ADOPTIONS

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I. INTRODUCTION

The purpose of this outline is to give practitioners who are unfamiliar or only somewhat familiar with adoption procedures a simple outline to assist them in handling clients with adoption issues and to help them in generating documents necessary to finalize adoptions. The outline details finalization of placements of children through agencies, step-parent adoptions, or private placements only where termination of parental rights has already been accomplished. No attempt has been made to educate practitioners on the multitude of issues involved in voluntary termination of parental rights as they apply to private placements by attorneys. I believe that the practice of handling private placements should be approached with great caution. In addition, malpractice policies may exclude coverage for private placements instituted by attorneys unless the attorney has specifically notified the insurance company that private placements are part of his or her practice.

II. TYPES OF ADOPTION PLACEMENTS

The law of adoptions in Iowa is almost exclusively statutory. Nearly all statutory provisions relating to the adoption of persons are contained in Iowa Code Chapter 600; although voluntary step-parent adoptions are discussed in Chapter 600A as well. Although types of placements differ, the basic format is the same.

A. Agency/DHS Placement: This is probably the most common type of adoption encountered by attorneys practicing in this area. In the past, private adoption agencies did most of the adoption placements. However, in recent years, the State of Iowa, through the Iowa Department of Human Services, has placed thousands of children for adoption due to termination of parental rights proceedings under Chapter 232. Most often the attorney is called upon by the adoptive parents to "finalize" an adoption placement that

has already been made by DHS or a private adoption agency. Most of the suggestions referred to below apply to this type of finalization.

B. Private Placement: The procedures as to the adoption itself are similar, and there is no distinction in the Code as to format or other provisions. However, I would caution against finalizing an adoption petition for petitioners who have had a private placement through another attorney.

C. Foreign (out of state): Iowa Code §600.15 grants full faith and credit to any adoption decree issued in the United States. Once an adoption has been finalized in another state, the child's legal status is recognized in Iowa. No further proceedings are necessary in Iowa. However, if there has been a termination outside of Iowa, and the parents want to finalize in Iowa, please note that you must confirm that the parents have complied with the provisions of the Interstate Compact on the Placement of Children (ICPC). Iowa Code §§ 232.158-232.168.

D. International Adoptions: Iowa Code §600.15 grants full faith and credit to any adoption decree issued by a court pursuant to due process of law outside of the United States. Once an adoption has been finalized in another country, the child's legal status is recognized in Iowa. No further proceedings are necessary in Iowa. However, it should be noted that even if a child has been adopted from another country, you will want to obtain proof of citizenship from the INS (Form N-600) to use in lieu of a birth certificate or to obtain a passport.

E. Step-parent: Iowa law permits a spouse of a parent of a child to adopt a child. Although there are some specific exceptions permitted which make step-parent adoptions somewhat easier than other adoptions, the basic format still applies. Exceptions for step-parent adoptions will be noted throughout the outline where applicable.

PRACTICE POINTER NO. 1 – The 1994 legislature adopted numerous changes (HF2217) which eliminated all references in Chapter 600 to "natural" parents

and changed all references instead to "biological" parents. The primary reason for this change was to distinguish biological parents from adoptive parents. I find that many lawyers still use "natural", instead of the more appropriate "biological". This may offend clients, since that makes their adoptive child, by definition "unnatural", rather than "non-biological".

III. CONTENTS AND REQUIREMENTS OF PETITION - §600.5

The adoption petition must be signed and verified by the petitioner(s) and should contain the following information:

A. Vital Information:

1. Adoptee

a. Name as it appears on the birth certificate, and the residence or domicile of the child; §600.5(1).

b. Date and place of birth; §600.5(2)

c. New name requrested, if any; §600.5(3).

d. Name, residence and domicile of any parents; §600.5(6).

PRACTICE POINTER NO. 2 – Except in step-parent adoptions, the person to be adopted no longer has biological parents since parental rights have been terminated.

e. Description, estimate and value of any property owned; §600.5(8).

2. Petitioner

a. Name, residence or domicile; §600.5(5).

b. Date of placement with petitioner (or expected date of placement); §600.5(5).

3. Guardian and/or Guardian Ad Litem and/or Custodian

a. Name, residence or domicile of guardian, custodian and guardian ad litem of the child, if one is appointed; §600.5(4)

B. Qualifications to Adopt: §600.5(7) provides that the petitioner meet one of the five criteria under §600.4 which permit persons to adopt.

