

OFFICE OF THE FAMILY ADVOCATE

The Office of the Family Advocate deals with disputes between parents or family members over the parental responsibility and rights of children. The functions of the Family Advocate have been extended by the Children's Act, 2005 (Act 38 of 2005). This is in line with the Hague Convention which was adopted in 1980 in a bid to curb international abductions of children.

WHAT IS THE OFFICE OF THE FAMILY ADVOCATE?

A Family Advocate is an unbiased Family Law specialist who assists parties to reach an agreement on disputes regarding parental responsibilities and rights of children through mediation.

YOU MAY CONSULT THE OFFICE OF THE FAMILY ADVOCATE IF:

- There is a dispute regarding contact, care or guardianship of the child during divorce or separation.
- A person wants to draft a parental rights and responsibilities agreement.
- Parties want to draw up a parenting plan.
- They want to register their parental rights and responsibilities agreements.
- A person wants to amend or terminate parental rights and responsibilities agreements registered with the Family Advocate.
- There is a dispute on whether the unmarried father of the child born out of wedlock has satisfied the requirements which makes him eligible to acquire full parental rights and responsibilities in terms of the Act.
- Courts also make orders that the Family Advocate has to conduct an inquiry as to what is in the best interest of the child.



PARENTAL RESPONSIBILITIES AND RIGHTS

Parents are expected to:

- take care of their child,
- maintain contact with the child,
- act as a guardian to the child
- provide financial support to the child
- provide for the child's needs.

PARENTING PLAN

A parenting plan includes:

- joint acceptance of responsibilities and rights by both parents
- indicates which parent will live with the child
- the maintenance of the child
- contact between the child and any of the parents or any other person
- the schooling and religious upbringing of the child.



STEP-BY-STEP GUIDE ON SOLVING A DISPUTE

- 1 Upon application by either of the parties or by direction of the court, the Family Advocate will interview the parties in the presence of each other or separately where necessary, to ascertain their personal circumstances and background details in the matter.
- 2 The Office of the Family Advocate also interviews the child with the assistance of the Family Counsellor in order to obtain and convey the child's views on the matter to court. The aim is to protect the child from testifying in a potentially harsh court environment.
- 3 The Family Advocate helps the parties reach an agreeable or viable solution through mediation by applying their legal expertise and dispute resolution skills in the matter.
- 4 If the parties reach an agreement the Family Advocate will then help them draft a parenting plan or responsibilities and rights agreement which can be registered with the Office of the Family Advocate or made an order of court.
- 5 If the parties cannot reach an agreement, the Family Advocate will then compile a report for court and make a recommendation based on the enquiry that was conducted.

QUICK FACTS

- The Family Advocate cannot become involved in any matter that has already been **finalised by the Court**.
- The Family Advocate cannot be subpoenaed to Court **as a witness** to give evidence on behalf of any party even if his/ her recommendation is in favour of that party.
- The recommendation of the Family Advocate is intended **to assist the Court** in adjudicating a matter and arriving at a particular order. The recommendation itself is not enforceable unless incorporated in a Court Order.
- The Family Advocate is a **neutral institution** and cannot act as the legal representative for either litigant, in a matter.
- The Office of the Chief Advocate deals with **40-50 cases of child abduction** annually.

The Family Advocate can amend or terminate **parental rights and responsibilities agreements** registered by the Family Advocate's office. This means that the parties do not have to go to court if they want to amend the agreement when the need arises.

In the process of consulting, if the parties **reach agreement** on disputed issues the matter does not proceed to trial, thereby saving legal costs and time.

Courts or Judicial officers are required by law to consider the report and/or recommendations of the Family Advocate when making a decision as to what is in the best interest of the minor child.

Courts will not readily give a **decree of divorce** where there is a dispute regarding minor children without the report or recommendations of the Family Advocate.

BENEFITS OF CONSULTING WITH THE FAMILY ADVOCATE

Free mediation services

Parental rights and responsibilities agreements or parenting plans registered with the Family Advocate have the same legal effect as an order of court.

COST EFFECTS

- ✎ The Office of the Family Advocate renders his/her services to the public **FREE** of charge.
- ✎ The parties to a legal dispute may be required to pay for additional expert reports, e.g. psychological evaluation, and other forensic tests where those are critical to the determination of the child's best interests.

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