

MOMBASA COUNTY PUBLIC PARTICIPATION BILL, 2017

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SCHEDULE—FORM OF A PUBLIC PETITION

MOMBASA COUNTY PUBLIC PARTICIPATION BILL, 2017

An Act of the County Assembly of Mombasa to provide for the establishment of a legal framework for facilitating public participation in the County Government processes; and for connected purposes.

ENACTED by the County Assembly of Mombasa as follows:

PART I – PRELIMINARY

1. Short Title and commencement

This Act may be cited as the Mombasa County Public Participation Act, 2017, and shall come into force on the date of publication in the Gazette

2. Interpretation

In this Act, unless the context otherwise requires-

"County Assembly" means the County Assembly of Mombasa;

"County Department" means any office or department established in the County Government by the County Public Service Board or under any written law;

"County Secretary" means a person so appointed under section 44 of the County Governments' Act, 2012;

"Clerk" means the clerk to the County Assembly;

"Department" means the department of public participation established herein under section 9;

"Executive Member" means the County Executive Committee Member for the time being responsible for public participation;

"public participation" includes the processes and methods designed to consult, involve and inform the public or stakeholders in order to allow those who would potentially be affected by a decision, any policy, legislation, program, project to have input into the process;

"stakeholder" means a person or group of persons who have an interest in a public issue or who are likely to be directly or indirectly affected by a public issue, decision or policy whether negatively or positively;

"the public" when used in relation to public participation in this Act, includes -

- (a) the residents of the county;
- (b) the rate payers of a particular urban area;
- (c) any resident civic organization or nongovernmental, private sector, labour organization or faith based organization with an interest in the governance of the county or an urban area;
- (d) non-resident persons who by virtue of their temporary presence in the county make use of services or facilities provided by the county or an urban area.

3. Objects of the Act

The objects of this Act is to –

- a) Give effect to the provisions of Chapter Eleven of the Constitution;
- b) Give effect to the principles of public participation as set out in Articles 1(2) and 10; Chapter Four Articles 35, 61, 69, 118, 119, 196, 174, 184, 201 and 232 and the Fourth Schedule of the Constitution;
- c) Give effect to Part VIII of the County Governments Act, 2012;
- d) Provide a framework for participation by the public in the affairs of the County through actively informing the form and content of legislation, policy and development plans formulated by the County Government;
- e) Provide a framework for informed, effective, efficient and sustainable engagement of the public in the County in the formulation of policy, legislation and development plans and programmes by the County Government;
- f) Provide for a framework for public participation in service delivery by the County Government;
- g) promote participatory democracy;
- h) transparency and accountability in decision making;
- i) community empowerment and support;
- j) promote partnership and collaboration in public processes;
- k) enhance public awareness and understanding of government processes;
- l) reduce conflicts related public or government decisions; and
- m) enhance community ownership of public decisions.

4. Guiding principles

The following principles shall guide public participation under this Act subject to section 87 of the County Governments' Act, 2012-

- a) The communities, organizations and citizens to be affected by a decision shall have a right to be consulted and involved in the decision-making process;
- b) Contributions by the public shall be taken into consideration when making decisions;
- c) Promotion of sustainable decisions by recognizing and communicating the needs and interests of all participants, including decision makers;
- d) Facilitation of the involvement of communities, organizations and citizens potentially affected by or interested in a decision;
- e) The public shall be consulted in designing how public participation shall be conducted;
- f) The public shall have access to information to enable their participation in a meaningful manner;
- g) Communication to the public on how their input affected the decision;
- h) Adherence to the values and principles of public service set out by Article 232 of the Constitution;
- i) Adherence to the principles of leadership and integrity set out in Chapter Six of the Constitution;
- j) Adherence to the principles of citizen participation set out in section 87 of the County Governments Act, 2012.
- k) provision of meaningful information in a format and language that is readily understandable and tailored to the needs of the target groups;
- l) provision of information in advance of consultation activities and decision making;
- m) mutual consultations and dialogue and exchange of views on matters affecting a community or group of persons;
- n) openness and transparency, inclusiveness in representation of views including vulnerable groups and marginalized;
- o) processes free of coercion;
- p) value for money;
- q) objectivity in engagement and non politicization of issues;
- r) constructive dialogue between County Government and the public or stakeholders;
- s) clear mechanism for responding to people's concerns, suggestions and grievances; and
- t) civic duty and responsibility.

