CLASP

CENTER FOR LAW AND SOCIAL POLICY

MEMORANDUM

TO: Interested People

FROM: Paula Roberts

DATE: June 10, 2005

RE: Paternity Disestablishment in 2004-2005

In 2003, CLASP published a series of articles on paternity disestablishment called *Truth and Consequences, Parts I, II, and III*. The original series can be found at www.clasp.org on the Child Support and Fathers page, in the 2003 section. It can also be found in volume 57 of *Family Law Quarterly*, pages 35-103 (Spring 2003). The first two articles analyzed recent statutory and case law on this important issue while the third looked at the fiscal implications of disestablishment.

The original articles were supplemented in February, April, and December of 2004 by memos (the last of which is still available on the CLASP website) describing case law developments in late 2003 and most of 2004. Since then more cases have been reported and several states have enacted new legislation. This memo analyzes the statutory and case law developments in late 2004 and early 2005, as well as recently enacted statutes. It contains three appendices. The *first* appendix describes in detail the reported cases in 2004 and early 2005. The cases are divided by topic and listed alphabetically by state. The *second* appendix contains a chart listing the major state cases in the last eight years in regard to paternity disestablishment for marital children. The *third* appendix charts similar case law as regards non-marital children.

DISESTABLISHMENT AND NON-MARITAL CHILDREN

Voluntary Acknowledgments

The paternity of a non-marital child may be established through voluntary acknowledgment. Using this method, the parties sign a standardized form and receive basic information about the rights and responsibilities that flow from the acknowledgment. They should also be told about the availability of genetic testing and given an opportunity to obtain such testing before they sign. Thereafter, they have 60

days in which to rescind the acknowledgment and thereby disestablish the child's paternity. At the expiration of the 60-day period, the acknowledgment is the equivalent of a judicial order and can be challenged only on the basis of fraud, duress, or material mistake of fact. In most states, if a parent challenges an acknowledgment, he or she must do so within a specific period of time. Before proceeding, the court will also consider equitable principles such as res judicata, collateral estoppel, and judicial estoppel. The best interest of the child will also likely be considered at some point in the proceedings.

Application of these principles, however, does not lead to consistent results. For example, in *People ex rel the Department of Public Aid v. Smith*, 797 N.E.2d 172 (Ill. 2004), the Illinois Supreme Court used equitable principles to deny an acknowledged father's petition to disestablish his paternity. Although Illinois law allows a man who has been *adjudicated* to be a father to bring a subsequent action to disestablish paternity based on genetic test results, the court found that the law did not apply to voluntary acknowledgments. Once 60 days have passed, a voluntary acknowledgment creates a conclusive presumption of paternity. It can be attacked only on the basis of fraud, duress, or material mistake of fact. The father could show none of these things. Therefore, his petition was unsuccessful. In contrast, and on a similar set of facts, an appellate court in Oklahoma reached the opposite conclusion, *Department of Human Services v. Chisum,* 85 P.3d 860 (Ok. App. 2004). That court found that since genetic testing contradicted the acknowledgment, there had been a "material mistake of fact." The appellate court also held that the neither equity nor the best interest of the child applied in paternity disestablishment cases involving a man who was not the genetic father.

A new line of cases is developing that involves challenges by third parties to an acknowledged paternity. In these cases, courts are also employing equitable principles and "best interests" language. For example, in *Koos v. Wilson*, 2005 Iowa App. LEXIS 243 (March 31, 2005), a man acknowledged paternity, and his name appeared on the child's birth certificate. While the mother was imprisoned, he had custody of the child. Upon her release, she sought to regain custody and the acknowledged father contested. Her ex-boyfriend then intervened seeking to establish his paternity and obtain custody of the child. The appellate court found that the boyfriend had waited too long and was thus estopped from establishing himself as the child's father.

The California legislature also took on the issue of paternity disestablishment when paternity was established through acknowledgment in 2004. Prior law allowed rescission during the 60-day post-acknowledgment period and under Rule 60(b) for fraud, duress, or material mistake of fact. These laws remain in place. However, AB 252 established a third way to challenge paternity established through the voluntary acknowledgment process. Now, either parent can challenge a voluntary acknowledgment if he or she does so within two years of the child's birth and alleges that the acknowledged father is not the biological father. If genetic tests confirm this allegation, the court may disestablish paternity if it finds that doing so is not contrary to the best interests of the child. The legislation also limits involvement of the IV-D agency in this area to cases in which there is a conflict between two voluntary acknowledgments or a

voluntary acknowledgment and a judgment. See, California Family Code Section 7575 (2005).

In addition, in 2005, both North Dakota and Utah adopted the Uniform Parentage Act (2002) which has specific provisions dealing with disestablishment of acknowledged paternity.

Litigation

Paternity can also be established through litigation. In a IV-D case, the agency may facilitate testing before trial. In a non-IV-D case, the judge will usually order testing. Thus, typically the judgment will be consistent with genetic test results. However, sometimes the parties waive their right to testing and agree to an order of paternity. Alternatively, if the defendant doesn't appear for the hearing, tests are not ordered and the court may enter a default judgment. Thereafter, the party who declined testing or defaulted might bring an action to disestablish paternity based on subsequently obtained genetic tests. Some states allow this by statute and some have case law setting the parameters for action. As with acknowledgments, there are usually time limits within which an action can be brought, equitable principles may be applied, and the best interests of the child may be considered.

MAM v. State of Wyoming, Dept. of Family Services, 99 P.3d 982 (Wyo. 2004) is a case in which the parents voluntarily waived a hearing and genetic testing. The court then entered an order adjudicating parentage. When the child was about two years old, the mother revealed that there was another possible father and genetic tests established that he—rather than the adjudicated father—was the child's biological parent. The Wyoming Supreme Court found that the adjudicated father could move to vacate the judgment, and the motion should have been granted. In its ruling, the court noted that the record did not establish that the man had been informed of his right to genetic testing, and thus, he did not make a knowing waiver of his rights.

In contrast, on a very similar set of basic facts, the New Jersey Supreme Court found that the father could not disestablish his paternity. *FB v. ALG*, 821 A. 2d 1157 (N.J. 2003). What distinguishes these two cases is that in the former, the adjudicated father had no contact with the child, while in the latter, the adjudicated father had a long-standing, close relationship with the child. In addition, in the Wyoming case, the biological father was available for suit, while in the New Jersey, there was no biological father in the picture.

Courts have also cautioned that it is important to follow correct procedures in paternity adjudications, especially if the father is incarcerated. In *J.G. v. State of Wyoming, Department of Family Services*, 84 P.3d 1268 (Wyo. 2004), the Wyoming Supreme Court was faced with a situation in which a judgment had been entered against an incarcerated man without regard for a number of procedural requirements. When the adjudicated father left prison, he obtained genetic tests showing he was not the biological father, and he and the state stipulated that the judgment should be vacated pursuant to

Rule 60(b). Unfortunately, the time for filing such a motion had expired and the lower court refused to accept the stipulation. On appeal, the court found that the procedural irregularities made the judgment void *ab initio* so the Rule 60(b) time limit did not apply. The lower court should have accepted the stipulation.

