

Reprint
as at 18 October 2016



Constituency Election Petition Rules 2008 (SR 2008/383)

Anand Satyanand, Governor-General

Order in Council

At Wellington this 6th day of October 2008

Present:

His Excellency the Governor-General in Council

Pursuant to section 234 of the Electoral Act 1993 and sections 51C and 51D of the Judicature Act 1908, His Excellency the Governor-General, acting on the advice and with the consent of the Executive Council, and with the concurrence of the Right Honourable the Chief Justice and at least 2 other members of the Rules Committee (of whom at least 1 was a Judge of the High Court), makes the following rules.

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Note

Changes authorised by subpart 2 of Part 2 of the Legislation Act 2012 have been made in this official reprint.
Note 4 at the end of this reprint provides a list of the amendments incorporated.

These rules are administered by the Ministry of Justice.

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Rules

1 Title

These rules are the Constituency Election Petition Rules 2008.

2 Commencement

These rules come into force on 1 February 2009.

Preliminary provisions

3 Interpretation

In these rules, unless the context otherwise requires,—

Act means the Electoral Act 1993

court means the High Court

High Court Rules means the High Court Rules 2016

petition means an election petition presented or allowed to be heard under section 229 of the Act

Registrar of Electors means, in relation to an electoral district, the Registrar of Electors appointed under the Act for that district

Returning Officer means, in relation to an electoral district, the Returning Officer appointed under the Act for that district

working days has the same meaning as in the High Court Rules.

Compare: 1908 No 89 Schedule 2 r 796 (SR 1998/325)

Rule 3 **High Court Rules**: replaced, on 18 October 2016, by section 183(c) of the Senior Courts Act 2016 (2016 No 48).

4 Application of these rules

These rules apply to the determination of a petition under sections 230 to 257 of the Act.

Compare: 1908 No 89 Schedule 2 r 797 (SR 1998/325)

5 Application of High Court Rules and practice of court

(1) The following rules of the High Court Rules do not apply:

- (a) rule 1.10 (how security to be given):
- (b) rules 4.46 to 4.54 (change of parties by death, etc):
- (c) rule 5.1 (proper registry of the court):
- (d) rule 5.22 (notice of proceeding to be filed with statement of claim):
- (e) rule 5.23 (requirements as to notice of proceeding):
- (f) rule 5.25 (proceeding commenced by filing statement of claim):
- (g) rule 5.45 (power to make order for security for costs):

- (h) rule 5.47 (filing and service of statement of defence):
 - (i) rule 5.48 (requirements of a statement of defence):
 - (j) rules 7.6, 7.7, 7.12, 7.13, and 7.16 (allocation of key dates, etc):
 - (k) rule 10.1 (place of trial):
 - (l) rule 10.3 (method of trial):
 - (m) Part 12 (summary judgment procedure):
 - (n) Part 15 subpart 4 (discontinuance).
- (2) The High Court Rules, other than the rules listed in subclause (1), and the general practice of the court apply unless they are modified by or inconsistent with the Act or these rules.

Compare: 1908 No 89 Schedule 2 r 798 (SR 1998/325)

Rule 5(1)(j): replaced, on 4 February 2013, by rule 4 of the Constituency Election Petition Amendment Rules 2012 (SR 2012/403).

Petitions

6 Petitions

- (1) A petition must be—
- (a) in form 1 of the Schedule, and contain the information required by that form; and
 - (b) signed by the petitioner or, if there are 2 or more petitioners, each petitioner; and
 - (c) filed in the registry of the court nearest to the place where the election was held.
- (2) The Registrar of the Court must send a copy of the petition to the Returning Officer as soon as it is filed.

Compare: 1908 No 89 Schedule 2 r 799 (SR 1998/325)

Service of petition

7 Service of petition

A petitioner must serve a petition as far as practicable in the same way as a statement of claim is served.

Compare: 1908 No 89 Schedule 2 r 800 (SR 1998/325)

Advertisement of petition

8 Advertisement of petition

- (1) Within 5 working days of the filing of a petition, a petitioner must, at his or her own expense, publish the petition in a newspaper circulating in the district to which the petition relates.

