SECTION 1302 - LEGAL GUIDES
CHANGE #03-2009
FEBRUARY 2009

I. INTRODUCTION

The adoption statute, Chapter 48 of the North Carolina General Statutes, clearly **outlines** the steps to be followed to bring about a valid adoption. Standard forms for legal proceedings have been prepared by the North Carolina Division of Social Services to meet the legal requirements of the adoption statute. These forms are accessible online at http://info.dhhs.state.nc.us/olm/forms/forms.aspx?dc=dss.

The standard forms available:

1.	DSS-1800	Petition for Adoption of a Minor Child (Not Stepparent)
2.	DSS-1801	Agency's Consent to Adoption
3.	DSS-1802	Consent to Adoption by Parent, Guardian Ad Litem or Guardian
4.	DSS-1803	Consent of Child for Adoption
5.	DSS-1804	Relinquishment of Minor for Adoption By Parent or Guardian
6.	DSS-1805	Revocation of Relinquishment for Adoption By Parent or Guardian
7.	DSS-1806	Revocation of Consent to Adoption by Parent, Guardian Ad Litem, or Guardian
8.	DSS-1807	Order for ~~a~~ Report on Proposed Adoption
9.	DSS-1808	Report on Proposed Adoption
10.	DSS-1809	Affidavit of Parentage
11.	DSS-1811	Medical Examination (Optional)
12.	DSS-1814	Decree of Adoption
13.	DSS-1815	Report to Vital Records
14.	DSS-1816	Dismissal of Adoption
15.	DSS-5102	Non-Identifying Background Information
16.	DSS-5103	Adoption Health History, (Parts I and II)
17.	DSS-5118	Denial of Paternity
18.	DSS-5162	Petition for Adoption of a Minor Child (Stepparent)
19.	DSS-5168	Revocation of Child's Consent to Adoption
20.	DSS-5169	Consent of Child for Adoption (Stepparent Adoption)
21.	DSS-5189	Consent to Adoption by Parent Who is Spouse of Stepparent
22.	DSS-5190	Consent to Adoption by Parent Who is Not the Stepparent's Spouse
23.	DSS-5191	Affidavit - Disclosure of Fees & Expenses
24.	DSS-5218	Consent to Release of Identifying Information
25.	DSS-5219	Certificate of Delivery of Pre-placement Assessment

II. LEGAL CLEARANCE PROCEEDINGS

In agency placements, the agency having placement authority for the child has the responsibility for legally clearing the child and filing the documents with the Clerk of Superior Court directly. In all other placements, it is the adopting parents' attorney's responsibility to legally clear the child and file the documents with the Clerk of Superior Court.

A. TERMINATION OF PARENTAL RIGHTS

General Statutes N.C.G.S.§7B-1100 through N.C.G.S.§7B-1113 provide the legal framework for termination of parental rights, which comes under the jurisdiction of the juvenile division of the district court. This action is initiated by the filing of a petition for termination of the parental rights of the parent or parents whose consents have not been obtained or the filing of a motion to terminate parental rights against parents who have previously been served in the juvenile case. As with other petitions for juvenile court action, termination actions are filed in the offices of the Clerks of Superior Court. Because of the complex legal nature of termination proceedings, agencies seeking to have parental rights terminated should obtain the services of an attorney for all parts of the action.

B. CONSENTS AND RELINQUISHMENTS

1. Consents and Relinquishments Defined

The adoption statute specifies when there must be a written consent to the child's adoption to protect the child fully and to make the adoption valid. When birth parents or guardians surrender~~s~~ a child to an agency through a Relinquishment of Minor for Adoption by Parent or Guardian and the agency gives consent to the child's adoption, OR when the birth parents or guardians give~~s~~ consent to the adoption of a child directly to the petitioner, then the person executing the consent or relinquishment is not a necessary party to the adoption proceeding and is not entitled to notice unless the petitioner has been informed that the person has moved to set aside the consent or relinquishment for fraud or duress. (N.C.G.S. § 48-2-401; 48-2-406)

a. Relinquishment

"Relinquishment" means the voluntary surrender of a minor to an agency for the purpose of adoption. This term replaces the former “Parent's Release, Surrender, and General Consent.” Upon execution of a relinquishment by a parent or guardian in accordance with N.C.G.S.§48-3-701, the agency obtains legal and physical custody of the child. (N.C.G.S.§48-3-705)

b. Consents

The term "consent to adoption" is used primarily in two instances. A consent means a voluntary surrender of a child for adoption by the parent or guardian in a direct or independent placement. The term "consent" is also used when an agency, which has received a relinquishment from a parent or guardian, consents to the placement of a child in an adoptive home. Further, a child 12 or more years of age must execute a consent for adoption, except that such consent may be waived by the court upon finding that it is not in the child's best interest to require consent (N.C.G.S.§48-3-601 and 48-3-603 [b]).

2. Persons Whose Consent to Adoption is Required (N.C.G.S.§48-3-601)

a. The minor to be adopted if 12 or more years of age unless waived by the court as not in the minor's best interest to require consent. (N.C.G.S.§48-3 603 [b][2]).

b. In a direct placement, by:

(1) The mother of the minor;

(2) Any man who may or may not be the biological father of the minor but who:

(a) 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 is terminated or the parties have legally separated;

(b) Attempted to marry the mother of the child before the child's birth, and the child is born during the attempted marriage or within 280 days thereafter;

(c) Before the filing of the petition, has legitimated the minor under the law of any state;

(d) Before the filing of the petition, has acknowledged his paternity of the child and;

1) Is obligated to support the minor under written agreement or by court order;

2) Has provided in accordance with his ability, reasonable and consistent payments for the support of the mother before or after birth of

the child, or the support of the child and has regularly visited or communicated or attempted to do so with the mother and/or child;

3) After the child's birth but before the child's placement for adoption or mother's relinquishment, has married or attempted to marry the mother of the child.

(e) Before the filing of the petition, has received the minor into his home and openly held out the minor as his biological child; or

(f) Is the adoptive father of the minor.

(3) A guardian of the child

c. In an agency placement by:

(1) The agency that placed the minor for adoption; and

(2) Each individual described in (b) (2) above who has not relinquished the minor pursuant to Part 7 of Article 3 of this Chapter.

3. Timing of Relinquishments and Consents (N.C.G.S.§48-3-604 and 48-3-701)

a. A man whose consent is required under N.C.G.S.§48-3-601 may execute a consent or relinquishment to adoption either before or after the child is born.

b. The mother of a child may execute a consent or relinquishment to adoption at any time after the child is born but not sooner.

c. A guardian of a minor to be adopted may execute a consent or relinquishment to adoption at any time.

d. An agency licensed by the Division or a county department of social services in this State that places a minor for adoption shall execute its consent no later than 30 days after being served with notice of the adoption.

e. A minor to be adopted who is 12 years of age or older may execute a consent at any time.

f. Adoption consents may not be given prior to or within 10 days after birth of an Indian child.

