

## Instructions & Forms for Filing a Mistaken Paternity Case

These instructions explain the steps to ask a judge to terminate your parental rights if you were mistakenly named as a child's legal father and you meet all the legal requirements (discussed below). **Each step includes a link to the form or forms needed for that step.**

**Have you read the Frequently Asked Questions and related articles?**

These instructions are part of this TexasLawHelp Toolkit: **[I want to terminate my rights. I mistakenly thought I was the genetic father. \(https://texaslawhelp.org/family-divorce-children/paternity/toolkit/i-want-terminate-my-rights-i-mistakenly-thought-i-was-genetic-father\)](https://texaslawhelp.org/family-divorce-children/paternity/toolkit/i-want-terminate-my-rights-i-mistakenly-thought-i-was-genetic-father)** [1] Before getting started, read the **Frequently Asked Questions** and **Articles** included in the Toolkit.

**WARNING!** These instructions provide general information, not legal advice. It's a good idea to talk with a lawyer about your particular situation.

**You can print these instructions to use as a checklist.**

### **Step 1: Meet the legal requirements.**

You can ask a court to terminate your parental rights based on mistaken paternity **only if**:

- **You are not the child's genetic father.**
- **AND** You are mistakenly named as the child's **legal** father because you either:
  - Signed an **Acknowledgement of Paternity** without first getting genetic testing because you mistakenly believed you were the child's genetic father. **OR**
  - A Texas judge made a court order naming you as the child's legal father without getting genetic testing. You did not contest parentage (argue you were not the father) because at the time the judge made the order you mistakenly believed you were the child's genetic father.
- **AND** Misrepresentations led you to conclude that you were the child's genetic father.
- **AND** You did not adopt the child. Click here to chat.

- **AND** You did not agree to the child being conceived through assisted reproduction.
- **AND** You are not the child's intended father based on a court-validated gestational agreement.
- **AND** You filed before the **deadline**. (You must file your Petition by the **second anniversary** of the date you discover you are not the child's genetic father.)

□ **Step 2: Fill out the starting forms.**

Fill out the following **starting forms**:

- **[Petition to Terminate the Parent-Child Relationship Based on Mistaken Paternity \(https://texaslawhelp.org/form/petition-terminate-parent-child-relationship-based-mistaken-paternity\)](https://texaslawhelp.org/form/petition-terminate-parent-child-relationship-based-mistaken-paternity)** [2]

This form (called the Petition) asks the judge to terminate your parental rights. The Petition tells the respondent(s) what orders you want the judge to make. Print your answers using blue or black ink. Do not leave blanks.

**Who is the petitioner?** You are the petitioner—the person asking the court to terminate your parental rights. You must fill out and sign the Petition. No one else needs to sign the Petition.

**Who is the respondent?** The child's mother, the child's alleged father (if any), and anyone with a court-ordered relationship with the child must be listed as a respondent.

Fill out these additional **starting forms** if required for your case:

- **[Exhibit: Petitioner's Supporting Affidavit \(https://texaslawhelp.org/form/exhibit-petitioners-supporting-affidavit-mistaken-paternity\)](https://texaslawhelp.org/form/exhibit-petitioners-supporting-affidavit-mistaken-paternity)** [3]  
(required for all cases)
- **[Exhibit: Out-of-State Party Declaration \(https://texaslawhelp.org/sites/default/files/fp\\_osp\\_302\\_ex\\_out\\_of\\_state\\_party\\_dec\\_final\\_0.pdf\)](https://texaslawhelp.org/sites/default/files/fp_osp_302_ex_out_of_state_party_dec_final_0.pdf)** [4]  
(required **only** if you or another person named as a party in your case lives outside of Texas)
- **[Civil Case Information Sheet \(https://texaslawhelp.org/sites/default/files/pr-gen-116\\_civil\\_case\\_information\\_sheet.pdf\)](https://texaslawhelp.org/sites/default/files/pr-gen-116_civil_case_information_sheet.pdf)** [5] (NOTE: the

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Texas Supreme Court has repealed the rule requiring the civil case information sheet (<https://www.txcourts.gov/media/1442977/189163.pdf>) [6], so you may not need this form).

- **Information on Suit Affecting the Family Relationship ([https://texaslawhelp.org/sites/default/files/vs\\_165\\_rev\\_07-2017.pdf](https://texaslawhelp.org/sites/default/files/vs_165_rev_07-2017.pdf)) [7]** (required for all cases)
- **Statement of Inability to Afford Payment of Court Costs ([https://texaslawhelp.org/sites/default/files/tx-pr-pay-112\\_scot\\_statement\\_of\\_inability\\_to\\_pay\\_court\\_costs.pdf](https://texaslawhelp.org/sites/default/files/tx-pr-pay-112_scot_statement_of_inability_to_pay_court_costs.pdf)) [8]** (use **only** if you cannot afford to pay the filing fee for your case) Call the clerk's office to learn the filing fee for your case. Learn more here: **Court Fees and Fee Waivers (<https://texaslawhelp.org/article/court-fees-fee-waivers>) [9]**.

**Step 3: Have your starting forms reviewed.**

Although not required, it's a good idea to have a family law lawyer review your completed forms.

You can hire a family law lawyer **just** to review your forms. This is called **limited scope representation**. You can then finish your case yourself. You may also be able to talk with a lawyer for free at a legal clinic. If you need help finding a lawyer, you can:

- Use our **Legal Help Finder (<https://texaslawhelp.org/legal-help/legal-help-finder>) [10]** to search for a lawyer referral service, legal aid office or self-help center in your area.
- Check our **Legal Clinic Calendar (<https://texaslawhelp.org/legal-clinic-calendar>) [11]** for free legal clinics in your area.
- Use **Ask a Question (<https://texaslawhelp.org/ask-question>) [12]** to chat online with a lawyer or law student.

**Step 4: Sign your forms in front of notary** [Click here to chat.](#)

Sign the following completed forms in front of a notary public:

- **Petition to Terminate the Parent-Child Relationship Based on Mistaken Paternity (<https://www.texaslawhelp.org/node/261>) [13]**
- **Exhibit: Petitioner's Supporting Affidavit (<https://texaslawhelp.org/form/exhibit-petitioners-supporting-affidavit-mistaken-paternity>) [3]**

**Step 5: Make copies.**

- Make enough copies of your completed Petition to Terminate the Parent-Child Relationship Based on Mistaken Paternity and Exhibits for you and each respondent or governmental entity to have one copy.
- Make copies of the Statement of Inability to Afford Payment of Court Costs if you are asking the court to waive court costs.
- You do not need copies of the Civil Case Information Sheet or the Information on Suit Affecting the Family Relationship.

**Step 6: File (turn in) your completed starting forms.**

Select the county to file your Petition. Choose either:

- The county where the child lives if there have never been any court orders about the child. **OR**
- The county where the last order was signed if a court order concerning the child has been signed by a judge (like a child support order).

You need to find out if your county has **standing orders** (<https://texaslawhelp.org/article/standing-orders>) [14]. If it does, you will need to attach a copy of the standing orders to your petition.

File (turn in) your completed Petition and other starting forms.

- To file your forms **online**, go to **E-File Texas (<https://efile.txcourts.gov/ofswab>) [15]** and follow the instructions.
- To file your forms **in person**, take your Petition and additional starting forms (and copies) to the district clerk's office, usually located in the county courthouse.
  - Take the copies with you to the clerk's office. [Click here to chat.](#)

- Ask the clerk if there is a local standing order that you need to follow or attach to your Petition.
- Ask the clerk if there are local rules or procedures you need to know about for your case.
- Pay the filing fee (or file your completed Statement of Inability to Afford Payment of Court Costs if you cannot afford the fee).
- The clerk will write your “Cause Number” and “Court Number” at the top of the first page of your Petition. (Write these numbers at the top of any document you file in your case.)
- The clerk will “file-stamp” your copies with the date and time. The clerk will keep the original and return your copies.

**Important:** File before the 2-year deadline. You must file your Petition by the **second anniversary** of the date you discover you are not the child’s genetic father. If you don’t, you will not be able to use this statute to end your parental relationship or child support order.

**Step 7: Set the pretrial hearing.**

There will be at least two court hearings in a mistaken paternity case. The first hearing is called the “pretrial hearing.” The judge may order genetic testing at the pretrial hearing.

Ask the court clerk how to set your case for a pretrial hearing.

Follow the clerk’s instructions. Complete the **Notice of Pretrial Hearing** (<https://www.texaslawhelp.org/node/265>) [16] form.

**Step 8: Give legal notice.**

You must notify the other people listed as parties (the respondents) in your Petition to Terminate the Parent-Child Relationship Based on Mistaken Paternity that you have asked the court to terminate your parental rights. You must also give them legal notice of the date of the pretrial hearing.

There are three ways to give legal notice:

- a. Service of Citation by Personal Service, or
- b. Waiver of Service, or

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c. Answer

a. **Service of Citation by Personal Service**

- Tell the clerk you want to have one or more of the respondents named in your Petition served **in person**. This means a sheriff, constable, or private process server will deliver the initial court papers to each respondent in person.
- Pay the issuance fee (or file your completed Statement of Inability to Afford Payment of Court Costs if you cannot afford the fee).
- The clerk will print a form called a “citation” for each respondent you would like served. The citation tells the respondent that you have filed a Termination of Parental Rights Based on Mistaken Paternity case. The citation also tells the respondent that unless he or she files an answer with the court, you will be able to finish your case by default (without the respondent). The clerk will attach a copy of your Petition to the citation. The citation with a copy of your Petition, Exhibits, and Notice of Pretrial Hearing attached are the “**initial court papers**” that must be served on each respondent by a constable, sheriff, or private process server.
- It is your responsibility to arrange for each respondent to be served with the initial court papers by a constable, sheriff, or private process server. You **CANNOT** serve the initial court papers yourself.
- Send the initial court papers to a constable, sheriff, or private process server **in the counties where each individual respondent can be served**. Include the service fee or a file-stamped copy of your Statement of Inability to Afford Payment of Court Costs. (Call first to learn the fee.) Also include a self-addressed and stamped envelope.
- The constable, sheriff, or private process server will deliver the initial court papers to the respondent in person. The constable, sheriff, or private process server will fill out a form called a “Return of Service.” It tells the court when and where the respondent was served. The completed Return of Service is proof the respondent was served. **The respondent will not have to sign anything.**
- The Return of Service must be filed with the court. The constable,  
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sheriff, or private process server may file it themselves or they may give the completed Return of Service form to you. If they give it to you, make a copy and file the original at the courthouse.

#### b. Waiver of Service

- You may also give legal notice by having a respondent sign a **Waiver of Service (https://texaslawhelp.org/form/respondents-waiver-service-only-specific-waiver-mistaken-paternity) [17]** in front of a notary. If the respondent signs a Waiver of Service, the respondent gives up his or her right to be served with the citation, but does not give up his or her right to know what will happen in the case. The respondent will be entitled to notice of all hearings in the case.
- Give the respondent a file-stamped copy of your Petition, Exhibits, Notice of Pretrial Hearing, and the **Respondent's Waiver of Service (https://texaslawhelp.org/form/respondents-waiver-service-only-specific-waiver-mistaken-paternity) [17]** form. The respondent must fill out the Respondent's Waiver of Service form, sign it in front of a notary, and file it in the clerk's office. **The Waiver of Service must be signed after the Petition is filed. If it's signed before you file the Petition, it is void and must be redone.**

#### c. Answer

- You may also give legal notice by having a respondent sign an Answer. If a respondent signs and files an Answer, the respondent gives up his or her right to be served with the citation, but does not give up his or her right to know what will happen in the case. The respondent will be entitled to notice of all hearings in the case.
- Give the respondent a file-stamped copy of your Petition, Exhibits, Notice of Pretrial Hearing, and the **Respondent's Original Answer (https://texaslawhelp.org/form/respondents-original-answer-mistaken-paternity) [18]** form. The respondent must fill out the Respondent's Original Answer form, sign it, and file it in the clerk's office.

**What if I'm having trouble serving a respondent?** For more information read this article: **How to Serve Initial Court Papers (Family Law)** [Click here to chat.](#)

**(<https://texaslawhelp.org/article/how-serve-initial-court-papers-family-law>) [19]**. You can also use **Ask a Question** (<https://texaslawhelp.org/ask-question>) [12] to chat with a law student or lawyer online.

**Step 9: Notify the Office of the Attorney General (if applicable).**

Has the child ever received TANF or Medicaid?

- If NO, skip this step.
- If YES, you must send a file-stamped copy of your Petition to the Office of the Attorney General (OAG) Child Support Division (and be able to prove that you did so).
  - **Send your Petition by Email** - You can scan a file-stamped copy of your Petition and email it. Find the email address for the OAG child support office in the county where your case is filed here: **Email Addresses for Child Support Offices** (<https://texasattorneygeneral.gov/cs/service-of-citation-notice-directory>) [20]. Write the cause number and the county where you filed your case in the subject line of the email. Print a copy of your email. This is your proof. Bring it with you when you go to court to finish your case.
  - **Send your Petition by Certified Mail Return Receipt Requested** - Or, you can mail a copy of your Petition by certified mail return receipt requested. The post office has the forms for certified mail return receipt requested. Find the mailing address for the OAG child support office in the county where your case is filed here: **Mailing Addresses for Child Support Offices** ([https://www.texasattorneygeneral.gov/apps/cs\\_locations](https://www.texasattorneygeneral.gov/apps/cs_locations)) [21]. The post office will give you a receipt when you mail the Petition. The OAG will sign the return receipt (often called the “green card”) and mail it back to you. This is your proof. Bring the receipt and the return receipt (green card) with you when you go to court to finish your case.

**Step 10: Prepare for the pretrial hearing.**

- If possible, hire a lawyer just to help you prepare for the pretrial hearing. Talk to the lawyer about the special rules you will need to know to present

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your evidence to the court.

- Gather your evidence to convince the judge that there is a strong possibility that you are not the child's genetic father. (This might include things like private genetic testing that excludes you as the child's father.)
- Complete the **Pre-Trial Order in Mistaken Paternity Case** (<https://texaslawhelp.org/form/pre-trial-order-mistaken-paternity-case>) [22].

You will ask the judge to sign this form at the pretrial hearing. Fill it out completely except for the judge's signature.

Read the article: **Tips for the Courtroom** (<https://texaslawhelp.org/article/tips-courtroom>) [23] for more information about going to court.

**Step 11: Attend the pretrial hearing.**

If the judge agrees that there is a strong possibility you are not the child's genetic father, the judge will order genetic testing by a controlled lab for you and the child. The judge will also order you or one of the respondents to pay for the genetic testing.

If the judge does NOT determine there is a strong possibility that you are not the child's genetic father, no testing will be ordered, and your case will be dismissed. If your case is dismissed, you will still be the child's legal father, and any orders you may have about the child will continue.

**Step 12: Get genetic testing, if ordered.**

Read the Pretrial Order that the judge signed at your pretrial hearing to learn where and when to go for genetic testing.

If the judge ordered you to pay for the testing, call the lab to learn the cost of the testing.

**Step 13: Set your case for final hearing.** [Click here to chat.](#)

If the court did not reset your case at the pretrial hearing, you will need to set your case for a final hearing.

Read this article to learn more: **[How to Set a Contested Final Hearing \(Family Law\)](https://texaslawhelp.org/article/how-set-contested-hearing-family-law-case)** (<https://texaslawhelp.org/article/how-set-contested-hearing-family-law-case>) [24].

**Step 14: Fill out the ending forms.**

Fill out the ending forms.

- **[Order Terminating the Parent-Child Relationship Based on Mistaken Paternity](https://www.texaslawhelp.org/node/266)** (<https://www.texaslawhelp.org/node/266>) [25]
- **[Order Denying Petition to Terminate the Parent-Child Relationship Based on Mistaken Paternity](https://texaslawhelp.org/form/order-denying-petition-terminate-parent-child-relationship-based-mistaken-paternity)** (<https://texaslawhelp.org/form/order-denying-petition-terminate-parent-child-relationship-based-mistaken-paternity>) [26]
- If applicable:
  - **[Exhibit - Possession Order - Mistaken Paternity](https://texaslawhelp.org/form/exhibit-possession-and-access-order-mistaken-paternity)** (<https://texaslawhelp.org/form/exhibit-possession-and-access-order-mistaken-paternity>) [27]
- **[Order to Employer to Terminate Withholding for Support](https://texaslawhelp.org/sites/default/files/fm-iw-204_order_to_employer_to_terminate_withholding_for_support.pdf)** ([https://texaslawhelp.org/sites/default/files/fm-iw-204\\_order\\_to\\_employer\\_to\\_terminate\\_withholding\\_for\\_support.pdf](https://texaslawhelp.org/sites/default/files/fm-iw-204_order_to_employer_to_terminate_withholding_for_support.pdf)) [28] (if you believe the court will find you are not the child's genetic father and you do not owe any child support) or **[Order to Employer to Withhold for Support](https://texaslawhelp.org/sites/default/files/fm-iw-200_income_withholding_order_english.pdf)** ([https://texaslawhelp.org/sites/default/files/fm-iw-200\\_income\\_withholding\\_order\\_english.pdf](https://texaslawhelp.org/sites/default/files/fm-iw-200_income_withholding_order_english.pdf)) [29] (if you owe child support).

Read the article: **[Tips for the Courtroom](https://texaslawhelp.org/article/tips-courtroom)** (<https://texaslawhelp.org/article/tips-courtroom>) [23] for more information about going to Court.

**Step 15: Have your ending forms reviewed.**

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Although not required, it's a good idea to have a family law lawyer review your completed forms.

You can hire a family law lawyer **just** to review your forms. This is called “**limited scope representation.**” You can then finish your case yourself. You may also be able to talk with a lawyer for free at a legal clinic. If you need help finding a lawyer, you can:

- Use our **[Legal Help Finder \(https://texaslawhelp.org/legal-help/legal-help-finder\)](https://texaslawhelp.org/legal-help/legal-help-finder)** [10] to search for a lawyer referral service, legal aid office or self-help center in your area.
- Check our **[Legal Clinic Calendar \(https://texaslawhelp.org/legal-clinic-calendar\)](https://texaslawhelp.org/legal-clinic-calendar)** [11] for free legal clinics in your area.
- Use **[Ask a Question \(https://texaslawhelp.org/ask-question\)](https://texaslawhelp.org/ask-question)** [12] to chat online with a lawyer or law student.

#### **Step 16: Go to the final hearing.**

Bring these papers with you to the courthouse on the day of your final hearing:

- A file-stamped copy of your *Petition to Terminate the Parent-Child Relationship Based on Mistaken Paternity*.
- A file-stamped copy of the *Return of Service* form showing when and where each respondent was served.
- A completely filled out *Order Terminating the Parent-Child Relationship Based on Mistaken Paternity* **signed by you.**
- A completely filled out *Order Denying Petition to Terminate the Parent-Child Relationship Based on Mistaken Paternity* **signed by you.**
- A completely filled out *Order to Employer to Terminate Withholding for Support* (if you believe the court will find you are not the child's genetic father and you do not owe any child support) **or** *Order to Employer to Withhold for Support* (if you owe child support).

#### **When you get to the courthouse, go to the clerk's office.**

- Ask the clerk if you need the court file or docket sheet (list of what has been filed in your case) and give the clerk your paperwork. [Click here to chat.](#)

- Sit down until the judge calls your case.
- When the judge calls your case, walk to the front of the courtroom and stand in front of the judge's bench. The judge will have you raise your right hand and swear to tell the truth. Make sure you know how to properly present your evidence to the court. The judge will:
  - Hear your testimony.
  - Review your evidence (including the lab results).
  - Hear the testimony and evidence offered by the other parties.
- The judge will listen to what you say and review your papers.
  - If the judge determines you are **not** the child's genetic father, the judge will sign the completed *Order Terminating the Parent-Child Relationship Based on Mistaken Paternity*.
  - If the judge determines you are the child's genetic father, the judge may sign the *Order Denying Petition to Terminate the Parent-Child Relationship Based on Mistaken Paternity* form.

**Step 17: File (turn in) the signed order or orders with the clerk.**

After the judge signs your orders, go back to the clerk's office.

- File (turn in) all orders signed by the judge. **Your case is NOT final until you do so.**
- Get a certified copy of all orders signed by the judge for yourself, the state disbursement unit, and if applicable, your employer from the clerk while you are there. The clerk may charge a fee for the certified copies.

**Step 18: After your case is finished.**

Follow these steps after your case is finished.

- Send a file-stamped copy of the *Order Terminating the Parent-Child Relationship Based on Mistaken Paternity* and any other orders signed by the judge to each respondent.
- Send a file-stamped copy of the *Order Terminating the Parent-Child Relationship Based on Mistaken Paternity* to each respondent.

*Relationship Based on Mistaken Paternity* and any other orders signed by the judge to the Texas State Disbursement Unit, P.O. Box 659791, San Antonio, TX 78265-9791.

- Give your employer a certified copy of the *Order to Employer to Terminate Withholding for Support*, **if** your employer is withholding support **and** you do NOT owe back child support.

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### Links

- [1] <https://texaslawhelp.org/family-divorce-children/paternity/toolkit/i-want-terminate-my-rights-i-mistakenly-thought-i-was-genetic-father>
- [2] <https://texaslawhelp.org/form/petition-terminate-parent-child-relationship-based-mistaken-paternity>
- [3] <https://texaslawhelp.org/form/exhibit-petitioners-supporting-affidavit-mistaken-paternity>
- [4] [https://texaslawhelp.org/sites/default/files/fp\\_osp\\_302\\_ex\\_out\\_of\\_state\\_party\\_dec\\_final\\_0.pdf](https://texaslawhelp.org/sites/default/files/fp_osp_302_ex_out_of_state_party_dec_final_0.pdf)
- [5] [https://texaslawhelp.org/sites/default/files/pr-gen-116\\_civil\\_case\\_information\\_sheet.pdf](https://texaslawhelp.org/sites/default/files/pr-gen-116_civil_case_information_sheet.pdf)
- [6] <https://www.txcourts.gov/media/1442977/189163.pdf>
- [7] [https://texaslawhelp.org/sites/default/files/vs\\_165\\_rev\\_07-2017.pdf](https://texaslawhelp.org/sites/default/files/vs_165_rev_07-2017.pdf)
- [8] [https://texaslawhelp.org/sites/default/files/tx-pr-pay-112\\_scot\\_statement\\_of\\_inability\\_to\\_pay\\_court\\_costs.pdf](https://texaslawhelp.org/sites/default/files/tx-pr-pay-112_scot_statement_of_inability_to_pay_court_costs.pdf)
- [9] <https://texaslawhelp.org/article/court-fees-fee-waivers>
- [10] <https://texaslawhelp.org/legal-help/legal-help-finder>
- [11] <https://texaslawhelp.org/legal-clinic-calendar>
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- [18] <https://texaslawhelp.org/form/respondents-original-answer-mistaken-paternity>

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- [19] <https://texaslawhelp.org/article/how-serve-initial-court-papers-family-law>
- [20] <https://texasattorneygeneral.gov/cs/service-of-citation-notice-directory>
- [21] [https://www.texasattorneygeneral.gov/apps/cs\\_locations](https://www.texasattorneygeneral.gov/apps/cs_locations)
- [22] <https://texaslawhelp.org/form/pre-trial-order-mistaken-paternity-case>
- [23] <https://texaslawhelp.org/article/tips-courtroom>
- [24] <https://texaslawhelp.org/article/how-set-contested-hearing-family-law-case>
- [25] <https://www.texaslawhelp.org/node/266>
- [26] <https://texaslawhelp.org/form/order-denying-petition-terminate-parent-child-relationship-based-mistaken-paternity>
- [27] <https://texaslawhelp.org/form/exhibit-possession-and-access-order-mistaken-paternity>
- [28] [https://texaslawhelp.org/sites/default/files/fm-iw-204\\_order\\_to\\_employer\\_to\\_terminate\\_withholding\\_for\\_support.pdf](https://texaslawhelp.org/sites/default/files/fm-iw-204_order_to_employer_to_terminate_withholding_for_support.pdf)
- [29] [https://texaslawhelp.org/sites/default/files/fm-iw-200\\_income\\_withholding\\_order\\_english.pdf](https://texaslawhelp.org/sites/default/files/fm-iw-200_income_withholding_order_english.pdf)

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