

NEW JERSEY LAW ON SAME-SEX ADOPTIONS, DOMESTIC ADOPTIONS, AND INTERNATIONAL ADOPTIONS

GIAMPOLO LAW GROUP

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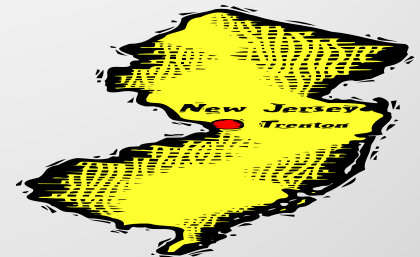
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Legal Landscape for Same-Sex Adoptions in New Jersey

Random Facts: Did You Know?

- ▶ 12,400 same-sex couples in NJ are raising children and the #s are growing exponentially.
- ▶ As of March 2007, the Urban Institute estimated that 42,614 children were adopted in NJ.
- ▶ Of those children, 3,000 of them were adopted by same-sex couples.
- ▶ The soon-to-be adopted child must live in the potential adoptive parents home for six (6) months before an adoption complaint can be filed.
- ▶ The NJ Surrogate is responsible for reviewing complaints for adoption.
- ▶ The NJ Superior Court Chancery Division is responsible for hearing disputes.





NJ GOVERNING AUTHORITY

- ▶ NJ pioneered the adoption cause in 1997 in *Galluccio* when it became the first state to expressly allow unmarried people to adopt children jointly.
- ▶ NJ Court found that the Dept. of Health & Human Services violated adoption statutes by disallowing unmarried, same-sex couples to adopt.
- ▶ More importantly, N.J.S.A. 9:3-43; 9:3-39.1 provides that *any* person over the age of 18 may adopt in NJ.
- ▶ What is in the “best interest of the child” is emphasized by courts.
- ▶ Liberal interpretation of adoption statutes are applied by courts.
- ▶ Parental sexual orientation is fundamentally irrelevant to what is in the best interest of the child.



What Does the Adoption Process Entail?

There are differences between public and private adoptions, but the processes are generally the same.

- ▶ **Step 1:** contact DYFS re: interest in adoption, DYFS will provide an info packet.
- ▶ **Step 2:** a DYFS “Local Office Resource Family Recruiter” will contact parent to arrange an “engagement meeting.” Here, prospective parents will learn more about the eligibility criteria and will receive an application.
- ▶ **Step 3:** DYFS will prioritize the child assignments based on the children who need homes.
- ▶ **Step 4:** in-depth home studies are conducted; these are detailed evaluations of the applicant’s home, health, financial background. This helps determine whether the home is suitable for children.
- ▶ **Step 5:** background checks completed/approval process.
- ▶ **Step 6:** child selection and additional meetings with DYFS and child.
- ▶ **Step 7:** if all is approved DYFS gives consent to adopt child.
- ▶ **Step 8:** the consent is given to adoptive parent’s attorney who will then file a legal petition with the court to adopt and secure a date for the final hearing. Here, the judge will decide if adoptive parents should be the legal parents of the child.

Big Step: Home Study

Elements of a home study generally include:

- ▶ A pre-service training
- ▶ Individual interviews and home visits
- ▶ References
- ▶ Approval Process (before a family can be approved they must be “licensed” by DYFS. This means that the home must be inspected to make sure it is safe).

The image shows two official forms. The top form is a 'Probate Court Certificate of Adoption' with a yellow header and a poem about adoption. The bottom form is a 'STATE OF MICHIGAN CERTIFICATE OF LIVE BIRTH' with a blue header and a grid for recording birth information. Both forms include fields for names, dates, and file numbers.



A checklist titled 'The Homestudy' with a small house icon at the bottom right. The checklist items are: BE YOURSELF HONESTLY, TRUST WHOLE-HEARTEDLY, ANTICIPATE ENTHUSIASTICALLY, ANSWER CONFIDENTLY, SURRENDER GRACIOUSLY, LAUGH JOYOUSLY, EXPRESS YOURSELF FREQUENTLY. At the bottom, there is a 'REPORT' box with 'PASS' and 'FAIL' options and a note: 'If Fail we will advise you when called.'



Interested in adoption?
Can you provide a short or
long term home for a child?



