

## Massachusetts Legislators: Shame on YOU



Full Disclosure: As of this article going to print, the jury, officially, the members of the Massachusetts House and Senate are still out. On Tuesday, May 16, 2017, the Joint Committee on Public Health held a hearing on equal access to birth records for all persons

born in this state who happen to have been adopted during a particular span of years: July 17, 1974 to January 1, 2008. All those who fall outside of the time line are exempt from this barrier.

And why say shame on the Massachusetts Legislators? Because this is not the first time bills to right this wrong have been filed, only to be sent out to committee and never heard from again. This issue has been kicked around the State House since 2015. Thank you, Sean Garballey and Kate Hogan, for presenting the bill in the House: Bill H. 1163. Thank you James Eldridge for presenting the bill in the Senate: Bill S. 1195. And thank you to all of the legislators who joined as petitioners.

Massachusetts has always been ahead of the wave: single parent adoptions, same sex adoptions, same sex marriage, enforceable open adoption contracts for contact, pre-birth orders in gestational carrier agreements, as well as so many other family issues for which I applaud our courts. And yet, our legislature falls flat when considering the needs of all persons who were born in Massachusetts and subsequently adopted.

Let's hope the Joint Committee on Public Health has listened carefully. The current statute: M.G.L.Ch. 46 s.2B precludes

people adopted who happened to be born in Massachusetts between July 17, 1974 and January 1, 2008. WHY? Those opposed assert that anonymity was promised during those particular years for mothers who gave birth in Massachusetts and made an adoption plan.

There is no good or valid reason why this statute should remain as is for several basic and constitutional reasons:

The premise upon which opponents rely, that mothers who gave birth in Massachusetts between July 17, 1974 and January 1, 2008, and made an adoption plan, were promised confidentiality is false. The Massachusetts Surrender is an unconditional and voluntary surrender of one's child. M.G.L.Ch. 208 § 2. Any promises made to mothers or fathers premised upon the voluntary termination of their parent rights are prohibited and if true, would void the surrender.

The statute is in violation of the Equal Protection Clause of the 14th Amendment of the United States Constitution. Courts of competent jurisdiction have overruled this so-called promise of anonymity countless times, based upon a showing of good cause, a discretionary standard. Biological family medical history is key to prevention, early diagnosis and treatment.

Perhaps by the time this article goes to print, it can be thrown out with yesterday's newspaper.

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our clients as a TEAM"

## The K&G Brand: Attorneys & Counselors at Law



Attorney & Counselor at Law: Isn't that redundant? No, you want me to be a counselor so that you don't need me as an attorney. As a counselor, I'm a coach—an expert trusted advisor directing from the sidelines. As an attorney, I'm in the game calling plays on the field as your agent.

In 2017, three different client situations arose and I noticed how my dual roles as a counselor and attorney came into play:

*My acumen as an attorney and counselor at law is best described as being a listener and a mentor.*

*I work with individuals and companies as a partner. My clients rely on me to thoroughly think about their business goals and apply my many years of experience to provide advice based on principled thinking that not only has their back, but also their future.*

The three clients were two high end executives ready to launch new careers in new companies, and a business corporation involved in a convoluted contract dispute.

Each client knew that they would benefit from my outside insight. They knew that I would see what they could not see. They are on the outside looking in. I would observe their life, ask questions and gather facts, and resolutions would begin to emerge. It is my job to help them clearly see their options and the decisions which will provide fresh insight. For Executive A, we discussed the value of a base salary versus a year-end bonus. After several chats, Executive A understood that the real upside was going to be his bonus, not his salary. He was able to negotiate a new bonus at twice the amount of money. For Executive B, we discussed his ability to maintain an important lifestyle aspect. This lifestyle enables him to perform certain charitable work. He was able to negotiate an acknowledgement that he would be unavailable weekly for a certain portion of the day, and still maintain his new position. As for the Business Corporation, it was time to stop fighting this battle, regroup, and move on in a completely different, new, and exciting direction.

As an excellent listener and strategist, I have trained ears to hear my clients' goals and then translate them into actionable next steps. My clients help me develop strategies to increase our success and harness the power of us working as partners. As a partner, I ask specific questions about their personal and professional life to ensure that they're an example of excellence. For instance, I talk about marriage and family, lifestyle, nutrition, exercise and other disciplines: as for Executive A, it was made clear in his employment contract that there would be very limited overnight travel; as for Executive B, he had a national presence, aside from his new position, and we carved out his ability to speak and write blogs; as to the Business Corporation, the "fighting" was having an adverse effect upon the CEO's health, the change in strategy reduced his stress level.

Is it redundant? No! In connection with our move we changed our tagline from just "Attorneys" to "Attorneys and Counselors at Law." Why? Because either as a coach or an attorney we are very deliberate in our advice and our approach. At K&G, these roles are interchangeable.

