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DISCIPLINARY PROCEDURE GUIDELINES

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PART 1 - ACRONYMS AND ABBREVIATIONS

- SPMA, 2007 : Supplies Practitioners Management Act No 17, 2007
- The Committee : The Disciplinary Committee established under section 22
of SPMA, 2007
- Form DC1 : Statement of Complaint Form
- Form DC2 : Statement of Response Form
- Form DC3 : Notice of Hearing
- Form DC4 : Witness Summons

PART 2 - INTERPRETATION

In this Guidelines, unless the context otherwise requires –

“**Complainant**” means a person, his duly recognized agent or legal representation who lodges a complaint to the Committee as per section 22(4) in accordance with SPMA, 2007

“**Disciplinary Committee**” means the disciplinary committee established under section 22 of SPMA, 2007;

“**Respondent**” means a party to the proceedings before the Committee against whom a complaint is lodged.

“**Lapse of Time**” means a period of time that passes and ends or terminates a disciplinary action, process or agreement.

“**Appeal**” means application for a decision to be reversed or reviewed by the High Court.

“**Registrar**” where used shall refer to the secretary

PART 3: DELEGATION OF POWERS AND INSTITUTIONAL FRAMEWORK

3.1 DISCIPLINARY COMMITTEE

1. There is hereby established a committee of the Council, to be known as the Disciplinary Committee, which shall consist of eight members as provided in section 22(1) and (2) of SPMA
2. Committee shall regulate its own procedures subject to the SPMA act and Regulations
3. The Committee shall receive and investigate complaints against supplies practitioners in accordance with the rules and regulations under this Act.

3.2 VALIDITY OF PROCEEDINGS

The Council, the Registration Committee, the Disciplinary Committee and the Examinations Board may exercise and perform their functions notwithstanding any vacancy among the members and the validity of any proceedings of the Council or the Registration Committee, or the Disciplinary Committee or the Examinations Board shall not be affected by any such vacancy or any defect in the appointment of a member.

3.3 DISCIPLINARY POWERS OF THE COMMITTEE

1. The Disciplinary Committee may order the removal from the register, suspension of registration or revocation of the practicing license of a supplies practitioner or the imposition of fine on a supplies practitioner as may be prescribed by the Council if that practitioner—
 - a. Has been convicted of an offence punishable with imprisonment, the commission of which in the estimation of the Institute dishonors or scandalizes the calling of a supplies practitioner; or
 - b. Has been convicted of an offence under the Public Procurement and Asset Disposal Act 2015 (Cap. 412A),
 - c. The Anti-corruption and Economic Crimes Act (Cap. 65) or any other existing law;
 - d. Has been guilty of gross negligence or malpractice in respect of his calling; or
 - e. Has been guilty of other impropriety or professional misconduct; and for the purposes of this Act a member shall be guilty of professional misconduct if the member—
 - i) willfully fails to follow professional procurement and supplies management standards and ethical guidelines
 - ii) misappropriates funds or any property entrusted to the member;

- iii) knowingly procures goods, works or services at inflated prices;
- iv) deliberately fails to keep proper records of all transactions undertaken in the course of duties;
- v) discloses information acquired in the course of duty of any other person without the consent of the employer or client or other than required by law;
- vi) is involved in any corrupt practice;
- vii) engages in activities which are contrary to those for which registration and or licensing as a supplies practitioner was obtained under this Act;
- viii) is found guilty of fraud or any dishonest act;
- ix) allows any person to practice in the name of the member as a supplies practitioner unless such a person is the holder of a registration certificate and license;
- x) enters for the purpose of or in the course of practicing as a supplies practitioner, into partnership with a person who does not hold a license or secures any professional business through the service of such a person or by means not open to a supplies practitioner;
- xi) pays or allows or agrees to pay directly or indirectly, to any person (other than a partner, a retired partner or the legal representative of a deceased partner) any share, commission or brokerage out of the fees for, or profits of, such member's professional services;
- xii) being concerned therein, in a professional capacity, expresses an opinion on a matter without obtaining sufficient information on which to base the opinion;
- xiii) fails to keep the funds of a client in a separate banking account or to use any such funds for purposes for which they are intended; or
- xiv) does or fails to do any other act which may be prescribed.