- (2) The court, on application by a petitioner, may cancel or vary that requirement.
Compare: 1908 No 89 Schedule 2 r 801 (SR 1998/325)

Representation of respondents

9 Respondent must file notice

Within 5 working days of being served with a petition, a respondent to a petition must file in the registry of the court in which the petition is filed a notice—

- (a) signed by or on behalf of the respondent; and
- (b) either—
 - (i) appointing a solicitor to act for the respondent in relation to the petition; or
 - (ii) stating that the respondent intends to act for himself or herself in relation to the petition; and
- (c) stating, for the purposes of proceedings to determine the petition,—
 - (i) an address for service; and
 - (ii) if a solicitor is appointed to act for the respondent, a post office box address, document exchange box number, fax number, or email address by which the solicitor will accept service of documents.

Compare: 1908 No 89 Schedule 2 r 802 (SR 1998/325)

Security for costs

10 Security by deposit of money

Security given by deposit of money must be given by the deposit of the money to the credit of the High Court Trust Account.

Compare: 1908 No 89 Schedule 2 r 803 (SR 1998/325)

11 Registrar of Court may withdraw money deposited as security

The Registrar of the Court may from time to time withdraw from the High Court Trust Account all or part of any money deposited as security if the court orders, or all parties to the proceedings agree, that that money be—

- (a) paid to a respondent, for costs, charges, or expenses incurred by or on behalf of that respondent; or
- (b) paid to a witness summoned on a petitioner's behalf, for costs, charges, or expenses incurred by or on behalf of that witness; or
- (c) returned to a petitioner; or
- (d) otherwise disposed of under the Act.

Compare: 1908 No 89 Schedule 2 r 804 (SR 1998/325)

12 Security by bond

- (1) Security given by bond must be given by a bond in form 2 of the Schedule, containing the information required by that form.
- (2) A bond may be executed by no more than 5 sureties.
- (3) If a Registrar of the Court believes on reasonable grounds that a surety is insufficient, or that a bond is defective or inadequate, he or she may—
 - (a) require a surety to lodge an affidavit of justification with the bond; or
 - (b) impose any other requirement the Registrar of the Court considers necessary.

Compare: 1908 No 89 Schedule 2 r 805 (SR 1998/325)

*Particulars of objections***13 Petitioner must list objections to votes**

- (1) This rule applies if a petitioner in his or her petition—
 - (a) alleges that a candidate not elected or returned has a majority of lawful votes; and
 - (b) objects to 1 or more votes.
- (2) The petitioner must prepare a list of—
 - (a) each vote objected to; and
 - (b) the heads of objection to each of those votes.
- (3) The petitioner must, at least 5 working days before the day appointed for the trial of the petition, deliver a copy of the list—
 - (a) to the Registrar of the Court; and
 - (b) to any other party to the proceeding at that party's address for service.
- (4) A petitioner must also deliver to the Registrar of the Court enough copies of that list to enable the Registrar to supply the copies required to be supplied under rule 15.

Compare: 1908 No 89 Schedule 2 r 806 (SR 1998/325)

14 Respondent must list objections to petition

- (1) This rule applies if—
 - (a) a petitioner in a petition complains of an unlawful election or return and claims the seat for some person; and
 - (b) a respondent to the petition intends to give evidence, under section 236(8) of the Act, to prove that that person was not duly elected.
- (2) The respondent must prepare a list of—
 - (a) the specific grounds upon which the respondent claims that that person was not duly elected or returned; and

- (b) in relation to each of those grounds, particulars of the facts upon which the respondent intends to rely.
- (3) The respondent must, at least 5 working days before the day appointed for the trial, deliver a copy of the list—
 - (a) to the Registrar of the Court; and
 - (b) to any other party to the proceeding at that party's address for service.
- (4) The respondent must also deliver to the Registrar of the Court enough copies of that list to enable the Registrar to supply the copies required to be supplied under rule 15.

Compare: 1908 No 89 Schedule 2 r 807 (SR 1998/325)

15 Inspection and supply of lists

On a request for the purpose by any person at the office of the court, the Registrar of the Court must allow the person to inspect, or supply the person with a copy of, a list delivered to the Registrar under rule 13 or 14.

Compare: 1908 No 89 Schedule 2 r 808 (SR 1998/325)

Trial of petition

16 Notice of time and place appointed for trial of petition under section 236 of Act

- (1) The court must appoint a time at which the petition is to be tried.
- (2) The court may, on application, subsequently adjourn the trial and appoint a new date.
- (3) The time appointed under subclause (1) or (2) must be at least 15 working days after the day on which the court appoints that time.
- (4) The Registrar of the Court must, at least 10 working days before the day appointed for the trial,—
 - (a) give a notice of the time and place appointed for the trial to each party to the proceeding at that party's address for service; and
 - (b) publish a notice of the time and place appointed for the trial in a newspaper circulating in the district to which the petition relates.
- (5) A notice of the time and place appointed for the trial must be in form 3 of the Schedule.

