

1957/265

THE ELECTION PETITION RULES 1957

COBHAM, Governor-General

ORDER IN COUNCIL

At the Government House at Wellington this 3rd day of December 1957

Present:

HIS EXCELLENCY THE GOVERNOR-GENERAL IN COUNCIL

PURSUANT to the Electoral Act 1956, His Excellency the Governor-General, acting by and with the advice and consent of the Executive Council, and with the concurrence of the Right Honourable the Chief Justice and all the other members of the Rules Committee constituted under the Judicature Amendment Act 1930 (four of those other members being Judges of the Supreme Court), hereby makes the following rules.

RULES

PRELIMINARY

1. (1) These rules may be cited as the Election Petition Rules 1957.
- (2) These rules are arranged as follows:

PRELIMINARY

1. Title and arrangement
2. Interpretation
3. Title of proceedings

CONTENTS AND FORM OF PETITION

4. Terms of petition
5. Paragraphing
6. Prayer of petition
7. Form

PERSONS TO BE MADE RESPONDENTS

8. When Returning Officer or Registrar of Electors to be respondent

COUNSEL

9. Right to appear by barrister

EMPLOYMENT OF SOLICITORS AND ADDRESSES FOR SERVICE

10. Solicitor to give notice to Registrar. Notices to and by solicitors
11. Petition to give name of solicitor
12. Petitioners may have one or different solicitors
13. Situation of address for service
14. Elected member's address for service
15. Respondent to give address for service
16. Notice at Registrar's office failing address for service
17. Registrar's book of addresses for service

ADVERTISEMENT OF PETITION

18. Publication of petition by petitioner

SERVICE OF PETITION

19. Time allowed for service
20. Persons to be served
21. Service at an address for service
22. Service generally
23. Power of Court to declare sufficient service
24. Power of Court to order substituted service

SECURITY BY DEPOSIT

25. Account to which payment to be made
26. Delivery of bank receipt and entry in deposit register
27. Disposal of deposit

SECURITY BY BOND

28. Form of bond
29. One bond or separate bonds
30. Approval of Registrar

PARTICULARS

31. Petition need not state evidence. Power to order particulars
32. List of votes objected to to be delivered
33. List of objections to election to be delivered
34. Inspection of lists. Evidence to be restricted to lists

TRIAL

35. Names of Judges to be gazetted
36. Fixing time and place of trial
37. Notice at Registrar's office of time and place of trial
38. Notice by Registrar to parties
39. Power of Court to postpone trial
40. If Court arrives late, commencement adjourned
41. Adjournments after trial commenced

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42. Order to compel attendance
43. Witnesses' costs

WITHDRAWAL AND ABATEMENT OF PETITION

44. Notice of intention to apply for leave to withdraw
45. Time and place of hearing application
46. Form of notice of motion seeking leave to withdraw
47. Application to be substituted for petitioner
48. Notice of abatement
49. Form of application to be substituted when petition has abated
50. Death, etc., of respondent
51. Notice by respondent of intention not to oppose

COSTS AND FEES

52. Payment of costs from Law Trust Account
53. Execution for costs out of Supreme Court
54. Office fees

MISCELLANEOUS

55. Supreme Court holidays
56. Computation of time
57. Supreme Court practice to be followed
58. Revocation

SCHEDULE

- Form 1—Title of Proceedings
 Form 2—Petition
 Form 3—Bond for Security
 Form 4—Notice of Time and Place of Trial
 Form 5—Order for Attendance of Witness
 Form 6—Notice of Intention to Apply for Leave to Withdraw a Petition
 Form 7—Notice of Motion for Leave to Withdraw a Petition
 Form 8—Notice of Abatement of Petition

2. (1) In these rules, unless the context otherwise requires,—

“The Act” means the Electoral Act 1956:

“Court” means the Supreme Court of New Zealand:

“Judge” means a Judge who has for the time being been named as a Judge before whom the trial of the petition shall take place, or to act in the place of any Judge so named; or, if no Judge has been named, means any Judge of the Supreme Court:

“Petition” means an election petition under the Act; and “petitioner” has a corresponding meaning:

“Registrar of Electors” means a Registrar of Electors appointed under the Act for any electoral district:

“Registrar of the Court” means a Registrar of the Supreme Court; and includes a Deputy Registrar:

“Solicitor” means a practising solicitor of the Supreme Court:

Expressions defined in the Act have the meanings so defined.

