THE PUNDIT

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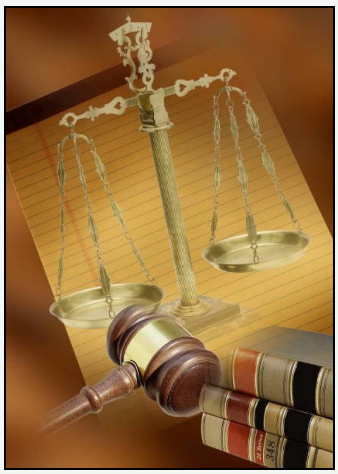
New Resources For Self-Represented Litigants

By Angela Tripp, Managing Attorney, Michigan Poverty Law Program

The statewide group "Solutions on Self-Help Task Force" (SOSTF) has publicly launched its Michigan Legal Help website on August 17, 2012.

Michiganlegalhelp.org is an interactive website built to enable self-represented litigants to handle some civil legal matters on their own, including a section focused on family-law issues. This project of the SOSTF is managed by the Michigan Poverty Law Program and is funded by a grant from the Michigan State Bar Foundation. The SOSTF was created in April 2010 by Justice Marilyn Kelly to promote greater centralization, coordination, and quality of support for self-represented litigants in Michigan.



The new website provides legal information and forms for people who need to handle simple civil legal matters without a lawyer. The site further provides self-represented litigants with jurisdiction-specific procedural instructions after they have completed forms, and gives litigants an idea about what to expect once they get to court.

The family law content of SOSTF's new website is based on an 11-year old similar website in Illinois, the Illinois Legal Aid Online (ILAO). Like ILAO, the Michigan Legal Help site offers informational articles, answers to common questions, and has an automated online interview that completes forms, and provides procedural instructions for family law matters. The State Court Administrative Office (SCAO) helped create the automated interviews, which fill out SCAO-approved divorce complaint, answer, and judgment forms. The Department of Community Health allowed the Record of Divorce form as part of the interview, too.

Website users can first review articles and common questions and answers about family law and divorce. They will see a checklist of all the documents and information they need before beginning to complete the forms. The user can create a username and password for the website, allowing the user to save the interview and finish it later (the website prompts users to take advantage of this feature, allowing changes to saved data should anything change before filing). Otherwise, no data is stored.

The interview itself is a series of questions that the user must answer. Some questions screen to ensure the user has a right to file the case in Michigan; all answers determine the route the interview takes, and populate the standard forms. For complex matters (like requests for spousal support, or pension division), users are advised to consult with an attorney in order to complete the divorce process, though the form will preserve the request in the finished form.

When a user is finished with the interview, the user has complete PDF documents of all the standard forms needed for a divorce. Users will be directed to other required local forms, if necessary. Our staff is developing simple, step-by-step procedural instructions in consultation with the court clerk and friend of the court staff in every jurisdiction. Ultimately, the website will give users jurisdiction-specific directions for completing their own *pro se* divorces and calculating child support obligations.

As we roll out this project, we want to work closely with friend of the court offices, court clerks, and other court staff so that the information we provide to pro se litigants can bring them success in handling their own divorces and other related legal matters. We know that this website does not have the ability to help everyone in Michigan who wants to file his or her own divorce. There are many individuals, and many situations, that are not appropriate for *pro se* representation. One goal of this project is to provide a set of tools to the people who *can* represent themselves so that they can prepare the documents that will be easy for the court to process and, also, so *(continued on page 2)*

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they can get a thorough understanding of the procedures that they must follow to complete a divorce.

The next step of our task force is to open four self-help centers in different locations around the state. These centers will provide *pro se* litigants with even more resources through in-person navigators who can help them use the website and who can answer their "how do I?" questions (without giving legal advice).

You can help make this website better. When you start to see *pro se* litigants in your courts and offices who are using the new forms, please let us know how they are doing. Questions and feedback can be directed to Angela Tripp (trippa@lsscm.org) or via one of the two feedback links on the website http://michiganlegalhelp.org/ . This project is providing an exciting advance for *pro se* litigants in Michigan, and we are proud to be a part of it.

