

### UNKNOWN BIRTH FATHER INFORMATION

- According to W. Va. Code §48-22-117, an “unknown father” is a biological father whose identity the biological mother swears is unknown to her before adoption.
- If the birth mother does not know the identity of the biological father, or potential biological father, a “Notarized Affidavit of Unknown Father” must be filed with the court pursuant to W. Va. Code §48-22-502(b),(d). This motion will be sealed in the file.
- Sixty days before the final hearing, the court must determine whether the biological father is known or unknown. (W. Va. Code §48-22-603).
- If the court determines the father is known, service must be executed in accordance with W. Va. Code §48-22-602.
- If the court determines that the father is unknown, the court may decide that notice needs to be published (W. Va. Code §48-22-603©). A Motion to Dispense with Publication can be filed and approved by the court if publication is not likely to lead to the potential biological father receiving notice.

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### PATERNITY INFORMATION

- If paternity has not been established for the minor child, the petitioner will most likely need to attempt to establish paternity if the biological parent is known.
- The Petition should also explain the identity, address, and other known information regarding the suspected biological father.
- The court may want the potential father to be noticed and consent to the adoption may be necessary.
- Petitioner(s) may need to publish notice to give the potential biological father the opportunity to participate in the proceedings.

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12. Are either of the biological parents deceased?



- If either or both of the child's biological parents are deceased, you will need to obtain a death certificate from the jurisdiction in which the parent died.
- Under W. Va. Code §48-22-601(a)(5), Notice of Adoption must be served on a grandparent of the child if the grandparent's child is a deceased parent of the minor child being adopted when the minor child's parent did not execute a consent or have parental rights terminated prior to their death.
- If the parent of the deceased parent (child's grandparent) cannot be located or are also deceased, the petition needs give as much detail as is known as to why service cannot or should not be served on the grandparent.
- A judge still may determine that living grandparents be served in person or by publication.

See "Alternative to Death Certificate Information"



13. Has one or both biological or legal parent abandoned the child?

See Abandonment Definition



- The Adoption Petition should lay out the details constituting abandonment of the minor child.
- It should include when the parent last made contact, any financial support provided, including when and amount of any support.

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Continue to Question #14



### Alternatives to Death Certificate

- If Petitioner is unable to obtain a death certificate, some other proof of death will need to be filed with the Adoption Petition.
- An example could be an obituary, an affidavit from family, living birth parent, official at cemetery where person is buried, etc.
- The court prefers a death certificate, so if you cannot obtain one, be sure to explain in the petition as much information about the parent's death as possible.

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### ABANDONMENT DEFINITION

#### W. Va. Code §48-22-301-306

- Abandonment of a child over 6 months of age is when a parent has:
  - 1) failed to financially support the child within the birth parent's means, and
  - 2) has failed to visit or otherwise communicate with the child when the parent knows where the child resides, is physically and financially able to do so and is not prevented from doing so by the person (or agency) that has care or custody of the child.
    - Provided that such failure to act continues uninterrupted for a period of 6 months immediately preceding the filing of the adoption.
- The W.Va. Supreme Court held in *In re Adoption of C.R.* (233 W.Va. 385, 2014), the involuntary payment of child support through BCSE wage withholding was not sufficient to overcome the presumption of abandonment.

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14. Will any living biological parent consent to the adoption?



- W. Va. Code §48-22-301-305 details whose consent is required, when consent can be obtained, required contents of the consent, consent by infants, and revocation of consent.
- Consent forms with an instruction letter can be mailed to parents who are or may be willing to give consent.
- It is important to remember that an attorney representing adoptive parent(s) makes clear to a consenting parent that the attorney does not represent the consenting parent and that the consenting parent can and should obtain legal counsel.

