

# WEBINAR HANDOUT



Webinar: **HOW TO TRANSFER A MAINTENANCE FILE FROM ONE COURT TO ANOTHER?**

Host: Eugene Opperman (Oppermans Inc Attorneys)

Handout : Erin O'Neale (Oppermans Inc Attorneys)

**During this lunch hour we cover topics which include:**

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## **1. Discussion of sections 23(1) and 19(a) and regulation 14**

Section 23 of the Maintenance Act deals with how files (maintenance court orders) can be transferred from one maintenance court to another court for example in another province. The provision reads as follow:

- (1) "Subject to the directions prescribed in connection with the transfer of maintenance orders, the maintenance officer may in writing direct the clerk of the court where a maintenance order was made to transmit the maintenance order, together with the prescribed records, to the clerk of the maintenance court within the area of jurisdiction of which the person in whose favour the maintenance order was made, or the person in whose care that person is, resides, carries on business or is employed.
- (2) On receipt of the maintenance order, the clerk of the maintenance court shall register such maintenance order in the prescribed manner.
- (3) Any maintenance order registered in terms of subsection (2) shall for the purposes of this Act be deemed to be a maintenance order made under section 16 by the maintenance court where the order has been so registered."

Regulation 14 in terms of the Regulations to the Maintenance Act reads as follow:

- (1) The clerk of the court where a maintenance order was issued shall, when the maintenance order is to be transferred in terms of section 23(1) of the Act –
  - retain certified copies of all orders or judgements, including previous amended orders, and documents with regard to the record of payment which are applicable to the particular case; and
  - send by registered post all the original documents referred to in paragraph (a) to the clerk of the maintenance court where the person in whose favour the maintenance order was made resides.
- (2) On receipt of the maintenance order referred to in subregulation (1), the clerk of the maintenance court shall register the order by numbering it with the following consecutive number for maintenance cases for the year during which it was received.

## **2. Circumstances under which a file could be transferred from one court to another**

It is possible that a maintenance file can be transferred from one court to another. The most common situation where this would happen is where the applicant in whose favour the court order was made moves to a different province. The maintenance file will then have to be transferred from the previous province to the new province in order to allow the applicant to approach the maintenance court in their area of jurisdiction for any issues relating to the maintenance order.

The Applicant now have a choice to register her/his maintenance file at her/his convenience at the closest court where she/he resides or where she/he is employed.

There are two scenarios:

- (1) Where the applicant already relocated to the new residential area or;
- (2) Where the applicant intends on relocating or wishes his/her file to be transferred for convenience close to his/her place of employment to ensure that he/she can return to work (since some courts do not regard the applicant as a any other witness in terms of section 11 eligible for witness fees (subsistence and travel allowance)).

## **3. Discussion of the application for transfer and explanation of the internal procedure that the maintenance officer/ clerk of the court needs to follow**

The applicant wishing to transfer the file will have to complete an application for transfer either at the court where they have opened the maintenance file or the court in the new area where they are currently residing. It is recommended that the applicant submit the form to the clerk where the original maintenance file was opened, and that clerk will scan and transfer the application for transfer to the new court closest to where the applicant is currently or intends on residing or is employed (i.e., after relocation).

Once the clerk of the court where the applicant intends on residing or area where the applicant is employed receives the application for transfer, that clerk must make a copy thereof and hand the applicant a copy and keep a copy. A copy is then scanned and emailed to the old court or origin. Once the old court of origin receives the application form that clerk will hand it to the maintenance officer. The maintenance officer is then responsible for checking that all the court documents are in order and signed, and must check that the minimum standards in the Department of Justice Code 26 of 2015 are complied with.

Once the maintenance officer has done this, he/she has to take the maintenance file to the magistrate in chambers to request that the magistrate order the transfer of the file to the new magisterial district. Once the court order to transfer the file is obtained the clerk of court will copy and certify all court orders including the J214, and all other court documents and archive the copied documentation in the court archive. The respondent and employer must be informed that the maintenance file was transferred to a new magisterial district to ensure that the respondent files a J107 reduction/variation application at the correct court.

The original file will then be handed to the messenger who has to sign for the maintenance file before taking receipt of the maintenance file . If the new court is within the messenger's delivery area the messenger can drop the file at the new court and ensure that he/she obtains the signature of the person taking receipt of the file. Once the file is received the clerk must register the maintenance file with the new court number and acknowledge receipt by email to the old court of origin. At the old court of origin the new number and acknowledgement of receipt will be filed with the copied maintenance file in the court archives.

Checklist for requesting your file to be transferred:

- Applicant filed application for transfer form;
- Maintenance officer checked that all of the court documents are correct and have been signed;
- File was taken to the magistrate in chambers in order for it to be transferred to the new court;
- The clerk has made copies of the file and all copies have been certified and kept for the archives;
- The clerk has complied the DOJ letter to accompany the original file to the new court;
- A messenger has been arranged and confirmed to dispatch the original file to the new court, or the file will be sent via registered mail;
- The clerk of the new court has confirmed receipt of the file, and the confirmation of receipt has been filed with the copied file in the archives.

**4. Reference to the DOJ Codified Instructions 26/2015 (paragraph 35)**

Paragraph 35 of the DOJ Codified Instructions 26/2015 deals specifically with the transfer of the maintenance file in terms of section 23 and regulation 14.

35.1) The Clerk of the Maintenance Court must upon receipt of a request for transfer of a maintenance order, file it immediately on the appropriate file and hand the file to the Maintenance Officer for a directive.

35.2) In terms of section 23(1), the Maintenance Officer must give a directive to the Clerk of the Maintenance Court which includes inter alia the following:

- certified copies of the application/directive for the transfer of file;
- certified copies of all orders or judgments, including previous amended orders;
- certified copies of documents with regard to the record of payment which are applicable to the particular case where applicable, from the maintenance report on the JDAS System;
- all other documents contained in the file;
- Section 212 of the Act 51 of 1977, statement in respect of the payments;
- dispatch by registered post all the original documents referred to above to the Clerk of the Maintenance Court where the beneficiary resides/ employed;
- notify the Respondent and Employer of the transfer of the file and the particulars of the new Maintenance Court by Registered mail;
- the file must also be transferred on the Maintenance Module – JDAS system.

35.3) Receipt of the maintenance file from another court. In terms of Section 23(2) and Regulation 14(2):

- The Maintenance Officer of the court receiving the transferred file, if needs be, must approach the court to vary the terms of the order to reflect the new details or particulars of that courthouse (for example, the banking details of the new district in instances where the place of payment is the courthouse) to facilitate the payment;
- Clerk of the Maintenance Court, who receive the maintenance file must by registered mail notify the Applicant, the Respondent and the Employer of the of the file, the new file number and particulars of the new courthouse; and

## **5. Tips and advice of requesting the transfer of a maintenance file to avoid delays**