

If after counselling the victim still wishes to withdraw the complaint, or if the victim refuses to take part in counselling the investigating officer will report on the matter to his or her Police Station Commander. The Police Station Commander will authorise ceasing the investigation.

Prior to authorising the ceasing of an investigation the Police Station Commander will ensure that:

- i. All efforts have been made to provide the victim with counselling and other available welfare service;
- ii. The decision to withdraw the complaint has been made by the victim of their own free will and not under duress.

8. Compliance with this Policy

Divisional Commanders, Provincial Police Commanders, Metropolitan Superintendents and Police Station Commanders, are to ensure this circular and the accompanying attachment are brought to the attention of all police officers under their command.

Gary L Baki, OBE, DPS, C.St.J.
Commissioner of Police

Annex L: Practice Directions: FSV Protection Order Rules



THE PNG MAGISTERIAL SERVICE

DISTRICT COURTS OF PAPUA NEW GUINEA

PRACTICE DIRECTIONS

Family and Sexual Violence Protection Order Rules

FEBRUARY 2014

DISTRICT COURTS ACT CHAPTER 40

PRACTICE DIRECTIONS FOR FAMILY & SEXUAL VIOLENCE
 PROTECTION ORDER RULES
 NO. 1 of 2014

1. *Application*
2. *Interpretation*
3. *Interim Protection Order*
4. *Clerk of court's Responsibility*
5. *Legal Representation*
6. *Joinder of Parties*
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8. **Hearing** of the Application for Protection Order
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12. **Breach of the Protection Order**

ANNEXTURES

SCHEDULE of Forms

<i>Form I</i>	<i>Application for Protection Order</i>
<i>Form II</i>	<i>Sworn Statement</i>
<i>Form III</i>	<i>Protection Order</i>
<i>Form IV</i>	<i>Information</i>
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DISTRICT COURTS ACT CHAPTER 40
PRACTICE DIRECTIONS FOR FAMILY AND SEXUAL VIOLENCE
PROTECTION ORDER RULES
 NO 1. of 2014

T. JOHN NUMAPO LLB (Honours); LL.M., Chief Magistrate of Papua New Guinea, pursuant to Section 21A of the *District courts Act Chapter 40* and all other powers enabling me, hereby make this Protection Order Rules 2014 (**Rules**) to provide for the practice and procedure of granting Interim Protection Orders in the District Courts.

These rules are intended to provide consistency in the District Courts and to enable the District Courts to issue Interim Protection Orders expeditiously at any time and at no cost to the applicant.

1 Application.

These Rules apply to a person seeking immediate protection from:-

- (a) Actual, and or threatened physical and sexual violence; and or
- (b) Actual, damage and or threatened damage to property.

2. Interpretation

In these Rules:-

"family" includes a person who is accepted as a member of a family, whether or not that person is related by blood or marriage.

"Protection Order" means an interim order or a Permanent Order issued by the District Court.

3. Interim Protection Orders.

- 3.1 A person may apply to the court for a Interim Protection Order at any time upon the, laying of an information.
- 3.2 The magistrate shall:-
 - (a) hear the application as soon as practicable; and
 - (b) dispense with the requirement for the service of the application upon the defendant.

- 33 No filing fee is required for an application under these Rules.
- 3.4 An application for an Interim Protection Order shall:-
- (a) set out the order sought and the grounds for which such order may be made; and
 - (b) be in the form prescribed in the schedule annexed to these Rules; and
 - (c) be supported by a sworn statement that is in the form prescribed in the schedule annexed to these rules;

4 Clerk of Court's Responsibility.

- 4.1 The Clerk of Court shall immediately:-
- (a) attend to a person seeking an Interim Protection Order; and
 - (b) make all necessary arrangements for an application for a Protection Order to be heard before a Magistrate.
- 4.2 The Clerk of Court shall ensure that the following documents are filed in support of an application for a Interim Protection Order and are in the forms prescribed in *the schedule annexed to these Rules*:-
- (a) Application for a Protection Order;
 - (b) Sworn Statement;
 - (c) Interim Protection Order;
 - (d) Information; and
 - (e) Summon Upon Information.

- 43 The Clerk of Court shall ensure that-
- (a) the documents referred to in Subsection 4.2 are fully and accurately completed by the applicant and, if necessary, are accompanied by a medical certificate; and
 - (b) an information contains a substantive course of action yet to be determined by the court.

5. Legal Representation

At the hearing of an application for a Protection Order before a magistrate, the applicant may;

- (a) appear in person;
- (b) be represented by a lawyer; or
- (c) by written or oral consent be represented by any of the following persons;
 - (i) a person in whose care the Complainant is in; or
 - (ii) a person who has control of the Complainant; or
 - (iii) an adult member of the Complainant's family; or
 - (iv) any other person with the leave of the court.

