

# CAFFA Connection

## Second Parent Adoption

*By Susan Frances, Esq.*

Second parent adoptions, also known as co-parent adoptions, are adoptions in which the parents are a lesbian or gay couple. 2012 is an exciting time to be a practitioner in the area of adoption law for gay and lesbian parents. The Illinois Civil Union Act, which became effective on June 1, 2011, has streamlined the procedural steps for a second parent adoption in counties that already performed such adoptions, and made such adoptions accessible in counties where this previously was not the case. Although many counties are still adjusting procedurally to the current law and couples will need to seek out a knowledgeable adoption attorney, lesbian and gay couples are now legally able to complete a second parent adoption in their home county.

*Who is in a civil union?*

Any couple who enters into a civil union in Illinois or a civil union, marriage or other legally equivalent relationship in another state or country after June 1, 2011, or who entered in a civil union, marriage or other legally equivalent relationship in another state or country before June 1, 2011, has their relationship legally recognized as a civil union in the State of Illinois.

*So how does a second parent adoption work?*

This depends on how the child enters the couple's life. Under the Illinois Adoption Act, a second parent adoption follows the same path of being either a related adoption or an unrelated adoption, just as all other adoptions. A related adoption means that the costs incurred, the documentation to be completed, and the statutory waiting period for entry of the adoption decree are less than for an unrelated adoption.

To complete an adoption as a related adoption, the child must be biologically related to one of the adoptive parents. The most common case is one in which a couple has decided to have a child together; one of the parents is the biological parent and the other parent is the non-biological parent. For a lesbian couple that has completed alternative insemination, the woman who carries the child is the biological mother while the other is the non-biological mother. For a gay couple using a surrogate, the donor for the surrogacy is the biological father while the other man is the non-biological father. In order to legally grant parental rights to the non-biological

parent, that parent needs to adopt the child. These families are already intact families and the adoption process is just a legal formality necessary to protect the legal rights of these families.

*What if we are a couple in a civil union and we are about to have a baby?*

The Illinois Civil Union Act has created an initial layer of protection for your family prior to the second parent adoption taking place. For a lesbian or gay couple in a civil union, the non-biological parent will now be added to the birth certificate at the time the child is born. The Illinois Department of Public Health Vital Records office ([www.idph.state.il.us/vitalrecords/index.htm](http://www.idph.state.il.us/vitalrecords/index.htm)) has information about the procedure to accommodate the naming of same-sex parents or co-parents on the child's birth certificate. You should also talk to the hospital where you will be giving birth to make sure they are up-to-date on the process for adding both names to the birth certificate. If you are a couple using a surrogate, make sure you work with an adoption attorney who is familiar with the requirements of the Illinois Gestational Surrogacy Act.

For several reasons, it is important for these couples to complete the second parent adoption even if both parents are listed on the birth certificate. The federal Defense of Marriage Act (DOMA), enacted in 1996, allows discrimination against same-sex couples. If the non-biological parent dies or becomes disabled or out of work, the federal government could contest the validity of the parent-child relationship and refuse to give benefits otherwise due to the child. DOMA also provides that states do not have to recognize the civil union of a same-sex couple even if the civil union is legal in the state or country where it was completed. This means that since putting one's name on a birth certificate as a co-parent is an administrative function that is derived from the couples' legal civil union, if the family moves to another state or country that does not recognize civil unions, then several things could trigger a legal battle. If the biological parent wants to dissolve the relationship or if the family requests state benefits, the biological parent or the new state or country may contest the legal relationship between the non-biological parent and the child. The parent-child relationship could be dissolved if it is secured only by what is represented on the birth certificate.

A good resource for additional information is Lambda Legal, one of the oldest national legal organizations whose mission is to safeguard and advance the civil rights of lesbians, gay men, bisexuals, and transgender people. See [www.lambdalegal.org/publications/fs\\_illinois-civil-union-law](http://www.lambdalegal.org/publications/fs_illinois-civil-union-law) for its information encouraging same-sex couples in a civil union to complete a second parent adoption.

For a non-biological parent who is named on a child's birth certificate, the county in which you reside may provide a modified procedure based on your status as a legal parent in order for you to complete your second parent adoption. A more efficient process has been developed in Cook County for couples in a civil union.

*What if we are a same-sex couple in a civil union whose child was born before the Illinois Civil Union Act took effect? What if we are a couple whose child was born after the Illinois Civil Union Act took effect but we didn't enter into a civil union until after our child was born?*

For both categories of couples, you are still able to complete a related adoption, as long as one of you is related biologically to the child. The Illinois Civil Union Act ensures that if you are a lesbian or gay couple in a civil union, then you are the step-parent of your spouse's child. So, if one of you is adopting the biological child of the other, you are able to follow the procedures for a related adoption just as a married heterosexual couple would follow for a step-parent related adoption.

