

## **CHAPTER 10: Adoption**

### **10.1 INTRODUCTION**

If a child cannot be reunified with his or her family, adoption is the next preferred permanency goal.<sup>1</sup> If adoption is the permanency goal, Idaho's placement priorities are:

- A fit and willing relative;
- A fit and willing non-relative with a significant relationship with the child; or
- Foster parents and other persons licensed in accordance with Idaho law.<sup>2</sup>

This chapter focuses on the finalization of adoptions initiated in connection with a Child Protective Act (CPA) proceeding. The chapter assumes that parental rights already have been terminated.<sup>3</sup>

### **10.2 THE ADOPTION PROCESS**

#### ***A. Jurisdiction***

The adoption proceeding is initiated when the person or persons proposing to adopt the child file(s) a petition to adopt in the court having jurisdiction over the CPA proceeding, unless the CPA court relinquishes jurisdiction over the adoption proceeding.<sup>4</sup> Where the CPA court relinquishes jurisdiction, the adoption petition must be filed in the county in which the prospective adoptive parents reside.<sup>5</sup>

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*Note re Terminology:* In this manual, "prosecutor" refers to both a county prosecutor and/or a deputy attorney general; "GAL" refers to both a guardian *ad litem* and/or a CASA; "Indian child" refers to all native children as defined by ICWA; and "IDHW" and "the Department" are used interchangeably to refer to the Idaho Department of Health and Welfare.

<sup>1</sup> See 42 U.S.C. § 675(5)(C). The federal government has put in place numerous incentives to support adoptive placements, most recently in the Fostering Connections to Success and Increasing Adoptions Act of 2008, P.L. 110-351. This Act is described in detail in the Administration for Children and Families, Policy/Program Issuance PI-08-05, available at [http://www.acf.hhs.gov/programs/cb/laws\\_policies/policy/pi/2008/pi0805.htm](http://www.acf.hhs.gov/programs/cb/laws_policies/policy/pi/2008/pi0805.htm).

<sup>2</sup> IDAHO CODE ANN. §16-1629(11) (2010).

<sup>3</sup> Termination of parental rights is discussed in Chapter 9 of this Manual.

<sup>4</sup> §16-1506(1).

<sup>5</sup> *Id.* In the latter situation, a copy of the CPA court's relinquishment of jurisdiction should be attached to and filed with the Adoption petition, as a matter of best practice.

Idaho law requires that the petitioners in an adoption proceeding have resided in the state for at least six consecutive months before the filing of the petition.<sup>6</sup>

### ***B. Social Investigation/Home Study***

Idaho law requires that prior to the placement of a child in the home of prospective adoptive parents', a thorough social investigation of all members of the prospective adoptive family must take place.<sup>7</sup> Where the prospective adoptive parent is married to the birth parent or a grandparent of the child, no social investigation is required unless ordered by the court.<sup>8</sup> If the social investigation is not conducted by the Department, a copy of the study must be provided to the Department. This investigation must lead to a positive recommendation for adoption in order for the adoption to go forward.

In exigent circumstances where a court finds that a social investigation could not be completed before the child is placed in the home, the child may remain in the home unless the court finds that the best interests of the child are served by another placement. The social investigation must then be initiated within five days of placement.<sup>9</sup>

The pre-placement social investigation must be completed within sixty (60) days of its initiation. If the proposed adoptive parent is not related to the child, the petition must be served within five days "by the court receiving the Petition" for adoption on the director of IDHW by registered mail or by personal service.<sup>10</sup>

If no private social investigation is conducted, IDHW must verify the allegations of the petition, and make a thorough investigation including the date and place of the child's birth and the parentage of the child within thirty (30) days after service of the petition.

The investigative report must include:

1. All reasonably known medical and genetic information regarding the child and the biological parents.
2. Reasonably known or available providers of medical care or services to the natural parents.
3. The source(s) of the information contained in the report.

A copy of the medical and genetic information compiled in the report must be provided to the adopting family.<sup>11</sup> The pre-placement investigation and recommendation and the investigative report of IDHW must be filed with the court.<sup>12</sup>

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<sup>6</sup> *Id.*

<sup>7</sup> § 16-1506(3). *See also* IDAHO ADMIN. CODE r. 16.06.01.750 *et seq.* for regulations regarding the investigation process.

