

ATTORNEY AD LITEM FOR “ALLEGED” FATHERS?

The rights of an alleged father may be terminated if the child is **over one year of age** at the time the petition for termination is filed, he has **not registered with the paternity registry** and **after the exercise of due diligence** by the petitioner his identity and location are unknown; or his identity is known but he cannot be located. (TFC Sec. 161.002(b)(2)).

Who is going to test due diligence of the petitioner? Best practice is to name an attorney ad litem to do so.

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The rights of an alleged father may be terminated if the child is **under one year of age** at the time the petition for termination is filed and he has **not registered with the paternity registry**. TFC Section 161.002(b)(3).

There is no requirement for due diligence to identify or locate the alleged father. With no requirement for due diligence what is there for the ad litem to test?

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The rights of an alleged father may be terminated if the alleged father has registered with the paternity registry but the petitioner’s attempt to personally serve citation at the address provided to the registry and at any other address for the alleged father know by the petitioner has been unsuccessful, **despite due diligence of the petitioner.** TFC Section 161.002(b)(4)

Who is going to test the due diligence here? Best practice is to name an attorney ad litem to do so.

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The termination of the rights of an alleged father under Subsection (b)(2) or (3) rendered on or after January 1, 2008, does **not require personal service of citation or citation by publication on the alleged father, and there is no requirement to identify or locate an alleged father who has not registered with the paternity registry.** TFC Section 161.002(c-1).

Confused? You should be! Section 161.002(b)(2) requires due diligence. Would that not involve an attempt to serve? Best practice is to attempt service as proof of due diligence knowing that failed personal service does not preclude termination. It goes to the weight of due diligence when the child is over one year old.

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The termination of rights of an alleged father under Subsection (b) (4) **does not require service of citation by publication on the alleged father. TFC Section 161.002(d)**

What do we do with the alleged father who has registered but whose **locations** at time of petition are no longer current and viable? Attempt service to prove due diligence and then proceed to termination without citation by publication.

Here the ad litem tests due diligence by determining whether personal service at the locations was attempted, with or without success.

The order shall contain specific findings regarding the exercise of due diligence of the petitioner.

ATTORNEY AD LITEM FOR ADJUDICATED FATHERS?

Usually an attorney ad litem is involved where there is a “known” father (adjudicated or acknowledged) that cannot be served personally and service by publication is necessary and approved by court order. Service here is in accordance with the TRCP.

What does all of this mean for the attorney ad litem? No ad litem necessary where personal service has been obtained (personal or sub-service).

In all other instances **appoint an attorney ad litem.**

THE AMICUS ATTORNEY

The focus of the inquiry should remain the best interest of the child, not the parent, thus the need for an Amicus Attorney or Attorney Ad Litem for the child.

THE AMICUS ATTORNEY

The *Holley v. Adams* factors (544 SW2nd 367 (Tex. 1976))

1. The desires of the child.
2. The emotional and physical needs of the child now and in the future.
3. Any emotional and physical danger to the child now and in the future.
4. The parenting ability of the individual(s) seeking the termination.
5. The programs available to help those individuals promote the best interest of the child.

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6. The plans for the child by those individuals seeking the termination.
7. The stability of the home.
8. The acts or omissions of the parent indicating that the existing parent-child relationship is not a proper one.
9. Any excuse for the acts or omissions of the parents.