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**TO: Assignment Judges
Family Presiding Judges
County Surrogates**

FROM: Glenn A. Grant, J.A.D. 

SUBJECT: Family – Court Policies on Termination of Parental Rights and Adoption Matters

DATE: June 23, 2017

DIRECTIVE #17-17

(Supersedes Directive #17-79, #17-06 and #06-11)

[Questions or comments may be directed to
(609) 815-2900, ext. 55350]

This Directive is a compilation and reissuance of past Directives regarding termination of parental rights (TPR) and adoption matters. These policies are intended to improve the outcomes for children who have been placed for adoption by the Division of Child Protection and Permanency (DCP&P), by an approved adoption agency or by a private party. The policies complement Rules 5:10, 5:10A and 5:11. The purpose of this Directive is to provide guidance on preparing adoption cases.

This Directive supersedes:

- Directive #17-79, “Juvenile - Adoption Information;”
- Directive #17-06, “Adoptions – (1) Agency Investigations in Stepparent Adoptions; (2) Timing of Background Checks in All Adoptions; (3) Implementation Plans;” and
- Directive #06-11, “Family – Court Policies on Termination of Parental Rights and Adoption Matters; Rule Amendments – Effective September 1, 2011.”

A. Division of Child Protection & Permanency (DCP&P) Matters

One of the overriding principles to ensure an efficient adoption process is to address issues well before an adoption complaint is filed. In DCP&P cases, this work can be completed as early as the abuse or neglect (FN docket) litigation or during termination of parental rights (FG docket) litigation. Unless otherwise specified, the completion of the steps listed in this section will be verified by the judge who is managing the FG, FN or child placement review (FC docket) case.

1. Obtaining the child’s birth certificate and social security card during TPR proceeding

Before the court enters a judgment of guardianship terminating parental rights and freeing a child for adoption, the court will order DCP&P to provide a copy of the child's birth certificate and social security card to the court. The early provision of those documents will ensure that an adoption is not delayed for lack of this documentation when an adoption is ready to be finalized. The court may enter its order for these documents at any proceeding before the final proceeding at which the court enters its final judgment terminating parental rights so the DCP&P has time to obtain and provide the documentation. The court will confirm that the child's birth certificate and social security card have been submitted before entering the judgment terminating parental rights.

2. Ordering DCP&P to proceed with adoption consent

After the court has granted TPR, DCP&P must make reasonable efforts to finalize the adoption. Failure to obtain a physical social security card for the child should not be considered a barrier to DCP&P's signing the consent to adopt the child. In those cases in which the social security card has not been obtained, if a child has a valid social security number and birth certificate, the court will order DCP&P to sign and forward its adoption consent to the attorney retained to represent the resource parents for the adoption. Provided that there are no other barriers to finalizing the adoption, DCP&P must finalize consent for the adoption and forward it to the attorney. The court should order DCP&P to advise the court of the date that it provided the consent to the attorney.

3. Confirming that DCP&P has conducted name checks prior to sending adoption consent

DCP&P should run its last child abuse record information (CARI) check and other name checks (Promis/Gavel, domestic violence central registry (DVCR) and the municipal court Automated Complaint System (ACS)) no later than 90 days before sending the consent package to the adoption attorney. This time frame is adopted to ensure that there is sufficient time for DCP&P to address any issues these searches may reveal prior to the adoption hearing. The CIC Document Search Engine, the application that facilitates name checks of Judiciary systems (Promis/Gavel, DCVR and ACS), has been implemented in all DCP&P local offices (LOs). If those checks indicate any history of DCP&P or court involvement, the court will order DCP&P to address those issues before the adoption hearing.

4. Ordering DCP&P to provide to the court a copy of its transmittal letter to adoption attorney

When DCP&P sends its consent to adopt to the attorney retained to represent the resource parents for the adoption, DCP&P attaches to the consent a letter of transmittal. Typically, that letter, the consent and all necessary documentation are sent to the adoption attorney immediately, but no later than 48 hours, after the DCP&P local office (LO) manager signs the consent. To track the children who have been legally freed for adoption, the court will order DCP&P to file a copy of the transmittal letter with the court. DCP&P's submission also must include the date that DCP&P mailed the consent to the adoption attorney. Upon receipt of a copy of the letter,

court staff will place that document in the court file tracking the child's DCP&P placement (FC docket case file). The judge will address the matter if the letter is not in the file at the next review.