This section permits single persons as well as husbands and wives (note it does not say married couples, but husband and wife together) to file adoption petitions. In addition, a husband or wife may file on their own in a step-parent petition (for obvious reasons).

The statute also permits a husband or wife to separately file a petition to adopt if for some reason the other spouse is absent, unavailable or incapacitated and the court makes the determination that adoption would be appropriate and that the parties had been separated under the separation provisions under 597.10. This would appear to be a rare circumstance.

PRACTICE POINTER NO. 3 – Note that gay or lesbian couples cannot adopt a child together, although one partner can.

C. Termination of Parental Rights: §600.5(10)

1. When and where termination of parental rights of the person to be adopted has occurred must be included. An adoption petition cannot be filed until a termination of parental rights has taken place (§600.3(2)) with two exceptions:

a. Adult adoptees (§600.3(2)(a))

b. Step-parent adoptions (§600.3(2)(b) – The statute permits step-parent adoption petitions to be filed as a combined termination of parental rights/adoption petition and permits termination of parental rights of the other biological parent as part of the same proceeding.

IV. ATTACHMENTS TO PETITION

A. Certified or Verified Birth Record: §600.6(1)

1. The birth certificate for a child born in Iowa to married parents, (or a child born out of wedlock after July 1, 1995), can be obtained from the county of birth. A certified copy is $15.00.

2. Children born out of wedlock prior to July 1, 1995, and children who have been adopted before, have their birth certificates indexed at the Bureau of Vital Records, Lucas State Office Building, Des Moines, Iowa. A

certified copy can be obtained from the department by written request at a cost of $15.00.

3. Foreign (out-of-state) birth records can generally be obtained by making a request to the respective state government department. Most adoption agencies will provide you with the birth certificate or verified birth record of children born out-of-state. A list of the agencies providing birth records appears in the appendix.

4. International Birth Records. Due to the difficulty in translations and verification of birth records, if there is no specific birth certificate or record, documentation from the Immigration and Naturalization Service regarding the legality of a termination or adoption overseas should be obtained and will be sufficient.

B. Copy of Termination of Parental Rights Order: §600.6(2)

A copy of the order or decree termination parental rights must be attached to the petition. It is extremely important that the practitioner ensure that the time for all appeals has expired and that procedendo has issued. This should be confirmed, especially in DHS cases.

The Code does not require that the termination order be a certified copy but the careful practitioner would ensure its validity.

NOTE: Because the step-parent adoption can take place as a combined proceeding, the termination order need not be attached to a step-parent adoption petition.

C. Consents to Adoption: §600.6(3), 600.7

1. Consents: Various parties are required to consent to the adoption. The parties from whom consent is required are set forth in §600.7. The consent must be in writing, must name or refer to the person to be adopted and the petitioner(s), and must be signed before a notary or be given directly to the court. The following persons must consent to the adoption:

a. The guardian of the person to be adopted.

b. The spouse of the petitioner (this applies to step-parent adoptions only).

c. The spouse of a petitioner who is separately filing to adopt an adult child.

d. A child over 14 (and presumably an adult child) must consent. However, said consent need not be attached to the petition. The Code provides that the child must consent in the presence of the court, presumably at the time of hearing on the petition. (In practice, adoptions for adults and children over 14 are relatively rare).

2. Withdrawal or Refusal of Consent: A person from whom consent is required may refuse to give said consent. Also, a person who has previously given consent can withdraw the same by the filing of an affidavit (§600.7(3)). In the event of either a refusal of consent or withdrawal of a previously given consent, the court has the power to follow through and at the time of hearing is permitted to make a decision as to whether the consent of the party who has refused (or withdrawn) consent is necessary to grant the adoption. The standard to be used by the court is the best interests of the child. §600.7(4) does provide that the court may, at its option, approve an adoption petition without all of the necessary consents, in the best interests of the child.

D. Pre-Placement Investigation Report (PPIR):

1. The requirements of a PPIR (generally known as a homestudy) are set forth in §600.8(1)(a).

PRACTICE POINTER NO. 4 – A list of the certified adoption investigators approved by the Department of Human Services can be obtained from DHS.