<sup>8</sup> IDAHO CODE ANN. § 16-1506(3) (2010). This is also true in a stepparent adoption, which rarely comes up in CPA connected proceedings.

<sup>9</sup> *Id.*

<sup>10</sup> *Id.* The five-day deadline also does not apply if the prospective adoptive parent is married to a parent.

<sup>11</sup> *Id.*

<sup>12</sup> *Id.*

### C. Consent to Adopt

Persons whose consent is required must execute such consent in writing.<sup>13</sup> The form of the consent is prescribed by Idaho law and is the same form used to consent to the termination of parental rights.<sup>14</sup> The consent must be filed in the court in which the adoption petition is filed. Best practice is to have the consent signed in the presence of the judge at the hearing on the adoption petition. This is particularly important with the consent of a child twelve years of age or older. With regard to the consent that may be required from IDHW, standard practice is that the Director of IDHW signs a consent that is filed with the court in advance and the assigned caseworker signs a second consent at the adoption hearing.

Consent to adoption is required from the following individuals:<sup>15</sup>

- The child to be adopted, if the child is over 12 years of age;
- Both parents or the surviving parent of an adoptee who was conceived or born within a marriage;
- The mother of an adoptee born outside of marriage;
- Any person who has been adjudicated to be the child's biological father prior to the mother's execution of consent;
- An unmarried biological father who has complied with Idaho Code §16-1504(2);<sup>16</sup>
- Any legally appointed custodian or guardian of the child;
- The spouse of the adoptive parent;<sup>17</sup>
- An unmarried, biological father who has filed a voluntary acknowledgement of paternity with the vital statistics division of IDHW pursuant to Idaho Code § 7-1106;<sup>18</sup> and,
- The father of an illegitimate child who has adopted the child by acknowledgement.

In an adoption in connection with a CPA proceeding, the parental rights of both parents have generally been terminated prior to the adoption proceeding, either through consent or involuntary termination. If parental rights have been involuntarily terminated, consent is not required at the time of the adoption.<sup>19</sup> Rather, the attorney handling the adoption should include with the Petition the Findings of Fact, Conclusions of Law and Termination of Parental Rights Order for the child's mother, and, if required, for the child's father.<sup>20</sup>

<sup>13</sup> § 16-1506(2).

<sup>14</sup> IDAHO CODE ANN. § 16-1506(2) (2010). *See also* § 16-2005(4).

<sup>15</sup> § 16-1504(1).

<sup>16</sup> Idaho Code sections 16-1504(2) and (3) and Idaho Code section 16-1513 purport to eliminate the necessity of obtaining consent from an unmarried biological father who fails to comply with certain statutory preconditions. Recommended best practice is to not rely on Idaho Code sections 16-1504(2) and (3) and section 16-1513 until questions regarding their constitutionality are resolved. Chapter 12 contains a discussion of the constitutional issues raised by these provisions.

<sup>17</sup> § 16-1504(1)(h).

<sup>18</sup> The consent statute also provides for the consent of the father of an illegitimate child who has adopted the child by acknowledgement pursuant to Idaho Code section 16-1510. §16-1504(1)(i). However, section 16-1510 was repealed in 2000, although the adoption statute was not amended at that time.

<sup>19</sup> § 16-1504(7).

<sup>20</sup> The question of when a father is required to participate in a CPA proceeding, when his parental rights may be terminated, and whether his consent to adoption is required is discussed in Chapter 12.

### ***D. Notice of the Adoption Proceeding***

Idaho Code § 16-1505 states that notice of the adoption action must be provided to any person whose consent is required under Idaho Code § 16-1504(1), unless that person's parental rights have been terminated or otherwise relinquished.<sup>21</sup> Thus, if an individual has executed a "Consent to Termination of Parental Rights" pursuant to Idaho Code § 16-2005(4), notice of a subsequent adoption proceeding is not required.

