

**REPORT OF THE JUDICIAL COUNCIL ADOPTION LAW  
ADVISORY COMMITTEE REGARDING NOTICE TO PARENTS IN  
AGENCY ADOPTIONS**

**December 2, 2022**

In August 2021, Judge Andrew Stein, district court judge in the 16th judicial district, asked the Judicial Council to study the notice provisions of the Kansas Adoption and Relinquishment Act (KARA), specifically K.S.A. 59-2133(c). Judge Stein asked for review of the provision requiring notice of the hearing on a petition for adoption to parents whose rights have been terminated. The Judicial Council accepted the study request and assigned it to the Adoption Law Advisory Committee.

The members of the Adoption Law Advisory Committee are:

**Hon. Thomas Kelly Ryan**, Chair, Olathe; Johnson County District Court Judge  
**Kathy L. Armstrong**, Topeka; Assistant General Counsel for Prevention and Protection Services, Kansas Department for Children and Families  
**Martin W. Bauer**, Wichita; practicing attorney  
**Michael J. Belfonte**, Independence, Missouri; practicing attorney  
**Jill Bremyer**, McPherson; practicing attorney  
**Dr. Bud Dale**, Topeka; child psychologist and practicing attorney  
**Allan Hazlett**, Topeka; practicing attorney and adjunct professor teaching adoption law at Washburn University School of Law  
**Rep. Susan Humphries**, Wichita; State Representative from the 99<sup>th</sup> District and practicing attorney  
**Hon. Rick Macias**, Wichita; Sedgwick County District Court Judge  
**Rachael K. Pirner**, Wichita; practicing attorney  
**Hon. Robb Rumsey**, Wichita; Sedgwick County District Court Judge  
**David H. Snapp**, Dodge City; practicing attorney  
**Austin Kent Vincent**, Topeka; practicing attorney  
**Lisa Williams-McCallum**, Topeka; practicing attorney

**DISCUSSION**

**Notice in Agency Adoptions**

In June 2015, the Judicial Council formed the Adoption Law Advisory Committee (Committee) to undertake a comprehensive review of KARA. The Judicial Council approved the Committee's recommended statutory amendments in December 2017 and the legislature passed the amendments in the 2018 legislative session. These amendments included amendments to the notice provisions of KARA in K.S.A. 59-2133.

Before the 2018 amendments, KARA required the petitioner in an agency adoption to give notice of the hearing on the petition to the consenting agency only. It did not require notice to parents.<sup>1</sup> In 2018, the legislature amended K.S.A. 2017 Supp. 59-2133(c) to require the petitioner in agency adoptions to give notice of the hearing on the petition to the consenting agency, the parents or possible parents, any relinquishing party, and any person who has physical custody of the child.<sup>2</sup> Notice to the persons listed in K.S.A. 2018 Supp. 59-2133(c) was not required if the person entitled to notice had waived the right to notice.<sup>3</sup> However, for agency adoptions, the statute failed to delineate between a parent whose parental rights to the child or children involved in the adoption had been terminated by a court (former parent) versus a parent whose parental rights had not been terminated.

In some cases, especially those arising out of a child in need of care (CINC) case, a former parent may be extremely difficult to find. Requiring a former parent to receive notice of the adoption hearing delays the adoption proceeding and increases the petitioner's costs as great effort goes into finding the former parent. Even if the former parent is located and served with notice, the former parent has no right to consent or oppose the adoption.<sup>4</sup> At most, the former parent could appear and watch the hearing as a passive observer. The Committee agreed that providing notice to a former parent is not required by due process and is unduly burdensome.

The Committee also agreed the 2018 amendments that expanded notice requirements for agency adoptions should apply only to private agency adoptions, which may involve parents whose rights have not been terminated or relinquished. The Committee agreed KARA should state different hearing notice requirements for private and public agencies. Because a petition in a public agency adoption is not filed until after parental rights have been relinquished or terminated, providing notice only to the consenting agency is sufficient.

### **Other Issues in K.S.A. 59-2133**

While the Committee was evaluating the agency adoption notice issue raised by Judge Stein, it recognized that K.S.A. 2021 Supp. 59-2133 is not written clearly and could use additional substantive amendments that were not part of the original study request. The Committee requested and received the Judicial Council's approval to expand the study's scope to consider additional substantive amendments.

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<sup>1</sup> K.S.A. 2017 Supp. 59-2133(c).

<sup>2</sup> K.S.A. 2018 Supp. 59-2133(c).

<sup>3</sup> K.S.A. 2018 Supp. 59-2133(c).

<sup>4</sup> See K.S.A. 2021 Supp. 59-2112(b) (the agency has the authority to consent to the adoption); K.S.A. 2021 Supp. 38-2270(a)(1) (if the court terminates parental rights in a child in need of care case, the agency has the authority to consent to the adoption of the child and is the only consent required).

