

CHILD & SPOUSAL

MAINTENANCE

THINGS THAT YOU
SHOULD KNOW



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INDEX

INTRODUCTION AND SOMETHING ABOUT THE AUTHORS	5
CHILD MAINTENANCE	6
From whom do you claim Maintenance?	6
What is required from the parent / guardian claiming maintenance?	6
What to expect on the day of your Court appearance?	7
How much maintenance are you expected to pay?	8
What is the rate for child maintenance payments?	8
What is covered by Child Maintenance?	8
How to determine the amount of child support?	8
When do I stop paying maintenance?	8
If I am unemployed am I still liable to pay maintenance?	8
What factors must be considered when determining Child Support?	8
What constitutes the reasonable needs of a child?	9
Can you expect any challenges regarding the calculation of maintenance amounts?	9
What factors will the court consider in determining maintenance?	10
Will there be consequences for Non-Compliance with Maintenance Orders?	10
Do you have any choice in the method of prosecution?	11
Maintenance Court – What do they do?	11
The maintenance investigator – What do they do?	11
How does the maintenance court make a decision?	11
Any guidelines I can follow while in the process of claiming maintenance?	11
How to treat income from the defaulter that is not consistent?	12
Which parent or guardian carries the most responsibility towards maintenance of the child?	12
What does the Court Application entail?	13
Final words	13
SPOUSAL MAINTENANCE	14
All about spousal maintenance	14
What does the law say?	14
You must prove a “need” to be supported	14
Factors that a court will consider when awarding post-divorce spousal maintenance.	14
Calculation of a spouse’s monthly maintenance	17
Annexure “A” List of expenditure	18
Annexure B: Maintenance Forms	21

Annexure C: How to apply for a maintenance order in the maintenance court	22
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INTRODUCTION AND SOMETHING ABOUT THE AUTHORS

"In everything we do, we believe in challenging the status quo. We believe in thinking differently, out of the box. The way we challenge the status quo is by making our services evolve around you, the client, being innovative in our thinking, supportive, fair and being part of the solution when the challenge of a maintenance issue presents itself. We just happen to be great maintenance attorneys as well. "

Having been in legal practice for nearly two decades, I have been confronted with numerous questions that clients usually ask during or even before a first consultation. This e-book is a result of those questions to shed some light on this journey you are about to embark.

The maintenance- and laws pertaining to child support in South Africa might be complex and difficult to understand at times, but rest assured that we will guide you through these challenges to ensure that your rights are protected, that you are treated fairly and to reach that win-win situation: after all, at one stage or another your (soon to be former) spouse was exactly what you needed. But needs change and life goes on, so when the *"I do"* changes into *"I don't"*, we will be here for you every step of the way.

After reading this e-book, you will be familiar with among other things:

1. Become familiar with some of the stipulations of the **Maintenance Act** that deals with all issues regarding child support;
2. The road forward and the steps that you would need to take to start the maintenance proceedings;
3. You will gain some insight into which courts to use and how long it would take
4. You would have some understanding as to your rights as a parent and your rights to child maintenance as well as spousal maintenance
5. You would have a deeper understanding of the maintenance procedures and how to equip yourself with all the necessary information to make this journey as little challenging as possible.



About the author: **Eugene Opperman** is the founder of Oppermans Inc which was established in 2000. Prior to his admittance as attorney of the High Court he graduated at UFS obtaining a B.Proc. degree and subsequently his LL.B. degree through UNISA. Post graduate studies include an Advanced Diploma in *Medicina Forensis* and an Advanced Diploma in Business Rescue Management. He is a Commissioner of the Small Claims Court (Helderberg) and a Court Annexed Mediator (Civil- and Commercial). He has strong ties with the community doing *pro bono* work at the Rape Crisis Centre and many other NGO's.

And finally.... He is an (ex) divorcee and have gone through the process personally.

The co-author is **Maartin Oliver** and has been employed as candidate attorney at the firm since 2015. He is currently finishing up on his LL.B. degree through UNISA and has a great interest in Family Law and related matters. With his calm and rational demeanour he brings a special empathy and understanding to the table when dealing with any sensitive Family Law related matters.

Child Support/Maintenance in South Africa: Questions and Answers

CHILD MAINTENANCE

To start off with: The Maintenance Act, Act 99 of 1998 oversees all procedures to be followed when you need to claim maintenance for yourself or your dependents. The first portion of this e-nook deals with child maintenance and the latter portion with spousal maintenance.

"Maintenance is the obligation to provide another person, (for example a minor), with food, housing, clothing, medical care and education, or with means that are necessary for providing the person with these essentials. This is a legal duty and also called 'the duty to maintain' or 'the duty to support'."

From whom do you claim Maintenance?



If a person has a legal duty to maintain you, maintenance may be claimed from him/her. So the next obvious question would be: who has a legal duty to maintain? Children may claim maintenance from their parents jointly and severally (together or separately). Spouses may also claim maintenance from each other, whether it is a husband claiming from a wife or vice versa or same-sex partners claiming from each other.

Minor children need to be assisted by a parent or guardian when claiming maintenance, but nevertheless it is still the child who is claiming.

In short: The duty to maintain is based on blood relationship, adoption, or the fact that the parties are married to each other.

What is required from the parent / guardian claiming maintenance?

Before you venture off to court or to your maintenance attorney, it might be to your advantage to get all your paperwork ready BEFORE hand – this would save you hours (if not days) of court delays and could expedite your maintenance case.

Proof of Income and Expenditure

If you work for an employer, you need to provide your most recent payslips. If you are self-employed you need to provide at least six months' bank statements to reflect your income. All other income such as rent, investments, and shares needs to be declared and proven as well. The same goes for unemployment. It must be clearly stated and proven.

