

To: Juvenile Division Staff  
From: Judge Archie C. Brown  
Re: Termination of Second Parent Adoption Program  
Date: June 4, 2002

Effective immediately the Washtenaw County Trial Court and in particular, the Juvenile Division staff, shall no longer process petitions for second parent adoptions, including any petitions that are currently pending.

This decision comes after a review of the current procedures for granting these petitions, a review of the applicable statutes, and concerns about the legality of this program expressed to me by judges from around the state, including members of the Supreme Court.

MCL 710.24(1) is the operative statute, and provides in part:

If a person desires to adopt a child ..., that person, together with his wife or her husband, if married, shall file a petition ....

The Court obtained a legal opinion from an adoption specialist, Herbert Brail, one of three attorneys in Michigan who is an American Academy of Adoption Attorneys member. He notes in his opinion that adoption is in derogation of the common law and that the provisions of the Adoption Code must be strictly construed. That opinion is consistent with what judges in other counties have determined to be the state of the law, that there is no legal basis for accepting or granting petitions for second parent adoptions.

The adoption code in using the phrase, "If a person desires to adopt a child," refers to a singular individual. Otherwise, that section would have read, "a person or persons." Further evidence that the reference is to a singular individual is supported by the phrase, "that person, together with his wife or her husband, if married." The language of the statute, under any reasonable construction, cannot refer to two or more individuals, unless they are married to one another. Therefore, it is clear that the statute, and our caselaw, bars adoptions by both gay couples and unmarried heterosexual couples.

Mr. Brail opines that the adoption, by one partner in a same-sex relationship or by an unmarried heterosexual partner, of a child not related to either partner or related to only one partner in the relationship may be a case of form over substance. There may be convincing evidence, through research studies, that the best interests of the child can be provided either by partners in a same-sex relationship or unmarried heterosexual partners that are committed, nurturing and competent parents. Additionally, it may be determined that the best interests of the child can be served either by partners in a same-sex relationship or unmarried heterosexual partners that are afforded the same rights and accept the same responsibilities as a legally married couple. However, the state of the law is clear, and any change in the statute to allow for second parent adoptions is solely a legislative issue rather than one for judicial resolution.