

Revocation of Paternity Act (ROPA)

■ Procedural Checklists for ROPA Actions:

- **Setting Aside an Acknowledgment of Parentage:** [MCL 722.1437](#) governs motions and actions to set aside an acknowledgment of parentage. [MCL 722.1435\(1\)](#).
- **Determining that a Genetic Father Is Not a Child's Father:** [MCL 722.1438](#) governs motions and actions to determine that a genetic father is not a child's father. [MCL 722.1435\(2\)](#).
- **Setting Aside an Order of Filiation:** [MCL 722.1439](#) governs motions to set aside an order of filiation. [MCL 722.1435\(3\)](#).
- **Determining that a Child's Presumed Father Is Not a Child's Father:** [MCL 722.1441](#) governs motions and actions to determine that a child's presumed father is not a child's father (child born out of wedlock). [MCL 722.1435\(4\)](#).

► Editorial Advisory Committee

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Revocation of Paternity Act (ROPA)

Setting Aside an Order of Filiation

Actions under the Revocation of Paternity Act (ROPA), [MCL 722.1431](#) *et seq.*, resolve the identity of a child's father; ROPA enables a **court** to determine who is, and who is not, the father of a child. The specific section of ROPA that applies to a motion to set aside an **order of filiation** is [MCL 722.1439](#). [MCL 722.1435\(3\)](#). In addition to the provisions in [MCL 722.1439](#), the relevant provisions in [MCL 722.1443](#) also apply to motions to set aside an order of filiation.



Motion to Set Aside an Order of Filiation

■ Is the ROPA action permitted?

- A ROPA action **MAY NOT** be initiated when a **court** has jurisdiction of a child under [MCL 712A.1](#) to [MCL 712A.32](#) (probate code governing the jurisdiction, procedure, and disposition of minors), **AND**
- A petition to terminate parental rights to the child has been filed. [MCL 722.1443\(15\)](#).
- HOWEVER**, a ROPA action **MAY** be permitted if the court having jurisdiction of a child under [MCL 712A.1](#) to [MCL 712A.32](#) determines that allowing an action under ROPA would be in the child's best interests. *Id.*

■ Was the ROPA action properly initiated?

- A motion to set aside an order of filiation may be initiated **IF**
 - A child has an **affiliated father**, [MCL 722.1439\(1\)](#), **AND**
 - Paternity was established after the child's affiliated father failed to participate in the paternity proceedings involving the child, *id.*

■ **Was the motion to set aside an order of filiation filed by one of the parties authorized to file it?**

- A motion to set aside an order of filiation may be filed by any of the following individuals:
 - A child’s mother. [MCL 722.1439\(1\)](#).
 - An **affiliated father**. *Id.*
 - An **alleged father**.¹ *Id.*

► **Note:**

An alleged father **IS NOT** permitted to initiate an action under ROPA “if the child is conceived as the result of acts for which the alleged father was convicted of criminal sexual conduct under [[MCL 750.520b](#) to [MCL 750.520e](#)].” [MCL 722.1443\(14\)](#).

■ **Was the motion to set aside an order of filiation filed in a proper court?**

- The motion to set aside an **order of filiation** **MUST** be filed in the **SAME COURT** that determined paternity (entered the order of filiation). [MCL 722.1439\(1\)](#).

■ **Does a court have jurisdiction to determine whether to set aside an order of filiation under ROPA when proceedings were initiated under the Paternity Act?**

- The Paternity Act, [MCL 722.711](#) *et seq.*, provides a **court** with continuing jurisdiction over a matter that originated under the Paternity Act, and the Paternity Act expressly authorizes a court to determine whether to set aside an order of filiation under ROPA. [MCL 722.720\(c\)](#).

■ **Was the motion to set aside an order of filiation timely filed?**

- A motion to set aside an order of filiation is timely if it is initiated within either of the following periods, *whichever is later*:
 - The motion was filed within three years after a child’s birth, **OR**

¹An **alleged father** may initiate an action under ROPA to determine that he is a child’s father. [MCL 722.1445\(1\)](#). If the alleged father proves he is a child’s father by clear and convincing evidence, “the court may make a determination of paternity and enter an **order of filiation** as provided for under . . . [MCL 722.717](#).”

- The motion was filed within one year after the date an **order of filiation** was entered. [MCL 722.1439\(2\)](#).
- A party may request an extension of the deadline specified for initiating an action under ROPA:
 - A request for an extension of time **MUST** be accompanied by an affidavit.² [MCL 722.1443\(12\)](#).
 - The affidavit **MUST** be signed by the person requesting the extension. [MCL 722.1443\(12\)](#).
 - The affidavit **MUST** state facts that the person requesting the extension satisfied all the requirements for initiating an action under ROPA but did not timely file the motion for one of the following reasons:
 - Mistake of fact.** [MCL 722.1443\(12\)\(a\)](#).

