

AGREEMENTS FOR POST-ADOPTIVE CONTACT & COMMUNICATION

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- * Effectively terminates all legal status and relationship of a parent, upon acceptance of the relinquishment by HHS*
- * Ends all obligations of the parent to support and provide for the child*
- * Also ends all rights and relationship between the parent and child*

** The relinquishment of parental rights*

WHAT PARENTAL RIGHTS?

- The right to care for the child.
- The right to have custody of the child.
- The right to establish a familial relationship with the child.
- The right to enjoy the companionship of the child.
- The right to visit the child.

But in certain situations

it is possible for a parent who has relinquished parental rights to continue to have visits and/or communication with a child *even after* adoption.

HOW?????



“The following constitutes the reasons for this bill and the purposes sought to be accomplished thereby:



“It is the intent of this legislation *to encourage and facilitate* the adoption of children who are in the custody of the Department of Social Services.”

“LB 531 would allow for a biological parent to relinquish their parental rights

with the knowledge

that they may continue communication regarding the child should both the biological parent and prospective adoptive parents agree that such communication is in the best interests of the child. The amount and type of communication would be stipulated by a written contract approved by the court.” [Emphasis Supplied]

“Introducer’s Statement of Intent,”

LB 531, February 11, 1993,

Ninety-Third Nebraska Legislature, First Session

Neb. Rev. Stat. §§43-162 thru 165

- Provides for the creation of a written agreement between a bio parent and a “prospective adoptive parent”
- Agreement provides for continued contact and communication
- Agreement is subject to approval by the adoption court



Obviously, this type of agreement is not appropriate for every case in which a parent relinquishes rights

So *when* would you use it?

- Where parent and child have established a positive relationship.



- Where continued contact & communication would be in the child's best interests.

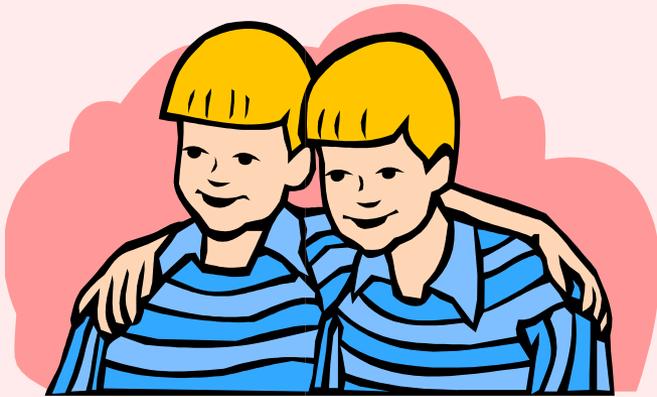
A parent who has a good relationship with the child, but who is suffering from a physical or mental illness/condition and cannot sustain the demands of parenting.



A PARENT OF AN OLDER CHILD OR TEENAGER



where preserving contact or communication is important to the child's best interest.



