

VITAL STATISTICS:  
BIRTH REGISTRATION:

A child generated by the first husband of the mother should be registered as the child of said natural father even though the mother divorces said husband and marries husband No. 2 before the birth of said child.

April 11, 1950

Honorable Buford G. Hamilton, M.D.  
Director, Division of Health  
Jefferson City, Missouri



Dear Sir:

I.

This department is in receipt of your recent request for an official opinion upon the following problems:

"We are now holding birth certificates covering two identical cases involving disputed paternity. In both cases, the mother was married to one man, divorced him, and married another during the normal period of gestation. In one case, the mother desires the child to carry her former husband's name and have her former husband listed as father; in the other, the mother desires the child to carry her present husband's surname and have her former husband listed as father.

"For administrative purposes, in cases of disputed paternity, we prefer that the name of the child be omitted and all data relative to the alleged father omitted. We desire this procedure on the assumption that it is easier to complete an incomplete document than it is to rebuild a document that is claimed to be erroneous.

"In cases where the husband of the mother at the time of conception differs from the husband of the mother at the time of the delivery, it appears to us that the child is actually illegitimate and that the present husband should formally adopt the child, his marriage to the mother prior to delivery notwithstanding.

Hon. Buford G. Hamilton, M.D.

"We shall appreciate your opinion on how to register a birth where the husband of the mother at the time of conception differs from the husband of the mother at the time of delivery."

The Supreme Court of Missouri recently said in the case of Bernheimer v. First National Bank of Kansas City, 225 S.W.(2d) 745, that:

"Missouri has two legitimizing statutes, Secs. 315 and 316, R.S. Mo. 1939, Mo. R.S.A., both of which have been in force for over a century. Sec. 315 has been construed to mean that if a man have by a woman a child born out of wedlock, yet if he afterward enter into a legal marriage with her and recognize the child as his own, the child will thenceforward be legitimized, and this is true even though the child was conceived in iniquity. Stripe case below. This statute can have no application here under the holding of the trial court, because the court ruled plaintiff's parents had never been legally married since the father had never been legally divorced from his preceding wife Sally.

"(6,7) As to Sec. 316, while the section says the issue of all marriages 'decreed' null in law shall be legitimate, it has been consistently held that the statute does not literally mean the marriage must have been declared void by court decree, but only that the marriage was in fact void and could and would have been so decreed. And the same decisions further hold that if such marriage was entered into in good faith, even by one of the contracting parties and not both, the child will be deemed legitimate."

Section 316, R. S. Mo. 1939, provides as follows:

"The issue of all marriages decreed null in law, or dissolved by divorce, shall be legitimate."

Hon. Buford G. Hamilton, M.D.

Section 1514, R.S. Mo. 1939, provides, in part, as follows:

"\* \* \*but no such divorces shall affect the legitimacy of the children of such marriage."

The St. Louis Court of Appeals in the case of Ash v. Modern Sand & Gravel Company, 234 Mo. App., 1195, l.c. 1206, 122 S.W.2d. 45, l.c. 51, said:

"\* \* \*Every child born in wedlock is presumed to be legitimate. Public policy sanctions this view. (Bower v. Graham, 285 Mo. 151, 225 S.W. 347; Gates v. Seibert, 157 Mo. 254, l.c. 272, 57 S.W. 1065, 80 Am. St. Rep. 625; Busby v. Self, 284 Mo. 206, 223 S.W. 729.)

"Such presumption in favor of the legitimacy of children born in wedlock is the strongest known to the law, and the courts in their righteous zeal to protect the innocent offspring will not permit this presumption to be overthrown unless there is no judicial escape from such a malign conclusion. \* \* \*"

The child in both of the cases involved in your letter would be legitimate beyond a question of a doubt. Each child was conceived during wedlock and would not be illegitimate as suggested in your letter. Sections 316 and 1514, cited above make it plain that the legitimacy of any child born after a divorce of the parents is unaffected by the dissolution of their marriage.

We should consider the meaning of the terms father, step-father, and parent so that the problem of completing the birth certificate may be solved.

"Parent means one who has generated a child; a father or mother." Boudreant v. Texas & N.O.R. Co., 78 S.W.2d. 641, 643. Also cited in In re Tombo, 149 N.Y.S. 219, 221, 86 Misc. 361.

"The term 'parent' primarily means one who procreates, begets, or brings forth offspring as father or mother, and literally can only include father or mother related by blood, excluding adopting parents, and persons in loco parentis. McDonald v. Texas Employers' Ins. Ass'n, Tex., 267 S.W. 1074, 1075.

\* \* \* \* \*

Hon. Buford G. Hamilton, M.D.

