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A Guide to Relinquishments and Post-Relinquishment Review Hearings

In the last two years, I've started to receive more questions about the relinquishment of a child to a child-placing agency for adoption. The questions focus on procedure. There are specific statutory procedures that must be followed. When those procedures are not followed, the rights of everyone involved are impacted.

What is a relinquishment?

A relinquishment is "the voluntary surrender of a minor to an agency for the purpose of adoption." G.S. 48-1-101(15). Legal and physical custody of the child vests with the child-placing agency to whom the child is relinquished so that the child may be placed for adoption by that agency. G.S. 48-3-705(b). *See* G.S. 48-1-101(9) (definition of "legal custody') and (12) (definition of "physical custody"). An agency is a public or private entity that is licensed or authorized by law to place minors for adoption, including a county department of social services (DSS). G.S. 48-1-101(4). The provisions regarding relinquishments apply to both private agencies and DSS.

Who executes a relinquishment?

A relinquishment is executed by a parent or a guardian of the person with the authority to consent to the minor's adoption through a guardianship order entered under N.C.G.S. Chapter 35A or by another state. G.S. 48-3-701. Note, a guardian of the person appointed in an abuse, neglect, or dependency action does not have the authority to execute a relinquishment. *See* G.S. 48-1-101(8); 7B-600. If the parents are married to one another and live together, they both must execute a relinquishment. G.S. 48-3-701(a). Presumably, if the parents are not married, or if they are married but not living together, one parent may execute a relinquishment. A minor parent has the legal authority to execute a relinquishment. G.S. 48-3-605(b); *see* G.S. 48-3-702(b).

A parent who has been adjudicated incompetent may execute a relinquishment so long as the procedures set forth in G.S. 48-3-602 are followed. Those procedures include the appointment of a guardian ad litem (GAL) to the parent and to the minor (if the minor is not already represented by a GAL) by the court hearing the adoption proceeding. This means a new GAL must be appointed by the court hearing the adoption proceeding even if for example the parent adjudicated incompetent already has a Rule 17 GAL in an underlying juvenile action. The GAL in the adoption matter could be the same person as the Rule 17 GAL or another GAL may be appointed by the court hearing the adoption action. A hearing is required before the GAL for the parent who is adjudicated incompetent can execute a relinquishment.

What is the process?

Timing: When a relinquishment may be executed depends on who is relinquishing and whether the child is an Indian child such that the Indian Child Welfare Act (ICWA) applies.

- A mother may execute a relinquishment any time after the child is born. G.S. 48-3-701(b).
- A man who is or may be the child's father and whose consent to the adoption is required may execute a relinquishment before or after the child is born. *; see* G.S. 48-3-601; 48-3-603 (consent).
- A guardian may execute a relinquishment at any time. G.S. 48-3-701(c).
- A relinquishment by any person for an Indian child may not be executed until 10 days after the child's birth. 25 U.S.C. 1913(a); *see* 25 U.S.C. 1903(4) (definition of "Indian child"). The relinquishment must be executed before a court of competent jurisdiction. 25 U.S.C. 1913(a). In North Carolina, a court of competent jurisdiction includes the office of the clerk of superior court, the superior court, and the district court. G.S. 48-3-605(g); *see* S. 48-3-702(b).

The Procedure: The procedures for a relinquishment are governed by G.S. 48-3-701 through -707. Substantial compliance with the statutes is required. G.S. 48-3-702(a). There are numerous requirements of what must be contained in a relinquishment, which are specified at G.S. 48-3-703.

A relinquishment must be signed and acknowledged under oath by a person with authority to administer oaths or take acknowledgments. G.S. 48-3-702(a). North Carolina law authorizes judges, the clerk of superior court, magistrates, and notaries to administer oaths. *See* G.S. 11-2; 7A-103(2); 7A-291(1), (5); 10B-20(a).

The person who signs and acknowledges the oath made by the relinquishing party must certify in writing to the best of their knowledge or belief that the person executing the relinquishment

- read (or had read to them) and understands the relinquishment,
- voluntarily signed the relinquishment,
- was given an original or copy of the relinquishment,
- was advised that counseling services are available at the agency accepting the relinquishment, and
- was advised of the right to seek legal counsel before executing the relinquishment. Note, there is no right to court-appointed counsel for a parent or guardian who is indigent.

G.S. 48-3-702(b1).

If the parent is represented by an attorney in an underlying abuse, neglect, dependency or termination of parental rights (TPR) action, before any relinquishment may be executed, DSS must give notice to the attorney (or if the attorney is unavailable, to the attorney's law partner or employee) that DSS has made arrangements for the parent to execute a relinquishment at a specific date, time, and location. The notice given must be reasonable and timely. G.S. 7B-909.1.