Proof of all your expenditure with regards to yourself and your minor children also needs to be provided. This will include rent, groceries, clothes, toiletries, airtime, school fees, etc. Right at the end of this e-book is a list of likely expenses that you might have – it might be worthwhile to go through the list as you might have missed something.



Details from the person you intend to claim maintenance must also be provided. Details include work- and home addresses, contact numbers (private and work) and Identity Number

Application for Maintenance Paperwork

You need to visit the Maintenance Court closest to you to obtain a “Application for Maintenance Order Form”. You can also obtain this form from your appointed attorney if you opt to go this route. If you have internet access you can download this form from the Department of Justice’s website.

This form is in the form of an affidavit and needs to be completed as thoroughly as possible and needs to be completed with all the information you gathered about your expenses and income.

Remember seeing as this is an affidavit you state under oath that the information provided by yourself is true and correct to the best of your knowledge. The Court may cross-examine you on any information provided by yourself.

Once the form is completed and returned to the Maintenance Court the Court will send yourself and the person from whom you are claiming a subpoena to appear at the Magistrate Court for an inquiry with the maintenance officer.

Record of all receipts/expenditure

Keep record of all receipts for items bought for the child(ren) in question. It doesn’t matter whether this is receipts of nappies, groceries or toys. You will have to prove how much money you spend on your children and the receipts are vital for this.

In the Notice to Appear for a maintenance enquiry on a specific date, delivered by subpoena, it is stated to provide prove of all expenditure. Without proof you won’t have a strong case. Thus, if you keep your receipts in a save place it will help you tremendously in court to prove your claim. It’s always a good idea to make copies of your proof of expenditure. You can take both the original and copied documents to court and take the original back home with you while all copies will stay on the Court file.

What to expect on the day of your Court appearance?

The maintenance officer will speak to both yourself and the person you are claiming maintenance from, prior to the court appearance, while accessing documentation provided by yourself and the person you’re claiming maintenance from.



Each party will get a chance to explain why she/he required maintenance and/or whether he/she can afford the maintenance requested. The maintenance officer will try as far as possible to resolve the matter without actually having to go to court.

If you can agree on an amount this can be made an order of the court. If, however, no agreement can be reached, the matter will be referred to court for trial.

Keep in mind that a party subject to an existing maintenance order may request a reduction of the maintenance amount as well.

How much maintenance are you expected to pay?

Every child has the right to receive adequate child maintenance from both parents. This includes provisions for food, shelter, clothing, education and healthcare. If one parent cannot provide the other parent will have to provide alone for the time being. Child support can also be claimed from the paternal and maternal grandparents under certain circumstances.

What is the rate for child maintenance payments?



There is no fixed rate. The amount depends on variable factors which includes the needs of the child(ren), the parents' personal expenses and the income of the parents. Parents must contribute in accordance to their means. Thus, if the primary caregiver earns substantially more than the other parent, the primary caregiver will pay a substantial amount more in maintenance. The aim is to determine a fair contribution for each parent according to his/her means.

What is covered by Child Maintenance?

The standard of living of the parents and what the child is accustomed to is the most deciding factors. Thus, necessities as well as luxuries can be included. The child needs to continue living at the same standard of living he/she is accustomed to as far as possible, even though this is not always possible.

How to determine the amount of child support?

This is no easy task. The parents' income and expenditure differ. Assets and liabilities will also be a deciding factor. This can lead to a scenario where one parent does not earn much, but own extensive assets which may result in this parent paying more maintenance. Simply put, there is no science in determining the amount of maintenance required.

When do I stop paying maintenance?

Usually till the day the child is self-supporting both parents have a duty to pay maintenance. Even if the child becomes an adult it might happen that the child is still studying or looking for employment. In such a scenario the child may still claim maintenance from both parents. Once the child becomes self-supporting the parents may stop maintenance by setting aside the child maintenance order if there is one in place.

If I am unemployed am I still liable to pay maintenance?

The short answer is yes. Both parents still need to maintain their child(ren) according to their means. To deliberately go unemployed will not free you from your maintenance obligations. The parents' duty of support is not dependent on employment status.

What factors must be considered when determining Child Support?

Again, there is no clear fixed formula to determine a child support amount, but the following may be considered:

Income of Both Parents: The income of both parents are taken into consideration. Also, the amount a parent is able to earn is considered – that is, if a attorney in his 40s is lying on the beach all day instead of working, she or he may



still owe child support even with no income. A related factor is how much other income each parent receives. For example, parents may earn interest or other investment income.

Income and needs of Custodial Parent: The parent that has custody of the parent requires more support since they have main custody of the child and will incur more expenses to take care of the child. If the custodial parent makes less money than the non-custodial parent, they will receive a much more larger child custody payment to cover the expenses needed.

Family structure – that is, how many children are involved. Obviously, more kids means more money. There is the factor of how much time each parent spends with their children – in this case, more time spent with kids usually means less money owed to the other parent for child support.

Age and status of the child: Depending on the child support agreement, the child support may end at some point in the child's life. Some agreements will allow the parents to cut off support when the child reaches the age of majority. Others will require that the children graduate from university or technikon or that the children become married before the support can be terminated.

Child's Standard of Living Before Divorce or Separation: The courts also look at the needs and standard of living for the child before the divorce. The courts main intent is to ensure that the child receives the same type of living after the divorce and the separation does not impact the child in a major way.

The Parent's Ability to Pay: The court ensures that the child support payments are fair and proportional to the parent's income. If the paying parent cannot afford to pay the child support, the court allows the parent to modify the child support payment.

What are the reasonable monthly needs of the child? The main factor that is determined is the need and expenses of the child to live a standard life. This includes the child's health insurance, education expenses, day care, food, rent, and special needs.



What constitutes the reasonable needs of a child?

Reasonable needs of children include food, clothing, accommodation and medical expenses. This is the basics, but if the parents can maintain a higher standard of living this may include any extramural activities as well.

