

(Divorce Act 70 of 1979)
SUMMONS COMMENCING ACTION
(In terms of Rule 5)

IN THE REGIONAL COURT FOR THE REGIONAL DIVISION OF _____ GAUTENG

HELD AT _____

Case Number: _____

IN THE MATTER BETWEEN:-

Identity Number:

PLAINTIFF

AND

Identity Number:

DEFENDANT

TO THE SHERIFF OR HIS/HER DEPUTY:

INFORM (Full names of the Defendant): _____ **A MAJOR MALE/FEMALE BY**
OCCUPATION: _____ **OF (Address):** _____
(Hereinafter referred to as the defendant),

THAT (full names of the Plaintiff): _____ **A MAJOR MALE/FEMALE BY**
OCCUPATION: _____ **OF (address):** _____
(Hereinafter referred to as the Plaintiff),

HEREBY institutes action against him/her in which action the Plaintiff claims the relief on the grounds set out in the particulars of claim attached hereto;

INFORM the defendant further that if defendant disputes the claim and wishes to defend the action he/she

- (i) shall within **10 (Ten) days** of the service upon him or her of this summons file with the registrar of this court at _____ (Type in Court address) (here set out the address of the assistant registrar's office) notice of his/her intention to defend and serve a copy thereof on the plaintiff or plaintiff's attorney, which notice shall give an address referred to in rule 13(3)

for the service upon the defendant of all notices and documents in the action;

- (ii) thereafter, and within **20 (Twenty) days** after filing and serving notice of intention to defend as aforesaid, file with the assistant registrar and serve upon the plaintiff or plaintiff's attorney a plea, exception, notice to strike out, with or without a counter-claim.

INFORM the defendant further that if he/she fails to file and serve notice as aforesaid, judgment as claimed may be given against him/her without further notice to him/her, or if, having filed and served such notice, he/she fails to plead, except or to counterclaim, judgment may be given against him/her.

INFORM the defendant also that if he/she does not intend to defend the action, he/she may give written notice to that effect to the plaintiff and the Registrar and the action may then, at the written request of the plaintiff, be forthwith set down by the Registrar for hearing.

And immediately thereafter serve on the defendant a copy of this summons and return the same to the registrar or assistant registrar with whatsoever you have done thereupon.

DATED AT _____ ON THIS _____ DAY OF _____ 20_____.

REGISTRAR/ASSISTANT REGISTRAR
CIVIL REGIONAL COURT
REGIONAL DIVISION OF _____

PLAINTIFF/PLAINTIFF'S ATTORNEY

Address

Postal address

Facsimile (fax) number (where available)

Electronic mail (e-mail) address (where available)

(Give full address for acceptance of service of process or documents within 15 kilometres from the Court-house and also the postal address.)

Defendant must take notice that—

- (a) in default of defendant paying the amount of the claim and costs within the said period or of defendant delivering a notice of intention to defend he or she will be held to have admitted the said claim and the plaintiff may proceed therein and judgment may be given against defendant in his or her absence;
- (b) if defendant pays the said claim and costs within the said period judgment will not be given against defendant herein and he or she will save judgment charges. Defendant will also save judgment charges if, within the said period, he or she lodges with the clerk of the aforesaid Court a consent to judgment;
- (c) if defendant admits the claim and wish[es] to consent to judgment or wish[es] to undertake to pay the claim in instalments or otherwise, defendant may approach the plaintiff or plaintiff's attorney.

(1) Notice:

(i) Any person against whom a court has, in a civil case, given judgment or made any order who has not, within 10 days, satisfied in full such judgment or order may be called upon by notice in terms of section 65A(1) of the Act to appear on a specified date before the court in chambers to enable the court to inquire into the financial position of the judgment debtor and to make such order as the court may deem just and equitable.

(ii) If the court is satisfied that—

(aa) the judgment debtor or, if the judgment debtor is a juristic person, a director or officer of the juristic person has knowledge of the above-mentioned notice and that he or she has failed to appear before the court on the date and at the time specified in the notice; or

(bb) the judgment debtor, director or officer, where the proceedings were postponed in his or her presence to a date and time determined by the court, has failed to appear before the court on that date and at that time; or

(cc) the judgment debtor, director or officer has failed to remain in attendance at the proceedings or at the proceedings so postponed, the court may, at the request of the judgment creditor or his or her attorney, authorise the issue of a warrant directing a sheriff to arrest the said judgment debtor, director or officer and to bring him or her before a competent court to enable that court to conduct a financial inquiry.

