



# Legal Updates in Family Law

## Hot Topics in Family Law

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# #1 Same-Sex Marriage

Birth Certificates

Child Custody

Child Support

Adoption

# Birth Certificates

N.C.G.S. 130A-101(e) provides that

“If the mother was married at the time of either conception or birth, or between conception and birth, the name of the husband shall be entered on the certificate as the father of the child, except as provided in this subsection. The surname of the child shall be the same as that of the husband, except that upon agreement of the husband and mother . . .any surname may be chosen. ”

# BIRTH CERTIFICATES

## **Female Same-Sex Couples**

- Who is the father? Is a father listed?
- Technically the statute provides that the mother's spouse is the "father"
- How is the term "mother" defined?

## **Male Same-Sex Couples**

- Who is the mother? Is a mother listed?
- Technically the statute doesn't apply to these families because the "mother" is always a surrogate.
- Gestational surrogacy contracts are typically necessary.

# Child Custody

- Parent v. Parent – the standard is “best interests of the child.”
- Parent v. 3<sup>rd</sup> Party –
  - does the 3<sup>rd</sup> party have standing to bring an action for custody
  - if so, has the 3<sup>rd</sup> party alleged “unfitness” of the parents
    - allegations must show that the parents have acted inconsistent with their constitutionally protected status as parents*
  - if allegations are sufficient such that parents are determined to be “unfit”, what custodial arrangement is in the best interests of the child.

# Child Custody

## *What happens when the parents are same-sex parents?*

- One is biologically related to the child, the other is not
- Courts have typically construed the cases on constitutionally protected status as a parent to mean a “natural” or “biological” parent
- Does this raise an equal protection issue?

Heterosexual parents are on equal footing in a custody dispute

Same-sex parents are not, parent who is not related to the child has to show that the natural parent is unfit before the best interests of the child standard will be applied?

# Child Support

- If you are not a natural parent of a child, you have no legal obligation to support that child
- Will this have the effect of leaving some children without adequate support?
  - Same-sex parents who separate
  - May depend on who has custody of the child
  - What if neither parent is biologically related to the child?





## #2 Grandparents' Rights



# Grandparents' Right to Custody

## N.C.G.S. 50-13.1(a)

Any parent, relative, or other person, agency, organization or institution claiming the right to custody of a minor child may institute an action or proceeding for the custody of such child, as hereinafter provided. Any person whose actions resulted in a conviction under G.S. 14-27.2, G.S. 14-27.2A, or G.S. 14-27.3 and the conception of the minor child may not claim the right to custody of that minor child. Unless a contrary intent is clear, the word "custody" shall be deemed to include custody or visitation or both.

- 50-13.1(a) is not specific to grandparents -- doesn't even use the term "grandparent"
- This is a general statute that authorizes standing to maintain an action for custody of a child ***against the child's parents***.
- Grandparents either bring an action against both parents OR intervene in an ongoing proceedings between the parents.
  - In either case grandparents must allege that both parents have acted inconsistent with their constitutionally protected status as parents
- If custody has already been decided, grandparents can make a motion in the cause alleging a substantial change of circumstances – essentially move to modify custody.
  - but still must allege that both parents have acted inconsistent with their constitutionally protected status as parents

# Grandparents' Right to Visitation

- Although visitation is a lesser form of custody, grandparents can seek visitation without seeking custody
- What difference does it make?
  - Don't have to allege "unfitness" if only seeking visitation
  - Can't bring an independent action for visitation
    - Can only seek visitation in an ongoing custody proceeding
    - Cannot bring an claim for visitation if child is living in an intact family
    - "Intact family rule" means a child living with either one of the child's parent, or a parent and step-parent.



