

# **Top 10 Issues in Adoption Review & Indexing**

December 11, 2012

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*Produced by*

Family and Children's Resource Program, part of the  
Jordan Institute for Families  
UNC-Chapel Hill School of Social Work

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NC Division of Social Services

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# ADOPTION TIME LINES

<b>Petition</b>	<ul style="list-style-type: none"> <li>Petitions filed prior to 10/1/12 must be filed within 30 days of placement date unless filing date is extended</li> <li><b>No longer required</b> for adoptions filed on or after October 1, 2012</li> </ul>
<b>Notice by Clerk</b> <i>(to agency for unfinished PPA or Order for Report)</i>	<ul style="list-style-type: none"> <li>5 days from filing of petition</li> </ul>
<b>Report to Court</b>	<ul style="list-style-type: none"> <li>Must be completed within 60 days of receipt of Order unless extended</li> <li>May not be ordered until 30 days after completion/filing of late PPA</li> </ul>
<b>Affidavit of Fees</b>	<ul style="list-style-type: none"> <li>At least 10 days before issuance of decree</li> </ul>
<b>Pre-placement Assessment/Updates</b>	<ul style="list-style-type: none"> <li>Must be completed within 18 months of placement date; or updated</li> <li>Must be completed within 90 days of request accepted by agency</li> <li>Fingerprint criminal history checks must be completed as part of favorable PPA prior to placement in agency adoptions</li> </ul>
<b>Agency Consent</b>	<ul style="list-style-type: none"> <li>Within 30 days of service of clerk's Notice of filing of petition</li> </ul>
<b>Child's Consent</b>	<ul style="list-style-type: none"> <li>Can be executed any time prior to issuance of decree</li> <li>Child in stepparent adoption may revoke any time before entry of decree</li> </ul>
<b>Placement Date</b>	<ul style="list-style-type: none"> <li>Cannot pre-date legal clearance date</li> </ul>
<b>Relinquishments</b>	<ul style="list-style-type: none"> <li>Revocation must be in writing and delivered within 7 days of its execution or placed with overnight delivery service or sent certified mail by the 7<sup>th</sup> day; last day cannot be weekend or holiday</li> <li>Birth parent who executes designated relinquishment and asks for notice if adoption not completed has 10 additional days to revoke after receiving notice</li> </ul>
<b>Consents</b>	<ul style="list-style-type: none"> <li>Revocation must be in writing and delivered within 7 days of its execution or placed with overnight delivery service or sent certified mail by the 7<sup>th</sup> day; last day cannot be weekend or holiday</li> <li>If PPA not given to placing parent prior to placement, a 5-business day revocation period applies upon service of late PPA to that parent</li> </ul>
<b>Decree</b>	<ul style="list-style-type: none"> <li>Must be issued no sooner than 90 days and no later than six months from filing of petition unless time shortened or lengthened</li> <li>Adoptee must be in physical custody of petitioner no less than 90 days prior to issuance of decree unless waived</li> <li><b>Adult decrees:</b> must be issued 30 days after filing of petition unless waived</li> </ul>
<b>Post Decree</b>	<ul style="list-style-type: none"> <li>Clerk must mail adoption packet to Division within 10 days of issuance of decree</li> </ul>
<b>Dismissals</b>	<ul style="list-style-type: none"> <li>Parties must be served with at least 5 days' notice of a hearing prior to dismissal by clerk</li> </ul>



NC BORN

North Carolina Department of Health and Human Services  
Division of Social Services

325 North Salisbury Street  
2411 Mail Service Center  
Raleigh, NC 27699-2411  
919-334-1269  
Courier # 56-20-25

Beverly Eaves Perdue, Governor  
Albert A. Delia, Acting Secretary

Sherry S. Bradsher, Director

November 30, 2012

[REDACTED]  
[REDACTED]  
[REDACTED]

**From:** Adoption Services  
State Division of Social Services

**Re:** Adoption of: [REDACTED]

Index Number: [REDACTED]

Congratulations on the adoption of your child!

This is to advise you that the indexing process has been completed and that your child's adoption has been recorded through the Decree of Adoption, dated June 20, 2012. The Adoption proceeding will be retained in this office for permanent retention and for microfilming at a later date.

Now that the Adoption proceeding has been completed through the Decree of Adoption, **North Carolina's Vital Records Office** has been notified and authorized to prepare a new birth certificate for your child. The Report to Vital Records (an Order from the Court of Adoptions) has been forwarded to the **North Carolina Vital Records Office**.

If you wish to secure a new birth certificate, you may do so by completing the Birth Certificate Application Form online, accessible at [www.vitalrecords.nc.gov](http://www.vitalrecords.nc.gov). Please submit the application and the required fee to N.C. Vital Records. If you do not have access to the internet or have questions, please call N.C. Vital Records at (919) 733-3000.

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Out of State  
BORN

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Division of Social Services

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Raleigh, NC 27699-2411  
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Courier # 56-20-25

Beverly Eaves Perdue, Governor  
Albert A. Delia, Acting Secretary

Sherry S. Bradsher, Director

November 30, 2012

[REDACTED]

**From:** Adoption Services  
State Division of Social Services

**Re:** Adoption of: [REDACTED]

Index Number: [REDACTED]

Congratulations on the adoption of your child!

This is to advise you that we have completed the indexing process and have recorded your child's adoption through the Decree of Adoption, dated June 11, 2012. The adoption proceeding will be retained in this office for permanent retention and for microfilming at a later date.

Since this child was not born in North Carolina, the appropriate out-of-state Vital Records Office has been notified and authorized to prepare a new birth certificate for your adoptive child. The Report to Vital Records (an Order from the Court of Adoptions) has been forwarded to the Vital Records Office of the state in which the child was born. If you wish to secure a new birth certificate, you may do so by contacting:

DIVISION OF VITAL RECORDS  
ILLINOIS DEPARTMENT OF PUBLIC  
HEALTH  
925 E RIDGELY AVENUE  
SPRINGFIELD, IL 62702-2737

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FOREIGN BORN

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Courier # 56-20-25

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Albert A. Delia, Acting Secretary

Sherry S. Bradsher, Director

November 30, 2012

[REDACTED]

**From:** Adoption Services  
State Division of Social Services

**Re:** Adoption of: [REDACTED]

Index Number: [REDACTED]

Congratulations on the adoption of your child!

