

MINNESOTA FAMILY SUPPORT & RECOVERY COUNCIL

2017 ANNUAL CONFERENCE





Paternity Hot Topics in CLV

Comprehensive Legal Vision (CLV) Paternity Group
+
Minnesota Department of Health, Office of Vital Records

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Road Map for Presentation



- CLV – what is it?
- Paternity subgroup in CLV
- Review of 5 Paternity CLV Proposals
- MDH – Office of Vital Records
- On the Horizon...
- BINGO!

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BINGO!!



- **Yes, there is BINGO! Here's how it works....**
 - Grab a BINGO card and some stickers
 - FREE space!
 - Watch/listen for the words or numbers on your bingo card
 - Bingo = 5 in a row either vertical, horizontal, or diagonal
 - First one to get a bingo – Shout it Out!
 - One "grand prize" for the first winner + prizes for the next 10 winners...so keep watching...
 - Have Fun!

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Comprehensive Legal Vision



- **What is the CLV?**
 - It was created to bring child support professionals (agents, supervisors, attorneys, DHS-CSD) together to attempt to solve some of the most difficult child support legal issues in our work.
 - The CLV groups have been meeting since mid-2014.
 - Overlap with legal issues and program considerations.

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Comprehensive Legal Vision



- **4 Work Groups**
 - Enforcement
 - Guidelines
 - Medical
 - Paternity subgroup

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Comprehensive Legal Vision



- **What do the Groups do:**
 - Meet in each large group, subgroups too
 - Research legal concerns, current policy and work direction
 - Contact external agencies related to specific issues
 - Poll counties on what their current practice is
 - Edit or create new state policy
 - Draft proposals for policy or legislative changes. Most often, full agreement but proposal can include a "minority report"
 - Draft letters, forms, etc.

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Comprehensive Legal Vision



- **What are the Resolution options:**
 - DHS-CSD policy updates, or create new policy
 - Written work direction (DHS-SIR message)
 - PRISM updates (*PRISM changes have to be prioritized with upcoming System Modernization.)
 - Communication to MCAA, child support offices, Court Administration, Judicial Officers
 - Legislative proposals
 - Best Practices Manual with Summary Guides on different topics
 - Recommend appeal of a case to the Minnesota Court of Appeals to clarify an issue
 - Other?

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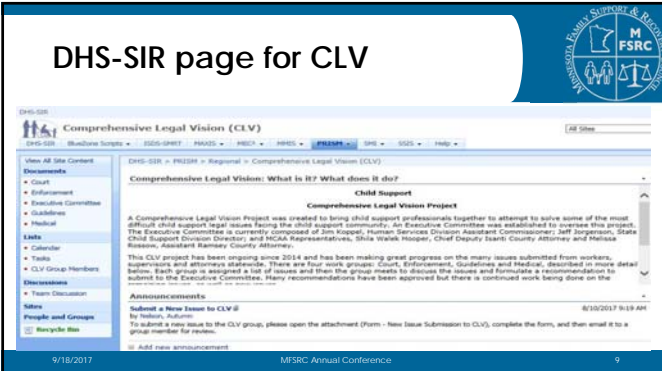
Comprehensive Legal Vision



- **DHS-SIR webpage for CLV**
 - New Issues Submission!
 - Yes, you can submit a new legal-related child support issue to the CLV.
 - CLV Front page - under Announcements, or on the Executive Committee page.
 - Follow directions on the form.

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DHS-SIR page for CLV



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- **How long have we been meeting?**
 - May 15, 2014 was our first subgroup meeting!
 - We typically meet 3-4 times per year.
 - Depends on pending issues
 - Email communications also

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Issue #1 – Elements of Paternity Pleadings and Court Order

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- **Issue #1 – Elements of Paternity Pleadings and Court Order**
 - Why is this an issue? - We did poll of all counties (55 of 87 counties responded):
 - 35 counties include specific recommendation on custody and parenting time
 - 17 counties generally state "address custody and parenting time"
 - 3 counties do not include custody or parenting time in their pleadings
 - **Notice** to parties and gives Court the option to proceed by default.
 - A reservation of custody means that neither parent has custody.