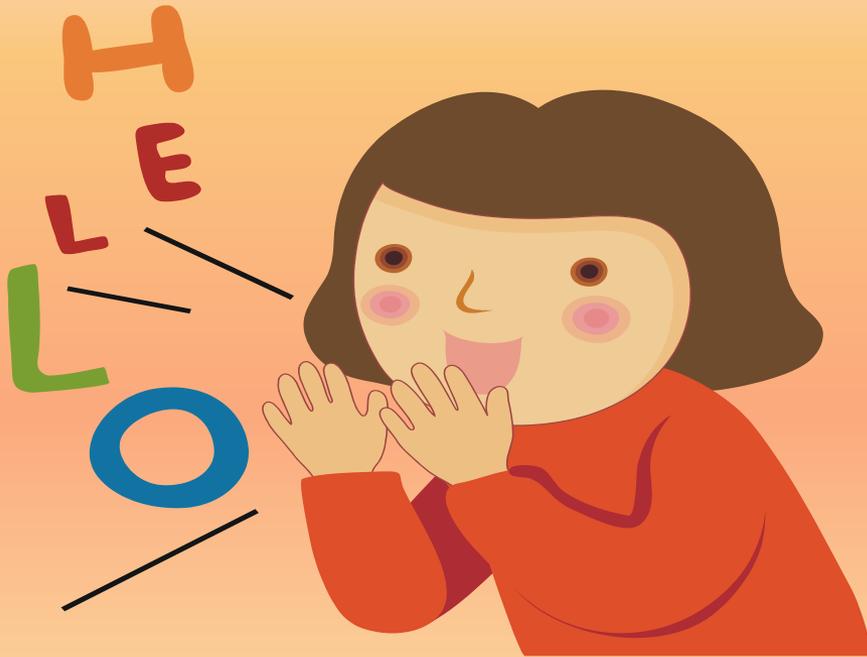
WHERE A SIBLING OF THE ADOPTED
CHILD

***Resides
with the
biological
parent***



When *not*
to use this agreement

As a means of “getting to know” the child

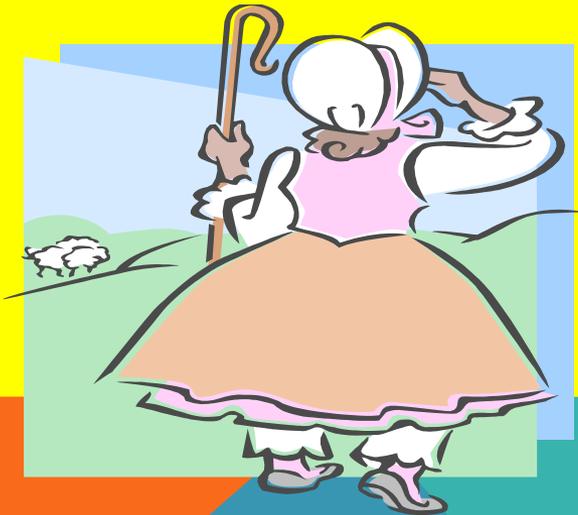


See Neb. Rev. Stat. §43-163(2)

Where the parent's relationship with the child has been ***abusive---*** or emotionally or psychologically toxic or disruptive to the child.



WHERE THE PARENT IS UNLIKELY TO LIVE BY THE AGREEMENT



History of
"no-show" or
periodic
disappearance
of parent



**Serious substance
or alcohol abuse**





**Where the prospective adoptive parent
Is *unwilling* to enter such an agreement**

DID YOU KNOW?

Nebraska has approved the use of these post-adoptive contact and agreements *since 1993.*

The Nebraska Legislature has sanctioned them by statute.

As a State administrative agency, HHS is required to enact administrative policies to implement this law.

Why aren't we using these agreements
in more cases?

COULD IT BE.....



RESISTANCE BY HHS?



Problem #1.

FAILURE OF HHS POLICY TO IMPLEMENT THE LAW



WHAT DO HHS's POLICIES SAY?

390 N.A.C. 6-002.06 OPENNESS

Openness will be based on the child's best interest. Details of the child's degree of openness is only determined ***after the child is free for adoption***; although assessment of what is best for the child can begin earlier. The Department will have input into an openness agreement between prospective adoptive parent and the birth parent of a prospective adoptee. (See Adoption Guidebook)

Statutory Reference: Neb. Rev. Stat. 43-138 through 43-141 and 43-146.

The Adoption Guidebook

X

OPEN ADOPTION

Openness will be based upon the child's best interest. Details of the degree of openness is only determined after the child is free for adoption, although assessment of what is best for the child can begin earlier.

The prospective adoptive parent(s) and the birth parent(s) of a prospective adoptee may enter into an agreement regarding communication or contact after the adoption between the prospective adoptee and his/her birth parent(s). The Department will have input into the openness agreement. See definitions. Adoption with Openness, Section II in this Guidebook

A child does not “become free for adoption” until
after relinquishment.

BUT



The agreement must be signed *prior to*
the relinquishment

Do these HHS policy statements
really
implement the contact and
communication statutes
if

“details of the degree of openness” is determined

only AFTER

the child is free for adoption?”

