

LEGAL NOTICE No. 267

REPUBLIC OF TRINIDAD AND TOBAGO

THE SUPREME COURT OF JUDICATURE ACT, CHAP. 4:01

RULES OF COURT

MADE BY THE RULES COMMITTEE UNDER SECTION 78 OF THE SUPREME COURT OF JUDICATURE ACT, CHAP. 4:01 AND SECTION 144 OF THE REPRESENTATION OF THE PEOPLE ACT, CHAP. 2:01

THE ELECTION PROCEEDINGS RULES, 2001

1. These Rules may be cited as the Election Proceedings Rules, Citation 2001.

2. The Interpretation Act, Chap. 3:01, shall apply to the interpretation of these Rules as it applies to the interpretation of an Act of Parliament.

Application of
the
Interpretation
Act
Chap. 3:01

3. In these Rules, unless the context otherwise requires—

Definitions

“the Act” means the Representation of the People Act, Chap. 2:01;

“Judge” means a Judge of the High Court of Trinidad and Tobago;

“local election petition” means a petition questioning election as a member or to an office of a Municipal Council or of a County Council, or to the Tobago House of Assembly;

“parliamentary election petition” means a petition questioning an election as a member of the House of Representatives;

“Registry” means the Registry of the Supreme Court of Judicature and includes the Sub-Registries of San Fernando and Tobago;

“Speaker’s reference” means an application made pursuant to section 137 of the Act;

“vacancy petition” means a petition filed pursuant to section 130 of the Act.

4. Subject to the provisions of the Act and these Rules, the practice and procedure of the High Court, including the rules relating to the discovery and inspection of documents and the delivery of interrogatories, shall apply to a petition or reference under these Rules as if it were an ordinary civil action within its jurisdiction.

Practice and
procedure

Filing of document 5. Any document required to be filed in proceedings under these Rules shall be filed in the Registry.

Application for leave to institute proceedings 6. An application for leave to institute proceedings pursuant to section 52 of the Constitution shall be made *ex parte* and be supported—

- (a) by a statement setting out the name and description of the applicant, the relief sought and the grounds on which it is sought; and
- (b) by an affidavit verifying the facts relied on.

REPRESENTATION PETITIONS

Form of representation petition Schedule 7. (1) A representation petition shall be in the form set out as Form No. 1 in the Schedule or a form to the like effect with such variations as the circumstances may require, and state—

- (a) the qualification of the petitioner to present the petition;
- (b) when the petition relates to an election, the date and result of such election and in the case of a parliamentary election petition, the date on which the return was made to the Chief Election Officer of the member declared to have been elected;
- (c) the date from which the time for bringing the petition runs; and
- (d) the grounds on which relief is sought, setting out with sufficient particularity the facts relied on but not the evidence by which they are to be proved,

and shall conclude with a prayer setting out particulars of the relief claimed.

(2) The petition shall be presented by filing it and at the same time leaving three copies at the Registry.

(3) The Registrar shall cause the petition to be published as soon as practicable in the *Trinidad and Tobago Gazette* and in two daily newspapers.

(4) The Registrar shall send a copy of the petition—

- (a) in the case of a petition questioning the appointment of a person to the Senate, to the Attorney General and the Clerk of the Senate;
- (b) in the case of a petition questioning the election of a person to the House of Representatives, to the Clerk of the House of Representatives and the Chief Election Officer; and

- (c) in the case of a petition containing allegations of corrupt or illegal practice, to the Director of Public Prosecutions.

8. (1) Within five days after the presentation of a representation^{Service} petition the petitioner shall serve on the respondent in accordance with subrule (3), a notice of the presentation of the petition and of the nature of the security which the petitioner proposes to give, together with a copy of the petition.

(2) An attorney appointed to act for a respondent in a representation petition shall forthwith give notice of his appointment to the petitioner and lodge a copy of the notice in the Registry.