Idaho Law also provides that "[n]o consent shall be required of, nor notice given to, any person whose parental relationship to such child shall have been terminated in accordance with the provisions of either chapter 16 or 20, title 16 Idaho Code, or by a court of competent jurisdiction of a sister state under like proceedings; or in any other manner authorized by the laws of a sister state."<sup>22</sup> As a matter of best practice, notice of the completion of the termination of parental rights and adoption should be provided to the attorney and the parent(s) whose rights were terminated.

Idaho Code § 16-1505(1)(b)-(f) further provides for notice to the following persons:

- Any person who has registered notice pursuant to Idaho Code § 16-1513;
- The spouse of the person petitioning to adopt the child, if he or she has not joined in the petition;
- Any person who is recorded on the birth certificate as the child's father, with the knowledge and consent of the child's mother, unless such person's parental rights have been terminated or otherwise relinquished;
- Any person openly living in the same household with the child at the time the mother's consent is executed or relinquishment made, and who is holding himself out as the child's father, unless such person's parental rights have been terminated or otherwise relinquished; and
- Any person who is married to the child's mother at the time she executes her consent to the adoption or at the time she relinquishes the child for adoption.

If there is any person who fits one of these categories, whose parental rights have not previously be terminated either voluntarily or involuntarily, that person must receive notice of the adoption proceeding. As a matter of best practice, consider serving the guardian *ad litem* (GAL) appointed in the child protection case, the Attorney for the GAL (if one is appointed), and/or the Attorney for the child.

The notice need not disclose the name of the mother who is placing the child for adoption.<sup>23</sup> It must be served as least twenty (20) days prior to the final dispositional hearing. The notice must also state that if the person served wishes to object to the adoption she or he must do so within twenty (20) days of being served. If a person fails to make objection within the twenty day period, she or he waives the right to further notice.<sup>24</sup>

<sup>21</sup> IDAHO CODE ANN. § 16-1505(1)(a) (2010).

<sup>22</sup> § 16-1504(7).

<sup>23</sup> §16-1505(3).

<sup>24</sup> § 16-1505(5)(b).

### ***E. Service***

Notice of adoption proceedings must be personally served on individuals whose consent is necessary for the adoption, unless their parental rights have been previously terminated. If reasonable efforts to effect personal service are unsuccessful, a court may order service by registered or certified mail to the last known address of the person to be notified and/or by publication.<sup>25</sup>

For others entitled to notice, service by certified mail, return receipt requested, is sufficient.<sup>26</sup> Notice to any person who has registered as a putative father pursuant to Idaho Code section 16-1513 must be served by certified mail, return receipt requested, at the last address filed with the Department.<sup>27</sup>

Proof of service on all those required to receive notice of the adoption must be filed with the court before the final hearing on the adoption petition.<sup>28</sup>

### ***F. Petition***

The adoption petition must contain the following information:

- the name(s) and address(s) of the petitioner(s);
- name of the child to be adopted;
- the name by which the adopted child will be known if the adoption is granted;
- the degree of relationship, if any, of the child to the petitioner(s); and
- the names of any person or agency whose consent to the adoption is necessary.<sup>29</sup>
- the marital status of the prospective adoptive parents;<sup>30</sup>
- the ages of the prospective adoptive parents (demonstrating that they are at least fifteen years older than the child being adopted or are at least 25 years of age);<sup>31</sup>
- that the parental rights of the mother and the father have been terminated either through consent or through judicial action; and
- that the CPA court made the required federal findings necessary to support the child's eligibility for Adoption Assistance. (These findings are detailed throughout this manual and are summarized briefly below in the Adoption Assistance section of this Chapter.)

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<sup>25</sup> § 16-1505(6).

<sup>26</sup> § 16-1505(6)(b).

<sup>27</sup> IDAHO CODE ANN. § 16-1505(6)(c) (2010).

<sup>28</sup> § 16-1505(7).

<sup>29</sup> § 16-1506(1).

<sup>30</sup> Idaho Code section 16-1503 provides that if the person adopting a child is married, the consent of the person's spouse is required. § 16-1503. A minor may consent to the adoption of a child on the same basis as an adult. § 16-1504(6).

<sup>31</sup> Idaho Code section 16-1502 requires that the person adopting a child must be at least fifteen (15) years older than the child or at least twenty-five (25) years of age or older unless the person adopting the child is the spouse of a parent. § 16-1502.

