

Same Sex Parentage Part 2



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June 2017

RETRAIN YOUR THINKING



**UNDERSTAND OUR
CUSTOMERS**

What is our Job?



- Our job is to establish parentage and support for children.
- Without prejudice, delay, or discrimination due to the sexual orientation, gender, race or religion of the child's parents.
- To treat our cases equally.
- To work our cases using the quality standards we have all adopted: safety, integrity, professionalism and compassion.

Professionalism



- While on duty or representing DHS, staff should refrain from making comments to customers or co-workers, that convey an opinion of same-sex marriage, same-sex relationships, or the State's role in establishing parentage/child support in these cases.
- Comments on these issues (in favor of or against), even if made in a joking manner, can be offensive to others, and, as DHS employees, we will refrain from knowingly offending others.

Professionalism - OAC



- Particular case facts should not be used by CSS employees “**for personal amusement**, curiosity, gain, or benefit, or for any other reason not directly related to the performance of official duties”. OAC 340:25-5-67, ITS No. 1.

For Example. . .



- Avoid gossiping with other staff about the facts of your case. If you share the facts, share them for **learning** or **casework** purposes.
- Don't make fun. Don't be mean. Don't give your opinion or comment about the facts. This could be very offensive.

CSS' Standards of Care



- Commit to quality service
- Know the child support program
- Seek to understand your customers without judging
- Treat people with courtesy and respect
- Do not leave customers in limbo
- Whenever possible, provide what you promise
- Assume that your customers tell the truth
- Help people find what they need.

Working Cases with Same Sex Parents



Map Key for Navigating Presentation



- The traditional notions of gender are evolving and changing.
- For the purpose of this presentation – you will see the symbols above to represent *female* or *male*.
- This is done for simplicity only in order to convey a complicated topic.

These symbols are not used to exclude or otherwise discriminate against someone who may identify themselves differently than male or female.

Understanding the Law



Does the U.P.A. apply to Same Sex Parents



- **Yes**, the Oklahoma Supreme Court overruled an Oklahoma Court of Appeals decision that UPA could not be read as gender neutral.
 - *Ramey v. Sutton*, 2015 OK 79
- **Read the U.P.A. as gender neutral.**
- The presumptions in 10 O.S. 7700-204 apply to same-sex parents the same way they apply to opposite-sex parents.

Oklahoma Case Law



- Applies the U.P.A. with gender neutrality
- Gives rights to non-bio parents when there is a co-parenting agreement.
- In some situations, gives rights to non-bio parents who are acting as parents without a co-parenting agreement.

Revised OAC: 340:25-5-176 (ITS)



- Paternity to Parentage, uses gender neutral language
- 7. (a) CSS files an action to determine parentage when a person claiming to be a non-biological parent requests assistance to adjudicate his or her parentage of a child born during a same-sex relationship.
- (b) The CSS state's attorney reviews the Uniform Parentage Act Guide to determine how to proceed in individual cases, based upon the fact pattern.
- 8. CSS considers a female spouse of the child's legal mother to be a presumed parent when one of the conditions of 10 O.S. § 7700-204 applies.

Building a Case



Revised OAC: 340:25-5-110.1 (ITS)



- Applications
- 3. (a) CSS accepts an application when an applicant who claims to be a non-biological parent of a child born during a same-sex relationship requests assistance to adjudicate the parentage of the child.
- (b) The CSS state's attorney reviews the Uniform Parentage Act Guide to determine how to proceed in individual cases, based upon the fact pattern.

Opening a New Case with Same-Sex Parents



- Application
 - By bio or adoptive parent
 - May name other bio parent, or non-bio parent as NCP
 - By non-bio parent
 - By 3rd party custodian
- Referral
- **In either situation, how will we know if there is also a non-bio same-sex parent with possible parental rights?**

We need to discover the Relevant Facts



- Revised P04
 - PRC/UPA guide groups are discussing proposed changes.
- Same Sex Child of the Marriage Questionnaire
 - Drafted by the UPA Guide group.
- Same Sex Co-parenting Questionnaire
 - To be drafted by the UPA Guide group.
- OSCN – search for any marriages of the bio or adoptive parents.

Ideas for the revised P04



- Revised P04 will ask questions about the child's biological parents, about who lives with the child, about whether another non-biological parent is claiming parentage of the child, etc.
- Questions will be gender neutral and allow the person to identify the gender of the person they are talking about.

