

Practical Guide Through the Adoption Process

By:
Belinda W. Engelmann

Practical Guide Through the Adoption Process

Belinda W. Engelmann
Law Office of Belinda W. Engelmann
2500 Northwinds Parkway
Suite 260
Building Three, Northwinds Center
Alpharetta, Georgia 30009

A. Preparation of Pre-placement Reports and Post-placement Reports

1. Preplacement Reports

a. Home Study

A home study is required by adoption agencies prior to a placement and may or may not be required in non-agency, private adoptions where the placement is made directly by the biological parent or where an intermediary assists in the placement. The Court is authorized by O.C.G.A. § 19-8-16 to appoint a child-placing agency or independent agent to verify the allegations in the petition for adoption and for that agency or agent to report to the Court and provide the attorney for the petitioner with a copy of the report. If the agency or agent is unable to arrange to do the investigation and report, it must notify the Court within twenty days after receipt of the request so that the Court may make other arrangements.

If the petition is filed under O.C.G.A. § 19-8-6, stepparent adoption, or O.C.G.A. § 19-8-7, relative adoption, the Court is authorized but not required under O.C.G.A. § 19-8-16(b) to appoint an agency or agent to make an investigation in whatever form the

Court specifies. Likewise, if the petition is filed under O.C.G.A. § 19-8-8, domestication of a foreign adoption, or if the Department of Human Resources (hereafter DHR) has conducted an investigation and consented to the adoption, an investigation is not required under O.C.G.A. § 19-8-16(c). However, under O.C.G.A. § 19-8-8, domestication of a foreign adoption, an investigation must be done by the United States Immigration and Naturalization Services as provided in O.C.G.A. §19-8-13(a)(6)(A)(iv). Like most family law matters in Georgia, whether the Court requires a home study report in stepparent or relative adoptions depends entirely upon your judge.

b. Interstate Compact on Placement of Children

In independent non-stepparent and non-relative adoptions in which an Interstate Compact on the Placement of Children (hereafter ICPC) is involved, ICPC forms 100A and 100B (a sextuplet form) must be completed by DHR or by the agency for the state that is authorized by the DHR through a contractual agreement to handle it for DHR. Since January 1, 2008, only Georgia DHR is authorized to handle ICPC services through the State Office of Adoptions. Susanne McClure currently handles ICPC services for DHR and her number is (404) 657-8960. ICPC comes into play when the child to be adopted is in a different state from the adopting parents. The agency handling ICPC services in both states must visit either the adoptive or biological parents, depending on who resides in their state. Usually, there is a study post-placement as well. Upon filing the petition for adoption, the attorney in a private adoption should inquire whether the judge will appoint someone to do a home study and see that the appropriate order is executed.

O.C.G.A. § 19-8-16(f) provides that the Court shall require the petitioner to pay the full cost of the investigation and limits the cost to \$250.00 unless specifically authorized by the Court. Needless to say, an independent adoption agency or agent will cost more than \$250.00 for a home study; therefore, you should contact an agency that you want to recommend to the Court and obtain their fees prior to preparing an order. At time of preparation of this paper, fees for a pre-placement home study were quoted as \$1,300.00 for a domestic adoption and \$1,500.00 for an international adoption by one agency.

c. Background Information Report

One of the necessary forms to be filed in adoptions involving DHR or an agency under O.C.G.A. § 19-8-4; involving an independent, non-stepparent, non-relative adoption under O.C.G.A. § 19-8-5; involving a stepparent adoption under O.C.G.A. § 19-8-6; and involving a relative adoption under O.C.G.A. § 19-8-7, is the DHR Form 413 entitled Background Information for Non-state Agency Child.

In agency adoptions involving DHR, the social worker completes the form by completing it with the biological parents and, if available, perhaps the grandparents. In private adoptions, the attorney for the biological mother, if there is an attorney, completes it with the biological parents. In cases where there is no attorney for the biological mother or father or agency involved, such as in relative or stepparent adoptions, the attorney for the adopting parents must obtain the information either from the biological parents or the adopting grandparents or relatives.

