Michigan Supreme Court

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Steven D. Capps
Director

MEMORANDUM

DATE: July 26, 2012

TO: Family Division Judges
         Friends of the Court
         Family Division Referees
cc: Court Administrators

FROM: Steven D. Capps

RE: The Revocation of Paternity Act (RPA)

The Revocation of Paternity Act (RPA)[1] became effective June 12, 2012. The act significantly changes the description of who has standing to establish or contest a child's paternity, establishes timelines for challenging existing paternity determinations, and addresses the authority of juvenile courts to adjudicate paternity as part of a child welfare proceeding. This memo summarizes the act.[2]

New Terms: *Acknowledged Father* is a man who is determined to be the father based on signing an Acknowledgment of Parentage. *Affiliated Father* is a man who has been determined to be a child's father pursuant to a court action. *Alleged Father* is a man who could have fathered the child. *Presumed Father* is a man who was married to the mother at the time of conception or birth.

Mandatory Genetic Testing: Section 13(5) requires the court to order genetic testing of the parties to a motion or action filed under the RPA and must be conducted in accordance with the requirements in section 6 of the Paternity Act (MCL 722.716).[3]

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[1] 2012 PA 159 (MCL 722.1431 et. seq.). The underlying bill package includes SB 557, SB 560, HB 5328, and HB 5329.

[2] SCAO is evaluating whether additional court rules, policies, forms, or guidelines will be necessary or useful to implement the act.

[3] The Office of Child Support has not yet determined what, if any, functions under the RPA are eligible for IV-D funding. It has released preliminary instructions pending further review.
See http://mi-support.cses.state.mi.us/policy/memos/2012/2012-026.pdf

Alleged Father May Seek an Order of Filiation: If an alleged father in a proceeding under the RPA proves by clear and convincing evidence that he is the child's father, the court may enter an order of filiation as provided in section 7 of the Paternity Act (MCL 722.717).

Setting Aside Acknowledgment of Parentage: Section 7 governs an action to set aside the paternity of a man who has signed an Acknowledgment of Parentage.[4]

> **Who may file:** the mother, the acknowledged father, the alleged father, or the prosecuting attorney. Note that the child is no longer able to file.

> **When:** The action must be filed within three years of the child's birth or within one year after signing the acknowledgment, whichever is later.

> **Requirements:** The filer must file an affidavit that establishes one of the following: (1) a mistake of fact; (2) newly discovered evidence that could not have been discovered by due diligence before the acknowledgment was signed; (3) fraud; (4) misrepresentation or misconduct; or (5) duress in signing the acknowledgment. If the court finds that the affidavit is sufficient, the court must order genetic testing in accordance with section 6 of the Paternity Act. The filer has the burden of proof by clear and convincing evidence.

Setting Aside an Order of Filiation: Section 9 governs an action to set aside an order of filiation but only if the order was entered as a result of the affiliated father's failure to participate in the proceedings. If the affiliated father participated in the proceeding, an action may not be brought under section 9.

> **Who may file:** The mother, an alleged father, or the affiliated father.

> **When:** Within three years after the child's birth or within one year after the date of the order of filiation, whichever is later.

> **Requirements:** The action is by a motion in the case. There are no standards in the act for setting aside the order of filiation, but it is likely that genetic testing will be determinative.

Setting aside Paternity of a Presumed Father and Establishing a Child's Paternity: Section 11 governs an action to determine that a presumed father is not the child's father and to establish the child's paternity.

> **Who may file:** The child's mother, a presumed father, an alleged father, or the Department of Human Services (DHS) when the child is supported by public assistance.

> **When:** Within three years[5] after the child's birth or if the presumed father raises the issue

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[4] The revocation procedure in the Acknowledgment of Parentage Act (APA) is eliminated, but the requirements in this new act are the same as those previously found in the APA (MCL 722.1011).

[5] The requirement that the action be brought within three years of the child's birth does not apply for one year after the effective date of the act.

in an action for divorce or separate maintenance between the presumed father and the mother.

Requirements: The requirements are different depending on the person who files the action.

The Mother: The mother must file an action identifying the alleged father by name. The presumed father, the alleged father, and the mother must have openly acknowledged a biological relationship between the alleged father and the child. There is no definition in this act of "openly acknowledged." Finally, the court must determine the child's paternity in the action, or the act of disestablishing the presumed father's paternity must result in the alleged father being the legal father. An example of the latter situation is an acknowledgment in another state that would be honored, but for the existence of the presumed father in Michigan.

The mother also may file by identifying the alleged father by name and showing that the presumed father had the ability to support the child and has failed to provide regular and substantial support for a period of two years or more or has failed to substantially comply with the support order.[6] The same requirement that the child's paternity be determined in the case or the disestablishment of the presumed father's paternity results in establishing the alleged father's paternity applies here as well.

