

**Introduction to Paternity**  
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**What does 'Legal Father' mean?**

- ▶ The person recognized for legal purposes as the father of the child
- ▶ If someone is the legal father, we can assume he is the father and proceed accordingly

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**How does one become a legal father?**

- ▶ By legal presumption, or
- ▶ By judicial adjudication

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### How can a legal father challenge paternity?

- ▶ If legal due to presumption:
  - By seeking a judicial adjudication and rebutting the presumption
  - By raising lack of paternity as a defense in judicial proceeding

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### How can a legal father challenge paternity?

- ▶ If legal due to judicial adjudication:
  - By setting aside existing adjudication
  - Or by raising lack of paternity as a defense despite previous adjudication when res judicata/collateral estoppel does not bar him from doing so

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### Presumptions = Legal Dad

- ▶ Husband of mother at time of birth
- ▶ Reputed father who married mother
  - GS 49-12
- ▶ [Probably/maybe] person named on birth certificate
  - *But see* GS 103A-101(f)
- ▶ Man who has adopted a child
  - GS 48-1-106(b)
- ▶ Husband of women who gave birth to child through heterologous artificial insemination
  - GS 49A-1

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### People *not* legal dads

- ▶ Step-parents or people who stand in loco parentis to child
  - NC does not recognize parentage by estoppel
  
- ▶ People who have only admitted paternity
  - But admission may help establish paternity in a judicial proceeding

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### Acknowledgements: GS 130A-101(f)

- ▶ 'Hospital affidavits'
  - Before 2005: acknowledgment pursuant to statute created presumption of paternity/legal dad
  - Presumption removed from statute in 2005
  - Acknowledgment can be used as evidence in an action to establish paternity

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### Affidavit of Parentage: GS 110-132

- ▶ "Constitutes an admission of paternity"
  
- ▶ "Shall have the same legal effect as a judgment of paternity for the purpose of establishing a child support obligation."
  - So not a general adjudication of paternity for all purposes
  
- ▶ But does it make him a legal dad based on a presumption for purposes of things other than child support?

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### Affidavit of Parentage: GS 110-132

- ▶ "an illegitimate child's father who has acknowledged or affirmed his paternity under section 110-132(a) and whose conduct is consistent with his right to care for and control his child, no longer stands as a third party in relation to his illegitimate child."
  - *Rosero v. Blake*, 357 NC 193 (2003)

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### Judicial Adjudications of Paternity

- ▶ GS 49-14
  - District court action to establish (or dis-establish) paternity
- ▶ GS 49-10
  - Special proceeding before the clerk to legitimate a child born out of wedlock
- ▶ Declaratory Judgment
  - GS 1-256, et. seq.
- ▶ Affidavit of parentage
  - GS 110-132
  - Adjudication for child support only

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### Other Judicial Determinations

- ▶ When paternity is an element or issue that was litigated
  - Criminal nonsupport
  - Custody orders
  - Child support orders
  - Divorce orders
  - Juvenile court orders

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**In Judicial Proceedings.....**

- ▶ Presumptions regarding paternity apply
  - Presumption that husband of mother is father must be rebutted by clear and convincing evidence
  
- ▶ In addition, blood tests ordered in proceeding pursuant to GS 8-50.1 create presumptions regarding paternity

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