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**SONT PUBLIES LES TEXTES SUIVANTS**

**ARRETES**

**NOTIFICATION OF PUBLICATION**

**ORDERS**

**JUDICIAL SERVICES AND COURTS ACT NO. 54  
OF 2000.**

- DECLARATION OF APPROVAL OF CONSTITUTIONAL PROCEDURES RULES ORDER NO. 26 OF 2003.
- DECLARATION OF APPROVAL OF NATIONAL COUNCIL OF CHIEFS ELECTION PETITION RULES ORDER NO. 27 OF 2003.
- DECLARATION OF APPROVAL OF PROBATE AND ADMINISTRATION RULES ORDER NO. 28 OF 2003.

**REPRESENTATION OF THE PEOPLES ACT  
[CAP.146].**

- ELECTION PETITION RULES ORDER NO. 29 OF 2003.





**REPUBLIC OF VANUATU**

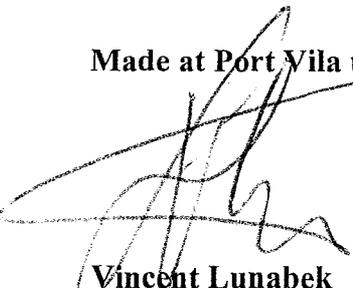
**JUDICIAL SERVICES AND COURTS ACT NO. 54 OF 2003<sup>0</sup>**

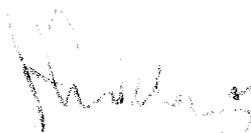
**Declaration of Approval of Constitutional Procedures Rules**

**Order No. 26 of <sup>2003</sup>~~2000~~**

The Judicial Committee as referred to in section 66 of the Judicial Services and Courts Act No. 54 of 2000 declares that on 16<sup>th</sup> day of July 2003, the Committee met and approved the attached Rules known as the Constitutional Procedures Rules which have been made under section 66 of that Act.

Made at Port Vila this 18<sup>th</sup> day of July 2003

  
**Vincent Lunabek**  
Chief Justice

  
**Sampson Endehipa**  
Attorney General

  
**Nicholas Mirou**  
Public Prosecutor

  
**Dudley Aru**  
Legal Practitioner

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# REPUBLIC OF VANUATU

JUDICIAL SERVICES AND COURTS ACT NO. 54 OF 2000

## CONSTITUTIONAL PROCEDURES RULES

Order No. 26 of 2003

To set out the procedure in Constitutional matters

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 and Commencement

- 1.1 (1) These Rules are the Constitutional Procedures Rules.
- (2) These Rules come into operation on 1 August 2003.

#### Purpose

- 1.2 The purpose of these Rules is to set out the procedures to be used in Constitutional proceedings brought in the Supreme Court under the Constitution of the Republic of Vanuatu.

[NOTE: Articles 6, 16(4), 39(3), 53(1), 53(3) and 72 of the Constitution provide for proceedings to be brought in the Supreme Court to enforce the Constitution.]

#### Application of the Civil Procedure Rules

- 1.3 If these Rules do not make provision for a matter relating to a constitutional 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:

“applicant” means the person who makes an application.

“Conference” means a conference held under Rule 2.8, 3.7, 4.8 or 5.4.

“Constitutional Application” means an Application under Article 6 or 53(1) of the Constitution.

“Constitutional proceedings” means proceedings under Article 6, 16(4), 39(3), 53(1), 53(3) or 72 of the Constitution.

“Court” means the Supreme Court.

“Emergency Regulation Complaint” or “Complaint” means a complaint made under Article 72 of the Constitution.

“Emergency Regulation” means a Regulation made under Article 69 of the Constitution.

“President’s Referral” or “Referral” means the referral of a matter to the Court by the President under Article 16(4) or 39(3) of the Constitution.

“Submission” means a submission of a question by a subordinate court under Article 53(3) of the Constitution (this is a case stated as mentioned in Rule 16.22 (1) (a) of the Civil Procedure Rules).

- (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.

## **PART 2 – PROCEEDINGS UNDER ARTICLES 6 AND 53(1) – INFRINGEMENT OF RIGHTS AND REDRESS**

### **Application of Part 2**

**2.1** This Part deals with Constitutional Applications, under Articles 6 and 53(1) of the Constitution, about the infringement of individuals' rights and the redress of infringements of provisions of the Constitution.

- [NOTES: 1. The Constitution in Article 5 guarantees certain fundamental rights. Article 6 provides that anyone who considers that any of those rights have been, are being infringed or are likely to be infringed may apply to the Supreme Court to enforce that right.
2. Article 53(1) provides that anyone who considers that a provision of the Constitution has been infringed in relation to him or her may apply to the Supreme Court for redress.]

### **Starting proceedings**

- 2.2** (1) A proceeding under Article 6 or 53(1) is started by filing a Constitutional Application in the office of the Supreme Court anywhere in Vanuatu.
- (2) A Constitutional Application filed by the person seeking redress must as far as possible be in Form 1, but is valid no matter how informally made. A Constitutional Application filed by a legal practitioner must be in Form 1.
- (3) In a case of extreme urgency a Constitutional Application may be made orally, as long as it is put into writing, in accordance with Form 1, as soon as possible.

[NOTE: An oral application put into writing must also contain the matters mentioned in subrule 2.3(4).]

### **What a Constitutional Application must contain**

- 2.3** (1) A written Constitutional Application must set out:
- (a) the rights that have been infringed, are being infringed or provisions for which redress is sought; and
  - (b) the Article of the Constitution that confers those rights or sets out those provisions; and
  - (c) the person or body that infringed those rights or provisions; and
  - (d) the way those rights or provisions have been infringed; and
  - (e) the facts on which the application is based; and
  - (f) the remedies applied for by the applicant to enforce those rights or seek redress.

- (2) The Application must have with it:
  - (a) a sworn statement by the applicant in support of the Application, setting out details of the evidence the applicant relies on; and
  - (b) any other sworn statements that support the Application.
- (3) An oral Application:
  - (a) must state the matters listed in subrule 2.3(1); and
  - (b) must be sworn to by the applicant.
- (4) When an oral Application is put into writing, it must also include:
  - (a) any orders made by the Court on the Application; and
  - (b) if any part of the hearing has been held, a statement of what was said at the hearing.
- (5) A sworn statement must be in Form 2.

### **Parties to proceedings started by a Constitutional Application**

- 2.4**
- (1) The parties to proceedings started by a Constitutional Application are:
    - (a) the applicant; and
    - (b) the Republic of Vanuatu, as the respondent.
  - (2) A witness may at any time apply to the Court to be legally represented.
  - (3) The Court may at any time order that a person may be legally represented.

### **Filing**

- 2.5**
- (1) A Constitutional Application is filed by lodging 4 copies of the Application and sworn statement with the Court.
  - (2) After the Application is filed and before returning sealed copies to the applicant, the Court must:
    - (a) fix a date for the first Conference in the matter; and
    - (b) write this date on the Application.
  - (3) The Conference date must be between 14 and 21 days after the filing date.
  - (4) The Court may by order reduce this period, either on application by a party or on its own initiative.

## **Service**

- 2.6** (1) A Constitutional Application must be served on the Attorney-General on behalf of the respondent to the proceedings within 7 days after the date of filing the application.
- (2) The Court may by order reduce or extend this period, either on application by a party or on its own initiative.
- (3) The applicant must file a sworn statement setting out details of the time and manner of service of the Application before the applicant takes any further action in the proceeding.

## **Duty of Court to enquire into Constitutional Application**

- 2.7** The Court is to enquire into the matters raised by the Constitutional Application.

## **Conference**

- 2.8** At the first Conference, the Court may:
- (a) deal with any application to strike out the Constitutional Application; and
  - (b) order the respondent to file a response; and
  - (c) issue a summons under Rule 2.9; and
  - (d) order that a person may be legally represented; and
  - (e) decide if the Constitutional Application needs to be served on anyone else, and state how it is to be served; 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 a response; and
    - (ii) filing and serving sworn statements by the parties, their witnesses and anyone else; and
    - (iii) disclosure of information and documents, in accordance with Part 8 of the Civil Procedure Rules; and
    - (iv) filing and serving written submissions and lists of authorities to be relied on; and
    - (v) giving notice to witnesses to attend the hearing; and
    - (vi) any other matter necessary to assist in furthering the enquiry into the application.
- (2) A response:
- (a) must not deny the applicant's claims generally but must deal with each paragraph of the Constitutional Application; and
  - (b) must be in Form 3.

