

Model Adoption Act by Steven M. Kirsh*

In August of 1994, the National Conference of Commissioners on Uniform State Laws (NCCUSL) completed their work on a Uniform Adoption Act. The NCCUSL is a group of lawyers, judges, and scholars.

There is a saying among lawyers that if you put a dozen lawyers in a room to discuss a single issue, you will have at least 13 different opinions. In a lot of ways, that is what happened with the Uniform Adoption Act.

In comparison to Indiana's adoption statutes which are straightforward and relatively easy to understand, the Uniform Adoption Act is quite detailed and complicated. One of the great advantages of Indiana's adoption laws is that the Indiana General Assembly did not try to "over legislate" matters. On the contrary, the NCCUSL tried to legislate every aspect of the adoption from requiring that the birth mother be given a copy of the adoptive parents' preplacement evaluation (with identifying information removed) to what the person witnessing the consent must tell the birth mother in order for the consent to be valid.

In addition to being very detailed and complicated, it does not include a provision to give notice to an alleged father prior to the birth of the child nor does it include a Putative Father Registry.

In short, Indiana's adoption laws are easier to understand and to implement and provide greater protection for adoptive parents, birth mothers, and even birth fathers.

The main argument in support of a uniform adoption law is that in adoptions between states, when laws are inconsistent, problems may arise. The case most often cited is that involving Baby Jessica.

The other reason often given in support of the Uniform Adoption Act is that the Act's provisions as a whole are superior to those of many states.

With respect to the uniformity issue, even in the Baby Jessica case, uniformity of laws was not an issue. The adoptive parents did not follow the laws of Iowa, the state in which the

* Steven M. Kirsh and Joel D. Kirsh are attorneys who practice exclusively in the area of private adoption. They practice together as Kirsh & Kirsh, P. C., throughout the State of Indiana, and as counsel in adoptions between the states. Steven was graduated from Dartmouth College, *magna cum laude*, with high distinction in history, and from the Indiana University School of Law with honors. He served as President of the American Academy of Adoption Attorneys in 1992-1993. In May, 1993, he participated in the negotiation of The Hague Convention on Intercountry Adoption as part of the official United States delegation. Steven has also testified before the Indiana General Assembly on proposed changes to the Indiana adoption laws. Steven and Joel are frequent lecturers and spokespersons about adoption issues. Inquiries about adoption and further information or suggestions for additional topics to be included in "Adoption Briefs" should be directed to Steven or Joel at 2930 E. 96th Street, Indianapolis, Indiana 46240 or skirsh@kirsh.com. Comments are welcome in writing or to (317) 575-5555 or fax (317) 575-5631. See also www.kirsh.com.

proceedings were commenced. They then initiated proceedings in Michigan after losing in Iowa. The United States Constitution provides that each state must give full faith and credit to the decisions of its sister states. There was no reason to expect that Baby Jessica's adoptive parents would have been successful in Michigan after they had already lost in Iowa.

The result would not have been any different had the Uniform Adoption Act been in place in Iowa. If the adoptive parents did not follow the provisions of the Uniform Adoption Act, they would have lost custody of Jessica just as they did when they did not follow the requirements of Iowa law.

Certainly, Baby Jessica's birth mother lied setting up the tragedy. However, the birth father appeared within two weeks claiming to be the father of the child. The adoptive parents chose not to pursue DNA testing until Jessica was almost nine months of age. Under Iowa law, the father's consent was required. Without DNA testing, they did not know whether or not they had the consent of the right man. Furthermore, after realizing that they did not have the consent of the father, they still pressed their case.

Again, had the Uniform Adoption Act been the law in Iowa and had they not followed the provisions of that law, they would have also lost custody of Jessica.

It is true that Indiana is among only a few states which have extremely well-written adoption laws. For those states which are not as fortunate as Indiana, the Uniform Adoption Act offers a better alternative. However, if the Uniform Adoption Act were ever brought up in Indiana, I would argue strenuously against its enactment.

Indiana's adoption laws are clear and the cases which have interpreted the laws are well reasoned. There is no reason for Indiana to enact the Uniform Adoption Act just so that Indiana's adoption laws will be the same as other states.