

ELECTION PETITION RULES 2017

EXPLANATORY NOTES

The *Election Petition Rules 2017* came into force on 1 July 2017 and have been amended by the *Election Petition (Miscellaneous Amendments) Rules 2022*, which came into force on 1 May 2022.

When citing the *Election Petition Rules*, refer to the principal rules, not the amending rules. For example, if you need to refer to the provision under which the court may dispense with the requirements of the Rules, do *not* refer to rule 22 of the *Election Petition (Miscellaneous Amendments) Rules 2022*. There is no such rule. Even though the original version of rule 22 was repealed and replaced by the *Election Petition (Miscellaneous Amendments) Rules 2022*, the correct reference is to rule 22 of the *Election Petition Rules 2017*. Do not add “As Amended” at the end.

A hard copy of the *Election Petition Rules*, which has been published in “the Elections Book”, is available for purchase from the Waigani Court Library. Please contact Mr Johannes Fege on email jfege@pngjudiciary.gov.pg.

JUSTICE CANNINGS
CHAIRMAN, RULES COMMITTEE
17 May 2024

ELECTION PETITION RULES 2017

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ELECTION PETITION RULES 2017

1. Definitions

In these Rules, unless the contrary intention appears:

“Court” means the National Court of Justice;

“filed” means lodged in a registry of the National Court at Waigani or at a registry or sub-registry of the National Court in a province, as set out in Schedule 1, and sealed with the seal of the Court and endorsed with an election petition number;

“Organic Law” means the *Organic Law on Provincial and Local-level Government Elections*;

“petition” means an election petition as referred to in the Organic Law;

“Registrar” means the Registrar of the National Court;

“respondent” means a person named as such in the petition;

“security deposit” means the sum referred to in Rule 8.

2. Administration

- (1) There shall be an Election Petitions List maintained by the Registrar, which shall contain the reference numbers, names and status of election petitions and related proceedings.
- (2) The Chief Justice may appoint a Judge to be Judge Administrator of the Election Petition Track and may from time to time appoint any Judge to deal with matters on the Election Petitions List.
- (3) The Registrar shall appoint an officer to be the senior officer in charge of registry matters concerning the Election Petitions List and shall appoint such other staff as are necessary to ensure the efficient and orderly running of the election petitions list.

3. Respondents

A petition filed pursuant to Section 206 of the Organic Law, shall:

- (a) state the name of the successful candidate as the first respondent;
- (b) specify the Electoral Commission as the second respondent; and
- (c) name no other respondent except ² with leave of the Court.

4. Form of petition

The petition shall be in accordance with Form 1.

5. Filing

A petition shall be filed together with the official receipt or stamped bank deposit slip evidence of payment of the filing fee and of the security deposit.

6. Filing fees

- (1) The filing fee for an election petition shall be K1,000.00.
- (2) The fee shall be paid at a provincial finance office and the official receipt of the payment shall be filed in the Registry with the petition in accordance with Rule 5.
- (3) Where circumstances do not permit a petitioner to pay the filing fee at a provincial finance office, the fee may be paid by bank cheque at a registry of the National Court or paid into the National Court Registrar's Trust Account at the appropriate bank.

7. Security for costs

The security deposit required by Section 209 of the Organic Law shall be paid in cash or by bank cheque into the National Court Registrar's Trust Account at the appropriate bank and evidence of the deposit shall be filed with the petition.

8. Service of petition on respondents

- (1) The petition shall be served on the respondents within 14 days after the date of filing the petition or within such further period as the Court determines upon application made within those 14 days.
- (2) Service on the first respondent shall be deemed to have been effected when any of the following events occurs:
 - (a) personal service on the first respondent is effected; or
 - (b) publication by the petitioner of the Notice of Petition in Form 2, endorsed with the approval of the Registrar, at the petitioner's expense, at least once in a daily newspaper circulating in the country; or
 - (c) compliance with any other mode of service authorised by the Court.
- (3) Service on the Electoral Commission shall be deemed to have been effected by:
 - (a) leaving the document at the office of the person apparently occupying the position of personal secretary to the Electoral Commissioner between the hours of 7.45 am and 12 noon, or 1.00 pm and 4.06 pm, or such other hours as may from time to time be declared by or under the *Public Services (Management) Act 1995* to be the normal public service hours of duty, on any day which is not a Saturday, Sunday or a public holiday declared by or under the *Public Holidays Act* (Chapter 321); or

