



Tonga

ELECTION PETITION RULES

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ELECTION PETITION RULES

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ELECTION PETITION RULES ¹

These Rules are made by the Chief Justice pursuant to section 29 of the Electoral Act 1989, as amended, to govern the practice and procedure in election petition proceedings.

Commencement [17th June 2016]

1 Citation and commencement

This Rule may be cited as the Election Petition Rules .

2 Definitions

Except where the context of these Rules otherwise provides, the following definitions apply:

“**Act**” means the Electoral Act 1989, as amended;

“**Chief Justice**” means the Lord Chief Justice of the Supreme Court of Tonga;

“**Commission**” means the Electoral Commission;

“**Court**” means the Supreme Court of Tonga;

“**election petition**” means an election petition under section 25 of the Electoral Act 1989;

“**Judge**” means the Chief Justice and any other Judge of the Supreme Court of Tonga;

“**Rules**” means these Rules;

“**Supreme Court Rules**” means the Supreme Court Rules 2007 (as thereafter amended from time to time).

3 Purpose

These Rules are made pursuant to section 29 of the Act to provide the procedures to be used in respect of election petitions brought under section 25 of the Act.

4 Application

- (1) These Rules are to be read together with Part V of the Act and shall apply to the extent that they are consistent with the provisions of the Act. In the event of any inconsistency, the Act shall prevail.
- (2) Where there is no applicable provision in the Act or in these Rules, the procedures set out in the Supreme Court Rules, in so far as they are not inconsistent with the Act or these Rules, shall apply to all election petitions.

5 Mode of hearing, conference and trial

The jurisdiction of the Supreme Court in relation to any matter concerning the trial of an election petition is to be exercised by a single Judge sitting without a jury.

6 Compliance with Rules

The effect of any failure to comply with these Rules shall be a matter for determination at the Court's discretion subject to the provisions of sections 35 and 36 of the Act.

7 Reference to Forms

Unless otherwise stated, a reference to a Form by number in these Rules is a reference to the Form of that number in the Schedule to these Rules.

PART II – PRE-TRIAL PROCEDURES

8 Commencement of election petition

- (1) An election petition shall be in Form 1 and shall be signed by the petitioner.
- (2) There must be as many copies of the election petition filed as there are persons to be served, plus a copy for the Court.

9 Parties to the election petition

- (1) The parties to an election petition are:
 - (a) the petitioner, who must have standing to bring the petition under section 26 of the Act;

- (b) the member whose election or result is complained of;
- (c) if the petitioner complains of the conduct of any official, the Chairman of the Commission;
- (d) any other person the Court orders to be a party if their presence is considered necessary or appropriate to determine any matter in issue in the election petition.

10 Content of election petition

- (1) An election petition must state:
 - (a) whether the petitioner:
 - (i) voted or had a right to vote at the election; or
 - (ii) claims to have had a right to be elected or returned at the election; or
 - (iii) alleges to have been a candidate at the election; and
 - (b) whether the petitioner claims that the:
 - (i) election was unlawful; or
 - (ii) declaration of poll was unlawful; and
 - (c) whether the petitioner claims that the Chairman of the Commission should be named as a respondent to the election petition on the basis of the conduct of any election official; and
 - (d) the full details of the grounds on which the petitioner disputes the election and/or the conduct of the election official referred to in (c) above; and
 - (e) the full details of the facts on which the petitioner disputes the election and/or the conduct of the election official referred to in (c) above; and
 - (f) the relief claimed by the petitioner as provided for under the Act.

11 Filing fees

The filing fee on filing an election petition shall be the same as the filing fee prescribed for a summons and statement of claim in the Court Fees Act (Cap 12) as amended.

12 Service of election petition

- (1) Unless otherwise ordered by the Court, every election petition shall be served personally on all other named parties within five (5) working days of the date of filing that election petition or within such longer period as the Court may allow on the application by a party.

- (2) An application to extend the time for service under Rule 12(1) of these Rules shall be made in accordance with Order 13 of the Supreme Court Rules and may be made before or after the expiry of the period prescribed.
- (3) Every election petition shall have attached to the front of the document a directions notice in accordance with Order 11, Rule 2 of the Supreme Court Rules.
- (4) The person serving an election petition shall complete and file a certificate of service in accordance with Order 11, Rule 4 of the Supreme Court Rules, which shall be evidence that the document was served as stated therein.

