



# **REDSTONE LEGAL BRIEF**

A Preventive Law Service of The Office of the Staff Judge Advocate  
Redstone Arsenal, AL  
*Keeping You Informed On Personal Legal Affairs*



## **Adoption**

### **THIS HANDOUT**

is provided for general information purposes; it does not constitute legal advice. If you have specific questions, call 876-9005 to make an appointment with a legal assistance attorney.

**[REVISED OCTOBER 2014]**

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## **A. INTRODUCTION.**

This handbook is designed to give you the basic understanding of the adoption process. Although it may contain most of the needed information, an attorney should be consulted on this process.

## **B. THE ROLE OF THE LEGAL ASSISTANCE ATTORNEY.**

In order to adequately serve our clients, the commanders, and other support agencies on post, and also serve the needs of our legal assistance clients on Federal Law and Alabama Law, AR 27-3 limits the role of the legal assistance attorney. Although we are prohibited from representing you in a civilian court due to a lack of licensed civilian attorneys, or preparing documents to be submitted to a civilian court, we will be happy to refer you to a civilian attorney, from the state you are bringing forth a suit.

## **C. COUNSELING SERVICES.**

### **1. Department of Human Resources**

Although DHR may be a valuable information tool of the adoption process, they specialize in the adoption of children placed in foster homes or abandoned children.

### **2. Civilian Attorneys**

Civilian Attorneys may specialize in the adoption process and may have other information that may meet your individual situation.

### **3. Adoption Placement Agencies**

There are several adoption placement agencies in the area, there are those who deal in specific areas of adoption from those around the local area, the United States as well as overseas locations. The attached agency listing may be helpful with any questions.

### **4. Chaplain**

The Chaplain is a great source for support and counseling in all areas of family support. The Chaplain may counsel the new family during the adjustment period as well as other issues that need addressing.

## **D. ADOPTION**

### **1. Who may adopt. [Alabama Code § 26-10A-3 (1975)]**

Any adult person, husband and wife jointly who may petition the court to adopt a Minor.

(a) No rule or regulation of the Department of Human Resources may prevent a single person from adopting solely because he/she is single, or prevent adoption because a person is of a certain age.

(b) No rule or regulation of the Department of Human Resources shall prevent a person who is employed outside of the home from adopting. However, the Department of Human Resources may exercise sound discretion in requiring person/persons to remain in the home for a minor child for a reasonable amount of time, when a particular minor child requires the presence of that person/persons to ensure his/her adjustment. Provided, however, that said period of time shall not exceed 60 consecutive calendar days.

**2. Who may be adopted.** [Alabama Code § 26-10A-6 (1975)]

Any minor (under the age of 19) may be adopted, provided consent is relinquished by at least one or more parents.

**E. ADOPTION PROCEDURES**

**1. Consent**

Voluntarily agreeing to adoption.

(a) A person from who consent is required.

(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.

(2) The adoptee's mother;

**(3) The adoptee's presumed father, regardless of paternity;**

if

a) He and the adoptee's natural 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 solemnize in apparent compliance with law, although the attempted marriage is or could be declared invalid, and,

1) If 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 or declaration of invalidity, or divorce; or

2) If the attempted marriage is invalid without a court order, the adoptee was born with 300 day of cohabitation; or

3) 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

a) With his knowledge or consent he was named as the adoptee's father on the adoptee's birth's certificate; or

(b) He is obligated to support the adoptee pursuant to a written voluntary promise or agreement or by court order; or

(c) He received the adoptee into his home and openly held out the adoptee as his own child;

(1) 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 interest of the adoptee and there is a finding that the agency has reasonably withheld its consent; and

(2) The putative father if made known by the mother or is otherwise made known to the court provided he responds within 30 days of notice he receives.

(b) Implied Consent. [Alabama Code § 26-10A-9(1975)]

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 provisions 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 proceedings under Section 26-10A-17 and failing to answer or otherwise respond to the petition within 30 days.

(c) A person whose consent is not required. [Alabama Code §26-10A-10(1975)]

(1) A parent whose right with reference to the adoptee have been terminated by operation and in accordance with the Alabama Child Protection Act.

(2) A parent who has been adjudged incompetent pursuant to law or a parent whom the court finds to be mentally incapable of consenting of relinquishment and whose mental ability 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 and incompetent parent for whom there has been no such prior appointment;

(3) A person 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 known, unless the natural father is otherwise made known to the court.

## 2. Court Proceeding

### (a) **Filing a petition** [Alabama Code §26-10A-16 (1975)]

(1) A petition must be filed with the clerk of the court within 30 days after the minor is placed with the prospective parent or parents, unless the Department of Human Resources or a licensed child placing agency except that a petition for good cause shown may be filed beyond a 30 day period. The petition shall be signed and verified by each petitioner.

