

Foundation for Love: General Principles for Post-Adoption Communication Agreements

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In 1989, fresh out of social work school, I was hired by a social service agency which had both a regular counseling department and an adoption program. I was delighted to be able to inform the agency that the state's adoption laws had changed three years previously to allow for pre-birth meetings between birth and adoptive parents. We began to facilitate open adoptions.

During one of those meetings, a grandfather-to-be accompanied the expectant parents as well. After the prospective adoptive and biological families had gotten to know each other and feel more comfortable, the grandfather drew out an old family bible and placed it in the hands of the prospective adoptive father. Opening the cover, the grandfather pointed to where he had drawn the full family tree, showing all their relatives. He gave the bible to the prospective adoptive parents for the child to have in the years to come. There wasn't a dry eye in the house. Such moments can inspire a career and, for nearly thirty years, I've helped many families put a foundation under their dreams of staying in contact.

A decade later, in 1999, in Massachusetts, a statute (M.G.L.c. 210 Section 6 c) allowing these agreements to be court enforceable and legally binding, was passed. Since then, written and detailed post-adoption agreements have been a routine part of our state's adoption practices. My agency's experience has been that these agreements have given families structure and support.

In turn, children have had an opportunity to grow up with a stronger sense of connectedness and confidence.

Many states have such statutory provisions, and there is also tremendous variability. Some states limit the applicability of agreements to children who've had a prior longer term relationship with the birth family, some states allow extended family (e.g. siblings and grandparents) to be included in the agreement and some states allow for agreements but do not provide for court enforceability. There are some states which don't recognize communication agreements and which will not enforce those created within their own state or those originally created in other states. Since this essay could be read at multiple points in time, it's best to seek expert adoption oriented legal counsel when seeking to understand the contours and allowability of a potential agreement. Where there is the option for court enforcement, the court can order the participants to honor the agreement but no statute allows the underlying adoption to be legally affected by any non-compliance with the agreement. A summary of these laws, current as of 2014, has been prepared by Child Welfare Gateway and can be found at https://www.childwelfare.gov/systemwide/laws_policies/statutes/cooperative.pdf. Hopefully in future years, this will continue to be updated by our federal government's child welfare agency.

There are many reasons to have communication agreements. One reason is so that children who

are adopted can know their birth families as well as their adoptive families. An agreement providing for communication can offer the opportunity for birthparents to feel reassured that their child is faring well. Adoptive parents have the benefit of being able to express appreciation to the birthparents and to enjoy their company during visits—few others will enjoy seeing that ‘first tooth’ quite as much. An open channel of communication also means the adoptive parents are more likely to receive ongoing birth-family health information that may be helpful to the child and, thus, also, to their parenting.

A list of “issue spotting” ideas for communication agreements can be obtained by writing to the author (maadoptionlaw@gmail.com). This list may help avoid reinventing the wheel as these agreements become more common. Particular clauses may not be lawful in a particular context or state—so these should only be utilized by expert adoption attorneys in the context of professional legal advice.

When drafting terms for a post-adoption communication agreement, there are some general principles to keep in mind. They might be summarized as boundaries, flexibility, creativity and accountability. I will provide a couple examples of each principle:

Boundaries

There should be clarification on matters about which the families do not want uncertainty in the years ahead. These areas might include:

***NAME:** That the child’s birth certificate will list an agreed upon name and the child will regularly be called by an agreed upon name. That no one will seek to change the name during the child’s minority;

***POSITIVE ATTITUDES:** That both families will speak positively about the other and will speak positively about the adoption to avoid divided loyalties for the child;

***SOCIAL MEDIA POLICY:** Clarification about families’ positions on utilization of Facebook or other on-line social media for communication; clarification about whether or not the child’s photo(s)

and/or information about them can go on a social networking site or other venue for wider disbursement of information;

***EXTRA SUPPORT:** Articulating an agreed upon commitment to having a social worker supervise and support the birth and/or adoptive families and the child during visits where this could provide needed emotional support and assistance maintaining healthy boundaries;

***PHOTO/LETTERS:** Defining the frequency of photo/letter updates and specific months; Specifying number of photos and whether hard copy or electronic; Specifying how the family will consider whether or not to utilize new technology as it arises over time, including video;

PROTOCOLS: Specifying who’ll initiate phone or videoconferencing calls, visits and other contact and how responses will be conveyed together with boundaries on timing;

ADOPTION IS FIRM: Clarifying that not upholding the agreement is never grounds for reversal of the underlying adoption itself.