PART II – CO-ORDINATION OF PUBLIC PARTICIPATION IN THE COUNTY

5. Roles and Responsibilities

- (1) the County Government shall promote and facilitate public participation in the County
- (2) the governor shall designate a member of the county executive committee to be in charge of public participation in the county
- (3) the member of the county executive committee designated to be in charge of public participation to subsection (2) shall in consultation with the county public service board, establish such offices and structures that may be necessary for the proper execution of public participation under this Act
- (4) the office or officer for public participation shall –
 - a. co-ordinate public participation by all county departments or agencies;
 - b. facilitate capacity building and provide support to other County Government departments on public participation processes;
 - c. monitor and evaluate public participation processes undertaken by each department or agency;
 - d. develop and execute an appropriate civic education programme;
 - e. ensure co-ordination with non-state actors in public participation processes and civic education;
 - f. prepare an annual report on public participation in accordance with the County Governments Act, 2012; and
 - g. manage the day to day running of civic education in the county.
- (5) Notwithstanding subsection (2), each member of the county executive committee shall promote, facilitate and coordinate public participation on matter under the department of that member.
- (6) The speaker of the County Assembly shall promote and facilitate public participation in the proceeding and other activities of the County Assembly.
- (7) The clerk shall provide administrative support for all public participation activities carried out by the County Assembly.
- (8) Each chief officer shall provide administrative support for all public participation activities carried out by the respective department for which the chief officer is responsible.
- (9) Sub-county, ward and village administrators shall promote, facilitate and coordinate public participation activities in their respective devolved units.

PART III – COORDINATION OF PUBLIC PARTICIPATION IN THE COUNTY ASSEMBLY

6. Relevant committee

There shall be a relevant Committee of the County Assembly which shall be responsible for-

- (a) providing general direction to the public participation processes in the County Assembly;
- (b) preparing reports on County Assembly public participation processes for consideration by the County Assembly ;
- (c) providing link between the Public Participation Office and the County Assembly.

PART IV – COORDINATION OF PUBLIC PARTICIPATION IN THE COUNTY EXECUTIVE

7. Establishment of the Department of Public Participation

There is established a department to be known as the Department of Public Participation which shall be an office in the county public service.

8. Composition of the Department

(1) The Department shall comprise—

- (a) a Director who shall be appointed by the County Public Service Board;
- (b) sub-county administrators as members of the office;
- (c) ward administrators; and
- (d) a representative of persons with disabilities seconded by Disabled Persons Organisation appointed by the County Public Service Board. .

(2) The Director shall be an employee of the County Public Service Board.

(3) The Director shall be the Secretary to the Department.

9. Appointment and qualifications of Director

(1) The appointment and nomination of the Director of the Department shall be—

- (a) carried out in a competitive and transparent manner;
- (b) based on merit; and
- (c) in line with the constitutional requirements for public service.

(2) A person is qualified for appointment as Director of the Department if that person—

- (a) is a citizen of Kenya;
- (b) holds a degree from a recognized university;
- (c) has knowledge and relevant experience in community service or social work; and
- (d) meets the requirements of leadership and integrity set out in chapter six of the Constitution.

(3) A person shall not be qualified for appointment as the Director under subsection (1) if such person—

- (a) is declared to be of unsound mind;
- (b) is an un-discharged bankrupt; or
- (c) has been removed from any office for contravening the provisions of the Constitution or any other written law.

10. Functions of the department

The functions of the Department shall be to-

- a) Co-ordinate public participation by other departments or agencies;
- b) facilitate capacity building and provide support to other County Government departments on public participation processes ;
- c) mobilize and organize the public, stakeholders and local communities to participate in county governance and decision making processes;
- d) facilitate the realization of the purpose of this Act as well as integration of the principles stipulated under section 7 in public participation processes;
- e) monitor and evaluate public participation processes undertaken by each department or agency;
- f) sensitize the public on county structures and opportunities for public participation;
- g) co-ordinate implementation of decisions and recommendations of the advisory committee;
- h) receive public complaints on issues emerging from public participation processes and liaising with respective departments for redress prepare an annual report on public participation in accordance with the County Governments Act;
- i) advise the Executive Member generally on the appropriate policies, plans and strategies for enhancing public participation in the county;
- j) carry out any other function in furtherance to the objects of this Act and as may be assigned by the Executive Member.