Problem #2- ARGUMENT

“We cannot promise
‘a specific placement’
for any child.”



*** ANSWER:
HHS ISN'T "PROMISING"
ANYTHING**

Problem #3

ANOTHER ARGUMENT:

**“A conditional
relinquishment
is not valid!”**



WHAT DOES THAT MEAN?

A PROPERLY EXECUTED
RELINQUISHMENT
CANNOT BE REVOKED



Gaughan v. Gilliam, 224 Neb. 836, 401 N.W.2d 687 (1987)

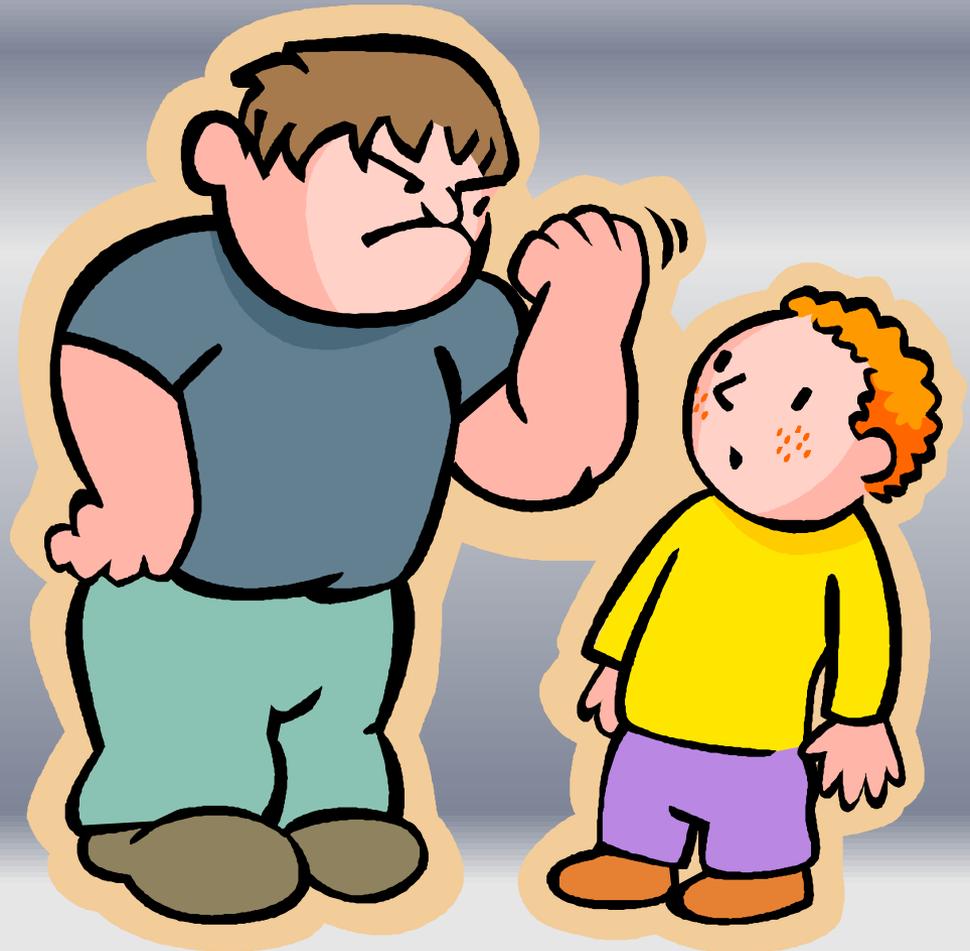
unless... it was induced by:

THREATS

COERCION

FRAUD

DURESS



IN ONE CASE, THE HHS CASE MANAGER TOLD PARENTS THAT IF THEY RELINQUISHED THEIR PARENTAL RIGHTS, THERE WAS A POSSIBILITY THAT AN "OPEN ADOPTION" COULD BE ARRANGED

PROVIDED THAT COOPERATIVE ADOPTIVE PARENTS COULD BE FOUND.

