

Guardianship Adoptions

Presented by

Willis Law
Attorneys & Counselors
ESTATE PRACTICE GROUP



My motivation – as an Attorney

Purpose of the Adoption Code



- MCL 710.21a lays defines the purpose of the Adoption Code.
 - To provide that each adoptee in this state who needs adoption services receives those services.
 - To provide procedures and services that will safeguard and promote the best interests of each adoptee in need of adoption and that will protect the rights of all parties concerned. If conflicts arise between the rights of the adoptee and the rights of another, the rights of the adoptee shall be paramount.
 - To provide prompt legal proceedings to assure that the adoptee is free for adoptive placement at the earliest possible time.
 - To achieve permanency and stability for adoptees as quickly as possible.
 - To support the permanency of a finalized adoption by allowing all interested parties to participate in proceedings regarding the adoptee.

1. Adoptions Defined

2. Adoptions as a Priority



Defined: (since what we see below – expanded by statute)

- ❑ Originally -- Adoption is the Act that legally establishes relations of paternity and affiliation among people who are not related by nature. *In Re Sessions Estate*, 70 Mich 297, 305 (1888).
- ❑ Adoption has also been referred to as the legal equivalent of biological parenthood. *Smith v Org of Foster Families for Equality and Reform*, 431 US 816, 84 n 51 (1977).

Priority: MCL 710.25 - All Adoption proceedings must be treated as high priority.

- ❑ All proceedings under MCL 710.21 et al shall be considered to have the highest priority and shall be advanced on the court docket so as to provide for their earliest practicable disposition.
- ❑ An adjournment or continuance of a proceeding under this chapter shall not be granted without a showing of good cause.

What is a Guardianship Adoption?

When does one consider a guardianship adoption?

- First and foremost, there must be an established EPIC guardianship regardless of who is the guardian.
- Guardianship Adoptions may be considered when:
 - The parental rights of the biological parents have already been terminated, or the parent(s) are deceased.
 - The parents have, without good cause, failed to follow a court-structured reunification plan.
 - A guardianship exists and the parents have the ability to support the child, but fail to do so without good cause for a period of two years prior to filing the petition for termination AND the parents have the ability to visit, contact, or communicate and fail to do so.
 - The parents have physically abused or abandoned the minor child, or are incarcerated for a period of two or more years.



Overview of Covered Materials

- **Show Me the Authority!!! Can a Guardian Consent to the Adoption of their ward?**
 - **Adoption Code: Guardians to Release or Consent? (MCL 710.28/MCL 710.43)**
 - **EPIC: MCL 700.5215(d)**
 - ***In re Handorf***

- **When, What, and Where do you file:**
 - **When the parent(s) agree?**
 - **When the parent(s) do NOT agree?**
 - **When the Guardian is not the prospective adoptive parent?**



Jennifer L. Grahek, J.D.



Davis C. Martin, J.D.

Show me the Authority!

Can it be done? Absolutely.

- Under MCL 710.28 and MCL 710.43, a guardian shall not execute a release or consent to “that child’s adoption” without first obtaining the authority to execute a release or consent from the court who appointed the guardian.
- MCL 700.5215(d): A minor’s guardian has the powers and responsibilities of a parent who is not deprived of custody of the parent’s minor and unemancipated child... A guardian has all the following powers and duties:
 - (d) Subject to the Adoption Code (MCL 710.21- MCL 710.70), a guardian may consent to adoption of a minor ward or to the release of a minor ward for adoption.



Jennifer L. Grahek, J.D.



Davis C. Martin, J.D.

Show me the Authority!

Can it be done? Absolutely.

- In Re Handorf, 285 Mich App 384 (2009) and Michigan SC Order 139742, 1/27/2010. Take aways
 - Guardians CAN consent to the adoption of their own Ward, if the court has given them the authority to do so.
 - Guardians CANNOT consent if there has not been a termination of all parental rights.

Per the Mich SC: “Consistent with the overall statutory scheme, a guardian may consent to adoption once she[he] has “first obtained authority to execute the consent from the court that appointed the guardian,” MCL 710.43(5), if (a) the parents’ rights have already been terminated, MCL 710.41(1); (b) the parents consent to an adoption, MCL 710.26(1)(a); or (c) the parents have released their rights to the child and do not intend to exercise any parental rights over that child. MCL 710.44(6).”



