

Legitimation

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Legitimation



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Once upon a time,



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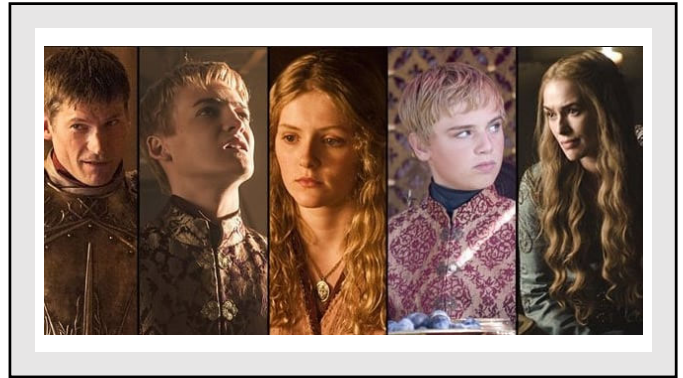
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What	Legal Recognition of Child's Status	
	Full Filial Rights (include property and surname)	Imposes on mother and father all lawful parental privileges, rights, & obligations

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Why		
	Inheritance Rights G.S. 49-14(a) "The establishment of paternity shall not have the effect of legitimation." G.S. 29-18 vs. 29-19	Paternity (allows for rights & responsibilities between parent – child be acknowledged)

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How	Exists through		
	Presumption by Marriage	Operation of Law	Judicial Proceeding

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Exists through		
Presumption by Marriage		
Common Law		
Rebuttable		
Same Sex: G.S. 12-3(16)		
After Birth: G.S. 49-12		

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Exists through		
Operation of Law		
Adoption		
G.S. 49A-1		

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Legitimation		
		Judicial Proceeding

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Where	Special Proceeding	
	Clerk	Transfer to superior court if G.S. 1-301.2(b)

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Where

County	
Child Resides	Putative Father Resides

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When

Completed	
Before Father's Death	Child = Any Age

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Who

Necessary Parties			
Putative Father <small>(only one with standing)</small>	Child	Mother <small>(if living)</small>	Mother's Husband <small>when presumption applies (G.S. 49-12.1)</small>
<small>May be other parties: custodian</small>			

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GAL for minor child


Rule 17
Need not be lawyer

Payment

- Pro bono
- Costs under G.S. 7A-306(c)(5)

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Don't Forget !!



SCRA

Federal: 50 U.S.C. 3901 et seq.
NC SCRA: G.S. 127B-25 et seq.

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Two Different Special Proceedings


G.S. 49-10	G.S. 49-12.1
<ul style="list-style-type: none"> • Verified Petition • Any child born out of wedlock • Seeking declaration of child • "If it appears to the court" 	<ul style="list-style-type: none"> • Verified Petition • Mother married • Same as G.S. 49-10 + <ul style="list-style-type: none"> • Husband • Rule 17 GAL represent minor child • Clear and convincing

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SOLE QUESTION OF FACT

Whether petitioner is biological father of the child (In re Papathanassiou)

**PROCEED
WITH
CAUTION**




**Best
Interests
of the
Child**

- Disputed paternity
- Transfer to superior court
 - In re Legitimation Locklear


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Standard of Evidence

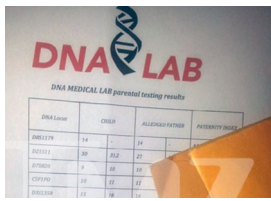


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Types of Evidence



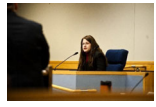
"Don't deny it, Mr. Bull. We have... a reliable witness who says you were indeed in the China shop."



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Sworn Witness Testimony

Nash County DSS ex rel Williams v. Beamon. 126 N.C. App 536 (1997)




One night stand

99%

**I did not,
have, sexual
relations,
with that
woman.**

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Documentary Evidence



STATE OF NORTH CAROLINA		File No.:
County	County	<input type="checkbox"/> In the General Court of Justice <input type="checkbox"/> Before the Clerk <input type="checkbox"/> District Court Division
Certificate of Paternity		
S.S. 168A-113		

(TYPE OR PRINT IN BLACK INK)		Case No.:
STATE OF NORTH CAROLINA		<input type="checkbox"/> In the General Court of Justice <input type="checkbox"/> District Court Division
Name of Alleged Father	County	Name of Mother of Child
VERSUS		AFFIDAVIT OF PARENTHOOD
Name of Defendant (if named)		S.S. 168A-113
Name and Address of Father	Name and Address of Mother	Name of Child
Date of Birth	Mother's Social Security No.	Father's Social Security No.

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Case Problem

- Mom is married but living with a different man when she gives birth to her first child. She has not seen her husband in 3 years. She wants to file for divorce but does not know where her husband is. Her live-in boyfriend wants to be recognized as the child's father, but he can't marry the mother. He files a legitimation proceeding.
- What are the procedural and other issues?

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- Who are the parties?
- What is the standard of proof?
- What about best interests?

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What if she was never married?


- Who are the parties?
- What is the standard?

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Contents


- Full names of
 - mother,
 - father, and
 - child
- Standard of evidence applied
- Find facts
- Declare and pronounce child legitimated
- May change surname



NO CUSTODY


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Change to Surname




Not Automatically father's		
G.S. 49-13: surname remains the same unless mom/dad agree and request or court orders based on BIC	G.S. 49-12.1: may change surname if determine BIC	G.S. 130A-118: New birth certificate with surname changes if agree or court orders change

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Appeal

- 1 _____
- 2 _____
- 3 _____

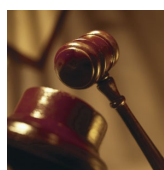



- W/in 10 days
- Superior court
- De novo

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Two Roles Involved for Clerks

- Judicial Function Role
- Administrative Role

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Vital Records

- New Birth Certificate (G.S. 49-13; 49-12.1(e))
 - Certified copy of order sent by clerk



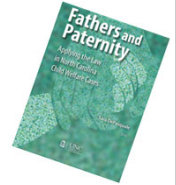
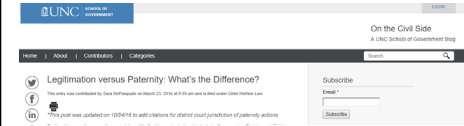
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Resources



Vol. 2, Ch. 140:
Proceedings by Putative
Father to Legitimate Child
(9/2010)

New Chapter Forthcoming!



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