

STATUTORY INSTRUMENT

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THE ELECTION PETITION RULES, 2007

ARRANGEMENT OF RULES

Rule

PART I - PRELIMINARY

1. Application.
2. Interpretation.

PART II - PETITIONS

3. Form of petition.
4. Contents of petition.
5. Presentation and issue of petition.

PART III - PETITIONER'S AGENT AND ADDRESS FOR SERVICE

6. Name of petitioner's agent and address for service.
7. Name of Member's agent and address for service.
8. Notice of agent's appointment.
9. Master's book of addresses and agents.
10. Agent to act as solicitor.

PART IV - NOTICES

11. Notification to National Electoral Commission and Returning Officer.
12. Service of petition and notice of compliance with rule 14.
13. Affidavit of service.

PART V - SECURITY FOR COSTS

14. Security for costs.
15. Furnishing of security by deposit of money.
16. Deposit book to be kept.
17. Recognisance as security for costs.
18. Form of recognisance.
19. Recognisance to be left at Master's Office.
20. Objection to recognisance within five days.
21. Grounds of objection to recognisance.
22. Objection to be heard by judge.

23. Form of evidence in objection.
24. Rejection of objection to security.
25. Allowance of objection.
26. Cost of objection.
27. Enforcement of order for costs.

PART VI - PLEADINGS AND PREPARATION FOR TRIAL

28. Answer.
29. Summons for directions.

PART VII - NOTICE OF TRIAL

30. List of election petitions.
31. Time and notice of trial.
32. Miscarriage of notice.
33. Form of notice.
34. Delivery to Master of election documents, etc.

PART VII - TRIALS

35. Affidavit evidence.
36. Cross-examination of deponent.
37. Compelling attendance for cross-examination.
38. Adjournment.

PART IX - PETITIONS THAT DO NOT COME TO TRIAL

39. Application for leave to withdraw a petition.
40. Notice to Master.
41. Notice to respondent and Returning Officer.
42. Time and place of hearing.
43. Notice that respondent will not oppose petition.
44. Copy of notice to petitioner.
45. Unopposed petitions.

PART X - MISCELLANEOUS

46. Forms of orders, etc.
47. Costs and fees.
48. Claims to money deposited.
49. Order in disposing of money deposited.
50. Requirements as to notice and proof.
51. Direction as to disposal of money.
52. Formal objection.
53. Where no provision made by these Rules.
54. Revocation.

SCHEDULE

STATUTORY INSTRUMENT NO. 7 OF 2007

Published 17th May, 2007

THE ELECTORAL LAWS ACT, 2002
(ACT NO. 2 OF 2002)

THE ELECTION PETITION RULES, 2007

Short title.

In exercise of the powers conferred on it by subsection (1) of section 124 of the Electoral Laws Act, 2002 the Rules of Court Committee hereby makes the following Rules -

PART I - PRELIMINARY

1. These rules shall have effect in relation to all proceedings, Application. brought in the High Court to hear and determine whether—

- (a) any person has been validly elected as a Member of Parliament; and
- (b) the seat of a Member of Parliament has become vacant.

2. In these Rules unless the context otherwise requires- Interpretation.

Act No.2 of 2002. “Act” means the Electoral Laws Act, 2002;

“Master” means the Master and Registrar and includes a Deputy Master and Registrar and a District Registrar;

“Member” means a Member of Parliament;

“Registry” means the High Court Registry in Freetown and includes a District Registry;

“petition” means an election petition.

PART II–PETITIONS

Forms of Petition.

- 3. (1) A petition may be in Form A in the Schedule.
- (2) A petition shall be divided into paragraphs, each of which as nearly as may be, shall be confined to a distinct portion of the subject.
- (3) Every paragraph of the petition shall be numbered consecutively.
- (4) No costs shall be allowed for drawing or copying a petition which is not substantially in conformity with this rule unless otherwise ordered by the Court or a Judge.

