

# Chapter 19 – Adoption

## 19.1 Overview

When a child cannot be safely reunited with his or her birth family, adoption is the next most permanent option. It gives the child a permanent family with the same legal standing and protection as a family created through birth. Through adoption, all parental rights and responsibilities are legally and permanently transferred to the adoptive parent(s). In cases where successful, safe reunification is not an option, adoption is the best possible alternative for many children, providing a sense of belonging and security that cannot be found in other temporary living arrangements.

The adoption hearing is typically the final step in the process of securing a permanent family for the dependent child. It is a time of happiness for both the child and the adoptive family. With all the legal requirements completed and support in place, the adoption hearing is an opportunity for celebration. This is a special day for everyone involved and should be so recognized. The judge presiding over the hearing has an opportunity to assist in the celebration by accommodating the unique wishes and desires of the child and family.

“When children can’t be reunited with their birth parents, adoption is a wonderful alternative to help kids connect with a family. I found a woman to call my mom and I know she will love me forever. I hope all children in foster care have the same chance. “

- J. W., 20, Former Pennsylvania Foster Youth

### **\*Best Practice — Adoption Celebrations\***

Many counties throughout the Commonwealth take extraordinary steps to make the day of adoption a very special one for children and their adoptive families. Celebrations range from formal Adoption Days, where numerous adoptions are finalized on the same day with accompanying celebration activities, to more simple practices that encourage adopting families to design their own adoption experiences, often including extended family members and friends.

Whatever the process, the judge is in a unique position to recognize the importance of the day and support each family’s desire for making the day a special one. Pictures and video recordings are encouraged and can help memorialize the day. In many courts, adoptees are encouraged to come to the judge’s bench and bang the gavel to end the ceremony and symbolically begin life in the adoptive family. Other courts provide small tokens to adoptees, such as stuffed animals or books, to help them remember the occasion.

## 19.2 Jurisdiction

Adoption in Pennsylvania is generally governed by the Adoption Act (23 Pa.C.S. §§ 2101-2938). Other laws that may bear on adoptions involving dependent children (described more fully in Chapter 21: Summary of Major Federal and State Child Welfare Legislation) include the Interstate Compact on the Placement of Children (62 P.S. §§ 746-765); the Adoption Opportunities Act (67 Pa.C.S. §§ 7701-7704 (relating to placement of special needs children)) and various federal laws, including the Indian Child Welfare Act (25 U.S.C. §§1901-1963), the Adoption and Safe Families Act of 1997 (See 42 U.S.C. §§ 671-679) and the Fostering Connections Act of 2008 (See 42 U.S.C. §§ 620-629, §§ 670-679). In addition, various Department of Human Services regulations may impact the adoption process.

Under 23 Pa.C.S. § 2302, adoption proceedings may be brought in the court of any of the following counties:

- Where the parent, the adoptee, or the person filing the report/notice of intention to adopt resides;
- Where the agency having custody of the adoptee is located;
- Where the agency that placed the adoptee is located; or
- With leave of the court, where the adoptee formerly resided.

As is discussed more fully in Chapter 4: Jurisdiction, under 20 Pa.C.S. § 711, only judges with Orphans' Court authority are permitted to preside over adoption hearings. The only exception is for Philadelphia, where 20 Pa.C.S. § 713 entrusts these matters to the Family Court Division. However, in those judicial districts in which the jurisdiction of the Dependency Court and the Orphans' Court are separated by statute (see list in Chapter 4, footnote 1), the judge who hears the dependency matter may be permitted to have the authority of an Orphans' Court judge for the purpose of concluding the adoption through a local order of the President Judge. 42 Pa.C.S. §6351(i).

### **\*Best Practice — One Judge/One Family\***

As in earlier stages of the dependency process, the "One Judge – One Family" practice is pertinent to the adoption phase. When possible, having the judge who initiated the dependency matter preside over the adoption finalization may help add consistency and closure for the child and the family.

