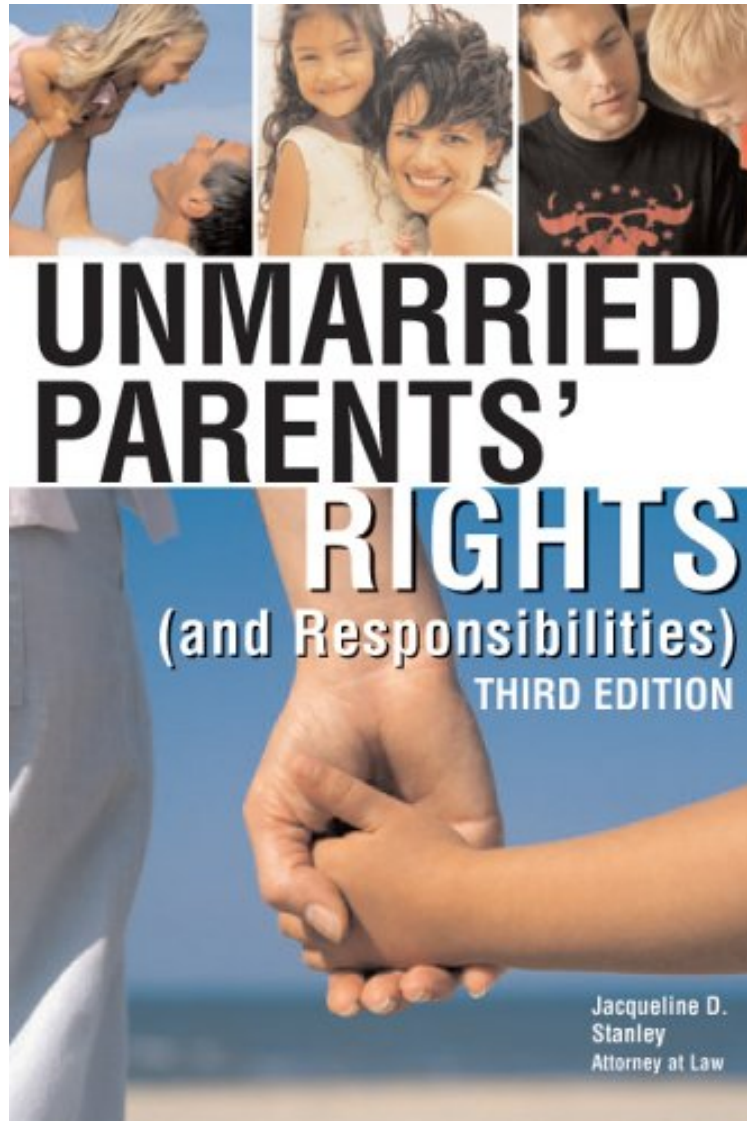


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Unmarried Parents' Rights (and Responsibilities)

Jacqueline D. Stanley

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Jacqueline D. Stanley : Unmarried Parents' Rights (and Responsibilities) before purchasing it in order to gauge whether or not it would be worth my time, and all praised Unmarried Parents' Rights (and Responsibilities):

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\$\$\$ time and heartache. 0 of 0 people found the following review helpful. Single Father; Pro Se By James Plumb Good book on legal issues. Explains how to do a lot of the paper work for court yourself instead of paying an over priced attorney that is just looking to make big bucks off of you and your emotions (Shame on them). I used this book and successfully filed and was granted what I ask for in my current motions.

As a parent, you have certain rights and responsibilities in the care and upbringing of your children. Sometimes those rights are challenged, and you need to know what to do if that happens. *Unmarried Parents' Rights (and Responsibilities)* contains detailed information on the issues single parents and divorced parents face. It provides a step-by-step guide to taking legal action. This book helps you take control of situations and provide for your children in the best possible way. Find valuable shortcuts to get to the heart of your matter. Look for: -Tip boxes on subjects like how courts determine custody, visitation time and child support -Extensive references to websites, organizations and agencies that can be contacted for information and assistance -Sample legal forms to speed you through the court process Being a single parent is hard -*Unmarried Parents' Rights (and Responsibilities)* makes it a little easier.

