

1 (Firm)  
2 BY: (Attorney) CSB#  
3 Address XXXXXXX  
4 Phone XXXXXXX  
5 Fax XXXXXXX

6  
7 Attorney for (FATHER), FATHER

8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
**IN AND FOR THE COUNTY OF X**  
**SITTING AS THE JUVENILE COURT**

In the matter of:	)	CASE NO.
	)	
(CHILD)	)	NOTICE OF MOTION AND MOTION
	)	FOR BLOOD TEST TO DETERMINE
	)	PATERNITY PURSUANT TO
	)	FAMILY CODE §7541 AND §7551
	)	
minor.	)	DATE:
	)	TIME: 10:30 A.M.
_____ )		DEPT.:

**TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:**

The father, (Father), hereby moves this court for an order for a blood test to determine paternity pursuant to Family Code Sections 7541 and 7551. It is requested that this motion be set for the date currently set for the pre-trial conference set for X, 2004 at 10:30 a.m., in Department X of the above named courthouse.

///

///

///

1 Said motion will be made on this notice, on the attached motion, and on all  
2 pleadings, records, and papers on file and on the Declaration of (Father), attached hereto  
3 and filed herewith.  
4

5 DATED: \_\_\_\_\_  
6 \_\_\_\_\_

7 Attorney for FATHER  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

1 **(Firm)**  
2 **BY: (Attorney) CSB#**  
3 **Address XXXXXXX**  
4 **Phone XXXXXXX**  
5 **Fax XXXXXXX**

6  
7 **Attorney for (FATHER), FATHER**

8 **SUPERIOR COURT OF CALIFORNIA**  
9 **COUNTY OF XXXXXXX**  
10 **JUVENILE DIVISION**

11 **In re the Matter of:** ) **Case No.: XXXXXXX**  
12 **(CHILD)** )  
13 **Minor.** ) **DECLARATION OF (FATHER) IN**  
14 ) **SUPPORT OF MOTION FOR ORDER**  
15 ) **FOR BLOOD TEST**  
16 ) **DATE:**  
17 ) **TIME: 10:30 A.M.**  
18 ) **DEPT.: 130**

19 I, (Father), state and declare the following:

- 20 1. I have been named as the presumed father in the above referenced case  
21 because the child was born during my marriage to the mother. However, I  
22 was incarcerated during the mother's pregnancy with the exception of a short  
23 period of time between X, 2003 and X, 2003.
- 24 2. I have significant doubt about whether I am truly the father of the above  
25 referenced child.
- 26 3. At the last court proceeding the mother indicated that the father of the child  
27 could possibly be "J.R."
- 28

1 4. I have signed the attached JV-505 form requesting that a paternity test be  
2 done.

3 5. I do not have the financial resources to pay for a blood test on my own.  
4 Beyond this I would still need the court's permission to have blood drawn  
5 from the child. This is necessary in order to conduct a paternity test.  
6

7  
8 I, declare under penalty of perjury under the laws of the State of California, that the  
9 foregoing is true and correct to the best of my knowledge and that this declaration was  
10 signed at XXXXXX, California.  
11

12  
13 DATED: \_\_\_\_\_  
14 \_\_\_\_\_ (FATHER)  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

1 **(Firm)**  
2 **BY: (Attorney) CSB#**  
3 **Address XXXXXXX**  
4 **Phone XXXXXXX**  
5 **Fax XXXXXXX**

6 **Attorney for (FATHER), FATHER**

7  
8 **SUPERIOR COURT OF CALIFORNIA**  
9 **COUNTY OF X**  
10 **JUVENILE DIVISION**

11 **In re the Matter of:**

12  
13 **(CHILD)**

) **Case No.:**

)  
) **POINTS AND AUTHORITIES IN**  
) **SUPPORT OF MOTION FOR ORDER**  
) **FOR BLOOD TEST**

)  
) **DATE:**

) **TIME: 10:30 A.M.**

) **DEPT.:**  
)

14  
15  
16  
17  
18  
19 **STATEMENT OF FACTS**

20  
21 The child, (Minor) was born on X, 2004. According to the jurisdictional report the  
22 child was born at thirty-nine and three quarter weeks gestation. This would put the  
23 mother's estimated date of conception at X, 2003. According to page four of the  
24 jurisdictional report (father) was paroled on X, 2003 and returned to custody on X, 2003.  
25 This makes it unlikely that he is the biological father of the child.  
26  
27  
28