4. Procedures (N.C.G.S. § 48-3-605 and 48-3-702)

a. A consent or relinquishment executed by a parent or guardian or a consent by a minor to be adopted who is 12 years of age or older must be signed and acknowledged under oath before an individual authorized to administer oaths or take acknowledgments.

b. A parent who has not reached the age of 18 years shall have legal capacity to give consent or relinquishment to adoption and to release that parent's rights in a child, and shall be as fully bound as if the parent had attained 18 years of age.

c. An individual before whom a consent or relinquishment is signed and acknowledged must now complete a written certification which is found on the back of standard consent and relinquishment forms.

d. A consent by an agency must be executed by the executive head or another authorized employee and must be signed and acknowledged under oath in the presence of an individual authorized to administer oaths or take acknowledgments.

e. Each parent or guardian who signs a relinquishment shall be furnished a letter or other writing indicating the agency's willingness to accept that relinquishment if the agency's director or designee is not immediately signing the acceptance page of the relinquishment if the agency's director or designee is not immediately signing the acceptance page of the relinquishment.

f. Adoption surrenders of Indian children – whether to public or private agencies or in private adoptions - must be in writing and recorded before a family court judge who certifies in writing that the parent or Indian custodian understood the surrender.

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5. Mandatory and Optional Provisions

a. Mandatory provisions for consents and relinquishments, in accordance with N.C.G.S.§48-3-606 and N.C.G.S.§48-3-703 are incorporated in the standard forms.

b. The optional provision for relinquishments, set out in N.C.G.S.§48-3-704, is also incorporated in the standard form.

(1) When a designated relinquishment is executed, the parent may choose to receive notice by the agency if the adoption by the specific prospective adoptive parent, named or described in the relinquishment, will not be completed.

(2) If this option is chosen by the parent, the parent may then revoke the relinquishment within 10 days following receipt of the notice. If the parent's whereabouts are unknown at that time, the notice may be sent to the address the parent used in the relinquishment, and the date of receipt is the date of delivery or last attempted delivery. If the parent does not revoke within 10 days, the child may be placed for adoption with adoptive parents selected by the agency.

6. Revocation (N.C.G.S.§48-3-608 and 48-3-703)

a. Revocation Period

(1) For consents and relinquishments, the revocation period is 7 days for any minor, inclusive of weekends and holidays. If the final day of the revocation period falls on a weekend or a North Carolina or a federal holiday, then the revocation period extends to the next business day.

(2) For an Indian child-an adoption consent may be revoked at any time for any reason before the final decree is filed, and the child must be returned.

(3) **A second consent to adoption to the same adoptive parents or a second general relinquishment to an agency or a second designated relinquishment to an agency for placement with the same adoptive parents is irrevocable.**

(4) In a direct placement, if a pre-placement assessment is required, and placement occurs before the pre-placement assessment is given to the parent or guardian who is placing the minor, then the parent or guardian's time under N.C.G.S.§48-3-608 (a) to revoke any consent previously given shall be either five business days after the date the individual receives the pre-placement assessment or the remainder of 7 day revocation period, whichever is longer.

b. Procedures

An individual who executes a consent or relinquishment may revoke by giving written notice to the persons specified in the consents or to the agency to which the relinquishment was given. Notice may be

given by personal delivery, overnight delivery, or registered or certified mail, return receipt requested. If notice is given by mail, notice is deemed complete when it is deposited in the United States mail, postage prepaid, addressed to the person to whom consent or relinquishment was given at the address specified in the consent, or to the agency at the agency's address as given in the relinquishment. If notice is given by overnight delivery, it is deemed complete on the date it is deposited with the service as shown on the service's receipt, delivery charges paid and addressed to person to whom consent was given at address specified in consent. Therefore, the agency or adoptive parent will need to wait longer than 7 days to insure that no valid revocation is received by certified mail or overnight delivery service.

c. Consequences

(1) If a person who has physical custody relinquishes a child to an agency or consents to the adoption of the child by a prospective adoptive parent and thereafter revokes the relinquishment or consent, the agency or prospective adoptive parent shall upon request return the child to that person. The agency or prospective adoptive parent loses any right to legal or physical custody of the child and has no further responsibility for the care and support of the child.

(2) A court in a direct placement shall award reasonable attorney's fees to the person who revoked the consent if the prospective adoptive parent fails upon request to return the child.

(3) A court in an agency placement may award the person who revoked the relinquishment reasonable attorney's fees from a prospective adoptive parent with whom the minor was placed who refuses to return the minor and from the agency if the agency fails to cooperate in securing the minor's return.

(4) If a person who did not have physical custody of the child revokes a relinquishment or consent and this person's relinquishment or consent is required, the adoption cannot proceed until another consent or relinquishment is obtained or parental rights are terminated. The person who revoked the relinquishment or consent is not thereby entitled to physical custody of the child. If the child whose consent is required revokes consent, the county department of social services should be notified for appropriate action.

7. Challenges to Validity of Consents and Relinquishments (N.C.G.S.§48-3-609 and 48-3-707)

a. A consent shall be void if:

(1) Before the entry of the adoption decree, the individual who executed the consent establishes by clear and convincing evidence that it was obtained by fraud or duress;

(2) The prospective adoptive parent and the individual who executed the consent mutually agree in writing to set it aside;

(3) The petition to adopt is voluntarily dismissed with prejudice by the petitioner(s); or

(4) The court dismisses the petition to adopt and no appeal has been taken, or the dismissal has been affirmed on appeal and all appeals have been exhausted.

b. A relinquishment shall become void if:

1. Before the 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; or

2. Before placement with a prospective adoptive parent occurs, the agency and person relinquishing the minor agrees to rescind the relinquishment.

c. If a consent or relinquishment of a person who previously had legal and physical custody of a minor becomes void and no grounds exist for dispensing with this consent or relinquishment, the court shall order the return of the child to the custody of that person and shall dismiss any adoption proceeding. If the court has reasonable cause to believe that such return will be detrimental to the child, the court shall not order the return of the child but shall notify the county department of social services for appropriate action.

d. If a consent or relinquishment of an individual who did not previously have physical custody of a minor is set aside and no grounds exist for dispensing with this consent or relinquishment, the court shall dismiss any pending proceeding for adoption. If return of the minor is not ordered to a person with prior legal and physical custody under (c) above, the court shall notify the department of social services for appropriate action.

8. Prebirth Determination of Father's Right to Consent (N.C.G.S.§48-2-206)

a. Anytime after six months from date of conception as reasonably determined by a physician, the biological mother, agency or adoptive parents chosen by the biological mother may file a special proceeding with the clerk requesting a determination whether the consent of the biological father is required.

b. The biological father must be served with notice of the intent of the biological mother to place the child for adoption. This notice states that he has been named as the father of a child to be placed for adoption and that if he believes his consent to adoption is required under N.C.G.S.§48-3-601, he must notify the court no later than 15 days after receiving the notice that he believes his consent is required. This response must also be sent to the person or agency that sent him the notice.

c. If the father fails to respond within the 15 days, the court shall enter an order that his consent is not required for the adoption. He is then not entitled to notice under N.C.G.S.§48-2-401(c) of an adoption petition filed within 3 months of the birth of the child. After that time the determination under this new section is no longer valid and he would be entitled to notice, need to give consent, deny paternity, etc.

d. If the father notifies the court within the 15 days that he believes his consent is required, a hearing shall be held no earlier than 60 days nor later than 70 days after the father received his notice.

e. The notice of that hearing must inform the father of the date, time and place of the hearing and inform him that before the date of the hearing, he must have taken steps under N.C.G.S.§48-3-601 to establish that his consent is necessary. These steps include marrying the mother, legitimating the child (after the child's birth), acknowledging paternity of the child and supporting the child or mother and regularly visiting or communicating with the mother and/or child.

f. The court may take evidence as necessary during the hearing and enter an order determining whether the father's consent is necessary. If the court determines his consent is not necessary; he is not entitled to notice of an adoption petition filed within 3 months of the child's birth.

g. Manner of service shall be pursuant to Rule 4 of the Rules of Civil Procedure, just as in TPR actions. For notice given by publication, a prior diligent search must have been made to find the father and the

publication notice must include information by which he could identify himself.

