NOTES ON DISESTABLISHMENT LAWS

N.C.G.S. § 49-14 - CIVIL ACTION TO ESTABLISH PATERNITY; MOTION TO SET ASIDE PATERNITY.

Adds new subsection "h" which reads "[n]othwithstanding the time limitations of G.S. 1A-1, Rule 60 of the North Carolina Rules of Civil Procedure, or any other provision of law, an order of paternity may be set aside by a trial court if each of the following applies:

(1) The paternity order was entered as the result of fraud, duress, mutual mistake, or excusable neglect,

(2) Genetic tests establish the putative father is not the biological father of the child.

The burden of proof in any motion to set aside an order of paternity shall be on the moving party. Upon proper motion alleging fraud, duress, mutual mistake, or excusable neglect, the court shall order the child's mother, the child whose parentage is at issue, and the putative father to submit to genetic paternity testing pursuant to G.S. 8-50.1(b1). If the court determines, as a result of genetic testing, the putative father is not the biological father of the child and the order of paternity was entered as a result of fraud, duress, mutual mistake, or excusable neglect, the court may set aside the order of paternity. Nothing in this subsection shall be construed to affect the presumption of legitimacy where a child is born to a mother and the putative father during the course of a marriage."

Notes.

The new subsection does not include language limiting the movant to be the man previously ordered to be the father of the child whose paternity is in question. (However see, Stockton v. Estate of Thompson, 165 N.C. App. 899, 600 S.E.2d 13 (2004) holding that the child's two siblings in a mother's paternity action against a putative father's estate did not have standing).

The filing of motion pursuant to NCGS § 49-14(h) may not be as restricted by time limitations as is the filing of a Rule 60 motion. Hence the language of NCGS § 49-14(h), "[n]othwithstanding the time limitations of G.S. 1A-1, Rule 60 of the North Carolina Rules of Civil Procedure..."

An order of paternity, MAY be set aside under NCGS § 49-14, if the court determines as a result of genetic testing, the putative father is not the biological father of the child and the order of paternity was entered as a result of fraud, duress, mutual mistake, or excusable neglect.

FRAUD

Rule 9(b) of the Rules of Civil Procedures states that "[i]n all averments of fraud, duress or mistake, the circumstances constituting fraud or mistake shall be stated with particularity." Therefore, the motion filed by the NCP pursuant to NCGS §49-14 should be plead with particularity as to the fraud, duress or mistake *that caused the paternity order to be entered*. If the motion is not plead with such particularity, a motion to dismiss the motion should be made. See Leake v. Sunbelt Ltd. of Raleigh, 93 N.C. App. 199, 377 S.E.2d 285, cert. denied, 324 N.C. 578, 381 S.E.2d 774 (1989). For the essential elements of a fraud claim, see Terry v. Terry, 302

N.C. 77, 273 S.E.2d 674 (1981).

MUTUAL MISTAKE

"A mutual mistake of fact is a mistake common to both parties and by reason of it each has done what neither intended." Foster v. Carolina Marble and Tile Co., 132 N.C. App. 505, 508, 513 S.E.2d 75, 77 (1999). "In order to disturb the binding force of a contract, there must exist a mutual mistake as to a material fact comprising the essence of the agreement." Mullinax v. Fieldcrest Cannon, Inc., 100 N.C. App. 248, 395 S.E.2d 160 (1990). Remember that if the putative father knew he was not the child's biological father and he (1) signed an affirmation of paternity and/or (2) a Voluntary Support Agreement anyway, there was no "mutual mistake." This is also true when the putative father, knowing he is not the child's biological father, marries the mother to "legitimize the child through subsequent marriage." There is no "mutual mistake" in that situation either.

NCGS § 49-14(h)(2) states that "**upon proper motion** alleging fraud, duress, mutual mistake or excusable neglect, the court **shall** order ...genetic paternity testing." And, that "the **burden of proof** in any motion to set aside an order of paternity **shall** be on the moving party."

Therefore, genetic testing should not be ordered until there has been, at a minimum a determination by the court that a "proper motion" meaning one which ***specifically alleges*** fraud, duress, mutual mistake or excusable neglect which caused the paternity order to be entered has indeed been filed.

Genetic paternity testing is pursuant to G.S. 8-50.1(b1).

