

Summary Guide™ to Minnesota Adoption Law and Procedure

Resources, Timing and Deadlines

Originally prepared by

Amy M. Silberberg
Attorney at Law
Afton, Minnesota

Updated by

Gary A. Debele
Walling, Berg & Debele P.A.
Minneapolis, Minnesota



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NOTICE:

This material is educational only.
It does not constitute legal advice.

Author's Note

Adoption is legally and emotionally complex and the stakes are extremely high. There is nothing more critical than a child's permanent place within their family. Legal errors in the adoption process can result in devastating consequences for children and their families. When things go wrong it is important to remember that children view the passage of time very differently from adults and it is essential that the legal process move quickly for their sake.

The purpose of this Summary Guide is to provide a general overview of the adoption process as well as to provide a list of some of the most important adoption forms, definitions and resources. This Summary Guide is intended to be a starting point, not an exhaustive review of adoption practice and procedure. Legal requirements will vary not only from one type of adoption to another, but from one county to another within Minnesota, from state to state and from country to country.

It will often be necessary for those using this Guide to consult additional resources that provide more detailed information regarding a particular topic. I would encourage readers to start with the list of "Helpful Adoption Resources" provided below. This Summary Guide can be a helpful reference tool regardless of your level of experience.

Guiding Principles in Minnesota Adoption Law and Practice

- The "best interests of the child" is guiding principle in adoption. It is referenced in the following section of the statute: Minn. Stat. § 259.29.
- Cardinal principle in adoption matters is to regard benefit of infant as paramount. *In re S.T.*, 1994, 512 N.W.2d 894.
- Consent to adoption must comply with strict statutory requirements. *Matter of Welfare of A.M.P.*, App. 1993, 507 N.W.2d 616.
- Adoption laws and laws pertaining to termination of parental rights should be construed together to effect an overall purpose. *In re Brennan*, 1965, 270 Minn. 455, 134 N.W.2d 126.
- In an adoption matter which involves the dissolution of a relationship as intimate and enduring as that of a parent and child, there should be strict adherence to letter of law. *Petition of Aisdurf*, 1965, 270 Minn. 236, 133 N.W.2d 479.
- The 2012 Legislature removed all provisions related to adoptions of state ward children (children under the guardianship of the Commissioner of Human Services) from Chapter 259 and created a new and comprehensive statutory scheme found in Chapter 260C that now governs these types of adoptions. All private adoptions remain controlled by Chapter 259. Detailed coverage of state ward adoptions is beyond the scope of this Summary Guide™.
- Adoptions in Minnesota are now governed procedurally by the Rules of Adoption Procedure which provide the practitioner, adoptive parents, and Courts with a comprehensive road map of court procedure affecting adoptions.

Helpful Adoption Resources

- *Minnesota Adoption Law and Practice*, by Amy M. Silberberg, LexisNexis
- *Adoption Law and Practice*, Hollinger, Matthew Bender
- *Federal Adoption Laws*, LexisNexis
- Minnesota Rules of Civil Procedure
- Minn. Stat. § 259.01 et seq.
- Minnesota Rules of Adoption Procedure

Key Definitions

Adam Walsh Background Study

Effective July 1, 2007, all adoptions must have a criminal background study which includes a set of classifiable fingerprints on all persons over the age of 13 living in the home. Often the Adam Walsh background study is incorporated into the adoption homestudy. The Minnesota Department of Human Services' Licensing Division will facilitate Adam Walsh background studies.

Agency

An organization or department of government designated or authorized by law to place children for adoption or any person, group of persons, organization, association or society licensed or certified by the commissioner of human services to place children for adoption. Minn. Stat. § 259.21, subd. 6.

Direct Adoptive Placement

The placement of a child by a birth parent or legal guardian other than an agency under the procedure for adoption authorized by Minn. Stat. §§ 259.47; 259.21, subd. 10.

ICPC

The Interstate Compact on the Placement of Children. Minn. Stat. § 260.851.