The California legislation discussed above also addresses disestablishment of the paternity of a non-marital child whose paternity has been previously adjudicated. Under the new law, the mother, adjudicated father, the child, or the legal representative of one of them may move to set aside a judgment based on genetic test results. The action must be brought within two years of the date the adjudicated father 1) knew or should have known of the judgment; or 2) knew or should have known of the existence of the paternity establishment suit, whichever is first. The legislation also allows any father whose paternity was adjudicated in a default proceeding held prior to the effective date of the new law (January 1, 2005) to move to disestablish his paternity based on genetic testing if he does so within two years. The court may deny the motion if it finds that it is not in the best interests of the child. California Family Code Section 7645 (2005).

Fiscal Consequences

When acknowledged or adjudicated paternity is disestablished, courts have had to wrestle with what to do about child support. There is near universal agreement that current and future support end once paternity is disestablished. However, the question of arrears remains. Should the disestablished father have to pay any outstanding arrears? Several courts have determined that, once a valid paternity order has been issued, if it is accompanied by a support order, the support order must be obeyed until paternity is disestablished. Thus accrued arrears must be satisfied.[1] This trend continued in 2004. See, *Dept. of Human Services v. Blaisdell*, 847 A. 2d 404 (Me. 2004); *State ex.rel. L.L.B. v. Hill*, 682 N.W. 2d 709 (Neb. 2004).

In addition, some fathers have brought tort actions to recover the support they paid to either the mother or the state (in public assistance cases). Disestablished fathers continue to be unsuccessful in this regard. *Bouchard v. Frost*, 840 A. 2d 109 (Maine 2004); *McBride v. Boughton*, No. A103456 (Cal. App., 1st Dist. Oct. 21, 2004).

The California legislature also addressed these issues in 2004. By statute, if the court sets aside or vacates a paternity judgment, it must also vacate any order for child support and arrearages based on the previous judgment. The law also states that the previously established father has no right of reimbursement for any support paid prior to the granting of the motion.

In 2005, Wyoming also enacted legislation clarifying that if a court sets aside a paternity adjudication, the adjudicated father has no right to reimbursement from the mother, the state, or any other assignee of child support. Wyo. Stat. Ann. §14-2-823.

[1] See, *Truth or Consequences, Part III* for more detail.

DISESTABLISHMENT AND MARITAL CHILDREN

Litigation by Third Parties

If a child is born during a marriage, the husband is presumed to be the father of that child. Unless there has been substantial contact between the biological father and the child, courts have been reluctant to allow a biological father to disestablish a husband's paternity in order to establish his own. This continued to be the case in 2004 and 2005. See, for example, *In re Jesusa V.,* 85 P.3d 2 (Cal. 2004); *Stubbs v. Calendra,* 841 A.2d 361 (Md. Spec. App. 2004); *Evans v. Wilson,* 856 A. 2d 679 (Md. 2004); *In re K.H.,* 677 N.W. 2d 800 (Mich. 2004); *John P. v. Vito C.,* 6 Misc. 3d 1099 (N.Y. Fam. Ct. 2004). See, also *In re Parentage of John M.,* 817 N.W. 2d 500 (Ill. 2004). In deciding these cases, the courts put heavy emphasis on the best interests of the child, the quality of the marital relationship, and the husband's wish to remain the child's legal father.

However, there are times when the biological father does prevail. In *GDK v. State of Wyoming, Department of Social Service*, 92 P.3d 834 (Wyo. 2004) there was significant, long-standing contact between the biological father and the children born during a marriage between their mother and another man. As to at least one of the two children involved, the biological father had timely filed a paternity action as allowed by Wyoming law. Under the circumstances, the court found that it was in the children's best interest to establish the paternity of their biological father.

Litigation by Parents at Divorce

If the marriage ends, paternity might also be brought up in a divorce proceeding. When a wife raises the issue at divorce in order to push the husband out of the child's life, courts are generally reluctant to allow the challenge if the husband does not wish paternity to be disestablished. This is true even when the biological father is available and wishes to establish his paternity. This view was followed in *Randy A. J. v. Norma I. J.,* 677 N.W.2d 630 (Wis. 2004). The court emphasized the importance of the best interests of the child. Indeed, the husband was so involved with the child that he had sought custody in the divorce action.

Husbands might also want to raise the paternity issue in order to avoid supporting the child in question. In many states, a husband must raise the issue in a timely manner. If he does not do so, he cannot raise it at separation or divorce. However, the North Dakota Supreme Court has held that, even if the husband was time barred from raising paternity affirmatively in a post-separation child support proceeding, he could raise it as a *defense*. In effect, the husband remained the legal father but with no duty of support. *Rydberg v. Rydberg*, 678 N.W. 2d 534 (N.D. 2004).

Equitable principles and " the best interests of the child" can also be applied to a child whose parents were not married at the time of her birth but who did subsequently marry and divorce, *Griffith v. Pell,* 881 So.2d 184 (Miss. 2004). In this case, there was a custody fight at divorce and the mother raised the paternity issue for the first time.

Genetic tests showed that the husband was not the father and the court disestablished his paternity in the divorce decree. The ex-husband appealed. The mother then established the paternity of another man who did not want to assume parental responsibilities. This man appealed that judgment arguing that the mother should be estopped from pursuing him. The state's Supreme Court consolidated the appeals. It analogized the ex-husband to a step-parent. Since Mississippi law allows courts to impose support obligations on ex-step parents in some cases, the court found there must also be a right to custody and visitation in ex-step-parents. It sent the divorce case back for further proceedings to determine the custody issue in light of the best interests of the child. At the same time, it affirmed the paternity ruling. As a result, the child has a legal father who wants nothing to do with her and a step-parent father who may be able to obtain custody.

Fiscal Consequences

Like their acknowledged or adjudicated counterparts, husbands whose paternity has been disestablished have sought reimbursement of support paid through the use of a tort claim. They have largely been unsuccessful in this endeavor. *Brooks v. Brooks*, 680 N.W.2d 379 (Iowa App. 2004). See also, *Cohen v. Nudelman,* 604 S.E. 2d 580 (Ga. App. 2004) (order requiring ex-wife to reimburse ex-husband for support paid is reversed; however, court notes that there may be grounds for a fraud action).

CONCLUSION

Courts and legislatures are continuing to struggle with paternity disestablishment issues. A reading of the cases suggests the following emerging issues:

- Can a child have two fathers? A small—but growing—number of cases suggest that courts may be becoming more comfortable with the notion that a child can have more than one father. The child may have a legal/ biological father (who plays a limited role in his or her life) and a non-biological father who plays a strong role (both financially and emotionally) in his or her life. See, *Griffith v. Pell, supra; Christensen v. Christensen,* 868 A. 2d 1143 (N.J. Super. App. Div. 2005).
- Is the "best interests" standard relevant? While most courts continue to emphasize a child's best interests, some are moving to a position that "best interests" are not relevant in a paternity proceeding. This mirrors some of the state paternity disestablishment statutes, which require courts to honor genetic testing results whatever the child's best interests are. See, e.g., *Department of Human Services v. Chisum,* 85 P. 3d 860 (Ok. App. 2004) (best interests don't apply in cases involving a man who is not the biological father).
- When should the "best interests" standard be applied? Some courts hold that a best interests hearing should be held *before* genetic tests are ordered. See, e.g., *Stubbs v. Calendra,* 841 A. 2d361 (Md. Spec. App. 2004). Others hold that genetic testing should always be done. Thereafter, a best interests hearing can be held to determine how the testing should affect paternity, support, custody, and

visitation. See, e.g., *In re Parentage of John M.*, 817 N.W. 2d 500 (Ill. App. 2004).

