



OFFICE OF THE COUNTY ATTORNEY LEGAL AFFAIRS POLICY & PROCEDURES MANUAL

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(Revised 2023)

TABLE OF CONTENTS

- 1. PART I- INTRODUCTION**
- 2. PART II-LEGAL POLICY**
- 3. PART III - MANAGEMENT OF CLAIMS OR ACTIONS AGAINST THE COUNTY GOVERNMENT**
- 4. PART IV-PROCEDURES RELATING TO CONTRACTS**
- 5. PART V PROCEDURES RELATING TO MOUs**
- 6. PART VI-PROCEDURES RELATING TO LEGAL RECORDS**
- 7. PART VII- PROCEDURES RELATING TO COMMUNICATION IN RELATION TO LITIGATION MATTERS**
- 8. PART VIII- PROCEDURES FOR DEALING WITH COURT ORDERS**
- 9. PART IX- PROCEDURES RELATING TO LITIGATION**
- 10. PART X – PROCEDURE RELATING TO DRAFTING OF POLICIES AND LEGISLATIVE PROPOSALS**
- 11. PART XI- EVALUATION AND REVIEW OF POLICY**

PART I

1.0 Introduction

The County Government of Nyeri is established under Article 176 of the Constitution of Kenya and the County Governments Act, 2012; and is mandated to perform all the devolved functions provided for by the Fourth schedule of the Constitution.

The Office of the County Attorney is established by the Office of the County Attorney Act, 2020 and is mandated as the principal legal advisor of the County Government on all legislative and legal matters.

The County Attorney, as provided for under Section 7 of the Act:

- 1.0.1 is the principal legal adviser to the county government;
- 1.0.2 shall attend the meetings of the county executive committee as an ex-officio member of the executive committee;
- 1.0.3 shall, on the instructions of the county government, represent the county executive in court or in any other legal proceedings to which the county executive is a party, other than criminal proceedings;
- 1.0.4 shall advise departments in the county executive on legislative and other legal matters;
- 1.0.5 shall negotiate, draft, vet and interpret documents and agreements for and on behalf of the county executive and its agencies;
- 1.0.6 shall be responsible for the revision of county laws;
- 1.0.7 may liaise with the Office of the Attorney General when need arises

In addition to the above functions, the Office of the County Attorney also performs the following functions:

- a) Drafting and publication of legislative proposals for the County Government and its agencies on legislative and other matters;
- b) In conjunction with the Director of Public Prosecutions, prosecute offences resulting from County legislations;
- c) Be the link between County and National government on legal matters and in liaison with

- the Council of Governors and the Attorney General of the Republic of Kenya;
- d) Undertaking legal audits to ensure that all County and National legislations that are applicable to the County are complied with or enforced;
 - e) Handling public interest litigation and representing any member of the public in matters that the Governor or the County Attorney deems to be public interest;
 - f) Ensuring that the County Government has the appropriate structures and programs in place to operate within the highest ethical standards, compliance and corporate governance practices.
 - g) It also aids in the provision of day to day legal and regulatory support to the Department/Section Heads and assisting them in their functions covering general compliance queries and reviews.
 - h) The office participates in review of the County Government's laws, policies and procedures thus ensuring that the County Government remains compliant with all relevant regulations and laws and has taken reasonable steps to protect itself and its employees from criminal or civil liability.
 - i) The office is responsible for providing legal interpretation and opinions sought by the County Government's departments.
 - j) The OCA is also the custodian of all legal documents executed by the County Government.

Structure of the Section

Per the Act, the Office of the County Attorney consists of the County Attorney (CA), the County Solicitor, who shall be the County Attorney's principal assistant, county legal counsel and other staff appointed by the County Public Service Board.

Currently, the Office consists of the County Attorney, Principal Legal Officer (1) , Senior Legal Officers (2), Legal Officers (3), a Legal Administrative Assistant (1), and a Clerical Legal Assistant who form an integral part of the Office and aid the County Attorney in the smooth operation of the office.

