Freeing a Child for Adoption II: Surrenders and Adoptions
NYSCCC Annual Conference, May 8, 2010

CURRENT LAW ON CONDITIONAL SURRENDERS

By Margaret A. Burt

Procedures to do the conditional surrender

- Surrenders of children to agency for adoption can contain conditions; without any doubt this is a "legal" procedure
- Must be in writing and on state mandated forms - OCFS forms consist of both the surrender and a terms addendum for both judicial and extra judicial
- If someone is designated to adopt, must be person who is "certified or approved foster parent" or "agency has fully investigated and approved such person as an adoptive parent"
- Must have everyone agree and sign to the terms – includes anyone designated to adopt, birth parent(s) who is surrendering, someone from agency, law guardian(s), and child over 14 if any terms re sibling visits
- Can be terms of contact with children who are siblings and half siblings – enforced only if children over 14 willing
- What about attorneys for foster/adopt parents?
- Judge must make a ruling that the terms are in child's best interests – hearing? Judge can refuse to allow the conditions, parent does not have to surrender if Judge will not allow conditions
- Everyone gets a copy

Procedures at the adoption if surrender was conditional

- Adoption papers to the court have a copy of the terms attached
- Court must be made aware of terms – likely to be the same Judge who took the surrender, if not, judge may want to know what is happening with the agreement
- Adoption order and second order that incorporates terms and incorporation order (OCA forms 13-A and 14-A) are issued – incorporation order is sent to birth parent, birth parent lawyers and law guardian so that they know child has been adopted and terms are included in the adoption orders.

Procedures if there are problems BEFORE the adoption is finalized

- If there is a "substantial failure of a material condition" then the agency must notify the birth parent (unless they waived such notification at the surrender) the law guardian and the court within 20 days
- Within 30 days, agency must file a petition under FCA 1055-a and serve everyone (again except parent if they waived at surrender) to review the failure and hold a hearing "if necessary"- OCA form SURR-7
- If agency fails to file petition, parent or law guardian can file within 60 days
- So far the courts have permitted birth parent to withdraw the surrender in these instances – perhaps not if agreement says otherwise – in some cases, the parties have renegotiated the terms of the surrender and in other cases the agency has responded to the withdrawal of the surrender with a new TPR
- If a party thinks that the conditions are not being honored and the child is not yet adopted, can bring an action to enforce the terms
- The court 'shall enter an order enforcing communication or contact pursuant to the terms and conditions of the agreement unless the court finds that enforcement would not be in the best interests of the child."

Procedures if there are problems AFTER the adoption is finalized

- Any party can file for enforcement after the child has been adopted under DRL 112-b and the court shall enforce the contact or communication if the terms were incorporated in the adoption and were found to have been in the child best interests at the time of the surrender. OCA form 17
- Enforcement is only in Family Court
- The court "shall enforce" unless it finds that enforcement is now not in the child's best interests – seesm like the court can not modify the terms but perhaps the parties can agree to modify them
- The failure of any party to obey the terms and conditions will not be grounds to set aside an adoption or allow the birth parent to withdraw a consent. There have been very rare instances of proof of fraud, duress or coercion which could result in setting aside an adoption

Conditional Surrenders of Foster Children
By Margaret A. Burt, 2010

THE LAW

Chapter 3 of the Laws of 2005 clarified once and for all that a birth parent can legally surrender a child to an agency for the purposes of adoption with conditions naming the adoptive parents and/or for contact in some form after the surrender and adoption. Although the law now specifies procedures for enforcement of the terms of the agreement both before and after the adoption finalization, there are issues that remain unclear until there is more case law. Specifically of concern is the question of the ability of the parent to revoke the surrender prior to a finalization if there are problems with the terms as well as the ability of the court to order modifications to the terms before or after the adoption. A review of some of the caselaw PRIOR to the new bill may shed some light but it will remain with the courts to rule as to the viability of these older decisions given the new statute.

THE CASE LAW BEFORE THE STATUTE

The limited number of published cases in this area suggests that the vast majority of conditional surrenders have gone quite smoothly regarding enforcement. It is also possible that some birth parents are not attempting the contact that had been agreed upon at the time of the surrender.

In 1993, Queens County Family Court reviewed the issue of conditional surrenders in **In Re Custody of Alexandra C.,** 157 Misc2d 423, 596 NYS 2d 958 (Queens County Family Court 1993) Although predating the perm law by more than a dozen years, the court allowed a birth father to surrender his daughter, who was then in foster care, adding agreed upon terms of ongoing, albeit limited visitation. While indicating that it would be helpful for more statutory guidance, the court found that a biological parent could condition his surrender on some specified contact with the child that would survive the adoption. Further the court stated that if the biological parent were denied the specified visitation, the biological parent would retain standing to return to court and seek enforcement of the visitation conditions. The court stated that the biological parent who sought such enforcement after the adoption would not have an automatic right to the visitation, nor would the biological parent be able to void the surrender or the adoption. The biological parent who claimed that the terms of the visitation were not being honored would simply be able to file in court and the court would review the situation at that time based on the current best interests of the child. This case simply seems to foreshadow what is now statute.

The First Department decided a very important case in 1995 that seems to be the model for the 2005 statute. In **Matter of Gerald** 211 AD2d 17, 625 NYS2d 509 (1st Dept. 1995) the court reviewed a conditional surrender situation involving a child in the Bronx. Here the lower court had refused to allow a biological mother to surrender her foster child with conditions for minimal visitation, finding that the law did not allow for such conditions. The Appellate Court reversed the trial court and sent the matter back to Family Court to review the specifics of the conditions

that the parties wanted. The Appellate Court found that the lower court should not refuse a proposed surrender of a foster child out of hand simply because the parent wished to condition the surrender with some visitation. The court ruled that if the lower court found that conditions of visitation to the surrender were in the child's best interest, the court should allow the conditional surrender. Most importantly, the court specifically stated that if a foster child were surrendered with visitation conditions, the biological parent wouldn't have an automatic right to visitation. If the biological parent brought a post adoption petition seeking visitation that she claimed was denied by the adoptive parents, that the court would then hear the issue and decide on the visitation based on the then current best interests of the child. Again this case law is basically moot given that its decision now seems incorporated in the statute.

In 1997 two more Appellate Division cases discussed conditional surrenders, each one again ruling that biological parents could sign surrenders of foster children with conditions for visitation. Each case also ruled that if the parent sought enforcement of the visitation rights after the adoption, that the court would give the biological parent standing. However, the actual decision would need to be based on the child's current best interests.

Matter of Patricia YY., 238 AD2d 672, 656 NYS2d 414 (3rd Dept. 1997), **Matter of Sabrina H.,** 245 AD2d 1134, 666 NYS2d 531 (4th Dept. 1997) Prior to the statute being passed, three out of four of the Appellate Courts had ruled that if there are problems after the adoption, the adoption would not be void nor the surrender vacatable. The birth parents would simply have standing if they chose to bring a post adoption action and current best interests would be the measure. This all seems to be clearly picked up now in statute.