13 Response

- (1) A respondent who wishes to respond to an election petition or disputes facts contained in an election petition, shall file a response in Form 2 within fifteen (15) working days of service of the election petition.
- (2) There must be as many copies of the response filed as there are persons to be served, plus a copy for the Court.
- (3) Unless otherwise ordered by the Court every response to an election petition shall be served personally on all other named parties within five (5) working days of the date of filing that response and otherwise in the same manner prescribed in Rule 12 of these Rules for the service of election petitions.
- (4) A response must respond to each claim made in the election petition.
- (5) In any case where the petitioner claims the seat in issue for themselves or any other person, the response shall state the facts upon which the respondent relies to prove that person was not duly elected in the same manner as if the respondent had presented a petition against the election of that person.
- (6) A respondent shall not file any counterclaim in response to the whole, or any part, of an election petition.

14 Amendment of election petition

- (1) An election petition may be amended without leave of the Court after it is filed and before it is served, but only with leave of the Court after it is served.
- (2) There must be as many copies of an amended election petition filed as there are persons to be served, plus a copy for the Court.
- (3) For the purpose of these Rules, Order 8, Rule 7(4) and (5) of the Supreme Court Rules are not to apply to amendments to any document filed in election petition proceedings.
- (4) Where leave is granted to make an amendment, the respondent is to be given such time to respond to the amendment as the Court may allow. There must

be as many copies of an amended response to an election petition filed as there are persons to be served, plus a copy for the Court.

15 Security for costs

- (1) A respondent may make an application for the petitioner to give security for the respondent's costs at the time of filing a response or with leave of the Court at any other stage of the proceedings.
- (2) The Court may only make an order that the petitioner provide security for costs where it appears that:
 - (a) the petitioner is ordinarily resident out of the jurisdiction;
 - (b) the petitioner may be unable to pay the costs of the respondent if ordered to do so; or
 - (c) the petitioner has not disclosed his (or her) true address to the Court.
- (3) An application for security for costs shall be made in accordance with Order 13 of the Supreme Court Rules.

16 Discovery of documents

- (1) Within ten (10) working days of service of a response to an election petition and unless otherwise ordered by the Court, the petitioner and the respondent must file and serve on each other a list of documents verified by affidavit which are, or have been, in that party's possession, custody or power relating to any matter in issue in the election petition.
- (2) The list of documents verified by affidavit shall be in Forms 8 and 9 of the Supreme Court Rules.
- (3) At the time of serving the list of documents verified by affidavit, the party must serve on all other parties a copy of each of the documents listed in Part 1 of that party's list of documents.
- (4) The Court may, if it considers it necessary for the just determination of any issue arising in the election petition, make an order requiring a person who is not a party to the election petition to make discovery of any document either:
 - (a) on the application of a party; or
 - (b) on its own initiative.
- (5) An order made under Rule 16(4) of these Rules may make provision for the reimbursement of all costs and disbursements incurred in complying with the order.

17 Directions hearing

- (1) The Court shall list the election petition for a directions hearing, to take place in Chambers not more than ten (10) working days after the due date for service of each party's list of documents verified by affidavit in accordance with these Rules.
- (2) At the directions hearing the Judge shall address matters affecting the future conduct of the election petition and shall:
 - (a) identify the legal issues in dispute between the parties;
 - (b) consider:
 - (i) whether the parties are represented by a law practitioner or self-represented;
 - (ii) whether the parties have complied with their discovery obligations under these Rules;
 - (iii) any outstanding interlocutory applications including for security for costs and non-party discovery made under these Rules;
 - (iv) the timeframes for the exchange of the briefs of evidence between the parties to the proceedings;
 - (v) the number of witnesses each party intends to call in the proceedings;
 - (vi) the number of trial days to be allocated to the hearing of the proceedings;
 - (vii) whether to make an order for discovery of additional documents not contained in a party's list of documents;
 - (viii) whether it is desirable to convene any further directions hearings.
 - (c) set a date and time for trial that is to commence not more than three (3) months from the date the election petition was filed unless this period is extended by special leave of the Court;
 - (d) set a date and time for a pre-trial conference that is to be held not less than five (5) working days before the date listed for trial; and
 - (e) do any other thing, or make any other orders, necessary to hear the election petition justly and promptly.
- (3) As soon as practicable following the directions hearing, the Court will issue a:
 - (a) Minute of the directions hearing setting out the steps to be taken by the parties and the timeframes for doing so, and the dates listed for the pre-trial conference and trial;
 - (b) Notice of Listing setting out the date, time and place of any further directions hearing and the pre-trial conference; and
 - (c) Notice of Listing setting out the date, time and place of the trial.

