

Reprint
as at 14 November 2018



Victims' Orders Against Violent Offenders Rules 2014

(LI 2014/344)

Jerry Mateparae, Governor-General

Order in Council

At Wellington this 17th day of November 2014

Present:

The Right Hon John Key presiding in Council

Pursuant to section 28 of the Victims' Orders Against Violent Offenders Act 2014, His Excellency the Governor-General, acting on the advice and with the consent of the Executive Council, makes the following rules.

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Note

Changes authorised by subpart 2 of Part 2 of the Legislation Act 2012 have been made in this official reprint.
Note 4 at the end of this reprint provides a list of the amendments incorporated.

These rules are administered by the Ministry of Justice.

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Rules

1 Title

These rules are the Victims' Orders Against Violent Offenders Rules 2014.

2 Commencement

These rules come into force on 1 January 2015.

Part 1

Preliminary provisions

Subpart 1—Objective and interpretation

3 Objective

The objective of these rules is to secure the just, speedy, and inexpensive determination of proceedings under the Act.

Compare: SR 1996/148 r 4(b); LI 2014/179 r 1.3

4 Interpretation

- (1) In these rules, unless the context otherwise requires,—

Act means the Victims' Orders Against Violent Offenders Act 2014

address for service, in relation to a party, means the address of a place in New Zealand at which any document may be left for, or sent to, that party under these rules

applicant means a person who is filing, or has filed, an application

application means—

- (a) an application for a non-contact order; or
- (b) an application for a section 12 direction

application for a section 12 direction means an application under section 12 of the Act for a direction that a final non-contact order against the offender also apply against any other person named in the application

associated person means the person against whom an application for a section 12 direction is made

chief executive means the chief executive of the Ministry of Justice

court means a District Court

District Courts Rules means the District Courts Rules 2014

electronic system used by the Registry means an electronic system that is approved by the chief executive for any particular or general purpose

Registrar means the Registrar of a court, and includes a Deputy Registrar of a court.

- (2) If a word or an expression used in these rules is not defined in these rules but is defined in the Act, then unless the context otherwise requires, the word or expression has, in these rules, the meaning given to it by the Act.

Subpart 2—Application of, and compliance with, rules

5 Application of rules

- (1) These rules apply to proceedings under the Victims' Orders Against Violent Offenders Act 2014.
- (2) If in any proceedings any question arises as to the application of any provision of these rules, the court may, either on the interlocutory application of any party or on its own initiative, determine that question and give such directions as it considers appropriate.

Compare: LI 2014/179 r 1.7

6 Cases not provided for

- (1) This rule applies if any case arises for which no form of procedure is prescribed by the Act or these rules.
- (2) In any case to which this rule applies,—
 - (a) the provisions of the District Courts Rules apply so far as they are applicable and with any necessary modifications; and
 - (b) the general practice of District Courts applies.
- (3) Subclause (2)(a) is subject to rule 45.
- (4) However, if the court is satisfied that there are no applicable provisions of the District Courts Rules, the court may give such directions with respect to the procedure to be followed as the court considers necessary.

Compare: SR 1996/148 rr 6(1), 7; LI 2014/179 r 1.11

7 Extending and shortening time

- (1) The court or a Registrar may, in its discretion, extend or shorten the time appointed by these rules, or fixed by any order, for doing any act or taking any proceeding or any step in a proceeding, on such terms (if any) as the court thinks just.
- (2) The court or a Registrar may order an extension of time although the application for the extension is not made until after the expiration of the time appointed or fixed.
- (3) The court or a Registrar may order an extension of time on application made by written notice instead of by interlocutory application, if the parties consent.

Compare: LI 2014/179 r 1.23

Subpart 3—Content of documents and authentication

8 Content of documents

- (1) This rule applies to any document that is required by the Act or these rules to be filed, served, or issued.

- (2) All documents must, in addition to the information required by the Act or these rules, include (if known)—
 - (a) the name and place of the court where proceedings to which the document relates will be heard; and
 - (b) the case number of the proceeding; and
 - (c) the section of the Act or provision of the rules to which the document relates; and
 - (d) the full names of the parties to the proceeding; and
 - (e) the addresses of the parties.
- (3) A document to be filed by or on behalf of a party must include,—
 - (a) if the document is filed by a party in person, the name of that party; or
 - (b) if the document is filed by a lawyer on behalf of a party,—
 - (i) the name of the lawyer; and
 - (ii) the name of the party for whom the lawyer is acting; and
 - (iii) the name of the lawyer's firm (if any); and
 - (iv) the name of any agent acting for the lawyer in the proceedings.
- (4) If the document to be filed is the first document to be filed by or on behalf of a party, the document must, in addition to the information required by subclauses (2) and (3), include the party's address for service.