2. The suspension of registration, removal from the register and other penalties or disqualifications imposed under this section shall subsist for a period not exceeding two years. Provided that:
 - a. The Council may in exceptional circumstances extend the suspension period for a longer term.
 - b. Also that in the case of the circumstances contemplated by section 16(5)(a) and (b) of the SPM Act, the removal from registration, suspension, revocation of license or other penalty or disqualification shall subsist for the longest period of disqualification from holding public office imposed on offenders convicted of an offence under the Anti-Corruption and Economic Crimes Act (Cap. 65).
3. A person whose conduct is the subject of inquiry or disciplinary proceedings shall be afforded a fair opportunity of being heard either in person or by an advocate.
4. In the discharge of its functions under the SPM Act, the Disciplinary Committee may administer oaths and, subject to any regulations made under this Act, enforce the attendance of persons as witnesses or production of books and documents.
5. The Disciplinary Committee shall discharge its functions in accordance with principles of fairness without undue regard to technicalities and rules of evidence.
6. Any person whose name has been removed from a register or whose license has been revoked or suspended shall forthwith surrender to the Institute his certificates of registration or license and, any person who fails to do so, shall be guilty of an offence.
7. Any person aggrieved by the decision of the Disciplinary Committee may appeal against that decision to the High Court whose decision shall be final.
8. The Chief Justice may make rules governing appeals under this section and providing for the fees to be paid, the scale of costs of any appeal and the procedure to be followed therein.

PART 4: COMPLAINTS

4.1 LODGING OF COMPLAINT

1. A person who intends to lodge a complaint against a member of the Institute shall submit to the Secretary a statement of complaint orally or in writing in Form DC 1 set out in the Schedule to these guidelines.
2. The statement of complaint lodged under paragraph (1) shall include:
 - a. The name, address and telephone contact of the complainant
 - b. The particulars of the respondents
 - c. The particulars of the alleged professional misconduct to be investigated by the Committee; and
 - d. The substance of the complaint in sufficient detail to enable the Committee to act.
3. A person who lodges a statement of complaint under paragraph (1) shall submit together with complaint, documents in support of the claim and the prescribed fee.
4. Where the complaint is made orally, or otherwise, or the complainant cannot read or write, the complaint shall be recorded in writing by a designated officer of the Council.
5. A person who records a complaint in writing under paragraph (4) shall
 - a. Read over and explain the contents of the complaint to the complainant
 - b. Note on the form that the complainant understood the contents;
 - c. State his name and designation; and
 - d. Cause the complainant or the duly authorized agent to sign or affix a thumbprint at the bottom of each page of the document, where practicable.

4.2 REGISTER OF COMPLAINTS

1. The Registrar shall keep a register of complaints in which all the statements of complaints shall be entered
2. A statement of complaint shall be numbered and recorded sequentially in the register of complaints in the order in which it was received

4.3. FILING OF COMPLAINT

Upon receipt of a statement of complaint, the Secretary shall,

1. Acknowledge receipt of the complaint by stamping and endorsing on the statement of complaint or recorded complaint; the date on which it is received;
2. Enter the particulars of the complaint in the register of complaints;
3. Inform the complainant in writing of the complaint number as entered in the register; and
4. Advise the complainant of any steps required to be taken by the complainant to enable the Committee determine the application

4.4. FEES

1. There shall be paid to the Council such filing and other fees, including fees for service by the Committee of any notice or process, as shall be prescribed
2. The Committee may, if it considers it to be in the interest of justice, or on grounds of financial hardship on the part of the applicant, waive all or part of the filing fees payable in an application
3. Where there is an application for waiver of fees, the secretary shall duly accept the complaint and remit the same to the Committee for consideration and direction on fees payable within three days from the date of filing.

4.5. SERVICE OF COMPLAINT

1. Upon filing a complaint with the Secretary, the complainant shall serve a copy of the complaint, on the respondent within thirty days from the date of filing the complaint as stipulated in the regulations.

2. As stipulated in the regulations, any document required to be served shall, where practicable, be served personally on the person by delivering the document to the person or, if the persons cannot be served by sending the document to the person's proper address by registered post or by other verifiable form of delivery like email.
3. The Secretary may, at the request of any party and on payment of such costs as the Committee may determine, serve a copy of the notice of the complaint and of any reply, together with any supporting documents, amendments or supplementary statements, written representations or other documents received from any party or all parties to the proceedings and if any person or body is subsequently enjoined as a party, upon that person or body

4.6 COMPLAINT AGAINST A MEMBER OF THE COMMITTEE

Where a complaint is lodged against a member of the Committee, the member shall stand suspended from the committee and shall be automatically reinstated once the inquiry is completed in his favor.

