



Republic of the Philippines
Supreme Court
Office of the Court Administrator
Manila

OCA CIRCULAR NO. 213-2017

TO : ALL FAMILY COURTS AND CONCERNED REGIONAL TRIAL COURTS

SUBJECT: APPROVED RESOLUTION NO. 02-2017 OF THE COMMITTEE ON FAMILY COURTS AND JUVENILE CONCERNS (RE: PROPOSED GUIDELINES AND CLARIFICATION IN THE INTERPRETATION AND APPLICATION OF PERTINENT PROVISIONS OF REPUBLIC ACT NO. 8552 [DOMESTIC ADOPTION ACT OF 1998], REPUBLIC ACT NO. 8043 [THE INTER-COUNTRY ADOPTION ACT OF 1995], REPUBLIC ACT NO. 9523 [ACT REQUIRING CERTIFICATION OF THE DSWD TO DECLARE A "CHILD LEGALLY AVAILABLE FOR ADOPTION" AS PREREQUISITE FOR ADOPTION PROCEEDINGS], AND ADMINISTRATIVE MATTER NO. 02-6-02-SC [RULE ON ADOPTION], AS TO THE REQUIRED DOCUMENTS IN ADOPTION)

For the information, guidance and strict compliance of all Family Courts and concerned Regional Trial Courts, appended herein as Annex "A" is the Committee on Family Courts and Juvenile Concerns (CFCJC) Resolution No. 02-2017: "Proposed Guidelines and Clarification in the Interpretation and Application of Pertinent Provisions of Republic Act No. 8552 (Domestic Adoption Act of 1998), Republic Act No. 8043 (The Inter-Country Adoption Act of 1995), Republic Act No. 9523 (Act Requiring Certification of the DSWD to Declare a 'Child Legally Available For Adoption' as Prerequisite For Adoption Proceedings), and Administrative Matter No. 02-6-02-SC (Rule On Adoption), As to the Required Documents in Adoption." The resolution was approved during the meeting of the CFCJC and its Technical Working Group on 14 July 2017.

23 October 2017


JOSE MIDAS P. MARQUEZ
Court Administrator



Supreme Court of the Philippines

Committee on Family Courts and Juvenile Concerns

Resolution No. 02-2017

PROPOSED GUIDELINES AND CLARIFICATION IN THE INTERPRETATION AND APPLICATION OF PERTINENT PROVISIONS OF REPUBLIC ACT NO. 8552 (DOMESTIC ADOPTION ACT OF 1998), REPUBLIC ACT NO. 8043 (THE INTER-COUNTRY ADOPTION ACT OF 1995), REPUBLIC ACT NO. 9523 (AN ACT REQUIRING CERTIFICATION OF THE DSWD TO DECLARE A "*CHILD LEGALLY AVAILABLE FOR ADOPTION*" AS A PREREQUISITE FOR ADOPTION PROCEEDINGS), AND ADMINISTRATIVE MATTER NO. 02-6-02-SC (RULE ON ADOPTION), AS TO THE REQUIRED DOCUMENTS IN ADOPTION

WHEREAS, the Supreme Court, by Memorandum Order No. 20-2014 dated August 13, 2014, created the Committee on Family Courts and Juvenile Concerns (CFCJC) with the mandate, among others, of "drafting a plan for the organization of the family courts," and "monitoring the implementation of the plan for the creation and organization of Family Courts including identification of procedural rules and guidelines;"

WHEREAS, two consultation-workshops were conducted by the CFCJC in a National Summit for Family Courts held on September 16 and 17, 2015 and National Summit for Regional Trial Courts Handling Family Court Cases held on August 4 and 5, 2016, to determine and address issues affecting Family Courts, particularly, among others, the jurisdiction of Family Courts *vis-a-vis* first and second level regular courts, amendments to the rules of procedure, issuance of guidelines in the implementation of a uniform court procedure and the efficient handling of cases in the Family Courts;"

WHEREAS, during the 2015 and 2016 National Summits, the participating Regional Trial Court Judges, designated as Family Court Judges, as well as Regional Trial Court Judges handling Family Court cases, arrived at a consensus that there is an urgent need to revise or modify certain existing guidelines or propose clarificatory guidelines to the Honorable Court Administrator, to address specific concerns raised during the National Summits, **which will not require any amendment of the Rules of Court or existing laws;**