This is to advise you that we have completed the indexing process and have recorded your child's adoption through the Decree of Adoption, dated May 29, 2012. The adoption proceeding will be retained in this office for permanent retention and for microfilming at a later date.

Since this is a foreign-born child, the North Carolina Vital Records Office has been notified and authorized to prepare a new Certificate of Identification for your adoptive child. The fee for the first copy is \$39.00 and additional copies are \$15.00 each. Please send certified check or money order payable to N.C. Vital Records. If you have any questions please contact Vital Records at:

N. C. VITAL RECORDS  
SPECIAL REGISTRATION UNIT  
1903 MAIL SERVICE CENTER  
RALEIGH, NC 27699-1903  
(919) 733-3000

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# ADULT LETTER

## North Carolina Department of Health and Human Services

### Division of Social Services

325 North Salisbury Street  
2411 Mail Service Center  
Raleigh, NC 27699-2411  
919-334-1269  
Courier # 56-20-25

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Sherry S. Bradsher, Director

November 30, 2012

[REDACTED]  
[REDACTED]  
[REDACTED]

**From:** Adoption Services  
State Division of Social Services

**Re:** Adoption of: [REDACTED]

Index Number: [REDACTED]

This is to advise you that we have completed the indexing process for the above-named adult adoption and have recorded it through the Decree of Adoption, dated October 12, 2011. The adoption proceeding will be retained in this office for permanent retention and for microfilming at a later date.

For information regarding a new birth certificate, please contact:

N. C. VITAL RECORDS  
SPECIAL REGISTRATION UNIT  
1903 MAIL SERVICE CENTER  
RALEIGH, NC 27699-1903  
(919) 733-3000 Ext. 252 or 265

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Dept. of State -

North Carolina Department of Health and Human Services  
Division of Social Services

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919-334-1269  
Courier # 56-20-25

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Albert A. Delia, Acting Secretary

Sherry S. Bradsher, Director

November 30, 2012

[REDACTED]

**From:** Adoption Services  
State Division of Social Services

**Re:** Adoption of: [REDACTED]

Index Number: [REDACTED]

This is to advise you that we have completed the indexing process and have recorded your child's adoption through the Decree of Adoption, dated September 30, 2011. The adoption proceeding will be retained in this office for permanent retention and for microfilming at a later date.

Since your child was born in a foreign country, his/her Certification of Birth must be amended through the U.S. Department of State. For you to obtain the amended Certification of Birth, you will need to send the following items to the U.S. Dept. of State, Passport Services, Suite 510, 1111 19th St., N.W., Washington, D.C., 20522-1705.

- 1) the enclosed Report to Vital Records (DSS-1815);
- 2) the Consular Report of Birth (FS-240);
- 3) the original Certification of Birth (FS-545),  
if child born prior to 11/90;
- 4) a certified copy of the Final Order for Adoption; and
- 5) a check or money order in the amount of \$40.00,  
made payable to the U.S. Department of State.

If you have questions about this process, please contact the U.S. Department of State at telephone number (202) 955-0307 or (202) 955-0308.

Attachments

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# WAIVER OF 90-DAY REQUIREMENT

G.S. 48-2-603(a)(1) requires that 90 days have elapsed after the petition is filed before the final decree is entered unless waived by the court for cause. 90 days is simply the presumed minimum amount of time that will be needed to finalize an adoption [48-2-601(b)]. There is no absolute minimum or maximum time frame in which to complete an adoption since Chapter 48 was rewritten in 1996. Some adoptions, often of special needs children, may need more time than the presumed maximum of 6 months [48-2-601(c)].

As part of the drafting committee that rewrote Chapter 48, we identified three reasons for the 90-day presumed minimum from petition to final decree. The first is that, in many private adoptions, both parents have not been cleared, and the father must be given notice that the adoption has been filed, to which he has 30 or 40 days to respond, depending on the type of notice. Second, agencies have 60 days in which to prepare and submit the report to the court (DSS-1808). So the 90-day period can easily be used up in those two processes.

Those two factors rarely apply in agency cases, however, because DSS has already cleared the parents when the petition is filed, and thus there is usually no one who needs notice, and DSS can complete the report to the court (DSS-1808) in far less than 60 days in its own adoptions.

That leaves the last reason for the 90 days—to provide some amount of time showing that the adoption appears to be working and is in the child's best interest. In DSS cases, most of the children have been in the foster homes that want to adopt them for much longer than 90 days before the petition is filed, so there is already a track record that the placement is going well, and adoption is in the child's best interest.

Moreover, the final decree is an emotional, as well as legal, claiming process, and unnecessary delays hurt children who continue to wonder if the adoption will really happen. Continuing to be involved in the juvenile court system can make them feel vulnerable—children in foster care are always wondering what that system will do to them next.

These are important issues to consider in deciding whether to shorten the 90-day time period when the three purposes for that time frame have already been met.

