



Supreme Courts of Papua New Guinea

ELECTION PETITION WORKSHOP

Gateway Hotel, Port Moresby

1st August, 2012

SUPREME COURT ELECTION PETITIONS REVIEW PROCESS GUIDEBOOK

'Intended for Court Registry Officers' use only'

**PROCEDURES FOR REGISTRY ADMINISTRATION OF ELECTION
PETITIONS - As provided under the Supreme Court Election Petition Review Rules 2002
(as amended) 2007 and The Organic Law on National & Local Level Government
Elections.**

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Acronyms

EP	Election Petition
OLNLLGE	Organic Law on National & Local Level Government Elections
SC	Supreme Court
SCEPRR	Supreme Court Election Petition Review Rules

Introductory Note

This document is intended to be a training manual for Supreme Court registry officers throughout the country. The basis of this document is the **Supreme Court Election Petition Review Rules 2002 (as amended)** and hereinafter referred to as SCEPRR.

AIM: To instruct all relevant registry staff on the management and administrative processes of Election Petition Review.

OBJECTIVES/OUTCOMES: At the end of the said workshop, trainees will be able to:

1. Understand the *Supreme Court Election Petition Review Rules 2002 (as amended) 2007* and at least know how to administer it accordingly.
2. Have a working knowledge of the provisions of the *Organic Law on National and Local level Government Elections especially Part XVIII (OLNLLGE)* relating to election disputes.
3. Be able to manage and administer Election Petition Reviews in accordance with the SCEPRR and such other laws.

Every participant of the election petition workshop is expected to read this document as well other materials that will be provided including the SCEPRR at the workshop.

SUPREME COURT ELECTION PETITION REVIEW PROCESS

1.0. Supreme Court Election Petition Review Rules

The Supreme Court Election Petition Review Rules (hereinafter referred to as SCEPRR) basically spells out detailed procedures for Supreme Court Election Petition review.

The SCEPRR, among other things, provides for application for leave to apply for Review, filing of application for Review, directions hearing, review book, pre-hearing conference, hearing, dismissal, etc. of application and stay of enforcement of decision under review.

Each of the basic provisions of the SCEPRR will be simplified and discussed in detail below.

2.0. Preliminary Provisions of the SCEPRR – Rules 1 & 2, SCEPRR

Rules 1 and 2 of the SCEPRR give brief legal basis upon which the SCEPRR was enacted and definitions of certain terms used in the Rule itself.

3.0. Application for Leave to apply for Review – Sub-Division 1, SCEPRR

Sub-division 1 of the SCEPRR specifically provides for application for leave to apply for review in the Supreme Court. A party who is aggrieved by a decision of the National Court in an election petition can file an application in the Supreme Court. This application can be filed under section 155 (2)(b) of the *Constitution* but only with the leave of the court. This simply means that the aggrieved party, before filing the review application, must first of all make an application to the court to seek leave to file such review.

The aggrieved party is entitled to leave under Section 155 (2) (b) of the *Constitution* and the manner such aggrieved party is entitled to leave is provided by Part XVIII of the *Organic Law on National and Local-Level Government Elections*. The leave application must:

- a) be in the name of the person making such application and the respondents;
- b) briefly state the particulars of the decision of the National Court to be reviewed, the nature of the case, the issues involved and the reasons why leave should be granted. It must also state an address for service of the applicant;
- c) state an address for service of the applicant, and be signed by the Applicant himself;

- d) be in accordance with Form 5A **(see Attachment 1)**
- e) be filed in the Supreme Court Registry at Waigani.

The leave application must be supported by an affidavit of an applicant. The affidavit shall set out the circumstances pertaining to the application and shall have annexed a copy of the election petition and the judgment and the order of the National Court. The leave application and the supporting affidavits must be served personally on the respondents not later than 3 days before the application is made and an affidavit of service must be filed within 3 days of service.

The time period within which the leave application is to be filed is 14 days. The 14 days period starts from the day when the National Court hands down its decision on the election petition filed. However, the court can extend the filing period upon application for extension of time by the aggrieved party. That application must be made within the 14 days period, and it must be made before a judge. The judge's decision as to grant or refusal to grant leave is final and it is not subject to further review.

