

BERMUDA STATUTORY INSTRUMENT

SR&O 27/1968

**SUPREME COURT (REPRESENTATION AND VACANCY
PETITIONS) RULES 1968**

*[made under section 43 of the Legislature (Appointment, Election and
Membership Controversies) Act 1968 [title 2 item 3] and brought into
operation on 8 June 1968]*

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Interpretation and application

1 (1) In these Rules, unless the context otherwise requires—

"the 1968 Act" means the Legislature (Appointment, Election and Membership Controversies) Act 1968 [*title 2 item 3*];

"appointment", "candidate", "The Constitution", "the Court", "election", "judge", and "Registrar" have the same meanings as those ascribed thereto in Section 1 of the 1968 Act;

"petition" means either a representation petition or a vacancy petition as the context may require or except where otherwise indicated in these Rules;

"representation petition" means a petition referring to the Court any question whether any person has been validly appointed as a member of the Senate or validly elected as a member of the House of Assembly;

"vacancy petition" means a petition referring to the Court any question whether a member of the Senate or of the House of Assembly has vacated his seat therein or is required by virtue of section 31(2) of the Constitution [*title 2 item 1*] to cease to perform his functions as a member;

"returning officer" means the returning officer of the constituency to which a petition questioning the validity of the election of or the vacation of his seat by a member of the House of Assembly relates.

(2) Subject to the provisions of the 1968 Act and these Rules, the practice and procedure of the Court, including the rules relating to the discovery and inspection of documents and the delivery of interrogatories, shall apply to a representation petition or vacancy petition under these Rules as if it were an ordinary action within its jurisdiction.

(3) Any document required to be filed in proceedings under these Rules shall be filed in the Registry.

2 [*blank*]

Presentation of vacancy petition

3 A vacancy petition may be presented to the Court at any time after the occurrence of the event giving rise to the vacancy.

Form of petition

4 (1) A petition shall be in Form No. 1 in the Schedule to these Rules or a form to the like effect with such variations as the circumstances may require, and shall state—

- (a) in which of the capacities mentioned in section 33(2) of the Constitution [*title 2 item 1*], the petitioner or each of the petitioners presents the petition;
 - (b) in the case of a representation petition questioning the validity of the appointment of any person as a member of the Senate, the date of the publication in the Gazette of notice of the appointment;
 - (c) in the case of a representation petition questioning the validity of the election of any person as a member of the House of Assembly the date and result of the election to which the petition relates, showing the date on which the return was made to the Deputy Governor of the member declared to have been elected;
 - (d) the date from which the time for the presentation of the petition is to be calculated; and
 - (e) 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) (a) Every petition delivered at the Registry pursuant to section 4(1) of the 1968 Act, or section 34(2) of the 1968 Act shall be accompanied by six copies thereof.
- (b) The Registrar shall cause a copy of every petition to be transmitted to—
- (i) the Governor, in the case of a petition questioning the validity of the appointment or of the vacation of his seat by a member of the Senate; or
 - (ii) the returning officer, in the case of a petition questioning the validity of the election of or the vacation of his seat by a member of the House of Assembly, and the returning officer shall publish the petition in accordance with the provisions of Rule 18;
 - (iii) Notwithstanding the provisions of the two preceding paragraphs, the Registrar shall cause

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every petition to be published by having inserted once in a daily newspaper a copy of the petition, certified under his hand to be a true copy.

Recognizances

5 (1) A recognisance entered into pursuant to the provisions of section 7(2) or section 35(2) of the 1968 Act shall be in Form 2 in the Schedule.

(2) Every such recognisance shall be acknowledged before a credible witness and shall be filed forthwith after being acknowledged.

(3) Every 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 each respondent.

(4) Where any security is given by a deposit of money, such money shall be paid, either in cash, or by bank draft, to the Registrar who shall give a receipt therefor.

Notice

6 Within five days after the presentation of the petition the petitioner shall comply with the provisions of section 8 of the 1968 Act and the notice referred to therein shall be in Form 3 in the Schedule.

