

## RESOLUTION 10-02-2008

### DIGEST

#### Adoption: Access to Confidential Adoption Records

Amends Family Code section 9200 to permit “good cause” access to confidential records.

### RESOLUTIONS COMMITTEE RECOMMENDATION

#### APPROVE IN PRINCIPLE

#### History:

Similar to 05-02-07, which was disapproved.

#### Reasons:

This resolution amends Family Code section 9200 to permit “good cause” access to confidential records. This resolution should be approved in principle because existing law fails to consider potential “good causes” for allowing adult adoptees access to court records regarding their adoption, the identity of birth parents, or other important non-identifying information.

Under Family Code section 9200(a), a court may provide access to confidential adoption records “in exceptional circumstances and for good cause approaching the necessitous.” As proponents highlight, current law imposes an exceptionally high bar that conceivably prevents adoptees from gaining access to vital health and genealogical information which an adoptee may have “good cause” for obtaining but that does not meet the “necessitous” standard.

As the “good cause” provision of this resolution injects safeguards protecting interests of biological parents while enabling reasonable, as opposed to “necessitous”, access to confidential records, this resolution strikes a fair balance between competing interests.

### SECTION/COMMITTEE REPORTS

#### FAMILY LAW SECTION

#### DISAPPROVE

The Family Law Section Executive Committee disapproves this resolution. This resolution, if approved would modify Family Code §9200 regarding access to judicial records in a concluded adoption proceeding and represents an effort to balance the privacy concerns of the parties involved with the desire or need for knowledge of the adoptee. However, the proposed standard for judicial access would open the door to knowledge of the identity of the natural parents by the adoptee for mere curiosity or other, such as economic, reasons rather than legitimate requests for medical, genetic or psychological reasons. Good cause should continue to include a requirement of showing “necessity” to insure that the rights of privacy for the natural parents are protected.

**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 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 services.**

**TEXT OF RESOLUTION**

RESOLVED, that the Conference of Delegates of California Bar Associations recommend that legislation be sponsored to ammend Family Code Section 9200 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, and their attorneys and the department, except upon the  
6 written authority of the judge of the superior court. A judge of the superior court may  
7 authorize an adult adoptee age 21 or older to inspect the adoption petition, relinquishment  
8 or consent, agreement, order, report to the court from any investigating agency, or power  
9 of attorney or deposition or any portion of any of these documents upon a showing of good  
10 cause. A judge of the superior court may not authorize anyone else to inspect the petition,  
11 relinquishment or consent, agreement, order, report to the court from any investigating  
12 agency, or power of attorney or deposition or any portion of any of these documents,  
13 except in exceptional circumstances and for good cause approaching the necessitous. The  
14 petitioner may be required to pay the expenses for preparing the copies of the documents to  
15 be inspected.  
16 (b) Upon written request of any party to the proceeding and upon the order of any  
17 judge of the superior court, the clerk of the court shall not provide any documents referred  
18 to in this section for inspection or copying to any other person, unless the name of the  
19 child's birth parents or any information tending to identify the child's birth parents is  
20 deleted from the documents or copies thereof.  
21 (c) Upon the request of the adoptive parents or the child, a clerk of the court may  
22 issue a certificate of adoption that states the date and place of adoption, the child's birth  
23 date, the names of the adoptive parents, and the name the child has taken. Unless the child  
24 has been adopted by a stepparent, the certificate shall not state the name of the child's birth  
25 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 upon a showing of good cause so they can ascertain the identity of their birth parents of 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 proposed resolution affects California Health and Safety Code section 102705.

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**RESPONSIBLE FLOOR DELEGATE:** Tina L. Rasnow

#### **COUNTERARGUMENTS**

#### **BAR ASSOCIATION OF NORTHERN SAN DIEGO COUNTY**

This Resolution seeks to abrogate the traditional contract between the biological parent and the system that the biological parent’s privacy be maintained, substituting a “good cause” standard for the existing “exceptional circumstances and for good cause approaching the necessitous” where a biological child wants the information. This Resolution would shift the presumption from the protection of any privacy interest the biological parent may have save in “exceptional circumstances” to one focused solely on the perceived interests and desires of the biological child based only on a showing of “good cause”. This would only be an acceptable approach if a biological parent were advised up front that adoption records could be accessed in this fashion at

the time the decision to put the child up for adoption were made. Biological parents who relinquished children based on an expectation of privacy should have that privacy respected.

## **ORANGE COUNTY BAR ASSOCIATION**

Under current law, a pregnant woman wishing to eschew parenthood entirely has three choices: (1) abortion, (2) closed adoption, and (3) abandonment. As in past years, the resolution's author seeks to take away one of these options by ending truly "closed" adoptions. As before, the author fails to identify any compelling interest served by such a dramatic change in California adoption law.

The present resolution attempts to overcome objections to past versions by no longer making the unsealing of adoption records automatic; instead, the present resolution lowers the legal standard for unsealing the adoption record from "good and compelling cause" to "good cause." What at first blush might appear to be a small change in the statute would have a large impact with unintended consequences.

Under the present standard, biological parent's privacy rights are protected unless some truly compelling cause is demonstrated, such as genetically-related health issues affecting the child. Simple "good cause," is a far easier standard to meet. Given the biological parents will not receive notice of the hearing at which good cause would be demonstrated, unsealing of the adoption record following an unopposed petition would become routine.

Although the stigma of single parenthood has lessened dramatically over the past 70 years, privacy continues to remain a concern of paramount importance to many biological parents. By the time an adopted child reaches majority, the biological parents will have gone on with their own lives, most often with a spouse and other children. The sudden appearance of an adult child at the doorstep can have a disruptive, and in many instances devastating, impact on the new family. Moreover, 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.

The resolution's unintended social effects have not been studied and presently 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, or opt for abortion, causing the ever-diminishing pool of children available for adoption by loving families to shrink further still?

No compelling interest supports the change. Certainly, if an adopted child's health issues require information about the biological parents, the court can issue an order unsealing the birth records. Although it is natural for an adopted child to seek out his or her biological parents, this natural curiosity is not sufficiently compelling to abrogate the biological parents' right to privacy. Indeed, a child's reunification with biological parents who do not wish to be found -- the *only* biological parents affected by the proposed resolution -- will likely do little to assuage the adopted child's "great personal anguish."

If the law is to be changed, the decision to unseal an adopted child's birth records should be at the option of the biological parents.

### **SAN DIEGO COUNTY BAR ASSOCIATION**

In seeking to protect certain individuals, a law may infringe excessively on others. Specifically, this law promotes the rights of the resulting children without considering the rights of the birth parents and the confidentiality that they came to expect, particularly when many adoptions go forward because the birth parents feel "safe." Birth parents deserve the same consideration as the resulting children, and at a minimum, birth parents deserve the right to respond to any requests for information. This is an issue that needs more discourse before a resolution like this one should be considered.