

# PARENTAGE LITIGATION

## REFERENCE GUIDE

---

2022 EDITION

By

GLEN H. SCHWARTZ

Glen H. Schwartz is a Certified Family Law Specialist, a Fellow of the American Academy of Matrimonial Lawyers, a Fellow of the International Academy of Family Lawyers, a recipient of the *Spencer Brandeis Award* ("In recognition of outstanding contributions to the legal community and the practice of family law"), and a recipient of the *AFCC Joseph Drown Award* ("In recognition of the contributions to the betterment of children and families going through the divorce process"). He is the principal of the Beverly Hills law firm Glen H. Schwartz A Law Corporation and has been trial and/or appellate counsel on many of the significant parentage cases during the past three decades. In addition to the annual publication of this reference guide, Mr. Schwartz is the author of numerous articles on parentage and frequently lectures and provides commentary on the substantive and practical aspects of parentage litigation.

*It is suggested that this Guide be cited as "Schwartz, PARENTAGE LITIGATION REFERENCE GUIDE (2022)"*

# PARENTAGE LITIGATION

By

**GLEN H. SCHWARTZ, Esq.**

## Table of Contents

---

I.	CALIFORNIA'S STATUTORY SCHEME OF PARENTAGE . . . . .	1
A.	Introduction . . . . .	1
B.	Uniform Parentage Act . . . . .	1
C.	2018 Legislative Amendment . . . . .	2
D.	Other Family Code Parentage Statutes . . . . .	2
II.	METHODS OF ESTABLISHING PARENTAGE . . . . .	4
A.	Conclusive Presumption . . . . .	4
1.	Family Code section 7540 . . . . .	4
2.	Necessary Foundational Facts . . . . .	4
3.	The Conclusive Presumption May Be Applied Against A Man Who Is Biologically Related To The Child . . . . .	5
a.	<i>Michael H. v. Gerald D.</i> . . . . .	5
b.	<i>Michelle W. v. Ronald W.</i> . . . . .	6
4.	Marital Separation Or Dissolution Does Not Affect The Application Of The Conclusive Presumption . . . . .	6
5.	The Conclusive Presumption Will Not Be Applied If There Is No Parent-Child Relationship to Preserve . . . . .	7
6.	The Conclusive Presumption Is Subject To A Limited Two Year Genetic Test Rebuttal Period . . . . .	8
B.	Voluntary Declaration . . . . .	9
1.	Signing Of The Voluntary Declaration . . . . .	9
2.	The Voluntary Declaration Has The Same Force And Effect As A Judgment Of Parentage . . . . .	10
3.	Birth Certificate Requirements . . . . .	10
4.	When The Voluntary Declaration Is Void . . . . .	11
5.	Rescission/Challenging The Voluntary Declaration . . . . .	11
a.	Rescission By Signatory Pursuant to Family Code section 7575(a) . . . . .	11

	b.	Challenge By The Signatory On The Basis Of Fraud, Duress Or Mistake Pursuant To Family Code section 7576 . . . . .	11
	c.	Challenge By Nonsignatory Pursuant to Family Code section 7577 . . . . .	12
	6.	Recognition Of Out-Of-State Voluntary Declaration . . . . .	13
C.		Section 7611 Rebuttable Presumptions . . . . .	13
	1.	Establishing The Presumptions . . . . .	13
	a.	Marital Presumptions . . . . .	13
	b.	Holdout Presumption . . . . .	14
	2.	Rebutting The Presumptions . . . . .	15
	a.	The Presumptions Are Not Necessarily Rebutted By Proof That The Presumed Father Is Not The Biological Father - <i>In re Nicholas H.</i> . . . . .	15
	b.	If There Are Two Or More Rebuttable Presumptions, The Weightier Presumption Will Control . . . . .	16
	3.	The Presumptions Are Applied On A Gender Neutral Basis . . . . .	18
	a.	<i>Elisa B. v. Superior Court (Emily B.)</i> . . . . .	18
	4.	The Presumptions Are Applicable In All Types Of Cases . . . . .	20
D.		More Than Two Persons May Be Parents Of A Child . . . . .	20
	1.	2014 Legislative Amendment . . . . .	20
	2.	Family Code section 7612(c) . . . . .	21
	3.	Applies To Preserve Existing Parent-Child Relationship . . . . .	21
	a.	<i>In re Donovan L.</i> . . . . .	21
	b.	<i>Martinez v. Vaziri</i> . . . . .	22
E.		Parentage By Equitable Estoppel . . . . .	22
	1.	Applies Only If The Alleged Father Knows The Truth That He Is Not Biologically Related To The Child . . . . .	23
	2.	Does Not Apply If The Alleged Father Believes He Is The Child's Biological Father . . . . .	24
F.		Genetic Testing . . . . .	25
	1.	Use Of Genetic Testing . . . . .	25
	a.	Refusal To Submit To Court-Ordered Blood And Genetic Testing . . . . .	26
	b.	Types Of Genetic Tests . . . . .	26
	c.	Genetic Test Results . . . . .	27
	d.	Genetic Test Results Are Admissible Only Upon Laying A Foundation As To Their Authenticity And Accuracy . . . . .	28

