

## **A MOTION TO SET ASIDE ORDER OF FILIATION AND FOR GENETIC TESTING ON YOUR PATERNITY CASE (DP)**

**You must file this motion and pay the \$20.00 fee with the Cheboygan County Clerk.**

**IF MOTION IS GRANTED**

**THE GENETIC TESTING COST IS THE FULL RESPONSIBILITY OF THE MOVING PARTY**

**Motions to set aside Order of Filiation and/or for Genetic Test on a DP (Paternity) case must be heard before the Chief Judge, not the Judge assigned to the case.**

- **The Chief Judge is Judge Scott L. Pavlich, 53<sup>rd</sup> Circuit Courtroom, 870 S Main St, Cheboygan County Courthouse, Cheboygan, MI 49721.**

- **THIS PACKET CONTAINS THE FOLLOWING:**

- **COVER SHEET**
- **INSTRUCTIONS: HOW TO FILE A MOTION TO SET ASIDE ORDER OF FILIATION**
- **MOTION-GENERIC**
- **CIRCUIT COURT PRAECIPE**
- **CERTIFICATE OF MAILING MOTION AND NOTICE OF HEARING**

**Do Not Mail this Motion to the Friend of the Court**

## HOW TO FILE A MOTION TO SET ASIDE ORDER OF FILIATION AND FOR GENETIC TESTING, TO BE SET FOR HEARING BEFORE THE CHIEF JUDGE

1. This packet contains instructions and blank forms for Circuit Court Praecept, Motion, and Certificate of Mailing.
2. By using this form packet you are representing yourself in a court action. In order to receive the relief you are requesting, you must follow these instructions. You may be required to conduct legal research in order to proceed. Court personnel are prohibited from providing legal advice. **If you fail to do even one of the required steps, your Motion may not be processed.**
3. All documents must be typed or written legibly using black ink, not pencil.
4. Use these instructions only if you are a party to an existing paternity (DP) case. This process cannot be used to start a new case
5. Use these instructions if you believe that the child of the case is not your child and your motion is requesting genetic testing, and to set aside the Order of Filiation and termination of your child support if you are found not to be the father.
6. If the other party is incarcerated, you have certain additional requirements that you must meet. Please consult MCR 2.004 or a private attorney. Indicate on your papers following the person's name that the person is incarcerated and in what facility he or she is being held.
7. A motion is the document you prepare to ask the court to change the existing order. An existing order cannot be changed except by a new order.
8. A separate motion packet must be prepared for each case. Separate cases cannot be combined in the same documents.
9. Motions to set aside Order of Filiation and for Genetic Test on a DP case must be heard before the **Chief Judge, not the Judge assigned to your case.**
10. Prepare the Circuit Court Praecept by filling it out completely including discussing the motion with the other side to see if an agreement may be reached. Leave the date of the hearing blank as the Chief Judge's court staff will select the court date.
11. **Remember that a motion must very specifically state what relief or modification you are requesting. It must also very specifically state why you believe the judge should rule in your favor. All relevant and necessary documentation must be attached to the motion. Some types of relief or requests have very specific requirements. You may need to research the law or consult an attorney.**

12. Bring the original and **FOUR** copies of your Motion packet (Praecipe, Motion and Notice of Hearing) to the Cheboygan County Clerk, Room 204, 870 S Main St, Cheboygan County Courthouse, Cheboygan, MI 49721.
13. Visit the 53<sup>rd</sup> Judicial Court Office, Room 213, 870 S Main St, Cheboygan County Courthouse, Cheboygan, MI 49721 to receive a date and time for your motion to be heard.
14. Proceed to the Cheboygan County Clerk, Room 204. You must pay a \$20 Motion fee to the Cheboygan County Clerk. The County Clerk's Office accepts cash; debit cards; MasterCard, American Express, and Discover credit cards; and checks and money orders made payable to the **Cheboygan County Clerk**.
15. The clerk will stamp your original Motion Praecipe to indicate the fee has been paid. The clerk will file the original Motion packet and return the copies to you.
16. Take the **Judge** copy directly to the 53<sup>rd</sup> Judicial Court Office, Room 213. If you do not, your motion will not be set for hearing.
17. Deliver a courtesy copy to the Friend of the Court Office, Room 210, 870 S Main St, Cheboygan County Courthouse, Cheboygan, MI 49721
18. Mail (serve) a complete Motion packet (Praecipe and Motion) to the other party. Make sure you include copies of any additional pages you have written in the packet you send to the other party. You must mail the Motion packet at least **nine (9)** days before the hearing or your motion will not be heard.
  - a. If you do not have the address of the other party, you may obtain the address at the Cheboygan Friend of the Court, Room 210, 870 S Main St, Cheboygan County Courthouse, Cheboygan, MI 49721.
  - b. If the address is marked "confidential" in the Friend of the Court records, then the Friend of the Court will mail the packet to the other party. You will need to leave a copy of the packet with the Friend of the Court if this occurs.
19. Bring a copy of your packet to the hearing.
20. Response from the other party: If you receive a response to your Motion from the other party, make sure you read it before you attend the hearing. Think about what you want to say on your behalf. You may want to make notes about what you will say in court.
21. **If genetic testing is granted the cost will be determined by the Court, regardless of the outcome of the test. The entire cost of any genetic testing is the full responsibility of the moving party.**

