

Rule 33. Consent to Adoption**33.01 Persons and Agencies Required to Consent**

Subdivision 1. Generally. Except as provided in subdivision 2, written consent to an adoption is required by the following:

- (a) the child to be adopted, if the child is fourteen (14) years of age or older, and the child's consent must be consent to adoption by a particular person;
- (b) the adult to be adopted, whose consent shall be the only consent required;
- (c) a registered putative father, if pursuant to Rule 32 he has:
 - (1) been notified under the Minnesota Fathers' Adoption Registry;
 - (2) timely filed an intent to claim parental rights form; and
 - (3) timely filed a paternity action;
- (d) the child's parents or legal guardian, except:
 - (1) a parent not entitled to notice of the proceedings;
 - (2) a parent who has abandoned the child or a parent who has lost custody of the child through a divorce decree or a decree of dissolution and upon whom notice has been served as required under Rule 31; and
 - (3) a parent whose parental rights to the child have been terminated by a juvenile court order or through a decree in a prior adoption matter; and
- (e) if there is no parent or legal guardian qualified to consent to the adoption, the consent shall be given by the agency having authority to place the child for adoption, which shall have the exclusive right to consent to the adoption of such child.

Subd. 2. Child Under Guardianship of Commissioner of Human Services.

(a) Any consent by a parent whose rights to the child have not been terminated shall be pursuant to Minnesota Statutes, section 260C.515, subdivision 3, and that consent shall be irrevocable upon acceptance by the court except as otherwise provided in Minnesota Statutes, section 260C.515, subdivision 3(2)(i). A parent of an Indian child may consent to the adoption of the child according to the Indian Child Welfare Act, 25 U.S.C., section 1913, and that consent may be withdrawn for any reason at any time before the entry of a final decree of adoption.

(b) When the child to be adopted is age fourteen (14) years or older, the child's written consent to adoption by the adopting parent is required.

(c) Consent by the responsible social services agency or the Commissioner of Human Services is not required because the adoptive placement has been made by the responsible social services agency according to Minnesota Statutes, section 260C.613, subdivision 1.

(Amended effective January 1, 2007; amended effective August 1, 2009; amended effective July 1, 2014.)

2004 Advisory Committee Comment

The Advisory Committee recommends that, with respect to a parent who has abandoned the child or a parent who has lost custody of the child through a divorce decree or a decree of

dissolution, it is best practice to either obtain a parent's consent as provided under Rule 31 or to commence a termination of parental rights proceeding pursuant to the Minnesota Rules of Juvenile Protection Procedure.

2014 Advisory Committee Comment

When a child, age 14 or older, is under the guardianship of the Commissioner of Human Services, the child must give consent to adoption by the particular person seeking to adopt the child. The child may not withhold "general consent" to the responsible social services agency working to find an appropriate adoptive home and making reasonable efforts to finalize adoption. See Minnesota Statutes, section 260C.605, subdivision 2.

33.02 Notice of Intent to Consent to Adoption

Subdivision 1. Consent of Biological Parents. Unless all biological parents from whom consent is required under Rule 33.01 are involved in making the adoptive placement and intend to consent to the adoption, a biological parent who intends to execute a consent to an adoption shall give notice to the child's other biological parent of the intent to consent to the adoption prior to or within seventy-two (72) hours following the placement of the child if the other biological parent's consent to the adoption is required under Rule 33.01. Notice of intent to consent to adoption shall be provided to the other biological parent according to the Minnesota Rules of Civil Procedure for service of a summons and complaint. The biological parent who receives notice shall have sixty (60) days after the placement of the child to serve upon the other biological parent either a consent pursuant to Rule 33.01 or a written objection to the adoption. If the biological parent who receives notice fails to consent or to respond with a written objection to the adoption within sixty (60) days after the adoptive placement, that parent shall be deemed to have irrevocably consented to the child's adoption.

