

# INSTRUCTIONS FOR FILING A PETITION FOR LEGITIMATION AND CUSTODY/VISITATION

## GENERAL COMMENTS

This is the form packet for a biological father of a child born out of wedlock to file on his own a petition for legitimation in Fulton County and to seek custody or visitation in the same petition. This form packet cannot be used by the mother or any other person other than the father.

**Please read these instructions and each form very carefully.** Missing or misreading a word could cause you to make serious errors in your case, placing your rights and the direction of your legitimation case in jeopardy.

## INTRODUCTION

In the State of Georgia, one way that a father may establish legal rights to a child born out of wedlock is to file a petition for legitimation in the Superior Court. There are two options available to you for filing a legitimation case: (1) you can hire an attorney who will prepare your paperwork and represent you in court, or (2) you can use self-help forms such as the forms included in this packet and represent yourself in court. If the court grants your legitimation and issues a *Final Order for Legitimation*, you will have legal rights to your child.

It is advisable to speak with an attorney before filing any action with the court. There are often more issues involved in a legitimation than you might realize if you fail to get legal advice. However, you may want to review the forms and instructions in this packet before you talk to an attorney, so that you will be able to make the best use of your time with the attorney.

Legitimation can be a very complicated process. If documents are not completed, signed, notarized and filed as required by law, the legitimation pleadings are not in compliance with the law; a judge cannot grant your request for legitimation, and may dismiss your case.

If you want a court to grant your legitimation, **you must follow the law and you must complete each and every paragraph that applies to your case (but not any paragraphs that do not apply to your case).**

Please read and complete the seven (7) steps listed below in order to complete, file and serve your petition for legitimation.

State law, **OCGA § 15-19-51** prohibits court personnel (including staff attorneys or law clerks, calendar clerks, clerk's office staff, and sheriff's department staff) from giving legal advice or answering legal questions. Free consultations with an attorney are available through the Family Law Information Center by appointment only. You may request a consultation by calling 404-612-2789..

## YOU MAY ESPECIALLY NEED AN ATTORNEY IF:

- The case is contested OR an attorney represents the Respondent.
- There has been family violence between you, your children, or the Respondent.
- You want an arrangement for custody or visitation that does not exactly fit these forms.
- You are unable to locate the Respondent to have him/her served with this action.
- Your child's mother was married to someone else at the time your child was conceived or born.
- Another man's name is listed as the father on the child's birth certificate.

**Whether your case is contested or uncontested, you should speak with an attorney before signing a settlement agreement or filing any other documents with the court.**

## FORMS YOU WILL NEED TO START YOUR Legitimation:

If this legitimation action may be contested (you do not have a signed Consent to Legitimation), you must file the following documents with the *Petition*. There may be other forms required by the Clerk's office. Be sure to follow the Clerk's instructions for e-filing. All forms listed below are either included in this packet or available from the FLIC Office, unless otherwise stated.

- (a) *Domestic Relations Case Filing Information Form*
  - (b) *Petition for Legitimation*
  - (c) *Verification*
  - (d) *Summons (available from Fulton County Clerk's Office or downloadable at <http://www.fultonclerk.org/285/Civil-Forms>)*
  - (e) *Automatic Domestic Relations Standing Order*
  - (f) *Domestic Relations Financial Affidavit*
  - (g) *Child Support Worksheets and Schedules*
  - (h) *Permanent Parenting Plan*
  - (i) *Sheriff's Entry of Service (available from Sheriff's Office)*
- OR**  
*Acknowledgment of Service*
- OR**  
Publication paperwork, as follows:
- (1) *Affidavit of Diligent Search*
  - (2) *Notice of Publication and*
  - (3) *Order of Publication, Return of Service, Order Perfecting Service*
- (j) *Rule Nisi (only if you want a hearing on temporary issues)*
  - (k) *Poverty Affidavit (only if you are indigent and cannot afford to pay the filing & service fees)*

If this action is **uncontested** (you have a signed Consent to Legitimation), you should file the following documents with the *Petition*.

