

*IN RE* ADOPTION OF GUSTAVO G.  
(decided April 22, 2004)

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The United States Supreme Court stated “[t]here are few of the business relations of life involving a higher trust and confidence than that of attorney and client . . .”<sup>1</sup> A lawyer has an ethical obligation to be a zealous advocate for his client, remain loyal, and preserve his client’s confidences.<sup>2</sup> In the course of an attorney-client relationship, situations may arise where a lawyer’s very involvement in a matter may offend the trust and confidence essential to that relationship. In these situations, though no *actual* conflict of interest may exist, an “inherent conflict of interest” (i.e. the potential for or the appearance of a conflict of interest) remains.<sup>3</sup> In order to preserve the integrity of the attorney-client relationship when an inherent conflict of interest arises, a lawyer should avoid involvement in the matter, though he may not be ethically mandated to do so by court rules. By withdrawing himself from a matter in which an inherent conflict of interest exists, a lawyer enhances public confidence in the judicial system<sup>4</sup> and avoids causing injury to potential clients. This promotes the values articulated by the Supreme Court that are essential to the attorney-client relationship.

In *In re Adoption of Gustavo G.*,<sup>5</sup> the New York Appellate Division, First Department, addressed the issue of whether a law firm that represented a foster care agency in terminating the parental rights of a child under the care of the agency could subsequently represent a person seeking to adopt the child. The court held that because the interests of the foster care agency and the person seek-

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1. *Stockton v. Ford*, 52 U.S. 232, 247 (1850).

2. *See, e.g.*, MODEL CODE OF PROF’L RESPONSIBILITY (1980) (Canons 4, 5, 7, and 9 of the Model Code include rules concerning loyalty, zealous representation, and appearances of impropriety).

3. *In re Adoption of Gustavo G.*, 776 N.Y.S.2d 15, 25 (1st Dep’t 2004) (Tom, J., dissenting).

4. *Id.*

5. 776 N.Y.S.2d 15 (1st Dep’t 2004).

ing adoption were aligned, no conflict of interest existed.<sup>6</sup> This Case Comment contends that the Appellate Division's holding was too broad. The continued representation by the law firm of the foster care agency in other parental rights termination proceedings during the law firm's representation of the prospective adoptive parent created an "inherent conflict of interest" which should have led to the law firm's disqualification.<sup>7</sup> Excluding this type of inherent conflict of interest, but allowing representation of an adoptive parent when there is no continued representation of a foster care agency, would advance the placement of the child in a home and promote the core elements on which the attorney-client relationship are based.

In *In re Adoption of Gustavo G.*, Gustavo, a four-year-old boy, was taken from his mother as a result of her drug abuse and placed with the Administration for Children's Services on March 3, 2000.<sup>8</sup> He was subsequently transferred to Angel Guardian Children and Family Services (Angel Guardian).<sup>9</sup> Since March 13, 2000, Gustavo continuously resided with petitioner, his maternal grandmother.<sup>10</sup> Warren & Warren, P.C. represented Angel Guardian in terminating the parental rights of Gustavo's biological mother and alleged father.<sup>11</sup> Subsequently, petitioner sought the legal representation of Warren & Warren to help her adopt Gustavo.<sup>12</sup> Before Warren & Warren agreed to represent the petitioner, the firm advised her that when there is dual representation, a situation might arise resulting in a disqualifying conflict of interest.<sup>13</sup> The petitioner decided to retain Warren & Warren despite this possibility.<sup>14</sup> While Warren & Warren represented the petitioner, it continued to re-

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6. *Id.* at 18-19.

7. *Id.* at 25 (Tom, J., dissenting).

8. *Id.* at 24.

9. *Id.* at 16.

10. *Id.*

11. *Gustavo*, 776 N.Y.S.2d at 16.

12. *Id.*

13. *Id.* at 17.

