

# NORTH CAROLINA TRIAL JUDGES' BENCH BOOK

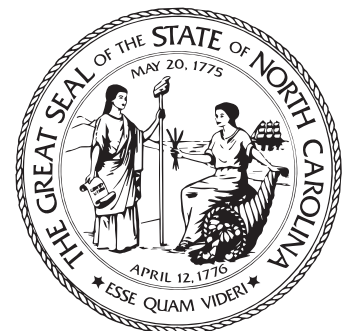
## 2016 DISTRICT COURT VOLUME 1 FAMILY LAW

### Chapter 8 Adoption

In cooperation with the School of Government, The University of North Carolina at Chapel Hill  
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# Chapter 8: Adoption

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# Chapter 8: Adoption

## I. Introduction

### A. Definitions

1. See G.S. 48-1-101 for a complete list of definitions relevant to adoptions.
  - a. Adoption: “the creation by law of the relationship of parent and child between two individuals.” [G.S. 48-1-101(2).]
  - b. Adoptee: “an individual who is adopted, is placed for adoption, or is the subject of a petition for adoption . . .” [G.S. 48-1-101(1).]
  - c. Adoption facilitator: “an individual or a nonprofit entity that assists biological parents in locating and evaluating prospective adoptive parents without charge.” [G.S. 48-1-101(3a).]
  - d. Adult: “an individual who has attained 18 years of age, or if under . . . 18, is either married or has been emancipated under the applicable State law.” [G.S. 48-1-101(3).]
  - e. Agency: a county department of social services in North Carolina, or a public or private association, corporation, institution, or other person or entity “that is licensed or otherwise authorized by the law of the jurisdiction where it operates to place minors for adoption.” [G.S. 48-1-101(4).]
  - f. Agency identified adoption: “a placement where an agency has agreed to place the minor with a prospective adoptive parent selected by the parent or guardian.” [G.S. 48-1-101(4a).]
  - g. Child: “a son or daughter, by either birth or adoption.” [G.S. 48-1-101(5).]
  - h. Guardian: an individual, other than a parent, (1) appointed pursuant to G.S. Chapter 35A, with the authority set out in G.S. 35A-1241, or (2) “appointed in another jurisdiction according to the law of that jurisdiction who has the power to consent to adoption under the law of that jurisdiction.” [G.S. 48-1-101(8).] The term “guardian” as used in G.S. Chapter 48 does not mean one appointed by the district court in a juvenile proceeding under G.S. Chapter 7B.
  - i. Minor: “an individual under 18 years of age who is not an adult.” [G.S. 48-1-101(10).]
  - j. Party: a petitioner, an adoptee, or any person whose consent to an adoption is necessary under G.S. Chapter 48 but whose consent has not been obtained. [G.S. 48-1-101(11).]
  - k. Parent: as used in Article 1 of Chapter 48, “parent” includes a person who has become a parent by adoption. [G.S. 48-1-102.]

- l. Placement: the “transfer of physical custody of a minor to the selected prospective adoptive parent.” [G.S. 48-1-101(13).]
  - i. Placement may be direct placement by a parent or guardian of the minor or placement by an agency. [G.S. 48-1-101(13)a., b.]
  - ii. See [Section I.C](#), below, for more on the different types of adoptions.
- m. Preplacement assessment: “a document, whether prepared before or after placement, that contains the information [on a prospective adoptive parent as] required by G.S. 48-3-303 . . .” [G.S. 48-1-101(14).] See [Section IV.B](#), below, for more on preplacement assessments.
- n. Relinquishment: “the voluntary surrender of a minor to an agency for the purpose of adoption.” [G.S. 48-1-101(15).] See [Section IV.F](#), below, for more on relinquishment.
- o. Stepparent: “an individual who is the spouse of a parent of a child, but who is not a legal parent of the child.” [G.S. 48-1-101(18).] See [Section V](#), below, on adoption of a minor by a stepparent. Same-sex couples now have the fundamental right to marry in all states. [*Obergefell v. Hodges*, 135 S. Ct. 2584 (U.S. 2015) (state laws at issue in this case were invalid to the extent they excluded same-sex couples from civil marriage on the same terms and conditions as opposite-sex couples; one of the governmental rights and benefits that married couples enjoy is the right to adopt).] A stepparent as defined in G.S. 48-1-101(18) may include a same-sex spouse. See Sara DePasquale and Meredith Smith, *Same-Sex Marriage and Adoptions of a Minor by a Stepparent*, UNC SCH. OF GOV’T: COATES’ CANONS: NC LOCAL GOV’T L. BLOG (Oct. 17, 2014), <http://canons.sog.unc.edu/same-sex-marriage-and-adoptions-of-a-minor-by-a-stepparent>.

## B. Proper Parties in Adoption Proceedings

1. Who may adopt.
  - a. Any adult may adopt another individual, but spouses may not adopt each other. [G.S. 48-1-103.]
  - b. If the individual who files the adoption petition is unmarried, no other individual may join in the petition. [G.S. 48-2-301(c).]
  - c. Generally, if a petitioner is married, the spouse of the petitioner must also be a petitioner unless *the spouse is incompetent* or this requirement is *waived for cause* by the court. [G.S. 48-2-301(b); 48-2-303.] The following exceptions apply:
    - i. When a person seeks to adopt the child of his spouse (a stepparent adoption), the stepparent’s spouse must consent to the adoption but does not join in the petition. [See G.S. 48-2-301(b); 48-4-102(1); *In re Estate of Edwards*, 316 N.C. 698, 343 S.E.2d 913 (1986) (under former statute, biological parent/wife was not required to join in petition by her husband/stepparent to adopt her two minor children); JOAN G. BRANNON & ANN M. ANDERSON, NORTH CAROLINA CLERK OF SUPERIOR COURT PROCEDURES MANUAL Vol. 2, Pt. VII (Special Proceedings), ch. 110 (Adoptions), App. VIII (Checklist for Stepparent Adoption), and App. XI (Adoption Questions and Answers), Art. 4, ¶ 2 (UNC School of Government 2012) (hereinafter CLERKS MANUAL).] See [Section V](#), below, for more on stepparent adoption.

- ii. When a former parent seeks to readopt an adoptee adopted by a stepparent, the petitioner's spouse shall not join the petition. [G.S. 48-2-301(b); 48-6-102(b).] See [Section VII.A](#), below, for more on re-adoption by a former parent.
        - iii. When a prospective adoptive parent of an adult is the adoptee's stepparent, the petitioner's spouse does not join in the petition. [G.S. 48-5-101(b).] See [Section VI](#), below, for more on adoption of an adult.
      - d. A prospective adoptive parent who is not a stepparent may file a petition to adopt a minor child only if the minor has been placed with the prospective adoptive parent by one or both parents, as set out in G.S. 48-3-201(a), by an agency or by a guardian, unless the requirement of placement is waived by the court for cause. [G.S. 48-2-301(a).]
      - e. There is no statute or case law indicating that a person must be a U.S. citizen to adopt a child in North Carolina. [See 3 Lee's North Carolina Family Law § 17.4 (5th ed. 2002) (indicating that it is not unusual for either the adoptive parent or the adoptee not to be a U.S. citizen and that parties to these adoptions often need specialized assistance); CLERKS MANUAL, Vol. 2, Pt. VII (Special Proceedings), ch. 110 (Adoptions), App. XI (Adoption Questions and Answers), Art. 1, ¶ 2.]
  2. Who may be adopted.
    - a. Any individual may be adopted, as provided in G.S. Chapter 48. [G.S. 48-1-104.]
      - i. Minors may be adopted under the procedures set out in Articles 3 and 4 of G.S. Chapter 48. See [Sections IV](#) and [V](#), below.
      - ii. Adults may be adopted under the procedures set out in Article 5 of G.S. Chapter 48. See [Section VI](#), below.
    - b. A child who is in North Carolina illegally or is not a U.S. citizen may be adopted. [CLERKS MANUAL, Vol. 2, Pt. VII (Special Proceedings), ch. 110 (Adoptions), App. XI (Adoption Questions and Answers), Art. 1, ¶ 2. See *In re S.R.*, 193 N.C. App. 752, 671 S.E.2d 72 (2008) (**unpublished**) (rejecting, in a termination of rights proceeding, unsupported contentions of the respondent that three of his four children were not adoptable because of their status as illegal immigrants and that termination of his parental rights would subject those children to a greater risk of deportation).]
      - i. If the adoption of the adoptee is subject to the Convention of 29 May 1993 on Protection of Children and Co-operation in Respect of Intercountry Adoption (Hague Adoption Convention), the provisions of the Hague Adoption Convention shall control the individual's adoption. Documentation establishing whether the Hague Adoption Convention applies to an adoptee may be filed and copies thereof may be certified by the court before or after the decree of adoption has been granted. [G.S. 48-1-108.1, *added by* S.L. 2015-54, § 1, effective June 4, 2015.]
      - ii. To determine whether a country is a party to the Hague Adoption Convention, see U.S. DEP'T OF STATE, BUREAU OF CONSULAR AFFAIRS, TRAVEL.STATE.GOV, *Intercountry Adoption: Hague Convention, Convention Countries*, <https://travel.state.gov/content/adoptionsabroad/en/hague-convention/convention-countries.html>.

3. Who is not a necessary party.
  - a. A person who has executed a consent or relinquishment or otherwise waived notice is not a necessary party to an adoption proceeding. [G.S. 48-2-406(b).] For limitations on the appearance in subsequent proceedings of such a person, see [Section III.H.6.c](#), below.
  - b. A parent whose rights have been terminated by a court of competent jurisdiction. [See G.S. 7B-1112.] See [Section III.L](#), below, for more on the relationship between adoption and termination of parental rights (TPR) proceedings.
  - c. A father who had been found by a valid order to have abandoned his child. [*Barnes v. Wells*, 165 N.C. App. 575, 599 S.E.2d 585 (2004) (once the valid abandonment order was entered, respondent father was no longer a necessary party to the adoption proceeding).]
  - d. A person whose actions resulted in a conviction of first- or second-degree forcible rape, statutory rape of a child by an adult, or first-degree statutory rape and the conception of the child to be adopted. [See G.S. 48-3-603(a)(9), *amended by* S.L. 2015-181, § 34, effective Dec. 1, 2015, and applicable to offenses committed on or after that date (consent to adopt not required).]

## C. Types of Adoption

1. Adults.
  - a. Article 5 of G.S. Chapter 48 authorizes the adoption of an adult, including married and emancipated minors, by another adult. See [Section VI](#), below.
  - b. Article 6 of G.S. Chapter 48 allows the re-adoption of a minor child or an adult by a former parent. [G.S. 48-6-101 (a minor child is re-adopted pursuant to Article 3 of Chapter 48, and an adult is re-adopted pursuant to Article 5).] See [Section VII.A](#), below.
2. Minor children.
  - a. Article 3 of G.S. Chapter 48 authorizes both agency and direct placements of minor children for adoption. [See *also Boseman v. Jarrell*, 364 N.C. 537, 704 S.E.2d 494 (2010) (Chapter 48 provides for three types of adoptions of minors: direct placement, agency placement, and stepparent adoption).]
  - b. Article 4 of G.S. Chapter 48 authorizes the adoption of a minor stepchild by a stepparent. See [Section V](#), below.
  - c. The provisions of G.S. Chapter 48 providing for adoptions of minors, along with the provisions for the adoptions of adults and the re-adoption by former parents of both adults and minors, indicate “the comprehensive and limiting nature” of the statutory procedure for adoption. [*Boseman v. Jarrell*, 364 N.C. 537, 543, 704 S.E.2d 494, 499 (2010).]
  - d. Each type of adoption is defined below and discussed more fully in this chapter.



3. Direct placement adoption.
  - a. In a direct placement, a parent or guardian personally selects a prospective single adoptive parent or married parents. [G.S. 48-3-202(a); 48-2-301; 48-2-303.] The person selected becomes the petitioner in the adoption proceeding.
  - b. The parent or guardian in a direct placement must execute a consent to the minor's adoption. [G.S. 48-3-201(b).] For detailed discussion of consent and required content of a consent, see [Section IV.E](#), below.
  - c. Unless the court orders otherwise, when the parent or guardian places the adoptee directly with the petitioner(s), the petitioner acquires the parent's or guardian's right to legal and physical custody of the adoptee and becomes responsible for his care and support after the earliest of the following:
    - i. Execution of consent by the parent or guardian who placed the adoptee.
    - ii. Filing of a petition for adoption by the petitioner.
    - iii. Execution of a document by a parent or guardian having legal and physical custody of the adoptee that temporarily transfers custody to the petitioner pending the execution of a consent. [G.S. 48-3-501.]
  - d. See [Section IV](#), below, for more detail on direct placement adoption.
4. Agency placement adoption.
  - a. An agency acquires legal and physical custody of a child for purposes of adoptive placement in one of two ways:
    - i. A relinquishment as set out in G.S. 48-3-701 *et seq.* or
    - ii. A court order terminating the rights of a parent or guardian of the child. [G.S. 48-3-203(a). *See also* G.S. 7B-1112(1).]
  - b. Relinquishment by a parent.
    - i. A parent or guardian who wants an agency to place a minor for adoption must execute a relinquishment to the agency. [G.S. 48-3-201(c).] See [Section IV.F](#), below, on relinquishment of a minor for adoption.
    - ii. If the agency has agreed to place the child with the prospective adoptive parent selected by the parent or guardian, the agency places the child with the individual selected. [G.S. 48-3-203(d)(1).] This is an "agency identified adoption" as defined in G.S. 48-1-101(4a).
    - iii. If the agency has not agreed to place the child with a prospective adoptive parent selected by the parent or guardian, the agency places the child with a prospective adoptive parent selected by the agency. [G.S. 48-3-203(d)(2).]
    - iv. An agency with legal and physical custody of a minor may place the minor for adoption at any time after a relinquishment is executed by anyone as permitted by G.S. 48-3-701. [G.S. 48-3-201(d).]
      - (a) If both parents are married to each other and living together, both parents must act jointly in relinquishing a child to an agency. [G.S. 48-3-701(a).]

- v. Placement may occur even if other consents are required before an adoption can be granted, unless an individual whose consent is required objects in writing to placement. [G.S. 48-3-201(d).]
  - c. See [Section IV](#), below, for more detail on agency placement adoption.
5. Stepparent adoption.
- a. In a stepparent adoption, a stepparent files a petition to adopt the child of the stepparent's spouse. [G.S. 48-4-101.]
  - b. See [Section V](#), below, for more detail on adoption of a minor by a stepparent.
6. Other parent-child relationships.
- a. Equitable adoption.
    - i. The North Carolina Supreme Court recognized the doctrine of equitable adoption in *Lankford v. Wright*, 347 N.C. 115, 489 S.E.2d 604 (1997).
    - ii. Equitable adoption is a remedy that recognizes a foster child's right to inherit from the person or persons who contracted to adopt the child and who honored that contract in all respects except through formal statutory procedures. [*Lankford v. Wright*, 347 N.C. 115, 489 S.E.2d 604 (1997).]
      - (a) As used in *Lankford*, the term "foster" means "giving or receiving parental care though not kin by blood or related legally." [*Lankford*, 347 N.C. at 118 n.1, 489 S.E.2d at 606 n.1.]
      - (b) As used in *Lankford*, "contract" means "an express or implied agreement to adopt the child." [*Lankford*, 347 N.C. at 119, 489 S.E.2d at 606. See [Section I.C.6.a.iv](#), below, setting out the elements of equitable adoption.]
    - iii. While equitable adoption creates the child's right to inherit from the foster parent, equitable adoption does not create a legal adoption and does not impair the statutory procedures for adoption. Nor does it confer the incidents of formal statutory adoption. [*Lankford v. Wright*, 347 N.C. 115, 489 S.E.2d 604 (1997).]
    - iv. Elements of equitable adoption are:
      - (a) An express or implied agreement to adopt the child,
      - (b) Reliance on that agreement,
      - (c) Performance by the birth parents of the child in giving up custody,
      - (d) Performance by the child in living in the home of the foster parents and acting as their child,
      - (e) Partial performance by the foster parents in taking the child into their home and treating the child as their own, and
      - (f) The intestacy of the foster parents. [*Lankford v. Wright*, 347 N.C. 115, 119, 489 S.E.2d 604, 606-07 (1997) (citing 2 AM. JUR. 2D *Adoption* § 54 (1994)).]
  - b. Parent by estoppel.
    - i. A parent by estoppel has been defined as "a person who, although not a biological or adoptive parent[,] 'lived with the child since the child's birth, holding out and accepting full and permanent responsibilities as parent, as part of a prior co-parenting agreement with the child's legal parent . . . to raise a child together

each with full parental rights and responsibilities, when the court finds that recognition of the individual as a parent is in the child's best interests.' " [*Heatzig v. MacLean*, 191 N.C. App. 451, 456, 664 S.E.2d 347, 351 (quoting PRINCIPLES OF THE LAW OF FAMILY DISSOLUTION: ANALYSIS AND RECOMMENDATIONS § 2.03(b) (AM. LAW INST.)), *appeal dismissed, review denied*, 362 N.C. 681, 670 S.E.2d 564 (2008).]

- ii. The North Carolina Court of Appeals has declined to adopt the theory of parent by estoppel, holding that the doctrine is inconsistent with previous rulings by both the U.S. Supreme Court and the North Carolina Supreme Court. [See *Heatzig v. MacLean*, 191 N.C. App. 451, 664 S.E.2d 347 (declining plaintiff's invitation to adopt the theory of parent by estoppel), *appeal dismissed, review denied*, 362 N.C. 681, 670 S.E.2d 564 (2008); see also *Estroff v. Chatterjee*, 190 N.C. App. 61, 660 S.E.2d 73 (2008) (the parent by estoppel and de facto parent doctrines have not been recognized in North Carolina).]
- iii. A district court in North Carolina is without authority to confer parental status upon a person who is not the biological parent of a child. [*Heatzig v. MacLean*, 191 N.C. App. 451, 664 S.E.2d 347, *appeal dismissed, review denied*, 362 N.C. 681, 670 S.E.2d 564 (2008).] The sole means of creating the legal relationship of parent and child is pursuant to the adoption statutes in G.S. Chapter 48. [*Heatzig*.]
- iv. See [Child Custody](#), Bench Book, Vol. 1, Chapter 4 for a more complete discussion of the *Estroff* and *Heatzig* cases cited above.

#### D. Legal Effect of an Adoption Decree

1. Adoption is the only way to confer legal parental status upon a person who is not the biological parent of a child. [*Heatzig v. MacLean*, 191 N.C. App. 451, 664 S.E.2d 347, *appeal dismissed, review denied*, 362 N.C. 681, 670 S.E.2d 564 (2008).]
2. An adoptive parent is entitled to the parental preference in a custody proceeding against a nonparent. [See *Best v. Gallup*, 215 N.C. App. 483, 715 S.E.2d 597 (2011) (mother who adopted child alone waived her protected status when she and nonparent jointly agreed to care for the child before the adoption, jointly cared for the child before and after the adoption for approximately five years, adoptive mother identified nonparent to the child and to others as the child's father, and adoptive mother did not state or otherwise indicate an intention that the relationship between the nonparent and the child would be temporary), *appeal dismissed, review denied*, 724 S.E.2d 505 (N.C. 2012).]
3. Substitution of families.
  - a. A decree of adoption effects a complete substitution of families for all legal purposes. [G.S. 48-1-106(a); *Boseman v. Jarrell*, 364 N.C. 537, 704 S.E.2d 494 (2010) (citing the statute and noting that a direct placement adoption envisions a complete substitution of parties).]
    - i. Children adopted by a stepparent were considered to be lineal descendants of their mother's second marriage and were not lineal descendants of her first marriage to their father. [*In re Estate of Edwards*, 316 N.C. 698, 343 S.E.2d 913

- (1986) (this classification resulted in stepparent receiving a larger distributive share upon dissent from his wife’s will).]
- ii. Grandchildren of Grandmother Crumpton who were adopted out of the Crumpton family pursuant to their father’s consent would not take as “issue” of Grandmother Crumpton as they were, after adoption, legal strangers to the Crumpton bloodline. [*Crumpton v. Mitchell*, 303 N.C. 657, 281 S.E.2d 1 (1981) (complete substitution of families and severance of legal ties with the birth parents includes not only intestate succession but also property passing under deeds, grants, wills, or other written instruments).]
- b. A decree of adoption divests the former parents of all rights with respect to the adoptee. [G.S. 48-1-106(c); *Boseman v. Jarrell*, 364 N.C. 537, 704 S.E.2d 494 (2010) (a direct placement adoption decree terminates the adoptee’s relationship with her former parent or parents); *In re T.H.*, 232 N.C. App. 16, 753 S.E.2d 207 (2014) (after adoptive grandmother’s death, biological mother did not have a right to intervene in a juvenile proceeding involving adopted children, nor did she have standing to appeal an adjudication or disposition order for children; mother’s parental rights severed by adoption); *Kelly v. Blackwell*, 121 N.C. App. 621, 468 S.E.2d 400 (biological father lost right to seek custody of or visitation with his children after adoption decree was entered; biological father had consented to children’s adoption), *review denied*, 343 N.C. 123, 468 S.E.2d 782 (1996).] See [Section IV.E.14](#), below, for the legal effect of consent to an adoption.
4. Property rights.
    - a. From the date of the signing of the adoption decree, the adoptee is entitled to inherit real and personal property from the adoptive parents, in accordance with the statutes on intestate succession, and has the same legal status, including all legal rights and obligations, as a child born of the adoptive parents. [G.S. 48-1-106(b); *Crumpton v. Mitchell*, 303 N.C. 657, 281 S.E.2d 1 (1981) (citing *Headen v. Jackson*, 255 N.C. 157, 120 S.E. 2d 598 (1961)) (for all legal purposes, adopted child is in the same position as if he had been born to his adoptive parents at the time of the adoption); *In re Estate of Edwards*, 316 N.C. 698, 343 S.E.2d 913 (1986) (law is well settled that adopted children are afforded the same legal status as natural children).]
    - b. An adoption divests any property interest, entitlement, or other interest contingent on an ongoing family relationship with the adoptee’s former family. [G.S. 48-1-107.]
      - i. Grandchildren of Grandmother Crumpton who were adopted out of the Crumpton family pursuant to their father’s consent would not take as “issue” of Grandmother Crumpton as they were, after adoption, legal strangers to the Crumpton bloodline. [*Crumpton v. Mitchell*, 303 N.C. 657, 281 S.E.2d 1 (1981) (complete substitution of families and severance of legal ties with the birth parents includes not only intestate succession but also property passing under deeds, grants, wills, or other written instruments).]
    - c. A decree of adoption does not divest any vested property interest owned by the adoptee immediately prior to the decree of adoption, including any public assistance benefit or child support payment due on or before the date of the decree. [G.S. 48-1-107.]

- d. A decree of adoption relieves the former parents of all legal duties and obligations due from them to the adoptee, except that a former parent's duty to make past-due payments for child support is not terminated. [G.S. 48-1-106(c).] See [Section IV.F.4.c.ii.\(a\)](#), below, for more about a parent's obligation for pre-adoption child support.
5. Grandparents' rights to visitation.
    - a. One general custody and visitation statute and three grandparent visitation statutes are the basis for a grandparent's complaint for visitation with a grandchild: G.S. 50-13.1(a); 50-13.2(b1); 50-13.2A; and 50-13.5(j).
    - b. The North Carolina appellate courts have not yet considered the constitutionality of any of these four statutes in the context of grandparent visitation in light of the *Petersen v. Rogers*, 337 N.C. 397, 445 S.E.2d 901 (1994), and *Price v. Howard*, 346 N.C. 68, 484 S.E.2d 528 (1997), opinions. However, the appellate courts have narrowed the interpretation of these statutes in recognition of the rights of parents. For a complete discussion, see [Child Custody](#), Bench Book, Vol. 1, Chapter 4.
    - c. Two statutes in G.S. Chapter 48 address grandparent visitation in the context of adoption:
      - i. G.S. 48-1-106(f) provides that the adoption procedures in Chapter 48 do not deprive a biological grandparent of any visitation rights with an adopted grandchild available under the three grandparent visitation statutes, G.S. 50-13.2(b1), 50-13.2A, and 50-13.5(j).
      - ii. G.S. 48-4-105 provides that an adoption of a child by the child's stepparent does not terminate or otherwise affect visitation rights previously awarded to a biological grandparent of a minor pursuant to G.S. 50-13.2, nor does it affect the right of a biological grandparent to petition for visitation rights pursuant to G.S. 50-13.2A or 50-13.5(j).
    - d. Prohibitions and limitations on a grandparent's visitation with an adopted child.
      - i. After a child has been adopted by adoptive parents, neither of whom is related to the child, and where parental rights of both biological parents have been terminated, a biological grandparent of that child cannot request visitation rights pursuant to either G.S. 50-13.2(b1) or 50-13.2A. [G.S. 50-13.2(b1); 50-13.5(j); 50-13.2A.]
      - ii. Grandparents did not have standing under G.S. 50-13.1 to seek custody of or visitation with a grandchild when the child was in department of social services (DSS) custody after one parent surrendered the child for adoption and the parental rights of the other parent had been terminated. [*In re Swing v. Garrison*, 112 N.C. App. 818, 436 S.E.2d 895 (1993) (citing *Oxendine v. Catawba Cty. Dep't of Soc. Servs.*, 303 N.C. 699, 281 S.E.2d 370 (1981)). Cf. *Smith v. Alleghany Cty. Dep't of Soc. Servs.*, 114 N.C. App. 727, 443 S.E.2d 101 (without considering grandmother's standing under G.S. 50-13.1, an order dismissing her petition for custody of grandchildren in DSS custody after parents' parental rights had been terminated was reversed), *review denied*, 337 N.C. 696, 448 S.E.2d 533 (1994).]
      - iii. In a stepparent or relative adoption, a biological grandparent with a substantial relationship with the child may seek visitation rights. [G.S. 50-13.2(b1);

50-13.2A; 48-4-105(b); 50-13.5(j); *Hill v. Newman*, 131 N.C. App. 793, 509 S.E.2d 226 (1998).]

- (a) While G.S. 50-13.2A allows a court to grant visitation, a trial court is not required to grant visitation unless it finds that visitation with the grandparent is in the best interest of the child. [G.S. 50-13.2A; *Hill v. Newman*, 131 N.C. App. 793, 509 S.E.2d 226 (1998) (citing *Blackley v. Blackley*, 285 N.C. 358, 204 S.E.2d 678 (1974)) (best interest of the child, not best interest of the grandparent, is the polar star).]
- (b) A grandparent who had helped “raise the grandchildren from birth” and with whom the grandchildren had lived for approximately eight months before their adoption had a “substantial relationship” with her grandchildren. [*Hill v. Newman*, 131 N.C. App. 793, 798, 509 S.E.2d 226, 229–30 (1998).]
- (c) Trial court’s decision to deny grandmother visitation upheld as not in children’s best interest when grandmother was unable to accept that adoptive parents were now the children’s parents and was unable to get along with adoptive parents. [*Hill v. Newman*, 131 N.C. App. 793, 509 S.E.2d 226 (1998).]