# #4 – Temporary (Emergency) Custody

- Check your local rules
  - Some local rules require the moving party to notify opposing counsel (if the other party is represented) and give counsel an opportunity to be heard.
  - Local rules may proscribe the length of time an *ex parte* emergency order will be in effect and or the time frame within which the court will have a hearing to review the *ex parte* order.
- Move to dismiss –especially if the allegations are not sufficient under the statute.
- Attorney’s fees should be available if the emergency is later determined not to exist, or determined that it does not justify changing the child’s living arrangements

# #4 – Domestic Violence Protective Orders

- Consent Orders
  - approved with no finding that an act of domestic violence has been committed
  - BEWARE! If Defendant has pending criminal charges arising out of this same incident, DV victim's attorney cannot talk to the Defendant without counsel present
    - Effectively this means no consent orders if the Defendant also has criminal charges
- Contested Hearings –what do you have to prove?
  - an act of DV (bodily injury) occurred or was attempted **OR**
  - Victim is in fear of imminent bodily injury or continued harassment that rises to the level of emotional distress.

## What does that mean?

Do not have to show both an act of DV and fear of Defendant

- Courts sometimes deny DVPO's if the victim continues to contact the Defendant during the period of the ex-parte order
- Courts also look at the history of both victim and Defendant
  - prior DVPO's entered or dismissed
  - prior criminal charges/convictions for assault-type offenses
- Dueling DVPO's – court has to hold a hearing on both complaints
  - can't grant one and dismiss the other without a hearing and findings of fact. *Holder v. Kunath*





# #5 – Contempt

## CRIMINAL

Purpose is punitive

For acts/omissions that have already occurred

To punish continued disobedience of the court's order

Entitled to a court-appointed lawyer

BOP – beyond a reasonable doubt

5<sup>th</sup> Amendment right against self-incrimination applies

## CIVIL

Purpose is to secure compliance with the court's order

Order can still be served by compliance therewith (payment of ongoing child support)

Entitled to a court-appointed lawyer

BOP – preponderance of the evidence

No constitutional right against self-incrimination so you may require the contemnor to testify.

# #5 Contempt



Criminal = censure, up to 30 days for each occurrence, fine up to \$500 or any combination of these three

Civil = indefinite for CSUP and other acts not related to the payment of \$\$

if it involved payment of \$\$ (i.e. alimony, ED award) the max sentence is 90 days but can be reviewed and renewed for additional 90-day periods up to 1 year.

contemnor has keys to the jail – meaning he/she has the ability to purge the contempt (usually by complying with the order)

# #5 - Contempt

- Attorney's fees are generally not available in connection with contempt hearings unless expressly authorized by a statute
- Child Support – upon a showing of good faith and insufficient means to defray the costs of bringing the contempt motion.
- Alimony - *Shumaker v. Shumaker*, 137 N.C. App. 72 (2000).
- To enforce an equitable distribution order/judgment - *Hartsell v. Hartsell*, 99 N.C. App. 380 (1990).
- Arguably to enforce a custody as well since there is statutory authority for attorney's fees.

# Other Issues to Consider

- Service of orders – remember to include a certificate of service and ***put it in the court file.***
- Notice of Appeal - in civil cases, you have 30 days from the date the order was served upon you **if it was served within three days of the order being entered.** Otherwise, you have 30 days from the date of service to file the notice of appeal.
- Subpoenas – cannot be served outside of North Carolina
  - Look for a NC registered agent for service of process (Secretary of State)
  - Look for a local office
  - Subpoenas can be issued to a party

### § 50-13.1. Action or proceeding for custody of minor child.

(a) (See Editor's note) Any parent, relative, or other person, agency, organization or institution claiming the right to custody of a minor child may institute an action or proceeding for the custody of such child, as hereinafter provided. Any person whose actions resulted in a conviction under G.S. 14-27.2, G.S. 14-27.2A, or G.S. 14-27.3 and the conception of the minor child may not claim the right to custody of that minor child. Unless a contrary intent is clear, the word "custody" shall be deemed to include custody or visitation or both.

(a1) Notwithstanding any other provision of law, any person instituting an action or proceeding for custody ex parte who has been convicted of a sexually violent offense as defined in G.S. 14-208.6(5) shall disclose the conviction in the pleadings.