What about an enforcement procedure brought after the adoption has occurred – how will the court look at the best interests question? A couple cases had been decided before the statutory change in 2005:

In **Matter of Ronald D., Sr. v Jane Doe, as Adoptive Parent of Crystal,** 176 Misc2d 567, 673 NYS2d 559 (Family Court, Jefferson County 1998) a biological father sought enforcement of the terms of his conditional surrender of his foster child. The conditions did not involve visitation. Instead, it had been agreed in the surrender that the father would receive every year a photo of the child, and progress reports and report cards. After the child was adopted, the biological father returned to court, claiming that he was not receiving these materials. Apparently the adoptive parent had not been made aware of the agreement. The court ordered that the materials be made available to the birth father. He had specifically conditioned his surrender on this agreement and there was no indication that furnishing the materials now would be violative of the child's best interests. Since the agency had accepted the surrender with these conditions, it became their obligation to inform any adopting parent of the conditions. The adoptive parent must obey the conditions given the agreement and the fact that providing the materials would not affect the child's interests.

In **Matter of Daijuanna Priscilla M.,** 290 AD2d 298, 735 NYS2d 544 (1st Dept. 2002) the birth mother had surrendered a foster child for adoption with the condition that she have visitation.

Some years after the adoption, the adoptive parent refused to provide the visitation when the biological mother sought it. The adoptive parent was concerned that the biological mother was using drugs and that she had gone several years without actually visiting. The biological mother returned the matter to court arguing that the surrender should be voided as fraudulent or alternatively that the visitation should be enforced. The Appellate Court noted that the birth mother had an attorney when she surrendered. She had been specifically told by the Judge at that time that the visitation after the adoption was not enforceable per se but would depend on the child's continuing best interests. The court found that the surrender was not fraudulent in that at the time all the parties understood and intended to abide by the conditions. The court went on to find that although the mother had standing to seek enforcement of the visitation, current best interests of the child governed the enforcement. Based on expert testimony provided by the child's therapists, it wasn't in the child's best interests to enforce the visitation.
This case is an excellent illustration of why a clause should be negotiated that ends the contact provisions if the birth parent does not seek the contact for a specified time period.

What about before the finalization? Will the court allow the birth parent to revoke the surrender if there are problems with the terms before the child is adopted?

In **Matter of Jesse F., 193 AD2d 839, 597 NYS2d 511 (3rd Dept. 199**3), the biological father of a teenager in foster care had signed a surrender, conditioned on some limited visitation with the boy. Before an adoptive home was located for the child, the visitation with the father became problematic from the agency's point of view. The agency, anticipating the father's complaint, did not themselves end the visits but brought an action in court seeking a modification of the terms of the surrender by specifically ending the visitation and arguing that in was not in the child's best interests for the visits to continue. The Appellate Court ruled that in signing the surrender, the father had given up his parental rights to contact and that the conditions to the surrender simply allowed the court to review the situation later under a current best interest's test. The father was not allowed to void the surrender but was permitted to argue as to the visitation being in the child's best interests. Given proof presented by experts of the child's difficulties with the visitation, the court limited the visits to only when the agency felt it was appropriate for the child. Note that this type of situation may or may not be seen as a "failure of a material condition" situation. It may not still be valid case law given that the statute now says that in this situation the court "shall enforce" the terms but says nothing about being able to modify the terms.

Also in a couple other reported cases of this situation, the courts did allow the parent to revoke the surrender when prior to the finalization the terms became problematic. **Matter of Shannon F. and Kelly P.,** 175 Misc. 2d 565, 669 NYS2d 476 (Family Court, Richmond County 1998) **Matter of Christopher F.,** 260 AD2d 97, 701 NYS2d (3rd Dept. 1999), and **Matter of William W.,** 188 Misc2d 630, 729 NYS2d 259 (Wayne County Family Court 2001) The **Christopher F.,** case specifically held that a surrender can be revoked by the birth parent, pre-adoption, if the birth parent no longer wishes to surrender the child when there is a failure of an identified person to be able to adopt.

The following cases have been reported since the effective date of the statute:

Matter of TR and NS 807 NYS2d 837 (Chemung County, Family Court 2005) - here the surrenders of two children had been conditioned on specified persons adopting and now those persons were not willing to adopt. The Family Court allowed the birth parents to revoke the surrender finding that the agreement conditions could not be honored and the surrenders were not valid. The court found that the new legislation did not require the court to use "best interests" as the test where there was a substantial failure of a material condition

Matter of Carrie W. 37 AD3d 1059, 830 NYS2d 406 (4th Dept. 2007)
A Cayuga County mother had surrendered her rights to her three children with an agreement that the children would be adopted by the paternal grandfather and his wife. The agreement contained a clause that she would be allowed to visit the children every week as long as she did not miss two visits within a 12 month period unless there was a crisis beyond her control. The birth mother filed a petition to enforce the visitation and claimed that the grandfather was not permitting visits. The mother however had not visited the children in a year and the mother had not alleged any "crisis beyond her control". Further her petition did not allege why the visitation would be in the children's best interests. The Fourth Department found that the Family Court had properly dismissed the petition without a hearing.

Matter of Rebecca O. 46 AD3d 687, 847 NYS2d 610 (2nd Dept. 2007)
In 2004, a biological mother surrendered her child for adoption with conditions that she be allowed to visit 4 times per year and also be able to send cards, letter and pictures. Six months after the surrender the child was adopted and the contact attempts were rebuffed. The birth mother sued the adoptive mother in Suffolk County Family Court for enforcement of the terms of the contact and under a best interest analysis; the Family Court ordered that the contact should be permitted. The adoptive mother appealed to the Second Department. The Appellate Court found that the new conditional surrender law gave the birth mother standing to seek enforcement of the surrender terms and that best interests of the child should be the standard for enforcement. The record supported that the contact was in the child's best interest and the adoptive mother must provide the contact.

Matter of Jack 844 NYS2d 855 (Family Court, Monroe County 2007)
In a private adoption agency surrender, Monroe County Family Court refused to accept the extra judicial surrenders of the birth parents. The court found that the surrenders did not encompass the entire agreement of the parties in that there was some post adoption contact agreed upon that was not adequately described. The surrender forms used were not in compliance with the required procedures of SSL 384. The parties wanted the agreement for post adoption contact to be exempt from court review or enforceability. The intention of the legislature is to have judicial scrutiny of post adoption agreements and have such agreements reviewed by a best interest analysis before being approved of by the court. The parties were ordered to submit surrenders with conditions clearly outlined for the court to review.

