

**TESTIMONY OF THE ADOPTION COMMITTEE OF THE FAMILY LAW SECTION
OF THE STATE BAR OF MICHIGAN IN SUPPORT OF HB 5148 & 5149
BEFORE THE HOUSE COMMITTEE ON JUDICIARY
TUESDAY, JANUARY 28, 2020**

Good morning, Mr.Chair, esteemed members of the Committee, my name is Dion Roddy, I am an attorney in private practice in Troy practicing nearly exclusively in adoption law and a current chair of the Adoption Committee of the Family Law Section of the State Bar of Michigan. In an effort to improve upon bills passed in 2016, specifically 2016 HB 5626 and 5628, the Adoption Committee drafted the bills before the Committee today, HB 5148 and 5149. We are asking the members of the Committee to support passage of these bills into Michigan law.

First, a brief overview of the 2016 bills. 2016 HB 5626 and 5628 were passed to address the issue of unregulated custody transfers of children across state lines in which no court oversight is provided, otherwise known as “rehoming”, In these situations, parents advertise children on social medial or the internet rather than go through a court supervised adoption process. The result is that the children involved in these placements are at high risk of being subject to abusive or neglectful environments. Some may be transferred or sold to human traffickers and end up in the commercial sex trade or in the custody of a child molester. 2016 HB 5626 updated a provision in the Michigan Adoption Code regarding who can solicit another party for the purpose of adoption by allowing advertising and recruiting. 2016 HB 5628 criminalized certain conduct regarding the permanent transfer of a child; a violation is 20 year felony. I have included the December 8, 2016 Legislative Analysis of the bills in my handout.

We on the Adoption Committee wholeheartedly support measures to prevent rehoming adoptions and to punish those involved in order to protect our children. We believe the 2016

bills were laws that needed to be passed. However, we, as regular legal practitioners in the area of adoption, believe that there were unintentional oversights in the drafting of the language of the bills that have resulted in exposing those traditionally involved in facilitating safe and legal adoptions, particularly attorneys, to potential criminal liability. The proposed amendments before you today are meant to remedy this problem so that adoption those attorneys can continue to do what they have always done in the past: facilitate legal, court-supervised adoptions that are in the best interest of the children involved.

2016 HB 5626 amended Section 55 of the Michigan Adoption Code. Under the current version of the Code, only a prospective adoptive parent may advertise for biological parents or guardians of potential adoptees for the purposes of adoption. In addition, it allows a biological parent or guardian, the court, the Department of Health and Human Services, or a child placing agency to advertise for potential adoptive parents only to fulfill the purposes of a court-supervised adoption of that child. Finally, the Code currently specifies that no other person or entity may advertise for the purpose of facilitating the transfer, adoption, or other permanent placement of a child.

Unfortunately, the current law leaves out a very important party often involved in adoption proceedings: attorneys. While attorneys do not advertise for the purpose of matching adoptive parents and biological parents for the purpose of adoption, they do advertise their services in connection with adoption matters such as representing adoptive parents in filing adoption petitions and finalizing adoptions; representing biological parents in and out of court in executing consents and releases for adoption; and representing adoptive parents, biological parents, child placing agencies, and adoptees themselves in adoption related litigation related to contesting birth parents and multiple petitions to adopt the same child. Under the current version

of the law, adoption attorneys who advertise for their services, as permitted under the Michigan Rules of Professional Conduct, potentially expose themselves to fines and jail time for doing so.

It is vitally important for adoption attorneys to be able to advertise for the services that they offer in connection with legal, court supervised adoption actions. Adoption attorneys provide a valuable service to those involved in adoptions. If adoption attorneys are not allowed to advertise, this hurts those involved in adoptions that are in need of the services that only an attorney can provide. It is an unfair burden to place on those seeking an adoption attorney to have to seek out quality counsel without the benefit that advertising provides.

HB 5148, attached to your handout, proposes an amendment to subsection 3 of section 55 of the Code, adding language excluding from the definition of advertising under the Code the, “Dissemination of an attorneys legal services, including an advertisement or website as allowed under the Michigan rules of professional conduct.” The Adoption Committee asks that this bill be passed so that adoption attorneys can continue to publicize the services they provide in adoption matters so that they may continue to serve those in need of those services without the looming threat fines and jail for doing so.

The second bill before the Committee today, HB 5149, also attached to your handout, proposes amendments to Section 136c of the Michigan Penal Code. The current version of the law, amended by 2016 HB 5628, prohibits the transfer or attempt to transfer custody of a child with the intent to permanently divest a parent of his or her responsibility. In addition, it further prohibits arranging for or assisting in the transfer, adoption, adoptive placement, or any other permanent physical placement of a child. The statute currently provides exceptions for the placement activities of a child placing agency, DHHS, in accordance with the Interstate Compact on the Placement of Children, or placement with a relative, or certain non-permanent placements.

Violation of the statute constitutes a felony punishable by imprisonment for up to 20 years and/or a fine of up to \$100,000.00.

Again, the current version of the law inadvertently fails to take into account the legitimate activities of attorneys in adoption proceedings. While arguably the current law would protect attorneys involved in relative, agency, foster, and interstate adoptions involving ICPC, it fails to provide protection for attorneys involved in adoptions that fall outside these types such as in-state direct placement adoptions and stepparent adoptions. In these particular types of adoptions, attorneys play crucial roles in ensuring that the adoptions are properly adjudicated and finalized by the courts. Often, in-state and stepparent adoptions only involve biological and prospective adoptive parents with no other professional entities to guide them through the process except attorneys. Without attorney involvement in these adoptions, it is very easy for parties to make mistakes that could run them afoul of other provisions of the Code, disrupt the adoption, and ultimately jeopardize the welfare of the child.

HB 5149 provides necessary language to ensure that attorneys can continue to do what they have always done in Michigan for years: assist parties in legal, court-supervised adoption actions with the ultimate goal of serving the best interest of each adoptee involved.

Neither bill before the Committee today adds any additional powers or privileges for attorneys other than what they have enjoyed in the past up to the passage of the 2016 bills. The Adoption Committee is of the opinion that the 2016 bills were not intended to prohibit attorneys from providing their services in legal, court-supervised adoptions, but unintentionally failed to take into consideration the valuable and essential work that attorneys do in adoption matters. The purpose of the bills before the Committee today is to shore up the language of the current

laws to focus on the target of the 2016 bills: stopping illegal, unsupervised adoptions and custody transfers by parties seeking to skirt the legal process set forth in the Code.

The bills before the Committee today enjoy the support of the Family Law Section of the State Bar of Michigan.

For the reasons set forth in my testimony today, I respectfully request passage of House Bills 5148 and 5149.

Respectfully submitted,

/s/ Dion E. Roddy
Dion E. Roddy, Chair
Adoption Committee
Family Law Section
State Bar of Michigan

January 14, 2020