- Is there a different standard for paternity disestablishment of marital vs. non-marital children? Some courts are distinguishing marital and non-marital children in regard to the best interests standard. They appear to be holding that a best interest standard is relevant in regard to marital children, but not non-marital children. Compare *Evans v. Wilson*, 856 A. 2d 679 (Md. 2004) with *Langston v. Riffe*, 754 A. 2d 389 (Md. 2000).

These and other issues are likely to play out in courts and legislatures for years to come.

APPENDIX A:
CASE LAW DEVELOPMENTS IN 2004-2005

Disestablishment and Non-Marital Children

Illinois

People ex. rel. the Department of Public Aid v. Smith, 797 N.E.2d 172 (Ill. 2004). A couple executed a voluntary paternity acknowledgment two days after the child's birth. The acknowledgment form clearly said that they had the right to genetic testing and that they waived that right. About six months later, the child support agency obtained a support order requiring both cash and medical support. Four years later, the man filed an action to declare the non-existence of a parent/child relationship pursuant to 750 Ill. Comp. Stat 45/7(b-5). This statute gives *adjudicated* fathers the right to bring a termination proceeding based on DNA test results. The man attached such results, indicating that he was not the child's biological father, to the pleadings.

The circuit court granted the state's motion to dismiss, finding that the terms of the voluntary acknowledgment statute made acknowledgments binding after 60 days unless fraud, duress, or material mistake of fact was raised. 750 Ill. Comp. Stat 45/5(b) and 45/6(d). Since the man had not acted within this time or raised these issues, he was not entitled to relief. The appellate court reversed, finding that the acknowledgment was the legal equivalent of an adjudication, and, therefore, the statute allowing post-adjudication challenges based on DNA testing applied.

The Illinois Supreme Court reversed the appellate court. Applying traditional rules of statutory construction, to harmonize the two statutes, and consulting the legislative history of both enactments, the Court found that the statute allowing a disestablishment action based on genetic test results was meant to apply to fathers whose paternity had been adjudicated, not to those who had signed voluntary acknowledgments. Fathers who have established their paternity through a voluntary acknowledgment have created a conclusive presumption that they are the biological parent, and the only way to undo this is to act within 60 days or make out a case of fraud, duress, or material mistake of fact.

Iowa

Koos v. Wilson, 2005 Iowa App. LEXIS 243 (March 31, 2005). Koos established his paternity of Brayde by acknowledgment in 1997. His name appeared on the child's birth certificate. He was involved with the child, paid support, and ultimately became the custodial parent when the mother went to prison. Upon her release, the mother tried to regain custody and Koos opposed her. The mother then questioned his paternity. Another man (Benes) then intervened in the action claiming he was the child's biological father. Genetic tests bore Benes out and the court established him as the father and disestablished Koos' paternity. Koos appealed.

The appellate court reversed. It held that the genetic tests were not properly admitted because state guidelines were not followed. Moreover, even if the guidelines had been followed, Benes had waived his right to assert paternity. On the facts, Benes knew he was possibly the child's father. However, he had waited five years before asserting his claim. While he has a constitutionally protected liberty interest in parenthood, he waived that right by waiting too long to act on it.

Maine

Department of Human Services v. Blaisdell. During a period of off-and-on cohabitation, a child was born. Although he was aware of the possibility that the child was not his biological child, Blaisdell acknowledged paternity. In 1996, the Department of Human Services began a paternity proceeding, and offered him genetic tests. Blaisdell declined and a paternity/support order was entered. In 1999, the couple broke up. Blaisdell then had genetic testing done and the tests revealed that he was not the biological father. He then filed a timely Rule 60(b) motion for relief from the 1996 order. Relief was granted and he was relieved of all past, present, and future support obligations. The state appealed, but the matter was remanded because neither the mother's nor the child's interests were represented. On remand, the mother and child were represented, but the result was the same. The state again appealed.

The Maine Supreme Judicial Court reversed, citing *Bouchard v. Frost*, 840 A.2d 109 (2004). The Court held that, while Blaisdell could be relieved of his present and future obligations, the arrears could not be written off. To do so would be a retroactive modification of the support order, barred by Maine law. The Court also noted that the results of the genetic testing did not "undermine the legality of [the] earlier judgments, which were based on the fact that Blaisdell freely acknowledged paternity."

New Jersey

Christensen v. Christensen, 868 A. 2d 1143 (N.J. Super. A.D. 2005). A daughter was born to Christensen and Tymczak in 1985. Tymczak supported the child until 1994, when the supported obligation was terminated at Christensen's request. All of the paperwork was completed for Christensen's new husband to adopt the child, but the adoption was never finalized. However, Tymczak was not told this until 2001. (At that time, Christensen and her husband separated and the mother needed financial help.) She then sued Tymczak for support, and the trial judge joined the husband as a necessary party. The judge concluded that since the husband had cut his step-daughter off from seeing her natural father, and induced her to rely on him for emotional and financial support, he was equitable obliged to continue supporting her. The court then ordered interim support.

On appeal, the Appellate Division found that the biological parent is the primary source of support for a child. If he is able to pay support, he should do so. However, if another man takes on the obligation—and the biological father relies on this to change his conduct (e.g., father another child)—then equitable estoppel may apply. As a result, the biological father is the first source of support and the step-parent is the second source,

supplementing or replacing the biological parent's obligation, depending on the financial situation.

Oklahoma

Department of Human Services v. Chisum, 85 P.3d 860 (Ok. App. 2004). On the day the child was born, Chisum executed a voluntary acknowledgment of paternity. Seven months later, he agreed to the entry of an administrative child support order, which recited that he had acknowledged paternity. This order was then entered in the district court. Several months later, he began to suspect that he was not the child's biological father and had private DNA tests done. The tests showed he was not the biological father, and he then moved to vacate the child support order and the paternity acknowledgment. The trial court ordered genetic tests, which again showed Chisum was not the biological father. It then granted his motion, finding that the acknowledgment was based on a material mistake of fact.

DHS appealed, arguing that 1) principles of *res judicata* precluded the challenge; 2) the state paternity statute in effect when Chisum signed the acknowledgment did not allow a challenge after 60 days, and that period had expired before the motion was filed; 3) even if the amended statute (giving the parties two years to challenge on the basis of fraud, duress, or material mistake of fact) applied, there was no "material mistake of fact" since Chisum had not availed himself of paternity tests; and 4) the best interest of the child should have been considered.

