

**ELECTION PETITION RULES****ARRANGEMENT OF RULES****RULE**

1. Citation.
2. Interpretation.
3. Presentation and contents of petition.
4. Format of petition.
5. Particulars may be ordered.
6. Objections to votes to be specified.
7. Cross petition.
8. Petitioner's address to be furnished.
9. Petitioner to give security for costs, etc.
10. Publication of petition.
11. Time for giving notice.
12. Service or substituted service of petition.
13. Evasion of service.
14. Furnishing security by deposit of money.
15. Objections to recognisance within five days.
16. Grounds of objection to recognisance.
17. Allowance and costs of objection.
18. Affidavit of sufficiency of sureties.
19. Enforcement of order for costs.
20. Election list.
21. Time and place of trial of petition.
22. Postponement of trial and amendment of petition.
23. Registrar to attend trial.
24. Expenses of witnesses.
25. Warrant of commitment for contempt.
26. Disposal of interlocutory matters.
27. Application to withdraw petition.
28. Abatement of petition by death and substitution of petitioner.
29. Respondent's Notice of non-opposition.
30. Taxation and recovery of costs.
31. Agents of petitioner or respondent.
32. Informality proceedings not fatal.
33. Delivery to Registrar of election documents.

## RULE

34. Claims to money deposited.
  35. Requirements as to notice and proof.
  36. Filing and production of orders.
  37. Countermanding notice of trial.
  38. Use of forms.
  39. Practice and procedure.
- 

**ELECTION PETITION RULES**

[Deemed to be made under subsections (7) and (9) of section 100.]

**1. Citation**

These Rules may be cited as the Election Petition Rules.

**2. Interpretation**

In these Rules, unless the context otherwise requires—

- “Act” means the Election Act;
- “Court” means the High Court;
- “election list” means the list of petitions against return or election of candidate to be kept by the Registrar;
- “Registrar” means the Registrar of the Supreme Court or the High Court, as the case may be; and
- “Rules of the Court” means the rules governing the practice and procedure in the Supreme Court or the High Court, as the case may be;
- “Supreme Court” means the Supreme Court of The Gambia established under section 125 of the Constitution.

**3. Presentation and contents of petition**

- (1) The presentation of an election petition shall be made by leaving it at the office of the Registrar.
- (2) The election petition shall state—
  - (a) the right of the petitioner to petition under the Act;
  - (b) the holding and result of the election; and
  - (c) briefly the facts and grounds relied on to sustain the prayer.

**4. Format of petition**

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

(2) The petition shall conclude with a prayer, as for instance that some specified person should be declared duly returned or elected or that the votes shall be re-counted or that the election should be declared void or that a return may be enforced (as the case may be) and shall be signed by all the petitioners.

(3) The form of the petition shall be in Form 6 with such alterations, additions or omissions as the facts and grounds on which the petitioner relies may require.

[Form 6.]

**5. Particulars may be ordered**

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

**6. Objections to votes to be specified**

(1) When a petitioner claims the seat for an unsuccessful candidate, alleging that he or she had a majority of lawful votes, the party complaining of or defending the election or return shall, six days before the day appointed for trial, deliver to the Registrar and also at the address, if any, given by the petitioners and respondent, as the case may be, a list of the votes intended to be objected to and of the heads of objection to each such vote and the Registrar shall allow inspection and office copies of the lists to all parties concerned.

(2) Evidence shall not be given against the validity of a vote or on any head of objection not specified in the list except by leave of the Supreme Court or Court, on such terms as to amendment of the list, postponement of the inquiry and payment of costs as may be ordered.

**7. Cross petition**

(1) When the respondent in a petition, complaining of an undue return and claiming the seat for some person, intends to give evidence to prove that the election of the person was undue, the respondent shall, six days before the day appointed for trial, deliver to the Registrar and also at the address, if any, given by

the petitioner, a list of the objections to the election on which he or she intends to rely and the Registrar shall allow inspection and office copies of the lists to all parties concerned.

(2) Evidence shall not be given by a respondent of an objection to the election not specified in the list except by leave of the Supreme Court or Court, on such terms as to amendments of the list, postponement of the inquiry and payment of costs as may be ordered.

