

FORMAL OPINION

the United States in the *Roe* and *Doe* decisions.

Very truly yours,  
WILLIAM F. HYLAND  
*Attorney General*  
RICHARD M. CONLEY  
*Deputy Attorney General*

\* The State Board of Medical Examiners would be the appropriate agency to adopt such a relation as it would affect the actions of the medical profession, pursuant to its statutory authority to regulate the practice of medicine (N.J.S.A. 45:9-1 *et seq.*).

April 18, 1975

HONORABLE ANN KLEIN  
*Commissioner*  
Department of Institutions and Agencies  
135 West Hanover Street  
Trenton, New Jersey 08625

FORMAL OPINION NO. 7-1975

Dear Commissioner Klein:

The Division of Youth and Family Services has asked for an opinion as to whether certain of its procedures, regarding the role and participation of a putative father to an adoption proceeding, satisfy all relevant statutory and constitutional requirements. We have concluded based upon our review of present New Jersey law and the holding of the United States Supreme Court in *Stanley v. Illinois*, 405 U.S. 645, 92 S. Ct. 1208, 21 L. Ed. 2d 551 (1972), that existing procedures are consistent with all statutory and constitutional requirements.

Although the Adoption Act, N.J.S.A. 9:3-17 *et seq.*, does not provide for the notification of a putative father to contest an adoption or to assert his right to custody, the procedures used by the Division do make extensive provision for notification of putative fathers under several different circumstances:

- (A) If the unwed mother has surrendered her child and refuses to name the father or states that she does not know who the father is, the surrender from the mother is accepted, and the child may be released for adoption. No effort is made to determine the identity of the father.\*
- (B) If the unwed mother surrenders the child and reveals the name of the father but indicates that she does not know his address or present whereabouts, the agency accepts the surrender, and the caseworker contacts local agencies in the area where the putative father last resided in an effort

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to give him notice that the mother has surrendered the child. The caseworker contacts such agencies as the Police Department, Post Office, local Welfare Department, local Draft Board, etc. and makes inquiries with any relatives of the putative father, if any are known to the caseworker. If the putative father cannot be found, then the caseworker prepares an Affidavit of Inquiry indicating all the efforts made to locate the putative father. In many instances the affidavit will additionally indicate that the child is a certain age and that no attempt has been made by the putative father either to see or support the child. This affidavit is attached to the mother's surrender and the child may be cleared for adoption.

(C) If the unwed mother provides the caseworker with an address or telephone number for the putative father or if one is uncovered after inquiry, the putative father is notified, in person, that the mother has named him as the father of the child and that the mother has surrendered the child. If he denies paternity, the caseworker may then accept an affidavit from him indicating his denial. The affidavit is then attached to the surrender and the child may be cleared for adoption. If an affidavit cannot be obtained from him, the caseworker then prepares an affidavit, indicating conversations with the putative father, stating that he was made aware that the surrendering mother named him as a father of her child; that he is aware of her intent to surrender the child, and that he has no objection to such action. This affidavit is then attached to the surrender and the child may be cleared for adoption.

(D) If the putative father avoids contact with the caseworker, a certified letter is sent to him, and if there is no response, an Affidavit of Inquiry (see above) is prepared and attached to the surrender and the child may be cleared.

(E) If the putative father admits paternity, but has no interest in the child, then he may also sign surrenders or draw an affidavit indicating his lack of interest in the child and his consent to adoption.

(F) If the putative father evidences any objection to the surrender, the child is not cleared for adoption. An investigation of the putative father and his plan is made and a determination of its viability is decided upon. If it is decided that his plan is not suitable or there is objection to him as a parent, either by the agency or the natural mother, then a guardianship action is filed naming him as defendant, and the court decides the matter.

The issue therefore is whether the Division's procedures satisfy all constitutional requirements and whether the consent of a putative father is necessary before a child may be adopted.

In *Stanley v. Illinois, supra*, the United States Supreme Court held that a putative father is constitutionally entitled to reasonable notice and an opportunity to be heard before either a state or a private party may take custody or guardianship of his child.\*\* However, it cannot be said that the affirmative consent of a putative father is required prior to the adoption of his child. The court in *Stanley* merely held that he must have notice that the custody of his child is in question and the right to have his views on the care of the child presented to a court.\*\*\* The Division's procedures provide the putative father access to a court whenever he expresses his objection to the adoption.

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A careful examination of the procedures of the Division, in light of *Stanley*, reveals that such procedures are in full conformity with all constitutional requirements. The specific administrative procedures which are designed to provide for actual or constructive notice to a putative father are consistent with constitutional demands for due process of law. See generally *Mullane v. Central Hanover Bank and Trust Co.*, 339 U.S. 306, 70 S. Ct. 652, 94 L. Ed. 865 (1949). In fact, the Division has extended the *Stanley* mandate beyond the mere requirement of giving a putative father notice of any court proceeding involving the custody or guardianship of his children to a situation where the Division receives a surrender from an unwed mother. These procedures are designed to give a putative father notice that his child has been surrendered and to allow him the opportunity to be heard or to offer a proposal regarding the disposition of his child.

Very truly yours,  
WILLIAM F. HYLAND  
*Attorney General of New Jersey*  
By: SHIRLEY A. TOLENTINO  
*Deputy Attorney General*

\* In order to fully satisfy all constitutional requirements it would appear that some responsibility should be placed on the Division to make reasonable inquiry as to the identity and whereabouts of the putative father.

\*\* The father in the *Stanley* case was not the typical putative father seen in so many cases involving the custody of children. He was easily ascertainable, had lived with his children intermittently over a period of 18 years and had assumed his responsibilities. In other words, he was not a mere putative father, but had elevated himself to the status of an admitted father. Nevertheless, the *Stanley* case stands for the proposition that all putative fathers are constitutionally entitled to reasonable notice and a hearing on their fitness before children may be removed from their custody.

\*\*\* However, the Court indicated in *Stanley* that the father's right to be heard may be waived either by his signing a surrender or his failing to respond to the notice.

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WILLIAM JOSEPH, *Director*  
Division of Pensions  
20 West Front St.  
Trenton, New Jersey

April 21, 1975

FORMAL OPINION NO. 8-1975

Dear Mr. Joseph:

You have requested an opinion as to whether retroactive salary increases in collective negotiations agreements effective after retirement or death of an individual employee are creditable for calculation of retirement allowances, dependency pen-