

# Contested Adoption: Involuntary Termination of Parental Rights

BY LYNN J. BODI



**Q&A** Through a mutual friend, we've found a lovely person who wants very much to place her baby with us after he or she is born. However, although the birthfather is unwilling to take any responsibility for the child, he will not consent to placing the child for adoption. Is there any way the baby can be made available for adoption without his consent, or should we move on?

ALTHOUGH THE LAW DIFFERS FROM state to state, generally the court can terminate the birthfather's (or -mother's) parental rights involuntarily in situations in which there is clear evidence that he or she is unfit under that state's laws. For example, a birthfather's consent may not be required if he has abandoned the child, failed to support the child and/or mother, failed to assume parental responsibility for the child, or sexually assaulted the birthmother. Typically, a birthfather will not have his rights terminated involuntarily unless he has failed to act like a parent, or worse.

If a basis for involuntary termination of parental rights exists, the birthfather's rights may be terminated if he doesn't appear at the hearing (by default), or after a contested proceeding. A contested proceeding is like a trial. The party seeking termination uses witnesses and other evidence to try to prove the grounds alleged. The birthfather (or his attorney) can present evidence to refute the allegations. The child's best interests may be represented by a guardian ad litem.

A fact finder (usually a judge, but in some states a jury) decides whether the proof is sufficient and whether the parent's rights should be terminated involuntarily.

**Q&A** We have been foster parents to two little girls for the past two years and would like to adopt them. The girls' mother, whose continued substance abuse makes her unable to parent, refuses to make them available for adoption. Their father, on the other hand, supports their adoption. What are our prospects for becoming their parents?

SOME OF THE REQUIREMENTS IMPOSED on parents whose children are taken into the child welfare system can include: receiving drug and alcohol treatment; getting suitable employment; maintaining suitable housing; learning parenting skills; and visiting with their children regularly. In many states, if the mother has not complied with the requirements of the court or department for getting the girls back within the time limits imposed, a court can terminate her parental rights, even over her objection.

The county or state department that placed the girls with you can choose to start legal proceedings to make the girls available for adoption. In fact, under the Adoption and Safe Families Act (ASFA), if a child has been placed outside the home for 15 of the last 22 months, the department must start termina-

tion of parental rights proceedings, or be prepared to show why it is not in the best interests of the child to do so.

**Q&A** If we decide to pursue a contested adoption and move to terminate the parental rights of a biological mother or father, how do we find an attorney who knows the law related to contested adoptions?

CONTESTED ADOPTION CASES ARE NOT undertaken lightly. They require an attorney with expertise in litigation as well as adoption and family law under the laws of your state. The American Academy of Adoption Attorneys (AAAA) is a national organization of attorneys who practice, or have otherwise distinguished themselves, in the area of adoption law. You'll find attorneys who are members of AAAA in your state by going to the directories on the AAAA Web site ([www.adoptionattorneys.org](http://www.adoptionattorneys.org)) or the Adoptive Families Web site ([www.adoptivefamilies.com](http://www.adoptivefamilies.com)). Look for an attorney with experience in contested adoption.

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**Is there a legal question you'd like an adoption attorney to address?**

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