Jennifer L. Grahek, J.D.



Davis C. Martin, J.D.

The process where there's agreement: Part 1

□ The Process where the Parent(s) Agree, Part 1

- **File Guardian Adoption** – where guardian will also be consenting to placement with themselves. The adoption is filed in the Circuit Court Family Division in the county where the Child is “Found,” where the Prospective Adoptive Parent(s) reside, or where the parent’s rights were terminated. (This may not necessarily be in the same county where the guardianship was entered). MCL 710.24
- **What do you file:** In the guardian adoption – Typical documents, include:
 - Petition for Adoption – PCA 301 (Case code either AF or AN – depending on whether Guardian(s) are a relative. See MCR 8.117(8)(d) or (g)
 - Copy of Letter of Guardianship – PC 633 (PDF)
 - Copy of Petition and Proposed Order Regarding Guardian Authority to Release for or Consent to Adoption – PC 692 and PC 693 (PDF) (OR if rights already terminated, the signed PC 692)
 - Verified Accounting(s):
 - Petitioner(s) – PCA347 (7 Days)
 - Attorney (if applicable) – PCA346 (7 Days)
- **EITHER**
 - Orders terminating the parent(s)’ rights
 - Must be a certified copy if the court case took place outside of the filing County; OR
 - PCA 310 (PDF) Signed by Mother (if there’s putative father)
 - PCA 316 (PDF) (signed by the putative father)
 - Depending on County – proposed consent documents and proposed orders.

The process where there's agreement: Part 1

□ Other documents – very county specific.

- Either a certified copy or an official use copy of the child's birth certificate
- Copy of Petitioner(s)' marriage license (if applicable)
- Certified Copy of Death Certificate of Biological Parent (if applicable)
 - Should be certified if Death Certificate is out of state
- Copy of Petitioner's Marriage License (if applicable)
 - Should be certified if Marriage License is out of state
- Central Registry Clearance Requests – DHS1929
 - Form must be completed by petitioner(s) and any individuals over the age of 18 living in the home
 - Copy of Driver's License or ID for petitioner(s) and any individuals over the age of 18 living in the home
 - Front and backside.

The process: Part 1, cont.,

□ The Process where the Parent(s) Agree

- **Probate Court** – where the guardianship was first granted. (once receive orders terminating or notice that the parents are consenting.)
 - Guardian(s) file “Petition for Guardian Authority to Release For or Consent To Adoption. PC 692.
 - Notice the hearing out to the parent(s).
 - You must show that it is in the ward/child’s best interests for the adoption to proceed.
 - Parent(s) must indicate they will consent to the adoption OR they have already consented in the Adoption and their rights are terminated or are pending termination in the adoption. ***And this depends on the county. ***



Jennifer L. Grahek, J.D.



Davis C. Martin, J.D.

Things to Ponder In Adoptions

- **Is an Attorney for birth mother required** (appointed or otherwise)?
 - Not per the Adoption Code UNLESS there was a temporary transfer (which is reserved for a direct placement adoption because parent must have legal and physical custody of the child.) If so, then the parents executing a transfer shall be “assisted” by an attorney or child placing agency. MCL 710.23a
- **PCA 310: Petition to ID:** Mom is the ONLY one that can sign the PCA 310. If Putative father signs a PCA 316, the court will have to decide whether to hold a hearing on the PCA 310 Petition.
 - IMHO – if there’s a PCA 316 filed, then a 310 does not need to be served 21 days prior to the hearing. A PCA 316 waives notice of that hearing. Hold Mom’s consent quickly and enter orders terminating.
 - During parent’s appeal period, the hearing in GM file should be filed, served, and held quickly. Once order allowing authority to consent is entered, file with Adoption court. The court can then hold its “hearing on the petition,” sign the Order on the PCA 301, start or waive court investigation process, schedule the guardian(s) consent, and enter an order placing.

The Process: Scenario 2: Parent(s) Don't Agree

- **So, here you know that you are not going to get parent's consent.** They (or one of them) do not agree to terminate their rights. Per *Handorf*, you can't agree to terminate their rights for them. To request permission to consent to the adoption in the Probate Court, you have to terminate their rights prior to filing that GM petition (or after if you're shanghaied during a hearing.)

