June 11, 2002

Honorable Archie C. Brown, Chief Judge
Washtenaw County Trial Court
101 E. Huron Street
P.O. Box 8645
Ann Arbor, MI 48104

Re: Second Parent Adoptions

Dear Judge Brown:

We were surprised and very disappointed by your memorandum, dated June 4, 2002, in which you direct the Washtenaw County Trial Court, and in particular the Juvenile Division staff, to no longer process petitions for second parent adoptions, including any petitions that are currently pending.

As developed more fully below, we disagree with the action you have taken and we ask you to withdraw your directive, for three reasons.

1. Circuit court chief judges lack the authority to, on their own initiative, render an advisory opinion about the interpretation of a statute and then make it binding upon all judges in the circuit. Chief judges have the authority to issue orders regarding the administration of the court, but cannot make legal rulings for other judges.

2. It was unfair, and contrary to long-standing judicial practice to issue a legal directive in a case not before you based on the legal opinion of a sole attorney and without even considering other opinions to the contrary, including those from judges in your own circuit.

3. The interpretation of Michigan's adoption law set forth in your memorandum is incorrect. Other states with adoption laws very similar to Michigan's have permitted second parent adoptions by unmarried couples and Michigan's law also authorizes such adoptions. Furthermore, we believe that your memorandum fails to recognize that the decision of whether to grant an adoption in Michigan hinges on whether the adoption advances the best interests of the child, not whether the prospective adoptive parent is married.

I. CHIEF JUDGES LACK THE AUTHORITY TO RULE ON LEGAL ISSUES NOT BEFORE THEM AND THEN ORDER OTHER JUDGES TO ABIDE BY THE RULING.

Michigan Court Rule 8.110 (C) details the duties and powers of a trial court chief judge, which include administrative functions such as docket control, assignment of cases, hours of court operations, vacation schedules, and effectuating compliance with procedural rules.

While the Michigan Supreme Court may issue advisory opinions regarding the constitutionality of Michigan law, MCR 7.301 (A) (4), and the Attorney General may issue opinions regarding statutory interpretation, there is no equivalent provision giving chief trial court judges the power to issue legal rulings outside the context of a specific case. Even the Supreme Court has made it clear that its traditional role, like that of the lower courts, is "to resolve only actual controversies where the stakes of the parties are committed and the issues developed in adversary proceedings." *Request for Advisory Opinion on Constitutionality of 1978 PA 33*, 402 Mich 968 (1978).

The effect of your June 4th memorandum is to render a decision on second parent adoption petitions assigned to other judges that are currently pending in Washtenaw County. A chief judge does not have the authority to enter dispositive orders in cases that have been assigned to other judges of the circuit. As the Michigan Supreme Court unanimously held:

> Substantive or dispositive rulings in individual cases are not exercises of administrative authority. Further, adherence to the approach set forth in MCR 8.111 enhances personal judicial accountability and assures litigants that rulings are made by a judge who is familiar with the substance and circumstances of each case….The rule that one circuit court judge should not enter orders in a case assigned to another circuit judge is of longstanding. [*Schell v Baker Furniture,* 461 Mich 502, 510 (2000)].

See also *Liberty v Michigan Bell Telephone Co,* 152 Mich App 780 (1986) (Authority to rule on motion to set aside ministerially entered mediation judgment rested with assigned judge, rather than chief judge); *Montean v City of Detroit*, 143 Mich App 500 (1985) (Chief judge lacked authority to rule on motion to set aside mediation acceptance; rather, unless assigned judge was absent or otherwise unable to act, her authority over the matter continued to date of trial).

If an aggrieved party in a lawsuit disagrees with a legal ruling of a trial court judge, that party may appeal to the Michigan Court of Appeals. The chief circuit court judge is an administrator, not a "roaming" appellate court, and he cannot substitute his judgment for that of other judges in the circuit whenever he sees fit.

II. IT WAS UNFAIR TO ISSUE A DIRECTIVE BASED SOLELY ON THE OPINION OF ONE LAWYER, WITHOUT HEARING THE OTHER SIDE.

In your memorandum, you indicate that you base your decision on a legal opinion obtained from one adoption specialist attorney, Herbert Brail, one of three Michigan attorneys who are members of the American Academy of Adoption Attorneys. We question the fairness and objectivity in reaching a decision regarding Michigan Adoption law, by soliciting only one interpretation of Michigan's law. If such practice was valid, a chief judge, could, based solely on the opinion of one constitutional scholar, and outside the context of a particular case, simply declare a state statute unconstitutional and order that all judges in the circuit dismiss criminal cases filed under the statute. Clearly, that is not how the American judicial process works.