“A mistake of fact is ‘a belief that a certain fact exists when in truth and in fact it does not exist.’” *Rogers v Wcisel*, 312 Mich App 79, 96 (2015), quoting *Montgomery Ward & Co v Williams*, 330 Mich 275, 279 (1951). “The law . . . does not require that a party have no knowledge that a fact might be untrue to create a mistake of fact.” *Wcisel*, 312 Mich App at 96. A party may establish a mistake of fact when the party acts on an erroneous belief, even if the party acted on the belief only in part, and even if the party had some doubt about the truth of the belief. *Wcisel*, 312 Mich App at 96. [MCR 2.112\(B\)\(1\)](#) requires a party alleging mistake of fact to state with particularity the circumstances that constitute mistake.
 - Newly discovered evidence** that could not have been discovered earlier with the exercise of due diligence. [MCL 722.1443\(12\)\(b\)](#).
 - Fraud.** [MCL 722.1443\(12\)\(c\)](#). A party alleging fraud must state with particularity the circumstances that constitute fraud. [MCR 2.112\(B\)\(1\)](#).
 - Misrepresentation or misconduct.** [MCL 722.1443\(12\)\(d\)](#).

²“An oath or affidavit . . . may be taken before a justice, judge, or clerk of a court, or before a notary public.” [MCL 600.1440\(1\)](#). See *Sherry v East Sub Football League*, 292 Mich App 23, 31 (2011) (“To be valid, an affidavit must be (1) a written or printed declaration or statement of facts, (2) voluntarily made, and (3) confirmed by the oath or affirmation of the party making it, taken before a person having authority to administer such oath or affirmation.”).

Duress. [MCL 722.1443\(12\)\(e\)](#).

- If the **court** finds that the affidavit in support of the time extension is sufficient, the court **MAY** allow the motion to be filed and engage in any other action considered appropriate. [MCL 722.1443\(13\)](#).
- The party requesting the extension of time has the burden of proving by **clear and convincing evidence** that granting relief under ROPA would not be against a child's best interests in light of the equities of the case. [MCL 722.1443\(13\)](#).

■ **Is it a Title IV-D case?**

- In **Title IV-D cases**, the court **MAY** appoint an attorney to represent the state's interests with regard to the motion under ROPA. [MCL 722.1443\(6\)](#).
- An attorney must be one approved by the Office of Child Support. *Id.*
- The court **MAY** appoint a guardian ad litem to represent the child's interests. *Id.*

■ **Is a surety or other assurance appropriate?**

- With the exception of an action filed by a mother who proves by clear and convincing evidence that a child was conceived as a result of nonconsensual **sexual penetration** ([MCL 722.1445\(2\)](#)), a court **MAY** order the person who initiated the ROPA motion to post a monetary amount with the court, to obtain a surety, or to offer other assurances to secure attorney fees and costs if the person does not prevail. [MCL 722.1443\(11\)](#) court-appointed attorney. [MCL 722.1438\(5\)](#).



Blood or Tissue Typing or DNA Identification Profiling

■ **Court MUST order blood or tissue typing or DNA identification profiling.**

- [MCL 722.1443\(5\)](#) mandates blood or tissue typing or **DNA identification profiling** in all actions under ROPA; that is, a court **MUST** order the parties in an action or motion under ROPA to submit to, and pay for, blood or tissue typing or DNA identification profiling to assist the court in making the findings required under ROPA. [MCL 722.1443\(5\)](#).
- The testing **MUST** be conducted as indicated in [MCL 722.716](#) of the Paternity Act.³ [MCL 722.1443\(5\)](#).

- ❑ **HOWEVER**, a court is **NOT** bound by the test results when it makes the necessary findings in a ROPA case. *Id.*
- **Payment for the cost of blood or tissue typing or DNA identification profiling in Title IV-D cases.**
 - ❑ If a party's ROPA motion satisfies the [eligibility criteria](#) set out in Subsection 4.1 of Section 4.06, the Title IV-D program must provide the genetic testing ordered by a court.
 - ❑ Federal funding may be available to reimburse the costs of genetic testing in a [Title IV-D case](#) when a court has ordered the parties involved to undergo blood or tissue typing or [DNA identification profiling](#).⁴

Disposition of a Motion to Set Aside an Order of Filiation

■ Court refuses to set aside an order of filiation.