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

- 2.9** (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:
- (a) at the request of a party; or
  - (b) at the request of a person entitled to legal representation; or
  - (c) on the Court's initiative.
- (3) A summons must be in Form 4.

## **Hearing**

- 2.10** (1) The hearing of a Constitutional Application must be in open court.
- (2) However, the Court may order the public to be excluded from a specific part of the hearing in exceptional circumstances if it is necessary to do so in the interests of the defence, safety, public order, public welfare or public health of Vanuatu.
- (3) Evidence in chief is to be given by sworn statement unless the Court orders otherwise.
- (4) The hearing is to be conducted as follows, unless the Court orders otherwise:
- (a) the applicant 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 respondent and anyone entitled to be legally represented cross-examine the applicant's witnesses;
  - (c) the applicant re-examines his or her witnesses;
  - (d) the respondent and anyone entitled to be legal represented make an address opening their case and, if evidence is to be given orally, bring evidence in support of their case;
  - (e) the applicant cross-examines the respondent's witnesses;
  - (f) the respondent and anyone entitled to be legally represented re-examine their witnesses;
  - (g) the applicant makes a closing address;
  - (h) the respondent and anyone entitled to be legally represented 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) inspect an object and visit a place; and

- (d) take any other step necessary to further the enquiry into the Constitutional Application and help the Court make a decision on the Application.

## **Judgment**

- 2.11** (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) Except as set out in subrule (5), the Court must ensure that copies of the judgment and reasons are available to the public.
  - (5) However, the Court may withhold from the public a part of the reasons for its decision in exceptional circumstances:
    - (a) out of respect for the rights and freedoms of a party or another person; or
    - (b) because it is necessary to do so in the interests of the defence, safety, public order, public welfare or public health of Vanuatu.

## **Enforcement and costs**

- 2.12** (1) When the Court gives its judgment, or as soon as practicable after giving judgment, the Court:
- (a) may make an enforcement order; and
  - (b) must decide the question of costs.
- (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 – PROCEEDINGS UNDER ARTICLES 16(4) AND 39(3) – REFERRALS BY THE PRESIDENT**

### **Application of Part 3**

**3.1** This Part deals with Referrals by the President, under Articles 16(4) and 39(3) of the Constitution, of Bills and Regulations that the President considers are inconsistent with the Constitution.

[NOTES: 1. Article 16 provides that after a Bill has been passed by the Parliament it is to be presented to the President for assent. Article 16(4) allows the President to refer the bill to the Supreme Court if he considers it is inconsistent with a provision of the Constitution.  
2. Article 39 vests the executive power in the Prime Minister and Council of Ministers. Article 39(3) allows the President to refer a Regulation to the Supreme Court if he considers it to be inconsistent with the Constitution.]

### **Starting proceedings**

- 3.2** (1) A proceeding under Article 16(4) or 39(3) is started by the President filing a Referral in the office of the Supreme Court anywhere in Vanuatu.
- (2) A Referral must be in Form 5.

### **What a Referral must contain**

- 3.3** A Referral must set out:
- (a) the name of the Bill or Regulation and the provisions that are being referred to the Court; and
  - (b) the Articles of the Constitution with which the President considers those provisions are inconsistent; and
  - (c) a statement of the reasons why the President considers those provisions to be inconsistent with the Constitution; and
  - (d) a statement whether the President considers those provisions of the Bill or Regulation are severable; and
  - (e) if the President considers the provisions are severable, which provisions of the Bill or Regulation may remain.

### **Parties to a proceeding started by a Referral**

- 3.4** The parties to a proceeding started by a Referral are:
- (a) the President; and
  - (b) as the respondent:
    - (i) for a Referral under Article 16(4), the Speaker of Parliament; and

- (ii) for a Referral under Article 39(3), the person or body that made the Regulation.

## **Filing**

- 3.5**
- (1) A Referral is filed by lodging 4 copies of the Referral with the Court.
  - (2) After the Referral is filed and before returning sealed copies to the President, the Court must:
    - (a) fix a date for the first Conference in the matter; and
    - (b) write this date on the Referral.
  - (3) The Conference date must be between 14 and 21 days after the filing date.

## **Service**

- 3.6**
- (1) A Referral must be served on the Attorney-General within 7 days after the filing date.
  - (2) The Court may by order reduce or extend this period, either on application by a party or on its own initiative.
  - (3) A sworn statement, in Form 2, setting out details of the time and manner of service of the Referral must be filed before the President can take any further action in the proceeding.

## **Conference**

- 3.7**
- (1) At the first Conference, the Court may:
    - (a) order that another person be served and may be legally represented; and
    - (b) recommend to the Attorney-General that he or she act under section 22 of the State Law Office Act (No.4 of 1998) to appoint an independent lawyer for a person, if the Court considers this is necessary in the interests of justice; and
    - (c) fix a date for another Conference, if one is necessary; and
    - (d) fix a hearing date; and
    - (e) make orders about:
      - (i) filing and serving written submissions and lists of authorities to be relied on; and
      - (ii) any other matter necessary to assist in managing the hearing of the Referral.

## Hearing

- 3.8** (1) The hearing of the Referral must take place as soon as practicable, and in open court.
- (2) However, the Court may order the public to be excluded from a specific part of the hearing in exceptional circumstances if it is necessary to do so in the interests of the defence, safety, public order, public welfare or public health of Vanuatu.
- (3) The hearing is to be conducted in the following order:
- (a) the President's counsel makes an address opening his or her case and states the reasons why the Bill or Regulation has been referred to the Court; and
  - (b) the respondent and anyone entitled to legal representation make an address opening their case and state their arguments; and
  - (c) the President's counsel replies.

## Judgment

- 3.9** (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 judgment must:
- (a) set out the Court's opinion; and
  - (b) state the Court's reasons for reaching its opinion.
- (4) The opinion must state:
- (a) whether or not the provisions of the Bill or Regulation are constitutional; and
  - (b) if the provisions are unconstitutional, whether or not they can be severed; and
  - (c) if they can be severed, to what extent any remaining provisions of the Bill or Regulation are consistent with the Constitution after severance.
- (5) Except as set out in subrule (6), the Court must ensure that copies of the judgment and reasons are available to the public.
- (6) However, the Court may withhold from the public a part of the reasons for its decision in exceptional circumstances:
- (a) out of respect for the rights and freedoms of a party or another person; or
  - (b) because it is necessary to do so in the interests of the defence, safety, public order, public welfare or public health of Vanuatu.

## **Costs**

**3.10** When the Court gives its judgment, or as soon as practicable after giving judgment, the Court must decide the question of costs.

## **PART 4 – PROCEEDINGS UNDER ARTICLE 72 – COMPLAINTS ABOUT EMERGENCY REGULATIONS**

### **Application of Part 4**

**4.1** This Part deals with Complaints, under Article 72 of the Constitution, about emergency Regulations.

[NOTE: Article 69 allows the Council of Ministers to make Regulations in an emergency. By Article 72, a citizen aggrieved by a Regulation made under Article 69 may complain to the Supreme Court about the validity of the Regulation.]

### **Starting proceedings**

- 4.2** (1) A proceeding under Article 72 is started by filing a Complaint in the office of the Supreme Court anywhere in Vanuatu.
- (2) A Complaint filed by the person seeking redress must as far as possible be in Form 6, but is valid no matter how informally made. A Complaint filed by a legal practitioner must be in Form 6.
- (3) However, in a case of extreme urgency a Complaint may be made orally, as long as it is put into writing, in accordance with Form 6, as soon as possible.

[NOTE: An oral application put into writing must also contain the matters mentioned in subrule 4.3(4).]

### **What a Complaint must contain**

- 4.3** (1) A written Complaint must set out:
- (a) the name of the Regulation complained of, and the provisions complained of; and
  - (b) the Articles of the Constitution which the complainant considers make the Regulation invalid; and
  - (c) any defects in procedure which the complainant considers make the Regulation invalid; and
  - (d) a statement of the reasons why the Regulation is invalid; and
  - (e) if only a part of the Regulation is considered invalid, a statement whether that part is severable and the remaining provisions of the Regulation are valid.
- (2) The Complaint must have with it:
- (a) a sworn statement in Form 2 by the complainant in support of the application:
    - a. stating that the complainant is a citizen of Vanuatu; and

- b. setting out details of how the complainant is aggrieved by the Regulation; and
    - c. setting out the evidence the complainant relies on; and
  - (b) any other sworn statements that support the application.
- (3) An oral application:
  - (a) must state the matters listed in subrule 4.3(1); and
  - (b) must be sworn to by the complainant.
- (4) When an oral Complaint is put into writing, it must also include:
  - (a) any orders made by the Court on the Complaint; and
  - (b) if any part of the hearing has been held, a statement of what was said at the hearing.

