

PATERNITY

**GENERAL
INFORMATION**

Packet #1

SOUTHERN ARIZONA LEGAL AID, INC.

PATERNITY

GENERAL INFORMATION

USE AND DISCLAIMER

These forms shall not be used to engage in the unauthorized practice of law. Court cases can be very complicated, and even if you are representing yourself you should see a lawyer for legal advice as to how the law applies to you, and what is best in your particular situation. This might save you time, money, trips to the courthouse, and avoid serious mistakes. There are lawyers who will help you help yourself. This means that they will only charge you for giving you the help you need, and you can complete the court papers on your own or ask the lawyer for additional help with your papers.

There are professional mediators in the community who can help you with your problems. They help you solve your present problem, and anticipate future problems and how to solve them. Mediators work with both parties in a dispute to help resolve areas of disagreement or trouble.

PATERNITY PROCEEDINGS

Paternity proceedings are court processes to establish the paternity of a child born out of wedlock, and to establish custody, parenting time (visitation) and child support.

The essential allegations of a paternity Complaint are that:

1. A child has been born or conceived out of wedlock; and
2. That one party in the proceedings is the father of the child.

If paternity is admitted or established by the court, orders pertaining to child custody, parenting time and child support will be entered.

In order to file a paternity action you should generally have resided in Arizona with the child(ren) **for at least six months** or Arizona must have been the child(ren)'s primary place of residence for a greater part of his/her life, if the child is less than six months old.

Title	Form Name
Use and Disclaimer (1 page)	paternity-use and disclaimer.info
Child Custody (1 page)	paternity-child custody.info
Parenting Time (1 page)	paternity-parenting time.info
Child Support (1 page)	paternity-child support.info
Temporary Orders (1 page)	paternity-temporary orders.info
Deferral or Waiver of Court Fees and Costs (1 page)	paternity-deferral/waiver.info
Preparing, Filing and Serving the Court Papers (1 page)	paternity-court papers.info
The Step-by-Step Process (1 page)	paternity-process.info

CHILD CUSTODY

Child custody refers to the rights and relationships between the parents and their child(ren). The court can order sole custody or joint custody. Child support is a different issue from child custody. See the packet entitled “**Custody and Parenting Time**” for more information and forms.

Sole legal custody is when one parent generally makes all major decisions for the child, although the other parent may have parenting time (visitation).

Joint custody can be **joint physical custody**, **joint legal custody**, or both. With joint physical custody both parents share substantial equal time with the children and the children may live part of the time with each parent. With joint legal custody both parents take the responsibility for making decisions and for raising the children but the children generally reside with one parent. In either situation each parent has parenting time.

Parents who want the court to order joint legal custody must file a Joint Custody Agreement and Parenting Plan signed by both parents before the judge will sign the Paternity Judgment. It is not necessary that both parties enter into the case (e.g. one parent files a Judgment and the other files an Answer). Joint custody can be awarded in a default situation as long as both parents sign a Joint Custody Agreement and a Parenting Plan, the answer fee is paid and both parents have taken the “Domestic Relations Education on Children’s Issues” class.

FACTORS: In making its decision regarding the custody of minor children, the court will take many factors into consideration. The primary concern, however, is what is in the best interests of the child(ren). Other factors that the court will consider are:

1. The wishes of the parent or parents;
2. The wishes of the child;
3. The interaction and interrelationship of the child with the child’s parent/parents, the child’s siblings, and other persons who may significantly affect the child (e.g. a step-parent);
4. The child’s adjustment at home, school and community;
5. The mental and physical health of all individuals involved;
6. Which parent is more likely to allow the child frequent and meaningful contact with the other parent;
7. If one or both parents have provided primary care for the child;
8. The nature and extent of any coercion or duress used by one parent in obtaining any agreement regarding custody; and
9. Whether a parent has completed the required course in “Domestic Relations Education on Children’s Issues.”

DOMESTIC VIOLENCE: The court considers evidence of domestic violence as contrary to the best interests of the child and that factor will be heavily weighed in deciding which parent is to get custody of the children. Joint custody is generally not awarded in situations where there has been a history of domestic violence.

