

The top 5 legal things for practitioners to know when working with unmarried fathers

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*This document is to guide family services practitioners and fatherhood advocates in Minnesota as they work with fathers. The hope is that this information will help identify when an unmarried father is facing an issue that has important legal considerations or ramifications and provide some brief information. This is general educational information and not advice on any particular situation. **More in-depth information on these topics can be found in the Unmarried Fathers' Guide to Paternity, Custody, Parenting Time and Child Support in Minnesota, at www.mnfathers.org/resources.html. Laws regarding these issues can change often. This information, specific to Minnesota's laws, is accurate as of February 2008. Fathers seeking advice should consult an attorney.***

ONE

The top 5 legal issues...

An unmarried father's rights can be cut off if he is not registered with the Fathers' Adoption Registry no later than 30 days after the birth of the child.

From the very beginning of his fatherhood, an unmarried father must be proactive if he does not want his parent-child relationship terminated. If the child of an unmarried father is put up for adoption, the father must be registered with the Fathers' Adoption Registry no later than 30 days after the child's birth in order to absolutely ensure that he can assert an interest in the child. Registry is an important first step, but there are other important legal steps he must follow. He can learn more information by calling the toll free number for the Fathers' Adoption Registry at 1-888-345-1726 or going to their website at www.health.state.mn.us/divs/chs/registry/top.htm.

The unmarried father must be registered even if he did not know about the birth until later, or if he believed the mother was not going to place the child for adoption. In other words, every unmarried man who believes he is going to have a child—or has recently had a child—must register with the Adoption Registry within the time limits to preserve a possible relationship with the child. A man can register even before the child is born. The Registry

Did you know...

Research has shown that fathers, no matter what their income or cultural background, can play a critical role in their children's education. When fathers are involved, their children learn more, perform better in school, and exhibit healthier behavior. US DOE, 2000.

does not impact child custody, child support or any other legal issues, other than adoption. However, Registry information may be used to contact a potential father for the purposes of paternity and child support establishment. This should not serve as a disincentive for a father to register as the child support office has many other ways to locate fathers.

TWO

The top 5 legal issues...

Unmarried fathers have no rights until they ask for them in court.

An unmarried mother has sole legal custody and sole physical custody until a court order says otherwise. An unmarried father must establish paternity (be the child's legal father) before he can obtain any rights. Paternity can be established by the parents voluntarily signing a Recognition of Parentage, or by a court order. If the parents are minors when they sign the Recognition of Parentage the Recognition establishes only a presumption of paternity. See the *Unmarried Fathers Guide* for more information.

Fathers who are established as legal fathers by signing a Recognition of Parentage have no legal rights to custody or parenting time (visitation). In contrast, fathers who appear at a court hearing to establish their paternity almost always get some type of rights, even if just "reasonable" parenting time. There is a common misconception that "because I am the legal father I must have some rights." This is not true. Signing the Recognition of Parentage gives the legal father *the right* to ask for rights, but doesn't actually give him any. If court ordered rights are not established, the mother decides if the father gets to spend time with the child and under what circumstances.

THREE *The top 5 legal issues...*

A biological father and a legal father are not the same thing.

Everyone has a biological father. Not everyone has a legal father (a father that the law recognizes), and not every legal father is the biological father. There is no requirement that genetic testing occurs before a legal decision is made about paternity. Therefore, parents can agree on who the legal father is and courts can determine the legal father without any genetic confirmation that the legal father is the biological father. The courts can decide who the legal father is based on the mother’s testimony alone, if there is no contrary evidence. After becoming a legal father it is very difficult to change this status.

Did you know...

Non-residential fathers can make a difference in academic outcomes through active participation in their children’s schools. Positive outcomes are especially strong for 6th—12th graders. US DOE, 1998.

Unmarried fathers sometimes sign the Recognition of Parentage or agree to a court order on paternity, *without knowing for sure if they are the biological father.* A father may find out later that he is not the biological father (often by obtaining a genetic test). He thinks the court can change the legal determination of paternity because now it is known that he is not the biological father. But changing this legal determination of paternity requires court action (and sometimes may require an attorney) and quick action upon learning the results of genetic tests. Fathers and mothers need to understand that a Recognition of Parentage is a legally binding document.

