

Article 2.

General Adoption Procedure.

Part 1. Jurisdiction and Venue.

**§ 48-2-100. Jurisdiction.**

- (a) Adoption shall be by a special proceeding before the clerk of superior court.
- (b) Except as provided in subsection (c) of this section, jurisdiction over adoption proceedings commenced under this Chapter exists if, at the commencement of the proceeding:
  - (1) The adoptee has lived in this State for at least the six consecutive months immediately preceding the filing of the petition or from birth;
  - (2) The prospective adoptive parent has lived in or been domiciled in this State for at least the six consecutive months immediately preceding the filing of the petition; or
  - (3) An agency licensed by this State or a county department of social services in this State has legal custody of the adoptee.
- (c) The courts of this State shall not exercise jurisdiction under this Chapter 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, Article 2 of Chapter 50A of the General Statutes. However, this subsection shall not apply if prior to the decree of adoption being granted, the court of the other state dismisses its proceeding or releases its exclusive, continuing jurisdiction. (1949, c. 300; 1963, c. 699; 1967, c. 619, ss. 1-3; c. 693; c. 880, s. 3; 1969, c. 21, ss. 3-6; 1971, c. 233, s. 1; c. 395; c. 1231, s. 1; 1973, c. 849, s. 3; c. 1354, ss. 1-4; 1975, c. 91; 1979, c. 107, s. 6; 1981, c. 657; 1983, c. 454, s. 6; 1989, c. 208; c. 727, s. 219(4); 1993, c. 553, s. 14; 1995, c. 88, ss. 3, 4; c. 457, s. 2; 1999-223, s. 8; 2007-151, s. 2; 2015-54, s. 3.)

**§ 48-2-101. Venue.**

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 filing;
- (2) The adoptee lives; or
- (3) An office of the agency that placed the adoptee is located. (1949, c. 300; 1967, c. 880, s. 3; 1969, c. 21, ss. 3-6; 1971, c. 233, s. 1; c. 1231, s. 1; 1973, c. 849, s. 3; 1975, c. 91; 1981, c. 657; 1989, c. 208; c. 727, s. 219(4); 1993, c. 553, s. 14; 1995, c. 88, s. 4; c. 457, s. 2.)

**§ 48-2-102. Transfer, stay, or dismissal.**

(a) If the court, on its own motion or on motion of a party, finds in the interest of justice that the matter should be heard in another county where venue lies under G.S. 48-2-101, the court may transfer, stay, or dismiss the proceeding.

(b) If an adoptee is also the subject of a pending proceeding under Chapter 7B of the General Statutes, then the district court having jurisdiction under Chapter 7B shall retain jurisdiction until the final order of adoption is entered. The district court may waive jurisdiction for good cause. (1949, c. 300; 1971, c. 233, s. 1; 1995, c. 88, s. 4; c. 457, s. 2; 1998-202, s. 13(i).)

Part 2. General Procedural Provisions.

**§ 48-2-201. Appointment of attorney or guardian ad litem.**

(a) 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 as provided in Part 4 of this Article.

(b) The court on its own motion may appoint an attorney or a guardian ad litem to represent the interests of the adoptee in a contested proceeding brought under this Chapter. (1995, c. 457, s. 2.)

**§ 48-2-202. No right to jury.**

All proceedings under this Chapter must be heard by the court without a jury. (1995, c. 457, s. 2.)

**§ 48-2-203. Confidentiality of proceedings under Chapter.**

A judicial hearing in any proceeding pursuant to this Chapter shall be held in closed court. (1995, c. 457, s. 2.)

**§ 48-2-204. Death of a joint petitioner or stepparent pending final decree.**

(a) When spouses have petitioned jointly to adopt and one spouse dies before entry of a final decree, the adoption may proceed in the names of both spouses. Upon completion of the adoption, the name of the deceased spouse shall be entered as one of the adoptive parents on the new birth certificate prepared pursuant to Article 9 of this Chapter. For purposes of inheritance, testate or intestate, the adoptee shall be treated as a child of the deceased spouse.

