


Children & the Law Section

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September 22, 2009

TO: Members of the Wisconsin State Assembly

FR: Attorney Henry Plum
Legislative Committee Chair
Children & the Law Section

RE: Support for AB 214 (on Assembly calendar 9/22/09)

For many years, the board of directors of the Children & the Law Section of the State Bar of Wisconsin has discussed the possibility of a change to the current state of post-adoption contact between birth and adoptive families in Wisconsin. We were pleased to see these bills come before the Wisconsin legislature for consideration and actively support the passage of AB 214 and the companion bill SB 140.

The rigid Victorian-era standards which demonized woman placing a child for adoption, cast secrecy and shame on adopted children and prevented adopted children from having any medical, social or genetic history gave way in the last part of the 20th Century to a model for adoption which incorporated more openness. In the past four decades social science research has demonstrated that children benefit from knowing their history and, in many cases, from knowing their biological family members even if those family members are not able, fit or willing to provide the daily care and nurturing a child requires.

However, Wisconsin law does not currently provide a legally enforceable means for a child's biological family to continue contact after termination of parental rights has been ordered. Under present law, all parties to a termination of parental rights and adoption plan must rely on trust and goodwill to ensure that verbal promises made for continued contact with the family and/or child will be followed in the future. As a result, in many cases, the lack of ability to put in place a written, enforceable agreement results in the trial of a termination of parental rights case which could otherwise be resolved in a voluntary proceeding.

Termination of parental rights cases in Wisconsin encompasses many different fact scenarios. These include:

- Voluntary placement of a child with non-relatives
- Voluntary placement of a child with relatives
- Termination of one biological parent's rights and adoption by a stepparent
- Termination of both parents' rights after the child has been removed from the home as a result of abuse and/or neglect

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An enforceable post-termination contact agreement, in many cases, is in the best interest of the child due to existing relationships between the child and parent or extended family members. In addition, an open adoption agreement which permits the child to obtain answers to questions about medical history, heritage and other biological family questions helps to meet the child's emotional security and health care needs.

Both bills, as currently drafted, provide direction to the courts for approval of post-termination agreements. Among other things, the bills include a balancing of interests by recognizing the child's position on continued contact if the child is over age 12, requiring the approval of the guardian ad litem who acts in the child's best interest, and requiring a finding by the court that the provisions of the contact agreement are voluntary and not the result of coercion or duress. The Section believes that such direction is necessary in order to have uniform consideration taking into account the individual facts of each child's unique situation.

Further, the Section supports the provisions of these bills which provide discretion to the courts to determine when such an agreement is appropriately in a child's best interest since there will be cases where further contact between a biological relative and the child is not appropriate.

In summary, the Children & the Law Section believes that passage of a bill which creates a legal means to enforce a promise of continued post-termination contact will benefit Wisconsin children by moving children whose parents' rights are being terminated into permanent homes more promptly and by enhancing the ability of the litigants and the courts to consider – and provide for – all aspects of a child's family situation.

The State Bar of Wisconsin establishes and maintains sections for carrying on the work of the association, each within its proper field of study defined in its bylaws. Each section consists of members who voluntarily enroll in the section because of a special interest in the particular field of law to which the section is dedicated. Section positions are taken on behalf of the section only.

The views expressed on this issue have not been approved by the Board of Governors of the State Bar of Wisconsin and are not the views of the State Bar as a whole. These views are those of the Section alone.

If you have questions about this memorandum, please contact Sandy Lonergan, Government Relations Coordinator, at slonergan@wisbar.org or (608) 250-6045.