

815.75 CHILD BORN OUT OF WEDLOCK - ISSUE OF PATERNITY.<sup>1</sup>

*(NOTE WELL: If the paternity action is brought more than three years after the birth of the child or is brought after the death of the putative father, paternity cannot be established in a contested case without evidence from a blood or genetic marker test. N.C. Gen. Stat. § 49-14(d). The effect of the results of a blood or genetic marker test and comparisons is governed by N.C. Gen. Stat. § 8-50.1(b1)<sup>2</sup>.)*

The *(state number)* issue reads:

"[Is] [was] *(name putative father)* the father of *(name child)*?"

On this issue, the burden of proof is on the plaintiff.<sup>3</sup> This means that the plaintiff must prove by clear, strong and convincing evidence that *(name putative father)* is the father of *(name child)*.<sup>4</sup> Clear, strong and convincing evidence is evidence which, in its character and weight, establishes what the plaintiff seeks to prove in a clear, strong and convincing fashion. You shall interpret and apply the words "clear," "strong" and "convincing" in accordance with their commonly understood and accepted meanings in everyday speech.

Finally, as to this *(state number)* issue on which the plaintiff has the burden of proof, if you find by clear, strong and convincing evidence that *(name putative father)* is the father of *(name child)*, then it would be your duty to answer this issue "Yes" in favor of the plaintiff.

If, on the other hand, you fail to so find, then it would be your duty to answer this issue "No" in favor of the defendant.

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1. N.C. Gen. Stat. § 49-14 provides for civil actions to establish paternity. An action for support may be combined with a civil action to establish paternity. See N.C. Gen. Stat. §§ 49-14 and 49-15.

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2. This instruction will require adaptation where the plaintiff is seeking to overcome a presumption of paternity under N.C. Gen. Stat. § 8-50.1(b1)(4).

3. Proceedings to establish paternity may be brought by the mother, the father, the child or the personal representative of the mother or the child. N.C. Gen. Stat. § 49-16(1). The paternity of a child born out of wedlock may be established by civil action at any time prior to such child's eighteenth birthday. N.C. Gen. Stat. § 49-14(a). Specific statutes of limitation also apply where the putative father becomes deceased. See N.C. Gen. Stat. § 49-14(c).

4. N.C. Gen. Stat. § 49-14(b). The statute refers to the burden of proof as "clear, cogent and convincing." To be consistent with other pattern charges, the phrase "clear, strong and convincing" is used.