The Presumed Father: The presumed father may file an action to disestablish his paternity. Although the RPA does not identify what finding the court must make to disestablish a presumed father's paternity, the subsection states that the action must be filed *for the purpose of* establishing the child's paternity. It is unclear whether the requirement is general (disposing of the impediment of having a presumed father so that at some point the child's true paternity can be established) or specific (actually having someone waiting to establish paternity).

The Alleged Father: The court may disestablish a presumed father's paternity if the alleged father files an action and shows one of the following:

1) That he did not know or have reason to know that the mother was married at the time of conception; that the mother, the presumed father, and the alleged father mutually and openly acknowledged a biological relationship between the alleged father and the child; and the court must determine the child's paternity in the action, or the act of disestablishing the presumed father's paternity must result in the alleged father being the legal father.

2) That he did not know or have reason to know that the mother was married at the time of conception; that the presumed father had the ability to support the child and failed to provide regular and

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[6] The standard is similar to that for terminating parental rights under MCL 712A.19(3)(f).

substantial support for a period of two years or more or failed to substantially comply with the support order.[7] The same requirement that the child's paternity be determined in the case or the disestablishment of the presumed father's paternity will result in establishing the alleged father's paternity applies here as well.

3)   That the mother was not married at the time of conception.

The Department of Human Services: The court may disestablish a presumed father's paternity if DHS files an action and shows that the child is being supported in whole or in part by public assistance, the presumed father had the ability to support the child and failed to provide regular and substantial support for a period of two years or more or failed to substantially comply with the support order[8], and the child's paternity is determined in the case or the disestablishment of the presumed father's paternity will result in establishing the alleged father's paternity.

Special Provisions for Child Welfare Proceedings: If there is a pending child welfare proceeding, section 13, subsection (15) requires that the court with jurisdiction over that action must approve a filing under the act as being in the best interests of the child. This provision protects against the possibility that an alleged father's interest may arise at about the time the court is finalizing a permanency option and delay that option against the child's interests. An action for revocation of paternity must be brought in a pending abuse and neglect case and the act authorizes the court to make a determination of paternity in the case.[9]

Other Provisions:

Filing: An action for revocation of paternity must be filed as a motion in an existing case involving the child.[10] If there is not an existing case involving the child, an original action is brought in the county where the child or mother resides, or if the child and mother live out of state, where the child was born.[11]

Past Due Support: A man is obligated to pay all past-due support that accrued before the action was filed.

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[7] Ibid.

[8] Ibid.

[9] The Paternity Act also requires the court to order support, and for the clerk to collect a $9 fee for entering the order and a $40 fee to amend the birth certificate.

[10] If the person filing the motion in a domestic relations action is not a party to the action, the court should treat the motion as a motion to intervene as either a third-party plaintiff or defendant. If the motion is granted, the caption of the case should also be amended to include the third party. In a child welfare proceeding, the caption would remain unchanged but, if the court enters an order for child support it should designate one of the parties as the plaintiff and the other as the defendant on the Uniform Support Order (FOC 10) so that the case can be processed in Michigan's child support enforcement system. See SCAO Administrative Memorandum 2008-01 *Ordering Support in Child Protective Proceedings*.

[11] The case should be captioned as "plaintiff v. defendant" and not "in re the paternity of _____." The case classification code is DP.

Court Not Obligated to Revoke Paternity: The court has broad discretion to refuse to enter an order that disestablishes paternity if the court finds that it is not in the best interests of the child to do so. Factors include estoppel, delay in filing, relationship between child and alleged or presumed fathers, or harm that may result to the child, among others.

Attorneys, Fees, Costs: The court may appoint an attorney approved by the Office of Child Support within DHS to represent the state's interests in a IV-D case, and may appoint a guardian ad litem to represent the child's interests. The court may order a nonprevailing party to pay the reasonable costs and attorney fees of a prevailing party. The court also may order a person to post money with the court, obtain a surety, or provide other assurances to secure the costs and attorney fees in the action in the event the person does not prevail.

Other Actions Not Affected: The act cannot be used to attack a determination made in another state, nor can it be used as a basis to terminate an adoption or to vacate a judgment of a child conceived under a surrogate parentage contract.

Common Law Actions to Set Aside Paternity: Any common law actions to set aside paternity will remain available for two years after the act's effective date.

Extension of Time to File: The court may extend the time for filing. The filer must sign an affidavit that states facts establishing one of the following: (1) a mistake of fact; (2) newly discovered evidence that could not have been discovered by due diligence earlier; (3) fraud; (4) misrepresentation or misconduct; or (5) duress. The court must find that granting the extension will not be against the best interests of the child considering the equities of the case.

Prohibition in Criminal Sexual Conduct Cases: An alleged father may not bring an action if the child is conceived as the result of acts for which the alleged father was convicted of criminal sexual conduct.

If you have questions concerning this act, please contact Steve Capps at 517-373-4831 or cappss@courts.mi.gov.