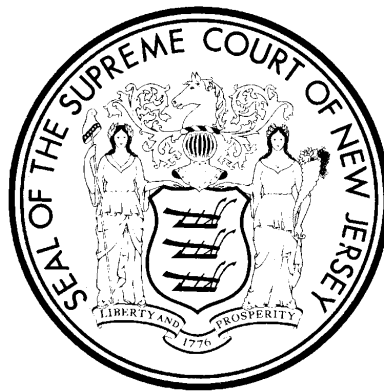


**SUPREME COURT
FAMILY PRACTICE COMMITTEE
REPORT**

**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 _____.

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Respectfully submitted,

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

Dated: September 20, 2016