Ohio Administrative Code

Rule 5101:12-40-05 Determination of the existence or non-existence of a father and child relationship.

Effective: May 1, 2023

(A) The following terms and definitions apply throughout division 5101:12 of the Administrative Code:

(1) "Alleged father" means a man who is believed to be or believes himself to be the natural father of a child but a final and enforceable determination of paternity regarding that man and child does not exist.

(2) "Birth record" has the same meaning as in section 3705.01 of the Revised Code.

(3) "Central paternity registry" (CPR) is the birth registry maintained by the office of child support (OCS) in the Ohio department of job and family services (ODJFS) in accordance with section 3111.64 of the Revised Code.

(4) "Determine the existence or non-existence of a father and child relationship" refers to the administrative or judicial process that will determine whether or not a man is the natural father of a child when there is not a final and enforceable determination of paternity.

(5) "Disestablish paternity" means to attempt to overturn or reverse a final and enforceable determination of paternity.

(6) A "final and enforceable determination of paternity" exists when:

(a) In accordance with section 3111.25 of the Revised Code, the mother and father signed a JFS 07038, "Acknowledgment of Paternity Affidavit" (effective or revised effective date as identified in rule 5101:12-1-99 of the Administrative Code) which has been entered into the birth registry, and neither the mother nor the father brought an action under section 3111.27 of the Revised Code within sixty days of the signing to request the JFS 07038 be rescinded;

(b) In accordance with section 3111.49 of the Revised Code, a child support enforcement agency (CSEA) issued a JFS 07774, "CSEA Administrative Order Establishment of Paternity" (effective or revised effective date as identified in rule 5101:12-40-99 of the Administrative Code), or JFS 07771, "CSEA Administrative Order Non-existence of Father and Child Relationship" (effective or revised effective date as identified in rule 5101:12-40-99 of the Administrative Code), and neither the mother, alleged father, nor guardian or legal custodian of the child brought an action under sections 3111.01 to 3111.18 of the Revised Code within fourteen days of the issuance of the administrative order to object to the administrative order;

(c) A court issued an order determining that the man is the father of the child, or that the child was born as a product of the marriage, and neither party to the order objected to the order;

(d) In accordance with section 3111.821 of the Revised Code, an administrative child support order was issued or, in accordance with section 2151.232 of the Revised Code, a court support order was issued and neither party to the order raised the issue of the existence or non-existence of a father and child relationship although paternity was presumed pursuant to division (A)(3) of section 3111.03 of the Revised Code and as described in rule 5101:12-40-10 of the Administrative Code;

(e) In accordance with section 3111.95 of the Revised Code, the husband of a married woman consented to artificial insemination; or

(f) Another state or country has established a final and enforceable determination of paternity under the laws of that state or country, regardless of whether the determination of paternity was made pursuant to a voluntary acknowledgment of paternity, an administrative proceeding, or a court proceeding. The CSEA shall give full faith and credit to a final and enforceable determination of paternity made by another state or country.

(7) "Genetic testing" and "genetic tests" mean: tissue or blood tests, including tests that identify the presence or absence of common blood group antigens, the red blood cell antigens, human lymphocyte antigens, serum enzymes, serum proteins, or genetic markers; or deoxyribonucleic acid typing of blood or buccal cell samples. "Genetic test" and "genetic testing" may include the typing and comparison of deoxyribonucleic acid derived from the blood of one individual and buccal cells of another.

(8) "Integrated perinatal health information system" (IPHIS): IPHIS is an electronic system maintained by the Ohio department of health (ODH) that provides the functionality to process and store data for vital statistics purposes.

(a) Individuals with access to IPHIS have the responsibility to maintain the confidentiality of and to safeguard all information contained in a person's case record, whether the information is contained on paper, film, computer, or any other electronic medium in accordance with rule 5101:12-1-20 of the Administrative Code.

(b) In accordance with section 3125.99 of the Revised Code, anyone who discloses information to any person or for any purpose not specifically permitted by rule 5101:12-1-20 of the Administrative Code or its supplemental rules is subject to a fine of up to five hundred dollars or a prison term of up to six months or both.

(B) The following forms are referenced throughout division 5101:12 of the Administrative Code:

(1) JFS 07038, "Acknowledgment of Paternity Affidavit" (effective or revised effective date as identified in rule 5101:12-1-99 of the Administrative Code)- A voluntary affidavit that may be signed by the mother of a child and a man alleging himself to be the natural father of the child.

(2) JFS 04070, "Addendum to the Administrative Order to Modify the Birth Record - Child Surname" (effective or revised effective date as identified in rule 5101:12-40-99 of the Administrative Code) - An addendum that may be signed by the mother of a child and a man alleging himself to be the father indicating an agreement by the parties to change the child's surname, if and only if the alleged father is found to be the natural father. If this agreement is signed by both parties and genetic testing indicates paternity is established it will be incorporated by reference into and become part of the administrative order establishing paternity.

(3) JFS 07774, "CSEA Administrative Order Establishment of Paternity" (effective or revised effective date as identified in rule 5101:12-40-99 of the Administrative Code) - Order indicating through genetic testing that a father and child relationship exists.

(4) JFS 07771, "CSEA Administrative Order Non-Existence of Father and Child Relationship" (effective or revised effective date as identified in rule 5101:12-40-99 of the Administrative Code) - Order indicating through genetic testing that a father and child relationship does not exist.

