

# Drop the Zero, Choose the Hero - Terminating Parental Rights

Written by Kaine Fisher

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**Q&A with [Kaine Fisher](#), Chairman of Rose Law Group [Family Law Department](#)**

**“My son’s father moved away and I haven’t heard from him in over six years. I recently got married and my husband desperately wants to adopt my son. My husband has been a prominent figure in my son’s life ever since my son’s biological father left the picture. What steps should I take to make this happen?”**



Congratulations on your marriage, and more importantly, be thankful you found such a great father figure to fill the void for your son. This will certainly serve your son well in the future from an emotional standpoint. Having your new husband adopt your son will definitely strengthen the bond between them and will afford your son a sense of stability he has likely been missing.

Step-parent adoptions are the most common; however, it is also common for grand-parents to adopt a child when the child’s biological parents are sick, are unfit or unwilling to raise their child, or when a young couple is not ready to handle the responsibility of raising a child.

Keep in mind though, that you cannot even begin to think about a step-parent adoption without first addressing the issue of severing the other biological parent’s parental rights. Moreover, it is important not to confuse litigating issues of parenting time with terminating a parent’s parental rights. They are very different processes with very different legal standards. In fact, severance and adoption actions do not take place in Family Court as one might expect, but rather, in Juvenile Court.

The process of severing a parent’s rights can be relatively quick and easy if the biological parent is willing to consent to the severance and adoption. Assuming you know how to contact the biological parent, I always recommend that my client first attempt to get the biological parent on board (with my assistance) before filing a severance petition. You would be surprised to know how willing some parents are to consent to a severance of their rights. It certainly doesn’t hurt to try as absent parents are often attracted to the idea that their support obligations pertaining to the child will be terminated.

Arizona has well-established statutory law pertaining to severing a biological parent’s rights. There are tried and true constitutional provisions, and Supreme Court case law, which underlie the analysis as well; to list them all here would not be practical. For purposes of this article, however, just understand that the Court must first determine that the biological father is unfit, and then evaluate whether the severance is in the best interest of the child. Understand also that severing a biological parent’s rights without having someone lined up to adopt the child will be very difficult. In other words, it is much easier for a married couple to adopt than a single person. This will obviously not be a concern for the parents involved in the particular factual scenario presented by this article.

The fitness consideration requires a lower standard of proof than does the best interest evaluation; however, both must still be proven to the satisfaction of the Court in accordance with the applicable law. So then what constitutes an unfit parent? Well abandonment, neglect or willful abuse, mental illness, prolonged alcohol/drug abuse, certain felony convictions, and lengthy prison sentences are just a few of the reasons one might be found to be unfit. Once this threshold has been crossed, the Court then considers a variety of different factors when determining whether severance is in the child’s best interest, such as the relationship and historical contact the child has had with each parent and the adoptive parent, the wishes of the child who is of suitable age and maturity, the physical and mental health of each parent and the adoptive parent, and the child’s adjustment to home, school and community.

Once the hard part is over (the severance), the focus then moves to finalizing the adoption. A pre-placement home study will be required. In situations of a step-parent adoption, the home study will involve a social worker who will run a background check (criminal, financial, and familial) on the adoptive parent, and will perform an investigation which includes interviewing the parents. The study will likely also consist of the social worker going out to the parents’ home to observe the child’s living environment and a medical evaluation may be performed – all in the name of ensuring that the child will be safe and comfortable around the adoptive parent. Once complete, and the adoption is approved by the Court, the only thing left to do is change the child’s last name and amend the child’s birth certificate. It’s important to realize that the termination of parental rights and adoption are permanent. To be expected, the adoptive parent will then be responsible for providing financial support for the child and the finalized adoption triggers certain inheritance rights which did not exist before the adoption.

As you can see, the process can be lengthy, extensive, confusing, and time-consuming. There are many pitfalls and it is crucial to avoid setbacks. It is for these reasons I never recommend people go at it alone. It is worth the expense to make sure it is done right to avoid disappointment. A majority of my practice consists of high-conflict divorce and custody matters. There are no winners - only losers - and I’m always left with an empty feeling because of how such litigation impacts all involved. But with adoptions, I can honestly say I’ve never been prouder of what I do when I see an adoptive parent walk out of the courthouse with his son or daughter - and not just in the emotional sense, but at that point for the first time, in the legal sense as well.

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