- (a) *Domestic Relations Case Filing Information Form*
- (b) *Petition for Legitimation*

- (c) *Verification*
- (d) *Summons*
- (e) *Domestic Relations Financial Affidavit*
- (f) *Child Support Worksheets and Schedules*
- (g) *Permanent Parenting Plan*
- (h) *Acknowledgment of Service and Consent to Jurisdiction and Venue* (original signed by Respondent and notary public)
- (i) *Poverty Affidavit* (only if you are indigent and cannot afford to pay the filing & service fees)
- (j) *Consent to Legitimation* (original signed by Respondent and notary public)

## **FORMS YOU WILL NEED AT THE FINAL HEARING TO FINISH YOUR LEGITIMATION:**

You will need the following form when you go to the final hearing in your legitimation. This form is included in this packet, or is available from the Family Law Information Center.

- (a) *Final Order of Legitimation*
- (b) *Child Support Addendum*
- (c) *Permanent Parenting Plan Order*
- (d) *Domestic Relations Final Disposition Information Form*

## **THE FOLLOWING ARE DETAILED INSTRUCTIONS ON HOW TO COMPLETE AND FILE THIS *PETITION FOR LEGITIMATION AND CUSTODY/VISITATION*, AS WELL AS SOME OF THE RELATED DOCUMENTS.**

### ***Step 1: Completing the Petition for Legitimation and Custody/Visitation***

#### ***Caption (Heading):***

Fill in your full name as the Petitioner, and the Respondent's full name as the Respondent. ***Do not fill in the Civil Action Case Number. The clerk will assign a number to your case when you file your Petition in the Clerk's office.*** After completing the heading, write your full name again in the space provided just before Paragraph 1.

#### ***Paragraph 1: Identify the Respondent***

Write the Respondent's name on the blank line.

- (a) Check box "a" if the Respondent is the mother of your child. Use this option if the mother is living and no one else has been granted guardianship or custody of the child. If the mother is deceased and no one else has been granted guardianship or custody of the child, you can still use this option.
- (b) Check box "b" if the Respondent is the legal guardian of your child.
- (c) Check box "c" if the Respondent is the legal custodian of your child.

## Paragraph 2: Jurisdiction and Venue

**Note:** The issue of venue in a legitimation action is very complicated. It is also very important, since the legitimation may be defective if venue is not addressed properly. Read these instructions very carefully. If your situation does not seem to fit any of the choices exactly, you should talk to an attorney. You may not be able to file your case in Fulton County, or you may need to make particular changes to this form.

- (a) Check box “a” if the Respondent **currently resides in Fulton County**.
- (b) Check box “b” if the Respondent is not a resident of Fulton County, but **resides in Georgia** and has **acknowledged** service of process **and consented** to the jurisdiction and venue of this Court. (You will also need to file the original signed and notarized *Acknowledgment of Service* when you file this *Petition*.) You must currently live in Fulton County to check this box.
- (c) Check box “c” if you live in Fulton County, the Respondent **does not live in Georgia** and your child resides in some other county in Georgia.
- (d) Check box “d” if you do not live in Fulton County, the Respondent **does not live in Georgia**, but your child resides in Fulton County, Georgia.
- (e) Check box “e” if you reside in Fulton County, your child resides in Georgia, but you **do not know where the Respondent lives**. You must prove to the Court that you have tried to locate the Respondent and cannot find her. **You must also file the original signed and notarized “Affidavit of Diligent Search” with this Petition. In that Affidavit, you will explain to the Court about the steps you took to try to find the Respondent.**
- (f) Check box “f” if you do not live in Fulton County, your child resides in Fulton County, but you **do not know where the Respondent lives**. You must prove to the Court that you have tried to locate the Respondent and cannot find her. **You must also file the original signed and notarized “Affidavit of Diligent Search” with this Petition. In that Affidavit, you will explain to the Court about the steps you took to try to find the Respondent.**
- (g) Check box “g” if the Respondent Mother is deceased but you or the children live in Fulton county.

**Note:** In situations (e) and (f), you will have to serve the Respondent by publication. That means you will not be able to get certain kinds of relief as part of the legitimation, such as child support. However, if the Respondent later acknowledges service, gets served by the sheriff, or files an *Answer* to the legitimation, then your case may not be limited by the restrictions that apply to publication cases.