FOUR *The top 5 legal issues...*

Work with, not against, the child support agency.

A. The child support office is almost always involved in cases with low and middle income unmarried parents.

This is because anytime public assistance is being spent, the county is required to establish a child support order. Public Assistance in Minnesota for these purposes includes MFIP (Minnesota Family Investment Program), child care assistance (day care subsidy), Medical Assistance, MinnesotaCare, or IV-

E foster care. When the parent or child gets help from any of these programs, the child support agency will start a case to get a child support order. (The only exception is a family violence waiver.) Therefore, many custodial parents do not have a choice in “*getting child support on the father.*”

B. If the father does not appear at the paternity hearing, or a child support hearing, the court can still act. Almost always this is to the detriment of the father.

Just like the court can decide a father is a legal father even if he does not show up for court, the court can set child support without the father’s appearance. (Of course, the father needs to be served with court papers, but his appearance isn’t required for the court to take action.) A father may think that it doesn’t make a difference if he shows up at a child support hearing because the child support agency already knows his income or is going to “do what they want anyway.” Although it is true that child support can be set based on what the father could make based on past jobs or at 150 percent of minimum wage—even if the father is not working--it is almost always worse for the father if he does not appear. The father is the only one who can present his side, and without it, the court is left with what the child support agency and the custodial parent tell them.

For paternity hearings, the consequences of not appearing can negatively impact a father forever. By not appearing, he gives up his right to request genetic testing, and the courts may not be sympathetic later if he says, “but I’m not even the biological father.” Just like any other lawsuit, if you don’t appear, you will almost always lose and give up your right to contest the results later. Note that both parents in a paternity action, if financially eligible, do have a right to a court-appointed attorney.

C. The child support office has many tools at their disposal to find out what someone has earned at their job in the past and is capable of making now, and many tools to enforce the payment of child support.

Child support agencies can access information about a parent’s earned income over the last few years, see if they are receiving unemployment compensation, look up bank account information, and do many other things to assess a parent’s financial situation. Therefore, fathers should be honest about their finances. If a father is unemployed, he should be

prepared at a child support hearing to explain and prove with documents, if necessary, why he cannot get a job in his field and what efforts he has made to get employed. Some counties work with or refer to specific programs to help unemployed fathers get jobs so that they can set realistic child support orders. If the father is unemployed, he should carefully document his attempts at finding work with a job log. A job log, for example, could be a list of the dates and places where he has submitted applications for work.

The child support agency has many tools to enforce payment of child support if an obligor (parent who owes money) gets behind in payment. They can suspend a driver's license or certain occupational licenses and take tax refunds, among other tools to enforce compliance. They can also track people from state to state to obtain payment.

A father's communication with the child support office about the reasons why he has fallen behind in payments, such as a non-voluntary reduction in hours at work, is important to prevent or stop enforcement tools from taking place. It is sometimes very difficult, once an enforcement mechanism has started, to un-do what has happened.

Did you know...

Fathers who are involved in their children's lives are more likely to participate in their communities, serve in civic leadership positions and attend church more often.

Ontario Father Involvement Initiative, 2002.

D. Fathers need to understand how child support is set and modified. Ignorance of the law only harms the father.

The way in which child support amounts are calculated in Minnesota changed in 2007. Briefly, child support is now determined according to both parents' gross incomes, using a proportionate share of the combined income. There are many other new changes in the law, such as the parenting expense adjustment. This adjustment is made when the obligor (parent who owes the money) has court ordered parenting time of 10 percent or more.

"Child support" consists of many different types of support: basic child support, medical support, and child care support. A child support order may also include an order or judgment on past or unpaid child support amounts. More information on child support can be found in many locations, including child support agencies and their websites.

There are primarily two areas in which fathers, particularly unmarried fathers, may get upset at the child support agency. One is being charged with back child support when a child support order is first established, and the second is having a limited ability to retroactively modify a child support order.

First, the father may be required to pay up to two years in back child support at the time that the first child support order is established. (Fathers can also be required to pay part of the costs of genetic testing, and for part of the mother's birthing costs.) For fathers who have been paying the mother some money or support before a child support order is set, they may get particularly upset to learn that the things they bought the child can't be counted for child support, and they may need to pay for that same time period all over again, based on their ability to pay at that time. (If the money is owed to the custodial parent, and not the public authority, the custodial parent can agree to waive back child support. The public authority, i.e., child support office, can waive back child support if the money is owed to them.)