ICWA

The Indian Child Welfare Act. 25 USC §§ 1901-1963.

Indian Child

A child who is eligible for membership in an Indian tribe. ICWA 25 USC §§ 1901-1963, Minnesota Indian Family Preservation Act (MIFPA), Minn. Stat. § 260.751 - 260.835.

MFAR

The Minnesota Fathers Adoption Registry. Minn. Stat. § 259.52.

Placement

The transfer of physical custody of a child from a birth parent or legal guardian to a prospective adoptive home. Minn. Stat. § 259.21, subd. 8.

Placement Activities

Placement; arranging or providing short-term foster care pending an adoptive placement; facilitating placement by maintaining a list in any form of birth parents or prospective adoptive parents; collecting health and social histories of a birth family; conducting an adoption study; witnessing consents to an adoption; or engaging in any of the foregoing activities for purposes of fulfilling any requirements of the interstate compact on the placement of children. Minn. Stat. § 259.21, subd. 9.

Putative Father

A man who may be a child's father, but who (1) is not married to the child's mother on or before the date that the child was or is to be born; and (2) has not established paternity of the child according to section 257.57 in a court proceeding before the filing of a petition for the adoption of the child. "Putative father" includes a male who is less than 18 years old. Minn. Stat. § 259.21, subd. 12.

State Ward Adoption

These adoptions involve children whose parents have either had their parental rights terminated by the court and as a result are under the guardianship of the state awaiting adoption or situations where the parents, in lieu of having their parental rights terminated, voluntarily consent to their children being placed under guardianship of the state for purposes of an adoptive placement arranged by the state. These adoptions have their own sets of applicable statutes found in Chapter 260C and their own procedural rules.

Working Day

Monday through Friday, excluding any holiday as defined under Minn. Stat. §§ 645.44, subd. 5 and 259.21, subd. 11; M. R. Civ. Pro. 6.01 Computation.