## 19.3 Pre-Adoption Requirements

The court has the ultimate responsibility for ensuring that all required pre-hearing steps are completed. These include:

- 1. Pre-Adoptive Home Study & Pre-Placement Report.** This report on the prospective adoptive parent(s) must have been completed within three years prior to placement of the adoptee in the home and updated within one year prior to placement of the adoptee. The pre-placement report must include information regarding the fitness of the adoptive parent(s) and the home environment. (See 23 Pa.C.S. § 2530 for specific elements required in the report).
- 2. Report of Intention to Adopt (also known as Notice of Intention to Adopt).** This report/notice must be filed by the person who has custody of an adoptee and must be filed with the court in which the petition for adoption will be filed. This report must include specific information regarding the person having custody of the child, the child, and the intermediary. 23 Pa.C.S. § 2531. It is often filed simultaneously with the termination of parental rights petition but can be filed later if an adoptive family has yet to be identified for the child. The report/notice must be filed within thirty days of receiving physical care of the adoptee. 23 Pa.C.S. § 2532.
- 3. Report of the Intermediary.** Within six months after filing the Report of Intention to Adopt, the intermediary that arranged the adoption placement must make a written report to the Court of Common Pleas, where the adoption will be filed, and notify the prospective adopting parents that the report has been filed. 23 Pa.C.S. §2533(a). (In dependency cases, the intermediary is the county child welfare agency.) The report must contain specific information regarding the intermediary, the child, and the prospective adoptive parents. 23 Pa.C.S. § 2533 (b). Required attachments include the child's birth certificate, any consent necessary for adoption, and a certified decree of the termination of parental rights if the adoption is occurring in any county other than the county in which the termination occurred.
- 4. Adoption Subsidy Agreement.** Adoption assistance supports permanency for special needs children by providing the families who adopt these children with resources to assist in their care. The adoption subsidy agreement is the binding agreement that is negotiated between the adopting parent(s) and the county children and youth agency when the county children and youth agency has determined a child eligible for adoption assistance. It articulates ongoing financial and programmatic supports for an eligible adoptee, including reimbursement for allowable one-time expenses related to the adoption process, a monthly subsidy, and Medicaid or medical assistance coverage. Any agreed-upon monthly subsidy amount cannot exceed the amount that would have been provided had the eligible adoptee remained in foster care.

The agreement must be signed and in effect prior to or at the time of the final decree of adoption and terminates upon the eligible child's eighteenth birthday or age twenty-one if the adoption agreement became effective when the child was at least thirteen years old, and the agreement was in effect on or after July 1, 2012.

**\*Best Practice — Adoption Subsidies and Services\***

In most counties, creation of the Adoption Subsidy Agreement is the responsibility of the child welfare agency, subject to the approval of the County Board of Commissioners, and does not involve the court. However, it is certainly in the adoptee's best interest for the court to ensure that the child's ongoing needs have been addressed prior to concluding the court's oversight. The judge should make sure adoptive parents are aware of services and financial resources available prior to the finalization of the adoption, including the availability of post-adoption services should such be needed. The judge should also work with agency administration to ensure a local process that accommodates the timely completion of Adoption Subsidy Agreements without slowing the legal adoption process.

## **19.4 Adoption Hearings**

### **19.4.1 Preliminary Matters**

The Petition for Adoption is the final pleading and is filed after parental rights have been terminated. The petition must include information and exhibits as delineated in 23 Pa.C.S. § 2701 and 23 Pa.C.S. § 2702.

The consent of a child over twelve years of age is required for an adoption under 23 Pa.C.S. § 2711.

Notice of the adoption hearing must be given by personal service or by registered mail to all persons whose consents are required and to such other persons as the court shall direct. 23 Pa.C.S. § 2721.

There is no requirement that counsel be appointed or that counsel be present for the adoption hearing. Adoptive parents are generally represented by privately retained counsel, an allowable adoption reimbursement expense.

### 19.4.2 Attendance at Hearing

The adoptive parent or parents and the adoptee must attend the hearing. In addition, a representative of the applicable child welfare agency generally attends the hearing but is not required to do so. The court may require the testimony of anyone present.

#### **\*Best Practice — Attendance at Adoption Hearings\***

Many courts encourage adoptive parents to invite a wide range of guests to witness the adoption, including extended family members, members of church congregations, school friends, work associates, and others. Courts often encourage former caseworkers for the child/family, GALs, and CASA to attend the hearing as well.

Where possible, guests may be allowed to participate through direct testimony or by reading poetry, providing prayers, singing, decorating the courtroom, taking pictures/videos, or simply sharing hopes for the future of the adoptee and the new family. Activities that reflect the adoptee's and adoptive family's values, traditions, and beliefs should be encouraged.

### 19.4.3 Testimony and Investigation

While the adoption hearing can be and often is relatively short, its importance in the lives of children and their new families cannot be understated. The judge's job is to ensure that the event is both memorable and legally sound. A set of questions that may assist judges in this task are found at the end of this chapter. While not exhaustive, the list provides possible questions aimed at eliciting needed information.

#### **\*Best Practice — Conduct of Adoption Hearings\***

The Adoption Petition provides the court with significant written information about the child and adoptive parents. By reviewing this information prior to the hearing, the judge can glean pertinent information and craft questions that solicit the needed information to meet legal requirements, solidify family relationships, and ease the child/family's concern about this final hearing.