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Issue #1 – Elements of Paternity Pleadings and Court Order

- Why is this an issue?
 - MN caselaw – the county attorney/child support office have an obligation to make sure there is a final custody order in a paternity case. *Morey v. Peppin*, 375 N.W.2d 19, 24 (Minn. 1985).
 - It's important for the parents to have custody and parenting time determined, no matter what county they live in.
 - Child Support Magistrates have identified the differences between counties, and raised this as an issue.

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Issue #1 – Elements of Paternity Pleadings and Court Order

- Analysis:
 - Minn. Stat. § 257.66 – paternity order shall address
 1. Parent-child relationship
 2. Custody
 3. Parenting time - %
 4. Legal name of the child
 5. Child support
 6. Past support/reimbursement

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Issue #1 – Elements of Paternity Pleadings and Court Order

- Analysis:
 - Minn. Stat. § 257.541 – The biological mother of a child born to a mother who was not married to the child's father when the child was born or conceived has sole custody of the child until paternity is established or until custody is determined in a separate proceeding.
 - Minn. Stat. § 518.17 – In an initial custody determination in a paternity action, the court decides based on the best interests of the child.

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• **Issue #1 – Elements of Paternity Pleadings and Court Order**

- Analysis:
 - **Minn. Stat. § 518.003, subd. 5** – Parenting time means the time a parent spends with the child regardless of the custodial designation regarding the child.
 - Parenting time is the important factor to consider in child support calculation; not the custody designation.

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• **Issue #1 – Elements of Paternity Pleadings and Court Order**

- Analysis:
 - **Minn. Rules of Juvenile Protection Procedure, Rule 50** – Parentage case and Child Protection case at same time
 - Subd. 3 – Juvenile Court has jurisdiction on custody and parenting time, and Family Court has jurisdiction to determine parentage, child’s name and child support.

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• **Issue #1 – Elements of Paternity Pleadings and Court Order**

- Resolution:
 - Update existing DHS policy – county paternity pleadings need to include all issues
 1. Parent-child relationship
 2. Physical and legal custody
 3. Parenting time - %
 4. Legal name of child
 5. Child support
 6. Past support/reimbursement

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- **Issue #1 – Elements of Paternity Pleadings and Court Order**
 - Resolution:
 - Communicate with MCAA and child support offices
 - Coordinate with head Child Support Magistrate
 - Proposed language options available on DHS-SIR

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- **Issue #1 – Elements of Paternity Pleadings and Court Order**
 - Resolution - implementing:
 - Meet with parties and discuss all of the issues in a paternity case.
 - Agreement?
 - If not, at least can include both parties' requests.
 - If applicant is co-signor on pleadings, language is slightly different.
 - Be aware of safety concerns and domestic violence issues (OFPs, DABs, criminal no-contact orders).

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- **Issue #1 – Elements of Paternity Pleadings and Court Order**
 - Resolution – language example for Complaint:

THE COUNTY REQUESTS THAT THE COURT:

- Address the issues of legal and physical custody, parenting time, and the legal name(s) of the child(ren) involved in this action, as required by Minnesota Statutes, section 257.66, *Morey v. Peppin*, 375 N.W.2d 19, 24 (Minn. 1985) and *Latourell v. Dempsey*, 518 N.W.2d 564, 565-566 (Minn. 1994).

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• Issue #1 – Elements of Paternity Pleadings and Court Order
 THE COUNTY REQUESTS THAT THE COURT – cont'd:

- Unless either parent files an answer or appears at the hearing* to request other relief, order that:
 - "MOTHER NAME" retain sole physical and sole legal custody consistent with Minnesota Statutes, section 257.541, subdivision 1 subject to "FATHER NAME's" right to request custody under Minnesota Statutes, sections 257.541, subd. 2(b), 518.17 and 518.175; and
 - The issue of parenting time be reserved, subject to "FATHER NAME's" right to request parenting time under Minnesota Statutes, sections 257.541, subd. 2(b), 518.17 and 518.175. The reservation of parenting time still allows for reasonable contact between "FATHER NAME" and the child(ren) as agreed to by the parties; and
 - The child(ren)'s name shall remain as it is on the birth certificate(s).

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Issue #2 – Consent to Release Voluntary Genetic Testing Results & Serving GT Results on all "Parties", not just Parents

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• Issue #2a – Consent to Release Voluntary Genetic Testing Results

- What is the issue?
 - Release of GT results to the parents, before a paternity action is started. Parent A receives genetic info on Parent B, and vice versa.
- Minn. Stat. § 257.62 allows release after a paternity action is commenced.

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• **Issue #2a – Consent to Release Voluntary Genetic Testing Results**

- Why is this an issue?
 - Genetic information is private data – Minn. Stat. § 13.386
 - May be **collected, used, stored** and **disseminated** only with written informed consent of the individual.
 - Previous GT lab forms only addressed collection, use and storage.

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• **Issue #2a – Consent to Release Voluntary Genetic Testing Results**

- Analysis:
 - Reviewed Data Practices statutes (Chapter 13) and GT statute.
- Previous lab forms included consent for collection, use, and storage, but did not include consent to disseminate.

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• **Issue #2a – Consent to Release Voluntary Genetic Testing Results**

- Resolution:
 - Update to labs' forms (August 2017)
 - If situation where lab form not used – Consent Form needed, and example Word document on DHS-SIR
 - Create DHS policy – consent is needed for release of GT results before a paternity action is commenced

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- Issue #2b – Serving GT Results on all “Parties”, not just Parents
 - Why is this an issue?
 - Counties unsure if they should send GT results to Caretaker or Guardian ad Litem or excluded Alleged Father, if they are parties to the paternity action

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- Issue #2b – Serving GT Results on all “Parties”, not just Parents
 - Analysis
 - Minn. Stat. § 257.62 states that “a copy of the test results must be served on each party by first class mail to the party’s last known address.”
 - Statute says “party” and not “parent”

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- Issue #2b – Serving GT Results on all “Parties”, not just Parents
 - Resolution:
 - County must serve all parties to the paternity action, courtesy copy to legal counsel.
 - If party is dismissed (e.g. excluded ALF), then do not have to serve with GT results.
 - DHS-CSD create PRISM form for “other parties”, not just parents, to serve the GT results.

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Issue #3 – Filing Paternity Orders and Acknowledgements with Child’s Birth State

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Issue #3 – Filing Paternity Orders and Acknowledgements with Child’s Birth State

- What is the issue?
 - Filing Paternity Adjudication Orders with child’s birth state
- Filing Voluntary Paternity Acknowledgements with child’s birth state (VAP/AOP)

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Issue #3 – Filing Paternity Orders and Acknowledgements with Child’s Birth State

- Why is this an issue?
 - Updating Birth Record is a **critical, final step** in paternity adjudication process
- Complete picture of the child’s parentage – for driver’s licenses, passports, applications for benefits, health insurance, etc.

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• **Issue #3 – Filing Paternity Orders and Acknowledgements with Child’s Birth State**

- Why is this an issue?
 - Good customer service. And it’s easier for us than for the parents.
- And that happened....
 - Paternity adjudication order not filed.....another man signed a ROP

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• **Issue #3 – Filing Paternity Orders and Acknowledgements with Child’s Birth State**

- Why is this an issue?
 - It reduces time spent years later trying to fix an issue.
- Federal reimbursement for any fees paid by county.

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• **Issue #3 – Filing Paternity Orders and Acknowledgements with Child’s Birth State**

- Resolution:
 - Clarified existing DHS policy
 - Counties should file the paternity orders, and other state’s VAP/AOPs with the child’s birth state.
 - Contact information on IRG. Call first.
 - Get confirmation of filing.

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- **Issue #3 – Filing Paternity Orders and Acknowledgements with Child’s Birth State**
 - Resolution – cont’d:
 - Some states are more tricky than others, but the benefit to the child and parents is important.
 - Letter sent to child support community in November 2016

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- **Issue #3 – Filing Paternity Orders and Acknowledgements with Child’s Birth State**
 - Nationwide work being done/discussions with OCSE, NCSEA and Vital Records – Molly Mulcahy Crawford
 - Filing Paternity Adjudication Orders with child’s birth state
 - Filing Voluntary Paternity Acknowledgements with child’s birth state (VAP/AOP)

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Issue #4 – Competing Presumptions and Multiple Alleged Fathers (ALFs)

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• **Issue #4a – Competing Presumptions**

- Why is this an issue?
 - Before a parentage order is entered, more than one presumption of paternity exists:
 - Inclusionary Genetic Testing Results
 - ROP + other presumption
 - Spouse
 - Holding out as biological child
 - Cannot disregard one presumption and “choose” another

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• **Issue #4a – Competing Presumptions**

- Why is this an issue?
 - We must talk to parties about circumstances
 - Notice to all parties
 - Get it “right” in the beginning
 - The Court makes paternity determination on “weightier considerations of policy and logic”; not the County or the parties.

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• **Issue #4b – Multiple Alleged Fathers**

- Why is this an issue?
 - Notice to all possible alleged fathers
 - Possible defense to action
 - Genetic Testing is critical
- Before a child support order is entered....

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- **Issue #4 – Competing Presumptions & Multiple ALFs**
 - Analysis:
 - **Minn. Stat. § 257.55, subd. 1 & 257.62, subd. 5 – PRESUMPTIONS OF PATERNITY**
 1. Spouse
 2. ROP + other presumption (GTs, Husband, 2nd ROP)
 3. Genetic testing results of 99% or more
 4. Holding out as bio father
 - a. Receives the child into his home and holds out as his biological child

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- **Issue #4 – Competing Presumptions & Multiple ALFs**
 - Analysis:
 - **Minn. Stat. § 257.55, subd. 2 – Rebuttal**
 - Presumption which on the facts is founded on the weightier considerations of policy and logic controls.
 - **Minn. Stat. § 257.57 – Action to declare existence or non-existence of parent-child relationship + time frames**

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- **Issue #4 – Competing Presumptions & Multiple ALFs**
 - Analysis:
 - **Minn. Stat. § 257.60 – Parties to parentage action**
 - Biological mother
 - All presumed fathers
 - All alleged fathers
 - Public authority
 - Child – maybe, with GAL

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- **Issue #4 – Competing Presumptions & Multiple ALFs**
 - Analysis:
 - **Minn. Stat. § 257.60 – No jurisdiction over a party?**
 - Given notice in a manner prescribed by the court
 - Given opportunity to be heard
 - *E.g.* Husband in Florida and he has no ties to Minnesota

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- **Issue #4 – Competing Presumptions & Multiple ALFs**
 - Analysis:
 - **Minn. Stat. § 257.62 – Genetic Testing**
 - “The Court or public authority may, *and upon request of a party shall* require the child, mother, or alleged father to submit to blood or genetic tests.”
 - Voluntary GTs before an action are helpful.

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- **Issue #4 – Competing Presumptions & Multiple ALFs**
 - Resolution:
 - Updated existing DHS policy on Competing Paternity Presumptions with case scenarios
 - Cites statutes, gives case tips and “best practices” suggestion
 - All cases are dependent on the **case facts**. Talk to the parties, gather facts, and then consult attorney.
 - **Before** a child support order is entered....

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- **Issue #4a – Competing Presumptions**
 - 2 or more presumed fathers
 - **Scenario #1: ROP father + Bio father**
 - Need inclusionary GTs for bio father, or exclusionary GTs for ROP father
 - Both presumed fathers are parties
 - Vacate ROP
 - Adjudicate one of the fathers as legal father

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- **Issue #4a – Competing Presumptions**
 - 2 or more presumed fathers
 - **Scenario #2: Husband (w/ J&D)+ Bio father**
 - Husband's Judgment and Decree says "not the father of the child" (review language with assigned attorney)
 - Bring paternity action – only bio father is a party
 - Request GTs, if not already done
 - Can proceed with inclusionary GTs of bio father
 - Adjudicate bio father as the legal father

