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The amendments to Oklahoma adoption law enacted this past summer are largely the result of proposed legislation drafted by the Adoption Law Reform Committee in its third and final year of operation. [1] The Adoption Law Reform Committee was created by the Oklahoma Legislature in 1995 and charged with the task of recommending revisions to Oklahoma's adoption statutes. Legislation enacted in 1996 as a result of the Committee's efforts altered the appellate timetables for adoption and termination proceedings, expanded requirements for collection and disclosure of medical and social history, and created tax deductions for adoption-related expenses. [2] In 1997, the Oklahoma Adoption Code was enacted, recodifying and significantly revising Oklahoma's adoption statutes. Jurisdiction and choice of law statutes were added, procedures for obtaining consents and relinquishments were substantially revised, grounds and time periods for revocation were circumscribed, preplacement home studies were required, and rights to notice, counsel, and other procedural requirements were more specifically delineated in the 1997 Code. [3]

In 1998, the Committee's third set of recommendations were enacted by the Oklahoma Legislature in H.B. 2829. These most recent amendments became effective on June 11, 1998. [4]

Compared to the overhaul of our adoption statutes that took place in 1997, the 1998 reforms are relatively modest. Responding to comments and suggestions from the judiciary, the bar, and other adoption professionals, the Committee recommended permitting immediate termination orders to be issued following execution of a permanent relinquishment, expanding jurisdiction in certain situations, revising the choice of law provisions, and codifying procedures regarding temporary orders. The roles of attorneys for children and guardians ad litem were delineated, a new ground for termination of parental rights was created, and many provisions were amended to provide clarification or to correct errors discovered in the intervening months since the 1997 Code was enacted. A more extensive criminal background check is now required, and adoptive placement with certain felons is prohibited or severely restricted. Some restrictions on out-of-state facilitators' involvement in Oklahoma adoptions were imposed, and new regulations concerning adoption advertising were created. This article reviews these and other changes enacted this past year, and discusses potential benefits and pitfalls the adoption practitioner may encounter as a result of this new legislation.

I. PERMANENT RELINQUISHMENTS AND CONSENTS

The first hurdle in any voluntary adoption is obtaining the permanent relinquishments or consents. The 1998 legislation contains two significant amendments regarding this stage of the proceedings.

First, amendments to 10 O.S. §§ 7503-2.3 and 7503-2.4 now clarify where, and in compliance with which law, a permanent relinquishment or consent may be executed. If the person signing a permanent relinquishment or consent resides in Oklahoma, the relinquishment or consent may be signed before any judge of any district court in Oklahoma. [5] If the person executing a relinquishment or consent resides outside of Oklahoma, the relinquishment or consent may be executed either in the presence of any judge of any district court in Oklahoma, or before any judge of a court having probate or adoption jurisdiction in the state or country of the person's residence. If the permanent relinquishment or consent is executed in Oklahoma, its form and the manner of execution must comply with all

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of the requirements of the Oklahoma Adoption Code. If the relinquishment or consent is executed by a non-Oklahoma resident outside of Oklahoma, the form and the manner of execution may be in compliance with the requirements of the Oklahoma Adoption Code, or, alternatively, in compliance with the laws of the state or country in which it is executed. [6]

The other major change relates to permanent relinquishments that are executed pursuant to the Oklahoma Adoption Code. Following execution, the judge before whom the permanent relinquishment is executed now may enter an order immediately terminating the parental rights of the parent who signed the relinquishment. [7] Under prior law the parental rights of such a parent normally would not have been terminated until the decree of adoption was entered at the final hearing.

This change was first suggested by attorneys and agencies who occasionally place Oklahoma infants with out-of-state adoptive parents. They reported that Interstate Compact on the Placement of Children (ICPC) officials and judges from other states often prefer that a termination of parental rights order be entered in Oklahoma, if the relinquishment was signed here. From a policy standpoint, no strong arguments preclude accommodating their requests. Since the basis for termination, the relinquishment itself, occurs in the presence of an Oklahoma judge, any issues regarding the circumstances of that relinquishment can best be addressed in the state in which the execution takes place, and particularly by the judge before whom the relinquishment is signed. The child's legal entitlement to support remains unaffected, because in Oklahoma the duty of parental support is extended after termination of parental rights until such time as a final decree of adoption is entered. [8] In fact, the termination order must contain a provision specifying that it does not terminate the duty of parental support. [9] A birth parent's right of revocation also remains unaffected. Section 7503-2.7 of the Adoption Code, [10] which sets forth the limited grounds for revocation, was amended to provide that an order terminating parental rights based upon the execution of a permanent relinquishment may be vacated under the same circumstances in which the relinquishment itself could be set aside. Although enabling Oklahoma judges to issue termination orders immediately following execution of a permanent relinquishment is intended to respond to the concerns of out-of-state officials, there is no restriction that such termination orders be entered only in out-of-state placements. Requests for immediate termination orders may therefore become routine in domestic placements as well.

Some minor amendments affecting consents and relinquishments were also enacted. When the consent of the executive head of a licensed child-placing agency is required for the adoption of a child in the agency's custody, such consent now may be given in the presence of any notary public, as well as before a judge of the court in which the adoption is to be completed. [11] When any relinquishment or consent is executed by a parent before a judge, the explanation to the parent regarding the effect of the execution may be made in the presence of the judge, and is no longer required to be made by the judge personally. [12]

In addition, consent and permanent relinquishment forms must now specify that execution does not terminate any duty to support the mother of the minor, as well as the child being placed for adoption, until the adoption is completed. [13] This amendment was not intended to create any new duty to support a mother, but merely to provide notice that any duty to support the mother that existed under prior law is not extinguished by execution of the consent or relinquishment. In many situations the provision would be inapplicable, most obviously when the executing parent is the mother herself! [14]

The procedure and form for execution of an extrajudicial consent by a putative father, and the effect of an extrajudicial consent, remain unchanged. Although the 1998 amendments repealed former Subsection D of 10 O.S. §7503-2.6, which addressed certain effects of extrajudicial consents, this repeal was intended merely to eliminate the potential for confusion that the former Subsection D created. [15] A properly executed extrajudicial consent, which has not been revoked within 15 days of its execution, has the same effect as a consent properly executed by a putative father in the presence of a judge. [16] Like consents executed before a judge, the extrajudicial consent achieves the consequences set forth in the repealed Subsection by virtue of other sections of the Code. [17]

The method by which a putative father may be served with a Notice of Plan for Adoption pursuant to 10 O.S. § 7503-3.1 has been clarified slightly. In response to suggestions from the bar, § 7503-1.1 (A) now specifically provides that if the Notice of Plan for Adoption is served upon the putative father by in-hand service, service must be made by an individual licensed to serve process in civil cases. Moreover, this Subsection now specifically provides that a putative father may be properly served with a Notice of Plan for Adoption both within and outside of the State of Oklahoma. [18]

II. TEMPORARY ORDERS

Although temporary orders awarding custody to adoption facilitators and prospective adoptive parents have frequently been issued by Oklahoma courts in a variety of circumstances, prior to the 1998 amendments to the Adoption Code the issuance of these orders was not regulated by statute. Hence, the circumstances under which such orders were issued varied tremendously from county to county. A new statute, 10 O.S. § 7503-4.1, now sets forth the circumstances under which such temporary orders may be issued.

Custody may be awarded under a temporary order only to a child-placing agency licensed in Oklahoma, an attorney licensed in Oklahoma, or a prospective adoptive parent whose favorable preplacement home study has been reviewed by the court prior to issuing the order. These provisions are intended to provide some protection against an award of legal custody to an unsuitable custodian, particularly since in a voluntary placement there typically is no adversary at this stage of the adoption process who might bring a problem to the court's attention.

A temporary order of custody may be issued at any time after a child's birth, and may be issued either before or after a consent or relinquishment has been executed by the mother of an out-of-wedlock child or both birth parents of a child born in wedlock. A temporary order of custody may be issued prior to

execution of these consents or relinquishments, however, only if the mother of the out-of-wedlock child, or both parents of the child who will be born in wedlock have appeared before a district court judge *prior to the child's birth* and requested that the court issue a temporary order of custody after the birth of the child.

