

What a GAL Needs to Know about Adoption

Freeing a child for adoption through a relinquishment (G.S. 48-3-701 to 707)

- **A relinquishment is an adoption consent given to DSS** that vests legal and physical custody in DSS and authorizes DSS to place the child for adoption.
- **A relinquishment does not terminate the parents' support obligation** which continues until the final decree of adoption.
- **A relinquishment does not terminate the parents' parental rights.** That occurs when the final decree of adoption is entered.
- **A relinquishment may be revoked within 7 days**, except that a second identical relinquishment is irrevocable. A revocation must be in writing and can be delivered to DSS within 7 days or sent registered mail or by overnight delivery service as long as the revocation was placed in the mail or with the overnight delivery service by the 7th day.
- **A relinquishment may be "general", allowing DSS full discretion to choose the adoptive parent, or "designated",** allowing DSS to place only with the adoptive parent designated in the relinquishment, usually the foster parent or relative. In designated relinquishments, the parent may choose to be notified if the adoption cannot be completed, and the parent will have an additional 10 days to revoke after that notification. If the parent does not revoke when notified, the designated relinquishment becomes a general one, and DSS may place the child in its discretion.
- **A relinquishment may be rescinded at any time by mutual agreement** of the parent and DSS, but only if the child has not been placed with a prospective adoptive parent.
- **A relinquishment can be voided for fraud or duress prior to the entry of the final decree** if the parent can show fraud or duress by clear and convincing evidence. After the decree, a relinquishment can also be voided for fraud or duress if a parent moves to set aside the adoption within six months of the time the fraud or duress is, or ought reasonably have been, discovered.
- **Parents' right to counsel in a juvenile case extends to the relinquishment decision,** *In re Maynard*, 116 N.C. App. 616 (1994), so it is important that the parent's attorney know of discussions about a relinquishment, and the parents know they can consult with their attorney.
- **A parent who is not 18 years old may sign a relinquishment** and is bound by it as if an adult, without the appointment of a guardian ad litem.

Freeing a child for adoption through a TPR proceeding

- **A TPR order ends all parental rights and obligations except the child's right of inheritance** which does not end until the final decree of adoption. 7B-1112.
- **The entry of a TPR order gives DSS all the rights to adoptive placement of the child as if the parents had relinquished the child**, including the right to consent to adoption. 7B-1112.
- **Prospective adoptive parents may file a petition to adopt the child while an appeal of a TPR order is pending**, but the adoption cannot be finalized until the appeal is resolved.

Post-TPR and relinquishment reviews

- **Reviews shall be held pursuant to 7B-908 and 7B-909 if one parent has relinquished a child**, and a TPR has not been instituted against the other parent within 6 months OR both parents have relinquished, and the child has not been adopted.
- **Reviews shall also be held pursuant to 7B-908 and 7B-909 if all parental rights have been terminated**, and the child has not been adopted.
- **DSS, the GAL, foster/adoptive parents and the juvenile if 12 or older get notice of these reviews.** If no GAL has been appointed, one may be appointed at the first review. The birth parents do not get notice or have a right to attend these hearings unless they have appealed the termination of their parental rights, and a court has stayed the order pending appeal.
- **These reviews are held every 6 months until the adoption is finalized.**
- **The purpose of these reviews is to ensure that every reasonable effort is being made to finalize a permanent plan.** To that end, the court must review the adequacy of the agency's plan and may require additional steps deemed necessary to accomplish the plan. Any evidence, including hearsay evidence, that the court considers relevant and reliable may be considered.
- **The court shall consider whether the county DSS permanency plan is adequate**, including whether the child has been listed with the NC Adoption Resource Exchange or the NC Photo Adoption Listing Service (PALS). In addition, the Division annually contracts with four private adoption agencies to help county DSS find adoptive homes for children. They are The Children's Home Society (Greensboro), Methodist Home for Children (Raleigh), Another Choice for Black Children (Charlotte), and Adoption Plus with Appalachian Family Innovations (Asheville).

District court jurisdiction in adoptions

- **Jurisdiction over adoptions was transferred from superior court to district court** for all adoption petitions filed on or after October 1, 1995. 7A-246. A party may appeal an order of the clerk in an adoption within 10 days to the district court. 48-2-607(b). When an issue of fact, an equitable defense, or a request for equitable relief is raised before the clerk, the clerk shall transfer the matter to the district court. 48-2-601(a1); 1-301.2.
- **When a child to be adopted is the subject of a juvenile proceeding, the district court having jurisdiction under 7B retains jurisdiction until the final order of adoption is entered, unless jurisdiction is waived for good cause.** 48-2-102(b). Once DSS places a child for adoption, and the adoption petition is filed, physical custody passes to the adoptive parents, and DSS must seek dismissal of the adoption in order to regain physical custody of the child. 48-3-502. That issue could be transferred to the district court by the clerk.
- **The selection of the adoptive placement is in the discretion of DSS under 7B-908(f).** The GAL may request information from and consult with DSS concerning the selection process. Any requested information shall be provided within five days. Once a child is free for adoption, the juvenile court may not order or change the child's adoptive placement. In re Asbury, 125 NC App 143 (1997); In re I.T.P.-L., 194 NC App 453 (2008).
- **A GAL who believes DSS abused its discretion in the selection of adoptive parents** must raise that issue before the clerk within 10 days after written notification that an adoption petition has been filed. 7B-908(f). That notice must be given by DSS within 10 days of receiving a copy of the adoption petition. The GAL files the motion before the clerk and provides written notice to DSS and the juvenile court that it has been filed. Neither the motion nor the adoption petition shall be filed in the district court file. The issue of abuse of discretion will be transferred to the district court for resolution under 48-2-601(a1).
- **The child's foster parents or other caregivers, not selected as adoptive parents, can file an adoption petition** and ask the clerk to waive the need for placement of the child and the need for DSS' consent because DSS has withheld it contrary to the best interest of the child. 48-2-301(a); 48-3-603(b)(1). Those issues would be transferred to district court under 48-2-601(a1).
- **There is no jurisdiction in any court to enforce an agreement for contact with or sharing of information about an adoptee following the final decree of adoption.** Any contact with or sharing of information about an adoptee is in the sole discretion of the adoptive parents.