

DEPARTMENT OF SOCIAL SERVICES
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June 25, 1982

ALL COUNTY LETTER No. 82-59

TO: ALL PUBLIC AND PRIVATE ADOPTION AGENCIES
ALL DSS ADOPTION DISTRICT OFFICES
ALL COUNTY CLERKS

SUBJECT: OUT-OF-STATE CONSENTS - INDEPENDENT ADOPTIONS

In submitting a court report on an independent adoption, the Department and public adoption agencies with responsibility for independent adoptions should be able to inform the court whether the procedures prescribed in regulations were followed in taking a consent and statement of understanding from each birth parent. If the consent is taken out of state, the Department or agency pursuant to Civil Code Section 226.1(d) must consent to the adoption.

Title 22, California Administrative Code (hereafter referred to as C.A.C.) Section 30719(f) states, "When necessary to take a consent out of state, the consent form and statement of understanding, with instructions, shall be sent by the agency or Department to an accredited adoption agency with the request that they obtain the consent using the prescribed form... Upon verification that there is no accredited agency available to take the consent, the consent form and the statement of understanding with instructions, shall be sent by the agency or Department directly to the consenting parent to be completed and signed before a notary or person authorized to perform notarial acts."

Questions on the validity of the consents have been raised in the following situations where the agency receives out-of-state consent which does not meet the requirements provided by C.A.C. Section 30719(f):

1. Consent taken on a form not prescribed by the Department of Social Services, i.e., a consent form drawn up by an attorney or a notary public in or outside California,
2. A consent form signed without a Statement of Understanding (AD 887),
3. A consent form signed by the parent but not notarized,
4. A consent form signed before the adoption petition was filed in California,
5. Otherwise contrary to procedure in regulations.

In any of the above situations the worker should submit a report to the court, providing all information on: (A) the kind of consent taken out of state, (B) how the consent was obtained, and (C) any lack of a necessary document or information. A judicial determination is needed on the validity of such consent in order to determine whether the child is legally free for adoption.

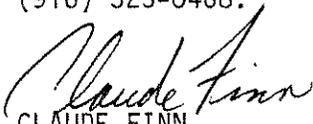
Procedures:

1. If the study has progressed sufficiently for the adoption agency to make it possible to submit a favorable recommendation on the suitability of the petitioners as adoptive parents, then a conditional recommendation should be submitted to the court in order that the adoption may be heard in the court simultaneously with the hearing on the validity of the consent(s) taken out of state.
2. If the study of the petitioners is incomplete and the consent(s) taken out of state is not in conformity with the provisions of C.A.C. Section 30719(f), then a preliminary court report should be filed for an early determination on the validity of the consent. However, it is the responsibility of the attorney for the petitioners to set the hearing date.

Reasons for the Above Procedures:

1. Under Civil Code Section 226.6 if there is serious question about the availability of the consent to adoption, a report is to be filed immediately with the court. By filing the report as soon as possible, the agency or Department will alert the court to the fact that the consent was not taken in accordance with Department regulations and it is necessary for the court to determine whether the consent is valid.
2. The question about whether the child is free for adoption will be appropriately decided by the court.
3. Should there be any occasion to open the case record in the future, the record will have documentation on the action taken by the adoption agency or Department and the court on the validity of the consent.
4. By submitting a conditional court report, as submitted in the situations where the involuntary actions under Civil Code 232 or Civil Code 7017 are pending, the adoption hearing and the hearing on the validity of the consent may be held concurrently. Under this procedure the validity of the consent will not hold up the adoption proceedings when there are no questions about the suitability of the petitioners as parents.

If you have any questions regarding this letter, please contact David Lee at (916) 323-0468.



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cc: CWDA