## Paragraph 3: Service of Process

**Note:** To find out more information about Service of Process, read **Step 6** of these instructions.

- (a) Check box “a” if you want the Sheriff’s Department to serve the Respondent with this *Petition* and the other court papers. You must fill in the address where the Respondent should be served, and circle whether this is a home or work address. If the Respondent lives outside of Fulton County and you want the Sheriff’s Department to serve him or her, *you must inform the Clerk’s office (when you file the case) that the other party must be served by “second original.” The clerk will then stamp the service copy of your papers as a “second original.”*

- (b) Check box “b” if the Respondent has acknowledged service of process. If you check this box, you must also file the original signed and notarized *Acknowledgment of Service*.
- (c) Check box “c” if you do not know where the Respondent lives and you are serving her by publication. Write the Respondent’s last known address on the lines provided. *You must also file the original signed and notarized “Affidavit of Diligent Search” with this Petition. In that Affidavit, you will explain to the Court about the steps you took to try to find the Respondent.*
- (d) Check box “d” if the Respondent Mother deceased.

**Paragraph 4: Minor Children**

On the space provided, write the number of minor children that you have together with Respondent. In the additional spaces, list the name of each child, the gender, year of birth and the parent (or other adult) with whom the child lives now. If you have more than five (5) minor children together, you should list the information for the additional children on a separate piece of paper and attach that paper to this *Petition* (between pages 2 & 3).

**Paragraph 5: Children’s Current Residence**

In the spaces provided, you must give the Court the address and county where the children live now, and the names of the adults living with them. On the last space, tell the court how long they have been at that address. **If the children live in a shelter for victims of family violence, do not list the address of the shelter.** Instead, on the space for the address, list only the name of the shelter and the state where it is located. Do not even fill in the name of the county.

**Paragraph 6: Children’s Past Residences**

You must tell the Court where the children have lived within the past five (5) years. In the spaces provided, tell the Court the dates the children lived at each address, and then list the address next to the corresponding date. **If the children live in a shelter for victims of family violence, do not list the address of the shelter.** Instead, on the space for the address, list only the name of the shelter and the state where it is located.

**Paragraph 7: Adults With Whom the Children Have Lived**

In the spaces provided, list the name of each adult with whom the children have lived during the past 5 years, and then list that person’s current address. **If any person on the list is living in a shelter for victims of family violence, do not list the address of the shelter.** Instead, on the space for the address, list only the name of the shelter and the state where it is located.

**Paragraph 8: Other Court Cases About Children**

- (e) Check “a” if you have never participated in litigation other than this case (such as filing a case, being served with court papers, testifying as a witness), concerning the custody of or visitation with the children, in this state or any other state.
- (f) Check “b” if you have participated in litigation other than this case (such as filing a case, being served with court papers, testifying as a witness), concerning the custody of or visitation with these children, in this state or any other state. In the spaces provided, list the court, the case number and the date of any order concerning custody or visitation.

**Paragraph 9: Other Cases That Could Affect Custody or Visitation in This Case**

- (a) Check “a” if you do not have any information about any other case (past or present, in Georgia or another state) that could affect custody or visitation in this case. Examples include other legitimations, contempt actions, family violence cases, termination of parental rights, divorces, and adoptions.
- (b) Check “b” if you do have information about any other case (past or present, in Georgia or another state) that could affect custody or visitation in this case. Examples include other legitimations, contempt actions, family violence cases, termination of parental rights, divorces, and adoptions. In the spaces provided, you must tell the Court the name of the court involved, the case number and the type of case. If you need more space for this answer, use additional paper and attach it to this *Petition* between pages 5 and 6.

**Paragraph 10: Others Claiming Custody or Visitation**

- (a) Check “a” if you do not know of any person (other than the Respondent) who has physical custody of the children or who claims to have custody or visitation rights to the children.
- (b) Check “b” if you do know of someone (other than the Respondent) who has physical custody of the children or claims to have custody or visitation rights to the children. In the spaces provided, list the name and present address of each person involved.

**Paragraph 11: Legitimation** – check Paragraph 11

**Paragraph 12: Request for Children’s Name Change**

Complete this paragraph if you are requesting the Court to change any of your children’s names. In the spaces provided, list the current name of each child whose name is to be changed. Then on the same line, after the word “to”, list the new name you would like the child to have. If you have more than five (5) minor children whose names are to be changed, you should list the information for the additional children on a separate piece of paper and attach that paper to this *Petition* (between pages 4 & 5).

