

**Maintenance**

Cap. 216.

**MAINTENANCE RULES, 1984**

*Arrangement of Rules*

*Rule*

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**FIRST SCHEDULE**

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**SECOND SCHEDULE**

**THE LAWS OF BARBADOS**

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**Maintenance**

Cap. 216.

**MAINTENANCE RULES, 1984**

1984/50.

**Authority:** These rules were made on 8th March, 1984 by the Judicial Advisory Council under section 29 of the *Maintenance Act*.

**Commencement:** 15th March, 1984.

1. These Rules may be cited as the *Maintenance Rules, 1984*. Short title.

2. In these rules Definitions.

"attachment order" means an attachment of earnings order made under these rules;

"defendant" means a man who is alleged to be the father of a child or in respect of whom an application is made to the court for maintenance;

"earnings" in relation to a defendant, means any sums payable to him

(a) by way of wages or salary, including any fees, bonus, commission, overtime pay, any payments in lieu of leave or other emolument payable in addition to wages or salary;

(b) by way of pension, including

(i) an annuity in respect of past services, whether or not the services were rendered to the person paying the annuity, and

(ii) periodical payments in respect of or by way of compensation for the loss, abolition, or relinquishment, or any diminution in the emoluments of any office or employment;

"employer" in relation to a defendant, means a person by whom, as principal and not as a servant or agent, earnings are payable or likely to become payable to that defendant.

3. The forms prescribed in the *First Schedule* must be used for the purposes to which they relate under these rules. Forms.  
First  
Schedule.

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Application  
for mainten-  
ance.

4. (1) An application for maintenance under section 6 or 8 of the Act must be in Form No. 1, as set out in the *First Schedule*.

(2) An application for maintenance under section 21(1) or 22 of the Act must be in Form No. 2, as set out in the *First Schedule*.

Summons  
for hearing  
of applica-  
tion for  
mainten-  
ance.

5. A summons for the hearing of an application for maintenance must be in Form No. 3, as set out in the *First Schedule*.

Method  
of making  
periodical  
payments.

6. (1) A court ordering payments to be made through the clerk of the court, under section 12 of the Act, shall notify the defendant of the times during which and the place at which payments are to be made.

(2) The clerk of the court, on receipt of the payments directed to be made under a maintenance order shall immediately make such payments to the mother of the child to which the order relates, such other person appointed to have legal custody of the child, or such other person or public authority as the magistrate specifies.

Enforce-  
ment of  
arrears.

7. (1) Where any sums are ordered by the court to be paid and

(a) in the case of a weekly sum, is in arrears for 2 weeks;

(b) in the case of a monthly sum, is in arrears for 1 month; or

(c) in the case of a yearly sum, 6 weeks have elapsed since the sum was due,

the clerk of the court may make an application to the court for the enforcement of any such arrears.

First  
Schedule.

(2) An application for the purposes of section 23(2) of the Act must be in Form No. 4, as set out in the *First Schedule*.

(3) A summons to be issued by a magistrate for the purposes of section 23(3) of the Act must be in Form No. 5, as set out in the *First Schedule*.

Attachment  
orders.  
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8. (1) Subject to the *Protection of Wages Act*, the court may, at the time of the making of a maintenance order or at any subsequent time, make an attachment order in respect of the earnings of a defendant.

(2) An attachment order may be made against any person who is proved to the satisfaction of the court to be an employer of the defendant against whom a maintenance order is made.

(3) The following persons and public authorities may apply to the court for an attachment order:

- (a) a person in whose favour a maintenance order is made;
- (b) the person who is required to make payments under a maintenance order;
- (c) the Chief Welfare Officer;
- (d) the Child Care Board;
- (e) the Attorney General; and
- (f) any other person or public authority with a sufficient interest in the matter.

(4) An application for an attachment order must be in Form No. 6 as set out in the *First Schedule*.

First Schedule.

(5) On hearing of an application for an attachment order, the court may make an attachment order in Form No. 7, as set out in the *First Schedule*.

