Revocation of Paternity Act (ROPA)

■ Procedural Checklists for ROPA Actions:

- ■ **Setting Aside an Acknowledgment of Parentage:** MCL 722.1437 governs motions and actions to set aside an acknowledgment of parentage. MCL 722.1435(1).

- ■ **Determining that a Genetic Father Is Not a Child's Father:** MCL 722.1438 governs motions and actions to determine that a genetic father is not a child's father. MCL 722.1435(2).

- ■ **Setting Aside an Order of Filiation:** MCL 722.1439 governs motions to set aside an order of filiation. MCL 722.1435(3).

- ■ **Determining that a Child's Presumed Father Is Not a Child's Father:** MCL 722.1441 governs motions and actions to determine that a child's presumed father is not a child's father (child born out of wedlock). MCL 722.1435(4).

▶ Editorial Advisory Committee

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Revocation of Paternity Act (ROPA)
Determining that a Genetic Father Is Not a Child's Father

Actions under the Revocation of Paternity Act (ROPA), MCL 722.1431 *et seq.*, resolve the identity of a child's father; ROPA enables a court to determine who is, and who is not, the father of a child. The statute under ROPA specific to determining that a genetic father is not a child's father is MCL 722.1438. MCL 722.1435(2). In addition to the provisions in MCL 722.1438, the relevant provisions in MCL 722.1443 also apply to actions to determine that a genetic father is not a child's father.

Initiation of an Action to Determine That a Genetic Father Is Not a Child's Father

■ **Is the ROPA action permitted?**

❑ A ROPA action **MAY NOT** be initiated when a court has jurisdiction of a child under MCL 712A.1 to MCL 712A.32 (probate code governing the jurisdiction, procedure, and disposition of minors), **AND**

❑ A petition to terminate parental rights to the child has been filed. MCL 722.1443(15).

❑ **HOWEVER**, a ROPA action **MAY** be permitted if the court having jurisdiction of a child under MCL 712A.1 to MCL 712A.32 determines that allowing an action under ROPA is in a child's best interests. MCL 722.1443(15).

■ **Was the ROPA action properly initiated?**

A ROPA action may be initiated by complaint in a circuit court as an original action or by motion in certain actions that already exist in a circuit court. MCL 722.1443(1).

■ **Original action in circuit court.**[1]

❑ When there is not an existing action involving the child, a party may initiate an original action in circuit court by filing a complaint.

❑ The complaint **MUST** be filed in the county where the mother or child resides, **OR**

❑ If the child and mother do not reside in Michigan, the complaint **MUST** be filed in the county where the child was born. MCL 722.1443(1).

■ **Motion in certain existing actions in circuit court.**

❑ When an existing action identified in MCL 722.1443(1) involves the child, a ROPA action **MUST** be initiated by motion in the existing case.

❑ A motion **MUST** be filed if an action involving the support, custody, or parenting time related to a child already exists, regardless of the stage of the proceedings in the existing action, **OR**

❑ If an action under MCL 712A.2(b) is pending in a circuit court in Michigan, the ROPA action **MUST** be initiated by motion in the existing case.

❑ The motion **MUST** be initiated pursuant to the applicable court rules. MCL 722.1443(1).

■ **Was the action to determine that a genetic father is not a child's father initiated by one of the parties authorized to initiate it?**

❑ An action to determine that a genetic father is not a child's father may be initiated by any of the following individuals:

❑ A child's mother. MCL 722.1438(1).

❑ A genetic father. *Id.*

❑ A prosecuting attorney. *Id.*

❑ An alleged father. *Id.*

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[1]ROPA actions are identified by case-type code *DP*. See *Michigan Trial Court Records Management Standards—Case Type Codes (MCR 8.117)*, Circuit Court Case-Type Code List (A)(6)(d) (rev. 5/2021). *DP* identifies "[a]ll questions of paternity; paternity and custody; or paternity, custody, and support. [*DP* is also] used for intrastate transfers of postjudgment paternity; paternity and custody; or paternity, custody, and support complaints." *Id*.