## E. Purpose of the Adoption Statutes

1. The primary purpose of G.S. Chapter 48 is to advance the welfare of minors by:
  - a. Protecting minors from unnecessary separation from their original parents,
  - b. Facilitating the adoption of minors in need of adoptive placement by persons who can provide appropriate and nurturing care,
  - c. Protecting minors from placement with adoptive parents unfit to have the responsibility for their care and rearing, and
  - d. Assuring the finality of adoption. [G.S. 48-1-100(b)(1).]
2. Secondary purposes of Chapter 48 include:
  - a. Protection of biological parents from ill-advised decisions to relinquish a child or to consent to the child’s adoption,
  - b. Protection of adoptive parents from assuming responsibility for a child about whose heredity or mental or physical condition they know nothing,
  - c. Protection of the parties’ privacy, and
  - d. To discourage unlawful trafficking in minors and other unlawful placement activities. [G.S. 48-1-100(b)(2).]

## F. Construction of G.S. Chapter 48

1. G.S. Chapter 48 is to be liberally construed and applied to promote its underlying purposes and policies. [G.S. 48-1-100(d).] However, notwithstanding this provision, when the language of a statute is clear and unambiguous, the courts are without power to liberally construe that language. [*Boseman v. Jarrell*, 364 N.C. 537, 704 S.E.2d 494 (2010).]

2. In construing the chapter, the needs, interests, and rights of minor adoptees are primary, and any conflict between the interests of a minor adoptee and those of an adult shall be resolved in favor of the minor. [G.S. 48-1-100(c).]

## II. Jurisdiction and Venue

### A. Subject Matter Jurisdiction

1. Jurisdiction of the clerk of superior court, the superior court, and the district court. The office of the clerk of superior court, the district court, and the superior court each is considered a court of competent jurisdiction for the purpose of:
  - a. Accepting voluntary consents to adoption under the Indian Child Welfare Act (ICWA), 25 U.S.C. § 1913, or the laws of any state and
  - b. Determining whether there is good cause to deviate from adoptive placement preferences under the ICWA, 25 U.S.C. § 1915(a). [G.S. 48-3-605(g), *added by* S.L. 2015-264, § 44(a), effective Oct. 1, 2015.]
2. Jurisdiction of the clerk of superior court and the district court.
  - a. Adoption is a special proceeding before the clerk of superior court. [G.S. 48-2-100(a).]
  - b. The district court has jurisdiction of adoption proceedings that are appealed from or transferred by the clerk. [G.S. 1-301.2; 7A-246; 48-2-601(a1); 48-2-607(b).]
    - i. The only way a district court obtains jurisdiction to hear matters relating to an adoption proceeding brought before the clerk is by transfer [G.S. 48-2-601(a1); 1-301.2(b).] or appeal. [G.S. 48-2-607(b); 1-301.2(e). *See Norris v. Norris*, 203 N.C. App. 566, 692 S.E.2d 190 (2010) (district court lacked jurisdiction to review an order of the clerk in an adoption proceeding because no appeal was taken pursuant to G.S. 48-2-607(b), nor was the order final for appeal purposes, and the case had not been transferred by the clerk; when the matter became contested after entry of the clerk's order at issue, the clerk should have transferred the proceeding to the district court for adjudication).]
  - c. Transfer to district court.
    - i. If an issue of fact, an equitable defense, or a request for equitable relief is raised before the clerk, the clerk shall transfer the proceeding to the district court under G.S. 1-301.2. [G.S. 48-2-601(a1); 1-301.2(b).] Before Oct. 1, 1995, if issues of law and fact, or of fact only, were raised before the clerk, the clerk transferred the matter to superior court. [See S.L. 1995-88, § 2, effective Oct. 1, 1995, and applicable to adoption petitions filed on or after that date.]
    - ii. What constitutes an issue of fact or request for equitable relief.
      - (a) When an adoption proceeding becomes contested, the clerk is required to transfer the proceeding to district court for adjudication. [*Norris v. Norris*, 203 N.C. App. 566, 692 S.E.2d 190 (2010) (after father killed mother, custody of the couple's children was awarded to paternal grandparents, who,

- shortly thereafter, filed a petition to adopt the children; after the adoption proceeding was “continued” for notice to be given to the maternal grandmother, maternal grandmother was allowed to intervene in the custody action and filed a motion to consolidate the adoption proceeding pending before the clerk with the custody proceeding in district court; at that point, clerk was required to transfer the adoption proceeding to district court for adjudication because the matter was contested).]
- (b) An issue of fact arises whenever a material fact is maintained by one party and controverted by the other. [*Oxendine v. Catawba Cty. Dep’t of Soc. Servs.*, 303 N.C. 699, 281 S.E.2d 370 (1981).]
  - (c) Whether father had willfully abandoned child raised an issue of fact. [*In re Adoption of Searle*, 74 N.C. App. 61, 327 S.E.2d 315 (1985).]
  - (d) Father’s attempt to contest an order of the clerk that determined his consent to an adoption was not required raised issues of fact and asserted a request for equitable relief. [*In re Adoption of C.E.Y.*, 228 N.C. App. 290, 745 S.E.2d 883 (2013) (father filed a document labeled “appeal” and a motion to set aside the clerk’s order based on G.S. 1A-1, Rules 59 and 60; a review of the substance of father’s filings showed that father actually requested equitable relief and raised issues of fact, making transfer pursuant to G.S. 1-301.2(b) proper).]
  - (e) Matter was properly transferred when issues of fact and law regarding the birth parents’ consent to the adoption, consent to the adoption by the department of social services (DSS), and a pending action for custody in New Jersey became considerations. [*In re Adoption of Duncan*, 112 N.C. App. 196, 435 S.E.2d 121 (1993).]
  - (f) The determination of whether DSS unreasonably withheld its consent to allow foster parents to institute an adoption proceeding involved an issue of fact. [*Oxendine v. Catawba Cty. Dep’t of Soc. Servs.*, 303 N.C. 699, 281 S.E.2d 370 (1981).]
- iii. Upon transfer, the district court judge may hear and determine all matters in controversy unless it appears to the judge that justice would be more efficiently administered by the judge’s disposing of only the matter leading to the transfer and remanding the special proceeding to the clerk. [G.S. 1-301.2(c).]
- d. Appeal to district court from final order of the clerk.
    - i. A party to an adoption proceeding may appeal a final order entered by the clerk to district court by giving notice of appeal as provided in G.S. 1-301.2. [G.S. 48-2-607(b); 1-301.2(e).] Before Oct. 1, 1995, an appeal of a judgment of the clerk in an adoption proceeding was to superior court. [See S.L. 1995-88, § 1, effective Oct. 1, 1995, and applicable to adoption petitions filed on or after that date.]
      - (a) An order by the clerk setting aside two adoption decrees to allow for notice to be given did not dispose of the adoption proceeding, so the clerk’s order was not final for appeal purposes. [*Norris v. Norris*, 203 N.C. App. 566, 692 S.E.2d 190 (2010).]



- (b) A challenge to an order of the clerk characterized as an appeal may be, depending on its substance, a matter requiring transfer to the district court pursuant to G.S. 1-301.2(b). [See *In re Adoption of C.E.Y.*, 228 N.C. App. 290, 745 S.E.2d 883 (2013) (even though father characterized his challenge to the clerk’s order as an appeal and also filed a motion to set aside the order pursuant to G.S. 1A-1, Rules 59 and 60, father actually requested equitable relief and raised issues of fact; transfer to district court pursuant to G.S. 1-301.2(b) was proper).]
      - ii. The aggrieved party has ten days after entry of the clerk’s order or judgment to appeal to district court. [G.S. 1-301.2(e).]
      - iii. When there is an appeal, the hearing is de novo. [G.S. 1-301.2(e).]
3. When jurisdiction exists.
  - a. A court has subject matter jurisdiction over an adoption proceeding commenced under G.S. Chapter 48 if, at the commencement of the proceeding,
    - i. The adoptee has lived in the state for at least the six consecutive months immediately preceding the filing of the petition or from birth, [G.S. 48-2-100(b)(1).]
    - ii. The prospective adoptive parent has lived or been domiciled in the state for at least the six consecutive months immediately preceding the filing of the petition, [G.S. 48-2-100(b)(2).] or
    - iii. An agency licensed by the state or a county department of social services in this state has legal custody of the adoptee. [G.S. 48-2-100(b)(3).]
  - b. For a court to have subject matter jurisdiction, an adoption proceeding must be “commenced under” G.S. Chapter 48, which means that the petitioner must be seeking an adoption available under Chapter 48. [*Boseman v. Jarrell*, 364 N.C. 537, 704 S.E.2d 494 (2010) (a petition seeking a “modified direct placement adoption” that would waive certain statutory requirements sought an adoption not available under Chapter 48; the decree entered pursuant to that petition, which allowed adoption by a domestic partner while allowing the biological parent to retain her parental rights, was void *ab initio* for lack of subject matter jurisdiction).]
4. Jurisdiction when another state is exercising jurisdiction.
  - a. A North Carolina court may not exercise jurisdiction under G.S. Chapter 48 if, “at the time the petition for adoption is filed, a court of any other state is exercising jurisdiction substantially in conformity with the Uniform Child-Custody Jurisdiction and Enforcement Act” (UCCJEA). [G.S. 48-2-100(c), *amended by* S.L. 2015-54, § 3, effective June 4, 2015.]
  - b. However, a North Carolina court has jurisdiction if, prior to the decree of adoption being granted, the court of the other state dismisses its proceeding or releases its exclusive, continuing jurisdiction. [G.S. 48-2-100(c), *amended by* S.L. 2015-54, § 3, effective June 4, 2015.]
  - c. The UCCJEA does not govern an adoption proceeding, [G.S. 50A-103; *Jones v. Whimper*, 218 N.C. App. 533, 727 S.E.2d 700 (2012) (in dicta, agreeing with plaintiff that the jurisdictional provisions of the UCCJEA do not apply to adoption

proceedings), *modified and aff'd per curiam*, 366 N.C. 367, 736 S.E.2d 170 (2013).] except as specifically referenced in G.S. Chapter 48.

- i. G.S. 48-2-100(c), set out in [Section II.A.4.a](#), above, references the UCCJEA.
  - ii. The only other reference in G.S. Chapter 48 to the UCCJEA is in G.S. 48-2-304(b)(4), which requires a petition to adopt a minor to include any information required by the UCCJEA that is known to the petitioner. The required information is found in G.S. 50A-209. Form AOC-CV-609, Affidavit as to Status of Minor Child, may be used.
5. Concurrent jurisdiction under G.S Chapter 7B.
- a. If an adoptee also is the subject of a pending juvenile proceeding under G.S. Chapter 7B, the district court having jurisdiction under Chapter 7B retains jurisdiction until a final order of adoption is entered. [G.S. 48-2-102(b).]
  - b. The juvenile court may waive jurisdiction for good cause. [G.S. 48-2-102(b).] See [Section III.L](#), below, for more on the relationship between adoption and termination of parental rights proceedings.

## B. Personal Jurisdiction

1. G.S. 48-2-100 authorizes the exercise of jurisdiction in an adoption case based on the residence of the adoptee, the prospective parent, or the agency. See [Section II.A.3](#), above.
2. G.S. 48-2-401 identifies those persons who must be provided notice of the proceeding. See [Section III.F.8](#), below.
3. G.S. 48-2-402 identifies the appropriate manner of service of process to be used in providing notice to those entitled to notice. See [Section III.F.9](#), below. Although the issue has not been addressed by an appellate court, following these statutory provisions probably is sufficient to confer personal jurisdiction on the court in an adoption proceeding.
4. See [Section IV.E.4](#), below, addressing personal jurisdiction issues that arise when the court must resolve whether the consent of a putative father is required for the adoption.

## C. Venue

1. A petition for adoption may be filed with the clerk of court in the county in which:
  - a. The petitioner lives or is domiciled at the time of filing,
  - b. The adoptee lives, or
  - c. An office of the agency that placed the adoptee is located. [G.S. 48-2-101.]
2. If the court, on its own motion or on motion of a party, finds in the interest of justice that an adoption should be heard in another county where venue lies under G.S. 48-2-101, the court may transfer, stay, or dismiss the proceeding. [G.S. 48-2-102(a).]

### III. General Adoption Procedure

#### A. Summons Not Required to Commence Case

1. Issuance of a summons is not required to commence an adoption proceeding under G.S. Chapter 48. [G.S. 48-2-401(g).]

#### B. Appointment of an Attorney or a Guardian ad Litem

1. The court may appoint an attorney to represent a parent or alleged parent who is unknown or whose whereabouts are unknown and who has not responded to notice of the adoption proceeding. [G.S. 48-2-201(a).]
2. The court on its own motion may appoint an attorney or a guardian ad litem (GAL) to represent the interests of the adoptee in a contested adoption proceeding. [G.S. 48-2-201(b).] The GAL serves pro bono or the fees are taxed to the parties as part of the costs. [G.S. 7A-305(d)(7).] There are no state funds to pay for a GAL appointed pursuant to this statute. [Chart, titled “NORTH CAROLINA PROCEEDINGS THAT INVOLVE GUARDIANS AD LITEM (GALS),” provided by the North Carolina Office of Indigent Defense Services and the Administrative Office of the Courts (Oct. 2014), [http://www.ncids.org/Rules%20&%20Procedures/GAL\\_Chart.pdf](http://www.ncids.org/Rules%20&%20Procedures/GAL_Chart.pdf).]

#### C. No Right to a Jury

1. All adoption proceedings must be heard by the court without a jury. [G.S. 48-2-202; *In re Adoption of C.E.Y.*, 228 N.C. App. 290, 745 S.E.2d 883 (2013).]
2. For an adoption case impaneling an advisory jury pursuant to G.S. 1A-1, Rule 39(c), see *Fakhoury v. Fakhoury*, 171 N.C. App. 104, 613 S.E.2d 729 (advisory jury used to determine issues of fraud and constructive fraud), *review denied*, 621 S.E.2d 622 (N.C. 2005).

#### D. Death of a Joint Petitioner Pending Final Decree

1. Joint petitioner.
  - a. When spouses have petitioned jointly to adopt and one spouse dies before entry of a final decree, the adoption may proceed in the name of both spouses. [G.S. 48-2-204(a).]
  - b. Upon completion of the adoption, the name of the deceased spouse must be entered as one of the adoptive parents on the new birth certificate, and for purposes of inheritance, testate or intestate, the adoptee shall be treated as a child of the deceased spouse. [G.S. 48-2-204(a), *amended by* S.L. 2013-236, § 2, effective July 3, 2013, and applicable to actions filed on or after that date.]
2. For the procedure when a petitioning stepparent dies before entry of a final decree, see G.S. 48-2-204(b), *added by* S.L. 2013-236, § 2, effective July 3, 2013, and applicable to actions filed on or after that date, set out in [Section V.D.1](#), below.

#### E. Recognition of Adoption Decrees from Other Jurisdictions

1. A final adoption decree issued by any other state must be recognized in this state. [G.S. 48-2-205.]

2. Additionally, the U.S. Constitution provides that “Full Faith and Credit shall be given in each State to the public Acts, Records, and judicial Proceedings of every other State.” [U.S. CONST. art. IV, § 1.] Congress has further provided that “[a]cts, records and judicial proceedings . . . shall have the same full faith and credit in every court within the United States . . . as they have by law or usage in the courts of such State . . . from which they are taken.” [28 U.S.C. § 1738.]
3. In *E.L. v. V.L.*, 136 S. Ct. 1017, 1022 (U.S. 2016) (per curiam), the U.S. Supreme Court held that the Full Faith and Credit Clause of the U.S. Constitution required the state of Alabama to give full faith and credit to a final decree of adoption entered by a Georgia court that appeared on its face to have been issued by a court with jurisdiction, there being “no established Georgia law to the contrary.” The Georgia judgment allowed mother’s same-sex partner to adopt children born to mother and recognized both parties as the legal parents of the children.
4. The full faith and credit provision in the U.S. Constitution applies to public acts, records, and judicial proceedings and not to private contracts. Enforcement of a private contract entered into in another state, in this case, an open adoption agreement entered into in Florida but not incorporated into the adoption judgment, was a matter of comity subject to four exceptions. [*Quets v. Needham*, 198 N.C. App. 241, 682 S.E.2d 214 (2009) (Full Faith and Credit Clause did not require North Carolina to recognize and enforce a Florida open adoption agreement that was not a court order).] See [Section IV.E.17](#), below, for discussion of *Quets* decision in the context of an unenforceable collateral agreement under G.S. 48-3-610.

## F. Petition for Adoption

1. Petition filed after placement unless requirement of placement is waived.
  - a. Unless the court, for cause, waives the requirement, a prospective adoptive parent may file a petition for adoption only if the child has been placed with the prospective adoptive parent pursuant to the provisions of G.S. Chapter 48. [G.S. 48-2-301(a).]
2. Who must join in the petition for adoption.
  - a. Except as specified in Articles 4 (stepparent adoption) or Article 6 (readoption) of G.S. Chapter 48, if the petitioner is married, his spouse must join in the petition, unless the spouse has been declared incompetent or the court waives this requirement for cause. [G.S. 48-2-301(b).] See [Section I.B.1.c](#), above, for more on exceptions to the rule that a spouse must join the petition.
    - i. The subsequent withdrawal of one spouse from the parties’ petition to adopt does not necessarily invalidate the petition but is a factor to be considered in determining the best interest of the child. [*In re Kasim*, 58 N.C. App. 36, 293 S.E.2d 247 (after an interlocutory decree was entered but before the final order of adoption, adoptive father moved to dismiss the adoption proceeding on the grounds that he and his wife had permanently separated; his withdrawal did not, by itself, require dismissal of the petition), *review denied*, 306 N.C. 742, 295 S.E.2d 478 (1982).]
  - b. If the petitioner is unmarried, no other person may join in the petition, except that a man and a woman who jointly adopted a minor child in a foreign country

while married to one another must readopt jointly as provided in G.S. 48-2-205. [G.S. 48-2-301(c).]

- i. In a re-adoption, if either spouse does not join in the petition, he or she must be joined as a necessary party as provided in G.S. 1A-1, Rule 19. [G.S. 48-2-205.] See [Section VII.B](#), below, on re-adoption of a child previously adopted in a foreign country.
3. Time for filing petition.
  - a. For adoption actions filed on or after Oct. 1, 2012. There is no time limit for filing an adoption petition after Oct. 1, 2012. [S.L. 2012-16, § 1, effective Oct. 1, 2012, applicable to actions filed on or after that date, and repealing former G.S. 48-2-302(a), which set a thirty-day time limit.]
4. Concurrent petitions to adopt and terminate parental rights.
  - a. A petition for adoption may be filed concurrently with a petition to terminate parental rights. [G.S. 48-2-302.]
5. Contents of a petition for adoption.
  - a. The original petition for adoption must be signed and verified by each petitioner and must include, among other things,
    - i. Each petitioner's full name, current address, place of domicile if different from current address, and whether each petitioner has resided or been domiciled in this state for the six months immediately preceding the filing of the petition; [G.S. 48-2-304(a)(1).]
    - ii. The marital status and gender of each petitioner; [G.S. 48-2-304(a)(2).]
    - iii. The sex and, if known, the date and state or country of birth of the adoptee; [G.S. 48-2-304(a)(3).] and
    - iv. Other background information about the adoptee and petitioner(s) as set out in G.S. 48-2-304(a), as well as information about the placement of the adoptee and any preplacement assessment. [See G.S. 48-2-304 for a detailed listing of the required contents of the petition.]
  - b. For additional requirements for a petition to adopt a minor, see [Section IV.D](#), below.
6. Additional documents.
  - a. G.S. 48-2-305 specifies additional documents that must be filed, including, among other things,
    - i. An affidavit of parentage executed under G.S. 48-3-206; [G.S. 48-2-305(1).]
    - ii. Any required consent or relinquishment that has been executed; [G.S. 48-2-305(2).]
    - iii. A certified copy of any court order terminating the rights and duties of a parent or guardian of the adoptee; [G.S. 48-2-305(3).]
    - iv. A certified copy of any court order or pleading in a pending proceeding concerning custody of or visitation with the adoptee; [G.S. 48-2-305(4).]

- v. A copy of any required preplacement assessment certified by the preparing agency or a petitioner's affidavit stating why the assessment is not available; [G.S. 48-2-305(5).]
  - vi. A copy of any document containing information required under G.S. 48-3-205 concerning the health, social, educational, and genetic history of the adoptee and the adoptee's original family, certified by the person who prepared it, or if the document is not available, an affidavit stating the reason for its unavailability; [G.S. 48-2-305(6).]
  - vii. A signed copy of the form required by the Interstate Compact on the Placement of Children (Article 38 of G.S. Chapter 7B) authorizing a child to come into the state, or a statement describing the circumstances of any noncompliance; [G.S. 48-2-305(7).]
  - viii. A certificate as required by G.S. 48-3-307(c) if the person who placed the minor executes a consent before receiving a copy of the preplacement assessment; [G.S. 48-2-305(11), *added by* S.L. 2013-236, § 5, effective July 3, 2013, and applicable to actions filed on or after that date.]
  - ix. A certified copy of any judgment of conviction of a crime specified under G.S. 48-3-603(a)(9) establishing that an individual's consent to adoption is not required; [G.S. 48-2-305(12), *added by* S.L. 2013-236, § 5, effective July 3, 2013, and applicable to actions filed on or after that date.] and
  - x. Various other documents as set out in G.S. 48-2-305. [G.S. 48-2-305.]
- b. Time for filing additional documents. Any document required by G.S. 48-2-305 that:
- i. Is available to the petitioner when the petition is filed must be filed with the petition.
  - ii. Is not available when the petition is filed must be filed as the document becomes available. [G.S. 48-2-305, *added by* S.L. 2013-236, § 5, effective July 3, 2013, and applicable to actions filed on or after that date (deleting requirement that documents required by G.S. 48-2-305 be filed with the petition).]
- c. Omission of documents.
- i. Before entry of a decree of adoption, the court may require or allow additional information to be filed. [G.S. 48-2-306(a).]
  - ii. After entry of a decree of adoption, omission of any information required by G.S. 48-2-304 and 48-2-305 does not invalidate the decree. [G.S. 48-2-306(b).]
7. Estoppel effect of petitioner's statements in an adoption petition.
- a. Husband's request for an annulment was properly denied on judicial estoppel grounds based on his sworn statements in an adult adoption proceeding that he and the mother of the adult adoptee were married and he was her stepfather by virtue of their marriage. [*Pickard v. Pickard*, 176 N.C. App. 193, 625 S.E.2d 869 (2006).]

8. Notice of filing of petition.
  - a. Persons entitled to notice in all adoptions.
    - i. Any individual whose consent to the adoption is required but has not been obtained or whose consent has been revoked or become void as provided in G.S. Chapter 48.
    - ii. The spouse of the petitioner if she is required to join in the petition and the petitioner is requesting that the joinder requirement be waived, provided the court for cause may waive this requirement.
    - iii. Any individual who has executed a consent or relinquishment but who the petitioner has actually been informed has filed an action to set it aside for fraud or duress.
    - iv. Any other person designated by the court who can provide information relevant to the proposed adoption. [G.S. 48-2-401(b).]
  - b. In addition to those required to be given notice by G.S. 48-2-401(b), each of the following recipients is entitled to notice in the adoption of a minor:
    - i. The child to be adopted, if 12 or more years of age, upon a finding that it is not in the best interest of the child to require the child's consent; [G.S. 48-2-401(c)(1) (a minor whose consent is dispensed with under G.S. 48-3-603(b)(2) is entitled to notice of the proceeding).]
    - ii. Any agency that placed the adoptee; [G.S. 48-2-401(c)(2).]
    - iii. A man who to the actual knowledge of the petitioner claims to be or is named as the biological or possible biological father of the minor (regardless of whether the child's paternity has been established);
    - iv. Any biological or possible biological fathers who are unknown or whose whereabouts are unknown, except notice need not be given to:
      - (a) A man who has executed a consent to adopt, a relinquishment of parental rights, or a notarized statement denying paternity or disclaiming any interest in the minor;
      - (b) A man whose paternal rights have been legally terminated or who has been judicially determined not to be the minor's parent;
      - (c) A man whose consent to the adoption is not required under G.S. 48-3-603(a)(9) due to his conviction of a specified crime (first- or second-degree forcible rape, statutory rape of a child by an adult, or first-degree statutory rape that resulted in the conception of the child to be adopted); [G.S. 48-2-401(c)(3), *added by* S.L. 2013-236, § 6, effective July 3, 2013.] or
      - (d) If the petition is filed within three months of the minor's birth, a man whose consent to the adoption has been determined not to be required under G.S. 48-2-206 (procedure for prebirth determination of right to consent); [G.S. 48-2-401(c)(3).]
    - v. Any individual who the petitioner has been actually informed has legal or physical custody of the minor or who has a right of visitation or communication with

- the minor under an existing court order issued by a court in this state or another state. [G.S. 48-2-401(c)(4).]
- vi. See [Section IV.D.3](#), below, discussing notice in a proceeding for the adoption of a minor not by a stepparent.
- c. In addition to those required to be given notice by G.S. 48-2-401(b), each of the following recipients is entitled to notice in the adoption of an adult:
    - i. Any adult children of the prospective adoptive parent;
    - ii. Any parent, spouse, or adult child of the adoptee who is listed in the petition to adopt, provided the court for cause may waive the requirement of notice to a parent of an adult adoptee; [G.S. 48-2-401(d).]
    - iii. See [Section VI.B.2](#), below, discussing notice in a proceeding for the adoption of an adult.
  - d. No later than five days after a petition is filed, the clerk must mail or otherwise deliver notice of the adoption proceeding to:
    - i. An agency that has been ordered to prepare a preplacement assessment but has not completed it when the petition is filed and
    - ii. An agency ordered to make a report to the court pursuant to G.S. 48-2-501 *et seq.* [G.S. 48-2-403.] See [Section IV.B](#), below, for more on preplacement assessments.
  - e. A person entitled to receive notice under Part 4 of Article 2 of G.S. Chapter 48, or her agent, may waive the right to notice in open court or in writing. [G.S. 48-2-406(a).]
9. Service.
- a. The petitioner must initiate service of the notice on the persons entitled to notice no later than thirty days after a petition for adoption is filed. [G.S. 48-2-401(a).] The noticed person must file a response to the petition within thirty days after service, or if service is by publication, forty days after first publication of the notice, in order to participate in and to receive further notice of the proceeding, including notice of the time and place of any hearing. [G.S. 48-2-401(f), *amended by* S.L. 2015-54, § 5, effective June 4, 2015, and applicable to proceedings filed on or after that date.]
  - b. Service must be made in accordance with G.S. 1A-1, Rule 4. [G.S. 48-2-402(a).] Issuance of a summons is not required to commence an adoption proceeding under G.S. Chapter 48. [G.S. 48-2-401(g).]
  - c. Service by publication when identity is known but whereabouts are unknown.
    - i. G.S. 1A-1, Rule 4(j1) provides that a party that cannot with due diligence be served by personal delivery, registered or certified mail, or by a designated delivery service authorized pursuant to U.S.C. § 7502(f)(2) may be served by publication.
    - ii. G.S. 1A-1, Rule 4(j1) is appropriate only where a civil litigant's whereabouts are unknown. [*In re Clark*, 76 N.C. App. 83, 332 S.E.2d 196, *appeal dismissed, review denied*, 314 N.C. 665, 335 S.E.2d 322 (1985).]
    - iii. While the statute clearly requires due diligence in attempting to ascertain a party's whereabouts, there is no mandatory checklist for what constitutes due



diligence, a case-by-case analysis being more appropriate. [*In re Clark*, 76 N.C. App. 83, 332 S.E.2d 196 (citing *Emanuel v. Fellows*, 47 N.C. App. 340, 267 S.E.2d 368 (1980)), *appeal dismissed, review denied*, 314 N.C. 665, 335 S.E.2d 322 (1985).]

