

This article is found on <http://www.ourlawyer.co.za>

## **Divorce**

### **How to get Divorced**

Written by Adv. Muhammad Abduroaf  
(Advocate of the High Court of South Africa)

If you want to get divorced from your spouse, I strongly advise that your approach a legal practitioner, or an attorney to attend to it on your behalf. This I would implore even more under the following circumstance:

There will be a dispute over care and visitation rights over the child / children;

One of the parties shall be applying for forfeiture of patrimonial benefits from a marriage in community of property;

The joint estate is huge or complicated; or

The other party shall be making use of legal representation.

If however, you would like to know the general procedures on how to go about a divorce, they are listed summarily below. There are many rules that regulate divorce processes and the summary below does exclude certain of them. These includes exceptions, strikeouts, compelling compliance, service addresses etc. Other matters incidental to divorce proceedings, e.g. interim arrangements, pending the divorce regarding maintenance for you or your children and care and contact regarding children are not dealt with. Therefore please consult a legal practitioner or the divorce court throughout your divorce process should you decide to do the divorce yourself.

### **Summons & Particulars of Claim**

A summons needs to be drafted which shall be issued by the divorce court to commence the divorce process. It should have on it the details of the court you shall be issuing divorce, details of the parties, e.g. names, occupation and address etc. Every High Court in the area where you live has the authority to attend to a divorce. There are however specialized divorce courts, that may attend to a divorce as well. Here in the Western Cape, we have the Southern Divorce Court.

You should then draft a particulars of claim outlining relevant matters concerning the marriage, children, reasons for wanting a divorce and what do you want the court to grant you in a divorce order. This particulars of claim you attach to the summons. Here is an example of a summons and particulars of claim for a divorce for a couple married

in community of property with no children getting divorce in the High Court in Cape Town.

IN THE HIGH COURT OF SOUTH AFRICA CASE NO.:  
(Western Cape High Court, Cape Town)

In the matter between:

John Smith (Plaintiff)

and

Jane Smith (Defendant)

To the Sheriff or his/her Deputy

1. INFORM

Jane Smith (hereinafter referred to as "the Defendant"), an adult female, self-employed as a singer currently residing at 12 Club Road, Waterfront, Western Cape and whose full and further particulars are unknown,

that:

John Smith (hereafter referred to as "Plaintiff"), an adult male self employed painter residing at Garden Road, Cape Town, Western Cape,

hereby institutes action against her in which action the Plaintiff claims the relief and on the grounds set out in the particulars annexed hereto marked "A".

2. INFORM the Defendant further that if she disputes the claim and wishes to defend the action she shall –

(a) within 10 (TEN) days after the service upon her of this Summons, file with the Registrar of this Court at Keerom Street , Cape Town a notice of her intention to defend, and serve a copy thereof on the Plaintiff, on which notice shall be given an address (not being a post office or poste restante) referred to in Rule 19(3) for the service upon the Defendant of all notices and documents in the action; and

(b) thereafter, and within 21 (TWENTY ONE) court days after the filing and serving such notice of intention to defend as aforesaid, file with

the Registrar and serve upon the Plaintiff a Plea, Exception, Notice to strike out, with or without a counterclaim.

3. INFORM the Defendant further that if she fails to file and serve notice as aforesaid, judgment as claimed may be given against her without further notice to her, or if having filed and served such notice, she fails to plead, except, make application to strike out or counterclaim, judgment may be given against her.

4. INFORM the Defendant also that if she does not intend to defend the action, she will inform the Registrar in writing to enable the Registrar to, on request in writing from Plaintiff, immediately set the matter down for hearing.

AND IMMEDIATELY THEREAFTER serve on the Defendant a copy of this summons and return same with whatsoever you have done thereupon.

DATED AT CAPE TOWN ON THIS THE DAY OF 2010.

---

REGISTRAR OF THE HIGH COURT

CAPE TOWN

---

Per: John Smith (Plaintiff in Person)

Service Address

Particulars of Claim "A"

(A) Parties

Plaintiff is John Smith, an adult male Bus Driver, residing at no. 5 Truck Apartments, Cape Town, Western Cape.