Jane Thompson  
*Assistant Attorney General*  
jane.thompson@dhhs.nc.gov



## Top 10 Issues in Adoption Review & Indexing

# Welcome!

Please click on the colored link below to download the handout for today:  
12-11-12 webinar handout

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STATEWIDE TRAINING  
PARTNERSHIPUNC  
School of Social Work

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## Goals of this Webinar



➤ Save you time,  
make your life easier

**Ultimate Goal**  
Ensure timely, secure adoptions for  
children in our state.

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## Agenda



- ❑ Brief Orientation
- ❑ Introductions
- ❑ Review of process & Timeline
- ❑ Top 10 Issues
- ❑ Legislative changes as of Oct. 1, 2012
- ❑ Application and closing

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Panel Participants:

Tammy Johnson

Tracey Duncan

Jane Thompson



Facilitator:

Mellicent Blythe

Technical Support :

Phillip Armfield

John McMahon

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## Review of Process and Timeline

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### Process and Timeline

1. Clerk sends adoption record to DHHS **within 10 days** of final decree or disposition **NCGS 48-9-102(d)**
  - Clerk **keeps original petition and decree** and sends copies
  - Clerk **keeps copies of everything else** in file and sends originals

Final Decree is **public record** — clerks can provide a copy to anyone who requests one.  
*NCGS 48-9-102(a)*

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## More on Mailing Record to DHHS

- Can use courier but won't have proof of receipt
- Multiple records in one packet should be identified individually on the US Postal Service certified mail "green card"



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## Process and Timeline *continued*

2. Review and indexing takes about **20 weeks** from receipt of record
3. Once indexed, DHHS sends:
  - DSS-1815 to Vital Records
  - "Congratulations" letter to family explaining how to get amended birth certificate

*Families should **immediately** contact Vital Records after receiving "congrats" letter if they need an amended birth certificate.*

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## NCDSS Role: Quality Control

- Our goal: permanency for every child
- NCDSS communicates with clerks if they see possible issues
- Clerks decide whether adoption is valid (can choose to ignore NCDSS feedback)
- Vital Records is independent—can decide whether to issue birth certificate

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# Top 10 Issues

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1

Lack of Jurisdiction

A. NCGS 48-2-100 governs jurisdiction: whether a petition can be filed in NC

Many other problems can be fixed, but not this:  
Voids any decree later issued.

B. NCGS 48-2-101 governs venue: once NC has jurisdiction, where should it be filed?

Lack of proper venue does not void a decree

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Jurisdiction *continued*

➤ Classic requirement:  
petitioners have lived or been domiciled in NC for at least 6 months immediately prior to filing

➤ Out-of-state petitioners may file here if child:

- Is in county DSS custody
- Has lived in NC for 6 months or from birth, *but must file while child is still here*

DSS-1800 Adoption Petition has blocks for all permissible options

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A small image of the North Carolina state flag, featuring a red field with a white star and a blue field with a white star.

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NC Division of Social Services and  
Jordan Institute for Families  
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## Venue

- County where petitioner lives or is domiciled
- County where adoptee lives
- County where agency that placed child has office

**If adoption filed in another county, can be dismissed or transferred at discretion of clerk [NCGS 48-2-102(a)]**

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## Page 1 of the DSS-1800

<http://info.dhhs.state.nc.us/olm/forms/dss/DSS-1800-ia.pdf>

That the petitioner(s) herein seeking adoption:

- ☐ has/have lived in or been domiciled in North Carolina for at least six consecutive months immediately preceding the filing of this petition; **OR**
- ☐ has/have lived in or been domiciled in North Carolina for less than six consecutive months prior to filing this petition, but the adoptee has lived in North Carolina for at least six consecutive months immediately preceding the filing of this petition or from birth; **OR**
- ☐ does/do not reside or have domicile in North Carolina, but is/are petitioning to adopt a child currently in the legal custody of a licensed NC adoption agency or county department of social services; **OR**
- ☐ does/do not reside or have domicile in North Carolina, but is/are petitioning to adopt a child directly placed with the petitioner(s) by the birth parent(s) and the child has lived in North Carolina for at least six consecutive months immediately preceding the filing of this petition or from birth and continues to reside in North Carolina at the time of the filing of this petition.

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## 2 Out-of-State Petitioners

- Use PPA from their state
- Must use DSS-1808 for report to court. Each block captures critical info. for federal reporting and adoption incentive \$
- May use background information forms from own state in lieu of DSS-5102 and DSS-5103 if they are substantively equivalent



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### 3 Service to Fathers by Publication

- Must clear all fathers, including putative and legal
- If whereabouts are unknown, can provide notice by publication in newspaper
  - Must make diligent effort to find father and publish in newspaper where he's believed to be
  - Otherwise can be done locally
  - Must have affidavit of diligent efforts, including the publication newspaper

**Make sure notice has enough detail for the father to identify himself.**

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### 3 Service to Fathers *continued*

#### Independent Adoptions

- Notice by publication to fathers whose identity or whereabouts are unknown NCGS 48-2-401(c)(3)
- Guidance on publication content in private adoptions in NCGS 48-2-402(b)
  - Must state that rights of father will be terminated upon entry of adoption decree if no response
- If father does not respond, clerk will enter an order under NCGS 48-2-207(a) that consent is not needed and final decree will terminate rights

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### 3 Service to Fathers *continued*

#### Agency Adoptions

- Rights of parents are terminated in district court
- If father does not respond, judge terminates rights after a hearing



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#### 4 Service of Notice to Non-Parents

NCGS 48-2-401 lists others who must receive notice, including:

- Husband of petitioner **if** petitioner is requesting waiver of joinder under NCGS 48-2-301(b)
- Child 12 or older **if** petitioner is requesting waiver of child's consent
- Any person with custody or right to visit or communicate with child under existing court order

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#### 4 Notice to Non-Parents *continued*

Anyone entitled to notice can:

- Waive it in writing  
NCGS 48-2-406(a)
- Ask for a hearing on whether the adoption is in the child's best interest NCGS 48-2-405



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#### 5 Timing of PPAs

- If pre-placement assessment required and not given to placing parent **prior** to placement of child:
  - Revocation period extends up to and including **5 business days** after receiving completed, favorable PPA  
NCGS 48-3-307; 48-3-608(b)
  - Petitioner must file proof of receipt using DSS-5219

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## 5 Timing of PPAs *continued*

- Once favorable late PPA is filed with clerk, must wait **30 days** to send order for report to court using DSS-1807

NCGS 48-3-301(c)(2)



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## 6 Unfavorable PPAs and Reports in Independent Adoptions

Clerk is not bound by agency's determination in PPA or report to court; however, must consider them in determining best interest

If either is unfavorable, clerk should hold hearing to determine best interest prior to entering decree. Petitioners and agency should be there and able to present evidence.