PART V – COMMUNITY PARTICIPATION AND INVOLVEMENT

11. Culture of democratic governance

The County Government shall develop a culture of democratic governance that complements a system of participatory governance, and for this purpose shall –

- a) Encourage and create conditions for the local community to participate in the affairs of the county including –
 - i. The preparation, implementation and review of its integrate development plan;
 - ii. The establishment, implementation and review of its performance management system;
 - iii. The monitoring and review of its performance, including the outcomes and impact of such performance;
 - iv. The preparation of the county budget; and
 - v. Strategic decisions relating to the provision of county services and functions;
- b) Contribute to building the capacity of –
 - i. The local community to enable it to participate in the affairs of the county; and
 - ii. Ward representative and staff to foster community participation appropriate for the purpose

2) public participation shall not be interpreted as permitting interference with a County Government right to govern and to exercise the executive and or legislative authority of the county.

12. Citizen forums

(1) There shall be citizen participation forums in -

- (a) the county convened by the Governor;
- (b) the Sub-county convened by the respective Sub-county administrator;
- (c) the Ward convened by the respective the Ward Representative in consultation with the Ward Administrator;
- (d) the Village convened by the respective Village administrator;
- (e) each town convened by the town manager.

(2) The citizen forums stipulated under subsection (1) shall be convened at least once every four months and shall provide a platform for consultations, review and deliberation on critical matters affecting the respective level.

(3) The Public Participation Office or Assembly shall within seven days communicate the precise date of any citizen participation forum to the concerned county residents and stakeholders through a suitable communication mode.

(5) The respective persons described under subsection (1) shall -

- (a) cause a record of proceedings during each citizen forum to be kept and shall ensure that where practicable, the decisions of such forums inform the decision making process by the County Government;
- (b) facilitate persons with disabilities to attend and participate in the citizen forums.

13. Stakeholder and public engagement

Each county department shall -

- (a) while developing legislation and policy or designing or implementing programs or delivering services, encourage and engage the relevant stakeholders and the public;
- (b) continuously report and communicate to the stakeholders and the public on the process, outcome and impact of policies, programs and services delivered;
- (c) provide or issue adequate and sufficient notice and information to stakeholders or the public where the stakeholders or the public are required to participate in an issue or forum stipulated under this Act.

14. Stakeholder engagement plan

(1) The Department shall ensure that the principles stipulated under this Act and the laws specified under sub-section 3 are integrated in each county department's or agency's policies, plans and service delivery processes.

(2) Each county department or agency shall develop and implement a stakeholder engagement plan.

(3) A stakeholder engagement plan shall provide among others for-

- (a) objectives of stakeholder engagement;
- (b) major issues requiring public and stakeholder engagement and consultations;
- (c) time-frame within which public consultations would be held;
- (d) process to be undertaken in stakeholder and public participation;
- (e) determination of public participation method;
- (f) method of providing information to the public.

PART VI – PUBLIC PARTICIPATION PROCESS

15. Forms of public participation

- (1) Public participation in the affairs of the county shall take place through –
 - a. Political structure for participation in terms of the County Government Act, urban areas and cities Act, public finance management Act and other relevant laws;
 - b. The mechanisms, processes and procedures for participation governance established in terms of this Act and any other relevant Act;
 - c. Other appropriate mechanisms processes and procedures established by the department or County Assembly;
 - d. Generally applying the provisions for participation as provided for in this Act.
- (2) The County Government shall establish appropriate mechanisms, processes and procedures to enable the public participate in the affairs of the county and shall for this purpose provide for –
 - a. The receipt, processing and consideration of petitions and complaints lodged by members of the public;
 - b. Notification and public comment procedures, when appropriate;
 - c. Public meetings and hearings by the County Government organs and other political structures and political office bearers of the county when appropriate;
 - d. Consultative sessions with locally recognized community organizations and where appropriate minorities; and
 - e. Report back to the local community.
- (3) In establishing mechanisms, processes and procedures pursuant to sub-section (2), the County Government shall take into account the special needs of –
 - a. People who cannot read or write;
 - b. People with disabilities;
 - c. Women; and
 - d. Other disadvantaged groups