(b) 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 the petitioning stepparent has died and the individual may, within 15 days from the date the individual receives notice, request a hearing on the adoption. Notice is complete when mailed to the individual at the address given in the consent. Upon completion of the adoption, the name of the petitioning stepparent shall be entered as one of the adoptee's parents on the new birth certificate prepared in accordance with Article 9 of this Chapter. For purposes of inheritance, testate or intestate, the adoptee shall be treated as a child of the deceased stepparent. (1949, c. 300; 1995, c. 457, s. 2; 2013-236, s. 2.)

**§ 48-2-205. Recognition of adoption decrees from other jurisdictions.**

A final adoption decree issued by any other state must be recognized in this State. Where a minor child has been previously adopted in a foreign country by a petitioner or petitioners seeking to readopt the child under the laws of North Carolina, 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 to the readoption. A man and a woman who adopted a minor child in a foreign country while married to one another must readopt jointly, regardless of whether they have since divorced. If either 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. (1975, c. 262; 1983, c. 454, s. 6; 1995, c. 457, s. 2; 2009-185, s. 2.2.)

**§ 48-2-206. Prebirth determination of right to consent.**

(a) At any time after approximately three months from the 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 the court to determine whether consent of the biological father is required. The biological father shall be served with

notice of the intent of the biological mother to place the child for adoption, allowing the biological father 30 days after service to assert a claim that his consent is required.

(b) The notice required under subsection (a) of this section shall contain the special proceeding case caption and file number and shall be substantially similar to the following language:

[Name of the biological mother], the biological mother, is expected to give birth to a child on or about [birth due date]. You have been identified as the biological father. It is the intention of the biological mother to place the child for adoption. It is her belief that your consent to the adoption is not required. If you believe your consent to the adoption of this child is required pursuant to G.S. 48-3-601, you must notify the court in writing no later than 30 days from the date you received this notice that you believe your consent is required. A copy of your notice to the court must also be sent to the person or agency that sent you this notice. If you fail to notify the court within 30 days that you believe your consent is required, the court will rule that your consent is not required.

(c) If the biological father fails to respond within the time required, the court shall enter an order that the biological father's consent is not required for the adoption. A biological father who fails to respond within the time required under this section is not entitled to notice under G.S. 48-2-401(c) of an adoption petition filed within three months of the birth of the minor or to participate in the adoption proceeding.

(d) If the biological father notifies the court within 30 days of his receipt of the notice required by subsection (a) of this section that he believes his consent to the adoption is required, on motion of the petitioner, the court shall hold a hearing to determine whether the consent of the biological father is required. Promptly on receipt of the petitioner's motion, the court shall set a date for the hearing no earlier than 60 days nor later than 70 days after the biological father received the notice required by subsection (a) of this section and shall notify the petitioner and the biological father of the date, time, and place of the hearing. The notice of hearing to the biological father shall include a statement substantially similar to the following:

"To the biological father named above: You have told the court that you believe your consent is necessary for the adoption of the child described in the notice sent to you earlier. This hearing is being held to decide whether your consent is in fact necessary. Before the date of the hearing, you must have taken steps under G.S. 48-3-601 to establish that your consent is necessary or this court will decide that your consent is not necessary and the child can be adopted without it."

During the hearing, the court may take such evidence as necessary and enter an order determining whether or not the consent of the biological father is necessary. If the court determines that the consent of the biological father is not required, that individual is not entitled to receive notice under G.S. 48-2-401(c) of an adoption petition filed within three months of the birth of the minor or to participate in the adoption proceeding.

(e) The manner of service under this section shall be the same as set forth in G.S. 48-2-402. If the identity or whereabouts of the biological father cannot be ascertained and the biological father is served by publication, then the 30-day notice requirements otherwise required by this section shall not apply and the biological father shall have 40 days from the date of first publication to answer in accordance with this section.

(f) The jurisdiction provisions of Article 6A of Chapter 1 of the General Statutes and the venue provisions of Article 7 of Chapter 1 of the General Statutes rather than the provisions of Part 1 of this Article apply to proceedings under this section.

(g) Computation of periods of time provided for in this section shall be calculated as set forth in G.S. 1A-1, Rule 6.

(h) Transfer under G.S. 1-301.2 and appeal under G.S. 1-279.1 shall be as for an adoption proceeding.