18 Memorandum of the parties

All parties are to file a memorandum addressing each of the matters set out in Rule 17(2) of these Rules not less than three (3) working days before the date listed for any directions hearing and serve it immediately on all other named parties.

19 Pre-trial conference

- (1) The Court shall list the election petition for a pre-trial conference, to take place in Chambers not less than five (5) working days before the date listed for trial of the election petition.
- (2) At the pre-trial conference the Judge shall determine whether the election petition will be ready to be heard on the dates listed for trial and shall:
 - (a) determine whether the parties have complied with the requirements of these Rules or an order of the Court and if the parties have not, why they have not done so and when compliance with the remaining matters is required;
 - (b) consider:
 - (i) whether there are any translation requirements for the trial of the proceedings;
 - (ii) whether there are any other requirements specific to the trial of the election petition;
 - (c) set dates for the filing of legal submissions by each party;
 - (d) re-examine, and if necessary amend, the number of days listed to hear the election petition;
 - (e) issue witness summons in accordance with Order 44, Rule 2 of the Supreme Court Rules;
 - (f) do any other thing, or make any other orders, necessary to hear the election petition justly and promptly.
- (3) As soon as practicable following the pre-trial conference, the Court will issue:
 - (a) a Minute of the pre-trial conference setting out the steps to be taken by the parties and the timeframes for doing so, and confirming the date(s) listed for trial; and
 - (b) where the date(s) listed for trial have been amended since the directions hearing, a Notice of Listing setting out the amended date, time and place of the trial.

PART III – TRIAL PROCEDURES

20 Venue of trial

- (1) The trial of an election petition shall be heard at such place determined in accordance with section 30 of the Act.
- (2) In making this determination, the Judge must consider whether the requirements of justice would be best served by conducting the trial in the electoral constituency in which the election in issue took place or any other place.

21 Trial

The procedure to be followed in conducting the trial of the election petition shall be the same as on the trial of a civil action pursuant to Order 25, Rule 7 of the Supreme Court Rules, modified as necessary. Any reference to the plaintiff and defendant in Order 25, Rule 7 of the Supreme Court Rules shall be taken to be a reference to the petitioner and respondent respectively in election petition proceedings.

Owen G Paulsen
Lord Chief Justice
Nuku'alofa
16 June 2016

SCHEDULE

Form 1

ELECTION PETITION

RULE 8(1)

**IN THE SUPREME COURT OF TONGA
ELECTORAL JURISDICTION
NUKU'ALOFAREGISTRY****Case No.****BETWEEN: (*INSERT petitioner's name*) of (*INSERT address*)
Petitioner****AND: (*INSERT First Respondent's name*) of (*INSERT address*)
[*First*]* Respondent****[(*INSERT Second Respondent's name*) of (*INSERT address*)
Second Respondent]*****TO: The Supreme Court of Tonga**

I, (*INSERT petitioner's name*) of (*INSERT petitioner's address*) voted or had a right to vote / had a right to be elected or returned at the election / was a candidate** at the election held on (*INSERT date of election*).

(*INSERT one or both of the following statements, depending on whether petitioner is claiming that the election, the declaration of poll or both were unlawful*)

[I claim that (*INSERT [First]* Respondent's name*) of (*INSERT [First]* Respondent's address*) was not lawfully elected for the seat of (*INSERT name of seat*) at that election.]

[I claim that the election of (*INSERT [First]* Respondent's name*) of (*INSERT [First]* Respondent's address*) was not lawfully declared.]

(*INSERT the following if claiming that the Chairman of the Commission should be named as the Second Respondent*)

[I claim that the conduct of (*INSERT name of official whose conduct is complained of*) of (*INSERT official's address*) at the election was unlawful and that the Chairman of the Commission is named as the Second Respondent to this election petition.]

This election petition is based on the following grounds:

1. (*In numbered paragraphs, set out the full details of all grounds on which the election of the [First]* Respondent is disputed and, if applicable, all grounds on which the complaint regarding the conduct of the official named in the election petition is based*)

2.

