

Termination of Parental Rights of Unknown Fathers: A Guide for Attorneys

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Adoption Law is Statutory

- Read Neb. Rev. Stat. §§ 43-101 to 43-166 in its entirety.
- Also familiarize yourself with the statutes regarding termination of parental rights. Neb. Rev. Stat. §§ 43-291 to 43-294.

Valid Adoption

- Strict compliance with the statutes is necessary for the adoption to be valid.
- In Re Adoption of Luke*, 263 Neb. 365, 640 N.W.2d 374 (2002)
- In Re Adoption of McCauley*, 177 Neb. 759, 131 N.W.2d 174 (1984)
- In Re Petition of Ritchie*, 155 Neb. 824, 53 N.W.2d 753 (1952)
- But "due diligence" and "substantial compliance" are the standards used by an adoption law attorney
- In Re Adoption of Baby Girl H, Armour v. KGG and TSG*, 262 Neb. 775, 635 N.W.2 256 (2001)

Basics of Termination of Parental Rights

- Facts and grounds must be alleged in the original petition, a supplemental petition, or a motion. Neb. Rev. Stat. § 43-291
- Proceedings must have due process safeguards. *In re Interest of Brook P. et al.*, 10 Neb. App. 577, 634 N.W.2d 290 (2001)
- After a termination of all parental rights proceeding under Neb. Rev. Stat. § 43-292, and where a child is a ward of the Department, no other consents are required before the adoption. Neb. Rev. Stat. § 43-293
- "An order terminating the parent-juvenile relationship shall divest the parent and juvenile of all legal rights, privileges, duties, and obligations with respect to each other." Neb. Rev. Stat. § 43-293
- Must prove grounds + best interests of the child.

Grounds for Termination of Parental Rights

Neb. Rev. Stat. § 43-292

- The parents have abandoned the juvenile for six months or more immediately prior to the filing of the petition;
- The parents have substantially and continuously or repeatedly neglected and refused to give the juvenile or a sibling of the juvenile necessary parental care and protection;
- The parents being financially able, have willfully neglected to provide the juvenile with the necessary subsistence, education, or other care necessary for his or her health, morals, or welfare or have neglected to pay for such subsistence, education, or other care when legal custody of the juvenile is lodged with others and such payment is ordered by the court;

Grounds for Termination of Parental Rights

- The parents are unfit by reason of debauchery, habitual use of intoxicating liquor or narcotic drugs, or repeated lewd and lascivious behavior, which conduct is found by the court to be seriously detrimental to the health, morals, or well-being of the juvenile;
- The parents are unable to discharge parental responsibilities because of mental illness or mental deficiency and there are reasonable grounds to believe that such condition will continue for a prolonged indeterminate period;
- Following a determination that the juvenile is one as described in subdivision (3)(a) of section 43-247, reasonable efforts to preserve and reunify the family if required under section 43-283.01, under the direction of the court, have failed to correct the conditions leading to the determination;
- The juvenile has been in an out-of-home placement for fifteen or more months of the most recent twenty-two months;

Grounds for Termination of Rights

- (8) The parent has inflicted upon the juvenile, by other than accidental means, serious bodily injury;
- (9) The parent of the juvenile has subjected the juvenile or another minor child to aggravated circumstances, including, but not limited to, abandonment, torture, chronic abuse, or sexual abuse;
- (10) The parent has (a) committed murder of another child of the parent, (b) committed voluntary manslaughter of another child of the parent, (c) aided or abetted, attempted, conspired, or solicited to commit murder, or aided or abetted voluntary manslaughter of the juvenile or another child of the parent, or (d) committed a felony assault that resulted in serious bodily injury to the juvenile or another minor child of the parent; or
- (11) One parent has been convicted of felony sexual assault of the other parent under section 28-319.01 or 28-320.01 or a comparable crime in another state.*

Best Interests of the Minor

- Must be a primary consideration.
- Applied by the courts on a case by case basis
- Focuses on the future well-being of the child
- Reunification is presumed to be in child's best interests, must prove parent is unfit. *In re Angelica L.*, 277 Neb. 984, 767 N.W.2d 74 (2009)
- Considerations:
 - Has parent made continued improvement?
 - Has a beneficial relationship been established between the parent and child?
 - Children should not languish in foster care
 - Siblings

But What Do you Do When the Biological Father is Unknown??