CRIMES: If the court determines that a parent seeking custody has been convicted of a drug-related offense or one involving driving while intoxicated or under the influence of alcohol or drugs, there is a presumption that custody of the child by that parent is not in that child’s best interests.

INCOME: Generally, income is not a determining factor in awarding custody to one parent or another.

PARENTING TIME

GENERAL

Parenting time (visitation) is ordered so that the parent who does not have primary custody of the child can still see the child. The court will order reasonable parenting time according to the age of the child, but the amount of parenting time can vary by agreement between the parents.

The judge will decide what is in **the best interest of the child** when deciding what kind of parenting time to order. Often this is complicated, and you might need legal or other professional help to understand your rights, duties, and responsibilities as to custody and parenting time as well as what may be in your children's best interests.

TYPES OF PARENTING TIME ARRANGEMENTS

Reasonable Parenting Time - generally the courts will allow the parents to work out and agree upon a parenting time plan. This plan must be "reasonable," and should be written into a Parenting Plan. A Parenting Plan is a document that the court can include in your paternity Order that specifically lists the parenting time that the parents have agreed to or, if they have not agreed, that the court will order. Beware of simply listing "reasonable parenting time" in the Paternity Judgment. What is "reasonable" to one parent may not be "reasonable" to the other parent, and this may cause disagreements later.

Supervised Parenting Time - This means that the non-custodial parent only has parenting time with another person present. Supervised parenting time may be ordered in cases where the non-custodial parent abuses drugs or alcohol, is violent or abusive, or does not have the parenting skills to care for the child without another adult present. Supervised parenting time is not intended to punish the parent, but to protect the child.

No Parenting Time - The court does not generally allow a custodial parent to totally prevent the other parent from seeing the child on a regular basis. The only time no parenting time is appropriate is if the non-custodial parent has seriously harmed or abused the child, or is otherwise a serious danger to the child's emotional and /or physical health, or if there is a court order saying that the parent shall not see the child. An order of no contact by a parent is a last resort, and is used solely to protect the child.

MORE HELP

You can read the "**Pima County Access Guidelines**" and the "**Model Parenting Time Plans**," adopted by Pima County to learn more about this subject and what the judge might consider appropriate in your case. The "**Pima County Access Guidelines**" are available online at www.sc.pima.gov/domestic/Visitation_Guidelines.htm. A copy of the "**Model Parenting Time Plans**" will be provided to you at the "Domestic Relations Education on Children's Issues" class. If you use the "**Pima County Access Guidelines**" and/or the "**Model Parenting Time Plans**" and develop a Parenting Plan, you may be able to agree on a parenting time arrangement that is best for the children and the parents, without the delay and expense of a contested court trial. A Parenting Plan form is available in the packet entitled **Custody/Parenting Time**.

Additionally, the Pima County Superior Court provides free mediation services through the Conciliation Court that can also help you develop a Parenting Plan. See the packet entitled "**Mediation**."

CHILD SUPPORT

Child support refers to payments made by one parent to the other parent for the needs of the child. The receiving parent does not have to account to the paying parent for how he or she spends the child support money.

Child support orders apply to any child under the age of 18, or to a child who is still attending high school or an equivalency program. If the child is attending high school or an equivalency program child support may continue until age 19. Also, if a child is mentally or physically handicapped, the judge may order that support payments continue indefinitely, past the age of 18.

The amount of child support is **determined by combining the incomes of both parents**. The income used is gross income, which is the income before any taxes or other withholdings. There are **Child Support Guidelines** to determine child support that the judge will follow. The Guidelines also give the paying or non-custodial parent some limited credit for times that he or she spends with the child(ren). The Guidelines list other factors involved in determining support, and include a chart to determine the amount of support.

You should read the **Child Support Guidelines** as soon as you can, to understand how child support might be ordered in your case. The **Child Support Guidelines**, as well as a "calculator" for determining child support, are available on the Arizona Supreme Court website www.supreme.state.az.us. Child support does not have to be computed until near the end of the paternity action; however, the court may order that child support payments be made retroactive to the date of service of the paternity Complaint or earlier.