Presumptions of the genetic testing results are as follows:
N.C.G.S. § 8-50.1(b1)(1) states, in part, that if the probability of the alleged parent's parentage is less than 85% the alleged parent is presumed not to be the parent and the evidence shall be admitted. This presumption may be rebutted only by clear, cogent and convincing evidence.
N.C.G.S. § 8-50.1(b1)(2) states that if the experts disagree in their findings or conclusions**,** the question of paternity shall be submitted upon all the evidence.
N.C.G.S. § 8-50.1(b1)(3) states, in part, that if the probability of the alleged parent's parentage is between 85% and 97%, this evidence shall be admitted by the court and shall be weighed with other competent evidence.
N.C.G.S. § 8-50.1(b1)(4) states, in part, that if the probability of the alleged parent's parentage is 97% or higher, the alleged parent is presumed to be the parent and this evidence shall be admitted. This presumption may be rebutted only by clear, cogent, and convincing evidence.

N.C.G.S. § 110-132 - AFFIDAVIT OF PARENTAGE AND AGREEMENT. MOTION TO SET ASIDE AFFIDAVIT OF PARENTAGE.

Under existing subsection (a) of this statute, the written affidavit of parentage constitutes an

admission of paternity and has the same legal effect as a judgment of paternity for the purpose of establishing a child support obligation, subject to the right of either the putative father or the mother of the dependent child to rescind within the earlier of: (1) 60 days of the date the document is executed; or (2) the date of entry of an order establishing paternity or an order for the payment of child support.

New subsection (a1) states: "Paternity established under subsection (a) of this section may be set aside in accordance with subsection (a2) of this section or in accordance with G.S. 50-13.13."

New subsection (a2) states: "Notwithstanding the time limitations of G.S. 1A-1, Rule 60 of the North Carolina Rules of Civil Procedure, or any other provision of law, an affidavit of parentage may be set aside by a trial court after 60 days have elapsed if **EACH** *(emphasis added)* of the following applies:

(1) The affidavit of parentage was entered as the result of fraud, duress, mutual mistake, or excusable neglect,
(2) Genetic tests establish that the putative father is not the biological father of the child.

The burden of proof in any motion to set aside an affidavit of parentage after 60 days allowed for rescission shall be on the moving party. Upon proper motion alleging fraud, duress, mutual mistake, or excusable neglect, the court shall order the child's mother, the child whose parentage is at issue, and the putative father to submit to genetic paternity testing pursuant to G.S. 8-50.1(b1). If the court determines, as a result of genetic testing, the putative father is not the biological father of the child and the affidavit of parentage was entered as a result of fraud, duress, mutual mistake, or excusable neglect, the court may set aside the affidavit of parentage. Nothing in this subsection shall be construed to affect the presumption of legitimacy where a child is born to a mother and the putative father during the course of a marriage."

Notes.

If paternity was established by an affidavit of parentage, it can be set aside through a motion to N.C.G.S. § 110-132. (Can also be set aside pursuant to a proper Rule 60 motion.)

The motion pursuant to N.C.G.S. § 110-132, must allege that the affidavit of parentage was entered as a result of fraud, duress, mutual mistake or excusable neglect.

A motion pursuant to N.C.G.S. § 110-132(a2) must be **specifically plead** as to the allegation of fraud, duress, mutual mistake or excusable neglect as required by Rule 9(b) or the Rules of Civil Procedures. See discussion above in regard to this issue.

"The burden of proof in any motion to set aside an affidavit of parentage ... **SHALL** be on the moving party."

"Upon **proper** motion ... the court **SHALL** order ... genetic paternity testing pursuant to G.S. 8-50.1(b1)."

Presumptions of the genetic testing results are as explained in the above section.

The court **MAY** set aside the affidavit of parentage if the court determines the following two things:
(1) "as a result of the genetic testing, the putative father is not the biological father"
AND
(2) "the affidavit of parentage was entered as a result of fraud, duress, mutual mistake or excusable neglect."
See N.C.G.S. § 110-132(a2). *(emphasis added)*

For N.C.G.S. § 49-14 and N.C.G.S. § 110-132, there are no time limits as to when the motion can be filed and the motions do not have to be verified.

N.C.G.S. § 50-13.13 - MOTION OR CLAIM FOR RELIEF FROM CHILD SUPPORT ORDER BASED ON FINDING OF NONPATERNTIY.

This is a new statute. **Subsection (a)** states: "Notwithstanding G.S. 1A-1, Rule 60 of the North Carolina Rules of Civil Procedure, or any other provision of law, an individual who, as the father of a child, is required to pay child support under an order that was entered by a North Carolina court pursuant to Chapter 49, 50, 52C, or 110 of the General Statutes, or under an agreement between the parties pursuant to G.S. 52-10.1 or otherwise, and that is subject to modification by a North Carolina court under applicable law may file a motion or claim seeking relief from a child support order as provided in this section."

Notes on subsection (a). Applies only to a
(1) "father of a child" who is
(2) "required to pay child support" pursuant to
  (a) an order entered by a North Carolina court pursuant to Chapter 49, 50, 52C or 110 of the General Statutes, or
  (b) an agreement between the parties pursuant to G.S. 52-10.1 or otherwise and that is subject to modification by a North Carolina court under applicable law.

Subsection (b) states, in part: "A motion or claim for relief ... shall be filed as a motion or claim in the cause in the pending child support action, or as an independent civil action, and shall be filed within one year of the date the moving party knew or reasonably should have known that he was not the father of the child. The motion or claim shall be verified by the moving party."

Notes of subsection (b).
(1) This claim for relief can be brought as a motion in the existing child support action or a new civil action can be filed.
(2) **The motion/complaint must be filed within *one year* of the date the father *"knew or reasonably should have known that he was not the father of the child."***
(3) The motion/complaint must be **verified** by the ***father***.

The rest of Subsection (b). " The motion or claim shall be verified by the moving party and **SHALL** state **ALL** of the following:

(1) The basis, with particularity, on which the moving party believes that he is not the child's father.

(2) The moving party has not acknowledged paternity of the child **OR** acknowledged paternity without knowing that he was not the child's biological father.

(3) The moving party has not adopted the child, has not legitimated the child pursuant to G.S. 49-10, 49-12, or 49-12.1, or is not the child's legal father pursuant to G.S. 49A-1.

(4) The moving party did not act to prevent the child's biological father from asserting his paternal rights regarding the child."

See N.C.G.S. § 50-13.13(b)(1-4)*(emphasis added)*

Notes on Subsection (b)(1),(2),(3) & (4).

(1) "The basis, with particularity, on which the moving party believes that he is not the child's father." The basis must be stated with particularity; therefore, a one or two sentence explanation such as, "She told me he's not mine" or "He's ten and he really doesn't look like me and then just last week during an argument, she told me he was really John Doe's", should not be sufficient.

(2) The motion/complaint should state that the movant has never acknowledged paternity or if he if has, that he did so, without knowing that he was not the child's biological father. If the motion/complaint does not one of these two statements, it does not contain all the required allegations and the IV-D attorney should ask for a dismissal.

(3) The motion/complaint must state that the movant has not adopted the child; and not legitimated the child pursuant to N.C.G.S. § 49-10 - Legitimation. (Through a special proceeding in superior court); or pursuant to N.C.G.S. § 49-12 - Legitimation by subsequent marriage. (When the mother of a child born out of wedlock and the father of such child marry after the birth of the child.); or pursuant to N.C.G.S. § 49-12.1 - Legitimation when mother married. (When the mother is married to another man and the father of the child files a special proceeding to legitimate the child.); or is not the legal father pursuant to N.C.G.S. § 49A-1- Status of child born as a result of artificial insemination. (A man is declared to be the father of a child as a result of the child being born of artificial insemination.)

(4) A motion under this statute can only be brought by a man currently ordered to be the father of the child and ordered to pay child support. The statute states that this man must not have acted to "prevent the child's biological father from asserting his paternal rights regarding the child". The motion/complaint should contain such an allegation.

If the motion/complaint does not contain all of the above, the IV-D attorney should ask for the motion/complaint to be dismissed. In the alternative, the IV-D attorney could file a motion for summary judgment.

If the motion/complaint is sufficient on its face, the IV-D attorney needs to obtain evidence from the mother of the child if she is available for questioning. The mother of the child should be able to provide some information regarding the facts relevant for N.C.G.S. § 50-13.13(b)(1),(2),(3)&

(4). If a "biological" father has been identified, he can offer evidence on N.C.G.S. § 50-13.13(b)(4) if there were efforts from the movant to prevent the biological father from asserting his rights.

Subsection (c) states, in part "[t]he court may appoint a guardian ad litem pursuant to G.S. 1A-1, Rule 17, to represent the interest of the child in connection with a proceeding under this section."

Notes on Subsection (c).
This section states the court MAY appoint a guardian ad litem pursuant to N.C.G.S. § 1A-1, Rule 17 to represent the interests of the child. Rule 17 refers to guardian ad litems for parties in actions. Children are not parties in child support actions, unless they have intervened. Consider suggesting to the court that the child be made a party to the matter and be allowed to intervene pursuant to Rule 24. The court could then appoint a guardian ad litem for the child. See In re Papathanassiou, 195 N.C. App. 278, 671 S.E.2d 572, disc. rev. denied, 363 N.C. 374, 678 S.E.2d 667 (2009).

Subsection (d).
The first sentence states, in part, that the court SHALL, UPON motion/complaint, order genetic testing "if the court finds that there is good cause to believe that the moving party is not the child's father and that the moving parting may be entitled to relief under this section."

Notes on the first sentence of Subsection (d).
This sentence states, in part, that the court shall order genetic testing if it finds good cause to believe the movant is not the child's father. It does not define what "good cause" is. It may be assumed that "good cause" is a verified motion/complaint alleging all that is required by subsection (b)(1),(2),(3) & (4). Since genetic testing SHALL be ordered upon an appropriate motion/complaint, then an equally appropriate response/answer should be timely filed.

Notes on the second sentence of Subsection (d).
This sentence states that **N.C.G.S. § 8-50.1(b1)** shall govern the **admissibility** and **weight** of the genetic test results. (emphasis added). **N.C.G.S. § 8-50.1(b1)** states, in part, the following ("**the admissibility**" of the genetic test results).

> The test be performed by a duly certified physician or other expert.
> The court shall require the person requesting the testing to pay the costs of the tests.
> Verified documentary evidence of the chain of custody of the blood specimens obtained pursuant to this subsection shall be competent evidence to establish the chain of custody.
> Any party objecting to or contesting the procedures or results of the testing shall file with the court written objections setting for the basis for the objections and shall serve copies thereof upon all other parties not less than 10 days prior to any hearing at which the results may be introduced into evidence.
> The person contesting the results of the testing has the right to subpoena the testing expert pursuant to the Rules of Civil Procedure.
> If no objections are filed within the time and manner prescribed, the test results are admissible as evidence of paternity without the need for foundation testimony or other proof of authenticity or accuracy.

If the movant obtains a genetic test on his own, for example through an independent lab he saw advertised on the internet and to which he mailed samples, the provisions regarding admission of genetic tests pursuant to N.C.G.S. § 8-50.1(b1) do not apply. During the hearing, if a movant attempts to introduce one of these independently obtained genetic tests (in other words, one that was not court ordered pursuant to N.C.G.S. § 8-50.1(b1)), object and require that he follow the Rules of Civil Procedure in laying all the proper foundation testimony or other proof of authenticity or accuracy. Also, pursuant to the Rules of Civil Procedure, demand that he prove the chain of custody in regard to all the DNA or blood specimens. See Rockingham County Dep't of Social Serv. ex rel. Shaffer v. Shaffer, 126 N.C. App. 197, 484 S.E.2d 415 (1997) and Columbus County v. Davis, 163 N.C. App. 64, 592 S.E.2d 225 (2004).
If a movant attaches a copy of independent genetic test results to his N.C.G.S. § 50-13.13 complaint/motion, immediately file a motion to have said genetic test results removed/quashed and removed from the court file. The movant can attempt to properly introduce the test results into evidence at the proper time if he so chooses. It is not proper, however, to have the judge review such test results upon initial review of the court file without the movant having laid the proper foundation and establishing the chain of custody.

Presumptions of the genetic testing results are as explained in the first section above.

Notes on the fourth sentence of Subsection (d).
This sentence states that if a **party** fails to comply with ordered genetic testing without good cause, the court may hold the party in civil or criminal contempt or impose appropriate sanctions pursuant to N.C.G.S. § 1A-1, Rule 37 or both. Usually in IV-D child support cases, the custodial parent is not a party. The county representing the child support enforcement agency is a party and the non-custodial parent is a party. If the custodial and non-custodial parent began the case privately or through the "clerk's office" and the child support enforcement agency intervened, then the custodial parent is a party in the case. So, technically in most cases, the only real party that might be subject to being held in contempt for not appearing for genetic testing would be the non-custodial parent. Since the movant in a N.C.G.S. § 50-13.13 complaint/motion can only be the non-custodial parent, who is ordered to pay child support and is requesting the testing, it is unlikely he would not appear. However, if he did not appear, one remedy would be to dismiss his N.C.G.S. § 50-13.13 action instead of asking for a show cause motion to find him in contempt. The only real problem with this is the next subsection which requires the child support obligation to be suspended while the motion or claim is pending. If the movant does not appear for genetic testing and the child support obligation is suspended, the problem may be what to do about the suspension of the child support order.

Subsection (e).
This subsection states that the child support obligation **shall** be suspended while the motion or claim is pending if the support is being paid on behalf of the child to the State or any other assignee of the child support or where the child is in the custody of the State or other assignee or where the movant is an obligor in a IV-D case. This subsection further states that the child support obligation will not be suspended if the support is being paid to the mother of the child (**this only applies to non-IV-D cases**). Therefore, suspension applies in all IV-D cases.

Notes on Subsection (e).

The phrase "while the motion or claim is pending" in this context most commonly refers to from the date the motion or claim is filed (when the motion or claim is filed with the clerk of court's office) until the court enters a ruling. When a movant in a IV-D case, files a motion or complaint pursuant to N.C.G.S. § 50-13.13, his child support obligation **shall** be suspended. A suggestion is that the a hearing be held where the IV-D attorney requests the court to consider placing instead a hold on the child support payments until the matter is resolved so that any wage withholding order is not stopped. That way the movant's payments are placed on hold and not distributed. Should the movant be successful in his motion or complaint, all payments would be released to him. An additional suggestion is that if there are arrears in the matter that all payments continue to be collected and distributed, but that all payments be applied to the arrears while the matter is pending.

Subsection (f).

This subsection states that the court may grant relief from a child support order under this section if paternity has been set aside pursuant to N.C.G.S. § 49-14 or N.C.G.S. § 110-132, or if the **movant proves** by **clear and convincing** evidence and the court, sitting without a jury, finds **both** of the following:

(1) The genetic test results excluded the movant.

(2) The moving party either (i) has not acknowledged paternity or (ii) acknowledged paternity without knowing that he was not the biological father.
For purposes of this section "acknowledging paternity" means that the movant has done any of the following:
   a. Publicly acknowledged child as his own and supported child while married to the child's mother.
   b. Acknowledged paternity in a sworn written statement, including an affidavit of parentage.
   c. Executed a consent order, a voluntary support agreement or any other legal agreement to pay child support as the child's father.
   d. Admitted paternity in open court or in any pleading.

Notes on Subsection (f).

This subsection states that the court may grant relief from a child support order if the movant has already had paternity set aside pursuant to either N.C.G.S. § 49-14 or N.C.G.S. § 110-132**.** Therefore, the movant would simply need to show the order setting aside paternity pursuant to either N.C.G.S. § 49-14 or N.C.G.S. § 110-132 to obtain relief. The court could then grant relief from the child support order.

Otherwise, the movant needs to prove by clear and convincing evidence both of the following:

(1) the results of a valid genetic test that establish that he is not the child's biological father (See discussion above regarding N.C.G.S. § 8-50.1(b1)); and

(2) that he either (i) has not acknowledged paternity or (ii) acknowledged paternity without knowing that he was the biological father.

For purposes of a N.C.G.S. § 50-13.13 motion/complaint, "acknowledging paternity" means any of the following:

   a. Publicly acknowledged the child as his own and supported the child while

married to the child's mother.

b. Acknowledged paternity in a sworn written statement, this includes an affidavit of parentage, N.C.G.S. § 110-132(a) and a birth certificate, N.C.G.S. § 130A-101(f).
c. Executed a consent order, a voluntary support agreement under N.C.G.S. § 110-132(a), (an affidavit of parentage) or N.C.G.S. § 110-133 (a VSA).
d. Admitted paternity in open court or in any pleading.

There will probably many movants who have acknowledged children based on subparagraphs "a-d." Those movants will probably argue that the acknowledgments were made without knowledge that they were not the biological fathers. Arguments should be made as is appropriate by the county that the movant knew or should have known that he was not the child's biological father based on the specific facts of each case. The child support agent and IV-D attorney should review both the allegations made in prior motions and the findings of fact of previous orders in the case. Also, a review of ACTS notes will likely yield valuable information. The child support agent and/or IV-D attorney should talk with the child's mother and discuss the child's paternity to evaluate the case and the mother as a potential witness. This meeting may also result in gaining information from the mother that the movant has acknowledged the child in ways listed in subparagraphs "a-d"not previously known by the agency. If the IV-D attorney meets with the child's mother caution must be used to make sure the mother understands that the IV-D attorney is not her attorney and that, therefore; there is no attorney/client relationship between them.

