

Commencement: 1 August 2003

REPRESENTATION OF THE PEOPLE ELECTION PETITIONS RULES

Order 29 of 2003

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To set out the procedure for Petitions about the election of members to Parliament, and about vacation of seats and becoming disqualified to hold seats.

PART 1 – PRELIMINARY

1.1 Title and Commencement

- (1) These Rules are the Election Petitions Rules.
- (2) These Rules come into operation on 1 August 2003.

1.2 Purpose

The purpose of these Rules is to set out the procedures to be used in proceedings about electoral disputes brought in the Supreme Court under Article 54 of the Constitution and section 54 of the Representation of the People Act (Cap.146.).

- [NOTES: 1. Article 54 of the Constitution gives the Supreme Court jurisdiction to hear and determine any question whether a person has been validly elected to Parliament, has vacated his seat or has become disqualified from holding it.
2. The Representation of the People Act (Cap. 146.) provides that the validity of an election to Parliament may be questioned by election petition brought under that Act, and that election petitions are to be heard in the Supreme Court.]

*Editor's note: This Arrangement of Rules contains links to the body of the Rules (Control + click)

1.3 Application of the Civil Procedure Rules

If these Rules do not make provision for a matter relating to an electoral dispute proceeding, the Civil Procedure Rules apply to that matter.

1.4 Overriding objective and case management

- (1) The Supreme Court must give effect to the overriding objective, as set out in the Civil Procedure Rules, when it:
- (a) does any act under these Rules; or
 - (b) interprets these Rules.
- (2) In particular, the Court must actively manage cases brought under these Rules, as set out in the Civil Procedure Rules.

[NOTES: 1. The "overriding objective" is set out in R. 1.2 of the Civil Procedure Rules.
2. Case management is set out in R.1.4 of the Civil Procedure Rules.]

1.5 Interpretation

- (1) Some words used in these Rules have a particular meaning. These are defined as follows:
- "Court" means the Supreme Court;
- "electoral dispute proceeding" means a proceeding under Article 54 of the Constitution about the validity of an election to Parliament;
- "member" means a member of the Parliament of Vanuatu;
- "petition" means a petition under Part 16 of the Representation of the People Act [Cap. 146];
- "Representation Act" means the Representation of the People Act [Cap. 146];
- "seat" means a seat in the Parliament.
- (2) The Notes in these Rules do not form part of the Rules and are for information only.

1.6 Forms

A reference to a Form by number is a reference to the form identified by that number in the Schedule at the end of these Rules.

[NOTE: A form is valid if it has minor defects – see s.37 of the Interpretation Act (Cap.132.).]

PART 2 – PROCEEDINGS ABOUT THE VALIDITY OF AN ELECTION TO PARLIAMENT

2.1 Application of Part 2

This Part applies to proceedings brought under section 54 of the Representation of the People Act [Cap.146] about the validity of an election to Parliament.

[NOTE: Sections 54 to 65 of the Representation Act deal with election petition proceedings. These Rules are in addition to those sections.]

2.2 Starting proceedings

- (1) A petition must be filed in an office of the Supreme Court anywhere in Vanuatu.
- (2) A petition must be in Form 1.
- (3) The Registrar must not accept the petition unless a deposit of VT 20,000 is paid when it is filed.

[NOTES: 1. A petition may be brought by a person registered to vote at the election or a person who claims to have been a candidate – see s.55 of the Representation Act.
2. The petitioner must lodge a deposit of VT 20,000 as security for costs – see s. 56.
3. The petition must be filed within 21 days after the gazettal of the election results. A petition alleging payment of money must be brought within 21 days after the alleged payment. These times cannot be extended. See s.57.
4. The petition must be in writing and specify the grounds on which the election is disputed. See s.58 and s.61.]