14. Warren & Warren were obligated to obtain the petitioner's consent because the possibility existed that the firm's interests would impair the judgment of its lawyers because the firm was previously employed by Angel Guardian to terminate the rights of Gustavo's biological parents. See MODEL CODE OF PROF'L RESPONSIBILITY DR 5-101 (1980) (stating that "[e]xcept with the consent of his client after full disclosure, a lawyer shall not accept employment if the exercise of his professional judgment on behalf

present Angel Guardian in other unrelated termination of parental rights matters.<sup>15</sup> On November 6, 2002, represented by Warren & Warren, Gustavo's grandmother filed a petition seeking to adopt Gustavo.<sup>16</sup>

After receiving the adoption petition, the Bronx County Family Court, *sua sponte*, issued an order to show cause as to why it should not dismiss the petition in light of Warren & Warren's prior representation of the foster care agency.<sup>17</sup> Though the court did not find an actual conflict of interest, it relied on a New York State Bar Association ethics opinion<sup>18</sup> to find that Warren & Warren's representation of the petitioner was impermissible.<sup>19</sup> The ethics opinion stated that a law firm should not, after representing a foster care agency in the termination of parental rights, represent the prospective adoptive parents.<sup>20</sup> The Bar Association contended that this would create the appearance of professional impropriety.<sup>21</sup>

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of his client will be or reasonably may be affected by his own financial, business, property, or personal interests.”)

15. *Gustavo*, 776 N.Y.S.2d at 25 (Tom, J., dissenting).

16. *Id.* at 16.

17. *Id.* at 17.

18. NYSBA Comm. on Prof'l Ethics Op. 708 (1998).

19. *Gustavo*, 776 N.Y.S.2d at 17.

20. NYSBA Comm. on Prof'l Ethics Op. 708 (1998). Generally, professional ethics opinions opined by state bar associations are not binding; they are issued to lend guidance to decision-making bodies. SUSAN R. MARTYN & LAWRENCE J. FOX, TRAVERSING THE ETHICAL MINEFIELD: PROBLEMS, LAW, AND PROFESSIONAL RESPONSIBILITY 537 (2004).

21. NYSBA Comm. on Prof'l Ethics Op. 708 (1998). The New York State Bar Association's opinion relied heavily upon MODEL CODE OF PROF'L RESPONSIBILITY DR 9-101. Disciplinary Rule 9-101(B) states that “[a] lawyer shall not accept private employment in a matter in which he had substantial responsibility while he was a public employee.” MODEL CODE OF PROF'L RESPONSIBILITY DR 9-101(B) (1980). The New York State Bar Association ruled that DR 9-101(B) could be extended to a private foster care agency where its purpose is to serve the system of justice. By serving the system of justice, it therefore acts as a public agency, and the lawyer, in turn, essentially constitutes a public employee. The Bar Association ruled that DR 9-101(B) was intended to “ensure the public's confidence in public agencies and public processes. . . .” NYSBA Comm. on Prof'l Ethics Op. 708 (1998). Because the public might perceive an attorney who works for a foster care agency and subsequently is employed by prospective adoptive parents in relation to the foster care proceedings as using the agency for a private advantage, the Bar Association urged that this type of representation would adversely affect the public's confidence in the foster care agency creating the appearance of impropriety and would violate DR 9-101(B). *Id.* Both the concurrence and the dissent in *Gustavo* adopted this argument. *Gustavo*, 776 N.Y.S.2d at 21-29. The majority contended that DR 9-101(B) is not invoked in this situation. *Id.* at 21.

Though Warren & Warren argued that the petitioner was fully advised about the possibility of disqualification if a conflict of interest arose and that in over twenty-five years the firm had never been questioned about its ability to recognize conflicts of interest,<sup>22</sup> the Family Court applied a per se disqualification rule.<sup>23</sup> As a result, the court dismissed Gustavo's grandmother's adoption petition without prejudice.<sup>24</sup>