This project of the Solutions on Self-Help Task Force (SOSTF) is managed by the Michigan Poverty Law Program (MPLP) and is funded by a grant from the Michigan State Bar Foundation (MSBF). The SOSTF was created in April 2010 by Justice Marilyn Kelly to promote greater centralization, coordination, and quality of support for self-represented litigants in Michigan.

Maybe A MAP Can Help ...

Judicial skills, which are honed, tested, and used daily, are essential to the idea of advancing "justice." But where does a judge turn for help when there are administrative problems within the court's office related to improving the office's performance, specifically within a Friend of the Court (FOC) office? One of the fundamental responsibilities of the State Court Administrative Office (SCAO) is to provide management assistance to judges and FOC Offices. One of the best ways that SCAO provides management assistance to judges and FOCs is through a management assistance project (MAP).

A MAP is a report for the judge that is full of explicit recommendations on how that specific court may administer its work more effectively. MAPs are available for all administrative aspects of court operations, including FOC office operations. All MAPs are initiated on a request from the chief judge of the circuit court to the relevant SCAO Regional Administrator. The request should specify the type of assistance that the court needs. SCAO then establishes a team of analysts and begins work on the first of three phases.

In an FOC office MAP, phase one includes the gathering of data to develop a statistical profile of the particular FOC office. This statistical profile includes a comparison of the FOC office to other, similarly-sized offices. The study team assigned to the project also reviews the FOC's policy manuals to develop an understanding of that office's practices. During phase two, the study team visits the FOC office. At that time, the review team interviews Family Division Judges, FOC staff, other court staff, prosecuting attorney staff, and local attorneys. Phase two may also include additional reviews of policy manuals, case files, and other documents that are related to the FOC's operations. In the final phase, the analysts prepare a report that summarizes results found by the study team and the report makes recommendations to the chief judge. The report may also suggest that the court try to implement innovative processes that have been found to be successful in other FOC offices.

Overall, a MAP report is to assist judges and FOC offices improve their performance and provide support to the FOC office in meeting its mandated and nonmandated duties. If judges or the staff of judicial offices have questions about SCAO's MAP process, they should contact the court's regional administrator.

THE PUNDIT

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The Pundit provides information on current issues to Michigan child-support staff. The Pundit is not intended to provide legal advice and does not represent the opinions of the Michigan Supreme Court or the State Court Administrative Office.

Getting It Right: Identifying Fathers In The 21st Century

BY HON. KENNETH TACOMA,
WEXFORD COUNTY PROBATE COURT; PRESIDING JUDGE,
28TH CIRCUIT FAMILY DIVISION

Life used to be so simple. People got married and had kids. Or if a girl got pregnant, it was generally known who had done it and the girl's father would arrange a "shotgun wedding." There were a few kids who were not begotten in this model that tied procreation to marriage, and life was cruel and unfair to them (unforgivably so). As late as 1960, the overall rate of births outside of marriage was about 5 percent (up from less than 4 percent in 1950). It now exceeds 40 percent nationally, and in the county where I hold court, 2011 marked a watershed year in that we had near statistical equality – out of 345 births registered in the county, 172 were to unwed women, and 173 were to married couples.

As a matter of jurisprudential theory, while I certainly think that there is a link between law and culture, I think in the final analysis it is culture that shapes the law. Thus, the law should adapt to the culture currently extant. I can think of a number of reasons why this must be so:

- There is virtually no chance that our current culture that promotes and sustains out-of-wedlock births will change. The sexual revolution is here to stay, at least for the foreseeable future, and a by-product of that will be continued out-of-wedlock births.
- The children born into today's time and place still need to have identified fathers. Study after study shows that having an identified father is a basic element of economic justice for a person. This goes beyond assistance in the form of child support; it also gives the person rights of inheritance from both progenitors.
- With the ever-increasing sophistication of medical research at the genetic level, it will become a matter of biological justice that people have access to their genetic heritage. Indeed, this may be a life-or-death issue in a few years. The proper identification of one-half of the genetic makeup of a person may mean the difference between being able to be treated for a particular disease or, perhaps dying.
- I am convinced, after over 30 years of working broadly in the family law area, that people have an innate need to feel connected via biology. Even when the connection is unhealthy, attenuated, or irrational to the outside observer, I think it is still important and believe that humans are hard-wired to know their biological connections.

