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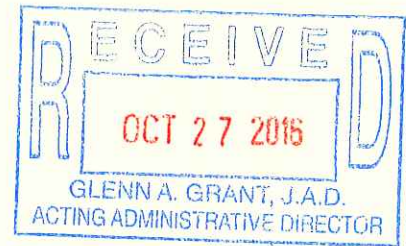
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October 24, 2016

REPLY TO: Haddonfield

Via Email

Honorable Glenn A. Grant J.A.D.,
Acting Administrative Director
Administrative Office of the Courts
Hughes Justice Complex
P.O. Box 037
25 W. Market Street
Trenton, NJ 08625



Re: Proposed Form and Rule Change Involving
Appointment of Counsel for Indigent Parents

Dear Judge Grant:

As you know, I serve as the representative of the **New Jersey Academy Adoption Attorneys (NJAAA)** on the Family Practice Committee, and I have worked with the Committee on developing the form and ~~the proposed rule changes which have now been published~~. I am submitting this comment as noted in the report itself where I dissented as to one of the items.

I have reviewed the form and the proposed rule changes with my colleagues who are members of NJAAA, and I am submitting this comment not only on my behalf but also on behalf of NJAAA. We have unanimously agreed that while the form itself is appropriate and should be used, and while the procedure for using it will entail the least amount of inconvenience in its implementation, nevertheless, there are portions of the proposed rules which raise concerns to all of us.

Specifically, proposed rules 5:10-5 (a)(4) and (a)(5) state that post-complaint filings for all types of adoptions must include, in addition to the other 12 enumerated items as applicable, the following:

October 24, 2016

Page 2

“ . . . the Notice of Rights in an Adoption Proceeding . . . form as promulgated by the Administrative Director of the Courts. If the . . . Placement form is served on, but not filed by the parent, proof of service on the parent must be filed.”

It is this first sentence of the rule that is causing a problem. It is somewhat ambiguous and also raises questions as to how it is to be applied. The original of the form is served on the birth parent. The form makes it quite clear that if an objection is to be filed and if the appointment of an attorney is to be requested, the parent or possible parent is required to file the form with the Surrogate's Office in the county and at the address indicated on the form. The requirement of filing an objection with the Surrogate is specifically set forth in the adoption statute, N.J.S.A. 9:3-45(b)(3), which mandates the information to be given to a parent including how to object and where to file.

Rule 5:10-5(a) Post-Complaint Submissions, presupposes that these forms are to be filed by the plaintiff (adopting parent) or plaintiff's attorney. However, this would not be possible since the original would either still be with the birth parent who has elected not to file it, or with the Surrogate with whom it had been filed.

Thus, If this rule were to go into effect as currently proposed, it would create uncertainty as to the identity of the party who is responsible for filing this form. On one hand it looks like it should be filed by the birth parent who has received the original notice and is objecting, and on the other hand, as above, by the plaintiff or plaintiff's counsel, yet neither of the latter two is likely to have or even should have the original of the form. Further, if the rule were to apply to the objecting parent, it would be in direct conflict with the statute and with the notice itself which requires the objecting parent to file it with the Surrogate within 20 or 35 days of service. The rule could therefore be read as extending the time that a parent has for filing the notice to up to 10 business days before a preliminary hearing. See Rule 5:10-5(a).

The easiest way to correct this would be to simply require that a **copy** of the notice which has been served on the parent along with a proof of service be filed with the court. Therefore, the proposed rules should read as follows:

(4) For private stepparent adoptions and direct private placement adoptions, a copy of the Notice of Rights in an Adoption Proceeding (Private/Non-Agency Placement) form as promulgated by the Administrative Director of the Courts, and proof of service of the Notice on the parent. If service cannot be effectuated, an Affidavit of Diligent Inquiry as per (3)(c) above shall 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, and proof of service of the Notice on the parent. If service cannot be effectuated, an Affidavit of Diligent Inquiry as per (3)(c) above shall be filed.

October 24, 2016

Page 3

Additionally, a question has been posed under the proposed rule as currently written as to what should occur if a birth parent fails to file the objection form with the Surrogate but instead sends it to the agency or to the attorney, although highly unlikely to happen since the form is so clear in its directions. As an attorney involved in both agency and private adoptions, I have seen a number of times where a birth parent contacts the agency or contacts the attorney saying that he or she objects to the adoption, will never consent to the adoption, and does not want the child to be adopted. I have advised agencies that if this occurs to contact the parent in writing and again advise him or her that if he or she wants to object, the objection must be filed as per the statute which is with the Surrogate's Office. It is not uncommon in our collective experience and in the experience of agencies to have a birth parent call or even send a note saying that he or she is objecting, but actually have no real intention of filing a formal objection with the court. In fact, from information I have received from various agencies when there is such a occasional contact after being served with notice of the proposed adoption, the number of times that an objection is actually filed with the court is well below 50 percent.

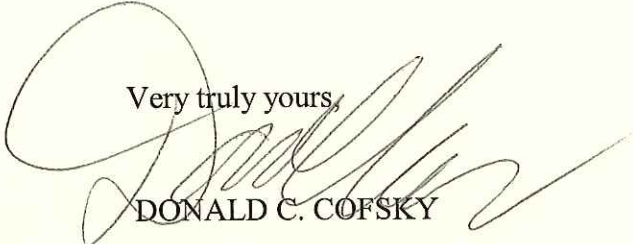
My colleagues and I believe that if we were to receive this form instead of the Surrogate, it would be inappropriate for us to forward it to the Surrogate. We base this on our belief that: (1) we represent the adoptive parent and not the objecting parent; (2) we do not know if that individual actually wants or intends to file a formal objection and turn the case into a contested adoption; (3) filing this would be tantamount to our filing a pleading for an individual who is not a client of ours and who has not authorized us to do so. Similarly, agencies are under no obligation to file this on behalf of a third party because the statute and the form make it clear how an objection must be filed.

Best practices dictate that if any such objection were to be received by an attorney or by an agency, the form itself should be returned to the sender (served) stating again the specific requirement of where and how to object. On the other hand if the sender includes a request when returning it to the attorney or the agency that the attorney or agency forward it to the Surrogate's Office, that would require such a filing. However, this goes beyond what is normally within the scope of a court rule, and is not something that needs to be addressed in one, and certainly not if the rule is modified as suggested.

NJAAA supports use of the form which has been proposed, and will support the rule if it is modified as recommended above.

Thank you.

Very truly yours,



DONALD C. COFSKY

DCC:dmm

cc: Fellows New Jersey Academy of Adoption Attorneys