Matter of Summer A., 49 AD3d 722, 854 NYS2d 195 (2nd Dept. 2008)

In a private adoption matter, the Second Department stayed and then reversed a Suffolk County Family Court decision to return a child to the birth parents after they revoked their extrajudicial consents to the adoption. A birth parent can revoke extrajudicial consents but if opposed by the adoptive parents, the court's decision is based on best interests only. The birth parents have no superior right to custody. Here the Second Department disagreed that it was in the best interests of the child to be returned to the birth parents when they revoked about a month after they had signed extrajudicial consents. The adoptive parents had lied on their adoption certification paperwork and did not admit the adoptive father's recent use of cocaine however they provided a much more stable home for the child then the birth parents. The birth mother had eight other children from three different fathers and also had an involved child protective history. Her children had been sexually abused by two different fathers and had been in foster care. She had surrendered two of her children after the history of abuse. The birth father had four other children from three mothers and had not remained involved with or supported at least some of those children. The child's best interests will be served by being adopted by the prospective adoptive parents.

Matter of Heidi E. v Phyllis G., ___AD3d___ dec'd 12/3/09 (3rd Dept. 009)

A Warren County birth mother filed an enforcement petition under DRL §112-b for visitation with her two children who had been adopted. She has signed a conditional surrender to receive annual photos and an annual visit. The agreement also stated that the visits would be suspended if they were deemed detrimental to either child by a therapist. Family Court ordered a therapeutic visit with the birth mother and a counselor but the children apparently refused to attend and the visit did not take place. The lower court did receive an evaluation of the children and dismissed the petition without a hearing. The birth mother appealed to the Third Department who remanded the matter for a hearing. The oldest child had since turned 18 and so issues regarding her are now moot. But as to the younger child, the court should hear testimony to determine if visitation is or is not in the child's best interests and should not base it's ruling on unsworn statements made at court appearances and the psychological report.

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CONDITIONAL SURRENDERS
ISSUES TO CONSIDER

By Margaret A. Burt, Esq.

Agency should have a written pre-defined policy regarding what kinds of cases and in what ways surrenders with conditions would be accepted. The parties should be able to discuss the possible terms in an open way, with attorneys present and with enough time to consider the matter carefully.

Who could be included in the discussion?

Foster parents/adoptive parents and their counsel (must sign if designated), Law Guardian (must sign), child at a particular age (must sign if over 14 and sib visits), DSS on-going worker, adoption worker, DSS counsel (someone from DSS must sign), child's therapist/counselor, parent's therapist/ counselor, birth parents and their counsel(must sign)

When should the process take place and how? - Should the agency still accept conditional surrenders after a certain point in a TPR?

What kinds of terms have been used?

- clarifying that the adoption will take time
- specifying the adoptive parent or clarifying that there is no adoptive parent yet identified
- specifying procedure if the identified adoptive parent can not adopt
- exchanging ongoing information about the child - school, photos, reports
- exchanging ongoing health information - one way or both ways
- visitation - frequency, structure, supervision, changes, failure to exercise
- name changes
- supportive statements
- phone calls, letters, gifts
- sibling information or contact
- grandparent contact

Policy and procedure if there are disagreements - what should agency role be, if any?

Does everyone understand legal requirements if failure of terms before and after the adoption?

Should there be a "dead man's clause" for failure of birth parent to appear for visits?

SURRENDER SUGGESTIONS
By Margaret A. Burt

- Have a policy in place that explains duties and workflow. Train all foster care workers.

- Have a policy in place regarding conditional surrenders. Review it - keep it up to date - train it frequently. Make it available to children's lawyers, defense attorneys, foster parents, the court.

- Remember that if there is a condition naming the adoptive parent then you must notify the birth parent if that person will not be adopting. You are required to return such a matter to court!!!

- Judicial surrender is preferable process due to no ability to revoke and ability for Judge to assess the parent's knowledge, protect against claims of DSS duress or coercion. Caseworker should role play process with parent - especially Judge's questions. Make sure that there is complete agreement on any terms or conditions and that they are properly written in advance.

- Extra-judicial not impossible but difficult. Must have a witness who is a certified social worker or an attorney admitted to practice in the state where the surrender is occurring. Witness cannot have any employment connection with DSS. There are 45 days to revoke and beyond the 45 days if the child is not placed in an adoptive home. Must be submitted for court review in 15 days.

- See if other county DSS will help with a surrender from parent in their county - particularly if parent is incarcerated.

- Out of state surrenders can be judicial or extra-judicial. Get help from sister DSS.

- Get an ORDER after the surrender that states that the child has been freed for adoption and deals with the father issue. If child born in wedlock and never a judicial determination that husband is not father then husband must surrender or must be grounds to TPR. If child born out of wedlock and father is a consent father, must also surrender or have grounds to TPR. If child born out of wedlock and father is a notice father, get court to make finding that he is just a notice father, give him the notice of mother's surrender or her surrender may not be valid to free child, get Judge to make finding that he need not be noticed for adoption. If child is born out of wedlock and father has no rights - get court to specifically make a finding in order freeing child that he has no rights.

- Consider the possibility of an accelerated or semi-accelerated adoption filing in surrenders where there is an identified adoptive parent.

WHAT SHOULD A FOSTER PARENT DO IF THE BIRTH PARENTS SAY THEY ARE WILLING TO CONSIDER A CONDITIONAL SURRENDER?

By Margaret A. Burt, Esq.

1. **Consider hiring a lawyer right away if you can** - ask the lawyer to be come involved in the negotiations. Insist that you and/or your attorney need to be present at any negotiations. You will be living with this agreement long after the agency is no longer involved.

2. **Don't let discussions occur without you.** If the surrender is going to be conditional on you adopting the child, then it has to be signed by you. That means you should be discussing the conditions as well – the caseworker should not just "present" you with the conditions that are going to be offered to the parent nor should the caseworker tell you that they have already reached the agreement and you "have" to agree to the terms.

3. **Take your time** - this is a very important consideration - think carefully about what is being asked of you and your family - can you do this? Do not let yourself be "talked into" a deal in the hallway at court without having had time to think it over and discuss it calmly with your spouse and your lawyer.

4. **Consider the alternatives.** Would it be better for the child and your family to have a termination occur with no terms? Ask what the agency's timetable would be for that alternative as well as the likelihood of a successful outcome.

5. **Ask questions** until you understand exactly what is being proposed.

6. **Ask to see the full agreement in writing in advance** before you sign anything. If you have trouble understanding what some terms means - will the birth parent understand it? Make sure everything is spelled out in the agreement as specifically as you think it needs to be so no one will have to wonder or question later what everyone agreed. Make sure they give you a copy of the agreement at the time it is signed.

7. **The devil is in the details.** If there is going to be exchanges of photos or information, who is actually obligated to provide them? How will people be kept aware of changing addresses? If there are going to be visits, how long will they be, where will they be, will anyone have to supervise them, will anyone else be allowed to be at them? What about make-ups? What if your family wants to move? Can presents or cards be exchanged? How will you reach each other? Will there be controls on certain behaviors? Will the child be able to refuse visits? Under what circumstances can visits be ended - opinion of a therapist or a certain number of missed visits?