2. Iowa law requires that the PPIR be done only by certified individuals (§600.2(2)). DHS is the licensing agency.

3. The PPIR must be completed prior to placement of the child in the home of the adoptive parents.

4. The PPIR can be waived by the court only in certain circumstances:

a. In step-parent or adult adoptions (§600.8(7)), the court may waive the PPIR, but is not obligated to do so.

b. Inter-Family Adoptions (§600.8(2)(a)) Petitioners who are related within the fourth degree of consanguinity to the person to be adopted may have the PPIR waived by the court.

PRACTICE POINTER NO. 5 – Although it is generally accepted practice that the PPIR is waived in the above cases there are no legal requirements that the court waive such report. The court is free to order the same if the court believes it is appropriate to do so even in those cases where the report can be waived.

c. The PPIR is valid only for one year from the date of issuance and cannot be relied upon to place a child in an adoptive home if the placement occurs more than one year after the date of the PPIR (§600.8(2)(a)).

d. There are a number of criminal convictions which can, and will likely forestall approval, including certain drug offenses, domestic violence and crimes against children. §600.8(2)(b).

V. FILING AND POST FILING PROCEDURES

A. Venue and Jurisdiction: (§600.3(1))

1. Venue is appropriate in any county which is the domicile or residence of the Petitioner, the guardian, or an adult person to be adopted.

2. Venue may be transferred to another county in the interest of substantial justice. There are no cases involving reasons why venue change would be appropriate although it is conceivable that the petitioners could move their residence during the course of the adoption proceedings.

B. Report of Expenditures: §600.9 - §600.9(1) places certain restrictions on the amount and types of compensation that can be received by an biological parent as part of the adoption process. §600.9(2) requires that the petitioners file with the court, prior to the adoption hearing, a full accounting of all disbursements paid or agreed to e paid by or on behalf of the petitioners in connection with the adoption.

PRACTICE POINTER 6 – The provisions of Iowa Code §600.9 do not apply to step-parent adoptions and step-parent adoption petitioners need not file this report.

The following expenditures listed in §600.9 may be paid in connection with the adoption:

a. The birth of the person to be adopted.

b. The placement of the minor person with the adoption petitioner and legal expenses related to the termination of parental rights and adoption processes.

c. Pregnancy-related medical care received by the biological parents or the minor person during the pregnancy or delivery of the minor person and for medically necessary postpartum care for the biological parent and the minor person.

d. Living expenses of the mother, permitted in an amount not to exceed the costs of room and board or rent and food, and transportation for medical purposes only, on a common carrier of persons or an ambulance, for no longer than a period of thirty days after the birth of the minor person.

e. Costs of the counseling provided to the biological parents prior to the birth of the child in accordance with §600A.4(2), to the biological parents prior to the release of custody, and any counseling provided to the biological parents for not more than 60 days after the birth of the child.

f. Living expenses of the minor person if the minor person is placed in foster care during the pendency of the termination of parental rights proceedings.

The Code also provides that all payments for the above expenses should be paid directly to the provider and not to the biological parents. A biological parent who receives any prohibited thing of value, or a person who gives a prohibited thing of value, whether it be a petitioner, adoptive parent, or a person assisting in the process, is guilty of a simple misdemeanor.

C. Notice: §600.11 provides for the manner and time of providing notice of the hearing.

1. Notice shall be given at least 20 days before the adoption hearing by providing a copy of the petition and its attachments as well as a notice of the adoption hearing to each of the person described in §600.11(2).

2. The notice shall state the time, place and purpose of hearing and shall be served in accordance with Rule 1.305 Acceptance of service is permitted (§600.11(3)). Although the form of notice is not specified, the notice is subject to constitutional due process requirements and must be reasonably calculated under all the circumstances to apprise persons entitled to notice o the proceedings and to afford them reasonable opportunity to appear and be heard. Catholic Charities of Archdiocese of Dubuque v. Zaleskv, 232 N.W.2d 539 (Iowa 1975).

3. The following parties are entitled to notice of the adoption proceedings:

a. Guardian of the child - §600.11(2)(a)

b. Guardian ad litem (if one is appointed for the adoption proceedings) - §600.11(2)(a)

c. Custodian of the child - §600.11(2)(a)

d. An adult person to be adopted – §600.11(2)(b)

e. Pre-placement and Post-placement investigators - §600.11(2)(c)

f. Any person who has been granted grandparent visitation rights with the child pursuant to §598.35 - §600.11(2)(e).

