

South Africa

Mediation in Certain Divorce Matters Act, 1987

## Mediation in Certain Divorce Matters Regulations, 1990

Government Notice R2385 of 1990

Legislation as at 11 September 1992

FRBR URI: /akn/za/act/gn/1990/r2385/eng@1992-09-11

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## South Africa

### Mediation in Certain Divorce Matters Act, 1987

# Mediation in Certain Divorce Matters Regulations, 1990

## Government Notice R2385 of 1990

Published in Government Gazette 12781 on 3 October 1990

**Commenced on 8 October 1990**

*Note: See section 9*

*[This is the version of this document as it was from 11 September 1992 to 18 May 1993.]*

*[Amended by Mediation in Certain Divorce Matters Regulations: Amendment (Government Notice R2513 of 1992) on 11 September 1992]*

### 1. Definitions

- (1) In these regulations any word or expression to which a meaning has been assigned in the Act shall bear the meaning so assigned to it and, unless the context otherwise indicates—
- “**advisory committee**” means an advisory committee on Family Counsellors appointed by regulation 7;
- “**deliver**” means the delivery of a copy of any document which in terms of these regulations is to be delivered to any person, to such person—
- personally; or
  - by leaving such copy at his place of residence or business; or
  - if the person to whom such copy is required to be delivered has chosen a *domicilium citandi*, by delivering or leaving such copy at such *domicilium citandi*; or
  - by causing such copy to be delivered at his place of residence or business by means of registered or certified post;
- “**Registrar of the Supreme Court**” means the Registrar of the Supreme Court at the division of the Supreme Court in question;
- “**Supreme Court**” means the Supreme Court of South Africa;
- “**the Act**” means the Mediation in Certain Divorce Matters Act, 1987 (Act No. 24 of 1987).
- (2) For purposes of the calculation of any period referred to in these regulations, a Saturday, Sunday or public holiday shall, except where expressly otherwise provided, be disregarded.

### 2. Institution of certain divorce actions and lodging of certain applications for variation, rescission or suspension of certain court orders

- (1) As from the coming into operation of these regulations—
- a plaintiff in any divorce action in which any relief is claimed in relation to the custody or guardianship of, or access to, a minor or dependent child of the marriage concerned; or

- (b) an applicant in any application for the variation, rescission or suspension of an order made in terms of the Divorce Act, 1979 ([Act No. 70 of 1979](#)), in relation to any minor or dependent child of the marriage concerned,

which action is instituted or application is made on or after such coming into operation, shall, together with the summons or notice of motion whereby such action is instituted or application is made, deliver or cause to be delivered to the defendant or respondent, as the case may be, a completed form, duly sworn or affirmed, corresponding substantially to Annexure A, and file with the Registrar of the Supreme Court two copies thereof.

- (2) The defendant or respondent, as the case may be, referred to in subregulation (1)—
  - (a) may, if he desires to reply to statements made in the form delivered to him in terms of that subregulation, within the period allowed in terms of the rules of the Supreme Court for filing any subsequent process, deliver or cause to be delivered to the plaintiff or applicant, as the case may be, a completed form, duly sworn or affirmed, corresponding substantially to the said Annexure A containing his reply to such statements; and
  - (b) shall, at the same time, file two copies of such form with the Registrar of the Supreme Court.
- (3) The Registrar of the Supreme Court shall, as soon as practicable after an action or application referred to in subregulation (1) has been filed with him, transmit to the Family Advocate a copy of the summons or application instituting or bringing such action or application and, if filed, the completed forms referred to in subregulations (1) and (2).

### **3. Request by court or party to divorce action or application for variation, rescission or suspension of court order relating to minor or dependent children for enquiry to be instituted by Family Advocate**

- (1) When a court has, in terms of section 4 of the Act, requested the Family Advocate to institute an enquiry referred to in that section, the Registrar of the Supreme Court shall endorse on the court file accordingly, and shall forthwith inform the Family Advocate in writing of such request.
- (2) Any party to a divorce action or application referred to in regulation 2 who desires an enquiry to be instituted by the Family Advocate in terms of section 4 of the Act on any matter concerning the welfare of any minor or dependent child of the marriage concerned shall request the Family Advocate accordingly in a form corresponding substantially to Annexure B, and shall at the same time—
  - (a) deliver or cause to be delivered a copy of such form to every other party to such action or application; and
  - (b) file a further copy of such form with the Registrar of the Supreme Court.
- (3) A party to proceedings referred to in regulation 2 shall, if any such action or application is in any manner settled, not take any further step in terms of the rules of the Supreme Court, unless such party has furnished the Family Advocate with all particulars in relation to such settlement, in so far as such settlement relates to any minor or dependent child of the marriage concerned.

### **4. Application by Family Advocate to court for an order authorising an enquiry for purposes of report and recommendation to court on welfare of minor or dependent children**

An application by the Family Advocate contemplated in section 4 (2) of the Act shall be made either orally or in writing in a form corresponding substantially to Annexure C.

**5. Procedure to be followed by Family Advocate in enquiry instituted for purposes of report and recommendation to court on welfare of minor or dependent children**

- (1) The Family Advocate shall as soon as practicable after receipt of a request referred to in regulation 3, subject to the provisions of this regulation, institute an enquiry in such manner as he may deem expedient or desirable.
- (2) The Family Advocate may, if he deems it necessary for an enquiry referred to in subregulation (1), require any person to submit to him such affidavits or other statements in writing or reports, documents or things as the Family Advocate may deem necessary.
- (3) The Family Advocate shall submit his report and recommendation to the Registrar of the Supreme Court within 15 days after the completion of his enquiry or within such shorter period as may be determined by the court, and shall deliver or cause to be delivered to the plaintiff or defendant, or the applicant or respondent, as the case may be, copies of such report and recommendation.