Contents of Petition.

- 4. (1) A petition shall state-
 - (a) the claim of right of the petitioner to petition;
 - (b) the holding and result of the election; and
 - (c) the facts and grounds of the petition.
- (2) Evidence may not be stated in the petition, but the Court or a Judge may order such particulars as may be necessary to prevent surprise and unnecessary expense, and to ensure a fair and effective trial in the same way as in ordinary proceedings in the High Court and upon such terms as to costs and otherwise as may be ordered.
- (3) The petition shall conclude with a prayer as for instance that–

- (a) some specific person shall not be declared duly returned or elected;
- (b) the vote shall be recounted; or
- (c) the election shall be declared null and void.

(4) The petition shall be signed by all the petitioners by whom it is presented.

5. (1) Unless otherwise provided by any enactment a petition shall be presented within seven days of the declaration, pursuant to the Act, of the result of the election to which the petition relates.

Presentation and issue of petition.

(2) The presentation of petition shall be by filing it–

- (a) in the case of a petition relating to an election held in the Western Area at the Registry in Freetown;
- (b) in the case of a petition relating to an election held in the Northern, Southern and Eastern Provinces at the District Registry in Makeni, Bo and Kenema respectively.

(3) The petitioner shall supply the Master four copies of the petition in addition to those to be served on the respondents.

(4) Upon presentation of the petition the original shall be sealed by the Master and shall then be deemed to be issued.

(5) The Master shall give a receipt for the petition and the additional copies thereof: and the receipt may be in Form B of the Schedule.

PART II-PETITIONER'S AGENT AND ADDRESS FOR SERVICE

Name of petitioner's agent and address for service.

6. (1) On presenting a petition, the petitioner shall leave at the Registry a notice, signed by him or on his behalf, giving the name of a legal practitioner whom he authorizes to act as his agent or stating that he acts for himself as the case may be, and in either case he shall give an address for service which shall be within five miles of the Registry in Freetown or seven miles of a District Registry, as the case may be, at which documents and notices addressed to him may be left.

(2) Where no notice is left or address given, then all notices and proceedings may be given and served by posting them up at the Master's Office or District Registrar's Office.

Name of member's agent and address for service..

7. (1) Any person returned as a member may, at any time after he is returned, send or leave at the Master's Office or at a District Registrar's office, as the case may be, a notice signed by him or on his behalf, appointing a legal practitioner to act as his agent in case there is a petition against him or stating that he intends to act for himself; and in either case he shall give an address for service which shall be within five miles of the Master's Office in Freetown or seven miles from a District Registrar's Office, as the case may be, at which notices may be left for him.

(2) Where no such notice has been left within seven days after service of a petition against a Member, then notices and proceedings may be given or served respectively by posting them up at the Master's Office or at a District Registrar's Office.

Notice of agent's appointment.

8. An agent appointed by the petitioner or the respondent under rule 6 or 7 shall forthwith leave a written notice of his appointment to act as an agent and of his address for service of notices and proceedings upon that agent at the Master's Office shall be sufficient for all purposes.

Master's book of address and agents.

9. (1) There shall be kept at the Master's Office and in every District Registry Office a book in which shall be entered the names and addresses of agents given under rule 6 or 7.

(2) The book shall be open for inspection by any person during office hours.

10. The person appointed as agent by the petitioner under rule 6 or by a member under rule 7 shall be deemed to be the solicitor of the petitioner or the member for all purposes relating to a petition. Agent to act as solicitor.

PART IV-NOTICES

11. (1) The Master shall, within seven days after the presentation of a petition, send to the National Electoral Commission and the National Returning Officer a certified copy of the petition if any- Notification to National Electoral Commission and Returning Officer.

- (a) the name of the petitioner's agent; if any
- (b) the address, if any, of the agent; and
- (c) the name of the respondent's agent and the address, if any.