PRACTICE POINTER NO. 7 – Subsection (f) provides for notice of adoption hearings to grandparents who have judicially established visitation privileges. This provision was inserted several years ago after the adoption of §598.35, but prior to court cases which ruled certain provisions of §598.35 unenforceable. Given the questionable validity of that code section, this author would seriously question whether any visitation privileges would survive a full adoption proceeding. In addition, although notice to the grandparents appears to be required under certain circumstances, it <u>does not</u> appear to give them any rights to participate in the proceedings or to contest the adoption in any way since they technically have no standing in the adoption proceeding.

g. Any other person who is required to consent under §600.7 who is not described above.

4. Exceptions to the notice provision:

A. Notice need not be given to certain parties:

a. Any person whose parental rights have been terminated is not entitled to notice of the adoption proceeding - §600.11(2)(a)

b. Neither the petitioner nor petitioner’s spouse is required to give themselves notice of the proceedings. For example, the spouse in a step-parent adoption is a party required to give consent, but is not required to be served with the petition or notice, since presumably they are aware of the proceedings - §600.11(2)(d).

PRACTICE POINTER NO. 8 – Most parties have no problem accepting service since most parties are cooperative in these proceedings; however, it is important

that the paperwork be served at least 20 days prior to the hearing date to preserve your record.

D. Minimum Residence Requirements: §600.10

This section requires that the final adoption decree not be entered until the person to be adopted has lived with the petitioner(s) for at least 180 days. This requirement can be waived under the following circumstances:

1. Step-parent adoptions

2. Where the child to be adopted is related to the petitioner(s) within the fourth degree of consanguinity.

3. The period may be shortened upon good cause shown when the court is satisfied that the adoption petitioner(s) and the person to be adopted are suited to each other.

PRACTICE POINTER NO. 9 – Because a post-placement report is not always required in a step-parent adoption or one involving a relationship within the fourth degree of consanguinity, the minimum residence requirement is often waived in these cases. However, a careful practitioner might satisfy themselves that the adjustment period for the child has been adequate before the adoption is finalized. It is important that the attorney exercise independent judgment when discussing a stepparent adoption with the parties and make it clear that one or the other should seek legal counsel to make sure that each understands the possible outcomes of an adoption. Unfortunately, like many marriages, marriages involving adoptive stepparents fail, and it is important that everyone is clear regarding the legal obligations involved. In other cases, although the court can shorten the period, there is no provision for waiver of the 180 day time frame.

VI. ADOPTION HEARING AND POST-HEARING PROCEDURES

A. Adoption Hearing: §600.12 covers the procedures at the adoption hearing.

That statute provides that the hearing will be informal and held as a hearing in equity with the hearing to be recorded by the court reporter. Only those persons notified of the hearing, witnesses and legal counsel shall be admitted to chambers during the adoption hearing. The petitioner and the person to be adopted shall be present unless excused by the court. The court is permitted to hear evidence and testimony from any person present at the discretion of the court.

PRACTICE POINTER NO. 10 – In the experiences of this practitioner, Judges conduct hearing sin different ways ranging from taking almost no testimony in an informal setting in chambers to considerable questioning in the courtroom. If you are preparing to finalize an adoption in a venue unfamiliar to you, I would suggest a telephone conference prior to the date of the hearing to review with the court any special requirements they may have regarding the conduct of the parties at the hearing. If possible, the court should be provided with the court file prior to the hearing so the court has a chance to review the file for any problems or concerns prior to the hearing.

B. Adoption Decrees: §600.13 – At the conclusion of the adoption hearing the court generally has three options available to it:

1. Dismiss the adoption petition and further make a determination as to who should be the guardian or custodian of the minor child. The dismissal of the adoption petition and the placement of the child with a person as a guardian or custodian shall each be determined by the court acting in the best interests of the child (§600.13(1)(c)).

