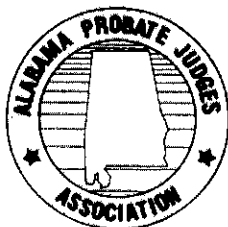


Adoptions

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Probate Judge Orientation
January 22-25, 2019
Hotel Capstone
Tuscaloosa, Alabama



ADOPTIONS

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I. FILING REQUIREMENTS

A. Jurisdiction

(a) Under the Alabama Adoption Code §26-10A-3 it states that Jurisdiction is as follows:

*“The probate court shall have **original jurisdiction** over proceedings brought under this chapter, **IF** any party whose consent is required fails to consent or is unable to consent, the proceedings will be transferred to the court having jurisdiction over juvenile matters for the limited purpose of termination of parental rights. The provision of this chapter shall be applicable to proceedings in the court having jurisdiction over juvenile matters. (Acts 1990, No. 90-554, p. 912, § 3.)”*

- **Cases:** Davis v. Turner, 55 Ala.App. 266, 315 So.2d 602 (1975); Ex parte D.B. and T.B., 975 So.2d 940, (Ala. 2007); J.L.L. III v. Jefferson Cty. Dept. of Human, 127 So.3d 433 (Ala.Civ.App. 2012)
- There is no requirement that the child or the couple be residents of Alabama for any extended period of time to obtain jurisdiction, however, in a related adoption, the court requires that the child be in the home for at least one year.
- UCCJEA and PKPA - Home State Issue

B. Venue

(a) In Section 26-10A-4 Venue is address as follows:

“All petitions may be filed in the probate court in the county in which:

- (a) The minor resides or has a legal residence;*
- (b) A petitioner resides, or is in military service; or*
- (c) An office of any agency or institution operating under the laws of this state having guardianship or custody of the minor is located. (Acts 1990, No. 90-554, p. 912, § 4.)”*

- Therefore, in a private or related adoption the petitions can be filed in the county in which the child resides, the petitioner resides, or the county in which the adoption agency is located.

C. Required Documents

(a) Birth Certificate

Application for an Alabama birth certificate must be ordered by the legal parent or Alabama attorney and include a front and back copy of the attorney’s Alabama BAR license, as well as, a front and back copy of the attorney’s driver’s license.

(b) HS-17 – Report of Adoption

- (c) Petition for Adoption
- (d) Affidavit of Petitioners
- (e) Marriage Certificate
- (f) Disclosure and Accounting of Disbursements Paid
- (g) Consent(s)
- (h) Home Study

D. Other Possible Documents

- (a) Affidavit of Petitioners Perfecting Service
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- (d) ICPC Documents

II. TRANSFER TO JUVENILE

A. §26-10A-3: Jurisdiction

“If any party whose consent is required fails to consent or is unable to consent, the proceedings will be transferred to the court having jurisdiction over juvenile matters for the limited purpose of termination of parental rights.”

- Consent may be written or implied (§26-10A-9)
- **Cases:** K.L.B. v. W.M.F. 864 So.2d 333 (2002) [Amended Statue after rule]; N.W.S.S. v. S.D.S. M.D.S. v. S.D.S. 747 So.2d 339 (Ala.Civ.App.1999); Ex Parte W.L.K. 175 So.3d 652, Ala. Supreme Court 115 02 80

B. §26-10A-24 (e): Contested Hearing

“(e) On motion of either party or the court, a contested adoption hearing may be transferred to the court having jurisdiction over juvenile matters.”

- This may be done to determine if there is implied consent and if the consent may be withdrawn.
- In the matter of D.B. and E.B. v. J.E.H. the Alabama Court of Appeal stated the following as its definition of “abuse of discretion”:

"The term, 'abuse of discretion,' in the decisions of courts, implying in common parlance, a bad motive or wrong purpose, is not appropriate. It is really a discretion exercised to an end or purpose not justified by, and clearly against, reason and evidence; or as otherwise stated, where a court does not exercise a discretion in the sense of being discreet, circumspect, prudent, and exercising cautious judgment, it is an abuse of discretion. In a legal sense discretion is abused whenever, in its exercise, the court exceeds the bounds of reason, all the circumstances before it being considered. It does not necessarily imply 'a wilful abuse or intentional wrong.' "

- **Cases:** T.S. v C.P., 674 So.2d 535; also S.W.B. v R.C., 668 So.2d 835; Ex parte A.M.P., 997 So.2d 1008 (Ala. 2008); D.B. and E.B. v. J.E.H., Jr., and L.H. 984 So.2d 459 (Ala.Civ.App.2007)

C. §26-10A-24: Cost and Fees:

"(h) Where there is a contested case hearing, if the adoption is denied, then the probate court or court of competent jurisdiction, unless just cause is shown otherwise by the contestant, shall issue an order for reimbursement to the petitioner or petitioners for adoption for all medical and living expenses incidental to the care and well-being of the minor child for the time the child resided with the petitioner or petitioners for adoption.