(b) publication by the petitioner of the Notice of Petition in Form 2, endorsed with the approval of the Registrar, at the petitioner's expense, at least once in a daily newspaper circulating in the country; or

(c) compliance with any other mode of service authorised by the Court.

(4) Publication of a Notice of Petition in Form 2 shall be in the size of a standard quarter-page tabloid page newspaper notice and shall be without embellishment.

9. Affidavit of service

The petitioner shall, within ten days after the date of service of the petition, file an affidavit of service giving full particulars of the manner in which service has been effected and, if by advertisement, by annexing copies of the Notice of Petition as it appeared in the newspaper.

10. Obligation of respondents to obtain copy of petition

It is the obligation of the respondents to the petition named in the advertisement of the Notice of Petition, to obtain a copy of the petition from the Registrar.

11. Notice to appear

(1) Within 14 days after service of the petition in accordance with Rule 9, a respondent shall file a notice to appear in accordance with Form 3 at the place where the petition was filed and serve a copy on the petitioner and on every named respondent.

(2) Where a respondent fails to file a notice to appear, the Court may proceed to deal with the petition in his or her absence.

12. Objection to competency

A respondent who objects to the competency of the petition shall, within 21 days after service of the petition —

(a) file an objection in accordance with Form 4 giving at least three clear days' notice of intention to mention the objection before the Judge Administrator; and

(b) serve a copy of the objection on the petitioner and on each of the other respondents; and

(c) file and serve all affidavits in support of the objection.

13. Directions hearing

- (1) A directions hearing shall take place within 28 days after the date of filing of the petition or as soon as practicable thereafter.
- (2) Where a party to a petition is represented by a lawyer, that party shall attend at the directions hearing with his or her lawyer who will be appearing at the trial.
- (3) At the directions hearing, the Judge Administrator shall consider amongst other things the following:
 - (a) whether a party shall be represented by a lawyer;
 - (b) identification of legal issues;
 - (c) filing and serving of witness statements and or affidavits;
 - (d) number of witnesses;
 - (e) filing, serving and production of any other relevant documents including: electoral records, summonses and notices to produce; agreed statement of facts;
 - (f) number of trial days;
 - (g) date, time and place for pre-trial conference;
 - (h) manner of presentation of arguments at hearing;
 - (i) the place of trial and the desirability of any change of venue;
 - (j) subject to Rule 13, any interlocutory matter;
 - (k) any objection to competency; and
 - (l) such other matters as may aid in the prompt disposition of the petition.

14. Pre-trial conference

- (1) A pre-trial conference shall be conducted by the Judge Administrator within 28 days after the directions hearing or as soon as practicable thereafter.
- (2) Where a party to a petition is represented by a lawyer, that party shall attend at the pre-trial conference with his or her lawyer who will be appearing at the trial.
- (3) At the pre-trial conference the Judge Administrator shall consider and as far as is practicable determine, amongst other things, the following:
 - (a) the place of trial;

- (b) number of witnesses;
- (c) confirmation of filing of affidavits;
- (d) statement of agreed and disputed facts;
- (e) number of trial days;
- (f) legal issues;
- (g) exhibits;
- (h) statement of the petitioner's case and the respondent's defence(s);
- (i) necessity to issue summonses to compel witnesses to attend and/or produce documents;
- (j) necessity for interpreters;
- (k) fixing trial dates; and
- (l) arrangements for hearing of any notice of objection to competency.