5. Ordering DCP&P to provide adoption consent packet to adoption attorney

In post-termination of parental rights cases where there is still an open child placement case under the FC docket, the court has the authority to compel DCP&P to ensure finalization of the adoption. This includes oversight regarding the provision of certain documents to the adoption attorney in the consent that will be essential to filing the adoption complaint. Therefore, at the court's first review after it has terminated parental rights under the FG docket, the court will order DCP&P to complete and send its consent package to the adoption attorney. The court's order will provide that the DCP&P adoption consent packet transmitted to the adoption attorney must contain, at a minimum, the following: all relevant documents set forth in R. 5:10-3, the agency report (also known as the court report), the Judgment of Guardianship (termination of parental rights judgment or a surrender and supporting documentation), the adoption agency background checklist and certification required pursuant to R. 5:10-8 (CN 11514) (http://www.judiciary.state.nj.us/forms/11514_fa_agency_bg_cklist_cert.pdf), the results of the state and federal fingerprint check (valid one year from filing the adoption complaint), DCP&P waivers (if applicable) and criminal history waivers (if applicable), appeal status if the child is legally free for adoption pursuant to a guardianship judgment entered under the FG docket (DCP&P TPR case), attorney transmittal letter, and long form birth certificate.

6. Ordering DCP&P to include in its court report documentation of any domestic violence history of adoptive parents or other adults in the adoptive home; DCP&P to inform court that it has investigated and addressed any DV matters

When DCP&P finds a domestic violence (DV) record as to the adoptive parents or other adults in the adoptive home during its background checks, the results should be noted in DCP&P's court report. If the court discovers that DCP&P has not noted this information in its court report, the court will order DCP&P to amend the court report. N.J.S.A. 2C:25-34 provides for DCP&P's access to the DVCR to conduct the searches. DCP&P employees must receive training on how to use the DVCR before they are provided access to the DVCR. If there had been allegations or a history of domestic violence against the adoptive parents or other adults in the adoptive home, DCP&P should advise the court in writing that it has investigated and addressed these matters. This information may be provided to the court in the agency report, in a separate letter or through testimony in a hearing. The information and resolution should be in the court report that is provided in the consent packet. If the court is not satisfied with DCP&P's documentation regarding those issues, the court will order DCP&P to provide a more complete response. Court staff may then locate and provide the court file to the judge for a determination as to whether adoption is in the best interest of the child considering the DV histories.

7. Obtaining backup documentation for fingerprint background checks

DCP&P should retain all background fingerprint check printouts (i.e., backup documentation that includes State Bureau of Investigation (SBI) and Federal Bureau of

Investigation (FBI) documentation) and other name checks relating to the adoptive parents and other adults in the adoptive home. That documentation should be made available to the court upon request. These checks include NJSpirit (DCP&P's case management system) and the federal and state criminal history record information (CHRI) checks. Name checks include Promis/Gavel, DVCR and ACS.

The SBI and FBI numbers, if they exist, also should be provided to ensure that the background checks match the individuals. Name checks may be conducted several days before an adoption, and any results will be checked against the records that DCP&P discovered. This information will be confirmed by DCP&P in its certification to the court pursuant to R. 5:10-3. If the backup documentation is not filed, the court may order DCP&P to provide that information.

8. Obtaining child abuse record information (CARI) checks in other states

Pursuant to N.J.S.A. 30:4C-27.7, DCP&P must request CARI checks of other states where the adoptive parents and other adult household members resided within five years preceding DCP&P's receipt of written consent from those individuals to conduct the checks. The court will determine whether DCP&P has made the requests, if necessary. If DCP&P has not done so, the court will order DCP&P to make those requests.

9. Receiving background check results and clear explanation of those results

The DCF Policy Manual, Volume IV, Chapter C, Subchapter 10, requires DCP&P to conduct CHRI checks and decide whether the results merit disqualification of the adoptive parents. It is important for DCP&P to staff each LO with individual who can analyze the background check results to provide the court with meaningful information regarding those results. Also, as noted above, the CIC Document Search Engine facilitates the searches of the Judiciary's criminal, DVCR and municipal systems. DCP&P has access to the CIC Document Search Engine.

10. Obtaining DCP&P's form that documents the child's medical history

DCP&P adopted a standardized medical form (DCP&P Form 11-70, Pediatric Nursing Report) on May 9, 2011. That form is completed by the DCP&P Child Health Unit nurse to document all encounters with children and their resource home providers, and to update DCP&P on the medical/mental health progress of the children in out-of-home placement. The form is to be used at the initial visit or contact, and can be used at follow-up visits and telephone contacts with the resource care provider as well. DCP&P's nurse managers will review the information on the form and actively manage the cases to ensure that required medical tests are conducted and are not duplicated unnecessarily. The court will order DCP&P to provide to the court, within 90 days of the entry of a TPR order, a completed copy of DCP&P Form 11-70 for review to ensure that a child's medical history and vaccinations are up-to-date.