Three Types of Adoption

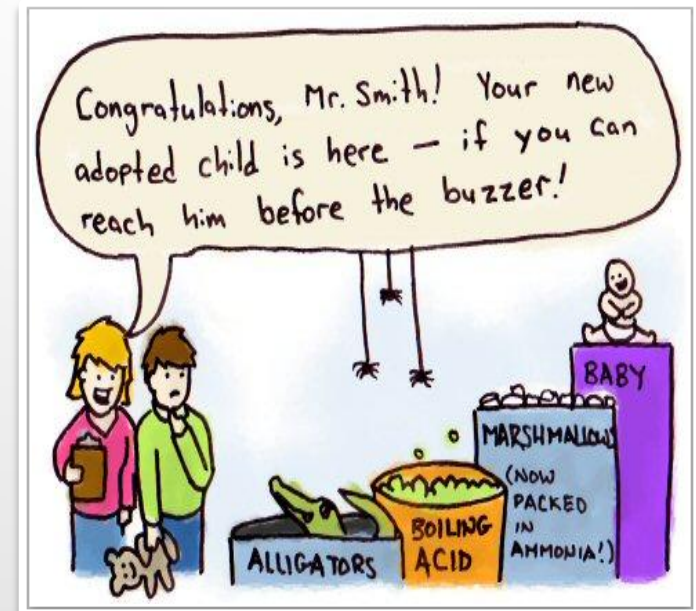
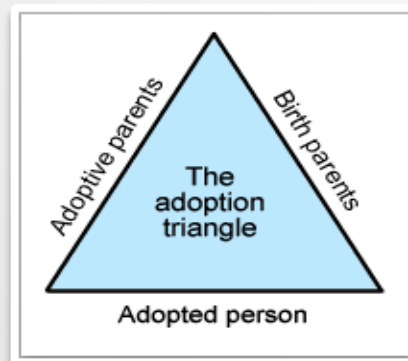
- ▶ **Individual adoptions:** an unmarried person adopts a child who has been placed for adoption by his/her biological parent. Permitted in all states. Once adopted, the biological parent's rights to the child are terminated.
- ▶ **Second-parent:** can adopt the partner's biological child without affecting the natural parent's rights.
- ▶ **Joint (or simultaneous) adoption:** Easier, quicker and cheaper than second-parent adoptions and not available in many states to same-sex couples.
- ▶ **Two significant NJ cases:** *In the Matter of Adoption of Two Children by H.N.R.* and *In the Matter of Adoption of a Child by J.M.G.* both held that unmarried partners could be legal parents in these circumstances because it was in the best interest of the child.





Practice Tip One (1)

- ▶ Although it seems like common-sense, the adoption process really needs to be demystified and therefore you must sit with your client and carefully discuss step-by-step the adoption triangle/process.
- ▶ You will need to explain that there is A LOT of paperwork involved and that PATIENCE is needed to jump through the adoption hoops.
- ▶ Explain the importance of the county home studies, the potential wait for a child and submission of the support letters.





Custody and Dissolution

- ▶ Determining who gets custody of a child after a relationship ends depends upon whether the parent seeking custody was a:
 - ▶ (A) “psychological parent” which is defined when:
 - ▶ 1. A biological parent consented to and fostered petitioner’s formation or establishment of a parent-like relationship.
 - ▶ 2. The petitioner and child live together in the same household.
 - ▶ 3. The petitioner assumed the obligations of parenthood (child care, education, financial obligation, or development).
 - ▶ 4. The petitioner is in a parental role long enough to have established a bond with the child.

AND

- ▶ (B) Whether there was evidence that the couple was actual a family unit.





Custody and Dissolution

- ▶ The first prong of the psychological parent test is very significant because it demonstrates *actual* acknowledgement by the biological parent.
- ▶ The standard is a heavy burden to meet.
- ▶ In *V.C. v. M.J.B.* the court found that the partner-plaintiff did serve a psychological need as the child acknowledged her as a “mommy” and not a mere nanny.
- ▶ Court also found that the relationship was an “open” one, as oppose to a hidden relationship, where friends and family have not no knowledge of the relationship.
- ▶ Visitation rights were granted to the plaintiff.

Food for thought:
any guesses on who
is the “psychological
parent?”



Custody and Dissolution

However.....

- ▶ Any relationship, gay or straight, that **is** secretive and hidden from friends and family, as exhibited in *A.F. v. D.L.P.* , will not help the cause for custody because there is no accepted existence of a family unit.
- ▶ Mere financial contribution \$\$\$ will also not be enough to grant even visitation rights.
- ▶ Bottom Line:
- ▶ 0 evidence of comprising a family unit
- ▶ 0 evidence of fostering a meaningful relationship with child
- ▶ Equals= No custody or visitation rights.





