

## **ESSAY QUESTION NO. 5**

### **Answer the question in booklet No. 5**

The non-Native biological parents of Daisy, born July 31, 2002, had their parental rights terminated by an Alaskan court last year. Daisy's non-Native foster parents, Melly and Fitz, wish to adopt her. At the same time, Fitz wants to adopt Melly's son, Silas, born in 2007. Silas' dad, Don, has not paid the court ordered child support in the divorce nor has Don contacted Melly or Silas in three years.

1. What pleadings/documents must be filed with the court for Daisy's adoption prior to the final hearing?

2. What pleadings/documents must be filed for Silas' adoption prior to the final adoption hearing?

3. Assume two years after the adoptions are completed, the couple divorces. After their Alaska divorce, Melly and the children relocate to Oregon. Fitz is transferred to Colorado and he receives a huge promotion. Melly wishes to modify child support. She has contacted your office about modifying the Alaska child support order. Discuss what state has jurisdiction for the modification.

**GRADERS' GUIDE**  
**\*\*\* QUESTION NO. 5 \*\*\***  
**FAMILY LAW**

**1. What pleadings/documents must be filed with the probate court prior to the final hearing in Daisy's adoption? (50 points)**

The Indian Child Welfare Act does not apply to either adoption

The parties must file a Petition of Adoption that must be signed and verified by both Melly and Fitz. (AS 25.23.080(b).

It has to be accompanied by a certified copy of the birth certificate or verification of the birth record of the person to be adopted. (AS 25.23.090 (c).

These documents must be accompanied by the required consents, relinquishments and termination orders. (AS 25.23.090 ( c ). Since the parental rights were terminated on Daisy, a copy of the termination must be filed.

Consent to Daisy's adoption must be filed by the State of Alaska, Office of Children's Services since the State is empowered to consent as Daisy's legal custodian.(AS 25.23.040 (a)(3).

A written consent must also be signed by Daisy since she will be 10 years old at the hearing. Her consent may be dispensed with if the court finds that the adoption is in her best interests. (AS 25.23.040 (a) (5)).

The biological parents' consents are not required due to the termination of their parental rights. In re Adoption of A.F.M., 15 P.3d 250 ( Alaska 2001).

Melly and Fitz must also file a Report of the Petitioner's Expenditures in connection with the adoption. Only when a step-parent is adopting is this requirement waived. (AS 25.23.090)(b). This report must also be signed and verified by Melly and Fitz. A written report of the investigation of the adopting parent is usually required. (AS 25.23.100 (e). This requirement is excused if the agency is a party to the adoption. (AS 25.23.100 (f). Since the Office of Children's Services is a party, no investigation is warranted.

**2. What pleadings/documents must be filed for Silas' adoption prior to the final adoption hearing? (30 points)**

There must be a signed and verified petition filed by Fitz. (AS 25.23.080 (b) Melly's written consent to the adoption is required under AS 25.23.040 (a) (1).

A father's consent is necessary under AS 25.23.040 (a)(2). The statute requires a father's written consent to his child's adoption if he was married to the mother at conception or anytime after conception, the father legally adopted the child or has otherwise legitimized the child under the law.

Don's consent may be dispensed with under AS 25.23.050 (a) (2). That statute provides:

“(a) Consent to adoption is not required of ...

(2) a parent of a child in the custody of another, if the parent for a period of at least one year has failed significantly without justifiable cause, including but not limited to indigency,

(A) to communicate meaningfully with the child, or

(B) to provide for the care and support of the child as required by law or judicial decree;”

Don was court ordered in his divorce to pay child support. He has failed to have any contact with Silas or Melly for more than three years. If Don does not consent to the adoption, Fitz' must move the court to dispense with his consent. The requirements of AS 25.23.050(a) (2) have been met by Don's history of non-payment and no contact.

Since this is a step -parent adoption, there is no need for a Report of Expenditures. AS 25.23.090 dispenses with that requirement.. Nor is an investigation of the suitability of the prospective adoptive home needed.

Unlike Daisy, Silas is not yet ten years old so his written consent to the proceeding is not required. His birth certificate must be filed with the court.

**3. Explain your advice to Melly about the support modification. (20 points)**

Melly cannot move for a modification of child support in Alaska.

As of January 1, 1998, all fifty states adopted the Uniform Interstate Family Support Act aka UIFSA. While Alaska issued the original child support order, it no longer has continuing exclusive jurisdiction over the parties' support order. AS 25.25.205 (a) provides “as long as this state remains the residence of the obligor, the individual obligee, or the child for whose benefit the support order is issued” then Alaska has continuing exclusive jurisdiction for the purposes of modification.

Melly, Fitz and their children have relocated to other states. Thus, Alaska lost its jurisdiction to modify. Only Colorado has personal jurisdiction over Fitz to modify the support order. UIFSA provides that to modify a support order the movant must file for modification in the state where the non-movant lives. Alaska codified this UIFSA provision at AS 25.25.611 ( a) (1 ).

Melly must file her modification motion in Colorado, Fitz' state of residence.