The appellate court disagreed. It held that the amended statute became effective three days after Chisum signed the acknowledgment and gave him the right to challenge his paternity during the two-year period. The statute overrode *res judicata.* The court also said that Chisum could raise the "mistake of fact issue" as he was under no legal obligation to seek genetic tests before signing the acknowledgment. Finally, citing *Barber v. Barber*, 77 P.3d 576 (Okla. 2003), the court said it was not able to apply equitable principles (including the "best interests" standard) in paternity cases involving a man who is not the biological father.

Wyoming

JG v. State of Wyoming, Dept. of Family Services, 84 P.3d 1268 (Wyo. 2004). A child was born in 1992. The state commenced a paternity action. At the time, the putative father was incarcerated in the state penitentiary. A paternity judgment was issued in 1993, and again in 1997 (via a support enforcement action). In neither trial were the state procedures properly followed: there were no genetic tests, no counsel was appointed for the putative father, no record was kept, and the putative father never got a copy of the judgment. In 2001, the father secured counsel and tried to reopen the case. Genetic tests were conducted, and they showed that he was not the biological father of the child. He, the mother, and the state then entered into a stipulation that he was not the father, but the court rejected the stipulation. It held that JG was no longer able to file a Rule 60(b)

motion for relief from the judgment since the statute of limitations for such a motion (five years) had passed.

On appeal, the Wyoming Supreme Court held that the original judgments were void because they had not been entered pursuant to the applicable statutes and procedures. Since the judgment was void, Rule 60(b) did not apply. The court below should have accepted the stipulation and entered an order accordingly.

MAM v. State of Wyoming, Department of Family Services, 99 P.3d 982 (Wyo. 2004). MAM and the mother established paternity through a Stipulated Order Waiving Informal Hearing and Order Waiving Genetic Tests. MAM had no contact with the child, but paid support regularly. The mother suspected that MAM was not the biological father, and, when the child was about two years old, voluntary genetic testing was done. The test revealed that MAM was not the child's biological father and identified another man who was. The mother then sought help from the IV-D agency to correct the error. She was told that there was nothing she could do. MAM then filed a petition to disestablish paternity. The district court refused to disestablish as it was inconsistent with Wyoming paternity statutes, and an appeal was filed with the Wyoming Supreme Court.

That Court reversed, finding that the lower court had abused its discretion in denying the motion. The Supreme Court chose to treat the petition to disestablish as a motion for relief from a judgment. Relying on the rules governing relief from judgments, the Court noted that Wyoming's Rule 60(b)(6) allows a court to overturn a judgment for any reason justifying relief so long as the motion is made in a reasonable time. The doctrines of *res judicata*, collateral estoppel, and judicial estoppel do not bar such motions. The Court then went on to note that "…given the ready availability of the child's biological father, it is difficult to imagine *any* justification for denying the appellant's motion. The child's best interests are certainly better served by tying his future to his father rather than a stranger. Furthermore, there is an unsaid implication in public policy that child support payments and public assistance recoupment should be from the parent of the child." (Emphasis in original.)

However, the Court went on to note "…we emphasize that this case should not be construed to represent the Court's willingness to willy-nilly grant relief from paternity judgments whenever genetic testing proves an error has occurred. Rather, the particular combination of facts in this case, especially the absence of evidence that [MAM] knowingly waived his rights to genetic testing and the lack of any prejudice to the child in granting relief from the judgment, have dictated the result."

Disestablishment and Marital Children

California

In re Jesusa V., 85 P.3d 2 (Cal. 2004). A husband and wife had been married for 18 years and had five children. They separated and the wife began living with Heriberto C. with whom she had a daughter. Heriberto held the child out as his, but made no effort to

formally establish his paternity. The wife and baby daughter returned to the husband almost every weekend to visit the older children and the husband also held the new child out as his own. Heriberto was abusive. At one point he beat and raped the mother, and she was hospitalized. The county then brought a dependency action on behalf of the two-year-old child. In response, the husband filed for a declaration that he was the child's presumed father. Nine days later Heriberto also filed a request to be named as the child's presumed father. After some delay, a hearing was held but Heriberto was not present because, by then, he had been convicted of the rape and was in state prison. He was, however, represented by counsel and submitted briefs on the legal issues.

The juvenile court declared the husband to be the presumed father. On appeal, Heriberto challenged this ruling and also challenged the court's making the adjudication in his absence. A deeply divided California Supreme Court agreed with the juvenile court. Four of the justices, relying in part on *In re Nicholas H*, 28 Cal. 4th 56 (Cal. 2002), extended that holding to find that biological paternity by a competing presumed father does not necessarily defeat a non-biological father's presumption of paternity. Rather, in cases where there are two competing presumptions of paternity (here the marital presumption and the presumption based on the biological father's holding the child out as his own), the courts are required to weigh the competing presumptions and follow the one based on the weightier policy and logic. It was not an abuse of discretion for the lower court to find that policy and logic favored the husband since this was consistent with the wife's wishes, provided the child with a stable home, and embedded the child in the household of her five half-siblings.

The three dissenters were concerned about the broader implications of the decision for incarcerated fathers. However, the majority noted that its decision was confined to that "small subset of biological fathers who have neither married the mother of their child nor otherwise taken any steps to formalize their legal relationship with the child prior to the child's formation of a presumptive parent-child relationship with a competing man who is interested in asserting his legal rights as a father."

Illinois

In re Parentage of John M., 817 N.W. 2d 500 (Ill. 2004). A son was born during a troubled marriage. After the birth, the wife began living with her boyfriend. The boyfriend brought a paternity suit to establish that he was the child's biological father, but the husband opposed, citing the marital presumption that he is the father and the fact that his name is on the birth certificate. However, Illinois law allows actions to disestablish paternity in one man and establish it in another under these circumstances and without regard to the best interests of the child. "Best interests" applies only after paternity is determined and only to issues of custody, visitation, and support. The husband argued that the statutes were unconstitutional on their face, and the lower court agreed.

The Illinois Supreme Court disagreed. There may be circumstances under which application of the statutes is unconstitutional, but the statutes are not facial unconstitutional. Therefore, the case was remanded for further proceedings.

Indiana

In re Long, 804 N.E.2d 1176 (Ind. App. 2004). A child was born approximately nine months after the husband's death. His estate challenged paternity and requested genetic testing. The court refused because the husband is the presumed father as the child was born within 300 days of the husband's death. An interlocutory appeal was taken and the appellate court held that testing should be done. The court distinguished *KS v. RS*, 669 N.E.2d 399 (Ind. 1999) because that case involved a situation in which a third party was trying to disestablish a husband's paternity in order to establish his own over the objection of the husband. Here, the husband never had a chance to challenge paternity since he was dead at the time the child was born. He could have raised the issue, and the estate stands in his stead.

Maryland

Stubbs v. Calendra, 841 A.2d 361 (Md. Ct. Spec App. 2004). A child was conceived and born during the Calendra marriage. The marriage was ongoing and the child had lived with the Calendras and their two other children all of her life. Two years after her birth, a former neighbor sued Mrs. Calendra to establish his paternity and claim visitation rights.

Mr. Calendra intervened in the suit in opposition to the motion to establish paternity. A hearing master applied the "best interests of the child" standard and declined to order genetic testing. The court agreed and denied the neighbor's motion to establish paternity, finding that he had not overcome the marital presumption that Mr. Calendra was the child's father.

