



ADOPTION THROUGH THE DIVISION OF CHILD PROTECTION AND PERMANENCY

by Lynn B. Norcia

The Division of Child Protection and Permanency (DCP&P)¹ finalizes approximately 1,000 adoptions every year. Approximately half of those adoptions are by relatives and the other half are by unrelated 'resource' parents.² A very small number of the adoptions each year are 'select home' placements, that is, the placements are made solely with the intent of adoption, usually once the child is already legally free for adoption. At any given moment, there are usually approximately 150

children waiting for a select home adoption. If a client is interested in adopting a child or children who may have some special needs, is part of a sibling group, is a pre-teen or teenager and/or is from an ethnically diverse background, adoption through DCP&P is a viable option.³

Although the licensing process usually takes up to five months and is very extensive, there are many financial and other benefits to the client who decides to adopt through DCP&P. For example, there is no charge for the home study conducted by DCP&P, (but note that DCP&P will only conduct a home study for a family who is interested in adopting the type of children DCP&P has available). Once approved, DCP&P pro-

be placed in the home. The agency must then supervise the placement for a minimum of six months before it can issue the legal consent for adoption. At some point during the six-month period, or at the time the consent for adoption is issued, the DCP&P case manager is instructed to provide the resource parents with the list of preapproved attorneys who have agreed to accept the division's fee to file the adoption complaint. An attorney is thereafter selected from the list.⁴

It's Not All About the Money

As an attorney, handling adoptions for DCP&P will not add much to one's investment portfolio, but will add to

(both held and missed) that often have had a unsettling effect on the children. The attorney who makes the adoption and permanency finally become a reality has the benefit of entering the process after the most difficult steps have been completed and just as the 'gold star' of a finalized adoption is awarded.

Efficiency and Timeliness are Critical

Pursuant to Administrative Office of the Courts (AOC) Directive #17-17 (issued June 23, 2017), "one of the overriding principles to ensure an efficient adoption process is to address issues well before an adoption complaint is filed." Consistent with that goal, the AOC has directed that much of the preliminary

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vides an adoption subsidy, which includes a 'board rate,' that includes a clothing allowance, Medicaid coverage for expenses not covered by the family's own insurance, child care services for children under six for adoptive parents who work or attend school full time and meet the eligibility requirements, and the payment of legal fees related to adoption. The division is also available to provide assistance to the family after the adoption, if additional services become necessary. This assistance might include referring the family to appropriate agencies for support and possibly adjusting the subsidy provided to the family if necessary and appropriate.

In the case of a 'select home adoption,' once a child has been matched with a family, and a series of visits have occurred between the prospective adoptive family and the child, the child will

one's good karma, while providing an opportunity to be a part of something meaningful in the process. The division pays attorneys only \$500 per adoption, to represent prospective adoptive parents of children placed by the agency. The fees paid to attorneys are small compared to private adoption practice, but the intangible rewards can be great.

One major advantage is that DCP&P does a majority of the work necessary to prepare the case for filing. The home study is completed, the background checks are done, and the consent package is completed. The families have already had to endure countless home visits from a variety of professionals, have had to navigate the innumerable DCP&P policies and forms, and have often had to comply with ongoing court orders, litigation-oriented evaluations, and possibly ongoing parental visits



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work that must be completed prior to the filing of an adoption complaint should be completed during the pendency of the abuse and neglect (FN docket⁵) litigation or during the termination of parental rights (FG docket⁶) litigation. Accordingly, DCP&P is directed to obtain the birth certificate and Social Security card prior to the final termination of parental rights. The directive instructs that even if the physical Social Security card is not in the possession of DCP&P, the consent to adoption can still be issued.

Once the court has terminated parental rights (TPR), DCP&P “must make reasonable efforts to finalize the adoption.”⁷ In addition to specifying the various background checks the division must complete, and the timeframes within which they must be completed, the main thrust of Directive #17-17 is to make sure the process moves efficiently and quickly and that once a child is legally freed, permanency is achieved through adoption as soon as possible.