Compare: 1908 No 89 Schedule 2 r 809 (SR 1998/325)

*Withdrawal of petition***17 Notice of intention to apply for leave to withdraw petition under section 252 of Act**

- (1) A petitioner who intends to apply to the court for leave to withdraw a petition must, at least 5 working days before the time appointed for the hearing of the application,—
 - (a) serve a copy of a notice of intention to apply for leave to withdraw the petition on each respondent to the petition; and
 - (b) publish a notice of intention to apply for leave to withdraw the petition at least once in a newspaper circulating in the district to which the petition relates.
- (2) A notice of intention to apply for leave to withdraw a petition must be in form 4 of the Schedule and contain the information required by that form.

Compare: 1908 No 89 Schedule 2 r 810 (SR 1998/325)

18 Form of application for leave to withdraw petition

An application for leave to withdraw a petition must be in form 5 of the Schedule.

Compare: 1908 No 89 Schedule 2 r 811 (SR 1998/325)

19 Time and place of hearing of application for leave to withdraw petition

- (1) The court must appoint a time at or after which an application for leave to withdraw a petition is to be heard.
- (2) The time appointed must be at least 6 working days after the day on which the court appoints the time.
- (3) The Registrar of the Court must, by such method as the court directs, give notice of the time and place of the hearing to—
 - (a) each respondent; and
 - (b) each person who, under rule 20(b), gives notice of an intention to apply to be substituted as a petitioner.

Compare: 1908 No 89 Schedule 2 r 812 (SR 1998/325)

20 Application to be substituted as petitioner

A person may, at a hearing of an application for leave to withdraw a petition, apply to be substituted as a petitioner in respect of the petition, if (and only if)—

- (a) the person would, under section 230(1) of the Act, have been entitled to present the petition; and
- (b) the person has given the Registrar of the Court, within 5 working days after the publication of the notice of intention to apply for leave to with-

draw the petition, written notice that the person intends to apply to be substituted as a petitioner in respect of the petition.

Compare: 1908 No 89 Schedule 2 r 813 (SR 1998/325)

Abatement of petition

21 Notice of abatement of petition under section 255(3) of Act

- (1) If a petition abates under section 255(1) of the Act (because of the death of a sole petitioner or of the survivor of several petitioners), the Registrar of the Court must, on learning of the death,—
 - (a) serve a notice of the abatement on each respondent; and
 - (b) publish the notice of the abatement at least once in a newspaper circulating in the district to which the petition relates.
- (2) A notice of the abatement must be in form 6 of the Schedule.

Compare: 1908 No 89 Schedule 2 r 814 (SR 1998/325)

22 Application to be substituted as petitioner on abatement

An application under section 255(3) of the Act (to be substituted as petitioner on the abatement of a petition) must be made by written notice given to the Registrar of the Court.

Compare: 1908 No 89 Schedule 2 r 815 (SR 1998/325)

Withdrawal and substitution of respondent before trial

23 Notice of respondent's death or loss of seat before trial of petition under section 256(1)(a) or (c) of Act

- (1) This rule applies if, before the trial of a petition, a respondent (other than a Returning Officer or a Registrar of Electors) dies or loses his or her seat because the House of Representatives resolves that his or her seat is vacant.
- (2) The Registrar of the Court must, on learning of the death or the loss by the respondent of his or her seat, give notice of the death or loss.
- (3) The Registrar of the Court must give the notice by—
 - (a) publishing the notice at least once in a newspaper circulating in the district to which the petition relates; and
 - (b) leaving a copy of the notice signed by him or her, or on his or her behalf, with the Returning Officer; and
 - (c) serving a copy of the notice signed by him or her, or on his or her behalf, on each petitioner.

Compare: 1908 No 89 Schedule 2 r 816 (SR 1998/325)

24 Notice of intention not to oppose petition under section 256(1)(b) of Act

- (1) A respondent to a petition (other than a Returning Officer or a Registrar of Electors) who does not intend to oppose the petition must give written notice of that intention to the Registrar of the Court at least 7 working days before the time appointed for the trial of the petition.
- (2) A respondent who gives notice must immediately—
 - (a) publish the notice in a newspaper circulating in the district to which the petition relates; and
 - (b) leave a copy of the notice with the Returning Officer; and
 - (c) serve a copy of the notice on each petitioner.

