

# CONSENT TO TERMINATION OF PARENTAL RIGHTS

## *Bench Card*

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### **PURPOSE**

Procedure for parent to voluntarily consent to termination of parental rights and for the court to enter an order and judgment terminating parental rights without a hearing on the merits.

### **WHEN AN ORDER MAY BE ENTERED WITHOUT A HEARING ON THE MERITS <sup>1</sup>**

The court may grant an order terminating the parent child relationship with no subsequent hearing on the merits where:

- A consent to termination signed by the parent or parents of the child has been filed by an adoption agency licensed in the state of Idaho;
- A consent to termination is filed in conjunction with a petition for adoption of the child; or
- A consent to termination signed by the parent or parents of the child has been filed and the termination is initiated by the department pertaining to a child who is in legal custody of the department.

### **IDAHO PROCESS <sup>2</sup>**

At any time during a Child Protective Act case, a parent may consent to termination of parental rights. The consent to termination must be witnessed, on the record, by a district or magistrate judge, whether within or outside of the county where the case was initiated.

The consent shall be in the form prescribed in Appendix B of Idaho Juvenile Rules.

### **REVIEWING CONSENT FROM OUT OF STATE<sup>3</sup>**

The court shall accept a consent, or a surrender and release executed in another state, if:

1. It is witnessed, on the record, by a magistrate or district judge of the state where signed, or
2. The court receives an affidavit or a certificate from a court of comparable jurisdiction stating that the consent or surrender and release was executed in accordance with the laws of the state in which it was executed, or the court is satisfied by other showing that the consent or surrender and release was executed in accordance with the laws of the state in which it was executed.

### **RECOMMENDED QUESTIONS TO VERIFY CONSENT**

Questions the court should consider asking under oath:

- Do you understand why you are here today?
- Can you tell me in your own words why you are here?
- Are you the [birth] parent of the child named in the consent form?
- When and where was the child born? (It may be advisable to wait a reasonable period of time after birth, to establish that the parent is not under emotional duress.)
- How old are you? What is your educational background?
- Are you under the influence of any medicine, drug, alcohol, or any other substance that might affect your state of mind?

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- Do you have any mental or physical illness that might affect your ability to decide what you want to do?
- Did you see the child after birth? Or, have you seen the child recently?
  - If not, did someone prevent you from seeing the child, or did you make your own decision not to see the child?
  - If so, did you have any concerns about your child's health? Did seeing the child make you change your mind about consenting to terminate your parental rights to the child?
- When did you decide to sign the consent to termination? Have you had enough time to think about it? Has anyone in any way tried to pressure you into signing the consent to terminate?
- Has anyone made any promises to you to influence your decision?
- Have you talked to a lawyer to get legal advice about this? If not, do you want to?
- Do you have a friend or family member who you talk to when you need to make an important decision? Did you talk to them? Is there someone you want to talk to before you do this?
- Do you understand that you will be giving up all your rights concerning this child? You will not have the right to contact the child, to be notified of anything concerning the child, or to be involved in any decisions concerning the child.
- Do you understand that you will be giving up all your rights to your child forever? Once you sign this document, if you later change your mind, it will be extremely difficult, and maybe impossible, to undo your decision to terminate your parental rights.
- Do you understand that by terminating your rights as a parent someone else may be able to adopt the child?
- Do you believe that agreeing to terminate your parental rights is in the child's best interests? Why?
- Do you think that agreeing to terminate your parental rights is in your best interests? Why?
- Are you a member of an Indian tribe, or are you eligible for membership in an Indian tribe or Alaska Native corporation? If so, which one(s)? If it is possible that the child might be of Indian or Alaska Native heritage, is there anyone who might have more information about the child's Indian or Alaska Native heritage? How can that person be contacted?
- Have you seen and carefully read the consent form? Would you read it again now? Take as much time as you need to read it carefully.
- Is there anything in the form that you don't understand or with which you do not agree?
- Do you still want to terminate your parental rights?

### REQUIRED ELEMENTS OF THE ORDER <sup>4</sup>

Any order terminating parental rights must be in writing and must recite the findings upon which the order is based.

1. Appoint an authorized agency as a guardian and vest legal custody in such agency.<sup>5</sup>
2. Fix responsibility for child support as appropriate.<sup>6</sup>
3. Where the termination case has been initiated by the department pertaining to a child who is in the legal custody of the department, set the review hearings at 6 months and every 2 months thereafter, and permanency every 12 months until adoption or final placement.<sup>7</sup>
4. In an ICWA case: (*See the ICWA Bench Card*)

### FINDINGS

1. The court has jurisdiction.<sup>8</sup>
2. The consent has been filed in one of the following ways:

- a. A consent to termination signed by the parent or parents of the child has been filed by an adoption agency licensed in the state of Idaho;
  - b. A consent to termination is filed in conjunction with a petition for adoption of the child; or
  - c. A consent to termination signed by the parent or parents of the child has been filed and the termination is initiated by the department pertaining to a child who is in legal custody of the department.
3. Whether or not it is an ICWA case, and if so, consent conforms with ICWA requirements.<sup>9</sup> In an ICWA case: (*See the ICWA Bench Card*)
  4. Consent is properly entered.

### JUDGMENT<sup>10</sup>

A separate judgment is entered for each parent, and it contains the termination to the particular parent for each particular child.

### ENDNOTES

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<sup>1</sup> I.C. § 16-2005(8)(c); I.J.R. 48A(a).

<sup>2</sup> I.J.R. 48A(b) and (c).

<sup>3</sup> I.J.R. 48A(d).

<sup>4</sup> I.C. § 16-2010(1).

<sup>5</sup> I.C. § 16-2010(2)(a)(iii), § 16-2002(9).

<sup>6</sup> I.C. § 16-2010(2)(b).

<sup>7</sup> I.C. § 16-2010(4), § 16-1622(1)(a) and (2)(b).

<sup>8</sup> I.C. § 16-2010(1), § 16-2003.

<sup>9</sup> 25 USC 1913.

<sup>10</sup> I.R.C.P. 54(a).