Upon appeal by the petitioner, the Appellate Division reversed the Family Court's order with direction to the Family Court to complete the adoption.<sup>25</sup> First, the court found that no law, ethical or otherwise, prohibited Warren & Warren's actions with regard to its representation of Angel Guardian and the petitioner.<sup>26</sup> The court reasoned that no actual conflict of interest existed because Angel Guardian was a former client with respect to the termination proceeding, the petitioner was Warren & Warren's current client with respect to Gustavo's adoption proceeding, and the petitioner decided to retain Warren & Warren despite the advice that a conflict of interest might arise.<sup>27</sup> The Social Services Law governing the authority of agencies to place foster care children with adoptive parents provided only that "[n]o attorney or law firm shall serve as the attorney for, or provide any legal services to both the natural parents and adoptive parents."<sup>28</sup> Therefore, the court held, the representation in question was legally permissible.<sup>29</sup>

Second, the court held that Warren & Warren could represent Angel Guardian and subsequently represent Gustavo's grandmother because their interests were aligned.<sup>30</sup> Courts have tradi-

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22. *Gustavo*, 776 N.Y.S.2d at 17.

23. *Id.* at 16.

24. *Id.* at 21.

25. *Id.*

26. *Id.* at 18.

27. *Id.* at 17.

28. N.Y. SOC. SERV. LAW § 374(6) (McKinney 2000).

29. *Gustavo*, 776 N.Y.S.2d at 17. Although the dissent found that an inherent conflict of interest existed, the dissent did concede that "no actual conflict between petitioner and the foster care agency" existed. *Id.* at 29 (Tom. J., dissenting).

30. *Id.* at 17-19. The court considered MODEL CODE OF PROF'L RESPONSIBILITY DR 5-105 which provides, in part, that, "[a] 'lawyer may represent multiple clients if a disinterested lawyer would believe that the lawyer can completely represent the interest of each and if each consents to the representation after full disclosure of the implications of the simultaneous representation and the advantages and risks involved.'" *Id.* at 17

tionally permitted attorneys to engage in dual representation when their clients' interests are so aligned that there is almost no chance of a conflict of interest arising.<sup>31</sup> Conversely, courts have barred dual representation when clients' interests diverge.<sup>32</sup> Not only were Angel Guardian and the petitioner's interests aligned, but the court found that a compelling reason justified the representation. The court stated that when the interests of clients are aligned, as in this situation, the placement of a child in a permanent home is likely to happen quickly.<sup>33</sup>

Lastly, the court allowed Warren & Warren's dual representation of Angel Guardian and the petitioner because doing so protected the petitioner's right to choose her own counsel.<sup>34</sup> The court stated that in the absence of an actual conflict of interest, the court must adhere to a party's choice of counsel.<sup>35</sup> For these reasons, the Appellate Division reversed the Family Court's dismissal of the adoption petition.

In his concurrence, Judge Marlow contended that in cases where a law firm represented a foster care agency in a parental rights termination proceeding, and subsequently represented a person seeking adoption of the child, the court should appoint a law guardian.<sup>36</sup> The law guardian, Judge Marlow argued, would remain with the child throughout the adoptive proceedings, thereby providing the child with a representative whose sole loyalty lies with

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(quoting MODEL CODE OF PROF'L RESPONSIBILITY DR 5-105). However, the court recognized that this was not a case of multiple employment. *Gustavo*, 776 N.Y.S.2d at 17.

31. *Gustavo*, 776 N.Y.S.2d at 18 (citing *In re Harley v. Ziems*, 469 N.Y.S.2d 128, 129 (2d Dep't 1983)). The court recognized that the present case involves successive representation as opposed to dual representation as it existed in the above-cited case. *Gustavo*, 776 N.Y.S.2d at 18-19.

32. See *In re Adoption A. and Another*, 733 N.Y.S.2d 571, 576 (N.Y. Fam. Ct. Queens County 2001); *Solow v. W.R. Grace & Co.*, 83 N.Y.2d 303, 306 (1994). Simultaneous representation of clients with differing interests is not only discouraged through opinions of the court, but engaging in this type of representation is a violation of the MODEL CODE OF PROF'L RESPONSIBILITY. Specifically, Disciplinary Rule 5-105(B) states in part that, "a lawyer shall not continue multiple employment if . . . it would be likely to involve the lawyer in representing differing interests. . ." MODEL CODE OF PROF'L RESPONSIBILITY DR 5-105(B) (1980).

33. *Gustavo*, 776 N.Y.S.2d at 19.

