



INTERESTING, DYNAMIC, THE TENNESSEE ADOPTION CODE

Adoption is a microcosm of values, politics, psychology, economics, public policy, emotion and aggressively competing interests. It is interesting, dynamic, and, in the past three legislative sessions here in Tennessee, very active. Let's hit the high points.

2018

In 2018 the legislature responded to complaints that adoption was too expensive and complicated with the "First in Adoption Act." The "FIAA" contained many revisions, including: a new and much shorter surrender form; a shift of proof of willfulness in the abandonment ground; limiting the class of putative fathers to those who take some affirmative action; and removing men from that class whose sole qualification was that the birthmother remembered their name. The law now requires checks of out of state putative father's registries where available, closing two loopholes in dependency and neglect grounds for termination of parental rights that previously only applied to the unfit parent who tried, but not to one who disappeared. This expands venue for adoptions, permitting non-residents to petition for adoption in Tennessee in some cases. Finally, the law expanded the ground for severe abuse to abuse perpetrated against any child and not just the subject child or a sibling or household member. 2018 was a big year for adoption.¹

2019

The major bill in 2019 created legally enforceable post-adoption contact agreements or PACAs, another big deal. Previously, in Tennessee birth and adoptive families often agreed to post-adoption contact but there was no option to create an enforceable agreement.

The new law² is based in contract and makes all written and signed agreements for post-adoption contact between birth and adoptive parents legally enforceable unless they expressly say enforceability is not intended. Enforceable post-adoption contact agreements "PACAs" are the national trend but Tennessee's statute is exceptional in a couple of ways. It requires child-centered conflict resolution attempts before litigation and it guarantees birth parents a realistic opportunity to enforce the agreement even if they are poor. The pre-litigation conflict resolution costs are borne by the adoptive parents and the litigation cost of the all parties are to be apportioned by the court based on means and good faith. A concept that merits broader application.³

Another 2019 law is highly unpopular with guardian ad litem. It begins with prefatory language that adoption needs to be more affordable and then creates a rebuttable presumption that the GAL's fees be divided between all parties, that any indigent parties portion be paid by the AOC, and if any party is indigent, the GAL calculate the fees for all parties at the AOC rate.⁴

A big clean-up bill was also passed in 2019, Public Chapter 36. The law requires that people, usually birth mother's, must disclose certain information to adoption professionals or be subject to criminal penalties. In 2019 the identity and whereabouts of a biological parent was removed from the list. Naming putative fathers and legal parents is still required, but because under the FIAA being a biological but not a putative father no longer elevates the man to the class of those whose rights must be terminated, the mother can now keep that information private without criminal implications.

Judges were given the authority to waive responses to out of state putative father registry checks when the other state has a registry but isn't able to process requests from Tennessee petitioners in a timely way. The requirement of out of state checks was removed altogether for termination of parental rights cases without adoptions. Some typos were

fixed in the 2018 surrender form, and an express statement was included that proof that a parent is dead satisfies the requirement to terminate that parent's rights.

In a bill primarily related to the state child welfare system, the definition of severe child abuse was expanded to cover a parent whose child under age 8 tested positive for illegal drugs.⁵ Sadly most attorneys who work regularly in juvenile court have had at least one case like that, as drugs continue their war on Tennessee families.

2020

2020 arrived with a political bang in Tennessee adoption. Church affiliated agencies in several states, including Tennessee, passed laws to permit private agencies to discriminate guided by their, "religious beliefs or moral convictions." As a practical matter, Tennessee's church-affiliated adoption agencies have always discriminated for any number of reasons and there was no promising movement afoot here to stop them. The law does not have a stated target.

The news coverage indicated that the law's target was the LGBT community, who is overrepresented as foster parents nationally. Knoxville is home to many adoptive families headed by same sex parents. They were the primary target. But the law is plenty broad enough to permit many other kinds of discrimination, like leaving out abortion when counseling a woman about option for an unplanned pregnancy, excluding prospective adoptive parents of other faiths, or no faith, and of the agency's faith who are not faithful enough, discrimination against single parents, working mothers and divorced people. Tennessee's private adoption agencies' policies are all over the board. All these kinds of discrimination are practiced here, or have been in the recent past. As state child welfare functions are increasingly privatized, including to church-affiliated agencies, this is a legal issue that we will see again.

2020 also saw passage of some technical bills including clarifying which guardian's rights needed to be terminated and which did not, and simplifying the calculation of the time period used to determine abandonment for those who are or have recently been incarcerated. Under the original calculation, it was possible to be in and out of jail so frequently that an abandonment period could not be calculated so abandonment could not be proven. At least on that point of law, a parent can no longer win by being extra bad.

