



Determining Paternity

Determining the paternity of a minor child has legal requirements and implications. The issue can arise when the mother is unmarried or when she is married and the husband is not the father.

If the mother is unmarried, the biological father's signing the affidavit on the back of the birth certificate does not make him the legal father. Such a designation requires court action.

The unmarried mother, alleged father, or the minor child may file a complaint for establishing paternity. This filing must occur before the child reaches 18 years of age. If the court rules the man as the father, he is the biological and legal father. With the legal designation comes certain rights and responsibilities. He may sue for custody or visitation rights, but he may also be responsible for child support. The court may also declare the child as the father's legal heir.

When a child is born to a married woman whose husband is not the father, legal difficulties arise. Getting a divorce before the birth does not settle the issue.

Mississippi law presumes that a child born to a husband and wife is the natural offspring of the couple. Paternity is presumed until proven otherwise in court. For a child conceived out of wedlock during the marriage, the law still recognizes the husband as the legal father who has parental rights and responsibilities to the child. This scenario acknowledges the existence of different legal and biological fathers.

In divorce proceedings, the court may declare the child was born out of wedlock, ruling the biological father as the legal father. However, the court may refuse to "bastardize" the child, requiring the ex-husband/legal father to support a child who is not his and denying the biological father of parental rights. If the divorcing parties do not raise the issue of paternity, they may be barred from doing so in the future.

If the biological father later marries the mother, he may declare the child as his through court action or by such conduct that publicly acknowledges his paternity. This act also makes the child his legal heir.

Mississippi law does allow the use of blood or genetic testing to determine the probability of paternity. While the test does not provide definite answers, if the calculation that the probability of fatherhood is at least 98 percent, the court will presume paternity. However, the presumption can be overcome in rare situations where evidence to the contrary is strong.