

SUMMARY OF PROCEDURES FOR ADOPTIONS

* All adoption proceedings under Miss. Code Ann. § 93-17-1, et seq. (West 2023) are confidential, and the court files are sealed by statute. So conventional filings are used by most courts, even if they are otherwise on MEC. The Adoption proceedings may be combined with a termination of parental rights action, under the MTPRL, Miss. Code Ann. § 93-15-101, et seq. (West 2023), but technically the TPR a separate proceeding.

I. INTERVIEWING THE CLIENT

- A. Conduct the Adopting Parents Interview.
- B. Give the client the following two forms. If conducting the interview by phone, inform the client that you will mail the forms:
 - 1. Physician's Certificate (one for each child) that must be completed by the child's physician as soon as possible – preferably before filing the petition but not necessary.
 - 2. Medical and Social History (Form 913 – one for each child) to be completed to the best of the client's ability. It is not necessary to fill in every single blank, but they should fill in the information they know.
- C. Inform the client of the costs involved:
 - 1. Petition filing fee (varies by county, typically \$145-160. Some districts allow a Petition to be filed for adoption of multiple children, but some districts required individual Petitions for each child.
 - 2. Discuss Costs associated with service of process if a biological parent will not consent or is unknown. A summons by publication may be required.
 - 3. The cost of new birth certificates is \$55 per child.
 - 4. **Guardian ad Litem** - - If a biological parent consents to TPR, the Court may waive the appointment of a GAL. Miss. Code Ann. § 93-15-107(d). If a GAL is required, GAL's fees shall be determined and assessed in the discretion of the court. The court may require the moving party to bear the cost, or the court may apportion the costs between the parties. The amounts of such fees vary.
 - a. Home Study - - If this is an adoption by a non-relative, the Court may require a home study. If so, this is ordinarily prepared by a licensed social worker. However, the statute also allows the GAL who has knowledge or training in conducting home studies to prepare the home study, "if so directed by the court." Miss. Code Ann. § 93-17-3(5) (West 2023).

II. PREPARING THE DOCUMENTS FOR FILING

A. **Petition for Adoption.**

1. Pursuant to § 93-17-29:

- a. The style of the case can name only the Petitioners and that the case is for adoption of the child named herein.
- b. The minor child CANNOT be named in the style of the case but can be named in the document.
- c. The natural parents CANNOT be named in the style of the case but can be named in the document.

2. If there are multiple children, call the Chancery Court Clerk to find out whether you can name them all in one petition or if you must draft a separate petition for each child. If you can name all of them in one petition, draft a separate paragraph for each child in the “Parties” section.

3. Pursuant to § 93-17-27, you should not allege or recite anything about the natural parents’ marital status, including that the child was born out of wedlock. If the Adoption Petition is combined with a Petition for TPR, use a separate section to set out the grounds for TPR.

B. **A child age 14 or older** must be made a party to the adoption through an affidavit of consent and joinder. If any of the children in the petition are fourteen or older, draft the appropriate affidavit(s).

C. **Draft the Adoptive Parent’s Affidavit – one for each parent.**

If the child has any medical conditions, include in the affidavit(s) that the parent is aware of the conditions and still wants to proceed with the adoption. Affidavit must also specify any fees paid to an adoption agency or facilitator and/or any expenses paid towards the adoption at the time of filing the petition. We also combine a paragraph stating that he child has no financial assets, and that there are n other proceedings about custody of the child pending in any other court, (UCCJEA Affidavit).

D. **Summons and Voluntary Surrender.**

1. If a parent will not be consenting, prepare a Rule 81(d)(1) Summons and serve it pursuant to Rule 4, Miss.R.Civ.P.

2. If the parent will consent to TPR and the Adoption, **a voluntary surrender form must be drafted that strictly complies with Miss. Code Ann. § 93-15-111 (West 2023)** which requires.

- a. Signed under oath and dated at least 72 hours after child’s birth;
- b. States parent’s full name, relationship to child, and address;
- c. States child’s full name, date of birth, time of birth if known, and place of birth as indicated on the birth certificate;
- d. Identifies governmental agency or home to which child has been surrendered, if any;

- e. States parent’s consent to adoption of child and waiver of service of process for any future adoption proceedings;
- f. Acknowledges that termination of the parent’s parental rights and subsequent adoption of child may significantly affect or even eliminate parent’s right to inherit from child;
- g. Acknowledges that parent entered into release knowingly, intelligently, and voluntarily; and
- h. Acknowledges that parent is entitled to consult with an attorney.

