

## GUADALUPE COUNTY LOCAL RULE

Adopted by the district judges on the 18<sup>th</sup> day of October, 2006

### PROCEDURE FOR DISSOLUTION OF MARRIAGE WHEN A CHILD IS BORN DURING MARRIAGE AND THE PARTIES AGREE THAT HUSBAND IS NOT THE BIOLOGICAL FATHER

#### A. Presumption of Paternity

The husband is presumed to be the father of the child if he is married to the mother of the child and the child is born or conceived during the marriage. **TEX. FAM. CODE ANN. § 160.204(a)(1).**

A presumption of paternity may be rebutted only by: (1) an adjudication of parentage under Subchapter G, Chapter 160, Texas Family Code; or (2) the filing of a valid denial of paternity by a presumed father in conjunction with the filing by another person of a valid acknowledgement of paternity as provided by Section 160.305, Texas Family Code. **TEX. FAM. CODE ANN. § 160.204(b).**

These procedures apply only if all parties agree that it would not be inequitable to disprove the father-child relationship between the presumed father and the child. If any party seeks to preserve the presumed father's relationship with the child, these procedures are not appropriate.

#### B. Rebuttal of Presumption by Valid Acknowledgment of Paternity and Denial of Paternity

1. The biological father of the child must execute a valid acknowledgement of paternity under Section 160.302, Texas Family Code.
2. The husband must execute a valid denial of paternity under Section 160.303, Texas Family Code.
3. An acknowledgement of paternity and a denial of paternity may be contained in a single document. **TEX. FAM. CODE ANN. § 160.304(a).**
4. Only a certified entity may assist with the completion of an acknowledgment of paternity; birth registrars in hospitals with birthing facilities generally are *certified* to complete the forms, as are staff in the Office of Attorney General, Child Support Division. An attorney may qualify and obtain an entity code by completing the online certification program at: [http://www.texasag.org/aop/aop\\_train.asp](http://www.texasag.org/aop/aop_train.asp).
5. The acknowledgement of paternity and the denial of paternity or the combined acknowledgement/denial of paternity must be filed with the bureau of vital statistics, and a certified copy of the filed acknowledgement of paternity and the denial of paternity or the combined acknowledgement/denial of paternity obtained from the bureau, prior to the date of the

final hearing. **TEX. FAM. CODE ANN. § 160.305.** Information about the requirements for filing the acknowledgement of paternity and the denial of paternity or the combined acknowledgement/denial of paternity and obtaining a certified copy of the form(s) may be obtained from the Bureau of Vital Statistics at 888.963.7111, ext. 3392. A certified copy of the acknowledgement of paternity and the denial of paternity or the combined acknowledgment/denial of paternity must be filed with the Court.

6. The decree of divorce must contain the following findings and order:

- a. The Court finds that a valid acknowledgement of paternity has been filed and is effective pursuant to Subchapter D, Chapter 160, Texas Family Code.
- b. The Court finds that a valid denial of paternity has been filed and is effective pursuant to Subchapter D, Chapter 160, Texas Family Code.
- c. The Court finds that **[name of husband]** is not the father of the child, **[name of child]**.

IT IS ORDERED AND DECREED that **[name of husband]** is not, and he is adjudicated not to be, the father of the child, **[name of child]**, born on **[date]** to **[name of wife]**.

7. If the acknowledgment of paternity or the denial of paternity or the combined acknowledgement/denial of paternity does not conform to the Texas Family Code or cannot be obtained, a proceeding to adjudicate parentage under Subchapter G, Chapter 160, Texas Family Code must be joined with the divorce.

#### **C. Rebuttal of Presumption by Proceeding to Adjudicate Parentage**

1. The alleged biological father must be made a party to the suit, subject to the provisions for personal jurisdiction under Section 160.604, Texas Family Code.
2. Note the time limitations on the right to file a proceeding to adjudicate parentage or to disprove the father-child relationship. **See, TEX. FAM. CODE ANN. § 160.607.**
3. A proceeding to determine parentage commenced before the birth of the child may not be concluded until after the birth of the child. **TEX. FAM. CODE ANN. § 160.611.**
4. Genetic testing under Subchapter F, Chapter 160, Texas Family Code must be conducted as to the child, the mother, the husband and the alleged biological father.
5. The report of the results of genetic testing must be filed with the Court. **TEX. FAM. CODE ANN. § 160.504.**
6. If the report of the results of genetic testing identifies the alleged biological father as the father of the child, a decree of divorce, along with a motion and order for severance shall be prepared as provided herein. If the report excludes the alleged biological father as the father of the child, no further genetic testing will be permitted without a hearing and order of the Court.

7. The decree of divorce must contain the following finding and order:

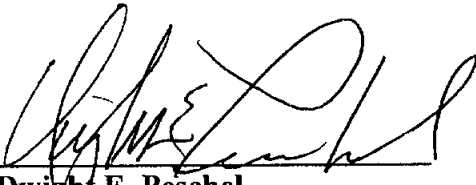
- a. The Court finds that admissible results of genetic testing identify another man as the father of the child, **[name of child]**.

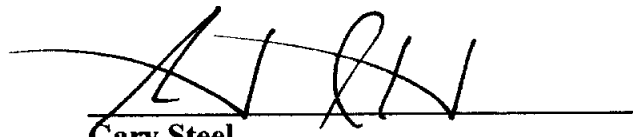
IT IS ORDERED AND DECREED that **[name of husband]** is not, and he is adjudicated not to be, the father of the child, **[name of child]**, born on **[date]** to **[name of wife]**.

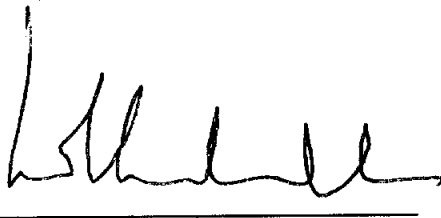
8. On or before the date of the final hearing, the parties must present the Court with an agreed motion and order for severance of the suit affecting the parent-child relationship regarding the child not of the marriage and have deposited with the District Clerk all cost associated with the filing of the severed suit. The order for severance will be signed by the Court contemporaneously with the divorce decree.

9. The Court may refer, or the custodial parent may be ordered to refer, the severed suit affecting the parent-child relationship to the Office of the Attorney General, Child Support Division for further proceedings.

SIGNED AND SO ORDERED THIS THE 18<sup>th</sup> DAY OF October, 2006,

  
Dwight E. Peschel  
Judge, 25<sup>th</sup> Judicial District

  
Gary Steel  
Judge, 274<sup>th</sup> Judicial District

  
W.C. Kirkendall  
Judge, 2<sup>nd</sup> 25<sup>th</sup> Judicial District