

“Establishing” or Deciding Paternity

When a child is born to an unmarried mother the child has no legal father until one is established by law. Establishing the father’s and child’s legal relationship is what is meant by “establishing paternity.” When a child is born to an unmarried mother, paternity can be decided in one of two ways:

(1) by both parents signing a **Recognition of Parentage (ROP)**. The ROP must be filed, and accepted by, the Minnesota Department of Health, Office of the State Registrar. An ROP does not automatically give the father the right to see the child. An ROP gives the father the right to go to court to **ask** for custody or parenting time.

(2) by court order in a paternity action (**Paternity Order**). You may be granted some custodial or parenting time rights in the paternity action.

Although parents are often asked for a copy of the birth certificate by different agencies, for example, if you apply for some type of benefits from the government, the birth certificate is NOT the official proof of your paternity needed in a court action. The official proof needed for a court action is the original or certified ROP or a certified paternity order itself. This is one reason why it is important to know how—by ROP or court order—your paternity is established.

As the chart on page 9 shows, the different ways to establish paternity have different effects on your rights.

Question From An Unmarried Father

My name is listed on the birth certificate as the father. Doesn’t that mean I’m already the legal father?

Answer: Generally yes. In Minnesota, if you are not married to the mother then your name *should* only be listed as the father on the birth certificate if your paternity has already been decided. An unmarried mother is not allowed just to put any man’s name on the birth certificate—only a legal father is supposed to be on the birth certificate. However, there are sometimes when an unmarried father’s name mistakenly appears on the birth certificate even though his paternity is not established. This may happen, for example, if the parents report they are married when the child is born, even though they are not legally married. (A husband’s name can be listed on the birth certificate because he is presumed by law to be the legal father.)

Once you sign an ROP and it is filed with the State, the State changes the child’s birth record to reflect the father’s name. To change the birth record when your paternity was established by a court order, the court order must state that the father is the legal father and that his name and other information is to be added to the child’s birth record. If the child’s last name is to be changed, the court order must also state that the child’s last name is to be changed on the birth record. There is a fee to change the birth record when there is a court order. Sometimes, if the court order establishing paternity goes to the State directly from the court of the county, the parents are not charged the fee.

How a Recognition of Parentage (ROP) differs from a Paternity Order

	The Recognition of Parentage:	A Paternity Order (court action):
Paternity	Decides who the legal father is.	Decides who the legal father is.
Do the parents have to agree on who the legal father is?	Both parents have to agree to sign an ROP.	Parents do not have to agree for the court to decide paternity. Genetic tests can help resolve conflict.
	With an ROP everything else must be done by a separate court action.	
Child Support	A child support action must be done separately in court.	Sets or reserves a child support order.
Physical and Legal Custody	Physical and legal custody stays the same as it was before the ROP was signed: The mother has sole legal and physical custody.	Decides which parent(s) have physical and legal custody.
Parenting Time	Parenting time rights are not decided. The father does not automatically have any parenting time rights.	Decides what parenting time rights the parent without physical custody has.
OTHER RIGHTS:		
Genetic Testing	No genetic testing is done. You give up the right to ask the court for it to be done later.*	Mother or alleged father can ask the court to order genetic testing.
Court-Appointed Attorney	You will not be given an attorney now or later on paternity, custody or parenting time issues.	The court must appoint an attorney to represent either parent on paternity if the parent is low income. The parent has to ask for it. This attorney also helps with custody and parenting time issues that come up in that court action.
Possible Adoption	A valid ROP helps make sure that the father finds out about any possible adoption. But it is not a guarantee because either party can cancel it within 60 days of signing.	Before the court order deciding paternity is final, the father might not get notice of adoption. Unless he is registered with the Fathers' Adoption Registry.
How long does it take?	A Recognition of Parentage can be signed in one day.	A court action takes longer (months, usually).

*You can get genetic testing BEFORE you sign an ROP. See the **options box** on page 11.

“Establishing” or Deciding Paternity, *Continued*

HOW CAN THE COURT DECIDE I’M THE LEGAL FATHER IF I WASN’T AT THE COURT HEARING?

A court can make a decision about paternity even if the father, or mother, does not show up or take part in the hearing process. These are called “default orders.” What this means is that the parent gives up his or her rights because they did not show up. In these cases the court decides paternity without genetic testing, unless the mother or another person that is part of the paternity lawsuit asks for the court to order genetic tests. The court usually decides paternity in cases without genetic testing by listening to who the mother says the father of the child is. She makes this statement under oath. That is why it is

important to go to court if you are served with court papers for a paternity case. Go to court even if you do not think you are the father. If you do not go, you may lose the right in the future to argue that you may not be the father of the child.



A court can make a decision about paternity even if the father, or mother, does not show up or participate in the hearing process.

Some other important things to understand about the ROP:

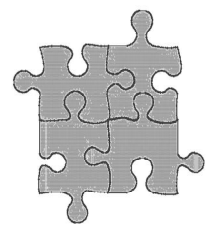
Once both parents sign an ROP and it is filed with, and accepted by, the Minnesota Department of Health, it is a final decision on paternity. It is the same legally as a court order stating that you are the father. The only time the ROP is not final is if:

- (1) the mother was married during the pregnancy or at birth, **or**
- (2) another ROP is signed claiming a different man is the legal father, **or**
- (3) one or both parents are minors (under age 18).

1) If the mother was married during the pregnancy or at birth, the husband or ex-husband is thought to be the legal father. This is called a “presumption of paternity” (see below). If the husband wants to give up his presumption of paternity, he can sign a form called a Husband’s Non-Paternity Statement and file it with the State. This form must be signed within 1 year after the child’s birth. Then the man that signed the ROP can be the legal father. If the Husband’s Non-Paternity Statement is not signed within 1 year, then a court action is necessary to decide who the legal father of the child should be.

