

NYA AFF

New York Attorneys for Adoption & Family Formation

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March 17, 2025

[REDACTED]

Re: Birth Registrar Advice to Patients Regarding Acknowledgment of Parentage Form

Dear Ms. [REDACTED],

I am writing on behalf of New York Attorneys for Adoption and Family Formation (“NYA AFF”) to bring to your attention a concern we have regarding the advice we believe the [REDACTED] Birth Registrar is providing to same sex married couples.

NYA AFF is a group of adoption and assisted reproduction attorneys and other adoption and child-welfare professionals from across New York State. We work with adoptive families, families seeking to conceive children through assisted reproduction/surrogacy, donor-conceived children, child welfare agencies, and the court system to protect and advocate for the rights of adoptive and donor-conceived children and their families.

We have had been told by multiple clients, working with NYA AFF attorneys, that the Birth Registrar is advising these couples that Acknowledgements of Parentage have the same legal effect as court-ordered Judgments of Parentage/Adoption. She is accordingly telling these families that there is no benefit to be derived from obtaining a court order of Parentage/Adoption.

This situation is concerning for two reasons: 1) the Birth Registrar is likely not a licensed attorney and therefore should not be providing legal advice on this important and complex legal issue, and 2) the advice being provided to patients is incorrect.

While we agree that there are significant benefits obtained from executing an Acknowledgment, particularly for those who can't afford the legal fees associated with obtaining a court order, Acknowledgements provide far less legal protection than that afforded by a Judgment of Parentage/Adoption:

First, a Judgment of Parentage/Order of Adoption is a full and final order which issues only after the court makes a judicial “finding” that the non-gestating parent is an intended/legal parent. The court order includes the additional finding that the sperm donor is not a legal parent. By contrast, because Acknowledgements merely



require the Intended Parents to sign an affidavit affirming their joint parentage, the governing statute affords them the opportunity to void the Acknowledgement for a period of sixty (60) days after signing. Even after the sixty (60) day period has elapsed, a signatory may challenge the Acknowledgment on the basis of fraud, duress, or material mistake of fact.

Secondly, the fact that Intended Parents can obtain a binding Judgment of Parentage, during the pregnancy, affords significant protection to the non-gestating parent in the event the parties sever their relationship prior to the birth.

Thirdly, and perhaps most importantly, it is far from clear that an Acknowledgement of Parentage would be afforded full faith and credit into the future, across changing times, and in varied locations. Acknowledgments of Parentage may be entitled to full faith and credit, based on the “compact” signed by all fifty states. That being said, the federal compact is not written in a gender neutral manner (the documents are described as Acknowledgements of *Paternity* in the most states) and such Acknowledgements affirm the genetic connection between the “parent” and child (which is not present for one of the parents in these cases). For that reason, our organization is rightfully concerned that states hostile to same sex parenting may fail to afford legal recognition to Acknowledgements where one Intended Parent is clearly not genetically connected to the child. By contrast, a Judgment of Parentage, if issued by a court with jurisdiction over the subject matter and the Parties, must be afforded *full faith and credit* based on Article 4, Section 1 of the U.S. Constitution.

Finally, those non-genetically connected parents seeking recognition of their parental status outside of the United States will be afforded far more legal protection by obtaining an Order of Adoption or in many cases, a Judgment of Parentage, rather than relying on an Acknowledgment. While other countries are not obligated to afford Full Faith and Credit to any order issued by a United States court, there is a long history of countries recognizing United States Orders of Adoption under principals of comity.

Today, same sex couples confront profound legal challenges in many states across the country. For the reasons articulated above, we ask that you provide this information to the Birth Registrar in an effort to stem the flow of incorrect information to your patients, which could unintentionally harm these families.

Thank you for taking the time to read this letter. We would be happy to engage in further dialogue about this issue, should you find that helpful.

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