

An **ALM** Web site

THE NATIONAL  
**LAW JOURNAL**  
with D.C. news from **LegalTimes**

## Uniting D.C. families

Court reforms, new laws speeding once-chaotic adoption process.

**Zoe Tillman**

The National Law Journal

January 2, 2012



Heidi Eitel, Brian Yourish and their adopted daughter Cymia



Schweitzer & Scherr's Harvey Schweitzer

*Photo: Diego M. Radzinski / NLJ*



D.C. Superior Court Judge Juliet McKenna  
*Photo: Diego M. Radzinski / NLJ*

Cymia first came to Heidi Eitel and Brian Yourish's home in Washington as a foster child in need of emergency placement in March 2010. They filed to adopt her that June. This November, during the 25th anniversary celebration of the District of Columbia Superior Court's Adoption Day, they finalized her adoption.

Waiting more than a year to adopt 4 1/2-year-old Cymia "felt like an eternity," Eitel said.

But had Eitel and Yourish gone through the same process 15 years ago, they might still be waiting. In the mid-1990s, attorneys who handled adoptions in the District of Columbia say the system was a mess. Unpredictable. Confusing. Secretive. One attorney described it as "in shambles."

Regardless of whether families were adopting children out of foster care or through private agencies, the process could take too long and hurt children while they waited, said Deborah Luxenberg, who handled adoption cases in the District from the mid-1970s until around 2006. "Once you filed stuff it was a black hole," she said. "It just sat there and it could be years."

Things have changed. In the quarter-century since the first Adoption Day, Luxenberg and other attorneys who remember the darker days credit judges and city officials with reforming the system. New adoption rules put in place by the court since 1997 made the process more predictable. New legislation enacted in the early 2000s restructured Family Court and kept adoption cases assigned to the same judge from start to finish, helping judges move cases along more quickly.

The system as it runs today is not without criticism. Superior Court data show that for foster children designated for adoption, the average time to achieve "permanency" — meaning a finalized adoption — was 5.8 years in 2004. The court and the city's Child and Family Services Agency didn't keep statistics until the 2000s, so the average time in the 1990s is unknown. In 2010, the average time to permanency in adoptions had dropped by more than a year to 4.6 years, but that still isn't fast enough for some.

Testifying before the District of Columbia Council in February, Priscilla Skillman, assistant director of the Council for Court Excellence, a local nonprofit that studies administration of justice, said "all parts of the District's child welfare system are taking far too long" to get children into permanent homes, via adoption or other legal arrangements. Skillman, who declined to comment beyond her remarks, faulted everyone with a hand in adoptions for the delays, from D.C. Child and Family Services to Superior Court.

Another common complaint from adoptive families is that a requirement that children live with adoptive parents for six months before they can finalize adoptions is too long. Still, attorneys, judges and city officials agree that the system has improved.

"The criticisms of 1997 were valid then, but are no longer valid now," said Harvey Schweitzer of Bethesda, Md.'s Schweitzer & Scherr, who has worked with children in foster care and handled adoptions in the District since 1979. "The adoptions judges are far more conscientious in terms of time lines and not allowing anybody in the process to delay it."

## **CHANGING THE SYSTEM**

When Stanton Phillips began taking adoption cases in the District in 1982, Superior Court judges handled adoptions on 30-day rotations. Longtime clerks familiar with adoptions had kept cases moving, but changes in personnel starting in the late 1980s meant there was "nobody with any history or understanding of adoptions," said Phillips, now of Adoption Legal Services in Tysons Corner, Va.

The court extended adoptions calendar rotations to 90 days, which helped, Phillips said, but families and attorneys still had to adapt to the changing personalities of judges as cases proceeded. The court didn't have rules in place governing how judges should manage adoption cases, meaning that even the most experienced adoption attorney had trouble advising clients on what to expect from a particular judge.

One of the most pressing problems by the mid-1990s, Phillips said, was the fact that new court policies based on a strict interpretation of confidentiality provisions in the D.C. Code barred attorneys and adoptive parents from getting information on the status of their cases. A District of Columbia Bar subcommittee was pushing for reform at the time, but nothing was happening.

"Judges thought attorneys shouldn't have access to case files and that was bizarre," said Mark McDermott, a Washington solo practitioner and past president of the American Academy of Adoption Attorneys who has practiced in the District for 26 years.

Schweitzer said a Feb. 24, 1997, article in *Legal Times* highlighting the problem "lit a fire under the court and they moved everything ahead." Less than two weeks after the article was published, then-Superior Court Chief Judge Eugene Hamilton issued an administrative order directing adoption judges to provide status updates to all parties and attorneys involved. He also credits Senior Judge Arthur Burnett Sr., who served as the adoption judge at the time, for pushing reform.

The court adopted new adoption rules in October 1997, which standardized the process and extended adoption judge rotations from 90 days to one year. "There is a system; it's followed, it's predictable," said Michele Zavos of the Zavos Juncker Law Group in Silver Spring, Md., who has handled adoptions in the District since 1994. "I can advise my clients about what will happen and it will happen, so its an enormous change from [the 1990s]."

## **START TO FINISH**

Legislative initiatives in the early 2000s added heft to the court's internal reforms.

The District of Columbia Family Court Act, passed by Congress in 2001, represented a "major sea change" in how Superior Court managed adoption cases, said Judith Sandalow, executive director of the Children's Law Center.

