

Information and Instructions: How to get initial hearing on private termination of parent-child relationship

(A.R.S. (Arizona Revised Statutes) §§ 8-531, and 8-861, et seq.*)

* § means “section”; §§ means “sections”; et seq. means “and the sections that follow”

Please read this carefully.

There are many important steps required to pursue a private Petition for Termination of Parent-Child Relationship and this list is not comprehensive. Failing to comply with each step may result in delays or the Court dismissing the matter.

Please note that a parent cannot ask the court to terminate his or her own parental rights.

Where these documents refer to “child,” “children” or “child(ren)” it means as many children as are the subject of this process, whether one or more.

- I. Documents Required Before the Initial Hearing on a Private Petition for Termination of Parental-Child Relationship.
 - A. Petition - A Petition is a key document required for a private request to terminate parental rights. A Petition must contain a variety of different information as reflected in the Petition for Termination of Parent-Child Relationship form available from the Court. Among other things, a Petition:
 1. Must reflect that the Petitioner (the person filing the Petition) has a legitimate interest in the child as required by Arizona Revised Statutes (A.R.S.) § 8-533(A);
 2. Must include available information about the parent(s) whose parental rights the Petition seeks to terminate;
 3. Must include available information about the children whose parental rights the Petition seeks to terminate;
 4. Must include information about the person or agency who is caring for the children;
 5. Must show how the Arizona Superior Court, Maricopa County, has power to properly hear the case (“jurisdiction”), which usually requires that the children have been in Arizona for a period of time;

6. Must include information about grounds for termination as required by A.R.S. § 8-533(B);
7. Must include information about why termination of parental rights is in the best interest of the children, as required by A.R.S. § 8-533(B);
8. Must include any information about whether the parent(s) or children are enrolled members of any native American Tribe or Nation; and
9. Should include information regarding who is completing the **social study** required by A.R.S. § 8-536(A) or, if the Petitioner is asking that the social study be waived, why waiving that study is in the best interest of the children.

B. Order Setting Initial Hearing. The Court will issue an “Order Setting the Initial Hearing” after the Petition for Termination of Parent-Child Relationship is filed if the Petition is minimally adequate.

C. Notice of Initial Hearing - The Clerk of Superior Court will provide a “Notice of Initial Hearing” to you after the Petition is filed. The Notice provides the date, time, place, (location) where the Initial Hearing will be held and other important information.

II. Steps to be taken before the Initial Hearing on a private petition for termination of parent-child relationship.

There are several steps that must be taken before the Initial Hearing with the Court on a private Petition for termination of parent-child relationship, including:

- A. Properly fill out and sign the Petition for Termination of Parent-Child Relationship.
- B. File the Petition for Termination of Parent-Child Relationship with the Clerk of Superior Court at one of the following locations:

Durango Facility
3131 W Durango Street
Phoenix, AZ 85009

Southeast Facility
1810 S Lewis Street
Mesa, AZ 85210

- C. Obtain an Order signed by the Court setting an Initial Hearing on the Petition for Termination of Parent-Child Relationship.

Please Note: The Court may review a Petition for Termination of Parent-Child Relationship, find that it does not comply with the requirements for a document and dismiss the Petition. If that happens, Petitioner may attempt to fix the deficiencies and file with the Clerk of Superior Court another Petition for Termination of Parent-Child Relationship that complies with all requirements.

- D. Obtain a Notice of Initial Hearing from the Clerk of Superior Court (which will include the date, time, place, location where the Initial Hearing will be held and other important information).
- E. Make copies and separate your papers. Copy and assemble your papers so that you have as many packets as needed to serve interested parties (see III(B) below).
- F. Complete Service of Process, in a timely basis, as discussed below.

III. Service of Process must be completed before the initial Hearing.

- A. Service of process is the formal way copies of documents are provided to all individuals and entities involved in the case. If service of process is not done properly and timely, the court will lack jurisdiction and/or the case may be delayed.
- B. Petitioner must serve a copy of the Petition for Termination of Parent-Child Relationship; the Notice of Initial Hearing and the Order signed by the Court on:
 - 1. all parents, and if applicable, each custodian or Indian custodian,
 - 2. Tribe of any children as defined by the federal Indian Child Welfare Act, 25 U.S.C. § 1901, et seq. (and sections that follow);
 - 3. person(s) having legal custody of the children;
 - 4. person(s) standing in loco parentis* to the children;
 - 5. guardians ad litem of any party and
 - 6. any other individual or entity that the court orders must be served.
 - a. All parties must be served as directed by Arizona Rules of Civil Procedure 4, 4.1 and/or 4.2 (as applicable).
 - b. Service of process must be timely, meaning it must be completed at least ten (10) days before the Initial Hearing (for service within Arizona) and at least thirty (30) days before the Initial Hearing (for service outside of Arizona).