(i) Where there is a contested hearing and the contest fails, then the probate court or court of competent jurisdiction, unless just cause is shown otherwise by the contestant, shall issue an order for reimbursement to the petitioner or petitioners for adoption for all legal costs incurred which are incidental to the contest. "

Make sure the Final Decree on the contest complies with Rule 58.

D. §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."

- **Cases:** R.C.O. v J.R.V., 759 So.2d 559 (Ala.Civ.App.1999) {See change to law 26-10A-21}; Ex parte A.M.P., 997 So.2d 1008 (Ala. 2008); J.B. v F.B., 929 So.2d 1023 (Ala.Civ.App2005);

E. §12-12-35: 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.”

- Unless the juvenile court acquires jurisdiction under this provision, the juvenile court does not have authority to grant and adoption
- **Cases:** Ex parte C.L.C., 897 So.2d 234 (Ala.2004); Ex Parte A.M.P. 997 So.2d 1008

IV. CONTESTED HEARING

A. §26-10A-24(d): Contested Hearing

“(d) After hearing evidence at a contested hearing, the court shall dismiss the adoption proceedings if the court finds:

- (1) That the adoption is not in the best interest of the adoptee*
- (2) That a petitioner is not capable of adopting the adoptee*
- (3) That a necessary consent cannot be obtained or is invalid; or*
- (4) That a necessary consent may be withdrawn. Otherwise the Court shall deny the motion of the contesting party”*

B. §26-10A-14(C-E): Withdrawal of Consent or relinquishment

“(c) The petition to withdraw consent or relinquishment must be in writing, signed by the person seeking to withdrawal the consent or relinquishment, dated, and signed by two witnesses.

“(d) In adjudicating a petitioner to withdraw a consent or relinquishment, the person seeking to withdraw the consent or relinquishment shall establish the facts necessary to withdraw the consent or relinquishment by a preponderance of the

evidence. The court shall not apply an presumption or preference in favor of the natural parents in reviewing an action brought under this section.

(e) ...Any order made by the court upon a petitioner to withdrawal consent or relinquishment under this section shall be deemed a final order for the purpose of filing an appeal under section 26-10A-26."

C. The Court must find adoption is not in best interest of the child.

- **Cases:** A.E.C. v. J.R.M., Jr. 46 So.3d 481 (Ala.Civ.App., 2009)
Adoptions for the purpose of social security benefits may be denied.

V. CONSENTS

A. §26-10A-12(a): Written Consents

"(a) A consent of the natural mother taken prior to birth of a child shall be signed or confirmed before a judge of probate. At the time of taking the consent the judge shall explain to the consenting parent the legal effect of signing the document and the time limits and procedures for withdrawal of the consent and shall provide the parent with a form for withdrawing the consent in accordance with the requirements of Section 26-10A-13 and 26-10A-14."

- **See Exhibit "A"**

B. §26-10A-13 (a-c): Time of Consent or relinquishment

"(a) A consent or relinquishment may be taken at any time, except that once signed or confirmed, may be withdrawal within five days after birth or within five days after signing of the consent or relinquishment, whichever comes last.

(b) Consents or relinquishment can be withdrawn if the court finds that the withdrawal is reason under the circumstances and consistent with the best interest of the child within 14 days after the birth of the child or within 14 days after signing of the consent or relinquishment, whichever comes last.

(c) All Consents or relinquishments required by this act shall be filed with the court in which the petition for adoption is pending before the final decree of adoption is entered."

- The natural mother can sign a consent before birth ONLY in front of a Probate Court Judge, and after birth in front of a notary public.
- The natural father can sign before birth or after birth in front of a notary public.

C. §26-10A-9: Implied Consents

"A consent or relinquishment required by Section 26-10A-7 may be implied by any of the following acts of a parent:

- (1) Leaving the adoptee without provision for his or her identification for a period of 30 days; or*
- (2) Knowingly leaving the adoptee with others without provision for support and without communication, or not otherwise maintaining a significant parental relationship with the adoptee for a period of six months; or*
- (3) Receiving notification of the pendency of the adoption proceeding under Section 26-10A-17 and failing to answer or otherwise respond to the petition within 30 days."*

- Putative Father Registry – the father has up to thirty (30) days after the birth of the child to register with the state (§26-10C-1)
- Pre-birth abandonment is when a father fails to offer financial and/or emotional support for a period of six months prior to the birth.
- Post-birth abandonment is when the father and/or mother fail to offer financial and/or emotional support for a period of six months subsequent to the birth.
- **Cases:** S.W.B. v. R.C. 668 So.2d 835 (1995); F.P. v. J.K.M. 857 So.2d 125 (2003); S.C.W. v. C.B. 826 So.2d 825 (2001) C.V. v. J.M.J. and T.F.J., 810 So.2d 700 (1999), B.F. v. L.J.S. 771 So.2d 1033 (Ala 2000). K.L.B. v. W.M.F. 864 So.2d 333 (2002) [Amended Statute after rule]; M.V.S., 776 So.2d 142; Ex parte A.M.P., 997 So.2d 1008 (Ala. 2008); A.D.S. v. S.J.L. 70 So.3d 345 (Ala.Civ.App. 2010)*

D. §26-10A-7: Persons Whose Consents or Relinquishment are required

"(a) Consent to the petitioner's adoption or relinquishment for adoption to the Department of Human Resources or a licensed child placing agency shall be required of the following:

- (1) The adoptee, if 14 years of age or older, except where the court finds that the adoptee does not have the mental capacity to give consent;*

* Specifically for the holdings that: 1) The biological father did not hold the child out as his own, and 2)(the biological Father) did not receive the child into his home, so as to be presumed father capable of unqualified objection to adoption.