16. Levels of Public Participation

1. While carrying out public participation, a county department or agency may-
 - (a) inform the public in order to enhance understanding the problem, alternatives, opportunities and solutions;
 - (b) consult in order to obtain public feedback on analysis, alternatives and decisions;
 - (c) involve the public directly throughout the process to ensure that public concerns and aspirations are consistently understood and considered;

- (d) collaborate with the public in each aspect of the decision, including development of alternatives and the identification of the preferred solution;
- (e) empower the public to make decision in regard to any public issue.

2. A Committee of the County Assembly may apply the levels described under subsection (1) (a) and (b) while carrying out public participation.

17. Public Participation Methods

A county department and Assembly may apply any of the following public participation methods in addition to the platforms stipulated under the County Governments Act, 2012-

- a) public meetings;
- b) public hearings;
- c) workshops;
- d) citizen advisory or consultation committees;
- e) surveys;
- f) focus groups;
- g) direct mail;
- h) newsletters;
- i) invitations for public submissions;
- j) partnerships and collaboration;
- k) joint auditing and evaluation of county
- l) government performance including projects audits;
- m) internet based interactive platforms.
- n) any other form of mass media.

18. Communication of information

- 1) The County Government shall communicate to the public information concerning –
 - a. The available mechanisms, processes and procedures to encourage and facilitate public participation;
 - b. The matters with regard to which public participation is encouraged;
 - c. The rights and duties of members of the public; and
 - d. County governance, management and development.
- 2) When communicating the information mentioned in sub-section (1), the County Government shall take into account –
 - a. Language preferences and usage in the county; and
 - b. The special needs of people who cannot read or write.

19. Notification

- 1) Any notice to the public required in terms of this Act or any other applicable legislation shall be done by –
 - a. Publication in at least two newspapers with national circulation;
 - b. Publication in the official website of the County Government or County Assembly;
 - c. By means of radio broadcasts covering the area of the county
 - d. Public announcements
- 2) A notification under sub-section (1) shall be in English and Kiswahili.
- 3) When the County Government invites the public to submit written comments or representations on any matter before it, it shall be stated in the invitation that any person who cannot write may visit, during office hours, a place where a staff member of the County Government named in the invitation shall assist that person to transcribe that person's comments and or representations.
- 4) When the County Government requires a form to be completed by a member of the public, reasonable assistance shall be given to the persons who cannot read or write to enable such persons to understand and complete the form.
- 5) If the form referred to in sub-section (5) relates to the payment of money to the County Government or to the provision of any service, the assistance shall include an explanation of its terms and conditions.

PART VII – PETITIONS TO THE COUNTY GOVERNMENT

20. Forms of Petition

A petition to County Assembly shall be in the form set out in the Schedule and shall -

- a) be handwritten, printed or typed;
- b) be in English or Kiswahili and be written in respectful, decorous and temperate language;
- c) be free of alterations and interlineations in its text;
- d) be addressed to the County Assembly or the County Secretary in case of petitions to the County Executive Committee;
- e) have its subject-matter indicated on every sheet if it consists of more than one sheet;
- f) confirm that efforts have been made to have the matter addressed by the relevant body and that there has been no response on the matter from the relevant body or that the response has not been satisfactory;
- g) conclude with a clear, proper and respectful prayer, reciting the definite object of the petitioner or petitioners in regard to the matter to which it relates;
- h) contain the names, addresses, identification numbers, signature or a thumb impression of the petitioner or of every petitioner, where there is more than one petitioner;

- i) contain only signatures or thumb impressions, as the case may be, and addresses and identification numbers written directly onto the petition and not pasted thereon or otherwise transferred to it;
- j) not have any letters, affidavits or other documents annexed to it;
- k) if the petitioner is unable to sign, be signed by a witness in whose presence the petitioner shall make his or her mark or thumb impression on the petition.

21. Procedure for presenting a petition to the County Executive Committee

1. A petition to the county executive committee shall be submitted to the county secretary by the petitioner.
2. The county secretary shall, within seven days of the date of receipt of the petitions, review the petition to ascertain whether the petition meets the requirements of this Act.
3. Where the county secretary considers that a petition does not comply with section 21, such directions as are necessary to ensure that the petition is amended to comply with the said section may be given.

