

# Frequently Asked Questions about Adoption in Mississippi

## BIRTH MOTHER RELATED

1. When can the mother of the baby start the adoption process?
  - A. The birth mother can do any number of things to plan for an adoption. However, the most important form, the parents' surrender of parental rights and consent to an adoption, cannot be signed until 72 hours after the birth of the child.
2. Can the birth mother choose the adoptive parents?
  - A. Yes
3. Can the birth mother see and hold the baby after the birth?
  - A. Yes
4. What expenses can the adoptive parents pay to or on behalf of the birth mother and child?
  - A. Adoptive parents can pay legal fees approved by the court, reasonable and actual hospital charges for services rendered in connection with the medical treatment of the child to the physician or the hospital which rendered the services. See Miss. Code Ann. ' 43-15-23 (4). There are no restrictions whatsoever on a Mississippi licensed adoption agency. Therefore, if a licensed agency is involved, the adoptive parents can funnel the money through the agency and pay for anything. See Miss. Code Ann. ' 43-15-23 (2) and (3).
5. Can a minor mother independently sign legal documents placing the child for adoption (consent to the adoption)?
  - A. Birth parents are considered adults for all purposes pertaining to termination of their parental rights and consenting to an adoption. See Miss. Code Ann. ' 93-15-103 (2) and Miss. Code Ann. ' 93-17-5 (1).
6. When does the birth mother actually sign the legal documents required for the adoption? Describe the process of signing the legal termination document.
  - A. The birth mother may sign at anytime at least 72 hours after the birth of the child. See Miss. Code Ann. ' 93-17-5 (1) and Miss. Code Ann. ' 93-17-9. Once the birth mother signs it must be notarized. Once notarized and signed, there is not a revocation period; the surrender is legally binding.
7. Can the birth mother change her mind before signing the legal consents to the adoption?
  - A. The birth mother can change her mind any time up to the point she signs the surrender of parental rights and consent to adoption.

8. Can the birth mother change her mind after signing the legal consents to the adoption?
  - A. Once the termination of parental rights has been signed, birth parents cannot change their mind. The signature is irrevocable except in extreme situations such as fraud. See Miss. Code Ann. § 93-17-9.
9. Can the birth mother communicate with the adoptive parents and child after the adoption?
  - A. Nothing in Mississippi law prohibits communication between the mother and the child. However, court orders authorizing such communication are not enforceable.
10. Can a birth mother anonymously surrender a newborn child?
  - A. Yes
11. What happens if the birth parents do not agree that adoption should be the plan?
  - A. Once the birth parents have surrendered their parental rights, they have no rights whatsoever regarding the child. Their agreement or disagreement is irrelevant at that point.
12. Will the birth mother be asked to file an affidavit in her adoption papers regarding future contact or the release of identifying information to the adoptee or adoptive parents?
  - A. Birth parents can file an affidavit either authorizing the state to give or prohibit the state from giving identifying information to the adopted child. There is no provision in Mississippi law that requires that birth parents be informed about these affidavits.

#### **BIRTH FATHER RELATED**

1. Does the father of the baby have to be notified of the birth and the mother's adoption plan?
  - A. There is no requirement in Mississippi law that the birth father be notified of the birth or of the mother's intention to place the child for adoption. However, withholding this information from the birth father could give him a valid defense to determination of his parental rights. Of course, the birth father must be given legal notice of court proceedings once an action is filed for the termination of his parental rights and/or for the adoption of the child.
2. How is the father of the baby notified of the mother's adoption plan?
  - A. As a practical matter, adoptive parents, attorneys, or social workers are usually seeking out the father to try and obtain his consent to the adoption. Of course, the birth father must be given legal notice of court proceedings once an action

is filed for the termination of his parental rights and/or for the adoption of the child.