- **What's the Circuit court's (Family Division) authority to take jurisdiction and what is the guardian's authority to request the court take jurisdiction?**
 - "Child protective proceedings are generally divided into two phases: the adjudicative and the dispositional." *In re Brock*, 442 Mich. 101, 108; 499 N.W.2d 752 (1993). The adjudicative phase determines whether the trial court may exercise jurisdiction over the children. *Id.* To establish jurisdiction, the petitioner must prove by a preponderance of the evidence that a statutory basis exists under [MCL 712A.2\(b\)](#). [In re SLH, 277 Mich.App. 662, 669; 747 N.W.2d 547 \(2008\)](#).

 - The trial court can take jurisdiction to make way for the guardianship adoption under MCL 712A.2(b)(6). For **jurisdiction**, the trial court only needs to find the statutory factors have been met by a preponderance of the evidence. See MCR 3.972(C); *In re BZ*, 264 Mich App 286, 296; 690 NW2d 505 (2004); also see [In Re Long, 326 Mich App 455; 927 NW2d 724 \(2018\)](#). A "preponderance of the evidence" means evidence of a proposition that when weighed against the evidence opposed to the proposition "has more convincing force and the greater probability of truth." *People v Cross*, 281 Mich.App. 737, 740; 760 N.W.2d 314 (2008).

Scenario 2: Parent(s) Don't Agree, CONT.

□ What are the Jurisdictional Grounds for a guardian to bring an NA matter?

□ MCL 712A.2(b)(6): Jurisdiction is met IF the juvenile has a guardian under EPIC, MCL 700.1101 to 700.8206, **and** the juvenile's parent(s) meets both of the following criteria:

- (A) The parent, having the ability to support or assist in supporting the juvenile, has failed or neglected*, without good cause, to provide regular and substantial support for the juvenile for 2 years or more before the filing of the petition or, if a support order has been entered, has failed to substantially comply with the order for 2 years or more before the filing of the petition.
- (B) The parent, having the ability to visit, contact, or communicate with the juvenile, has regularly and substantially failed or neglected*, without good cause, to do so for 2 years or more before the filing of the petition.

*As used above, "neglect" means that term as defined in section 2 of the child abuse and neglect prevention act, 1982 PA 250, MCL 722.602.

Jurisdictional Definitions

- **Neglect: Per MCL 722.602(1)(d):**
 - "Neglect" means harm to a child's health or welfare by a person responsible for the child's health or welfare that occurs through negligent treatment, including the failure to provide adequate food, clothing, shelter, or medical care, though financially able to do so, or the failure to seek financial or other reasonable means to provide adequate food, clothing, shelter, or medical care.

Things to Ponder

- What is substantial compliance?
- How do you figure out ability to pay?
- How do you determine ability to visit, contact, or communicate?
- What happens when the parent(s) argue the guardians "thwarted" their contact.
- Some recent case law has given some guidance, but, really, it's a factual question that the court has to answer.
- On to the basic grounds for termination! Contains VERY similar grounds to what you have to prove for jurisdiction.

Scenario 2: Parent(s) Don't Agree, CONT.

- **The Guardians have met the Jurisdictional Grounds for a guardian to bring an NA matter? Now what!???**
- The trial court has assumed jurisdiction, it can now terminate parental rights if it find at least one statutory ground for termination under MCL 712A.19b(3) by clear and convincing evidence. BUT although the grounds are numerous to terminate in (3), the Juvenile Code has a specific provision for when a **guardian** is seeking to terminate parental rights – which provision is nearly identical to the jurisdictional language above.
- Under MCL 712A.19b(3)(f) termination is appropriate when: (f) The child has a guardian under the estates and protected individuals code, 1998 PA 386, MCL 700.1101 to 700.8206, and both of the following have occurred:
 - (i) The parent, having the ability to support or assist in supporting the minor, has failed or neglected, without good cause, to provide regular and substantial support for the minor for a period of 2 years or more before the filing of the petition or, if a support order has been entered, has failed to substantially comply with the order for a period of 2 years or more before the filing of the petition.
 - (ii) The parent, having the ability to visit, contact, or communicate with the minor, has regularly and substantially failed or neglected, without good cause, to do so for a period of 2 years or more before the filing of the petition. MCL 712A.19b(3)(f)

Ability to Pay or Substantial Compliance

- The language in the Juvenile code is similar to the language in the Adoption Code for a stepparent adoption, but there's big differences in application:
- **Adoption Code:** A \$0 or reserved support order in a Stepparent Adoption MCL 710.51(6), "shall be treated in the same manner as if no support order has been entered." See *In re Dailey*, unpublished opinion of Court of Appeals, issued Oct. 15, 2019 (Docket No. 348064) So then you can argue Ability to Support or ability to assist.
- **Juvenile Code:** If there is a child support order that states the parent pays \$0.00 in child support, that means the parent who pays nothing has fully complied with that order.

