



ILLINOIS STATE BAR ASSOCIATION

# FAMILY LAW

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## Putative Father Registry

By Kimberly J. Anderson

Father may have known best in the 1950s, but in the seemingly more complicated new millennium, many fathers don't even know that they've become parents. For a myriad of reasons, some mothers don't share news of their pregnancies or impending births with the fathers of their babies. This becomes quite a complication in adoption proceedings—which have drawn scrutiny due to high-profile cases such as Baby Richard and, lately, Baby Tamia. Media spotlights have drawn more eyes to the practice of adoption and the agencies that broker these familial transactions. Nevertheless, not everyone involved in potential adoption cases is getting the pertinent facts. It is crucial that each adoption case is followed to the letter of the law. It is imperative that attorneys educate client agencies and prospective adoptive parents as to the different choices available to them.

Adoption agencies place children and adoptive parents together. Sometimes it's a cut-and-dried process. In those cases, there is a clearly demonstrated desire by both birth parents to give up their parental rights. But when a case has only a mother who desires to give up her parental rights, adoption agencies face a legal dilemma that they must handle effectively. When a child is available for adoption, but there is no consent given by the father, an agency may tell prospective adoptive parents that there is likelihood of finding the father unfit based on a variety of reasons, thus leading the way to the termination of his parental rights. The agency also may inform prospective adoptive parents that there is a chance that the father could emerge to fight the termination of his parental rights.

Some prospective adoptive parents are unwilling to take on the risk, not to mention the expense, of seeking to terminate a father's parental rights. Adoption agencies, therefore, are bringing actions on their own in court to terminate a father's rights, well before any adoption petition is filed. These actions are typically called Father Identification Cases. Adoption agencies are filing in the hopes of terminating a father's rights, and then presenting an adopting couple with a child that is free and clear to adopt.

In the wake of the Baby Richard case, lawmakers enacted legislation designed to keep a similar case from occurring. Thus, the Putative Father Registry was born, and under the statute, a putative father is required to register or risk losing his parental rights. Registration can be done before the baby is born, and up until 30 days after the baby's birth.<sup>1</sup> The registry's purpose is to determine the identity and location of a putative father whose child is being considered for adoption.

The agency has to decide however, whether to bring a Father Identification Case or have the adoptive parents proceed directly with an Adoption proceeding terminating a father's parental rights. Termination of parental rights encompasses many different sections of the Adoption Act. Depending on the facts, an attorney can proceed under Section 12A when a putative father has not registered with the Putative Father Registry, or under Sections 1 or 8 to allege that a parent is unfit.<sup>2</sup>

Reading the statutes together can sometimes cause confusion. For example, according to Section 1(n)(2)(i), a putative father has evidenced his intent to forgo his parental rights where he fails to "commence legal

proceedings to establish his paternity under the Illinois Parentage Act of 1984 or the law of the jurisdiction of the child's birth within 30 days of being informed, pursuant to Section 12A of this Act, that he is the father or the likely father of the child," or within 30 days of the child's birth. But a literal reading of Section 12A, does not require a putative father to commence legal proceedings. Section 12A simply states that if a father registers with the Putative Father Registry, and mails his Declaration of Paternity, then he is entitled to notice of any adoption proceeding concerning his child.

The putative father provides certain information to the Registry, including his name, address, social security number, and his date of birth.<sup>3</sup> He must also provide the same information about the mother of the child. If the putative father knows it, then he also is asked to provide the name, gender, place of birth, and the anticipated, or actual birth date of the child.<sup>4</sup>

When an interested party seeks to adopt the child, they are required to request that the Registry search its database to determine if a father has registered for the child. The Registry sends confirmation to the interested party to inform them as to whether or not a father has registered. Any father who has registered must be notified of the pending action concerning his child. Any father who fails to register as described in the Act, is barred thereafter from asserting his parental rights to the child, unless he can demonstrate that he was unable to register. Even if the putative father could demonstrate that he was unable to register, he only has ten days to register once it became possible to do so.<sup>5</sup> The statute does not allow the puta-

tive father's lack of knowledge concerning a pregnancy to be used as a defense.

