

**SUBORDINATE LEGISLATION IN TERMS OF THE
ADMINISTRATION AMENDMENT ACT, 1929 (ACT NO. 9 OF 1929)**

Rules in terms of section 10 of the Administration Amendment Act, 1929 (Act No. 9 of 1929) published in Government Notice No. R. 1454 of 9 November 1998(Government Gazette No. 19458):

SCHEDULE

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Definitions

1. (1) In these rules, unless the context otherwise indicates –
 - ‘action’ means a proceeding in which substantive relief is claimed;
 - ‘apply’ means on motion, and ‘application’ has a corresponding meaning;
 - ‘clerk of the court’ means a clerk of the court appointed under section 13 of the Magistrates’ Courts Act, 1944 (Act No. 32 of 1944) and includes an assistant clerk of the court so appointed;
 - ‘copy’ means a true and correct copy;
 - ‘court’ means a divorce court established by proclamation under section 10 of the Act;
 - ‘court day’ means any day other than a Saturday, Sunday or public holiday, and only court days shall be included in the computation of any time expressed in days prescribed by these rules or fixed by any order of court;
 - ‘deliver’ means to file or record with the registrar and serve a copy on the opposite party, and ‘delivery’, ‘delivered’ and ‘delivering’ have a corresponding meaning;
 - ‘Director-General’ means the Director-General of the Department of Justice;
 - ‘Family Advocate’ means a Family Advocate appointed in terms of section 2(1) of the Mediation in Certain Divorce Matters Act, 1987 (Act No. 24 of 1987);

‘Family Councillor’ means a Family Counsellor appointed in terms of section 3(1) of the Mediation in Certain Divorce Matters Act, 1987 (Act No. 24 of 1987);

‘legal aid centre’ means any centre which provides legal service free of charge to the public and includes centres operated by the Legal Aid Board, established under section 2 of the Legal Aid Act, 1969 (Act No. 22 of 1969);

‘legal practitioner’ means an advocate or attorney;

‘magistrate’ includes an additional magistrate and an assistant magistrate;

‘magistrate’s court’ means a court established in terms of section 2(1)(f) of the Magistrates’ Courts Act, 1944 (Act No. 32 of 1944);

‘notice’ means a notice in writing;

‘party’ means any person who is a party to the proceedings;

‘plaintiff’, ‘defendant’, ‘applicant’, ‘respondent’ and ‘party’ include the legal practitioner appearing for such plaintiff, defendant, applicant, respondent or party;

‘pleading’ includes an annexure to a summons, a plea, a counterclaim and a replication;

‘presiding officer’ means a judicial officer appointed by the Minister of Justice under section 10(3)(b) of the Act;

‘registrar’ means an officer appointed under rule 2 to be registrar or assistant registrar of the divorce court having jurisdiction;

‘sheriff’ means a person appointed in terms of section 2 of the Sheriffs Act, 1986 (Act No. 90 of 1986), and also a person appointed in terms of section 5 or section 6 of the Act as an acting sheriff or a deputy sheriff and includes a messenger of the court appointed in

terms of any law not yet repealed by a competent authority and, immediately before the commencement of the Constitution, in force in any area which forms part of the national territory;

‘taxing officer’ means the registrar or a clerk of the court or a registrar of the High Court appointed under section 34 of the Supreme Court Act, 1959 (Act No. 59 of 1959) or a registrar appointed under any law not yet repealed by a competent authority and immediately before the commencement of the Constitution in force in any area which forms part of the national territory; and

‘the Act’ means the Administration Amendment Act, 1929 (Act No. 9 of 1929).

- (2) All distances shall be calculated over the shortest route reasonably available under the circumstances.

Appointment of registrar

2. (1) The Director-General shall appoint officers to perform the duties of the registrar or assistant registrar of the court and may appoint any person to act temporarily as registrar or assistant registrar.
- (2) A registrar may, with the approval of the Director-General, delegate his or her authority to a clerk of the court or a registrar of a High Court.

Duties of registrar

3. (1) A refusal by the registrar to do any act which he or she is required or empowered by these rules to do shall be subject to review by the court on application, either *ex parte* or on notice, as the circumstances may require.
- (2) The registrar shall keep a register to be called the register of divorce cases, and shall enter therein –
 - (a) the number of the action; and
 - (b) the names of the parties.
- (3) The registrar shall also keep a daily index of all cases entered in the register of divorce cases.
- (4) The summons or other first document lodged in an action or an application not relating to a then pending case shall be numbered by the registrar with a consecutive number for the year, and the action or application shall be entered in the register of divorce cases under that number.
- (5) Every document afterwards served or lodged in such action or application, or in any subsequent case in continuation of any such action or application, shall be marked with such number by the party lodging it, and shall not be accepted by the registrar until so marked.

- (6) All documents delivered to the registrar and all minutes made by the court shall be filed of record under the number of the respective action or application.
- (7) Copies of such records shall, upon prepayment of the prescribed fees, be made and issued by the registrar to any person applying therefore and entitled thereto, or such copies may be made by such person in the presence of the registrar.
- (8)
 - (a) A party who does not make use of the services of a legal practitioner, may request –
 - (i) the registrar, if the party resides in the district in which the seat of the registrar is situated; or
 - (ii) the clerk of the court of the district in which the party resides, if the party does not reside in the district in which the seat of the registrar is situated,for assistance with the preparation of any process of court or other document concerning the action.
 - (b) The registrar or the clerk of the court requested in accordance with paragraph (a) shall render such assistance or refer the party to a convenient legal aid centre.
 - (c) If the clerk of the court assists a party with the preparation of any process of court or other document, he or she shall send a copy of such process or document, except a summons, to the registrar concerned.
 - (d) The State and a registrar or a clerk of the court who assists a party with the preparation of any process of court or other

document shall not be liable for any damage or loss resulting from assistance given in good faith by that registrar or clerk of the court to such party to an action before the court or to the enforcement of a judgment or order in terms of these rules in the form of legal advice or the compilation or preparation of any process of court or other document.

- (9) Any act required to be done by the registrar may be done by a presiding officer except that a presiding officer shall in no case write out any affidavit, pleadings or process for any party or tax any bill of costs.
- (10) The register of divorce cases shall be open to inspection without charge at all convenient times during office hours.
- (11) The registrar's office hours for the public shall be from 08:30 to 15:00 on court days.

Representation of parties

- 4. (1) (a) A party may institute or defend and may carry to completion any legal proceedings either in person or by a legal practitioner.
- (b) No person other than a practitioner acting in terms of paragraph (a) shall be entitled to recover any costs other than necessary disbursements.

- (2) It shall not be necessary for a legal practitioner to file a power of attorney to act but the authority of any person acting for a party may be challenged by the other party within forty-eight hours after he or she has noticed that such person is so acting or, with the leave of the court if good cause is shown, at any time before judgment; and thereupon such person may not, without the leave of the court, so act further until he or she has satisfied the court that he or she has authority so to act and the court may adjourn the hearing of the action or application to enable him or her to do so.
- (3) Whenever, in the opinion of the court, a legal practitioner has been guilty of misconduct or dishonourable practice, the court may report the fact –
- (a) in the case of an advocate, to the branch of the Society of Advocates or bar council at the centre at which such advocate practices; or
 - (b) in the case of an attorney to the law society concerned.

Courts to be open to the public with exceptions

5. (1) Except where otherwise provided by law the proceedings of the court shall be carried on in open court and recorded by the presiding officer or other officer appointed to record such proceedings.
- (2) The court may in any case in the interest of good order or public morals direct that a trial shall be held with closed doors, or that, with such exceptions as the court may direct, minors or the public

generally shall not be permitted to be present thereat, or that the trial be held in some other place than in the courtroom.

- (3) If any person present in the court disturbs the peace or order thereof, the court may order that person to be removed and detained in custody until the rising of the court.
- (4) If, in its opinion, peace or order cannot otherwise be secured, the court may order the courtroom to be cleared and the doors thereof to be closed to the public.

Evidence to be given *viva voce* with exceptions

6. (1) Except as is otherwise provided in these rules every witness in any action shall deliver his or her evidence *viva voce* and in open court: Provided that, where any witness is unable on account of ill health or advanced age to attend the court, his or her evidence may be taken in the presence of the presiding officer, the parties and their legal practitioners, if there be such practitioner or practitioners and should he or she choose to attend, at such place as may seem to the court most convenient.
- (2) Whenever by reason of physical affliction or other good and sufficient cause any witness is unable to give his or her evidence *viva voce* the court may, in its discretion, allow such evidence to be given in any other manner whereby intelligible communication can be established between such witness and the court.

