

SPECIAL ISSUE

Nyandarua County Gazette Supplement No. 14 (Acts No. 6)



REPUBLIC OF KENYA

**NYANDARUA COUNTY GAZETTE
SUPPLEMENT**

ACTS, 2016

NAIROBI, 9th December, 2016

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COUNTY ASSEMBLIES FORUM (CAF)
P. O. Box 73552 - 00200,
NAIROBI, KENYA

**THE NYANDARUA COUNTY ATTORNEY OFFICE
ACT, 2016**

No. 6 of 2016

Date of Assent: 3rd November, 2016

Date of Commencement: See section 1

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Nyandarua County Attorney Office

**THE NYANDARUA COUNTY ATTORNEY OFFICE
ACT, 2016**

**AN ACT of the County Assembly of Nyandarua to
provide for the establishment of the office of the
County Attorney and its functions; and for
connected purposes**

ENACTED by the County Assembly of Nyandarua, as
follows—

PART I—PRELIMINARY

1. This Act may be cited as the Nyandarua County Attorney Office Act, 2016 and shall take effect upon assent by the Governor and upon publication.

Short title and
commencement

2. In this Act—

Interpretation

“County Attorney” means the officer appointed to the office of County Attorney under section 5 of this Act;

“County Legal Counsel” means a person appointed under section 13 of the Act;

“Deputy County Attorney” means a person appointed under section 12 of the Act;

“legal officer” means an officer appointed to serve in the county government as such to by the County Public Service Board;

“office” means the office of the County Attorney.

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

Application

4. The objects of the Act are to—

Objects and
purpose.

- (a) establish an institutional framework for the county government, from which legal services shall be provided and made available;
- (b) entrench in decision making and governance by the county government, compliance with the Constitution and other public laws;
- (c) provide for the powers, duties and administration of the Office of the County Attorney ; and

- (d) define the relationship of the Office of the County Attorney with other offices including the County Executive Committee, in discharge of their mandates .

PART II – ESTABLISHMENT OF THE OFFICE OF THE COUNTY ATTORNEY

5. (1). There is established in Nyandarua County, the Office of the County Attorney which consists of—

Establishment of
office of the Count
Attorney

- (a) the County Attorney;
- (b) the Deputy County Attorney; and
- (c) such other number of County Legal Counsels and other officers as may be determined by the County Attorney in consultation with the County Public Service Board.

(2) The County Attorney shall, in consultation with the County Public Service Board, establish in the Office, such administrative units as may be necessary for effective discharge of its duties and responsibilities under this Act.

6. The County Attorney shall be competitively appointed by Governor and approved by the County Assembly, from amongst persons who have at least five years' experience as an Advocate of the High Court.

Appointment of the
County Attorney

7. The County Attorney is the principal legal advisor to the County Government and shall—

Duties and
responsibilities of
the County
Attorney

- (a) be as *ex officio* member of the County Executive Committee with no right to vote on any matter before the Committee;
- (b) represent the county government in court or in any other legal proceedings to which the county government is a party, other than criminal proceedings;
- (c) advise the county governments departments on legislative and other legal matters;
- (d) negotiate, draft , vet and interpret documents and agreements for and on behalf of the county government and its agencies;
- (e) be responsible for the drafting and revision of the county laws;

- (f) ensure that county government enters into lawful contract and agreements;
- (g) liaise with the Office of the Attorney General when need arises; and
- (h) perform such other function as may be necessary for the effective discharge of the duties and responsibilities of the County Attorney.

8. (1) The County Attorney shall, in discharging of the duties and responsibilities under this Act, have the power to—

Powers of the
County Attorney

- (a) issue directions to any officer working in the Office including the Deputy County Attorney;
- (b) require any officer in the county public service to furnish the office with any information in relation to any matter which is the subject of legal consideration or inquiry ;and
- (c) appear at any stage of any proceedings, appeal, execution or any incidental proceedings before any court or tribunal in which by law the County Attorney's rights of audience is not excluded.

(2) The County Attorney may upon request, appear and advise on any legal matter which is the subject of consideration by a committee of the County Assembly.

(3) Notwithstanding the provisions of any other written law or in the absence of any other written law, the County Attorney shall have the right of audience in proceedings of any suit or inquiry of an administrative body which the County Attorney officer consider to—

- (a) be of public interest or involve public property;
or
- (b) involve the legislative or an independent department or agency of the County Government

(4) In exercise of the powers conferred under subsection (3), the County Attorney shall—

- (a) notify any court, tribunal or such other administrative body of the intention to be enjoined in the suit, inquiry or administrative proceedings;
- (b) satisfy to the court, tribunal or such other

administrative body of the public interest or public property involved; and

- (c) comply with any directions of the court, tribunal or any such other administrative body on the nature of pleadings or measures to be taken for purpose of giving effect to the effective discharge of the duties of the Office.

9. (1) The County Attorney shall be appointed for a term of five years which may be renewed once and may be removed from office by the Governor with the approval of the County Assembly only for—

Tenure of Office

- (a) serious violation of the Constitution or any other law;
- (b) gross misconduct, whether in the performance of functions of the Office the County Attorney or otherwise;
- (c) physical or mental incapacity to perform the functions of the office;
- (d) breach of laws and regulations on ethics and integrity;
- (e) incompetence; or
- (f) bankruptcy.

(2) Notwithstanding the provisions of subsection (1) the Governor may, upon election under the Constitution, appoint a person who is qualified as County Attorney in accordance with the provisions of this Act.

(3) The Governor shall, where it is desired to remove the County Attorney from office, constitute a task force, to investigate, interrogate and consider the allegation for which the removal is proposed.