It is important to review the form carefully and note that the relationships are to the child. For example, where it refers to the child's maternal aunt and uncle on the first page and when you are interviewing the biological mother, it is the mother's brother or sister and not the mother's maternal aunt and uncle that is referenced.

Pages five and seven are particularly useful if the child should contract a disease in the future or need medical information in the future regarding his or her own medical history in order to make decisions regarding his or her own children. Early disclosure of social and medical history promotes early diagnosis and treatment of serious medical and psychological conditions that the adoptees may develop later and prevents possible litigation against the adoption agency. For example, cases in which the agency failed to disclose a biological family history of Huntington's disease and mental illness left the adoptive family unprepared for later neurological disorders that developed. *Burr v. Bd. Of Co. Comm.*, 491 N.E.2d 1101 (Ohio 1986). Likewise, an agency failed to disclose a history of physical and sexual abuse by birth parents and foster parents, leaving the adoptive parents unprepared to deal with the child's aggression. *Gibbs v. Ernst*, 615 A.2d 851 (Pa. App. 1993).

The current wisdom is that it is better for the adoptive parents to know than to have the adoption disrupted when the adoptive parents cannot cope emotionally or financially with the child's needs. R. Barth & M. Berry, Adoption and Disruption (1988). Disclosure leads to more appropriate placements, may help adoptive parents determine their eligibility for state and federal subsidies, and may help ease the curiosity that many adoptees have about their origins.

The last two questions on the Background Information Report regarding whether the biological parents are aware of the Reunion Registry provisions of O.C.G.A. § 19-8-23 remind the social worker or attorney to explain to the biological parents the possibility of the child requesting limited information after he or she reaches the age of majority, and new specific information identifying the parents after he or she reaches the age of twenty-one. The biological parents have rights to give written permission for DHR to release their names and addresses to the child under the provisions of the statute.

d. Criminal Records Check

O.C.G.A. § 19-8-16 requires the Court to have the petitioner(s) submit to a criminal records check to be completed by the Georgia Crime Information Center (GCIC). The petitioners are fingerprinted and GCIC transmits the information to the Federal Bureau of Investigation (FBI) for a search of their records. The center is to notify the Court in writing of a negative finding. In practice, the GCIC requires the agency or attorney to obtain an OAC number and to sign a two-year agreement before processing the criminal records check, and will send the information back to the attorney or the agency who then files it with the Court. This topic is covered more completely below.

In order for GCIC to check the records, a consent form must be executed by each adopting parent.

2. Post-placement Reports

a. Home Study

As noted above, the Court may require a social worker of DHR or an independent agent appointed by the Court to perform a home study of the adoptive parents prior to finalization of the adoption. In foreign adoptions, the United States Immigration and Naturalization Service performs the investigation after the child enters the Country.

In addition to investigation of the allegations in the pre-placement home study, the placing agency may require that post-placement visits take place after the child is living with the adoptive parents and a post-placement report is completed to be submitted to the court. The fees for post-placement services were recently quoted by one agency at \$250.00 per office visit and \$375.00 per home visit with fees paid prior to the agency committing to post-placement services.

b. Report of Adoption

After an adoption decree is entered by the Court, O.C.G.A. § 31-10-13 provides that the Court shall require the preparation of a report of adoption on a form prescribed and furnished by the state registrar – Georgia DHR/Vital Records Service Form 3927, entitled Certificate of Adoption. After the decree is entered, the attorney may complete this form and have the Deputy Clerk of the Court sign and affix its seal. In some counties, such as DeKalb County, the Clerk's office has forms that they give to your client to complete. Then, the Deputy Clerk sends them to Vital Records.

In cases in which the child was born out of state, the Clerk's office sends the Certificate of Adoption to Vital Records to the state registrar in the state of birth per the

statute. To short cut the process, the Deputy Clerk will allow the attorney to send it to the attorney in the other state, and that attorney will obtain the new birth certificate.

In addition, the attorney may obtain the executed Certificate of Adoption from the Clerk of Court and take it to Vital Records Service, located at 2600 Skyland Drive, NE, Atlanta, Georgia 30319-3640. It is then necessary to complete Form 3918 and pay the appropriate fees, and Vital Records will issue the new birth certificate while you wait. This is preferable to mailing since the likelihood that it will take months and then be incorrect when it arrives is far greater if you mail.