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## 7 Inconsistent Names in File

Four documents must match and have full legal name of child and adoptive parent:

1. Petition (DSS-1800)
2. Report to Court (DSS-1808)
3. Final Decree (DSS-1814)
4. Report to Vital Records (DSS-1815)

- Inconsistencies will prevent issuance of birth certificate
- Once decree issued, any name change must follow usual process under Chapter 101

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## 8 3 Types of Foreign Adoptions

### 1. Foreign Re-Adoption

- Child already fully and finally adopted abroad and parent wants to re-adopt here  
NCGS 48-2-205
- Clerk needs to see original birth certificate and adoption decree; **only** send copies certified by clerk as exact to DHHS/NCDSS
- Clerk will use PPA created for adoption but must require current report to court

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## 8 Foreign Adoptions *continued*

### 2. Guardianship

- Adoptive parent given guardianship abroad with intent for adoption in US after period of supervision by US agency
- That agency usually authorized to consent to NC adoption
- Guardianship has cleared biological parents so no consents needed

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## 8 Foreign Adoptions *continued*

### 3. Adoption of a Foreign-Born Child

- Adoptive parents did not complete adoption in the foreign country. Child born abroad and now lives here.
- Treated as any independent adoption
- Need consent of birth parents or other clearance

Consent form DSS-1802 can be sent to parents abroad. Consent is valid if signed in accordance with procedures of that country [NCGS 48-3-605(e)].

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## 9 Incorrect Forms

- Beware of attorney-drafted forms; must meet Chapter 48 requirements
- Remember: different forms for step-parent and adult adoptions
- No NCDSS PPA form; however, must meet requirements for PPA in [NCGS 48-3-303](#)

Use of checklists will ensure correct form is used and all required information is provided.

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## 10 Waivers

Chapter 48 allows clerks to waive many requirements

All should be in writing and included in adoption record



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## 10 Waivers *continued*

Waiver of requirement for petition to be filed within 30 days of placement

- Clerk can extend time to file [NCGS 48-2-302\(a\)](#)
- For petitions filed on or after 10/1/12 this is no longer required and so will not be addressed by the clerk

Waiver of notice to birth parents of adoptee in adult adoptions [NCGS 48-2-401](#)

- Cannot waive notice to **adult children of adoptee or adoptive parents or spouse of adoptee**

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## 10 Waivers *continued*

Waiver of requirement that step-parents be married 6 months before filing

- Step-parent petitioner can file motion for waiver  
*NCGS 48-4-101(3)*

Can also waive report to court **if** step-parent and birth parent married at least 2 years **and** child with them during that time **unless...**

- Child's consent is to be waived, child has revoked consent **OR**
  - Both child's parents are deceased  
*NCGS 48-2-501*

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## 10 Waivers *continued*

Waiver of placement requirement

- Paragraph 6 of petition asks for date child placed for adoption *NCGS 48-3-201*
  - **In agency adoptions:** agency with custody after relinquishment or TPR order can place
  - **In independent adoptions:** placement is by consenting custodial parent
- Petitioner can ask for waiver of placement in independent adoption when there is no consenting custodial parent – e.g., when consenting parent has already lost custody or no custodial parent consents  
*NCGS 48-2-301(a)*

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## 10 Waivers *continued*

Waiver of 90 days between Filing and Decree

- Waiver of requirement that 90 days elapse between filing of the petition and issuance of the decree *NCGS 48-2-603(a)(1)*
- Remember, no minimum or maximum time in which to complete adoptions, only a presumed minimum of 90 days, which can be shortened, and a presumed maximum of six months, which can be extended
- Primary purposes for 90-day minimum: required notice with 30 or 40 days to respond, 60 days for report to court, sufficient placement time to determine best interest

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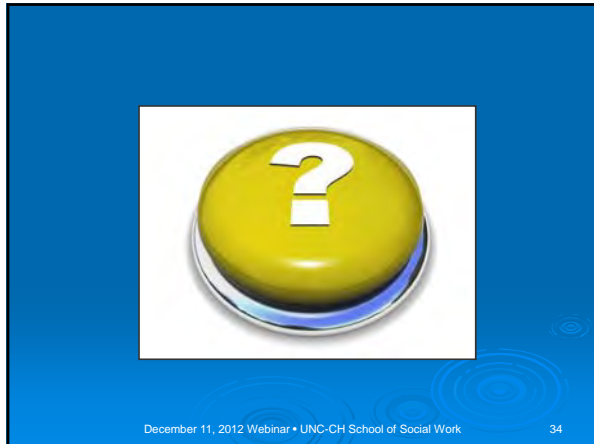
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## New Legislation

- Additional information may be redacted from pre-placement assessments provided to placing parent in independent adoptions
  - Adoptive parents' income and SSNs
- Reasonable equivalent forms for background information (our DSS-5102 and DSS-5103) may be used—especially helpful for out-of-state petitioners



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## New Legislation: Relinquishment

- Relinquishment for an incompetent adult can be obtained in same manner of consent of incompetent adult under NCGS 48-3-602, after appointment of and investigation by GAL who then executes the relinquishment upon order of the clerk after a hearing
- Relinquishment can now be mutually rescinded even after child is placed for adoption as long as agency, birth parent, AND prospective adoptive parents agree [NCGS 48-3-707(a)(3)]

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# Follow-up Document from the Webinar

## *Top 10 Issues in Adoption Review & Indexing*

Webinar delivered December 11, 2012

Follow-up document date: January 28, 2013

*Presented by*

Jane Thompson, Tammy Johnson, Tracey Duncan, and Mellicent Blythe

*Produced by*

Family and Children's Resource Program,  
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School of Social Work, University of North Carolina at Chapel Hill