- iv. Where petitioner agency relied solely on information supplied by mother and did not check public records to attempt to locate father named by mother, the due diligence requirement was not met. [*In re Clark*, 76 N.C. App. 83, 332 S.E.2d 196 (where adoption agency resorted to notice by publication after making only one phone call when the birth father had a permanent address, a North Carolina drivers license, voting records, tax records, and draft registration records in the county, agency did not use due diligence; termination of parental rights order set aside), *appeal dismissed, review denied*, 314 N.C. 665, 335 S.E.2d 322 (1985). See also a later related case, *In re Clark*, 327 N.C. 61, 393 S.E.2d 791 (1990) (court correctly dismissed adoption proceeding when required affidavit was not attached to the petition and father had filed a legitimation proceeding).]
- d. Service when the identity of a biological or possible biological parent cannot be ascertained and notice is required. [G.S. 48-2-402(b).]
  - i. In a direct placement adoption, if the identity of a biological or possible biological parent cannot be determined and notice is required, the parent or possible parent must be served by publication pursuant to G.S. 1A-1, Rule 4(j1). [G.S. 48-2-402(b) (setting out particular requirements for the content and salutation of the notice).]
  - ii. In an agency placement adoption, the agency or other proper person must file a petition to terminate the unknown parent's or possible parent's rights instead of serving notice of the adoption proceeding under G.S. 48-2-402(b), referenced immediately above. [G.S. 48-2-402(c).]
    - (a) The court must stay the adoption proceeding pending the outcome of the termination proceeding. [G.S. 48-2-402(c).]
    - (b) G.S. 48-2-402(c) does not require the agency or other proper person to file a petition to terminate the parental rights of any known or possible parent who has been served notice as provided under G.S. 1A-1, Rule 4(j)(1), that is, who was served with notice by a method other than publication. [G.S. 48-2-402(c).]
- e. Proof of service of notice on each person entitled to notice, or a certified copy of a waiver of notice, must be filed with the court before the hearing on adoption begins. [G.S. 48-2-407.]

## G. Report to the Court

1. Whenever a petition for adoption of a minor is filed, the court must order an agency to prepare a "report to the court" to assist the court in determining if the proposed adoption is in the child's best interest. [G.S. 48-2-501(a).] There are two exceptions to this requirement:
  - a. In a stepparent adoption in which the child has lived with the stepparent for at least the two consecutive years immediately preceding the filing of the petition, the court

may order a report. However, the court is not required to order a report unless the child's consent is to be waived, the child has revoked a consent, or both of the child's parents are dead. [G.S. 48-2-501(d)(1).] For a more thorough discussion of when the court may and when it must order a report, see [Section V.E](#), below.

- b. In any adoption of a child by the child's grandparent in which the child has lived with the grandparent for at least the two consecutive years immediately preceding the filing of the petition, the court may order a report. However, the court is not required to order a report unless the child's consent is to be waived, the child has revoked a consent, or the child is eligible for adoption assistance pursuant to G.S. 108A-49. [G.S. 48-2-501(d)(2).]
2. G.S. 48-2-502 gives detailed requirements about the contents of the report and authorizes the state Social Services Commission to adopt rules to implement the requirements. [See N.C. ADMIN. CODE tit. 10A, ch. 70H, § .0405.]
  3. The report must include, among other things,
    - a. All reasonably available nonidentifying information concerning the physical, mental, and emotional condition of the adoptee required by G.S. 48-3-205 and not already included in that document; [G.S. 48-2-502(b)(2).]
    - b. Copies of any court order or similar document affecting the adoptee, the petitioner, or any child of the petitioner relevant to the adoptee's welfare; [G.S. 48-2-502(b)(3).] and
    - c. A list of expenses, fees, or other charges incurred, paid, or to be paid in connection with the adoption that can reasonably be ascertained by the agency. [G.S. 48-2-502(b)(4). See [Section X](#), below, on lawful and unlawful payments in connection with an adoption.]
  4. Confidentiality concerns arising from distribution of the report to petitioner.
    - a. G.S. 48-2-503(c) requires the agency to give the petitioner a copy of each report filed with the court.
    - b. The court orders required by G.S. 48-2-502(b)(3) to be included in the report to the court may include identifying information about the adoptee's birth parents. However, G.S. 48-2-502 provides that in an agency adoption:
      - i. The report shall be written in such a way as to exclude all information that could reasonably be expected to lead directly to the identity of the adoptee at birth or any former parent or family member of the adoptee and
      - ii. Any copies of documents included pursuant to G.S. 48-2-502(b)(3) shall be redacted to exclude this information. [G.S. 48-2-502(b).]
  5. Filing of the report with the court.
    - a. The agency must file the report with the court within sixty days after the mailing or delivery of the order to prepare the report unless the court extends the time. The agency shall have three additional days to complete and file the report if the order was mailed. [G.S. 48-2-503(a).]
    - b. If the agency identifies a specific concern about the suitability of the petitioner or the petitioner's home for the adoption, the agency must file immediately an interim

report describing the specific concern. The agency must indicate in the final report whether its concerns have been satisfied and in what manner. [G.S. 48-2-503(b).]

- c. When an agency identifies a specific concern in a final report and the court extends the time for a final hearing to allow resolution of those concerns, the agency shall file a supplemental report indicating whether its concerns have been satisfied and in what manner. [G.S. 48-2-503(b1).]

## H. Hearing

1. If it appears to the court that a petition to adopt a minor is not contested, the court may dispose of the matter without a formal hearing. [G.S. 48-2-601(a).]
2. If an issue of fact, an equitable defense, or a request for equitable relief is raised in a pleading or written motion, the clerk is required to transfer the proceeding to the district court under G.S. 1-301.2. [G.S. 48-2-601(a1). *See Norris v. Norris*, 203 N.C. App. 566, 692 S.E.2d 190 (2010) (where custody proceeding was pending in district court and adoption proceeding was pending before superior court clerk, motion of intervenor who contested the adoption, filed in the pending custody action, requesting both visitation and consolidation of the custody and adoption proceedings, triggered the clerk's duty to transfer the adoption proceeding to district court under G.S. 48-2-601(a1) and 1-301.2(b)); *In re Adoption of C.E.Y.*, 228 N.C. App. 290, 745 S.E.2d 883 (2013) (father challenged an order of the clerk by filing a document labeled "appeal" and a motion to set aside the clerk's order pursuant to G.S. 1A-1, Rules 59 and 60; a review of the substance of father's filings showed that father actually requested equitable relief and raised issues of fact, making transfer proper under G.S. 1-301.2(b)).]
3. Confidentiality.
  - a. A judicial hearing in any adoption proceeding must be held in closed court. [G.S. 48-2-203.]
  - b. For a discussion of the confidentiality of adoption records, see [Section VIII](#), below.
4. Timing.
  - a. No later than ninety days after a petition is filed, the court must set a date and time for hearing or disposing of the petition. [G.S. 48-2-601(b).]
  - b. The adoption cannot be granted until at least ninety days have elapsed since the filing of the petition, unless the court waives this requirement. [G.S. 48-2-603(a)(1).]
  - c. The hearing or disposition must take place no later than six months after the petition is filed, unless the court extends the time for cause. [G.S. 48-2-601(c).]
5. Disclosure of fees and charges.
  - a. At least ten days before the date of the hearing or disposition, the petitioner must file an affidavit accounting for any payment or disbursement of money or anything of value made or agreed to be made by or on behalf of each petitioner in connection with the adoption. [G.S. 48-2-602.]
  - b. The court may ask for a more specific statement of any fees, charges, or payments made or to be made by any petitioner in connection with the adoption. [G.S. 48-2-602; see [Section X](#), below, on lawful and unlawful payments in connection with an adoption.]

6. Who may/may not appear.
  - a. Except as provided in G.S. 48-2-206(c) and (d) and 48-2-207(d), a person entitled to notice whose consent is not required may appear and present evidence only as to whether the adoption is in the best interest of the adoptee. [G.S. 48-2-405.]
  - b. If the court determines that the consent of an individual described in G.S. 48-2-401(c)(3) is not required, that individual is not entitled to receive notice of, or to participate in, further proceedings in the adoption. [G.S. 48-2-207(d).] See [Section IV.D.3.b](#), below, discussing the men who must be given notice pursuant to G.S. 48-2-401(c)(3).
  - c. A person who has executed a consent or relinquishment or has otherwise waived notice of the proceeding is not a necessary party and is not entitled to appear in any subsequent proceeding related to the petition, except as provided in G.S. 48-2-406(c), set out immediately below. [G.S. 48-2-406(b).]
  - d. A parent who has executed a consent or relinquishment may appear in the adoption proceeding for the limited purpose of moving to set aside the consent or relinquishment on the grounds that it was obtained by fraud or duress. [G.S. 48-2-406(c).]
  - e. After termination of parental rights, a parent is not entitled to notice of adoption proceedings and may not object to or participate in them. [G.S. 7B-1112; 48-2-401(c)(3).]
7. Granting a petition to adopt a minor.
  - a. The court must grant a petition for the adoption of a minor if the court finds by a preponderance of the evidence that the adoption will serve the child's best interest. [G.S. 48-2-603(a); *In re Papathanassiou*, 195 N.C. App. 278, 671 S.E.2d 572 (G.S. 48-2-606(a)(7), 48-2-501(a), and 48-2-603(a) explicitly, not implicitly, require the court to consider the best interest of the child), *review denied*, 363 N.C. 374, 678 S.E.2d 667 (2009).]
  - b. The court also must find the following:
    - i. At least ninety days have elapsed since the filing of the petition for adoption, unless the court for cause waives this requirement. [G.S. 48-2-603(a)(1).]
    - ii. The adoptee has been in the physical custody of the petitioner for at least ninety days, unless the court for cause waives this requirement. [G.S. 48-2-603(a)(2).]
    - iii. Notice of the filing of the petition has been served on any person entitled to receive notice under Part 4 of Article 2 of G.S. Chapter 48. [G.S. 48-2-603(a)(3).]
    - iv. Each necessary consent, relinquishment, waiver, or judicial order terminating parental rights has been obtained and filed with the court and the time for revocation has expired. [G.S. 48-2-603(a)(4).]
    - v. Any assessment required by G.S. Chapter 48 has been filed with and considered by the court. [G.S. 48-2-603(a)(5).]
    - vi. If applicable, the requirements of the Interstate Compact on the Placement of Children, Article 38 of G.S. Chapter 7B, have been met. [G.S. 48-2-603(a)(6).]  
NOTE: Article 38 of G.S. Chapter 7B states that “[i]t is the intent of the General

Assembly that Chapter 48 of the General Statutes shall govern the adoption of children within the boundaries of North Carolina.” [G.S. 7B-3800.]

- vii. Any motion to dismiss the proceeding has been denied. [G.S. 48-2-603(a)(7).]
  - viii. Each petitioner is a suitable adoptive parent. [G.S. 48-2-603(a)(8).]
  - ix. Any accounting and affidavit required by G.S. 48-2-602 has been reviewed by the court, and the court has denied, modified, or ordered reimbursement of any payment or disbursement that violates Article 10 of G.S. Chapter 48 or is unreasonable when compared with the expenses customarily incurred in connection with an adoption. [G.S. 48-2-603(a)(9).]
  - x. The petitioner has received information about the adoptee and the adoptee’s biological family if required by G.S. 48-3-205. [G.S. 48-2-603(a)(10).]
  - xi. Any certificate of service required by G.S. 48-3-307 (relating to preplacement assessment) has been filed. [G.S. 48-2-603(a)(10a).]
  - xii. There has been substantial compliance with the provisions of G.S. Chapter 48. [G.S. 48-2-603(a)(11).]
8. Denying a petition to adopt a minor.
- a. If at any time between the filing of a petition to adopt a minor and the issuance of the final order completing the adoption, it appears to the court that the minor should not be adopted by the petitioners or the petition should be dismissed for some other reason, the court may dismiss the proceeding. [G.S. 48-2-604(a).]
    - i. The trial court had full statutory authority under G.S. 48-2-604(a) and 48-3-502(b) to dismiss petitions to adopt based on the best interests of the three minor children regardless of whether the department of social services (DSS) had previously consented to the adoption. [*In re Adoption of Cunningham*, 151 N.C. App. 410, 567 S.E.2d 153 (2002) (petitions dismissed when evidence showed that one of the petitioners had yelled at, cursed at, and kicked a 13-year-old foster child and had yelled and cursed at the prospective adoptees; court of appeals upheld trial court’s dismissal of adoption petitions based on lack of written consents by DSS as required by G.S. 48-3-605(d) but noted that trial court had full authority under G.S. 48-2-604(a) and 48-3-502(b) to dismiss the adoption petitions based on best interests); *In re Kasim*, 58 N.C. App. 36, 293 S.E.2d 247 (question of the child’s best interests should be paramount in the court’s consideration of a motion to dismiss the proceeding), *review denied*, 306 N.C. 742, 295 S.E.2d 478 (1982).]
  - b. Before entering an order to dismiss, the court must give five days’ notice of the motion to dismiss as set out in G.S. 48-2-604(b). Those entitled to notice are entitled to a hearing on the issue. [G.S. 48-2-604(b).]
  - c. If the court denies the petition to adopt, custody of the minor reverts to the agency or person having custody immediately before the filing of the petition. [G.S. 48-2-604(c).]
9. On its own motion, the court may continue a hearing for further evidence. [G.S. 48-2-603(c).]

10. Electronic media and still photography coverage of adoption proceedings is expressly prohibited. [GEN. R. PRAC. SUPER. & DIST. CTS. 15(b)(2).]

## I. Adoption Decree

1. Decree of adoption.
  - a. G.S. 48-2-606(a) specifies the minimum required contents of a final decree of adoption.
  - b. The decree must state, among other things, that the adoption is in the best interest of the adoptee. [G.S. 48-2-606(a)(7).]
  - c. G.S. 48-2-606(b) requires the final decree to contain information concerning the date and place of birth of an adoptee who was born outside the United States. See [Section III.K](#), below.
  - d. A decree of adoption must not contain the name of a former parent of the adoptee. [G.S. 48-2-606(c).]
2. For the legal effect of an adoption decree, see [Section I.D](#), above.
3. Name change of an adopted minor or adult.
  - a. The name designated in a final decree of adoption is the name of the adoptee. [G.S. 48-1-105.]
4. New birth certificate.
  - a. G.S. 48-9-107(a) states that, upon receipt of a report of an adoption, the State Registrar of Vital Statistics shall prepare a new birth certificate for the adoptee. [G.S. 48-9-107(a).]
  - b. The statute sets out the procedure in detail.
5. Challenges to an adoption decree.
  - a. Except as set out in G.S. 48-2-607(c), discussed in [Sections III.I.5.d](#) and [e](#), below, after entry of a final order of adoption, no party to an adoption proceeding, nor anyone claiming under a party, may question the validity of the adoption because of any defect or irregularity, jurisdictional or otherwise, in the proceeding but shall be fully bound by the order. [G.S. 48-2-607(a).]
    - i. This provision does not preclude a challenge to an adoption decree based on the court's subject matter jurisdiction. [*Boseman v. Jarrell*, 364 N.C. 537, 704 S.E.2d 494 (2010) (this provision shields from review only those decrees entered by a court having subject matter jurisdiction).]
    - ii. A party may appeal a final decree of adoption as provided in G.S. 48-2-607(b), discussed in [Section III.J](#), below.
  - b. No adoption may be attacked either directly or collaterally because of any procedural or other defect by anyone who was not a party to the adoption. [G.S. 48-2-607(a).]
    - i. A previous version of the statute which provided that an adoption proceeding could be attacked only by a biological parent or by a guardian of the person of the child was interpreted to prohibit attack by the adoptee. [*Flinn v. Laughinghouse*, 68 N.C. App. 476, 315 S.E.2d 72 (adoptee lacked standing to attack her

adoption; clerk's order setting aside adoption vacated), *review denied*, 311 N.C. 755, 321 S.E.2d 132 (1984).]

- c. The court's or an agency's failure to perform any duty or act within the time required by G.S. Chapter 48 does not affect the validity of any adoption proceeding. [G.S. 48-2-607(a).]
  - d. A parent or guardian whose consent was obtained by fraud or duress, or whose consent was required but not obtained, may move to have an adoption decree set aside. [G.S. 48-2-607(c).] However, the parent or guardian may do so only within six months of the time the fraud, duress, or omission is discovered or reasonably ought to have been discovered. [G.S. 48-2-607(c).]
  - e. Any action for damages against an adoptee or the adoptive parents for fraud or duress in obtaining a consent must be brought within six months of the time the fraud, duress, or omission is discovered or reasonably ought to have been discovered. [G.S. 48-2-607(c).]
6. Costs.
- a. Costs in special proceedings shall be as allowed in civil actions, unless otherwise specially provided. [G.S. 6-26.]
  - b. For costs assessed in special proceedings, see G.S. 7A-306.

## J. Appeal from District Court

1. Appeal to/from district court.
  - a. A party to an adoption proceeding may appeal a final decree of adoption entered by a clerk of superior court to district court by giving notice of appeal as provided in G.S. 1-301.2. [G.S. 48-2-607(b); 1-301.2(e).]
  - b. A party to an adoption proceeding may appeal a judgment or order entered by a judge of district court to the court of appeals by giving notice of appeal as provided in G.S. 1-279.1. [G.S. 48-2-607(b).]
2. Interlocutory appeal as affecting a substantial right.
  - a. When the issue is whether the consent of a biological or putative father is required, the court of appeals has found a substantial right and allowed appeal. This is so whether the father is or was married to the mother or the parties are unwed, whether the order below found that consent was required or not required, or whether the father or the petitioners appealed. [See *In re Adoption of C.E.Y.*, 228 N.C. App. 290, 292, 745 S.E.2d 883, 885 (2013) (quoting *In re Adoption of Anderson*, 165 N.C. App. 413, 415, 598 S.E.2d 638, 640 (2004), *rev'd on other grounds*, 360 N.C. 271, 624 S.E.2d 626 (2006)) ("a court's determination as to whether a putative father has sufficiently protected his ability to withhold consent for the adoption of his child is a substantial right" for appeal purposes; appeal taken by father of order finding his consent to proceed with adoption not required); *In re Adoption of S.D.W.*, 228 N.C. App. 151, 745 S.E.2d 38 (order determining unwed father's consent to adoption not required affects a substantial right and is immediately appealable), *appeal dismissed, review allowed*, 367 N.C. 243, 748 S.E.2d 315 (2013), *rev'd on other grounds*, 367 N.C. 386, 758 S.E.2d 374 (2014); *In re Adoption of S.K.N.*, 224 N.C. App. 41, 735 S.E.2d 382 (2012) (citing

- In re Adoption of Shuler*, 162 N.C. App. 328, 590 S.E.2d 458 (2004)) (order determining that unwed father's consent was necessary affected a substantial right and was immediately appealable), *review denied, appeal dismissed*, 366 N.C. 588, 743 S.E.2d 185 (2013); *Shuler* (denial of biological father's motion to dismiss a petition to adopt his child affected a substantial right because father's fundamental parental right was eliminated); *see also Anderson* (court of appeals assumed that a determination as to whether a putative father is entitled to withhold consent for his child's adoption is a substantial right capable of appellate review when that right is affected by order or judgment).]
- b. The issue of whether the birth mother's consent, or her relinquishment of the child, was valid affects a substantial right and is appealable. [*In re Adoption of Baby Boy*, 233 N.C. App. 493, 757 S.E.2d 343 (citing *In re Adoption of Anderson*, 165 N.C. App. 413, 598 S.E.2d 638 (2004), *rev'd on other grounds*, 360 N.C. 271, 624 S.E.2d 626 (2006)), *review denied*, 763 S.E.2d 390 (N.C. 2014).]
  - c. Denial of adoptive parent's motion to dismiss a custody action brought by the biological mother after a final decree of adoption was entered was interlocutory and did not affect a substantial right. [*Pruitt v. Pruitt*, 196 N.C. App. 789, 675 S.E.2d 719 (2009) (**unpublished**) (denial of motion did not alter the parental rights of the adoptive parents).]
3. Standard of review.
    - a. Standard of review in appeal of the following matters is de novo:
      - i. When constitutional rights are implicated [*In re Adoption of S.D.W.*, 367 N.C. 386, 758 S.E.2d 374 (2014).] and
      - ii. When a question of law is presented. [*In re Adoption of S.D.W.*, 228 N.C. App. 151, 745 S.E.2d 38, *appeal dismissed, review allowed*, 367 N.C. 243, 748 S.E.2d 315 (2013), *rev'd on other grounds*, 367 N.C. 386, 758 S.E.2d 374 (2014).]
    - b. When the trial court sits without a jury, the court of appeals is to determine whether there was competent evidence to support the trial court's findings of fact and whether its conclusions of law were proper in light of such facts and must uphold the trial court's findings if supported by competent evidence, even if there is evidence to the contrary. [*In re Adoption of C.E.Y.*, 228 N.C. App. 290, 745 S.E.2d 883 (2013) (citing *In re Adoption of S.K.N.*, 224 N.C. App. 41, 735 S.E.2d 382 (2012), *review denied, appeal dismissed*, 366 N.C. 588, 743 S.E.2d 185 (2013)); *In re Adoption of Shuler*, 162 N.C. App. 328, 590 S.E.2d 458 (2004) (citing *In re Adoption of Cunningham*, 151 N.C. App. 410, 567 S.E.2d 153 (2002)); *S.K.N.* (citing *Shuler*).]
  4. Jurisdiction of the district court pending appeal to the court of appeals.
    - a. Once an adoption order is appealed to the court of appeals, the district court has no jurisdiction to enter any further orders relating to the adoption pending appeal. [G.S. 1-294, *amended by* S.L. 2015-25, § 2, effective May 21, 2015, providing that a perfected appeal stays all further proceedings in the court below upon the judgment appealed from, or upon the matter embraced therein, unless otherwise provided by the Rules of Appellate Procedure, but the court below may proceed upon any other matter included in the action and not affected by the judgment appealed from).]



- b. The trial court lacked jurisdiction to dismiss an adoption petition while an order finding that father's consent was necessary was pending on appeal. [*In re K.A.R.*, 205 N.C. App. 611, 696 S.E.2d 757 (2010) (notice of appeal in September from order finding father's consent necessary divested trial court of jurisdiction to enter order in October dismissing the adoption petition upon father's motion based on its earlier finding that father's consent was required), *review denied*, 365 N.C. 75, 706 S.E.2d 236 (2011).]

## K. Special Provisions Applicable to Adoption of an Individual Born in a Foreign Country

1. Hague Adoption Convention.
  - a. If the adoption of adoptee is subject to the Convention of 29 May 1993 on Protection of Children and Co-operation in Respect of Intercountry Adoption (Hague Adoption Convention), the provisions of the Hague Adoption Convention shall control the individual's adoption. Documentation establishing whether the Hague Adoption Convention applies to an adoptee may be filed and copies thereof may be certified by the court before or after the decree of adoption has been granted. [G.S. 48-1-108.1, *added by* S.L. 2015-54, § 1, effective June 4, 2015.]
  - b. To determine whether a country is a party to the Hague Adoption Convention, see U.S. DEP'T OF STATE, BUREAU OF CONSULAR AFFAIRS, TRAVEL.STATE.GOV, *Intercountry Adoption: Hague Convention, Convention Countries*, <https://travel.state.gov/content/adoptionsabroad/en/hague-convention/convention-countries.html>.
  - c. A petition for adoption must state the sex and, if known, the date and state or country of birth of the adoptee. [G.S. 48-2-304(a)(3).]
2. A consent signed in another state or country in accord with the procedure of that state or country shall not be invalid solely because of failure to comply with the formalities of G.S. Chapter 48. [G.S. 48-3-605(e).]
3. In stating the date and place of birth of an adoptee born outside the U.S., the court in a decree of adoption must:
  - a. Enter the date and place of birth as stated in the certificate of birth from the country of origin, the U.S. State Department's report of birth abroad, or the documents of the U.S. Immigration and Naturalization Service;
  - b. If the exact place of birth is unknown, enter the information that is known, including the country of origin;
  - c. If the exact date of birth is unknown, determine and enter a date of birth based upon medical evidence by affidavit or testimony as to the probable chronological age of the adoptee and other evidence the court finds appropriate to consider. [G.S. 48-2-606(b).]
4. Certificate of identification for individual of foreign birth.
  - a. In the case of an adopted individual born in a foreign country but residing in North Carolina at the time of application, the State Registrar of Vital Statistics shall, upon the presentation of a certified copy of the original birth certificate from the country of birth and a certified copy of the final order of adoption signed by the clerk of court

or other appropriate official, prepare a certificate of identification for that individual. [G.S. 130A-108(a). But see [Section VII.B.4](#), below, regarding requirements for a certificate for a child re-adopted after a foreign adoption.]

- b. The certificate shall contain the same information required by G.S. 48-9-107(a) for individuals adopted in North Carolina, except the country of birth shall be specified in lieu of the state of birth. [G.S. 130A-108(a).]
5. See [Section VII.B](#), below, for re-adoption of a child previously adopted in a foreign country.