(b) Whenever it appears to the court, from the pleadings or otherwise, that an action involves a contested issue as to the custody or visitation of a minor child, the matter, where there is a program established pursuant to G.S. 7A-494, shall be set for mediation of the unresolved issues as to custody and visitation before or concurrent with the setting of the matter for hearing unless the court waives mediation pursuant to subsection (c). Issues that arise in motions for contempt or for modifications as well as in other pleadings shall be set for mediation unless mediation is waived by the court. Alimony, child support, and other economic issues may not be referred for mediation pursuant to this section. The purposes of mediation under this section include the pursuit of the following goals:

- (1) To reduce any acrimony that exists between the parties to a dispute involving custody or visitation of a minor child;
- (2) The development of custody and visitation agreements that are in the child's best interest;
- (3) To provide the parties with informed choices and, where possible, to give the parties the responsibility for making decisions about child custody and visitation;
- (4) To provide a structured, confidential, nonadversarial setting that will facilitate the cooperative resolution of custody and visitation disputes and minimize the stress and anxiety to which the parties, and especially the child, are subjected; and
- (5) To reduce the relitigation of custody and visitation disputes.

(c) For good cause, on the motion of either party or on the court's own motion, the court may waive the mandatory setting under Article 39A of Chapter 7A of the General Statutes of a contested custody or visitation matter for mediation. Good cause may include, but is not limited to, the following: a showing of undue hardship to a party; an agreement between the parties for voluntary mediation, subject to court approval; allegations of abuse or neglect of the minor child; allegations of alcoholism, drug abuse, or domestic violence between the parents in common; or allegations of severe psychological, psychiatric, or emotional problems. A showing by either party that the party resides more than fifty miles from the court may be considered good cause.

(d) Either party may move to have the mediation proceedings dismissed and the action heard in court due to the mediator's bias, undue familiarity with a party, or other prejudicial ground.

(e) Mediation proceeding shall be held in private and shall be confidential. Except as provided in this Article, all verbal or written communications from either or both parties to the mediator or between the parties in the presence of the mediator made in a proceeding pursuant to this section are absolutely privileged and inadmissible in court. The mediator may assess the needs and interests of the child, and may interview the child or others who are not parties to the proceedings when he or she thinks appropriate.

(f) Neither the mediator nor any party or other person involved in mediation sessions under this section shall be competent to testify to communications made during or in furtherance of such mediation sessions; provided, there is no privilege as to communications made in furtherance of a crime or fraud. Nothing in this subsection shall be construed as permitting an individual to obtain immunity from prosecution for criminal conduct or as excusing an individual from the reporting requirements of Article 3 of Chapter 7B of the General Statutes or G.S. 108A-102.

(g) Any agreement reached by the parties as a result of the mediation shall be reduced to writing, signed by each party, and submitted to the court as soon as practicable. Unless the court finds good reason not

to, it shall incorporate the agreement in a court order and it shall become enforceable as a court order. If some or all of the issues as to custody or visitation are not resolved by mediation, the mediator shall report that fact to the court.

(h) If an agreement that results from mediation and is incorporated into a court order is referred to as a "parenting agreement" or called by some similar name, it shall nevertheless be deemed to be a custody order or child custody determination for purposes of Chapter 50A of the General Statutes, G.S. 14-320.1, G.S. 110-139.1, or other places where those terms appear.

(i) If the child whose custody is the subject of an action under this Chapter also is the subject of a juvenile abuse, neglect, or dependency proceeding pursuant to Subchapter 1 of Chapter 7B of the General Statutes, then the custody action under this Chapter is stayed as provided in G.S. 7B-200. (1967, c. 1153, s. 2; 1989, c. 795, s. 15(b); 1998-202, s. 13(p); 2004-128, s. 10; 2005-320, s. 5; 2005-423, s. 4; 2007-462, s. 1; 2011-411, s. 4; 2013-236, s. 13.)

**§ 50-13.2. Who entitled to custody; terms of custody; visitation rights of grandparents; taking child out of State; consideration of parent's military service.**

(a) An order for custody of a minor child entered pursuant to this section shall award the custody of such child to such person, agency, organization or institution as will best promote the interest and welfare of the child. In making the determination, the court shall consider all relevant factors including acts of domestic violence between the parties, the safety of the child, and the safety of either party from domestic violence by the other party and shall make findings accordingly. An order for custody must include findings of fact which support the determination of what is in the best interest of the child. Between the mother and father, whether natural or adoptive, no presumption shall apply as to who will better promote the interest and welfare of the child. Joint custody to the parents shall be considered upon the request of either parent.