9. Persons Whose Consent Is Not Required (N.C.G.S.§48-3-603)

a. A person whose parental rights have been terminated;

b. A man, described in N.C.G.S.§48-3-601(2) other than an adoptive father, who has been judicially determined not to be the father of the child to be adopted, OR where another man has been judicially determined to be the father of the child to be adopted;

c. An individual who has given relinquishment for adoption to an agency;

d. A man who is not married to the child's birth mother and who, after the conception of the child, has executed a notarized denial of paternity;

e. A deceased parent, or the personal representative of a deceased parent's estate;

f. An individual listed in N.C.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 30 days after the service of the notice;

g. An individual notified under N.C.G.S.§48-2-206 (described in 8 above) who does not respond within the 15 days to a notice of hearing or whose consent is not required as determined by the court;

h. The court may issue an order dispensing with the consent of:

1. A guardian or an agency that placed the minor upon a finding that the consent is being withheld contrary to the best interest of the minor; or

2. A minor 12 or more years of age upon a finding that it is not in the best interest of the minor to require the consent.

10. Affidavit of Parentage

N.C.G.S.§48-3-206 requires an affidavit of parentage (DSS-1809) to be filed in both independent and agency placements in order to assist the court in determining that all necessary consents have been obtained. In an independent placement, the parent or guardian who placed the minor shall execute the affidavit. setting out the names, last known addresses, and marital status of the minor's parents or possible parents. In an agency

placement, the agency shall obtain from at least one individual who relinquishes a minor to the agency an affidavit setting out this same information.

A knowledgeable individual can execute this affidavit if the placing parent or guardian is unavailable. That person indicates the source of his knowledge on the form. This affidavit is not necessary when the agency has cleared both parents through a termination of parental rights order.

11. Consent to Adoption by Child

When a child is 12 years of age or older or will become 12 years of age before the Decree of Adoption is issued, the child's consent to the adoption is necessary (N.C.G.S.§48-3-601), unless dispensed with by the court. (See 9h above). The child's written consent to the adoption is given on form DSS-1803, Consent of Child for Adoption, and is required in addition to the Consent to Adoption given by the parents or guardians. The child's consent is filed with the Petition for Adoption or before the Decree of Adoption is issued. If the Clerk does not require the consent of the child, the child must be given notice of the filing of the adoption petition. N.C.G.S.§48-2-401(c)(1).

12. Consent to Adoption by Guardian of the Person

The consent for a child's adoption may be given by a guardian of the person of the child. The guardian of the person of the child is appointed to serve by the Clerk of Court pursuant to the provisions of N.C.G.S.§35A-1220, et. seq. A petition for appointment of guardian of the person is submitted to the Clerk of Court. Upon appointment, the guardian of the person has full legal authority to give or withhold consent to a child's adoption at a later date, and must be made a party to any proceeding for adoption (N.C.G.S.§48-3-601 and 48-2-401). Written consent is given by the guardian of the person of the child on form DSS-1802, Consent to Adoption by Parent, Guardian Ad Litem, or Guardian of the Person of the Child.

a. Reasons for Appointment of Guardian of the Person of the Child

(1) Biological Parents Deceased
When the birth parents are deceased, the Clerk may appoint a guardian of the person in accordance with the provisions of N.C.G.S.§35A. Such guardian shall have authority to give or withhold consent to adoption.

(2) Adjudication of Mental Incompetency
Where one or both birth parents of the child have been adjudged mentally incompetent, the Clerk may appoint a guardian of the person in accordance with the provisions of N.C.G.S.§35A, and such guardian's consent would be

required in any subsequent proceeding for the child's adoption. (See 13 below regarding consents for mentally incompetent parents if the child is adopted).

b. Legal Documents Re: Appointment of Guardian of Person of the Child

When consent to the adoption is given by the guardian of the person of the child, a certified copy of the appointment of the guardian of the person of the child and the consent by the guardian (Form DSS-1802) are attached to the Petition for Adoption and filed for the Court's review. The Clerk of Court forwards these documents with the Petition to the Division of Social Services for filing and retention.

c. Guardians appointed in another jurisdiction

A guardian appointed in another jurisdiction must have the power to consent to the child's adoption under the law of that jurisdiction. N.C.G.S.§48-1-101 (8).

13. Consents Where Parents are Mentally Incompetent (N.C.G.S.§48-3-602)

If a parent whose consent to adoption is required has been adjudicated incompetent, then the court shall appoint a guardian ad litem for that parent and a guardian ad litem for the child, unless the child already has a guardian, to make a full investigation as to whether the adoption should proceed. If the court determines after a hearing on the matter that it will be in the best interest of the child for the adoption to precede, the court shall order the guardian ad litem of the parent to execute a consent for that parent.

A diagnosis of mental illness or commitment to a psychiatric facility does not alone determine that a parent is incompetent. An adjudication of mental incompetency can only be made by a court of competent jurisdiction after reviewing evidence in the case, pursuant to N.C.G.S.§35A-1101, et. seq.

Agencies should proceed with caution before accepting relinquishments from parents who have been diagnosed as mentally ill, but not adjudicated incompetent, and work with mental health professionals to determine if the parent fully understands the adoption decision. In the alternative, termination of parental rights on the grounds of mental illness or mental retardation should be accomplished, pursuant to N.C.G.S.§7B-1111(a)(6).

14. Special Situations Affecting Status of Consents/Relinquishments

a. When Biological Mother Marries After the Birth of the Child

If the birth mother marries after the child's birth, her consent to the child's adoption should be signed under her married name. For example, if the mother's name is Mary Jane Doe and she marries a Smith, her signature would be Mary Jane Doe Smith.

b. When Mother is Married and Legal Father is Not Biological Father

It is necessary that the legal father as well as the birth father and mother consent to the adoption of a child born in wedlock although the legal father (mother's husband) is not the birth father. North Carolina common law presumes that the birth mother's husband is the father of the child regardless of the circumstances around the child's conception and birth. Notice must be provided to the birth father and legal father, except as provided in (c) below and/or their consents or relinquishments must be obtained.

c. Consent of Legal Father is Not Necessary in Certain Instances

The consent of the husband of a birth mother of a child to be adopted is not required if the child was born more than 280 days after the marriage was terminated or the parties have separated pursuant to a written separation agreement or an order of separation entered under Chapter 50 or 50B of the General Statutes or a similar order of separation entered by the court in another jurisdiction.

