

QUESTIONS AND ANSWERS ABOUT LEGITIMATIONS

WHAT IS A “LEGITIMATION”?

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

WHO MAY FILE FOR LEGITIMATION?

Only the 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 this 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, then you must still file a petition with the Court to legitimate your child.

WHERE SHOULD THE PETITION BE FILED?

The Petition for Legitimation must be filed in the mother's county of residence, the child's county of residence, 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?

This is a basic filing fee and you should confirm the fee amount with the Clerk of Superior Court. 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—there is also a fee for service to each address to which the sheriff has to go if you are in the state of Georgia. If you are out of the state and want the sheriff there to serve the mother, you will need to contact the sheriff's office in the mother's country of residence to find out the cost of service. [“**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 they have the opportunity to 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 Completed, filed and then published in the official county newspaper for the county in which you are filing the Petition. The Clerk of Superior Court can also advise you on the amount of the Publication fee.

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 that person served. (if you are in the state of Georgia) or you will need to contact the sheriff's office in that person's county of

residence 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 I 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. The form you will need for this is called a **Poverty Affidavit**. Ask the Family Law Information Center staff for a copy of the form. Most forms provided by the Family Law Information Center cost a fee of \$2.00. No waiver is available for these forms.

In completing the Poverty Affidavit, you 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.

Please check with the Clerk of Superior Court to determine if the Poverty Affidavit will also waive any fees for Publication (if applicable).

HOW LONG WILL ALL OF THIS TAKE?

In Fulton County, the Clerk of Superior Court will give you notice of your court date on the same day you file your Petition. This is usually approximately 30 days. However, that may not apply if you are filing in another county. Please check with the Clerk of Superior Court to understand how and when you will receive your court date.

DEFINITIONS

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| 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 it’s birth; a father who married the mother after the child was born and then executed an affidavit of paternity stating or acknowledging that the he is the father of the 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. |
| SERVICE: | Copy of Petition is personally delivered to Respondent by the Sheriff or a private processor certified by the courts. |

LEGITIMATION?
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 visitation or custody?

A. Do mother/legal guardian and child reside with you?

If they both reside with you, please obtain mother's consent. There is a form in the Packet for the mother/legal guardian 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. However, you must get the mother/legal guardian personally served.

C. Is the mother/legal guardian of the child deceased?

You may file a Petition for Legitimation and Custody and the court may order both at the same time.

D. If the child resides with you?

You may attempt to obtain the mother/legal guardian written consent to legitimation and custody. There is a form in the packet for the mother/legal guardian 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/custody.

3. Is another man's name listed on your child's birth certificate as the father of the child?

No. *(If no, proceed to question 4.)*

Yes.

*(If yes, you will need to seek a determination of paternity of your child **before** you can file a Petition for Legitimation. The father listed on the birth certificate **MUST BE NOTIFIED** and given a chance to object.) **You should consult with an attorney to determine what steps to take to determine paternity.***