9 Authentication

- (1) Any document that is required by the Act or these rules to be filed, served, or issued must be authenticated by the person responsible for its content.
- (2) The person responsible for its content authenticates the document by—
 - (a) signing and dating the document; or
 - (b) in the case of any document in an electronic form, any electronic means that adequately identifies that person and the date of authentication.
- (3) However, an affidavit or other document required to be sworn must be signed and dated.
- (4) In the absence of evidence to the contrary, any document is to be treated as having been authenticated in accordance with this rule.

Compare: SR 2012/415 r 2.2

Part 2

Commencement of proceedings

Subpart 1—How to commence proceedings

10 How proceedings are commenced

Proceedings are commenced when an applicant makes an application to the court.

Compare: SR 2002/261 r 19

11 Making an application

An application to the court is made by filing in a court the following documents:

- (a) an application stating—
 - (i) the nature of the order or direction sought; and
 - (ii) the grounds on which the application is made; and
 - (iii) whether the application is made without notice or on notice; and
 - (iv) the residential address of the party against whom the application is made, or, if this is not known, any information that may assist in ascertaining that address; and
- (b) a supporting affidavit that—
 - (i) contains sufficient particulars to show the grounds on which the applicant claims to be entitled to the order or direction, as the case may be;
 - (ii) contains sufficient information to inform the court of the facts relied on in support of the application.

12 Filing documents

To be filed in a court, a document must be—

- (a) presented for filing at a court office by, or on behalf of, the applicant; and
- (b) accepted for filing by the Registrar.

Compare: SR 2002/261 r 75

13 Ways documents may be presented for filing

Any document may be presented for filing at a court office by—

- (a) delivering it to the Registry by hand; or
- (b) sending it to the Registry by prepaid post; or
- (c) sending it to an electronic system used by the Registry.

Compare: SR 2002/261 r 76; SR 2012/415 r 2.3(2); LI 2014/179 r 2.6

14 Number of copies to be filed

When an application on notice is presented for filing in either of the ways specified in rule 13(a) and (b), there must also be filed the same number of copies of the documents filed as there are persons on whom those documents are required to be served.

Compare: LI 2014/179 r 20.34

15 Applicant may request that residential address be kept confidential

- (1) Where an applicant wants his or her residential address to be kept confidential from any person required to be served with the application, the applicant must file with his or her application a notice—
 - (a) stating the applicant's residential address; and
 - (b) requesting that the address be kept confidential.
- (2) On filing a notice in accordance with subclause (1), the applicant is not required to disclose the applicant's residential address in a document that is available to another party (despite any other rule).
- (3) To the extent that a document discloses the applicant's residential address that is to be kept confidential in accordance with this rule, the document may not be searched, inspected or copied under Part 3 of the District Courts Rules, unless the court otherwise directs.
- (4) Where the applicant changes his or her address as shown on a notice filed in accordance with subclause (1), the applicant may notify that change of address to the Registrar.

Compare: SR 1996/148 r 22; SR 2002/261 r 311; LI 2014/179 r 20.35

Subpart 2—Amending documents**16 Amendment of application form before it is served**

A Registrar may amend an application before it is served if the Registrar receives from the applicant a written request to amend it.

Compare: SR 2002/261 r 77

17 Amending documents in proceedings

- (1) The court may, on its own initiative or on an interlocutory application for the purpose, at any stage of the proceedings,—
 - (a) amend a defect or an error in a document in the proceedings, whether or not the defect or error is that of the party applying to amend;
 - (b) make any other amendment to a document in the proceedings that may be necessary for the purpose of ensuring that the real matter in dispute between the parties is determined.

- (2) If an amendment is made to documents in proceedings under subclause (1), the proceedings continue as if they had been commenced with the documents in the form in which they appear after the amendment has been made.

Compare: SR 2002/261 r 78; LI 2014/179 r 1.12

Part 3

Proceedings

Subpart 1—Proceedings for temporary non-contact order

18 Application of this subpart

This subpart applies to proceedings that are commenced when an applicant makes an application without notice for a temporary non-contact order.

19 Procedure after filing application without notice for non-contact order

- (1) As soon as practicable after an application without notice for a temporary non-contact order is made, the application must be referred to a Judge for consideration.
- (2) After that consideration, the Judge may do 1 of the following:
- (a) make a temporary non-contact order; or
 - (b) decline to make a temporary non-contact order but direct that the application be dealt with as if it had been made on notice; or
 - (c) dismiss the application.