Only once it is clear what the child in question basic needs are can an amount be determined what will constitute reasonable maintenance. Only after this amount is established it can be calculated what portion each parent or guardian must contribute, naturally still within their means. It is quite safe to expect the parent or guardian with the highest disposable income to contribute the most to the maintenance, even if this parent or guardian is not the primary caregiver of the child.

Can you expect any challenges regarding the calculation of maintenance amounts?

The best interest of the child is of paramount importance. Thus, however does not mean the child must have the most expensive clothing, attend the most expensive school or dine out regularly. The best interest of the child is determined by what you and the co-parent or guardian can afford. If a parent is

self-employed with an income that varies one needs to look at the average the parent earns each month over an extended period of time. With an unemployed parent one needs to look at their means.

What factors will the court consider in determining maintenance?

Factors may overlap, but consist mainly of the following:

- Reasonable needs of the minor child;
- Reasonable expenses of the parents;
- Standard of living the child was accustomed to before;
- Earning capacity of the parents;
- Assets of the parents;

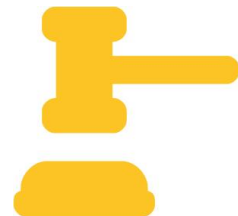
It is clear that every child of the same age and same socio-economic background will not require the same maintenance amount, so similarities with other children with a similar background cannot be used to determine the maintenance amount.

Will there be consequences for Non-Compliance with Maintenance Orders?

Civil Remedies

If a parent or guardian against whom a maintenance order was issued does not comply with it, such maintenance order can be enforced in any of the following ways:

- Execution against property;
- Attachment of Emoluments; and
- Attachment of any debt.



The complainant must approach the maintenance court with the necessary application. This process is started by completing an “Application for Enforcement of Maintenance or Other Order in terms of Section 26 of the Maintenance Act, 1998 (Act No. 99 of 1998)” form. This form can be obtained from your attorney, from the maintenance court or be downloaded from the Department of Justice’s website.

The maintenance officer will forward the completed form to the magistrate who may issue an order. For this order to be issued all relevant information must be provided on the application form. This includes information such as the whereabouts of the defaulting parent/guardian, calculations of how you reached the claim amount, etc. Take proof with you to court to no maintenance had been paid in the form of bank statements. You need to be clear in your application in stating what relief you sought in this application.

Once your application is in order, a few different orders can be made. One option is an emolument attachment order where the order is made against the defaulter’s employer to the effect of subtracting the maintenance amount directly from the defaulter’s salary before the salary gets paid out to the defaulter. Another option is to attach the defaulter’s property if he/she has no income. The property will then be sold on public auction and the proceeds will be paid to you as maintenance.

Criminal procedure

Not attending to a maintenance order is a criminal offence and a defaulter can be convicted for this. The defaulter will be liable on conviction to a fine or imprisonment for a period not exceeding one year without the option of a fine.

Once you laid your complaint, with the “Complaint of Failure to Comply with a



Maintenance Order for purposes of Section 31(1) of the Maintenance Act, 1998 (Act 99 of 1998)” form, the maintenance court would subpoena the defaulter to the criminal court. The form can be obtained from your attorney, the maintenance court or from the Department of Justice’s website.

Once the date has been set for a trial you will be subpoenaed as a witness to give your evidence as per the maintenance order, the outstanding maintenance amount and any other relevant information. Should the court find the defaulter guilty, the court may grant an order for the recovery of the arrears maintenance together with the sentence imposed on the defaulter.

Do you have any choice in the method of prosecution?

The choice in method of prosecution lies with the prosecuting authority and not with the defaulted party. A decision will be made on the prosecution authority’s discretion after taking all circumstances into consideration. It is important to note that defaulters don’t always get prosecuted with the criminal procedure. It depends on circumstances and the prosecutor’s judgment. However, it still remains a real possibility and should not be disregarded as something that will not happen.

Maintenance Court – What do they do?



If a parent or guardian does not pay reasonable maintenance or no maintenance at all, the maintenance court can enforce compliance. This will happen through the Maintenance Court which is usually located in your closest Magistrate Court. Once an order is made, the court may decide whether to prosecute criminally or to handle it as a civil matter. The Maintenance Court will also consider applications for adjustment of maintenance in cases where the circumstances of the parent or guardian paying maintenance changed significantly.

The maintenance investigator – What do they do?

Each maintenance court has a maintenance investigator. It is the job of the investigator to gather evidence related to the maintenance matter. Due to the nature and amount of maintenance cases these offices often are very busy, but they are here to assist you with the gathering of information in your case.

How does the maintenance court make a decision?

A maintenance court may only make an order against a parent or guardian if there is evidence that he/she can afford the maintenance claimed. This creates a problem when one parent claims that the other parent can afford the maintenance but does not have any concrete evidence to back this statement. The court will not be able to make a suitable order under these circumstances.

Any guidelines I can follow while in the process of claiming maintenance?

The court will entertain no application for child maintenance if it is excessive. Thus, if you know the other parent/guardian cannot afford your amount claimed, or if you intentionally claim too much, you will be wasting your and the court’s time.

Maintenance Court Investigator

Insist on the assistance of the maintenance investigator to investigate the financial affairs of the party you are claiming maintenance from. This is the best way to find out whether the defaulting party is hiding any information.

Defaulter's employer

Request from the maintenance court to issue a subpoena against the defaulter's employer to provide the salary advices from the defaulter. Its also a good idea to request the employer to avail the details of the defaulter's pension fund.

Defaulter's bank account

Request the court to subpoena various banking institutions for bank statements of the defaulter. The bank statements will be a clear indication of the lifestyle of the defaulter. This information can be used to show the court that the defaulter in fact can afford to cut some expenses to spend more money on his/her child. The bank statements will also provide proof of possible additional income streams.

Defaulter's Credit Profile

A credit profile from the defaulter will reveal valuable information such as employment and residential addresses, where the defaulter has credit and for what purposes the defaulter applied for credit.

