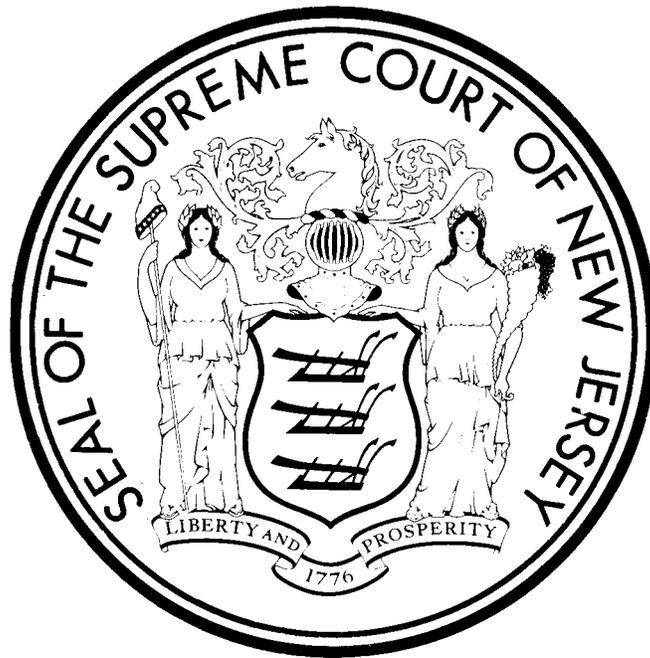


# **FAMILY PRACTICE COMMITTEE**



## **2009-2011 SUPPLEMENTAL REPORT**

February 14, 2011

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## **I. Introduction**

The Judicial Council endorsed a number of recommended policies and procedures for adoption practice in New Jersey. The recommendations formalize the requirements for adoption complaints, Surrogate responsibilities, and other procedures relating to adoptions. Some of the recommendations will be promulgated by directive and others have been approved for the development of court rules. On October 8, 2010, Acting Administrative Director of the Courts, Glenn A. Grant, referred to the Family Practice Committee (Practice Committee) those recommendations that were approved for the drafting of court rules. This report primarily addresses those issues that were specifically referred to the Practice Committee.

The Practice Committee also addressed two other issues unrelated to adoption practice, which are included in this supplemental report. First, in its January 20, 2011, it recommended the deletion of various forms from the Rules' Appendix so that they may be promulgated by the Administrative Director of the Courts. One additional form recommended for deletion is Appendix XIII, the Certification of Child Support Arrears. Supplemental Report at 25-26. Second, the Practice Committee discussed whether parties must disclose a denied domestic violence complaint or temporary restraining order in the context of another family court action, and concluded that there is no such requirement. Supplemental Report at 49.

Where rule changes are proposed, deleted text is bracketed [as such], and added text is underlined as such. No change to a paragraph of a rule is noted as follows: ". . . no change."

## **II. Proposed Rule Amendments**

### **One adoptee per complaint**

A complaint or petition filed pursuant to Rules 5:10 and 5:11 must relate to one and only one child or adoptee. This rule facilitates the counting of individual adoptees. It is particularly important to ensure tracking of foster children in the care of the Division of Family Development. It is recognized that this requirement may pose a significant financial burden on plaintiffs seeking to adopt more than one child. At the Surrogate's discretion, for plaintiffs seeking to adopt more than one child, the filing fee may be waived for the additional children. Therefore, the Practice Committee recommends the following rule amendment:

**5:10-2**

5:10-2. Caption of Complaint; Waiver of Filing Fees

(a) The complaint in an action for the adoption of a child shall be verified and shall state the title of the action as "In the matter of the adoption of a child [(or children)] by \_\_\_\_\_."

(b) Each complaint shall address only one adoptee. However, the supporting documentation for a sibling group being adopted by a single family may be submitted as one set of documents that supports all the siblings' complaints for adoption.

(c) In cases involving multiple children, the filing fee(s) for the additional children may be waived at the discretion of the Surrogate upon the plaintiff's showing of financial hardship.

Note: Source-R. (1969) 4:94-2(a). Adopted December 20, 1983, to be effective December 31, 1983; caption amended, paragraph (a) amended and new paragraphs (b) and (c) adopted \_\_\_\_\_ to be effective \_\_\_\_\_.

### **Minimum requirements for adoption complaints**

A minimum standard level of review of the complaint and its attachments should be conducted before the Surrogate files and docket an adoption. If, however, the required documents set forth below are not provided, then the complaint should be returned to the plaintiff and not filed. Therefore, the Practice Committee proposes R. 5:10-3(a) and (b) as minimum complaint requirements for adoptions of children placed for adoption by an approved private adoption agency and DYFS. The Practice Committee also proposes R. 5:10-3(c) as minimum complaint requirements for all other adoptions of children who have not been placed for adoption by an adoption agency or DYFS.

In proposed R. 5:10-3(b)(3), an initial draft included a requirement for adoption agencies to attach backup documentation of the criminal history record information (CHRI) checks. There was an objection to "including all backup documentation" in the rule because it includes information inappropriate for distribution, such as arrests and this requirement may delay adoptions unnecessarily. In any adoption case, the court has the discretion to order an adoption agency to provide evidence to support its conclusions as to the CHRI and CARI checks.

### **Confirming appeals status of DYFS termination of parental rights case**

In DYFS cases, adoption represents permanency for a child. As such, in cases where parental rights have been terminated through DYFS guardianship complaints, it is preferred that all parties ensure that the termination proceedings have been finalized before entering the adoption judgment. This issue is addressed by proposed R. 5:10-3(a)(7) and -3(b)(5)(B).