An example of some language related to the child’s name might include:

Child’s Name As It Will Be Used & As It Will Appear On The Amended Birth Certificate: The biological mother of the child and the prospective adoptive parents have agreed, together, on a name for the child. At birth the child will be listed on the original birth certificate as “Name” followed by the _____’s surname. Following finalization of the child’s adoption, the adoptive family shall list the child’s name as “First Name + Chosen Middle Name + Adoptive Family Surname” on the child’s amended State birth certificate. The parties agree to call the child NAME as well as to have this as the child’s name on the birth certificate as described above. The parties agree not to seek a change of name during the child’s minority.

One area of concern has to do with widespread use of social media. An agreement might address this issue in a number of ways. This is one possible approach:

Limiting Distribution of Child's Photos—Avoiding Social Media/Internet Dissemination: The birthmother agrees not to directly or indirectly disseminate any photographs or videos to other people, the media or via the internet other than immediate family. This is not intended to restrict the birthmother from sharing photographs with people close to her, but is intended to avoid scenarios where the child's image is posted on widely accessible mass media. The birthmother shall ask her immediate family, and anyone else who might have access to the photographs, to honor this request as well.

Flexibility

A post-adoption agreement needs to be flexible to be able to take into account possible changes during the child's growing up years. These changes could include: changes in relationship status for birth or adoptive families (couple to single, single to couple); either family having subsequent children; health issues in either family; the birth or adoptive family having difficulties that could impact in-person visits (substance abuse impairment, deteriorating mental health, criminal law involvement, other); child expressing wishes (not to visit, or to visit more, not to have photos shared, or to have direct communication with the birth family); how the families would want to respond to new technology which might create additional options for connection.

Sample language in anticipation of the possibility of relationship separation follows:



Responsibility for Photo/Letter Updates in case of Separation or Divorce:

Should the adoptive parents ever divorce or separate, each parent shall individually provide their own photo/letter updates to the birthfather and birthmother through the agency, so that the responsibility is not left to one of the adoptive parents to provide all the updates, and so that the birthparents can get a well-rounded picture of how the child is doing with each parent.

Anticipating visits when Birthparents might not always be a couple: Visits shall occur with both birthparents present, or separately, on the same date, if the birthparents are separated and not on good terms with each other. The purpose is to minimize the need for the child to have to adjust/adapt to various changes in the adults' lives. If the visits with birthmother and birthfather are separate, the birthmother and birthfather will propose, to the adoptive parents, possibilities for one place and one date which will be mutually agreed to by both birthparents and the adoptive parents when the two visits will take place (e.g. one in the morning and one in the evening). If for any reason the adoptive parents separate, the same principles will apply. There will be an effort made to have the visits together, if at all possible; if not, the visits will be in a mutually chosen place and date, with times being on one date.

Creativity

One birthmother had a job that involved considerable travel. She asked that the adoptive family create a private, password protected, on line photo album so that, wherever she was geographically, she could access updated photos of the child on her smart phone. Sample language might state:

On Line Photo Album: The adoptive parents shall maintain a private online photo album account, where they will post photos of the child in an ongoing fashion, so that the birthmother & birthfather can view photos, online, as they wish. The adoptive parents shall post new photos to the online

account at least four times per year. The adoptive parents shall provide to the birthmother and birthfather the necessary account name, password or other information necessary to access the account. At this point in time, the understanding is that it will be a [BRAND NAME] account; but the parties recognize that, over 18 years, technology may change and so the agreed upon basic principle is that the families will create private access to an on-line photograph album that is periodically updated and available for the birthmother and birthfather to view from their computer or computers.

Accountability: When proposing a post-placement communication agreement, the plan is for both birth and adoptive families to be accountable to each other for following through with their commitments to each other. They should also be accountable to the adoption professional for keeping their contact information up to date.

Some states allow for agreements to be court enforceable and others do not. Whether or not an agreement is court-enforceable, it would be helpful if there is language that provides the following: A commitment by each family to keep their contact information up to date with each other and at least one adoption professional/entity (agreed to by both families); Each family would identify another friend or family member who has been a steady presence in their life whom the adoption professional could communicate with if contact with the family has been lost; A statement of conditions under which each family will promptly notify the other (e.g. death, hospitalization, criminal charges/incarceration, inpatient treatment, divorce, illness/incapacity of any member of the household/immediate family); How they will resolve matters of concern related to their communication, e.g. visits, what is mailed to the family, stated to the child (e.g. mediation or other mode of handling different perspectives); Ways to find each other if/when AP and BP lose touch over time, notwithstanding the identification of a family/friend contact; Agreement to communicate fully if/when the child has questions about their adoption or if the child has difficulties (emotional, academic, medical etc.); An agreed upon way for both families to obtain support around difficult disclosures of new information that may unfold in the future.



