



Point to Consider **Adoption Dissolution**

By Seth A. Grob, JD, and Alison Foster Davis, JD

One of the most difficult life experiences is dissolving an adoption after finalization. While the vast majority of adoptions remain stable, an estimated one to seven percent dissolve, often due to a child's negative behaviors such as lying, defiance, aggression, destruction of property, and sexual acting out; or other issues such as lack of attachment; inability to handle the child's special needs; unrealistic expectations; negative reactions of other children in the home; a family's resistance to change or intervention; and/or financial strain.

For adoptive parents who decide that dissolution of the adoption is the best choice, a myriad of issues must be considered. Families in this position are usually in crisis and want immediate relief from the intense strain they are experiencing. Nonetheless, they must patiently engage in a deliberate and thoughtful search for a suitable placement for the child, persevering through each step of the process.

The adoptive family's first step is to obtain a detailed child assessment, typically from a licensed psychologist. The evaluator should outline the child's needs and make recommendations for the type of home and family

appropriate for the child. In addition, the evaluator can often provide counseling to assist with the child's transition into a new family. The adoptive family should collect all of the child's medical, dental, mental health, educational and other records for the evaluator. These records and the evaluation should also be shared with families who are seriously considering acceptance of the placement. Full disclosure of records and matching the child's needs with the new family's strengths will greatly increase the likelihood that the subsequent placement will succeed.

Most courts will not dissolve an adoption unless a new family is ready to adopt once the original adoptive family is no longer legally responsible for the child. Thus, locating an appropriate subsequent family is paramount. Some private adoption agencies specialize in the placement of special needs children. Homestudy-approved adoptive families can also be found through adoption support groups, the Internet or word of mouth.

The placing parents should be prepared to incur financial expenses associated with the dissolution process and subsequent placement of the child. This will likely include, but is not limited to, attorney fees, agency fees, therapist

fees, travel costs and the child's living expenses until the new placement is formalized through the legal system. The placing family must also maintain the child's enrollment on health insurance plans until the new family can enroll the child on their own plans.

While the placing family may wish to ask the second adoptive family to pay some of these costs, this may be limited by the laws of each family's state of residence. Each family should obtain qualified legal advice from an experienced adoption attorney in the family's home state, before agreeing to or paying for any expenses incurred by the other family.

Once a subsequent placement has been identified, the child must be legally freed for adoption. Placing parents typically seek to have their parental rights voluntarily relinquished or terminated according to the laws of their home state. Many states require placing parents to undergo pre-relinquishment counseling to ensure their understanding of this decision.

While the impact of the decision on the placing parents and other family members may be relevant, the child being relinquished is the focus of the proceeding. A judge will often

grant the relinquishment upon determination that the plan is in the child's best interests, and that an appropriate alternative family is present to accept immediate legal and physical custody of the child. In some states, the court does not make an independent best-interest determination, leaving the parties free to make an adoption plan as long as the new family has an approved homestudy.

A few states also allow an adoption to be annulled or set aside upon filing and pursuit of a timely legal action based on fraud, newly discovered evidence or a disability of the child of which the parents had no knowledge. This procedure does not always require a new adoptive family to accept placement of the child. Annulment is not available for international adoptions, however, because U.S. courts have no legal authority to annul an adoption order from another country.

Obtaining an adoption subsidy for the child is often essential so the new set of adoptive parents can obtain the services and support necessary to parent the child. If the initial adoption was domestic, and the child was receiving a federal Title IV-E subsidy, the child remains eligible for the subsidy after the second adoption, so long as the child continues to have special needs. For private placements, the new family must apply for the federal subsidy in their home state prior to finalizing the second adoption.

However, if the initial adoption was international, the child will need to qualify for a subsidy through one of two avenues: (1) Supplemental Security Income eligibility; or (2) eligibility for Aid to Families with Dependent Children, along with documented special needs and placement through a public or non-profit private agency. For interstate placements where the child does not go into state care, the subsidy application should be made in the new adoptive parents' state of residence. That state will determine whether the child is subsidy-eligible, and if so, will enter into the adoption assistance agreement and pay the subsidy.

For internationally adopted children who are being placed into subsequent adoptive

families, there are additional considerations. For instance, post-placement/post-adoption reporting obligations to the child's birth country must be fulfilled. If the child was adopted from a country that is a signatory to the Hague Convention on the Protection of Children and Co-Operation in Respect of Inter-Country Adoption, certain restrictions apply to any attempted dissolution. The new placement must consider the child's views and wishes, and must serve the child's best interests. The agency responsible for placing the child must inform the U.S. Secretary of State and the Central Authority of child's birth country of the change in placement. Under no circumstances may an agency or adoptive family return the child to the child's country of origin without permission from both governmental entities.

The internationally-adopted child's citizenship status must be determined prior to completing the subsequent placement. If the child entered the U.S. on an IR3 or IH3 visa, the child automatically became a U.S. citizen upon initial entry to this country. Nonetheless, upon legal finalization of the second adoption, the second adoptive family should file Form N600 with the U.S. Citizenship and Immigration Service, in order to obtain a new citizenship certificate with the correct legal information, including the child's new legal name.

If the child entered on an IR4 or IH4 visa, and the first adoptive family did not finalize the adoption or complete a re-adopt in the U.S., the child has Legal Permanent Resident ("green card") status only. This child will not become a U.S. citizen unless an adoption is finalized in the U.S. prior to the child's sixteenth birthday. In the meantime, failure to establish U.S. citizenship at the earliest possible date puts the child at great risk for mandatory deportation under certain circumstances.

In IR4 and IH4 cases, the child will not receive automatic citizenship upon finalization of the adoption by the second family, because that family was not pre-approved by Citizenship and Immigration Service to adopt the child before the child entered the country. The second family must take the following steps to secure U.S. citizenship for the child:

1. File Form AR-11 with CIS to change the child's address.
2. Finalize the adoption in state court before the child's sixteenth birthday.
3. File Form I-90 with CIS to obtain a new green card with the child's new name.
4. Twenty-four months after adoption finalization, file Form N600 with CIS to adjust the child's status from Legal Permanent Resident to citizen, and to obtain a citizenship certificate with child's correct legal name.

Whether the initial adoption was domestic or international, if the first and second adoptive families reside in different states, the second adoptive placement must be pre-approved pursuant to the Interstate Compact on the Placement of Children. In other words, the child may visit the new family, but may not move to their home, until ICPC approval is issued. Compliance with the ICPC is technical, mandatory, and difficult to accomplish without the assistance of an experienced adoption attorney or licensed adoption agency in each state.

In summary, each dissolution case has different nuances, as do the families and children involved. Since this article cannot cover every potential scenario, families are encouraged to seek the assistance of adoption professionals to guide them through the process. As difficult as it may be, families willing to persevere through the required steps will often reach a resolution that is appropriate for everyone.

Seth A. Grob is an attorney in private practice whose firm's practice is limited to adoption, assisted reproduction and child welfare cases. He is a fellow of the American Academy of Adoption Attorneys. He writes and lectures frequently across the country on adoption related issues. In 2006, Grob was awarded the Congressional Angels in Adoption Award. For more information, visit www.sethgrob.com.

Alison Foster Davis is an attorney and the executive director of Family Connections Christian Adoptions, a non-profit full-service adoption agency with six offices throughout California. She is a frequent speaker and writer on the topic of adoption, and a 2010 Angel in Adoption©.