



LAW OFFICE OF
BRYAN FAGAN
— PLLC —



PATERNITY ACTIONS IN HOUSTON, TX

WORK WITH A HOUSTON ATTORNEY

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INTRODUCTION

Thank you for downloading our special report: about Paternity Actions, with information that will help you protect your assets and secure your future. For more insider divorce tips, please download our other special reports about Dirty Divorce Tricks, How to Plan and Prepare for Divorce, and Divorce after 50. We understand that you have a lot of questions and concerns about your divorce and we want to help you feel as comfortable with the process as we can. If you would like to speak to one of our highly skilled Law Office of Bryan Fagan, PLLC attorneys, we encourage you to contact us to schedule a free confidential consultation. We're here for you, always. Sincerely, Bryan Fagan, Law Office of Bryan Fagan

HOUSTON PATERNITY LAWYER

PATERNITY ACTIONS IN TEXAS

If you suspect that you are the father of a child, you have the right to establish paternity. Sometimes, the child's mother may agree that you are the father, and you can sign an affidavit evidencing that you are the child's rightful parent.

If the mother refuses to admit that you are the father, you can evidence this through DNA testing. If you are capable of establishing paternity of a child, this can help you secure certain visitation and child support rights. This often works in the best interest of the mother as well, as you may need to pay child support to care for the child.

WHY IS ESTABLISHING PATERNITY IMPORTANT?

Proving that you are the father can help you:

- Petition for visitation rights
- Request custody arrangement modifications
- Contest the adoption of the child by another family
- Allow you to include the child in your will or give the child automatic inheritance rights
- Provide child support
- I am not the biological father but I want to be - Paternity by Estoppel?
- Fathers' Rights: Children Born Out of Wedlock in Texas?
- Challenging a paternity finding in Texas

WHY YOU NEED A HOUSTON FAMILY LAWYER

Paternity actions can be complicated, and they are a legal, court-mandated process. This means that it can be extremely helpful to have an attorney to guide you through the process. You may need to petition for visitation or custody in court, and a skilled Houston family lawyer will be able to assist you with these arguments.

If you are interested in learning more about how divorce lawyer can help, don't hesitate to contact the firm right away for more information. The Law Office of Bryan Fagan, PLLC is a committed firm that is focused on helping you pursue family matters.

I AM NOT THE BIOLOGICAL FATHER BUT I WANT TO BE - PATERNITY BY ESTOPPEL?

In the past 12 months, my office has represented three different Husbands each going through their own Texas divorce who all had cases in which their wife has had a child with another man. The facts of each case have varied in some of the cases the husband was aware the wife had cheated on them but not that the child was not theirs biologically.

The one thing that was consistent in all three of the cases was that the husband had bonded and love the child and did not care if the child was his biologically. They wanted to remain the father of the child with all the duties and responsibilities that entailed even after the marriage was over.



The facts and the people were different in each one of the three cases so all the twists and turns of the cases played out a little differently. In this blog article, I am going to discuss the various applicable Texas Laws that should be contemplated when contemplating a case involving paternity by Estoppel.

WHAT IS PATERNITY BY ESTOPPEL?

The doctrine of paternity by estoppel is most often applied in child support cases to either preclude a man who has held the child out as his own from avoiding support of the child after his relationship with the child's mother has ended.

However, it can also be used to preclude a mother who held one man out as her child's father from denying him a relationship with the child as the father later.

When I handled my first one of these cases I remembered this doctrine from law school and thought I would ask some of my colleagues for their help in getting caught up on applying it in the real world. Unfortunately, this did not work out very well. Most the Texas family law attorneys did not know what I was talking about. However, with a lot of research, I found a few Texas cases on point that allowed me to create the necessary tools to fight these cases in court.

CUSTODY BATTLES ARE EXPENSIVE

One of the things I caution someone contemplating fighting a case involving paternity by estoppel is that it may get very expensive. This partly because is a fact-intensive issue and partly because it is also a fight regarding conservatorship of a child.

In many of my cases, I can give my clients a guestimate regarding the range of potential costs based on where their case ends up in the process. I am also able to tell them what similar cases have averaged as far as costs.

The cases I have had which have been outliers to this range and cost averages have been cases where there is some sort fight over conservatorship of a child.

PRESUMPTION OF PATERNITY – MOTION TO DENY GENETIC TESTING

In my cases discussed above the issue of paternity came up during the divorce process because the wives decided to bring up that their husbands were not the genetic father of the children. One of my first battles in one of these cases was over DNA testing.

A wife had on her own without agreement or Court Order conducted a DNA test and was trying to get it admitted to show that her husband was not the Genetic father of the child. In response, we filed a "Motion to Deny Genetic Testing and Objection to Admissibility of Results of Genetic Testing."

