## Notice of Parental Responsibility—Multiple-Allegation Cases

**CS 605.3**

## SUPERSEDES

CS 605.3 Notice of Parental Responsibility--Multiple-Allegation Cases, January 11, 1998

## REFERENCES

MCA §§ 40-5-231-40-5-237, 40-6-101-40-6-118, Rule 301 Montana Rules of Evidence

## Policy

### Applicability

Procedures in this section apply when the following conditions are met:

1) The case meets the definition of a multiple-allegation, unresolved paternity case given in CS 602.1 Case Initiation—Mother Obligee.

   REMINDER: In cases where all other possible fathers have been excluded by genetic testing, the case is treated as a single-allegation case, and procedures in CS 605.2 Notice of Parental Responsibility—Single- Allegation Cases apply.

2) The CSED can assert personal jurisdiction over the alleged or presumed father.

3) In the determination of the caseworker there is reasonable cause to proceed with the contested case against the alleged or presumed father.

4) The CSED has taken the appropriate case initiation steps under CS 602.1 including obtaining birth records and mother's information; entering case information on SEARCHS; and, except in special situations, contacting the alleged or presumed father and giving him an opportunity to resolve paternity voluntarily.

### Processing Multiple-Allegation Contested Cases

Generally, the CSED applies the same policies and procedures to multiple-allegation contested cases (those involving a Notice of Parental Responsibility) as to single-allegation contested cases. These policies and procedures are given in CS 605.2 Notice of Parental Responsibility--Single-Allegation Cases and are referenced throughout this section. The purpose of this section, however, is to identify the points at which multiple-allegation cases are treated differently from single-allegation cases, and to give the special procedures that apply.

As in case initiation (see CS 602.1) the caseworker follows the procedures in this section for **each** alleged or presumed father. Processing of multiple allegations usually proceeds concurrently, although the CSED may, at the caseworker's discretion, wait to take the next step on one allegation in anticipation of paternity being resolved by actions on another. **Any determination not to proceed immediately to the next step for a given allegation must take into account the federal time frames within which paternity and the resulting support order must be established.** See CS 605.2 for specific guidance and requirements.

**Differences from Single-Allegation Processing**

There are seven main differences between single- and multiple-allegation case processing:

1) **No Default Option**

   When an alleged or presumed father fails to respond to a Notice of Parental Responsibility (NPR); fails to appear for a scheduled NPR hearing; or fails to appear for genetic testing after being ordered by the CSED to do so, the CSED **cannot** enter a default order establishing paternity against that man. There are, however, other options available to the CSED to force the alleged/presumed father into testing through increasingly stronger actions, see PROCEDURES. Genetic testing results, in turn, give the CSED the necessary authority to either establish paternity against the man or to exclude him.

2) **Admission of Paternity Not Acceptable**

   As in case initiation procedures the CSED will not act on an Admission of Paternity and Application for Paternity Consent Order in a multiple-allegation case unless the Admission (a) is supported by positive genetic testing results, or by the exclusion by genetic testing of all other possible fathers and (b) includes language recognizing there are other allegations in the case.

3) **Additional Issue at Hearing**

   The issue of whether there is a reasonable probability of a presumption may be determined at hearing. This determination may be used--in addition to, or in the absence of, a determination of reasonable probability of sexual contact--as a basis for ordering genetic testing.

4) **Less Occasion for Concurrent Notice and Order Concerning Support (NOCS) Processes**

   Because the paternity default process does not apply, and the paternity consent process applies only after genetic testing is completed, in most multiple-allegation cases the caseworker must wait for formal resolution of paternity before proceeding on the alleged/presumed father's response to the NOCS.

5) **SEARCHS Processing**

   SEARCHS processing remains the same as for single-allegation cases except with respect to system document generation: some of the forms used in contested case processing are automatically generated in their single-allegation versions if the caseworker does not actively select the multiple-allegation option.

6) **Exclusion not a Cooperation Issue**

   When an alleged or presumed father is excluded by genetic testing in a multiple-allegation case, the CSED does not contact the mother for names of other possible fathers, but simply proceeds to work the remaining allegations.

7) **Reduction to Single-Allegation Case**

   Because in a single-allegation case the CSED can establish paternity by methods other than genetic testing (default, Admission, or rebuttable presumption), exclusion of all allegations but one in a multiple-allegation case serves to advance the case toward establishment of paternity for the remaining (non-tested) man. When a multiple-allegation case becomes a single-allegation case, procedures revert to those given in CS 605.2.

   As stated in CS 602.1 the RULES on the following page summarize the paths by which the CSED can establish paternity in multiple-allegation cases. These RULES are the basis for the procedural differences described above.

## RULES FOR RESOLVING PATERNITY IN MULTIPLE-ALLEGATION CASES

The following RULES assume genetic testing will result in either a presumption (positive results) or an exclusion (negative results). The rules also assume it will be impossible to obtain positive genetic testing results for more than one man in a case. If either assumption should prove false, consult your CSED staff attorney.