Unmarried fathers can plan ahead to try to avoid large payments for back child support. The best option is to pay by check or money order directly to the custodial parent, with it clearly marked on the payment that it is child support for a specific month. **The father should not pay money (cash) directly to the mother or buy the child "things" hoping that it will later count for child support.** Things that are bought for the child, such as diapers, clothing, and food, while important, are always considered gifts, both before and after a child support order is set.

If the father plans to pay child support informally (without an order) by check or money order to the custodial parent, he should inquire with the local child support agency to ensure he can receive credit later for these payments. Another option is for the father to contact the child support agency right away to start a child support case and/or to make voluntary payments into the payment center (if the county is able to do this). A father, just like a mother, can request to open a "child support case" and to pay child support through the child support agency.

If the mother is receiving cash public assistance (MFIP), any money paid by the father through a county child support order goes directly to the mother, and her MFIP grant is reduced accordingly. If the father does not have a child support order through

the county, and the mother is on MFIP, and he pays her cash or some other type of informal child support, that support will not be credited to him later. Sometimes the father is living with the mother and she is on a public assistance grant, but he isn't, and he is still giving the mother money. To protect himself, he should get on the public assistance grant with her and/or stop paying her money. (If he continues to live with the mother but it isn't reported to public assistance the grant may be terminated, and worse, if they find out he lived there).

Second, perhaps one of the most important things for fathers and people working with fathers to understand is how child support modification works. Without going into the law in detail, fathers need to understand that it is very difficult, almost impossible, to retroactively modify a child support order. **Once child support debt (called arrears) accrues, it may be there forever until it is paid off.** For example, when the father retires, if he receives social security then child support can come out of social security benefits, even long after his children are adults. (If the money is owed to the custodial parent, she can agree to forgive debt owed to her. If the money is owed to the public authority (county), the county may be willing to compromise or forgive some debt, depending on the circumstances.)

If a father cannot pay the current order, he can bring a motion to reduce his child support. **The current order will remain in place until there is a new child support order.** There are pro se motion forms available to modify the child support order. (Pro se means without an attorney. Pro se forms are forms with blank spaces for the father to add the specific facts of his case. The forms include instructions.) Child support modifications can be tricky, depending on the facts and the number of children and obligees (parents who are receiving the support) involved. This is one area in which help with the forms and/or an attorney's advice is wise.

FIVE

The top 5 legal issues...

Child support and custody/parenting time issues aren't always addressed at the same time.

Some fathers are frustrated that they are not able to see their children but have to pay child support. They bring up the visitation and access issues at the child support hearing, but then are told that the decision-maker at that hearing cannot do anything about it.

This is true. Child support hearings are usually in front of a child support magistrate who cannot hear or decide disputes about parenting time and custody. (A child support magistrate has limited powers. They only hear cases about child support. They don't have the powers of regular judges to hear and decide many kinds of disputes.) There are only two very limited exceptions to this rule. See the *Unmarried Father's Guide to Paternity, Custody and Parenting Time*. However, child support magistrates can make a finding about whether an obligor has parenting time that entitles them to the parenting time adjustment.

If a father needs to establish parenting time, is not getting parenting time, or has parenting time problems, he must bring a motion in District Court (separate from the child support expedited process). There are pro se forms to help fathers get into court on these issues. The type or name of the motion the father needs to bring depends on how his paternity was established and whether there have been any court orders regarding the child already entered. Fathers also need to know that although parenting time and custody issues cannot be brought up in the child support hearings that are heard in front of child support magistrates, child support can be brought up in district court in the hearings on parenting time and custody. In other words, a custodial parent can bring up child support issues in response to a father's request to have the court decide parenting time issues.

Non-payment of child support is not a valid legal reason to deny a father parenting time. Conversely, not getting time with one's child is not a valid reason not to pay child support.

ADDITIONAL RESOURCES:

- www.mnfathers.org/resources.html (*Unmarried Fathers' Guide* and other resources)
- www.mncourts.gov (forms and self-help info.)
- www.lawhelpmn.org (legal info.)
- www.dhs.state.mn.us (child support info.)

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