



ILLINOIS STATE
BAR ASSOCIATION

THE CATALYST

The newsletter of the ISBA's Standing Committee on Women & The Law

The Putative Father Registry in Illinois

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. I know firsthand how crucial it is that each adoption case is thorough 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 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 most effectively handle. 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.¹ The registry's purpose is to determine the identity

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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.²

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 within 30 days of being informed, pursuant to Section 12A of this Act, that he is the father or likely father, 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.

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The putative father provides certain information to the Registry, including his name, address, social security number, and his date of birth.³ 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.⁴

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 10 days to register once it became possible to do so.⁵ The statute does not allow the putative 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, 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.⁶

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.⁷ 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.⁸

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 is disconcerting how few fathers are aware of its existence. I am a step-mother 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 though 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.

Kimberly J. Anderson is a strong supporter and advocate of children's rights. A former assistant Cook County state's attorney, she has extensive trial and appellate experience. She serves as a court-appointed child representative, and the courts have appointed her numerous times to cases involving adoption and juvenile matters. Visit Anderson & Boback on the Internet at <http://www.illinoislawforyou.com/>.

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).

Bills on Request

Don't forget that the ISBA Legislative Affairs Department provides copies of pending and enacted Illinois legislation on request.

Call the ISBA Department of
Legislative Affairs in Springfield at
800-252-8908,
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Springfield, IL 62701

The Legal Aid Safety Net

Low-income Illinoisans are only able to get legal help for one out of every six legal problems they face, according to a major new study of the legal aid system released in February. The study, *The Legal Aid Safety Net: A Report on the Legal Needs of Low-Income Illinoisans*, found that the legal aid system is so overburdened and under-funded that it is operating in a crisis mode, accepting only the most critical cases and turning away tens of thousands of people each year.

Through a statewide telephone survey of 1,645 low-income households, the study found that in **2003 alone, poor people faced more than 1.3 million civil legal problems**, involving issues such as domestic violence, divorce, child custody, evictions, mortgage foreclosures or the physical and financial abuse of the elderly. **However, in more than 80 percent of those cases, individuals and families faced the problem without legal assistance.**

The study was sponsored by The Chicago Bar Association, the Illinois State Bar Association, the Chicago Bar Foundation, the Illinois Bar Foundation and the Lawyers Trust Fund of Illinois. It is the first study of its kind in more than 15 years.

"The study clearly shows that people who cannot afford to pay market rates for legal help are often forced to try to resolve serious problems without the knowledge or the assistance they need to obtain a fair resolution," said Timothy L. Bertschy, co-chair of the study's steering committee and a partner at the firm of Heyl, Royster, Voelker & Allen in Peoria. "Lawyers aren't necessary to solve every problem, and we don't want to encourage unnecessary litigation. But people are being forced to handle some very complex matters on their own, simply because there are no legal aid resources available."

For example, the study found that 69 percent of domestic violence victims did not have legal assistance. Parents faced child custody disputes without representation in 63 percent of cases. Three-quarters of those facing mortgage foreclosures did not have an attorney.

"What many people may not realize is that in civil cases, unlike crimi-

nal ones, people don't automatically have the right to counsel," said Jennifer T. Nijman, a co-chair of the study and a partner at Winston & Strawn. "This is true even though the potential consequences of some civil problems, like the loss of custody of a child or the loss of a home due to foreclosure, are extremely serious. That's why the legal aid safety net has to be strengthened."

The study found that those who sought legal help encountered a legal aid system overwhelmed by demand for its services. Legal aid "hotlines," which serve as the first point of contact for legal aid programs in many parts of the state, report that they are able to respond to less than a third of the calls they receive. There are only the equivalent of **280 full-time legal aid lawyers in the entire state—a ratio of one legal aid lawyer for every 4,752 legal problems** faced by the poor. As a result of these staff shortages, legal aid programs have adopted "triage" systems designed to screen out all but the most critical legal emergencies.

"The legal aid system is stretched too thin everywhere, but outside of Cook County there are only 84 legal aid lawyers to serve 101 counties," said Ole Bly Pace III, president of the Illinois State Bar Association. "The nearest legal aid office to my home town, Sterling, is in Rock Island, more than sixty miles away. In some parts of the state the nearest office is two or three counties away. That makes it especially tough for older people and others who have a hard time traveling."

The legal aid system is overburdened because it is severely underfunded. The study determined that it would cost an additional \$49 million to provide assistance to the 140,000 people who sought, but could not get, legal help in 2003.

Federal funding from the Legal Services Corporation, which is the largest source of support for legal aid, has dropped by 38 percent over the past fifteen years, when adjusted for inflation. **The state of Illinois provides less than 2 percent of total funding for legal aid, and of the ten most populous states, Illinois ranks last, spending just \$472,000 compared to an**

average of \$6.8 million.