<b>STATE OF MICHIGAN</b> <b>53<sup>RD</sup> JUDICIAL CIRCUIT</b> <b>CHEBOYGAN COUNTY</b>	<b>MOTION</b> <b>TO SET ASIDE ORDER OF</b> <b>FILIATION AND/OR FOR</b> <b>GENETIC TESTING</b>	<b>CASE NO.:</b> _____ <b>DP</b> <b>HONORABLE SCOTT L. PAVLICH</b> <b>CHIEF JUDGE</b>
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870 S Main St, Cheboygan County Courthouse, Cheboygan, MI 49721

Plaintiff's name, address and telephone no.	VS	Defendant's name, address and telephone no.
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I hereby verify to the Court the following:

1. A default order of filiation exists in this case: (check one)
  - Yes
  - No (If no, explain your requested relief in an attached document)
  
2. I am: (check one)
  - The mother
  - The affiliated father (i.e., the defendant in this case)
  - An alleged father (i.e., man who could have fathered the child)
  - Neither applies to my situation. Explain \_\_\_\_\_.
  
3. One of the following is true: (check one)
  - The child is less than three years old. The child's date of birth \_\_\_\_\_.
  - Not more than one year has passed since the Order of Filiation was entered.  
The Order of Filiation was entered on (put in date) \_\_\_\_\_.
  - Neither applies to my situation. Explain \_\_\_\_\_.

\*\* If this motion is being filed outside of the guidelines provided in the Revocation of Paternity Act then an affidavit must be provided to indicate a reason for the delay in filing.

4. I request that the court order the following:
  - a) Set Aside Order of Filiation, or
  - b) Other (write a detailed explanation)
  
4. We stipulate (agree) to this modification/relief as shown by our signatures below.

Signature of Moving Party	Typed/printed name	Date
Signature of Other Party (if in agreement)	Typed/printed name	Date

<b>STATE OF MICHIGAN 53<sup>RD</sup> JUDICIAL CIRCUIT CHEBOYGAN COUNTY</b>	<b>REQUEST FOR HEARING ON A MOTION (PRAECIPE) ORDER/JUDGMENT</b>	CASE NO.: _____ DP
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870 S Main St, Cheboygan County Courthouse, Cheboygan, MI 49721

Plaintiff's name, address and telephone no.	VS	Defendant's name, address and telephone no.
Plaintiff's attorney, bar no., address and telephone no.	VS	Defendant's attorney, bar no., address and telephone no.

1. Motion Title: Motion to Set Aside Order of Filiation and/or Genetic Testing

2. Moving Party: Plaintiff Defendant Other (circle)

3. Please place on the motion calendar for:

Judge PAVLICH	Bar No. 28593	Date:	Time:
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4. I certify that I have made personal contact with Plaintiff or Defendant (circle) on \_\_\_\_\_ regarding concurrence in relief sought in this motion and that concurrence has been denied or that I have made reasonable and diligent attempts to contact counsel regarding concurrence with motion.

Date \_\_\_\_\_ Moving Party \_\_\_\_\_ Bar No. P- \_\_\_\_\_

**ORDER / JUDGMENT**

DATE \_\_\_\_\_  
IT IS ORDERED THAT THIS MOTION IS:

- DENIED     GRANTED IN PART/DENIED IN PART     TAKEN UNDER ADVISEMENT     DENIED
- GRANTED, SEE SEPARATE GENETIC TESTING ORDER

\_\_\_\_\_  
CHIEF JUDGE SCOTT L. Pavlich

Approved as to form and substance by Counsel for:  
Plaintiff \_\_\_\_\_  
Defendant \_\_\_\_\_  
Date \_\_\_\_\_

<b>STATE OF MICHIGAN 53<sup>RD</sup> JUDICIAL CIRCUIT CHEBOYGAN COUNTY</b>	<b>CERTIFICATE OF MAILING RE: MOTION AND NOTICE OF HEARING</b>	<b>CASE NO.:</b> _____ <b>DP</b>
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870 S Main St, Cheboygan County Courthouse, Cheboygan, MI 49721

Plaintiff's name, address and telephone no.	VS	Defendant's name, address and telephone no.
Plaintiff's attorney, bar no., address and telephone no.	VS	Defendant's attorney, bar no., address and telephone no.

I certify that on this date I served the other party with a copy of the attached motion and notice of hearing by ordinary mail with first-class postage fully pre-paid, addressed to the person at the address indicated on the motion at least nine days prior to the hearing.

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Date

Signature of Moving Party

**\*\*\* YOU MUST:** Mail (serve) a complete Motion packet (Praecipe and Motion) to the other party. Make sure you include copies of any additional pages you have written in the packet you send to the other party. You must mail the Motion packet at least nine (9) days before the hearing or your motion will not be heard.

a. If you do not have the address of the other party, you may obtain the address at the Cheboygan Friend of the Court, Room 210, 870 S Main St, Cheboygan County Courthouse, Cheboygan, MI 49721.

b. If the address is marked “confidential” in the Friend of the Court records, then the Friend of the Court will mail the packet to the other party. You will need to leave a copy of the packet with the Friend of the Court if this occurs.

FILE EITHER IN PERSON OR BY MAIL WITH: CHEBOYGAN COUNTY CLERK, ROOM 204, 870 S MAIN ST, CHEBOYGAN COUNTY COURTHOUSE, CHEBOYGAN, MI 49721.

\*NOTICE RE REFUND OF JUDGMENT FEE UPON DISMISSAL: If this case involves child custody, child support, or parenting time and a judgment fee was paid, the payer of the judgment fee will receive a refund of the fee if the case is dismissed.