Please Note: Service of Process for cases governed by the Indian Child Welfare Act, 25 U.S.C. § 1901, et. seq., have special timeliness requirements. See, e.g., Arizona Rule of Procedure for Juvenile Court 351(d).

c. Service by publication

- i. Service by publication applies when the residence of the person to be served is unknown to the party seeking to serve that person and the party seeking to serve by publication has made a diligent search to find that person. Service by publication is more complicated than personal service. There are important rules that apply to service by publication. If those rules are not met, the whole process of service by publication may need to be started all over, which can result in delays and added cost.
- ii. Service by publication requires literally publishing the Notice of Initial Hearing and a statement as to the manner in which a copy of the Petition For Termination of Parent-Child Relationship may be obtained at least one (1) time a week for four (4) consecutive weeks in a newspaper published in the county where the action is pending. If the last known residence of the person to be served is in Arizona but not in Maricopa County, service by publication also must be made in the county of that last known residence.
- iii. Where the party seeking to serve a person by publication has an address for the person to be served, before the first date of publication, a copy of the Petition for Termination of Parent-Child Relationship; Notice of Initial Hearing and Order must be mailed, postage prepaid, to that person at that person's last known place of residence.
- iv. Service by publication is deemed complete thirty (30) days after the first publication date.
- v. A party serving a person by publication must provide to the court the following documents either at or before the Initial Hearing:
 1. A written affidavit or declaration that the residence of the person served by publication is unknown contained in the Declaration Supporting Publication (sometimes referred to as Affidavit of Unknown Residence);
 2. A written affidavit or declaration that the person to be served by publication cannot be located even though diligent efforts have been made to locate that person contained in the Declaration Supporting Publication (sometimes referred to as an Affidavit of Due Diligence);
 3. A written affidavit showing the manner and dates of the publication (and mailing, if applicable) and the circumstances warranting service by publication as well as printed copy of the publication. If the residence of the person being served is unknown, and therefore no mailing was made, the affidavit shall state that.

- d. Notice and appearance may be waived by an individual or entity involved in the case. A Waiver of notice and appearance must contain language explaining the meaning and consequences of the waiver and the termination of parental rights pursuant to A.R.S. § 8-535(C). Unless done in court, a Waiver of notice and appearance must be signed by the individual or entity agreeing to the waiver and notarized or attested by two or more credible witnesses who are at least eighteen (18) years old.
- e. A consent to adoption must comply with certain specified requirements, including A.R.S. §§ 8-106 and 8-107. Please Note: In Arizona, if a proper consent has been obtained, a person seeking to adopt a child may proceed directly to adoption without filing a Petition for Termination of Parent-Child Relationship. In that case, the Maricopa County Attorney provides representation in uncontested adoptions pursuant to A.R.S. § 8-127.
- f. A copy of any relinquishment or consent shall be attached to the Petition pursuant to A.R.S. § 8-534(C).

IV. Unless Waived by the Court, a Social Study must be completed.

- a. Unless waived by the court given the best interests of the child, petitioner must obtain a social study pursuant to A.R.S. § 8-536.
- b. A social study must:
 - i. Be prepared by an appropriate agency or person;
 - ii. Include the circumstances of the petition, the social history, the present condition of the children and parent, proposed plans for the children and other facts pertinent to the parent-child relationship;
 - iii. Address whether the parent-child relationship should be terminated; and
 - iv. Contain the information required by A.R.S. § 8-536.

V. The Initial Hearing.

- a. The Petitioner must attend the Initial Hearing. If the Petitioner does not personally attend the Initial Hearing, the Court may dismiss the Petition or may set a continued hearing, which will cause delay.
- b. Petitioner should bring the following documents to the Initial Hearing:
 - i. Originals of the applicable service of process documents to show the Court that service is completed;

- ii. Documents showing parentage including:
 1. a birth certificate for each child listed in the Petition;
 2. paternity documents;
 3. child support or custody orders or related documents;
- iii. Copies of any applicable guardianship documents;
- iv. Originals of any consents; waivers; relinquishments; the social study (if not waived and if prepared before the Initial Hearing) that have not yet been filed;
- v. A copy of all filings made with the Court that contain a copy of the Clerk of Superior Court's stamp to show to the Court if necessary;
- vi. Any other documents Petitioner may want the Court to consider.

Note:

- Failure to comply with the applicable statutes and rules may result in the initial hearing being reset or the petition dismissed.
- Unrepresented parties are encouraged to consult legal counsel. Court employees cannot provide legal advice.

You may also wish to consult the following additional resources.

Law Library Resource Center
Hours: 8:00 AM to 5:00 PM Monday - Friday

Locations:

Downtown Phoenix
101 West Jefferson, 1st Floor
Phoenix, AZ 85003
(East Court Building)

Southeast (Mesa)
222 East Javelina Avenue, 1st Floor
Mesa, AZ 85210
(Southeast Court Complex)

Northeast (Phoenix)
18380 North 40th Street
Phoenix, AZ 85032
(Northeast Regional Center)
40th St. & Union Hills

Northwest (Surprise)
14264 West Tierra Buena Lane
Surprise, AZ 85374
(Northwest Regional Center)

Legal Authority

Arizona Revised Statutes Section §§ 8-531 to 8-544
Arizona Rules of Procedure for Juvenile Court § 351-353