(i) A determination by the court under this section that the consent of the biological father is not required shall only apply to an adoption petition filed within three months of the birth of the minor. (1997-215, s. 14; 2002-159, s. 11; 2005-166, s. 1; 2015-54, s. 4; 2018-68, s. 4.1.)

**§ 48-2-207. Necessity of consent post-petition.**

(a) If any individual who is described in G.S. 48-3-601 or entitled to notice under G.S. 48-2-401(c)(3) is served with notice of the filing of the petition in accordance with G.S. 48-2-402 and fails to respond within the time specified in the notice, the court, upon motion by the petitioner, shall enter an order under G.S. 48-3-603(a)(7) that the individual's consent is not required for the adoption.

(b) The court shall hold a hearing to take evidence and determine whether an individual's consent to an adoption is required if any of the following:

- (1) Any individual described in G.S. 48-2-401(c)(3) who has been served with notice of the filing of the petition in accordance with G.S. 48-2-402 notifies the court within the time specified in the notice that he believes his consent to the adoption is required.
- (2) Any individual who has not been served with the notice of the filing of the petition intervenes in the adoption proceeding alleging that his or her consent to the adoption is required.

(c) If the court determines that the consent of any individual is required, the adoption cannot proceed until such individual's consent is obtained or such individual's parental rights are terminated. If the individual whose consent is required did not have physical custody of the minor immediately prior to the placement of the minor with the prospective adoptive parents, a finding that such individual's consent is required does not entitle such individual to physical custody of the minor.

(d) If the court determines that the consent of any individual described in G.S. 48-2-401(c)(3) is not required, such individual shall not be entitled to receive notice of, or to participate in, further proceedings in the adoption. (2005-166, s. 2; 2013-236, s. 3.)

Part 3. Petition for Adoption.

**§ 48-2-301. Petition for adoption; who may file.**

(a) A prospective adoptive parent may file a petition for adoption pursuant to Article 3 of this Chapter only if a minor has been placed with the prospective adoptive parent pursuant to Part 2 of Article 3 of this Chapter unless the requirement of placement is waived by the court for cause.

(b) Except as authorized by Articles 4 and 6 of this Chapter, 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.

(c) If the individual who files the petition is unmarried, no other individual 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. (1949, c. 300; 1963, c. 699; 1967, c. 619, ss. 1-3; c. 693; c. 880, s. 3; 1969, c. 21, ss. 3-6; 1971, c. 395; c. 1231, s. 1; 1973, c. 849, s. 3; c. 1354, ss. 1-4; 1975, c. 91; 1979, c. 107, s. 6; 1981, c. 657; 1983, c. 454,

s. 6; 1989, c. 208; c. 727, s. 219(4); 1993, c. 553, s. 14; 1995, c. 88, s. 3; c. 457, s. 2; 2009-185, s. 2.1.)

**§ 48-2-302. Concurrent petitions to adopt and terminate parental rights.**

- (a) Repealed by Session Laws 2012-16, s. 1, effective October 1, 2012.
- (b) Repealed by Session Laws 2013-236, s. 4, effective July 3, 2013.
- (c) A petition for adoption may be filed concurrently with a petition to terminate parental rights. (1949, c. 300; 1957, c. 90; c. 778, s. 3; 1971, c. 1185, s. 17; 1975, c. 321, s. 1; 1977, c. 879, s. 2; 1979, c. 107, s. 7; 1985, c. 758, ss. 5-9; 1987, c. 371, s. 1; 1995, c. 457, s. 2; 2012-16, s. 1; 2013-236, s. 4.)

**§ 48-2-303. Caption of petition for adoption.**

The caption of the petition shall be substantially as follows:

STATE OF NORTH CAROLINA  
IN THE DISTRICT COURT  
\_\_\_\_\_ COUNTY  
BEFORE THE CLERK

\_\_\_\_\_  
\*(Full name of petitioning father)  
and

\_\_\_\_\_  
\*(Full name of petitioning mother)  
and

FOR THE ADOPTION OF

PETITION FOR ADOPTION

\_\_\_\_\_  
\*(Full name by which the adoptee is to be known if the adoption is granted). (1949, c. 300; 1961, c. 186; 1969, c. 982; 1973, c. 476, s. 138; 1995, c. 88, s. 5; c. 457, s. 2; 1997-215, s. 9(d).)