Social Media



Few people have filters on social media. Whether its Facebook, Twitter or Instagram, this is one sure way of finding information about the lifestyle the defaulter is living.

Pictures of expensive holidays at exotic destinations or check-ins at fancy restaurants will provide valuable information regarding the real standard of living the defaulter is maintaining. This information may be submitted as evidence when you apply for maintenance.

Property Search

This is by far the easiest approach to determine the extent of the defaulter's property portfolio. It's easy to pretend that you can only afford to rent the house you live in but then you own property in other parts of the country.

How to treat income from the defaulter that is not consistent?

It might be that the defaulting party is self-employed and only gets paid with cash. There will be limited information on bank statements and no payslips. You need to become creative in questioning clients of the defaulter regarding his/her tariffs/fees. You may provide this information to the maintenance court and the investigator must follow up on it.

Which parent or guardian carries the most responsibility towards maintenance of the child?

As per the Children's Act of 2005, both parents have full parental responsibilities and rights in relation to a child. When a dispute arises regarding the responsibilities and rights of a parent, the prejudiced parent/guardian may make an application in the High Court confirming his responsibilities and rights as

well as enforcing it. Keep in mind that this is a costly affair and its advised that you do this with the aid and help of an attorney.

What does the Court Application entail?

A Notice of Motion supported with a Founding Affidavit must be submitted to court and filed with the Family Advocate. Once the application is served on the defaulting parent/guardian, the defaulting party will have his/her opportunity to oppose the papers. The party claiming maintenance will also have an opportunity to reply to the opposing papers. Once a date is provided for by the Registrar of the Court, the matter would be argued before a Judge who would make a decision with the aid of the Family Advocate's report.

Final words

You are only as successful in your maintenance claim as your proof that you provide to substantiate your claim. If you have sufficient prove, the court won't make your claim an order of the court. The court will only make an order on what is fair and proved. It is of paramount importance to keep proof of your income and expenditure up to date and ready for court.

SPOUSAL MAINTENANCE*

All about spousal maintenance



One of the consequences of marriages is a reciprocal duty of support between a husband and wife or same sex partners. This reciprocal duty comes to an end once the marriage ends. This duty can however be extended if there is an agreement between the two parties and the agreement is made an order of the court. It is important to note that this agreement can be enforced even after the death of the spouse, but maintenance cannot be claimed after the fact if maintenance was not agreed upon during divorce proceedings.

What does the law say?

Section 7 of the Divorce Act, 70 of 1979 sets out clear guidelines with regards to the duty to pay spousal maintenance after divorce:

Section 7(1) of the Act provides that the court, when granting a decree of divorce, may in accordance with the written agreement between the parties, make an order with regard to the payment of maintenance by one spouse to the other.

Section 7(2) states that in the absence of a settlement agreement the court may make an order which it finds suitable in respect of spousal maintenance taking various factors such as prospective and existing means of the parties, financial needs and obligations, age of each party and standard of living of the parties before a divorce.

Only after such an enquiry by the court will an order for maintenance be made clearly stating the amount and time for which the maintenance order will be valid.

Spousal maintenance is in no way a given upon divorce and any party who claim maintenance must prove that he or she is entitled to such. A maintenance order can at any time be varied, rescinded or suspended and will not always be in place till the death or remarriage of the party receiving the maintenance.

You must prove a “need” to be supported

In *EH v SH 2012 (4) SA (SCA)* it was held that a person claiming maintenance must establish a need to be supported by the other spouse and that if no such need can be established, it would not be “just” for the maintenance order to be issued. Thus, proving a need for maintenance is of paramount importance in obtaining maintenance.

Factors that a court will consider when awarding post-divorce spousal maintenance.

Section 7(2) deals exclusively with the factors that the court will consider when awarding maintenance.

Existing and Prospective means of the parties

The means of a person indicates the financial resources a person has access to. This includes, amongst other things, capital assets, income from employment, income from shares/investments and

fixed property that can be used to generate income. It is important to note that means exclude an inheritance or voluntary payments to a spouse from his/her children from a previous marriage. It is no exact science to calculate the means of a person, therefore all variable factors need to be taken into account upon the divorce of the parties. Maintenance can only be determined once the division of assets have been finalised.

Earning capacities of the parties



Post-divorce, parties to a divorce should become financially independent from each other as soon as possible. Our courts favour the idea of a clean-break principle where parties attempt to terminate inter financial dependence on each other completely. Where a spouse earns enough to support him/herself and maintain a reasonable standard of living, the court will be reluctant to award maintenance in this spouse's favour. The age, qualifications, employment status and number of dependent children of the spouse claiming maintenance will also be taken into consideration.

In scenarios where both spouses are economically active their respective incomes must be taken into account to determine whether or not each spouse will be able to meet his/her maintenance needs. In *K v K* 2006 (6) SA 127 (C) it was rightfully held that the division of roles in a family influence not only the past earning capacity of a party, but also his/her future earning capacity. If a spouse can work but chooses not to the court will not be more lenient towards this spouse in terms of the granting of maintenance.

Financial needs and obligations of parties

The standard of living of a couple during their marriage will establish the needs of a specific party. What is considered to be a reasonable need in one family may be totally irrelevant in another family. It is also quite possible to confuse a party's needs with the party's wants. It is important to determine how much money each party needs for their day-to-day living or needs, and what percentage of their income they need to spend on obligatory purposes.

In *B v B* 2009 (2) SA 421 (C) interim maintenance was granted for a wife who still had two dependant adult children who resided with her as the wife incurred an obligation to look after her family as per section 7(2) of the act.

Even though the court is in favour of the clean-break principle it will accommodate a spouse that has insufficient income or no income at all to support him or herself. This is to avoid scenarios of inequality.