34. *Id.* at 18 (citing *Solow*, 83 N.Y.2d 303).

35. *Gustavo*, 776 N.Y.S.2d at 18.

36. *Id.* at 22 (Marlow, J., concurring).

that child.<sup>37</sup> Even where no actual conflict of interest exists, Judge Marlow advised that a law guardian be appointed.<sup>38</sup> Judge Marlow stated that though he did not agree with dual representation, especially where no law guardian was involved, it was not within the court's purview to disallow it.<sup>39</sup> Because social services law did not speak to the propriety of a law firm representing an adoption agency and an adoptive parent, he contended, it was not for the court to disallow but, rather, it was the legislature's responsibility to correct.<sup>40</sup>

Judge Tom dissented. He argued that a law firm that had represented a foster care agency in a parental rights termination proceeding cannot subsequently represent the person seeking adoption of that child.<sup>41</sup> Judge Tom contended that this type of representation presented an inherent conflict of interest.<sup>42</sup> He argued that though the interests of the foster care agency and the adoptive parent might be aligned at the beginning of a law firm's representation of an adoptive parent, there existed the possibility that during the course of the representation, their interests might splinter.<sup>43</sup> If this occurred, Judge Tom argued, the law firm, if it continued its representation, would be disloyal to one of its clients.<sup>44</sup>

In his dissent Judge Tom also considered the fact that Warren & Warren, while representing the petitioner, continued to represent Angel Guardian in unrelated parental rights termination proceedings.<sup>45</sup> Judge Tom argued that a law firm engaging in this type of ongoing representation might follow the judgment of the

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37. *Id.*

38. *Id.* at 23 (Marlow, J., concurring).

39. *Id.* at 24.

40. *Id.*

41. *Gustavo*, 776 N.Y.S.2d at 25 (Tom, J., dissenting). *Accord In re Adoption A.*, 733 N.Y.S.2d at 577; *In re Adoption of Vincent*, 602 N.Y.S.2d 303, 306 (N.Y. Fam. Ct. New York County 1993). *See also* NYSBA Comm. on Prof'l Ethics Op. 708 (1998) (discussing same).

42. *Gustavo*, 776 N.Y.S.2d at 25 (Tom, J., dissenting).

43. *Id.* The dissent provided an example of such an instance. Judge Tom stated that new information may come to light causing the foster care agency to rescind its recommendation of adoption of the child by the putative adoptive parent. *Id.*

44. *Id.*

45. *Id.* at 27 (Tom, J., dissenting). The majority did not address this fact in any of the arguments it put forth in its opinion.

agency in a particular adoption, not the adoptive parent the firm also represented, because of the continuous relationship it maintained with the foster care agency.<sup>46</sup> In addition, in an effort to please the foster care agency and secure future employment, a lawyer might disregard the best interests of the child and agree to represent the adoptive parent upon recommendation of the foster care agency.<sup>47</sup> This would impair the public's confidence in the integrity of the judicial system. It would also give the impression that attorneys used foster care agencies to further their own goals.<sup>48</sup> For these reasons, Judge Tom concluded that the court should have affirmed the Family Court's decision to disqualify Warren & Warren as the petitioner's counsel.<sup>49</sup>

Under *Gustavo*, a law firm may represent a foster care agency in a parental rights termination proceeding and subsequently represent a person seeking adoption of the same child even though an ongoing attorney-client relationship exists between the foster care agency and the law firm in other unrelated proceedings.<sup>50</sup> Allowing a law firm to first represent a foster care agency and then an adoptive parent does not represent an actual conflict of interest.<sup>51</sup> In fact, it can enhance the best interests of the child to be adopted.<sup>52</sup> However, allowing this type of representation when an ongoing attorney-client relationship exists between the foster care agency and the law firm creates an inherent conflict of interest. This inherent conflict of interest should be prohibited. The majority's holding in *Gustavo* should be limited to only permit representation of the adoptive parent when no ongoing relationship exists between the foster care agency and the law firm. This allows for the advantages that accompany this type of successive representation but prevents the potential for impropriety, the appearance of impropriety, and breaches of confidentiality.

