

SOKAOGON CHIPPEWA COMMUNITY FAMILY CODE
PATERNITY

3.9 PATERNITY

3.9.1 Acknowledgment of Paternity. The potential father of a non-marital child may declare assume parental responsibility for a child and recognize such child by executing a formal Voluntary Paternity Acknowledgment (VPA) form provided for that purpose by the hospital or the Tribal Child Support Agency. The acknowledgement shall also be signed by the mother of the child.

3.9.2 Administrative Paternity. The Tribal Child Support Agency can conduct genetic testing to establish parentage without the need for court involvement. This option is encouraged, as tribal enrollment also requires genetic testing as part of the process. The agency will follow the state's procedures through the KIDS computer program. The cost of the genetic test is covered by the Tribal Child Support Agency. If the individual is confirmed as the father, the agency will submit the associated costs and forms to the state to have his name added to the child's birth certificate.

3.9.3 Petition to Determine Paternity.

- A. Any interested party, including the mother, father, private attorney, and the Tribal Child Support Agency, may petition the Court for the determination of the paternity of a child.
- B. The case caption shall be entitled: "In re the Paternity of (child's initials)", shall be verified, and shall contain the following information within the petition:
 - (1) The name, birth date, and residence of the child;
 - (2) Information showing whether or not the child is an enrolled member or eligible;
 - (3) The name, address of the mother and enrollment status;
 - (4) The name and address of the potential father of the child;
 - (5) The name, address, and relationship to the child of all other interested parties; and
 - (6) The petitioner's interest in the matter.

- C. Upon the filing of a petition, the Tribal Child Support Agency or the Tribal Clerk of Court shall issue a summons pursuant to § 3.2.2 of this Chapter.
- D. The Tribal Child Support Agency or a petitioner shall serve copies of the petition and summons pursuant to § 3.2.3 of this Chapter upon all interested parties. Service shall also be made on the Tribal Child Support Agency if the office is not the petitioner. Service shall be made at least ten (14) days prior to the initial hearing.
- E. Any party may request a good cause claim to dismiss the action, if they assert the establishment of the paternity is not in the best interest of the child. This could be where the child was conceived by incest or forcible rape, or other documented proof that it is not in the best interest of the child to proceed with establishing paternity. If there is a pending adoption of the child and the establishment of paternity is not in the best interests of the child, the Tribal Court will dismiss the action.
- F. The petition may include a request to appoint a guardian ad litem for the minor child or minor parent. The court at their discretion may appoint a guardian ad litem and a portion of fees to be charged to the parents. A guardian ad litem shall be appointed for any parent (or alleged parent) who is a minor. A guardian ad litem shall be appointed for the minor child when the alleged father is someone other than the person listed as the father on the child's birth certificate.

3.9.4 Initial Hearing. At the initial hearing the Court shall determine whether any interested party wishes to contest the petition. Before doing so, the Court shall inform the parties of the following:

- A. The nature and possible consequences of the proceeding;
- B. The right to confront and cross-examine witnesses;
- C. The right to be represented by counsel at the party's own expense.
- D. The right to request genetic tests.
- E. The SCC Tribal Child Support Agency shall not be required to participate in Paternity cases where the following circumstances exist:
 1. Child was conceived as a result of incest or sexual assault
 2. The parents are voluntarily relinquishing their parental rights and the Child is the subject of an adoption ;
 3. The child is age 19 or older, unless a paternity action was filed with the court before the child's 19th birthday or

4. A VPA form has been filed by the vital records office and the father's name is on the birth certificate.

3.9.5 Genetic Tests.

- A. The Court may, and upon request of a party shall, require the child, mother, potential father to submit to genetic testing. In the event, the mother or the potential father are deceased or unavailable, the court may order the relative (direct descendent) of the potential father to submit to genetic testing. Genetic tests shall be performed by a person certified to collect genetic samples and be analyzed by an accredited genetic testing laboratory. The Tribal Child Support Agency is available to collect genetic testing samples as allowed by their guidelines. The court may decline to order genetic tests, if it is not in the best interests of the child.
- B. The Court may order such tests by additional experts at the request and expense of a party, as the Court deems desirable.
- C. Whenever the results of the genetic tests exclude any potential father as the biological father of the child, this evidence shall be conclusive evidence of non-paternity and the Court shall dismiss the action. If any party refuses to submit to the genetic tests, this fact shall be taken into account as evidence in the decision. If the child's mother brought the action but she refuses to submit herself or the child to the genetic tests, the action shall be dismissed.
- D. The tribal child support agency pays for the genetic test costs unless otherwise ordered by the Court. The Court may order any party to be responsible to pay the genetic test cost
- E. If the Respondent fails to appear at the initial hearing and the Petitioner provides credible evidence that there was requisite sexual contact during the conceptive period, the Tribal Court shall order genetic testing be conducted. A copy of the Order for Genetic Testing shall be sent to the Petitioner and Respondent by the Tribal Clerk of Court or the Tribal Child Support Agency. The Order shall indicate the date, time and place that the parties must appear at to provide a genetic testing sample.
- F. If genetic tests show that the putative/potential father is the biological father by a percentage of 99% or higher, paternity is proved and he shall be adjudicated the legal father at the final paternity hearing.

3.9.6 Fact Finding Hearing.

If after the genetic tests are made the matter remains contested, the Court shall hold a Fact-Finding Hearing to determine paternity. The hearing may be conducted in an informal manner, but the decision shall be based solely upon the evidence produced at the hearing. The hearing shall be closed to the public, and the proceedings shall remain confidential except upon order of the Court for good cause shown.

3.9.7 Judgment.

- A. If the paternity of the potential father is established at the hearing by clear and convincing evidence, a judgment establishing paternity and declaring the potential father to be the child's father shall be entered. If paternity is not established (as all potential fathers were excluded by the genetic test results), the petition shall be dismissed.
- B. If paternity is established, the judgment shall make provision for legal custody, physical placement, health insurance, uninsured medical expenses, the right to claim the child tax exemption, and child support as provided in section 3.8 Sokaogon Chippewa Community Tribal law and Chapter 3A Child Support of those chapters.
- C. The court may enter temporary order as justice requires.

3.9.8 Limitations. There shall be no statute of limitation on establishing paternity.

LEGISLATIVE HISTORY

1. Enacted - unknown.
2. 7/20/11 adopted, ratified and codified by Resolution No. 720A2011 and as amended by Resolution No. 825A2011 on August 25, 2011.
3. Amended December 13, 2017, by Resolution No. 12-13C-2017.
4. Amended February 7, 2018 by Resolution No. 2-7D-2018.