- (3) All *viva voce* evidence shall be given upon oath or affirmation after the witness has been duly sworn or admonished to speak the truth.
- (4) Any document which purports to be a report by a Family Counsellor relating to the interest of minor or dependant children of parties in a divorce action, shall by the mere production thereof by the registrar at any proceedings pertaining to such divorce action, be *prima facie* evidence of the contents thereof: Provided that the court may itself, or on application by any of the parties to the divorce action, or on application by the Family Advocate, direct that the Family Counsellor who compiled the report shall appear at the hearing to give evidence, and the court may make an appropriate order with regard to the costs relating thereto.

Public access to records

7. (1) The records of the court shall be accessible to the public under supervision of the registrar at convenient times during office hours and upon payment of the fees prescribed by these rules, and for this purpose and for all other purposes the records shall be preserved by the registrar.
- (2) The Director-General may order that after the expiration of a period determined by him or her from the date of judgment or disposal of or lapsing of the action the records of proceedings be removed to a central place of custody.

Judgment

8. The court may as the result of the trial of an action grant –
- (a) judgment for a party in respect of his or her claim in so far as he or she has proved the same;
 - (b) judgment for a party in respect of his or her defence in so far as he or she has proved the same;
 - (c) absolution from the instance if it appears to the court that the evidence does not justify the court in giving judgment for either party;
 - (d) such judgment as to costs as may be just.

Witnesses and evidence

9. (1) Any party to an action or other proceedings where the attendance of witnesses is required, may procure the attendance of any witness to give evidence or to produce any books, papers or documents by suing out a subpoena.
- (2) (a) Any witness who has been required to produce any book, paper or document at the trial shall hand it to the registrar within 10 court days after a subpoena referred to in subrule (1) has been served on him or her, unless the witness claims that the book, paper or document is privileged.
- (b) The parties may thereafter inspect such book, paper or document and make copies thereof, after which the witness is entitled to its return.

- (3) There shall be delivered to the sheriff, if the party suing out the subpoena desires it to be served through the sheriff, together with the said subpoena as many copies thereof as there are witnesses to be summoned and also such sum or sums of money as the party for whom they are summoned intends that the sheriff shall pay or offer to the said witnesses respectively for their conduct money.
- (4) The court may set aside the service of any subpoena if it appears that the witness served was not given reasonable time to enable him or her to appear in pursuance of the subpoena.
- (5)
 - (a) Any person duly subpoenaed to give evidence or to produce books, papers or documents in his or her possession or under his or her control, which the party requiring his or her attendance desires to show in evidence, who fails, without lawful excuse, to attend or to give evidence or to produce those books, papers or documents according to the subpoena or, unless duly excused, fails to remain in attendance throughout the trial, may be charged with contempt of court.
 - (b) If any person so subpoenaed fails to appear or, unless duly excused, to remain in attendance throughout the trial, the court may, upon being satisfied that no lawful excuse for such failure seems to the court to exist, issue a warrant for his or her apprehension in order that he or she may be brought before a magistrate's court to be dealt with according to law.

- (c) The court may order the costs of any postponement of adjournment occasioned by the default of a witness or any portion of such costs to be paid by such witness.

Interrogatories

- 10.** (1) Whenever a witness resides or is in a district other than that wherein the case is being heard, the court may, if it appears to be consistent with the ends of justice, upon the application of either party, approve such interrogatories as either party desires to have put to such witness and shall direct the same to be transmitted, together with any further interrogatories framed by the court, to the magistrate's court of the district within which such witness resides or is present.
- (2) (a) Such witness shall thereupon be subpoenaed to appear before the magistrate's court and upon his or her appearance his or her evidence shall be taken in manner and form as if her or she were a witness in a case pending before that court, and the said interrogatories shall be put to the witness and also such further questions as may prove to be necessary to obtain full and true answers to the interrogatories, and the evidence of the witness shall be recorded and the same shall be transmitted to the registrar.
- (b) The said record shall, subject to all lawful objections, be received and taken as evidence in that case.

- (3) Every witness subpoenaed under subrule (2) to appear, may be charged with contempt of court in the case of non-attendance or failure to give evidence or to produce books, papers or documents.

Commissions *de bene esse*

11. (1) The court may in any case which is pending before it, whenever it may be expedient or consistent with the ends of justice to do so, appoint a person to be a commissioner to take the evidence of any witness, whether within the Republic or elsewhere, upon the request of one of the parties and after due notice to the other party.
 - (2) (a) The person so appointed, shall put to such witness such questions as may have been transmitted to him or her on agreement between the parties, or otherwise shall allow the parties to examine such witness as if the witness were being examined in court.
 - (b) Such person shall record or cause to be recorded the evidence of such witness and the evidence so recorded shall be read over to and shall be signed by the witness.
 - (c) The said record shall, subject to all lawful objections, be received as evidence in the case.

Execution

12. (1) The court may issue against any party to an action or proceeding any form of process in execution of its judgment in such action or proceeding.

- (2) The court may, on good cause shown, stay or set aside any warrant of execution or arrest issued by it.
- (3) The process for the execution of any judgment shall be by warrant issued and signed by the registrar and directed to the sheriff and shall also be signed by the party suing out the same.
- (4) Such process may be sued out by any person in whose favour any such judgment shall have been given if such judgment is not then satisfied, set aside or suspended.
- (5)
 - (a) Such process may at any time, on payment of the costs incurred, be withdrawn or suspended by notice to the sheriff by the party who has sued out such process.
 - (b) A request in writing made from time to time by such party to defer execution of such process for a definite period not being longer than one month shall not be deemed to be a suspension.
- (6) Any alteration in such process shall be initialled by the registrar before such process is issued by him or her.
- (7) Any such process shall be invalid if a wrong person is named therein as a party, but no such process shall be invalid by reason of the misspelling of any name therein, or of any error as to date.

Mode of execution

13. The mode of executing any judgment of the court for the payment of money shall mutatis mutandis be as prescribed for the execution of judgments of magistrates' courts.

Process of the court

14. (1) All processes of the court for service or execution and all copies to be filed of record shall be on A4 standard paper.
- (2) Any process issued or delivered shall be endorsed with the name and address of the parties issuing or delivering it.
- (3) All processes of the court shall be directed to the sheriff and shall, except as hereinafter provided, be issued and signed by the registrar and bear the date and the name and postal address of the party suing it out.
- (4) Subpoenas for compelling the attendance of witnesses and notices of any application may be signed either by the registrar or by the clerk of the court: Provided that such subpoena or notice may not be signed by the clerk of the court of the district in which the seat of the registrar is situated.
- (5) The forms of subpoena, warrant of execution, warrant for fine or arrest of a witness in default and generally all other forms necessary for the proper and effective carrying out of these rules shall, save

where otherwise provided in these rules, be those prescribed for magistrates' courts, suitably adapted.

Force of process

15. Every process issued by the court shall be of force throughout the Republic.

Sheriff

- 16.** (1) Except where otherwise provided in these rules, the process of the court shall be served or executed, as the case may be, by the sheriff upon payment by the party suing out the process of the fees prescribed in the rules for magistrates' courts.
- (2) Service or execution of process of the court shall be effected without avoidable delay, and the sheriff shall, in any case where resistance to the due and proper service or execution of such process has been encountered or is reasonably anticipated, have power to call upon any officer or member of the South African Police Service as defined in section 1 of the South African Police Service Act, 1995 (Act No. 68 of 1995), to render aid to himself or herself.
- (3) The sheriff shall endorse on or annex to all process entrusted to him or her for service or execution a return showing the date and manner of service or the result of execution, as the case may be, and shall then forthwith return the said process to the registrar.

- (4) The sheriff shall, as to processes entrusted to him or her for service, notify as soon as may be by post or otherwise in writing the legal practitioner who sued out the process or, if there be no such practitioner, the registrar, either –
- (a) that service has been duly effected and of the date thereof; or
 - (b) that he or she has been unable to effect service and of the reason for such inability.

Service or process, notices, etc.