Types of Adoptions

	Direct Placement § 259.47	Agency Placement § 259.25	Adoption of an Adult § 259.241	Stepparent, Relative or Second Parent Adoption	Adoption of an Indian Child 25 USC §§ 1901-1963; Minn. Stat. § 260.755
Is an Adam Walsh background study required?	Yes.	Yes.	Yes.	Yes.	Yes.
Is a preplacement adoption study required? Minn. Stat. § 259.41, subd. 1	Yes, but placement may be court ordered without a completed adoption study in an emergency.	Yes.	No.	A study is not required by statute in the adoption of a relative in the first degree, a stepparent or second parent adoption. However, the court has the discretion to order an adoption study or a criminal background check.	Yes.
What type of consent to adoption form is required? Minn. Stat. §§ 259.24, subd. 5; 259.25; 259.47, subd. 7; DHS-1957; DHS-3198; DHS-2002	Judicial consent of the birth parent or guardian is required if the birth parent declines birth parent counseling. When the child to be adopted is over 14 years of age, the children's written consent to adoption is also necessary. Minn. Stat. § 259.24, subd. 3.	Judicial consent or agency consent to a particular adoptive family or an agreement conferring authority to place. When the child to be adopted is over 14 years of age, the children's written consent to adoption is also necessary. Minn. Stat. § 259.24, subd. 3.	Adult adoption consent form must be signed by the adult to be adopted.	Judicial consent or consent of the birth parent or guardian. When the child to be adopted is over 14 years of age, the children's written consent to adoption is also necessary. Minn. Stat. § 259.24, subd. 3.	Consent to the adoption of an Indian child must be taken in court pursuant to ICWA 25 USC § 1913. When the child to be adopted is over 14 years of age, the children's written consent to adoption is also necessary. Minn. Stat. § 259.24, subd. 3.
How long is the consent revocation period? Minn. Stat. §§ 259.24, subd. 6a; 645.44, subd. 5 <i>Petition of Anderson, App.1997, 565 N.W.2d 461</i>	10 working days (not including weekends and holidays) or later in case of fraud.	10 working days (not including weekends and holidays) or later in case of fraud.	10 working days (not including weekends and holidays) or later in case of fraud.	10 working days (not including weekends and holidays) or later in case of fraud.	The voluntary consent to the adoption of an Indian Child is revocable until the adoption is finalized in court. 25 U.S.C. § 1913 (c). ICWA has a two year revocation period in case of fraud or duress. 25 U.S.C. § 1913 (d).
When may consent be taken? Minn. Stat. § 259.24, subd. 2a	At least 72 hours after birth.	At least 72 hours after birth.	Anytime.	Anytime.	At least 10 days after birth. 25 U.S.C. § 1913 (a).
When must the MFAR be searched? Minn. Stat. § 259.52	For children born on or after January 1, 1998, must search thirty days or more after the child's birth.	For children born on or after January 1, 1998, must search thirty days or more after the child's birth.	No search is required.	For children born on or after January 1, 1998, must search thirty days or more after the child's birth.	For children born on or after January 1, 1998, must search thirty days or more after the child's birth.
When must the adoption be finalized? Minn. Stat. § 259.22, subd. 4 Rule 41.02 of the Rules of Adoption Procedure	The adoption must be finalized within 1 year after adoptive placement, but the time may be extended by court order. An adoption must be finalized within 90 days of the filing of the adoption petition.	The adoption must be finalized within 1 year after adoptive placement, but the time may be extended by court order. An adoption must be finalized within 90 days of the filing of the adoption petition.	An adoption must be finalized within 90 days of the filing of the adoption petition.	An adoption must be finalized within 90 days of the filing of the adoption petition.	The adoption must be finalized within 1 year after adoptive placement, but the time may be extended by court order. An adoption must be finalized within 90 days of the filing of the adoption petition.
What is the residency requirement for adoptive parents? Minn. Stat. § 259.22, subd. 1	1 year. (May be reduced to 30 days by the court.)	1 year. (May be reduced to 30 days by the court.)	1 year. (May be waived by the court.)	1 year. (May be waived by the court.)	1 year. (May be waived by the court.)
Must a birth parent social and medical history be completed? Minn. Stat. § 259.43; DHS-3205	Yes.	Yes.	Yes.	Not required in a stepparent adoption.	Yes.
Does the ICPC apply? Minn. Stat. § 257.05	Yes.	Yes.	No.	No.	Yes.

Timing Requirements

EVENT

TIMING

Residency of Adoptive Parents

Generally, the adoptive parents must live in Minnesota for a minimum of one year. The residency requirement may be reduced to 30 days by the court, or may be waived in a stepparent, second parent or relative adoption or in the adoption of an Indian child. Minn. Stat. § 259.22.

Adoption Study

Adoptive parents must complete an adoption study prior to the adoptive placement. Exception: emergency direct placement. Minn. Stat. § 259.41.

MFAR Registration

A man who is merely a putative father must register within 30 days of the birth of a child to be adopted, or later if he has a valid legal excuse under Minn. Stat. § 259.52. Applies only to children born on or after 1/1/98. *Heidbreder v. Carton*, 645 N.W. 2d 355 (Minn. 2002).

Motion for Pre-Adoptive Custody Order

May be filed up to 60 days prior to placement and prior to birth of the child to be adopted. Minn. Stat. § 259.47, subd. 3.

Order for Pre-Adoptive Custody

Must be issued within 30 days of filing motion for pre-adoptive custody or within 24 hours in an emergency. Minn. Stat. § 259.47, subd. 3.

Adoptive Placement

The adoptive placement may be made at anytime after birth by an adoption agency pursuant to an adoptive placement agreement. In a direct placement, the adoptive placement may be made at anytime after the order for pre-adoptive custody has been issued. Minn. Stat. § 259.47, subd. 3 and subd. 6.

Consent to Adoption

May be signed a minimum of 72 hours after birth and up to 60 days after placement. Minn. Stat. § 259.24, subd. 2.