Subd. 2. Consent of Minors. If an unmarried parent who consents to the adoption of a child is under eighteen (18) years of age, the consent of the minor parent's parents or legal custodian or legal guardian, if any, also shall be required. If either or both parents are not required to consent pursuant to Rule 33.01(d), the consent of such parent shall be waived and the consent of the legal custodian or legal guardian only shall be sufficient. If there be neither parent nor legal custodian or legal guardian qualified to give such consent, the consent may be given by the Commissioner of Human Services. The responsible social services or child placing agency overseeing the adoption matter shall ensure that the minor parent is offered the opportunity to consult with an attorney, a member of the clergy, or a physician before consenting to adoption of the child. The advice or opinion of the attorney, clergy member, or physician shall not be binding on the minor parent. If the minor parent cannot afford the cost of consulting with an attorney, a member of the clergy, or a physician, the county shall bear that cost. A parent or legal custodian or legal guardian of a minor or incapacitated person may not delegate the power to consent to adoption of a minor ward under Minnesota Statutes, sections 524.5-101 to 524.5-502.

(Amended effective January 1, 2007; amended effective July 1, 2014.)

33.03 Execution of Consent to Adoption

Subdivision 1. Requirements of Consent.

- (a) **Generally.** Except as provided in subdivision 3, all consents to an adoption shall:
- (1) be in writing;
 - (2) be executed before two competent witnesses;
 - (3) be acknowledged by the consenting party;

(4) include a notice to the parent of the substance of Minnesota Statutes, section 259.24, subdivision 6a, providing for the right to withdraw consent; and

(5) include the following written notice in all capital letters at least one-eighth inch high: "The agency responsible for supervising the adoptive placement of the child will submit your consent to adoption to the court. If you are consenting to adoption by the child's stepparent, the consent will be submitted to the court by the petitioner in your child's adoption. The consent itself does not terminate your parental rights. Parental rights to a child may be terminated only by an adoption decree or by a court order terminating parental rights. Unless the child is adopted or your parental rights are terminated, you may be asked to support the child."

(b) **Child Under Guardianship of Commissioner of Human Services.** Pursuant to Minnesota Statutes, section 260C.515, subdivision 3, consents for children under the guardianship of the Commissioner of Human Services shall:

(1) be on a form prescribed by the Commissioner of Human Services;

(2) be executed before two competent witnesses;

(3) be confirmed by the consenting parent before the court or executed before the court;

(4) include notice that the consent is irrevocable upon acceptance by the court and shall result in an order that the child is under the guardianship of the Commissioner of Human Services; unless

(a) fraud is established and an order is issued permitting revocation for fraud pursuant to Minnesota Statutes, sections 260C.515, subdivision 3(2)(i), and 259.24; or

(b) the matter is governed by the Indian Child Welfare Act, 25 U.S.C., section 1913(c).

Subd. 2. Consents Taken Outside of Minnesota. A consent executed and acknowledged outside of Minnesota, either in accordance with the law of this state or in accordance with the law of the place where executed, is valid.

Subd. 3. Exceptions to Consent Requirements. The requirements of subdivision 1 do not apply to:

(a) consents to adoption given by:

(1) the Commissioner of Human Services, when required by Minnesota Statutes, section 259.24, subdivision 2;

(2) a licensed child-placing agency;

(3) an adult adoptee;

(4) the child's parent in a petition for adoption by a stepparent; or

(5) a parent or legal guardian when executed, together with a waiver of notice of hearing, before a judicial officer;

(b) a Minnesota Fathers' Adoption Registry consent to adoption; or

(c) consent to the adoption of an Indian child.

(Amended effective July 1, 2014.)

33.04 Timing of Consent

A consent to adoption form shall not be signed sooner than seventy-two (72) hours after the birth of a child. The seventy-two (72) hours is computed excluding the date of the birth and including Saturdays, Sundays, and legal holidays. A consent to adoption shall be executed by any person whose consent is required under Rule 33 within sixty (60) days after the child's placement in a prospective adoptive home.

(Amended effective January 1, 2007.)

33.05 Failure to Execute Consent

With the exception of cases where a person receives notice under Minnesota Statutes, section 259.24, subdivision 2a, if a biological parent whose consent is required under Rule 33 does not execute a consent by the end of the period specified in Rule 33.04, the child-placing agency shall notify the court and the court shall issue an order regarding continued placement of the child. The court shall order the local social services agency to determine whether to commence proceedings for termination of parental rights on grounds of abandonment as defined in Minnesota Statutes, section 260C.301, subdivision 2. The court may disregard the six-month and twelve-month requirements of Minnesota Statutes, section 260C.301, in finding abandonment if the biological parent has failed to execute a consent within the time required under Rule 33.04 and has made no effort to obtain custody of the child.