3. Can the father of the baby choose the adoptive parents?
  - A. There is nothing in Mississippi law that prohibits the birth father from participating in the choice of adoptive parents.
4. What is the difference between a legal father and a named birth father? How is the process of voluntary termination different for a legal father and a named birth father?
  - A. A legal father is the man that is married to the birth mother at time of conception or delivery.  
The named birth father (putative father) is the man that the birth mother names or comes forward and has to prove paternity. The process is not different in Mississippi. Both fathers would sign a waiver.
5. What happens if the mother does not know who the biological father is?
  - A. Mississippi law has a specific procedure set out to deal with the parental rights of the father of the child born out of wedlock. Obviously, this would be the situation if the mother does know the identity of the biological father. This procedure is entitled a Petition for Determination of Rights. In this situation the Judge specifies what, if any, notice is to be given to the father of the child. See Miss. Code Ann. '93-17-6 (7).
6. What happens if the mother refuses to give the name of the biological father?
  - A. There is no specific provision of Mississippi law dealing with this situation. It would likely be handled under A. '93-17-6 Petition for Determination of Rights as mentioned above.
7. Can the biological father of the baby give notice that he intends to plan for the baby before the baby is born? What are the steps that the birth father must take if he intends to parent the child?
  - A. There is no legal procedure in place for the father to give such notice. As a practical matter, a father wishing to avoid an adoption can file a request for a restraining order. This is very effective in preventing the adoption from going forward until he has a full opportunity to be heard in court.  
The sole matter for determination under a petition for determination of rights is whether the alleged father has a right to object to an adoption as set out in Section 93-17-5(3)(4). Proof of an alleged father's full commitment to the responsibilities of parenthood would be, in accordance with his means and knowledge of the mother's pregnancy or the child's birth, that he either:
    - a) Provided financial support, including, but not limited to, the payment of consistent support to the mother during her pregnancy, contributions to the payment of the medical expenses of pregnancy and birth, and contributions of consistent support of the child after birth; that he frequently and consistently visited the child after birth; and that he is now willing and able to assume legal and physical care of the child; or

- b) Was willing to provide such support and to visit the child and that he made reasonable attempts to manifest such a parental commitment, but was thwarted in his efforts by the mother or her agents, and that he is now willing and able to assume legal and physical care of the child.
- 8. Can the birth father change his mind before signing the legal consents to the adoption?
  - A. Yes
- 9. Can a minor father independently sign legal documents placing the child for adoption (consent to the adoption)?
  - A. Yes. Any consent to adoption must be signed at least 72 hours after the birth of the child. See Miss. Code Ann ' 93-17-5 (1).
- 10. Can the birth father change his mind after signing the legal consents to the adoption?
  - A. Once the birth parents have surrendered their parental rights, they have no rights what-soever regarding the child. Their agreement or disagreement is irrelevant at that point.
- 11. Describe the process for doing an involuntary termination of a legal father or named birth father's rights.
  - A. Doing a diligent search as described in number 12. Publish in the newspaper the court of jurisdiction uses that rights will be terminated on all known and unknown putative fathers. Submitting to the court the Petition for Termination on all unknown or known putative fathers' rights. Waiting to see if there is a petition for determination of rights.
- 12. Describe the process for making a diligent effort to find the birth father if the birth mother knows the identity of the birth father but he cannot be located.
  - A. Sending a certified letter to last known address of the birth father, contacting any known relatives of the birth father, contacting all persons in phone book with same last name, checking with local law enforcement agencies for any known information, outstanding warrants, etc., checking with branches of military services for any information on known father. Then last you would publish in the Newspaper the court of jurisdiction uses that rights will be terminated on all known and unknown putative fathers.
- 13. Describe the process for termination the rights of the birth father in the event of a rape.
  - A. There is no specific provision of Mississippi law dealing with this situation. But refer to the process described in number 11 which would be conducted on all unknown fathers.

#### **ADOPTIVE PARENT RELATED**

1. Who can be an adoptive parent and who selects them?
  - A. Unmarried adults may adopt. Married couples may adopt as long as both of them join in the adoption petition. There is no official selection process in Mississippi. Adoption cases come before the court and the Judge either grants or denies the adoption. Many adoptions involve licensed adoption agencies. In that case, there are many other requirements to being approved as adoptive parents, including a home study. Most adoption agencies allow birth parents to participate in the selection of adoptive parents. Adoption by couples of the same gender is prohibited. See Miss. Code Ann. '93-17-3 (2).
2. What information about the birth parents and the child must be provided to the adoptive parents?
  - A. Mississippi law requires that the court be provided with the doctor's certificate, and a sworn statement listing the child's property and a four-page medical and history form. There is technically no requirement that any of this information be provided to the adoptive parents. Of course, good practice dictates that the adoptive parents are given as much information as possible, taking into account confidentiality.
3. What procedures are followed to ensure that adoptive parents are fit to adopt a child?
  - A. Once all legal requirements have been met, the only check on the fitness of the adoptive parents is that the court must find that the adoption is in the best interest of the child. As mentioned above, interstate adoptions and adoptions involving agencies will necessitate a home study.
4. Can the potential adoptive parents have the child placed with them prior to the actual court procedures?
  - A. Yes. Birth mothers routinely sign appropriate forms while in the hospital to allow the child to be released to the adoptive parents, even prior to the 72 hour limit.
5. Can the adoptive parents prevent the birth parents from communicating with the child after the adoption?
  - A. Yes. Court orders which specify visitation or communication are not enforceable.
6. Under what circumstances can an adopted child communicate with the birth parents?
  - A. The parties are free to agree to any type communication or visitation. Even if the adoptive parents agree, birth parents cannot force such communication or visitation period.
7. What information must the birth parents provide to the adoptive parents?
  - A. The medical and social history form must be filed with the adoption and also supplied to the state, but there is no method in forcing a birth parent to giving any substantive information. As practical matter, birth mothers routinely provide the

required information as a service to the court, the adoptive parents, the social worker, and their child.