> ▶ **Note:**
>
> An alleged father **IS NOT** permitted to initiate an action under ROPA "if the child is conceived as the result of acts for which the alleged father was convicted of criminal sexual conduct under [MCL 750.520b to MCL 750.520e]." MCL 722.1443(14).

- ■ **Was the action to determine that a genetic father is not a child's father timely initiated?**

  - ❑ An action to determine that a genetic father is not a child's father is timely initiated if it is initiated within either of the following periods, *whichever is later*:

    - ❑ The action was filed within three years after the child's birth, **OR**

    - ❑ The action was filed within one year after the date a genetic father was designated as a child's father. MCL 722.1438(1).

  - ❑ A party may request an extension of the deadline specified for initiating an action under ROPA, whether the action is initiated by complaint in an original action or by motion in an existing action. MCL 722.1443(12).

  - ❑ A court **MAY** extend the time allowed for a party to initiate a ROPA action. MCL 722.1443(12).

  - ❑ A request for an extension of time **MUST** be accompanied by an affidavit.[2] *Id.*

    - ❑ The affidavit **MUST** be signed by the person requesting the extension. *Id.*

    - ❑ The affidavit **MUST** state facts that the person requesting the extension satisfied all the requirements for initiating an action under ROPA but did not timely file the action or motion for one of the following reasons:

      - ❑ **Mistake of fact.** MCL 722.1443(12)(a).

        "A mistake of fact is 'a belief that a certain fact exists when in truth and in fact it does not exist.'" *Rogers v Wcisel*, 312 Mich App 79, 96 (2015), quoting *Montgomery Ward & Co v Williams*, 330 Mich 275, 279

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[2]"An oath or affidavit . . . may be taken before a justice, judge, or clerk of a court, or before a notary public." MCL 600.1440(1). See *Sherry v East Sub Football League*, 292 Mich App 23, 31 (2011) ("To be valid, an affidavit must be (1) a written or printed declaration or statement of facts, (2) voluntarily made, and (3) confirmed by the oath or affirmation of the party making it, taken before a person having authority to administer such oath or affirmation.").

(1951). "The law . . . does not require that a party have no knowledge that a fact might be untrue to create a mistake of fact." *Wcisel*, 312 Mich App at 96. A party may establish a mistake of fact when the party acts on an erroneous belief, even if the party acted on the belief only in part, and even if the party had some doubt about the truth of the belief. *Wcisel*, 312 Mich App at 96. MCR 2.112(B)(1) requires a party alleging mistake of fact to state with particularity the circumstances that constitute mistake.

❑ **Newly discovered evidence** that could not have been discovered earlier with the exercise of due diligence. MCL 722.1443(12)(b).

❑ **Fraud.** MCL 722.1443(12)(c). A party alleging fraud must state with particularity the circumstances that constitute fraud. MCR 2.112(B)(1).

❑ **Misrepresentation or misconduct.** MCL 722.1443(12)(d).

❑ **Duress.** MCL 722.1443(12)(e).

❑ If the court finds that the affidavit in support of the time extension is sufficient, the court **MAY** allow the action or motion to be filed and engage in any other action considered appropriate. MCL 722.1443(13).

❑ The party requesting the extension of time has the burden of proving by **clear and convincing evidence** that granting relief under ROPA would **NOT** be against a child's best interests in light of the equities of the case. *Id.*

■ **Is it a Title IV-D case?**

❑ In Title IV-D cases, the court **MAY** appoint an attorney to represent the state's interests with regard to the action or motion under ROPA. MCL 722.1443(6).

