ELECTORAL CODE OF CONDUCT ENFORCEMENT RULES

IN EXERCISE of the powers conferred by regulation 99 of the Elections (General) Regulations 2012, the Commission makes the following Rules —

Citation.	**1.** These rules may be cited as the Electoral Code of Conduct Enforcement Rules
Interpretation	**2.** In these rules, unless the context otherwise requires— "Act" means the Elections Act, 2011; "Code" means the Electoral Code of Conduct "Committee" means the Electoral Code of Conduct Enforcement Committee established under the Act; "Returning officer" means a person appointed by the Commission for the purpose of conducting an election or referendum. "Electoral area" means a Ward, County or Constituency. "Election Court" means the Supreme Court in the exercise of the jurisdiction conferred upon it by Article 163(3) (a), the High Court in the exercise of its jurisdiction conferred upon it by Article 165(3) (a) of the Constitution, or the High Court in the exercise of the jurisdiction conferred upon it by this Act. "Electoral Laws" means the Constitution, the Elections Act and subsidiary legislation made thereunder as they relate to the presidential, parliamentary, county elections and the referendum.
Object.	**3.** The object of these rules is to provide a procedure and mechanisms for the enforcement of the Electoral Code of Conduct.
Application of rules.	**4.** (1) These rules shall apply todisputes or complaints arising from violation of the Electoral Code of Conduct.

	(2) These rules shall not apply to election petitions or disputes and complaints subsequent to the declaration of election results.
Establishment of Committee	**5.** The Code of Conduct Enforcement Committee shall comprise not less than five members of the Commission and shall be chaired by a member appointed by the Chairperson of the Independent Electoral and Boundaries Commission. The Commission may nominate a member of its Staff to be the Secretary to the Committee.
Directorate designated as assisting counsel	**6.** The Directorate responsible for legal affairs shall act as the assisting counsel and shall prosecute all complaints in respect to breach of the Code before the Committee.
Charges for breach of the Code	**7.** The charges for breach of the Code shall be in the manner prescribed in schedule one of these guidelines and shall be accompanied with such particulars as are necessary to effectively prosecute the complaint. **8.** The directorate shall direct any investigation as required prepare the case for prosecution and may request the Police and the Director of Public Prosecution to conduct any further investigation on its behalf.
Powers of the High Court	**9.** These Rules reserve the powers of the court in respect to any of the offences under the Elections Act or where an offence may be prosecuted under the penal code or where the power of the court is specified. **10.** The Commission may on its own motion or in consequence of any report made to it, institute proceedings in the High Court in cases of alleged infringement of the Electoral Code of Conduct. **11.** Where a complaint has been determined by the Commission, and the Committee finds that the offender has committed other offences under the Elections Act which the Committee may not have jurisdiction to try, the Committee may of its own motion and in addition to registering any fine

	with the High Court, if any, institute prosecution of any such offences. **12.** The High court will have the power to render any judgment and impose upon the offender one or more of the penalties and sanctions stated in paragraph 9(a) and (b) of the Second Schedule of the Elections Act, 2011.
Evidence and Standard of proof	**13.** The process shall not be bound by the provisions of the Criminal Procedure Code or the Evidence Act **14.** The standard of proof is upon presentation of sufficient evidence by the prosecution.
Right to lodge complaint.	**15.** Any person, candidate or political party may file a complaint for breach of the Code with the Commission.
Form of Complaint	**16.** Complaint for breach of the Code of Conduct shall be in Form 1.
Summons	**17.** The Committee may issue any summons requiring any person to appear before it accordance with Form 2. **18.** The Committee may order any person, political party or government office to produce any document as may be required to facilitate investigation and prosecution of any matter before it. **19.** Where a complaint has been issued against any person, the Committee may apply to the High Court to require that person to execute a bond with or without sureties.
Initiation of a complaint.	**20.** (1) A person who believes from a reasonable and probable cause that a breach of the Code has been committed by another person subject to the Code may make a complaint thereof to the Commission or the Peace Committee in the electoral area where the alleged breach has occurred. (2) A complaint may be made orally or in writing but if made orally shall be reduced in writing by the