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46. *Id.* at 27-28.

47. *Gustavo*, 776 N.Y.S.2d at 25 (Tom, J., dissenting) (citing *In re Adoption A.*, 733 N.Y.S.2d 571).

48. *Gustavo*, 776 N.Y.S.2d at 28 (Tom, J., dissenting).

49. *Id.* at 29 (Tom, J., dissenting).

50. *Id.* at 17-18.

51. *Id.*

52. *Id.* at 19.

When there is no ongoing relationship between the foster care agency and the law firm that represented the adoptive parent, certain benefits that accompany this type of successive relationship remain. For example, as the majority contended, when a law firm represents a foster care agency and subsequently represents the prospective adoptive parent, “a coordinated approach to the disposition of [the] matter. . .”<sup>53</sup> ensues and “. . .the public interest in securing a permanent home for the child in a most expeditious manner”<sup>54</sup> is furthered. Additionally, allowing the law firm to represent the adoptive parent respects a person’s choice of counsel.<sup>55</sup> However, when there is an ongoing relationship between the foster care agency and the law firm, three essential problems present themselves.

The first fundamental problem that arises when a law firm represents an adoptive parent while simultaneously representing a foster care agency in unrelated matters is the potential for impropriety. The potential for impropriety exists when, as the dissent argued, a foster care agency recommends that a law firm represent an adoptive parent.<sup>56</sup> Though Judge Marlow, in his concurrence, noted that in an overwhelming majority of cases, where a law firm represents a foster care agency and an adoptive parent, the parties have a child’s best interests at heart,<sup>57</sup> he further remarked that “history surely knows cases where. . .the child’s best interests have been secondary, or even worse, irrelevant, to an adult’s agenda.”<sup>58</sup> If a foster care agency recommends that a law firm represent an adoptive parent, the possibility exists that the law firm would agree regardless of whether the representation was in the child’s best interest. The law firm would agree to the representation in order to please its long-term client and ensure that it retained its ongoing business with the foster care agency.<sup>59</sup> If, however, a law firm did not maintain an ongoing relationship with the foster care agency the potential for this impropriety would not

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53. *Id.*

54. *Gustavo*, 776 N.Y.S.2d at 19.

55. *Id.* at 18.

56. *Id.* at 28 (Tom, J., dissenting).

57. *Id.* at 22 (Marlow, J., concurring).

58. *Id.*

59. *Id.* (citing *In re Adoption A.*, 733 N.Y.S.2d 571).

exist. This is because the incentive to retain the foster care agency as a client would not be present, leaving the law firm to consider only the child's best interest when determining whether to represent the adoptive parent. Therefore, in order to avoid a situation where a child's interests are subordinated to the interests of a law firm, a law firm should terminate its ongoing representation of a foster care agency before pursuing representation of a person seeking adoption of a child under the agency's care.

Second, a law firm should not only avoid the potential for impropriety but it should also avoid the appearance of impropriety. The notion that lawyers should avoid even the appearance of impropriety in their representation of clients is well-settled.<sup>60</sup> Indeed, the New York Court of Appeals stated that certain appearances of impropriety should be no less condemned than the improprieties themselves.<sup>61</sup> The appearance of impropriety erodes public confidence in attorneys.<sup>62</sup> The type of dual representation present in *Gustavo*, for example, might lead the public to perceive that attorneys are driven by their own interests, regardless of what is in the best interest of a child.<sup>63</sup> The appearance of impropriety also erodes confidence in agencies whose mission it is to serve public ends, such as foster care agencies.<sup>64</sup> Foster care agencies serve in the interest of children but if these agencies are perceived as acting in their own interests without regard for the children to be adopted, the integrity of these agencies will diminish.<sup>65</sup> As shown above, the appearance of impropriety largely impacts the way in which the public views societal institutions and attorneys. Therefore, an ongoing attorney-client relationship, such as the one between Warren & Warren and Angel Guardian, should be prohibited because without it, no such appearance of impropriety would exist.