A [court](#) may refuse to enter an order setting aside an [order of filiation](#) **IF**:

- ❑ There is evidence that an order setting aside an order of filiation would not be in a child's best interests. [MCL 722.1443\(4\)](#).
- ❑ If a court refuses to set aside an order of filiation, it must state on the record its reasons for refusing to enter such an order. *Id.*
 - ❑ Factors a court **MAY** consider when determining whether an order setting aside an order of filiation is in the child's best interests:⁵
 - ❑ "The age of the child." [MCL 722.1443\(4\)\(e\)](#).
 - ❑ "The harm that may result to the child." [MCL 722.1443\(4\)\(f\)](#).

³[MCL 722.716](#) provides details concerning the conduct of and payment for the testing ordered; [MCL 722.716](#) also addresses posttesting procedures and the proper management and use of the testing results.

⁴Subject to the conditions described in [Section 4.06, Paternity Disestablishment, of the Michigan IV-D Child Support Manual](#), a Title IV-D program may be required to provide genetic testing services when a court has ordered the parties to undergo blood or tissue typing or [DNA identification profiling](#). Additionally, pursuant to the [eligibility guidelines](#) prescribed in Section 4.06, federal funding may be available to reimburse a portion of the costs of providing the testing.

⁵Several factors in [MCL 722.1443\(4\)](#) apply only when a [presumed father](#) is involved and so are not included here with the discussion of acknowledgments of parentage. See [MCL 722.1443\(4\)\(a\)-\(d\)](#). One factor listed, [MCL 722.1443\(4\)\(d\)](#), applies in cases involving a presumed or an [alleged father](#). An alleged father is not an [acknowledged father](#). [MCL 722.1433\(a\)](#) and [MCL 722.1433\(c\)](#).

- “Other factors that may affect the equities arising from the disruption of the father-child relationship.” [MCL 722.1443\(4\)\(g\)](#).
 - “Any other factor that the court determines appropriate to consider.” [MCL 722.1443\(4\)\(h\)](#).
- **Court MUST set aside an order of filiation if a child’s mother proves the child was conceived as a result of nonconsensual sexual penetration.**
- “If an action is brought by a mother who, after a fact-finding hearing, proves by clear and convincing evidence that the child was conceived as a result of nonconsensual **sexual penetration**,” a court **MUST** set aside an order of filiation for the child’s **affiliated father**, [MCL 722.1445\(2\)\(c\)](#),
 - HOWEVER**, a court is **NOT** required to set aside an order of filiation in such cases if a child’s biological parents cohabit after the date of the alleged nonconsensual sexual penetration and establish for the child a mutual custodial environment. [MCL 722.1445\(3\)](#).
- **Action initiated by alleged father.**
- When a child’s **alleged father** initiates a ROPA action and by clear and convincing evidence proves that he is a child’s father, a “court [**MAY**] make a determination of paternity and enter an order of filiation as provided for under [[MCL 722.717](#)].” [MCL 722.1445\(1\)](#).
- **Payment of costs and fees.**
- If a court determines that an **order of filiation** should **NOT** be set aside, a court **MUST** “order the person who filed the motion to pay the reasonable attorney fees and costs incurred by any other party because of the motion.” [MCL 722.1439\(3\)](#).

■ What a ROPA Order Does Not, Cannot, and Must Not Do

- **ROPA does not authorize orders affecting other states’ judgments or orders inconsistent with applicable federal law.**
- The court **MUST NOT** issue an order in a ROPA action “that sets aside a judgment or determination of a court or administrative agency of another state, even if the judgment or determination is being enforced in this state[.]” [MCL 722.1443\(7\)](#).

- The **court MUST NOT** issue an order in a ROPA action “that is inconsistent with [28 USC 1738A](#) (full faith and credit given to child custody determinations made by a court in another state) or [28 USC 1738B](#) (full faith and credit given to child support orders entered by a court in another state). *Id.*
- **ROPA does not relieve a man of his obligation to pay child support.**
 - A judgment under ROPA does **NOT** relieve a man of his obligation to pay support already due to a child or a child’s mother before initiation of the ROPA action to set aside an acknowledgment of parentage. [MCL 722.1443\(3\)](#).
 - A judgment under ROPA does **NOT** prevent an individual from seeking to have a judgment vacated or set aside under the applicable court rules. *Id.*
- **ROPA does not terminate adoption orders or interfere with adoptive obligations.**
 - ROPA does **NOT** provide a basis for terminating an adoption. [MCL 722.1443\(8\)](#).
 - ROPA does **NOT** affect any obligation an adoptive parent has to an adopted child. [MCL 722.1443\(8\)](#).
- **ROPA does not constitute grounds for vacating paternity established in a surrogacy contract.**
 - ROPA does **NOT** provide a basis for vacating a paternity determination involving a child who was conceived under a surrogate parentage contract as defined in [MCL 722.853](#). [MCL 722.1443\(9\)](#).