[Section 65A(6) of the Act]

(iii) Any person who—

(aa) is called upon to appear before a court under a notice in terms of section 65A(1) or 65A(8)(b) of the Act (where the sheriff, in lieu of arresting a person, hands to that person a notice to appear in court) and who wilfully fails to appear before the court on the date and at the time specified in the notice; or

(bb) where the proceedings were postponed in his or her presence to a date and time determined by the court, wilfully fails to appear before the court on that date and at that time; or

(cc) wilfully fails to remain in attendance at the relevant proceedings or at the proceedings so postponed, shall be guilty of an offence and liable on conviction to a fine or to imprisonment for a period not exceeding three months. [Section 65A(9) of the Act]

(iv) On appearing before the court on the date determined in the notice in terms of section 65A(1) or (8)(b) of the Act in pursuance of the arrest of the judgment debtor, director or officer under a warrant referred to in section 65A(6) of the Act or on any date to which the proceedings have been postponed, such judgment debtor, director or officer shall be called upon to give evidence on his or her financial position or that of the juristic person and his or her or its ability to pay the judgment debt. [Section 65D of the Act]

(v) Any person against whom a court has, in a civil case, given any judgment or made any order who has not satisfied in full such judgment or order and paid all costs for which he or she is liable in connection therewith shall, if he or she has changed his or her place of residence, business or employment, within 14 days from the date of every such change notify the clerk or register [sic] of the court who gave such judgment or made such order and the judgment creditor or his or her attorney fully and correctly in writing of his or her new place of residence, business or employment, and by his or her failure to do so such judgment debtor shall be guilty of an offence and liable upon

conviction to a fine or imprisonment for a period not exceeding three months. [Section 109 of the Act]

(2) Consent to judgment (Not applicable in matters where a divorce order is requested)

I admit that I am liable to the plaintiff as claimed in this summons (or in the amount of R.....) and costs to date and I consent to judgment accordingly.

Dated at..... this day of 20,

Defendant

(3) Notice of intention to defend**

To the Registrar/Clerk of the Court

Kindly take notice that the defendant hereby notifies his or her intention to defend this action.

Dated at this day of, 20,

.....
Defendant/Defendant's attorney

Address

.....

Postal address

.....

Facsimile (fax) number (where available)

Electronic mail (e-mail) address (where available)

(Give full address for acceptance of service of process or documents within 15 kilometres from the Court-house and also the postal address.)

Costs if the action is undefended will be as follows:

Summons.....	R
Judgment.....	R
Attorney's charges.....	R
Sheriff's fees.....	R
Sheriff's fees on re-issue.....	R
Total:	R

*The original notice must be filed with the registrar or clerk of the court and a copy thereof served on the plaintiff or plaintiff's attorney.

PARTICULARS OF CLAIM

(In terms of Rule 5)

1. Parties

1.1 The Plaintiff is _____ (Full names and Surname)
(Born _____), an adult male/female* who resides at _____ (Physical Address, including province), and is employed as a _____ at _____ (Physical Address, including province)

1.2 The Defendant is _____ (Full names and Surname) (born _____), an adult male/female* who resides at _____ (Physical Address, including province), and is employed as a _____ at _____ (Physical Address, including province)

2. Domicile

Plaintiff/Defendant/Both parties* is/are:

- * Domiciled in the area of the Court on the date on which the action is instituted;
- OR
- * Ordinarily resident in the area of jurisdiction of the date on which the action is instituted and have/has been ordinarily residing in the Republic for a period of not less than one year immediately prior to the date on which the action is instituted.

