

Paternity Hot Topics

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Direct to Consumer Genetic Testing



Direct to Consumer Genetic Tests

- Paternity and other genetic tests available through the internet.
- Late 2007 paternity test kits became available for purchase at major pharmacies in CA, OR, WA.
- Retail for \$29.99 + additional fee of approximately \$119 for sample to be analyzed.
- Results in 3-5 business days.
- \$319 for a legal purpose DNA test.

below the map.

Search within 25 miles or 10 cloud mn Find

IDENTIGENE Home Paternity Test kit with this short video.

Learn how to use IDENTIGENE's Home Paternity Test kit with this short video.

Google Custom Search Search

how-to questions?

- » How do I use the test?
- » Where do I send my swabs?
- » Why include the mother?
- » What if the father isn't available?
- » When will my results be ready?
- » More frequently asked questions...

helpful links

- » Genetiopedia: a resource for understanding DNA testing
- » Legal? Personal? Selecting a DNA test
- » Paternity testing forum
- » FREE Eye Color Paternity Test (online)

RESULTS:

Walgreens

1 Walgreens (3.9 mi)
2505 W Division St
St Cloud, MN 56301
(320) 251-9433

What does this mean for you?

- Greater availability of paternity tests to general public.
- Watch for genetic test results from this type of test.
- More cases with zero test results post adjudication.

Admissible as evidence?

- Minn. Stat. 257.62, subd. 6
- Certified report of facts and results of laboratory analysis,
- Lab is accredited to meet the Standards for Parentage Testing of the American Association of Blood Banks, AND
- Prepared and attested to by a qualified expert appointed by the court.

Admissible as evidence? (cont.)

- Admissible in evidence without proof of the seal, signature, or official character of the person whose name is signed to it.
- If no objection is made, the blood or genetic test results are admissible as evidence without the need for foundation testimony or other proof of authenticity or accuracy.

American Association of Blood Banks

- Cannot prohibit accredited labs from performing "non-legal" tests.
- Labs cannot claim/advertise that non-legal testing meets AABB Standards.
- Labs cannot state that the testing meets the standards and only the chain of custody is lacking.
- List of accredited labs (over 40) on website: www.aabb.org

Additional Testing

- Minn. Stat. 257.62, Subd. 2.
- If not agreed to by parties, must
 - Contest the original tests,
 - Pay in advance for additional testing, AND
 - Performed by another qualified expert.

Hypothetical Scenarios

Vacating Recognition of Parentage

- Action to vacate – Minn. Stat. §257.75, subd. 4
 - Brought by mother, father, man signing joinder, child, or public authority.
 - Must be brought within 1 year of execution of recognition or within 6 months of obtaining results of genetic testing indicating man is not the father of child.
 - Child must bring action no later than 1 year after reaching age of majority.
 - Moving party must request on basis of fraud, duress, or material mistake of fact.

Vacating Recognition of Parentage (cont.)

- Genetic Testing – Minn. Stat. §257.75, subd. 4.
 - Court shall order if finds a prima facie basis for vacating the recognition.
 - Court shall require party seeking to vacate to make advance payment for the tests.
 - Failure to pay for the costs will result in action being dismissed with prejudice.

Vacating Recognition of Parentage

-- Caselaw

- *Williams v. Carlson*, 701 N.W. 2d 274 (Minn. App. 2005)
 - Father filed petition to establish custody and parenting time.
 - Court ordered genetic testing at request of mother. Tests exclude father as biological father.
 - Court awarded sole physical custody of child to father.

Williams v. Carlson (cont.)

- Appellate court affirmed District Court.
 - Trial court should not have ordered genetic tests as mother did not deny paternity.
 - Mother did not bring timely action to vacate the ROP. Did not allege fraud, duress or material mistake of fact.
 - Therefore, trial court did not err in declaring existence of parent and child relationship and awarding custody to father.

Vacating Recognition of Parentage

– Caselaw (cont.)

- *Pike v. Mendez*, (Unpub.) C2-00-2157 (Minn. App. 2001)
 - Mother and father sign ROP knowing father is not biological father.
 - Father signed because mother promised to continue their relationship.
 - Court properly denied request for genetic testing because no fraud or duress involved in signing of ROP.

Fiscal Consequences

- Minn. Stat. §257.75
 - If a Recognition of Parentage is vacated, the court *shall* terminate the ongoing child support obligation.
 - Modification of child support *may* be made retroactive with respect to any period the motion to vacate is pending but only from the date of service of the motion.

DHS Policy

“A CSO or County Attorney may not assist parties in any action to vacate an ROP or initiate genetic testing in such cases without an order from the court.”

