



**KIRSH & KIRSH, P.C.**  
**FEE AGREEMENT**  
(Revised: November 2021)

**Preamble**

This Fee Agreement takes into account the uniqueness of the practice of adoption law and the extensive experience of Kirsh & Kirsh, P.C. (“Kirsh & Kirsh”) in handling adoptions. Adoptions, unlike most other areas of law, not only involve legal issues but fundamental parental rights and needs. Human beings have an instinctual want, need, and desire to be parents and pass on their legacies. Likewise, courts have universally recognized the sanctity of the parent-child relationship and, therefore, require that any legal action to terminate that relationship, including adoption and/or termination of parental rights (“TPR”) proceedings, must strictly comply with law. Lawyers charge for their services in a variety of ways. This Preamble will briefly address these issues. Kirsh & Kirsh encourages, and in some places, requires, prospective adoptive parent(s) to have this Fee Agreement reviewed by separate, independent legal counsel before signing it.

Many lawyers charge fees based upon an hourly rate, expect payment regardless of outcome, and make themselves available only during regular business hours. Kirsh & Kirsh is available 24/7/365, including all national and religious holidays. Based upon the knowledge, experience spanning in excess of 35 years, national reputation, and availability of Kirsh & Kirsh, as well as the complexity, intense emotions, and stakes involved in adoption and TPR proceedings, if Kirsh & Kirsh charged for its services on an hourly basis, \$650 per hour or more would be commensurate with what other attorneys experienced in their fields would charge. When legal services must be completed on an expedited basis and/or in a shortened time frame, many such attorneys charge an even higher hourly rate. However, Kirsh & Kirsh prefers to charge a flat fee for its services, payable upon certain benchmarks as outlined in this Fee Agreement. Among other things, this manner of billing enables prospective adoptive parent(s) to know precisely the amount of attorney fees, giving them the opportunity to determine, prior to engaging the services of Kirsh & Kirsh, if the attorney fees of Kirsh & Kirsh are within their budget. Additionally, most prospective adoptive parent(s) appreciate(s) the comfort of knowing that they may ask questions of Kirsh & Kirsh when those questions arise without having to worry about incurring an additional charge for each communication with Kirsh & Kirsh.

However, if Client(s) prefer(s) to pay for the legal services of Kirsh & Kirsh on an hourly or per diem basis, rather as outlined in this Fee Agreement, Client(s) should communicate that to Kirsh & Kirsh, in writing, prior to signing this Fee Agreement, and Kirsh & Kirsh will provide to Client(s) an alternate billing arrangement, under which Client(s) pay(s) the legal fees of Kirsh &

Kirsh without regard to the benchmarks or outcomes outlined in this Fee Agreement.

**Client(s) Initials:** \_\_\_\_\_

This Fee Agreement provides that the bulk of attorney fees charged under this Fee Agreement contemplate a successful adoption are not payable if that outcome is not achieved. Furthermore, this Fee Agreement provides for Client(s) to pay attorney fees (as opposed to expenses) only once even if Kirsh & Kirsh pursues multiple adoption opportunities for Client(s).

However, as previously stated, if Client(s) prefer(s) to pay for the legal services of Kirsh & Kirsh, on an hourly or per diem basis, without regard to a successful adoption, Client(s) should so inform Kirsh & Kirsh, in order that alternative billing arrangements can be made.

### **Terms and Conditions**

The undersigned Client(s) engage(s) the services of Kirsh & Kirsh under the following terms and conditions:

1. **Initial Payment.**

- a. After the initial consultation, if Client(s) choose(s) to engage the services of Kirsh & Kirsh, then Client(s) shall pay the amounts in the following subparagraphs.
- b. Upon signing this Fee Agreement, Client(s) shall pay to Kirsh & Kirsh the sum of \$2,000, as payment for services of Kirsh & Kirsh in initially consulting with Client(s) to answer initial and subsequent questions of Client(s), meet with Client(s) to explain adoption procedure, and for such things, when appropriate, possible, and as needed, in the judgment of Kirsh & Kirsh, as being available to pursue adoption opportunities on behalf of Client(s), and actually pursuing adoption opportunities on behalf of Client(s). This amount shall be deemed fully earned upon payment. If the attorney-client relationship created under this Fee Agreement ends prior to Kirsh & Kirsh pursuing at least one adoption opportunity for Client(s), Kirsh & Kirsh will refund up to \$1,000 to Client(s).
- c. Upon signing this Fee Agreement, Client(s) shall pay to Kirsh & Kirsh the sum of \$250, as a **non-refundable** expense payment, to cover miscellaneous, non-itemized, pre-placement expenses which Kirsh & Kirsh may incur on behalf of Client(s) prior to the filing of the petition for adoption for such things as Federal Express, express mail, postage, long distance, fax, and courier charges.

- d. The initial payment under paragraph 1(b) shall be applied to the final attorney fees specified in paragraph 3(a) of this Fee Agreement.

**Client(s) Initials:** \_\_\_\_\_

2. **Preliminary Attorney Fees.**

- a. If an expectant mother indicates that she would like Client(s) to be the adoptive parent(s) and if Client(s) would like to pursue the opportunity to adopt the child, then Client(s) shall pay to Kirsh & Kirsh an additional sum of \$5,000, as preliminary attorney fees. These preliminary attorney fees shall be for legal services rendered in making arrangements in anticipation of an adoption, and for such things, when appropriate, possible, and as needed, in the judgment of Kirsh & Kirsh, as meeting with the expectant mother, making financial arrangements with her doctor and hospital for the delivery of the baby, making arrangements for the expectant mother to see a counselor, being available to answer questions raised by the expectant mother, and providing legal counsel to Client(s) prior to the birth of the child. These preliminary attorney fees shall be deemed fully earned when Client(s) agree(s) to be matched with at least one expectant mother and Kirsh & Kirsh has begun making the arrangements for Client(s) to adopt that expectant mother's child. If attorney-client relationship created under this Fee Agreement ends after the match but prior to when Kirsh & Kirsh has begun making the arrangements for the adoption, Kirsh & Kirsh will refund up to \$2,000 to Client(s). If Client(s) do not file a petition for adoption in relation to that match, the preliminary fees will be applied to all subsequent matches as provided in paragraph 2(c) but shall be deemed fully earned as a result of the efforts of Kirsh & Kirsh with regard to the initial match.
- b. The preliminary attorney fees shall be applied to the final attorney fees specified in paragraph 3(a) of this Fee Agreement.
- c. **Client(s) shall only be responsible for paying the preliminary attorney fees once prior to the placement of a child for adoption with Client(s).** In other words, if Client(s) have paid the preliminary fees for an adoption opportunity that does not result in the placement of a child for adoption with Client(s), Client(s) shall ***not*** be responsible for paying preliminary attorney fees for any subsequent adoption opportunities which might arise.

3. **Final Attorney Fees and Non-Itemized, Post-Placement Expenses.**

- a. Upon the signing of a consent to adoption or a consent to the termination of parental rights by the birth mother, Client(s) shall pay to Kirsh & Kirsh final attorney fees in the amount of \$17,500, less the initial payment paid pursuant to Paragraph 1(b), and less the preliminary attorney fees paid pursuant to paragraph 2(a) of this Fee Agreement, for a total additional payment of \$10,500. These final attorney fees shall be for legal services rendered in making the final arrangements for the adoption, and for such things, when appropriate, possible, and as needed, in the judgment of Kirsh & Kirsh, as obtaining the birth mother's consent to the adoption, locating the birth father and determining his position with regard to the adoption, attempting to obtain the cooperation of the birth father, preparing and filing of all court documents, obtaining an initial court order granting Client(s) custody of the child, having the child discharged from the hospital to the adoptive parents, sending disbursement checks for the payment of living and medical expenses to, or on behalf of, the birth mother **[Kirsh & Kirsh is not funding the payment of these expenses, but rather preparing and sending the checks. Client(s) is/are responsible for funding the expenditures, in addition to paying the fees and expenses of Kirsh & Kirsh]**, accounting to Client(s) for the distribution of trust funds, setting the final adoption hearing, appearing with and for Client(s) at the final adoption hearing, and obtaining a birth certificate for the child. These final attorney fees shall be deemed fully earned upon the signing of a consent to adoption or a consent to the termination of parental rights by the birth mother.
- b. Upon the signing of a consent to adoption or a consent to the termination of parental rights by the birth mother, Client(s) shall pay to Kirsh & Kirsh the sum of \$250, as a ***non-refundable*** expense payment, for miscellaneous, non-itemized, post-placement expenses which Kirsh & Kirsh may incur on behalf of Client(s) for such things as Federal Express, express mail, long distance, fax, and courier charges.
- c. These final attorney fees shall not be subject to increase for a period of one (1) year from the date of this Fee Agreement. Thereafter, the final attorney fees shall be equal to the final attorney fees then being quoted by Kirsh & Kirsh to new clients in fee arrangements similar to this Fee Agreement at the time of the placement of a child for adoption with Client(s).
- d. In the event compliance with the Indian Child Welfare Act ("ICWA") is required, the Client(s) shall pay additional attorney fees to Kirsh & Kirsh in the amount of \$2,500, which fees shall be deemed fully earned when Kirsh

& Kirsh begins preparing the additional documentation required for ICWA compliance. If the ICWA hearing does not take place, Kirsh & Kirsh will refund up to \$1,000 of the additional fees. Compliance with ICWA usually requires the initiation of an action in Indiana to terminate parental rights, which necessitates the involvement of an adoption agency in Indiana. Kirsh & Kirsh will coordinate arrangements with the agency. The fees charged by the agency are generally between \$3,500 and \$4,000, plus the fees of an attorney to represent the agency and the fees to represent the birth parent(s), which are approximately \$500 each. Those fees are due and payable to the Indiana adoption agency upon the filing of the petition for termination of parental rights and are in addition to the fees and expenses paid to Kirsh & Kirsh pursuant to this Fee Agreement. If ICWA is an issue, Kirsh & Kirsh will explain the process to Client(s) before Client(s) incur the obligation to pay the amounts specified in this subparagraph.