On appeal, the court had to consider whether the paternity statute and the state Supreme Court's ruling in *Langston v. Riffe,* 754 A2d 389 (2000) required the ordering of genetic tests without regard to the best interests of the child. After reviewing federal and state law, the court concluded that the paternity statutes applied only to non-marital children. The paternity of marital children was to be determined under the state's Estates and Trusts Article. As interpreted by the state Supreme Court in *Turner v. Whisted,* 607 A. 2d 935 (1992), that statute required a "best interests of the child" hearing before genetic testing is ordered. Thus, it was not error for the court below to have held such a hearing. Moreover, the appellate court determined that the lower court had not abused its discretion in determining that it was not in the child's best interest to have the testing done. The decision contains a lengthy discourse on the psychological evidence presented and discusses why it would be harmful to the child to disrupt her existing family relationships.

Evans v. Wilson, 856 A. 2d 679 (Md. 2004). A couple was married in a Muslim ceremony, although they did not obtain a marriage license. The wife had an ongoing relationship with one Evans. She became pregnant and engaged in some bizarre behavior, leading each man to think he was the father of the child. Ultimately the husband (Harris) signed an acknowledgment of paternity and his name appears on the child's birth certificate. He is the only father the child has known and the couple has raised the child as their own. About a year after the birth, Evans filed a motion seeking visitation and alleging he was the child's father. The wife (Wilson) answered, denying he was the father. Evans then filed a paternity suit and sought genetic testing. The judge denied the motion, finding that it would not be in the child's best interest to disestablish the husband's paternity. Evans appealed to the Court of Special Appeals, but the Maryland Supreme Court issued a writ of certiorari of its own initiative to resolve the role of the "best interests of the child" in a paternity disestablishment/establishment proceeding.

A majority of the Maryland Supreme Court upheld the lower court's ruling. Maryland has two statutes governing paternity establishment and disestablishment: the equitable Estates and Trusts Article and the Family Law Article. The Estates and Trusts Article makes a child born after marriage, even if the marriage is invalid, presumptively a legitimate child of the marriage. Under this article, a "best interests" hearing must be held before genetic tests are ordered. In contrast, the Family Law proceeding governs paternity establishment and disestablishment for non-marital children. In a proceeding under this article, genetic testing is mandatory if requested by a party without regard to the child's best interests. *Langston v. Riffe*, 754 A. 2d 389 (Md. 2000).

Since the parties in this case had a marriage ceremony, the marital presumption applies. Therefore, the action is more appropriately brought under the Estates and Trusts Article. Otherwise, "the consequences to intact families could be devastating. Without regard to the child's best interests, courts would be forced to order genetic tests of every child whose paternity is merely questioned." The court below did not abuse its discretion in applying the best interest standard and denying the request for testing. Therefore, its judgment was upheld.

Two dissenting judges felt that genetic testing should be done in all cases if requested by a party. They did not wish to "subscribe to a view that precludes the discovery of true facts, undeniably ascertainable and reliable." They would order testing and then have the court hold a "best interests" hearing to determine what to do given the test results.

Michigan

Aichele v. Hodge, 673 N.W. 2d 452 (Mich. App. 2003). A married couple was having difficulties and separated. During the separation, the wife had a brief affair. She gave birth to a child. She and the boyfriend signed an acknowledgment of paternity and his name was placed on the child's birth certificate. The boyfriend also paid a small amount of informal support. The married couple then reunited, and the husband assumed responsibility for the child. Eventually, the mother ended contact between the boyfriend

and the child, and the boyfriend sued, seeking custody of the child. The lower court dismissed his suit for lack of standing. Since he was not a parent, he had no right to custody. He appealed.

The Court of Appeals affirmed. It held that the acknowledgment was void because only children born to unmarried parents may have their paternity established through the acknowledgment process. Since the mother was in fact married (to a man other than the father), she and the boyfriend could not legally use the acknowledgment process. Therefore, the boyfriend was not a father. Nor was he a "parent" pursuant to any other Michigan law. As a result, he had no standing to seek custody. The court noted: "In essence, when a child is born during a marriage, a putative father can never successfully institute legal proceedings to be declared a parent."

In re K.H., 677 N.W. 2d 800 (Mich. 2004). In a proceeding to terminate the parental rights of an addicted, abusive wife and her incarcerated husband, the state joined the two men who were the biological fathers of the four children in question. (One of the men had fathered three of the children, and the second was the biological father of the fourth child.) Each of the biological fathers was interested in their child(ren)'s welfare and wanted to help plan for the future. Therefore, each sought to establish his paternity with their respective child/children. The court below allowed the paternity action. The children's guardian ad litem appealed, arguing that the biological fathers could not establish paternity in a termination of parental rights proceeding under Michigan law.

The Michigan Supreme Court agreed with the guardian ad litem. A determination that a child was born outside marriage must be made before a biological father may be identified as the father in a child protection proceeding. Nothing in the court rules allows a paternity determination of a marital child to be raised in such a proceeding. However, the record contains evidence that these are not marital children and the court below seems to have found this. Therefore, the case was remanded for a specific finding on the issue. If the court finds that these are, in fact non-marital children, the fathers can commence paternity proceedings if they do so within the 14-day period allowed by statute.

Mississippi

Griffith v. Pell, 881 So.2d 184 (Miss. 2004). Prior to the Pell's marriage, the wife gave birth to a child. The husband believed the child was his and raised her as a child of the marriage. The couple divorced and each wanted custody. So, as part of the divorce, the mother moved to disestablish the husband's paternity. Genetic tests were administered and showed that he was not the biological father. As a result, the court disestablished Pell's paternity and gave him neither custody nor visitation. He appealed.

In a separate action, the wife sued to establish Griffith's paternity. In this action, the husband and Griffith enter a stipulation that Pell should be declared the father. (Griffith had no relationship with the child and did not want one.) They asked that the wife be estopped from pursuing her paternity suit against Griffith. This motion was denied, and a paternity and support order was entered against Griffith. He appealed.

The appeals were consolidated. The Mississippi Supreme Court analogized the husband to a step-parent. Under Mississippi law, a step-parent can be liable for post-divorce support of step-children under certain circumstances. Those circumstances were met here. Since he could be liable for support, it follows that the ex-husband must also have custody/visitation rights. Therefore, the divorce case was sent back with instructions to consider the husband's support, custody and visitation rights consistent with the "best interests of the child." The Supreme Court also directed the lower court to consider the stipulation that Pell and Griffith had entered into. At the same time, the court upheld the paternity judgment. It noted that in a paternity context, the "best interests" standard does not apply. As a result, it appears that this child will have a legal father with whom she has no contact, and a father-equivalent who may end up with custody.

New York

John P. v. Vito C., 6 Misc. 3d 1099 (Fam. Ct. 2004). Two months after the marriage, the wife gave birth to a child. She and her husband raised the child as their own. She died and a third party (John) filed an action to be declared the father of the child and obtain custody. Genetic tests were ordered and established that John was the biological father. Nonetheless, the court held that equitable estoppel applies in paternity cases, and Vito has proven the requisite elements. He is, therefore, the presumed and legal father of the child.