A COURT CAN DENY A MOTION FOR GENETIC TESTING

Under the Family Code Section 160.204 "A man is presumed to be the father of a child if he is married to the mother of the child and the child is born during the marriage"

When a child has a presumed or acknowledged father, a court can deny a motion for genetic testing based on equity. See Tex. Fam. Code §160.608(a), (f). To deny the motion, the court must find, based on clear and convincing evidence, that (1) the mother or father engaged in conduct that estops either party from denying parentage and (2) disproving the father's relationship with the child would be inequitable. See id. §160.608(a), (d), (f). In determining whether testing would be inequitable, the court must consider the child's best interest. See id. §160.608(b), (f). To determine the child's best interest, the court must consider the following factors:

- ☑ The length of time between the date the parentage suit was filed and the date the presumed or acknowledged father was placed on notice that he may not be the genetic father. See id. §160.608(b)(1), (f).
- ☑ The length of time the presumed or acknowledged father assumed the role of the child's father. See id. §160.608(b)(2), (f).



- ☑ the facts surrounding the presumed or acknowledged father’s discovery of his possible nonpaternity. See id. §160.608(b)(3), (f).
- ☑ The nature of the relationship between the child and the presumed or acknowledged father. See id. §160.608(b)(4), (f).
- ☑ The age of the child. Id. §160.608(b)(5).
Any harm that may result to the child if presumed or acknowledged paternity is successfully disproved. See id. §160.608(b)(6), (f).
- ☑ The nature of the relationship between the child and the alleged father. Id. §160.608(b)(7).
- ☑ The extent to which the passage of time reduces the chances of establishing the paternity of another man and a child-support obligation in favor of the child. Id. §160.608(b)(8).
- ☑ Any other factors that may affect the equities arising from the disruption of the relationship between the child and the presumed or acknowledged father or the chance of other harm to the child. Id. §160.608(b)(9), (f).

GENETIC TESTING UNDER TEXAS FAMILY CODE 160.502

If a child has a presumed, acknowledged, or adjudicated father, the results of genetic testing are inadmissible to adjudicate parentage unless performed; except:

- ☑ with the consent of both the mother and the presumed, acknowledged, or adjudicated father; or
- ☑ under an order of the court under Section 160.502.

Based on Texas Family Code 160.502 we were initially able to keep out the genetic results because they had not been conducted by agreement or by court order. We then had to have a court hearing ad described above on whether the Court would order genetic testing.

CLEAR AND CONVINCING EVIDENCE

Under Texas Family Code 160.608 to prevent the Court from Ordering Genetic Testing the following must be shown based on clear and convincing evidence:

- ☑ the mother or father engaged in conduct that estops either party from denying parentage and
- ☑ disproving the father’s relationship with the child would be inequitable.

The big challenge here is “Clear and Convincing Evidence.”A medium level of burden of proof which is a more rigorous standard to meet than the preponderance of the evidence standard, but a less rigorous standard to meet than proving evidence beyond a reasonable doubt which is the standard needed to convict someone of a crime.

In one of my cases, it was easy enough to prove that the mother had engaged in conduct that estops either party from denying parentage. However, the second prong was more challenging to prove.

IF YOU LOSE UNDER THE FAMILY CODE 160.608 ALL IS NOT LOST

Even if someone loses under 160.608 of the Family Code then they may still be able to proceed under a common law basis for paternity by estoppel. In Hausman v. Hausman, 199 S.W.3d 38 (2006) the court found in that case that no statutory basis for estoppel. However, there was a basis for “equitable estoppel.”

Equitable estoppel may arise if five factors are satisfied:

- ☑ there was a false representation or concealment of material facts;
- ☑ made with knowledge, actual or constructive, of those facts;
- ☑ to a party without knowledge, or the means of knowledge, of those facts;
- ☑ with the intention that it be acted upon; and
- ☑ the party to whom it was made must have relied on the misrepresentation to his prejudice.

NO HEIGHTENED BURDEN OF PROOF

Unlike section 160.608 of the Family Code. The Court found in Hausman v. Hausman “Nothing in section 160.608(d) requires a heightened burden to be applied when a trial court is exercising its equitable jurisdiction to determine whether a mother is estopped from denying a presumed father’s paternity.



CHILD AGE 4

Once a child turns four a new statute under the Family Code becomes relevant. Under Section 160.607:

- ☑ Except as otherwise provided by Subsection (b), a proceeding brought by a presumed father, the mother, or another individual to adjudicate the parentage of a child having a presumed father shall be commenced not later than the fourth anniversary of the date of the birth of the child.
- ☑ A proceeding seeking to adjudicate the parentage of a child having a presumed father may be maintained at any time if the court determines that:
 - ☑ the presumed father and the mother of the child did not live together or engage in sexual intercourse with each other during the probable time of conception; or
 - ☑ the presumed father was precluded from commencing a proceeding to adjudicate the parentage of the child before the expiration of the time prescribed by Subsection (a) because of the mistaken belief that he was the child's biological father based on misrepresentations that led him to that conclusion.

