

file:spcpro_part4.htm

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/046155744d73/>

Special Proceedings JOJO JOJO 4 10 2002-01-15T01:10:00Z 2002-01-15T02:15:00Z 6 2523 14382 SUPREME COURT 119 28 17662 9.2720 110

4. ADOPTION

1. Governing Laws

1. The basic governing law on domestic adoption is found in Republic Act No. 8552, which is "An Act Establishing the Rules and Policies on the Domestic Adoption of Filipino Children." It was approved on February 25, 1998. It took effect fifteen (15) days after its complete publication in a newspaper of general circulation in the Official Gazette.
2. On December 2, 1998, Rules and Regulations to Implement the Domestic Adoption Act of 1998 were promulgated to govern the adoption of Filipino children within the Philippines.
3. Foreign adoptions are governed by Republic Act No. 8043, which is "An Act Establishing the Rules to Govern Inter-Country Adoption of Filipino Children," approved on June 2, 1995.
4. Prior laws on adoption include provisions in the Child and Youth Welfare Code (Presidential Decree No. 603), the Family Code, and Executive Order No. 91.
5. The Family Code expressly repealed Articles 17-19, 27-31, 39-42 of the Civil Code and Articles 27-29, 31, 33 and 35 of Presidential Decree No. 603.
6. The Civil Code provisions, however, were expressly repealed by the provisions of P.D. No. 603, which took effect in 1975, or six months after its approval on December 10, 1974.
7. About six months before the Family Code was signed by President Corazon C. Aquino as Executive Order No. 209 on July 6, 1987, she promulgated Executive Order No. 91 on December 23, 1986. It was published in the Official Gazette on January 12, 1987. It should have taken effect fifteen (15) days thereafter or on January 27, 1987.
8. Republic Act No. 8552 provides that any law, presidential decree or issuance, executive order, letter of instruction, administrative order, rule, or regulation contrary to, or inconsistent with its provisions is repealed, modified or amended accordingly.¹⁶⁶ The provisions of Rules 99 and 100 in the Rules of Court should thus be considered amended.

2. Petition for Adoption

1. Who may adopt

Those who may adopt are enumerated in Sec. 7 of Rep. Act No. 8552, viz:

- (a) Any Filipino citizen of legal age, in possession of full civil capacity and legal rights, of good moral character, has not been convicted of any crime involving moral turpitude, emotionally and psychologically capable of caring

for children, at least sixteen (16) years older than the adoptee, and who is in a position to support and care for his/her children in keeping with the means of the family.

Note: The requirement of sixteen (16) year difference between the age of the adopter and adoptee may be waived when the adopter is the biological parent of the adoptee, or is the spouse of the adoptee's parent.

(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 (3) 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 (4th) 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 (4th) degree of consanguinity or affinity of the Filipino spouse; or

(iv) the guardian with respect to the ward after the termination of the guardianship and clearance of his/her financial accountabilities.

(c) Husband and wife shall jointly adopt, except in the following cases:

(i) if one spouse seeks to adopt the legitimate son/daughter of the other; or

(ii) if one spouse seeks to adopt his/her own illegitimate son/daughter: Provided, However, that the other spouse has signified his/her consent thereto; or

(iii) if the spouses are legally separated from each other.

In case husband and wife jointly adopt, or one spouse adopts the illegitimate son/daughter of the other, joint parental authority shall be exercised by the spouses.

2. Jurisdictional Venue

A petition for adoption shall be filed in the Regional Trial Court of the place in which the petitioner resides.¹⁶⁷ Adoption now falls under the original and exclusive jurisdiction of the Regional Trial Court.¹⁶⁸

3. Subjects of adoption

Who may be adopted are enumerated in Sec. 8 of Rep. Act No. 8552.

4. Aliens

Aliens are now allowed to adopt. For a time, under the Family Code repealing the provisions in the Civil Code, aliens were not allowed to adopt. Those who possess the same qualifications as Filipino nationals upon the following conditions:

4.1 That his/her country has diplomatic relations with the Republic of the Philippines.

4.2 That he/she has been living in the Philippines for at least three (3) continuous years prior to the filing of the application for adoption and maintains such residence until the adoption decree is entered.

4.3 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.

4.4 That the requirements of residency and certification of the alien's qualification to adopt in his/her country may be waived by the following:

4.4.1 a former Filipino citizen who seeks to adopt a relative within the fourth degree of consanguinity or affinity; or

4.4.2 one who seeks to adopt the legitimate son/daughter of his/her Filipino spouse; or

4.4.3 one who is married to a Filipino citizen and seeks to adopt jointly with his/her spouse a relative within the fourth consanguinity or affinity of the Filipino spouse.

