

**AMERICAN BAR ASSOCIATION
ADOPTED BY THE HOUSE OF DELEGATES
August 11-12, 2003**

RESOLVED, That the American Bar Association supports state and territorial laws and court decisions that permit the establishment of legal parent-child relationships through joint adoptions and second-parent adoptions by unmarried persons who are functioning as a child's parents when such adoptions are in the best interests of the child.

REPORT

Introduction

Millions of children in the United States today are being raised in families headed by unmarried or same-sex parents. In many of these families, however, the children lack a legally recognized relationship because they are unrelated by birth or adoption to one or both parents.

Second-parent adoption (also called co-parent adoption) is a legal procedure that allows an unmarried partner in a family relationship to adopt her or his partner's child without terminating the first legal parent's rights. Joint adoption is a legal procedure in which both adults in a family relationship simultaneously adopt a child who has no prior legal relationship to either parent. Second-parent and joint adoption protect children in unmarried parent families by giving these children the security of having two legal parents. Second-parent and joint adoptions entitle these children to crucial financial benefits, including inheritance rights, wrongful death and other tort damages, Social Security benefits, and child support. In many situations, second-parent adoptions also are important to ensure health insurance coverage for the child and to allow both parents to make medical decisions for the child. In addition, second-parent and joint adoptions foster children's emotional and developmental health by recognizing the children's actual relationship to both adults in such families.

The proposed resolution would complement several existing ABA policies promoting the interests of children in families headed by unmarried or same-sex partners. In February 1995, the ABA approved the Uniform Adoption Act (1994), which allows second-parent adoptions, with the consent of a minor's custodial parent, in the same circumstances as step-parent adoptions.¹ In August 1995, the ABA adopted a policy supporting the enactment of legislation and implementation of public policies that would ensure that child custody or visitation is not denied or restricted on the basis of a parent's sexual orientation. In February 1999, the ABA adopted a policy supporting "the enactment of laws and implementation of public policy [providing] that sexual orientation shall not be a bar to adoption when the adoption is determined to be in the best interests of the child."

The proposed resolution expands upon these policies by supporting laws and court decisions permitting second-parent and joint adoptions by unmarried parents. This resolution is necessary because, in some states, existing laws or judicial decisions deny children who are being raised by unmarried and same-sex parents the benefits of legal recognition of their functional parent-child relationships. This resolution would put the ABA on record as supporting the legal rights of all children in America's families.

¹ National Conference of Commissioners on Uniform State Laws, Uniform Adoption Act (1994), Section 4-102(4)(b), 9 U.L.A. 1, 67 (West Supp. 1994) (stating that a "de facto stepparent" or "second parent" has standing to adopt a "minor stepchild" with the consent of the child's custodial parent).

Current Law Regarding Second-Parent Adoptions and Joint Adoptions

Over the past two decades, second-parent adoptions have been granted in a steadily growing number of jurisdictions. Currently, second-parent adoptions are available by statute or appellate court decision in the following states: California, Connecticut, the District of Columbia, Illinois, Indiana, Massachusetts, New York, New Jersey, Pennsylvania, and Vermont. *See* CAL. FAMILY CODE § 9000(f); CONN. GEN. STAT. § 45a-724(3); *In re M.M.D. v. B.H.M.*, 662 A.2d 837 (D.C. 1995); *In re Petition of K.M. & D.M.*, 274 Ill. App. 3d 189, 653 N.E.2d 888, 210 Ill. Dec. 693 (Ill. App. Ct. 1995); *In re Adoption of M.M.G.C.*, 785 N.E.2d 267 (Ind. Ct. App. 2003); *In re Adoption of Tammy*, 416 Mass. 205, 619 N.E.2d 315 (Mass. 1993); *In re Jacob, In re Dana*, 86 N.Y.2d 651, 660 N.E.2d 397, 636 N.Y.S.2d 716 (N.Y. 1995); *In re the Adoption of Two Children by H.N.R.*, 285 N.J. Super. 1, 666 A.2d 535 (N.J. Super. 1995); *In re Adoption of R.B.F. & R.C.F.*, 803 A.2d 1195 (Pa. 2002); *In re Adoption of B.L.V.B. & E.L.V.B.*, 160 Vt. 368, 628 A.2d 1271 (Vt. 1993); 15A VT. STAT. ANN. 1-102(b). Second-parent adoptions also are available in some counties in at least 15 other states. *See* Schacter, *Constructing Families in a Democracy: Courts, Legislatures and Second-Parent Adoptions*, 75 Chi.-Kent L. Rev. 933, 934 (2000). Most of the states that allow second-parent adoptions also permit joint adoptions.