WHEREAS, some of the issues raised during the 2015 and 2016 National Summits involve the application and interpretation of laws and the rule on adoption;

NOW THEREFORE, the CFCJC hereby **PROPOSES** the following guidelines for the consideration and approval of the **Honorable Court Administrator**:

I. STRICT COMPLIANCE WITH REPUBLIC ACT NO. 9523 (AN ACT REQUIRING CERTIFICATION OF THE DSWD TO DECLARE A “CHILD LEGALLY AVAILABLE FOR ADOPTION” AS A PREREQUISITE FOR ADOPTION PROCEEDINGS INVOLVING ABANDONED, SURRENDERED, OR NEGLECTED CHILDREN)

Judges are enjoined to strictly comply with the provisions of Sec. 8 of Republic Act (R.A.) No. 9523 and its Implementing Rules and Regulations, requiring a Certification Declaring the Child Legally Available for Adoption (CDCLAA) from the DSWD as primary evidence in a domestic adoption proceeding, including the adoption of surrendered, abandoned, neglected, and dependent children. The only exceptions are adoption proceedings covered by subparagraphs (i), (ii), and (iii) of Section 4 of the Implementing Rules and Regulations of R.A. No. 9523.

Judges are reminded of Section 10 of RA No. 9523, which states that a violation of any provision of the said law is punishable as provided below:

SEC. 10. Penalty. – The penalty of One Hundred Thousand Pesos (P100,000) to Two Hundred Thousand Pesos (P200,000) shall be imposed on any person, institution, or agency who shall place a child for adoption without the certification that the child is legally available for adoption issued by the DSWD. Any agency or institution found violating any provision of this Act shall have its license to operate revoked without prejudice to the criminal prosecution of its officers and employees.

Violation of any provision of this Act shall subject the government official or employee concerned to appropriate administrative, civil and/or criminal sanctions, including suspension and/or dismissal from the government service and forfeiture of benefits.

JUSTIFICATION FOR THE PROPOSED GUIDELINE:

This guideline will clarify that the CDCLAA required under Section 8 of No. 9523 is also required in petitions for adoption of



abandoned, surrendered, and neglected children which do not fall within the three adoption cases exempted from the CDCLAA requirement by the subparagraphs (i), (ii), and (iii) of Section 4 of the Implementing Rules and Regulations of R.A. No. 9523.

Section 8 of R.A. No. 9523 provides:

Section 8. Certification. – The certification that a child is legally available for adoption shall be issued by the DSWD in lieu of a judicial order, thus making the entire process administrative in nature.

The certification, shall be, for all intents and purposes, the primary evidence that the child is legally available in a domestic adoption proceeding, as provided in Republic Act No. 8552 and in an inter-country adoption proceeding, as provided in Republic Act No. 8043.

Further, Section 4 of the Implementing Rules and Regulations of R.A. No. 9523 provides:

SECTION 4. *Coverage.* — These rules shall apply to surrendered, abandoned, neglected, and dependent children as mentioned in this Act who are subject for adoption.

Any of the following adoption proceedings in court does not require a Certification Declaring a Child Legally Available for Adoption.

- i. Adoption of an illegitimate child by any of his/her biological parent
- ii. Adoption of a child by his/her step-parent
- iii. Adoption of a child by a relative within the fourth (4th) degree of consanguinity or affinity.

II. APPLICATION OF SECTION 12 (5) OF ADMINISTRATIVE MATTER NO. 02-6-02-SC OR THE RULE ON ADOPTION IF THE CHILD STUDY REPORT (CSR) AND HOME STUDY REPORT (HSR) ARE NOT ATTACHED TO THE PETITION FOR ADOPTION UPON FILING AS REQUIRED UNDER SECTION 11 OF SAID RULE

When a petition for adoption is filed without the Case Study Report (CSR) and the Home Study Report (HSR), the court shall not dismiss the petition outright. Instead, the court shall, pursuant to Section 12(5), Rule on Adoption, order the concerned social worker to prepare and submit directly and only to the court the required reports before the hearing.

