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## **Parental Responsibilities & Rights**

### **Care & Contact (Custody & Access)**

Written by Advocate Muhammad Abduroaf LL.B LL.M

(Advocate of the High Court of South Africa)

(This section relates to an application being made in Cape Town (Western Cape High Court). Attorneys and Advocates in Jurisdiction of Courts outside Cape Town may follow a slightly different format.)

In the past, the terms Custody and Access was used in relation to children. Now the terms Care and Contact are used and you will see the term Visitation coming up as well. In terms of the Children's Act of 2005, both parents (with certain exceptions) have full parental rights and responsibilities in relation to a child. If there is a dispute regarding that, or the mother refuses access etc, then the father may have to make an application to the High Court confirming his responsibilities and rights and enforcing them. This can turn out to be a costly affair. If however a father has to take that route, it is strongly suggested that he gets hold of an attorney who may instruct an advocate. A Notice of Motion would be drafted with a Founding Affidavit and other supporting affidavits. The documents would further be filed with the Office of the Family Advocate. Once the Application is served on the mother, she would then have an opportunity to file her opposing papers (if any) and the father will then have an opportunity to reply. Once a date is provided by the Registrar of the Court, the matter would be argued before a Judge who would make a decision with or without a Family Advocate's Report. Urgent applications can also be made, but here an experienced attorney and advocate is required as time is of the essence.

What the father would basically be asking for is the following:

An Order directing that the parties (mother and father) are co-holders of parental responsibilities and rights in respect of the minor child, in terms of the Children's Act, 38 of 2005 ("the Children's Act") as follows:

the parties are co-holders of guardianship over the minor child as provided in Section 18(2)(c); 18(3); 18(4) and 18(5) of the Children's Act;

the parties shall be co-holders of parental responsibilities and rights of care and contact in respect of the minor child as referred to in Section 18(2)(a) and (b) of the Children's Act; and

How such rights of care and contact shall be implemented.

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)

If you are a father and would like to have access to your child, feel free to contact us and we can refer you to an attorney for assistance. Send us an email by clicking [here](#).

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