

# Adoptions and Alabama Law

By: Bryant A. Whitmire, Jr. (“Drew”)

## 1. Transfer of Matter to Juvenile Court

- Order to Transfer Matter to Court with Juvenile Jurisdiction (Attachment A)
- Alabama Code
  - §12-12-35 - *Transfer of adoption proceedings*
    - “Transfer of adoption proceedings to district court from probate court; maintenance of records of adoption proceedings.
      - (a) *Adoption proceedings, primarily cognizable before the probate court, may be transferred to the district court on motion of a party to the proceeding in probate court.*
      - (b) *When adoption proceedings are transferred to the district court, a copy of the record of such proceedings shall be filed in the probate court, and the probate court offices shall maintain records of all adoption proceedings within their respective counties.”*
  - § 26-10A-3 - *Jurisdiction*
    - “The probate court shall have original jurisdiction over proceedings brought under the chapter. If any party whose consent is required fails to consent or is unable to consent, the proceeding will be transferred to the court having jurisdiction over juvenile matters for the limited purpose of termination of parental rights. The provisions of this chapter shall be applicable to proceedings in the court having jurisdiction over juvenile matters.”
  - § 26-10A-21 - *Related Proceedings*
    - “If, at any time during the pendency of the adoption proceeding, it is determined that any other custody action concerning the adoptee is pending in the courts of this state or any other state or country, any party to the adoption proceeding, or the court on its own motion, may move to stay such adoption proceeding until a determination has been made by an appropriate court with jurisdiction pursuant to the provisions of the Uniform Child Custody Jurisdiction Act (UCCJA) or the Parental Kidnapping Prevention Act (PKPA). The adoption may be transferred and consolidated with a custody proceeding pending in any court in this state.”
  - § 26-10A-24 – *Contested Hearing*
    - “(e) On motion of either party or of the court, a contested adoption hearing may be transferred to the court having jurisdiction over juvenile matters.”

## 2. Possession of the Child before Final Decree

- §26-10A-18
  - *Once a petitioner has received the adoptee into his or her home for the purposes of adoption and a petition for adoption has been filed, an interlocutory decree shall be entered delegating to the petitioner (1) custody, except custody shall be retained by the Department of Human Resources or the licensed child placing agency which held custody at the time of the placement until the entry of the final decree and (2) the responsibility for the care, maintenance, and support of the adoptee, including any necessary medical or surgical treatment, pending further order of the court. This interlocutory decree shall not stop the running of time periods prescribed in Section 26-10A-9.*
- §26-10A-25(b)(1)
  - (b) “*At the dispositional hearing, the court shall grant a final decree of adoption if it finds on clear and convincing evidence that:*
    - (1) The adoptee has been in the actual physical custody of the petitioners **for a period of 60 days**, unless for good cause shown, this requirement is waived by the court

### 3. Service on Unknown Fathers

#### ■ § 26-10A-7(5)

- *“(5) The putative father if made known by the mother or is otherwise made known to the court provided he complies with Section 26-10C-1 and he responds within 30 days to the notice he receives under Section 26-10A-17(a)(10).”*
  - § 26-10C-1 - Registration of putative fathers; notice of intent to claim paternity; release of information
  - § 26-10A-17(a)(10)
    - *“The father and putative father of the adoptee if made known by the mother or otherwise known by the court unless the court finds that the father or putative father has given implied consent to the adoption, as defined in Section 26-10A-9.”*

■ If the father’s name on the birth certificate is blank, or marked refused, for **any reason**, unknown fathers **must** be served notice. If there is a legal, known, and/or alleged birth father(s), they must also be served notice.

### 4. Home Study

#### ■ Pre-Placement and Post-Placement Reports

- §26-10A-19(c)
  - Unless a pre-placement investigation has been performed within 24 months of the petition or an investigation is dispensed with by court order for good cause shown on the record, no decree for the adoption of any adoptee shall be entered until a full post-placement investigation ordered by the court has been made concerning:
    - (1) *The suitability of each petitioner, and his, her, or their home for the adoptee;*
    - (2) *Why the natural parents, if living, desire to be relieved of the care, support, and guardianship of such minor;*
    - (3) *Whether the natural parents have abandoned such minor or are otherwise unsuited to have its custody;*
    - (4) *Any orders, judgments, or decrees affecting the adoptee or any children of the petitioner;*
    - (5) *Any property owned by the adoptee;*
    - (6) *The medical histories, both physical and mental, of the adoptee and the biological parents. This history shall be provided to the petitioner in writing before the decree is entered;*
    - (7) *Criminal background investigations;*
    - (8) *The costs and expenses connected with the adoption; and*
    - (9) *Any other circumstances which may be relevant to the placement of the adoptee with the petitioners.*
- §26-10A-19(f)
  - “The investigator shall complete and file his or her written report with the court within 60 days from receipt of notice of the proceeding and shall deliver a copy of the report to the petitioner's attorney or to each petitioner if he or she is appearing pro se. The investigation shall include a verification of all allegations of the petition. The report shall include sufficient facts for the court to determine whether there has been compliance with consent or relinquishment provisions of this chapter. The post-placement investigation shall include all of the information enumerated within subdivisions (c)(1) through (c)(9) that was not obtained in the pre-placement investigation required under subsection (a).”