NO



15. Has either parent been adjudicated by a court as unfit and/or had their parental rights terminated?



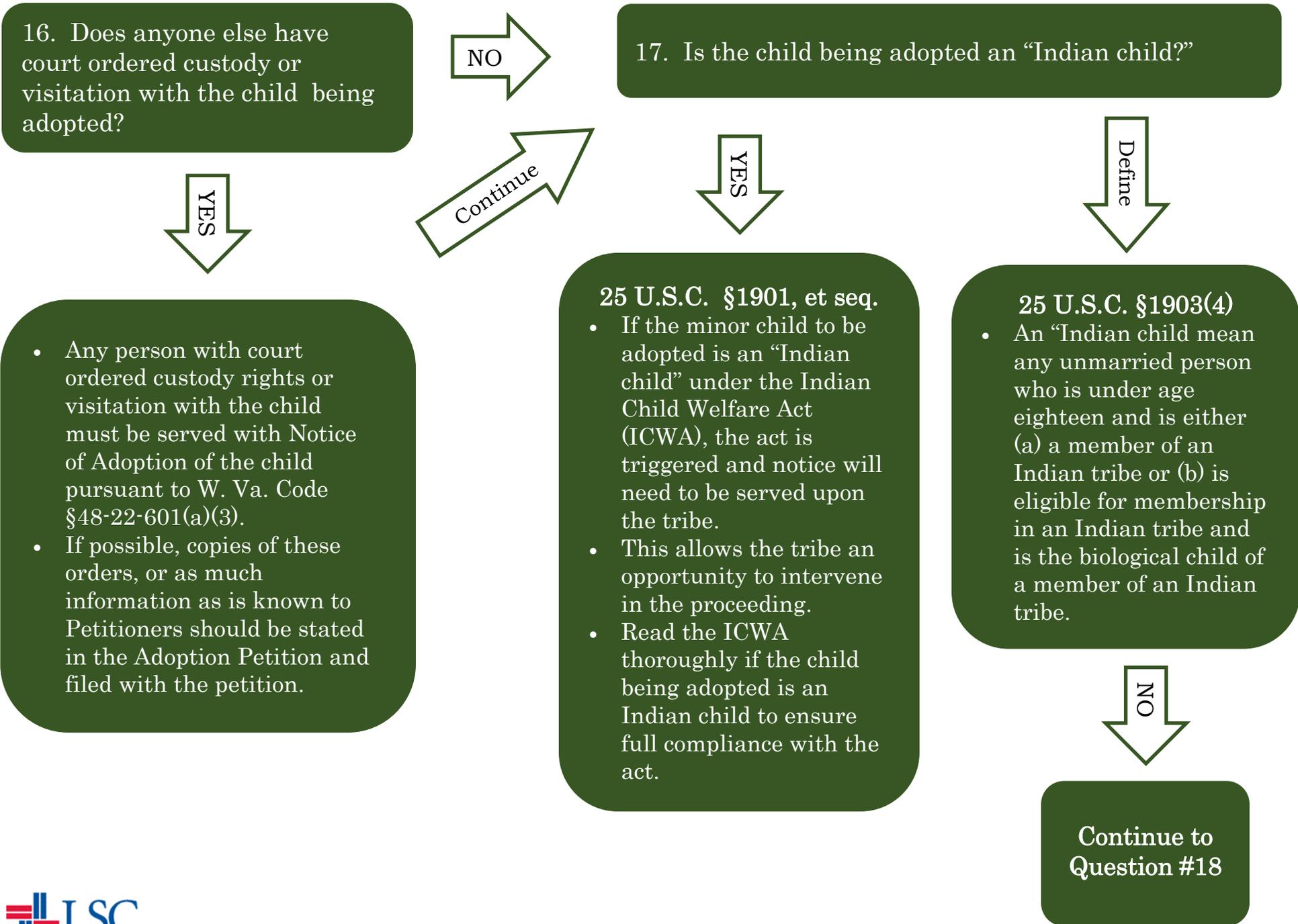
- Compile all court documents regarding the termination of parental rights to include with the Adoption Petition.
- The Petition should specify the details of the termination of parental rights, including: court, civil action number, date of termination, specific findings of fact supporting the termination of rights.
- Parents whose right have been legally terminated are not entitled to receive notice of the adoption proceedings.

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NO



Continue to Question #16



18. Is the adoptive parent fifteen years older than the child being adopted?



19. Was the child being adopted born in West Virginia?



- The Petition should state that the adopting parent is more than fifteen years older than the child being adopted.
- While an adoption will not necessarily be denied due to the difference if less than fifteen years, it is an issue that will be addressed.

**W. Va. §48-22-502**

- The petition for adoption must state that the adoptive parent is less than fifteen years older than the child being adopted.
- In order to grant the adoption, the court must make a specific finding that the adoption is in the best interest of the child notwithstanding the differences in age.
- In a step-parent adoption, the specific finding is not required and an adoption shall not be denied on the sole basis of proximity in age.

- A copy of the child's birth certificate must be filed with the Adoption Petition.
- A "State of West Virginia Certificate of Adoption" must also be filed before the adoption is final. The clerk's office will mail this form to Vital Statistics in order to have a new birth certificate issued.
- The child's original birth certificate will be sealed and a court order will be required to access the original birth certificate in the future.

- The "State of West Virginia Certificate of Adoption" form will not be needed.
- Contact the birth state's Vital Statistic's Dept. to obtain requirements for having the child's birth certificate changed following the entry of a final adoption order.

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20. Does the Petitioner qualify for a Fee Waiver?



- For current qualifications and necessary forms, visit the [West Virginia Judiciary's](#) website.
- The Fee Waiver form is available as a LAWV Law Help form or as a fillable pdf on the court's website.



- If the client does not qualify for a fee waiver, the regular civil case filing fee will need to be paid at the time of filing.
- For current qualifications and necessary forms, visit the [West Virginia Judiciary's](#) website.

This is the end of the client interview.