	Commission and in either case shall be signed by the Complainant and the person recording the complaint. (3) The complaint shall state— (a) full names and address of service of the complainant; (b) voter registration number or certificate of political party registration; (c) the date, time and location of the occurrence of the act complained of; (d) information about the person whose conduct is complained against; (e) information as to the identity and contacts of witnesses, if any; (f) a concise statement under oath of the ultimate facts constituting his cause or causes of action; and (g) a declaration by the complainant that the representations are true. (h) Furnish the exhibits to be produced if any.
Framing of Charges and information	**21.** Upon receiving a complaint under Rule 21, the Commission shall cause to be drawn a formal charge in accordance with Form 3. **22.** The charge shall be accompanied by a statement of information drafted in plain language describing the particulars of the alleged breach of the Electoral Code of Conduct. **23.** The person making a complaint shall make a sworn statement giving further particulars of fact as may be necessary to prove the elements of the breach of the Code contained in the charge.
Joinder of accused persons	**24.** Any person or persons accused of violating the Electoral Code of Conduct in a similar manner, abetting or attempting to violate the Electoral Code of Conduct in a similar manner in the cause of the same transactions may be jointly charged.
Summons to the accused	**25.** Within twenty four hours of recording the charge, the Commission shall issue a summon to the accused and require that an answer to the allegation is provided to the Commission within forty eight hours of receipt of such summon. (a) The commission may issue summons through the political party office, by advertisement in a newspaper of national

	circulation, email, and registered post or as the Committee may approve. (b) Where a summon is issued by way of advertisement such summon shall be deemed to have reached the accused at 12.00 noon on the date of advertisement. (c) A summon issued under this rule will contain the statement of charge, the date by which the accused must record an answer with the Commission and the date of hearing of the alleged breach of the Code.
Summoning of witnesses	**26.** If the Committee is satisfied that a material evidence or information may be given by a person who may not voluntarily appear before it, the Committee shall issue a summon to compel attendance by such person to give evidence in person or produce document as required by the Committee. **27.** Summons issued under this rule shall be recorded with the Registrar of the High Court.
Meeting place of the Committee	**28.** The Committee shall designate a convenient place for holding its meetings as they deem fit and Information on the meeting place shall be communicated to all parties on time.
Pre-hearing meetings and ADR	**29.** Before the date designated for hearing of complaints, the Committee may facilitate a pre-hearing meeting between the parties. **30.** During the pre-hearing meetings, the Committee may address the following issues: a. Disclosure of issues necessary for each party to adequately prepare for the main hearing. b. Where possible and in the interest of justice, mediate the differences between the parties. c. Where possible and in the interest of justice e, enter consent between the parties
Hearing	**31.** At the hearing, the Assisting Counsel shall open the case against the accused persons upon which witnesses may be called as permitted by the Committee. **32.** The accused or his/her counsel shall be permitted to examine the witnesses.

	33. The Committee shall have the power to dismiss the case against any accused person if at the end of the prosecution case it comes to a finding that no case has been disclosed in evidence. **34.** The defense shall lead evidence in answer to the prosecution case and may call witnesses in support as permitted by the Committee. **35.** Every witness shall be examined upon oath and the Committee shall have necessary power to administer the oath. **36.** The Committee shall be properly constituted by a quorum of three members for purposes of hearing of a complaint. **37.** During the hearing the Committee shall make any interventions, question any witness as it deems fit to ensure resolution of the complaint.
Power of the Committee during hearing	**38.** The Committee may at any stage of the hearing under these rules summon or call any person as witness or examine any person in attendance though not summoned as witness or recall and re-examine a person already examined if it appears to it that that essential information or evidence will be provided for the just decision of the case. **39.** The Committee may invite the prosecution or defense counsel to examine any witness called under Rule 36 above. **40.** The Committee shall have powers to determine and/or limit the duration the prosecution and defense shall take in presenting their cases.
Decision of the Committee	**41.** At the conclusion of the hearing the Committee shall state its decision or where the decision is reserved state the date and time of such decision. **42.** The decision of the Committee shall contain findings of fact and law and the penalty imposed if any and the reasons why a penalty was or was not imposed. **43.** If in its decision the Committee imposes a fine, such a decision shall be registered in the High Court within three days upon the pronunciation of the decision.
Peace Committees	**44.** The Chairperson of the Commission shall appoint peace committees in every constituency who shall comprise: (a) The Constituency Returning Officer who shall be chair and convener of the peace committee;