In post-termination of parental rights cases 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.”⁸

With that goal in mind, the directive instructs that within *48 hours* of the DCP&P local office manager signing the consent form, it must send the consent to the attorney retained to represent the resource parents for the adoption and attach the *dated* transmittal letter to the consent and file it with the court. Thus, the division must complete the consent package soon after the parental rights have been terminated, the consent pack-

age must leave the DCP&P office within 48 hours of being signed by a manager, and the court monitors when the package was transmitted to the attorney and whether a complaint has been filed in a timely manner.⁹ A fast turnaround time by the selected attorney is not only critical to the goal of an efficient adoption process, but is also an expectation of the division’s Office of Adoption Operations if one is to continue to receive referrals.

Attorneys performing adoption work for DCP&P can expect, at a minimum, to receive the following documentation as part of the consent packet from the division:

[A]ll 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 surrender and supporting documentation), the adoption agency background checklist and certification required pursuant to R. 5:10-8, 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.¹⁰

In addition to the documentation mentioned above, DCP&P also includes documentation of any domestic violence history of the adoptive parents or other adults in the adoptive home. The division will also request child abuse record information (CARI) checks in other states where the adoptive parents and other adult household members resided within five years of the written consent. The division will also conduct criminal history record information checks on the adoptive parents and any adult members of the household.

Problems sometimes arise if someone

has moved into the household since the home study was completed. As the attorney, it is important to ensure that DCP&P has adequately addressed all issues so as not to cause a last-minute delay. Timing of all of the checks and fingerprinting is very important. Name checks and background checks will have been conducted no later than 90 days before sending the consent package to the adoption attorney, to allow sufficient time for DCP&P to address issues before the adoption hearing. Conversely, checks must be current and any fingerprinting or background checks older than one year must be updated. In addition to the extensive information already mentioned, DCP&P also collects medical information regarding the child and the biological parents, to the extent possible. Obviously, it is imperative to review the file in advance. If anything is missing, the division caseworker should be notified immediately, as it is the agency’s job to complete the task prior to the hearing.

Sensitivity to Family History is Important

It is advisable to review the home study report, the agency’s court report and any judicial decisions (trial or appellate) related to the child’s case. These children have complex case histories. The relationships between the adoptee and the adoptive parent, or the adoptive parent(s) and the biological parent(s), may be one that requires a certain level of sensitivity by the attorney handling the adoption. By the time the attorney enters the picture, a lot of shared history and experiences may have occurred between the family members—some of it good, some of it not so good.

Many resource parents and biological parents may have participated in child welfare mediation through the court during the course of the protective services or guardianship proceeding.¹¹ During the child welfare mediation, the biological parents may have chosen to

perform an identified surrender of their parental rights to the specific adoptive parents, who are currently the adoptive parents and the attorney's clients. Therefore, it is incumbent upon the attorney to be mindful of some of this history and the relationships between the individuals, so that all interactions are handled appropriately. If there are any problems with the placement, either the attorney or the client should reach out to the DCP&P case manager or the law guardian immediately to address the issues. These are very fluid situations, which can sometimes change from week to week, especially with older children.¹²

Some practice pointers include making sure DCP&P has provided documentation that establishes that neither the child nor the child's biological parents are members or eligible to be members of a federally recognized Indian tribe, in accordance with the requirements set forth in Rule 5:10-6 pursuant to the Indian Child Welfare Act.¹³ This should be included in the initial information provided by DCP&P or in the judgment of guardianship or voluntary surrender, but sometimes an additional request must be made of DCP&P to verify this information.

Additionally, the court rules provide that information about whether the plaintiffs have entered into a subsidy agreement with DCP&P should be provided to the court.¹⁴ It is advisable to obtain a copy of the subsidy agreement and confirm with the clients that they understand their subsidy package before they finalize the adoption. The division's goal is to support the families who are adopting their children, and it strives at the outset to be generous with its subsidies. Although the division permits families to come back to DCP&P post finalization to have their subsidy rate reassessed if the situation with their child changes, it is always best to make sure the client understands the current terms of the subsidy agreement DCP&P

is providing at the time of the adoption.

When working with the adoptive parents to prepare the complaint, many attorneys complete the necessary paperwork and interview process over the telephone. One must be sensitive, however, to the fact that some of the resource families may require more assistance than others in completing the necessary paperwork or preparing for the adoption proceeding. Approximately half of the resource families are relatives of the parents, including many grandparents or great aunts or uncles.¹⁵

The attorney and support staff must demonstrate patience when working with adoption clients.