**RULE 1:** The CSED will enter a Paternity Consent Order if either of the following applies:

1) An AF or PF signs an Admission of Paternity (multiple-allegation version) AND the same AF or PF genetically tests positive (if there are other PFs, the order should include language overcoming the other presumptions).

2) An AF or PF signs an Admission of Paternity (multiple-allegation version) but does not undergo genetic testing, AND all other AFs and PFs are excluded by genetic testing. *

**RULE 2**: If RULE 1 does not apply, the CSED will proceed with establishment of a support order (without entering a paternity order) if either of the following applies:

1) An AF or PF genetically tests positive.

2) One PF in the case does not undergo genetic testing AND all other AFs and PFs are excluded by genetic testing. *

**RULE 3:** The CSED will enter a Paternity Default Order for an AF or PF only if default conditions (failure to respond to notice or appear as ordered) apply AND all other AFs and PFs are excluded by genetic testing. *

**RULE 4:** The CSED will proceed with establishment of a support order, regardless of the status of any other allegations or presumptions in the case, if it discovers an irrebuttable presumption, or a judicial or administrative order declaring paternity. This RULE is superior to RULES 1, 2, and 3.

*In highly unusual cases where genetic testing is not available to exclude an AF or PF, it may be possible to exclude the AF or PF by an action in district court or—upon a determination by the CSED staff attorney based on the facts of the case—to proceed as if the AF or PF were excluded.

AF = alleged father (no presumption)

PF = presumed father (rebuttable presumption)

## Procedures

In third-party obligee cases see CS 602.2 Case Initiation Third-Party Obligee for proper procedures in all steps involving the mother below.

*Except where otherwise noted the following procedures apply to the same man from beginning to end.*

**Procedures for Caseworker**

1. **NPR Package**

   Takes the following actions as in CS 605.2 Notice of Parental Responsibility—Single Allegation Cases:

   a. Determines whether a combined NPR-NOCS package is appropriate.

   b. Prepares and issues an NPR-NOCS or NPR package, the documents in the package differ from those in the single-allegation package as follows:

      – The NPR must be the multiple-allegation version

      – The Admission of Paternity and Application for Paternity Consent Order is not included

   c. Obtains service of the notice package.

   d. Where an NPR-NOCS package is issued, follows the applicable procedures in CS 401.3 or CS 401.6 relating to the mother or third-party custodian.

2. **Response to the NPR**

   Takes action corresponding to the alleged/presumed father's timely response to the NPR as follows:

   The NOTES in CS 605.2 regarding timely response and responder's intent apply here as well.

   a. **No Response**   If the alleged/presumed father does not contact the CSED, or contacts the CSED but does not follow with action appropriate to the NPR, follows the procedures in CS 606.3 Motion for Genetic Testing Hearing for preparing and forwarding to the Office of Fair Hearings document CS 606.3A Verified Motion for Genetic Testing Hearing; proceeds to step 9 Pre-Hearing Contact; Hearing Preparation.

   b. **Agreement to Testing, Request for Hearing, Proof Against Paternity** If the alleged/presumed father returns a signed Consent to Genetic Testing, **or** contacts the CSED and orally agrees to genetic testing, **or** returns a signed Statement Concerning Paternity (or an equivalent document) requesting a hearing, **or** contacts the CSED and proves he could not be the child's father or proves another defense to the CSED action, proceeds as in CS 605.2.  **Returns to this section if at any time a situation occurs that in a single-allegation case, would constitute a <u>default</u> for this alleged or presumed father and proceeds as follows:**

      – If the alleged/presumed father fails to appear for a hearing to determine whether he should be ordered to submit to genetic testing, proceeds to step 10a Implementing the Hearing Results.

      – If the alleged/presumed father fails to appear for genetic testing after being ordered to do so by a Genetic Testing Subpoena or by an order following the Consent to Genetic Testing, proceeds to step 14 Enforcing the Appearance of the Alleged/Presumed Father.

3. **Case Reduced to One Possible Father; Loss of Presumption**

   If at any point in these procedures the multiple-allegation case becomes a single-allegation case against this

   – alleged father, proceeds to the appropriate step in CS 605.2 and continues contested case processing as directed

   – presumed father, updates SEARCHS via the CHL screen to show the date and method of paternity establishment, and proceeds with the NOCS case as in step 4 Proceeding with the NOCS Case

   If at any point in these procedures a presumed father rescinds an acknowledgment of paternity within 60 days after it is signed and a basis for an allegation remains, proceeds against the man as an alleged father.

4. **Proceeding with the NOCS Case**

   Upon the resolution of paternity, takes action in CS 401.3 Notice and Order Concerning Support or CS 401.6 Subsequent Notice and Order Concerning Support according to the alleged/presumed father's timely response to the NOCS. If necessary in conjunction with step 5 Request for a NOCS Hearing, notifies the OFH to reactivate a NOCS hearing request as in CS 605.2. Coordinates the timing of the NOCS and paternity actions to meet federal expedited process requirements as in CS 605.2.

