

# GOVERNMENT OF FIJI GAZETTE SUPPLEMENT

No. 46

THURSDAY, 6th OCTOBER

2022

[LEGAL NOTICE NO. 125]

ELECTORAL ACT 2014

## General Election Petition Rules 2022

IN exercise of the powers conferred on me by section 134(1) of the Electoral Act 2014, I hereby make these Rules—

### *Short title and commencement*

- 1.—(1) These Rules may be cited as the General Election Petition Rules 2022.
- (2) These Rules come into force on the date of publication in the Gazette.

### *Interpretation*

2. In these Rules, unless the context otherwise requires—

“Act” means the Electoral Act 2014;

“court” or “Court of Disputed Returns” means the High Court of Fiji as prescribed under section 66 of the Constitution;

“court registry” means the High Court Civil Division Registry at Suva;

“petition” means an election petition brought under Part 5 of the Act;

“petitioner” means a person who presents a petition to court under these Rules;  
and

“respondent” means a person against whom a petition is presented to the Court.

### *Application*

- 3.—(1) These Rules are to be read together with section 66 of the Constitution and Part 5 of the Act.

(2) Where there is no applicable provision in the Constitution, the Act or these Rules, the procedures set out in the High Court Rules 1988, insofar as they are not inconsistent with the Constitution, the Act or these Rules apply to all election petitions.

(3) These Rules provide constricted timelines and filing dates that may fall on weekends or public holidays to give effect to section 66(8) of the Constitution.

### *Reference to forms*

4. Unless otherwise stated, a reference to a form by number in these Rules is a reference to the form of that number in the Schedule to these Rules.

### *Petition*

- 5.—(1) A petition must be in the form as specified in Form 1 of the Schedule and—
  - (a) state the right of the petitioner to petition under section 66(3) of the Constitution;

- (b) set out the facts the petitioner relies on as justifying the grant of relief;
- (c) state the date the writ was issued and returned;
- (d) contain a prayer asking for the relief the petitioner claims to be entitled to, including but not limited to—
  - (i) request for a recount of ballot papers in one or more polling stations or a recount of all ballot papers in an election;
  - (ii) request for the invalidation of the protocol of results in one or more polling stations, invalidation of the election of one or more candidates, or invalidation of the entire election; or
  - (iii) request for repeat polling in one or more polling stations or request for a repeat election;
- (e) signed by the petitioner, or if more than one, by all petitioners, except in the case of a petition filed by the Attorney-General under section 124 of the Act or section 66 of the Constitution; and
- (f) signed in the presence of a Commissioner for Oaths or solicitor.

(2) Evidence must be included in an affidavit in support to the petition.

*Respondent to petition*

6. A candidate whose election or return is complained of must be the respondent to the petition, and the political party that nominated the candidate, if any, and if the petition complains of the conduct of an election official, the Supervisor must also be a respondent.

*Filing of petition*

7.—(1) The petitioner must file the petition within 21 days of the declaration of the poll.

(2) The petition must be presented by filing it in the court registry.

(3) There must be as many copies of the petition filed as there are persons to be served, in addition to 3 copies for the court.

*Filing fees*

8. The petitioner is not required to pay any fees or deposit of security for costs with the petition.

*Service of petition*

9.—(1) The petition must be served on the respondent within 2 days from the date of filing the petition or within such further period as the court determines upon application made within those 2 days.

(2) Service to the Supervisor, Electoral Commission and the Attorney-General must be deemed to be effected by leaving the document at the registered office between the hours of 8.00 am to 4.00 pm.

(3) Immediately after service of petition, the petitioner must file in court an affidavit of service giving full particulars of the manner in which service has been effected on the respondent.

(4) Service to a respondent other than the Supervisor, the Electoral Commission and the Attorney General, must be between the hours of 6.00 am to 6.00 pm and deemed to be effected by leaving the petition and affidavit of service at either of the following location—

- (a) residential address as provided by the respondent on the nomination document at the time of nomination;
- (b) address of the registered office of the political party, if the respondent was a party candidate.