4.7 SCREENING OF COMPLAINTS

1. Upon registering a complaint under clause 4.3, the Secretary shall transmit a copy of the complaint to each member of the Committee and to the person whose conduct is the subject of investigation
2. The Committee shall, within 14 days upon receipt of a complaint under paragraph (a) below, conduct a preliminary enquiry into the matter and shall,
 - a. Where in the opinion of the Committee the complaint does not disclose any prima facie case of professional misconduct, dismiss such complaint without requiring the member to whom the complaint relates to answer any allegations made against him or her and inform the complainant of its decision thereof, or
 - b. Where the complaint discloses a prima facie case of professional misconduct, investigate the complaints
3. The Committee shall inform the complainant of its decision under 4.7(2)(a) above within fourteen days of its decision
4. Where the Committee decides to investigate a complaint under 4.7(2) (a) above the Secretary shall notify the member against whom the complaint has been made of its decision and require him to respond to the complaint by the date notified therein.

4.8 DISMISSAL OF COMPLAINT

1. an order by the Committee dismissing a complaint under

this paragraph shall be notified to the complainant and the respondent but shall not be a bar to a further complaint under the same grounds upon the discovery of new evidence which was not within the knowledge of the complainant

2. Notwithstanding section 4.7, the Committee shall reject a complaint where it considers that –
 - a. The matter is the subject of a complaint pending under investigation;
 - b. The complaint is vexatious, frivolous, oppressive or otherwise an abuse of procedures for dealing with complaints
 - c. The complaint is repetitive
3. For the purposes of paragraph 2(c) above, a complaint is repetitive if it is substantially the same as a previous complaint, whether made by or on behalf of the same or a different complainant, or if it concerns the same subject as a previous complaint;
4. Nothing in this regulation shall prevent the Committee from investigating a complaint if it considers that it is in the public interest to do so.

4.9 WITHDRAWAL OF COMPLAINT AND LAPSE OF TIME

1. A complainant may, in writing, withdraw a complaint at any stage of the proceedings and before any finding or recommendation is made, but such withdrawal shall not automatically terminate the investigation
2. The Committee may, in its discretion, continue with the investigation of any complaint, if, on the basis of evidence before it, such investigation is in the public interest
3. Where a complainant fails or neglects to respond to communication from the Committee within twelve months from the date of such communication, the Committee may deem the complaint to have lapsed.

Provided that the Committee may on its own motion, commence the investigation of the complaint as if the same was a complaint requiring special investigation

4.10 APPLICATION FOR REVIEW

1. Any person against whom an order is made and who has not appealed against such order under section 23(7) of the Act, may, without undue delay, apply to the Disciplinary Committee for a review of the Order.”
2. An application for review shall only be made upon the discovery of new information or evidence which was not within the knowledge of the complainant when the decision was made or for any other sufficient reason

3. An application for review shall be in writing and shall state
 - a. The details of the complaint
 - b. The date on which the complaint was made
 - c. The ground on which the application is based; and
 - d. The date on which the complainant was notified of the rejection of the complaint
4. The Committee shall consider the application and may allow it
5. The Committee shall determine the outcome of an application for review as soon as practicable and shall notify the applicant of the reason for its determination
6. Where the Committee receives an application for review it may request any information from any person which it considers necessary to dispose of the application
7. The Committee shall notify the applicant of its decision within seven days of making the decision thereof

PART 5: REPLY TO COMPLAINT

5.1 REPLY

1. A respondent shall within fourteen days of receipt of the order under section 4.7(4) file with the Secretary his Statement of Response in Form DC2 set out in the schedule
2. The respondent shall file together with his or her statement of response under 5.1(1) documents in support of his or her statement as he or she considers necessary
3. The Secretary shall, upon receipt of the Statement of Response and supporting documents enter the fact in the register kept for the said purpose

5.2 REQUEST FOR FURTHER INFORMATION

In his or her reply or in a separate notice to the Committee, the respondent may request –

1. Further particulars of the complaint or action by the complainant; or
2. A determination of any question as a preliminary issue

5.3 PRELIMINARY CONSIDERATION OF REPLY BY COMMITTEE

1. The Secretary shall, within seven days of receipt of the Statement of Response furnish the Committee with the Statement of Response and any supporting documents
2. The Committee shall, upon receipt of the statement under 5.3(1) above and –
 - a. Where it is satisfied with the response by the respondent, consider the matter as settled and inform the parties to the complaint of its decision within seven days; or -
 - b. Where it is of the opinion that the respondent has not adequately addressed the issues raised by the complainant set a hearing date in accordance with section 5.4 below

5.4 PLACE AND TIME OF HEARING

1. The Secretary shall,
 - a. Within thirty days of receipt of the Statement of Response; or
 - b. Where the respondent fails to file a reply to a complaint within 14 days being the time indicated in section 5.1 of this guidelines as specified in regulation 13.