1.1 Definitions

Unless the context otherwise requires, the following terms whenever used in this Policy have the following meanings:

Act means the Office of the County Attorney Act, 2020.

Agreement includes a contract, deed, memorandum of understanding, lease, license or similar documents setting out the legal rights and obligations of parties.

Court order includes a legal process such as Summons, warrants, statement of claim or similar documents.

Employee means all officers and employees of County Government of Nyeri.

Legal work includes all legal advice and the drafting or review of an agreement.

Addendum means any additional documentation to an already executed contract/document.

Performance bonds refer to a warranty from a bank or an insurance company submitted to the County Government by a contractor following an award of a tender.

MoU means memorandum of understanding

CA means County Attorney

PLO means Principal Legal Officer

SLO means the Senior Legal Officer

LO means the Legal Officer

LAA means the Legal Administrative Assistant

CLA means the Clerical Legal Assistant

CEC means the county executive committee member

ExCom means the County Executive Committee

OCA means the Office of the County Attorney

SLA means Service Level Agreement

1.2 Purpose

The purpose of the Legal Policy and Procedures Manual is to:

1.2.1 Define the scope of legal services provided by the OCA;

1.2.2 Define the responsibilities of officers or external counsel involved in the provision of legal services;

1.2.3 Define the responsibilities of employees within the County Government in relation to

accessing legal services; and

1.2.4 Establish procedures for the management of legal services and matters.

1.3 Scope

This Policy covers all the operations of the OCA and all employees of the County Government.

1.4 Quality Objectives of the OCA

1.4.1 To continuously review and develop internal policies in order to keep pace with changing legal and regulatory requirements.

1.4.2 Promote preservation of ethical legal standards through biannual training of the office's staff on professional legal ethics.

1.4.3 To continually improve on customer relations by ensuring that clients with any legal queries are dealt with within fifteen (15) minutes of their arrival.

1.4.4 Ensure that any legal queries from the departments are dealt with within two (2) days for simple legal matters and within five (5) days for complex legal matters.

1.4.5 To ensure that contracts are prepared within two (2) days of submission of a complete set of tender documents to the office by the Procurement Section.

1.4.6 To ensure that contracts submitted to the office for review by any department are reviewed and feedback given within two (2) days.

1.5 Vision of the OCA

To be a benchmark of professional legal excellence for County law offices in Kenya.

1.6 Mission of the OCA

To provide timely, objective and reliable legal support to the County Government and all its departments on all legal matters that may arise in the execution of its Constitutional and Statutory mandate.

1.7 Roles and Responsibilities of officers administering this Policy and Procedures Manual

1.7.1 The OCA plays a key role in assisting the County Government in carrying out its constitutional and statutory roles.

1.7.2 The CA is the head of the OCA and is responsible for offering policy directions on how

the office runs.

- 1.7.3 The County Solicitor deputizes the CA and plays a key role in assisting the CA in the running of the Office by overall management of the provision of legal services to the County Government.
- 1.7.4 The County Legal Counsel work under the direction of the CA and the County Solicitor.
- 1.7.5 The Legal Administrative Assistant is tasked with ensuring that any correspondence to the OCA is forwarded to the relevant officer for action and ensuring the fluid flow of information within the office and is the first point of contact of clients to the office.
- 1.7.6 The Legal Researcher offers research services in the department.
- 1.7.7 The Clerical Legal Assistant is tasked with maintaining the records of the office stemming from litigation, contract preparation and all other documentation in the office. The officer is tasked with ensuring that the records are kept up to date and an efficient filing system is adhered to by all the employees in the office.

