Motion to Revoke Affidavit of Parentage

(CC 435, CC 436, CC 434)

When to Use:	• You need to start a case (see below); **or** • You have an existing DS or DC case in Ottawa County; **and** • You have a signed Affidavit of Parentage; **and** • You want the court to determine that you are not the child's father.
Filing Fees:	$20.00
Where to File:	https://mifile.courts.michigan.gov
Filing Type:	Motion
Additional Information:	If you are using this packet to start a new case, you also need to fill out forms **MC 01, FOC 23, and DHHS 1201D**. These forms are not in this packet. You must also pay a **$175 filing fee**. You must include a copy of the **Affidavit of Parentage** with this motion. If you do not have a copy, you can ask the **State of Michigan Vital Records Office** for one. If the other person has a **MiFILE** account, you can send this motion to them through the MiFile account. If they do not have a MiFILE account, you must mail them a copy. You can send it by regular first-class mail.

REVOCATION OF PATERNITY ACT (EXCERPT)
Act 159 of 2012

722.1443 Court action.

Sec. 13. (1) An original action under this act shall be filed in the circuit court for the county in which the mother or the child resides or, if neither the mother nor the child reside in this state, in the circuit court for the county in which the child was born. If an action for the support, custody, or parenting time of the child exists at any stage of the proceedings in a circuit court of this state or if an action under section 2(b) of chapter XIIA of the probate code of 1939, 1939 PA 288, MCL 712A.2, is pending in a circuit court of this state, an action under this act shall be brought by motion in the existing case under rules adopted by the supreme court.

(2) In an action filed under this act, the court may do any of the following:

(a) Revoke an acknowledgment of parentage.

(b) Determine that a genetic father is not a child's father.

(c) Set aside an order of filiation or a paternity order.

(d) Determine that a child was born out of wedlock.

(e) Make a determination of paternity and enter an order of filiation as provided for under section 7 of the paternity act, 1956 PA 205, MCL 722.717.

(3) A judgment entered under this act does not relieve a man from a support obligation for the child or the child's mother that was incurred before the action was filed or prevent a person from seeking relief under applicable court rules to vacate or set aside a judgment.

(4) A court may refuse to enter an order setting aside a paternity determination, revoking an acknowledgment of parentage, determining that a genetic father is not a child's father, or determining that a child is born out of wedlock if the court finds evidence that the order would not be in the best interests of the child. The court shall state its reasons for refusing to enter an order on the record. The court may consider the following factors:

(a) Whether the presumed father is estopped from denying parentage because of his conduct.

(b) The length of time the presumed father was on notice that he might not be the child's father.

(c) The facts surrounding the presumed father's discovery that he might not be the child's father.

(d) The nature of the relationship between the child and the presumed or alleged father.

(e) The age of the child.

(f) The harm that may result to the child.

(g) Other factors that may affect the equities arising from the disruption of the father-child relationship.

(h) Any other factor that the court determines appropriate to consider.

(5) The court shall order the parties to an action or motion under this act to participate in and pay for blood or tissue typing or DNA identification profiling to assist the court in making a determination under this act. Blood or tissue typing or DNA identification profiling shall be conducted in accordance with section 6 of the paternity act, 1956 PA 205, MCL 722.716. The results of blood or tissue typing or DNA identification profiling are not binding on a court in making a determination under this act.

(6) If the case is a title IV-D case, the court may appoint an attorney approved by the office of child support to represent this state's interests with respect to an action or a motion under this act. The court may appoint a guardian ad litem to represent the child's interests with respect to the action or motion.

(7) A court shall not issue an order under this act that sets aside a judgment or determination of a court or administrative agency of another state, even if the judgment or determination is being enforced in this state, or that is inconsistent with 28 USC 1738A or 28 USC 1738B.

(8) This act does not establish a basis for termination of an adoption and does not affect any obligation of an adoptive parent to an adoptive child.

(9) This act does not establish a basis for vacating a judgment establishing paternity of a child conceived under a surrogate parentage contract as that term is defined in section 3 of the surrogate parenting act, 1988 PA 199, MCL 722.853.

(10) A common law action that was available before June 12, 2012 to set aside a paternity determination or to determine that a child is born out of wedlock remains available until June 12, 2014, but is not available after June 12, 2014.

(11) Except for an action filed under section 15(2), a court, in its discretion, may order a person who files an action or motion under this act to post an amount of money with the court, obtain a surety, or provide other assurances that in the court's determination will secure the costs of the action and attorney fees if the person does not prevail. The court, in its discretion, may order a nonprevailing party, including a mother who is a nonprevailing party under section 15(2), to pay the reasonable attorney fees and costs of a prevailing party.

(12) A court may extend the time for filing an action or motion under this act. A request for extension shall

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be supported by an affidavit signed by the person requesting the extension stating facts that the person satisfied all the requirements for filing an action or motion under this act but did not file the action or motion within the time allowed under this act because of 1 of the following:

(a) Mistake of fact.

(b) Newly discovered evidence that by due diligence could not have been found earlier.