**Client(s) Initials:** \_\_\_\_\_

4. **Contested Adoption.**

In the unlikely event of a contested adoption, Client(s) shall be responsible for paying the fees and expenses in the defense of the adoption, in addition to the fees and expenses outlined in this Fee Agreement, and payment by Client(s) of the fees and expenses in defense of the adoption shall not reduce the obligation of Client(s) to pay the fees and expenses of Kirsh & Kirsh as set forth in this Fee Agreement.

**Client(s) Initials:** \_\_\_\_\_

5. **Expenses.**

- a. In addition to the payments for non-itemized expenses, made by Client(s) under paragraphs 1(c) and 3(b) of this Fee Agreement, fees payable pursuant to an Adoption Services Agreement, if any, and the attorney fees payable under this Fee Agreement,
  - i. Client(s) shall also be responsible for payment of the itemized, expenses of Kirsh & Kirsh for such items as out-of-the-office meeting fees (as described below), court costs, board of health fees, fees for having the alleged father served with notice of the adoption, medical records, putative father registry searches, publication costs, and etc.

- ii. For birth mothers whom Kirsh & Kirsh meets and other meetings more than 25 miles from the offices of Kirsh & Kirsh at 2930 E. 96<sup>th</sup> Street, in Indianapolis, Indiana, Client(s) shall pay Kirsh & Kirsh an out-of-the-office meeting fee of \$650 for each such meeting<sup>1</sup>, regardless of whether Kirsh & Kirsh drives or flies to the meeting and any other stops, or meetings, or both, Kirsh & Kirsh might make while out of the office.
- iii. Client(s) shall be responsible for the payment of birth parent('s)(s') attorney's fees relating to the adoption<sup>2</sup> and counseling expenses, as well as any other expenses which Client(s) agree(s) to pay or reimburse to, or on behalf of, the birth mother. Client(s)'s obligation for a birth parent('s)(s') counseling expenses is usually not more \$2,500, plus the counselor's travel expenses. In many cases, Client(s) will be asked to make payment arrangements for counseling expenses directly with the counselor. In that event, Kirsh & Kirsh would assist in making counseling arrangements for the birth parent(s) and then put Client(s) in contact with the counselor to make payment arrangements.
- iv. Client(s) shall be responsible for paying the birth mother's medical expenses and the child's medical expenses without regard to any Medicaid or private insurance coverage which might be available. In other words, even if the birth mother has insurance or Medicaid, Client(s) should assume that they will be responsible for the full amount of the medical expenses without regard to Medicaid or private insurance. Generally, if Medicaid or private insurance is available, it will pay some, if not all, of the medical expenses. However, the birth mother does not have any obligation to apply for, or maintain in effect, Medicaid, or private insurance coverage. If, for any reason, Medicaid or private insurance does not pay the medical expenses, Client(s) shall be responsible for them if they assume custody of the child. This Fee Agreement does not include services necessary to qualify a birth mother for Medicaid. Those services are beyond the scope of this Fee Agreement. If Client(s) would like a referral of a company that will assist the birth mother

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<sup>1</sup> Most adoptions involve 2 meetings with the birth mother. The first meeting is when Kirsh & Kirsh initially meets with the birth mother, and the second meeting is for the consent signing. Rarely, are there more than 2 meetings with the birth mother.

<sup>2</sup> In most cases, this amount will be \$750, or less. If the birth parent('s)(s') attorney fees will be greater than \$750, Kirsh & Kirsh will inform Client(s) of the amount before Client(s) become(s) obligated to pay birth parent attorney fees greater than \$750.

in attempting to obtain Medicaid coverage, Kirsh & Kirsh will make a referral. The fees charged by companies which assist with Medicaid applications is typically less than \$550 and usually only payable if Medicaid is successfully obtained. **Kirsh & Kirsh strongly recommend using one of the outside companies to assist a mother obtain Medicaid coverage for herself and the child. In most cases, the cost of utilizing these services is a small fraction of the actual medical expenses, and the companies Kirsh & Kirsh recommends only charge a fee, if they successfully obtain Medicaid coverage.**

- v. Client(s) shall be responsible for paying the birth mother's living expenses. Client(s) should assume that the birth mother will receive the statutory maximum allowable living expenses, in the amount of \$4,000. In most cases, approximately \$2,000 is paid prior to the birth. That amount is typically divided by the number of months left in the pregnancy and disbursed on a monthly basis. Any living expenses given to a birth mother prior to the birth of the child are monies Client(s) is/are putting at risk if Client(s) do(es) not adopt the child. Client(s) hereby authorize(s) Kirsh & Kirsh to disburse living expenses which Client(s) have given to Kirsh & Kirsh for the birth mother without specific authorization for each disbursement.
  
- vi. If Client(s) live outside of Indiana and opt to finalize the adoption in their state of residence, rather than in Indiana<sup>3</sup>, Client(s) should assume that they will also incur the cost of a termination of parental rights proceeding in Indiana. The additional cost is approximately \$4,500, payable after the child is born, and only if birth mother signs a consent to the termination of her parental rights. None of this amount is for services rendered by Kirsh & Kirsh. Approximately \$4,000 is payable to the licensed, child-placing agency which will act as the petitioner in the termination action, and \$500 is payable to the attorney representing the agency. In many cases, Client(s) will be asked to make payment arrangements for termination fees directly with the licensed, child-placing agency. In that event, Kirsh & Kirsh would make arrangements for the termination action and then put Client(s) in contact with the licensed, child-placing agency to make payment arrangements.

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<sup>3</sup> As of July 1, 2021, non-residents of Indiana may file adoption proceedings in Indiana for a newborn born in Indiana or a child living in Indiana.

- vii. Client(s) shall be responsible for contracting with, and paying the fees of Child Connect ([www.childconnect.com](http://www.childconnect.com)). For a one-time fee of approximately \$700, Client(s) will be able to upload their post placement birth parent(s) updates to the Child Connect website. Child Connect will not only provide the birth parent(s) a secure access to the updates but will also print and mail to the birth parent(s) a hard copy of the updates. Client(s) authorize Kirsh & Kirsh to share identifying information with Child Connect in order for Child Connect to create an account for Client(s) and for Child Connect to facilitate the exchange of updates between Client(s) and the birth parent(s) of the child Client(s) adopt(s). In giving this authorization, Client(s) freely, voluntarily, and knowingly waive(s) the attorney-client privilege to which Client(s) would otherwise be entitled and gives informed consent to disclosure of information relating to the representation of Client(s). By initialing below this subparagraph, Client(s) confirm(s) that Client(s) possess(es) the information reasonably adequate to (1) understand why it would be necessary for Kirsh & Kirsh to discuss the adoption proceedings with the above-referenced persons and (2) give informed consent to the disclosure of what might be information subject to the attorney-client privilege, or confidential information relating to the representation of Client(s), or both.

**Client(s) Initials:** \_\_\_\_\_

- b. Prior to the birth of a child, expenses shall be billed as they are incurred and payable by Client(s) within ten (10) days of billing by Kirsh & Kirsh.
- c. Upon the signing of a consent to adoption or a consent to the termination of parental rights by the birth mother, Client(s) shall provide Kirsh & Kirsh, with the amount which Kirsh & Kirsh estimates is necessary to fully pay all fees and expenses under this Fee Agreement, unless other payment arrangements satisfactory to Kirsh & Kirsh have been made. Expenses, incurred or anticipated, in excess of the estimate provided by Kirsh & Kirsh, at the time of placement, will be billed to Client(s) and shall be payable within ten (10) days of billing by Kirsh & Kirsh.
- d. Unpaid fees and expenses shall begin accruing interest at the rate of eight percent (8%) per annum ten (10) days after they are due and payable. Client(s) shall pay the accrued interest. No interest will be charged to accounts paid within ten (10) days of when they are due and payable.



- e. Client(s) should not agree to pay or reimburse any expenses for, or on behalf of, a birth mother or birth father other than medical and counseling fees without first consulting with Kirsh & Kirsh. **Unauthorized payments could be construed as a felony crime in Indiana and could jeopardize the adoption.**
- f. Upon request from Kirsh & Kirsh, and from time to time as determined by Kirsh & Kirsh, Client(s) shall deposit with Kirsh & Kirsh funds for Kirsh & Kirsh to use to pay the various expenses referred to in this Fee Agreement. Client(s) hereby authorize(s) Kirsh & Kirsh to disburse those funds on behalf of Client(s) as, in the sole discretion of Kirsh & Kirsh, Kirsh & Kirsh deems appropriate, without receiving specific authorization from Client(s) for each disbursement. Upon request, Kirsh & Kirsh shall provide to Client(s) a detailed accounting of all monies received and disbursed on behalf of Client(s).
- g. Client(s) is/are responsible for the payment of expenses incurred by Kirsh & Kirsh (as opposed to Kirsh & Kirsh attorney fees) in pursuing a possible opportunity for Client(s) to adopt regardless of whether or not that adoption opportunity results in an adoptive placement.

