

# LEGITIMATION

**This packet contains forms and information on:**

## **How to Legitimate a Child**

**Note:** The forms and instructions in this packet are to be used by the father of a child born out of wedlock to legitimate the child. They cannot be used by the mother or any person other than the father.

It is advisable to have an attorney when filing legal papers to be sure that your rights are protected and that all the procedures are correctly followed. **Courthouse personnel are prohibited by state law O.C.G.A. § 15-19-51 from giving legal advice.** Different situations may require special procedures and courthouse personnel cannot advise you on how to proceed or what forms may be necessary in specific situations.

## 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 father of a child born 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 the child, and therefore can petition for custody and/or visitation with his child.

If custody is an issue, you must file your legitimation first, and get the *Order of Legitimation* signed. Once your child has been legitimated by the court order, then you may file another action for custody.

**Note:** The exception to this rule is if the mother is deceased, there is no other legal parent or guardian, or the mother consents to custody.

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 file a *Petition* with the Court to legitimate your child.

### WHERE SHOULD THE PETITION BE FILED?

The *Petition for Legitimation* may be filed in the child’s county of residence, or if there is an adoption pending, in the county where the adoption was filed. If custody or visitation is desired, you should petition the Court for custody and/or visitation after you have filed for legitimation.

### HOW MUCH DOES IT COST TO FILE FOR LEGITIMATION?

There are basic filing fees for petitions that are scheduled by the Cobb County Superior Court Clerk’s Office. Therefore, inquiries regarding the cost to file for legitimation should be addressed to that office at 770-528-1300.

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 a fee for 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 to serve the mother, you must check with the respective jurisdiction to determine the fees for 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 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. There will be a 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 a fee (if you are in the State of Georgia) or fee (if you are out of state) 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 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. In order to do so, you must complete 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 newspaper 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, 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 (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 by his/her case manager.
- If custody is to be an issue, then you should file your legitimation first, and get the *Order of Legitimation* signed. Once your child has been legitimated by the Court, then you may file another action for custody.

**Note:** 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. It is recommended that you seek the advice of an attorney before you proceed.

**FORMS INCLUDED IN THIS PACKET:**

- Petition for Legitimation*
- Verification*
- Respondent's Consent to Legitimation*
- Acknowledgment of Service*
- Rule Nisi*
- Order*

**NOTICE:**

(The following forms may not be applicable if the parties are legitimating only and not addressing issues of custody, visitation or support.)

- "Exhibit A" – *Visitation Schedule*
- Domestic Relations Financial Affidavit*
- Certificate of Service*

**ADDITIONAL FORMS NEEDED:**

(These forms may be obtained from the Superior Court Clerk's Office)

- Domestic Relations Case Filing*
- Domestic Relations Disposition*
- Summons*
- Sheriff's Entry of Service

**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.
- 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 "Defendant."
- SURNAME:** Last name