Defendant is Jane Smith (born Smit) an adult female, employed as a hairdresser, residing at Hectic House, 2 Main Road, Strand, Western Cape.

(B) Marriage

Plaintiff and Defendant (hereafter referred to together as "the Parties") married each other on 10 August 2003 at Pretoria, in community of property and the marriage still subsists. Kindly find attached hereto a copy of the marriage certificate marked "MC".

The Parties are domiciled within the area of jurisdiction of this honourable court.

There are no children born out of the marriage.

(C) Irretrievable breakdown

The marriage between the Parties has irretrievably broken down and there is no reasonable prospects of the restoration of a normal marital relationship between them in that:

Defendant left the common home approximately 2 years ago;

There is no love and affection, understanding and communication between the parties;

The Parties are incompatible and continue arguing; and

Plaintiff has a gambling problem.

(D) Prayer

WHEREFORE Plaintiff prays for Judgement against Defendant in the following terms:

A decree of divorce;

Each party retain the property in his or her possession as his or her sole property;

Cost if this action is opposed; and

Further and/ or alternative relief.

DATED AT CAPE TOWN ON THIS THE DAY OF 2010.

---

Per: John Smith (Plaintiff in Person)

## Service Address

Once you have your summons and particulars of claim in order, you have to attach thereto revenue stamps. If you are issuing your summons out of the High Court, the stamps should be R 80— 00 and in the special divorce courts, R 20—00.

Now you should make three (3) copies of your set of documents and have it issued at court.

## Issuing & Service of Summons

Once you are at the court, go to the clerk of the court and have your documents issued.

The clerk shall sign the summons and provide a case number and write it on the summons.

You should then take the original and a copy (both must be signed and stamped by the clerk of the court) and take it to the sheriff which serves documents where your spouse works or lives. You can ask the clerk of the court for that details.

The extra—copy of the summons & particulars of claim you keep for your file and records.

## Notice of intention to defend

Once the sheriff has served the documents, your spouse has about two weeks to inform you whether he or she shall be defending the divorce. This information is outlined in the summons as shown above.

## Plea to particulars of claim

Once you received notice of your spouse's intention to defend the divorce, about a month later, your spouse or their attorney shall serve and file a plea.

The plea shall outline which parts of your particulars of claim your spouse agrees (or disagrees) with which would give a direction of what to prove at court.

## Counter Claim

Your spouse might want to file a counter claim. In the same way which you outlined your case as to what you want from the court and the reasons therefore in your particulars of claim, your spouse can file on your as well a counter claim.

A counter claim might still be filed if your spouse agrees to a divorce, by maybe wants care of the children, but in your particulars of claim, you asked for care.

You should then within 10 (ten) days plead to the counter claim the same manner in which you spouse pleaded to your particulars of claim.

### Obtaining a Trial date

Once you received the plea, without a counter claim, or have pleaded to your spouses counter claim, you should then approach the clerk of the court for a trial date. This you or your spouse may do.

### Discovery

While you waiting for a trial date, and way before the trial, you may ask, or may be asked to provide a under oath a schedule of books and documents in your possession and under your control relating to the divorce. This could be policy documents, deeds etc, and which your or your spouse might want to make use of at trial.

Once you received this schedules you may inspect and request copies of the documents.

### Divorce day / Trial

If your spouse does not defend the divorce within the time period, go back to court and ask for an unopposed divorce date and attend to your divorce on that date.

If however your divorce is defended, a trial shall ensure. During the trial, each party shall prove his or her case. Witnesses shall be called and at the end, the Magistrate or Judge shall deliver the verdict.

Best of luck, and please, don't take my word, contact a legal practitioner should you decide to get divorced.

Kind regards,

Advocate Muhammad Abduroaf (Cape Town | Western Cape)

LL.B & LL.M (Master of Laws) Constitutional Litigation

Advocate of the High Court of South Africa

Advocate Muhammad Abduroaf's contact details are as follows:

Chambers: 206 | 2nd Floor | 80 Stand Strand | Cape Town | Western  
Cape

Office: 021 811 7786 (Neotel)

Mobile.: 083 731 9816

Email: [Litigation@ourlawyer.co.za](mailto:Litigation@ourlawyer.co.za)

\_\_\_\_\_o0o\_\_\_\_\_