6. **General.** Client(s) understand(s) and agree(s) that:

- a. If Client(s) reside(s) outside the State of Indiana, it is the responsibility of Client(s):
  - i. To confirm with an independent attorney in the home state of Client(s) that the terms of this Fee Agreement do not violate the laws of that state, and
  - ii. To make sure that their home study, including criminal and child-abuse checks, are current within one (1) year of the date of birth of the child whom Client(s) adopt(s). Failure to maintain a current home study may result in a significant delay in the Interstate Compact on the Placement of Children (“ICPC”) approval process. The Indiana ICPC Office requires that the home study, including criminal, child abuse, sex-offender, and FBI checks, be current within one (1) year of the birth of the child even if the ICPC office in the receiving state would accept a home study and other checks of longer duration.
- b. The final hearing on the adoption will **not** take place until all:

- i. Attorney fees and expenses have been paid in full to Kirsh & Kirsh,
  - ii. Medical expenses have been paid to the medical providers, or Client(s) have made satisfactory arrangements with the medical providers for the payment of medical expenses and have provided Kirsh & Kirsh written confirmation from the medical providers of those arrangements,
  - iii. Counseling, home study, and other adoption agency and attorney fees, if any, have been paid,
  - iv. Birth mother living expenses, if any, have been paid or monies escrowed with Kirsh & Kirsh for payment to the birth mother,
  - v. Birth parent('s)(s') attorney fees have been paid,
  - vi. Attorney and agency fees in the sending state, if any, have been paid, and
  - vii. Client(s) have provided to the birth parent(s) all updates due to have been delivered by the time of the final hearing on the adoption.
- c. Kirsh & Kirsh reserves the right to withdraw from representing Client(s), for reasons including, but not limited to, the following: if actions taken by Client(s), requested by Client(s), not taken by Client(s) or Client(s)('s) position places the child "at risk", regardless of whether that risk is legal, financial, physical or emotional. Client(s) understand that "at risk" may be a subjective determination made by Kirsh & Kirsh. Client(s) understand(s) that this right of Kirsh & Kirsh to withdraw includes the right to withdraw if Client(s) are not approved for adoptive placement by a licensed social worker or licensed child-placing agency. Client(s) shall be entitled to a refund of unearned fees or expenses if Kirsh & Kirsh withdraw from representation.
- d. Client(s) understand(s) and agree(s) that Kirsh & Kirsh may report any known or suspected child neglect or abuse to the proper authorities. Client(s) specifically release(s) Kirsh & Kirsh from any liability or claims of privilege in the event Kirsh & Kirsh makes a report pursuant to this subparagraph. In giving this authorization, Client(s) freely, voluntarily, and knowingly waive the attorney-client privilege to which Client(s) would otherwise be entitled and gives informed consent to disclosure of

confidential information relating to the representation of Client(s). By initialing below this subparagraph, Client(s) confirm that Client(s) possess(es) the information reasonably adequate to (1) understand why it would be necessary for Kirsh & Kirsh to make such a report and (2) give informed consent to the disclosure of what might be information subject to the attorney-client privilege or confidential information relating to the representation of Client(s), or both.

**Client(s) Initials:** \_\_\_\_\_

- e. Client(s) hereby authorize(s) Kirsh & Kirsh to discuss all aspects of Client('s)(s') adoption proceedings, both before and after finalization of an adoption, with Client('s)(s') home study and/or supervising agency or agencies, and Client('s)(s') adoption counselors and adoption social workers. In giving this authorization, Client(s) freely, voluntarily, and knowingly waive the attorney-client privilege to which Client(s) would otherwise be entitled and gives informed consent to disclosure of confidential information relating to the representation of Client(s). By initialing below this subparagraph, Client(s) confirm(s) that Client(s) possess(es) the information reasonably adequate to (1) understand why it would be necessary for Kirsh & Kirsh to discuss the adoption proceedings with the above-referenced persons and (2) give informed consent to the disclosure of what might be confidential information relating to the representation of Client(s).

**Client(s) Initials:** \_\_\_\_\_

7. **“Surprise” Baby Situations.** Client(s) should indicate if Client(s) would like to be considered for a “Surprise Baby”. Typically, a “Surprise Baby” is a situation in which Kirsh & Kirsh, P.C., is first informed, after the baby is born, that the birth mother is interested in pursuing an adoption plan for her baby. In these situations, Kirsh & Kirsh, P.C., must complete arrangements for the adoption, including finding a family to adopt, in a matter of a few hours or less. Surprise Baby situations can be hard on Client(s) because they require quick decision making, in a highly emotional setting, without much information other than an indication of the general health of the baby. In order to be considered for a Surprise Baby, Client(s) must be prepared to:
- a. Commit or pass on the situation without obtaining any medical records or background information for the birth mother or baby, other than very general information such as the race and general health of the baby. Kirsh & Kirsh, P.C., will attempt to obtain the same type of information

obtained in non-surprise baby situations and eventually provide that information to Client(s), but that information may not be available until weeks after placement of the child into Client('s)(s') home and certainly will NOT be available prior to the time in which Client(s) will need to either commit or pass on the opportunity to adopt.

- b. Commit or pass on the situation within the time frame presented by Kirsh & Kirsh, P.C., at the time the situation is presented. This could require making a decision within hours or even minutes of the initial contact of Client(s) by Kirsh & Kirsh, P.C.
- c. Submit payment in full of all amounts and expenses to Kirsh & Kirsh, P.C., upon the baby's discharge from the hospital. In non-surprise baby situations, Client(s) may have weeks, if not months, to get their finances in order for an upcoming, possible adoption. This is not true with a "Surprise Baby".

Client(s) would like to be considered for a "Surprise Baby".

Client(s) Initials: \_\_\_\_\_

8. **Limitation of Liability.** Unlike many other areas of the law, adoptions are highly emotional – they have the potential for great excitement and joy and also devastating loss and disappointment. Kirsh & Kirsh tries to practice adoption law to the highest standards of ethics and competence; however, adoptions are often unpredictable, information incomplete or inaccurate, and individuals fickle. In spite of the efforts of Kirsh & Kirsh to practice adoption law to the highest standards of ethics and competence, mistakes happen and/or situations do not turn out as hoped or expected. When those events happen, Client(s) may be inclined to make a claim against Kirsh & Kirsh for compensation for their losses. Those losses usually fall into two categories: (1) actual, out-of-pocket expenses ("Actual Damages") and (2) mental injury, emotional distress, mental anguish, disappointment, pain and suffering, and the like ("Intangible Damages"). Client(s) freely, knowingly, and voluntarily waive all claims against Kirsh & Kirsh for Intangible Damages and all other forms of loss other than Actual Damages. This waiver of liability for Intangible Damages and other losses is referred to as the "Limitation of Liability Provision".

Limitation of liability provisions in attorney-client contracts are not permitted in Indiana except when clients have received the benefit of independent legal counsel. Since Kirsh & Kirsh is a party to this Fee Agreement and the Limitation of Liability Provision is for the direct benefit of Kirsh & Kirsh, Kirsh & Kirsh is

not independent and cannot provide advice to Client(s) as to the legal consequences of this Limitation of Liability Provision.

Client(s) acknowledge(s), agree(s), and understand(s) that Client(s) must consult with independent legal counsel to acquire a full and complete understanding of the restrictions, limitations, and nuances of agreeing to this Limitation of Liability Provision. Having consulted with independent legal counsel, by signing in the blank following this Limitation of Liability Provision, Client(s) confirm(s) that Client(s):

1. have/has, in fact, consulted independent legal counsel in regard to this Limitation of Liability Provision,
2. acknowledge(s) that Kirsh & Kirsh has agreed to represent Client(s) and include this Limitation of Liability Provision in this Fee Agreement in reliance on the confirmation contained in the immediately preceding paragraph, and
3. agree(s) to be bound by this Limitation of Liability Provision.

\_\_\_\_\_  
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 "Client(s)"

9. **Adoption Subsidies.** In the adoption of children with significant medical problems, federal and state adoption subsidies are sometimes available. However, making the determination of eligibility and applying for an adoption subsidy, if available, are beyond the scope of services offered by Kirsh & Kirsh under this Fee Agreement. Client(s) would need to engage other counsel to make that determination and application. Furthermore, if obtaining an adoption subsidy is a requirement of Client(s), Client(s) should not engage the services of Kirsh & Kirsh, without simultaneously engaging the services of other counsel able to make the determination of eligibility and application.

**Client(s) Initials:** \_\_\_\_\_

10. **Miscellaneous.**

- a. Client(s) acknowledge(s) that the provisions of this Fee Agreement contain the entire agreement with Kirsh & Kirsh and that any modifications or changes to this Fee Agreement must be in writing and signed by Kirsh & Kirsh.
- b. No waiver by any party of any default or nonperformance shall be deemed a waiver of any subsequent default or nonperformance.
- c. If any provision of this Fee Agreement shall be invalid or unenforceable, the remainder of this Fee Agreement shall not be affected and each provision of the remainder of the Fee Agreement shall be valid and be enforceable to the fullest extent permitted by law.
- d. This Fee Agreement shall be interpreted in accordance with the laws of the State of Indiana.
- e. Client(s) consent(s) to the jurisdiction of the Indiana courts and venue of Hamilton County, Indiana, to resolve any claim or alleged breach under this Fee Agreement.
- f. Kirsh & Kirsh makes no warranties or representations, express or implied, about the information which Kirsh & Kirsh provides to Client(s) about the background of the biological parents or the health of the child being adopted, except that Kirsh & Kirsh will accurately share with Client(s) the information which has been provided to Kirsh & Kirsh. Client(s) acknowledge(s) and understand(s) that Kirsh & Kirsh does not independently verify any of the information which Kirsh & Kirsh gathers about the birth mother, birth father, or the child, but rather only reports to Client(s) information provided to Kirsh & Kirsh.
- g. Client(s) understands that when Kirsh & Kirsh supplies background information and medical records to Client(s), with or without comment to Client(s), Client(s) should **NOT** conclude that there are no problems/issues, or other problems/issues, contained in the information and records. Client(s) acknowledge(s) and agree(s) that it is their sole responsibility to review, or to hire medical or other professionals to review the background information and medical records provided to Client(s) and that Client(s) have the obligation to determine what additional information and records they would like to have and to communicate that

determination to Kirsh & Kirsh. Kirsh & Kirsh will then advise Client(s) whether such information and records can reasonably be obtained. Client(s) further acknowledge(s) that the decision to adopt a child is based upon less than full or perfect information and records.