Objections

7 (1) Where the respondent intends to object to a recognisance on any ground mentioned in section 9 of the 1968 Act, he shall, within five days after service on him of the notice referred to in Rule 6, 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 or otherwise of the objection.

(2) The summons shall be heard in chambers by a judge.

(3) If the objection is allowed, the judge having cognisance of the matter 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, or by providing a further recognisance in that sum.

Display of list

8 A list of petitions at issue shall be conspicuously displayed on the Registry Notice Board and shall be available for inspection by the public during office hours.

Application for hearing date

9 (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 in Chambers for a time and place to be fixed for the trial of the petition and, if the petitioner to do so, any respondent may, within a further period of twenty-eight days, apply in the same manner as the petitioner could have done.

(2) If no application to fix a time and place for the trial of a petition is made in accordance with paragraph (1), the Registrar shall refer the matter to a judge, who shall thereupon fix such a time and place.

(3) Not less than fourteen days before the day so fixed, the Registrar shall cause notice of the time and place of the trial to be displayed in a conspicuous place on the Registry Notice Board and sent by post to—

- (a) the petitioner
- (b) the respondent, and
- (c) the Attorney-General.

Claim by unsuccessful candidate

10 (1) Where the 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 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 Attorney-General.

(2) Where the respondent to a petition complaining of an undue election and claiming the seat or office for some other person intends to give evidence pursuant to Section 13(6) of the 1968 Act, to prove that that person 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 Attorney-General.

(3) Any party to the petition may, on payment of the appropriate fee, inspect and obtain an office copy of any list filed pursuant to paragraph (3) or (4).

(4) Except by leave of the Court—

- (a) no evidence shall be given by a party against the admission or rejection of any vote, or as to any ground of

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contention, which is not specified in a list filed by him pursuant to paragraph (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 paragraph (2).

Application for special case

11 An application for a special case to be stated pursuant to section 29 of the 1968 Act shall be made by motion to the Court.

Application for leave to withdraw petition

12 (1) An application for leave to withdraw a representation petition shall be made by motion to the Court at such time and place as the Court may appoint.

(2) Not less than seven days before the day so appointed the petitioner shall—

(a) serve notice of motion on the respondent, the returning officer and the Attorney-General and lodge a copy in the Registry;

(b) publish notice of the intended motion once in at least one daily newspaper.

(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 election may apply to the Court to be substituted as a petitioner.

(4) The returning officer shall upon receipt of the notice forthwith publish it as prescribed by Rule 18.

(5) 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.

Application to stay or dismiss petition

13 (1) An application by a respondent to stay or dismiss a petition before the day fixed for the trial shall be made by motion to the Court at such time and place as the Court may appoint.

(2) Not less than seven days before the date so appointed the respondent shall serve notice of motion, stating the grounds thereof, on the petitioner, any other respondent, the returning officer and the Attorney-General and shall lodge a copy at the Registry.

Abatement of representation petition

14 (1) Where a representation petition is abated by the death of a sole petitioner or the survivor of several petitioners, 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—

- (a) lodge notice thereof in the Registry in Form No. 4 in the Schedule;
- (b) serve notice thereof in the same form on the returning officer, who shall forthwith publish it in accordance with the provisions of Rule 18 ;
- (c) publish notice thereof in the same form once in at least one daily newspaper.

Each such notice shall contain a statement to the effect of paragraph (2).

(2) Within twenty-eight days after the publication of any notice referred to in paragraph (1)(c) any person who might have been a petitioner in respect of the election may apply by motion to the Court, at such time and place as the Court may appoint, to be substituted as a petitioner.

Non-opposition

15 (1) A respondent who does not intend to oppose the petition shall, not less than seven days before the day fixed for the trial—

- (a) lodge notice thereof in Form 5 in the Registry;
- (b) serve notice thereof in the same form on the petitioner and the Attorney-General and on the returning officer who shall forthwith publish it in accordance with the provisions of Rule 18; and
- (c) publish notice thereof in the same form once in at least one daily newspaper.

Each such notice shall contain a statement to the effect of paragraph (3) of this Rule.

(2) The duties imposed by paragraph (1) on the respondent concerned shall, in the case of the death of a respondent, be performed by the attorney acting for him in the proceedings at the date of his death or, if he had no such attorney, by any petitioner learning of his death.