❑ An attorney must be one approved by the Office of Child Support. *Id.*

❑ The court **MAY** appoint a guardian ad litem to represent the child's interests. *Id.*

■ **Is a surety or other assurance appropriate?**

❑ With the exception of an action filed by a mother who proves by clear and convincing evidence that a child was conceived as a result of nonconsensual sexual penetration (MCL 722.1445(2)), a court MAY order the person who initiated the ROPA action or motion to post a monetary amount with the court, to obtain a surety, or to offer other assurances to secure

attorney fees and costs if the person does not prevail. MCL 722.1443(11).

Affidavit in Support of an Action to Determine That a Genetic Father Is Not a Child's Father

■ **Was an affidavit filed in support of the action to determine that a genetic father is not a child's father?**

❑ An affidavit in support of an action to determine that a genetic father is not a child's father **MUST** be filed when the action is initiated.[3] MCL 722.1438(2).

❑ The affidavit **MUST** be signed by the person initiating the action, **AND**

❑ The affidavit **MUST** state facts that constitute one of the factors listed below:

   ❑ The genetic tests establishing a man as a child's father were inaccurate, MCL 722.1438(2)(a), **OR**

   ❑ The genetic material of a man designated as a child's genetic father was unavailable to the child's mother, MCL 722.1438(2)(b), **OR**

   ❑ A man having DNA that is identical to the genetic father's DNA is a child's father, MCL 722.1438(2)(c).

■ **Is the affidavit sufficient? That is, does the mandated affidavit include facts that constitute one or more of the statutory requirements set forth MCL 722.1438(2)?**

❑ A court's review of the affidavit is **NOT** to determine whether the facts alleged in the affidavit are true. A court's review is limited to determining whether the facts stated in the affidavit are sufficient to establish one of the three factors listed in MCL 722.1438(2)(a)-(c) required to support the action for determining that a genetic father is not a child's father. MCL 722.1438(2).

   ❑ **The affidavit is sufficient.** If a court finds that an affidavit filed under MCL 722.1438(2) is sufficient a court **MUST** order that blood or tissue typing or DNA

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[3]The required affidavit in support of an action to determine that a genetic father is not a child's father is separate from, and in addition to, the affidavit required to request an extension of time in which to initiate a ROPA action. "An oath or affidavit . . . may be taken before a justice, judge, or clerk of a court, or before a notary public." MCL 600.1440(1). See *Sherry v East Sub Football League*, 292 Mich App 23, 31 (2011) ("To be valid, an affidavit must be (1) a written or printed declaration or statement of facts, (2) voluntarily made, and (3) confirmed by the oath or affirmation of the party making it, taken before a person having authority to administer such oath or affirmation.").

identification profiling be conducted as required under MCL 722.1443(5). MCL 722.1438(3).

❑ A court **MAY** order the person who filed the action to determine that a genetic father is not a child's father to repay the state for the cost of the genetic testing. *Id.*

❑ The person who filed the action has the burden of proving by clear and convincing evidence that a child's genetic father is not the child's father. *Id.*

▶ **Note:**

Whether an action to determine that a genetic father is not a child's father was initiated by complaint in an original action or by motion in an existing action, there is no requirement that any party be represented by the prosecuting attorney, an attorney appointed by the county, or a court-appointed attorney. MCL 722.1438(5).

Blood or Tissue Typing or DNA Identification Profiling

■ **Court MUST order blood or tissue typing or DNA identification profiling.**

❑ MCL 722.1443(5) mandates blood or tissue typing or DNA identification profiling in all actions under ROPA; that is, a court **MUST** order the parties in an action or motion under ROPA to submit to, and pay for, blood or tissue typing or DNA identification profiling to assist the court in making the findings required under ROPA. MCL 722.1443(5).[4]

❑ The testing **MUST** be conducted as indicated in MCL 722.716 of the Paternity Act.[5] MCL 722.1443(5).

❑ **HOWEVER**, a court is **NOT** bound by the test results when it makes the necessary findings in a ROPA case. *Id.*

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[4]In addition to the mandate in MCL 722.1443(5) regarding blood or tissue typing or DNA identification profiling, MCL 722.1438(3) contains a specific provision that mandates blood or tissue typing or DNA identification profiling when a court finds that the affidavit required in the ROPA action is sufficient.

