

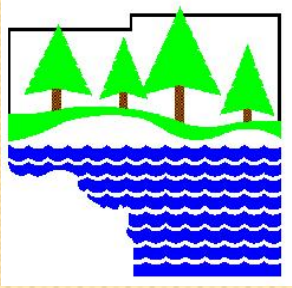


You had a baby, *now what?*

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Now the fun, legal work begins!

CONGRATULATIONS!



Paternity Adjudications

Parentage Act

Minn. Stat. § § 257.51 - 257.74

- A paternity case must determine:
 - Which County will pursue the action;
 - Who the parties are;
 - What to do if a parent does not cooperate;
 - Where the action will commence;
 - When child support starts;
 - How far back past support will reach;



Which county will pursue the action?

Minn. Stat. § 257.59

- Jurisdiction:
 - Any court in Minnesota if action:
 - Commences under the Parentage Act; or
 - Is joined to an action for:
 - Dissolution;
 - Legal separation;
 - Custody under Chapter 518 (“Marriage Dissolution”); or
 - Reciprocal enforcement of support
 - Interstate petition:
 - Mom & child ↪ MN. Alleged/presumed father ↪ another state.
 - Mom & child ↪ another state. Alleged/presumed father ↪ MN.
- Venue
 - Where child/respondent resides/is found, or
 - If respondent is deceased, then county where probate has/could start



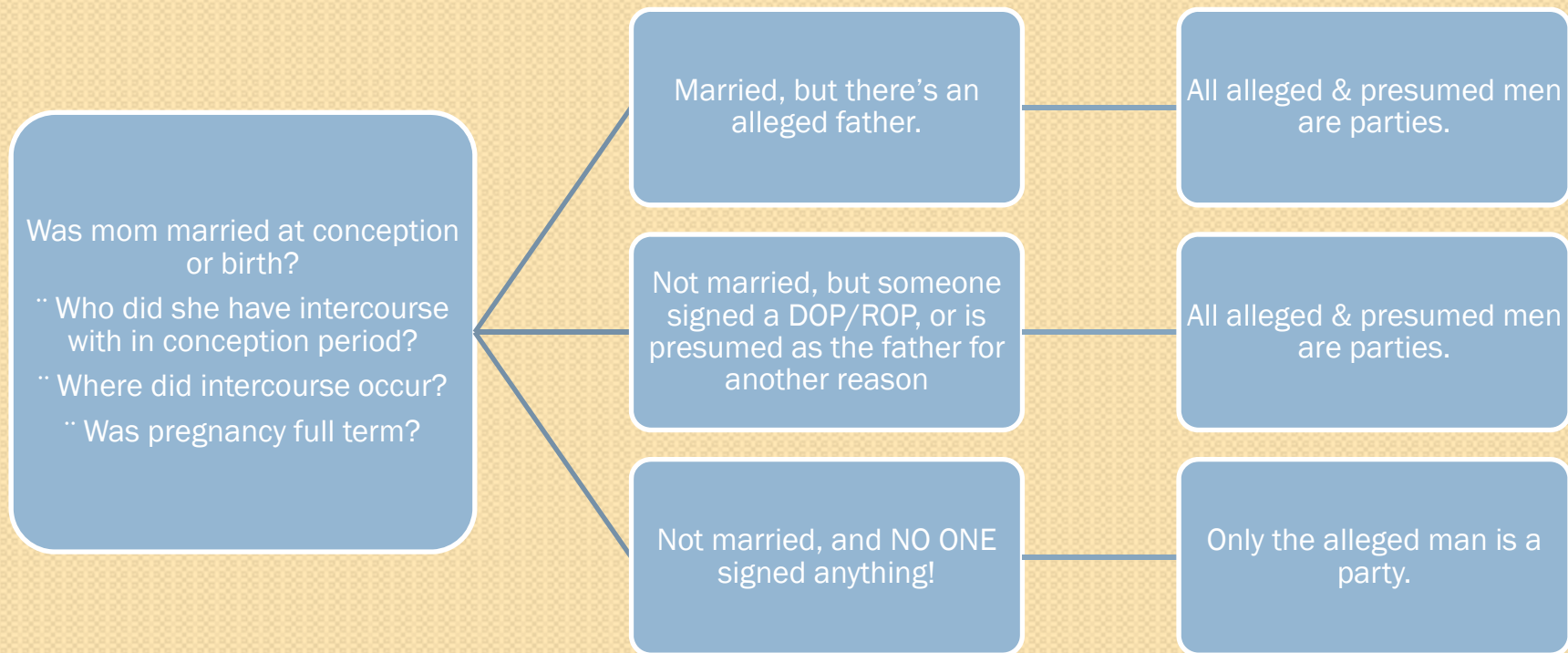
Who will the parties be?