8. **When will you expect to be able to finalize the adoption?** Will the birth parent be notified if there is a problem before the adoption or has this right been waived? Will the parent be able to revoke the surrender if there are problems before the adoption or has this right been waived?

LOOK BEFORE YOU LEAP

SAMPLE SURRENDER TERMS
TO PLACE in State Mandated Addendum Form
By Margaret A. Burt, Esq. Copyright 2009

SAMPLE : This is a sample that was used in a case where the birth father and the adoptive mother had a relatively comfortable relationship due to visitation during the foster care placement

The undersigned hereby agree to the following conditions as part of and a condition of the surrender for adoption of Julia Mary Miller:

First: Julia will be surrendered for adoption by her birth father Carl Miller. Julia will be adopted by her foster mother Linda Perry. If the agency becomes aware that Ms. Perry can not or will not adopt the child Julia, the agency will immediately notify Carl Miller and the agency shall follow all procedures designated under SSL §383-c and FCA §1055-a.

Second: Carl Miller, birth father of Julia, will have visitation with Julia 3 times per year - at intervals of approximately every 4 months. These visits will occur on dates and times mutually agreed upon by the two parties, Mr. Miller and Ms. Perry. At each visit the parties will consult their schedules and agree upon the date and time of the next visit. The parties will endeavor to agree to dates that are convenient for both of them and for the child. Mr. Miller may request that his visit coincide with a special or family occasion and Ms. Perry will endeavor to cooperate with such activity. All the visits will occur under the following conditions:

A. The visits will be minimally one hour in length, but may be longer if the parties so agree.
B. The visits will be at a location of Linda Perry's choice.
C. The visits will be supervised by Ms. Perry or someone she has approved of as a supervisor until such time as both parties agree that the child is comfortable with an unsupervised setting.
D. If Mr. Miller can not or does not make a visit that had already been arranged for, for whatever reason, Ms. Perry is under no obligation to "make up" or offer an alternative visit. If Ms. Perry cannot or does not make a visit that had already been arranged for, the visit will be "made up" within a month's time at a time the parties mutually agree upon. The parties will show as much consideration as possible to advise each other of visits which cannot be made.
E. If Mr. Miller misses two visits within any 12 month time period, excluding a provable crisis beyond his control, such as serious illness, Ms. Perry is no longer obligated to provide any further visitation whatsoever.
F. The parties shall exchange phone numbers and addresses but shall only use same to communicate regarding visits.
G. All visits will be discontinued if that is the recommendation of any therapist treating the child. Visits would only then recommence upon a therapist's recommendation and under terms recommended.
H. A visit will be discontinued if Mr. Miller engages in any offensive conduct toward Julia, Ms. Perry, or anyone supervising the visit. A visit will terminate immediately if Mr. Miller appears to be under the influence of drugs or alcohol or uses same during a visit.
I. Visits will be discontinued if at any time after the child turns 12 years of age, the child states that she does not wish to visit Mr. Miller.
J. At the visit, Mr. Miller will be permitted to take 2-3 photos of the child or of Mr. Miller with the child for his own use. Mr. Miller shall not display the photos in any way on any internet site or in any public media.

Third: Ms. Perry will provide copies of Julia's report cards to Mr. Miller

Fourth: This Agreement shall survive the adoption of Julia and shall be governed by the laws of New York State.

Fifth: This constitutes the entire agreement between birth father Carl Miller, foster and adoptive mother Linda Perry and Mohawk County DSS

ACCELERATED ADOPTION

By Margaret A. Burt, Esq. 2010

☑ Agency must build into terminations and surrenders a review of the possibility for an accelerated adoption. Clearly not all of the cases fall into this category but without a discussion at this stage it will never happen. All foster care workers and all persons involved in the process to decide to file a TPR or accept a surrender must be aware of accelerated adoption. Ideally whatever process is used would have built in check list to require a least a consideration.

☑ Likely types of cases could include situations where the adoptive resource had already been identified and child has been in that home for three months or will have been by time of adoption or situations where the court could be given good reason to waive the three months and:

- Both parents willing to surrender
- Mother willing to surrender, no father can be identified or no consent father
- Abandonment
- Cases where parent is likely to default at time of TPR

☑ Establishing a fast-track process - Designating a particular adoption worker the "accelerated adoption worker" and giving this worker responsibility to fast track any case where acceleration is a strong possibility. This worker gets assigned as the decision is made to TPR or accept a surrender and starts to immediately work on the adoption issues having the adoptive resource get counsel, starting the home study, medical, SCR clearance and subsidy. Also this worker must keep in touch with ongoing foster care worker and DSS attorney re continuing to smooth the way for acceleration and semi-acceleration.

☑ Situations could occur as TPR progresses that enhance possibility for semi-accelerated adoption. DSS attorneys, foster care workers and law guardians would have to be the ones to spot these situations. Situations like:

- After filing TPR, parent(s) decide to do surrender
- Parent defaults at time of TPR
- Parent admits or consents to the TPR
- Parent loses the TPR but appeal is not to be filed - possibilities involving parents who would "waive" appeal (anything that might encourage such a waiver?)
- Parent loses the TPR and 30 days elapse (from actual service) without notice of appeal being filed

☑ Pool of local attorneys who do adoptions must include attorneys willing and able to do them in an accelerated format - offer increase in fee?

Can the Court Order Post Termination Contact?

Margaret A. Burt 1/10

The FOURTH Dept.'s Position:

Matter of Kahlil S., 35 AD3d 1164 (4th Dept. 2006)

The Fourth Department rejected its own long standing precedent as well as rulings of the three other Appellate Divisions in this unexpected decision regarding a mother's termination on mental illness grounds. The court affirmed that the lower court properly found that the mother was unable to care for the children for the foreseeable future due to her mental illness. However, the Appellate Court then remanded the matter for an admittedly non mandated dispositional hearing on the issues of "posttermination contact". The Appellate Court ruled specifically that "Family Court, may in those cases in which the court deems it appropriate, exercise its discretion in determining whether some form of post- termination contact with the biological parent is in the best interests of the child". The Appellate Court found that this was appropriate to consider in cases where the termination was on the grounds of mental illness, mental retardation and permanent neglect. The court acknowledged that it was reversing its own precedents which had clearly held that the court had no such discretion. The court did not cite any statutory authority for its decision. The court also did not define "posttermination" contact in the sense of whether it meant only before an adoption or after an adoption as well. The lower court is to review the best interests of the children by considering their ages, the bond they have with the mother and the likelihood of adoption.

Matter of Thomas 35 AD3d 1289 (4th Dept. 2006)

In a similar case to the **Kahlil** matter above, the Fourth Department remanded a mental illness termination matter back to Chautauqua County for a dispositional hearing on the question of "posttermination contact".