On the other hand, second-parent adoptions currently are not permitted in four states because of court decisions holding that the adoption statutes in those states do not authorize such adoptions. *Interest of Angel Lace M.*, 516 N.W.2d 678 (Wis. 1994); *In re Adoption of T.K.J. and K.A.K.*, 931 P.2d 448, *reh'g denied*, and *cert. denied* (Colo. Ct. App. 1996); *In re Adoption of Doe*, 719 N.E.2d 1071 (Ohio Ct. App. 1998); *In re Adoption of Luke*, 640 N.W.2d 374 (Neb. 2002).

Benefits of Second-Parent Adoptions and Joint Adoptions

Estimates are that six million or more children in the United States today are being raised in families headed by unmarried or same-sex parents. *See, e.g., ABA Annual Meeting Provides Forum for Family Law Experts*, 13 Fam. L. Rep. (BNA) 1512, 1513 (Aug. 25, 1987). *See also* American Academy of Pediatrics, *Technical Report: Co-parent or Second-Parent Adoption by Same-Sex Parents*, 109 Pediatrics 341 (Feb. 2002).

For the majority of these children, a second-parent or joint adoption is the only legal avenue through which to establish a legal parental relationship with both parents. In jurisdictions where these forms of adoption are not available, unmarried and same-sex parents attempt to protect their relationships with their children through a variety of privately executed documents, such as wills, guardianship agreements, and authorizations to consent to medical treatment. These documents do not create a legally recognized parental relationship, and they are vastly inferior to the security and legal protection that adoption provides for children. For example, in the absence of a legally protected parental relationship, a child of one parent cannot claim financial support or inheritance rights from the second parent; is not entitled to Social Security benefits, retirement benefits or state workers' compensation benefits if the second parent dies or becomes disabled;

and is ineligible for health insurance or other insurance benefits from the second parent's employer. Moreover, a child of one parent may be denied essential care if the second parent is ineligible for parental leave to care for a seriously ill child under the Family and Medical Leave Act or if, in the event of an emergency in which the legal parent is unavailable, the second parent is legally unable to consent to medical treatment for the child or visit the child in a hospital emergency room.

Adoption also is critical to protect the child's right to financial support and to a continuing relationship with the second parent if the parents separate. Courts in family law cases generally attempt to ensure ongoing contact between a child and both his parents, even when the family unit is no longer intact. In most cases, ongoing contact with the parents is in the best interests of children because "children generally will sustain serious emotional harm when deprived of emotional benefits flowing from a true parent-child relationship."² In the absence of a legally recognized parent-child relationship, however, children of unmarried parents routinely are deprived of such ongoing contact with both parents.³

Similarly, in the absence of a second-parent or joint adoption, a child whose legal parent dies or becomes incapacitated may be taken away from the second parent and become a ward of the state or sent to live with relatives with whom the child has no close relationship. Even if the legal parent has nominated the second parent as the child's guardian in his or her will, there is no requirement that courts approve this nomination, and relatives of the legal parent can challenge the nomination. Such challenges have led to expensive and time-consuming litigation and have caused emotional trauma to the children involved in such disputes.⁴

A recent case in the District of Columbia provides a vivid illustration of the critical difference that second parent and joint adoptions can make in protecting children in lesbian and gay parent families. Laura Solomon and Victoria Lane were granted, respectively, second-parent adoption of Victoria's adopted child, Maya, and Laura's biological child, Tessa. *Matter of Petition of L.S.*, 119 Daily Wash. L. Rep. 2249 (D.C. Super. Ct., Aug. 30, 1991). Two years later, Victoria Lane died in an automobile accident. Because of the second-parent adoption, there was no need for Laura, the surviving parent, to initiate any court action to protect her relationship with her deceased partner's child. Both children were eligible for Social Security benefits, and both were

² *Guardianship of Phillip B.*, 139 Cal. App. 3d 407, 422 (Cal. Ct. App. 1983).

