

CALIFORNIA DEPARTMENT OF CHILD SUPPORT SERVICES

P.O. Box 419064, Rancho Cordova, CA 95741-9064

Reason for this Transmittal

- State Law or Regulation Change
 Federal Law or Regulation Change
 Court Order or Settlement Change
 Clarification requested by One or More Counties
 Initiated by DCSS

December 15, 2004

CSS LETTER: 04-30

ALL IV-D DIRECTORS
 ALL COUNTY ADMINISTRATIVE OFFICERS
 ALL BOARDS OF SUPERVISORS

SUBJECT: CHAPTERED LEGISLATION – ASSEMBLY BILL (AB) 252
 SET ASIDE OF PATERNITY JUDGMENTS

This letter is to provide assistance to local child support agencies (LCSAs) in the implementation of AB 252. This measure, which becomes effective January 1, 2005, adds Section 7645 et seq. to the Family Code pertaining to setting aside or vacating paternity judgments.

Definition of Judgment

Family Code Section 7645 defines “judgment” as a judgment, order, or decree entered in a California court that establishes paternity, including a determination of paternity made pursuant to a petition filed under Section 300, 601, or 602 of the Welfare and Institutions Code or a voluntary declaration of paternity. For paternity set aside/vacate purposes, judgment does not include a judgment in any action for marital dissolution, legal separation, or nullity.

Time Frames to Set Aside/Vacate a Paternity Judgment

Family Code Section 7646 permits a judgment establishing paternity to be set aside or vacated upon a motion by the previously established mother of a child, the previously established father of a child, the child, or the legal representative of any of these persons if genetic testing indicates that the previously established father of a child is not the biological father of the child. The motion must be filed within the following time frames:

1. Within a two-year period commencing with the date on which the previously established father knew or should have known of a judgment that established him as the father of the child or commencing with the date the previously

established father knew or should have known of the existence of an action to adjudicate the issue of paternity, whichever is first.

2. Within a two-year period commencing with the date of the child's birth if paternity was established by a voluntary declaration of paternity. Nothing in this paragraph shall limit any rights specified under Family Code Section 7575(c) pertaining to rescission of a voluntary declaration of paternity.
3. Within a two-year period commencing January 1, 2005, in the case of any previously established father who is the legal father as a result of a default judgment issued on or before January 1, 2005.

Genetic Testing

Pursuant to Family Code Section 7648.2, the LCSA may issue an administrative order requiring the mother, child, and the previously established father to submit to genetic testing only for cases where the LCSA is providing enforcement services pursuant to Family Code Section 17400. Upon receipt of any motion brought pursuant to Family Code Section 7646, the LCSA may issue an administrative order for genetic testing if the motion to set aside/vacate paternity is filed in a court of proper venue and contains all of the following information, if known:

1. The legal name, age, county of residence, and residence address of the child.
2. The names, mailing addresses, and counties of residence, or, if deceased, the date and place of death, of the following persons:
 - a. The previously established father and mother, and the biological father and mother of the child.
 - b. The guardian of the child, if any.
 - c. Any person who has physical custody of the child.
 - d. The guardian ad litem of the child, if any, as appointed pursuant to Family Code Section 7647.5.

The LCSA shall pay the costs of any genetic tests that are ordered under Family Code Section 7648.2 or any genetic tests that are ordered by a court for cases in which the LCSA is providing IV-D services. LCSAs will be reimbursed for the costs of the genetic tests through the normal claiming process.

Exclusions to Paternity Set Aside/Vacate

Family Code Section 4645 et seq. does not establish a basis for setting aside or vacating a judgment establishing paternity with regard to the following:

1. The child is presumed to be a child of marriage pursuant to Family Code Section 7540.
2. The judgment was made or entered by a tribunal of another state, even if the enforcement of that judgment is sought in California.
3. The judgment was made or entered in California and genetic tests conducted prior to entry of the judgment did not exclude the previously established father as the biological father of the child.
4. Termination of any adoption or any obligation of an adoptive parent to an adoptive child.
5. A child conceived by artificial insemination as described in Family Code Section 7613 or a child conceived pursuant to a surrogacy agreement.

Forms / Outreach

The Judicial Council of California will promulgate a new mandatory form to be implemented January 1, 2006, for LCSAs to use when filing a motion to set aside/vacate a judgment of paternity. In the interim, a temporary form for the LCSAs to file such a motion is attached.

Attached to this letter is a hard copy of the form(s). An electronic version of the form(s) in Adobe Portable Document Format (PDF) and JetForm application is included via email distribution of this letter. The PDF version of the form(s) may also be accessed on the DCSS Public website at www.childsup.cahwnet.gov/library.asp. If you have any questions about the forms, please contact Doreen Conley at (916) 464-5250.

