**KNOW YOUR LEGAL RIGHTS**

**Custody Issues for Unmarried Parents**

By AnnMarie Sylla

The first phone consultation between a lawyer and an unmarried parent looking for placement or custody of a child sounds something like this:

***Caller:*** *Hi. I am looking for an attorney to help me get custody back of my four-year-old child. The mother and I were together for five years, never married. We just broke up and she has moved out of our apartment. I thought we agreed on a schedule that would work, but now she’s refusing to follow it. I haven’t even seen my child in over a week.*

***Attorney:*** *Oh, I am sorry to hear that. Have you ever been to court before to establish paternity, or address issues of custody, placement, or support for this child?*

***Caller:*** *No.*

***Attorney:*** *Do you recall if, when your child was born, you signed a Paternity Acknowledgement form at the hospital? Are you on the birth certificate?*

***Caller:*** *I don’t remember, but I don’t think so. I know I am the father and the mother knows it too. Don’t I have any rights?*

Unfortunately, the answer to the caller’s ultimate question about his rights regarding custody and placement of the child is almost always: ***not yet.***It is never easy to have to give that news, especially to an involved parent who was blindsided by a breakup and never imagined something like this could happen to their family.

**Establishing Paternity**

In Wisconsin, paternity is established three ways:

* by court order (in a paternity action, usually after [genetic testing](https://dcf.wisconsin.gov/cs/agencylist)),
* by filing a Voluntary Paternity Acknowledgement (VPA) form with the state registrar, or
* [by marriage](https://docs.legis.wisconsin.gov/statutes/statutes/891.pdf#page=4).

If an unmarried father does not know whether or not he signed a VPA form at the child’s birth, the best way to find out is to check the birth certificate or contact the [State Vital Records Office](https://dcf.wisconsin.gov/cs/vpa) to request a copy of the completed form.

Filing a VPA form at birth does not establish a father’s legal custody or physical placement rights. In fact, Wisconsin law provides that in any paternity case involving unmarried parties, the child’s mother shall have [sole legal custody](https://docs.legis.wisconsin.gov/statutes/statutes/767.pdf#page=50) until a court orders otherwise. This shocks most people, especially considering that an estimated [one in four parents in the U.S. is unmarried](https://www.pewresearch.org/social-trends/2018/04/25/the-changing-profile-of-unmarried-parents/).

**Your Options for Obtaining Custody and Placement**

The biggest hurdle today due to the COVID-19 pandemic, and resultant backlog in the court system across the state, is getting orders on custody and placement established quickly. In some counties, it can take months to get an initial hearing just to establish paternity and perhaps set a temporary placement schedule. Regardless, for many unmarried parents, filing a paternity action is a necessary step one. Some unmarried parents can work out parenting schedules and other agreements on their own or with the assistance of counsel prior to filing an action, which can be put into place before getting to court.

A good option is to try to put a written [parenting plan](https://www.wicourts.gov/formdisplay/FA-4147V.pdf?formNumber=FA-4147V&formType=Form&formatId=2&language=en) in place before things start to fall apart. All parents (unmarried or married) should have substantive discussions on child-raising before the issues arise, so when things do come up, they are prepared to deal with them. This does not always happen, but it can minimize conflict in the event of a breakup. Consider:

* **Legal custody:** Will decisions be made jointly, or will one parent have authority on decisions such as non-emergency healthcare, education/school choice, childcare, participation in school and non-school activities, and religious preference?
* **Physical placement:** After separation, what type of overnight schedule will work for both parents and child – such as rotating every few days, agreeing to a week on-week off schedule, or something else?
* **Holidays and vacation:** Are certain holidays more important to one parent than the other, or will they simply be rotated?
* **Children’s expenses and insurance:** Who will pay for extracurricular activities, schooling, and daycare?
* **Disagreements:** When there is a disagreement on major decisions, how will it be resolved?

Unless the law catches up to the societal shift away from traditional marriage, unmarried parents should prepare themselves with answers to these questions long before getting to court. Parents who reach an early and informed agreement on all, or at least some, of these issues in their child’s best interests are far more likely to be successful co-parents than those who do not reach agreement. After a breakup, these important considerations will be left for a court to decide in a paternity action.

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