(2) In these rules, a reference to a form by number is a reference to the form so numbered in the Schedule to these rules.

3. All documents to be lodged or filed in the proceedings upon an election petition and all orders made in such proceedings under the authority of these rules shall be intitled in the manner set out in form 1.

CONTENTS AND FORM OF PETITION

4. Every petition shall state—

- (a) The holding and result of the election;
- (b) The nature of the right of every petitioner by virtue of which he is entitled to present the petition pursuant to section 156 of the Act;
- (c) Briefly, the facts relied on to sustain the prayer of the petition;
- (d) The specific grounds on which the complaint is founded.

5. The petition shall be divided into paragraphs, each of which shall, as nearly as may be practicable, be confined to a distinct portion of the subject, and every paragraph shall be numbered consecutively; and unless otherwise ordered by the Court no costs shall be allowed of drawing or copying any petition not substantially complying with this rule.

6. The petition shall conclude with a prayer, as, for instance, that some specified person should be declared duly returned or elected, or that the election should be declared void, or that a return may be enforced, or as the case may be.

7. A petition shall be sufficient if in form 2 or to the like effect.

PERSONS TO BE MADE RESPONDENTS

8. If the petitioner is advised that by reason of the matters alleged in the petition and by operation of section 156 (2) of the Act a Returning Officer or Registrar of Electors is deemed to be a respondent, he shall insert in the petition a statement to that effect and set out the name of the Returning Officer or Registrar of Electors.

COUNSEL

9. A party to any proceedings under these rules may appear and be represented by a barrister not being a member of Parliament.

EMPLOYMENT OF SOLICITORS AND ADDRESSES FOR SERVICE

10. (1) A solicitor employed by any party shall forthwith deliver to the Registrar of the Court written notice of his appointment setting out an address for service complying with the provisions of these rules.

(2) Service of notices and proceedings upon the solicitor at that address shall be sufficient for all purposes, and any notice to be given by a party under these rules shall be sufficient if given by his solicitor on his behalf.

11. There shall be endorsed upon or appended to the petition the name of some solicitor whom the petitioner authorises to act for him, or a statement that he acts for himself, as the case may be, and in either case giving an address for service.

12. Where there are more petitioners than one, each petitioner may have a different solicitor or they may jointly appoint one solicitor to act for them.

13. The address for service shall be a place not more than three miles from the registry of the Court in which the petition is filed.

14. Any person returned or declared elected as a member may, at any time after he is returned or declared elected, deliver to the Registrar of the Court, at the registry of the Court nearest to the place where the election was held, a writing signed by him or on his behalf appointing a solicitor to act for him in case there should be a petition against him, or stating that he intends to act for himself, and in either case giving an address for service complying with the requirements of rule 13 hereof.

15. Every respondent who has not complied with rule 14 hereof shall, within a week after service on him of a petition, deliver to the Registrar of the Court at the registry in which the petition is filed a writing signed by him or on his behalf appointing a solicitor to act for him, or stating that he intends to act for himself, and in either case giving an address for service complying with the requirements of rule 13 hereof.

16. In default of compliance with rule 15 hereof, any notice or proceeding may be given to or served upon the said respondent by affixing it on some conspicuous place in the office of the Registrar of the Court at the registry aforesaid.

17. The Registrar of the Court shall keep a book at his office in which he shall enter all addresses for service and names of solicitors given under the foregoing rules. The book shall be open to inspection by any person without fee during office hours.

ADVERTISEMENT OF PETITION

18. Within seven days after filing of the petition the petitioner shall at his own expense cause the petition to be published in some newspaper circulating in the district, unless publication is excused by the Court or a Judge.