(2) The Master shall, within seven days after the presentation of the petition publish those particulars mentioned in subrule (1) in the Gazette or in a conspicuous part of the Registry where the petition was presented together with the petition.

12. (1) Within five days of its presentation an election petition together with notice of compliance with rule 14 as to the giving of security for costs shall be served on all the respondents named in the petition. Service of petition and notice of compliance with rule 14.

(2) Where a respondent has named an agent or given an address for service, the service of the petition may be by delivery to the agent or by leaving it at the agent's address for service.

(3) In any other case the service must be by personal service on the respondent unless a Judge, on an application made to him not later than eight days after the petition is presented and supported by an affidavit showing what has been done, is satisfied that all reasonable effort has been made to effect personal service

and to cause the matter to come to the knowledge of the respondent, in which case the Judge may order that what has been done shall be considered sufficient service subject to such condition as he may consider reasonable.

(4) Upon any application made under subrule (3), the Judge may order that the posting up of a notice at the Master’s Office of the petition having been presented giving brief details of the petition and the prayer shall be deemed equivalent to personal service.

Affidavit of service.

13. Within three days of the service of the petition there shall be filed with the Master by or on behalf of the petitioner, an affidavit of the time, place and manner of service of the petition,

PART V–SECURITY FOR COSTS

Security for Costs.

14. (1) At the time of presentation of a petition, the petitioner shall give security for the payment of all costs, charges and expenses which may become payable by him to any witness summoned on his behalf or to any respondent.

(2) The security shall be in the form of a deposit in the sum of Le 1,000,000 and by recognisances of the same amount entered into by two sureties but the petitioner may deposit money in lieu of any recognisance.

Furnishing of security by deposit of money.

15. 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 Master who shall forthwith pay any amount so deposited into a special account opened by him for that purpose and he shall obtain a separate receipt or deposit slip in respect of every amount so deposited.

Deposit book to be kept.

16. (1) The Master shall file the receipt or deposit slip referred to in rule 15 and shall keep a book, in which shall be entered from time to time the amount and the petition to which it relates.

(2) The book shall be open for inspection by all parties.

17. (1) A recognisance given as security for costs under rule 14 may be acknowledged before a Judge, Master or Magistrate. Recognisance as security for costs.

(2) There may be one recognisance acknowledged by both the sureties or separate recognisances by each surety as may be convenient.

18. (1) A recognisance shall contain the name and usual place of residence of each surety the description of which shall be sufficient as would enable him to be found or ascertained. Form of recognisance.

(2) The recognisance may be in Form C in the Schedule.

19. The recognisances shall immediately after being acknowledged, be filed at the Registry by or on behalf of the petitioner. Recognisance to be left at Master’s Office.

20. Objection may be made to a recognisance for any of the reasons set out in rule 21 within five days after the date of service of the notice of compliance with rule 14, exclusive of the date of service. Objection to recognisance within five days,

21. An objection to the recognisance shall state the ground or grounds of the objection, whether– Grounds of objection to recognisance

- (a) any of the sureties is insufficient;
- (b) a surety is dead, or that he cannot be found; or
- (c) a person named in the recognisance has not duly acknowledged the recognisance.

22. Any objection made to the security shall be heard and decided by a Judge. Objection to be heard by judge.

23. Any hearing and decision may be either upon affidavit or personal examination of witnesses or both as the Judge thinks fit. Form of evidence in objection .

Rejection of objection to security . 24. Where by order made by a Judge upon such hearing the security is declared sufficient the petition shall proceed.

Allowance of objection. 25. Where by an order made upon the hearing an objection is allowed and the security is declared insufficient, the Judge shall in that order state what is required to be done to render the security sufficient, and the further prescribed time to remove the objection by deposit shall be within three days after the date of the order not including the date of the order and the deposit shall be made in the manner already prescribed.

