

STEP BY STEP GUIDENCE MANUAL TO OBTAIN THE ORDER

STEP 1

The clerk of the court will hand in the application for a protection order in (Form 2) with a case number and supporting affidavit(s) to the Magistrate/Court.

In your application you may request the magistrate/court to prohibit the respondent from

- committing any act of domestic violence;
- getting the help of another to commit any act of domestic violence;
- entering your workplace, home or the shared residence or any part thereof;
- preventing you or any child who normally lives in the shared residence from entering or remaining in the residence or any part thereof;
- Committing any other act determined by the court.

You may request the magistrate/court not to disclose your physical address to the respondent. The court may also, in order to protect you and to provide for your safety, health and wellbeing

- order that the respondent pay rent, mortgage or other monetary relief (such as medical expenses and loss of income);
- refuse the respondent contact your children;
- order the seizure of any firearms or dangerous weapons in the possession or under the control of the respondent;
- order that a peace officer accompany you to assist you with the collection of your personal property;
- impose any other condition it deems reasonably necessary

The Magistrate will consider your application. The Magistrate has three options;

- Granting the interim ex parte protection order (Form 4) and the clerk of the court is ordered to serve the respondent with (Form 4) the application/supporting affidavit(s) calling on the respondent to appear;
- Not Granted the interim order;
- An interim order referred to in section 5(2) is not issued and the clerk of the court is ordered to serve the respondent with a (Form 5) application/supporting affidavit(s) calling on the respondent to appear Notice to show cause why a protection order should not be issued;

In not granting the order means that there is no eminent harm in the application or that there is no case made out.

In not granting the order but instruct the clerk of the court to issue a (Form 5) a Notice to Show cause is ordered to serve the respondent with a (Form 5) by South African Police Service member calling on the respondent to appear and explain why a protection order should not be issued. This means a case was made out but explanation is needed from the (Respondent).

Granting the interim ex parte protection order (Form 4) the magistrate will seal it with his/her official magistrate stamp ,with a return date,which is immediately valid.The magistrate simultaineiously will, issue a warrant of arrest (Form 8) for the respondent.

STEP 2:

The clerk of the court will provide the applicant/victim with the original and copy of the order and a blank return of service which has to be taken by the applicant to the South African Police Service.

The temporary/interim order will **ONLY** come into effect after it has been delivered to the respondent by the South African Police Service member or the Sheriff. The South African Police Service member will complete the return of service as proof of service on the respondent and hand it back to the applicant.

This means that the respondent may be arrested if he or she fails to comply with any provision of the temporary/interim protection order and after you have given the police the warrant (Form 8) and an affidavit explaining that the respondent has breached the order **AFTER** the (Form 4) was served on the respondent.

Go back to the clerk of the court hand in the completed return of service that they can file this on the case file

Please note that both parties have to uphold the protection order and it is a violation of a protection order if the applicant contacts the offender.

STEP 3:

On the return date when the applicant **MUST** appear in court. If the applicant fails to appear this will result in this order will be cancelled

Or

When the respondent is present to oppose means the magistrate **MUST** hear the case and make a decision. The purpose of the return date on the temporary/interim order is to give the respondent a chance to oppose the application to see if the victim of domestic violence (applicant) might have made a false protection order.

Or

On the the return date where the respondents fails to appear this interim order can be made a final order (default order) this means either the respondent admits committing an act of domestic violence.

Both the applicant and respondent has the right to a legal representative. Both the applicant and respondent can ;

- (a) conducts his/her own defence;
- (b) Appoint his/her own legal representative;
- (c) Apply for legal aid

The magistrate/court will give the following explanations to the parties who are not legally represented.

1. In terms of section 16 of the domestic Violence Act, 116 of 1998, the provisions of appeal and review contemplated in the Magistrate's Court Act, 1994 (Act 32 of 1994) apply to any proceedings in terms of this Act.
2. The protection order is enforceable in the entire Republic of South Africa.
3. The protection order remains effective until it is set aside and the execution thereof is not automatically suspended with filing of an appeal.
4. Any contravention of a prohibition, condition, obligation or order contained in the protection order will result in a warrant of arrest for the respondent being executed and the prosecution of the respondent. Upon conviction of a contravention of any prohibition, condition, obligation or order contained in the protection order, the respondent will be liable to a fine or imprisonment for a maximum period of five years or both such fine and such imprisonment.

The interim protection order is made final and (Form 6) signed by the magistrate and simultaneously also sign a warrant for arrest (Form 8).