(2) The adoptee's mother;

(3) The adoptee's presumed father, regardless of paternity, if:

a. He and the adoptee's mother are or have been married to each other and the adoptee was born during the marriage, or within 300 days after the marriage was terminated by death, annulment, declaration of invalidity, or divorce, or after a decree of separation was entered by a court; or

b. Before the adoptee's birth, he and the adoptee's mother have attempted to marry each other by a marriage solemnized in apparent compliance with law, although the attempted marriage is or could be declared invalid, and,

1. If the attempted marriage could be declared invalid only by a court, the adoptee was born during the attempted marriage, or within 300 days after its termination by death, annulment, declaration of invalidity, or divorce; or

2. If the attempted marriage is invalid without a court order, the adoptee was born within 300 days after the termination of cohabitation; or

c. After the adoptee's birth, he and the adoptee's mother have married, or attempted to marry each other by a marriage solemnized in apparent compliance with law, although the attempted marriage is or could be declared invalid, and

1. With his knowledge or consent, he was named as the adoptee's father on the adoptee's birth certificate; or

2. He is obligated to support the adoptee pursuant to a written voluntary promise or agreement or by court order; or

d. He received the adoptee into his home and openly held out the adoptee as his own child;

(4) The agency to which the adoptee has been relinquished or which holds permanent custody and which has placed the adoptee for adoption, except that the court may grant the adoption without the consent of the agency if the adoption is in the best interests of the adoptee and there is a finding that the agency has unreasonably withheld its consent; and

(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)."

- **Cases:** J.L.P. v L.A.M., 41 So.3d 770 (Ala.Civ.App.2008); A.D.S. v. S.J.L., 2010 WL 31963211 (Ala.Civ.App.2010); M.M. v. D.P. and C.P., 37 So.3d 179 (Ala.Civ.App.2009)

E. §26-10A-8: Consent or relinquishment by a minor parent

"(a) Prior to a minor parent giving consent a guardian ad litem must be appointed to represent the interests of a minor parent whose consent is required. Any minor, 14 years of age and beyond, can nominate a guardian ad litem either prior to the birth of the baby or thereafter.

(b) A consent or relinquishment executed by a parent who is a minor shall not be subject to revocation by reason of such minority."

F. §26-10A-10: Consents Not Required

"Notwithstanding the provisions of Section 26-10A-7, the consent or relinquishment of the following persons shall not be required for an adoption:

- (1) A parent whose rights with reference to the adoptee have been terminated by operation of the law in accordance with the Alabama Child Protection Act Section 26-18-1 through 26-18-10;*
- (2) A parent who has been adjudged incompetent pursuant to law or a parent whom the court finds to be mentally incapable of consenting or relinquishing and whose mental disability is likely to continue for so long a period that it would be detrimental to the adoptee to delay adoption until restoration of the parent's competency or capacity. The court must appoint independent counsel or a guardian ad litem for an incompetent parent for whom there has been no such prior appointment;*
- (3) A parent who has relinquished his or her minor child to the department of human resources or a licensed child placing agency for an adoption;*
- (4) A deceased parent or one who is presumed to be deceased under Alabama law;*
- (5) An alleged father who has signed a written statement denying paternity; or*
- (6) The natural father where the natural mother indicates the natural father is unknown, unless the natural father is otherwise made known to the court."*

- If a natural parent is deceased, their family's consent is not required, but must be notified of the pending adoption. §26-10A-17(a)(5)

G. §26-10A-7 (4): Permanent Custody – Consent Required

“The agency to which the adoptee has been relinquished or which holds permanent custody and which has placed the adoptee for adoption, except that the court may grant the adoption without the consent of the agency if the adoption is in the best interests of the adoptee and there is a finding that the agency has unreasonably withheld its consent; and”

- If no agency has permanent custody and the matter is filed in Family Court, then the natural parents may still sign a Consent to Adopt, and the adoption may go forward.
- There may be conflicts if an agency has only temporary custody and not permanent custody.