The undersigned includes numerous concerned attorneys and family law practitioners that practice in the area of adoption and family law, including Monica Linkner, a Michigan member of the American Academy of Adoption Attorneys. We disagree with Mr. Brail's interpretation of the law for the reasons set for below.

3. THE MICHIGAN ADOPTION CODE PERMITS SECOND-PARENT ADOPTIONS.

A. Second Parent Adoptions Are Consistent With the Purpose of the Adoption Code, Which Is To Safeguard and Promote the Best Interests of Each Adoptee.

The purpose of the Michigan Adoption Code is to safeguard and promote the best interests of the child. *See* MCL 710.21(b).[1] *See also Matter of Schejbal*, 131 Mich App 833, 835 (1984) ("[T]he concept of the best interests of the child has long been the polar star for judicial guidance in cases involving children. *Corrie v. Corrie*, 42 Mich 509 (1880); *In re Ernst*, 373 Mich 337 (1964).").

Allowing second parent adoptions fulfills this purpose by protecting children's existing relationships with their nonbiological parents. As the Supreme Judicial Court of Massachusetts explained:

> Adoption will not result in any tangible change in Tammy's daily life; it will, however, serve to provide her with a significant legal relationship which may be important in her future. At the most practical level, adoption will entitle Tammy to inherit from Helen's family . . . and from Helen . . ., to receive support from Helen, who will legally be obligated to provide such support, to be eligible for coverage under Helen's health insurance policies, and to be eligible for social security benefits in the event of Helen's disability or death.

(Adoption of Tammy, 619 NE 2d 315, 320-21 (Mass 1993)).

[1] MCL 710.21(b) provides that its purpose is "to provide procedures and services which will safeguard and promote the best interest of each adoptee in need of adoption and which will protect the rights of all parties concerned. If conflicts arise between the rights of the adoptee and the rights of another, the rights of the adoptee shall be paramount."

See also *Jacob/Dana*, 660 NE 2d 397, 339-400 (NY 1995) (listing "advantages" that accrue to children by adoption, including financial and practical concerns, as well as emotional security).

The statute clearly gives judges significant discretion to grant second parent adoption where necessary to protect the best interests of the child. MCL 710.24(1). The only restriction in the statute is the requirement that where a married person is adopting a child, the person must be joined by his or her spouse in the petition. See MCL 710.24(1) ("If a person desires to adopt a child . . . that person, together with his wife or her husband, if married, shall file a petition with the court . . ."). This provision is included because there is a presumption that when a married person is adopting, his or her spouse will also be involved in parenting the child and should therefore also have a legally binding relationship to the child. This requirement also ensures that both spouses agreed as to the rights and responsibilities of each party at the time of the adoption.

Courts interpreting similar language in other states have uniformly concluded there is nothing in the plain language or purpose of this requirement that prevents second parent adoptions. See *In the Matter of Jacob/In the Matter of Dana*, 660 NE 2d 397 (NY 1995) (interpreting similar statute to permit second parent adoptions); *Adoption of Two Children by H.N.R.*, 666 A 2d 535 (NJ App 1995) (same); *In re M.M.D. & B.H.M.*, 662 A 2d 837 (D.C. App. 1995) (same); *In re Petition of K.M. & D.M.*, 653 NE 2d 888 (Ill App Ct 1995) (same); *Adoption of Tammy*, 619 NE 2d 315 (Mass 1993) (same); *Adoptions of B.L.V.B. & E.L.V.B.*, 628 A 2d 1271 (Vt 1993) (same).[2] States

[2] New York's statute provides: "an adult unmarried person or an adult husband and his adult wife together may adopt another person." NY Dom Rel Law § 110; New Jersey's statute provides: "Any person may institute an action for adoption except that a married person may do so only with the written consent of his spouse or jointly with his spouse in the same action or if living separate and apart from his spouse." NJSA 9:3-43a.; The DC Code provides: "Any person may petition the court for a decree of adoption. A petition may not be considered by the court unless petitioner's spouse, if he has one, joins in the petition . . ." DC Code § 16-302; Massachusetts' statute provides: "A person of full age may petition the probate court in the county where he resides for leave to adopt as his child another person younger than himself. . . . If the petitioner has a husband or wife living, competent to join in the petition, such husband or wife shall join therein, and upon adoption the child shall in law be the child of both . . ." MGLA Chp. 210, § 1; Vermont's statute provides: "A person or husband and wife together . . . may adopt any

in which final appellate courts have held that second parent adoptions are not permissible have statutes that are substantially different than Michigan's law.[3]

Because second parent adoptions are so clearly in the best interests of children, every major child welfare organization in the country supports them. See, e.g., American Academy of Pediatrics (AAP) Technical Report: Coparent or Second-Parent Adoption by Same-Sex Parents (available at http://www.aap.org/policy/020008t.html); American Psychological Association (APA), Lesbian and Gay Parenting: A Resource for Psychologists.

