

**NATIONAL COURT ELECTION PETITION RULES  
FOR  
PRESENTATION AND CONDUCT OF ELECTION PETITIONS 2002  
(AS AMENDED)**

PURSUANT to Section 184 of the *Constitution* and Section 212(2) of the *Organic Law on National and Local-Level Government Elections* and all other powers there unto enabling the following Rules of Court for regulating and prescribing the practice and procedure of the National Court of Justice are made and shall come into force on a date specified in the rules.

Dated this 3<sup>rd</sup> day of September 2007.

Chief Justice, Sir Mari Kapi, GCL CBE, CSI

Deputy Chief Justice, Sir Salamo Injia

Justice Timothy Hinchliffe, CBE

Justice Gibbs Salika, CSM, OBE

Justice Moses Jalina, OBE

Justice Bernard Sakora, CBE, CSM

Justice Mark Sevua, CBE

Justice Nicholas Kirriwom

Justice Les Gavera Nanu, OBE

Justice Ambeng Kandakasi

Justice Ellenas Batari, MBE

Justice Catherine Davani

Justice Salatiel Lenalia

Justice Paniel Mogish

Justice Gregory Lay

Justice David Cannings

Justice George Manuhu

Justice Allen David

Justice Sao Gabi

Justice Derek Hartshorn, ML

**NATIONAL COURT ELECTION PETITION RULES  
FOR  
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(AS AMENDED)**

*General:*                                *These Rules are made pursuant to Section 184 of the Constitution and Section 212(2) of the Organic Law on Provincial and Local-level Government Elections concerning the practice and procedure relating to the presentation and conduct of election petitions and may be cited as the Election Petition Rules 2000 (As Amended).*

*Commencement:*                      *These Election Petition Rules (As Amended) shall come into effect on the 18<sup>th</sup> September 2007.*

**1. DEFINITION**

Unless the context otherwise suggests:

- “petition”                      means an election petition as defined in the *Organic Law on Provincial and Local-level Government Elections*.
- “Registrar”                      means the Registrar of the National Court, an Acting, Deputy or Assistant Registrar.
- “Registry”                      means the National Court registry established under the National Court Act.
- “respondent”                      means a winning candidate and includes the Electoral Commission.
- “Rules”                      means these rules.

**2. PLACE OF FILING**

- (1) All petitions shall be filed at the National Court at Port Moresby or at the Court House in any Provincial Headquarters as specified in Schedule 1.
- (2) For Port Moresby, all petitions are filed at the Waigani Registry with the Registrar of the National Court and in all other places; petitions are filed with the Clerk of Court, except in the registries established under the National Court Act where they are filed with the Assistant Registrar.

**3. DATE OF FILING**

The time prescribed for filing petitions pursuant to Section 208(e) of the *Organic Law on National and Local-level Government Election* shall include all days of the week.

#### **4. FEES**

- (1) The filing fee for an election petition shall be K500.00.
- (2) The fee shall be paid at a Provincial Finance office by cash or bank cheque and a copy of the official receipt of the payment shall be immediately forwarded to the Registrar with the petition.
- (3) Where circumstances do not permit a petitioner to pay the filing fee at a Provincial Finance Office, he or she may pay the fee at a registry of the National Court or pay into the National Court Registrar's Trust Account (PNGBC/BSP Account No. 202-006-5551) and evidence of the payment shall be immediately forwarded to the Registrar.

#### **5. SECURITY FOR COSTS**

- (1) The security deposit of K5, 000.00 required by Section 209 of the *Organic Law on National & Local-level Government Elections* must be paid in cash or by bank cheque.
- (2) The deposit shall be paid at the registry at the time of filing.
- (3) Where a petition is filed at a place other than at a registry, the deposit shall be paid into the National Court Registrars Trust Account, (PNGBC/BSP Account No. 202-006-5551) and evidence of the payment shall be immediately forwarded to the Registrar.

#### **6. SERVICE OF PETITION ON RESPONDENTS**

- (1) Within 14 days of the date of filing a petition, the petitioner must serve a copy of the petition on the respondents and must, at the same time, provide the respondents with:
  - (a) three copies of a Notice to Appear in accordance with Form 1 completed with the title of the proceedings; and

(b) the Registrar's or his delegate's Notice which shall state the date, time and place at which a Directions Hearing will be held and the matters in Rule 12(3).

