

Oakland County Circuit Court - Family Division, Adoption Services

Putative Father (MCL 710.36 et seq)

(Incorporating May 1, 2002 changes to the court rules)

The putative father's parental rights may be addressed both before and after the child is born.

**Before the child is born**, the procedure for a *Petition to Issue Notice of Intent to Release or Consent* may be used. The agency or attorney and birth mother sign and file with a *Petition to Issue Notice of Intent to Release or Consent* (PCA 313) and *Notice of Intent to Release or Consent* (PCA 314) with \$20.00 filing fee. A case number is assigned and the Deputy Register authorizes the notice. The PCA 314 is personally served upon putative father at least 30 days before the expected date of confinement. MCL 710.34; MCR 3.802

If this method of notification to the birth father is used, it is the only notice of the proceedings he is entitled to receive. It provides personal service early in the process, before the child is born and allows the birth mother to appear to give her consent without further notice to the father.

**The father may sign a Custody Statement (PCA 316)** when he is served with the Notice of Intent (PCA 314). If he completes this form, it is additional evidence his rights can be properly terminated at the hearing to identify father pursuant to MCL 710.36.

**After the birth of the child** the agency or attorney and the birth mother sign and file a *Petition for Hearing to Identify Father* (PCA 310). At the hearing, the proof of service and the paternity clearance shall be evidence to terminate the parental rights of the putative father. MCL 710.36 and 37. If served with the Notice of Intent, the father needs no further notice of the hearing.

**If the putative father has an ongoing relationship with the birth mother** and is available, the best and most secure method of termination of his parental rights is by taking a release or consent. If the putative father will appear, he may sign a release or consent in a court hearing. A release is signed if a child is being released to an agency or the Department of Human Services (DHS). A consent is signed if a child is being placed directly with an adoptive family.

**Putative Father Hearing**

“If a child is claimed to be born out of wedlock and the mother executes or proposes to execute a release or consent relinquishing her rights to the child or joins in a petition for adoption filed by her husband, **and the release or consent of the natural father cannot be obtained**, the judge shall hold a hearing as soon as practical to determine the identify of the father, and to determine or terminate the rights of the father....” MCL 710.31.

If the putative father is unwilling to sign a release or consent and has not been served with a *Notice of Intent to Release or Consent*, the agency or attorney and the birth mother sign and submit a *Petition for Hearing to Identify father* (PCA 310), together with the \$20 filing fee. The hearing will be scheduled and the date provided to the agency or attorney by the deputy register.

Notice of this hearing shall be served upon a putative father who has filed a *Notice of Intent To Claim Paternity* or a putative father who was not served with a *Notice of Intent to Release or Consent*. (MCL 710.36). The putative father may waive notice of the hearing by signing the Custody Statement portion of the PCA 316. The *Notice of Hearing to Identify Father and Determine or Terminate his Rights* is PCA 311.

If the putative father must be served with a notice of hearing it must be done according MCR 3.802(A)(2). “Notice of a *Petition to Identify a Putative Father*...must be served on the individual or the individual’s attorney in the manner provided in MCR 5.105(B)(1)(a) or (b).”

MCR 5.105(B)(1) describes the manner and method of service on an attorney, if the putative father is represented.

MCR 5.105(B)(1)(b) addresses the service to an individual other than an attorney.

“Personal service of a paper on an individual other than an attorney must be made by

- (i) handing it to the individual personally;
- (ii) leaving it at the person’s usual residence with some person of suitable age and discretion residing there; or
- (iii) sending the paper by registered mail or certified mail, return receipt requested, and delivery restricted to the addressee; but service is not made for purpose of this subrule until the individual receives the paper.” (emphasis added)

Personal service is required 7 days prior to the hearing (MCR 5.108) Service by mail must be made 14 days before the hearing. If the service is being made by certified mail, as required, an two additional weeks need to be added to the 14 days in order to provide for the return of the *Proof* to the court by the post office.

The former provisions allowing first class mail service and requiring certified mail only if service is through third parties has been eliminated.

It would appear that in the case of a putative father whose usual residence is known, that leaving the notice of the hearing at his usual residence with some person of suitable age and discretion would be good service, pursuant to MCR 5.105(B)(b)(ii). Or the father must be served by certified mail, addressee only and sign the receipt himself.

If the service is being left “at the person’s usual residence with some person of suitable age and discretion residing there,” the return of service will have to include language describing the person with whom the service has been left.

A similar procedure is followed if the **legal father is not the biological father of the child**. “Born out of wedlock’ means a child conceived or born to a woman who was not married from the conception to the date of birth of the child, or a child whom the court has determined to be a child born during a marriage but not the issue of the marriage.” MCL 710.22 (g)

The court must hold a hearing to make the above determination. The agency or attorney and birth mother sign and file a *Petition for Hearing to Identify Father* (PCA 310) and file a notice of hearing PCA 311 with \$20.00 filing fee. Notice of the hearing must be provided to the legal as well as the putative father(s) of the child. Notice is required as above.

**If the putative father’s whereabouts is unknown** or he cannot be identified, the birth mother and her agency or attorney must sign and submit a *Declaration of Inability to Identify/Locate Father* (PCA 315) along with the *Petition for Hearing to Identify Father* (PCA 310) and a \$20

filing fee. The PCA 315 is very important. It must be completed with as much information as possible about the reasons the father cannot be identified or located. The document may have an attachment, which completely explains either the circumstances of conception, which do not allow identification of the father, and /or the efforts, which have been made to locate him. A hearing will be held at which the referee or judge will determine the sufficiency of the petition and the declaration. See MCR 3.802(B).

**The putative father signs a custody statement.** “A waiver, affirmation or disclaimer to be executed by the father of a child born out of wedlock may be executed any time after the conception of the child.” MCR 3.801(A). This means that a putative father may sign a *Notice to Putative Father and Custody Statement* (PCA 316) at any time during the pregnancy, or thereafter, prior to the hearing to identify father, indicating his non interest in custody of the child.

Depending upon the information regarding the putative father provided to the court, notice to the putative father may be required as well.

It is a good practice for the attorney or agency worker to have the birth father sign the custody statement in his or her presence so that the worker or attorney may represent to the court that he or she has discussed matters with the birth father and the custody statement is accurate. If the custody statement is mailed to the birth father a copy of the letter which accompanies the custody statement should also be filed with the court. It is also a good idea to copy the identification or drivers license of the birth father to accompany the custody statement. A copy of the custody statement should be given to the birth father.

An interested party may not witness the document, therefore, do not allow the birth mother or her family to witness the PCA 316.

The PCA 316 is then used at the hearing to identify father as proof he is not interested in custody.

A person who must be served for a hearing may acknowledge that he is waiving the time period in which service must be made.

**Use the most recent version of the SCAO approved forms.**

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