(c) Fraud.

(d) Misrepresentation or misconduct.

(e) Duress.

(13) If the court finds that an affidavit under subsection (12) is sufficient, the court may allow the action or motion to be filed and take other action the court considers appropriate. The party filing the request to extend the time for filing has the burden of proving, by clear and convincing evidence, that granting relief under this act will not be against the best interests of the child considering the equities of the case.

(14) An alleged father may not bring an action under this act if the child is conceived as the result of acts for which the alleged father was convicted of criminal sexual conduct under sections 520b to 520e of the Michigan penal code, 1931 PA 328, MCL 750.520b to 750.520e.

(15) An action may not be brought under this act if the child is under court jurisdiction under chapter XIIA of the probate code of 1939, 1939 PA 288, MCL 712A.1 to 712A.32, and a petition has been filed to terminate the parental rights to the child, unless the court having jurisdiction under chapter XIIA of the probate code of 1939, 1939 PA 288, MCL 712A.1 to 712A.32, first finds that allowing an action under this act would be in the best interests of the child.

History: 2012, Act 159, Imd. Eff. June 12, 2012;—Am. 2014, Act 374, Eff. Mar. 17, 2015;—Am. 2016, Act 178, Eff. Sept. 12, 2016.

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STATE OF MICHIGAN JUDICIAL CIRCUIT-FAMILY DIVISION 20TH COUNTY OTTAWA	☐ COMPLAINT ☐ MOTION AND AFFIDAVIT TO REVOKE ACKNOWLEDGMENT OF PARENTAGE	CASE NO. and JUDGE

Court address

12240 Fillmore St, Rm 50, West Olive, MI 49460

Court telephone no.

616-846-8315

Plaintiff's name, address, and telephone no. ☐ moving party	v	Defendant's name, address, and telephone no. ☐ moving party
Plaintiff's attorney, bar no., address, and telephone no.		Defendant's attorney, bar no., address, and telephone no.
Third party's name, address, and telephone no. ☐ moving party		Third party's attorney, bar no., address, and telephone no.

In the matter of _____
Existing case is under MCL 712A.2(b)

Form MC 01, Summons, must also be completed when a complaint is being filed.

COMPLAINT/MOTION AND AFFIDAVIT

1. An acknowledgment of parentage was signed _____ (Date), acknowledging _____ (Acknowledged parent's name)

   as the parent of the minor child _____ (Child's name) born _____ (Date of birth; Put DOB in Ref. No. row 10 on MC 97a),

   (Check either a or b)
   - ☐ a. A petition has not been filed to terminate the parental rights to this child.
   - ☐ b. There is an existing termination proceeding in the _____ Court and that court has found that it is in the best interests of the child to allow the filing of this complaint/motion.

2. I am the ☐ mother. ☐ acknowledged parent. ☐ alleged father and the child was not conceived as a result of acts for which the alleged father was convicted of criminal sexual conduct under MCL 750.520b to MCL 750.520e. prosecuting attorney or other as permitted under MCL 722.1437(2).

3. This complaint/motion is timely because
   - ☐ a. it is filed within one year after the date the acknowledgment of parentage was signed.
   - ☐ b. it is filed within three years after the child's birth.
   - ☐ c. I was granted an extension of time for filing this complaint/motion under MCL 722.1443(14).

4. The acknowledgment of parentage should be revoked because of: (Check each reason that applies.)
☐ mistake of fact. ☐ fraud. ☐ duress in signing the acknowledgment. ☐ misrepresentation or misconduct.
☐ newly discovered evidence that by due diligence could not have been found before the acknowledgment was signed.

5. The facts supporting the reason(s) checked in item 4 above are: (Specify the reason[s]. Attach additional sheets as needed.)

I REQUEST that:

6. The court revoke the acknowledgment of parentage and, if necessary, order genetic testing to assist in making its determination.

☐ 7. The child support obligation of _____ be terminated.
Name of obligor

_____
Moving party's signature

Subscribed and sworn to before me on _____ .
Date

_____
Deputy clerk/Notary public signature

My commission expires on _____ . _____
Name (type or print)

Notary public, State of Michigan, County of _____ . ☐ Acting in the County of _____ .
☐ This notarial act was performed using an electronic notarization system or a remote electronic notarization platform.

To be completed only when a motion is filed.

NOTICE OF HEARING

A hearing will be held on this motion before _____
Judge/Referee

on _____ at _____ .
Date and time Location

To be completed only when a motion is filed and served.

CERTIFICATE OF MAILING

I served a copy of this complaint/motion and affidavit ☐ and notice of hearing on the parties or their attorneys by first-class mail addressed to their last-known addresses as defined by MCR 2.107(C)(3). I declare under the penalties of perjury that this certificate of mailing has been examined by me and that its contents are true to the best of my information, knowledge, and belief.