### **Parties to proceedings started by a Complaint**

- 4.4** (1) The parties to proceedings started by a Complaint are:
- (a) the complainant; and
  - (b) the Attorney-General of Vanuatu, on behalf of the Council of Ministers of the Government of Vanuatu, as the respondent.
- (2) A witness may at any time apply to the Court to be legally represented.
- (3) The Court may at any time order that a person may be legally represented.

### **Filing**

- 4.5** (1) A Complaint is filed by lodging 4 copies of the Complaint and sworn statements with the Court.
- (2) After the Complaint is filed and before returning sealed copies to the complainant, the Court must:
- (a) fix a date for the first Conference in the matter; and
  - (b) write this date on the Complaint.
- (3) The Conference date must be between 14 and 21 days after the filing date.
- (4) The Court may by order reduce this period, either on application by a party or on its own initiative.

### **Service**

- 4.6** (1) A Complaint must be served on the Attorney-General within 7 days after the filing date.

- (2) The Court may by order reduce or extend this period, either on application by a party or on its own initiative.
- (3) The complainant must file a sworn statement, in Form 2, setting out details of the time and manner of service of the Complaint before the complainant takes any further action in the proceeding.

### **Duty of Court to inquire into Complaint**

**4.7** The Court is to inquire into the matters raised by the Complaint.

### **Conference**

- 4.8** (1) At the first Conference, the Court may:
- deal with any applications to strike out the Complaint; and
  - (a) order the respondent to file a response; and
  - (b) issue a summons under Rule 2.9; and
  - (c) order that a person may be legally represented; and
  - (d) decide if the Complaint needs to be served on anyone else, and state how it is to be served; 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 a response; and
    - (ii) filing and serving sworn statements by the parties, their witnesses and anyone else; and
    - (iii) disclosure of information and documents, in accordance with Part 8 of the Civil Procedure Rules; and
    - (iv) filing and serving written submissions and lists of authorities to be relied on; and
    - (v) giving notice to witnesses to attend the hearing; and
    - (vi) any other matter necessary to assist in furthering the enquiry into the Complaint.
- (2) A response:
- (a) must not deny the complainant's claims generally but must deal with each paragraph of the Complaint; and
  - (b) must be in Form 3.

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

- 4.9** (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

- 4.10** (1) The hearing of the Complaint must be in open court.
- (2) However, the Court may order the public to be excluded from a specific part of the hearing in exceptional circumstances if it is necessary to do so in the interests of the defence, safety, public order, public welfare or public health of Vanuatu.
  - (3) Evidence in chief is to be given by sworn statement unless the Court orders otherwise.
  - (4) The hearing is to be conducted as follows, unless the Court orders otherwise:
    - (a) the complainant 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 respondent and anyone entitled to be legal represented cross-examine the complainant's witnesses;
    - (c) the complainant re-examines his or her witnesses;
    - (d) the respondent and anyone entitled to be legal represented make an address opening their case and, if evidence is to be given orally, bring evidence in support of their case;
    - (e) the complainant cross-examines the respondent's witnesses;
    - (f) the respondent and anyone entitled to be legal represented re-examine their witnesses;
    - (g) the complainant makes a closing address;
    - (h) the respondent and anyone entitled to be legal represented 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) inspect an object and visit a place; and
    - (d) take any other step necessary to help the Court make a decision on the Complaint.

## Judgment

- 4.12** (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 determination.
- (4) The determination must state:
  - (a) whether or not the provisions of the Regulations are valid; and
  - (b) if the provisions are invalid, whether or not they can be severed; and
  - (c) if they can be severed, to what extent any remaining provisions of the Regulations are valid after severance.
- (5) Except as set out in subrule (6), the Court must ensure that copies of the judgment and reasons are available to the public.
- (6) However, the Court may withhold from the public a part of the reasons for its determination in exceptional circumstances:
  - (a) out of respect for the rights and freedoms of a party or another person; or
  - (b) because it is necessary to do so in the interests of the defence, safety, public order, public welfare or public health of Vanuatu.

### **Enforcement and costs**

- 4.13** (1) When the Court gives its judgment, or as soon as practicable after giving judgment, the Court:
- (a) may make an enforcement order; and
  - (b) must decide the question of costs.
- (2) An enforcement order must set out how and when the Court's determination is to be enforced.
- (3) Part 14 of the Civil Procedure Code applies to the enforcement order.

## **PART 5 – PROCEEDINGS UNDER ARTICLE 53(3) – SUBMISSION OF QUESTIONS BY SUBORDINATE COURTS**

### **Application of Part 5**

- 5.1 (1) This Part deals with submissions to the Supreme Court by a subordinate court, under Article 53(3) of the Constitution, of questions concerning the interpretation of the Constitution that concern a fundamental point of law.
- (2) This Part is in addition to Rule 16.22 of the Civil Procedure Rules.

[Note: Rule 16.22 of the Civil Procedure Rules contains some provisions dealing with the content and service of a Submission (in those Rules called a “case stated”), and the hearing and decision of the question.]

### **Starting proceedings**

- 5.2 (1) A proceeding under Article 53(3) is started by sending a Submission to the office of the Supreme Court anywhere in Vanuatu.
- (2) The Submission must:
- (a) state the question to be decided; and
  - (b) state concisely the facts necessary to enable the Court to decide the question.
- (3) After the Submission is received the Court must fix a date for the first Conference in the matter.
- (4) The Conference date must be between 14 and 21 days after the filing date.

### **Parties**

- 5.3 The Court may order that the Attorney-General is to be a party to the proceedings, representing the Republic.

### **Conference**

- 5.4 At the first Conference, the Court may:
- (a) order that the Attorney-General or another person become a party; and
  - (b) make orders about clarifying the Submission and the issues it raises; and
  - (c) refer the matter back to the subordinate court for better identifying any questions of law or fact; and

- (d) fix a date for another Conference, if one is necessary; and
- (e) fix a hearing date; and
- (f) make orders about:
  - (i) filing and serving sworn statements to clarify the facts of the case; and
  - (ii) filing and serving written submissions and lists of authorities to be relied on; and
  - (iii) any other matter necessary to assist in managing the hearing of the Submission.

## **Hearing**

- 5.5** (1) The hearing of the Submission must take place as soon as practicable, and in open court.
- (2) However, the Court may order the public to be excluded from a specific part of the hearing in exceptional circumstances if it is necessary to do so in the interests of the defence, safety, public order, public welfare or public health of Vanuatu.
- (3) The Court must decide the order of events at the hearing.

## **Judgment**

- 5.6** (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 judgment must:
  - (a) set out the Court's determination of the question submitted to it; and
  - (b) state the Court's reasons for its determination.
- (4) The determination must state:
  - (a) the Court's interpretation of the provision of the Constitution; and
  - (b) whether or not an activity, or a provision of any Act or Regulation, is unconstitutional as a result of that interpretation; and
  - (c) if a provision is unconstitutional, whether or not it can be severed; and
  - (d) if it can be severed, to what extent any remaining provisions of the Act or Regulation are valid after severance.
- (5) The Court must send a sealed copy of its determination to the subordinate court as soon as practicable.

- (6) Except as set out in subrule (7), the Court must ensure that copies of the judgment and reasons are available to the public.
- (7) However, the Court may withhold from the public a part of the reasons for its determination in exceptional circumstances:
  - (a) out of respect for the rights and freedoms of a party or another person; or
  - (b) because it is necessary to do so in the interests of the defence, safety, public order, public welfare or public health of Vanuatu.

### **Enforcement and costs**

- 5.7** The Court may decide the question of costs of the Submission hearing or send the question to the subordinate court.
-

**SCHEDULE**

**FORMS**

**FORM 1 – CONSTITUTIONAL APPLICATION**

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

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

**BETWEEN**

\_\_\_\_\_  
Applicant's name

\_\_\_\_\_

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

**AND**

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

\_\_\_\_\_

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

**CONSTITUTIONAL APPLICATION**

\_\_\_\_\_ of \_\_\_\_\_,  
applicant's name applicant's address

applies for:

Set out details of Constitutional Application, in numbered paragraphs

- 1.
- 2.

on the grounds that:

set out the reasons for making the Constitutional Application, in numbered paragraphs

- 1.
- 2.