- 3. You may combine the voluntary surrender form with a waiver of service of process and joinder. If not, then draft a separate waiver/joinder for the parent to sign.
- 4. Prepare a summons by publication if the biological parents cannot be located. We usually file a Motion asking for permission to serve by publication that is supported by an affidavit concerning the reasonable efforts used to attempt personal service. This avoids the possibility that the chancellor may not approve the Summons by Publication after it has been completed.

NOTE: **Under the statute, a voluntary surrender of rights may be revoked or withdrawn by the parent prior to the time that the surrender is “accepted” by the Court.** Consider acting promptly to present the voluntary surrender to the Court as soon as it is received, even if the final hearing on the adoption is not scheduled. *Adoption of A.M.*, 323 So.3d 509, 515 (Miss. 2021) (under the new statute, a parent's written voluntary release of their parental rights may be withdrawn prior to the court’s acceptance of the surrender).

- E. **Civil Cover Sheet.** Complete this form to be filed with the Petition. If more than one Petitioner, add the pages for additional petitioners. If more than one Respondent, add the pages for additional respondents.
- F. **Gather the Exhibits to the Petition.** The following Exhibits will typically be attached to the Petition. The Exhibit letters must match the lettering stated in the petition, which may vary based on the circumstances of the matter. Each document gets its own Exhibit letter:
 - 1. **Copies of original Birth Certificates.** If there is more than one child named in the petition, you will have multiple birth certificates.
 - 2. **Affidavit of child age 14 or older consenting to the adoption.** If there is more than one child named in the petition who is age 14 or older, you will have multiple affidavits.
 - 3. **Affidavit of Adoptive Parent.** One for each adoptive parent.
 - 4. **Certificate of Attending Physician.** There should be a certificate for each child named in the petition. If there are multiple children, make sure you specify

which child's Certificate is attached as which lettered Exhibit. If the certificate has not been completed when filing the petition, note in the petition that it "will be filed separately with the Court."

5. Affidavit of Child's Assets.

6. Copy of Order terminating parental rights, if that was done in a previous proceeding.

7. Any other exhibits that arose when drafting the Petition (*e.g.*, documents from other court proceedings).

III. FILING THE PETITION FOR ADOPTION

NOTE: BECAUSE ADOPTION PROCEEDINGS ARE SEALED, MOST COURTS REQUIRED CONVENTIONAL FILING.

- A. File the Civil Cover Sheet, Petition, and Exhibits with the appropriate filing fee in the Chancery Court of the county of client's residence. If mailing the documents for filing, include a self-addressed stamped envelope and a copy of the Petition's first page, and ask the clerk to return first page, stamped "filed" – unless the court will email a copy.
- B. Miss. Code Ann. § 93-17-3 lists requirements for Jurisdiction and Venue, sworn petition, physician's certificate, certification of adoptee's assets, GAL, and home study. Note that the statute provides that the GAL may complete the home study, if so directed by the chancellor.
- C. A Guardian ad Litem acting for the best interest of the minor child, and not as an attorney for the child, is required in most cases. Miss. Code Ann. § 93-17-8(2). However, the chancellor has discretion to find that a GAL is unnecessary in a specific case. Miss. Code Ann. § 93-17-8(5).
- D. Adults may be adopted, and in those cases, Miss. Code Ann. § 93-17-3(9) provides that the chancellor may waive any of the requirements in subsections (4), (5), (6) and (7).
- E. Consider filing *In forma Pauperis* to waive the filing fee, if the client is low income.
- F. If any supporting documents were not available when the Petition was filed, then these documents should be filed separately as soon as they are received, such as affidavits, physician's certificate, etc. The Court cannot conduct a hearing until all necessary documents have been filed, but, as a practical matter, the documents can be filed the day of the hearing if absolutely necessary.

- G. Contact the Court Administrator to get a return day for the Rule 81 Summons. Once you have the hearing date, immediately draft the appropriate summons and have it issued by the clerk. Also send a Notice of Hearing or Order of Setting to the Court Administrator, so the matter will be added to the Court’s docket.

IV. SERVICE OF PROCESS (IF NECESSARY)

- A. If any of the respondents will not consent, or if the father is unknown, process must be served through personal service or by publication. If the respondent is not a resident of Mississippi, service of process may be completed by certified mail, if the respondent is willing to sign the “green card.”
- B. Regardless of how the summons is served, **the respondent must receive the summons at least 30 days before the hearing.** Factor in the how long it will take to get the summons issued by the chancery clerk, get it to the appropriate service agent (sheriff, newspaper, post office, process server), and have service made. This may require six to seven weeks in advance of the scheduled hearing date.
- C. **PERSONAL SERVICE (MRCP 4(c)(2))** – the simplest and cheapest method (currently \$35.00) for personal service is usually the sheriff’s office of the county where the respondent lives (rather than a private process server).