Continuation of the practice of issuing temporary orders of custody even before a parent has executed a consent or relinquishment was a subject of some debate. Although this has been a common practice in some counties, many of the reasons for issuance of these orders are obsolete. Some hospitals have in the past required a temporary order of custody prior to releasing an infant to a prospective adoptive parent, but hospitals and physicians are now forbidden from requiring a temporary order before discharging a newborn by a 1998 amendment to 10 O.S. § 7509-1.1 (B). Insurance coverage is no longer a rationale, because insurance companies are now required by 10 O.S. § 6059 to cover adopted children from the date of placement, which is defined as the assumption by the insured of the physical custody of the child and financial responsibility for the care of the child. [19] A temporary order is therefore unnecessary to obtain coverage for the child. Nevertheless, there may be instances in which a child is in need of immediate medical care, and issuance of a temporary order will enable the prospective adoptive parent, agency, or attorney to obtain the needed treatment expeditiously. Other exigent circumstances may also require that prospective adoptive parents or adoption facilitators be able to establish that a child is legally in their care.

A temporary order of custody issued pursuant to the Adoption Code must expire by its own terms no later than 90 days after it has been issued. The court may grant an extension of the temporary order, upon application, only if:

> (1) the mother of a child born out of wedlock, or each parent of a child born in wedlock, have executed a consent or permanent relinquishment prior to the application for the extension, and
>
> (2) the court has jurisdiction to adjudicate termination of parental rights or adoption proceedings pursuant to 10 O.S. § 7502-1.1.

Because the reason for continuing the practice of pre-consent temporary orders of custody is short-term i.e., to facilitate emergency medical care until the mother or both parents can appear before a judge to execute consents or relinquishments, this goal can be accomplished within 90 days. These temporary orders are not intended to give prospective adoptive parents an advantage in a dispute with a birth mother of an out-of-wedlock child, or birth parents of a child born in wedlock, who have never executed a consent or relinquishment. The first limitation upon granting an extension thus ensures that these orders are not used to create long term custody arrangements or to facilitate abduction by a prospective adoptive parent, when a birth parent whose consent is required refuses to execute one. This limitation will not apply in deprived child proceedings, of course, even though a temporary order of custody is granted in such proceedings to DHS, which subsequently could place the child for adoption, or to foster parents who could subsequently adopt the child following termination of parental rights, because custody orders issued in deprived child actions will be issued pursuant to the Children's Code and not under the Adoption Code. Similarly, when a legal guardian seeks to adopt, a temporary order of custody would be unnecessary because the guardian would already have custody. Thus, the need for temporary orders of custody should arise under the Adoption Code only in placements that are, at least initially, voluntary, and are not intended to extend a placement a nonconsenting birth parent no longer desires.

In addition to the 90 day limitation, birth parents are further protected by two additional provisions of 10 O.S. § 7503-4.1. Subsection (A)(2) specifically provides that a prebirth request by a birth parent for an order of temporary custody is not to be construed as a consent to adoption or as a permanent relinquishment. Moreover, until the mother of an out-of-wedlock child or both parents of a child born in wedlock execute a consent or permanent relinquishment, Subsection (A)(3) mandates that a temporary order be set aside immediately and that the child be returned upon the application of the unmarried mother or either of the parents of a child born in wedlock.

Once the consent or relinquishment of the mother of an out-of-wedlock child, or both parents of the child born in wedlock, has been executed, the court upon application may extend the temporary order of custody, as long as the Oklahoma court has jurisdiction to adjudicate a termination of parental rights or an adoption proceeding pursuant to 10 O.S. § 7502-1.1. The temporary order provisions are not intended to create or extend jurisdiction that Oklahoma does not otherwise have under Section 7502-1.1. If a child is placed out-of-state and the Oklahoma courts no longer have jurisdiction, the initial 90 day period gives the prospective adoptive parents sufficient time to return to their home state, file an adoption proceeding, and seek an order of temporary custody in that proceeding from a court with proper jurisdiction.

It bears emphasis that 10 O.S. § 7503-4.1 sets the parameters within which temporary orders *may* be issued. It does *not* require that a temporary order of custody be issued whenever a child is placed with a foster family by an agency or attorney facilitating an adoption, or even in the physical custody of a prospective adoptive parent. The transfer of a child to the care of a prospective adoptive parent prior to finalization of the adoption, and even prior to execution of the required consents, is commonplace in Oklahoma practice, and may continue without a temporary order as long as the preplacement home study requirements of 10 O.S. § 7505-5.1 are satisfied.

III. ELIGIBILITY TO ADOPT

In order to create parity and ensure that adoptive parents had reached some level of maturity, the requirements for eligibility to adopt were amended to require that when a husband and wife jointly petition to adopt, both spouses must be at least 21 years of age. [20] An exception to this requirement is created if one of the spouses is a parent or relative of the child who is to be adopted. [21]

Recent federal legislation [22] also motivated the Oklahoma Legislature to reexamine the issue of whether a criminal record of the prospective adoptive parent or other family members should preclude

an adoption. The Legislature elected to impose its own restrictions, rather than adopt the suggested federal restrictions verbatim, [23] but nevertheless addressed many of the same concerns.

Oklahoma law now prohibits the placement of a child for adoption with:

(1) an individual who is subject to the Oklahoma Sex Offenders Registration Act, or with someone who is married to or living with such an individual; or with

(2) a prospective adoptive parent if any petitioner, or any other person residing in the home, has been convicted of the following felonies:

(A) child abuse or neglect;

(B) any crime in which a child is the victim, which includes, but is not limited to, child pornography;

(C) any crime involving violence, which includes, but is not limited to, rape, sexual assault, and homicide. Convictions for physical assault and battery that occurred prior to the five year period preceding the filing of the adoption petition are specifically excluded from this category.

In addition, severe restrictions are imposed upon the placement of a child with a prospective adoptive parent if any petitioner or any other person residing in the home of the petitioner has received a felony conviction for physical assault, domestic abuse, battery, or a drug-related offense, within five years prior to filing the adoption action. Such petitioners may be approved for placement if the professional conducting the home study recommends placement after considering "the nature and seriousness of the crime in relation to the adoption, the time elapsed since the commission of the crime, the circumstances under which the crime was committed, the degree of rehabilitation, and the number of crimes committed by the person involved, and a showing by clear and convincing evidence that the child will not be at risk by such placement," and the court accepts this evaluation. [24]

IV. JURISDICTION

The 1997 Adoption Code for the first time codified the bases upon which an Oklahoma court may exercise subject matter jurisdiction over adoption proceedings and over termination of parental rights proceedings initiated under the Adoption Code. [25] The five bases for jurisdiction are:

1. Oklahoma is the home state of the child, defined as the state where the child lived with a parent, guardian, prospective adoptive parent, or another person acting as a parent for the six months immediately preceding the commencement of the proceeding; or for a child under six months of age, the state where the child lived with any of those individuals from soon after birth, if substantial evidence concerning the child's present or future care is available in the state;

2. the prospective adoptive parent lived in Oklahoma for the six months immediately preceding the commencement of the proceeding, if there is substantial evidence in the state concerning the child's present or future care;

3. the child was placed by an agency located in Oklahoma, if (a) the child and his parents, or the child and a prospective adoptive parent have a significant connection with the state, and (b) substantial evidence is located in Oklahoma concerning the child's present and future care;

4. the child and the prospective adoptive parent are physically present in Oklahoma, and the child has been abandoned or an emergency necessitates the protection of the child from threatened or actual mistreatment, abuse, or neglect; or

5. no other state has jurisdiction under one of the above four bases, or another state with jurisdiction has declined to exercise it for the reason that Oklahoma is the more appropriate forum to hear the adoption proceeding, and it is in the best interest of the child for Oklahoma to assume jurisdiction. [26]

Derived from the 1994 Uniform Adoption Act [1994 UAA] approved by the National Conference of Commissioners on Uniform State Laws [NCCUSL], these bases clearly favor jurisdiction in the state of the prospective adoptive parent's residence, when there is no pending or prior adoption or custody proceeding in another state. The 1994 UAA was used as a model for Oklahoma's jurisdictional statute to promote interstate uniformity in jurisdictional standards. In addition, the Adoption Law Reform Committee agreed with the underlying premise of the UAA, which is to adjudicate adoptions in the state with the most substantial evidence about the prospective adoptive family. [27] These original five bases therefore remain unchanged by the 1998 amendments to the Adoption Code. However, in response to numerous comments by the judiciary and the bar requesting that jurisdiction be broadened in certain circumstances, the 1998 amendments extend the subject matter jurisdiction of the Oklahoma courts beyond the limitations established by these five bases in three specific instances.

