

**NATIONAL COUNCIL OF CHIEFS ELECTION PETITIONS  
RULES**

<b>PART 1 – PRELIMINARY .....</b>	<b>2</b>
Title .....	2
Purpose .....	2
Application of the Civil Procedure Rules .....	2
Overriding objective and case management .....	2
Interpretation .....	3
Forms .....	3
<b>PART 2 – PROCEEDINGS ABOUT THE VALIDITY OF AN ELECTION TO THE NATIONAL COUNCIL OF CHIEFS .....</b>	<b>4</b>
Application of Part 2 .....	4
Starting proceedings .....	4
What a petition must contain .....	4
Parties .....	5
Filing .....	5
First hearing .....	5
Service .....	5
Response .....	6
Conference .....	6
Summons to disclose documents and information, produce documents and objects, etc .....	6
Hearing .....	7
Judgment .....	7
Enforcement and costs .....	7
<b>PART 3 – VACATING SEAT AND DISQUALIFICATION TO HOLD SEAT .....</b>	<b>8</b>
Application of Part 3 .....	8
Starting proceedings .....	8
What a petition may contain .....	8
Parties .....	9
Filing .....	9
Service .....	9
Conference .....	9
Summons to disclose documents and information, produce documents and objects, etc .....	10
Hearing .....	10
Judgment .....	11
Enforcement and costs .....	11
<b>SCHEDULE .....</b>	<b>12</b>
<b>FORMS .....</b>	<b>12</b>
FORM 1 – PETITION .....	12
FORM 2 – SWORN STATEMENT .....	15
FORM 3 RESPONSE .....	16
FORM 4 - SUMMONS .....	17

# REPUBLIC OF VANUATU

## NATIONAL COUNCIL OF CHIEFS (ELECTION PROCEDURE) (RULES) ORDER NO. 8 OF 1989

### NATIONAL COUNCIL OF CHIEFS ELECTION PETITIONS RULES

To set out the procedure for Petitions about the election of members of the National Council of Chiefs.

The Judicial Committee makes the following Rules under section 66 of the Judicial Services and Courts Act No. 54 of 2000.

#### PART 1 – PRELIMINARY

##### Title

**1.1** These Rules are the National Council of Chiefs Election Petitions Rules.

##### Purpose

**1.2** The purpose of these Rules is to set out the procedures to be used in proceedings about electoral disputes brought in the Supreme Court under Article 54 of the Constitution and Rule 17 of the National Council of Chiefs (Election Procedure) (Rules) Order No. 8 of 1989.

[NOTES: 1. The Supreme Court has jurisdiction to hear and determine any question about elections to the National Council of Chiefs. See Article 54 of the Constitution.  
2. The National Council of Chiefs (Election Procedure) (Rules) deals with challenging elections. See R. 17.]

##### Application of the Civil Procedure Rules

**1.3** If these Rules do not make provision for a matter relating to an electoral dispute proceeding, the Civil Procedure Rules apply to that matter.

##### Overriding objective and case management

**1.4** (1) The Supreme Court must give effect to the overriding objective, as set out in the Civil Procedure Rules, when it:

- (a) does any act under these Rules; or
- (b) interprets these Rules.

- (2) In particular, the Court must actively manage cases brought under these Rules, as set out in the Civil Procedure Rules.

[NOTES: 1. The “overriding objective” is set out in R. 1.2 of the Civil Procedure Rules.  
2. Case management is set out in R.1.4 of the Civil Procedure Rules.]

## **Interpretation**

- 1.5** (1) Some words used in these Rules have a particular meaning. These are defined as follows:

“Council” means the National Council of Chiefs.

“Court” means the Supreme Court.

“Election Rules” means the National Council of Chiefs (Election Procedure) (Rules) Order No. 8 of 1989

“Electoral College of Chiefs” means the electoral college established by the Election Rules.

“member” means a member of the Council.

“petition” means a petition under rule 17 of the Election Rules.

“seat” means a seat in the National Council of Chiefs.

“section” means a section of the Electoral College of Chiefs.

- (2) The Notes in these Rules do not form part of the Rules and are for information only.

## **Forms**

- 1.6** A reference to a Form by number is a reference to the form identified by that number in the Schedule at the end of these Rules.

[NOTE: A form is valid if it has minor defects – see s.37 of the Interpretation Act (Cap.132).]

## **PART 2 – PROCEEDINGS ABOUT THE VALIDITY OF AN ELECTION TO THE NATIONAL COUNCIL OF CHIEFS**

### **Application of Part 2**

**2.1** This Part applies to proceedings brought under rule 17 of the Election Rules about the validity of an election to the Council.

[NOTE: Rule 17 of the National Council of Chiefs (Election Procedure) (Rules) deals with election petition proceedings. These Rules are in addition to that rule.]

### **Starting proceedings**

- 2.2** (1) A petition must be filed in an office of the Supreme Court anywhere in Vanuatu.
- (2) A petition must be in Form 1.

[NOTES: 1. A petition may be brought by a member of a section of the electoral college of chiefs. The person may only challenge the election in the section in which the person is a member. See R.17 of the National Council of Chiefs (Election Procedure) (Rules) Order.

2. The petition must be filed within 21 days after the gazettal of the election results. See R.17(1).]

### **What a petition must contain**

- 2.3** (1) A petition must set out:
- (a) details of the election the petitioner is challenging; and
  - (b) that the petitioner is a member of the section for which he is challenging the poll; and
  - (c) grounds on which the election is disputed; and
  - (d) the facts on which the petition is based; and
  - (e) the declaration sought; and
  - (f) any remedies sought.
- (2) The petition must have with it:
- (a) a sworn statement by the petitioner in support of the petition, setting out details of the evidence the petitioner relies on; and
  - (b) any other sworn statements that support the petition.
- (3) A sworn statement must be in Form 2.

[NOTE: The petition must set out as its object either that:

- (a) the election of a candidate be declared void; or
- (b) the election of a candidate be declared void and another candidate be declared elected. See R.17(2)].

## **Parties**

- 2.4** (1) The parties to a proceeding are:
- (a) the petitioner; and
  - (b) the candidate whose election the petitioner seeks to have declared void; and
  - (c) anyone else the Court orders at any time to be a party.
- (2) The parties to the proceedings other than the petitioner are called the respondents.

## **Filing**

- 2.5** (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
- (a) fix a date for the first hearing in the matter; and
  - (b) tell the petitioner in writing of this.
- (3) The hearing date must be as soon as practicable and in any case within 21 days after the filing date.

## **First hearing**

- 2.6** (1) The first hearing is to be in open court.
- (2) At the first hearing,
- (a) the petitioner must satisfy the Court that there is a foundation for the petition; and
  - (b) the Court must make orders about:
    - (i) who is to be a party to the proceeding; and
    - (ii) service of the petition on the parties; and
  - (c) the Court must fix a date for the first Conference in the proceeding and write this date on the petition.
- (3) If the Court is not satisfied that there is a foundation for the petition, the Court must strike out the petition.

## **Service**

- 2.7** (1) The petition must be served within the time, and on the persons, required by the order under Rule 2.6.

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

## **Response**

- 2.8** (1) A party to the proceedings who wishes to contest the proceedings must file a response within 14 days of being served with the application.
- (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.

## **Conference**

- 2.9** At the first Conference, the Court may:
- (a) deal with any applications to strike out the petition; and
  - (b) issue a summons under Rule 2.10; and
  - (c) order that a person may be legally represented; and
  - (d) order that a person become a party; and
  - (e) fix a date for another Conference, if one is necessary, or fix a hearing date; and
  - (f) make orders about:
    - (i) filing and serving sworn statements by the parties, their witnesses and anyone else; 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.

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

- 2.10** (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.
- (2) The order may be made at a party's request or on the Court's initiative.
  - (3) A summons must be in Form 4.

## **Hearing**

- 2.11** (1) The hearing of the petition must be in open court.
- (2) Evidence in chief is to be given by sworn statement unless the Court orders otherwise.
- (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-examines the petitioner's witnesses;
  - (c) the petitioner re-examines his or her witnesses;
  - (d) the respondents make an address opening their cases and, if evidence is to be given orally, bring evidence in support of their cases;
  - (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.
- (5) At the hearing the Court may:
- (a) ask questions of the witnesses; and
  - (b) call witnesses on its own initiative; and
  - (c) take any other step necessary to help the Court make a decision on the petition.

## **Judgment**

- 2.12** (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) The Court must state its reasons for making its decision.
- (4) The Court must ensure that copies of the judgment and reasons are available to the public.

## **Enforcement and costs**

- 2.13** (1) When the Court gives its judgment, or as soon as practicable after giving judgment, the Court must:
- (a) decide the question of costs; and
  - (b) make an enforcement order.

- (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 Code applies to the enforcement order.

## **PART 3 – 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 the National Council of Chiefs has vacated his seat or has become disqualified to hold his seat.

[NOTE: Jurisdiction to hear any question whether a person has vacated his seat or become disqualified from holding his seat is vested in the Supreme Court. See Article 54 of the Constitution.]

### **Starting proceedings**

- 3.2** (1) A proceeding under this Part is started by filing a petition in an office of the Supreme Court anywhere in Vanuatu.
- (2) The petition must be in Form 1.

### **What a petition may contain**

- 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 seat; or
    - (ii) has become disqualified to hold the seat; and
  - (c) the facts on which the petition is based; and
  - (d) any remedies sought.
- (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
  - (c) the Chairman of the Council, unless the Court orders otherwise; and
  - (d) 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.

## **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
- (a) fix a date for the first Conference in the matter; and
  - (b) write this date on the petition.
- (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 a party 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
  - (b) the Chairman or the Secretary of the Council.
- (2) The petitioner must file a sworn statement setting out details of the time and manner of service of the petition before the petitioner takes any further action in the proceeding.

## **Conference**

- 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

- (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
  - (g) make orders about:
    - (i) filing and serving sworn statements by the parties, their witnesses and anyone else; 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.

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

- 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.
- (2) The order may be made at a party's request or on the Court's initiative.
- (3) A summons must be in Form 4.

### **Hearing**

- 3.9** (1) The hearing of the petition must be in open court.
- (2) Evidence in chief is to be given by sworn statement unless the Court orders otherwise.
- (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-examines the petitioner's witnesses;
  - (c) the petitioner re-examines his or her witnesses;

- (d) the respondents make an address opening their cases and, if evidence is to be given orally, bring evidence in support of their cases;
  - (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.
- (4) At the hearing the Court may:
- (a) ask questions of the witnesses; and
  - (b) call witnesses on its own initiative; and
  - (c) take any other step necessary to help the Court make a decision on the petition.

## **Judgment**

- 3.12** (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) The Court must state its reasons for making its decision.
  - (4) The Court must ensure that copies of the judgment and reasons are available to the public.

## **Enforcement and costs**

- 3.13** (1) When the Court gives its judgment, or as soon as practicable after giving judgment, the Court must:
- (a) decide the question of costs; and
  - (b) make an enforcement order.
- (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 Code applies to the enforcement order.
-

**SCHEDULE**

**FORMS**

**FORM 1 – PETITION**

**IN THE SUPREME COURT OF  
THE REPUBLIC OF VANUATU  
(CIVIL JURISDICTION)**

**CIVIL CASE NO \_\_\_\_\_ OF \_\_\_\_\_** **R.2.2, 3.2**

**BETWEEN**

\_\_\_\_\_  
Petitioner's name  
\_\_\_\_\_  
\_\_\_\_\_  
Petitioner's lawyer's name or  
Petitioner's address

**AND**

\_\_\_\_\_  
Respondent's name  
\_\_\_\_\_  
\_\_\_\_\_  
Respondent's lawyer's name or  
Respondent's address

**NATIONAL COUNCIL OF CHIEFS ELECTION  
PETITION**

I, \_\_\_\_\_ of \_\_\_\_\_,  
petitioner's name petitioner's address

was a member of the section of \_\_\_\_\_ and registered to vote at the  
details of section  
election held on \_\_\_\_\_  
date of election

**OR**

was a candidate at the election held on \_\_\_\_\_  
date of election

2. I claim that \_\_\_\_\_ was not validly  
name of person whose election is disputed  
elected for the seat of \_\_\_\_\_ at that

name of seat

election because:

Set out details of grounds on which election is disputed, in numbered paragraphs

- 1.
- 2.

AND/OR

2. I claim that \_\_\_\_\_ has vacated his/her  
name of person whose election is disputed  
seat of \_\_\_\_\_  
name of seat

OR

2. I claim that \_\_\_\_\_ has become  
name of person whose election is disputed  
disqualified from holding his/her seat of \_\_\_\_\_  
name of seat

because:

Set out details of grounds on which election is disputed, in numbered paragraphs

- 1.
- 2.
3. The facts on which this petition is based are:  
Set out the facts, in numbered paragraphs
  - 1.
  - 2.
4. I seek the following remedies:  
Set out the remedies sought

Signed by the petitioner OR  
petitioner's lawyer

at \_\_\_\_\_  
Place

\_\_\_\_\_  
petitioner's signature OR petitioner's lawyer's signature

on \_\_\_\_\_  
Date

**Date of filing:** \_\_\_\_\_ **Filed by:** \_\_\_\_\_

The petitioner's address for service is:

\_\_\_\_\_  
\_\_\_\_\_

OR  
name and address of petitioner's lawyer  
petitioner's name and address, if petitioner does  
not have a lawyer

**FORM 2 – SWORN STATEMENT**

**R.2.3, 3.3**

**IN THE SUPREME COURT OF  
THE REPUBLIC OF VANUATU  
(CIVIL JURISDICTION)**

**CIVIL CASE NO \_\_\_\_\_ OF \_\_\_\_\_**

**BETWEEN**

\_\_\_\_\_  
Name of petitioner

\_\_\_\_\_

\_\_\_\_\_  
Petitioner's lawyer's name or  
Petitioner's address

**AND**

\_\_\_\_\_  
Respondent's name

\_\_\_\_\_

\_\_\_\_\_  
Respondent's lawyer's name or  
Respondent's address

**SWORN STATEMENT**

I, \_\_\_\_\_ of \_\_\_\_\_,  
name of person making statement address and occupation

swear the following is true:

- 1.
- 2.

**SWORN by** )  
 )  
 )  
\_\_\_\_\_)  
name of person making statement )

\_\_\_\_\_  
signature of person making statement

on \_\_\_\_\_  
date

**BEFORE ME**

\_\_\_\_\_  
Signature of witness

Commissioner for Oaths OR Notary Public

\_\_\_\_\_

**FORM 3 RESPONSE**

**R.2.8, 3.7**

**IN THE SUPREME COURT OF  
THE REPUBLIC OF VANUATU  
(CIVIL JURISDICTION)**

**CIVIL CASE NO \_\_\_\_\_ OF \_\_\_\_\_**

**BETWEEN**

\_\_\_\_\_  
Petitioner's name

\_\_\_\_\_

\_\_\_\_\_  
Petitioner's lawyer's name or  
Petitioner's address

**AND**

\_\_\_\_\_  
Respondent's name

\_\_\_\_\_

\_\_\_\_\_  
Respondent's lawyer's name or  
Respondent's address

**RESPONSE**

Set out details of response in numbered paragraphs

- 1.
- 2.
- 3.

Signed by the respondent OR  
respondent's lawyer

at \_\_\_\_\_ ) \_\_\_\_\_  
Place Respondent's signature OR respondent's lawyer's signature

on \_\_\_\_\_  
Date

**Date of filing:** \_\_\_\_\_ **Filed by:** \_\_\_\_\_

The Respondent's address for service is:

\_\_\_\_\_  
\_\_\_\_\_  
name and address of Respondent's lawyer  
OR Respondent's name and address, if respondent does  
not have a lawyer  
\_\_\_\_\_



**FORM 4 - SUMMONS**

**R.2.10, 3.8**

**IN THE SUPREME COURT OF  
THE REPUBLIC OF VANUATU  
(CIVIL JURISDICTION)**

**CIVIL CASE NO \_\_\_\_\_ OF \_\_\_\_\_**

**BETWEEN**

\_\_\_\_\_  
Petitioner's name

\_\_\_\_\_

\_\_\_\_\_  
Petitioner's lawyer's name or  
Petitioner's address

**AND**

\_\_\_\_\_  
Respondent's name

\_\_\_\_\_

\_\_\_\_\_  
Respondent's lawyer's name or  
Respondent's address

**SUMMONS TO ATTEND COURT, DISCLOSE DOCUMENTS AND  
INFORMATION, PRODUCE DOCUMENTS AND OBJECTS**

**TO:** \_\_\_\_\_ of \_\_\_\_\_  
name of person summoned address

You must attend the Supreme Court at \_\_\_\_\_  
Place

on \_\_\_\_\_ at \_\_\_\_\_  
date time

1. to give evidence in this proceeding at the request of \_\_\_\_\_  
name of party issuing summons

AND/OR

2. you must disclose the following documents and information:  
(describe documents and information)

AND/OR

3. you must bring the following documents and/or objects with you:  
(list documents and objects)

Seal of Supreme Court

\_\_\_\_\_  
Signature of Judge date

**WARNING:** If you do not come to court, you may be arrested, brought to court and  
fined or put in prison

\_\_\_\_\_