



How to serve Section 8 and 9 summons

Regulations 3 of the Maintenance Regulations to Act 99 of 1998 provides:

8. Examination of persons by maintenance officer

- (1) A magistrate may, prior to or during a maintenance enquiry and at the request of a maintenance officer, require the appearance before the magistrate or before any other magistrate, for examination by the maintenance officer, of any person who is likely to give relevant information concerning-
 - (a) the identification or the place of residence or employment of any person who is legally liable to maintain any other person or who is allegedly so liable; or
 - (b) the financial position of any person affected by such liability.
- (2)
 - (a) The provisions of sections 162, 163, 164(1), 165, 179 to 181, 187, 191 and 204 of the Criminal Procedure Act, 1977 (Act No. 51 of 1977), shall, with the necessary changes, apply in respect of the examination of any person under this section.
 - (b) If the person who is required to appear before a magistrate furnishes the information in question to the satisfaction of the maintenance officer concerned in advance of the day on which he or she is required so to appear, the maintenance officer shall discharge him or her from the obligation so to appear.
- (3) The examination of any person under this section may be conducted in private at a place designated by the magistrate.

The enquiry

9. Maintenance officer may cause witnesses to be subpoenaed

- (1)
 - (a) A maintenance officer who has instituted an enquiry in a maintenance court may cause any person, including any person legally liable to maintain any other person or any person in whose favour a maintenance order has already been made, to be subpoenaed—
 - (i) to appear before the maintenance court and give evidence; or
 - (ii) to produce any book, document or statement.
 - (b) A book, document or statement referred to in paragraph (a)(ii) includes—
 - (i) any book, document or statement relating to the financial position of any person who is affected by the legal liability of a person to maintain any other person or in whose favour a maintenance order has been made; and
 - (ii) in the case where such person is in the service of an employer, a statement which gives full particulars of his or her earnings and which is signed by the employer.
(Section 9(1) substituted by section 3 of Act 9 of 2015)
- (2)
 - (a) Any person to be subpoenaed as a witness shall, subject to paragraph (b), be subpoenaed in the manner in which a person may be subpoenaed to appear before a magistrate's court in a criminal trial.
 - (b) The form of the subpoena shall be as prescribed.
 - (c) The provisions of section 181 of the Criminal Procedure Act, 1977 (Act No. 51 of 1977), are, subject to section 11(2), not applicable to any person against whom a maintenance order may be made under this Act.

The maintenance officer can direct that the maintenance clerk

- (i) Send the section 8 and 9 summons to the South African Police Service for service on the respondent or employer;**
- (ii) Send the section 8 and 9 summons to the Sheriff (as last resort) for service on the respondent or employer;**

If the Maintenance Office can save on the expense of Sheriff's costs in serving Section 8 and 9 summons by requesting the SAPS to serve summons -we will be able to save the DOJ money.
See examples included.

TELEPHONE CALLS /CELLPHONE CALLS – we can call respondents on their cellphones and request the respondent to come and collect the summons. We just need to make a note of our means of contacting and requesting respondents to collect their summons. Just keep proper record on the Regulation 3 Record Keeping form.

Future means of service that should be explored include once legislative amendments are requested
WHATSAPP : if you have Whatsapp on your cellphone you can access the web version on your personal computer (PC) or laptop by typing on Google whatsapp web . You can then scan the barcode on the PC screen and will be able to access your whatsapp on your PC. You will then be able to attach Section 8 and 9 summons with the attach (paper clip button). Just keep proper record on the Regulation 3 Record Keeping form. The legislation allows the sheriff to pin and hammer a summons on the door or put summons in a postbox -The argument is we should be able to use electronic media to serve summons on the respondent so that they **receive NOTICE** of pending civil action.

SMS text and Email : we can easily text Section 8 and 9 summons via MMS (Multimedia Messaging Service) or email Section 8 and 9 summons. On emails- set your settings to send you a READ receipt that can be printed and filed as a return of service in the maintenance file. Just keep proper record on the Regulation 3 Record Keeping form. ***The most important factor is that respondents receive NOTICE.***