So what's the problem? We have the legal tools available to address this, don't we? Generally, Michigan law currently recognizes four mechanisms by which a male can become a legal father of a child (other than adoption, which is not under consideration for these purposes):

1. The child is born to a woman to whom the male is married - where we started in the law before the collapse of our traditional family structures, which we know as Lord Mansfield's Rule. (See also MCL 552.29 - 552.31.)
2. The male signs a formal legal document under the Acknowledgment of Parentage Act at the time of, or following, the birth of the child. (MCL 722.1001 *et seq.*)
3. The male is determined to be the father pursuant to legal action brought under the Paternity Act. (MCL 722.711 *et seq.*)
4. If paternity previously has not been determined, the male may be determined to be a legal father in interstate proceedings under the Uniform Interstate Family Support Act or the Revised Uniform Reciprocal Enforcement of Support Act. (MCL 552.1101 *et seq.* and MCL 780.151 *et seq.*, respectively.)

Unfortunately, these mechanisms are inadequate to protect the rights of children to ensure they have identified parents in Michigan. Too often in neglect and abuse cases we find that none of the four mechanisms listed above has been used to determine paternity leaving the child without a legal father or a means for the child's biological heritage to be established. We also find a significant number of cases where there may be a legal father, but biological paternity is contested, or sometimes very clearly inaccurate.

An important step has been taken in the recently-passed Revocation of Paternity Act (2012 PA 159, effective date June 12, 2012). This law allows accurate paternity determination to be made based on genetic testing and allows correction of erroneous legal paternity determinations in limited circumstances after paternity has been established pursuant to one of the mechanisms described above. Also, in a very important provision, § 13 of the act allows the issue of paternity revocation to be raised not only as an original action, but in existing cases involving support, custody, or parenting time, or in cases brought under the Juvenile Code involving abuse and neglect.

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Man Testifies To Regain Parental Rights Under RPA

[Note: The Revocation of Paternity Act's sponsors were persuaded to introduce legislation because of a case in Fenton, Mich. This article, reprinted with permission of the Oakland Press and reporter Gerald Wolffe, summarizes the facts of that case.]

He said he went to Genesee County Family Court to claim paternity. However, Quinn said the court found in July 2009 he had "no standing" in the case because of the Michigan Paternity Act.

Quinn said Borders-Beckwith is now living with a boyfriend and her children, including Maeleigh, in Lexington, Ky.

He said the Paternity Act should be changed because DNA testing is now available to determine paternity and there was no such test in 1956.

"It's time to update the law," said Quinn, who works as a tradesman. "The law is outdated because it was created before DNA testing."

Quinn, who has hired attorney Gregory Rohl of Novi, to help him win shared custody of his daughter, is determined to fight until he wins the case.

"I am not going to stop until my daughter is in my life," he said. "I made a promise to my daughter when she was born that daddy would always protect her."

"These bills need to be passed and signed into law to protect the relationship and bond between the father and the child."

On June 12, 2012, the Michigan Legislature transformed the rights of putative fathers and changed the description of who may establish or contest a child's paternity when it passed the Revocation of Paternity Act (RPA). The RPA allows a putative father (a man who claims to be the biological father of a child) to bring a paternity action to establish paternity of a child despite the fact that the mother of that child is married to a different man. There is a presumption that a husband is the father of all his wife's children born during their marriage, even if he is not actually the biological father. The biological father could not establish paternity unless there was a court determination that the child was born out of wedlock as part of a court proceeding between the husband and wife. The RPA gives a putative father standing in court to seek an order establishing his paternity despite the mother's marriage. A man will also be considered to be a child's father when he and the mother sign an affidavit of parentage or when the man is determined to be the child's father in a paternity action - even if it has determined by his default by filing an answer or complaint, or he appeared for genetic testing.

Under the RPA, an alleged (putative) father may seek an order of filiation by proving by clear and convincing evidence that he is the child's father. When there is an acknowledgment of parentage, the mother, acknowledged father, alleged father, or prosecuting attorney may file to set aside the paternity of a man who has signed an affidavit of parentage. The action must be filed within three years of the child's birth or within a year of signing the acknowledgment of parentage, whichever is longer. The petitioner must file an affidavit that shows that signing the paternity acknowledgment was the result of one of the following:

- a mistake of fact,
- newly discovered evidence that could not have been found in due diligence,
- fraud,
- misrepresentation, or
- duress in signing the acknowledgement.