The parents relinquished,

- Immediately after signing relinquishment, HHS removed child's possessions from parents;
- HHS stopped all visitation between child & parents;
- Court dismissed habeas action filed by parents, but granted restraining order pending appeal, preventing HHS from arranging for adoption.

Parents argued coercion



- HHS told them if their rights were terminated by the court, they could not see their son again;
- But that if they signed a relinquishment, they could continue to visit their son.



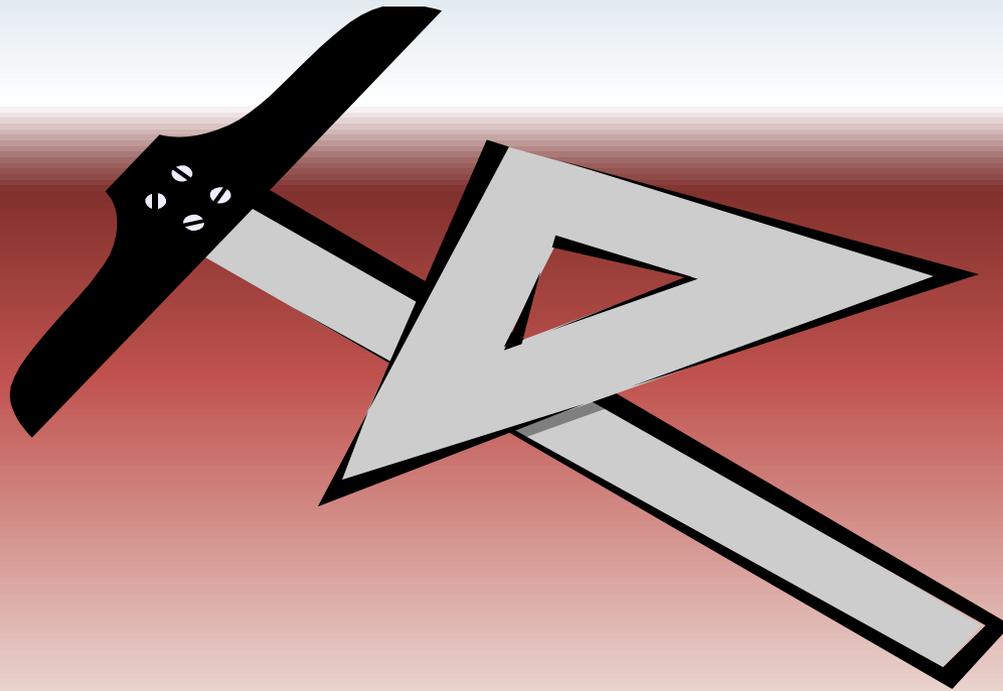
THE NEBRASKA SUPREME COURT HELD:

Parents were coerced into signing the relinquishments, based upon HHS's promise that they would be able to continue to see their son after the relinquishment.

“A relinquishment conditioned upon the retention of some parental rights is invalid.”

McCormick v. State, 218 Neb. 338, 354 N.W.2d 160 (1984)

How to square *McCormick*
with §§ 43-162 through 165?





McCormick was decided in 1984

9 years before

the Contact & Communication
statutes were enacted to govern the
issue of post-adoptive contact

In *McCormick*, the HHS case manager made the offer to parents in the hallway, outside the courtroom, *just moments prior to the hearing* on termination of their parental rights.



But under the Contact & Communication statutes



**The parent has time to
contemplate his/her
decision in advance**

In *McCormick*, HHS had not identified
any adoptive family



The Contact & Communication statutes require that the agreement be signed in advance of relinquishment by the prospective adoptive parent(s)



A vibrant, multi-colored rainbow arches across the top of the image. Below it are two large, puffy blue clouds with a gradient from light to dark blue. The text is centered within the rainbow's arch.

In *McCormick*,
HHS's "offer" of an open adoption
was vague

No specifics were drawn up.