PART II LEGAL POLICY

2.0 Legal Policy Statement

- 2.1 All employees are responsible for promoting and protecting the interests of the County Government, including complying with the law, and for ensuring the County Government complies with the law.
- 2.2 The County Government will ensure that employees are aware of, and have access to appropriate and timely legal advice when making legal or quasi legal decisions that may affect the rights or responsibilities of the County Government and third parties.
- 2.3 Legal management shall form an integral part of the County Government's mandate, to be achieved through the provision of excellent legal services and advice, legal support to the County Government and all its departments on all legal matters that may arise in the development of its statutory business and corporate affairs.
- 2.4 Unless otherwise provided by this Policy, legal advice shall be requested on all legal matters including but not limited to:

- a) contracts and agreements including Memoranda of Understanding(MOUs);
- b) drafting of bills, policies and amendments to County legislation;
- c) legal claims or actions against the County Government, including letters of demand and threatened legal action;
- d) legal claims or actions on behalf of the County Government, including notices, prosecutions, demands and quasi-judicial administrative actions;
- e) proposed activities which involve a high risk of civil or criminal liability or where substantial liability may result from the activity;
- f) media inquiries regarding pending or potential litigation;
- g) transactions where the other party is represented by a lawyer; and
- h) civil or criminal matters brought against an officer of the County Government in their capacity as an officer of County Government, which action must be in the course of their discharge of their duties.

2.5 Below is a laid out procedure for seeking legal advice on any of the above stated matters;

2.5.1 Requesting Legal advice

- a) All requests for legal advice must be submitted to the legal office in accordance with these guidelines.
- b) A request for legal advice must be in writing.

2.5.2 Requests to be submitted by authorized officer

- a) A request for legal advice must initially be submitted by an authorized officer in charge of the Department responsible for the area of activity.
- b) For the purpose of this section, authorized officers for the Departments are the CECs, the Chief Officers and the County Secretary.
- c) The authorized officers shall notify the legal office of any subsequent changes in the departments for the purpose of approval of a request for legal advice.

2.5.3 Authorized officer may appoint instructing officer

- a) An authorized officer may appoint another employee of the Department to provide instructions in all legal matters arising in the said Department, on a case to case basis; such appointment shall be in writing and accompany said instructions.
- b) Where such an officer has been appointed, the instructing officer will have the same

authorities and responsibilities as the authorized officer.

2.5.4 Request must be expeditious

A request for legal advice must be made at the earliest opportunity. This will ensure that there is adequate time for the legal office to provide such advice, before any action is taken and give the department requesting the advice, time to properly consider and act on the advice.

2.5.5 Requests to include clear instructions

A request for legal advice must contain clear instructions including:

- a) Background information;
- b) Copies of relevant documents;
- c) Specific legal questions to be answered;
- d) Desired outcome of the request;
- e) Indication on the timeline the department is working under as regards the project or issue in question.

2.5.6 Timeframe for provision of legal advice

- a) In simple matters, legal advice will be provided in two (2) working days.
- b) In complex matters, legal advice will be provided in five (5) working days.

2.5.7 Requesting urgent Legal advice

- a) Urgent legal advice may be requested at any time by telephone or email. However such request if submitted other than in writing should subsequently be submitted to the legal office in writing.
- b) A request will not be considered urgent where an officer and or department failed to request for such advice in a timely manner.

2.5.8 Form of Legal Advice

All legal advice rendered by the legal office shall be in writing addressed to the officer who sought it.

2.5.9 Legal services not available for certain people

Legal services will not be provided to:

- i. employees in their personal capacity
- ii. independent contractors

PART III - MANAGEMENT OF CLAIMS OR ACTIONS AGAINST THE COUNTY GOVERNMENT

3.0 The County Government, through its employees and the OCA, will act fairly in the management of all claims or actions against the County Government (but it is not precluded from acting firmly in pursuit of its rights) including:

- a) acting consistently and expeditiously;
- b) not taking purely technical points when no prejudice has been suffered;
- c) not caving in to spurious demands;
- d) generally pursuing costs awarded in the County Government's favor;
- e) paying legitimate claims without litigation, including making partial settlements of claims or interim payments, where it is clear that liability is at least as much as the amount to be paid;
- f) keeping the costs of litigation to a minimum;
- g) endeavoring to avoid litigation and as far as possible try an alternate dispute resolution mechanism;
- h) not pursuing appeals unless the County Government believes that it has reasonable prospects for success and if the appeal is otherwise justified in the County Government's interest. The procedure in pursuing an appeal is as set out in *the Office of the County Attorney procedures Manual.(annexed hereto)*

3.1 The County Government will continually consider whether a dispute is susceptible to alternative dispute resolution and will promote or agree to alternative dispute resolution wherever appropriate taking into account the County Government's interest in the matter. All agreements drafted by the County Government should include a dispute resolution clause.

3.2 In the event that a claimant suing the County Government intends to enter into a Consent Order, the CA shall discuss the terms of the same with the external counsel (where such counsel is representing the county government) before the consent is signed and filed in court. Such terms shall be agreeable to the instructing Department.

3.3 The fundamental criteria for settling a claim against the County Government is that the settlement be in accordance with legal principle and practice. In particular:

- a) there must be a meaningful prospect of the County Government's liability;

- b) the amount of the settlement should reflect the prospects of the claim succeeding in Court, and the prejudice to the County Government (by way of cost or otherwise) of continuing to defend the claim.

PART IV PROCEDURES RELATING TO CONTRACTS

4.0 Types of Contracts

The types of contracts the County Government shall execute in the course of its business shall include but not be limited to:

- a) Contracts for Maintenance Works
- b) Consultancy Contracts
- c) Agency Contracts
- d) Construction Contracts
- e) Administration Contracts

4.1 Contract Preparation

The procedure for the preparation of contracts is as set out in *the Office of the County Attorney procedures Manual(annexed hereto)*

4.2 Name of County Government as a party to a Contract

Only the County Government may be named as a party to an agreement/contract between the County Government and a third party.

4.3 County Government to enter into a contract

A contract will only be awarded to a third party on completion of the procurement process. Such a party would be awarded the tender vide a letter of award in favor of the winner of the bid, who would thus accept the award vide a letter of acceptance. This documentation in addition to the tender documents will be forwarded by the Procurement Section to the OCA, for preparation of the contract.

4.4 Authorized officer to sign a contract

Only a Chief Officer or an officer authorized to act on their behalf, are authorized to execute contracts on behalf of the County Government.

4.5 Circumstances where the County Government will not enter into a contract

The County Government will not enter into a contract with a third party, where it is required or becomes clear that the resultant contract would require the County Government to:

- a) Undertake tasks or functions that are not permitted under the County Governments Act;
- b) Breach a mandatory requirement or procedural obligation imposed under the County Governments Act;
- c) Breach a legal requirement under the general laws of Kenya or laws in the jurisdiction in which the services or goods under the agreement are to be delivered.

4.6 Review of contracts prepared by third parties

Unless otherwise exempted by this Policy and Procedures Manual, all contracts prepared by third parties for execution by the County Government must be submitted for legal review by the OCA.

4.7 Records of Contracts

- 4.7.1 The Chief Officer shall maintain an updated departmental register of all Contracts for the relevant department. The register shall be both manual and electronic.
- 4.7.2 The Chief Officer shall upon making a new entry on the register notify the County Secretary in writing of the existence of the contract and forward a copy of the Contract to the County Secretary.
- 4.7.3 The County Secretary shall maintain a master register of all contracts signed by the County Government. The register shall be both manual and electronic;
- 4.7.4 The County Secretary shall cause a copy of the electronic register to be submitted to the OCA for purposes of custodianship.