DSS must also advise the parent of their right to seek the advice of their attorney and have their attorney present before they execute the relinquishment. *Id. See In re Maynard*, 116 N.C. App. 616 (1994).

For minor parents who are executing a relinquishment, the person who signs and acknowledges the oath made by the minor parent may confirm the minor's identity. This can be done through methods of identification that are permitted by G.S. Chapter 10B (Notary Public Act) or other applicable law or an affidavit of a teacher, licensed professional social worker, health service provider, adult relative, or if none of these individuals are available, an adult the minor parent has known for more than 2 years. G.S. 48-3-605(h).

Is the relinquishment the same as a consent?

No, but… A relinquishment is not the same as a consent but has the same effect. A consent to a minor's adoption is given to a specific individual(s); whereas, a relinquishment is given to an agency that agrees to accept the relinquishment. See G.S. 48-3-201(b), (c).

Are there different types of relinquishments?

Yes. There are two types of relinquishments: general and designated (often referred to as a specific relinquishment). A general relinquishment gives the agency full discretion to select the adoptive parent. A designated or specific relinquishment is when the parent or guardian who executes the relinquishment designates the person to whom the child will be adopted, and the agency agrees. G.S. 48-3-704.

Can a relinquishment be revoked, rescinded, or voided?

Yes, but…

Revocation. A relinquishment can be revoked once so long as it is revoked within 7 days after an original or copy of the relinquishment has been delivered to the parent. G.S. 48-3-706(a), (d); *In re Ivey*, 257 N.C. App. 622 (2018). That means the time period runs from the date of delivery to the parent or guardian, which is not necessarily the date the relinquishment was signed. The revocation must be in writing and delivered to the agency or sent by registered or certified mail, return receipt requested or overnight delivery service. If the revocation is made by mail, the determinative date is the date the revocation was placed in the mail or delivered to the overnight delivery service. If the 7th day falls on a weekend or legal holiday when the courts are closed, the revocation period extends to the next business day. G.S. 48-3-706(a).

Although the statute requires the revocation to be in writing, it does not specify the form of writing – a written document, form, email, or text. There is a NC DHHS form for revocation, DSS-1805, but a revocation may occur without the use of that form. Additionally, the form has a space for the

revocation to be made under oath, but an oath is not statutorily required for a revocation.

If the parent or guardian executed a designated relinquishment and the adoption by the designated individual(s) cannot be achieved, the agency must notify the parent or guardian. The parent or guardian has 10 days from when the parent receives the notice to revoke the relinquishment. If the parent does not do so, the designated relinquishment converts to a general relinquishment to the agency. G.S. 48-3-704.

If the child is an "Indian child," the relinquishment may be revoked at any time before the adoption decree is final. 25 U.S.C. 1913(c).

A revocation restores custody to the parent or guardian who had physical custody of the minor and revoked their relinquishment. G.S. 48-3-706(b). The agency no longer has rights or responsibilities to the minor other than to return the child to the revoking parent's or guardian's care. *Id*. A parent or guardian who revoked the relinquishment may seek attorney's fees from a prospective adoptive parent and the agency if the child is not returned and the agency does not assist in returning the child to the parent's or guardian's care. *Id.* This provision implies that a court action is available to that parent or guardian who revokes their relinquishment.

Rescission. After the revocation period has expired, the agency and relinquishing parent or guardian may agree to rescind the relinquishment. G.S. 48-3-707(a)(2). If the child has been placed with a prospective adoptive parent, that prospective adoptive parent must also agree to rescind the relinquishment. G.S. 48-2-707(a)(3).

Voiding the relinquishment: Before the adoption decree is final, a parent or guardian may seek to void their relinquishment by proving by clear and convincing evidence that there was fraud or duress. G.S. 48-3-707(a)(1). The agency who accepted the relinquishment may also seek to void the relinquishment at a post-relinquishment review hearing if the consent or relinquishment of the other parent cannot be obtained and no steps to terminate that parent's rights are being taken. G.S. 7B-909(b1); 48-3-707(a)(4). When an agency motions for a voided relinquishment, the agency must give the relinquishing parent at least 15 days' notice of the hearing so that the parent may be heard. G.S. 7B-909(b1).

What is the effect of a relinquishment?