Case regarding - Non substantial compliance

- ***In re Ernsberger*, Mich App ; NW3d (2024) (Docket No. 369225).**
- The timing of that two-year period runs from the entry of the support order, if there was one. *ID*
- The parent had not provided any financial support for three years, BUT, the support order had only been entered 22 or 23 months before the filing of the petition. The COA interpreted the language of the statute to mean that, if there was a support order, then the petitioner must establish that second prong of MCL712A.19b(3)(f)(i).
- **In footnote 3** – COA indicated without deciding -- it is appropriate to use the effective date of the support order rather than the date it was entered.

Other forms of “support”

□ **LaPoint v Saintclair (In re MSL, Minor)**, Docket No. 368581; June 13, 2024:

- This was in the context of a stepparent adoption under MCL 710.51(6)(a), but I think the same principals can be applied to the NA case.
- Making healthcare insurance available to a child does constitute an act of providing “support” for purposes of MCL 710.51(6)(a), and two years of unwavering coverage counts as “regular.”
- TC erred by not going through an ability to support analysis in determining whether this support was “substantial.” Whether support is deemed “substantial” is circumstantial and depends on an analysis of the parent’s “ability to support.”

Guardians - Thwarting visitation, contact, communication

- *In Re DP Rozenboom (In Re DPR), COA No. 371439, February 11, 2025.*
- Trial court here denied guardian's request to terminate even though mom had not had regular and substantial contact with the child for two or more years AND had not supported the child in over two year because the guardian's actions prevented phone calls and visits.
- Mom sporadically attend her supervised visitation, she did not try to enforce her parenting time, and got angry and yelled at the child during a supervised visit for using her first name, etc.
- Of note, too, this case delves into what is considered "abandonment" as well.
- What were some of the actions by the Guardian that the court focused on? See pgs 4-7 of the opinion:
 - Facebook messages telling mother that she wasn't the mother, the guardian was.
 - Texts and such that the child had no desire to see her. (probably true)
 - The guardian gave the power "veto" seeing his mom to the then 9-year-old.
 - Trying to enforce drug screens before visitation, then not following through on paying the drug tests.
- Court has indicated that reunification of parents and children over termination is preferred. (Referencing *In Re Walters, Minor*, for publication, COA 369318) and Guardian had no intention to allow that to happen.
- The court also touched on the fact that mom did not have legal counsel at the circuit court level and that she only was able to prevail when she got an attorney to file her appeal.

The putative father: Adoption Code vs Juvenile Code



Definitions

Procedures

Case law: In re Long

Definitions in the Juvenile Code

- For cases regarding the juvenile code: “Father” is defined in MCR 3.903(A)(7)(a-e). Note that putative father is defined in (24)
 - Marriage (unless ROPA)
 - Adoption
 - Order of Filiation
 - Judicially determined to be the father of the minor
 - Acknowledgement of parentage
- MCR 3.903(A)(24) “Putative father” means a man who is alleged to be the biological father of a child who has no father as defined in MCR 3.903(A)(7).
- MCR 3.921(D): If at any time during the pendency of a proceeding, the court determines that the minor has no father as defined in MCR 3.903(A)(7), the court may, in its discretion, take appropriate action as described in this subrule.