North Dakota

Rydberg v. Rydberg, 678 N.W. 2d 534 (N.D. 2004). A child was born in March 1992. The next day, Rydberg acknowledged paternity. Two years later, the parties married and lived together for 10 years. Then they separated and the IV-D agency brought a child support action. At that point, Rydberg denied paternity. Eventually, genetic tests were ordered and he was excluded as the father. The district court then dismissed the child support case with prejudice. The IV-D agency appealed, arguing that Rydberg was the presumed father and had not disestablished his paternity within the five-year period allowed by North Dakota law.

The North Dakota Supreme Court held that, while Rydberg could not disestablish his paternity because of the statute of limitations, he could raise non-paternity as a *defense* in a child support suit. In this context, genetic test results do constitute clear and convincing evidence to rebut the marital presumption of paternity. Two judges dissented, finding that the decision subverts legislative intent as well as previous case law.

Wisconsin

Randy A.J. v. Norma I.J., 677 N.W.2d 630 (Wis. 2004). A daughter was born during the marriage of a Wisconsin couple. The husband's name was placed on the child's birth certificate, and he has supported her for her entire life. Unbeknownst to him, his wife was having an affair in Illinois at the time the child was conceived. When the child was about 15 months old, the wife was convicted of embezzlement and sentenced to jail. At that

point she told the husband that he might not be the child's biological father. Shortly thereafter, her boyfriend filed a paternity action in Illinois. This action was later dismissed for lack of jurisdiction. The husband then filed for divorce seeking sole legal custody of the child. A temporary custody hearing was held. The boyfriend was notified of the hearing but did not appear. The court awarded temporary sole custody to the husband. The wife then counterclaimed alleging he was not the child's father (and therefore not entitled to custody) and the boyfriend intervened in the divorce action asserting his parental rights. For reasons that are not clear, the husband did allow genetic testing, and it showed a high probability that the boyfriend was the biological father.

The trial court found that the wife was equitably estopped from asserting her husband's non-paternity. The boyfriend was not equitable estopped, but he had failed to overcome the marital presumption of paternity. The court held that it was in the child's best interest to have the husband adjudicate to be her father and did so. On appeal, the court upheld the decision but used the equitable parent doctrine to do so, 655 NW 2d 195 (Wis. App. 2002).

The Wisconsin Supreme Court affirmed the ruling but disagreed with the appellate court's reasoning. It held that the equitable parent doctrine should not be used in Wisconsin. Instead, equitable estoppel principles should be used. In this case, applying those principles prohibits both the wife and her boyfriend from challenging the husband's paternity. The husband's paternity was affirmed.

The boyfriend had also raised a constitutional claim to establish his paternity. The court held that biology was not sufficient to raise the issue to a constitutional level. There has to be a relationship between the child and the alleged father before constitutional dimensions come into play. Here, the boyfriend had allowed the husband to put his name on the birth certificate and let the husband fully support the child. The boyfriend made no effort to assert paternity until the child was 15 months old, and he had failed to appear at the temporary custody hearing where the issue could have been resolved much earlier. In addition, even after the genetic tests were conducted, he made no attempt to support the child. Thus, his conduct did not create a relationship worthy of constitutional protection. The court declined to take a "purely biological approach to parenthood."

Wyoming

GDK v. State of Wyoming, Dept. of Social Services, 92 P. 3d 834 (Wyo. 2004). A married couple was having difficulties and she moved in with her boyfriend. She subsequently gave birth to two children. She left the boyfriend, and the state brought a paternity and support action against the boyfriend and the husband. Genetic tests were ordered and the boyfriend proved to be the biological father of both children. The court established the boyfriend's paternity and the husband appealed, arguing that the marital presumption should prevail over genetic testing. The boyfriend argued that there were competing presumptions and that the court should consider both the best interests of the child and the presumption that was more consistent with good policy.

The Supreme Court held that in a pure paternity case, genetic tests—not the best interests of the child—prevail. However, in a disestablishment case, the court was required to weigh the competing presumptions and consider the best interests of the child. Here, the biological father had a long-standing relationship with the children, was able and willing to be responsible for them, and had asserted his paternity of the second child in the time allowed by law. While his assertion of paternity of the first child was not timely, it would not be in the best interests of children who have the same biological father and mother to have different legal fathers. Therefore, the best interests standard lead to establishment of paternity for both children in their biological father (the boyfriend).

Fiscal Consequences of Disestablishment

California

McBride v. Boughton, Cal. App. No. A103456, (Cal. App. First Dist. October 21, 2004). After a brief affair, mother gave birth to a child in 1996. She told a man that he was the father and, based on that representation, he supported her and formed a relationship with the child. When the child was two years old, the mother sought to relocate and take the child with her. The man then filed a paternity action and filed for custody of the child. Genetic tests established that he was not the biological father, and he abandoned the custody action. He then sued the mother and her new husband (who apparently was the biological father) to recover the support he had provided, using an unjust enrichment theory.

The trial court ruled in favor of the mother on public policy grounds, and the California Court of Appeals affirmed. The court said there were two fundamental public policy reasons for not allowing the man to pursue the mother. *First*, it would require courts to look into the nature of the parent-child relationship in order to determine the amount of restitution due. Any financial loss could be offset by the emotional benefits gained from the man's relationship with the child. This is an area courts should avoid under the principles laid out in *Nagy v. Nagy,* 258 Cal. Rptr. 787 (Cal. App. 1989) and *Richard P. v. Superior Court*, 249 Cal. Rptr. 246 (Cal. App. 1988). *Second,* men should be encouraged not to lightly enter into agreements to support children who are not necessarily theirs. Allowing restitution would make men less careful about such agreements, and in the end, this hurts children. Finally, the court noted that the potential emotional and psychic costs to the child outweigh any financial injury a man might suffer from mistakenly supporting another man's child for a temporary period.

Georgia

Cohen v. Nudelman, 604 S.E.2d 580 (Ga. App. 2004). A divorce decree was issued in 1992 requiring the ex-husband to pay support for two children born during the marriage. In 1993, the ex-husband successfully challenged the paternity of the youngest child (under Georgia statute allowing disestablishment based on genetic tests). The court also

ended his current support obligation, wiped out arrears, and ordered the ex-wife to reimburse him for support paid.

The decision was upheld on appeal except for the requirement that the ex-wife repay support received. The court noted that there may be grounds for a fraud action, but that was not put properly before the trial court, and the ex-wife was not given proper notice.

Maine

Bouchard v. Frost, 840 A.2d 109 (Maine 2004). A child was born to an unmarried mother in 1989. The mother began receiving public assistance and named Bouchard as the father. The IV-D agency brought Bouchard in for an interview and he acknowledged paternity. He did not request genetic tests although the form he signed told him of this right. Based on the acknowledgment, a support order was entered. He did not appeal the order and paid $22,695 over the next 11 years. In 2001, he filed a complaint to determine parental rights and responsibilities. Genetic tests were conducted and they showed he was not the biological father. The district court rescinded the paternity acknowledgment, declared him not to be the father, and held he was not liable for future support. This part of the order was not challenged. The district court also held that Bouchard was estopped from denying paternity during the period the acknowledgment was in effect. Bouchard appealed.

