

Who's Your Daddy? Common Paternity Questions

I often receive questions about how paternity is handled when a wife gets pregnant as the result of an affair.

Here are some of the questions I have received:

"I had been married for 17 years when my still wife became pregnant by her lover. I took care of everything that had to do with my daughter and my name is on the birth certificate. Almost five years later the biological father wants to get custody and rights. What are my chances of keeping custody of my daughter?"

"My husband and I were separated for about 3 months, in which the time I got pregnant by another man. We got back together when I was around 2 months pregnant and I didn't want any more contact with the biological father. My husband was the one there throughout my pregnancy and he has been there for my son since day one and he tells everyone he is his son. When our baby was 2 weeks old the biological father had a paternity test ordered. He said he was going to take me to court for visitation. Is there any way I can force him to terminate his rights so my husband can adopt my son?"

Answers to these types of questions:

In California, a child is conclusively presumed the child of the marriage when the parties were legally married at the time that the wife became pregnant. Any dispute in paternity would need to be brought within 24 months of the birth of the child and can only be brought by the husband or the wife. A lover of the wife does not have standing to seek custody or visitation orders in California Courts. This matter has been heavily litigated in the California Courts over a number of years.

The child in cases such as these is deemed to be the natural child of the husband. The putative father (or biological father) has absolutely no rights to the child. The couple does not need to consent to a DNA test if they don't choose to. Any DNA test would not be admissible in Court unless it is presented by the husband or the wife in connection with a proceeding initiated within the first 24 months of the child's birth.

If a biological father were to initiate proceedings against the married couple, he would most likely lose. The matter would be brought as a paternity action against the wife, and the husband would also be a party to the action. However, it is unlikely that the biological father would prevail in his request for parental rights over the child.