

STATUTORY INSTRUMENTS

S.I. NO. 202 OF 2005

DISTRICT COURT (DOMESTIC VIOLENCE) RULES, 2005

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DISTRICT COURT (DOMESTIC VIOLENCE) RULES, 2005

The District Court Rules Committee, in exercise of the powers conferred on them by section 91 of the Courts of Justice Act, 1924, section 72 of the Courts of Justice Act, 1936, section 17 of the Interpretation Act, 1937 [as applied by section 48 of the Courts (Supplemental Provisions) Act, 1961] and section 34 of the Courts (Supplemental Provisions) Act, 1961, do hereby, with the concurrence of the Minister for Justice, Equality and Law Reform, make the following rules of court:-

1. These rules may be cited as the District Court (Domestic Violence) Rules, 2005.
 2. These rules shall come into operation on the 6th day of April 2005 and shall be read together with all other District Court rules for the time being in force.
 3. Order 59 of the District Court Rules 1997 (S.I. no. 93 of 1997) is hereby amended:
 - (a) by the substitution for sub-rules (1), (2) and (3) of rule 6 thereof of the following:
 - "6. (1) An application to the Court under section 4(1) of the Act for an Interim Barring Order may be made on the evidence of the Applicant viva voce and on oath and shall be on notice to the Respondent.
 - (2) An application to the Court under section 4(3) of the Act as amended for an Interim Barring Order ex parte shall be grounded on an Affidavit sworn by the Applicant, or on information on oath and in writing sworn by the Applicant .in the Form 59.5, Schedule C.
 - (3) An Interim Barring Order may be made ex parte where the Court having regard to the circumstances of the particular case considers it necessary or expedient to do so in the interests of justice, and notwithstanding the fact that the summons required by Rule 5 hereof has not been served".
- and the said Order 59 as so amended appears in Schedule 1 hereto..
- 4 The Form numbered 59.5 and 59.6 respectively in Schedule 2 hereof shall be substituted for the Forms numbered 59.5 and 59.6 respectively in Schedule C of the District Court Rules, 1997 (S.I. No. 93 of 1997).

SCHEDULE 1

ORDER 59
DOMESTIC VIOLENCE

1. In this Order-

Definitions

"the Act" means the Domestic Violence Act, 1996.

2. Proceedings under this Order may be brought, heard and determined before a sitting of the District Court for the Court District in which the applicant resides or, if the application is for a barring order, where there is situate the place in relation to which that application is made.

3. Proceedings under the Act shall be heard otherwise than in public and only officers of the Court, the parties and their legal representatives, witnesses (subject to the provisions of Order 8, rule 2 of these Rules) and such other persons as the Judge shall in the exercise of his or her discretion allow, shall be permitted to be present at the hearing.

*Hearing
otherwise than in
public*

4. (1) An application to the Court under section 2 (2) of the Act for a safety order shall be preceded by the issue and service upon the respondent of a summons in the Form 59.1, Schedule C.

Safety Order

(2) The order of the Court granting the application shall be in the Form 59.2, Schedule C.

5. (1) An application to the Court under section 3 (2) of the Act for a barring order shall be preceded by the issue and service upon the respondent of a summons in the Form 59.3, Schedule C.

Barring Order

(2) The order of the Court granting the application shall be in the Form 59.4, Schedule C.

6. (1) An application to the Court under section 4(1) of the Act for an Interim Barring Order may be made on the evidence of the Applicant viva voce and on oath and shall be on notice to the Respondent..

*Interim barring
order*

(2) An application to the Court under section 4(3) of the Act as amended for an Interim Barring Order ex parte shall be grounded on an Affidavit sworn by the Applicant, or on information on oath and in writing sworn by the Applicant .in the Form 59.5, Schedule C.

Protection Order

(3) An Interim Barring Order may be made ex parte where the Court having regard to the circumstances of the particular case considers it necessary or expedient to do so in the interests of justice, and notwithstanding the fact that the summons required by Rule 5 hereof has not been served.

(4) The order of the Court shall be in the Form 59.6, Schedule C.

7. (1) Where a summons applying for a safety order or a barring order has been issued but the application has not been determined by the Court, an application may be made to the Court ex parte under section 5 (1) of the Act for a protection order pending such determination.

(2) An application to the Court under section 5 of the Act for a protection order, save where made in the course of the hearing of an application for a safety order or a barring order, shall be by sworn information in the Form 59.7, Schedule C.

(3) The Order of the court granting a protection order under the terms of section 5 of the Act shall be in the Form 59.8, Schedule C.

8. (1) An application to the Court under section 2 (3) to vary a safety order, section 3 (6) to vary a barring order, section 3 (6) as applied by section 4 (2) to vary an interim barring order or section 5 (2) to vary a protection order, shall be preceded by the issue and service of a summons in the Form 59.9, Schedule C.

*Vary Safety
Barring Interim
Barring
Protection Order*

(2) The Order of the Court granting the application shall be in the Form 59.10, Schedule C.