15. Status conference

- (1) A status conference shall be conducted by the Judge Administrator at least five days before the date of trial to confirm that the matters in Rule 14(3) have been complied with and that the petition is ready for trial.
- (2) Where a party to a petition is represented by a lawyer, that party shall attend at the status conference with the lawyer who will represent them at the trial.

16. Trial

The Court shall deal with the petition and any objections to the competency of the petition at the trial of the petition.

17. Joint trial of two or more petitions [Note: rule 17 of the *Election Petition Rules 2017* repealed and replaced by rule 1 of the *Election Petition (Miscellaneous Amendments) Rules 2022*]

- (1) There shall be no "consolidation" of petitions, however, where two or more petitions relating to the same election or return are filed, then unless good cause is shown for separate trials, they shall be heard together in a joint trial.
- (2) The Judge hearing a joint trial of two or more petitions shall ensure that, for filing and case management purposes, each petition is separately recorded.
- (3) Nothing in this rule requires a Judge to give separate judgments in the case of a joint trial of two or more petitions.

18. Summary determination

Where a party has not done any act required to be done by or under these rules or otherwise has not complied with any direction, the Court may on its own motion or on the application of a party, at any stage of the proceeding:

- (a) order that the petition be dismissed where the defaulting party is the petitioner; or
- (b) where the defaulting party is a respondent, the petition shall be set down for expedited hearing; or
- (c) make such other orders as it deems just.

19. Costs

- (1) The Court may make such orders as to costs as it deems fit.
- (2) A party may apply to the Court at the end of the hearing for a different rate of costs other than the rates of costs specified in Schedule 2.
- (3) If parties do not agree to the costs, the Registrar shall tax the costs in accordance with Schedule 2 or the rate of costs ordered by the Court.
- (4) A party aggrieved by the taxation of costs may within seven days after the taxation apply to a Judge of the National Court for a full review of the taxation.

20. Payment out of security deposit

- (1) Where parties agree in writing for the security deposit to be paid out to any party or parties, the Registrar shall pay out the security deposit as agreed between the parties without requiring any further authority or action.
- (2) Where there is a dispute as to the distribution of the security deposit, the parties awarded costs may share the deposit in equal proportion to the number of parties.
- (3) Where a party is awarded costs, after the taxation of those costs, the Registrar shall pay out the share of the security deposit of that party up to the taxed costs amount without further order.

21. Practice directions

The Registrar may, in consultation with the Chief Justice, issue a practice direction in relation to any matter concerning these Rules to clarify the procedure and application or to otherwise explain or regulate any matter concerning the Rules.

22. Relief from the Rules [Note: rule 22 of the *Election Petition Rules 2017* repealed and replaced by rule 2 of the *Election Petition (Miscellaneous Amendments) Rules 2022*]

- (1) The Court may dispense with compliance with any of the requirements of these Rules, either before or after the occasion for compliance arises.

- (2) Substantial compliance with any form, including a petition, prescribed by these Rules shall be regarded as sufficient.
- (3) No petition or other process provided for by these Rules shall be struck out or dismissed for want or defect of form unless the want or defect is so extensive as to amount to substantial non-compliance or appears to demonstrate a deliberate abuse of process.
- (4) Nothing in this rule excuses a failure to comply with a requirement of the Organic Law, however when determining an allegation of failure to comply with a requirement of the Organic Law, the Court shall pay close regard to the requirements of s 217 of the Organic Law.

SCHEDULE 1 – LIST OF NATIONAL COURT REGISTRIES & SUB-REGISTRIES

Alotau, Milne Bay Province
Buka, Autonomous Region of Bougainville
Daru, Western Province
Goroka, Eastern Highlands Province
Kainantu, Eastern Highlands Province
Kavieng, New Ireland Province
Kerema, Gulf Province
Kimbe, West New Britain Province
Kokopo, East New Britain Province
Kundiawa, Chimbu Province
Lae, Morobe Province
Lorengau, Manus Province
Madang, Madang Province
Mendi, Southern Highlands Province
Minj, Jiwaka Province
Mount Hagen, Western Highlands Province
Popondetta, Northern Province
Tari, Hela Province
Vanimo, West Sepik Province
Wabag, Enga Province
Waigani, Central Province
Waigani, National Capital District
Wewak, East Sepik Province