#### **8. Petitioner's address to be furnished**

(1) With the petition, petitioners shall leave at the office of the Registrar, a writing, signed by them on their behalf, giving an address within fifteen kilometres from the Supreme Court or Court at which notices addressed to them may be left.

(2) If no writing is left or address given, then notices of objection to the recognisance and all other notices and proceedings may be given and served respectively by posting up the same at the Registrar's office.

(3) The Registrar shall keep a book at his or her office in which he or she shall enter all addresses given under this rule and the book shall be open to inspection by any person during office hours.

#### **9. Petitioner to give security for costs, etc.**

The security required by the Act to be given by the petitioner shall be by deposit, or otherwise as ordered by the Supreme Court or Court.

#### **10. Publication of petition**

(1) The Registrar shall on presentation of the petition and the furnishing of security, forthwith send a copy of the petition to the Commission which shall publish or cause to be published the petition in the *Gazette* and post it up in a conspicuous place outside its office and at such other place as it may direct.

(2) The cost of publication of the petition and any other matter required to be published shall be paid by the petitioner or person moving in the matter and shall form part of the general costs of the petition.

#### **11. Time for giving notice**

Notice of the presentation of a petition and of the nature of the proposed security accompanied by a copy of the petition shall be served by the petitioner on the respondent within five days after the presentation, exclusively of the day of presentation.

#### **12. Service or substituted service of petition**

(1) Every petition shall be served on the respondent.

(2) The service of a petition shall be personal on the respondent unless the Supreme Court or Court, on an application made to it not later than eight days after the petition is presented on affidavit showing what has been done, is satisfied that all reasonable effort has been made to effect personal service and cause the matter to come to the knowledge of the respondent in which case the Supreme Court or Court may—

- (a) order that what has been done shall be considered sufficient service, subject to such conditions as it may think reasonable; or
- (b) make an order for substituted service in the manner authorised by the Rules of the respective courts.

### 13. Evasion of service

In the case of evasion of service, the posting up in the office of the Registrar of a notice of the petition having been presented, stating the petitioner, the prayer and the nature of the proposed security, shall be deemed equivalent to personal service, if so ordered by the Supreme Court or Court.

### 14. Furnishing security by deposit of money

(1) The deposit of money by way of security for payment of costs, charges and expenses, payable by the petitioner shall be made by payment to the Registrar, who shall pay any amount so deposited into the bank in which moneys received by him or her are usually deposited and he or she shall obtain a separate receipt for every amount so deposited.

(2) The Registrar shall file the receipt and keep a book open to inspection of all parties concerned in which shall be entered from time to time the amount and the petition to which it is applicable.

(3) The recognisance as security for costs may be acknowledged before the Supreme Court or Court or Registrar or a Commissioner of Affidavits and there may be one recognisance acknowledged by all the sureties or separate recognisances by one or more as may be convenient.

(4) The recognisance shall contain the name and usual place of abode of each surety with such sufficient description as shall enable him or her to be found or ascertained and may be in the form set out in Form 7.

[Form 7.]

(5) The recognisance or recognisances shall be left at the Registrar's office by or on behalf of the petitioner.

### 15. Objections to recognisance within five days

Objection to a recognisance may, for any of the reasons set out in rule 16, and notice of objection shall, be given within five days from the date of service of the notice of the petition and of the nature of the security, exclusive of the day of service.

**16. Grounds of objection to recognisance**

(1) An objection to the recognisance must state the ground or grounds of objection, that the sureties, or any, and which of them, are insufficient or that a surety is dead or that he or she cannot be found or that a person named in the recognisance has not duly acknowledged the same.

(2) An objection made to the security shall be heard and decided by the Registrar, subject to appeal within five days to the Supreme Court or Court on summons taken out by either party to declare the security sufficient or insufficient.

(3) Such hearing and decision may be either on affidavit or personal examination of witnesses, or both, as the Registrar or Supreme Court or Court may think fit.

(4) If by order made on such summons the security is declared sufficient, the petition shall be at issue.

