



**THE BASICS**  
Paternity Proceedings  
in New York State

## WHAT IS PATERNITY?

Paternity means that a man is legally the father of a child. As the legal father, he has both legal rights and duties to his child.

## WHEN IS A FATHER THE LEGAL FATHER?

- If the mother and father are married when the child is born, even if they are not married to each other now, the law says the father is the legal father.

OR

- If the mother and the father are not married when the child is born, but they both sign an **Acknowledgment of Paternity** form.

OR

- If a court issues an order, called an **Order of Filiation**, after the mother or the father starts a paternity proceeding.

## WHAT IS AN ACKNOWLEDGMENT OF PATERNITY?

When a baby is born to an unmarried woman, the hospital must give the mother and father (if he is there) the chance to sign an Acknowledgment of Paternity form. This is a written statement naming the person who is the father of the child.

Once a man is declared the legal father of a child, he has the right to seek custody or visitation. He also has the legal obligation to pay child support.

There are agencies that help with safety planning, counseling and considering the best legal choices.

## **WHY WOULD THE FATHER START A PATERNITY PROCEEDING?**

- To make sure someone else is not known as the father.
- To have the right to visit with his child.
- To have custody of his child.
- To make sure you do not move far away with the child.

**An Order of Filiation is an order from a court naming the child's father.**

## **WHEN DO I NEED TO GO TO COURT TO GET AN ORDER OF FILIATION?**

If you want the father of your child to pay you child support and you were never married to him and you do not have an Acknowledgment of Paternity, you must first have an Order of Filiation (an order naming the child's father). Once the Court issues the Order of Filiation, it will automatically begin a child support case. If you are or were married to the child's father at the time of the child's birth, you do not need to have an Order of Filiation; instead you should just show the marriage certificate for yourself and the child's father.

If you were married to someone else at the time the child was born and your husband is not the child's father, you must first have an Order of Filiation if you want the child's father to pay you child support.

If you do not want the father of the child to pay you child support, or if you are receiving cash public assistance for the child, then there is no need to get an Order of Filiation.

You should know that an Order of Filiation gives the father the right to seek custody and/or visitation with your child. Be sure to speak with an attorney if you believe that it would not be safe for you to go to court or if you believe it would not be safe for you to get an Order of Filiation which could put you and your child in contact with the father.

## **WHEN CAN I START A PATERNITY PROCEEDING?**

- You can start a paternity proceeding at any time while you are pregnant and up until the child is 21 years old and supporting himself/herself.
- You can start a paternity proceeding even after your child turns 21 years old IF the father has admitted he is the father in writing, or IF the father has been paying child support.
- You do not need to be 21 years old to start a paternity case.
- You can start a paternity case even if the father is dead, but only under certain circumstances.

## **WHERE SHOULD I GO TO START A PATERNITY PROCEEDING?**

The Family Court is the only court that can make an Order of Filiation. If you and the father live in the same county, you **MUST** go to the Family Court in that county. If you and the father live in different counties, you can go to the Family Court in either county.

## **HOW DO I START A PATERNITY PROCEEDING IN FAMILY COURT?**

Go to the petition room of Family Court and a clerk will help you complete a paternity petition. The paternity petition says who you are, who the child is and who you believe the father is.

Plan to spend the day there. Family Court is a busy place and you may have to wait for a long time. To cut down the time you spend in Family Court, bring the following information with you:

- Your name, address and social security number
- The name, address and social security number of the father
- The child's name, address and social security number (if already born)

- The sex of the child (if already born)
- The approximate dates of the beginning and end of your sexual relationship with the father

In Court, you will be the **petitioner** and the father will be the **respondent**. (If the father starts the paternity proceeding, he will be the petitioner and you will be the respondent.) Sometimes the father is referred to as the putative father.

**Putative father means the Court assumes he is the father until it is decided whether or not he is the legal father.**

### **HOW DOES THE FATHER FIND OUT THAT I AM STARTING A PATERNITY PROCEEDING?**

The father must be given a summons and a copy of the paternity petition you filed in court. You get both papers when you file the paternity petition. The summons tells the father (and you) when and where he must come to Family Court. The paternity petition tells him what the case is about.