1. Set the hearing date issue a Rule 81(d)(1) summons (30 days). Send the Court administrator a Notice of Hearing or Order of Setting, depending on which is required.

2. Have the chancery clerk issue three copies of the summons (one to be served, one to be returned, and one for our files). This is usually done in person at the courthouse, but, if it is a remote county, some clerks may accept it via email and return the issued summons via email. Otherwise, you must send via mail and include a stamped return envelope.

3. Call the sheriff’s office and ask to whom in the sheriff’s office the packet should be addressed/delivered.

4. Deliver (in person or by mail) two copies of the summons to the Sheriff or process server, including a copy of the Petition (with Exhibits) that is to be served, a letter requesting either return (with stamped envelope) or filing the proof of service with the clerk of court, and payment for service.

5. The Sheriff may file the proof of service with the Clerk, if the respondent is in the same county. However, since the file is sealed and not on the regular MEC, you will likely not receive notice if/when it is filed. Follow up in a week or two if the proof of service has not been received or filed with the clerk. If you receive the proof of service, promptly file it with the Clerk.

6. If the deputy is unable to serve the respondent, then make arrangements for another method of service. If that cannot be done so that the respondent has thirty days notice before the hearing, a new hearing date and a new Rule 81 Summons may be necessary.

E. **SUMMONS BY PUBLICATION (MRCP 4(c)(4))**

1. If the respondent is unknown or cannot be found (reasonable effort must be made), a summons by publication may be required.

2. Draft an Affidavit in support of issuing a Rule 81 Summons by Publication.

3. Present a proposed Order Authorizing Summons by Publication to the judge. This way, we do not pay for the publication and then have the judge tell us we did not make a diligent enough effort to locate the respondent.

a. After the Order has been filed, call the newspaper in the county where the case is filed and ask:

i. What day(s) of the week is the newspaper published?

ii. How soon before a publish date does a legal notice need to be submitted?

iii. Will the newspaper bill us for the legal notice or do they require payment in advance?

iv. Can we e-mail the legal notice? If so, what is the email address?

b. Set the hearing date. In this instance, the hearing can be no sooner than the 31st day after the first time the notice is published. The summons must be published once a week for three weeks.

c. Draft a Rule 81 Summons by Publication. If there is more than one respondent for publication, you can put them all on the summons and in the publication. Include at the bottom of the summons the dates that the notice will be published.

d. Have the chancery clerk issue one copy of the summons. This is usually done in person at the courthouse, but, if it is a remote county, you can call and ask if the clerk will accept it via email and return it via email.

e. Send the summons to the newspaper. Most of them will accept it via email, but usually in Word format. In this case, you will send the original draft and do an electronic signature for the chancery clerk. (But you must still have had the chancery clerk issue a copy for the court file.)

f. After the notice has run for three weeks, ask the newspaper for a Proof of Publication. File the original Proof with the Court to show you have

perfected service on that respondent.

F. CERTIFIED MAIL SERVICE ON A NONRESIDENT (MRCP 5)

1. Schedule the hearing date with the Court Administrator, and draft a Rule 81 summons.
2. Have the chancery clerk issue two copies of the summons (one to be served and one for our files). This is usually done in person at the courthouse, but, if it is a remote county, you can call and ask if the clerk will accept it via email and return it via email.
3. Mail one copy of the Summons, Petition and Exhibits, and cover letter to the respondent via certified mail, return receipt, signature required via the U.S Postal Service.

a. Complete a certified mail card, **checking the boxes for restricted delivery and return receipt.**

b. Write, on the outside of the envelope, “Restricted Delivery.” Courts have ruled service invalid when this was not written on the envelope.

c. Service by this method is complete as of the date of delivery as evidenced by the respondent’s signature on the return receipt “green card,” or by the returned envelope marked “Refused.” Proof of this must be filed with the Court.

CAVEAT: The postal service sometimes returns the letter “UNCLAIMED” because the respondent never appears to pick up the mailing after a notice is placed in their mail box. This designation is NOT SUFFICIENT for service by mail.

d. If the envelope is not “delivered” or “refused,” you must find an alternate way to serve the summons, which will likely require setting a new return date.

V. SCHEDULING A HEARING ON THE PETITION

- A. Contact the Judge’s court administrator (or online calendar or whatever method the district prefers) to get a hearing date for the final adoption.
- B. Send a Notice of Hearing, Order Setting Hearing, or whatever that district requires upon the scheduling of the hearing.
- C. Call the client and confirm the adoption date, time, and place. In most cases, the child should also attend. If not already completed, remind the client to bring the Medical and Social History form and the payment for the revised birth certificate,

currently \$55.00.