First, Oklahoma courts are now permitted to adjudicate a proceeding to terminate the parental rights of a putative father, initiated prior to the commencement of an adoption proceeding pursuant to 10 O.S. § 7505-2.1, even when none of the above five bases are satisfied, if two requirements are met:

(1) the child is born in Oklahoma; and

(2) the birth mother has executed her consent or permanent relinquishment before a judge in Oklahoma. [28]

This new provision will be relevant, of course, only to out-of-state placements. When the prospective adoptive parents reside in Oklahoma, regardless of whether the child is born inside or outside of Oklahoma, it would be unnecessary to utilize this provision because Oklahoma courts will already have jurisdiction to hear both termination and adoption proceedings under one or more of the original five bases listed above. Under most circumstances, however, the original five bases do not create jurisdiction in Oklahoma to hear a preadoption termination proceeding under 10 O.S. § 7505-2.1 when an Oklahoma child is placed out of state.

This jurisdictional gap thwarted requests from out-of-state court and ICPC officials that Oklahoma courts conduct the proceedings terminating the rights of putative fathers of Oklahoma infants. In addition, Oklahoma judges, agencies, and attorneys favored an early determination

concerning an infant's eligibility for adoption when the infant is to be placed out of state. It was the concerns of these groups that motivated the extension of jurisdiction to preadoption termination proceedings.

The requirements that the child be born in Oklahoma and that the birth mother execute her consent or relinquishment within the state ensure that Oklahoma's contacts with the termination proceeding are such that application of its law is neither arbitrary nor fundamentally unfair. [29] These requirements also avert the potential for Oklahoma courts becoming an adoption mill for out-of-state adopters with little connection to Oklahoma who wish to invoke favorable law, a possibility the Committee strongly wished to avoid. The fact that the child and the birth mother both have connections to Oklahoma also creates a high probability that Oklahoma will be a more convenient forum for the putative father than the courts of the state of the prospective adoptive parent's residence. In addition, these requirements create a greater likelihood that more evidence regarding the grounds for termination will exist in Oklahoma.

Moreover, the goal of the original five bases, i.e., to favor adoption jurisdiction in the state with the most substantial evidence about the prospective adoptive family, will not be undermined by this extension.. Oklahoma courts that are permitted to hear preadoption termination proceedings under this new provision, when none of the original five bases for jurisdiction are present, are specifically prohibited from exercising jurisdiction over the adoption proceeding itself. [30] In fact, the 1998 amendments require that any termination order issued under this provision must contain a specific finding that the Oklahoma court is declining jurisdiction over the adoption proceeding, and deferring jurisdiction over the adoption to the appropriate state with jurisdiction under the original five bases. [31] Because the 1994 UAA created no mechanism for bifurcation of the termination and adoption proceedings into separate actions, it could not accommodate the availability of different types of evidence in different states under its jurisdictional scheme. The 1998 amendment permitting the preadoption termination proceeding to be conducted separately in Oklahoma facilitates maximum availability of evidence in both proceedings, while preserving the jurisdictional scheme intended by the 1994 UAA for the adoption proceedings themselves.

The second extension permitted by the 1998 amendments gives Oklahoma courts the jurisdictional authority to issue a pre-finalization order terminating the rights of a parent who has executed a permanent relinquishment in an Oklahoma court, as discussed above in Section I, even if jurisdiction to terminate parental rights would not otherwise be available under the original five bases. [32] As with the first extension, if Oklahoma courts do not have jurisdiction to hear the adoption proceeding under one of the original five bases, the termination order must include a finding that the Oklahoma court is declining jurisdiction over the adoption proceeding and deferring jurisdiction over the adoption to a state with jurisdiction under the original five bases. [33]

The third extension permits an Oklahoma court to issue an order, as described in Section II above, awarding temporary custody of a child born in Oklahoma to an out-of-state prospective adoptive parent, even when Oklahoma does not have jurisdiction to hear the adoption proceeding under one of the five original bases. [34] Again, if the Oklahoma court does not have jurisdiction under one of these bases, the temporary order must specifically decline jurisdiction over the adoption and defer to a more appropriate state. [35]

Several other changes were made to the jurisdictional statute, 10 O.S. § 7502-1.1, to clarify the provisions regarding simultaneous proceedings and the provisions restricting the exercise of adoption jurisdiction when another state has previously exercised jurisdiction over a custody or adoption proceeding regarding the same child. Both provisions were modified to specify that their restrictions applied to proceedings to terminate parental rights brought pursuant to Sections 7505-2.1 or 7505-4.1 of the Adoption Code, as well as to adoption proceedings. [36] References to these termination proceedings were inadvertently omitted in 1997 when this section was originally drafted. [37] In describing the proceedings pending in another state to which an Oklahoma court must defer, the Uniform Child Custody Jurisdiction and Enforcement Act is now included in the list of laws with which the exercise of jurisdiction in the pending action may be in conformity, in order to receive deference. [38] Finally, a similar amendment was made to the findings an Oklahoma court must make in order to exercise jurisdiction under the Adoption Code, when the child has been the subject of a custody or visitation order issued by a court of another state. Before an Oklahoma court may exercise jurisdiction, it must now find that the court that issued the original decree or order no longer has jurisdiction under " its own law," rather than "the Uniform Child Custody Jurisdiction Act." [39] These last two amendments reflect the fact that other states may replace their UCCJA with the UCCJEA, [40] as Oklahoma has done. [41]

V. CHOICE OF LAW

The fundamental rule regarding choice of law remains unchanged. Oklahoma law will be applied to adoption proceedings and termination of parental rights proceedings initiated under the Adoption Code in Oklahoma courts. [42] A statutory exception to this basic rule, however, relating to the grounds for termination and adoption without consent, was repealed in 1998, and two new exceptions regarding the validity and revocation of consents and permanent relinquishments were created.

In 1997, 10 O.S. § 7502-1.3 (B) provided that, when reviewing a petition or application to terminate parental rights or to permit adoption without consent, an Oklahoma court should apply the law of the state of residence of the mother at the time of the occurrence of the acts or omissions alleged in support of the application or petition. This provision was defective, in that it was drafted by the Committee more broadly than the Committee had intended, so that it applied to stepparent as well as infant adoptions. [43] Rather than revise the provision, however, the Committee ultimately recommended its repeal. The difficulty of determining the residence of some birth mothers during the relevant time period caused concern. In particular, attorneys representing prospective adoptive parents in Oklahoma with whom infants born out of state have been placed suggested that they often do not have direct access to the birth mothers to obtain the necessary information.

Absent from the 1997 Code were clear directives concerning the law that must be applied to determine the validity of consents and relinquishments, and the circumstances under which they can be revoked. Under the new amendments, a consent, extrajudicial consent, or permanent relinquishment must be recognized as valid and given effect by Oklahoma courts if:

(1) it is executed before an appropriate official and in the manner prescribed by the Oklahoma Adoption Code, regardless of whether it is executed within or outside of Oklahoma; [44] or

(2) it is executed before an appropriate official and in the manner prescribed by the law of the state or country in which it is executed. [45]

The preaddressed form that accompanies a Notice of Plan for Adoption is not a consent or relinquishment. The consequences of any response on that form, or of a failure to return the form, are therefore determined by Oklahoma law, [46] regardless of whether service of the Notice of Plan for Adoption is made upon the putative father within or outside of the state of Oklahoma.

The circumstances under which a consent, an extrajudicial consent, or a permanent relinquishment must be revoked are governed by 10 O.S. § 7503-2.7 of the Oklahoma Adoption Code if:

(1) the consent or permanent relinquishment was executed in Oklahoma, or

(2) the consent or permanent relinquishment was executed outside of Oklahoma in full compliance with the requirements of the Oklahoma Adoption Code. [47]

If the consent, extrajudicial consent, or permanent relinquishment is executed outside of Oklahoma before an official or in a manner that does not comply with the requirements of the Oklahoma Adoption Code, an Oklahoma court must apply the law of the state in which the document was executed to determine if it can be revoked.

This distinction protects birth parents who may execute consent in a state in which revocation is permitted under broader circumstances or for a longer period of time than Oklahoma revocation law permits. If the parent has signed a consent, an extrajudicial consent, or a relinquishment that conforms to the Oklahoma Adoption Code, the limited circumstances in which revocation is allowed will be set forth in the consent, extrajudicial consent, or relinquishment form itself. [48] If the document was executed before a judge in accordance with Oklahoma law, further protection is afforded by the fact that the judge must certify that Oklahoma law regarding revocation has been explained to the parent by or in the presence of the judge. [49] When the law of the state of execution is followed regarding the official before whom the document may be executed or the manner in which it must be executed, however, the likelihood is stronger that the parent will have expectations regarding the right to revoke based upon the law of the state of execution, and should therefore be bound by that law regarding the right to revoke.