11. Obtaining medical histories of the biological parents

The medical histories of the biological parents are set forth in DCP&P Form 14-177, Family Medical History. This history should be obtained at the beginning of the child abuse or neglect (FN docket) litigation. The court will determine whether DCP&P has completed this form. If DCP&P has not completed the form, the court will order DCP&P to do so.

12. Conducting a municipal court records Automated Criminal System (ACS) search

At the time of the child's placement, mandatory searches on ACS should be conducted on the resource parents and other adults in the household. This search should capture disorderly persons, petty disorderly persons, and other offenses that do not appear in Promis/Gavel. The search is particularly important because, pursuant to N.J.S.A. 30:4C-26.8, certain offenses (e.g., simple assault) would disqualify a person from adopting a child and that information may be available only in the municipal court records. Additionally, these searches would unveil other prior conduct that may be of concern to the court when deciding whether a resource parent's home is the appropriate permanent placement for the child. The search of municipal court records should be done early in the process. The information regarding the municipal court records search should be on the background checklist form. In DCP&P cases, the last name check in ACS should be done at least 90 days before DCP&P submits its consent package to the adoption attorney so that there is enough time to address any problems these searches may reveal before the adoption hearing. DCP&P now has access to ACS, which is accessible through the CIC Document Search Engine, and conducts searches using that application.

B. Other Adoption Policies

1. Affidavit of Adoption not necessary

The Affidavit of Adoption is unnecessary and there is no legal requirement to file this affidavit. It therefore should not be required for filing the adoption complaint. This affidavit is a document that indicates that the plaintiff has not been convicted of any crimes. An approved adoption agency or the adoptive parent must obtain this information through the standard procedures of fingerprint background checks, which are verifiable and more reliable than an affidavit.

2. Stepparent or same sex partner adoptions -- Background checks may be performed before or after complaint filing

Surrogates may refer stepparents or same sex partners (also known as second parent or co-parent adoptions) to licensed adoption agencies to obtain the fingerprint checks of the plaintiff and other adults in the adoptive home to ensure that the results are properly interpreted for the court. It has been reported that fingerprint checks may be filed either with the complaint or afterwards without any significant impact on case processing time.

Plaintiffs may continue to obtain and file those fingerprint results with the complaint. In those cases where the fingerprint results are not filed with the complaint, however, immediately after the complaint is filed, the court will include on the order setting the hearing date a provision that orders the fingerprint checks. The child's biological custodial parent is not required to undergo fingerprint checks. Fingerprint checks must be filed with the court at least ten business days before a preliminary hearing, pursuant to R. 5:10-5(a).

3. Agency Investigations in Stepparent Adoptions

In all stepparent adoptions, the courts should review three separate information checks. Those checks are the CHRI checks, the DCP&P system name checks, and the DCVR checks. The CHRI check, the DCP&P system name check, and the DCVR check must be performed on each adoptive applicant and on all persons residing in the adoptive applicant's home who are 18 years of age and older. Stepparents seeking to adopt their stepchildren must follow the procedures established by the New Jersey State Police (NJSP) and the FBI for obtaining criminal history background checks of all adult members in their households (See attachment).

All CHRI checks must be dated 12 months or less before the filing date of the adoption complaint and must be submitted by the stepparent with the adoption complaint. Upon the stepparent's filing of the adoption complaint, the County Surrogate either will conduct the required DV registry checks and DCP&P system name checks or will provide a copy of the complaint to the court to enable court staff to perform these two checks. The judge will consider the results of the CHRI check, the DCP&P name check, and the DV registry check in determining whether to order or waive an agency investigation. If those checks reveal any criminal activity, child abuse, or domestic violence, the judge must be so advised immediately and may order a full or limited agency investigation and report. The investigation and report will include CARI background checks.

N.J.S.A. 9:3-48(a)(4) ("Action on Complaint for Adoption: Child Not Received from Approved Agency") states in pertinent part:

Whenever the plaintiff is a stepparent of the child, the court, in its discretion, may dispense with the agency investigation and report and take direct evidence at the preliminary hearing of the facts and circumstances surrounding the filing of the complaint for adoption.