About the Author Jacqueline D. Stanley received her law degree from Wake Forest University. Ms. Stanley has coauthored many self-help legal guides, including *How to File for Divorce in North Carolina*. She currently resides in Greensboro, North Carolina. Excerpt. Reprinted by permission. All rights reserved. *How to Establish Paternity* Excerpted from *Unmarried Parents' Rights (and Responsibilities)*, 3E by Jacqueline Stanley 2005 Establishing paternity is the process of determining who is a particular child's father. Paternity can be established by the mere relationship between the parents and the child, by the father admitting in an official manner that he is the father, or by a court proceeding. **PATERNITY LAW AND PROCEDURE** When paternity is in dispute or uncertain, scientific tests can be done. The most common paternity test uses DNA to determine whether a given man could be the biological father of a given child (tests are discussed later in this chapter). In most states, a paternity action is a civil lawsuit in which a court is asked to determine and make a ruling based on the paternity test regarding who is the biological father of a given child. **Who Needs to Establish Paternity?** You will need to establish paternity if it is not already established, and you either want to enforce your rights as a parent (i.e., to secure custody or visitation rights) or want to force the child's father to live up to his obligations as a parent (i.e., pay child support, medical expenses, etc.). The following are examples of scenarios that might give rise to a paternity action: ? a mother is certain of paternity, but the father refuses to accept responsibility; ? a man suspects the woman he has been dating is carrying his baby or discovers that a woman he once dated gave birth a few months after their breakup; ? a mother has multiple sex partners and is not certain which man is the father of her child; ? an unmarried couple wants to go through the legal formality of establishing paternity in order to ensure their child is legally protected and formally legitimated; or, ? a man has doubts about whether he is the father of a child and wants to make certain before agreeing to pay child support. **Relationship to Custody and Visitation** It is not necessary to establish paternity before filing for custody or visitation, unless paternity becomes an issue. If you are the mother, you just file for custody (or visitation) without any request to establish paternity. The same is true if you are the father and the mother is not disputing that you are the father. However, if there is a question regarding paternity, that will need to be legally established before a custody or visitation action can proceed. This almost always occurs when the supposed father is seeking custody or visitation, and the mother does not want him involved in her child's life. She will then dispute paternity, to challenge his claim to a right to custody or visitation. **Relationship to Child Support** Similarly, it is not necessary to establish paternity before filing for child support unless paternity becomes an issue. If the man being sued for child support knows without question that he is the father, there is no need for him to dispute paternity. All that would do is delay the inevitable order for support and run up expenses for scientific testing that he will have to pay. However, if the man believes that he is not the father, or believes it is possible that he is not the father, paternity will usually become an issue. Although some men will not put up a fight because they cannot afford the test, most will not subject themselves to years of paying support for a child that may not be theirs. **ESTABLISHING PATERNITY WITHOUT A COURT PROCEEDING** Paternity may be established simply by the relationship of the parents; however, this does not generally apply to unmarried parents. The law provides that if the mother is married at the time the child is conceived, her husband is presumed to be the father of the child. Until proven otherwise, the law will recognize the husband as the father. In some states, the presumption is irrebuttable, which means that under no circumstances will the law allow a blood test or any other action that is intended to prove that someone other than the husband is the father of a child conceived during the marriage. Therefore, if you are having an affair with a married woman and she becomes pregnant, you may not be allowed to claim the child as yours even if you want to do so. **Voluntary Paternity** Most states will allow a father to sign an affidavit to establish paternity, which eliminates the need for filing a court action. This is a written statement, signed before a notary or other official, in which the father acknowledges paternity. The affidavit must also be signed by the mother. Both signatures must be notarized, and the affidavit must be filed at the courthouse. Paternity affidavit forms are available from the court clerk's office. States encourage people to establish paternity using affidavits because it simplifies problems with inheritance, removes some of the lingering stigma that might plague children born out of

wedlock, and avoids expensive and time-consuming court proceedings. Establishing paternity can sometimes go a long way toward creating a meaningful relationship with a child. For this reason alone, if a father and mother are on good terms, establishing paternity through an affidavit is a good idea. Even if the relationship deteriorates, the father's rights are established. However, men should be cautioned that if paternity is established, they will be obligated to pay child support. Once the paternity affidavit is filed (and signed by a judge if required by state law), you cannot come back later and change your mind. No matter what information might arise to show that someone else is the child's father, the person who acknowledged paternity in the affidavit will not be removed as the legal parent of the child. If the father's name does not already appear on the child's birth certificate, the birth certificate will be reissued to show the names of both parents.

Should You Sign a Paternity Affidavit? The best advice for both men and women is if you have any doubts, have a scientific paternity test performed. Asking someone to take a paternity test can open a can of worms, but it will be easier to do sooner rather than later.

SCIENTIFIC TESTS FOR PATERNITY Either party in a paternity action can request a scientific paternity test. Few paternity actions fail to utilize this most effective tool. Until recently, blood samples had limited worth. They could prove with a reasonable degree of accuracy that a man was not the father of a given child. However, they were totally ineffective when it came to identifying or pinpointing whether a given man was the father of a child. However, with recent advancements in the use of DNA (genetic sampling), paternity tests have become almost 100% accurate in establishing that a man either is or is not the father of a given child. The court will not automatically order tests simply because a paternity action is filed. There must be enough information in the prepared documents for the court to order testing. In addition, the court may require that evidence be presented at a court hearing before it orders the test. If the court orders the test, the mother, child, and alleged father will all be tested at a laboratory designated by the court. Generally, testing involves using a cotton swab to take a saliva sample from the mouth. A man found to be the father of a child will generally be responsible for paying for the paternity test. If he did not initiate the lawsuit, and is determined not to be the father, the cost is paid by whoever filed the paternity action. Prices range from \$200 to \$600. Check your medical insurance to determine if it will cover the cost of the test.

