

## FCA ARTICLE 5: PATERNITY.

Copyright 2007, Yosef Seigel. MAY BE FREELY DISTRIBUTED.

Any time during the course of a paternity proceeding, the Court can on its own motion direct the filing of a neglect petition; if the support case is ultimately dismissed, the neglect may nevertheless remain.

Court may determine support/visitation/custody together with paternity case.

If parent is unable to pay - or has neglected child - child's care shall be a county/city/town welfare charge.

Party can by written application vacate an Acknowledgment of Paternity within 60 days of filing (or petition, if earlier). After 60 days: only on showing fraud; duress; or material mistake of fact. Vacatur shall be provided to the original authority with whom the acknowledgement was registered, as well as the Putative Father Registry; also SCU if such services are being provided. Out-State acknowledgements are valid when in compliance with Social Security Act.

Paternity proceedings may be filed beginning with pregnancy; but not after child reaches 21 unless father acknowledged paternity in writing or paid support.

Paternity petition may proceed despite death/mental illness/unknown whereabouts of mother; but as to alleged father, only if he was the petitioner, or acknowledged paternity in open court, had DNA test done before death; or held self out openly and notoriously as father.

Paternity petitions are brought where mother or father reside, or are found; regardless if child was born out-State.

Paternity proceedings may be brought by parent (even if minor); or guardian/person standing in parental relationship to child; next of kin; interested philanthropic organization; as well as authorized Social Services official (a dismissal or withdrawal by such is without prejudice to any other party).

Petitions must be VERIFIED. Summons shall notice that failure to appear may result in a default Order of Filiation; as well as loss of license. Process is by same rules as for Article 4.

Resp not compelled to testify at hearing. Court may exclude public, and allow only "officers of the court" (lawyers) and witnesses be admitted.

Court can adjourn on *parties'* request, can only adjourn in own discretion after making determination of paternity; may undertake Resp in either case.

NYC Corporation Counsel represents Commissioner of Social Services; else own CSS own counsel or County Atty. Court may award counsel fees to prevailing party upon inability to pay.

If male does not appear after having taken DNA test which does not exclude him as father, or by other clear&convincing proof, Court can issue a temporary support order even without first determining paternity.

Court shall dismiss if male is not father; else Order of Filiation if he is, such order shall include dad's SSN # (but not otherwise invalid). Clerk shall forthwith send O/F to State Health agency on Commissioner's own form (or NYC if birth certificate was so recorded); later abrogation of paternity shall be sent *immediately*.

Court can also issue Orders of Filiation in other proceedings as long as both parents are present; Court is satisfied by testimony/statements; and father waives filing and hearing. Else Court may direct authorized party to file petition; such case can then be severed.

Court may decide motions challenging DSS requirement to undergo DNA testing.

**Article 5A:**

Person on Public Assistance "assigns" their rights herein to Social Services. Order on proceedings thereby shall break down amounts of support for children and spouse separately (if both should enter). Such orders are paid to SCU; but can be administratively switched over to assignor once Public Assistance closes, or Petitioner can bring *de novo* (new) case.

If child is on Public Assistance or Foster Care, Social Services can have existing support order - including out-State - paid from SCU to them. If not already SCU, can direct SCU enforcement services.

If Social Services brings petition for pregnant woman, and Resp denies paternity: proceedings STAY until 60 days post-birth.