## L. Relationship between Adoption and Proceedings to Terminate Parental Rights

1. For a more complete account of the relationship between these two proceedings, see KELLA W. HATCHER, SARA DEPASQUALE, & JOHN RUBIN, *ABUSE, NEGLECT, DEPENDENCY, AND TERMINATION OF PARENTAL RIGHTS PROCEEDINGS IN NORTH CAROLINA* ch. 10 (Post-Termination of Parental Rights and Post-Relinquishment Reviews), § 10.3 (Relationship between TPR and Adoption Proceedings) (UNC School of Government, 2015) (hereinafter *ABUSE, NEGLECT, DEPENDENCY, AND TERMINATION MANUAL*). A free pdf version of this resource is available at [www.sog.unc.edu/resources/microsites/abuse-neglect-dependency-and-termination-parental-rights](http://www.sog.unc.edu/resources/microsites/abuse-neglect-dependency-and-termination-parental-rights).
2. Any person who has filed a petition to adopt a child may file a petition or motion to terminate parental rights. [G.S. 7B-1103(a)(7).] “While termination of a putative father’s rights *may* precede an adoption petition, prior termination of his rights . . . is not necessary if, under the applicable provisions of [G.S.] Chapter 48, his consent to the adoption is not necessary.” [*In re Adoption of Clark*, 95 N.C. App. 1, 7, 381 S.E.2d 835, 838 (1989) (emphasis in original) (decided under former G.S. Chapter 48), *rev'd on other grounds*, 327 N.C. 61, 393 S.E.2d 791 (1990).]
3. An adoption petition and a petition to terminate parental rights may be filed at the same time. [G.S. 48-2-302.]
4. A county department of social services (DSS), consolidated county human services agency, or licensed child-placing agency to whom custody of the child has been given by a court of competent jurisdiction may file a petition or motion to terminate parental rights. [G.S. 7B-1103(a)(4).]
5. An order terminating parental rights completely and permanently terminates all rights and obligations of the parent to the child and the child to the parent arising from the parental relationship, except that the child’s right of inheritance does not terminate until a final order of adoption is issued. [G.S. 7B-1112.] Any child support arrearages remain after termination of parental rights, even though the parent is no longer liable for ongoing support obligations. [G.S. 48-1-107 (a decree of adoption does not divest any vested property interest owned by the adoptee immediately prior to the decree of adoption, including child support payments due on or before the date of the decree); *Michigan ex rel. Pruitt v. Pruitt*, 94 N.C. App. 713, 380 S.E.2d 809 (1989) (holding that even though support obligation ceased when adoption became final, support arrearages owed prior to adoption that were within statute of limitations were recoverable).]
6. After termination of parental rights, the parent is not entitled to notice of adoption proceedings and may not object to or participate in them. [G.S. 7B-1112; 48-2-401(c)(3).] However, consent of the county DSS or licensed child-placing agency with custody of

- the child may be required. [See G.S. 7B-1112(1), providing that, following termination of parental rights, agency acquires all rights for placement of the child as set out in 7B-1112(2), including the right to consent to the child's adoption.]
7. G.S. 7B-1112.1, *amended by* S.L. 2013-129, § 36, effective Oct. 1, 2013, and applicable to actions filed or pending on or after that date, sets out the rights and responsibilities of a guardian ad litem in the selection of adoptive parents.
  8. A parent's right to counsel in a juvenile case extends to the decision to relinquish the child for adoption. [*In re Maynard*, 116 N.C. App. 616, 448 S.E.2d 871 (1994) (mother's consent for children to be adopted, signed without her appointed counsel being present or notified, violated her right to counsel; consent to adopt void), *review denied*, 339 N.C. 613, 454 S.E.2d 254 (1995).] For more on the right to counsel in juvenile proceedings, see ABUSE, NEGLECT, DEPENDENCY, AND TERMINATION MANUAL, ch. 5 (The Pre-Adjudication Stage in Abuse, Neglect, and Dependency Cases), § 5.4 (Parties, Appointment of Counsel, and Guardians ad Litem), and ch. 9 (Termination of Parental Rights), § 9.4 (Counsel and Guardians ad Litem for Parent and Child), [www.sog.unc.edu/resources/microsites/abuse-neglect-dependency-and-termination-parental-rights](http://www.sog.unc.edu/resources/microsites/abuse-neglect-dependency-and-termination-parental-rights).

### M. Relationship between Adoption and G.S. Chapter 50 Custody Claims

1. Exercise of jurisdiction when there are concurrent proceedings for custody and adoption involving the same child.
  - a. There is no statute specifying a procedure for concurrent adoption and custody proceedings, as there is for custody actions that coincide with abuse, neglect, or dependency proceedings under G.S. Chapter 7B. [*Johns v. Welker*, 228 N.C. App. 177, 744 S.E.2d 486 (2013).]
  - b. In *Johns v. Welker*, 228 N.C. App. 177, 744 S.E.2d 486 (2013), father filed an action seeking custody of his child while an adoption proceeding for that child, to which father was not a party, was pending. The court of appeals, on de novo review, held that the trial court erred in dismissing the custody proceeding for lack of subject matter jurisdiction. However, even though the trial court had jurisdiction, the custody action was required to be held in abeyance pending completion of the adoption proceeding because of potentially "unresolvable conflicts."
    - i. Statutes applicable in *Johns* did not provide a clear answer to the question of how to address the potential for conflicting orders when the same child is the subject of simultaneous custody and adoption proceedings; the adoption statutes had changed since the court of appeals in *Griffin v. Griffin*, 118 N.C. App. 400, 456 S.E.2d 329 (1995), considered the issue, so it was not controlling in *Johns*; and the doctrine of prior pending action was not applicable in *Johns* because the parties to the two proceedings were not the same and the proceedings did not provide the same relief.
    - ii. Once the adoption petition is resolved by a final decree of adoption or denial or dismissal of the petition, the court may remove the stay and, if appropriate, consider custody of the minor child under G.S. Chapter 50.
  - c. If a custody case and an adoption proceeding are pending in the same judicial district, consolidation pursuant to G.S. 1A-1, Rule 42(a) may be appropriate.

[*See Oxendine v. Catawba Cty. Dep't of Soc. Servs.*, 303 N.C. 699, 281 S.E.2d 370 (1981) (consolidation of adoption proceeding and juvenile proceeding would have been appropriate but for procedural error, as both actions involved related issues of fact and law); *Johns v. Welker*, 228 N.C. App. 177, 744 S.E.2d 486 (2013) (noting that the father had not filed a motion to consolidate adoption and custody actions); *cf. Norris v. Norris*, 203 N.C. App. 566, 692 S.E.2d 190 (2010) (where custody proceeding was pending in district court and adoption proceeding was pending before superior court clerk, motion of intervenor who contested the adoption, filed in the pending custody action, requesting both visitation and consolidation of the custody and adoption proceedings, triggered the clerk's duty to transfer the adoption proceeding to district court under G.S. 48-2-601(a1) and 1-301.2(b)).]

2. A final order of adoption probably voids any existing custody order concerning the adopted child. [*See Griffin v. Griffin*, 118 N.C. App. 400, 456 S.E.2d 329 (1995); G.S. 48-1-106(a) (decree of adoption effects a complete substitution of families for all legal purposes); 48-1-106(c) (decree of adoption divests the former parents of all rights with respect to the adoptee).]
3. Custody during adoption proceeding. Since 1996, adoption statutes have provided that, during the pendency of an adoption proceeding, legal and physical custody of a child is with the potential adoptive parent in a direct placement adoption, [G.S. 48-3-501.] and legal custody is with the agency in a placement by an agency, [G.S. 48-3-502(a).] “[u]nless the court orders otherwise.”
4. An adoptive parent is entitled to the parental preference in a custody proceeding against a nonparent. [*See Best v. Gallup*, 215 N.C. App. 483, 715 S.E.2d 597 (2011) (mother who adopted child alone waived her protected status when she and nonparent jointly agreed to care for the child before the adoption, jointly cared for the child before and after the adoption for approximately five years, adoptive mother identified nonparent to the child and to others as the child's father, and adoptive mother did not state or otherwise indicate an intention that the relationship between the nonparent and the child would be temporary), *appeal dismissed, review denied*, 724 S.E.2d 505 (N.C. 2012).]
5. Effect of stepparent adoption on grandparents' visitation rights.
  - a. An adoption of a child by the child's stepparent does not terminate or otherwise affect visitation rights previously awarded to a biological grandparent of a minor pursuant to G.S. 50-13.2, nor does it affect the right of a biological grandparent to petition for visitation rights pursuant to G.S. 50-13.2A or 50-13.5(j). [G.S. 48-4-105.]

## N. Relationship between Adoption and Paternity Proceedings

1. Notice to putative father of adoption proceeding.
  - a. A petitioner seeking to adopt a minor child generally must serve a copy of the adoption petition on:
    - i. A man who, to the actual knowledge of the petitioner, claims to be, or is named as, the biological or possible biological father of the child (regardless of whether the child's paternity has been legally established) and
    - ii. Any biological or possible biological fathers who are unknown or whose whereabouts are unknown. [G.S. 48-2-401(c)(3).]

- b. The notice requirement in G.S. 48-2-401(c)(3) does not apply if:
  - i. A presumed or putative father has executed a consent, a relinquishment, or a notarized statement denying paternity or disclaiming any interest in the child or
  - ii. The presumed or putative father's parental rights have been legally terminated or he has been judicially determined not to be the father of the child. [G.S. 48-2-401(c)(3).]
2. A presumed or putative father's consent to the adoption of a minor child generally is required in a direct placement adoption if the presumed or putative father:
  - a. Is or was married to the child's mother if the child was born during the marriage or within 280 days after the marriage terminated or the parties have separated pursuant to a written separation agreement or an order of separation entered under G.S. Chapters 50 or 50B or a similar order of separation entered by a court in another jurisdiction; [G.S. 48-3-601(2)b.1.]
  - b. Legitimated the child before the date the adoption petition was filed under the law of any state; [G.S. 48-3-601(2)b.3.]
  - c. Before the earlier of the filing of the petition or the date of a hearing under G.S. 48-2-206, has acknowledged his paternity of the child and
    - i. Was obligated by written agreement or court order to support the child [G.S. 48-3-601(2)b.4.I.] or
    - ii. Provided, in accordance with his financial means, reasonable and consistent payments for the support of the mother during or after the term of pregnancy, the support of the child, or for both, and regularly visited or communicated, or attempted to communicate or visit, with the mother during or after the term of pregnancy, or with the child, or both; [G.S. 48-3-601(2)b.4.II.]
      - (a) Father's consent to adoption was required when he made, in accordance with his financial means, regular and consistent deposits into a home lockbox after mother refused his offers of support. Father testified extensively about his efforts to set aside more than \$3,000 in the lockbox, which was used to keep the funds separate and for the child. Father also provided documentation of a year's worth of bank records showing cash withdrawals and hundreds of pages of Facebook messages with mother. [*In re C.M.H.*, 788 S.E.2d 594 (N.C. Ct. App. 2016), *review denied*, 797 S.E.2d 3 (2017). *Cf. In re Adoption of Byrd*, 354 N.C. 188, 552 S.E.2d 142 (2001) (consent of putative father not required because he only made attempts to support or made offers of support, which were not sufficient for purposes of G.S. 48-3-601(2) b.4).]
    - iii. Married, or attempted to marry, by a marriage solemnized in apparent compliance with the law, although the attempted marriage was or could be declared invalid, the child's mother after the child's birth but before the child's placement for adoption or the mother's relinquishment. [G.S. 48-3-601(2)b.4.III.]
  - d. Received the child into his home and openly held the child out as his biological child before the date the adoption petition was filed. [G.S. 48-3-601(2)b.5.]
  - e. Has adopted the minor child. [G.S. 48-3-601(2)b.6.]

- f. See [Section IV.E](#), below, on consent.
- 3. The consent of a presumed or putative father with respect to the adoption of a minor child (other than an adoptive father) is not required if his consent is not required under G.S. 48-3-601, discussed above, or if:
  - a. He has been judicially determined not to be the child's father or
  - b. Another man has been judicially determined to be the child's father. [G.S. 48-3-603(a)(2).]
  - c. See [Section IV.E](#), below, on consent.
- 4. If a presumed or putative father's right to withhold consent to the adoption of a child depends on whether he is the child's father, a district court judge may order genetic paternity testing pursuant to G.S. 8-50.1(b1) and enter appropriate findings of fact and conclusions of law with respect to paternity in the pending adoption action.
- 5. For more on paternity generally, see [Paternity](#), Bench Book, Vol. 1, Chapter 10. For more on the notice and consent provisions with respect to presumed or putative fathers in adoption proceedings, see [Sections IV.D](#) and [IV.E](#) below.

## O. Relationship between Adoption and Child Support Proceedings

- 1. Adoption assistance subsidies for special needs children are not income of the parents but, rather, constitute money received by the adopted children. [N.C. CHILD SUPPORT GUIDELINES, 2015 ANN. R. N.C. 49 (effective Jan. 1, 2015, applicable to child support actions heard on or after that date) (specifically excluding these payments from income for the first time and codifying the holding in *Gaston Cty. ex rel. Miller v. Miller*, 168 N.C. App. 577, 608 S.E.2d 101 (2005) (such payments are a resource of the adopted child, not a subsidy to the parents; North Carolina Administrative Code and the Adoption Assistance Agreement between the county and the parents so provided).]

## IV. Adoption of a Minor Not by a Stepparent

### A. Placement of Minors for Adoption

- 1. Who may place a minor for adoption.
  - a. Only an agency, a guardian, both parents acting jointly under certain conditions, or a parent with legal and physical custody may place a minor for adoption. [G.S. 48-3-201(a).]
  - b. Only those persons or entities specified in G.S. 48-3-201 may place a child for adoption. A person in violation of this provision is guilty of a Class 1 misdemeanor. [G.S. 48-10-101(a).]
- 2. Documents executed before placement.
  - a. Disclosure of background information. [G.S. 48-3-205.]
    - i. Before placing a minor for adoption, the individual or agency placing the adoptee must give the prospective adoptive parent a written document containing

- specified nonidentifying background and health information about the child and the child's biological family. [G.S. 48-3-205(a).]
    - ii. The minor can obtain this information when she is 18 or is married or emancipated. [G.S. 48-3-205(a).]
    - iii. Limitations on the use of the information in other actions or proceedings are set out in G.S. 48-3-205(b).
  - b. Affidavit of parentage.
    - i. A parent or guardian who makes a direct placement of a child must execute an affidavit setting out the names, last known addresses, and marital status of the child's parents or possible parents. [G.S. 48-3-206(a).] If the placing parent or guardian is unavailable, the affidavit may be executed by a knowledgeable person who must indicate the source of his knowledge. [G.S. 48-3-206(a).]
    - ii. An agency making a placement must obtain, from at least one individual who relinquishes a child, an affidavit setting out the same information described in the section immediately above. [G.S. 48-3-206(b).] The affidavit is not necessary when the agency acquires legal and physical custody of the child for purposes of adoption by a court order terminating the parental rights of the parent or guardian. [G.S. 48-3-206(b).]
    - iii. If a petition for adoption is filed without the required affidavit of parentage, there is no valid adoption proceeding. [*In re Adoption of Clark*, 327 N.C. 61, 393 S.E.2d 791 (1990) (decided under former G.S. Chapter 48) (G.S. 1A-1, Rule 15 could not be used in this case to amend the adoption petition to allow the filing of the necessary affidavit submitted two years after adoption petition was filed).]
3. Interstate placement. When a minor is brought into the state or removed from the state for the purpose of adoption, the placement must comply with the Interstate Compact on the Placement of Children (ICPC) (Article 38 of G.S. Chapter 7B). [G.S. 48-3-207.]
  - a. If the other jurisdiction is not a party to the ICPC, G.S. 7B-3700 through 7B-3705 (Article 37 of G.S. Chapter 7B) regulate the placement. [G.S. 7B-3800.]
  - b. All states, the District of Columbia, and the Virgin Islands have passed legislation enacting the ICPC into law. [Vivek S. Sankaran, *Out of State and Out of Luck: The Treatment of Non-Custodial Parents Under the Interstate Compact on the Placement of Children*, 25 YALE L. & POL'Y REV. 63, 68 (2006).]
  - c. For an overview of the ICPC along with resources for more comprehensive information, see ABUSE, NEGLECT, DEPENDENCY, AND TERMINATION MANUAL, ch. 7 (Dispositional Purposes and Outcomes), § 7.8 (Interstate Compact on the Placement of Children), [www.sog.unc.edu/resources/microsites/abuse-neglect-dependency-and-termination-parental-rights](http://www.sog.unc.edu/resources/microsites/abuse-neglect-dependency-and-termination-parental-rights).
4. Placement under the Indian Child Welfare Act (ICWA, or "the Act") [25 U.S.C. §§ 1901–1963.]
  - a. When enacting the ICWA, Congress declared as national policy:
    - i. The protection of the best interests of Indian children,

- ii. The promotion of the stability and security of Indian tribes and families by the establishment of minimum federal standards for the removal of Indian children from their families,
  - iii. The placement of Indian children in foster or adoptive homes that will reflect the unique values of Indian culture, and
  - iv. The provision of assistance to Indian tribes in the operation of child and family service programs. [25 U.S.C. § 1902.]
- b. On June 14, 2016, the Bureau of Indian Affairs issued binding ICWA regulations applicable to any child custody proceeding initiated on or after Dec. 12, 2016. The regulations were published at 81 Fed. Reg. 38,778 (June 14, 2016) and codified at 25 C.F.R. pt. 23 (hereinafter 2016 ICWA Regulations).
- c. The 2016 ICWA Regulations clarify the minimum federal standards governing implementation of the Act to ensure that it is applied in all states consistent with the Act's express language and with Congress's intent in enacting the statute, and to promote the stability and security of Indian tribes and Indian families. [25 C.F.R. § 23.101.]
- d. Definitions.
- i. A "child custody proceeding" for purposes of the ICWA is any nonemergency action that may result in one of the following outcomes:
    - (a) Foster care placement,
    - (b) Termination of parental rights,
    - (c) Preadoptive placement, or
    - (d) Adoptive placement. [25 U.S.C. § 1903(1); 25 C.F.R. § 23.2.] The ICWA does not apply to an award of custody of an Indian child to one of the child's parents, in a divorce proceeding or otherwise. [25 U.S.C. § 1903(1); 25 C.F.R. § 23.103(b)(3); 81 Fed. Reg. 38,778-01, 38,800.]
  - ii. An "Indian child" is any unmarried person who is under age 18 years and either (1) is a member of an Indian tribe or (2) is eligible for membership in an Indian tribe and is the biological child of a member of an Indian tribe. [25 U.S.C. § 1903(4); 25 C.F.R. § 23.2.]
- e. One notable requirement of the 2016 ICWA Regulations is set out below. Resources providing more information about the 2016 ICWA Regulations are also set out below.
- i. The 2016 ICWA Regulations require that state courts ask each participant at the beginning of a voluntary or involuntary child custody proceeding whether the participant knows or has reason to know that the child is an Indian child. [25 C.F.R. § 23.107(a).]
  - ii. All responses should be on the record. [25 C.F.R. § 23.107(a).]
  - iii. The state court must instruct the parties to inform the court if they subsequently receive information that provides reason to know that the child is an Indian child. [25 C.F.R. § 23.107(a).]
  - iv. For a tool to use to implement this requirement, see U.S. DEP'T OF THE INTERIOR, BUREAU OF INDIAN AFFAIRS, QUICK REFERENCE SHEET FOR STATE



COURT PERSONNEL, [www.indianaffairs.gov/cs/groups/xois/documents/document/idc2-041404.pdf](http://www.indianaffairs.gov/cs/groups/xois/documents/document/idc2-041404.pdf).

- f. For guidelines to aid implementation of the 2016 ICWA Regulations, see U.S. DEP'T OF THE INTERIOR, OFFICE OF THE ASSISTANT SECRETARY—INDIAN AFFAIRS, BUREAU OF INDIAN AFFAIRS, GUIDELINES FOR IMPLEMENTING THE INDIAN CHILD WELFARE ACT (Dec. 2016). [www.bia.gov/cs/groups/public/documents/text/idc2-056831.pdf](http://www.bia.gov/cs/groups/public/documents/text/idc2-056831.pdf).
- g. For information about the 2016 ICWA Regulations, see discussion in Sara DePasquale, *The Indian Child Welfare Act: New Binding Federal Regulations You Need to Know About!* UNC SCH. OF GOV'T: ON THE CIVIL SIDE BLOG (Dec. 9, 2016), <http://civil.sog.unc.edu/the-indian-child-welfare-act-new-binding-federal-regulations-you-need-to-know-about>.
- h. If an individual to be adopted is an Indian child as defined in the ICWA, then the provisions of that act control the individual's adoption. [G.S. 48-1-108.]
- i. A consent to the adoption of an Indian child must meet the requirements of the ICWA. [G.S. 48-3-605(f).] NOTE: The clerk of superior court, the superior court, and the district court each have jurisdiction to accept voluntary consents for adoption under the ICWA. [G.S. 48-3-605(g), *added by* S.L. 2015-264, § 44(a), effective Oct. 1, 2015.]
- j. Certain provisions of the ICWA were found to apply only to Indian parents with custody of their Indian child(ren). In *Adoptive Couple v. Baby Girl*, 133 S. Ct. 2552 (U.S. 2013), an Indian father, who had abandoned his child before birth and never had legal or physical custody, sought custody and withheld his consent to the child's adoption by a non-Indian couple. The U.S. Supreme Court held:
  - i. 25 U.S.C. § 1912(f), providing that parental rights may be terminated only if the parent's continued custody would likely result in serious harm to the child, was not applicable because father had never had legal or physical custody.
  - ii. 25 U.S.C. § 1912(d) provides that parental rights may be terminated only if remedial services have been provided, the goal being to prevent the breakup of an Indian family. This provision was not applicable when the Indian father and the child had never had a relationship.
  - iii. Note that the 2016 ICWA Regulations were not in effect when the *Baby Girl* case was decided.
- k. The provision of the ICWA giving adoption placement preferences to Indian family members, tribe members, or other Indian families [25 U.S.C. § 1915(a).] did not bar a non-Indian couple from adopting the child of an Indian father when no person eligible for the preferences sought to adopt the child. [*Adoptive Couple v. Baby Girl*, 133 S. Ct. 2552 (U.S. 2013).] NOTE: The clerk of superior court, the superior court, and the district court each have jurisdiction to determine whether there is "good cause" to deviate from the adoptive placement preferences in the ICWA. [G.S. 48-3-605(g), *added by* S.L. 2015-264, § 44(a), effective Oct. 1, 2015.]
  - i. Regulations on the placement preferences that apply in adoptive placements are set out at 25 C.F.R. § 23.130.

- ii. Regulations addressing how a determination of good cause to depart from placement preferences is made are set out at 25 C.F.R. § 23.132.
- iii. Note that the 2016 ICWA Regulations were not in effect when the *Baby Girl* case was decided.

## B. Preplacement Assessments

1. Which agencies are allowed to prepare preplacement assessments and reports to the court.
  - a. The general rule is that only a county department of social services (DSS) or an agency licensed by the North Carolina Department of Human Services may prepare preplacement assessments and reports to the court. [G.S. 48-1-109(a).]
  - b. For exceptions, see G.S. 48-1-109(b) (preplacement assessments prepared in another state) and (c) (when petitioner moves to a different state before the agency completes the report).
2. When preplacement assessment required.
  - a. A preplacement assessment is not required in an independent adoption when a prospective adoptive parent is a specified relative. [G.S. 48-3-301(b), *amended by* S.L. 2015-54, § 7, effective June 4, 2015.]
    - i. The specified relatives are the minor's grandparent, full or half sibling, first cousin, aunt, uncle, great-aunt, great-uncle, or great-grandparent. [G.S. 48-3-301(b), *amended by* S.L. 2015-54, § 7, effective June 4, 2015.]
    - ii. G.S. 48-3-301(b) applies only when a parent or guardian places a child directly with a specified relative. All DSS adoptions must have preplacement assessments.
  - b. Otherwise, placement of a child may occur only if a written preplacement assessment:
    - i. Has been completed or updated within the eighteen months preceding the placement and
    - ii. Contains a finding that the person who is the subject of the assessment is suitable to be an adoptive parent, either in general or for a specific child. [G.S. 48-3-301(a).]
3. Procedure when a direct placement is made before a preplacement assessment is completed.
  - a. If a direct placement is made in violation of this requirement:
    - i. The prospective adoptive parent must request that an assessment be done or, if one has been started but not completed, that it be expedited; [G.S. 48-3-301(c)(1).]
    - ii. The court may not enter an adoption decree until a favorable preplacement assessment and a report to the court have been completed and filed, and the court may not order a report to the court until at least thirty days after the assessment has been completed; [G.S. 48-3-301(c)(2).] and

- iii. If the person who placed the child executes a consent before receiving a copy of the preplacement assessment, the time within which the person may revoke consent is to be determined under G.S. 48-3-608. [G.S. 48-3-301(c)(3). See [Section IV.E.15](#), below, on revocation.]
  - b. G.S. 48-3-307 sets out the duties of the prospective adoptive parent upon completion of the assessment.
4. Procedure and fees.
  - a. G.S. 48-3-302 sets out the procedure for a prospective adoptive parent to request an assessment.
  - b. G.S. 48-3-303(a) requires that a preplacement assessment be completed within ninety days after a request has been accepted.
  - c. G.S. 48-3-304 sets out the fees that an agency may charge for an assessment.
5. Content of assessment.
  - a. The preplacement assessment is a comprehensive evaluation of the personal history of the individual being assessed, including the person's age, date of birth, marital status and family history, physical and mental health, educational and employment history, whether the person has been convicted of a crime other than a minor traffic violation, and other relevant data. [G.S. 48-3-303(c)(1), (2), (3), (4), (9).]
  - b. The assessment must indicate whether a person has previously requested an assessment or been involved in an adoptive placement and the outcome of the assessment or placement. [G.S. 48-3-303(c)(7).]
  - c. If the prospective adoptive parent seeks to adopt a child in the custody or placement responsibility of a county department of social services (DSS), DSS must have the prospective adoptive parent's criminal history and the criminal histories of all individuals 18 years of age or older who reside in the prospective adoptive home investigated, pursuant to and in accordance with G.S. 48-3-309, and must make a determination as to each individual's fitness. [G.S. 48-3-303(d).]
  - d. See G.S. 48-3-303 for the complete requirements for a preplacement assessment.
6. Response to an unfavorable preplacement assessment. G.S. 48-3-308 sets out a procedure for the administrative review of an unfavorable preplacement assessment at the request of the person who was the subject of the assessment.

### C. Custody of Child Pending Final Decree of Adoption

1. There is no longer any provision in G.S. Chapter 48 for an "interlocutory decree" of adoption.
2. Direct placement.
  - a. Unless the court orders otherwise, when a parent or guardian places the child directly with the petitioner, the petitioner acquires that parent's or guardian's right to legal and continuing physical custody of the child and becomes a person responsible for the care and support of the child after the earliest of the following:
    - i. Execution of consent by the parent or guardian who placed the child;
    - ii. The filing of a petition for adoption by the petitioner; or

- iii. The execution of a document by a parent or guardian having legal and physical custody of the child temporarily transferring custody to the petitioner, pending execution of a consent. [G.S. 48-3-501.]
- 3. Agency placement.
  - a. Unless the court orders otherwise, during a proceeding for adoption in which an agency places the child with the petitioner, the agency retains legal but not physical custody of the child until the adoption becomes final. [G.S. 48-3-502(a)(1).]
  - b. The agency placing the child may delegate to the petitioner responsibility for the care and support of the adoptee. [G.S. 48-3-502(a)(2).]
  - c. Before a decree of adoption becomes final, the agency, for cause, may petition the court to dismiss the proceeding and to restore full legal and physical custody of the child to the agency. The court may grant the petition upon finding that it is in the child's best interest. [G.S. 48-3-502(b).]
    - i. Regardless of whether DSS has previously consented to the adoption, the trial court, upon motion of the agency before entry of a final decree, may dismiss a petition to adopt and restore full legal and physical custody to the agency upon finding it would be in the best interest of the child to do so. [*In re Adoption of Cunningham*, 151 N.C. App. 410, 567 S.E.2d 153 (2002) (adoption petitions dismissed when evidence showed one of the petitioners had yelled at, cursed at, and kicked a 13-year-old foster child and had yelled and cursed at the prospective adoptees; court of appeals upheld the trial court's dismissal of the adoption petitions based on lack of written consents by DSS as required by G.S. 48-3-605(d) but noted that the trial court had full authority under G.S. 48-2-604(a) and 48-3-502(b) to dismiss the adoption petitions based on best interests).]
- 4. Transfer of physical custody of minor by health care facility or attending practitioner for purposes of adoption.
  - a. A health care facility or attending practitioner with physical custody of a child may release the child for the purpose of adoption to a prospective adoptive parent or agency that is not entitled to legal custody of the child upon execution of an authorization of the transfer of physical custody executed by the child's parent, guardian, or other person having legal custody of the child as provided in G.S. 48-3-402.

