

## Helping our clients navigate difficult waters...



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### Contested Adoption — Case Closed!

The Summer 2011 edition of The Brief discussed Karen Greenberg's then-recent success in the Probate and Family Court on behalf of her client, an adoption agency, in terminating the parental rights of an absent father who was contesting the adoption of his biological son. In that case, Karen filed a Petition to Dispense with Parental Consent to the adoption and, after trial, the Court found that the father was unfit to parent the child and granted the petition.

Father's counsel, who had been appointed by the Court upon the father's claim of indigency, appealed that decision and also appealed the Trial Court's denial of a stay of the adoption proceedings while the appeal was decided. Following an initial round of briefing and argument before the Massachusetts Appeals Court relating to the father's request for a stay, that Court agreed that the father was not entitled to a stay of the adoption proceedings and allowed the adoption to proceed.

The parties then briefed and argued the merits of the father's appeal. On appeal, the father asserted numerous arguments in support of his claim that the Trial Court's decision was erroneous and should be reversed, including that an initial delay in appointing counsel had denied the father his due process rights, that certain findings made by the Trial Court were erroneous and showed that the judge had not paid close attention to the evidence, and that there was insufficient evidence at trial to support the Court's findings that the father had willfully failed to visit the child and that the father was unable and unwilling to meet the special needs that the child would have if he was separated from the pre-adoptive family that had cared for him since he was a few days old.

*Konowitz & Greenberg, P.C.* prepared and filed a brief on behalf of the adoption agency in opposition to each of the father's claims. In that brief, we argued, among other things, that the evidence presented at trial, including expert testimony concerning the impact on the child if he was separated and the father's inability and unwillingness to address or deal with that impact if he gained custody, as well as testimony of the birth mother and pre-adoptive parents, was easily sufficient to justify the Court's findings. The brief also explained that any errors in the Court's findings did not relate to central issues in the case and were harmless, and that the delay in appointing counsel had no effect on the father's substantive rights.

Finally, on May 2, 2012, more than five years after the child was born, the Massachusetts Appeals Court affirmed the Trial Court's judgment in its entirety, focusing its decision on the father's claim that there was insufficient evidence to find him unfit, and dismissing the other arguments in a footnote stating that "we need not dwell on the father's other arguments, all of which were considered and determined to be without merit for substantially the reasons [set forth] in the briefs of the appellees." With respect to that argument, the Appeals Court stated that it "discern[s] no error on the part of the trial judge," before concluding that "given the father's willful failure to involve himself in the life of the child, with whom he has no bond whatsoever, and no appreciation of the disruption the child would suffer if he were to be removed from the only 'parents' he has known since birth, the conclusion rendered by the trial judge is amply supported."

Where a year ago, Karen's discussion of this case concluded by advising "stay tuned...", the child's adoption by his adoptive parents has now been completed and, barring any desperate attempt to further appeal the matter, is final and irrevocable.

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## “Counselor! Please Counsel Your Client!”<sup>1</sup>

For the past few years, I have taught a course in legal studies to undergraduate students at Brandeis University. Teaching undergraduates about the law is challenging—yet probably one of the most illuminating experiences with regard to my interaction with clients. By the time students get to law school, they have already developed a particular mindset about their relationship with the law and the purpose of the legal system. This is different from the mindset of the general population, which is well represented by my students, who have such diverse majors as biology, theatre, and economics.

These differences help remind me of a critical yet very simple fact: People hire attorneys because they need help solving problems. See how simple this sounds? The difficulty, from the lawyer’s perspective, lies in identifying the *real* problem, and helping the client achieve the *proper* solution.

The first thing I teach my students is how to identify legal issues in a client’s story. Sometimes, there are no legal issues despite a compelling narrative from the client. This is extremely frustrating for the students, who insist that the law must provide a remedy given the harm that has occurred. I can think of clients who have expressed this same frustration: “But what they did was just wrong!”

Other times, there are plenty of legal issues, but no good legal remedies to solve the client’s problem. This is equally frustrating,

and I can think of clients who have won a lawsuit but failed to gain the satisfaction they were looking for with a legal resolution. Finally, sometimes there are legal issues, and legal remedies, but also legal fees—which create an entirely different problem for the client!

Through these class discussions, I see how helpless the students feel not knowing how to solve hypothetical problems within the system of laws—which helps remind me how clients must feel at that first meeting with their attorney. It is at this point I remind my students that another word for an attorney is “counselor.”