The Committee carefully reviewed the notice requirements applicable to each type of adoption. Prior to the 2018 amendments, the petitioner in independent and stepparent adoptions was required to give notice of the hearing on the petition to the “parents or presumed parents” unless parental rights were previously terminated or the right to receive notice was waived.<sup>5</sup> That language was amended in 2018 to “parents or possible parents.”<sup>6</sup> That same language was also added in 2018 to the notice requirements for agency adoptions.<sup>7</sup> The goal of this amendment, which had been recommended by the Committee in its December 2017 report, was to ensure that all potential fathers were given adequate notice when paternity had not been established. In its current review of the notice requirements under K.S.A. 59-2133, the Committee confirms that “possible parents” was an appropriate addition to the statute. However, the Committee believes it should have been an addition to, rather than a replacement for, “presumed parents.” The Committee agrees that “presumed parents” should be added back to the statute and should be included in the lists of those who should receive notice of the hearing on the petition in independent, stepparent, and private agency adoptions.

The Committee discussed one final category of persons who might be entitled to receive notice of the hearing – legal guardians. Both before and after the 2018 amendments, a legal guardian was entitled to receive notice only in an independent adoption. The Committee agreed that a legal guardian, if one exists, should always receive notice of the hearing on the petition for adoption and recommends adding that language to the requirements for stepparent and private agency adoptions.

Having agreed on additions to the categories of persons entitled to receive notice of the hearing on an adoption petition, the Committee agreed to add language clarifying that receiving notice does not make the recipient a party or confer standing to participate in the proceeding. The Committee also redrafted a majority of statute to enhance readability and incorporate the recommended changes.

## **RECOMMENDATION**

The Committee recommends K.S.A. 2021 Supp. 59-2133 be amended, as set out below, to incorporate the following proposed amendments:

- add language clarifying that the petitioner is not required to send notice to a person whose parental rights to the child have been terminated by a final order of the court;
- provide separate notice requirements for private and public agency adoptions;
- for public agency adoptions, restore pre-2018 requirement of providing notice of the hearing on the petition only to the consenting agency;

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<sup>5</sup> K.S.A. 2017 Supp. 59-2133(b).

<sup>6</sup> K.S.A. 2018 Supp. 59-2133(b).

<sup>7</sup> K.S.A. 2018 Supp. 59-2133(c).

- add “presumed parents” to the list of those entitled to receive notice of the hearing on the petition in independent, stepparent, and private agency adoptions;
- add “legal guardian” to the list of those entitled to receive notice of the hearing on the petition in stepparent and private agency adoptions; and
- add language clarifying that an individual who receives notice under the statute is not made a party or granted standing in the action solely on the basis of the notice.

### **RECOMMENDED STATUTORY AMENDMENTS**

**K.S.A. 59-2133. Notice; waiver.** (a) Upon filing the petition, the court shall fix the time and place for the hearing. The time fixed for the hearing may be any time not more than 60 days from the date the petition is filed. The time fixed for the hearing may be extended by the court for good cause.

~~(b) In independent and stepparent adoptions, notice of the hearing on the petition shall be given to the parents or possible parents at least 10 calendar days before the hearing, unless waived by the party entitled to notice or unless parental rights have been previously terminated, and to any person who has physical custody of the child, unless waived by the person entitled to notice. Notice also shall be given in an independent adoption to a legal guardian of the child, unless waived by the party entitled to notice.~~

~~(c) In an agency adoption, notice of the hearing on the petition shall be given to the consenting agency, the parents or possible parents, any relinquishing party and any person who has physical custody of the child at least 10 calendar days before the hearing, unless waived by the person entitled to notice.~~

(b) Notice of the hearing on the petition to persons entitled to notice shall be given at least 10 days before the hearing. Individuals receiving notice pursuant to this section shall not be made a party or be granted standing in the action solely on the basis of this notice.

(c) Except as provided in subsection (d):

(1) In an independent or stepparent adoption, notice of the hearing on the petition shall be given to:

- (A) the parents, presumed parents, or possible parents;
- (B) any person who has physical custody of the child; and
- (C) any legal guardian of the child.

(2) In a private agency adoption, notice of the hearing on the petition shall be given to:

- (A) the consenting agency;
- (B) the parents, presumed parents, or possible parents;
- (C) any relinquishing person;
- (D) any person who has physical custody of the child; and
- (E) any legal guardian of the child.

(3) In a public agency adoption, notice of the hearing on the petition shall be given to the consenting agency.

(d) Notice of the hearing on the petition is not required to be provided to:

(1) a person whose parental rights have been terminated by an order of a court of competent jurisdiction; or

(2) a person who or agency that has waived in writing the right to receive notice.

~~(d)~~ (e) Notice of the hearing shall be by personal service, certified mail return receipt requested or in any other manner the court may direct. Notice given pursuant to this section shall not include a copy of the petition.