A

Acknowledged father

- For purposes of the Revocation of Paternity Act (ROPA), [MCL 722.1431 et seq.](#), *acknowledged father* “means a man who has affirmatively held himself out to be the child’s father by executing an acknowledgment of parentage under the acknowledgment of parentage act, [MCL 722.1001 to MCL 722.1013].” [MCL 722.1433\(a\)](#).

Affiliated father

- For purposes of the Revocation of Paternity Act (ROPA), [MCL 722.1431 et seq.](#), *affiliated father* “means a man who has been determined in a court to be the child’s father.” [MCL 722.1433\(b\)](#).

Alleged father

- For purposes of the Revocation of Paternity Act (ROPA), [MCL 722.1431 et seq.](#), *alleged father* “means a man who by his actions could have fathered the child.” [MCL 722.1433\(c\)](#).

C

Child born out of wedlock

- For purposes of the Paternity Act, [MCL 722.711 et seq.](#), *child born out of wedlock* “means a child begotten and born to a woman who was not married from the conception to the date of birth of the child, or a child that the court has determined to be a child born or conceived during a marriage but not the issue of that marriage.” [MCL 722.711\(a\)](#).

Court

- *Court* is not expressly defined in the Revocation of Paternity Act (ROPA), [MCL 722.1431](#) *et seq.* However, when ROPA refers to initiating a ROPA action by complaint or motion and when ROPA refers to jurisdiction, it is referring to a circuit court in Michigan. See [MCL 722.1443](#)
- For purposes of the Acknowledgment of Parentage Act, [MCL 722.1001](#) *et seq.*, *court* “means the circuit court.” [MCL 722.1002\(c\)](#).
- For purposes of the Paternity Act, [MCL 722.711](#) *et seq.*, *court* “means the circuit court.” [MCL 722.711\(d\)](#).

D

DNA identification profiling

- For purposes of the Paternity Act, [MCL 722.711](#) *et seq.*, *DNA identification profiling* “means a validated scientific method of analyzing components of deoxyribonucleic acid molecules in a sample of genetic testing material to identify the pattern of the components’ chemical structure that is unique to the individual.” [MCL 722.711\(f\)](#).

G

Genetic father

- For purposes of the Revocation of Paternity Act (ROPA), [MCL 722.1431](#) *et seq.*, *genetic father* “means a man whose paternity has been determined solely through genetic testing under the paternity act, [[MCL 722.711](#) to [MCL 722.730](#)], the summary support and paternity act, or the genetic parentage act.” [MCL 722.1433\(d\)](#).

O

Order of filiation

- For purposes of the Revocation of Paternity Act (ROPA), [MCL 722.1431](#) *et seq.*, *order of filiation* “means a judicial order establishing an affiliated father.” [MCL 722.1433\(f\)](#).

P

Presumed father

- For purposes of the Revocation of Paternity Act (ROPA), [MCL 722.1431 et seq.](#), *presumed father* “means a man who is presumed to be the child’s father by virtue of his marriage to the child’s mother at the time of the child’s conception or birth.” [MCL 722.1433\(e\)](#).

S

Sexual penetration

- For purposes of [MCL 722.1445](#) of the Revocation of Paternity Act (ROPA), *sexual penetration* “means that term as defined in . . . [MCL 750.520a](#).” [MCL 722.1445\(4\)](#). [MCL 750.520a\(r\)](#) defines *sexual penetration* as “sexual intercourse, cunnilingus, fellatio, anal intercourse, or any other intrusion, however slight, of any part of a person’s body or of any object into the genital or anal openings of another person’s body, but emission of semen is not required.”

State registrar

- For purposes of the Acknowledgment of Parentage Act, [MCL 722.1001 et seq.](#), *state registrar* “means that term as defined in [[MCL 333.2805](#)].” [MCL 722.1002\(e\)](#). *State registrar* is defined in [MCL 333.2805](#) of the Public Health Code as “the official appointed under [[MCL 333.2813](#)] or his or her authorized representative.” [MCL 333.2805\(1\)](#). According to [MCL 333.2813](#), the state registrar is “to administer the system of vital statistics.” [MCL 333.2813\(1\)](#). A state registrar’s specific duties are set forth in [MCL 333.2813\(2\)\(a\)-\(f\)](#).

T

Title IV-D case

- For purposes of the Revocation of Paternity Act (ROPA), [MCL 722.1431 et seq.](#), *Title IV-D case* “means an action in which services are provided under part D of title IV of the social security act, [42 USC 651 to 42 USC 669b].” [MCL 722.1433\(g\)](#).

