



## **HOW TO DO SECTION 10 MAINTENANCE ENQUIRY**

**See :** section 10 Maintenance Act 99 of 1998

DOJ Code 26 page 17/18 paragraph 22 to paragraph 28 (page 21)

NPA Policy Part 26 (paragraph B1 to B9)

1. Once the section 6 investigation is completed and the maintenance officer made his/her recommendation -the maintenance officer may refer the matter to a maintenance court for a formal enquiry before a magistrate .
2. The maintenance do not have to refer each and every matter to court especially if the facts are not in dispute and the parties agree to (1) the expenses of the minor child/ren (2) the income of both parents and the maintenance officer applied *Acutt vs Acutt* -then there will be no need to refer the matter to a magistrate . The maintenance officer can write or type his recommendation and submit to a magistrate in terms of section 10 and the magistrate can confirm the maintenance officer recommendation and complete a J168 court order.
3. Once the maintenance officer decided on a section 10 enquiry -the magistrate will allocate a date for the formal enquiry .
4. The maintenance officer will summon the parents on a section 9(2) summons .
5. The Maintenance clerk will complete section 9(2) summons for the maintenance officer to sign and hand to the maintenance investigator to serve on the parties.
6. The maintenance officer will prepare four sets of copies for court . Some courts make use of indexed bundles but it is not necessary for each and every case to have indexed bundles especially if it is undefended parties since preparation of indexed bundles are time consuming to prepare .
7. Each parent will get a set of the prepared documents (J101, salary slips, bank statements and documentary expenses of the child/ren that they will be allowed to peruse and study the contents of the documents for the section 10 enquiry.
8. The Maintenance officer and parents, attorneys and the court - will study the contents of the J101/J107 and establish:
  - 8.1 **the relationship** (section 2); the **needs of the minor child/ren** and
  - 8.2 the **means of applicant** and respondent for section 15(3) pro rata calculations (see (1) ***Acutt vs Acutt 1990 (4) SA 873 (ZS)***; (2) ***Santam vs Fourie***
  - 8.3 The maintenance court will then use the JOINT INCOME FORMULA to determine the pro rata percentage each parent must contribute to the minor child's expenses;
  - 8.4 The maintenance court will then establish if the expenses of the child was correctly allocated as per ***Acutt*** and ***Santam vs Fourie*** as one share allocated to a child and 2 shares to an adult. The shared expenses like food, electricity and rent/bond will be divided by the number of adults and number of children in the household to allocate an expense amount to a child.
  - 8.5 **Once the maintenance court had listened to all evidence of the applicant and respondent -the maintenance officer will address the court and recommend a fair and equitable amount to the court and the court will use a J168 court order form to make a final court order.**
  - 8.6 At the start of the section 10 enquiry the applicant will testify first and explain section 2 relationship , the needs and expenses of the child/ren or herself (spousal) and the respondent and maintenance officer will be allowed to ask questions on the expenses.
  - 8.7 The respondent will then testify about his income /salary and his expenses and the applicant and maintenance officer will question him about his expenses .
  - 8.8 The maintenance officer will then submit his recommendation in writing or oral (viva voce) to the court.
  - 8.9 The court will then order an amount on a J168 and decide on emolument attachment orders
  - 8.10 The maintenance officer will complete Form O on a J448 will then be sent or emailed to the employer . Remember regulation 26 say the J448 (form O) can even be faxed to the employer.

- 8.11 The maintenance court will after the J168 court order is ordered - explain to the applicant and respondent the consequences of defaults in payments and that he/she can complete a J470 complaint form and a J306 application for enforcement of the maintenance order.
- 8.12 The J306 application form is completed to attach the salary (emoluments) of the respondent or any other money or assets the respondent have.
- 8.13 The applicant can insist on criminal prosecution in terms of section 31 of the Maintenance Act 99 of 1998.
- 8.14 The respondent should be warned in the case of defaulting action he can be prosecuted in terms of section 31 (1) and his details can be entered on form W for blacklisting by credit bureaus.
- 8.15 Where a prosecutor decide on prosecution -please note section 54(1) of the criminal procedure Act 51 of 1977 states ONLY a prosecutor can decide on prosecution and not a maintenance clerk or maintenance officer. A J605 summons is issued where the public prosecutor decide on section 31 prosecution of the respondent.

**SUMMARY**

- 1. Maintenance concluded section 6 enquiry [ ];
- 2. Parties are not happy with recommendation and request section 10 enquiry [ ];
- 3. Maintenance officer not sure of amount and can recommend a section 10 enquiry [ ];
- 4. Maintenance clerk prepare four sets of copies of all documents for s.10 enquiry [ ];
- 5. Maintenance officer arrange court date with magistrate and issue s. 9(2) summons [ ];
- 6. Maintenance officer instruct clerk to issue section 9(2) summons for witnesses [ ];
- 7. On day if any party is absent court can make J252 default court order [ ];
- 8. If s.10 enquiry not concluded – interim maintenance order can be issued [ ];
- 9. If concluded court will make J168 court order [ ].