Duration of marriage and ages of parties

The court will be more likely to award maintenance to a spouse that spent the majority of his/her married life without being economically active or who earns an income that is not viable to live on alone. The court will also consider the age and lack of working experience of a spouse claiming maintenance. The length of the marriage is not a deciding factor, but will contribute towards the decision to grant maintenance as a secondary factor.

A spouse who has assisted the other spouse materially in building up his/her separate estate will be entitled to far more in terms of spousal maintenance.

Even though a court might grant spousal maintenance on the grounds that the spouse did not work before or do not earn a sufficient income to support himself/herself the court will still take the possibility and likelihood of a spouse to re-enter the job market into account. Thus, a younger person will have a higher prospect of re-entering the job market successfully and will therefore be granted a lesser spousal maintenance amount if maintenance gets granted.

In *G v G* 1987 (1) SA 48 (C) it was confirmed that rehabilitative maintenance is a good alternative for a middle-aged spouse claiming maintenance. The idea behind rehabilitative maintenance is for the spouse to prepare himself/herself with the necessary training or qualifications to re-enter the job market. Bear in mind rehabilitative maintenance is temporary and will stop when the spouse is self-sustainable or at a stage as previously agreed on between spouses.

Permanent maintenance is reserved for an elderly spouse that has been married for a long time and is likely to old to earn his/her own living and unlikely to remarry.

Standard of living during the marriage

The idea is to keep the standard of living of each spouse as close as possible to the standard spouses are accustomed to during the divorce. The court will balance the needs of both parties and each case will be decided upon its own facts.

The court can use its own discretion and is not bound to refuse maintenance simply because a spouse can support himself/herself. If supporting oneself means a substantial lower standard of living, the court may award the spouse maintenance. The individual facts of each case must be considered before the court will make a just decision.



In *MB v NB* 2010 (3) SA 220 (GSJ) it was held that the proper approach to divorce is that parties must continue to live the lifestyle they have become accustomed to during the marriage for as long as it is permitted by the resources at their disposal. If resources are limited or becoming scarce, then each spouse must co-operate by lowering their respective living standards to a more acceptable norm. It will be grossly unfair for a spouse who claim maintenance to expect the paying spouse to lower his/her standard of living alone while the spouse receiving maintenance continue to maintain a higher living standard.

Conduct leading to breakdown of a marriage

There is a misperception that divorce is based on matrimonial fault. This is not the case in South Africa anymore. Therefore, spousal maintenance cannot be seen as a penalty for misconduct.

Before the court considers conduct leading to divorce, the court must first decide whether such conduct is in fact relevant. Conduct can be seen merely as a symptom and not the cause of the breakdown of the marriage and will thus not be considered by the court. Adultery is the perfect example of such conduct.

Say for instance a spouse who was unable to work due to ill health and dependant on his/her spouse's financial support becomes wealthy and decide to ditch the spouse that supported him/her previously, the court may well award spousal maintenance if it can be proven that gross misconduct caused the marriage to break down. In such scenarios the misconduct of spouses will be taken into account. This was confirmed in *G v G* 1987 (1) SA 48 (C) where a husband's persistent adultery was seen as gross

misconduct and that this misconduct played a role in deciding whether or not maintenance had to be awarded to the wife. Even though the wife had a professional qualification and could maintain herself, maintenance was still awarded to her.

Additional factors considered by the court

- The best interests of the children involved.
- Childcare responsibility of the dependant spouse.
- Inflation rate
- The manner in which each party convey his/her financial position and needs.

Calculation of a spouse's monthly maintenance

No fixed formula exists for calculating the ideal amount of maintenance payable each month. The best way to go around this is to draft the income and expenditure of each party. This will include a budget for child maintenance if minor dependent children are involved. Maintenance needs cannot be calculated in isolation. Both spouses' financial needs must be taken into consideration.

The primary caregiver of dependant minor children will obviously have more expenses in respect of the children. Therefore, certain household expenses which are incurred for both the benefit of the care-giving parent or guardian and the minor dependent children, such as bond instalments, water and electricity and groceries, should be shared between spouses proportionally to the extent the minor dependent children benefit from said expenses. A clear distinction should be made to determine which spouse is responsible for expenses that are not incurred for both the benefit of the care-giving parent or guardian and minor children such as school fees and extramural activities.

It is important to note that maintenance payments should be calculated from the paying spouse's after-tax income. At the same time the recipient of the maintenance is exempted from taxation in as far as the maintenance payments are concerned.

Annexure “A” List of expenditure

This is a typical list of expenditure. New columns could be added to additional children. Remember that each child shares pro rata in the expense.

Item	Self	Child
<u>Running of Home</u>	Name	Name
Lodging (bond /levy / rent)	R 0.00	R 0.00
Groceries/food/personal hair, cosmetics	R 0.00	R 0.00
Toiletries	R 0.00	R 0.00
Electricity	R 0.00	R 0.00
Woolies	R 0.00	R 0.00
Cell Phone	R 0.00	R 0.00
Domestic Worker	R 0.00	R 0.00
Child Care	R 0.00	R 0.00
Electricity	R 0.00	R 0.00
Nappies and milk	R 0.00	R 0.00
Credit card	R 0.00	R 0.00
<u>Clothing</u>		
Clothes and shoes (children)	R 0.00	R 0.00
Work Uniform	R 0.00	R 0.00
Sports Clothes	R 0.00	R 0.00
Shoes	R 0.00	R 0.00
Other	R 0.00	R 0.00
Other	R 0.00	R 0.00
<u>Transport</u>		
Bus/taxi/lift	R 0.00	R 0.00
Motor Vehilce Instalments	R 0.00	R 0.00
Motor Vehicle Insurance	R 0.00	R 0.00
Motor Vehicle Maintenance	R 0.00	R 0.00
Fuel	R 0.00	R 0.00
Licences	R 0.00	R 0.00
Parking	R 0.00	R 0.00
Other	R 0.00	R 0.00
Other	R 0.00	R 0.00
Other	R 0.00	R 0.00
<u>Educational Expenditure</u>		
University / College / Tech Fees	R 0.00	R 0.00
Text Books	R 0.00	R 0.00
Other	R 0.00	R 0.00