5. Joint Adoption

Husband and wife are required to adopt except (a) if one spouse seeks to adopt the legitimate son/daughter of the other; (b) if one spouse seeks to adopt his/her own illegitimate son/daughter, provided that the other spouse has signified his/her consent thereto; and (c) if the spouses are legally separated from each other.¹⁶⁹

6. Age Difference

The age difference should be 16 years between the adopter and the adopted, provided that it may be waived when the adopter is the biological parent of the adoptee or is the spouse of the adoptee's parent.¹⁷⁰

7. Procedure

7.1 Contents of petition

The petition should contain the same allegations in a petition for guardianship, to wit:

- (1) The jurisdictional facts;
- (2) The qualifications of the adopter;
- (3) That the adopter is not disqualified by law;
- (4) The name, age, and residence of the person to be adopted and of his relatives or of the persons who have him under their care;
- (5) The probable value and character of the estate of the person to be adopted.

7.2 Required consent

Under Sec. 9, Republic Act No. 8552, written consent of the following is required:

- (1) The adoptee, if ten (10) years of age or over.
- (2) The biological parent(s) of the child, if known, or the legal guardian, or the proper government instrumentality which has legal custody of the child.
- (3) The legitimate and adopted sons/daughters, ten (10) years of age or over, of the adopter(s) and adoptee, if any.

(4) The illegitimate sons/daughters, ten (10) years of age or over, of the adopter if living with said adopter and the latter's spouse, if any.

(5) The spouse, if any, of the person adopting or to be adopted.

7.3 Order for hearing

If the petition and consent are sufficient in form and substance, and a favorable case study has been made, as hereafter mentioned, the court, by an order, shall fix the date and place of the hearing which shall not be more than six (6) months after the issuance of the order.¹⁷¹

7.4 Publication of order

The order shall direct that a copy thereof be published before the hearing once a week for three (3) successive weeks in a newspaper of general circulation in the province.

7.5 Case Study

No petition for adoption shall be set for hearing unless a licensed social worker of the Department, the social service office of the local government unit, or any child-placing or child-caring agency has made a case study of the adoptee, his/her biological parent(s), as well as the adopter(s), and has submitted the report and recommendations on the matter to the court.

7.6 Birth registration

At the time of preparation of the adoptee's case study, the social worker concerned shall confirm with the Civil Registry the real identity and registered name of the adoptee. If the birth of the adoptee was not registered with the Civil Registry, the social worker shall ensure that the adoptee is registered.

7.7 Legally available

The case study shall establish that the adoptee is legally available for adoption and that the documents to support this fact are valid and authentic. Further, the case study of the adopter shall ascertain his genuine intentions and that the adoption is in the best interest of the child.

7.8 Intervention by DWSD

The DWSD shall intervene on behalf of the adoptee if it finds, after the case study, that the petition should be denied. The case studies and other relevant documents and records pertaining to the adoptee and the adoption shall be preserved by the Department.¹⁷²

7.9 Supervised Trial Custody

No petition for adoption shall be finally granted until the adopter/s has/have been given by the court a supervised trial custody period for at least six (6) months within which the parties are expected to adjust psychologically and emotionally to each other and establish a bonding relationship. During said period, temporary parental authority shall be vested in the adopter/s.

(a) The court may *motu proprio* or upon motion of any party reduce the trial period if it finds the same to be in the best interest of the adoptee, stating the reasons for the reduction of the period. However, for alien adopters, they must complete the six (6)-month trial custody except for those enumerated in Sec.7(b)(i)(ii)(iii).

(b) If the child is below seven (7) years of age and is placed with the prospective adopter through a pre-adoption placement authority issued by the Department, the prospective adopter shall enjoy all the benefits to which

biological parents are entitled from the date the adoptee is placed with the prospective adopter.¹⁷³

7.10 Decree of adoption

If, after the publication of the order of hearing, no opposition has been interposed, and after consideration of the case studies, the qualifications of the adopter, the trial custody report, and the evidence submitted, the court is convinced that the petitioners are qualified to adopt, and that the adoption would redound to the best interest of the adoptee, a decree of adoption shall be entered. The decree shall state the name by which the child is to be known¹⁷⁴ which shall be effective as of the date the original petition was filed.