### ***G. Objections to the Adoption***

Although adoptions are generally uncontested, Idaho law provides a procedure for objections to an adoption. A person who has been served with notice must file written objections within twenty days after service. The written objection must set forth the “specific relief sought” and must be accompanied by a “memorandum specifying the factual and legal grounds upon which the written objection is based.”<sup>32</sup> If a person fails to file written objections within twenty days of service, notice of any further proceedings in connection with the adoption is waived and the person “forfeits all rights in relation to the adoptee, and is barred from thereafter bringing or maintaining any action to assert any interest in the adoptee.”<sup>33</sup>

### ***H. Hearings***

The prospective adoptive parents and the child must appear in person at the hearing on the adoption petition. At the time of the hearing, the prospective adoptive parents must execute an agreement “to the effect that the child shall be adopted and treated in all respects as [their] own lawful child should be treated.”<sup>34</sup> The hearing on an adoption petition may be consolidated with the proceedings for termination of parental rights assuming all the requirements of the parental termination and adoption statutes are complied with.<sup>35</sup> This consolidation rarely occurs in a CPA connected adoption because parental rights typically have been terminated previously as part of the CPA proceeding.

At the hearing, the judge must examine each of the parties appearing at the hearing separately and must review the investigative report.<sup>36</sup> The court must find that the interests of the child will be promoted by the adoption.<sup>37</sup>

### ***I. Order of Adoption***

Based upon the examination of all of the parties and of the investigative report, an order of adoption may be entered if the judge is “satisfied that the interests of the child will be promoted by the adoption.”<sup>38</sup> The order must declare that “the child shall thenceforth be regarded and treated in all respects as the child of the person adopting.”<sup>39</sup> Several additional provisions of the adoption statute make clear that the standard for approval is the best interests of the child. For example, the adoption notice provision states that “[e]xcept to those persons whose consent to an adoption is required . . . , the sole purpose of notice under this section is to enable the person served to present evidence to the court relevant to the best interest of the child.”<sup>40</sup> Likewise, § 16-1506 provides that “[i]n all disputed matters under this chapter . . . the paramount criterion for consideration and determination by the court shall be the best interests of the child.”<sup>41</sup>

<sup>32</sup> IDAHO CODE ANN. § 16-1505(5)(a) (2010).

<sup>33</sup> § 16-1505(5)(b).

<sup>34</sup> § 16-1506(1).

<sup>35</sup> § 16-1506(4).

<sup>36</sup> §§ 16-1506(1); 16-1507.

<sup>37</sup> § 16-1507.

<sup>38</sup> *Id.*

<sup>39</sup> *Id.*

<sup>40</sup> IDAHO CODE ANN. § 16-1505(9) (2010).

<sup>41</sup> § 16-1506(4).

### 10.3 FINALIZING PERMANENCY AND ADOPTION ASSISTANCE

#### A. Federal Requirements Regarding Finalization of Permanency

The federal Adoption and Safe Families Act requires that reasonable efforts extend beyond the permanency planning hearing to actual achievement of permanency for a child and closure of the case.<sup>42</sup> Adoption recruitment is one of the activities that judges must now determine to be “reasonable.” This determination includes whether the Department has:

- adequate programs to recruit and identify prospective adoptive parents, both locally and beyond state boundaries;
- adequate support to approve adoptive families including completion of home studies in a timely manner preparation of adoption assistance agreements, interstate documentation, and provision of relevant information to the family regarding the child; and
- appropriate and accessible post-adoption services to support and stabilize a child in the adoptive home.<sup>43</sup>

#### B. Adoption Assistance: Federal Adoption Assistance for Special Needs Children

Federal adoption assistance is administered under the Federal Title IV-E adoption assistance program.<sup>44</sup> Payments to the parents of an eligible child with special needs can take the form of either one-time (nonrecurring) adoption assistance or ongoing (recurring) adoption assistance. These funds are paid through IDHW and are available for children being adopted from foster care.