A relinquishment is effective when it is accepted by the agency to whom the minor is relinquished. *See* G.S. 48-3-702(c). Legal and physical custody of the minor vests with the agency that accepted the relinquishment, and that agency has the authority to place the child for adoption. G.S. 48-3-705(b); *see In re A.L*., 245 N.C. App.55 (2016). There is no court order of custody; however, after the 7-day revocation period expires, the agency may apply ex parte to the clerk of superior court for an order that finds the child has been relinquished to the agency and confirms the agency has legal custody of the child for the purpose of obtaining a certified copy of the child's birth

certificate, Social Security number, or federal or state benefits for the child. G.S. 48-3-705(e). Spoiler Alert: the rights of the non-relinquishing parent are not addressed in statute but are discussed in the NC Supreme Court opinion*, In re E.B.,* 375 N.C. 310 (2020), which will be the subject of my next blog post.

The parent or guardian who relinquishes the child to the agency does not have a right to receive notice of an adoption proceeding or give or withhold their consent to the adoption. G.S. 48-3-703(a)(10); 48-3-705(c); 48-3-603(a)(4). The relinquishing parent or guardian is not a party to any post-relinquishment review hearing. G.S. 7B-909(c).

The relinquishment is not a termination of parental rights, and the child's right to inherit from the parent is not extinguished. Similarly, the parent's obligation to support their child continues. G.S. 48-3-705(d). The parent's rights are terminated when the adoption decree is final. 48-1-106(c).

What is a post-relinquishment review hearing and is it required in all private and DSS agency cases?

Yes. A post-relinquishment review hearing is required when the child has not been adopted within 6 months of the executed relinquishment. G.S. 7B-909. This applies to relinquishments that are accepted by both DSS and private child-placing agencies. *See* G.S. 7B-909(a). In situations where there is not an underlying juvenile court action, the agency must file a petition for post-relinquishment review. G.S. 7B-909(c). If there is an underlying juvenile action, the agency may file a motion in that proceeding. G.S. 7B-909(a). When there is not an underlying juvenile action, the court does not have subject matter jurisdiction to enter any orders unless a petition for a post-relinquishment review hearing is filed. *See In re E.B.,* 375 N.C. 310.

The post-review hearing must be held within 30 days of the petition or motion being filed unless the court directs otherwise. Post-relinquishment review hearings continue at least every six months until a final decree of adoption is entered or the relinquishment is voided. G.S. 7B-909(c). Note that the adoption decree must not be filed with the district court. G.S. 7B-908(e).

The Procedure. The procedures for the hearing are the same as a post-TPR review hearing and are governed by G.S. 7B-908. G.S. 7B-909(c). The purpose of the hearing is to review the agency's plan for the child. G.S. 7B-909(a).

The clerk must give notice at least 15 days but no later than 30 days before the hearing to

- the minor's legal custodian (the agency),
- the person providing care to the minor,
- the minor's GAL (if any),
- the minor if they are 12 years old or older, and
- any other person or agency the court specifies.

G.S. 7B-908(b)(1).

At the first hearing, the court may appoint a GAL for the child and continue the hearing for a time necessary for the GAL to become familiar with the facts. G.S. 7B-908(b)(2). At each hearing, the court may consider any evidence that is relevant, reliable, and necessary to determine the minor's needs and most appropriate disposition. G.S. 7B-908(a). The court must consider and make written findings of relevant factors that address

- the adequacy of the plans and efforts to achieve the plans made by the agency to obtain permanency for the minor,
- whether the minor has been listed for adoptive placement with the NC Kids Adoption and Foster Care Network or other child-specific recruitment program,
- previous efforts made by the agency to find a permanent placement for the minor, and
- whether the minor's current placement is in their best interests.

G.S. 7B-908(c).

A factor is relevant when there is conflicting evidence such that it is an issue before the district court. *In re A.R.A*., 373 N.C. 190 (2019).

The Order. The order must be entered within 30 days of the hearing's completion. G.S. 7B-908(e1). The order must include findings of fact that address the minor's best interests and affirm the agency's permanent plan or designate a new permanent plan as specified in G.S. 7B-906.2. G.S. 7B-908(d). The court may specify efforts the agency must make to achieve the child's permanent plan and if the child is not placed with selected adoptive parents, may order a specific placement for the minor that is in the minor's best interests, after considering recommendations from the agency. G.S. 7B-909(d1). Upon motion of the agency, the court may also void the relinquishment if it finds that the other parent's necessary consent or relinquishment for the child's adoption cannot be obtained and no steps are being taken to terminate that parent's parental rights. G.S. 7B-909(b1).

Conclusion

Relinquishments involve a myriad of laws that apply to both DSS and other child-placing agencies. Compliance with these laws can ensure the legal rights of all involved and the best interests of the child are protected. I hope this post helped to answer your questions. Look for my next blog post that talks about a situation where one parent relinquishes the child, and the other parent seeks to assert their rights to care, custody, and control of their child.