### **Civil union recommendations**

This rule recommendation incorporates the technical amendments to R. 5:10-3(b), (e), (i)

and (m), relating to civil unions and domestic partnerships that the Practice Committee recommended in its Final Report submitted on January 20, 2011.

**5:10-3**

5:10-3. Contents of Complaint

(a) The complaint shall state:

[(a)](1) The name, age, citizenship and domicile of each plaintiff and the relationship, if any, of each plaintiff to the child to be adopted.

[(b)](2) The name, age and citizenship of the spouse, civil union partner or domestic partner of the plaintiff (if such [spouse] person is not also a plaintiff), and the relationship, if any, of such [spouse] person to the child to be adopted.

[(c)](3) The name, age, date of birth and birthplace of the child to be adopted; or if unknown to the plaintiff or plaintiffs, the complaint shall so state.

(4) The date of the child's placement in the adoptive home.

[(d)](5) The name, age and birthplace of all [natural] biological and adopted children of the plaintiff or plaintiffs.

[(e)](6) The name, age and birthplace of all [natural] biological and adopted children of the spouse of the plaintiff (if such spouse, civil union partner or domestic partner is not also a plaintiff).

[(f)](7) The name of the approved agency or other source from which the plaintiff or plaintiffs received the child to be adopted, and include proof of the manner in which the child became legally free for adoption or a statement that parental rights have not been terminated.

[(g)](8) The date of commencement of each period during which the child to be adopted came under the continuous care of the plaintiff or plaintiffs, and the duration of each such continuous period. If the child has not been received from or with the approval of an

approved agency and the complaint has not been filed promptly as required by statute, a statement of the reasons for the delay shall be made.

[(h)](9) The name and residence of each [natural] biological parent and guardian or custodian of the child to be adopted. If unknown to the plaintiff or plaintiffs, or if deceased, the complaint shall so state. If unknown, there shall be annexed to the complaint an affidavit of the plaintiff or plaintiffs stating the extent of their inquiry and knowledge with respect thereto and the circumstances under which the child was received into their home. Such affidavit may be omitted if the child to be adopted was received by the plaintiff or plaintiffs from an approved agency.

[(i)](10) Whether or not either [natural] biological or legal parent of the child to be adopted has been granted a divorce, dissolution of a civil union or termination of a domestic partnership from the other [natural] biological or legal parent, unless such information is unknown to the plaintiff or plaintiffs. If unknown, the complaint shall so state.

[(j)](11) A full description of all property belonging to the child to be adopted. If none or unknown, the complaint shall so state.

[(k)](12) The name by which the child to be adopted shall be known.

[(l)](13) The occupation of the plaintiff or plaintiffs, and an allegation that the plaintiff or plaintiffs are able to support the child to be adopted.

[(m)](14) If the spouse, civil union partner or domestic partner of a plaintiff has consented to the proposed adoption, such consent shall be annexed to the complaint or appended thereto.

[(n)](15) If the plaintiff or plaintiffs shall have received the child to be adopted from or with the approval of an approved agency, the consent of such approved agency to the proposed adoption shall be annexed to the complaint or appended thereto.

(16) Neither the child nor the child's biological parents are members or eligible to be members of a federally recognized Indian tribe in accordance with the requirements set forth in R. 5:10-6 [new rule pending in this report].

(b) For every domestic agency adoption, in addition to the complaint requirements set forth in paragraph (a) of this rule, there shall be attached to the complaint the following:

(1) A report of consideration and expenses in accordance with N.J.S.A. 9:3-55.a.

(2) Home study report.

(3) The results of criminal history and child abuse record information checks, including a statement as to waiver of objection regarding those results. Such checks shall be conducted within one year prior to the filing of the complaint for each person 18 years of age or older in the adoptive household.

(4) The signed original agency consent to the adoption dated within 120 days prior to the filing of the complaint.

(5) Agency certification. The agency shall certify as follows:

(A) An explanation and evaluation of the results of the fingerprint checks as it concerns the proposed adoption;

(B) A termination of parental rights judgment is not pending appeal;

(C) The agency is unaware of any pending concurrent adoption action existing in another county;

(D) The adoptive parents have been provided with full disclosure of the adoptee's known life and medical history and the birth parents' known medical history;

(E) Whether the adoptive parents have entered into a subsidy agreement if applicable;

(F) No adult member of the adoptive household has been convicted of a crime that bars adoption pursuant to the Adoption and Safe Families Act (ASFA); and

(G) In DYFS cases, the adoptee's verified current social security number, and the card shall be supplied to the adoptive parents if available.

(6) Form of order fixing a hearing date.

(7) Interstate Compact on the Placement of Children authorization form that approves the placement, if applicable.

(8) Affidavit of non-military service. When a child is placed for adoption by a private adoption agency, and termination of parental rights has not been granted or the birth parents have not surrendered their rights, the complaint must have attached to it an Affidavit of non-military service in accordance with R. 1:5-7.

(c) For every private adoption, in addition to the complaint requirements set forth in paragraph (a) of this rule, there shall be attached to the complaint the following:

(1) A report of consideration and expenses in accordance with N.J.S.A. 9:3-55.a., except where the plaintiff is a stepparent, brother, sister, grandparent, aunt, uncle, or birth father of the child.

(2) Affidavit of the circumstances under which the child was received in the adoptive home.

(3) In the case of a second-parent or co-parent adoption, the complaint shall be the same as that of a stepparent adoption.

(4) Affidavit of non-military service. When termination of parental rights has not been granted or the birth parents have not surrendered their rights, the complaint must have attached to it an Affidavit of non-military service in accordance with R. 1:5-7.

(5) Form of order setting a date for a preliminary or final hearing.

