

**SPECIAL ISSUE**

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***KENYA GAZETTE SUPPLEMENT***

**SENATE BILLS, 2018**

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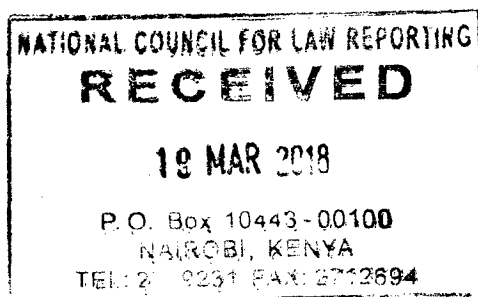
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# **THE OFFICE OF THE COUNTY ATTORNEY BILL, 2018**

## **A Bill for**

**AN ACT of Parliament to establish the Office of the County Attorney; provide for the functions and powers of the County Attorney; provide for the discharge of duties and the exercise of powers of the County Attorney; and for connected purposes**

**ENACTED** by the Parliament of Kenya, as follows—

### **PART I—PRELIMINARY**

1. This Act may be cited as the Office of the County Attorney Act, 2018.

Short title.

2. In this Act—

Interpretation.

“County Attorney” means the County Attorney appointed under section 5;

“County Legal Counsel” means a person appointed as such under section 18;

“County Solicitor” means a person appointed as such under section 17; and

“Office” means the office of the County Attorney established under section 4.

3. This Act shall apply to the County Attorney, the County Solicitor, County Legal Counsel and such other officers who perform or discharge legal functions and such other duties as may be assigned to them in the Office.

Application.

### **PART II—ESTABLISHMENT AND ADMINISTRATION**

4. (1) There is established in each county the Office of the County Attorney, which is an office in the county public service.

Establishment of  
Office of County  
Attorney.

(2) The Office shall consist of—

(a) the County Attorney;

(b) the County Solicitor; and

(c) such other number of County Legal Counsel as the County Attorney may, in consultation with the county public service board, consider necessary.

5. (1) The County Attorney shall be appointed by the Governor with the approval of the county assembly.

Appointment and qualifications for appointment of County Attorney.

(2) A person qualifies for appointment as County Attorney if such person-

- (a) has at least seven years experience as an Advocate of the High Court of Kenya; and
- (b) meets the requirements of Chapter Six of the Constitution.

(3) The County Attorney shall take and subscribe to the oath or affirmation as set out in the First Schedule to this Act before assuming office.

6. The County Attorney—

Functions of the County Attorney.

- (a) is the principal legal adviser to the county executive committee;
- (b) shall attend the meetings of the county executive committee as an *ex officio* member of the executive committee;
- (c) shall represent the county executive in court or in any other legal proceedings to which the county executive is a party, other than criminal proceedings;
- (d) shall advise departments in the county executive on legislative and other legal matters;
- (e) shall negotiate, draft, vet and interpret documents and agreements for and on behalf of the county executive and its agencies;
- (f) shall be responsible for the revision of county laws;
- (g) may liaise with the Office of the Attorney-General when need arises; and
- (h) shall perform any other function as may be necessary for the effective discharge of the duties and the exercise of the powers of the County Attorney.

7. (1) The County Attorney shall, in discharging the functions under this Act, have the power to—

Powers of the County Attorney.

- (a) appear at any stage of any proceedings, appeal, execution or any incidental proceedings before

- any court or tribunal in which by law the County Attorney's right of audience is not excluded;
  - (b) require any officer in the county public service to furnish any information in relation to any matter which is the subject of a legal inquiry;
  - (c) summon any officer in the county public service to explain any matter which is the subject of litigation by or against the county executive; and
  - (d) issue directions to any officer performing legal functions in any department within the county executive.
- (2) The County Attorney shall—
- (a) establish such administrative units in the Office as may be necessary for the effective discharge of the functions of the Office under this Act; and
  - (b) perform any other action necessary in the administrative interests of the Office.

**8. (1)** Despite the provisions of any other written law, the County Attorney shall have the right of audience in proceedings of any suit or inquiry of an administrative body which the County Attorney considers to—

Audience by  
County Attorney  
in matters of  
public interest.