Good attorneys are not just lawyers. They are counselors in every sense of that definition. Being a good counselor requires educating the client, identifying the client’s true problem, and considering all possible solutions both in and out of the legal system. When a lawyer conducts himself as his client’s counselor, the client will feel prepared, protected, and positive about the solutions available—just as I hope my students feel about their final exams!

At *Konowitz & Greenberg*, we are very proud of the fact that our attorneys have such diverse interests, talents and backgrounds. Though this may make us disagree on some things, we would all agree that this diversity makes us better counselors.

<sup>1</sup>Overheard comment made by a judge in the Suffolk County Superior Court.

## STAND UP! FOR WOMEN’S SAFETY

As a dedicated supporter of the Lily Konowitz Foundation for Women’s Safety, *Konowitz & Greenberg* is proud to announce that the organization’s first fundraiser was a huge success!

The event, **Stand Up! for Women’s Safety**, took place on June 12th at BOKX 109 American Prime At The Hotel Indigo in Newton. Guests enjoyed beverages, hors d’oeuvres, great company and the opportunity to win a variety of raffle and auction items. Matt Siegel of KISS 108 was the Celebrity Auctioneer for the event. All proceeds went towards this great cause!

For more information about the Lily Konowitz Foundation for Women’s Safety and its mission, please visit:

[WWW.LILYKONOWITZFOUNDATION.ORG](http://WWW.LILYKONOWITZFOUNDATION.ORG)



## Have It Your Way

Want to make a baby? Options range from the back of your daddy’s Lincoln, to the turkey baster, to the sperm cocktail. Indeed, thanks to the ever-improving science of reproductive technology, more options are becoming available all the time. While the folks able to rely on traditional methods

remain on their own, in recent years, I have assisted many clients in navigating the legal issues that arise with respect to a few of the technological alternatives.

### Artificial Insemination

The only Massachusetts statute governing any form of assisted reproductive technology is Massachusetts General Law Chapter 46, § 4B. The statute provides that any child born to a married woman as a result of artificial insemination with the consent of her husband shall be considered the legitimate child of the mother and such husband.

Massachusetts, unlike several other states, has no other statutory law governing assisted reproduction. However, Massachusetts case law has created common law doctrines, which are equally enforceable as a statute.

### Gestational Carriers and Surrogates

Massachusetts does not recognize a gestational carrier as the parent of a child carried for the intended parents as long as the egg is not from the carrier. This is true whether the egg and the sperm are from the intended parents or from anonymous or known donors. With the proper proof of history of the egg and the sperm, Massachusetts will also allow a pre-birth parentage order in the case of the known donors, if all parties agree.

If the egg is the carrier’s egg, an adoption is required to terminate the parental rights of the carrier, who in such circumstances is commonly referred to as a surrogate, because the egg is hers.

### The Cocktail

Often times, same sex couples want to build their family using biological material from adults related to them. For example, a same sex couple may use the egg of a relative and fertilize the egg with the sperm of the non-related partner. In other cases, if the egg is not biologically related to either of the intended parents, the egg may be fertilized with a sperm “cocktail”; a mixture of both partners’ sperm. In either case, it is important and appropriate that both partners adopt the child, so that there is no mistake as to who the legal parents are in the eyes of the law.

These, of course, are just a few of the scenarios for creating a family today. New alternatives, and new legal issues surrounding those alternatives, seem to arrive on a daily basis.

## K&G NEWS

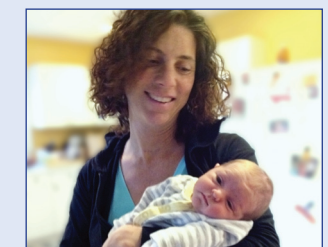
Brad recently completed a trial in the Business Litigation Session of the Suffolk Superior Court. The case involved a partnership dispute with multiple claims and counterclaims alleging the breach of partnership agreements and violations of fiduciary duties relating to numerous business ventures between the partners dating back over a period of more than thirty years.

Brad recently obtained the dismissal of a case filed in the Federal District Court for the Southern District of New York. Our client, an investment company, had been sued for commissions allegedly owed to the Plaintiff under a marketing agreement.