22. Consideration of a petition

1. The Clerk shall, if satisfied that the petition meets the requirements of this Act, forward the petition to the speaker for tabling in the Assembly.
2. The county secretary shall, if satisfied that the petition meets the requirements of this Act, forward the petition to the county executive committee or relevant body for consideration.
3. A petition that is tabled in the County Assembly under this Act shall be considered in accordance with the County Assembly Standing Orders.
4. The Clerk or county secretary shall, within fifteen days of the decision being reached, in writing, notify the petitioner of the decision of the County Assembly.

23. Procedure for investigation

1. Where the county executive committee or County Assembly through its relevant committee, recommends further investigation in relation to a petition, it may hold public hearing and may –
 - a. Invite individuals to submit memoranda or appear before the committee to give evidence on a petition;
 - b. Invite any person holding public office to appear before them to give evidence relation to the petition; or
 - c. With the support from the County Government, hold public hearing in relation to the petition.

2. The evidence given by a person invited under sub-section (1) shall be taken down in writing and a copy of it sent to the person who gave the evidence
3. The presentations and comments given during a public hearing shall be recorded and a copy of it shall be publicized by posting the copy in a conspicuous place at the offices of the County Government and on the website as the case may be.
4. A person giving evidence may, within seven days from the date of receipt of the copy under sub-section (2), suggest corrections to his or her evidence due to inaccurate reporting and the evidence shall be printed with such corrections as may be appropriate.
5. The relevant committee may at its discretion refuse to hear any irrelevant evidence or to listen to any unruly or unmanageable person giving evidence.
6. Any document received at the investigation of a petition shall not be withdrawn or altered without the knowledge and approval of the relevant committee.
7. A document submitted to the investigation of a petition may be released to the person who submitted it at the conclusion of the deliberations.
8. The committee so appointed herein shall as soon as practicable after the conclusion of the investigation, submit its finding and recommendation to the county executive committee or the County Assembly for a final decision to be made on the petition.
9. The county secretary or the clerk shall, within fifteen days of the decision being reached, in writing, notify the petitioner of the decision.

24. Publication of decision on petition

The county secretary or clerk shall, within fourteen days after the decision is communicated to the petitioner or petitioners –

- a) Give notice of the decision to the public by posting a copy in a conspicuous place at the offices of the County Government;
- b) Inform the public that a copy or extract of the decision is available on its website; or
- c) Publish the decision in such other manner as may be appropriate for the dissemination of information.

25. Register of petitions

1. The county secretary or the clerk shall keep and maintain a register in which shall be recorded all petitions and supporting documents, and the decisions of the county executive committee or the County Assembly on the petitions.
2. The register of petitions under sub-section (1) shall be accessible to the public during working hours at the offices of the County Government.

26. Appeal against a decision on a petition

Any petitioner who is dissatisfied by the decision of the County Government may appeal to the Commission on Administrative Justice pursuant to the Commission on Administrative Justice Act, 2011.

PART VIII – FINANCIAL PROVISIONS

27. Funds of the Department

The funds of the Department shall consist of—

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

28. Annual estimates

- (1) Before the commencement of each financial year, the Department shall cause to be prepared estimates of the revenue and expenditure of the Department for that year.
- (2) The annual estimates shall make provision for all the estimated expenditure of the Department for the financial year concerned and, in particular, shall provide for —
 - (a) maintenance of buildings and grounds of the Department;
 - (b) the funding of the schedules and organization of public participation meetings;
- (3) The annual estimates shall be approved by the Department before the commencement of the financial year to which they relate and shall be submitted to the secretary for tabling in County Assembly.
- (4) No expenditure shall be incurred for the purposes of the Department except in accordance with the annual estimates approved under subsection (3).

29. Accounts and audit

- (1) The Department shall cause to be kept proper books and records of account of the income, expenditure, assets and liabilities of the Department.
- (2) Within a period of three months after the end of each financial year, the Department shall submit to the Auditor-General the accounts of the Department in respect of that year together with a —

- (a) statement of the income and expenditure of the Department during that year;
and
 - (b) statement of the assets and liabilities of the Department on the last day of that financial year.
- (3) The annual accounts of the Department shall be prepared, audited and reported upon in accordance with the provisions relating to public audit.