"We have in this state more than 11 million people, and we have a \$55 billion annual budget, and the amount of money that is made available for legal services simply is disgraceful," said Phil Rock, former Illinois Senate President and co-chair of the Equal Justice Illinois Campaign. "You're trying to paint the house with a quart of paint. It's not working."

The report's other key findings include:

- Just under half (49 percent) of the approximately 782,000 low-income households in Illinois experienced one or more legal problems in 2003.
- Those households that did have at least one legal problem faced an average of 3.5 distinct problems.
- African-American households were 21 percent more likely to have a legal problem than the survey average, and Latino households were 5 percent more likely to have a problem. White households were 13 percent less likely than average to have encountered a legal problem.
- Households that include a person with a disability were 50 percent more likely to have experienced a legal problem.

"We need to ensure that low-income people have a level playing field and can obtain the legal help that they need when it comes to securing their legal rights," said Joy Cunningham, president of The Chicago Bar Association.

In addition to pointing out the need for additional funding, the study offers recommendations on ways to make the courts more accessible to people who do not have legal representation, to encourage more attorneys in private practice to offer voluntary pro bono services, and to further increase the efficiency of the legal aid system.

Financial support for the study was provided by the Lawyers Trust Fund of Illinois, the Polk Bros. Foundation, the Joyce Foundation, The Chicago Community Trust, The Chicago Bar Foundation, the Illinois Bar Foundation, Caterpillar, Inc. and the Francis Beidler Foundation. For a copy of the full report, go to <www.ltf.org/legalneeds.htm>.

Legislative update

By Sandra Crawford

Annually the ISBA, on behalf of its membership, monitors and formally comments through its Director of Legislative Affairs, James Covington, on hundreds of pending Illinois State Senate and House Bills. During each legislative session the Women and The Law (W&L) Standing Committee and other ISBA committees and sections counsels assist the ISBA's Legislative Affairs Department in that process. The 2005-2006 94th Illinois General Assembly session got underway on January 8, 2005, and your W&L Committee has been busy reviewing and commenting on proposed new and amended legislation which is of special interest to women and families and consistent with our mission.

Those of you interested in all things legislation can remain current through use of the Illinois General Assembly Web site at www.ilga.gov. This site provides access not only to Senate and House Bills and Resolutions, but to Illinois Compiled Statutes, the Illinois Constitution, Senate and House Membership information, Committee Schedules and more. This site is maintained for the Illinois General Assembly by the Legislative

Information System, 705 Stratton Building, Springfield, Illinois 62706, 217-782-3944 217-524-6059 (Fax) 217-782-2050 (TDD). They can also be helpful if you encounter issues in accessing information from the site.

Those of you interested in tracking specific bills or any legislation impacting your particular area of practice or concern can do so through the "My Legislation" service offered free to citizens through the General Assembly. To use that service, merely go to the General Assembly Web site listed above and look for the "My Legislation" key. Once in the "My Legislation" section follow the instructions given. To customize your particular inquiry to a particular Act or Code section of interest use the "Build ILCS Query" function. You can then easily and speedily track legislation proposed to impact you or your clients and can comment directly on same to a bill's sponsor or your State representative.

The W&L Committee has gathered in one place in the "My Legislation" section all bills which have come under review by this Committee. To view same you can go to the "Reports" section of the "My Legislation" sec-

tion. You can sign in using the especially established e-mail address womenlaw@isba.org, and the password "power." Many thanks to ISBA Staffer, Ms. Kim Wallner, for her assistance in creating this quick reference resource. As of the writing of this Legislative Update it is anticipated that there will be posted there, under the heading "View" and file name "W&L Bills," all currently pending bills of interest to our newsletter subscribers and our Committee.

Yet another wonderful resource for staying updated on pending legislation can be found under the "E-Mail Services" provided to ISBA members on www.isba.org. The Legislative Alert service delivers occasional e-mail bulletins about important issues and breaking news from the ISBA's Legislative Affairs Department during the legislative session. Follow the "sign up today—Members Only" instruction using your ISBA member number to receive this service. At the end of the legislative session look for updates in this column and in the *Bar News* and *Bar Journal* on new or amended legislation impacting you, your practice, and your clients and your families.



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POSTMASTER: Please send address changes to the Illinois State Bar Association, 424 S. 2nd St., Springfield, IL 62701-1779.

Women's History Month 2005

By E. Lynn Grayson

March 2005 marked the 18th year celebrating Women's History Month. This special celebration has its origins in the "Women's History Week" organized in 1978 by the Education Task Force of the Sonoma County Commission on the Status of Women in California. The week was chosen to coincide with International Women's Day, which was first celebrated March 8, 1911, in Europe.

In 1981, the United States Congress passed a resolution establishing National Women's History Week, which was expanded to a month in 1987 at the request of the National Women's History Project. Every year since then the U.S. Congress has issued a resolution for Women's History Month.

