

# CPA-RELATED ADOPTION

## *Bench Card*

*This Bench Card has been created by the Administrative Office of the Court as a resource for judges. Bench Cards do not represent statements of law by the Idaho Supreme Court and do not constitute legal advice.*

### **PURPOSE**

1. To establish a new legal parent-child relationship for a child who has been the subject of a CPA proceeding.<sup>1</sup>
2. To establish permanency for the child.

### **NOTICE<sup>2</sup>**

1. Any person whose consent to adoption is required pursuant to Idaho Code § 16-1504 and whose rights have not previously been terminated.<sup>3</sup>
2. Unwed fathers whose rights have not previously been terminated if the unwed father:
  - a. has registered notice of commencement of paternity proceedings pursuant to Idaho Code § 16-1513;<sup>4</sup>
  - b. is recorded on the birth certificate as the child's father;<sup>5</sup>
  - c. is living openly in the household of the child's mother and holding himself out as the child's father;<sup>6</sup> or,
  - d. is married to the child's mother at the time she executes her consent to the child's adoption.<sup>7</sup>
3. The spouse of the petitioner if not joined in the petition.<sup>8</sup>

### **REQUIRED CONSENT<sup>9</sup>**

1. The child to be adopted, if the child is over 12 years of age;
2. The spouse of the adoptive parent;<sup>10</sup>
3. Any legally-appointed custodian or guardian of the child;
4. The Director of the Department;<sup>11</sup>
5. If parental rights have not been terminated:
  - a. Both parents or the surviving parent of an adoptee who was conceived or born within a marriage;
  - b. The mother of an adoptee born outside of marriage;
  - c. Any person who has been adjudicated to be the child's biological father prior to the mother's execution of consent;
  - d. An unmarried biological father who has complied with Idaho Code § 16-1504(2);
  - e. An unmarried biological father who has filed a voluntary acknowledgement of paternity with the vital statistics division of the Department pursuant to Idaho Code § 7-1106; and
  - f. The father of an illegitimate child who has adopted the child by acknowledgement.

### **PETITION AND WHO MAY ADOPT**

1. Any adult who has resided in Idaho for the prior 6 months and who is 15 years older than the child or who is 25 years of age or older may adopt a child.<sup>12</sup>
2. If the person proposing to adopt the child is not the proposed adoptive parent named in the permanency plan, then the adoption judge must stay the adoption until the permanency plan is amended by the court in the child protection case.<sup>13</sup>
3. Petition must be filed by the person(s) proposing to adopt.<sup>14</sup>

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4. Petition must be filed with the court having jurisdiction over the CPA, unless the court has relinquished jurisdiction.<sup>15</sup>
5. If the court has relinquished jurisdiction, the petition must be filed in the county where the prospective adoptive parents reside.<sup>16</sup>

## WHO MUST BE PRESENT

1. The child to be adopted.<sup>17</sup>
2. The person adopting the child.<sup>18</sup>
3. The spouse of the petitioner, if a natural parent of the child.<sup>19</sup>

## EVIDENCE

The court shall enter an order granting adoption if the requirements regarding consent and Idaho Code § 16-1501 are proven to the satisfaction of the court, and the court is also satisfied that the interests of the child will be promoted by the adoption.<sup>20</sup>

## REQUIRED FINDINGS

1. The social investigation conducted by, or submitted to, the Department for oversight prior to the placement for adoption must have a positive recommendation from the investigator and must be approved by the court, or a motion may be made to the court to dismiss the petition.<sup>21</sup>
  - a. In instances where the prospective adoptive parent is a grandparent or stepparent to the child, such social investigation shall be completed only upon order of the court.<sup>22</sup>
2. Consent to adoption must be knowing and voluntary; the consent of all persons for whom consent is required has been given.<sup>23</sup>
3. The requirements of Idaho Code § 16-1501 are proven to the satisfaction of the court.<sup>24</sup>
4. The interests of the child will be promoted by the adoption. The court's authority is limited to granting the petition.<sup>25</sup>

## ENDNOTES

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<sup>1</sup> I.C. § 16-1508.

<sup>2</sup> I.C. § 16-1505(1).

<sup>3</sup> I.C. § 16-1505(1)(a).

<sup>4</sup> I.C. § 16-1505(1)(b).

<sup>5</sup> I.C. § 16-1505(1)(d).

<sup>6</sup> I.C. § 16-1505(1)(e).

<sup>7</sup> I.C. § 16-1505(f).

<sup>8</sup> I.C. § 16-1505(1)(c).

<sup>9</sup> I.C. § 16-1504.

<sup>10</sup> I.C. § 16-1503.

<sup>11</sup> I.C. § 16-1504(7).

<sup>12</sup> I.C. § 16-1506(1), § 16-1502.

<sup>13</sup> I.C. § 16-1506(2).

<sup>14</sup> I.C. § 16-1506(1).

<sup>15</sup> *Id.*

<sup>16</sup> *Id.*

<sup>17</sup> *Id.*

<sup>18</sup> *Id.*

<sup>19</sup> *Id.*

<sup>20</sup> I.C. § 16-1506(6), § 16-1507.

<sup>21</sup> I.C. § 16-1506(4).

<sup>22</sup> *Id.*

<sup>23</sup> I.C. § 16-1506(3) and (6).

<sup>24</sup> I.C. § 16-1506(6).

<sup>25</sup> I.C. § 16-1507.