(3) Any document required to be served on a party may be served—

- (a) in any manner in which a writ of summons may be served;
- (b) in the manner provided by section 142(1) of the Act; or
- (c) by delivering it or sending it by post to any attorney who appears, from any document filed, to be acting for the party.

9. (1) Where, in the case of a local election petition, the security for^{Security for costs} costs which the petitioner proposes to give is the maximum which may be directed under the Act, an application to fix the security at that amount may be made *ex parte* by summons to a Judge but otherwise shall be made by an *inter parte* summons.

(2) A recognisance as security for costs shall be—

- (a) in the form set out as Form No. 2 in the Schedule;
- (b) acknowledged before a Commissioner of Affidavits; and
- (c) filed forthwith after being acknowledged.

(3) A recognisance shall be accompanied by an affidavit sworn by each surety, stating that after payment of all his debts he is worth a sum not less than that for which he is bound by his recognisance, and a copy of the affidavit shall forthwith be served by the petitioner on the respondent.

10. (1) Where a party intends to object to a recognisance on any^{Objection to recognisance} ground mentioned in section 111 of the Act, he shall within five days after service on him of the notice referred to in Rule 8, serve on the petitioner notice of his objection, stating the grounds thereof and issue and serve on the petitioner a summons to determine the validity of the objection.

(2) The summons shall be heard by the Registrar, subject to review by a Judge on application made by notice within five days after the Registrar's decision.

(3) If the objection is allowed, the Registrar or Judge before whom the matter is heard shall at the same time determine what sum of money will make the security sufficient and the petitioner may within five days thereafter remove the objection by deposit of that sum.

Time and
place of trial

11. (1) Within twenty-eight days after the first day on which a petition is at issue the petitioner shall apply by summons to a Judge for a time and place to be fixed for the trial of the petition and, if the petitioner fails to do so, the respondent may within a further period of twenty-eight days apply in the same manner as the petitioner might have done.

(2) If no application to fix a time and place for the trial of a petition is made in accordance with the last foregoing subrule the Registrar shall refer the matter to a Judge, who shall thereupon fix such time and place.

(3) In the case of a parliamentary election petition, not less than fourteen days, and in any other case not less than seven days, before the day fixed, the Registrar shall cause notice of the time and place of the trial to be published in the *Trinidad and Tobago Gazette* and in two daily newspapers and to be displayed in a conspicuous place in the Registry and to be sent by post or delivered to—

- (a) the petitioner;
- (b) the respondent; and
- (c) any person to whom a copy of the petition has been sent pursuant to rule 7(4).

Display of list
of petitions

12. (1) A list of all representation petitions at issue shall be kept by the Registrar, shall be conspicuously displayed in the Registry and shall be available for inspection by the public during office hours.

(2) The petitions shall be tried in the order in which they stand in the list unless a Judge in his discretion orders that—

- (a) they be heard in some other order; or
- (b) two or more petitions be heard together.

Filing of list
of votes
claimed to be
wrongly
admitted or
rejected

13. (1) Where a parliamentary or local election petition claims the seat or office for an unsuccessful candidate on the ground that he had a majority of lawful votes, every party shall, not less than seven days before the day fixed for the trial, file a list of the votes which he contends were wrongly admitted or rejected, stating in respect of each such vote the grounds for his contention, and serve a copy of the list on every other party and the Director of Public Prosecutions.

(2) Where the respondent to such a petition intends to call evidence to prove that the person for whom the seat is claimed, was not duly elected, the respondent shall, not less than seven days before the

day fixed for the trial of the petition, file a list of his objections to the election of that person on which he intends to rely and serve a copy of the list on the petitioner and the Director of Public Prosecutions.

(3) Any party to such a petition may inspect and obtain an office copy of any list filed pursuant to either of the last two foregoing subrules.

(4) At the trial of such a petition, except by leave of the court—

(a) no evidence shall be given by a party against the admission or rejections of any vote, or as to any ground of contention, which is not specified in a list filed by him pursuant to subrule (1); and

(b) no evidence shall be given by a respondent of any objection to a person's election which is not specified in a list filed by him pursuant to subrule (2).