- i. And in consultation with the Committee, set a date for the hearing of the complaint and notify the parties to the complaint and notify the parties to the proceedings in Form DC3 set out in the schedule. A hearing notice shall be issued by the Committee and served on all other parties to the proceedings not less than twenty one days before the date set for the hearing.
2. the hearing notice shall contain –
 - a. the date and time of the hearing
 - b. a statement of the purpose of the hearing and a statement of the issues involved;
 - c. information and guidance, in a form approved by the Committee, as to attendance to the hearing of the parties and witnesses, the production of documents and the right of representation;
 - d. a statement of the right of the parties to request for and received reasons in writing for a decision of the Committee; and
 - d. a statement explaining the possible consequences of non-attendance and of the right of an applicant and of any respondent who has presented a reply, but who fails to attend and is not represented, to make representations in writing.
3. The Committee may alter the place and time of any hearing and the Committee shall give the parties not less than seven days' notice of the alteration.
4. The Committee may, from time to time, on its own motion or on the application of a party to the proceedings, adjourn the hearing and if the date, place and time of the next hearing is announced in the presence of all the parties at the time of the allowing adjourning the hearing, no hearing notice shall be required to be issued to any party

PART 6: HEARING

6.1 POWERS OF THE COMMITTEE

1. The Committee shall, in conducting proceedings under these Regulations, have power to
 - a. Administer oaths;
 - b. Summon persons to attend and give evidence;
 - c. Order the production of relevant documents, including court judgments; and
 - d. Subject to the provisions of the Regulations, regulate its own procedure
2. An oath may be administered by the person chairing the meeting of the Committee or by the Secretary
3. Notices and summons of the Committee shall be issued under the hand of the Secretary and shall be deemed to have been issued by the Committee

6.2 NON-RESPONSE BY THE RESPONDENT

Where the respondent fails to respond to a complaint as specified under regulation

1. the hearing may proceed in his or her absence; and
2. he or she commits professional misconduct

6.3 FORM OF PROCEEDINGS

In the determination of complaints under these Regulations, the Committee shall have due regard to the principles of natural justice and shall not be bound by any legal or technical rules of evidence applicable to proceedings before a court of law.

6.4 LANGUAGE OF PROCEEDINGS

1. Proceedings before the Committee shall be conducted in English or Kiswahili
2. The Committee shall, taking into account all the circumstances, grant the assistance of a competent interpreter free of charge to a party or witness who does not understand or speak the language used at the hearing or who is deaf
3. The rulings of the Committee shall be in the English language but may be translated, on request by a party, into the Kiswahili language

6.5 INFORMATION

1. the Committee may receive or obtain information from such persons as it may deem proper, including, information from such persons as the Committee considers to possess knowledge or experience in matters relating to any complaint before it
2. where a complaint is not disposed of after the preliminary investigation, the Committee shall review the complaint with a view to initiating further investigations.

6.6 CONFIDENTIALITY

The committee shall not disclose or publish information received by it in confidence without the prior consent of the informant

6.7 DIRECTIONS AND PRE-HEARING ORDERS

1. the Committee may on its own motion or on the application by a party to the proceedings give directions, including directions for the furnishing or further particulars or supplementary statements, as are necessary to enable the parties prepare for the hearing or assist the Committee determine the issues related to the hearing about it
2. With a view to making proper use of the Disciplinary Committee's time and resources, the secretary shall within three days of close of pleadings or at such time as is convenient to the Committee's diary but without undue delay list all pending complaints before the Committee for a Case Management Conference.

At the Case Management Conference, the committee will:

- a. Confirm that the complaints and all responses are duly filed.
- b. Consider and give directions on joinder of parties, if need be.
- c. Consider and give directions on filing and service of witness statements

- d. Consider and give directions on further investigations, if need be
 - e. Consider and give directions on filing and service of expert witness statements/reports, if need be.
 - f. Consider and give directions regarding any applications.
 - g. Consider and give directions on filing and service of submissions at the hearing. This will include directions as to: oral or written submissions.
3. The Committee may take into account the need to protect any matter that relates to the intimate personal or financial circumstances of any party and is commercially sensitive, consists of information communicated or obtained in confidence or concerns national security and may order that all or part of the evidence of a person be heard in private or prohibit or restrict the publication of that evidence
 4. Subject to the provisions of (3) above, all proceedings before the Committee shall be held in public.
 5. The Committee shall not compel a person to give any evidence or produce any document or other material that the person could not be compelled to give or produce in a trial for an action in a court of law
 6. An application by a party for directions shall be made in writing to the Committee and shall, unless accompanied by the written consent of all parties, be served by the party seeking directions
 7. on all other parties to the proceedings

