

ADOPTION

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ADVOCATE

The Role of Facilitators in Adoption

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The landscape of adoption has changed dramatically in recent years. In the past, an expectant parent would most likely connect with an adoption agency in her area through print advertising or a referral from a medical professional. She would receive services that included face-to-face counseling, practical assistance with expenses as allowed by state law, and connections with community resources to meet needs such as medical care, transportation, and housing. The agency would show her profiles of prospective families that might match her wishes should she choose adoption. A social worker from the agency would come to the hospital to be of support to her after birth, assist her in interactions with the adoptive family and hospital staff, help her complete the necessary legal paperwork, and take custody of the child at discharge. From there, the birth parent would receive post-adoption counseling. After placement, the adoptive family would finalize the adoption in their state of residence.

Today, many expectant parents considering adoption connect with prospective adoptive parents through out-of-state entities—or facilitators—that they find online. Too often, these entities are unlicensed and unregulated intermediaries; they act as matchmakers only, not full-service agencies. The expectant parents receive no face-to-face counseling, and may not be apprised of the laws in their state or the state where the prospective adoptive parents reside. When the child is born, there is often a scramble to locate an adoption attorney or licensed adoption agency representative who can then meet with the expectant parent(s) for the first time and begin the counseling and legal processes; these vital services must be outsourced, because the independent facilitator is not licensed in their state and is therefore legally unable to provide these services. There can also be confusion as to which state's laws



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apply, because many states prohibit fees paid to unlicensed entities, meaning that adoptions arranged by facilitators cannot be finalized. Sometimes the placement does not go through, and both prospective adoptive parents and expectant parents can experience heartache and financial loss with no follow-up support services. Even when placements do succeed and are finalized, the lack of post-adoption support services can undermine the likelihood of adoptive family success as well as the birth parent's long-term wellbeing.

A facilitator is typically a person or an organization whose only task is to make an introduction between expectant parents and adoptive parents in exchange for a large, nonrefundable fee paid in advance. In some states, these facilitators are regulated, but in most states, they are prohibited. Expectant parents considering adoption as well as prospective adoptive parents should exercise great caution, as it can be difficult to determine whether an entity is licensed as an adoption agency or acting solely as a facilitator.

Some facilitators use terms that imply they are offering legal services, when in fact they are acting only as facilitators. A facilitator might even be a "licensed agency" in the state where their office is located. However, if they work with expectant parents and adoptive parents nationwide, they can then claim to act as a facilitator in all other states. This language is deliberately misleading and confusing for people seeking to make an adoption plan or adopt children. In addition, most facilitators are for-profit entities.

Risk of Adoption Failures and Disruptions

Michael R. Lackmeyer, an experienced adoption attorney in Texas, reported: "I would guess the rate of success in Texas is less than 10 percent for facilitators. I personally would never recommend them to a client." Lackmeyer shared one memorable case, involving an army major and his wife: "[The client] called me from Georgia; she was there to pick up a child in a facilitator situation. It failed. This was their second failed facilitator case, and the family was out \$22,000. I told her to apply with our agency upon return to Texas. She did, and within six months, we placed twin girls with them through our agency. That \$22,000 probably could have paid all or most of their adoption fee with our agency."¹

On its website, the American Academy of Adoption Attorneys (AAAA), a professional organization comprised of hundreds of attorneys with proven expertise in adoption, explains the dangers of using a facilitator:

¹ Conversation with attorney Michael R. Lackmeyer. January 27, 2014.

Adoptions arranged by facilitators can and often do fail for many different reasons. Some families who reside in states where payment to facilitators is illegal unwittingly engage and pay facilitators to match them with birth parents. Yet, prospective adoptive families often hire facilitators before consulting a knowledgeable adoption attorney who can help them avoid illegal payments that will impact the entire process and even the ability to finalize the adoption without running into legal challenges. These prospective parents are left distressed and financially drained when they learn that an adoption with the birth family cannot be finalized due to such an illegal payment. An adoption may be legally unfeasible due to the legal requirements of the birth parents' or prospective adoptive parents' states of residence. [AAAA] attorneys are frequently called upon by prospective adoptive parents or birth parents to salvage adoptions that are legally unfeasible because a facilitator or matching agency ignored critical state laws. These situations become financially prohibitive for the prospective adoptive parents and emotionally difficult for them and the birth parents, while the facilitator keeps its fee whether or not the match leads to an adoption.