**Paragraph 13: Father’s Name on Children’s Birth Certificate**

Check this paragraph if your name is not already listed as father on each child’s birth certificate and you would like your name entered as the father on the child’s birth certificate.

**Paragraph 14: Child Custody**

**Note:** There are many ways to arrange custody of children. This form *Petition* does not try to deal with all of them, but only the most common ones. If you want the Court to order a different custody arrangement, you should talk to an attorney. If you want more information about what it means to have sole custody or joint legal custody, you may want to read OCGA § 19-9-6 and also talk to an attorney. Under the law, the Court must order custody in a way that fits the “best interests of the children.”

- (a) Check box “a” to show that you are seeking custody.  
On the first line, check the box to show whether you want sole or joint legal custody.  
On the second line, check the box to show whether you want sole or joint physical custody.  
On the third line, check the box if you are seeking visitation.  
If you want some other or additional arrangement, check the box on line four and write out the

arrangement that you want.

(b) Check box “b” if you have completed and attached a Parenting Plan.

**Paragraph 15: Child Support**

**Note:** Unlike many areas of family law, there are specific guidelines that the Court must follow when setting child support. The guidelines are found in OCGA § 19-6-15. You should read the child support guidelines in OCGA § 19-6-15, links to which may be found on the Internet at: <http://csc.georgiacourts.gov/content/legislation-and-rules>

- (a) Check box “a” if you are asking the Court to order the Respondent to pay child support. In the first space provided, list the Respondent’s gross monthly income (before taxes or other deductions). Then, in the other space, list the amount you believe the Respondent should pay each month, based on the Georgia child support guidelines. (See note above.) If you do not know the amount of the Respondent’s income, write the word “unknown” on all three spaces.
- (b) Check box “b” if you believe that you should pay child support to the Respondent. In the first space provided, list your gross monthly income (before taxes or other deductions). Then, in the other space, list the amount you believe you should pay each month, based on the Georgia child support guidelines. (See note above.)
- (c) Check “c” if you are not asking the Court to deal with child support. (This may be the case if there is already a child support order in place that you do not want to change.)
- (d) Check box “d” if the Court cannot decide this issue in this legitimation action, because the Court cannot get personal jurisdiction over the Respondent. Generally, this will be because you are serving by publication, or because the Respondent has never lived in the State of Georgia.

**Paragraph 16: Health Insurance for Children**

- (a) Check box “a” if you want the court to order the Respondent to maintain medical, dental and hospitalization insurance for the children.
- (b) Check box “b” if you already provide health insurance for the children.
- (c) Check box “c” if you are not asking the Court to decide this issue.
- (d) Check box “d” if this issue cannot be decided by the Court in this legitimation action because the Court cannot get personal jurisdiction over the Respondent. (See the instructions above for Paragraph 16-c.)

**Paragraph 17: Other Medical Expenses for Children**

- (a) Check “a” if you want the Respondent to be responsible for all expenses incurred for the children’s medical, dental and hospital care, that are not covered by insurance.
- (b) Check “b” if you believe that you and the Respondent should share the expenses incurred for the children’s medical, dental and hospital care, that are not covered by insurance.
- (c) Check “c” if you are not asking the Court to decide this issue.
- (d) Check “d” if this issue cannot be decided by the Court in this legitimation action because the Court

cannot get personal jurisdiction over the Respondent.

**Paragraph 18: Life Insurance to Support Children**

- (a) Check “a” if the children depend on the Respondent for support, and you believe the Respondent should maintain a life insurance policy on herself for the support of the minor children. In the space provided, write the amount of insurance you believe the Respondent should maintain for the children’s benefit.
- (b) Check “b” if you are not asking the Court to decide this issue.
- (c) Check “c” if this issue cannot be decided by the Court in this legitimation action because the Court cannot get personal jurisdiction over the Respondent.

