

Part 1

Last week on our blog, we discussed how to choose a reputable surrogacy program, and why you, as an Intended Parent, should work with an attorney-run program. Since surrogacy is not the choice for some families who look to third parties to build their families, this week we wanted to address some of the concerns of adoptive families. This week's articles outline some of the most important issues that an experienced adoption attorney can assist you with.

When starting the adoption process, many potential adoptive families ask the question, "Should we work with an attorney?" **Legal issues are inherent in each adoption.** No one other than a licensed attorney is charged with the duty to give you accurate legal advice. An experienced adoption attorney is familiar with the legal issues which may arise as well as the psychological issues which can flavor all the legal issues involved in the adoption process. Why go forward with a particular situation if the legal/psychological situation is so volatile that an adoption may not be able to be completed?

Birth mother choices often drive the entire adoption. Generally, she (and maybe the birth father with her) **choose the family** with whom she wishes to place her child. But what if she met this family through a facilitator in a state where facilitators are illegal? Many states have limitations as to how the birth mother may connect with the family. When do they invalidate the adoption?

What about her **relationship with the birth father** or his with her? What if it's a volatile relationship, full of drama and craziness, or a quick weekend fling where she only knows his nickname? Are the legal standards for terminating the parental rights of a particular birth father achievable? What if the named birth father wishes to contest the adoption, but the child may or may not be related to him genetically? Can a potential birth father sign a denial of paternity and is it as good as a consent? Do legal requirements vary if the child was conceived in State A, the birth father lives in State B, birth mother is going to deliver in State C and the adopting parents live in State D? Is there a choice of laws? What if there is more than one potential birth father? Or if the possible birth father is only known by a nickname and no address is available? Does it matter if the birth mother is married? What if she's married but her husband isn't the actual father? Or he's in the military and we can't contact him? What if a birth father opposes the adoption plan – when should you still proceed with the adoption?

What if the mother or the father indicate they have **American Indian heritage**? Might the child be eligible for some tribal benefits even in an adoption? How does one check this? What if the tribe is opposed to non-Indian members adopting? What if the birth mother conveniently forgets this heritage?

What if the birth parents request an **open adoption**? What does this mean? When is it a red flag? What if she changes her mind later? Or you do? When is it legally binding and can the adoption be set aside if it is not complied with?

When will the birth parent's **consent** to the adoption become irrevocable? Does that change if she or the birth father has American Indian heritage? What if she's signing a consent in a state other than the one you live in? What if you would like to use an agency to take her relinquishment but there are no agencies who will service the area where she lives? What if she puts off signing the relinquishment or consent to adoption? What if she or the birth father disappears before ever signs the consent?

Adoption is a legal process, but it is not a simple formula like signing a contract. Legally, it is the process whereby an individual's rights, privileges and duties are severed from his legal family and similar rights and duties toward his adoptive parents are substituted. The procedure is entirely statutory and each state has its own set of adoption laws, but it is so much more. It has many many layers all of which flavor the process. Perhaps the shortest, most concise way, to express this is that Adoption is Love and the Legal Process going hand in hand.

Family Formation Law Offices of Diane Michelsen has been limited its practice to Family Building for the last 30 years. Diane has her Masters Degree in Social Work, has been a practicing therapist and adoption mediator and attorney and is extremely well versed in all adoption issues.

The following is a continuing list of the most pressing issues that an Adoption Attorney may assist you with. Remember: The most accurate legal advice about adoption is going to come from an experienced adoption attorney. Without an attorney, it is easy to do something that may seem harmless or well meaning that makes the adoption impossible to finalize. Especially when working with out of state birth mothers, it is easy to take a “wrong turn” that means “you can’t get there from here.”

You can feel confident that attorneys who have the special training in adoption law will assist you in the process with as few rough spots as possible. And an attorney who belongs to a professional association such as the Academy of California Adoption Lawyers (ACAL) or the American Academy of Adoption Attorneys (AAAA) has the added advantage of experience. He or she must have handled an extensive number of successful adoptions before being offered membership. When investing your heart, time, and money in an adoption, it is the smartest idea to make sure you’ve got the experience and expertise to make your adoption the first solid step on the wonderful road of parenthood.

Homestudy? Do you need one before entering into an adoption? How soon can you get one and who will perform it? How much will it cost? How long is it valid? What kinds of questions are asked? What if you were previously divorced? Five times? What if you had a brush with the law, e.g. DUI, or unlawful gathering or petty theft or income tax evasion or another felony? What if the record is sealed, does it still need to be revealed?

Is it okay to cover the **birth mother’s living expenses**? How much is too much? Does your state authorize this? What if her state authorizes payment to her to assist, but your state does not? What if the birth mother keeps raising how much assistance she needs? How will you know if this is a scam? Is she obligated to reimburse us if she changes her mind?

What if the birthmother has no **insurance**? Are there programs which will cover her prenatal care and delivery? Will they still be available if she discloses she plans to place the child in an adoption? Can we cover the extras so she gets excellent care? If we sign as guarantor and she changes her mind, are we still responsible? When is your insurance company mandated to cover the baby’s medical bills?

If the **adoption is interstate**, between two states, how much more complicated is it? Will it cost significantly more? What is the ICPC and what obstacles does it pose? What state laws are the controlling laws? What if I like the laws better in the birth mother’s state than in the adopting parents state? What if the birth mother’s state’s laws don’t fit well with your state’s? What if you’re a nontraditional family and the birth mother’s state only allows placement with married couples? What if the birth mother doesn’t want foster care, but the birth mother’s state mandates it? How do you make the Interstate Compact work well for you instead of being just another bureaucratic hoop?

How will the child be **transferred**? Does the attorney need to be present? What if the baby is sick? What if the child is born with a medical problem? Do we have to continue with the adoption? Can we receive any financial assistance to help cover medical needs?

When can we get a **tax deduction** for the child? When can we get a social security number? What about Adoption Assistance Programs or tax credits?

These are legal questions--agencies and facilitators do not have the legal knowledge to creatively solve these problems. Your legal counsel has an ethical duty to zealously represent you. The stakes are high; an attorney has a license on the line, and there are serious malpractice penalties. In addition, your attorney has the heightened duty of a fiduciary to you. And if an attorney is consulted, wouldn't you rather it be someone with the ethical duty to advocate on YOUR behalf?

Family Formation Law Offices of Diane Michelsen offers a complimentary 15 minute consultation. For more information, give us a call at 925 945-1880. We have represented adopting parents and birth parents from many states who have a nexus with CA law.