

**TENNESSEE CLERKS OF COURT CONFERENCE**  
**JUNE 16, 2011**  
**CHATTANOOGA, TENNESSEE**  
**ADOPTION ISSUES**

I. TERMINATION OF PARENTAL RIGHTS

- A. Jurisdiction: Surrenders can be heard in Juvenile, Circuit or Chancery Court [TCA Section 36-1-111(b)]. Involuntary termination actions may also be filed in all three courts [(TCA Section 36-1-113(a)].
- B. Surrenders:
1. Certified copies of executed surrenders are to be given to the birth parent, as well as the adoptive parents (or the agency representative, if the surrender is to an agency) [TCA 36-1-111(p)].
  2. Any cost for providing a certified copy of the surrender may only be taxed to the person or agency who received the surrender.
  3. No court costs or litigation tax can be assessed for the surrender itself.
  4. The Court is to maintain a special docket for surrenders.
  5. The original surrender is to be (a) permanently filed by the Court in a separate file, (b) shall not be inspected by anyone without written approval of the court, (c) certified and a copy of which should be sent to the state adoption unit within five days, and (d) sent to (i) the court where the adoption petition or petition to terminate parental rights is filed (upon request) and (ii) DCS or the private agency or LCSW or who is performing any service related to the adoption (upon request). Note that the cost of any certified copies will be assessed against the requesting party unless the requesting party is DCS, a private agency or LCSW who is “responding to an order of reference from the court.”
  6. In the event a Tennessee surrender form is used in another state, a foreign country, or a state or federal penitentiary, the party to whom the child is surrendered is to file a certified copy of the surrender in the chancery, circuit or juvenile court of the county which is his or her residence, in which event the surrender is to be processed by the clerk just as if the surrender was taken

before that clerk's judge [TCA Section 36-1-111(q)].

- C. Waivers: A biological father who is not a legal father (a "legal father" is generally a husband or a man identified in a court order or a birth certificate as the father) can sign a voluntary waiver of interest that will serve to irrevocably terminate his rights. That waiver is signed in front of a notary (not a judge) and can be signed at any time during the pregnancy or after birth [TCA Section 36-1-111(w)(i)].
- D. Consents:
  - 1. Relative Adoption. A biological parent who is related to the child within certain degrees (most commonly in adoptions involving grandparents, stepparents, aunts or uncles or siblings) can join in an adoption petition as a co-petitioner. The act of joining in the adoption petition is a complete termination of the co-petitioner's parental rights, no further notice is to be afforded to the consenting relative, and their attendance at the subsequent adoption hearing is not required [TCA Section 36-1-117(f)].
  - 2. Non-Relative Consent. Where there is no biological relationship between the adopted child and the adopting parents, a biological parent can join in the adoption petition to provide their consent. This is commonly done when there are questions about the ability of the adoptive parents to terminate the rights of the other biological parent. The act of joining in the petition, however does not affect the parental rights of the consenting party, which then must subsequently be terminated through a "confirmation" hearing. A separate form is used for this purposes, which is substantially identical to the surrender form (TCA Section 36-1-117(g)).
- E. Guardianship Orders: Unless there is a prior court order of custody or guardianship in favor of the person or entity to whom a surrender or parental consent is executed, that party has thirty days to obtain an order of partial or complete guardianship. The statute requires (a) that the clerk maintain a "separate adoption order of guardianship minute book," and (b) that the minute book "be kept locked and available for public view only upon written approval of the Court" [TCA Section 36-1-111(r)(2)(B)]. The motion of guardianship and any resulting order shall be sent by the clerk to the DCS adoption unit in Nashville [TCA Section 36-1-111(r)(6)(D)].
- F. Order of Confirmation: A certified copy of any order of confirmation in any case must be sent to the DCS adoption unit in Nashville [TCA Section 36-1-117(g)(6)].
- G. Service by Publication: Permitted when "accompanied by an affidavit of the petitioners or their legal counsel attesting, in detail, to all efforts to determine the identity and whereabouts of the parties against whom substituted service is sought." [TCA Section 36-1-117(M)(3)].

## II. ADOPTIONS

### A. Jurisdiction:

1. Only circuit and chancery court have jurisdiction to accept an adoption filing [TCA Section 36-1-115(a)].
2. Upon filing, a certified copy of the adoption petition is to be sent within three business days after filing to (1) the DCS adoption unit in Nashville and (b) to any person or entity named in an order of reference filed with the petition [TCA Section 36-1-116(c)].

### B. Time Issues:

1. Hearings - 6 month waiting period. Adoption should not be heard before the petition has been on file for six months UNLESS:
  - a. The child has already been in the home for 6 months and the court waives waiting period,
  - b. The adoption is a relative adoption;
  - c. The adoption is a re-adoption (child previously adopted overseas), or
  - d. The adoption is an adult adoption.  
TCA Section 36-1-119
2. Dismissal for Non-Prosecution. Unless there is an appeal, court “must complete or dismiss the adoption proceeding by entering a final order within one (1) year of the filing of the petition, unless the petitioner shows good cause why such final order should not be entered.”

