

Approved by the Judicial Council December 4, 2009

**REPORT OF THE JUDICIAL COUNCIL
FAMILY LAW ADVISORY COMMITTEE ON
2009 SB 27**

The Family Law Advisory Committee was asked to review 2009 SB 27, a copy of which is attached to this report. The bill would amend existing law concerning presumption of paternity to allow a man, who is presumed to be the father of a child, to request genetic testing to determine paternity and to use the results of that test to rebut any presumptions of fatherhood. The amendment would only apply to actions concerning children who are under 18 years of age on July 1, 2009, and would specifically override rules of common law concerning the best interests of the child. The Committee is strongly opposed to SB 27.

COMMITTEE MEMBERS

Charles F. Harris, Chair, Wichita. Practicing attorney.

Sara S. Beezley, Girard. Practicing attorney.

Honorable Sam K. Bruner, Overland Park. Retired District Court Judge.

Anne E. Burke, Overland Park. Practicing attorney.

Dr. Sharon E. Cain, Overland Park. Director of Child and Adolescent Psychiatry at the University of Kansas Medical Center.

Honorable William B. Elliott, Hill City. District Court Judge.

Honorable Robert J. Frederick, Garden City. District Court Judge.

Joyce Grover, Topeka. Legal Advocacy Coordinator for the Kansas Coalition Against Sexual and Domestic Violence.

Senator Janis Lee, Kensington. Kansas State Senator.

Professor Nancy Maxwell, Topeka. Professor of Law at the Washburn University School of Law.

Ronald W. Nelson, Shawnee Mission. Practicing attorney.

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Suzanne Valdez, Lawrence. Clinical Associate Professor at the University of Kansas School of Law.

DISCUSSION

In 1989, the Kansas Supreme Court decided *In re Marriage of Ross*. *In re Marriage of Ross*, 245 Kan. 591, 783 P.2d 331. In that case, the Court determined that when faced with a claim that a child is not the child of a “presumptive father,” prior to ordering genetic testing, the trial court must first “consider the best interests of the child, including physical, mental, and emotional needs.” *Id.* at 602. The Court pointed out that the stated purpose of the Kansas Parentage Act is to “ensure that the legal obligations, rights, privileges, duties and obligations incident to the mother/child relationship and the father/child relationship are carried out.” *Id.* at 595.

The *Ross* court recognized that a child’s connection to parent is not a simple, uncomplicated relationship. A child requires bodily comfort and gratification, affection, companionship, and stimulating intimacy from his parents and when those needs are answered by the parent, the child-parent relationship becomes firm, with immensely productive effects on the child’s intellectual and social development. *Id.* at 601. Situations in which a parent’s paternity comes into question are typically fraught with emotions that tear at the stability of the family. In these situations, the child needs the court to be able to provide stability, to acknowledge that his perception of time is different than that of an adult, and to take into consideration his past relationship with the parent. *Id.* at 602. “The shifting of paternity from a presumed father to a biological father could easily be detrimental

to the emotional and physical well-being of any child. Although someone may suffer, it should never be the child, who is totally innocent and who has no control over or conception of the environment into which he or she has been placed.” *Id.* at 602, (citing *In re Marriage of Ross*, 13 Kan. App. 2d 402, 772 P.2d 288 (1989)).

Ross has represented the public policy of Kansas with regard to genetic testing in presumptive parent cases since it was decided. The amendment proposed in SB 27 would effectively override *Ross* and remove all consideration for the best interests of the child in any case where a presumed father decides that he no longer wants the responsibility for a child. The bill does not take into consideration the age of the child, the relationship that has developed between the child and the presumed father, the motivations behind the challenge to paternity, or the effects of such a request on the child, the mother or even the father. Furthermore, the bill does not provide any option for the court to step in and protect the child when it is apparent that the motives behind the request for genetic testing are selfish, hateful, manipulating, or based solely on issues surrounding money.

The Committee recognizes that there may be situations in which a man may take on responsibilities or act in a manner that makes him a presumed father only as a result of fraud or deception on the part of the child’s mother. In those situations, it does seem unjust that the “presumed father” should be required to uphold all of the responsibilities of a presumed father. However, this bill does not address that issue. Instead, the bill would upset the balance that was reached by *Ross*. It removes the power of the court to make an independent, just and rational decision based on the facts of the situation with consideration of the best interests of the child, and places that power in the hands of a single individual who may or may not act in the best interests of anyone but himself. It allows a man to strip a child of a father, perhaps only because he is acting

out of hate or anger towards the mother. The bill does not provide the court with any acceptable way to handle this situation and it prohibits the court from protecting the child.

CONCLUSION

In light of the foregoing, the Committee recommends against passage of SB 27. The primary consideration in situations pertaining to parentage of a child should be the protection of the well-being of the child. We can not unring the genetic testing bell once it has been rung and in the case of a presumed father, the Committee strongly believes that the requirement of a *Ross* hearing prior to granting genetic testing is a sound public policy that should not be disturbed.