8. Who supervises the adoptive placement and for how long?
  - A. There is no requirement for supervision. Certain interstate adoptions require that post placement visits be performed. Adoptions involving licensed adoption agencies typically will require some level of post placement supervision.
9. When is the adoption final?
  - A. The adoption is final when the Judge signs a Final Decree of Adoption. It is theoretically possible to finalize an adoption 72 hours and a few minutes after the birth of the child. They are usually done 5 or 6 days after the birth of the child if both parents consent.

Mississippi law provides for a 6 month waiting period prior to finalization. This waiting period is routinely waived, especially in infant adoptions. Interstate placements will often necessitate a longer period of time to deal with the appropriate paper work.

## **OTHER ADOPTION RELATED QUESTIONS**

1. Who initiates the adoption process?
  - A. As a practical matter, children available for adoption are very scarce. Thus, there are many adoption agencies, attorneys, doctors, adoption facilitators, and childless couples actively looking for children to place for adoption. A pregnant woman willing to discuss adoptions will find herself with no shortage of offers.
2. When are the legal adoption papers filed with the court?
  - A. Typically, the defining event is obtaining consent from one or both parents. An adoption is typically filed after the consents are obtained.
3. Can the baby be placed for adoption without the consent of the birth mother and/or birth father?
  - A. Yes. The most common situation would be where the child has been taken away from the natural parents by the Department of Human Services or placed at a private residential facility by the parent. Then, a separate action can be instituted against the natural parents to terminate their parental rights. The child can be placed with potential adoptive parents at some point during this process. Often, in cases involving the Department of Human Services, foster parents adopt a child that has been placed in their care months or years previously.
4. What happens if the birth parents do not agree on the adoption plan?
  - A. Presumably, an adoption agency or the potential adoptive parents have filed a Termination of Parental Rights procedure, or an adoption. If one or both parents disagree with the adoption, the burden will be on the agency or the adoptive parents to present proof in court sufficient to terminate their parental rights.
5. Who can charge a fee for bringing birth parents and adoptive parents together?
  - A. Only adoption agencies licensed by the Mississippi Department of Human Services are authorized to charge a fee for this service. See Miss. Code Ann. § 43-15-23 (2).
6. Is the use of a non-licensed facilitator, non-licensed child-placing agencies, permitted to match adoptive families and birth families?
  - A. There are no restrictions on who can match adoptive families and birth parents. However, only licensed agencies can charge a fee for providing these services. (see #5 above)
7. Are independent adoptions allowed?
  - A. Yes.
8. How are independent and agency adoptions different?

- A. Agency adoptions involve a lengthy and relatively expensive screening procedure for potential adoptive parents. Agencies typically offer a much higher level of services to birth parents, including counseling, medical care or even room and board at a maternity care center.

Independent adoptions, by definition, are simply adoptions that do not involve an adoption agency. These range from very simple adoptions to very complicated and expensive interstate adoptions. A simple independent adoption might involve the adoption of a child by their grandparents where both natural parents consent. The entire court file might only contain 12 or 15 pages. There is no home study, no waiting period, and very little investigation into the situation. An example of a complicated independent adoption would involve an interstate placement where the adoptive parents travel to another state, pick up the child from the hospital, wait for approval from both states before traveling home (the Interstate Compact for the Placement of Children) and finalize the adoption in their home state. Attorneys from both states will likely have to be hired. ICPC approval would require that a home study be done and many other documents provided.

9. How does an adoptee go about requesting access to their adoption file?

- A. The Mississippi Bureau of Vital Records maintains adoption records. Birth parents can file affidavits authorizing or prohibiting contact with the adopted child. A procedure is set out in the Mississippi Confidentiality Act. Miss. Code Ann. '93-17-201 et seq. specifies how an adopted child goes about attempting to contact a natural parent. This is essentially how an adoptee requests the information contained in an adoption file.

The adopted child (presumably now an adult) makes their request to a licensed adoption agency. The adoption agency then conducts a search, unless the natural parents file an affidavit prohibiting such a search. Medical information and identifying information may be requested of the birth parent, if they can be found. Details of how the search is conducted are found in Miss. Code Ann. '93-17-209 thru 223.