

RESOLUTION 05-02-2007

DIGEST

Adoptions: Confidentiality of Records

Amends Family Code section 9200 to permit an adopted child to gain access to court records about his or her adoption.

RESOLUTION COMMITTEE RECOMMENDATION

APPROVE IN PRINCIPLE.

History:

Similar to Resolution 07-02-2006, which was withdrawn.

Reasons:

This resolution amends Family Code section 9200 to permit an adopted child to gain access to court records about his or her adoption. This resolution should be approved in principle because the policies behind adoption policies and secrecy laws no longer apply in today's society.

The paternalistic secrecy laws embody the societal mores of the time in which they were enacted. Initially, state laws providing for secrecy in the adoption process were designed to protect the privacy of the parties from outside inquiry. California became one of the first states to enact legislation to prevent the parties themselves from inspecting their own records and the original birth certificate. Secrecy in the adoption process was done for a variety of reasons, including to protect the birth mother from the stigma of having conceived a child, usually out of wedlock; to protect the adoptive parents from the stigma of being infertile; to protect the adoptee from the stigma of being illegitimate; and to protect the adoptive family from the threat of attempted reclamation of the adoptee by the birth parents.

These concerns are now largely moot. As society has changed, more open adoptions have become the norm. In fact, the number of closed domestic adoptions is *extremely* small today, which is evidence that, given a choice, the vast majority of birth parents would not have chosen closed adoption in years past.

The belief of many years ago that the decision to place a child for adoption or to have a "closed" adoption were voluntary decisions is not necessarily true. Many birth fathers frequently were not involved in the decision to adopt at all, and many birth mothers were subject to some form of coercion by society and the government. And "open" adoptions were not available many years ago.

Finally, whatever privacy interests of the birth parents and the adoptive parents remain intact, the interests of the adopted child should be paramount. When that child reaches majority, and if that child so desires, he or she should be permitted to know the identity of his or her birth parents.

SECTION/COMMITTEE REPORTS

FAMILY LAW SECTION

DISAPPROVE

The Family Law Executive Committee disapproves this Resolution, as it appears to be another method of adoptee to find out who their birth parents are. Current law requires that a court order based on “exceptional circumstances and for good cause approaching necessitous” for an adoptee to gain access to the court records for his or her adoption. This law would allow an adult adoptee access to court records regarding their birth so they can identify their parents if they choose without any showing. People who place children for adoption assume the records are confidential. This resolution may have the effect of limiting adoptions by not allowing confidentiality of biological parents who give children up for adoption. If an adoptee and biological parent want to find each other there are other methods to do so.

This position is only that of the FAMILY LAW SECTION of the State Bar of California. This position has not been adopted by either the State Bar's Board of Governors or overall membership, and is not to be construed as representing the position of the State Bar of California.

Membership in the FAMILY LAW SECTION is voluntary and funding for section activities, including all legislative activities, is obtained entirely from voluntary sources.

TEXT OF RESOLUTION

RESOLVED that the Conference of Delegates of California Bar Associations recommends that legislation be sponsored to amend Family Code Section 9200 to read as follows:

- 1 §9200
- 2 (a) The petition, relinquishment or consent, agreement, order, report to the court
- 3 from any investigating agency, and any power of attorney and deposition filed in the office
- 4 of the clerk of the court pursuant to this part is not open to inspection by any person other
- 5 than the parties to the proceeding, including the person(s) being adopted, and their attorneys
- 6 and the department, except upon the written authority of the judge of the superior court. A
- 7 judge of the superior court may not authorize anyone to inspect the petition, relinquishment
- 8 or consent, agreement, order, report to the court from any investigating agency, or power of
- 9 attorney or deposition or any portion of any of these documents, except in exceptional
- 10 circumstances and for good cause approaching the necessitous. The petitioner may be
- 11 required to pay the expenses for preparing the copies of the documents to be inspected.
- 12 (b) Upon written request of any party to the proceeding and upon the order of any
- 13 judge of the superior court, the clerk of the court shall not provide any documents referred to
- 14 in this section for inspection or copying to any other person, unless the name of the child's
- 15 birth parents or any information tending to identify the child's birth parents is deleted from
- 16 the documents or copies thereof.

