

CHAPTER 12 UNOPPOSED DIVORCE ACTION

1. Prior to the closure of the roll, the legal representative who enrolled the matter must determine that the court file contains all the relevant pleadings, notices and returns of service. The legal representative must further ensure that the court file is properly paginated, indexed and bound. Documents will only be accepted from the bar in exceptional circumstances which must be established on affidavit.
2. The pleadings, notices and returns of service referred to in the previous paragraph must all be originals. If any one is not an original, an affidavit must be included in the documents explaining why the original is not in the court file and proving that the copy is a true copy of the original. Where the summons is not the original summons, the affidavit must additionally prove that the original summons was properly signed and stamped when issued. In such a case the presiding judge will determine if the matter can proceed in the absence of the original pleadings, notices and returns of service.
3. If a copy of a marriage certificate is utilised to prove the marriage, the copy must have been certified as a true copy of the original.
4. Where the party proving the marriage requires return of the original or certified marriage certificate, a copy thereof must be available to be placed in the court file at the hearing.
5. In the event that the parties have concluded an agreement of settlement, the original agreement of settlement must not be placed in the court file. The original agreement must be handed up through the witness proving its conclusion.
6. A divorce roll consists of no more than 50 matters. If a matter is not on the printed roll it will not be enrolled save in exceptional circumstances which must be made out on affidavit.
7. In order to enrol the matter, the form known as the J 118 must be properly completed. The following must appear on a document attached to the J 118:
 - 7.1 The date of service of the summons,
 - 7.2 The dies induciae allowed in the summons,
 - 7.3 The date when the dies induciae lapsed,
 - 7.4 A statement that no intention to defend was given,
 - 7.5 Alternatively to 7.1 TO 7.4, the date when the opposing parties claim or plea and if applicable counterclaim was withdrawn.
8. A matter may not be enrolled prior to the expiry of the dies induciae even if the dies induciae will have expired by the time the matter is heard.

9. Any amendment to the pleadings must be sought in writing. If the amendment is granted the judge's clerk must note the order on the court file. The notation of the order will, in so far as the amendment may relate to the parties' names and the spelling thereof, draw the attention of the registrar's office thereto and ensure that any court order will correctly reflect the parties' names.

10. Subject to the discretion of the presiding judge the evidence necessary for the grant of a decree of divorce may be presented on affidavit provided that -
 - 10.1 the affidavit proves that no child was born to or adopted by the parties to the marriage, or, if there was that such child is over the age of 18 years;
 - 10.2 all financial matters between the spouses have been settled in a signed written agreement which is identified in and attached to the affidavit, or if the only order to be sought in regard to financial matters is division of the joint estate or forfeiture of the benefits of the marriage in community of property;
 - 10.3 all the necessary evidence is set out in the affidavit. (In this regard it is emphasised that primary facts and not conclusion of fact are required);
 - 10.4 the affidavit is attached to the notice of enrolment.