

# Defining Ethics in Domestic and Global Child Adoption Practice

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OPEN ARMS, OPEN MINDS: THE ETHICS OF  
ADOPTION IN THE 21ST CENTURY  
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- *Ethical* Adoption
- *Ethical* Adoption Practices
- *Ethical* Adoption Agencies
- *Ethical* Adoption Practitioners

**What does it all mean?**

- eth·i·cal

1. pertaining to or dealing with morals or the principles of morality; pertaining to right and wrong in conduct.
2. being in accordance with the rules or standards for right conduct or practice, esp. the standards of a profession: such as the ethics of physicians advertising

“Professionals have yet to develop uniform ethical standards in adoption or to make meaningful attempts to monitor their own profession.”

L. Anne Babb, (1999) *Ethics in American Adoption*

- Some ethical *guidelines* for adoption have been set by:
  - the American Bar Association (ABA)
  - the Child Welfare League of America (CWLA).
- But they are *not enforced*.
- And, two-thirds of international adoptions to the U.S. are from non-Hague countries.

## For Instance...

*Fees for legal representation of  
both parties*

*- relinquishing and adopting -  
are routinely paid by those planning to  
adopt, despite the fact that they have  
separate, and potentially conflicting,  
interests.*

*This violates the principle of  
dual representation and creates  
a potential conflict of interest*

“The research on ethics in adoption shows that adoption, more than any other human service, is rife with conflict of interest...”

L. Anne Babb, (1999) *Ethics in American Adoption*

The prospective adopter “is likely to be the primary, if not exclusive ‘client’ because he or she is paying the fee for the services.”

**Madelyn Freundlich**, director of the Policy Dept. of *Children’s Rights*, a national advocacy organization for children in government custody, quoted in “Time to Decide” by Elizabeth Samuels

- The ABA Standing Committee on Ethics and Professional Responsibility concluded in 1987 that lawyers might not ethically represent both adopting and relinquishing parties. Dual representation violates the ABA Model Rules of Professional Conduct [Rule 1.7(a)].
- Most states, however, allow such dual representation in adoption, as long as the client is given *written knowing and informed consent* of dual representation
- No state offers legal aid for relinquishing parents, as is required for the indigent facing criminal charges. The only exceptions are mothers who are minors and *some* state-initiated termination of parental rights cases.

**“This practice of dual representation raises acute ethical and practical concerns.”**

**Susan Smith**, “Safeguarding The Rights and Well Being of Birthparents In The Adoption Process,” The Evan B. Donaldson Adoption Institute report 2006.

**“Adoption experts concur that we need to transform... adoption... into a social service in which payments by adoptive parents play no part.”**

**Elizabeth Samuels**, Time To Decide? The Laws Governing Mothers' Consents To The Adoption of Their Newborn Infants. 2005, *Tenn. L. Rev.* 509

**Suggested Basic  
Standards of Ethics for  
*All* Adoptions**

1. Ensure the best interests of the child are primary by appointing a guardian ad litem.
2. Ensure claims of orphan status are confirmed via the death of both parents.
3. Verify claims of abandonment.
4. Ensure all efforts are made to locate extended family members and they are provided resources needed to care for their kin.

5. Ensure no coercion, pressure or exploitation of poverty, age, illiteracy, language, or misunderstanding of the permanency of adoption.
6. No falsification of original birth certificate information: names, dates, place, etc.
7. Legal enforcement of ongoing contact agreements.
8. All costs and fees made transparent and accountable to all parties.

**Additional Concerns  
for Ethical  
Domestic Adoptions**

"It amazes me how many adoptions are done by attorneys, where the birth mothers have zero counseling.

"There are a lot of sharks out there, manipulating them in every way they know how, and the laws don't prevent that in most states."

**Susan Smith**, author of The Evan B. Donaldson Adoption Institute report "Safeguarding The Rights and Well-Being of Birthparents In The Adoption Process" 2006

“To what extent do prospective adoptive parents’ expenditures to cover a birth mother’s medical ... or other living expenses create a sense of indebtedness that may affect her decision-making?”

“Does a birth mother ultimately ‘owe’ it to the prospective adoptive parents to follow through on an adoption because a good deal of money has been expended ...?”

Madelyn Freundlich, quoted in “Time to Decide” by Elizabeth Samuels

- In order to eliminate feelings of indebtedness, obligation, or pressure which can be interpreted as coercion, and . . .
- To eliminate false hope and unmet expectations for prospective adopters when planned adoptions fail to occur, and . . .
- To conform to the intent of laws prohibiting pre-birth contracts and baby buying and selling . . .

- No pre-birth contact between an expectant mother and prospective adopters until after relinquishment, at which time the original mother may select from pool of available prospective adopters.
- No relinquishment signed until a minimum of 6 weeks post-birth with natural mother encouraged to see, hold and breastfeed.
- 30-day revocation period with no best interest hearing.

- All pre- and post-placement services for all adult parties paid from a common state pool funded by placement fees.
- Such services to be provided by social workers on state salary - not those whose income is reliant on said fees.

- Expectant mothers' housing and medical expenses to be paid by state welfare and Medicaid.
- Legal counsel for natural mothers and fathers provided and paid for from a common state pool funded by placement fees.
- No expectant mother encouraged to conceal the father's identity; efforts made to locate fathers for consent.

- Fatherhood proved by DNA without having to pre-register.
- Father has 90 days from the time he knows of the child's existence for file to stop adoption proceedings.
- No legalized abandonment.
- No expectant mother moved out of state for the purpose of adoption.

- Extended family members provided resources needed to care for their kin, e.g. subsidies allotted foster parents.
- Parents considering voluntary relinquishment must be provided impartial option counseling and must be informed of the lifelong grief, increased risk of secondary infertility, and the challenges adoptees face.
- Ongoing contact agreements must be enforceable.

“The adoption field itself remains such a legal gray area that it tests the ethical limits of the attorneys who specialize in it.”

*New York Law Journal* 11/11/09 Law.com

## Conclusion:

With no oversight of the industry, and no enforcement of ethical guidelines, adoption practitioners push the envelope and *unethical* practices become the norm.

- No one wants their desire to provide safe, loving home for a child in need to result in living with the knowledge - or fear - that a child was procured unethically.
- To ensure ethical practice, for the protection of *all parties* in adoption, a federal agency to oversee the interstate and international transfer of child custody is sorely needed.