(b) An order for custody of a minor child may grant joint custody to the parents, exclusive custody to one person, agency, organization, or institution, or grant custody to two or more persons, agencies, organizations, or institutions. Any order for custody shall include such terms, including visitation, as will best promote the interest and welfare of the child. If the court finds that domestic violence has occurred, the court shall enter such orders that best protect the children and party who were the victims of domestic violence, in accordance with the provisions of G.S. 50B-3(a1)(1), (2), and (3). If a party is absent or relocates with or without the children because of an act of domestic violence, the absence or relocation shall not be a factor that weighs against the party in determining custody or visitation. Absent an order of the court to the contrary, each parent shall have equal access to the records of the minor child involving the health, education, and welfare of the child.

(b1) An order for custody of a minor child may provide visitation rights for any grandparent of the child as the court, in its discretion, deems appropriate. As used in this subsection, "grandparent" includes a biological grandparent of a child adopted by a stepparent or a relative of the child where a substantial relationship exists between the grandparent and the child. Under no circumstances shall a biological grandparent of a child adopted by adoptive parents, neither of whom is related to the child and where parental rights of both biological parents have been terminated, be entitled to visitation rights.

(b2) Any order for custody, including visitation, may, as a condition of such custody or visitation, require either or both parents, or any other person seeking custody or visitation, to abstain from consuming alcohol and may require submission to a continuous alcohol monitoring system, of a type approved by the Division of Adult Correction of the Department of Public Safety, to verify compliance with this condition of custody or visitation. Any order pursuant to this subsection shall include an order to the monitoring provider to report any violation of the order to the court and each party to the action. Failure to comply with this condition shall be grounds for civil or criminal contempt.

(c) An order for custody of a minor child may provide for such child to be taken outside of the State, but if the order contemplates the return of the child to this State, the judge may require the person, agency, organization or institution having custody out of this State to give bond or other security conditioned upon the return of the child to this State in accordance with the order of the court.

(d) If, within a reasonable time, one parent fails to consent to adoption pursuant to Chapter 48 of the General Statutes or parental rights have not been terminated, the consent of the other consenting parent shall not be effective in an action for custody of the child.

(e) An order for custody of a minor child may provide for visitation rights by electronic communication. In granting visitation by electronic communication, the court shall consider the following:

- (1) Whether electronic communication is in the best interest of the minor child.
- (2) Whether equipment to communicate by electronic means is available, accessible, and affordable to the parents of the minor child.
- (3) Any other factor the court deems appropriate in determining whether to grant visitation by electronic communication.

The court may set guidelines for electronic communication, including the hours in which the communication may be made, the allocation of costs between the parents in implementing electronic communication with the child, and the furnishing of access information between parents necessary to facilitate electronic

communication. Electronic communication with a minor child may be used to supplement visitation with the child. Electronic communication may not be used as a replacement or substitution for custody or visitation. The amount of time electronic communication is used shall not be a factor in calculating child support or be used to justify or support relocation by the custodial parent out of the immediate area or the State. Electronic communication between the minor child and the parent may be subject to supervision as ordered by the court. As used in this subsection, "electronic communication" means contact, other than face-to-face contact, facilitated by electronic means, such as by telephone, electronic mail, instant messaging, video conferencing, wired or wireless technologies by Internet, or other medium of communication.

(f) In a proceeding for custody of a minor child of a service member, a court may not consider a parent's past deployment or possible future deployment as the only basis in determining the best interest of the child. The court may consider any significant impact on the best interest of the child regarding the parent's past or possible future deployment. (1957, c. 545; 1967, c. 1153, s. 2; 1977, c. 501, s. 2; 1979, c. 967; 1981, c. 735, ss. 1, 2; 1985, c. 575, s. 3; 1987, c. 541, s. 2; c. 776; 1995 (Reg. Sess., 1996), c. 591, s. 5; 2004-186, s. 17.1; 2009-314, s. 1; 2012-146, s. 10; 2013-27, s. 1.)



