

TITLE IX

CHOCTAW DOMESTIC RELATIONS CODE

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CHAPTER 1. MARRIAGE

§9-1-1 Recognition of Previous Marriage

Indian marriages consummated before the effective date of this title, whether according to the laws of the State of Mississippi or Choctaw Tribal custom, are declared valid for all purposes under this Code. Marriages according to Tribal custom are recognized as being either by the traditional ceremonial observation or by mutually manifested course of conduct within the Indian community expressive of the intent of a couple to be regarded as husband and wife.

§9-1-2 Marriage by Laws of Foreign Jurisdiction

Marriages consummated under the laws of a foreign jurisdiction shall be accorded the same legal status in this jurisdiction as in the jurisdiction where consummated.

§9-1-3 Subject Matter Jurisdiction

The Choctaw Court shall have subject matter jurisdiction to determine the existence and duration of any marriage relationship in any action properly before the court wherein the validity or duration of such marriage is placed in issue.

§9-1-4 Marriage – General Definition

Marriage, for all purposes, shall be defined as a personal relationship arising out of a civil contract to which the consent of parties capable of making it is necessary.

§9-1-5 Invalid Marriages; Incest

Marriages between ancestors and descendants of every degree, between a stepfather and stepdaughter or between a stepmother and a stepson, between brothers and sisters, aunts and nephews, uncles and nieces, and between first cousins or second cousins, whether the relationship is of the half or whole blood and legitimate or illegitimate, shall be void.

§9-1-6 Invalid Marriages; Bigamy

The marriage of any person already lawfully married to another living spouse shall not be valid unless the former marriage has been annulled or dissolved or unless the spouse has been absent and not known to be living for a period of seven years immediately prior to the subsequent marriage.

§9-1-7 Marriage Under this Title

Marriages entered into within this Tribal territorial jurisdiction, after the effective date of this title, in order to be valid, shall be in conformity with one of the following:

- (1) tribal licensing procedures for marriages, as set forth hereafter in this title;

- (2) tribal custom ceremonial marriage; or
- (3) the laws of the State of Mississippi.

§9-1-8 Marriage by Tribal Law

After the effective date of this Title, marriages by Tribal law shall be consummated by:

- (1) the consent of the parties capable of giving same;
- (2) the issuance of a Tribal marriage license in accordance with §9-1-10 of this title; and
- (3) the solemnization of the marriage within the territorial jurisdiction of the Tribal court by the person authorized under §9-1-12 of this title.

§9-1-9 Tribal Marriage License; Application For

- (1) Application for the issuance of a marriage license shall be made in writing before the Secretary to the Tribal Chief, shall be sworn to by both applicants, and shall include the names, ages and addresses of the parties applying, as well as the names and addresses of the parents of the parties applying, or, if no parents, then the names and addresses of the guardian or next of kin. The application shall remain on file, open to the public, at the Office of the Tribal Chief not less than three days prior to the issuance of any license.
- (2) Applicants who are at least sixteen (16) years of age but less than eighteen (18) years old shall be provided, upon completion of the license application, with a written consent form containing an agreement to support the minor party and any children thereof until termination of the applicant's minority which must be signed before a notary public by the applicant's parents or other legal guardian and filed at the office of the Tribal Chief prior to the issuance of any certificate.
- (3) Except as otherwise provided in §9-1-10(3), no license shall issue to any applicant under the age of sixteen (16) years.

§9-1-10 Tribal Marriage License; Issuance of

It is unlawful for any Tribal marriage license to be issued unless:

- (1) Application shall have been made in accordance with §9-1-9 of this title and have remained on file at the office of the Tribal Chief for not less than three (3) days nor more than sixty (60) days;
- (2) A medical certificate dated within thirty (30) days prior to the application shall be presented to the secretary to the Tribal Chief showing that the applicants are free from venereal disease, as nearly, as can be determined by a blood test performed by a medical laboratory or licenses physician; and
- (3) Applicants are at least eighteen (18) years of age, or at least sixteen (16) years of age and have obtained and filed the requisite parent or guardian consent form; provided, however, that if satisfactory proof is furnished to the Tribal court judge that sufficient reason exists

and that the parties desire to be married to each other, then the Tribal court judge may waive the minimum age requirement, the requirement of parental consent, and/or the three-day waiting period and by written decree direct the secretary to the Tribal Chief to issue the marriage license in question. The grounds for any authorization so obtained shall be a part of the confidential files of the Clerk of the Court, subject to inspection only by written permission of the judge.