(Amended effective January 1, 2007; amended effective July 1, 2014.)

33.06 Agreement Conferring Authority to Place for Adoption

Subdivision 1. Parties to Agreement. The parents and legal custodian or legal guardian, if there be one, of a child may enter into a written agreement with the Commissioner of Human Services or an agency giving the Commissioner or such agency authority to place the child for adoption. If an unmarried parent is under eighteen (18) years of age, the written consent of the parents and legal custodian or legal guardian, if any, of the minor parent also shall be required. If either or both of the parents are disqualified from giving such consent for any of the reasons enumerated in Minnesota Statutes, section 259.24, subdivision 1, the written consent of the legal custodian or legal guardian shall be required.

Subd. 2. Format of Agreement. The agreement and consent shall be in the form prescribed by the Commissioner of Human Services and shall contain notice to the parent of the substance of Minnesota Statutes, section 259.59, subdivision 2a, providing for the right to revoke the agreement.

Subd. 3. Content of Agreement. The agreement and consent shall contain the following written notice in all capital letters at least one-eighth inch high: "This agency will submit your consent to adoption to the court. The consent itself does not terminate your parental rights. Parental rights to a child may be terminated only by an adoption decree or by a court order terminating parental rights. Unless the child is adopted or your parental rights are terminated, you may be asked to support the child."

Subd. 4. Execution of Agreement. The agreement shall be executed by the Commissioner of Human Services or agency, or one of their authorized agents, and all other necessary parties, and shall be filed, together with the consent, in the proceedings for the adoption of the child. If, after the execution of an agreement and consent under this rule, the child is diagnosed with a medical or psychological condition that may present a substantial barrier to adoption, the child-placing agency shall make reasonable efforts to give notice of this fact to a party to the agreement and consent. If a child is not adopted within two (2) years after an agreement and consent are executed under this rule, the agency that executed the agreement shall so notify a parent who was a party to

the agreement and request the parent to take custody of the child or to file a petition for termination of parental rights. This notice shall be provided to the parent in a personal and confidential manner. A parent who has executed an agreement under this rule shall, upon request to the agency, be informed of whether the child has been adopted.

33.07 Consent to a Direct Placement Adoption Under Minnesota Statutes, Section 259.47

Subdivision 1. Presence of Legal Counsel for Biological Parent. If a biological parent has chosen to have legal counsel pursuant to Rule 23.04, the attorney shall be present at the execution of any consent. If a biological parent waives counsel, the parent's written waiver shall be filed with the consent to the adoption.

Subd. 2. Execution of Consent Before Judicial Officer - When Required. A biological parent whose consent to a direct placement adoption is required under Minnesota Statutes, section 259.24, and who has chosen not to receive counseling through a licensed agency or a licensed social services professional trained in adoption issues, shall appear before a judicial officer at a consent hearing as described in subdivision 4 to execute consent to the adoption.

Subd. 3. Execution of Consent Before Judicial Officer - When Optional. A biological parent whose consent to a direct placement adoption is required under Minnesota Statutes, section 259.24, and who has received counseling through a licensed agency or a licensed social services professional trained in adoption issues, or any other parent or legal guardian whose consent to a direct placement adoption is required under Minnesota Statutes, section 259.24, subdivision 2, may choose to execute consent to the adoption under the procedures set forth in Minnesota Statutes, section 259.24, subdivision 5, and Rule 33.03, subdivision 1, or at a consent hearing as described in subdivision 4.

Subd. 4. Consent Hearing. Notwithstanding where the prospective adoptive parent resides, a consent hearing may be held in any county in this state where the biological parent is found. If the consent hearing is held in a county other than where the prospective adoptive parent resides, the court shall forward the executed consent to the district court in the county where the prospective adoptive parent resides.

