

ILLINOIS PUTATIVE FATHER REGISTRY - A PRIMER
by Christina Schneider and Don Hammer

1. Introduction. The Putative Father Registry (“PFR”) was established by the Illinois Legislature as part of broad changes that were made to the Illinois Adoption Act in 1994. The primary impetus for the Act arose out of the “Baby Richard” case (Petition of Kirchner, 264 Ill. 2d 324 (1995) *et seq.*). In that case, the birth mother placed her baby for adoption and lied to the birth father about the existence of a child (and relatives and friends had told father that the child had died at birth). The birth mother finally admitted to the birth father that the child had been adopted about sixty days after the adoption had been finalized.

The Illinois Putative Father Registry (750 ILCS 50/12.1) provides a process by which:

- A) A birth father, who registers, can be notified if his child is to be adopted, and
- B) Adoptive parents can determine the existence of a birth father who has expressed some interest in parenting the child.

The Baby Richard case highlighted the problems that exist when a birth mother is less than truthful about the identity of a child’s father. Prior to implementation of the Putative Father Registry, if a birth mother stated that she didn’t know the identity of the father, unknown fathers had to be made parties defendant to the adoption action. Counsel for the adoptive parents had to publish a notice in a newspaper, generally in the county in which the adoption case was pending to try to notify the birthfather. He would then have the daunting task of trying to check the legal notices in all of the newspapers in Illinois. In the case of Baby Richard, the birth father would have been unlikely to check for a legal notice because he had been told that the child died. Publication to locate an interested birth father was and continues to be almost always unproductive.

By creating the Putative Father Registry, the Legislature sought to balance the interests of all parties to adoptions; the birth mother, putative father, adoptive parents and the child. At the same time, judicial discretion was more restricted to focus on the putative father’s timely registration in relation to parental rights and preservation of his rights.

A common objection to the Act over the years has been that the birth father may not know about the birth of the child. The birth father is expected to know, however, that his sexual encounter might result in the birth of a child approximately nine months after the date of his sexual encounter with the birth mother. From that, he can project an anticipated birth date.

2. Process. A person who believes that he is, or may be, the father of a child who might be subject to an adoption proceeding must “register” with the Putative Father Registry by providing his:

- A) name (including any other names by which he may have been known);
- B) address at which he may be served with a notice of a petition under this Act, and phone number;
- C) social security number;
- D) date of birth;
- E) physical description.

The birth father must also provide information about the mother of the child, including as much of the following information that he has:

- A) the name of the mother, including any aliases;
- B) her last known address;
- C) her social security number;
- D) her date of birth;
- E) the anticipated date of birth of the child.

If the child has already been born and if the father has the information, he must also provide:

- A) the name of the child;
- B) the child's gender;
- C) the child's place of birth;
- D) the date of birth of the child.

A putative father wishing to register should do so online at www.putativefather.org. The Registry may alternatively be contacted by phone at 866-PFR-DCFS (737-3237) or by mail at 3 N. Old State Capitol Plaza, Springfield, IL 62701.

The father can register at any time prior to the birth of the child and must register no later than thirty days after the birth of the child. Putative fathers are not charged any fee for registration.

Information provided to the Registry is kept confidential and may only be disclosed to interested parties. Interested parties are the putative father, mother, child welfare/adoption agency, adoptive parents, or attorneys representing any of these parties.

Note that registering false information under the registry is a Class B Misdemeanor (par. 12.1f)

If thorough and accurate information is provided by both the putative father and the interested party requesting the search, the father will certainly be found during a search of the Registry database.

Individuals requesting a search of the Registry database for a putative father will be charged a

fee (currently, the fee is \$40). For cases involving wards of DCFS, no fee is charged for a search of the registry. Fees may be waived in cases involving indigent petitioners or children who are wards of other state child welfare agencies.

3. Other obligations of the birth father. In addition to registering with the PFR, the birthfather must commence proceedings to establish paternity under the Illinois Parentage Act “prior to the expiration of 30 days from the date of such registration” (750 ILCS 50/8(b)(1)(B)(vii)). If he fails to do so, his consent to the adoption is not required.