§9-1-11 License Essential

No marriage may be contracted or solemnized under §9-1-7(1) or (4) of this title unless a state or Tribal license shall first have been duly issued. No irregularity in the issuance of, or omission, in the license shall invalidate any marriage, nor shall this section be construed as invalidating any marriage that is otherwise good under §9-1-7(2) or (3) of this Title.

§9-1-12 License and Solemnization Required

- (1) No marriage contracted after the effective date of this title shall be valid under §9-1-7(1) of this title unless the contracting parties shall have obtained a marriage license as heretofore provided by this title and unless also the marriage, after such license shall have been duly issued therefore, shall have been solemnized within this territorial jurisdiction by the Tribal Chief, any member of the Tribal Council, any ordained minister, priest, rabbi or other spiritual leader of any religious body authorized under the rules of such religious body to solemnize rites of matrimony and being in good standing, or any Tribal court judge.
- (2) Nothing contained in this section shall be construed to affect the validity of any marriage under §9-1-7(2), (3), or (4) of this title.

§9-1-13 Transmittal of Marriage Certificate to Clerk

- (1) A certificate of marriage under §9-1-7(1) of this title signed by the Tribal Chief, member of the Tribal Council, religious leader, or Tribal court judge celebrating the same, shall be transmitted by such solemnizing officer within one month thereafter to the secretary to the Tribal Chief for recording.
- (2) Every Chief, Council member, religious leader, or judge failing to transmit such certificate to the issuing secretary within the time prescribed shall forfeit and pay to the secretary who issued the license and to each of the parties whose marriage was solemnized a forfeiture of twenty-five dollars (\$25.00); such payment to be enforceable by order of the Tribal Court.

§9-1-14 Recording of Marriage

A permanent record of all certificates of marriage issued under the provisions of this title shall be maintained in a permanent bound book open for public inspection by the secretary to the Tribal Chief, who shall also forward not less than quarterly to the Choctaw Agency notice of all marriages recorded therein during the previous quarter.

CHAPTER 2. ANNULMENT

§9-2-1 Grounds for Annulment

- (1) A marriage may be annulled by the Choctaw Court for any of the following reasons upon application of one of the parties:
 - (a) that the marriage lacked the consent of the party making application or of another person legally required to consent to such party's marriage, or that such consent was obtained by force or fraud;
 - (b) that the marriage was invalid under one of the grounds set forth in §9-1-5 or 9-1-6;
 - (c) that the party making application was of unsound mind at the time of the marriage; or
 - (d) that either party was, at the time of the marriage, incapable of consummating the marriage and the incapacity is continuing.
- (2) If, after the termination of any of the foregoing defects, the parties shall continue to live together as husband and wife, the marriage shall not subsequently be subject to annulment because of such defect.

§9-2-2 Effects of Annulment

The legitimacy of children born prior to a judgment of annulment shall not be affected by the judgment. The judgment shall be conclusive only as against the parties to the action and those claiming under it.

CHAPTER 3. DIVORCE

§9-3-1 Divorce and Annulment Procedure

Proceedings in divorce and annulment shall be commenced and conducted in the manner provided by law for civil cases, except as otherwise specifically provided. Electronic filing of pleadings with the Court may be permitted at the discretion of the Judge. Hearings may be held by electronic means in the discretion of the Judge. A final decree of divorce shall restore the parties to the status of unmarried persons.

§9-3-2 Residency Requirement

In order to maintain an action for divorce or annulment in the Choctaw Court, at least one party to the marriage must be an enrolled member of the Tribe and have lived within the territorial jurisdiction of the Tribal court for at least six (6) weeks prior to bringing the action, except that an annulment may be granted where either party lives within the territorial jurisdiction of this court and the marriage was performed under the authority of the Tribal Code.