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60. See *People v. Abar*, 99 N.Y.2d 406, 412 (2003) (Smith, J., dissenting); *In re Commitment of T'Challa*, 766 N.Y.S.2d 500, 505 (N.Y. Fam. Ct. Kings County 2003), *aff'd*, *In re T'Challa D.*, 770 N.Y.S.2d 649 (2d Dep't 2004); *Kassis v. Teacher's Ins. and Annuity Ass'n*, 93 N.Y.2d 611, 618 (1999); *Solow*, 83 N.Y.2d at 306; *Abbondanza v. Siegel*, 619 N.Y.S.2d 896, 897 (4th Dep't 1994).

61. *In re Schiff*, 83 N.Y.2d 689, 693 (1994) (citing *In re Spector v. State Comm'n on Judicial Conduct*, 47 N.Y.2d 462, 466 (1979)).

62. *Gustavo*, 776 N.Y.S.2d at 29 (Tom, J., dissenting).

63. *Id.*

64. *Id.* at 24 (Marlow, J., concurring).

65. *Id.*

Finally, when a law firm maintains an ongoing relationship with a foster care agency while simultaneously representing a prospective adoptive parent, it raises concerns about confidentiality. Confidentiality is a core professional obligation dating back to the seventeenth century.<sup>66</sup> Maintaining a client's confidence encourages "full and frank" discussion between the client and the lawyer.<sup>67</sup> Having all of the information pertaining to an issue will enable the lawyer to perform his job better.<sup>68</sup> Because of the role confidentiality plays in the attorney-client relationship, a client has a right to expect that his confidences will not be revealed.<sup>69</sup> But in this instance, because of the ongoing relationship between Warren & Warren and Angel Guardian, there was a greater risk that petitioner's confidences concerning the adoption would have been revealed to Angel Guardian.<sup>70</sup>

When adopting a child a prospective adoptive parent is required to make many disclosures to the agency facilitating the adoption.<sup>71</sup> The possibility of breaching a client's confidentiality, then, occurs when an attorney is privy to information that the client is not required to disclose, but which the attorney may nevertheless regard as useful to the foster care agency it continually represents. For example, a foster care agency does not require that an applicant disclose his sexual orientation.<sup>72</sup> Though applicants cannot be rejected based on their sexual preferences,<sup>73</sup> they may not desire that this aspect of their lives be revealed to the agency. If the pro-

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66. See Martyn & Fox, *supra* note 20, at 122 (citing Geoffrey C. Hazard, Jr., *An Historical Perspective on the Attorney-Client Privilege*, 66 CAL. L. REV. 1061, 1069-70 (1978)).

67. *Upjohn Co. v. United States*, 449 U.S. 383, 389 (1981).

68. See Martyn & Fox, *supra* note 20, at 122 (citing Deborah L. Rhode & Geoffrey C. Hazard, Jr., PROFESSIONAL RESPONSIBILITY AND REGULATION 64 (2002)) (arguing that lacking relevant information increases the likelihood that a lawyer will either apply the wrong law or give incorrect legal advice or both).

69. *In re Commitment of T'Challa*, 766 N.Y.S.2d at 507-08; MODEL CODE OF PROF'L RESPONSIBILITY DR 4-101 (1980).

70. See *Abbondanza*, 619 N.Y.S.2d at 897 (holding that a likelihood of confidential information being exploited existed when a law firm maintained a continuous relationship with one client while it was representing a different client against the former client).

71. See N.Y. COMP. CODES R. & REGS. tit. 18, § 421.15 (1981). Examples of such disclosures include medical conditions, marital status, criminal record, and salary.

72. *Id.* at § 421.15(c).

73. *Id.* at § 421.16(h)(2).

spective adoptive parent discloses this fact to his attorney, however, the attorney may reveal it to the agency. Another example of information an applicant may not want revealed is occurrences of past depression. Despite being required to submit a report from a physician on the applicant's health,<sup>74</sup> the examination may not reveal past mental illness. Even though an agency is prohibited from rejecting an applicant on the basis of past psychiatric illness or treatment,<sup>75</sup> the applicant may not want this fact revealed. A final example of a confidence that risks being exposed involves employment. An applicant is required to submit to an agency evidence of employment and salary,<sup>76</sup> but nothing requires him to reveal the possibility of lost employment.<sup>77</sup> If an applicant reveals to his attorney that, due to a strained financial position, his employer is contemplating laying workers off the attorney might be inclined to alert the agency of such a possibility. However, the applicant may not want this fact revealed. Therefore, the most effective means of preventing the type of confidential information mentioned above from reaching a foster care agency is for an attorney who represents a prospective adoptive parent to terminate an ongoing relationship with such agency.

