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Adoption Reform Amendment Act of 2010

The Adoption Reform Amendment Act ("ARA"), B18-0547, was passed by the D.C. Council and took effect in September 2010. The ARA includes provisions extending adoption and guardianship subsidies until children turn 21 and expanding guardianship subsidies to include non-kin. It also contains other important provisions including: judicial enforcement of voluntarily-entered post-adoption contact agreements between adoptive and biological parents; easing requirements for adoption of foster children over 18; and establishing a foster care registry so adults who are or were in foster care can seek out biological family members with whom they have lost contact. This memorandum summarizes each of these provisions and how they may play out in practice. As with any new law, not all of the details of how this will work in practice are clear. Please feel free to call the Children's Law Center Helpline during regular business hours at 202-467-4900, Option 4, with any questions.

I. Adoption and guardianship subsidy extension and expansion and related changes

a. *In general*

The law extends a child or youth's eligibility for an adoption or guardianship subsidy until he or she turns 21 years old. ARA § 501, *codified at* D.C. Code §§ 4-301(e)(2) and 16-2399(d)(2). The law also removes the limiting of guardianship subsidies to kinship foster parents – thus permitting subsidized non-kinship guardianship. ARA § 501(b), *repealing* D.C. Code § 16-2399(b)(3).

The subsidy changes have prospective effect only; this law only extends subsidies until 21 for adoptions and guardianships that are **finalized after May 7, 2010**. ARA § 501, *codified at* D.C. Code § 4-301(e)(2) & 16-2399(d)(2).[1]

Note that Child and Family Services Agency ("CFSA") has not yet amended its regulations governing guardianship subsidies nor issued new policies or "administrative issuances" to implement the new law.[2] The now-outdated regulations are invalid to the extent they conflict with the new statute.

II. Guardianship proceedings

a. *Guardianships for youth 18 – 20 years old*

The ARA clarifies that the Family Court has authority to enter guardianship orders for youth who are 18-20 years old.[3]

Several factors regarding guardianship for 18-20 year olds are important to note. First, under the new law, an 18-20 year old must consent to any guardianship in writing; indeed, such written consent is a condition of the court's jurisdiction. ARA § 501(b), *codified at* D.C. Code § 16-2390(a).

Second, attorneys for youth or prospective guardians may want to consider language regarding the authority of a permanent guardian that differs from typical guardianship orders. The statutory provision describing the effect of guardianship orders, D.C. Code § 16-2389, is drafted for younger children, over whom parent-like authority is appropriate. The same authority may be less appropriate for 18-20 year olds, so the parties can consider requesting the judge to issue a more age-appropriate order giving older youth more autonomy over certain decisions. It might also be worth

[1] This provision of the ARA is already in effect. Emergency (B18-759) and temporary legislation (B18-760) allowed the subsidy extension and expansion sections of the ARA to go into effect in May.

[2] The regulations still provide that a guardian must be a "kinship caregiver," and the subsidy will terminate when a child turns 18. 29 D.C.M.R. §§ 6101.1(b) and 6104.4(d)(1).

[3] The law amends D.C. Code § 16-2390 to provide that "the court shall have jurisdiction to **enter** a guardianship order and shall retain jurisdiction to enforce, modify, or terminate a guardianship order until a child reaches 21 years of age; provided, that when the child reaches 18 years of age, the child consents and the court finds it is in the best interest of the child." (emphasis added)

considering an order that provides that the guardian has certain authority until 18, and modified authority after 18. Under the statute, the statutory language applies "[u]nless the court specifies otherwise." § 16-2389(a).

Third, the guardianship statute remains silent as to what rights, if any, biological parents have regarding guardianships involving 18-20 year olds. An argument exists that parents have no custodial rights regarding youth of that age (who are legal adults) and therefore should not have any standing to contest a motion for permanent guardianship. On the other side, parents can argue that so long as they are parties to a neglect case, they may challenge a guardianship motion.

b. *Youth in guardianships cannot re-enter foster care after turning 18*

The ARA prohibits youth from re-entering foster care after they turn 18. ARA § 501(b), *codified at* D.C. Code § 16-2390(b). Just as youth in biological or adoptive families cannot enter (or re-enter) foster care after turning 18, youth living with permanent guardians now may not do so either.

The Family Court retains jurisdiction to modify or terminate a guardianship order until a youth turns 21 – the only restriction is that, unlike children under 18, youth 18 or older cannot then re-enter foster care. D.C. Code §§ 16-2390 & 16-2395. A 19 year-old can, for instance, move the Court to terminate the guardianship order or to modify any of the provisions of the guardianship order and the Court has jurisdiction to decide such motions.

III. Adoptions of 18-20 year olds

The existing adoption statute already permits adoption of anyone of any age, but the legislation changes the legal standard applicable to adult adoptions. The new law provides that a person 18 and older "may be adopted, on the petition of the adopting parent or parents and with the consent of the prospective adoptee, if the court is satisfied that the adoption should be granted." D.C. Code § 16-304(e). This standard differs from the more familiar "withholding consent contrary

to the best interests of the child" standard (the standard into which the Court of Appeals has incorporated the termination of parental rights (TPR) standard into adoption cases).

IV. Waiving the 6-month requirement for adoption of children over 18

The Act provides that an adoptee 18 or older need not live with an adoptive parent for six months before the adoption can be finalized. ARA § 701, *codified at* D.C. Code § 16-309(c)(2).

V. Post-adoption contact agreements

The ARA establishes judicially-enforceable "post-adoption contact agreements." ARA § 101.[4] Biological parents, adoptive parents, and adoptees (if they are 14 or older) can enter into agreements governing "contact" between the child and his or her biological family after the adoption is finalized. ARA § 101(a). For cases involving an adoptee who is a respondent in a child abuse and neglect case, the court finalizing the adoption shall review and approve any agreement based on whether it is in the best interests of the adoptee. ARA § 101(b)(3).

