

Guidelines for Formal Maintenance Enquiry Bundles

Your bundle (original plus 3 copies) must be contained in a lever arch file, indexed, paginated and given to the opposing side or the maintenance officer at least 2 weeks before.

Applicant's bundle must start with

1. A copy of the Application (J101E or J107E).
2. The court order/s (in an application for a variation or discharge).
3. Full disclosure of current financial status.

Respondents bundle must contain

1. Full disclosure of current financial status.

The Court record in the Maintenance File is not evidence unless it is in the bundle and parties must request copies from the Maintenance Officer if they want aspects of the file to form part of the evidence.

All income from whatever source, all monthly expenses, all assets and every liability must be disclosed for a period of at least 3 to 6 month prior to the enquiry date, example:

Earnings

- Current salary advices, or where self-employed, proof of such a party's income, eg. Financial statements in respect of a private company or a close corporation
- Returns of income rendered to the South African Revenue Service.
- Copies of applications supplied to financial institutions in order to obtain credit.

Bank statements

- All statements in respect of any financial institution where a party conducts a banking or credit card account and any other accounts under an *alias* or through a nominee, or under the control of the party or a close corporation or private company, where the party has signing powers on the account and/or conducts business through such accounts, as if it was their own account.
- Documentation in regard to investments in foreign accounts

Financial statements

- Source documentation in respect of statements of private companies, close corporations or partnerships in which a party may have a direct or indirect interest.
- Financial statements determining the value of shares, membership interests, or loan accounts in entities such as close corporations, companies with a limited liability and partnerships.

Other assets or sources of income

- Pension fund, retirement annuity, insurance policies, trust funds, ownership of properties, motor vehicles etc

Liabilities

- Overdrafts, bond statements, credit agreements, accounts or any debts

Pre Trial

It is in the best interests of the children that the matter be settled as amicably and as quickly as possible. This should be possible where both parties make full and honest disclosure. If a Formal Enquiry is essential, the court expects the parties to have clarified the points at issue before bringing the matter into the forum of the Formal Enquiry.

The Enquiry

The evidence must be led in clear sequence

1. The applicant using the J101E or J107E must follow the sequence of the pro forma and give the court updated current information. At the end of the Applicant's case it must be clear what the alleged total monthly income and expenditure is and what the exact amount of the alleged need is. The Applicant must close their case with a clear request as to exactly what order they are asking the court to make. The J214 is a good guideline to what a Maintenance Order should look like, with the addition of an amount for education and medical costs and an escalation clause.
2. The Respondent's case should similarly end with a clear indication to the court as to what amount is conceded as reasonable in respect of the needs of the child/ren and or Applicant: and a clear indication of an amount tendered commensurate with the alleged means of the Respondent.

The Constitutional Imperative

Counsel are please to be mindful of the need to keep the best interests of the child as paramount. Acrimonious and adversarial posturing is both undesirable and unnecessary in the Maintenance Court. The Enquiry should be mainly a matter of financial need and ability and nothing more. The Maintenance Court is a sui generis creation and should be used as a problem solving forum in the best interests of the child with the understanding that the parental relationship between the parties will endure long after the court case is over.