O.C.G.A. § 19-8-20 provides that the Clerk of Court forward a copy of the decree of adoption, the original investigation report and background information filed with the Court to DHR. It provides a more basic form of an adoption certificate that may be given to an adopted person over eighteen years of age or an adoptive parent upon payment of a fee.

Any questions as to how the county in which you are filing the adoption operates should be addressed to the adoption clerk for that county. It is best to call and inquire about the process and procedures for that particular county prior to filing the petition.

B. The Interrelated Roles of Social Worker and Attorney

1. Role of Social Worker

The social worker is best suited to counsel the adoptive parents as to the adoption by providing information about the types of children who are available for adoption and the social services that are available to the parents and adoptee. The social worker conducts the home study to approve the future placement by reviewing the parents'

capacity and suitability to adopt and, in doing so, confirms the applicants' understanding of the advantages and disadvantages of adoption.

Likewise, a social worker may very well be the best person for the birth parents to surrender their parental rights as surrender to a social worker who provides the birth parent with counseling about alternatives to surrendering the child will assure that each birth parent's surrender and consent to placement is voluntary and knowingly given. Many times, well meaning family and friends pressure young biological parents who are unmarried to sign consents without exploring their legal alternatives. The social worker can provide information on the availability of community resources and social service programs.

Social workers employed by DHR can bring actions to involuntarily terminate the biological parent's rights upon the parent's failure to complete the recommendations set out in a disposition for reunification by the juvenile court, where the parent will not surrender the child and is an unfit parent who is unable to be reunified with the child.

During post-placement, the social worker determines if the child has made a proper adjustment. The social worker sees that collateral issues such as subsidies, special education or medical needs of the child are being addressed, provides the adoptive parents with available support services and helps process any required paperwork.

Finally, the social worker provides the report to the Court recommending placement, delay of placement or removal of the child from the home. If the adoptive parents choose, they may hire an independent social worker to challenge an unfavorable

home study report. In the unfortunate event of problems arising after placement, a social worker can provide counseling to try to salvage the adoption.

2. Role of the Attorney

The attorney for the adoptive parents prepares all pleadings and paperwork required under the appropriate statute with the exception of the home study, criminal background check, and background information. The attorney oversees these processes and collects the data to attach to the petition and file with the Court. In the event the Court does not require a home study, the attorney usually completes the background information by speaking with the biological parents. Since the biological parents may fear that the adoptive parents may not want the child if they disclose negative past medical or psychological information, a social worker is better suited to obtain this information.

The attorney attends the final hearing with the adoptive parents and sees that the Clerk of Court completes all forms and follows through to see that the birth certificate is obtained from Vital Records.

3. Interrelated Roles of Social Worker and Attorney

In considering the interrelatedness of the roles of social worker and attorney in the adoption process, both have unique responsibilities. The social worker has the responsibility of overseeing the family unit to see that the placement of the child is into an environment that is emotionally, psychologically, and financially sound. The social worker counsels and provides information as to services.

The attorney counsels the adoptive parents as to the law and the adoption process. Sometimes, if the biological parents have no attorney, the attorney for the adoptive parents also advises the biological parents as to their rights and the adoption process. However, the attorney represents his or her client(s), usually, the adoptive parents, and the rights and desires of the adoptive parents are the primary responsibilities of the attorney. The social worker, on the other hand, reports to the Court as to whether a placement should take place and may take a position against the adoptive parents.

From the attorney's perspective, a surrender to a social worker who is a neutral, as opposed to a representative of the adoptive parents, is a consent that is less likely to be withdrawn or contested as being unwillingly executed since it is given after counseling with the social worker as to all the available options. Attorneys walk a fine line when they act as a representative for one party while obtaining surrenders from biological parents with competing interests.

Georgia adoption statutes provide under O.C.G.A. § 19-8-26 that an affidavit be completed by the petitioner's representative stating that the surrender was fully explained to the individual signing it and stating that it was executed "knowingly, intentionally, freely and voluntarily." O.C.G.A. § 19-8-26(k). The best protection for all involved is for a social worker to accompany the adoptive parents' attorney and explain all possible options and services while the attorney witnesses that the surrender of parental rights is given knowingly, intentionally, freely and voluntarily.