§9-3-3 Grounds for Divorce

A divorce may be granted for any of the following causes:

- (1) impotency of the defendant, at the time of the marriage, where such impotency continues to the time of commencement of the action;
- (2) adultery, unless it should appear that it was condoned by the party complaining;
- (3) willful, continued and obstinate desertion of the plaintiff for more than one (1) year immediately preceding commencement of the action;
- (4) willful neglect of the defendant to provide for the plaintiff the common necessities of life for a period of six (6) months;
- (5) habitual drunkenness or drug incapacitation of the defendant for a period of at least one year;
- (6) conviction and sentence to at least six (6) months in jail of the defendant of a Class A offense under the Tribal Code, or of a felony and sentence of at least one (1) year to any penitentiary and not pardoned before being sent there;
- (7) habitual cruel treatment to the plaintiff by the defendant to the extent of causing bodily injury or great mental distress;
- (8) when the parties have lived apart without cohabitation for a period of three (3) consecutive years, except under a decree of separate maintenance;
- (9) permanent insanity of the defendant; provided, however, that no divorce shall be granted on this ground unless the defendant has been duly and regularly adjudged insane by a court of competent jurisdiction and such insanity reasonably appears to be permanent;

further, no divorce shall be granted on this ground unless a guardian ad litem as been appointed to represent the defendant in the divorce proceedings;

- (10) pregnancy of the wife by another person at the time of the marriage, if the husband did not know of such pregnancy; or
- (11) irreconcilable differences, but only upon joint bill of the husband and wife or a bill of complaint where the defendant has been personally served with process or where the defendant has entered an appearance by written waiver of process. No divorce shall be granted on the ground of irreconcilable differences unless the court shall find in its decree that the parties have made adequate and sufficient provision by written agreement for the custody and maintenance of any children of that marriage and for the settlement of any property rights between the parties. The agreement may be incorporated in the decree, and such decree may be modified as other decrees for divorce. Bills for divorce on the ground of irreconcilable differences must have been on file for sixty (60) days before being heard. A joint bill of husband and wife or a bill of complaint where the defendant has been personally served with process or where the defendant has entered an appearance by written waiver of process, for divorce, solely on the ground of irreconcilable differences, shall be taken as confessed and final decree entered thereon, pro confesso, as in other cases and at any time after the expiration of sixty (60) days. No divorce shall be granted on the ground of irreconcilable differences where there has been a contest or denial; provided, however, that a divorce may be granted on the grounds of irreconcilable differences where there has been a contest or denial, if the contest or denial has been withdrawn or canceled by the party filing same by leave and order of the court. Irreconcilable differences may be asserted as a sole ground for divorce or as an alternate ground of divorce with any other cause for divorce set out in this section.

§9-3-4 Limitations

A divorce must be denied in all cases when there is an unreasonable lapse of time before the commencement of the action, or two (2) years have passed since the grounds became or should have become known to the complaining party and subsequent actions thereto on the part of the complainant indicate condonation of the activity or situation.

§9-3-5 Right of Husband to Divorce

The husband may in all cases obtain a divorce from his wife for the same causes and in the same manner as the wife may obtain a divorce from her husband.

§9-3-6 Temporary Alimony and Suit Money; Restraint

- (1) The court may order either party to pay the clerk for the benefit of the other party a sum of money for the separate support and maintenance of the adverse party and the children, and to enable such party to prosecute and defend this action.
- (2) The court may restrain either party from doing certain acts harmful to the other or to the children, or the property of either, during the pendency of the divorce proceedings.

§9-3-7 Pleadings; Findings; Decree

The complaint shall be in writing and signed by the plaintiff or the plaintiff's counsel or attorney. No decree of divorce shall be granted upon default or otherwise, except upon legal evidence taken in the cause by the court who shall make and file its findings and decree upon the evidence. The decree shall become absolute upon entry unless the judge orders otherwise in which case the period of time until which it becomes absolute may be up to three (3) months.

§9-3-8 Disposition of Property and Children

When a decree of divorce is made, the court may make such orders in relation to the children, property and parties and the maintenance of the parties and children by alimony and child support, as may be equitable. Subsequent changes or new orders may be made by the court with respect to the custody of the children or the distribution of property as shall be reasonable and proper.

§9-3-9 Custody of Children

In any case involving custody of minor children, the court shall make such order for the future care and custody of the minor children as it may deem just and proper. In determining custody, the court shall consider the best interests of the child and the past conduct and demonstrated moral standards of each of the parties. The court may inquire of the children and take into consideration the children's desires regarding the future custody; however, such expressed desires shall not be controlling and the court may, nevertheless, determine the children's custody otherwise.