[5]MCL 722.716 provides details concerning the conduct of and payment for the testing ordered; MCL 722.716 also addresses posttesting procedures and the proper management and use of the testing results.

- **Payment for the cost of blood or tissue typing or DNA identification profiling in Title IV-D cases.**

    ❑ If a party's ROPA action satisfies the eligibility criteria set out in Subsection 4.1 of Section 4.06, the Title IV-D program must provide the genetic testing ordered by a court.

    ❑ Federal funding may be available to reimburse the costs of genetic testing in a Title IV-D case when a court has ordered the parties involved to undergo blood or tissue typing or DNA identification profiling.[6]

Disposition of an Action to Determine that a Genetic Father Is Not a Child's Father

- **Court determines that a genetic father is not a child's father and enters the appropriate order.**

    ❑ If the court determines that a genetic father is not a child's father, and the state registrar had identified a genetic father as a child's father, the court clerk **MUST** forward to the state registrar a copy of the court's order declaring that a genetic father is not a child's father. The state registrar **MAY** amend the child's birth certificate accordingly. MCL 722.1438(4).

- **Court refuses to order that a genetic father is not a child's father.**

    ❑ A court **MAY** refuse to enter an order determining that a genetic father is not a child's father **IF**:

        ❑ There is evidence that entering such an order would not be in a child's best interests. MCL 722.1443(4).

        ❑ If a court decides against entering an order determining that a genetic father is not a child's father, a court **MUST** state on the record its reasons for refusing to enter such an order. *Id.*

            ❑ Factors a court **MAY** consider when determining whether entering an order that a child's genetic father is not a child's father is in a child's best interests:[7]

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[6]Subject to the conditions described in Section 4.06, Paternity Disestablishment, of the Michigan IV-D Child Support Manual, a Title IV-D program may be required to provide genetic testing services when a court has ordered the parties to undergo blood or tissue typing or DNA identification profiling. Additionally, pursuant to the eligibility guidelines prescribed in Section 4.06, federal funding may be available to reimburse a portion of the costs of providing the testing.

[7]Several factors in MCL 722.1443(4) apply only when a presumed father is involved and so are not included here with the discussion of acknowledgments of parentage. See MCL 722.1443(4)(a)-(d). One factor listed, MCL 722.1443(4)(d), applies in cases involving a presumed or an alleged father. An alleged father is not an acknowledged father. MCL 722.1433(a) and MCL 722.1433(c).

❑ "The age of the child." MCL 722.1443(4)(e).

❑ "The harm that may result to the child." MCL 722.1443(4)(f).

❑ "Other factors that may affect the equities arising from the disruption of the father-child relationship." MCL 722.1443(4)(g).

❑ "Any other factor that the court determines appropriate to consider." MCL 722.1443(4)(h).

■ **Court MUST order that a genetic father is not a child's father if a child's mother proves the child was conceived as a result of nonconsensual sexual penetration.**

❑ "If an action is brought by a mother who, after a fact-finding hearing, proves by clear and convincing evidence that the child was conceived as a result of nonconsensual sexual penetration," a court **MUST** determine that a child's genetic father is not a child's father, MCL 722.1445(2)(b),

❑ **HOWEVER,** a court is **NOT** required to determine that a genetic father is not a child's father in such cases if a child's biological parents cohabit after the date of the alleged nonconsensual sexual penetration and establish for the child a mutual custodial environment. MCL 722.1445(3).

■ **Action initiated by alleged father.**

❑ When a child's alleged father initiates a ROPA action and by clear and convincing evidence proves that he is a child's father, a "court [**MAY**] make a determination of paternity and enter an order of filiation as provided for under [MCL 722.717." MCL 722.1445(1).

■ **Payment of costs and fees.**

❑ A court **MAY** order a nonprevailing party, even a mother who fails to make the necessary showing under MCL 722.1445(2),[8] "to pay the reasonable attorney fees and costs of a prevailing party." MCL 722.1443(11).