Note: This provision shall also apply in case the petitioner dies before the issuance of the decree of adoption to protect the interest of the adoptee.¹⁷⁵

8. Civil Registry Record

An amended certificate of birth, without any notation that it is an amended issue, shall be issued by the Civil Registry, attesting to the fact that the adoptee is the child of the adopter by being registered with his/her surname. The original certificate of birth shall be stamped 'cancelled' with the annotation of the issuance of an amended birth certificate in its place and shall be sealed in the civil registry records¹⁷⁶

9. Confidential Nature of Proceedings

All hearings in adoption cases are confidential and shall not be open to the public. All records, books, and papers relating to the adoption cases in the files of the court, the DWSD, or any other agency or institution participating in the adoption proceedings shall be kept strictly confidential. The court may authorize the necessary information to be released, if it is for the best interest of the adoptee and the disclosure is necessary, restricting the purposes for which it may be used.¹⁷⁷

10. Service of judgment

The judgment shall be served by the clerk on the civil registrar.

3. Rescission of Adoption

1. Grounds for rescission

Upon petition of the adoptee, with the assistance of the DSWD if a minor or if over eighteen (18) years of age but is incapacitated, as guardian/counsel, the adoption may be rescinded on any of the following grounds committed by the adopter(s): (a) repeated physical and verbal maltreatment by the adopter(s) despite having undergone counselling; (b) attempt on the life of the adoptee; (c) sexual assault or violence; or (d) abandonment and failure to comply with parental obligations.¹⁷⁸

2. Who may file

A minor or other incapacitated person may, through a guardian or guardian ad litem, file the petition for rescission of adoption. Under Rep. Act No. 8552, Sec. 19, adoption, being in the best interest of the child, shall not be subject to rescission by the adopter(s). However, the adopter(s) may disinherit the adoptee for causes provided in Article 919 of the Civil Code.

3. Time to file petition

The petition must be filed within five (5) years following attainment of majority, or following recovery from incompetency.¹⁷⁹

4. Procedure

The court shall issue an order requiring the adverse party to answer the petition within fifteen (15) days from receipt of a copy thereof. The order and a copy of the petition shall be served on the adverse party in such manner as the court may direct. After trial, if the court finds the allegations of the petition to be true, the court shall render judgment ordering rescission, with or without costs, as justice requires.

5. Service of judgment

A certified copy of the judgment shall be served upon the civil registrar concerned. Within thirty (30) days from rendition of the judgment, he shall enter the action in the civil register.¹⁸⁰

4. Inter-Country Adoption (Rep. Act No. 8043):

1. Adoption by aliens

The Family Code had provided that adoption by aliens of Filipino children, while generally prohibited by the Code, shall be authorized in inter-country adoption as may be allowed by law.

2. The law and the implementing rules and regulations

The Inter-Country Adoption Act was thereafter passed on June 7, 1995 and took effect fifteen days after publication in two newspapers of general circulation.. Its Implementing Rules and Regulations was passed by the Inter-Country Adoption Board (ICAB) which was thereby created. The implementing rules, which were patterned after the 1993 Hague Convention, became effective on January 17, 1996. It has been observed that the implementing rules contain provisions which are adopted from the Hague Convention but are not authorized by the law.

3. The process

The process of inter-country adoption refers to the process of adopting a Filipino child by a foreigner or by a Filipino citizen permanently residing abroad where the petition is filed. The supervised child custody is undertaken and the decree of adoption is issued outside the Philippines.

4. A legally-free child

For a child to be placed under the coverage of the Inter-Country Adoption Law, he must be legally-free which means that the child has been voluntarily or involuntarily committed to the DSWD in accordance with P.D. No. 603 and the necessary documents submitted to the ICAB.

5. Adopters

The qualifications for adopters are more stringent than the qualifications for adopters in domestic adoption. For one, an adopter must at least be 27 years of age aside from the 16-year difference between the adopter and the adopted.

6. Application

An application for inter-country adoption may be filed with the Regional Trial Court having jurisdiction over the child or with the ICA Board, through an intermediate agency in the country of the prospective or adoptive parents.

7. Functions of the RTC

The Regional Trial Court appears merely to receive applications from foreign adoption agencies, evaluate and assess the qualifications of the proposed adopter, and pursuant to the implementing rules, the court must submit

its findings and the application papers to the ICAB. The supervised trial custody is conducted and the decree of adoption is issued by the court in the place of the adopter abroad.

8. Resident Aliens

Aliens who permanently reside in the Philippines are not qualified to become adopters under the Inter-Country Adoption Act. However, under the Domestic Adoption Act, they are qualified to adopt.

8.1 Art. 184, Family Code provides that an alien cannot adopt under Philippine law except '(a) a former Filipino citizen who seeks to adopt a relative by consanguinity; and (b) one who seeks to adopt the legitimate child of his or her Filipino spouse.'