#### D. Petition for Adoption

- 1. For provisions applicable to all adoption petitions, see [Section III.F](#), above.
- 2. In addition to the requirements in G.S. 48-2-304(a) for all adoption petitions, G.S. 48-2-304(b) and (c) set out additional requirements for the content of a petition for adoption of a minor.
- 3. In addition to the persons required to be given notice by G.S. 48-2-401(b) in all adoptions, G.S. 48-2-401(c) sets out additional notice requirements for the adoption of a minor.
  - a. Notice must be served on:
    - i. The child to be adopted, if 12 or more years of age, upon a finding that it is not in the best interest of the child to require the child's consent; [G.S. 48-2-401(c)(1)]

- (a minor whose consent is dispensed with under G.S. 48-3-603(b)(2) is entitled to notice of the proceeding).]
- ii. Any agency that placed the adoptee; [G.S. 48-2-401(c)(2).]
  - iii. Any individual who the petitioner has been actually informed has legal or physical custody of the child or who has a right of visitation or communication with the child pursuant to an existing court order issued by a court in this or another state. [G.S. 48-2-401(c)(4).]
- b. Notice also must be served on the following possible fathers:
- i. A man who to the actual knowledge of the petitioner claims to be or is named as the biological or possible biological father of the minor (regardless of whether the child's paternity has been established) and
  - ii. Any biological or possible biological fathers who are unknown or whose whereabouts are unknown, except that notice need not be given to:
    - (a) A man who has executed a consent to adopt, a relinquishment of parental rights, or a notarized statement denying paternity or disclaiming any interest in the minor;
    - (b) A man whose paternal rights have been legally terminated or who has been judicially determined not to be the minor's parent;
    - (c) A man whose consent to the adoption is not required under G.S. 48-3-603(a)(9) due to his conviction of a specified crime (first- or second-degree forcible rape, statutory rape of a child by an adult, or first-degree statutory rape that resulted in the conception of the child to be adopted); [G.S. 48-2-401(c)(3), *added by* S.L. 2013-236, § 6, effective July 3, 2013.] or
    - (d) If the petition is filed within three months of the minor's birth, a man whose consent to the adoption has been determined not to be required under G.S. 48-2-206 (procedure for prebirth determination of right to consent). [G.S. 48-2-401(c)(3).]
    - (e) For an article discussing whether notice to an anonymous sperm donor is required under G.S. 48-2-401(c)(3), see Sara DePasquale and Meredith Smith, *Adoptions and Sperm Donors*, UNC. SCH. OF GOV'T: ON THE CIVIL SIDE BLOG (Apr. 25, 2016), <http://civil.sog.unc.edu/adoptions-and-sperm-donors>.
  - iii. If an individual who is described in G.S. 48-3-601 or is entitled to notice under G.S. 48-2-401(c)(3) is served with notice and fails to timely respond, the court, upon motion by the petitioner, must enter an order under G.S. 48-3-603(a)(7) that the individual's consent is not required for the adoption. [G.S. 48-2-207(a), *amended by* S.L. 2013-236, § 3, effective July 3, 2013, and applicable to actions filed on or after that date.] If service was by publication, the noticed person has forty days from the first publication of the notice to respond. If service was not by publication, response is required within thirty days after service of the notice. [G.S. 48-3-603(a)(7), *amended by* S.L. 2015-54, § 8, effective June 4, 2015, and applicable to proceedings filed after that date.]

- iv. G.S. 48-2-404 also speaks to notice to an alleged father as described in G.S. 48-2-401(c)(3). It provides that if, at any time in the proceeding, it appears to the court that there is an alleged father of a minor adoptee who has not been given notice, the court shall require notice to be given to him pursuant to G.S. 48-2-402.

## E. Consent to Adoption

1. G.S. 48-3-601 contains extensive, detailed provisions regarding consent and describes those persons whose consent is required.
2. Persons whose consent to adoption is required. [G.S. 48-3-601.]
  - a. The child to be adopted, if 12 or more years of age; [G.S. 48-3-601(1).]
  - b. In an agency placement:
    - i. The agency that placed the child for adoption and
    - ii. Each individual described in [Section IV.E.2.c](#), immediately below, who has not relinquished the child as set out in G.S. Chapter 48, Article 3, Part 7; [G.S. 48-3-601(3).]
  - c. In a direct placement:
    - i. The child's mother; [G.S. 48-3-601(2)a.]
    - ii. The child's guardian; [G.S. 48-3-601(2)c. See [Section I.A.1.h](#), above, for the definition of a guardian.]
    - iii. A man who may or may not be the biological father of the child but who:
      - (a) Before the filing of the petition legitimated the child under the law of any state; [G.S. 48-3-601(2)b.3.]
      - (b) Before the filing of the petition received the child into his home and openly held out the child as his biological child; [G.S. 48-3-601(2)b.5.]
      - (c) Has adopted the child; [G.S. 48-3-601(2)b.6.]
      - (d) Is or was married to the mother of the child if the child was born during the marriage or within 280 days after the marriage terminated, or has separated from the mother pursuant to a written separation agreement or a court order of separation; [G.S. 48-3-601(2)b.1.]
      - (e) Attempted to marry the mother of the child before the child's birth by a marriage solemnized in apparent compliance with law, although the attempted marriage is or could be declared invalid, and the child is born during the attempted marriage, or within 280 days after the attempted marriage is terminated by annulment, declaration of invalidity, divorce, or, in the absence of a judicial proceeding, by the cessation of cohabitation; [G.S. 48-3-601(2)b.2.]
      - (f) Before the earlier of the filing of the petition or the date of a hearing under G.S. 48-2-206, acknowledged his paternity of the child and:

- (1) Was obligated to support the minor by written agreement or court order; [G.S. 48-3-601(2)b.4.I.]
    - (2) Has provided, in accordance with his financial means, reasonable and consistent payments for the support of the biological mother during or after pregnancy, or for the support of the child, or both, and has regularly visited or communicated or attempted to communicate or visit with the biological mother during or after pregnancy, or with the minor, or both; [G.S. 48-3-601(2)b.4.II.] or
    - (3) After the child's birth but before the child's placement for adoption or the mother's relinquishment, has married or attempted to marry the mother of the minor by a marriage solemnized in apparent compliance with law, although the attempted marriage is or could be declared invalid. [G.S. 48-3-601(2)b.4.III.] See [Section IV.E.5](#), below, for relevant case law on this consent provision, including the terms "acknowledgment" and "support."
  - (g) For case law discussing the consent requirement in G.S. 48-3-601(2)b.4., see [Section IV.E.5](#), below.
3. Persons whose consent is not required [G.S. 48-3-603.] include the following:
- a. A person whose parental rights have been terminated under G.S. Chapter 7B or by a court in another state; [G.S. 48-3-603(a)(1).]
  - b. A man, other than an adoptive father, who has been judicially determined not to be the father of the child to be adopted or when another man has been judicially determined to be the child's father; [G.S. 48-3-603(a)(2).]
  - c. A person who has relinquished parental rights or guardianship powers, including the right to consent to adoption, to an agency; [G.S. 48-3-603(a)(4). See [Section IV.F](#), below, on relinquishment.]
  - d. A man who is not married to the child's birth mother and who, after the child's conception, executed a notarized statement denying paternity or disclaiming any interest in the child. [G.S. 48-3-603(a)(5).] Notwithstanding this provision, an adoptive parent may wish to proceed carefully when the man will sign only a denial of paternity rather than a consent to adoption and should consider whether the evidence strongly indicates whether the man is the actual father. [CLERKS MANUAL, Vol. 2, Pt. VII (Special Proceedings), ch. 110 (Adoptions), App. XI (Adoption Questions and Answers), Art. 3, Consents/Relinquishments, ¶ 18 (setting out other options).]
  - e. A deceased parent or the personal representative of a deceased parent's estate. [G.S. 48-3-603(a)(6).] There is no provision for a substitute consent. [CLERKS MANUAL, Vol. 2, Pt. VII (Special Proceedings), ch. 110 (Adoptions), App. XI (Adoption Questions and Answers), Art. 3, Consents/Relinquishments, ¶ 5.]
  - f. A person whose consent is required by G.S. 48-3-601 who has not executed a consent or a relinquishment and who fails to respond to a notice of the adoption proceeding within thirty days after service of the notice or, if service is by publication, forty days from the first publication of the notice; [G.S. 48-3-603(a)(7), *amended by* S.L. 2015-54, § 8, effective June 4, 2015, and applicable to proceedings filed after that date.]

- g. A biological father who does not respond in a timely matter to notice of a prebirth determination of his right to consent to adoption or whose consent the court determines is not required; [G.S. 48-3-603(a)(8).]
  - h. A person whose actions resulted in a conviction of first- or second-degree forcible rape, statutory rape of a child by an adult, or first-degree statutory rape and the conception of the child to be adopted. [G.S. 48-3-603(a)(9), *amended by* S.L. 2015-181, § 34, effective Dec. 1, 2015, and applicable to prosecutions for offenses committed on or after that date.]
4. Hearing to determine whether consent is required.
- a. The court must hold a hearing to take evidence and determine whether an individual's consent to an adoption is required if:
    - i. An individual described in G.S. 48-2-401(c)(3) who has been served with notice of the proceeding timely notifies the court that he believes his consent to the adoption is required or
    - ii. An individual who has not been served with notice of the proceeding intervenes in the adoption proceeding alleging that her consent to the adoption is required. [G.S. 48-2-207(b).]
  - b. If the court determines that the consent of any individual is required, the adoption cannot proceed until that person's consent is obtained or his parental rights are terminated. [G.S. 48-2-207(c).]
  - c. Minimum contacts are required for jurisdiction over a nonresident father of a legitimate child.
    - i. A nonresident father's contacts with North Carolina were sufficient to support a finding of personal jurisdiction in an abandonment proceeding which determined that father had abandoned child and, thus, that his consent was not necessary in a stepparent adoption proceeding. [*Barnes v. Wells*, 165 N.C. App. 575, 599 S.E.2d 585 (2004) (clerk had personal jurisdiction over father even though he had only lived in North Carolina one month, as he had other contacts with the state, including that his divorce from child's mother took place here and father picked up and returned child to North Carolina).]
    - ii. Father in a proceeding to terminate parental rights did not have the requisite minimum contacts with North Carolina when his only contacts were that his child was brought here by his former wife and was in her custody here and father's support payments ordered by a Wisconsin court were forwarded by that court to North Carolina. [*In re Trueman*, 99 N.C. App. 579, 393 S.E.2d 569 (1990). *See also In re Finnican*, 104 N.C. App. 157, 408 S.E.2d 742 (1991) (where the nonresident parent had no contacts with North Carolina and made no appearance in the action, the termination order was void and could be set aside at any time under G.S. 1A-1, Rule 60(b)(4)), *cert. denied*, 330 N.C. 612, 413 S.E.2d 800, *overruled in part on other grounds by Bryson v. Sullivan*, 330 N.C. 644, 412 S.E.2d 327 (1992).] NOTE: The Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA), at G.S. 50A-201(c), states that personal jurisdiction over a party or a child is neither necessary nor sufficient to give a court authority to make a child custody determination. G.S. 7B-1101 provides that the court



- has jurisdiction to terminate a parent's rights, without regard to the parent's state of residence, under circumstances as set out in the statute. North Carolina appellate courts have not addressed the conflict between (1) statutory provisions saying that personal jurisdiction is not required and (2) case law requiring that in some termination cases the court have personal jurisdiction over the respondent parent.
- d. Minimum contacts have not been required under certain circumstances for jurisdiction over a nonresident father of an illegitimate child.
    - i. A nonresident father's parental rights can be terminated in the absence of minimum contacts with North Carolina if the child is born out of wedlock and the father has failed to establish paternity, legitimate his child, or provide substantial financial assistance or care to the child and mother. [*In re Dixon*, 112 N.C. App. 248, 435 S.E.2d 352 (1993).]
    - ii. Even though a father incarcerated in another state lacked minimum contacts with North Carolina, trial court properly asserted personal jurisdiction and terminated father's rights to a child whom he had acknowledged but not legitimated and with whom he had never had a custodial relationship or any significant personal or financial relationship. [*In re Williams*, 149 N.C. App. 951, 563 S.E.2d 202 (2002) (citing *Dixon*, 112 N.C. App. 248, 435 S.E.2d 352 (1993)).]
  - e. For a more complete discussion on the issue of personal jurisdiction in proceedings to terminate parental rights, see ABUSE, NEGLECT, DEPENDENCY, AND TERMINATION MANUAL, ch. 3 (Jurisdiction and Venue), § 3.4.C (Out-of-State Parents in TPR Cases), [www.sog.unc.edu/resources/microsites/abuse-neglect-dependency-and-termination-parental-rights](http://www.sog.unc.edu/resources/microsites/abuse-neglect-dependency-and-termination-parental-rights).
5. Case law on consent requirement for putative fathers.
- a. A putative father must "assume some of the burdens of parenthood" before his consent will be required. [*In re Adoption of Anderson*, 360 N.C. 271, 276, 624 S.E.2d 626, 629 (2006).]
  - b. North Carolina case law and G.S. 48-3-601 establish bright-line requirements for putative fathers to demonstrate that they have assumed some of the burdens of parenthood, thus enabling the trial court to make clear factual determinations about their rights in an adoption or termination of parental rights proceeding. [*A Child's Hope, LLC v. Doe*, 178 N.C. App. 96, 630 S.E.2d 673 (2006) (citing *In re Adoption of Byrd*, 354 N.C. 188, 552 S.E.2d 142 (2001), and *In re Adoption of Anderson*, 360 N.C. 271, 624 S.E.2d 626 (2006)) (petition by private adoption agency to terminate parental rights of putative father should not have been denied when there were no findings to indicate that he attempted to establish paternity, legitimize the child, or provide support for the mother or child; this was so even though putative father had taken extensive steps to determine whether mother had given birth, mother lied about child's parentage, and mother led father to believe that she had miscarried).] NOTE: No constitutional issues were raised in either *A Child's Hope* or *Adoption of Anderson*. See also generally *In re Adoption of S.D.W.*, 367 N.C. 386, 758 S.E.2d 374 (2014), discussed more fully at [Section IVE.6](#), below.

- c. The provision requiring action by the father before the filing of an adoption petition requires father's action only if a valid petition was filed. [*See In re Clark*, 327 N.C. 61, 393 S.E.2d 791 (1990) (decided under former G.S. Chapter 48) (adoption petition filed without the required affidavit was not valid; father's later petition for legitimation met the statutory requirement for action before filing of an adoption petition).]
- d. G.S. 48-3-601(2)b.4. contemplates that a trial court may consider different time periods when determining whether a putative father's actions establish that his consent to an adoption is required. [*In re Adoption of S.K.N.*, 224 N.C. App. 41, 735 S.E.2d 382 (2012) (trial court did not err in using two-day period after putative father became aware of birth of child to determine whether he acknowledged paternity, as required by G.S. 48-3-601(2)b.4., while using entire period of pregnancy to determine whether he provided sufficient support, as required by G.S. 48-3-601(2)b.4.II.), *review denied, appeal dismissed*, 366 N.C. 588, 743 S.E.2d 185 (2013).]
- e. The subparts of G.S. 48-3-601(2)b.4., that is, subparts I, II, and III, are to be read disjunctively, each being an alternative to the other. [*Miller v. Lillich*, 167 N.C. App. 643, 647, 606 S.E.2d 181, 183 (2004) (emphasis in original) (rejecting the argument that a man who has acknowledged paternity must be both "obligated to support the minor under written agreement or by court order (subpart I) *and* to make reasonable and consistent payments" (subpart II)).]
- f. But all three requirements under G.S. 48-3-601(2)b.4.II. must be satisfied before a putative father's consent is required. [*In re Adoption of Byrd*, 354 N.C. 188, 552 S.E.2d 142 (2001) (a putative father's failure to satisfy any of the three requirements in G.S. 48-3-601(2)b.4.II. before the filing of the adoption petition renders his consent to the adoption unnecessary; where father met two of the three requirements, his consent was not required).] The three requirements in G.S. 48-3-601(2)b.4.II. are set out in [Section IV.E.2.c.iii.\(f\)](#), above.
- g. Statutory requirement of "acknowledgment" under G.S. 48-3-601(2)b.4.
  - i. G.S. 48-3-601(2)b.4., requiring an acknowledgment of paternity, contains no specific requirements as to the manner of acknowledgment. [*In re Adoption of Byrd*, 354 N.C. 188, 552 S.E.2d 142 (2001) ("acknowledgment" may be made orally or in writing or may be demonstrated by the conduct of the putative father).]
  - ii. Whether putative father acknowledges paternity in writing, verbally, or by his conduct, his acknowledgment must be made "unconditionally" and the putative father must have "unequivocally" expressed his desire to be the child's father and a part of the child's life. [*In re Adoption of Shuler*, 162 N.C. App. 328, 590 S.E.2d 458 (2004) (citing *In re Adoption of Byrd*, 354 N.C. 188, 552 S.E.2d 142 (2001)) (father's denial of paternity, made at the hospital when the child was born and when he believed himself to be the child's father, his false statement that he was a "friend," and his refusal to be listed on the child's birth certificate demonstrated that his acknowledgment was not unconditional and unequivocal).]
  - iii. Consent not required; no timely acknowledgment of paternity.

- (a) An affidavit acknowledging paternity signed after the petition for adoption was filed did not meet statutory requirements. [*In re Adoption of Shuler*, 162 N.C. App. 328, 590 S.E.2d 458 (2004) (unconditional acknowledgment of paternity prior to the filing of the adoption petition is required).]
- iv. Consent required; proper acknowledgment of paternity.
  - (a) A phone call placed by respondent's mother to department of social services, made on respondent's behalf, was found to be an "acknowledgement" by respondent of paternity under G.S. 48-3-601(2)b.4. [*In re Adoption of S.K.N.*, 224 N.C. App. 41, 735 S.E.2d 382 (2012) (rejecting argument that *In re Adoption of Byrd*, 354 N.C. 188, 552 S.E.2d 142 (2001), which recognized that offers of support by a third party on behalf of a putative father would not meet the statutory requirement of support, as discussed in [Section IV.E.5.h.vi](#), below, prohibited consideration of a third party's statements as evidence of a putative father's acknowledgement of paternity), *review denied, appeal dismissed*, 366 N.C. 588, 743 S.E.2d 185 (2013).]
  - (b) Father satisfied statutory requirement by his conduct when he readily and unconditionally acknowledged his paternity of the unborn child and maintained this posture until mother advised him that another man might be the father, after which father continued to acknowledge his possible paternity and expressed his willingness to accept that responsibility, conditioned only upon a proven biological link to the child. [*In re Adoption of Byrd*, 354 N.C. 188, 552 S.E.2d 142 (2001) (father's words and actions, when considered as a whole, satisfied the statute, even though after being advised that another man might be child's father, father conditioned his acknowledgment of fatherhood upon proof of biological paternity). *See also In re Adoption of S.K.N.*, 224 N.C. App. 41, 735 S.E.2d 382 (2012) (relying on *Adoption of Byrd* to find that respondent's request for a blood test to confirm his paternity did not void his acknowledgment of paternity), *review denied, appeal dismissed*, 366 N.C. 588, 743 S.E.2d 185 (2013).]
- h. Statutory requirement of "support" under G.S. 48-3-601(2)b.4.II.
  - i. The "support" required under G.S. 48-3-601(2)b.4.II., though not specifically defined, is actual, real, and tangible support, so that attempts or offers of support do not suffice. [*In re Adoption of Byrd*, 354 N.C. 188, 552 S.E.2d 142 (2001) (noting that "attempted" communication with the mother is sufficient under the statute but statute makes no such provision for "attempted" support); *In re Adoption of B.J.R.*, 238 N.C. App. 308, 767 S.E.2d 395 (2014) (citing *Byrd*) (father who occasionally offered to provide financial assistance but never actually provided money or tangible support did not meet requirement in G.S. 48-3-601(2)b.4.II. for support).]
  - ii. A putative father may satisfy the support and communication requirements of G.S. 48-3-601(2)b.4.II., even though he has no knowledge of the pregnancy. [*In re Adoption of S.K.N.*, 224 N.C. App. 41, 735 S.E.2d 382 (2012) (decided on nonconstitutional grounds) (trial court did not err when it concluded that respondent had satisfied the support and communication requirements of the

statute, even though his actions were made “[u]nintentionally and unknowingly” because mother had denied the pregnancy; statute does not require knowledge of the pregnancy), *review denied, appeal dismissed*, 366 N.C. 588, 743 S.E.2d 185 (2013).]

- iii. Mother’s refusal to accept assistance cannot defeat the father’s paternal interest as long as the father makes reasonable and consistent payments for the support of the mother or child as required by G.S. 48-3-601, such as to a bank account or trust fund. [*In re Adoption of Anderson*, 360 N.C. 271, 624 S.E.2d 626 (2006) (if father makes reasonable and consistent payments for the support of mother or child, mother’s refusal to accept assistance cannot defeat his paternal interest). *But see In re Adoption of Byrd*, 354 N.C. 188, 552 S.E.2d 142 (2001) (Butterfield, J., concurring in part and dissenting in part) (noting that if father set up a fund for child after mother rejected offers of support, this would be classified as an attempt to support, which *Adoption of Byrd* majority found insufficient).]
- iv. Another way for an unmarried biological father to provide support when his efforts have been rebuffed by the mother is to begin purchasing, during the relevant time frame, equipment and supplies that can only be used for the support of the minor child, such as a baby car seat, a baby crib mattress, and baby clothing. [*In re K.A.R.*, 205 N.C. App. 611, 696 S.E.2d 757 (2010) (those items, valued at more than \$200, were found to be reasonable support consistent with putative father’s financial means), *review denied*, 365 N.C. 75, 706 S.E.2d 236 (2011).]
- v. The trial court may use child support guidelines to calculate father’s probable support requirements, and this amount then serves as a baseline for determining whether payments father made were reasonable and consistent. [*Miller v. Lillich*, 167 N.C. App. 643, 606 S.E.2d 181 (2004) (use of guidelines is not required, nor is a child support order or written support agreement necessary to determine whether payments were reasonable and consistent; support of \$100 cash each month plus diapers and medicine exceeded guideline amount of \$57/month). *See also In re K.A.R.*, 205 N.C. App. 611, 696 S.E.2d 757 (2010) (court of appeals noted that putative father provided a reasonable amount of support based on his financial means when his child support obligation under the guidelines would be no more than \$50/month and putative father had provided more than \$200 in support for the four-month period after he obtained employment and before the adoption petition was filed), *review denied*, 365 N.C. 75, 706 S.E.2d 236 (2011).]
- vi. Cases appear to require that the putative father and not a third party provide at least a portion of the support called for by the statute. [*See In re Adoption of Byrd*, 354 N.C. 188, 552 S.E.2d 142 (2001) (recognizing the practical importance of family assistance but noting prior rulings that support paid or offered by a third party on a parent’s behalf does not relieve that parent from his own support obligations); *see also Miller v. Lillich*, 167 N.C. App. 643, 606 S.E.2d 181 (2004) (finding support by father, independent of the support provided by his family, sufficient). *But see In re Adoption of S.K.N.*, 224 N.C. App. 41, 735 S.E.2d 382 (2012), *review denied, appeal dismissed*, 366 N.C. 588, 743 S.E.2d 185 (2013), considering “misplaced” the petitioners’ contention that the North Carolina Supreme Court in *Adoption of Byrd* expressly rejected a putative father’s

reliance on third-party efforts to meet the requirements of G.S. 48-3-601; finding that a phone call placed by respondent's mother to the department of social services, made on respondent's behalf, to be an "acknowledgement" by respondent of paternity under G.S. 48-3-601(2)b.4.]

- vii. Consent not required; support requirement not met.
  - (a) Father's consent to adoption was not required where support requirement was not met when father had earnings left over after paying his expenses but did not provide support to mother during or after her pregnancy or to the child; \$100 money order and baby clothing sent by father's mother after the filing of the adoption petition did not meet the statutory requirement of support. [*In re Adoption of Byrd*, 354 N.C. 188, 552 S.E.2d 142 (2001).]
  - (b) Where unwed father merely offered support but did not provide actual financial support required by G.S. 48-3-601(2)b.4.II., his consent to adoption was not required. [*In re Adoption of Anderson*, 360 N.C. 271, 624 S.E.2d 626 (2006); *In re Adoption of B.J.R.*, 238 N.C. App. 308, 311, 767 S.E.2d 395, 397 (2014) (17-year-old father whose basic needs were provided by his parents and who "always had at least \$1,000" in a checking account for a six-month period during mother's pregnancy had money that "was his to spend;" when he occasionally offered support but never actually provided money or tangible support before or after the child's birth, he did not meet statutory requirement of support).]
- viii. Consent required; support requirement met.
  - (a) Father's consent to adoption was required when he made, in accordance with his financial means, regular and consistent deposits into a home lockbox after mother refused his offers of support. Father testified extensively about his efforts to set aside more than \$3,000 in the lockbox, which was used to keep the funds separate and for the child. Father also provided documentation of a year's worth of bank records showing cash withdrawals and hundreds of pages of Facebook messages with mother. [*In re C.M.H.*, 788 S.E.2d 594 (N.C. Ct. App. 2016), *review allowed*, 797 S.E.2d 3 (2017).]
  - (b) Putative father "provided reasonable and consistent support" for mother and child during mother's pregnancy by making the monthly payment for their residence and contributing to utility and other daily expenses, even though he did so without knowing that mother was pregnant. [*In re Adoption of S.K.N.*, 224 N.C. App. 41, 50, 735 S.E.2d 382, 389 (2012), *review denied, appeal dismissed*, 366 N.C. 588, 743 S.E.2d 185 (2013).]
  - (c) Putative father provided reasonable and consistent support prior to the filing of the adoption petition when, as soon as he had an income, he purchased equipment and supplies worth more than \$200, including a baby car seat, a baby crib mattress, and baby clothing, even after his efforts to provide support and assistance directly to the mother were rebuffed. The support was reasonable given putative father's means and financial resources, making his consent to the adoption necessary. [*In re K.A.R.*, 205 N.C. App.

611, 696 S.E.2d 757 (2010), *review denied*, 365 N.C. 75, 706 S.E.2d 236 (2011).]

- (d) Payments were reasonable and consistent when father provided financial support for mother during her pregnancy, which included payment of doctor's bills for pregnancy testing and the purchase of necessary items for the child's future use, and was independent of support provided by father's family, which consisted of two baby showers for mother before child's birth, and when father continued to provide support for both mother and child after child's birth through monthly cash payments of at least \$100 per month (when guidelines required \$57 a month) and by providing diapers and medicine. [*Miller v. Lillich*, 167 N.C. App. 643, 606 S.E.2d 181 (2004).]