Consent Becomes Irrevocable

For a non-Indian child, the consent to adoption becomes irrevocable 10 working days (not including holidays or weekends) after execution of the consent form, or later if there is fraud. For an Indian child, the consent to adoption is revocable until the adoption is finalized. M.R. Civ. Pro. 6.01; Minn. Stat. § 645.44, subd. 5; Minn. Stat. § 259.24, subd. 6a; *Petition of Anderson*, App. 1997, 565 N.W.2d 461.

MFAR Search Certificate

A MFAR certificate must be filed with the court prior to the finalization of all Minnesota adoptions, with the exception of inter-country adoptions. Minn. Stat. § 259.52, subd. 2.

Consent of a Registered Putative Father or Notice

If the MFAR certificate indicates that a putative father is registered, either his consent to the adoption must be filed with the court or he must be served with notice of the adoption. Minn. Stat. §§ 259.52, subd. 10; 259.24. *Heidbreder v. Carton*, 645 N.W. 2d 355 (Minn. 2002).

Paternity Petition

A putative father registered with MFAR must initiate a paternity action within thirty days from the date that he is served with notice of the adoption. Minn. Stat. § 259.52, subd. 10. *Heidbreder v. Carton*, 645 N.W. 2d 355 (Minn. 2002). *In the Matter of the Petition of T.D. and J.D. to Adopt N.T.K.*, 677 N.W. 2d 110 (Minn. App. 2004).

Finalize Adoption

An adoption may be finalized as soon as the child to be adopted has resided in the adoptive home for 3 months. Minn. Stat. § 259.53, subd. 4. The adoption petition must be filed within 1 year after placement. Minn. Stat. § 259.22, subd. 4. The adoption must be finalized within 90 days after the filing of the petition. Rule 41.02 of the Rules of Adoption Procedure.

Complete Adoption Study

The adoption study must be completed prior to placement or within 14 days after issuance of an order for emergency direct placement pursuant to Minn. Stat. § 259.49.

Adoption Study

The adoption study is valid if it has been completed or updated within the previous 12 months. Minn. Stat. § 259.41, subd. 4.

Contact Agreement

The contact agreement must be entered into before the adoption is finalized, it must be incorporated as part of the adoption order and decree and it must be approved by the court as being in the "best interests of the child." Minn. Stat. § 259.58.

Post-placement Report to Court

The adoption agency supervising the adoptive placement must file a post-placement report to court within 90 days of the receipt of a copy of the filed adoption petition from the district court administration. Minn. Stat. § 259.53.

Hearing to Finalize Adoption

A minimum of 3 months after the adoptive placement. The court may shorten this period of time to 30 days in the best interests of the child. Minn. Stat. § 259.53, subd. 4. The adoption must be finalized within a year of the adoptive placement. Minn. Stat. § 259.22, subd. 4. Rule 41.02 of the Rules of Adoption Procedure.

Filing Checklist

The following must be filed in the juvenile court in the district court in which the adoptive parents reside:

In an Emergency Direct Placement only: (Minn. Stat. § 259.47, subd. 6)

- Notice of Motion and Motion for an Emergency Direct Placement Custody Order
- Affidavit of Birth Mother
- Affidavit of Birth Mother Concerning Birth Father or Affidavit of Birth Father
- Proposed Order
- Affidavit of Prospective Adoptive Parents

In a Direct Placement Adoption only: (Minn. Stat. § 259.47)

- Affidavit of Birth Mother
- Affidavit of Birth Mother Concerning Birth Father or Affidavit of Birth Father, Statement of Birth Parents – Minn. Stat. § 259.47, subd. 3 (5)
- Notice of Motion and Motion for a Pre-Adoptive Custody Order
- Proposed Order for Pre-Adoptive Custody
- Statement of Intent to File Adoption Petition
- Affidavit of Prospective Adoptive Parents

In all adoptions:

- Petition – Minn. Stat. § 259.23 (1)
- Certificate of Adoption – DHS-0173
- Contact or Communication Agreement – Minn. Stat. § 259.58
- Judgment and Decree – Minn. Stat. § 259.57
- Birth Certificate – Minn. Stat. § 144.218
- Birth Parent Social and Medical History Forms – DHS-3205
- Statement of Expenses – Minn. Stat. § 259.47, subd. 3(b)(3), and 259.53, subd. 6
- MFAR Search Certificate – Minn. Stat. § 259.52
- Filing Fee
- Affidavit of Service – Minn. Stat. § 259.49; Minn. R. Civ. Pro. 4
- Adoption Study – Minn. Stat. § 259.41
- Consent to Adoption or Order Terminating Parental Rights – Minn. Stat. §§ 259.24; 260C.301
- Post-placement Report to Court – Minn. Stat. § 259.53, subd. 2

Right to Consent to or to Receive Notice of an Adoption Proceeding

	Is consent or notice required?	Statutory Authority	Case Law
Presumed Father	Presumed father's consent to adoption is required.	Minn. Stat. § 257.55	<ul style="list-style-type: none"> • <i>Witso v. Overby</i>, 2001, 627 N.W.2d 63, rehearing denied. Certiorari denied, 122 S.Ct. 1069, 151 L.Ed. 2d 972. • <i>Quillon v. Walcott</i>, 1978, 98 S.Ct. 549, 434 U.S. 246, 54 L.Ed.2d 511, rehearing denied 98 S.Ct. 1477, 436 U.S. 918, 55 L.Ed.2d 511. • <i>DeBoer by Darrow v. DeBoer</i>, U.S. Mich.1993, 114 S.Ct. 1, 509 U.S. 1301, 125 L.Ed.2d 755. • <i>Matter of Welfare of A.M.P.</i>, App.1993, 507 N.W.2d 61.
Notice Father	Notice must be given to a father whose name is on the birth certificate, has substantially supported the child, is or was married to the mother during pregnancy or up to 10 days after birth, is openly living with the child or mother, has been adjudicated as the father, has filed a paternity petition within 30 days of the birth of the child, has signed a declaration or recognition of parentage, or has timely registered with the Father's Adoption Registry and timely responded to subsequent notices. Consent is not required of a parent not entitled to notice of the adoption.	Minn. Stat. §§ 259.49, (1) and (3); 259.52, Minn. Stat. § 259.24, subd. 1	<ul style="list-style-type: none"> • <i>In re C.M.A.</i>, App.1996, 557 N.W.2d 353, review denied. • <i>Heidbreder v. Carton</i>, App. 2001, 636 N.W.2d 933, review granted. • <i>Sundboom v. Keul</i> (Minn. Ct. App. e4-02-26, July 23, 2002),
Divorced Parent Who Lost Custody Through a Divorce Decree or a Decree of Dissolution	Notice, but not consent, is required. Attorneys should be aware that this provision in Minnesota law is constitutionally suspect and this author would highly recommend not only giving notice, but also obtaining either a consent from the father or seeking a termination of his parental rights.	Minn. Stat. § 259.24, subd. 1(b)	<ul style="list-style-type: none"> • <i>Petition of Jordet</i>, 1957, 248 Minn. 433, 80 N.W.2d 642. • <i>Petition of Parks</i>, 1964, 267 Minn. 468, 127 N.W.2d 548. • <i>Eggert v. Van De Weghe</i>, 1967, 279 Minn. 31, 155 N.W.2d 454. • <i>Nelson v. Bye</i>, 1965, 271 Minn. 194, 135 N.W.2d 700. • <i>Wilson v. Barnet</i>, 1966, 275 Minn. 32, 144 N.W.2d 700. • <i>In re Jaren's Adoption</i>, 1947, 223 Minn. 561, 27 N.W.2d 656.
Parent Who Has Abandoned the Child	Neither notice nor consent is required.	Minn. Stat. § 259.24, subd. 1(c)	<ul style="list-style-type: none"> • <i>Curtiss v. Hagen</i>, 1968, 280 Minn. 296, 159 N.W.2d 193. • <i>In re Anderson</i>, 1933, 189 Minn. 85, 248 N.W. 657.
