

## **Title 9. Family Law**

### **Chapter I. Office of Child Support Enforcement, Department of Finance and Administration**

#### **Subchapter A. Generally**

#### **Part 4. Office of Child Support Enforcement Policy Manual — Establishment**

##### **Subpart 1. Establishment of Paternity**

###### **9 CAR § 4-101. Generally.**

(a) If the parents are not married when a child is born, paternity must be established before a child and medical support obligation can be established.

(b) The Office of Child Support Enforcement is not required to attempt to establish paternity in any case involving incest, forcible rape, or any case in which a legal proceeding for adoption is pending, if, after review and approval of an office Field Manager, it is determined that to do so would not be in the best interest of the child.

(c)(1) If the paternity of a child has not been established at the time a case opens for child support services, the custodial party must identify the father of the child.

(2) The office will:

(A) Notify the putative father that it is alleged that he is a biological parent of a child; and

(B) Provide an opportunity for the parties to voluntarily acknowledge paternity or request genetic testing to determine if he is the father of the child.

**Authority.** Arkansas Code § 9-14-206.

###### **9 CAR § 4-102. Establishing paternity when a parent is deceased.**

(a) If the putative father is deceased, the Office of Child Support Enforcement will not accept referrals or an application to establish paternity.

(b)(1) State law authorizes genetic testing to establish paternity if the biological mother is deceased or unavailable (whereabouts are unknown).

(2) If the mother is deceased or unavailable, a relative who is willing to submit to genetic testing may be included in the testing process.

(3) The testing lab will advise the office regarding the participation of the relative.

(c) The office will open a case and attempt to establish paternity and a support order in the case if the:

(1) Mother is the deceased parent; and

(2) Child is living with a caretaker relative such as an aunt or grandmother.

**Authority.** Arkansas Code § 9-14-206.

**9 CAR § 4-103. Establishing paternity when a parent is incarcerated.**

(a) The Office of Child Support Enforcement will not initiate court action to establish paternity while a putative father is incarcerated.

(b) The caseworker will contact the putative father and provide an opportunity for him to voluntarily acknowledge paternity by signing the AOP or request genetic testing.

(c) However, no other action to establish paternity may proceed while the putative father is incarcerated.

**Authority.** Arkansas Code § 9-14-206.

**Codification Notes.** "AOP" means acknowledgment of paternity.

**9 CAR § 4-104. Establishing paternity when a parent is in bankruptcy.**

(a) Paternity may be established even though the noncustodial parent has filed bankruptcy without having to seek relief from the automatic stay.

(b) If the Office of Child Support Enforcement receives a notice of bankruptcy, the attorney must review the case to determine the next appropriate action.

**Authority.** Arkansas Code § 9-14-206.

**9 CAR § 4-105. Establishing paternity by voluntary acknowledgment of paternity.**

(a) The Office of Child Support Enforcement will offer both parents the opportunity to establish paternity by completing the acknowledgment of paternity (AOP).

(b) If both parties complete the AOP, paternity is legally established and the office will take no other action to establish paternity.

**(c) Rescinding the acknowledgment of paternity.**

(1) Either person who signed the AOP may rescind the document within the earlier of sixty (60) calendar days from the date of signing and prior to the date that an administrative or judicial proceeding, including a proceeding to establish a support order, is held relating to the child and the person executing the voluntary acknowledgment of paternity.

(2)(A) The office does not have the authority to assist the acknowledged father in rescinding the acknowledgment of paternity.

(B) Forms for this purpose are available from the Department of Health, Division of Vital Records.

**Authority.** Arkansas Code § 9-14-206.

**9 CAR § 4-106. Paternity testing.**

**(a) Putative father requests testing.**

(1) If the person named to be the putative father of a child disputes that he is the biological father, he may request genetic testing.

(2) The Office of Child Support Enforcement will schedule testing through a court-approved genetic testing company.

**(b) Administrative order for testing.**

(1)(A) If the putative father does not respond to the initial request from the office for contact or if he responds but does not want to sign the AOP or submit to genetic testing, the office may issue an administrative order for paternity testing that

will require the mother, putative father, and minor child to submit themselves for paternity testing.