**Final Paragraph: Request for Relief \* CHECK ONLY THOSE THAT APPLY \***

- (a) Check box “a” if you want the Court to grant you an order legitimating your relationship with your children.
- (b) Check box “b” if want the Court to change the names of your children. Make sure you have completed paragraph 12.
- (c) Check box “c” if you want the Court to order that your name be entered as the father on the children’s birth certificates. Make sure you have completed paragraph 13.
- (d) Check box “d” if you want the Court to order custody and visitation according to Paragraphs 14.
- (e) Check box “e” if you want the Court to order child support, health insurance, medical expenses and life insurance according to Paragraphs 15, 16, 17, and 18. Make sure you have completed those paragraphs.
- (f) Check box “f” if the Respondent did not sign an *Acknowledgment of Service* and you need to have Respondent served according to the law.
- (g) Check box “g” if you want the Court to schedule a Rule Nisi (hearing on temporary issues). Complete a *Rule Nisi* form for the Court to complete and sign.
- (h) Check box “h” as a “back-up” to allow for any other relief the Court finds appropriate in your case.

**To finish filling out this Petition form**, add the date on which you are signing it, sign your name in the space provided on the last page, write your address and a daytime telephone number where the Court staff could reach you if necessary. **If the Respondent does not know your address and it should be kept confidential because of family violence, do not write that address here.** Instead, you should write another address here, where you can be sure that you will receive any information that is mailed to you by the Court or the Respondent.

**Step 2: Complete the Verification Form**

The Verification form must be filed with the *Petition for Legitimation and Custody/Visitation*. In the caption, insert your name as the Petitioner and the Respondent’s name as the Respondent. **Do not fill in the Civil Action Case Number. The clerk will assign a number to your case when you file your case in the**

**Clerk's office.** Insert your name in the space underneath the word "Verification," which is the title of this document. In the next space, insert the title of the document you are verifying as true, which is "*Petition for Legitimation and Custody/Visitation.*"

Now, before you sign this *Verification*, remember that you will be swearing under oath that the information you have provided in the *Petition for Legitimation* is true. Therefore, you should re-read the *Petition* one more time, from start to finish, to make sure it is all true. Then, take the *Petition* and this *Verification* to a notary public. (See pages 2-3 above to find out the other forms you will need to have notarized.) **Sign your name in front of the notary public** in the space provided, and check the box to indicate that you are the Petitioner. The notary must complete the rest of the *Verification* form after you sign it under oath.

### **Step 3: Complete Other Court Documents & Copying Your Papers**

In addition to the *Petition* and the *Verification*, you must complete and file several other forms together with the *Petition* to start your legitimation case. Like the *Petition* and the *Verification*, some of these forms must also be signed by you in front of a notary public.

After you have finished filling out all the papers you need to start your case, and all have been signed (in front of a notary when required), **follow the Clerk's instructions for efilng.**

### **Step 4: Fees**

Check with the Clerk's Office to find out **filing fee** for a legitimation action. In addition, if the Fulton County Sheriff's Department is going to serve this action, there is a **service fee**. You should check with the Clerk's office and confirm the types of payment they will accept.

If you have a very low income, and feel that you cannot afford to pay these fees, you can ask the Court to waive the fees. To do this, you can file a **Poverty Affidavit** (or **Affidavit of Indigence**) with the other papers when you file your legitimation action at the Clerk's office. A judge must sign the *Order* approving your *Affidavit*, before the filing of your case will be completed by the Clerk's office staff. If the judge signs the order of approval, both the filing fee and the service fee are waived. If the judge does not approve your *Affidavit*, you must pay the fees before your case will proceed.

If you are serving the Respondent by publication (because you do not know where she or he can be found for service), there is a publication fee charged by the newspaper that publishes the notice. If the judge approves your Affidavit of Indigence, the newspaper may waive the publication fee.

### **Step 5: Filing Your Case in Court**

After you have completed, signed (in front of a notary, where applicable), copied and sorted all your paperwork (and you have your filing and service fees ready, unless you are filing a *Poverty Affidavit*), you are ready to file your case.

**You should follow the Clerk's instructions for efilng.** Unless you filed an *Acknowledgment of Service*, you must also arrange for service. Follow the Clerk's instructions for efilng and arranging for service.

### **Step 6: Arranging for Service**

Service is the required formal process of notifying the Respondent that the legitimation action has been filed.