6. Relevance of father's lack of knowledge of the child's existence.

- a. The North Carolina Supreme Court upheld against a due process challenge a trial court's determination that a biological father's consent was not required for a pending adoption initiated by petition filed before the father was aware of the child's existence. [*In re Adoption of S.D.W.*, 367 N.C. 386, 758 S.E.2d 374 (2014) (citing *Lehr v. Robertson*, 463 U.S. 248, 103 S. Ct. 2985 (1983)) (while the court was "concerned" that mother took steps to disguise father's identity in the hospital affidavit of parentage and on a form relinquishment, and failed to advise father of the child's birth when given the opportunity, based on the facts of the case, father had an opportunity to learn of mother's pregnancy and child's birth, which he did not grasp, so he was not entitled to constitutional due process protections). For a case finding no due process violation when father was aware of mother's pregnancy, see *In re Adoption of B.J.R.*, 238 N.C. App. 308, 315, 767 S.E.2d 395, 399 (2014) (emphasis in original) (application of G.S. Chapter 48 to father with notice of mother's pregnancy did not violate father's due process rights when he had made "very few efforts *after* the birth of his child to develop a parent-child relationship;" that father had taken actions before the child's birth that were consistent with a desire to develop a parent-child relationship was not a sufficient basis to find that father had sufficiently grasped the opportunity to develop that relationship).]
- b. The court of appeals has found that a putative father's knowledge of the existence of his illegitimate child is not relevant when determining whether his consent to adoption is required. [*In re Clark*, 95 N.C. App. 1, 381 S.E.2d 835 (1989) (decided under former G.S. Chapter 48), *rev'd on other grounds*, 327 N.C. 61, 393 S.E.2d 791 (1990).] In reversing on other grounds, the North Carolina Supreme Court did not address the father's argument that his due process and equal protection rights were violated by an adoption statute that allowed the loss of parental rights to a child that he did not know existed. [*But see In re Adoption of S.D.W.*, 367 N.C. 386, 758 S.E.2d 374 (2014), considering constitutional protections, discussed in [Section IV.E.7.b](#), below.] In a recent case decided on nonconstitutional grounds, *In re Adoption of S.K.N.*, 224 N.C. App. 41, 735 S.E.2d 382 (2012), *review denied*, *appeal dismissed*, 366 N.C. 588, 743 S.E.2d 185 (2013), the court of appeals found that a putative father had satisfied the support and communication requirements of G.S. 48-3-601(2)b.4.II. by living with the mother, so his consent was required, even though he had no knowledge of

the pregnancy. The court noted that G.S. 48-3-601 does not require knowledge of the pregnancy.

- c. In the context of proceedings to terminate parental rights, the court of appeals has considered and rejected the argument that a putative father was unable to take the steps required by G.S. 7B-1111(a)(5) to prevent termination because he did not know of the existence of the child. [*A Child's Hope, LLC v. Doe*, 178 N.C. App. 96, 103, 630 S.E.2d 673, 677 (2006) (quoting *In re Adoption of Clark*, 95 N.C. App. 1, 8, 381 S.E.2d 835, 839 (1989)) (noting that the similarity between former statutes permitting the termination of a putative father's rights and requiring the consent of a father of a child born out of wedlock to the child's adoption reflects the legislature's intention not to make an "illegitimate child's future welfare dependent on whether or not the putative father knows of the child's existence at the time the petition is filed").] NOTE: No constitutional issues were raised in *A Child's Hope*.
  - d. In *A Child's Hope, LLC v. Doe*, 178 N.C. App. 96, 630 S.E.2d 673 (2006), even though father was unaware of the child's birth because the biological mother told father she had miscarried, it was error to dismiss a petition to terminate father's rights because strict compliance with the statutory requirements in G.S. 7B-1111 was required and father failed to take acts that would have prevented termination of his rights.
  - e. For lack of knowledge of the child's existence as a defense in a termination of rights proceeding, see ABUSE, NEGLECT, DEPENDENCY, AND TERMINATION MANUAL, ch. 9 (Termination of Parental Rights), § 9.11.E.4 (Knowledge of Child's Existence), [www.sog.unc.edu/resources/microsites/abuse-neglect-dependency-and-termination-parental-rights](http://www.sog.unc.edu/resources/microsites/abuse-neglect-dependency-and-termination-parental-rights).
7. Constitutional challenges to consent provisions regarding putative fathers.
- a. Whether a putative father has "grasp[ed] the opportunity" to develop a parent-child relationship sufficient for constitutional protection "must be made on a case-by-case basis as each case is fact-specific." [*In re Adoption of B.J.R.*, 238 N.C. App. 308, 316 n.2, 767 S.E.2d 395, 400 n.2 (2014).]
  - b. Unwed father had the opportunity to obtain notice of mother's pregnancy and child's birth but failed to grasp that opportunity by taking steps that would establish him as a responsible father prior to petition for adoption being filed. Accordingly, father was not in the class of fathers whose interest in developing a relationship with a child receives constitutional due process protections. [*In re Adoption of S.D.W.*, 367 N.C. 386, 758 S.E.2d 374 (2014) (citing *Lehr v. Robertson*, 463 U.S. 248, 103 S. Ct. 2985 (1983)) (obtaining notice of mother's pregnancy was within father's control when he had knowledge that mother was fertile, he failed to make a detailed inquiry about the method of birth control being used, he considered contraception to be wholly the mother's responsibility while engaging in an active sex life with mother over a period of months, and he never asked mother if she was pregnant; that mother misidentified father in the hospital affidavit of parentage and on a form relinquishment, did not notify him of her pregnancy or of child's birth and only confirmed child's birth when questioned by father some six months later after father "heard" mother had given birth, and that father then took steps to seek custody and to prevent pending adoption from proceeding not sufficient for constitutional due process protections to apply to father).]

- c. Unwed father with notice of mother’s pregnancy, whose prebirth actions were consistent with a desire to develop a relationship with his child, “failed to take many of the essential steps within his control to develop this relationship” after the child was born. Father’s substantive due process challenge to the consent requirement in G.S. 48-3-601(2)b.4.II. was rejected. [*In re Adoption of B.J.R.*, 238 N.C. App. 308, 315, 767 S.E.2d 395, 399–400 (2014) (17-year-old father’s prebirth actions included offering to marry mother, offering money during mother’s pregnancy, openly acknowledging the child as his, and hiring an attorney after learning of mother’s adoption plan; father’s postbirth actions during the six months after child’s birth were “few,” with father seeing child on only one occasion and failing to provide any support other than \$100 after genetic testing confirmed his paternity; other than filing an action for genetic testing and custody within a week of child’s birth, father was “passive” in his efforts to develop a parent-child relationship and failed to grasp the opportunity to do so).]
  - d. Former consent statute, G.S. 48-6, was upheld against equal protection and substantive due process challenges brought by putative father, whose consent to adoption was not required because he had not, before an adoption petition was filed, taken any of the steps set out in the statute that would have given him a parental relationship of care and support with the child, in addition to a biological link. [*In re Baby Girl Dockery*, 128 N.C. App. 631, 495 S.E.2d 417 (1998) (father was unaware of mother’s pregnancy arising from short relationship, child was placed for adoption, father was asked to consent but refused, petition to adopt was filed, and shortly thereafter father filed an action to establish paternity and for custody). *But see In re Adoption of S.D.W.*, 367 N.C. 386, 758 S.E.2d 374 (2014) (applying and discussing law with respect to the current statute, G.S. 48-3-601).]
8. Consent void against public policy.
- a. Father’s consent to the adoption of his child was void as against public policy in that it was in exchange for the termination of his child support obligations and the mother’s agreement not to pursue child support, either prospective or in arrears. [*Stanly Cty. Dep’t of Soc. Servs. ex rel. Dennis v. Reeder*, 127 N.C. App. 723, 493 S.E.2d 70 (1997) (father’s obligation to provide support continues until entry of a final adoption order).]
  - b. A person “who gives or receives *any consideration* for ‘receiving or placing . . . any child for adoption’ . . . acts contrary to the public policy of North Carolina.” [*State ex rel. Raines v. Gilbert*, 117 N.C. App. 129, 131, 450 S.E.2d 1, 2 (1994) (emphasis in original) (citing *In re Adoption of P.E.P.*, 329 N.C. 692, 703, 407 S.E.2d 505, 511 (1991)).]
  - c. See [Section X.B](#), below, on unlawful payments related to adoption and [Section IV.E.17](#), below, on collateral agreements.
9. Consent when parent is incompetent.
- a. If a parent has been adjudicated incompetent, the court must appoint a guardian ad litem (GAL) for the parent and, unless the child already has a guardian, a GAL for the child to investigate whether the adoption should proceed. [G.S. 48-3-602.]



- i. The GAL serves pro bono or the fees are taxed to the parties as part of the costs. [G.S. 7A-305(d)(7).] There are no state funds to pay for a GAL appointed pursuant to this statute. [Chart titled NORTH CAROLINA PROCEEDINGS THAT INVOLVE GUARDIANS AD LITEM (GALs), provided by the North Carolina Office of Indigent Defense Services and the Administrative Office of the Courts (Oct. 2014), [http://www.ncids.org/Rules%20&%20Procedures/GAL\\_Chart.pdf](http://www.ncids.org/Rules%20&%20Procedures/GAL_Chart.pdf).]
    - ii. There is no requirement that the GAL be an attorney, but the complexity of the investigation may warrant appointment of an attorney. [CLERKS MANUAL, Vol. 2, Pt. VII (Special Proceedings), ch.110 (Adoptions), App. XI (Adoption Questions and Answers), Art. 3, Consents/Relinquishments, ¶ 15.]
  - b. If the court determines after a hearing that it will be in the child's best interest for the adoption to proceed, the court must order the parent's GAL to execute for that parent a consent or relinquishment as provided in G.S. Chapter 48, Article 3, Parts 6 and 7. [G.S. 48-3-602, amended by S.L. 2012-16, § 6, effective Oct. 1, 2012, and applicable to actions filed on or after that date.]
10. When the court may dispense with the consent requirement.
  - a. The court may issue an order dispensing with the consent of either:
    - i. A guardian or agency that placed the child, if the court finds that the consent is being withheld contrary to the child's best interest, [G.S. 48-3-603(b)(1); *In re Daughtridge*, 25 N.C. App. 141, 212 S.E.2d 519 (1975) (consent of agency properly withheld based on well-founded concern about lack of confidentiality about child's placement).] or
    - ii. A child 12 or more years of age, if the court finds that it is not in the child's best interest to require his consent. [G.S. 48-3-603(b)(2).]
11. Timing of consent.
  - a. The mother of a child may execute a consent to adoption any time after the child is born but not before. [G.S. 48-3-604(b).]
  - b. A man whose consent is required may execute a consent either before or after the child is born. [G.S. 48-3-604(a).]
  - c. An agency that places a child for adoption must execute its consent no later than thirty days after being served with notice of the proceeding for adoption. [G.S. 48-3-604(d).]
  - d. A guardian of a child or an adoptee 12 years of age or older may execute a consent at any time. [G.S. 48-3-604(c), (e).]
  - e. A county department of social services or a licensed agency that places a child for adoption must execute its consent no later than thirty days after being served with notice of the adoption proceeding. [G.S. 48-3-604(d).]
12. Procedure for execution of consent.
  - a. G.S. 48-3-605 sets out in detail the procedure for execution of a consent to adoption.
  - b. The consent of a parent, a guardian, or an adoptee 12 years of age or older must be signed and acknowledged under oath before an individual authorized to administer oaths or take acknowledgments. [G.S. 48-3-605(a).]

- c. A minor parent has legal capacity to consent to adoption and to release his or her parental rights. [G.S. 48-3-605(b).] In addition to the methods of identification permitted by G.S. Chapter 10B or other applicable law, a minor parent may be identified to an individual authorized to administer oaths or take acknowledgements by an affidavit of an adult relative of the minor parent, a teacher, a licensed professional social worker, or a health service provider. [G.S. 48-3-605(b), *added by* S.L. 2015-54, § 9, effective June 4, 2015.]
  - d. A consent that is signed in another state or country in accordance with that location's procedure is not invalid solely because it fails to comply with the formalities of North Carolina law. [G.S. 48-3-605(e).]
  - e. A consent by an agency must be executed by the executive head or another authorized employee and must be signed and acknowledged under oath. [G.S. 48-3-605(d); *In re Adoption of Cunningham*, 151 N.C. App. 410, 567 S.E.2d 153 (2002) (department of social services consent form not acknowledged under oath would not comply with G.S. 48-3-605(d)).]
  - f. For the content of the certification required by the individual before whom a consent is signed and acknowledged, see G.S. 48-3-605(c), *amended by* S.L. 2013-236, § 8, effective July 3, 2013, to require certification that the person giving consent was given an original or copy of his fully executed consent.
13. Content of consent.
- a. G.S. 48-3-606 sets out in detail the required content of a consent to adoption and applies to the consent given by an adoptee 12 years of age or older, by a parent, or by a guardian. The individual executing the consent must provide a current mailing address if the individual has no permanent address. [G.S. 48-3-606(2), *amended by* S.L. 2015-54, § 10, effective June 4, 2015.]
  - b. The consent must state, among other things, that the individual executing the consent:
    - i. Is voluntarily consenting to the transfer of legal and physical custody to, and the adoption of the child by, the identified prospective adoptive parent; [G.S. 48-3-606(4).]
    - ii. Understands that a validly executed consent may be revoked pursuant to G.S. 48-3-608 but otherwise is final and irrevocable and may not be withdrawn or challenged except as set out in G.S. 48-3-609; [G.S. 48-3-606(6). See [Section IV.E.15](#), below, on revocation of consent.]
    - iii. Has not received or been promised any money or anything of value for the consent or in relation to the adoption except for lawful payments as itemized in an attached schedule; [G.S. 48-3-606(8). See [Section X.A](#), below, on lawful payments.]
    - iv. Understands that when the adoption is final, all rights and obligations of the adoptee's former parents or guardian with respect to the adoptee will be extinguished and every aspect of the legal relationship between the adoptee and the former parent or guardian will be terminated. [G.S. 48-3-606(9).]

- (a) This provision ensures that a parent understands that a direct placement adoption “will totally sever her relationship with the child being adopted.” [*Boseman v. Jarrell*, 364 N.C. 537, 545, 704 S.E.2d 494, 500 (2010) (further noting that General Statutes applicable to a direct placement adoption repeatedly provide that an adoption decree “must sever” the former parent-child relationship).]

#### 14. Effect of consent.

- a. Except as set out in [Section IV.E.14.b](#), immediately below, the consent of a parent, guardian, or agency that placed a child for adoption vests legal and physical custody of the child in the prospective adoptive parent and empowers that person to petition the court to adopt the child. [G.S. 48-3-607(b); *Quets v. Needham*, 198 N.C. App. 241, 682 S.E.2d 214 (2009) (biological mother lost right to seek custody of or visitation with her children when she consented to their adoption).]
- b. Any other parental right and duty of a parent who executed a consent is not terminated until either a final adoption decree is entered or the parent-child relationship is otherwise terminated, whichever comes first. [G.S. 48-3-607(c); *Stanly Cty. Dept of Soc. Servs. ex rel. Dennis v. Reeder*, 127 N.C. App. 723, 727, 493 S.E.2d 70, 72–73 (1997) (emphasis in original) (“[a]bsent prior formal proceedings terminating parental rights under Article 24B of Chapter 7A, the final order of adoption, and not the *consent to adoption terminates parental rights*”).]
- c. Until termination, the adoptee remains the child of a parent who executed a consent for purposes of inheritance, succession, insurance, child support arrearages, and any other benefit or claim that the child may have from, through, or against the parent. [G.S. 48-3-607(c).] See [Section IV.F.4.c.ii.\(a\)](#), below, for more about a parent’s obligation for pre-adoption child support.

#### 15. Revocation of consent.

- a. Time period for revocation.
  - i. Consent to the adoption of an infant in utero or any minor may be revoked within seven days following the day on which it is executed, inclusive of weekends and holidays. [G.S. 48-3-608(a).]
  - ii. In a direct placement, if the placement occurs before a required preplacement assessment is given to the parent or guardian who is placing the child, then the revocation period is either five business days after that person receives the preplacement assessment or the remainder of the time provided in G.S. 48-3-608(a), set out in [Section IV.E.15.a.i](#), immediately above, whichever is longer. [G.S. 48-3-608(b). See [Section IV.B](#), above, on placement before completion of the assessment.]
- b. Method of revocation.
  - i. The individual may revoke her consent by giving written notice to the person specified in the consent. [G.S. 48-3-608(a).]
  - ii. For the methods by which notice of revocation may be given, see G.S. 48-3-608(a).
- c. Effect of revocation on child’s custody.

- i. If the person who has physical custody of the child revokes consent within the time limits of G.S. 48-3-608(a) after placing the child with the prospective adoptive parent, the revocation restores the right to physical custody and any right to legal custody to the person who placed the child. [G.S. 48-3-608(c).]
    - ii. For revocation of consent by a person other than a person described in G.S. 48-3-608(c), see G.S. 48-3-608(d).
  - d. When consent is irrevocable.
    - i. Following a revocation, a second consent to adoption given to the same adoptive parents is irrevocable. [G.S. 48-3-608(e).]
- 16. When a consent becomes void.
  - a. A consent to adoption is void if:
    - i. Before entry of the adoption decree, the individual who gave consent establishes by clear and convincing evidence that it was obtained by fraud or duress;
    - ii. The prospective adoptive parent and the individual who gave consent mutually agree in writing to set the consent aside;
    - iii. The petition to adopt is voluntarily dismissed with prejudice; or
    - iv. The court dismisses the petition to adopt and no appeal is taken, or the dismissal has been affirmed on appeal and all appeals have been exhausted. [G.S. 48-3-609(a).]
  - b. If the consent of a person whose consent is required becomes void and no grounds exist under G.S. 48-3-603 for dispensing with this individual's consent, the court must dismiss the pending adoption proceeding. [G.S. 48-3-609(b), (c).]
    - i. If the person whose consent is void previously had physical and legal custody of the child, the clerk must order the return of custody to that person unless the clerk has reasonable cause to believe that the return will be detrimental to the child, in which case the clerk must notify the county department of social services. [G.S. 48-3-609(b).]
    - ii. If the person whose consent is void did not previously have physical custody of the child and return of the child is not ordered under G.S. 48-3-609(b), the court must notify the county department of social services. [G.S. 48-3-609(c).]
  - c. Fraud or duress.
    - i. Birth mother's claim to set aside her consent to adoption based on fraud was barred by res judicata. [*Quets v. Needham*, 198 N.C. App. 241, 682 S.E.2d 214 (2009) (Florida judgment finding that birth mother's consent to adopt not procured by fraud was res judicata in North Carolina action).]
    - ii. Evidence of fraud was sufficient to set aside the biological parents' consent to adopt when a social worker made intentional misrepresentations about the grandparents' chances of adopting the child. [*In re Baby Boy Shamp*, 82 N.C. App. 606, 347 S.E.2d 848 (1986), review denied, 318 N.C. 695, 351 S.E.2d 750 (1987).]
    - iii. For a case considering whether to set aside a consent on the basis of fraud in the context of a stepparent adoption, see *Fakhoury v. Fakhoury*, 171 N.C. App. 104,

613 S.E.2d 729, *review denied*, 621 S.E.2d 622 (2005), discussed in [Section V.F.8.b](#), below.

17. Collateral agreements.
  - a. A collateral agreement accompanies the consent and is an agreement between the person executing a consent and the prospective adoptive parent(s) regarding visitation, communication, support, or other rights and duties with respect to the child.
  - b. If a person executing a consent and the prospective adoptive parent enter into a collateral agreement, the agreement shall not be a condition precedent to the consent itself, failure to perform shall not invalidate a consent already given, and the agreement itself is not enforceable. [G.S. 48-3-610.]
  - c. An open adoption agreement (OAA) executed by birth mother in Florida, in which she consented to the adoption of her twins and which provided for postadoption visitation and communication, was a *contract* not enforceable in North Carolina under the rule of comity because it was contrary to G.S. 48-3-610. [*Quets v. Needham*, 198 N.C. App. 241, 682 S.E.2d 214 (2009) (emphasis added) (OAA was not incorporated into the adoption judgment; birth mother's action to specifically enforce OAA properly dismissed).]
  - d. "Failure to enforce a *court order* for postadoption visitation by a birth parent would be contrary to the PKPA [Parental Kidnapping Prevention Act, 28 U.S.C. §§ 1738A(a), (b)(9)], which states, '[t]he appropriate authorities of every State shall enforce according to its terms any judgment, decree, or other order of a court providing for the visitation of a child[.]' " [*Quets v. Needham*, 198 N.C. App. 241, 255 n.4, 682 S.E.2d 214, 223 n.4 (2009) (emphasis in original).]
  - e. Agreement between mother and father, whereby mother would drop a child support arrearage action and accept \$2,000 in lieu of the total amount in exchange for father's consent to the child's adoption in Alabama by mother's new husband, was void against North Carolina public policy and violated statute on unlawful payments. [*State ex rel. Raines v. Gilbert*, 117 N.C. App. 129, 450 S.E.2d 1 (1994) (trial court erred in finding mother equitably estopped from enforcing her judgment for the full amount of the child support arrearages).] See [Section X.B](#), below, on unlawful payments related to adoption.
18. Prebirth determination of a biological father's right to consent.
  - a. A biological mother, an agency, or an adoptive parent chosen by the biological mother may file a special proceeding with the clerk approximately three months from the date of conception to determine whether consent of the biological father to adoption is required. [G.S. 48-2-206(a), *amended by* S.L. 2015-54, § 4, effective June 4, 2015, and applicable to proceedings filed after that date.]
  - b. Jurisdiction for a prebirth determination is determined under Article 6A of G.S. Chapter 1, and venue is determined under Article 7 of G.S. Chapter 1 and not under the jurisdiction and venue provision in G.S. 48-2-100 and 48-2-101. [G.S. 48-2-206(f).]
  - c. If the biological father notifies the court within thirty days of his receipt of notice of the mother's intent to place the child for adoption that he believes his consent to the

adoption is required, on motion of the petitioner, a hearing shall be held to determine whether his consent is required. [G.S. 48-2-206(d), *amended by* S.L. 2015-54, § 4, effective June 4, 2015, and applicable to proceedings filed after that date.] The clerk should transfer the case to the district court for the hearing to determine whether consent is necessary. [G.S. 48-2-601(a1); 1-301.2(b) (requiring transfer when an issue of fact, an equitable defense, or a request for equitable relief is raised); 48-2-206(h) (transfer under G.S. 1-301.2 and appeal under G.S. 1-279.1 of a special proceeding for a prebirth determination of consent shall be as for an adoption proceeding); *In re Adoption of C.E.Y.*, 228 N.C. App. 290, 745 S.E.2d 883 (2013) (an order of the clerk that determined father’s consent was not required was properly transferred to district court pursuant to G.S. 1-301.2(b) upon challenge by father; father requested equitable relief and raised issues of fact).]

- d. The biological father’s consent is not required unless before the date of the hearing he has taken steps under G.S. 48-3-601 to establish that his consent is necessary. [See required language in G.S. 48-2-206(d) providing notice to father of hearing; see [Sections IV.E.5 and IV.E.6](#), above, for more on G.S. 48-3-601.]
- e. For more on a proceeding for a prebirth determination of consent, see *CLERKS MANUAL*, Vol. 2, Pt. VII (Special Proceedings), ch. 110 (Adoptions).

## F. Relinquishment of a Minor for Adoption

1. A parent or guardian may relinquish all parental rights or guardianship powers, including the right to consent to adoption, to an agency. [G.S. 48-3-701(a).]
2. G.S. 48-3-702 sets out the procedure for a parent or guardian to relinquish a child to an agency for adoption.
  - a. “A relinquishment executed by a parent or guardian must conform substantially to the requirements in this Part and must be signed and acknowledged under oath before an individual authorized to administer oaths or take acknowledgments.” [G.S. 48-3-702(a).]
    - i. The “substantial compliance” component of G.S. 48-3-702(a) applies only to the requirements set out in G.S. Chapter 48 and does not apply to the oath requirement. [*In re Adoption of Baby Boy*, 233 N.C. App. 493, 757 S.E.2d 343 (even though the relinquishment did not state the sex of the child as required by G.S. 48-3-703(a)(3), the relinquishment was executed in substantial compliance with the law), *review denied*, 763 S.E.2d 390 (N.C. 2014).]
    - ii. A birth mother was under oath when she signed her relinquishment, even though the notary did not orally administer an oath to her, when the adoption agency social worker read the relinquishment, which included the word “swear,” to birth mother in the notary’s presence and with her implicit assent; birth mother stated in writing that she had been “duly sworn” when she signed the relinquishment, and the notary’s verification recited that birth mother had sworn to the document before the notary. [*In re Adoption of Baby Boy*, 233 N.C. App. 493, 757 S.E.2d 343 (administration of an oath being a ministerial act, the procedure set out above substantially complied with the oath requirements in G.S. Chapter 10B; birth mother failed to overcome the presumption of regularity

- in favor of the validity of notarial acts), *review denied*, 763 S.E.2d 390 (N.C. 2014).]
- b. An individual before whom a relinquishment is signed and acknowledged under G.S. 48-3-702(a) must certify in writing that, to the best of the individual's knowledge or belief, the parent, guardian, or minor to be adopted executing the relinquishment:
    - i. Read, or had read to him, and understood the relinquishment;
    - ii. Signed the relinquishment voluntarily;
    - iii. Was given an original or copy of her fully executed relinquishment; and
    - iv. Was advised that counseling services were available through the agency to which the relinquishment is given. [G.S. 48-3-702(b1), *added by* S.L. 2013-236, § 10, effective July 3, 2013, and applicable to actions filed on or after that date.]
  - c. If the relinquishment is executed by a minor parent, in addition to the methods of identification permitted by G.S. Chapter 10B or other applicable law, the minor parent may be identified to an individual authorized to administer oaths or take acknowledgements by an affidavit of an adult relative of the minor parent, a teacher, a licensed professional social worker, or a health service provider. [G.S. 48-3-605(b), *added by* S.L. 2015-54, § 9, effective June 4, 2015.]
  - d. The following statutes addressing consent to the adoption of a minor apply to the relinquishment of a minor for adoption:
    - i. G.S. 48-3-605(b) (consent given by a minor parent),
    - ii. G.S. 48-3-605(e) (consent signed in another state or country),
    - iii. G.S. 48-3-605(f) (consent to adoption of an Indian child), and
    - iv. G.S. 48-3-605(g) (jurisdiction of the clerk of superior court, the superior court, and the district court to accept voluntary consents to adoption of an Indian child). [G.S. 48-3-702(b), *amended by* S.L. 2015-264, § 44.b, effective Oct. 1, 2015.]
3. G.S. 48-3-703 sets out the provisions required to be included in a relinquishment. The individual executing a relinquishment must provide a current mailing address if the individual has no permanent address. [G.S. 48-3-703(a)(2), *amended by* S.L. 2015-54, § 11, effective June 4, 2015.] G.S. 48-3-704 details certain provisions that may be included.
4. Effect of relinquishment.
- a. With respect to an agency, a relinquishment by a parent or guardian entitled to place a child for adoption:
    - i. Vests legal and physical custody of the child in the agency [G.S. 48-3-705(b)(1).] and
    - ii. Empowers the agency to place the child for adoption with a prospective adoptive parent selected in the manner specified in the relinquishment. [G.S. 48-3-705(b)(2).]
  - b. With respect to a parent, the parent's relinquishment:
    - i. Terminates any right and duty of that parent to legal and physical custody of the child; [G.S. 48-3-705(c)(1).]