Generally, under the Texas Family Code, there is no time limitation for a suit to adjudicate parentage if the child has no presumed, alleged, or adjudicated father.

However, to adjudicate parentage of a child with a presumed father the suit must be brought within four years of the anniversary of the child's birth.

If a parent wants to overcome this four-year limitation, a presumed father must not have lived with the mother or engaged in sexual intercourse with her during the probable time of conception. The presumed father also must never have represented to others that the child was his own.

If two people live together as husband and wife, with a child born during their marriage, and meet the requirements of Texas Family Code 160.607(b) it can be very difficult to overcome.

FATHERS' RIGHTS: CHILDREN BORN OUT OF WEDLOCK IN TEXAS?

It is a weekly if not a daily occurrence that fathers reach out to us to find out what their rights are in Texas in regards to their children. In the state of Texas, family law protects a father's paternal rights to his children.

If a couple has broken up and are actively pursuing a child custody case they must work with their respective attorneys to ascertain the father's parental rights. Recently I had a father ask me in a consult about his rights to his child who had not been born yet and the mother was currently married to another man.

PARENTAL RIGHTS?

Texas courts treat fathers as having an important role in the upbringing of a child. Under the family code it is presumed to be in the best of the children to have both parents active in the child life. This is true whether or not fathers were ever married to the child's mother.

Fathers are afforded both rights and duties under the Texas Family Code. In Texas, a man can be a father to a child if he is:

- ☑ presumed to be the father
- ☑ has acknowledged paternity
- ☑ legally determined to be the father
- ☑ is an adoptive father
- ☑ Assisted Reproduction
- ☑ Gestational Agreement



PRESUMED FATHER

Under the family code a man is presumed to be the father following situations:

- ☑ The man is married to the child’s mother, and the child is born during the marriage;
- ☑ The man was married to the child’s mother, and the child is born within 300 days after the marriage was terminated.
- ☑ The man married the child’s mother before the birth of the child in apparent compliance with the law (regardless of whether the marriage is or could be declared invalid), and the child is born during the invalid marriage or within 300 days after the marriage ended.
- ☑ The man married the child’s mother after the birth of the child in apparent compliance with the law, he voluntarily asserted his paternity of the child and (1) the assertion is in a record filed with the Bureau of Vital Statistics, (2) he is voluntarily named as the child’s father on the child’s birth certificate, or (3) he promised in a record to support the child as his own.
- ☑ He continuously lived in the same household with the child during the first two years of the child’s life, an

ACKNOWLEDGED FATHER

A man can become a father if:

- ☑ he and the mother sign an acknowledgement of paternity with the intent to establish the man’s paternity.
- ☑ An acknowledgement of paternity is filed with the Bureau of Vital Statistics.

The signing of a valid acknowledgement of paternity adjudicates parentage and therefore, the acknowledged father has all of the rights and duties of a parent.

LEGALLY DETERMINED TO BE THE FATHER

A man can become a father if his paternity is adjudicated and established through a lawsuit in court.

ADOPTION

If a man can become a father through adoption

ASSISTED REPRODUCTION

A man becomes a father if he consents to assisted reproduction by the mother.

GESTATIONAL AGREEMENT

A man becomes a father if he is adjudicated to be the father of a child born to a gestational mother under a validated gestational agreement.

PROVING PATERNITY WHEN A COUPLE IS NOT MARRIED

If a couple is married there is a legal presumption that the child is the husbands. However, if a pregnancy occurred out of wedlock, and if a man believes he is the biological father of that child, paternity must be established. This can be done by either:

- ☑ The mother, the biological father, and the husband could fill out an acknowledgement of paternity establishing the biological father as “the father “or
- ☑ A paternity case could be pursued through the court system

CHILDREN BORN OUT OF WEDLOCK AND PRESUMED FATHERS

Under the Texas Family Code, while there is no time limitation for a suit to adjudicate parentage if the child has no presumed, alleged, or adjudicated father.

However, under the Texas Family Code Section 160.607(a) a suit adjudicate parentage of a child with a presumed father must be brought within four years of the anniversary of the child’s birth.



The four-year limitation may be overcome if:

- ☑ a presumed father did not live with the mother or engaged in sexual intercourse with her during the probable time of conception.
- ☑ The presumed father also must never have represented to others that the child was his own.

