

NOTICE TO THE BAR

Notice of Rights to Birth Parents in Private Adoption Proceedings – Amendments to Rules 5:10-4 and 5:10-5 and Promulgation of Notice Forms

The Supreme Court by Order dated May 30, 2017 adopted amendments to Rules 5:10-4 (Surrogate Action) and 5:10-5 (Post-Complaint Submissions), which relate to adoption matters, effective immediately. The Court also has approved two notice of rights forms for birth parents in private adoption proceedings. These actions follow the Court's decision in In the Matter of the Adoption of a Child by J.E.V. and D.G.V., 226 N.J. 90 (2016), and recommendations, including from the Family Practice Committee, that were published by notices to the bar dated October 12, 2016 and March 24, 2017.

New R. 5:10-4(b)(3) sets forth the requirement for the Surrogate to append one of the two new notice forms to the court's order fixing a date for preliminary or final hearing in private placement adoptions, with the Surrogate's staff to return the signed order and the notice of rights form to the plaintiff. The plaintiff then must serve both documents on the child's birth parents pursuant to N.J.S.A. 9:3-45.

New R. 5:10-5(a)(4) provides that in private stepparent adoptions and direct private placement adoptions, the "Notice of Rights in an Adoption Proceeding (Private/Non-Agency Placement)" form is a required post-complaint submission. New R. 5:10-5(a)(5) provides that in agency placement adoptions, the "Notice of Rights in an Adoption Proceeding (Agency Placement)" form is a required post-complaint submission. The plaintiff will serve the appropriate form on a birth parent. The forms instruct the parent to file the completed form with the Surrogate should they wish to object to the adoption. If the parent fails to file the completed form with the Surrogate, the plaintiff must file proof of service of the form on the parent, which satisfies the filing requirement.

Rule 5:10-5 (a)(2) was amended to clarify the requirement to file a proposed form of order for execution upon completion of preliminary hearing. Rule 5:10-5(a)(3)(H) was amended to eliminate redundant text.

In addition to the rule amendments, this notice promulgates two forms to provide notice to 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). These forms are located on the Judiciary website at the following links:

http://www.njcourts.gov/forms/12144_notice_rights_agency_adopt.pdf

http://www.njcourts.gov/forms/12145_notice_rights_non_agency_adopt.pdf

Questions concerning this notice may be directed to the Family Practice Division, Administrative Office of the Courts, Hughes Justice Complex, P.O. Box 983, Trenton, New Jersey 08625-0983; telephone: 609-815-2900, extension 55350.



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

Dated: July 5, 2017

SUPREME COURT OF NEW JERSEY

It is ORDERED that the attached amendments to Rules 5:10-4 and 5:10-5 of the Rules Governing the Courts of the State of New Jersey are adopted to be effective immediately.

For the Court,



Chief Justice

Dated: May 30, 2017

Rule 5:10-4. Surrogate Action

(a) Review of Complaint Prior to Docketing . . . no change.

(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) Upon the court fixing a day for preliminary or final hearing in private placement adoptions, the Surrogate shall append to the court's order a form promulgated by the Administrative Director of the Courts informing the child's parents of the procedure to object to the adoption, the right to legal counsel, and how to apply for a court-appointed attorney. The signed order and form shall be returned to the plaintiff for service of the form and notice of the hearing on the child's parents pursuant to N.J.S.A. 9:3-45.

(4) [(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, former text redesignated as paragraph (b), paragraph (b) caption adopted, paragraph (b) amended, and new paragraph (a) adopted July 21, 2011 to be effective September 1, 2011; former subparagraph (b)(3) redesignated as subparagraph (b)(4) and new subparagraph (b)(3) adopted May 30, 2017 to be effective immediately.

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 May 30, 2017 to be effective immediately.