Case Examples

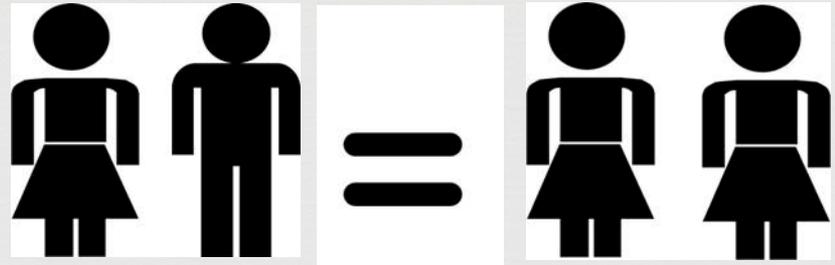


Various Fact Patterns



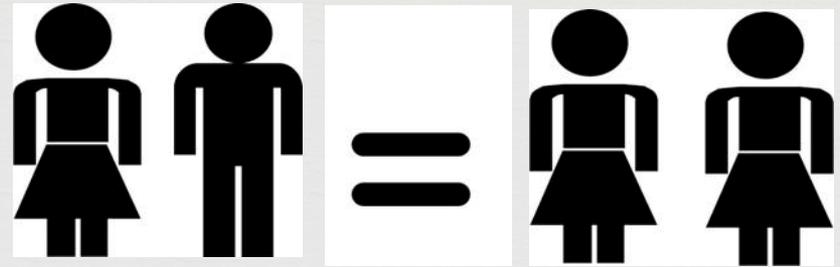
- Some will be easier because the U.P.A. applies.
- Many will be more difficult and will require litigation.

Marriage



- Treat legal paternity the same when parties are married.
- If child is born during the marriage (or within 300 days of divorce) of the bio mother to another person – then this is a child of the marriage.
- The spouse of the biological mother (whether male or female) is the presumed parent.

Two Year Presumption

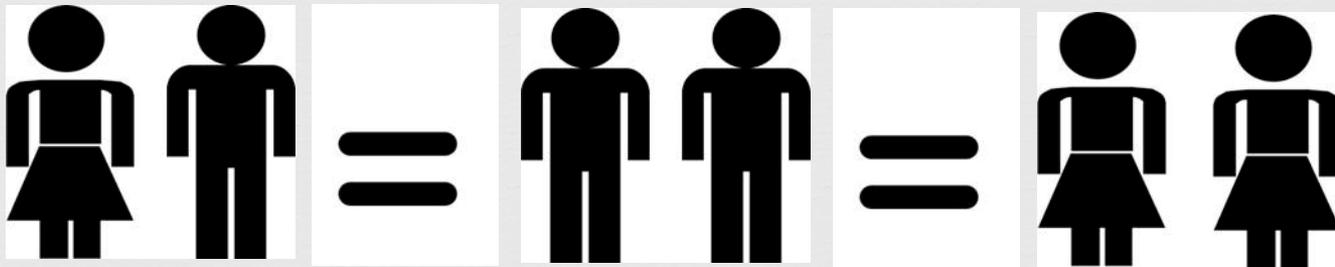


- Treat legal paternity the same when:
 - The biological mother's partner (whether male or female) is the presumed parent
 - Assuming no other person is the presumed (look for mother's marriages), acknowledged (AOP) or adjudicated parent (court order).
- Ex. Partner of biological mother (whether male or female) lived with child for the 1st two years of the child's life and holds the child out as his/hers.

Adoptive Parents



- Treat legal paternity the same in adoption cases.



What if no presumptions apply to the Non-Bio Parent?



- Non-bio parent could still be determined to be a legal parent of the minor child(ren).
- Fleming v. Hyde, 2016 OK 23
- Newland v. Taylor, 2016 OK 24
- Ramey v. Sutton, 2015 OK 79
- Eldridge v. Taylor, 2014 OK 92

(Not Married)



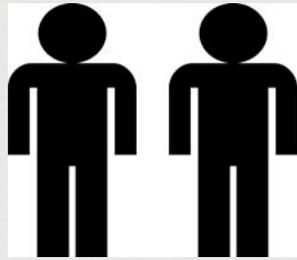
- Question 1: Who is the child's biological mother?
- Question 2: Who is the child's biological father?
 - What relationship did bio father have with bio mother? Is bio dad seeking parentage?
- Question 3: Who is raising the child?
- Question 4: Do any presumptions exist – for bio parent or for non-bio parent?
- Question 5: Do the bio mother and same sex partner have a co-parenting agreement?
- Question 6: Send the parties the Co-Parenting Questionnaire.

