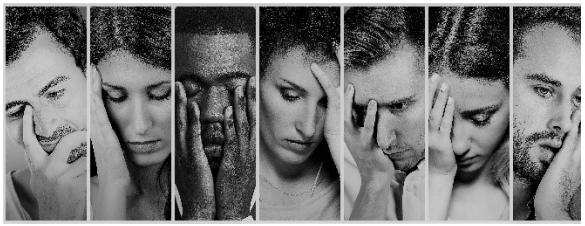
MEDIATION NETWORK

FIGHT, FLIGHT OR MEDIATE



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YOUR MAINTENANCE QUESTIONS ANSWERED

What is maintenance

It is an amount that someone, who has a legal duty to support another person, must pay to that person monthly. For example: Both parents have a legal duty to support their children according to their own financial position and the specific reasonable needs of the child. Therefore, both parents are proportionately liable for the maintenance of their children.

"FAMILY MEDIATION SERVICES THAT ARE FAIR, AFFORDABLE and EFFICIENT"

Who is entitled to maintenance?

•All children, even those who are over the age of majority, are entitled to receive maintenance from their parents, whether or not the parents are/were married, until the child becomes self-supporting.

•Children can claim maintenance from their deceased parent's estate.

•Parents and grandparents can also claim maintenance for their bare necessities from their children and grandchildren if they have no or little income and the children or grandchildren are in a position to help.

•Spouses have a duty to support each other and can claim maintenance from each other.

•Adopted children are entitled to maintenance from their adoptive parents and not their natural parents.

Can partners claim maintenance from each other?

Partners in customary, civil and religious marriages have a duty to support each other. Partners in a lifelong heterosexual or same-sex relationship may also claim maintenance from each other.

Who can lodge a claim for maintenance on behalf of a child?

A parent, guardian or curator can claim maintenance on behalf of minor children.

What is included in a claim for maintenance?

You can include food, toiletries, clothing, accommodation (including electricity, water, and other household necessities), recreation, medical care and education (which may include tertiary education).

The amount of maintenance payable is affected by the standard of living of the parents and their standing in the community.

How do I enforce a maintenance order?

If the person obliged to pay maintenance fails to make any payment for a period of 10 days, you may apply for:

- A warrant of attachment against a debt

In the case of the defaulter having an amount available in a bank account, a pension fund or any other form of debt owed to him, by attaching that account.

- A warrant of execution

Attaching and selling the defaulter's property, such as furniture, vehicle, or house.

- Attachment of emoluments

Attaching the defaulter's salary for payment of an amount every month until the arrears are settled. To apply, complete a FORM J306 E, which is available from the maintenance court. You must attach a copy of the maintenance order and a statement of payments and non-payments, indicating the amount of arrears. The clerk of the court can issue a notice to be served on the defaulter's employer instructing them to make payments at certain times and in a certain way.

Should the three civil procedures above be ineffective, you may approach the maintenance officer to lay a criminal charge against the defaulter.

MEDIATION NETWORK can help by mediating all maintenance related issues you may have.

How long should I maintain my child?

A parent's duty to support a child end when the child becomes self-supporting, not when the child reaches a particular age. The duty of support changes when the child reaches the age of majority (18) and it is then confined to the child's necessities.

Can I claim maintenance before a child is born?

'Lying-in' expenses are the mother and child's expenses immediately before, during and immediately after the child's birth and include hospital, medical and reasonable related costs. Both parents are proportionately liable for these costs in accordance with their means.

Can I claim for an increase in the amount of maintenance?

Yes. Maintenance orders should be reviewed annually to keep up with changing circumstances and the rate of inflation. It is advisable to include an annual escalation clause into a maintenance order to avoid applying for an increase every year. MEDIATION NETWORK can help parties negotiate maintenance increases.

Can I apply for a reduction in maintenance?

Yes. You can apply for a reduction in maintenance in the following circumstances:

- your personal circumstances change substantially, e.g. losing your job or being in a serious road accident that affects your ability to earn an income;
- your child takes on part-time work;
- the other parent's salary increases substantially.

MEDIATION NETWORK can assist you to settle this out of court and if mediation is successful, the agreement is made an order of the court.

Must I still pay maintenance if the other parent remarries, is involved in another relationship, or does not let me see the children?

Yes. Your children's right to receive maintenance (and your obligation to pay it) continues even if:

- your ex does not allow you contact with them;
- you or your ex remarry or are involved in a new relationship.

If your ex does not allow you contact with your children in terms of the divorce order, you must use the correct channels to resolve this dispute.

What is a fair amount of maintenance?

One approach is to base the maintenance on how much is spent on the child per month (even if this is not enough to meet all the child's needs because the parents are struggling financially).

The other approach reflects how much it would cost per month to provide for the child in a way that meets his needs in a reasonable way.

The amount of maintenance payable is calculated by first determining the actual costs of raising a child. These expenses include rental, food, toiletries, medical, education, clothes, electricity, transport, and other expenses. The total cost of raising each child is then shared by both parents in proportion to their respective incomes.

Parents should agree on the total of reasonable living expenses of the child. If they disagree, mediation should be the next step.

What is mediation?

Mediation is a voluntary process of structured negotiation that can help two parties in conflict to resolve their differences. Mediation is not a form of counselling. It opens discussion and helps you work through the different legal issues that need to be settled when getting a divorce.

A skilled mediator assists families to work out creative arrangements for themselves and their children. The settlement agreement is then made an order of court. The agreement could include the division of your estate, maintenance, a parenting plan, and any other arrangements that are in the best interests of your minor children. Parents should carefully consider the views of their children when negotiating contact and care arrangements.

Mediation is cost effective, less stressful than traditional litigation and saves time. It also helps parties maintain a positive ongoing relationship after divorce, especially when children are involved.

Have you applied your mind to the following potential consequences if the disagreements are not resolved?

- How much litigation will cost?
- How long it may take for litigation to be completed?
- The likelihood that even if you win the case, you may not be able to recover your costs from the other party?
- The personal and productive time taken up by preparation, consultation and court attendances during litigation?
- The effect litigation may have on your relationship with the children?

What do we offer?

- **Divorce Mediation**

  Divorce is stressful for the entire family. Mediation provides a facilitated, legally formalized process of negotiations.

  We offer clients access to our panel of:

  - Mediators
  - Attorneys
  - Social workers
  - Financial advisors
  - Psychologists
  - Play therapists

- **Parenting Plans**

  A Parenting Plan is a roadmap for separated or divorced parents. It ensures co-operation from both parents for a better future for their child. It helps to reduce future conflict by reducing tension and stress of the entire family.

  MEDIATION NETWORK provides a comprehensive plan for a fraction of the cost in a more timeous manner compared to conventional channels.

- **Maintenance Assistance**

  Every child deserves to be maintained by BOTH parents. This can be achieved through a mediated process that is confidential and transparent. It can also be referred to our panel of experts to ensure that the child remains protected, and the individual parents are not taken advantage of.

*NABFAM accredited mediators**
Scan for more information on our website.