

▼ **A Shield, Not a Sword**

Minnesota's Parentage Act, found at Minn. Stat. §257.55, provides that a man is presumed to be the biological father of a child if he and the child's biological mother are or have been married to each other and the child is born during the marriage, or within 280 days after the marriage is terminated. Only the child, the child's biological mother, or a man presumed to be the child's father have standing to challenge the presumed father and child relationship. The paternity action must be brought within a strictly and specifically limited time, but a defensive denial of paternity, even when asserted to rebut a paternity presumption, is not subject to these time limitations. *State of Georgia ex rel. Brooks v. Braswell*, 474 N.W.2d 346, 349-50 (Minn. 1991). But a defensive denial of paternity asserted by whom? Can a daughter of her deceased father in a probate proceeding make such an assertion? Two daughters were born to a woman, one during her marriage and one some 247 days following her divorce. The woman's former husband remarried and died intestate more than 50 years after the birth of his former wife's second daughter. In the probate proceeding to identify heirs, the decedent's surviving second spouse identified both daughters as heirs. The first daughter objected, claiming that the second daughter was not decedent's child. Citing the three-year statute of limitations under Minn. Stat. §257.57, the district court declined to hear the evidence. The Court of Appeals reversed, ruling that because the case at bar was not a paternity action, but a probate proceeding in which a party sought to defensively rebut a presumption of paternity, the statute of limitations did not apply. The Minnesota Supreme Court reversed, stating that a denial of paternity is defensive only when asserted by a presumed or putative father in a suit seeking to enforce against him a legal obligation that exists by reason of the contested father-child relationship. Therefore, decedent's daughter had no standing in probate court and the statute of limitations under Minn. Stat. §257.57 applied. *In re: Estate of: Leonard Earl Jotham, Deceased*, A05-438 (Minn. 10/12/06)

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Have a bit of sage advice for a newcomer to your area of practice? Send us your "tips & traps"! Your colleagues will be grateful. Email suggestions, cautions, and tales of woe to bb@mnbar.org

▲ **Pensions & Divorce**

Having trouble getting the opposing party in a divorce to either provide accurate pension information or sign an authorization releasing her pension information to you? No problem. You don't actually need her cooperation. All you need to do is read and follow Minn. Stat. §356.49. Section 356.49 requires public and private pension plan administrators to release private or confidential retirement plan data to the court, either party, their attorneys, and an actuary if you send the administrator a copy of the petition and a copy of the affidavit of service showing the divorce has been started and the petition served on the other party. You must cite the statute in your requesting letter. The plan administrator must provide you with information necessary to calculate the present value of the participant's benefits or rights. The statute covers retirement plans in which the participant is currently and formerly enrolled. This statute is especially helpful in divorces where retirement benefits are the major or only asset.



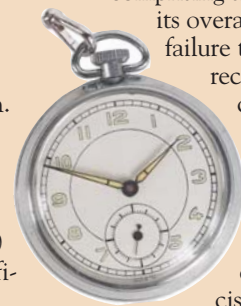
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▼ **Unemployment Appeals**

A party aggrieved by a ruling by an unemployment compensation judge of the Department of Employment and Economic Development (DEED) must make a timely appeal for reconsideration by the same jurist or lose the option of further appeal through the courts. Under Minn. Stat. §268.105 subd. 2, passed by the Legislature in 2005, a party must seek such relief within 30 days. This is a significant departure from past practice, wherein the appellate process required an appeal to the commissioner of DEED or, in more recent years, the senior unemployment review judge, a representative of the commissioner. Following the decision on reconsideration, an aggrieved party may appeal, within 30 days, to the Minnesota Court of Appeals and there-

after, by petition for review, to the state Supreme Court. On average, some 169,000 Minnesota residents annually file unemployment compensation claims, and the Court of Appeals has had a fairly stable pool of about 125 unemployment compensation cases, comprising about 5 percent of its overall caseload. The



failure to timely seek reconsideration precludes further appeal through the court system. Yet the appellate process may often be an exercise in futility. In the past, the commissioner, and thereafter the commissioner's representative, generally upheld the decisions of unemployment compensation judges and the appellate court tends to uphold the administrative rulings in more than 90 percent of the cases.

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