9. Upon making an attachment order, the court shall cause a copy thereof to be served on the defendant and his employer either personally or by post.

Service of attachment order.

10. (1) An attachment order shall be directed to the employer of the defendant and shall operate as instructions to him

Effect of attachment order.

- (a) to make periodical deductions from the earnings of the defendant in the amounts specified in the order; and
- (b) at such times as may be specified in the order, to pay the amounts so deducted to the clerk of the court, as specified in the order.

(2) Subject to paragraph (3), an employer shall comply with an attachment order served on him.

(3) Where an employer is served with an attachment order and the defendant, to whom the order relates, is no longer in his employment, the employer shall within 7 days from the date of service or the date on which the defendant ceases to be employed by him, as the case may be, give notice of the fact to the court.

Second  
Schedule.

(4) The *Second Schedule* has effect with respect to the priority to be accorded as between 2 or more attachment orders directed to an employer in respect of the same defendant.

(5) Where an employer in compliance with an attachment order makes deductions from the defendant's earnings

(a) he may, in addition, deduct such sum as may be specified by rules of court towards his clerical or administrative expenses; and

(b) he shall give to the defendant a written statement of the total amount of any such deductions.

Notice of  
change of  
employment.

11. While an attachment order is in force

(a) a defendant shall notify the court in writing of every occasion on which he leaves employment, or becomes employed or re-employed not later, in each case, than 7 days from the date when any such event occurs;

(b) a defendant shall on any occasion on which he becomes employed or re-employed include in his notification under paragraph (a) particulars of his earnings or anticipated earnings from the relevant employment; and

(c) any person who becomes the employer of a defendant and receives knowledge that an order is in force in respect of that defendant, shall within 7 days of receiving such knowledge, notify the court in writing of that fact and include in his notification a statement of the defendant's earnings.

Variation  
etc. of  
mainten-  
ance order.

12. (1) A maintenance order may at any time be varied, discharged, suspended or revived by the court on the application, pursuant to section 19 of the Act, of any person with a sufficient interest or good cause being shown to the satisfaction of the court, why the order should be varied, discharged, suspended or revived.

(2) Every variation, discharge, suspension or revival under paragraph (1) takes effect from the date ordered by the court.

(3) An application for the purposes of paragraph (1) must be in Form No. 8, as set out in the *First Schedule*.

First  
Schedule.

(4) A summons for the purposes of paragraph (1) must be in Form No. 9, as set out in the *First Schedule*.

13. (1) Where an order is issued under section 19 of the Act for the variation, discharge, suspension or revival of a maintenance order, a person or public authority to whom rule 8(3) applies may make application to the court for an attachment order made in respect of a maintenance order to be similarly varied, discharged, suspended or revived.

Variation  
etc. of an  
attachment  
order.

(2) An application for the purposes of paragraph (1) must with the necessary modifications, be in Form No. 8, as set out in the *First Schedule*.

First  
Schedule.

(3) For the purposes of hearing an application under paragraph (1) the court may, with the necessary modifications, issue a summons in Form No. 9, as set out in the *First Schedule*.

14. (1) An application under section 20(1) of the Act for the custody of a child by its mother, where that child is not in her custody must be made in Form No. 10, as set out in the *First Schedule*.

Application  
for custody  
First  
Schedule.

(2) An application under section 20(2) or (3) of the Act for the custody of a child by its father, or other person must, with the necessary modifications, be in Form No. 11, as set out in the *First Schedule*.

First  
Schedule.

(3) For the purpose of hearing an application under section 20(1) of the Act, the court may issue a summons in Form No. 12, as set out in the *First Schedule*.

15. (1) An application under section 20(5) or (6) of the Act, by a mother, father or other person appointed to have legal custody of a child, for the delivery of that child must be in Form No. 13, as set out in the *First Schedule*.

Application  
for delivery  
of child.

(2) For the purpose of hearing an application under section 20(5) or (6) of the Act the court may issue a summons in Form No. 14, as set out in the *First Schedule*.