### **HOW DOES THE FATHER GET SERVED WITH THE SUMMONS AND PETITION?**

The person who delivers (serves) the summons and petition must be someone who is at least 18 years old, is not part of the case, and can fill out an Affidavit of Service. This means that you cannot serve the papers; they must be served by someone else.

The Court will give you the **Affidavit of Service** form when you file the paternity petition.

**The Affidavit of Service is proof in writing that the papers were served.**

The father should get the papers at least 8 days before the next court date. If he asks the Judge for more time, generally the Judge will give it to him and you will have to come back at a later date.

**There are several ways to serve:**

- By personal service (handing the papers to the father).
- By handing the papers to another person who is old enough and responsible, AND by mailing a second copy of the summons and petition to the father's last known home address. The papers can be served at the father's place of work or home. If the father is served this way, the server must identify (by name or physical description) the person who was given the summons and petition. The server must write in the date, time and place that the person was given the papers.
- If, after 2 or 3 reasonable efforts, service cannot be made, you can ask the Court to order another kind of service aimed at getting actual notice to the father.
- By sending the papers by certified mail, return receipt requested, to the father's last known address. People do not often use this method because if the father is not home to sign for the mail, or does not go to the post office to sign for the mail, this kind of service does not work.

**IMPORTANT: Remember that you cannot deliver (serve) the papers to the father yourself.**

**WHAT HAPPENS THE NEXT TIME I GO TO COURT?**

The next time you go to Court is on the date, time and place in the summons (the return date or hearing date). First, you should let the court officer (or bailiff) who is standing in front of the courtroom know that you are there. When both you and the father are there, the court officer will write it down on his/her list of cases for the day. Your case will then be ready to be called when the Support Magistrate is ready to see you. Plan to spend at least the morning, and maybe even the whole day, in court.

When the court officer calls your name and the father's name, you and he will appear in the courtroom before a **Support Magistrate**.

**A Support Magistrate is not a Judge, but the law gives Support Magistrates the power to decide paternity cases.**

**Support Magistrates used to be called Hearing Examiners.**

The Support Magistrate must tell you and the father about your right to apply for free legal help if you or the father cannot afford a lawyer. Although it is helpful to have a lawyer, you may not need one. However, if the father has a lawyer, it is recommended that you have one as well. Also, you and the father each have the right to have blood or DNA tests done.

If the father says he needs time to get a lawyer, the Support Magistrate will tell you both to come back to court on another day to give the father time to get a lawyer.

**IMPORTANT:** It is extremely hard to change an Order of Filiation that was agreed to by the parties ("done on consent") later on. So if there is any doubt or question about who the child's biological father is, the respondent (father) should not consent.

### **WHAT IF THE FATHER DOES NOT SHOW UP WHEN HE IS SUPPOSED TO?**

If you give the Support Magistrate the Affidavit of Service or a receipt signed by the father, and it shows the Support Magistrate that the father was served with the papers at least 8 days before the return date, the Support Magistrate can make an Order of Filiation by default against him. Sometimes the Support Magistrate will make you serve the father again before making a default order.

## **SHOULD THE RESPONDENT (FATHER) CONSENT TO AN ORDER OF FILIATION?**

Once you and the father are in Court before the Support Magistrate, the respondent (father) has the choice of agreeing to an Order of Filiation.

Consenting (agreeing) to an Order of Filiation means that both of you agree that the father really is your child's biological father, and that neither you nor the father is requesting blood or DNA tests to prove it.

## **WHAT IF THE FATHER DENIES THAT THE CHILD IS HIS?**

The Support Magistrate will order blood or DNA tests on you, the putative father and the child. Then the Support Magistrate can send the case to a Judge.

If the putative father denies that he is the father, and tests are ordered, you will not have the chance to give evidence or to get an Order of Filiation that day. The case will be rescheduled (sometimes called "adjourned" or "put over") for a later date. If tests are ordered, the next hearing date will be set for a date after the tests are completed.

If the father is dead, DNA testing may be done on the father's parents.

## **HOW DO I GET BLOOD OR DNA TESTS?**

The Court will mail you a notice telling you when and where to go for your test. The father will also receive a notice. When you go to the lab for the test, bring:

- The child
- A picture ID
- Your Social Security number
- Your date of birth
- Your child's date of birth



You will be asked to sign a paper about whether you or your child has ever gotten a blood transfusion or bone marrow transplant. If the answer is “yes,” they will ask when it happened.