The Adoption Hearing: The Happiest Proceeding in the Family Division

Many times the judge who presided over the child protection and/or termination of parental rights litigation concerning the child or children who are the subject of the adoption will request the opportunity to preside over the adoption proceeding. Additionally, the case manager from DCP&P, possibly the law guardian from the Office of the Public Defender, who represented the child in the prior litigation, and even a court-appointed special advocate (CASA) volunteer will also appear at the adoption hearing.¹⁶ At the hearing, the necessary statutory factors will be placed on the record through the client's testimony. The court will enter the judgment of adoption and DCP&P will file the critical notice of change of placement form with the court, which formally closes the court's supervision of the child's case.

Finish the Punch List: Obtaining the New Birth Certificate

Following the adoption proceeding, the attorney's job is not done. The attorney must make sure to file the report of adoption form with the Office of Vital Statistics, and obtain a new birth certificate to be provided to the adoptive par-

ents. The cost for reporting the adoption and obtaining at least one certified copy of the birth certificate (currently a total of \$27)¹⁷ must be paid out of the original \$500 attorney's fee. The filing for the birth certificate should be completed in a timely manner. Attorneys who do not follow through with this seemingly minor, but very important, task should not expect to receive future referrals from DCP&P.

Attorneys must file the judgment of adoption, along with their bill, with the Office of Adoption Operations, in order to receive payment. ☺

Endnotes

1. Formerly known as Division of Youth and Family Services or DYFS.
2. 'Resource family' has replaced the term 'foster family' in DCP&P terminology so as to more accurately reflect the many family members who become 'resources' for their family members but are not foster families to the general public. To say that half of the adoptions are by resource families means that the children were initially placed with the family while the division was continuing to work towards the goal of reunification with the biological parents (*i.e.*, the children were not legally free for adoption when placed with the family).
3. *Adoptive Parent Handbook*, NJ Department of Children and Families, May 2013.
4. In practice, this method of distribution has resulted in the majority of cases going to a handful of the same practitioners, with little opportunity for others to participate in this work. Nonetheless, attorneys who wish to be included on the list of approved attorneys may contact DCP&P's Office of Adoption Operations in Trenton to be included.

5. 'FN' stands for 'family neglect' and is the docket designation used for cases filed under N.J.S.A. 9: 6-1 *et. seq.*
6. 'FG' stands for 'family guardianship' and is the docket designation used for cases filed under N.J.S.A. 30:4C-12 *et. seq.*
7. Administrative Office of the Courts Directive, #17-17, ¶ 2, June 23, 2017.
8. Administrative Office of the Courts Directive, #17-17, ¶ 5, June 23, 2017.
9. Administrative Office of the Courts Directive, #16-17. Improved Oversight for Abused and Neglected Children in Foster Care. This directive, and others before it, was issued to address an historical problem of limited judicial oversight of DCP&P cases after termination of parental rights occurred. In Jan. 2005, the Essex Vicinage implemented what was called the 'post-term project,' which greatly increased the court's oversight, and consequently the speed with which children who were legally freed for adoption were actually achieving permanency. Thus, these timeframes for reporting to the court when the consent to adoption forms were issued and other steps in the adoption process became codified in the court rules.
10. *Id.* at ¶ 6.
11. *See*, Administrative Office of the Courts Directive, #15-17, Child Welfare Mediation Program Procedures.
12. On more than one occasion, what appears to be a stable placement falls apart leading up to an adoption. Older children, in particular, sometimes have conflicted feelings about adoption, or situations in the resource family home can change suddenly, with a death, a terminal diagnosis, or a potential divorce.
13. Indian Child Welfare Act, 25 U.S.C. §1902.
14. R. 5:10-3(b)(5)(E).
15. Do not be surprised if the client does not have an active email address or easy access to a computer. Some resource parents, especially those who are family members, may be older and are not as comfortable using some of the technology that many people use routinely.
16. The presence of a law guardian or CASA volunteer at an adoption hearing usually has a direct correlation to how difficult a journey the road to permanency has been for that particular child and/or adoptive parents. There is no legal necessity for his or her presence at the adoption hearing. The law guardian represented the child in the underlying litigation, and the CASA volunteer may have been assigned by the court to act as an advocate for the child since the time the child was first placed in foster care.
17. *See*, <https://www.state.nj.us/health/vital/adoption/domestic-adoptions/>.

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