9. (1) An application to the Court under section 13 (1) of the Act for the discharge of a

*Discharge
Safety, Baring*

safety order, a barring order, an interim barring order or a protection order shall be preceded by the issue and service of a summons in the Form 59.11, Schedule C.

*Interim Barring
Protection Order*

(2) The order of the Court granting the application shall be in the Form 59.12, Schedule C.

10. (1) Where the Court makes, varies or discharges a safety order or a protection order, the Clerk shall give or send a certified copy of the order in question as soon as practicable

*Clerk to supply
copies of orders*

(a) to the applicant for the safety order or, in respect of a protection order, the applicant for the safety order or barring order concerned,

(b) to the respondent to the application for the safety order or in respect of a protection order, the respondent to the application for the safety order or barring order concerned,

(c) where a health board by virtue of section 6 of the Act made the application for the safety order or, in respect of a protection order, for the safety order or barring order, to the health board,

by ordinary prepaid post, and

(d) to the member of the Garda Siochana in charge of the Garda Siochana station for the area in which the person for whose benefit the safety order or protection order was made resides, and

(e) where the order in question is a variation or discharge of a safety order or a protection order and the person for whose benefit the order was made had previously resided elsewhere, to the member of the Garda Siochana in charge of the Garda Siochana station for the area in which that person had so resided but only if that member had previously been sent under this Rule a copy of such safety order or protection order or any order relating thereto

by prepaid registered post

(2) Where the Court makes, varies or discharge a barring order or an interim barring order, the Clerk shall give or send a certified copy of the order in question as soon as practicable

(a) to the applicant for the barring order,

(b) to the respondent to the application for the barring order,

(c) where a health board by virtue of section 6 of the Act made the application for the barring order concerned, to the health board,

by ordinary prepaid post, and

(d) to the member of the Garda Siochana in charge of the Garda Siochana station for the area in which is situate the place in relation to which the application for the barring order was made, and

(e) where the order in question is a variation or discharge of a barring order or an interim barring order and the place in respect of which the previous order was made is elsewhere, to the member of the Garda Siochana in charge of the Garda Siochana station for the area in which is situated that place but only if that member had previously been sent under this Rule a copy of such barring order or interim barring order or any order relating thereto,

by prepaid registered post.

11. (1) Where an Interim Barring Order has been made and the Interim Barring Order has ceased to have effect, the Clerk shall send notice in the Form 59.13, Schedule C that the Interim Barring Order has ceased to have effect, by prepaid registered post to the member of the Garda Siochana referred to in Rule 10 (2) (d) or (e), as the case may be.

*Clerk to notify
Gardai when
Protection Order
ceases to have
effect*

(2) Where a protection order has been made and the application for a safety order or a barring order has been determined, the Clerk shall send notice in the Form 59.13, Schedule C that the protection order has ceased to have effect, by prepaid registered post to the member of the Garda Siochana referred to in Rule 10 (1) (d) or (e), as the

case may be.

12. (1) A summons issued under these Rules shall be served by the Clerk by prepaid ordinary post upon the person to whom it is directed at least seven days before the date fixed for the hearing of the application. Where, however, the Clerk, having consulted the Judge for the time being assigned to the Court District in which the summons is being issued, otherwise certifies on the summons that the proceedings are urgent, such summons may be served at least two days before the date fixed for the hearing.

(2) The Clerk shall endorse on the original of every such summons served the time, date and place of posting of the envelope containing the copy summons for service and that endorsement shall be prima facie evidence of such service.

(3) The summons shall be deemed to be issued when it has been signed by the Judge or the Clerk. It shall be deemed to be served at the time at which the said envelope would be delivered in the ordinary course of post.

13. (1) Notwithstanding the provisions of Order 25. r.9 (4) and Order 101 of these Rules and that an appellant has entered into a recognisance for appeal,

*Effect of appeal
from orders*

(a) an appeal from a safety order or a barring order shall, if the court that made the order or the court to which the appeal is brought so determines (but not otherwise), stay the operation of the order on such terms (if any) as may be imposed by the court making the determination;

(b) an appeal from a protection order or an interim barring order shall not stay the operation of the order.

(2) (a) An application to the District Court to stay the operation of a safety order or a barring order under the terms of section 12 of the Act, may be made following the service and lodgment of a notice of appeal and lodgment of the recognisance for appeal and when made otherwise than upon the occasion of the making of those orders shall be preceded by the issue of a notice in the Form 59.14, Schedule C which shall be served upon the respondent to the application two days before the hearing of the application.

(b) Where the Court grants a stay on the operation of a safety order or a barring order under this Rule, and the Clerk has supplied the copies of the orders as directed by Rule 10 of this Order, the Clerk shall send notification of the granting of the stay in the Form 59.15, Schedule C to the same persons and in the manner directed by Rule 10 of this Order.

