

ESTABLISHING PATERNITY PROMPTLY IN JUVENILE DEPENDENCY COURT

Judge Leonard Edwards, Santa Clara Superior Court (Ret.)

THE PROBLEM

How long does it take for paternity testing results to be completed and returned to your court in a juvenile dependency case? 2 weeks? 4 weeks? 2 months? Longer? Does it matter?

Yes, it matters a great deal. Until you establish paternity the alleged father will not be engaged in the legal process. He may be denied visitation, services, appointed counsel, and the right to participate in legal proceedings. His relatives (potentially 1/2 of all of the child's relatives) will not be able to participate in the legal process. Since relative placement is preferred under California law [see Welfare and Institutions Code sections 319(a), (d)(2), 361.45, and 361.3], a child's best interests will be served by expanding the number of relatives available for the court and the social worker to work with. Determining paternity promptly will enable them to become active participants in the dependency case.

The longer the paternity process takes, the more likely that the father and his relatives will not be engaged in dependency court proceedings and the longer that important decisions will be made without their participation. When there are significant delays, the courts may rule that the father or his relatives have not appeared in a timely fashion and deny them custody consideration. See, *In re Vincent M.*, (2006) 161 Cal.App.4th 943, regarding late-appearing fathers and *In re Stephanie M.*, (1994) 7 Cal.4th 295 and *In re Lauren R.* (2007) 148 Cal.App.4th 841 regarding late-appearing relatives.

Thus there is a sense of urgency in the juvenile dependency court to identify and locate the father, establish paternity, engage him in the legal process, and identify and engage his family members.

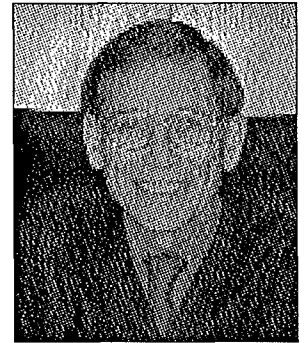
DETERMINING PATERNITY

How does the court determine paternity? In some cases the alleged father and mother come to court as an established couple. They have been living together and there is no question that he is the father of the child or children. Judges can administer an oath to the parents, advise the father of the consequences of a paternity finding including child support obligations, ask questions about the mother and father's relationship, and make a paternity finding. [Refer to CRC 5.635(e)(3)]. Judicial Council form JV-505 should be used when determining parentage in this manner. CRC 5.635(e)(1) states that "[t]he alleged father and his counsel must complete and submit *Statement Regarding Paternity (Juvenile Dependency)* (form JV-505). Form JV-505 must be made available in the courtroom. All of this can happen without DNA testing.

There are several other methods to determine parentage. The father may appear at the hospital and sign a voluntary declaration of paternity (VDP). [Family Law Code sections 7570-7577 and CRC 5.635(c)]. The parents can go to the child support office, a prenatal clinic, an office of local registrars of births and deaths, a court, or county welfare department within the state and make a declaration of paternity to the officials there. (Family Code sections 7571, 17410, and 17412). Furthermore, it is important to search court

records for other proceedings where paternity may have been determined. Family court or child support proceedings may have established paternity before this family arrived in juvenile court.

However, in most cases DNA testing is necessary to determine paternity. This is particularly true when there are multiple alleged fathers, the mother is unsure who the father might be, or the court is not persuaded that the man appearing in court is the father.¹ The court then orders that the alleged father or fathers participate in DNA testing with the social worker making arrangements for the testing procedures.



THE TIME FRAME

The paternity testing process can take about two weeks. That is the experience in some counties. This time frame includes making the court order, completing the testing, and sending the samples to the testing facility. However, getting the necessary family members to the testing site can slow down the process considerably. Frequently, the entire paternity determination process takes six to eight weeks. I have visited out-of-state courts where the process can take up to six months.

Why are there significant time differences among the various counties? The delays apparently do not occur at the laboratory. The laboratories consistently state that they complete the testing within 10 days. (LabCorp, 1440 York Court Extension, Burlington, NC 27215, Central Medical Laboratory, 10554 Progress Way, Cypress, CA 90630, and DNA Diagnostics Center (DDC), 1 DDC Way, Fairfield, Ohio 45014.). Moreover, these laboratories can and do fax their results directly to the social service agency or to the court.

It appears that the delays occur for bureaucratic and procedural reasons, usually related to the time it takes to complete the DNA testing. For example, the social worker may not take action in a timely fashion and fail to contact the father immediately. The social worker may lose contact with the father, or the father may not cooperate with the social worker. The child's caretaker or the social worker may not take the child to the testing site in a timely fashion. If the father is incarcerated, there may be added delays.