PART IX – MISCELLANEOUS PROVISIONS

30. Independently organized initiatives

1. No provision in this Act precludes the private mobilization of citizens for purposes of public participation.
2. The County Government shall work in cooperation with the citizens' fora.

31. Review forums

1. The County Government through its organs, departments and agencies shall organize annual forums at the ward level to receive feedback from the citizens.
2. The forums referred to in sub-section (1) shall be held in accordance with the provisions of Part V of this Act.

32. Civic education

1. Every financial year, the sub-county administrators, ward administrators and village administrators shall, in consultation with the county executive committee and County Assembly, conduct at least four civic education sessions to inform county residents on issues including but not limited to –
 - a. County policy making;
 - b. Law making process;
 - c. Public finance management processes;
 - d. Development planning processes;
 - e. Monitoring and evaluating county budget implementation;
 - f. Evaluating periodic county reports.
2. Certified civic education providers who are non-state actors may conduct civic education in the county as per county civic education guidelines.
3. Non-state actors shall coordinate with the Executive Member at all times as they carry out civic education.

4. The Executive Member shall publish a quarterly report on –
 - a. Number of certified non-state actor civic education providers;
 - b. Number of civic education sessions conducted by non-state actors; and
 - c. Assessment of the impact of civic education conducted by non-state actors.

33. Electronic governance

1. Each county department or agency shall provide all applicable information, forms, documents, statistics and data through electronic system such as online system, websites and portal in a timely, efficient and in a usable manner in order to facilitate public participation.
2. The Executive Member responsible for information, communication and technology shall ensure that the systems referred under subsection (1) facilitate interactive engagement with county residents and are comprehensive in terms of the information provided.

34. Reports

1. The Department shall prepare an annual report on public participation which shall contain among others-
 - a. the number of public participation forums facilitated by each department or agency;
 - b. the level of implementation of stakeholder engagement plan;
 - c. the level of engagement by participants during public participation process ;
 - d. the level of incorporation of proposals made or issues raised by stakeholders or the public;
 - e. challenges faced in the implementation of this Act and proposed mitigation measures;
 - f. any other prescribed matter.
2. The Department shall submit the report to the Executive Member not later than 2 months after the end of financial year.
3. The Executive Member shall, within twenty one days, transmit the report to the County Executive Committee for consideration.

35. Citizens' duties and responsibilities

A resident or any member of the public with interest in county affairs has the duty and responsibility to –

- a. constructively participate in the forums and platforms created by the County Government for public participation;
- b. share information and make proposals to the County Government during the law, policy and decision making processes as well as servicedelivery mechanisms; and
- c. contribute where appropriate and practicable resources for developing or implementing public delivery processes.

36. Regulations

The Executive Member may make regulations generally for the better carrying into effect of the provisions of this Act.

SCHEDULE

(Sec 20)

FORM OF A PUBLIC PETITION

TO: The Director, Department of Public Participation

WE/I, the undersigned and humble Petitioner(s) of..... (Here insert the names or description of the petitioner or petitioners and address including their status: residents of a particular area, workers, particular part of the community, minority or marginalised group etc.)

DRAW the attention of the County Government/Assembly to the following:

(Here, briefly state the reasons underlying the petition and request for the intervention of the Government/Assembly by outlining the grievances or problems and summarizing the facts which the petitioners wish the Government/Assembly/Department to consider)

THAT:

(Here confirm that efforts have been made to have the matter addressed by the relevant body, and it failed to give satisfactory response.)

THAT:

(Here confirm that the issues in respect of which the petition is made are not pending before any court of law, or constitutional or legal body.)

THEREFORE your humble petitioners PRAY that the Government / Assembly/ Department :-

(Here, set out the prayer, by stating in summary what action the petitioners wish the Government/Assembly to take or refrain from)

and your PETITIONERS will ever Pray.

Name of petitioner	Full Address	National ID Passport No.	or Signature/Thumb print
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Subsequent Pages

PETITION concerning.....
(Here, repeat the summary in first page)

***This form may contain such variations as the circumstances of each case may require.**