (d) any recommendations made by the Commission to any person or entity and the action taken thereof;
- (e) the impact of the exercise of any of its powers or performance of its functions; and
- (f) any challenges faced by the Commission in the exercise of its powers and performance of its functions under this Act.

(3) The annual reports shall be published and publicised in such manner as the Commission may determine.

PART IV—MISCELLANEOUS PROVISIONS

Independence of the Commission.

31. (1) Except as provided for under this Act, the Commission shall, in the performance of its functions, not be subject to the direction or control of any person or authority.

(2) The Chairperson and Commissioners shall be State officers within the meaning of Article 260 of the Constitution.

Disclosure of information.

32. A request for information by any citizen shall be—

(a) addressed to the secretary or such other person as the Commission may designate for that purpose; and

(b) dealt with in accordance with Article 35 of the Constitution, the Access to Information Act, 2016 and Data Protection Act, 2019.

No. 31 of 2016.
No. 24 of 2019.

Regulations.

33. The Commission may make Regulations generally for the better carrying out into effect of the provisions of this Act.

Offences and penalty.

34. Any person who contravenes the provisions of this Act for which a penalty is not prescribed commits an offence and is liable, on conviction, to a fine not exceeding one million shillings or to a term of imprisonment not exceeding two years or to both.

PART V—REPEAL, SAVINGS AND TRANSITIONAL PROVISIONS

Interpretation of Part.
Cap. 16.

35. In this Part, “former Commission” means the Advocates Complaints Commission established under the Advocates Act.

Amendment of Cap. 16.

36. The Advocates Act is amended—

- (a) by repealing section 53;
- (b) by repealing section 53A; and
- (c) by repealing section 54.

Savings.

37. (1) The Commissioners of the former Commission who were in office immediately before the commencement of this Act shall, upon commencement of this Act, continue in office for the unexpired period of their terms.

(2) Notwithstanding the provisions of subsection (1), for the purposes of the first appointments of the Chairperson and Commissioners under this Act, the expiry of the terms Commissioners of the former Commission shall be staggered such that they do not occur on the same date.

Transfer of staff.

38. (1) A person who, immediately before the commencement of this Act, was an employee of the Government serving in the former Commission shall, upon the commencement of this Act, be deemed to be an employee of the Commission.

(2) Despite subsection (1), all the employees of the Government serving in the former Commission shall, within one year from the date of the commencement of this Act, be given the option of electing to serve in the Commission or be redeployed in the public service.

FIRST SCHEDULE

(s. 13)

**OATH/AFFIRMATION OF THE OFFICE OF CHAIRPERSON AND
COMMISSIONER**

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

(SO HELP ME GOD).

Sworn/Declared by the said

Before me this day of

.....

Chief Justice

SECOND SCHEDULE

(s. 16)

CONDUCT OF BUSINESS AND AFFAIRS OF THE COMMISSION

- Meetings. 1. Subject to Rule 5, the Commission shall have at least four meetings in each calendar year.
- Special meetings. 2. Notwithstanding rule 4, the Secretary to the Commission may, at any time, and shall, within fourteen days of the receipt of a written request signed by at least two members, convene a special meeting of the Commission.
- Chairperson to preside. 3. The chairperson shall preside at every meeting of the Commission at which present, and, in the absence of the Chairperson at any meeting, the Commissioners present shall elect one of their number who shall, with respect to that meeting and the business transacted thereat, have all the powers of the Chairperson.
- Quorum. 4. The quorum of the meeting shall be two members.
- Voting. 5. A decision on any matter before the Commission shall be by a majority of the votes of the Commissioners present and voting, and, in the case of an equality of votes, the chairperson or the person presiding shall have a casting vote.
- Disclosure of interest. 6. (1) If a Commissioner is directly or indirectly interested in any matter before the Commission, and is present at a meeting of the Commission at which the matter is the subject of consideration, such Commissioner shall, at the meeting and as soon as soon as reasonably practicable after the commencement thereof, disclose that fact, and shall not take part in the consideration or discussion of, or vote on, any questions with respect to that matter or be counted in the quorum of the meeting during consideration of the matter.
- (2) A disclosure of interest under this paragraph shall be recorded in the minutes at which it is made.
- Commission may determine its own procedure. 7. Subject to these Rules, the Commission may determine its own procedure, including the procedure for the attendance

of other persons at its meetings, and may make standing orders in the respect thereof.