The consent of the legal father is also not required if there has been a judicial determination that he is not the father of the child or a judicial determination that another man is the father of the child to be adopted. N.C.G.S.§48-3-603(a)(2).

d. Denial of Paternity

Occasionally the person named by the mother as the birth father of the child may deny paternity. In such a case, the person named as the father should execute his denial and waive any rights, including right to notice of the adoption, on the Denial of Paternity, Form DSS-5118. Only an original of this form is needed, and it should be filed with the Petition for Adoption and any other legal documents. The Denial of Paternity is sufficient to allow the clerk to enter an order with findings of fact that his consent is not required. A denial of paternity may be executed at any time **after conception** of the child **by a man who was not married to the mother (N.C.G.S.§48-3-603).**

However, to be certain that no adoptive placements can be successfully challenged in such cases, it is recommended that the agency having placement authority for the child petition for

termination of parental rights against an unknown father, since the denial of paternity by one man leaves open the question of paternity.

e. Voidable or Bigamous Marriage

If a child is born of a voidable or a bigamous marriage, the child is considered legitimate notwithstanding the annulment of the marriage (N.C.G.S.§50-11.1). Therefore, it is necessary that the birth father, as well as the mother, give consent to the adoption of the child. **If a child is born of a bigamous marriage**, consents to the child's adoption should be secured from the birth mother, the mother's legal husband (legal father of child), and the husband of the bigamous marriage (birth father of child).

If the consents to the child's adoption cannot be secured from the legal father (mother's legal husband) as well as from the birth father (husband of bigamous marriage) because the whereabouts of one or both are unknown, then necessary action should be taken to rule out one or both, as the case may be, through a termination of parental rights action.

f. Divorced Parents

Consent of both parents in cases of divorce is necessary to adoption of their child unless one or both parents have been eliminated through termination of parental rights or unless the legal father's consent is not required as discussed in (c) above.

The awarding of custody of a child to one parent in a divorce decree does not terminate the parental rights of the other parent for purposes of adoption, and does not therefore eliminate the other parent as a necessary party to a subsequent adoption proceeding.

II. PETITIONS TO ADOPT

The Petition is a formal request to the **Clerk of Superior Court** for approval of an adoption and is presented to the Court for the purpose of legally establishing the parent-child relationship. The Petition may be prepared on the Form DSS-1800, or DSS-5162 (for stepparents) supplied by the Division of Social Services, or may be drawn up by the attorney in some other form that gives the particular information required under N.C.G.S.§48-2-304. The signing and filing of the Petition by the adoptive parents with the Clerk of Superior Court initiates the legal adoption proceeding.

A. Who May Be Adopted

1. Any minor child may be adopted in accordance with the provision of Chapter 48. The child does not need to be a citizen or legal resident of the United States or here legally to be adopted.

2. Persons who are eighteen years of age or older, or if under the age of 18, are either married or have been emancipated by law may be adopted in accordance with the provisions of N.C.G.S.§48-5-100 et. seq. The legal requirements and the procedures in adult adoptions are quite different from those described for the adoption of minors. The county departments of social services have no statutory responsibilities in adult adoptions and do not make investigations and reports to the Court.

B. Who May Petition

1. The petitioners must be 18 years of age when the Petition for Adoption is filed. (N.C.G.S.§48-1-103)

   An individual may adopt even if not a citizen of the United States or not here legally, if such adoption would be in the best interest of the child and sufficient information exists to complete an approved pre-placement assessment. However, the services of an immigration attorney may also be needed to deal with federal immigration and naturalization issues arising from the state adoption.

2. The petitioners shall have lived in or been domiciled in North Carolina for at least the six consecutive months immediately preceding the filing of the petition or the child being adopted shall have lived in North Carolina for at least the six consecutive months immediately preceding the filing of the petition or from birth and the petitioner is domiciled in North Carolina. N.C.G.S.§48-2-100.

   If the petitioners live here when the petition is filed and then move to another state, the adoption can still be finalized in North Carolina after receipt of the post-placement Report on Proposed Adoption (DSS-1808) from the state where they now reside using ICPC procedures. N.C.G.S.§48-1-109 (c).

3. A prospective adoptive parent may file a petition for adoption of a child only if the child has been placed with the prospective adoptive parent unless the requirement of placement is waived by the court for cause. N.C.G.S.§48-2-301(a)

4. The spouse of a petitioner must join in the petition unless the spouse has been declared incompetent or unless this requirement is otherwise waived by the court for cause. Exceptions to this requirement are adoptions by stepparents or former parents under Articles 4 and 6 of Chapter 48. N.C.G.S.§48-2-301(b). That spouse must then be given notice of the waiver

request, unless that notice is waived by the clerk for cause for petitions filed on or after 10/01/2005.

5. If the petitioner is unmarried, no other individual may join in the petition. N.C.G.S.§48-2 301(c)

6. Nonresidents are able to adopt in North Carolina if the adoptee is in the legal custody of a North Carolina child placing agency; the adoptee has resided in the State for six consecutive month immediately preceding the filing of the petition or from birth; or the prospective adoptive parent has lived in or been domiciled in North Carolina for rat least six consecutive months immediately preceding the filing of the petition. N.C.G.S.§48-2-100.

C. When Petition May Be Filed (N.C.G.S. § 48-2-302)

1. A petition for adoption must be filed no later than 30 days after a child is placed with the petitioner or this state acquires jurisdiction to hear the petition, whichever is later, except for stepparent petitions and adoptions by former parents, unless the court extends the time for filing.

2. If a petition is not filed in accordance with (1) above, any person may notify the county department of social services for appropriate action.

3. A petition for adoption may be filed concurrently with a petition to terminate parental rights.

D. Where a Petition may be Filed (N.C.G.S.§48-2-101)

A petition for adoption may be filed with the clerk of the superior court in the county in which:

1. A petitioner lives, or is domiciled, at the time of the filing

2. The adoptee lives

3. An office of the agency that placed the adoptee is located.

E. Content of Petition

The content of an adoption petition is specified by N.C.G.S.§48-2-304 and these mandatory provisions are contained on the standard form DSS-1800 and DSS-5162 (for stepparents).

F. Additional Documents to be Filed with Petition (N.C.G.S. § 48-2-305)

1. Any required Affidavit of Parentage executed pursuant to N.C.G.S.§48-3-206;

2. Any required Consent or Relinquishment that has been executed;

3. A certified copy of any court order terminating the rights and duties of a parent or guardian of the child;

4. A certified copy of any court order or pleading in a pending proceeding concerning custody of or visitation with the child;

5. A copy of any required pre-placement assessment certified by the agency that prepared it or an affidavit stating why the assessment is not available. In direct agency placements, in which an assessment is required and is not provided to the placing parent before placement of the child for adoption, a Certificate of Delivery of Pre-placement Assessment, (DSS-5219) must be filed, indicating that the prospective adoptive parent has later delivered a copy of the assessment to the placing parent;

6. A copy of any document containing the information required under N.C.G.S.§48-3-205 concerning the health, social, educational, and genetic history of the adoptee and the adoptee's biological family which the petitioner received before the placement or at any later time, certified by the person who prepared it, or if this document is not available, an affidavit stating the reason why it is not available;

7. Any signed copy of the form required by the Interstate Compact on the Placement of Children authorizing a child to come into North Carolina or an explanation of why such is not available;

8. A statement containing the name of any individual whose consent is or may be required, but who has not executed a consent or a relinquishment or whose parental rights have not been legally terminated, and any fact or circumstance that may excuse the lack of consent or relinquishment; and

9. In an adoption pursuant to Article 4 of Chapter 48 (stepparents), a copy of any agreement to release past-due child support payments;

10. Any consent to an agency by a placing parent and adopting parents to release identifying information under N.C.G.S.§48-9-109. Use form DSS-5218 (Consent to Release of Identifying Information).