2.3 What a petition must contain

- (1) A petition must set out:

- (a) whether the person was registered to vote, or claims to have been a candidate, at the election; and
 - (b) the grounds on which the election is disputed; and
 - (c) the facts on which the petition is based; and
 - (d) an application for an order about service of the petition.
- (2) The petition must have with it:
- (a) a sworn statement by the petitioner in support of the petition, setting out details of the evidence the petitioner relies on; and
 - (b) any other sworn statements that support the petition.
- (3) A sworn statement must be in Form 2.

[NOTES: 1. A petition may only be brought by a person who was registered to vote, or claims to have been a candidate, at the election. See s.55 of the Representation Act.
2. The petition must set out the grounds on which the election is disputed. See s.58 of the Representation Act.]

2.4 Parties

- (1) The parties to proceedings under this Part are:
- (a) the petitioner; and
 - (b) any person whose election is affected by the petition; and
 - (c) the Principal Electoral Officer, if the Court orders he or she is to be a party; and
 - (d) anyone else the Court orders at any time to become a party.
- (2) The parties to the proceedings other than the petitioner are called the respondents.

2.5 Filing

- (1) A petition is filed by lodging 4 copies of the petition and sworn statement with the Court.
- (2) After the petition is filed and before returning sealed copies to the petitioner, the Court must
- (a) fix a date for the first hearing in the matter; and
 - (b) tell the petitioner in writing of this.
- (3) The first hearing date must be as soon as practicable and in any case within 21 days after the filing date.

[NOTE: The petitioner must also lodge a deposit of VT20,000. See s.56 of the Representation Act and Rule 2.2.]

2.6 First hearing

- (1) The first hearing is to be in open court.
- (2) At the first hearing,
- (a) the petitioner must satisfy the Court that there is a foundation for the petition; and
 - (b) the Court must make orders about:
 - (i) who is to be a party to the proceeding; and
 - (ii) service of the petition; and
 - (c) the Court must fix a date for the first Conference in the proceeding and write this date on the petition.
- (3) If the Court is not satisfied that there is a foundation for the petition, the Court must strike out the petition.

[NOTE: S.58(2) of the Representation Act deals with who is to be served and to be allowed to be heard.]

2.7 Service

- (1) The petition must be served within the time, and on the persons, required by the order under Rule 2.6.

- (2) The petitioner must file a sworn statement setting out details of the time and manner of service of the petition before the petitioner takes any further action in the proceeding.

[NOTE: S.58(2) of the Representation Act deals with who is to be served and to be allowed to be heard.]

2.8 Response

- (1) A party to the proceedings who wishes to contest the proceedings must file a response within 14 days of being served with the application.
- (2) A response:
- (a) must not deny the petitioner's claims generally but must deal with each paragraph of the petition; and
 - (b) must be in Form 3.

2.9 Conference

- (1) At the first Conference, the Court may:
- (a) deal with any applications to strike out the petition; and
 - (b) issue a summons under Rule 2.10; and
 - (c) order that a person may be legally represented; and
 - (d) order that a person become a party; and
 - (e) fix a date for another Conference, if one is necessary, or fix a hearing date; and
 - (f) make orders about:
 - (i) filing and serving sworn statements by the parties and their witnesses; and
 - (ii) disclosure of information and documents, in accordance with Part 8 of the Civil Procedure Rules; and
 - (iii) filing and serving written submissions and lists of authorities to be relied on; and
 - (iv) giving notice to witnesses to attend the hearing; and
 - (v) any other matter necessary to assist in managing the hearing of the petition.
- (2) If the petitioner is challenging the election on the ground that the petitioner had a majority of lawful votes, the Court at the first Conference may also order:
- (a) an examination of the counted and void votes; and
 - (b) an examination of the counting of votes.

[NOTE: 1. S.58(2) of the Representation Act deals with who is to be served and to be allowed to be heard.]
2. S.62 of the Representation Act deals with the examination of votes cast.]

2.10 Summons to disclose documents and information, produce documents and objects, etc

- (1) The Court may at any time order that:
- (a) a summons be issued requiring a person to attend court to give evidence and produce documents or objects; and
 - (b) a person allow the Court to inspect an object and visit a place.
- (2) The order may be made at a party's request or on the Court's initiative.