(3) Within fourteen days after the publication of any notice referred to in sub-paragraph (c) of paragraph (1) of this Rule any person who might have been a petitioner in respect of the election may apply by motion to the Court to be admitted as a respondent to oppose the petition.

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Filing of copy of particulars

16 A party giving particulars in pursuance of an order or otherwise shall file in the Registry a copy within twenty-four hours after delivering the particulars to the party requiring them.

Computation of time

17 (1) Any period of time prescribed by Rule 7 shall be computed in the manner following, that is to say—

where the day or last day on which anything is required or permitted to be done is a public holiday, the requirement or permission shall be deemed to relate to the first day thereafter which is not a public holiday and no such period shall be enlarged by order or otherwise, but save as aforesaid the provisions of Order 3 of the Rules of the Supreme Court 1985 [*title 8 item 1(a)*] shall apply to any period of time prescribed by these Rules as if it were prescribed by the Rules of the Supreme Court.

(2) Without prejudice to the provisions of paragraph (1), where any period of time limited by the 1968 Act for presenting a petition or filing any document expires on a day on which the Registry is closed the petition or document shall be deemed to be duly presented or filed if it is presented or filed before 10 o'clock in the forenoon on the next day on which the Registry is open.

Returning Officer to publish

18 Where by any provision of these Rules a petition or notice is required to be published by the returning officer—

- (a) the cost of publication shall be paid in the first instance by the petitioner or, as the case may be, by the person by whom the notice was given, without prejudice to the manner in which such cost shall ultimately be borne by one or more of the parties to the petition, and
- (b) the returning officer shall publish the petition or notice at the General Post Office, and, except where the constituency lies in the Parish of Pembroke, at all Post Offices in the Parish in which the constituency lies.

Notice of appointment of attorney

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

(2) Any representation petition or any notice required to be served on a respondent to a petition may be served—

- (a) by delivering it or sending it by post to any attorney who has given notice under paragraph (1) that he is acting for the respondent; or
 - (b) if no such notice has been given, in the manner provided by section 40 of the 1968 Act.
- (3) Any notice required to be served on the returning officer or the Attorney-General in proceeding under these Rules may be served by delivering it or sending it by post to him.

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SCHEDULE

FORM 1
REPRESENTATION/VACANCY PETITION

In the Supreme Court of Bermuda.

In the Matter of the Parliamentary Election Act 1978 and the Legislature
(Appointment, Election and Membership Controversies) Act 1968.

And in the Matter of a Parliamentary Election for (state
constituency) held on the [blank] day of [blank] 19 [blank].

The Petition of A.B. of [blank] (and C.D. of [blank]) shows—

1 That the Petitioner A.B. is a person who voted (or had a right to
vote) at the above election (or was a candidate at the above election) (or
claims to have had a right to be elected or returned at the above election)
and the Petitioner C.D. (state similarly the capacity in which he presents
the petition).

2 That the election was held on the [blank] day of [blank]
19 [blank], when E.F., G.H. and J.K. were candidates, and on the [blank]
day of [blank] 19 [blank], the returning officer returned E.F. and G.H. to
the Chief Secretary as being duly elected.

3 That (state the facts on which the Petitioner(s) rely).

4 That (in the case of a petition mentioned in section 5(3) of the
1968 Act, state the event on which the time for the presentation of the
petition depends and the date of the event). The Petitioner(s) therefore
pray(s)—

(1) That it may be determined that the said E.F. was not
duly elected (or returned) and that the election was void
(or that the said J.K. was duly elected and ought to have
been returned) (or as the case may be).

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

Dated this [blank] day of [blank] 19 [blank]

(Signed) [blank]
Petitioner(s)

This petition was presented by [blank] whose address for service is
[blank]
(Attorney for the said Petitioner)

It is proposed to serve a copy of this petition on [blank] of [blank] (and [blank] of [blank]) and on the Attorney-General.

FORM 2

IN THE SUPREME COURT OF BERMUDA

BOND FOR COSTS OF REPRESENTATION/VACANCY PETITION.