**17. Allowance and costs of objection**

(1) If by order made on a summons an objection is allowed and the security is declared insufficient, the Registrar or Supreme Court or Court shall in such order state what amount it deems requisite to make the security sufficient and the further prescribed time to remove the objection by deposit shall be within five days from the date of the order, not including the day of the date, and the deposit shall be made in the manner already prescribed.

(2) The costs of hearing and deciding the objections made to the security given shall be paid as ordered by the Registrar or Supreme Court or Court and in default of such order shall form part of the general costs of the petition.

**18. Affidavit of sufficiency of sureties**

(1) The costs of hearing and deciding an objection on the ground of insufficiency of a surety or sureties shall be paid by the petitioner, and a clause to that effect shall be inserted in the order declaring its sufficiency, or insufficiency unless at the time of leaving the recognisance with the Registrar there is also left with the Registrar an affidavit of the sufficiency of the surety or sureties, sworn by each surety before the Registrar or a Commissioner of Affidavits, that he or she is seized or possessed of real or personal property, or both, above what will satisfy his or her debts, of the clear value of the sum for which he or she is bound by his or her recognisance.

(2) The affidavit may be in the form set out in Form 8.

[Form 8.]

**19. Enforcement of order for costs**

An order for payment of costs shall have the same force as an order made by the Supreme Court or Court in a civil action and may be enforced in like manner as an order of costs is enforceable under the Rules of the respective courts.

**20. Election list**

(1) The Registrar shall make out the election list in which he or she shall insert the name of the petitioners and respondent and the addresses to which notices may be sent, if any.

(2) This list may be inspected at the Registrar's office at any time during office hours and shall be put up for that purpose on the notice board of the Supreme Court or Court.

**21. Time and place of trial of petition**

(1) The time and place of the trial of each election petition shall be fixed by the Supreme Court or Court and notice of it shall be given in writing by the Registrar posting up a notice on the notice board of the Supreme Court or Court and by sending one copy by post to the address given by the petitioner and another to the address given by the respondent, if any, and another to the Commission or such other person as the Supreme Court or Court may direct ten days before the day appointed for the trial.

(2) The notice of trial may be in the form set out in Form 1.

[Form 1.]

**22. Postponement of trial and amendment of petition**

(1) The Supreme Court or Court may from time to time, by order made on the application of a party to the petition, postpone the beginning of the trial to such day as it may name and may at anytime before or during the trial, on the application of the petitioner, allow the petition to be amended on such terms and conditions as may be just.

(2) An application under subrule (1) shall be made by motion on notice to the other party to the petition.

**23. Registrar to attend trial**

The Registrar, or a deputy appointed by him or her, shall attend at the trial of the election petition and shall perform such functions and duties as may be prescribed to him or her by the Supreme Court or Court.

**24. Expenses of witnesses**

(1) The amount to be paid to any witness whose expenses shall be allowed by the Supreme Court or Court shall be ascertained and certified by the Registrar or, in the event of his or her becoming incapacitated from giving such certificate, by the Supreme Court or Court.

(2) The order of the Supreme Court or Court to compel the attendance of a person as a witness may be in the form set out in Form 2.

[Form 2.]

**25. Warrant of commitment for contempt**

(1) In the event of it being necessary to commit any person for contempt, the warrant may be in the form set out in Form 3.

[Form 3.]

(2) The warrant may be made out and directed to the Sheriff or other person having the execution of process of the superior court, as the case may be, and to all constables and officers of the peace in any place where the person adjudged guilty of contempt may be found and the warrant shall be sufficient without further particularity and shall be executed by the persons to whom it is directed or any or either of them.

**26. Disposal of interlocutory matters**

All interlocutory questions and matters, except as to the sufficiency of the security, shall be heard and disposed of before the Chief Justice.

**27. Application to withdraw petition**

(1) Notice of an application for leave to withdraw a petition shall be in writing and signed by the petitioner and it shall state the ground on which the application is intended to be supported and may be in the form set out in Form 4.

[Form 4.]

(2) The notice of application for leave to withdraw shall be left at the Registrar's office.

(3) A copy of the notice of the intention of the petitioner to apply for leave to withdraw his or her petition shall be given by the petitioner to the respondent, and to the Commission or to such other person as the Chief Justice may direct, who shall cause the same to be published by posting it up in a conspicuous place outside its or his or her office, and the notice may be in the form set out in Form 5.