(B) The office will cause a copy of the administrative order for paternity testing to be served by certified mail on the mother and putative father.

(2)(A) Any party to an administrative order for paternity testing may object to the order and request an administrative hearing within twenty (20) days of receiving the order.

(B) The purpose of the administrative hearing will be limited to whether the paternity testing under the administrative order should be conducted.

(c) **Court-ordered testing.** If the putative father does not respond to the initial contact letter or declines to cooperate with administrative paternity testing, the office will initiate a court action to establish paternity.

(d) **Results of testing.** If the results of paternity testing establish a probability of inclusion that the putative father is the biological father of the child, the office will file a complaint for paternity and child support in the circuit court.

(e) **Paternity testing after paternity is established by a court order.**

(1)(A) State law allows a man who has been adjudicated to be the father or who has acknowledged paternity of a child who has not had a genetic test previously to have one (1) paternity test at any time during the time in which he is ordered to pay support.

(B) If an acknowledgment of paternity was signed, paternity may be challenged only on an allegation of:

- (i) Fraud;
- (ii) Duress; or
- (iii) Material mistake of fact.

(C) The office will not initiate this action on behalf of the noncustodial parent.

(D) The office will not suspend the collection of support while any action pursuant to this section is pending, unless otherwise ordered by the court.

(2)(A) The noncustodial parent may petition the court asking for paternity testing if paternity and support were established without testing.

(B) The office cannot assist the noncustodial parent in the filing of such petitions and will not enter into an agreed order for paternity testing in such circumstances.

(C) If the court determines, based upon the results of genetic testing, that the adjudicated or presumed father is not the biological father, the court will:

- (i) Set aside a previous finding or establishment of paternity;
- (ii) Find that there is no future obligation of support;
- (iii) Order that any unpaid support owed under the previous order is vacated; and
- (iv) Order that any support previously paid is not subject to refund.

**Authority.** Arkansas Code § 9-14-206.

**Codification Notes.** "AOP" means acknowledgment of paternity.

## **Subpart 2. Establishment of Child Support**

### **9 CAR § 4-201. Overview.**

(a) The Office of Child Support Enforcement will:

- (1) Initiate actions to establish paternity, when necessary; and
- (2) Support in the appropriate circuit court on behalf of customers of the office with an open enforcement case.

(b) When the custodial party receives assistance or has contracted with the office for support services, a petition may be filed to require the noncustodial parent or both parents, if the child has been placed in foster care or with a guardian, to provide support.

(c) The most recent Family Support Chart must be used to determine the amount of support.

(d) **Social Security benefits.**

(1) **Supplemental Security Income (SSI).** The Supreme Court has held that an order for child support payments may not be based upon income from Supplemental Security Income benefits.

(2) **Social Security Disability (SSD).**

(A) When establishing support when disability benefits are being paid, the spouse and dependent benefit will be taken into account in determining the noncustodial parent's income.

(B) For example, the noncustodial parent's benefit amount plus any separate awards made to the disability recipient's spouse and children equals the total income for the noncustodial parent as defined by the Supreme Court's guidelines for setting support.

(e) **Bankruptcy.**

(1) Child support may be established even though the noncustodial parent has filed bankruptcy without having to seek relief from the automatic stay.

(2) If the office receives a notice of bankruptcy, the attorney must review the case to determine the next appropriate action.

(f) **Establishing support when a noncustodial parent is incarcerated.**

(1) The office will not initiate court action to establish child or medical support while a noncustodial parent is incarcerated.

(2) An order for support will be sought after the noncustodial parent has been released.

(3) "Incarceration" means being convicted and sentenced to a term of imprisonment in a state or federal correctional facility, including noncustodial parents who have been convicted and are housed in a county jail awaiting transfer to a state or federal correctional facility.

