

Adoption Attorneys: A Higher Standard of Ethics

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Unlike most jobs or professions, lawyers and attorneys are guided in both their personal and professional lives by Codes of Professional Responsibility and Rules of Ethics. A failure to follow the rules or live up to the ethical requirements can lead to private reprimands, public reprimands, suspension from the practice law, or even disbarment. Lawyers, usually licensed in the state in which they practice, have their behavior monitored in ways the ordinary citizen does not, by the Supreme Court of their state, usually through a Board of Professional Responsibility. The Board will investigate claims of unethical behavior, and make recommendations to the Supreme Court as to what an appropriate penalty would be to a particular behavior.

Most state Rules of Professional Responsibility and Professional Conduct, closely approximate the model Rules of Professional Conduct promulgated by the American Bar Association. In general, Rules of Professional Conduct require attorneys to be competent in the area of law they are practicing, diligent, and to have adequate communication with their clients. There are also requirements regarding fees, a strong commitment to confidentiality of all information, an avoidance of any conflict of interest, as well as general requirements regarding being organized and being committed to the highest level of duty and representation of a client.

In addition, Rules of Professional Conduct often require candor and honesty with clients, as well as fairness and candor with the Judge or Tribunal that is hearing a case. Further, while zealous advocacy on behalf of a client is also an ethical requirement, balancing the merit of claims and giving open and honest advice to a client about the validity of his claim is also required.

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In addition to the general rules of Ethical Conduct, which allow a lawyer to practice before the Courts of his or her State, the American Academy of Adoption Attorneys, which is the largest and most influential organization of Adoption Attorneys in the United States, has a higher set of specific Ethical Standards directed at attorneys who focus their practice in Adoption Law. The “Code of Ethics of the American Academy of Adoption Attorneys” deals specifically with similar issues as general ethical concerns, but does it in ways that are uniquely designed to approach the unusual questions that arise in adoption law. (A full copy of the Code of Ethics of the American Academy of Adoption Attorneys can be found at www.adoptionattorneys.org)

In addition to requiring that all members comply with the Ethical Rules, Disciplinary Rules, Ethical Candors, or other Rules of Professional Conduct for the state in which a member practices, several significant and specific requirements are contained in the American Academy of Adoption Attorneys Code of Ethics. Initially, and most importantly, “a member shall assure that the member’s clients are aware of their legal rights and obligations in the adoption, and that all parties to the adoption are aware of their right to separate legal counsel”.² Since this is intended to ensure that all parties to an adoption, since adoptions by their nature involve the rights and best interests of children, understand fully all of their rights and responsibilities.

In addition, unless specifically allowed by its jurisdiction, “a member shall not purport to represent both the perspective adoptive parent and one, or both, birth parents, particularly where such representation is specifically prohibited”. While rules, statutes, and laws vary throughout the country, the issue of dual representation is one that all clients should question carefully when working with an adoption attorney. This avoids even the appearance of any conflict of interest.

Also, “a member shall actively discourage adoption fraud or misrepresentation, and shall not engage in such conduct...”. This rule requires an attorney who finds, or has concern about, such fraud

² All quotations are from the American Academy of Adoption Attorneys Code of Ethics.

or misrepresentation, to withdraw from any representation where necessary to avoid such conduct. In addition to that, and of critical importance, is that “a member shall not assist or cooperate in any adoption in which the member has reason to believe that the birth parent, or parents, are being paid, or given anything of value in exchange for the adoption”. This does not preclude the payment of expenses allowed by statute, or financial assistance for losses incurred by birth parents, but specifically prohibits the buying and selling of children and puts the burden directly on the attorney to be sure that does not occur.

While there are a number of other ethical requirements, the most important remaining one is that “a member shall assure that the members fee arrangement with each client is carefully explained and fully understood by the client...” and, “a member shall not enter into an agreement for, charge, or collect, an illegal or unconscionable fee”. Thus, adoption attorneys are held to a higher standard in all areas, including the area of fee discussion and collection. The Rules of Ethics specifically require that all fee arrangements be discussed with a client upfront, that they be clear and unambiguous, and that the attorney not charge any unconscionable fee.

Finally, of critical importance, is that failure to follow the requirements of the Code of Ethics of the American Academy of Adoption Attorneys, can result in the same sort of sanctions that apply to practice before State Courts. That is the Academy can privately reprimand, publicly reprimand, suspend, or exclude the attorney from its membership if a violation is found.

When one deals with children and families, it is vitally important that the highest level of ethics be imposed upon the attorneys. Good practice and procedure as outlined by the Code of Ethics of the American Academy of Adoption Attorneys assures that such an approach is taken, both by members, and non members of the academy.