SCHEDULE 2 – FORMS

Rule 5

FORM 1

**In the National Court of Justice
at ... (insert place of filing)**

EP No of

PETITION

**IN THE MATTER OF A DISPUTED RETURN
FOR THE ELECTORATE**

(insert name of petitioner)

PETITIONER

And

(insert name of successful candidate)

FIRST RESPONDENT

ELECTORAL COMMISSION

SECOND RESPONDENT

(add other respondents if leave granted by the Court)

A: THE PETITIONER petitions the National Court against the election or return of the first respondent as the successful candidate for the (insert name of electorate) electorate.

B: THE FACTS relied on to invalidate the return of the first respondent are set out as follows:

(set out the facts in numbered paragraphs)

C: THE GROUNDS upon which the petitioner relies are:

(set out the grounds in numbered paragraphs)

D: THE RELIEF to which the petitioner claims to be entitled is:

(specify the relief sought in numbered paragraphs)

SIGNED BY: (petitioner to sign his or her signature)

.....
PETITIONER (being a candidate at the election in dispute or by a person who was qualified to vote at the election, in accordance with Section 208(c) of the Organic Law), on (insert date on which petitioner signs the petition) at (insert place at which the petition is signed)

IN THE PRESENCE OF:

FIRST ATTESTING WITNESS:

I, (insert name of first attesting witness),
..... (insert occupation of first attesting witness), of

..... (insert address of first attesting witness: state address precisely by section and lot number or where no section and lot number by street name or in the case of a village or settlement, state name of place precisely by referring to province, district and nearest town), WHOSE SIGNATURE APPEARS BELOW, ATTEST THAT I HAVE WITNESSED THE SIGNING OF THE PETITION BY THE PETITIONER.

.....
(signature of first attesting witness)

SECOND ATTESTING WITNESS:

I, (insert name of second attesting witness),
..... (insert occupation of second attesting witness), of
..... (insert address of second attesting witness: state address precisely by section and lot number or where no section and lot number by street name or in the case of a village or settlement, state name of place precisely by referring to province, district and nearest town), WHOSE SIGNATURE APPEARS BELOW, ATTEST THAT I HAVE WITNESSED THE SIGNING OF THE PETITION BY THE PETITIONER.

.....
(signature of second attesting witness)

THE PETITIONER'S ADDRESS FOR SERVICE IS:
(state address precisely by section and lot number or where no section and lot number by street name or in the case of a village or settlement, state name of place precisely by referring to province, district and nearest town)

NOTICE BY THE REGISTRAR

ALL PARTIES TO THE PETITION TAKE NOTICE THAT THE FIRST DIRECTIONS HEARING FOR THIS PETITION WILL BE HELD AT WAIGANI ON (insert date) at (insert time).

.....
REGISTRAR

National Court of Justice

NOTICE OF PETITION

TAKE NOTICE that a petition has been filed against **(INSERT NAME OF SUCCESSFUL CANDIDATE IN BOLD CAPITALS)** the successful candidate for the electorate of (insert name of electorate), the first respondent.

The following persons have also been named as respondents to the petition:

The Electoral Commission, the second respondent
(And insert the name of any other respondent named)

This notice of petition takes effect according to the Rules of Court **as service on all of the named respondents.**

DUTIES OF THE RESPONDENTS

Each respondent who wishes to defend the petition must contact the Registrar of the National Court and obtain a copy of the petition and thereafter file in the Court a notice to appear in Form 3. The Court may proceed to hear the petition without notice to any respondent who fails to file a notice to appear.

This notice has been endorsed by the Registrar.

Dated.....

REGISTRAR

National Court of Justice

NOTICE TO APPEAR

In the National Court of Justice at **EP No.....of...**
(insert place at which petition was filed)

(Insert name of respondent), the ... respondent, give(s) notice that (I/it) intend(s) to appear in this petition.