[Form 5.]

(4) The time and place for hearing the application shall be fixed by the Chief Justice but shall not be less than a week after the notice of the intention to apply for leave to withdraw has been given to the Registrar as provided in this rule.

**28. Abatement of petition by death and substitution of petitioner**

Notice of abatement of a petition by death of the petitioner or surviving petitioner, may be given by any person who might have been a petitioner in respect of the election to which the petition relates in the same manner as notice of an application to withdraw a petition and the person may within fourteen days or such further time as on consideration of any special circumstances the Chief Justice shall allow, apply to be substituted for the deceased petitioner.



**29. Respondent's notice of non-opposition**

(1) A respondent may give notice that he or she does not intend to oppose the petition presented against him or her.

(2) The manner and time of the respondent's giving notice to the Supreme Court or Court that he or she does not intend to oppose the petition shall be by leaving the notice in writing at the office of the Registrar signed by the respondent six days before the day appointed for trial, exclusive of the day of leaving such notice.

(3) On the notice being left at the Registrar's office, the Registrar shall forthwith send a copy of the notice by post to the petitioner and to the Commission or to such other persons as the Chief Justice may direct, who shall cause the same to be published by posting it up in a conspicuous place outside its or his or her office and the costs of publication shall be paid by the respondent.

**30. Taxation and recovery of costs**

(1) Cost shall be taxed by the Registrar in the same manner as costs in a civil action in the Supreme Court or Court are taxed and costs, and when taxed, may be recovered by execution in the same manner as in the case of costs in an action in the Supreme Court or Court.

(2) The office fees payable for inspection, office copies, enrolment and other proceedings under these Rules shall be the same as those payable, if any, for like proceedings according to the present practice of the Supreme Court or Court.

**31. Agents of petitioner or respondent**

An agent employed for the petitioner or respondent shall forthwith leave written notice at the office of the Registrar of his or her appointment to act as such agent, and service of notices and proceedings on an agent shall be sufficient for all purposes.

**32. Informality proceedings not fatal**

Proceedings under these Rules shall not be defeated by any informal objection.

**33. Delivery to Registrar of election documents**

(1) The notice of the time and place of trial of each election petition shall be transmitted to the Commission or other person having custody of the documents relating to the election in respect of which the petition has been presented.

(2) The Commission or such other person shall if so required by the Supreme Court or Court, on or before the day fixed for the trial, deliver or cause to be delivered to the Registrar all documents in its or his or her custody relating to the election, for which the Registrar shall, if required, give a receipt.

(3) The Registrar shall keep the documents in safe custody until the trial is over and then return them to the Commission or other such person.

**34. Claims to money deposited**

(1) All claims at law or in equity to money deposited or to be deposited with the Registrar for payment of costs, charges and expenses payable by the petitioners pursuant to these Rules shall be disposed of by the Chief Justice.

(2) Money so deposited shall, if and when it is no longer needed for securing payment of the costs, charges and expenses, be returned or otherwise disposed of as justice may require, by order of the Chief Justice.

**35. Requirements as to notice and proof**

An order of the Chief Justice under rule 34 may direct payment either to the party in whose name the same is deposited or to any person entitled to receive the same.

**36. Filing and production of orders**

A copy of every order (other than an order giving further time for delivering particulars, or for costs only) shall be forthwith filed with the Registrar, and be produced at the trial by the Registrar, stamped with the official seal and the order shall be filed by the party obtaining the same.

**37. Countermanding notice of trial**

(1) If notice of the petitioner's intention to apply for leave to withdraw or of respondent's intention not to oppose or of the abatement of the petition by death, is received after notice of trial shall have been given and before the trial has commenced, the Registrar shall forthwith countermand the notice of trial.

(2) The countermand shall be given in the same manner, as near as may be, as the notice of trial.

**38. Use of forms**

The various forms set out in these Rules or forms as near thereto as possible, shall be used in all proceedings relating to election petitions.

**39. Practice and procedure**

Except where otherwise provided in these Rules, the practice and procedure to be observed on election petitions shall be the same, as near as circumstances permit, as the practice and procedure on the trial of a civil action in the Supreme Court or Court.