FIRST SCHEDULE

MAINTENANCE

FORM NO. 1

(Rule 4(1))

*Application for Maintenance*

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APPLICANT'S ADDRESS FOR SERVICE .....

.....

I,.....

of .....

being .....

hereby make application for a summons to be served on.....

of .....

whom I allege to be the father of my child which is expected to be born

on.....or which was born on.....

at .....

for the purpose of obtaining maintenance in respect of the said child.

And pursuant to this application, I, .....  
of the above-mentioned address hereby make oath and say as follows:

1. I am the applicant herein and a child .....

.....

2. The allegation as to the paternity of my child is true.

3. All the other matters stated in the application are true.

Sworn by the )  
 applicant at )  
 this day of )  
 19 )  
 Before me )  
 Clerk of the )  
 Magistrate's )  
 Court for )  
 District )  
 this day of )  
 19 )

MAINTENANCE

Cap. 216.

FORM NO. 2

(Rule 4(2))

*Application for Maintenance by Chief Welfare  
 Officer or Child Care Board*

I.....  
 of.....  
 being.....  
 hereby make application for maintenance of a child named.....  
 born on..... to.....  
 and which has become chargeable to.....

Dated this.....day of.....19.....

.....  
*Applicant.*



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MAINTENANCE

FORM NO. 3

(Rule 5)

*Summons for the Hearing of an Application  
for Maintenance*

TO:.....  
of .....

You are hereby summoned to appear before the Magistrate’s Court for District.....at.....on the..... day of.....19.....at .....o’clock in connection with the hearing of an application for maintenance in which you are alleged to be the father of a child born to (or to be born to) ..... of .....

Dated this                              day of                              ,19 .

*Clerk of the Magistrate’s Court  
for District .*

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MAINTENANCE

FORM NO. 4

(Rule 7 (2))

*Application for Enforcement of Arrears*

I,..... Clerk of the Magistrate’s Court for District.....hereby make

application for the enforcement of arrears of maintenance, as stated in the Schedule hereto, in respect of a maintenance order issued by Court

dated.....

SCHEDULE

*[Details of arrears of maintenance]*

Dated this day of ,19 .

*Clerk of the Magistrate's Court  
for District .*

MAINTENANCE

Cap. 216.

FORM NO. 5

*(Rule 7(3))*

*Summons for the Hearing of an Application for the  
Enforcement of Arrears of Maintenance*

TO:.....  
of .....

You are hereby summoned to appear before the Magistrate's Court for District.....on the.....day of.....,19.....at.....

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o'clock in connection with the hearing of an application for the enforcement of arrears of maintenance in respect of a maintenance order issued by Court. dated.....

Dated this day of , 19 .

..... Clerk of the Magistrate's Court for District

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MAINTENANCE

FORM NO. 6

(Rule 8(4))

Application for Attachment Order

APPLICANT'S ADDRESS FOR SERVICE.....

I,..... of..... hereby make application for an attachment order in respect of the earnings of..... against whom a maintenance order was issued by the Magistrate's Court for District .....

Dated this day of , 19 .

..... Applicant

MAINTENANCE

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FORM NO. 7

(Rule 8(5))

*Attachment Order*

On consideration of the application for an attachment order IT IS  
 HEREBY ORDERED that you, .....  
 the employer of .....  
 against whom a maintenance order was made by the Magistrate's Court for  
 District , shall deduct the sum of from the.....  
 earning of the said.....  
 and which shall be paid over to the Clerk of the Magistrate's Court for  
 District.....during working hours and within.....  
 day of the making of any such deductions.

.....  
*Magistrate for District* .

MAINTENANCE

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FORM NO. 8

(Rule 12(3))

*Application for Variation, Discharge, Suspension,  
 Revival of a Maintenance Order*

I, .....  
 of .....  
 being .....  
 hereby make application for the variation, discharge, suspension, revival of a



, 19 at o'clock in connection with the hearing of an application for the variation, discharge, suspension, revival of a(n) maintenance/attachment order issued by the Magistrate's Court for District.....and dated the day of 19 .