(2) The Notice referred in Rule 6(1) (b) shall be in accordance with Form 2.

## **7. MODE OF SERVICE**

(1) Service under this Rule may be effected by:

(a) personal service; or

(b) in the case of the successful candidate, by leaving it at his or her residential address as stated by him or her in the nomination form, with a person who appears to be over the age of 18 years; or

(c) such other service as the Court may, on application approve.

(2) The Registrar shall send a copy of each petition to the Clerk of Parliament.

## **8. PROOF OF SERVICE**

A petitioner shall, within 14 days of service of the petition, file a proof of service at the National Court Registry at Port Moresby or at the Provincial Court House where the petition was filed indicating the manner of service.

## **9. NOTICE TO APPEAR**

(1) Within 14 days after the date of service of the petition, a respondent shall file a notice in accordance with Form 1 in the National Court Registry or the Court House in the Provincial headquarters where the petition was filed and serve a copy on the petitioner.

(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.

## **10. PLACE OF TRIAL**

- (1) A petition may be heard at the place where the petition was filed or at any other venue determined by the Court.
- (2) In the case of Central Province and National Capital District, the place of trial will be at Port Moresby.

## **11. AMENDMENT OF PETITION**

A petition may be amended at anytime before the expiry of 40 days from the declaration.

## **12. DIRECTIONS HEARING**

- (1) A Directions Hearing shall take place within 28 days from the date of the filing of a petition.
- (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 witnesses' statements and or affidavits;
  - (d) number of witnesses;
  - (e) filing, serving and producing of any other relevant documents amongst others:
    - (i) electoral records;
    - (ii) summonses and notices to produce; and
    - (iii) agreed statement of facts;
  - (f) number of trial days;
  - (g) the date, time and place for pre-trial conference;
  - (h) manner of presentation of arguments at the hearing;
  - (i) the necessity to adjourn a hearing to Provincial Court House in or close to where the electorate is situated;
  - (j) subject to Rule 15, any interlocutory matter; and
  - (k) such other matters as may aid in the prompt disposition of the petition.

### **13. PRE-TRIAL CONFERENCE**

- (1) A pre-trial conference shall be conducted by the Judge Administrator 28 days from the date of the directions hearing.
- (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, amongst other things, the following:
  - (a) number of witnesses;
  - (b) affirmation of filing of affidavits;
  - (c) agreed and disputed statement of facts;
  - (d) number of trial days;
  - (e) legal issues;
  - (f) exhibits;
  - (g) statement of the petitioner's case and the respondents' defence (s);
  - (h) necessity to issue summonses to compel witnesses to attend and or produce documents;
  - (i) necessity for Interpreters;
  - (j) fixing trial dates.

### **14. STATUS CONFERENCE**

- (1) A status conference shall be conducted by the Judge Administrator 5 days before the date of hearing to confirm that matters in Rule 13(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 his or her lawyer who will be appearing at the trial.

**15. HEARING**

The Court shall deal with the petition and any challenges to the competency of it at the hearing.

**16. CONSOLIDATION OF PETITIONS**

Where two or more petitions relating to the same election or return are filed, then unless cause is shown for separate trials, they may be heard together.

**17. RELIEF FROM RULES**

The Court may dispense with compliance with any of the requirements of these Rules, either before or after the occasion for compliance arises, unless it is a requirement of the Organic Law on National and Local-Level Government Elections.

**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:-

- (i) order that the petition be dismissed where the defaulting party is the petitioner; or
- (ii) where the defaulting party is a respondent, the petition shall be set down for expedited hearing; or
- (iii) 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) Parties may apply to the Court at the end of the hearing for a different rate other than the rates in Schedule Two (2).
- (3) If parties do not agree to the costs, the Registrar shall tax the costs in accordance with Schedule Two (2).

