

Adoptions:

Lawyers Helping to Create Forever Families and Sometimes Forever Problems

By Jennifer Guillot Womble

It is well settled in Louisiana that “adoption is a creature of statute and all of the statutory requirements must be strictly carried out . . .” *In re Byrd*, 75 So.2d 331,332 (La. 1954). But adoption is not only a legal transaction, but a family transformation. No matter the age of the child or the circumstances surrounding the situation, the legal actions taken will forever dramatically change the life of a child as well as both the family of origin and the adoptive family. Louisiana’s adoption laws create a new family and, except in limited circumstances, permanently terminate the legal rights and responsibilities with the family into which the child was born.¹

For an attorney, the prospect of assisting in the creation of a new family through adoption may be enticing. The practice of adoption law can be fulfilling but is fraught with potential pitfalls that complicate adoptions, delay adoptions or, in the worst case scenarios, cause adoptions to fail. Because the factual circumstances of each adoptive situation is unique, no two adoptions are exactly the same and opportunities for complications are variable and abundant. The more common problems involve opposition by a biological father, a biological mother deciding to parent her baby after adoption planning has progressed, placements that involve more than one state, and incorrect or missing adoption documentation. No matter the problem encountered and the reason for the adoption going astray, any complication

can be totally devastating to a child and both families (biological and adoptive). Complications could cause delays in hearings and finalization of adoptions, removal of the child from a loving family unit despite living in the home for a significant period of time, termination of relationships with the child, extensive emotional court proceedings, and/or payment of exorbitant costs. Rule 1.1 of the Louisiana Rules of Professional Conduct requires all lawyers to provide competent representation. In an adoption proceeding, where the stakes are so high and the obstacles so potentially devastating, attorney competency is critical.

There are three different types of domestic adoptions created by Louisiana statutory law — intrafamily, agency and private adoptions.² Intrafamily adoptions involve a stepparent or close biological relative of the child who is adopting the child.³ These adoptions tend to be the simplest legal process and the most common. An agency adoption is one in which the child has been placed with adoptive parents by a licensed child placing agency.⁴ Agency adoptions include adoption of foster children through the Department of Children and Family Services and adoption of unrelated children surrendered to a licensed adoption agency. A private adoption is one in which the biological parents and the adoptive parents are not legally or biologically related to each other.⁵ Private adoptions are usually arranged by the parties themselves, through com-

mon friends or relatives, or matched through an attorney.

Additionally, Louisiana law provides procedures for intercountry adoptions through recognition of foreign adoption and adoption of a foreign orphan.⁶ Through recognition of foreign adoption proceedings, a Louisiana court can recognize an adoption granted in a foreign country, render a Louisiana adoption decree and issue a Louisiana birth certificate. In an adoption of a foreign orphan, the Louisiana court must find that the child has qualified as a foreign orphan and is lawfully in the United States to proceed with a Louisiana adoption proceeding. Intercountry adoptions are very complicated and are subject to federal and state law. All intercountry adoptions require federal immigration and naturalization documentation. Since the Intercountry Adoption Universal Accreditation Act of 2012 went into effect, all intercountry adoptions are required to meet the standards of the Hague Convention on Protection of Children and Cooperation in Respect of Intercountry Adoption.⁷ Only Hague-accredited agencies and attorneys are permitted to place foreign children for adoption in the United States.

With the opportunity for complications so high and the consequences of a failed adoption so devastating, diligence at every point in the process is essential. Adoption attorneys can minimize problems by recognizing potential issues, counseling clients diligently, and proactively handling “hot spots” such as

interstate placements, federal tax credits, custodial situations, required documentation, termination of all parental rights, intercountry placements, allowable birth parent living expenses, insurance coverage and Indian Child Welfare Act application. Additionally, attorneys should be mindful of issues touching on adoption law including gestational carrier contracts which are statutorily allowed and handled under the jurisdiction of Juvenile Courts (although not included in the Children's Code). To further complicate matters, adoption laws are amended frequently, and adoption practitioners must be vigilant to changes in the law.