The Same Sex Co-Parenting Questionnaire



Relevant questions would include:

- Did they have a co-parenting agreement?
- Did they plan to have a family together?
- Did they have a plan to co-parent?
- Was the non-bio parent present at conception and/or delivery?
- Did both parties hold the non-bio party out as a parent? To the child, friends, family and the public?
- After separation, did they share custody of the child?



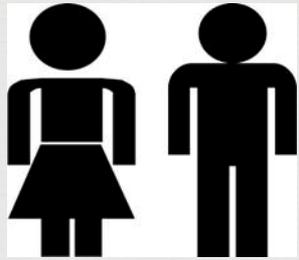
(Not Married)



- Question 1: Who is the child's biological mother?
- Question 2: Who is the child's biological father?
- Question 3: Was the biological mother a surrogate?
- Question 4: Is there a surrogacy contract?
- Question 5: Has the non-bio father(s) adopted?
- Question 6: Who is raising the child?

Parentage Challenges





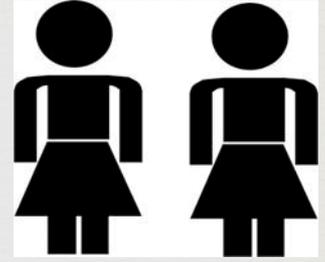
(Married), then
prior to divorce



- Mother married to male spouse. They separate and biological mother has a relationship with a new female partner. She and new female partner have a child together.
- First, have to deal with the marital presumption.
 - Is AOP/Denial option available?
 - Can the husband rebut his presumption since he is the biological father?
 - Non-bio mother has standing to file a parentage action. *Ramey*.



(Married), then
prior to divorce



- Mother married to female spouse. They separate and biological mother has a relationship with a new female partner. She and new female partner have a child together.
- First, have to deal with the marital presumption.
 - Does spouse want to deny her legal parentage?
 - Is AOP/Denial option available?
 - Will the court have to hear a parentage challenge to rebut the spouse's presumption?

Can a same-sex non-bio parent execute an AOP?



- Yes. Reading the U.P.A. as gender neutral, appears that any person wishing to “establish parentage” can execute an AOP regardless of whether they are the bio-parent.
- **But, is it valid?**
 - It is in opposite-sex situations where the father is not the biological father but signs the AOP anyway.
 - **To be determined** by the courts or the legislature.

Updating Legal Status on OSIS



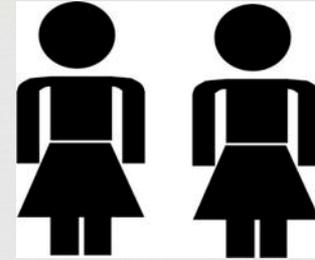
OSIS updates and
Ideas for OK Benefits

Legal Status Codes



- A = Support Order Established
- H= Paternity Established, No Support Ordered
- I = Married/Separated, No Support Ordered/ Case against Mother
- M = Paternity not Established
- N - Paternity Disproved by CSED

2 Year Presumption



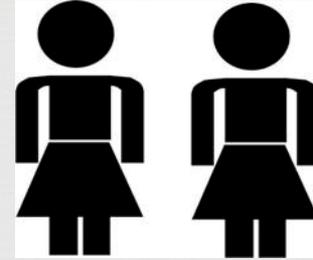
- Non-bio same sex partner lives with child for first 2 years and holds the child out.
- If CP is bio mother and NCP is same sex partner.
 - Legal status code would be “M”
 - Change to “A” once we have a court order for support and parentage. Use NOPSO s/s
- If CP is non bio partner, and NCP is bio mother.
 - Legal status code would be “I”

Married



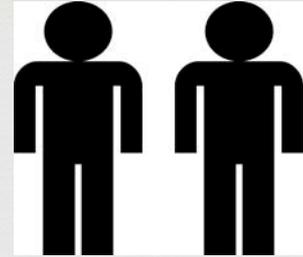
- Mother is married to same-sex spouse and child is born during the marriage or within 300 days of divorce.
- If CP is bio mother and NCP is same sex spouse, or
- If CP is non bio same sex spouse, and NCP is bio mother.
- **Legal status code would be “I” in both scenarios.**

