

## Take birthfather rights seriously

**Q** What should I know about birthfather legal rights in adoption?

**A** The legal rights of birthfathers are one of the most complicated areas of adoption law. Each state has its own laws, often conflicting with those of other states. It is difficult to know which state's laws would prevail, for example, if the birthmother resides in one state, the birthfather in another, and the adopting parents in a third. (Ordinarily, the laws of the state where the baby is born or the laws of the state where the adoption will be completed are followed.)

Adoptions involve unique situations with unique fact patterns. The variables of each situation—Are the father's identity and whereabouts known? Does he know of the pregnancy? Is he married to the birth mother? Has he taken any action indicating that he wishes custody of the child?—determine which laws will come into play and how they will affect the parties. For this reason, I strongly recommend the services of a skilled adoption attorney.

Most states have created two legal classifications of fathers in adoptions—marital and nonmarital fathers (also known as “presumed” and “alleged”), each with different rights. In every case, the birthfather's category must be determined, and his rights must be addressed.

A man who is married to the birthmother (or was not divorced from her at least 300 days before the baby's

birth), is considered the marital or presumed father. Generally, there is a legal presumption that if a birth occurs while the mother is married, the husband (or estranged or ex-husband) is the child's father. The most common instance in which an unmarried man is considered a presumed father is if he takes the child into his home, supports her, and claims her as his own. In many states, a man may achieve presumed father status by filing suit and/or doing everything within his power (e.g. assisting

with expenses, letting people know that he wants to raise the child, starting a bank account for the child) to “legitimate” the child. In many states, a single father may attain presumed father status only by winning a court action.

Commonly, a presumed father has the same legal rights as a mother. In most cases, the presumed father is entitled to custody, so his consent to the adoption is necessary. If the presumed father cannot be contacted, then an abandonment action must be brought. Usually this entails publication. Prior to adjudication, the presumed father may come forward and receive custody of the child from the adoptive parents.

But what if the presumed father is not the actual father? (For example, if the mother has had an affair, or was recently divorced when conception took place.) The man presumed to be the father still must receive notice, but his consent to the adoption may not be necessary.

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