³ See, e.g., *Music v. Rochford*, 654 So.2d 1234 (Fla. Dist. Ct. App. 1995) (court has no authority to award visitation to lesbian co-parent); *Alison D. v. Virginia M.*, 572 N.E.2d 27 (N.Y. 1991) (lesbian partner has no standing to seek visitation with child she had raised with biological mother); *Nancy S. v. Michelle G.*, 228 Cal. App. 3d 831 (Cal. Ct. App. 1991) (same).

⁴ See, e.g., *McGuffin v. Overton*, 542 N.W.2d 288 (Mich. Ct. App. 1995) (denying custody to lesbian co-parent following death of biological mother, despite power of attorney and will designating co-parent as the child's legal guardian); *In Re Pearlman*, 15 Fal.L.Rep. (BNA), 1355 Fla. Cir. Ct. (May 30, 1989) (following death of biological mother, lesbian co-parent had to petition to invalidate the child's adoption by the biological mother's parents, who first had denied the co-parent visitation, then adopted the child without her knowledge or consent); see also *Adoption of Tammy* 619 N.E.2d 315, 320 (Mass. 1993) (in absence of second-parent adoption, if birth parent dies, "the children often remain in legal limbo for years while their future is disputed in the courts").

able to file wrongful death actions. Absent the second-parent adoption, both children's financial stability would have been seriously impaired, and Maya might well have undergone the additional trauma of being legally separated from her only surviving parent.⁵

By contrast, the fate of the children in *Nancy S. v. Michelle G.*, 228 Cal. App. 3d 831 (Cal. App. 1991), illustrates the harms that result to children if second-parent adoptions are not available. Because the parties had not completed a second-parent adoption, the court in *Nancy S.* concluded that Michelle G., the non-biological parent who had shared equally in the parenting of the children since their birth, had no standing to request visitation or custody of the children after she and Nancy dissolved their relationship. As a result, both children's relationship with Michelle was terminated.⁶

Several years later, Nancy and the son, Micah, moved to Oklahoma. Nancy subsequently died in a car accident, and Micah sustained severe injuries. When Micah was asked how to contact his father, Micah said that he did not have a father, but that he had another mother and a sister in California. But Oklahoma authorities refused to contact Michelle. Instead, Micah was declared a ward of the state, and plans were made to place him with a foster family. Fortunately, but entirely coincidentally, a hospital chaplain intervened and helped locate Michelle. After repeated pleas by Michelle and Nancy's relatives, Oklahoma authorities finally allowed Micah to return to live with Michelle and his sister.⁷

In part because of concern about ensuring children the important benefits and protections that flow from having legally recognized parental relationships, numerous professional organizations support second-parent and joint adoptions. *See, e.g.*, American Academy of Pediatrics, *Policy Statement on Co-parent and Second-Parent Adoptions*, 109 Pediatrics 339-340 (Feb. 2002) (supporting "legislative and legal efforts to provide the possibility of adoption of the child by the second parent or co-parent in [same-sex parent] families"); American Academy of Family Physicians (2002) (resolution calling upon the Academy to establish policy and support legislation that would protect children in same-sex parent families); American Psychiatric Association (Dec. 2002) (statement endorsing the right of gay and lesbian couples to adopt); American Psychoanalytic Association, *Position Statement on Gay and Lesbian Parenting* (May 2002).

By approving the proposed resolution, the ABA would be adding its voice of support for second-parent and joint adoptions to those of other major associations concerned about doing what is best for all children in family settings.

⁵ *See* Deb Price, *Girl Would Be Orphan If They'd Lost The Battle*, Minneapolis Star-Tribune, Jan. 5, 1994 at 4E.

⁶ Hersche, *Family Circle*, S.F. Chron. 1Z1 (Aug. 29, 1999), available at 1999 WL 2694404.

⁷ *Id.*

Conclusion

Every child is entitled to the emotional and financial security that follows from legal recognition of his or her relationships to his parents. By supporting second-parent adoptions and joint adoptions, the ABA can help ensure that all children have recognized legal relationships to their parents, thereby helping promote all children's best interests.

Respectfully submitted,

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