4.8 Custody of Contracts

- 4.8.1 The Chief Officer shall keep the original Contract signed by the County Government in a secure and easily retrievable place. The Chief Officer shall cause an electronic copy to be made and securely maintained.
- 4.8.2 The Office of the County Attorney shall retain copies of all executed contracts in exercise of its custodial mandate.
- 4.8.3 The County Secretary shall keep certified copies of all Contracts sent by the Chief Officers in a secure and easily retrievable place.

4.9 Translation of agreements into other languages

- 4.9.1 The translation of contracts or other documents into foreign languages or from foreign languages must be undertaken by accredited legal translators appointed by the County Government.
- 4.9.2 The cost for the translation of the contract or other documents into other languages will be charged to the bidder requesting the contract.

PART V PROCEDURES RELATING TO MOUs

5.0 MoUs are merely expressions of the preliminary understanding of parties who plan to enter into a contract or some other agreement; they are not meant to be binding and do not hinder the parties from bargaining with a third party.

5.1 Name of County Government as a party to a MoU

Only the County Government may be named as a party to a MoU between the County Government and a third party.

5.2 Governor to sign a MoU

- 5.2.1 Only the Governor and a member of the County Executive Committee may sign a Memorandum of Understanding (MoU).
- 5.2.2 All MoUs shall be witnessed by the County Attorney or in his absence the County Solicitor or County Legal Counsel.

5.3 Review of MoUs prepared by third parties

Unless otherwise exempted by this Policy and Procedures Manual, all MoUs prepared by third parties for execution by the County Government must be submitted for legal review to the OCA.

5.4 Records of MoUs

The County Secretary shall maintain an updated register of all MoUs signed. The register shall be both manual and electronic.

5.5 Custody of MoUs

The County Secretary shall keep the original MoUs signed by the County Government in a secure and easily retrievable place. The County Secretary shall cause an electronic copy to be made and securely maintained.

The County Secretary shall cause a copy of the electronic register to be submitted to the OCA for purposes of custodianship.

PART VI PROCEDURES RELATING TO LEGAL RECORDS

6.0 Files to be classified as regards content

All correspondence and communications relating to the legal business of the County Government must be maintained in clearly labeled and indexed files categorized according to the type of correspondence or communication and, further divided into the relevant departments and litigation matters.

6.1 Legal records and files to be kept separately from other files

All employees in the OCA should keep legal files confidential and segregated from open files.

6.2 Confidentiality not to be used artificially

As a public institution, the County Government is subject to the Constitution and as such is committed to transparency and accountability in its activities. An employee will not seek to artificially make documents confidential for the purpose of avoiding the County Government ordinary obligations of public accountability.

PART VII PROCEDURES RELATING TO COMMUNICATION IN RELATION TO LITIGATION MATTERS

7.0 Communication with third parties

7.1 The CA or County Solicitor is responsible for the management of all communication with third parties including officers in other Departments/Sections in the County Government.

7.2 The CA or County Solicitor may delegate the same to the CLCs.

PART VIII PROCEDURES FOR DEALING WITH COURT ORDERS

8.0 Definition of a Court Order

A court order is any order issued under the seal of the court. Non-compliance with a court order may result in execution proceedings including a party's arrest. A court order may include a Ruling, Judgment or any other such orders as a court may direct including interim orders or summons to attend court or produce documents in court.

8.1 Who may be served with court Pleadings/ Orders

8.1.1 Court Pleadings or orders may only be served upon the County Secretary or the OCA.

8.1.2 Service may be effected by delivering the same at the County Secretary's office or the OCA or by sending the same by registered post.

8.2 OCA to act

8.2.1 The CA and the County Solicitor may delegate to the CLCs to respond to the pleadings on behalf of the County Government or appoint external counsel to represent the County Government.

8.2.2 The CA or the County Solicitor shall appoint external counsel registered in the County Government's list of suppliers for legal representation services. Criteria for appointing external counsel will include exceptional importance and complexities of the matters, time constraints and the general workload of the Litigation Unit.