- (a) be of public interest within the county;
  - (b) involve public property within the county; or
  - (c) involve an independent department or agency of the county executive.
- (2) In the exercise of the powers of the County Attorney under subsection (1), the County Attorney shall—
- (a) notify any court, tribunal or such other administrative body of the intention to be enjoined in the suit, inquiry or administrative proceedings;
  - (b) satisfy the court, tribunal or such other administrative body of the public interest or public property involved; and
  - (c) comply with any direction of the court, tribunal or any such other administrative body on the nature of pleadings or measures to be taken for purposes of giving effect to the effective discharge of the duties of the Office.

(3) Where a suit, inquiry or any other proceedings is pending before a court, tribunal or any other administrative body to which the County Attorney does not have a right of audience, it shall be sufficient for the County Attorney to file a certificate of the intention of the County Attorney to be joined in the proceeding.

(4) The court, tribunal or such other administrative body may, upon receipt of a certificate under subsection (3), enjoin the County Attorney in the proceedings.

**9.** No criminal proceeding or civil suit shall be brought against the County Attorney, the County Solicitor, County Legal Counsel or any other officer in the Office in respect of any proceedings in a court of law or in the course of discharging of the functions of the County Attorney under this Act.

Protection from personal liability.

**10.** The County Attorney shall have the status and rank of a member of the county executive committee.

Status of the office of County Attorney.

**11.** The County Attorney, the County Solicitor and County Legal Counsel shall not engage in any other gainful employment that may result in a conflict of interest.

Private practice prohibited.

**12.** The County Attorney may resign from office in writing, addressed to the Governor.

Resignation.

**13. (1)** The Governor may, with the approval of the County Assembly, remove the County Attorney from office only for—

Removal from office.

- (a) serious violation of the Constitution or any other law;
- (b) gross misconduct, whether in the performance of functions of the Office or otherwise;
- (c) physical or mental incapacity to perform the functions of the Office;
- (d) incompetence; or
- (e) bankruptcy.

(2) Notwithstanding any other provisions of this Act, the Governor may, upon election under the Constitution, appoint a person who is qualified as County Attorney in accordance with the provisions of this Act.

**14.** (1) The County Attorney may, either generally or otherwise as provided by the instrument of delegation, by writing under the County Attorney's hand, delegate to the County Solicitor or any County Legal Counsel all or any of the powers and functions under any written law, except the power of delegation.

Delegation by  
County Attorney.

(2) A power or function delegated under subsection (1) may be exercised or performed by the County Solicitor or County Legal Counsel in accordance with the instrument of delegation.

(3) A delegation under this subsection (1) may be revoked at will and does not prevent the exercise of a power or performance of a function by the County Attorney.

**15.** (1) All County Legal Counsel in any department in the county executive shall be officers of the Office and shall be answerable to the County Attorney.

Legal officers in  
County executive  
departments.

(2) The County Attorney shall have the power to issue directions to any County Legal Counsel with regard to the manner of performing the legal functions within their respective departments.

### **PART III—PERFORMANCE OF FUNCTIONS OF THE COUNTY ATTORNEY**

**16.** (1) A department or public entity established within a county executive shall not engage the services of a consultant to render any legal services relating to the functions of the County Attorney without the approval of the County Attorney.

Engagement of  
consultant.

(2) A request by a department or public entity to the County Attorney to engage the services of a consultant under subsection (1) shall be made in writing.

(3) An approval by the County Attorney of a request by a department or public entity to engage the services of a consultant under subsection (1) shall be made in writing.

### **PART IV—APPOINTMENT, TERMS AND CONDITIONS OF SERVICE OF COUNTY SOLICITOR AND COUNTY LEGAL COUNSEL**

**17.** (1) There shall be a County Solicitor who shall be competitively recruited and appointed by the county public service board.



(2) A person is qualified for appointment to the office of County Solicitor if the person—

- (a) has at least five years experience as an Advocate of the High Court of Kenya; and
- (b) meets the requirements of Chapter Six of the Constitution.

County Solicitor.

(3) The County Solicitor shall be the principal assistant of the County Attorney in the execution of the functions of the County Attorney under this Act and any other written law.

**18.** (1) The county public service board shall appoint such County Legal Counsel as may be necessary for the proper and efficient discharge of the functions of the Office.

County Legal Counsel.

