

§ 115-b. Special provisions relating to consents in private-placement adoptions.

1. A duly executed and acknowledged consent to a private-placement adoption shall state that no action or proceeding may be maintained by the consenting parent for the custody of the child to be adopted except as provided in this section. Notwithstanding any other section of law, a consent to adoption executed by a person who is in foster care shall only be executed before a judge of the family court.

2. Judicial consents. (a) A consent to a private placement adoption may be executed or acknowledged before any judge or surrogate in this state having jurisdiction over adoption proceedings. Such consent shall state that it is irrevocable upon such execution or acknowledgment. A consent executed or acknowledged before a court in another state shall satisfy the requirements of this section if it is executed by a resident of the other state before a court of record which has jurisdiction over adoption proceedings in that state, and a certified copy of the transcript of that proceeding, showing compliance with paragraph (b) of this subdivision, is filed as part of the adoption proceeding in this state.

(b) At the time that a parent appears before a judge or surrogate to execute or acknowledge a consent to adoption, the judge or surrogate shall inform such parent of the consequences of such act pursuant to the provisions of this section, including informing such parent of the right to be represented by legal counsel of the parent's own choosing; of the right to obtain supportive counseling and of any rights the parent may have pursuant to section two hundred sixty-two of the family court act, section four hundred seven of the surrogate's court procedure act, or section thirty-five of the judiciary law. The judge or surrogate shall give such parent a copy of such consent upon the execution thereof.

3. Extrajudicial consents. (a) Whenever a consent is not executed or acknowledged before a judge or surrogate pursuant to subdivision two of this section such consent shall become irrevocable forty-five days after the execution of the consent unless written notice of revocation thereof is received by the court in which the adoption proceeding is to be commenced within said forty-five days.

(b) Notwithstanding that such written notice is received within said

forty-five days, the notice of revocation shall be given effect only if the adoptive parents fail to oppose such revocation, as provided in subdivision six of this section, or, if they oppose such revocation and the court as provided in subdivision six of this section has determined that the best interests of the child will be served by giving force and effect to such revocation.

4. (a) In any case where a consent is not executed or acknowledged before a judge or surrogate pursuant to subdivision two of this section, the consent shall state, in conspicuous print of at least eighteen point type:

(i) the name and address of the court in which the adoption proceeding has been or is to be commenced; and

(ii) that the consent may be revoked within forty-five days of the execution of the document and where the consent is not revoked within said forty-five days no proceeding may be maintained by the parent for the return of the custody of the child; and

(iii) that such revocation must be in writing and received by the court where the adoption proceeding is to be commenced within forty-five days of the execution of said consent; and

(iv) that, if the adoptive parents contest the revocation, timely notice of the revocation will not necessarily result in the return of the child to the parent's custody, and that the rights of the parent to custody of the child shall not be superior to those of the adoptive parents but that a hearing will be required before a judge pursuant to the provisions of this section to determine: (1) whether the notice of revocation was timely and properly given; and if necessary, (2) whether the best interests of the child will be served by: (A) returning custody of the child to the parent; or (B) by continuing the adoption proceeding commenced by the adoptive parents; or (C) by disposition other than adoption by the adoptive parents; or (D) by placement of the child with an authorized agency, and if any such determination is made, the court shall make such disposition of the custody of the child as will best serve the interests of the child; and

(v) that the parent has the right to legal representation of the parent's own choosing; the right to obtain supportive counseling and may have the right to have the court appoint an attorney pursuant to section

two hundred sixty-two of the family court act, section four hundred seven of the surrogate's court procedure act, or section thirty-five of the judiciary law.

(b) Such consent shall be executed or acknowledged before a notary public or other officer authorized to take proof of deeds.

(c) A copy of such consent shall be given to such parent upon the execution thereof. The consent shall include the following statement: "I, (name of consenting parent), this ____ day of _____, _____, have received a copy of this consent. (Signature of consenting parent)". Such consenting parent shall so acknowledge the delivery and the date of the delivery in writing on the consent.

(d) The adoptive parent may commence the adoption proceeding in a court of competent jurisdiction other than the court named in the consent provided that such commencement is initiated more than forty-five days after the consent is executed. Such commencement shall not revive, extend or toll the period for revocation of a consent pursuant to this section.

5. For the purposes of commencing an adoption proceeding, the clerk of a court of competent jurisdiction shall accept an adoption petition for filing which is complete on its face and shall not require any supplementary documentation as a condition of filing. Nothing in this section shall compel a court to hear an adoption petition until all documents necessary to the adoption proceeding have been filed to the satisfaction of the court.

6. (a) A parent may revoke his consent to adoption only by giving notice, in writing, of such revocation, no later than forty-five days after the execution of the consent, or twenty days after the receipt of a notice of denial, withdrawal or removal pursuant to paragraph (a) of subdivision four of section seventeen hundred twenty-five of the surrogate's court procedure act, whichever is later, to the court in which the adoption proceeding has been or is to be commenced. Such notice shall set forth the name and address of the court in which the adoption proceeding is to be commenced, the address of the parent and may, in addition, set forth the name and address of the attorney for the parent.