**§ 50-13.2A. Action for visitation of an adopted grandchild.**

A biological grandparent may institute an action or proceeding for visitation rights with a child adopted by a stepparent or a relative of the child where a substantial relationship exists between the grandparent and the child. Under no circumstances shall a biological grandparent of a child adopted by adoptive parents, neither of whom is related to the child and where parental rights of both biological parents have been terminated, be entitled to visitation rights. A court may award visitation rights if it determines that visitation is in the best interest of the child. An order awarding visitation rights shall contain findings of fact which support the determination by the judge of the best interest of the child. Procedure, venue, and jurisdiction shall be as in an action for custody. (1985, c. 575, s. 2.)

**§ 50-13.5. Procedure in actions for custody or support of minor children.**

(a) Procedure. - The procedure in actions for custody and support of minor children shall be as in civil actions, except as provided in this section and in G.S. 50-19. In this G.S. 50-13.5 the words "custody and support" shall be deemed to include custody or support, or both.

(b) Type of Action. - An action brought under the provisions of this section may be maintained as follows:

- (1) As a civil action.
- (2) Repealed by Session Laws 1979, c. 110, s. 12.
- (3) Joined with an action for annulment, or an action for divorce, either absolute or from bed and board, or an action for alimony without divorce.
- (4) As a cross action in an action for annulment, or an action for divorce, either absolute or from bed and board, or an action for alimony without divorce.
- (5) By motion in the cause in an action for annulment, or an action for divorce, either absolute or from bed and board, or an action for alimony without divorce.
- (6) Upon the court's own motion in an action for annulment, or an action for divorce, either absolute or from bed and board, or an action for alimony without divorce.
- (7) In any of the foregoing the judge may issue an order requiring that the body of the minor child be brought before him.

(c) Jurisdiction in Actions or Proceedings for Child Support and Child Custody. -

- (1) The jurisdiction of the courts of this State to enter orders providing for the support of a minor child shall be as in actions or proceedings for the payment of money or the transfer of property.
- (2) The courts of this State shall have jurisdiction to enter orders providing for the custody of a minor child under the provisions of G.S. 50A-201, 50A-202, and 50A-204.
- (3) through (6) Repealed by Session Laws 1979, c. 110, s. 12.

(d) Service of Process; Notice; Interlocutory Orders. -

- (1) Service of process in civil actions for the custody of minor children shall be as in other civil actions. Motions for support of a minor child in a pending action may be made on 10 days notice to the other parties and compliance with G.S. 50-13.5(e). Motions for custody of a minor child in a pending action may be made on 10 days notice to the other parties and after compliance with G.S. 50A-205.
- (2) If the circumstances of the case render it appropriate, upon gaining jurisdiction of the minor child the court may enter orders for the temporary custody and support of the child, pending the service of process or notice as herein provided.
- (3) A temporary order for custody which changes the living arrangements of a child or changes custody shall not be entered ex parte and prior to service of process or notice, unless the court finds that the child is exposed to a substantial risk of bodily injury or sexual abuse or that there is a substantial risk that the child may be abducted or removed from the State of North Carolina for the purpose of evading the jurisdiction of North Carolina courts.

(e) Notice to Additional Persons in Support Actions and Proceedings; Intervention. -

- (1) The parents of the minor child whose addresses are reasonably ascertainable; any person, agency, organization or institution having actual care, control, or custody of a minor child; and any person, agency, organization or institution required by court order to provide for the support of a minor child, either in whole or in part, not named as parties and served with process in an action or proceeding for the support of such child, shall be given notice by the party raising the issue of support.
- (2) The notice herein required shall be in the manner provided by the Rules of Civil Procedure for the service of notices in actions. Such notice shall advise the person to be notified of the name of the child, the names of the parties to the action or proceeding, the

### Part 3. Petition for Adoption.

#### **§ 48-2-301. Petition for adoption; who may file.**

(a) A prospective adoptive parent may file a petition for adoption pursuant to Article 3 of this Chapter only if a minor has been placed with the prospective adoptive parent pursuant to Part 2 of Article 3 of this Chapter unless the requirement of placement is waived by the court for cause.

(b) Except as authorized by Articles 4 and 6 of this Chapter, the spouse of a petitioner must join in the petition, unless the spouse has been declared incompetent or unless this requirement is otherwise waived by the court for cause.