KNOW ALL MEN BY THESE PRESENTS that we [blank] of [blank] and [blank] of [blank] and [blank] of [blank] and [blank] of [blank]

are jointly and severally held and firmly bound to the Registrar of the Supreme Court in the sum of two thousand four hundred dollars of lawful money to be paid to the Registrar of the Supreme Court, for which payment well and truly to be made we bind ourselves, and each of us for himself in the whole and every of our heirs, executors and administrators firmly by these presents.

SEALED with our seals

DATED the [blank] day of [blank] in the year of our Lord, 19 [blank].

WHEREAS a representation/vacancy petition has been presented to the Supreme Court wherein [blank] of [blank] is the Petitioner.

AND WHEREAS it is by law provided that the Petitioner shall give security for the payment of any costs which may be ordered to be paid by the Petitioner.

AND WHEREAS the abovenamed [blank], [blank], and [blank] at the request of the Petitioner have agreed to enter into this obligation for the purposes aforesaid:

Now the condition of this obligation is such that if the above bounden [blank], [blank], and [blank], any or either of them shall pay any costs which may be ordered to be paid by the Petitioner, this obligation shall be void, otherwise remain in full force.

Signed sealed and delivered
by the said [blank]

in the presence of [blank]

Signed sealed and delivered
by the said [blank]

in the presence of [blank]

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Signed sealed and delivered
by the said [blank]
in the presence of [blank]

Signed sealed and delivered
by the said [blank]
in the presence of [blank]

FORM 3

NOTICE OF PRESENTATION OF REPRESENTATION/VACANCY PETI-
TION

In the Matter of the Parliamentary Election Act 1978. and

In the Matter of the Legislature (Appointment, Election and Membership
Controversies) Act 1968, [blank] and

In the Matter of the Appointment of [blank] (name of appointee) to be a
member of the Senate/Election of [blank] (name of person elected) to be a
member of the House of Assembly for the constituency of [blank]

TAKE NOTICE that a representation/vacancy petition, a copy whereof is
annexed hereto, was on the [blank] day of [blank] 19 [blank] presented at
the Registry of the Supreme Court;

AND THAT the undersigned, the petitioner(s) propose(s) to give security
for the costs of the said petition by depositing the sum of two thousand
four hundred dollars with the Registrar of the Supreme Court/by
providing sureties in the sum of \$ [blank] each.

[blank]
Petitioner(s)

TO:

FORM 4

NOTICE OF ABATEMENT OF A REPRESENTATION PETITION

In the Matter of the Parliamentary Election Act 1978, and

In the Matter of the Legislature (Appointment, Election and Membership
Controversies) Act 1968, [blank] and

In the Matter of the Appointment of [blank] (name of appointee) to be a member of the Senate/Election of [blank] (name of person elected) to be a member of the House of Assembly for the constituency of [blank]

TAKE NOTICE that the representation petition presented at the Registry of the Supreme Court on the [blank] day of [blank] 19 [blank], has abated by the death of the sole petitioner/the survivor of the petitioners/the respondent

*AND that within twenty-eight days after the publication of this notice any person who might have been a petitioner in respect of the election may apply by notice to the Court, at such time and place as the Court may appoint to be substituted as a petitioner. Attorney for the said

TO:

*This paragraph need not be included when the representation petition questioned the appointment of any person to the Senate.

FORM 5

NOTICE OF INTENTION NOT TO OPPOSE A PETITION

In the Matter of the Parliamentary Election Act 1978, and

In the Matter of the Legislature (Appointment, Election and Membership Controversies) Act 1968, [blank] and

In the Matter of the Appointment of [blank] (name of appointee) to be a member of the Senate/Election of [blank] (name of person elected) to be a member of the House of Assembly for the constituency of [blank]

TAKE NOTICE that [blank] of [blank] respondent to the representation petition presented to the Court on this [blank] day of [blank] 19 [blank], does not intend to oppose the said petition AND that within 14 days after the publication of this notice any person who might have been a petitioner in respect of the appointment/election may apply by motion to the Court to be admitted as a respondent to oppose the petition.

Attorney for the said [blank]

TO: