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Paternity or Parentage in New York

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What is paternity?

- Paternity means legal fatherhood of a child. Parentage means establishing parental rights for a person who did not give birth to the child.
- Paternity gives certain rights and responsibilities to the father. The father must support the child until age 21 or until the child is emancipated before age 21. He has the right to make important decisions for the child equal to that of the mother, unless a court has ruled otherwise. He has the right to visitation or parenting time with the child, and could also receive legal and/or physical custody.
- Paternity gives certain rights to the child. The child has the right to child support, inheritance, Social Security benefits, and to get health insurance on the father's plan. The child has the right to share in wrongful death claims for the father.
- Parentage can also be established for a child conceived by assisted reproduction, however this article is mostly about parentage for unmarried fathers.

How is paternity established?

- If a mother is married when the child is born, the spouse is the child's legal parent automatically. This is also true when a child is born to a same sex married couple. If the spouse is not the biological father, the mother or father can file in court to name the biological father as the legal father. The court would decide if it is in the child's best interests to allow a challenge to the parentage of the spouse.
- If the mother is not married, the biological father and mother can sign an Acknowledgement of Paternity, which names him as the legal father. If the mother is married to someone else, do not try to use this form.
- Family Court can decide paternity and issue an "Order of Parentage". The order for a father can also be called an "Order of Filiation."

How does an Acknowledgement of Paternity work?

- An Acknowledgement of Paternity is a form signed by the mother and the father. Usually the form is signed at the hospital after the baby's birth, but it can be signed any time before the child turns 21 years. Family Court, hospitals, and the local Department of Social Services have this form.
- If you have signed an Acknowledgement of Paternity and believe it was a mistake, you must file a petition within 60 days of the date it was signed to ask the Court to vacate the Acknowledgement.
- If you file the petition to vacate the Acknowledgement after 60 days, you will have to show that there was a fraud, or a material (major) mistake of fact, or that you were under duress when you signed.

How does a court decide paternity?

- Either the mother or father can file a paternity petition in Family Court. You can find the form at www.nycourts.gov/forms/familycourt/paternity.shtml
- For further information, you can go to <http://www.nycourts.gov/courthelp/Family/paternity.shtml>

- All parties in a paternity case have the right to an attorney, but only the respondent (the person who did not file a petition) can have an attorney assigned to represent him/her without charge if he/she cannot afford one.
- If the mother was married to someone else when the child was conceived or born, or someone else is named as the child's father, the court could refuse to order testing, based upon a legal rule called "equitable estoppel". That means the court has decided it is not in the child's best interest to let the existing parental relationship be disrupted, even if it is not biologically true.
- If there is no agreement on paternity, the court will probably order a DNA test. If the DNA test shows the man is not the biological father, the petition will be dismissed. If the DNA test shows the man is likely the biological father, the parents can agree on paternity. Then the court will issue an Order of Filiation stating the biological father is the legal father. If the parents still do not agree though, the court will have a hearing and will consider the DNA test results. If the court determines the man is the father, it will issue an Order of Filiation.

After paternity is established, does the court decide custody, visitation, and child support?

- After a court establishes paternity, either parent can file petitions for custody, visitation, or child support. These petitions could also be filed while the paternity case is pending, but no order can be granted until after paternity is established.
- See the articles Child Custody and Visitation in New York, and Child Support in New York, and Emancipation in New York.

For more information on paternity, please visit the New York State Division of Child Support Enforcement website at

https://childsupport.ny.gov/dcse/parentage_establishment.html

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This article provides general information about this subject. Laws affecting this subject may have changed since this article was written. For specific legal advice about a problem you are having, get the advice of a lawyer. Receiving this information does not make you a client of our office.

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