G.	Assisted Reproduction . . . . .	29
1.	Rights And Obligations Of The Intended Parent . . . . .	29
2.	Rights And Obligations Of The Semen Donor . . . . .	30
3.	Rights And Obligations Of The Ova Donor . . . . .	31
4.	Forms To Conform With The Requirements Of Family Code section 7613 . . . . .	31
H.	Promise To Furnish Support . . . . .	32
III.	THE PARENTAGE ACTION . . . . .	33
A.	How A Parentage Action May Be Brought . . . . .	33
1.	Actions May Be Brought In Proceedings Not Under The Family Code . . . . .	33
a.	Actions May Be Brought By The Local Child Support Agency . . . . .	33
b.	Actions May Be Brought In Dependency Proceedings . . . . .	33
c.	Actions May Be Brought Under The Uniform Interstate Family Support Act (UIFSA) . . . . .	34
d.	Actions May Be Brought Under The Domestic Violence Prevention Act . . . . .	34
e.	Actions May Be Brought Under The Probate Code . . . . .	34
2.	Actions May Be Brought In Proceedings Under The Family Code . . . . .	35
a.	To Establish Parentage . . . . .	35
b.	To Establish Non-Parentage . . . . .	36
c.	When There Is A Presumed Father And Another Man Claiming Paternity . . . . .	36
(1)	<i>Dawn D. v. Superior Court (Jerry K.)</i> . . . . .	36
(2)	<i>Craig L. v. Sandy S.</i> . . . . .	37
d.	To Determine A Mother And Child Relationship . . . . .	38
B.	When The Action May Be Brought . . . . .	38
1.	No Statute Of Limitations . . . . .	38
2.	Before Birth . . . . .	38
C.	Jurisdiction And Venue . . . . .	38
1.	Jurisdiction . . . . .	38
2.	Venue . . . . .	39
D.	Notice Of The Parentage Action . . . . .	39
1.	Notice To Respondents . . . . .	39
2.	Notice To Non-Parties . . . . .	39
3.	Notice To The Child . . . . .	40
E.	Pendente Lite Orders . . . . .	40
1.	Child Support . . . . .	40

	a.	Payment Of Support .....	40
	b.	Limitation On Discovery Of Financial Information . . .	41
	2.	Custody And Visitation .....	42
	3.	Attorney Fees .....	42
F.		Trial Issues .....	42
	1.	Right To Jury Trial? .....	42
	2.	Burden Of Proof .....	43
	3.	Defenses .....	43
	a.	Legal Defenses .....	43
	b.	Factual Defenses .....	45
	4.	Confidentiality Of Hearing And Records .....	46
	5.	Display Of Child .....	46
	6.	Attorney Fees .....	46
IV.		THE PARENTAGE JUDGMENT .....	48
	A.	Effect Of A Judgment .....	48
	1.	Determinative For All Purposes .....	48
	2.	May Be Challenged By A Child Not A Party To The Action .....	49
	B.	Provisions And Orders .....	49
	C.	Change Of Name Of Child/Amending Birth Certificate .....	49
	D.	Enforcement And Modification Of The Judgment .....	50
	E.	Setting Aside Or Vacating Judgment Of Parentage .....	50
	1.	Time Period For Bringing Motion .....	50
	2.	Genetic Testing In Support Of The Motion .....	51
	3.	Conditions For Granting Motion .....	51
	4.	Conditions For Denying Motion .....	52
	5.	Support Orders Vacated/No Right Of Reimbursement .....	52
		TABLE OF AUTHORITIES .....	53

**FOR A COMPLETE COPY OF THIS  
PARENTAGE LITIGATION REFERENCE GUIDE  
SEND EMAIL REQUEST TO:**

**[LAW@GSCHWARTZ.COM](mailto:LAW@GSCHWARTZ.COM)**