The Supreme Court of Maine held that Bouchard could not recover what he had paid from the state because of sovereign immunity. It also found that he could not recover against the mother under the doctrine of restitution. Child support law is statutory in nature and nothing in the statute authorizes a court to award restitution to a man who, without objection, pays child support for a child who later is determined not to be his. Moreover, such an award would effectively be a retroactive modification prohibited by federal and state law. Finally, the order—although voidable prospectively—was not void and therefore rights that accrued under it were properly enforced. In dicta, the court also notes that the purpose of child support is to provide for a child's welfare. It would manifestly undermine the purpose of this statute to order a mother receiving public assistance to repay child support.

Nebraska

State ex. rel. L.L.B. v. Hill, 682 N.W.2d 709 (Neb 2004). In 1996, the state sued to establish paternity and support. The alleged father (Hill) was properly served but failed to appear, and a default order was entered. He then moved to set aside the decree, but abandoned that action. It appears that, at the time, he was in prison. He was released from prison in 1998. While he was in prison, and after his release, his wages were garnished to pay the ordered support. In 2001, his driver's license was suspended for failure to meet the full obligation and a short time later, a contempt action was begun. Hill responded with a motion for genetic testing. The testing was ordered and showed that Hill was not the biological father of the child in question. Hill then moved—and the state did not

oppose—to disestablish paternity and terminate future support. Hill also moved to vacate the arrears owed under the original order. The state opposed this motion. The court granted all of Hill's motions, and the state appealed the arrearage issue.

The Nebraska Supreme Court reversed the lower court and reinstated the arrearages. It found that the basis of Hill's motion was equity. However, to invoke equity a party must show that the situation was not due to his or her own fault, neglect, or carelessness. In this case, Hill's failure to respond to the original suit, his abandonment of his earlier motion to set aside the judgment, and his inaction in raising the issue in response to the wage garnishment meant that he was negligent. "It was Hill's inexcusable lack of diligence which led to the accumulation of the arrearages, and, as a result, equity will not aid him in vacating those arrearages." In support of this holding the court cited *CSEA v. Hill*, 705 N.E.2d 318 (Ohio 1999).

Damage Actions

Iowa

Brooks v. Brooks, **680 N.W.2d 379 (Iowa App. 2004).** A married couple had three children. One was born three years before the marriage and a set of twins were born eight years after the marriage. The husband signed an affidavit of paternity of the older child, and there was a subsequent paternity proceeding as well. The couple divorced in 2001. At that time, the wife had genetic testing done for all the children. The test results showed that another man was the biological father of all three children. She did not tell the husband the results. He later learned of the tests and filed a petition for paternity disestablishment (as allowed by Iowa law). He also filed suit against the wife and her lover for fraud and intentional infliction of emotional distress. The district court granted a motion for summary judgment, finding that it was contrary to public policy to allow tort claims that threaten an existing parent-child relationship.

The Iowa Court of Appeals affirmed the decision in an unpublished opinion. Citing the rationale of *Day v. Heller*, 653 N.W.2d 475 (Neb. 2002), the court concluded that Iowa law does not recognize tort actions by husbands against wives for intentional infliction of emotional distress or fraud based on misrepresentation of paternity. The court went on to say that whether such torts should be recognized is up to the state's Supreme Court or the legislature.

APPENDIX B:
CASE LAW ON PATERNITY DISESTABLISHMENT ISSUES FOR MARITAL CHILDREN: 1997 - 2005

State	Major Cases
Alabama	*Jenkins ex rel. J.B. v. M.A.B.*, 723 So.2d 649 (1998) *Conway v. Dept. of Human Resources*, 720 So.2d 889 (1998)
Alaska	*T.P.D. v. A.C.D.*, 981 P.2d 116 (1999) *B.E.B v. R.L.B.*, 979 P.2d 514 (1999) *Rubright v. Arnold*, 973 P.2d 580 (1999) *Dixon v. Pouncy*, 979 P.2d 520 (1999)
Arkansas	*Office of Child Support Enforcement v. Williams*, 995 S.W.2d 338 (1999) *Graves v. Stevison*, 98 S.W.3d 848, (Ark. App. 2003)
Arizona	*Worcester v. Reidy*, 960 P.2d 624 (1998)
California	*Dawn D. Superior Court of Riverside County*, 952 P.2d 1139 (1998) *Brian C. v. Ginger K.*, 92 Cal. Rptr. 2d 294 (Cal. App. 2000) *In re Marriage of Pedregon*, 107 Cal. App. 4th 1284 (Cal. App. 2003) *In re Jesusa V.*, 85 P.3d 2 (2004)
Colorado	*N.A.H. v. S.L.S.*, 9 P.3d 354 (2000)
Connecticut	*Serrano v. Serrano*, 566 A.2d 413 (Conn. Super. 2000) *W. v. W.*, 779 A.2d 716 (2001)
Florida	*Anderson v. Anderson*, 845 So.2d 870 (2003)
Georgia	*Baker v. Baker*, 582 S.E.2d 102 (2003)
Hawaii	*Doe v. Doe*, 52 P.3d 255 (2002)

State	Major Cases
Illinois	*In re Parentage of Griesmeyer*, 707 N.E.2d 72 (Ill. App. 1998) *In re Parentage of John M.* , 817 N.W.2d 500 (2004)
Indiana	*Cochran v. Cochran*, 717 N.E.2d 892 (Ind. App. 1999) *Driskill v. Driskill*, 739 N.E.2d 161 (Ind. App. 2000) *In re Estate of Long*, 804 N.E. 2d 1176 (Ind. App. 2004)
Iowa	*Treimer v. Lett*, 587 N.W.2d 622 (1999) Callendar v. Skiles, 623 N.W.2d 852 (2001)
Kansas	*Ferguson v. Winston*, 996 P.2d 841 (Kan. App. 2000) *In re Marriage of Phillips*, 58 P.3d 680 (2002)
Kentucky	*Moore v. Cabinet for Human Resources*, 954 S.W.2d 317 (1997)
Louisiana	*State v. Walker*, 700 So.2d 496 (1997) *T.D. v. M.M.M.*, 730 So.2d 873 (1999) *Leger v. Leger*, 829 So.2d 1101 (La. App. 2002) *Gallo v. Gallo*, 861 S.2d 168 (2003)
Maine	*Stitham v. Henderson*, 768 A.2d 598 (Me. 2000)
Maryland	*Stubbs v. Calendra*, 841 A.2d 361 (Md. App. 2004) *Evans v. Wilson*, 856 A.2d 679 (2004)
Michigan	*Aichele v. Hodge*, 673 N.W. 2d 452 (Mich. App. 2003) *In the Matter of C.A.W.*, 665 N.W. 2d (475) (2003), on remand 673 N.W. 2d 470 (Mich. App. 2003) *In re K.H.*, 677 N.W.2d 800 (2004)
Minnesota	*G.A.W. v D.M.W.*, 596 N.W.2d 284 (Minn. App. 1999) *Witso v. Overby*, 627 N.W.2d 63 (2001)