(d) Affidavit of Verification and Non-collusion. There shall be attached to every complaint for adoption an oath or affirmation by the plaintiff that the allegations of the complaint are true to the best of the party's knowledge, information and belief, and that the pleading is made in truth and good faith and without collusion for the causes set forth therein.

Note: Source-R. (1969) 4:94-2(c), (d), (e). Adopted December 20, 1983, to be effective December 31, 1983; first paragraph designated as paragraph (a), paragraph (a) redesignated as subparagraph (a)(1), paragraph (b) amended and redesignated as subparagraph (a)(2), paragraph (c) amended and redesignated as subparagraph (a)(3), subparagraph (a)(4) adopted, paragraph (d) amended and redesignated as subparagraph (a)(5), paragraph (e) amended and redesignated as subparagraph (a)(6), paragraph (f) amended and redesignated as subparagraph (a)(7), paragraph (g) redesignated as subparagraph (a)(8), paragraph (h) amended and redesignated as subparagraph (a)(9), paragraph (i) amended and redesignated as subparagraph (a)(10), paragraph (j) redesignated as subparagraph (a)(11), paragraph (k) redesignated as subparagraph (a)(12), paragraph (l) redesignated as subparagraph (a)(13), paragraph (m) amended and redesignated as subparagraph (a)(14), paragraph (n) redesignated as subparagraph (a)(15), subparagraph (a)(16) adopted, and paragraphs (b), (c) and (d) adopted \_\_\_\_\_ to be effective \_\_\_\_\_.

### **Surrogate action upon filing of an adoption complaint**

Other matters related to complaint standards requires the Surrogate, as clerk of the court, to review complaints for all necessary information and documentation filed with the court.

Those responsibilities include reviewing the complaint for the following:

1. The complaint should be reviewed to ensure proper venue (R. 5:10-1).
2. The complaint must contain all information required by R. 5:10-3 and other information as set forth in these rule recommendations.
3. The adoptive parents have provided their current address and any prior addresses within the last five years. This requirement is consistent with the amendment to federal law, 42 U.S.C.A. § 671(a)(20), which requires a child abuse records search of adults in an adoptive household, and that such search include all states where the individuals have lived within the past five years.
4. The names, dates of birth and all residences within the past five years of all other adults in the adoptive home must be noted on the complaint. This information is necessary to conduct background checks on these individuals as required by N.J.S.A. 9:3-54.2.
5. The marital or civil union status of the adoptive parent (and names of spouses/partners, if applicable) must be noted on the complaint. This information will ensure compliance with N.J.S.A. 9:3-43, which requires spousal consent to adopt.

### **Physical adoption file**

The physical adoption file must be provided to the judge for review no later than five business days before the first adoption proceeding.

### **Establishing a case in the Judiciary's automated case management system**

When a complaint is submitted for filing with the Surrogate, Surrogate staff must conduct a party lookup in the Judiciary's adoption case tracking system (FA docket) to find the party in the database so that the party's demographic information may be added to the FA case, if the party exists in the system. This task will save keystrokes when establishing the FA case in the system and it also will minimize data entry errors. This lookup also must be done to ensure that

a link to the FC case, the court's child placement docket, is created to track a foster child who is to be adopted. The Surrogate shall use the Judiciary's FA case tracking system to establish, manage and process FA cases.

**5:10-4**

5:10-4. Surrogate action [Action] on complaint

(a) Prior to docketing, the Surrogate shall review the complaint to ensure that proper venue is laid in accordance with R. 5:10-1, and that it contains the following:

(1) all information required by R. 5:10-3,

(2) a current address and any prior addresses within the last five years for each plaintiff,

(3) the names, dates of birth and all residences within the past five years of all other adults in the adoptive home,

(4) the marital or civil union status of each plaintiff and the name of the spouse or partner, and

(5) a home study report that is consistent with the information set forth in the complaint.

(b) Jurisdiction.

(1) Upon the filing of a complaint for the adoption of a child, if it appears therefrom that there is jurisdiction and that each plaintiff is qualified, as required by statute, and that the complaint is substantially complete in all respects, the complaint shall be docketed. At the time of docketing, the Surrogate's staff shall conduct a party look-up in the Judiciary case management system to determine if any of the parties exist in the court's system. If a party exists in the system, the party's demographic information shall be copied into the adoption case using the process in the Judiciary's case management system.

(2) The court shall fix a day for preliminary or final hearing as provided by statute. The Surrogate shall provide the entire adoption file to the court for review no later than five business days before the first adoption proceeding.

(3) If there is a lack of jurisdiction or lack of qualification on the part of a plaintiff the court shall dismiss the complaint forthwith. If a complaint is not substantially complete in all respects, the court shall order the plaintiff to file an amended complaint or shall dismiss the complaint without prejudice, as the situation requires.

Note: Source-R. (1969) 4:94-3. Adopted December 20, 1983, to be effective December 31, 1983; caption amended, new paragraph (a) adopted, paragraph (b) caption adopted, and existing text amended and redesignated as paragraph (b) \_\_\_\_\_ to be effective \_\_\_\_\_.

**Fingerprint background checks in other states**

It was recommended that, in DYFS cases, fingerprint background checks should be conducted in other states where the adoptive parents and other adult household members resided within the last five years preceding the filing of the adoption complaint.

It was noted that this information will provide additional safeguards to adoptees.

The Practice Committee could not develop a mechanism to implement out-of-state criminal background checks. Neither DYFS nor the courts have the power or resources to obtain criminal background checks from other states. It also is impractical for the adoptive parents to obtain the information. In addition, attempts to obtain this information would unduly delay adoptions. Therefore, the Practice Committee recommends a compromise reflected in proposed R. 5:10-8(b) below.