- ii. Terminates that parent's right to consent to the minor's adoption, [G.S. 48-3-705(c)(2).]
    - iii. Does not terminate other parental rights and duties of that parent, except those set out above. Those rights are terminated when the decree of adoption becomes final or the parental relationship is otherwise legally terminated, whichever first occurs. [G.S. 48-3-705(d).]
  - c. With respect to a child, until the parent's parental rights and duties are terminated, the child remains the child of a parent who executed a relinquishment for purposes of:
    - i. Inheritance, succession, insurance, arrears of child support;
    - ii. Other benefit or claim that the child may have from, through, or against the parent. [G.S. 48-3-705(d).]
      - (a) A parent's obligation to support a minor child continues until entry of a final decree of adoption. [See G.S. 48-1-106(c); 48-3-705(d); 48-3-607(c); see also *Michigan ex rel. Pruitt v. Pruitt*, 94 N.C. App. 713, 380 S.E.2d 809 (1989) (absent evidence that mother waived her right to the past-due child support payments, children's subsequent adoption by their stepfather did not affect father's pre-adoption obligation to provide support for his children); *Stanly Cty. Dep't of Soc. Servs. ex rel. Dennis v. Reeder*, 127 N.C. App. 723, 493 S.E.2d 70 (1997) (where his parental rights had not otherwise been terminated, defendant father's obligation to provide child support continued until entry of a final adoption order).]
5. Revocation of a relinquishment.
- a. Time period for revocation.
    - i. A parent may revoke a relinquishment of an infant in utero or any minor within seven days following the day on which it is executed, inclusive of weekends and holidays. [G.S. 48-3-706(a).]
    - ii. A parent may revoke a relinquishment within ten days, inclusive of weekends and holidays, of being given notice by the agency that an adoption by a specific prospective adoptive parent named in the relinquishment is not completed, if the relinquishment included an express provision allowing revocation in that event. [G.S. 48-3-704; 48-3-707(b).]
  - b. Method of revocation.
    - i. The individual may revoke a relinquishment by giving written notice to the agency to which the child was relinquished. [G.S. 48-3-706(a).]
    - ii. For the methods by which notice of revocation may be given, see G.S. 48-3-706(a).
  - c. Effect of revocation.
    - i. If the person with physical custody relinquishes a child and thereafter revokes that relinquishment, the agency upon request must return the child to that person. [G.S. 48-3-706(b).]
    - ii. The revocation restores the right to physical custody and any right to legal custody to the person who relinquished the child and divests the agency of any



- right to legal or physical custody and any further responsibility for the care and support of the child. [G.S. 48-3-706(b).]
- iii. For revocation of a relinquishment by a person other than a person described in G.S. 48-3-706(b), see G.S. 48-3-706(c).
  - d. When a relinquishment is irrevocable.
    - i. A second relinquishment for placement with the same adoptive parent selected by the agency and agreed upon by the person executing the relinquishment is irrevocable. [G.S. 48-3-706(d).]
    - ii. A second general relinquishment for placement by the agency with any adoptive parent selected by the agency is irrevocable. [G.S. 48-3-706(d).]
6. When a relinquishment becomes void.
- a. A relinquishment becomes void if any of the following occur:
    - i. Before entry of the adoption decree, the individual who executed the relinquishment establishes by clear and convincing evidence that it was obtained by fraud or duress. [G.S. 48-3-707(a)(1).] For a case finding that birth mother's relinquishment was not procured by constructive or actual fraud, see *In re Adoption of Baby Boy*, 233 N.C. App. 493, 757 S.E.2d 343, review denied, 763 S.E.2d 390 (N.C. 2014).
    - ii. Before placement with a prospective adoptive parent occurs, the agency and the individual who relinquished the child agree to rescind the relinquishment. [G.S. 48-3-707(a)(2).]
    - iii. After placement with a prospective adoptive parent occurs but before the entry of the adoption decree, the agency, the person relinquishing the minor, and the prospective adoptive parent agree to rescind the relinquishment. [G.S. 48-3-707(a)(3), added by S.L. 2012-16, § 8, effective Oct. 1, 2012, and applicable to actions filed on or after that date.]
    - iv. Upon motion of a county department of social services or a licensed child-placing agency under G.S. 7B-909, the court orders that the relinquishment shall be voided based on a finding that another consent or relinquishment necessary for an adoption cannot be obtained and that no further steps are being taken to terminate the parental rights of the parent from whom the consent or relinquishment has not been obtained. [G.S. 48-3-707(a)(4), added by S.L. 2013-236, § 12, effective July 3, 2013, and applicable to actions filed on or after that date.]
  - b. If the relinquishment is set aside, see G.S. 48-3-707(c) and (d) for provisions as to the custody of the child and dismissal of the adoption proceeding.

## V. Adoption of a Minor by a Stepparent

### A. Subject Matter Jurisdiction

1. A court has subject matter jurisdiction over an adoption proceeding commenced under G.S. Chapter 48 if, at the commencement of the proceeding,

- a. The adoptee has lived in the state for at least the six consecutive months immediately preceding the filing of the petition or from birth [G.S. 48-2-100(b)(1).] or
- b. The stepparent has lived or been domiciled in the state for at least the six consecutive months immediately preceding the filing of the petition. [G.S. 48-2-100(b)(2).]

## B. Conditions for Adoption by a Stepparent

1. A stepparent may petition to adopt her spouse's child if:
  - a. The spouse has legal and physical custody of the child, and the child has lived primarily with this parent and the stepparent during the six months immediately preceding the filing of the petition; [G.S. 48-4-101(1).]
  - b. The spouse is deceased or incompetent but, before dying or being adjudicated incompetent, had legal and physical custody of the child, and the child has lived primarily with the stepparent during the six months immediately preceding the filing of the petition; [G.S. 48-4-101(2).] or
  - c. For cause, the court permits a stepparent who does not meet either of the preceding conditions to file a petition. [G.S. 48-4-101(3).]
  - d. Same-sex couples now have the fundamental right to marry in all states. [*Obergefell v. Hodges*, 135 S. Ct. 2584 (U.S. 2015) (state laws at issue in this case were invalid to the extent they excluded same-sex couples from civil marriage on the same terms and conditions as opposite-sex couples; one of the governmental rights and benefits that married couples enjoy is the right to adopt).] A stepparent as defined in G.S. 48-1-101(18) may include a same-sex spouse. See Sara DePasquale and Meredith Smith, *Same-Sex Marriage and Adoptions of a Minor by a Stepparent*, UNC SCH. OF GOV'T: COATES' CANONS: NC LOCAL GOV'T L. BLOG (Oct. 17, 2014), <http://canons.sog.unc.edu/same-sex-marriage-and-adoptions-of-a-minor-by-a-stepparent>.

## C. Petition for Adoption

1. In addition to the requirements in G.S. 48-2-304(a) applicable to all adoption petitions, a petition by a stepparent to adopt a minor must state:
  - a. The date of the petitioner's marriage, the name of the petitioner's spouse, and whether the spouse is deceased or has been adjudicated incompetent;
  - b. The length of time the petitioner's spouse or the petitioner has had legal custody of the adoptee and the circumstances under which custody was acquired; and
  - c. That the adoptee has resided primarily with the petitioner or with the petitioner and the petitioner's spouse during the six months immediately preceding the filing of the petition. [G.S. 48-2-304(d).]
2. In addition to the documents required by G.S. 48-2-304(a) applicable to all adoption petitions, a petition by a stepparent to adopt a minor must include a copy of any agreement to release past-due child support payments. [G.S. 48-2-305(9).]
3. The stepparent must initiate service of notice of the filing of a petition as set out in Part 4 of Article 2 of G.S. Chapter 48 (General Adoption Procedure), G.S. 48-2-401 to 48-2-407. See [Section III.F.9](#), above.

## D. Death of a Petitioning Stepparent Pending Final Decree

1. “When a stepparent who has petitioned to adopt dies before entry of a final decree, the adoption may proceed in the name of the petitioning stepparent if the court causes to be mailed to any individual who executed a consent to adoption a notice advising that:
  - a. [T]he petitioning stepparent has died and
  - b. [T]he individual may, within 15 days from the date the individual receives notice, request a hearing on the adoption.” [G.S. 48-2-204(b), *added by* S.L. 2013-236, § 2, effective July 3, 2013, and applicable to actions filed on or after that date.]
2. Notice is complete when mailed to the individual at the address given in the consent. [G.S. 48-2-204(b), *added by* S.L. 2013-236, § 2, effective July 3, 2013, and applicable to actions filed on or after that date.]
3. Upon completion of the adoption, the name of the petitioning stepparent must be entered as one of the adoptee’s parents on the new birth certificate. For purposes of inheritance, testate or intestate, the adoptee shall be treated as a child of the deceased stepparent. [G.S. 48-2-204(b), *added by* S.L. 2013-236, § 2, effective July 3, 2013, and applicable to actions filed on or after that date.]

## E. Report to the Court

1. G.S. 48-2-501(a) requires a report to the court whenever a petition for adoption of a minor is filed to assist the court in determining if the proposed adoption is in the minor’s best interest. [See [Section III.G](#), above, discussing this requirement.]
2. G.S. 48-2-501(d) sets out special rules for stepparent adoptions when the child has lived with the stepparent for at least the two consecutive years immediately preceding the filing of the petition.
  - a. When the court may order a report.
    - i. In stepparent adoptions in which the child has lived with the stepparent for at least the two consecutive years immediately preceding the filing of the petition, a report to the court is not required, but the court may order a report. [G.S. 48-2-501(d)(1).]
  - b. When the court must order a report. A report is required in the following situations:
    - i. The child has not lived with the stepparent for at least the two consecutive years immediately preceding the filing of the petition. [General requirement in G.S. 48-2-501(a), set out in [Section V.E.1](#), above, applies.]
    - ii. The child has lived with the stepparent for at least the two consecutive years immediately preceding the filing of the petition but
      - (a) The child’s consent is to be waived,
      - (b) The child has revoked her consent, or
      - (c) Both of the child’s parents are deceased. [G.S. 48-2-501(d)(1).]

## F. Consent to Adoption

1. G.S. 48-4-102 sets out the persons whose consent to the adoption of a stepchild is required. G.S. 48-4-103 contains detailed provisions regarding the content of the consent and the execution thereof. See [Section IV.E](#), above, on consent.
2. Consent executed by an adoptee in a stepparent adoption.
  - a. The consent must be signed and acknowledged under oath, but the statute does not require any specific content. [G.S. 48-4-103(e).]
3. Consent executed by a parent who is the stepparent's spouse. [G.S. 48-4-103(a).]
  - a. The consent must state, among other things,
    - i. The statements required by G.S. 48-3-606, except for those required by subdivisions (4), (9), (12), and (13); [G.S. 48-4-103(a)(2)(a).]
    - ii. That the parent executing the consent has legal and physical custody of the child and is voluntarily consenting to the adoption of the child by the stepparent; [G.S. 48-4-103(a)(2)(b).]
    - iii. That the adoption will not terminate the legal relation of parent and child between the parent executing the consent and the child; [G.S. 48-4-103(a)(2)(c).] and
    - iv. That the adoption will terminate the legal relation of parent and child between the adoptee and the adoptee's other parent, including all right of the adoptee to inherit as a child from or through the other parent, and will extinguish any court order of custody, visitation, or communication with the adoptee, except that the other parent will remain liable for past-due child support payments unless legally released from this obligation. [G.S. 48-4-103(a)(2)(d).]
4. Consent executed by a parent who is not the stepparent's spouse. [G.S. 48-4-103(b).]
  - a. The requirements are similar to those required of a parent who is the stepparent's spouse except in this case the parent is voluntarily consenting to the transfer of any right the parent has to legal or physical custody of the child to the child's other parent and stepparent and to the adoption of the child by the stepparent. [G.S. 48-4-103(b)(2)(b).]
  - b. The consent must state that the adoption will terminate the legal relation of parent and child between the adoptee and the parent executing the consent (the parent who is not the stepparent's spouse), including all rights of the adoptee to inherit as a child from or through the parent, and will extinguish any court order of custody, visitation, or communication with the adoptee, except that the parent executing the consent will remain liable for past-due child support payments unless legally released from this obligation. [G.S. 48-4-103(b)(2)(c).]
5. Consent to a stepparent adoption not required from certain persons. [G.S. 48-3-603.] Consent of the following persons to the adoption of a stepchild by a stepparent is **not** required:
  - a. A person whose parental rights have been terminated under G.S. Chapter 7B or by a court in another state; [G.S. 48-3-603(a)(1).]
  - b. When the petitioner is a stepfather, a man (other than an adoptive father), if:

- i. The man has been judicially determined not to be the father of the child to be adopted; [G.S. 48-3-603(a)(2).]
    - ii. Another man has been judicially determined to be the child's father; [G.S. 48-3-603(a)(2).] or
    - iii. The man is not married to the child's birth mother and who, after the child's conception, executed a notarized statement denying paternity or disclaiming any interest in the child. [G.S. 48-3-603(a)(5).]
  - c. A deceased parent or the personal representative of a deceased parent's estate; [G.S. 48-3-603(a)(6).]
  - d. A person whose consent is required by G.S. 48-3-601 who has not executed a consent or a relinquishment and who fails to respond to a notice of the adoption proceeding within thirty days after service of the notice or, if service is by publication, forty days from the first publication of the notice. [G.S. 48-3-603(a)(7), *amended by S.L. 2015-54, § 8, effective June 4, 2015, and applicable to proceedings filed after that date.*]
6. For consent executed by a guardian of a minor stepchild, see G.S. 48-4-103(c).
7. Revocation of consent.
  - a. Revocation of consent executed pursuant to G.S. 48-4-103(a) through (c), set out in [Sections V.F.3](#) and [V.F.4](#), above, is governed by G.S. 48-3-608(a), the provision allowing revocation of consent to the adoption of an infant in utero and any minor. [G.S. 48-4-103(d).]
  - b. A child whose consent is required may revoke his consent to a stepparent adoption at any time before the final adoption decree is entered. [G.S. 48-4-103(e).]
8. Challenge to validity of consent.
  - a. See [Section III.I.5](#), above, and [Section IV.E.16.a](#), above, discussing G.S. 48-2-607 and 48-3-609(a), respectively, provisions for setting aside a consent for fraud, among other things.
  - b. Father failed to establish that his consent for his wife to adopt as a stepparent was obtained by fraud. [*Fakhoury v. Fakhoury*, 171 N.C. App. 104, 109, 613 S.E.2d 729, 733 (evidence that wife had visited internet divorce sites and had told a counselor and physician that she planned to separate did not amount to fraud when husband "was fully aware of the precarious status" of his marriage), *review denied*, 621 S.E.2d 622 (2005).]

## G. Hearing

1. At the hearing or disposition, the clerk must grant the petition upon finding by a preponderance of the evidence that the adoption will serve the stepchild's best interest and that:
  - a. At least ninety days have passed since the filing of the petition, unless the clerk waives this requirement for cause; [G.S. 48-2-603(a)(1).]
  - b. The child has been in the physical custody of the stepparent for at least ninety days, unless the clerk waives this requirement for cause; [G.S. 48-2-603(a)(2).]
  - c. Notice of the filing of the petition has been served on any person entitled to receive notice; [G.S. 48-2-603(a)(3).]

- d. Each necessary consent, waiver, or judicial order terminating parental rights has been obtained and filed with the clerk and the time for revocation has expired; [G.S. 48-2-603(a)(4).]
- e. Any assessment required by G.S. Chapter 48 has been filed with and considered by the clerk; [G.S. 48-2-603(a)(5).]
- f. Any motion to dismiss the proceeding has been denied; [G.S. 48-2-603(a)(7).]
- g. The stepparent is a suitable adoptive parent; [G.S. 48-2-603(a)(8).]
- h. The clerk has reviewed any required accounting and affidavit of fees and charges and has denied, modified, or ordered reimbursement of any payment or disbursement that violates Article 10 of G.S. Chapter 48 or is unreasonable compared with expenses customarily incurred in connection with an adoption; [G.S. 48-2-603(a)(9).] and
- i. There has been substantial compliance with the provisions of G.S. Chapter 48. [G.S. 48-2-603(a)(11).]

## H. Adoption Decree

1. Notwithstanding any other provision in G.S. 48-1-106, an adoption by a stepparent does not have any effect on the relationship between the child and the parent who is the stepparent's spouse. [G.S. 48-1-106(d).]
2. For the legal effect of an adoption decree generally, see [Section I.D](#), above.
3. For a case considering the legal effect of an adoption decree in the context of a stepparent adoption, see *In re Estate of Edwards*, 316 N.C. 698, 343 S.E.2d 913 (1986) (children adopted by a stepparent were considered to be lineal descendants of their mother's second marriage and not lineal descendants of her first marriage to their father, which classification resulted in stepparent receiving a larger distributive share upon dissent from his wife's will).]

## I. New Birth Certificate

1. The procedure for obtaining a new birth certificate in a stepparent adoption is set out in G.S. 48-9-107(b).

## J. Re-Adoption After a Stepparent Adoption

1. G.S. 48-6-101 and 48-6-102 allow a former parent to petition to re-adopt a child adopted by a stepparent. Example of when a former parent might file a petition to re-adopt a child previously adopted by a stepparent: if a child's birth mother and adoptive stepfather were to die in an accident, the child's birth father could petition to re-adopt the child.
2. G.S. 48-6-102(c) identifies the individuals whose consent to the re-adoption is necessary. G.S. 48-6-102(d)–(h) set out requirements specific to the various individuals whose consent is required.
3. Readoption by a former parent does not:
  - a. Affect the relationship between the adoptee and the parent who was married to the adoptive parent [G.S. 48-6-102(i); 48-1-106(d), providing that re-adoption after a

stepparent adoption does not have any effect on the relationship between the child and the parent who is the stepparent's spouse.] or

- b. Terminate or otherwise affect any existing custody order. [G.S. 48-6-102(j).]
4. See [Section VII](#), below, on re-adoption of a minor.

### K. Stepparent Adoption of an Adult

1. A stepparent may adopt an adult as provided in Article 5 of G.S. Chapter 48. [See G.S. 48-5-102(c) (setting out special provisions related to the consent of the petitioner's spouse in a stepparent adult adoption).]
2. See [Section VI](#), immediately below.

## VI. Adoption of an Adult

### A. Parties

1. Article 5 of G.S. Chapter 48 applies to the adoption of adults, including minors who are married or otherwise emancipated. [G.S. 48-5-100.]
2. An adult may adopt another adult, except that a person may not adopt his or her spouse. [G.S. 48-5-101(a).]
3. If the petitioning adult is married, his or her spouse must join in the petition unless:
  - a. The petitioning adult is the adoptee's stepparent or
  - b. The court waives the requirement for cause. [G.S. 48-5-101(b).]

### B. Petition for Adoption

1. In addition to the requirements in G.S. 48-2-304(a) applicable to all adoption petitions, a petition to adopt an adult must state:
  - a. The name, age, and last known address of any child of the prospective adoptive parent, including a child previously adopted by the prospective adoptive parent or the adoptive parent's spouse, and the date and place of adoption and
  - b. The name, age, and last known address of any living parent, spouse, or child of the adoptee. [G.S. 48-2-304(e).]
2. In addition to those required to be given notice by G.S. 48-2-401(b) applicable to all adoptions, the petitioner in an adult adoption must serve notice of the petition on any adult children of the prospective adoptive parent and on any parent, spouse, or adult child of the adoptee who are listed in the petition to adopt. The court may waive notice to a parent of an adult adoptee. [G.S. 48-2-401(d).] Because consent of those served with notice is not required (see [Section VI.C](#), immediately below), those individuals may appear and present evidence only as to whether the adoption is in the best interest of the adoptee. [G.S. 48-2-405.]

### C. Consent to Adoption

1. Consent to the adoption of an adult is required only of:

- a. The adult being adopted and
  - b. The spouse of the petitioner in an adoption by the adult's stepparent, unless the court waives this requirement for cause. [G.S. 48-5-102(a).]
2. Consent of the adult being adopted must be in the form required by, and include the provisions set out in, G.S. 48-5-102(b).
  3. Consent of the petitioner's spouse in a stepparent adult adoption must be in the form required by, and include the provisions as set out in, G.S. 48-5-102(c). Anyone who gives consent may revoke it at any time before entry of the final adoption decree. [G.S. 48-5-102(d).]

#### **D. Adoption of an Incompetent Adult**

1. If an adult who is being adopted has been adjudicated incompetent, then that adult's guardian has authority to consent in place of the incompetent adult. [G.S. 48-5-103(a).]
2. G.S. 48-5-103(b) specifies the required contents of the consent of the guardian.
3. The court must appoint a guardian ad litem, other than the guardian, to investigate and report to the court on the proposed adoption. [G.S. 48-5-103(c).]
4. A final adoption decree does not terminate the guardian's rights, duties, and powers. [See G.S. 48-5-103(b)(5).]

#### **E. Hearing on Petition to Adopt an Adult**

1. Unless the court waives the requirement for cause, the petitioner and the adoptee must appear in person before the court. [G.S. 48-2-605(a).]
2. Before granting the petition in an adult adoption, the court must find that:
  - a. At least thirty days have elapsed since the filing of the petition for adoption, but the court for cause may waive this requirement;
  - b. Notice of the petition has been served on any person entitled to receive notice under G.S. 48-2-401 to 48-2-407;
  - c. Each necessary consent, waiver, document, or judicial order has been obtained and filed with the court;
  - d. The adoption is entered into freely and without duress or undue influence for the purpose of creating the relation of parent and child between each petitioner and the adoptee and each petitioner and the adoptee understand the consequences of the adoption; and
  - e. There has been substantial compliance with the provisions of G.S. Chapter 48. [G.S. 48-2-605(b).]
3. The standard of proof is preponderance of the evidence. [G.S. 48-2-605(b).]

#### **F. Equitable Adoption**

1. It is not possible for an adult to be adopted by a deceased person. Under certain circumstances, the adult could inherit from these "parents" under the theory of equitable



adoption, that is, treating the adult as if he had been adopted even though adoption was never legally accomplished. [See *Lankford v. Wright*, 347 N.C. 115, 489 S.E.2d 604 (1997).]

2. See [Section I.C.6.a](#), above, for more on equitable adoption and *Lankford*.

## VII. Re-Adoption of a Minor

### A. Re-Adoption by a Former Parent

1. Pursuant to Article 6 of G.S. Chapter 48, a former parent may petition to re-adopt:
  - a. A minor adoptee under Articles 3 (adoption of a minor) or 4 (adoption of a minor by a stepparent) of G.S. Chapter 48; [G.S. 48-6-101.]
  - b. An adult adoptee under Article 5 of G.S. Chapter 48. [G.S. 48-6-101.]
2. In addition to the methods set out in G.S. 48-6-101, a former parent can petition pursuant to G.S. 48-6-102 to re-adopt an adoptee adopted by a stepparent.

### B. Re-Adoption of a Child Previously Adopted in a Foreign Country

1. A minor child who has been previously adopted in a foreign country by a petitioner or petitioners may be re-adopted under the laws of North Carolina. [See G.S. 48-2-205.]
2. If a child was adopted from a Hague Convention country, re-adoption may be required. [U.S. DEP'T OF STATE, OFFICE OF CHILDREN'S ISSUES, INTERCOUNTRY ADOPTION FROM A TO Z, [https://travel.state.gov/content/dam/aa/pdfs/Intercountry\\_Adoption\\_From\\_A\\_Z.pdf](https://travel.state.gov/content/dam/aa/pdfs/Intercountry_Adoption_From_A_Z.pdf).] To determine whether a country is a party to the Hague Adoption Convention, see U.S. DEP'T OF STATE, BUREAU OF CONSULAR AFFAIRS, TRAVEL.STATE.GOV, *Intercountry Adoption: Hague Convention, Convention Countries*, <https://travel.state.gov/content/adoptionsabroad/en/hague-convention/convention-countries.html>.
3. Procedure.
  - a. A man and a woman who adopted a minor child in a foreign country while married to one another, who seek to re-adopt the child under the laws of North Carolina must re-adopt jointly, regardless of whether they have since divorced. If either one does not join in the petition, he or she must be joined as a necessary party as provided in G.S. 1A-1, Rule 19. [G.S. 48-2-205.]
  - b. In this type of re-adoption, the adoption order entered in the foreign country may be accepted in lieu of the consent of the biological parent or parents or the guardian of the child being re-adopted. [G.S. 48-2-205.]
    - i. The court should require an original or certified copy of the foreign adoption decree with translation, and an original or certified copy of the foreign birth certificate or abandonment order with translation, as well as an amended birth certificate, if available. [CLERKS MANUAL, Vol. 2, Pt. VII (Special Proceedings), ch. 110 (Adoptions), App. IX (Checklist for Foreign Adoptions).]
    - ii. A certified copy of the foreign adoption order should be allowed to satisfy the consent requirement. [CLERKS MANUAL, Vol. 2, Pt. VII (Special Proceedings),

- ch. 110 (Adoptions), App. XI (Adoption Questions and Answers), Art. 2, Filing Petition/Attachments to Petition, ¶ 7.]
- c. No affidavit of parentage would be required, but a preplacement assessment would be required under G.S. 48-2-305. [CLERKS MANUAL, Vol. 2, Pt. VII (Special Proceedings), ch. 110 (Adoptions), App. XI (Adoption Questions and Answers), Art. 2, Filing Petition/Attachments to Petition, ¶ 4.]
4. Preparation of a certificate of identification.
    - a. In the case of an adopted individual born in a foreign country and readopted in North Carolina, the State Registrar of Vital Statistics shall, upon receipt of a report of that adoption from the Division of Social Services, prepare a certificate of identification for that individual. [G.S. 130A-108(b).]
    - b. The certificate shall contain the same information required by G.S. 48-9-107(a) for individuals adopted in North Carolina, except the country of birth shall be specified in lieu of the state of birth. [G.S. 130A-108(b).]
  5. For a resource on federal laws related to adoption, including intercountry adoptions, see U.S. DEP'T OF HEALTH & HUMAN SERVS., ADMIN. FOR CHILDREN & FAMILIES, CHILDREN'S BUREAU, *Child Information Gateway*, "Federal Laws Related to Adoption," [www.childwelfare.gov/topics/adoption/laws/laws-federal](http://www.childwelfare.gov/topics/adoption/laws/laws-federal). For a resource on the Hague Adoption Convention, see U.S. DEP'T OF STATE, BUREAU OF CONSULAR AFFAIRS, TRAVEL.STATE.GOV, INTERCOUNTRY ADOPTION: *Hague Convention*, <https://travel.state.gov/content/adoptionsabroad/en/hague-convention.html>.

