

DEPARTMENT OF SOCIAL SERVICES
744 P Street, Sacramento, CA 95814



February 25, 1997

ALL-COUNTY LETTER NO: 97-10

TO: All County Welfare Directors
All Public Adoption Agencies
All Licensed Private Adoption Agencies
CDSS Adoption District Offices

REASON FOR THIS TRANSMITTAL

- State Law Change
 Federal Law or Regulation Change
 Court Order or Settlement Agreement
 Clarification Requested by One
or More Counties
 Initiated by CDSS

SUBJECT: A. TERMINATION OF AN ALLEGED NATURAL FATHER'S PARENTAL RIGHTS TO THE CHILD

B. NOTIFICATION GIVEN TO ALLEGED NATURAL FATHER(S) PURSUANT TO FAMILY CODE SECTIONS 7662, 7664, AND 7666

This letter rescinds and replaces ACL No. 95-72 (dated November 21, 1995) in its entirety.

A. Termination of an Alleged Natural Father's Parental Rights to the Child

The California Department of Social Services (CDSS) has recently been made aware of errors contained in Title 22 California Code of Regulations (CCR) Sections 35029 through 35035, which pertain to terminating the parental rights of alleged natural fathers.

Currently, adoption program regulations indicate that the alleged natural father's parental rights to the child are terminated by (a) notification pursuant to Family Code Sections 7662, 7664, and 7666, (b) his signing a waiver of further notice of the adoption proceedings, or (c) his signing a denial of paternity. Such information is incorrect. This all-county letter is to alert agencies that, prior to the granting of the adoption petition, the only way in which an alleged natural father's parental rights to the child can be terminated is either by a relinquishment of the child for adoption that has been filed and acknowledged by CDSS or by court action.

Therefore, an alleged natural father's status regarding the child remains unchanged until the decree of adoption is issued by the court even if he:

1. Does not file an action to declare his paternity of the child in response to notice given pursuant to Family Code Sections 7662, 7664, and 7666,
2. Signs a waiver of further notice of the adoption proceedings, or
3. Signs a denial of paternity.

Unless specific court action has been taken to terminate the alleged natural father's parental rights or until such time that the adoption decree is granted, the district attorney may seek out an alleged natural father to reimburse the county if the child has been receiving public assistance. A judicial determination that the alleged natural father is the child's father for purposes of collecting child support would affect his status in the adoption. That is, the former alleged natural father, here referred to as the *legally ascertained father*, would not have the ability to waive further notice or sign a denial of paternity. In addition, the papers he signed as an alleged natural father would no longer be valid.

The CDSS strongly recommends that if an alleged father does not file a paternity action in response to notice given pursuant to Family Code Sections 7662, 7664, and 7666, the agency file a separate petition to terminate the alleged natural father's parental rights to the child. We believe that this procedure will provide the most protection for all parties to the adoption even though the adoption cannot be finalized until the appeal period has lapsed.

B. Notification Given to Alleged Natural Father(s) Pursuant to Family Code Sections 7662, 7664, and 7666

The CDSS has recently been made aware that some adoption agencies are not following appropriate notification procedures when giving notice to alleged natural fathers pursuant to Family Code Sections 7662, 7664, and 7666. This All-County Letter is to remind adoption agencies of the correct procedures.

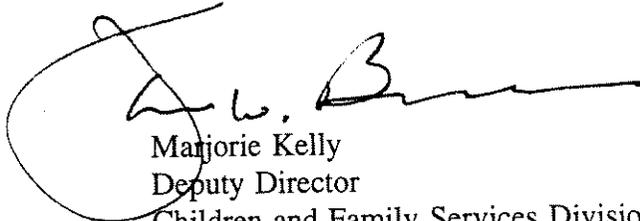
Family Code Sections 7662, 7664, and 7666 specify the requirements of notice provided to an alleged natural father who "has not, in writing, denied paternity, waived his right to notice, or voluntarily relinquished for or consented to the adoption" unless his relationship to the child has been previously terminated or determined not to exist by a court, or he has already been given notice. Code of Civil Procedure Sections 415.10, 415.30 and 415.40 prescribe the manner in which the alleged natural father is to be given notice when he resides within the State or outside the State.

Title 22 CCR Section 35033(b) and Code of Civil Procedure Section 415.30 permit the notice to the alleged natural father who is within the State be sent by first-class mail and to include an "Acknowledgement of Receipt of Summons" which is to be signed and returned to the agency by the alleged natural father. We understand agencies sometimes send this notice "return receipt requested" and are using the receipt signed by the alleged natural father returned by the post office as verification that notice has been accomplished. This practice does not meet the requirements of regulations or statute. Pursuant to Title 22 CCR Section 35033(c) and Code of Civil Procedure Section 415.30(d), if the alleged natural father does not return the "Acknowledgement of Receipt of Summons" to the agency, he must be personally served pursuant to Code of Civil Procedure Section 415.10.

Title 22 CCR Section 35033(d) and Code of Civil Procedure Section 415.10 require the alleged natural father living outside the State to be served in the same manner as an alleged natural father within the State or the agency may send the notice "return receipt requested". If the agency sends the notice "return receipt requested", the agency may use the receipt signed by the alleged natural father returned by the post office as verification that notice has been accomplished.

The Department is in the process of revising current adoption program regulations in both of these areas to clarify the requirements regarding these matters.

If you have any questions, please contact the Adoptions Policy Bureau at (916) 322-4228.



Marjorie Kelly
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Children and Family Services Division