H. How to Withdrawal or Contest Consents under §26-10A-13 and §26-10A-14

- (1) Five (5) days – automatic – mother or father must still file withdrawal form
- (2) Fourteen (14) days – by petition in court – mother and/or father may hire counsel and file petition in court.
 - (a) Petition shall establish facts necessary to withdraw the consent by a preponderance of the evidence; there will be no presumption or preference in favor of the natural parents in reviewing the case.
 - (b) Consents can be withdrawn if the Court finds that the withdrawal is reasonable under the circumstances and consistent with the best interest of the child.
- (3) Consents can be withdrawn, until final decree, upon showing of fraud, duress, mistake or undue influence.
 - (a) Pre-birth consent, which is signed before a probate Judge, will remove these grounds.
- (4) From Final Decree to one (1) year after decree, fraud is sole grounds to contest.
- (5) After one (1) year from Final Decree, consents may not be contested except where kidnapping is shown. (§26-10A-25)

VI. §26-10A-17: NOTICE

“(a) Unless service has been previously waived, notice of pendency of the adoption proceeding shall be served by the petitioner on:

- 1. Any person, agency, or institution whose consent or relinquishment....*
- 2. The legally appointed custodian or guardian of the adoptee.*
- 3. The spouse of any petitioner who has not joined in the petition.*
- 4. The spouse of the adoptee.*
- 5. The surviving parent or parents of a deceased parent of the adoptee.*
- 6. Any person known to the petitioners as having physical custody...*
- 7. The agency or individual authorized to investigate the adoption...*
- 8. Any other person designated by the court.*
- 9. The Department of Human Resources.*
- 10. Father and putative father of the adoptee if made known by the mother...*

(b) The notice shall specifically state that the person served must respond to the petitioner within 30 days if he or she intends to contest the adoption. A copy of the petition for adoption shall be delivered to those individuals or agencies in subdivisions (a)(2) through (a)(10). Any notice required by this chapter may be served on a natural parent prior to birth.

(c) Service of the notice shall be made in the following manner:

- 1. Service of process shall be made in accordance with the Alabama Rules of Civil Procedure*
- 2. As to the agency or individual referred to in subdivisions (a)(7) and (a)(9) above, notice shall be by certified mail.*
- 3. As to any other person for whom notice is required under subsection (a) of this section, service by certified mail, return receipt requested, shall be sufficient...*

(d) The notice required by this section may be waived in writing by the person entitled to receive notice.

(e) Proof of service of the notice on all persons for whom notice is required by this section must be filed with the court before the adjudicational hearing, provided in Section 26-10A-24.

(f) Notice to a birth father may not be necessary if he does not register property with the putative father registry.

(g) DHR in Montgomery should be notified of adoptions final hearing and send a copy of the Petition for Adoption.”

- **Cases:** P.D. v J.K. AND N.K. 636 So.2d 681, (1994); M.V.S. v. V.M.D. 776 So.2d 142 (Ala.Civ.App.,1999); S.C.W. v. C.B. 826 So.2d 825 (2001)

VII. PUTATIVE FATHER REGISTRY

- A. According to § 26-10C-1(c) of the Alabama Adoption Code, any person who wishes to be registered on this registry must send to the Department of Human Resources in Montgomery:

- “1. *His name, social security number, current address and date of birth*
2. *The mother's name, social security number, current address and date of birth*
3. *CS-41 (income affidavit form) filled out*
4. *The child's name, place of birth and date of birth*
5. *Possible date of intercourse;”*

- If this is not done within thirty (30) days of the child's birth, man's consent is impliedly given.
- Cases: S.C.W. v. C.B. 826 So.2d 825 (2001); M.V.S. v. V.M.D. 776 So.2d 142 (1999)
- Due to the ruling in S.C.W. v. C.B. legislature made changes in both §26-10A-9 and §26-10C.1 in 2002; In Re Adoption of J.C.P. 871 So.2d 831

VIII. INHERITANCE

A. §43-8-48(1): Parent and Child Relationship

“If, for purposes of intestate succession, a relationship of parent and child must be established to determine succession by, through, or from a person:

(1) An adopted person is the child of an adopting parent and not of the natural parents except that adoption of a child by the spouse of a natural parent has no effect on the right of the child to inherit from or through either natural parent;”

- Once a child is adopted, said child no longer has the right to inherit from its natural parents except step-parent adoptions
- Wrongful death of natural parent, and subsequent adoption by related party, could cause child to lose benefits from a wrongful death or perhaps payment of personalities such as insurance paid to the estate or savings in the estate. There is a case that could be interpreted to say different
- Cases: Barnett v. Beck 481 So.2d 348, (1985)

IX. GRANDPARENTS VISITATION

A. §26-10A-30

"Post-adoption visitation rights for the natural grandparents of the adoptee may be granted when the adoptee is adopted by a stepparent, a grandfather, a grandmother, a brother, a half-brother, a sister, a half-sister, an aunt or an uncle and their respective spouses, if any. Such visitation rights may be maintained or granted at the discretion of the court at any time prior to or after the final order of adoption is entered upon petition by the natural grandparents, if it is in the best interest of the child."

B. A recent Washington State case which was heard by the United States Supreme Court ruled grandparents right unconstitutional. *Troxel v. Granville*, United States Supreme Court, June 5, 2000; The Alabama Court of Appeals declared in April 2001 that the statute was unconstitutional as applied to those facts in that case. The grandparents should show at least visitation would be in the best interest of the child and whether harm to the child is present if visitation is denied. *J.S. and E.S. v. D.W. and J.W.* The Supreme Court reversed the Court of Appeals which stated that under the Alabama Adoption Code, grandparent visitation was constitutional - February 8, 2002 - 835 So.2d 186.