2. The court may issue an interlocutory adoption decree which automatically become final at a date specified by the court which date shall be not less than 180 days nor more than 360 days from the date of the issuance of an interlocutory decree. However, the interlocutory decree may be vacated by the court at any time prior to the date specified for the decree to become final. The court has discretion to make additional

observations and investigations and reports regarding the relationship between the adoption petitioners and the person to be adopted. If the interlocutory decree is vacated the provisions above relating to dismissal of the adoption petition apply. (§600.13(1)(b) and §600.13(2,3))

3. A final decree can be issued. A final decree terminates any parental rights existing at the time of the issuance and establishes the parent-child relationship between the adoption petitioner and the person to be adopted. The termination of parental rights does not apply to the spouse of a step-parent petitioner. In addition, the parent-child relationship shall be deemed to have been created at the birth of the child except as otherwise specified by law. (§600.13(1)(a), §600.13(4))

C. Copies of Adoption Decree: §600.13(5) provides that the Clerk shall, within 30 days, deliver certified copies of the adoption decree to the following persons:

a. Petitioner

b. Department of Human Services

c. Agency or person making an independent placement.

PRACTICE POINTER NO. 11 – Each certified copy of adoption decree costs $10.00 - $13.00, which is assessed as part of the court costs. However, because the record is sealed pursuant to §600.16 after 30 days, this may be the only simple opportunity available to obtain a certified copy of the decree, so the petitioner should get a copy at this time.

D. Abstract of Adoption Decree: The clerk is also required to provide the Bureau of Vital Records of the Iowa Department of Public Health with an Abstract of Adoption Decree prescribed by §144.19 within 30 days of the issuance of the adoption decree. The State has recently adopted a new form. The abstract is to be filled out by the petitioners and certified by the Clerk of Court and mailed to the Registrar of the Bureau of Vital Records. The Registrar requires $15.00 to prepare a new birth certificate

and $15.00 for each certified copy of the new certificate. There is an additional $15.00 charge for international adoptions. Checks are payable to the Iowa Department of Public Health.

PRACTICE POINTER NO. 12 – The Iowa Department of Public Health will issue a new birth certificate for any child who is born in the State of Iowa and for international adoptions. However, if a child is born outside of Iowa, the new birth certificate must be issued from the state in which the child was born. The state office responsible for birth certificates must be contacted regarding the procedures for the issuance of a new birth certificate, however, most states will accept the abstract of adoption decree prepared for the Iowa Department of Public Health. The Iowa Department of Public Health will forward the abstract of adoption decree to the proper state of birth and will provide your office with a copy of the letter of transmittal.

E. Termination and Adoption Records: Pursuant to §600.16A, the permanent adoption record of the court shall be sealed when the file is complete and the time for appeal has expired. With limited exceptions, the files hall not be open to inspection and the identity of the natural parents of an adopted person shall not be revealed except under the following circumstances:

1. The agency placing the child shall contact the adoptive parents or the adult adopted child regarding eligibility of the adopted child for benefits based on entitlement to benefits or inheritance from the terminated biological parents.

2. Where for good cause the court determines that the records should be opened for the adopted person who is an adult. However, the court is to consider at least two additional factors when determining whether or not to open the record. The first is whether the biological parent has filed an affidavit requesting the court reveal or not reveal the biological parent’s identity and whether or not the adopted person has a minor sibling.

PRACTICE POINTER NO. 13 – Although conceivably many circumstances could exist in which good cause had been shown to reveal the identity of biological parents to the adoptee, (or vice versa) a random unscientific survey of Judges in District 2A indicates that the courts have effectively closed the door on the opening of adoption files unless both parties have indicated a willingness to have the file opened. Because it was not standard practice to place such affidavits in adoption files even as recently as 10 years ago, it will be some time before the effects of this statute become known. The Judges surveyed indicated they have never opened the file at the request of either party except on one occasion where the biological parents and the adoptee both independently requested that the file be opened.

3. A biological sibling may file an affidavit in the adoptee's adoption record regarding whether or not they wish their name to be revealed or not revealed to the adoptee. The court may consider such an affidavit in determining whether or not good cause has been shown to reveal the name of the biological sibling to and adoptee. Good cause must still be shown.

4. The court may, upon competent medical evidence, open records if necessary to save the life of or prevent irreparable physical or mental harm to the adoptive person or the person's offspring. Even under these circumstances, the court and the medical personnel involved are to make every reasonable effort to prevent the identity of the biological parents from being revealed to the adoptee.

5. In addition to the above circumstances, all of which appear to involve the court's discretion for good cause only, §600.16A(3) provides that the Department of Human Services, the Clerk of Court, and the Agency making the placement shall open the adoption records for inspection if the biological parent has placed in the adoption record a written consent to revelation of the biological parent's identity to the adopted child at a specified age and that adult adopted child has placed in the adoption record

a written request that the identity of the biological parent be revealed. This consent can be withdrawn at any time by placing the written withdrawal of consent in the adoption record. Violation of this section is a simple misdemeanor.