VI. ROLE OF ATTORNEY FOR CHILD AND GAL

In any proceeding brought pursuant to the Adoption Code, the court is directed to appoint an attorney for the child in any contested proceeding, and may appoint an attorney in an uncontested proceeding. [50] In addition, the court may appoint a separate guardian ad litem(GAL) in a contested proceeding, and must appoint a guardian ad litem upon request. The category of those who may make this request has been broadened by the 1998 amendments to now include any party, the child, the child's attorney, or any individual or agency with physical or legal custody of the child. [51]

The 1998 amendments clarify the roles and responsibilities of the child's attorney and the GAL, and were developed in conjunction with similar amendments to 10 O.S. § 7003-3.7 of the Children's Code, which were under consideration by the Legislature concurrently. Under these amendments, the child's attorney is to represent the child as a client. If the child is old enough to express preferences concerning the outcome of the proceeding, the attorney's role is to represent the child in attaining the child's goals, and not to advocate the attorney's own independent assessment of the child's best interest. To accomplish this task, the attorney must investigate as necessary, interview witnesses, examine and cross-examine witnesses at hearings and trial, make recommendations to the court as the child's attorney, and participate in the proceedings in any other way "to the degree appropriate for adequately representing the child." [52] The new amendments specifically provide that the child's attorney must be given access to all relevant reports, including any reports of examinations of the child's parents or custodians prepared by the guardian ad litem. The child's attorney is allowed a reasonable fee for this representation, upon approval of the court. [53]

The guardian ad litem, by contrast, is to objectively advocate for the outcome that is in the best interest of the child, regardless of whether that outcome is desired by the child. Although the guardian is directed to consider the child's wishes, as appropriate, the GAL's task is to independently assess the child's best interests as an officer of the court. [54] To accomplish this task, the GAL must investigate all matters that concern the child's best interests; review relevant documents, reports, and other information; meet with or observe the child; interview the parents, caregivers, and others with relevant knowledge; request appropriate community and other services when necessary; and report to the court regarding his or her findings and recommendations, if any, and the supporting facts for those conclusions. [55]

To protect the privacy interests of all of those involved, the GAL is directed by statute to maintain the confidentiality of information related to the case. [56] As a further protection, the GAL is to be given access to the court file and all records and reports, including reports of examinations of the child's parents or custodians, as specified by the court, subject to any protective orders regarding identifying information that the court chooses to impose. [57]

VII. THE ADOPTION PROCESS

A. Preadoption Termination Proceedings

The Adoption Code continued the practice of permitting a petition to terminate the rights of a putative father to be filed in a separate proceeding prior to the initiation of an adoption action. [58] Such proceedings may only be filed by an agency, attorney, or prospective adoptive parent to whom a mother has permanently relinquished a child born out of wedlock.

During the past year, some counties were requiring that an affidavit of expenses be attached to the petition initiating these termination proceedings. 10 O.S. § 7502-2.1 has been amended to clarify that affidavits of expenses need not be filed in these termination proceedings. [59]

The purpose of an affidavit of expenses, required by 10 O.S. § 7505-3.2 to be filed prior to issuance of a final decree of adoption, is to permit the court hearing the adoption proceeding to monitor the costs expended by the adoptive family and ensure that all payments are proper. At the time of a preadoption termination proceeding, the final selection of prospective adoptive parents may not have been made by an agency. Even when placement has occurred, however, the imposition of a requirement that an affidavit of expenses be filed twice, once in the termination proceeding and once in the adoption proceeding, serves little purpose and adds to the cost of the adoption. [60]

B. Petition for Adoption

In addition to the information previously required under the Adoption Code, a petition for adoption must now also specify:

(1) (A) that a copy of the preplacement home study is attached to or filed with the petition; or, if the home study has not been completed,

(B) that the court waived the requirement for a preplacement home study pursuant to 10 O.S. § 7505-5.1(B), and that a copy of the waiver is attached; or

(C) why the preplacement home study was not required by 10 O.S. § 7505-5.1(C); or

(D) that the child is not yet in the physical custody of the petitioner; and

(2) whether any other home study or professional custody evaluation has been conducted regarding either of the petitioners. If so, a copy of each such study or evaluation must be attached to the petition if it is reasonably available. [61]

The purpose of the first allegation is to facilitate enforcement of the preplacement home study requirement, while at the same time providing the court with a copy of the preplacement home study as early as possible when it has been completed. The second requirement imposes a duty to inform the court of, and provide if possible, all previous home studies and custody evaluations that have been performed regarding the prospective adoptive parents. While this is not a foolproof safeguard, it at least imposes an obligation of disclosure. The goal is to inhibit prospective adoptive parents' ability to home-study shop, in the event that one evaluator finds them unsuitable for placement, without at least advising the court as to the existence and contents of the negative evaluation. It should be noted that previous evaluations include not only home studies performed for this adoption, but home studies performed for any adoption, attempted or completed, by either of the prospective adoptive parents, as well as evaluations performed in connection with previous custody litigation of any type regarding the child before the court or any other child.

C. Termination of Parental Rights and AWOC

Under the Adoption Code, the rights of a putative father may be terminated in a proceeding filed before commencement of an adoption action, under 10 O.S. § 7505-2.1, or following hearing on an application to terminate parental rights filed in a pending adoption action, [62] if one or more of the grounds set forth in 10 O.S. § 7505-4.2 is shown by clear and convincing evidence and the court finds termination is in the best interests of the child. [63] Upon such a showing of any of these same grounds and a best interests determination, a court may also grant an application for adoption without the consent of a parent, filed in a pending adoption action. Although no major changes have been made regarding these procedures, the 1998 amendments attempted to clarify some issues and fill some gaps left by the 1997 Code.

1. Notification of Putative Fathers

Under the Adoption Code, regardless of whether a child is born in or out of wedlock, every parent has a right to notice of a hearing on a petition or application for termination of parental rights or for adoption without consent, unless the parent's rights have been previously terminated. [64] 10 O.S. § 7506-1.1, which addresses the role of the DHS Paternity Registry in relation to adoptions, has been amended to better insure that this requirement is fulfilled.

A putative father who registers with the paternity registry is permitted to designate another person as his agent to receive notice of an adoption, if the putative father does not have an address of his own. Previously, Section 7506-1.1 provided that if the agent could not be served at the address provided by the putative father, no further notice to the agent or to the putative father was necessary. This provision has been replaced with the requirement that if the agent cannot be served at the address provided, an effort must be made to serve the putative father. If the whereabouts of the putative father are unknown, then the putative father must be served by publication. [65]

The Adoption Code also requires that if a birth mother fails to disclose the identity or location of a possible father, she must be advised of certain consequences. In addition to informing her about the importance of obtaining the father's medical and social history, 10 O.S. § 7505-4.3 formerly required that she be advised that the adoption could be delayed or challenged if the father was not notified. Because the consequences of failure to disclose a possible father might vary with the circumstances, this provision caused some concern that the provision itself might be interpreted to create an independent basis to challenge an adoption that might otherwise not exist under the circumstances of the particular case. Therefore, this provision was deleted, and instead the Section now provides that the birth mother must be advised that "any false statement that she might make under oath or affirmation at a hearing or trial before the court regarding her knowledge of the identity or

whereabouts of a possible father, if she knows or believes that the statement is not true or intends thereby to obstruct the ascertainment of the truth, could constitute grounds for a criminal prosecution of perjury." [66]

2. Grounds

A new ground was added to 10 O.S. § 7505-4.2, which addresses the plight of children voluntarily placed by a parent in a licensed child care institution or in the care of a licensed child-placing agency for lengthy periods, whose parents fail to comply with the written plan of care. Formerly, these children were often left in legal limbo. Even though the parent was not taking the steps to reunite the family to which the parent had agreed, the child could not be adjudicated deprived because the child was well cared for by the institution or agency. Under the new amendment, the court may now permit the child to be adopted without the consent of a parent [67] who willfully fails to substantially comply with a written plan of care for twelve consecutive months out of the fourteen month period immediately preceding the date upon which the petition for adoption was filed. In order for this provision to apply, the child must have been placed by that parent, the child care institution or child-placing agency must be licensed, the child must have remained in out-of-home care for eighteen months or more after placement, the plan must be signed by the parent before the fourteen month period prior to commencement of the adoption begins, and the plan must contain a notice to the parent that failure to substantially comply constitutes grounds for adoption without consent. Willful failure to comply with a written plan can only serve as a ground for adoption without consent if the written plan is reasonable, a question of fact to be determined by the court. [68]

3. No jury trial

10 O.S. §§ 7505-2.1(H) and 7505-4.1(G) now specify that there is no right of jury trial in proceedings for termination of the rights of a putative father initiated either prior to an adoption proceeding or while an adoption is pending, nor is there a right to jury trial in a hearing on an application for adoption without consent. [69] The Committee's recommendation to the Legislature to deny a right to jury trial in these proceedings was motivated by concern over the increased expense and delay a jury trial might involve.