Even in the states where facilitators are allowed to work, many of the matches they arrange do not result in adoption. Facilitators do not have the training, skill, or experience to ensure a safe and legal outcome. Many birth parents are left unprepared to part with their babies as they have not had access to counseling until too late in their pregnancies. Prospective adoptive parents require assistance from experienced adoption attorneys or licensed adoption agencies to have the match result in adoption.²

The National Council For Adoption urges both expectant parents considering an adoption plan and prospective parents hoping to adopt to work *only* with licensed nonprofit adoption agencies and attorneys—and even then to carry out their due diligence researching and selecting a fully qualified and experienced adoption service provider. While adoption facilitators often present themselves as “adoption experts,” they are typically unsupervised and unregulated, and may have little or no experience providing adoption services. They are not required to adhere to set standards in terms of education or best practices, and thus have little accountability when it comes to providing pre-adoption training and counseling or post-adoption services. The lack of a long-term promise for post-adoption services is particularly troubling, as these are known to be critical both to birth parent wellbeing and adoptive family success. These essential services are best provided by experienced, licensed adoption professionals who will promise to partner for the long-term success of a family and help meet the often unpredictable, long-term needs of children.

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² American Academy of Adoption Attorneys Statement on Facilitators. Retrieved online at: www.adoptionattorneys.org/refinery/cache/pages/aaaa-page/adopting-parents/facilitators.html

Lack of Counseling Services When Using a Facilitator

An important component of any ethical adoption placement is the provision of counseling services to the expectant parents. A qualified and thoughtful counselor's involvement can minimize the risk of adoption fall-throughs or disruptions, and ensure that there is never coercion or pressure placed on expectant parents. Professional, in-person counseling services as offered by knowledgeable adoption agency staff or licensed birth parent counselors differs significantly from the long-distance online or phone "support" typically offered by facilitators.

The counseling relationship is essential to helping the expectant mother consider her options and make an informed and noncoerced decision. An experienced, professional counselor can identify areas of concern that may impact a parent considering or pursuing an adoption plan. A counselor can also help birth parents and adoptive parents verbalize expectations regarding post-placement contact or openness in the adoption, and come to an agreement that all parties can honor and support. Counseling helps prepare expectant parents for the emotional impact of labor and delivery, and separation from their child if they do choose adoption. If a mother does choose to parent her child after giving birth, her counselor can serve as her advocate, helping to ensure that she is not pressured into the placement by distraught adoptive parents. Post-adoption counseling can help birth parents think back through their decision and process their feelings of sadness and loss. The counselor plays an important role with prospective adoptive parents as well, helping them to understand and respect the mother's wishes throughout the process.

Most states require a minimum amount of counseling be provided to expectant parents considering adoption. These requirements vary greatly, and some states give those considering adoption the ability to opt out of counseling. While some requirements for counseling are better than none, a one-time visit with a counselor cannot compare to an ongoing relationship with a trusted counselor. A competent, professional counselor must be invested in helping the birth mother with processing her grief post-placement, staying involved with her as long as she needs support. In her article "Birthparent Issues of Grief and Loss," Kris Faasse explains: "A birthparent who has relinquished her child can reconcile her loss, or adapt to it—but 'resolving' her loss or grief, coming to the end of it, will not happen. Just as she will never forget the child she placed, she will never stop having days or events that make her think of her child and wonder. Reconciling herself to the

loss means that she will be able to find a way to make peace with her decision and incorporate being a birthparent into her life and identity.”³

Expectant parents considering adoption and birth parents may not always realize the importance of counseling until it is too late and they have not received it. They may find themselves without needed resources, and have difficulty self-advocating. Co-author Teresa McDonough once received a call from a birth mother who had worked with a facilitator and received no pre- or post-adoption counseling. She called McDonough to request post-placement counseling six months after she had placed her newborn for adoption, stating: “I have not been able to leave my apartment since coming home from the hospital because I have been so sad. I did not receive any counseling through this process. I am not sorry I chose adoption, but I am sorry that I worked with someone through the Internet.”

In states where a birth parent’s living expenses may be paid by potential adoptive parents, the involvement of a professional counselor can also be invaluable. Many prospective adoptive parents have paid large sums in living expenses to expectant parents, only to have the placement fall through. In some cases there is the suspicion that the expectant parent never intended to follow through with an adoption plan, and these expenses are irrecoverable. An experienced adoption counselor or adoption attorney who has established a relationship with the expectant parent is often able to assess and manage issues such as the payment of living expenses in a way that offers more protections for the adoptive parent.

The Rise in the Use of Facilitators

In view of the risks involved, one would think that the use of facilitators would be declining, but that is not the case. In fact, more and more prospective adoptive families and expectant parents are using facilitators. There are many reasons for this. Proponents of the use of these facilitators or intermediaries would argue that the increase is due to satisfaction with their services. A facilitator can expand the pool of potential expectant parents who can be matched with an adoptive family, which is attractive to adoptive families. Also, in some cases, it is difficult for older and/or “nontraditional” families to meet the criteria established by local licensed agencies for being matched with an expectant family; this may lead them to choose a facilitator who will help them locate out-of-state expectant parents.

