

TERMINATION (of parental rights) AND ADOPTION

Unless you are attempting to do an adoption for a step parent you should first complete the termination of both parents then file and complete the adoption. A combined termination and adoption is acceptable for a step-parent adoption.

If the child has already been the subject of a prior case, your termination action should be filed in the court of the prior action regarding the child.

Steps to Termination

You should first have your client fill out an Affidavit of Inability to Pay Costs so that the fees associated with the termination may be waived.

Determine the status of all biological parents living or dead. This includes both the biological mother and any presumed, alleged, unknown, or legal fathers of the child or children. **(In stepparent adoption, only one parent will be terminated.)**

If you have a variety of choices on the possible biological father or fathers you may have to terminate several men as to one child.

Next determine what service will need to be done on each person whose parental rights you are attempting to terminate.

Service

In your petition to terminate, always name the bio mother and all potential *biological* fathers whose rights should be terminated. You also need to allege the way in which that termination will occur, whether by voluntary relinquishment, personal service, or service by publication. (If parents were married when child was born, dad will be the *legal* father of the child.)

Waiver by Bio Mom via an Affidavit of Voluntary Relinquishment of Parental Rights and Bio Dad via Waiver of Interest , Legal Dad via an Affidavit of Relinquishment.

If the biological mother or biological father's whereabouts are known and they are willing to sign an affidavits of relinquishment (or Waiver of Interest for bio dad), you simply give the documents to your client, have them give it to the bio mom and dad to have them each sign off on their respective affidavits in front of two impartial witnesses and a notary public. Mom also needs to execute an affidavit of status alleging the bio father or fathers. This affidavit of status should also be attached to the petition to terminate OR filed later.

The affidavit of Relinquishment can only be used for the presumed, that is legal, father, meaning paternity has previously been established or he was married to the mother at the time the child was born.

If the biological father is known, but he is merely an alleged father (no legal

presumption exists for his status as father), and he is willing to relinquish his potential parental rights, an Affidavit of Waiver of interest should be submitted for his signature in front of two impartial witnesses and a notary.

Once the affidavits of Relinquishment and/or Waiver are returned, attach these documents to your original Petition for Termination OR they can be filed later.

It is best NOT to have a biological parent sign either an Affidavit of Relinquishment or Affidavit of Waiver of Interest in your office. Let the parent execute it elsewhere (Your local legal aid office is an alternative).

(Citation by Publication) [whereabouts or identity of party is unknown]

If service is to be citation by publication on one or both of the biological parents your client must sign Affidavit In Support of Citation by Publication for each person whom you are serving by publication. If termination is to be done by publication you must submit the affidavits with the original petition and also submit to the clerk a request for notice by publication called Notice By Publication. The notice should be published in the city or county where the Respondent was last known to be found.

(Citation by Personal Service) when a parent is not in agreement. (Be cautious about this type of case. A trial is likely before termination can be completed.)

If an address for a biological or alleged parent or parents is known but they refuse to sign off on a Relinquishment of parental rights or Waiver of interest, they must be personally served with citation. You must recite their address in the original petition for termination and request that a Constable serve them.

If the parent to be served lives outside the County in another county or state you must ask the district clerk to return citation to you. After citation is returned to you or picked up, you must then mail the citation to the Sheriff of the county in which the biological parent lives. If the parent is in prison, then you must ask the sheriff of the county in which the particular prison is located to do the service.

If the parent lives out of state you must first determine if they are amenable to Texas service. If not you may not be able to go forward with the case. If they are amenable to Texas service then you should mail your citation to the Sheriff or service agent of the county where they currently reside.

In any instance where the parent must be served either out of county or out of state be certain to include a postage paid envelope with the citation when sent to the Sheriff so that they may return the executed citation to you. Once the citation is returned to you, you must submit it to the court. It must be on file for 10 days PRIOR to a prove up of the case.

