



One People, One Nation

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THE WIPER DEMOCRATIC MOVEMENT (WDM)

NATIONAL ELECTIONS APPEALS BOARD'S RULES, 2022

1. Citation

These Rules may be cited as the **Wiper Democratic Movement National Elections Appeals Board's Rules, 2022** and are made pursuant to **Chapter Three, Clause 3.13 Sub-Clause (h) of the Wiper Democratic Movement Constitution 2021.**

2. Interpretation

In these Rules, unless the context otherwise requires-

"**Administrator**" means officer designated by the Party to receive complaints on behalf of the Board.

"**Complaint**" means any dispute presented to the Board for hearing and determination;

"**Complainant**" means a participant in a Nomination Exercise aggrieved with the outcome of the Nomination Exercise;

"**Board**" means The Wiper Democratic Movement National Elections Appeals Board;

"**Interested Party**" means the successful person in the Nomination Exercise

"**Party**" means The Wiper Democratic Movement (WDM);

"**Participant**" means either a complainant, a respondent or their representative (s) and the Interested Party;

"**Respondent**" means the Wiper Democratic Movement National Elections Board;

"**Sittings**" means 4 hours per sitting.

3. Application

These Rules shall apply in the resolution of disputes between party members pertaining to party nominations **as expressly provided for under Chapter Three Clause 3.13 sub-clause (g) of the Wiper Democratic Movement's Part Constitution 2021.**

4. Guiding Principles

The admission and consideration of complaints lodged before the Board shall-

- i. Be guided by the Constitution of Kenya and all relevant Laws of Kenya; and the Party's Constitution and the Party's Nomination Rules.

- ii. Uphold a process that is expeditious, efficient, lawful, reasonable and procedurally fair.
- iii. Be open, transparent and accountable
- iv. Be guided by the dictates of natural justice
- v. Be accessible and cost effective
- vi. Shall take into consideration socio-cultural and religious differences of the participants

5. Jurisdiction of the Board

The Board shall have and exercise jurisdiction to hear and determine any dispute(s) between party **members as expressly provided for under Chapter Three Clause 3.13 sub-clause (g) of the Wiper Democratic Movement's Part Constitution 2021.**

6. Lodging of Complaint

- i. A complainant shall lodge a complaint by completing and signing the prescribed **Complaint Form No. 1** and submitting six copies of the same to the Administrator within ***48hours** from the time of occurrence of the incident complained about.
- ii. The duly completed and signed Form **No.1** shall be submitted to the Administrator together with **six copies of all the attachments mentioned in the form** and a prescribed non-refundable fee of ***25% equivalent of what the complainant paid as Nomination Fees.** Paid in cash by depositing to **A/C No.:01120199325701 A/C Name: WDM Bank: Cooperative Bank of Kenya – Branch,** or Safaricom Paybill no: **909122** and account name: your telephone number, and submit the receipt to the Administrator
- iii. The Administrator shall upon receipt of a complaint review the same to ensure compliance with the provisions of **rule 6(i) and (ii)** above where-after he/she shall admit and serialize the same for further processing.
- iv. For any non-compliant complaint, the administrator shall inform the concerned participant and call upon him/her to comply within a further period of ***12 hours** failure upon which the Board may dismiss the complaint summarily.

7. Service of Complaint

- i. Upon admission and serialization of a complaint, the Administrator shall within ***48 hours** thereof notify and serve upon the named Respondent and the Interested Party in the completed Complaint **Form No. 1.**
- ii. All efforts shall be made to ensure personal service however, service effected by way of electronic media or courier shall be deemed acceptable under these rules and a **Certification of Service Form No. 2** shall be completed by the Administrator to confirm service.
- iii. Confirmation of service may be undertaken through telephone communication

- iv. All efforts will be made to ensure swift service of the complaint form

8. Handling of Evidence

Participants who elect to attend the hearing in person are required to have all the evidence they seek to present before the board in terms of forms 1,3 and 4 including any witnesses they may wish to call. The Board may record the proceeding for purposes of accuracy and limited for use in writing its rulings, orders and/ or final judgments. Hard evidence produced before the Board shall be clearly marked as exhibits with initials of the producer of the evidence.