The Contact & Communication statutes

require the creation of a written agreement that sets forth:

the specific manner
frequency
conditions



governing the post-adoptive contact & communication

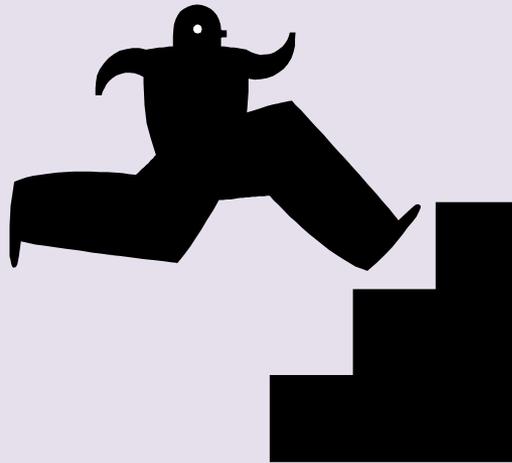
IN *MCCORMICK*,
AFTER PARENTAL
RIGHTS WERE
RELINQUISHED,
THE PARENTS HAD
NOWHERE TO GO



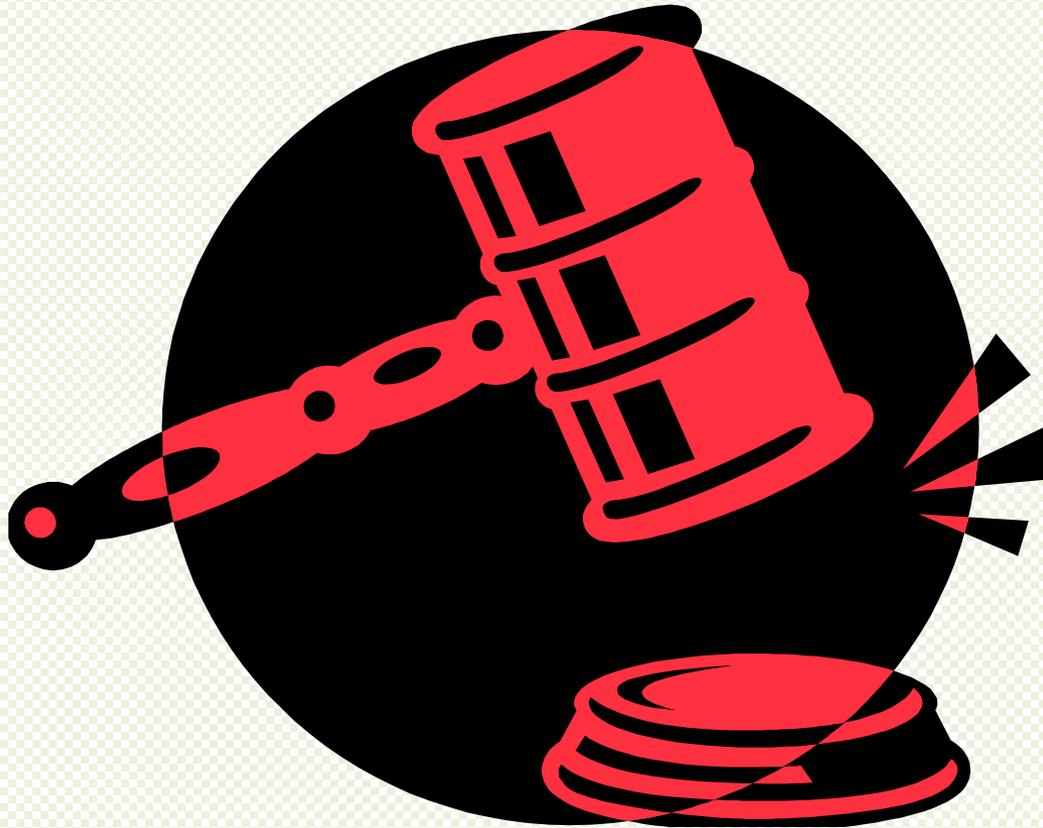
After HHS signified it was not going to
honor its agreement

