



What to Expect From an Adoption Attorney

*A Guide for Prospective
Adoptive Parents in
New York State*



The Legal Relationship of Adoption

Adoption creates a legal relationship of parent and child. After the adoption is final, as the adoptive parent you assume all the rights and responsibilities for the child that a birth parent would have. The child receives the same rights and responsibilities as would any child who was born to you. Until the adoption is finalized by the Court, the local social services district, foster care agency, or adoption agency remains the child's legal guardian and will continue to be responsible for the child.

Filing an Adoption Petition

It is your responsibility to file an adoption petition with the Court to begin the legal process of adoption. By petitioning the Court, you are asking the judge to make the adoptive relationship final by issuing an order of adoption. You are highly encouraged to have an attorney prepare this petition, along with the additional supporting paperwork, and file the documents with the Court on your behalf.

Hiring an Adoption Attorney

The local social services district, foster care agency, or adoption agency does not assign an attorney to you. You are free to hire any attorney you wish to represent you in the adoption. While your caseworker may help you in choosing an attorney by providing you with a list of names of some adoption attorneys, it is your choice which attorney, if any, you choose to help you.

Besides choosing from the list of attorneys the local social services district, foster care agency, or adoption agency may provide, you may also wish to consider the following options:

- ✓ Ask other adoptive parents for recommendations and/or contact a local foster parent support group or board for suggestions.
- ✓ Hire an attorney from the “Pro Bono Adoption Project” (for NYC cases only) or another volunteer lawyer project. (A Pro Bono attorney does not charge attorney fees for services provided.)
- ✓ Contact the local Bar Association referral service and request names of attorneys who have experience finalizing adoptions for children in foster care.
- ✓ Contact the New York State Bar Association Lawyer Referral Service at (518) 463-3200 or www.nysba.org.
- ✓ If you are a member of a union, you may wish to inquire whether you are entitled to an attorney through your union to represent you in the adoption.
- ✓ Contact an attorney that you have done business with in the past and ask him/her to refer you to an adoption specialist.

Can any Attorney Help Me with the Adoption?

Adoption is a specialized area of law. Before you hire any attorney, you should ask about his or her prior experience in handling foster care adoption cases. This process can be very different from that of an international adoption. You can ask how many completed adoptions he or she has been involved in. By getting a recommendation from the foster care or adoption agency, another adoptive parent or foster parent group, you can be more confident that the attorney you select has this particular experience. You should feel comfortable asking any attorney you meet with for client references. In the end, the attorney you choose should be one with whom you feel comfortable discussing your issues, and who makes you feel comfortable that he or she knows how to move the case along promptly.

Paying for an Attorney

You are responsible for your attorney's fees. However, if the child you are going to adopt has special needs (including a child who has been determined eligible for adoption subsidy, as many are), you may be entitled to reimbursement for “nonrecurring adoption expenses” and may use these funds to help you in paying for adoption-related expenses, including your attorney fees. With your agreement, the payment is often made directly to the attorney by the local department of social services.

If you retain an attorney from the NYC “Pro Bono Adoption Project” or other volunteer lawyer project, you will not be charged a fee for their services. This will often allow you to spend the “nonrecurring adoption expense” funds on some other expense you may have with the adoption, such as travel expenses.

Signing Retainer Agreements

Once you choose an attorney, he or she may require you to sign a “Retainer Agreement,” which is a legal document that explains your rights and responsibilities in the attorney-client relationship. This will often include details about all costs and fees anticipated by the attorney, and how the attorney expects to be paid.

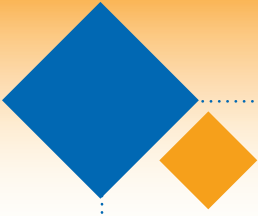




Client's Rights

Once you have retained an attorney to represent you, you should expect:

- ◆ **to be treated with courtesy and professionalism.**
Your attorney and the other attorneys and personnel in his or her office should treat you with the same courtesy as he or she would any other client. You, in turn, are expected to treat your attorney and his or her staff with courtesy and consideration.
- ◆ **your attorney to represent your interest above all others.**
You are entitled to your attorney's independent professional judgment and undivided loyalty, uncompromised by conflicts of interest. Your attorney is obligated to work at all times in your best interests, even if your interests conflict with those of the agency involved in the adoption.
- ◆ **to meet with the attorney in person.**
You should expect to meet with your attorney face-to-face before you hire him or her. This meeting should be an opportunity for you to decide whether you are comfortable with the attorney and feel confident that he or she can do the job. You may use this initial meeting to provide him or her with the details of the case, or you may schedule another time to meet with the attorney to go over the details of your case. You should expect to meet any staff in the office that may contact you to help the attorney prepare the documentation, and have them describe their role to you.
- ◆ **for your business to be kept private.**
All dealings with your attorney should be kept private and your confidences maintained to the extent permitted by law. You, in turn, are expected to be truthful with your attorney, and to provide all information and documentation requested to enable him or her to competently prepare your case. You are also expected to inform your attorney of all relevant facts or circumstances in your particular case, even if you believe that those facts may be harmful to your case or unflattering to you.
- ◆ **a quick response.**
Your attorney should respond to your questions and concerns promptly and return your telephone calls within a reasonable time frame. You, in turn, should return your attorney's telephone calls promptly and provide him or her with any requested information promptly.
- ◆ **to be kept informed of the status of your case.**
Discussing the adoption process and its various stages with your attorney will better enable you to monitor your case. In the stage prior to the filing of the adoption petition, your attorney, with your help and that of the local social services district, foster care agency, or adoption agency, will be required to gather numerous documents and other information to submit to the Court along with the adoption petition. After the adoption petition is filed, the Court will review your case and communicate with your attorney within certain time frames regarding the status of your case. After reviewing your case, the Court may request additional information. Your attorney should inform you if this occurs. He or she may also request your help in obtaining any additional information requested. You should be prepared to assist him or her so that the information can be provided to the Court promptly.
- ◆ **to discuss how long the process might take.**
While neither your attorney nor the local social services district, foster care agency, or adoption agency will be able to predict exactly how long the process will take, they should be able to estimate the amount of time it will take to complete the various stages, such as gathering all of the information and documentation required to submit to the Court with your adoption petition, obtaining any additional information the Court may request, as well as the amount of time the Court will need to review your case. You should discuss these time frames with your attorney. You have the right to follow up with your attorney and the local social services district, foster care agency, or adoption agency at any time to make sure everyone is doing his or her part to finalize the adoption as quickly as possible.
- ◆ **to express your concerns and complaints.**
If you are not satisfied with how your case is being handled, you should be able to express your concerns and complaints to your attorney, the local social services district, or your foster care or adoption agency without fear of penalty.
- ◆ **to have the right to fire your attorney.**
If you cannot resolve your differences with your attorney, you have the right to discharge him or her. Court approval may be required in some matters, and you may have to pay the attorney for services he or she provided in your case up to the point of discharge. You should be aware, however, that changing attorneys while the case is pending may result in delaying your case.
- ◆ **to have your case completed in full.**
In many instances, certain tasks may be the responsibility of the attorney after the adoption is finalized. These may include filing paperwork for the child's new birth certificate or a new or revised social security card, or forwarding his or her itemized bill to the social services district for processing. However, in certain counties, the Court or the agency may do any or all of these tasks. You should be told what tasks need to be completed after the adoption is final, who is responsible for completing each task, how long it should take, and how you will be notified that the task has been completed.



Contacting Your Lawyer

Record your lawyer's contact information below.
Keep this information up to date for easy reference.

Name

Address

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City..... State Zip

Phone Number

Fax Number

E-mail Address



The pamphlet is a product of the Adoption Now Workgroup. This multidisciplinary collaborative workgroup was formed as a result of the initiative of Chief Judge Judith Kaye of the NYS Court of Appeals to bring together Commissioner John A. Johnson, New York State Office of Children and Family Services, and the Commissioner of New York City's Administration for Children's Services, then William Bell and now John Mattingly, to identify and resolve systemic barriers to achieving timely permanency for children who have been freed for adoption yet linger in foster care. The workgroup is composed of representatives of the courts, Office of Court Administration, Office of Children and Family Services, Administration for Children's Services, and other local social services district personnel.

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New York State Office of Children & Family Services

Capital View Office Park
52 Washington Street
Rensselaer, NY 12144

Visit our website at:
www.ocfs.state.ny.us

For child care and adoption information, call:
1-800-345-KIDS

To report child abuse and neglect, call:
1-800-342-3720

For information on the Abandoned Infant Protection Act, call:
1-866-505-SAFE

State of New York



Pursuant to the Americans with Disabilities Act, the New York State Office of Children and Family Services will make this material available in large print or on audiotape upon request.