9. Response

- i. The Respondent shall present his/her response by completing and signing six copies of the prescribed **Response Form No. 3** within ***48 hours** from time of receipt of the completed and signed Complaint Form No. 1 together with the annexures.
- ii. There will be no fees chargeable for admission of Response Form No. 2

10. Interested Party

- i. The Interested Party shall present his/her response by completing and signing six copies of the prescribed **Response Form No. 4** within ***48 hours** from time of receipt of the completed and signed Complaint Form No. 1 together with the annexures.
- ii. There will be no fees chargeable for admission of Response Form No. 2

11. Admission of the Responses by the Respondent and the Interested Party

- i. The administrator shall upon receipt of a responses by the Respondent and the Interested Party, review the same to ensure compliance with the provisions of rules 9 (i) and 10(ii) above where-after he/she shall admit the same for further processing.
- ii. For any non-compliant response, the administrator shall inform the concerned party and call upon him/her to comply within a further period of ***12 hours**. Should the respondent and/or the Interested Party fail to comply within the further 12hrs the board will proceed to hear the matter as though it were undefended.
- iii. Once admitted, the Administrator shall serve the complainant with a copy of the responses by the Respondent and/or the Interested Party by way of electronic means or courier and a Certification of Service Form No. 2 shall be completed by the Administrator to confirm service.

12. Hearing and Procedure at the hearing

- i. A complaint shall be deemed ready for hearing upon confirmation of filing /admission of the complaint, the responses and any reply to the response before the board.
- ii. The Administrator shall notify and invite the concerned participants to appear before the Board for a hearing of the complaint on a specified date, time and venue using the prescribed **Hearing Notice Form No. 5** which shall be served upon both participants by way of electronic media or courier and a certification of service **Form No. 2** completed in that respect.
- iii. On the hearing date, the participants shall attend in person and may be accompanied by a representative of their choice or may alternatively complete **Hearing Attendance Exclusion Form No. 6** expressing their desire to have written submissions upon which the Board consider and make a determination based on the material presented without requiring their personal attendance.
- iv. Where both participants attend, the complainant shall commence by presenting his/her complaint and he/she shall in the process be open for questioning by the Respondent, Interested Party and members of the Board.
- v. Where the complainant has witnesses, the witnesses shall testify one at a time on the relevant aspects of the complaint that they witnessed and they shall also be open for questioning by the Respondent, the Interested Party and the Board.
- vi. After the complainant concludes presentation of his/her case together with his/her witnesses, the complainant shall close his/her case. The Respondent will be given an opportunity to present his/her response together with his/her evidence in the same manner and using the same procedure accorded to the complainant.
- vii. After the complainant and the Respondent have concluded presentation of their case together with their witnesses, both the complainant and the Respondent shall close their cases. The Interested Party shall be given an opportunity to present his/her response together with his/her evidence in the same manner and using the same procedure accorded to the complainant.
- viii. Where the Complainant does not attend the hearing on the hearing date and further does not submit the Hearing Attendance Exclusion Form No. 6, the complaint shall be dismissed for want of prosecution whether or not the Respondent attends the hearing in person or submits Form No. 6.
- ix. Where the Complainant attends the hearing in person but the Respondent and/or the Interested Party neither attends the hearing nor submits Hearing Attendance Exclusion Form No. 6, the hearing of the complainant's complaint, shall proceed the absence of the Respondent and/or the Interested Party notwithstanding.

13. Consideration and Determination

- i. The Board shall review all documents furnished relating to the dispute and consider and determine the complaint in accordance with the provisions of the Constitution of Kenya, the Elections Act, 2011 and the Elections (Regulations) and any other applicable Laws of Kenya, the Party's Constitution and the Party's Nomination Rules.
- ii. The Board shall make a written determination on all complaints lodged with it within **72 hours** from the time of lodging of the complaint.
- iii. All decisions of the board shall be dated and shall bear the signatures of all the board members involved
- iv. The Board reserves the right to order an award as to costs but in any event the costs awarded may not exceed the filing fees

14. Quorum

- i. For purposes of conducting a hearing, each sitting must have odd numbers of the Board representation to guarantee procedural fairness
- ii. To ensure expeditious disposal of disputes before the Board, the party may appoint two additional board members on need basis to ensure that at any given time there can be two hearings concurrent hearings of disputes