**Background checklist for CHRI, DV and CARI checks**

The adoption agency must provide to the court a form prescribed by the Administrative Director of the Courts, which sets forth the results of its criminal history record information (CHRI), domestic violence (DV) and child abuse record information (CARI) checks. This form, which is attached to the agency report submitted to the court, provides enumerated information regarding the adoptive parents and other adults in the adoptive household.

The Practice Committee discussed concerns relating to the provision of non-adjudicated information such as domestic violence temporary restraining orders (TROs) or arrests to the court even if the adoption agency nevertheless approved the adoptive home based on its mandated, comprehensive assessment. It also was noted that imposing these additional burdens of completing more paperwork is unproductive and may delay adoptions. After discussion, the Practice Committee agreed that it was important to ensure that adults in adoptive homes will not

put adoptive children at risk. The Practice Committee therefore reached consensus on the compromise reflected in proposed R. 5:10-8(b) below.

**Addressing pattern of arrests or DV restraining orders**

In a case where DYFS has placed the child for adoption, DYFS discloses to the court information discovered during its investigation relating to a pattern of arrests or DV restraining orders against the adoptive parents or other adults in the household. DYFS also advises the court as to whether such behavior would preclude that family as a permanent placement. This issue should be resolved at the earliest possible time in the process. These concerns are addressed by proposed R. 5:10-8(b) below.

**20 page medical report**

The medical report that contains the medical histories of the biological parents must be submitted to the court and retained in the court's file after the filing of the adoption complaint. The benefits of requiring this report to be filed with the court is that the document would be conveniently available to an adoptee if a motion is granted to unseal the adoption to access the medical information, whereas a private adoption agency holding the file may be defunct. The draft rule language is recommended because requiring the court to retain the medical form assists an adoptive child in obtaining critical medical information. Therefore, the Practice Committee proposes R. 5:10-8(a) below.

**5:10-8**

[5:10-5] 5:10-8. Preliminary Hearing

(a) Order. If the court shall enter an order for a preliminary hearing as provided by statute, the plaintiff shall mail a copy of the order, together with a copy of the complaint, to the approved agency appointed by the order to make an investigation and report. At least 5 days prior to the day fixed for the preliminary hearing, the approved agency shall file its report with the court and mail a copy thereof to the plaintiff. The medical report that contains the medical histories of the biological parents shall also be submitted to the court and shall be retained in the court's file.

(b) Background Checklist and Certification by Approved Agency. The approved agency shall provide to the court a background checklist and certification on a form prescribed by the Administrative Director of the Courts, which shall include criminal history record information and child abuse record information. If the approved agency discovers a pattern of arrests or domestic violence restraining orders against the adoptive parents or other household members over the age of 18 that may impact approval of the home, the form submitted to the court shall include this information. The agency shall certify that, considering all criminal, domestic violence or child abuse records known to the agency, it is in the best interest of the child that the adoption be finalized.

[(b)] (c) . . . no change.

[(c)] (d) . . . no change.

Note: Source-R. (1969) 4:94-4(a), (b), (c). Adopted December 20, 1983, to be effective December 31, 1983; paragraph (c) caption and text amended November 7, 1988 to be effective January 2, 1989; R. 5:10-5 redesignated as 5:10-8, paragraph (a) amended, new paragraph (b) caption and text adopted, paragraph (b) redesignated as paragraph (c), and paragraph (c) redesignated as paragraph (d) \_\_\_\_\_ to be effective \_\_\_\_\_.

**Judgment of Adoption**

In addition to the requirement of limiting an adoption complaint to include only one adoptee, it is equally important to require the court to enter one judgment of adoption for each adoptee. Therefore, the Practice Committee proposes the following rule amendment:

**5:10-11**

[5:10-9] 5:10-11. Judgment of Adoption

(a) Judgment. A separate judgment of adoption shall be entered for each adoptee.

[(a)] (b) . . . no change.

[(b)] (c) . . . no change.

[(c)] (d) . . . no change.

Note: Source-R. (1969) 4:94-8(a), (b) and (c). Adopted December 20, 1983, to be effective December 31, 1983; paragraph (c) amended July 13, 1994 to be effective September 1, 1994; R. 5:10-9 redesignated as 5:10-11, new paragraph (a) caption and text adopted, paragraph (a) redesignated as paragraph (b), paragraph (b) redesignated as paragraph (c), and paragraph (c) redesignated as paragraph (d) \_\_\_\_\_ to be effective \_\_\_\_\_.

**Procedures to close and seal adoptions**

Standard procedures to close and seal adoptions are necessary to ensure consistency of practice throughout the state. Therefore, the Practice Committee proposes the amended rule set forth below.

The procedure is consistent with DYFS policy. There was a concern, however, that it will be impossible to provide an out-of-state judgment of adoption within 10 days, as directed by the referral. The subcommittee agreed that a timeframe is necessary to ensure that the case is monitored, but 10 days is not sufficient time to receive an out-of-state judgment of adoption.

Therefore, the subcommittee recommends 30 days. As to obtaining the out-of-state judgment of adoption, DYFS will revise its policy to require its staff to request that the judgment be submitted to DYFS within two weeks of signing. DYFS staff will follow up with the out-of-state court or agency to promote submission of the judgment in a timely manner.

**5:10-12**

[5:10-9] 5:10-12. Judgment of Adoption; Procedures for Closing and Sealing Adoption Records

(a) Filing. An original and copy of the judgment shall be filed with the court.

(b) Costs. If costs are allowed by the court to an approved agency, they shall be included in the judgment.

(c) Certified Copies. Prior to sealing the record of the proceedings the clerk shall, upon payment of the appropriate fee, provide the plaintiff, the plaintiff's attorney, the clerk of the Superior Court, and the approved agency which made the adoptive placement with certified copies of the judgment.

