§ 1725. Temporary guardianship by adoptive parent prior to adoption

1. Upon the filing of a petition for temporary guardianship, as described in section one hundred fifteen-c of the domestic relations law, or upon the filing of a petition for adoption when no prior application has been made for an order of temporary guardianship, the court shall determine promptly whether or not to grant temporary guardianship.

2. A petition for temporary guardianship of the person of an infant to be adopted shall contain at least the following:

(a) The first and last name of the infant, the anticipated surname of the infant subsequent to the completion of the adoption, the anticipated residence of the infant and the infant's date of birth;

(b) The full names, addresses and telephone numbers of the petitioners;

(c) Proof of the consent to the adoption of the infant as required by section one hundred fifteen-b of the domestic relations law; and

(d) A verified statement that the infant will be residing with the petitioners and that the petitioners intend to file a petition for adoption of such infant within forty-five days of the execution of the consent to the adoption of the infant.

3. (a) The court shall inquire of the statewide central register of child abuse and maltreatment and the register shall inform the court whether the petitioner is a subject of an indicated report, as such terms are defined in section four hundred twelve of the social services law, filed with such register. When the court is informed that the petitioner is a subject of an indicated report, as such terms are defined in section four hundred twelve of the social services law, filed with the statewide central register of child abuse and maltreatment, the court shall give such information contained therein due consideration in its determination.

(b) The court shall make an order based upon the best interests of the child. Such order shall:

(i) appoint the petitioner temporary guardian of the person of the child; or

(ii) continue the proceeding for further investigation; or

(iii) if there is apparent cause to remove the child from the petitioners, follow the procedure set forth in subdivision two of section one hundred sixteen of the domestic relations law.

(c) Any decree or order of temporary guardianship issued pursuant to this section shall expire no later than nine months following the date of its issuance or entry of a final order of adoption, whichever is sooner. Such decree or order may be extended for periods of up to three months, upon application to the court, for good cause shown.

(d) Any decree or order issued pursuant to this section shall terminate upon the withdrawal or denial of the petition to adopt the infant named therein, unless the court orders the continuation thereof during the pendency of an appeal from an order denying the adoption petition.

4. If the court denies an application for temporary guardianship, or removes a child from the physical custody of the petitioners, or an order of temporary guardianship expires without the entry of a final order of adoption, or if the petition for adoption is withdrawn or denied, the court:

(a) if such withdrawal, denial or removal is within forty-five days of the execution of the consent to adoption by the birth parent, shall promptly inform the birth parent who consented to the adoption of such withdrawal, denial or removal;

(b) if such withdrawal, denial or removal is subsequent to forty-five days of the execution of the consent to adoption by the birth parent, may inform the birth parent who consented to the adoption of such withdrawal, denial or removal where the court determines that such notice will be in the best interests of the child; and

(c) in any case, shall direct the child protective service to conduct an investigation to assess the condition of the infant and to report its findings to the court within the time specified in the order. If the court has reason to believe that a crime was committed, it shall report such belief to the appropriate district attorney.

5. Rules of court shall provide for the monitoring by the court of filing of an adoption petition within forty-five days of the execution

of a consent to adoption, when an application for temporary guardianship has been filed.