(c) If the individual who files the petition is unmarried, no other individual may join in the petition, except that a man and a woman who jointly adopted a minor child in a foreign country while married to one another must readopt jointly as provided in G.S. 48-2-205. (1949, c. 300; 1963, c. 699; 1967, c. 619, ss. 1-3; c. 693; c. 880, s. 3; 1969, c. 21, ss. 3-6; 1971, c. 395; c. 1231, s. 1; 1973, c. 849, s. 3; c. 1354, ss. 1-4; 1975, c. 91; 1979, c. 107, s. 6; 1981, c. 657; 1983, c. 454, s. 6; 1989, c. 208; c. 727, s. 219(4); 1993, c. 553, s. 14; 1995, c. 88, s. 3; c. 457, s. 2; 2009-185, s. 2.1.)

**§ 48-4-103. Execution and content of consent to adoption by stepparent.**

- (a) A consent executed by a parent who is the stepparent's spouse:
  - (1) Must be signed and acknowledged before an individual authorized to administer oaths or take acknowledgments;
  - (2) Must be in writing and state or contain:
    - a. The statements required by G.S. 48-3-606, except for those required by subdivisions (4), (9), (12), and (13) of that section;
    - b. That the parent executing the consent has legal and physical custody of the child and is voluntarily consenting to the adoption of the child by the stepparent;
    - c. That the adoption will not terminate the legal relation of parent and child between the parent executing the consent and the child; and
    - d. That the adoption will terminate the legal relation of parent and child between the adoptee and the adoptee's other parent, including all right of the adoptee to inherit as a child from or through the other parent, and will extinguish any existing court order of custody, visitation, or communication with the adoptee, except that the other parent will remain liable for past-due child support payments unless legally released from this obligation.
- (b) A consent executed by a minor stepchild's parent who is not the stepparent's spouse:
  - (1) Must be signed and acknowledged before an individual authorized to administer oaths or take acknowledgments; and
  - (2) Must be in writing and state or contain:
    - a. The statements required by G.S. 48-3-606, except for those required by subdivisions (4), (9), (12), and (13) of that section;
    - b. That the parent executing the consent is voluntarily consenting to:
      - 1. The transfer of any right the parent has to legal or physical custody of the child to the child's other parent and stepparent, and
      - 2. The adoption of the child by the stepparent; and
    - c. That the adoption will terminate the legal relation of parent and child between the adoptee and the parent executing the consent, including all rights of the adoptee to inherit as a child from or through the parent, and will extinguish any court order of custody, visitation, or communication with the adoptee, except that the parent executing the consent will remain liable for past-due child support payments unless legally released from this obligation.
- (c) A consent executed by the guardian of a minor stepchild:
  - (1) Must be signed and acknowledged before an individual authorized to administer oaths or take acknowledgments; and
  - (2) Must be in writing and state or contain:
    - a. The statements required by G.S. 48-3-606, except for those required by subdivisions (4), (9), (12), and (13) of that section;
    - b. A statement that the guardian is voluntarily consenting to:
      - 1. The transfer of any right the guardian has to legal or physical custody of the adoptee to the adoptive stepparent; and
      - 2. The adoption of the adoptee by the stepparent;
    - c. That the adoption will not terminate the legal relation of parent and child between a parent who is or was the stepparent's spouse and the adoptee;
    - d. That the adoption will terminate the legal relation of parent and child between the adoptee and a parent who is not or has not been the stepparent's spouse, including all right of the adoptee to inherit from or through that parent, and will extinguish any court order of custody, visitation, or communication with the adoptee, except that a parent whose relation to the adoptee is terminated by the adoption will

remain liable for past-due child support payments unless legally released from this obligation.

(d) G.S. 48-3-608(a) applies to consents executed pursuant to subsections (a) through (c) of this section. Unless so revoked, the consent is final and irrevocable except under a circumstance set forth in G.S. 48-3-609.

(e) A consent executed by an adoptee in a proceeding for adoption by a stepparent must be signed and acknowledged under oath before an individual authorized to administer oaths or take acknowledgments. The minor may revoke the consent at any time before the decree is entered by filing written notice with the court in which the petition is pending. (1949, c. 300; 1957, c. 778, s. 6; 1961, c. 186; 1969, c. 982; 1983, cc. 83, 688; 1985, c. 758, s. 12; 1987, c. 541, s. 1; 1991, c. 667, s. 1; 1995, c. 457, s. 2.)

court in which the action or proceeding was instituted, and the date thereof.