## 5. ICPC

### ■ Related/Relative Adoptions

- §26-10A-28
  - A grandfather, a grandmother, great-grandfather, great-grandmother, great-uncle, great-aunt, a brother, or a half-brother, a sister, a half-sister, an aunt or an uncle of the first degree and their respective spouses, if any may adopt a minor grandchild, a minor brother, a minor half-brother, a minor sister, a minor half-sister, a minor nephew, a minor niece, a minor great-grandchild, a minor great niece or a minor great nephew, according to the provisions of this chapter, except that:
    - (1) *Before the filing of the petition for adoption, the adoptee must have resided for a period of one year with the petitioner, unless this filing provision is waived by the court for good cause shown;*
    - (2) *No investigation under Section 26-10A-19 shall occur unless otherwise directed by the court; and*
    - (3) *No report of fees and charges under Section 26-10A-23 shall be made unless ordered by the court.*
- §44-2-20. *Article VIII. Limitations*
  - This compact shall not apply to:
    - (a) *The sending or bringing of a child into a receiving state by his parent, step-parent, grandparent, adult brother or sister, adult uncle or aunt or his guardian and leaving the child with any such relative or non-agency guardian in the receiving state.*
    - (b) *Any placement, sending or bringing of a child into a receiving state pursuant to any other interstate compact to which both the state from which the child is sent or brought and the receiving state are party, or to any other agreement between said states which has the force of law.*

### ■ ICPC Checklist (Attachment B)

## 6. Guardian ad Litem Fees

### ■ Guardian ad Litem fees are court costs.

- *Alabama Rules of Civil Procedure, Rule 17 (d)*
  - “Whenever a guardian ad litem shall be necessary, the court in which the action is pending shall appoint to serve in that capacity some person who is qualified to represent the minor or incompetent person in the capacity of an attorney or solicitor, and must not select or appoint any person who is related, either by blood or marriage within the fourth degree, to the plaintiff or the plaintiff’s attorney, or to the judge or clerk of the court, or who is in any manner connected with such plaintiff or such plaintiff’s attorney, or who has been suggested, nominated, or recommended by the plaintiff or the plaintiff’s attorney or any person for the plaintiff. If the guardian ad litem is to be appointed for a minor fourteen (14) years of age or over, such minor may, within thirty (30) days after perfection of service upon the minor in such cause, have the minor’s choice of a guardian ad litem to represent the minor in said cause certified by an officer authorized to take acknowledgments, but if such minor fails to nominate a guardian ad litem within the thirty- (30-) day period or before any hearing set in the action, whichever is earlier, the court shall appoint a guardian ad litem as before provided. **In all cases in which a guardian ad litem is required, the court must ascertain a reasonable fee or compensation to be allowed and paid to such guardian ad litem for services rendered in such cause, to be taxed as a part of the costs in such action, and which is to be paid when collected as other costs in the action, to such guardian ad litem.**”
- No final decree should be issued until all costs are paid in full. In contested adoptions, both parties should be required to pay all court costs prior to the final hearing to ensure all costs are paid.

## 7. International Adoption/Re-Adoption

### ■ Need for Re-Adoption in the Probate Court

- *Visa*
  - IR-3/IH-3
    - *No re-adoption necessary. Adoptive couple will send all documents to Vital Statistics and receive an Alabama birth certificate for the child.*
    - *Process for obtaining Certificate of Foreign Birth (Attachment C)*
  - IR-4/IH-4
    - *The federal government now requires children entering the US on this visa to be re-adopted. Children entering the US on this Visa have not met the conditions of adoption and must be adopted in the US.*
- *Change of Name or Change of Birthdate*
  - At this time, Vital Statistics will not recognize an Alabama Probate Court decree correcting the date of birth, even though a Federal Law (Attachment D) was adopted in 2014 to give the Probate Court that authority.

**IN THE PROBATE COURT OF JEFFERSON COUNTY, ALABAMA**

<b>IN THE MATTER OF:</b>	)	
	)	
<b>THE ADOPTION PETITION OF:</b>	)	<b>CASE NO.: 123-456-78.9</b>
	)	
<b>SALLY CLIENT</b>	)	

**ORDER TO TRANSFER MATTER TO COURT WITH JUVENILE JURISDICTION**

**THIS MATTER CAME ON** a Motion to transfer to a court of juvenile jurisdiction filed by Joe Law, attorney for Sally Client, in the above styled case.

It is hereby, **ORDERED ADJUDGED AND DECREED** that this matter is transferred to Juvenile Court under Alabama Code §\_\_\_\_\_.

Should it be required by Statue that the matter be transferred back to Probate Court for disposition of this adoption, said Juvenile Court is to decide whether there is implied consent under Alabama Code §26-10A-9.