Some expectant parents considering adoption choose to work with facilitators out of a desire for privacy. Sometimes their prenatal and/or

³ Kris Faasse, “Birthparent Issues of Grief and Loss.” *Adoption Advocate* No. 58. April 2013. Retrieved online at: www.adoptioncouncil.org/images/stories/NCFADOPTIONADVOCATE_NO58.pdf

adoption-related expenses cannot be fully compensated according to the laws of their state. They may also value the increased pool of adoptive parents they have to choose from. Some birth mothers unwittingly work with a facilitator because they do not understand the differences between facilitators and agencies, and do not know that they are legally entitled to more comprehensive services. In situations in which a birth father disagrees with an adoption plan, a mother considering adoption might turn to interstate adoption with a facilitator, hoping to place the child without securing the father's consent.

Most would agree that online advertising has been a huge factor in the rise of facilitators. Facilitators typically have enormous advertising budgets, and pay top dollar for search engine optimization. As a result, an expectant parent or adoptive parent often finds a facilitator by performing a basic search online, before consulting with a licensed agency or experienced adoption attorney.

Many nonprofit adoption agencies are struggling to find the resources for search engine optimization and online advertising, as they cannot compromise the quality of services provided to adoptive parents and birth parents, and are reluctant to raise fees to cover rising costs. As one director of a small adoption agency in Pennsylvania notes, "The Internet has changed the face of adoption. Agencies have seen a decrease in pregnancy counseling clients because we cannot compete on the Internet. Women do not realize that they have local resources they can trust for counseling, placement services, and post-placement services." Online advertising makes it difficult to determine where the facilitating entity is located, what services are provided, and whether the entity is licensed to operate in that state.

One Virginia family that recently adopted a newborn through an adoption agency shared their experience of researching adoption on the Internet: "We began researching domestic adoption options. That was way more overwhelming than researching international adoption. We understand how people could feel very confused, lost, and not even know where to begin. In addition to what seemed like hundreds of agencies, there seemed to also be many groups that could provide help, but it was unclear what this 'help' actually entailed and also how they would actually find an expectant mom and match her with us. The overarching feeling that we had in doing this research is that these groups essentially prey on adoptive parents' feelings of desperation, fear, and anxiety. Their websites feature testimonials of families who finished the paperwork and homestudy in a matter of weeks and were matched immediately. We had the wherewithal to know that something like this was not worth our time or money—we wanted to work with a proper agency [that] followed the state laws, adhered to a clear

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process, and didn't make what felt like empty promises. We could definitely see how an adoptive family could throw a lot of money at a group like this, especially if they have been wanting to build their family for a long time and are feeling desperate."

The family had no regrets about choosing to work with their adoption agency. "We felt that our agency's due diligence to extensively counsel the expectant mother, even prior to her making a decision, is a model that other agencies should follow," they stated. "We think it helped her feel confident in her decision, which in turn helped us as the prospective adoptive parents feel more confident... As adoptive parents, it was most important to us that we felt our agency was being honest with us."

Inconsistency of State Laws

In a recent survey of adoption attorneys from 22 states, co-author and adoption attorney Karen S. Law found that state laws regarding facilitators vary widely.⁴ Most states mandate that only public agencies, licensed in-state or out-of-state private agencies, and attorneys can provide "child-placing services."⁵ Since facilitators typically do not fall into any of those categories, it would appear that to the extent that they are providing "child-placing services" in those states, their activities would not be lawful.

Many states, including Delaware, Illinois, New Jersey, New York, North Carolina, Oklahoma, South Dakota, Tennessee, Texas, Vermont, Virginia, and Wisconsin, regulate facilitators through laws which limit the expenses that can be paid. Since facilitators charge money for their services, and these fees have to be disclosed when the adoption is finalized by the prospective adoptive parents, the finalization may not be approved by the judge if a facilitator is used. Further, the Interstate Compact on the Placement of Children (ICPC) regulates placements of children for purposes of adoption across state lines. As ICPC offices often require an Affidavit of Expenses, a state which prohibits payments to facilitators may not approve the placement if one is used.

In some of these states where expenses are closely scrutinized—particularly Delaware, Illinois, New Jersey, and New York—enforcement is tight, and facilitators have a hard time doing business.⁶ In these states, any payment to a facilitator is illegal, and will result in adoptive parents not obtaining ICPC approval or finalization of the adoption. In other states, there is less oversight. Fees paid to facilitators are listed as "advertising" or "legal services," ICPC approval is granted, and finalization does occur. Also, if the

⁴ 2014 Survey of AAAA Attorneys: "Can Facilitators Operate in Your State?" Compiled by Karen S. Law. January 27, 2014.