If a couple is married the presumption of paternity becomes more and more difficult to overcome the longer it is allowed to remain in place. For this reason, it is important to establish paternity as soon as possible through:

- ☑ genetic testing and
- ☑ the court system

CAN PATERNITY BE ESTABLISHED PRIOR TO THE BIRTH OF A CHILD?

One of the things the father I met with wanted to know was could he force the mother to take a DNA test prior to child being born. Although DNA testing is medically possible before the birth of the child courts are reluctant to grant such a request because there is some risk to the mother and the child.

Without the mothers consent you will likely have to wait until the child is born. Recently I have written about the local rules in Harris County Family Courts and one of the courts I wrote about specifically said it would not grant such a request.

PARENTAL RIGHTS FOR UNBORN CHILDREN

Mother’s rights as far as making decisions for a child before the child is born generally trump fathers. A mother generally will have the final say in:

- ☑ Birthing of a Child
- ☑ Prenatal Care
- ☑ Exclusive access to the child's well-being before birth

If an expectant mother and father are in disagreement about a decision regarding the unborn child prenatal there is little that can be done. If a father wants to find out information from the doctor regarding the mother or his unborn child he will need approval from the expectant mother. HIPAA rules dictate what information he has access to.

This means that without the mother's permission, fathers will have no access to information and will not be allowed to attend doctor's appointments, nor can they see test results.

CHALLENGING A PATERNITY FINDING IN TEXAS

The law in the state of Texas is that a man is legally presumed to be the father of any child that is born to his wife either during the course of their marriage or before the 301st day after the marriage ends. The most common reasons that a marriage would end are divorce or death.

In order to present a case that would rebut this presumption a man would need to file a document known as a Denial of Paternity with the district or county clerk for the county in which he resides. If you find yourself in a situation where you are in danger of being named as the presumed father of a child who is not your own, this blog post will be important for you to consider.

CHANGES IN THE LAW ON PATERNITY FRAUD

The law in Texas has recently been updated on the subject of paternity fraud. Before the change in laws (which occurred in 2011) if you mistakenly signed an acknowledgment of paternity form or were determined to be the legal father of a child by a judge then you would be on the hook to pay child support for the child even if you could prove with genetic testing that you were not the father of the child.

If that sentence put a shiver down your spine, well then that makes two of us. I can’t think of a more helpless situation than being responsible for providing care for a child that is not your own.



WHAT THE CHANGE IN LAWS MEANS TO YOU AS A MAN IN TEXAS

Prior to 2011, a parent in Texas had the ability to file a suit to terminate their rights and duties to a child and a judge could evaluate the circumstances and grant the petition if doing so were in the best interests of the child.

After 2011, if you are a father who has been legally determined to be the father of a child without first having undergone genetic testing you too may file a motion with the court to have your parental rights and duties terminated as to that child.

The key for you to understand is that in signing the acknowledgment of paternity you must have done so under a misrepresentation that was made to you. A lie, in other words, that led you to believe that you actually were the biological father of the child in question.

TIME LIMITATIONS & RELEVANT STATUTES

One of the main questions then, would be how soon would you need to bring a lawsuit that challenges the paternity finding.

Texas Family Code - 160.307 - Procedures for Rescission

A signatory may rescind an acknowledgment of paternity or denial of paternity as provided by this section before the earlier of:

- ☑ the 60th day after the effective date of the acknowledgment or denial, as provided by Section 160.304; or
- ☑ the date a proceeding to which the signatory is a party is initiated before a court to adjudicate an issue relating to the child, including a proceeding that establishes child support.

REQUESTING CONTINUED ACCESS TO THE CHILD

The other question that I think would be relevant to ask is what happens if you would still want to have the ability to spend time with the child despite your rights and duties being terminated as the legal father of the child.

Often times if you have been operating under the mistaken belief that you are the father of the child it's likely that you would have spent a great deal of time with him or her and developed a "normal" father/child relationship accordingly. If this is the case, you have the ability to request that the court award you continued possession and access to child until the child turns eighteen years of age.

This is a subject that certainly contains its share of difficult and emotional decisions. You may feel like you owe it to the child to continue to be a part of their life while balancing your own self interest of not wanting to be responsible for a child that is not biologically yours.

Unfortunately, these are questions that you may want to seek answers to from sources other than your lawyer. Certainly though, your attorney should be available to assist you with any concerns you have and to be ready and able to listen to your questions with a supportive ear.

THE LAW OFFICE OF BRYAN FAGAN, PLLC- FAMILY LAW ATTORNEYS FOR SOUTHEAST TEXAS FAMILIES

Across southeast Texas, the Law Office of Bryan Fagan, PLLC seeks to help people find solutions to their family law problems. To learn more about our office and to ask any questions you have in the field of family law please do not hesitate to contact our office. A free of charge consultation with an experienced family law attorney is available six days a week.





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