

Divorces - Summons

- Must be combined summons (2C) R 5(2)(b)
- Notice of defence now 10 days R 13(1)
- Summons must adhere to all requirements of Rules 5 and 6
- Claim for division, transfer or forfeiture must give details why entitled to in summons R 6(8)
- Must serve personally R 9(3)

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Annexures to Summons

- Annexure to Summons
 - Description of parties
 - Domicilium
 - How married, date and place
 - Marriage still subsists
 - Details of children
 - Breakdown of Marriage
 - Forfeiture, accrual or sec 7(3) claim

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Annexures to Summons

- Parental Plan – Children's Act
- Annexure A (Regulation 2 of the Mediation in Certain Divorce Matters Act)
 - Copy of School reports
- Copy of ANC
- Statistics Form

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Parental Plan – Contents – p 96

- Residential arrangements
- Parental contact and time spent with the children
- Sharing of duties
- Holidays / birthdays / special days / public holidays
- Educational and extramural activities
- Attendance of the children's activities
- Medical care: arrangements and decisions
- Health and emotional well-being
- Clothing needs
- Regular and emergency transportation

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Parental Plan – Contents (cont)

- Telephonic access
- Religious or spiritual matters
- Principles of upbringing and discipline
- Developmental needs
- Professional assistance
- Relocation
- Relationship with extended family
- Maintenance
- Dealing with conflict (mediator)
- Methods of communication
- Re-evaluation of the parenting plan

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Parental Plan – Sec 33

- The co-holders of parental responsibilities and rights may **agree on a parenting plan** determining the exercise of their respective responsibilities and rights.
- If the co-holders of parental responsibilities and rights are experiencing difficulties in exercising their responsibilities and rights, those persons, **before** seeking the intervention of a court, **must** first seek to agree on a parenting plan determining the exercise of their respective responsibilities and rights in respect of the child.

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Parental Plan – Sec 33

- In preparing a parenting plan the parties must seek-
 - the assistance of a family advocate, social worker or psychologist; or
 - mediation through a social worker or other suitably qualified person.

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Parental Plan – Sec 34 - Formalities

- A parenting plan-
 - must be in writing and signed by the parties to the agreement; and
 - may be registered with a family advocate or made an order of court.
- Can be varied by either family advocate or court, which ever granted it.

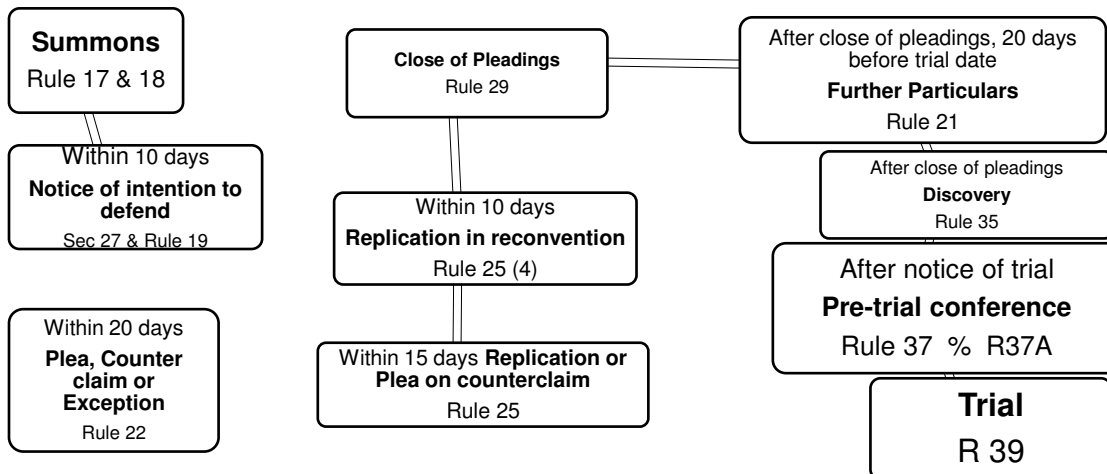
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Parental Plan – Sec 34 - Formalities

- Dept of Social Dev Regulations 9 to 11
- Form 8 is an application for registration of parenting plan at either family advocate or court
- Form 9 is a statement of family advocate, social worker or psychologist that parenting plan was prepared after assistance
- Form 10 Statement of Social Worker or other suitably qualified person that parenting plan was prepared after mediation.