**§ 48-2-304. Petition for adoption; content.**

(a) The original petition for adoption must be signed and verified by each petitioner, and the original and two exact or conformed copies shall be filed with the clerk of court. The petition shall state:

- (1) 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;
- (2) The marital status and gender of each petitioner;
- (3) The sex and, if known, the date and state or country of birth of the adoptee;
- (4) The full name by which the adoptee is to be known if the petition is granted;
- (5) That the petitioner desires and agrees to adopt and treat the adoptee as the petitioner's lawful child; and
- (6) If the adoptee is a minor or an adult who has been adjudicated incompetent, a description and estimate of the value of any property of the adoptee.

(b) Any petition to adopt a minor shall also state:

- (1) The length of time the adoptee has been in the physical custody of the petitioner.

- (2) If the adoptee is not in the physical custody of the petitioner, the reason why the petitioner does not have physical custody and the date and manner in which the petitioner intends to acquire custody.
  - (3) That the petitioner has the resources, including those available under a subsidy for an adoptee with special needs, to provide for the care and support of the adoptee.
  - (4) Any information required by the Uniform Child-Custody Jurisdiction and Enforcement Act, Article 2 of Chapter 50A of the General Statutes, which is known to the petitioner.
  - (5) That any required assessment has been completed or updated within the 18 months before the placement.
  - (6) That all necessary consents, relinquishments, or terminations of parental rights have been obtained and will be filed as additional documents with the petition; or that the necessary consents, relinquishments, and terminations of parental rights that have been obtained will be filed as additional documents with the petition, along with the document listing the names of any other individuals whose consent, relinquishment, or termination of rights may be necessary but has not been obtained.
- (c) A petition to adopt a minor under Article 3 of this Chapter shall also state all of the following:
- (1) A description of the source of placement and the date of placement of the adoptee with the petitioner.
  - (2) That the provisions of the Interstate Compact on the Placement of Children, Article 38 of Chapter 7B of the General Statutes, were followed if the adoptee was brought into this State from another state for purposes of adoption, or that a statement is attached describing the circumstances of any noncompliance.
- (d) A petition to adopt a minor under Article 4 of this Chapter shall also state:
- (1) 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;
  - (2) 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
  - (3) 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.
- (e) Any petition to adopt an adult shall also state:
- (1) 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 the adoption; and
  - (2) The name, age, and last known address of any living parent, spouse, or child of the adoptee.
- (f) The Department may promulgate a standard adoption petition. (1949, c. 300; 1961, c. 186; 1969, c. 982; 1973, c. 476, s. 138; 1995, c. 88, s. 5; c. 457, s. 2; 1998-202, s. 13(k); 1999-223, s. 9; 2001-150, s. 2; 2005-166, s. 3; 2012-16, s. 2.)

**§ 48-2-305. Petition for adoption; additional documents.**

The petitioner shall file or cause to be filed the following documents:

- (1) Any required affidavit of parentage executed under 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 a guardian of the adoptee.
- (4) A certified copy of any court order or pleading in a pending proceeding concerning custody of or visitation with the adoptee.
- (5) A copy of any required preplacement assessment certified by the agency that prepared the assessment or an affidavit from the petitioner stating why the assessment is not available.
- (6) A copy of any document containing the 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 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, Article 38 of Chapter 7B of the General Statutes, authorizing a minor to come into this State, or any statement required by G.S. 48-2-304(c) describing the circumstances of any noncompliance.
- (8) A writing that states 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.
- (9) In an adoption pursuant to Article 4 of this Chapter, 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 G.S. 48-9-109.
- (11) 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.
- (12) 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.

Any document required under this section that is available to the petitioner when the petition is filed shall be filed with the petition. Any document required under this section that is not available when the petition is filed shall be filed as the document becomes available. The petitioner may also file any other document necessary or helpful to the court's determination. (1949, c. 300; 1953, c. 906; 1961, c. 186; 1969, c. 911, s. 7; c. 982; 1975, c. 702, ss. 1-3; 1977, c. 879, s. 5; 1985, c. 758, ss. 10, 11; 1995, c. 457, s. 2; 1997-215, s. 1; 1998-202, s. 13(m); 2001-150, s. 3; 2005-166, s. 4; 2013-236, s. 5.)