Child support must be paid in money -- not in clothes or gifts -- and it must be paid through **The Support Payment Clearinghouse**, PO Box 52107, Phoenix, Arizona 85072-2107. The paying parent cannot pay the money directly to the custodial parent. In most cases, child support payments are ordered to be made through a wage assignment from the paying parent's paycheck. This means that the court's order directs the employer of the paying parent to deduct the amount of child support directly from the paycheck, and then the employer sends this money to The Support Payment Clearinghouse. The Clearinghouse then records the payment and sends the money to the parent who is entitled to receive the child support payment. Self-employed or unemployed parents must also make child support payments directly to The Clearinghouse.

MEDICAL INSURANCE

Medical insurance is considered part of child support. If the parent who is ordered to make the child support payment is the same parent who pays the children's medical insurance premium, the child support amount is usually lowered to account for the cost of the medical insurance. Similarly, if the parent who receives the child support payment is the same parent who pays the children's medical insurance premium, the child support amount is usually raised.

OTHER INFORMATION

A temporary child support order can be entered before the paternity action is final, to help with financial needs of the child during the time it takes to get the paternity order. Child support payments that are ordered when the family receives Temporary Assistance to Needy Families (TANF) are processed through The Support Payment Clearinghouse. Receipt of TANF does not relieve or lessen the responsibility of the paying parent to pay court ordered child support in full and on time. If you are receiving cash assistance, DES may be entitled to keep a portion of your child support. You should check with DES regarding payment. See the packet entitled "**Child Support**" for more information and forms.

TEMPORARY ORDERS

GENERAL

Temporary orders are orders the judge may enter in your case while you are waiting to finalize Paternity Judgment, Custody or Support orders. Either party can file for temporary orders. Temporary orders are short-term decisions by the judge about child support, child custody and parenting time, until a final court order on the case.

To file for temporary orders you need a special form called a Petition for Temporary Orders, and some other documents. You also need to get a hearing date scheduled for the judge to decide about the temporary order Petition. Instructions and forms about how to do this are in the packet entitled "**Temporary Orders.**"

FILING THE PAPERWORK

You can file the papers for temporary orders at the same time you file for divorce. If you do this, get the hearing date set for the temporary orders while you are at the court filing and then be sure these papers regarding the temporary orders are served on your spouse along with the divorce papers. If you file for temporary orders at some other time, then you must be sure you serve the papers on your spouse.

The forms and instructions about the forms and how to get the hearing date are in the packet entitled "**Temporary Orders.**"

DEFERRAL OR WAIVER OF COURT FEES AND COSTS

FEES IN GENERAL

By Arizona law the court is required to charge **fees** to file some papers related to paternity cases. Here are some of the common fees (as of September 2004):

- To file a Paternity Complaint -- **\$238** (includes \$27 Domestic Relations Education Course)
- To file an Answer to a Paternity Complaint -- **\$193** (includes \$27 Domestic Relations Education Course)
- To file petitions for "post-decree" matters such as child support modification -- **\$61**
- Copying charges, per page -- **\$0.50**

If the person filing the papers cannot afford the payment when filing the papers, the court may order a deferral of the fees. If the person filing the papers is permanently unable to pay these fees, the court may order a full waiver of the fees.

COSTS IN GENERAL

There are several **costs** associated with filing a paternity action which also may be deferred or waived. These include the cost for the mandatory course in "Domestic Relations Education on Children's Issues", which is included in the fee to file a Complaint for Paternity and in the fee to file an Answer to Paternity Complaint. There may also be publishing costs if you must serve the other party by publication in Pima County, and the cost of having the Sheriff or a private process server serve the papers on the other party.