(4) The task force constituted under subsection (3) shall comprise of—

- (a) a judicial officer or an advocate of the High Court who qualifies, in accordance with Constitution, for appointment as a judge of the High Court of Kenya who shall be the chairperson; and
- (b) four other persons who have requisite knowledge and training in legal or administrative matters from within the County.

(4) The County Government shall provide a secretariat to the task force.

(5) The taskforce shall within thirty days from the date of its appointment submit a report to the Governor containing its findings and recommendations.

(6) The Governor shall consider the report of the taskforce and make a decision on the recommendations of the report within fourteen days, which shall bear a written submission on the reasons for his decision.

(7) Where the Governor decides to dismiss the County Attorney, the decision and reasons therein shall be submitted to the County Assembly upon which the Assembly will approve or disapprove the decision.

10. The County Attorney may resign from office in writing, addressed to the Governor. Resignation

11. The County Attorney shall take and subscribe to the oath or affirmation as set out in the schedule to this Act before assuming office. Oath of office.

PART III—APPOINTMENT, TERMS AND CONDITIONS OF SERVICE OF DEPUTY COUNTY ATTORNEY AND LEGAL COUNSELS

12. (1) The County Public Service Board shall competitively recruit and forward three names to the Governor who shall nominate one name and with the approval of County Assembly appoint the Deputy County Attorney, to the county public service, the Deputy County Attorney. Deputy County
Attorney

(2) The deputy County Attorney shall serve for a term of six years which may be renewed once.

(3) The Deputy County Attorney shall be the principal assistant of the County Attorney and shall deputize the County Attorney in the execution of the County Attorney's functions under this Act.

(4) A person shall be qualified for appointment to office of the Deputy County Attorney if the person—

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

13. (1) The County Public Service Board shall appoint, to the County Attorney office, such number of County Legal Counsels as may be necessary for the proper and efficient discharge of the functions of the Office.

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

- (a) an advocate of the High Court of Kenya; and
- (b) fit and proper with due regard to the discharge of his or her duties under this Act .

(3) The County Legal Counsels appointed under this Act shall serve on such terms as the County Public Service Board shall, in consultation with Salaries and Remuneration Commission, determine.

PART IV—PERFORMANCE OF THE FUNCTIONS OF THE COUNTY ATTORNEY

14. (1) The County Attorney may, either generally or otherwise, by an instrument of delegation in writing, delegate to the Deputy County Attorney or any County Legal Counsel all or any of the powers and functions of the Office except the power to delegate.

Delegation by the
County Attorney

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

15. The County Attorney, the Deputy County Attorney and County Legal Counsel shall not engage in any other gainful employment that may result in a conflict of interest or in private practice.

Private Practice
Prohibited

16. No criminal or civil proceeding shall be brought against the person of office the County Attorney, the Deputy County Attorney, County Legal Counsel or any other officer in the Office of the County Attorney, for proceedings in court of law or for lawful discharge of functions of the County Attorney under this Act.

Protection from
personal liability

17. (1) All legal officers in any county department shall be officers in the Office of the County Attorney and shall be functionally answerable to the County Attorney.

Legal officers in
county government
departments

(2) The County Attorney shall have the power to issues directions to any County Legal Counsel with regard

to the manner of performing the legal functions within their respective departments for the purpose of maintaining standards and uniformity.

18. (1) The Office of the County Attorney may, upon request, second any County Legal Counsel to any agency, organization or institution on such terms and conditions as the Office may, in consultation with the agency to which the officer is being seconded, agree upon.

Secondment of
officers

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

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

19. (1) The office of the County Attorney may procure services of such other persons as may be reasonably necessary for the purpose of assisting the Office in the performance of its functions.

Procurement of
Services

(2) The law on procurement of public assets and service shall apply to goods and services procured by the county government for the Office of the County Attorney.

(3) The County Government shall not engage the services of a consultant to render any legal services relating to the functions of the Office of the County Attorney without the approval of the County Attorney.

PART V—MISCELLANEOUS PROVISIONS

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

Prohibition of
unauthorized
disclosure of
information

(2) A person who contravenes subsection (1) commits an offence and is liable, on conviction, to a fine not

exceeding two hundred thousand shillings, or to imprisonment for a term not exceeding two years, or to both penalties.

21. (1) The Office of the County Attorney shall be the depository of all County laws and legal documents and agreements signed for or on behalf of the County Government.

Depository of laws
and agreements

(2) The office of the County Attorney shall ensure that all the laws are published in the Gazette.

22. The County Attorney shall be the custodian of the county public seal.

County Seal

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

Accessibility

24. The County Government shall provide adequate facilities for the efficient functioning of the Office of the County Attorney.

Facilities

25. (1) The funds of the Office of the County Attorney shall consist of monies that may be allocated by the County Assembly for the purpose of administrative and development expenditure by the Office.

Funds of the Office

(2) The Executive Committee Member responsible for matters of finance shall, in compliance with section 148 of the Public Finance Management Act, designate the accounting officer for the Office.

26 The accounting officer designated in accordance with section (25) (2) shall be accountable to the County Treasury and shall prepare, maintain and submit, to the County Treasury and the assembly, for the Office, financial records and reports as required by the law and the County Treasury.

Financial Records
and Reports

27. (1) The County Attorney may make regulations prescribing necessary matters for better carrying out of this Act.

Regulations

28. Upon the coming to effect of this Act all the officers working in the directorate of legal affairs shall be absorbed in the office of the County Attorney.

Transition

2016

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Nyandarua County Attorney Office

COUNTY ASSEMBLIES FORUM (CAF)
P. O. Box 73552 - 00200,
NAIROBI, KENYA No. 6

**OATH/AFFIRMATION OF OFFICE FOR THE COUNTY
ATTORNEY**

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

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