I seek the following remedies:

Set out the remedies sought

Signed by the applicant OR  
applicant's lawyer

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

\_\_\_\_\_  
Applicant's signature OR applicant's lawyer's signature

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

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

The Applicant's address for service is:

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

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

**FORM 2 – SWORN STATEMENT**

**R. 2.3, 3.6, 4.3, 4.6**

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

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

**BETWEEN**

\_\_\_\_\_  
Name of applicant/complainant

\_\_\_\_\_  
Applicant's/complainant's lawyer's name  
or Applicant's/complainant'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, 4.8**

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

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

**BETWEEN**

\_\_\_\_\_  
Applicant's/Claimant's name

\_\_\_\_\_  
Applicant's/Claimant's lawyer's name or  
Applicant's/Claimant'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:

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

OR

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

**FORM 4 - SUMMONS**

**R.2.9, 4.9**

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

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

**BETWEEN**

\_\_\_\_\_  
Applicant's/Complainant's name

\_\_\_\_\_

\_\_\_\_\_  
Applicant's/Complainant's lawyer's name  
or Applicant's/Complainant'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

\_\_\_\_\_

**FORM 5 – REFERRAL**

**R.3.2**

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

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

**BETWEEN**

\_\_\_\_\_  
President's name

The President of the Republic of Vanuatu

**AND**

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

The Speaker of the Parliament of Vanuatu

**OR**

\_\_\_\_\_  
Name of the person or body who made the Regulation

The person / body who made the Regulation

**REFERRAL**

1. I. \_\_\_\_\_

Name of President

the President of the Republic of Vanuatu, refer \_\_\_\_\_

provisions

of \_\_\_\_\_

title of Bill or Regulation

to the Supreme Court because I consider they are inconsistent with Articles

\_\_\_\_\_ of the Constitution of Vanuatu.

list Articles

2. I consider those provisions are inconsistent with those Articles of the Constitution because:

set out reasons for inconsistency

3. I consider those provisions are / are not severable because:

set out reasons why provisions are/are not severable

If the provisions are considered severable

4. I consider that \_\_\_\_\_

list provisions that may remain

of the Bill/Regulation may remain because:

set out reasons

\_\_\_\_\_  
Signature of President

\_\_\_\_\_  
date

**FORM 6 – COMPLAINT**

**R.4.2**

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

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

**BETWEEN**

\_\_\_\_\_  
Complainant's name

\_\_\_\_\_  
Applicant's/Complainant's lawyer's name  
or Applicant's/Complainant's address

**AND**

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

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

**COMPLAINT**

I, \_\_\_\_\_ of \_\_\_\_\_,  
Name of citizen making Complaint citizen's address  
a citizen of Vanuatu, make this Complaint about \_\_\_\_\_  
provision and name of Regulation

2. I consider these Regulations / part of these Regulations are invalid because they are inconsistent with of the operation of Articles \_\_\_\_\_ of the Constitution  
list Articles

**AND / OR**

2. I consider these Regulations are invalid because of the following defects in making the Regulations:  
list defects

3. The reasons why the Regulations are invalid are:  
give reasons why Regulations are invalid

4. I consider that those parts of the regulations are severable and that \_\_\_\_\_,  
list the valid provisions of the regulations  
the remaining provisions of the regulations, are valid.

\_\_\_\_\_  
Signature of Complainant date





**REPUBLIC OF VANUATU**

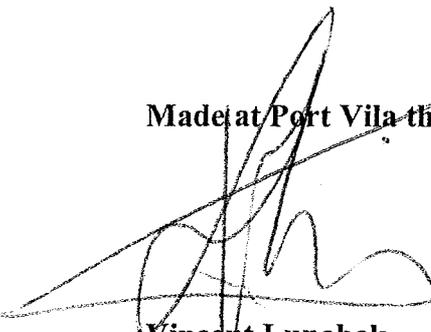
**JUDICIAL SERVICES AND COURTS ACT NO. 54 OF 2003**

**Declaration of Approval of National Council of Chiefs Election  
Petitions Rules**

**Order No. 27 of 2003**

The Judicial Committee as referred to in section 66 of the Judicial Services and Courts Act No. 54 of 2000 declares that on 16<sup>th</sup> day of July 2003, the Committee met and approved the attached Rules known as the National Council of Chiefs Election Petitions Rules which have been made under section 66 of that Act.

Made at Port Vila this 18<sup>th</sup> day of July 2003

  
Vincent Lunabek  
Chief Justice

  
Sampson Endehipa  
Attorney General

  
Nicholas Mirou  
Public Prosecutor

  
Dudley Aru  
Legal Practitioner

**NATIONAL COUNCIL OF CHIEFS ELECTION PETITIONS  
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# REPUBLIC OF VANUATU

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

### NATIONAL COUNCIL OF CHIEFS ELECTION PETITIONS RULES

Order No. 27 of 2003

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 and Commencement

- 1.1 (1) These Rules are the National Council of Chiefs Election Petitions Rules.
- (2) These Rules come into operation on 1 August 2003.

##### 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  
election held on \_\_\_\_\_  
details of section 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:

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

OR name and address of Respondent's lawyer  
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



**REPUBLIC OF VANUATU**

**JUDICIAL SERVICES AND COURTS ACT NO. 54 OF 2000<sup>0</sup>**

**Declaration of Approval of Probate and Administration Rules**

**Order No. 28<sup>3</sup> of 2000~~0~~**

The Judicial Committee as referred to in section 66 of the Judicial Services and Courts Act No. 54 of 2000 declares that on 16<sup>th</sup> day of July 2003, the Committee met and approved the attached Rules known as the Probate and Administration Rules which have been made under section 66 of that Act.

Made at Port Vila this 18<sup>th</sup> day of July 2003

**Vincent Lunabek  
Chief Justice**

**Sampson Endehipa  
Attorney General**

**Nicholas Mirou  
Public Prosecutor**

**Dudley Aru  
Legal Practitioner**

# PROBATE AND ADMINISTRATION RULES

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# REPUBLIC OF VANUATU

Succession, Probate and Administration Regulation 1972, Queen's Regulation No.7  
of 1972

## PROBATE AND ADMINISTRATION RULES

Order No. 28 of 2003

To set out the procedure in probate and administration matters.

The Rules Committee makes the following Rules under section 66 of the Judicial Services and Courts Act No 54 of 2000 and the Queen's Regulation No. 7 of 1972.

### PART 1 – PRELIMINARY

#### Title and Commencement

- 1.1 (1) These Rules are the Probate and Administration Rules.
- (2) These Rules come into operation on 1 August 2003.

#### Purpose

- 1.2 The purpose of these Rules is to set out the procedures to be used in probate and administration proceedings brought in the Supreme Court.

#### Application of the Civil Procedure Rules

- 1.3 (1) If these Rules do not make provision for a matter relating to a proceeding, the Civil Procedure Rules apply to that matter.
- (2) In particular, the Civil Procedure Rules apply to contested proceedings, as set out in Rule 3.2.

#### 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:

“applicant” means the person who makes an application.

“contested proceedings” means proceedings where an application for probate or administration is opposed.

“Court” means the Supreme Court.

“foreign probate or administration” means probate or administration granted in a Commonwealth country or territory.

“Queen’s Regulation” means the Succession, Probate and Administration Regulation 1972, Queen’s Regulation No. 7 of 1972.

“will” includes a codicil to a will.

[NOTES:1. The Attorney-General may certify that a country or territory is a Commonwealth country or territory. See Queen’s Regulation 2.3.]  
2. The making of a will is dealt with in the Wills Act (Cap. 55.).  
3. The following terms are defined in the Queen’s Regulations and have the meaning given to them by those Regulations: “administration”, “estate”, “intestate”, “personal representative”, “probate”.]

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

## Forms

- 1.6 (1) 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.
- (2) If these Rules do not require a particular Form to be used, the equivalent form in the Civil Procedure Rules is to be used, but with the heading of the Forms in these Rules.

## **PART 2 – APPLYING FOR PROBATE AND ADMINISTRATION**

### **Application of Part 2**

**2.1** This Part deals with:

- (a) applying for grants of probate and letters of administration of estates of deceased persons; and
- (b) the grant, if there is no opposition to the application.

- [NOTES: 1. The executors named in the will are entitled to probate. The Queen's Regulation sets out who is entitled to administration. See Regulation 7.  
2. Part 3 of these Rules deals with the procedure where an application is opposed.]

### **Application for probate**

**2.2** (1) An application for the grant of probate of the will of a deceased person must:

- (a) set out:
  - (i) the name, last address and occupation of the deceased; and
  - (ii) the date of death; and
  - (iii) the name and address of the applicant; and
  - (iv) an address for service of documents; and
- (b) if not all executors are applying, state why the applicant is applying for the grant; and
- (c) have with it the original will; and
- (d) have with it a copy of the death certificate or other proof of death; and
- (e) have with it a sworn statement by the applicant in support of the application.