2) What happens if 2 ROPs are filed for the same child? If the mother signs and files an ROP with you, and another ROP with another man, then each ROP is just a “presumption of paternity.” This is a very unusual case that would probably need a court action to figure out who is the legal father. Normally, once an ROP is filed with the Minnesota Department of Health and is accepted, a second ROP for the same child would be turned down and sent back to the people who signed it.

“Fathering” is a parenting style distinctive from “mothering.” Thus fathers add an important dimension to children’s intellectual and social development.



SPAN / NPNFF, 2002

3) Parents under 18:

If you or the mother are under 18 years old when the ROP is signed, the ROP is only a presumption of paternity. This means that you may still need a court order to decide paternity if you want it decided while you are still younger than 18.

But, if you are under 18 years old when you sign the ROP and neither parent seeks a paternity order from court, the ROP automatically becomes final 6 months after the younger parent turns 18. Becoming final means it has the same legal effect as if you were an adult when you signed the ROP.

What is a presumption of paternity?

If a man has a “presumption of paternity,” he is considered the legal father by the court. If he does not agree he is the father, he has to prove it with clear and convincing evidence. If 2 or more men are presumed the father of a child, then the court must decide the child’s paternity. Some presumptions of paternity are listed above (when the mother was married, if 2 ROPs are signed for the same child, or if one or both of the parents are under 18).

Other presumptions of paternity happen when people are married, or try to get married, during pregnancy or after the child’s birth. If this applies to your situation, you should talk to a lawyer.

The current law in Minnesota says that a man who “receives the child into his home and openly holds out the child as his biological child” may be presumed by law to be the child’s father. But if the man is not married to the mother, he still needs a court order or ROP to be the legal father.

If you have a question about how presumptions of paternity might apply to your situation, you should talk to a lawyer. This can be a complicated area of law to understand.

What is a Declaration of Parentage?

Before the Recognition of Parentage form was created there was another form, called a Declaration of Parentage, which some parents signed for paternity purposes. This form could not be used after August 1, 1995. If you have older children, you may have signed a Declaration of Parentage and not a Recognition of Parentage.

If you signed a Declaration, you have a presumption of paternity, but you probably still need to go to court to finalize your paternity. This is especially true if you want to get custody or parenting time rights. A child support order could have been established with just a Declaration without a final court order on paternity.

Question From An Unmarried Father

I think that I am the father of a child, but paternity has not yet been decided for the child. I think I want to sign the ROP, but I would also like to have genetic tests done to make sure that I am the biological father. Do I have to wait until I’m brought to court to get genetic tests?

Answer: No. If you and the mother agree, you can schedule and pay for genetic testing yourself. If you do not have the money to pay for genetic tests, you can ask the child support office to help you. The child support office helps mothers and fathers establish paternity. They can usually help you set up genetic tests before the court process is started (unless the court process has already started). Call the county child support office to ask for this help. *See the Written Resources section at the end of this guide for the website and phone number.*

**OPTIONS WHEN
PATERNITY IS
NOT YET
ESTABLISHED**

If you ask the child support office for help in establishing paternity, they will also set up child support if the mother is getting public assistance. But, they must pursue child support in any case where the mother is receiving public assistance, even if you do not ask for help in getting genetic testing. For more information see the child support section of this guide on page 26.

You can always sign an ROP after you obtain genetic test results if the child’s paternity has not yet been established, but you cannot get the child support agency to help you get genetic tests done after you sign the ROP. The only exception to this is if you are within 60 days of signing the ROP, then you can revoke the ROP and ask for genetic tests.

You can ask for a copy of your Declaration of Parentage. You use the same form that you use to ask for a copy of your Recognition of Parentage. A copy of this form is at the back of this guide.

Canceling a Recognition of Parentage

The mother or father who signed the ROP can revoke (cancel) it within 60 days of signing it. The revocation must be in writing, notarized, and filed with the Minnesota Department of Health, Office of the State Registrar. A revocation form is available on the state office of child support's website or from any child support office. *See the Written Resources section at the end of this guide for the website and phone number.*

After 60 days, only a court can cancel the ROP. This is called "vacating." **Vacating an ROP after 60 days is hard to do. There are also time limits- so act quickly!** The person bringing the court action must ask the court to vacate the ROP. These are people that can start a court action:

- mother
- father
- child
- husband who signed a non-paternity statement or
- child support office.

The court action has to be based on a good legal reason. The legal reasons the court will accept are:

- someone lied in signing the document (fraud)
- duress, meaning you were forced to sign it, or
- material mistake of fact. This means you thought one thing and another thing is true.

This type of court action has time limits: the mother, father or husband must bring the action within 1 year of signing the ROP. Or within 6 months after getting genetic test results that show that the man named on the ROP is not the father. A child can bring an action within 6 months of getting genetic test results or before they turn 19, whichever is later. **You may need an attorney for this type of court action.**

The court forms you need to use and the legal standards that the court uses to make custody and parenting time decisions depend on whether you have a final, accepted ROP or a final Paternity Order.

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. Even when fathers do not share a home with their children, their active involvement can have a lasting and positive impact.



U.S. DOE

After Paternity is Decided: Understanding Family Court Actions In Minnesota For Unmarried Parents

Court forms are available on the State Court Website at www.mncourts.gov. Select “Forms” from the upper left side of the web page.

How to File Court Actions without an Attorney

(called being Pro Se)