14. (1) An application for leave to withdraw a representation petition shall be made by motion and supported by affidavit in accordance with section 121 of the Act. Application for leave to withdraw petition

(2) Not less than seven days before the day fixed for the hearing of such motion, the petitioner shall serve notice of motion together with the affidavit in support on the respondent and the Attorney General.

(3) The notice of motion shall state the grounds on which the application to withdraw is made and contain a statement to the effect that on the hearing of the application any person who might have been a petitioner in respect of the proceedings may apply to the court to be substituted as a petitioner.

(4) Where on the hearing of the application a person is substituted as a petitioner, any security required to be given by him shall be given within three days after the order of substitution.

15. (1) An application by a respondent to stay or dismiss a representation petition before the day fixed for the trial shall be made by motion. Application to stay or dismiss petition

(2) Not less than seven days before the date fixed for hearing of such motion, the respondent shall serve notice of motion, stating the grounds thereof, on the petitioner and send a copy thereof to any person to whom a copy of the petition has been sent pursuant to rule 7(4).

16. (1) Where a representation petition is abated by the death of a sole petitioner or the last surviving petitioner, the attorney acting for him in the proceedings at the date of his death, or if he had no such attorney, any respondent learning of his death, shall file notice thereof in the Registry. Abatement of petition by death

(2) The Registrar shall thereupon cause to be published in the *Trinidad and Tobago Gazette* and in two daily newspapers a notice stating that the petition has been abated by virtue of the death of the petitioner or the last surviving petitioner as the case may be, and that any person who might have been the petitioner in respect of the appointment or election may within twenty-eight days after the first publication of such notice apply to the High Court by motion to be substituted as petitioner.

(3) Notice of any such motion shall be given to the respondent at least seven days before the hearing of the motion.

Notice of
intention not
to oppose
petition

17. Any respondent who does not intend to oppose a representation petition shall not less than seven days before the day fixed for the trial serve notice to that effect on the petitioner, any other party and the Attorney General, whereupon the Registrar shall cause such notice to be published in the *Trinidad and Tobago Gazette* and two daily newspapers, and shall include in such notice a statement that any person who might have been a petitioner in the proceedings may within twenty-eight days after the first publication of such notice apply to the High Court by motion to be substituted as respondent.

Notice of
respondent's
death

18. (1) Where a respondent dies before the hearing of the petition, the attorney acting for him in the proceedings at the date of his death, or if he had no such attorney, the petitioner upon learning of his death, shall file notice thereof in the Registry,

(2) The Registrar shall thereupon cause to be published in the *Trinidad and Tobago Gazette* and two daily newspapers notice of the respondent's death and shall include in such notice a statement to the like effect as that included in a notice published pursuant to rule 17.

Requirement
for copy of
particulars

19. A party giving particulars in pursuance of an order or otherwise in proceedings under Part VI of the Act shall file a copy at the Registry within twenty-four hours after delivering the particulars to the party requiring them.

Computation
of time

20. (1) Any period of time prescribed or limited by the Act shall not be enlarged by order or otherwise, but save as aforesaid and subject to section 159 of the Act, the provisions of Order 3 of the Rules of the Supreme Court shall apply to any period of time prescribed by these Rules.

(2) Where any period of time limited by the Act for presenting a petition or filing any document expires on a day (not being a day mentioned in section 159(2) of the Act) on which the Registry is closed, the petition or document shall be deemed to be duly presented or filed if it is filed on the next day on which the Registry is open.

VACANCY PETITIONS

21. (1) Where a vacancy petition is presented by authority of a ^{Nominal} resolution of the Senate or of the House of Representatives the ^{petitioner} nominal petitioner shall be the Clerk of the Senate or the Clerk of the House of Representatives, as the case may be.

(2) The member whose seat is the subject-matter of the petition shall be the respondent.