(5) JFS 07773, "CSEA Administrative Order Paternity Finding Inconclusive" (effective or revised effective date as identified in rule 5101:12-40-99 of the Administrative Code) - Order indicating that a party failed to submit to genetic testing and the results are inconclusive.

(6) JFS 04070-I, "Instructions for Completing the JFS 04070, Addendum to the Administrative Order to Modify the Birth Record - Child Surname" (effective or revised effective date as identified in rule 5101:12-40-99 of the Administrative Code) - Instructions for parents wishing to complete the JFS 04070 to change their child's surname during the administrative paternity process.

(7) JFS 07754, "Notice of Request for Paternity Determination and Order to Appear for Genetic Tests" (effective or revised effective date as identified in rule 5101:12-40-99 of the Administrative Code) - Notice issued to the natural mother, each man presumed to be the father of the child, and each man alleged to be the father of the child ordering that the parties submit to genetic testing.

(8) JFS 07029, "Request for Paternity Determination and Notification to Central Paternity Registry" (effective or revised effective date as identified in rule 5101:12-40-99 of the Administrative Code) - A request that shall be completed by a party that signed a JFS 07038 requesting the CSEA to make an administrative determination of the existence or non-existence of a father and child relationship. The request must be completed no later than sixty days after the date of the last signature on the JFS 07038.

(9) JFS 01716, "Waiver of Service of Notice and Order to Appear for Genetic Testing" (effective or revised effective date as identified in rule 5101:12-30-99 of the Administrative Code) - Waiver to be signed by a presumed father, alleged father, natural mother, or caretaker of a child prior to proceeding with genetic testing when the party appears for genetic testing but service of process was not obtained, or when a CSEA requests that the party waive service of process in accordance with rule 4.7 (7/1/2022) of the Rules of Civil Procedure (www.supremecourt.ohio.gov).

(C) In accordance with Chapter 3111. of the Revised Code, the CSEA shall determine the existence

or non-existence of a father and child relationship when:

(1) The child was born out-of-wedlock and:

(a) The CSEA receives a referral for a child who receives Ohio works first (OWF), Title IV-E foster care maintenance, or medicaid benefits in the same county as the CSEA; or

(b) The CSEA receives a request to determine the existence or non-existence of a father and child relationship, as described in rule 5101:12-40-20 of the Administrative Code, by:

(i) The child's mother or her personal representative;

(ii) A man alleged or alleging himself to be the father of the child or his personal representative;

(iii) The child or the child's personal representative; or

(iv) The court pursuant to division (D) of section 3111.381 of the Revised Code.

(2) There is a presumption of paternity and:

(a) The CSEA receives a request to determine the existence or non-existence of a father and child relationship, as described in rule 5101:12-40-20 of the Administrative Code, by:

(i) The child's mother or her personal representative;

(ii) A man alleged or alleging himself to be the father of the child or his personal representative;

(iii) The child or the child's personal representative.

(b) Either the mother or the presumed father who are party to a request to establish an administrative support order dispute paternity. The CSEA shall proceed as if a request had been made to determine the existence or non-existence of a father child relationship in accordance with this rule.

(D) In accordance with section 3111.38 of the Revised Code, the CSEA in the county in which the child or the guardian or legal custodian of the child resides shall determine the existence or non-existence of a father and child relationship when a IV-D application as described in paragraph (A) of rule 5101:12-10-01.1 of the Administrative Code or a IV-D referral as described in paragraph (B) of rule 5101:12-10-01.1 of the Administrative Code has been completed and filed with the CSEA.

In accordance with section 3111.39 of the Revised Code, when more than one CSEA receives a request to determine the existence or non-existence of a father and child relationship concerning the same child that meets the requirements described in this paragraph, the CSEA that receives the request first shall act on the request. When a CSEA that receives a request is not the appropriate CSEA for the filing of the request, the CSEA shall forward the request to the CSEA in which the child or the guardian or legal custodian of the child resides.

(E) Pursuant to section 3111.381 of the Revised Code, the CSEA shall attempt to determine the existence or non-existence of a father and child relationship through an administrative action and, when the administrative action is unsuccessful, by bringing a court action.

Pursuant to division (E) of section 3111.381 of the Revised Code, if the alleged father of a child is deceased and proceedings for the probate of the estate of the alleged father have been or can be commenced, the court with jurisdiction over the probate proceedings shall retain jurisdiction to determine the existence or non-existence of a father and child relationship between the alleged father and any child without an administrative determination being requested from a CSEA.

(F) Pursuant to section 3111.05 of the Revised Code, an action to determine the existence or non-existence of a father and child relationship may be brought up to and including the child's twenty-third birthday.

(G) Disestablishing paternity.

(1) When the CSEA knows or the CSEA should have known that there is a final and enforceable determination of paternity, the CSEA:

(a) Shall not assist either party in an action to disestablish paternity;

(b) Shall intervene in an action to disestablish paternity in order to defend support collections assigned to ODJFS; and

(c) May intervene in an action to disestablish paternity in order to defend a paternity determination or a support order.

(2) Except as provided in paragraph (C)(3) of rule 5101:12-1-85 of the Administrative Code, ODJFS shall not pay the cost of genetic testing performed under the statewide genetic testing contract when the CSEA knew or should have known that there was a final and enforceable determination of paternity before genetic testing was conducted.