4. Separate Hearings

A new section has been added to 10 O.S. § 7505-4.1 of the Adoption Code requiring that the hearing on an application to terminate the rights of a putative father or an application to permit adoption without consent must be held separately from the hearing on the application for the final decree of adoption. This requirement is not new. Previously Oklahoma courts had imposed such a requirement based upon interpretations of the former Oklahoma Adoption Act, [70] which has now been repealed, or a similar provisions of the Oklahoma Children's Code. [71] Separation of these proceedings enables the court to consider the issue of whether grounds for termination or adoption without consent have been shown by clear and convincing evidence before issues related to the qualifications of the adoptive parents are presented. Separation of these hearings also affords counsel more time to prepare for the final hearing, and in some cases may circumvent the expense of that preparation if the resolution of the first hearing precludes an adoption.

Nevertheless, because there may be circumstances in which it would be appropriate to conduct a final hearing immediately following the AWOC or termination hearing, the statute permits the court, in its discretion and for good cause shown, to hear an application for a final decree as early as the same day. For example, when a parent makes no appearance to contest adoption without consent or termination, and the prospective adoptive couple has a particular need for immediate finalization, such as an imminent residential move out of state, a hearing on the same day may be warranted.

5. Effect of Termination of Parental Rights and AWOC Orders

To avoid confusion regarding the effect of an order terminating parental rights issued in proceedings brought under the Adoption Code, amendments have been added to 10 O.S.§§ 7505-2.1 and 7505-4.1 which clearly set forth the consequences of such orders. No substantive change was intended by these amendments. They provide that termination orders: "terminate the parent-child relationship, including the parent's right to the custody of the child and the parent's right to visit the child, the parent's right to control the child's training and education, the necessity for the parent to consent to the adoption of the child, the parent's right to the earnings of the child, and the parent's right to inherit from or through the child." They further declare that the child's right to inherit from the parent is not affected by such orders. Finally, the amendments state clearly that an order terminating parental rights does not terminate the duty of either parent to support the child. The duty to support is not terminated until a final decree of adoption has been entered. [72]

Similarly, the amendments also clarify that an order permitting the adoption of a child without a parent's consent does not terminate that parent's obligation to support the child. Again, the parent's duty of support continues until a final decree of adoption is issued. [73]

6. Appeals of AWOC Orders

When the Adoption Code was enacted in 1997, the deadlines for bringing appeals from an order terminating parental rights were clearly set forth. [74] No similar clarification was provided for appeals from orders permitting adoption without consent, a defect that was remedied by the 1998 amendments to 10 O.S. § 7505-4.1(I) and § 7505-7.1.

Because an order determinating a child eligible for adoption does not terminate parental rights, and is not a final order, some confusion existed concerning when such an order could be appealed, and when it must be appealed. [75] The new amendments provide that a parent whose consent to adoption has been determined unnecessary has a choice regarding when he or she may appeal from this order. [76] Such an appeal may be taken by:

> (1) filing a petition in error in the Supreme Court appealing the order determining the child eligible for adoption without consent within 30 days from the filing of the order, or
>
> (2) filing a petition in error in the Supreme Court appealing the final decree of adoption, asserting error in the order determining the child eligible for adoption without consent, within 30 days from the filing of the filing of the final decree of adoption. [77]

If the parent chooses the first option, the parent must file a designation of record in the trial court within 10 days after the date of the order. The appellee's counter designation of record must be filed 10 days after appellants designation of record is filed in the trial court. The briefing deadlines then follow the schedule

established for other types of adoption appeals. [78]

7. Best Interest Custody Hearing

When the court determines in a preadoption termination proceeding that the rights of a putative father cannot be terminated, or in an adoption proceeding that a decree of adoption cannot be granted or must be vacated, the Adoption Code directs the court to schedule a hearing to legal and physical custody of the child, according to the best interests of the child. The 1998 amendments further specify when such a hearing need not be held and provides more guidance about how it must be conducted.

A custody hearing should not be scheduled following denial or vacation of an adoption decree or a final order refusing termination in a Section 7505-2.1 proceeding if:

(1) the court has no jurisdiction to issue a custody order; or

(2) a preexisting custody order remains in effect. [79]

Obviously the court cannot conduct a custody hearing if it has no jurisdiction to do so pursuant to the Uniform Child Custody Jurisdiction and Enforcement Act(UCCJEA). [80] Because the jurisdictional bases under the Oklahoma Adoption Act are different than the bases under the
UCCJEA, it is conceivable that the court would not have custody jurisdiction.

In addition, the provision for a custody hearing was never intended to provide an opportunity to relitigate custody following an adoption or termination proceeding if a preexisting custody order remained in effect. This would most commonly occur when the adoption proceeding was filed by a stepparent or a guardian, but might occur in other situations as well.

When a custody hearing is scheduled, a question arose under the Code as to who is responsible for serving the birth mother, following a Section 7505-2.1 proceeding, or any parent who has not entered an appearance following an adoption proceeding. Responsibility for ensuring this service is made is now placed upon the petitioner for termination following the Section 7505-2.1 proceeding, and upon the petitioner for adoption following the adoption proceeding. [81] In addition, because DHS or an agency may not be a party to the adoption proceeding, if a custody hearing is required following denial or vacation of an adoption decree, DHS or any agency that had legal custody at the time that the petition was filed must also be given notice, in addition to the other parties entitled to notice under the statutes. [82]

Anyone entitled to notice of the hearing is entitled to intervene as a party. Although this was not originally specified in the statutes, it was clearly the intended interpretation and is now clearly set forth. [83]

The child now has a statutory right to representation by an attorney at the custody hearing. [84] The duties and responsibilities for the attorney for a child set forth in 10 O.S. § 7505-1.2 should be applicable to this proceeding, as would the right of the attorney to seek access to all records and to seek fees.

At the custody hearing, the court may award custody to the birth mother or father, or to both parents if they are married, to the prospective adoptive parents, or to DHS or another agency that had legal custody of the child at the time that the petition was filed. Custody is to be awarded according to the best interests of the child, according to the standards of 10 O.S. § 21.1. [85]

D. Home Study

The description of the criminal background check that must be performed as part of the initial home study has been substantially expanded. A criminal background and child abuse registry check for each prospective adoptive parent must include:

(1) a review of a state criminal background check;

(2) a review of a national fingerprint-based criminal background check;

(3) a search of the Department of Corrections files maintained pursuant to the Sex Offenders Registration Act;

(4) a search of the child abuse and neglect files maintained for review by DHS pursuant to the Oklahoma Child Abuse Reporting and Prevention Act. [86]

In addition, for each adult member of the prospective adoptive parent's family, the statute requires that a search of the Sex Offenders Registration Act files of the Department of Corrections and a search of DHS child abuse and neglect files must be performed. [87]

A requirement for national fingerprint-based background checks was recommended by many adoption professionals, including both social workers and attorneys, who noted that the state background checks previously performed would not reveal crimes committed elsewhere. At the time that the Committee recommended to the Legislature that national finger-print based criminal background checks should be required, the Committee had been advised that this type of check was already available in Oklahoma through the Oklahoma State Bureau of Investigation. That information was erroneous, as it became apparent after passage of the 1998 amendments that such checks would not become available in Oklahoma for purposes of adoption home studies until some time in the Fall of 1998. Because the amendments went into effect in June, this may have created an obstacle for some pending adoptions. Pursuant to 10 O.S. § 7209, the Oklahoma Department of Human Services will be the designated agency authorized in Oklahoma to process requests for a national fingerprint-based criminal background check for both public and private adoptions. Until such checks do become available through DHS, adoptions should be able to proceed based upon language in 10 O.S. § 7505-6.2, which provides that certain documents must be filed in the proceeding prior to the final hearing *when available*. Although the home study itself clearly must be available, the argument could be made that the national fingerprint-based background check portion simply is not available until such time as the system for obtaining such checks through DHS becomes operational.