(b) If, within forty-five days of the execution of the consent, the court has received such notice of revocation, the court shall promptly notify the adoptive parents and their attorney, by certified mail, of the receipt by the court of such notice of revocation.

(i) Such notice to the adoptive parents shall set forth that if within fifteen days from the date of such notice the court has not received from the adoptive parents or their attorneys notice, in writing, of their intention to oppose such revocation by the parents, the adoption proceeding will be dismissed and that, in case of such dismissal, the court will send to the parents, the adoptive parents and their respective attorneys the notice of dismissal, as provided in paragraph (c) of this subdivision.

(ii) Such notice to the adoptive parents shall further set forth that if, within fifteen days from the date of such notice, the court shall receive from the adoptive parents notice, in writing, of their intention to oppose such revocation by the parents, the court will, upon notice to the parents, the adoptive parents and their respective attorneys, proceed, as provided in paragraph (d) of this subdivision, to a determination of whether such notice of revocation by the parents shall be given force and effect and to a determination of what disposition shall be made of the custody of the child.

(c) If the adoption proceeding is dismissed pursuant to the provisions of paragraph (b) of this subdivision,

(i) Written notice of such dismissal shall forthwith be sent to the parent, the adoptive parents and their respective attorneys.

(ii) Such notice of dismissal shall set forth the name and address of the parent, the name and address of the attorney for the parent, if any, the name and address of the attorney for the adoptive parents.

(iii) Such notice of dismissal shall further set forth that if the child is not returned to the custody of the parent within ten days from the date of such notice of dismissal, the court will forthwith upon request, in writing, by the parent or by the attorney for the parent, furnish to said parent or attorney so requesting, the names and address of the adoptive parents.

(iv) Such notice of dismissal shall further state that, in the event the custody of the child is not returned to the parent by the adoptive parents upon request therefor, a proceeding to obtain custody may be

instituted by the parent in the Supreme Court or the Family Court.

(d) If, pursuant to the provisions of paragraph (b) of this subdivision, the adoptive parents give timely and proper notice of their intention to oppose the revocation of the parent's consent:

(i) The court shall promptly notify, in writing, the parent, the adoptive parents, their respective attorneys, and the attorney for the child appointed pursuant to section two hundred forty-nine of the family court act or a guardian ad litem appointed pursuant to section four hundred three-a of the surrogate's court procedure act, that the court will, upon the date specified in such notice by the court, or as soon thereafter as the parties may be heard pursuant to this paragraph, hear and determine whether revocation of the consent of the parent was timely and properly given and whether the adoptive parent's notice of intent to oppose such revocation was timely and properly given and if necessary, hear and determine what disposition should be made with respect to the custody of the child.

(ii) The court shall, upon the date specified, take proof as to whether the best interests of the child will be served by returning custody of the child to the parents, or by the adoption of the child by the adoptive parents, or by placement of the child with an authorized agency for foster care with or without authority to consent to the adoption of the child, or by other disposition of the custody of the child.

(iii) If the court determines that the best interests of the child will be served by returning custody of the child to the parent or by placement of the child with an authorized agency or by disposition other than adoption by the adoptive parents, the revocation of consent shall be given force and effect and the court shall make such disposition of the custody of the child as will best serve the interests of the child.

(iv) If the court determines that the best interests of the child will be served by adoption of the child by the adoptive parents, the court shall enter an order denying any force or effect to the notice of revocation of consent and shall dispose of the custody of the child as if no such notice of revocation had been given by the parent.

(v) In such proceeding the parent or parents who consented to such adoption shall have no right to the custody of the child superior to that of the adoptive parents, notwithstanding that the parent or parents

who consented to the adoption are fit, competent and able to duly maintain, support and educate the child. The custody of such child shall be awarded solely on the basis of the best interests of the child, and there shall be no presumption that such interests will be promoted by any particular custodial disposition.

7. Nothing contained in this section shall limit or affect the power and authority of the court in an adoption proceeding, pursuant to the provisions of section one hundred sixteen of this title, to remove the child from the home of the adoptive parents, upon the ground that the welfare of the child requires such action, and thereupon to return the child to a birth parent or place the child with an authorized agency, or, in the case of a surrogate, transfer the child to the family court; nor shall this section bar actions or proceedings brought on the ground of fraud, duress or coercion in the execution or inducement of an adoption consent.

8. Notwithstanding any other provision of this section, a parent having custody of a child whose adoption is sought by his or her spouse need only consent that his or her child be adopted by a named stepfather or stepmother.

9. Any consent to adoption subject to the provisions of this section shall include an adoption information registry birth parent registration consent form, stating whether or not such biological parent or parents whose consent is subject to the provisions of this section, consents to the receipt of identifying information by the child to be adopted upon registration with the adoption information registry established by section forty-one hundred thirty-eight-c of the public health law and upon the adoptee reaching the age of eighteen. If such consent is made, it shall be revocable by either of the biological parents at any time. The revocation of the consent by one of the parents shall revoke the consent of both parents. The failure of a biological parent to complete the consent form shall have no effect on the finality of the consent to adoption. A copy of the form required by this subdivision, shall be forwarded to the state adoption information registry for inclusion in the records maintained by such registry. Any fees authorized to be

charged by the state adoption registry for filing documentation with such registry shall be waived for the form required by this subdivision.