(2) A person qualifies for appointment as a County Legal Counsel under subsection (1) if such person—

- (a) is an Advocate of the High Court of Kenya;
- (b) meets the requirements of Chapter Six of the Constitution; and
- (c) meets such other qualifications as the county public service board may require.

(3) Despite subsection (2), nothing in this Act shall be construed to entitle any officer who is not qualified in law to perform legal functions in the county public service.

**19.** The County Legal Counsel appointed under this Act shall serve on such terms as the county public service board shall, in consultation with the Salaries and Remuneration Commission, determine.

Terms and conditions of service.

**20.** (1) A County Legal Counsel appointed under section 18 shall subscribe to and observe the Code of Conduct as set out in the Second Schedule.

Code of conduct.

(2) The County Attorney may, from time to time by notice in the *Gazette*, amend the Schedule.

(3) A County Legal Counsel who breaches the Code of Ethics shall be liable to disciplinary action.

**21.** (1) The Office may, upon request, second any County Legal Counsel to any agency, organization or

Secondment.

institution within the county government on such terms and conditions as the Office, in consultation with the agency to which the person is being seconded, agree upon.

(2) A County Legal Counsel who is seconded under subsection (1) shall—

- (a) be deemed to be an employee of the agency, organization or institution;
- (b) enjoy the same benefits as an employee who is directly recruited by the agency, organization or institution; and
- (c) be required to comply with such orders and directions of the agency, organization or institution in the same manner as an employee who is directly recruited by that agency, organization or institution.

**22.** (1) There shall be such officers and other members of staff of the Office as the County Attorney considers necessary for the proper and efficient discharge of the functions of the Office.

Staff.

(2) The County Attorney may procure the services of such other persons as may be reasonably necessary for the purposes of assisting the County Attorney in the performance of the functions of the County Attorney.

(3) The appointing bodies shall ensure that the composition of the staff of the Office reflects gender equity and takes into account persons with disabilities.

## **PART V—MISCELLANEOUS PROVISIONS**

**23.** (1) Without prejudice to the provisions of any other written law, an officer or member of staff of the Office shall not disclose or use any information gained by the officer or member of staff in the course of the official duties of the officer or member of staff without the authority of the County Attorney.

Prohibition of unauthorized disclosure of information.

(2) A person who contravenes subsection (1) commits an offence and is liable, on conviction, to a fine not exceeding two hundred thousand shillings, or to imprisonment for a term not exceeding two years, or to both.

**24.** The Office shall be the depository of all County laws and legal documents and agreements signed for or on behalf of the county executive. Depository of laws and agreements.

**25.** The County Attorney shall have custody of the seal of the county executive. County Seal.

**26.** The County Attorney shall have access to persons, relevant records, documents and property pertaining to civil or criminal cases in the performance of the duties of the County Attorney. Accessibility.

**27.** The County Government shall provide adequate facilities for the efficient functioning of the Office. Facilities.

**28.** (1) The funds of the Office Attorney shall consist of— Funds of the Office.

- (a) monies that may be allocated by the County Assembly for the purposes of the Office;
- (b) such monies or assets as may accrue to the Office in the course of the exercise of its powers or the performance of its functions under the Act; and
- (c) all monies from any other source provided, donated or lent to the Office.

(2) The funds of the Office shall be used for administrative expenses of the Office and such other purposes as may be necessary for the discharge of the functions of the Office.

**29.** (1) The County Attorney shall, as soon as practicable after the thirtieth of June in each year, prepare and furnish to the Governor a report of the operations of the Office during the year that ended on thirtieth June. Annual report.

(2) The report prepared under subsection (1), shall, in respect of the year to which it relates, contain—

- (a) the financial statements of the Office;
- (b) a description of the activities of the Office; and
- (c) such other information relating to its functions that the Office may consider necessary.

(3) The County Attorney shall submit to the Clerk of the County Assembly a copy of the report furnished under subsection (1) for tabling before the County Assembly

within fifteen days after the day on which the Governor receives the report.

**30.** The County Attorney may make Regulations, not inconsistent with this Act, prescribing all matters required or permitted to be prescribed, or necessary or convenient to be prescribed for the carrying out or giving effect to this Act.

Regulations.

**31.** This Act shall prevail in case of any inconsistency between this Act and legislation enacted by a County Assembly in accordance with Article 191 (3) (b) of the Constitution.

