

3- Establishing Paternity

As any of us who remember Johnny Sablan's song, "Shame and Scandal in the Family" know, answering the question, "Who's your daddy?" isn't always easy. In a humorous fashion, the song makes the point that trying to determine the identity of a child's biological father can be a bit difficult at times. Johnny, if you happen to be reading this column, I'd like to suggest that you write a sequel to your song. In this sequel, you can explore the question, "Whose your legal daddy?"

This ballad can have just as many twists and turns as *Shame and Scandal* as you explore the question of whether a father who is willing to admit his paternity is automatically considered the child's legal father. Best of all, we can give your listeners a surprise ending that will make their heads spin.

Of course Johnny, you're going to need a few legal pointers before you begin writing the lyrics. So, sit back and relax and let me walk you through the legal intricacies. First, let's get a couple of definitions down. "Paternity" is the process a man uses to establish the legal fact that he is a child's father. "Legitimation" is the only way, other than by marrying the mother of a child, that a father of child born out of wedlock may establish his rights to a child. Once legitimized, a child is entitled to the same inheritance benefits as a child born into a marriage.

OK, keeping these definitions in mind Johnny, let's explore the question, how can a father establish his paternity and make his child legitimate? This can be done in one of three ways. First, if a child is born into a marriage, paternity is automatically established. That is, under Guam law, the husband is deemed the child's father and the child is considered legitimate.

Second, if the child is born out of wedlock, and both parents jointly execute an affidavit of paternity before the child turns 18 acknowledging the man's fatherhood, this will conclusively prove paternity and make the child legitimate.

Third, if the child is born out of wedlock and the mother refuses to acknowledge the paternity of a man claiming to be the father, that man can file a Complaint to Establish Paternity with the Superior Court of Guam as long as the child is under 18 years of age. He will probably have to take a paternity test. If the paternity test determines that he is the father, the Judge will grant the man's request to establish his paternity regardless of whether the mother likes it or not. Once paternity is established, the child becomes the legitimate offspring of the man.

Are you with me so far, Johnny? Are you beginning to sense that there can be some interesting story lines to your song? If I can be so bold, let me suggest a possible twist to the plot for your sequel. Suppose a married woman gives birth to a child during her marriage. To make it even more interesting, let's suppose the husband and wife divorce a couple years after the child's birth. Five years later, a man, not the woman's husband, wants to legally establish that he is the child's father. Let's further suppose that the husband, who all along suspected that he wasn't the child's father, says he doesn't care whether or not he's the biological father. He loves

the child as his own and still wants to be considered the child's legal father. The song can explore who is going to win this tug of war.

Johnny, let me walk you through the legal analysis that will help you deliver a surprise ending to your loyal fans. Guam law, specifically 19 Guam Code Annotated sections 4101 – 4103, provides that a child born during a marriage, or within 10 months after a divorce, is *presumed* to be a legitimate child of the marriage. The question then becomes, can the man claiming to be the child's father challenge this presumption? This is where things start to get really interesting, Johnny. Under Guam law, "the presumption of legitimacy can be disputed *only* by the husband or wife, or the descendant of one or both of them." In our story, the wife, although she is now divorced, still wants her ex-husband to remain the child's legal father.

At the hearing, the man can dramatically pull a sheet of paper out his pocket and demand that the judge read it. Let's further suppose that the paper is a certified paternity test result that proves the man is the child's father. Now what??? Unflustered, the judge shakes his head and quotes yet another Guam law (6 GCA section 5106(5)): "The issue [child] of a wife cohabiting with her husband who is not impotent, is *indisputably* presumed to be legitimate."

Aha, so even if the man can prove that he is the child's biological father, as long as the ex-husband and wife stick together and refuse to entertain the man's claim, the ex-husband's wish to remain the child's legal father trumps the biological father's attempt to prove his paternity. Talk about shame and scandal, Johnny!! Your fans will love it! Give me a call later, Johnny, I've been working on a catchy tune for the song I think you'll like.