

## Establishing Paternity and Legitimation under Georgia Law

Georgia law establishes two distinct levels of recognition of the relationship between a father and a child born out of wedlock: paternity and legitimation. Paternity establishes who the biological father of the child is, and obligates the payment of child support; legitimation establishes the legal relationship (parental rights) with and to the child, and gives the father standing to request custody or visitation. The continuum of paternal rights is basically: paternity → legitimation → custodial/visitation rights.

### **↻THE ADMINISTRATIVE PROCESS↻**

#### A. Paternity

**Paternity:** Under Georgia law, paternity establishes the biological condition of being a father but does not establish the legal relationship of the father/child. Superior and state courts have concurrent jurisdiction in paternity proceedings. O.C.G.A. § 19-7-40(a). Paternity cases are not subject to a jury trial.

**Who may establish Paternity?** When parents are not married, a petition to establish the paternity of a child may be brought by:

(a) the child; (b) the mother of the child; (c) any relative in whose care the child has been placed; (d) the Department of Human Services (Division of Child Support Services) in the name of and for the benefit of a child for whom public assistance is received or in the name of and for the benefit of a child not the recipient of public assistance whose custodian has applied for services for the child; or (e) one who is alleged to be the father. O.C.G.A. § 19-7-43.

**Evidence of Paternity:** Evidence of paternity is the appearance of the name or SSN of the father, entered with his written consent on the birth certificate. This shall constitute a *prima facie* case of paternity establishment. The burden of proof shifts to the father to rebut such in a proceeding. O.C.G.A. § 19-7-46.1. In any case in which the paternity of a child or children has not been established, the court, either on its own motion or on the motion of any party, may order the mother, the alleged father, and the child or children to submit to genetic tests. O.C.G.A. § 19-7-43.

**Administrative Paternity Acknowledgment:** Fathers can administratively acknowledge their biological relationship with the child. The Paternity Acknowledgment Form (Vital Records Form 3940) may be completed at the hospital at the time of the birth of a child or later at the Georgia State Office of Vital Records. This form must be signed in the presence of a notary. The form is filed with the Georgia State Office of Vital Records.

By completing the Paternity Acknowledgment Form, the following benefits can occur:

1. The biological father's name gets added to the child's birth certificate.
2. Financial support may be received from the father.
3. Child may be eligible for Social Security benefits from the father.

What is the purpose of going through the voluntary process?

1. It is used to add a father to a child's birth record.
2. It can also be used in furtherance of efforts to legitimate the relationship between the father and child.
3. It is also a low cost method of furthering the process of establishing a father-child relationship.

**Note:** *Father's name gets added to the Putative Father Registry only when the father also submits a Putative Registry Registration form to the Georgia State Office of Vital Records.*

**Administrative Determination of Paternity:** If the child support agency (Division of Child Support Services) seeks to establish paternity through the Office of Administrative Hearings (OSAH), OSAH shall have the authority to adjudicate paternity pursuant Chapter 13 of Title 50 of the "Georgia Administrative Procedure Act"; however, the putative father may demand a trial in the superior court. The administrative determination shall have the same force and effect as a judicial decree. See O.C.G.A. § 19-7-40(b).

**Child Support:** Whether a man has been adjudicated by a court or voluntarily acknowledged paternity through the administrative process, he shall be legally liable for the support of the child in the same manner as he would if the child was born of a marriage. O.C.G.A. §19-11-14.

#### B. Legitimation

**Legitimation:** In Georgia, legitimation allows the biological father to be recognized by law as the legal father when a child is born out of wedlock. The superior and juvenile courts have concurrent jurisdiction in legitimation cases:

(1) when transferred to juvenile court by proper order from superior court; and (2) when a petition for legitimation is filed as to a child with respect to whom a dependency proceeding is pending in the juvenile court at the time the petition to legitimate is filed. If there is a demand by either parent for a jury trial as to child support after a petition for legitimation has been granted, then the case shall be transferred from juvenile to superior court for such jury trial. O.C.G.A. §§ 15-11-28(e) and 19-7-22.

## THE JUDICIAL PROCESS

**Determination of Paternity/Legitimation:** If paternity has not been established through the voluntary acknowledgment process, a single petition for paternity and legitimation may be filed any time after the birth of the child by the father, and include claims for visitation, parenting time or custody.

**Who may file for Legitimation?** Only the biological father of a child may file a judicial petition seeking to legitimate his child. The petition for legitimation may also include claims for visitation, parenting time or custody. O.C.G.A. §19-7-22. If the Department of Human Services (Division of Child Support Services) files a petition to establish paternity in the name of and for the benefit of a child for whom public assistance is received or whose custodian has applied for services for the child, the alleged father may assert a third-party action for the legitimation of the child. O.C.G.A. §§ 19-7-22 and 19-7-43.

**Where to file a Legitimation Petition?** The petition is filed in the county of the residence of the child's mother or other party having legal custody or guardianship of the child. However, if the mother or other party having legal custody or guardianship of the child resides outside of Georgia or cannot be found within the state, the petition may be filed in the county of the father's residence or the county of the child's residence. A legitimation petition may be filed in the juvenile court of the county in which a dependency proceeding regarding the child is pending. If there is a pending petition for adoption of the child, the father must file the legitimation petition in the county in which the adoption petition is filed. O.C.G.A. §§ 15-11-28(e) and 19-7-22.

**Requirements of the Legitimation Petition:** The petition shall set forth the name, age, and sex of the child, the name of the mother, and, if the father desires the name of the child to be changed, the new name. If the mother is alive, she shall be named as a party and she shall be served and provided an opportunity to be heard. O.C.G.A. § 19-7-22.

**Contest of Legitimation:** The mother may contest the legitimation petition by alleging that the petitioner is not the biological father or that he has lost his "opportunity interest to develop a relationship with the child." Davis v. Labrec, 274 Ga. 5, 549 S.E.2d 76 (2001); In the Interest of M.K., 288 Ga. App. 71 (2007); Binns v. Fairnot, 292 Ga. App. 336 (2008).

**Declaring an Order of Legitimation:** Upon the presentation and filing of the petition, the court may issue an order declaring the father's relationship with the child to be legitimate, and that the father and child shall be capable of inheriting from each other in the same manner as if the child was born in lawful wedlock, and specifying the name by which the child shall be known. O.C.G.A. § 19-7-22.

**Determination of Custody/Visitation:** The petition for legitimation may also include claims for visitation, parenting time, or custody. If such claims are raised in the legitimation action, the court may, in addition to legitimation, order visitation, parenting time, or custody, based on the best interests of the child. O.C.G.A. § 19-7-22 (f.1). Custody of the child shall remain with the mother unless or until a court order is entered addressing the issue of custody. O.C.G.A. §19-7-22.

**Genetic Tests:** In any case in which the paternity of a child or children has not been established, any party may make a motion for the court to order the mother, alleged father and the child to submit to genetic tests. O.C.G.A. § 19-7-43.

**When Department of Human Services Brings a Petition for Paternity:** When the Department of Human Services (Division of Child Support Services) brings a petition to establish the paternity of a child, issues of name change, visitation and custody shall not be determined by the court until such time as a separate petition is filed by one of the parents or legal guardian of the child. If the petition is brought by a party other than the Department of Human Services, the court may determine issues of name change, visitation and custody. O.C.G.A. §19-7-22.

## THE DISESTABLISHMENT PROCESS

The specific legal steps to disestablish paternity/legitimation are:

1. **Voluntary rescission** – If the father signed a Paternity Acknowledgment Form, he may rescind that acknowledgment within 60 days of signing it, unless an order has already been entered establishing paternity. This action will remove the father from the Putative Father Registry, but a court order is required to remove the father's name from the birth certificate and change the child's last name.
2. **Challenging a paternity acknowledgment after 60 days, but prior to the entry of an order** – After the 60 day rescission period specified by law, the paternity acknowledgment may be challenged in court only on the basis of fraud, duress, or material mistake of fact, with the burden of proof on the person challenging the acknowledgment. The legal responsibility of any signatory, including child support obligations, arising from the acknowledgment may not be suspended during the challenge, except for good cause shown. O.C.G.A. § 19-7-46.1(c).
3. **Motion to set aside** – A motion to set aside a determination of paternity may be filed in superior court at any time upon the grounds set forth in O.C.G.A. § 19-7-54. The motion must have attached two essential pieces of proof to show that the person ordered to pay support cannot be the biological father: (a) an affidavit showing newly discovered evidence about paternity; and (b) results of a paternity genetic test conducted within 90 days before the motion is filed. Filing the motion, in and of itself, will not necessarily result in disestablishment.
4. **Extraordinary motion for new trial** - This motion can be filed at any time. The person who files it has to prove the following: (a) when the evidence of non-paternity came to his attention, he acted with appropriate speed to investigate it; (b) he was unaware of the non-paternity before the order was issued; and (c) he could not have known about his non-paternity even if he had acted carefully and reasonably. As with the motion to set aside, filing the motion, in and of itself, will not necessarily result in disestablishment.