Dated this day of , 19 .

.....  
*Clerk of the Magistrate's Court*  
*for District .*

\*This form must be modified, by necessary deletions, to suit the purpose of the application.

MAINTENANCE

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FORM NO. 10

*(Rule 14(1))*

*Application by mother for Custody of Child*

APPLICANT'S ADDRESS FOR SERVICE .....

.....

I,.....

of.....

being.....

hereby make application for the custody of a child that was born to me on

day of ,19

and which was not presently in my custody.

Dated this day of , 19 .

.....  
*Applicant*

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MAINTENANCE

FORM NO. 11

(Rule 14(2))

*Application for Custody of Child*

Applicant's address for service:.....  
.....

I,.....  
of.....

being .....

hereby make application for the custody of a child born to .....

..... on the

..... day of ,19 .  
and in respect of which I affirm paternity.

This application is based on the fact that\*

I consider the mother of the said Child is not a fit and proper person to have custody of the child

The mother of the said child is now dead of unsound mind in prison has left Barbados

Dated this                      day of                      ,19 .

.....  
*Applicant.*

\*Delete any of the statements appearing below which is not relevant to your application.

MAINTENANCE

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FORM NO. 12

(Rule 14(3))

*Summons for the Hearing of an Application  
for Custody*

To:.....  
of.....

You are hereby summoned to appear before the Magistrate's Court for  
District ..... at ..... on the  
day of , 19 .  
at o'clock in connection with the hearing of an application for the  
custody of a child named .....  
born to ..... on.....

Dated this day of , 19 .

*Clerk of the Magistrate's Court  
for District .*

MAINTENANCE

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FORM NO. 13

(Rule 15(1))

*Application for Delivery of Child*

Applicant's address for service.....  
.....

I,.....  
of.....  
being .....

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hereby make application for an order for delivery of a child named  
 .....  
 born on.....  
 by virtue of the fact that this court made an order dated  
 .....  
 granting legal custody of the said child and the said child was unlawfully taken  
 out my custody.

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 19 .

.....  
*Applicant.*

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**MAINTENANCE**

FORM NO. 14

*(Rule 15(2))*

*Summons for the Hearing of an Application  
 for Delivery of Child*

To:.....  
 of.....

You are hereby summoned to appear before the Magistrate's Court for  
 District \_\_\_\_\_ at ..... on the  
 \_\_\_\_\_ day of \_\_\_\_\_, 19  
 at \_\_\_\_\_ o'clock in connection with the hearing of an application for  
 an order for delivery of a child named

.....  
 born on.....  
 .....

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 19 .

.....  
*Clerk of the Magistrate's Court  
 for District \_\_\_\_\_ .*

## SECOND SCHEDULE

## PRIORITY AS BETWEEN ATTACHMENT ORDERS

*(Rule 10(4))*

1. Where the employer is required to comply with 2 or more attachment orders in respect of the same defendant all of which are made to secure payment under the same type of order, then on any pay-day the employer shall,

- (a) deal with the orders according to the respective date on which they were made, disregarding any later order until an earlier order has been dealt with;
- (b) deal with any later order as if the earnings to which it relates were the residue of the defendant's earnings after the making of any deduction to comply with an earlier order.

2. Where the employer is required to comply with 2 or more attachment orders and one or more, but not all, are made to secure payments under different types of orders, then on any pay-day the employer shall,

- (a) deal first with any order made to secure maintenance payments and payments adjudged to be paid by a conviction or treated as so adjudged; and
- (b) deal thereafter with any order which is made to secure the payment of a judgment debt as if the earnings to which it relates were the residue of the defendant's earnings after the making of any deduction to comply with an order having priority under subparagraph (a); and
- (c) if there are 2 or more orders of the same type to which subparagraph (a) or (b) relates, apply the provisions of paragraph 1 in respect of the priority of those orders.

3. In paragraph 1 "pay-day" means an occasion on which earnings to which an attachment order relates becomes payable.

## THE LAWS OF BARBADOS