*Sponsored by*

North Carolina Division of Social Services

**Handouts.** Be sure to consult the handouts for this webinar:

[https://www.ncswlearn.org/ncsts/webinar/handouts/25\\_Webinar\\_Handouts\\_12\\_11\\_12.pdf](https://www.ncswlearn.org/ncsts/webinar/handouts/25_Webinar_Handouts_12_11_12.pdf)

**Recording.** If you missed the webinar or want to view it again, you can access a recording of this event by going to: <http://fcrp.unc.edu/videos.asp>

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## Recommendations, Questions, and Answers from the Webinar

*Note: The Division of Social Services encourages licensing professionals who have not already done so to attend four-day curriculum **Adoptions in Child Welfare Services**. To learn more about this course, class times, or to register, log in to your account on [www.ncswLearn.org](http://www.ncswLearn.org).*

### I. Adoption Process and Timeline

#### **How is it that different counties have different timelines and processes?**

Chapter 48 sets out the general timeline and procedures for all adoptions, and there can be significant time variations in different adoptions, depending on what is statutorily required—for example, a preplacement assessment, and how promptly it is provided. In addition, the volume of adoptions varies among counties, as does the granting of certain waivers, such as waivers of the report to court (DSS-1808), which can extend or shorten the time to final decree.

Clerks are judges of adoption and need to insure statutory requirements are met, but there should not be the need for a procedural adoption requirement, not mandated in Chapter 48, which is unique to one county.

#### **I usually file an original and 5 copies of the petition. I have had 1 or 2 clerks tell me that they have to have multiple petitions, all with original signatures. Why would this be requested? Is it necessary?**

Signing 3 originals is often done—one for the clerk, one for the adoption agency (DSS or private agency), and adoptive parent. It is OK to send a copy to DHHS. But adoptions are civil cases, and only one original is legally required.

#### **I personally adopted 3 children last November and have never received a “congratulations” letter.**

“Congratulations” letter (see samples in the handouts for this webinar) come from NCDSS. Contact us [Tammy Johnson ([tammy.t.johnson@dhhs.nc.gov](mailto:tammy.t.johnson@dhhs.nc.gov); 919-334-1185)], and we can check for you. You may have moved or perhaps there is a problem with address we have for you.

#### **Why does the Division no longer send congratulation letters to the clerk?**

Several years ago the Division made a decision to cut cost on the amount of paper we were mailing out daily. The congratulations letter is mailed only to the adoptive parents to inform them of how to obtain an amended birth certificate.

#### **Please give a more complete list of those states that may throw away requests for amended birth certificates after a year. Or another period of time?**

States that do this include California, South Carolina, and New York. Especially with out-of-state birth certificates, it is important for adoptive parents to promptly request a new birth certificate and follow through with that state’s requirements in a timely manner.

#### **If an adoptive parent pays the expedited fee to Vital Records to get the amended birth certificate, how long does it take to receive the birth certificate when expedited?**

Normally it is mailed the next day.

#### **The decree itself won’t help with Social Security Office if the adoptive parents want a new SSN for the child? Parents must wait for new birth certificate to go to Social Security Office?**

Yes, apparently SSA wants the new birth certificate, though the decree is an order creating the new name.

### **Is there a checklist for clerks new to Adoptions?**

Yes, there are checklists for each type of adoption. They are available on the AOC intranet.

## **2. Jurisdiction**

### **Can an attorney file an adoption petition for a child who is involved in an open family court case out-of-state?**

48-2-100(c) requires compliance with the Uniform Child Custody Jurisdiction and Enforcement Act, found in Chapter 50A. All states have adopted the UCCJEA, which in general gives exclusive, original, jurisdiction over child custody matters to the state where the first custody action was filed.

When there is an out-of-state custody action involving the adoptee, the petitioner should file the AOC form AOC-CV-609, Affidavit of the Status of a Minor Child, setting out where child has lived for the past 5 years and whether there are outstanding custody orders. The petitioner can file an adoption petition here and then has 60 days to clear up the jurisdiction issue with another state, following UCCJEA procedures. An attorney's assistance will be needed in these cases. One way to find an experienced adoption attorney in another state is to use the website of the American Academy of Adoption Attorneys, [www.adoptionattorneys.org](http://www.adoptionattorneys.org).

## **3. Venue**

### **Should a clerk keep an adoption in her county merely for the convenience of an attorney who asks? The petitioners live in another county.**

Most clerks will require it be transferred under 48-2-102(a) to an appropriate venue county listed in 48-2-101. If it is transferred, the entire adoption file would be sent to the new county. Or the petitioner could take a voluntary dismissal of the adoption and re-file in the other county. But the adoption can be kept in the initial county, which is not a venue county under 48-2-101, and the validity of the adoption will not be at risk.

Venue issues such as this may arise when out-of-state petitioners come to NC to adopt an infant. The child may be from County A (birth mother's county), but is born in County B (where hospital is located and consent is given), and is now in County C with adoptive parents (where they are waiting for ICPC clearance and the filing of the petition before returning home). Typically, the petition would be filed in County C, but since any residence is temporary in these cases, some flexibility is often needed with venue.

### **When a child is placed in my county by another county DSS or from another state, who does the paperwork?**

If the petitioners live out of state, but file here under 48-2-100, any preplacement assessments and reports to court must be done by authorized out-of-state agencies and comply with Chapter 48. The report to court must be on our DSS-1808 form in order to capture federally required information. If the child is placed from another county with petitioners who live in your county, your county will almost always prepare the report if no PPA was required. If a PPA was required, that PPA agency will prepare the report.

## **4. Service to Fathers by Publication**

### **How often have fathers actually been located via publication? It seems as though it is just a formality....is it ever successful?**

Absolutely. We have seen it happen many times. The key is to include enough information in the publication notice so the father would recognize himself if he or a friend or family member sees it. 48-2-402(b) provides excellent guidance on the content of a publication notice for an unknown father.