SUGGESTED SOLUTIONS

The juvenile dependency court is comparable to a hospital emergency room. A child has been abused or neglected (allegedly) and possibly removed from parental care. Even though the child has been placed in a presumably safe environment, the child needs stability and permanency, preferably with one or both of his or her parents. In the court system we are accustomed to a slow, careful process. In juvenile dependency court, time is of the essence.

(over)

and a contract, or to parse the Rule Against Perpetuities (although we know he must have done so, once, long ago). But at the same time it is uplifting in the extreme to know that this man saw fit to use his legal training to advance the interests of the peoples both of America and of Libya.

On his tombstone at Arlington, Justice Holmes insisted that his engravings would read: "Associate Justice, United States Supreme Court," and, just below that, "Captain, 20th Massachusetts Volunteer Infantry."

Paternity...continued

The child is a developing being, one who cannot wait for a slow process to reach permanency.²

The judge must address several issues immediately and throughout the life of the case until they are resolved. First, who is the child's father? Second, does the child have Native American heritage, and, if so, does the tribe wish to intervene in the dependency case. If these issues are not resolved early in the case, they may disrupt proceedings months later when the father is found or when a tribe wishes to intervene.

In order to ensure that the paternity determination is completed in a timely fashion, the court should meet with agency representatives and have them explain in detail what protocol they follow to determine parentage. This meeting should include a representative from the child support office. That office has an interest in the paternity determination and also should be responsible for payment of the testing procedure.³ From this meeting the court will learn where the testing sites are, who is responsible for taking the parties to the site, how the testing results are sent to the testing laboratories, and when they are returned from the laboratories. It should be noted that some courts have testing facilities at the courthouse and that this is a best practice.⁴

From a judicial perspective, determining parentage must start from the initial hearing. The court should assume that the social worker has completed the collection of information about possible fathers prior to that hearing. At the initial hearing the court must enquire about the identity of possible fathers and then determine who the biological father is, including ordering the administration of genetic testing to determine paternity. [Welfare & Institutions Code section 316.2, CRC 5.635, and *In re B.C.*, 205 Cal.App.4th 1306, 140 Cal. Rptr.3d 881 (2012)]. In this regard, the court should make careful, specific orders. The court should direct the father to complete the testing, preferably ordering him to go to a specific testing site at a particular time and place. Further the court should order the social worker to follow through with the testing procedures immediately.

The court should monitor the paternity testing process over the days and weeks that follow to ensure that the participants follow the court orders and that the social worker employs the most efficient procedures. If necessary, the court should set an interim review hearing solely on the issue of paternity. An interim review can be a short, focused hearing that takes only a few minutes, but one that addresses a critical issue early in the proceedings.⁵

Careful attention to the details surrounding paternity testing should yield a faster, more efficient process. The savings in time will serve

Christopher Stevens, and all of us, can be proud that his life remains engraved on our hearts with the listings: "Diplomat. Lawyer."

Note: the writer wishes to thank the researchers, compilers, and promulgators of the Wikipedia entry on Ambassador Stevens, both for the basic facts contained in the above piece and for the genesis of the figure "Diplomat. Lawyer."

Wikipedia.org/wiki/Christopher_Stevens_(diplomat).

the child and family members well and will prevent disruptions later in the dependency process.

Endnotes:

1. For example, in the case of *In re J.L.*, 159 Cal.App.4th 1010 (2008) a man appeared at the initial hearing with the mother and claimed to be the father. He had filled out the voluntary declaration of paternity at the hospital thus making him a presumed father. A second man came to the dependency court and claimed to be the father. DNA testing proved him to be the biological father. The first man had prevented the biological father from coming to court by threatening both the mother and the biological father. Given the facts of the case the court declared the biological father to be the presumed father.
2. For a comprehensive discussion of moving juvenile dependency cases forward in a timely fashion see Edwards, L., "Achieving Timely Permanency in Child Protection Courts: The Importance of Front loading the Court Process," *Juvenile and Family Court Journal*, Vol. 58, No. 2, Spring, 2007, at pp 1-38, available at the following website: judgeleonardedwards.com.
3. The child support agency will have to have an application for services on file in order to provide the testing service and cover the cost. That should not be an insurmountable problem, but probably is a necessary step to survive an audit on the issue. (Information gathered from Michael Wright, Supervising Attorney, California AOC).
4. Los Angeles and Cook County (Chicago) are two examples.
5. "Juvenile Court Corner: Interim Hearings," *The Bench*, Autumn, 2009, pp 9-10 (I will send you a copy of this article if you email me - judgeleonardedwards@gmail.com or you can find it on my website: judgeleonardedwards.com. Moreover, I will send you a copy of a one page court report that addresses issues at an interim hearing.



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