11. The petitioner may also file any other document necessary or helpful to the court's determination.

G. Omission of Required Information (N.C.G.S.§48-2-306)

1. Before entry of a Decree of Adoption, the court may require or allow the filing of any additional information required by Chapter 48.

2. After entry of a Decree of Adoption, omission of any information required by N.C.G.S.§48-2-304 and N.C.G.S.§48-2-305 does not invalidate the Decree.

H. Termination of Juvenile Court Reviews

The placement of a child for adoption and the filing of an adoption petition does not terminates juvenile court reviews in accordance with **N.C.G.S.§7B-908 and 909**.

I. Notification of Guardian Ad Litem

The agency must notify the guardian ad litem in writing of the filing of the adoption petition. Any issue of abuse of discretion by the county ~~d~~epartment of social services or child-placing agency in the selection process must be raised by the guardian ad litem before the Clerk within 10 days of the date of the written notice pursuant to N.C.G.S.§7B-908 (f).

J. Notice by Petitioner

1. No later than 30 days after a petition is filed, the petitioner shall serve notice of the filing, pursuant to N.C.G.S.§1A-1, Rule 4, on the persons specified in N.C.G.S.§ 48-2-401.

2. A notice required under this section must state that the person served must file a response to the petition within 30 days after service **(40 days, if service by publication)** in order to participate in and to receive further notice of the proceeding including notice of the time and place of any hearing.

3. In the event that the identity of a biological or possible biological parent cannot be ascertained and notice is required, the parent or possible parent shall be served by publication pursuant to N.C.G.S.§1A-1, Rule 4 (j1). The notice shall also state that any parental rights the unknown parent or possible parent may have will be terminated upon entry of the order of adoption. However, in an agency placement of a minor child, the agency or other proper person shall file a petition to terminate the parental rights of an unknown parent or possible parent instead of serving notice under this subsection, and the court shall stay any adoption proceeding already filed.

An agency may give notice of the adoption proceeding to any known or possible parent if that can be done personally or by registered mail. (N.C.G.S.§48-2-402 (c))

4. 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.

5. A person who has executed a consent or relinquishment or otherwise waived notice is not a necessary party and is not entitled to appear in subsequent proceedings related to the petition except that such person may appear for the limited purpose of moving to set aside the consent or relinquishment on the grounds that it was obtained by fraud or duress.

III. ORDER FOR A REPORT TO THE COURT (Form DSS-1807)

Whenever a petition for adoption of a child is filed, the court shall order a report to the court made to assist the court to determine if the proposed adoption of the minor by the petitioner is in the child's best interest.

The court shall order the report to be prepared:

- by the agency that placed the minor;
- by the agency that made the pre-placement assessment pursuant to Part 3 of Article 3 of Chapter 48;
- by another agency

The court shall provide the individual who prepares the report with copies of the petition to adopt and the documents filed with it.

IV. REPORT ON PROPOSED ADOPTION

(Form DSS-1808) and Instructions for Completing the Form DSS-1808-I

A. Preparation and Content of Report

1. In preparing a report to the court, the agency shall conduct a personal interview with each petitioner in the petitioner's residence and at least one additional interview with each petitioner and the adoptee, and shall observe the relationship between the adoptee and the petitioner or petitioners.

2. The report must be in writing and contain:

   a. An account of the petitioner's marital or family status, physical and mental health, home environment, property, income, and financial

obligations; if there has been a pre-placement assessment, the account may be limited to any changes since the filing of the pre-placement assessment;

b. All reasonably available non-identifying information concerning the physical, mental, and emotional condition of the adoptee required by N.C.G.S.§48-3-205 which is not already included in the document prepared under that section;

c. Copies of any court order, judgment, decree, or pending legal proceeding affecting the adoptee, the petitioner, or any child of the petitioner relevant to the welfare of the adoptee;

d. A list of the expenses, fees, or other charges incurred, paid, or to be paid in connection with the adoption that can reasonably be ascertained by the agency;

e. Any fact or circumstance known to the agency that raises a specific concern about whether the proposed adoption is contrary to the best interest of the adoptee because it poses a significant risk of harm to the well-being of the adoptee;

f. A finding by the agency concerning the suitability of the petitioner and the petitioner's home for the adoptee;

g. A recommendation concerning the granting of the petition; and

h. Such other information as may be required by rules adopted by the Social Services Commission.

B. TIMING AND FILING OF REPORT

1. The agency shall complete a written report and file it with the court within 60 days after mailing or delivery of the order under N.C.G.S.§48-2-501 unless the court extends the time for filing. The agency shall have 3 additional days if the order was mailed.

2. If the agency identifies a specific concern about the suitability of the petitioner or the petitioner's home for the adoptee, the agency must file an interim report immediately, which must contain an account of the specific concern. The final report must then indicate whether that concern has been satisfied and in what manner.

3. When an agency identifies a concern in a final report and the court extends the time for final disposition to allow resolution of these concerns, a

supplemental report indicating whether these concerns have been satisfied and in what manner must be filed.

4. The agency shall give the petitioner a copy of each report filed with the court and the agency shall retain a copy. 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 a birth-family member.

5. If a minor has lived with a stepparent for at least 2 consecutive years immediately preceding the filing of the petition, the court may order a report to the court but is not required to do so unless the minor's consent to the adoption is to be waived or the minor has revoked a consent or both the minor's parents are dead.

C. FEE FOR REPORT

1. An agency that prepares a report to the court may charge the petitioner a reasonable fee for preparing and writing the report. No fee may be charged except pursuant to a written fee agreement which must be signed by the parties to be charged prior to the beginning of the preparation. The fee agreement may not be based on the outcome of the report or the adoption proceeding.

2. A fee for a report is subject to review by the court pursuant to N.C.G.S.§48-2-602 and N.C.G.S.§48-2-603.

3. The Department shall set the maximum fees, based on ability to pay and other factors, which may be charged by county departments of social services. The Department shall require waiver of fees for those unable to pay or for those unable to obtain a pre-placement assessment at the fee the county is permitted to charge. Fees collected under this section shall be applied to the costs of preparing and writing reports and shall be used by the county department of social services to supplement and not to supplant appropriated funds.

V. DISPOSITIONAL HEARING AND ADOPTION DECREE

A. NATURE AND TIMING OF HEARING

If a petition to adopt a minor is not contested, the court may dispose of the petition without a formal hearing. A date and time for hearing or disposing of the petition must be set no later than 90 days after a petition for adoption has been filed. That 90 day time period can be shortened by the clerk for cause. N.C.G.S. § 48-2-

603(a)(1)(2). Such hearing or disposition must take place no later than 6 months after a petition is filed unless extended for cause. N.C.G.S.§48-2-601(b).