(2) The application must be in Form 1.

(3) The sworn statement must be in Form 2.

(4) If there is more than one executor, each executor applying for probate must make a sworn statement in Form 2.

(5) If not all executors are applying for probate, the applicant must:

- (a) obtain a sworn statement from any executor not applying, setting out why he or she is not applying; or
- (b) if this is not practicable, include in his or her sworn statement the reasons why it has not been obtained.

- [NOTE: 1. For requirements about a valid will, see the Wills Act (Cap.55.).]  
2. The sworn statement should be in accordance with the Civil Procedure Rules. See Rule 1.3.]

### **Application for administration**

- 2.3** (1) An application for the grant of administration of the estate of a deceased person must:
- (a) set out:
    - (i) the name, last address and occupation of the deceased; and
    - (ii) the date of death; and
    - (iii) the name and address of the applicant; and
    - (iv) an address for service of documents; and
  - (b) state why the applicant is applying for the grant; and
  - (c) have with it a copy of the death certificate or other proof of death; and
  - (d) have with it a sworn statement by the applicant in support of the application.
- (2) The application must be in Form 3.
- (3) The sworn statement must be in Form 4.

### **Application for administration with the will annexed**

- 2.4** (1) An application for the grant of administration of the estate of a deceased person with the will annexed must:
- (a) set out:
    - (i) the name, last address and occupation of the deceased; and
    - (ii) the date of death; and
    - (iii) the name and address of the applicant; and
    - (v) an address for service of documents; and
  - (b) have with it the original will; and
  - (c) state why the applicant is applying for the grant; and
  - (c) have with it a sworn statement by the applicant in support of the application.
- (2) The application must be in Form 5.
- (3) The sworn statement must be in Form 6.

[NOTE: For requirements about a valid will, see the Wills Act (Cap.55).]

### **Advertisement**

- 2.5** (1) After an application has been filed, the applicant must cause an advertisement to be broadcast on the radio in the area where the deceased lived and carried on business.

- (2) The applicant must also do any other things reasonably necessary to bring the application to the knowledge of anyone who:
  - (a) is entitled to any property of the deceased; or
  - (b) may oppose the grant applied for; or
  - (c) is a creditor of the deceased.
  
- (4) The advertisement must:
  - (a) state that the applicant has applied for probate or administration of the estate of the deceased person, as the case requires; and
  - (b) give the applicant's name and an address for service of documents; and
  - (c) state that anyone who is opposed to probate or administration of the estate being granted to the applicant must file a Response in an office of the Supreme Court within the time stated in the advertisement; and
  - (d) state that if no-one files a Response, the Court will grant the probate or administration to the applicant; and
  - (e) state that anyone who thinks they are entitled to property of the deceased, or that the deceased owed them money, must contact the applicant or his or her lawyer.
  
- (4) The advertisement must be broadcast on 3 working days in the same week, at least once in a morning and once in an evening.
  
- (5) The advertisement must:
  - (a) be broadcast in Bislama; and
  - (b) be in Form 7.
  
- (6) For subrule (2) the applicant may, for example:
  - (a) cause the advertisement to be published in a newspaper circulating in Vanuatu or elsewhere; and
  - (b) cause the advertisement to be broadcast or published in English or French as well as Bislama.

### **If no Response filed**

- 2.6 (1) If no response is filed and served on the applicant within 28 days after the advertisement was last broadcast, the applicant must file a sworn statement:
  - (a) stating that the advertisement was broadcast; and
  - (b) giving details of the dates and times when it was broadcast; and
  - (c) attaching a copy of the text that the applicant believes was broadcast; and
  - (d) if the applicant did any other things to comply with subrule 2.5(2), stating what was done and attaching a copy of any information published.
  
- (2) A sworn statement must be in Form 8.

### **Grant if application not opposed**

- 2.7 (1) After the sworn statement about the advertisement is filed, the Court may grant the probate or administration applied for if a person does not oppose the application by filing a response.
- (2) The grant of probate must be in Form 9, and the grant of administration must be in Form 10 or 11.

## **PART 3 – OPPOSING AN APPLICATION FOR PROBATE OR ADMINISTRATION**

### **Response**

- 3.1** (1) A person who opposes the grant of probate or administration to the applicant must file a response within 28 days after the advertisement required by Rule 2.5 was last broadcast or published.
- (2) A response must:
- (a) state that the person opposes the grant of probate or administration to the applicant; and
  - (b) state the person to whom probate or administration should be granted; and
  - (c) set out the address that is the person's address for service of documents; and
  - (d) be in Form 12.

### **Application of Civil Procedure Rules to opposition proceedings**

- 3.2** (1) After a Response has been filed, the procedure to be used is the procedure set out in the Civil Procedure Rules, unless:
- (a) these Rules provide otherwise; or
  - (b) the Court orders otherwise.
- (2) In particular, the Civil Procedure Rules apply as if:
- (a) the application is a claim; and
  - (b) the applicant is the plaintiff; and
  - (c) the respondent is the defendant.
- (3) A document filed in the Court under the Civil Procedure Rules as applied by this Rule must have the same heading as in the forms in Schedule 1 to these Rules.
- (4) The fees set out in Schedule 1 of the Civil Procedure Rules are payable.

### **Grant of probate and administration**

- 3.3** Where the Court grants probate or administration in contested proceedings:
- (a) the grant of probate must be in Form 9; and
  - (b) the grant of administration must be in Form 10 or 11.

## **Caveats**

**3.4 (1) A caveat must be in Form 13.**

- [NOTES: 1. Regulations 47 and 48 of the Queen's Regulations deal with caveats.  
2. The caveat may be applied for any time before the probate or administration is granted. See R. 47(1).  
3. R. 47(2) requires a caveat to contain the name of the person filing it and an address within Port Vila for services of notices.

**(2) An application to withdraw a caveat must be in Form 14.**

- [NOTES: 1. An application to withdraw a caveat is to be made as an application under the Civil Procedure Rules – see Rule 3.2 above.  
2. The Queen's Regulation sets out who can file a caveat, and how the Court may order it to be withdrawn. See Regulation 47 and 48.]

## PART 4 – RESEALING AND ACCOUNTS

### Resealing of probate or administration

- 4.1 An application to reseal a foreign probate or administration must:
- (a) be in Form 15; and
  - (b) have with it the original probate or administration, and a copy; and
  - (c) have with it a sworn statement in Form 16.

[NOTES: 1. The Queen's Regulation deals with resealing probate and administration granted in a Commonwealth country. See Regulation 46.  
2. A resealed probate or administration has the same effect as if it had been granted under those Regulations, and the duties and liabilities of its personal representatives are the same. See Regulation 46(2).]

### Accounts

- 4.2 (1) The Court may order that a personal representative file accounts.
- (2) The Court may make the order:
- (a) on application by a beneficiary, a creditor or any other person with an interest in the estate, or on its own initiative; and
  - (b) when it grants probate or administration, or at any other time.

[NOTES: The Queen's regulation deals with filing accounts by personal representatives. See Regulations 40 and 41.]

### Form of accounts

- 4.3 (1) Accounts filed must list:
- (a) the property of the deceased; and
  - (b) the debts; and
  - (c) the funeral expenses; and
  - (d) the income of the estate; and
  - (e) if property has been sold, the proceeds of the sale; and
  - (f) any other amounts received by the personal representative; and
  - (g) any amounts paid by the personal representative:
    - (i) in paying debts; and
    - (ii) in bequests; and
    - (iii) otherwise in administering the estate.
- (2) The accounts must be signed by the personal representative.
- (3) A person with an interest in the estate may inspect the accounts and obtain copies.

## **PART 5 – MISCELLANEOUS**

### **Court fees**

- 5.1** (1) The fees set out in Schedule 2 are payable.
- (2) Rule 4.12 of the Civil Procedure Rules applies to fees payable under these Rules.

### **Commencement**

- 5.2** These Rules come into operation on the 1<sup>st</sup> day of August 2003.

### **Transitional**

- 5.3** (1) These Rules apply to an application filed on and after the commencement date.
- (2) These Rules apply to a continuing proceeding to the exclusion of the old Rules.
- (3) In the application of these Rules to a continuing proceeding:
- (a) every step to be taken in the proceeding on and after the commencement date must be taken under these Rules; and
  - (b) the Court may give all directions necessary for the application of these Rules to the proceeding.