**Client(s) Initials:** \_\_\_\_\_

- h. Client(s) failure to initial any of the places calling for Client('s)(s') initials does not, in any way, abrogate Client('s)(s') obligations under this Fee Agreement. Kirsh & Kirsh has added the place for initials in hopes that Client(s) will carefully read this Fee Agreement. Kirsh & Kirsh encourages Client(s) to ask questions if they do not fully understand any part of this Fee Agreement.
  - i. The term "birth mother" is defined to include an "expectant mother". Those terms are used interchangeably.
11. **Binding Effect.** Kirsh & Kirsh has provided this written Fee Agreement in hopes of avoiding any misunderstanding regarding the payment of fees and expenses. Kirsh & Kirsh would like to receive a copy of this Fee Agreement signed by Client(s). **However, whether or not Kirsh & Kirsh receives the signed copy, Client(s) shall be bound by the terms and conditions of this Fee Agreement if Kirsh & Kirsh begins making the arrangements for the adoption unless Kirsh & Kirsh has agreed, in writing, to a different fee structure.**
12. **Representation Conclusion.** Except as otherwise provided in this Fee Agreement, the scope of representation of Kirsh & Kirsh includes providing to Client(s) legal services in Indiana relating to the adoption, up to, and including, the finalization of the adoption. Representation of Client(s) ends upon the entry of a final decree of adoption. Notwithstanding the foregoing, as deemed appropriate, in the sole discretion of Kirsh & Kirsh, Kirsh & Kirsh may continue to provide advice and counsel to Client(s) on matters relating to the adoption after the entry of final decree. Client(s) understand(s) and agree(s) that providing advice and counsel on an adoption related matter after the entry to the final decree of adoption does not obligate Kirsh & Kirsh to provide advice and counsel on all

adoption related matters in perpetuity.

DATED: \_\_\_\_\_

**CLIENT(S):**

\_\_\_\_\_

\_\_\_\_\_

**To what email address(es) would you like invoices sent:**

EMAIL: \_\_\_\_\_

EMAIL: \_\_\_\_\_





## **ADOPTION SERVICES AGREEMENT**

(Revised: March 2024)

### **Preamble**

Prior to offering the Kirsh & Kirsh Directed Approach, explained below, all prospective adoptive parents who engaged Kirsh & Kirsh, P.C. (“Kirsh & Kirsh”) for legal services in an adoption were responsible for identifying adoption opportunities on their own. They did so primarily through word of mouth and newspaper advertising. Some prospective adoptive parents still opt for that approach, which is described in this Agreement as the “Self-Directed or Self-Directed Plus” Approach. Given the stress, strain, uncertainty, emotional investment, and the like, many prospective adoptive parents have experienced in pursuing infertility treatments and otherwise, some prospective adoptive parents have requested that Kirsh & Kirsh take responsibility for identifying potential adoption opportunities for them. For more than 40 years, Kirsh & Kirsh has expended time and substantial financial resources developing a referral network of expectant mothers. Kirsh & Kirsh continues to pursue those strategies that have worked and test new ideas.

Indiana statutes recognize that attorneys licensed to practice law in Indiana may be compensated for providing “adoption services”, which are defined to include, among other things, arranging for the placement of a child, identifying a child for adoption, matching adoptive parents with biological parents, and arranging or facilitating an adoption.<sup>1</sup> The amounts payable in this Agreement are for adoption services and are not for legal services. In other words, the amounts payable under this Agreement are not attorney fees.

For some prospective adoptive parent(s), they are fortunate to be successful in adopting on the first match with an expectant mother. Others have experienced one or more disappointments before they go home with a baby. Historically at Kirsh & Kirsh, one in three matches have proven unsuccessful. The Initial Payment of the Kirsh & Kirsh Directed amount covers the efforts of Kirsh & Kirsh in pursuing adoption opportunities for all prospective adoptive parent(s) who have opted for the Kirsh & Kirsh Directed Approach, as well as assisting individual prospective adoptive parent(s) with their preparation to become “active”. Nearly all prospective adoptive parent(s) who pay the Initial Payment begin doing what is necessary to become “active” and have their profile shown to expectant mothers. However, if prospective adoptive parent(s) pay the Initial Payment and then take no action to complete their profile and Kirsh & Kirsh has not otherwise begun providing their profile to expectant mothers, Kirsh & Kirsh will refund some or all of the Initial Payment, on a case by case basis.

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<sup>1</sup> Indiana Code § 35-46-1-22(a)

In order to meet the differing needs of our Clients, Kirsh & Kirsh, P. C., offers three options for creating opportunities to adopt.

Kirsh & Kirsh encourages Client(s) to pursue the Self-Directed approach. However, Kirsh & Kirsh recognizes that this approach is not for everyone, and it is for that reason, that Kirsh & Kirsh is pleased to offer other options.

**The three options are as follows** (Please check the appropriate box):

- Self-Directed*** - Client(s) create(s) their own adoption opportunities by means of their own networking or advertising, or both. Their success is entirely dependent upon their own efforts. No additional charges apply.
- Self-Directed Plus*** - Like the Self-Directed approach, the Client(s) work(s) to create their own adoption opportunities; however, if Client(s) is/are connected to a birth mother through a referral from Kirsh & Kirsh and that referral results in an adoptive placement (i.e., after the birth of the baby, the court issues an order granting them custody of the baby), Client(s) shall pay to Kirsh & Kirsh \$27,500, in addition to all other amounts and expenses associated with the adoption, and, in particular, under any agreement with Kirsh & Kirsh for the payment of attorney fees and expenses. The ***Self-Directed Plus*** approach does not assure Client(s) that their adoption profile will be shown to a birth mother, but that if it is shown to a birth mother and that birth mother places her baby with Client(s), Client(s) will be responsible for paying the additional amount of \$27,500. **Rarely, if ever, will Kirsh & Kirsh have an opportunity to connect a birth mother to Client(s) under this option. Client(s) should only choose this option if they intend to identify an expectant mother on their own.**

Client(s) Initials: \_\_\_\_\_

- Kirsh & Kirsh Directed*** - Kirsh & Kirsh, creates adoption opportunities for Client(s) without Client(s) having to network or advertise on their own. The additional cost for this service is \$27,500, in addition to all other amounts and expenses associated with the adoption, and, in particular, under any agreement with Kirsh & Kirsh for the payment of attorney fees and expenses. The amount of \$5,500 is payable upon opting into this program and the balance of \$22,000 is payable upon adoptive placement. Under the ***Kirsh & Kirsh Directed*** approach, Kirsh & Kirsh will present Client('s)(s') adoption profile to birth mothers as often as necessary until a birth mother selects Client(s) as the family for her baby and until Client(s) actually assume custody of the child

after birth.

Client(s) Initials: \_\_\_\_\_

If choosing the *Kirsh & Kirsh Directed Approach*, please check the appropriate box:

- Caucasian child
- African-American child, in whole or part
- Either Caucasian or African-American child, in whole or part

Client(s) acknowledge and agree that if their preference is for a child who is only African-American, in part, the child may appear or develop into a child or person who appears to be wholly African-American and that even if the child appears completely Caucasian, the issue of race will still exist for Client(s) and the child. In other words, Client(s) should not assume that because the child appears completely Caucasian, neither they nor the child will ever have to address the child's African-American Ancestry. Client(s) seeking to adopt a child whose race is different, in whole or part, from their own, should consult experienced professionals to fully understand the issues they and the child will face. If Client(s) seek to adopt a child that is only partially African-American, Kirsh & Kirsh does not permit Client(s) to specify a percentage of African-American, with which Client(s) would be comfortable adopting. In other words, while Client(s) may specify that they are interested in adopting an African-American and Caucasian mixed child, Client(s) may not limit themselves to adopting a child that is 50% African-American and 50% Caucasian, or any other ratios for the reason that Kirsh & Kirsh cannot assure that whatever percentages have been specified are met. Likewise, Kirsh & Kirsh cannot assure Client(s) that a child will be 100% Caucasian or 100% African-American. To do so would require an extensive study of ***both*** birth parents' ancestries, which is simply not feasible in an adoption. In specifying race, Client(s) understand that statements by birth mother is the only information Kirsh & Kirsh receives about the race of the child, and that Kirsh & Kirsh does not independently verify the information the birth mother provides. Client(s) understand(s) and accept(s) the risk that the information provided by a birth mother may not be accurate.

Client(s) Initials: \_\_\_\_\_

**Limitation of Liability.** Adoptions are highly emotional – they have the potential for great excitement and joy and also devastating loss and disappointment. Kirsh & Kirsh tries to provide adoption services to the highest standards of ethics and competence; however, adoptions are often unpredictable, information incomplete or inaccurate, and individuals fickle. In spite of the efforts of Kirsh & Kirsh to provide adoption services under Agreement to the highest standards of ethics and competence, mistakes happen and/or situations do not turn out as hoped or expected. When those events happen, Client(s) may be inclined to make a claim against Kirsh & Kirsh for compensation for their losses. Those losses usually fall into two categories: (1) actual, out-of-pocket expenses (“Actual Damages”) and (2) mental injury, emotional distress, mental anguish,

disappointment, pain and suffering, and the like (“Intangible Damages”). Client(s) freely, knowingly, and voluntarily waive all claims against Kirsh & Kirsh for Intangible Damages and all other forms of loss other than Actual Damages. This waiver of liability for Intangible Damages and other losses is referred to as the “Limitation of Liability Provision”.