Consider yourself current until our representatives reconvene in Nashville.

Side note from Dawn

The best of these bills were created and driven by ordinary Tennessee lawyers, often working together on a code they know well. Next time you find yourself frustrated yet again by a state statute that is unclear or just wrong, draft something better, phone a few lawyer friends and a legislator and improve the pond we all swim in. It is satisfying work.

¹ See *TBA Journal*, July 2018 "Tennessee's New Adoption Law" by Dawn Coppock and Mike Jennings for more detail on the First in Adoption Act.

² T.C.A. §36-1-145

³ See *TBA Journal*, May 2019 "A New Concept," by Mike Jennings and Will Vetterick for more a more detailed discussion of the PACA statute.

⁴ T.C.A. §36-1-146

⁵ T.C.A. § 37-1-102(b)(27)

THE EROSION OF LAWYERS IN PUBLIC OFFICE AND CORRESPONDING DETRIMENT TO SOCIETY

Introduction and the Diminution of Lawyers in American Political Office

While lawyers constitute less than 0.5% of the total U.S. population,¹ lawyers have historically dominated American political offices.² Notably, over half of all Congressmembers, presidents, and vice-presidents have been lawyers.³ More obviously, while not a formal requirement, all Supreme Court Justices have been lawyers.⁴ This trend holds true for state government positions as well.⁵ However, in recent years, the number of lawyers-politicians has plummeted.⁶ This Article explores the recent diminution of lawyers in public office. Meanwhile, it emphasizes the importance of the lawyer-politician.

Scholars and practitioners postulate several reasons for the recent decline of lawyers in public office. Former Knoxville City Councilman and mayoral candidate Marshall Stair believes the public simply no longer perceives lawyers in a favorable light.⁷ Instead, Councilman Stair asserts the public considers lawyers to be untruthful, unlikeable, and overreaching, and the public instead prefers for “outsiders” to serve as public officials.⁸ Recent presidential elections support this position. Indeed, since the mid-1970s, only two presidents have been lawyers.⁹ Jimmy Carter was a farmer; Ronald Reagan was an actor; and George H.W. Bush, George W. Bush, and Donald Trump were businessmen.¹⁰ Indeed, only Presidents Clinton and Obama were lawyers.¹¹ Yet, at the same time, there is evidence that the existence of fewer lawyers in office has caused the public to disfavor government.¹² Specifically, there is a steep negative correlation between the number of lawyers holding Congressional positions and public distrust in government.¹³

Several other factors have diminished the number of lawyers in public office. Education and licensing requirements make it more difficult for individuals to become lawyers at the outset.¹⁴ Unlike historically when the legal profession had no formal education requirements (or otherwise when merely a bachelor's degree was required), individuals today must acquire a J.D. degree to obtain a license to practice law.¹⁵ Moreover, extensive compensation in private practice

yields an unacceptably high opportunity cost for lawyers who would otherwise run for public office.¹⁶ This opportunity cost is worsened by the fact that politicians receive extremely low salaries.¹⁷ Likewise, Councilman Stair posits many lawyers refrain from seeking office because of the daunting time commitment that corresponds with holding public office (especially while also maintaining an active law practice).¹⁸ What is more, lawyers must discontinue relationships with clients, if not completely suspend their practices, to hold certain offices.¹⁹ Finally, some

lawyers may not seek office to avoid the stress that accompanies running a campaign and holding a public position.²⁰

The Importance of the Lawyer-Politician

Unfortunately, the erosion of the lawyer-politician causes detriments to society.

Councilman Stair maintains that lawyers' suitability and training for positions of public offices is “common sense.”²¹ Specifically, with respect to legislators, legal training provides the skillset required to draft laws and ensure they comport with public policy.²² More principally, the analytical skills that accompany a law degree prepare a lawyer “for a career in politics or government [where one's] job is making and interpreting laws”²³ Likewise, the manner in which a lawyer advocates for a position on behalf

of his or her client mirrors the manner in which a lawyer holding public office advocates for a position for his or her constituents.²⁴ As Knoxville City Councilman Andrew Roberto describes, attorneys can quickly digest and explain obscure legal principles, and Councilman Roberto himself has utilized his legal experience when responding to policy issues impromptu during public meetings.²⁵ Similarly, United States Attorney Douglas Overbey explains that lawyers' training allows them to “look at issues from all sides” and make rational decisions considering countless competing viewpoints.²⁶

Nevertheless, some lawyers who might otherwise run for public office choose not to do so because they are untrained in the intricacies of successful campaign management. Fortunately for these lawyers, a few states' bar associations—including the Tennessee Bar Association—recognize the benefits that flow from lawyers holding public offices,

