

THE RISK MANAGER

Summer 2000

PRESIDENT'S MESSAGE



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William E. Loucks
President

Adoption *and the* Law



Attorney Jeanne T. Tate

“While adoption representation is fulfilling, make sure you know the legal venues for a successful conclusion.”

At some time during your law career, you may receive a call from a friend, relative or acquaintance requesting legal assistance with an adoption. While representing adoptive parents is one of the most fulfilling jobs a lawyer can undertake, it is not without pitfalls. To protect the validity of the adoption, it's important that all legal requirements are strictly met.

The requirements for an adoption are set forth in Chapter 63 of the Florida Statutes. A lawyer that is not well acquainted with the statute may find that there are many areas where mistakes can easily be made. Some of the most important issues in an adoption involve: (1) providing notice to the appropriate parties; (2) terminating the birth parents' rights; (3) making mandatory disclosures to the court; and (4) screening and supervising the adoptive parents.

In any adoption, it is vital that any birth parent that has not consented to the adoption be provided notice and an opportunity to respond. If a birth parent seeks to withdraw his or her consent on the grounds of fraud or duress, the birth parent must also be given notice. In many circumstances, an extensive diligent search must be conducted to locate one parent, often the birth father, or to demonstrate that the birth

parent cannot be found for purposes of constructive service. Additionally, grandparents who have had a grandchild living with them for over six months are entitled to notice unless it is a stepparent adoption.

A birth parent's parental rights are generally terminated quickly by the court when the birth parent properly executes a consent to the adoption. However, in cases where a birth parent refuses to consent, the court must determine whether that consent is required and whether it may be excused.

Additionally, when an adoption agency makes the placement, the birth parents' parental rights must be terminated in a separate action in juvenile court pursuant to Chapter 39. Whether the case is pending in juvenile or family court, the party attempting to terminate the non-consenting parent's rights must meet the clear and convincing evidence standard. In addition to filing the birth parents' consents, there are many mandatory disclosures that an attorney must make to the court under Chapter 63. Some examples include: (1) notice of the intended placement by the intermediary; (2) sworn testimony regarding all expenditures by the intermediary and the persons independently adopting; (3) social and medical

information concerning the child and the birth parents; and (4) sworn testimony regarding where and with whom the child has resided.

An adoption attorney must also ensure that the adoptive parents have obtained the required home study and background clearances. Additionally, the required post-placement visits must be performed after the placement and the appropriate reports filed with the court. While stepparents and relatives within the third degree of consanguinity do not have to meet these requirements, all other adoptive parents do.

Adoption attorneys, acting as intermediaries, generally arrange the match, keep in direct contact with the birth mother and facilitate the family's assistance with the birth mother's medical and living expenses. In caring out these duties, adoption attorneys also strictly guard the parties' confidentiality. Based on their experience, adoption attorneys are better equipped to assess whether a birth mother appears committed to adoption and whether there are any issues with the birth father that may delay or even impede the adoption. In relative and stepparent adoptions, adoption attorneys can effectively and efficiently

conclude the adoption often at a lower cost to the client. If an attorney is unsure of representing a client in an adoption, the attorney should retain co-counsel or refer the client to an adoption attorney in order to avoid the possibility of an attack on the validity of the adoption.

This is just a thumbnail sketch of some of the areas of critical importance in an adoption. An attorney who specializes in adoption can assist your client with these and other adoption issues. Moreover, in circumstances where the client wishes to adopt but does not already have a child in mind, an adoption attorney can help to find a birth mother that wishes to place her child.

Attorney Jeanne T. Tate

specializes in adoption representation, participating in the placement of over 1,000 children into loving homes. She earned her J.D. degree with honors from the University of Florida College of Law in 1981, and was a member of the Order of the Coif and served as executive editor of the Law Review. A member of the Hillsborough County Bar Association and The Florida Bar, Jeanne is admitted to practice before the US District Court for the Middle District of

Florida, the Eleventh and Sixth Circuit Courts of Appeal, and the United States Supreme Court. She is active in the state and local bar association, and numerous civic and charitable organizations, including the National Football Foundation and the College Hall of Fame.



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