

Adjudication of Paternity

Some child support referees have stated that they do not have the legal authority to adjudicate paternity. This becomes a problem when the Division of Child Support (DCS) has conducted DNA testing and issued a Notice of Support Debt, and the alleged father (the person asked to pay support) requests a hearing.

In these cases, even after the hearing, the resulting support order does not legally establish paternity. As a result, the father's name cannot be added to the child's birth certificate.

To fix this, the parents must either:

- Sign a Voluntary Acknowledgment of Paternity, or
- File a private court case to get an order adjudicating paternity.

A similar issue arises when a couple already has a child support order in place and a second child is born. If DCS performs DNA testing for the new child, the parents must request a modification of the existing support order. This modification also goes before a child support referee, who still may not have the authority to legally establish paternity, causing the same problem.

Consideration

Amend SDCL 25-7A-6 to allow for child support referees to adjudicate paternity when DNA testing has been done which shows at least 99% probability the individual is the biological father of the child.

25-7A-6. Hearing requested by parent--Referee's report--Objections--Order of court--Service--Objection to court's modification.

If a parent served with a notice of support debt under § [25-7A-5](#) makes a timely request for a hearing, the secretary of social services shall file the notice of support debt, proof of service thereof, and response thereto in the office of the clerk of the circuit court in the county of residence of that parent. The matter shall be set for hearing before a referee who is a member in good standing of the State Bar Association and is appointed by the court, pursuant to statute, and after due notice to all parties by first class mail. The referee shall make a report to the court, recommending the amount of the debt due to the state, if any, and the monthly support obligation of the parent and the arrearage debt due to the obligee or another state who has applied for support enforcement services, the provision of medical support, or genetic testing costs.

The referee shall file the report with the court and cause copies thereof to be served by mailing to the parties and the secretary. Any party shall have ten days from the date of service of the report in which to file objections to the report. If a party files an objection, the other party shall have an additional five days from the date of service of the objections to file additional objections. If no objection is filed, the circuit court may thereafter, and without further notice, enter its order. If any objection is filed, the circuit court shall fix a date for hearing on the report, the hearing to be solely on the record established before the referee. The circuit court may

thereafter adopt the referee's report, or may modify it, or may reject and remand it with instructions or for further hearing. The secretary shall serve the parent the court's order by certified mail, return receipt requested, at the parent's last known address, and shall file proof of service.

If the circuit court's order modifies the referee's report and no hearing was held before the court before entry of its order, any party has ten days from the date of service of the order in which to file an objection to that modification. If an objection is filed, the circuit court shall fix a date for hearing on the objection and after the hearing shall enter its order. The secretary shall serve the order by certified mail, return receipt requested, at the parent's last known address, and shall file proof of service.

Source: SL 1982, ch 196, § 6; SL 1986, ch 218, § 7; SL 1989, ch 175, § 4; SL 1991, ch 213, § 1; SL 1995, ch 144, § 2; SL 2005, ch 134, § 7; SL 2009, ch 130, § 14.