## VIII. Confidentiality of Adoption Records and Disclosure of Information

### A. Generally

1. Article 9 of G.S. Chapter 48 contains extensive, detailed provisions relating to adoption records and related information. [G.S. 48-9-101 to 48-9-109.]
2. For purposes of Article 9, a "record" is defined in comprehensive terms and includes documents, regardless of physical form or characteristics and in various media, such as microfilm, microfiche, videotape, tape recorded material, or electronic data processing records. [G.S. 48-9-101(a).]

### B. Confidentiality of Adoption Records

1. Except for the final decree of adoption and the entry in the special proceedings index in the office of the clerk, all records created or filed in connection with an adoption are confidential and may not be disclosed or used except as provided in G.S. Chapter 48. [G.S. 48-9-102(a).]
2. The confidentiality provision extends to records on file with, or in the possession of, the court, an agency, the state, a county, an attorney, or other provider of professional services. [G.S. 48-9-102(a).]

3. During an adoption proceeding records shall not be open to inspection by any person, except upon order of the court based on a finding that the disclosure is necessary to protect the interest of the adoptee. [G.S. 48-9-102(b).]
4. When a decree of adoption becomes final, all records and all indices of records on file with the court, an agency, or the state shall be retained permanently and sealed. Sealed records are not open to inspection, except as otherwise provided in Article 9 of G.S. Chapter 48. [G.S. 48-9-102(c).]

### C. Transfer and Repository of Adoption Records

1. G.S. 48-9-102(c) and (d) address retention of records.
2. Only the original petition and final decree are to be retained in the office of the clerk. All records, or in some instances copies thereof, are to be sent to the Division of Social Services, in the Department of Health and Human Services. [G.S. 48-9-102(d).]
3. G.S. 48-9-102(e) and (f) set out the responsibilities of the Division of Social Services when an adoption is complete.
  - a. The Division of Social Services is responsible for having the papers and reports related to the proceeding permanently indexed and filed. [G.S. 48-9-102(e).]
  - b. The Division of Social Services also must transmit a report of each adoption and any name change to (1) the State Registrar of Vital Statistics if the adoptee was born in this state or (2) the appropriate official responsible for issuing birth certificates or their equivalent if the adoptee was not born in this state. [G.S. 48-9-102(f).]

### D. Release of Information

1. Release of nonidentifying information.
  - a. An adoptive parent, an adoptee who is an adult at the time of the request, or a minor adoptee who is a parent or an expectant parent may request a copy of background information submitted at the time of adoption pursuant to G.S. 48-3-205 or any additional nonidentifying health-related information about the adoptee's original family. [G.S. 48-9-103(a).]
  - b. If the court that issued a final adoption decree receives a request for nonidentifying information, such as health-related information, the court must refer the person making the request to:
    - i. The Division of Social Services or
    - ii. If known to the court, the agency that placed the adoptee or prepared the report to the court. [G.S. 48-9-103(b).]
  - c. The person should not be referred to the State Registrar of Vital Statistics. [G.S. 48-9-103(h).]
  - d. A person who is denied access to the report to the court or to information requested under G.S. 48-9-103 may petition the clerk of original jurisdiction for review of the reasonableness of the denial. [G.S. 48-9-103(d).]
  - e. A person who fraudulently or intentionally misrepresents or fails to disclose information required under G.S. 48-3-205 or Article 9 of G.S. Chapter 48 may be the subject

of a civil action for equitable or monetary relief, or both, brought by the individuals listed in G.S. 48-10-104. [G.S. 48-10-104.]

2. Release of identifying information.
  - a. Except as provided in G.S. 48-9-104 or 48-9-109(2) or (3), no person or entity is to release, except upon court order for cause pursuant to G.S. 48-9-105, from any records retained and sealed under Article 9 of G.S. Chapter 48, the name, address, or other information that reasonably could be expected to lead directly to the identity of:
    - i. An adoptee;
    - ii. An adoptive parent of an adoptee;
    - iii. An adoptee's parent at birth; or
    - iv. An individual who, but for the adoption, would be the adoptee's sibling or grandparent. [G.S. 48-9-104(a).]
  - b. Confidential intermediary.
    - i. A county division of social services or a licensed child-placing agency may agree to act as a confidential intermediary for any of the following:
      - (a) A biological parent,
      - (b) An adult adoptee,
      - (c) An adult biological sibling of an adult adoptee,
      - (d) An adult biological half-sibling of an adult adoptee,
      - (e) An adult family member of a deceased biological parent, [*See* G.S. 48-9-104(c) (for purposes of G.S. 48-9-104 only, "family member" means a spouse, child, stepchild, parent, stepparent, grandparent, or grandchild).] or
      - (f) An adult family member of a deceased adoptee. [G.S. 48-9-104(b).]
    - ii. The Division of Social Services may share information from its records regarding the identity of birth parents with an agency if the agency needs the information to carry out its duties as a confidential intermediary. [G.S. 48-9-109(3).]
3. Action for release of identifying and other nonidentifying information.
  - a. Upon motion in the cause before the clerk of original jurisdiction, the court may order the release to the movant of any information necessary for the protection of the adoptee or the public that is in, or derived from, adoption records, including a certified copy of the adoptee's original birth certificate from the State Registrar of Vital Statistics. [G.S. 48-9-105(a), (d).]
    - i. G.S. 48-9-105 does not specify who may file such a motion.
    - ii. G.S. 48-9-105 uses both "motion" and "movant" and "petition" and "petitioner", suggesting that the person seeking the information is not required to have been a party to the adoption proceeding.
    - iii. Apparently, any person who claims that disclosure of the information is necessary for the protection of the adoptee or the public may proceed under G.S. 48-9-105.

- b. The court must give primary consideration to the best interest of the adoptee, but also must give due consideration to the interests of members of the adoptee's original and adoptive family. [G.S. 48-9-105(a).]
- c. The movant must serve a copy of the motion on the North Carolina Department of Health and Human Services and on the agency that prepared the report for the court. The clerk must give at least five days' notice to the Department and to the agency of every hearing on the motion, whether the hearing is before the clerk or before a district court judge. Both the Department and the agency are entitled to appear and be heard on the motion. [G.S. 48-9-105(b).]
- d. In determining whether cause exists for the release of the name or identity of an individual, the court must consider:
  - i. The reason the information is sought;
  - ii. Any procedure available for satisfying the petitioner's request without disclosing another person's identity, including having the court appoint a representative to contact the person and request specific information;
  - iii. Whether the person about whom identifying information is sought is alive;
  - iv. To the extent known, the preference of the adoptee, the adoptive parents, the adoptee's parents at birth, and other members of the original and adoptive families, and the likely effect of disclosure on these individuals;
  - v. The age, maturity, and expressed needs of the adoptee;
  - vi. The report or recommendation of any individual appointed by the court to assess the request for identifying information; and
  - vii. Any other factor relevant to an assessment of whether the benefit to the petitioner of releasing the information sought will be greater than the benefit to another individual of nondisclosure. [G.S. 48-9-105(c).]
- e. A court must make sufficient findings of fact to support its conclusions of law when determining whether it is in the best interest of the child and the public that records be opened. [*Davidson v. Gaston Cty. Dep't of Soc. Servs.*, 56 N.C. App. 806, 290 S.E.2d 399 (1982) (findings under predecessor to G.S. 48-9-105 were not sufficient to support a partial release of information).]

## E. Authorized Disclosures

1. G.S. 48-9-109 allows certain disclosures as set out therein:
  - a. By a court employee, agency, or any other person; [G.S. 48-9-109(1).]
  - b. In agency placements, as authorized by a parent or guardian placing a child for adoption or by the adopting parents; [G.S. 48-9-109(2).] and
  - c. By the Division of Social Services to an agency acting as a confidential intermediary. [G.S. 48-9-109(3).]

## F. New Birth Certificate

1. G.S. 48-9-107 sets out the responsibilities of the State Registrar of Vital Statistics and of registers of deeds regarding the issuance of new birth certificates and the handling of records in relation to adoptions.

## IX. Practices Prohibited in Connection with Adoption

### A. Unlawful Transfer of Custody of Minor Child

1. It is unlawful for a parent to effect or attempt to effect an unlawful transfer of custody of that parent's minor child, which includes an adopted minor child as defined in G.S. 48-1-101(14a). [G.S. 14-321.2(a), *added by* S.L. 2016-115, § 1, effective Dec. 1, 2016, and applicable to offenses committed on or after that date.]
2. An "unlawful transfer of custody" is the transfer of physical custody of a minor child, in willful violation of applicable adoption law or by grossly negligent omission in the care of the child, by the child's parent, without a court or other authorization under law, to a person other than a relative or another individual having a substantial relationship with the child. [G.S. 14-321.2(b)(4), *added by* S.L. 2016-115, § 1, effective Dec. 1, 2016, and applicable to offenses committed on or after that date.]
3. A person who commits an offense under G.S. 14-321.2(a) is guilty of a:
  - a. Class A1 misdemeanor. [G.S. 14-321.2(c), *added by* S.L. 2016-115, § 1, effective Dec. 1, 2016, and applicable to offenses committed on or after that date.]
  - b. Class G felony if the transfer results in serious physical injury to the child. [G.S. 14-321.2(d), *added by* S.L. 2016-115, § 1, effective Dec. 1, 2016, and applicable to offenses committed on or after that date.]

### B. Prohibited Placement Activities

1. It is a Class 1 misdemeanor to violate the following prohibitions:
  - a. Only those persons or entities specified in G.S. 48-3-201 may place a child for adoption. [G.S. 48-10-101(a).]
  - b. Only persons or entities designated in G.S. 48-3-201 or an adoption facilitator may solicit potential adoptive parents for children. [G.S. 48-10-101(a).]
  - c. No one other than an agency, an adoption facilitator, or an individual with a completed favorable preplacement assessment may solicit a potential adoptee for adoption. [G.S. 48-10-101(a).]
  - d. No one other than a county social services department, an adoption facilitator, or an agency licensed in this state may advertise in any periodical or newspaper, or by radio, television, or other public medium, that any person or entity will place or accept a child for adoption. [G.S. 48-10-101(b).] For purposes of G.S. 48-10-101(b), "other public medium" includes the use of any computerized system, including electronic mail, Internet site, Internet profile, or any similar medium of communication

provided via the Internet. [G.S. 48-10-101(b), *amended by S.L. 2016-115, § 2, effective July 28, 2016.*]

2. The district court may enjoin a person from violating these prohibitions. [G.S. 48-10-101(d).]
3. Notwithstanding G.S. 48-10-101(a) and (b), a person with a current completed favorable preplacement assessment is not prohibited from advertising that the person desires to adopt. [G.S. 48-10-101(b1).]

### **C. Unauthorized Disclosure of Information**

1. Except as allowed by G.S. Chapter 48, no identifying or nonidentifying information contained in a report or in records relating to an adoption may be disclosed by present or former employees or officials of the court, by an agency, the state, a county, an attorney or other professional service provider, or by any person or entity who wrongfully obtains such a report or records. [G.S. 48-10-105(a).]
2. The knowing unauthorized disclosure of identifying information is a Class 1 misdemeanor, and the district court may enjoin further violations. [G.S. 48-10-105(b) and (c).]
3. A person who is the subject of unlawfully disclosed adoption information may bring a civil action for equitable or monetary relief, or both, against any person or entity that makes an unauthorized disclosure of information. [G.S. 48-10-105(d).]

## **X. Lawful and Unlawful Payments**

### **A. Lawful Payments**

1. An adoptive parent, or another person acting on behalf of an adoptive parent, may pay the reasonable and actual fees and expenses for:
  - a. Services of an agency in connection with an adoption;
  - b. Medical, hospital, nursing, pharmaceutical, traveling, or other similar expenses incurred by a mother or her child incident to the pregnancy and birth or to any illness of the adoptee;
  - c. Counseling services, for a parent or the adoptee, that are directly related to the adoption and provided by licensed or other professionals as set out in G.S. 48-10-103(a)(3);
  - d. Ordinary living expenses of a mother during the pregnancy and for no more than six weeks after birth;
  - e. Expenses incurred in obtaining the information required by statute about an adoptee and the adoptee's biological family;
  - f. Legal services, court costs, and traveling or other administrative expenses connected with the adoption, including any legal service connected with the adoption performed for a parent who consents to the adoption of the minor or relinquishes the minor to an agency; and

- g. Preparation of the preplacement assessment and the report to the court. [G.S. 48-10-103(a).]
- 2. None of the payments set out above may be made contingent on the placement of the minor for adoption, relinquishment of the minor, consent to the adoption, or cooperation in the completion of the adoption. [G.S. 48-10-103(c).]

## B. Unlawful Payments

- 1. Except as provided in G.S. 48-10-103, a person or entity may not pay or give, offer to pay or give, or request, receive or accept any money or anything of value, directly or indirectly, for:
  - a. The placement of a minor for adoption;
  - b. The consent of a parent, a guardian, or an agency to the adoption of a minor;
    - i. Father's consent to the adoption of his child violated predecessor statute and was void as against public policy in that it was in exchange for the termination of his child support obligations and the mother's agreement not to pursue child support, either prospective or in arrears. [*Stanly Cty. Dep't of Soc. Servs. ex rel. Dennis v. Reeder*, 127 N.C. App. 723, 493 S.E.2d 70 (1997) (father's obligation to provide support continues until entry of a final adoption order).]
    - ii. Agreement between mother and father, whereby mother would drop a child support arrearage action and accept \$2,000 in lieu of the total amount in exchange for father's consent to the child's adoption in Alabama by mother's new husband, was void against North Carolina public policy and violated statute on unlawful payments. [*State ex rel. Raines v. Gilbert*, 117 N.C. App. 129, 450 S.E.2d 1 (1994) (trial court erred in finding mother equitably estopped from enforcing her judgment for the full amount of the child support arrearages).]
    - iii. Actions of the adopting parents and their attorney in providing birth mother with complete financial support prior to and immediately after the child's birth required that the interlocutory decree of adoption be set aside and the adoption proceeding dismissed. [*In re Adoption of P.E.P.*, 329 N.C. 692, 407 S.E.2d 505 (1991) (evidence showed that attorney paid for the transportation of birth mother and her two children to North Carolina, for food, shelter, and transportation for the three while in North Carolina, and for some of birth mother's medical expenses; in connection with birth mother's return to her home state, attorney paid birth mother's airfare and six-months' rent on an apartment there and gave her \$1,500 cash) (case decided before amendments allowing adoptive parents to pay reasonable and actual medical expenses of biological mother incident to pregnancy and birth and ordinary living expenses during pregnancy and six weeks after birth).]
  - c. The relinquishment of a minor to an agency for purposes of adoption; or
  - d. Assisting a parent or guardian in locating or evaluating a potential adoptive parent or in transferring custody of a minor to the adoptive parent. [G.S. 48-10-102(a).]



2. Violation of G.S. 48-10-102 is a Class 1 misdemeanor for the first offense. For each subsequent violation, a person is guilty of a Class H felony and may be fined up to \$10,000. [G.S. 48-10-102(b).]
3. The district court may enjoin a person or entity from violating G.S. 48-10-102. [G.S. 48-10-102(c).]

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## Appendix A. Time Schedule for the Adoption of Minors

### Direct Placement and Agency Placement

Event	Time Frame	Statute
Preplacement assessment of prospective adoptive parents or the updating of an old assessment	Within 18 months immediately preceding placement; completion within 90 days of the request for assessment	G.S. 48-3-301 <i>et seq.</i> G.S. 48-3-303
Placement with prospective adoptive parents	Time not specified by statute	
Petition filed	For adoption actions filed on or after Oct. 1, 2012, there is no time limit for filing an adoption petition; for adoption actions filed before Oct. 1, 2012, not more than 30 days after placement <sup>a</sup>	G.S. 48-2-302(a), <i>repealed</i> by S.L. 2012-16, § 1, effective Oct. 1, 2012, and applicable to actions filed on or after that date
Court orders report on placement	When petition is filed	G.S. 48-2-501(a)
Notice of filing given to all parties	Not more than 30 days after petition filed	G.S. 48-2-401(a)
Response by party that wants to participate	Not more than 30 days after service of the notice; if service is by publication, 40 days after first publication of the notice	G.S. 48-2-401(f), <i>amended</i> by S.L. 2015-54, § 5, effective June 4, 2015, and applicable to proceedings filed on or after that date
Report on placement filed with court	Within 60 days of delivery of the order for the report or 63 days if order was mailed <sup>a</sup>	G.S. 48-2-503(a)
Court sets hearing or disposition date	Within 90 days of filing of petition	G.S. 48-2-601(b)
Revocation of consent for adoption or of relinquishment	For child in utero or any minor revocation of consent/relinquishment, allowed within 7 days of execution.	G.S. 48-3-608(a) G.S. 48-3-706(a)
Hearing on or disposition of adoption (most will be disposed of without formal hearing)	At least 90 days after petition filed, unless court waives requirement; not later than 6 months after petition filed <sup>b</sup>	G.S. 48-2-601(b) G.S. 48-2-601(c) G.S. 48-2-603(a)(1)
Decree for adoption	At hearing/disposition	G.S. 48-2-603 G.S. 48-2-606

a. Court may extend time.

b. Court may extend time for cause.

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## Supplemental Navigation Instructions

The instructions below, which include screenshots for ease of use, will allow Adobe users (of both Acrobat Pro and Reader) to install a toolbar navigation feature (called "Previous view") that operates like a "Back" button on Web browsers.

Please note that if you are a Mac user, the appearance of your screens may differ slightly from the screens in the instructional images below (which were pulled from a PC). The selections from the pull-down menus, however, are essentially the same across both platforms.

### For Users of Adobe Acrobat Pro

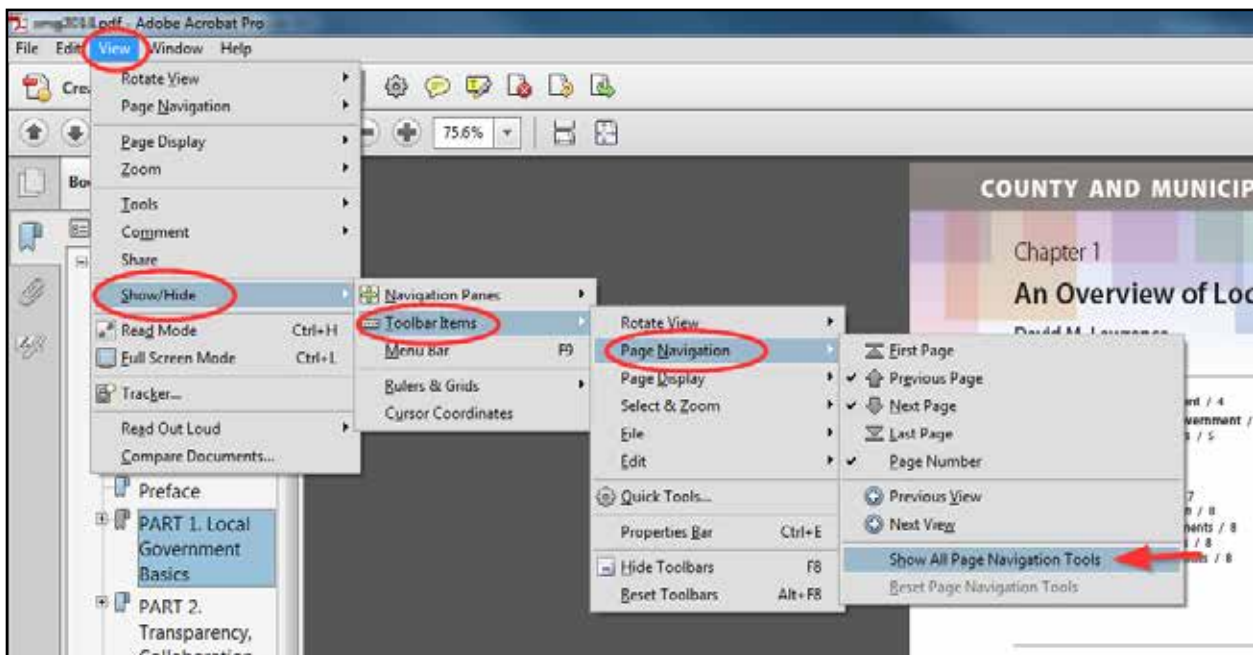
1. In the Acrobat Pro menu, click "View". In the drop-down menu that then appear, click the following options (as shown below):

"Show/Hide"

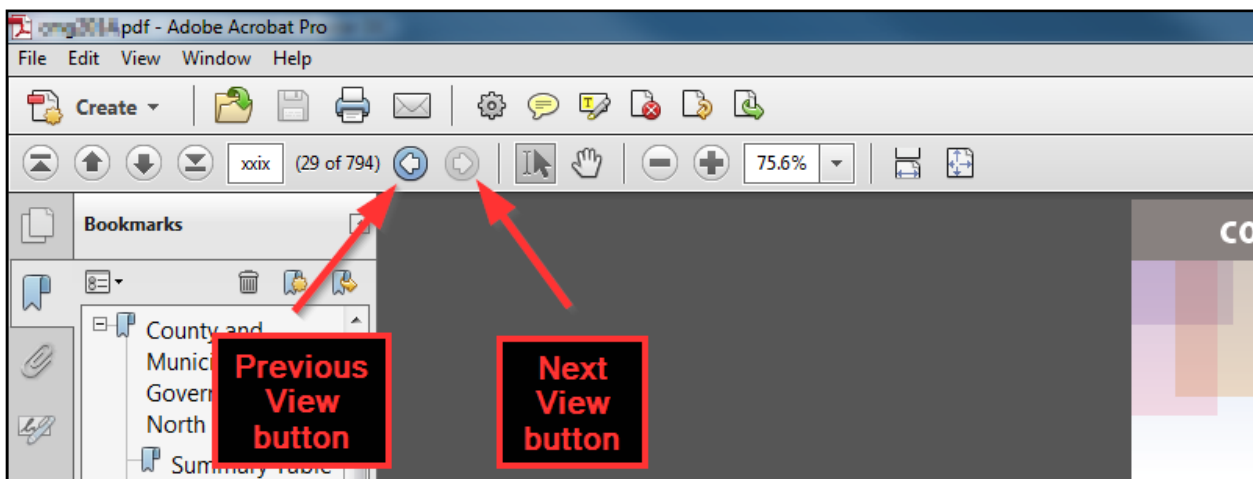
"Toolbar Items"

"Page Navigation"

"Show All Page Navigation Tools"

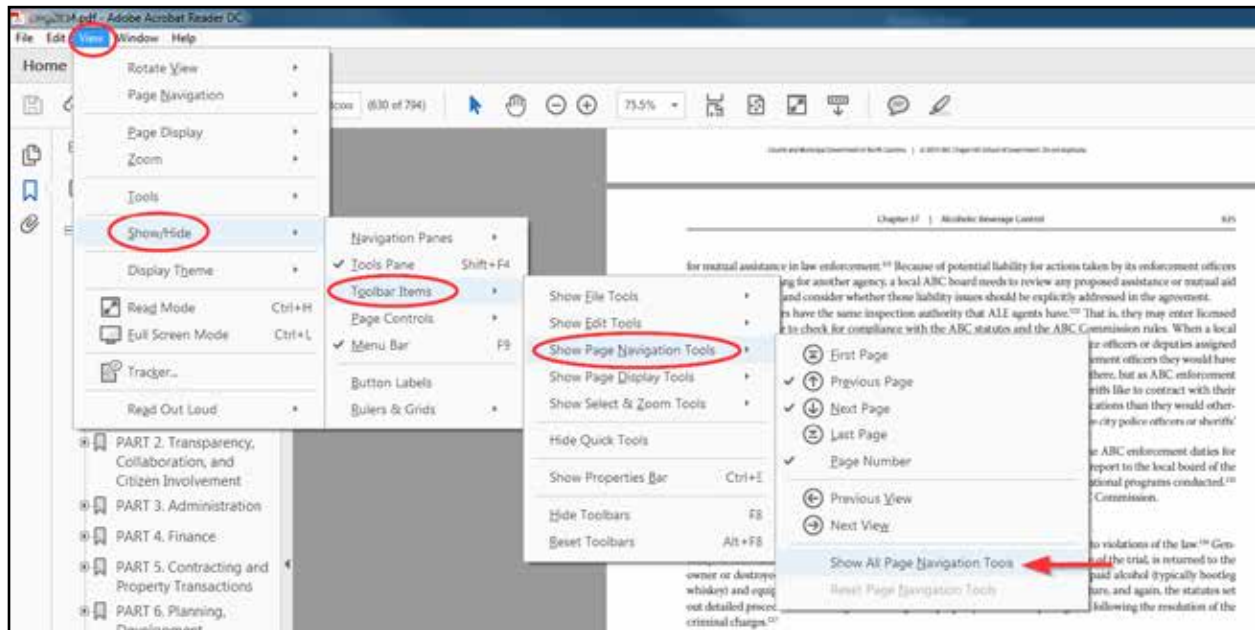


2. You will now see the buttons for "Previous View" (which will be greyed out while you are on the first page you are viewing) and "Next View" (which will be greyed out if you haven't used the Previous View button to return to an earlier view) (see below). You are now ready to navigate!

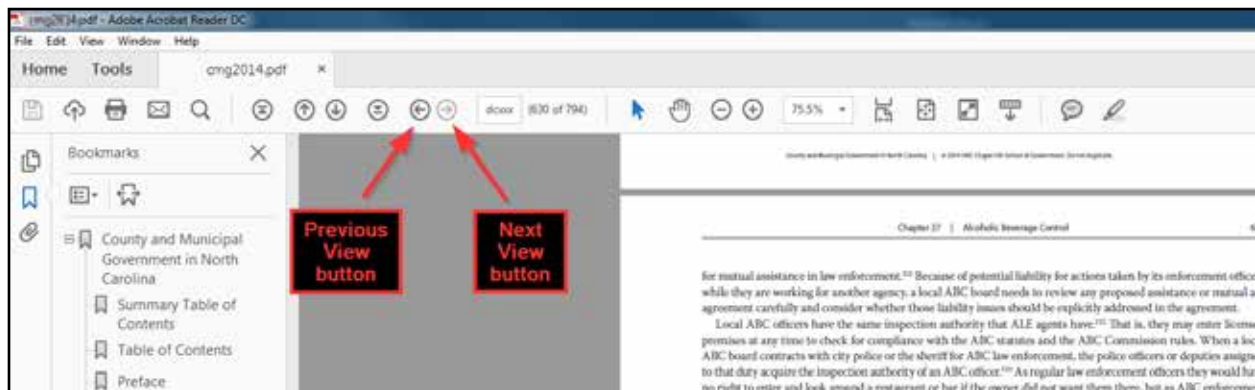


## For Users of Adobe Reader

1. In the Acrobat Reader menu, click "View". In the drop-down menus that then appear, click the following options (as shown below):
  - "Show/Hide"
  - "Toolbar Items"
  - "Show Page Navigation Tools"
  - "Show All Page Navigation Tools"



2. You will now see the buttons for "Previous View" (which will be greyed out while you are on the first page you are viewing) and "Next View" (which will be greyed out if you haven't used the Previous View button to return to an earlier view) (see below). You are now ready to navigate!



## Additional Feature

You will notice a blue "TOC" button in all text pages of the Bench Book. When you are in a given chapter, clicking this button will take you to the table of contents at the beginning of the chapter (which is itself linked to the heads in text).