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Memorandum

To: Assembly Judiciary Committee Subcommittee on A.B. 28: Honorable William Horne (Chair), Bernie Anderson and Rod Sherer

From: Professor Annette Appell, William S. Boyd School of Law, UNLV

Re: A.B. 28

Date: February 21, 2003

Through this memo, I am offering to assist the subcommittee in any way that I can. I have many resources on post-adoption contact so am most willing, and usually able, to answer questions that may arise. I would also like to make a couple of points and to enclose some materials for the subcommittee.

A number of good questions and answers were raised on February 17 at the committee hearing. I will not rehearse any of that material here, but I would like to clarify a comment I made about post-adoption litigation that has occurred under the statutes. Litigation has been reported pursuant to only one of the statutes, that of New York. That litigation arose out of the failure of the statute (which is very different from A.B. 28) to provide any guidance as to standards for court approval of agreements, the effect of such agreements, and whether the agreements are enforceable. A.B. 28 provides guidance on the very issues that were litigated in New York and which, except for enforceability, were left open by *Birth Mother v. Adoptive Parents*.

In addition, there has been litigation in California and South Dakota, but this (unsuccessful) litigation did not arise out of post-adoption contact agreements. Instead, the California litigation was brought by birth mothers who did not know about the statute and complained that they should have been given notice of and opportunity to enter into a post-adoption contact agreement prior to termination of parental rights proceedings. *In re Kimberly S.*, 71 Cal. Rptr. 2d 740 (Ct. App. 1999); *In re Zachary D.*, 83 Cal. Rptr. 2d 407 (Ct. App. 1999). The South Dakota litigation involved court-ordered post-adoption contact that *did not* meet statutory requirements and which the supreme court, therefore, refused to enforce. *In re J.H.*, 590 N.W.2d 473 (S.D. 1999).

In a study I performed for the Nevada Division of Child and Family Services (DCFS), I questioned adoption professionals about their knowledge of post-adoption contact agreement litigation in the states with statutes providing for enforceable post-adoption contact agreements. No respondent was aware of any such litigation; in fact one respondent had conducted a survey himself seeking that information and found none.

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My second point relates to an issue that did not appear to be clearly, or accurately, addressed at the hearing: that post-adoption contact *has been* studied. There are, currently two or three large-scale longitudinal studies regarding ongoing post-adoption contact – one in its twentieth year. These studies do not attempt to determine whether such contact is in the best interests of all children, but instead to examine and compare the dynamics of types of post-adoption contact and relationships and their effect, if any, on the members of the adoption triad: birth parents, adoptive parents, and adoptees. Other smaller studies have shown benefits to openness in adoption, particularly for foster children. I am unaware of any studies that have shown post-adoption contact to be harmful.

Dominant norms about adoption, supported by all of these studies, are that: (a) adoption is an ongoing process, not a one time legal event; (b) relatedly, the birth family remains important to adoptees on some level throughout the adoptee's life; and (c) there is no single best model for adoption; each adoption is different and must be tailored to the needs of the child and the birth and adoptive families. Thus, although in the social science literature there appears to be consensus that some level of openness in adoption is good, no study holds that any level of openness is appropriate for all children or that openness is bad for all children. The matter (like most family matters) is simply too complicated for easy, generalized answers. That is one reason I support A.B. 28: it provides an additional option for adoption and permits those who will live with the adoption to establish its terms.

At the risk of inundating you with too much information, I have enclosed two documents that may help you in the subcommittee's work:

- the DCFS study I referred to above, *Final Report, Adoption with Contact Statutes: Origins and Outcomes.* That study surveyed adoption and child welfare professionals in seventeen of the eighteen states that have statutes in the same category as A.B. 28: statutes designed to make enforceable post-adoption contact between members of the birth family and the adoptive family (while preserving the finality of adoption). The survey also contains, in Appendix A, a comparison of the provisions of these adoption with contact statutes (including the federal guidelines).

- an article I wrote several years ago, *Increasing Options to Improve Permanency: Considerations in Drafting an Adoption with Contact Statute,* 18 CHILDREN'S LEGAL RIGHTS J. 24 (1998). That article, though dated regarding the existing statutes (the number of which has expanded and the content of some been amended), contains, on pages 24-27, background on adoption and the growth in openness. It also contains, on pages 31-36, a discussion of considerations in drafting post-adoption contact statutes.

Please do not hesitate to contact me if I can answer any questions or assist in any other way. I can be reached at 702-895-2325 or appell@unlv.edu.