C. Cases: *J.S., Jr and J.S., Sr. v. S.C. and C.C.* 959 So.2d 664; (Ala.Civ.App.,2006) *B.C.M. v H.E.C.* 907 So.2d 445; *Ex Parte A.S. & C.S.*, 91 So.3d 656 (Ala. 2011); *D.T. v. W.G.* 138 S.Ct.1441 (US Supreme Court)

X. PLACEMENT

A. Any person can make a placement of a child twice a year.

B. A person can identify numerous couples to a natural mother, as many times as he or she wishes - this is not considered a placement.

C. Anyone who makes more than two absolute placements a year must be licensed as an agency

XI. CONFIDENTIALITY

A. §26-10A-31(g-h)

"(g) Notwithstanding subsection (f) of this section, the State Department of Human Resources or the licensed investigating agency appointed by the court pursuant to Section 26-10A-19(b) and (c), shall furnish, upon request, to the petitioners, natural

parents or an adoptee 19 years of age or older, non-identifying information which shall be limited to the following:

1. Health and medical histories of the adoptee's natural parents;
2. The health and medical history of the adoptee;
3. The adoptee's general family background, including ancestral information, without name references or geographical designations;
4. Physical descriptions;
5. The length of time the adoptee was in the care and custody of one other than the petitioner; and
6. Circumstances under which the child comes to be placed for adoption.

(h) Notwithstanding subsection (f), if either the natural mother or the natural or presumed father have given consent in writing under oath to disclosure of identifying information as defined in subsection (d) and which is not otherwise provided in this section and in subsection (c) of Section 22-9A-12, the State Department of Human Resources or a licensed child placing agency shall release such identifying information.

(i) If the court finds that any person has a compelling need for non-identifying information not otherwise available under subsection (e) of this section, which only can be obtained through contact with the adoptee, the adoptee's parents, an alleged or presumed father of the adoptee, or the adoptee's adoptive parents, the court shall direct the agency or a mutually agreed upon intermediary, to furnish such information or to establish contact with the adoptee, the adoptee's natural parents, the alleged or presumed father of the adoptee, or the adoptive parents of the adoptee in order to obtain the information needed without disclosure of identifying information to or about the applicant...

(j) Notwithstanding any subsection of this section to the contrary, when an adult adoptee reaches the age of 19, the adoptee may petition the court for disclosure of identifying information's defined in subsection (d) and which is not otherwise provided for in this section or in subsection (c) of Section 22-9A-12, if a natural or presumed parent has not previously given consent under subsection (h). The court shall direct an intermediary to contact the natural parents to determine if the natural parents will consent to the release of identifying information."

- Birth Certificates are now available upon request when the adoptee reaches 19

XII. DIFFERENT REQUIREMENT FOR RELATED AND NON-RELATED ADOPTIONS ON ALL RELATED

A. §26-10A-27: Stepparent adoptions

"Any person may adopt his or her spouse's child 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."*

B. §26-10A-28: Adoption by other relatives

"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."*

- However, if child is brought over state line for the purpose of adoption, if not closer related than niece or nephew, the couple must have a home study and comply with interstate compact §44-2-20. This home study is not needed for the probate court, but for SDHR in Montgomery (334-242-9500); This must be done before child is brought into or out of this state
- If it is a paternal related adoption, paternity must be determined, or it will be treated as a non-related adoption.

XIII. INTERSTATE COMPACT: §44-2-20

- The Interstate Compact on the Placement of Children (ICPC) has been enacted in all 50 states, the District of Columbia, and the Virgin Islands for two main purposes. ICPC acts to protect children that are placed across state lines and to protect states from the un-monitored influx of out-of-state children. Both purposes are aided by the requirement that the sending agency retain jurisdiction over any child who is placed out of state until both states give interstate approval.
- No Child may be brought over a state line for the purpose of adoption without compliance of this section;
- A list of forms and interview must be completed to comply. (Alabama's Requirements Listed Below).
- Each state may have a different list;
- Violation of this statute may void the adoption or at least hold it up;
- Only very closely related adoption are exempt from this act, i.e. an aunt adoption a nephew or niece;
- To leave the sending state you must get approval from that state and to return to the receiving state you also must have complied with their requested list of documents. Usually sending and receiving states give approval the same day or shortly thereafter;
- A GAL must be appointed to minor parents.

XIV. ALABAMA INTERSTATE COMPACT REQUIREMENTS:

A. 100 A

1. Must have original signatures
2. Name on 100A must match hospital record, if there is not a current birth certificate

B. Birth Parent Interview – *This can only be conducted by a licensed social worker or representative of a licensed child placing agency.*

1. Social and Medical Family History
2. Completed information packet and short typed summary
3. Why natural parents are doing the adoption
4. Natural parents are sure of what they are doing
5. Should be done on both mother and father of child

C. Home Study

1. CANS (Child Abuse and Neglect) Clearance – good for 12 months
2. Reference Letters – good for 12 months
3. FBI and ABI Clearance – good for 24 months
4. Medicals – on all person living in home – good for 12 months
5. Financial Statements
6. In 2006, “The Adam Walsh Act” required that all person adoption and fostering, and other adults living in the home, should have child abuse clearances from the states they have resided in the preceding 5 years.