20 Issue of temporary non-contact order

If a Judge makes a temporary non-contact order under rule 19(2)(a), the Registrar must—

- (a) issue the order; and
- (b) make a copy of the order available to the applicant; and
- (c) arrange for service on the offender of—
 - (i) the temporary non-contact order; and
 - (ii) the application; and
 - (iii) the supporting affidavit.

21 Changing application without notice to application on notice

If a Judge makes a direction under rule 19(2)(b) in respect of any application made without notice, rules 25 to 27 apply with the following modifications:

- (a) the reference to application on notice in rule 25(1) must be read as if it were a reference to the application made without notice; and

- (b) in addition to issuing for service the documents specified in rule 25(1)(c), the Registrar must issue for service the direction.

22 Notice that offender wishes to be heard

- (1) Where a temporary non-contact order is made, the offender may, at any time before the day on which the order becomes final in accordance with section 20 of the Act, file in the court a notice that he or she wishes to be heard on whether a final non-contact order should be substituted for the temporary non-contact order.
- (2) A notice referred to in subclause (1) must set out—
 - (a) sufficient particulars to indicate the reasons for giving the notice; and
 - (b) sufficient information to inform the court of the facts relied on.
- (3) On the filing of a notice in accordance with subclause (2), the Registrar must—
 - (a) arrange for a copy of the notice to be served on the applicant; and
 - (b) assign a hearing date in accordance with section 19(3) of the Act; and
 - (c) notify the parties of the hearing date.

23 Registrar to issue order when temporary order becomes final

Where a temporary non-contact order becomes final by operation of law in accordance with section 20(1) of the Act, the Registrar must, without delay,—

- (a) issue a final order confirming that the temporary order has become final and setting out any terms and conditions of the final order; and
- (b) make a copy of the order available to the applicant; and
- (c) arrange for a copy of the order to be served on the offender.

Subpart 2—Proceedings for final non-contact order

24 Application of this subpart

This subpart applies to proceedings that are commenced when an applicant makes an application on notice for a final non-contact order.

25 Procedure after filing application on notice for non-contact order

- (1) After an application on notice for a final non-contact order is made, the Registrar must—
 - (a) fix a date and time for the hearing of the application, which must be as soon as practicable; and
 - (b) prepare a notice of proceeding notifying the offender of—
 - (i) the applicant's application; and
 - (ii) the order sought by the applicant; and
 - (iii) the date, time, and place of the hearing of the application; and

- (iv) the steps that may be taken to defend the application; and
 - (v) the consequences of not taking any such steps; and
 - (c) issue for service the following documents:
 - (i) the application; and
 - (ii) the notice of proceeding; and
 - (iii) the supporting affidavit.
- (2) The Registrar must—
 - (a) inform the applicant of the date and time fixed for the hearing of the application; and
 - (b) arrange for the service of the documents referred to in subclause (1)(c) on the offender.
- (3) The documents issued for service must be served in accordance with rules 32 to 41.

26 Notice of defence

- (1) If an offender intends to defend the application, the offender may, at least 5 working days before the date of hearing, file in the court a notice of defence.
- (2) A notice of defence must state that the offender intends to defend the application and must set out—
 - (a) sufficient particulars to indicate the grounds on which the defence is based; and
 - (b) sufficient information to inform the court of the facts relied upon in support of the defence.
- (3) On the filing of a notice of defence in accordance with subclauses (1) and (2), the Registrar must immediately arrange for a copy of the notice of defence to be served on the applicant.

27 Issue of final non-contact order

If a Judge on the hearing of an application on notice for a non-contact order makes a final non-contact order, the Registrar must—

- (a) issue the order; and
- (b) make a copy of the order available to the applicant; and
- (c) arrange for a copy of the order to be served on the offender.

Subpart 3—Proceedings for direction that final non-contact order apply against other persons

28 Application of this subpart

This subpart applies to proceedings that are commenced when an applicant makes an application for a section 12 direction.

29 Procedure after filing application for section 12 direction

- (1) After an application for a section 12 direction is made, the Registrar must—
 - (a) fix a date and time for the hearing of the application in accordance with subclause (2); and
 - (b) prepare a notice of proceeding; and
 - (c) issue for service the following documents:
 - (i) the application; and
 - (ii) the notice of proceeding; and
 - (iii) the supporting affidavit.
- (2) The date and time fixed under subclause (1)(a) for the hearing of the application for a section 12 direction must—
 - (a) be the same date and time as fixed under rule 25(1)(a) for the hearing of the application on notice for a final non-contact order, if the application for a section 12 direction is filed at the same time as the application on notice for a final non-contact order; or
 - (b) be as soon as practicable, if paragraph (a) does not apply.
- (3) The Registrar must—
 - (a) inform the applicant of the date and time fixed for the hearing of the application; and
 - (b) arrange for service of the documents referred to in subclause (1)(c) on—
 - (i) the associated person; and
 - (ii) the offender.