**§ 48-2-306. Omission of required information.**

(a) Before entry of a decree of adoption, the court may require or allow the filing of any additional information required by this Chapter.

(b) After entry of a decree of adoption, omission of any information required by G.S. 48-2-304 and G.S. 48-2-305 does not invalidate the decree. (1995, c. 457, s. 2.)

Part 4. Notice of Pendency of Proceedings.

**§ 48-2-401. Notice by petitioner.**

(a) No later than 30 days after a petition for adoption is filed pursuant to Part 3 of this Article, the petitioner shall initiate service of notice of the filing on the persons required to receive notice under subsections (b), (c), and (d) of this section.

(b) In all adoptions, the petitioner shall serve notice of the filing on each of the following:

- (1) Any individual whose consent to the adoption is required but has not been obtained, has been revoked in accord with this Chapter, or has become void as provided in this Chapter.
- (2) The spouse of the petitioner if that spouse is required to join in the petition and petitioner is requesting that the joinder requirement be waived, provided the court for cause may waive this notice requirement.
- (3) 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.
- (4) Any other person designated by the court who can provide information relevant to the proposed adoption.

(c) In the adoption of a minor, the petitioner shall also serve notice of the filing on each of the following:

- (1) A minor whose consent is dispensed with under G.S. 48-3-603(b)(2).
- (2) Any agency that placed the adoptee.
- (3) 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, and any biological or possible biological fathers who are unknown or whose whereabouts are unknown, but notice need not be served upon a man who has executed a consent, a relinquishment, or a notarized statement denying paternity or disclaiming any interest in the minor, a man whose parental rights have been legally terminated or who has been judicially determined not to be the minor's parent, 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, or, provided the petition is filed within three months of the birth of the minor, a man whose consent to the adoption has been determined not to be required under G.S. 48-2-206.
- (4) 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.

(d) In the adoption of an adult, the petitioner shall also serve notice of the filing on any adult children of the prospective adoptive parent and any parent, spouse, or adult child of the adoptee who are listed in the petition to adopt; provided the court for cause may waive the requirement of notice to a parent of an adult adoptee.

(e) Only those persons identified in subsections (b), (c), and (d) of this section are entitled to notice of the proceeding.

(f) A notice required under this section must state that the person served must file a response to the petition within 30 days after service or, if service is by publication, 40 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) Issuance of a summons is not required to commence an adoption proceeding under this Chapter. (1949, c. 300; 1957, c. 778, s. 5; 1969, c. 911, s. 6; 1971, c. 1093, s. 13; 1973, c. 1354, s. 5; 1983, c. 30; c. 454, ss. 2, 6; 1995, c. 457, s. 2; 1997-215, s. 2; 2001-208, s. 12; 2001-487, s. 101; 2005-166, s. 5; 2009-185, s. 3; 2012-16, s. 3; 2013-236, s. 6; 2015-54, s. 5.)

#### **§ 48-2-402. Manner of service.**

(a) Service of the notice required under G.S. 48-2-401 must be made as provided by G.S. 1A-1, Rule 4, for service of process.

(b) 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 G.S. 1A-1, Rule 4 (j1). The time for response shall be the time provided in the rule. The words "In re Doe" may be substituted for the title of the action in the notice as long as the notice contains the correct docket number. The notice shall be directed to "the unknown father [or mother] of" the adoptee, and the adoptee shall be described by sex, date of birth, and place of birth. The notice shall contain any information known to the petitioner that would allow an unknown parent or possible parent to identify himself or herself as the individual being addressed, such as the approximate date and place of conception, any name by which the other biological parent was known to the unknown parent or possible parent, and any fact about the unknown parent or possible parent known to or believed by the other biological parent. 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.

(c) In an agency placement under Article 3 of this Chapter, 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 subsection (b) of this section, and the court shall stay any adoption proceeding already filed, except that nothing in this subsection shall require that the agency or other proper person 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) of the Rules of Civil Procedure. (1949, c. 300; 1957, c. 778, s. 5; 1969, c. 911, s. 6; 1971, c. 1093, s. 13; 1973, c. 1354, s. 5; 1983, c. 30; c. 454, ss. 2, 6; 1995, c. 457, s. 2; 2001-150, s. 4.)

