

THE DELHI MAINTENANCE AND WELFARE OF PARENTS AND SENIOR CITIZENS RULES, 2009

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No. F-JD(A)/WP/Sr/Citizen Maint.Bill/DSW/2005-06- In exercise of powers conferred by Section 32 of the Maintenance and Welfare of Parents and Senior Citizens Act, 2007, the Lt. Governor of NCT of Delhi Maintenance and Welfare of Parents and Senior Citizens Rules, 2009. The said rules shall come into force from the date of Notification.

1. Short title and commencement

(1) These Rules may be called the Delhi Maintenance and welfare of Parents and Senior Citizens Rules, 2009.

(2) They shall come into force from the date of their notification in the Official Gazette.

2. Definitions

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

(a) "Act" means the Maintenance and Welfare of Parents and Senior Citizens Act, 2007 (56 of 2007);

(b) "application" means an application made to a tribunal under section 5;

(c) "Blood Relations" in the context of a male and a female inmate, mean father-daughter, mother-son, and brother-sister (not cousins);

(d) "Form" means a form appended to these rules;

(e) "Government" means the Lt. Governor of the National Capital Territory of Delhi appointed by the president under article 239 and delegated as such under article 239 of the constitution;

(f) "inmate", in relation to an old age home, means a senior citizen duly admitted to reside in such a home;

(g) "Opposite Party" means the party against whom an application for maintenance has been filed under section 4;

(h) "Presiding Officer" means an officer appointed to preside over a Maintenance Tribunal referred to under sub-section (2) of section 7 or an Appellate Tribunal under sub-section (2) of section 15;

(i) "Schedule" means a Schedule appended to these Rules;

(j) "section" means a section of the Act;

(2) Words and expressions defined in the Act but not defined in these rules shall have the meanings respectively assigned to them in the Act.

CHAPTER II

Procedure for Maintenance Tribunal, Appellate Tribunal and Conciliation Officers

3. Constitution of Maintenance Tribunal

(1) The Government of NCT of Delhi shall, by notification in the official Gazette, constitute for each sub-division one or more Tribunals as may be specified in the notification for the purpose of adjudicating and deciding upon the order for maintenance under section 5.

(2) The Tribunal shall consist of an ADM or SDM of the sub-division, as the case may be and two other members, of whom one shall be a woman.

(3) The maintenance tribunal shall have all the powers a civil court for all purposes of section 195 and chapter XXVI of the CrPC 1973.

¹(a) The ADM shall be designated as the Presiding Officer of the Tribunal.

(b) Two other non-official members, one of whom shall be a woman, shall have the following qualifications, namely:-

(i) he should not be less than 35 years of age.

(ii) He should possess a post graduate degree from a recognized university.

(iii) he should be a person of ability, integrity and standing and should have adequate knowledge and experience of at least 10 years of working with an organization working for the welfare of senior citizen in the area of health, woman empowerment and social welfare.

(iv) He should be resident of a National Capital Territory of Delhi for not less than three years.

Provided that a person shall be dis-qualified for appointment as a member if he-

(a) has been convicted and sentenced to imprisonment for an offence which, in the opinion of the state Government involves moral turpitude; or

(b) is an undischarged insolvent; or

(c) is of unsound mind and stands so declared by a competent court; or

(d) has been removed or dismissed from the service of the Government or a body corporate owned or controlled by the Government;

(c) Every appointment in clause (b) shall be made by the State Government on the recommendation of a Selection Committee consisting of the following, namely-

1. (i) Retired Secretary of the Government-Chairman.

(ii) Secretary In charge of the Department of the State Government.

(iii) One representative from the State Counsel for the senior Citizens – Member.

(iv) One representative from academic bodies concerned with social work, psychology and sociology with experience of working on the issues of aged persons – Member.

(v) Any officer, not below the rank of Dy. Director, of the concerned department – Member Secretary.

The Selection Committee at the time of recommending names for appointment as Members of the Tribunal and Appellate Tribunal shall also prepare a panel of names for each Tribunal to fill in vacancies which may arise during the tenure.

(d) The two non-official members shall hold office for a term of three years from the date on which they join the office or up to the age of 65, whichever is earlier.