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[8]MCL 722.1445(2) concerns "an action . . . brought by a mother who, after a fact-finding hearing, proves by clear and convincing evidence that the child was conceived as a result of nonconsensual sexual penetration . . . ."

Other Statutes Under Which Paternity May Be Established Through Genetic Testing

■ Two other legislative acts contain information relevant to the use of genetic testing in establishing the identity of a child's father—the **Genetic Parentage Act**, MCL 722.1461 *et seq.*, and the **Summary Support and Paternity Act**, MCL 722.1491 *et seq.* The Genetic Parentage Act and the Summary Support and Paternity Act both address issues related to paternity such as support, custody, and parenting time.

■ Neither the **Genetic Parentage Act** nor the **Summary Support and Paternity Act** has an effect on the procedures in ROPA that are required to change an existing paternity designation; however, the Summary Support and Paternity Act expressly refers to ROPA. The Summary Support and Paternity Act states that "[i]n a proceeding under this act, a party may file a motion to set aside the order entered under [MCL 722.1496(3)[9]] or contesting a child's paternity as provided in the revocation of paternity act, [MCL 722.1431 to MCL 722.1445]." MCL 722.1502.

What a ROPA Order Does Not, Cannot, and Must Not Do

■ **ROPA does not authorize orders affecting other states' judgments or orders inconsistent with applicable federal law.**

❑ The court **MUST NOT** issue an order in a ROPA action "that sets aside a judgment or determination of a court or administrative agency of another state, even if the judgment or determination is being enforced in this state[.]" MCL 722.1443(7).

❑ The court **MUST NOT** issue an order in a ROPA action "that is inconsistent with 28 USC 1738A (full faith and credit given to child custody determinations made by a court in another state) or 28 USC 1738B (full faith and credit given to child support orders entered by a court in another state). *Id.*

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[9]MCL 722.1496(3)(a)-(b) authorize a court to enter an order establishing that an alleged father is or is not a child's father after the Title IV-D agency involved in the case has received the genetic test results and has provided the court with a proposed order based on the results.

■ **ROPA does not authorize orders affecting other states' judgments or orders inconsistent with applicable federal law.**

❑ The court **MUST NOT** issue an order in a ROPA action "that sets aside a judgment or determination of a court or administrative agency of another state, even if the judgment or determination is being enforced in this state[.]" MCL 722.1443(7).

❑ The court **MUST NOT** issue an order in a ROPA action "that is inconsistent with 28 USC 1738A (full faith and credit given to child custody determinations made by a court in another state) or 28 USC 1738B (full faith and credit given to child support orders entered by a court in another state). *Id.*

■ **ROPA does not relieve a man of his obligation to pay child support.**

❑ A judgment under ROPA does **NOT** relieve a man of his obligation to pay support already due to a child or a child's mother before initiation of the ROPA action to set aside an acknowledgment of parentage. MCL 722.1443(3).

❑ A judgment under ROPA does **NOT** prevent an individual from seeking to have a judgment vacated or set aside under the applicable court rules. *Id.*

■ **ROPA does not terminate adoption orders or interfere with adoptive obligations.**

❑ ROPA does **NOT** provide a basis for terminating an adoption. MCL 722.1443(8).

❑ ROPA does **NOT** affect any obligation an adoptive parent has to an adopted child. MCL 722.1443(8).

■ **ROPA does not constitute grounds for vacating paternity established in a surrogacy contract.**

❑ ROPA does **NOT** provide a basis for vacating a paternity determination involving a child who was conceived under a surrogate parentage contract as defined in MCL 722.853. MCL 722.1443(9).

Revocation of Paternity Act (ROPA)
Glossary

A

Acknowledged father

- For purposes of the Revocation of Paternity Act (ROPA), MCL 722.1431 *et seq.*, *acknowledged father* "means a man who has affirmatively held himself out to be the child's father by executing an acknowledgment of parentage under the acknowledgment of parentage act, [MCL 722.1001 to MCL 722.1013]." MCL 722.1433(a).