#### **§ 48-2-403. Notice of proceedings by clerk.**

No later than five days after a petition is filed, the clerk of the court shall mail or otherwise deliver notice of the adoption proceeding to any agency that has undertaken but not yet completed a preplacement assessment and any agency ordered to make a report to the court pursuant to Part 5 of this Article. (1995, c. 457, s. 2; 1997-215, s. 3.)

#### **§ 48-2-404. Notice of proceedings by court to alleged father.**

If, at any time in the proceeding, it appears to the court that there is an alleged father of a minor adoptee as described in G.S. 48-2-401(c)(3) who has not been given notice, the court shall require notice of the proceeding to be given to him pursuant to G.S. 48-2-402. (1995, c. 457, s. 2.)

#### **§ 48-2-405. Rights of persons entitled to notice.**

Except as provided in G.S. 48-2-206(c), 48-2-206(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. (1995, c. 457, s. 2; 2005-166, s. 6.)

**§ 48-2-406. Waiver of notice; effect.**

(a) If notice is required under this Part, it may be waived in open court by the person entitled to receive it or by an agent authorized by that person; it may also be waived at any time in a writing signed by the person entitled to receive the notice.

(b) A person who has executed a consent or relinquishment or otherwise waived notice is not a necessary party and, except as provided in subsection (c) of this section, is not entitled to appear in any subsequent proceeding related to the petition.

(c) 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. (1949, c. 300; 1957, c. 778, s. 5; 1969, c. 911, s. 6; 1971, c. 1093, s. 13; 1973, c. 1354, s. 5; 1983, c. 30; c. 454, ss. 2, 6; 1995, c. 457, s. 2.)

**§ 48-2-407. Filing proof of service.**

Proof of service of notice on each person entitled to receive notice under this Part, or a certified copy of each waiver of notice, must be filed with the court before the hearing on the adoption begins. (1995, c. 457, s. 2.)

Part 5. Report to the Court.

**§ 48-2-501. Report to the court during proceeding for adoption of a minor.**

(a) Whenever a petition for adoption of a minor 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 minor's best interest.

(b) Consistent with G.S. 48-1-109, the court shall order the report to be prepared:

- (1) By the agency that placed the minor;
- (2) By the agency that made the preplacement assessment pursuant to Part 3 of Article 3 of this Chapter; or
- (3) By another agency.

(c) The court shall provide the individual who prepares the report with copies of:

- (1) The petition to adopt; and
- (2) The documents filed with it.

(d) The following exceptions apply in this section:

- (1) In any stepparent adoption under Article 4 of this Chapter in which the minor 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 minor's consent is to be waived, the minor has revoked a consent, or both of the minor's parents are dead.
- (2) In any adoption of a minor by the minor's grandparent in which the minor 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 minor's consent is to be waived, the minor has revoked a consent, or the minor is eligible for adoption assistance pursuant to G.S. 108A-49. (1949, c. 300; 1961, c. 186; 1969, c. 982; 1973, c.

476, s. 138; 1983, c. 454, s. 5; 1991, c. 335, s. 2; 1995, c. 457, s. 2; 1997-215, s. 12(a); 2009-185, s. 4.)

**§ 48-2-502. Preparation and content of report.**

(a) 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.

(b) The report must be in writing and contain:

- (1) 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 preplacement assessment, the account may be limited to any changes since the filing of the preplacement assessment;
- (2) All reasonably available nonidentifying information concerning the physical, mental, and emotional condition of the adoptee required by G.S. 48-3-205 which is not already included in the document prepared under that section;
- (3) 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;
- (4) 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;
- (5) 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;
- (6) A finding by the agency concerning the suitability of the petitioner and the petitioner's home for the adoptee;
- (7) A recommendation concerning the granting of the petition; and
- (8) Such other information as may be required by rules adopted pursuant to subsection (c) of this section.

In an agency adoption, 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 any copies of documents included pursuant to subdivision (3) of this subsection shall be redacted to exclude this information.