### C. Effect on Other Proceedings: Upon the filing of an adoption petition, the adoption court “shall have exclusive jurisdiction of all matters pertaining to the child, except for delinquency, unruliness or truancy matters.” TCA Section 36-1-116(f). Existing custody, guardianship or visitation actions are to be suspended. Any pending parentage action is to be transferred to the adoption court. TCA Section 36-2-307(c).

### D. Final Adoption Decree:

1. A certified copy of the final adoption decree and any attorney or agency fee affidavits filed in the case are to be sent to the DCS adoption unit in Nashville [TCA Section 36-1-120(e)].
2. By statute, the clerk should also send to the Tennessee Vital Records Office a “certified copy of the order” or a “certified certificate of adoption” (in practice, you should send both). In the case of a child born overseas, a Report of Foreign Birth would be used instead of a Certificate of Adoption (see

attached forms, pgs. 7 & 8; <http://health.state.tn.us/vr/downloads.htm>).

3. The cost of certifying the final decree can be assessed to the petitioners.
4. Contested Termination Time Issues:
  - a. A contested termination case “shall be given priority in setting a final hearing . . . and shall be heard at the earliest possible date over all other civil litigation other than child protective services cases . . .” [TCA Section 36-1-124(a)].
  - b. The trial court is to “ensure that the hearing on the petition takes place within six (6) months of the date the petition is filed.” The trial court than must “enter findings of fact and conclusion of law within 30 days of the hearing.” [TCA Section 36-1-113(k)].

E. Re-Adoptions (TCA Section 36-1-106):

1. 2005 amendment provides a procedure whereby a re-adoption decree can be granted *without a hearing* where the United States Government recognizes the foreign adoption as a final adoption. The key here is the child’s visa stamp—is it an IR-3 or IH-3 stamp (vs an IR-4 or IH-4 stamp)? (see attached examples, pg. 9).
2. For a re-adoption where a child has a IR-3 or IH-3 visa stamp, the statute now specifies that the following documents be filed with the Clerk:
  - a. The re-adoption petition;
  - b. A copy of the decree, order or certificate of adoption that evidences finalization of the adoption in the foreign country;
  - c. A “certified translation” of the same (if the foreign decree is not in English); and
  - d. Proof of full and final adoption from the United States Government (this requirement is satisfied by the IR-3 or IH-3 visa stamp).

With the above-documents in hand, the Clerk is directed to (a) “assign a document number” and (b) file and enter the documents . . . “with an order recognizing such foreign adoption without the necessity of a hearing” (emphasis mine).

3. A re-adoption with an IR-4 or IH-4 visa stamp requires the same documentation, but a hearing is required before the Judge can enter the re-adoption order.

### III. APPEALS

T.R.A.P. 8A provides for expedited appeals in termination of parental rights cases (see attached summary, pg. 10).

### IV. ADOPTION RECORDS

A. Confidentiality of Records (TCA Section 36-1-125): All court filings in the context of a surrender or an adoption action, as well as the information in those filings, is confidential and may not be disclosed. Their use outside of any legal proceeding other than the adoption proceeding or termination of parental rights proceeding are only permitted in conjunction with a protective order restricting further disclosure or dissemination. Unauthorized disclosure is a Class A misdemeanor. An unauthorized disclosure for “personal gain or for a malicious purpose” is a Class E felony.

B. Sealing of Records (TCA Section 36-1-126):

1. All court records are to be sealed (i) after the entry of a final order of adoption; (ii) after the entry of a final order dismissing the adoption; (iii) after the entry of an order revoking a surrender or parental consent; (iv) after the entry of an order dismissing a termination of parental rights proceeding filed in conjunction with an adoption proceeding; or (v) upon conclusion of all termination of parental rights proceedings that were filed in conjunction with an adoption proceeding.
2. Prior to sealing the record, a certified copy of the dispositive order shall be forwarded to the DCS adoptions unit in Nashville.
3. In the event of an appeal of any ruling of the trial court in an adoption proceeding, the clerk is to “place the court’s record of the adoption proceedings in a sealed file in a locked file or other secure depository . . .” The records are to “remain confidential” and shall not be open to inspection by anyone other than the trial or appellate courts, the clerk, the parties to the proceeding, or the licensed child-placing agencies or the licensed clinical social worker . . . that have been involved in the case.”

C. Access to Records (TCA Section 36-1-127):

1. Pre-March 16, 1951 Records. All pre-March 16, 1951 adoption records and all records of adoptions involving the Tennessee Children’s Home Society are open to adoptive persons and birth relatives and relatives by adoption.

