

Dissolution (Divorce) When the Wife is Pregnant

This memo will describe what happens and what you should do if the wife is pregnant when you are getting your dissolution.

I. What if the husband is the child's biological father?



If a child is born during a marriage, or within 300 days after it legally ends, the husband is “presumed” by law to be the child’s father. This includes marriages later found to be invalid.

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If a child is born before a marriage, the husband is also presumed to be the father if he voluntarily showed his paternity in one of three ways: (1) the father’s statement of paternity in a record¹ is filed with the state registrar of vital statistics; (2) he agreed to be and is 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. This is called an “Acknowledgement of Paternity” and the record - or letter - must contain all of the following: 1) a signature of both the mother and the man wanting to be considered the father, 2) the child’s name, 3) whether there has been a genetic test and the results of that test, and 4) an acknowledgement by both the mother and the man that the piece of paper being signed represents paternity of the child and that any challenge to this acknowledgement is limited and must occur within two years.

This letter can be a single page or both the mother and father can submit two different documents.² However, both documents must contain all of the above information and there may be a filing fee. If you want to get a blank “Acknowledgement Of Paternity” form and ask the other parent to sign, you can contact your local (DSHS) Division of Child Support or Community Service Office, the Center for Health Statistics (Vital Records) at the Department of Health in Olympia (360-236-4300), or in King County contact the Family Law Facilitators at the Superior Court in Seattle or the Regional Justice Center in Kent.

Ultimately, a complete Acknowledgement of Paternity means that if both spouses agree that the husband is the child’s father, you will not usually need to “prove” it in court. The husband will have the same right to residential time with the child and the same obligation to support the child as the wife does. You will need a parenting plan and a child support order once the child is born. (See “When Can I Finalize My Dissolution?” on page 4.)

¹A record is “information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form,” that is a document, form, etc. RCW 26.26.011.

²RCW 26.26.116

II. What if the husband is not the child's biological father?

The court treats the husband as the child's father until you get a court order that says the husband is not the child's father. Getting that order is called "disestablishment of paternity".

There are three ways to disestablish paternity.

- One, the disestablishment can be joined (included) in your dissolution by writing this in the "Petition for Dissolution" or stating this in your answer if you are the respondent. There is no box to check about this on the dissolution forms, so you should have an attorney help you. Generally, this option would be used when the identity of the biological father is unknown or his whereabouts are unknown. It would most likely involve genetic testing to disestablish the husband as the father. Since paternity is not being established, the biological father is not a necessary party.
- Two, the mother, husband, and biological father can sign an *Acknowledgement of Paternity* that would establish (show) the father as the child's biological father and not the husband (who would then be disestablished). The Acknowledgement must be prepared properly and must include each of the following: 1) be in a record, 2) signed under penalty of perjury by the mother, the biological father, and the husband, 3) state whether genetic testing has been completed, and if so, state that the man shown to be the biological father by the testing is the same man seeking to be established as the father, and 4) state that the parties signing the acknowledgement understand that the acknowledgement is the same as a court determination of paternity, and can only be challenged under limited circumstances for two years, and then is final and can no longer be challenged. If you want to get a blank Acknowledgement Of Paternity form and ask the other parent to sign, you can contact your local (DSHS) Division of Child Support or Community Service Office, the Center for Health Statistics (Vital Records) at the Department of Health in Olympia (360-236-4300), or in King County contact the Family Law Facilitators at the Superior Court in Seattle or the Regional Justice Center in Kent. You would include the Acknowledgement of Paternity with your Petition for Dissolution.
- Finally, either biological parent can file a Parentage (paternity) Action asking the court to establish the biological father's paternity and include a parenting plan or residential schedule and a child support order. Please see the memo by Legal Voice entitled "Options for Unmarried Parents" for more information about parentage actions. A Parentage (paternity) Action must include the mother and any possible biological fathers. You should also serve the county prosecutor's office, Family Support Division, with a copy of your paperwork so that they can determine whether the state has any interest in your case.

A guardian ad litem (GAL) must be appointed to represent the child's interests if: 1) the child is a party or 2) the court finds that the interests of the child are not adequately represented³; or 3) it is important that the child be bound by the determination of parentage⁴; or 4) the court denies genetic testing.⁵

³ RCW 26.26.555

⁴ RCW 26.26.630

⁵ RCW 26.26.535

How does the Guardian ad Litem represent the child's interests?