C. Determining Fees and Expenses

1. Impermissible Fees

The courts rarely address which fees are proper for adoption agencies and persons who place a child for adoption. In several cases in other states, courts have ruled as to what fees are permissible and impermissible. An Illinois court allowed an agency to increase the fee charged to the adoptive parent to pay for medical costs incurred by the biological mother for the birth of the child. *Crismoner v. Catholic Social Services of Peoria*, 497 N.E.2d 1217 (Ill. App. 1985).

Other courts have scrutinized more clearly the fees charged by adoption agencies and held that costs, such as counseling, Lamaze classes, prenatal care of the mother, and housing expenses during the pre-birth period are not permissible and are limited to the actual cost of the birth and reasonable legal fees. *Baby Girl D*, 512 Pa. 449 (1986).

The concern by the Pennsylvania Supreme Court was that adoptive children would be sold to the wealthiest adoptive parents and that though financial consideration is a factor, many homes with scarce financial resources are adequate to provide the love, protection and support that children require. *Id.* at 454. Needless to say, a law firm that took large sums of money from couples in return for promises that children would soon be available, from what turned out to be non-existent birth mothers with imaginary pregnancies, resulted in an Oklahoma Supreme Court decision finding fraud in the inducement of the attorney-client contract. *Shaffer v. Jeffery & Belt*, 915 P.2d 910 (Okla. 1996).

In an effort to prohibit payments in connection with adoption placement that may be considered payments to purchase a child to the highest bidder, a number of states, including Georgia, have enacted statutes regarding the fees that are impermissible.

2. Permissible Fees

One state that has dealt with what constitutes permissible fees and payments is Idaho. In its ruling, the Idaho court upheld the right of the adoptive parents to pay for an attorney's fees for representation of the biological mother in the adoption process as long as the biological mother had exclusive control over the attorney. *Petition to Steve B.D.*, 723 P.2d 829 (Idaho, 1986).

The Uniform Adoption Act (1994) lends some guidance as to what fees and payments are permissible for the adopting parents to pay in connection with the adoption. They are medical, travel, living expenses related to the mother's pregnancy, the child's birth, counseling, and legal expenses of the biological and the adoptive parents. The Act also specifies that all disbursements made or to be made for adoption expenses on or on behalf of the biological parents must be reported to the Court in private and agency adoptions and may be denied, modified or reimbursed if the Court finds them unreasonable when compared to expenses customarily incurred in adoptions.

Similar provisions have been included in more recently enacted adoption statutes, including Georgia's statute. O.C.G.A. § 19-8-24(a)(24) provides assistance in determining what is prohibited in Georgia. It prohibits and makes it unlawful to advertise that you will arrange or cause children to be placed for adoption. Secondly, it makes it unlawful to hold out inducements to parents to part with their children. Inducements are

defined as financial assistance with the exception of payment or reimbursement of medical expenses directly related to the mother's pregnancy or hospitalization for the birth of the child and medical care for the child. Finally, the statute makes it unlawful to sell, offer to sell, or conspire to sell a child for money or anything of value. The offense can result in a \$10,000.00 fine or imprisonment for not more than ten years, or both.

A judicial decision upheld the constitutionality of the statute as being sufficiently clear to apprise the defendant that offering an automobile for physical custody of a child was proscribed under the statute. *Douglas v. State*, 263 Ga. 748 (1994). Another decision held that neither the offer of shelter by the father's aunt nor the adopting parents providing care at the biological parent's request were inducement under O.C.G.A. § 19-8-24.

Further assistance is provided in O.C.G.A. § 19-8-13(c), which requires a report fully accounting for disbursements of anything of value made by or on behalf of or for the benefit of the petitioner in connection with the adoption, including expenses incurred in connection with the minor child; placement of the child with the petitioner; medical or hospital care received by the mother or child during the mother's prenatal care and confinement; and services related to the adoption or placement which were received by or on behalf of the petitioner, the natural parent of the minor, or any other person. Any report must be signed and verified by the individual making the report.