There are attorneys and agencies across Louisiana who regularly handle adoption matters. While adoption law is not considered a legal specialization by the Louisiana Board of Legal Specialization, the American Academy of Adoption Attorneys is a national association comprised of attorneys who have distinguished themselves in the

adoption field and have been invited into the academy based on their adoption work. Presently, there are approximately 10 Louisiana attorneys who have membership in the Academy.

Adoption practice is not for the faint of heart. It is categorically not a form practice. It is rewarding yet challenging even for seasoned adoption attorneys. Lawyers are well advised to proceed with caution in adoption matters — the future of a child and his/her family is at stake.

Adoption Practice Pointers

- ▶ Learn all applicable law and policy, including, but not limited to, the provisions of the Children's Code.
- ▶ Enlist the assistance of a seasoned Louisiana adoption attorney.
- ▶ Attend specialized adoption training (see the Louisiana State Bar Association's Children's Law Committee webpage for scheduled events, www.lsba.org/childrenslaw).

FOOTNOTES

1. In all adoptions, the legal right of the child to inherit from birth parents is retained. Children's Code (Ch. C.) arts. 1218 and 1240. In a stepparent adoption, the relationship with the parent married to the stepparent is unaffected. Art. 1256.
2. La. Ch. C. art. 1170.
3. La. Ch. C. art. 1243 *et seq.*
4. La. Ch. C. art. 1198 *et seq.*
5. La. Ch. C. art. 1221 *et seq.*
6. La. Ch. C. art. 1281.1 *et seq.*
7. Public Law 112-276; 42 USC 14925.

Jennifer Guillot Womble received both her BS and JD degrees from Tulane University. She has more than 20 years of experience in the juvenile law arena, practicing in various courts throughout Louisiana focusing on adoptions, Child in Need of Care, termination and delinquencies proceedings. (jenwomble@cox.net; 4828 Evangeline St., Metairie, LA 70001)



Children and Education: Access Articles Online

Neither the U.S. Constitution nor the Louisiana Constitution explicitly guarantees children a fundamental constitutional right to education. In a series of Supreme Court cases, beginning with *Brown v. Board of Education*, public education has been recognized as a legal entitlement that "is perhaps the most important function of state and local governments."¹ State statutes provide for compulsory school attendance and a system of public education. However, the exercise of state authority over educational matters has been limited by both federal law and by federal and state court decisions.

Education law involves a panoply of issues.

- ▶ Equal access to education for all children, including children with disabilities, at-risk children, homeless children and immigrant children.
- ▶ School safety concerns include

bullying, school fights and having weapons and drugs on school grounds.

- ▶ Control over student behavior through corporal punishment, use of restraints, suspension and expulsion.
- ▶ Privacy rights of students and educational records.
- ▶ Discrimination on the basis of race, ethnicity, religion or sexual orientation.
- ▶ Freedom of expression, including student appearance, publications, assembly and speech.

Posted on the Louisiana State Bar Association's Children's Law Committee website are several articles that provide additional information on many of these issues.

In her article on the "Educational Rights of At-Risk Children," Dr. Barbara Ferguson reviews federal and state laws that address the education of poor children.

Rebecca E. May-Ricks and Kellie Johnson Futrell provide guidance on the

"Federal Educational Rights of Children with Disabilities."

Pamela Toney Crawford's article on "Enrollment and Access to Education" references the statutory provisions by which non-parents without a custody order can enroll students in school.

Mark Simeon explains requirements relative to "Homelessness and Access to Education."

An article on "Locker Searches and Right to Privacy" by Pamela Toney Crawford highlights Louisiana law.

Information about "Corporal Punishment in Louisiana" is provided by Rebecca E. May-Ricks.

Access all articles at: www.lsba.org/Childrenslaw/.

FOOTNOTE

1. 347 US 483 (1954).