

NATIONAL ADOPTION NETWORK, LTD.

15-31 MORRIS AVENUE, SUITE FOUR • BRYN MAWR, PENNSYLVANIA 19010 • 215-520-9800

JANE C. FISCHER, ESQUIRE
EXECUTIVE DIRECTOR

February 6, 1991

Martin Leventon is an adoption lawyer and Senior Legal Counsel for National Adoption Network. He is also a member of the American Academy of Adoption Attorneys. He was admitted to practice law in Pennsylvania in 1981. Jane Fischer is also an adoption lawyer and a member of the American Academy of Adoption Attorneys. She is admitted to practice law in Pennsylvania, New Jersey and the District of Columbia. Ms. Fischer is the founder and the Executive Director of the National Adoption Network and is also an adoptive parent. The agency is licensed in Pennsylvania and works with birthparents and adoptive parents all over the country. The agency completes 1-2 adoptions per week and counsels a number of birthparents who choose not to place. The agency has worked with birthparents from age 14 through 45, and from every ethnic and socio-economic background. In an effort to keep minority and special needs children out of institutional foster care, the agency developed, runs and has funded a pro-bono program for minority and special needs children.

NATIONAL ADOPTION NETWORK, LTD.

15-21 MORRIS AVENUE, SUITE FOUR • BRYN MAWR, PENNSYLVANIA 19010 • 215-520-9800

JANE C. FISCHER, ESQUIRE
EXECUTIVE DIRECTOR

February 7, 1991

STATEMENT OF MARTIN LEVENTON, ESQ. and JANE FISCHER, ESQ.

We, National Adoption Network are here to voice our support for the passage of House Bill No. 79. This is an excellent piece of legislation, many of its provisions were long overdue. For those of us that practice adoption law exclusively and on a daily basis, we applaud this committee. Our Executive Director, Jane Fischer, Esquire and myself have reviewed this piece of legislation extensively. Over the past two and a half years, our agency has successfully completed almost 150 adoptions including the legal work and court appearances. In addition we have researched the adoption laws in most of the fifty states since a substantial number of adoptions that we do are interstate placements. As a result we feel especially prepared to comment on the effect of some of these changes and amendments on our agency and our everyday practice.

There are three specific areas in the bill that we would like to comment on. These are Sections 2725, 2530 and 2505. We also have some general comments about the act and then I would be more than happy to answer any

questions that any of you may have. Please keep in mind that although our agency is a licensed Pennsylvania agency, we are a private agency. As a result all of the adoptions that we do are voluntary ones. Therefore, we are not really prepared to comment on the effect that this piece of legislation would have on public agencies which handle a substantial number of involuntary termination cases.

With regard to Section 2725, we feel it is absolutely imperative to replace the original language "Whenever possible, the adopting parents shall be of the same religious faith as the natural parents of the adoptee" with the language "The intermediary may honor the preference of the natural parents as to the religious faith in which the adoptive parents intend to rear the adopted child." As the law now stands, the courts are required to match the religion of the birthparents with that of the adopting parents. We believe this law violates the first amendment of the constitution by mandating the courts to apply a religious litmus test to all adoptions. Under the present law, a baby could be placed in the best possible home; nevertheless, solely on the basis of the adopting couple's religion, the Court could disallow the adoption. The beauty of this change is that it prevents this type of religious discrimination, yet still empowers the intermediary to honor the birthparents' religious preferences in the placement of

their child. This amendment would also prevent the forcing of a religious match when to do so would either contravene the birthparents' preferences or unfairly discriminate against religious minority couples who cannot be matched with a birthparent of the same religion.

Finally from an agency perspective, a substantial number of the birthmothers that we deal with have no religious preference. It has also been our experience that some courts, to make an exception under our present law, have required counsel or the agency to secure an affidavit from a birthmother that she has no objection to the couple raising her child a particular religion. Often that birthmother in fact did not have any religious preference whatsoever. This can create a very uncomfortable situation for all parties concerned.