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Divorces Defended



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Divorce - undefended

- After service of summons wait for dies to lapse
- Can set down (request registrar in writing) if NOT:
 - Defended
 - Plead
 - Written notice that not defend R 22(5)
- Defendant can not consent to judgement R 11 (1) or (4)
- Settlement agreement
- Deed of settlement must be send to Family Advocate for consent

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Divorces - undefended

- Notice of set down - not served
- Practice note: 6 months after service, must give notice
- Marriage certificate
- Practice note: Require original marriage certificate, but certified copy will be accepted in good grounds
- CA can do Divorce in Regional Court
- Undefended divorce action postpone, may continue before another court R22(6)

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What must proof

- Names of the parties
- Particulars of marriage – hand in original certificate
- Basis of courts jurisdiction
- Details of children
- Reasons for breakdown
- Basis for any parental powers claims
- Basis for any Maintenance claims
- Basis for any property claims
- If settlement agreement – hand in
- NB Court order - uplift

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Divorce Interim Relief

Mag Court Rule 58
High Court Rule 43

- Form 42
- Can apply again if material change in either party's circumstances R 58(6)

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Rule 58 – Flow Chart

- a) Maintenance *pendente lite*
- b) Contribution towards costs of a pending matrimonial action
- c) Interim custody of any child
- d) Interim access to child

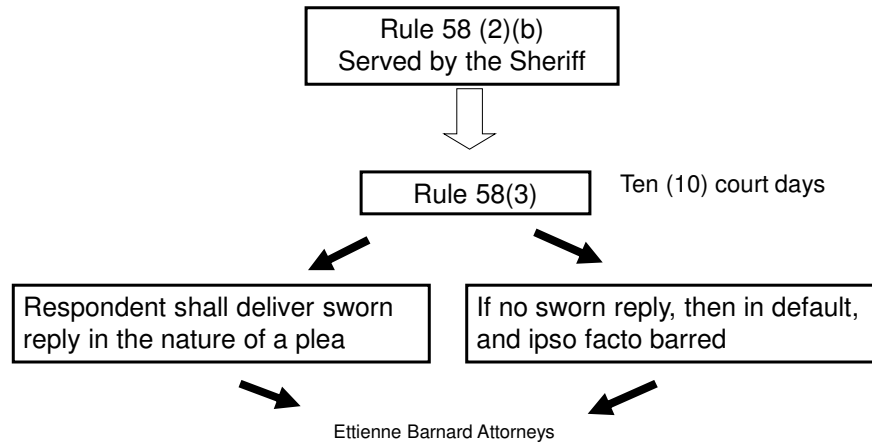


- Rule 58(2)(a)
- Sworn statement setting out relief claimed
 - Notice – Form 42

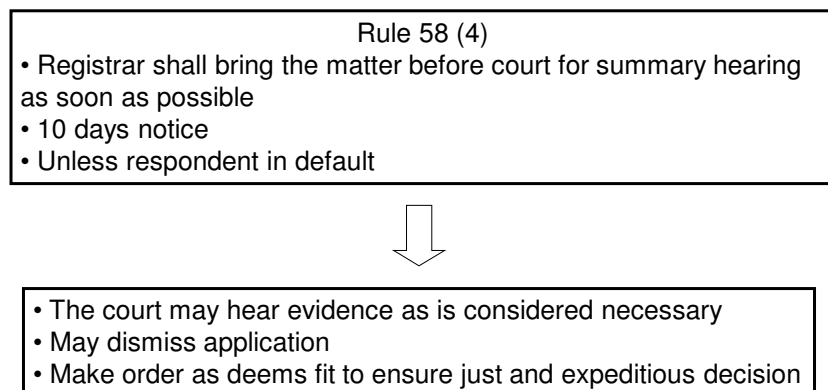


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R 58 – Flow Chart



R 58 – Flow Chart



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- E v E; R v R; M v M (12583/17; 20739/18; 5954/18)
[2019] ZAGPJHC 180; [2019] 3 All SA 519 (GJ); 2019 (5)
SA 566 (GJ) (12 June 2019)
- 20 page form for income and expenses of both parties
must be completed before matter is heard

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Maintenance - Wife

- BOTHERA v BOTHERA 2009 (3) SA 89 (W)
 - Neither spouse having automatic right to maintenance upon divorce
 - Court having general discretion to make 'just' award, including no award at all
 - Claimant spouse to provide factual basis for award before quantum and duration determined by court

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Maintenance - Wife

- W v H [2016] 4 All SA 260 (WCC)
- ANC with accrual
- Excluded maintenance in event of divorce
- Contra bones mores

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Maintenance - Wife

- Earning capacities
- Current or expected wealth
- Financial needs and obligations
- Ages of parties
- Duration of marriage
- Standard of living before divorce
- Behaviour as far as it is relevant to the break-down
- Any factor that the court feels necessary

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Maintenance - Wife

- Can be ordered to pay re-settlement allowance or lump sum ito Maintenance Act
- If wife works or can work usually not ordered
- Nominal maintenance
- Dum casta clause

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Maintenance

- KRUGER NO v GOSS AND ANOTHER 2010 (2) SA 507 (SCA)
- Rehabilitative maintenance
- Former husband's estate
- Common law viewing spousal duty of support and consequent liability for maintenance as incidents of matrimonial relationship
- Termination of relationship by death bringing duty to an end

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Maintenance

- The Maintenance of Surviving Spouses Act 27 of 1990 allowed widows and widowers, in specified circumstances, to be maintained from the estates of their late partners
- Hodes v Coubrough 1991 (3) SA 58 (D) – divorced spouses excluded
- Settlement agreement