E. Final Hearing and Decree

Prior to a final hearing on a petition for adoption, the documents listed in 10 O.S. §7505-6.2 must be filed with the court. In addition to those documents previously listed therein, amendments to Section 7505-6.2 now requires the filing of

(1) all initial and supplemental medical and social history reports; [88]

(2) any affidavits of nondisclosure signed by birth parents; [89] and

(3) copies of the state criminal background checks, the national fingerprint-based background checks, the results of the searches of the Department of Corrections' Sex Offenders Registration Act files, and the results of the searches of the DHS child abuse and neglect files. [90]

To resolve questions that were raised in some counties since the enactment of the 1997 Code, 10 O.S. § 7505-6.3(E) now specifically provides that the final hearing need not be recorded by a court reporter. However, at the request of any party, the court must order that the hearing be recorded. On its own initiative the court may also choose to order that the hearing be recorded.

F. Birth Certificates

Following the issuance of a decree of adoption, a certificate of adoption is often prepared for transmittal to the State Registrar, in order to obtain a new birth certificate for the child. The 1998 amendments shift to the attorney or agency facilitating the adoption the task of preparing the certificate of adoption, obtaining the certification of the court clerk, and forwarding it to the State Registrar. [91] This change was made at the request of court clerks, and reflects the actual practice in many counties prior to the amendment.

When a new birth certificate is prepared by the State Registrar, it shall contain the new name of the adopted person, and the names of the adoptive parents listed as the parents. The city and county of the place of birth, the hospital, and the name of the physician listed on the original certificate must remain on the new birth certificate. [92]

G. Challenge Period

The time limitation for filing a direct or collateral attack upon a final decree of adoption has been reduced from one year after entry of the final decree to three months after entry of the final adoption decree. [93] In addition to fostering the goal of the Adoption Code to strengthen the finality of adoption decrees, this amendment is consistent with the three month time limitation for direct or collateral attacks on challenges to decrees terminating parental rights.

H. Cross Index

The court clerk in each county is required to create a confidential cross index listing each child adopted in the county by both the child's birth name and the child's adoptive name. This index will facilitate the updating of medical and social history that is filed after a decree is rendered, [94] as well as the operation of the mutual consent voluntary registry [95] and the confidential intermediary search registry. [96]

I. Paternity Actions

A putative father who files a paternity action and subsequently learns of a potential adoption of the same child is now required provide notice of the paternity action to the attorney for the petitioner or the agency that placed the child for adoption. If neither the attorney nor the agency can be located by the putative father, he is then required to give notice to the petitioner for adoption. If the petitioner is also unknown to him, he must notify the Paternity Registry of the Department of Human Services.

If the paternity action is filed in Oklahoma, a prospective adoptive parent must be permitted to intervene and have the opportunity to be heard and seek custody and/or visitation. The statute creating this right of intervention does not address the resolution of any such request, or create any new substantive standard to be applied. It merely ensures that the prospective adoptive parent, who in many cases will already have physical custody of the child, and who may have legal custody at the time, will have standing to assert a claim in the paternity action.

If a proceeding to terminate the putative father's rights under 10 O.S. § 7505-2.1 or an adoption proceeding and the paternity action are both pending in Oklahoma courts, upon motion of any party the court hearing the paternity action must transfer the paternity proceeding to the court in which the termination or adoption proceeding is pending, so that the two proceedings may be considered together. [97]

VIII. EXPANDED COVERAGE OF REGISTRY PROGRAM

The 1997 Adoption Code created a mutual consent registry program, which permits adult adoptees and their relatives to locate each other on a voluntary basis. The program is also open to those whose parents rights were terminated, but who were never adopted. Added to the categories of who may participate in this program are the legal parents or guardians of a child or mentally incompetent person whose biological parents' rights have been terminated, a group that was inadvertently omitted from the 1997 legislation. [98]

IX. CHILDREN'S CODE INAPPLICABLE TO PRIVATE ADOPTIONS

One of the goals of the Adoption Code was to incorporate, to the extent feasible, all of the law related to private adoptions in one chapter. Prior to the enactment of the Adoption Code, several provisions that affected private adoptions were found tucked away in the Children's Code. Where those provisions needed to be retained, they have been included in the Adoption Code. The provisions of the Children's Code are no longer applicable to adoptions that do not involve a petition for the deprived status of a child. The introductory section of the Children's Code, 10 O.S. § 7001-1.1 explicitly so provides, and declares that all adoption and termination proceedings that do not involve a petition for deprived status of a child are governed by the Adoption Code.

X. LIMITATIONS ON ADVERTISING AND OUT-OF-STATE FACILITATORS

The crime of trafficking in children has been expanded to include the advertising of adoption services for compensation by anyone other than DHS, a child-placing agency licensed in Oklahoma. Attorneys licensed in Oklahoma are permitted to advertise adoption-related legal services.

Advertisements to solicit pregnant women to place a child for adoption is also prohibited by anyone except:

(1) a child-placing agency licensed in Oklahoma,

(2) an attorney licensed in Oklahoma,

(3) a prospective adoptive parent who has received a favorable preplacement home study, which must be verified by a signed, written statement by the person or agency that performed the study. [99]

Publishers who circulate publications within Oklahoma are prohibited from publishing advertisements in any print, broadcast, or electronic medium [100] that would violate these restrictions, and can be fined up to $5,000 per violation.

Only DHS, a child-placing agency licensed in Oklahoma, or an attorney licensed to practice in Oklahoma may accept compensation for adoption-related services. However, attorneys or agencies licensed in other states may receive compensation when working with an Oklahoma attorney or agency to provide adoption or other services necessary to placing a child in an adoptive placement [101]

Anyone other than a prospective adoptive parent who brings a child into Oklahoma or causes a child to be brought into this state, without complying with the Interstate Compact on the Placement of Children will also be subject to criminal penalties. [102] A birth parent who receives anything of value for an adoptive placement and who at the time of receipt had no intent to consent to the eventual adoption, or a woman who is not pregnant, but claims pregnancy and the intent to place the child for adoption, and who receives anything of value, is also subject to criminal penalties. [103]

XI. CONCLUSION

Although the 1998 amendments pale in comparison to the sweeping overhaul of adoption law produced by the 1997 Code, these changes will hopefully strengthen the Adoption Code, provide additional clarification to some of the issues that have troubled practitioners, and facilitate adoptive placements that serve the best interest of our children.

NOTES

1. Although the Committee was originally created for a two year term, 10 O.S. §60.53, recodified in 1997 as 10 O. S. § 7511-1.3, extended the Committee's operation until June 30, 1998.

2. For an excellent overview of these and other amendments enacted in 1996, *see* Paul E. Swain III, Carol A. Grissom, and Nancy Lynn Davis, *The 1996 Adoption Act: New Laws and New Burdens*, 67 OBJ 3965 (1996).

3. For a comprehensive discussion of the changes effected by the 1997 Adoption Code, *see* D. Marianne Blair, *The New Oklahoma Adoption Code: A Quest to Accommodate Diverse Interests*, 33 Tulsa L. J. 177 (1997). *See also* Virginia Henson, *The Oklahoma Adoption Code*, 12 Okla. Fam. L. J. 15 (March 1997).

4. 1998 Okla. Session Laws ch. 415 § 53 .

5. 10 O.S. §§ 7503-2.3(H), 7503-2.4(G) provide that a permanent relinquishment and a consent "may be signed before any judge of a court having probate or adoption jurisdiction in this state... ."

6. 10 O.S. §§ 7503-2.3(H)(K), 7503-2.4(G)(J) provide that a permanent relinquishment and a consent " may be signed before any judge of a court having probate or adoption jurisdiction in this state or in the state of residence of the person executing the" relinquishment or consent, and that when the person executing the relinquishment or consent resides outside of Oklahoma, the relinquishment or consent "may be executed in that state or country in the manner set forth in the Oklahoma Adoption Code or in the manner prescribed by the laws of the state or country of such person's residence."

7. 10 O.S. § 7503-2.3(L).

8. *See* 10 O.S. §§ 7503-2.3(L)(2), 7505-2.1(L)(2), 7505-4.1(L)(2) of the Oklahoma Adoption Code, 10 O.S. § 7006-1.3 of the Oklahoma Children's Code.

9. 10 O.S. § 7503-2.3(L)(2).

10. 10 O.S. § 7503-2.7(B).

11. 10 O.S. § 7503-2.1 (D)(2).

12. 10 O.S. §§ 7503-2.3 (G), 7503-2.4(F).

13. 10 O.S. §§ 7503-2.3(D)(4), 7503-2.4 (B)(4).

14. *See* 10 O.S. §§ 7503-2.3 cmt. and 7503-2.4 cmt. (Supp. 1998).

15. The language used in former Subsection D was borrowed from other statutes that used a different model for extrajudicial consents, and thus created a risk of confusion. The repeal of former Subsection D does not mean, however, that extrajudicial consents will not have the effects described therein. Former Subsection D was simply not necessary to achieve those effects. *See* 10 O.S. § 7503-2.6 cmt. (Supp. 1998).