Either the adoptive or biological parent can move the Family Court to enforce a post-adoption contact agreement, and the Court should do so if it finds that enforcement is in the child's best interests. ARA §§ 101(b) and 101(c)(2).

A party may also ask the Court to modify a post-adoption contact agreement and the Court may do so if convinced that such modification is in the child's best interest. ARA § 101(c)(3). For instance, if an adoptive parent stops permitting contact after some time because the birth parent's substance abuse problems have worsened and the birth parent seeks to enforce the agreement, the adoptive parent could ask the Court to modify the agreement to make any future contact in the adoptive parent's discretion.

Under no circumstances may any dispute over post-adoption contact lead to rescission of an adoption order or revocation of consent to adoption. ARA § 101(a)(2).

[4] The post-adoption contact provision will not go into effect until after the Congressional review period ends.

In foster care adoption cases, the ARA provides that "the court finalizing the adoption shall review and approve any PAC [post-adoption contact] agreement based on whether it is in the best interest of the child prior to finalizing the adoption." ARA § 101(b).

If post-adoption disputes regarding contact agreements arise, the statute states: "the parties shall certify that they have participated, or attempted to participate, in good faith in mediation or other appropriate dispute resolution proceedings to resolve the dispute prior to seeking judicial resolution. The mediator shall be selected by the adoptive parent." ARA § 101(c)(1). This provision does not clarify whether failure to seek mediation will prevent a party from seeking to enforce a post-adoption contact agreement in Family Court, or how adoptive parents are supposed to select a mediator.

Several practice points are noteworthy:

First and foremost, post-adoption contact agreements are entirely voluntary and must be agreed to by both adoptive and biological parents. Client counseling and negotiations with other parties are therefore essential. Some adoptive parents will want (or will not mind) such agreements but others will want to avoid them entirely – and such adoptive parents have every right to refuse to sign such an agreement, proceed to trial and advocate for an adoption with no such agreement. Clients will need to consider all of the ramifications of such an agreement so they can make an informed choice, and if they choose to pursue such an agreement, will need an able negotiator to help them.

Second, the statute does not define what kind of "contact" may be included in post-adoption contact agreements. Lawyers and parties negotiating such agreements have to define "contact" in each case. To best represent your client in such negotiations, it is important to know that a range of actions may amount to "contact" – from annual letters and/or photographs from an undisclosed

address to the biological parent to regular in-person visits – and to determine whether to seek specific or general provisions about the "contact" that will occur.

Third, as with adoptions themselves, an adoptee who is 14 years old or older must consent in writing to any post-adoption contact agreement. ARA § 101(a)(1). This gives foster children of that age (and their GALs) some influence over the negotiating process.

VI. Foster care registry

The ARA requires CFSA to establish a "voluntary foster care registry" to help individuals 18 and older who are or at any time were in foster care reconnect to family members with whom they have lost touch. ARA §§ 301-302, *codified at* D.C. Code §§ 4-1303.03(a)(16), 4-1303.08, 4-1303.09. CFSA has until about April 2011 to establish this registry. ARA § 301(b), *codified at* D.C. Code § 4-1303.08(a).

The registry will enable a former foster child (or current foster youth 18 or older) and an immediate family member – parents and siblings – to reconnect if *both* parties so desire and sign up for the registry. The only people who may sign up for the registry are: an individual who is 18 or older and is or was a respondent in a child abuse or neglect case in DC, and his or her mother, father, or sibling who is also 18 or older. ARA § 301(b), *codified at* D.C. Code § 4-1303.08(g). An individual who was a respondent in an abuse or neglect case can sign up for the registry no matter how long his or her case was open and no matter how that case ended. It is envisioned that most registrants will have been permanently separated from their biological family through adoption, guardianship, or growing up in foster care.

To sign up for the registry, a current or former foster child must consent to have their own contact information shared with family members who also sign up for the registry. The individual can consent to have their information shared with any family member who registers, or only with certain specific family members who register. ARA § 301(b), *codified at* D.C. Code § 4-

1303.08(b)(1)(C). For instance, a former foster youth may consent to his information to be shared with his mother only but not his father, or only with siblings but not either parent.

Individuals will have to pay a fee, which has not yet been set, to sign up for the registry. The fee may be waived for individuals with incomes below the federal poverty line. *Current* foster youth 18 to 20 years old do *not* have to pay the fee. ARA § 301(b), *codified at* D.C. Code § 4-1303.08(c).

Individuals may withdraw from the registry at any time. ARA § 301(b), *codified at* D.C. Code § 4-1303.08(d).

Before the registry takes effect in spring 2011, it is worth discussing with current – and possibly former – clients whether they want to register. It is particularly worth doing so with older GAL clients who wish to reconnect with parents or siblings with whom they have lost touch. Such clients can register without paying a fee if they act before they age out of foster care.

VII. Other provisions

The ARA contains several other provisions that may be of interest, but which are not likely to affect neglect practice directly. They include:

- Permitting adoption agencies to charge sliding scale fees rather than be subject to a fee cap. ARA §§ 201-201. This section is designed to encourage private adoption agencies – most of which are located in Maryland, which has sliding scale fees – to relocate to the District. The pre-existing fee cap was a significant deterrent to agencies being located in the District. This provision only affects private adoptions; foster care adoptions do not depend on privately-paid fees.
- Easing the process of recognizing foreign adoptions in D.C. Courts. ARA § 401, *codified at* D.C. Code § 16-317.