NA Procedures

- If mother will not consent, then she would be a respondent in an NA action; PF's rights would need to be addressed pursuant to MCR 3.921(D) and the JC106 form would ultimately be used.
- MCR 3.921(D) gives a rundown on the procedure that courts may use to take action against a Putative Father – it needs to first determine that the child has “no father” as defined in 3.903(A)(7).
- Take initial testimony on the “tentative” identity of the “natural” father. (Of course, in your initial petition, you’re going to allege that the father is putative).
- IF court finds Probable Cause to believe that the person named is the natural father, then the court will direct that Notice be served (and published if whereabouts are sketchy). JC 53 and JC 79.
- Notice must be given in a “manner reasonably calculated to provide notice to the PF.” Note though that if published – can’t use name of putative father in the notice. Also, if unknown, then the court must direct that the unknown father be given notice by publication (JC 79)

NA Procedures, Cont.

- **You've given notice to the PF or unknown PF – Now What? Per MCR 3.921(D), After notice, the court may hold that hearing on the initial petition and determine:**
 - That the putative father has been served properly.
 - That a preponderance of the evidence establishes that the putative father is the natural father of the minor and justice requires that he be allowed 14 days to establish his relationship according to MCR 3.903(A)(7). The court may extend the time for good cause shown.
 - That IF there is probable cause to believe that another identifiable person is the natural father of the minor. If so, the court shall proceed with respect to the other person same as above.
- If ID can't be made after "diligent" inquiry, the court may proceed without further notice and without appointing an attorney for the unidentified person.
- The court may find that the "natural father" waives all rights to further notice, including the right to notice of termination of parental rights, and the right to an attorney if he did not appear after proper notice OR, he appeared but does not establish his paternity within time set by the court.

NA Procedure Takeaways

- **Remember – we are doing this in order to eventually file the adoption and for the guardians to request permission to consent.** BUT, you still need to show in the adoption that the father was either legal or putative AND that his rights were terminated in the NA case. This is especially important if mom has passed away.
- Perhaps some clarification language can be added to the JC 106: (example is the unknown PF and mom refuses to consent in AF or AN and her rights have been terminated.)
 - e.g. The Court finds that the child has no legal father because mother was not married at the time of the conception or birth, no man has filed a paternity action to establish paternity for the minor child, nor has any man adopted this child. Therefore, the father is putative. The Court's record reflects from prior hearings and today that mother never knew the identity of the minor child's father. Thus, he is unidentifiable. Pursuant to MCR 3.921(D)(1), the court provided notice by publication in the paper of this hearing to the unidentifiable putative father and a proof of service was filed on _____. No man has come forward since the last hearing in response to publication or at today's hearing identifying as minor child's father. After proper notice was given, putative father failed to appear at the hearing. The court finds that the minor child, _____, has no legal father as defined in MCR 3.903(A)(7). The unknown father's rights are terminated. The Adoption may proceed. Jurisdiction in the neglect case is now terminated.

Definitions in the Adoption Code

- Putative father in the adoption code first ARE considered to be parents and are named in the petition for adoption. (I just indicated that they are non-legal, putative fathers)
- Putative father is not specifically defined in the Adoption Code, but when filing a PCA 310 or reading the code, you basically have the same definition as in the NA matter.
 - Child born out of wedlock or determined not be of issue of the marriage; and
 - No Order of Filiation
 - No Judicially determination to be the father of the minor; and
 - Acknowledgement of parentage.



Procedure Under the Adoption Code

- IF mom is consenting to the Adoption, and if there's a PF, mom must sign and file a PCA 310 (Petition For Hearing to Identify Father and Determine or Terminate His Rights.)
- IF mom does not know who the father is: Fill out and file a PCA 315, which is a declaration of inability to identify or locate a father. Efforts have to be diligent and reasonable to serve of if you have a name. IF mom just does not know – I am respectful, but a little detail is necessary: Drunk, High, party, etc. The judge is not there to shame her for not knowing. IT happens.
- IF the PF is known:
 - IF PF is agreeable, then he can sign a PCA 316 (Notice to Putative Father and Custody Statement. This is where a PF can say he is the father and is not interested in custody. Signing that form, gives up his right to notice of the hearing. HE can show up to the hearing if he did not sign a PCA 316 and disclaim his interest at that hearing as well.
 - If PF is not agreeable, then the court may involuntarily terminate a father's parent rights under: MCL 710.37 and MCL 710.39.