### **Is there a standard form for this affidavit of making diligent efforts?**

There is not a standard form, and it varies with the facts of each case. A possible diligent efforts checklist has been added as the last page of this document. Agencies have more access to records to search for parents than petitioners in private adoptions.

### **South Carolina just adopted a Responsible Fathers registry. Any effort in North Carolina to do that? (In lieu of publication)**

Actually, the adoption committee of the State Bar Association Family Law Council is considering such a registry, which would prevent the need to publish notice for unknown fathers who have not signed onto the putative father registry within a designated time period.

### **Does the attorney file an affidavit of diligent efforts with the clerk prior to publishing?**

Rule 4(j1) and (j2) of the Rules of Civil Procedure state an affidavit must be filed showing publication is warranted prior to the entry of judgment. As an attorney, I've always filed in advance to be sure the judge (who in this case is the clerk), agrees that I have made a diligent effort and chosen the proper newspaper. I think the clerk can require the affidavit in advance and can review the content of the notice prior to publication.

### **Do you still have to publish for unknown father if mother wasn't married, but paternity has been clarified through either DNA testing or affidavit of parentage?**

No, if X has been identified through DNA testing or an affidavit of parentage, then only X needs to be cleared.

### **If a potential father is identified, but signs a denial of paternity and won't submit to DNA testing, does he still need to be cleared by the court, or is the denial sufficient?**

Signing denial of paternity does clear that man. But this raises the issue—since he is not the dad, who is? So a TPR on an unknown father would be warranted in an agency adoption or notice to an unknown father in a private adoption, especially if there is a real question as to paternity of the child.

Note: only bio dad can sign denial of paternity. If married to the mom, you cannot deny paternity, even if you are not the biological father. 48-3-603(a)(5).

### **Does a TPR on an unknown father cover any father who might be named by first name only?**

The better practice is to give notice by publication to "A man known as Koolaid or Bubba and any unknown father..." But even if the publication does not list any first names used by the mother, it should still include enough information about the mother and time and place of conception that the father would recognize himself if he saw it.

## **5. Pre-Placement Assessments**

### **We have an order for report and in the process of completing it realized the families are 2nd cousins and need a PPA. Does that family need to file anything like an extension while they get this? They are representing themselves.**

True second cousins would need a PPA. A person adopting her first cousin's child is actually a first cousin once removed of that child, not a second cousin of the child. If a PPA is found to be required after filing, the family does not need to request an extension of time unless the PPA is not ready and the presumed maximum of six months to finalization is looming. 48-2-601(c) allows the clerk to extend that time. Any petition knowingly filed without a required PPA must explain that in an affidavit attached to the petition. 48-2-305(5).

### **Should ALL foster parents have PPAs done if they may adopt in the future?**

There is no requirement for this; however, it is good practice. Some agencies model their Foster Care Mutual Home Assessment to include the requirements of 48-3-303 on content of a PPA. Even though families often state their desire to foster only, I have often seen them change their minds when a child has been in their home for some time, and bonding has occurred.

### **What is the status of an adoption if the mother chooses a specific family for adoption of her child, signs relinquishments and initial paperwork, but then goes "off the radar" and is not accessible, available, or easily located for service of the PPA (preplacement assessment) or other paperwork? Personal service is not an option and the certified mail is returned—what will satisfy the requirement for service of the PPA?**

This question confuses two rules. Relinquishments are executed in agency adoptions, and while any agency placement must have an approved PPA, there is no requirement in agency adoptions that the PPA prepared by the agency be given to the placing parent. That requirement only exists in independent private adoptions where the placing parent (usually the birth mother with custody) consents to the adoption prior to receiving the adoptive parents' PPA. The birth mother must then be given a copy of the late PPA, and has an additional five business days in which to revoke. If her whereabouts are unknown, and she cannot be located after a diligent search, the late PPA may be sent by certified mail to the address given in the consent, and her five business days run from the date of last attempted delivery. See 48-3-307 and 48-3-608(b).

There is a similar delivery issue that DOES involve a relinquishment, but it does not involve delivery of a PPA. If the birth parent executes a designated relinquishment to X family, and also checks the block in paragraph #13 (on the DSS-1804) asking to be notified if X will not adopt with an additional 10 days in which to revoke her relinquishment, the agency must give the parent that notice in the event the adoption will not occur. If the agency cannot find the birth parent at that point, after an exercise of diligent efforts, the agency may send that notice by certified mail, and the additional 10 day revocation period begins to run the day after the date of the last attempted delivery. At the conclusion of the 10 days, the designated relinquishment may be used as a general one by the agency. See 48-3-704.

## **6. Inconsistent Names and Typos in File**

### **What should we do if in the case of twins where the paperwork was switched and the name got attached to the wrong child? We called indexing team and have not heard back. This was sometime in March 2012.**

What to do depends on where the typo occurs (which document). There are ways to correct/amend any of these documents. Please contact Tammy Johnson at [tammy.t.johnson@dhhs.nc.gov](mailto:tammy.t.johnson@dhhs.nc.gov) or 919-334-1185 for assistance.

### **If the clerk finds that a child's birth certificate contains a typo in the spelling of the birth mother's name, what is the recourse?**

It is not unusual for birth certificates to contain misspellings of a parent's name. As long as there is no question about the identity of the birth mother, spelling disparities on the birth certificate or between the birth certificate and the relinquishment or consent are not a problem. Sometimes an affidavit from the parent or social worker is needed to explain that the person with the different name spelling is the same person.

### **Do we have to have people sign their first, middle, maiden, and last names on all documents?**

Yes.

**If a typo is discovered in the name of the adoptee on one of the documents within the adoption packet (not the final decree), is it okay to include an affidavit providing the correct name? Or is an amended petition required?**

It depends which document contains the typo. If the child's name or adoptive parent's name on the petition was incorrect, then an Amended Petition would be required. A typo on a relinquishment or consent can be amended by the parent, but if the parent is no longer available, there is no need for further action as long as there is no question as to the identity of the adoptee.