Insurance (Study Policy)	R 0.00	R 0.00
Stationary	R 0.00	R 0.00
Other	R 0.00	R 0.00
Other	R 0.00	R 0.00
Other	R 0.00	R 0.00
<u>Medical Expenditure</u>		
Doctor/Dentist etc.	R 0.00	R 0.00
Medication	R 0.00	R 0.00
Hospital	R 0.00	R 0.00
Medical Aid	R 0.00	R 0.00
Pharmacy Council Fees	R 0.00	R 0.00
Other	R 0.00	R 0.00
<u>Insurance</u>		
Life	R 0.00	R 0.00
Other	R 0.00	R 0.00
Other	R 0.00	R 0.00
House owners / householders	R 0.00	R 0.00
Burial Policy	R 0.00	R 0.00
Other	R 0.00	R 0.00
<u>Pocket money / allowances</u>	R 0.00	R 0.00
Other	R 0.00	R 0.00
<u>Holidays/Entertainment/Recreation</u>	R 0.00	R 0.00
Other	R 0.00	R 0.00
<u>Upkeep/Repairs Household</u>		
House	R 0.00	R 0.00
Household Appliances	R 0.00	R 0.00
Kitchenware	R 0.00	R 0.00
Linen, towels etc.	R 0.00	R 0.00
Bicycles/bikes/ scooters/boats	R 0.00	R 0.00
Other	R 0.00	R 0.00
Other	R 0.00	R 0.00
<u>Personal Loans</u>	R 0.00	R 0.00
Other	R 0.00	R 0.00
<u>Security Alarm System</u>	R 0.00	R 0.00
Other	R 0.00	R 0.00
<u>Membership Fees</u>	R 0.00	R 0.00
Other	R 0.00	R 0.00
<u>Religious Contributions</u>	R 0.00	R 0.00
Other	R 0.00	R 0.00

<u>Gifts</u>	R 0.00	R 0.00
Other	R 0.00	R 0.00
<u>TV Licence</u>	R 0.00	R 0.00
Other	R 0.00	R 0.00
<u>Reading Material</u>	R 0.00	R 0.00
Other	R 0.00	R 0.00
<u>Lease/Credit Agreement Payments</u>		
Furniture	R 0.00	R 0.00
Appliances	R 0.00	R 0.00
Other	R 0.00	R 0.00
Other	R 0.00	R 0.00
Other	R 0.00	R 0.00
<u>Pets</u>		
Food	R 0.00	R 0.00
Veterinary surgeon	R 0.00	R 0.00
Licence	R 0.00	R 0.00
Other	R 0.00	R 0.00
<u>OTHER (Not specified above)</u>		
Other	R 0.00	R 0.00
Other	R 0.00	R 0.00
Other	R 0.00	R 0.00
Other	R 0.00	R 0.00
Other	R 0.00	R 0.00
TOTAL EXPENDITURE	R 0.00	R 0.00

Annexure B: Maintenance Forms

Documents to be used for an application for maintenance order:

J101 E Application for maintenance order

J107E Substitution or discharge of existing maintenance order

J214E Consent and maintenance order

J256E Application for variation

Application for enforcement of maintenance order:

J435E Application for setting aside of a warrant of execution

J438E Application for suspension amendment or rescission of an order

J458E Application for suspension amendment or rescission of an order

Documents to be completed when your spouse is in arrears:

J470E COMPLAINT FORM ARREAR MAINTENANCE

All forms are available for download on the internet: http://www.justice.gov.za/forms/form_mnt.htm



Annexure C: How to apply for a maintenance order in the maintenance court

If the child is not living with the mother or the father, the person who is looking after the child can also apply for maintenance costs from the parents. For example, if a child is living with their grandparents, they can apply to get maintenance from the father and the mother of the child.

Once there is a court order instructing a parent to pay child support, it is a criminal offence not to pay.

Important steps to follow when applying for child maintenance:

- Firstly, you need to apply for a maintenance order at the Magistrate's Court (also called District Court) in the district where you live.
- If you're unsure, your local court will give you advice and tell you exactly at which court to apply for maintenance.
- Go to the relevant court, and complete and submit Form A: Application for a maintenance order (J101).
- You'll also need to bring the following:
 - Your ID, or a certified copy.
 - Certified copies of the child/children's birth certificates.
 - Proof of your monthly income and expenses, such as receipts for food purchases, electricity and/or rent payments.
 - Three months' latest bank statements.
 - Three months' latest payslips.
 - Full name and proof of the physical and/or work address of the person responsible for paying the maintenance money.
 - If you were married and are now divorced, a copy of the divorce order.
- The court will set a date on which you and the respondent, (the person whom you wish to pay maintenance) must go to the court.
- A maintenance officer and an investigator will investigate your claim and look into your circumstances.
- The court will serve a summons (a letter instructing a person to come to court) on the respondent (the person against whom the claim is brought) to appear in court on a specific date to discuss the matter.
- The respondent then has a choice between:
 - Agreeing to pay the maintenance as claimed, or
 - Contesting the matter in court.
- If the respondent agrees to pay the maintenance as claimed, a magistrate will review the relevant documentation. He or she will then make an order, and may decide to do so without requiring the parties to appear in court.
- If the person who is allegedly liable to pay maintenance does not consent to the issuance of an order, he or she must appear in court, where evidence from both parties and their witnesses will be heard.