We also strongly support the amendment to Title 23 by the addition of Section 2530 providing for preplacement investigation and reports. We particularly like the provisions in subsection (c) for interim placements. It has been our policy as an agency to go well beyond the statutory requirements of the Adoption Act by requiring a completed home study on adopting couples before placement is made rather than before the finalization of an adoption occurs. Much of this is derivative of DPW regulation 3350.12 (a) which mandates that placements be based on the suitability of the adoptive parent and the child for each other. However, extenuating circumstances beyond anyone's

control can exist at the time of birth, making immediate completion of the entire home study impractical. (For example, the birthmother may first contact us when birth is imminent; at that point, the designated couple may have been only preliminarily approved for placement or may have completed a home study which has expired and needs updating). Without subsection (c) in this amendment, many babies would have to be placed into foster care while an agency that had already counseled and preliminarily approved the couple waited for every last piece of paper to filter in. Such a result would be especially detrimental to special needs children. Many couples who are willing to accept special needs children simply cannot afford foster care, which can run as high as \$50.00 per day. (Our agency provides all services, including legal, pro bono for special needs children and unfortunately cannot afford the additional cost of foster care either). Further, many adoptive parents refuse to accept a baby once it has been in foster care. Because adoptive parents for special needs children are scarce, subsection (c) to this amendment would give these special children a chance at a normal life.

Without this amendment as a whole, the law in Pennsylvania presently allows a non-agency or private adoption to proceed by placing a child into an unstudied home and exposing that child to the "Jack The Rippers" of the World. That child could remain in that home

indefinitely without any home study whatsoever. The home study would only be needed if that couple chose to file a Petition to Finalize their Adoption. It has also been our experience that many private adoptions take well over a year to finalize since the private sector does not have home study services and legal services under one roof and the termination period for voluntary relinquishments is longer in private adoptions than an agency adoption.

Finally we urge the passage of the proposed changes to Section 2505 regarding counseling. However, we strongly urge that no additional changes to the proposed subsection (c) be made. It is very important that the language "if the parent whose rights are to be terminated is present in court, the court shall inquire whether he or she has received counseling concerning the termination and the alternatives thereto ... " shall be retained. Without the present in court language an agency would be required to track down and bring to court a putative father or an abandoning parent when the court would not otherwise require attendance. Because many birthparents are transient at the time of placement, such a result could indefinitely or even permanently halt the proceedings. In a voluntary relinquishment where the birthmother's presence in court is required, an inquiry about counseling would satisfy the goal of ensuring counseling without causing unconscionable delays.

One general point about counseling. When it comes to counseling, there is a big difference between agency and non-agency ("private") adoptions. Every agency licensed by its home state is obligated by law to provide quality counseling to birthparents and adoptive parents. We and most agencies do not represent one side over another and can thus advocate evenly for both sides. Private adoptions are different. These are handled by lawyers who represent one side or the other (usually adoptive parents who can afford legal fees). As advocates for the adoptive parents, these lawyers are legally and ethically bound to represent the interests of the adoptive parents. Where a conflict develops between the birthparents and the adoptive parents, these lawyers must side with them against birthparents. (As adoption lawyers, we avoid this problem by representing the agency rather than either side with the our goal to protect the best interest of the child that we are placing. Given these circumstances, you can easily see how private adoptions often neglect counseling of birthparents.

With regard to voluntary termination of parental rights, please take comfort in knowing that it is a fact that Pennsylvania's adoption laws are among the strictist in the nation when it comes to protecting birthparents from pressured or sudden termination of their parental rights. In such states as New Jersey, West Virginia,

Indiana, Washington D.C., Arkansas, Arizona, and Nebraska, a birthparent forever terminates his or her rights by signing a piece of paper within a matter of days after giving birth. There may be little or no right to revoke termination and there often is no court hearing to ensure proper procedures are followed. We believe that the procedural safeguards in the act coupled with valuable changes in Section 2503 (b), 2505 (c) and 2711 (d) will continue to protect birthparents who are unsure about any actions they may have taken to voluntarily or passively elect to give up parental rights.

In conclusion we find House Bill No. 79 a laudable effort by this committee. We strongly urge the passage of this bill as it now stands so that we in the adoption profession can better serve both birthparents and adopting couples in the continued completion of successful adoptions.