17. (1) (a) Service of any process through which an action claiming a divorce is instituted shall be effected by the sheriff at the request of the plaintiff or the applicant, on the defendant or the respondent personally.
- (b) Where the person to be served with any process initiating ancillary or interlocutory application proceedings, is already represented by a legal practitioner, such process may be served upon such practitioner by the party initiating such proceedings.
- (c) The court may condone service of a process, through which an action is instituted, which is not served personally on the defendant or respondent, if there is evidence before it that such process has come to the knowledge of the defendant or respondent.
- (2) A party requiring service of any process, notice or other document to be made by the sheriff shall deliver to him or her the original of such

process, notice or document, together with as many copies thereof as there are persons to be served.

- (3) Except in the case of service by post, processes and notices may not be served on a Sunday or on a public holiday.
- (4) All processes of the court shall, subject to the provisions of this rule, be served upon the person affected thereby by delivery of a copy thereof in one or other of the following manners:
 - (a) To the said person personally or to his or her duly authorized agent;
 - (b) at his or her residence or place of business or employment to some person apparently not less than sixteen years of age and apparently residing at or employed there (“residence” for the purpose of this paragraph when a building is occupied by more than one person or family, means that portion of the building occupied by the person to be served);
 - (c) if the person to be served has chosen a *domicilium citandi*, at the *domicilium* so chosen;
 - (d) if the address of the person to be served is within the areas if jurisdiction of the court for which the sheriff has been appointed, and if the plaintiff or her or her authorized agent has given written instruction to the sheriff to serve by registered post, the process shall be so served.

- (5) The court may, if there is reason to doubt whether a process served has come to the actual knowledge of the person to be served and in the absence of satisfactory evidence, treat such service as invalid.
- (6) The sheriff or other person serving a process shall, on demand by the person upon or against whom process is served, exhibit to him or her the original process except where service has been effected by post, in which case the original may be inspected where it is filed.
- (7) Where two or more persons are to be served with the same process, service shall be effected upon each.
- (8) Service of a subpoena on a witness may be effected at a reasonable time before attendance is required in any manner hereinbefore prescribed but need not be effected through the sheriff.
- (9)
 - (a) Service of any notice, request, statement or other document which is not process of the court may be effected by delivery by hand at the address for service given in the summons or pleadings, as the case may be, or by sending it by registered post to the postal address so given.
 - (b) An address for service or postal address so given may be changed by the filing of record with the registrar of notice of a new address and the service of a copy thereof upon the opposite party and thereafter service may be effected at such new address.

- (c) Service by registered post under this subrule shall be deemed, until the contrary appears, to have been effected at 10:00 on the tenth day after the postmarked date upon the receipt for registration.
 - (d) Service under this subrule need not be effected through the sheriff.
- (10)
- (a) If service cannot be effected in any manner hereinbefore prescribed, or if process or a document whereby proceedings are instituted is to be served outside the Republic, the person desiring to obtain leave to effect service may apply for such leave to a presiding officer, who may consider the application in chambers.
 - (b) Such application shall set for the concisely the nature and extent of the claim, the grounds upon which it is based and upon which the court has jurisdiction to entertain the claim and also the manner of service which the court is asked to authorize.
 - (c) If such manner be other than personal service, the application shall further set forth the last-known whereabouts of the person to be served and the enquiries made to ascertain his or her present whereabouts.
 - (d) Upon such application the presiding officer may make such order as to the manner of service as it deems fit and shall further order the time within which notice of intention to defend is to be given or any other step which is to be taken by the person to be served.

- (e) Where service by publication is ordered, it shall be in a form which shall substantially correspond with Form 4 of Annexure 2, and shall be approved and signed by the registrar.
 - (f) Where the document concerned is not one whereby proceedings are instituted, leave for service thereof may be requested in terms of paragraph (a) or verbally at any hearing at which the court is dealing with the matter, in which event no papers need be filed in support of such request and the court may make such order as it deems fit.
- (11) Where the service to be effected is an order made ex parte, which calls upon the respondent to show cause, at a time or before the end of a period stated in the order, why such order should not be confirmed, it shall be effected at least 15 court days before the time or the end of the period therein.
- (12) Except where otherwise provided, notice of application to the court shall be served at least 10 court days before the time appointed for the hearing of the application, but the court may on cause shown reduce such period.
- (13) (a) Unless otherwise provided, where service of process may be effected by registered post, the service shall be so effected by the sheriff placing a copy of the process in an envelope, addressing and posting it by prepaid registered letter to the address of the party to be served and at the time of registration making application for an acknowledgement by the addressee

of the receipt thereof as provided in regulation 44 of the Regulations published under Government Notice No. 550 of 14 April 1960.

- (b) A receipt form completed as provided in regulation 44(8) in the said Regulations shall be a sufficient acknowledgement of receipt for the purpose hereof.
- (c) If no acknowledgement be received the sheriff shall state the fact in his or her return of service of the process.
- (d) Every such letter shall have on the envelope a printed or type-written notice in the following terms:
 “This letter must not be readdressed. If delivery is not effected before19..... it must be returned to the sheriff.”

Summons commencing action

- 18.** (1) The process of the court commencing an action shall be by summons informing the defendant that, if he or she disputes the plaintiff’s claim and wishes to defend the action, he or she shall within one month after the date of service of the summons upon him or her enter an appearance to answer the claim of the plaintiff, and warning the defendant of the consequences of failure to do so.
- (2) The summons shall state –
- (a) the sex, occupation (if known) and address of the defendant;
 - (b) the sex, occupation and postal and residential addresses of the plaintiff; and

- (c) the full address where the plaintiff will accept service of process in the action.
- (3) The summons shall substantially correspond with Form 1 of Annexure 2.

Endorsement of summons

- 19.** (1) The summons shall before issue be endorsed with particulars of claim, which shall include –
- (a) the grounds on which it is averred that the court has jurisdiction in terms of subsection (1) of section 2 of the Divorce Act, 1979 (Act No. 70 of 1979);
 - (b) if a marriage subsists between the plaintiff and the defendant –
 - (i) the place and date of the marriage, as well as the matrimonial property system;
 - (ii) the names, ages and sex of any minor children of the marriage;
 - (iii) the name and address of the person in whose custody such minor children are; and
 - (c) the nature and grounds of each claim and alternative claim.
- (2) The summons shall be signed by the plaintiff or his or her legal practitioner and shall state the address of the person who has so signed.

- (3) The particulars of claim shall be contained in an annexure served with the summons, which annexure shall be taken to be part of the summons.

Amendment of summons and other pleadings

- 20.** (1) Subject to the provisions of this rule a summons may, before service, be amended by the plaintiff as he or she shall think fit.
- (2) Any alteration or amendment of a summons before service, whether before or after issue, shall, before the summons is served, be initialled by the registrar in the original summons and, until so initialled, such alterations and amendments shall have no effect.
- (3) (a) Any party desiring to amend any pleadings in a divorce action shall give notice to the other party of his or her intention so to amend and the particulars of such amendment.
- (b) Such notice shall state that unless objection in writing is made within 10 court days after the delivery of the notice of the proposed amendment, the amendment will be effected.
- (c) Any objection to a proposed amendment shall clearly and concisely state the grounds upon which the objection is founded.
- (d) If any objection be made against the amendment within the said period, the provisions of subrule (5) shall apply.

- (e) Unless the court otherwise directs, a party who is entitled to amend shall effect the amendment by delivering each relevant page in its amended form.
 - (f) The other party may within 10 court days after the amendment has been effected plead thereto or amend accordingly any pleading already filed by him or her.
- (4) When neither the first name nor the initial of the defendant is shown, or a wrongly spelt first name or not all first names appear in the summons but the correct first name or initial of the person upon whom service has been effected is disclosed in the return of the sheriff, the registrar may, at the request of the plaintiff and without notice to such person, insert such first name or initial in the summons as being the first name or initial of the defendant and such amendment shall, for all purposes, be deemed to have been effected before service of the summons.
- (5) The court may, at any time before judgment, upon such terms as to costs and otherwise as it may deem reasonable, grant leave for the amendment of any summons or other document forming part of the record: Provided that no amendment shall be made by which any party other than the party applying for such amendment may, notwithstanding adjournment, be prejudiced in the conduct of his or her action or defence.

Pleadings

- 21.** (1) Every pleading shall be signed by the party or his or her legal practitioner.
- (2) Every pleading shall be divided into paragraphs (including subparagraphs) which shall be consecutively numbered and shall, as nearly as possible, each contain a distinct averment.
- (3) Every pleading shall contain a statement of all the material facts relied upon with sufficient particularity to enable the other party to respond thereto.
- (4) Every pleading in which a party claims patrimonial relief other than that which the party would ordinarily be entitled to as a natural consequence of the divorce, shall contain details of the grounds on which such relief is claimed.

