

Information & Instructions: Should You File A Separate Petition for Termination Followed by an Adoption Proceeding

1. It should be noted that filing separate petitions for termination may be the wise way to proceed in a termination/adoption proceeding. By filing separate petitions, the practitioner facilitates holding a termination hearing before an adoption.
2. This may be considered practical because the parent who has executed an affidavit of relinquishment may be able to revoke his affidavit, or the required investigation and preparation of reports may cause the proceeding to extend past the 60 day period irrevocable period set forth in the affidavit of relinquishment.
3. There are two alternate methods of drafting the revocable clause in an affidavit of relinquishment. They are set forth in §161.003 and §161.035, Texas Family Code. The later section provides that the affidavit of relinquishment by law is revocable for the first 11 days after it is signed, but thereafter it becomes irrevocable.
4. This method of drafting an affidavit of relinquishment is elected when the attorney drafting the affidavit is silent as to whether or not the affidavit is revocable, or when the attorney specifically sets forth in the affidavit that it is revocable for only the 11 days immediately following its signing, which after the expiration of said 11 days, the affidavit is irrevocable. It may be that the later method of drafting the affidavit of relinquishment may well be the preferable method, in that the affiant may be less likely to revoke his affidavit in the first eleven days after its execution, and in that the window of the revocable period is only 11 days in length.
5. If this dilemma presents itself to the practitioner, he should have the client or clients fill out and sign the form entitled CLIENT'S DIRECTIVE REGARDING

PERIOD OF TIME FOR REVOKING RELINQUISHMENT OF PARENTAL RIGHTS, which form is set forth in §1:31 herein before. If the client elects pursuant to said election form, the client will evidence in writing that he has been informed regarding this dilemma, and the burden of selecting the method of drafting the affidavit of relinquishment will be shared by the client. Neither the client nor the lawyer know what the future holds regarding the possible revocation of an affidavit of relinquishment by a parent who has signed an affidavit of relinquishment. Either election may produce unfavorable results, but when the client is informed, and he makes an informed election, then the client participates in the decision, and the attorney discharges his responsibility to advise and inform the client.

6. Some practitioners feel that a combined termination and adoption proceeding should only be used in situations where a stepparent adoption is involved and the other natural party has signed a relinquishment of parental rights, or the child has lived in the petitioner's home for six months prior to the filing of the combined adoption and termination. However, if the petitioner/s sign the form entitled CLIENT'S DIRECTIVE REGARDING PERIOD OF TIME FOR REVOKING RELINQUISHMENT OF PARENTAL RIGHTS, §1:31 above, the attorney has given the client the ability to make an informed decision.