SCHEDULE 2

Schedule C
O.59,r.6

DOMESTIC VIOLENCE ACTS, 1996 AND 2002

Section 4

INFORMATION

District Court Area of - District No.
..... Applicant
..... Respondent

The information of *the above-named applicant of
*(or..... of the..... Health Board on behalf of the
applicant by virtue of section 6 of the above-mentioned Act) who says on oath:-

On theday of.....20...., I caused a summons for hearing at the District Court at
..... on the..... day of 20...; at am./pm. to be issued
against the above-named respondent of,
applying for a barring order in respect of

*(in the Court District aforesaid) being the place where I *and any dependent person reside(s)
and I now request an Interim Barring Order against the respondent pursuant to the provisions
of section 4 of the above-named Act of 1996 as amended on the grounds:-

.....
.....
.....
.....
.....
.....

and I say that there is an immediate risk of significant harm to me *and *or any dependent
person if this order is not made immediately, and the granting of a Protection Order would not
be sufficient to protect me *and *or any dependent person.

Dated this.....day of, 20....
Signed.....
Informant

Sworn before me this.....day of, 20....
Signed
Judge of the District Court

To.....of.....
Respondent.

*Delete where inapplicable

Schedule C
O.59,r.6

DOMESTIC VIOLENCE ACTS, 1996 AND 2002

Section 4

INTERIM BARRING ORDER

District Court Area of - District No.
.....Applicant
.....Respondent

WHEREAS *the applicant above- named of
*(or the..... Health Board on behalf of the applicant by virtue of section 6 of the
above-mentioned Act) has issued a summons for a barring order to be heard at the District
Court at on the day of 20; at am./pm.,
AND WHEREAS the Court is satisfied that the summons herein dated the.....day of
.....20....*was duly served on the respondent *has not yet been served.

AND HAVING HEARD what was alleged on behalf of the applicant †and on behalf of the
respondent.

† AND WHEREAS the Court on the evidence given is of opinion that there is an immediate
risk of significant harm to the applicant *and *or any dependent person if this order is not
made immediately, and the granting of a protection order would not be sufficient to protect the
applicant *and any dependent person.

□ AND WHEREAS the Court on the *information in writing *Affidavit sworn by the applicant is
of opinion that there is an immediate risk of significant harm to the applicant *and *or any
dependent person if this order is not made immediately, and the granting of a protection order
would not be sufficient to protect the applicant *and any dependent person.

□ AND WHEREAS the Court, having regard to the circumstances of the particular case,
considers it necessary or expedient in the interests of justice, to make this order ex parte *and
notwithstanding the fact that the summons required by Rule 5 hereof has not been served.

NOW THE COURT HEREBY DIRECTS YOU, the respondent to leave the place where the
applicant *and any dependent person reside(s) at *.....(in
the Court District aforesaid) on being notified of the making of this order,
AND PROHIBITS YOU FROM entering such place until the.....day of, 20.... without
leave of the Court,

*[†] SAVE AND EXCEPT

* AND FURTHER PROHIBITS YOU from
using or threatening to use violence against *the applicant/*any dependent person; molesting
or putting in fear *the applicant/*any dependent person; attending at or in the vicinity of, or
watching or besetting a place where the applicant/*any dependent person reside(s) during the
period aforesaid.

□ TAKE NOTICE THAT THIS ORDER SHALL HAVE EFFECT FOR A PERIOD OF []
WORKING DAYS ONLY FROM ITS DATE, that is until the.....day of.....20..., unless
on application to this Court by the applicant and made on notice to you this order is confirmed
within that period.

□ Application may be made to this Court by you or on your behalf to vary or discharge this
order.

□ There are served on you with this order (or there will as soon as practicable be served on
you) a copy of the *information *Affidavit grounding the application for this order and a note of
the evidence given by the Applicant on said application.

Dated this.....day of....., 20....

Signed
Judge of the District Court

To.....of.....
Respondent.

WARNING

A respondent who contravenes this order, or who, while this order is in force refuses to permit the applicant or any dependent person to enter in and remain in the place to which this Order relates or does any act for the purpose of preventing the applicant or such dependent person from so doing may be arrested without warrant by a member of the Garda Siochana, and on conviction for such an offence may be fined €1,904.61 or be sentenced to twelve months imprisonment or be both fined and imprisoned.

A copy of this order is being sent to Garda Siochana Station
At.....
.....

† Delete where Order is made ex parte
□ Delete where Order is made inter partes
* Delete where inapplicable

Given this 19th day of May 2003

Peter Smithwick Chairman
John Garavan
Uinsin Mac Gruairc
Mary C Devins
Sean McMullin
Hugh O'Neill
Damien Colgan
David Kelly

I concur in the making of the foregoing rules

Dated this 23rd day of March 2005

Michael McDowell

L.S.

Minister for Justice, Equality and Law Reform

EXPLANATORY NOTE

(This note does not form part of the Instrument and does not purport to be a legal interpretation).

These Rules amend the District Court Rules, 1997 (S. I. No. 93 of 1997) to take account of the Domestic Violence (Amendment) Act 2002.