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TO: Senate Judiciary Committee

FROM: Kansas Judicial Council – Austin K. Vincent

DATE: February 8, 2023

RE: SB 115 Amending the list of persons entitled to notice of the hearing on an adoption under K.S.A. 59-2133

The Judicial Council and its Adoption Law Advisory Committee recommend SB 115, a bill amending K.S.A. 59-2133 relating to notice of the hearing on a petition for adoption. A study request from a district court judge brought to the Judicial Council's attention the need to reexamine the changes made to this statute in 2018. In addition to fixing the issue raised by the judge, SB 115 also contains additional clean-up amendments and clarifications to the list of persons entitled to receive notice of the hearing on a petition for adoption in independent, stepparent, private agency, and public agency adoptions.

Notice in Agency Adoptions

In June 2015, the Judicial Council formed the Adoption Law Advisory Committee (Committee) to undertake a comprehensive review of the Kansas Adoption and Relinquishment Act (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. 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. However, while K.S.A. 59-2133(b) relating to independent and stepparent adoptions delineated between a parent whose parental rights had been terminated by a court (former parent) versus a parent whose parental rights had not been terminated, that language was not added to subsection (c) when the notice requirements for agency adoptions was expanded.

The Committee agreed with the judge who brought this issue to the Judicial Council's attention 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. For public agency adoptions, the pre-2018 language requiring notice only to the consenting agency is sufficient. K.S.A. 38-2270(a)(1) provides that 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.

SB 115 addresses both of these issues by reorganizing the statute and separating agency adoptions into two categories, with the notice requirements for private agency adoptions in subsection (c)(2) and the more limited notice requirements for public agency adoptions in subsection (c)(3).

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

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. That language was amended in 2018 to "parents or possible parents." The same language also was added to the notice requirements for agency adoptions. The goal of that 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 the recent review of the notice requirements under K.S.A. 59-2133, the Committee confirmed 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 bill returns "presumed parents" to the lists of those who should receive notice of the hearing on the petition in independent and stepparent adoptions in subsection (c)(1)(A), and private agency adoptions in subsection (c)(2)(A).

The bill also addresses notice to 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 the bill adds that requirement for stepparent and private agency adoptions.

Because the bill further expands the categories of persons entitled to receive notice of the hearing on an adoption petition, new language in subsection (b) clarifies that receiving notice does not make the recipient a party or confer standing to participate in the proceeding.