The GAL conducts an investigation and recommends to the court what is in the best interests of the child or unborn child. The GAL will try to determine who is actually the child's biological father. Also, the GAL will recommend whether it is in the child's best interests to disestablish the husband's paternity (and to establish the biological father's paternity). The GAL may also make recommendations about the residential schedule or parenting plan.⁶

How is the GAL appointed to the case?

The parties can agree on a GAL and have that GAL appointed by the court. If the parties do not agree on a GAL, they will have to bring a motion for the court to appoint a GAL. The court has a list of people who serve as GAL's. Neither spouse nor any potential father may act as the child's GAL. The GAL is usually not a court employee, and the parties must pay the GAL fees. The GAL fees are usually divided between the parties. GAL fees can vary widely, but are often in the range of \$75 to \$175 per hour.

What if a potential father cannot be made part of the case?

If one or more potential father(s) is out of the state or cannot be found, you should get legal advice regarding "jurisdiction", and about the possibility of proceeding without him. The court may be able to decide some issues of paternity (such as disestablishment of the husband's paternity) without the biological father there. Again, get legal advice about your specific case.

Time limits

If the dissolution isn't final, you should try to have the final court orders clearly say the husband is not the biological father of the child. This would be found in the "Findings of Fact and Conclusions of Law" part of the judge's decision. However, the court cannot order a disestablishment of paternity and it cannot recognize a signed Acknowledgement (affidavit) of paternity until *after* the child is born. In addition, the court must wait 60 days after the Acknowledgement is signed so that the period for rescission has passed before it will recognize the Acknowledgement.

If you are married when the child is born and want to disestablish paternity, you must do this before the child is two years old, or, if more time has passed, you will have to show three things: (1) you did not live with the husband at the time the child was conceived, (2) you did not have sex with the husband at the time the child was conceived, and (3) the husband never openly treated the child as his own.

⁶ A residential schedule is a court order which contains a schedule of the time each parent will spend with the child, and any restrictions on that time caused by the parent's past behavior or the child's needs. A parenting plan, which is more extensive, and required for the children of a marriage, contains a residential schedule, a section which states which parent has the authority to make major decisions for the child (education, health care, religious upbringing), and a dispute resolution section which mandates the method the parents must use to settle future disputes about the children.

Where do I get help to disestablish the husband's paternity?

If an attorney does not already represent you, you may wish to consider hiring an attorney at this time. Call the Information and Referral Line at Legal Voice (206-621-7691) or a local lawyer referral service for referrals to private attorneys.

If you want to file a Parentage (paternity) Action, you should contact your county prosecutor's office Family Support Division; they may be able to assist. See the Legal Voice memo "Options for Unmarried Parents" for more information.

If you cannot afford an attorney, you may be able to get legal advice and help filling out forms at a neighborhood clinic or from an attorney who provides services to people who represent themselves in court. For referrals to such clinics and attorneys, you may call the Information and Referral Line at the Legal Voice.

III. When can I finalize my dissolution?

You will be able to finalize your dissolution in the normal time frame. As of July 27, 2005, a judge cannot deny or delay the decree of dissolution of a marriage based on the sole reason that the wife is pregnant.⁷

If you want a parenting plan and a child support order after the child is born, you will have to go back to court at that time. You can **reserve the issue** in the final divorce decree so that you can come back to court under the same cause number, without having a new filing fee, and then present proposed orders or set the issues for trial. This is the best way to deal with it if everyone is aware that the wife is pregnant with a child of the husband during the divorce. **If the issue was not reserved** (for example, because the woman didn't know that she was pregnant at the time of finalizing the dissolution) then a Petition to Establish a Parenting Plan may be filed after the child is born.

If your dissolution has been delayed because the wife is pregnant, please call the Information and Referral Line at Legal Voice (206-621-7691) to speak to a volunteer. The volunteer may be able to refer you to an attorney for legal advice; for instance, if little time has passed since the order, you may have the option to file a Motion for Revision – an attorney can advise you whether this is an option for you.

Related Publications available from Legal Voice:

- *Options for Unmarried Parents* memo
- *Working with a Lawyer* memo

⁷ RCW 26.09.030 (1) (e)