To assist LCSAs in their outreach efforts regarding the new paternity judgment set aside/vacate laws, we have also attached "talking points" that outline the new requirements, time frames, and LCSA responsibilities.

Data Collection

In order to measure the impact of AB 252 on child support collections, LCSAs will be required to submit statistical data on a quarterly basis for those cases directly affected by the provisions of AB 252. Detailed information regarding the method and instructions for reporting will be provided at a later date. If you have any questions about data collection, please contact Helen Faust at (916) 464-5042.

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Should you have any other questions regarding the provisions of AB 252, please contact Lesley Hull, Chief of the Case Management Policy Section, at (916) 464-5055.

Sincerely,

A handwritten signature in cursive script that reads "Sandra Poole". The signature is written in black ink and is positioned above the typed name.

SANDRA O. POOLE
Deputy Director
Child Support Services Division

cc: Outreach Coordinators

Attachments

ATTORNEY OR PARTY WITHOUT ATTORNEY (<i>Name and Address</i>):	Telephone No.:	FOR COURT USE ONLY
ATTORNEY FOR (<i>Name</i>):		
NAME OF COURT: STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:		
PETITIONER/PLAINTIFF: RESPONDENT/DEFENDANT:		
DECLARATION TO SET ASIDE/VACATE PATERNITY		CASE NUMBER:

I (name) _____ am the Previously established mother Previously established father
 Child Legal representative
 of (name) _____.

I am requesting that the court order genetic testing, and if the testing shows that the previously established father is not the biological father of the child in this case, this is to request that the judgment of paternity be set aside, and that a judgment of non-paternity be entered. This motion is brought under Family Code Section 7646, and is timely under at least one of the following provisions:

_____ This motion is filed within two years of the date the previously established father first knew or should have known of a judgment establishing him as the father, or of the existence of an action to establish paternity of the child in this case, whichever occurred first. [Family Code 7646(a)(1)]

_____ Paternity was established by Voluntary Declaration of Paternity, and this motion is filed within two years of the date of birth of the child. [Family Code 7646(a)(2)]

_____ The paternity judgment was entered against the previously established father by default, and this motion is being filed within two years of the effective date of the paternity set aside legislation (AB 252, Chapter 849, Statutes of 2004.) [Family Code 7646(a)(3)]

The child in this case is not presumed to be the child of a marriage pursuant to Family Code Section 7540.

_____ I do not believe that the previously established father is the biological father of the child, _____, for the reasons which will be more fully set forth hereafter.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Date:



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 (TYPE OR PRINT NAME)

 (SIGNATURE OF DECLARANT)
 Petitioner/Plaintiff Respondent/Defendant Attorney
 Other (*specify*):

DECLARATION

PETITIONER/PLAINTIFF:
RESPONDENT/DEFENDANT:

CASE NUMBER:

1. Child: _____ Age: _____ DOB: _____
County of Residence: _____
Residence Address: _____
2. Previously established father: _____
County of Residence: _____
Mailing Address: _____
or Date and Place of Death: _____
3. Previously established mother: _____
County of Residence: _____
Mailing Address: _____
or Date and Place of Death: _____
4. Biological Mother: _____
County of Residence: _____
Mailing Address: _____
or Date and Place of Death: _____
5. Biological Father: _____
County of Residence: _____
Mailing Address: _____
or Date and Place of Death: _____
6. Guardian of the Child (if any): _____
County of Residence: _____
Mailing Address: _____
or Date and Place of Death: _____
7. Person with Physical Custody of Child: _____
Relationship to Child: _____
County of Residence: _____
Mailing Address: _____
or Date and Place of Death: _____
8. Guardian ad Litem of the Child (if any): _____
County of Residence: _____
Mailing Address: _____
or Date and Place of Death: _____
9. Date of Entry of Judgment of Paternity: _____
[Pursuant to FC 7648(b)]

PETITIONER/PLAINTIFF:
RESPONDENT/DEFENDANT:

CASE NUMBER:

I have set forth the required information with respect to the child, the previously established father, previously established mother, biological mother, biological father, guardian of the child (if any), the person having physical custody of the child and the guardian ad litem of the child (if any) to the extent such information is known to me. [Family Code 7646(a)(2)]

FACTS IN SUPPORT of this request are:

_____ The previously established father was never married to the mother.

_____ The previously established father was married to the mother, but they were not living together at the time the child was conceived.

_____ A Voluntary Declaration of Paternity was signed on _____.

_____ The child has never lived with the previously established father.

_____ The child lived with the previously established father from _____ to _____.

_____ The previously established father has never had a personal relationship with the child.

_____ The previously established father has not had a personal relationship with the child since _____.

_____ The previously established father's parental rights to the child were terminated on _____.

I further declare:

I do not believe that the previously established father is the biological father of the child because:

I request the true facts of parentage be determined by genetic testing, and that the previously established father be relieved of the duty to pay ongoing child support, and/or child support arrears for the above-named child.