Costs of objection. 26. The costs of hearing and deciding objections made to the security given shall be paid as ordered by the Judge and in default of such order shall be part of the general costs of the petition.

Enforcement or order for costs. 27. The order for payment of costs shall have the same force of order for order made by the High Court in a civil action and may be costs enforced in the manner as an order for costs is enforceable under the High Court Rules.

PART VI- PLEADINGS AND PREPARATION FOR TRIAL

Answer. 28. (1) A respondent to a petition may within ten days after the date of service of the notice of compliance with rule 14, exclusive of the date of service, file an answer to the petition and shall immediately serve the answer on the petitioner and all the other parties to the petition.

(2) The High Court Rules relating to the contents of a defence shall apply to the content of such answer.

Summons for directions. 29. (1) All interlocutory questions a matters shall be heard and disposed of during a summons for directions which shall be taken out within seven days after the time hunted further files of the Respondents answer.

(2) The hearing and determination of the summons for directions shall be in accordance with the High Court Rules relating to such summons.

PART VII- NOTICE OF TRIAL

30. (1) The Master shall make out a list of all election petitions to be tried. Lists of election petitions.

(2) The Master shall insert in the list the names of agents of petitioners and respondents and the addresses if any, to which notices may be sent.

(3) The list may be inspected at the Master's office at any time during office hours, and shall be put up for that purpose upon a notice board headed "Electoral Laws Act, 2002".

31. (1) The time and place of the trial of each petition shall be Time and fixed by a Judge after satisfying himself on the basis of a certificate to be issued by the Master to the effect, that all orders made during the summons for directions have been complied with. Time and notice of trial

(2) The notice of the time and place of the trial of a petition shall be given in writing by the Master by publication in the *Gazette* or by posting a copy up in his office and by delivering one copy at the address given by the petitioner or his agent, another at the address given by the respondent or his agent if any, and a copy at the office of the Returning Officer.

(3) Where a petition is in respect of an election held in the Western Area, the notice shall be given seven days before the day appointed for the trial.

(4) In any other case, ten days notice shall be given

(5) On receipt of a copy of the notice the Returning Officer shall, as expeditiously as possible, give such publicity to the notice as he considers necessary.

32. The publication of the notice of trial in the *Gazette* shall be deemed to be notice in the manner prescribed in these Rules and such notice shall not be vitiated by any non delivery of or relating to the copy or copies thereof to be posted up or delivered as described in rule 31. Miscarriage of notice.

Form of
notice.

33. The notice of trial shall be Form D in the Schedule.

Delivery to
Master of
election
document ec.

34. (1) Notice of the time and place of trial of each petition shall be given in writing by the Master to the Chairman of the Electoral Commission not less than fifteen days before the day fixed for the trial and the Chairman of the Electoral Commission shall, on or before the day fixed for the trial, deliver or cause to be delivered, to the Master all voting materials, documents and things in his custody relating to the election for which the Master shall give a receipt.

(2) The Master shall keep the voting materials and documents and things in safe custody until the trial is over and return them thereafter to the Chairman of the Electoral Commission.

PART VIII-TRIALS

Affidavit
evidence.

35. (1) Subject to this rule, all evidence which would otherwise have been given *viva voce* at the trial of an election petition shall be by affidavit.

(2) At the hearing of the summons for direction and not later than fifteen days from the time fixed for the filing of the respondent's answer, the Judge shall order the parties to exchange affidavits.

(3) The petitioner shall comply with such order within seven days of the date thereof.

(4) The respondent shall file his affidavit in opposition, if any, within seven days of the receipt of the petitioner's affidavit.

(5) Within five days after the receipt of the respondent's affidavit in opposition, the petitioner may file an affidavit in reply.

36. (1) Any party desiring to cross-examine a deponent who has made an affidavit filed on behalf of the opposite party, may serve upon the party by whom such affidavit has been filed, a notice in writing requiring the production of the deponent for cross-examination at the trial, such notice to be served at any time before the expiration of five days next after the end of the time allowed for filing affidavits in reply, or within such time as in any case the Court may specially appoint; and in default the affidavit shall not be used as evidence unless by the special leave of the Court.