County Assembly  
legislation.

**32.** (1) Upon the coming into effect of this Act, members of staff employed by the county executive to perform the functions of the Office under this Act shall—

Transition.

- (a) be deemed to be members of staff of the Office in their respective capacities;
- (b) retain any rights accrued or accruing to them as such staff or contributors;
- (c) be at liberty to continue to contribute to any superannuation scheme to which they were contributors;
- (d) be entitled to receive any deferred or extended leave as if they have continued to be such staff of the Office during their service with the county executive;
- (e) be entitled to receive any payment, pension or gratuity as if they have continued to be such staff of the Office during their service with the county executive; and
- (f) be deemed to be employees of the Office for the purposes of any law under which those rights accrued or were accruing, under which they continue to contribute or by which that entitlement is conferred.

(2) Despite the provisions of subsection (1), a person employed by the county public service board to perform the functions of the County Attorney, County Solicitor or County Legal Counsel at the commencement of this Act shall continue to hold their respective positions in the

Office after the coming into effect of this Act only if they meet the qualifications specified in this Act.

(3) The county public service board shall, where a person employed by the county executive to perform the functions of the County Attorney, County Solicitor or County Legal Counsel does not meet the qualifications specified in this Act, redeploy such person to the highest position that is vacant and to which such person qualifies for appointment.

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**FIRST SCHEDULE** **(section 5(3))**

**OATH OF OFFICE FOR THE COUNTY ATTORNEY**

I ..... , do swear/solemnly affirm that I shall always truly and diligently serve the people and the Republic of Kenya in the Office of the County Attorney of ..... County; that I shall diligently discharge my duties and perform my functions in the said office to the best of my judgment; that I shall at all times, when so required, faithfully and truly give my counsel and advice to the Governor of ..... County; and that I shall do justice to all. (So help me God)

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**SECOND SCHEDULE** **(section 20(1))**

**CODE OF CONDUCT**

**Ethical Values and Principles**

**1. Application**

- (a) This Code of Ethics shall apply to all County Legal Counsel.
- (b) This Code of Ethics shall be supplementary to the Public Service Code of Conduct and the Rules of Professional Conduct and Etiquette of the Law Society of Kenya.

**2. Loyalty and Dedication**

A County Legal Counsel shall perform the functions of the Office of the County Attorney with complete loyalty and dedication and shall not indulge in any activity that may affect the interests of the Office of the County Attorney in particular and the County in general.

### **3. Responsibility**

A County Legal Counsel shall ensure that personal conduct is consistent with the dignity, image and integrity of the Office of the County Attorney.

### **4. Honesty**

A County Legal Counsel shall act honestly and with propriety in the performance of the County Legal Counsel's duties and functions.

### **5. Competence**

A County Legal Counsel shall—

- (a) perform the functions and discharge duties of the Office of the County Attorney competently; and
- (b) handle matters without undue delay, risk or unnecessary expense to the county government.

### **6. Quality of service**

A County Legal Counsel has a duty to serve the County Government and the public in a conscientious, diligent and efficient manner in order to provide quality service.

### **7. Fairness and Diligence**

A County Legal Counsel shall not make an official decision without first giving due consideration to the matter at hand and the impact it is likely to have on the rights and interests of the people involved.

### **8. Confidentiality**

A County Legal Counsel has a duty to hold in strict confidence all information concerning the business and affairs of the County Government and the public generally where the information is acquired by virtue of office except where the disclosure is expressly authorized by the County Attorney, or required by law.

### **9. Integrity**

A County Legal Counsel shall—

- (a) not be influenced in any manner whatsoever by any individual or body of individuals in the discharge of official duties;

- (b) perform the functions and discharge the duties of the Office of the County Attorney with integrity;
- (c) respect and comply with this Act and any other written law and shall conduct oneself both in private and official capacities in a manner that promotes public confidence, the integrity of the Public Service, Office of the County Attorney and the legal profession;
- (d) not allow outside interest to compromise or in any way jeopardize the integrity of the legal profession, their independence or competence;
- (e) at all times observe a standard of conduct that reflects credit on the legal profession, the public service and administration of justice generally; and
- (f) desist from conduct capable of drawing an impression of being involved in corruption.

#### **10. Selflessness**

A County Legal Counsel shall take decisions solely in the interest of the nation and justice and not on any other factor.