Appearance to defend

- 22.** (1) A defendant who intends to defend the action may, within the period stated in the summons, enter an appearance to defend by delivering to the registrar or to any clerk of the court and serving upon the plaintiff, at the address nominated by the plaintiff in the summons, a notice in writing that he or she intends to defend.
- (2) The notice shall be signed by the defendant or his or her legal practitioner and shall state the full address where the defendant will

accept service of process in the action and also the postal address of the person who so signed.

- (3) The clerk of the court shall forthwith forward any notice received by him or her in terms of subrule (1) to the registrar.

Plea and claim in reconvention

23. (1) The defendant shall, within 10 court days after entry of appearance to defend, deliver a plea.
 - (2) The plea shall be dated and signed by the defendant or his or her legal practitioner.
 - (3) The defendant shall in his or her plea either admit or deny or confess and avoid all the material facts alleged in the particulars of claim and shall clearly and concisely state the nature and the grounds of his or her defence including any exception to the summons or special defence.
 - (4) Any defence which can be adjudicated upon without the necessity of going into the main case may be set down by either party for a separate hearing upon 10 court days' notice at any time after such defence has been raised.
 - (5) (a) If the defendant desires to make a claim in reconvention, he or she shall do so by the delivery, with his or her plea, of a

statement in writing giving such particulars as are required for claims in convention.

- (b) It shall not be necessary to enter an appearance to defend a claim in reconvention.
- (c)
 - (i) A defendant in reconvention who intends to defend the claim in reconvention shall within 10 court days of delivery of such claim deliver a plea to such claim giving such particulars as are required for pleadings in convention.
 - (ii) The provisions of subrules (2) and (3) shall *mutatis mutandis* apply to such plea.

Failure to deliver a plea

- 24.** (1) If a defendant has entered an appearance to defend but has failed to deliver a plea, the plaintiff may deliver notice in writing calling upon the defendant to deliver a plea as provided in rule 23 within 10 court days of the service of such notice and warning the defendant that upon his or her failure to do so the case may be set down without further notice and that judgment may be given against him or her in his or her absence.
- (2) The provisions of subrule (1) shall *mutatis mutandis* apply to a defendant in reconvention who fails to deliver a plea.

Replication and further pleadings

25. (1) A plaintiff may within 10 court days of the service upon him or her of a plea subject to subrule (2) hereof, deliver a replication to the plea.
- (2) No replication which would be a mere joinder of issue or bare denial of allegations shall be necessary .
- (3) A plaintiff in reconvention may, subject to the provisions of subrule (2), within 10 court days from the delivery of a plea in reconvention, deliver a replication in reconvention.
- (4) Any party who fails to deliver a replication within the time stated in this rule shall be *ipso facto* barred.
- (5) Notwithstanding the provisions of rules 22, 23 and 24, the court may during or at any time before the hearing of the action and on such terms as to adjournment and costs as may be just allow any plea, answer or claim in reconvention or subsequent pleading to be then and there recorded or filed.

Discovery of documents

26. (1) After the close of pleadings, but not later than 15 court days before the date of trial, either party may deliver a notice to the other party calling on him or her to deliver a schedule specifying the books and documents in his or her possession or under his or her control which

relate to the action and which he or she intends to use in the action or which tend to prove or disprove either party's case.

- (2) Such schedule, verified by affidavit, shall be delivered by the party required to do so within 10 court days after the delivery of the aforesaid notice.
- (3) If privilege be claimed for any of the books or documents scheduled, such books or documents shall be separately listed in the schedule and the grounds on which privilege is claimed in respect of each shall be set out.
- (4) A book or document not so disclosed may not be used for any purpose at the trial of the action by the party in whose possession or under whose control it is without the leave of the court on such terms as to adjournment and costs as may be just, but the other party may call for and use such book or document in the cross-examination of a witness.
- (5) Each party shall, on notice, forthwith allow the other party to inspect and make copies of all books and documents disclosed in terms of subrule (1) or specified in a notice delivered in terms of subrule (6) and shall, on prepayment therefor, forthwith furnish the other party with such copies thereof or extracts therefrom as may be requested.
- (6) (a) Either party may, by notice to produce, require the other to produce at the trial of the action, the books and documents so

disclosed and also any other books and documents specified in detail.

- (b) Such notice shall have the effect of subpoena under rule 9 as regards all such books or documents as are in the possession or under the control of the party to whom notice is so given.

Settlements

- 27. Any agreement of settlement made by the parties before or during the course of the proceedings may be made an order of court.

Pre-trial conference

- 28. The court may at any stage after close of pleadings, suo motu or upon the request in writing of either party direct that an informal conference be conducted in the presence of the judicial officer in chambers in order to consider a settlement of disputes.

Setdown for trial

- 29. (1) (a) The trial of an action shall be subject to the delivery by the plaintiff, after the pleadings have been closed, of notice of trial at a place and on a day approved by the registrar:
Provided that if the plaintiff does not within 20 court days after the pleadings have been closed deliver notice of trial, the defendant may do so.

- (b) Upon the delivery of a replication, or where no reply is delivered, upon the expiration of the period for a reply, pleadings shall be deemed to be closed.
- (2) The registrar shall set the action down for hearing at the centre at which the court is to be held which is nearest to the place of residence of the plaintiff unless it appears that the trial of the action at that centre may result in undue expense or inconvenience to the defendant, in which case the registrar may set down the hearing at some other centre at which the court is to be held.
- (3) The decision of the registrar as to the centre at which the trial of the action is to be held shall be subject to review by the president of the division on application by either party.
- (4) The delivery of the notice referred to in subrule (1) shall *ipso facto* operate to set down for trial at the same place and day any claim in reconvention made by the defendant.
- (5) The notice referred to in this rule shall be served at least 20 court days before the day stated in such notice.
- (6) Notwithstanding anything in this rule contained, the registrar shall at the written request of the plaintiff forthwith set the action down for hearing at a time and place and on a date to be fixed by him or her, if the defendant-
- (a) has failed to enter an appearance to defend; or

- (b) has failed to deliver a plea after receiving a notice in terms of rule 24(1); or
 - (c) has given written notice to the plaintiff and the registrar that he or she does not intend defending the action,
- but no notice of such request or setdown need be served on the defendant.

Trial

- 30.** (1) The trial of an action shall, subject to the provisions of rule 29(2), take place at the place mentioned in the summons commencing the action.
- (2) A witness who is not a party to the action may be ordered by the court -
- (a) to leave the court until his or her evidence is required or after his or her evidence has been given; or
 - (b) to remain in court after his or her evidence has been given until the trial is terminated or adjourned.
- (3) (a) If on the pleadings the burden of proof is on the plaintiff he or she shall first adduce his or her evidence.
- (b) If absolution from the instance is not then decreed, the defendant shall adduce his or her evidence.

- (4) Where such burden of proof is on the defendant, the defendant shall first adduce his or her evidence and, if necessary, the plaintiff shall thereafter adduce his or her evidence.
- (5)
 - (a) Where the burden of proving one or more issues is on the plaintiff and that of proving others is on the defendant, the plaintiff shall first call his or her evidence on any issues whereof proof is upon him or her and may then close his or her case; and the defendant shall then call his or her evidence on all the issues.
 - (b)
 - (i) If the plaintiff has not called any evidence (other than that necessitated by his or her evidence on the issues whereof the burden of proof is upon him or her) on any issues proof whereof is on the defendant, he or she shall have the right so to do after the defendant has closed his or her case.
 - (ii) If he or she has called any such evidence he or she shall have no such right.
- (6) In case of a dispute as to the party upon whom the burden of proof rests the court shall direct which party shall first adduce evidence.
- (7) Either party may, with the leave of the court, adduce further evidence at any time before judgment, but such leave shall not be granted if it appears to the court that such evidence was intentionally withheld out of its proper order.

- (8) The court may at any time before judgment, on the application of either party or of its own motion, recall any witness for further examination.
- (9) Any witness may be examined by the court as well as by the parties, and the court may of its own motion call a witness not called by either party if it thinks his or her evidence necessary in order to elucidate the truth or for the solution of the question before it.
- (10) After the evidence on behalf of both parties has been completed, the party who first adduced evidence may first address the court and thereafter the other party, and the party who first adduced evidence may reply.
- (11) Where the court has authorised the evidence of any witness to be taken on interrogatories, such interrogatories shall be filed within five days of the order and cross-interrogatories within five days thereafter.