Provided that a member shall be eligible for re-appointment for another term of three years or up to the age of 65, whichever is earlier, subject to the condition that he fulfills the qualification and other conditions for appointment as prescribed and such re-appointment is also made on the basis of the recommendation of Selection Committee.

(e) A member can resign any time, by giving one month advance notice in writing under his hand, or he may be removed from his office, after holding enquiry by the State Government, if

(a) he has been found guilty of misuse of power vested under this Act

(b) he has been convicted of an offence involving moral turpitude.

(c) He fails to attend the proceeding of the tribunal for consecutive four weeks without any valid reasons.

(f) Any vacancy in the Tribunal may be filled by appointment of another person from the panel of names prepared by the selection committee constituted under rule 3 (4) (c).

(g) The non-official members of the Tribunal shall be paid sitting allowance as the State Government may determine, but it shall not be less than Rupees Five Hundred per sitting per member

(h) The Tribunal shall hold its sittings for a minimum of two days a week which may be increased by the State Government depending on cases and pendency of work.

(i) The Tribunal shall perform the functions of adjudicating and disposing off cases of maintenance to achieve the objects of the Act and in this respect shall be guided by the provisions laid down under Chapter 2 of the Act.

(j) The procedure for the enquiry to be adopted by the Tribunal shall be guided by the provisions of the Section 5, 6 and 8 of the Act..

4. Panel for appointment as Conciliation Officers

(1) Every Tribunal shall prepare a panel of persons suitable for appointment as Conciliation Officer under sub-section (6) of section 6, which shall include the Maintenance Officers designated under section 18.

(2) Every Conciliation Officer shall have the following qualifications namely:-

(a) he should be associated with an organization which is working for the welfare of senior citizens and/or weaker sections, or in the area of education, health, poverty-alleviation, women's empowerment, social welfare, or related fields, for at least two years with an unblemished record of service;

(b) he should be a senior office-bearer of the organization; and

(c) he should possess good knowledge of law;

Provided that a person who is now associated with an organization of the kind mentioned above, may also be included in the panel mentioned in sub-rule (1) if he fulfills the following conditions namely:

(i) he has a good and unblemished record of public service in one or more of the areas mentioned in clause (a); and

(3) The Tribunal shall publish the panel mentioned in sub-rule (1) for general information at least twice every year, on 1st January and 1st July, respectively, and every, time any change is effected therein.

(4) Conciliation Officer shall be paid such honorarium and allowances as may be prescribed by the Sate Government.

5. Procedure for filling an application for maintenance, and its registration

(1) An application for maintenance under section 4 shall be made in Form `A', in the manner laid down in clauses (a) and (b) of sub-section (1) of section 5.

(2) On receipt of an application under sub-rule (1), the Presiding Officer shall cause – Its essential details to be entered in a Register of Maintenance Claim Cases, to be maintained by the Maintenance Tribunal.

Its acknowledgment in Form `B' to be given, notwithstanding anything contained in rule 5, to the applicant or his authorized representative in case of hand delivery, and its dispatch by post in other cases and the acknowledgement shall specify, inter alia, the registration number of the application.

(3) Where a Tribunal takes cognizance of a maintenance claim, suo motu, the Presiding Officer shall, after ascertaining facts, get Form `A' completed as accurately as possible, through the staff of the Tribunal, and shall, as far as possible, get it authenticated by the concerned senior citizen or parent, or any person or organization authorized by him and shall cause the same to be registered in accordance with clause (a) of sub-rule (2) above.

6. Preliminary Scrutiny of the application

(1) On receipt of an application under sub-section (1) of section 5, the Tribunal shall satisfy itself that-

(a) The application is complete; and

(b) The opposite party has, prima facie, an obligation to maintain the applicant in terms of section 4.

(2) In case where the Tribunal finds any lacunae in the application, it may direct the applicant to rectify such lacunae within 15 days of filling the application.

(3) Every application shall be heard and decided, within 3 months of the date of its presentation.

7. Notice to the Opposite Party

(1) Once the Tribunal is satisfied on the points mentioned in sub-rule (1) of rule 5, it shall cause to be issued to each person against whom an application for maintenance has been filed, a notice in Form `C' directing them to show cause why the application should not be granted, along with a copy of the application and its enclosures, in the following manner:-

(a) by hand delivery (Dasti) through the applicant if he so desires, else through a process server; or

(b) by registered post with acknowledgement due.