8.2.3 Any other litigation matter that does not fall in the above mentioned criteria shall be taken up by County Legal Counsel

8.3 Information to be provided in response to demand in the time frame specified

8.3.1 The County Government is required by law to comply with any demand for information contained in a court order and must generally supply all information required by the court order within the time frame provided.

8.3.2 Upon receipt of the order, the OCA shall immediately assess the information required and forward the same to the relevant department for further information and clarification if required as regards the information to be supplied.

8.3.3 All authorized officers to whom information is sought shall within the timeframe provided respond to the OCA providing accurate and complete information.

8.3.4 It shall be the responsibility of the Chief Officer of the relevant department to provide evidence, witnesses and or any other information necessary for purpose of pursuing or defending any claim or action against or for the County Government.

8.4 Dealing with a court order requiring employee to give evidence or answer questions in court

8.4.1 Where an employee is served with a court order/summons to give evidence in their professional capacity, the employee must comply with that notice. Such compliance is subject to the said employee bringing the fact to the attention of the CA, the County Solicitor, SLOs or LOs to ensure they are adequately prepared to give such testimony.

PART IX PROCEDURES RELATING TO LITIGATION

9.0 County Attorney to authorize litigation against third parties

Only the County Attorney may commit or authorize the commencement of legal action or claims on behalf of the County Government against third parties after consultation with the relevant department and upon obtaining legal advice. No other employee may commence legal action against third parties or commit the County Government to litigation with a third party.

9.1 Office to manage or oversee litigation

The CA or in his absence the County Solicitor will manage all litigation and other legal proceedings on behalf of the County Government and will advise on all other litigation matters.

9.2 Insurance company to manage certain litigation

9.2.1 The County Government insurers are responsible for the management of claims against the County Government in relation to insured risks, including the management of legal

work for such claims subject to the specific terms and conditions of the insurance contract.

- 9.2.2 Where the County Government insurers accept a claim, the insurer becomes the entity responsible for the management of the claim, including any litigation relating to the claim in accordance with the terms and conditions of the contract of insurance.

PART X – PROCEDURE RELATING TO DRAFTING OF POLICIES AND LEGISLATIVE PROPOSALS

10.0 Annual legislative Calendar

- 10.1 At the beginning of each year the OCA shall come up with an annual legislative calendar.

- 10.2 The calendar shall include requests for legislative proposals and policies from the departments.

- 10.3 All departments shall forward their requests to the OCA for inclusion in the legislative calendar by the 31st day of January in each year.

10.4 Policies

- 10.4.1 Policies shall be initiated by the respective departments upon identification of gaps and needs in the relevant department.

- 10.4.2 The OCA shall offer technical assistance in the formulation and drafting of policies.

- 10.4.3 The request for such technical assistance shall be forwarded to the OCA by the County Executive Committee Member in charge of the department.

- 10.4.4 All policies shall be forwarded to the OCA for review before presentation to the ExCom for adoption and approval.

10.5 Legislative proposals

- 10.5.1 All legislative proposals shall be initiated by the respective departments upon identification of gaps and needs in the relevant department.

10.5.2 The OCA shall offer technical assistance in the formulation and drafting of legislative proposals.

10.5.3 The CA or County Solicitor may engage drafters, consultants or technical advisers in the formulation and drafting of legislative proposals.

10.5.4 The relevant department shall subject the draft legislative proposal to public participation and stakeholders' engagement.

10.5.5 The final draft shall be reviewed by the OCA and forwarded to the ExCom for adoption and thereafter forwarded to the County Assembly for approval.

The procedure for the preparation of legislative proposals is as set out in the *Office of the County Attorney procedures Manual*. (annexed hereto).

PART XI EVALUATION AND REVIEW OF POLICY

The County Government shall monitor the policy regularly through the OCA to ensure its relevance and effectiveness. It shall evaluate its impact on employees and other stakeholders. This policy will be reviewed by the ExCom as and when deemed necessary to ensure that it remains relevant to the objectives of the County Government.