D. Consents

1. Both mother and father’s consent should be signed
2. If no father signs a consent, there should be a statement in the cover letter regarding how his rights will be addressed.

E. At Risk Affidavit – a statement that is signed by the adoptive couple stating that they will take the child at risk for certain things like birth fathers, drug addictions, and medical issues.

F. Medical Information – *Verification of child’s birth, including birth certificate, if available.*

1. Child’s admissions and discharge
2. Child’s APGAR score
3. Labor and Delivery information

G. Affidavit of Paternity

H. American Indian Heritage Affidavit

I. Affidavit of Receipt of Child’s Social and Medical History

J. Guardian Ad Litem’s for minor birth parents – some states don’t require a GAL, but Alabama will.

K. Transition plan for placement of older children.

XV. Hague Convention: <http://www.adoption.state.gov>

CONVENTION COUNTRIES

NOTE: The United States is not currently processing new adoptions with countries in bold

Albania	Estonia	New Zealand
Andorra	Finland	Norway
Armenia	France	Panama
Australia	Georgia	Paraguay
Austria	Germany	Peru
Azerbaijan	Greece	Philippines
Belarus	Guatemala	Poland
Belgium	Guinea	Portugal
Belize	Hungary	Romania
Bolivia	Iceland	San Marino
Brazil	India	Seychelles
Bulgaria	Israel	Slovakia
Burkina Faso	Italy	Slovenia
Burundi	Kenya	South Africa
Cambodia	Latvia	Spain
Canada	Liechtenstein	Sri Lanka
Cape Verde	Lithuania	Sweden
Chile	Luxembourg	Switzerland
China (and Hong Kong)	Macedonia	Thailand
Colombia	Madagascar	Togo
Costa Rica	Malta	Turkey
Cuba	Mali	United Kingdom
Cyprus	Mauritius	Uruguay
Czech Republic	Mexico	Venezuela
Denmark	Moldova	
Dominican Republic	Monaco	
Ecuador	Mongolia	
El Salvador	Netherlands	

XVI. ADULT ADOPTIONS

A. §26-10A-5(b): Who May Adopt

“Any adult may petition the court to adopt another adult as provided in this chapter”.

B. §26-10A-6(2): Who May Be Adopted

“(2) An adult under any one of the following conditions:

- a. He or she is totally and permanently disabled.*
- b. He or she is determined to be mentally retarded.*
- c. He or she consents in writing to be adopted and is related in any degree of kinship, as defined by the intestacy laws of Alabama, or is a stepchild by marriage.*
- d. He or she consents in writing to be adopted by an adult man and woman who are husband and wife.”*

C. §26-10A-7(a)(3)(b): Person Whose Consent or Relinquishments are required

“petition to adopt an adult may be granted only if written consent to adopt has been executed by the adult seeking to adopt and his or her spouse or by the guardian or conservator of the adult sought to be adopted pursuant to the requirements of Sections 26-10A-6 and 26-10A-11.”

D. §26-10A-11(b): Person Whose Consents or Relinquishments are not required

“When the person sought to be adopted is an adult, only the sworn, written consent of the adult person sought to be adopted shall be required and no order of reference or any home studies need be issued. If the adult person to be adopted has been adjudicated incompetent, the written consent of the adult person's guardian or conservator shall be required. If the adult person is without a spouse, guardian, or conservator and the court has reason to believe that the adult person is incompetent to give consent, the court shall appoint a guardian ad litem who shall investigate the adult person's circumstances and that guardian ad litem shall give or withhold consent. The guardian ad litem shall file a written report stating the basis for the decision and the court shall afford a hearing to all parties to present evidence as to the best interest of the adult person, and if the court determines upon clear and convincing evidence that the decision to withhold consent by the guardian ad litem is arbitrary and is not in the best interests of the incompetent adult person, it may proceed to make any other orders it deems necessary for the adult person's welfare, including granting the petition for adoption.”

E. Adult Adoption Forms

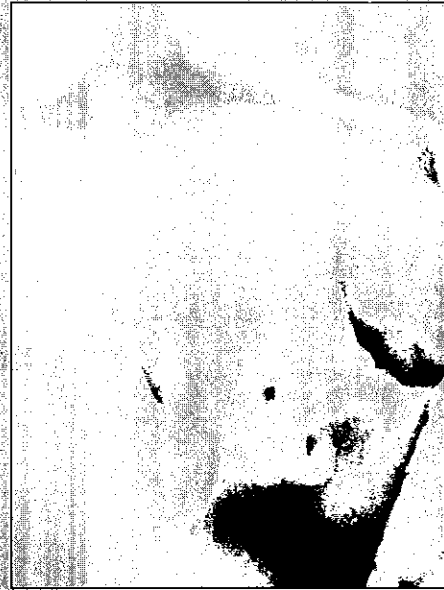
Forms for Adult Adoptions can be found on the Alabama Administrative Office of Courts website (<http://eforms.alacourt.gov>)