	(b) Two members representing the County political parties liaison committee (c) Two community leaders not being of the same gender; (d) Two persons representing the district security committee; (e) A maximum of three other persons as required representing specific community interests. The Chairperson shall designate any member of the peace committee as an alternate chairperson of the peace committees.
Objectives of the Peace Committees	**45.** The objectives of the peace committees are to provide a forum for mediation and reconciliation of political differences during the election period, monitor campaign practices and inform the Committee and Governmental security agencies of any election malpractices and violation of the Electoral Code of Conduct.
Guiding principles for the Peace Committees	**46.** Each Peace Committee shall be guided by the following principles; (a) Fairness in dealing with all political sides; (b) Expeditious disposal of matters; (c) Professionalism in dealing with matters based on evidence; (d) Due process and transparency; (e) Consultation.
Proceedings in the Committee	**47.** Meetings of the peace committees shall be convened by the chairperson and shall be properly constituted by a quorum of five members. **48.** Peace committees shall discuss complaints by any person in the electoral area. **49.** A peace committee may of its own motion direct that a matter be investigated and presented before it for consideration. **50.** Where a peace committee believes that any person may provide relevant information regarding a matter before it, the peace committee may require any person to attend before it.
Decisions of the peace committee	**51.** Decisions of the peace committee shall be by consensus and in the absence of consensus then by a vote. **52.** All decisions of the peace committee shall be forwarded to the Commission through the Directorate.

	53. The decision shall include the source of any complaint, steps taken to resolve the matter, findings of the peace committee, determination of the peace committee and any recommendations. **54.** Where a peace committee recommends that further action or formal action for breach of conduct be undertaken, the Directorate shall investigate the matter and where necessary draft necessary charges and information and prosecute the matter.

FORMS

Form 1 (r.16)

Electoral Code of Conduct: Complaint Form

INITIATION OF A COMPLAINT

The Complaint of ……..……..……...

Against……

The complainant states that on the ……..day of…….……..,20……., in ……Ward in ……..……Constituency, in ……County within the Republic of Kenya violated the Electoral of Conduct in the following manner:

…….……...……..
……
……
……
……
……

The following people witnessed
1.……

2.……
3.……

4.……

Dated ……, 20……..

(Signed)…… ……(Complainant)

Form 2. (r.17)

Electoral Code of Conduct: Summons

SUMMONS

WHEREAS …….. has instituted a complaint against you in regard to violation of the Electoral Code of Conduct, the particulars of which are set out in the copy of Complaint Form with annexture attached hereto.

YOU ARE HEREBY REQUIRED within twenty (**24) hours** from the date of service hereof to file a response against the said complaint.

Should you fail to file a response enter an appearance within the time mentioned above, the complaint will be heard and determined in your absence.

TAKE NOTICE that the hearing of the complaint shall be on……. **day of ……2017** at 9 o'clock in the forenoon or soon thereafter at the …….., Nairobi.

Given and issued this …… day of ……..…… 2017.

(Signed)……

(Chairperson: Electoral code of Conduct Enforcement Committee)

FORM 3. (r.21)

Electoral Code of Conduct: Charge Sheet

CHARGE SHEET

STATEMENT OF OFFENCE:

Breach of the Electoral Code of Conduct contrary to Section 21 of the Elections Offences Act, 2016.

PARTICULARS OF OFFENCE

A.B on the ……day of ……..20……, in ……Ward in ……..……Constituency in ……County being a candidate in the election to fill the vacancy of ……in the said constituency impeded the right of ……..to have reasonable access to the voters at ……Polling Station.

Given and issued this …… day of …… 2017.

(Signed)……..……
(Chairperson: Electoral code of Conduct Enforcement Committee)

Dated……day of……, 2017