"The ordinary meaning of 'parent' is one who begets or brings forth offspring, and by common acceptance the word is ordinarily used to designate a legitimate relationship but the trend of modern legislation and court decisions is towards a more liberal use of the term as regards mother of illegitimate child. Mother of illegitimate son is his 'parent' within statute providing compensation for death. Smith-Hurd Stats. c. 48 Sec. 144; c. 39, Sec. 2; c. 70, Sec. 2. Marshall v. Industrial Commission, 174 N.E. 534, 535, 342 Ill. 400.

"The legal and ordinary acceptance of the word 'parent' does not include a stepfather or stepmother, and, under the rule that criminal statutes must be strictly construed, it follows that prosecution does not lie against a stepfather, under Gen. Code, Sec. 12970, for failure to provide for his stepchildren. State v. Barger, 14 Ohio App. 127, 128."

\* \* \* \* \*

"Accused who married mother of an illegitimate girl and who was not her putative father was not her 'parent', within the exception of the federal kidnapping statute, where girl had lived in accused's household for only about four months and thereafter lived with her grandfather until, with her mother's consent, she was married at the age of 15, and at time of alleged kidnapping she had been an emancipated married woman for about three years. Patterson Act, Sec. 1, 18 U.S.C.A. Sec. 408a; Pope's Ark. Dig. Sec. 6215. Miller v. United States, C.C.A. Ark. 123 F2d. 715, 717.

\* \* \* \* \*

(Parent)"One who generates a child, a father or mother by blood. Hendy v. Industrial Accident Board, 146 P.(2d) 324, 325, 115 Mont. 516.  
(Parenthesis ours)

"'Parent' in its common and accepted meaning refers to the natural father or mother. Welch v. Welch Aircraft Industries, 29 N.E. 2d, 323, 326, 108 Ind. App. 545.

Hon. Buford G. Hamilton, M.D.

"A 'parent' is one who begets or brings forth offspring; a father or a mother. The word 'parent' standing alone means the parent who begat the child and not a parent artificially created by law. Gardner v. Hall, 26 A.2d 799, 805, 132 N.J. Eq. 64."  
(Words and Phrases, Vol. 31, p. 75, 78, 79, 80. Pocket Edition, p. 15, 16.)

"A 'stepfather' is a man who is the husband of one's mother, but not one's father. Larsen v. Harris Structural Steel Co., 243 N.Y.S. 654, 655, 230 App. Div. 280.

\* \* \* \* \*

"Child of whose existence mother's husband was aware at time of marriage with child's mother held 'stepchild' of mother's husband, notwithstanding that child was illegitimate, and hence 'stepfather' was chargeable with support and maintenance of child on proof that child was or was likely to become public charge. Laws 1933, c. 482, Sec. 101, subd. 5; Public Welfare Law, Sec. 125; Domestic Relations Law, Sec. 120. 'Child' embraces legitimate and illegitimate issue, while 'step' is prefix used before father, mother, brother, sister, son, daughter, child, etc., to indicate that person thus spoken of was not blood relative, but is relative only by marriage of parent; 'stepfather' is a man who is husband of one's mother but is not one's father. Jones v. Jones, 292 N.Y.S. 221, 225, 161 Misc. 660." (Words and Phrases, Vol. 40, pages 144, 145)

\* \* \* \* \*

"Stepfather is the husband of ones mother by a subsequent marriage; husband of ones mother who is not ones father." (Hendy v. Industrial Accident Board, 146 P.2d. 324, 115 Mont. 516.)

The wishes of the mother in regard to the statements on the birth certificate should not be the controlling factor with your office. You should have the natural parent or father listed on the birth certificate of each child as its father. Then if the mother desires to have the name of the child changed she may do

Hon. Buford G. Hamilton, M.D.

so by an action in the circuit court for a change of name. If the stepfather of the child wishes to formally adopt the child, then a proceeding in the circuit court for the adoption of the child would be necessary. The law provides for a change of the birth certificates after an adoption has been approved by the circuit court. (See Section 9614a R.S.A. Laws of Mo. 1947, Vol.2, page 213.)

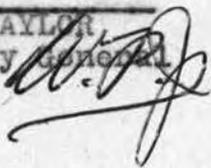
CONCLUSION

It is the conclusion of this department that a child conceived in wedlock by husband number one should be registered as the child of said husband even though the mother divorces him and marries husband number two before the birth of said child, and regardless of the wishes of the mother the surname of the child will be that of the natural father or husband number one.

Respectfully submitted,

  
STEPHEN J. MILLETT  
Assistant Attorney General

APPROVED:

J. E. TAYLOR  
Attorney General 

SJM:mw