

NOTICE TO THE BAR

Report of the Family Practice Committee on Legal Representation for Indigent Birth Parents in Contested Adoptions – Comments Sought

The Supreme Court, in In the Matter of the Adoption of a Child by J.E.V. and D.G.V., 226 N.J. 90 (2016), concluded that indigent parents who face termination of parental rights in contested adoption proceedings are entitled to legal representation. The Court directed the development of a form notice to inform the parents of their right to object and their right to counsel, along with informing them of the procedures to be used in such matters.

This notice publishes for written comment the September 20, 2016 **Report of the Family Practice Committee on Legal Representation for Indigent Birth Parents in Contested Adoptions**. The Practice Committee in this report recommends the adoption of two forms noticing birth parents of their rights in an adoption proceeding (one for use in agency placement adoptions, the other for use in private/non-agency placement adoptions). The birth parent may complete and file the applicable form if the parent wishes to object to the adoption. The forms include information on the birth parent's right to be represented by an attorney and the right to a court-appointed attorney if the birth parent is indigent. The report also recommends an amendment to Rule 5:10-5(a) so as to require either the filing of the completed form or proof of service of the form on the birth parent.

Please send any comments on this report and its recommendations in writing by **Friday, November 11, 2016** to:

Glenn A. Grant, J.A.D.
Acting Administrative Director of the Courts
Comments on Indigent Birth Parents in Adoptions
Hughes Justice Complex, P.O. Box 037
Trenton, NJ 08625-0037

Comments may also be submitted by e-mail to: Comments.Mailbox@njcourts.gov

The Supreme Court will not consider comments submitted anonymously. Thus, those submitting comments by mail should include their name and address and those submitting comments by email should include their name and email address. Comments submitted in response to this notice are subject to public disclosure.


Glenn A. Grant, J.A.D.
Acting Administrative Director of the Courts

Dated: October 12, 2016

**SUPREME COURT
FAMILY PRACTICE COMMITTEE
REPORT**

**LEGAL REPRESENTATION FOR
INDIGENT BIRTH PARENTS IN
CONTESTED ADOPTIONS**



**2015-2017
RULES CYCLE**

September 20, 2016

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I. Introduction

The Supreme Court Family Practice Committee ("Committee") recommends that the Supreme Court adopt the proposed rule amendment and new forms contained in this report¹. In the Matter of the Adoption of a Child by J.E.V. and D.G.V., 226 N.J. 90 (2016), the Supreme Court concluded indigent parents who face termination of parental rights in contested adoption proceedings are entitled to legal counsel. As a result, the Court directed the following:

We ask the Director of the Administrative Office of the Courts to review letters of this nature and develop a form designed to enable each parent to respond directly. At a minimum, the form letter, in plain language, should (1) advise parents that they have the right to object, (2) outline how they should do so, (3) explain that failure to respond to the notice in writing will constitute a waiver, (4) tell parents about the statutory right to counseling before they decide whether to sign a surrender form, (5) advise them what to do if they wish to surrender the child, (6) inform parents that they have the right to be represented by an attorney if they object and that the court will appoint counsel if they are indigent, and (7) provide details about how to apply for counsel. Slip Op. at 30-31.

The Committee proposes the two attached forms for the Court's consideration, as well as an amendment to R. 5:10-5(a), requiring that one of the forms, as applicable, be served on birth parents. Where rule changes are proposed, deleted text is bracketed [**as such**], and added text is underlined **as such**. No change to a paragraph of the rule is indicated by ". . . **no change**."

II. Proposed Forms

After reviewing the J.E.V. opinion, the Committee concluded that notice to birth parents in private adoptions must be provided for both adoption agency placements and private

¹ A separate comment dissenting from the Committee recommendation will be filed during the public comment period by Donald C. Cofsky, Esq. serving on the Committee as representative of the New Jersey Academy of Adoption Attorneys.

placements not made by an adoption agency. The Committee thus recommends the promulgation of the attached forms – one for adoption agency placements and one for private/non-agency placements.

A. Proposed Form - Notice of Rights in an Adoption Proceeding (Agency Placement)

Attachment A is a proposed form entitled the “Notice of Rights in an Adoption Proceeding (Agency Placement)” (Agency form). The Agency form would be used for adoptions where a child is placed by a private adoption agency. It provides the birth parent with instructions regarding how to object to the adoption, how to surrender his or her parental rights with the option to seek counseling services, and how to request the appointment of an attorney. Appointment of an attorney and determination of indigency will be made by the court prior to the hearing. The Agency form also includes a selection for the parent to deny parentage of the child.

The Department of Children and Families (DCF), as the State agency responsible for licensing adoption agencies, was consulted in the drafting of the proposed Agency form.