Limitation of liability provisions in attorney-client contracts are not permitted in Indiana except when clients have received the benefit of independent legal counsel. Since Kirsh & Kirsh is a party to this Agreement and the Limitation of Liability Provision is for the direct benefit of Kirsh & Kirsh, Kirsh & Kirsh is not independent and cannot provide advice to Client(s) as to the legal consequences of this Limitation of Liability Provision.

Client(s) acknowledge(s), agree(s), and understand(s) that Client(s) must consult with independent legal counsel to acquire a full and complete understanding of the restrictions, limitations, and nuances of agreeing to this Limitation of Liability Provision. Having consulted with independent legal counsel, by signing in the blank following this Limitation of Liability Provision, Client(s) confirm(s) that Client(s):

1. have/has, in fact, consulted independent legal counsel in regard to this Limitation of Liability Provision,
2. acknowledge(s) that Kirsh & Kirsh has agreed to represent Client(s) and include this Limitation of Liability Provision in this Agreement in reliance on the confirmation contained in the immediately preceding paragraph, and
3. agree(s) to be bound by this Limitation of Liability Provision.

\_\_\_\_\_  
 \_\_\_\_\_  
 “Client(s)”

**Additional terms and conditions:**

1. Kirsh & Kirsh, does not make any warranties, express or implied, about Client’s(s’) success in adopting under any of these options.
2. Regardless of the option selected, Kirsh & Kirsh, shall use its best efforts to help Client(s) achieve success in adopting within the parameters of the option selected by Client(s).
3. Payment of additional amounts under the *Self-Directed Plus* and the *Kirsh & Kirsh Directed* options do not provide any greater protection against a contested adoption. In all adoptions handled by Kirsh & Kirsh, Kirsh &

Kirsh, strives to provide the highest quality legal services in the most compassionate manner. There are risks inherent in adopting regardless of how adoption opportunities are created.

4. The additional amounts payable under this Agreement are not subject to increase for a period of two years from the date this Agreement. Thereafter, the additional amounts payable under this Agreement shall be equal to the additional amounts then being quoted by Kirsh & Kirsh to new client(s) in Agreements similar to this Agreement at the time of the placement of a child for adoption with Client(s).
5. Client(s) may change from *Self-Directed* to the *Self-Directed Plus* or *Kirsh & Kirsh Directed* approach or from the *Self-Directed Plus* to the *Kirsh & Kirsh Directed* approach at any time by executing a new Adoption Services Agreement; however, switching from the *Kirsh & Kirsh Directed* approach to *Self-Directed* or the *Self-Directed Plus* approach may not result in a refund of the *Kirsh & Kirsh Directed* Payment paid under this Agreement, depending on the circumstances.
6. If Client(s) opt(s) for the *Kirsh & Kirsh Directed* approach and then create(s) their own adoption opportunity, the balance otherwise payable under the *Kirsh & Kirsh Directed* approach, would not be payable upon that adoptive placement.
7. If Client(s) create(s) a “baby-in-the-bank”<sup>2</sup> opportunity for themselves, no additional amounts under this Agreement are payable upon an adoptive placement pursuant to the “baby-in-the-bank”. However, if Client(s) had opted for the *Kirsh & Kirsh Directed* approach and then created a “baby-in-the-bank” opportunity for themselves, Client(s) would not be entitled to a refund of the initial *Kirsh & Kirsh Directed* Payment but would not be responsible for paying the balance otherwise payable under the *Kirsh & Kirsh Directed* approach upon the adoptive placement resulting from the “baby-in-the-bank”.
8. The phrases “additional charges” and “additional amounts” used in this Agreement refer to charges and amounts in addition to the attorney fees and expenses paid under any separate agreement with Kirsh & Kirsh for legal services.
9. Client(s) failure to initial any of the places calling for Client(‘s)(s’) initials does not in any way abrogate Client(‘s)(s’) obligations under this Agreement. Kirsh & Kirsh has added the place for initials in hopes that Client(s) will carefully read this Agreement. Kirsh & Kirsh encourages

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<sup>2</sup> “Baby in the Bank” is explained in the Kirsh & Kirsh informational video, which is approximately 2 hours in length. If Client(s) would like further explanation of what this means, Client(s) should ask Kirsh & Kirsh. Likewise, if Client(s) has/have not seen the informational video, immediately contact Kirsh & Kirsh to arrange to see it.

Client(s) to ask questions if they do not fully understand any part of this Agreement.

- 10. The term “birth mother” is defined to include an “expectant mother”. Those terms are used interchangeably.

DATED: \_\_\_\_\_

**CLIENT(S):**

\_\_\_\_\_  
\_\_\_\_\_

## **DATABASE**

### **Instructions for completing this form:**

1. Complete all items as fully as possible
  2. Call to discuss any answers which you feel need further explanation
  3. When a list follows the question, select your response(s) only from listed choices and mark your response(s) on the enclosed form.
- 

**Prospective Adoptive Parents:** \_\_\_\_\_

**Open to a “Surprise” Baby:** No/Yes      **Open to twins:** No/Yes

**Open to post-placement visitations between birth mother and child:** No/Yes

### **Race of Child Sought (Select all that apply)**

- |                   |                     |
|-------------------|---------------------|
| 1. White          | 7. Asian            |
| 2. White/Black    | 8. Asian/White      |
| 3. Black          | 9. Asian/Black      |
| 4. Hispanic       | 10. American Indian |
| 5. Hispanic/White | 11. Middle Eastern  |
| 6. Hispanic/Black | 12. Other: _____    |

### **Ages of Child Sought (Select all that apply)**

- |                       |                      |
|-----------------------|----------------------|
| 1. Newborn – 6 months | 4. 3 years – 5 years |
| 2. 6 months – 1 year  | 5. 5 years- 9 years  |
| 3. 1 year – 3 years   | 6. Over 9 years      |

### **Health of Child Sought**

**Please read the following carefully:** The next page allows you to select the health of child sought. You will not be bound to accept any such child, but the more open you are, the more opportunities you will have. **Please consult with a doctor or your home study agency to understand the consequences of the following conditions before selecting them. Any conditions that you are willing to accept must be reflected in your home study.**

Please **DO NOT** indicate that you “might” be open on a “case-by-case” basis to a situation. Please understand that if your database indicates you are open to a situation, based on what you select here, we will call you when that situation arises. If you pass on an expectant mother, we must go back to her and tell her you are out. Sometimes they never reply to us again, which causes another adoptive family to miss out on an opportunity. If you have any questions about this section of the database, please email rachel@kirsh.com and she will further explain the process.

**If you are not open to any of the following conditions, please check here to be considered for a “healthy only” baby:**

**Select all you are open to:**

- |   |   |
|---|---|
| <ul style="list-style-type: none"> <li>1. Aids or HIV positive birth mother</li> <li>2. Alcohol Exposed (birth mother drinks more than a little during the pregnancy)</li> <li>3. Alcohol-fetal alcohol syndrome</li> <li>4. Autism Spectrum</li> <li>5. Cardiac problems</li> <li>6. Cerebral palsy</li> <li>7. Cleft Palate</li> <li>8. Cranial bleed</li> <li>9. Cystic fibrosis</li> <li>10. Deafness</li> <li>11. Diabetes in child or in family history</li> <li>12. Discharge from hospital on monitor</li> <li>13. Down syndrome</li> <li>14. Epilepsy</li> <li>15. Exposure to sexually transmitted disease (syphilis, gonorrhea, chlamydia, other)</li> <li>16. Hearing problems</li> <li>17. Hepatitis</li> <li>18. Herpes exposed</li> <li>19. Herpes infected</li> </ul> | <ul style="list-style-type: none"> <li>20. Intellectually disabled</li> <li>21. Learning disability in family history - ADD, ADHD</li> <li>22. Low Apgar scores</li> <li>23. Malformation – physical</li> <li>24. Mental illness – bipolar</li> <li>25. Mental illness – depression</li> <li>26. Mental illness – schizophrenia</li> <li>27. Mental illness – PTSD</li> <li>28. Mental illness – borderline personality disorder</li> <li>29. Orthopedic problems</li> <li>30. Premature – more than 3 weeks</li> <li>31. Physical retardation</li> <li>32. Respiratory problems</li> <li>33. Sickle cell</li> <li>34. Spina Bifida</li> <li>35. Terminally ill child</li> <li>36. Tuberculosis</li> <li>37. Venereal disease</li> <li>38. Vision problems</li> </ul> |
|---|---|

**Open to cigarette use?\*** No  Yes

\*Almost, if not all, expectant mothers smoke cigarettes. Often, they smoke up to a half or full pack a day. Again, you will not be bound to accept any such child, but if you are open to cigarette use, the more opportunities you will have.