Subd. 5. Consent Format. The written consent form to be used in a direct placement adoption under this rule shall be on a form prepared by the Commissioner of Human Services and made available to agencies and court administrators for public distribution. The form shall state:

(a) the biological parent has had the opportunity to consult with independent legal counsel at the expense of the prospective adoptive parent, unless the biological parent knowingly waived the opportunity;

(b) the biological parent has been notified of the right to receive counseling at the expense of the prospective adoptive parent and has chosen to exercise or waive that right; and

(c) the biological parent has been informed that if the biological parent withdraws consent, the prospective adoptive parent cannot require the biological parent to reimburse any costs the prospective adoptive parent has incurred in connection with the adoption, including payments made to or on behalf of the biological parent.

(Amended effective January 1, 2007.)

33.08 Revocation of Consent to Adoption of a Non-Indian Child Under Minnesota Statutes, Section 259.24

A parent's consent to adoption may be withdrawn for any reason within ten (10) working days after the consent is executed and acknowledged or pursuant to the law of the state where the consent is executed. Written notification of withdrawal of consent shall be received by the agency to which the child was surrendered no later than the tenth working day after the consent is executed and acknowledged. On the day following the tenth working day after execution and acknowledgment, the consent shall become irrevocable, except upon order of a court of competent jurisdiction after written findings that the consent was obtained by fraud. In proceedings to determine the existence of fraud, the adoptive parents and the child shall be made parties. The proceedings shall be conducted to preserve the confidentiality of the adoption process. There shall be no presumption in the proceedings favoring the biological parents over the adoptive parents. Failure to comply with the terms of a communication or contact agreement order entered by the court under Rule 34 is not grounds for revocation of a written consent to an adoption after that consent has become irrevocable.

(Amended effective January 1, 2007.)

33.09 Consent to Adoption of an Indian Child

Subdivision 1. Requirements of Consent. If the child to be adopted is an Indian child, the consent of the parent or Indian custodian shall not be valid unless:

- (a) executed in writing;
- (b) recorded before the judge; and

(c) accompanied by the presiding judge's certificate that the terms and consequences of the consent were explained in detail and were fully understood by the parent or Indian custodian. The court shall also certify that the parent or Indian custodian fully understood the explanation in English or that it was translated into a language that the parent or Indian custodian understood. Any consent given prior to, or within ten (10) days after, the birth of the Indian child shall not be valid.

Subd. 2. Revocation of Consent to Adoption of an Indian Child. In any voluntary proceeding for adoptive placement of an Indian child, the consent of the parent may be withdrawn for any reason at any time prior to the entry of an adoption decree and the child shall be returned to the parent.

Subd. 3. Vacation of an Adoption Decree of an Indian Child. After the entry of an adoption decree of an Indian child in any State court, the parent may withdraw consent thereto upon the grounds that consent was obtained through fraud or duress and may petition the court to vacate such decree. Upon a finding that such consent was obtained through fraud or duress, the court shall vacate such decree and return the child to the parent. No adoption of an Indian child which has been effective for at least two (2) years may be invalidated under the Indian Child Welfare Act, 25 U.S.C., section 1913, unless otherwise permitted under state law.

(Amended effective January 1, 2007.)

2004 Advisory Committee Comment

Rule 33.09 mirrors the provisions of the Indian Child Welfare Act, 25 U.S.C., section 1913. The Guidelines of the Bureau of Indian Affairs provide additional guidance as follows:

"A consent to termination of parental rights or adoption may be withdrawn by the parent at any time prior to entry of a final decree of voluntary termination or adoption by filing an instrument executed under oath by the parent stipulating his or her intention to withdraw such consent. The

clerk of court where the withdrawal of consent is filed shall promptly notify the party or agency by or through whom the adoptive placement has been arranged of such filing and that party or agency shall insure the return of the child to the parent as soon as practicable." The Commentary to the guideline further provides that "This provision recommends that the clerk of court be responsible for notifying the family with whom the child has been placed that consent has been withdrawn. The court's involvement frequently may be necessary [because] the biological parents are often not told who the adoptive parents are."

Bureau of Indian Affairs Guidelines for State Courts - Indian Child Custody Proceedings, Section E.4 and Commentary (emphasis included in original).