

QUESTIONS AND ANSWERS ABOUT LEGITIMATION

WHAT IS A “LEGITIMATION”?

Legitimation is a legal action that is the only way, other than by marrying the mother of a child, that the biological father of a child born in the State of Georgia may establish legal rights to his child.

WHO MAY FILE FOR LEGITIMATION?

Only the biological father of a child may file a petition seeking to legitimate his child.

WHAT IS THE LEGAL EFFECT OF A LEGITIMATION?

An order of legitimation creates a father and child relationship legally between the petitioner and his child.

An order of legitimation establishes that the child may inherit from his legal father and vice versa. An order of legitimation allows the legal father to be listed on the child's birth certificate as such. **An order of legitimation is the only way that the father of a child born out of wedlock can be recognized as the legal father of a child and therefore can petition for custody and/or visitation with this child.**

If you are already listed on the child's birth certificate as the father, but you and the child's mother were not married to each other, you must still file a petition with the court to legitimate your child.

Effective July 1, 2005, requests for custody and/ or visitation may be included in your petition for legitimation.

WHERE SHOULD THE PETITION BE FILED?

The Petition for Legitimation must be filed in the mother's county of residence or in the county where any other person who has legal custody or guardianship resides. If there is an adoption pending, then the Petition can be filed in the county where the adoption was filed.

An exception to where the action must be filed occurs if the mother of the child is deceased and there is no other legal custodian or guardian of the child. Another exception occurs when the mother has disappeared and must be served by publication but the minor child is living with you. In each of those cases, the action may be filed in the county where you live. **As always, you may wish to consult an attorney.**

HOW MUCH DOES IT COST TO FILE FOR LEGITIMATION?

The basic filing fee changes from county to county. You should confirm the filing fee with the Clerk of Superior Court in the county in which the Petition will be filed. If the mother has not signed a consent and/or waiver of jurisdiction form, she will need to be served with the petition by the sheriff. The Sheriff's office in which the petition is to be served will need to be contacted to determine the fee for that particular county.

[**“Service”** is an official way to give notice to the mother, and other people involved with your case, that you have filed your case and that they have the opportunity to then file a response with the court.]

If the mother has left the child with you and you do not know her address and you have tried but cannot find her, then you will have to serve her with the Petition by Publication. This means that the petition is written up and then published in the official county newspaper for the county in which you knew she last lived. The clerk in your county will tell you that cost.

If the mother was married to someone else when your child was born, or she has listed someone else on your child's birth certificate as the Father of the child you will also have to pay to have the Sheriff serve that person with a copy of the Petition. If you don't know where that person lives, he will also have to be served by Publication.

WHAT CAN I DO IF DON'T HAVE THE MONEY TO PAY THESE FEES?

If you do not have the money to pay your filing fees and sheriff's fees, then you may ask the Court to allow you to file free of charge. This is called a Poverty Affidavit.

You must make a written statement to the court about your monthly income and monthly expenses, and why it would be a hardship for you to have to pay the filing fees. The court will then let you know by a written order that you may file your case without having to pay.

The county newspapers will not usually waive their fees so you will still have to pay for publication if it is necessary.

HOW LONG WILL ALL OF THIS TAKE?

The length of time depends on the facts of your case. There are several options for what can happen with your case:

If custody is not an issue, and there is no other father listed on the birth certificate, and the mother has acknowledged service, then an Order for Legitimation can be heard by a Judge on the same day that you file it, and you may get your **Order for Legitimation** signed on the same day. If the mother or another father listed on the birth certificate must be served by publication, then the hearing cannot take place until after the publication is finished (at least 60 days).

If the mother or another father must be served by the sheriff with the **Petition to Legitimate**, then the case will be placed on a Judge's calendar.

If custody or visitation is to be an issue, then your case may be contested and may require more than one hearing. **THE EXCEPTIONS TO THIS RULE ARE IF THE MOTHER IS DECEASED AND THERE IS NO OTHER LEGAL PARENT OR GUARDIAN, OR IF THE MOTHER CONSENTS TO CUSTODY.**

WHAT IF I AM NOT SURE THE CHILD IS MINE?

If you are unsure that you are the child's biological father, you may request that the court order a DNA test before declaring the child legitimate.

DEFINITIONS

LEGITIMATION: A legal action brought by a Father to establish his legal rights concerning his child who was "born out of wedlock."

LEGAL FATHER: A Father who has legitimated his child; a Father who was married to the Mother of the child at the time of its' birth; a Father who married the Mother after the child was born and then executed an affidavit of paternity stating or acknowledging that the child is his child.

BIOLOGICAL FATHER: The birth father of a child.

PETITION: A form filed with a court that requests that a Judge do something for you.

ORDER: The Judge's written, signed decision in your case.

PATERNITY: A legal action brought by either a Father, Mother, or another interested party to establish that a Father is the biological father of a child, and therefore has a duty to support the child he has fathered.

PETITIONER: The person who files the petition with the Court, may in some cases be listed as "Plaintiff."

RESPONDENT: The person who the petition is being filed against; the person who should respond to the petition; may in some cases be listed as the "Defendant."

SURNAME: Last name.

RULE NISI: Temporary hearing.

DO YOU NEED TO FILE A PETITION FOR LEGITIMATION AND FOR CUSTODY OR VISITATION?

PLEASE ANSWER THESE QUESTIONS AFTER READING THE QUESTION AND ANSWER SECTION AND DEFINITION LIST

1. Do you believe that you are the father of a child born out of wedlock?
Yes. (If yes, proceed to question 2.)
No

2. Do you want custody? Do you want visitation?
 - A. Do mother and child reside with you?
If they both reside with you, please obtain mother's consent. There is a form for the mother to fill out and sign in front of a notary.

 - B. If No, or if you are unable to obtain consent, you may still file a Petition for Legitimation, and ask the court to enter an order for visitation and/ or custody.

 - C. Is the mother of the child deceased?
You may file a Petition for Legitimation and Custody and the court will usually order both at the same time.

 - D. Does the child reside with you?
You may attempt to obtain the mother's written consent to legitimation and custody. There is a form for the mother to fill out and sign in front of a notary.
If the mother does not consent to custody, you may still file a Petition to Legitimate. The court will have to rule on the issue of visitation and/or custody.

3. Is another man's name listed on your child's birth certificate as the father of the child?
No.
Yes. (If yes, or if you have any doubts about the paternity of your child, you should consult with an attorney because you may need to seek a determination of paternity before you file a Petition for Legitimation and the situation may be complicated.)

4. Do you have doubts about the paternity of your child?

If yes, you can ask the court to order a DNA test