3. Place of Marriage

The parties were married to each other at _____ (place) on _____ (date) as follows:

- * by civil marriage (Marriages Act, 25 of 1961)
- * by customary union (Recognition of Customary Marriages Act, 120 of 1998)
- * by civil union (Civil Union Act, 17 of 2006)

(Certificate attached as Annexure “_____”)

And the matrimonial property dispensation applicable is:

- * in community of property;
 - * out of community of property with the inclusion of the accrual system;
 - * out of community of property with the exclusion of the accrual system;
- (Ante-nuptial contract attached as Annexure “_____”)

And the marriage still subsists.

4. Children

- * There are no children born of the marriage.
- * There is/are _____ child/ren born of the marriage, but the child/ren already attained the age of majority.
- * The following minor child/ren were born of the marriage:
 1. _____ (Name) _____ (Age) _____ (Gender)
 2. _____ (Name) _____ (Age) _____ (Gender)
 3. _____ (Name) _____ (Age) _____ (Gender)
 4. _____ (Name) _____ (Age) _____ (Gender)
 5. _____ (Name) _____ (Age) _____ (Gender)

In terms of Mediation in Certain Divorce Matters Act, 1987 (Act No. 24 of 1987), Annexure "A" (Arrangements Regarding the Dependant of Minor Children) is completed in full and attached hereto as Annexure "_____".

5. Breakdown of the Marriage

The parties' marriage has reached such a state of disintegration that there is no reasonable prospect of the restoration of a normal marriage relationship between them in that:

- * The parties have not lived together as husband and wife since _____(date)
- * The parties have not lived together as husband and wife for a continuous period of at least one year immediately prior to the date of the institution of this action.
- * The defendant has committed adultery and the plaintiff finds it irreconcilable to continue with the marriage relationship.
- * There is no meaningful communication between the parties.
- * The parties have lost their mutual love and respect for each other.
- * Defendant has physically assaulted Plaintiff.
- * The defendant has in terms of an order of Court been declared a habitual criminal and is undergoing imprisonment as a result of such sentence.
- * The Defendant is suffering from a mental illness in that defendant has been incarcerated in a state facility as state patient and has for a continuous period of two years not been discharged since _____(date of incarceration).
- * The defendant is unconscious for a continuous period for at least six months prior to instituting this action since _____ (date of commencement of unconsciousness) and there is no reasonable prospect of recovery.
- * _____
- * _____

* _____

As a result of the above the marriage relationship has irretrievably broken down.

Marriage counselling, treatment and reflection have been attempted and there is there is no reasonable prospect of the parties being reconciled.

6. Averments

6.1 Maintenance for Plaintiff

* The plaintiff avers that he/she is entitled to contribution towards maintenance by the defendant for the following reasons:

6.2 Pension Fund

* The plaintiff is entitled to _____% of the pension interest held by the defendant in the _____ (registered name of the fund) Pension/Provident Fund Employee work no _____ with Pension number _____ at _____(Postal address of the fund) in terms of Section 7(7) and 7(8)(a)(i) and (ii) of the Divorce, 1979 (Act No. 70 of 1979), when any such pension benefits accrue in respect of the defendant, up to date of divorce. An endorsement be made in the records of that pension/provident fund.

6.3 Children

* That the plaintiff and the defendant shall retain full parental responsibilities and rights of the minor child/children, inclusive of acting as guardian, to care for, to maintain contact with and to contribute to the maintenance of the minor child/children. (Section 18 of the Children’s Act(Act No 38 of 2005), and

That the plaintiff/defendant shall have the following specific parental responsibilities and rights in respect of the minor child/children:

Guardianship, daily care and primary residence of the minor children.

* That the plaintiff and the defendant shall retain specific parental responsibilities and rights of the minor child/ren, inclusive of acting as guardian, to care for to contribute to the maintenance of the minor child/ren;

* The plaintiff/defendant is to have supervised contact/no contact at all with the minor child/ren for the following reasons:

(Full reasons must be provided)

6.4 Maintenance in respect of Children

- * The plaintiff/defendant must pay maintenance in the sum of R _____ in respect of the minor child/children.
 - * The minor child/children remain(s) registered on the plaintiff's/defendant's medical aid scheme.
 - * The plaintiff/defendant is responsible for all reasonable medical expenses of the minor child/children.
- OR
- * The plaintiff/defendant is responsible for 50% of all reasonable medical expenses of the minor child/children.
 - * The plaintiff/defendant is responsible for 50% of all reasonable educational expenses of the minor child/children.
 - * The plaintiff/defendant must pay maintenance in the sum of R _____ in respect of the plaintiff/defendant.

