

Relinquishments: An Overview for DSS Attorneys

Definitions (48-1-101)

- » Relinquishment = a consent by a parent or guardian to a county DSS or licensed child placing agency for placement of a child for adoption
 - The agency placing the child based on a relinquishment then executes a consent to the adoption by the prospective adoptive parent
 - In non-agency adoptions – independent, relative, stepparent – the parent or guardian executes a consent for adoption of the child directly to the prospective adoptive parent
- » Guardian = an individual, other than a parent, appointed by the clerk to exercise all powers under G.S. 35A-1241, including a standby guardian under Article 21 of Chapter 35 whose authority has actually commenced, AND an individual appointed in another jurisdiction who has the power to consent to adoption. Not a 7B guardian.

Who may execute a relinquishment (48-3-701)

- » Parent
 - The mother may execute the relinquishment at any time after birth but not sooner
 - A father may execute a relinquishment either before or after the child is born. Thus, his revocation period may expire before the birth of the child.
 - A minor parent may relinquish as if an adult without appointment of a GAL. 48-3-605(b)
- » A guardian may relinquish at any time
- » If the child is an “Indian child” under ICWA, both NC relinquishment and ICWA consent procedures must be followed. Under ICWA, (1) the child cannot be relinquished until the child is 10 days old, (2) the ICWA consent must be taken in court with a judicial certification that the parent

understands the terms of the consent, (3) the ICWA consent is revocable until the final decree of adoption, and (4) it can be challenged for fraud or duress for two years. 48-3-605(f)(g)

- » Note that the relinquishment form (DSS-1804) is entitled “Relinquishment by Parent, Guardian or Guardian ad Litem.” This does not refer to a 7B GAL for the child. This GAL may execute a relinquishment only in the very narrow circumstance set out in 48-3-602, when an adoption petition has been filed and a parent whose consent is required has been adjudicated incompetent.
 - In that instance, the clerk appoints a guardian ad litem for the parent to investigate whether the adoption should proceed and present this information at a hearing, after which the clerk determines whether it is in the child’s best interest to be adopted. If so, the GAL appointed in the adoption executes a relinquishment for the incompetent parent, if it is an agency adoption.

Adoption forms

- » Created and updated by DHHS, Division of Social Services, not AOC
- » <https://policies.ncdhhs.gov/divisional/social-services/forms>
- » Adoption forms are listed on the site in numerical order
 - DSS-1800 (adoption petition)
 - DSS-1801 (agency consent to adoption)
 - DSS-1804 (relinquishment)

Procedures for relinquishment (48-3-702)

- » Must be signed and acknowledged under oath before an individual authorized to administer oaths or take acknowledgements
 - Execution in another state or country in accord with local procedures is not invalid solely because of the failure to comply with Chapter 48 formalities. 48-3-605(e)
 - Methods acceptable to identify a minor parent to the notary are set out in 48-3-605(h) and include an affidavit of a DSS social worker

- A relinquishment of a newborn child may give the child's name as "Baby [last name of biological mother] or a similar designation." 48-3-703(a)(3).
- » The parent may release the child to be adopted by an adoptive parent chosen by DSS (general relinquishment) OR name an adoptive parent selected by DSS and agreed upon by the parent, for example, a foster parent or relative (designated relinquishment)
- » The person executing the relinquishment must certify that he/she (1) has been given a copy of the fully executed relinquishment, (2) been advised that counseling services are available through the county DSS, and (3) been advised of the right to seek legal counsel before executing the relinquishment
 - Note: 7B-909.1 now statutorily incorporates the requirements of In re Maynard, 116 N.C. App. 616 (1994), regarding a parent's right to counsel. The parent must be a Respondent in a 7B action with (1) retained counsel who has entered a notice of appearance or (2) an attorney whose provisional appointment has been confirmed by the court.
 - Prior to execution of a relinquishment by that parent, notice must be given, by any reasonable and timely means, to parent's counsel or a partner or employee at counsel's office of the DSS arrangements for the parent to execute the relinquishment – at a specific date, time, location
 - The parent must be advised of the right to seek counsel's advice prior to executing the relinquishment and to have counsel present at the execution
- » DSS must accept the relinquishment by letter or other writing, generally by signing the acceptance page of the relinquishment

- » If the relinquishment is taken in a hospital, the hospital may release the child to DSS if the parent signs a transfer of physical custody for the purpose of adoption in the presence of hospital staff. 48-3-402

Consequences of relinquishment (48-3-705)