VI. DRAFT THE DOCUMENTS FOR THE HEARING

- A. Prepare the proposed **MEMORANDUM OPINION, JUDGMENT TERMINATING PARENTAL RIGHTS (if applicable), and JUDGMENT OF ADOPTION**. The proposed orders should track the allegations and relief requested in the Petition. Be sure to include in the Judgment that the Clerk of Court is to issue (at least) **FOUR CERTIFIED COPIES** of the Judgment of Adoption: two copies for the client; one copy for the application for new birth certificate; and one copy to retain in our files. The client will need one to send to the Social Security Administration. Additional certified copies may be required if it is a DCPS Adoption, or if more than one child is named in the same Petition, add a certified copy for each additional child for each child's new birth certificate.
1. The MEMORANDUM OF OPINION will lay out the Court's findings that terminate the parental rights of the biological parents. It will also establish the findings for the adoption.
 2. The JUDGMENT should not refer to the **original name of the child – unless the name is not changing – nor to the names of the biological parents**. Miss. Code Ann. § 93-17-29. Instead, the Judgment should state “the minor child(ren) named in the Petition, whose name(s) after the adoption will be [name(s)]” and that the natural/legal/putative parents' rights were terminated.
- B. Complete the **REPORT OF ADOPTION** using the information gathered in the client interview and from the child's original birth certificate. **You must use a form provided by the Mississippi Vital Records Office (with its specific watermark)**, and not a photocopy or printed version of the form. Vital Records will only accept their original form. **This form must be certified by the Chancery Clerk after the hearing.**
- C. If the child was born in another state, you must call that state's vital records office and find out their process for applying for a birth certificate after an adoption.

VII. ADOPTION HEARING

- A. If the hearing is scheduled as an “out-of-county matter,” determine whether you need to check out the court file from the clerk's office (you do not have to if both counties are on MEC).

NOTE: A Court Order may be required to check out the paper file, if there is one in the clerk's office. This will be an evolving procedure as all courts shift to MEC. The best practice is to check with the Court Administrator about what a specific chancellor requires.

- B. Bring the completed **REPORT OF ADOPTION**. A blank **CERTIFICATE OF LIVE BIRTH** form (on original Vital Records bond paper, not a photocopy), is required for children born in 2012 or earlier. If the child was born in 2013 or later, this form is no longer required. **Again, the Report of Adoption form only applies to children born in Mississippi.**
- C. In case the judge requires formal proof in the hearing, meet with the client beforehand to review the questions that will be asked.
- D. At the end of the hearing, present the proposed Memorandum Opinion and Judgment of Adoption to the Court. Make sure you have informed the Court of all forms of relief being requested.
- E. File the Order in the appropriate Chancery Clerk's office and ask for the correct number of certified copies.

NOTE: THE CASE WILL BE CLOSED AFTER THESE ORDERS ARE ENTERED, AND BECAUSE THE CASE IS SEALED, NOT EVEN AN ATTORNEY OF RECORD CAN OBTAIN ADDITIONAL COPIES WITHOUT AN ORDER FROM THE COURT.

- F. **Ask the Clerk to certify the REPORT OF ADOPTION that will be sent to Vital Records.**
- G. If the child was born before 2013, have the client sign the **CERTIFICATE OF LIVE BIRTH**, Line 11a only – **do not date. If the child was born 2013 or later, you do not need to submit this form.**
- H. Get the Medical and Social History form from the client, as well as the payment for each revised birth certificate.

VIII. APPLICATION FOR NEW (REVISED) BIRTH CERTIFICATE

- A. Attach the **CERTIFICATE OF LIVE BIRTH** and **MEDICAL AND SOCIAL HISTORY** to the **REPORT OF ADOPTION** for new birth certificate.
- B. Cost of new Birth certificate is \$55.00 as of 2023.
- D. Cover letter to Vital Records requesting the new (revised) birth certificate.
- E. Mail the letter, filing fee, Report of Adoption, a certified copy of the Judgment of Adoption, the blank form for the new Certificate of Live Birth that has been signed by one of the adoptive parents (if needed), and the Medical and Social History form to:

Mississippi State Department of Health
Vital Records
P. O. Box 1700
Jackson, MS 39215-1700

* If the minor child was born in a state other than Mississippi, you must follow that state's laws when applying for the new birth certificate, which will likely mean a different fee and forms.

IX. CLOSING THE FILE

Upon receipt of the new birth certificate, make a copy for the file. Then mail the original to the client via certified mail.