

REGULATIONS

GNR.2385 of 3 October 1990: Regulations made under the Mediation in Certain Divorce Matters Act, 1987 (Act No. 24 of 1987)

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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—

- (i) **“advisory committee”** means an advisory committee on Family Counsellors appointed by regulation 7;
- (iA) **“Court”** means a High Court contemplated in section 166 of the Constitution of the Republic of South Africa, 1996 (Act No. 108 of 1996), within its area of jurisdiction, or a divorce court established under section 10 of the Administration Amendment Act, 1929 (Act

No. 9 of 1929), as the case may be;

[Definition of "Court" inserted by GNR.1123 of 2001.]

- (ii) **"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—
 - (a) personally; or
 - (b) by leaving such copy at his place of residence or business; or
 - (c) 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
 - (d) by causing such copy to be delivered at his place of residence or business by means of registered or certified post;
- (iii) **"Registrar of the Supreme Court"**.....
 [Definition of "Registrar of the Supreme Court" deleted by GNR.1123 of 2001.]
- (iv) **"Supreme Court"**.....
 [Definition of "Supreme Court" deleted by GNR.1123 of 2001.]
- (v) **"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) 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 Court two copies thereof.

[Subreg. (1) amended by GNR.1123 of 2001.]

- (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 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
 [Para. (a) amended by GNR.1123 of 2001.]
 - (b) shall, at the same time, file two copies of such form with the Registrar of the Court.
 [Para. (b) amended by GNR.1123 of 2001.]

(3) The Registrar of the 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 form referred to in subregulations (1) and (2).

[Subreg. 3 amended by GNR.1123 of 2001.]

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 Court shall endorse on the court file accordingly, and shall forthwith inform the Family Advocate in writing of such request.

[Subreg. (1) amended by GNR.1123 of 2001.]

(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 Court.

[Para. (b) amended by GNR.1123 of 2001.]

(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 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.

[Subreg. (3) amended by GNR.1123 of 2001.]

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.

4A. Circumstances in which court may cause investigation to be carried out by Family Advocate in maintenance inquiries and domestic violence proceedings.—(1) For the purposes of this regulation “court” means any court contemplated in the Magistrate’s Courts Act, 1944 (Act No. 32 of 1944), or any family court or maintenance court established in terms of an Act of Parliament, as the case may be.

(2) A court may cause an investigation to be carried out by a Family Advocate as contemplated in section 10 (1A) of the Maintenance Act, 1998 (Act No. 99 of 1998), or section 5 (1A) of the Domestic Violence Act, 1998 (Act No. 116 of 1998), where the court deems it—

- (a) in the best interest of any minor or dependent child affected by the proceedings or enquiry before the court, as the case may be; and
- (b) necessary in view of the complexity of any matter or issue that affects such a minor or dependent child.

[Reg. 4A inserted by GNR.251 of 2005]

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 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.

[Subreg. (3) amended by GNR.1123 of 2001.]

6. Appointment by Family Advocate or Family Counsellor or 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 Court.

[Reg. 7 amended by GNR.1123 of 2001.]

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 R1,10 per kilometre in the case of a vehicle with an engine swept volume of 2 150 cm³ or less, R1,14 per kilometre in the case of a vehicle with an engine swept volume of 2 151 cm³ to 2 500 cm³, inclusive, R1,27 per kilometre in the case of a vehicle with an engine swept volume of 2 501 cm³ to 3 500 cm³, inclusive or R1,42 per kilometre in the case of a vehicle with an engine swept volume of over 3 500 cm³, shall be paid to him.

[Reg. 7A (4) (b) amended by GN R1342 of 1996.]

(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 Court.

[Subreg. (6) amended by GNR.1123 of 2001.]

(7) The decision of the Registrar of the Court regarding the amounts payable in terms of this regulation shall be final.

[Reg. 7A inserted by GNR.2513 of 1992. Subreg. (7) amended by GNR.1123 of 2001.]

7B. Remuneration and allowances payable to a Family Counsellor and remuneration payable to a person appointed to assist a Family Advocate or a Family Counsellor.—(1) In this regulation "person" means a person or persons appointed under regulation 6.

(2) A Family Counsellor or a person who, for the purposes of rendering assistance, 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 the following remuneration:

- (i) An all-inclusive amount of R65,00 per day; or
- (ii) the actual expenses reasonably incurred by him in respect of accommodation and meals, and a special remuneration of R20,00 per day for incidental expenses.

(3) If a Family Counsellor or a person 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 remuneration of R25,00 per day.

(4) (a) Whenever a Family Counsellor or a person makes use of public transport for the purposes of rendering assistance a remuneration 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, the 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 Counsellor or a person makes use of private transport for the purposes of rendering assistance he shall be paid an amount for the forward and return journey by the shortest convenient route, calculated at R1,10 per kilometre in the case of a vehicle with an engine swept volume of 2 150 cm³ or less, R1,14 per kilometre in the case of a vehicle with an engine swept volume of 2 151 cm³ to 2 2500 cm³, inclusive, R1,27 per kilometre in the case of a vehicle with an engine swept volume of 2 501 cm³ to 3 500 cm³, inclusive or R1,42 per kilometre in the case of a vehicle with an engine swept volume of over 3 500 cm³, shall be paid to him.