##### 1. Eligibility for Federal IV-E Adoption Assistance (either Non-recurring or Recurring)

A child is eligible for federal Adoption Assistance funds if two conditions are met.<sup>45</sup> First, the child must have “Special Needs.” A child with special needs is a child who:

- cannot or should not be returned home to his or her parent(s);
- has a physical, mental, emotional, or medical disability, or is at risk of developing such disability based on the child’s experience of documented physical, emotional, or sexual abuse or neglect;<sup>46</sup> and

<sup>42</sup> 45 C.F.R. § 1356.21(b)(2)(i) (“The State agency must obtain a judicial determination that it has made reasonable efforts to *finalize* the permanency plan . . . .”) (emphasis added). See also CECELIA FIERMONTE & JENNIFER L. RENNE, MAKING IT PERMANENT: REASONABLE EFFORTS TO FINALIZE PERMANENCY PLANS FOR FOSTER CHILDREN 39 (Claire Sandt ed., 2002) (“The purpose of the reasonable efforts inquiry is to (1) ensure that the agency is working diligently to secure a child’s adoption and (2) ensure the adoption process is thorough to reduce the risk of disruption later.”).

<sup>43</sup> This reasonable efforts requirement is found in 42 U.S.C. § 671(a)(15)(C). See MAKING IT PERMANENT, *supra* note 42 at 40-44 (discussing the nature of the state agency’s responsibility under the reasonable efforts provision in the context of a permanency plan of adoption).

<sup>44</sup> Child Welfare Information Gateway: Adoption Assistance for Children Adopted from Foster Care, [http://www.childwelfare.gov/pubs/f\\_subsid.cfm#federal](http://www.childwelfare.gov/pubs/f_subsid.cfm#federal) (last visited April 19, 2011). The provisions for federal adoption assistance were part of the Adoption Assistance and Child Welfare Act of 1980, P.L. 96-272, 94 Stat. 500. The Act is primarily codified at 42 U.S.C. § 673 (2010).

<sup>45</sup> 42 U.S.C. § 673(a)(1)(B).

- has not been able to be placed without adoption assistance (attempts at placement for adoption) were made, but were unsuccessful, except where it would be against the best interests of the child.<sup>47</sup>

This eligibility determination is made by the Department pursuant to detailed federal regulations.

The second requirement for Adoption Assistance eligibility, which only applies to recurring adoption assistance, is that the child meets one of the following four criteria:

1. The child was eligible for IV-E match funds at the time the child was removed from the home. Although there are other requirements, the key consideration for the court and for the attorney for the adoptive parents is that at the time of removal, in the first order sanctioning removal, the court made a finding that remaining in the home was contrary to the child's welfare and that removal was in the child's best interests;<sup>48</sup>
2. The child was eligible for supplemental security income (SSI) programs under the Social Security Act before adoption;<sup>49</sup>
3. The child's parent was in foster care and receiving Title IV-E funds that covered both the parent and the child when the adoption was initiated; or
4. The child previously received adoption assistance and his/her adoptive parent(s) died or the adoption was dissolved.

### 2. *Nonrecurring Adoption Assistance*

Nonrecurring adoption assistance is paid or reimbursed for one-time reasonable and necessary expenses directly related to the legal adoption of a child with special needs that have not been reimbursed from other sources or funds. These reimbursable expenses may include the home study fees, attorney fees, replacement of the birth certificate, and travel for visits to the child (including mileage, lodging, and meals). The federal maximum for this type of assistance is \$2,000 for each adoptive placement.<sup>50</sup>

### 3. *Recurring Adoption Assistance*

Ongoing adoption assistance provides funds that may be used for any identifiable need of the child. These usually take the form of monthly payments to the parents of eligible children. The maximum payment amount may not exceed the amount that would have been paid for

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<sup>46</sup> Pursuant to federal law, this element of "special needs" is defined on a state-by-state basis. 42 U.S.C. § 673(c)(1)(B); Adoption Assistance, <http://www.benefits.gov/benefits/benefit-details/822> (last visited April 22, 2011). In Idaho, the definition is found in IDAHO ADMIN. CODE r. 16.06.01.900.02(b) (2010).

