

TO:

Assistant Registrars,
Advocates and Practicing Attorneys

The following practical arrangements will be in force from 20 August 2018 in respect all matters in the civil Regional Court in Kempton Park and Springs.

These directions do not replace the Magistrate's Court Rules or Practice Directives, but is a practical measure to ensure the efficient functioning of the Civil Court.

The Rules and Practice Directives must be adhered to.

CIVIL REGIONAL COURT PRACTICE PROCEDURE

1. Right of Appearance

- a. Attorneys must have a current Fidelity Fund Certificate (except practitioners employed by Legal Aid South Africa), available at request of the Regional Magistrate.
- b. Candidate Attorneys must be in possession of a certificate of a Right of Appearance in the Regional Court and will not be allowed to appear in chambers or at taxation without a right of appearance.
- c. Advocates must have proper instructions in writing from an instructing attorney, who must confirm such instructions and be in attendance. Instructing attorneys will only be excused from any court attendance with the leave of the court and are expected to either request such in court or arrange in advance with the presiding officer to be excused after confirming the instructions of the advocate.
- d. All court personnel and legal practitioners are expected to be appropriately and professionally dressed for court when appearing in court or chambers in respect of any civil matter.

e. All persons, parties and witnesses appearing in court are expected to dress appropriately.

f. Visiting a Regional Magistrate in his/her office regarding a specific case, where it is defended/opposed, without your opponent present, is strongly discouraged.

2. Settlement Agreements

a. In view of Rule 27 (6) (b)

Where any party to a settlement agreement is **not present** at the time when the terms of a settlement agreement are recorded or made an order of court, the **presiding Magistrate may call for the verification of the authenticity of any signature of a party to a settlement agreement** before recording the terms thereof or recording same as an order of court or granting judgment in terms thereof. [Sub-rule (6) substituted by GN R5/2015 w.e.f. 13 February 2015],

both parties should be in court when the matter is finalised OR the court will request verification of the signatures on the settlement agreements before it is made an order of court.

3. Motion Proceedings

a. All parties involved in opposed motions must file short heads of argument and a practice note at least 5 days before the hearing date.

b. Draft orders must be presented in all motion proceedings.

c. Set down of opposed and unopposed motions must be done in terms of the Rules. The application is not a notice of set-down in terms of the Rules.

4. Pleadings in General

a. All pleadings must comply with the Rules of Court as well as all relevant legislation.

b. The Summons must have the physical and postal address of the Assistant Registrar of the Regional Court where it was issued. Regional Court pleadings should have no reference to "Clerk of the Court".

c. It is the duty of the attorney to ensure that the summons/application was properly issued by the Assistant Registrar.

d. The Return of Service must clearly indicate on whom process was served and how the person was identified by the Sheriff. The person who has been served must be properly identified in the Return of Service.

5. Divorce matters (PRESCRIBED FORM 2C)

a. All laminated marriage certificates must be affixed on a white standard A4 paper before handing it up as an exhibit.

b. Index and paginate the original pleadings. When indexing and paginating remove the original marriage certificate, ANC and settlement from the court file and have it at court on the trial day.

NB : If the original ANC is not available the parties must complete an affidavit to confirm what has happened to the original and to confirm that the copy is in fact a true copy of the original. This affidavit must be handed in to court at the trial of the action.

c. Witness must be briefed by the attorney before trial regarding the procedure in court and the taking of the oath. Witnesses may not enter the witness box until after leave from court through the attorney is sought.

d. The averment regarding jurisdiction must comply with the provisions of section 2 of the Divorce Act, Act 70 of 1979 and section 28(1A) of the Magistrates Court Act, Act 32 of 1944.

- e. The averment regarding compliance with the Mediation in Certain Divorce Matters Act, 1987 must be made. Annexure A must be referred to and attached.
- f. Particulars of Claim should include an averment as to the children born from the marriage and their status.
- g. No orders in respect of the children can be made without the noting of the summons or endorsement of settlement by the Family Advocate or a report from the Family Advocate with recommendations in respect of disputes. This is also applicable in respect of any Rule 58 application in respect of the children and any variation/amendment application.
- h. The particulars of claim and settlement must contain a provision in respect of section 6 of the Children's Act, 2005.
- i. Prepare draft orders.
- j. For an example of how to plead forfeiture see Van Niekerk, A Practical Guide to Patrimonial Litigation in Divorce Actions. Appendix 3C. Currently not all particulars of claim comply.