Duties to Identify

- The biological mother has an obligation to identify and attempt to inform the biological father
- Mother required to complete an affidavit. Neb. Rev. Stat. § 43-104.09 has the affidavit form.
- Agency or attorney has an obligation to try to identify and attempt to inform the biological father
- Agency or attorney has an obligation to inform the mother of the need to identify a biological father
- Agency or attorney needs to complete affidavit of due diligence regarding efforts to identify and give actual or constructive notice.

GAL for Biological Father

- If there is no "due diligence" and "substantial compliance" the court "may" appoint a GAL for the biological father.
- Duties:
 - Identify the biological father whenever possible
 - Notify the potential biological fathers of their options, rights, duties
 - Notify the court of all reasonable efforts
 - Make determinations regarding conception, support, and whether any man has acknowledged or declared paternity
- Investigation must be completed within 20 days, unless Court finds good cause to extend the time period

Where & When to TPR Biological Fathers?

- No: In the 3(a) case.
- Yes: In the adoption case.
- Why?
 - If you terminate in the 3(a) case, you are terminating parental rights of everyone in the world as to the child.
 - If you terminate in the adoption case, you have published notice to the specific father, and have checked the biological father registry maintained by DHHS.
 - If terminating parental rights in the 3(a) case, can you prove up grounds under Neb. Rev. Stat. § 43-292? Probably not, as to an unknown party.
 - Most judges require it to be done this way.

General Process of TPRing for Fathers

- Petition (and other required documents) for Adoption
- Notice
- Consents
- Biological Father Registry Check
- Order Terminating Parental Rights
- Decree

Notice Publication

- Three successive weeks
- Legal newspaper of general circulation in "such county"
- Neb. Rev. Stat. § 43-103
- Once a week for three consecutive weeks
- Legal newspaper of general circulation in "the Nebraska county or county of another state which is most likely to provide actual notice to the biological father."
- Neb. Rev. Stat. § 43-104.14

Notice Publication

- Not required, and shouldn't be published
 - Child's name
 - Child's initials
 - Mother's name
- Not required, and you should consider publishing
 - Mother's initials
 - Mother's first name and last initial

NOTICE FOR PUBLICATION

Pursuant to Neb. Rev. Stat. §43-104.14, Tana M. Fye, Attorney at Law, 713 Fourth Avenue, Holdrege, NE 68931, (402) 519-0061, does hereby provide the following notice of possible adoptive placement of a minor child:

Sample Notice

John Doe, real name unknown, male, unknown age. You have been identified as the biological father of a child whose date of delivery was December 8, 2010. The child was conceived on or about March 2010 with M.A., in Buffalo County, Nebraska. The child's stepfather is seeking to adopt the child. If you are the biological father, you may (i) deny paternity; (ii) waive any parental rights you may have; (iii) relinquish and consent to the adoption; or (iv) file a Notice of Objection to Adoption and Intent to Obtain Custody, pursuant to section 43-104.02, or object to the adoption in a proceeding before any Nebraska court which has adjudicated you to be the biological father of the child prior to your receipt of notice. If you wish to deny paternity, waive your parental rights, relinquish and consent, or receive additional information to determine whether you may be the father of the child in question, you must contact Tana M. Fye at the above address. If you wish to object to the adoption and seek custody of the child, you must seek legal counsel from your own attorney immediately.

INSTRUCTIONS TO PUBLISHER

Please publish this notice on the following days:
 _____, 2018
 _____, 2018
 _____, 2018


Please send one copy of the published notice to the above-named attorney immediately following the first publication.
 Immediately following the last publication, please mail proof of publication to the above-named attorney.