Matter of Bert M., 50 AD3d 1509 (4th Dept. 2008)

The Fourth Department reviewed an appeal from Jefferson County Family Court regarding the revocation of a suspended judgment and the freeing of two children for adoption. The parents maintained on appeal that the DSS had not engaged in diligent efforts to assist them. The Appellate Court refused to consider of what diligent efforts had been made for the time period prior to the parents having consented to the adjudication of permanent neglect. They did review the actions of the DSS subsequent to the adjudication and during the term of the suspended judgment. (Note: Although the court reviewed the actions of the DSS during the suspended judgment period, the court made no comment that "diligent efforts" are required to be proven in a violation of a suspended judgment and it is well settled that such proof is not necessary) The DSs had provided the parents with a "coparent" who assisted them with the care of their home and arranged supervised visits. Services to assist with personal hygiene, employment, budgeting, parenting as well as

counseling were offered to the parents. The parents did not address or overcome the problems that had caused the placement of the children. Mere attendance at the required programs, without progress is not sufficient to fulfill a suspended judgment.

However, the Fourth Department did remand the matter for a new dispositional hearing on the question of the court ordering "post termination contact" with the parents. The Appellate Court commented that the hearing had been held prior to the **Kahlil S.** decision. The lower court must consider in a permanent neglect termination if the children's best interests warrant ongoing contact with the birth parents whose parental rights are terminated.

Matter of Diana M.T., 57 AD3d 1492 (4th Dept. 2008)

The Fourth Department reviewed an Allegany County Family Court's termination of a father's rights to his two daughters on mental illness grounds given that the expert testimony was that the father had a personality disorder, alcohol dependency and posttraumatic stress disorder that prevented him from safely caring for the children. The father's treating psychologist did opine that he could provide proper care if he were gradually given responsibility with a system in place to provide him support and treatment. Since he had been unable to do that very thing with petitioner's help, the mere possibility that he might be able to in the future did not defeat the termination. The father had requested post termination visitation but the lower court properly denied the request as the father failed to establish that the visitation would be in the girl's best interests. (no comments on facts)

Matter of Kahlil S., 60 AD3d 1450 (4th Dept. 2009) and Matter of Terrell Z., 60 AD3d 1451(4th Dept. 2009)

In 2006, the Fourth Department reversed all precedent and ruled that Family Court had authority to order post termination contact in terminations based on permanent neglect, mental illness and mental retardation in **Matter of Kahlil S. 35 AD3d 1164.** That matter was remanded for a best interest hearing in Erie County Family Court. At the remanded hearing, the court ordered that there should be no post termination contact with one of the children and that "reasonable" post termination contact should occur with the second child. The mother then appealed both determinations. Both findings were affirmed by the Fourth Department as appropriate based on the evidence regarding each child's best interests.

Matter of Josh M., 61 AD3d 1366 (4th Dept. 2009)

While upholding a mental retardation termination of a father's rights, the Fourth Department remanded the disposition back to Ontario County Family Court for failing to hold a ***Kahlil*** inquiry about post adoption visitation. The lower court had urged the parties to consider having the father surrender with some agreement for visitation after the child's attorney and the court expressed the opinion that post termination visitation might be appropriate but the father refused to surrender when the parties could not reach

agreement on the terms. The lower court then ordered a termination without holding a hearing to determine if post termination should be ordered as being in the child's best interests.

Matter of Christopher J., 60 AD3d 1402 (4th Dept. 2009) and Matter of Christopher J., 63 AD3d 1662 (4th Dept. 2009)

In reviewing a Oswego County Family Court's revocation of a suspended judgment in a permanent neglect termination, the Fourth Department ruled that the mother did not ask the court to consider post termination contact or to hold a hearing on that issue and that in any event, she failed to establish that the contact would be in the children's best interests. The court ruled exactly the same as to the father in the second matter.

Matter of Samantha K., 59 AD3d 1012 (4th Dept. 2009)

Oneida County DSS was not required to prove diligent efforts in a permanent neglect case where the father was incarcerated and filed on more than one occasion to cooperate with the agency. Further, since the father had no feasible plan for the child other than foster care while he was incarcerated, he failed to plan and therefore had permanently neglected the child. The Fourth Department found that the terminating the fathers rights , while allowing the father to still have "visitation rights" was in the child's best interests. (no real comments on reasoning)

Matter of Tryston M., 66 AD3d 1448 (4th Dept. 2009)

While affirming the Jefferson County Family Court's termination of a mother's rights, the Fourth Department continued it's position that Family Court has jurisdiction to order post termination contact and remanded the case for a **Kahlil** hearing. (DSS agreed to the remand)

Matter of Imani W., __Misc3d ___ dec'd 11/27/09 (Monroe County Family Court 2009)

Monroe County Family Court denied a mother any post termination contact with her daughter after a **Kahlil S.** hearing. The court found it was not in the child's best interests to have contact. The child had been in foster care since birth and was now four years old. The mother's rights had been terminated after a contested mental illness termination. The foster mother planed to adopt the child and fears for her own and the child's safety if visits were ordered given the mother's mental state and stability. The foster mother has been reported to the SCR hotline over 40 times while the child has been in her home and has reason to believe that it is the mother who is reporting her. The mother has tried to bring criminal actions against the caseworker. The Medical Motor service canceled their service contract to bring the child to the mother for visitation after the mother was aggressive to the drivers. When the mother is suffering from mental instability, visitation becomes sporadic and she has behaved inappropriately at visits, threatening and using profane

language. At the fact finding, the expert testimony established that the mother had a lack of insight into her mental illness. The mothers' own testimony showed that she did not comprehend what post termination contact even meant, persisting in seeking a return of the child. Even though her rights have been terminated, the mother has advised the child that she is trying to get the child back and that she will see her soon. The conflicting messages that the child is receiving will confuse her and will not establish permanency.

Matter of Maximus H. 25 Misc3d 1241(A) (Monroe County Family Court 2009)
A Monroe County father's request for post termination **Kahlil S.** visitation was denied by Family Court. The father was incarcerated and had been since the child was born and only knows the child due to court ordered one hour bimonthly visits that are supervised. The father was released from prison just a few months before the hearing and the court at that time had increased his visits to twice a week but he was not consistent with his visitation. The foster mother has had the child in her care for four years and wishes to adopt him. She is "not comfortable at all" with post termination visitation and does not want to supervise them and feels that they can't be unsupervised due to the father's prior convictions and violent history. The caseworkers testified that the child would become clingy, he would wet the bed and exhibit anger and aggression after his jail visit with the father. The child did not want to go on the visits, would ask for "mommy" and was shy with his father. This continued even after the father left prison but the father was inconsistent with these visits and engaged in some questionable behavior. The father failed to appear for the last court date of the dispostional hearing, did not testify himself and failed to offer proof that any visitation was in the child's best interests. The child considers his foster parents to be his parents and does not really know his biological father as his father.

Matter of Malashia B., dec'd 3/19/10 (4th Dept. 2010)
The Fourth Department affirmed the appeal of a violation of a suspended judgment from Onondaga County where the court had also held a "Kahlil" hearing. In reviewing that hearing, the Fourth Department concurred with the Family Court that the mother should not have post termination contact. She has only had supervised visitation twice a week with the child since birth. There was a bond with the birth mother, but the now 3 year old had a strong bond with the foster parents who wanted to adopt. The foster parents testified that the child tended to have temper tantrums and act out after visits with her birth mother.