30 Notice of defence

- (1) If an associated person intends to defend an application for a section 12 direction, the associated person may, at least 5 working days before the date of hearing, file in court a notice of defence.
- (2) A notice of defence must state that the associated person intends to defend the application and must set out—
 - (a) sufficient particulars to indicate the grounds on which the defence is based; and
 - (b) sufficient information to inform the court of the facts relied upon in support of the defence.
- (3) On the filing of a notice of defence in accordance with subclauses (1) and (2), the Registrar must immediately arrange for a copy of the notice of defence to be served on the applicant.

31 Issue of section 12 direction

If the Judge on the hearing of an application for a section 12 direction makes a section 12 direction, the Registrar must—

- (a) issue the direction; and
- (b) make a copy of the direction available to the applicant; and
- (c) arrange for a copy of the direction to be served on—
 - (i) the associated person; and
 - (ii) the offender.

**Part 4
Service**

Subpart 1—How documents to be served

32 Service of applications, orders, and directions

- (1) This rule applies to the following documents when they are required by the Act or these rules to be served on a person:
 - (a) an application:
 - (b) a temporary non-contact order.
- (2) The document may be served on the person—
 - (a) by personal service on the person (*see* rule 35); or
 - (b) by service on a lawyer who accepts service of the document on behalf of the person (*see* rule 36).
- (3) Service of an application must be effected not less than 15 working days before the day of the hearing of the application.

33 Service of other documents

A document, other than a document to which rule 32 applies, that is required by these rules to be served on a person may be served on that person—

- (a) by personal service (*see* rule 35); or
- (b) by service on a lawyer who accepts service of the document on behalf of the person (*see* rule 36); or
- (c) by service at the person's address for service (*see* rules 37 to 41); or
- (d) by service in a manner and at a place the court or Registrar directs.

34 Who may carry out service

- (1) A document must be served by—
 - (a) an officer of the court; or

- (b) an individual who is authorised by the chief executive to serve documents under the Act; or
 - (c) an officer or employee of a corporation that is authorised by the chief executive to serve documents under the Act; or
 - (d) a constable; or
 - (e) a Police employee authorised by the Commissioner of Police to serve documents under the Act.
- (2) A party may not—
- (a) effect service:
 - (b) be present when the service is effected.

Subpart 2—Personal service

35 Personal service

Personal service of a document may be effected by leaving the document with the person to be served or, if that person does not accept it, by putting it down in that person's presence and bringing it to that person's attention.

Subpart 3—Lawyer accepting service

36 Service on lawyer accepting service on behalf of person

- (1) Service of a document on a person may be effected by service of it on a lawyer who accepts service of it on behalf of the person.
- (2) A lawyer accepts service of a document if the lawyer—
 - (a) notes on a copy of the document that he or she accepts service of it on behalf of the person; and
 - (b) signs the note.
- (3) If a lawyer accepts service of a document on behalf of a person, the document must, unless the contrary is proved, be treated as served on the date the lawyer signed the note.

Subpart 4—Service at address for service

37 Address for service

- (1) The parties must, as soon as practicable after the proceedings are commenced, notify the court of their address for service.
- (2) Any address for service may from time to time be altered by reasonable notice to the Registrar.
- (3) If a party has no address for service, the Judge or Registrar may direct that a particular address is the party's address for service.

38 Service at address for service

A document may be served at an address for service by leaving the document at that address between 9 am and 5 pm.

39 Methods of service if address for service is lawyer's office

- (1) This rule applies if—
 - (a) a party's address for service is the office of the party's lawyer; and
 - (b) the party's lawyer has given a document exchange box number or an electronic address by which the lawyer will accept service on behalf of the party.
- (2) If this rule applies, a document may be served on the party by—
 - (a) leaving the document at a document exchange for direction to the document exchange box number; or
 - (b) transmitting the document to the electronic address.