JUSTIFICATION FOR THE PROPOSED GUIDELINE:

The use of the word “shall” in Section 11, Rule on Adoption, underscores the mandatory character of the Rule **requiring the CSR and**



HSR. Upon filing of the petition for adoption, the court should issue an order to the DSWD to conduct the child and home study and submit the CSR and HSR directly to the court as the same are strictly confidential.

Sections 11 and 12 of the Rule on Adoption provide, to wit:

Section 11. Annexes to the Petition.— The following documents shall be attached to the petition:

x x x

C. Child study report on the adoptee and his biological parents;

x x x

E. Home study report on the adopters. If the adopter is an alien or residing abroad but qualified to adopt, the home study report by a foreign adoption agency duly accredited by the Inter-Country Adoption Board; and

x x x

Section 12. Order of Hearing.— If the petition and attachments are sufficient in form and substance, the court shall issue an order which shall contain the following:

x x x

(5) a directive to the social worker of the court, the social service office of the local government unit or any child-placing or child-caring agency, or the Department to prepare and submit child and home study reports before the hearing if such reports had not been attached to the petition due to unavailability at the time of the filing of the latter; and

x x x. ”

III. IF THE ADOPTER IS AN ALIEN, THE HOME STUDY REPORT (HSR) MUST BE PREPARED BY A FOREIGN ADOPTION AGENCY DULY ACCREDITED BY THE INTER-COUNTRY ADOPTION BOARD (ICAB)

If the petitioner is an alien or residing abroad and qualified to adopt under RA No. 8552, the HSR must be prepared by a foreign adoption agency duly accredited by the Inter-Country Adoption Board (ICAB) in accordance with Section 11(E), Rule on Adoption.



Furthermore, pursuant to the third paragraph of Sec. 13, Rule on Adoption, the HSR must show the alien's legal capacity to adopt and that his/her government allows the adoptee to enter his/her country as his/her adopted child.

IV. IF THE ALIEN PETITIONER FALLS UNDER ANY OF THE EXCEPTIONS IN SECTION 7 (b) OF RA NO. 8552 OTHERWISE KNOWN AS THE DOMESTIC ADOPTION ACT OF 1998, THE CERTIFICATION THAT THE ALIEN'S GOVERNMENT ALLOWS THE ADOPTEE TO ENTER THE ALIEN'S COUNTRY AS THE ALIEN'S ADOPTED CHILD SHALL NOT BE WAIVED.

If the alien petitioner falls under any of the exceptions provided in Section 7(b) of RA No. 8552, only the residency requirement and certification as to the legal capacity to adopt may be waived. The certification that the alien's government allows the adoptee to enter the alien's country as the alien's adopted child shall not be waived and must be submitted to the court.

The said Section 7 (b) reads:

"Who May Adopt.—The following may adopt:

(b) Any alien possessing the same qualifications as above stated for Filipino nationals: Provided, That his/her country has diplomatic relations with the Republic of the Philippines, that he/she has been living in the Philippines for at least three continuous years prior to the filing of the application for adoption and maintains such residence until the adoption decree is entered, that he/she has been certified by his/her diplomatic or consular office or any appropriate government agency that he/she has the legal capacity to adopt in his/her country, and that his/her government allows the adoptee to enter his/her country as his/her adopted son/daughter: Provided, further, That the requirements on residency and certification of the alien's qualification to adopt in his/her country may be waived for the following:

- (i) a former Filipino citizen who seeks to adopt a relative within the fourth degree of consanguinity or affinity; or*
- (ii) one who seeks to adopt the legitimate son/daughter of his/her Filipino spouse; or*
- (iii) one who is married to a Filipino citizen and seeks to adopt jointly with his/her spouse a relative within the fourth degree of consanguinity or affinity of the Filipino spouse; or*

xxx. "



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JUSTIFICATION:

There were instances involving alien petitioners whose petition for adoption filed under the Domestic Adoption Act of 1998 was granted by the court, yet the adopted child was not allowed to enter the alien's country. Thus, in order to avoid this situation, courts must require the alien petitioner to submit the certification that his or her government allows the adopted child to enter the alien's country, which is not waived under the above-quoted Section 7 (b).



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