Challenging Test Results If you believe the test results are not correct, you may challenge the results in court. The following are a few examples of the kinds of arguments that might be successful in challenging the results of the paternity test.

- ? The results were tainted by the lab. (You would need to prove that the lab was responsible for erroneous results in the past and that it routinely does substandard work.)
- ? The results were tainted by fraud. (An example might be that the opposing party sent someone else to take the test on his or her behalf.)
- ? You are physically incapable of conceiving a child.
- ? Someone tampered with the results.

PATERNITY LAWSUITS If paternity is not established automatically, and if either parent is unwilling to sign and file a paternity affidavit, the only recourse is a paternity lawsuit. This generally involves going to court and asking a judge to determine whether the man is the child's father. This most often involves the judge issuing an order that a paternity test be performed.

Who Can Initiate a Paternity Suit? The law only allows certain people to initiate a paternity suit. Such people are said to have standing. This is a legal requirement that there be a certain connection between the child and the person filing the paternity suit. If you believe you need to establish paternity, you must first determine if you have standing. Typically, the following people have the required standing that allows them to file a paternity case:

- ? the mother of the child;
- ? the mother of the expected child;
- ? a man alleging that he is the father of the child;
- ? a man alleging that he is the father of the expected child;
- ? the child or the child's personal representative;
- ? a personal representative of an expected child;
- ? the mother and father of the child (filing together);
- ? the mother and father of an expected child (filing together);
- ? the state social service agency, which will usually intercede in instances where the child is receiving state or federal assistance; and,
- ? the prosecutor's office (or district attorney, state attorney, or some other name, depending on the state), which will usually intercede in instances where the child is in need of services and will generally serve as the child's attorney in the action.

If you do not fall into one of the designated categories, you cannot file a paternity case. You can go through the trouble of having the papers drawn up and taking them to the courthouse, but once the court is aware that you have no right to bring the action, the case will be thrown out. You could be ordered to pay the other side's attorney's fees for bringing the action when you had no right to do so.

If You Are Not Sure the Child is Yours You cannot file a paternity action if there is only a remote possibility a child is yours. Paternity actions are generally filed by people who want to prove paternity, not exclude paternity. If you have not been asked to pay child support or otherwise been interfered with, you cannot file a paternity action-even if it is simply to satisfy your curiosity-unless the mother agrees to the action. In that case, it will not be necessary to file a paternity action-you can simply use the services of a private laboratory to have a scientific paternity test performed. Such laboratories are listed in the Yellow Pages under "Genetic Screening."

Effect of the Alleged Father's Death In most instances, establishing paternity must be done prior to the alleged father's death. There are many reasons for this, the most important being that a deceased father cannot defend himself or challenge the evidence against him. If a paternity determination is sought after the father's death, the father must have done something to acknowledge the child prior to his death. For example, the father put his name on the birth certificate, put information in legal documents, or took some type of formal action.

Should You File? Even if you determine that you have standing to file a paternity action, that does not mean you should run to the courthouse with paternity papers in hand. There are several factors you should consider

before you do anything.? The consequences to you. If you are the noncustodial father, the consequences may be paying child support or the other expenses associated with the birth and raising of a child. If you are the mother, you should be sure the alleged father is someone you want in your life and in your child's life for years to come. Tying your child to an uncaring dad may not be the best action or in the best interest of your child.? The impact on the child. Say that the child is in an intact family and believes someone else is their father-someone with whom they have bonded, who is acting responsibly as their parent, and who is committed to the relationship. The child's best interest should always be at the forefront of any consideration that involves a child.? Seeing the process through to the end. If the person you have filed the action against resists the action, establishing paternity can be a long and possibly expensive process. If you begin a paternity action, be certain you are prepared to complete the process.? Handling the outcome. Say, for example, that, as the alleged father, you have a 3- year-old who was born out of wedlock, and for those three years you have been caring for and loving this child. However, in the back of your mind, you have always questioned whether the child actually belongs to you. If you file a paternity action and find out the child is not yours, then what? Your emotional commitment and the feelings you have for the child will not go away. How will the results affect your relationship? ? Realistic expectations. A paternity action, regardless of the outcome, cannot automatically create relationships or act as a form of punishment. Consider this example. John had been estranged from his children. He had vehemently denied paternity for years and resisted any attempt to have it established by the court or otherwise. As he grew older, he required triple-bypass surgery. John then decided it was time to get right with the people he had wronged. When he was ready to acknowledge his children, they were not ready to acknowledge him. He thought filing a paternity action would change things. Unfortunately, it made matters worse.? Attempting to punish a parent who has had no relationship with his child. Consider this example. Diane decided to file a paternity action. Her son was in his teens and she never needed child support because she came from a wealthy family. She had thought her child's father was struggling, but she learned he had married and had other children. Diane decided that filing a paternity action would be a way to punish him for abandoning her. She thought the public humiliation and embarrassment would cost him and his family. However, this was a painful experience that backfired.