(2) The notice shall require the opposite party to appear in person, on the date to be specified in the notice and to show cause, in writing, as to why the application should not be granted and shall also inform that, in case he fails to respond to it, the Tribunal shall proceed ex parte.

(3) Simultaneously with the issue of notice under sub-rules (1) and (2), the applicants (s) shall also be informed of the date mentioned in sub-rule (2), by a notice issued in Form `D'.
*

(4) The provisions of Order V of the Code of Civil Procedure, 1908, shall apply, mutatis mutandis, for the purpose of service of notice under sub-rules (2) and (3).

(5) The Tribunal shall have all the powers of a Civil Court for the purpose of taking evidence on oath and of enforcing the attendance of witnesses of compelling the discovery and production of documents and material objects and for such other purposes as may be prescribed; and the Tribunal shall be deemed to be a Civil Court for all the purposes of section 195 and Chapter XXVI of the Code of Criminal Procedure, 1973.

8. Procedure in case of non-appearance by the Opposite Party

In case, despite service of notice, the opposite party fails to show cause in response to a notice, the Tribunal shall proceed ex parte, by taking evidence of the applicant and making such other inquiry as it deems fit, and shall pass an order disposing of the application.

9. Procedure in case of admission of claim

In case, on the date fixed in the notice issued under rule 6, the opposite party appears and accepts his liability to maintain the applicant, and the two parties arrive at a mutually agreed settlement, the Tribunal shall pass an Order accordingly.

10. Procedure for impleading children or relatives

(1) An application by the opposite party, under the proviso to sub-section (5) of section 5, to implead any other child or relative of the applicant shall be filed on the first date of hearing as specified in the notice issued under sub-rule (2) of rule 10:

Provided that no such application shall be entertained after such first hearing, unless the opposite party shows sufficient cause for filing it at a later stage.

(2) On receipt of an application under sub-rule (1), the Tribunal shall, if it is prima facie satisfied, after hearing the parties, about the reasonableness of such application, issue notice to such other child or relative to show cause why they should not be impleaded as a party, and shall after giving them an opportunity of being heard, pass an order regarding their implement or otherwise.

(3) In case the Tribunal passes an order of implement under sub-rule (2), it shall cause a notice to be issued to such impleaded party in Form "C" in accordance with rule 10.

11. Reference to Conciliation Officer

(1) In case, on the date fixed in the notice issued under rule 6, the opposite party appears and shows cause against the maintenance claim, the Tribunal shall seek the opinion of both the parties as to whether they Tribunal shall seek the opinion of both the parties as to whether they like the matter to be referred to a Conciliation Officer and if they express their willingness in this behalf, the Tribunal shall ask them whether they would like the matter to be referred to a person included in the panel prepared under rule 4, or to any other person acceptable to both parties.

(2) If both the parties agree on any person, whether included in the panel under rule 4 or otherwise, the Tribunal shall appoint such person as the Conciliation Officer in the case, and shall refer the matter to him, through a letter in Form 'E', requesting the Conciliation Officer to try and work out a settlement acceptable to both parties, within a period not exceeding one month from the date of receipt of the reference.

(3) The reference in Form 'E' shall be accompanied with copies of the application and replies of the opposite party thereto.

12. Proceedings by Conciliation Officer

(1) Upon receipt of a reference under rule 10, the Conciliation Officer shall hold

meetings with the two parties as necessary, and shall try to work out a settlement acceptable to both the parties, within a period of one month from the date of receipt of the reference.

(2) If the Conciliation Officer succeeds in working out a settlement acceptable to both the parties, he shall draw up a memorandum of settlement in Form 'F', get it signed by both parties, and forward it, with a report in Form 'G', along with all records of the case received from the Tribunal, back to the Tribunal within a month from the receipt of the reference.

(3) If the Conciliation Officer is unable to arrive at a settlement within one month of receipt of a reference under rule (12), he shall return the papers received from the Tribunal along with a report in Form 'H',

Showing efforts made to bring about a settlement and the points of difference between the two parties which could not be reconciled.

13. Action by the Tribunal in case of settlement before a Conciliation Officer

(1) In case, the Tribunal receives a report from the Conciliation Officer under sub-rule (2) of Rule 11, along with a memorandum of settlement, it shall give notice to both parties to appear before it on a date to be specified in the notice, and confirm the settlement.

