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TRANSMITTAL: 90 INF-48

TO: Commissioners of
 Social Services

DIVISION: Family and
 Children
 Services

DATE: September 14, 1990

SUBJECT: State Court of Appeals Decision on Unwed Father's
 Rights in Adoption

SUGGESTED

DISTRIBUTION: Child Welfare Executive and Supervisory Staff
 Legal Staff
 Foster Care Staff
 Adoption Staff
 Staff Development Coordinators

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ATTACHMENTS: State of New York Court of Appeals Opinion: Not
 Available on-line.

FILING REFERENCES

Previous ADMs/INFs	Releases Cancelled	Dept. Regs.	Soc. Serv. Law & Other Legal Ref.	Manual Ref.	Misc. Ref.
			DRL 111(1)(e)		

This release is to inform you of the New York State Court of Appeals decision in the Matter of Raquel Marie X and in the Matter of Baby Girl S; regarding the constitutional rights of unwed fathers of infants under six months who are being placed for adoption.

The Court of Appeals decision involved the constitutionality of the consent provision found in Domestic Relations Law (DRL) 111(1)(e) which provides that in the adoption of a child less than six months old, the consent of the unwed father is required only if:

- (i) such father openly lived with the child or the child's mother for a continuous period of six months immediately preceding the placement of a child for adoption; and
- (ii) such father openly held himself out to be the father of such child during such period; and
- (iii) such father paid a fair and reasonable sum for the medical, hospital and nursing expenses incurred in connection with the mother's pregnancy or with the birth of the child.

All the provisions of Section 111(1)(e) of DRL had to be met by the unwed father for his consent to be required for adoption. Therefore, if a child less than six months was surrendered by the mother or her rights had been terminated, and the unwed father did not meet all of the requirements in DRL Section 111(1)(e), the child could be adopted without the father's consent.

The Court of Appeals ruled that the "living together" requirement of Domestic Relations Law is unconstitutional. The Court held that "the living together" requirement can be used to block the father's rights. But even more significantly, it permits adoption despite the father's prompt objection even when he wishes to form or actually has attempted to form a relationship with the infant that would satisfy the State as substantial, continuous and meaningful by other standards. In addition, because the two remaining elements of the statute were intertwined with the unconstitutional provision, the entire Section 111(1)(e) of Domestic Relations Law was declared unconstitutional.

The consequence of the Court's decision is that the current statutory consent standard relating to unwed fathers of children who are less than six months at the time of adoptive placement may not be used. The consent standards for all other children are not affected by this decision.

Until the Legislature amends the statute, the Court of Appeals has offered an interim test which could be used by the courts in place of Section 111(1)(e) of Domestic Relations Law. To determine whether an unwed father has established the requisite interest for a right of consent to adoption, the Court of Appeals suggests consideration of:

- (1) The unwed father's right to a continued parental relationship by his manifestation of parental responsibility. In the case of newborn infants, the qualifying interest of an unwed father requires a willingness himself to assume full custody of the child, not merely to block the adoption. Also, any unfitness or waiver of abandonment by the father would be considered by the court.
- (2) The manifestation of parental responsibility must be prompt. In reaching this decision due consideration must be given to the father's manifestation of responsibility for the child during the six continuing months immediately preceding the child's placement for adoption. Such an evaluation may include consideration of his public acknowledgement of paternity, payment of pregnancy and birth expenses, steps taken to establish legal responsibility for the child and other factors evincing a commitment to the child.

Because the decision is limited to children under the age of six months at the time of the adoptive placement, we do not anticipate that this decision will have a significant impact on the efforts of social services districts to place children for adoption.

Joseph Semidei
Deputy Commissioner
Division of Family
and Children Services