Getting a child maintenance order:

- If the court finds the person liable for paying maintenance, it will make an order for the amount of maintenance to be paid. The court will also determine when and how maintenance payments must be made.
- The court can order maintenance money to be paid in one of the following ways:

- At the local magistrate's office or any other government office designated for this purpose.
- Into the bank or building society account designated by the person concerned.
- Directly to the person who is entitled to the money, or
- By means of an order that directs the employer of the person who is liable for paying maintenance to deduct the maintenance payment directly from the employee's salary, in accordance with the 1998 Maintenance Act.

Your view of the other parent's behaviour has no effect on your children's right to maintenance. You still have to pay maintenance, even if the other parent

- has remarried,
- is involved in another relationship,
- does not allow you to see the children, and/or
- if either party later has more children.

How long will child maintenance be paid?

The duty to pay maintenance continues regardless of your child's age, and lasts until the child is self-supporting, adopted or has died.

- Once your child reaches the age of 18 years, the responsibility is on him or her to prove how much maintenance he or she needs.
Note: If your child is self-supporting he or she cannot claim maintenance from any of his or her parents.
- The duty to support a child ends at the child's death but not at the parent's death. However, in the event of the parent's death, the child may lodge a claim for maintenance against the deceased parent's estate.

Cost: Applying for a maintenance order is free.



(Info on how to apply for a maintenance order courtesy of : <https://www.westerncape.gov.za/service/getting-maintenance-order>)

CHILD MAINTENANCE CHECK LIST

- (1) WHAT THE APPLICANT NEEDS TO BRING TO THE MAINTENANCE OFFICE AT THE MAGISTRATES' COURT WHEN MAKING AN APPLICATION FOR CHILD MAINTENANCE:
- (2) NOTE: BRING THE FOLLOWING DOCUMENTATION TO THE MAINTENANCE OFFICE TO MAKE COPIES AND IF THESE ARE NOT AVAILABLE ON THE DATE OF APPLICATION PLEASE BRING THE DOCUMENTS ON THE NEXT DAY AND/OR ON THE HEARING DATE.
- (3) UNAVAILABILITY OF THE DOCUMENTS ON THE DATE OF APPLICATION FOR MAINTENANCE SHOULD NOT STOP THE APPLICANT FROM COMPLETING THE J101 APPLICATION (FORM A TO THE MAINTENANCE REGULATION), WHICH IS ATTACHED TO THIS CHECK LIST AS **ANNEXTURE "B1"**.

DOCUMENTS REQUIRED FOR MAINTENANCE ENQUIRY/MEDIATION		Please tick off
1.	An identity book (green book with your photo) or passport or drivers licence and or immigration permit	
2.	Certified copies of the child/children's birth certificates	
3.	Three months bank statement (LATEST)	
4.	Three months proof of income (payslip) or the signed letter from the employer confirming your income.	
5.	Physical/work address of the person responsible for paying the maintenance money.	
6.	List of your income and expenditure e.g. water and lights bill, till slips for groceries, school expenses; medical and travel receipts, clothing accounts, etc.,	
7.	Full name of parent/person responsible for paying the maintenance money.	
8.	Copy of Decree of Divorce (in the case of divorce)	

AFTER THE TICK OFF ON THE CHECKLIST THEN MAINTENANCE SUPERVISOR SHOULD ADD HIS/HER SIGNATURE AND DATE, TO ENSURE ALL NECESSARY DOCUMENTS WILL BE AVAILABLE

MAINTENANCE SUPERVISOR

Signature:

Date:

WHAT THE RESPONDENT NEEDS TO BRING TO COURT WHEN APPEARING BEFORE THE MAINTENANCE OFFICER FOR ENQUIRY/MEDIATION

The respondent is required to bring all the required documents on the date of enquiry:

DOCUMENTS REQUIRED FOR MAINTENANCE ENQUIRY/MEDIATION		Please tick off
1.	An identity book (green book with your photo) or passport or drivers licence and or immigration permit	
2.	Three months bank statement (Latest)	
3.	Three months proof of income (payslip) or the signed letter from the employer confirming your income	
4.	Proof of physical work and residential address	
5.	List of your expenditure e.g. water and lights bill, till slips for groceries, school expenses; medical and travel receipts, clothing accounts, etc.,	
6.	Provide the copy of the maintenance court order if there is a maintenance court order against you in another court	
7.	Birth certificates of all your other biological children other than children in question	

NB: THE MATTER WILL NOT BE POSTPONED BECAUSE OF LACK OF THE ABOVE-MENTIONED DOCUMENTS, SO IT IS COMPULSORY THAT THE MAINTENANCE OFFICER /CLERK EXPLAIN THAT THE PARTIES SHOULD COMPLY WITH THE REQUIREMENTS ON THE RETURN DATE.

