

The Legal Details of Finalization: What Families Need to Know Before and After Finalization of an Adoption

Presented by
The Alaska Center for Resource Families
and Otterson Law Office

January 24, 2017

OTTERSON LAW OFFICE

Session Presented by:

J. Stefan Otterson and Tiffany Brookwell

425 G Street, Ste. 714
Anchorage, AK 99501
907-868-5050

ADOPTION FINALIZATION STAGE

- * Adoptive parents choose their attorney.
- * Attorney drafts and files **Adoption Petition** and sets a **hearing**.
- * **Notice** of Adoption Hearing goes to:
 - * Parents whose rights haven't been terminated (if parents haven't waived notice)
 - * (this includes fathers who have not legitimated)
 - * Tribe (except in private voluntary adoptions where parents requested privacy)
 - * State Office of Children's Services (OCS)

Questions?



Notice to fathers

Notice must be given to fathers who haven't waived notice even if they have not legitimated the child.

- * In a private adoption, the adoptive parents have the responsibility to identify, locate and notify the father.
- * In an OCS adoption, the adoptive parent's attorney must make sure OCS has properly dealt with all biological and legal parents. If there is not a termination order or a consent and waiver, notice must be given.

THE ADOPTION HEARING

Adoption Rule 14. Decree of Adoption.

(a) **Findings.** At the conclusion of the hearing, the court shall enter findings of fact concerning:

- (1) whether the required **consents** were filed or excused;
- (2) whether a report of petitioner's expenditures was required, and if so, whether the report was accepted by the court;
- (3) whether all appropriate **notices** were timely given;
- (4) if the adoption was of a minor, whether the required residence of the minor with petitioner exists;
- (5) whether a **home study** was required, and if so, whether the home study was accepted by the court;
- (6) whether the adoption is in the **best interests** of the minor; and
- (7) whether **visitation rights** are being allowed under AS 25.23.130(c).

The court's findings also must include a description and an estimate of value of any property of the person to be adopted.

(b) **Additional Finding for Indian Children.** In the case of an Indian child, the court must enter additional findings regarding:

- (1) whether any **additional notices** required in Rule 10(e) were timely given;
- (2) whether the parent's consent was voluntary and in compliance with 25 U.S.C. Section 1913; and
- (3) whether the **placement complies with the preferences** set out in 25 U.S.C. Section 1915 or good cause exists for deviation from the placement preferences.

Contested Private Adoption

- * What if a parent contests a private adoption?
 - * Attorney reviews evidence of parent's efforts to contact and support the child over the past year, or whether the parent has abandoned, abused or neglected the child.
 - * May require a trial. This can be expensive.
 - * In agency adoptions, the agency must also consent. This is not guaranteed.

Challenges to Termination

- **Invalidating for ICWA violations**

- The following may petition any court of competent jurisdiction to invalidate an action for foster-care placement or TPR under state law where it is alleged that 25 U.S.C. 1911, 1912, or 1913 has been violated:

- An Indian child who is or was the subject of any action for foster-care placement or termination of parental rights;
- A parent or Indian custodian from whose custody such child was removed; and
- The Indian child's Tribe

- Any of these parties may challenge the action based on any violations of 25 U.S.C. 1911, 1912, or 1913 **during the course of the child-custody proceeding even if** that party's rights were not violated

- Upon a showing that an action for foster-care placement or TPR violated any provision of 25 U.S.C. 1911, 1912, or 1913, the court must determine whether it is appropriate to invalidate the action

How Final is the Adoption Decree?

AS 25.23.140 - ... “upon the expiration of one year after the adoption decree is issued, the decree may not be questioned by any person including the petitioner, in any manner upon any ground, including fraud, misrepresentation, failure to give any required notice, or lack of jurisdiction. . .unless... the petitioner has not taken custody of the minor.”

Finality of Native Adoptions

- **Vacating an adoption because consent was obtained through fraud or duress**

If a parent files a petition to vacate the final decree of adoption, the court must:

- Give notice to all parties to the adoption proceedings and the Indian child's Tribe; and
- Hold a hearing on the petition
 - If the State court finds the parent's consent was obtained through fraud or duress, and
 - It is within 2 years after a final decree of adoption (or any longer period of time permitted by State law), then:
- The court must:
 - Vacate the final decree of adoption;
 - Order the consent revoked; and
 - Order that the child be returned to the parent

What You're Taking On

Once the adoption is final, it cannot simply be annulled or overturned at your request. There would only be very limited circumstances under which the adoption could be overturned during the first year, and after one year, it could not be overturned at all.

What You're Taking On

Once the adoption is final, the biological parent's duty to support the child will end, and the adoptive parents will be responsible for **all financial support** of this child.

- * If the adoptive parents were to separate or divorce, either parent could seek a custody order which may include child support from the other parent.
- * If the child were placed in the custody of a third party, that party could also seek child support.
- * If the child becomes a **disabled adult**, the adoptive parents may continue to be responsible for his/her support.
- * If the child commits a delinquent act causing damage to others, the adoptive parents may be liable for those damages as provided by law. *(But see exclusions for OCS adoptions.)*

Adoptive Parent Liability

* AS 09.65.255. Liability for Acts of Minors.

... a person... may recover damages in a civil action in an amount not to exceed \$15,000 and court costs from either parent or both parents of an unemancipated minor under the age of 18 years who, as a result of a knowing or intentional act, destroys real or personal property...

(e) Subsection (a) of this section does not authorize the recovery of damages from:

(1) a legal guardian; or

(2) the **adoptive parents of a hard-to-place child** if the adoptive parents are receiving, at the time the property is destroyed, financial assistance from the state as a result of the adoption; in this paragraph, "hard-to-place child" has the meaning given in AS [25.23.240](#) .

The Adoption Subsidy

*

- Child qualifies as a “**hard-to-place child**” if the adoptive parents are receiving, at the time the property is destroyed, financial assistance from the state as a result of the adoption
- Adoption subsidies can be state subsidies or federal (IVE Funding) and families can appeal those subsidies if they don't agree with the source of funding
- Adoption subsidies cannot be more than the foster care payment—families need sufficient resources to adopt a child
- Potential adoptive families should educate themselves to what the special needs of the child are

Questions?

