

# Rules of Probate Procedure

## Rule 80.5. Adoption Proceeding

(a) **Petition.** The petition for adoption shall be signed and certified by the person or persons seeking to make the adoption and shall contain the following information: (1) the date and place of birth of the person to be adopted; (2) the name and place of residence of each person seeking to make the adoption; (3) the name, age, and place of residence of the person to be adopted; (4) the name by which the person to be adopted is to be known; and (5) the relationship, if any, the persons seeking to make the adoption have to the person being adopted. If the person to be adopted is a minor, the petition shall also contain the name and address of each living parent, and if the person to be adopted is in the custody of the Department of Social and Rehabilitation Services or a licensed child care agency, the petition shall state the method by which the department or agency acquired custody. Attached to the petition to adopt a minor shall be: the consents specified in subdivision (e), any relinquishment order of the court with respect to the minor, a certified copy of the birth certificate of the minor if available and, if the person to be adopted is a minor domiciled in another state which has entered the Interstate Compact on the Placement of Children, either a copy of the notification required by Article III(d) of that Compact or an affidavit setting forth the grounds for an exception under Article VIII. If there has been an order of the juvenile court terminating parental rights, a copy of that order shall be attached to the petition. Duplicate originals of the petition shall be filed. Except as provided in subdivision (b), the register shall not accept for filing any petition that does not contain the information and attachments specified in this subdivision.

(b) **Petition; parental names.** The petitioner is not required to provide the name or address of a parent who has relinquished the minor to be adopted to the Department of Social and Rehabilitation Services or a licensed child care agency pursuant to order of the court. The petitioner is not required to provide the name or address of a parent if the petitioner submits an affidavit that the name or address is not known to the petitioner despite reasonable efforts to determine it, that any parent who has relinquished the minor pursuant to court order is unable or unwilling to provide the information, and that the parent has not filed a notice to retain parental rights in the probate court for the district of Chittenden.

(c) **Notice.** The court shall cause notice of the filing of the petition to be served by the methods provided in Rule 4 on the parents of the child, except that no notice need be provided to a parent who has consented to the adoption or has relinquished a minor child to the Department of Social and Rehabilitation Services or a licensed child placing agency pursuant to court order or when the minor has been committed to the care and custody of the department or agency by a court without limitation as to adoption. The notice to the father of a child born out of wedlock shall specify that the father must file an appearance within 14 days of service upon him and file an acknowledgement of paternity and claim of custodial rights. The notice shall specify that the petition is confidential, and the parent may not receive a copy of the petition unless specifically authorized by the court. The notice shall specify the time and date of a hearing on consent if one is to be held.

If the petition does not contain the name and address of the father of a child born out of wedlock and the petitioner has filed an affidavit as provided in subdivision (b), the court shall cause the mother and any other appropriate person to appear before it for an inquiry into the name and location of the father or possible fathers. The probate court in which the petition has been filed shall contact the probate court for the District of Chittenden to determine whether a notice of intent to retain parental rights has been filed. If after inquiry, the father is identified to the satisfaction of the court, or more than one man is identified as a possible father, each shall be given notice pursuant to Rule 4 of the filing of the petition. The notice shall specify that the father or possible father must appear within 14 days of service on him and acknowledge paternity and claim custodial rights.

(d) **Appearance.** A person served with notice under subdivision (c) must file a notice of appearance in order to receive papers filed by any party and notice of further actions to be taken by the court. A person served with notice under subdivision (c) shall not be entitled to access to the petition or the name of the

persons seeking to make the adoption unless specifically authorized by the court. A person served as a father of a child born out of wedlock, or the possible father of such child, must file the appearance within 14 days of the service of the notice upon him and must in addition file an acknowledgement of paternity and a claim for parental rights if he wishes to oppose the adoption.