16. In its 1997 Comments to 10 O.S. § 7503-2.6, the Committee referred to the effect of an extrajudicial consent as similar to the effect of a permanent relinquishment. The Committee has acknowledged in its 1998 Comment to 10 O.S. § 7503-2.6 that this analogy was not entirely accurate, because the extrajudicial consent, unlike a permanent relinquishment, does not transfer to an agency, attorney, or other court-approved individual the right to subsequently consent to an adoption. The extrajudicial consent doesn't relinquish rights to anyone, and was intended to have no effect upon a putative father's ability to claim custody or visitation if an adoptive placement is never made by the birth mother. 10 O.S. § 7503-2.6 cmt. (Supp. 1998).

17. The fact that proper execution of an extrajudicial consent waives the right to receive notice of an adoption proceeding is already established by 10 O.S. §7505-

6.3 (C). The fact that an application for adoption without consent or relinquishment or an alternative application for termination of parental rights is unnecessary for a putative father who has properly executed an extrajudicial consent is established by 10 O.S. § 7505-4.1 (A). Moreover, the execution of an extrajudicial consent by the putative father enables the court to grant the adoption (assuming that the mother has also consented, relinquished, or her rights have been terminated), which ultimately results in the termination of the putative father's parental rights pursuant to 10 O.S. § 7505-6.5 (B). Thus, the repeal of former Subsection D was not an attempt to alter these results, but simply an attempt to eliminate a redundant subsection in order to reduce the risk that it would create confusion. *See* 10 O.S. § 7503-2.6 cmt. (Supp. 1998).

18. This was clearly the intent of the Committee when it drafted 10 O.S. § 7503-2.1 in 1997. This 1998 amendment is therefore not a change in the law, but merely a more explicit statement added to respond to inquiries from the bar.

19. In addition, 10 O.S. § 6059 requires that birth-related expenses for a child adopted at the age of eighteen months or younger must be covered by the adoptive parent's medical insurance.

20. 10 O.S. § 7503-1.1. This requirement was already in place for prospective adoptive parents who are single or legally separated from the other spouse.

21. It was clearly the intent of the Committee that the requirement that both spouses be 21 years of age to adopt jointly should not apply to stepparent adoptions or to adoptions by a married couple if one of the spouses was a relative of the child. Because of the manner in which this recommendation was incorporated into the preexisting statutory language, it could be read to waive the age requirement only when just one of the spouses is adopting a child who is a relative. That interpretation would not be consistent with the Committee's rationale, which was to avoid additional age restrictions when an adult attempted to adopt, with or without his or her spouse, a child who was related, but the current language is somewhat ambiguous.

22. The Adoption and Safe Families Act of 1997, Public Law 105-89, which amended 42 U.S.C.§ 675(I).

23. The federal law provides that, unless a State elects to make the provisions inapplicable, a final adoptive placement shall not be approved whenever a criminal background check of a prospective adoptive parent revealed a felony conviction for (1) child abuse or neglect, spousal abuse, a crime against children (including child pornography), or a crime involving violence, such as rape, sexual assault, or homicide; regardless of when the crime was committed, or (2) physical assault, battery, or a drug related offense; committed within the past five years.

24. 10 O.S. §§ 7505-5.1(D)(E), 7505-6.3(G)(H).

25. Proceedings brought to terminate parental rights under the Adoption Code would include proceedings to terminate the rights of a putative father, prior to the initiation of an adoption action, pursuant to 10 O.S. § 7505-2.1, or during an adoption proceeding pursuant to 10 O.S. § 7505-4.1. Subject matter jurisdiction over termination proceedings brought during the course of a deprived child proceeding initiated under the Children's Code would be governed, after November 1, 1998, by the Uniform Child Custody Jurisdiction and Enforcement Act, 43 O.S. § 551-102(4), and prior to November 1, 1998, by the Uniform Child Custody Jurisdiction Act, 43 O.S. § 504(3).

26. For a detailed discussion of these grounds, see Blair, *supra* note 3, at 186-191.

27. *See* Joan Heifetz Hollinger, *The Uniform Adoption Act: Reporter's Ruminations,* 30 Fam. L. Q., 345, 369 (Summer 1996).

28. 10 O.S. § 7502-1.1 (B)(1).

29. *See e.g., Allstate Ins. Co. v. Hague*, 449 U.S. 302, 312-13 (1981), discussing the Due Process standards which determine when a state may constitutionally apply its own substantive law.

30. 10 O.S. § 7502-1.1(B)(1).

31. 10 O.S. § 7502-1.1 (B)(4). Inclusion of this finding is necessary to avoid the potential for a jurisdictional quagmire that might otherwise be created by Oklahoma entering an order terminating parental rights. The state that appropriately should exercise adoption jurisdiction might otherwise be prevented from doing so by its own jurisdictional statutes or its court's interpretation of the federal Parental Kidnaping Prevention Act, because Oklahoma had previously issued an order regarding the custody of the child, which includes termination orders. *See* 10 O.S. § 7502-1.1 cmt. (Supp. 1998).

32. 10 O.S. § 7502-1.1(B)(2).

33. 10 O.S. § 7502-1.1(B)(4).

34. 10 O.S. § 7502-1.1(B)(3). This subparagraph also provides that an Oklahoma court may exercise jurisdiction to issue an order awarding temporary custody of a child brought into Oklahoma in compliance with the ICPC, if the Oklahoma court is exercising jurisdiction in an adoption proceeding consistently with one of the five original bases. This provision does not extend the jurisdiction originally granted under the 1997 Adoption Code, and is simply included to avoid any confusion that its omission might cause, and to summarize in one place the circumstances under which the Oklahoma courts may exercise jurisdiction to issue orders awarding custody of children who have been placed for adoption.

35. 10 O.S. § 7502-1.1(B)(4).

36. 10 O.S. § 7502-1.1(C)(D).

37. *See* Blair, *supra* note 3, at 191 n. 77, 192 n. 86.

38. 10 O.S. § 7502-1.1(C).

39. The alternative of simply substituting a reference to the UCCJEA in place of the UCCJA was rejected. Because it may be many years, if ever, until every state has repealed its UCCJA and substituted the UCCJEA, failure to defer to courts of other states which recognize their own continuing jurisdiction under the UCCJA would greatly increase the risk that Oklahoma adoption decrees would not be recognized by these states.

40. As of August 1, 1998, only Oklahoma and Alaska had enacted the UCCJEA. Twelve other states have introduced UCCJEA bills in their legislatures. Telephone interview with Jennifer Nelson, National Conference of Commissioners on Uniform State Laws (September 16, 1998).

41. *See* 43 O.S. § 551-101 *et seq.*

42. 10 O.S. § 7502-1.3(A).

43. Application of this rule in the context of stepparent adoptions created the potential for an Equal Protection challenge. *See* Blair, *supra* note 3, at 199.

44. If a consent or permanent relinquishment is executed outside of the state of Oklahoma, it must be executed in the state or country of the residence of the person executing the document. 10 O.S. §§ 7503-2.3(H), 7503-2.4(G).

45. 10 O.S. § 7502-1.3(B). 10 O.S. § 7503-2.3(I) and 10 O.S. § 7503-2.4(H) create an exception to this rule, by providing that members of the United States Armed Services stationed abroad may execute a consent or permanent relinquishment before an officer of the

Judge Advocate General's Office or other legal officer possessing the authority to administer oaths.

46. *See* 10 O.S. § 7502-1.3(A).

47. If Oklahoma revocation law is to be applied, the executing parent must be given every protection Oklahoma law affords regarding the form of the document and manner of its execution, as well as the official before whom the execution may take place.

48. 10 O.S. §§ 7503-2.3(D)(2); 7503-2.4((B)(2); 7503-2.6(B)(3).

49. 10 O.S. §§ 7503-2.3((G); 7503-2.4(F).

50. 10 O.S. § 7505-1.2. A contested proceeding is defined in the Adoption Code as "any proceeding pursuant to the Oklahoma Adoption Code in which an interested party enters an appearance to contest the petition." 10 O.S. § 7501-1.3 (5). However, a recent Oklahoma Supreme Court decision, *In the Matter of the Adoption of K.D.K.*, 1997 OK 69, 940 P.2d 216, could be interpreted to require appointment of counsel for a child as a matter of constitutional right, whenever the proceeding could result in a termination of rights of a parent who has not signed a consent, extrajudicial consent, or permanent relinquishment.

51. 10 O.S. § 7505-1.2(B)(1).