Dispensing with the agency investigation altogether in stepparent adoptions may put children at risk. Applying a narrow interpretation of that statute by requiring an agency investigation in all cases would provide children in stepparent adoptions with the highest level of protection, but at the cost of a slower adoption process and potentially impeding stepparents from adopting children. However, by using CHRI checks, DCP&P system name checks, and DCVR checks to screen a case before ordering an agency investigation and report, a significant level of protection is provided to an adoptive child without causing excessive delay. This approach should provide protection for children without creating an undue burden on the adoption process. This policy should not be read as limiting a court from ordering a full

investigation at any time in the process, regardless of the results of the checks, if the court determines that a full investigation is necessary.

4. Terminating child support

If the court grants an adoption, court staff will determine whether the child was the recipient of child support. If the child was the subject of a child support order, court staff will advise the court, and the judge must enter a separate order vacating the child support obligation, but not any outstanding child support arrears. Any arrears must be set and reduced to judgment, effective as of the date of adoption. Court staff should then forward a copy of the order vacating child support to the child support obligor, and, if applicable, to the Probation Division.

The adoption may relate to a child who is the subject of a child support order affecting other children. In this situation, the parties of the child support case may file an application to recalculate child support for those remaining children. This would be processed in the usual manner. (See the Administrative Director's February 24, 2010 memorandum to Assignment Judges for procedures to be used if the court terminates child support when entering a judgment of guardianship).

5. Judiciary's adoption case management system

Pursuant to R. 5:10A, "[a]ll adoptions shall be recorded using the Judiciary [adoption] 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." The Judiciary has developed and implemented an adoption case management system. The index of adoptions required pursuant to N.J.S.A. 9:3-51 will be maintained within the Judiciary's adoption case management system.

6. Timing of Background Checks in All Adoptions

Pursuant to N.J.S.A. 9:3-37, the adoption statute "shall be liberally construed to the end that the best interests of children be promoted and that the safety of children be of paramount concern." This statutory provision provides the courts with broad powers to promote the best interests and safety of the children who might be adopted in New Jersey. N.J.A.C. 10:121A-5.6(m) provides that CHRI checks are valid for 12 months from the date the results are received by the agency. In order to provide maximum protection to adoptive children the CHRI and CARI checks must be as current as possible in all adoptions. Accordingly, it shall be Judiciary policy that CHRI checks in adoptions, whether part of the agency's home study services in an agency adoption or in a private adoption, must be dated 12 months or less before the filing date of the adoption complaint.

In a private adoption through an approved adoption agency or in an adoption through DCP&P, the agency must have conducted the CHRI and CARI checks 12 months or less before the filing date of the adoption complaint. Upon the filing of the adoption complaint, court staff will conduct the DV check pursuant to N.J.S.A. 9:3-47(b). In a private adoption not through an approved adoption agency (exclusive of stepparent adoptions), after the filing of the

adoption complaint, the court shall appoint an approved adoption agency to conduct an investigation and report, which shall include the CHRI and CARI checks. Court staff will conduct the DVCR check pursuant to N.J.S.A. 9:3-48(a)(5).

As to a relative adoption (that is, where the plaintiff is a brother, sister, grandparent, aunt, uncle, or birth father of the child), the statute provides for a limited investigation, described as "an inquiry concerning the status of the parents of the child and an evaluation of the plaintiff." N.J.S.A. 9:3-48(a)(4). Such investigation should include, but not be limited to, a CHRI check, a CARI check and a DV registry check on the relative.

Additionally, Family Division staff and Surrogate staff (depending on which office has case management responsibility for adoptions in a particular county), at the time of filing of the adoption complaint (whether it originated from DCP&P or is from a private party), shall use available automated systems to conduct a name check of the DVCR, and updated name checks of the Promis/Gavel and DCP&P system (child abuse) databases. If these searches reveal any recent criminal activity, child abuse or domestic violence, the judge must be so advised immediately. Further, at the time of the adoption hearing, staff shall again conduct the criminal name check (using Promis/Gavel). In the discretion of the judge, staff may conduct the DVCR check and the child abuse check.

7. Foreign Adoptions

A judgment of adoption entered in a country other than the United States will not require a complaint to be filed in New Jersey provided that the adopting parent is a resident of New Jersey and the United States Citizenship and Immigration Services office has verified the adoption by granting an IR-3 immigrant visa. N.J.S.A. 9:3-43.1.

8. Domestic Partnerships

For purposes of this directive, domestic partners as defined in N.J.S.A. 26:8A-1 et seq., are treated the same as stepparents.

9. Post-Adoption Responsibilities

Pursuant to N.J.S.A. 9:3-52, the County Surrogate, acting as the clerk of the court, is responsible for forwarding adoption information to the State Bureau of Vital Statistics. This information includes:

1. Date of entry of judgment;
2. Name of the adopting parent or parents;
3. Name of the child;
4. Date and place of birth of child; and
5. New name of child if changed by the judgment of adoption.

