



KIRSH & KIRSH, P.C.
FEE AGREEMENT
(Reduced Fees -- \$9,500)
(Self-Directed or Referred by Agency of Facilitator)
(Revised: January 2024)

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 40 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, \$500 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. 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.

NOTWITHSTANDING THE FOREGOING OR ANYTHING ELSE IN THIS FEE AGREEMENT, CLIENT(S) UNDERSTAND THAT MAKING AN EVALUATION OF THE SUITABILITY OF THE CHILD, WHO WILL BE THE SUBJECT OF THE ADOPTION, OR THE APPROPRIATENESS OF THIS ADOPTION OPPORTUNITY FOR CLIENT(S) IS BEYOND THE SCOPE OF THE REPRESENTATION OF CLIENT(S) BY KIRSH & KIRSH. CLIENT(S) ACKNOWLEDGE THAT THEY WERE MATCHED WITH THE EXPECTANT MOTHER AND BABY THROUGH THEIR OWN EFFORTS, OR BY AN AGENCY OR FACILITATOR, BUT THAT KIRSH & KIRSH HAD NO INVOLVEMENT WITH CLIENT(S)'S DECISION TO PURSUE THIS PARTICULAR OPPORTUNITY TO ADOPT.

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 \$1,000, 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 \$500 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. **[Intentionally Deleted]**

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 \$9,500, less the initial payment paid pursuant to paragraph 1(b) of this Fee Agreement, for a total additional payment of \$8,500. 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.

Client(s) Initials: _____

- 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. **[Intentionally Deleted]**
- 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, 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. 96th Street, in Indianapolis, Indiana, Client(s) shall pay Kirsh & Kirsh an out-of-the-office meeting fee of \$650 for each such meeting¹, 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 adoption² and counseling expenses (if she/he elects to participate in counseling or retains her/their own attorney), 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

¹ 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.

² 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.

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 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 Indiana³, 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.
- vii. Client(s) shall be responsible for contracting with, and paying the fees of Child Connect (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

³ Non-residents of Indiana may file adoption proceedings in Indiana for a newborn born in Indiana or a child living in Indiana.

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 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 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).

- f. While Kirsh & Kirsh endeavors not to share identifying information about Client(s) with birth parent(s), Client(s) understand(s) that **it is possible that the birth parent(s) will learn their identity, address, or both**, from certain adoption-related records or documents, in which case Client(s) would not have any recourse except to decide not to proceed with the adoption.

Client(s) Initials: _____

7. **[Intentionally Deleted]**

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.

 “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: _____



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:



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.

Update Sent By This Date:
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 th 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

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



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: _____



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: _____