(d) Report of Adoption. Upon receipt of a check payable to the Treasurer of the State of New Jersey, the Surrogate shall submit the report of adoption along with the certified judgment of adoption to the Bureau of Vital Statistics and Registration.

(e) Sealing of Adoption Records. All records of proceedings related to adoption, including the complaint, judgment and all petitions, affidavits, testimony, reports, briefs, orders and other relevant documents, shall be filed under seal by the clerk of the court and shall at no time be open to inspection or copying unless the court, upon good cause shown, shall otherwise order. An index of all adoption proceedings shall be maintained by the clerk of the court, but no index of adoption proceedings shall be open to inspection or copying or be made public except by order of the court.

(f) Closing of child placement case (FC docket). When an adoption case is sealed and there is a related child placement case (FC docket), the child placement case shall be closed to reflect the adoption, but only when the Division of Youth and Family Services (DYFS) provides

the court with a Notice of Change. If the adoption occurs out of state, DYFS shall provide the court with both the judgment of adoption and the Notice of Change in order to close the child placement case. These documents shall be provided to the court presiding over the child placement case no later than 30 days after the adoption judgment is entered.

Note: Source-R. (1969) 4:94-8(a), (b) and (c). Adopted December 20, 1983, to be effective December 31, 1983; paragraph (c) amended July 13, 1994 to be effective September 1, 1994; R. 5:10-9 redesignated as 5:10-12, paragraph (c) amended, and new paragraphs (d), (e) and (f) adopted \_\_\_\_\_, to be effective \_\_\_\_\_.

**Adult adoptions**

A minimum standard level of review of the complaint and its attachments should be conducted before the Surrogate files and docket an adult adoption. If, however, the minimum required documents are not provided as set forth below, then the complaint should be returned to the plaintiff and not filed. Therefore, the Practice Committee proposes R. 5:11 as minimum complaint requirements for adult adoptions.

**5:11**

5:11. Action for Adoption of Adult

(a) In every action for the adoption of an adult, [The] the complaint [shall be verified by the plaintiff and] shall state (1) the name, age and place of residence of the plaintiff and the person to be adopted; (2) the name by which the person to be adopted shall thereafter be known; (3) whether the person to be adopted is possessed of any property, with a full description thereof, if any.

(b) There shall be filed with the complaint a request in writing for the adoption and, if desired, the change of name, which request shall be signed by the person to be adopted and shall be acknowledged before an officer qualified to take acknowledgements of deed.

(c) Consent of spouse, civil union or domestic partner. There shall be filed with the complaint a certification by any non-adopting spouse, civil union or domestic partner consenting to the adoption.

(d) Affidavit of Verification and Non-collusion. There shall be attached to every complaint for adoption an oath or affirmation by the plaintiff that the allegations of the complaint are true to the best of the party's knowledge, information and belief, and that the pleading is made in truth and good faith and without collusion for the causes set forth therein.

(e) The court may hear the case upon the oral testimony of the parties to the action and of other persons as the court deems necessary.

Note: Source-R. (1969) 4:95. Adopted December 20, 1983, to be effective December 31, 1983; amended July 13, 1994 to be effective September 1, 1994; first sentence amended and designated as paragraph (a), second sentence designated as paragraph (b), paragraphs (c) and (d) captions and text adopted and third sentence of existing text designated as paragraph (e)  
to be effective \_\_\_\_\_.

**Proposed Deletion of Appendix XIII - Certification of Child Support Arrears**

On May 4, 2010, Administrative Director Grant referred to the Practice Committee the issue of standardizing the case practice of non-dissolution matters in the Family Part as recommended by the Conference of Family Presiding Judges. The Conference also recommended that forms related to non-dissolution case practice would be more efficiently promulgated by the Administrative Director of the Courts.

The Practice Committee endorses the more efficient process recommended by the Conference of Family Presiding Judges and recommends the deletion of certain forms from the Rules' Appendix so that they may be promulgated by the Administrative Director. Therefore, the Practice Committee recommends deleting Appendix XIII, the Certification of Child Support Arrears. The Practice Committee believes that this change to the rules is consistent with the current practice of promulgating other forms of order.

**Appendix XIII - Certification of Child Support Arrears**

[Appendix XIII Certification of Child Support Arrears]

Appendix XIII deleted \_\_\_\_\_ to be effective \_\_\_\_\_.

### **III. Proposed New Rules**

#### **Post-complaint submissions**

The following documents, although not required to be filed with the complaint, must be submitted to the court 10 days before the preliminary hearing: Fingerprint and DYFS name check results for private adoptions, Proof of service on biological parents in appropriate cases, and Form of Order Upon Completion of Preliminary Hearing. Proof of service on biological parents is not required if the biological parent executed a judicial surrender or signed a surrender to an approved adoption agency or to DYFS.

The following documents, although not required to be filed with the complaint, must be submitted to the court 10 days before the final hearing: One proposed Judgment of Adoption for each child, Final court report, Consent from agency for private agency placements, Proof of service on biological parents for Non-DYFS cases only (if necessary), affidavit of diligent inquiry for Non-DYFS cases only (if necessary), Approved request pursuant to the Interstate Compact for the Placement of Children (ICPC) for DYFS-only Identified Judicial surrenders (if applicable), Report of Adoption (a.k.a. Bureau of Vital Statistics form), Check payable to "Treasurer, State of New Jersey."

For cases where the plaintiffs were granted custody or guardianship of a child for purposes of adoption or if the plaintiffs elect to readopt a child who was adopted in a foreign country, other documents must be submitted to the court as evidence of those foreign proceedings.