**Open to drug use?\*** No  Yes  (If you select YES, fill out the chart below)

\*\*Please be aware, even if an expectant mother tells us she has stopped using drugs, we cannot guarantee that she has in fact stopped using drugs.

| Drug  | Exposed | Addicted |
|---|---------|----------|
| Heroin  |         |          |
| Cocaine   |         |          |
| Methamphetamine   |         |          |
| Marijuana   |         |          |
| Prescription Medication (morphine, codeine, hydrocodone, meperidine oxycodone, other) |         |          |
| Suboxone  |         |          |
| Subutex   |         |          |
| Benzodiazepines   |         |          |
| Fentanyl  |         |          |



**Openness Name (What names are you willing to share with a birth mother?) (Select all that apply.)**

1. First names only
2. First & last names
3. Last names & address

**Openness of Preplacement Information Exchange (What type of information are you willing to share with a birth mother?) (Select all that apply.)**

1. Nonidentifying telephone
2. Nonidentifying meeting
3. Identifying information

**Combined Gross Annual Income**

1. Less than \$30,000
2. \$30,000 - \$75,000
3. \$75,000 - \$100,000
4. \$100,000 - \$150,000
5. \$150,000 - \$250,000
6. \$Over 250,000

**Primary Home**

1. Farm
2. Mountain
3. Ocean

4. Rural/country
5. Suburban
6. Urban
7. Other: \_\_\_\_\_

**Secondary Home**

1. Farm
2. Mountain
3. Ocean

4. Rural/country
5. Suburban
6. Urban
7. Other: \_\_\_\_\_

**Stay at Home Parent**

1. Full time
2. Part time
3. No

**Pets & Animals (Select all that apply)**

1. Bird
2. Cat
3. Dog
4. Farm animals/horse
5. Fish

6. Reptile
7. Rodent
8. Other: \_\_\_\_\_
9. None

**Adoptive Parent 1:** \_\_\_\_\_

**Does Adoptive Parent 1 Smoke?** No/Yes

**Does Adoptive Parent 1 Drink Alcohol?** No/Yes

**Drinks How Often?**

1. Not at all
2. Special occasions only
3. Monthly
4. Weekly
5. Daily

**Adoptive Parent 1's Religion:**

1. Agnostic
2. Anglican
3. Assemblies of God
4. Atheist
5. Baptist
6. Catholic
7. Charismatic
8. Christian
9. Christian Science
10. Church of Christ
11. Church of God
12. Disciples of Christ
13. Eastern Orthodox
14. Episcopalian
15. Evangelical
16. Full Gospel
17. Greek Orthodox
18. Jehovah's Witness
19. Jewish
20. Later Day Saints
21. Lutheran
22. Mennonite
23. Methodist
24. Missionary
25. Monrovia
26. Muslim
27. Nazarene
28. Nondenominational
29. Pentecostal
30. Presbyterian
31. Quaker
32. Seventh-Day Adventist
33. Unitarian
34. United Church of God
35. Wesleyan
36. None
37. Other: \_\_\_\_\_

**Adoptive Parent 1's Religious Practice (Select one)**

1. Actively practicing
2. Non-practicing

**Adoptive Parent 1's Religious Faith (Select one)**

1. Very significant
2. Somewhat significant
3. Not significant

**Adoptive Parent 1's Education (Select one)**

1. Graduate school - graduate
2. Graduate school - partial
3. College (4 yr) - graduate
4. College (4 yr) - partial
5. College (2 yr) - graduate
6. College (2 yr) - partial
7. High school - graduate
8. High school - partial

**Adoptive Parent 1's Build (Select one)**

1. Thin
2. Medium
3. Heavy

**Adoptive Parent 1's Height (in inches):** \_\_\_\_\_ inches

**Adoptive Parent 1's Hair Color (Select one)**

- |                |                 |
|----------------|-----------------|
| 1. Auburn      | 6. Brown-medium |
| 2. Black       | 7. Red          |
| 3. Blonde      | 8. Silver       |
| 4. Brown-dark  | 9. White        |
| 5. Brown-light | 10. Gray        |

**Adoptive Parent 1's Eye Color (Select one)**

- |          |                          |
|----------|--------------------------|
| 1. Blue  | 4. Green                 |
| 2. Brown | 5. Hazel (green & blue)  |
| 3. Gray  | 6. Hazel (green & brown) |

**Adoptive Parent 1's race (Select one)**

- |                               |                           |
|-------------------------------|---------------------------|
| 1. Caucasian                  | 7. Asian                  |
| 2. Caucasian/African-American | 8. Asian/Caucasian        |
| 3. African-American           | 9. Asian/African-American |
| 4. Hispanic                   | 10. Middle Eastern        |
| 5. Hispanic/Caucasian         | 11. American Indian       |
| 6. Hispanic/African-American  | 12. Other: _____          |

**Adoptive Parent 1's Ancestry (Select all that appl**

- |                       |                    |
|-----------------------|--------------------|
| 1. African            | 13. Mediterranean  |
| 2. American Indian    | 14. Middle Eastern |
| 3. Arabic             | 15. Portuguese     |
| 4. English            | 16. Russian        |
| 5. European - Eastern | 17. Scottish       |
| 6. European - Western | 18. Slavic         |
| 7. French             | 19. Spanish        |
| 8. German             | 20. Swiss          |
| 9. Greek              | 21. Welsh          |
| 10. Hispanic          | 22. Other: _____   |
| 11. Irish             |                    |
| 12. Italian           |                    |

**Adoptive Parent 1's Hobbies (Select up to eight that apply)**

- |                              |                              |
|------------------------------|------------------------------|
| 1. antiques                  | 21. modeling (fashion, etc.) |
| 2. art                       | 22. movies                   |
| 3. astronomy                 | 23. music/singing            |
| 4. camping                   | 24. nature                   |
| 5. church activities         | 25. outdoor activities       |
| 6. collecting                | 26. pets                     |
| 7. computers/internet        | 27. photography              |
| 8. cooking/baking            | 28. physical fitness         |
| 9. crafts/sewing             | 29. racing - motorized       |
| 10. dancing                  | 30. racing- non-motorized    |
| 11. diving/scuba/snorkeling  | 31. reading                  |
| 12. flying/ballooning        | 32. shopping/fashion         |
| 13. games-board              | 33. sports-participation     |
| 14. games-card               | 34. sports-spectator         |
| 15. gardening                | 35. television/radio         |
| 16. home repair/remodeling   | 36. theater                  |
| 17. hunting/fishing          | 37. travel                   |
| 18. magic                    | 38. woodworking              |
| 19. mechanics                | 39. writing/poetry           |
| 20. modeling (making models) |                              |

**Adoptive Parent 2:** \_\_\_\_\_

**Does Adoptive Parent 2 Smoke?** No/Yes

**Does Adoptive Parent 2 Drink Alcohol?** No/Yes

**Drinks How Often?**

- |                           |           |
|---------------------------|-----------|
| 1. Not at all             | 4. Weekly |
| 2. Special occasions only | 5. Daily  |
| 3. Monthly                |           |

**Adoptive Parent 2's Religion (Select one)**

- |                         |                           |
|-------------------------|---------------------------|
| 1. Agnostic             | 20. Latter Day Saints     |
| 2. Anglican             | 21. Lutheran              |
| 3. Assemblies of God    | 22. Mennonite             |
| 4. Atheist              | 23. Methodist             |
| 5. Baptist              | 24. Missionary            |
| 6. Catholic             | 25. Monrovia              |
| 7. Charismatic          | 26. Muslim                |
| 8. Christian            | 27. Nazarene              |
| 9. Christian Science    | 28. Nondenominational     |
| 10. Church of Christ    | 29. Pentecostal           |
| 11. Church of God       | 30. Presbyterian          |
| 12. Disciples of Christ | 31. Quaker                |
| 13. Eastern Orthodox    | 32. Seventh-Day Adventist |
| 14. Episcopalian        | 33. Unitarian             |
| 15. Evangelical         | 34. United Church of God  |
| 16. Full Gospel         | 35. Wesleyan              |
| 17. Greek Orthodox      | 36. None                  |
| 18. Jehovah's Witness   | 37. Other: _____          |
| 19. Jewish              |                           |

**Adoptive Parent 2's Religious Practice (Select one)**

1. Actively practicing
2. Non-practicing

**Adoptive Parent 2's Religious Faith (Select one)**

1. Very significant
2. Somewhat significant
3. Not significant

**Adoptive Parent 2's Education (Select one)**

- |                               |                              |
|-------------------------------|------------------------------|
| 1. Graduate school - graduate | 5. College (2 yr) - graduate |
| 2. Graduate school - partial  | 6. College (2 yr) - partial  |
| 3. College (4 yr) - graduate  | 7. High school - graduate    |
| 4. College (4 yr) - partial   | 8. High school - partial     |

**Adoptive Parent 2's Build (Select one)**

1. Thin
2. Medium
3. Heavy

**Adoptive Parent 2's Height (in inches)** \_\_\_\_\_ inches

**Adoptive Parent 2's Hair Color (Select one)**

- |                |                 |
|----------------|-----------------|
| 1. Auburn      | 6. Brown-medium |
| 2. Black       | 7. Red          |
| 3. Blonde      | 8. Silver       |
| 4. Brown-dark  | 9. White        |
| 5. Brown-light | 10. Gray        |

**Adoptive Parent 2's Eye Color (Select one)**

- |          |                          |
|----------|--------------------------|
| 1. Blue  | 4. Green                 |
| 2. Brown | 5. Hazel (green & blue)  |
| 3. Gray  | 6. Hazel (green & brown) |

**Adoptive Parent 2's race (Select one)**

- |                               |                           |
|-------------------------------|---------------------------|
| 1. Caucasian                  | 7. Asian                  |
| 2. Caucasian/African-American | 8. Asian/Caucasian        |
| 3. African-American           | 9. Asian/African-American |
| 4. Hispanic                   | 10. Middle Eastern        |
| 5. Hispanic/Caucasian         | 11. American Indian       |
| 6. Hispanic/African-American  | 12. Other: _____          |

**Adoptive Parent 2's Ancestry (Select all that apply)**

- |                       |                    |
|-----------------------|--------------------|
| 1. African            | 13. Mediterranean  |
| 2. American Indian    | 14. Middle Eastern |
| 3. Arabic             | 15. Portuguese     |
| 4. English            | 16. Russian        |
| 5. European - Eastern | 17. Scottish       |
| 6. European - Western | 18. Slavic         |
| 7. French             | 19. Spanish        |
| 8. German             | 20. Swiss          |
| 9. Greek              | 21. Welsh          |
| 10. Hispanic          | 22. Other: _____   |
| 11. Irish             |                    |
| 12. Italian           |                    |