- (4) In this Rule:  
“commencement date” means the date these Rules come into operation.

“continuing proceeding” means a proceeding started before the commencement date, and includes:

- (a) an application that is not opposed; and
- (b) a caveat.

“old Rules” means the Succession, Probate and Administration Rules No. 1 of 1974, as in force immediately before the commencement date.

### **Repeal**

- 5.4** The Succession, Probate and Administration Rules No. 1 of 1974, made under the Queen’s Regulation, are repealed.

# SCHEDULE 1

## FORMS

### FORM 1 APPLICATION FOR PROBATE

R. 2.2

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

PROBATE CASE NO P \_\_\_\_ OF \_\_\_\_

IN THE ESTATE OF

\_\_\_\_\_  
Deceased's name

\_\_\_\_\_  
Applicant's name

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

#### APPLICATION FOR PROBATE

In the estate of \_\_\_\_\_ late of \_\_\_\_\_,  
deceased's name last address, occupation  
who died on \_\_\_\_\_  
date of death

1. I \_\_\_\_\_ apply for probate of the will dated \_\_\_\_\_  
applicant's name date of will

[and codicils dated \_\_\_\_\_] of the above deceased to be granted to  
date of codicils  
\_\_\_\_\_, the executors named in the  
names of executors

will [and codicils].

[If not all executors are applying:]

2. I am applying for probate because \_\_\_\_\_  
give reasons

3. The address for service of documents is: \_\_\_\_\_  
applicant's address or applicant's lawyer's address

\_\_\_\_\_  
Signature of applicant

\_\_\_\_\_  
date

**FORM 2 SWORN STATEMENT - PROBATE**

**R. 2.2**

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

**PROBATE CASE NO P \_\_\_\_ OF \_\_\_\_**

**IN THE ESTATE OF**

\_\_\_\_\_  
Deceased's name

**SWORN STATEMENT**

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

swear the following is true:

1. The document dated \_\_\_\_\_ signed in the margin by  
date of will  
me and by the person before whom this sworn statement is made is, I believe, the last will of the deceased.

2. I am [the/an] executor named in the will and I have reached 18 years of age.

3. I believe the will has not been revoked.

4. I do not know of any other later will.

5. The will came into my possession \_\_\_\_\_  
state how will came into person's possession

6. The witnesses to the will are \_\_\_\_\_ and  
name of first witness  
\_\_\_\_\_  
name of second witness

[If there are other executors:]

7. The other executors named in the will are \_\_\_\_\_

[If all executors are not applying for probate:]

8. \_\_\_\_\_ are not applying for probate.  
names of executors not applying

9. The deceased died on \_\_\_\_\_  
date of death

10. I believe the deceased is \_\_\_\_\_ referred to in  
name as in death certificate or other proof of death  
the death certificate or other proof of death attached and marked "A".

- 11. The deceased did not marry after the will was made.
- 12. The deceased had reached 18 years of age when the will was made.
- 13. The deceased left property in Vanuatu.

OR

13. I believe the deceased was at the time of death domiciled in Vanuatu. I believe this because \_\_\_\_\_  
reasons for believing this

14. An inventory of all property of the deceased that I now know about is attached and marked "B". If I find out about any other property of the deceased I will tell the court about it.

15. The estate has an estimated gross value of VT \_\_\_\_\_  
value of estate

16. If the Court grants probate to me I will administer the estate according to law and I will give a true account of my administration to the Court if it asks me to.

17. I realise that if I do not administer the estate according to law I may be liable to a fine or imprisonment.

**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

\_\_\_\_\_

**ATTACHMENT B**

Inventory of property of the estate of \_\_\_\_\_  
of \_\_\_\_\_ deceased.  
name of deceased  
last address and occupation

**DESCRIPTION**

**ESTIMATED OR KNOWN VALUE**

Description sufficient to identify property

VT  
amount

**TOTAL VT**

\_\_\_\_\_

**FORM 3 APPLICATION FOR ADMINISTRATION**

**R. 2.3**

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

**PROBATE CASE NO P \_\_\_\_ OF \_\_\_\_**

**IN THE ESTATE OF**

\_\_\_\_\_  
Deceased's name

\_\_\_\_\_  
Applicant's name

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

**APPLICATION FOR ADMINISTRATION**

In the estate of \_\_\_\_\_ late of \_\_\_\_\_,  
deceased's name last address, occupation

who died on \_\_\_\_\_  
date of death

1. I \_\_\_\_\_ apply for administration of the estate of  
applicant's name

the above deceased to be granted to me.

2. I am applying for administration because \_\_\_\_\_  
give reasons

3. The address for service of documents is: \_\_\_\_\_  
applicant's address or applicant's lawyer's address

\_\_\_\_\_  
Signature of applicant

\_\_\_\_\_  
date

**FORM 4 SWORN STATEMENT - ADMINISTRATION**

**R. 2.2**

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

**PROBATE CASE NO P\_\_\_\_ OF \_\_\_\_**

**IN THE ESTATE OF**

\_\_\_\_\_  
Deceased's name

**SWORN STATEMENT - ADMINISTRATION**

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

swear the following is true:

1. The deceased died on \_\_\_\_\_ .  
date of death
2. I am applying for administration because \_\_\_\_\_  
give reasons
3. I know of no valid will left by the deceased.
4. I believe the deceased is \_\_\_\_\_ referred to in  
name as in death certificate or other proof of death

the death certificate or other proof of death attached and marked "A".

5. The persons entitled to the deceased's property are:  
\_\_\_\_\_  
give details of persons entitled and relationship, attaching birth etc certificates as necessary

6. The deceased left property in Vanuatu.

OR

6. I believe the deceased was at the time of death domiciled in Vanuatu. I believe this because \_\_\_\_\_  
reasons for believing this
7. An inventory of all property of the deceased that I now know about is attached and marked "B". If I find out about any other property of the deceased I will tell the court about it.
8. The estate has an estimated gross value of VT \_\_\_\_\_ .  
value of estate



**FORM 5 APPLICATION FOR ADMINISTRATION WITH THE WILL ANNEXED**

**R. 2.4**

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

**PROBATE CASE NO P\_\_\_\_\_ OF \_\_\_\_\_**

**IN THE ESTATE OF**

\_\_\_\_\_  
Deceased's name

\_\_\_\_\_  
Applicant's name

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

**APPLICATION FOR ADMINISTRATION WITH THE WILL ANNEXED**

In the estate of \_\_\_\_\_ late of \_\_\_\_\_,  
deceased's name last address, occupation  
who died on \_\_\_\_\_  
date of death

I \_\_\_\_\_ apply for probate of the will dated \_\_\_\_\_  
applicant's name date of will

[and codicils dated \_\_\_\_\_] of the above deceased to be granted to  
date of codicils

\_\_\_\_\_  
names of executors

the executors named in the will [and codicils].

The address for service of documents is: \_\_\_\_\_  
applicant's address or applicant's lawyer's address

\_\_\_\_\_  
Signature of applicant

\_\_\_\_\_  
date

**FORM 6 SWORN STATEMENT – ADMINISTRATION WITH THE WILL ANNEXED**

**R.2.4**

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

**PROBATE CASE NO P\_\_\_\_ OF \_\_\_\_**

**IN THE ESTATE OF**

\_\_\_\_\_  
Deceased's name

**SWORN STATEMENT – ADMINISTRATION WITH THE WILL ANNEXED**

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

swear the following is true:

1. The document dated \_\_\_\_\_ signed in the margin by  
date of will  
me and by the person before whom this sworn statement is made is, I believe, the last will of the deceased.

2. I have reached 18 years of age.

[If applicant is a beneficiary]

3. I am a beneficiary named in the will.

OR

[If applicant is a creditor]

3. I am a creditor of the deceased because \_\_\_\_\_  
give reasons

OR

[If applicant is applying for another reason]

3. I am applying for administration because \_\_\_\_\_  
give reasons

4. I believe the will has not been revoked.

5. I do not know of any other later will.

6. The will came into my possession \_\_\_\_\_  
state how will came into person's possession

7. The witnesses to the will are \_\_\_\_\_ and  
name of first witness  
\_\_\_\_\_  
name of second witness

8. The executors named in the will are \_\_\_\_\_

9. The executors are not applying for probate because \_\_\_\_\_.

10. The deceased died on \_\_\_\_\_  
date of death

11. I believe the deceased is \_\_\_\_\_ referred to in  
name as in death certificate or other proof of death

the death certificate or other proof of death attached and marked "A".