**5:10-5**

5:10-5. Post-complaint submissions

(a) At least ten business days before a preliminary hearing the following shall be filed with the court:

- (1) For private stepparent adoptions, fingerprint and DYFS name checks.
- (2) Form of order upon completion of Preliminary Hearing.
- (3) Proof of service on biological parent(s) or any of the following if not

previously submitted:

(A) Termination of parental rights judgment

(B) Parent's death certificate

(C) Affidavit of diligent inquiry to locate parent(s)

(D) Surrender of parental rights to agency

(E) Judicial surrender Order

(F) Denial of paternity Form

(G) Evidence that the biological father does not appear on the child's birth certificate, a signed certificate of parentage does not appear in the registry and he has not taken action pursuant to N.J.S.A. 9:3-45.b.(6).

(b) At least ten business days before a final hearing, the following shall be filed with the court, unless previously submitted:

- (1) A Proposed Judgment of Adoption for each child being adopted.
- (2) Final agency report(s).
- (3) Consent from agency for private agency placements.

(4) Proof of service or affidavit of inquiry on biological parent(s) in non-DYFS cases.

(5) Approved ICPC request if applicable.

(6) Report of Adoption Form from Bureau of Vital Statistics. For children born outside of New Jersey, plaintiff or plaintiff's attorney is responsible for obtaining the amended birth certificate.

(7) Check payable to "Treasurer, State of New Jersey."

(8) For adoptions in which a foreign country conveyed guardianship or custody for the purpose of adoption in the United States,

(A) Post-placement reports from the approved adoption agency,

(B) The final court report of the approved New Jersey adoption agency supervising the placement, and

(C) The final consent of adoption from the approved New Jersey adoption agency supervising the placement.

(c) If a final hearing is waived in a non-agency private adoption pursuant to N.J.S.A. 9:3-48c(4), the documents required in paragraph (b) must be provided to the court at least ten business days before the preliminary hearing.

Note: Adopted \_\_\_\_\_ to be effective \_\_\_\_\_.

**Indian Child Welfare Act**

Before entering a judgment of adoption, the court must determine whether the Indian Child Welfare Act (ICWA) applies to the child to be adopted. In making this determination, the court must determine if there is any reason to believe that the child or either biological parent may be a member or eligible to be a member of a federally recognized Indian tribe. ICWA findings must be made on the record and documented in a court order. In the alternative, if a court has already addressed ICWA for the child, then the court's order that has already made the ICWA determination would be sufficient to address the issue. Therefore, the Practice Committee proposes the following new rule:

**5:10-6**

5:10-6. Indian Child Welfare Act

At the first hearing following the filing of the adoption complaint, the court shall determine whether there is reason to believe that the child or either biological parent may be a member, or eligible to be a member, of a federally recognized Indian tribe, pursuant to the Indian Child Welfare Act (ICWA). If so, the court shall order an investigation to determine if ICWA applies. The ICWA findings shall be made on the record and documented in a court order.

Note: Adopted \_\_\_\_\_ to be effective \_\_\_\_\_.

**Judicial surrender of parental rights**

A biological parent or his or her attorney may petition the court to accept the surrender of parental rights. Private adoption agencies and DYFS may continue to accept surrender of parental rights pursuant to N.J.S.A. 9:3-41. The petition for a judicial surrender may be filed in the biological parent's county of residence. The judicial surrender proceeding should be scheduled on an expedited basis and should be given high priority. This rule recommendation sets forth the required documents to file a judicial surrender petition and more detailed procedures for judicial surrenders. When the court accepts a surrender of parental rights in a matter involving DYFS, the court shall use the form promulgated by the Administrative Director of the Courts (CN 10983). Therefore, the Practice Committee proposes the following new rule:

**5:10-7**

5:10-7. Judicial Surrender of Parental Rights

(a) A biological parent may surrender his or her parental rights before the court. Upon filing of a written request for surrender by a biological parent or the biological parent's attorney, a hearing shall be scheduled on an expedited basis by the Surrogate in the county where the biological parent(s) reside.

(b) Contents of Request for Judicial Surrender. The written request shall contain:

(1) Certification of biological parents consenting to adoption;

(2) Good faith representation of the biological parents that the child is not a member of or eligible to be a member of a federally recognized Indian tribe;

(3) Dates of availability to appear for a hearing within seven days of filing; and

(4) Proposed form of order.

(c) Hearing. The court shall conduct a closed hearing on the record within seven days of filing to determine if the surrender is voluntary. Surrendering parent(s) shall be advised that (1) the hearing is to surrender parental rights; (2) the hearing is to permanently end the relationship and all contact between parent and child; (3) the action is a relinquishment and termination of parental rights and consent on the part of the birth parent to adoption; and (4) no further notice of adoption proceedings shall be provided to the birth parent if the surrender is accepted by the court.

(d) This rule shall not prohibit approved adoption agencies or the Division of Youth and Family Services from accepting surrenders of parental rights pursuant to N.J.S.A. 9:3-41.

Note: Adopted \_\_\_\_\_ to be effective \_\_\_\_\_.

**Actions to unseal**

Standard procedures to unseal adoptions are necessary to ensure consistency of practice throughout the state. Therefore, the Practice Committee proposes the rule set forth below.

**5:10-13**

5:10-13. Procedure to Unseal Adoption Cases

(a) Requests to Unseal Adoption Case. The Surrogate shall accept for filing a post judgment request to unseal an adoption, which may be by motion or notarized letter, and shall forward the request and a proposed order to the court. The court may, if necessary, schedule a hearing to consider the request to unseal the adoption.

(1) The court shall determine whether good cause exists to grant the request to unseal the adoption. The court shall provide to the Surrogate the signed court order denying or granting the request to unseal the adoption.