**A child is adopted, but the birth name was never changed to the adopted name once the final decree was submitted. How can this be corrected?**

Please contact the Indexing unit to make sure this adoption was received and, if so, to determine if the "congratulations" letter has been sent to the adoptive parents. Vital Records can take up to six (6) weeks to create a new birth certificate after the fee is received unless the expedited process is used.

**Please explain surnames. We have a case whereby the birth certificate (identity card) has a surname for the child but the father's name does not. Is the surname listed for the child the father's name too? How should it be reflected in the TPR order? This case involves a family from Tehran.**

A TPR is supposed to use the name of the child as shown on the birth certificate. 7B-1104(1).

## **7. Foreign Adoptions**

**What is the benefit of re-adoption?**

With a re-adoption, the adoptive parents have not only the NC birth certificate for the child, but also a NC adoption decree, which can also be replaced if it is ever lost or destroyed. And if the final decree is needed in the future, the family or adoptee will not have to present the foreign document with the often stilted and confusing English translation. Foreign adoption documents almost always cannot be replaced.

**Regarding foreign adoption decree—does that apply to situations before the US adopted the Hague Convention/Treaty?**

Yes, re-adoptions can take place no matter when the child was adopted and regardless of whether the Hague Convention Treaty was in place at the time of the original adoption.

**What is a "current" DSS-1808? Sometimes folks don't file a petition to re-adopt right away, even though post-placement visits were made after the child returned to US with the adoptive parent. Is there a rule of thumb as to how long ago the visits can be before submitting a DSS-1808?**

48-2-502(a) requires a personal interview with each petitioner in the petitioner's residence and at least one other interview with the petitioner and adoptee. The statute presumes these will be done contemporaneously with the completion of the DSS-1808, after the entry of an order for the report is issued (DSS-1807).

## **8. Forms**

**Some clerks will not allow you to file a petition unless you are also submitting all the legal clearance documents and other required forms with the petition, even if you submit an affidavit explaining why those documents are not being filed with the petition. Please address this issue.**

Jane's first rule of adoptions is "take the paper." Clerks may not prevent or prohibit the filing of an adoption petition; filing is a clerical act. Like any other civil proceeding, an adoption starts with the main pleading (the petition) and then other papers are filed as available. Of course, the final decree will not

be entered until all the necessary paperwork has been filed. 48-2-305 lists other documents to be filed with the petition, and 48-2-306(a) provides that before entry of the decree, the clerk may require or allow the filing of additional information.

**Is it possible to file all paperwork (including the previously completed PPA and the DSS-1808) at the same time with the clerk?**

Yes. That often happens in agency adoptions, and is one reason why clerks come to expect all supporting documents to be filed at the same time as the petition. But, as stated above, the only document that initially must be filed is the adoption petition.

**Is DSS responsible for all of the forms on the checklist, or do attorneys, clerks, etc. bear some/all responsibility?**

DSS is responsible for the creation and maintenance of required adoption forms, and they are accessible at the Division website to any parties. The responsibility for completion depends on the forms and the type of adoption. Clerks must insure that all forms have been completed properly, especially attorney-created forms and forms from the internet, and meet Chapter 48 requirements.

**Please talk about DSS-1808... I have been asked by the clerk to do DSS-1808 in stepparent adoptions where the parents have not been married a year. The birth father's rights have not been relinquished or terminated. Do you still do the DSS-1808 and send it in with information missing?**

No. If you can't complete that report w/in 60 days (dad's TPR is part of that) you must ask clerk for an extension. Sometimes you have to do that once or twice. But you may need to say to the clerk you can't approve the clearance. Then the clerk can do a 5-day notice of dismissal if cases have lingered. This sets a fire under petitioner's attorney.

**Why would a Clerk require certified copies of monthly post-placement documentation in addition to the DSS-1808?**

We are not sure why this would be requested. Nothing in Chapter 48 requires this documentation. All that is required is that the report to the court, that should be an original.

**What do other counties do when they don't have DSS-5102s and DSS-5103s? Do they complete their own affidavits?**

Yes, they do. Although, if you have any information at all please complete as much as possible of the 5102 and/or 5103.

**What happens if the biological father signed consent, but he marked out #7 being liable for child support?**

Making a change on the consent form does not change the underlying law that the father remains liable for child support arrears after the decree. The only exception is in stepparent adoptions where the statute specifically allows the petitioner to waive liability for those arrearages. 48-4-103(b)(2)c.

## **9. Waivers**

**Must a motion be filed to request a waiver?**

No, a motion is not legally required, although sometimes it is helpful to set all the relevant facts. Some petitioners will use the paragraph #13 of petition to ask for a waiver. The waiver itself must be in writing and granted for good cause.

**Can you talk a little about when the DSS-I 808 can be waived.**

48-2-501(d) provides that the report can be waived in stepparent and grandparent adoptions if the child has lived with the petitioner(s) for at least two years, subject to some limitations set out in that statute. Waiver is at the clerk's discretion.

We recommend that the clerk review a certified copy of the child's birth certificate, check for any criminal history of the petitioners, and confirm marriage and divorce decrees, even if a waiver is granted.

**If a pre-adoptive parent has been separated for 7-8 years and we are unable to locate her husband, can the clerk issue a waiver of notice for that spouse?**

Yes. If the petitioners are married, both spouses must adopt, unless the Clerk chooses to waive this requirement for cause. 48-2-301(b). He must be given notice of that waiver request under 48-2-401(b)(2), but that notice can also be waived. Waiver of notice to the spouse whose joinder is not being required is often waived when the whereabouts of that spouse are unknown. Upon receiving notice of the waiver request, the spouse could only ask for a hearing on whether the adoption is in the adoptee's best interest. 48-2-405. A spouse who must be given notice by publication is unlikely to respond, and after the passage of time, would have little relevant information to offer.