Man Who is Merely a Putative Father	Neither notice nor consent is required if a man is merely a putative father, unless he has registered and complied with all of the requirements found in the MFAR.	Minn. Stat. § 259.49	<ul style="list-style-type: none"> • <i>In re Brennan</i>, 1965, 270 Minn. 455, 134 N.W.2d 126. • <i>In re Zink</i>, 1963, 264 Minn. 500, 119 N.W.2d 731. • <i>In re Shady</i>, 1962, 264 Minn. 222, 118 N.W.2d 449. • <i>Heidbreder v. Carton</i>, 645 N.W. 2d 355 (Minn. 2002).
Parent or Legal Guardian of a Minor Parent	Consent of a minor parent's parent or guardian is required if the parent of the child to be adopted is a minor.	Minn. Stat. §§ 259.49 (1)(a); 259.24 (2)	<ul style="list-style-type: none"> • <i>Petition of Sherman</i>, 1954, 241 Minn. 447, 63 N.W.2d 573. • <i>Fleming v. Hursh</i>, 1965, 271 Minn. 337, 136 N.W.2d 109. • <i>In re Pratt</i>, 1945, 219 Minn. 414, 18 N.W.2d 147. • <i>In re Martinson</i>, 1931, 184 Minn. 29, 237 N.W. 596. • <i>In re Adoption of Anderson</i>, 1951, 235 Minn. 192, 50 N.W.2d 278. • <i>Op. Atty. Gen.</i>, 1940, No. 228, p. 288.
Tribe	If the child to be adopted is eligible for membership in an Indian tribe, the tribe must be notified and must consent to the adoption.	25 USC §§ 1903 (4); Minn. Stat. § 260.761 subd. 3	<ul style="list-style-type: none"> • <i>Matter of Custody of S.E.G.</i>, 1994, 521 N.W.2d 357, certiorari denied 115 S.Ct. 935, 513 U.S. 1127, 130 L.Ed.2d 881. • <i>Desjarlais v. Desjarlais</i>, App.1985, 379 N.W.2d 139.
Commissioner of the Department of Human Services	If no parent or guardian is qualified to consent to the adoption of a child born to a minor parent, the commissioner may consent to the adoption. Consent cannot be withheld unreasonably.	Minn. Stat. § 249.24 (1)(d) and (7)	<ul style="list-style-type: none"> • <i>In re McKenzie</i>, 1936, 197 Minn. 234, 266 N.W. 746. • <i>State ex rel. True v. LaKosky</i>, 1974, 301 Minn. 450, 224 N.W.2d 128. • <i>Matter of K.L.L.</i>, App.1994, 515 N.W.2d 618. • <i>In re S.T.</i>, 1994, 512 N.W.2d 894
Adoption Agency (public or private)	If an adoption agency has the authority to place a child for adoption, the agency has the exclusive authority to consent to the adoption. Consent cannot be withheld unreasonably by the agency.	Minn. Stat. §§ 259.24 (1)(e) and (7), 259.25 (1)	<ul style="list-style-type: none"> • <i>In re McKenzie</i>, 1936, 197 Minn. 234, 266 N.W. 746. • <i>State ex rel. True v. LaKosky</i>, 1974, 301 Minn. 450, 224 N.W.2d 128. • <i>Ritchie v. Children's Home Soc. of St. Paul</i>, 1974, 299 Minn. 149, 216 N.W.2d 900. • <i>In re Adoption of Anderson</i>, 1951, 235 Minn. 192, 50 N.W.2d 278
Notice by Birth Parent to Other Birth Parent(s)	Unless the birth parents are planning the adoption together, the birth parent planning the adoption must give notice to the child's other birth parent of the intent to consent to the adoption prior to or within 72 hours following the placement of the child if the other parent's consent is required. The birth parent who receives notice has 60 days after the placement of the child to either consent or refuse to consent to the adoption. If the birth parent fails to act, that parent is deemed to have irrevocably consented to the child's adoption.	Minn. Stat. § 259.24, subd. 2a(b)	<ul style="list-style-type: none"> • <i>In re C.M.A.</i>, App. 1996, 557 N.W.2d 353, rev. denied
Child to be Adopted	A child 14 years or older must consent to their own adoption.	Minn. Stat. § 259.24 (3)	<ul style="list-style-type: none"> • <i>In re Welfare of M.P.</i>, App.1996, 542 N.W.2d 71.
Adult to be Adopted	Only the consent of the adult to be adopted is required.	Minn. Stat. § 259.24, subd. 4	<ul style="list-style-type: none"> • <i>Berston v. MN Dept. of Public Welfare</i>, 1973, 296 Minn. 24, 206 N.W.2d 28.