(2) If the court grants the request to unseal the adoption, the Surrogate shall provide a copy of the order unsealing the adoption to the requesting party and shall make available copies of the documents on file as directed by the court's order. If the Surrogate determines that an adoption did not occur in the county in which the request was received, the Surrogate shall send a letter to the requesting party indicating that there is no record of the adoption in that county and no further action will be taken on the request.

(3) If the court denies the request, the Surrogate shall provide a copy of the court order denying the request to the requesting party and shall include in the sealed court file, if any, a copy of the written request and the order denying the request to unseal the adoption.

Note: Adopted \_\_\_\_\_, to be effective \_\_\_\_\_.

## **Adoptions involving foreign citizens**

### **Domestic adoptions and readoptions of foreign citizens**

Standard procedures for handling adoptions and readoptions of foreign citizens are necessary to ensure consistency of practice throughout the state. Therefore, the Practice Committee proposes a new rule set forth below.

**5:10-14**

5:10-14. Domestic adoptions and readoptions of foreign citizens

(a) Complaint. In all domestic adoptions and readoptions of foreign citizens, a complaint shall be filed conforming to the requirements of R. 5:10-3.

(b) In addition to the requirements of paragraph (a) of this rule, the plaintiffs shall allege in the complaint the following information and reference the attachments to the complaint that support this statement:

(1) Specific facts regarding whether the case was processed under the Hague Adoption Convention;

(2) The type of immigration visa that was issued;

(3) Whether the originating foreign country finalized the adoption or granted custody or guardianship for adoption finalization in the United States.

(c) In addition to the requirements of paragraph (a) of this rule, a complaint for adoption shall be accompanied by all of the following:

(1) One of the following, as applicable:

(A) copy of foreign judgment of adoption together with English translations, each certified as true and correct copies of the original by the plaintiff or the attorney of record; or

(B) copy of conveyance of custody/guardianship of the child to adoptive parents or placement agency for the purpose of adoption, as applicable, together with English translations, each certified as true and correct by the plaintiff or the attorney of record;

(2) Copy of birth certificate and translation of the birth certificate, certified as true

and correct by the attorney of record;

(3) Exemplified copy of child's immigration visa, certified as true and correct by the plaintiff or the attorney of record;

(4) For cases processed under the requirements of the Hague Adoption Convention, copy of Hague Adoption Certificate or Hague Custody Declaration, as applicable, certified as true and correct by the plaintiff or the attorney of record.

Note: Adopted \_\_\_\_\_ to be effective \_\_\_\_\_.

**Adoptions of United States citizens by residents of foreign countries**

Standard procedures for handling adoptions of United States citizens who will be adopted by individuals who reside in a foreign country are necessary to ensure consistency of practice throughout the state. The proposed rule below addresses the adoption of United States citizens by residents of foreign countries that are signatories to the Hague Adoption Convention. Cases involving foreign residents of countries who are not signatories of the Hague Adoption Convention are handled the same as domestic adoptions.

**5:10-15**

5:10-15. Adoptions of United States citizens by residents of foreign countries which are signatories to the Hague Adoption Convention (HAC)

(a) The complaint shall allege specific facts as to the applicability of the Hague Adoption Convention and whether seeking a New Jersey adoption or a petition for a Hague Adoption Certificate (HAC) or a Hague Custody Declaration (HCD).

(b) The court shall determine whether the Hague Adoption Convention applies in the country where the child is residing or will reside for purposes of the adoption.

(c) If the Hague Adoption Convention applies to the case, and the court is asked to issue findings and an order supporting a request for the U.S. Department of State to issue a Hague Certificate of Adoption or Hague Declaration of Custody for the adoption placement, the court must receive sufficient evidence to conclude that the child is eligible for adoption, and find that the placement is in the best interests of the child. The court must receive evidence on all of the following:

(1) The Hague-approved adoption agency or person is accredited to provide intercountry adoption services for Hague cases by the U.S. Department of State;

(2) A child background study has been completed in accordance with the regulations governing Hague adoptions;

(3) The child is eligible for adoption under New Jersey law;

(4) The Hague-approved adoption agency or person has made reasonable efforts to place the child in the United States and was unable to do so, or an exception to this requirement applies to the case;

(5) The agency has determined that the placement is in the child's best interest;

(6) The home study of the adoptive family was completed, which includes:

(A) information on the prospective adoptive parent or parents, such as identity, eligibility, and suitability to adopt, background, family and medical history, social environment, reasons for adoption, ability to undertake an inter-country adoption, and the characteristics of the children for whom they would be qualified to care,

(B) confirmation that a competent authority has determined that the prospective adoptive parent or parents are eligible and suited to adopt and has ensured that the prospective adoptive parent or parents have been counseled as necessary, and

(C) the results of the criminal background checks;

(7) The Central Authority of the adoptive family's country of residence has declared that the child will be permitted to enter and reside permanently in the receiving country, and has consented to the adoption;

(8) All appropriate consents have been obtained in accordance with the following standards:

(A) counseling was provided to any birth parent consenting to the adoption,

(B) birth parents were informed of the legal effect of adoption,

(C) such consent was freely given without inducement by compensation,

(D) such consent was not subsequently withdrawn, and

(E) consents were taken only after the birth of the child;

(9) The Hague-approved adoption agency or person has committed to taking all steps to ensure the secure transfer of the child, including obtaining permission for the child to

leave the United States;

(10) The Hague-approved adoption agency or person has agreed to keep the foreign Central Authority informed about the status of the case;

(11) The adoptive parents have agreed to accept custody of the child for purposes of adoption;

(12) The Hague-approved adoption agency or person demonstrates that any contact between the birth family and the adoptive family complies with applicable state law and Hague regulations governing timing of such communications; and

(13) The agency certifies that no one is deriving improper financial gain from the adoption and describes the financial arrangement with the prospective adoptive family.