Not Married



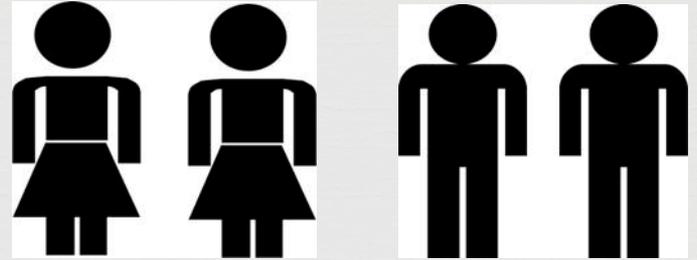
- Bio mother and same sex partner are raising a child together and they are co-parenting. No presumption applies.
 - Bio father is not the presumed, acknowledged, or adjudicated father.
- If CP is bio mother and NCP is same sex partner.
 - Legal status code would be “M”
 - Change to “A” once we have a court order for support and parentage. Use NOPSO s/s
- If CP is non bio partner, and NCP is bio mother.
 - Legal status code would be “I”

Adoptive



- Two men adopt a child together. Neither is the biological parent.
- NCP adoptive – legal status as A or H
 - A: parentage and support established
 - H: only parentage established, no support ordered.
- BP could be “unknown” or the CP legal father.
 - Unsure.

Who is the BP in same-sex cases?



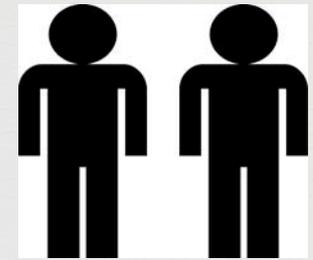
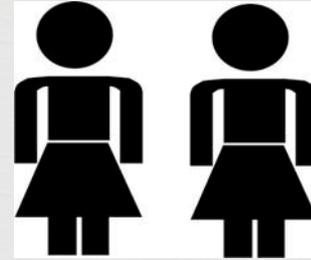
Two Female Parents

- Known bio father? Sperm donor?
- Unknown?
- NCP bio parent?

Two Male Parents

- CP? CP is non bio, but is the legal parent. Ex. two male adopting parents.
- Bio mother? Surrogate?

Who is the BP in same-sex cases?



- Don't have a decision yet.
 - Best practice is to wait to update the BP in these cases until we know the relevant parenting parties.
 - **Who is raising this child as a parent?**
- OSIS
 - **BP DCN cannot be same as AP DCN**

Suggestion for OK Benefits



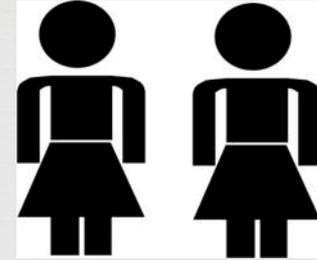
- Screen that would identify all different parental types related to each child:
 - Biological mother and father
 - Non-bio legal parents
 - Custodial parent (bio and non-bio)
 - Noncustodial parent (bio and non-bio)
 - Guardians (legal and not)
 - Adoptive parents
 - Non-bio alleged parent
 - Bio alleged parent
 - Adjudicated parents

Revised Pleadings



Suggestion is that we have a
NOPSO for same sex parent
cases = NOPSO S/S.

New Pleading



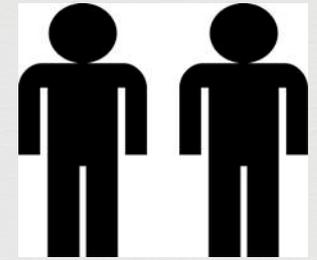
- **NOPSO S/S**
 - “P” in NOPSO S/S stands for “parentage”.
- When would we use the new pleading?
 - For all female same sex cases whether or not a presumption applies, and
 - if the bio father is not the presumed, acknowledged, or adjudicated legal parent.

What does a NOPSO S/S request?



- **Not** Genetic testing
- Asks court to either:
 - Confirm the presumption of parentage created by the U.P.A.
 - Establish the non-bio parent to be the legal parent based on:
 - Co-parenting agreement
 - *in loco parentis* – person is acting as the parent. Intentional family planning, etc.

What about Male-Male cases?



- Not sure if the new pleading will apply to these cases.
- Will have to wait and see how these cases play out.
- In the case I had – two men adopted. The NOCSO was appropriate.

Why do we need to adjudicate parentage in same sex presumption cases?



- Adjudicating parentage and ordering the non-bio legal parent to be added to the child's birth certificate will protect the child and the parties in the event of future parentage challenges.
- This will protect the child and the non-bio parent and allow the non-bio parent to handle all issues as a parent: school, healthcare, etc.
- And will protect the child and the parties should they travel to other states.

Child's Birth Certificate



- Ask for copy of the birth certificate to see who is currently listed as mother/father.
- Our orders should include language about the child's birth certificate.
 - Who should be listed as father on the BC if adjudicated non-bio parent is female?
 - Should the birth certificate reflect two mothers or two fathers?
 - Can there be more than two legal parents?