

International Adoption Risks for the Adoption Professional

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What Could go Wrong?

Law Suit

Bankruptcy

Bad Reputation

Loss of Business

Loss of Licensing

Criminal Charges/Convictions

Protecting yourself and your client...

How can we do both?

Drama Mama.....

Am I just being dramatic or can these things really happen to you me, my agency, my non-profit. We are just trying to help children.

Abuse of child – is the agency responsible?

I cared too much – Jail time!

Sending him back – did my agency warn me?

You knew and you didn't tell me – So you are served!

Contracts

What should be in them and why?

Attorney/Agency Role & Responsibility

- Pre-placement
- Travel
- Post-placement

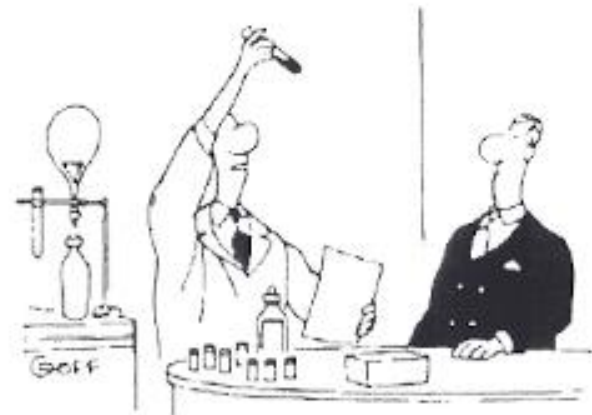
Adoptive Parent Role & Responsibility

- Pre-placement
- Travel
- Post-placement

Fees & Expenses

- Can change due to circumstances
- Address when payments are due
- Refund Policy

1996 Ted Gott

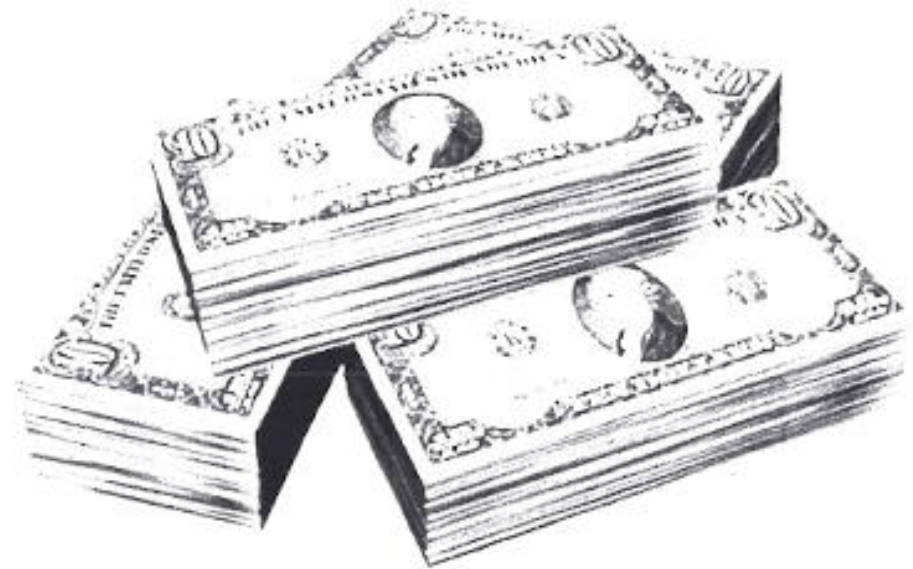


"The paper and ink content is within acceptable norms, but the contract itself appears to have too many clauses."

