



Office of the Attorney General

Office of the Legislative Secretary
Senator Tina Rose Mufia Barnes
Date 6-15-08
Time 1:40 p.m.
Received by E. McDonald

February 15, 2008

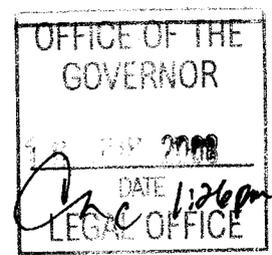
MEMORANDUM (Informational and Guidance)

Ref: DPHSS 07-0885

TO: Registrar, Office of Vital Statistics
Department of Public Health and Social Services

FROM: Attorney General

SUBJECT: Proper Procedures For Registering Births



We hereby respond to your Memorandum of September 21, 2007 requesting a legal opinion regarding the registration of births of dubious paternity. The Division of Vital Statistics of the Department of Public Health and Social Services registers all births on Guam and it must include the names of the parents on the birth certificates. However, a problem recently arose in that two women recently delivered babies fathered by men other than their husbands while they were still legally married.

The primary statute creating the process of birth registration is Title 10 G.C.A. 3210. It mandates that all births be registered within ten days. §3210(a). It also mandates that when a child is born at an institution or hospital, such as GMH, the Director thereof must collect the information needed for the registration and record it on the proposed certificate. §3210(b). If the child is born outside an institution, the physician, midwife or other person assisting at the birth must complete the certificate.

According to §3210(d), the certificate must contain the child's name and sex; the date and hour of its birth; the planned and actual place of birth; the names, Social Security Numbers, birthplace and date of birth of both parents; and other information. If the child is illegitimate, the certificate must note that: "The above named father is not the presumptive father of the child and no presumption exists as to any father-child relationship."

The institution where the child is born must advise the parents of an illegitimate child that, if they want to be named parents on the birth certificate, they can fill out an affidavit stating that they are the parents. §3210(f). This can be done at the hospital or institution. Ibid. If both parents so acknowledge the child, it is deemed legitimate and both names are placed on the certificate. Ibid.

However, if the child is illegitimate and the father does not want to acknowledge paternity, the institution should have the mother execute an affidavit naming the father of the

RECEIVED

Office of the Compiler of Laws

By: [Signature]

Date: 6/16/08

287 West O'Brien Drive • Hagåtña, Guam 96910 • USA
(671) 475-3324 (Tel) • (671) 472-2493 (Fax) • www.guamattorneygeneral.gov

RECEIVED

JUN 16 2008

GUAM LAW LIBRARY

child and giving pertinent information about him. §3210(g). The affidavit is, with certain exceptions, kept confidential and the father should not be named on the birth certificate. Ibid.

Title 10 G.C.A. 3211, the next section, then describes the procedure followed regarding "foundlings". That is, children with no known parents. Section 3211, therefore, does not apply to the situation described in your memorandum of September 21, 2007.

Therefore, the initial burden of collecting the information for the birth certificate falls on GMH or other institution where the child was born, not on DPHSS. However, if both parents sign an affidavit at DPHSS acknowledging a child is theirs, the child is legitimated and the birth certificate can be modified accordingly by Title 19 G.C.A. §4124(a)(4).

The Division of Vital Statistics should take the information it receives from the institution and register the certificate accordingly. If the child is legitimate and there is no question as to paternity, the birth certificate should simply name the husband as the father. If the child is illegitimate and both parents acknowledge paternity, the birth certificate should name both the mother and father, regardless of whether the mother is married to another man. If the father refuses to acknowledge paternity or if the father is unknown or if the mother refuses to name him, the space for the father's name on the birth certificate should be left blank. The Division should modify the certificate if both parents sign the affidavit, as stated above. In the case of the two children described above, the Division should place the father's name on the certificate if he has acknowledged paternity. Otherwise, the space for the father's name should be left blank.

If a putative father is dissatisfied with the birth certificate, he can file an action in Superior Court pursuant to Title 10 G.C.A. 3213 to have himself named the father. A DNA test will prove who the true father is. The court will then order the Division to issue a new birth certificate naming the father.

Title 19 G.C.A. §§4101, 4102 and 4103 create a legal presumption that all children born in wedlock are legitimate. This presumption is useful in probate cases or controversies involving heirship or ancestry, but the three statutes do not mention the process of registering births. Therefore, we believe Title 10 G.C.A. §3210, *et seq.*, and Title 19 G.C.A. 4124 govern. A presumption, after all can be rebutted, especially by the findings of modern science. Sections 4101, 4102 and 4103 were enacted before DNA tests could establish paternity.

To sum up, the functions of the Division of Vital Statistics are primarily ministerial. It should generally register the birth and issue the certificate using the information collected and transmitted by the institution where the birth occurred. Dissatisfied parties should ask the Superior Court, not the Division, to resolve the matter.


DAVID J. HIGHSMITH
Assistant Attorney General