

FATHERHOOD IN NORTH CAROLINA

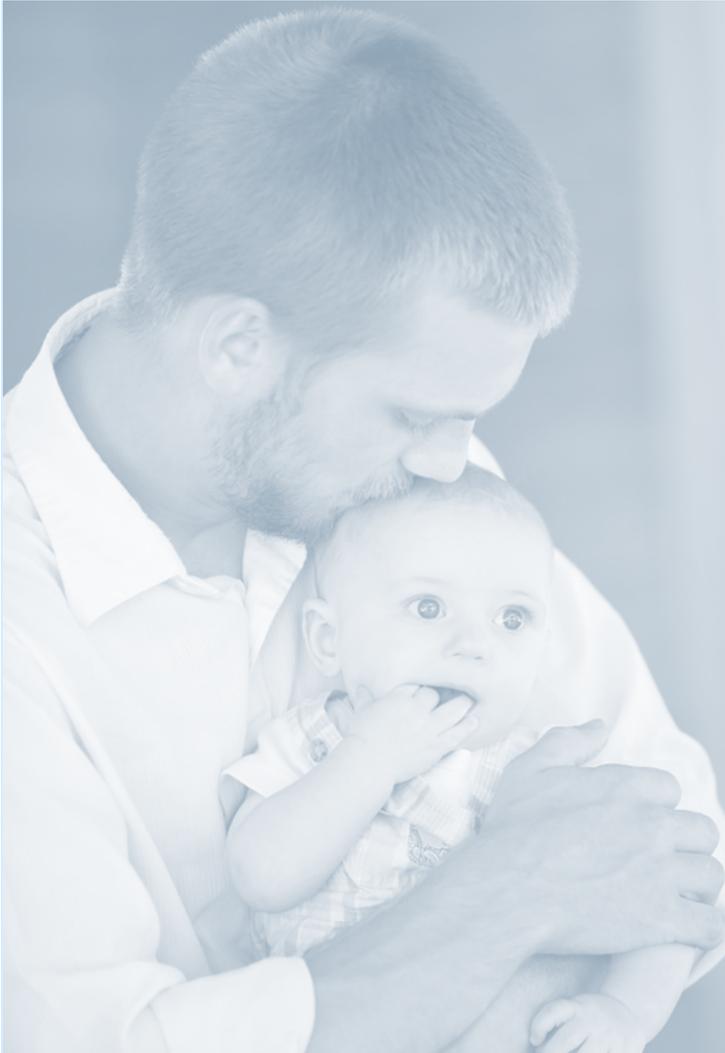


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WHY DOES ASSERTING THE RIGHTS AS A FATHER MATTER?

- Provides fathers with the same opportunities as the mother to participate in the upbringing, care and well-being of their children
- Absent the interference of another party, it allows a father the right to visit his child and maintain a relationship with the child
- Legitimation allows for a child to inherit from his/her father and a father can inherit from his child
- Father can establish all legal rights to the child

WHY DOES PATERNITY MATTER IN 7B CASES?



- Provides father with standing to pursue custody
- Expands services the agency is required to provide
- Expands the possibility of relative placements for the child
- Provides for court ordered visitation
- Eliminates mother's previous power to prevent visitation/custody
- Prevents agency or any person from terminating the father's parental rights pursuant to N.C. G.S. 7B-1111(a)(5)

PREVENTING TPR GROUND

N.C.G.S. 7B 1111(A)(5)

- Prior to TPR being filed the father MUST have:
 - Established paternity judicially; or
 - By affidavit AND file it with central registry maintained by the Department of Health and Human Services; or
 - Legitimated the juvenile pursuant to G.S. 49-10 (special proceedings action); or
 - File a petition to legitimate; or
 - Legitimate the juvenile by marriage to the mother of the juvenile; or
 - Provided substantial financial support or consistent care with respect to the juvenile and mother

PRACTICAL TIPS WHEN REPRESENTING FATHERS

- Immediately determine what is the status of paternity
- If not established, discuss options with your client
- Discuss whether client is the biological father of the children
 - If client is uncertain discuss DNA testing and initiating CSE action (pros and cons)
- Cooperate with DSS to ensure that DNA testing happens as soon as possible
 - Ask for genetic marker testing at nonsecure hearing
- Discuss mother's willingness to complete affidavit or consent to legitimation action
- Advise client of pros and cons of establishing paternity

LEGAL DEFINITIONS OF FATHERHOOD

- Legal father
- Presumptive father
- Putative father

LEGAL FATHER

- This is established by:
 - Judicially determined in a legitimation action
 - Parents were married when the child was born
 - Note: legal father \neq biological father
 - Legal father is presumed to be biological father
 - Putative father can rebut presumption (file legitimation action)– all inheritance rights exist, established by NCGS Chapter 49
 - Parents can marry after the birth of the child



PRESUMPTIVE FATHER

- Father's name is on the birth certificate
 - Doesn't bestow all inheritance rights, but gives rise to rights in 7B cases
- Father's name can be placed on the birth certificate at the hospital
 - Father is supposed to sign the affidavit of parentage to have his name on the birth certificate
- Don't assume the affidavit is sent to DHHS. (It is unknown if all hospitals send them to Vital Records)
- If a newborn is taken into custody, the state-issued birth certificate won't be available for several weeks. This may cause problems with possible relative placements.
 - Could provide the mother's birth certificate as proof

PUTATIVE FATHER

- No legal standing to address issues of custody
- Could pose issues with kinship placements
- The father must take some affirmative action to establish paternity of the child
- The putative father has no legal rights or claims to the child
- Could effect or prevent visitation to occur until paternity is established.
- There may be more than one putative father named as the father of the child(ren)
- Initiate some affirmative action to establish paternity ASAP

VARIOUS WAYS TO ESTABLISH PATERNITY

- Birth certificate
- Affidavit of parentage
- Paternity action
- Legitimation action
- Child custody action
- Child support order
- Marry the mother of the child*

DNA TESTING

- This is the best way to begin the process if paternity is in question (does NOT establish paternity)
- Ask for a DNA test ASAP (at first nonsecure hearing)
- Have the judge order that DNA testing be completed
- Most DSS offices do this through child support enforcement
 - If the father has another CSE case and paternity testing was complete, they may already have DNA results for him
 - The same may be true for the child
- Can pay for the DNA testing privately and arrange with DSS for the children to be tested if the children are in their custody
- Private pay can be arranged with custodial parent if kids aren't in custody
- In A/N/D case, the judge can make a finding that the father is the bio/natural dad of child

BIRTH CERTIFICATE

- If father is on birth certificate, he is the presumptive father
- Paternity is established for 7B purposes and will prevent termination on this ground
- Affidavit may have been sent to DHHS, but don't assume that has occurred
- If not on birth certificate, take further steps to establish paternity
- Birth certificate can be changed by the parents (see form)
- If legitimation action is filed and the a new birth certificate



AFFIDAVIT OF PARENTAGE

- Mother and putative father can execute an affidavit of parentage to establish paternity (See appendix AOC-CV-604)
- Send the affidavit to Vital Records with the DHHS
- Make a request for receipt of affidavit after it is sent to Vital Records
- This will establish paternity for 7B purposes

Note: This does not legitimate the child

Addresses for NC Vital Records are:

- 225 North McDowell Street, Raleigh, NC 27603-1382 (for UPS delivery)
- 1903 Mail Service Center, Raleigh, NC 27699-1903 (regular mail)

PATERNITY ACTION

- Civil action filed in district court
- Civil filing fee
- Can be filed in the county where the child or father reside
- Father files the action
- Establish paternity for 7B purposes
- Both parents can acknowledge paternity and enter a consent order
- Establishes paternity through judicial decree
- An A/N/D proceeding does not stay this matter
- Burden: clear, cogent and convincing

LEGITIMATION ACTION

- Special proceedings action filed in Superior Court
- No filing fee
- Action can be filed in the county where father or child reside
- Legitimizes the child for inheritance purposes
- Father files the action
- An A/N/D proceeding does not stay this matter
- This will establish paternity for 7B purposes
- Burden: clear, cogent and convincing
- NCGS Chapter 49A-Bastardy dictates legitimation actions and procedure

CHILD CUSTODY ACTION

- District court action
- There is a filing fee
- Filed in the county where child has resided for six months prior to the filing of the action
- Establishes paternity through judicial decree
- Does not legitimate the child
- This matter is stayed pending an A/N/D proceeding
- This will establish paternity for 7B-1111 purposes
- Burden: clear, cogent and convincing



CHILD SUPPORT ORDER



- File in district court
- Establishes paternity through judicial decree
- Father files the action
- Filed in the county where the child resides
- Filing fee if done in district court
- No filing fee if filed through child support enforcement
 - Note: If mother has custody of kids she can decline to proceed with the action
- A/N/D proceeding does not stay this action
- Establishes paternity for 7B-purposes
- Burden: clear, cogent and convincing

PITFALLS TO WATCH FOR WHEN REPRESENTING FATHERS

- Resistance from DSS or the court for the father to visit due to prior lack of involvement/failure to establish paternity
- Non-removal fathers may be ignored by DSS or GAL
- If there are multiple children with different fathers, some may not want to separate siblings and place with paternal relatives
- Know your judge and your social worker
 - Some persons are less inclined to work with fathers
 - Be aware of the mother-bias
 - Push for services to be provided ASAP
 - Ensure that the father has the ability to advocate for attending medical appointments, school events, etc. for his child