1 **LAW AND ARGUMENT**

2 **I.**

3 **ORDERING A PATERNITY TEST IS APPROPRIATE UNDER THE**  
4 **CIRCUMSTANCES OF THIS CASE**

5  
6 Family Code Section 7540 contains the conclusive presumption for a wife  
7 cohabitating with her husband. Under §7541(b) the husband can file a noticed motion  
8 for a blood test not later than two years from the child’s date of birth. Furthermore,  
9 Family Code §7551 states as follows:

10 “In a civil action or proceeding in which paternity is a relevant fact, the court may  
11 upon its own initiative or upon suggestion made by or on behalf of any person  
12 who is involved, and shall upon motion of any party to the action or proceeding  
made at any time so as not to delay the proceedings unduly, order the mother,  
child, and the alleged father to submit to genetic tests.”

13  
14 In the instant case the father has twice requested a court order for a blood test. On X,  
15 2004, this court denied the request indicating that the father was free to take a blood  
16 test on his own. However, even assuming Mr. L. had the resources to pay for his own  
17 blood test it is still necessary for the child to submit to a blood test in order to confirm or  
18 dispute paternity. A court order would be necessary to make this child available for  
19 such a blood test.

20  
21 In the instant case the child has a strong interest in learning who his true  
22 biological father is. Beyond this, if indeed the biological father is found to be another  
23 individual, it is entirely possible that this individual will be capable of providing for the  
24 child immediately or in the near future. While County Counsel is reluctant to have the  
25 Department bear the minimal expense of paternity testing, the possibility exists that  
26 instead the County will bear the exorbitant cost of maintaining this child in foster care  
27  
28

1 through the termination of dependency which could be several months or several years.

2 In making this decision it is important to consider the practice tip contained in  
3 California Juvenile Court Practice and Procedure (2004) Seiser & Kumli §2.60[5]. That  
4 authority states as follows:

5  
6 **“Don’t be too eager to find just anyone the father.** Just as it is important to  
7 not delay the effort to determine the identity of the father, it is also important to  
8 not be so eager to find someone to be the father that paternity is found too  
9 quickly and the true father of the child is overlooked. This sometimes happens  
10 when testimony, rather than testing is used to determine paternity. Testimony is  
11 at times sufficient. In other cases testing should be required. If paternity findings  
12 in dependency cases are to be meaningful and not subject to later dispute when  
13 another possible father emerges, all parties must ensure that the process used  
14 by the court to determine paternity in each case is as thorough as the  
15 circumstances of the case dictate, and as accurate as reasonably possible.”

12  
13 **CONCLUSION**

14 For the reason stated above it is respectfully requested that this court order the  
15 father, (Father), and the child submit to a blood test for the purpose of accurately  
16 determining paternity.  
17

18  
19  
20 *Respectfully submitted,*

21  
22  
23 DATED: \_\_\_\_\_

24 ATTORNEY for Father

**PROOF OF SERVICE**

**Case Name: IN RE: (MINOR)**  
**Court: COUNTY SUPERIOR COURT; JUVENILE DIVISION**  
**Case No.:**

I am a resident of the United States and of the State of California. I am employed in the County of . My business address is . My business telephone number is ; fax number is . I am over the age of eighteen years. I am not a party to the within action or proceeding. On, X, 2004, I served the following document(s):

1. **NOTICE OF MOTION & MOTION FOR BLOOD TEST**
2. **P&A IN SUPPORT OF MOTION FOR ORDER FOR BLOOD TEST**
3. **DECLARATION OF (FATHER) IN SUPPORT OF MOTION FOR ORDER FOR BLOOD TEST**
4. **STATEMENT REGARDING PATERNITY**

X by placing, or causing to be placed, a true copy thereof enclosed in a sealed envelope with postage thereon fully prepaid, in the United States mail at , California, addressed as set forth below. (CCP §1012, 1013, & 1013(a))

**COUNTY COUNSEL**

**ATTORNEY AT LAW**

X by personally delivering, or causing to be delivered, a true copy thereof to the person(s) at the addresses set forth below. (CCP §1011)

**ATTORNEY AT LAW**

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed on X, 2004 at , California.