Q

The biological father of my children was very abusive. He hasn't seen them in a long time. I want to remove his name from their birth certificates, and I want my new husband to legally adopt them. I don't have any money for a lawyer. Please help us move on and heal.

-- Nicky R., Macon County

A

Hi Nicky, I can help you with this. The process should be fairly simple.

Use a Petition for adoption to ask the court for your new husband to adopt your children. Here are instructions on Starting an adoption case. There are certain things the judge will look for in deciding whether to grant the adoption. Usually a person can adopt if:

- They do not have a legal disability.
- They have lived in Illinois for at least 6 months, and
- They have a good reputation.

After filing the paperwork, you will need to notify the children's biological father. If he consents, then he can go to court and sign a consent in front of the judge. If he won't consent, the adoption proceedings can still go on. The adopting parent can ask the court to decide that the biological father is unfit, or unable to care for the child. There are a few different reasons why a parent can be found unfit. Those are explained in If the parents of a child do not agree to an adoption.

If any of your children are 14 years or older, then they will also have to give written consent to allow their stepdad to adopt.

Let me know if you have any questions.

Sincerely, Amanda

Applicable Law

410 ILCS 535/ Vital Records Act
16. Certificate of adoption or annulment of adoption
750 ILCS 50/ Adoption Act
1. Definitions
19. Registration new birth certificate

Background of the Law

Adoption

There are 4 basic types of adoptions: (1) direct or independent adoptions, in which the adoptee is placed directly with the adoptive parents by the natural parents or guardian; (2) relinquishment or agency adoptions, in which the adoptee is placed through a licensed adoption agency; (3) related adoptions, in which the adopting parents are related to the adoptee, usually as parent and stepparent; and (4) adult adoptions, in which the adoptee is an adult. Samuel H. Young, William J. Dale, Jr., & Benson J. Barr, Midwest Transaction Guide §222.20 (2017). The type of adoption affects the procedures required by statute, particularly with regard to consents, surrenders, and releases, *Id.*

Adoptions are purely statutory proceedings. Samuel H. Young, William J. Dale, Jr., & Benson J. Barr, *supra* at §222.21. A person qualified to adopt an eligible adoptee files a petition, and the court investigates the suitability of the petitioner and adoptee. *Id.*

The petitioner can seek consent of the parents, guardian, or custodian of the adoptee. Id. A court hearing is held where the adoption will be granted or denied. If an order of adoption is entered, the clerk prepares a certificate of adoption which is sent to the Department of Public Health upon completion. 410 ILCS 535/16–535/17; 750 ILCS 50/19; Samuel H. Young, William J. Dale, Jr., & Benson J. Barr, *supra* at §222.54.

In order for a judge to approve an adoption, the rights of both biological parents must be ended. 750 ILCS 50/14(e), 50/17. There is an exception if one of the two new parents is a biological parent of the child. In that case, the biological parent keeps their parental rights. However, the two new parents have to be married. 750 ILCS 5/212.

Relevant ILAO Content

Pro se

Adoption a child
Starting an adoption case
If the parents of a child do not agree to an adoption
Petition for adoption – biological parents unmarried
Petition for adoption – biological parents married
Final and irrevocable consent for adoption

For legal professionals

Divorce and custody (Lawyer Manual)