SERVICE OF PETITION

19. The petition shall be served not later than seven days after the date of filing.

20. The petition shall be served on every respondent. Where a Returning Officer is respondent, delivery of the petition to him by the Registrar of the Court under section 156 (4) of the Act shall not excuse service on him thereafter under this rule.

21. Service upon a respondent who has given an address for service under rule 14 hereof may be effected by leaving a copy of the petition at that address.

22. Subject to rule 21 hereof, service shall be effected by serving a copy of the petition in the manner in which a writ of summons is served when issued out of the Supreme Court.

23. Where the Court or a Judge, on application made not more than fourteen days after the date of the filing of a petition, is satisfied, on affidavit showing what has been done, that every reasonable effort has been made to effect service in manner hereinbefore provided and to cause the matter to come to the knowledge of the respondent, the Court or a Judge may order that what has been done shall be considered sufficient service, subject to such conditions as it or he thinks reasonable.

24. The Court or a Judge may, if of opinion that there has been evasion of service, order that the affixing in the office of the Registrar of the Court of a notice setting out the fact that the petition has been presented, the name of the petitioner, and the prayer of the petition, shall be considered sufficient service.

SECURITY BY DEPOSIT

25. Security given by a deposit of money shall be given by the deposit thereof to the credit of the Law Trust Account of the Registrar of the Court.

26. A bank receipt or certificate of payment for the sum deposited shall be delivered to the Registrar of the Court, who shall file the receipt or certificate and shall enter in a book to be kept for the purpose the amount of every such deposit and the petition to which it is applicable. The book shall be open to inspection by any person without fee during office hours.

27. The Registrar of the Court may from time to time withdraw from the said Law Trust Account the amount of the deposit or any part thereof in pursuance of any order made by the Court for payment thereof of costs, charges, or expenses, or in pursuance of any order made by the Court for the return or other disposal of any deposit or the residue or any part thereof or otherwise for the purposes of the Act, or in pursuance of any agreement in that behalf signed by all parties to the petition and filed in the Court.

SECURITY BY BOND

28. Security given by bond shall be given in form 3 or to the like effect stating the name and usual place of abode of each surety with such sufficient description as shall enable him to be found or ascertained.

29. There may be one bond executed by all the sureties or separate bonds executed by one or more, as may be convenient.

30. The bond shall be given to the approval and satisfaction of the Registrar of the Court, who, if he has cause to believe that any surety is insufficient or that the bond is in any respect defective or inadequate, may require an affidavit of justification to be lodged with the bond or impose such other requirement as he thinks necessary.

PARTICULARS

31. Evidence need not be stated in the petition, but the Court or a Judge may order such particulars as may be necessary to prevent surprise and unnecessary expense, and to ensure a fair and effectual trial, in the same way as in ordinary proceedings in the Supreme Court, and upon such terms as to costs and otherwise as may be ordered.

32. When a petitioner claims the seat for an unsuccessful candidate, alleging that the candidate had a majority of lawful votes, the party complaining of or defending the election or return shall, not later than six days before the day appointed for trial, deliver to the Registrar of the Court, and also at the address for service, if any, given by the other party, a list of the votes intended to be objected to, and of the heads of objection to each such vote, together with sufficient copies of the list in the case of the Registrar to enable him to supply the copies required to be supplied under rule 34 (1) hereof.

33. When the respondent to a petition complaining of an unlawful return, and claiming the seat for some person, intends to give evidence pursuant to section 162 (6) of the Act to prove that that person was not duly elected, the respondent shall, not later than six days before the day

appointed for the trial, deliver to the Registrar of the Court, and also at the address for service, if any, given by the petitioner, a list of the objections to the election upon which he intends to rely, together with sufficient copies of the list in the case of the Registrar to enable him to supply the copies required to be supplied under rule 34 (1) hereof.

34. (1) The Registrar of the Court shall allow inspection and supply office copies of the lists provided for in rules 32 and 33 hereof to all parties concerned.

(2) No evidence shall be given against the validity of any vote or upon any head of objection not specified in any such list, except by leave of the Court or a Judge, and upon such terms as to amendments of the list, postponement of the trial, and payment of costs, as may be ordered.