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Maintenance - Children

- **BURSEY v BURSEY AND ANOTHER 1999 (3) SA 33 (SCA)**
- Divorced parents having common-law duty to maintain child
- relative means and the circumstances and needs of the child
- Such duty continuing after majority
- Maintenance order at divorce ancillary to and not replacing or altering such duty

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Maintenance - Children

- Usually amount in summons or settlement agreement coupled with CPI
- Can also go to Maintenance court if no order has been made yet
- If circumstances change can go to Maintenance Court
- Maintenance Act 99 of 1998
- Majority not necessarily end of maintenance
- Test is self supporting

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Maintenance - children

- Need of child on monthly basis – 2 parts adult to 1 part child
- Parent's contribution:

$$\frac{R (\text{Parent's gross income})}{R (\text{Total gross income both parents})} \times R (\text{child's need})$$

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Maintenance

- Wife lays complaint with Maintenance officer
- Subpoena is issued to attend enquiry
- Both parties must fill in schedule with monthly income and expenditure
- Proof must be attached
- Attempt to settle
- If not then referred to court
- Attorneys allowed at every stage

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Maintenance

- NB be careful with maintenance order in maintenance court
- If changes maintenance order of High Court it SUBSTITUTES it – *Stinnes v Stinnes* 1996 (2) All SA 475 (T)
- *Cohen v Cohen* 2003 (3) SA 337 (SCA)

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Maintenance

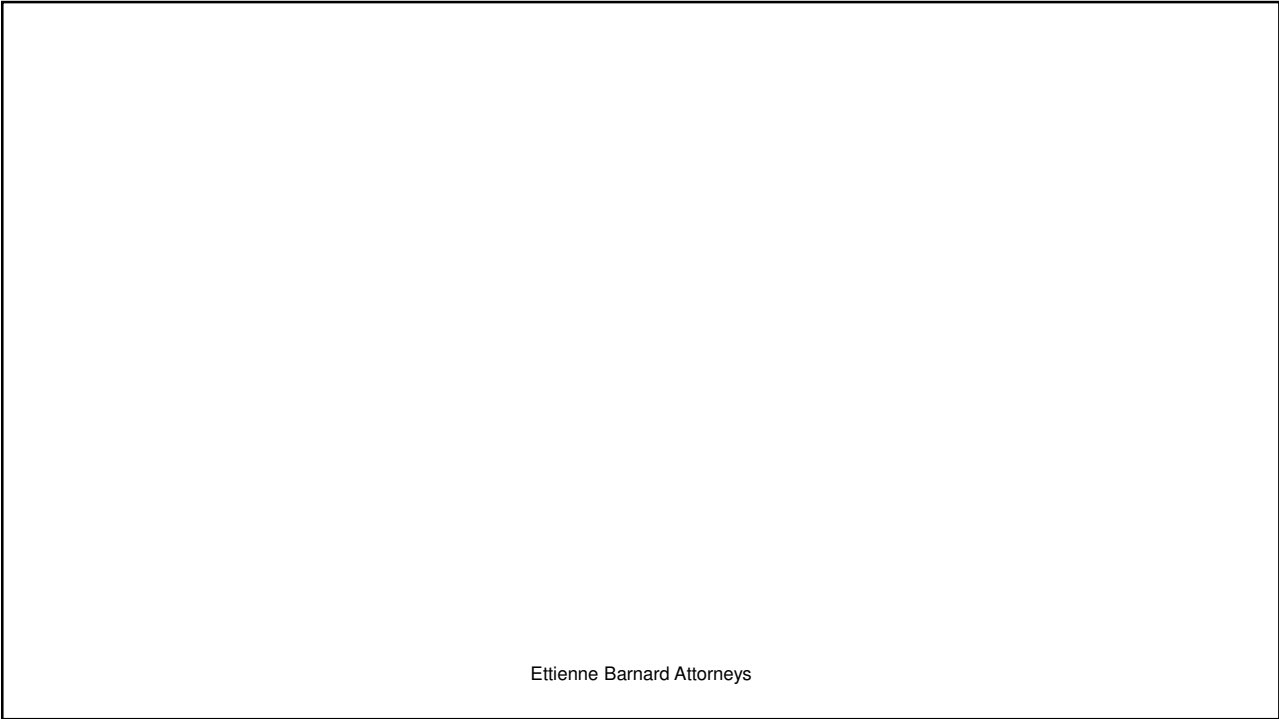
- Non Compliance
 - Criminal complaint
 - Warrant of execution
 - Emolument attachment
 - Garnishee attachment
 - Attachment of pension for future maintenance
 - Contempt of court – AG v DG 2017 (2) SA 409 (GJ)
 - Blacklisting at credit bureaus

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Maintenance

- PT v LT and another 2012 (2) SA 623 (WCC)
 - To enforce maintenance order must go through Chapter 5 of the Maintenance Act. No warrant in High or Regional Court
- Isaacs v Isaacs A431/2017 11 June 2018 overturned
- JW v HW 2011 (6) SA 237 (GSJ)
 - Settlement agreement is an order of court may be enforced by a warrant of execution.
 - Arrear maintenance can be enforced by warrant in High Court

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