



## **Does signing the ROP give custody or parenting time rights?**

No. The ROP does not give the father any custody or parenting time rights. It only establishes paternity. A father can visit the child if the mother agrees to parenting time. If the parents cannot agree on visits, the ROP gives the father the right to go to court about parenting time. If a child's father wants custody, the ROP is the legal basis to ask for it.

Signing the ROP does not give a father automatic rights to custody or to visit the child.

## **I signed an ROP but now I am not sure I should have. Can I cancel it?**

Anyone who signed an ROP can cancel it within 60 days. This is called a revocation. A revocation must be in writing, notarized, and filed with the MN Dept. of Health, Office of the State Registrar. The mother, the person who signed as father, or a husband who signed, can revoke the ROP. No special form is needed.

After 60 days, only a court can vacate (cancel) the ROP. The person who signed the ROP or the child or the public authority (the child support office) may bring a court action to vacate the ROP. The action must be brought within certain time limits as follows:

- The mother, father, or husband must bring the action within 1 year of signing the ROP. Or within 6 months of getting blood or genetic test results that show that the man named as father on the ROP is not the father.
- The child must bring the action within 6 months of the blood or genetic test results or within 1 year of becoming an adult (that is, by age 19), whichever is later.

The person bringing this action has to be able to show there was fraud, duress or material mistake of fact.

## **What is a Paternity Adjudication and what is its legal significance?**

A Paternity Adjudication is different from an ROP. It is the other way to establish legal paternity. A Paternity Adjudication is a court order that says who the child's father is. The order should also decide custody, parenting time, child support, medical support, childcare support, and the child's legal name.

## **Who can bring a paternity action to court?**

The child (through a guardian), the child's biological mother, a man presumed to be the father, or the county can start a paternity action. The law also lets a grandparent start the case, if that grandparent's child (the mother or father) is dead or is a minor.

## Can a paternity action decide that someone is not the father?



Yes, the court can make an order that a man named in the court action as a party is not the father of the child.

## Who can start a paternity action when the child is older?

A child, the child's mother or a man presumed to be the father may bring a court action at any time for the purpose of declaring the parent-child relationship. If a presumed father (or another person) wants the court to declare he is not the father, the legal action must be started before the child is 3 years old. But, this time limit does not apply in all cases. Also, if a person starting the action knows the man is not the father; the action must be started within 2 years of finding out that the man is not the father.

## What are the steps in a Paternity Adjudication?

The first step is serving formal legal papers just like starting any other court case. The next step is getting information. Either parent has the right to ask for blood or genetic tests. Parents can always come to an agreement at any stage of the court case. If the parents cannot agree, the court will schedule a hearing or trial to decide the issues. All hearings or trials under the parentage act are held in closed court without any persons other than those necessary to the action.

The court will make a paternity order or judgment. The final judgment is a public record, but all the other papers and records are not. These papers may be inspected only if the court and the people that were part of the case say it is ok. In some special cases the papers can be inspected without permission but the court has to decide if there is a good enough reason before they say ok. A plaintiff or defendant in a paternity trial has the right to a jury trial under the state constitution, but because of modern technology this is rare.

## What is a presumption of paternity?

**The court will sometimes “presume” (take for granted) that a man is the child’s father. A man is presumed to be the biological father if**

- He and the mother were married when the child was born, or the child was born within 280 days after the marriage was over or
- He and the child’s mother get married after the child is born and he claims his paternity in writing, (like with an ROP) filed with the MN Dept. of Health, Office of the State Registrar
- He receives the child into his home and openly “holds the child out” to be his biological child

- He and the mother of the child signed a Declaration of Parentage before July 31, 1995. A Declaration of Parentage is different from a Recognition of Parentage (ROP). A Declaration of Parentage only creates a “presumption” of paternity. It does not establish paternity, like an ROP does
- Blood or genetic tests say that he is the father at a 99% or greater probability
- He and the mother of the child have signed an ROP (see the section about ROPs on pages 5 and 6)

## **What is the Declaration of Parentage?**

A man may also be presumed to be the child’s father if he has signed a Declaration of Parentage. The Declaration of Parentage is any written acknowledgment of parentage. It is only a presumption of paternity. In 1995, the law changed to allow ROPs to be signed to determine parentage. The old form (Declaration) is no longer used. If you got a Declaration prior to 1995, you should consult an attorney to find out the current status of that Declaration.

A Paternity Adjudication or an ROP is still needed to establish paternity even if a Declaration of Paternity is signed. People easily confuse Declarations and ROPs, but they are very different.

## **Can I have a lawyer represent me? What if I can’t afford a lawyer?**

In any legal matter, you may always hire a lawyer to give legal advice or representation.

If there is a paternity case in court, you have a right to have a free, court appointed lawyer if you are low-income. There is no right to a free lawyer if the parents have signed an ROP. You can still choose to consult with a lawyer, but you may have to pay for the lawyer yourself.

If an ROP is signed, contact your local Legal Aid office for advice and help. You may be able to get help for free.