Some judges encourage the adoptive children to sit with the adoptive mother or father on the witness stand or join the judge on the bench, asking them just a few short questions as a means of helping the child feel included in the proceedings.

Prior to the conclusion of the hearing, the judge should ensure evidence and testimony have been provided to sufficiently answer the following questions:

1. Have all legal requirements been met?
2. Why is the adoption in the best interest of the child?
3. What is the child's current adjustment in the home, school, and community?
4. Do the adopting parent(s) understand the rights and responsibilities of this newly created parent-child relationship, including the permanency and obligations of adoption?
5. Has there been full disclosure regarding the child's medical and psychological background?
6. If over the age of twelve years, does the child consent to the adoption?
7. Has the adopting family signed the adoption assistance agreement, and are there any questions regarding the agreement?
8. Are all necessary services and supports in place?
9. Is the new family aware of available services and support to meet the adoptee's current and future needs, and do they know who to contact if they need assistance in the future?
10. Whether a Voluntary Agreement for Continuing Contact (also known as Post Adoption Contact Agreement) filed with the court should be approved? See 23 Pa.C.S. §§ 2733, 2734, and 2735.

## **19.5 Adoption Orders**

Once the court is satisfied that the statements made in the petition are true, that the needs and welfare of the adoptee will be promoted by the adoption, and that all legal requirements have been met, the court shall enter a decree finding and directing that the adoptee shall have all the rights of a child and heir of the adoptive parents and shall be subject to the duties of a child to them. 23 Pa.C.S. § 2902. The adoptive parents receive a copy of the decree along with a Certificate of Adoption.

The Certificate of Adoption is issued by the Orphan's Court clerk to the adoptive parent or parents. The certificate cannot disclose the name of any natural parent or the original name of the adoptee. The certificate must be accepted in any legal proceedings in the Commonwealth as evidence of the fact that the adoption has been granted. 23 Pa.C.S. § 2907.

While there is no standard adoption order in the Administrative Office of Pennsylvania's Common Pleas Case Management System (CPCMS) Dependency Module (as this is an Orphan's Court proceeding), a mechanism should be in place to close the dependency proceedings using the CPCMS Dependency Order for Termination of Court Supervision form. Pa.R.O.C.P. 15.6(b) requires the county agency to file a praecipe regarding specific termination of parental rights, adoption, and appellate court information with the clerk of courts using the dependency proceedings caption. This information is used to provide comprehensive information to local courts regarding permanency outcomes for dependent children.

## SAMPLE QUESTIONS FOR THE ADOPTION HEARING

### **Questions for adoptive parent(s):**

1. Have there been any changes since the home study was completed?
2. Tell me how you feel about today.
3. Do you know what an adoption is?
4. Do you understand all the responsibilities and the legal obligations that come with the adoption? What does that mean?
5. Tell me something special about (child's name).
6. How does (child's name) fit in with the rest of your family (grandparents, aunts, uncles, brothers and sisters)?
7. Can you introduce any family and friends here today with their relationship to (child's name) (The judge often just goes around the room, allowing everyone to introduce themselves)?

### **Questions for the younger adoptee:**

1. Tell me your name.
2. What do you like to do at home with your mom and dad?
3. Who's the best cook in the family?
4. What do you like to do with your brothers/sisters?

### **Questions for adoptee over age twelve regarding consent:**

1. Tell me your name.
2. Where do you live and who lives there with you?
3. What grade are you in and how is school?
4. What's your favorite subject?
5. What do you like to do after school?
6. What do you like to do with your mom and dad?
7. Tell me how you feel about your mom and dad.
8. Tell me how your mom and dad feel about you.
9. Do you know what is happening today?
10. Do you know what adoption is?
11. Did you sign the consent for adoption?
12. Do you want to be adopted?
13. Do you wish to be known as the name that was given to the court?

**Questions for the agency representative who prepared the home study:**

1. With whom are you employed (position and length of service)?
2. How did you become involved in the placement of this child and adoptive parents?
3. Did your agency prepare the home study concerning the adoptive parents?
4. Are there any material changes since that report was prepared?
5. Other than normal agency, court, or legal fees, has anything else been promised to be paid concerning the placement of this child?
6. Are you in favor of this adoption?
7. Why do you believe this is in the child's best interest?

**Questions for family and friends (if not already covered above):**

1. Is there anybody in the courtroom who wants to say something about this adoption?
2. Please stand up, identify yourself, and tell us how you feel about today.
3. What hopes do you have for (child's name) and his/her family?