52. 10 O.S.§ 7505-1.2(A)(2).

53. 10 O.S.§ 7505-1.2(A)(2)(3).

54. This role division departs from the description of the Oklahoma Supreme Court in *In the Matter of the Adoption of K.D.K.*, 1997 OK 69 ¶ 5, 940 P.2d 216, 218, wherein the court envisioned the attorney's role as "an independent advocate for the best interests of the child," the role now given to the guardian ad litem. The issue of the division of duties between an attorney for the child and a GAL was not before the court, however, and the Adoption Code, which provides for the appointment of both attorneys for the child and GALs under the certain circumstances, had not yet gone into effect. The role division set forth in 10 O.S. § 7505-1.2 is consistent with the role division chosen by the Oklahoma Legislature for proceedings brought under the Children's Code, 10 O.S. § 7003-3.7, and has been suggested by other legal scholars. *See* Alexandra Dylan Lowe, Parents and Strangers: The Uniform Adoption Act Revisits the Parental Rights Doctrine, 30 Fam. L. Q. 379, 422 (1996); Linda Elrod, Counsel for the Child in Custody Disputes: The Time Is Now, 26 Fam. L. Q. 53 (1992).

55. 10 O.S. § 7505-1.2(B)(3).

56. 10 O.S.§ 7505-1.2(B)(3). In addition, 10 O.S. § 7505-1.1 requires that all papers, records and books relating to adoption proceedings are confidential, and that disclosure of information or records pertaining to an adoption proceeding constitutes a misdemeanor.

57. 10 O.S. § 7505-1.2(B)(4). Guardians ad litem acting in good faith receive immunity from civil liability for actions related to the exercise of their duties. The statute creates a prima facie presumption that a guardian is acting in good faith. 10 O.S. § 7505-1.2(B)(5).

58. Separate proceedings to terminate the parental rights of putative fathers were governed by former 10 O.S. § 29.1, prior to the enactment of the Adoption Code. These proceedings were most commonly initiated by agencies to whom infants had been relinquished by birth mothers.

59. 10 O.S. § 7505-2.1(B)(2).

60. Prospective adoptive parents are required by 10 O.S. § 7505-3.2(C)(D) to obtain court approval for the payment of more than $500 to or on behalf of a birth parent. This requirement serves to address the concern over payment of expenses prior to initiation of adoption proceedings.

61. 10 O.S. § 7505-3.1(9)(10).

62. 10 O.S. § 7504-4.1.

63. *See, e.g., In the Matter of the Adoption of J.R.M.*, 1995 OK 79, 899 P.2d 1155.

64. If the parent has previously consented or relinquished, it would be unnecessary to file a petition or application to terminate parental rights, or for adoption without consent. 10 O.S. § 7505-4.1(A).

65. 10 O.S. § 7506-1.1(G)(3).

66. 10 O.S. § 7505-4.3(D).

67. The grounds for adoption without consent listed in 10 O.S. §7505-4.2 are also the grounds for termination of the rights of a putative father under 10 O.S. §§ 7505-2.1(D)(2) or 10 O.S. § 7505-4.1(A). A technical argument could perhaps be raised that since Section 7505-4.2(O) requires that the plan advise the parent that failure to comply with the plan may be a ground for adoption without consent, it would be inappropriate to use it as a ground to terminate the putative rights of a putative father prior to the issuance of a final decree. No such distinction was intended by the Committee when this provision was drafted. In any event, a situation in which this distinction becomes relevant is unlikely, as it would be rare that a putative father would be the one to initiate the placement with the institution or agency and sign the written plan of care.

68. 10 O.S. § 7505-4.2(O).

69. By contrast, 10 O.S. § 7003-3.8 creates a statutory right to jury trial for parents in adjudicatory hearings in deprived child actions.

70. *See Merrell v. Merrell*, 1985 OK 107, ¶ 5, 712 P.2d 35, 38; *In re Adoption of B.N.D.*, 1997 OK CIV APP 30, ¶ 13, 941 P.2d 255, 258-59.

71. 10 O.S. § 7006-1.5 of the Children's Code prohibits the combination of adoption actions with termination of parental rights proceedings brought under the Children's Code. Although Oklahoma courts and practitioners in the past have often applied provisions of the Children's Code in the context of private adoptions, the Children's Code now specifically provides, in 10 O.S. § 7001-1.1, that its provisions "shall not apply to adoption proceedings and actions to terminate parental rights which do not involve a petition for deprived status of the child."

72. 10 O.S. §§ 7505-2.1(L)(1)(2); 7505-4.1(L)(1)(2).

73. 10 O.S. § 7505-4.1(L)(3).

74. 10 O.S. §§ 7505-2.1(I), 7505-4.1(I).

75. The Oklahoma Courts had interpreted the former Oklahoma Adoption Act to provide that a determination that a child was eligible for adoption without consent was an appealable order. *See Merrell v. Merrell*, 1985 OK 107, 712 P.2d 39, *In re Adoption of B.N.D.*, 1997 OK CIV APP 30, 941 P.2d 255, 258.

76. 10 O.S. § 7505-4.1does not directly address the timetable for an appeal filed by an adoptive parent from a determination that a child cannot be adopted without the consent of a parent. Such an order would normally be a final order, since there would be no reason for the adoption action to proceed further. Therefore, the adoptive parent, pursuant to 10 O.S. § 7505-7.1(B)(C), must file a designation of record in the trial court within ten days after the date of the final order, and must file a petition in error in the Oklahoma Supreme Court within thirty days after the filing of the final order.

77. 10 O.S. §§ 7505-4.1(I); 7505-7.1(C).

78. Appellant's brief must be filed 20 days after the trial court clerk notifies all parties that the record is complete and such notice is filed in the Oklahoma Supreme Court Clerk's Office; the appellee's answer brief must be filed 15 days after

appellant's brief is filed, and appellant's reply brief must be filed within 10 days after appellee's answer brief is filed. 10 O.S. §§ 7505-4.1(I)(4);7505-7.1(D).

79. 10 O.S. §§ 7505-2.1(E)(1), 7505-6.4(A).

80. 43 O.S. § 551-101 *et. seq.*

81. 10 O.S. §§ 7505-2.1(E)(2), 7505-6.4(B).

82. 10 O.S. § 7505-6.4(B).

83. 10 O.S. §§ 7505-2.1(E)(3), 7505-6.4(B)(2).

84. 10 O.S. §§ 7505-2.1(E)(5), 7505-6.4(B)(4).

85. 10 O.S. §§ 7502-2.1(E)(4), 7505-6.4(B)(4).

86. 10 O.S. § 7505-5.3(A)(4).

87. 10 O.S. § 7505-5.3(A)(4) is punctuated in such a way the question of whether the state or national finger-print based criminal background check must be performed for adult household members is somewhat ambiguous. Although it is not this author's recollection that requiring the state or national finger-print based criminal background checks for adult household members was the intent of the Committee, the punctuation in the subparagraph relating to adult household members is somewhat confusing. In addition, because this Section was drafted by legislative staff and revised by the Legislature after it left the Committee, the original intent of the Committee may not be useful in determining what the Legislature intended. The interpretation set forth in the text is the one that makes the most sense to this author, given the construction of the two subparagraphs in Paragraph 4.

88. Filing these reports was already required by 10 O.S. § 7504-1.2(C), but the inclusion of this requirement in the laundry list presented by Section 7506-6.3 was inadvertently omitted in 1997.

89. This requirement assumes that the affidavits are in the possession of the attorney for the petitioner. Affidavits of nondisclosure may be executed by birth parents in the court clerk's office, or in the presence of the judge, pursuant to 10 O.S. § 7503-2.5, and may never come into the possession of the attorney for petitioner.

90. Even though these checks should be discussed in the home study, the reports of the actual checks must be included as well, so that they are available directly to the court.

91. 10 O.S. § 7505-6.6(A)(2).

92. 10 O.S. § 7505-6.6(B).

93. 10 O.S. § 7505-7.2(2).

94. *See* 10 O.S. § 7504-1.2(E).

95. 10 O.S. § 7508-1.2.

96. 10 O.S. § 7508-1.3.

97. 10 O.S. § 7503-3.2.

98. 10 O.S. § 7508-1.2.

99. 21 O.S. § 866(A)(1)(e)(f).

100. The statute provides that this would include, but is not limited to, newspapers, magazines, telephone directories, handbills, radio, and television. 21 O.S. § 866 (B).

101. 21 O.S. § 866(A)(1)(b).

102. 21 O.S. § 866(A)(1)(c).

103. 21 O.S. § 866(A)(1)(d).