If the affidavit is sufficient, the court then must order genetic testing.

To set aside the paternity of a man married to the child's mother, a suit can be brought in circuit court by any of the following parties:

- the Department of Human Services when the child is supported by public assistance,
- the mother of the child,
- an individual named as the child's father on the child's birth certificate,
- the child's presumed father, or
- a putative father.

The requirements for standing to file under the RPA are different depending on who files the action. If the mother files, she must identify the alleged father by name. The mother, presumed father, and alleged father must openly acknowledge a biological relationship between the alleged father and child. The court then must determine the child's paternity, or the act of disestablishing the presumed father's paternity must result with the alleged father becoming the child's legal father. If the presumed father files the action to disestablish paternity, the action must be filed for the purpose of establishing the child's paternity. If the alleged father files the action, one of the following must occur:

- The alleged father must show that :
  - ► he did not know or have reason to know that the mother was married at conception,
  - ► the mother, presumed father, and alleged father mutually and openly acknowledge a biological relationship between the alleged father and the child, and

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Identifying Fathers In The 21st Century

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The latter cases are fertile ground for unsettled or improper determinations of paternity and giving courts authority to address the issue in those cases is a great step forward.

Finally, the issue of working to determine paternity is being pushed forward by a workgroup (of which I am a member) that was formed through the State Court Administrative Office. Representatives from across the spectrum of offices that deal with the issue - including the State Court Administrative Office's Friend of the Court Bureau and Child Welfare Services, Prosecuting Attorneys, Department of Human Services, Friends of the Court, County Adoption Services, Domestic Relations Referees, and Trial Court Judges - have ongoing discussions and meetings to develop proposals for additional legislation to refine paternity determination, including proposals to allow paternity determination to be made in neglect and abuse cases where children are brought into court and paternity has not previously been established. I expect the committee will agree upon a viable solution that can be drafted into proposed legislation and submitted to the Legislature for consideration in the next legislative session. And, maybe the law will be another step closer to having a proper match between children and parents, both biological and legal.

Man Testifies To Regain Parental Rights Under RPA

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- ► he can become the legal father when the court determines the child's paternity or the act of disestablishing the presumed father's paternity will establish his paternity.
- ▪ The alleged father must show that he did not know or have reason to know the mother was married at conception, the alleged father must show that the presumed father had the ability to support the child and failed to do so, and disestablishment must result in the alleged father's paternity.
- ▪ The alleged father must show that the mother was not married at conception.

The RPA brings about more new provisions as well.

- ▪ A putative father cannot bring an action if the child was conceived through an act of criminal sexual conduct,
- ▪ The act's provisions include a revision of the definition of a "child born out of wedlock,"
- ▪ A putative father may be ordered to pay for genetic testing expenses in an action that he filed, and
- ▪ A judgment in an action brought by a putative father will not relieve a presumed father from child support that accrues before the judgment.

The RPA may have a fiscal impact, since allowing putative fathers to bring paternity actions could increase circuit court caseloads, though the cost of these additional cases should be minimal. Despite the minimal cost of these new cases, the effect that the RPA will have on the relationships between biological fathers and their children is significant because the RPA allows a class of biological fathers the opportunity to form legal relationships with their children that they were previously denied.

The Pundit **is a publication of the Friend of the Court Bureau, State Court Administrative Office, Michigan Supreme Court.** ***The Pundit*** **is published quarterly and is paid for with IV-D funds.**

THE LEGAL CORNER

A summary of recent Michigan Court of Appeals decisions and Michigan IV-D memoranda.

Court of Appeals Decisions – SEE HTTP://COA.COURTS.MI.GOV/RESOURCES/OPINIONS.HTM

► ***Garrity v Janger***, unpublished opinion per curiam, issued May 17, 2012 (Docket No. 306956). Where there was no appreciable time that the children looked to plaintiff or defendant alone for guidance, discipline, the necessities of life, and parental comfort, the children did not have an established custodial environment with either parent.

► ***Mersman f/k/a/ Lingenfelter v Lingenfelter***, unpublished opinion per curiam, issued May 24, 2012 (Docket No. 305383). Severity of a criminal punishment does not bind the trial court in its consideration of the crime's effect on custody or parenting time.

