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SPRINGFIELD

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FILE NO. S-1073

**FAMILY LAW:**  
**Termination of Parental**  
**Rights Under the Juvenile**  
**Court Act**

Honorable William J. Cowlin  
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Woodstock, Illinois 60090

Dear Mr. Cowlin:

This is in response to your letter concerning the termination of parental rights under section 5-9 of the Juvenile Court Act. Ill. Rev. Stat. 1975, ch. 37, par. 705-9.

Your first question is whether, under juvenile court proceedings, natural parental rights may be terminated on the basis of "unfitness" prior to the filing of a petition for adoption.

Under appropriate circumstances, section 5-7 of the Juvenile Court Act (Ill. Rev. Stat. 1975, ch. 37, par. 705-7)

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authorizes the juvenile court to appoint a guardian of the person of a minor who has been adjudged to be a ward of the court. (Ill. Rev. Stat. 1975, ch. 37, par. 704-8.) Such a guardian is granted the powers enumerated in section 1-11 of the Act. (Ill. Rev. Stat. 1975, ch. 37, par. 701-11.) The power to consent to the adoption of the minor ward remains with his parents as a "residual parental right". (Ill. Rev. Stat. 1975, ch. 37, par. 701-11.) However, the original or a supplemental petition may contain a prayer requesting the grant of this power to the guardian. (Ill. Rev. Stat. 1975, ch. 37, pars. 701-11, 704-1 and 703-7.) If such a prayer is submitted, then the court may proceed under section 5-9 of the Juvenile Court Act. Section 5-9 of the Juvenile Court Act states:

"§ 5-9. Adoption; Appointment of Guardian With Power to Consent.) (1) A ward of the court under this Act, with the consent of the court, may be the subject of a petition for adoption under 'An Act in relation to the adoption of persons, and to repeal an Act therein named', approved July 17, 1959, as heretofore or hereafter amended, or with like consent his parent or parents may, in the manner required by such Act, surrender him for adoption to an agency legally authorized or licensed to place children for adoption.

(2) If the petition prays and the court finds that it is in the best interests of the minor that a guardian of the person be appointed and authorized to consent to the adoption of the minor, the court

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with the consent of the parents, if living, or after finding a non-consenting parent to be unfit as provided in this Section, may empower the guardian of the person of the minor, in the order appointing him as such guardian, to appear in court where any proceedings for the adoption of the minor may at any time be pending and to consent to the adoption. Such consent is sufficient to authorize the court in the adoption proceedings to enter a proper order or decree of adoption without further notice to, or consent by, the parents of the minor. An order so empowering the guardian to consent to adoption terminates parental rights, deprives the parents of the minor of all legal rights as respects the minor and relieves them of all parental responsibility for him, and frees the minor from all obligations of maintenance and obedience as respects his natural parents.

(3) Parental consent to the order authorizing the guardian of the person to consent to adoption of the Minor shall be given in open court whenever possible and otherwise must be in writing and signed in the form provided in 'An Act in relation to the adoption of persons, and to repeal an Act therein named', approved July 17, 1959, as heretofore or hereafter amended, but no names of petitioners for adoption need be included. A finding of the unfitness of a nonconsenting parent must be made in compliance with that Act. Provisions of that Act relating to minor parents and to mentally ill or mentally deficient parents apply to proceedings under this Section." (emphasis added.)

Section 5-9 provides that the order which empowers the guardian to consent to adoption has the effect of terminating all parental rights with respect to the minor ward of the court. Such an order may be granted if the parents consent

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to surrendering the minor to an adoption agency. If the parents withhold consent, the order may be entered if the court finds, in compliance with "AN ACT in relation to the adoption of persons, etc." (Ill. Rev. Stat. 1975, ch. 4, par. 9.1-1 et seq.), that a non-consenting parent is "unfit". Under section 1D of "AN ACT in relation to the adoption of persons, etc." (Ill. Rev. Stat. 1975, ch. 4, par. 9.1-1D), a person is "unfit" if the court finds any of the "grounds for unfitness" which are enumerated therein. Therefore, if the juvenile court finds that any of these grounds are applicable to a non-consenting parent after due notice and hearing, the court may terminate the parent's rights with respect to the minor by entering an order which empowers a guardian of the ward to consent to the ward's adoption.