8.2 Where one of the spouses is an alien, the adoption cannot be allowed. 181

9. Case rulings

9.1 Where one of the spouses is an alien, they are disqualified to adopt under Philippine laws. 182

9.2 Husband and wife must jointly adopt. 183

9.3 Non-resident aliens cannot adopt. 184

166 Sec. 26, Republic Act No. 8552, Sec. 26.

167 Rules of Court, Rule 99, Sec. 1.

168 Batas Blg. 129, amending Sec. 19 (7).

169 Rep. Act No. 8552, Sec. 7.

170 Rep. Act No. 8552, Sec. 7 (a).

171 Rules of Court, Rule 99, Sec. 4.

172 Rep. Act No. 8552, Sec. 11.

173 Rep. Act No. 8552, Sec. 12.

174 Rep. Act No. 8552, Sec. 13.

175 Ibid.

176 Rep. Act No. 8552, Sec. 14.

177 Rep. Act No. 8552, Sec. 15.

178 3. Rescission of Adoption

1. Grounds for rescission

Upon petition of the adoptee, with the assistance of the DSWD if a minor or if over eighteen (18) years of age but is incapacitated, as guardian/counsel, the adoption may be rescinded on any of the following grounds committed by the adopter(s): (a) repeated physical and verbal maltreatment by the adopter(s) despite having undergone counselling; (b) attempt on the life of the adoptee; (c) sexual assault or violence; or (d) abandonment and failure to comply with parental obligations.[178]

2. Who may file

A minor or other incapacitated person may, through a guardian or guardian ad litem, file the petition for rescission of adoption. Under Rep. Act No. 8552, Sec. 19, adoption, being in the best interest of the child, shall not be subject to rescission by the adopter(s). However, the adopter(s) may disinherit the adoptee for causes provided in Article 919 of the Civil Code.

3. Time to file petition

The petition must be filed within five (5) years following attainment of majority, or following recovery from incompetency.[179]

4. Procedure

The court shall issue an order requiring the adverse party to answer the petition within fifteen (15) days from receipt of a copy thereof. The order and a copy of the petition shall be served on the adverse party in such manner as the court may direct. After trial, if the court finds the allegations of the petition to be true, the court shall render judgment ordering rescission, with or without costs, as justice requires.

5. Service of judgment

A certified copy of the judgment shall be served upon the civil registrar concerned. Within thirty (30) days from rendition of the judgment, he shall enter the action in the civil register.[180]

Footnotes

178. Rep. Act No. 8552, Sec. 19.

179. Rules of Court, Rule 100, Sec. 5.

180. Rules of Court, Rule 100, Sec. 4.

179 Rules of Court, Rule 100, Sec. 5.

180 Rules of Court, Rule 100, Sec. 4.

181 Executive Order No. 91, paragraph 2, December 17, 1986.

182 Republic v. Court of Appeals and Hughes, G.R. No. 100835, October 26, 1993, 227 SCRA 401.

183 Republic v. Court of Appeals and Hughes, G.R. No. 100835, October 26, 1993, 227 SCRA 401.

184 Brehm v. Republic, G.R No. L-18566, September 30, 1963, 9 SCRA 172.

ABOUT BATAS.ORG

Study smarter at BATAS.org

The Philippine bar review and law-school companion built around how your brain actually remembers.

The complete Philippine law library - free for everyone.

More than 100,000 Supreme Court decisions, Republic Acts, and executive issuances - full-text searchable, browsable by category and year, and always free. No paywall, no login. This PDF came from it.

Audio case-brief lectures.

Any decision becomes a podcast-style lecture - facts, issues, ruling, and doctrine - with read-along highlighting and a hands-free presentation mode. Study while commuting, working out, or resting your eyes.

Bar review built on the science of memory.

Complete, sequenced courses for all eight bar subjects, narrated like podcasts and reinforced with retrieval practice and spaced review - the study techniques with the strongest evidence behind them.

The full law-school curriculum.

One subscription unlocks the entire J.D. curriculum - every subject, every lesson, with your progress tracked down to the paragraph so you can pick up exactly where you left off, on any device.

Mock exams that tell you where you stand.

Timed multiple-choice exams graded instantly, with per-subject score breakdowns and focus suggestions that point you at your weakest topics first.

A study planner that keeps you on pace.

Set your schedule and BATAS tells you every day whether you are on track for bar day - and exactly which lesson to take next.

Start free at <https://batas.org>

The law library is free forever - and your first lesson is one click away.

The text of this document is an official public record and remains in the public domain. Formatting, presentation, and compilation © 2026 batas.org.

Downloaded free from the batas.org Law Library. Share it freely - the library is free for every law student, bar reviewee, and practitioner.