

**Opinion No. 43-4372**

August 25, 1943

**BY:** EDWARD P. CHASE, Attorney General

**TO:** Miss Billy Tober, State Registrar of Vital Statistics, Department of Public Health, Santa Fe, New Mexico

In your letter dated August 18, 1943 you request an opinion on the following question:

"If a child is born to a mother who is married but the facts indicate that the husband is not the father of the child, should the child bear the name of the husband?" Example:

"Mother married but husband left her several years ago. They were never divorced. Mother has had several children, obviously illegitimate. Welfare workers want to know how birth certificates should be filed, under the husband's name, the mother's maiden name or the alleged father's name, if he admits paternity."

A child born in lawful wedlock is presumed to be legitimate and this is one of the strongest presumptions known to the law. This presumption is not conclusive, but judicial action is ordinarily required before the presumption can be overcome, for that reason in my opinion birth certificates of a child born in lawful wedlock should be filed under the husband's name regardless of the fact that the husband and wife are separated, so long as they are not divorced.

Any questions that might arise in the suit whereby it might be sought to show different paternity would be matters for the Court to decide and should not be determined beforehand by the person filling out the birth certificate.

Trusting the foregoing sufficiently answers your questions, I am

By C. C. McCULLOH,

First Asst. Atty. General