6.5 Matrimonial Property

- * Division of the joint estate.
- * Division of the joint estate in that each party retains the property already in his/her possession as his/her sole property.
- * Payment of one half of the accrual of the spouse whose estate showed more growth
- * The defendant is to forfeit the benefits arising from the marriage in community of property in terms of Section 9 of the Divorce Act, 1979 (Act No. 70 of 1979), reasons being:

* _____

6.6 Costs

- * Defendant is to be ordered to pay the costs of the action.
- * Each party to pay his/her own costs.
- * _____

7. Settlement Agreement

- * The parties have reached a settlement regarding all the aspects stated here-in and attach it as Annexure "_____".

8. Prayers

Wherefore the Plaintiff prays for judgment as follows:

- * (a)(1) A decree of divorce on the grounds of irretrievable breakdown of the marriage.
- * (a)(2) A decree of divorce on the grounds of the mental illness or continuous unconsciousness of a party to the marriage.

- * (b)(1) That the provisions contained in the settlement agreement attached hereto be made an order of court.
- * (b)(2) Division of the joint estate; OR
- * (b)(3) Forfeiture of the benefits arising from the marriage in community of property;
- * (b)(4) Payment of one half of the accrual of the spouse whose estate showed more growth;
- * (b)(5) Each party shall retain the property already in his/her possession as his/her sole property;

- * (c)(1) That the plaintiff and the defendant shall retain full parental responsibilities and rights of the minor child/ren, inclusive of acting as guardian, to care for and to contribute to the maintenance of the minor child/ren; and
(c)(2) That the plaintiff/defendant shall have the following specific parental responsibilities and rights in respect of the minor child/ren:
Guardianship, daily care and primary residence of the minor child/ren; and
(c)(3) That the plaintiff/defendant shall have specific parental responsibilities and rights of the minor child/ren of guardianship and reasonable contact with the minor child/ren. Such contact rights shall include having the minor child/ren with him/her during alternate weekends and/or every alternate short and long school holiday. or
- * (c)(3)The plaintiff/defendant is to have supervised contact/no contact at all with the minor child/ren.
- * (c)(4) The plaintiff/defendant must pay maintenance in the sum of R _____ per month in respect of the minor child/ren.
- * (c)(5) The minor child/ren remain(s) registered on the plaintiff's/defendant's medical aid scheme.
- * The plaintiff/defendant is responsible for all reasonable medical expenses of the minor child/ren.
- * (c)(6) The plaintiff/defendant is responsible for 50% of all reasonable medical expenses of the minor child/ren.
- * (c)(7) The plaintiff/defendant is responsible for all reasonable educational expenses of the minor child/ren.
- * (c)(7) The plaintiff/defendant is responsible for 50% of all reasonable educational expenses of the minor child/ren.
- * (c)(8) The plaintiff/defendant must pay maintenance in the sum of R _____ per month in respect of the plaintiff/defendant for a period of _____ months.

- * (d)(1) That part (_____%) of the pension interest due or assigned to the plaintiff/defendant up to the date of the divorce be paid to the plaintiff within 30 days after the courts grants a decree of divorce.
- * (d)(2) An endorsement is made on the records of the relevant pension/provident fund by the plaintiff/defendant.
- * (d)(3) The _____ Pension fund is ordered to pay an amount equal to _____ % of the value as on date of divorce to the Plaintiff/Defendant within 30 days after the date on which the final decree of divorce is granted.

* (e) Other:

- * (f)(1) Costs of this action.
- * (f)(2) Costs of this action only if defended.
- * (f)(3) Each party to pay his/her own costs.

(g) Alternative relief

PLAINTIFF/PLAINTIFF'S ATTORNEY

(Signature)

ADDRESS AT WHICH PLAINTIFF WILL ACCEPT SERVICE OF PROCESS (15 km)

POSTAL ADDRESS OF PLAINTIFF:

RESIDENTIAL ADDRESS OF PLAINTIFF:
