

**Ordering Blood Tests
To Determine Paternity**

○

**CHERYL HOWELL
JUNE 2011**

Two Statutes

○

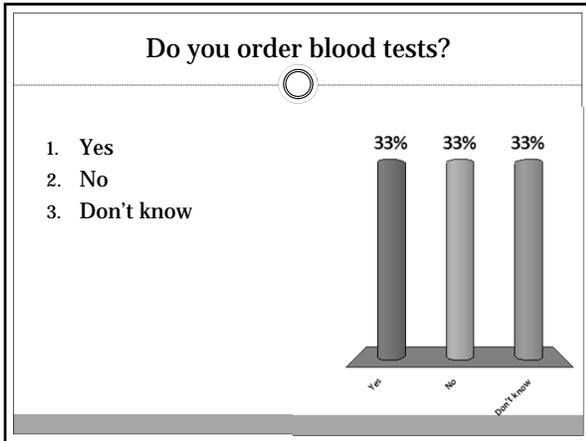
- **GS 8-50.1**
 - Whenever "issue of parentage arises"
 - Order "the mother, the child, and the alleged father-defendant"
 - Submit to "one or more blood or genetic marker tests"
 - Presumptions based on results
 - Relaxed evidence standards

- **GS 1A, Rule 35**
 - When "physical condition (including the blood group) of a party ... is in controversy"
 - On motion for good cause shown
 - Order party to submit to physical exam by physician

Question 1

○

- Show cause issued for contempt for failure to pay child support
- Dad filed motion to terminate support and requested blood tests
- Paternity and support order entered by consent 4 years ago
- "She told me 3 months ago that I am not dad."



Paternity as a Defense

- “Once paternity order is entered, court cannot order genetic testing under GS 8-50.1(b1) until paternity order is set aside pursuant to Rule 60(b).”
 - *Bright v. Flaskrud*, 148 NC App 710 (2002)
- Paternity must be attacked in case establishing paternity.
 - *See Leach v. Alford*, 63 NC App 118 (1983)
 - No collateral attack; must be filed in case establishing paternity
 - *See Reid v. Dixon*, 136 NC App 438 (2000)
 - No collateral attack of paternity in UIFSA enforcement proceeding

Relief from Judgment

- Within one year – Rule 60(b)(1), (2) and (3)
 - Mistake
 - *See Leach v. Alford* (motion based on “mutual mistake as to paternity”)
 - Excusable neglect
 - Newly discovered evidence
 - *See Leach* (blood test result may be newly discovered evidence)
 - Fraud, misrepresentation or misconduct

Relief from Judgment

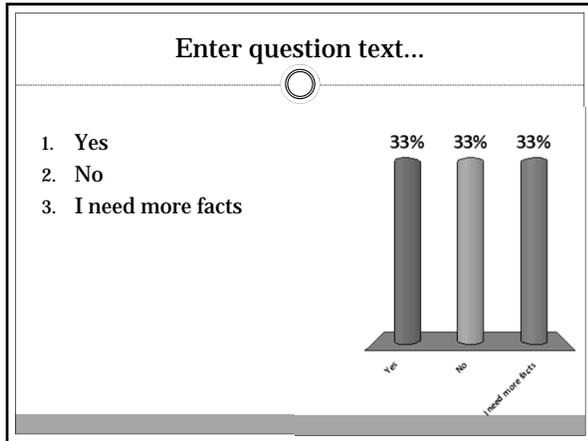
- Within “reasonable” time - Rule 60(b)(6)
 - For “any other reason” (compelling)
 - Meritorious defense
 - Broad discretion to grant or deny
 - But not intended to cover situations that would be covered under 60(b)(1), (2) or (3)
 - *Davis v. Adams*, 153 NC App 512 (2002)

Acknowledgment GS 110-132

- Can be rescinded within 60 days of execution
- After 60 days, can be challenged for “fraud, duress, mistake or excusable neglect”
- Subject to one-year time limit of Rule 60(b)(1), (2) and (3)
 - *Stevens v. Charles*, 182 NC App 505 (2007)

Question #2

- Custody case between plaintiff and defendant mom
- Child born during the marriage
- Mom says he’s not really dad
- Do you order blood tests?



Husbands

- **Child born during marriage is presumed legitimate**
 - *Eubanks v. Eubanks*, 273 NC 189 (1968)
 - Presumption can be rebutted by blood tests
- **Mom cannot raise issue during custody litigation unless another man has acknowledged paternity or been adjudicated to be the father**
 - *Jones v. Patience*, 121 NC App 434 (1996)

Husbands

- **Husband can request blood test if paternity not previously established**
 - *Ambrose v. Ambrose*, 140 NC App 545 (2000)
- **GS 8-50.1 cannot be used to force husband to submit to blood test**
 - *Johnson v. Johnson*, 343 NC 114 (1996)
- **But maybe Rule 35 of the Rules of Civil Procedure**
 - *Jeffries v. Moore*, 148 NC App 364 (2002)