If the judge refuses to grant leave, then the aggrieved party's hope of filing review of the decision of the National Court ends there. However, if the judge does grant leave, then the next step is for the aggrieved party to file his review in the Supreme Court. Sub-Division 2 of the SCEPRR in particular provides for filing of Application for Review in the Supreme Court.

4.0. Filing for Application for Review – Sub-Division 2, SCEPRR

As already alluded to above, the application for review must be filed within 14 days from the grant of leave or within such further extended period as the court determines upon application for extension of time made within those 14 days.

There are certain important requirements which the review application must meet before it is filed. For instance, the review application must:

- a) state that the application lies with leave and state the date on which such leave was granted;
- b) state whether the whole or part only, and as such what part of the judgment is being reviewed;
- c) state briefly but specifically the grounds relied upon in support of the review;
- d) state what judgment, order or relief the applicant seeks in lieu of that decision reviewed;
- e) be in accordance with Form 5B **(See Attachment 2)**
- f) be signed by the applicant

Further, at the time of the application, the applicant is required to satisfy certain requirements. Among other things, the applicant must:

- a) indicate on the application whether a transcript is required and if so, a request for the production of the transcript;
- b) file a draft Index of the Review Book;
- c) the application for review must, amongst other things, include the date and time fixed by the Registrar for Directions Hearing before a Judge of the Supreme Court;
- d) the date fixed for the Direction Hearing under Rule 14 must not exceed 14 days from the filing of the application;
- e) the application must be filed in the Supreme Court Registry at Waigani.

5.0. Other important Requirements – See Sub-Divisions 3, 4 & 5, SCEPRR

Apart from the above requirements, there are other important requirements under the SCEPRR which the applicant must meet as well. Sub-divisions 3, 4 & 5 specifically provide for such requirements, and they are as follows:

a) Transcript: where the court requests for the applicant to produce transcripts of the National Court, the applicant himself must meet the cost for production of such transcript and then produce them in court. The current rate for printing of transcripts from our court reporting section here at Waigani is as follows: K4:00 per page if only one party is ordering; K2:50 per page if 2 parties are ordering; K2:00 per page if 3 or more parties are ordering.

The applicant who is requested to produce transcripts especially here at Waigani can see Ms Pavora Marupi, the current Director for Court Reporting, or any of her court reporting officers to access copies of transcripts. For other centres, the applicant can see court reporting section for the centre concerned to access transcripts.

b) Service of Application: Within 7 days of filing the review application, the applicant must serve the application together with the draft Index on the Respondents named in the application and also on any other person the Court considers has an interest in the application.

c) Notice of Appearance: Within 7 days of the service of the application, the respondents or their lawyer must file a Notice of Appearance in accordance with Form 5C (**See Attachment 5**)

6.0. Directions Hearing – Sub-Division 6, SCEPRR

A direction hearing can be held within 14 days of filing of the review application. The directions hearing is for the Judge concerned to consider and determine or give such directions as may be necessary to ensure prompt disposition of the application. More specifically, among others things,

consider and ascertain the following things and give certain directions where necessary:

- a) Question of legal representation;
- b) Grounds of review;
- c) Identification of legal issues;
- d) Consolidation of multiple applications on the one election for purpose of hearing;
- e) Availability of transcript and related matters;
- f) Objection to competency of the application;
- g) Manner of presentation of argument by parties including filing extract of submissions;
- h) Settlement of the Index;
- i) Compilation of the Review Book;
- j) The number of days required for the hearing.

7.0. Review Book – Sub-Division 7, SCEPRR

Again within 14 days after the Directions Hearing, the applicant is required to compile, file and serve the Review Book on each respondent. The applicant must prepare the Review Book in the manner required by the SCEPRR. Sub-Division 7 rule 23 provides a list of requirements which the applicant must strictly consider when preparing the Review Book. They are as follows:

- a) The applicant must bind the Review Book in a suitable binder on A4 size paper with tabs;
- b) The thickness of the Review Book must **not** exceed 38mm;
- c) The title page(s) must give the full and correct title of the proceedings and the names of the lawyers for each party (if any), telephone numbers and their addresses for service;
- d) After the title page(s) there must be an index, consisting of a complete list of documents contained in the review book as settled by the Registrar, stating in the case of each document as to what page of the review book it appears. Also in the index, the exhibits must be marked in the order in which they are identified or numbered in the National Court.
- e) the date and a short description of each document must come before the document, but the backsheet or formal heading shall not be printed or copied and jurats, format identification of exhibits and the like shall be omitted;
- f) (g) where the transcript of evidence is reproduced, the name of the witness together with a notation indicating whether the evidence given is in chief (IC), cross-examination (XX) or re-examination (RX) must appear on the right hand side of each page.