CONTRAST TO THE OTHER DEPT'S :

Matter of Valentino G., 36 AD3d 439 (1st Dept. 2007)
New York County Family Court was affirmed on appeal to the First Department. The father had failed to comply with the terms of a suspended judgment. He relapsed in his drug treatment and he could not care for the child. Freeing the child for adoption would be appropriate even though this child's chances of being adopted were not high. But

termination would mean that the child could be photo listed and this would enhance the ability to locate a pre-adoptive home for the child. There has been an agreement with the agency, the foster mother and the law guardians to continue to visit the child and so the court will not "grant respondent's alternative request for an order" for visitation post termination. (Note: court cited caselaw that open adoption cannot be ordered in any event)

Matter of James X. 37 AD3d 1003 (3rd Dept. 2007)

The Third Department affirmed a Cortland County Family Court termination of a father's rights to his 7 year old son. The father had lived with the child at earlier points but when the child came into foster care, the child had been in the mother's home. The mother ultimately surrendered her parental rights. The agency worked with the father after the child was removed from the mother on issues regarding sexual abuse. Although he had not been found to have abused this child, he had plead guilty to sexually abusing a 9 year old niece and had been found by Family Court to have sexually abused a different son. In both cases, he was ordered to obtain sexual abuse treatment and he did not do so. He had an extensive history of indicated child protective reports and had also sexually abused yet another unrelated child. Due to this history, DSS required that he obtain sexual abuse counseling for any potential return of this child. They offered diligent efforts involving weekly supervised visitation and anger management programs. The caseworkers repeatedly indicated that he would have to complete sexual abuse treatment and he repeatedly refused to do so saying that he did not have a problem with sexual abuse. He lived in a home with several adults who also had extensive child protective histories. He offered "myriad invalid excuses" for not becoming involved in sexual abuse treatment. His basic failure to accept responsibility for his repeated sexual abuse of children is a failure to plan for this child's return and necessitates a termination of parental rights. There is no reason to offer a suspended judgment in this situation. Lastly, in response to the respondent's request that the court consider allowing him visitation with the child even if his rights were terminated, the Third Department stated that "…. It is axiomatic that when parental rights are terminated pursuant to an adversarial proceeding that results in a finding of permanent neglect, the court lacks the authority to permit visitation to a respondent". (Note: No mention was made of the 4th Department's **Kahlil S.** ruling just 2 months earlier that allowed court to consider ordering post termination visitation on a mental illness TPR)

Matter of Charles FF., 44 AD3d 1137 (3rd Dept. 2007)

A Columbia County mother voluntarily placed her two sons in foster care and 18 months later, the county filed to terminate her rights on both mental illness and mental retardation grounds. The Third Department affirmed the Family Court's termination. The expert testified that the mother had a borderline range of intellectual functioning as well as a panic disorder, agoraphobia and a borderline personality. He did opine that medication might help the panic disorder but this would only be a partial solution at best. Her

personality disorder is largely untreatable and her IQ will not increase such that she can care safely for the children. The mother argued that termination was not in her children's best interests. Given the fact that mother's problems are not resolvable, there is no reason to prolong the matter. The law does not provide for a suspended judgment, as the Law Guardian argued for, in mental illness or mental retardation terminations. Although there is no current adoptive resource for the children, parental rights can still be terminated when it is in the children's best interests to do such that a permanent home can be found for them, despite the bond with the mother.

Matter of Melissa DD., 45 AD3d 1219 (3rd Dept. 2007)

The Third Department reviewed a termination proceeding brought against a mother and one of the fathers of four of her children and affirmed Broome County's termination. The children had been in foster care since the fall of 2003. The agency provided diligent efforts to the parents. A parent aide was assigned. Biweekly visits were set up and the parents were given a bus pass. Arrangements were made such that they could call the foster home twice a week to talk to the children. The mother was provided with referrals to parenting and codependency classes and the father was provided with parenting classes, anger management and domestic violence counseling. While the parents did attend most of the visits with the children, cleaned up their apartment and completed parenting classes, they failed to resolve other issues. They missed half of the children's medical appointments, several special education meetings and only called the children about twice a month. The mother did not complete her codependency counseling and the father has not completed his anger management or domestic violence counseling. A suspended judgment was not appropriate. Although the mother had completed the codependency counseling by the time of the dispostional hearing, she did not follow up with their recommendation of mental health counseling even though the counseling services suspected that she had an undiagnosed bipolar condition that needed medication. The father had completed anger management counseling by the dispostional hearing but had not even arranged for domestic violence counseling. The parents had separated twice in the six month between the fact finding and the disposition with the police being called on two occasions due to their domestic violence. The parents had four different addresses in the last year. These parents had been under various court orders to improve parenting since 2001 and have never resolved their problems. A suspended judgment would only delay permanency for these special needs children. The Third Department ruled that given the parental rights were being terminated instead of surrendered, the Family Court "had no authority to permit post termination visitation" between the mother and the children. (Note: no comment re the 4th Departments ruling in **Kahlil S**)

Matter of Jasmine Pauline M., 62 AD3d 483 (1st Dept. 2009)

The First Department affirmed New York County Family Court's termination of a mother's rights based on mental illness and mental retardation. The expert testimony by

the court appointed psychologist was that her mental condition made her unable to care for her child for the foreseeable future. The expert had interviewed the mother and reviewed all her medical records. The mother's adaptive skills had improved but not to the point that she could ensure the safety of the child. The court was not required to issues any order regarding post termination visitation. (note: no reference made to the 4th Dept's **Kahlil S.** ruling)

NYS Adoption Subsidies
Margaret A. Burt, Esq. 2/08

Children who have been in foster care when they are freed for adoption can be eligible for an adoption subsidy paid by the state and county to the adoptive parents until the child is 21 years of age IF the child is "handicapped" or "hard to place", proving that a child is handicapped would involve medical and therapeutic opinions and records and "hard to place has the following meanings:

THE SEVEN CATEGORIES OF "HARD TO PLACE" ADOPTION SUBSIDIES

1. The child has been freed for adoption for six months before placed with prospective adoptive parents. This category is not eligible for non-recurring expenses such as legal fees.

2. The child has been in foster care with the same foster parents for more than 12 months before the foster parents signed an agreement to adopt.

3. The child is aged 10 or older.

4. The child is aged 8 or older and is a member of a minority.

5. The child is being adopted in a sibling group of three or more.

6. The child is being adopted in a sibling group of two or more and one of the siblings is aged five or older, or one of the siblings is a member of a minority, or one of the siblings is otherwise eligible for an adoption subsidy.

7. The child is a sibling to a child the adoptive parents have already adopted and the child to be adopted is aged five or older, or the child to be adopted is a member of a minority, or the already adopted sibling is eligible for a subsidy.