22. A vacancy petition shall be in the form set out as Form No. 3 in ^{Form and content of} the Schedule or a form to the like effect with such variations as the ^{vacancy} circumstances may require, shall be signed by the petitioner and ^{petition} shall—

- (a) state the capacity in which the petitioner presents the petition;
- (b) where the petition is presented by authority of a resolution of the Senate or of the House of Representatives, give particulars of such resolution; and
- (c) state the grounds on which relief is sought, setting out with sufficient particularity the facts relied on, but not the evidence by which they are to be proved,

and shall conclude with a prayer setting out the particulars of the relief claimed.

23. The Registrar, on receipt of the petition, shall send a copy— ^{Despatch of copy of}

- (a) in the case of a petition questioning whether any senator ^{petition} has vacated his seat, or is required to cease to perform any of his functions as a member of the Senate, to the Clerk of the Senate if he is not the petitioner;
- (b) in the case of a petition questioning whether a member of the House of Representatives has vacated his seat, or is required to cease to perform any of his functions as a member of the House of Representatives, to the Clerk of the House of Representatives if he is not the petitioner; and
- (c) in the case of a petition questioning whether a member of a Municipal Corporation or the Tobago House of Assembly has vacated his seat or office therein, to the Chief Executive Officer of the Municipal Corporation or the Presiding Officer of the Tobago House of Assembly as the case may be.

Service 24. Within five days after delivery of a vacancy petition the petitioner shall serve notice of the presentation of the petition, the nature of the proposed security and a copy of the petition upon the respondent and the Attorney General.

Rules that apply to vacancy petitions 25. Rules 7(2) and (3), 8(2) and (3), 9, 10, 11, 14 and 15 shall apply to vacancy petitions as they do to representation petitions.

SPEAKER'S REFERENCE

Speaker's reference 26. (1) A Speaker's reference shall be in the form set out as Form No. 4 in the Schedule or a form to the like effect with such variations as the circumstances may require, and shall—

- (a) state the qualification of the person making the reference;
- (b) state the grounds on which relief is sought, setting out with sufficient particularity the facts relied on but not the evidence by which they are to be proved;
- (c) where made by the Clerk of the House of Representatives, give particulars of the resolution of the House authorising him to make the reference; and
- (d) be signed by the person making it.

(2) The person making the reference shall deliver it to the Registrar by filing it and leaving three copies of it at the Registry.

Application of rules 27. (1) Rules 9(2) and (3) shall apply to a Speaker's reference.

(2) The person making a Speaker's reference shall within twenty-one days after delivering it to the Registrar apply by summons to a Judge for a time and place to be fixed for the hearing of the reference and shall serve such summons on all other parties to the reference at least two clear days before the hearing of the summons.

(3) If the person making the reference fails to apply in accordance with subrule (2), any other party to the reference may apply in like manner for the same purpose within a further period of twenty-one days.

(4) If no application is made for the time and place of the hearing of the reference to be fixed in accordance with subrules (2) and (3), the Registrar shall refer the matter to a Judge who shall thereupon fix such time and place.

APPEALS

Petitions 28. (1) Subject to subrules (2) and (3), Order 59 of the Rules of the Supreme Court shall apply to appeals to the Court of Appeal in proceedings brought under Part VI of the Act.

(2) Notice of appeal shall be filed within fourteen days of the decision complained of and a copy of the notice of appeal shall be served by the appellant on all parties directly affected by the appeal within seven days after the date of filing.

(3) The Registrar shall, not later than seven days after the filing of the Record of Appeal by the appellant, notify the parties of the time and place of hearing of the appeal.

29. When a notice of appeal and a statement of material facts have^{Registration} been forwarded to the Registrar pursuant to section 26(3) of the Act, the Registrar shall within twenty-one days thereafter issue a notice to the appellant and the registration officer, requiring them to attend before a Judge of the Court of Appeal in Chambers at a specified time and place in order to receive such directions as the Judge may give for the conduct and hearing of the appeal.