**Adoptive Parent 2's Hobbies (Select up to eight that apply)**

- |                              |                              |
|------------------------------|------------------------------|
| 1. antiques                  | 21. modeling (fashion, etc.) |
| 2. art                       | 22. movies                   |
| 3. astronomy                 | 23. music/singing            |
| 4. camping                   | 24. nature                   |
| 5. church activities         | 25. outdoor activities       |
| 6. collecting                | 26. pets                     |
| 7. computers/internet        | 27. photography              |
| 8. cooking/baking            | 28. physical fitness         |
| 9. crafts/sewing             | 29. racing - motorized       |
| 10. dancing                  | 30. racing- non-motorized    |
| 11. diving/scuba/snorkeling  | 31. reading                  |
| 12. flying/ballooning        | 32. shopping/fashion         |
| 13. games-board              | 33. sports-participation     |
| 14. games-card               | 34. sports-spectator         |
| 15. gardening                | 35. television/radio         |
| 16. home repair/remodeling   | 36. theater                  |
| 17. hunting/fishing          | 37. travel                   |
| 18. magic                    | 38. woodworking              |
| 19. mechanics                | 39. writing/poetry           |
| 20. modeling (making models) |                              |

**I/WE AFFIRM UNDER THE PENALTIES FOR PERJURY THAT THE FOREGOING INFORMATION IS CORRECT TO THE BEST OF MY/OUR KNOWLEDGE.**

**DATED:** \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_



## **Background Information Risk Acknowledgment**

(revised 3/5/24)

A common question asked by many prospective adoptive parents and their friends and family is what type of investigation of expectant/birth parents is conducted by Kirsh & Kirsh, P.C. (“Kirsh & Kirsh”). Kirsh & Kirsh tries to interview every expectant/birth mother prior to, or at the time of, the birth of the child, in order to obtain biological, social, psychological, psychiatric, criminal, marital, ancestral (including Native American), medical, behavioral (including, but not limited to, drug and alcohol use) and other information about her parents, grandparents, siblings, children and her (“background information”) and asks every expectant/birth mother and birth father, if he is involved, to complete detailed background information forms.

Kirsh & Kirsh will share the background information provided by the expectant/birth parent(s) and the completed background information forms with the prospective adoptive parent(s). If the prospective adoptive parent(s) have not received from Kirsh & Kirsh the completed background information form(s) within a couple of weeks of the birth of the child, the prospective adoptive(s) should request that Kirsh & Kirsh send the completed background information form(s).

If the birth father is not involved, then no background information about him will be available other than a physical description, if the expectant/birth mother is able, and willing, to provide it.

In short, all of the background information about the expectant/birth parent(s) comes from the expectant/birth parent(s) themselves. Some expectant/birth parent(s) lack much background information, some are wrong about the background information they provide, and some lie about their background information. Sometimes, background information is simply unavailable. Kirsh & Kirsh encourages expectant/birth parent(s) to disclose background information as fully and accurately as possible. However, Kirsh & Kirsh does not independently verify the background information, nor does Kirsh & Kirsh conduct background checks of expectant/birth parent(s) of any kind, including, but not limited to, interview of friends and family, check of criminal conviction histories, monitor of social media activity, or search of Google or other Internet sites. Such activities are beyond the scope of the services Kirsh & Kirsh provides or is qualified to provide.

Furthermore, Kirsh & Kirsh believes most expectant/birth parent(s) would consider it an invasion of privacy to do so without their permission. The undersigned understand(s) that in adopting a child, the background information is often incomplete and sometimes inaccurate.

Lastly, Kirsh & Kirsh does not review or opine about the background information or lack of background information. Any comments made by Kirsh & Kirsh about the background



information should not be construed as medical or legal opinion or advice. It is the sole responsibility of the undersigned, either on their own, or in consultation with a medical professional or other professional of their choosing, to review and assess the background information which Kirsh & Kirsh provides and to determine what additional background information, if any, they need in order to make the decision as to whether or not to proceed with the adoption of the child.

If the undersigned chooses to make independent inquiries regarding the expectant/birth parent(s), Kirsh & Kirsh recommends that the undersigned seek the permission of the expectant/birth parent(s) before performing any background checks. The undersigned understands the expectant/birth parent(s) may be offended by such a request and opt to have another family adopt, in which event the undersigned hereby grants Kirsh & Kirsh permission to attempt to match the expectant/birth parent(s) with another family.

The undersigned, individually, collectively, and on behalf of the child(ren) as the child(ren)'s parent, guardian or next friend, release(s) Kirsh & Kirsh for liability, of whatsoever nature, howsoever relating to the health and future well-being of the child(ren) they adopt, in general, and the adequacy and accuracy of the background information, in particular.

Dated: \_\_\_\_\_

Signatures:

\_\_\_\_\_  
\_\_\_\_\_



## **CONFLICT OF INTEREST STATEMENT**

It is important to understand that, since we have many clients seeking to adopt, your efforts, your letters, and pictures, and our files which describe you and your lives, and from which we make information available to the birth parents, are inevitably in competition with other letters, pictures, and files from some of our other clients. This creates a conflict of interest for us, in that, while we want to represent all of our prospective parents equally when it comes to any particular baby, it is often impossible to do so.

When a particular baby comes to our attention, and the birth parent(s) is (are) not referred to us by, or on behalf of, a particular family whom the birth parent(s) intend(s) on having adopt the baby, and the birth parent(s) seek(s) our help in choosing an adoptive home, our practice is to offer a choice from among three or four of our clients, based on the general qualities sought by the birth parent(s). To the extent possible, we focus on objective factors in selecting potential families from which to choose.

However, this process often involved subjective decisions on our part based on considerations too numerous to list and too subtle to articulate. Based on our experience, we try to help the birth parent(s) pick an adoptive family that will be most suitable.

Please read the foregoing, and sign below that you have understood this and agree to waive any "conflict of interest" which may arise regarding the above.

DATED: \_\_\_\_\_

\_\_\_\_\_  
Adoptive Parent

\_\_\_\_\_  
Adoptive Parent

O:\CDATA\FRNTDESK\FORMS\conflict of interest.wpd



## **Medical Risk Acknowledgment**

The undersigned understand(s) that in adopting a child there are certain risks regarding the health and future well-being of the child. Some of those risks are the same whether parent(s) give(s) birth to, or adopt(s), a child; others are specific to an adopted child. One example, among many risks that is the same, is that some conditions are not apparent at birth. In deciding to have a child by birth or adoption, parent(s) assume this risk and others.

The undersigned further acknowledge and understand that Kirsh & Kirsh, P.C., its employees, officers, directors, and shareholders, successors and assigns (individually and collectively referred to as "Kirsh & Kirsh"), are not qualified to give medical advice. Information which Kirsh & Kirsh provides to the undersigned is simply information which Kirsh & Kirsh has received from either the birth parent(s) or medical providers. Kirsh & Kirsh does not review or opine about the information or lack of information. Any comments made by Kirsh & Kirsh about the information should not be construed as medical opinion or advice. It is the sole responsibility of the undersigned, either on their own, or in consultation with a medical professional of their choosing, to review and assess the information which Kirsh & Kirsh provides and to determine what additional information, if any, they need in order to make the decision as to whether or not to proceed with the adoption of the child.

Kirsh & Kirsh will assist the undersigned in trying to obtain information about both the child they are seeking to adopt as well as relating to the pregnancy of the birth mother of the child. The undersigned acknowledge and agree that it shall be their responsibility to have those records reviewed by medical personnel and to let Kirsh & Kirsh know if additional information is needed.

The undersigned release(s) Kirsh & Kirsh for liability, of whatsoever nature, howsoever relating to the health and future well-being of the child(ren) they adopt.

Dated: \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_



## **KIRSH & KIRSH POST-PLACEMENT UPDATE POLICY**

(Revised March 5, 2024)

At the time of placement, the adoptive parents will contract with Child Connect, a third party, who hosts the secure and encrypted website that facilitates our adoption updates. For a one-time fee of approximately \$700, the adoptive parents will be able to upload their post-placement birth parent updates to the ChildConnect website and ChildConnect will provide the birth parent(s) secure access to the updates. The birth parent(s) may also use the ChildConnect app to order hard copies of the updates.

In our 40+ years and over 4,000 successful adoptions we have found that typically the more updates birth parents receive the more at ease they are with their decision. Therefore, the adoptive parents should be prepared to provide post-placement updates to their birth parent(s) according to this schedule.

| <b>Update Sent By This Date:</b>                       |
|--|
| Within your first 2 weeks with the baby                |
| 1 Month  |
| 2 Months   |
| 3 Months   |
| 6 Months   |
| 9 Months   |
| 12 Months  |
| 18 Months  |
| 24 Months  |
| Annually on birthday through 18 <sup>th</sup> Birthday |

Logins will be created using your email addresses once the birth mother consents to the adoption. You will be able to access Child Connect by visiting: [www.IndianaAdoption.com/updates](http://www.IndianaAdoption.com/updates)

We, the prospective adoptive parent(s), understand and agree that regardless if the birth parent(s) want a closed adoption, or if other arrangements for sharing updates have been made between you and the birth parent(s) (ie texting, emailing) it is still required for you to use Child Connect to post the updates according the schedule above.

We, the prospective adoptive parent(s), understand and agree to the update arrangements outlined in the update policy.

Date: \_\_\_\_\_

\_\_\_\_\_  
Adoptive Parent Signature

\_\_\_\_\_  
Adoptive Parent Signature



## **WAIVER OF ATTORNEY-CLIENT PRIVILEGE**

(Revised: January 17, 2018)

Kirsh & Kirsh may report any known or suspected child neglect or abuse to the proper authorities. Client(s) specifically release(s) Kirsh & Kirsh from any liability or claims of privilege in the event Kirsh & Kirsh makes a report pursuant to this subparagraph. In giving this authorization, Client(s) freely, voluntarily, and knowingly waive the attorney-client privilege to which Client(s) would otherwise be entitled. By initialing below this paragraph, Client(s) confirm(s) that Client(s) possess(es) the information reasonably adequate to (1) understand why it would be necessary for Kirsh & Kirsh to make such a report and (2) give informed consent to the disclosure of what might be information subject to the attorney-client privilege.