*What if we are a lesbian or gay couple that has chosen not to enter into a civil union, and one of us wants to adopt the other one's biological child?*

The First District Appellate Court of Illinois ruled in 1995 that same-sex partners are able to adopt under the Illinois Adoption Act. This Act allows domestic partners to complete a second parent adoption<sup>1</sup>. Cook County was one of the few counties to actually provide a regular process for second parent adoptions and allow domestic partners to adopt each other's biological children without being married or in a civil union. Even with the passage of the Illinois Civil Union Act, couples should still be able to follow the previous procedures in their county for adopting each other's child without entering into a civil union. As some Illinois counties will be implementing new procedures with the passage of the Illinois Civil Union Act, it is best to check with an experienced adoption attorney in your county to determine how to proceed in this situation.

*What if we are a couple in a civil union who has been a foster family or taken in a child from an extended family member and we are adopting that child?*

Families who do not fall under the related adoption process, which means the child is either not related or not related closely enough to the couple to meet the related party definition of the adoption statute, are still able to complete a second parent adoption through the unrelated adoption process. This process involves a home study, terminating parental rights, and other documentation that make it a longer process than the related adoption. However, couples should not be deterred and should interview agencies and adoption attorneys until they find the agency and attorney with whom they are comfortable working. The Illinois Civil Union Act allows couples to legally adopt as co-parents. Previously, this process often involved separate adoptions by each parent or the ability of only one parent to adopt the child. Currently, individuals and private agencies may choose not to work with you, but the state foster system and the adoption courts statewide must recognize your relationship as a couple.

*So, we've completed our second parent adoption. Now what?*

Now, you are ready to move from the courtroom to the administrative office. First, you'll need to secure your child's new birth certificate. You or your attorney will send the Illinois Department of

Public Health Vital Records' Certificate of Adoption form that has been stamped in the county in which your adoption was completed to the Vital Records Department in the state where your child's birth certificate was issued. In Illinois and numerous other states, same-sex parents will then receive a new birth certificate for your child with each of you named as a co-parent.

Several states still have limited or no process for changing your child's birth certificate. Some states will add the second parent to the child's birth certificate, but will not modify the document to take into account that the parents are a same-sex couple. One of the mothers will be named under the father section, or one of the fathers will be named under the mother section.

Other states have no process for issuing a new birth certificate in a second parent adoption. Currently, Louisiana and Texas have refused to honor adoption decrees from other states and therefore have refused to add the second parent's name to the child's birth certificate. For a child born in one of these states, gay and lesbian parents need to make sure they have an experienced adoption attorney who can carefully word their adoption decree, as they will not receive a new birth certificate, and will need to use the decree for certain matters where a birth certificate would normally be used.

Once you have the new birth certificate, you or your attorney should get the numident data associated with your child's social security number updated at your local Social Security Administration office. This procedure associates the name and social security number of the adoptive parents with the child's social security number. If one parent dies or goes on disability this should speed up the process by which the child receives federal benefits. The Social Security Administration has issued a policy regarding this procedure at <https://secure.ssa.gov/apps10/poms.nsf/lnx/0110212200>.

*We have our child's new birth certificate and have updated the information associated with our child's social security number. Now what?*

While many attorneys would tell you that you are done, I believe that same-sex couples and their families need many layers of protection. I always suggest that now you need to complete an estate plan. This should include powers of attorney for each other, and possibly a trust to handle any inheritance you will leave for your child. It also involves naming a guardian for your child – a family member or a friend who will raise your child with the same values you have – and spelling out things like ongoing visitation with both parents' families. You took the time to protect your parent-child relationship by completing your second parent adoption; now take the time to protect your child if something should happen to you.

---

<sup>i</sup> *Petition of K.M.*, 653 N.E.2d 888 (Ill. App. 1995); reaffirmed in *In re C.M.A.*, 715 N.E.2d 674 (Ill. App. 1999)

---

*Attorney Susan Frances was awarded her Juris Doctorate from Southern Illinois University School of Law in 2002 and joined the firm of Jill M. Metz & Associates upon moving to Chicago in 2005. She practices adoption law and estate planning, primarily for LGBT individuals and couples.*

*The CAFFA Connection is the quarterly publication of Chicago Area Families For Adoption (CAFFA), an organization dedicated to providing information, education, and support to adoptive and pre-adoptive families.*