SCHEDULE

FORM 1

ELECTION PETITION

IN THE HIGH COURT OF JUSTICE

No. of 200

IN THE MATTER OF THE REPRESENTATION OF THE PEOPLE ACT CHAP. 2:01

AND

IN THE MATTER OF A (Parliamentary *or* Local Government) ELECTION FOR THE
(Constituency of) HELD ON 200

The petition of A. B., of (address) (or A. B. of, and C. D., of as the case may be) shows:

1. That the Petitioner A. B. is a person who [voted or had a right to vote or was a candidate *or, in the case of a parliamentary election, claims to have a right to be elected and returned*] at the above election (and the Petitioner C.D. is a person *(continue as above)*].
2. That the election was held on 200 when L.M. and N.P. were candidates, and on 200 [the Returning Officer [declared (as was the fact) that the said L.M. received (...) votes and the said N.P. received (...) votes and] returned L.M. to the Clerk of the House as being duly elected, *or, in the case of a local government election, J.K. was declared to be duly elected*].
3. That [*state the facts on which the petitioner(s) rely*].
4. (*Where the petitioner alleges corrupt or illegal practices state the event on which the time for the presentation of the petition depends and its date*).

The (Petitioner therefore prays *or* Petitioners therefore pray):

- (a) [That it may be ordered that there be a (scrutiny or re-count) of the votes recorded as having been cast in the election];
- (b) That it may be determined that the said [L.M. was not duly (elected or returned) and that the election was void *or* N.P. was duly elected and ought to have been returned *or* L.M. was not duly elected and ought not to have been returned *or* L.M. was not duly elected and that the said N.P. was duly elected and ought to have been returned, or in the alternative that the election was void *or as the case may be*];
- (c) That the Petitioner(s) may have such further or other relief as may be just.

Dated this day of 200

[Signature(s)]
[Petitioner(s)]

This Petition was presented by E.F. & Co, whose address for service is (*address*), Attorneys-at-law for the said Petitioner(s).

To: [The respondent (s)]
[Address (es)].

FORM 2

RECOGNISANCE

[Heading as in Form 1, 3, or 4 s the case may be]

BE IT REMEMBERED that on the day of200 before me X.Y a Commissioner of Affidavits came N.O. of (address and description) [and P.Q. of (address and description) and (acknowledged himself or severally acknowledged themselves) to owe to the State of Trinidad and Tobago the sum of (\$ or the following sums, that is to say, the said N.O. the sum of \$ and the said PQ the sum of \$) to be levied on (his or their respective) goods and chattels, land and tenements, to the use of the said State of Trinidad and Tobago.

The condition of this recognisance is that if the (Petitioner *or* Petitioners) A.B. (and C.D. or any of them) shall well and truly pay all costs, charges and expenses in respect of the Election Petition dated the day of 200 and signed by (him *or* them) relating to the (Parliamentary) Elections for the (Constituency) of held on the day of 200 which shall become payable by the said (petitioner or petitioners or any of them) under the Representation of the People Act Ch. 2:01 to any person or persons, then this recognisance shall be void, otherwise it shall stand in full force.

TAKEN and acknowledged by

The above-named N.O. (and P.Q.) at (*address*)

on thisday of 200 before me,

(Signature)

(Signatures of sureties)

Commissioner of Affidavits.

FORM 3

VACANCY PETITION

IN THE HIGH COURT OF JUSTICE

No of 200

IN THE MATTER OF THE REPRESENTATION OF THE PEOPLE ACT, CHAP. 2:01

AND

IN THE MATTER OF A VACANCY PETITION

pursuant to sec. 43(2) *or* sec. 49(2) *or* sec. 43(3) *or* sec. 49(3) of the Constitution and sec. 130(1) of the Representation of the People Act.The petition of A.B., of (*address*) [*or* C.D., the Clerk of the Senate *or* the House of Representatives (*as the case may be*)] shows:

1. That the Petitioner A.B. (is a person who is entitled to vote as an elector at a Parliamentary election *or* would be entitled to vote at an election held for the electoral district for which the person to whom the petition relates was elected, *as the case may be*) *or* C.D. [is the Clerk of the Senate *or* the House of Representatives *as the case may be* and (give particulars of the resolution of the Senate *or* the House of Representatives relied upon, i.e. the date and substance of it)].