B. Rules of Statutory Construction Provide That The Term "Person" Should Be Read to Include "Persons."

Under the express terms of the Michigan Adoption Code, any "person" is eligible to adopt, whether married or unmarried, and any "child" may be adopted. MCL 710.24(1) ("If a person desires to adopt a child . . . that person . . . shall file a petition with the court . . .").

When interpreting this statute, courts must apply the rules of statutory construction mandated by the legislature. The legislature has made clear that use of a singular term within a statute may be interpreted to include the plural as well: "Every word importing a singular number only may extend to and embrace the plural number." MCL 8.3b. The Legislature has also made clear that this rule should be applied in all cases, unless doing so is patently contrary to the purpose of the statute: "In the construction of statutes of this state, the rules [of statutory construction] stated in sections 3a to 3w shall be observed, unless such construction would be inconsistent with the manifest intent of the legislature." MCL 8.3.

When applied to the adoption statutes, these rules provide that the word "person" in MCL 710.24(1) can be interpreted to include "persons." This is the most direct and straightforward

---

other person . . . A married man or a married woman shall not adopt a person or be adopted without the consent of the other spouse." 15 VSA §§ 431.

[3] *In the Interest of Angel Lace M.*, 516 NW 2d 678 (Wis 1994) (construing Wis Stat § 48.81(1), which bars consideration of an adoption petition unless the minor's "parental rights have been terminated."); *Adoption of Baby Z.*, 724 A2d 1035 (Conn 1999) (discussing the limitation in Conn Gen Stats §§ 45a-727 and 45a-724 that, except for stepparent and blood relative adoptions, an adoption application may only be filed by a "statutory parent" who was appointed because the minor had no legal parents) (Note that Connecticut has since amended its adoption statute to explicitly provide for second parent adoptions. Conn Gen Stat § 45a-724(3)); *Adoption of T.K.J. and K.A.K.*, 931 P2d 488, 491 (Colo 1996) (interpreting Colo Rev Stat § 19-5-203, which defines children who are "available" for adoption as those for whom all parental rights have been terminated).

interpretation of the plain language in MCL 710.24(1). There is nothing in the adoption statutes to indicate that the Legislature intended courts to refrain from applying the rule of construction mandated in MCL 8.3b. Based on this straightforward reading, the provision in MCL 710.24(1) allowing an unmarried "person" to adopt should be interpreted to include two unmarried "persons" as well.

This conclusion is reinforced by case law from other states whose statutory language is similar to that in MCL 710.24(1).[4] In Illinois, for example, the adoption statutes provide:

> A reputable person of legal age and of either sex, provided that if such person is married, his or her spouse shall be a party to the adoption proceeding, including a husband or wife desiring to adopt a child of the other spouse, in all of which cases the adoption shall be by both spouses jointly. [750 ILCS 50/2(A)].

The Illinois Court of Appeals recently interpreted this language to permit second parent adoptions. *In re Petition of K.M. & D.M.*, 653 NE 2d 888 (Ill App Ct 1995). The trial court had interpreted the statute as *not* permitting second parent adoptions, reasoning that "a plural interpretation of the word 'person' was limited to married couples." *Id.* at 893. The Court of Appeals reversed this decision and permitted the second parent adoption to go forward, explaining: "The Act expressly provides for plural construction to be given to singular terms: 'The singular includes the plural and the plural includes the singular . . . as the context of this Act may require." [*Id.* at 897].

In fact, to the best of our knowledge, there are no reported decisions in which a court has held that the use of the singular term "person" must be interpreted to prohibit second parent adoptions.

