



**the doj & cd**

Department:  
Justice and Constitutional Development  
REPUBLIC OF SOUTH AFRICA



# Maintenance



**Responsible Parenting  
Responsible Families**

## What is maintenance?

» **Child maintenance** is an obligation on both parents or any other person liable to provide for the personal and developmental needs of a child such as food, clothing, accommodation, education, medical care, sports etc. It includes the obligation to maintain the adult child if he or she is not self-sufficient.

» **Spousal Maintenance** happens where there is a Maintenance Court Order for one party in a marriage to maintain the other party during marriage, separation or in divorce.

## Who can apply for a Maintenance Order?

- » A parent/person who has custody over a child/ren
- » An adult child who cannot sustain themselves
- » A married spouse (the Complainant) may claim maintenance from the Maintenance Respondent/Defendant during marriage, separation or at divorce.

## How much should I pay to apply for a Maintenance Order?

- » There is no need to pay or even secure a legal representative (attorney) for the Maintenance Application to be processed in courts. The service is free of charge.

## What documents are required to lodge a Maintenance Application?

- » The Identity Document of the Complainant;
- » The Birth Certificate of the child/Identity Document of the Child;
- » Proof of expenses for the child;
- » List of expenses of the Child;
- » List of expenses of the Applicant parent;
- » Proof of Applicant's income and expenditure if available;
- » Name and Surname of the Maintenance Respondent responsible for the payment of maintenance if available; and
- » Physical/ Work address of the Maintenance Respondent responsible for the payment of maintenance money if available.

## Where can I apply for a Maintenance Order?

- » You can apply for a Maintenance Order at any Local Magistrates' Court where the Complainant resides or works.



## Who can assist me to apply for Maintenance at Court?

- » You can be assisted by the Clerk of the Maintenance Court (the Maintenance Clerk) to apply for a Maintenance Order. He or she will guide you to fill in the Maintenance Application if needed and will check whether you have all the relevant information.
- » Your application will be registered even when you do not have the minimum of documents required and will issue a file number.



## Which other court RolePlayers are responsible to assist in the processing of my Maintenance Application?

- » Maintenance Officer/Prosecutor; Maintenance Investigator and the Magistrate will gather relevant information from the complainant and respondent and any other information to finalise the application for the Maintenance Order.
- » The Police Officer or Sheriff may assist the court with serving subpoenas or any other court documents.



## How do parties appear in court (the court date)?

- » You may go to court to apply for maintenance on any working day.
- » The court will serve a Directive/Subpoena on the respondent/defendant with a specific date on which he or she has to appear in court.



## The Maintenance Process

### 1. Informal enquiry (section 6)

- » The Maintenance Clerk will guide the Applicant on the process and documents required.
- » Maintenance Clerk will open the file and refer the file to the Maintenance Officer.
- » The Applicant and Respondent will be required to appear in court for an enquiry by the Maintenance Officer.
- » The Enquiry by the Maintenance Officer will determine the following:
  - Acceptance of maintenance obligation by the Respondent.
  - Maintenance Officer will interview the parties to gather information on the financial income and expenditure to facilitate an agreement on the Maintenance Amount/ Quantum to be paid by the Respondent.
  - If the parties agree on the Maintenance Amount/ Quantum, the Maintenance Officer will draft the agreement to be signed by the parties and present it to the Magistrate.

- The Magistrate will confirm the agreement as an order of court (i.e. Maintenance Order) in the presence or absence of the parties or one of the parties.
- » Where paternity is disputed, and therefore maintenance obligation is not accepted. Both parents together with the child will be ordered to submit themselves for paternity tests at their own costs.
- » Where parties indicate inability to afford the tests, the court will hold an enquiry and order the state to pay for the costs.

### 2. Formal hearing

- » Where parties do not agree on the amount of the maintenance to be paid/Maintenance Quantum, a formal hearing will be held by the magistrate.
  - The Magistrate will then make a determination of the maintenance amount or quantum to be paid.
  - The Maintenance Order may include cash and non-cash component.



### Payment Method The court may order: -

- » Direct payment where the person to maintain must pay directly into the bank account of the person who approached the court for a Maintenance Order.
- » A Maintenance Respondent/Defendant to make payments by means of an Electronic Funds Transfer (EFT) to the beneficiary's bank account.
- » That a deduction of the maintenance money from the Maintenance Respondent's salary (called a Garnishee order) be effected.

**Contact Details:**  
Please contact the nearest Magistrate Court in your district or for enquiries you can contact DOJ&CD Website.

**Call Centre Toll Free Number  
080 122 9017  
www.justice.gov.za**