BY CONTRAST

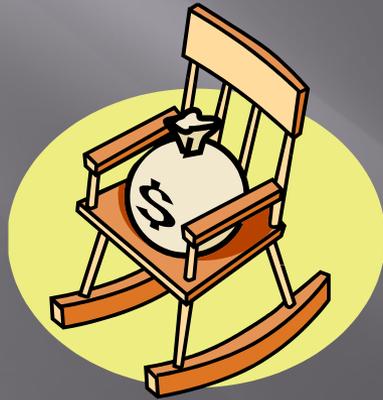
The Contact & Communication statutes
provide
specific legal remedies
to address non-compliance
by either party to the agreement



Enforcement of the agreement by a court



Award of attorneys' fees to the prevailing party



***Modification of the agreement
where appropriate***





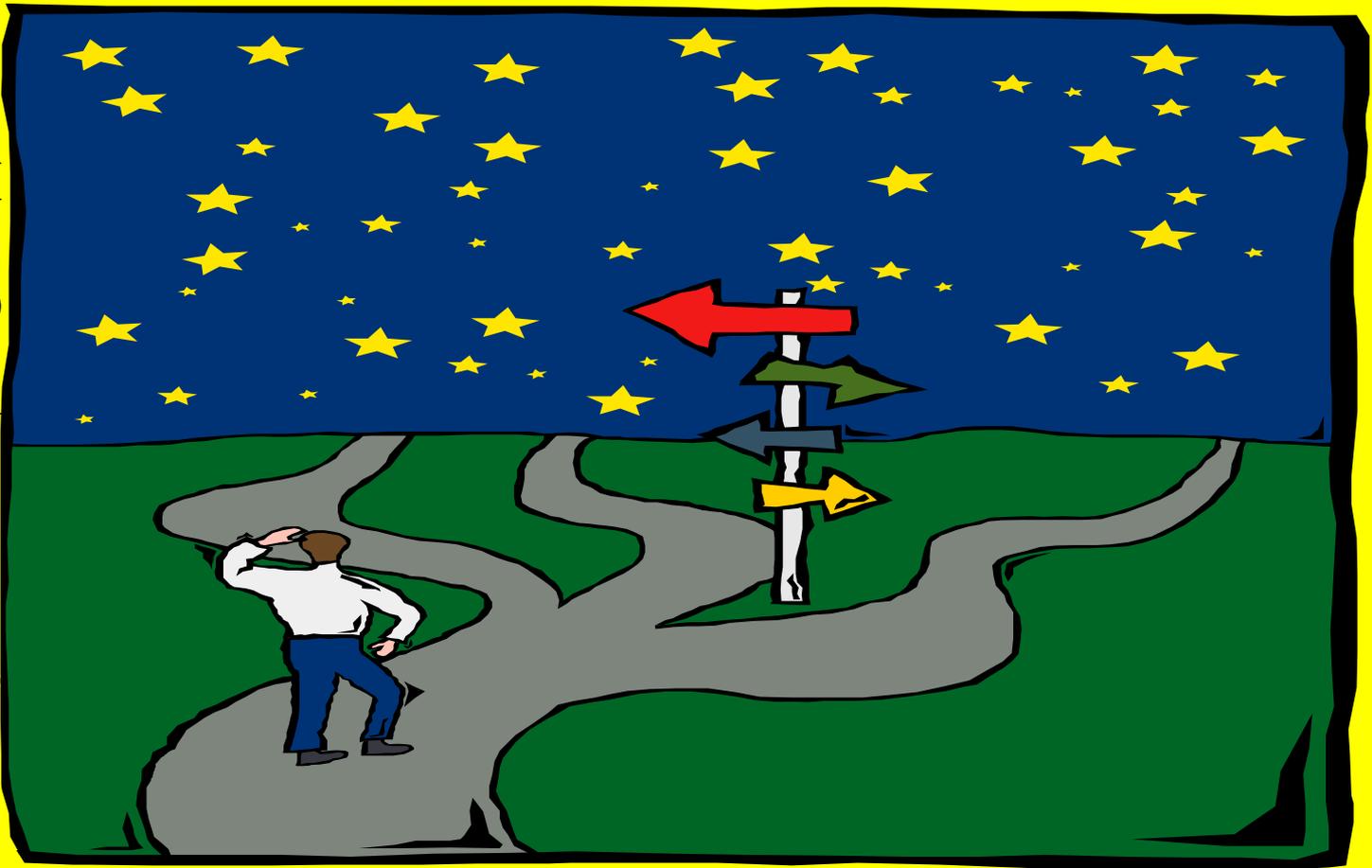
**Probably most important
aspect: the statutes address
the concern raised by
*McCormick***