Under a new "one family, one judge" system, one judge in Family Court would be expected to handle a child or family's case from start to finish. For instance, a judge that handled a foster child's legal proceedings would keep that child's case as he or she moved toward adoption or other legal permanency arrangements, such as guardianship or custody. The Family Court Act also set up the magistrate judge system as it runs today, where magistrates serve terms on Family Court handling abuse and neglect cases, also from start to finish.

Superior Court Judge Juliet McKenna, who was appointed in 2005 and just finished her second year as the adoptions calendar judge, said the change made sense because "we needed to keep those cases with the judge who had the greatest familiarity with the case." An adoptive parent, McKenna worked with children in the abuse and neglect system for before joining the court as a magistrate judge in 2002. She was honored by Congress as one of this year's Angels in Adoption.

"Previously, when you had 60-odd judges rotating frequently through the adoptions assignments, there was no certainty or predictability," McKenna said. "In some ways...we're kind of ahead of the game. We made up for lost time and then moved ahead."

Also in 2001, the D.C. Council created a new legal path to a permanent home. The Foster Children's Guardianship Act created guardianships, which carry the same legal status and financial subsidies as adoptions, but do not require birth parents to terminate their rights.

"If you're a grandmother, you don't want to become their mother, because you're not," Sandalow said. "It is mirroring one of the strengths in D.C., the extended family system."

More recently, in July 2010, the D.C. Council passed the Adoption Reform Amendment Act. The act made it easier for international adoptions to be recognized in the District; extended adoption and guardianship subsidies to cover adoptees up to age 21; and set up guidelines for enforcing post-adoption contact agreements between adoptive and birth parents, among other things.

"I actually like practicing in D.C....because of the state of the law, the existence of the practice rules and the string of good judges," said McDermott, who also handles adoptions in Maryland and Virginia.

The legal representation available to families also got better, Schweitzer said. In 1997, the Children's Law Center launched a program to provide pro bono assistance to adoptive families, and, in the mid-2000s, the court established a system for appointing and paying attorneys to represent families and children. "As that bar improved, it obviously had a connection to the improvement in the adoption practices," he said.

Washington resident Tyronetta Leech, who has adopted five children from foster care with her husband Timothy Leech since 2006, said that "from the very beginning of the adoption, there was someone there every step of the way with us."

## **BALANCING ACT**

While attorneys agree that the system is "dramatically better," as Sandalow put it, they say there are still areas that could use improvement.

When she testified before the D.C. Council, Skillman of the Council for Court Excellence noted the drop in time for children in foster care to achieve permanency when designated for adoption. But she said that is still far too long for children to be without a permanent family arrangement.

Family Court Presiding Judge Zoe Bush said that the numbers don't tell the full story, since teenagers in foster care, who can take longer to

place in a permanent home, can push up the average. Court data show that, from 2004 to 2010, the vast majority of adoption cases for foster children took more than two years to resolve, but those numbers also show signs of improvement. In 2004, 98 percent of those cases took more than two years to resolve, compared to 93 percent in 2010.

Bush, who is also an adoptive parent, said that balancing the rights and needs of birth parents with those of children takes time by design. She said the court, Child and Family Services, and other groups with a stake in the system have set a goal of resolving adoptions within two years. "We're very fortunate in the District because in some jurisdictions, people go to court and they're not represented by counsel. Is it faster? Maybe. But it's not more fair," she said.

Sharon Knight, an adoption program manager with the D.C. Child and Family Services Agency, said that, although the agency is "working to improve our time lines, sometimes that may or may not be possible." In moving foster children toward permanent homes, she said, agency officials "want to make sure that before they terminate the parent's rights, we have done everything to make it possible for that child to remain with the birth parents."

Sandalow said that, although foster parents are guaranteed an attorney once they begin the adoption process, not having access to legal counsel before that point can also slow the process down. She said the District of Columbia Court of Appeals can be another source of frustration for families. Although the D.C. Code requires the appeals court to "expedite" family cases, it doesn't specify a time frame for resolving a case. "A year for a family is a very long time not to know and to have uncertainty," she said.

Court of Appeals Chief Judge Eric Washington said the court follows a speedier briefing schedule for appeals in adoption and other abuse and neglect system cases. Oral arguments are usually scheduled three to four months after the notice of appeal is filed, and the average time to resolve an appeal in the 11 such cases handled last year was nine months; the average appeal took 18 months. "Everybody is pushing so hard for speed, but our first calling is to do justice and decide cases

fairly," he said, noting that there are some complicated cases that take more time to resolve. "There's quickly and then there's justice. You have to be mindful of both."

Adoptions outside of the abuse-and-neglect system can often take far less time to arrange, sometimes as a little as a few months. But adoptive families do complain that the six-month wait time to finalize any adoption in the District is too long. In Maryland, for instance, a private adoption arranged directly with birth parents can be finalized after a 30-day revocation period; in the same cases in Virginia, there is a 90-day waiting period.

"Six months is a long time," said District resident Donna Edwards, who will finalize the adoption of her five-month-old daughter in January. Edwards arranged to adopt privately with the birth mother. "You have consent, but it's always in the back of your mind — what if something comes up?"

Still, Edwards and other adoptive parents say they understand why the city and the court need to proceed with care.

Brian Yourish and Heidi Eitel had to endure a few legal hiccups that held up Cymia's adoption. But in the end, Eitel said they thought the city and the court "did everything they're supposed to do."

Yourish agreed, adding, "there were some frustrating challenges for us, but at the same time, we chose a process knowing that the rights of everybody are protected every step of the way."

*Zoe Tillman can be contacted at [ztillman@alm.com](mailto:ztillman@alm.com).*