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## **INDEPENDENT ADOPTION IN WASHINGTON**

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### **WHAT IS INDEPENDENT ADOPTION?**

An independent adoption is a private adoption in which the adoptive parents are in contact with the birth parents directly, or through a friend or other intermediary, through a doctor, or through an attorney. Washington State permits the independent adoption of children under appropriately controlled circumstances, which provide for the protection of the birth parents and the adoptive parents. Many people choose this method of adoption because it allows for more control over the process and more flexibility in communicating with birth parents. In an independent adoption, you and the birth family will be able to plan specifically for the needs of both families. You may arrange for birth mother counseling, medical care, and the like on an as-needed basis. In addition, many prospective adoptive parents are surprised to learn that an independent adoption may be less expensive.

### **WHO MAY ADOPT?**

Anyone over the age of 18 who has a favorable homestudy may adopt. You need not be married, but if you are, your spouse must join in the Petition. There is no prohibition against same sex adoption. Transracial adoption is a matter of choice; by law it may not be prohibited.

### **THE HOMESTUDY**

One of the first things to do when you have decided to adopt a child is to obtain a homestudy. Under Washington law, before a child can be placed in an adoptive home, the prospective parents must have obtained a favorable homestudy. Homestudies may be prepared by agencies or individuals approved by the Court (such as social workers in private practice). A homestudy is a report prepared for the Court indicating that the prospective adoptive parents are suitable and prepared for an adoption.

## **FINDING THE CHILD**

In an independent adoption, the adoptive parents participate in the search for a child. Adoptive parents may locate a birth mother and child in any number of ways. Some adoptive parents have found their children by advertising, or by sending Dear Birthmother letters to doctors and friends. Other families have used networking, word of mouth among family and friends or facilitators. Your attorney and adoption counselor will be able to help you to plan the strategy with which you are most comfortable for getting the word out that you are seeking a child to adopt. You should tell your friends and relatives of your search and encourage their participation and assistance. When your homestudy has been completed, you are permitted to begin advertising, should you choose to do so.

## **CONTACT WITH THE BIRTH PARENTS**

Independent adoption allows the birth parents and the adoptive parents to plan their adoption in a way which best suits the needs of all the persons involved. The families can choose to have as much or as little contact with each other as they find comfortable. The options vary considerably, from the traditional "closed" adoption in which there is no direct contact, to an "open" adoption in which the families may have regular, direct contact with one another. The concept of open adoption may include a wide spectrum of choices for contact between the families such as, one or more meetings before or after the birth of the child, visitation in the hospital following the birth, participation by the adoptive parents in the birthing process, and an exchange of information about the child after the placement. The adoptive parents and the birth parents may make a formal agreement regarding any contact which they wish to have in the years following the adoption. Independent adoption allows the families to structure these arrangements in a manner which is most comfortable for all. The key to successful independent adoption involves mutual agreement on the plan to be followed, and coordination of that plan between the attorney, the adoption counselor, the doctor and other medical personnel, and family members.

## **TERMINATION OF THE BIRTH PARENTS' PARENTAL RIGHTS**

In order to adopt a child, the parental rights of the birth parents must be terminated. This step in the adoption process is extremely important. Your attorney will try to obtain a signed consent to the termination of parental rights from each of the birth parents. It is very important to get accurate information from the birth mother regarding the identity of the birth father. If the birth father refuses to sign a consent, he can be served with notice of a hearing and his rights can be terminated by default if he fails to contest. If the birth father is unknown or unavailable, his rights may be terminated by court order following publication of notice. If there is more than one possible birth father, the possible rights of each of the men must be terminated. The procedure for termination of father's rights varies from state to state, so in an interstate adoption, we will need to coordinate the legal work with an attorney in the other state.

Under Washington law, the birth parents may sign consents to the adoption prior to the child's birth, however, the consents may be revoked at any time until approved by the court. Your attorney may not present the consents for Court approval until 48 hours after the birth of the baby or 48 hours after a parent has signed the consent, whichever is later. Usually the Court will enter an order terminating the parental rights of the birth parents and placing the child in your custody at the same time. If the child is ready to be released from the hospital, you may take the child home. Sometimes a court will enter a temporary custody order prior to termination of parental rights, permitting the adoptive parents to have the child in their care before the termination order is entered. In that event, the adoptive parents do not have any legal right to retain the child if the consent is revoked prior to entry of a termination order. (If the child is born outside of Washington, the timing for termination of rights may be based upon the laws of the state of birth.)

If either of the birth parents are under age 18, Washington requires that a guardian ad litem be appointed to assure that the minor birth parent's consent is voluntary, and to report to the court that the adoption is in the best interest of the minor parent. In addition, there are federal and state laws concerning United States military personnel and the placement of Native American children which must be followed in order to ensure a legal placement.