(5) In the event both parties are represented by their legal representatives then service is to be made to their legal representatives where service under paragraphs 2 and 4 is not possible.

(6) The Chief Registrar must as soon as possible after the filing of a petition forward a copy of the petition to the Speaker of Parliament, Supervisor, Electoral Commission and Attorney-General, if he or she is not a petitioner.

*Notice of intention to defend*

10.—(1) The respondent must file in court a notice of intention to defend in accordance with Form 2.

(2) The notice of intention to defend must be filed and served within 3 days from the date of filing the petition and the respondent must immediately serve a copy to the petitioner and on every named respondent.

(3) Where a respondent fails to file a notice of intention to defend, the court may proceed to deal with the petition in his or her absence.

*Response to petition*

11.—(1) The respondent who wishes to respond to the petition must file and serve a response to the petition in accordance with Form 3 within 9 days after the date of filing of the petition.

(2) There must be as many copies of the answer to the petition filed as there are persons to be served, in addition to 3 copies for the court.

(3) The respondent must respond to each claim made in the petition.

(4) The petitioner has the right to respond to the answer to the petition in accordance with Form 4 within 10 days after the date of filing of the petition.

*Directions hearing*

12.—(1) The court must list the petition for a directions hearing to take place within 4 days after the date of filing the petition.

(2) Where a party to the petition is represented by his or her legal representative, that party may attend the directions hearing with his or her legal representative who will be appearing at the trial.

(3) At the directions hearing the court may consider the following matters—

- (a) whether the parties are represented by a legal representative or self-represented;
- (b) filing and serving of answer to petition and response to answer to petition;

- (c) date, time and venue for pre-trial conference;
- (d) any interlocutory matters; and
- (e) such other orders necessary to hear the petition justly and promptly.

*Amendment to the petition*

13.—(1) The petition may be amended without leave of the court after it is filed and before it is served, but only with leave of the court after it is served on one or more of the respondents.

(2) The petition must not be amended after the answer to petition has been filed.

(3) There must be as many copies of the amended petition filed as there are persons to be served, in addition to 3 copies for the court.

(4) Where leave is granted to make an amendment to the petition, the respondent may be given such time to respond to the amendment as the court may allow.

(5) There must be as many copies of the amended answer to the amended petition filed as there are persons to be served, in addition to 3 copies for the court.

*Withdrawal of petition*

14.—(1) A petitioner may not withdraw a petition without the leave of the court.

(2) If there is more than one petitioner, an application to withdraw the petition may not be made except with the consent of all the petitioners.

(3) On the withdrawal of a petition, notice of the withdrawal must be published by the Chief Registrar in the Gazette and in a daily newspaper.

(4) The court may order costs as determined by the court in granting leave to withdraw the petition.

*Pre-trial conference*

15.—(1) Unless otherwise determined by the court, the pre-trial conference is to take place no later than 12 days from the date of filing of the petition.

(2) Where a party to a petition is represented by a legal representative that party may attend at the pre-trial conference with his or her legal practitioner who will be appearing at the trial.

(3) At the pre-trial conference the court must determine whether the petition will be ready to be heard on the dates listed for trial and must consider the following for directions—

- (a) confirmed date, time and venue of trial;
- (b) number of confirmed witnesses;
- (c) necessity to issue summons to compel witnesses to attend the trial;
- (d) necessity for interpreters;
- (e) filing of legal submissions;
- (f) statement of agreed and disputed facts;
- (g) confirmation of filing of all necessary petition documents; and

(h) any other matters deemed relevant by the court.

*Trial*

16. The procedure to be followed in conducting the trial of a petition must be the same as a trial of a civil action in accordance with the High Court Rules 1988.

Made this 6th day of October 2022.

K. KUMAR  
Chief Justice

SCHEDULE

FORM 1  
*(Rule 5)*

IN THE COURT OF DISPUTED RETURNS  
AT SUVA

No. of 20\_\_

BETWEEN: *[Petitioner's full name and address]*

Petitioner

AND *[Respondent's full name and address]*

Respondent

ELECTION PETITION

This petition concerns the general election for the Parliament of the Republic of Fiji held pursuant to a writ of election issued on *[dd/mm/yr]* by the President of the Republic of Fiji pursuant to section 59(2) of the Constitution and returned on *[dd/mm/yr.]*.