12. The deceased did not marry after the will was made.

13. The deceased had reached 18 years of age when the will was made.

14. The deceased left property with Vanuatu.

OR

14. I believe the deceased was at the time of death domiciled in Vanuatu. I believe this because \_\_\_\_\_  
reasons for believing this

15. An inventory of all property of the deceased that I now know about is attached and marked "B". If I find out about any other property of the deceased I will tell the court about it.

16. The estate has an estimated gross value of VT \_\_\_\_\_  
value of estate

17. If the Court grants administration to me I will administer the estate according to law and I will give a true account of my administration to the Court if it asks me to.

OR

[If administration being granted for a limited purpose]

17. If the court grants administration to me for \_\_\_\_\_,  
purpose

I will administer the estate for that purpose according to law and I will give a true account of my administration to the court if it asks me to.

18. I realise that if I do not administer the estate [for that purpose] according to law I may be liable to a fine or imprisonment.

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  
\_\_\_\_\_

**ATTACHMENT B**

Inventory of property of the estate of \_\_\_\_\_  
name of deceased  
of \_\_\_\_\_ deceased.  
last address and occupation

DESCRIPTION

ESTIMATED OR KNOWN VALUE

Description sufficient to identify property

VT  
amount

TOTAL VT  
\_\_\_\_\_



**FORM 8 SWORN STATEMENT – ADVERTISEMENT IF NO RESPONSE TO FILED**

**R. 2.6**

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

**PROBATE CASE NO P \_\_\_\_ OF \_\_\_\_**

**IN THE ESTATE OF**

\_\_\_\_\_  
Deceased's name

**SWORN STATEMENT**

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

swear the following is true:

1. I am applying for \_\_\_\_\_ of the estate of  
probate OR administration

\_\_\_\_\_ of \_\_\_\_\_  
name of deceased last address, occupation

2. I caused an advertisement about this to be broadcast on the radio on  
\_\_\_\_\_ at \_\_\_\_\_, and on  
date of first broadcast time

\_\_\_\_\_ at \_\_\_\_\_, and on  
date of second broadcast time

\_\_\_\_\_ at \_\_\_\_\_  
date of third broadcast time

3. A copy of the advertisement that I believe was broadcast is attached marked  
"A".

4. The receipt for the broadcasting of this advertisement is attached.

**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 9 – GRANT OF PROBATE**

**R.2.7, 3.3**

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

**PROBATE CASE NO P \_\_\_\_ OF \_\_\_\_**

**IN THE ESTATE OF**

\_\_\_\_\_  
Deceased's name

**PROBATE**

In the estate of \_\_\_\_\_ late of \_\_\_\_\_ ,  
deceased's name last address, occupation  
who died on \_\_\_\_\_  
date of death

**PROBATE** of the will dated \_\_\_\_\_ [and codicil dated \_\_\_\_\_ ]  
date of will date of codicil

of the above deceased is granted to \_\_\_\_\_  
names of executors

the executors named in the will [and codicil].

A true copy of the will [and codicil] is annexed.

The sworn value of the estate is under VT \_\_\_\_\_  
total value of estate

Date \_\_\_\_\_

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

Seal of Court

**FORM10 – GRANT OF ADMINISTRATION**

**R.2.7, 3.3**

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

**PROBATE CASE NO P \_\_\_\_ OF \_\_\_\_**

**IN THE ESTATE OF**

\_\_\_\_\_  
Deceased's name

**ADMINISTRATION**

In the estate of \_\_\_\_\_ late of \_\_\_\_\_ ,  
deceased's name last address, occupation  
who died on \_\_\_\_\_  
date of death

**ADMINISTRATION** of the estate of the above deceased is granted to

\_\_\_\_\_  
names

The sworn value of the estate is under VT \_\_\_\_\_  
total value of estate

Date \_\_\_\_\_

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

Seal of Court

**FORM 11 – GRANT OF ADMINISTRATION WITH THE WILL  
ANNEXED**

**R.2.7, 3.3**

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

**PROBATE CASE NO P \_\_\_\_ OF \_\_\_\_**

**IN THE ESTATE OF**

\_\_\_\_\_  
Deceased's name

**ADMINISTRATION WITH THE WILL ANNEXED**

In the estate of \_\_\_\_\_ late of \_\_\_\_\_ ,  
deceased's name last address, occupation  
who died on \_\_\_\_\_  
date of death

**ADMINISTRATION** with the will dated \_\_\_\_\_  
date of will

[and codicil dated \_\_\_\_\_ ] annexed of the estate of the above deceased  
date of codicil

is granted to \_\_\_\_\_  
name

A true copy of the will [and codicil] is annexed.

The sworn value of the estate is under VT \_\_\_\_\_  
total value of estate

Date \_\_\_\_\_

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

Seal of Court

**FORM 12 RESPONSE**

**R.3.1**

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

**PROBATE CASE NO P \_\_\_\_ OF \_\_\_\_**

**IN THE ESTATE OF**

\_\_\_\_\_  
Deceased's name

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

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

**RESPONSE**

In the estate of \_\_\_\_\_ late of \_\_\_\_\_,  
deceased's name last address, occupation  
who died on \_\_\_\_\_  
date of death

1. \_\_\_\_\_ has applied for  
applicant's name

probate OR administration OR administration with the will annexed  
in the above estate.

2. I \_\_\_\_\_ of \_\_\_\_\_  
respondent's name address

oppose the grant being made to \_\_\_\_\_  
name of person being opposed

because \_\_\_\_\_  
reasons

3. Probate OR administration OR administration with the will annexed should be  
granted to \_\_\_\_\_  
name of person to whom grant should be made

4. The address for service of documents is: \_\_\_\_\_  
respondent's address or respondent's lawyer's address

\_\_\_\_\_  
signature of applicant

\_\_\_\_\_  
date

**FORM 13 CAVEAT**

**R.3.4**

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

**PROBATE CASE NO P \_\_\_\_ OF \_\_\_\_**

**IN THE ESTATE OF**

\_\_\_\_\_  
Deceased's name

\_\_\_\_\_  
Caveator's name

\_\_\_\_\_  
Caveator's lawyer's name or  
Caveator's address in Vila

**CAVEAT**

In the estate of \_\_\_\_\_ late of \_\_\_\_\_,  
deceased's name last address, occupation  
who died on \_\_\_\_\_.  
date of death

1. I \_\_\_\_\_ of \_\_\_\_\_  
caveator's name address

claim an interest as \_\_\_\_\_  
state relationship with deceased or nature of interest

in the estate of the deceased.

2. I demand that nothing be done in connection with the estate without notice to me.

3. My address for service is \_\_\_\_\_  
address in Vila for service of documents

\_\_\_\_\_  
signature of caveator date

\_\_\_\_\_

**FORM 14 APPLICATION TO WITHDRAW CAVEAT**

**R.3.4**

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

**PROBATE CASE NO P \_\_\_\_ OF \_\_\_\_**

**IN THE ESTATE OF**

\_\_\_\_\_  
Deceased's name

\_\_\_\_\_  
Caveator's name

\_\_\_\_\_  
Caveator's lawyer's name or  
Caveator's address in Vila

**APPLICATION TO WITHDRAW CAVEAT**

In the estate of \_\_\_\_\_ late of \_\_\_\_\_  
deceased's name last address, occupation  
who died on \_\_\_\_\_  
date of death

I \_\_\_\_\_ of \_\_\_\_\_  
caveator's name address

apply to withdraw the caveat I filed on \_\_\_\_\_  
date caveat filed

\_\_\_\_\_  
signature of caveator date

\_\_\_\_\_

**FORM 15 APPLICATION FOR RESEAL OF FOREIGN GRANT**

**R. 4.1**

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

**PROBATE CASE NO P\_\_\_\_\_ OF \_\_\_\_\_**

**IN THE ESTATE OF**

\_\_\_\_\_  
Deceased's name

\_\_\_\_\_  
Applicant's name

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

**APPLICATION FOR RESEAL OF FOREIGN GRANT**

In the estate of \_\_\_\_\_ late of \_\_\_\_\_ ,  
deceased's name last address, occupation  
who died on \_\_\_\_\_  
date of death

1. I \_\_\_\_\_ apply for  
applicant's name

probate of the will

OR

administration of the estate

of the above deceased granted by the \_\_\_\_\_  
full name of court and country

to \_\_\_\_\_ , to be sealed with the seal of this Court.  
names

2. The address for service of documents is: \_\_\_\_\_  
applicant's address or applicant's lawyer's address

\_\_\_\_\_  
Signature of applicant or applicant's lawyer

\_\_\_\_\_  
date

\_\_\_\_\_

**FORM 16 SWORN STATEMENT – RESEAL OF FOREIGN GRANT**

**R. 4.1**

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

**PROBATE CASE NO P\_\_\_\_ OF \_\_\_\_**

**IN THE ESTATE OF**

\_\_\_\_\_  
Deceased's name

**SWORN STATEMENT**

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

swear the following is true:

1. Probate of the will OR administration of the estate of the deceased was granted by \_\_\_\_\_  
full name of court and country

to me on \_\_\_\_\_  
date

OR

to \_\_\_\_\_ on \_\_\_\_\_  
name date

The grant has not been revoked. A copy of the grant is attached marked "A".