**Authority.** Arkansas Code § 9-14-206.

**9 CAR § 4-202. Proof of income.**

The Office of Child Support Enforcement will include in all petitions for an order for child support that the:

(1) Custodial party be entitled to request proof of income annually, in writing by certified mail to the noncustodial parent; and

(2) Noncustodial parent must respond by certified mail to the request within fifteen (15) calendar days of receipt.

**Authority.** Arkansas Code § 9-14-206.

### **Subpart 3. Establishing Medical Support and Expedited Process for Establishment**

#### **9 CAR § 4-301. Establishing medical support — Overview.**

(a) Every court order must address the medical support needs of the children.

(b) If a new case is opened for enforcement with an existing court order that does not address medical support, the:

(1) Child support will be enforced as ordered; and

(2) Medical support will be addressed the next time the order is modified.

(c)(1) The custodial party can choose to be the person responsible for providing medical support by:

(A) Indicating his or her choice on the application for services; and

(B) Providing proof of coverage.

(2) Any form of private or public healthcare coverage qualifies as an acceptable form of medical support.

(d)(1) If the custodial party does not indicate he or she wishes to be the person responsible for providing medical coverage, the Office of Child Support Enforcement will:

(A) Interview both parties; and

(B) Review employer records to determine the availability of healthcare coverage.

(2) The office will present information to the court so that a determination can be made as to which party is in the best position to provide coverage.

(e)(1) Each order will address:

(A) Who should provide coverage and whether the other party should contribute to the cost of the premium; or

(B) That neither party has healthcare coverage available that is reasonable in cost and accessible to the child.

(2) "Reasonable cost", as it pertains to insurance premiums and/or cash medical support, and "accessible coverage" are defined in the Arkansas Supreme Court Guidelines for Setting Child Support Obligations (Administrative Order #10).

(f) If employer-sponsored health care is available and the custodial party or noncustodial parent who is ordered to provide medical support has not provided proof of alternative coverage, a National Medical Support Notice (NMSN) will be sent to the appropriate employer.

(g) Once medical support is established, the office will provide information to the custodial party and the Medicaid agency, if the children are receiving Medicaid benefits, regarding the healthcare insurance policy including, but not limited to, the:

(1) Name, address, and phone number of the healthcare insurance organization;

(2) Benefits covered under the plan;

(3) Policy number;

(4) Claim forms;

(5) Membership card; and

(6) Any other information needed to file a claim.

**Authority.** Arkansas Code § 9-14-206.

**9 CAR § 4-302. Authorized inquiries.**

(a) Federal law protects the individual's right to privacy with regard to his or her medical histories and medical insurance coverage.

(b) For the purposes of preparing for court, the Office of Child Support Enforcement has the authority to request the availability of medical support from employers.

(c) The office may also ask employers if children listed in the case are covered, but not about other children the employee may have covered.

**Authority.** Arkansas Code § 9-14-206.

**9 CAR § 4-303. Expedited process for establishment cases.**

(a)(1) Federal regulations and state law require that action to establish child support obligations be taken within certain timeframes.

(2) The Office of Child Support Enforcement must, within ninety (90) calendar days of locating the putative father or noncustodial parent, and regardless of whether paternity has been established:

(A) Establish an order for support;

(B) Complete service of process necessary to commence proceedings; or

(C) Document unsuccessful attempts to serve process despite diligent efforts to obtain service of process.

(3) If the court dismisses a petition for a support order without prejudice, the office must, at the time of dismissal:

(A) Examine the reasons for dismissal; and

(B) Determine when it would be appropriate to seek an order in the future.

(b) Additionally, in all cases in which an order of support needs to be established and regardless of whether or not paternity has been established, action to obtain the order of support must be completed within:

(1) Six (6) months of the date of service in seventy-five percent (75%) of such cases; and

(2) Twelve (12) months from the date of service in ninety percent (90%) of such cases.

(c)(1) If long-arm jurisdiction rules to establish paternity and support are used, paternity establishment and/or support order establishment should be completed within twelve (12) months of service of process.

(2) Paternity establishment and support order establishment should be completed as one (1) action when appropriate.

**Authority.** Arkansas Code § 9-14-206.