B. ISSUES TO BE ADDRESSED AT HEARING OR DISPOSITION

1. At the hearing on, or disposition of, a petition to adopt a minor, the court shall grant the petition upon finding by a preponderance of the evidence that the adoption will serve the best interest of the adoptee, and that:

   a. At least 90 days have elapsed since the filing of the petition for adoption, unless the court for cause waives this requirement;

   b. The adoptee has been in the physical custody of the petitioner for at least 90 days, unless the court for cause waives this requirement;

   c. Notice of the filing of the petition has been served on any person entitled to receive notice under Part 4 of Article 2;

   d. 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;

   e. Any assessment required by this Chapter has been filed with and considered by the court;

   f. If applicable, the requirements of the Interstate Compact on the Placement of Children, N.C.G.S.§7B-3800, et. seq., have been met;

   g. Any motion to dismiss the proceeding has been denied;

   h. Each petitioner is a suitable adoptive parent;

   i. Any accounting and affidavit required under. N.C.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 or is unreasonable when compared with the expenses customarily incurred in connection with an adoption;

   j. The petitioner has received information about the adoptee and the adoptee's biological family if required by N.C.G.S.**§**48-3-205; and

   k. There has been substantial compliance with the provisions of this Chapter.

2. If the court finds a violation of this Chapter pursuant to Article 10 or of the Interstate Compact on the Placement of Children, N.C.G.S.§7B-3800, et.

seq., but determines that in every other respect there has been substantial compliance with the provisions of this Chapter, and the adoption will serve the best interest of the adoptee, the court shall:

a. Grant the petition to adopt; and

b. Impose the sanctions provided by this Chapter against any individual or entity who has committed a prohibited act or report the violations to the appropriate legal authorities.

3. The court on its own motion may continue the hearing for further evidence.

C. DECREE OF ADOPTION

Mandatory provisions for the Decree of Adoption are found in N.C.G.S.§48-2-606 and are incorporated in the standard form DSS-1814.

A Decree of Adoption must not contain the name of a former parent of the adoptee. The legal effect of a Decree of Adoption is to establish the relationship of parent and child between the petitioner and individual being adopted.

Adoption entitles the child to inherit real and personal property from the adoptive parents in accordance with the statutes of descent and distribution. If one petitioner dies before the adoption can be completed and the surviving petitioner thereafter obtains the Decree of Adoption, the child is entitled to inherit real and personal property from the deceased petitioner in accordance with statutes of descent and distribution as though the Decree of Adoption had been entered prior to the petitioner's death. (N.C.G.S.§48-2-204)

D. TRANSMITTAL OF ADOPTION RECORDS TO THE DIVISION OF SOCIAL SERVICES

The clerk holds all documents in an adoption proceeding until after the Decree of Adoption is entered or after the final disposition of an appeal in the adoption. The clerk then has 10 days to send them to the Division. The clerk retains the original petition and original decree of adoption and sends a copy of these documents to the Division.

The Division permanently indexes and files the records and transmits a report of the adoption and name change to the State Registrar. N.C.G.S.§48-9-102(d-f). Adoption proceedings, reviewed by Division staff for accuracy and legal soundness, are returned to the Clerk of Superior Court for corrections.

VI. DISMISSAL OF ADOPTION PROCEEDING

The adoption proceeding may be dismissed by the Court if at any time between the filing of the Petition and the issuing of the Decree of Adoption it is made known to the Court that circumstances are such that the child should not be adopted by the petitioners. Such information may be brought to the court's attention by the attorney, birth or adoptive parents, and/or the social agency.

If an adoption proceeding is not to be completed, it should be dismissed by a formal court order, which may be either drawn and typewritten to suit the individual case, or may be issued on the standard Dismissal form (DSS-1816) provided by the Division of Social Services.

A. PROCEDURE FOR DISMISSAL OF PROCEEDING

The court, before entering an order to dismiss the proceeding, shall give at least 5 days notice of the motion to dismiss to the parties, to the agency that prepared the Report on Proposed Adoption and to the Department of Health and Human Services. The parties, agency and Department shall be entitled to a hearing on the issue of dismissing the proceeding. N.C.G.S.§48-2-604.

B. CUSTODY OF CHILD WHEN PROCEEDING IS DISMISSED IN AGENCY PLACEMENT

When the proceeding is dismissed by the clerk in an agency placement, custody of the child shall revert to the director of the county department of social services or executive director of the licensed child-placing agency having custody of the child through release and surrender at the time of placement and initiation of the adoption proceeding. (N.C.G.S.§48-2-604)

C. CUSTODY OF CHILD WHEN PROCEEDING IS DISMISSED IN AN INDEPENDENT PLACEMENT

If the child was placed directly with the adoptive parents by the birth parents, the custody of the child reverts to the birth parents and the Court of Adoptions, upon dismissal of the proceeding, immediately notifies the director of social services of the county in which the Petition was filed to take appropriate action for the protection of the child. (N.C.G.S.§48-2-604). In addition, when the court dismisses the petition and no appeal is taken or is resolved, any consents used in that adoption are void. N.C.G.S.§48-3-609(a)

If any question or dispute arises as to custody of the child, the director should petition the appropriate court of juvenile jurisdiction for custody so that the agency can make a plan of care for the child.

D. PROCEEDING DISMISSED FOR TECHNICAL REASONS

If the adoption proceeding is dismissed for legal and/or technical reasons, and a new proceeding is initiated or filed, and the child is to remain with and be adopted by the same adoptive parents, the consents to the child's adoption will continue to be valid. It is recommended that the Order dismissing the proceeding show that the original consents are not to be affected. The original consent documents may be drawn from the file held by the Division of Social Services and returned to the Court to be made a part of a new proceeding upon receipt by the Division of Social Services of an Order from the Court authorizing such return.

E. VOLUNTARY DISMISSAL BY THE PETITIONER

The petitioner may request that the petition be dismissed under Rule 41 of the Rules of Civil Procedure either without prejudice to re-file within a year or with prejudice meaning the action cannot be refiled. A voluntary dismissal by the petitioner does not void the underlying consents, but a voluntary dismissal with prejudice does. N.C.G.S.§48-3-609(a).

VII. APPEALS

A. A party to an adoption proceeding may appeal a Decree of Adoption by giving notice of appeal as provided in N.C.G.S.§48-2-607(b) and N.C.G.S.§1-301-2(e).

B. A parent or guardian whose consent or relinquishment was obtained by fraud or duress may, within six months of the time the fraud or duress is or ought reasonably to have been discovered, move to have the decree of adoption set aside and the consent declared void. A parent or guardian whose consent was necessary as described in Chapter 48 but whose consent was not obtained may, within six months of the time omission is or ought reasonably to have been discovered, move to have the decree of adoption set aside.