Key Forms

Various adoption forms can be found on the following websites:

- Minnesota Department of Human Services at <http://edocs.dhs.state.mn.us>
- The court forms section of the website of the Minnesota Judicial Branch, www.mncourts.gov

The Minnesota Supreme Court, through its various committees, has attempted to provide uniform adoption forms which it encourages be used by practitioners and petitioners.

Key Government Agencies

United States Citizenship and Immigration Services (USCIS)

2901 Metro Drive, Suite 100
Bloomington, MN 55425
612-854-7754
www.uscis.gov

Internal Revenue Service (IRS)

www.irs.ustreas.gov

Minnesota Fathers' Adoption Registry (MFAR)

Minnesota Department of Health
717 Delaware Street Southeast
PO Box 9441
Minneapolis, MN 55440-9441
612-676-5466 or 888-345-1726 (phone)
612-676-5466 (fax)
far@health.state.mn.us
www.health.state.mn.us

Minnesota Department of Human Services (MN DHS)

444 Lafayette Road
Saint Paul, MN 55155
651-296-3973
www.dhs.state.mn.us

- Adoption Unit
- Adoption Assistance Program
- Interstate Compact on the Placement of Children (ICPC)

Social Security Administration (SSA)

316 North Robert Street, Room 185
Saint Paul, MN 55101
651-290-0054
www.ssa.gov

Minnesota Department of Health

Attention: Office of the State Registrar
717 Delaware Street Southeast
PO Box 9441
Minneapolis, MN 55440-9441
612-331-5776 (fax)

Most Common Adoption Litigation Claims

- Fraud, misrepresentation
- Wrongful adoption – failure to provide social and medical history information
- Inadequate notice
- Failure to obtain required consent
- Fraud as a ground for revocation of consent more than 10 working days after execution
- Failure to comply with ICWA/MIFPA

Common Mistakes Made by Adoption Practitioners

- **Adoption Assistance** – failure to determine eligibility and to timely apply for adoption assistance (Minn. Stat. § 259.67)
- **Competency**
- **Confidentiality**
- **Conflicts of interest**
- **Conflicts of laws** – failure to apply the law of another state properly
- **Contact agreement** – failure to comply with statutory requirements for a legally enforceable contact agreement (Minn. Stat. § 259.58)
- **Expenses** – failure to comply with statutory restrictions on payment of birth parent expenses (Minn. Stat. § 259.55)
- **Failure to provide counseling to birth parent** (Minn. Stat. § 259.47, subd. 4)
- **ICPC** – failure to comply with the Interstate Compact on the Placement of Children (Minn. Stat. § 260.851)
- **ICWA** – failure to comply with the Indian Child Welfare Act
- **MFAR** – Not searching the Minnesota Father's Adoption Registry prior to finalizing the adoption
- **Rules** – Incorrectly applying the Minnesota Rules of Juvenile Protection instead of the Minnesota Rules of Adoption Procedure to adoption proceedings
- **Unrepresented birth parents** (Minn. Stat. § 259.47, subd. 5)

