

## **House Judiciary Committee**

### **Task Force on Adoptions, Guardians ad litem and Court Appointed Special Advocates**

#### **March 23, 2000 Public Hearing – Adoption Reform Legislation**

#### **Testimony of James E. Mahood**

By way of background, I have been engaged in the private practice of law in Pittsburgh for the past 20 years. During that time I have limited my practice to the area of family law. Before that, I practiced law for six years with Neighborhood Legal Services in Pittsburgh. A good portion of my practice as a neighborhood attorney with NLS was also devoted to family law.

I am the immediate Past Chair of the Family Law Section of the Pennsylvania Bar Association, which is an organization of more than 1800 lawyers from across the state of Pennsylvania who practice in the area of family law. I am Chair of the Family Law Section's Task Force on Adoption. I am a Fellow of the American Academy of Matrimonial Lawyers. The Academy is a national organization of lawyers whose practice is almost exclusively limited to the area of family law. There are approximately 50 members of the Academy in Pennsylvania and less than 2000 nationally. I also serve as a Member of the Joint State Government Commission Advisory Committee on Adoption Law. Finally, I am an adoptive parent of a six year old.

On September 13, 1995, I appeared before the Senate Committee on Aging and Youth and offered testimony at a public hearing in Pittsburgh concerning six Senate bills then pending regarding Adoption. At that time, as an officer of the PBA Family Law Section, I

offered the resources of the Section in review, critique and drafting of proposed legislation concerning adoption, in part because, as here, the Section had not had the opportunity to obtain Bar Association approval for comment on the specific legislation then proposed. I also made the plea that the Legislature adopt a comprehensive review of the Pennsylvania Adoption statute because of the importance of the subject matter, rather than approach problems as might arise in a very interrelated statute on an ad hoc basis which might, in the end, lead to counterproductive or unintended results. I will renew that plea today for the same reasons and also because of the pending efforts of the Joint State Government Commission Advisory Committee on Adoption.

Through joint resolution<sup>1</sup>, the Legislature has directed the Joint State Government Commission<sup>2</sup> to establish a task force and an advisory committee to study the Commonwealth's adoption law and make recommendations regarding the law to the General Assembly. While the Commission has employed the advisory committee concept in other areas of law in the past, including Commonwealth procurement and eminent domain, this is the third currently active advisory committee in the area of family law. The other two are the Advisory Committee on Decedents' Estates Laws, which has been advising the General

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<sup>1</sup> 1995 Senate Resolution 72, Pr.'s No. 1488, a concurrent resolution, was adopted by both the House and the Senate in 1996.

<sup>2</sup> The Joint State Government Commission was established in 1937 as the bipartisan, bicameral research agency of the Pennsylvania General Assembly. One-time and ongoing projects on a variety of subjects are performed by the Commission as requested. Topics of past studies include the Clean and Green Act, public residential education, east European business development, and defense-related industries. In addition to providing objective research services to the General Assembly, the Commission staff responds on a daily basis to requests for information from government agencies and institutions within the Commonwealth and from other states, the federal government and foreign governments.

Assembly on probate matters for more than 53 years, and the Advisory Committee on Domestic Relations Law, which had its first meeting in 1995. All three committees are ongoing, which means that their work is not finished with the presentation of one report on a specific issue to the General Assembly. Each committee is tasked with continuously studying its area of the law, and each will make recommendations to the General Assembly throughout the coming years as appropriate.

Chaired by Nancy Newman of Montgomery County, the Advisory Committee on Adoption Law has 35 members, including birth parents, adoptive parents, adult adoptees, child advocates, persons working in the adoption field, lawyers, judges, a court administrator, a professor, and a representative of the Department of Public Welfare.

The Advisory Committee had its organizational meeting in January of 1998 and met again in March and October of 1998; April, June, October and December of 1999; and February of 2000. A meeting is anticipated for May of 2000. Four subcommittees were formed to study specific areas of adoption law and have held numerous meetings to date. The subcommittees are Placement and Costs, Search and Information, Special Needs, and Terminations.