C. Rules of Court Relating to Adoption Matters

The Supreme Court adopted a number of rule amendments and new rules relating to adoption matters, effective September 1, 2011. See Rules 5:10, 5:10A, and 5:11.

D. Policy Manuals and Other Relevant Materials

To the extent that any prior Judiciary standard, policy or other material on this subject is not consistent with the court rules or with the policies set forth herein, such inconsistent standard, policy, or other material is superseded.

EDITOR'S NOTE

***2017 Update -**

This Superseding Directive updates and consolidates Directives #17-79, #17-06, and #06-11. The subject line was revised to accurately reflect the subject matter addressed in this Directive, superseding Directives #17-79, #07-06/#17-06 and #06-11. Any references to these superseded Directives have been removed.

The reference to the Division of Youth and Family Services was changed to reflect the reorganization of the Department of Children and Families effective July 2, 2012. The Division of Youth and Family Services is now the Division of Child Protection and Permanency.

Directive #06-11 requested implementation plans from all vicinages to ensure compliance with the Directive. Because the Directive was implemented in 2011, references to implementation plans have been removed from this superseding Directive.

Directive #06-11 projected implementation of the adoption case management system to be 2012. Because this system has been implemented, references to R. 5:10A (which required backloading of all open pending adoptions within 180 days) and Attachment B to the Directive, a sample court order regarding unsealing adoption cases so they can be uploaded, have been removed.

Directive #06-11 recited a number of court rule amendments and superseding court rules relating to adoption matters effective September 1, 2011. The rule recitations have been removed from this Superseding Directive.

Directive #17-06 requested an implementation plan from each vicinage by October 1, 2006. Because the Directive was implemented in 2006, references to implementation plans have been removed from this Superseding Directive.

08/23/2011 -- Directive #06-11, "Family -- Court Policies on Termination of Parental Rights and Adoption Matters; Rule Amendments - Effective September 1, 2011," promulgated by Glenn A. Grant, J.A.D., Acting Administrative Director of the Courts.

08/28/2006 -- Directive #17-06, "Adoptions -- (1) Agency Investigations in Stepparent Adoptions; (2) Timing of Background Checks in All Adoptions; (3) Implementation Plans," promulgated by Philip S. Carchman, J.A.D., Acting Administrative Director of the Courts.

08/4/1980 -- Directive #17-79, "Juvenile - Adoption Information," promulgated by Robert D. Lipscher, Administrative Director of the Courts.

Attachment

cc: Chief Justice Stuart Rabner
Steven D. Bonville, Chief of Staff
AOC Directors and Assistant Directors
Clerks of Court
Trial Court Administrators
Ann Marie Fleury, Special Assistant
Melaney S. Payne, Special Assistant
David Tang, Chief, Family Practice
Family Division Managers
Assistant Family Division Managers

Stepparent Adoptions -- Procedures to Apply for Criminal History Background Checks

1. State Check (www.njsp.org)

- a. Visit the State Police State Bureau of Investigation (SBI) website for information on the fingerprinting procedure located at <http://www.njsp.org/criminal-history-records/>
- b. The stepparent and other adults in the household must make an appointment for fingerprinting which is scheduled through the above website.
- c. Print and complete the appropriate form which can be found on the website. Bring it with you to the appointment.
- d. Go get fingerprinted.
- e. Pay the fee as listed on the website.
- f. Results should be mailed to you within 10 days.

2. FBI Check (www.fbi.gov)

Option 1 - Direct FBI requests

- a. The stepparent and other adults in the household must make an appointment with the police department for fingerprinting.
- b. The fingerprint card may be obtained on the Federal Bureau of Investigation (FBI) website at <https://www.fbi.gov/about-us/cjis/identity-history-summary-checks>
- c. Go to the police department to get fingerprinted.
- d. Follow the procedures for submitting your request for the fingerprint check which are listed on the above website.
- e. Pay the fee as listed on the website.
- f. Results should be mailed to you within 12 – 14 weeks.

Option 2 - FBI-approved Channeler requests

Due to the FBI's processing backlog, you may submit a request through an FBI-approved Channeler, which is a private business that has contracted with the FBI to submit requests on your behalf. You may contact each Channeler for costs, processing times, and availability in your area. For details on the FBI-approved Channeler option, see <https://www.fbi.gov/about-us/cjis/identity-history-summary-checks/fbi-approved-channelers>.