PRACTICE POINTER NO. 14 - Although the provisions of §600.16A(3) above do not appear to be discretionary, I do not believe a clerk would open the records without court approval.

F. Medical and Developmental History: The complete family medical history of the person to be adopted, including any known genetic, metabolic or family disorders, and the complete medical and developmental history of the person to be adopted are to be included in the pre-placement investigation report prepared pursuant to §600.8(1), although the identity of the biological parent is not to be disclosed. Under §600.16, the information compiled relating to medical and developmental history shall be made available at any time (by the clerk of court, the Department of Human Services, or the agency) to adoptive parents or the adult adoptee, so long as the identity of the adopted person's biological parents is not disclosed. Also, a person conducting legitimate medical research or treating a patient in a medical facility may use the information solely for these purposes if approved by the Department of Human Services. A person violating this section is guilty of a simple misdemeanor for the first offense, a serious misdemeanor for the second offense, and an aggravated misdemeanor for the third or subsequent offense.

VII. CASE LAW

As might be expected since adoptions are rarely contested proceedings, there is very little case law relative to adoptions. the case law that does exist is fairly straight forward and touches on some principal issues that have been emphasized in this outline.

In Re Marriage of Holcomb, 471 N.W.2d 76 (Iowa App. 1991) the court found that Iowa does not recognize the principle of equitable adoption. At issue was whether or not a step-father who had taken financial responsibility for a stepson had a continuing obligation for support upon the divorce of the parties. Although a termination had taken place between the biological father and the stepson, no adoption proceedings were ever begun. The court found that only by court decree following statutory procedures could an adoption take place. In the Matter of the Interest of L.B.T., 318 N.W.2d 200 (Iowa 1982) the court had to review competing cross-petitions for adoption. The parental rights had previously been terminated. A single foster mother who had cared for the child for 28 months filed a petition and another couple filed a cross petition. The second couple had already adopted the minor child's biological brother and sister when the biological parents' rights were terminated. Despite the bonding attachments, the trial court found in favor of the adoptive couple and the Supreme Court affirmed on appeal. There appeared to be no question that the couple had clear advantages regarding parenting, including financial ability, age, education, two-parent family and the presence of siblings. The Supreme Court found that the developed relationship between the foster mother and the minor child was not enough to overtake the vastly superior advantages which the cross-petitioners offered as adoptive parents. Id. at 202.

Elliott v. Hiddleson, 303 N.W.2d 140 (Iowa 1981), the Supreme Court affirmed the rights of an adopted child as a lineal heir of his grandfather/testator despite the fact that the testator had no knowledge of the adoption. The court rejected prior decisions of the court which applied the stranger to the adoption rule and found that lawful heirs, lineal heirs and similar terms are meant to include by law adopted children absent contrary intent in the instrument. Since there was no contrary intent, an adopted child was entitled to inherit from her grandfather.

In the Matter of the Adoption of M.M.B., 376 N.W.2d 900 (Iowa 1985), the Supreme Court confirmed that a biological father whose rights had previously been terminated had no standing to give evidence and appear at the adoption hearing. Although not entitled to receive formal notice, the parties, by agreement, allowed the biological father to be given notice of the adoption proceedings, but resisted his attempts to appear in court and present evidence at the hearing. The court's decision denying the biological father's right to present evidence was affirmed by the Supreme Court. **PRACTICE POINTER NO. 14 – Although approved by the court in this decision, this author believes that offering to give biological parents notice of adoption proceedings or any other similar "rights" to obtain his or her consent to termination of his or her parental rights is a dangerous practice and could be grounds for claims of fraud, duress, etc. if problems arise down the road.**

In the Matter of the Adoption of K.T., 497 N.W.2d 163 (Iowa App. 1992), the Court of Appeals affirmed that grandparents have no specific standing in adoption proceedings unless the grandparents are the guardians or custodians of the minor child by virtue of prior court action. The court found that although the grandparents had been given visitation rights under §598.35, they were not custodians or guardians of the child and had no standing in the adoption proceedings. It should be noted that shortly after this case was decided, the statute relating to notice as amended to provide notice of adoption hearings to grandparents who had established visitation rights under §598.35. However, the fact that the grandparents are given notice of proceedings does not necessarily obviate the decision in this case since the Grandparent Visitation Right Statute does not address the issue of adoption with the exception of step-parent adoptions (§598.35(5)). And, as previously noted, the statute has essentially been gutted by several Court decisions.