3. Second Parent Adoptions Are Consistent with Strict Construction of the Michigan Adoption Code.

Although the Michigan Adoption Code must be strictly construed, see *In re Schnell*, 214 Mich App 304, 309-310 (1995), statutory language "should be construed reasonably, keeping in mind

[4] *In re Petition of K.M. & D.M.*, 653 NE 2d 888 (Ill App Ct 1995); *See In re M.M.D. & B.H.M.*, 662 A2d 837 (DC App 1995) (applying rule that words importing the singular shall be held to include the plural and concluding that an unmarried couple can petition to adopt); *Adoption of Tammy*, 619 NE 2d 315, 318-19 (Mass 1993) (holding that "construing the term 'person' as 'persons'"); *In the Matter of Jacob/In the Matter of Dana*, 660 NE 2d 397, 400 (NY 1995) (applying the rule of statutory construction and concluding that petitioners were eligible to adopt as "adult unmarried persons"). *See also In re Hart*, -- A.2d –, 2001 WL 1773607, at *6 (Del Fam Ct 2001) ("[T]he term 'unmarried person' though stated in the singular can be read to include the plural 'unmarried persons' since 1 Del. C. § 304(a) provides: Words used in the singular number include the plural and the plural includes the singular.").

the purpose of the act." *Hill v Sienkiewicz*, 221 Mich App 683, 689 (1997); See also *In re Gaipa*, 219 Mich App 80, 86 (1996) (when construing a statute, courts must use common sense and should construe the statute to avoid unreasonable consequences).

In this case, it would be unreasonable to disregard the plain language of the statute and impose an extra prohibition on second parent adoptions. Such a restriction would frustrate, rather than further, the underlying statutory purpose of encouraging adoption and protecting children. This is particularly true in light of the wholesale revision of Michigan's adoption code in 1995 when Michigan ended its prohibition on direct placement adoptions unless the prospective adoptive parent was already related to the child as a stepparent or within a specified degree of affinity or consanguinity. See former MCL 710.21 *et seq*. See also *In re Kiogima*, 189 Mich App 6, 11 (1991).

After extensive study and public debate, the legislature eliminated those anachronistic restrictions to accommodate the increased diversity of contemporary family life and thus to facilitate more adoptive placements. See Suzanne Herman, "The Revised Michigan Adoption Code: The Reemergence of Direct Placement Adoptions and the Role and Duties of the Attorney," 74 U DET MERCY L REV 583, 592-96 (1997) (discussing rationale for 1995 amendments).[5] As a result of those amendments, a birthparent is now free to select an adoptive family of her own choosing, without regard to whether there is any pre-existing legal or biological tie. *See* MCL 710.23a.[6]

The same considerations are equally relevant in the distinct but related context of second parent adoption, where it is equally important to recognize the diversity of families and ensure that children have the security of having a legally protected relationship to both parents whenever possible.[7]

In light of these revisions, it is clear that the primary purpose of Michigan adoption law is not to limit and restrict the types of families who may adopt, or to impose a narrow vision of the ideal

---

[5] *See also* Rick Pluta, "Adoption Reform Package Clears Michigan House," UPI (June 9, 1993) (stating that a primary purpose of the proposed statutory revision was to provide birthparents and adoptive parents with a more flexible alternative to agency placements, which deprive the birth parent of any choice in selecting her child's family and also typically involve "extensive criteria relating to age, marital status, infertility, length of marriage and financial stability of the adoptive parents") (quoting Rep. David Gubow).

[6] In light of these amendments, the Court of Appeals' dictum in a 1991 decision, *In re Adams*, 189 Mich App 540, 544 (1991), about joint petitions by unmarried couples is inapposite. At the time *In re Adams* was decided, the strict statutory restrictions on direct placement adoptions were still in place, and the now readily available procedures to secure direct placement adoptions for children who are being raised by two unmarried parents did not yet exist. In fact, if the dictum from that case was applied to the current code, it would effectively nullify the 1995 amendments by restoring the very restriction (*i.e.*, no direct placement adoption unless there is a stepparent situation) that the legislature specifically eliminated in MCL 710.23.

[7] Other states have held that it is within the parameters of strict construction to construe adoption statutes similar to Michigan's to allow second parent adoptions. *See, e.g., In the Matter of Jacob/In the Matter of Dana*, 660 NE 2d 397, 399 (N.Y. 1995) (holding that second parent adoptions are permissible under the existing New York adoption statute even though adoption statutes in New York "must be strictly construed"); *Adoption of Tammy*, 619 NE 2d at 321 (holding that second parent adoptions are permissible even though Massachusetts employs strict construction in interpreting its adoption statutes). *See also id.* at 318-19 ("[t]here is nothing on the face of the statute which precludes the joint adoption of a child by two unmarried cohabitants such as the petitioners"; "construing the term 'person' as 'persons'" is mandated by the rule of statutory construction).

adoptive family structure; rather the primary purpose is to encourage adoption and to establish a flexible adoption scheme that is in tune with the diversity of current families.