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## Before You Say, “I Do”



It is no secret that divorces tend to be emotionally painful, protracted, and very expensive. The filing for divorce is only the beginning and these issues are usually brought on when the parties are determining the terms of the divorce who keeps the house, what happens to the money in joint bank accounts, whether there will be spousal support, etc. One way to minimize the difficulty of this process is to have a premarital agreement, colloquially referred to as a “Prenup.”

In situations where one partner expresses any hint of wanting a Prenup to the other, the other’s reaction is usually one of disapproval. Understandably, when we hear the word “Prenup,” negative associations, such as noncommitment, usually come to mind. Another common association with prenups is that only people with significant assets utilize them. The stigma behind premarital agreements must change. They should not be thought of as casting doubt on the strength of the marriage or as something only wealthy people use, but rather as a pragmatic protective measure against the potential emotional chaos and financial disputes inherent in a divorce. Premarital agreements can spell out the terms of a divorce, such as how assets are to be divided, simplifying and speeding up the process, which in turn saves emotional stress and attorneys’ fees. When considering having a premarital agreement, it is important to remember these three important points: (1) you can contract about almost everything; (2) there must be full disclosure; and (3) enforcement is not automatic.

While a premarital agreement can have terms about almost anything, any term addressing the custody of children or child support will be unenforceable. A premarital agreement can help spare heartache and stress of asset division, but

cannot address any issues relating to children. If it contains terms surrounding issues relating to children, those portions will be stricken and the rest of the agreement will remain.

Before the parties execute the agreement, they must have fully disclosed all assets to the each other. This helps to ensure that the parties understand the extent of their rights and what it is they are agreeing to. In the event that enforcement of the premarital agreement is necessary, one spouse’s failure to fully disclose all assets can render the agreement unenforceable.

Lastly, before a premarital agreement can be enforced, it must pass two tests; it must be fair and reasonable, (1) at the time of its signing, and (2) at the time of its enforcement. Factors such as one party’s not receiving legal advice, failure to fully disclose assets, or if the agreement is too one-sided can lead a judge to find the agreement not fair and reasonable at its signing. A common concern about prenups is that during the marriage, financial situations can change drastically and the prenup will leave one spouse at a significant disadvantage, but the second test helps to allay this concern. If such was the case, then the premarital agreement would not be considered fair and reasonable at the time of its enforcement.

Prenuptial agreements have slowly started to gain acceptance in the legal system, but for many, the idea of a prenuptial agreement still elicits negative feelings. It is important to remember that a prenuptial agreement may very well never be needed after it is signed, but when faced with the reality that “til death do us part” is sometimes cut short, a prenuptial agreement makes sense to protect both spouses from a lengthy and emotional divorce process.

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"BE PREPARED, BE PREPARED, BE PREPARED,  
AND THEN, WHEN YOU THINK THAT YOU ARE PREPARED,  
PREPARE!"

## Adult Adoption: Choosing a New Family



Adult adoption is legal in most states and is more common than you think. Why would one adult wish to adopt another adult? The most common reasons for an adult adoption are formalizing an existing parent-child relationship between a former foster child and a foster parent, formalizing an existing relationship between a step child and a step parent, and creating legal inheritance rights within a relationship.

The requirements in each state may differ, but overall the process is fairly straightforward and less complicated than the adoption of minor children where the court must consider the parental fitness of the adoptee’s parents, the ability of the parent to support the adoptee and what is in the best interest of the adoptee. In Massachusetts, there are few requirements. First, an adult may adopt someone who is younger as long as the adoptee is not a spouse, brother, sister, uncle or aunt. Second, if the adult petitioning the court for adoption is married, the spouse must also join in the adoption. Third, the adoptee must consent to the adoption as is the case for the adoption of any person over the age of 12. Fourth, Massachusetts further requires that if the adoptee is married, the spouse must also consent to the adoption, but the consent of the adoptee’s birth parents is not required. Finally, the court requires a statement of affidavit of the petitioner(s) explaining the parent-child relationship and reason for the adoption. The adoptee has the option of requesting a new name and new birth certificate, but neither is required.

Whether intended or not, adult adoption creates inheritance rights. The adoption gives the adoptee the right to inherit from the adopter as a legal child under a will and under the laws of intestacy which is when someone dies without a will and the state dictates who can inherit, and in what order of preference.

In Massachusetts, we are fortunate that our adoption statute supports and encourages adult adoptions and the formalizing of existing parent-child relationships. Our office has handled numerous adult adoptions, each with its own set of unique circumstances. Recently, we have represented step parents wishing to formalize the long term and loving parent-child relationship with a step child, a couple who adopted their

former high school exchange student from Europe, now married, and to whom they had grown close over the years, and an aunt who adopted the adult niece whom she raised, after the niece’s mother passed away. In each instance, the adult adoption enabled the adult adoptee to choose and become part of a new family. Even for an adult adoptee, an adoption can provide comfort and security by giving legal permanence to an emotional bond.

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