TRIAL

35. When the Chief Justice has named the Judges before whom the petition is to be tried, he shall cause a notification thereof to be published in the *Gazette*.

36. The time and place at which a petition will be tried shall be fixed by the Court in accordance with section 161 (3) of the Act.

37. The notice of the time and place at which a petition will be tried shall be given by the Registrar of the Court in form 4, or to the like effect, by affixing it on some conspicuous place in his office, and notice so given shall be deemed to be the notice required to be given by section 162 (1) of the Act.

38. The Registrar of the Court shall forthwith send by post a copy of the notice to the petitioner at his address for service, and a copy to the respondent at his address for service (if any), but no failure to send, or miscarriage of, any such copy shall vitiate a notice given as prescribed by rule 37 hereof.

39. The Court or a Judge may from time to time by order made upon the application of a party to the petition, or by notice to be given in such form as the Court or Judge may direct, postpone the beginning of the trial to such day as it or he may appoint. When any such notice is received by the Registrar of the Court it shall forthwith be made public in the same manner as the original notice of the time and place of trial.

40. If the Court does not arrive at the place of trial on the day which is appointed for the trial or to which the trial is postponed, the commencement of the trial shall be deemed to stand adjourned to the ensuing day, and so from day to day until the Court arrives.

41. No formal adjournment of the Court shall be necessary during the trial, but the trial shall be deemed adjourned and may be continued from day to day until the trial is concluded.

WITNESSES

42. In any case in which the Court or a Judge thinks fit to compel the attendance of a witness by order pursuant to subsection (2) of section 173 of the Act, the order may be in form 5 or to the like effect.

43. The reasonable costs of a witness shall be ascertained as provided by section 175 of the Act.

WITHDRAWAL AND ABATEMENT OF PETITION

44. The notice to be given under section 178 (2) of the Act of the intention of a petitioner to make an application to the Court for leave to withdraw the petition shall set out the ground of the proposed application and may be in form 6 or to the like effect, and shall at least one week before the application is heard by the Court be served on every respondent and published at least once in a newspaper circulating in the district.

45. The time and place for hearing the application shall be fixed by the Court or a Judge; and notice of the time and place so appointed shall be given to every respondent, and to every person who has given notice to the Registrar of the Court of an intention to apply to be substituted as a petitioner, and otherwise in such manner as the Court or Judge directs.

46. The application to the Court for leave to withdraw the petition shall be made by motion, of which notice may be in form 7 or to the like effect, and no further notice of the motion shall be required other than the notices prescribed by rules 44 and 45 hereof.

47. (1) Any person who might in the first instance have presented the petition may, within seven days after the notice prescribed by rule 44 hereof is published by the petitioner, give notice in writing to the Registrar of the Court of his intention to apply, at the hearing of the application for leave to withdraw the petition, to be substituted for the petitioner.

(2) Any such person as aforesaid may, at the hearing, apply to be substituted for the petitioner, notwithstanding that he may not have given the notice referred to in subclause (1) of this rule.

48. Notice of the abatement of a petition by the death of a petitioner or surviving petitioner, as provided by section 181 of the Act, may be given by any party or person interested, or by the Returning Officer or the Registrar of the Court, by service and publication in the same manner as notice of an application to withdraw a petition, and may be in form 8 or to the like effect.

49. Any application made to the Court by any qualified person under section 181 (3) of the Act to be substituted as a petitioner when the petition has abated shall be made by notice given to the Registrar of the Court.

50. If before the trial of the petition a respondent other than the Returning Officer dies, or loses his seat by reason of the House of Representatives resolving that it is vacant, any person who might have been a petitioner in respect of the election may give notice of such death or loss as aforesaid by causing the notice to be published at least once in a newspaper circulating in the district and by leaving a copy of the notice signed by him or on his behalf with the Returning Officer and a like copy with the Registrar of the Court, and serving a copy on the petitioner; or notice may be given as aforesaid by the Returning Officer or the Registrar of the Court.