#### **11. Transparency**

The decisions and actions of a County Legal Counsel shall be made in a transparent manner and the County Legal Counsel shall provide reasons for such decisions.

#### **12. Leadership**

A County Legal Counsel shall—

- (a) at all times display high moral values and conduct oneself in a manner that reflects credibility on the Office of the County Attorney;
- (b) abide by the spirit and letter of the law; and
- (c) adhere to the ethical standards expressed in this Schedule.

#### **13. Rule of law and the administration of justice**

A County Legal Counsel has—

- (a) a duty to promote respect for the rule of law and administration of justice;
- (b) a duty to treat the court with candour, courtesy and

respect and shall not attempt to influence court decisions by use of deceptive or reprehensible methods;

- (c) a duty to deal with other legal practitioners fairly, courteously and in good faith; and
- (d) a duty to uphold the integrity and reputation of the legal profession and to promote principles of fairness, justice and honesty.

#### **14. Appropriate presentation and attire**

A County Legal Counsel shall at all time in and outside the place of work appear in smart, proper and decent dress and behave in a manner befitting both the public service and the legal profession.

#### **15. Personal Conduct**

- (a) A County Legal Counsel, shall comply with and execute laws, uphold the administration of justice and protect the integrity of public life.
- (b) A County Legal Counsel entrusted with the responsibility to serve a county, shall —
  - (i) refrain from indulging in habits and behaviour that infringe upon the performance of official duties or tarnish the image of the Office of the County Attorney;
  - (ii) maintain the dignity and decorum of the Office;
  - (iii) not use county government resources for personal purposes and benefit;
  - (iv) be liable for unlawful and improper behaviour or the non-performance of duties;
  - (v) not do or direct to be done, in abuse of the office or power, any act prejudicial to the rights of another person knowing that such an act is unlawful or contrary to the county government policy;
  - (vi) maintain transparency in the policies of the Office and in decisions and actions made;
  - (vii) not knowingly mislead the county government on any matter arising from their functions;



- (viii) not maintain or operate a bank account outside Kenya;
- (ix) not provide information which is detrimental to the interest, territorial integrity and sovereignty of Kenya;
- (x) protect and uphold professionalism, render decisions based on merit, and prohibit all forms of discrimination; and
- (xi) not accept any gifts, presents or benefits.

## **16. Conflict of Interest**

- (a) A County Legal Counsel shall ensure that no conflict arises or appears to arise between the County Legal Counsel's official duties and private interests.
- (b) A County Legal Counsel shall not—
  - (i) appear, advise or represent any party against the county government; and
  - (ii) be a member of, belong to, or take part in any society the membership of which is incompatible with the functions or dignity of the County Legal Counsel's office.

## **MEMORANDUM OF OBJECTS AND REASONS**

### **Statement of the Objects and Reasons for the Bill**

The principal object of this Bill is to establish the Office of the County Attorney. The County Attorney would be the principal legal adviser to the county executive and would be responsible for representing the county executive in any legal proceedings. The Bill provides for the functions and powers of the County Attorney and the appointment of a County Solicitor and County Legal Counsel.

### **Statement on the delegation of legislative powers and limitation of fundamental rights and freedoms**

The Bill does not delegate legislative powers nor does it limit fundamental rights and freedoms.

### **Statement of how the Bill concerns County Governments**

The Bill establishes the Office of the County Attorney and sets out the functions of the office. This is an office that would be instrumental to the functioning of county governments and do away with the current lacuna with regards to legal representation of the county executive. The office would provide legal advice to the county executive and also represent the county executive in court or in any legal proceedings that may be instituted by or against it.

The Bill therefore concerns county governments as it fundamentally affects the powers and functions of county governments in terms of Article 110 (1) (a) of the Constitution.

### **Statement that the Bill is not a money Bill within the meaning of Article 114 of the Constitution**

The Bill does not appropriate funds for its implementation as such appropriation would be effected through separate legislation introduced and enacted in accordance with Article 185 (2) of the Constitution.

The Bill is therefore not a money Bill within the meaning of the said Article 114 of the Constitution.

Dated the 22nd February, 2018.

**SAMSON CHERARKEY,**  
*Chairman,*  
*Committee on Justice, Legal Affairs and Human Rights.*