6. Joinder of Parties

6.1 Where a person or institution who provides security and/or counseling to the applicant receives threats in relation to an application for a Protection Order, that person or institution may apply to the court to be joined in the proceeding and the court may accord that person or institution with the same protection as it gives to the Complainant.

7. Protection of Service Providers

Where a service provider's safety is at risk, in particular during the course of a proceeding, they may apply for a Protection Order for a specified period.

8. Hearing of the Application for Protection Order

- 81 Upon hearing an application for an Interim Protection Order, a court may, if satisfied, grant the Order to the complainant pending the determination of the substantive cause of action contained in the complaint or information.
- 82 The court may grant one or more of the following orders:
- (a) an order restraining the defendant or any other person from harassing, intimidating, using or threatening to use or apply force against the applicant;

- (b) an order restraining the defendant or any other person from entering the premises in which the applicant dwells; and or,
- (c) an order restraining the defendant or any other person from entering the premises where the applicant works, and or.
- (d) an order restraining the defendant from contacting the applicant by any form of communication: and or
- (e) any such order that the Court deems fit, or
- (f) may dismiss the application

8.3 In granting a Protection Order, a court shall:-

- (a) fix a return date, not later than 14 days after the date of the order for a hearing of the substantive matter; and
- (b) endorse the return date on the Interim Protection Order; and or
- (c) (i) In the event when an IPO is breached, a warrant of arrest is to be issued pursuant to Section 214 to bring the defendant before the Court.
(ii) Subsection (i) does not in any way stop the Police from charging the defendant for a new offence.

8.4 Any application to set aside the Interim Protection Order may be made before a Magistrate.

8.5 Variation

The parties are at liberty to apply for variation of the order at any time before the expiry date.

- a. Application in writing
- b. Affidavit
- c. Copy of the Order

9. The Standard of Proof is on the “the balance of probability”

10. Service of Process and Protection Order

10.1 The order and the commencement process shall be served on the defendant as soon as practicable.

10.2 The Court shall direct a person (other than the complainant) to serve the Protection Order and commencement process on the defendant.

10.3 A sealed copy of the Protection Order shall be served on the Officer-In-Charge at any Police Station that is located within reasonable proximity to the residences of the applicant and defendant respectively.

10.4 Proof of service of the Protection Order and commencement process shall be filed in court as soon as practicable after service is effected.

10.5 If, by statement on oath or by affidavit for any reason personal service cannot be promptly effected the court may extend the return date and *order for* substituted service in accordance with Section 48 of the District Courts Act.

11. Substantive Hearing

11.1 The substantive hearing of the application shall be held on the date fixed by the magistrate unless an application is made by way of a motion by either of the parties to bring forward the date of the hearing..

11.2 At the hearing, the court may extend, amend or revoke the interim protection order.

11.3 Upon the hearing of the substantive application the court may issue permanent protective orders pursuant to sections 209 and 210 of the District Courts Act for keeping the peace and surety towards the complainant and be of good behavior for a period of time as determined by the court.

11.4 Surety of an amount to be ordered to be paid forthwith or upon breach

12. Breach of the Protection Order.

12.1 An interim Protection Order shall have the same effect, as if it were a permanent Protection Order.

12.2 If an interim Protection Order is breached the court shall issue a warrant of arrest for the defendant to be arrested and brought before the court to be dealt with according to law.

12.3 Pursuant to Section 214 of the District Courts Act, a Warrant of Arrest may be issued

- a. Oral or written application
- b. Affidavit/ Sworn Statement
- c. Warrant of Arrest
- d. In the event that an application is made orally, the Magistrate is to be put it down into writing

DATED, this. day OC.. 2014

**JOHN K. NUM/PO LLB (Honours); 'LLM.
Chief Magistrate**

**ANNEXTURES
SCHEDULE of forms**

<i>Form I</i>	<i>Application for Protection Order</i>
<i>Form II</i>	<i>Sworn Statement</i>
<i>Form III</i>	<i>Protection Order</i>
<i>Form IV</i>	<i>Complaint</i>
<i>Form V</i>	<i>Information</i>
<i>Form VI</i>	<i>Summons (on Complaint)</i>
<i>Form VII</i>	<i>Summons Upon Information</i>
<i>Form VIII</i>	<i>Proof of Service</i>

Annex M: Family Protection Act 2014

No. 29 of 2013.

Family Protection Act 2013.

Certified on: **11 MAR 2014**