

HOW TO REQUEST THE APPROVAL OF A GESTATIONAL AGREEMENT AND THE ENTRY OF PRE-BIRTH ORDERS WITHOUT A COURT HEARING

During the COVID-19 public health emergency, the Judicial Branch has established a procedure whereby parties to gestational carrier agreements may request the approval of their agreements, and the entry of pre-birth orders, without coming to the courthouse for a hearing.

In order for the court to consider the agreement without a hearing, a true and accurate copy of the executed agreement must be in the court file, and all parties must have current appearances on file. In addition, all parties must file affidavits swearing to the truth of the matters that they would otherwise have testified about in court. The affidavits should cover not only the pertinent facts, but also the issues that would typically be addressed in a canvass about the parties' understanding of the agreement, the voluntariness of their entry into it, their opportunity to receive independent legal advice, and other appropriate subjects. The parties must also file any affidavits from third parties, such as medical professionals, which are necessary to enable the court to make the requested factual findings. Unlike other matters which are being considered by the court on the papers during this period, no court forms are provided for these affidavits due to the complexity and variety of possible fact situations.

Parties requesting court action on the papers in these matters should also provide a proposed order for the court's consideration. The proposed order should be filed as a separate document identified as such, rather than as part of a set of documents. A separately filed and identified proposed order will allow for ease of reference should the court decide to adopt it, with or without modifications.

Finally, when you have filed all required documents and are ready for a judge to consider your case, you must complete and file the following form (found at the provided link):

[Request for Approval of Final Agreement Without Court Appearance JD-FM-282](#)

The above form does not specifically mention gestational agreements as a type of matter to be decided without court appearance, but you should nevertheless adapt it for your use. The form is designed so that upon its filing, a clerk is alerted to the need to bring the matter to the attention of a judge. If you draft and file your own pleading to request action on the papers, it will not result in the same alert.