[Reg. 7B (4) (b) amended by GN R1342 of 1996.]

(5) A Family Counsellor or a person who is an officer in the Public Service or who is in the service of a body or organisation that receives financial aid from the State shall not be entitled to any remuneration 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) (ii) a claim for the actual expenses

incurred by him in respect of accommodation and meals, a Family Counsellor or a person shall submit the necessary receipts or other vouchers in support of his expenses to the Registrar of the Court.

[Reg. 7B inserted by GNR.920 of 1993. Subreg. (6) amended by GNR.1123 of 2001.]

7C. Miscellaneous provisions.—The decision of the Registrar of the Court regarding the amounts payable in terms of regulations 7A and 7B shall be final.

[Reg. 7C inserted by GNR.920 of 1993 and amended by GNR.1123 of 2001.]

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

[Reg. 8 amended by GNR.1123 of 2001.]

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.

[Reg. 7B (4) (b) amended by GN R1342 of 1996.]

Annexure A

REGULATION 2 OF THE MEDIATION IN CERTAIN DIVORCE MATTERS REGULATIONS, 1990

[Annexure A substituted by GNR.1123 of 2001.]

ARRANGEMENTS REGARDING DEPENDENT AND MINOR CHILDREN

	Case No.	20
	in the	
High Court,		/
		Divorce Court*
	in the matter between	
		Plaintiff/Applicant
	And	
		Defendant/Respondent

PARTICULARS OF PLAINTIFF/APPLICANT:

Postal address:

Residential address:

Telephone number:

Name and address of employer:

Telephone number:

Gross monthly income:

Extent of monthly financial commitments:

PARTICULARS OF DEFENDANT/RESPONDENT:

Postal address:

Residential address:

Telephone number:

Name and address of employer:

Telephone number

Gross monthly income, if known:

Extent of monthly financial commitments, if known:

GENERAL INFORMATION:

State the full name, gender and date of birth of each minor or dependent child of the marriage:

- 1.
- 2.
- 3.
- 4.
- 5.
- 6.
- 7.
- 8.

State with whom the children are living at present:

state where the children are to live, furnish particulars of the accommodation, what other persons (name them) are living there and who will look after the children. if it is proposed that the children should be in the care of a person other than yourself, state whether or not that person has agreed to this arrangement. state the relationship of such other person to the children:

State the name of the school or other educational establishment which your children are at present attending, or, if any of them are already working, their place of employment, the nature of their work and details of any training they are receiving. attach copies of the most recent school reports:

Is it envisaged that the children, after the conclusion of the action/application, will have to change schools? if so, give full details:

Do any of the children experience learning problems? are any of them in any respect physically or

Answer

I certify that the deponent has acknowledged that he/she* knows and understands the contents of this declaration which was sworn to/affirmed before* me, and the deponent's signature/thumb print/mark* was placed thereon in my presence.

*Justice of the Peace/
Commissioner of Oaths**

Full name

*Designation (Rank) and
area for which appointed*

Business address:

Date:

Place:

*Delete whichever is not applicable.

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)

1. Details of applicant requesting enquiry

Full name:

Residential address:

Postal address:

Telephone numbers: (Home)

(Work)

2. Is applicant a party to an action/application involving minor or dependent children?

Yes

No

3. Where was the action/application instituted/lodged?

4. When was the action/application instituted/lodged?

5. Court file reference number of action/application

6. Names, ages and gender of minor or dependent children involved in action/application

7. Details of other party involved in action/application

Full name:

Residential address:

Postal address:

Telephone numbers: (Home)

(Work)

8. Full details of reasons why an enquiry is requested

9. Are you or a member of your family known to any welfare organisation or agency? If so, state the name of the organisation/agency and where it operates

Applicant (Signature)

Date:

Place:

Annexure C

REGULATION 4 OF THE MEDIATION IN CERTAIN DIVORCE MATTERS REGULATIONS, 1990

[Annexure C substituted by GNR.1123 of 2001.]

in the

High Court,

/

Divorce Court*

in the matter between

Plaintiff/Applicant

and

Defendant/Respondent

After having considered the following information:

I, _____ (initials and surname),
Family Advocate at the abovementioned High Court/Divorce Court*, hereby apply for an order in terms of which I am authorised to institute an enquiry contemplated in section 4(1) of the Mediation in Certain Divorce Matters Act, 1987 (Act No. 24 of 1987), into the welfare of the minor and/or dependent children of the above-named parties.

Dated and signed at _____ this _____ day of _____ 20____

Family advocate

ORDER

The Family Advocate at the High Court, /

Divorce Court* is hereby under an order of

The Court given on authorised to institute an enquiry

contemplated in section 4(1) of the Mediation in Certain Divorce Matters Act, 1987 (Act No. 24 of 1987), in respect of the minor and/or dependent children of the above-named parties.

By order of the Court

Registrar

*Delete whichever is not applicable.