(2) In case on the date specified in the notice as above, the parties appear before the Tribunal and confirm the settlement arrived at before the Conciliation Officer, the Tribunal shall pass a final order as agreed in such settlement.

14. Action by the Tribunal in other cases

(1) In case,-

(i) the applicant (s) and the opposite parties do not agree for reference of their dispute to a Conciliation Officer as per rule 11, or

(ii) the Conciliation Officer appointed under rule 11 sends a report under sub-rule (3) of rule 11, conveying inability to work out a settlement acceptable to both the parties, or

(iii) no report is received from a Conciliation Officer within the stipulated time-limit of one month, or

(iv) in response to the notice issued under sub-rule (1) of rule 13, one or both the parties decline to confirm the settlement worked out by the Conciliation Officer, the Tribunal shall give to both the parties an opportunity of leading evidence in support of their respective claims, and shall, after a summary inquiry as provided in sub section (1) of section 8, pass such order as it deems fit.

(2) An order passed under rule 8, rule 9 or under sub-rule (1) above shall be a speaking one, spelling out the facts of the case as ascertained by the Tribunal, and the reasons for the order.

(3) While passing an order under sub-rule (1), directing the opposite party to pay maintenance to an applicant, Tribunal shall take the following into consideration:-

(a) amount needed by the applicant to meet his basic needs, especially food, clothing, accommodation, and healthcare,

(b) income of the opposite party, and

(c) value of, and actual and potential income from the property, if any, of the applicant which the opposite party would inherit and/or is in possession of.

(4) A copy of every order passed, whether final or interim, on an application, shall be given to the applicant (s) and the opposite party or their representatives, in person, or shall be sent to them through a process server or by registered post.

15. Maximum maintenance allowance

The maximum maintenance allowance which a Tribunal may order the opposite party to pay shall, subject to maximum of rupees ten thousand per month.

16. Establishment and Procedure of Appellate Tribunal

The Government of National Capital Territory of Delhi shall, by notification in the official Gazette, constitute for each District one Appellate Tribunal as may be specified in the notification to hear the appeal against the order of Tribunal under section 15 (1) of the Act.

17. Form of appeal

And appeal under sub-section (1) of section 16 shall be filed before the appellate Tribunal in Form `I', and shall be accompanied by a copy of the impugned order of the Maintenance Tribunal.

18. Registration and acknowledgement of appeal

On receipt of an appeal, the Appellate Tribunal shall register it in a register to be maintained for the purpose in such form as the State Government may direct, and shall, after registering such appeal, give an acknowledgement to the appellant, specifying the appeal number and the next date of hearing, in Form `J'.

19. Notice of hearing to the respondent

(1) On receipt of an appeal, the Appellate Tribunal shall, after registering the case and assigning an appeal number, cause notice to be served upon the respondent under its seal and signature in Form `K'.

(2) The notice under sub-rule (1) shall be issued through registered post with acknowledgement due, or through a process server.

(3) The provisions of Order V of the Civil Procedure Code shall apply mutatis mutandis for the purposes of service of notice issued under sub-rule (1). Chapter III

20. Scheme for Management of old age homes established under section 19

Scheme for management of old age homes for indigent senior citizens.-

(1) Old age homes established under section 19 shall be run in accordance with the following norms and standards:-

(A) The home shall have physical facilities and shall be run in accordance with the operational norms as laid down in the Schedule.

(B) Inmates of the home shall be selected in accordance with the following procedure:-

(a) applications shall be invited at appropriate intervals, but at least once each year, from indigent senior citizens, as defined in section 19 of the Act, desirous of living in the home;

(b) in case the number of eligible applicants on any occasion is more than the number of places available in a home for admission, selection of inmates will be made in the following manner:-

(i) the more indigent and needy will be given preference over the less indigent applicants,

(ii) other things being equal, older senior citizens will be given preference over the less old, and

(iii) other things being equal, female applicants will be given preference over male applicants.

Illiterate and/or very infirm senior citizens may also be admitted without any formal application if the competent authority, is satisfied that the senior citizen is not in a position to make a formal application, but is badly in need of shelter;

(C) While considering applications or cases for admission, no distinction shall be made on the basis of religion or caste;

(D) The home shall provide separate lodging for men and women inmates, unless a male and a female inmate are either blood relations or a married couple endeavour shall be made to accommodate the married couple as far as possible;

(E) Day-to-day affairs of the old age home shall be managed by a Management Committee, such that inmates are also suitably represented on the Committee.

(2) State Government may issue detailed guidelines/orders from time to time for admission into and management of old age homes in accordance with the norms and standards laid down in sub-rule (1) and the Schedule.

CHAPTER-III

21. Duties and powers of the Deputy Commissioner

(1) The Deputy Commissioner shall perform the duties and exercise of the powers mentioned in sub-rules (2) and (3) so as to ensure that the provisions of the Act are properly carried out in his district.

(2) It shall be duty of the Deputy Commissioner to-

(I) ensure that life and property of senior citizens of the district are protected and they are able to live with security and dignity;

(II) oversee and monitor the work of Maintenance Tribunals and Maintenance Officers of the district with a view to ensuring timely and fair disposal of applications for maintenance and execution of Tribunals' orders;

(III) oversee and monitor the working of old age homes in the district so as to ensure that they conform to the standards laid down in these rules, and any other guidelines and orders of the State Government;

(IV) ensure regular and wide publicity of the provisions of the Act, and Central and State Government's programmes for the welfare of senior citizens;

(V) encourage and co-ordinate with municipalities, educational institutions and especially their National Service Scheme Units, organisations, specialists, experts, activists, etc. working in the district so that their resources and efforts are effectively pooled for the welfare of senior citizens of the district;

(VI) ensure provision of timely assistance and relief to senior citizens in the event of natural calamities and other emergencies;

(VII) ensure periodic sensitization of officers of various Departments and Local Bodies concerned with welfare of senior citizens, towards the needs of such citizens, and the duties of the officers towards the latter;

(VIII) ensure that adequate number of prescribed application forms for maintenance are available in offices of common contact for citizens like Post (VIII) Offices, SDMs offices, District Offices, PDS outlets, Police Stations, etc.;

(IX) perform such other functions as the Government may, by order, assign to the Deputy Commissioners in this behalf , from time to time.

(3) With a view to performing the duties mentioned in sub-rule (2), the Deputy Commissioners shall be competent to issue such directions, not inconsistent with the Act, these rules, and general guidelines of the Government, as may be necessary, to any concerned government or statutory agency or body working in the district, and especially to the following:

(I) Officers of the Government in the police, Health and publicity Department, and the Department dealing with welfare of senior citizens;

(II) Maintenance Tribunals and Conciliation Officers;

(III) Municipal Corporation of Delhi and NDMC;

(IV) Educational institutions.

CHAPTER-IV

Protection of Life and Property of Senior Citizens

22. Action plan for the protection of life and property of senior citizens

(1) The Commissioner, Police shall take all necessary steps, subjects, to such guidelines as the Government may issue from time to time, for the protection of life and property of senior citizens.

(2) Without prejudice to the generality of sub-rule (1). –

(I). each police station shall maintain an up-to-date list of senior citizens living within its jurisdiction, especially those who are living by themselves (i.e. without there being any member in their household who is not a senior citizen).

(II) a representative of the police station together, as far as possible, with a social worker or volunteer, shall visit such senior citizens at regular intervals and shall, in addition, visit them as quickly as possible on receipt of a request of assistance from them.

(III) complaints/problems of senior citizens shall be promptly attended to, by the local police.

(IV) one or more Volunteers' Committee(s) shall be formed for each police station which shall ensure regular contact between the senior citizens, especially those living by themselves on the one hand, and the police and district administration on the other.

(V) the Commissioner, Police shall cause to be published widely in the media and through the police stations, at regular intervals, the steps being taken for the protection of life and property of senior citizens.

(VI) each police station shall maintain a separate register containing all important particulars relating to offences committed against senior citizens, in such form as the Government may, by order, specify.

(VII) the register referred to in clause (VI) shall be kept available for public inspection, and every officer inspecting a police station shall invariably review the status as reflected in the register.

(VIII) the Police Station shall send a monthly report of such crimes to the Commissioner, Police by the 10th of every month.