(3) In the discretion of the court, failure of such service of notice shall not affect the validity of any order or judgment entered in such action or proceeding.

(4) Any person required to be given notice as herein provided may intervene in an action or proceeding for support of a minor child by filing in apt time notice of appearance or other appropriate pleadings.

(f) **Venue.** - An action or proceeding in the courts of this State for custody and support of a minor child may be maintained in the county where the child resides or is physically present or in a county where a parent resides, except as hereinafter provided. If an action for annulment, for divorce, either absolute or from bed and board, or for alimony without divorce has been previously instituted in this State, until there has been a final judgment in such case, any action or proceeding for custody and support of the minor children of the marriage shall be joined with such action or be by motion in the cause in such action. If an action or proceeding for the custody and support of a minor child has been instituted and an action for annulment or for divorce, either absolute or from bed and board, or for alimony without divorce is subsequently instituted in the same or another county, the court having jurisdiction of the prior action or proceeding may, in its discretion direct that the action or proceeding for custody and support of a minor child be consolidated with such subsequent action, and in the event consolidation is ordered, shall determine in which court such consolidated action or proceeding shall be heard.

(g) **Custody and Support Irrespective of Parents' Rights Inter Partes.** - Orders for custody and support of minor children may be entered when the matter is before the court as provided by this section, irrespective of the rights of the wife and the husband as between themselves in an action for annulment or an action for divorce, either absolute or from bed and board, or an action for alimony without divorce.

(h) **Court Having Jurisdiction.** - When a district court having jurisdiction of the matter shall have been established, actions or proceedings for custody and support of minor children shall be heard without a jury by the judge of such district court, and may be heard at any time.

(i) **District Court; Denial of Parental Visitation Right; Written Finding of Fact.** - In any case in which an award of child custody is made in a district court, the trial judge, prior to denying a parent the right of reasonable visitation, shall make a written finding of fact that the parent being denied visitation rights is an unfit person to visit the child or that such visitation rights are not in the best interest of the child.

(j) **Custody and Visitation Rights of Grandparents.** - In any action in which the custody of a minor child has been determined, upon a motion in the cause and a showing of changed circumstances pursuant to G.S. 50-13.7, the grandparents of the child are entitled to such custody or visitation rights as the court, in its discretion, deems appropriate. As used in this subsection, "grandparent" includes a biological grandparent of a child adopted by a stepparent or a relative of the child where a substantial relationship exists between the grandparent and the child. Under no circumstances shall a biological grandparent of a child adopted by adoptive parents, neither of whom is related to the child and where parental rights of both biological parents have been terminated, be entitled to visitation rights. (1858-9, c. 53, s. 2; 1871-2, c. 193, ss. 39, 46; Code, ss. 1292, 1296, 1570, 1662; Rev., ss. 1567, 1570, 1854; 1919, c. 24; C.S., ss. 1664, 1667, 2242; 1921, c. 13; 1923, c. 52; 1939, c. 115; 1941, c. 120; 1943, c. 194; 1949, c. 1010; 1951, c. 893, s. 3; 1953, cc. 813, 925; 1955, cc. 814, 1189; 1957, c. 545; 1965, c. 310, s. 2; 1967, c. 1153, s. 2; 1971, c. 1185, s. 24; 1973, c. 751; 1979, c. 110, s. 12; c. 563; c. 709, s. 3; 1981, c. 735, s. 3; 1983, c. 587; 1985, c. 575, s. 4; 1987 (Reg. Sess., 1988), c. 893, s. 3.1; 1999-223, ss. 11, 12.)

**§ 130A-101. Birth registration.**

(a) A certificate of birth for each live birth, regardless of the gestation period, which occurs in this State shall be filed with the local registrar of the county in which the birth occurs within 10 days after the birth and shall be registered by the registrar if it has been completed and filed in accordance with this Article and the rules.