51. The manner and time of the respondent's giving notice under section 182 (1) (b) of the Act that he does not intend to oppose the petition shall be by leaving notice thereof in writing at the office of the Registrar

of the Court at least ten days before the day appointed for trial; and the respondent shall forthwith cause a copy of the notice to be published at least once in a newspaper circulating in the district and a copy to be left with the Returning Officer and a copy to be served on the petitioner.

COSTS AND FEES

52. When the amount of any costs has been fixed by the Registrar of the Court upon taxation or agreed upon by the parties, the Court or a Judge may order that the amount, or the amount of any costs, charges, or expenses which has been fixed by the Court shall be payable from the Law Trust Account referred to in rule 25 hereof to the extent of the money therein available for the purpose.

53. Any order of the Court declaring the amount of costs, charges, or expenses payable by any party shall for purposes of execution have the effect of a judgment for costs given in the Supreme Court.

54. The office fees payable for inspection, office copies, and other proceedings under the Act and these rules shall be the same as those, if any, payable for like proceedings according to the practice of the Supreme Court.

MISCELLANEOUS

55. All days set apart or declared to be holidays of the Supreme Court under the rules of that Court in its ordinary jurisdiction shall be deemed to be holidays for the purposes of these rules.

56. In computing time for the doing of any act or the taking of any proceeding under these rules, time shall be reckoned in the manner prescribed by the rules or practice of the Supreme Court.

57. In any matter not provided for by these rules, the rules of practice and procedure of the Supreme Court shall, as far as practicable, be followed.

58. The Election Petition Rules 1951* are hereby revoked.

*S.R. 1951/184

SCHEDULE

Form 1

Rule 3

TITLE OF PROCEEDINGS

In the Supreme Court of New Zealand,

No.....

.....District,
.....Registry.

In the matter of a [*Name of electoral district*] Election Petition

Between

A. B. [*and others*], Petitioner(s), and
L.M. [*and others*], Respondent(s).

SCHEDULE—*continued*

Form 2

Rule 7

PETITION

(Title)

To the Supreme Court of New Zealand

THE petition of A. B., of, (and C. D., of, *as the case may be*), whose name is (*or names are*) subscribed hereto, showeth—

1. An election for a member of Parliament for the Electoral District was held, the poll wherefor was appointed for the day of 19.....
2. At the said election L. M., N. O., and P. Q. were candidates, and the Returning Officer has returned L. M. as being duly elected [*or as the case may be*].
3. Your petitioner, A. B., is a person who voted at the said election, *or* is a person who had a right to vote at the said election, *or* was entitled to be returned at the said election, *or* was entitled to be elected at the said election, *or* was a candidate at the said election [*as the case may be*].
4. Your petitioner, C. D. [*Here state in like manner the right of each petitioner*].
5. Your petitioner(s) say(s) that [*Here state in numbered subparagraphs the facts on which the petitioner relies*].
6. The specific grounds on which your petitioner('s)(s') complaint is founded are as follows: [*Here state the grounds either expressly or by reference to numbered subparagraphs of paragraph 5*].
7. [*If the case so requires*] Your petitioner(s) is (are) advised that by reason of the matters aforesaid and by operation of section 156 (2) of the Electoral Act 1956, the Returning Officer (*or* Registrar of Electors) is deemed to be a respondent to this petition and his name is

Wherefore your petitioner(s) pray(s) that it may be determined that the said L. M. was not duly elected (*or* returned) and that the election was void (*or* that the said N. O. was duly elected and ought to have been returned, *or as the case may be*).

Dated this day of 19.....

Signature(s) of Petitioner(s):.....

The petitioner(s) authorise(s) Mr, a solicitor of the Supreme Court, to act as his (their) solicitor and his address for service is; *or*

The petitioner(s) act(s) for himself (themselves) and his (their) address for service is

SCHEDULE—*continued*

Form 3

Rule 28

BOND FOR SECURITY

KNOW all men by these presents that we (*or I*), [*Names of sureties or surety in full, adding residences and occupations*] (hereinafter called the sureties or surety), are jointly and severally (*or am*) bound unto Her Majesty the Queen in the sum of £..... for payment of which unto Her Majesty, Her heirs and successors, we bind ourselves, jointly and each of us severally, and the executors and administrators of us and each of us (*or I bind myself, my executors and administrators*), firmly by these presents.