<sup>47</sup> 42 U.S.C. § 673(c) (2010)

<sup>48</sup> 42 U.S.C. §672(a)(1)(2010); .45 C.F.R. 1356.21

<sup>49</sup> See Child Welfare Information Gateway, *Adoption Assistance for Children Adopted From Foster Care*, [http://www.childwelfare.gov/pubs/f\\_subsid.cfm](http://www.childwelfare.gov/pubs/f_subsid.cfm) (last visited April 22, 2011)

<sup>50</sup> See Children's Bureau, [http://www.acf.hhs.gov/cwpm/programs/cb/laws\\_policies/laws/cwpm/policy\\_dsp.jsp?citID=50#745](http://www.acf.hhs.gov/cwpm/programs/cb/laws_policies/laws/cwpm/policy_dsp.jsp?citID=50#745) (last visited Feb. 28, 2010).

maintenance if the child had remained in a foster home in Idaho. Payments can continue until the child reaches age 18, and these payments continue even if the family moves to another state.<sup>51</sup>

#### 4. *Family Income and Determination of Need*

Federal law mandates that the resources of the adoptive parents cannot be considered when determining a child's eligibility for Title IV-E adoption assistance.<sup>52</sup> However, the circumstances of the family and the needs of the child may both be taken into consideration when determining the amount of assistance.<sup>53</sup>

### C. *State Adoption Assistance*

Under IDHW regulations, a child qualifies for state adoption assistance if the child has special needs but is not eligible for federal adoption assistance. Such a situation may arise if the appropriate federal findings are not made in the child's CPA case. The requirement for special needs is the same as the requirement for federal assistance, discussed above.<sup>54</sup> In addition, under Department regulations, children with special needs are eligible for Medicaid coverage. This coverage may not continue if the child moves to another state.<sup>55</sup>

## 10.4 SPECIAL CONSIDERATIONS FOR PRIVATE COUNSEL REPRESENTING PROSPECTIVE ADOPTIVE PARENTS IN A CPA CONNECTED ADOPTION

### A. *Retention of Counsel by the Adoptive Parents to Finalize the Adoption*

IDHW will usually advise the potential adoptive parents to seek a private attorney to finalize the adoption. The attorney will be asked to make contact with the local adoption social worker and provide a written estimate of his/her costs and fees to finalize. In the initial contract, the attorney should ascertain from his/her clients:

- The name of and contact information for the adoption social worker;
- The status of the Adoption Assistance application process;
- The full name the child will be given at the completion of the adoption; and
- Whether the family knows the identity of the natural parents.

The adoption social worker is the source of the following crucial information:

- The status of the case;
- A reasonably anticipated timeframe for the adoption petition to be filed or heard;

<sup>51</sup> See Child Welfare Information Gateway, *Adoption Assistance for Children Adopted From Foster Care*, [http://www.childwelfare.gov/pubs/f\\_subsid.cfm](http://www.childwelfare.gov/pubs/f_subsid.cfm) (last visited April 22, 2011).

<sup>52</sup> 45 CFR 1356.40 (c). See Children's, Bureau, [http://www.acf.hhs.gov/cwpm/programs/cb/laws\\_policies/laws/cwpm/policy\\_dsp.jsp?citID=81](http://www.acf.hhs.gov/cwpm/programs/cb/laws_policies/laws/cwpm/policy_dsp.jsp?citID=81) to read the section of the Child Welfare Policy Manual that says that States cannot employ a "means test" in negotiating adoption assistance agreements.

<sup>53</sup> *Id.*

<sup>54</sup> IDAHO ADMIN. CODE r. 16.06.01.900.02 (2010).

<sup>55</sup> r. 16.06.01.911.03 (2010).