A number of resources are available to learn more about women in history. Two outstanding ones are:

1. Thomson Gale

(http://www.galegroup.com/free_resources/whm/index.htm)

Thomson Gale has assembled a collection of activities and information to complement classroom topics. Within this site, teachers and students can:

- Read biographies of significant women throughout time
- Take a quiz based on women and their achievements
- Follow a timeline of significant events in women's history
- Enjoy activities taken from the Women's History Month Resource Book and excerpts from Women's Rights on Trial

2. infoplease

(<http://www.infoplease.com/spot/womenshistory1.html>)

A variety of information and resources are available broken down into the following categories:

History and Timelines

- The History of Women's History
- International Women's Day (March 8)
- Timeline: U.S. Women's Rights Movement
- Famous Firsts by American Women
- The Wage Gap: A History

- Declaration of Sentiments
- Encyclopedia: Feminism
- Five Women's Museums to Know
- Notable Speeches by U.S. Women—New!

Special Features

- Women by the Numbers
- Quotations by Women
- The First Ladies Portrait Gallery
- Women Political Leaders Throughout History
- Top Female CEOs
- For Kids: Women of Influence

Prize Winners and Honorees

- Women's Hall of Fame
- Women Nobel Prize Winners
- Women Pulitzer Prize Winners for Letters, Drama, and Music
- Women Pulitzer Prize Winners in Journalism

Fun Stuff

- Women Who Left Their "Stamps" on History
- Crossword: Women Songwriters
- Crossword: Women Writers
- Crossword: Women in Sports
- Crossword: First Ladies & Kids
- Crossword: "Her-Story"
- Quiz: First Ladies
- Quiz: Female Writers and Performers
- Quiz: Groundbreaking Women
- Quiz: Women of the Ancient World
- Quiz: Women in History
- Quiz: Suffrage Movement

Awards and Achievers

- Women's Hall of Fame
- Nobelists
- Pulitizers
- Women in Gov't
- Women in Sports

Health and Reproductive Issues

- Contraceptive Use
- Abortion Statistics
- Legal Abortions in Selected Countries
- The Abolition of Female Genital Mutilation
- Smoking Statistics, by Sex
- Heavy Alcohol Use, by Sex

Crime

- National Violence Against Women Survey
- Domestic Violence Statistics
- Total Arrest Trends by Sex

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- Women on Death Row

Other Resources

- Changing the Face of Medicine: Celebrating America's Women Physicians
- Fathom Knowledge Network: Women's History Month Resources
- The National Women's History Project
- National Organization for Women
- The American Association of University Women
- The National Women's Health Information Center
- MADRE: International Women's Human Rights Organization

Population

- Ratio of Males to Females
- Persons 65 Years Old and Over: Characteristics by Sex
- Life Expectancy, by Sex

Education

- Educational Attainment by Sex
- Percent of High School Dropouts by Sex
- Mean Annual Earnings by Level of Education

Work

- Women in the Labor Force
- Mothers Participating in Labor Force
- Percent of Women Employed in Select Occupations

- Women's Earnings as a Percentage of Men's Active Duty Servicewomen by Branch of Service and Rank

Motherhood and Family

- Marital Status
- Median Age at First Marriage
- Births by Age and Race of Mother
- Families by Type, Race, and Hispanic Origin
- Teen Birth Rates Decline

In recognition of Women's History Month, visit one of the Web sites above and see what new information you can learn about remarkable women in history.

The National Women's Health Information Center

By E. Lynn Grayson

The National Women's Health Information Center offers women's health resources and materials for consumers and medical professionals. The Center is sponsored by the U.S. Department of Health and Human Services - The Office of Women's Health—serving as the government's champion and focal point for women's health issues, and works to redress inequities in research, health care services, and education that have historically placed the health of women at risk. The Office on Women's Health coordinates women's health efforts in the U.S. to eliminate disparities in health status and supports culturally sensitive educational programs that encourage women to take personal responsibility for their own health and wellness.

The Center recently sponsored National Women's Health Week from May 8-14, 2005. Special events and activities were conducted around the country to spotlight women's health concerns. In Chicago, there was an outdoor health and fitness expo sponsored by *SELF* magazine as well as the kickoff of a 12-week walking challenge.

During National Women's Health Week, women should discuss with their health care professionals which of the following tests are right for them, when they should have them and how often:

- Mammograms—everyone one to

two years starting at age 40

- Pap smears—every one to three years if sexually active or older than 21
- Cholesterol checks—regularly, starting at age 45 (if a smoker, diabetic or if heart disease runs in the family, cholesterol checks should start at age 20)
- Diabetes tests—if diagnosed with high blood pressure or high cholesterol
- Blood pressure—checked at least

every two years, beginning at age 18

In addition to promoting this special women's health awareness week, the Center provides timely, helpful information on a variety of women's health concerns. Resources available include: *Today's Health News*; FAQs about women's health; health information available in different languages; and, other important medical resources. This information is available at <<http://www.4women.gov/>>.

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