CONCLUSION

We are distressed by your June 4th directive and the impact that such directive may have on second parent adoption petitions in Washtenaw County. We do not believe that a chief judge has the authority to issue such a directive, absent a live and actual controversy on his docket, nor do we believe that he has the authority to enter dispositive legal orders in cases pending before other judges. The Juvenile Division's interpretation of Michigan's adoption law has been correct and the legal conclusions drawn in your memorandum are wrong and conflict with the best interests of Michigan's children.

For these reasons we respectfully request that you rescind your recent directive.

Respectfully submitted,

American Civil Liberties Union of Michigan
Kary L. Moss, Executive Director
Michael Steinberg, Legal Director
Jay Kaplan, Staff Attorney, GLBT Project
60 W. Hancock
Detroit, MI 48201

Monica Farris Linkner, Esq.
American Academy of Adoption Attorneys
Sommers, Schwartz, Silver and Schwartz, PC
2000 Town Center, #900
Southfield, MI 48075

Human Rights Campaign
Kevin Layton, Legal Director
919 18th Street N.W.
Washington D.C. 20006

Lambda Legal Defense and Education Fund
Patricia Logue, Esq.
11 E. Adams, Suite 1008
Chicago, Illinois 60603-6303

National Center for Lesbian Rights
Courtney Joslin, Esq.
870 Mission Street, Suite 570
San Francisco, CA 94102

John M. Allen, Esq.
Allen Brothers PLLC
407 E. Fort Street, #400
Detroit, MI 48226

Jane Bassett, Esq.
Bassett and Associates
217 E. Washington Street
Ann Arbor, MI 48104

Nancy Costello, Esq.
Dickinson Wright PLLC
500 Woodward Ave., Suite 4000
Detroit, MI 48226

Lynn D'Orio, Esq.
215 S. Main Street #208
Ann Arbor, MI 48104

Barbara H. Erard, Esq.
Dickinson Wright PLLC
500 Woodward Ave., Suite 4000
Detroit, MI 48226

Henry M. Grix, Esq.
Dickinson Wright PLLC
38525 Woodward Ave., Ste. 2000
Bloomfield Hills, MI 48304

Rick A. Haberman, Esq.
500 Woodward Ave., Ste. 4000
Detroit, MI 48226

Constance Jones, Esq.
300 N. 5th Avenue, Suite 220
Ann Arbor, MI 48104

Barbara Kessler, Esq.
Kessler, Mullkoff and Hooberman
402 W. Liberty St.
Ann Arbor, MI 48103

Deborah Labelle, Esq.

221 N. Main St. #300
Ann Arbor, MI 48104

Judy Fertel Layne, Esq.
Dickinson Wright PLLC
500 Woodward Ave., Suite 400
Detroit, MI 48226

Anne C. Levy, Esq.
5342 Red Fox Drive
Brighton, MI 48114

Judith E. Levy, Esq.
2140 Fair Street
Ann Arbor, MI 48103

Alison M. Ogilvie, Esq.
Bassett & Associates, PLLC
217 E. Washington St.
Ann Arbor, MI 48104

Susan E. Paletz, Esq.
Darlene Szumko, Esq.
4120 Chicago, S.W. #4
Grandville, MI 49418

Cynthia M. York, Esq.
710 Northside Ave
Ann Arbor, MI 48105

Susan E. Paletz & Associates PC
34405 W. Twelve Mile Rd Ste. 149
Farmington Hills, MI 48331

Kathleen Poelker, Esq.
217 E. Washington Streeet
Ann Arbor, MI 48104

Claudia Rast, Esq.
Pear, Sperling, Eggan and Muskovitz
24 Frank Lloyd Wright Dr.
Ann Arbor, MI 48105

Molly Reno, Esq.
221 N. Main St. #300
Ann Arbor, MI 48104

Lisa Ruby, Esq.
611 Church Street
Ann Arbor, MI 48104

Monika Sacks, Esq.

Nichols, Sacks, Slank & Sweet
121 W. Washington St., Ste. 300
Ann Arbor, MI 48104

Rudolph A. Serra P.C.
Attorney for Triangle Foundation
1023 Parker Street
Detroit, MI 48214

Annette E. Skinner, Esq.
Chris Waichunas, Esq.
Skinner, Waichunas and Assoc. PLLC
509 E. Grand River Ave. #B
Lansing, MI 48906

Francyne Stacey
Pear, Sperling, Eggan and Muskovitz
24 Frank Lloyd Wright Drive
Ann Arbor, MI 48105