2. That E.F. (a Senator *or* member of the House of Representatives *or* a member of a Municipal Corporation *or* a County Council *or* the Tobago House of Assembly *as the case may be*) was (appointed *or* elected) on the day of 200

3. That (here set out the facts on which the petitioner relies to show that the person has vacated his seat *or* should cease to perform any of his functions *as the case may be*).

The Petitioner therefore prays:

(a) That it may be ordered that (the seat of the Senator *or* the Member of the House of Representatives *or* *as the case may be*) be declared vacant *or* that it be declared that (the Senator *or* the member *or* *as the case may be*) do cease to perform his functions.

(b) That the Petitioner may have such further *or* other relief *as may be just*.

Dated this day of 200

[Signature]
[Petitioner]

This Petition was presented by [E.F. & Co., whose address for service is (*address*) Attorneys-at-law for the said Petitioner *or* the Clerk of the Senate *or* the House of Representatives *as the case may be*]

To: (The respondent, the Attorney General *or* *as the case may be*).

(Address).

FORM 4

SPEAKER'S REFERENCE

IN THE HIGH COURT OF JUSTICE

No. of 200

IN THE MATTER OF THE REPRESENTATION OF THE PEOPLE ACT, CHAP. 2:01

AND

IN THE MATTER OF A SPEAKER'S REFERENCE

pursuant to sec. 50(5) of the Constitution and sec. 137(1)(a) of the Representation of the People Act

The petition of A.B., of(address) a member of the House of Representaatives (or C.D., the Clerk of the House of Representatives) shows:

1. That the Petitioner A.B. is a member of the House of Representatives, having been so elected on theday of 200..... [or if the petition is by way of resolution of the House of Representatives, C.D. is the Clerk of the House of Representatives and (give particulars of the resolution of the House relied upon i.e. the date and substance of it)]

2. That E.F. was elected as Speaker of the Hosue of Representatives on the day of200

3. That (here set out the facts on which the petitioner relies to show that the Speaker was not validly elected or was not qualified to be elected to the office of Speaker or has vacated the office of Speaker as the case may be).

The Petitioner therefore prays:

- (a) That it may be declared that (the Speaker is not validly elected to the office of Speaker and the office be declared vacant or that the Speaker is not qualified to be elected to the office of Speaker and the office be declared vacant or that the Speaker has vacated the office of Speaker).
- (b) That the petitioner may have such further or other relief as may be just.

Dated this day of 200

[Signature]
[Petitioner]

This Petition was presented by [E.F. & Co., whose address for service is (address) Attorney-at-law for the said Petitioner or the Clerk of the Senate or the House of Representatives as the case may be]

To: (The respondent, or as the case may be).

[Address].

FORMS

Form No. 1	Rule 7(1)	Representation Petition
Form No. 2	Rule 9(2)(a)	Recognisance
Form No. 3	Rule 22	Vacancy Petition
Form No. 4	Rule 26(1)	Speaker's Reference

Made by the Rules Committee this 4th day of December, 2001.

.....
 MICHAEL de LA BASTIDE
The Chief Justice

.....
 RALPH DOYLE
Master of the High Court

.....
 ROGER HAMEL-SMITH
Justice of Appeal

.....
 EVELYN ANN PETERSEN
Registrar, Supreme Court

.....
 PETER JAMADAR
Judge of the High Court

.....
 ALVIN FITZPATRICK
Attorney-at-law

.....
 KAMLA PERSAD BISSESSAR
Attorney General

.....
 INDAL HARRACKSINGH
Attorney-at-law

Laid in the House of Representatives this day of ,
 2001.

Clerk of the House

Laid in the Senate this day of , 2001.

Clerk of the Senate