C. An adoption of an Indian child can be challenged for up to two years for fraud or duress.

D. **Except as provided above, after the decree of adoption is entered, no party to an adoption proceeding or anyone claiming under such a party may question the validity of the adoption.**

VIII. AMENDMENT OF BIRTH CERTIFICATE

A. Provision is made within the adoption statute, N.C.G.S.§48-9-107, for changing the name of the child and for the preparation of a new birth certificate in the adoptive name. The original birth certificate is sealed and a new one is issued by the Office of Vital Records in the state where the child was born. This is done upon receipt of the Court's report that the Decree of Adoption has been issued and that the change of name is authorized. This Report, which is actually an order issued by the Court of Adoptions, is made on Form DSS-1815, Report to Vital Records. The Clerk of Court signs the Report and forwards it to the Division of Social Services at the time the Decree of Adoption is sent.

B. In North Carolina, as in most states, the new birth certificate makes no reference to the adoption, and the names of the adoptive parents are shown as though they were the birth parents of the child. The original certificate is placed under seal which may not be broken except as provided in **N.C.G.S.§48-9-105 and 106** for the opening of the adoption record.

C. N.C.G.S.§48-9-108 provides for restoration of the original birth certificate if the decree of adoption is set aside.

D. Certification of Identification for Foreign-Born Children

A certificate of identification can be issued by the Special Registration Unit, North Carolina Vital Records Section, State Center for Health and Environmental Statistics, in lieu of a child's birth certificate for children born in a foreign country and later adopted in North Carolina. It is essential that a certified copy of the child's original foreign birth certificate, with appropriate translation, be attached to the Report to Vital Records if a certificate of identification is desired (N.C.G.S.§130A-108).

IX. CONFIDENTIALITY

A. All records created or filed in connection with an adoption, except the Decree of Adoption and the entry in the special proceedings index in the clerk's office, and on file with or in the possession of the court, an agency, the State, a county, an attorney, or other provider of professional services, are confidential and may not be disclosed or used except as provided in Chapter 48.

B. During a proceeding for adoption, records shall not be open to inspection by any person except upon an order of the court finding that disclosure is necessary to protect the interest of the adoptee.

C. Following a Decree of Adoption, all records and all indices of records on file with the court, an agency, or this State shall be retained permanently and sealed. Sealed

records shall not be open to inspection by any person except as otherwise provided in Chapter 48.

D. Release of Non-Identifying Information

1. 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 any document prepared pursuant to N.C.G.S.§48-3-205 and a copy of any additional non-identifying health-related information about the adoptee's biological family that has been submitted to a court, agency, or the Division. A minor seeking treatment pursuant to N.C.G.S.§90-21.1 may request that a copy of this information be sent to the treating physician.

2. If a request under this section is made to the agency that placed the adoptee or prepared the report to the court, the agency shall furnish the individual making the request or the treating physician named by a minor making the request with a copy of any relevant report or information that is included in the sealed records of the agency. If a request under this section is made to the court that issued the decree of adoption, the court shall refer the individual to the Division, or, if known to the court, the agency that placed the adoptee or prepared the report to the court. The Division may refer the individual to the agency that prepared the report to the court. If the agency no longer exists, the Division may furnish the information to an agency convenient to the requesting party.

3. Any report or information released under this section shall be edited by the sender to exclude the name, address, or other information that could reasonably be expected to lead directly to the identity of an adoptee at birth or an adoptee's parent at the adoptee's birth or other member of the adoptee's biological family and shall contain an express reference to the confidentiality provisions of this Chapter.

4. An individual who is denied access to a report or information requested under this section may petition the clerk of original jurisdiction for review of the reasonableness of the denial.

5. If the court or the agency receives information from an adoptee's former parent or from an adoptee's former relative about a health or genetic condition that may affect the health of the adoptee or the adoptee's child, an appropriate employee shall make a reasonable effort to contact and forward the information to an adoptee who is 18 or more years of age, or an adoptive parent of an adoptee who is under 18 years of age.

6. Nothing in this section shall prohibit an agency from disclosing non-identifying information about the adoptee's present circumstances, in the nature of information required under N.C.G.S.§48-3-205, to a former parent, an adult sibling, or the guardian of a minor sibling on request.

7. The Department shall prescribe a reasonable procedure for verifying the identity, age, or their relevant characteristics of an individual who requests or provides a report or information under this section and the Department, the court, or agency may charge a reasonable fee for locating and making copies of a report or information.

E. Release of Identifying Information

No information from any adoption records shall be released that could reasonably be expected to lead to or identify an adoptee, adoptive parent, birth parent, birth sibling or birth grandparent except upon order of the court pursuant to N.C.G.S.§48-9-105 and 106. The agency that prepared the report for the court must be given a copy of any motion to release information pursuant to N.C.G.S.§48-9-105 and such agency must be given at least 5 days notice of any hearing on this motion.

The placing parent and the adoptive parents may sign a consent form allowing the placing agency to release identifying information to both parties and allowing them to release that information to each other. This consent must be filed with the petition for adoption. Use DSS Form 5218 (Consent to Release of Identifying Information) for this purpose. After the adoption is finalized, the adoption record is sealed and no identifying information can be disclosed except pursuant to N.C.G.S.§48-9-105.

F. Authorized Disclosures

Under N.C.G.S.§48-9-109 an employee of a court, agency, or any other person is not prohibited from:

1. Inspecting permanent, confidential, or sealed records, other than records maintained by the State Registrar, for the purpose of discharging any obligation under this Chapter.

2. Disclosing the name of the court where a proceeding for adoption occurred, or the name of an agency that placed an adoptee, to an individual described in N.C.G.S.§48-9-104 who can verify his or her identity; or

3. Disclosing or using information contained in permanent and sealed records, other than records maintained by the State Registrar, for statistical or other research purposes as long as the disclosure will not result in identification of a person who is the subject of the information and subject to any further conditions the Department may reasonably impose.

4. When an Indian adoptee reaches 18, the court entering the final decree of adoption will inform the adoptee of his tribal affiliation and any other information needed to protect rights flowing from tribal membership.

X. PROHIBITED PRACTICES IN CONNECTION WITH ADOPTION

A. PROHIBITED ACTIVITIES IN PLACEMENT

1. No one other than a person or entity specified in N.C.G.S.§48-3-201 may place a minor for adoption. No one other than a person or entity specified in N.C.G.S.§48-3-201, or an adoption facilitator, may solicit potential adoptive parents for children in need of adoption. No one other than an agency or an adoption facilitator, or an individual with a completed pre-placement assessment that contains a finding that the individual is suitable to be an adoptive parent or that individual's immediate family, may solicit for adoption a potential adoptee.

2. No one other than a county department of social services, an adoption facilitator, or an agency licensed by the Department in this State may advertise in any periodical or newspaper, or by radio, television, or other public media, that any person or entity will place or accept a child for adoption. **Persons with current, favorable pre-placement assessments may advertise their desire to adopt in a periodical or newspaper or on radio, television, cable television or on the Internet. This advertisement must include a statement that the person has a completed, favorable pre-placement assessment, identify the agency which prepared the assessment and the date it was completed. The advertisement may state whether the person is willing to provide lawful expenses as permitted by N.C.G.S.§48-10-103.**

3. A person who violates (1) or (2) above is guilty of a Class 1 misdemeanor.

4. The district court may enjoin any person from violating this section.

B. UNLAWFUL PAYMENTS RELATED TO ADOPTION

1. Except as provided in N.C.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;

    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.