B. Proposed Form - Notice of Rights in an Adoption Proceeding (Private/Non-Agency Placement)

Attachment B is a proposed form entitled the “Notice of Rights in an Adoption Proceeding (Private/Non-Agency Placement)” (Non-Agency form). The Non-Agency form would be used for adoptions where a child is not placed by a private adoption agency (for example, an adoption by a step-parent, relative, or other private person). It provides the birth parent with instructions on objecting to the adoption and how to request the appointment of an attorney. The County Surrogate would append the Non-Agency form to the notice or order fixing the date of the preliminary or final hearing, which is returned to the plaintiff for service. This procedure may be implemented by a policy memorandum promulgating the use of said form.

The Non-Agency form does not include the paragraphs regarding an irrevocable voluntary surrender, denial of parentage, or offer of counseling services prior to executing the surrender, since irrevocable surrenders are only permitted by statute in an agency placement and only after counseling has been offered. See N.J.S. 9:3-41. A signed consent to adopt in a non-agency placement is revocable until the court terminates rights either at a preliminary hearing or at a hearing for a voluntary judicial surrender. See N.J.S. 9:3-48(c). A denial of paternity in an agency placement, whether signed before or after the birth of a child, is deemed to be a voluntary irrevocable surrender of parental rights to the child. This provision of a denial of parentage does not apply in a non-agency placement because it is only applicable in agency placements as set forth in N.J.S. 9:3-41.

III. Proposed Rules

A. Proposed Amendment to R. 5:10-5 – Action for Adoption of a Child

Include reference to forms

The Committee recommends amending R. 5:10-5(a) to require the filing of the Agency form or the Non-Agency form with the court at least ten business days before a preliminary hearing. The Committee believes this is the appropriate step in the process to address the Supreme Court's instructions. The Committee also recommends technical revisions to: subparagraph (a)(2) to clarify the requirement of the filing of a proposed form of order for execution upon completion of the preliminary hearing; and subparagraph (a)(3)(H) to eliminate redundant text.

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 and direct private placement adoptions, fingerprint and Division of Child Protection and Permanency name checks.

(2) Proposed form [Form] of order for execution upon completion of preliminary hearing.

(3) Proof of service on the biological or legal parent or parents 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 the parent or parents;

(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, and he has not taken action pursuant to N.J.S.A. 9:3-45(b)(6);

(H) [Proof of service of a] The notice of intent to place the child for adoption pursuant to N.J.S.A. 9:3-45(b)(3) with no objection having been filed;

(I) Affidavit executed by the placing parent that the parent cannot identify or refuses to identify the other biological or legal parent.

(4) For private stepparent adoptions and direct private placement adoptions, the Notice of Rights in an Adoption Proceeding (Private/Non-Agency Placement) form as promulgated by the Administrative Director of the Courts. If the Private/Non-Agency Placement form is served on, but not filed by the parent, proof of service on the parent must be filed.

(5) For private agency adoptions, the Notice of Rights in an Adoption Proceeding (Agency Placement) form as promulgated by the Administrative Director of the Courts. If the Agency Placement form is served on, but not filed by the parent, proof of service on the parent must be filed.

(b) no change.

(c) no change.

(d) no change.

Note: New Rule 5:10-5 adopted (and former Rule 5:10-5 redesignated as Rule 5:10-8) July 21, 2011 to be effective September 1, 2011; subparagraphs (a)(1) and (b)(4) amended July 9, 2013 to be effective September 1, 2013; subparagraphs (a)(2) and (a)(3)(H) amended, and new subparagraphs (a)(4) and (a)(5) adopted _____ to be effective _____.

Committee Members and Staff

Hon. Marie E. Lihotz, J.A.D. (Chair)
Hon. Madelin F. Einbinder (Vice-Chair)
Robert J. Adinolfi, Esq.
Ivette Ramos Alvarez, Esq.
Christian A. Arnold, Esq.
Lorraine M. Augostini, Esq.
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Valerie R. Butler, Esq.
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AOC Staff:
Joanne M. Dietrich
David Tang
Melissa Czartoryski
Stephanie Ullman

Respectfully submitted,

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

Dated: September 20, 2016

Notice of Rights in an Adoption Proceeding (Agency Placement)

You have been identified as the parent or possibly the parent of Baby Girl/Baby Boy, _____, born on the ____ day of _____, 20__ at _____ (hospital/location of birth) in _____ (municipality/state of birth). The child has been placed for adoption through _____ (adoption agency), a licensed adoption agency in the State of New Jersey. If the child is adopted, this will terminate your parental rights and responsibilities.