I request that this motion be granted.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Date:

(TYPE OR PRINT NAME)

(SIGNATURE OF DECLARANT)

- Petitioner/Plaintiff Respondent/Defendant Attorney
 Other (specify):

DECLARATION

AB 252 INFORMATION SHEET

OVERVIEW

- AB 252 expands the opportunity to request the court set aside or vacate paternity judgments.
- The provisions of AB 252 will go into effect January 1, 2005.

What is a Declaration To Set Aside/Vacate Paternity?

The *Declaration To Set Aside/Vacate Paternity* is a legal form containing statements of true facts that is attached to a Notice of Motion to set aside, or vacate, a paternity judgment. When signed by the moving party, it states that the moving party believes that the previously established father is NOT the biological father and includes the specific reasons supporting that statement.

What is the Purpose of a Declaration To Set Aside/Vacate Paternity?

The purpose of this form is to present facts to declare that the established father is not the biological father and to request the court grant the Notice of Motion to set aside or vacate a paternity judgment.

What Does It Mean To Sign a Declaration To Set Aside/Vacate Paternity?

By signing this declaration, the moving party is requesting the paternity of the previously established father be disestablished. The declaration must be signed under the penalty of perjury.

If the court grants the Motion to Set Aside or Vacate the Paternity judgment, the previously established father's name will be removed from the court order, and will relieve the previously established father from future support payments and arrearages issued on the basis of that previous judgment of paternity.

Who Can Request the Court To Set Aside/Vacate a Judgment of Paternity?

There are three groups involved and specific individuals in each scenario that can request the motion to set aside or vacate a paternity judgment.

1. Paternity Declaration Cases

Paternity was established by the previously established father's voluntarily signature on the Parent Opportunity Program Declaration (CS 909).

Who can make the request:

- the mother
- the previously established father who signed the POP Declaration
- the LCSA

Time Limitation To File Motion With Court

Two years from the date of the child's birth.

2. Default Cases

The Paternity judgment was established based on a default ruling of the court (i.e., alleged father does not participate in court proceedings).

Who can make the request:

- the mother
- the legally established father
- the child
- the legal representative
- the LCSA

Time Limitation To File Motion With Court

- The two year period from when the father knew or should have known of the judgment of paternity; or two years from the date the father knew or should have known of an action to adjudicate the issue of paternity, whichever is first.
- For existing cases prior to January 1, 2005, within two years of enactment of this provision.

3. Paternity Judgments

The previously established father was determined to be the biological father.

Who can make the request:

- the mother
- the legally established father
- the child
- the legal representative
- the LCSA

Time Limitation To File Motion With Court

- The two year period from when the father knew or should have known of the judgment of paternity; or two years from the date the father knew or should have known of an action to adjudicate the issue of paternity, whichever is first.

Conditions For Granting a Motion to Set Aside or Vacate

The court is required to determine whether setting aside or vacating the voluntary declaration of paternity or paternity judgment is in the best interest of the child based upon the following criteria:

- The age of the child.
- The length of time elapsed since paternity was established.
- The nature, duration, and quality of relationship with the child, including the duration and frequency of any time periods during which the child enjoyed a parent-child relationship.

- A request that the parent-child relationship continue.
- A notice from the biological father that he does not oppose preservation of parent-child relationship between the man who signed the voluntary declaration and the child, or the previously established father and the child.
- The benefit or detriment to the child in establishing the biological parentage of the child.
- Whether any conduct has impaired the ability to determine identity of, or get support from, the biological father.
- Additional factors the court deems relevant in the determination of the best interest of the child.

Setting Aside or Vacating Support Orders

- If the court vacates or sets aside the paternity, the court will relieve the obligor of any future support payments and all past-due support owed (arrearages).
- There is no right to reimbursement of any monies previously paid for child support.

What Scenarios Are NOT Covered Under AB 252?

- Marriage cases do not apply.
 - Family Code 7540 states "...the child of a wife cohabiting with her husband, who is not impotent or sterile, is conclusively presumed to be a child of the marriage."
- Out-of-state orders
 - The State of California has no jurisdiction in out-of-state orders.
- Adoptions, artificial inseminations, surrogate parents
 - The State law for disestablishment of paternity does not apply to these cases.

How Do I Fill Out the *Declaration To Set Aside/Vacate Paternity*?

This form is prepared by the moving party, moving party's attorney, or the LCSA.

What court do I go to?

Paternity disestablishment matters are handled in the Family Court of proper venue.

What is a "court of proper venue"?

A "court of proper venue" is the court where the child support order is currently registered.

A judge in any court can appropriately decide which court you should utilize.