CHILDREN. Provides requirements relative to an acknowledgment of paternity. (8/15/10)

1   AN ACT

2   To amend and reenact R.S. 9:392(A)(introductory paragraph), (7)(a) and (b), and (B) and

3   399.1(A)(introductory paragraph), (B), (C), and (D) and to enact R.S. 9:399.1(E) and

4   (F), relative to paternity; to provide for acknowledgments of paternity; to provide

5   terminology to include both parents; to provide for the inclusion of certain

6   information; to provide for the dismissal of a paternity judgment; to provide for the

7   burden of proof; to provide exceptions; to provide for genetic testings; to provide for

8   the filing of tests results, and to provide for related matters.

9   Be it enacted by the Legislature of Louisiana:

10   Section 1. R.S. 9:392(A)(introductory paragraph), (7)(a) and (b), and (B) and

11   399.1(A)(introductory paragraph), (B), (C), and (D) are hereby amended and reenacted and

12   R.S. 9:399.1(E) and (F) are hereby enacted to read as follows:

13   §392. Acknowledgment; requirements; content

14   A. Prior to the execution of an acknowledgment of paternity, the notary shall

15   provide in writing~~,~~ and orally~~, or by~~ **which may include** directing them to video or

16   audio presentations, the ~~party or parties~~ **mother and alleged father** making the

17   acknowledgment of the following:

1   *   *   *

2   (7)(a)   ~~A party~~ **An alleged father** who executed an authentic act of

3   acknowledgment may revoke the act, without cause, before the earlier of the

4   following:

5   (i) Sixty days after the signing of the act, in a judicial hearing for the limited

6   purpose of revoking the acknowledgment.

7   (ii) A judicial hearing relating to the child, including a child support

8   proceeding, wherein the ~~affiant to~~ **alleged father who executed** the authentic act of

9   acknowledgment is a party to the proceeding.

10   (b) Thereafter, the acknowledgment of paternity may be voided only upon

11   proof, by clear and convincing evidence, that such act was induced by fraud, duress,

12   material mistake of fact, or error, or that the ~~person~~ **alleged father** who executed the

13   authentic act of acknowledgment is not the biological father.

14   *   *   *

15   B.   In addition to the general requirements of the Civil Code, an

16   acknowledgment of a child born outside of marriage shall include the social security

17   numbers of the father and mother, and, in accordance with the provisions of 42

18   U.S.C. 652(a)(7) **and 42 U.S.C. 666(a)(5)(D),** shall include all minimum

19   requirements specified by the secretary of the United States Department of Health

20   and Human Services. Failure to recite a party's social security number as required

21   herein shall not affect the validity of the declaration.

22   *   *   *

23   §399.1. Dismissal of final order following judgment of paternity; time periods;

24   procedure; effects

25   A. Notwithstanding any other provision of law, a judgment establishing

26   paternity may be set aside or vacated by the adjudicated father of a child, the child,

27   the mother of the child, or the legal representative of any of these persons ~~if genetic~~

28   ~~testing conducted in accordance with the provisions of R.S. 9:397.2 and 397.3~~

29   ~~indicates that the adjudicated father of a child is not the biological father of the child.~~

Coding: Words which are ~~struck through~~ are deletions from existing law;
words in **boldface type and underscored** are additions.

1   The proceeding shall be instituted by ordinary process in a court of competent

2   jurisdiction and service shall be made upon the office of family support, support

3   enforcement services of the Department of Social Services, if services are being

4   provided by the department. **The burden of proof shall be upon the party seeking**

5   **to set aside or vacate the judgment of paternity.** The proceeding shall be brought

6   within one of the following time periods:

7   *   *   *

8   B. Subsection A of this Section does not apply if the child is presumed to be

9   a child of a marriage **between the mother and the adjudicated father**.

10   C. ~~If an order of support is dismissed on the basis of non-paternity of the~~

11   ~~adjudicated father, the court shall nullify the judgment of paternity.~~ **If the court**

12   **finds there is a substantial likelihood that the adjudicated father is not the**

13   **biological father, it shall order genetic tests pursuant to R.S. 9:396. Nothing**

14   **herein shall preclude the introduction of other evidence if it is not possible to**

15   **conduct genetic testing.**

16   **D. The test results certified under oath by an authorized representative**

17   **of an accredited laboratory shall be filed with the court and shall be admissible**

18   **on the issue of paternity in accordance with R.S. 9:397.3. If the test results show**

19   **a statistical probability of paternity of ninety-nine point nine percent or greater,**

20   **a rebuttable presumption of paternity shall be established. If the adjudicated**

21   **father is found to be excluded by the tests, the court shall nullify the judgment**

22   **of paternity.**

23   **E. Except for good cause shown, the court shall not suspend, during the**

24   **pendency of this proceeding, any legal obligations including a support obligation**

25   **of the adjudicated father.**

26   ~~D.~~**F.(1) If a judgment of paternity is set aside, vacated, or dismissed, the**

27   **court shall dismiss any obligation of child support.**

28   ~~(1)~~**(2)** A judgment dismissing an established order of support does not affect

29   any child support payment or arrearages paid, due, or owing prior to the date the

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1   action to set aside or vacate the judgment of paternity was filed.

2   (2)**(3)** The judgment dismissing an established order of support shall be

3   served upon the office of family support, support enforcement services of the

4   Department of Social Services, if services are being provided by the department.

5   (3)**(4)**   Neither the state of Louisiana, its officers, employees, agents,

6   contractors, nor the office of family support, support enforcement services of the

7   Department of Social Services shall be liable in any case to compensate any person

8   for child support paid or for any other costs as a result of the judgment setting aside

9   or vacating the judgment of paternity or support entered in accordance with this

10   Section.

The original instrument and the following digest, which constitutes no part
of the legislative instrument, were prepared by Jerry G. Jones.

DIGEST

Present law uses the terms "party or parties" and "affiant."

Proposed law changes the terms to "mother and alleged father" and "alleged father."

Present law required only the alleged father who executed the acknowledgment to be a party
to this action.

Proposed law changes present law to make it consistent with federal law which requires both
the mother and father to sign the acknowledgment.

Present law provides that a judgment establishing paternity may be set aside or vacated if
genetic testing indicated that the adjudicated father is not the biological father.

Proposed law provides that if the court finds there is a substantial likelihood that the
adjudicated father is not the biological father, it shall order genetic testing and if the results
show a 99.9% statistical probability of paternity, a rebuttable presumption of paternity shall
be established.

Proposed law provides that the burden of proof shall be upon the party seeking to set aside
or vacate the judgment.

Proposed law provides that the court shall not suspend any legal obligations during the
pendency of this proceeding, except for good cause shown.

Proposed law provides that if the judgment of paternity is set aside, vacated, or dismissed,
the court shall dismiss any obligation of child support.

Present law provides that present law does not apply to a child presumed to be a child of a
marriage.

Coding: Words which are ~~struck through~~ are deletions from existing law;
words in **boldface type and underscored** are additions.

Proposed law provides that present law does not apply to a child presumed to be a child of a marriage between the mother and the adjudicated father.

Effective August 15, 2010.

(Amends R.S. 9:392(A)(intro. para.), (7)(a) and (b), and (B) and 399.1(A)(intro.para.), (B), (C), and (D); Adds R.S. 9:399.1(E) and (F))