

1. Child born December 2010.
Mother and man both sign affidavit of parentage at hospital.
Mother comes in to apply for services in May 2010, and no rescission of affidavit of parentage has been done.
Mother says that she and man both knew that he was not the father, but both signed the affidavit of parentage.
The man that signed the affidavit of parentage is now incarcerated.
She now wants child support from another man that she states is the biological father.

This cannot be done. You already have a father established and until he is no longer considered the father you cannot get child support from the second man. Moreover, federal policy says that providing disestablishment services to the NCP is not a IV-D function.

The North Carolina Court of Appeals, further, ruled in Chambers v. Chambers, 43 N.C. App. 361, 258 S.E.2d 822 (1979), was estopped from denying paternity when he took conscious action to have his name placed on a minor child's birth certificate knowing that he was not the biological father. I do not see any distinction in the fact pattern presented here.

3. Is there any legal statute or recommendation that the cost of paternity testing should be refunded to the NCP if he is excluded?

Yes. First, N.C. Gen. Stat. § 8-50.1(b1) provides that "[t]he court shall require the person requesting the blood or genetic marker tests to pay the costs of the tests." However, the very next sentence provides that "[t]he court may, in its discretion, tax as part of costs the expenses for blood or genetic marker tests and comparisons."

5. Do North Carolina statutes restrict IV-D from enforcing child support obligations beyond age 20? For example, North Carolina intervenes in a North Carolina divorce order when the child is 16 years old. The divorce order states the defendant will pay child support until the child graduates from college. The child will turn 21 in February 2011, but is a junior in a four year university. When the child turns 21, can IV-D continue to enforce the case until the child graduates from college at age 23? Does IV-D have to close their case and redirect the case back to the Clerk of Superior Court? If IV-D must close the case, is it IV-D policy or North Carolina statute that restricts IV-D participation after age 20? What about an order that requires an NCP to pay child support indefinitely due to disability of the child – (another intervention on a non-IV-D order). The child now gets a disability check based on his/her own disability. The NCP draws SSA benefits based on age and is paying child support as ordered, but would like to have it stopped.

I am not aware of any circumstances which would require that North Carolina close its case under the facts as posed. In fact, under this fact pattern, I would suggest that the services you are giving in interstate cases are far better than those you would be giving in intrastate cases. Remember, North Carolina law allows for the payment of child support beyond the age of 18 if the parties contract for such an obligation. The

court will enforce this obligation. Harding v. Harding, 46 N.C. App. 62, 264 S.E.2d 131 (1980). If the obligation is made part of a court order, it loses its contractual “look” and is subject to modification as is any court order.

6. If a foster care custody order is established that includes current support and medical insurance obligation, what is the legal position on IV-D role and “cross-referencing?”

7. How should IV-D handle situations in which the judge terminates parental rights just because the NCP no longer wants to pay child support or have anything to do with the child - - this is not a situation in which the child is to be adopted - - and the child continues to receive public assistance – TANF and/or Medicaid?

N.C. Gen. Stat. § 7B-1112 indicates that termination of a parent’s parental rights “terminates all rights and obligations of the parent to the juvenile.” Biological father no longer has the obligation to pay ongoing support or to reimburse the taxpayer for public assistance.

8. What language should be used in a motion when we are removing ourselves as plaintiff because the CP no longer wants our services? Is there any legal statute regarding the number of times the CP can have the order suspended and reinstated?

9. Enrollment of military dependents in the DEERS program.

Issue an order requiring that the defendant enroll his dependents into the DEERS program.

10. When lump sums are paid (usually by SSA), what is the best method of obtaining a portion of the lump sum for child support for child support arrears owed?

I would suggest a garnishment against the lump sum.

11. Service of Process issues. When can a motion and order to show cause be sent via regular mail? We were under the impression that unless it was signed by a judge, the show cause had to be served pursuant to Rule 4 of the Rules of Civil Procedure. In other words, a show cause could only be sent via regular mail if the show cause was signed by a judge, not a Clerk. Please clarify or elaborate.

12. Alias and Pluries Summons – Life or Death issues. (i.e., keeping it alive or letting it die and having to start over, etc.)

13. Application and Summons – When to use it instead of a full complaint. (Some attorneys do not like for their CSE offices to use it because it does not contain as much detailed information as a complaint action).

14. Issues concerning enrollment of military dependents in the DEERS program. Can court orders require the service member to enroll the child within a specified time frame? i.e. 30 days and that the NCP be required to bring to the child support office proof of enrollment. If not done timely, can we do a show cause?

Yes to all of the above.

15. International Case Processing Issues. What should an agent/attorney do when the NCP is in Canada? – can we still get an order established? What about an NCP in Mexico or another country that does not have federal reciprocating agreements? Can we just close these cases? If not, what forms would we use? Should we translate the order as the initiating agency or should the other country be responsible for that?

For any foreign country in which we either have a reciprocal agreement or the U.S. Department of State has declared to be a reciprocating state, simply follow the requirements as set forth in UIFSA.