Biofather Registry

- Putative father can file a Request for Notification of Intended Adoption or a Notice of Objection to Adoption and Intent to Obtain Custody
- Notice can be revoked
- Must use DHHS Forms
- Specific time limits apply to the filing of these forms


DHHS Forms

- Available at:
http://dhhs.ne.gov/chil dren_family_services/Pages/adoption_biofather.aspx



DHHS Forms

- Available at: http://dhhs.ne.gov/chil dren_family_services/Pages/adoption_biofater.aspx



Biological Father Registry

- Notice Contains:
 - Putative father's name
 - Address
 - Social Security Number
 - Name and Last-Known Address of the Mother
 - Month and Year or Expected Birth of Child
 - Case Name, Court Name, Location of any NE Court having jurisdiction over the custody of the child
 - Statement by the Putative Father that he acknowledges liability for contribution to the support of the child and medical expenses related to the pregnancy

Biological Father Registry

- Specific time limits for putative father filing under Neb. Rev. Stat. § 43-104.02
- If putative father has filed, DHHS sends a copy to the mother and to any courts identified. Neb. Rev. Stat. § 43-104.03
- If putative father has not filed, the mother (or her attorney) requests, and DHHS supplies, a certificate that no such notice has been filed with the biological father registry. Neb. Rev. Stat. § 43-104.04
- "The filing of such certificate pursuant to section 43-102 shall eliminate the need or necessity of a consent or relinquishment for adoption by the putative father of such child." Neb. Rev. Stat. § 43-104.04

Consent

- If the child is the subject of a 3(a) case, you'll need to obtain consent from the County/Juvenile Court handling that case (whether filed in the same county or a different county)
- DHHS or licensed child placement agency
- Other parent if parental rights not terminated/relinquished (i.e. stepparent adoption)
- Consent of the child is required if he/she is age 14 or older.

Substituted Consent

- "In all other cases when consent cannot be given as provided in subdivision 1)(c) of section 43-104, consent shall be given by the guardian or guardian ad litem of such minor child appointed by a court, which consent shall be authorized by the court having jurisdiction of such guardian or guardian ad litem." Neb. Rev. Stat. § 43-105

Consent Not Required

- Neb. Rev. Stat. § 43-104
- *Of a putative father who has failed to timely file
 - (a) a Notice of Objection to Adoption and Intent to Obtain Custody pursuant to section 43-104.02 and with respect to the absence of such filing, a certificate has been filed pursuant to section 43-104.04 or
 - (b) a petition pursuant to section 43-104.05 for the adjudication of such notice and a determination of whether his consent to the adoption is required and the mother of the child has timely executed a valid relinquishment and consent to the adoption pursuant to such section."
- *Of an adjudicated or putative father who is not required to consent to the adoption pursuant to section 43-104.22."

Order Terminating Parental

- Findings in Order:
 - That notice was provided to the putative father by publication;
 - That notice was appropriate;
 - That no putative father has filed a Request for Notification of Intended Adoption nor a Notice of Objection to Adoption and Intent to Obtain Custody;
 - As no putative father has not timely filed an objection in this matter, it is appropriate to terminate parental rights; and
 - That it is in the best interests of the minor child to terminate parental rights of the unknown father.
- Can be signed at the hearing, along with the Decree. Doesn't need to be done in advance.

Decree of Adoption

- This is the same as in an adoption when parental rights have either been terminated or relinquished
- Because you've done a separate Order Terminating Parental Rights
- Nicer for adoptive parents to have a 'happy' decree of adoption, without the more negative aspects of terminating parental rights, biological fathers who aren't responsive, etc.

Citations and Resources

- Neb. Rev. Stat. §§ 43-101 to 43-168
- Neb. Rev. Stat. §§ 43-291 to 43-294
- Neb. R. Prof. Conduct § 3-501.1
- In Re Adoption of Luke*, 263 Neb. 385, 640 N.W.2d 374 (2002)
- In Re Adoption of McCauley*, 177 Neb. 759, 131 N.W.2d 174 (1984)
- In Re Petition of Ritchie*, 155 Neb. 824, 53 N.W.2d 753 (1952)
- In Re Adoption of Baby Girl H, Armour v. KGG and TSG*, 262 Neb. 775, 635 N.W.2d 258 (2001)
- In re Interest of Brook P. et al.*, 10 Neb. App. 577, 634 N.W.2d 290 (2001)
- In re Angelica L.*, 277 Neb. 984, 767 N.W.2d 74 (2009)
- Sapp, S.K. *Understanding Adoption Procedures in Nebraska*, Nebraska State Bar Association publication (2016)

Questions?



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