Because of the prolonged relationship between Warren & Warren and Angel Guardian, the law firm likely had detailed information regarding the foster care agency. Because such information would be of interest to a prospective adoptive parent, the possibility existed that Warren & Warren would not only reveal the petitioner's confidences to the agency, but that it would reveal Angel Guardian's confidences as well. For example, a prospective adoptive parent would likely be interested in learning about an agency's adherence to mandates concerning the adoption process. State statutes, rules, regulations, and standards impose stringent requirements on agencies involved in the adoption process.<sup>78</sup> However, these requirements, while setting minimum standards, do not speak to the quality of the services rendered.<sup>79</sup> Therefore, there is no

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74. *Id.* at § 421.15(c)(1).

75. *Id.* at § 421.16(p)(2).

76. *Id.* at § 421.15(c)(6).

77. N.Y. COMP. CODES R. & REGS. tit. 18, § 421.15 (1981).

78. JOAN H. HOLLINGER ET AL., ADOPTION LAW AND PRACTICE 7-16 (1988).

79. *Id.* at 7-17.

guarantee the particular agency that a prospective adoptive parent utilizes to facilitate an adoption will have provided appropriate services to meet the needs of that adoptive parent and the child to be adopted.<sup>80</sup>

In addition, when a child is available for adoption, the agency must evaluate the child's needs,<sup>81</sup> arrange for a medical examination to determine the state of the child's health (including identifying significant factors that may interfere with normal development),<sup>82</sup> train and recruit prospective adoptive parents,<sup>83</sup> and provide post-adoption services which can continue for up to three years.<sup>84</sup> In evaluating a child, however, the agency might be prone to downplay the needs of an emotionally dependant child in order to facilitate a faster adoption, or may fail to report factors that may interfere with the development of the child, terming them not significant. While regulations may require that the agency disclose information concerning the health, social, educational, and genetic history of the child,<sup>85</sup> a prospective adoptive parent may want to know more. The putative adoptive parent or the child to be adopted may want to know who the child's biological parents are.<sup>86</sup> An attorney with access to the agency's confidential records might be inclined to share the information with his client. While a foster care agency might assume its confidences will not be revealed, an attorney who is privy to this information and who represents putative adoptive parents may feel compelled to disclose this information in his client's best interest.

Allowing a law firm to represent a foster care agency in a parental rights termination proceeding and subsequently represent the person seeking adoption of the same child presents many advantages, both to the child and to the parties involved. However, when the law firm maintains an ongoing relationship with the fos-

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80. *Id.*

81. N.Y. COMP. CODES R. & REGS. tit. 18, § 421.8(f) (1981).

82. *Id.* at § 421.8(e).

83. *Id.* at § 421.8(h)(1).

84. *Id.* at § 421.8(h)(2)(ii).

85. HOLLINGER ET AL., *supra* note 78, at 7-28.

86. When adopting a child from an authorized agency, New York Domestic Law requires that none of the papers concerning the adoption proceeding contain the child's surname. This precludes the adoptive parents from determining the identity of the child's biological parents. N.Y. DOM. REL. LAW § 112 (4) (McKinney 2004).

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ter care agency, particular problems arise, leading to an inherent conflict of interest. Courts should narrow permissible types of representation to exclude these types of inherent conflicts of interest. This would deter impropriety, or at least the appearance of impropriety, bolster public confidence in the judicial system<sup>87</sup> and, at the same time, further the public interest by finding a permanent home for the child.<sup>88</sup>

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87. *Gustavo*, 776 N.Y.S.2d at 28 (Tom, J., dissenting).

88. *Id.* at 19.