(2) The petition shall be accompanied by a copy of the child's birth certificate or affidavit stating that the application has been made except in cases where the child has been abandoned.

### (b) **Acquired Consent, if necessary.** [Alabama Code §26-10A-11 (1975)]

According to section 5A of this handout determine which type of consent is needed, if necessary. The filing of consent to the child's adoption by the natural parents who would give such consent. In some states, a child over a certain age, such as 12 (in Alabama), must also consent to his or her own adoption.

### (c) **Investigation process.** [Alabama Code §26-10A-19 (1975)]

(1) The State Department of Human Resources may collect a fee of \$300 for the investigation process of an adoption where an investigation is necessary. (Excluding a stepparent or relative to those adoptions occurring within an adoption agency by the Department of Human Resources, in which the parental rights have been relinquished.

(2) The investigation will consist of background and home investigation of the parent(s), as well as the determination of the relationship between the adoptive child and prospective parents. Reports of recent medical examinations of the child and parents, including any other pertinent information are also included.

### (d) **Adoptive parents receive the child temporarily.**

Upon completion of the investigation, a temporary court order may be issued giving the adoptive parents custody of the child, until the finalization of the adoption is complete.

The final decree and the responsibility for the care, maintenance and support of the adoptee, including any necessary medical or surgical treatment shall be pending further court order.

### (e) **Finalization of the adoption.** [Alabama Code §26-10A-25 (1975)]

The final step in the adoption process, the final decree or dispositional hearing, the court may grant a final decree of adoption if it finds 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;

(2) All necessary consents, relinquishments, terminations or waivers have been obtained and if appropriate, have been files with the court;

(3) Service of the notice of pendency of the adoption proceedings has been made or dispensed with as to all persons entitled to receive notice under [Alabama Code §26-10A-17 (1975)];

(4) All contests brought under [Alabama Code §26-10A-24 (1975)] have been resolved in favor of the petitioner;

(5) Each petitioner is a suitable adopting parent and desires to establish a parent and child relationship between himself and the adoptee;

(6) The best interest of the adoptee is served by the adoption; and

(7) All other requirements have been met.

**F. Legal rights to:**

**1. Withdrawal of consent.** [Alabama Code §26-10A-14 (1975)]

The consent or relinquishment may not be withdrawn except;

(a) Within 5 days of signing petition as stated in §26-10A-13 of the Alabama Code.

(b) At the time until the final decree upon showing the consent or relinquishment was obtained by fraud, duress, mistake, or undue influence on the part of the petitioner or his agent or agency to whom the benefit it was given.

1) The petition must be in writing by the person wishing to withdraw consent and signed by 2 witnesses.

2) The withdrawal of consent by the petitioner must be affirmed with facts and submitted by the court. If the court directs that the consent or relinquishment to be withdrawn the court shall order the minor restored to the custody of his or her parents, the Department of Human Resources or a licensed child placing agency; otherwise, the court shall deny the withdrawal and declare that the consent or relinquishment is final and binding. Any other order by the court upon a petition to withdraw consent or relinquishment under this section shall be deemed a final order for the purpose of filing an appeal under section.

**2. Placing children for adoption.**

(a) Only a parent,

(b) A parent of a deceased parent or a relative of the degree of relationship specified in [§26-10A-28 of the Alabama Code (1975)],

(c) The Department of Human Resources or a licensed child placing agency, or

(d) An agency of an approved by the Department of Human Resources may place a child for adoption.

Surrogate motherhood is not intended to be covered in this section.

### **3. Adoption fees and charges.**

(a) No person, organization, group, agency, or any legal entity may accept any fee whatsoever for bringing the adopting parents together with the adoptee or the natural parents. This violation is punishable by law, under [Alabama Code §26-10A-33 (1975)].

(b) Prior to payment, the petitioners must file with the court a full accounting of all charges for expenses, fees or services they or persons acting on their behalf will be paying relating to the adoption. Payment may be made only with the court approval except that fees may be placed in an escrow account prior to court approval. The court may not refuse to approve a fee for documented services on the sole basis that the child has not been placed. The court shall approve all reasonable fees and expenses unless determined by the court to be unreasonable.

(c) The petitioner may sign a sworn affidavit of the accounting to the fees and charges, and must swear that no moneys or other things of value have been received for giving the minor child up for adoption.

(d) In addition for penalties for perjury, the above shall be punishable under [Alabama Code §26-10A-33 (1975)].

### **ADOPTION SERVICES**

Adoption Placement  
(205) 367-8184

Catholic Social Services  
(334) 793-3601

Friends of Adoption  
(205) 870-7093

Resources Agape  
(334) 393-1990  
(800) 276-5826

Villa Hope (assisting in U.S. and Overseas Adoption)  
(205) 870-7359