Fiduciary Duty

Managing Client's Monies

- Keeping money separate
- Returning unused money
- Changes in costs/expenses



Fiduciary Duty

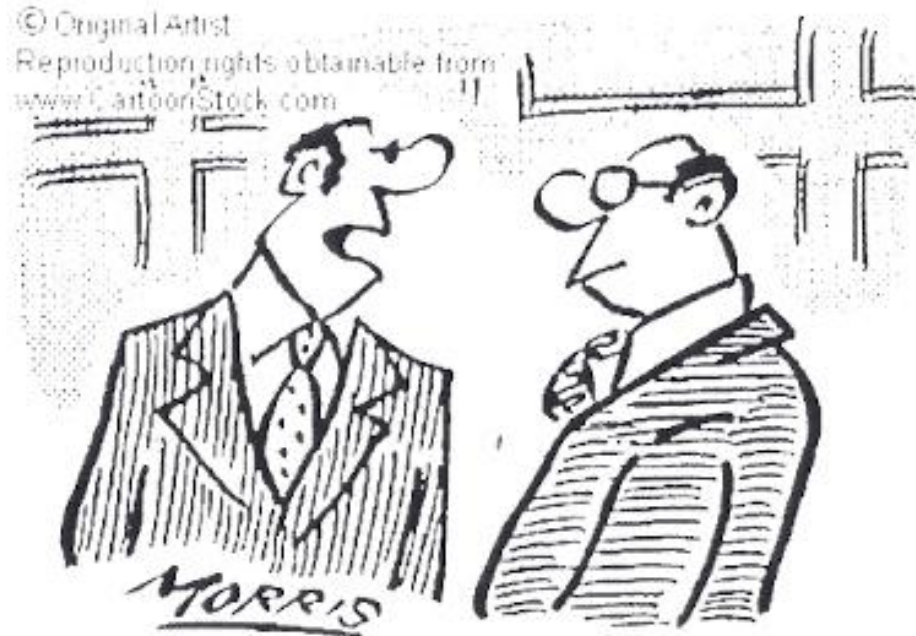
Conduct & Keeping Client Informed

- Toledo Bar Assn. v. Vild, 702 N.E.2d 865 (Ohio 1998).
 - Attorney's failure to file necessary probate forms in adoption proceeding, failure to order home study in preparation for adoption, Resulted from attorney's complete inexperience and lack of knowledge regarding adoption
 - Warranted public reprimand. Code of Prof. Resp., DR 6-101(A)(1, 3).
- Matter of Mitchum, 501 S.E.2d 733 (S.C. 1998).
 - Attorney's conduct in neglecting legal matter by failing to:
 - provide competent representation to his clients,
 - to consult with his clients regarding adoption proceeding,
 - to pursue matter with reasonable diligence and promptness,
 - to keep his clients reasonably informed about status of matter, and
 - to promptly comply with clients' requests for information
 - Attorney Conduct violated rules governing competence, scope of representation, diligence, communication, and misconduct. Appellate Court Rule 407, Rules of Prof. Conduct, Rules 1.1, 1.2, 1.3, 1.4, 8.4; Appellate Court Rule 413, Lawyer Disciplinary Enforcement Rule 7(a)(1).

Source: Negligence, inattention, or professional incompetence of attorney in handling client's affairs in family law matters as ground for disciplinary action—modern cases, Debra T. Landis, J.D., 67 A.L.R.4th 415 (Originally published in 1989).

Who do you manage?

Domestic Staff
Service
Providers
Foreign Staff



"I'll get my people to arrange a meeting with your people, so they can talk about trying to get us to meet again."

Disclosure of Health Information

Cases:

Roe v. Jewish Children's Bureau of Chicago, 790 N.E.2d 882
(App. Ct. 1st Dist. 2003)

- To establish the causation element in a fraudulent misrepresentation or negligent misrepresentation cause of action against an adoption agency for placement of a child, an adoptive parent must establish:
 - they asked a question that a rational parent would consider relevant to gauging the future risks of serious mental or physical illness, and
 - that but for the adoption agency's false statement regarding that risk they would not have adopted the child.

Disclosure of Health Information

- Mohr v. Com., 653 N.E.2d 1104 (Mass. 1995)
 - Court recognized the common-law tort of negligent misrepresentation in the adoption context
 - While an agency cannot be expected to guarantee or warranty a child's future health, the agency must use due care to ensure that it fully and adequately discloses information about a child's background so as not to mislead potential adoptive parents.

Disclosure of Health Information

Burr v. Board of County Com'rs of Stark County, 491 N.E.2d 1101, (Ohio 1986)

- First case to define the elements of “wrongful adoption.”
- Cause of action was grounded in the elements of fraud.
 - a representation or, where there is a duty to disclose, concealment of a fact,
 - which is material to the transaction at hand,
 - made falsely, with knowledge of its falsity, or with such utter disregard and recklessness as to whether it is true or false that knowledge may be inferred,
 - with the intent of misleading another into relying upon it,
 - justifiable reliance upon the representation or concealment, and
 - a resulting injury proximately caused by the reliance

Disclosure of Health Information

Roe v. Catholic Charities of the Diocese of Springfield, Ill., 588 N.E.2d 354 (5th Dist. 1992)

- Court held adoptive parents could maintain an action for adoption agency negligence for failing to disclose necessary medical and psychological information to adoptive parents.
- Court recognized that one can allege a cause of action grounded in negligence against an adoption agency.
- Agency did not disclose to the adoptive parents the medical backgrounds of the children, even though the children had serious behavioral problems.
- The parents sued the agency, alleging fraud, breach of contract, and negligence.
- Court held that since the adoption agency is the only one of the parties with the information concerning the infants' physical and psychological health, the burden of disclosure can be placed on no other party.

Disclosure of Health Information

Malette v. Children's Friend and Service, 661 A.2d 67 (R.I. 1995)

- Tort of negligent misrepresentation found to be applicable under Rhode Island law in the adoption context where all of the elements of that tort are met.
- The court noted that Rhode Island, along with Nevada and Alaska, has no statute requiring adoption agencies to disclose information to adoptive parents, and that Minnesota and Kansas require collection of health data but do not require it to be given to the adoptive parents.
- Court rejected the agency's contention that it had no duty to disclose since there was no statute requiring disclosure.
- Court recognized an extension of common-law liability and found a duty where the agency volunteers information about a child's health. When an agency takes the initiative to disseminate such information, the court ruled, it assumes a duty to refrain from making negligent misrepresentations.

Source: "Wrongful adoption" causes of action against adoption agencies where children have or develop mental or physical problems that are misrepresented or not disclosed to adoptive parents, Harriet Dinegar Milks, J.D., 74 A.L.R.5th 1 (Originally published in 1999)

Client's Independent Actions

How do client actions affect you and the future of adoption

Media Case:

- April, 2010

- Torry Hansen of Shelbyville, Tenn., put 7-year-old Artyem Saviliev -- renamed Justin Artyem Hansen in the U.S. -- on a plane to Moscow's Domodedovo airport with a note in his pocket saying she was returning him, that the boy had severe psychological problems and that the orphanage had lied about his condition.

- Russian officials called for a halt to all U.S. adoptions until the two countries reach anew agreement regarding conditions & obligations for adoptions.

Agency, Attorney, Facilitator's Actions

Mary Bonn facilitated hundreds of adoptions from Guatemala. But one adoption was her last. She attempted to place a child with medical needs that was first refused by a couple. However, later they determined they wanted the child but Mary had already brought the child into the US in a fraudulent manner. Mary was convicted under Federal criminal charges. Although her actions may have saved one child hit may have hurt thousands. While our heart goes out to this child and Mary... our business minds should pause to ask the right questions.

Can we all get along?

Agencies

Attorneys

Non-Profits

USCIS and US State

Foreign Governments



Questions?