**DONE AND ORDERED** this \_\_\_\_\_ day of \_\_\_\_\_, 2018. .

\_\_\_\_\_  
Judge of Probate

## ICPC Checklist

- ICPC Letter to Anne/Daphne** – will need to include where the adoption is being finalized and include Fed Ex label to the other ICPC office
- 100 A-** Must be original signatures; Name of child on 100-A must match hospital record, if there is not a current birth certificate
- OPINION LETTER** – Concerning the validity of the consent from the attorney finalizing and how he will deal with the birth father if there is no consent.
- BIRTH PARENT INTERVIEW - CAN ONLY BE CONDUCTED BY A LICENSED SOCIAL WORKER OR REPRESENTATIVE OF A LICENSED CHILD PLACING AGENCY**
  - Birth Parent Interview completed by Mother
  - Typed summary completed by social worker to include : Why natural parents are doing the adoption; that birth parents are sure of what they are doing
- HOME STUDY**
  - Child Abuse & Neglect Clearance (good for 12 months), for everyone over 14 years of age
  - Three Reference letters ( at the time of any updates)
  - FBI and ABI Clearances (good for 12 months)
  - Medicals - on all persons living in the home (good for 12 months)
  - Financial Worksheets, or copy of previous year's tax returns
  - Copy of current pet vaccinations (not absolutely necessary)
  - Copies of birth certificates and marriage license (copy of any divorce decrees if applicable)
  - Verification of who will do supervisory visits
- CONSENTS**
  - Birth Mother
  - Birth Father - If no father signs then cover letter regarding how his rights will be address
- AT RISK AFFIDAVIT** - should be sign BY THE ADOPTIVE PARENTS
- MEDICAL INFORMATION** – Child's admission and discharge; Child's APGAR score; Labor and Delivery Information – Birth Certificate Information if available
- AFFIDAVIT OF RECEIPT OF CHILD'S SOCIAL HISTORY** - Summarize the facts in the child's medical records; Summarize the facts stated in the birth parent interview; Needs to be dated after the child has been discharged from the hospital
- AFFIDAVIT OF PATERNITY** – Birth Mother and Father if applicable
- AMERICAN INDIAN HERITAGE AFFIDAVIT** – Birth Mother and Father if applicable
- ANTICIPATED COSTS PAID IN ADOPTION** – what the couple expects to paid for adoption
- WAIVER OF LAW** – Birth parents waiver the law of one state and accept the law of another

### **Certificate of Foreign Birth**

Effective January 1, 2013, the Center for Health Statistics may prepare and register a [Certificate of Foreign Birth](#) upon receipt of a request from adoptive parent or an adopted individual 19 years of age or older. A Certificate of Foreign Birth may be put on file for a child who has automatically acquired United States citizenship following a foreign adoption and who possesses a Certificate of Citizenship in accordance with the Child Citizenship Act. Upon receipt of the required documentation and the appropriate fee, the Center for Health Statistics will prepare a Certificate of Foreign Birth showing the child's new name and the name(s) of the new parent(s). All of the following documents must be provided in order to prepare the Certificate of Foreign Birth:

- The child's Certificate of Citizenship
- A certified copy of the child's foreign birth certificate and certified English translation
- The original documents related to the foreign adoption certified by the United States Embassy abroad and certified English translation
- The Social Security card of the child
- A valid government issued picture identification of parent or parents such as a passport, driver's license, or military identification
- Proof of current residency of the parent or parents in the State of Alabama. Submit at least one of the following:
  - Valid Alabama driver's license
  - Current Alabama tax return
  - Current Alabama property tax bill
  - Current Alabama utility bill
  - Another record that confirms Alabama residency

### **Cost**

The fee to prepare the Certificate of Foreign Birth is \$25.00 which includes one certified copy of the new record. Additional copies of the same record ordered at the same time are \$6.00 each. There is an additional fee of \$15.00 to expedite the request. Make check or money order payable to "State Board of Health". Please do not send cash. Fees are not refundable. Complete and send the [application](#) with the required documents and appropriate fee to:

Alabama Vital Records  
Adoption Section  
P.O. Box 5625  
Montgomery, AL 36103-5625

127 STAT. 1212 PUBLIC LAW 113-74-JAN. 16,2014

Public Law 113-74  
113th Congress

An Act

To require Certificates of Citizenship and other Federal documents to reflect name and date of birth determinations made by a State court and for other purposes.

Jan. 16, 2014  
[So 1614]

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

Accuracy for  
Adoptees  
Act.  
S USC 1101 note.

SECTION 1. SHORT TITLE.

This Act may be cited as the "Accuracy for Adoptees Act".

SEC. 2. RECOGNITION OF STATE COURT DETERMINATIONS OF NAME  
AND BIRTH DATE.

Section 320 of the Immigration and Nationality Act (8 U.S.C. 1431) is amended by adding at the end the following:

"(c) A Certificate of Citizenship or other Federal document issued or requested to be amended under this section shall reflect the child's name and date of birth as indicated on a State court order, birth certificate, certificate of foreign birth, certificate of birth abroad, or similar State vital records document issued by the child's State of residence in the United States after the child has been adopted or readopted in that State."

Approved January 16, 2014.