XVII. INCOME TAX CREDIT

“For taxable years beginning in 2019, under §23(a)(3) the credit allowed for an adoption of a child with special needs is \$14,080. For taxable years beginning in 2019, under §23(b)(1) the maximum credit allowed for other adoptions is the amount of qualified adoption expenses up to \$14,080. The available adoption credit begins to completely phase under §23(b)(2)(A) for taxpayers with modified adjusted gross income in excess of \$211,160 and is completely phased out for taxpayers with modified gross income of \$251,160 or more.”

continued from previous page

Should the Department of Human Resources, Office of Permanency receive a Petition to Adopt naming the child, this Office will send the court a letter telling the court that you have registered as the father. The court will then send a letter to you and the child's mother notifying you of the adoption petition. The names and addresses of those listed in the Alabama Putative Father Registry will be provided to the court only. The information is not given to any other person except by court order.



Putative Father REGISTRY

*Alleged fathers in Alabama
have the right to be notified of
adoption proceedings involving
their children.*



ALABAMA

DEPARTMENT OF HUMAN RESOURCES

OFFICE OF PERMANENCY

50 Ripley Street
Montgomery, AL 36104

Pamphlet Series 2001-01
Revised 8-09

The Putative Father Intent to Claim
Paternity Registration form
and the
Child Support Obligation Income
Statement / Affidavit
may be requested from the

Alabama
Department of Human Resources'
OFFICE OF PERMANENCY
(334) 242-9500

or
downloaded from the DHR website -
www.dhr.alabama.gov

Completed and notarized forms for the
Putative Father Registry should be mailed to:

Alabama DHR
OFFICE OF PERMANENCY
P.O. Box 304000
Montgomery, AL 36130 - 4000

All programs of the
Department of Human Resources are
administered in accordance with the Civil Rights
Act of 1964, the Rehabilitation Act of 1973,
the Americans with Disabilities Act of 1990, and
all other federal and state civil rights laws.

Alabama
DEPARTMENT OF
HUMAN RESOURCES



Alleged fathers must register with the Putative Father Registry either prior to the child's birth or within 30 days after the child's birth. The putative father must provide complete information and proper forms to DHR's Office of Permanency.

Are you a man who may have a child born out of wedlock?

Do you know about the Alabama PUTATIVE FATHER REGISTRY?

Alabama Law (Code of Alabama 1975, Section 26-10C-1) says that a putative father – a man who thinks or says he is the father of a child born out of wedlock – should be notified if the child is being adopted by someone. In other words, the registry was set up for men who **think** they may have a child born out of wedlock to register so they will receive a letter notifying them if that child is being adopted. Then the father can contact the court if he disagrees with the adoption of that child.

WHY DO YOU NEED TO REGISTER?

If you do not register, the law says you have automatically agreed (given "irrevocable implied consent") to any adoption of the child. This means that **if you do not register** and someone goes to court to adopt the child, you do not have a right to receive a letter telling you about the adoption and **your rights to the child may be ended**. Based on current law, it does not matter if you have supported the child or mother or if you disagree with the adoption petition. You must register to protect your right to be informed of any adoption plan for the child and to be given the opportunity to be heard in the court where the adoption is taking place.

WHEN DO YOU REGISTER?

- The law allows the putative father to register **while the mother is pregnant with the child or within 30 days after the child is born**. As soon as you think that someone is pregnant by you, you should register. You do not have to prove in court you are the father before you register.
- If you have legitimated the child in the probate court according to Alabama Code 1975, §26-11-1 to §26-11-3, you may send a copy of the order and the completed and notarized forms to the DHR address listed below.
- After a court has decided that you are the father, you may register by sending a copy of the court order naming you as the father to the address listed below.

HOW DO YOU REGISTER?

You must complete two forms in order to register:

- (1) The Putative Father Intent to Claim Paternity Registration form **and**
- (2) The Child Support Obligation Income Statement/Affidavit

The forms must be completed and notarized.

Then mail them to

**Alabama DHR Office of Permanency
P.O. Box 304000
Montgomery, AL 36130 - 4000**

The forms are available on the Internet at www.dhr.alabama.gov or through the Office of Permanency at (334) 242-9500.

Please note that even though you send completed child support forms, this does not require you to pay child support unless you are ordered by a court. When you send the forms, it only registers you on the Alabama Putative Father Registry.

It is important that the registry have your current address. You will need to contact SDHR Office of Permanency at (334) 242-9500 to request the registry be updated should your address change.

WHAT DOES THE PUTATIVE FATHER REGISTRY NOT DO?

- The registry does **not** prove or make you the father of the child – it protects your right to receive notice of an adoption proceeding involving the child.
- The registry does not make a father pay child support – a court must determine you to be the father and order you to pay child support.

WHAT HAPPENS AFTER YOU REGISTER?