Records of proceedings

- 31.** (1) Minutes of record shall forthwith be made of –
- (a) any judgment given by the court;
 - (b) any *viva voce* evidence given in court;
 - (c) any objection made to any evidence received or tendered; and

- (d) the proceedings of the court generally, including the record of any inspection *in loco*.
- (2) The court shall also mark each document put in evidence and note such mark on the record.
 - (3) Such record shall be kept by such means as to the court seems appropriate and may in particular be taken down in shorthand or be recorded by mechanical means.
 - (4)
 - (a) The shorthand notes so taken or any mechanical record shall be certified by the person taking the same to be correct and shall be filed with the registrar.
 - (b) It shall not be necessary to transcribe them unless the court so directs or a party so requires it.
 - (c) If and when transcribed, the transcript of such notes or record shall be certified as correct by the person transcribing it and the transcript, together with the shorthand notes or the mechanical record, shall be filed with the registrar.
 - (d) The transcript of the shorthand notes or mechanical record shall be deemed to be correct unless the court otherwise orders.
 - (5) Every stenographer employed to take down a record of any proceedings shall be deemed to be an officer of the court and shall, before assuming duty, declare on oath/solemnly affirm as follows:

"I, AB., do swear/solemnly affirm that I shall faithfully and to the best of my ability record in shorthand, or cause to be recorded by mechanical means, as directed by the court, the proceedings in any case in which I may be employed as an officer of the court, and that I shall similarly when required to do so, as far as I am able transcribe any shorthand notes or mechanical record made by any other stenographer or recorded by mechanical means."

- (6) (a) A transcript of any shorthand notes or mechanical record may, upon written request by a party, be obtained from the registrar: Provided that in respect of proceedings made by mechanical means, the party requesting the transcription shall pay the full cost thereof as predetermined by agreement between the contractor concerned and the State for such transcription.
 - (b) A copy of a transcript referred to in paragraph (a) may, upon written request by a party, be obtained from the registrar: Provided that in respect of proceedings made by mechanical means, the party requesting the transcription shall pay the full cost thereof as pre- determined by agreement between the contractor concerned and the State for such transcription.
- (7) In the event of an appeal being noted and set down for hearing such shorthand notes or mechanical record shall, in so far as may be relevant to the appeal, be transcribed and certified by the stenographer as a true record of the proceedings and such transcript shall thereafter form part of the record.

- (8) Any party may, not later than 10 court days after the judgment or, where the minutes were taken in shorthand or mechanically recorded, after the transcript thereof has been completed, apply to the court to correct any errors in the minutes and the court may correct any errors.
- (9) If, before the hearing of the application, all parties affected file a consent to the correction claimed, no costs of such application shall be allowed; otherwise costs shall be in the discretion of the court.

Maintenance *pendente lite*, contribution towards costs, interim custody and access to children

- 32.** (1) This rule shall apply whenever a spouse seeks relief from the court in respect of one or more of the following matters:
- (a) Maintenance *pendente lite*;
 - (b) a contribution towards the costs of a pending matrimonial action;
 - (c) interim custody of any child;
 - (d) interim access to any child.
- (2) (a) The applicant shall deliver a sworn statement setting out the relief claimed and the grounds therefor, together with a notice to the respondent which shall substantially correspond with Form 6 of Annexure 2.

- (b) The sworn statement and notice, signed by the applicant or his or her legal practitioner, shall contain an address for service and shall be served by the sheriff.
- (3) The respondent shall within 10 court days after receiving the statement deliver a sworn reply in the nature of a plea, signed and giving an address for service, in default of which he or she shall be *ipso facto* barred.
- (4) As soon as possible thereafter the registrar shall bring the matter before the court for summary hearing, on 10 court days' notice to the parties, unless the respondent is in default.
- (5) The court may hear such evidence as is considered necessary and may dismiss the application or make such order as it thinks fit to ensure a just and expeditious decision.
- (6) The court may, on the same procedure, vary the decision referred to in subrule (5) in the event of a material change taking place in the circumstances of either party or a child, or the contribution towards costs proving inadequate.

Applications

- 33.** (1) Every application shall be brought on notice of motion supported by an affidavit setting out the facts upon which the applicant relies for relief.

- (2) When relief is claimed against any person, or where it is necessary or proper to give any person notice of such application, the notice of motion shall be addressed to both the registrar and such person.
- (3) Every notice of motion shall conclude with the form of order prayed.
- (4)
 - (a) Every application brought *ex parte* shall be filed with the registrar and set down on a day to be fixed by the registrar.
 - (b) The notice of motion shall set forth the form of order sought, specify the affidavit filed in support thereof, request the registrar to place the matter on the roll for hearing, and shall substantially correspond with Form 2 of Annexure 2.
 - (c) Any person having an interest which may be affected by a decision on an application being brought *ex parte* may deliver notice of an application by him or her for leave to oppose, supported by an affidavit setting forth the nature of such interest and the ground upon which he or she desires to be heard, whereupon the registrar shall set such application down for hearing at the same time as the application first mentioned.
 - (d) At the hearing the court may grant or dismiss either of or both such applications, as the case may require, or may adjourn the same upon such terms as to the filing of further affidavits by either applicant or otherwise as it deems fit.
- (5)
 - (a) Every application other than one brought *ex parte* shall be brought on notice of motion, which shall substantially correspond with Form 3 of Annexure 2, and true copies of the

notice and all annexures thereto shall be served upon every party to whom notice thereof is to be given.

- (b) In such notice the applicant shall appoint an address within the area of jurisdiction of the court at which he or she will accept notice and service of all documents in such proceedings and shall set forth a day, not less than 15 court days after service thereof on the respondent, on or before which such respondent is required to notify the applicant in writing whether he or she intends to oppose such application, and shall further state that if no such notification is given the application will be set down for hearing on a stated day, not being less than 10 court days after service on the said respondent of the said notice.
- (c) If the respondent does not, on or before the day mentioned for that purpose in such notice, notify the applicant of his or her intention to oppose, the applicant may place the matter on the roll for hearing on a day fixed by the registrar.
- (d) Any person opposing the grant of an order sought in the notice shall –
 - (i) within the time stated in the said notice, give the applicant notice in writing that he or she intends to oppose the application, and in such notice appoint an address at which he or she will accept notice and service of all documents;
 - (ii) within 15 court days after the service of notice of intention to oppose the application, deliver his or her

answering affidavit, if any, together with any relevant documents; and

- (iii) if he or she intends to raise any question of law only, deliver notice of his or her intention to do so within the time stated in the preceding subparagraph, setting forth such question.
- (e) The applicant may deliver a replying affidavit within 10 court days of the service upon him or her of the affidavit and documents referred to in subparagraph (ii) of paragraph (d).
- (f) The court may at its discretion permit the filing of further affidavits.
- (g) Where no answering affidavit or notice in terms of paragraph (d) is delivered within the period referred to in paragraph (b) or subparagraph (ii) of paragraph (d) the applicant may within five court days of the expiry thereof apply to the registrar to allocate a date for the hearing of the application, which may be heard in chambers.
- (h) Where an answering affidavit or notice is delivered the applicant may apply for such allocation within five court days of the delivery of his or her replying affidavit or, if no replying affidavit is delivered, within five court days of the expiry of the period referred to in paragraph (e).
- (i) If the applicant fails to apply within the appropriate period for a date, the respondent may do so immediately upon the expiry thereof.

- (j) Notice in writing of the date allocated by the registrar shall forthwith be given by the applicant or respondent, as the case may be, to the opposite party.
 - (k)
 - (i) Where an application cannot properly be decided on affidavit the court may dismiss the application or make such order as to it seems meet with a view to ensuring a just and expeditious decision.
 - (ii) In particular, but without affecting the generality of the foregoing, it may direct that viva voce evidence be heard on specified issues with a view to resolving any dispute of fact and to that end may order any deponent to appear personally or grant leave for him or her or any other person to be subpoenaed to appear and be examined and cross-examined as a witness, or it may refer the matter for trial with appropriate directions as to pleadings or definition of issues, or otherwise.
- (6) The court after hearing an application, whether brought *ex parte* or otherwise, may refrain from making an order thereon, save as to costs, if any, but grant leave to the applicant to renew the application on the same papers supplemented by such further affidavits as the case may require.
- (7) Any person against whom an order is granted *ex parte* may anticipate the return day upon delivery of not less than 48 hours' notice.