⁵ The definition of "child-placing services" varies according to individual state law.

adoptive parents finalize their adoption in the state where the birth parent resides, the placement may still be permitted and ICPC would also most likely approve the case.

Facilitators do operate quite freely and openly in some states. In California, facilitators are licensed and regulated. California law requires that facilitators based there be fingerprinted, bonded, and registered with the Adoptions Branch of the state's Department of Social Services. Advertising rules apply as well.⁷ In other states, there are no practical restrictions on the use of an out-of-state facilitator; these states include: Pennsylvania, Washington, Kentucky, Mississippi, Missouri, Michigan, and Ohio, among others. However, if the fees paid to a facilitator are considered "excessive," an individual judge in any state might refuse to finalize the adoption.

Recommendations Given the Increasing Use of Facilitators

Better enforcement of existing laws: If a state such as California permits facilitators to operate, we would suggest strict enforcement of licensing and training requirements as well as advertising disclosure restrictions. If the state prohibits facilitators from operating, especially if this is accomplished through close monitoring of fees paid, more rigorous enforcement by the state Attorneys General and stricter oversight by ICPC offices would significantly limit the activities of facilitators in those states.

Advertising disclosure laws: We recommend both state and federal laws mandating that print and Internet advertising by facilitators disclose both the state(s) where the entity is located and whether they are licensed to operate in the state where the advertising appears. This would give prospective adoptive parents and expectant parents more information to decide whether to work with a particular entity. It would also ensure that individual state standards are met.

Research and due diligence on the part of adoptive parents: Prospective adoptive parents should check with state licensing to determine whether an agency or entity is a licensed child-placing agency. If it is an out-of-state entity, the adoptive parents should check with state licensing where the entity is located, and be certain that it has the ability to provide or arrange for all the services necessary for an ethical and successful adoption. Some adoptive parents will still choose to work with facilitators to expand their search for an expectant mother, but they must be aware of the risks and benefits involved.

⁶ In 2013, Illinois Attorney General Lisa Madigan contacted a dozen out-of-state facilitators and demanded that they cease and desist from operating in Illinois. Eleven of the twelve complied with this request. See www.npr.org/2013/10/29/241649188/illinois-files-suit-against-online-adoption-agency for more.

⁷ For more information, see: http://leginfo.ca.gov/faces/codes_displayText.xhtml?lawCode=FAM&division=13.&title=&part=2.&chapter=1.5.&article=

Full compliance with the ICPC: The Interstate Compact on the Placement of Children (ICPC) aims to safeguard children placed for adoption across state lines, with requirements for sending agencies and the receiving state's ICPC office administrator. Children can only be placed across state lines after the receiving state has determined that it does not violate their best interests. Prospective parents adopting a child from another state must ensure that their agency is capable of meeting and fully complying with all ICPC requirements.

Expectant parents must know their rights: Expectant parents should be aware that they will typically receive a higher level of service from an agency that has a physical presence in their state. Local agencies can provide in-person, ongoing options counseling from a social worker with knowledge of resources in the community, and can also ensure that the expectant parents' emotional, legal, and medical needs are met before they are called upon to select adoptive parents or make an adoption plan. Expectant parents may also be more likely to receive the information agreed upon about the child after the placement if an agency is used, and will know who to turn to if they need post-placement counseling. If expectant parents choose to work with a facilitator instead, they should request a higher level of service and expect in-person counseling by a licensed child-placing agency working with the facilitator. They should have the opportunity to meet with an attorney in their state well in advance of their child's birth and understand the laws in their state as well as the laws in the state where the adoptive parents reside. They should also have the opportunity to meet potential adoptive families before they select a family to parent their child.

Improved oversight of adoption fees: State laws should require full disclosure of *all* fees paid by an adoptive family for an adoption placement. There should be full oversight of these fees mandated by the state Attorney General's Office. State laws for limits on fees should also be enforced, and states with no limits should review their laws.

ABOUT THE AUTHORS

Karen Stoutamyer Law, an adoption and immigration attorney practicing in Virginia, is a fellow of the American Academy of Adoption Attorneys and a member of the American Immigration Lawyers Association. She represents birth parents and adoptive parents in private, agency, international, step-parent, and relative adoptions. She often speaks at national conferences on intercountry adoption issues, and has travelled with her family to work in orphanages throughout the world. She was designated as a 2013 Angel in Adoption by the Congressional Coalition on Adoption Institute.

Teresa McDonough, ACSW recently retired from her position as Director of the Domestic Adoption Program at America World Adoption. In her position at America World, she counseled pregnant women and adoptive families, and also worked in post-placement counseling. Teresa earned her Bachelor's Degree from the University of Notre Dame and her Master's Degree from Loyola University of Chicago. She has over 25 years of experience in pregnancy counseling and adoption.



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