- What steps in the permanency plan remain to be completed by the prospective adoptive parent, if any, and how the attorney can assist in completing the steps;
- The process to submit the attorney's fee and cost estimate;
- Any anticipated problems or unique issues to the adoption; and
- Whether the child is an Indian child under the Indian Child Welfare Act.<sup>56</sup>

### ***B. Preparing for the Adoption Action: the "Attorney Letter" from the Department***

Once an attorney contacts the adoption social worker and confirms that she or he is the attorney for the prospective adoptive parents, the attorney will receive an "Attorney Letter" from the Department. This letter is a roadmap to completing the adoption process. It spells out:

- When the child was placed with the prospective adoptive parents;
- Confirmation of the statutory requirement that the attorney provide a copy of the petition to the Department within five days of filing;<sup>57</sup>
- Confirmation that the Department has thirty (30) days after the filing to provide the Court with the Court Report and Director's Consent;<sup>58</sup>
- The Department's request that the attorney provide it with a copy of the completed Notice of Hearing that will be proposed to the court at the time the petition is filed; and
- That the final Departmental Consent to the adoption, in addition to the Director's Consent, must be given in Court by the social worker and witnessed by the judge.

A majority of Idaho courts will allow the clerk to set an adoption hearing at the time the petition is filed. If this is the case, the attorney should set the hearing out. As a matter of best practice, the attorney should already have discussed potential unavailable dates with the social worker who must be present at hearing. This will provide adequate time for the Central Office of the Department to prepare its Court Report and to obtain the Director's Consent.

Some judges require that the Court file be complete before they will schedule the final hearing. If this is the case, the attorney must explain to the prospective adoptive parents that the hearing date will not be known until the Department has provided all of the required information to the Court. Since the Department's information goes directly to the Court, the attorney will know that the hearing may be scheduled when she or he receives a copy of the Director's Consent from the Central Office. This will alert the attorney that the court report has been sent to the court. Attorneys should allow forty-eight hours for the local clerk's office to process the report before scheduling the hearing.

In addition to confirming the information outlined above, the Attorney Letter will typically have the following documents attached:

- A certified birth certificate for the child being adopted;

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<sup>56</sup> ICWA is discussed in detail in Chapter 11 of this manual.

<sup>57</sup> IDAHO CODE ANN. § 16-1506(3) (2010).

<sup>58</sup> *Id.*

- Findings of Fact, Conclusions of Law and Termination of Parental Rights Order, as to the Birthmother;
- Findings of Fact, Conclusions of Law and Termination of Parental Rights Order, as to the Birthfather; and
- When appropriate, an Order to Relinquish Jurisdiction Over Adoption and Releasing the Relinquishment Order to another Court.

With regard to the relinquishment, if one is required because the adoption will not be filed in the same court handling the CPA proceeding, the attorney must be prepared to obtain an order of relinquishment. This can be problematical because an attorney for the prospective adoptive parents does not generally have access to the CPA case file. The attorney will need to work with the Department and with the Prosecutor or Deputy Attorney General in the county where the child protection case is filed to obtain the order of relinquishment.

### 10.5 POST FILING RECOMMENDATIONS

Once the Petition is prepared and filed, copies should immediately be provided to the social worker and IDHW's Central Office. If the hearing was scheduled at the same time of filing, a Notice of Hearing should accompany the copies of the Petition.

In order to obtain the consent of the Director of IDHW to the adoption, the social worker submits an Adoption Report to the Court, copies of the family's home study, placement documentation, and legal documentation to the Department's Central Office. At the Central Office, the adoption file undergoes a quality assurance review. The file is then submitted to the Director for written consent. The Department has 30 days to complete this review and sign the consent. It is important to note that consent to the adoption is not signed by the Director until a copy of the Petition to Adopt is received by the Central Office.

Upon receipt of the Director's consent authorizing the social worker to consent to the adoption, the Department's Central Office sends a packet of information via certified mail or express courier to the Clerk of the Court where the adoption will finalize. This packet includes the following:

- Adoption Report to the Court;
- Director's written consent to the adoption;
- Copies of the child's Child and Family Social and Medical Information Forms;
- Copies of the pre-adoptive parents' adoption home study and criminal history clearances; and
- Copy of the Petition to Adopt.

The social worker brings to the hearing a document evidencing his/her consent to the adoption, which he/she will sign during the court hearing.<sup>59</sup>

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<sup>59</sup> §§ 16-1506(2); 16-2005(4); 67-2405.