Initial: \_\_\_\_\_

Client(s) hereby authorize(s) Kirsh & Kirsh to discuss all aspects of Client(s)'s adoption proceedings, both before and after finalization of an adoption, with Clients(s)'s home study and/or supervising agency or agencies, and Client(s)'s adoption counselors and adoption social workers. In giving this authorization, Client(s) freely, voluntarily, and knowingly waive the attorney-client privilege to which Client(s) would otherwise be entitled. By initialing below this paragraph, Client(s) confirm(s) that Client(s) possess(es) the information reasonably adequate to (1) understand why it would be necessary for Kirsh & Kirsh to discuss the adoption proceedings with the above-referenced persons and (2) give informed consent to the disclosure of what might be information subject to the attorney-client privilege.

Initial: \_\_\_\_\_

Client(s) authorize Kirsh & Kirsh to share identifying information with Child Connect in order for Child Connect to create an account for Client(s) and for Child Connect to facilitate the exchange of updates between Client(s) and the birth parent(s) of the child Client(s) adopt(s). In giving this authorization, Client(s) freely, voluntarily, and knowingly waive the attorney-client privilege to which Client(s) would otherwise be entitled. By initialing below this paragraph, Client(s) confirm(s) that Client(s) possess(es) the information reasonably adequate to (1) understand why it would be necessary for Kirsh & Kirsh to discuss the adoption proceedings with the above-referenced persons and (2) give informed consent to the disclosure of what might be information subject to the attorney-client privilege.

Initial: \_\_\_\_\_

Client(s) authorize Kirsh & Kirsh to discuss with ParentFinder information about Client(s) in order for Parentfinder to assist Client(s) with the completion of their online and physical profile. In giving this authorization, Client(s) freely, voluntarily, and knowingly waive the attorney-client privilege to which Client(s) would otherwise be entitled. By initialing below this paragraph, Client(s) confirm that Client(s) possess(es) the information reasonably adequate to (1) understand why it would be necessary for Kirsh & Kirsh to share information about Client(s) with ParentFinder and (2) give informed consent to the disclosure of what might be information subject to the attorney-client privilege.

Client(s) Initials: \_\_\_\_\_

DATE: \_\_\_\_\_/\_\_\_\_\_/\_\_\_\_\_

\_\_\_\_\_  
CLIENT

\_\_\_\_\_  
CLIENT



**WHAT TO EXPECT OF BIRTH MOTHERS**

(Revised 10/12/23)

While it is difficult to generalize about all birth mothers who make adoption plans for their children, it is important for prospective adoptive parents to be realistic about what they can expect in working with our office.

Rarely do we have complete medical histories from mother and father. We should have a fairly good social and medical history for the mother because the birth mothers generally are willing to complete our 30-page background form. We can also obtain copies of hospital records relating to the birth and prenatal records of the birth mother (if she is receiving prenatal care), although it sometimes takes as long as a month to get those records after we have requested them. On the other hand, seldom do we have information about the father of the baby.

For some prospective adoptive parents, having complete medical information is essential in order for them to make a decision about whether or not they are interested in adopting a baby. While that desire is reasonable, detailed information is probably not going to be available in most cases. Families with those needs must carefully evaluate whether or not they wish to proceed with an adoption through our office.

Additionally, many birth mothers take care of themselves during their pregnancy. They refrain from smoking, drinking, and using drugs. On the other hand, many of the birth mothers with whom we work smoke. Occasionally, drug testing is performed by the doctor. If the woman does not receive prenatal care, often the hospital will routinely do a drug screen. However, our knowledge of a birth mother's usage of drugs is largely dependent upon what she tells us. Alcohol presents even more challenges because there are no tests for alcohol use beyond the first few hours of the alcohol consumption and that testing is almost never done.

In adopting a child, adoptive parents give up control of a number of items, but, in particular, they give up control of the pregnancy. To balance that lack of control, the option that prospective adoptive parents have, which birth parents do not have, is that if the baby is born with an obvious medical problem, the adoptive parents do not have to proceed with the adoption.

We provide this information not to discourage you from adopting, but to make sure that your expectations of the process are within the realm of what can be accomplished through our office.

If you have any questions, please let us know. Because this issue is so important, we would like for you to acknowledge that you have read this statement by signing your names below.

We have read and understood the foregoing *What to Expect of Birth Mothers*.

DATED: \_\_\_\_\_

## Indian Child Welfare Act (“ICWA”) Disclosure

### Preface

*If we do not comply with ICWA in an adoption proceeding when it is required that we comply and the adoption is challenged, the adoption could be overturned and the child taken from you.*

### Explanation

Congress enacted ICWA, 25 U.S.C. § 1901, *et seq.*, “to protect the best interests of Indian children and to promote the stability and security of Indian tribes and families by the establishment of minimum Federal standards for the removal of Indian children from their families and the placement of such children in foster or adoptive homes which will reflect the unique values of Indian culture, and by providing for assistance to Indian tribes in the operation of child and family service programs.” 25 U.S.C. § 1902.

Section 1903(6) of ICWA provides: “‘Indian child’ means any unmarried person who is under age eighteen and is either (a) a member of an Indian tribe or (b) is eligible for membership in an Indian tribe and is *the biological child of a member of an Indian tribe* . . .”(emphasis added). ICWA applies to Indian tribes and Alaskan Villages federally recognized by the United States Bureau of Indian Affairs.

The emphasized passage in the foregoing quote applies equally to biological mothers ***AND*** fathers, including, by way of example, but not limited to the following:

1. A birth father not identified by the mother;
2. A birth father who does ***NOT*** register with a putative father registry;
3. A birth father who receives pre-birth notice of the adoption and does not file a paternity action;
4. A birth father who receives post-birth notice of the adoption and does not file a motion to contest; and
5. A birth mother or birth father who do not know they are members of, or eligible for membership in, an Indian tribe.

Additionally, the quoted passage does not specify a time frame. In other words, potentially, a birth parent could seek tribal membership after they have consented to the adoption or later.

Each tribe sets its own membership enrollment qualifications. Simply put, there is not a universal quantum of blood requirement to be eligible for membership in a tribe, nor is there a centralized location to check tribal membership. Each tribe maintains its own membership rolls, and ICWA does not specify a time frame within which a tribe must respond to a membership inquiry.



Complying with ICWA is not difficult and, in most cases, does **NOT** involve notifying the tribe or even determining that the child being adopted fits within the definition of an “Indian child,” **but it can add up to \$7,500 to the cost of your adoption.**

In the United States Supreme Court case, **Adoptive Couple v. Baby Girl**, 570 U.S. 637 (2013), the Cherokee tribe took this case to the Supreme Courts of South Carolina and Oklahoma, and to the United States Supreme Court, involving a child that was 1.2% (3/256) Indian. A tribe like the Cherokee Tribe has unlimited time and resources. For the most part, prospective adoptive parents have **neither**. Fortunately for the adoptive parents in that case, the United States Supreme Court ruled in their favor but **not** because of the small amount of Indian blood.

Given the uncertainties and difficulties in determining whether a child is an “Indian child,” the safest course of action to protect against a claim that the adoption took place in violation of ICWA, but for the additional expense, would be to comply with ICWA in **EVERY** adoption, with few exceptions, which we would be happy to discuss on a case-by-case basis.

Of course, **NOT** every adoption is subject to an ICWA challenge – only those adoptions involving an “Indian child.” Furthermore, in a state like Indiana, with a statute of limitations on challenges to adoptions, those statutes of limitations may protect adoptive parents, who do not comply with ICWA in an adoption involving an “Indian child.” As an example, **Indiana Code** § 31-19-14-4 may provide that protection roughly one (1) year after an adoptive placement.

We believe that a court will more likely use a statute like **Indiana Code** § 31-19-14-4 to uphold an adoptive placement in response to an ICWA challenge, if the adoptive parents did not ignore ICWA, when they knew ICWA applied. In other words, if the adoptive parents knew that the child was an “Indian child” and decided not to comply with ICWA, a court may not use the foregoing statute to save the adoption.

But, complying with ICWA gives rise to other risks, including, but not limited to the following:

1. A consenting birth parent must appear in court, in person or via Zoom, no sooner than ten (10) days after the child’s birth to give their ICWA consent in open court, which obviously gives rise to the possibilities that:
  - a. They will not appear at the hearing, or
  - b. They will appear at the hearing and not consent to the adoption.
2. Making the birth parents, who do not appear at the ICWA hearing or who appear and do not consent to the adoption, aware that ICWA may provide them a way to challenge the adoption.
3. Alerting other family members of the birth parents of the existence of ICWA.

## **Summary**

In short, complying with ICWA adds another layer of protection but, perhaps, at significant additional cost. Some states have enacted their own versions of ICWA, which may

complicate matters. If you would like to discuss the implications of ICWA or have us comply with ICWA, let us know before we file a petition for adoption on your behalf. Based upon information provided to us by the birth mother or father, if we have reason to believe the child you are adopting is, or may be, an “Indian child,” **we will bring ICWA compliance to your attention. Otherwise, we will rely on you to inform us that you would like to comply with ICWA.**

**Affirmation**

We have read the foregoing Disclosure and had the opportunity to ask the attorneys at Kirsh & Kirsh, P.C., questions about ICWA and understand our obligation to inform Kirsh & Kirsh, P.C., of our desire to comply with ICWA. We also understand that rarely, if ever, will Kirsh & Kirsh, P.C., have independent knowledge that a child is, in fact, an “Indian child,” and, therefore, must rely upon the information provided by the birth mother or father.

**Dated:** \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_