***A parent may not revoke a relinquishment of
parental rights or a consent to adoption
for failure to comply with the terms
of the contact & communication agreement.***

§ 43-164
Look it up!



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?

When you think that
continued contact & communication
might be appropriate in your case?

**ASSESS YOUR CASE CAREFULLY TO SEE
IF YOUR SITUATION FITS THE
REQUIREMENTS OF THE STATUTE**



START TALKING ABOUT IT WITH OTHERS ON THE CASE





**GET THE GUARDIAN AD LITEM
ON BOARD**

MAKE CONTACT WITH THE PROSPECTIVE
ADOPTIVE PARENT(S) TO EXPLORE WILLINGNESS



ARRANGE A MEETING



**BETWEEN YOUR CLIENT AND THE
PROSPECTIVE ADOPTIVE PARENT(S)**



WRITE THE AGREEMENT

THE *ONLY SIGNERS* ARE:

THE BIO PARENT &
PROSPECTIVE ADOPTIVE
PARENT(S)



HHS does not sign

Guardian ad Litem does not sign

Have HHS and the GAL review it



IF AN AGREEMENT IS
SIGNED



REMEMBER.....
TIMING IS EVERYTHING!!!!!!

The agreement must be signed
BEFORE
the parent executes
a relinquishment of parental rights



IT'S TOO LATE....

TO SIGN THE AGREEMENT
AFTER THE PARENT HAS
RELINQUISHED PARENTAL RIGHTS

ONCE SIGNED,
THE AGREEMENT IS
PRESENTED TO THE ADOPTION
COURT FOR APPROVAL





At this point, HHS & the GAL have the right to give input to the adoption court on whether they believe the proposed agreement is in the child's best interest

Factors

the court will consider

- o *Have the child and birth parents lived together for a substantial period of time?*
- o *Does the child exhibit attachment and bonding to the birth parent(s)?*
- o *The fact that the adoption is a foster-parent adoption, with the birth parent(s) having relinquished the child due to an inability to provide him or her with adequate parenting.*
 - o **Neb. Rev. Stat. §43-163(2)**



AFTER CONSIDERING EVERYTHING

If the court finds the agreement to be in the child's best interest,

it becomes *a binding agreement* between the birth parent and the adoptive parent(s)



But what if problems develop
after the agreement is approved?



REFUSAL TO ALLOW CONTACT

CHILD DOES NOT WANT TO SEE PARENT

PARENT ACTS INAPPROPRIATELY AT VISITS

**MAKING NEGATIVE REMARKS TO THE CHILD
ABOUT THE OTHER PARTY**

Mediation



Can be included as a term of the agreement

OTHERWISE, BACK TO COURT!



FOR ENFORCEMENT OF THE AGREEMENT

THE AGREEMENT CAN BE MODIFIED



EVEN TO THE POINT OF TERMINATION

6 KEY POINTS

Legislature intended that parents could relinquish “with knowledge”

Binding contract between birth parent & prospective adoptive parent

Applies only to children in HHS custody

Subject to approval by adoption court

GAL & HHS give input at hearing

Enforceable in court; can be modified

Things to think about



The fact that the Legislature has authorized these agreements does not mean that a parent has an *absolute right* to such an agreement.

It is really a discretionary decision on two fronts:

If the prospective adoptive parent is not interested, there can be no agreement;

Even if both parties sign the agreement, if the adoption court does not approve it, there is no agreement



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