Cross
examination
of deponent.

(2) The party producing such deponent for cross-examination shall not be entitled to demand the expenses thereof in the first instance from the party requiring such production.

37. The party to whom a notice mentioned in rule 36 is given shall be entitled to compel the attendance of the deponent for cross examination in the same way as he might compel the attendance of a witness to be examined.

Compelling
attendance
for cross
examination.

38. No formal adjournment of the Court for the trial of a petition shall be necessary, but the trial is to be deemed adjourned, and may be continued from day to day until the trial is concluded; and where the Judge who begins the trial is disabled by illness or otherwise, it may be recommenced and concluded by another Judge unless otherwise agreed by the parties.

Adjournment.

PART IX-PETITIONS THAT DO NOT COME TO TRIAL

39. Notice of an application for leave to withdraw a petition shall be in writing and shall be signed by the petitioner or his agent.

Application
for leave to
withdraw a
petition.
Notice to
master.

40. The notice of an application for leave to withdraw shall be filed at the Master's Office.

Notice to respondent and returning Officer. 41. A copy of a notice of the intention of the petitioner to apply for leave to withdraw his petition shall be given by the petitioner to the respondent, the other petitioners (if any), and the Returning Officer.

Time and place of hearing. 42. The time and place for hearing the application shall be fixed by a Judge, but shall not be more than seven days after the giving of the notices mentioned in rule 41.

Notice that respondent will not oppose petition. 43. The manner and the time of the respondent's giving of a notice to the Court that he does not intend to oppose the petition shall be by filing the notice at the Master's Office, signed by the respondent.

Copy of notice to petitioner. 44. Upon the notice being filed at the Master's office, the Master shall immediately deliver a copy of the notice to the petitioner or his agent, and to the Returning Officer who shall immediately give due publicity to the notice.

Unopposed petitions. 45. (1) Where all the respondents give notice that they do not intend to oppose the petition, the Court or Judge may by order either declare the election void or direct the trial to proceed.

(2) Notice of the order shall immediately be given by the Master to the Chairman of the Electoral Commission and the Returning Officer.

(3) Where the election is declared void, the seat of the person to whom it relates shall become vacant from the first day (not being a *dies non*) after the date of the order.

(4) The Court or Judge may also make such orders as to costs as may be just.

PART X—MISCELLANEOUS

Forms or orders etc. 46. Orders to compel the attendance of a person as a witness and warrants to commit a person for contempt given or issued in proceedings arising out of petitions shall be in the respective forms in use in the High Court from time to time with such variations as circumstances may require, and shall be obeyed and executed accordingly.

47. (1) Costs shall be assessed by the Court or taxed by the Master upon the Court or Judge's order by which the costs are payable, and costs when assessed or taxed may be recovered in like manner as if payable under a judgment or order of the Court or Judge in the ordinary proceedings in the High Court. Costs and fees.

(2) The office fees for filing inspection, office copies and other proceedings under the Act and these Rules, shall be the same as those payable, if any for the like proceedings according to the practice for the time being of the High Court.

48. All claims at law or to money deposited or to be deposited at the Master's Office for payment of costs, charges and expenses payable by the petitioner pursuant to these Rules shall be disposed of by the Court or a Judge. Claims to money deposited.

49. Money so deposited shall, if and when it is no longer needed for securing payment of costs, charges and expenses be returned or otherwise disposed of as the Court or Judge may order, Order disposing of money deposited.

50. An order made under rule 49 may be made after the notice of intention to apply and proof that all just claims have been satisfied or otherwise sufficiently provided for as the Court or Judge may require. Requirements as to notice and proof.

