

This article is found on <http://www.ourlawyer.co.za>

## **Child Maintenance**

### **ABC GUIDE TO APPLYING FOR CHILD SUPPORT / CHILD MAINTENANCE**

Written by Advocate Muhammad Abduroaf *LL.B LL.M*  
(Advocate of the High Court of South Africa)

The procedures to be followed in instituting a complaint for child maintenance are regulated by the Maintenance Act 99 of 1998. Below is a simple "ABC" guide to get you started in claiming maintenance for yourself, your children or dependants. This I wrote in order to encourage people to claim needed maintenance for their children or for themselves. Remember, the Maintenance Court would be more than happy to assist you with whatever other legal queries you may have. Before I deal with the simple steps that should be followed in claiming maintenance, I shall first deal with the following question:

#### **Q: From whom may maintenance be claimed?**

A: Maintenance may be claimed from persons who have a legal obligation to maintain you. For instance children can claim maintenance from their parents or a wife from her husband and visa versa. Seeing that children are minors, they are assisted by their parent or guardian through the maintenance process, but in actual fact it is the child who is claiming. For the purposes of the steps below, I shall structure it as if a parent or guardian is claiming maintenance on behalf of the child.

#### **Step 1 ...**

Get hold of all your proof of income. E.g. pay slips. If you are not working for an employer, you should get hold of proof that you earn a certain amount of money per month. If you are unemployed, that is in order.

Get together a list of all monthly expenses incurred for yourself and your children. This would include rent, groceries, clothes, entertainment etc. This information is required when filling in the maintenance application form that is dealt with in Step 2 below.

Find out all the details of the person from whom you are requesting maintenance from, e.g. his/her home and work address and identity number.

## **Step 2 ...**

Go to the Maintenance Court closest to your area and obtain an "Application for Maintenance Order Form" also referred to as "Form A".

Use the information you have gathered in Step 1 and fill in the form. The form is in the form of an affidavit and you therefore have to swear to the correctness of the information under oath and sign. Therefore do not hide any information for the Court.

Caution: If your information is not 100 % correct, you may be cross-examined on such correctness in Court and if it is found that you were not totally honest, this would not be in your favour. If you require any assistance in filling in the form, the maintenance officers would be happy to assist you. Once you have filled in the Application for Maintenance Order Form, return it to the maintenance officer who will process it for you. If the maintenance officer can provide you with a reference/case number there and then, request it. The Maintenance Court will send you and the person you are claiming maintenance from a letter or subpoena to appear at the Maintenance Court for an inquiry with the maintenance officer. Diarise the date immediately and make arrangements with your work and a babysitter as soon as possible. If you miss the date, it can take months to get another.

## **Step 3...**

From the time you left the office of the maintenance officer and even from the time you decided to claim maintenance, keep all receipts you received for any items bought for you and your child. Therefore, if you buy nappies for your child or even a toy, keep that receipt as if it is gold. This is due to you having to prove to the court that you really do spend money on the child and you have the receipts to prove it.

You will soon hear from the Maintenance Court where they will be giving you a date to appear back at the Maintenance Court for an inquiry. They would either inform you by post or by a subpoena. On that date both you and the person from whom maintenance is claimed would have to appear. If you are planning on making use of a legal representative, inform him/her early about the date so that he/she can be available to assist you at Court.

In the notice to appear for the maintenance enquiry it is requested that you bring proof of all expenses and income for you and your child. This is why it is so very important for you to keep all proof of expenditure in a safe place.

Hint: If you can afford to, bring original proof of expenditure and income and a photocopy thereof. The original you would then be able to take back home and bring it back when requested and the copy will stay in the Court file.

#### **Step 4 ...**

This step deals with the maintenance enquiry where you and the person from whom you are claiming maintenance from will appear before a maintenance officer. The maintenance officer will speak to each of the parties and look at the documents provided. Each party will get a chance to explain why he/she requires maintenance and also why he/she can't afford the maintenance requested. The maintenance officer will as far as possible try to resolve the matter there and then without it having to go to court. If the parties can agree to an amount, this amount can be made an order of court. If however an agreement cannot be reached at this stage, the matter, depending on the Court will either be referred to a prosecutor or for trial.

Remember, if you are a father or a person currently paying maintenance / child support, a reduction is possible. The same goes for an application for an increase in maintenance / child support.

Kind regards,

Advocate Muhammad Abduroaf (Cape Town | Western Cape)

LL.B & LL.M (Master of Laws) Constitutional Litigation

Advocate of the High Court of South Africa

Advocate Muhammad Abduroaf's contact details are as follows:

Chambers: 206 | 2nd Floor | 80 Stand Strand | Cape Town | Western Cape

Office: 021 811 7786 (Neotel)

Mobile.: 083 731 9816

Email: [Litigation@ourlawyer.co.za](mailto:Litigation@ourlawyer.co.za)