Compare: 1908 No 89 Schedule 2 r 817 (SR 1998/325)

25 Notice of application to be admitted as respondent to oppose petition

An application under section 256(1) of the Act (to be admitted as a respondent to oppose a petition) must be made by written notice given to the Registrar of the Court.

Compare: 1908 No 89 Schedule 2 r 818 (SR 1998/325)

Schedule Forms

rr 6, 12, 16, 17, 18, 21

Form 1 Constituency election petition

r 6

Part 8, Electoral Act 1993

In the High Court of New Zealand

[*Name of registry*] Registry

No: [*number of proceeding*]

In the matter of an election petition relating to the [*name of electoral district*] Electoral District

Between [*full name(s) of petitioner(s)*] (petitioner(s))

And [*full name(s) of respondent(s)*] (respondent(s))

Election

This petition relates to the election of a member of Parliament for the Electoral District of:

Polling day: [*specify*]

Candidate(s): [*specify*]

Candidate returned as duly elected by Electoral Commission: [*specify*]

Day on which the Electoral Commission publicly notified result of poll:

Petitioner(s)

Note: See section 230(1) of the Electoral Act 1993 for the persons who may present a constituency election petition.

Name(s): [*specify*]

Respondent(s)

Name(s): [*Specify the name of the candidate whose election or return this petition complains of. Insert "the Electoral Commission" if the petition complains of the conduct of the Electoral Commission. If the petition complains of the conduct of the Registrar of Electors, specify the Registrar's name.*]

Grounds

The petition is based on the following grounds:

Facts

The petition relies on the following facts:

Determination(s) sought

The petition seeks the following determination(s): [*for example, that the candidate returned was not duly elected or returned and that the election was void, or that the candidate was duly elected and should have been duly returned*].

Date:

Signed: [*name(s), signature(s) of petitioner(s)*]

Note

Once completed, this petition must be presented by being filed—

- (a) in the Registry of the High Court nearest the place where the election was held (*see* section 230(4) of the Electoral Act 1993); and
- (b) within 28 days after the day on which the Electoral Commission publicly notified the result of the poll (unless section 231(2) of the Electoral Act 1993 applies).

Filing of petition

The petition is filed by the petitioner(s) in person. The address for service of the petitioner(s) is:

or

The petition is filed by [*name*], solicitor for the petitioner(s), of the firm [*name of firm*]. The address for service of the petitioner(s) is:

Documents for service on the petitioner(s) may be left at that address for service or may be—

- (a) posted to the solicitor at [*post office box address*]; or
- (b) left for the solicitor at a document exchange for direction to [*document exchange box number*]; or
- * (c) transmitted to the solicitor by fax to [*fax number*]; or
- * (d) emailed to the solicitor at [*email address*].

or

The petition is filed by [*name*], solicitor for the petitioner(s), of the firm [*name of firm*], whose postal address is:

The solicitor's agent in the proceeding is:

The address for service of the petitioner(s) is:

Documents for service on the petitioner(s) may be left at that address for service or may be—

- (a) posted to the solicitor at [*specify address*]; or

- (b) left for the solicitor at a document exchange for direction to [*specify document exchange box number*]; or
 - *(c) transmitted to the solicitor by fax to [*specify fax number*]; or
 - *(d) emailed to the solicitor at [*specify email address*].
- *Omit if this method of service is unacceptable.

Schedule form 1: amended, on 1 October 2010, by section 32(2)(c) of the Electoral (Administration) Amendment Act 2010 (2010 No 26).

Form 2
Bond for security

r 12

In the High Court of New Zealand

[*Name of registry*] RegistryNo: [*number of proceeding*]In the matter of an election petition relating to the [*name of electoral district*] Electoral DistrictBetween [*full name(s) of petitioner(s)*] (petitioner(s))And [*full name(s) of respondent(s)*] (respondent(s))I/We*, [*specify full name, residence, and occupation of each, surety*], am/are jointly and severally* bound to pay to the Crown any amount not exceeding \$[*sum*], unless the petitioner(s) pays/pay* all costs that become payable by the petitioner(s)—

- (a) to any witness summoned on the petitioner's/petitioners'* behalf; and
- (b) to the respondent(s).

*Select one.