If any party objects to the directions sought, the Committee shall consider the objection and if it considers it necessary, give the parties an opportunity to appear and be heard by it on the objection raised

6.8 NON-APPEARANCE BY RESPONDENT

1. Where a member of the Institute whose conduct is the subject of investigation, fails without reasonable excuse, to appear either personally or by his representative at the time and place in the notice of hearing served on him or her –
 - a. the hearing may proceed in his or her absence; and
 - b. he or she commits professional misconduct
2. if a person appearing at the inquiry, without reasonable excuse:-
 - a. refuses or fails to be sworn or affirmed
 - b. refuses or fails to answer a question that he or she is required to answer by the person chairing the Committee; or
 - c. refuses or fails to produce a document that he was required to produce by a summon served on him or her, he or she commits an offence.

6.9 FAILURE TO COMPLY WITH DIRECTIONS

1. where a party fails to comply with directions given under these Regulations, the Committee may, in addition to other powers available to it, before or at the hearing of the complaint dismiss the whole or part of the complaint, or, as the case may be, strike out the whole or part of a respondent's reply and where appropriate, direct that a party be excluded from participating in the hearing
2. the Committee shall not dismiss, strike out or give any directions under 6.9(1) unless it has served a notice on the party who has failed to comply with the direction, giving him an opportunity to show cause why the Committee should not give directions under 6.9(1).

6.10 VARYING OR SETTING ASIDE OF DIRECTIONS

1. a person on whom directions, including any summons, are served and who had no opportunity of objecting to the making of directions may apply to the Committee to vary or set aside the directions.
2. The Committee shall not vary or set aside any directions under 6.10(1) without first notifying the person who applied for the directions and considering any representations made by that person

6.11 SUMMONS AND ORDERS

1. a person who is summoned to give evidence before the Committee shall be given at least seven days' notice of the hearing
2. a witness summons issued under this section shall be in Form DC4 set out in the Schedule

6.12 EXCLUSIONS OF PERSONS DISRUPTING PROCEEDINGS

Without prejudice to any other powers it may have, the Committee may exclude from the hearing or part of it, any person whose conduct has disrupted or is likely, in the opinion of the Committee, to disrupt the hearing

6.13 FAILURE OF PARTIES TO ATTEND HEARING

1. Where a party fails to attend or be represented at a hearing of which he has been duly notified, the Committee may –
 - a. Unless it is satisfied that there is sufficient reason for the absence of the party, hear and determine the complaint or application in the absence of that party; or
 - b. Adjourn the hearing

And may make such orders as to costs as it considers fit

2. Before determining a complaint or application under 6.13 (1)(a), the Committee shall consider any representations made in writing submitted by that party in response to the notice of application and for the purpose of this regulation, the application and any reply shall be treated as representations in writing

A party aggrieved by the decision of the Committee under paragraph 6.13 (1)(a) may file an application within thirty days from the date of the decision for review of the order, and the Committee may within reasonable time review the order on such terms as it considers fit, if the Committee is satisfied that there was sufficient cause for non-attendance

6.14 PROCEDURE AT HEARING

1. the Chairperson shall, at the commencement of the hearing, explain the order of proceedings which the Committee proposes to adopt
2. the Committee shall conduct the hearing in such manner as it considers suitable for the determination of the application or the clarification of issues before it and generally in the interest of justice, avoid legal technicality and formality in its proceedings
3. the parties shall be heard in such order as the Committee shall determine, and shall be entitled to give evidence, call witnesses, and address the Committee on both evidence and generally on the subject matter of the application
4. evidence before the Committee may be given orally or, if the Committee so orders, by affidavit or written statement, provided that the Committee may at any stage of the proceedings require the personal attendance of any deponent or author of a written statement
5. the Committee may receive evidence of any fact which appears to it to be relevant to the application
6. the Committee may, during the hearing and if it satisfied that it is just; and reasonable to do so, permit a part to rely on grounds not stated in his notice of application, or, as the case may be, his reply and to adduce any evidence not presented to the /commissioner before or at the time the Commissioner took the disputed decision
7. the Committee may require any witness to give evidence on oath or affirmation and for that purpose it may administer an oath or affirmation in the prescribed form