Minn. Stat. § 257.60

1. The public agency
2. The biological mother
3. Each man:
 - Presumed to be a father, and
 - Alleged to be a father
4. The child of the action, if:
 - Child's a minor and case involves a compromise or lump sum payment; or
 - Child's a minor and action is to declare the nonexistence of the father and child relationship; or
 - "Standard" paternity action with a presumed/alleged father but mother denies this existence of this relationship

FACT-GATHERING FOR A PATERNITY CASE

Best practice: use a paternity affidavit
Other option: interview bio mom or any man alleging that he's dad



Paternity Adjudications

- District Court
 - Minn. Gen. R. Prac. 301-314:
 - Most rules here do not apply to paternity actions in Ex Pro, except for:
 - 302.02 – Designation of Parties
 - 303.05 – Orders to Show Cause
 - 308.02 – Statutorily required notices
 - 309 – Contempt
 - 313 – Confidential Numbers and Tax Returns
 - 314 – Parentage Proceedings
 - Presiding officer (“Judge” or “Referee”) has broad authority:
 - Issues with no agreements may be set for trial or another dispute resolution option
 - Rules of Civil Procedure apply, except if there is a conflict, then the Rules of Practice apply
- Expedited Process
 - Minn. Gen. R. Prac. 351 – 379:
 - Rules only apply to actions commenced in the Ex Pro
 - Presiding officer (“Child Support Magistrate”) has limited authority:
 - Issues with no agreement must be referred to District Court
 - Common examples:
 - Adjudication
 - Custody
 - Parenting time
 - Child’s name
 - Rules of Civil Procedure apply where there is no Ex Pro rule relating to the issue.



Paternity Adjudications

- Itasca
 - Most cases initiated in Ex Pro
 - Cases referred from Ex Pro are immediately set for a scheduling with a judge. Many will settle here.
 - Ex Pro hearings:
 - 3 mornings/month
 - Cases can also be scheduled for PM
- Kanabec
 - All cases start in district court
- Ramsey:
 - Most cases initiated in Ex Pro
 - Cases referred from Ex Pro are immediately set for an initial case management conference with a judge or referee. Many will settle here.



Alleged Fathers

- Paternity affidavit from bio mom is best to determine who the alleged father is
- Affidavit is a basis for seeking an order for GTs, Minn. Stat. § 257.62, subd. 1
 - May later be used to “prove up” the case if a party defaults
- How our counties approach the (signed and notarized) affidavit:
 - Itasca:
 - Required from bio mom. If not returned, mom is sanctioned and the action halts until she complies.
 - Kanabec:
 - Paternity affidavit is included
 - Mother also signs the petition
 - Ramsey:
 - Required from bio mom, absent an extraordinary circumstance
 - Accepted from an alleged father



Presumed Fathers

Minn. Stat. §§ 257.55 & 257.62

- Bases for presumptions:
 - Marriage;
 - Attempted marriage before/after birth;
 - Holding out;
 - Declaration of Parentage (DOP);
 - Recognition of Parentage (ROP); and
 - Genetic Tests
- Rebutting Presumptions
 - Standard is clear and convincing evidence
- More than one presumption?
 - Standard: presumption “founded on the weightier considerations of policy and logic.”
 - Examples:
 - Who wants to be dad?
 - How old is the child of the action?
 - Do the parties have other children?
 - What does the child know about his parents/circumstances?



In the real world...

- Itasca
 - Presumed fathers (GT dad + other) are named parties
 - At the hearing, parties may agree on who's adjudicated. If no agreement, then case goes to district court for trial.
- Kanabec:
 - Presumed fathers (GT dad + other) are named parties
 - County will ask to dismiss a party based on the GTs, unless this is contested. Issue remains in district court
- Ramsey
 - Whether case commences in ex pro or district court is based on the presumption issue
 - Case with Husband will most likely start in ex pro
 - Some factors:
 - Separated during conception (e.g. husband lives in another state or was incarcerated)
 - Mom's affidavit says she didn't have intercourse with him
 - Case with ROP father will most likely start in district court since County will also seek to vacate ROP



Rights in Paternity Adjudications

1. Right to Jury Trial

- Under common law, child born out of wedlock was considered *filius nullius* – the child of no one.
- Paternity action is quasi-criminal in nature:
 - The putative father was referred to as the “accused”
 - See (Rev.Stat. (Terr.) 1851, c. 22, s 1, et seq.; Minn.St. § 257.18 , et seq. (1969).
- Right to a jury trial in paternity actions existed under the territorial laws at the time of the adoption of the [Minnesota] state constitution.
 - Smith v. Bailen, 258 N.W.2d 118, 121 (Minn. 1977)
- Case law addressing this goes back to the 1800s
 - Whallon v. Bancroft, 4 Minn. 109, 113 (Gil. 70, 74) (1860)
- Party must make a demand for jury trial. Otherwise, waived.