Section 5-9 of the Juvenile Court Act authorizes the court to terminate parental rights by entering a court order which authorizes the guardian to consent to the ward's adoption. This proceeding is pursuant to a petition filed with the juvenile court (Ill. Rev. Stat. 1975, ch. 37, par. 704-1) and, therefore, is within the juvenile court's jurisdiction. There is no statutory provision which imposes the filing of an

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adoption petition as a condition precedent to the juvenile court's assumption of jurisdiction. Although the finding of parental "unfitness" must be in accordance with the standards set forth by section 1D of "AN ACT in relation to the adoption of persons, etc.", the finding is made by the juvenile court and not by another court acting on an adoption petition. I, therefore, conclude that parental rights may be terminated prior to the filing of an adoption petition where the court finds non-consenting parents to be "unfit".

Your second question is whether parental rights with respect to a minor ward of the juvenile court may be terminated more than 30 days prior to the filing of an adoption petition, where such termination is based upon a finding of "unfitness" under section 5-9 of the Juvenile Court Act.

As explained above, section 5-9 of the Juvenile Court Act authorizes the court to enter an order which empowers a guardian of the person of a ward of the court to consent to the ward's adoption. If the parents are unwilling to consent to this arrangement, the court must first find the parents to be "unfit" as defined in section 1D of "AN ACT in relation to the adoption of persons, etc.". The effect of the order is

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to terminate all parental rights with respect to the ward. Guardianship continues until the court otherwise directs, or the minor reaches the age of 21. (Ill. Rev. Stat. 1975, ch. 37, par. 705-7.) Section 5-9 expressly provides that the court may empower the guardian "to appear in court where any proceedings for the adoption of the minor may at any time be pending \* \* \* ". The continued force and effect of such a court order is not limited by the condition that an adoption petition is to be filed within 30 days of its issuance. Therefore, as long as guardianship pursuant to the court order is still in effect, the guardian may appear in any subsequent adoption proceedings, whether or not they are instituted within 30 days of the juvenile court order which grants the guardian the power to consent, and terminates parental rights.

The termination of parental rights under section 5-9 of the Juvenile Court Act more than 30 days prior to the filing of an adoption petition is also consistent with "AN ACT in relation to the adoption of persons, etc.", and will not hamper the efforts of adoptive parents. A child who is a ward of the juvenile court becomes available for adoption after a guardian with power to consent to adoption gives his consent. (Ill. Rev. Stat. 1975, ch. 4, par. 9.1-1H.) If the child is "unrelated"

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to the adoptive parents (Ill. Rev. Stat. 1975, ch. 4, par. 9.1-1B), the adoption petition must then be filed within 30 days after the child becomes available for adoption. (Ill. Rev. Stat. 1975, ch. 4, par. 9.1-5.) It is the guardian's exercise of the power to consent and not the juvenile court's act of authorizing the guardian which determines when the adoption petition must be filed. By the same token, the termination of parental rights will also have no effect upon when the adoption petition must be filed. The guardian may withhold consent until suitable parties are available for adoption of the guardian's ward. For these reasons, it is my opinion that the termination of parental rights with respect to a minor ward of the court under section 5-9 of the Juvenile Court Act may occur more than 30 days prior to the filing of an adoption petition.

Your third question is whether it is necessary to prove again that the parents are "unfit" where adoption of the ward of the court is sought, and where parental rights have already been terminated under section 5-9 of the Juvenile Court Act on the basis of "unfitness".

Pursuant to section 5-9 of the Juvenile Court Act the court order which empowers the guardian to consent to adoption terminates and deprives the child's parents of all

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legal rights with respect to the child. There are no longer any rights to terminate in a subsequent adoption proceeding. Parents whose rights have already been judicially terminated are not even to be named in an adoption petition, nor may they be made parties defendant. (Ill. Rev. Stat. 1975, ch. 4, par. 9.1-5.) The consent of the guardian which is given pursuant to the juvenile court's order is sufficient to support the adoption decree. (Ill. Rev. Stat. 1975, ch. 4, par. 9.1-8.) Therefore, there is no need to again prove that the child's parents are "unfit".

To summarize, it is my opinion that:

1. In juvenile court proceedings, natural parents' rights may be terminated on the basis of "unfitness" prior to the filing of a petition for adoption.
2. The termination of parental rights with respect to a minor ward of the court, which is based upon a finding of parental "unfitness" under section 5-9 of the Juvenile Court Act, may occur more than 30 days prior to the filing of an adoption petition.
3. Where adoption of a ward of the court is sought, and where parental rights have been terminated under section 5-9 of the Juvenile Court Act, it is not necessary to prove again

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that the natural parents are "unfit" under section 1D of  
"AN ACT in relation to the adoption of persons, etc."

Very truly yours,

A T T O R N E Y   G E N E R A L