FEDERAL TAX CREDIT FOR
THOSE ADOPTING WITH A SUBSIDY

By Margaret A. Burt, Esq.

As of tax year 2003, those that adopt a "special needs" child in NYS can claim a federal tax credit in the year that they adopt for each child that qualifies. This is a major change from the past when the only persons who could claim tax credits were families who had actually paid out monies to do the adoption. That tax credit still exists and is available but now our child welfare adoptions of a foster child are eligible for a subsidy can take a tax credit even though the family themselves have had no out of pocket expenses.

President Obama's health reform bill has upped the amount of the credit and in tax year 2010, the tax credit is **$13,170**. The **family's income is a factor – in 2009 they has to earn less than $222,180 to take the full credit but that amount will be changed yearly to reflect inflation, so check for the 2010 number.**

Prior to 2010, you could carry over the credit over 5 years until it is used up! But again under Obama's new health reform bill, if the credit is more than your tax liability, the difference is refunded instead of having to spend years "using up" the credit!!

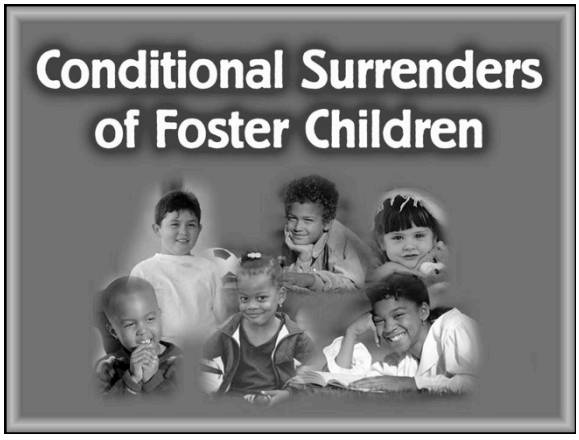
THIS IS A GREAT HELP - particularly for foster families that are adopting multiples. The definition of the "special needs" child that the IRS uses for purposes of eligibility includes ALL the reasons we give subsidies in NYS so **anyone adopting a foster child who is entitled to a state adoption subsidy in NYS can take this credit if their income is within the guidelines.**

Clients need to tell their tax preparers about this - many tax folks may not know about this as it is still relatively new and somewhat obscure. They should be especially careful to **make sure the tax preparer understands that this is different than the rules before 2003 which required that the adoptive family have out of pocket expenses**. They should tell the tax preparers that the forms to use are:

- **IRS Form 8839 and**
- **Instructions for Form 8839.**

They need to read the forms carefully because as first glance it does not look like they can do it unless they actually spent money of their own - tell them keep reading!!

Conditional Surrenders of Foster Children
by Margaret A. Burt, Esq.



CONDITIONAL
SURRENDERS
AND
ADOPTIONS WITH
CONDITIONS
SSL 383-c
SSL 384
FCA 1055-a
DRL 112-b

Conditional surrenders

- A surrender of child in foster care to agency or surrender of any child to agency can include terms and conditions such as adoption by a particular person and/or contact
- If conditioned upon adoption by a particular person, person must be certified or approved foster parent or "fully investigated and approved" adoptive parent

Conditional Surrenders

If particular person(s) is designated to adopt then the addendum will contain written agreement to that effect and also, if agreed - terms re communication or contact between child and surrendering birth parent(s). The following persons must agree and sign the addendum:

- person(s) designated to adopt
- birth parent(s) surrendering
- agency with care & custody
- child's attorney

Conditional surrenders

If no particular person(s) are designated to adopt, then a written addendum about communication or contact between child and surrendering birth parent(s), can also be done and the following must agree and sign:

- birth parent(s) surrendering
- agency with care & custody
- child's attorney
- this will bind anyone who adopts as the adoption must reference this agreement

- Also - the court shall determine if proposed terms of surrender are in child's best interests before approval of surrender and, if so determined, shall approve agreement and surrender - the court will say so in the addendum
- If court does not think conditional surrender terms are in child's best interests, can approve surrender without the terms, BUT parent is to be given opportunity to withdraw surrender instrument

Conditional Surrenders of Foster Children
by Margaret A. Burt, Esq.

Issues

- IF child is in foster care - must only use OCFS surrender forms – these forms tell of option to have terms
- Can you do an extrajudicial conditional surrender for a foster child ?
- Attys for foster parents……..
- Can it be anonymous??

Siblings

Terms and conditions can contain agreement for contact between siblings and half siblings. If any child is over 14 years old, there will be no enforcement of sibling visits unless child over 14 consents in writing to visits - signature line on form. Nothing in the statute re the child having to agree to the birth parent contact but the child's atty must agree at the time of the surrender

Issues:

- Which sibling? The one being surrendered or the other one? Or both?
- What happens if child is under 14 at surrender but does not want to visit when he/she turns 14?
- Does this mean all children can refuse sib visits at 14 or just those who were surrendered after the law?
- Can they refuse parent visits?

At time of adoption:

After a SSL §383-c or SSL §384 surrender, the surrender and addendum with the terms must be included with any subsequent petition of adoption. The court upon finalization issues two orders - the adoption order and an order incorporating the terms of the agreement into the adoption - and all parties to the surrender are to be given a copy of the incorporation order.

Enforcement of terms

Post-surrender but pre-finalization: FCA §1055-a section re enforcement of terms:

- "substantial failure of material condition" pre-finalization, court has ongoing jurisdiction
- agency must notify parent of failure of condition UNLESS parent expressly waived notification in writing in surrender - form allows parent choice of option

Where there has been a material failure pre-finalization:

- Agency must notify parent who did not waive, law guardian, and court within 20 days of failure of condition
- Agency must file petition within 30 days of failure on notice to parent who did not waive, law guardian, and court to review failure and hold hearing if necessary
- If agency does not file petition, parent or law guardian has 60 days to file
- WILL COURT ALLOW REVOCATION?

Conditional Surrenders of Foster Children
by Margaret A. Burt, Esq.

Enforcement of terms before finalization but not failure of material condition

- Where child surrendered but not yet adopted, any party to agreement may file to enforce terms - petition should have agreement attached
- Court "shall" enforce communication and contact upon terms of agreement unless court finds "enforcement will not be in the best interests of the child"
- WILL COURT ALLOW REVOCATION?
- CAN COURT ORDER MODIFICATION?