Date of this day of,

.....
Respondent

National Court of Justice

NOTICE OF OBJECTION

The (state whether first or second or other) respondent OBJECTS to the competency of this petition, on the following grounds:

(set out concisely the grounds of the objection in numbered paragraphs, by reference to specific provisions of the Organic Law that it is claimed have not been complied with, eg Sections 206, 208 and/or 209):

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

.....
(Insert number ie first, second or third) respondent
(To be signed by the respondent or the respondent’s lawyer)

SCHEDULE 3 – COSTS

PART 1 – PRE-TRIAL FEES

ITEM

- 1. An allowance of up to K450.00 per hour: Institution of proceedings; (a) interlocutory proceedings; (b) other documents: preparing (including where necessary filing, serving or delivering) any document; (c) opinions and conferences; (d) attendances; (e) preparation for trial.
2. Letters and phone calls (a) letters out - K50.00 (if faxed or emailed – add charges); (b) letters in - K25.00 (if faxed or emailed – add charges); (c) phone calls in and out may be charged at the hourly rate and with Telikom charged-proof from Telikom for time spent must be produced.
3. Copy documents: photocopy, printed and carbon copies – all sizes K3.00 per page

PART 2 – LAWYERS’ FEES

Table with 2 columns: Description of fee and Amount. Rows include: Directions hearing (K650.00), Any other applications (K350.00), Appearing and arguing a petition – first 2/3 of first day for second and

subsequent days day

Taking a deferred judgment K350.00

Where the trial Judge has certified the fees, costs and expenses of a second lawyer resident within the jurisdiction or for an overseas counsel – there shall be allowed the same amount as for the first lawyer.

PART 3 – LAWYER’S TRAVELLING EXPENSES

1. Where a lawyer is required to travel from the town where he practices to appear as counsel in Court he shall be allowed reasonable travel and accommodation expenses.
2. Where the fees, costs and expenses of an overseas counsel are certified by the Court there shall be allowed return business class airfares to Brisbane (except where the airfare is for a lesser amount, or counsel is appearing in more than one matter during the same time period), and reasonable hotel expenses.
3. Within the town of trial for lawyers and overseas counsel for all attendances at the Court there is allowed a total of half an hour for journey to and the journey back from the Court of K225.00 (ie half an hour is allowed at the hourly rate of K450.00).

PART 4 – ALLOWANCES TO WITNESSES

1. Witnesses who give evidence at the trial of a Petition – K50.00 per day.
2. Where a person who gives evidence at a trial of a petition is on salary or wages – the amount of salary or wages actually lost may be allowed at the taxing officer’s discretion.
3. Proof by affidavit that salary or wages are actually earned by the witness, annexing proof of loss of salary or wages signed by the employer of the witness must be produced to the taxing officer.
4. Where a witness who gives evidence at a trial of the petition does not reside in the town where he is required to give evidence, he shall be allowed such an additional sum as is reasonable for travel expenses to and from that town by PMV or by sea or air, and for accommodation and transport within that town – at the discretion of the taxing officer.
5. The allowance for transport within the town shall be the ordinary PMV cost. Where a witness stays with relatives or friends whilst attending the hearing of a petition a sum of K40.00 per day may be allowed at the discretion of the taxing officer.
6. A witness attending in more than one cause will be entitled to a proportionate part only in each cause.

PART 5 – ALLOWANCE TO PARTIES

Petitioner's and respondent's costs for every hearing and trial attended:

- (a) actual travel and accommodation expenses;
- (b) reasonable costs for meals, hire car or taxi.

PART 6 – TAXATION OF COSTS

1. Taxation

Preparing bill of costs and copies and attending to lodge; attending taxation; vouching and completing bill, paying taxing fee and lodging for certificate or order: K1,000.00.

2. Review

Preparing and filing notice of motion to review decision of taxation officer; preparing and delivering objections or answers to objections, including copies for service and filing and considering opponent's answers on objections as the case may be; attending hearing of review: K1,000.00