17 (c) Upon the request of the adoptive parents or the child, a clerk of the court may
18 issue a certificate of adoption that states the date and place of adoption, the child's birth date,
19 the names of the adoptive parents, and the name the child has taken. Unless the child has
20 been adopted by a stepparent, the certificate shall not state the name of the child's birth
21 parents.

(Proposed new language underlined; language to be deleted stricken)

PROPONENT: National Lawyers Guild—Los Angeles Chapter

STATEMENT OF REASONS:

Existing Law: The existing law requires a court order based on “exceptional circumstances and for good cause approaching the necessitous” for an adoptee to gain access to court records about his or her adoption. Outside of a medical necessity, it is often difficult for adult adoptees to gain access to information about their birth parents, despite great personal anguish. Existing law mandating sealed records was enacted in the 1930’s when abortion was illegal, and children born out of wedlock carried enormous stigma for the mother and the child. This is no longer such a consideration today as societal norms have changed.

This Resolution: Would modify existing law by allowing adult adoptees access to court records regarding their adoption so they can ascertain the identity of their birth parents if they so choose.

The Problem: Despite the assertions of many who claim to speak for the “unborn,” children do not ask to be born. The decision to carry a fetus to term is one made by the mother without input from the child. For over thirty years women have been able to choose whether to legally terminate a pregnancy or carry a fetus to term, and this right is codified in California. Those who are born and then placed for adoption should have the right to know from whence they came if it is important to them to know. They should not have to prove a compelling reason “approaching the necessitous” to know their biological heritage, which is the birthright of all other children not placed for adoption.

When the adoption laws were enacted providing for sealed records, abortion was illegal and significant adverse stigma was placed upon unwed mothers and their children. This is no longer the case. As a matter of fairness and equity, adult adoptees should have the same rights as other people to know their historic and genetic roots.

IMPACT STATEMENT

This resolution does not affect any other law, statute or rule.

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COUNTERARGUMENTS

ORANGE COUNTY BAR ASSOCIATION

Resolution 05-02-2007 seeks to try and amend Family Code, Section 9200 to open up an adoption file for inspection by an adult adoptee abrogating the current law requiring “exceptional circumstances and for good cause approaching the necessitous”. The proponent’s contrary assertion notwithstanding, closed adoptions are not a 1930;s anachronism. Every year, a significant number of birth mothers and biological fathers who, for whatever personal reasons, do not wish to become parents are still willing to place infants with adoptive parents. They have done so with the legal assurance that their identity will be kept private unless “good cause...” necessitates disclosure. Although the stigma of single parenthood has lessened significantly, privacy remains a concern of paramount importance to many biological parents.

Equally important, is that the resolution’s unintended social effects are unknown. If privacy cannot be assured, some biological parents may forego adoption entirely. Would these parents instead choose to raise an unwanted child, causing the number of dependency cases to increase?

No compelling interest supports the change. Under the current law, an adopted child may discover his or her birth parents upon a showing of “exceptional circumstances and good cause...” Certainly, if an adopted child’s health issues require information about the biological parents, the court can issue an order unsealing the birth records. Biological parents who, in light of changed societal mores, no longer harbor privacy concerns may take advantage of registries that currently exist to facilitate reunification. For those biological parents who wish to remain anonymous, however, the current law should continue to provide protection.

WOMEN LAWYERS OF SACRAMENTO

This resolution proposes that adult adoptees gain access to court records regarding adoption to ascertain the identity of their birth parents should they choose without the stringent requirement of showing good cause. While the proposed statutory amendment does not seem to accomplish its stated goals, the existing standard for adoptees to access court records and their biological parents identity should not be diminished in any way.

Allowing adult adoptees to obtain the identity of their birth parents without a court order based on exceptional circumstances or good cause could have a significant chilling effect on parents’ decisions to give up their children for adoption. Parents who choose to give up their children for adoption and choose to be and remain anonymous should have the right to do so. Society should continue to encourage women and men to give up their children for adoption when it is in the best interests of the child. This resolution may have an adverse effect on parents’ choosing to give up their children for adoption. Privacy is a fundamental right that needs to be protected, especially in significant life-altering circumstances such as giving a child up for adoption. The

ability of an adult adoptee to obtain the identity of his or her biological parents through court records should be limited to exceptional circumstances or when good cause exists. This resolution should be opposed.