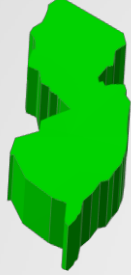
Practice Tip Two (2)

- ▶ In same-sex cases, check state's legal statutory scheme to see if former partner has rights to child....usually no rights are carved out, but typically, such statutes are written so vaguely that a favorable interpretation can be rendered.
- ▶ If there is no statute, one can rely on equitable doctrines and argue that the partner is either a *defacto*, psychological or an equitable parent.
- ▶ Make sure you ask the partner seeking rights to provide evidence that:
 - ▶ Parent and partner had a committed relationship.
 - ▶ Parent considered the partner to be part of the parent's family unit.
 - ▶ The parent and partner took appropriate legal measures to solidify their relationship.
 - ▶ The parent executed legal documents signifying the partner as a parent to the child.

Contested Adoptions: What Happens When the Biological Parent Changes Mind

- ▶ Believe it or not, it happens, even with oral or written consent from the parent.
- ▶ Attorneys need to convey to the adoptive parent that before the court enters the final order the biological mother can revoke her decision *any* time before hand.
- ▶ In fact, in *A.L. v. P.A.*, the biological mother revoked her consent to place her child up for adoption just ten days after submitting an affidavit to the court.
- ▶ Court will still look at child's best interest standard.
- ▶ Despite the money spent, preparatory measures taken or the dramatic life changes encountered by prospective parents in the interim, there is **no** recovery for them.

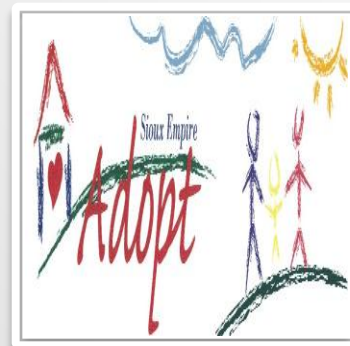
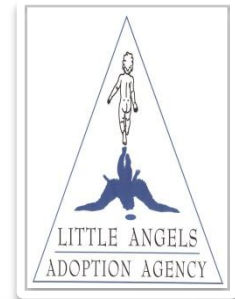




Domestic Adoptions in NJ

8 Forms of Adoption

- ▶ 1. Adopt an Adult
- ▶ 2. An Agency Adoption
- ▶ 3. A Foreign Agency Adoption
- ▶ 4. Foreign-private adoption
- ▶ 5. Foreign re-adoption
- ▶ 6. Private
- ▶ 7. Relative
- ▶ 8. Step-Parent





Practice Tip Three (3)

- ▶ If meeting with potential adoptive parents, steer them away from private placements as it often leads to “baby-brokering” (i.e., promising a baby for a \$ price)
- ▶ Alert client of potential penalties that can be applied even though he may have accidentally violated N.J.S.A. 9:3-39.1.
- ▶ Private placements are discouraged in NJ *See Sees v. Baber*.
- ▶ Any sign of unauthorized payment for adoption and the court will immediately refer the matter to state prosecutor.
- ▶ It’s better if we restrict the unit of people that are going to materially assist in the adoption to the following categories enumerated in N.J.S.A. 9:3-39.1.
- ▶ Those who can materially assist in the adoption are:
 - ▶ 1. A parent or guardian of the child.
 - ▶ 2. An approved agency, association, corporation, to act as an agent finder.
 - ▶ 3. An uncle, birth father, mother, sister, aunt, grandparent, or an intermediary approved by DYFS.
 - ▶ 4. The birth parent.