**6. Appointment by Family Advocate or Family Counsellor of persons to assist him with an enquiry for purposes of report or recommendation to court on welfare of minor or dependent children**

The Family Advocate or Family Counsellor who institutes an enquiry in terms of section 4 of the Act may appoint a person or persons to assist him with such an enquiry.

**7. Appointment of advisory committees**

The Minister may appoint an advisory committee referred to in section 5(1)(e) of the Act at each division of the Supreme Court.

**7A. Remuneration and allowances payable to a Family Advocate appointed under section 2 (1) of the Act to act in a specific divorce action or an application or in more than one such action or application**

- (1) A Family Advocate appointed under section 2(1) of the Act to act in a specific divorce action or an application or in more than one such action or application and who is not an officer in the public service shall, for services rendered by him in that regard, be entitled to the following remuneration:
  - (a) For appearance in court: R300,00 per day, irrespective of the number of such actions or applications in connection with which he appears before the court on that day.
  - (b) For conducting an enquiry referred to in section 4 (1) of the Act: R300,00 for the first day spent on such enquiry and R100,00 for each subsequent day spent on such enquiry.
  - (c) For drafting a written report referred to in section 4 (1) of the Act: R50,00 per hour or part of an hour actually spent on the drafting of such report, subject to a maximum amount of R300,00 per day.
  - (d) R50,00 per hour or part of an hour actually spent on the perusal and consideration of—
    - (i) any summons or notice of motion and completed forms referred to in regulation 2 (1) and (2);
    - (ii) any completed form referred to in regulation 3 (2); or
    - (iii) any deed of settlement referred to in regulation 3 (3) which does not have a bearing on a court appearance, conducting an enquiry or drafting a written report referred to in paragraphs (a), (b) and (c), respectively, of this subregulation,subject to a maximum amount of R300,00 per day.

- (2) A Family Advocate referred to in subregulation (1) who, for the purposes of appearing in court or conducting an enquiry as contemplated in paragraphs (a) and (b), respectively, of that subregulation, is obliged to rent accommodation for the night or is absent for a period of 24 hours or longer from the city or town where he normally works or resides is entitled to—
  - (a) an all-inclusive subsistence allowance of R65,00 per day; or
  - (b) the actual expenses reasonably incurred by him in respect of accommodation and meals, and a special allowance of R20.00 per day for incidental expenses.
- (3) If, in rendering a service contemplated in subregulation (2), a Family Advocate referred to in subregulation (1) is absent for a period of less than 24 hours from the city or town where he normally works or resides and is not obliged to rent accommodation for the night, he shall be paid an all-inclusive allowance of R25,00 per day.
- (4)
  - (a) Whenever a Family Advocate referred to in subregulation (1) makes use of public transport for the purposes of appearing in court or conducting an enquiry (as contemplated in that subregulation) at a city or town other than the city or town where he normally works or resides, an allowance equal to the actual cost of such transport for the forward and return journey by the shortest convenient route shall be paid to him: Provided that if more than one suitable means of public transport is available, such actual cost shall be deemed to be the amount of money which, in the circumstances, would have been charged for transportation by the least expensive of such means of public transport.
  - (b) Whenever a Family Advocate referred to in subregulation (1) makes use of private transport for the purposes of appearing in court or conducting an enquiry at a city or town other than the city or town where he normally works or resides, an amount for the forward and return journey by the shortest convenient route, calculated at R1,00 per kilometre, shall be paid to him.
- (5) In so far as the costs of the transport, accommodation or meals of a Family Advocate referred to in subregulation (1) are borne by or defrayed from any other source, no allowance shall be payable to him in terms of subregulation (2), (3) or (4), whichever may be applicable.
- (6) When submitting, for payment in terms of subregulation (2) (b), a claim for the actual expenses incurred by him in respect of accommodation and meals, a Family Advocate referred to in subregulation (1) shall submit the necessary receipts or other vouchers in support of such expenses to the Registrar of the Supreme Court.
- (7) The decision of the Registrar of the Supreme Court regarding the amounts payable in terms of this regulation shall be final.

*[regulation 7A inserted by section 2 of [Government Notice R2513 of 1992](#)]*

## **8. Application of these regulations**

These regulations shall apply only in respect of a division of the Supreme Court at which a Family Advocate has been appointed under section 2 of the Act.

## **9. Title and commencement**

These regulations shall be called the Mediation in Certain Divorce Matters Regulations, 1990, and shall come into operation on 8 October 1990.

**Annexure A (Regulation 2 of the Mediation  
in Certain Divorce Matters Regulations, 1990)**

**Arrangements regarding dependent and minor children**

*[Editorial note: The forms have not been reproduced.]*

**Annexure B (Regulation 3 of the Mediation  
in Certain Divorce Matters Regulations, 1990)**

**Request to family advocate to institute an enquiry in terms of section 4  
of the Mediation in Certain Divorce Matters Act, 1987 (Act No. 24 of 1987)**

*[Editorial note: The forms have not been reproduced.]*

**Annexure C (Regulation 4 of the Mediation  
in Certain Divorce Matters Regulations, 1990)**

*[Editorial note: The forms have not been reproduced.]*