(d) The court shall make findings relating to the application for the HAC or HCD from the Department of State. To meet the requirements for an HAC or an HCD, the court's findings shall include that:

(1) the adoptive placement is in the child's best interest,

(2) the substantive regulatory requirements set forth in 22 CFR 97.3(a) through (k) have been met, and

(3) the adoption services provider meets the requirements of 22 C.F.R. Part 96.

(e) If the court is satisfied that all Hague Adoption Convention requirements are met, the court shall make findings of fact and order the following:

(1) The child is eligible for adoption;

(2) The grant of custody with respect to the proposed adoption is in the child's best interests; and

(3) The court grants custody of the child to the named family for purposes of

adoption, as applicable.

(f) A petition for HAC or HCD shall state specific facts that the adoptive parent or parents intend to finalize in their country of residence or that they will return to New Jersey after the post-placement supervisory period to finalize the adoption in the Superior Court of New Jersey.

Note: Adopted \_\_\_\_\_ to be effective \_\_\_\_\_.

**5:10-16**

5:10-16. Adoptions of United States citizens by residents of foreign countries which are not signatories to the Hague Adoption Convention

Adoptions of United States citizens by residents of foreign countries which are not signatories to the Hague Adoption Convention shall conform to the rules for domestic adoptions.

Note: Adopted \_\_\_\_\_ to be effective \_\_\_\_\_.

**Adoption case tracking system**

Adoption actions will be recorded and managed using a computerized system prescribed by the Administrative Director of the Courts. Surrogates will use the prescribed case management system to establish, manage and process all adoptions. Therefore, the Practice Committee proposes new R. 5:10A(a) below.

**Search engine of the Judiciary's automated systems**

The case management system will include one-button access to all relevant Judiciary systems when conducting name checks, such as Promis/Gavel for criminal matters, the DV central registry for domestic violence matters and the Automated Complaint System (ACS) for municipal court matters. If an SBI number is found during the fingerprint check, then this number should be provided to the Surrogate to ensure accuracy of the name checks. The Surrogate shall use the Judiciary's case management system to establish, manage and process adoption cases. Therefore, the Practice Committee proposes new R. 5:10A(b) below.

**5:10A**

5:10A. Adoption of a Child or an Adult; Use of Automated System; Name Checks

(a) All adoptions shall be recorded using the Judiciary case management system, as prescribed by the Administrative Director of the Courts. Every Surrogate shall use the system to establish, manage and dispose of all adoptions. Within 180 days of the effective date of this rule, all open pending adoptions shall be backloaded into the Judiciary case management system.

(b) Name checks. All name checks in adoption matters shall be done through the Judiciary's case management system. If an SBI number is found during a fingerprint check, then this number shall be provided to the Surrogate to ensure accuracy of the name checks.

Note: Adopted \_\_\_\_\_, to be effective \_\_\_\_\_.

#### **IV. Non-Rule Recommendations**

##### **Dismissal of adoptions**

The Practice Committee discussed the issue regarding the procedure to dismiss an adoption complaint. It was determined that a directive would satisfy the need for uniform procedures.

## **V. Issues Considered without Recommendation**

### **Appeals of termination of parental rights (a.k.a. guardianship)**

#### **Notifying the trial court of an appeal of a DYFS guardianship case**

The Practice Committee discussed several issues regarding permanency for a foster child in DYFS care. Pursuant to *R. 2:5-1(a)*, a copy of the notice of appeal and transcript request must be filed with the court from which the appeal is taken. *Rule 2:5-1(b)* permits the trial court to file an amplification of its prior statements at trial. Compliance with this rule assists the trial court in managing any pending adoption actions involving the child. Therefore, the Practice Committee acknowledges this court rule and believes that no additional rule recommendation is necessary.

#### **Using reports to track the appeal of guardianship cases**

The Judiciary's Family Automated Case Tracking System (FACTS) creates a weekly report of guardianship appeals that have been filed with the Appellate Division. Therefore, the Practice Committee acknowledges this statistical report and believes that no additional rule recommendation is necessary.

**Disclosure of a denied domestic violence complaint or temporary restraining order in the context of another family court action**

The issue arose from an inquiry whether *R. 4:5-1* or the Family case information statement (CIS) required by *R. 5:5-2*, requires disclosure of a denied DV temporary restraining order (TRO) under the Prevention of Domestic Violence Act. *Rule 4:5-1* requires disclosure of other currently pending litigation, and is not applicable. The CIS in Part B, #5, however, requires a list of all prior or pending family actions, including DV actions.

The Practice Committee discussed the ramifications involved with this issue, and believed that there was no reason or requirement to disclose a denied complaint or TRO. The Practice Committee discussed various hypothetical situations, and the general feeling was that disclosure of a denied TRO offered no substantive value and may needlessly serve to inflame tensions between the parties. A TRO is an initial application to begin the DV restraining order process. By denying the TRO, no process is issued and no restraining order is issued. Additionally, pursuant to section 4.1.5 of the DV Procedures Manual, the DV defendant is not entitled to obtain a copy of a denied TRO. The Practice Committee unanimously agreed there was no obligation to disclose a denied complaint or TRO pursuant to *R. 4:5-1* or the CIS.

Therefore, the Practice Committee does not believe any formal rule change is necessary.

## **VI. Matters Held for Consideration**

### **Gestational surrogacy**

The procedures for gestational surrogacy are the subject of litigation at this time. *IMO the Parentage of a Child by T.J.S. and A.L.S.*, Dkt. No. A-4784-09 (App. Div.). Therefore, the Practice Committee recommends holding this issue pending disposition of that case.

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Respectfully submitted,

Hon. Marie E. Lihotz, J.A.D., Chair

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