6.15 PROCEDURE AT HEARING

The quorum at meetings of the Committee shall be five members

6.16 EXPEDITED PROCEEDINGS

1. In exceptional circumstances or due to an emergency, prior to or on the commencement of the proceedings or during the conduct of proceedings, a party may apply to the Committee for the expedited conduct of proceedings.
2. An application under paragraph (1) shall—
 - a. be made in writing to the secretary;
 - b. be copied to all other parties to the proceedings; and
 - c. set out the specific grounds for exceptional circumstances or urgency in the conduct of proceedings.
3. The respondent shall be entitled to respond to the application and serve the response to the secretary and the other parties within three days of receipt of the application from the applicant.
4. The Committee shall decide the application within three working days of receipt of the response and shall communicate the reasons for such decision to any party.
5. If the Committee accepts the application under paragraph (4), the Committee may reduce any time or dispense with any procedural requirement specified under the Guidelines in order to accommodate the urgency."

6.17 POWER TO DETERMINE APPLICATION WITHOUT HEARING

The Committee may, by consent in writing of all the parties to a hearing determine the application or any issue arising therefrom without an oral hearing

6.18 CONSOLIDATION OF PROCEEDINGS

The Committee may, upon giving the parties concerned an opportunity to be heard, order the consolidation of any proceedings before it where complaints have been filed in request of the same matter or in respect of several interests in the same subject in dispute

6.19 AMENDMENT OF STATEMENTS

The Committee may allow any amendments to the statements of complaints or response at any stage of the proceedings, provided that such amendment shall be for the interest of justice and is aimed at aiding the determination of the proceedings upon fair notice to the other party

6.20 DISPENSING WITH REQUIREMENTS UNDER THESE GUIDELINES

The Committee may dispense with any requirements of this part with respect to notices, affidavits, documents, service or time, in any case where it appears to the Committee to be just or expedient to do so

6.21 EXTENSION OF TIME

The Committee may extend the time for doing anything under this Part on such terms as the Committee thinks fit

6.22 DEMONSTRATION AND DISPLAY FACILITIES

The Committee may, at the request of any party and upon payment of the prescribed fees, provide visual demonstration facilities for the display of any maps, charts, diagrams, illustrations or texts and documents, which that party intends to exhibit during the hearing

6.23 OPPORTUNITY TO BE HEARD OR CROSS-EXAMINE

The Committee shall grant to any party a reasonable opportunity to -

1. Be heard, submit evidence and make representations; and
2. Cross-examine witnesses to the extent necessary to ensure fair hearing

6.24 ADJOURNMENT OF PROCEEDINGS

1. The Committee may of its own motion, or upon the application of any party, adjourn the inquiry upon such terms as it thinks fit
2. Notice of an adjournment of the inquiry shall be given to the persons involved in the proceedings in writing by the Committee

6.25 JUDICIAL NOTICE

1. The Committee may take judicial notice of:-
 1. Facts that are publicly known and that may be judicially noticed by a court of law; and
 2. Generally recognized facts and any information, policy or rule that is within its specialized knowledge

2. Before the Committee takes notice of any fact, information, opinion or policy or rule other than that which may be judicially noticed by a court, it shall notify the parties of its intention and afford them a reasonable opportunity to make representations with respect thereto.

6.26 REPRESENTATION

1. Any party to the proceedings, may represent himself or be represented by an advocate of his choice
2. A party who is represented by an advocate may, at any stage of the proceedings change his advocate upon giving notice to the Committee and his former advocate. The party shall serve the notice of change of advocate on
3. all other parties to the proceedings

6.27 DECISIONS OF THE COMMITTEE

1. After the hearing of a complaint, the Committee may determine or order -
 - a. That the complaint is dismissed
 - b. That the member of the Institute is reprimanded;
 - c. That the member of the Institute be suspended from practice for a specified period not exceeding two years;
 - d. That the name of the member of the Institute be struck off the register of members
 - e. That the member of the Institute pay to the aggrieved person compensation of such amount as the Committee may determine, but limited to the extent of loss incurred taking into account all other prudent mitigating measures at the claimant's disposal; or
 - f. Make such order as the Committee considers fit
2. The decision of the Committee may be taken by a majority of the members present and the decision shall record whether it was unanimous or taken by a majority of the members present
3. For the purposes of making the decision on the inquiry every member of the Committee has one vote, and, in the vent of an equality of vote, the chairperson shall have a casting vote
4. The decision of the Committee shall be in writing and may be read out at the end of the hearing or be reserved and shall be signed and dated by the Chairperson and every member who heard the matter