Rights in Paternity Adjudications

2. Right to Genetic Testing, Minn. Stat. § 257.62

- Any party may request
- In our counties:
 - Itasca:
 - Attempt voluntary swabs
 - If parties disagree or miss appointments: start paternity action & request GT order
 - Alleged father can waive GTs even with order
 - If only one alleged father: may forego GTs & proceed by default if he's not cooperative
 - Kanabec:
 - Attempt voluntary sample
 - GTs required for all cases. Fees waived.
 - If necessary, Order to Show Cause. ALF remains in custody until sample is provided.
 - Ramsey:
 - Attempt voluntary (swab only or swab and serve with pleadings)
 - If GTs weren't done already, then motion for GTs included with pleadings
 - If necessary, Order to Show Cause
- 30 days to object to the GT results
- Person attempting to rebut GT presumption has burden of proof



Rights in Paternity Adjudications

3. Right to an Attorney: Minn. Stat. § 257.69
 - Each party has the right to court-appointed counsel, if requested and qualifies.
 - Representation limited to *establishment of parentage*
 - Itasca:
 - Application for court-appointed counsel served with pleadings
 - Kanabec:
 - Limited requests so far
 - Appointment would most likely be limited to issue on whether ALF is dad.
 - Ramsey:
 - Party usually applies at the hearing.
 - Appointment order states that attorney is discharged after hearing on whether ALF is dad.



Service of Process

Minn. Stat. § 257.60

- Commencement requires:
 - Personal in-hand service
 - Alternate service:
 - Waiver of personal service
 - Service by publication
 - Abode service



Service of Process

Minn. Stat. § 257.60

Who must be served?

- Mother
- Presumed Fathers (Minn. Stat. § 257.55)
 - Marriage;
 - Attempted marriage before birth;
 - Attempted marriage after birth;
 - Holding out;
 - Declaration of Parentage (DOP);
 - Recognition of Parentage (ROP); and
 - Genetic tests
- Alleged biological father
- Sometimes the child
- Sometimes the County



Final Paternity Order

Minn. Stat. § 257.66

- Orders must address
 - Custody (physical and legal)
 - Parenting time (visitation)
 - The child's legal name
 - Ongoing child support (basic support, medical support and child care support)
 - Past support limited to 2 years preceding commencement
 - Mother and father's names, SSNs and their dates of birth and place of birth, if known.
- The “final” order may actually be a combination of orders. Example:
 - Order in ex pro addresses the “fatherhood” part of the action and temporary child support, then
 - First order in district court addresses child's name and temporary custody, then
 - Second (or subsequent orders) address child support, permanent custody and parenting time



Adjudication in the Juvenile File

- Allowed under Minn. Stat. § 260C.150
- Not often used
 - Discrepancies between Family Court File and Child Protection court file
 - Costs
- Adjudication is best resolved in the child support:
 - Limited authority of the Juvenile court
 - Cannot vacate ROP
 - Court-appointed attorneys have different functions in each file
 - Notice requirements are different
 - Long list of issues to resolve in a paternity action
 - If necessary, paternity trial in the child protection file



Adjudication in the Juvenile File

How our counties approach it:

- Itasca and Kanabec:
 - Open communication between child support and CHIPS attorneys.
 - Adjudicate in the family court file
- Ramsey:
 - Child support and child protection attorneys agree where possible to limit adjudication in juvenile files
 - Agree to keep each other informed of what's happening



CHIPS Cases with Transfer of Custody

- Distinguishing Factors
 - Consult with Juvenile Protection Attorney
 - Depends on stage of CHIPS proceeding:
 - If still pending, then in child support paternity case:
 - Ask court to determine custody and paternity time issues, subject to jurisdiction in the juvenile file.
 - Juvenile custody and parenting time issues will trump that part of the child support file.
 - If there's a permanent order, then in child support paternity case:
 - Ask court to award custody and parenting time consistent with the order in the juvenile file.
 - Reunification
 - Prior transfer of custody
 - No prior adjudication



Responses when Mother Fails to Cooperate

- TANF (MFIP) applicant must meet two child support-related conditions:
 1. Cooperation in obtaining child support; and
 2. Assignment of rights to child support
- BUT mother may have good cause for noncooperation:
 - Minn. Stat. § 256.741, subd. 7
- If mother was subpoenaed, issue a warrant for her arrest.
- Sanctions:
 - Stop MFIP benefits
 - MA, but effect is not the same as MFIP
 - NPA – dismiss the action for noncooperation
- Dismissal



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THANK YOU.