One Big HAPPY Family

Adoption Litigation in NJ

- ▶ In NJ cases are about whether parents are “unfit” or unable to provide a stable home environment or care for the child.
- ▶ In NJ cases are also about poor child placements
- ▶ In *State v. Interests of LL* the court disagreed with a DYFS placement of young boy to live with his uncle who he barely knew in Panama.
- ▶ DYFS argued that the termination of the natural parents rights would have done more harm than good. Again, court disagreed with this founding.
- ▶ Court held that the boy had already established a psychological relationship with his foster parents and that such a change of family would not be in his best interests.
- ▶ Such cases have led to a movement to reform foster care in NJ and has lead to \$\$10m settlements against DYFS. *See Cody v. DYFS.*





Adoption Costs

Adoption Care	Adoption Care Costs
Foster care adoption	\$0 to \$2,500
License Agency/Private	\$5,000 to \$40,000
Independent Agency	\$8,000 to \$40,000
Facilitate/Unlicensed	\$5,000 to \$40,000





International Adoptions (it is not only for Madge and Jolie)

- ▶ According to the Dept. of State, from 1998 to 2009, NJ had 8,156 international adoptions.
- ▶ The top countries that NJ residents adopt from are:

▶ China with 2280



▶ Russia: 1409



▶ South Korea: 1210



▶ Guatemala: 1087





About the Hague Convention and Member Countries

- ▶ As of Feb. 2008, 75 countries are part of the Hague Convention for Adoption.
- ▶ Adoptions can also be made through non-convention countries, but they do not adhere to the rules and regulations promulgated by the Convention.
- ▶ US is currently not participating with Cambodia and Venezuela.
- ▶ More parents tend to adopt from convention countries.
- ▶ China is a signatory to the Hague Convention and completed 3,001 adoptions in 2009.
- ▶ However, non-convention countries like Indonesia, and Tanzania, had 41 and 40 adoptions respectively in total between 1998 and 2009.





International Adoption 411

- ▶ *The Hague Convention of the Protection of Children Cooperation of Respect of Inter-Country Adoption* is the governing authority for international adoptions.
- ▶ Adoption service providers and attorneys **must be formally accredited and approved on the national level.**
- ▶ **Approved means that you MUST be an accredited attorney or agency pursuant to 22 CFR Part 96.**
- ▶ The process can be executed by two agencies: (1) **Council on Accreditation** or the (2) **Colorado Department of Health and Human Services.**
- ▶ The accreditation process entails successful completion of the “Substantial Compliance Systems” Criteria.
- ▶ If you bomb the accreditation process, you can always appeal...
(this is conducted by a non-judicial body).
- ▶ This is a complex area of law, so be sure to check out www.adoption.state.gov for a wealth of information and the useful inserts we provided!



International Adoption 411

What do accredited agencies do?

- ▶ The responsibilities of these approved agencies are outlined by the IAA. Such responsibilities include:
- ▶ Identify and arrange a child for adoption.
- ▶ Secure the appropriate consent to terminate parental rights.
- ▶ Perform a home study and background on child.
- ▶ Making a non-judicial determination of adoption based on the child's best interest.
- ▶ Assuming custody of the child and providing welfare services if alternate placement for child to be granted.



International Adoption 411

The Hard Part: The Int. Adoption Process

(Abridged)

- ▶ **Step 1:** USCIS will determine whether the individual is eligible to adopt; this approval is **necessary** in order to adopt.
- ▶ **Step 2:** Need to fill out the **I-800 Form**.
- ▶ **Step 3:** Conduct an in-depth **home-study**.
- ▶ **Step 4:** The USCIS will review all of these documents and if approved will forward your file to the foreign country's **Central Authority (CA)** to determine if under *that* country's law the individual is eligible for adoption.
- ▶ **Step 5:** If the CA approves the application an **Article 16 report** will be provided to the applicant; the report contains background information on the child.
- ▶ **Step 6:** Application with the **DOS & ICIS** to have the child come to the US.
- ▶ **Step 7:** Once approved, the Consular Officer at a US Embassy will review forms and issue an **Article 5 Letter**. You can't move forward with the adoption without this letter.
- ▶ **Step 8:** Your child needs a visa. Visas typically issued: **IH-3** and **IH-4**.



Practice Tip Four (4)

Be aware of the following authorities when assisting with international adoptions:

- ▶ Immigration Nationality Act 10(b)(1)
- ▶ 22 CFR 42.24
- ▶ 22 CFR 96
- ▶ 22CFR 97
- ▶ 22 CFR 98
- ▶ 22 CFR 99
- ▶ DOS Regulations: 8 CFR 103.7; 8 CFR 204 and 8 CFR 213(1)
- ▶ Remember: The Central Authority is an influential entity in the process



FIN

- ▶ The adoption processes whether same-sex, domestic or international adoption and complex, but can be successfully completed with proper guidance and with the help of credible, knowledgeable professionals.
- ▶ Should you have any questions on the adoption process please feel free to contact me.

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