Signature: [*signature(s) or common seal of each surety*]This bond was signed by [*name of each surety*]Date: [*place, date*]Before me: [*name, signature*](a solicitor of the High Court of New Zealand/Registrar *or* Deputy Registrar of the High Court of New Zealand/Notary Public*)

*Select one.

Form 3

Notice of time and place appointed for trial of constituency election petition

r 16

In the High Court of New Zealand

[*Name of registry*] Registry

No: [*number of proceeding*]

In the matter of an election petition relating to the [*name of electoral district*] Electoral District

Between [*full name(s) of petitioner(s)*] (petitioner(s))

And [*full name(s) of respondent(s)*] (respondent(s))

The petition will be tried at [*place, date*], at [*time, am/pm*], or as soon after that time as the parties may be heard.

Date:

Signature:

(Deputy Registrar/Registrar* of the High Court at [*place*])

*Select one.

Form 4
Notice of intention to apply for leave to withdraw constituency election
petition

r 17

In the High Court of New Zealand

[*Name of registry*] Registry

No: [*number of proceeding*]

In the matter of an election petition relating to the [*name of electoral district*] Electoral District

Between [*full name(s) of petitioner(s)*] (petitioner(s))

And [*full name(s) of respondent(s)*] (respondent(s))

The petitioner(s) will at such time and place as the court appoints, being at least 5 working days after the [*date*], apply to the High Court for leave to withdraw the petition on the grounds that: [*specify grounds*].

At the hearing of the application for leave to withdraw the petition, a person may apply to be substituted as a petitioner, if (and only if)—

- (a) the person might in the first instance have presented the petition; and
- (b) the person has given the Registrar of the Court, within 5 working days after the publication of this notice, written notice that the person intends to apply to be substituted.

Date:

Signature(s) of petitioner(s):

Form 5
Application for leave to withdraw constituency election petition

r 18

In the High Court of New Zealand

[*Name of registry*] Registry

No: [*number of proceeding*]

In the matter of an election petition relating to the [*name of electoral district*] Electoral District

Between [*full name(s) of petitioner(s)*] (petitioner(s))

And [*full name(s) of respondent(s)*] (respondent(s))

The petitioner(s) will on the [*date*], at [*time, am/pm*] (the time and place appointed for the purpose by the court), or as soon after that time as the petitioner(s) may be heard, apply to the court for leave to withdraw the petition on the grounds that [*specify grounds*] and on the grounds that the prescribed notice of the petitioner's/petitioners' * intention to make this application has been duly served and published.

*Select one.

Date:

Signature(s) of petitioner(s):

Form 6
Notice of abatement of constituency election petition

r 21

In the High Court of New Zealand

[*Name of registry*] Registry

No: [*number of proceeding*]

In the matter of an election petition relating to the [*name of electoral district*] Electoral District

Between [*full name(s) of petitioner(s)*] (petitioner(s))

And [*full name(s) of respondent(s)*] (respondent(s))

This petition has abated because the petitioner(s)/the survivor of the petitioner(s)* has died.

*Select one.

Any person who might in the first instance have presented the petition may apply to the High Court to be substituted as a petitioner by giving notice to the Registrar of the Court within 20 working days from the date of publication of this notice.

Date:

Signature:

(Deputy Registrar/Registrar* of the High Court at [*place*])

*Select one.

Rebecca Kitteridge,
Clerk of the Executive Council.

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18 October 2016

Constituency Election Petition Rules 2008

Schedule

Issued under the authority of the Legislation Act 2012.
Date of notification in *Gazette*: 9 October 2008.

Reprints notes

1 *General*

This is a reprint of the Constituency Election Petition Rules 2008 that incorporates all the amendments to those rules as at the date of the last amendment to them.

2 *Legal status*

Reprints are presumed to correctly state, as at the date of the reprint, the law enacted by the principal enactment and by any amendments to that enactment. Section 18 of the Legislation Act 2012 provides that this reprint, published in electronic form, has the status of an official version under section 17 of that Act. A printed version of the reprint produced directly from this official electronic version also has official status.

3 *Editorial and format changes*

Editorial and format changes to reprints are made using the powers under sections 24 to 26 of the Legislation Act 2012. See also <http://www.pco.parliament.govt.nz/editorial-conventions/>.

4 *Amendments incorporated in this reprint*

Senior Courts Act 2016 (2016 No 48): section 183(c)

Constituency Election Petition Amendment Rules 2012 (SR 2012/403)

Electoral (Administration) Amendment Act 2010 (2010 No 26): section 32(2)(c)