

Parent and Party Variations

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Definition – Parent

- Biological mother and child.
(defined as giving birth to child)
- Father and child when:
 - Presumption of Paternity and no Action to Declare Nonexistence of Father and Child Relationship
 - Recognition of Parentage
 - Positive Genetic Test + ROP or Adjudication
 - Father as defined by tribal law or custom, does not include an unmarried father whose paternity has not been acknowledged or established
- Adoptive parent and child.

Minn. Stat. § 260C.007, subd. 25
Minn. Stat. § 260.755, subd. 14
Minn. Stat. § 257.55
Minn. Stat. § 257

Definition – Legal Custodian

- If mother is unmarried she is the sole legal and physical custodian by law, unless there is a court order establishing an alternative custody arrangement.
- If married, then mother and father are joint legal and physical custodians. Minn. Stat. § 257.541, subd. 1
Minn. Stat. § 260C.007, subd. 10
- A person, other than a parent, is a legal custodian if they have been awarded custody by Court Order.
- For an Indian child, custodian means any Indian person who has legal custody of an Indian child under tribal law or custom or under state law or to whom temporary physical care, custody, and control has been transferred by the parent of the child, as provided in section 260.755, subd. 10

Definition – Party

Minn. R. Juv. Prot. Pro. 21

CHIPS

* child's guardian ad litem * child's legal custodian * ICWA child's parent *ICWA child's Indian Custodian * ICWA Child's tribe through the tribal representative * petitioner * intervener pursuant to Rule 23 * person who is joined pursuant to Rule 24 * any other person deemed by the court to be important to a resolution that is in the best interests of the child*

PERMANENCY

*child's parent, including any noncustodial parent and any adjudicated or presumed father * any person entitled to notice of any adoption providing involving the child * responsible social services agency when the agency is not the petitioner * any other person deemed by the court to be important to a resolution that is in the best interests of the child

Definition - Participant

Minn. R. Juv. Prot. Pro. 22

Unless already a party:

* child * any parent who is not a legal custodian and any alleged, adjudicated, or presumed father * the responsible social services agency when the agency is not the petitioner * guardian ad litem for the child's legal custodian * grandparents with whom the child has lived within the two years preceding the filing of the petition * relatives or other persons providing care for the child and other relatives who request notice *current foster parents, persons proposed to receive a permanent transfer of custody or permanent foster placement, and persons proposed as pre-adoptive parents *spouse of the child, if any * any other person deemed by the court to be important to a resolution that is in the best interests of the child *

Transgender Parents

Are still parents.

Same sex couples

What are the agency's obligations regarding paternity?

Must Identify and Locate Parents

- Ask – children, relatives, and the other parents.
- Databases and other County resources
 - Child Support ([Minn. Stat. § 260C.150, subd. 3\(2\)](#))
 - Probation
 - Review the underlying assessments, police reports, and other child protection records
 - Check Odyssey / MGA for other recent court cases
 - Facebook
 - Use vinelink.com to locate an incarcerated parent

Get Parents to Court

- How:
 - Service of Petitions with Hearing Notices
 - Letters and mail to known addresses
 - Transport Orders and Writs
- Why?
 - Meet with the agency
 - Obtain counsel

Establish Paternity

Adjudication (Court Order) Minn. Stat. § 257.51 – 257.74: Parentage Act

or

Recognition of Parentage (ROP)

Genetic testing is not required, but is strongly preferred!

Party Amendments

- Allowed at any time prior to trial, may be amended after the trial has commenced if the amendment does not prejudice a party and all parties are given sufficient time to respond. Minn. R. Juv. Prot. Pro. 33.04

Can occur through written or verbal motion or by Amended Petition if necessary

- Best practice: substantively amend the petition to add additional facts related to the added party (if it's a newly identified parent)

Complications

Make Your Record

Competing Presumption of Paternity

- Multiple ROPs
- Marriage
- Genetic Tests

Minn. Stat. § 257.55, subd. 2

A presumption may be rebutted in an appropriate action only by clear and convincing evidence. If two or more presumption arise the presumption which on the facts is founded on the weightier considerations of policy and logic controls. The presumption is rebutted by a court decree establishing paternity of the child by another man

Resolve
Competing
Presumptions of
Paternity

Invalid ROP

Minn. Stat. § 257.75

- Married mother and non-husband father
- Executors not the age of consent
- Executors otherwise not capable of consent
- ROP not filed

MN DHS Recognition of Parentage

Minnesota Voluntary Recognition of Parentage (PDF)

Parents with Probate Court Guardians

- Parent – regardless of status of probate court guardian – is still the parent. The Probate Court Guardian *does not become the parent*
- If a father, ensure the adjudication is valid and appropriately witnessed by the Guardian of Person.
- Make a record of the Guardian’s role and the Agency’s focus of reunification.

Incarcerated Parents – ICE Custody

Specific language is required that orders both ICE and the Sheriff’s Department to transport your parent.

Sample ICE Writ

TO: SCOTT R. BENECKE, FIELD OFFICE DIRECTOR, DEPARTMENT OF HOMELAND SECURITY, IMMIGRATION AND CUSTOMS ENFORCEMENT, ONE FEDERAL DRIVE, FORT SNELLING, MINNESOTA 55111; AND RICHARD W. STANEK, SHERIFF OF HENNEPIN COUNTY, MINNESOTA

Pursuant to the Petition of the Hennepin County Public Defender and the Order of the Court herein,

YOU ARE COMMANDED to produce the person of **§ 87(2)(b)**, AKA **§ 87(2)(b)**, DOB: **§ 87(2)(b)**, by you confined, to the custody of the Hennepin County Sheriff on or around the 14th day of July, 2017, at 9:00am. The Hennepin County Sheriff will pick up **§ 87(2)(b)** from the ICE Ft. Snelling Office at One Federal Drive, Fort Snelling, Minnesota so that the person may be brought before the District Court of Hennepin County, Minnesota to be presented in the above-entitled matter.

THE INMATE MAY BE PICKED UP ON OR BEFORE 07142017.

Upon adjournment of the proceedings, the Hennepin County Sheriff will return the person to your custody and deliver the person to the ICE Ft. Snelling Office at One Federal Drive, Fort Snelling, Minnesota during the business hours of 8:00am - 3:00pm, excluding weekends and holidays.

Incarcerated Parents – Out of State

Good luck

Deceased Parents

- Obtain a death certificate
- Determine if you want to adjudicate

Intervening Parties

- Minn. R. Juv. Prot. Pro. 23
- Children
- Non-custodial parents
- Grandparents
- Foster Parents

Questions?

Contact Information

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