Factors to Consider

- Child's age
- History of Relationship
- Biological Father
- Timeliness
- Fraud

ROP Best Practices

- Education of parties
 - Minn. Stat. 257.75, subd. 5
 - “The individual providing the form to the parents for execution shall provide oral notice of the rights, responsibilities, and alternatives to executing the recognition.”
- Genetic Testing

In Re Paternity of Cheryl, 746 N.E.2d 488, 500 (Mass. 2001)

“Where the State requires an unmarried woman to name her child's putative father, the department should require that the parties submit to genetic testing prior to the execution of any acknowledgment of paternity or child support agreement. To do otherwise places at risk the well-being of children born out of wedlock whose fathers subsequently learn, as modern scientific methods now make possible, that they have no genetic link to their children.”

To Fax or Not to Fax –
that is the Question

DHS ROP POLICY

Dept Health & Dept Human Svcs

ROPS are to be faxed to
Dept of Health

Fax number:
(651) 215-5834



DHS Helpdesk

- Current form of ROPs can and should be faxed to DHS.
- Counties should keep the original ROP in the file. Counties won't have to request a certified copy if needed for court.
- MDH might ask on occasion if any problems have been reported on the new fax method.
- DHS encourages the counties to use the fax method and report any issues they encounter.

Issues

- Certified Copy? Submit Original?
- Who is the record keeper?
- Result the same if mail or fax it?
- If mail it – DHS destroys it in one year
 - Scanned and saved electronically
- Which counties mail and which ones fax?
- Need for consistency?
- What would a judge accept?

Which forum?

■ INITIATED IN EXPEDITED PROCESS

Cases resolved?
Referrals to District Court?
Timelines?
CSO time?



■ INITIATED IN DISTRICT COURT

Cases resolved?
Trials?
Timelines?

Where to initiate Paternity Actions

- District Court
 - Rules of Family Court Procedure (Rule 301-313)
 - And Rules of Civil Procedure where applicable and not in conflict with statutes
- Expedited process
 - Rule 371
 - Service of Summons & Complaint at least 20 days prior to hearing
 - Service of supporting affidavit is optional
 - Required to serve a request for blood or genetic testing unless testing completed
 - May also serve an Order to Show Cause pursuant to Rule 303.05 of Gen. R. of Prac.
 - Rules 301-313 do not apply

Expedited Process

- Permissive Proceeding at the Option of each County
- Rule 353.01 subdivision 2
- Must be a IV-D case

Ex-Pro Paternity Orders

- Any order issued pursuant to Rule 353.01 must address the financial issues if appropriate whether or not agreed upon by the parties.
- Limited jurisdiction of magistrate

CSM can issue an order when . . .

- Parties agree or stipulate to paternity, legal & physical custody, child's name
- A party defaults by failing to serve a response or appear at the hearing AND the pleadings specifically address paternity, legal & physical custody and child's name
- EFFECT: if the issues are resolved on a permanent basis, the CSM's order is a FINAL DETERMINATION of all claims raised

CSM can issue a Partial Order when...

- At a minimum parties agree to paternity and temporary or permanent physical custody
 - Parties can agree to additional issues
- The order is final as to paternity and any other issues not deemed temporary
- Issues not deemed final are referred to District Court

CSM Order: If Paternity and Temp or Perm Physical Custody Not Resolved

- Child Support Magistrate must make findings
- Genetic testing completed?
- If paternity agreed upon but not temp or permanent physical custody, then CSM's order. . . .

District Court

- Issues referred are considered pending; not final until the district ct issues an order deciding
- Cannot appeal the referral order
- If service was proper in Ex Pro, no need to re-serve when referred to Dist. Ct.
- If matter was referred from Ex Pro, "the matter shall be decided in its entirety by the district court judge and shall not be referred back to the expedited process."

Initiate in District Court

- Rule 353.02 subd. 2:
 - If the dist court cannot decide the financial issues without an additional hearing, the ct can refer the financial issues to Ex Pro if the court determines it is "in the best interests of the parties"
 - Referral order must include a "clear statement of the issues referred and a description of the additional information needed, and shall provide date, time and place of the hearing
 - Determine temp. support if possible

**Expedited Process or
District Court**

Is One "Better" than the Other?

**Paternity Adjudication
and Parenting Time Expense
Adjustment**

Any Effects?

District Court

- Attorneys – private and court appointed

- Parties using the parenting time expense adjustment to figure out what parenting time is requested/agreed?

Joint Physical Custody

- Assumed equal parenting time?
- Parties living together once get to court?
- Not living together & no specific schedule
 - "reasonable and liberal" for each parent and let them determine what parenting time it should be?
 - How to apply that designation in setting support?

Paternity and Child Protection

Minn. Stat. 260C.150

Minn. Stat. 260C.212, subd. 4

Other topics

- Putative fathers
- When alleged fathers apply for services
- Multiple Alleged Fathers

Questions

- Comments Welcome

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