Affiliated father

- For purposes of the Revocation of Paternity Act (ROPA), MCL 722.1431 *et seq.*, *affiliated father* "means a man who has been determined in a court to be the child's father." MCL 722.1433(b).

Alleged father

- For purposes of the Revocation of Paternity Act (ROPA), MCL 722.1431 *et seq.*, *alleged father* "means a man who by his actions could have fathered the child." MCL 722.1433(c).

C

Child born out of wedlock

- For purposes of the Paternity Act, MCL 722.711 *et seq.*, *child born out of wedlock* "means a child begotten and born to a woman who was not married from the conception to the date of birth of the child, or a child that the court has determined to be a child born or conceived during a marriage but not the issue of that marriage." MCL 722.711(a).

Court

- *Court* is not expressly defined in the Revocation of Paternity Act (ROPA), MCL 722.1431 *et seq.* However, when ROPA refers to initiating a ROPA action by complaint or motion and when ROPA refers to jurisdiction, it is referring to a circuit court in Michigan. See MCL 722.1443

- For purposes of the Acknowledgment of Parentage Act, MCL 722.1001 *et seq.*, *court* "means the circuit court." MCL 722.1002(c).

- For purposes of the Paternity Act, MCL 722.711 *et seq.*, *court* "means the circuit court." MCL 722.711(d).

D

DNA identification profiling

- For purposes of the Paternity Act, MCL 722.711 *et seq.*, *DNA identification profiling* "means a validated scientific method of analyzing components of deoxyribonucleic acid molecules in a sample of genetic testing material to identify the pattern of the components' chemical structure that is unique to the individual." MCL 722.711(f).

G

Genetic father

- For purposes of the Revocation of Paternity Act (ROPA), MCL 722.1431 *et seq.*, *genetic father* "means a man whose paternity has been determined solely through genetic testing under the paternity act, [MCL 722.711 to MCL 722.730], the summary support and paternity act, or the genetic parentage act." MCL 722.1433(d).

O

Order of filiation

- For purposes of the Revocation of Paternity Act (ROPA), MCL 722.1431 *et seq.*, *order of filiation* "means a judicial order establishing an affiliated father." MCL 722.1433(f).

P

Presumed father

- For purposes of the Revocation of Paternity Act (ROPA), MCL 722.1431 *et seq.*, *presumed father* "means a man who is presumed to be the child's father by virtue of his marriage to the child's mother at the time of the child's conception or birth." MCL 722.1433(e).

S

Sexual penetration

- For purposes of MCL 722.1445 of the Revocation of Paternity Act (ROPA), *sexual penetration* "means that term as defined in . . . MCL 750.520a." MCL 722.1445(4). MCL 750.520a(r) defines *sexual penetration* as "sexual intercourse, cunnilingus, fellatio, anal intercourse, or any other intrusion, however slight, of any part of a person's body or of any object into the genital or anal openings of another person's body, but emission of semen is not required."

State registrar

- For purposes of the Acknowledgment of Parentage Act, MCL 722.1001 *et seq.*, *state registrar* "means that term as defined in [MCL 333.2805]." MCL 722.1002(e). *State registrar* is defined in MCL 333.2805 of the Public Health Code as "the official appointed under [MCL 333.2813] or his or her authorized representative." MCL 333.2805(1). According to MCL 333.2813, the state registrar is "to administer the system of vital statistics." MCL 333.2813(1). A state registrar's specific duties are set forth in MCL 333.2813(2)(a)-(f).

T

Title IV-D case

- For purposes of the Revocation of Paternity Act (ROPA), MCL 722.1431 *et seq.*, *Title IV-D case* "means an action in which services are provided under part D of title IV of the social security act, [42 USC 651 to 42 USC 669b]." MCL 722.1433(g).