5. A dissenting opinion may be pronounced separately by the member who wrote it and shall be dated and signed by that member
6. Every document containing a decision referred to in this guidelines shall, as soon as may be reasonable, be entered in the register and the Committee shall send a copy of the entry to each party
7. Every copy of an entry sent to the parties under 6.27(6) shall be accompanied by a notification indicating the rights of the parties and of the time within which and place at which those rights may be exercised.
8. Where the decision of the Committee refers to any evidence which has been heard in private, a summary of the decision, omitting such material as the Committee may direct, shall be entered in the register, but copies of the complete decision document shall be sent to the parties together with a copy of the entry.
9. Except where a decision is announced at the end of the hearing, it shall be treated as having been made on the date on which a copy of the document recording is sent to the applicant.
10. Every order or determination of the Committee shall be made under the hand of chairperson or in his or her absence, by the person chairing the meeting at which the order or determination is made
11. Every order or determination of the Committee bearing the signature of the person chairing the meeting shall be "prima facie" evidence that the order or determination is that of the Committee

6.28 REASONS FOR DECISIONS

The Committee shall give reasons for reaching its decisions, and each decision shall include

1. A statement of the findings of fact from the evidence adduced, including, where applicable, any relevant government policy; and
2. A statement of the laws and rules of law applied, and the interpretation thereof

6.29 COST OF PROCEEDINGS

The Committee may recover the cost of an inquiry from any or all the parties to the proceedings

PART 7: MISCELLANEOUS PROVISIONS

7.1 THE COMMITTEE SHALL SUBMIT AN ANNUAL REPORT OF ITS DECISIONS AND ACTIVITIES TO THE COUNCIL

7.2 ADDITIONAL POWERS OF THE COMMITTEE

1. The Committee may -
 - a. Where the parties to an application agree in writing upon the terms on which an application or issue should be decided, confirm the agreement reached by the parties and decide accordingly;
 - b. At any stage of proceedings before it, by order strike out or amend any notice, reply, supplementary statement or written representation on the grounds that it is scandalous, frivolous or vexatious; or
 - c. At any stage of the proceedings before it by order strike out any application for want of prosecution
2. Before making any order under 72(1) of these guidelines, the Committee shall send a notice to the party against whom the order is to be made, giving that party an opportunity to show cause why the order should not be made.

7.3 CORRECTION OF IRREGULARITIES

1. Any irregularity resulting from failure to comply with any provisions of the regulations, disciplinary guidelines and code of ethics and standards of professional conduct documents or any direction of the Committee before the Committee has reached its decision shall render any proceedings void
2. Where any irregularity comes to the attention of the Committee, the Committee, shall, if it considers that any person may have been prejudiced by the irregularity, give such directions as it considers just before reaching its decision to cure or waive the irregularity
3. Clerical mistakes in any document recording a direction or decision of the chairperson or the Committee, or errors arising as a result of an omission, may be corrected by the chairperson by certificate under his hand or by the Committee

7.4 RECORDING OF PROCEEDINGS

1. The chairperson shall record or cause to be recorded all proceedings before the Committee or may order that the record of any proceedings before the Committee shall be taken by short hand notes or tape recorder or, at the discretion of the Committee, be electronically recorded
2. A verbatim record of every hearing shall be made by the Committee, and copies of the transcript thereof shall be circulated to all members of the Committee and, on request, to any party to the hearing.

7.5 WHISTLE BLOWING AND WITNESS PROTECTION

1. Whistle blowers are encouraged to use reporting channels provided by the institute including
 - i. Writing a complaint or letter reporting any wrong doing addressed to the CEO, Kenya Institute of Supplies Management
P. O. Box 30400 – 00100, NAIROBI
 - ii. Use of dedicated email disciplinary@kism.or.ke
 - iii. Use of dedicated disciplinary reporting boxes in the Institute
 - iv. Anonymous reporting using KISM website as provided

PART 7 - FORMS

SCHEDULES

FORM DC1 – Statement of Complaint Form

FORM DC2 – Statement of Response Form

FORM DC3 – Notice of Hearing

FORM DC4 – Witness Summons

FORM DC1

STATEMENT OF COMPLAINT FORM

This form is provided for use when submitting a complaint against a Purchasing and Supplies Chain Management Practitioner. In order to initiate a complaint, the complainant must complete this form or prepare a similar detailed description of the factual allegations supporting the charges.