The Petition to terminate parental rights

Once the original petition is complete as to parties and method of service, you must file

it with the court of continuing jurisdiction (if there was a prior action regarding the child).

Your Petition should be filed with the Affidavit of Inability to Pay Costs. You should include 4 copies with the original of each document you submit to the court except the Austin form.

Medical History of the Child

This report is required per Texas Family Code Section 161.1031 and must be compiled by a parent who is voluntarily relinquishing parental rights **or** any parent before the court must compile this report during termination phase, applies to any *pending or new* case, Texas Family Code Section 161.2021.

Ad Litem

A Guardian or Attorney Ad Litem will likely be required by courts for any child who is the subject of a termination action.

An Attorney ad Litem (AAL) must be appointed for any absent party. This means anyone who was cited by publication.

If your service was by publication, has your time run and is the copy of the newspaper clipping in the court file? Or, if personal service, has the Monday next after the expiration of 20 days expired since service *and* no answer has been filed?

If personal service was done and an answer was filed then you must schedule your case for trial. Most courts require that mediation be done prior to trial so it is suggested that you request a mediation date from all parties and complete mediation prior to your scheduled trial date.

In most cases, if you have an opposing counsel on a termination matter, a jury trial will be requested.

Once the trial is complete, the final order either granting or denying termination should be drafted and entered.

PATERNITY REGISTRY

If there is no presumed or legal father, inquiry on each child must be made to the Bureau of Vital Statistics (Texas Dept of State Health Services as of 09/01/04). Inquiry form, VS 134, is faxed to BVS with information on the child. [*This requirement is relevant if child was born after the Paternity Registry was established-circa 1996*] The cost is currently \$9.00. Response is filed with the court prior to prove up.

SERVICEMEMBERS' AFFIDAVIT is required from Petitioner for each Respondent unless a Waiver containing the appropriate language has been filed.

PROVE UP

When case is ready to be concluded, you should check with your ad litem(s) and determine a mutually agreeable date and schedule a prove up with the court coordinator.

The morning you arrive at the court, you will either get your court file from the court clerk or your file may already be in the courtroom. Once all parties and attorneys on your case have arrived, approach the bailiff and request that your case be heard for an agreed prove up. [SEE PROVE UP NOTE BELOW]

The prove up is simply an oral recitation of each of the components listed in your original petition. The Attorney Ad Litem will likely have several questions for your client. The Guardian Ad Litem will make an oral report to the court.

At this time, the petitioner(s) will be appointed managing conservator(s) of the child.

Steps for Adoption

After termination is complete, then the **adoption** should be filed in the court of continuing jurisdiction (where the termination was done). The adoption will be filed under a new cause number, but must be filed in the court of continuing jurisdiction.

A criminal history is required of the petitioner(s). In stepparent adoption, only the stepparent will be required to get criminal history. The petitioner(s) must obtain fingerprint cards from the local Department of Public Safety office (\$5).

The fingerprint card is sent to the Department of Public Safety in Austin with the fee (\$15) for the criminal history record. (Fee is current as of January 2005)

The criminal history will be sent directly to the court and put in the court file.

Pre-adoptive home screening, required by Texas Family Code Section 107.0511, must be done, you may request that the fees be waived (since client has an Affidavit of Inability to Pay Costs) by means of a Motion to Waive Social Study fee. Whether your county has county services for home screening may affect your chances of success in this motion.

Health, Social, Educational and Genetic History report – is required unless the child is being adopted by a stepparent, a grandparent, aunt or uncle.

PROVE UP

The case is ready for prove up once the criminal history has made it into the court file and the pre-adoptive home screening is complete.

Prove up is done at the courthouse.

You, the client, petitioner(s), and child need to be present. (If there are other family members, they may also attend since adoptions are generally happy, family events.) Photos with the judge are permitted.

PROVE UP NOTE:

You should call the court clerk the day before the prove up and inform them you are planning to prove up the next morning. The clerks will either have the court file ready in the courtroom or will instruct you to pick up the file from the clerk's office.