- (4) A party aggrieved by the taxation of costs may within seven (7) days of the taxation apply to a Judge of the National Court for a review of the taxation.
- (5) 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.
- (6) 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.
- (7) The Registrar shall pay out the share of the costs of party awarded costs after the taxation of the costs of that party. No specific order is necessary for this payment to be made by the Registrar.
- (8) Where the winning parties do not claim the deposit within three (3) months after the decision, the deposit shall be paid to the applicant.
- (9) If, on the taxation of any costs, one-sixth or more of the amount of the bill for those costs is taxed off, the lawyer whose bill it is shall not be allowed the fees to which, apart from this Rule, he would be entitled for preparing the bill and for attending the taxation.

## **SCHEDULE 1**

### **Rule 2 (1)**

#### **LIST OF COURT HOUSES AT PROVINCIAL HEADQUARTERS**

<b>#</b>	<b>Court House</b>	<b>Province (Provincial Administration name in brackets)</b>
1.	Alotau	Milne Bay
2.	Buka	Autonomous Region of Bougainville
3.	Daru	Western
4.	Goroka	Eastern Highlands
5.	Kavieng	New Ireland
6.	Kerema	Gulf
7.	Kimbe	West New Britain
8.	Kokopo	East New Britain
9.	Kundiawa	Chimbu (Simbu)
10.	Lae	Morobe
11.	Lorengau	Manus
12.	Madang	Madang
13.	Mendi	Southern Highlands
14.	Mt. Hagen	Western Highlands
15.	Popondetta	Northern (Oro)
16.	Port Moresby	Central
17.	Port Moresby	National Capital
18.	Vanimo	West Sepik (Sandaun)
19.	Wabag	Enga
20.	Wewak	East Sepik

**SCHEDULE TWO**  
**SCALE OF COSTS FOR NATIONAL COURT**

**PART 1. PRE-TRIAL FEES**

ITEM

1. **An allowance of up to K450.00 per hour:**
  - a. Institution of proceedings;
  - b. Interlocutory proceedings;
  - c. Other Documents: Preparing (including where necessary filing, serving or delivering) any document;
  - d. Opinions and Conferences;
  - e. Attendances;
  - f. Preparation for Trial.
  
2. **Letters & 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:**
  - a. Photocopy, printed and carbon copies – all sizes K3.00 per page

## **PART 2 – LAWYER’S FEES**

Directions Hearing	K650.00
Any other applications	K350.00
Appearing and arguing a Petition – First day 2/3rds of first day for second and subsequent days	K1, 500.00
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 (i.e 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**

1. 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

**FORM 1**

*Rules 6(1)(a) and 9(1)*

In the National Court of Justice at	EP ..... of 2007
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<b>PETITIONER</b>
<b>AND</b>
<b>RESPONDENT</b>

**NOTICE TO APPEAR**

I/The Electoral Commission\* ....(name of respondent)....give (s)\* notice that I/it\* intend (s)\* to appear in this petition.

Dated this .....day of 2007.

.....  
Respondent

**TO:** The Petitioner

**AND TO:** The Court

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\* Strike out as inappropriate

**FORM 2**

*Rule 6(1)(b)*

<b>In the National Court of Justice at</b>	EP ..... of 2007
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<b>PETITIONER</b>
<b>AND</b>
<b>RESPONDENT</b>

**NOTICE OF DATE, TIME AND VENUE OF DIRECTIONS HEARING**

**To the:**

<b>Petitioner:</b>	
<b>Respondent:</b>	
<b>Electoral Commission:</b>	

I, ....., appoint the following date, time and venue for the holding of the directions hearing in the above matter:

<b>Date:</b>	...../..... 2007
<b>Time:</b>	.....am/pm
<b>Venue</b>	.....Court House

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 or producing of any other relevant documents amongst others:
  - (i) electoral records;
  - (ii) summonses and notices to produce; and
  - (iii) agreed statement of facts;
- (f) number of days for trial;
- (g) the date, time and place for pre-trial conference;
- (h) manner of presentation of arguments at the hearing;
- (i) the necessity to adjourn a hearing to a Provincial Court House close to where the electorate is situated;
- (j) determination of any interlocutory matter; and
- (k) such other matters as may aid in the prompt disposition of the petition.

<b>Dated:</b>	...../..... 2007
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Signed:	
	<b>Registrar</b> National Court of Justice