There are basically **three ways** for service to be completed: (1) the Respondent signs an *Acknowledgment of Service*, (2) service by the sheriff's department or other approved process server, or (3) publication.

### **Acknowledgment of Service**

This is the easiest and least expensive method, **but only if** the Respondent is cooperative and willing to sign an acknowledgment form in front of a notary public.

The *Acknowledgment of Service* form is appropriate if you and the Respondent have not reached a complete agreement yet, but the Respondent is willing to acknowledge service. This saves the Respondent the possible embarrassment or inconvenience of being served by the deputy sheriff, but does not give up the Respondent's right to file an *Answer* and have a trial if an agreement is not reached.

To use this method of service, you need to complete the appropriate form and have the Respondent sign it in front of a notary public. Then, you file it with your other papers per the Clerk's instructions for e-filing.

### **Service by the Sheriff ("Personal Service")**

This is the usual way for service to be completed. It is sometimes called "Personal Service," which means that the deputy sheriff or other court-approved process server hands the papers to the Respondent in person. If the Respondent has not signed an acknowledgment, and you know an address where the Respondent can be served, then you should make arrangements for the Sheriff's Department to serve the papers. Follow the Clerk's and the Sheriff's instructions for Sheriff's service.

**If the Respondent must be served in another county or state**, then the Fulton County Sheriff's Department cannot serve the papers. **You must arrange for service directly with the sheriff's department of the proper county.** You must find out the amount of the fee, and take or send it to the proper sheriff's department, along with the service copy of the papers.

Make sure the service copy includes the *Sheriff's Entry of Service* form. After the sheriff's department completes service, they will send you a proof of service form.

### **Service by Publication**

This is the method of last resort. If you can find the Respondent, you must use one of the other two methods of service. But, it is your only choice if you do not know where the Respondent lives or works, and you cannot find out that information. You must prove to the Court that you have tried to locate the Respondent and cannot find him or her.

If you have to serve the Respondent by publication, there are special limitations on your legitimation case, because the Court will not have "personal jurisdiction" over the Respondent. You will not be able to get certain kinds of relief as part of the legitimation, such as child support. However, if the Respondent later acknowledges service, gets served by the sheriff, or files an *Answer* to the legitimation, then your case may not be limited by the restrictions that apply to publications cases.

To serve by publication, you must prepare and file three forms:

- (1) *Affidavit of Diligent Search*
- (2) *Notice of Publication* **and**
- (3) *Order of Publication, Return of Service, Order Perfecting Service*

In the *Affidavit of Diligent Search*, you will explain to the Court about the steps you took to try to find the Respondent. You must make reasonable efforts to find the Respondent before you fill out the *Affidavit* form.

These forms are available through the Family Law Information Center.

If you know you must use service by publication when you prepare your *Petition for Legitimation and Custody/Visitation*, then you should prepare the three listed forms at that time. However, if you have already filed your legitimation case, and have tried to complete service by a different method, you can still request the Court's permission to serve by publication.

After you file the forms, if the Court grants permission, the Judge will sign the *Order of Publication*. You must pay the cost of publication. Then, the *Notice of Publication* will be published in the county's official legal newspaper four times (usually four weeks in a row). The *Notice* gives the Respondent 60 days to file an *Answer*, if she or he wants to contest the case.

Meanwhile, the Court Clerk is required to mail the *Notice of Publication* to the Respondent's last known address (which you have provided in the *Affidavit of Diligent Search*), and then to complete the *Return of Service* part of the 3-part form listed as (3) above.

However, to be on the safe side, you should also mail a set of all the papers (the "service copy") to the last known address. Make sure you put enough postage on it, and make sure you list a return address, so the post office can return it to you if they are not able to deliver it.

After it has been published all four times, you should receive an *Affidavit of Publication* from the newspaper, stating that publication is complete. **You must bring this *Affidavit of Publication* with you to your hearing**, to prove that service by publication has been completed. Usually, the Judge will then sign the *Order Perfecting Service* at the hearing, showing that the Court has reviewed the service and finds it was done properly.

**You may later find out where the Respondent lives or works (before the case is over).** If this happens, then you should arrange for the Sheriff's Department to serve the Respondent, or for the Respondent to acknowledge service.