DRL §112-b- after the finalization:

- Post-adoption contact agreement enforcement
- If parties entered into written agreements regarding contact/ communication between child, birth parent(s), adoptive parent(s), siblings, and half siblings at time of surrender

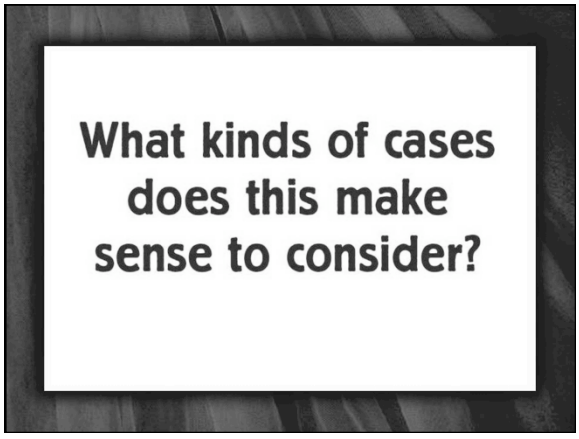
After the adoption finalization :

DRL §112-b

- Terms are enforceable IF terms were incorporated into a written court order based on a written agreement to which the parties consented
- Court must have found, at time of surrender, that agreement was in child's best interests
- Copy of terms were given to all parties

DRL 112-b

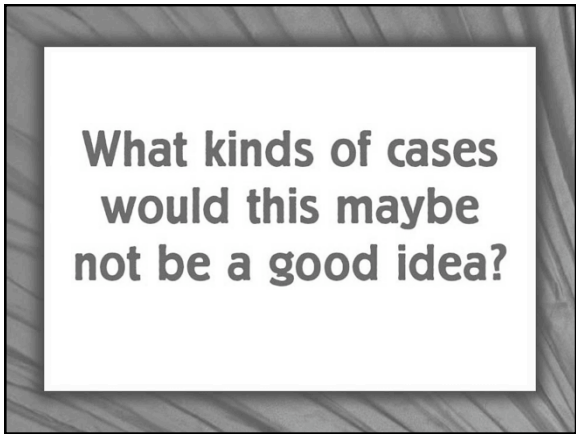
- Failure to comply with terms post-adoption shall not be grounds to set aside adoption or revoke consent to adoption
- Petition to enforce can be brought by any party, including child's attorney, in Family Court after adoption - even if adoption was in Surrogate Court
- Court shall not enforce terms if it determines that enforcement is not in child's best interests -
- Can court MODIFY?



Ideas

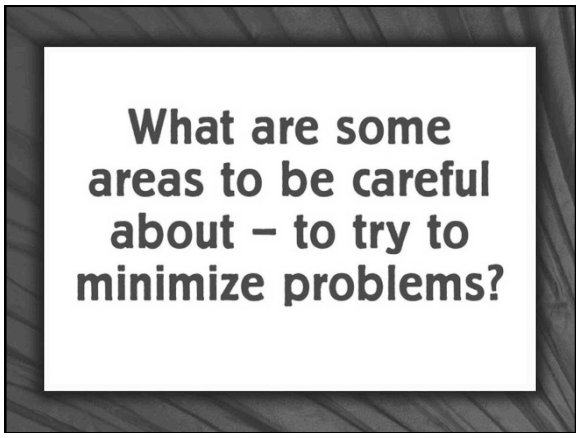
- Child knows the parent and there are positive aspects to the relationship
- Birth parent and adoptive parent have relationship - there are able to manage it
- Agency can get out
- DETAILS of agreement are crystal clear
- KEEP it from coming back
- ANTICIPATE problems

Conditional Surrenders of Foster Children
by Margaret A. Burt, Esq.



DANGER SIGNS

- Child does not know parent
- Child has had problems with contact
- No adoptive parents have been identified and there are lots of terms
- More than one set of adoptive parents who do not agree on issues
- Adoptive parents who have never met/do not know/ actively have problems with birth parents



Terms to consider

- Details on what will happen before the finalization and what will happen after - who is responsible
- Understanding the options if there are problems - clarify if all will follow the law, if there is an agreement for more
- Exchange of info or Contact? DETAILS on photos, "reports", report cards, e-mail, post mail, - one way or both?

Terms to Consider

- DETAILS on visits - contact, time, location, people, "o/p", makeups
- A "Dead Man's Clause" - negotiate time, details that would mean obligation ends
- Child of a Specified Age?
- Therapist who says no longer in best interests – is this a caselaw issue?
- Resumptions?

How far should you go?

- Failure of terms before finalization allows for filing of TPR?
- Failure of some terms before finalization and birth parent can not revoke?
- Relocation?
- Re-surrender and re- adopt?
- Consent to allow court modification?
- Consent to submit disagreements to a body before litigation permitted?

Conditional Surrenders of Foster Children
by Margaret A. Burt, Esq.

Can the court ORDER contact conditions as part of a surrender or disposition of a TPR?

Not as to surrenders, but as to TPRS - Caselaw is now conflicted

- 1st - Cheyanne N 2002, April S. 2003
- 2nd - Lovell Raeshawn McC 2003 (Corinthian Marie "exceptional" 2002)
- 3rd - William W. 2005, Jessi W. 2003
- 4th – Used to be : Jamie T. 2005….Kenneth D .September, 2006 -
- BUT>>>> BIG NEWS IN THE FOURTH DEPARTMENT:
- Matter of Kahill-4th Dept. December 2006….specifically overrules Jamie T and prior rulings

MATTER OF KAHLIL S.
35 A.D.3d 1164 (2006 4th Dept)

- We recognize, however, that the termination of the parental rights of a biological parent results in an abrupt and complete cessation of contact between a child and the parent, and that "psychological harm . . . may possibly result from severing the bonds between a child and his or her biological parent, particularly where the child is older and has strong emotional attachments to the birth family" (*Matter of Gregory B., 74 N.Y. 2d 77, 90, 542 N.E.2d 1052, 544 N.Y.S.2d 535)*.

WOW! This changes the world

- We conclude that, in the event that parental rights are terminated after a finding that the parent is unable by reason of **mental illness** or **mental retardation** to provide proper and adequate care for his or her child or after a finding of **permanent neglect** , Family Court may, in those cases in which the court deems it appropriate, exercise its **discretion in determining whether some form of post termination contact with the biological parent is in the best interests of the child.**

IN CASE you thought they didn't mean it

- **Matter of Thomas 35AD3d 1289**
- **Matter of Bert M 50 AD3d 1509**
- **Matter of Diana MT 57 AD3d 1492**
- **Matter of Kahlil S 60 AD3d 1450**
- **Matter of Terrell Z 60 AD3d 1451**
- **Matter of Josh M 61 AD3d 1366**
- **Matter of Christopher J 60 AD3d 1402**
- **Matter of Samantha K 59 Ad3d 1012**
- **Matter of Tryston M 885 NYS2d 824**

Inquiring minds want to know!!

- WHY have the other Departments ignored the decision?
- Will the Court of Appeals hear it and WHAT will they do?
- Will there be some legislation?

Conditional Surrenders of Foster Children
by Margaret A. Burt, Esq.

Issues- in the 4th Dept.

- If parent asks, better have a Kahlil hearing and better make a clear record
- If there is Kahlil ordered visitation, how will it be enforced as DRL 112-b does not seem to fit?
- What if it is overturned, will orders still be valid?
- Why do they call it “post termination” and not “post adoption”?
- Is it modifiable?