(Please print/type the following information).

Complainant's details:

NAME: _____

ADDRESS: _____

TELEPHONE NUMBER: _____

EMAIL ADDRESS: _____

Purchasing and Supplies Chain Management Practitioner's details:

NAME: _____

ADDRESS OR PLACE OF WORK: _____

INFORMATION TO BE SUPPLIED BY THE COMPLAINANT

1. Statement of Complaint: provide a statement of the facts, which the complainant believes, supports a formal investigation by the Kenya Institute of Supplies Management Disciplinary Committee. The complaint must include a clear explanation of the alleged unethical or unprofessional conduct of the named Supplies Practitioner. The statement must explain the facts insufficient detail to permit the respondent Supplies Practitioner to answer the allegations.

The complainant must state the enabling provision of the Law under which the complaint is brought.

List of Witnesses and Documents to be Submitted and Considered:

The complainant should supply any document evidence that can support or demonstrate the complaint against the supplies practitioner. If possible, details of witnesses should also be supplied together with the complaint or may be submitted in person to the Committee.

2. Prayers sought by the Complainant

DECLARATION

I.....(complainant) certify that the facts submitted with this form are true and accurate to the best of my knowledge. I also understand that the accused Supplies Practitioner will receive a copy of this document as well as other information that may be submitted with regard to this complaint.

Signature of Complainant:_____ Date: _____

The above information should be sent by the complainant to:

Chairman
Disciplinary Committee
Kenya Institute of Supplies Management
Nairobi

FORM DC2

STATEMENT OF RESPONSE FORM

This form is provided for use by a Registered Purchasing and Supplies Chain Management Practitioner when responding to a complaint against him/her.

(Please print/type the following information).

Respondent's particulars.

NAME: _____

ADDRESS: _____

TELEPHONE NUMBER: _____

EMAIL ADDRESS: _____

INFORMATION TO BE SUPPLIED BY THE RESPONDENT

1. Statement of Response: Provide the Respondent's statement in response to the complaint.

2. List of witnesses and documents to be submitted and considered:

3. Counterclaim or claim by the respondent

DECLARATION

I.....(complainant) certify that the facts submitted with this form are true and accurate to the best of my knowledge. I also understand that the accused Supplies Practitioner will receive a copy of this document as well as other information that may be submitted with regard to this complaint.

Signature of Complainant: _____ Date: _____

The above information should be sent by the complainant to:

Chairman
Disciplinary Committee
Kenya Institute of Supplies Management
Nairobi

FORM DC3

NOTICE OF HEARING

Registered Purchasing and Supplies Chain Management Practitioner's name:

KINDLY TAKE NOTICE THAT a hearing will be held in respect of the allegation(s) as detailed below:

ALLEGATION(S)-(specifies here or in a separate document annexed to this document)

The details of the enquiry are as follows:

Date _____

Time _____

Venue _____

By signing this notice you confirm that you have been advised of the following:

- 1. You are entitled to be assisted at the disciplinary hearing by a fellow practitioner or advocate
- 2. You are entitled to have an interpreter, if requested prior to the enquiry, timeously after receipt of this notice.
- 3. You are entitled to call witnesses, furnish evidence and argue on the question of whether the allegation(s) occurred.
- 4. You have been advised that should you refuse/ fail to attend the hearing, the hearing will be held in your absence.

Chairperson of the Disciplinary Committee

Signature: _____ Date _____

Registered Purchasing and Supplies Chain Management Practitioner

Signature: _____ Date _____

Chairman
Disciplinary Committee
Kenya Institute of Supplies Management
Nairobi

FORM DC4

WITNESS SUMMONS

In the matter of a complaint against

----- (Purchasing and Supplies
Chain Management Practitioner)

Whereas your attendance is required to give evidence on behalf of

(complainant/respondent) to the above complaint, you are required by the Disciplinary Committee of

Kenya Institute of Supplies Management (KISM) to appear before it at _____AM/PM on the

----- day of ----- 20-----

Consequences of not responding

Dated this ----- day of ----- 2020

Chairman- KISM Disciplinary Committee



KENYA INSTITUTE OF SUPPLIES MANAGEMENT

...Promoting Professionalism in Supply Chain Management..

KISM Towers, 12th Floor, Ngong' Road

P.O. Box 30400-00100 NBI, Kenya

E-mail: admin@kism.or.ke

Mobile: 0721 244 828 | 0717 004 842 | 0733 333 226