[NOTE: The summons must be in the form set out in Schedule 6 to the Representation Act. See s.59(4).]

2.11 Hearing

- (1) The hearing of the petition must be in open court.
- (2) Evidence in chief is to be given by sworn statement unless the Court orders otherwise.
- (3) The hearing is to be conducted as follows, unless the Court orders otherwise:

- (a) the petitioner makes an address opening his or her case and, if evidence is to be given orally, brings evidence in support of his or her case;
 - (b) the respondents cross-examine the petitioner's witnesses;
 - (c) the petitioner re-examines his or her witnesses;
 - (d) the respondents make an address opening their cases and, if evidence is to be given orally, bring evidence in support of their cases;
 - (e) the petitioner cross-examines the respondent's witnesses;
 - (f) the respondents re-examine their witnesses;
 - (g) the petitioner makes a closing address;
 - (h) the respondents make their closing addresses.
- (4) At the hearing the Court may:
- (a) ask questions of the witnesses; and
 - (b) call witnesses on its own initiative; and
 - (c) take any other step necessary to help the Court make a decision on the petition.

[NOTE: Section 59 of the Representation Act deals with the conduct of proceedings.]

2.12 Judgment

- (1) After the hearing the Court must give judgment, as set out in this Rule.
- (2) The judgment must be announced in open court.
- (3) The Court must state its reasons for making its decision.
- (4) The Court must ensure that copies of the judgment and reasons are available to the public.

[NOTES: 1. The Court may declare the election of a candidate void, declare another candidate elected, or dismiss the petition and declare the original candidate elected. See s. 60 of the Representation Act.

2. S.61 of the Representation Act sets out the grounds for declaring the election of a candidate void.]

2.13 Enforcement and costs

- (1) When the Court gives its judgment, or as soon as practicable after giving judgment, the Court must:
 - (a) decide the question of costs; and
 - (b) make an enforcement order for the costs.
- (2) An enforcement order must set out how and when the Court's decision is to be enforced.
- (3) Part 14 of the Civil Procedure Rules applies to the enforcement order.

[NOTE: If costs are ordered against the petitioner, the Court may deduct the costs from the petitioner's deposit. See s.56(3) of the Representation of the People Act.]

PART 3 – VACATING SEAT AND DISQUALIFICATION TO HOLD SEAT

3.1 Application of Part 3

This Part applies to proceedings about whether a person validly elected to Parliament has vacated his or her seat or has become disqualified to hold his or her seat.

[NOTES: 1. The Members of Parliament (Vacation of Seats) Act [Cap. 174] deals with the circumstances when a member is disqualified for membership of the Parliament and when a member's seat is vacated. See s. 1, 2 and 3.]

3.2 Starting proceedings

- (1) A proceeding under this Part is started by filing a petition in an office of the Supreme Court anywhere in Vanuatu.
- (2) The petition must be in Form 1.

3.3 What a petition may contain

- (1) A petition must set out:
 - (a) the member's name, the seat held and when the member was elected to the seat; and
 - (b) a request for a determination by the Court whether the member:
 - (i) has vacated his or her seat; or
 - (ii) has become disqualified to hold the seat; and
 - (c) the facts on which the petition is based; and
 - (d) any remedies sought.
- (2) The petition must have with it:
 - (a) a sworn statement by the petitioner in support of the petition; and
 - (b) any other sworn statements that support the petition.
- (3) A sworn statement must be in Form 2.

3.4 Parties

- (1) The parties to proceedings under this Part are:
 - (a) the petitioner; and
 - (b) if the petitioner is not the member whose seat is affected by the petition, the member; and
 - (c) the Speaker of the Parliament, unless the Court orders otherwise; and
 - (d) anyone else the Court orders at any time to become a party.
- (2) The parties to the proceedings other than the petitioner are called the respondents.