Subsection (g).

This section states that if the court does not find for the movant, all the orders regarding paternity, support and custody stay in effect. If the court finds the movant did not act in good faith in filing the motion, the court shall award reasonable attorneys' fees to the prevailing party. The court shall make findings of fact and conclusions of law to support its award of attorneys' fees.

Notes on Subsection (g).

A finding of not acting in good faith would be fact specific. An example would be when the facts showed that the movant had signed the affidavit of parentage even though he knew he was not the biological father because he had wanted to take on the role on the child's father. The movant would not be acting in good faith to bring a motion or compliant pursuant to NCGS § 50-13.13. Because to do so he would have to allege, pursuant to NCGS § 50-13.13(f)(2), that he had not acknowledged paternity of the child without knowing that he was not the child's biological father.

Subsection (h).

This section states that if the court determines that the movant has satisfied the requirements of the section, the court shall enter an order, including written findings of fact and conclusions of law, terminating the movant's child support obligation regarding the child. The court may tax as cost to the mother of the child the expenses of genetic testing.

Any unpaid support DUE PRIOR TO THE FILING of the motion or complaint is due and owing.

If the court finds that the mother used fraud, duress, or misrepresentation, resulting in the belief on the part of the movant that he was the father, the court may order the mother to reimburse any

child support paid and RECEIVED BY THE MOTHER AFTER THE FILING of the motion or complaint. The movant has no right to reimbursement of past child support paid on behalf of the child to the State, or other assignee of child support, where the child is in the custody of the state or other assignee, or where the moving party is an obligor in a **IV-D case**.
If the child was born in N.C. and the movant is named as the father on the child's birth certificate, the court shall order the clerk to notify the State Registrar of the court's order. The movant may apply for modification or relief from any judgment or order involving the movant's paternity of the child.

Notes on Subsection (h).
If the court is satisfied the movant has met the requirements of this statute, the court shall enter an order terminating the movant's child support obligation. Said order shall contain findings of fact and conclusions of law. This statute does not say anything about setting aside the order of paternity. In fact, it states that the movant "may apply for modification or relief from any judgment or order involving the movant's paternity of the child."
If the movant is successful, the court may order that the mother pay the "expenses" of the genetic testing as costs in the matter.
This statute does not lay out any circumstances under which the court may order the mother in a **IV-D case** to pay back child support to the movant if he is successful with his motion.
If the child was born in North Carolina and the movant's name is on the child's birth certificate, the court shall order the clerk of court to notify the State Registrar of the court's order in this matter. (This provision does not seem appropriate, as the court's order pursuant to N.C.G.S. § 50-13.13 only terminates the child support order and not a paternity order. N.C.G.S. § 50-13.13(h) specifically states the moving party "may apply for relief" from any paternity orders that exist.) Therefore, if the movant has not otherwise set aside the paternity order, it does not appear that a motion or claim pursuant to N.C.G.S. § 50-13.13 can be used to set aside an order of paternity. Such a proceeding can only act to terminate the order directing the payment of child support. To terminate both the order of paternity and child support, it appears that the movant must file a motion or claim pursuant to N.C.G.S. § 50-13.13 and either N.C.G.S. § 49-14 or N.C.G.S. § 110-132.

Subsection (I).
This section states that any servicemember who is deployed on military orders, and is subject to the protections of the Servicemembers Civil Relief Act, shall have the period for filing a motion pursuant to subsection (b) of this section tolled during the servicemember's deployment. If the period remaining allowed for the filing of the motion following the servicemember's redeployment is less than 30 days, then the servicemember shall have 30 days for filing the motion.

Notes on Subsection (I).
This section appears to attempt to give servicemembers extra protection beyond what the Servicemembers Civil Relief Act allows. This statute attempts to tolls the period for filing a motion or complaint pursuant to subsection (b) during the servicemember's deployment.

N.C.G.S. § 50-13.13 becomes effective **January 1, 2012** for motions or claims filed **ON OR AFTER** that date. "Notwithstanding the provision in Section 3 of this act requiring motions or

claims to be filed within one year of discovery that the moving party is not the father, any person who would otherwise be eligible to file a motion or claim may file a motion or claim pursuant to this act prior to **January 1, 2013.”**

Notes

Effective date is January 1, 2012 - all motions and/or complaints filed on or after that date. Movants can file motions or complaints up until January 1, 2013 which otherwise would be barred for not having been filed within a year of discovering that the movant was not the father.