The lab will take your picture and fingerprints and also the child’s.

For a blood test, the lab will take a sample of your and the child’s blood.

For a DNA test, the test is taken by wiping the inside of your and your child’s mouth with a small bit of cotton on a stick. There are no needles.

### **WHO PAYS FOR THE TEST?**

If the Court decides that you or the father cannot pay for the test, the Court will have the costs paid from public funds. If you can pay, you will have to pay for the test UNLESS the test shows the putative father is really the father. If he is the father, he will have to pay for the test.

The Court might order that you and the father share the cost.

### **WHAT IF THE FATHER DOES NOT SHOW UP FOR THE TEST?**

At the next court date, the Support Magistrate can issue an order of temporary child support against him.

### **WHEN DO I GET A CHANCE TO PROVE PATERNITY?**

At the next hearing date after the tests are completed.

### **HOW DO I PROVE PATERNITY?**

To make an Order of Filiation, the Support Magistrate must be entirely satisfied by “clear and convincing evidence” that the respondent (father) is the biological parent. At the court hearing, you must convince the Support

Magistrate that the father is the child's biological parent. The Support Magistrate looks at the evidence, which can include testimony, papers and DNA test results.

If the respondent (father) takes DNA or blood tests, the results are considered evidence. **If the results show that there is a 95% chance or higher that he is the father, New York law says he is the father.** You do not have to give or show the Support Magistrate any other evidence.

Then the respondent (father) has the burden of proving he is NOT the father. It is very hard for the father to convince the Support Magistrate that he is not really the father because blood and DNA tests are very accurate. If the father cannot give any evidence, or cannot give enough to convince the Support Magistrate that he is not the father, the Support Magistrate will issue an Order of Filiation naming the father as the legal father.

### **WHAT IF THE TESTS SHOW THAT THERE IS LESS THAN A 95% CHANCE THE RESPONDENT IS THE FATHER?**

You must show the Support Magistrate other evidence that the father is the real father.

### **WHAT KIND OF EVIDENCE IS GOOD?**

Many different types of evidence may help prove paternity. Here are some examples:

- The father knows the child uses his last name and has not objected, even though the father has not signed the Acknowledgment of Paternity, and his name is not on the birth certificate.
- The father has treated the child as his own.
- The father has helped pay for the child's expenses.
- The father has claimed the child as his own in some other court proceeding or paper.
- The father has told other people the child is his own.

- The father has sent the child presents or cards showing that he treats the child as his own.

### **CAN I MAKE THE FATHER TESTIFY IN THE PATERNITY PROCEEDING?**

No. But you can bring in other witnesses to tell the Court what the father told them about the child.

### **WHAT IF THE FATHER SAYS I HAD SEX WITH SOMEONE ELSE AROUND THE TIME I GOT PREGNANT?**

He cannot just say that. He must show some other evidence to prove what he says.

### **WHAT IF I WAS MARRIED TO SOMEONE ELSE WHEN THE CHILD WAS BORN?**

You and your husband can tell the Support Magistrate that the two of you did not have sex during the time your child was conceived.

Also, you can present proof that your husband was somewhere away from you during this time, for example, in the armed forces or in prison.

### **WHAT IF THE FATHER TAKES THE TESTS BUT DOESN'T SHOW UP IN COURT AFTER TAKING THE TESTS?**

If the test results do not rule him out as a father, the Support Magistrate can make an Order of Filiation along with an order of child support against him.

### **WHAT HAPPENS WHEN THE JUDGE DECIDES THE CASE?**

If the Support Magistrate decides that the father is not the biological parent, your case will be dismissed.

If the Support Magistrate decides that the father is the biological parent, the Support Magistrate will make an Order of Filiation. The Order of Filiation must contain the child's social security number, if available.

### **GETTING CHILD SUPPORT AFTER A PATERNITY CASE**

If the Support Magistrate issues an Order of Filiation, he or she will then automatically begin a child support case. You do not need to file a separate child support petition if the Court issues an Order of Filiation at the conclusion of a paternity case. The Order of Filiation is the legal foundation for the Court to order the father to pay child support.

For information on child support in New York State, please see *The Basics Series* booklet entitled "Getting Child Support in New York State."

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