

VACATING SEAT AND DISQUALIFICATION TO HOLD SEAT

Application of Part 3

3.1 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.

- [3.1.1] Validity of Part This Part appears to relate to *Members of Parliament (Vacation of Seats)* [Cap 174] and not *Representation of the People* [Cap 146]. This creates difficulty because these *Rules* are made under s.59(1) of the latter (see also r..2). The former does not contain a rule making power. It is also noted that the long title of the *Rules* states (with emphasis added): “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.’ Though it is arguable that the rules in this Part could have been made in the inherent jurisdiction of the court (see CPR [1.1.2]), it is suggested that their validity should not be assumed.
- [3.1.2] Scope of Part The *Members of Parliament (Vacation of Seats)* Act makes provision for the disqualification of holders of seats and for the vacation of seats. These consequences are automatic upon certain events taking place. Accordingly, the only conceivable dispute is whether one or more of these “trigger” events has taken place. Presumably a party could apply to the Supreme Court in its general jurisdiction for an appropriate declaration to resolve the dispute. This would not be an “electoral dispute” within the meaning of r.1.5(1). Accordingly, quite apart from questions as to the validity of this Part, it is doubtful whether any of the following rules have any application in any event. The annotations to this Part assume that the Part is valid *and* that a dispute about disqualification/vacation is to be commenced by petition in the way prescribed hereunder.

Starting Proceedings

CPR r2.2, 2.3
ConPR rr2.2(1),
3.2(1), 4.2(1), 5.2(1)

3.2 (1) A proceeding under this Part is started by filing a petition in an office of the Supreme Court anywhere in Vanuatu.

- [3.2.1] See CPR [2.3.1] for the location of offices.
- [3.2.2] Whether a “petition” is required The definition of “petition” in r.1.5 is a petition under Part 16 of *Representation of the People* [Cap 146]. An issue under *Members of Parliament (Vacation of Seats)* [Cap 174] is different and so it is difficult to see that a petition is the appropriate process to initiate. See further [3.1.1], [3.1.2].
- [3.2.3] Time limit See [2.2.2]. Of course, having regard to what is suggested in [3.2.2], the only applicable time limit would seem to be those contained in *Limitation* [Cap 212].

(2) The petition must be in Form 1.

What a petition must contain

ConPR rr2.3, 3.3,
4.3

3.3 (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 becomes disqualified to hold the seat; and

- [3.3.1] See [3.1.2].

(c) the facts on which the petition is based; and

[3.3.2] See [2.3.2].

(d) any remedies sought.

[3.3.2] See [3.1.2].

ConPR rr2.3(2),
4.3(2)

(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.

Parties

3.4 (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

[3.4.1] General observations It is difficult to imagine that the member holding a seat will seek an order effecting any of the outcomes in ss.1, 2 or 3 of *Members of Parliament (Vacation of Seats)* [Cap 174]. Otherwise see [2.4.1].

(c) the Speaker of the Parliament, unless the Court orders otherwise; and

(b) 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.

ConPR r2.5

Filing

3.5 (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:

[3.5.1] See *CPR* r.18.5 as to sealing.

(a) fix a date for the first Conference in the matter; and

(b) tell the petitioner in writing of this.

(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 the parties or on its own initiative.**

Service

- 3.6 (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**

[3.4.1] General observations It is difficult to imagine that the member holding a seat will seek an order effecting any of the outcomes in ss.1, 2 or 3 of *Members of Parliament (Vacation of Seats)* [Cap 174].

- (b) the Speaker, or the Attorney-General on behalf of the Speaker.**

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

CPR r5.13(2)
ConPR rr2.6(3),
3.6(3), 4.6(3)

ConPR rr2.8, 3.7,
4.8, 5.4

Conference

CPR r6.4(2)(a), (b)

- 3.7 (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**

[3.7.1] This is perhaps a typographical error which should refer to r.3.8.

- (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**

CPR r6.4(2)(b)

- (g) 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) 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.**

ConPR rr2.9, 4.9

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

CPR r11.15(1)

3.8 (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.**

CPR r11.15(3)

(2) The order may be made at a party's request or on the Court's initiative.

(3) The summons must be in Form 4.

[3.8.1] Curing deficiencies This rule may be used to obtain information to cure deficiencies in the petition: *Rarua v Electoral Commission* [1999] VUCA 13; CAC 7 of 1999.

Hearing

CPR r12.2
ConPR rr2.10(1),
3.8(1), 4.10(1), 5.5

3.9 (1) The hearing of the petition must be in open court.

[3.9.1] See CPR [12.2.1] – [12.2.2] as to the meaning of “open court”. Note also the additional requirement under s.59(3), *Representation of the People* [Cap 146] that proceedings of the court be “recorded in writing.”

CPR r11.3
ConPR rr2.10(3),
4.10(3)

(2) Evidence in chief is to be given by sworn statement unless the Court orders otherwise.

[3.9.2] As to the circumstances which may justify departure see CPR [11.3.2].

CPR r12.1(4)
ConPR rr2.10(4),
3.8(3), 4.10(4)

(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 case and, if evidence is to be given orally, bring evidence in support of their case;**

- (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.

ConPR rr2.10(5),
4.10(5)

(4) At the hearing the Court may:

- (a) ask questions of the witnesses; and
- (b) call witnesses on its own initiative; and
- (c) inspect an object and visit a place; and
- (d) take any other step necessary to further the enquiry into the petition and help the Court make a decision on the petition.

[3.9.3] See further s.59, *Representation of the People* [Cap 146].

ConPR rr2.11, 3.9,
4.12, 5.6

Judgment

CPR r12.11

3.10 (1) After the hearing the Court must give judgment, as set out in this Rule.

(2) The judgment must be announced in open court.

[3.10.1] See *CPR* [12.2.1] – [12.2.2] as to the meaning of “open court”.

CPR r13.1(1)

(3) The Court must state its reasons for making its decision.

[3.10.2] See further *CPR* r.13.1(1) and annotations.

CPR r13.1(4)

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

ConPR rr2.12, 4.13,
5.7

Enforcement and costs

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

ConPR r3.10

- (a) decide the question of costs; and

[3.11.1] See further *CPR* Part 15.

- (b) make an enforcement order for the costs.

[3.11.2] See further *CPR* Part 14 and subs.(3).

(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.

[3.11.3] Deduction of costs from deposit The court may order that costs be deducted from the security deposit: s.56(3), *Representation of the People* [Cap 146].

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