2. Post-March 16, 1951 Records.
    - a. 1996 legislation;
    - b. For adoptive persons 21 years or age or older;
    - c. Records not open if the birth mother was a victim of rape or incest (unless she consents to disclosure);
    - d. No home study information is to be provided.
  3. Any person who is eligible to receive record access must submit a request for access through the DCS post-adoption unit in Nashville in order to obtain written authorization to access the record.
  4. Access to Final Adoption Decree. Notwithstanding the foregoing, the clerk of the adoption court must give to the adopted person, the adoptive parents or their attorneys "upon their request at any time," certified copies of any adoption or readoption decree or any final order dismissing an adoption proceeding. The requesting party must first furnish to the clerk verification of their identity [TCA 36-1-120(h)]. (See attached form order used by Hamilton County Circuit Court, pg. 11)
- D. Clerk Happy Face Provision: Tenn. Code Ann. 36-1-122 provides in part as follows: "The failure of the clerk of the court . . . to perform any of the duties or acts within the time requirements of this part shall not affect the validity of any adoption proceeding."

V. KEY CONTACT INFORMATION

- A. **For State Adoption Forms and to send Required Pleadings:**  
State Office of Adoption Services  
Department of Children's Services  
Attention: Adoption Services  
8th Floor, Cordell Hull Building  
436 Sixth Avenue, North  
Nashville, Tennessee 37243-1290
- B. **For Record Release Information:**  
Same Address, except sent  
"Attention: Post Adoption Services"



**STATE OF TENNESSEE**  
**DEPARTMENT OF HEALTH, OFFICE OF VITAL RECORDS**  
**CERTIFICATE OF ADOPTION**

**INSTRUCTIONS: USE BLACK INK OR TYPEWRITER TO COMPLETE THIS FORM. DO NOT USE WHITEOUT OR ANY ERASURE.**

Part I should be completed and signed by the adopting parents. Parts II and III should be completed by attorney, clerk of court, or child placing agency. When the final decree of adoption has been entered, the clerk of court shall enter his/her certification in Part IV, affix the seal of the court, sign, and forward to **Tennessee Vital Records, Central Services Building, 1<sup>st</sup> Floor, 421 5<sup>th</sup> Avenue North, Nashville, TN 37243**. If the child was born in another state or U. S. Territory, the office will forward to the proper state. If the child was born in Tennessee, enclose the fee of \$30.00 for preparation of a new birth record. The fee entitles applicant to one certified copy of the new birth certificate. Additional copies may be obtained at the same time for \$5.00 each. Make check or money order payable to **Tennessee Vital Records**.

**INFORMATION AFTER ADOPTION**

<p><b>PART I</b></p> <p>All items must be completed so that the new birth certificate will show all essential data</p> <p>Adoptive parents should verify all personal data for accuracy and sign this form before Part II is completed.</p>	Full name of child after adoption, as decreed by court.		
	<b>ADOPTIVE FATHER</b> Were you related to this child prior to adoption? <input type="checkbox"/> Yes <input type="checkbox"/> No If so, what is your relation? _____		Full Name of Father
	Date of Birth (Mo/Day/Year)	State or Foreign Country of Birth	Social Security Number
	<b>ADOPTIVE MOTHER</b> Were you related to this child prior to adoption? <input type="checkbox"/> Yes <input type="checkbox"/> No If so, what is your relation? _____		Full Legal Name of Mother
	Maiden Surname of Mother		
	Date of Birth (Mo/Day/Year)	State or Foreign Country of Birth	Social Security Number
	Adopting mother's mailing address at time of the adoption (Street, Number, City, State and Zip Code)		County of Residence
	I have reviewed the information entered in Part I and verify that it is accurate. <b>Note:</b> When the spouse of the child's biological parent (i.e. child's stepparent) is the adopting parent, both the stepparent and biological parent should complete Part I.		
Mother's Signature _____		Date _____	
Father's Signature _____		Date _____	
Do you want a new birth certificate prepared? <input type="checkbox"/> YES <input type="checkbox"/> NO. If a single parent adoption: Do you want the word "Adoption" to be entered in the space provided for the other parent? <input type="checkbox"/> YES <input type="checkbox"/> NO			

**INFORMATION ABOUT CHILD BEFORE ADOPTION**

<p><b>PART II</b></p> <p>This information is used to locate the child's original birth record.</p> <p>If the child was previously adopted, please give the adoptive parents' names.</p>	Name of Child at Birth	Sex <input type="checkbox"/> Male <input type="checkbox"/> Female	Birth Certificate No. (if known)
	Date of Birth (Mo/Day/Year)	Place of Birth (Hospital, City, State)	
	Full Maiden Name of Mother	Full Name of Father	