Materials being reviewed by the subcommittees include the federal Adoption and Safe Families Act of 1997, the Model State Adoption Act which was developed under the authority of the federal Child Abuse Prevention and Treatment and Adoption Reform Act of 1978, the Uniform Adoption Act, caselaw, adoption literature, and the laws of other states.

Procedurally, the Advisory Committee will prepare proposed amendments to the

Adoption Act and present them to the Commission's Task Force on Adoption Law,<sup>3</sup> which is chaired by Sen. Stewart J. Greenleaf. If approved by the Task Force, legislation containing the Committee's recommendations will be introduced in the General Assembly by Task Force members. The proposed legislation will be accompanied by a report containing official comments. It is anticipated that the Committee's report will be published in June of 2000.

While I cannot speak for the Advisory Committee concerning the subject matter of House Bill 1533 or 1838 because the Committee's work is not yet complete and I have not been given that authorization, I can say that the subject matter of both HB 1533 and 1838 is included in the draft of proposed legislation which is being debated by the Advisory Committee. As you might expect given the varied backgrounds of the Committee membership, many statutory provisions receive extensive debate. Nonetheless, the Advisory Committee expects to have a final comprehensive draft to submit to the Task Force in the next several months.

While I cannot offer comments on HB 1533 or 1838, either as a representative of the Advisory Committee or the PBA Family Law Section, as an individual, I can offer the following:

### **HB 1533**

**HB 1533** would change the law which currently permits a birth parent to revoke a

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<sup>3</sup> TASK FORCE ON ADOPTION LAW

SENATE MEMBERS: Sen. Stewart J. Greenleaf, Chair (R-Montgomery); Sen. Robert J. Mellow (D-Lackawanna); Sen. Jeffrey B. Piccola (R-Dauphin); and Sen. Jack E. Wagner (D-Allegheny).

HOUSE MEMBERS; Rep. Lita Indzel Cohen (R-Montgomery); Rep. Mark B. Cohen (D-Philadelphia); Rep. Edward H. Krebs (R-Lebanon); and Rep. Constance H. Williams (D-Montgomery).

consent to adoption up until the time of entry of a decree of termination of parental rights or adoption, to limit the time for revocation to 30 days of execution of the consent to adoption. This section impacts birth mothers and birth fathers differently, since a birth mother's consent cannot be obtained under current law until after 72 hours following a child's birth, whereas a birth father's consent can be obtained at any time after notice of a child's expected or actual birth. Accordingly, the earliest a mother's consent could be final would be 33 days after birth, while a father's consent could be final months prior to a child's birth.

I see no reason to treat men and women differently under this section of the Adoption Law. While current law permits a father to give a consent to adoption prior to birth, either parent can revoke the consent up until a decree of termination or adoption is entered. This at least gives the father the opportunity to experience a child's birth and see if that life changing event alters his willingness to consent to an adoption.

I believe that the giving of a consent to adoption of one's child is too profoundly important to unduly shortcut one's ability to reconsider that decision. I think this is particularly true in those many cases where the fathers themselves, though legally adults, are little more than children. Since a child is not available for adoption without the consent or termination of rights of both birth parents and neither current law, HB 1533, nor any other pending provision would alter this, I believe it more advisable to keep the time limit on revocation of consent to adoption the same for both birth mothers and birth fathers.

Beyond this and the scope of HB 1533, I would go one step further and change current law to preclude a consent from a birth father until after a child's birth. As a new parent, I personally discovered a depth of feeling that was unimaginable before the birth of my son. Current law recognizes this and also the physical and other emotional factors which might impair a mother's ability to give a knowledgeable consent by precluding execution of a consent to adopt until 72 hours after the birth of a child. Particularly since a child is not free for

adoption until the rights of both parents have been terminated, there seems no fair reason not to permit fathers the same opportunity to experience the effect of the birth of one's child before they can, with knowledge, be called upon to make so important a decision as consent to adopt.