2. I am [the/a] person to whom probate OR administration was granted.

OR

2. I am authorised under a power of attorney by the executor OR administrator of the deceased to make this application. I have not received any notice of revocation of the power of attorney. A copy of the power of attorney is attached marked "B".

3. The deceased left property in Vanuatu.

4. An inventory of all property of the estate I now know about is attached and marked "C". If I find out about any other property of the deceased I will tell the court about it.

5. The estate has an estimated gross value of VT \_\_\_\_\_  
value of estate

6. If the Court reseals the probate OR administration I will administer the estate according to law and I will give a true account of my administration to the Court if it asks me to.

7. I realise that if I do not administer the estate according to law I may be liable to a fine or imprisonment.

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

\_\_\_\_\_

### ATTACHMENT C

Inventory of property of the estate of \_\_\_\_\_  
name of deceased  
of \_\_\_\_\_ deceased.  
last address and occupation

DESCRIPTION

Description sufficient to identify property

ESTIMATED OR KNOWN VALUE

VT  
amount

TOTAL VT

\_\_\_\_\_

## SCHEDULE 2

### FEES

	VT
Application for probate or administration where the value of the estate is VT 500,000 and above	VT50,000
Response	VT10,000
Resealing probate or administration	VT10,000

[NOTE: The fees payable under the Civil Procedure Rules are payable in contested proceedings; See R.3.2 of these Rules.]

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# REPUBLIC OF VANUATU

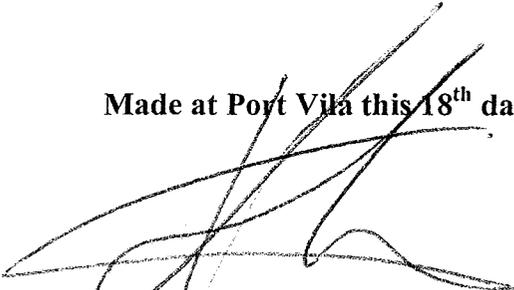
## REPRESENTATION OF THE PEOPLES ACT [CAP 146]

### Election Petitions Rules

#### Order No. 29 of 2003

The Chief Justice in exercise of his powers under subsection 59(1) of the Representation of the Peoples Act [CAP 146] makes the attached Rules known as the Election Petitions Rules.

Made at Port Vila this 18<sup>th</sup> day of July 2003



Vincent Lunabek  
Chief Justice

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# REPUBLIC OF VANUATU

## REPRESENTATION OF THE PEOPLE ACT (Cap 146)

### ELECTION PETITIONS RULES

Order No. 29 of 2003

To set out the procedure for Petitions about the election of members to Parliament, and about vacation of seats and becoming disqualified to hold seats.

The Chief Justice makes the following Rules under section 59(1) of the Representation of the People Act (Cap 146).

### PART 1 – PRELIMINARY

#### Title and Commencement

- 1.1 (1) These Rules are the Election Petitions Rules.
- (2) These Rules come into operation on 1 August 2003.

#### 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 section 54 of the Representation of the People Act (Cap.146.).

- [NOTES: 1. Article 54 of the Constitution gives the Supreme Court jurisdiction to hear and determine any question whether a person has been validly elected to Parliament, has vacated his seat or has become disqualified from holding it.
2. The Representation of the People Act (Cap. 146.) provides that the validity of an election to Parliament may be questioned by election petition brought under that Act, and that election petitions are to be heard in the Supreme Court.]

#### 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:

“Court” means the Supreme Court.

“electoral dispute proceeding” means a proceeding under Article 54 of the Constitution about the validity of an election to Parliament.

“member” means a member of the Parliament of Vanuatu.

“petition” means a petition under Part XVI of the Representation of the People Act (Cap 146.)

“Representation Act” means the Representation of the People Act (Cap. 146.)

“seat” means a seat in the Parliament.

- (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 PARLIAMENT**

## **Application of Part 2**

**2.1** This Part applies to proceedings brought under section 54 of the Representation of the People Act (Cap.146.) about the validity of an election to Parliament.

[NOTE: Sections 54 to 65 of the Representation Act deal with election petition proceedings. These Rules are in addition to those sections.]

## **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.
- (3) The Registrar must not accept the petition unless a deposit of VT20,000 is paid when it is filed.

[NOTES: 1. A petition may be brought by a person registered to vote at the election or a person who claims to have been a candidate – see s.55 of the Representation Act.  
2. The petitioner must lodge a deposit of VT20,000 as security for costs – see s. 56.  
3. The petition must be filed within 21 days after the gazettal of the election results. A petition alleging payment of money must be brought within 21 days after the alleged payment. These times cannot be extended. See s.57.  
4. The petition must be in writing and specify the grounds on which the election is disputed. See s.58 and s.61.]

## **What a petition must contain**

- 2.3** (1) A petition must set out:
- (a) whether the person was registered to vote, or claims to have been a candidate, at the election; and
  - (b) the grounds on which the election is disputed; and
  - (c) the facts on which the petition is based; and
  - (d) an application for an order about service of the petition.
- (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.

[NOTES: 1. A petition may only be brought by a person who was registered to vote, or claims to have been a candidate, at the election. See s.55 of the Representation Act.  
2. The petition must set out the grounds on which the election is disputed. See s.58 of the Representation Act.]

## **Parties**

- 2.4** (1) The parties to proceedings under this Part are:
- (a) the petitioner; and
  - (b) any person whose election is affected by the petition; and
  - (c) the Principal Electoral Officer, if the Court orders he or she is to be a party; 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**

- 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 first hearing date must be as soon as practicable and in any case within 21 days after the filing date.

[NOTE: The petitioner must also lodge a deposit of VT20,000. See s.56 of the Representation Act and Rule 2.2.]

## **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; 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.

[NOTE: S.58(2) of the Representation Act deals with who is to be served and to be allowed to be heard.]

## **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.

[NOTE: S.58(2) of the Representation Act deals with who is to be served and to be allowed to be heard.]

## **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 (1) 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 and their witnesses; 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) If the petitioner is challenging the election on the ground that the petitioner had a majority of lawful votes, the Court at the first Conference may also order:
- (a) an examination of the counted and void votes; and
  - (b) an examination of the counting of votes.

- [NOTE: 1. S.58(2) of the Representation Act deals with who is to be served and to be allowed to be heard.]
2. S.62 of the Representation Act deals with the examination of votes cast.]

## **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.

[NOTE: The summons must be in the form, set out in Schedule 6 to the Representation Act. See s.59(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-examine 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.

[NOTE: Section 59 of the Representation Act deals with the conduct of proceedings.]

## **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.

[NOTES: 1. The Court may declare the election of a candidate void, declare another candidate elected, or dismiss the petition and declare the original candidate elected. See s. 60 of the Representation Act.

2. S.61 of the Representation Act sets out the grounds for declaring the election of a candidate void.]

## **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 for the costs.
- (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.

[NOTE: If costs are ordered against the petitioner, the Court may deduct the costs from the petitioner's deposit. See s.56(3) of the Representation of the People Act.]

## **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 Parliament has vacated his or her seat or has become disqualified to hold his or her seat.

[NOTES: 1. The Members of Parliament (Vacation of Seats) Act (Cap.174.) deals with the circumstances when a member is disqualified for membership of the Parliament and when a member's seat is vacated. See s. 1, 2 and 3.]

## **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 or her 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 Speaker of the Parliament, 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 Speaker, or the Attorney-General on behalf of the Speaker.
- (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.

[NOTE: If costs are ordered against the petitioner, the Court may deduct the costs from the petitioner's deposit. See s.56(3) of the Representation of the People Act.]

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# SCHEDULE

## FORMS

### FORM 1 – PETITION

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

R.2.2, 3.2  
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

### ELECTION PETITION

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

was registered to vote at the 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:

---

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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:

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

**FORM 4 - SUMMONS**

**R.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

\_\_\_\_\_