ENTITLEMENT TO FILE THIS PETITION

The petitioner is entitled to file this petition as *[set out the basis of entitlement pursuant to section 66(3) of the Constitution]*.

STATEMENT OF FACTS

*[Set out the facts the petitioner relies on as justifying the grant of relief]*.

RELIEF

The petitioner asks the court to make the following orders:

*[Details of orders and relief sought]*.

ISSUED by the High Court of Fiji at \_\_\_\_\_ this \_\_\_\_\_ day of  
20 .

.....  
[signed]  
*[Name of Petitioner]*

IN THE PRESENCE OF:

.....  
Signed by Witness

.....  
Name of Witness  
Commissioner for Oaths / Solicitor

.....  
Address of Witness

Date  
.....

TO:

THE RESPONDENT  
*[state address]*

The petitioner's address of service is *[state address for service]*.

FORM 2  
(Rule 10)

\_\_\_\_\_

IN THE COURT OF DISPUTED RETURNS  
AT SUVA

No.      of 20\_\_

BETWEEN      *[Petitioner's full name]*

Petitioner

AND            *[Respondent's full name]*

Respondent

NOTICE OF INTENTION TO DEFEND

*[Insert name of respondent]*, the Respondent, gives notice that it/he/she intends to defend this Petition.

Dated this ..... day of .....

.....  
*[signed]*

*[Name of Respondent]*

TO:

THE PETITIONER

*[state address]*

The petitioner's address of service is *[state address for service and/or petitioner's solicitor's firm/ name and address]*.

FORM 3  
(Rule 11)

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IN THE COURT OF DISPUTED RETURNS  
AT SUVA

No. of 20\_\_

BETWEEN *[Petitioner's full name]*

Petitioner

AND *[Respondent's full name]*

Respondent

ANSWER TO PETITION

This answer to petition relates to the petition concerning the general election for the Parliament of the Republic of Fiji held pursuant to a writ of election issued on *[dd/mm/yr]* by the President of the Republic of Fiji pursuant to section 59(2) of the Constitution and returned on *[dd/mm/yr.]*.

GROUND OF RESPONSE

This response to the petition is based on the following grounds: *[In numbered paragraphs, set out the full details of all grounds on which the petition is objected to. The response must not contain the general denial of all the claims raised in the petition].*

STATEMENT OF FACTS

*[Set out the facts the Respondent relies on to object the petition].*

RELIEF

The respondent asks the court to make the following orders:

*[Details of orders and relief sought].*



Dated this ..... day of .....

.....

*[signed]*

*[Name of Respondent]*

TO:

THE PETITIONER

*[state address]*

The petitioner's address of service is *[state address for service and/or petitioner's solicitor's firm/ name and address]*.

FORM 4  
(Rule 11)

IN THE COURT OF DISPUTED RETURNS  
AT SUVA

No. of 20\_\_

BETWEEN: [Petitioner's full name and address]

Petitioner

AND [Respondent's full name and address]

Respondent

RESPONSE TO ANSWER TO PETITION

This response to answer to petition relates to the petition concerning the general election for the Parliament of the Republic of Fiji held pursuant to a writ of election issued on [dd/mm/yr.] by the President of the Republic of Fiji pursuant to section 59(2) of the Constitution and returned on [dd/mm/yr.].

GROUND OF RESPONSE TO ANSWER

This response to the answer to petition is based on the following grounds: [In numbered paragraphs, set out the full details of all grounds on which the petition is objected to. The response must not contain the general denial of all the claims raised in the petition].

STATEMENT OF FACTS

[Set out the facts the respondent relies on to object to the answer to petition].

RELIEF

The respondent asks the court to make the following orders:  
[Details of orders and relief sought].

Dated this ..... day of .....

.....  
[signed]

[Name of petitioner]

TO:

THE RESPONDENT  
*[state address]*

The respondent's address of service is *[state address for service]*.

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