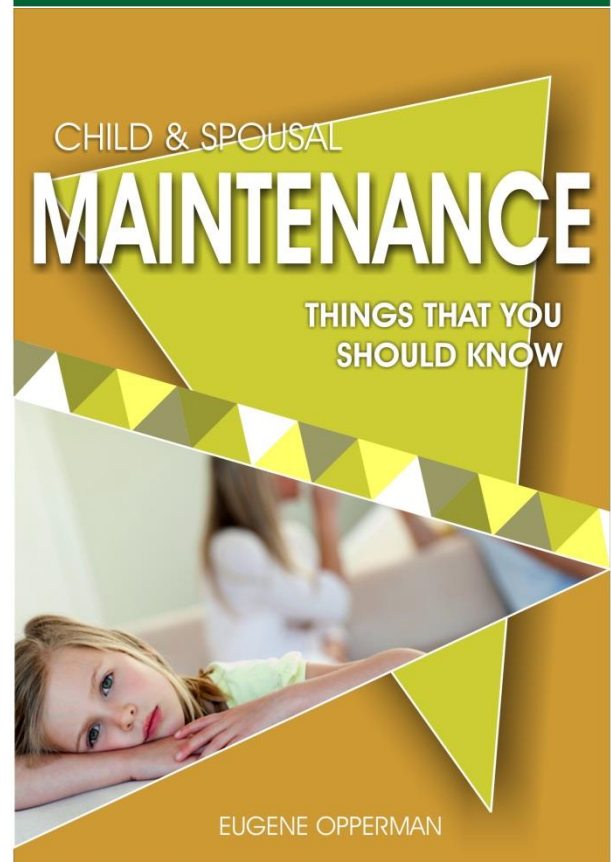
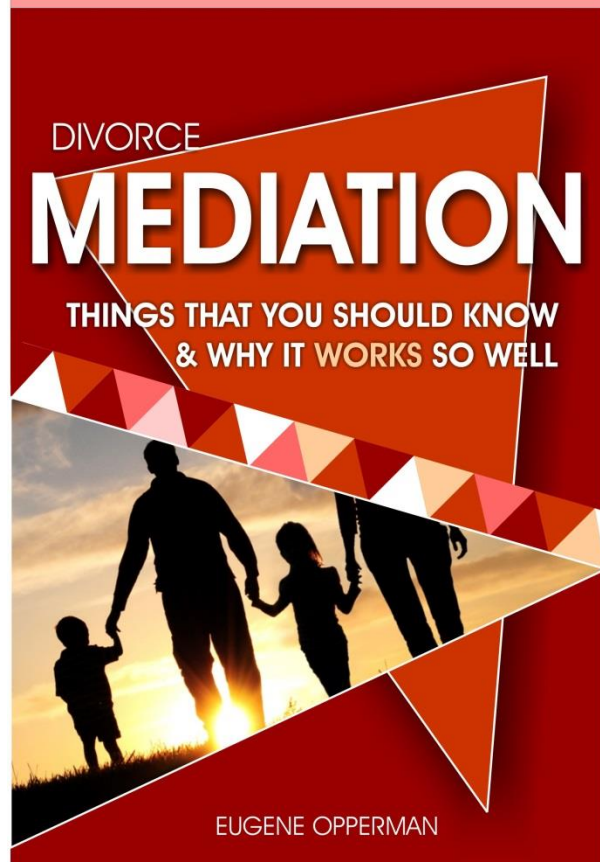
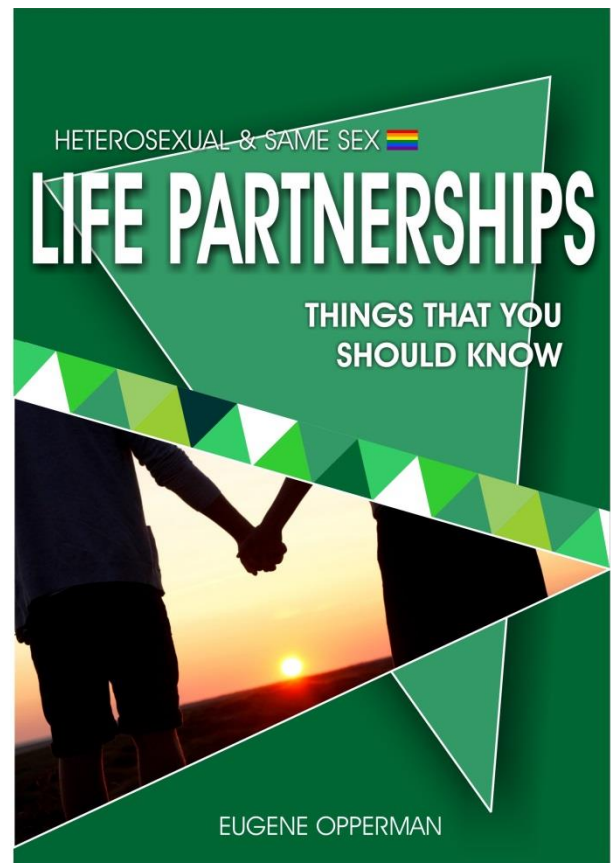
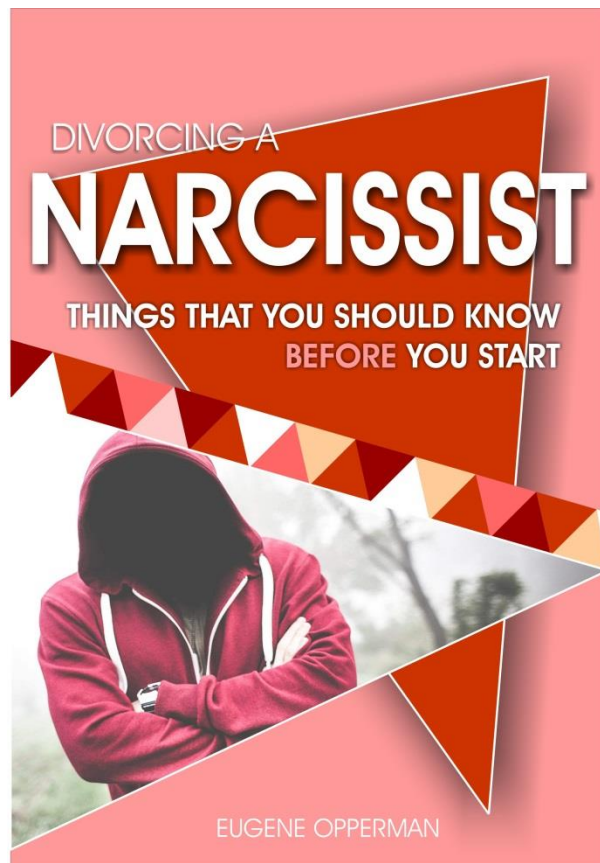


the doj & cd

Department:
Justice and Constitutional Development
REPUBLIC OF SOUTH AFRICA



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Many thanks to Maartin for the compilation and wording of this e-book.
*<https://www.divorcelaws.co.za/spousal-maintenance.html>