3.5 Filing

- (1) A petition is filed by lodging 4 copies of the petition and sworn statement with the Court.
- (2) After the petition is filed and before returning sealed copies to the petitioner, the Court must:
 - (a) fix a date for the first Conference in the matter; and
 - (b) write this date on the petition.
- (3) The Conference date must be between 14 and 21 days after the filing date.
- (4) The Court may reduce this period, either on application by a party or on its own initiative.

3.6 Service

- (1) The petition must be served within 7 days after the date of the first hearing on:
 - (a) the member, if the petitioner is not the member; and
 - (b) the Speaker, or the Attorney-General on behalf of the Speaker.
- (2) The petitioner must file a sworn statement setting out details of the time and manner of service of the petition before the petitioner takes any further action in the proceeding.

3.7 Conference

- (1) At the first Conference, the Court may:
 - (a) deal with any applications to strike out the petition; and
 - (b) order the respondent to file a response; and
 - (c) issue a summons under Rule 3.10; and
 - (d) order that a person may be legally represented; and
 - (e) order that a person become a party; and
 - (f) fix a date for another Conference, if one is necessary, or fix a hearing date; and

- (g) make orders about:
 - (i) filing and serving sworn statements by the parties, their witnesses and anyone else; and
 - (ii) disclosure of information and documents, in accordance with Part 8 of the Civil Procedure Rules; and
 - (iii) filing and serving written submissions and lists of authorities to be relied on; and
 - (iv) giving notice to witnesses to attend the hearing; and
 - (v) any other matter necessary to assist in managing the hearing of the petition.
- (2) A response:
 - (a) must not deny the petitioner's claims generally but must deal with each paragraph of the petition; and
 - (b) must be in Form 3.
- 3.8 Summons to disclose documents and information, produce documents and objects, etc**
 - (1) The Court may at any time order that:
 - (a) a summons be issued requiring a person to attend court to give evidence and produce documents or objects; and
 - (b) a person allow the Court to inspect an object and visit a place.
 - (2) The order may be made at a party's request or on the Court's initiative.
 - (3) A summons must be in Form 4.
- 3.9 Hearing**
 - (1) The hearing of the petition must be in open court.
 - (2) Evidence in chief is to be given by sworn statement unless the Court orders otherwise.
 - (3) The hearing is to be conducted as follows, unless the Court orders otherwise:
 - (a) the petitioner makes an address opening his or her case and, if evidence is to be given orally, brings evidence in support of his or her case;
 - (b) the respondents cross-examines the petitioner's witnesses;
 - (c) the petitioner re-examines his or her witnesses;
 - (d) the respondents make an address opening their cases and, if evidence is to be given orally, bring evidence in support of their cases;
 - (e) the petitioner cross-examines the respondent's witnesses;
 - (f) the respondents re-examine their witnesses;
 - (g) the petitioner makes a closing address;
 - (h) the respondents make their closing addresses.
 - (4) At the hearing the Court may:
 - (a) ask questions of the witnesses; and
 - (b) call witnesses on its own initiative; and
 - (c) take any other step necessary to help the Court make a decision on the petition.
- 3.10 Judgment**
 - (1) After the hearing the Court must give judgment, as set out in this Rule.
 - (2) The judgment must be announced in open court.
 - (3) The Court must state its reasons for making its decision.

- (4) The Court must ensure that copies of the judgment and reasons are available to the public.

3.11 Enforcement and costs

- (1) When the Court gives its judgment, or as soon as practicable after giving judgment, the Court must:

- (a) decide the question of costs; and
- (b) make an enforcement order.

- (2) An enforcement order must set out how and when the Court's decision is to be enforced.

- (3) Part 14 of the Civil Procedure Rules applies to the enforcement order.

[NOTE: If costs are ordered against the petitioner, the Court may deduct the costs from the petitioner's deposit. See s.56(3) of the Representation of the People Act.]