Financial Considerations

- **Adoption Assistance** (Minn. Stat. § 259A)
- **Health Insurance** (Minn. Stat. § 62L.02, subd. 11; 62A.27; 29 U.S.C. 1000-1461)
- **Post Adoption Service Grants** (Minn. Stat. § 259.85)
- **Effect of Adoption on Inheritance** (Minn. Stat. § 259.59 subd. 1 and subd. 1a)
- **Employer Adoption Assistance Programs**
Many employers offer adoption assistance to their employees. <http://www.adopting.org/employer.html>
- **Medical Assistance** (Minn. Stat. §§ 259.67; 256B.01, et seq.)
- **Non-recurring Expense Reimbursement** (Minn. Stat. § 259.73)
- **Parenting Leave** (Minn. Stat. §§ 181.941; 181.92; 29 USCA § 201 et seq.)
- **Adoption Tax Credit**
www.irs.ustreas.gov
- **Birth Parent Expenses** (Minn. Stat. § 259.55)
 1. Adoptive parents may pay and birth parents may receive only the birth parent expenses allowed by statute.
 2. If the birth parent changes her mind about the adoption, she cannot be required to reimburse a prospective adoptive parent for expenses already paid.
 3. Violation of the birth parent expense limitations is a gross misdemeanor.
- **Is Long-term Foster Care or Adoption a Better Alternative?** (*In re A.K.*, 633 N.W.2d 65; 2001 Minn. App. Lexis 1025)

Minnesota Fathers' Adoption Registry

(Minn. Stat. § 259.52)

- Applies only to adoptions
- Applies only to men who are merely putative fathers and not to presumed fathers, adjudicated fathers or fathers not entitled to notice under Minn. Stat. § 259.49, subd. (1) and (3)
- Must be searched in all adoptions, with the exception of intercountry adoptions

Interstate Adoptions

(Minn. Stat. § 260.851)

- Must consider the laws of both states
- Must comply with the ICPC
- An application (including Form 100A and specific attachments as required by the ICPC Administrator) must be filed with the Interstate Compact on the Placement of Children administration in the sending state.
- ICPC approval must be granted before a child may travel across state lines for the purpose of an adoptive placement. Adoptive parents who are relatives of the child in the third degree or closer are not required to comply with the ICPC.

ICWA Requirements

(25 USC §§ 1901-1963;

Minn. Stat. § 260.751 - 260.835)

1. If a child is an Indian Child, ICWA applies.
2. Federal ICWA and the state MIFPA both apply to the adoption of an Indian Child.
3. If ICWA applies:
 - Consent to adoption must be signed in front of a judge
 - Child's tribe (or tribes) must be notified
 - Consent to adoption is revocable until the adoption is finalized
4. Consequences of ICWA Violation:
 - 2 years or more after adoption is finalized, adoption of an Indian child may not be invalidated upon fraudulent or coercive consent. 25 USC § 1913(d)
 - No time limit for vacating an adoption based upon other ICWA violations
 - ICWA violation was grounds for attorney liability for malpractice. *Doe v. Hughes*, 838 P.2d 804 (Alaska 1992)

Contact Agreements

(Minn. Stat. § 259.58)

- Must be in writing
- Must be signed by parties
- Approved by court as in the best interests of the child
- Entered into before adoption is finalized

Intercountry Adoption

(Minn. Stat. § 259.60)

- The United States has now become a signator to the Hague Convention on Intercountry Adoptions on the placement of children. New regulations now in place under that Convention have dramatically changed the intercountry adoption process and requirements. See USCIS website.
- Readoption results in a Minnesota adoption order
- Validation of an Inter-Country Adoption results in an order recognizing the foreign adoption order
- Intercountry adoptions are an exception to the MFAR search requirement. Minn. Stat. § 259.52 (15)