► ***Watrous v Watrous***, unpublished opinion per curiam, issued May 24, 2012 (Docket No. 306744). A trial court may find that an established custodial environment exists with both parents after one parent moved across state lines to be closer to his children after the other parent moved out-of-state with the child.

► ***Alholinna v Alholinna***, unpublished opinion per curiam, issued May 29, 2012 (Docket No. 307012). A discretionary decision to move locations for a new job does not constitute a substantial change in circumstances sufficient to support a change in custody.

►***Gansen v Phillips***, unpublished opinion per curiam, issued May 29, 2012 (Docket No. 304102). A third party nonparent has the burden of proving by clear and convincing evidence that it is not in the best interests of the minor child to award custody to a parent.

►***Nyikon v Kosinski***, unpublished opinion per curiam, issued May 29, 2012 (Docket No. 306708). A trial court has authority to award physical custody to a third person when proper weight is given to the presumption favoring natural parent custody when examining the best-interest factors found in MCL 722.23.

►***Rugiero v Dinardo***, unpublished opinion per curiam, issued June 19, 2012 (Docket Nos. 301829, 302192, 302228, 302936, 302963, 303259, 303707, and 307630). In considering parenting time, parties should not focus merely on the sheer number of hours awarded to them for parenting time, but should also consider contact such as phone calls. The trial court may infer from the evidence that a party's expenses are higher than actual income and may assess the credibility of a party's explanations when calculating child support.

► ***Wardell v Hincka***, 297 Mich App ___ (2012). If an opinion and postjudment order change where a child will live, the change affects the custody of a minor and should be used when determining whether to modify the child's custody.

► ***Clarke v Clarke***, 297 Mich App ___ (2012). Only retirement benefits that are actually paid from the Social Security Administration and delivered to the recipient can be considered part of that person's income when calculating child support. Where a person chooses not to continue to receive social security retirement benefits, the payments he could have received cannot constitute income. Additionally, choosing not to receive the benefits early does not constitute an unexercised ability to earn income if the evidence shows that the person would receive a larger benefit by deferring payment until a later date.

► ***Sandel v Shining Water Eagle***, unpublished opinion per curiam, issued July 17, 2012 (Docket No. 306994). The trial court's findings that a mother was coaching or fostering sexual abuse allegations against the father constituted a change in circumstances to warrant a trial court's reevaluation of the statutory best-interest factors.

► ***Henry v Francis,*** unpublished opinion per curiam, issued July 17, 2012 (Docket No. 298896). When evaluating a mentally ill parent's ability to find work, the trial court should require proof that the parent can work before imputing income instead of requiring proof that the parent cannot work.

► ***Lagueux v Lagueux,*** unpublished opinion per curiam, issued May 10, 2012 (Docket No. 305456). The existence of a temporary custody order does not preclude a finding that an established custodial environment exists with the noncustodian.

► ***Slater v Michels,*** unpublished opinion per curiam, issued May 10, 2012 (Docket No. 306547). Change of custody motions require the court to apply a "preponderance of evidence" standard when evaluating the motion. It is harmless error if a court's opinion meets both standards.

► ***Juneac v Miller-Garcia, f/k/a Miller,*** unpublished opinion per curiam, issued May 15, 2012 (Docket No. 306260). A trial court must determine whether the child was of sufficient age to express a preference and, if so, determine the child's preference as factor (i) in the best-interest factors requires. However, the child's preference is only one factor that the trial court considers when determining the best interests of the child.

► ***Carr v Carr***, unpublished opinion per curiam, issued July 3, 2012 (Docket No. 308794). The trial court committed clear legal error in relying on extrajudicial information by referencing and relying on a study not introduced into evidence or part of the record.

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THE LEGAL CORNER

A summary of recent Michigan Court of Appeals decisions and Michigan IV-D memoranda.

Court of Appeals Decisions

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► ***Simon v Simon***, unpublished opinion per curiam, issued July 24, 2012 (Docket No. 308528). When the parties are unable or unwilling to communicate with one another to make decisions regarding their children, it is neither inherently inconsistent nor against the best-interest factors to simultaneously award sole legal custody to a plaintiff and expand parenting time for a defendant.