2. A person who violates this section is guilty of a Class 1 misdemeanor. For each subsequent violation, a person is guilty of a Class H felony which may include a fine of not more than ten thousand dollars ($10,000).

3. The district court may enjoin any person or entity from violating this section.

C. LAWFUL PAYMENTS RELATED TO ADOPTION

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 any illness of the adoptee;

   c. Counseling services for a parent or the adoptee that are directly related to the adoption and are provided by a licensed psychiatrist, psychologist, marital and family therapist, registered practicing counselor, certified social worker, fee-based practicing pastoral counselor or other licensed professional counselor, or an employee of an agency;

   d. Ordinary living expenses of a mother during the pregnancy and for no more than six weeks after the birth;

   e. Expenses incurred in ascertaining the information required under N.C.G.S.§48-3-205 about an adoptee and the adoptee's biological family;

   f. Legal services, court costs, and traveling or other administrative expenses connected with an adoption, including any legal service connected with the adoption performed for a parent who consents to the adoption of a minor or relinquishes the minor to an agency; and

   g. Preparation of the pre-placement assessment and the report to the court.

2. A birth parent, or another person acting on the parent's behalf, may receive or accept payments authorized in (1) above; or a provider of a service listed in (1) above may receive or accept payments for that service.

3. A payment authorized by (1) above may not 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. Except as provided in (4) below, if the adoption is not completed, a person who has made payments authorized by (1) above may not recover them; but neither is this person liable for any further payment unless the person has agreed in a signed writing with a provider of a service to make this payment regardless of the outcome of the proceeding for adoption.

4. A prospective adoptive parent may seek to recover a payment if the parent or other person receives or accepts it with fraudulent intent to prevent the proposed adoption from being completed.

5. An agency may charge or accept a reasonable fee or other compensation from prospective adoptive parents. In assessing a fee or charge, the agency may take into account the income of adoptive parents and may use a sliding scale related to income in order to provide services to persons of all incomes.

D. FAILURE TO DISCLOSE NON-IDENTIFYING INFORMATION

An adoptive parent, an adoptee, or any person who is the subject of any information required under N.C.G.S.§48-3-205 or authorized for release under Article 9 of Chapter 48 may bring a civil action against a person who fraudulently or intentionally misrepresents or fails to disclose information required under N.C.G.S.§48-3-205 or Article 9 of Chapter 48.

E. UNAUTHORIZED DISCLOSURE OF INFORMATION

1. Except as authorized in N.C.G.S.§48-3-205 or in Article 9 of Chapter 48, no identifying or non-identifying information contained in a report or records described therein may be disclosed by present or former employees or officials of the court, and agency, the State, a county, an attorney or other provider of professional services, or any person or entity who wrongfully obtains such a report or records.

2. A person who knowingly makes an unauthorized disclosure of identifying information is guilty of a Class 1 misdemeanor.

3. The district court may enjoin for further violations any person who makes an unauthorized disclosure.

4. Notwithstanding the penalties provided in (2) above, an individual who is the subject of any of this information may bring a civil action for equitable or

monetary relief or both against any person or entity who makes an unauthorized disclosure of the information.

XI. USE AND DISTRIBUTION OF FORMS RE: NON-IDENTIFYING BACKGROUND AND HEALTH HISTORY INFORMATION

A. FORMS

1. The Non-Identifying Background Information Form (DSS-5102) has been developed pursuant to N.C.G.S.§48-3-205. It is designed to contain non-identifying information about the characteristics of the birth parents of a child released for adoption.

2. The Adoption Health History Form, Parts I and II, (DSS-5103) has been developed pursuant to N.C.G.S.§48-3-205 and is designed to contain a complete non-identifying health history, if available, of birth parents and other relatives.

B. USE AND DISTRIBUTION OF FORMS

1. Required Use and Distribution of Forms

   For all adoptions completed, the Non-Identifying Background and Information and the Adoption Health History Forms are to be completed insofar as possible and given to the adoptive parents. For those adoptions not yet completed through the Decree of Adoption, these two forms are to be completed and given to the adoptive parents prior to entry of the Decree of Adoption.

2. Optional Use and Distribution of Forms

   These same forms may be used, if desired, to provide characteristic and health information about birth parents and other relatives upon receipt of a written request for such information from the adoptive parents and/or the adoptee or the information may be presented in narrative form, if desired.

3. Additional Information About Non-Identifying Background and Health History N.C.G.S.§48-9-103 allows an adoptive parent, an adult adoptee, or a minor adoptee who is a parent or expectant parent to request a copy of DSS-5102 and DSS-5103.

C. PROCEDURE FOR OBTAINING INFORMATION FOR THE FORMS DSS-5102 AND DSS-5103.

1. Agency Adoptions

When possible, staff should seek the assistance of the birth parents in completing the Non-Identifying Background Information and the Adoption Health History Forms. In cases in which the agency is working with the parents prior to their releasing their child for adoption, this will pose little or no problem. In an effort to obtain as much accurate information as possible about the child's birth family, the forms should be given to the parents for completion, with the instructions that they should feel free to seek the help of their parents and/or other relatives in obtaining information to be included on the Adoption Health History Forms. Family centered practice tells us that it may be beneficial to assist the birth family in completing the form.

2. Non-Agency Adoptions

A separate Adoption Health History Form, Part II, is to be completed for each birth parent. In cases in which the child has been placed directly by the birth parents with the adoptive parents, these forms should have been completed by the birth parents at the time of the agency's assessment. In other cases, such as relative adoptions, the agency will become aware of and involved in the case only after receipt of the Order for a Report on Proposed Adoption (DSS-1807), after the Petition for Adoption of a Minor Child (DSS-1800) has been filed. In such cases, family centered practice tells us that the agency should make every effort to assist petitioner(s) to obtain the information needed for the Non-Identifying Background Information (DSS-5102) and the Adoption Health History (DSS-5103). Often, this will mean that the agency receiving the Order for a Report on Proposed Adoption (DSS-1807) from the Court will need to contact an agency or agencies in another county or state for assistance in this matter.

D. GENERAL INFORMATION

There should be no attempt to contact the birth parents after an adoption has been completed through the Decree of Adoption in an effort to obtain information for the Non-Identifying Background and Adoption Health History Forms. However, when working with the birth parents at the time of release to the agency or, in independent placements, following receipt of the Order for a Report to the Court, the adoption worker should encourage them to feel comfortable about providing the agency with relevant and current medical information on a continuing basis. **Contact must then be made with the adoptive parents to share any such information that may affect the health of the adoptee (N.C.G.S.§48-9-103(e)).**

In all contacts with birth parents around obtaining the information for these two forms, the parents should be helped to understand the value that this information will have for the adoptive parents and for the child they are releasing or have released for adoption.

In particular, medical facilities are increasingly seeking detailed medical background information as they evaluate and develop treatment plans for patients, and this information can be of critical importance.

In motions by adult adoptees under N.C.G.S.§48-9-105, the Clerk must consider the appointment of an intermediary to obtain information from the birth parents in a non-identifying manner, and many clerks will ask the placing agency to serve as an intermediary, locate the birth parents, obtain updated background and medical information for the adoptee and ascertain their desire to be identified to the adult adoptee.