**Procedures for Office of Fair Hearings (OFH)**

5. **Request for a NOCS Hearing**

   Upon receipt of a request for hearing on the NOCS, checks SEARCHS to determine if paternity has been established. If so, proceeds with hearing actions in the NOCS case as in CS 401.3 or CS 401.6; if not, delays any processing of the hearing request until paternity is resolved, and advises the caseworker of the request and the delay.

6. **Request for a Genetic Testing Hearing**

   Upon receipt of either a Statement Concerning Paternity from an alleged/presumed father requesting an NPR hearing or a properly completed Verified Motion for Genetic Testing Hearing, proceeds according to the instructions in CS 605.2 for processing a hearing request, except as noted below.

   EXCEPTION: If the alleged/presumed father fails to appear for the hearing, the Administrative Law Judge (ALJ) does not deem the request withdrawn but proceeds with the hearing and decides the issues based on the evidence provided. (Note that in the case of a hearing requested by the alleged/presumed father, the hearing proceeds by authority of a special CSED request included in the witness and exhibit list in all multiple-allegation cases.)

   **NOTE:**

   **Hearing Issue.** The issue to be determined at hearing is whether the CSED can order the alleged/presumed father to submit to genetic testing. In a multiple-allegation case, authority to order testing must be based on either (1) a reasonable probability of sexual contact during the probable period of conception or (2) the existence of a rebuttable presumption.

[steps 7 and 8 deleted]

## Procedures for Caseworker

### 9. Pre-Hearing Contact; Hearing Preparation

Prior to the hearing contacts the alleged/presumed father. Discusses the facts or issues of the paternity case (claimed defenses, voluntary testing, elements to be contested at hearing), and coordinates any agreed genetic testing, as in CS 605.2. If a hearing is still necessary, completes the hearing checklist, prepares exhibits, arranges for testimony, participates in discovery, and attends and appears as a witness at the hearing; requests entry of any applicable oral order or of a judgment for testing costs as in CS 605.2.

### 10. Implementing the Hearing Results

Upon receiving the results of the hearing takes action in 10a or 10b below; note that the ALJ will proceed with the hearing, and will issue a determination, regardless of whether the alleged/presumed father appears for the hearing.

a. If the ALJ has determined the alleged/presumed father should be required to submit to genetic testing schedules genetic testing as in CS 605.2 and proceeds to step 11 Genetic Testing Subpoena.

b. If the ALJ has determined there is no "reasonable-probability" basis for ordering genetic testing, dismisses the NOCS as in CS 401.3 or CS 401.6, updates SEARCHS (CHL and CAP screens) to exclude the alleged/presumed father, and proceeds with the other allegations in the case. (NOTE: If after consultation with the CSED staff attorney further action on **this** allegation appears warranted, pursues, and obtains additional evidence, issues a new NPR-NOCS, and returns to step 2 Response to the NPR).

## Procedures for Caseworker and OFH

### 11. Genetic Testing Subpoena

Generate and issue a Genetic Testing Subpoena according to the procedures in CS 605.2 (caseworker--prepares, submits to the OFH, specifies service; OFH--obtains the ALJ's signature, issues, secures service, sends a copy to the caseworker).

## Procedures for Caseworker

### 12. Appearance of the Persons to be Tested

Monitors the genetic testing appointments for the appearance of the alleged/presumed father, the mother, and the child, as in CS 605.2. If the alleged/presumed father appears for testing, proceeds to step 13 Processing the Genetic Testing Results. If the alleged/presumed father fails to appear for testing, proceeds to step 14 Enforcing the Appearance of the Alleged/Presumed Father.

### 13. Processing the Genetic Testing Results

Receives and processes the testing results as in CS 605.2 with the following exceptions:

a.  If the genetic testing results are positive, includes in the results package to the father (along with the other documents required in CS 605.2) CS-606.2A Admission of Paternity and Application for Paternity Consent Order, **multiple allegation version**, accompanied by the CSED information sheet, "Paternity Information for Parents."  (NOTE:  The single-allegation version of the Admission is not acceptable.)

b.  If the genetic testing results are negative, does not require the mother to provide the names of other possible fathers, but instead proceeds (or continues) with the appropriate steps for the remaining allegations.

### 14. Enforcing the Appearance of the Alleged/Presumed Father

If the alleged/ presumed father fails to appear for testing after being ordered to appear by a Genetic Testing Subpoena or by a CSED decision and order following a signed Consent to Genetic Testing, consults with the CSED staff attorney to determine the appropriate remedy; works with the attorney in obtaining a district court order or in taking other actions to compel submission.

**NOTE:**

**Perseverance Required.** Unless or until **another** alleged/presumed father in the case genetically tests positive, it is essential to pursue testing of this man until a sample is obtained. This may involve administrative contempt procedures, license suspension, and court-ordered physical enforcement by the sheriff or any combination of these.