As to the 30 day limit for revocation of consent, this would somewhat shorten the time for a termination decree under the alternate procedure of Section 2504, which permits a petition to terminate rights to be filed 40 days after a consent has been given, with the hearing to be scheduled no sooner than 10 days after the petition has been filed. Making no allowance for the time when a hearing might be scheduled, a termination decree cutting off revocation of consent could issue 50 days after a consent under current law, contrasted with the 30 days proposed by HB 1533. By itself, this shortening of time seems likely to affect only a small percentage of birth parents who would change their minds in the after 30 day time frame, whereas in the far greater percentage of cases where no change of heart is present, the adoption could be finalized more quickly to the great relief of the adoptive family. Since the line must be drawn somewhere, and since there seems no good reason why 30 days is worse than 50, subject to the above caveat, the 30 day provision of HB 1533 seems reasonable.

### **HB 1838**

**HB 1838** adds definitions of "adoption-related counseling services" and "putative father". As to the former, HB 1838 also specifies that only an agency can provide adoption-related counseling services and makes provision for an acknowledgement that counseling services were offered to or requested by the birth parent and, if provided, by whom. Other provisions of HB 1838 provide implementation for adoption-related counseling services and clarify that the expenses of such are a permissible reimbursement. The provision for

counseling services is salutary because it recognizes the fundamental importance of a knowledgeable consent to adoption of one's child.

Like HB 1533, HB 1838 would also limit revocation of consent to adoption to the 30 days following the consent. My comments to this provision in HB 1533 also apply to HB 1838.

HB 1838 would also add a provision conditioning validity of consent to adoption in the case of birth parents under the age of 18 upon a provision of the consent advising the birth parents of the availability of adoption-related counseling services. This also is a salutary provision increasing the likelihood of a knowledgeable consent to adoption of one's child. I would go further and recommend that legislation require acknowledgement of the availability of adoption-related counseling services in the consent to adoption for all birth parents, regardless of age, particularly since other provisions of HB 1838 require notice of such services and an acknowledgement executed by the birth parent would be the best evidence that the notice had been given.

Other provisions of HB 1838 are very troublesome. HB 1838 would amend Section 2503 (b)(3) and 2504(c) to eliminate the notice now provided to a putative father as to what specific actions he must take to preserve his parental rights. Currently, both sections specify that a notice be given alerting the putative father that his rights are subject to termination if he fails to file an acknowledgement or claim of paternity under section 5103, and fails to either appear at the termination hearing to object to the termination of his rights or file a written objection prior to the hearing. HB 1838 then goes on, having eliminated the notice of what specific acts are required to preserve parental rights, to specify that a putative father's rights are terminable if he fails to do **any** of the following: file a written objection prior to hearing


**and** appear at the hearing **and** provide substantial financial support **and** make substantial **and** ongoing provision for the child's care.

These changes, without notice of the statutory requirements, raise the specter of terminating the parental rights of a putative father who has provided financial support and care for his child, and who has appeared at hearing to object to the termination of his rights, simply because he did not also file a written notice of objection prior to the hearing. Imagine the young 18 year old putative father who falls into this trap. Parental rights should be subject to termination for substantial reasons, not because one was unwary of a legal technicality, particularly where notice of statutory requirements are eliminated. I urge that these provisions of HB 1838 proposing amendment to Sections 2503 (b) (3) & (d) and 2504 (c) be reconsidered and withdrawn.

Again, since the Legislature's directive to the Joint State Government Commission is shortly to bear fruit with the report of the Advisory Committee on Adoption Law setting forth a comprehensive review of the entire Pennsylvania Adoption Law, I hope that the House Judiciary Committee, and members of the House and Senate generally, will take into consideration the thousands of hours of work of the Advisory Committee and its subcommittees in the very important Legislative debate which will set the face of adoption in Pennsylvania in the future.

Thank you.

Respectfully submitted:

  
James E. Mahood  
Pittsburgh, March 23, 2000.