HOW TO GET A DEFERRAL OR WAIVER

All forms and instructions you will need to make your initial request for a deferral or waiver are included in the packet entitled "**Deferral/Waiver of Fees/Costs.**"

PREPARING, FILING AND SERVING THE COURT PAPERS

1. To start a paternity action **you must fill out a written Complaint and other paperwork**. In the Complaint for Paternity you will give the judge information about you, the other party and your children. You will tell the judge how you think issues should be resolved, such as child custody, parenting time and child support. When you fill out and file the Complaint, you will also need to fill out and/or file other forms such as the Summons, Affidavit Regarding Minor Children, Order to Complete Course in Domestic Relations Education on Children's Issues, and Sensitive Information Sheet.
2. After all the paperwork is filled out, you must **go to Superior Court to file the Complaint and related papers**. If a deferral or waiver of the fees/costs was not requested or approved, you will also have to pay the filing fee at this time. All documents in a paternity case must be filed in the **Office of the Clerk of the Court, Pima County Superior Court, 110 West Congress St., Tucson, AZ**. Court is open from 8:00 a.m. - 9:00 p.m., Monday through Friday (except for legal holidays). Be sure to get to the court at least an hour before closing to file the papers as it takes time to process the papers.
3. After you file, **you must have the Complaint and related papers served on the other party** to give him/her notice about the lawsuit. There are several ways to serve papers. These are: by acceptance, by process server, by sheriff, by mail, or, as a last resort, by publication if you have tried very hard but you cannot find the other party. Service by publication may not get all of the orders you want. Each method of service has special requirements that you need to know before you try to use that type of service. Instructions about each type of service are in the packet entitled "**Service of Papers on the Other Party.**"

THE ANSWER

After the Complaint and related papers are served on the other party, he or she can file a written Answer. Only a written Answer is acceptable, and it must be filed within time limits set by law. The other party has 20 days to file the Answer if he or she was served in Arizona and 30 days if served outside Arizona.

NO RESPONSE = DEFAULT

If you have filed and properly served the other party with the Complaint and related papers, you need to count the days **after service was completed** to see if the other party files a written Answer within the time limits set by law.

If the other party does not file a written Answer within the 20 or 30 day periods, you may get your Paternity Judgment through a process called **Default**. This generally means that the other party is not "contesting" the paternity complaint itself or anything else you asked for in your paternity Complaint.

To obtain a Default, you must file an **Application and Affidavit for Entry of Default**. You take this paperwork to the Clerk of the Court and the clerk will sign the Application and enter the Default. You must then send a copy of this paperwork to the other party. The other party then has 10 more business days (about 2 weeks) after getting this paperwork to file a written Answer to your Complaint. If the other party still does not file a written Answer, the Default is complete and the paternity action is almost over.

The final step is to get your Paternity Judgment and related paperwork signed by the judge. This is usually done at a Default hearing. All of the forms and instructions for completing your paternity action by Default are located in the packet entitled "**Obtaining a Default.**"

THE STEP-BY-STEP PROCESS

Establishing paternity is a step-by-step process, and you generally must **follow the steps** in the **correct order** and **at the right time**. We have broken down this process and made separate “packets” containing the forms and instructions for each step. Here are the packets for each step and the approximate time to accomplish each step:

1. **Deferral/ Waiver of Fees/Costs** - Prepare and file these papers **immediately**. It generally takes about 5 days to get the deferral or waiver approved.
2. **Complaint** - Prepare this and all related papers and file after your Deferral/Waiver of Fees has been approved.
3. **Service of Papers on the Other Party** - This will be done **immediately after you have filed your Complaint** and may take from 1-2 days to up to several months, depending where the other party lives and whether he or she is evading service.
4. **Obtaining a Default** - If the other party does not contest any part of the paternity Complaint and does not file a written Response, you can file the papers to request Default be entered against the other party **20 calendar days after the other party was served with the papers in Arizona**. If the party was served with the papers outside the State of Arizona, you must wait 30 calendar days to apply for the Default.
5. **Mediation** - You can ask for Mediation services **at any time**, but this is generally done **if the other party files a written Answer**.
6. **Child Support** - These papers deal with the issues relating to the children and need to support.
7. **Custody/Parenting Time** – These papers deal with custody and provide a form on which to complete the parenting plan.