If an interested party determines that a father has registered, then the interested party pays the Clerk of the Circuit Court a fee and the father is notified that his child has been born or will be born on a certain date. Along with the notice, the father is sent a Declaration of Paternity and a Disclaimer of Paternity. The putative father may file the Disclaimer stating he is not the father, and he shall be deemed not to be the father. However, but if the putative father intends to declare his paternity, he must file his Declaration of Paternity along with his Appearance within 30 days of service. If he fails to do so, then the interested party does not have to give him notice of any proceeding. Once the putative father files his declaration of paternity, or a request for notice, he shall be given notice of any proceeding brought for the adoption of the child.<sup>6</sup>

According to the actual language contained in the Declaration of Paternity, a putative father acknowledges that he is aware that he is also obligated to establish paternity within 30 days of receiving the notice, or if the baby has not yet been born, 30 days from the baby's birth. If the father has registered and mailed his Declaration of Paternity in a timely manner but then failed to establish paternity in a court of law, his parental rights can still be terminated according to Section 1(n)(2)(i), but apparently not under Section 12A.<sup>7</sup> Section 12A, which describes the Declaration of Paternity in language necessitating the establishment of paternity pursuant

to the Parentage Act, fails to state that a father's rights can be terminated for failing to establish paternity.

A litigant's relief is different depending on which type of petition is brought before the court. In a Father Identification case action, a litigant cannot terminate a father's rights pursuant to Section 12A alone if the putative father has registered and sent in his Declaration of Paternity. Once the putative father successfully completes the first two steps, he is to be notified of any proceeding which is brought to adopt his child.<sup>8</sup>

If the putative father fails to bring the paternity action within 30 days, of course, the notification he receives could be a Petition for Adoption, alleging that he is unfit pursuant to Section 1(n)(2)(i). The apparent discrepancy in the statutes prevents an agency from terminating a father's rights unless they convince the adoptive parents to bring the Petition for Adoption. Although the agencies may feel that this places a chill on adoption cases, I feel that the Putative Father Registry is already stringent, and this tiny hole in the statute may very well save some father's parental rights.

The Putative Father Registry is a useful tool, and a necessary one, but it is disconcerting how few fathers are aware of its existence. I am a stepmother of three young men who range in age from 15 to 25 years old. I asked them if they were aware of it, and if they thought their friends were aware of the Putative Father Registry. They had never heard of it. Since the requirements are so strict and statutorily rigid, it seems that there

should be some avenue to educate fathers who may cherish fatherhood, but have become parents out of wedlock.

Again, attorneys must be thorough in educating client adoption agencies and adoptive parents about these laws and the dilemmas they present. In cases in which fathers have registered with the Putative Father Registry and mailed the Declaration of Paternity in a timely manner, but then failed to bring a paternity action within 30 days, the agency needs to decide which petition will grant the relief they seek. If the agency gives the putative father notice in the Father Identification Case, but does not bring a Petition to Adopt and seek termination of the father's parental rights, then the agency risks having the father pursue custody in paternity court. A father is likely to persuade the paternity court that he should have custody when the biological mother has temporarily placed the minor child with an adoptive agency and the child is not in her care. While the adoption court determines the father's rights in a Father Identification Case, the putative father could be awarded custody of the minor. In that likely scenario, the agency or the adoptive parents would have been better off bringing a Petition to Adopt the child. ■

1. 750 ILCS 50/12.1(b)
2. 750 ILCS 50/1.
3. 750 ILCS 50/12.1(a)(1).
4. 750 ILCS 50/12.1(a)(1).
5. 750 ILCS 50/12.1(g)(3)
6. 750 ILCS 50/12a.
7. 750 ILCS 50/12a.
8. 750 ILCS 50/12(a)(5).

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