## 10.6 THE ADOPTION HEARING

Prior to the scheduled hearing, the attorney should consider discussing the following matters with the client:

- Review the Agreement of Adoption and the proposed Order of Adoption. (Note: With the exception of the Department's Consent, all pleadings taken into the Courtroom at the adoption hearing should reflect only the new name of the child.)
- Have the clients prepare as much of the original Idaho Certification of Adoption as possible before the meeting ends. Always have the client fill in the information on the second line of question number 22.<sup>60</sup>

At the hearing, the attorney should consider asking the following questions:

- Whether the adoptive parents have been provided all appropriate information regarding the physical and mental health of the child.<sup>61</sup>
- Whether the child has special needs.
- Whether the Department will remain involved with the child.

If the child to be adopted is 12 years of age or older, she or he must be present at the hearing. Three questions should be asked of the child:

- What are we doing here today?
- Is this what you want? Do you wish (clients) to be your Mother and Father forever?
- Do you understand the Consent and do you want to sign it?<sup>62</sup>

## POST-HEARING BEST PRACTICES

After the hearing counsel should provide the following copies to:

- The Client(s):
  - Two court-certified copies of the Adoption Order. Counsel should advise his or her clients not to give away the court certified copies to anyone. If requested, the clients should offer *copies* of the order; however, the original order should remain with the client. Also, the client should always retain the Order even after the new birth certificate arrives. There have been instances where clients have applied for a passport for the child only to be asked to show proof of why the child's name was changed. The new birth certificate isn't satisfactory to answer the question.
  - Conformed copy of the Agreement of Adoption.
  - Conformed copy of the Department's Consent to Adoption.

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<sup>60</sup> Regarding the information on line 15, the client needs to give their residential address as of the day the child was born – not where they now live.

<sup>61</sup> See IDAHO CODE ANN. § 16-1506(3) (2010).

<sup>62</sup> § 16-1504(1)(a).

- The Department Social Worker. (The following list anticipates the social worker will forward on all required documents to the Central Office.)
  - Two court-certified copies of the Adoption Order. These orders are necessary for the family to receive adoption assistance and for the Department to end their child protection case.
  - Conformed copy of Agreement of Adoptive Parents.
  - Two court certified copies of the Department’s Consent to Adoption.
  
- Counsel
  - One court certified copy of the Adoption Order. (If the child was born out of state, retain two court-certified copies in the file. The birth state may require a certified copy to issue the new birth certificate.)
  - Conformed copy of Agreement of Adoptive Parents.
  - Conformed copy of the Department’s Consent to Adoption.
  - Some Clerks’ offices will retain the Idaho Certificate of Adoption and forward it on to the Idaho Bureau of Vital Statistics. If this is the case, counsel should also have the Clerk provide him or her with a copy of the Idaho Certificate of Adoption after it is fully filled out and stamped by the Clerk.
  - A motion and order to close the child protection case, which can be signed at the adoption hearing.

Counsel should remember that the adoption file will be sealed shortly after the hearing. Access to the file can then only come about after a Motion has been filed to reopen the file and a Court Order issued allowing reopening.

Following the adoption proceedings, the Department will work with their Prosecuting Attorney or Deputy Attorney General to obtain an Order to Vacate the Child Protection Case.

## **SECURING THE NEW BIRTH CERTIFICATE**

The attorney for the Prospective Adoptive Parents should accept the role of securing the new birth certificate. Idaho and out of state requests for new birth certificates are routed through the Idaho Bureau of Vital Statistics. Sending it to the Idaho Bureau of Vital Statistics ensures it is properly forwarded to the state of the child’s birth.

If the child was born in a foreign country, Idaho will issue the new Birth Certificate.

The attorney will receive a copy of the letter from the Bureau of Vital Statistics forwarding the Idaho Certificate of Adoption to the state in which the child was born. Thereafter, the attorney will receive a letter from the out-of-state Bureau informing him or her of the cost and required documents needed to secure the amended birth certificate.

The new birth certificates are always mailed to the attorney – never to the client. When it is received in the attorney’s office, the best practice is to make a copy for the file and to ask the social worker if she or he wishes a copy. Then a copy should be provided in person to the adoptive parents.

## **CONCLUSION**

The creation of a new, stable family through adoption is extraordinarily beneficial for many children in foster care. Care must be taken that the adoption is process correctly and that eligibility for adoption assistance is preserved whenever appropriate.