In a recent alimony modification case, Karen represented a husband seeking a reduction in his alimony obligation due to job loss. The day before trial, the wife requested a continuance, and in a surprise outcome, the judge allowed the continuance, terminated the husband’s alimony, ordered the wife to pay him child support on behalf of the minor child and continued the trial for nine months.

## THE KONOWITZ & GREENBERG FAMILY HAS EXPANDED!

Mia Rosenblatt Tinkjian and her family, Kevork, Rose and Gregory welcomed Arianna Jean Tinkjian, who was born on March 28, weighing 6 lbs. 5 oz. and was 19 inches long. Best wishes to the Tinkjian family!



READ OUR  
NEWSLETTER ONLINE!

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## Size Does Matter: Smaller Can Be Better

In many arenas, there seems to be an assumption that bigger always equals better. The bigger the payroll, the better the baseball team (ask the Red Sox how this is working out for them!), or the bigger the law firm, the better it must be. However, there is a well known quote by Mark Twain that I have

always preferred: "It's not the size of the dog in the fight; it is the size of the fight in the dog."

If a firm and its members do not have the talent, abilities or commitment to do the job, it makes no difference how big they are. You cannot expect or force a law firm to be first-rate or provide high-quality service simply because they are big. Either they do or they do not. As a smaller firm, it is imperative that the attorneys at *Konowitz & Greenberg* work as a TEAM. Doing so brings a variety of perspectives to our work, meaning that not only is the end result a superior product, but also that the product is more likely to be tailored to the client's needs. In addition, the client in a smaller firm is likely to be given greater attention and service because the client is not simply a number, but an actual person that is actually important to the firm.

In today's economy, going with a smaller, leaner, and more cost conscious firm will result in more competitive rates on your project. Our smaller firm is more convenient, more service-oriented, and more responsive. Our firm members have much greater control of their destinies, which gives each TEAM member a sense of security and they pass this feeling on to our clients.

Since our last newsletter, our "small firm" has successfully argued an appeal before the Massachusetts Appeals Court on a sensitive adoption issue; is awaiting decisions from the Massachusetts Appeals Court and the Vermont Supreme Court in cases involving contractual disputes; successfully argued for the elimination of alimony and an order that our client's spouse now pay child support; concluded an acquisition of a New York financial asset management firm; advised a London based company on doing business in the United States; implemented several estate plans; successfully defended a company in multiple suits in New York and Pennsylvania; tried a case in the Superior Court Business Litigation Session; delivered a paper to the American Academy of Adoption Attorneys at their annual convention; and successfully appeared before the City of Newton Licensing Board Commissioners.

This is just a representative sampling of the issues that have been successfully handled by our "small firm."



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## More on . . . Estate Planning

I am always amazed at how often I hear someone say that they do not think they need a will because they are either not married or do not have children. In fact, that is all the more reason to have an estate plan! I recently came across a statistic that is alarming: 50% of Americans with children do not have a

will, and 41% of baby boomers do not have a will. I can't speak to the accuracy of these statistics, but it certainly brings the issue to the forefront. These people must not be reading my articles. Otherwise, they would know and understand that while it is difficult to deal with the inevitability of death, we all need to plan for the future, regardless of our marital status. The costs are always greater to our estate and our loved ones if we do not.

A single person dying without a will means that the person's assets will be distributed according to the state's intestacy laws. Massachusetts recently updated its intestacy laws under the Massachusetts Uniform Probate Code (MUPC) which, after several delays, became effective on March 31, 2012. According to the MUPC, if you are single and die without a will, your assets will pass

to your children, followed by your parents, and siblings, according to percentages prescribed by the law, even if you wanted them to go to a partner, friend or charity. Making an estate plan is even more critical if you are not married but have children or are in a committed relationship, because under the MUPC, a surviving partner does not receive the same protections under the law as a married couple and could be left completely unprovided-for in the event of your death.

Furthermore, if you are single and become incapacitated without a Health Care Proxy or Durable Power of Attorney in place, a court will appoint someone to make medical and financial decisions for you, rather than someone of your choosing, and whom you trust, making these important decisions on your behalf. The same fate applies to same-sex couples who are not legally married or reside in a state where same-sex marriages are not recognized. Unlike married couples, an unmarried partner or friend cannot make medical or financial decisions on your behalf without signed authorization.

Our laws pertaining to estates clearly favor married couples, but single and unmarried couples who plan for their future have nothing to worry about.