In the Interest of J.M.W., 492 N.W. 2d 686 (Iowa 1992) another case where adoptive parents' attempts to finalize an adoption was opposed by the (biological) maternal grandparents. The trial court approved the adoption which was reversed at the Court of Appeals. The Supreme Court vacated the Court of Appeals' decision and affirmed the District Court judgment. The court did not emphasize the fact that the grandparent rights were ended by the termination of the rights of the biological parents, but reviewed the two potential adoptive homes and found that the couple with whom the child had been initially placed were more likely to provide a stable and safe environment than the maternal grandparents. The court found it was in the best interests of the children (twins) to place them with the adoptive couple despite the familial ties since the adoptive couple was younger, better educated and apparently more financially stable. There was also evidence of conflict in the grandparents' home and in the raising of their children. **PRACTICE POINTER NO. 15 – For those of you interested in pursuing private placements and adoption work, a reading of the above case is suggested to explore some of the pitfalls involved in the practice.**

Becker v. Iowa Department of Human Services, 661 N.W.2d 125 (Iowa 2003). This case involves the subsidies provided by the State to individuals adopting children with special needs as defined by the statute and DHS. §600.17-600.23. Grandparents who had guardianship of a drug-affected grandchild who would clearly fit the criteria were denied a subsidy in their subsequent adoption proceeding because §600.20 provides that the subsidy is available only when the child was in State custody immediately prior to the adoption. The child was not in State custody immediately prior to adoption and the court found that they were not eligible for the subsidy.

DeBoer (the Baby Jessica Case): The DeBoer case is found at In the Interest of B.G.C., 496 N.W. 2d 239 (Iowa 1992). It should be pointed out that the Baby Jessica case is not technically an adoption case , but is

really a termination of parental rights proceeding. The adoption petition of the Michigan couple was denied on the grounds that the parental rights had not previously been terminated, which is a fatal flaw in all cases. There are three factors which make the DeBoer case unique and which together contributed to the denial by the Iowa court of the adoption petition of the DeBoers. First the release of custody signed by the biological mother was defective because the 72 hour waiting period required before a release of custody can be signed was not observed. Arguments that the 72 hour waiting period could be waived or shortened were rejected by the court. It is this author's contention that the most serious adoption attorneys did not believe that the 72 hour period could be waived or shortened and a reliance upon that defense did not carry much credence. Secondly, the fact that the biological father came forward within 30 days of the termination proceedings would not seem to meet the abandonment requirements of the Iowa Code. There is a fair amount of case law on the issue of abandonment and again, a fair reading of the cases would indicate that a 30 day abandonment would not constitute grounds for termination under almost any scenario. Faced with these problems, the continued efforts to finalize an adoption where termination of the rights of both biological parents was seriously in question would not appear to have been in the best interests of any of the parties. In this author's humble opinion, when these questions arose, the DeBoers should have been advised to place the child in foster care or return the child to the biological parents. This author is of the opinion that despite the emotional appeal that a child should not be removed from the placement after such a long period of time, there is a strong case to be made in favor of the converse opinion that we should not reward parties (even adoptive parents) who continue to hold the child in their home with the knowledge that their chances of success appeared remote.

The reaction by the Iowa legislature to correct the problems raised in the DeBoer case was somewhat mixed. The legislature created a 30 day window of opportunity in which a putative biological parent whose rights have been terminated could apply to the court to vacate or appeal the termination within 30 days and that thereafter the biological parent would be prohibited from challenging the decision. However, even if this statute had been in place, it would appear that Mr. Schmitt (by contacting the court within the 30 day period) could have preserved his rights to vacate the termination and tat the result may have remained unchanged.

The legislation does provide some safeguards to both the adoptive parents and the putative fathers who wish to exercise their rights by setting up a registry of putative fathers and clarifying that the waiting periods for execution of releases of custody and finalization of termination cannot be waived. The statute also requires birth parent counseling to be provided to the biological parents and clearly addresses the issue of criminal sanctions for birth mothers who intentionally name a party as a biological father who is not, in fact, the biological father.