► ***Brecht v Hendry***, unpublished opinion per curiam, issued July 24, 2012 (Docket No. 308343). Even though a parent must seek permission under MCR 3.211(C)(1) to move out of state with the child, if MCL 722.31 does not apply (a parent has sole legal custody), the trial court may not consider the *D'Onofrio* factors in determining the change in residence and should approve the move.

► ***Greenhoe v Slater***, unpublished opinion per curiam, issued July 26, 2012 (Docket No. 308716). A trial court must render factual findings and conclusions regarding each best-interest factor or must render a finding regarding each factor's applicability.

► ***Berry v Berry***, unpublished opinion per curiam, issued August 7, 2012 (Docket No. 298991). When a defendant suffers a change in circumstances, an award of child support should not be modified downward under a defendant's motion for reconsideration. Instead, the child support modification must be filed and considered as a motion to modify support based on a change of circumstances or a motion for relief from judgment.

► ***Miller v Miller***, unpublished opinion per curiam, issued August 7. 2012 (Docket No. 308215). A defendant's direct violation of a custody order constitutes a compelling basis to revisit the prior custody and parenting time decision. Despite evidence that a defendant is a good overall parent with whom the child wants to maintain a relationship, defendant's conduct that causes the child to be fearful of his or her physical safety is a sufficient change in circumstances to grant a motion for a change in custody.

► ***Weaver v McGee***, unpublished opinion per curiam, issued August 7, 2012 (Docket No. 308036). If a parent has sole legal custody, he or she may move over one hundred miles with the child when MCR 3.211(C)(1) is not cited in the court order, even if a consent agreement states otherwise. An inquiry into the best-interest factors is only necessary when both parents share joint physical custody. However, a defendant's motion titled "motion to enforce order and for pick up order for minor child" should be treated as a motion for a change in custody if the request for relief includes a request to award that parent temporary physical custody.

Michigan IV-D Memoranda

►**IV-D Memorandum 2012-017, *Obligation Entry and Modification* (June 4, 2012):** Announced the initial publication of Section 5.20 of the *Michigan IV-D Child Support Manual*, which discusses policy and procedures for entering and maintaining obligations in the Michigan Child Support Enforcement System (MiCSES). Section 5.20 includes policy changes related to the MiCSES 8.1 Release (June 8, 2012). This memorandum also introduced a revision of Exhibit 5.35E1, *MiCSES Allocation/Distribution Hierarchies*, and, further the memorandum attached an updated table of contents for the *Michigan IV-D Child Support Manual*.

►**IV-D Memorandum 2012-019, *Transition of Title IV-D Genetic Testing Contract to DNA Diagnostics Center (DDC)* (May 22, 2012):** Served as notice that beginning May 15, 2012, DDC provided the genetic collection and testing services that were previously provided by Orchid. The DDC contract terms continue to be the same as the Orchid contract terms. Other than changes in personnel, location, website, and contact numbers, no additional changes are expected. This memorandum also introduced Section 4.10, "Genetic Testing" of the *Michigan IV-D Child Support Manual*. Exhibit 4.10E1 of the *Genetic Paternity Testing Services Contract Overview 2010-2015* was revised to incorporate the contractor change. Key provisions of the contract and related information are outlined in the exhibit.

►**IV-D Memorandum 2012-023, *Unique Identifier Added to the* National Medical Support Notice (NMSN) (July 30, 2012):** Announced that a unique identifier would be added to the footer of some pages of the NMSN to assist OCS Central Operations staff in processing NMSNs. This change to the NMSN was implemented in the Michigan Child Support Enforcement System (MiCSES) on August 3, 2012.

► **IV-D Memorandum 2012-026, Revocation of Paternity Act (July 16, 2012):** Addressed the inquiries that OCS received regarding services that will be provided and funded under Title IV-D as a result of the Revocation of Paternity Act (RPA) that took effect on June 12, 2012. The RPA does not require OCS or other IV-D funded staff to provide parents with expanded services under Title IV-D of the Social Security Act (e.g., paternity disestablishment services). OCS has not yet determined the definition of "available services" that are required to be provided to an individual who files an application for paternity disestablishment. Thus, OCS continues to review the services that may be required.