

## Challenges to Paternity

Who can challenge paternity and how and when the challenge can be made depends upon the method in which paternity was established. Below is a list of *some* of the methods for challenging paternity (listed by method in which paternity was established). This list is not exhaustive. You may need to seek legal advice if DHS or another party to a juvenile proceeding wishes to challenge paternity.

This information is valid for the period between **January 1, 2006 - January 2, 2008** only. Some of the laws referenced below will change in 2008.

### a. **PATERNITY ESTABLISHED BY VOLUNTARY ACKNOWLEDGMENT**

- i. **Parties to the acknowledgment** can rescind a voluntary acknowledgment **within 60 days** of filing it, for any reason. If the party wishing to rescind is also a party to a "proceeding related to a child" (including a proceeding to establish child support) that occurs within the 60-day period, the party may not rescind after the date that an order is entered in the proceeding. ORS 109.070(2).
- ii. A **party to the acknowledgment**, the **child**, or the **state** if child support services are being provided, can reopen the issue of paternity established by voluntary acknowledgment **within one year** of the filing of the voluntary acknowledgment by contacting the Division of Child Support (DCS) or by filing a motion with the court. Reopening will, most likely, lead to an order for genetic testing and a judgment consistent with the results of the testing. ORS 109.070(3)(a)(C); 109.070(4). NOTE: The process of reopening through DCS can be initiated merely by contacting DCS; that process is administratively simpler than a court reopening process.
- iii. The **mother** or **legal father** can reopen the issue of paternity established by voluntary acknowledgment **within two years** if no genetic tests were performed prior to their filing of the voluntary acknowledgment by filing a petition with the court. Or Laws 2005, ch 160, § 9. At the time of filing the petition, the petitioner must present parentage tests, administered within 90 days before filing the petition, that show a zero percent probability that the legal father is the biological father (*i.e.*, a paternity "exclusion").
- iv. The voluntary acknowledgment can be challenged at **any time** on the basis of **fraud, duress, or material mistake of fact**. A **party to the acknowledgment**, the **child, DCS, or DHS** – if the child is in DHS custody and DHS has reasonable belief of fraud, duress, or material mistake of fact – can bring a fraud, duress, or material mistake of fact challenge. ORS 109.070(3).

**b. PATERNITY ESTABLISHED BY DEFAULT ADMINISTRATIVE ORDER OR CIRCUIT COURT JUDGMENT**

- i. A party to an administrative (DCS) paternity action (the **obligor**, the **obligee**, or the **state**) can apply to the Administrator to reopen the issue of paternity within **one year** of the date that an administrative default paternity judgment was entered. ORS 416.443.
- ii. The **mother** and **legal father** can file a petition in Circuit Court under Or Laws 2005, ch 160, § 9 to reopen the issue of paternity within **two years** of the date that any default paternity judgment (judicial or administrative) was entered if no genetic tests were performed prior to the entry of the judgment. At the time of filing the petition, the petitioner must present parentage tests, administered within 90 days before filing the petition, that show a zero percent probability that the legal father is the biological father (*i.e.*, a paternity "exclusion").
- iii. A **party** to an administrative (DCS) paternity action or a judicial paternity action could move to set aside a default judgment based upon errors in service or other jurisdictional errors, at **any time**.

**c. PATERNITY ESTABLISHED BY MARITAL PRESUMPTION**

- i. Juvenile court proceedings under ORS 419B.395 – a juvenile court now has authority to enter judgments of paternity or non-paternity consistent with certain provisions of ORS chapter 109. One of those provisions relates to a court's authority to enter a judgment of non-paternity for a presumed legal father who the court determines is not the child's father after providing notice to the presumed legal father of a show/cause proceeding on the issue of paternity. ORS 109.326. The law does not clearly state who can initiate such an action, but refers to the "petitioner." In a juvenile case, the petitioner typically is **DHS** or the **child**. Presumably, the mother or legal father who is a party to the juvenile court proceeding could also seek such a judgment. A juvenile court determination of paternity in compliance with ORS 109.326 can occur at **any time during the course of a juvenile dependency proceeding or a termination of parental rights proceeding**. ORS 109.326 sets out notice requirements and a sample summons; if the provisions of ORS 109.326(10) apply the court can proceed with entry of a judgment of non-paternity without notice to the presumed legal father. ORS 419B.395 requires the court to find that "adequate notice" has been provided. The notice provisions of ORS 419B.395 and ORS 109.326 should be read together when seeking a judgment of non-paternity for a presumed legal father in juvenile court.

- ii. Show/Cause Proceeding under ORS 109.326 – The provisions of ORS 109.326 described above also are available to any court having adoption or divorce jurisdiction.
- iii. The **mother** and **legal father** can file a petition in Circuit Court under Or Laws 2005, ch 160, § 9 to reopen the issue of paternity **at any time**, if paternity was established by presumption. At the time of filing the petition, the petitioner must present parentage tests, administered within 90 days before filing the petition, that show a zero percent probability that the legal father is the biological father (*i.e.*, a paternity “exclusion”).
- iv. Divorce decrees can establish paternity by declaring children “issue of the marriage.” Similarly, parties to a divorce proceeding sometimes challenge the presumption of paternity during the course of the dissolution proceedings and judgments of non-paternity sometimes are contained within divorce decrees.