(c) The Social Services Commission may adopt rules to implement the provisions of this section. (1949, c. 300; 1961, c. 186; 1969, c. 982; 1973, c. 476, s. 138; 1983, c. 454, s. 5; 1991, c. 335, s. 2; 1995, c. 457, s. 2; 1997-215, s. 4.)

**§ 48-2-503. Timing and filing of report.**

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

(b) 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 agency shall indicate in the final report whether its concerns have been satisfied and in what manner.

(b1) When an agency identifies a specific concern in a final report and the court extends the time for a final hearing or disposition to allow resolution of these concerns, the agency shall file a supplemental report indicating whether its concerns have been satisfied and in what manner.

(c) The agency shall give the petitioner a copy of each report filed with the court, and the agency shall retain a copy. (1949, c. 300; 1961, c. 186; 1969, c. 982; 1973, c. 476, s. 138; 1983, c. 454, s. 5; 1991, c. 335, s. 2; 1995, c. 457, s. 2; 1997-215, s. 5(a)-(c).)

#### **§ 48-2-504. Fee for report.**

(a) 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.

(b) A fee for a report is subject to review by the court pursuant to G.S. 48-2-602 and G.S. 48-2-603.

(c) 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. 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. (1995, c. 457, s. 2.)

### Part 6. Dispositional Hearing; Decree of Adoption.

#### **§ 48-2-601. Hearing on, or disposition of, adoption petition; transfer of adoption proceeding; timing.**

(a) If it appears to the court that a petition to adopt a minor is not contested, the court may dispose of the petition without a formal hearing.

(a1) 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.

(b) No later than 90 days after a petition for adoption has been filed, the court shall set a date and time for hearing or disposing of the petition.

(c) The hearing or disposition must take place no later than six months after the petition is filed, but the court for cause may extend the time for the hearing or disposition. (1949, c. 300; 1953, c. 571; 1959, cc. 340, 561; 1961, cc. 186, 384; 1967, c. 19; c. 619, s. 4; 1969, c. 982; 1973, c. 1354, s. 6; 1989 (Reg. Sess., 1990), c. 977, s. 1; 1995, c. 457, s. 2; 1997-215, s. 10(a); 2002-159, s. 12.)

#### **§ 48-2-602. Disclosure of fees and charges.**

At least 10 days before the date of the hearing or disposition, each petitioner shall file with the court 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, or pursuant to Article 10, including the amount of each payment or disbursement made or to be made and the name and address of each recipient. The court in its discretion may request a more specific statement of any fees, charges, or payments made or to be made by any petitioner in connection with the adoption. (1995, c. 457, s. 2.)

**§ 48-2-603. Hearing on, or disposition of, petition to adopt a minor.**

(a) 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 upon finding the following:

- (1) At least 90 days have elapsed since the filing of the petition for adoption, unless the court for cause waives this requirement.
- (2) The adoptee has been in the physical custody of the petitioner for at least 90 days, unless the court for cause waives this requirement.
- (3) Notice of the filing of the petition has been served on any person entitled to receive notice under Part 4 of this Article.
- (4) 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.
- (5) Any assessment required by this Chapter has been filed with and considered by the court.
- (6) If applicable, the requirements of the Interstate Compact on the Placement of Children, Article 38 of Chapter 7B of the General Statutes, have been met.
- (7) Any motion to dismiss the proceeding has been denied.
- (8) Each petitioner is a suitable adoptive parent.
- (9) Any accounting and affidavit required under 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.
- (10) The petitioner has received information about the adoptee and the adoptee's biological family if required by G.S. 48-3-205.
- (10a) Any certificate of service required by G.S. 48-3-307 has been filed.
- (11) There has been substantial compliance with the provisions of this Chapter.

(b) If the Court finds a violation of this Chapter pursuant to Article 10 or of the Interstate Compact on the Placement of Children, Article 38 of Chapter 7B of the General Statutes, 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:

- (1) Grant the petition to adopt; and
- (2) 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.

(c) The court on its own motion may continue the hearing for further evidence. (1949, c. 300; 1953, c. 571; 1959, cc. 340, 561; 1961, cc. 186, 384; 1967, c. 19; c. 619, s. 4; 1969, c. 982; 1973, c. 476, s. 138; c. 1354, s. 6; 1989 (Reg. Sess., 1990), c. 977, s. 1; 1995, c. 457, s. 2; 1998-202, s. 13(l); 2001-150, s. 5.)