- After you send your notarized registration form and child support income statement/affidavit, you will be entered on the Alabama Putative Father Registry. You will receive a letter letting you know that you have been registered.

continued on next page

ALABAMA REPORT OF ADOPTION

INSTRUCTIONS: Parts I and II of this report must be completed by the petitioners, their attorney, or the Court. If the child was placed by a licensed child-placing agency or the State Department of Human Resources, information about 1) the natural parents, 2) place of birth of the child, and 3) birth certificate number may be omitted. This information is to be furnished to the State Registrar by the agency which placed the child.

Within ten (10) days after the final decree of adoption has been made, the Clerk of the Court shall make his certification in Part III, affix his official seal, and forward this report with the final decree of adoption to the State Registrar, Center for Health Statistics, P. O. Box 5625, Montgomery, Alabama 36103-5625. If the child was born in Alabama a new certificate listing the child's new name and adoptive parents will be prepared. The fee to prepare this new birth certificate is \$25.00 payable to the Alabama State Board of Health. This fee also includes one certified copy of the new certificate. If the adopted child was not born in Alabama, the State Registrar will forward the certified copy of the final decree of adoption and the report of adoption to the proper official in the state of birth. The fee to forward the final decree of adoption and report of adoption to the proper official in the state of birth is \$10.00 payable to the Alabama State Board of Health. To obtain a certified copy of this birth certificate, contact the state of birth.

PART I INFORMATION ABOUT CHILD (To Identify Original Birth Certificate)

NOTE: If the official birth certificate number is entered, the names of the father and mother may be omitted.

Full Name of Child at Birth			Birth Certificate Number
First	Middle	Last	
Place of Birth	City-Town or Location	State and Country of Birth	Sex
Date of Birth			
Full Maiden Name of NATURAL Mother			
First	Middle	Last	
Full Name of LEGAL Father /Parent			
First	Middle	Last	

PART II INFORMATION AFTER ADOPTION (For New Birth Certificate)

Full Name of Child After Adoption		
First	Middle	Last
FATHER/PARENT — Full Name		
First	Middle	Last
Father/Parent State of Birth (if not in U.S.A., name country)	Father/Parent Date of Birth	Father/Parent (Check One) Adoptive <input type="checkbox"/> Natural <input type="checkbox"/>
MOTHER /PARENT Maiden Name		
First	Middle	Last
Mother/Parent Legal Name		
First	Middle	Last
Mother/Parent Date of Birth	Mother/Parent State of Birth (if not in U.S.A., name country)	Mother/Parent Usual Residence—State
Mother/Parent Residence — County	Mother/Parent Residence — City or Town and Zip Code	
Mother/Parent Residence — Street Address (If rural, give location)	Mother/Parent Residence — inside City Limits (Specify Yes or No)	Mother/Parent (Check One) Adoptive <input type="checkbox"/> Natural <input type="checkbox"/>
Mailing Address of Adoptive Parents		Phone Number
Name and Full Address of Attorney Or Agency Representative	Phone Number	Title

PART III CERTIFICATION OF CLERK OF COURT Must be properly signed, dated and sealed.

Name of Court _____	For City, County of _____
I hereby certify that the adoption as set forth above was made final in this Court by decree dated _____	
and bearing No. _____	
(Seal)	Signature _____
	Title _____
	By _____

Good Morning,

I have created a letter that I will send out if we are missing an important document. We will now have to receive the petitions and the items listed in the check box below to process the petitions:

- Birth Certificate of the child
- Copy of Marriage License for petitioner/s
- Dates of Birth for the petitioner/s
- Names and dates of birth for biological parents
- Termination Information on Biological Parents
- Other _____

Carla J. Easterling, LMSW
Alabama Department of Human Resources
Program Specialist
Office of Adoptions
334-353-2089

Bryant A. Whitmire, Jr.

From: Kathie.Cleckler@adph.state.al.us
Sent: Thursday, November 15, 2018 9:45 AM
To: Bryant A. Whitmire, Jr.
Subject: RE: FW: Emailing: 20181114155833251.pdf

Confidentiality Notice - This e-Mail message, including any attachments, is for the sole use of the intended recipient(s) and may contain confidential or privileged information. If this message concerns a lawsuit, it may be considered a privileged communication. Any unauthorized review, use, disclosure, or distribution is prohibited. If you are not the intended recipient, please contact the sender by reply e-mail and destroy all copies of the original message.

Thanks for asking Drew.

Here are a few suggestions.

*The Final Decree should clarify if step-parent or grand parent adoption.

*Make sure the petitioner's names include their first name, and any generational title. A nickname is not appropriate.

*For clarity the Final Decree should state if the child's name is to remain on the same. Many times no statement is provided regarding the child's name.

*Please make sure they understand a biological parent cannot remain on the birth certificate when the child is adopted by a grand parent.

*Our office requires a photo id of the attorney or parent receiving the certificate. This information is stated on our website.

Please assure them I am willing to answer any questions they may have, and provide assistance in any way possible regarding adoptions, legitimations or name changes.

Thanks so much!

Hope you have a grand Thanksgiving!!

Kathie Cleckler