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Unmarried Fathers: Paternity, Child Custody and Time-Sharing

It is the preference of New Mexico courts that both parents participate in the lives of their children. This participation can become complicated when unmarried parents are involved, particularly when disagreements arise or an unmarried father is being denied access to his child.

Under New Mexico law, a child born to married parents is presumed to belong to both parents. On the other hand, a child of unmarried parents is deemed to be only the child of the mother. Unless certain measures have been taken by an unmarried father, such as being named on the child's birth certificate or confirmation of paternity through blood testing, there is no automatic presumption of paternity. This means that the unmarried father of a child may have to legally establish paternity to exercise his rights to physical and legal child custody.

In order to establish his paternal rights, an unmarried father must file a Petition to Establish Paternity. More specifically, since child support kicks in once paternity is established, a Petition to Establish Paternity, Child Support and Child Custody is filed.

Once filed, there are a number of options for establishing paternity. The parties can agree and enter a Stipulated Order Establishing Paternity, Child Support and Child Custody. More common, the parties will agree to Paternity and child support reserving the issue of custody. Perhaps just as common and for obvious reasons, if the parties cannot agree on child support, then the father must establish paternity by other means.

The most direct route to establishing paternity, other than by agreement of the parties, is through DNA testing. If paternity is disputed, then the father can request DNA testing. DNA testing is generally at the costs of the father, subject to reallocation in some circumstances.

Once paternity is established, child custody and time-sharing can be difficult to address. This is particularly the case where no relationship exists between the child and the father and the mother was resistant to a finding of paternity. Child custody and time-sharing will always be based upon the best interests of the child. As a result, the transition toward a normal time-sharing plan can be very slow. In some cases, where the child is older, there may never be

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significant time-sharing. However, in most cases, the Court will transition toward normal time-sharing as quickly as possible in order to encourage the father child relationship.

Once paternity is established, the father will have some paternal rights. The extent of those rights will be dependent upon the circumstances of each case. As with many family law issues, the progress may be slow and bumpy. The progress and outcome is fact specific and entirely dependent upon the situation of the parents and the child.

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