**§ 48-2-604. Denying 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.

(b) The court, before entering an order to dismiss the proceeding, shall give at least five days' notice of the motion to dismiss to the parties, to the agency that made the report to the court, and to the Department of Health and Human Services. The parties and agency entitled to notice under this subsection, and the Department, shall be entitled to a hearing on the issue of dismissing the proceeding.

(c) If the court denies the petition, the custody of the minor shall revert to any agency or person having custody immediately before the filing of the petition. If the placement of the minor was a direct placement under Article 3 of this Chapter, the court shall notify the director of social services of the county in which the petition was filed of the dismissal, and the director of social services shall be responsible for taking appropriate action for the protection of the minor. (1949, c. 300; 1961, c. 186; 1969, c. 982; 1973, c. 476, s. 138; 1983, c. 454, s. 6.; 1995, c. 457, s. 2; 1997-215, s. 6(a); 1997-443, s. 11A.118(b).)

#### **§ 48-2-605. Hearing on petition to adopt an adult.**

(a) At the hearing on a petition to adopt an adult, the prospective adoptive parent and the adoptee shall both appear in person, unless the court waives this requirement for cause, in which event an appearance may be made for either or both of them by an attorney authorized in writing to make the appearance.

(b) At the hearing, the court shall grant the petition for adoption upon finding by a preponderance of the evidence all of the following:

- (1) At least 30 days have elapsed since the filing of the petition for adoption, but the court for cause may waive this requirement;
- (2) Notice of the petition has been served on any person entitled to receive notice under Part 4 of this Article;
- (3) Each necessary consent, waiver, document, or judicial order has been obtained and filed with the court;
- (4) 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
- (5) There has been substantial compliance with the provisions of this Chapter. (1967, c. 880, s. 3; 1969, c. 21, ss. 3-6; 1971, c. 1231, s. 1; 1973, c. 849, s. 3; 1975, c. 91; 1981, c. 657; 1989, c. 208; c. 727, s. 219(4); 1993, c. 553, s. 14; 1995, c. 457, s. 2.)

#### **§ 48-2-606. Decree of adoption.**

(a) A decree of adoption must state at least:

- (1) The name and gender of each petitioner for adoption;
- (2) Whether the petitioner is married, a stepparent, or single;
- (3) The name by which the adoptee is to be known;
- (4) Information to be incorporated in a new standard certificate of birth to be issued by the State Registrar;

- (5) The adoptee's date and place of birth, if known, or as determined under subsection (b) of this section in the case of an adoptee born outside the United States;
  - (6) The effect of the decree of adoption as set forth in G.S. 48-1-106; and
  - (7) That the adoption is in the best interest of the adoptee.
- (b) In stating the date and place of birth of an adoptee born outside the United States, the court shall:
- (1) Enter the date and place of birth as stated in the certificate of birth from the country of origin, the United States Department of State's report of birth abroad, or the documents of the United States Immigration and Naturalization Service;
  - (2) If the exact place of birth is unknown, enter the information that is known, including the country of origin; and
  - (3) 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.
- (c) A decree of adoption must not contain the name of a former parent of the adoptee. (1949, c. 300; 1973, c. 476, s. 138.; 1983, c. 454, s. 6; 1995, c. 457, s. 2.)

#### **§ 48-2-607. Appeals.**

(a) Except as provided in subsections (b) and (c) of this section, after the final order of adoption is entered, no party to an adoption proceeding nor anyone claiming under such 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. 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. The failure on the part of the court or an agency to perform duties or acts within the time required by the provisions of this Chapter shall not affect the validity of any adoption proceeding.

(b) 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. A party to an adoption proceeding may appeal a judgment or order entered by a judge of district court by giving notice of appeal as provided in G.S. 1-279.1.

(c) 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 under this Chapter but was not obtained may, within six months of the time the omission is or ought reasonably to have been discovered, move to have the decree of adoption set aside. 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 or duress is or ought reasonably to have been discovered. (1949, c. 300; 1961, c. 186; 1969, c. 982; 1983, c. 454, s. 6; 1995, c. 457, s. 2; 1999-216, s. 11.1.)