Summary

Open adoption is an unfolding process of increased awareness for adoptive and birth families. When discussing the idea of post-placement visits with prospective adoptive parents, I have noticed that it can be challenging for families to agree to visits when they have no idea what that experience might be like. A colleague, who is also an adoptive parent, once shared photos of a post-placement visit with me—with his kind permission, I shared these, in turn with a prospective adoptive family. The photos showed the family gathering in a park. There were photos of children running around, laughing, eating cookies and drinking some milk. The visit had been adapted to the child's age. There was no long line of medieval bugles heralding the birthparents' arrival. It was similar to getting together with cousins or other extended family during the course of a year. "I see," said the prospective adoptive family, "this helps."

The connections with birth family can meet a deep need. I remember the existential utterance of a teenager, who'd been adopted, who had grown up as an only child, upon meeting his half-brother for the first time. He was standing alone, a few feet from me, waiting for an elevator door to open. "I have a brother," he said dreamily as he faced the door, as if to himself. It was said into the ether. These are the moments that sometimes shift the axis of their world and deepen their sense of place in the universe. Post-adoption communication agreements help us to give children more of the connections that help them feel known, loved and anchored in their lives.

Implications for the Future of Adoption: Research

There are two areas that adoption professionals might research—one is the question of: “What benefits do children receive from open adoption arrangements and are some agreement provisions more helpful than others?” This is in keeping with the notion that it’s good to notice strengths and positives, not just listen for issues or difficulties. The second area adoption professionals might research might be, “Under what circumstances do those involved in open adoption arrangements not follow through consistently with the agreed upon terms?” A parallel question might be, “What shifts, changes, polishes or additions to open adoption agreements might best support compliance over the course of the adopted person’s childhood?” It is important to consider what kinds of circumstances might lead to non-compliance and what might be done, both clinically and legally, to anticipate and prevent such detours from agreements.

Implications for the Future of Adoption: Practice

While the work of most adoption professionals focuses on the pre-placement part of the process, the heart of all adoption is the life of the child. The focus should be on what works best for children and teens for the full trajectory of the childhood and adolescence periods. Given the current understanding—that open adoption agreements, when followed, can provide continuity, emotional comfort and connection and other good experiences and qualities to the child—the right to request a communication agreement (either in the birthparents’ state or the state/law of the prospective adoptive parents) should be a required part of education for both biological parents and prospective adoptive parents. However, it would be important to emphasize this opportunity for biological parents—often they are so grateful that another family is willing to raise their child as their own

that they feel apprehensive about asking for anything, much less an agreement having to do with the child. Given that the decisions made at this point will be the agreement (most likely) for up to 18 years (e.g. for a newborn), it would be important for expectant parent counseling to acknowledge this power differential and for there to be encouragement for biological parents to ask—not for what they want right now—but for more than what they imagine they might want 10 years from now—to maximize the chance that they won’t be disappointed later.

Implications for the Future of Adoption: Policy

Efforts to standardize adoption laws and policies have not met with much success over the decades. However, it would be important for legislators and policy makers to consider conflict of laws matters as they arise in interstate adoptions. Imagine this hypothetical: The biological parents live in State A and the prospective adoptive parents (PAPs) live in State B. The PAPs are, as typically the case, paying the bills of the various professionals. The PAPs want the adoption to proceed under the law of State B (with the biological parents submitting to the jurisdiction and laws of the PAPs’ state) because their laws are more favorable with regard to timing of termination of BP’s rights. The BP’s aren’t worried about the timing of the termination of their rights but they do want to have a court enforceable post adoption agreement and only their state allows for this; the PAPs’ state doesn’t yet have a law allowing for this. The question is—how does the decision-making proceed with regard to determining the law of the adoption and which law will apply for each component of that process? Who is informed of what, who has ancillary advice (e.g. separate counsel), and who has the option to press their interests—is this fully encouraged or not? Policy making should take into account the importance of making sure that the rights of biological parents are not weakened because they are not the ones paying the professional bills.

Author



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Marla Ruth Allisan JD, LICSW is the Founder of Full Circle Adoptions (of Northampton, MA and Portland, ME). During the twenty years she served as Executive Director of the agency (1996-2016), she helped families with 200 adoptions and helped many more families with their decision-making regarding child welfare and family building. Marla, together with her daughter, Annie Arrighi-Allisan (Mount Sinai medical student) has been helping develop a Nexus course (an ancillary educational program) for medical students by which they can be more familiar with adoption and other family building concepts (Medicine and The Modern Family). When not working as an attorney and clinical social worker, Marla is a published essayist (Family Therapy Networker, Lilith and others), blogger (Full Circle's "Adoptimal") and is a part-time exhibiting artist (www.figuresinflow.com). She can be reached at: maadoptionlaw@gmail.com. Marla is currently working as a psychotherapist dedicated to Harvard Law School.