

PATERNITY ESTABLISHMENT

Evidence at Hearing

CS 602.5

SUPERSEDES

CS 602.5, Evidence at Hearing, September 30, 1995

REFERENCES

MCA§40-5-233 and 40-6-105

Policy

Role of Evidence in Paternity Case

If paternity cannot be established informally and the case is set for hearing under CS 605.2 Notice of Parental Responsibility—Single Allegation Cases, the CSED will be required to produce "testimony and any other supplementary evidence" demonstrating a reasonable probability the alleged or presumed father had sexual contact with the child's mother during the probable period of conception, or in multiple-allegation cases only, a probable existence of a presumption. If this evidence is satisfactory, the hearing officer will order genetic testing, and the CSED can proceed on the basis of the testing results to resolve paternity for the alleged or presumed father in question.

Preparing Evidence for Hearing

Generally the CSED depends on the mother's Paternity Affidavit, supported by live testimony from the mother, for evidence of the probability or presumption required. If there is any chance the alleged/presumed father will claim the mother's Paternity Affidavit is false, the CSED must be prepared to present documents or testimony corroborating the mother's sworn statements, refuting the alleged/presumed father's counter-claims, or giving additional evidence of a presumption or the probability of sexual contact.

Generally the areas contested or raised at hearing in which evidence may be needed are as follows:

- 1) The probable period of conception, evidence would include the date of birth of the child and whether the birth was late, premature, or on time; the place of conception
- 2) The physical possibility/impossibility of the alleged father's having fathered the child; medical, geographical
- 3) The child's resemblance to the alleged/presumed father
- 4) The relationship of the mother with the alleged/presumed father during the probable period of conception
- 5) *Multiple-allegation Cases Only*: the existence of a legal presumption
- 6) Any actions or statements of the alleged/presumed father indicating he believes he is or may be the natural father

If it appears further information may be needed or helpful in any of these areas to corroborate the evidence of the mother, the CSED investigates possible sources and arranges for presentation at hearing through testimony or documents of any evidence discovered.

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Actions or Statements of Alleged/Presumed Father

Certain actions or statements by the alleged/presumed father sometimes called "admissions" when offered as evidence by the CSED, can help to support the claim he could be the natural father of the child. Some of the more likely statements and actions of this nature are as follows:

- 1) Promises to pay support
- 2) Visits to mother while in hospital
- 3) Suggestions of, offer to pay for abortion
- 4) Payment of expenses, gifts of money
- 5) Providing transportation to or from hospital, clinic, doctor
- 6) Buying baby food, clothes, diapers, etc.
- 7) Gifts to child--birthday, Christmas, other
- 8) Payment of medical or hospital bills
- 9) Being photographed with child
- 10) Taking photographs of child
- 11) Requesting photograph of child from mother
- 12) Writings (correspondence, love letters, birthday cards, etc.) admitting or inferring paternity
- 13) Visits to child, holding or playing with child
- 14) Referring to child as his ("my son")

NOTE:

Omissions by Alleged/Presumed Father. If an alleged/presumed father makes no comment, or does not deny paternity, when a remark is made in conversation stating or implying the child is his ("your baby," "your little boy/girl"), this "omission" may be used in evidence in the same way as a positive statement or action claiming paternity.

Testimony of Witnesses

A witness may be any person having direct knowledge relating to an area to be raised at hearing. Depending on the issue, a witness may be a friend, relative, neighbor, acquaintance, classmate, or coworker of the mother or alleged/presumed father; a person connected to the issue in a professional capacity (doctor, local registrar); or a person not connected to anyone in the case who happened to be in a position to witness an event or situation relating to the paternity at issue. Important witnesses are often those who can testify to facts about the relationship or to statements or actions of the alleged/presumed father indicating paternity. In certain situations, even the impressions of a witness as to the type of relationship that existed, or the meaning of a particular statement at the time it was made, may be accepted as evidence.

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Documents in Evidence

Documents commonly used in evidence of paternity are photographs (showing a father-child resemblance, or showing the man and child together); letters written by the alleged/presumed father; the mother's personal calendar showing menstrual cycle dates; sworn statements of persons who witnessed relevant events; and official documents from doctors, hospitals, institutions, or employers relating to the child's birth, the alleged/presumed father's whereabouts at the time of conception, or his medical condition.

Procedures

Caseworker

1. At any time after initiating a paternity case and before attending and appearing as a witness at a genetic testing hearing, documents any statements made by the alleged/presumed father indicating he may be the natural father.

CSED Regional Administrative Staff

2. Upon receiving a telephone call from a man identifiable as a participant in a CSED paternity case, documents any statements made by him indicating he may be the natural father of the child, refer to Actions or Statements of Alleged/Presumed Father above.

Caseworker

3. Upon receiving a notice of hearing in the paternity case, reviews the file for the strength of the CSED's evidence in all relevant areas. If it appears further evidence may be needed to establish a reasonable probability of sexual contact (or to establish a presumption, in a multiple-allegation case), takes action as follows:
 - a. Identifies and contacts possible witnesses and, if suitable evidence is discovered, arranges for their testimony at hearing. Testimony may be live or by deposition.
 - b. Identifies possible sources of relevant documents and, if suitable evidence is discovered, arranges for production of the documents at hearing.

CS 605.2 Notice of Parental Responsibility—Single Allegation Cases contains information on the use of subpoenas, discovery deadlines, etc.

4. Consults with the CSED staff attorney on any questions concerning the use of evidence at hearing, especially on issues of corroboration of testimony and strength of evidence.