- (8) Notwithstanding the foregoing subrules, interlocutory and other applications incidental to pending proceedings may be brought on notice supported by such affidavits as the case may require and set down at a time assigned by the registrar or as directed by the president of the division or a presiding officer assigned by him or her.
- (9) (a) In urgent applications the court or the president of the division or a presiding officer assigned by him or her may dispense with the forms and service provided for in these rules and may dispose of such matter at such time and place and in such manner and in accordance with such procedure, which shall as far as practicable be in terms of these rules, as it or the said president or presiding officer deems fit.
- (b) In every affidavit filed in support of any application under paragraph (a) of this subrule, the applicant shall set forth explicitly the circumstances which he or she avers render the matter urgent and the reasons why he or she claims that he or she could not be afforded substantial redress at a hearing in due course.
- (10) The court may on application order to be struck out from any affidavit any matter which is scandalous, vexatious or irrelevant, with an appropriate order as to costs, including costs as between attorney and client: Provided that the application shall not be granted unless the court is satisfied that the applicant will be prejudiced in his or her case if it be not granted.

- (11) Any unopposed application may be heard in chambers.
- (12) An order obtained *ex parte* shall substantially correspond with Form 5 of Annexure 2.

Curator *ad litem*

34. The court may appoint a curator *ad litem* in any case in which a curator is allowed or required by law for a party to any proceedings brought or to be brought before the court.

Delay in prosecution of action

35. If summons in an action is not served within 12 months of the date of its issue or, having been served, the plaintiff has not within 12 months after the date of such service taken further steps in the prosecution of the action, the summons shall lapse.

Non-compliance with rules including time limits and errors

36. (1) (a) Where a party fails to comply with a request made or notice given pursuant to these rules, the party making the request or giving the notice may notify the defaulting party that he or she intends after the lapse of 10 court days applying for an order that such notice or request be complied with, or that the claim or defence be struck out.

- (b) Failing compliance within the 10 court days, application may be made to court and the court may make such order thereon as to it seems meet.

- (2) Any time limit prescribed by these rules may at any time, whether before or after the expiry of the period fixed, be extended -
 - (a) by the written consent of the opposite party; or
 - (b) if such consent is refused, then by the court on application and on such terms as to costs as may be just.

- (3) Where there has been short service without leave, the court may, instead of dismissing an application, adjourn it until, at the earliest, the expiration of the period prescribed by these rules and thereupon any objection to short service shall lapse.

- (4) No process or notice shall be invalid by reason of any obvious error in spelling or in figures or of the date.

- (5) If any party has in fact been misled by any such error in any process or notice served upon him or her, the court may, on application, grant him or her such relief as may be just and may for that purpose set aside the process or notice.

Adjournment and postponement

37. (1) The trial of an action or the hearing of an application may be adjourned or postponed by the court, either on application or of its own motion.
- (2) Where such an adjournment or postponement is made *sine die*, either party may by delivery of notice of reinstatement set down the action or application for further hearing on a day fixed by the registrar not earlier than 15 court days after delivery of such notice.
- (3) Any adjournment or postponement shall be on such terms as to costs and otherwise as the parties may agree to or as the court may order.

Non-appearance of a party, withdrawal, dismissal, etc.

38. (1) Where the summons has not been served the plaintiff may withdraw the summons by notice to the registrar.
- (2) Save as is provided in subrule (1), a plaintiff or an applicant desiring to withdraw an action or application against the other party thereto shall deliver notice of withdrawal.
- (3) Any party served with a notice of withdrawal may within 15 court days thereafter apply to the court for an order that the party so withdrawing shall pay the applicant's costs of the action or application withdrawn, together with the costs incurred in so applying.

- (4) Any unopposed application in terms of subrule (3) may be heard in chambers.
- (5) Where the plaintiff in the notice of withdrawal embodies in such notice a consent to pay the costs, such consent shall have the force of an order of the court and the registrar shall tax the costs at the request of the defendant.
- (6) Any party may by delivery of notice abandon any specified claim or defence pleaded by him or her, and such notice shall be taken into consideration in taxing costs.
- (7) If a plaintiff or applicant does not appear at the time appointed for the trial of the action or the hearing of the application, the action or application may be dismissed with costs.
- (8) If a defendant or respondent does not so appear, a judgment against him or her, not exceeding the relief claimed, may be given with costs.
- (9) The withdrawal or dismissal of an action, or a decree of absolution from the instance, shall not be a defence to any subsequent action; but if a subsequent action is brought for the same or substantially the same cause of action before payment of any costs awarded on such withdrawal, dismissal or decree of absolution the court shall, on application, unless good cause to the contrary be shown, and if the

said costs have been taxed and payment thereof has been demanded, order a stay of such subsequent action until such costs shall be paid and that the plaintiff shall pay the costs of such application to stay proceedings.

Variation and rescission of orders

- 39.** (1) The court may, in addition to any other power a court has at common law, *mero motu* or upon the application of any party affected, rescind or vary -
- (a) an order or judgment erroneously sought or erroneously granted in the absence of any party affected thereby;
 - (b) an order or judgment in which there is an ambiguity, or a patent error or omission, but only to the extent of such ambiguity, error or omission;
 - (c) an order or judgment granted as the result of a mistake common to the parties.
- (2) Any party desiring any relief under this rule shall make application therefor upon notice to all parties whose interest may be affected by any variation sought.
- (3) The court shall not make any order rescinding or varying any order unless satisfied that all parties whose interest may be affected have been given notice of the proposed rescission or variation.

- (4) (a) A defendant (including a defendant in reconvention) to divorce proceedings in which an order was given in his or her absence may within 20 court days after such order has come to his or her knowledge apply to court upon notice to the plaintiff to set aside such order and the court may upon good cause shown set aside the order on such terms as it may deem fit.
- (b) Such application shall be on affidavit setting out briefly the reasons for his or her absence or default of delivery of a notice of intention to defend or of a plea, and the grounds of defence to the action in which the order was given.
- (c) It shall be presumed that the applicant had knowledge of the order one month after the date on which it was granted, unless he or she proves otherwise.

Production of record, entry or document as evidence

- 40.** (1) Where it is necessary to give in evidence in the court any record, entry or document of the same court in another action the registrar shall, on reasonable notice, produce and show the original thereof, and the cost of copies shall not be allowed.
- (2) Where it is necessary to give in evidence in another court any such record, entry or document, a copy thereof certified by the registrar may be given in evidence without production of the original.

Costs

- 41.** (1) The court in giving judgment or in making any order including therein adjournment or amendment, may award such costs as may be just: Provided that the court shall not order one party to pay another party's costs unless there is good reason to do so.
- (2) Subject to subrule (1), the cost of any application or order or issue raised by the pleadings may be awarded or may be made costs in the action, or may be reserved to be dealt with on the conclusion of the action, but if no order is made such costs shall be costs in the action.
- (3) Unless the court shall for good cause otherwise order, costs of interim orders shall not be taxed until the conclusion of the case and a party may present only one bill for taxation up to and including the judgment or conclusion of the action.
- (4) The scale of fees to be taken by legal practitioners as between party and party shall be that set out in Scale A of Table A of Annexure 2 to the Magistrates' Courts Rules in addition to necessary expenses.
- (5) Such fees shall be allowable whether the work has been done by an attorney or a candidate attorney or an advocate, but shall be allowed only in so far as the work to which they have been allocated has in fact and necessarily been done.

- (6) The costs of issuing any warrant of execution or arrest shall, where they are payable by the party against whom the warrant is issued, be assessed by the registrar without notice and inserted in the warrant.
- (7) Witness fees and expenses shall be allowed in respect of the attendance of a party to an action or proceeding.
- (8) Where costs and expenses are awarded to any party by the court the party to whom such costs and expenses have been awarded shall deliver a bill of such costs and expenses and give reasonable notice of the taxation thereof at an hour determined generally or specially by the taxing officer and he or she may include in such bill all such payments as have been necessarily and properly made by him or her.
- (9) The taxing officer shall at the time fixed tax the bill and allow the costs and expenses so awarded: Provided that witness fees shall not be allowed in taxation unless properly vouched for.
- (10)
 - (a) Where more than one fourth of the bill (excluding expenses) is taxed off, the party presenting the bill shall not be allowed any costs in taxation.
 - (b) Where a party to whom a bill of costs is presented makes a written offer of payment in respect of such costs, and such offer is refused, the party presenting the bill shall not be allowed any costs of taxation if the bill is taxed in an amount which is smaller than the amount of the offer.