(b) When a birth occurs in a hospital or other medical facility, the person in charge of the facility shall obtain the personal data, prepare the certificate, secure the signatures required by the certificate and file it with the local registrar within 10 days after the birth. The physician or other person in attendance shall provide the medical information required by the certificate.

(c) When a birth occurs outside a hospital or other medical facility, the certificate shall be prepared and filed by one of the following in the indicated order of priority:

- (1) The physician in attendance at or immediately after the birth, or in the absence of such a person;
- (2) Any other person in attendance at or immediately after the birth, or in the absence of such a person;
- (3) The father, the mother or, in the absence or inability of the father and the mother, the person in charge of the premises where the birth occurred.

(d) When a birth occurs on a moving conveyance and the child is first moved from the conveyance in this State, the birth shall be registered in the county where the child is first removed from the conveyance, and that place shall be considered the place of birth.

(e) If the mother was married at the time of either conception or birth, or between conception and birth, the name of the husband shall be entered on the certificate as the father of the child, except as provided in this subsection. The surname of the child shall be the same as that of the husband, except that upon agreement of the husband and mother, or upon agreement of the mother and father if paternity has been otherwise determined, any surname may be chosen. The name of the putative father shall be entered on the certificate as the father of the child if one of the following conditions exists:

- (1) Paternity has been otherwise determined by a court of competent jurisdiction, in which case the name of the father as determined by the court shall be entered.
- (2) The child's mother, mother's husband, and putative father complete an affidavit acknowledging paternity that contains all of the following:
  - a. A sworn statement by the mother consenting to the assertion of paternity by the putative father and declaring that the putative father is the child's natural father.
  - b. A sworn statement by the putative father declaring that he believes he is the natural father of the child.
  - c. A sworn statement by the mother's husband consenting to the assertion of paternity by the putative father.
  - d. Information explaining in plain language the effect of signing the affidavit, including a statement of parental rights and responsibilities and an acknowledgment of the receipt of this information.
  - e. The social security numbers of the putative father, mother, and mother's husband.
  - f. The results of a DNA test that has confirmed the paternity of the putative father.

(f) If the mother was unmarried at all times from date of conception through date of birth, the name of the father shall not be entered on the certificate unless the child's mother and father complete an affidavit acknowledging paternity which contains the following:

- (1) A sworn statement by the mother consenting to the assertion of paternity by the father and declaring that the father is the child's natural father and that the mother was unmarried at all times from the date of conception through the date of birth;
- (2) A sworn statement by the father declaring that he believes he is the natural father of the child;
- (3) Information explaining in plain language the effect of signing the affidavit, including a statement of parental rights and responsibilities and an acknowledgment of the receipt of this information; and
- (4) The social security numbers of both parents.

The State Registrar, in consultation with the Child Support Enforcement Section of the Division of Social Services, shall develop and disseminate a form affidavit for use in compliance with this section, together with an information sheet that contains all the information required to be disclosed by subdivision (3) of this subsection.

Upon the execution of the affidavit, the declaring father shall be listed as the father on the birth certificate, subject to the declaring father's right to rescind under G.S. 110-132. The executed affidavit shall be filed with the registrar along with the birth certificate. In the event paternity is properly placed at issue, a certified copy of the affidavit shall be admissible in any action to establish paternity. The surname of the child shall be determined by the mother, except if the father's name is entered on the certificate, the mother and father shall agree upon the child's surname. If there is no agreement, the child's surname shall be the same as that of the mother.

The execution and filing of this affidavit with the registrar does not affect rights of inheritance unless the affidavit is also filed with the clerk of court in accordance with G.S. 29-19(b)(2).

(g) Each parent shall provide his or her social security number to the person responsible for preparing and filing the certificate of birth. (1913, c. 109, s. 13; 1915, c. 85, s. 1; C.S., s. 7010; 1957, c. 1357, s. 1; 1969, c. 1031, s. 1; 1979, c. 95, s. 4; c. 417; 1983, c. 891, s. 2; 1989, c. 199, ss. 1, 2; 1989 (Reg. Sess., 1990), c. 1004, s. 6; 1993, c. 333, s. 1; 1995, c. 428, s. 1; 1997-433, s. 4.12; 1998-17, s. 1; 2005-389, s. 4; 2009-285, s. 1; 2013-378, s. 8.)