Terminating Rights of Father Without Release or Consent Checklist (Hearing)

Procedures to follow during the hearing:[1]

❑ Call case, identify case number, state the full name of child, and child's date of birth.

❑ Determine Indian child status and state on the record that the child is or is not an Indian child.[2]

❑ State that a petition has been filed to determine the identity of the father and to determine or terminate his parental rights to the child, born out of wedlock on (date) to (mother)

    ❑ Who has executed or proposes to execute a release or consent relinquishing her parental rights to the child, OR

    ❑ Who has joined with her spouse in a petition for adoption. MCL 710.36(1).

❑ Indicate whether proof of service of a notice of intent to release or consent OR the putative father's verified acknowledgment of notice of intent to release or consent was filed with the court, if notice was given to the putative father. MCL 710.36(2).

❑ State on the record that notice of the hearing[3] was served on:

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[1] For a detailed discussion on Identifying the Father, see the Michigan Judicial Institute's *Adoption Proceedings Benchbook*, Chapter 3.

[2] *Indian child* means "any unmarried person who is under age 18 and is either (a) a member of an Indian tribe, or (b) is eligible for membership in an Indian tribe as determined by that Indian tribe." MCR 3.002(12).

[3] Proof of service of the notice of hearing must be filed with the court. A verified acknowledgment of service by the party to be served constitutes proof of personal service. A waiver of notice of hearing by a person entitled to receive it is sufficient. MCL 710.36(5).

❑ A putative father who has timely filed a notice of intent to claim paternity as set out in MCL 710.33 or MCL 710.34.

❑ A putative father who was not served a notice of intent to release or consent at least 30 days before the expected date of confinement specified in the notice of intent to release or consent.

❑ Any other male who was not served under MCL 710.34(1) with a notice of intent to release or consent and who the court has reason to believe may be the child's father. MCL 710.36(3).

❑ If an Indian child is involved, the Indian child's Tribe and Indian custodian (if applicable), or where the Indian child's parent, Indian custodian, or Tribe is unknown, the Secretary of the Interior.[4, 5] See MCL 712B.9(1).

❑ Affirm that the notice of hearing informed the putative father that his failure to appear at the hearing constitutes a denial of his interest in the custody of the child, which will result in termination of his rights to the child. MCL 710.36(4).

❑ Indicate whether the putative father is present at the hearing (notice not required in this circumstance). MCL 710.36(5).

❑ Receive evidence as to the identity of the child's father by the mother's live testimony, affidavit, or verified written declaration. MCL 710.36(6).

❑ If affidavit or verified written declaration is insufficient, must allow the mother to amend the affidavit or verified written declaration. MCL 710.36(6).

❑ If the amended affidavit or verified written declaration is insufficient, may receive live testimony from the mother. MCL 710.36(6).

❑ Based on the evidence received, enter a finding identifying the father or declaring that the identity of the father cannot be determined. MCL 710.36(6).

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[4] "[N]otice [to the Secretary of the Interior] only becomes obligatory when 'the identity or location of the parent or Indian custodian and the tribe cannot be determined.'" *In re Jones*, 316 Mich App 110, 117-118 (2016) (conditionally reversing the trial court's order terminating the respondent-mother's parental rights due to ICWA and MIFPA noncompliance and remanding to the trial court where the court failed to send notice to the Cherokee Tribe after "the DHHS and the trial court had information that at least suggested the possibility of Cherokee heritage[;]" although notice was sent to the Secretary of the Interior, "such notice only becomes obligatory when 'the identity or location of the parent or Indian custodian and the tribe cannot be determined[]'").

[5] Copies of the notice must also be sent to the appropriate Regional Director, which for Michigan is the Midwest Regional Director. 25 CFR 23.11(a); 25 CFR 23.11(b)(2).

❏ If the child's father is a person who did not receive a timely notice of intent to release or consent under MCL 710.34(1) OR a notice required under MCL 710.36(3), AND he has neither waived his right to notice of hearing nor is present at the hearing, adjourn further proceedings until that person is served with a notice of hearing. MCL 710.36(7).

❏ If the *identity of the child's father, born out of wedlock, is known*, state his name and indicate which of the following apply:

  ❏ He submitted a verified affirmation of his paternity and a denial of his interest in custody of the child. MCL 710.37(1)(a).

  ❏ He filed a disclaimer of paternity. MCL 710.37(1)(b).

  ❏ He was served with a notice of intent to release or consent at least 30 days before the expected date of confinement specified in that notice but failed to file an intent to claim paternity either before the expected date of confinement or before the birth of the child. MCL 710.37(1)(c).

  ❏ He was given proper notice of this hearing and failed to appear OR appeared and denied his interest in the custody of the child. MCL 710.37(1)(d).

  ❏ He cannot be located after reasonable effort was made AND he has not provided support for the mother, has not shown any interest in the child, and has not made provision for the child's care for at least 90 days preceding this hearing. MCL 710.37(2)(b).

  ❏ He appeared and requested custody of the child, BUT the father has not established any custodial relationship with the child or did not provide any support or care for the mother during pregnancy or for either the mother or child after the child's birth AND the court inquired into the fitness and the ability of the father to properly care for the child, and it would not be in the best interest of the child to grant custody to the father. MCL 710.39.

  ❏ He is deceased.

❏ If appropriate, make a finding that the mother was married to the putative father for part or all of the time from the conception to the date of birth of the child, and that he is not the child's father.

❏ If the *identity of the father is not known*, state that the identity of the father cannot be determined after reasonable effort was

made, AND he has not made provision for the child's care and did not provide support for the mother during her pregnancy or during her confinement. MCL 710.37(2)(a).

❑ If appropriate, order termination of the putative father's parental rights. MCL 710.39.

   ❑ If putative father's identity and whereabouts are known, notify putative father orally or in writing that he remains obligated to support the child until the court modifies or terminates the obligation, enters an order of adoption, or the child is emancipated. MCR 3.809(A).

❑ If the court determines that the parental rights of the putative father will not be terminated under MCL 710.39(1):

   ❑ Terminate the temporary placement made under MCL 710.23d. MCL 710.39(3)(a).

   ❑ Return custody of the child to the mother or guardian unless the mother's parental rights have been terminated under the Adoption Code or other law and are not restored under MCL 710.62. MCL 710.39(3)(b).

   ❑ Deny the order of adoption and dismiss the pending adoption proceeding. MCL 710.39(3)(c).

❑ If the mother's parental rights are terminated under the Adoption Code or other law and are not restored under MCL 710.62, and if the court awards custody of a child born out of wedlock to the putative father, enter an order granting custody to the putative father and legitimating the child for all purposes. MCL 710.39(5).

   ❑ Notify mother orally or in writing that she remains obligated to support the child until the court modifies or terminates the obligation, enters an order of adoption, or the child is emancipated. See MCR 3.804(C); MCR 3.809.

For court forms related to adoption proceedings, see the One Court of Justice website.