

Jane's Top 12 Adoption Issues

- Most frequently asked by clerks
- Issues most likely to come to attention of the elected clerk
- Goal is to “spot the issue” and then find answer

#1 Take the Paper

- Accepting the adoption petition is a clerical, not a judicial act
- Chapter 48 allows any needed attachments to be filed later
- Filing the petition is often necessary to pursue legal clearance of parents
- Filing the petition can ensure an adoption can be completed if a petitioner dies

#2 Jurisdiction v. Venue

- Jurisdiction = NC's authority to act and is necessary for a valid adoption
- Out of state petitioners can adopt in NC under certain circumstances
- Venue = the county where the petition is filed. Incorrect venue will not harm decree

#3 Citizenship or Immigration Status

- Citizenship or documented immigration status is not required to adopt or be adopted in NC
- Lack of documented status may present best interest issue
- Immigration is federal issue and advice of an immigration attorney may be needed

#4 Placement for Adoption

- A child must be “placed for adoption” or that requirement must be waived
- Who may place
 - Married parents who are living together
 - Parent with legal and physical custody
 - Agency that has legally cleared parents
 - Guardian of child (Chapter 35A)

Placement for Adoption

- Paragraph 6 on petition states who placed child for adoption and when
- New form will allow space to request waiver
- Relative adoptions most likely to need waiver – no parent to consent or parent does not have custody

#5 Preplacement Assessment (PPA)

- Adoptive home study that determines suitability to adopt
- Required in all agency and independent, unrelated adoptions – not required in most relative and all stepparent adoptions
- Placement of a child before placing parent has received PPA from adoptive parents gives parent additional 5 business days to revoke after receipt of PPA

#6 Background Information

- Family medical history and general background information on birth parents
- Two forms – DSS- 5102 and 5103
- Information can be provided by anyone with knowledge
- Very important to adoptive parents and adoptee as an adult

#7 Revocation of Consents or Relinquishments

- Birth parents have 7 days to revoke
- Must be in writing
- 7th day cannot end on weekend or holiday
- May deliver revocation on 7th day
- May send revocation by overnight delivery service as late as 7th day
- May send revocation by certified mail as late as 7th day

Revocations

- Revocation of a consent may extend up to and including 5 business days after a placing parent receives a late preplacement assessment (DSS-5219)
- Revocation period for a designated relinquishment when the designee will not adopt is 10 days after receipt of notice from agency

#8 Notice to Fathers in Adoption

- Petitioner must give notice to any father who has not consented or otherwise been cleared
- Notice is given in adoptions rather than use of summons
- Notice must be served per Rule 4 – personal service, certified mail, publication

Publication Notice

- Must make a diligent effort to find father before publication notice is allowed
- Petitioner must submit affidavit of those efforts and where publication will run
- Notice must contain information from which the father could identify himself

#9 Clearing Fathers After Notice

- If a married father does not respond to notice, his consent is not required
- If an unwed father does not respond to notice, his consent is also not required
- In either case, the clerk enters an order that his consent is not required
- His parental rights will be terminated by final decree

Clearing Fathers After Notice

- If married father responds to notice and does not consent, his rights must be terminated
- If unwed father responds to notice and does not consent, need hearing on whether his consent is required: Has he acknowledged paternity, paid support, and visited or communicated prior to filing of petition?

#10 Waiver of 90 Days

- Chapter 48 presumes minimum of 90 days to complete adoption, but that can be shortened
- Purpose of 90 days is to allow 30 days for notice and 60 days for report to court plus time to assess best interest
- 90 days frequently not needed in agency adoptions

#11 Waiver of Report to Court

- Post-placement report to court is required in all adoptions except can be waived in:
 - Grandparent adoptions when child has lived there 2 years
 - Stepparent adoptions with two years of marriage and primary custody of child
 - Waiver not possible in certain circumstances

Waiver of Report to Court

- If waiver considered, clerk is advised to obtain birth and marriage records to validate grandparent and stepparent status
- Clerk may also want to conduct criminal record check on petitioners
- Clerk still responsible for determining whether adoption is in child's best interest

#12 Dismissals

- Voluntary dismissal by petitioner without prejudice allows re-filing within 12 months, any parental consents remain valid, and custody of child does not change
- Dismissal by clerk voids any parental consents which may return custody of child to birth parent
- 5 days notice of dismissal hearing required before clerk may dismiss