**Can foster parents (couple not married) adopt their foster child together through a waiver? Or must they be married?**

No, if a petitioner is not married, no one else may join in the petition. They must be married to adopt together. 48-2-301(b)(c).

**May we provide Jane's "Waiver of 90-Day Requirement" to a clerk in support of our recommendation that the 90 days be waived?**

Yes.

**Can the clerk waive the 10 day GAL "hold" on an adoption when the GAL provides a letter that the GAL has no objection to the adoption?**

Under 7B-908(f), the adoptee's juvenile court GAL had 10 days after the petition was filed in which to allege abuse of discretion by DSS in the choice of the adoptive placement. That statute was repealed effective October 1, 2011. It was replaced by 7B-1112.1, which requires that DSS notify the GAL of the adoption placement decision prior to the filing of an adoption petition, and the GAL has 10 days to file a motion in opposition with the juvenile court. So clerks will no longer deal with GAL objections to an adoption.

**An Adult Adoption filed ... All parties served certified mail... Green cards returned served and consents have been filed by all parties noticed. Can this be finalized in 14-day period? This is needed to be expedited for GI bill to pay for adult child's college.**

They have 30 days to file an answer. But if by "consents" you mean that each of the parties served has already indicated receipt of notice and agreement to the adoption, then there is no need to wait the 30 days as the only right they have is to ask for a hearing on whether the adoption is in the adoptee's best interest, and it is clear they have chosen not to do so. Remember that anyone entitled to notice may also waive that notice in writing.

## **10. Legislative Changes**

1. New Legislation (HB637) for petitions filed on or after 10/1/12. Requirement for filing petition within 30 days of placement is **repealed**
2. Service of notice under NCGS 48-2-401 shall be started (rather than completed) within **30 days of filing**

3. Additional information may be redacted from pre-placement assessments provided to placing parent in independent adoptions
  - Adoptive parents' income and SSNs
4. Reasonable equivalent forms for background information (our DSS-5102 and DSS-5103) may be used—especially helpful for out-of-state petitioners
5. Relinquishment for an incompetent adult can be obtained in same manner of consent of incompetent adult under NCGS 48-3-602, after appointment of and investigation by GAL who then executes the relinquishment upon order of the clerk after a hearing
6. Relinquishment can now be mutually rescinded even after child is placed for adoption as long as agency, birth parent, AND prospective adoptive parents agree [NCGS 48-3-707(a)(3)]

## **I I. Miscellaneous**

### **How would you handle an adoption that has been sent in without the father's consent, a hearing has been scheduled, and the father wants to keep the child?**

The Clerk will need to set the decree aside and request the file back from the Division until after the hearing and/or disposition of the case.

### **How are adoptions handled for prospective families that do not meet the financial criteria, particularly if the family did not qualify for Foster Home Licensing?**

Not sure what the questioner means by “do not meet the financial criteria” as there is no requirement other than the ability to meet the basic needs of the family. That issue must be addressed in the preplacement assessment, 48-3-303(c)(5), and the report to court. 48-2-502(b)(1). We would need to know why the family did not qualify for Foster Home licensing to answer this question properly. Feel free to contact Jane Thompson at [jane.thompson@dhhs.nc.gov](mailto:jane.thompson@dhhs.nc.gov) or 336-761-2050.

### **Why is there a lag between adoption assistance monies starting and foster care board checks ending? This seems to be a recent occurrence, over the past year whereby families are not receiving all of the monies owed to them.**

If you experience this problem, please contact the Division of Social Services' Amelia Lance ([amelia.lance@dhhs.nc.gov](mailto:amelia.lance@dhhs.nc.gov); 919/334-1096). She handles all those contracts and is responsible for the financial piece.

### **Can 2 county DSS offices apply for adoption incentive money for the same children? One has custody and the other has the home and actually does the adoption DSS-1808.**

This used to be YES, but it has been several years since I administered this program. This question should be directed to Amelia Lance as well.

### **Can the birth family and adoptive family agree to post-adoption contact?**

They can agree, but that agreement is not enforceable, and violation of that agreement does not invalidate a consent or the adoption. 48-3-610. The General Assembly has considered at least 4 bills that would allowed court-enforced post-adoption contact, but none have passed.

### **How can I obtain a copy of the participant manual from the NC Division of Social Services' Legal Aspects training?**

Send a request to Tammy Johnson ([tammy.t.johnson@dhhs.nc.gov](mailto:tammy.t.johnson@dhhs.nc.gov)).

## 12. Checklist for Locating Fathers

- ☐ Information on father's identity and whereabouts from the mother – at least determine when and where she became pregnant, any name she knew him by and a physical description.
- ☐ Check birth certificate for named father.
- ☐ Check DSS child support records for affidavits and/or orders of paternity. Use Parent Locator Service if available.
- ☐ Check all agency records involving the mother or child for possible named father or to see if services were provided to father she has named.
- ☐ Send a registered letter, return receipt requested, restricted delivery (deliver to addressee only), to the parent at last known address.
- ☐ Contact all known relatives.
- ☐ Contact past landlords, employers, or neighbors.
- ☐ Check the telephone directory.
- ☐ Contact the public utility companies – electricity, gas, water, telephone – in the city where the parent was last known to reside.
- ☐ Check with local law enforcement in areas he was known to live
- ☐ If the parent has been or may be in prison, check NC Department of Corrections, [www.doc.state.nc.us](http://www.doc.state.nc.us), or other states' DOC. Check Federal Bureau of Prisons at [www.bop.gov](http://www.bop.gov).
- ☐ Check voter registration records at the Board of Elections.
- ☐ Check with Clerk of Court and Register of Deeds for court records/property tax records/death certificates.
- ☐ Check with the Armed Services Finder Service if he was or is in the service.
- ☐ Use online services, such as [whowhere.com](http://whowhere.com), [privateeye.com](http://privateeye.com) or [PeopleFinder.com](http://PeopleFinder.com), as well as social media sites, such as Facebook.
- ☐ School and college records/alumni organization