SCHEDULE

FORMS

FORM 1 – PETITION

R.2.2, 3.2

**IN THE SUPREME COURT OF
THE REPUBLIC OF VANUATU
(CIVIL JURISDICTION)**

CIVIL CASE NO _____ OF _____

BETWEEN

Petitioner's name

Petitioner's lawyer's name or
Petitioner's address

AND

Respondent's name

Respondent's lawyer's name or
Respondent's address

ELECTION PETITION

1. I, _____ of _____,
petitioner's name *petitioner's address*

was registered to vote at the election held on _____
date of election

OR

was a candidate at the election held on _____
date of election

2. I claim that _____ was not validly
name of person whose election is disputed
elected for the seat of _____ at that
name of seat

election because:

Set out details of grounds on which election is disputed, in numbered paragraphs

1.

2.

AND/OR

2. I claim that _____ has vacated his/her
name of person whose election is disputed

seat of _____
name of seat

OR

2. I claim that _____ has become
name of person whose election is disputed

disqualified from holding his/her seat of _____
name of seat

because:

Set out details of grounds on which election is disputed, in numbered paragraphs

1.

2.

3. The facts on which this petition is based are:

Set out the facts, in numbered paragraphs

1.

2.

4. I seek the following remedies:

Set out the remedies sought

Signed by the petitioner OR
petitioner's lawyer

at _____
Place

petitioner's signature OR petitioner's lawyer's signature

on _____
Date

Date of filing: _____

Filed by: _____

The petitioner's address for service is:

name and address of petitioner's lawyer OR
petitioner's name and address, if petitioner does
not have a lawyer

FORM 2 – SWORN STATEMENT

R.2.3, 3.3

**IN THE SUPREME COURT OF
THE REPUBLIC OF VANUATU
(CIVIL JURISDICTION)**

CIVIL CASE NO _____ OF _____

BETWEEN

Petitioner's name

Petitioner's lawyer's name or
Petitioner's address

AND

Respondent's name

Respondent's lawyer's name or
Respondent's address

SWORN STATEMENT

I, _____ of _____,
name of person making statement *address and occupation*

swear the following is true:

- 1.
- 2.

SWORN by

name of person making statement

signature of person making statement

on _____
date

BEFORE ME

Signature of witness

Commissioner for Oaths OR Notary Public

FORM 3 – RESPONSE

R.2.8, 3.7

**IN THE SUPREME COURT OF
THE REPUBLIC OF VANUATU
(CIVIL JURISDICTION)**

CIVIL CASE NO _____ OF _____

BETWEEN

Petitioner's name

Petitioner's lawyer's name or
Petitioner's address

AND

Respondent's name

Respondent's lawyer's name or
Respondent's address

RESPONSE

Set out details of response in numbered paragraphs

- 1.
- 2.
- 3.

Signed by the respondent OR
respondent's lawyer
at _____

Place

Respondent's signature OR respondent's lawyer's signature

on _____
Date

Date of filing: _____

Filed by: _____

The Respondent's address for service is:

name and address of Respondent's lawyer OR
Respondent's name and address, if respondent does
not have a lawyer

FORM 4 – SUMMONS

R.3.8

IN THE SUPREME COURT OF
THE REPUBLIC OF VANUATU
(CIVIL JURISDICTION)

CIVIL CASE NO _____ OF _____

BETWEEN

Petitioner's name

Petitioner's lawyer's name or
Petitioner's address

AND

Respondent's name

Respondent's lawyer's name or
Respondent's address

**SUMMONS TO ATTEND COURT, DISCLOSE DOCUMENTS AND INFORMATION,
PRODUCE DOCUMENTS AND OBJECTS**

TO: _____ of _____
name of person summoned address

You must attend the Supreme Court at _____
place
on _____ at _____
date time

1. to give evidence in this proceeding at the request of _____
name of party issuing summons

AND/OR

2. you must disclose the following documents and information:
(describe documents and information)

AND/OR

3. you must bring the following documents and/or objects with you:
(list documents and objects)

Seal of Supreme Court

Signature of Judge

date

WARNING: If you do not come to court, you may be arrested, brought to court and fined or put in prison.