Uninterested putative fathers (MCL 710.37) Known PF, but no location; OR the Unknown PF

- **The court may terminate if, after the hearing on the PCA 310:**
 - ID is known, but location is NOT and
 - He has not shown any interest in the child's care for at least 90 days preceding the termination hearing (i.e. the hearing on the petition to ID)
- **IF UNKNOWN – terminate if:**
 - PF remains unidentified after reasonable efforts were made to ID him; and
 - He has not provided for the child's care and did not support the mother during her pregnancy or confinement.
- After either above – enter PCA 312 – Order Terminating Rts of Father without release or consent

Uninterested putative fathers (MCL 710.37) ID and Location Known

- The court may terminate (PCA 312) if, after the hearing on the PCA 310:**
- 1. Putative father was either:**
 - Served with a notice of intent to release or consent, or
 - Served with or waived the notice of hearing to identify the father. AND
 - 2. The putative father did any of following:**
 - Verified paternity and denied his interest in custody of the child (PCA 316);
 - Filed a disclaimer of paternity;
 - Served with a notice of intent to release/consent at least 30 days before the expected date of confinement but failed to file an intent to claim paternity before expected date of confinement or child's birth;
 - Received properly served notice of hearing to ID and either failed to appear at the hearing or appeared and denied wanting "custody."

Uninterested putative fathers (MCL 710.37) ID and Location Unknown

- Mother may file affidavit/declaration with court indicating inability to identify/locate father. (PCA 315)
- Court must take evidence regarding mother's attempt to identify or locate putative father.
 - If found that reasonable attempt was made to locate putative father, court must proceed to terminate parental rights
 - If found that reasonable attempt was not made to locate putative father, court must adjourn hearing and order one of the following:
 - Mother to diligently attempt to identify or locate the putative father and properly serve him
 - Mother to serve the putative father in an alternative manner.

Uninterested putative fathers, et al (MCL 710.37)

- IF for whatever reason the court denies the PCA 310 and does not terminate, the court MUST indicate the reasons for the denial on the record in writing. MCL 710.63

Interested Putative Fathers (MCL 710.39)

Two Categories after they said they wanted Custody:

Do Nothing Putative Fathers

- Expresses an interest in the child, but has not established a custodial relationship with the child or provided substantial and regular support or care to the mother or child.

Do Something Putative Fathers

- Established a custodial and/or support relationships with the child.

Interested Putative Fathers (MCL 710.39) Two Categories after they said they wanted Custody:

Do Nothing Putative Fathers: Appears and Asks for Custody

- Ct must inquire into PFs fitness and ability to properly care for the child.
- Best Interest Factors in MCL 710.39: Ct Finds:
 - NOT in the best interests of the child, court must terminate parental rights.
 - Finds it's in **Child's** Best Interest"
 - Court must terminate temporary placement, return custody to mom (unless rights terminated) or guardian, deny order of adoption, and dismiss pending adoption proceeding, and enter an order granting putative father custody and legitimating the child for all purposes.

Do Something Putative Fathers Appears and asks for custody

- Court MUST inquire:
- If there's an established a custodial and/or support relationships with the child. OR
- IF PF, provided regular support or care to the mother during pregnancy, or for either the mother or child at least 90 days before a termination hearing,
- Parental rights may only be involuntarily terminated during child protective proceedings under the Juvenile Code or through a stepparent adoption.

QUESTIONS?



- Feel free to contact me on my direct line: 269-492-6696 or my cell phone: 269-598-9073.
- Davis Martin's direct line: 269-492-1717
- Emails:
 - Jgrahek@willis.law
 - Dmartin@willis.law

I may not have the answers, but I can be a sounding board if you have questions. My door is always open. Be sure that if I have county specific questions, I will be calling you!



Jennifer L. Grahek



Davis C. Martin, J.D.

Licensed or Partnered with Lawyers in

-
- Arizona
 - California
 - Florida
 - Illinois
 - Indiana
 - Michigan
 - South Carolina
 - Texas
 - Washington
 - Wisconsin



Jennifer L. Grahek, J.D.



Davis C. Martin, J.D.

THANK YOU FOR ATTENDING

**Please feel free to contact us with any questions
or opportunities to serve you or your clients.**



Jennifer L. Grahek, J.D.



Davis C. Martin, J.D.

The materials and information have been prepared for informational purposes only. This is not legal advice, nor intended to create or constitute a lawyer-client relationship. Before acting on the basis of any information or material, readers who have specific questions or problems should consult their lawyer.

This content and presentation is the copyright © of Willis Law.