Further the Review Book must be paginated and arranged in certain ways under rule 24 of the SCEPRR. Rule 24 basically requires that the review book must be paginated and arranged in the following order:

- a) the title page;
- b) index to Review Book;
- c) order granting leave;
- d) the application for review to the Supreme Court;
- e) the election petition for review;
- f) evidence, oral or affidavit, stating the name of each witness or deponent and page number on which such evidence commences;
- g) testimony taken on commission or before an examiner and put into use as evidence;
- h) exhibits arranged in the order in which were identified or numbered as exhibits in the National Court;
- i) written submissions filed in the National Court;
- j) the reasons for decision of the National Court;
- k) the formal judgment or order of the National Court.

A copy of the review book must be examined with the original documents and all copies must be certified as correct by all parties concerned. Any copy that is not certified might be rejected by the court. Therefore, if such a minor error is noticed in the Review Book at the time of filing, then our officers at the court registry should point it out to the parties so that they may make quick corrections before it is filed.

8.0. Pre-Hearing Conference – Sub-Divisions 8 & 9, SCEPRR

Within 21 days from Directions Hearing, a Pre-Hearing Conference can take place. The Pre-Hearing can be presided over by a **single** judge.

At the Pre-Hearing Conference, among other things, the Judge can consider and determine or give such directions as may be necessary to ensure prompt disposition of the review. The following are some of the things the judge is required to consider under rule 27 of the SCEPRR:

- a) legal representation;
- b) the correctness of the Review Book;
- c) the grounds for review to be argued at the hearing;
- d) identify legal issues to be argued at the hearing;
- e) consolidation of multiple applications on the one election;
- f) manner of presentation of argument by parties including filing extract of written submissions;
- g) number of days required for the hearing;
- h) fix a date for the hearing.

Once when a date for hearing is fixed, under rule 28 the Registrar can give notice of the hearing date to the parties in accordance with Form 5D (**See Attachment 6**). And at hearing, the court can deal with the review application as well as any objections to competency of the application.

9.0. Dismissal, etc. of Applications – Sub-Division 10, SCEPRR

In cases where the parties fail to comply with court directions or requirements under the rules, the court can even dismiss the applications and/or make such other necessary decisions as circumstances of the case permit. So the onus is upon the parties to make sure that every requirement under the rule is met, and every direction of the court is complied accordingly.

10. Sub-Divisions 11, 12 and 13 of SCEPRR

The Sub-divisions 11, 12 and 13 of the SCEPRR talk about stay of enforcement of decision under review, dispensation from the rules, and costs respectively. They are somewhat not relevant to our present purpose, but officers can refer to them in the rules whenever needs arise. Otherwise, they are for the court to consider.

ATTACHMENTS

Attachment 1

Supreme Court Election Petition Review Rules (as Amended)

Order 5 Division 4 Sub-division 1 Rule 3(f)

Form 5A

APPLICATION FOR LEAVE TO REVIEW

IN THE SUPREME COURT SC REVIEW No. 2012
OF JUSTICE (*Insert Number and Year*)

Application under Section
155(2)(b) of the *Constitution*
And in the Matter of Part XVIII of
the *Organic Law on National
and Local-Level Government
Elections.*

A.B.

Applicant

C.D.

Respondent

APPLICATION FOR LEAVE TO REVIEW

APPLICATION will be made to the Supreme Court, at Waigani at am/pm
on the day of 2012, for:

1. LEAVE TO APPLY FOR REVIEW:

(state date of the decision and the decision for review).

2. GROUNDS:

(state briefly the particulars of the decision of the National Court to be reviewed and the nature of the case)

3. THE ISSUES INVOLVED:

4. REASONS WHY LEAVE SHOULD BE GIVEN:

5. ADDRESS FOR SERVICE OF THE APPLICANT:

Dated this day of, 2012.

Sgd _____
(Applicant)

Attachment 2

Supreme Court Election Petition Review Rules (as Amended)

*Order 5 Division 4 Sub-division 2 Rule 12 (e)**Form 5B*

IN THE SUPREME COURT S.C. REV. NO. ... OF 2012
 OF JUSTICE (Insert number and year)

Review Pursuant to
Constitution Section
 155(2)(b)
 Application by (insert
 name of party seeking
 Review)
 Respondents
 (Insert names of
 respondents)

APPLICATION TO REVIEW

1. THIS REVIEW OF THE DECISION OF THE NATIONAL COURT is sought
 by: (the applicant)
2. LEAVE TO APPLY FOR REVIEW WAS GRANTED ON:
 (*State date and name of Judge who granted leave*)
3. THE DECISION TO BE REVIEWED is:
 National Court No: EP No. 2012
 Parties:
 Date of order:
 Trial Judge:
4. STATE BRIEFLY THE NATIONAL COURT DECISION AND ATTACH A
 COPY OF THE DECISION OR ORDER:
5. GROUNDS:
 (*Specify each particular ground by paragraph*)
6. ORDERS SOUGHT:

Dated this day of 2012

Signed: _____
 (Applicant)

Attachment 3

Supreme Court Election Petition Review Rules (as Amended)

FILED at the Supreme Court Registry at Waigani

BY:

Name of applicant

Address (Residential)

(Business)

Address (postal and e-mail where available)

Name (Lawyer)

Address

Address postal and
e-mail where
available)

Telephone

Fax

Telephone

Fax

Transcript of Proceeding in the National Court

Transcript required? Yes/No

Transcript requested? Yes/No

Attachment 4

Supreme Court Election Petition Review Rules (as Amended)

(For completion by the Registrar Only)

APPOINTMENT OF DATE FOR DIRECTIONS HEARING

The Supreme Court will conduct a Directions Hearing ata.m./p.m. on day of2012 at the Supreme Court at Waigani, National Capital District.

At the Directions Hearing, the Judge shall consider amongst other things, the following:

- a) question of legal representation;
- b) grounds of Review;
- a) identification of legal issues;
- b) consolidation of multiple applications on the one election for purpose of the hearing;
- c) availability of transcript and related matters;
- d) objections to competency of the application;
- e) manner of presentation of argument by parties including filing extract of submissions;
- f) settlement of the Index;
- g) compilation of the Review Book;
- h) the number of days for the hearing.

REGISTRAR

(Date)

Attachment 5

Supreme Court Election Petition Review Rules (as Amended)

*Order 5 Division 4 Sub-division 5
Rule 19*

Form 5C

GENERAL FORM OF NOTICE OF APPEARANCE
(Headings as applicable to proceedings)

NOTICE OF APPEARANCE

TAKE NOTICE, I enter an appearance on this review.

Dated at.....this day of..... 2012

Signed: _____
(Respondent or his/her
Lawyer)

FILED:
BY:

Name of respondent

Name: Lawyer

Address: (Residential)

Address: (Business)

Address: (postal and e-mail where available)

Address: (postal
and e-mail where
available)

Telephone

Telephone:

Fax:

Fax:

Attachment 6

Supreme Court Election Petition Review Rules (as Amended)

*Order 5 Division 4 Sub-division 9
Rule 28*

From 5D

GENERAL FORM OF NOTICE OF HEARING

(Heading as applicable to the application for review)

NOTICE OF HEARING

The application for review will be heard at the sittings of the Supreme Court at Waigani, (or such other place as specified) ata.m. /p.m. on the day of, 2012

Further details can be obtained from the registry.

Signed _____

Registrar

Dated:

FILED at the Supreme Court Registry at Waigani

BY:

Name: (Personal)

Address: (Residential)

Address: (postal and e-mail where available)

Name: (Lawyer)

Address: (Business)

Address: (postal and e-mail where available)

Telephone:

Fax:

Telephone:

Fax: