

Rule 405. Paternity

(a) Commencement. A paternity proceeding pursuant to D.C. Code § 11-1101(11) is commenced by filing a verified petition with the Court which shall set forth the jurisdiction of the Court and all relevant information concerning the allegation of paternity, including, but not limited to, the relationship of the petitioner to the child or children, the approximate date of conception (and date and place of birth if appropriate), the alleged natural father of the child or children, a prayer for relief and for reasonable attorney's fees which may in appropriate cases be assessed against the natural father upon a finding of paternity.

(b) Jurisdiction and process. Jurisdiction over the respondent shall be obtained by personal service upon him of a notice of hearing and order directing appearance on a date certain, together with a copy of the petition, pursuant to Rule 4 of these rules governing service of a notice of hearing and direction to appear.

(c) Answer.

(1) The respondent shall file an answer within 20 days after service upon him of the petition and notice of hearing and order directing appearance. If an answer is not timely filed and the respondent obtains leave of Court to file an answer or is directed by the Court to file an answer, such answer must be filed within 10 days from the date of the extension, unless additional time is specified by the Court or allowed by the Court pursuant to written motion filed before the last day of the first extension.

(2) Upon the filing of a timely answer, or the filing of an answer as allowed by the Court under subparagraph (c)(1) of this Rule, the case shall be set for hearing on the contested calendar. If the date set for the contested hearing is different from the return date specified in the order directing appearance, then the respondent shall be relieved of his obligation to appear in Court on the return date.

(d) Proceedings before hearing commissioners.

(1) All cases brought pursuant to D.C. Code § 11-1101(11) shall be referred to a hearing commissioner sitting in the Family Division who shall:

(A) Determine whether paternity will be acknowledged and, if so, enter an adjudication of paternity and thereafter conduct a hearing on support as provided in SCR Family D(b)(1); or

(B) Determine whether to order medical, genetic blood or tissue grouping tests and, if so, thereafter hear and determine the issues of paternity and amount of support or, if the case involves complex issues requiring judicial resolution, refer it to a judge for determination of those issues.

(2) At any time following the adjudication or acknowledgment of paternity in a case before the Court, the Court may refer the case to a hearing commissioner of the Family Division pursuant to the provisions of General Family Rule D, for entry of an order as to the amount of support.

(e) Procedure upon failure of respondent to respond. Where the respondent fails to file an answer as allowed by the Court under subparagraph (c)(1) of this Rule, or otherwise fails to respond appropriately, the issues of paternity and amount of support may be heard and determined ex parte on the return date specified in the order directing appearance. If the Court is satisfied that (1) there is uncontroverted proof that respondent is the natural father of the child as alleged by the petitioner, and (2) justice to the child requires an immediate judicial determination of the petition, which shall not be defeated by respondent's non-appearance, it may enter an order adjudging respondent to be the natural father of the

child and fixing an appropriate amount of support, or alternatively, may refer the issue of support to a hearing commissioner for determination of the appropriate support amount and entry of a final order.

(f) Blood tests.

(1) The Court, on its own motion or on the motion of a party, may, pursuant to D.C. Code § 16-2343 require the child, the mother, an alleged parent, or the other parent to submit to medical, genetic blood or tissue grouping tests, which may include the human leukocyte antigen test and the red cell blood grouping tests.

(2) The Court may appoint the examiners of genetic markers to perform the tests or the examiners may be chosen by the consent of the parties.

(3) Costs.

(A) The costs for the tests and expert witnesses appointed by the Court shall be paid by the parties.

(B) The Court, upon written motion accompanied by a sworn financial statement of the alleged parent, may order that the District of Columbia, if it is a party to the action, pay the costs upon a finding that the alleged parent does not have sufficient resources to pay the costs.

(C) The parties may consent to an agreement for the payment of such costs.

(4) Admissibility.

(A) Pursuant to D.C. Code Section 16-2343.1, a certified document of the chain of custody of the test specimens is competent evidence to establish the chain of custody for any test ordered or agreed to by the parties under this Rule.

(B) A party wishing to object to the test results shall file a written motion, including specific objections, within 45 days of the date the test results were mailed by the Court to the party. The Court shall not accept such a motion less than 5 days prior to the first trial date following the taking of the tests, unless good cause is shown. A party wishing to object to the admission of test results at trial without expert testimony shall file that objection in writing at least 20 days prior to trial or the test results shall be admitted without expert testimony. A party intending to call an expert witness to testify about the test must notify the other party and the Court in writing at least 20 days prior to trial. Such notice must contain the substance of the testimony which the expert will provide.

(C) The Court shall prior to the trial date decide all motions to exclude the test results and written objections to the test results, and shall rule on the admissibility of the test results and whether or not an expert witness is required.

(5) Unless a party files timely objections pursuant to this subsection:

(A) The party waives the party's objections to the testing procedures, the admission into evidence of the results of the test and the report on the statistical probability of paternity. However, the Court may upon a showing of extraordinary circumstances extend the time for filing objections.

(B) The verified results of the tests and the report are admissible into evidence at a hearing or other proceeding regardless of the presence or non-presence of parties having notice of the action.

(C) Whenever the results of the tests and report exclude the alleged parent as the parent of the child, that evidence shall be conclusive evidence of non-paternity, unless contrary test results are received by the Court.

(6) The Court may order that additional tests be made.

(7) Sanctions. If any party refuses to submit to a test the Court may impose sanctions or hold the refusing party in contempt.

(g) Certificates of judgment of paternity. The Clerk of the Court shall issue a Certificate of Judgment of Paternity pursuant to D.C. Code § 16-2346(a) upon entry of a final judgment.

COMMENT

The purpose of this Rule is to implement the Parentage and Support Proceedings Reform Act of 1984. The intent of that act is to assist in making scientific blood test results available to the trier of fact in actions involving the issue of disputed paternity. To ensure that valid blood and tissue typing test results, including the results of the human leukocyte antigen test, are readily available as evidence to the trier of fact, the Rule provides that such test results shall be decided before trial. The intent of the act is also to prevent the situation where such tests, although performed, are not admitted at trial due to some correctable objection to the test results or procedures. It is also contemplated that expert witnesses should only be necessary in rare cases and that the test results and the reports should generally be admitted into evidence without the necessity of an expert witness testifying.

Section (c) replaces SCR-Dom. Rel. 12(a) for paternity proceedings. Section (d) represents one use of hearing commissioners as authorized in SCR-General Family D. Section (e) allows an adjudication of paternity without the presence of the respondent but does not allow a default judgment on the pleadings alone. Cf. *District of Columbia v. J.R.M., App. D.C., 521 A.2d 1152 (1987)*.

Note: SCR-Dom. Rel. 26 through 37 make pretrial discovery available in paternity proceedings.