<p><b>PART III</b></p> <p>MAILING ADDRESS AND TELEPHONE NUMBER</p>	Please include \$30.00 fee to process request, additional copies maybe obtained at the same time for \$5.00 each. Make check or money order payable to <b>TENNESSEE VITAL RECORDS</b> . Enter the address to which the birth certificate should be sent.		
	NAME: _____		
	ADDRESS: _____		
	CITY, STATE, ZIP CODE: _____		
DAYTIME PHONE NUMBER: (      ) _____			

**CERTIFICATION OF CLERK OF COURT**

<p><b>PART IV</b></p> <p>COURT SEAL</p>	State of <b>TENNESSEE</b>	County of _____	Docket Number _____	Date of Decree _____
	I hereby certify that there was a final decree of adoption entered by _____ Court of this county on this the _____ day, _____, in the year _____, which adjudged that the child named in Part I is deemed to be the lawful child of the adoptive parents identified in Part I.			
	Clerk's Signature _____			Date _____



Tennessee Department of Health  
**OFFICE OF VITAL RECORDS**

**Application for Report of Foreign Birth for Adopted Child**

Full **adoptive** name of child: \_\_\_\_\_

Place of birth: \_\_\_\_\_

Date of birth: \_\_\_\_\_ Sex of Child: \_\_\_\_\_ Male \_\_\_\_\_ Female

Full name of adoptive Father: \_\_\_\_\_

Full maiden name of adoptive Mother: \_\_\_\_\_

Legal residence of **adoptive parents** at the time of the adoption:

\_\_\_\_\_  
City County State

We, the above named parents, hereby certify the information given above is correct.

Father's signature: \_\_\_\_\_ Date: \_\_\_\_\_

Mother's signature: \_\_\_\_\_ Date: \_\_\_\_\_

Mailing address: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Name of Court: \_\_\_\_\_

Clerk's signature: \_\_\_\_\_ Date: \_\_\_\_\_

Please remit the fee of \$30.00 to prepare the report and issue one certified copy. Additional certified copies may be obtained at this time for \$5.00 each. Check or money order should be made payable to Tennessee Vital Records.

Also include the certified copy of the court order. Mail all documents and the required fee to:

Office of Vital Records  
421 5<sup>th</sup> Avenue North  
1<sup>st</sup> Floor Central Services Building  
Nashville, TN 37243

(SEAL)





**IMPORTANT DEADLINES UNDER NEW PARENTAL TERMINATION RULE  
T.R.A.P. 8A (EFFECTIVE JULY 1, 2004) AS RELATED TO THE DUTIES  
OF THE TRIAL COURT CLERKS**

On January 15, 2004, the Tennessee Supreme Court adopted a new rule of appellate procedure - T.R.A.P. 8A - providing for expedited appeals in termination of parental rights cases. The new rule will become effective July 1, 2004. T.R.A.P. 8A shortens the time to prepare and file the record with the Court of Appeals as follows:

Event	New Deadlines In Days From Prior Event	Total Number Of Days
Trial Court Judgment		0
Notice of Appeal	30	30
Transcript Filed	45	75
Objections Period	10	85
Record Approved by Trial Judge	20	105
Trial Clerk Transmits Record	5	110

Under the new rule if a transcript or statement of the evidence is not filed within 45 days, the clerk of the trial court must notify the clerk of the appellate court of that fact **in writing** within 10 days. In addition to establishing time frames, T.R.A.P. 8A also explains which documents go into the technical record and which do not. In particular, T.R.A.P. 8A states that in addition to the documents excluded by T.R.A.P. 24(a), “any portion of a juvenile court file of a child dependency, delinquency or status case that has not been properly admitted into evidence at the termination of parental rights shall be excluded from the record.” Therefore, the documents from the dependency and neglect case (such as the custody petition, order of adjudication, etc.) are not part of the technical record. This is a brief overview of the new rule, if you have any questions, call Mike Catalano, the Appellate Court Clerk, at his Nashville Office (615-741-1314).

IN THE CIRCUIT COURT OF HAMILTON COUNTY, TENNESSEE

IN RE  
(ADOPTEE)

PLAINTIFF

DOCKET NO.

VS

DIVISION NO.

DEFENDANT

ORDER

It appearing to the Court upon proof being furnished of the verification of the identity of the requesting person that the party is either the adoptee, the adoptive parent(s) or their attorney, hereinafter referred to as "Requesting Party" in the adoption proceeding, the Circuit Court Clerk may release to the requesting party a certified copy of the Final Decree of Adoption, Re-Adoption or Final Orders dismissing such adoption proceedings, it is therefore

ORDERED that pursuant to TCA 36-1-120 (h) the Circuit Court Clerk may release to \_\_\_\_\_ the "Requesting Party" a certified copy of the Final Decree of Adoption, Re-adoption or the Final Order dismissing such adoption proceedings.

ENTERED this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

\_\_\_\_\_  
JUDGE