51. The order made under rule 49 may direct payment either to the party on whose account the sum is deposited or to any person entitled to receive the payment. Direction as to disposal of money.

52. No proceedings under the Act shall be defeated by any formal objection. Formal objection.

53. Where no provision is made by these Rules, the procedure, practice and forms from time to time in force in the High Court so far as they can conveniently be applied, shall be in force in relation to the trial of election petitions under the Act, but Orders 1,13,16 and 22 of the High Court Rules shall not apply to election petitions. Where no provision made by these Rules.

S. 1 No. 12 of 1986. 54. The Election Petitions Rules 1986, are hereby revoked. Revocation.

SCHEDULE
FORM A
ELECTORAL LAWS ACT, 2002
PETITION

In the High Court of Sierra Leone.....election for (state the constituency) held on the.....day of.....20

The petition of A..... of (or A.....of.....and B.....of , as the case may be) whose name(s) is (are) subscribed.

1. Your petitioner A is a person who [state the right of the petitioner] voted for (or had a right to vote as the case may be) at the above election (or claims to have had a right to be returned or elected at the above election or alleges himself to have been a candidate at the above election) and your petitioner B (here state in like manner the right of each petitioner)

2 And your petitioners state that the election was held on the..... day of 20 when A B, CD, and E F were candidates, and the Returning Officer has returned A. B. as being duly elected.

3. And your petitioners say (here state the facts and grounds on which the petitioners rely).

Wherefore your petitioners pray that it might be determined that A B, was not duly elected or returned and that the election was void,

(Signed) A
B

FORM B
ELECTORAL LAWS ACT, 2002

RECEIPT OF PRESENTATION OF PETITION

Received on the.....day of.....,20 at the Master's Office, (or the District Registrar's Office, as the case may be,) a petition touching the election of A B, member for.....purporting to be signed by (insert the names of the petitioners) and three additional copies of the petition.

C.D.,
Master(or District Registrar)

FORM C
ELECTORAL LAWS ACT, 2002
RECOGNISANCE AS SECURITY FOR COSTS

Be it remembered that on the.....day of.....(name of Judge. Master or Magistrate) name A, B of.....) and acknowledged themselves severally and jointly and each of their executors and administrators to owe to the State the.....levied on their goods, chattels, lands and tenements to the.....State.

The condition of this recognisance is such that if (name of petitioner, and if more than one, add "or any of them") shall well and truly pay all costs, charges and expenses in respect of the petition signed by him (by them) relating to the (here insert the name of the constituency) which shall become payable by the petitioner (or petitioners or any of them) under the Election petition Rules, 2007 to any person or persons then this recognisance shall be void, otherwise to stand in full force.

(Signed).....
Sureties

Taken and acknowledge by the above-named.....(name) of Sureties on the.....day of..... 20.....at.....before me.

E.E
Judge (or as the case may be)

FORMS D
ELECTORAL LAWS ACT,
NOTICE OF TRIAL

Election petition of.....Constituency

Take notice that the above petition (or petitions) will be tried at..... and on such other subsequent days as may be necessary

Dated the day of , 20
(Signed) by Order
A. B.
Master (or District Registrar)

MADE this *10th* day of *April*, 2007.

A. R. D. Renner Thomas <i>Chief Justice</i>	–	Chairman
M. E. Tolla Thompson Justice of the Supreme Court	–	Member
Salimatu Koroma <i>Justice of the Court of Appeal</i>	–	Member
A. Showers <i>Justice of the High Court</i>	–	Member
O. V. Robbin-Mason <i>Ag. Director of Public Prosecutions</i>	–	Member
J. Aryee <i>Ag. First Parliamentary Counsel</i>	–	Member
Berthan Macaulay Jnr. <i>Legal Practitioner</i>	–	Member
E. E. Roberts <i>Nominee of Attorney-General and Minister of Justice</i>	–	Member
Y. Williams <i>Legal Practitioner</i>	–	Member