3.

This election petition is made in reliance on the following facts:

1. (*In numbered paragraphs, set out the full details of all facts related to the election of the [First] Respondent and, if applicable, all facts related to the complaint regarding the conduct of the official named in the election petition*)

2.

3.

The petitioner claims the following relief:

(Set out the full details of the relief claimed including a claim by the petitioner of the seat for some person. The election petition must only claim remedies that are available under Part V of the Act)

Signed: (*petitioner to sign*)

Dated: (*INSERT date*)

The petitioner's address for service is: (*INSERT full address for service*)

[If the petitioner is represented by a lawyer: (*INSERT full name and address for service of lawyer*)]*

This petition is to be served on: *(INSERT First Respondent's name)*

of: *(INSERT First Respondent's address for service)*

[and on: *(INSERT Second Respondent's name)*

of: *(INSERT Second Respondent's address for service)]**

NOTE: This election petition must be served within five (5) working days of the date of filing unless time is extended by order of the Supreme Court.

NOTICE TO THE RESPONDENT[S]*

TAKE NOTICE THAT:

1. If you wish to respond to this election petition you must file a response in the Supreme Court office within fifteen (15) working days of the date the election petition was served. The response must be in Form 2 to the Election Petition Rules 2016. You must serve a sealed copy of it at the petitioner's address for service shown in this petition within five (5) working days of filing your response or such other time as extended by order of the Supreme Court.
2. If you do not file a response to this election petition within this period, the petition may be listed for an expedited trial or be dealt with in some other manner available to the Court and deemed appropriate in the circumstances.
3. If you do file a response to this election petition, you are required under Rule 16 of the Election Petition Rules 2016 within ten (10) working days after serving your response to file a list of documents verified by affidavit which are, or have been, in your possession, custody or power relating to any matter in issue in the election petition and serve the list and a copy of each document in Part 1 of that list on all other parties to the election petition.

Issued this day of

Judge of the Supreme Court

* Delete as appropriate.

** Strike through the option that is not applicable.

Form 2

RESPONSE TO ELECTION PETITION RULE

13(1)

**IN THE SUPREME COURT OF TONGA
ELECTORAL JURISDICTION
NUKO'ALOFAREGISTRY****Case No.****BETWEEN: (*INSERT petitioner's name*) of (*INSERT address*)
Petitioner****AND: (*INSERT First Respondent's name*) of (*INSERT address*)
[First]* Respondent****[(*INSERT Second Respondent's name*) of (*INSERT address*)
Second Respondent]*****RESPONSE OF THE [FIRST]* RESPONDENT**

I, (*INSERT [First]* Respondent's name*) of (*INSERT [First]* Respondent's address*) give notice that I intend to appear in this election petition.

This response to the election petition is based on the following grounds:

1. (*In numbered paragraphs, set out the full details of all grounds on which the petitioner's election petition is objected to. The response must not contain a general denial of all the claims raised in the election petition*)

2.

3.

This response to the election petition is made in reliance on the following facts:

1. (*In numbered paragraphs, set out the full details of all facts on which the petitioner's election petition is objected to*)

2.

3.

(INSERT the following if raising evidence to prove that some other person, in whose name the seat in issue is claimed in the election petition, was not duly elected, in the same manner as if the respondent had presented a petition against the election of that person)

[I dispute the petitioner's claim that *(INSERT name of person named by the petitioner in the election petition as having the seat)* was, or should have been, duly elected to the seat in issue on the following grounds:

1. *(Set out the full details of all grounds and facts on which the petitioner's claim regarding their election, or the election of another named person to the seat in issue, is objected to)*
- 2.
- 3.

Signed: *([First]* Respondent to sign)*

Dated: *(INSERT date)*

The *[First]** Respondent's address for service is: *(INSERT full address for service)*

[If the *[First]** Respondent is represented by a lawyer: *(INSERT full name and address for service of lawyer)]**

This response is to be served on: *(INSERT Petitioner's name)*

of: *(INSERT Petitioner's address for service)*

[and on: *(INSERT Second Petitioner's name)*

of: *(INSERT Second Petitioner's address for service)]**

NOTE: This response must be served within five (5) working days from the date of filing unless time is extended by order of the Supreme Court.

* Delete as appropriate.

ENDNOTE

ENDNOTES

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