- (11) As between attorney and client, the taxing officer may at his or her discretion, subject to the review hereinafter mentioned, allow costs and charges for services reasonably performed by the legal practitioner at the request of the client for which no remuneration is recoverable as between party and party and for which no provision is made in these rules.
- (12) Where a bill of costs as between attorney and client is required to be taxed, taxation shall take place on at least five court days' notice thereof to the legal practitioner or client, whether an action therefor is pending or not: Provided that, notwithstanding anything in subrule (3), a bill of costs as between attorney and client may be taxed at any time after the termination of the mandate.
- (13) Payment of costs awarded by the court may not be enforced until they have been taxed by the taxing officer.
- (14) Value added tax may be added to all costs, fees, disbursements and tariffs in respect of which value added tax is chargeable.
- (15) (a) Where a bill of costs is to be taxed by a taxing officer other than the registrar, that registrar shall, upon receipt of a written request, dispatch the court file to the office of such a taxing officer.

- (b) Upon completion of taxation, the taxing officer shall return the court file to the registrar.

Review of taxation

- 42.** (1) Any party having an interest may, within five court days after he or she has obtained knowledge of the taxing of a bill of costs, give notice to the taxing officer and the registrar and to the opposing party of his or her intention to bring the bill of costs under review by a presiding officer and shall specify the grounds for such review.
- (2) Upon receipt of notification as provided in subrule (1), the registrar shall give 20 court days' notice to the parties of the time when and the place at which the bill of costs will be reviewed, and the bill of costs shall thereafter be reviewed accordingly.
- (3) (a) Notwithstanding anything in subrules (1) and (2), should a bill of costs have been taxed at the centre at which the court was held, either party may at the time of taxation give summary verbal notice to the taxing officer of his or her intention to bring it under review.
- (b) Thereupon the taxing officer shall after consultation with the registrar endorse on the bill of costs a note of the request and of the time when taxation will be reviewed.
- (c) Such endorsement shall be signed by the taxing officer and each of the parties, and the bill of costs shall thereafter be reviewed.

- (d) Where only one party attended the taxation then only that party and the taxing officer shall be required to sign the endorsement referred to in paragraph (c).

Fees of assessors

43. The fees payable to assessors shall be calculated according to the scale prescribed for assessors in the magistrates' courts, plus an additional allowance of 20% of such fee.

Fees of registrar

44. The charges to be taken by the registrar shall be as prescribed in Part III of Annexure 1

Witness expenses

45. The allowance payable to witnesses appearing before the court shall be calculated according to the scale prescribed for witnesses in civil cases in magistrates' courts.

Fees of the sheriff

46. The fees and charges to be taken by the sheriff shall be those prescribed for sheriffs in the Magistrates' Courts Rules.

Offences

- 47.** (1) If any person wilfully insults the presiding officer during his or her sitting or the registrar or other officer during his or her attendance at such sitting or wilfully interrupts the proceedings of the court or disturbs the peace or order thereof or otherwise misbehaves himself or herself in the place where such court is held, he or she may, in addition to his or her ability to be removed and detained as in rule 5(3) provided, be charged with contempt of court.
- (2) Any person wilfully disobeying or neglecting to comply with any order of the court may be charged with contempt of court.

Saving of pending proceedings

- 48.** (1) Nothing in these rules shall affect proceedings pending at the date of commencement of these rules and such proceedings shall be continued and concluded in every respect as if these rules had not been promulgated.
- (2) Proceedings shall, for the purpose of this rule, be deemed to be pending if, at the date of commencement of these rules, summons had been issued and shall be deemed to be concluded when judgment is given.

Short title and commencement

49. These rules shall be called the Divorce Courts Rules, 1998, and shall come into operation on **15 November 1998**.

ANNEXURES**ANNEXURE 1 – COSTS****PART I****GENERAL PROVISIONS**

1. In the event of an order for costs being granted by the court in favour of a party to litigation before the court, a bill of costs for services actually rendered by a legal practitioner in his or her capacity as such in connection with the litigious matter giving rise to the award for costs shall be taxed by the taxing officer subject to the provisions of the tariff (read with paragraph 6 hereunder).
2. The taxing officer may call for any books, documents, papers and accounts as are, in his or her opinion, necessary to enable him or her to properly determine any matter arising from such taxation.
3. With a view to affording the party who has been awarded an order for costs as much of an indemnity for costs reasonably incurred by such party in relation to his or her claim or defence as is provided for in the tariff, and to ensure that such costs shall be borne by the party against whom such order has been awarded, the taxing officer shall, on every taxation, allow such costs, charges and expenses as appear to him or her to have been necessary

- or proper (within the parameters of the provisions herein and the said tariff) for the attainment of justice or for defending the rights of the party in whose favour the costs award was granted.
4. No costs shall be allowed which appear to the taxing officer to have been incurred or increased through over-caution, negligence or mistake, or by payment of a special fee to any person or special charges or expenses to witnesses or other persons or by other unusual expenses.
 5. The taxing officer shall not proceed to taxation of any bill of costs unless he or she is satisfied that the party liable for payment of same has been duly notified of the date, place and time of taxation and that he or she is entitled to be present to oppose any item reflected in the bill of costs. Such notice of taxation shall not be necessary -
 - (a) if the party against whom costs have been awarded did not appear, either personally or through a legal practitioner, at the hearing of the matter; or
 - (b) if the party liable for costs consents in writing to taxation of the bill in his or her absence; or
 - (c) for the taxation of writ and post-writ bills.
 6. If extraordinary or exceptional circumstances exist where strict adherence to the tariff would be inequitable, the taxing officer shall be entitled, in his or her discretion, to depart from any of the provisions of the said tariff.
 7. Notwithstanding anything to the contrary contained in the tariff, and in the event of the taxing officer allowing a charge for copying any document,

and such document could have been copied by means of a photocopying device, the maximum amount allowable for each page necessarily copied shall be 20 cents.

8. Where, in the opinion of the taxing officer, a correspondent attorney has necessarily been engaged in the performance of any of the services covered by the tariff, the instructing attorney and the correspondent attorney shall be entitled to be remunerated on the basis set out in the tariff for the work necessarily done by him or her.
9. Where an amount is specified for an item, this amount shall be inclusive of all necessary copies for service, filing and to keep.
10.
 - (1) Unless service shall have been effected by the sheriff or by registered post, in which cases the actual disbursements shall be recoverable, a fee of R20,00 shall be allowed for service of each necessary process or notice.
 - (2) Where service of more than one notice or process in the same action can be effected simultaneously, only one fee for service shall be allowed.
11. Where the amount for an item is left blank -
 - (1) the drawing of such item shall be allowed at R9,00 for each folio;
 - (2) copies for filing and service shall also be allowed;
 - (3) R6,00 shall be allowed for each necessary service.

12. A folio shall consist of 100 written or printed words or figures or part thereof and four figures shall be reckoned as one word.
13. Unless otherwise provided, a charge for perusal shall be allowed at R3,50 per folio in respect of any document or pleading necessarily perused, subject to a maximum fee, regardless of how many folios, of R35,00.
14. (1) Fees consequent upon the employment of more than one legal practitioner shall be allowed as between party and party only if authorized by the court or agreed to by the parties.

(2) When authorized by the court, the fees of an advocate shall be allowed at the magistrates' courts tariff.
15. In the event of costs being awarded on the attorney and client scale, the applicable tariff for the taxation of such costs shall be on scale A of Table A of Annexure 2 to the Magistrates' Courts Rules.

PART II

TAXATION AND EXECUTION

1. Drawing bill of costs:
5% of the fees, allowed on taxation, excluding VAT.
2. Attending taxation:
5% of the total bill, allowed on taxation, excluding VAT.

3. All necessary disbursements (postage; sheriff's charges; long-distance (trunk) calls, witness fees; fees to counsel, where so authorised by the court; travelling expenses, etc.) must be itemised separately under a column headed "Disbursements", and the taxing officer must be provided with proof of payment before allowing such charges.
4. Notice of application for review of taxation and service:-
5. Attending on review of taxation, for each quarter of an hour or part thereof in court while review is actually being heard: R56,00.
6. Issue of warrant of execution, arrest, etc. (inclusive of any re-issue): R37,50.