_____ _____
Date Signature

Approved, SCAO

Original - Court
1st copy - Plaintiff/Attorney

2nd copy - Defendant/Attorney
3rd copy - Friend of the court
4th copy - Third party (as needed)

STATE OF MICHIGAN 20th JUDICIAL CIRCUIT JUDICIAL CIRCUIT - FAMILY DIVISION OTTAWA COUNTY	ORDER REGARDING REQUEST TO REVOKE ACKNOWLEDGMENT OF PARENTAGE (PAGE 1)	CASE NO.

Court address: 12240 Fillmore St, Rm 50, West Olive, MI 49460 **Court telephone no.: 616-846-8315**

Plaintiff's name, address, and telephone no. ☐ moving party		Defendant's name, address, and telephone no. ☐ moving party
Plaintiff's attorney, bar no., address, and telephone no.	v	Defendant's attorney, bar no., address, and telephone no.
Third party's name, address, and telephone no. ☐ moving party		Third party's attorney, bar no., address, and telephone no.

In the matter of _____
Existing case is under MCL 712A.2(b)

1. On _____ , a ☐ complaint ☐ motion was filed to revoke an acknowledgment of parentage.
Date

2. Specific findings of fact are on the record.

THE COURT FINDS:

3. An acknowledgment of parentage was signed on _____ , acknowledging _____
Date Acknowledged father's name

as the father of the minor child _____ born _____ .
Child's name Date of birth

4. The request to revoke the acknowledgment of parentage ☐ was ☐ was not timely.

5. The affidavit filed under MCL 722.1437(2) ☐ is ☐ is not sufficient.

6. There ☐ is ☐ is not clear and convincing evidence that the acknowledged father is not the father of the child.

☐ 7. The child was conceived as a result of acts for which the alleged father was convicted of criminal sexual conduct under MCL 750.520b to MCL 750.520e.

☐ 8. It is not in the child's best interests to revoke the acknowledgment of parentage.

☐ 9. At a hearing on a petition to terminate parental rights to the child under MCL 712A.2(b), the court having jurisdiction over the child found that it is in the best interests of the child to allow the request to revoke acknowledgment of parentage.

Approved, SCAO

Original - Court
1st copy - Plaintiff/Attorney

2nd copy - Defendant/Attorney
3rd copy - Friend of the court
4th copy - Third party (as needed)

STATE OF MICHIGAN 20th JUDICIAL CIRCUIT JUDICIAL CIRCUIT - FAMILY DIVISION OTTAWA COUNTY	ORDER REGARDING REQUEST TO REVOKE ACKNOWLEDGMENT OF PARENTAGE (PAGE 2)	CASE NO.

Court address: 12240 Fillmore St, Rm 50, West Olive, MI 49460 **Court telephone no.: 616-846-8315**

Plaintiff's name, address, and telephone no. ☐ moving party	v	Defendant's name, address, and telephone no. ☐ moving party
Third party's name, address, and telephone no. ☐ moving party		

In the matter of _____

Existing case is under MCL 712A.2(b)

IT IS ORDERED:

☐ 10. The request to revoke the acknowledgment of parentage is granted. Any child support arrears owed are preserved as of the date the complaint/motion to revoke the acknowledgment of parentage was filed.

☐ The child support obligation of _____ (Name) is terminated effective _____ (Date) .

☐ 11. The request to revoke the acknowledgment of parentage is denied.

☐ 12. Other:

_____ Date

_____ Judge Bar no.

MCL 722.1437, MCL 722.1443

Approved, SCAO

Original - Court
1st copy - Plaintiff/Attorney

2nd copy - Defendant/Attorney
3rd copy - Friend of the court
4th copy - Third party (as needed)

STATE OF MICHIGAN 20th JUDICIAL CIRCUIT JUDICIAL CIRCUIT - FAMILY DIVISION OTTAWA COUNTY	ORDER FOR GENETIC TESTING (REVOCATION OF PATERNITY ACT)	CASE NO.

Court address

12240 Fillmore St, Rm 50, West Olive, MI 49460

Court telephone no.

(616) 846-8315

Plaintiff's name, address, and telephone no.	v	Defendant's name, address, and telephone no.
Plaintiff's attorney, bar no., address, and telephone no.		Defendant's attorney, bar no., address, and telephone no.
Third party's name, address, and telephone no.		Third party's attorney, bar no., address, and telephone no.

THE COURT FINDS:

1. An action has been brought under the Revocation of Paternity Act regarding _____ (Name of child)

   born _____ (Date of birth) .

☐ 2. An order for genetic testing is appropriate because the affidavit filed by the person filing the action was sufficient under MCL 722.1437. (Item 2 is only used where an action to revoke an acknowledgment of paternity is filed.)

IT IS ORDERED:

3. To assist the court in making its determination in this action, _____ (Name(s))

   _____ shall participate in genetic testing in accordance with MCL 722.716.

4. The cost for genetic testing shall be paid as follows: _____

   _____

5. Testing shall be completed and test results filed with this court by _____ (Date) .

6. Other:

_____ Date

_____ Judge

_____ Bar no.

MCL 722.1437. MCL 722.1439, MCL 722.1441, MCL 722.1443(5)