Objection to This Adoption

As the parent of this child, if you do not want the child to be adopted, you have the right to object to the adoption of this child. If you complete the steps below to object to the adoption, the party or parties seeking the adoption must prove that the New Jersey statutory standard for adoption is met.

If you want to object to this adoption, you must take the following steps:

Step 1 – Check this box

☐ I object to this adoption.

Step 2 – File this form with the _____ County Surrogate (at the address listed below) within

- a. 20 days of receiving this notice, if you live in New Jersey, or
- b. 35 days of receiving this notice, if you live outside of New Jersey.

If you do not complete the steps above to object to this adoption (by choice or by failure to take action), you will waive your right to receive further notice of any proceedings with regard to this child, including proceedings for termination of parental rights and adoption.

Voluntary Surrender of Parental Rights and Consent to this Adoption

If you are in agreement with the adoption plan for this child, you may sign a voluntary surrender of your parental rights with the agency no earlier than 72 hours after the birth of the child. Once a voluntary surrender form is signed in the presence of a notary, it is final and irrevocable. A voluntary surrender is the permanent end of the parent-child relationship. It cannot be withdrawn after it is signed.

You have the right to receive up to three face-to-face counseling sessions on three separate days with a social worker before you decide whether to give up your parental rights by signing a voluntary surrender form. Please indicate below whether you wish to be provided with counseling:

☐ Yes; I want to receive counseling services

☐ No; I want to waive my right to receive counseling services

If you want to surrender (give up) your parental rights to this child and agree to the adoption of this child, please return the appropriate form signed in the presence of a notary in the enclosed envelope. The voluntary surrender form is available from the agency handling this adoption. Your signature on the voluntary surrender form must be notarized.

Denial of Parentage

If you deny that you are a parent of this child, you may sign a denial of parentage form which may be provided by the agency that is handling this adoption. Your signature on the denial of parentage form must be notarized.

Attorney

You have a right to hire an attorney to advise and represent you in this adoption. If you can afford to pay an attorney but do not know one, you may call the Lawyer Referral Services of your local county Bar Association at _____.

If you object to this adoption and you cannot afford an attorney (you are indigent), an attorney will be appointed by the Court to represent you in the adoption proceeding.

To apply for a court-appointed attorney, you must take the following steps:

Step 1 – Check this box

☐ I want to apply for a court-appointed attorney.

Step 2 – Complete the attached Application for Assignment of Counsel form.

Step 3 - File this form and Application for Assignment of Counsel form with the _____ County Surrogate (at the address listed below)

You may also apply to Legal Services for representation, as noted below.

You may wish to consult an attorney about completing this form. If you cannot afford to pay for a lawyer, free legal advice may be available by contacting the New Jersey Legal Services system through the Legal Services of New Jersey Statewide Hotline, at LSNJLawHotline.org or 1-888-LSNJ-LAW (1-888-576-6529).

Signature

I have completed this form by checking the above boxes that apply to my situation.

Signature: _____

Date: _____

Print name: _____

Notice of Rights in an Adoption Proceeding (Private/Non-Agency Placement)

You have been identified as the parent or possibly the parent of Baby Girl/Baby Boy, _____, born on the ____ day of _____, 20__ at _____ (hospital/location of birth) in _____ (municipality/state of birth). This child is the subject of a complaint for adoption as set forth in the attached notice from the proposed adopting party. If the child is adopted, this will terminate your parental rights and responsibilities.

Objection to This Adoption

As the parent of this child, if you do not want the child to be adopted, you have the right to object to the adoption of this child. If you complete the steps below to object to the adoption, the party or parties seeking the adoption must prove that the New Jersey statutory standard for adoption is met.

If you want to object to this adoption, you must take the following steps:

Step 1 – Check this box

☐ I object to this adoption.

Step 2 – File this form with the _____ County Surrogate (at the address listed below) within

- a. 20 days of receiving this notice, if you live in New Jersey, or
- b. 35 days of receiving this notice, if you live outside of New Jersey.

If you do not complete the steps above to object to this adoption (by choice or by failure to take action), you will waive your right to receive further notice of any proceedings with regard to this child, including proceedings for termination of parental rights and adoption.

Attorney

You have a right to hire an attorney to advise and represent you in this adoption. If you can afford to pay an attorney but do not know one, you may call the Lawyer Referral Services of your local county Bar Association at _____.

If you object to this adoption and you cannot afford an attorney (you are indigent), an attorney will be appointed by the Court to represent you in the adoption proceeding.

To apply for a court-appointed attorney, you must take the following steps:

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Signature

I have completed this form by checking the above boxes that apply to my situation.

Signature: _____

Date: _____

Print name: _____