Likewise, an affidavit by the attorney for the petitioner detailing sums promised or paid to the attorney is required; however, if the attorney receives less than \$500.00, rather than giving detailed amounts, it can allege that it is to receive less than \$500.00.

D. How to Conduct a Thorough Background Check

The Background Information for Non-state Agency Child referenced above and included in the materials (Form 413) is required in all adoptions. It is the petitioner's counsel who must make reasonable efforts to secure the requested information. In ICPC placements from other states, it must be provided to the co-counsel who assists in the other state so that the required information is obtained from the biological parents.

Secondly, the Criminal Records check referenced above and the consent to it included in the materials above must be completed. In the past, the fingerprints were taken at the local police departments and imprinted on paper fingerprint cards. The attorney can set up an account with GCIC so that the law firm is billed directly for the costs. GCIC will not accept a personal check. The report is returned to the court appointed agency or, in an independent adoption, the attorney is the independent agent to whom the report is returned.

Recently, GCIC sent out correspondence allowing for electronic submissions of criminal history record checks beginning January 1, 2009 and stating that it no longer accepted manual fingerprint-based criminal history checks for non-criminal justice purposes. This requires electronic fingerprint capture via Georgia Applicant Processing Services (GAPS). This is supposed to produce results within twenty-four to forty-eight hours via GAPS secure website. Electronic submissions can still be obtained from law enforcement agencies. For more information, visit their website at <http://www.ga.cogentid.com/index.htm>.

Though these measures may reveal a history of mental illness or drug use and criminal convictions, it is far from being a thorough background check. The home study may reveal more information and, if conducted by DHR, it would include a search of their records as to whether there were any contacts to the abuse hotline reporting either of the parents for child abuse. The attorney or the agency must contact DHR to make sure no reports exist for the adoptive parents as to child abuse.

E. The Adoption Home Study: A Look Into the Reality

The Department of Human Resources has detailed regulations as to what is required in a home study of the prospective adoptive family at Ga. Comp. R. & Regs. r. 290-9-2-.06 (2008). It includes three visits on separate days with at least one being in the home. All family members are seen and interviewed. The parents are interviewed together and separately. The social worker explores the motivation for adoption and the family members' attitudes toward childlessness. A description is provided of each family member, including a family background and history, current relationship with immediate and extended family members, education, social involvements, and personal characteristics, such as personality, interests, and hobbies. Next, an evaluation is made of the marriage and family life, including history and assessment of the marital relationship, family patterns and previous marriages. There are evaluations of parenting practices, physical and mental health needs, the understanding of and adjustment of adoptive parenting, and the prospective adoptive parents' finances and occupations. A description of the home and community, a statement regarding the criminal records check, a list of a minimum of three character references, a description of the child the applicant will

consider, and a recommendation of approval if prospective adoptive parents are acceptable.

F. Working with Birth Parents – What You Need to Do

Even though the attorney is retained by the adoptive parents, there are times when the birth parents are unrepresented, and the attorney for the adoptive parents must make sure the unrepresented birth parents are fully and objectively advised as to their rights and the adoption process. The attorney for the adoptive parents must disclose and discuss with the birth parents that they have the right to have an attorney, and that the attorney representing the adoptive parents will not act as their attorney and has no attorney-client relationship or attorney-client confidentiality privilege. This should be reduced to writing either in a letter or a formal Acknowledgment of Disclosure That Attorney Is Employed by Prospective Adopting Parents.

Though the ethical standards allow for dual representation of adoptive parents and birth parents and most adoptions are cooperative ventures in which the parties' interests are aligned, if problems arise, the attorney would have to withdraw from representation of either party. The American Bar Association Standing Committee on Professional Ethics and Grievances in 1957 found it to be unethical for an attorney to represent both the biological and adoptive parents. The Standing Committee issued a formal opinion in 1987 declaring that it is an inherent conflict to represent both biological and adoptive parents and stating that it is a violation of Rule 1.7(a) of the ABA Model Rules of Professional Conduct.