Dated this day of 19.....

Whereas has (*or have*) presented a petition to the Supreme Court of New Zealand under the provisions of the Electoral Act 1956 in respect of an election for the Electoral District held on the day of

And whereas it is required that a bond should be entered into on behalf of the said petitioner(s) in accordance with the provisions of the said Act for the purposes hereinafter mentioned:

And whereas the Registrar of the Supreme Court at has approved of the said sureties (*or surety*) for that purpose:

Now the condition of this obligation is such that if the said petitioner(s) (*or any of them*) shall well and truly pay all costs, charges, and expenses in respect of the election petition signed by him (*or them, as the case may be*) relating to the said election which shall become payable by him (*or them, or any of them*) under or by virtue of the said Act, or any rules made thereunder, to any person or persons, then this obligation shall be void, but otherwise shall remain in full force.

Signature of Surety:.....

Signed by the above named [*Full name of surety*] in the presence of—
Witness—

Usual Signature:.....

Place of Abode:.....

Calling or Description:.....

Form 4

Rule 37

NOTICE OF TIME AND PLACE OF TRIAL

(*Title*)

TAKE notice that the above petition will be tried at on the day of, 19..., at o'clock in the noon, and on such subsequent days as may be necessary.

Dated the day of 19.....

Signature:.....

Registrar of the Supreme Court at

SCHEDULE—continued

Form 5

Rule 42

ORDER FOR ATTENDANCE OF WITNESS

(Title)

To

PURSUANT to an order of the Court (or a Judge), you are hereby required to attend before the Supreme Court at..... on the..... day of.....19....., at the hour of (or forthwith, as the case may be) to be examined as a witness in the matter of the above mentioned petition, and to attend the said Court until your examination shall have been completed.

Dated this day of 19.....
....., Registrar.

Form 6

Rule 44

NOTICE OF INTENTION TO APPLY FOR LEAVE TO WITHDRAW A PETITION

(Title)

NOTICE is hereby given that the above-named petitioner will at such time and place as may be fixed for that purpose, being at least one week after the day of, 19....., apply to the Supreme Court for leave to withdraw the above-mentioned petition upon the following grounds – namely,

And notice is likewise given that any person who might in the first instance have presented the petition in respect of the election to which the petition relates may give notice in writing to the Registrar of the Supreme Court at of his intention, on the hearing of the application for leave to withdraw the petition, to apply for leave to be substituted as a petitioner.

Dated this day of 19.....

Signature:.....

Form 7

Rule 46

NOTICE OF MOTION FOR LEAVE TO WITHDRAW A PETITION

(Title)

TAKE notice that the above-named petitioner will on the day of 19....., at (being the time and place appointed by the Court in that behalf), apply to the Court for leave to withdraw the above-mentioned petition upon the following grounds – namely,..... – and upon the further grounds that the prescribed notice of the petitioner's intention to make this application has been duly served and published.

Dated this day of 19.....

Signature:.....

SCHEDULE—*continued*

Form 8

Rule 48

NOTICE OF ABATEMENT OF PETITION

(Title)

NOTICE is hereby given that by reason of the death of the above-named petitioner (*or* the survivor of the above-named petitioners) the above-mentioned petition has abated:

And, further, that any person who might in the first instance have presented the petition may apply to the Supreme Court, by notice given to the Registrar of the Supreme Court at within 28 days from the date of publication of this notice, to be substituted as a petitioner.

Dated this day of 19.....

Signature:.....

T. J. SHERRARD,
Clerk of the Executive Council.

EXPLANATORY NOTE

This note is not part of the rules, but is intended to indicate their general effect.

These rules re-enact the Election Petition Rules 1951 made under the Electoral Act 1927, with the amendments required to adapt them to the provisions of the Electoral Act 1956.

Issued under the authority of the Regulations Act 1936.

Date of notification in *Gazette*: 5 December 1957.

These regulations are administered in the Department of Justice.