40 When and how documents under rule 39 to be treated as served

- (1) A document left at a document exchange under rule 39(2)(a) must, unless the contrary is proved, be treated as having been served on the earlier of—
 - (a) the day on which it was received; and
 - (b) the second working day after the day on which it was left.
- (2) A document transmitted under rule 39(2)(b)—
 - (a) before 5 pm on a working day must be treated as having been served on that day unless the contrary is proved;
 - (b) on or after 5 pm on a day must be treated as having been served on the first working day after the day on which it was received unless the contrary is proved.
- (3) A document transmitted under rule 39(2)(b) must be treated as having been received in a complete and legible form unless—
 - (a) the contrary is proved; or
 - (b) the lawyer receiving the document gave in relation to the document the notice required by rule 41(1)(b).

41 Lawyer must acknowledge document transmitted electronically

- (1) A lawyer to whom a document is transmitted under rule 39(2)(b) must, promptly after receiving the document, give the person who serves the document—
 - (a) a notice acknowledging receipt of the document and confirming the date of service of the document; or

- (b) if the document is incomplete or illegible, or both, when it is received, a notice stating that the document was incomplete or illegible, or both, when it was received.
- (2) A notice under subclause (1) may be—
- (a) given in writing; or
 - (b) transmitted electronically.

Subpart 5—Substituted service

42 Substituted service

If reasonable efforts have been made to serve a document by a method permitted or required under these rules and either the document has not come to the knowledge of the person to be served or it cannot be promptly served, the court may—

- (a) direct—
 - (i) that instead of service, specified steps be taken that are likely to bring the document to the notice of the person to be served; and
 - (ii) that the document be treated as served on the happening of a specified event, or on the expiry of a specified time:
- (b) when steps have been taken for the purpose of bringing, or which have a tendency to bring, the document to the notice of the person on whom it is required to be served, direct that the document be treated as served on that person on a specified date:
- (c) subject to any conditions that the court thinks just to impose, dispense with service of a document on a person and give to the party by whom the document is required to be served leave to proceed as if the document had been served.

Compare: LI 2014/179 r 6.8

Subpart 6—Proof of service

43 Proof of service of a document

- (1) The service of a document may be proved—
- (a) by an endorsement on a copy of the document or, where applicable, on a printout that records an electronic document—
 - (i) showing the fact, date, time, and mode of service; and
 - (ii) signed by the person who signed the document; or
 - (b) by affidavit; or
 - (c) on oath at the hearing.
- (2) If the service of a document is proved by affidavit, it is unnecessary, unless the court otherwise directs, for a copy of that document to be annexed if—

- (a) either the original of the document or a copy of the document has, at the time of service, been filed in the court; and
- (b) the affidavit contains a description of the document that—
 - (i) is sufficient to enable the document to be identified; and
 - (ii) includes the date of the document (if the document is dated).

Part 5

Miscellaneous matters

44 Power to clear court

[Revoked]

Rule 44: revoked, on 14 November 2018, by section 168 of the Courts Matters Act 2018 (2018 No 50).

45 Application of District Courts Rules 2014

- (1) If in the course of proceedings under the Act a situation arises that is not provided for by these rules, any relevant provisions of the District Courts Rules apply, except the following provisions:
 - (a) rule 1.10:
 - (b) rule 2.6:
 - (c) rules 4.1 to 4.28 and rules 4.49 to 4.64:
 - (d) rules 5.1 to 5.4, 5.6 to 5.37, and 5.47 to 5.70:
 - (e) rules 6.1 to 6.32:
 - (f) rules 7.1 to 7.11, 7.12(4), 7.14, 7.15, 7.16(1), 7.17(3), 7.29, 7.32, 7.40, and 7.45 to 7.70:
 - (g) rules 8.1 to 8.48:
 - (h) rules 9.1 to 9.41:
 - (i) rules 10.1 to 10.8.
- (2) The application of rule 7.17(1) of the District Courts Rules is subject to rule 34 of these rules.

Michael Webster,
Clerk of the Executive Council.

Reprints notes

1 *General*

This is a reprint of the Victims' Orders Against Violent Offenders Rules 2014 that incorporates all the amendments to those rules as at the date of the last amendment to them.

2 *Legal status*

Reprints are presumed to correctly state, as at the date of the reprint, the law enacted by the principal enactment and by any amendments to that enactment. Section 18 of the Legislation Act 2012 provides that this reprint, published in electronic form, has the status of an official version under section 17 of that Act. A printed version of the reprint produced directly from this official electronic version also has official status.

3 *Editorial and format changes*

Editorial and format changes to reprints are made using the powers under sections 24 to 26 of the Legislation Act 2012. See also <http://www.pco.parliament.govt.nz/editorial-conventions/>.

4 *Amendments incorporated in this reprint*

Courts Matters Act 2018 (2018 No 50): section 168