(IX) list of Do's and Don'ts to be followed by senior citizens in the interest of their safety will be widely publicized.

(X) antecedents of domestic servants and other working for senior citizens shall be promptly verified, on the request of such citizens.

(XI) community policing for the security of senior citizens will be undertaken in

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conjunction with citizens living in the neighbourhood Residents' Welfare Association, Youth Volunteers, Non-Government Organisations, etc.

(XII) the Deputy Commissioner of Police shall submit to the Commissioners of Police, a monthly report by the 20th of every month, about the status of crime against senior citizens during the previous month, including progress of investigation and prosecution of registered offences, and preventive steps taken during the month. The Commissioner of Police shall cause the reports to be compiled, once a quarter, and shall submit them to the Government every quarter as well as every year for, inter alia being placed before the State Council of Senior Citizens constituted under rule 23.

CHAPTER-V

State Council and District Committees of Senior Citizens

23. State Council of Senior Citizens

(1) The State Government may, by order, establish a State Council of Senior Citizens to advise the State Government on effective implementation of the Act and to perform such other functions in relation to senior citizens as the Government may specify.

(2) The State Council shall consist of the following members, namely :-

(i) Minister of the Government in charge of welfare of senior citizens

-Chairman, ex-officio

(ii) Secretaries of Department of the Government dealing with Disabilities, Senior Citizens Welfare, Health, Planning Home, Publicity, Pensions and other subject of concern to the senior citizens

-Member ex-officio

(iii) such number of specialists and activists in the field of welfare of senior citizens, as the Government may determine, to be nominated by the Government

-Members

(iv) such number of eminent senior citizens, as the Government may determine, but not less in number than the ex-officio members in the Council, to be nominated by the Government

-Members

(v) Director in-charge of Senior Citizens Welfare in the NCT of Delhi.

-Member-Secretary ex-officio

(3) The State Council shall meet at least once in six months.

(4) Tenure of the members of the State Council, other than ex-officio members, will be three years which will be co-terminus with the term of the Council.

24. District Committee

(1) The Government may, by order, establish a District Committee of Senior Citizens for each District to advise in effective and co-ordinate implementation of the Act at district level, and to perform such other functions in relation to senior citizens at the district level, as the Government may, specify.

(2) The District Committee shall meet once in every quarter.

(3) Composition of the District Committee, tenure of members (other than ex-officio Members), rules of procedure and other ancillary matters shall be such as the State Government may, by order, specify.

Schedule

(See Rule 20)

Norms of Physical Facilities and Operational Standards for an Old Age Home for Indigent Senior Citizens Established Under/Section 19 of the Act

I. Physical Facilities

1. Land

The land for the old age home should be adequate to comply with the Floor-Area Ratio (FAR) as prescribed by the relevant urban body/State Government. In the case of semi-urban/rural areas, the State Government shall provide adequate land for setting up of an old age home of requisite capacity such that there is adequate land for recreation, gardening, further expansion, etc.

2. Living Space:

The old age home shall, as far as possible, have minimum area per inmate as per the following norms:-

(i) area of bedroom/dormitory per inmate 7.5 sq. metres

(ii) living area or carpet area per inmate i.e. including (i) above plus ancillary areas like kitchen, dining hall, recreation room, medical room, etc. but excluding verandahs, corridors, etc. 12 sq. metres

3. Facilities

(1) The old age home shall have the following facilities:-

(i) residential area comprising rooms/dormitories-separately for men and women;

(ii) adequate water for drinking and ancillary purposes;

(iii) electricity, fans and heating arrangement for inmates (as necessary);

(iv) kitchen-cum-store and office;

(v) dining hall;

(vi) adequate number of toilets and baths, including toilets suitable for disabled persons;

(vii) recreation facilities, television, newspaper and an adequate collection of books; and (viii) first aid, sick bay, and primary healthcare facilities.

(2) The old age home should be barrier-free with provision of ramps and handrails, and where necessary, lifts, etc.

II. Operational Standards

1. Supply of nutritious and wholesome diet as per scale to be fixed by the State Government.

2. Adequate clothing and linen for the inmates, including for the winter season.

3. Adequate arrangements for sanitation, hygiene, and watch and ward/security.

4. Arrangements with the nearest Government hospital for emergency medical care, and with the nearest Police Station for security requirements.