- » A relinquishment by a parent or guardian entitled to place the child for adoption (1) vests legal and physical custody in DSS and (2) empowers DSS to place the minor for adoption with a prospective adoptive parent selected in the manner specified in the relinquishment
 - 48-3-201 provides that a parent with legal and physical custody may place a child for adoption by means of executing a relinquishment. Married parents living together must jointly relinquish, as must parents where one parent has legal custody of a minor and the other has physical custody but neither has both
- » The relinquishment terminates the rights and duties of the parent or guardian with respect to legal and physical custody and the right to consent to the adoption
 - The relinquishment does not terminate the duty of child support which continues until the final decree of adoption
- » The relinquishment does not terminate parental rights until the final decree of adoption or parental rights are otherwise terminated earlier. Until that time, the child is entitled to any inheritance, succession, insurance, arrears of child support, or other benefit the child may have by and through or against the parent
- » After the revocation period for the relinquishment has expired, DSS may apply to the clerk of court for an order finding DSS has legal custody by virtue of the relinquishment for purposes of obtaining a certified copy of the child's birth certificate, Social Security number, or State or federal benefits for the child

Revocation of relinquishment (48-3-706)

- » Parent may revoke in writing within 7 days by three methods – personal delivery, registered or certified mail, or overnight delivery service
 - The seventh day may not fall on a weekend or legal holiday when NC courthouses are closed for transactions, but extends to the next business day
- » Revocation is effective upon deposit in the mail for certified or registered delivery or with the overnight delivery service, even though it arrives after the 7th day
 - In re Ivey, 257 N.C. App. 622 (2018), held that the 7 day revocation period does not begin to run until the relinquishing parent has been given an executed copy of the relinquishment
- » For designated relinquishments, the parent must indicate on the relinquishment form whether he/she wishes to be notified if the adoption will not take place as designated. If so, the parent will have 10 days to revoke after notice from DSS.
 - If DSS cannot locate the parent, after the exercise of due diligence, the notice may be mailed, return receipt requested, to the address of the parent given in the relinquishment
 - The date of receipt by the parent is the date of delivery or last attempted delivery
 - If the parent does not revoke a designated relinquishment, the relinquishment is deemed a general relinquishment, and DSS may select new adoptive parents
- » A second general relinquishment to the same county DSS is irrevocable. A second designated relinquishment to the same designee is also irrevocable.

Adoptive placement selection and requirements

- » 7B-1112.1 provides that selection of specific adoptive placement is the responsibility of and in discretion of DSS, but

- Any current placement provider who wants to adopt must be considered
 - The GAL may request information and consult with DSS. Information about the selection process must be provided within 5 business days
- » Both GAL and foster parents must be notified within 10 days of selection AND prior to the filing of the adoption petition
- GAL who disagrees with decision or foster parent not chosen as placement may file a motion within 10 days of that notice for hearing on next juvenile calendar. DSS provides a motion for this judicial review to the foster parent
 - The child's placement may not be changed prior to the hearing
 - At the hearing the court considers the recommendations of DSS and GAL, along with other relevant facts and determines whether the proposed adoptive placement is the juvenile's best interest
- » At a subsequent 7B-908 or -909 review hearing, if the child has not been placed with adoptive parents as selected pursuant to 7B-1112.1, the court may order a placement that the court finds in the child's best interest after considering DSS' recommendation
- » No adoptive placement, including with relatives of the child, can be made without a favorable preplacement assessment, including a fingerprint criminal history check. 48-3-203(d)(d1); 48-3-309.
- » Unless otherwise ordered by the court, prior to the final decree of adoption the agency retains legal but not physical custody of the child, and for cause may petition the clerk to dismiss the adoption proceeding and restore full legal and physical custody to DSS. 48-3-502.

Challenges to a relinquishment (46-3-707)

- » Before the entry of the adoption decree, a relinquishment becomes void if the person executing it establishes by clear and convincing evidence that it was obtained by fraud or duress
- » Before placement with a prospective adoptive parent occurs, DSS and the person relinquishing the child may agree to rescind the relinquishment
- » After placement with a prospective adoptive parent occurs, but before the decree is entered, DSS, the person relinquishing, and the prospective adoptive parent may agree to rescind the relinquishment
- » DSS may make a motion under 7B-909 that a relinquishment be voided because the consent or relinquishment of the other parent cannot be obtained and no steps will be taken to terminate that parent's parental rights. The court must find that voiding is in child's best interest.
 - 7B-909(b1) provides for 15 days notice to the relinquishing parent and the right to be heard on whether the relinquishment should be voided and any plan to provide for the child in that event.
 - If the relinquishing parent cannot be located with exercise of due diligence, notice is sent to address in relinquishment, return receipt requested, and date of receipt is date of delivery or last attempted delivery
- » After the adoption decree has been entered, a parent or guardian whose relinquishment was obtained by fraud or duress may move to set aside the decree and have the relinquishment declared void. 48-2-607(c)
 - This action must be brought within 6 months of the time the fraud or duress is or reasonably should have been discovered.

Jane Thompson
Jthompson792@aol.com
Winter 2021 DSS Attorney Conference