PART III
FEES OF REGISTRAR

		R c
1.	On every initial summons, or the initial documents in an application which are not related to proceedings already on record in that court	20, 00
2.	On any request to inspect any record -	
	(a) if the correct number is furnished.....	2, 00
	(b) if an incorrect or no number is furnished for every 100 records searched.....	5, 00
3.	For a copy of a record made by the registrar -	
	(a) for every 100 typed words or part thereof.....	2,00

	(b)	for every photocopy of an A4 size page or part thereof.....	1, 00
4.		For examining and certifying a copy of a record- each 100 words or part thereof.....	2, 00
		NOTES:	
1.		All court fees are to be paid by means of revenue stamps to be affixed to process and cancelled by the registrar.	
2.		A registrar who has omitted to take any such fees shall be liable to pay and make good the amount thereof to the Treasury: Provided that the registrar may in return recover from the party who did not stamp or understamped in the first instance.	
3.	(1)	Where any dispute arises between the registrar and any person desiring to lodge a document, as to whether the document is or is not sufficiently stamped, the dispute shall be referred to the president of the division.	
	(2)	The president of the division shall decide the dispute summarily and record his or her decision.	
	(3)	The said president's decision shall be final for the purpose of the action or matter in respect of which such document is lodged and shall discharge the registrar from any liability under item 2 hereof; but such decision shall be without prejudice to any rights of any other interested person.	
4.		No charge shall be made for the inspection of the record	

	of any case on the business day next succeeding the day on which judgment was delivered, nor to any party to any case at any time before judgment or within one year after judgment.	
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ANNEXURE 2 – FORMS

Form No.	Description
1.	Summons commencing action.
2.	Notice of motion (<i>ex parte</i>).
3.	Notice of motion.
4.	Edictal citation: Short form of process.
5.	Order for interdict obtained <i>ex parte</i> .
6.	Notice in terms of rule 32(2)(a).

FORM 1 - SUMMONS COMMENCING ACTION

IN THEDIVORCE COURT
HELD ATCASE NO.

In the matter between:

.....Plaintiff

and

.....Defendant

To the Sheriff,

-
1. INFORM A. B. of(state sex, occupation and address)(hereinafter referred to as the defendant), that C. D., of (state sex, occupation and address)(hereinafter referred to as the plaintiff), hereby institutes action against him/her in which action the plaintiff claims the relief and on the grounds set out in the particulars annexed hereto.

 2. INFORM the defendant further that if he/she disputes the claim and wishes to defend the action he/she shall –
 - (a) within one month of the service upon him/her of this summons file with the registrar of this Court at(set out the address of the registrar) or with any clerk of the court a notice of his/her intention to defend and serve a copy thereof on the plaintiff, which notice shall give an address for the service upon the defendant of all notices and pleadings in the action;
 - (b) thereafter, and within 10 court days after filing and serving notice of intention to defend as aforesaid, file with the registrar and serve upon the plaintiff a plea or exception, with or without a claim in reconviction.

 3. (a) INFORM the defendant further that if he/she fails to file and serve notice as aforesaid judgment as claimed may be given against him/her without further notice to him/her of if, having filed and served such notice, he/she fails to plead, except, or to counterclaim, judgment may be given against him/her.

- (b) INFORM the defendant also that if he/she does not intend to defend the action, he/she may give written notice to that effect to the plaintiff and the registrar and the action may then, at the written request of the plaintiff, be forthwith set down by the registrar for hearing.

DATED at..... this day of19.....

.....

Registrar of the Divorce Court

Particulars of service (to be completed by the sheriff)

It is hereby certified that a copy of this summons has been handed to

on (date), at (time)

at..... (address).

.....

Sheriff for

ANNEXURE TO SUMMONS

Particulars of claim

.....

.....

.....

.....

Plaintiff/Plaintiff's legal practitioner

Address at which plaintiff will accept service of process.....

.....

Postal address of plaintiff/plaintiff's legal practitioner

.....

.....

Residential address of plaintiff

.....

.....

FORM 2 – NOTICE OF MOTION (EX PARTE)

IN THEDIVORCE COURT

HELD AT CASE NO.

In the matter of

.....

..... Applicant

To the Registrar,

TAKE NOTICE that application will be made on behalf of the above-named applicant on the day of19..... at (time) or as soon thereafter as his or her legal practitioner may be heard for an order on the following terms:

(a)

(b)

(c)

The affidavit of annexed hereto will be used in support thereof.

Kindly place the matter on the roll for hearing accordingly.

DATED AT.....

Applicant/Applicant’s legal practitioner

To the registrar of the above-named Court.

FORM 3 – NOTICE OF MOTION

(To Registrar and Respondent)

IN THEDIVORCE COURT

HELD AT CASE NO.

In the matter between

.....Applicant

and

.....Respondent

TAKE NOTICE THAT

.....(hereinafter referred to as the applicant) intends to make application to this Court for an order –

(a) (Here set forth the form of order prayed)

(b)
.....

(c)

and that the accompanying affidavit of will be used in support thereof.

TAKE NOTICE FURTHER that the applicant has appointed..... (here set forth an address within the jurisdiction of the Court) as the address at which he/she will accept notice and service of all process in these proceedings.

TAKE FURTHER NOTICE that, if you intend to oppose this application, you are required (a) to notify the applicant/applicant’s legal practitioner in writing on or before the (date) and (b) within 15 court days after service of your notice of intention to oppose the application, to file your answering affidavits, if any; and, further, that you required to appoint in your notification an address within the jurisdiction of the above-named Court at which you will accept notice and service of all documents in these proceedings.

If no such notice of intention to oppose is given, the matter will without any further notice to you be placed on the roll for hearing at least 10 court days after service of this notice upon you, on a day fixed by the registrar.

DATED at this..... day of 19.....

.....
Applicant/Applicant's legal practitioner
(Address).....
.....
.....

To: (1) Respondent:
(Address)
.....

(2) The Registrar
..... Divorce Court.

FORM 4 – EDICTAL CITATION: SHORT FORM OF PROCESS

IN THEDIVORCE COURT
HELD AT CASE NO.

In the matter between:
.....Plaintiff
and
.....Defendant

To:
A. B.(sex),
..... (occupation), formerly residing at
but whose present whereabouts are unknown:

TAKE NOTICE that by summons issued by this Court, you have been called upon to give notice within days after publication hereof to the registrar and to the plaintiff/plaintiff’s legal practitioner of your intention to defend (if any) in an action wherein C. D. claims –

- (a)
- (b)
- (c)

TAKE NOTICE further that if you fail to give such notice, judgment may be granted against you without further reference to you.

DATED at..... this.....day of19.....

.....

Registrar

Plaintiff/Plaintiff’s legal practitioner

Address for service:

.....

.....

FORM 5 – ORDER FOR INTERDICT OBTAINED *EX PARTE*

It is ordered:

1. That a rule *nisi* be and it is hereby granted calling upon
..... (respondent) of
.....(respondent's address),
to show cause, if any, to this Court on theday of
19..... at..... (time) or so soon thereafter as he or she can be heard,
why shall not be interdicted from
.....(set out the acts from which respondent or any
other person is restrained) pending the decision of an action to be brought
by the application against the said (respondent) for
..... (set out the nature of the claim).

2. The said action be commenced within 48 hours.

3. That this rule operate as an interim interdict.

By Order of the Court.

.....

Registrar

.....

Applicant/ Applicant's legal practitioner

(Address).....

.....

.....

FORM 6 – NOTICE IN TERMS OF RULE 32(2)(a)

IN THEDIVORCE COURT
HELD AT CASE NO.

In the matter between

.....Applicant

and

.....Respondent

To the above-mentioned respondent:

TAKE NOTICE that if you intend to defend this claim you must within 10 court days file a reply with the registrar of this court, giving an address for service referred to in rule 33(5)(b) and serve a copy thereof on the applicant or his or her legal practitioner, Should you not comply with the above, you will then be automatically barred from defending and judgment may be given against you as claimed. Your reply must indicate what allegations in the applicant’s statement you admit or deny, and must concisely set out your defence.

DATED at..... this..... day of19.....

.....

Applicant/Applicant’s legal practitioner

Address for service:

.....

.....

.....