

Rule 43: Easing the financial stress during divorce proceedings

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The start and end of the festive season sadly sees an expected rise in the onset of divorce proceedings. These leave many people anxious about what will happen to them financially pending divorce actions, this includes whether they will see their children or how financial commitments will be met, or even how to pay the legal fees required to institute such divorce proceedings.



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Unfortunately, as is sometimes the case, the most vulnerable become more so when realising these fears, particularly during acrimonious divorces. These fears in fact hinder many from instituting divorce proceedings. Subsequently, many may continue to be trapped in unhappy or even abusive marriages.

The High Court Rules, specifically Rule 43, makes provision for an application to set aside these specific fears.

A Rule 43 application is one in which the High Court provides for interim assistance during divorce actions. The interim relief sought by an applicant must, however, relate to one of the following categories:

1. Maintenance for a spouse and / or minor child pending the outcome of the divorce proceedings;
2. A contribution towards the legal fees of the divorce;
3. Interim residency and care of any minor child; and
4. Interim contact with any minor child.

A Rule 43 application can be instituted at any stage of divorce proceedings, subject to a divorce summons having already been issued and served. Rule 43 applications are available to either of the spouses and is non-gender specific.



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Unlike many court proceedings, a Rule 43 application affords an applicant speedy and expeditious relief. Applications can be finalised within a few months as opposed to standard applications, which can take months, or even years, to be concluded.

The law in respect of Rule 43 applications has evolved positively in recent years, and now makes provision for the filing of a Financial Disclosure Form (FDF); which compels both parties to declare all of their assets, liabilities, monthly income and expenses.

In terms of the latest practice directives of the Pretoria and Johannesburg High Courts, both parties are required to file a completed FDF under oath, together with supporting documentation, prior to the hearing of the Rule 43 application. The implementation of FDF's in Rule 43 applications now affords both parties, indeed and the court, a bird's eye view of the exact current financial status of both spouses. Fortunately, the days of not knowing what one's spouse earns or owns is long gone.

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