### **FINALIZING YOUR ADOPTION**

After you have had time to settle into your new role as a parent, a post-placement report will be prepared. The post-placement report is usually completed by the same person or agency which prepared the homestudy. After a favorable post-placement report is filed, a final decree of adoption can be entered. There is no required waiting period for finalizing the adoption in Washington. Although the adoption statute provides that the post-placement report is to be filed within 60 days of the child's placement in the home, in some cases there is a somewhat shorter or longer time before finalization.

If the adoption is for a local family, they will appear at the final adoption hearing to give testimony. If the adoptive parents are from out of state, most judges will agree to the entry of testimony by written interrogatory. The judge may allow you to take pictures at the hearing, which can be saved as mementos of this special day.

### **ADOPTIONS BETWEEN TWO STATES**

A Petition for Adoption may be filed in Washington when either the prospective adoptive parents, or the birth parents, or the child are residents of Washington. Therefore, it is possible to undertake a Washington adoption for out-of-state adoptive parents, or for in-state adoptive parents with an out-of-state child. If you have a choice regarding which state to file the adoption, it may be advantageous to do a Washington adoption because of the benefits of Washington adoption law, particularly with regard to termination of parental rights.

When an adoption spans two states, you must meet the requirements of the Interstate Compact for the Placement of Children (ICPC) if that law is applicable. The ICPC is not a federal law, but a law which has been separately enacted in each state. The adoption laws of both the sending and receiving states must be examined. Where they are not compatible, it is necessary for your lawyer to determine whether you must comply with a particular part of the law in either state to satisfy the ICPC.

You may not take a child from one state to another for the purposes of adoption until the ICPC requirements are met. The ICPC requirements in most states may be satisfied by providing background information on the birth parents, medical records for the child, the homestudy of the adoptive parents (including the criminal records check here in Washington) and either consents to adoption or court orders of termination of parental rights.

In an independent interstate adoption, your attorney will submit the documentation to the ICPC office in the sending state. Each state has an ICPC office, which is usually a division of the state department of social services. The ICPC coordinator in the sending state will review the documentation, determine whether or not it is in proper form and complete, and if so, forward it to the ICPC office in the receiving state. You must have the approval of the receiving state before you may bring the child into the receiving state.

It is important to be prepared as far in advance of the birth as possible for the ICPC requirements. Your attorney will need adequate time to make the necessary arrangements so you are not unnecessarily delayed in returning home while you wait for ICPC approval. The time period to accomplish ICPC approval varies from state to state.

There are certain circumstances in which the ICPC does not apply at all. There also are some states which will not permit adoptions arranged by persons other than adoption agencies. Your attorney will be able to advise you as to the circumstances in your planned placement.

### **EXPENSES**

The costs of an independent adoption vary from case to case. All living expenses you pay on behalf of the birth parents, counseling fees, or other pregnancy related costs must be approved by the court. The Washington statute specifically permits adoptive parents to pay uninsured medical expenses and legal fees for themselves and the birth parent.

### **ADOPTING OLDER CHILDREN**

Although many persons seeking to participate in independent adoptions are planning for the placement of a newborn infant, independent adoption may be used for the placement of older children as well. The same process will apply.

## ABOUT OUR LAW FIRM

This law firm has undertaken adoption representation for many years. We are able to provide attorney coverage as necessary over holidays, weekends and vacations and to have an attorney available who can answer your questions or handle last-minute emergencies. We have extensive experience representing both adoptive parents and birth parents, and we are committed to serving each client with dignity and respect for each of their circumstances. Hundreds of children have been placed with the services of our office, for clients doing either independent or agency adoptions. We strive to provide excellent legal counsel and practical advice. We seek to ensure that each adoption goes smoothly, that birth parents feel secure with their decisions, and that each child is placed in a loving home. It is our goal to accomplish the placement of children in need of families with families in search of children.

Rita L. Bender is a shareholder in our firm. She graduated from Rutgers University School of Law in 1968. Rita is a parent by adoption herself and understands the many and complicated issues involved in independent adoption. Rita has been the attorney for well over 900 adoptions, surrogacy contracts, or egg and sperm donor agreements, since she began her adoption practice. She has consulted with medical service providers regarding the legal issues of adoption and assisted reproduction. She is a member of the American Academy of Adoption Attorneys and has served upon the Board of Trustees for that organization, and is the Chairperson of the AAAA Board of Discipline.

Raegen N. Rasnic is an attorney associate. She is a graduate of Hastings College of the Law in 1995. Raegen is also a member of the American Academy of Adoption Attorneys, and is experienced in in-state and interstate adoption practice, as well as assisted reproduction, including surrogacy contracts and egg and sperm donor agreements. In addition to being well-versed in the law, her empathetic personality is reassuring for birth parents as well as adoptive families.

Our attorneys are well-qualified and enthusiastic in the representation of clients upon adoption and assisted reproduction. We do an adoption practice because it is professionally and personally satisfying. We are available to answer your questions by telephone or to meet with you in our offices. We wish you the best of luck and hope that we will be able to assist you.