

No. R. 276

12 April 2013

PROTECTION FROM HARASSMENT ACT, 2011 (ACT NO. 17 OF 2011)**DIRECTIVES IN TERMS OF SECTION 20(3) OF THE PROTECTION FROM HARASSMENT ACT, 2011**

The Director-General: Justice and Constitutional Development has, in terms of section 20(3) of the Protection from Harassment Act, 2011 (Act No. 17 of 2011), issued the directives in the Schedule.

Schedule**Definitions**

1. In these directives any word or expression to which a meaning has been assigned in the Act has that meaning and, unless the context otherwise indicates—

“the Act” means the Protection from Harassment Act, 2011 (Act No. 17 of 2011); and

“the Regulations” means the Protection from Harassment Regulations, 2013, made in terms of section 19 of the Act and published as Government Notice No. R. 274 in Government Gazette No. 36357 of 12 April 2013.

Compliance with the Act and Regulations

2. Clerks of the court must—

- (a) obtain a working knowledge of, and be able to apply, the Act and the Regulations; and
- (b) comply with their obligations in terms of the Act, the Regulations and these directives.

Availability of clerk of court to receive applications for protection orders outside ordinary court hours or on a day which is not an ordinary court day

3. (1) A clerk of the court must comply with any duty roster issued by the court manager or a person who has oversight responsibilities over a clerk of the court and in respect of which a clerk of the court is assigned to receive applications for protection orders outside ordinary court hours or on a day which is not an ordinary court day.

(2) If a clerk of the court is designated to perform duties in terms of the Act outside ordinary court hours or on a day which is not an ordinary court day, the clerk of the court—

- (a) must furnish a telephone number where he or she may be contacted; and
- (b) must at all times be able to make himself or herself available at the court building after he or she is contacted telephonically, within a reasonable time, to receive an application for a protection order and to perform any other duty imposed on a clerk of the court in terms of the Act, the Regulations and these directives.

(3) The clerk of the court is responsible for contacting a magistrate who has been designated to consider an urgent application for a protection order which is brought outside ordinary court hours or on a day which is not an ordinary court day.

Assistance to be rendered by clerk of court to complainant or person who applies for protection order and who is not represented by a legal representative

4. (1) In terms of section 2(2) of the Act and regulation 2 of the Regulations it is imperative that the information notice (Form 1 of the Annexure to the Regulations), be handed to the complainant or person who applies for a protection order on behalf of the complainant (hereinafter referred to as “the person”) and who is not represented by a legal representative.

(2) The information notice must be furnished to the complainant or the person in the official language of the complainant or the person’s choice, if available. If the information notice is not available in the official language of the complainant or the person’s choice, the clerk of the court must—

- (a) make use of an interpreter to translate the information notice for the complainant or the person; and
- (b) make a note on the information notice that the content thereof was translated for the complainant or the person.

(3) If the complainant or the person is unable to read the information notice, the clerk of the court must read out or cause the information notice to be read out to the complainant or the person.

(4) After the complainant or the person has read the information notice, or after it has been read to the complainant or the person, the clerk of the court must enquire from the complainant or the person whether he or she understands the contents of the information notice. The clerk of the court must, to the best of his or her ability, further explain to the complainant or the person any part of the information notice which the complainant or the person does not understand.

(5) The signature of the complainant or the person must be placed on the appropriate part of the information notice that there has been compliance with regulation 2 of the Regulations and this part of the information notice must be placed on the court file if the complainant or the person proceeds with the application.

Assistance to be rendered by clerk of court to complainant or the person not represented by legal representative in completion of application for protection order

5. (1) If the complainant or the person is a child, illiterate or can for some or other reason not complete the application form for a protection order (Form 2 of the Annexure to the Regulations), the clerk of the court must complete the application form on behalf of the complainant or the person.

(2) If a clerk of the court completes the application form on behalf of a complainant or the person as contemplated in subdirective (1), the clerk of the court must, after completion of the application form ensure that the application form is read out to the complainant or the person and that the complainant or the person acknowledges the correctness of the content thereof before completing Part B of the application form.

(3) The clerk of the court must pertinently bring it to the attention of the complainant or the person not represented by a legal representative that—

- (a) supporting affidavits of persons who have knowledge of the matter may accompany the application; and
- (b) evidence which may have a bearing on the harassment, may in the manner set out in paragraph 4 of the application for a protection order, be submitted to the court.

General duties of clerk of court on receipt of application for a protection order

6. (1) The acknowledgement of receipt of the application for a protection order (forming part of Form 2 of the Annexure to the Regulations), must be completed by the clerk of the court and be handed to the complainant.

(2) Parts C of the application for a protection order must be completed by the clerk of the court.

Submission of application for protection order to court

7. When submitting the application for a protection order and any accompanying affidavits to the court, the clerk of the court must complete Part D of the application for a protection order form.

Confidentiality of documents

8. Appropriate steps must be taken by clerks of the courts to ensure the confidentiality of all documentation that relates to proceedings in terms of the Act.

Service and forwarding of documents by clerks of court

9. (1) Clerks of the court must adhere strictly to timeframes provided for in the Act for the service or forwarding of documents.

(2) Where no specific time frame is provided for the service or forwarding of documents, such documents must be served or forwarded without delay.

Disciplinary steps for failure to comply with directives

10. (1) The failure of a clerk of the court to comply with these directives constitutes an act of misconduct.