State	Major Cases
Mississippi	*R.E. v. C.E.W.*, 752 So.2d 1019 (1999) *W.H.W. v. J.J.*, 735 So.2d 990 (1999) *Griffith v. Pell*, 881 So.2d 184 (2004)
Missouri	*W.B. v. M.G.R.*, 955 S.W.2d 935 (1997) *Div. of Child Support Enforcement v. T.J.*, 981 S.W.2d 149 (1998)
Nebraska	*Day v. Heller*, 639 N.W.2d 158 (Neb. App. 2002)
Nevada	*Love v. Love*, 959 P.2d 523 (1998)
New Mexico	*Tedford v. Gregory*, 959 P.2d 540 (N.M. App. 1998)
Ohio	*Van Dusen v. Van Dusen*, 784 N.E.2d 750 (Ohio App. 2003) *Poskarbiewicz v. Poskarbiewicz*, 787 N.E.2d 688 (Ohio App. 2003)
Oklahoma	*Miller v. Miller*, 956 P.2d 887 (1998) *Cornelius v. Cornelius*, 15 P.3d 528 (Okla. App. 2000) *Barber v. Barber*, 77 P.3d 576 (2003)
Oregon	*In re Marriage of Moore*, 328 Ore. 513 (1999) *In the Matter of Sleeper*, 929 P.2d 1028, (Ore Ct. App. 1996)aff'd on other grounds 982 P.2d 1126 (Ore.1999)
Pennsylvania	*Brinkley v. King*, 701 A.2d 176 (Pa. Super. 1997) *Strauser v. Starr*, 726 A.2d 1052 (1998) *Fish v. Behrs*, 741 A.2d 721 (1999) *Sekol v. Delsantro*, 763 A.2d 405 (Pa. Super. 2000) *Weidman v. Weidman*, 808 A.2d 576 (Pa. Super. 2002) *JC formerly known as JA v. JS*, 826 A.2d 1 (Pa. Super. 2003)
Rhode Island	*Pacquette v. Trottier*, 723 A.2d 794 (R.I. 1998)

State	Major Cases
South Carolina	*Douglass v. Boyce*, 542 S.E.2d 715 (2001)
South Dakota	*Culhane v. Michels*, 615 N.W.2d 580 (2000)
Vermont	*Godin v. Godin*, 725 A.2d 904 (1998) *Jones v. Murphy*, 772 A.2d 502 (2001)
West Virginia	*William L. v. Cindy E.L.*, 495 S.E.2d 836 (1997)
Wisconsin	*Randy A.J. v Norma I.J.*, 677 N.W.2d 630 (2004)
Wyoming	*R.W.R. v E.K.B. and J.D.B.*, 35 P.2d 1224 (2001) *GDK v. State Dept. of Family Services*, 92 P. 2d 834 (2004)

APPENDIX C:
CASE LAW ON PATERNITY DISESTABLISHMENT FOR NON-MARITAL CHILDREN: 1997 - 2005

State	Major Cases
Alaska	*Ferguson v. Dept. of Revenue*, 977 P.2d 95 (1999) *State, Dept. of Revenue, CSED v. Button*, 7 P.3d 74 (2000)
Arizona	*Stephenson v. Nastro*, 967 P.2d 616 (1998)
Arkansas	*Littles v. Fleming*, 970 S.W.2d 259 (1998)
California	*In re Nicholas H.*, 46 P.3d 932 (2002) *McBride v. Boughton*, Cal. App. No. A 103456 (Cal. App. October 21, 2004)
Florida	*Fla. Dept. of Revenue ex rel. R.A.E. v. M.L.S.*, 756 So.2d 125 (Fla. App. 2000) *Fla. Dept. of Revenue ex rel. Sparks v. Edden*, 761 So.2d 436 (Fla. App. 2000) *Magwood v. Tate*, 835 So.2d 1241 (Fla. App. 2003)
Georgia	*Davis v. LeBrec*, 549 S.E.2d 76 (2001)
Illinois	*Donath v. Buckley*, 744 N.E.2d 385 (Ill. App. 2001) *People ex. Rel. Dept. of Public Aid v. Smith* , 797 N.E.2d 172 (2004)
Indiana	*Nickels v. York*, 725 N.E.2d 997 (Ind. App. 2000)
Iowa	*Koos v. Wilson*, 2005 Iowa App. LEXIS 243 (March 31, 2005)
Louisiana	*Rousseve v. Jones*, 704 So.2d 229 (1997) *Faucheux v. Faucheux* , 772 So. 237 (La. App. 2000)

Maine	*Dept. of Human Services. V. Blaisdell,* 816 A.2d 55 (2002), 847 A.2d 404 (2004) *Bouchard v. Frost*, 840 A.2d 109 (2004)
Maryland	*Langston v. Riffe,* 754 A.2d 389 (2000) *Walter v. Gunter*, 788 A.2d 609 (2002)
Massachusetts	*In re Paternity of Cheryl*, 746 N.E.2d 488 (2001)
Michigan	*Van v. Zahorik*, 597 N.W.2d 15 (1999)
Minnesota	*Turner v. Suggs*, 653 N.W.2d 458 (Minn. App. 2002)
New Hampshire	*In the Matter of Haller*, 839 A.2d 18 (2003)
New Jersey	*F.B. v. A.L.G.*, 821 A.2d 1157 (2003)
New York	*Cleophus P. v. Latrice M.R.*, 299 A.2d 936 (App. Div. 2003) *Sarah S. v. James T.*, 299 A.2d 785 (App. Div. 2003) *Ellis v. Griffin*, 764 N.Y.S.2d 120 (App. Div. 2003) *Enrique G. v. Lisbet E.*, 769 N.Y.S. 2d 533 (App. Div. 2004)
North Carolina	*Price v. Howard*, 484 S.E.2d 528 (1997)
North Dakota	*Rydberg v. Rydberg*, 678 N.W. 2d 534 (2004)
Ohio	*Cuyahoga Support Enforcement Agency v. Guthrie*, 705 N.E.2d 318 (1999)
Oklahoma	*Dept. of Human Services v. Chisum*, 85 P.3d 860 (Ok. App. 2004)

Pennsylvania	*McConnell v. Berkheimer*, 781 A.2d 206 (Pa. Super. 2001) *In re Adoption of MTJ*, 814 A.2d 225 (Pa. Super. 2003) *Warfield v. Warfield*, 815 A.2d 1073 (Pa. Super. 2003)
Texas	*Texas Dept. Protective &Regulatory Services v. Sherry*, 46 S.W.3d 857 (2001) *In re Shockley,* 123 S.W.3d 642 (Tex. App. 2003)
West Virginia	*State ex rel. West Va. Department of Health and Human Resources, Child Support Div. V. Michael George K*., 531 S.E.2d 669 (2000)
Wisconsin	*In re A.Y.*, 677 N.W.2d 684 (Wis. App. 2004)
Wyoming	*D.M.M. v. D.F.H*, 954 P. 2d 976 (1998) *M.A.M v. State of Wyoming, Dept. of Family Services*, 99 P.3d 982 (2004) *J.G. v. State of Wyoming, Dept. of Social Services*, 84 P. 3d 1268 (2004)