PRACTICE TIP: Even if a birth father fails to file a parentage action, most judges will still require that he be given notice of the adoption. The birth father may have signed a Voluntary Acknowledgment of Paternity (VAP), and assumed that a parentage action was not required. (See Family Law Section Council newsletter, March 2009, vol. 52, #8 and May 2009, vol. 52, #10). Also, the father, as in the Baby Richard case, may have been told that the child had died, and would not have thought that a parentage action was necessary.

The birth father must also keep the Registry updated as to his address. The adoptive parents must either mail notice to the putative father or try to serve him at his last known address. The adoptive parents do not have any statutory obligation to seek a follow-up address (though prudence may dictate that they do so).

4. Obligations of the Adoptive Parents. An adoptive parent (or adoption agency or the attorney for the adoptive parents) must check the Putative Father Registry more than thirty days after the birth to see if a putative father has registered (the birth mother may have lied on her Affidavit of Identification or may not have identified one of several possible fathers). The person requesting information must ask the Putative Father Registry to conduct a search based upon:

- A) the name of the mother;
- B) the projected birth date of the child;
- C) the name and gender of the child.

4. History/Case Law. In Stanley v. Illinois (405 U.S. 645 (1972)), the U.S. Supreme Court struck down an Illinois statute that conclusively presumed that the father of a child born out of wedlock was unfit to have custody of his child. In response, several years later, New York established a putative father registry to protect an unmarried father’s interest in assuming a responsible role in the future of his child. As of 2007, approximately 23 states had established putative father registries. Presumably, a father who wishes to have a role in his child’s life will at least take the effort to register with a state registry.

In Anna D. Reyes v. Jose A Corral (860 N.E.2d 456, 307 Ill.Dec. 802 (2006)), the court found

that consent to adoption is required from the biological father even though the father did not register with the PFR, if he acknowledged paternity pursuant to the Illinois Parentage Act of 1984 and his name was on the child's birth certificate.

In Illinois v. S.B. (688 N.E.2nd 1215, 228 Ill.Dec. 238 (1997)), the court found that due process rights of the putative father were not violated by finalization of an adoption without notice to the putative father who has not registered with the PFR.

In the matter of the Petition of K.J.R. and D.F.R. to adopt O.J.M., (687 N.E.2d 113, 227 Ill.Dec. 190 (1997)), the court found that the birth mother's misrepresentations to the birth father didn't excuse him from the requirement to register with the PFR, and there was no violation of Equal Protection laws or due process in depriving a putative father of a right to proceed with a parentage action where he failed to register with the PFR within 30 days of the child's birth.

5. Concerns/Objections. The existence of the registry does not permit an adoptive mother to lie, mislead, or omit information on the Affidavit of Identification. The adoptive parents (and their attorney or agency) are still obligated to try to locate any identified putative fathers and to give actual notice to any that can be located. Publication can be made, but does not obviate the necessity of searching the registry.

6. Effectiveness of the Registry. In the first year of PFR operations (1995), the PFR processed about 90 registrations and 1,800 requests for searches.

In fiscal year 2009 (7-1-08 to 6-30-09):

362 fathers registered

3,897 search requests were made

37 fathers were found

In the current fiscal year-to-date 2010 (7-1-09 to 12-31-09):

184 fathers registered

1,752 search requests were made

23 fathers were found

7. Late Registration. It should be noted that a birth father may register late. For example, if the birth father is on active military duty or is of Native American heritage, he may be exempt from the requirements of registration within 30 days of the child's birth. Under limited circumstances an

exception may be made, if a birth father can prove by clear and convincing evidence that:

- A) It was not possible for him to register within the period of time specified in subsection (b) of the section; and
- B) His failure to register was through no fault of his own; and
- C) He registered within ten days after it became possible for him to file.

This section (750 ILCS 50/12(g)) also notes that: “A lack of knowledge of the pregnancy or birth is not an acceptable reason for failure to register.”

8. Concluding paragraph. A birth father who has a serious desire to be involved in his child’s life will be responsible enough to seek out, and to register with, a PFR to protect his parental rights. Such a registry is not dependent on a birth mother being truthful. It is not dependent on a putative father scanning the legal notices in all of the newspapers in Illinois ten months after a sexual encounter. It provides a reasonable and convenient method by which agencies and adoptive parents can locate and contact a putative father.