(e) **Consent.** The consent for each parent required to be filed by subdivision (a) shall be executed by:

(1) The Department of Social and Rehabilitation Services, its counterpart in another state, or a child placing agency licensed or approved in this or another state if the minor is committed to the care and custody of the department or agency by a court of competent jurisdiction without limitation as to adoption or if the minor has been relinquished to the department or agency pursuant to court order by the parent on whose behalf the consent is signed;

(2) The Department of Social and Rehabilitation Services, when authorized by a public or licensed child placing agency of another state having jurisdiction of the child or if the minor has been adopted in a foreign country and readoption is necessary for the purpose of naturalization of the minor as a citizen;

(3) The guardian if the minor is under guardianship;

(4) The minor and the minor's spouse if the minor is married;

(5) The parent.

Where one or more of the consents required by this section is not filed, the court shall hold a hearing on whether grounds exist for proceeding without the consent of a parent as provided by law. If more than one possible father of a child born out of wedlock appears, acknowledges paternity and claims custody, the court shall at the same time adjudicate who is the father of the minor. If the father of a child born out of wedlock acknowledges paternity and claims custody, the standard for proceeding without consent of the father shall be the same as if the child was born in wedlock. In all such cases counsel shall be assigned to the child, and to each parent who qualifies for assignment of counsel, pursuant to the Rules Governing the Assignment of Counsel and Payment Therefor by the Defender General, A.O. No. 4. If the court finds after hearing that the adoption may proceed without the consent of a parent, no further notice shall be given to that parent, and the parent has no further right to participate in the proceeding.

(f) **Investigation; trial period.** The investigation and trial period shall be as provided by law. On motion of a party, the Department of Social and Rehabilitation Services or a child-placing agency that has made an investigation of the circumstances of the child or supervised the child in the home, or on the court's initiative, the court may hold a hearing on whether the trial period shall be shortened. Notice of the hearing shall be given to the parties, the Department of Social and Rehabilitation Services and any licensed agency that has made an investigation of the circumstances of the child or supervised the child in the home. The court shall decide the issue solely on the evidence presented and the records of the court and shall issue findings of fact.

(g) **Final hearing.** Except as provided in subdivision (e) and this subdivision, notice of the final hearing on the adoption of a minor shall be given to the parents of the child and the petitioners and the Department of Social and Rehabilitation Services. No notice shall be given to the parent of a child if:

(1) The child has been committed to the care and custody of the Department of Social and Rehabilitation Services or a licensed child placing agency without limitation with respect to adoption;

(2) The child has been relinquished by that parent pursuant to court order to the Department of Social and Rehabilitation Services or a licensed child care agency;

(3) The parent has filed a waiver of further notice and consent to issue an adoption decree, together with a power of attorney to a specified person other than an adopting parent or an attorney for an adopting parent to sign the adoption papers on behalf of the parent, as long as the person specified in the power is notified of the hearing. If at the time of the final hearing a parent who is required to consent to the adoption has not received notice of the proceeding, the court shall suspend the hearing until such consent is obtained.

The court shall consider the evidence at the hearing, make findings and issue an order.

(h) **Adoption decree.** The adoption decree shall be on a form to be promulgated by the Court Administrator. A person holding a power of attorney as provided in subdivision (g) may sign on behalf of the parent who executed the power. In all other respects, the signatures shall be as provided by law. If the person to be adopted is a minor fourteen years of age or older, except where the relinquishment has been made to licensed child-placing agency as provided in 15 V.S.A. § 446, that person shall sign in the presence of the probate judge a statement consenting to the decree.

(i) **Notice of intent to retain parental rights.** At any time, a parent or alleged parent of a child born in this state may file in the probate court for the district of Chittenden a notice of intent to retain parental rights. The notice shall specify the name and address of the person filing it, the name and last known address of the other parent of the child, the name of the child if known and the date of birth of the child to the extent known. The register of the court shall send a copy of the notice to the other parent. Any person filing an adoption petition for a child in this state shall determine as of the date of the petition whether a notice has been filed under this subdivision with respect to the child.

Any person filing a notice under this subdivision shall provide the register of the Probate Court for the District of Chittenden with his change of address, if any; in any subsequent proceeding where the putative father fails to receive notice because he has not notified the register of his current address, he shall be deemed to have waived his right to receive notice under this rule.

Added Nov. 5, 1987, eff. March 1, 1988; amended Dec. 8, 1988, eff. March 1, 1989.