G. State and Local Services Available to All Parties Involved

Once again, as in the home study, the rules and regulations for the Department of Human Resources at Ga. Comp. R. & Regs. r. 290-9-2-.06 (2008) set out in detail the services provided for the birth family and child, the biological father who is not the legal father of the child, services prior to an adoption placement and following an adoption placement. The gist of the regulation is that counseling and referral to other agencies when needed is provided. Detailed instructions are set out for obtaining surrenders of parental rights by DHR and advising the biological parents as to the Georgia Adoption Reunion Registry. The DHR prepares the approved prospective family for the placement and provides information about the child's development and background and furnishes the adoptive parents with the written health history to use and share with the child's physician. Services following an adoption placement consist of at least two home visits and education as to the need for an attorney to be engaged by the adoptive parents to complete the adoption. In an interstate adoption where the child is in Georgia, the requirements for services following the adoption placement are met by fulfilling the requirements for services of the receiving state.

H. Medical Care and Insurance Coverage for Birth Mother and Child

1. Medical Insurance for Birth Mother

The birth mother will be eligible under her own medical insurance for her medical and hospital expenses and for the baby's expenses. If she is qualified, she may receive Medicaid health benefits for herself and the child. Without cutting off her coverage under these plans, the birth mother can execute a power of attorney and medical

authorization in order to allow the adoptive parents to obtain medical treatment for the child under their insurance and to obtain any medical treatment until the adoption is final.

2. Medical Insurance for the Child Placed for Adoption

Under 29 U.S.C. § 1169(c), the Employee Retirement Income Security Act (ERISA), employee-sponsored group health plans which offer coverage to dependent children, must cover children placed for adoption under the same terms and conditions as natural born children. Children placed for adoption may not be denied coverage on the basis of a “pre-existing condition”; thus, adequate medical coverage is assured in placement of older children and infants with birth defects and injuries as long as the adoptive parent has medical insurance through their employer under a plan that is governed by ERISA. The definition of placement is defined under ERISA as “the assumption and retention by such person of a legal obligation for a total or partial support of such child in anticipation for adoption.” The power of attorney mentioned above should provide evidence of the intentions of the birth mother and may be useful in obtaining the insurance from the adoptive parents’ insurance company.

I. Responsibilities of the Guardian Ad Litem

O.C.G.A. § 19-8-17 (2008) provides for the appointment of a guardian ad litem with the cost charged to the county if at any time it appears to the court that the interests of the child may conflict with those of the petitioner. This differs from the Uniform Adoption Act (1994), which provides that the court shall appoint a guardian ad litem for a minor adoptee in a contested proceeding and may appoint one in an uncontested proceeding.

The responsibility of the guardian ad litem is to protect the interests of the child in all matters relating to litigation. *In re J.S.C.*, 182 Ga. App. 721, 756 (1987). Georgia's termination of parental rights statute requires that the child's interests be independently represented by counsel; thus, the court ruled that the petitioner in a termination of parental rights action could not act as the guardian ad litem since the petitioner had already decided that the child's interests were best served by termination of parental rights. *Id.*

J. Unique Considerations When Adopting Special Needs Children

1. Definition

A child is a special needs child when the state determines that the child cannot be returned to his parents, and the child has a specific condition which makes it difficult to place the child for adoption without assistance under 42 U.S.C. § 673 or 42 U.S.C. § 1395.

2. Services

Under 42 U.S.C. § 673, the state pays for non-recurring adoption expenses that are reasonable and necessary adoption fees, court costs, attorney's fees, and other expenses directly related to the adoption of the child with special needs. Medical assistance under 42 U.S.C. § 1395 is Medicaid for people who are disabled.

In addition, the state must have made reasonable efforts to place the child without providing such assistance. This latter requirement may be waived if the adoptive parents are foster parents to the child and the child has significant emotional ties with the adoptive parents.

3. Cost Effectiveness

One of the considerations that inhibits placement is the cost of caring for special needs children. The placement of special needs children with adoption assistance has been cost-effective for the state as compared with long-term foster care.

4. Attorney's Role

Attorneys can assist the adoptive family with a special needs child helping them establish eligibility for adoption assistance benefits. The attorney can help negotiate the initial adoption assistance agreement and any modifications. Likewise, the attorney can enforce the agreement if the family does not receive the promised services.