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- **Issue #4a – Competing Presumptions**
 - 2 or more presumed fathers
 - **Scenario #3: Husband (but no J&D)+ Bio father**
 - NO Judgment and Decree that says "not the father of the child"
 - Inclusionary GTs for another man
 - Bring paternity action – both presumed fathers are parties, if jurisdiction
 - Request GTs, if not already done
 - Adjudicate one of the fathers as legal father

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- **Issue #4a – Competing Presumptions**
 - 2 or more presumed fathers
 - **Scenario #4: Husband (but no J&D)+ Alleged father**
 - NO Judgment and Decree that says “not the father of the child”
 - Mother tells us that Husband is not the father and another man is the possible, alleged father but no GTs yet
 - Request voluntary GTs
 - Bring paternity action – both are parties, if jurisdiction
 - Paternity is disputed – best practice to “get the facts” now
 - Adjudicate one as legal father

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- **Issue #4b – Multiple ALFs**
 - 2 or more alleged fathers
 - **Scenario #1: 2+ ALFs, no GTs, all ALFs identified and located**
 - Include all as parties
 - Request GTs
 - Recommend that included ALF be adjudicated
 - Don't have to include financials in original pleadings; can amend after inclusionary GTs

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- **Issue #4b – Multiple ALFs**
 - 2 or more alleged fathers
 - **Scenario #2: 2+ ALFs, no GTs, both identified but only one ALF located**
 - Include all as parties; try personal service on non-located ALF or service by publication
 - Request GTs
 - Can request dismissal of non-located ALF once other ALF included
 - Don't have to include financials in original pleadings; can amend after inclusionary GTs

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- **Issue #4b – Multiple ALFs**
 - 2 or more alleged fathers
 - **Scenario #3: 2+ ALFs, no GTs, only one ALF identified and located (e.g. "Timmy who lives in the Twin Cities")**
 - Include only identified/located ALF parties with a note in Supporting Affidavit that mother named another man that the county has been unable to identify or locate.
 - Request GTs
 - Can include financial recommendation if only one ALF as party

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- **Issue #4b – Multiple ALFs**
 - 2 or more alleged fathers
 - **Scenario #4: 2+ ALFs, one ALF included and one (or more) ALFs – possibly some excluded**
 - Unalleging Affidavit signed by mother?
 - What is this? Affidavit completed by mother – she’s reviewed inclusionary GTs and no longer believes that any other man is the biological father.
 - She is the only one that can remove status of “alleged father”.
 - Example Affidavit on DHS-SIR; linked in Paternity Presumptions policy

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- **Issue #4b – Multiple ALFs**
 - 2 or more alleged fathers
 - **Scenario #4: 2+ ALFs, one ALF included and one (or more) ALFs – possibly some excluded**
 - If Unalleging Affidavit signed, only add included ALF as a party
 - If not signed, must include all ALFs (included and excluded) because they all remain “alleged fathers”.
 - Mother’s testimony at a court hearing is another option
 - Can include financial recommendation if only one ALF as party

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• **Issue #4 – Competing Presumptions & Multiple ALFs**

- **SUMMARY:**
 - These scenarios are before a child support/parentage order is entered.
 - It is important to the parents and the child to know all of the facts.
 - Court decides, not us and not one of the parents.
 - Child deserves to know their genetic background, as it may relate to their own physical health.
 - Biology doesn't determine the outcome.

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• **Issue #4 – Competing Presumptions & Multiple ALFs**

- **SUMMARY:**
 - All possible presumed or alleged fathers are entitled to notice of the paternity action.
 - Best Practices Guide on DHS-SIR
 - If in doubt, ask.
 - Review the updated DHS policy,
 - consult your attorney with the facts,
 - email a Paternity CLV member for help/guidance....

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• **Issue #4 – Competing Presumptions & Multiple ALFs**

- **SUMMARY:**
 - Also includes scenarios **after** a child support order is entered. More controversial; discuss with assigned attorney.
 1. **ROP father ordered to pay CS but is excluded by GTs + bio father with GTs** – Important to talk to parties first! Suggested approach: File Motion to vacate ROP and stop ongoing child support, with simultaneous Paternity action for bio father.
 2. **Husband ordered to pay CS + bio father with GTs** – Talk to parties first! Possible approach if parties agree and child is less than 3 years old: File Motion to declare the non-existence of husband/father-child relationship and stop ongoing child support, with simultaneous Paternity action for bio father. If child is over 3 years old, likely barred unless all parties agree.

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Issue #5 – Minor Parent ROPs

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• Issue #5 – Minor Parent ROPs

- Why is this an issue?
 - Some states do not allow minors to sign AOP/VAP.
 - Some states require the minor’s parent to co-sign the AOP/VAP.
 - Is a minor parent the same as a legal adult?
 - Should a minor person enter into a contract, especially one as important as the parent-child relationship?
 - Minnesota statutory language

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• Issue #5 – Minor Parent ROPs

- Analysis:
 - **Minn. Stat. § 257.55, subd. 1(h)** – a man is presumed to be the biological father of a child if he and the mother signed a ROP when either one was less than 18 years old.
 - **Minn. Stat. § 257.75, subd. 9** – a ROP signed by a minor parent creates a presumption of paternity.

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- Issue #5 – Minor Parent ROPs
 - Analysis:
 - Minn. Stat. § 257.75, subd. 3(a) – “if the conditions in section 257.55, subd. 1(g) or (h) exist, the ROP creates only a presumption of paternity...”
 - § 257.55, subd.1(h) is the minor parent ROP section

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- Issue #5 – Minor Parent ROPs
 - Analysis:
 - *Ramsey County v. X.L.*, 853 N.W.2d 813 (Minn.App. 2014) states that a county can, and should, commence a paternity action when a ROP is signed by a minor parent.
 - No need for a competing presumption.
 - Paternity action can be brought at anytime, Minn. Stat. § 257.57, subd. 2(1).
 - Supported by the statutory provisions, but also by caselaw and common law.

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- Issue #5 – Minor Parent ROPs
 - Analysis:
 - “Appellate courts have recognized that presumptions are not conclusive of paternity, but rather create a functional set of rules that point to a likely father.”
 - “Thus, while a presumption of paternity carries weight, establishing paternity with clarity and finality provides further benefits to the parties and their child.”
 - *Ramsey County v. X.L.*, 853 N.W.2d at 818.

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- **Issue #5 – Minor Parent ROPs**
 - Analysis:
 - “Those under 18 may not have legal capacity to enter into legally binding contracts or may need guidance in matter of great weight.”
 - *Ramsey County v. X.L.*, 853 N.W.2d at 818.

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- **Issue #5 – Minor Parent ROPs**
 - Resolution:
 - Update existing state policy – counties should initiate a paternity action on all cases involving a minor parent ROP, no matter the age of the parent at the time the action is commenced.
 - The ROP does not become conclusive when the minor parent turns 18 years old + 6 months.

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- **Other Paternity CLV Issues**
 1. Certified Copy of ROP – not needed to commence Establishment action
 - Resolution: Letter sent to CS offices and MCAA in February 2016; Letter sent to Court in February 2016
 2. Signing ROPs at county child support offices – yes, we should help facilitate ROPs when appropriate
 - Resolution: Clarified existing DHS policy; DHS-SIR message and email to MCAA in March 2016; Letter to CS community in November 2016
 3. Deceased Parents
 - Resolution: Creating DHS policy, stay tuned

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On the Horizon...


- **Paternity CLV Group**
 - Legislator working on Disestablishment statutory changes
 - Custody/parenting time Stipulation for parents that sign ROP – working with Court Administration
 - Facilitating GTs after ROP is signed, but before child support order
 - Other?



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- **Our connection to MDH, Office of Vital Records:**
 1. Filing Paternity Adjudication Orders with MDH – yes, file with MDH – either Certificate of Adjudication or paternity order.
 - Resolution: Letter sent to CS offices and MCAA in February 2016; Letter sent to Court in February 2016
 - MDH, Office of Vital Records is here presenting with us – stay tuned!
 2. Certificate of Adjudication Pilot Project
 - You can use the pilot forms also!
 - Check with your Court Administration.



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MDH, Office of Vital Records

- Interagency agreement, funding
- Access to real-time, live birth record data
- User accounts administered by DHS-CSD
- Daily data files that inform/update PRISM
- Integration with birth registration
 - Part of Minnesota's birth registration process
 - Paternity documents print from birth record with data populated, consistent with birth record
 - Hospital training conducted in partnership



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MDH, Office of Vital Records



- Technology and automation for ROP filing
 - Documents sent via fax to secure server
 - Documents saved as images
 - Documents auto-filed/data captured and added to birth record
 - Documents linked to birth record
 - Follow up with hospitals and parents when necessary

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MDH, Office of Vital Records



- Adjudication Filing
 - Cross-department effort/participation
 - Use of "Certificate of Adjudication" form
 - Cooperation to pilot new process, make improvements
 - Consideration for legislative change to streamline process, assure equity among family situations
 - Vital Record Priority
 - Positions process for future interoperability, e-documents

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MDH, Office of Vital Records



- National/Federal Improvements
 - Representation on national vital records association (NAPHSIS)
 - Contributing to conversations at OCSE, NCSEA and NAPHSIS
 - Other states/jurisdictions interested in improving interstate case management
 - MN is a leader and model for others

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On the Horizon...


- MDH, Office of Vital Records
 - Imaging upgrade offers possibility for new data sharing
 - Open to quality and process improvement partnerships
 - Changes to MN legislation—data classifications, tangible interest



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On the Horizon...

- MDH, Office of Vital Records
 - Social and political impacts to vital records
 - Sex/gender
 - Multiple parents
 - Surrogacy
 - Same-sex parents, voluntary paternity acknowledgements
 - 2017 Uniform Parentage Act impact
 - Balance between identity documents, security, and public health
 - Balance between federalism, state autonomy




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THANK YOU!!

Questions?

Presented at Minnesota Family Support & Recovery Council Conference on October 2, 2017



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THANK YOU!!



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MINNESOTA FAMILY SUPPORT & RECOVERY COUNCIL
 2017 ANNUAL CONFERENCE




What Every IVD Attorney Should Know About Custody and Parenting Time

In Parentage actions

Prepared by Theresa Farrell-Strauss

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Custody and Parenting Time for Unmarried Parents



- The biological mother of a child born to a mother who was not married to the child's father when the child was born or conceived has **sole custody** of the child until paternity is established or until custody is determined in a separate proceeding. Minn. Stat. § 257.541
- Custody and parenting time are **required elements** in a paternity judgment and decree. Minn. Stat. § 257.66, subd.3
- In an initial custody determination in a paternity action, the court decides based on the **best interests** of the child. Minn. Stat. § 518.17

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Legal Custody



- **Legal custody** means the right to determine the child's upbringing, including education, health care, and religious training. Minn. Stat. § 518.003, subd.3(a).
- **Joint custody** means both parents have equal rights and responsibilities determining these issues.

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Legal Custody Continued



- The initial determination is based on **best interests**. However, if there is a disagreement between the parents, and one parent seeks sole legal custody, the standard is **endangerment**.
- The court shall use a **rebuttable presumption** that joint legal custody is in the child's best interests upon request of either party, but a rebuttable presumption that joint legal custody is not in the child's best interest should be applied if **domestic abuse** as defined in Minn. Stat. § 518B.01 has occurred between the parents.

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Physical Custody



- Physical care and residence means the routine daily care and control and the residence of the child. Minn. Stat. § 518.003(c).
- Joint physical custody means the routine daily care and control and the residence is structured between the parents. Minn. Stat. § 518.003(d).
- Trial court's may unequally divide physical custody but still label the arrangement as joint. *Lutzi v Lutzi*, 485 N.W.2d 311, 314 (Minn. Ct. App. 1992).

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Physical Custody Continued



- The child's best interests is always the guiding principle for the court.
- Physical custody does not impact child support.
- It's parenting time that counts.
- However, its still difficult to try to change join physical custody to sole physical custody.

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Modification of Custody



- Minn. Stat. § 518.18 requires “a change has occurred in the circumstances of the parties and that modification is necessary to serve the best interest of the child.” Further, the moving party must show **one** of the following:
 - Both parties **agree** to the modification;
 - The child has been **integrated** into the family of the petitioner **with the consent** of the other party; **OR**
 - The child’s present environment **endangers** the child’s physical or mental health or impairs the child’s emotional development and the harm likely to be caused by a change in environment is outweighed by the advantage to the child.

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Time Limits on Modification



- Generally, motions for modification are **not allowed within one year** of the initial determination.
- After, if there is a modification of custody, there is a two year requirement until it will be changed again.
- There is an **exception**, if there is a persistent and willful denial of parenting time or reason to believe the child’s present environment may endanger the child’s physical or emotional health.
- Unlike child support modification, the goal is **permanency** for children.

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Parenting Time



- Parenting time means the time a parent spends with the child regardless of the custodial designation regarding the child. Minn. Stat. § 518.003, subd. 5.
- Interference with parenting time can be a basis for a change in custody.
- If a parent interferes with the other parent’s parenting time, compensatory parenting time can be ordered. Contempt of court is also an option.

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Out of State Moves



- The parent with whom the child resides **shall not move the residence of the child to another state** except upon order of the court or with the consent of the parent, if the other parent has been given parenting time by the decree. If the purpose of the move is to interfere with parenting time given to the other parent.... the court shall not permit the child's residence to be moved to the other state. Minn. Stat. § 518.175, subd 3.
- The **burden of proof** is on the parent seeking the move. If the parent seeking the move has been a victim of domestic abuse, the burden shifts to the parent opposing the move.

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Impact of Conviction of Certain Offences on Parenting Time



- **Minn. Stat. 518.179, Subdivision 1. Seeking Custody or Parenting Time.**
- Notwithstanding any contrary provision in section 518.17 or 518.175, if a person seeking child custody or parenting time has been convicted of a crime described in subdivision 2, the person seeking custody or parenting time has the burden to prove that custody or parenting time by that person is in the best interests of the child if:
 - (1) the conviction occurred within the preceding five years;
 - (2) the person is currently incarcerated, on probation, or under supervised release for the offense; or
 - (3) the victim of the crime was a family or household member as defined in section 518B.01, subdivision 2.
- If this section applies, the court may not grant custody or parenting time to the person unless it finds that the custody or parenting time is in the best interests of the child. If the victim of the crime was a family or household member, the standard of proof is clear and convincing evidence. **A guardian ad litem must be appointed in any case where this section applies.**

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Applicable Crimes



- **§ Subd. 2. Applicable crimes.**
- This section applies to the following crimes or similar crimes under the laws of the United States, or any other state:
 - (1) murder in the first, second, or third degree under section 609.185, 609.19, or 609.195;
 - (2) manslaughter in the first degree under section 609.20;
 - (3) assault in the first, second, or third degree under section 609.221, 609.222, or 609.223;
 - (4) kidnapping under section 609.25;
 - (5) depriving another of custodial or parental rights under section 609.26;
 - (6) soliciting, inducing, promoting, or receiving profit derived from prostitution involving a minor under section 609.322;
 - (7) criminal sexual conduct in the first degree under section 609.342;
 - (8) criminal sexual conduct in the second degree under section 609.343;

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Applicable Crimes Con't.



- (9) criminal sexual conduct in the third degree under section [609.344, subdivision 1](#), paragraph (c), (f), or (g);
- (10) solicitation of a child to engage in sexual conduct under section [609.352](#);
- (11) incest under section [609.365](#);
- (12) malicious punishment of a child under section [609.377](#);
- (13) neglect of a child under section [609.378](#);
- (14) terroristic threats under section [609.713](#); or
- (15) felony stalking under section [609.749, subdivision](#)
- (16) domestic assault by strangulation under 609.2247. (new)

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Juvenile Court Jurisdiction




- If there is an active CHIPS case, Juvenile Court has jurisdiction over the issues of custody and parenting time.

260C.101 JURISDICTION.

- **§ Subdivision 1. Children in need of protection or services, or neglected and in foster care.**
- The juvenile court has original and exclusive jurisdiction in proceedings concerning any child who is alleged to be in need of protection or services, or neglected and in foster care.

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Thank You!



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