§9-3-10 Age of Majority for Purposes of Child Support Obligations

- (1) The duty of support of a child, whether ordered by virtue of a divorce proceeding or child support proceeding, terminates upon the child reaching the age of twenty-one (21) years or the emancipation of the child, whichever occurs first. The court may determine that emancipation and no other support obligation exists when the child:
 - (a) Marries, as defined by the Choctaw Tribal Code, or cohabits, as if married;
 - (b) Voluntarily moves from the home of the custodial parent or guardian and establishes independent living arrangements; or
 - (c) Discontinues full-time enrollment in school after reaching eighteen (18) years of age.
- (2) Other factors that the court may consider when determining if a child is emancipated include, but are not limited to, whether the child discontinues full-time enrollment in school, attains permanent, full-time employment or enters military service.
- (3) This code section shall apply to all existing and future orders of child support.

CHAPTER 4. SEPARATE MAINTENANCE AND PROPERTY RIGHTS

§9-4-1 Separate Maintenance

- (1) The wife, living in this jurisdiction, who through no fault of her own or by agreement with her husband, is living separate and apart from her husband, or whose husband has deserted her or has failed to support her when otherwise able to do so, may maintain an action for a decree of separate maintenance.
- (2) During the pendency of the action the court may order the husband to pay temporary alimony and suit money as in an action for divorce.
- (3) If it appears that the wife is entitled to such, the court shall grant a decree of separate maintenance awarding custody of children, alimony, child support and expenses of suit as may be equitable under the circumstances.

§9-4-2 Property Rights of Married Persons

- (1) Either a wife or husband can obtain, own, hold, give, sell or otherwise deal with real or personal property as if they were unmarried.
- (2) Either a wife or a husband can enter into contracts and sue or be sued to the same extent and in the same manner as if unmarried.
- (3) Either a wife or a husband nor the property of either in which their spouse has no interest, is liable for the debts or obligations of the other spouse solely by reason of marriage to the other spouse.
- (4) A conveyance, transfer, or lien executed by either husband or wife in favor of the other shall be valid to the same extent as between other persons.
- (5) Nothing in this section shall alter existing inter-spousal or spousal rights and limitations respecting the sale, transfer or encumbrance of real property constituting a marital "homestead" interest under Mississippi Law.

§9-4-3 Family Expenses

The expenses of the family and the education of the children are chargeable upon the property of both husband and wife or either of them and may be enforced jointly or separately.

§9-4-4 Custody of Children and Property

- (1) Absent a judicial decree of property distribution or custody or otherwise, neither the husband nor the wife can remove the other spouse or the children from the place of family dwelling without the consent of the other spouse; provided however, that children may be removed from the family residency by one parent without the consent of the other if such appears to be reasonably necessary to protect the physical well being of the children, the children are thereafter provided with a more proper living environment, and application is

made to the court within ten (10) days for an order of the court, modifiable at any time, approving such removal of the children.

- (2) If a husband abandons his wife, the wife is entitled to custody of all children under the age of sixteen (16) unless a court of competent jurisdiction shall otherwise direct.

CHAPTER 5. RELATION TO ORDINANCE NO. 11

§9-5-1 Other Domestic Relations/Family Law Matters

All domestic relations and family law matters and proceedings not addressed in this Title or Title XI, shall be adjudicated in accordance with the provisions of Tribal Ordinance No. 11, provided that any reference to a state or county Department of Welfare or Welfare Department officials in state law provisions incorporated pursuant thereto shall be construed to refer to the Choctaw Department of Family Services, Mississippi Band of Choctaw Indians, or such successor agency or department as the Choctaw Tribal Council shall hereafter designate. Service of process or notice on said department shall be hand on the Mississippi Band of Choctaw Indians' Office of Attorney General, and the Tribal Chief.

CHAPTER 6. TERMINATION OF PARENTAL RIGHTS

§9-6-1 Indian Child Welfare Act; Portions Applicable

All proceedings instituted under this chapter shall be deemed “child custody proceedings” as defined in 25 U.S.C. §1903(1) of the *Indian Child Welfare Act*, and the Act’s findings and conclusions, evidentiary standards for termination of parental rights, and requirements for voluntary parental consent to termination of parental rights under state law are hereby made applicable to termination proceedings in the Choctaw Courts, to the extent not otherwise provided in this Code.

§9-6-2 Petition; Form of and By Whom Filed

- (1) Parental rights to a child may be terminated according to the procedures in this chapter.
- (2) Proceedings to terminate parental rights shall be instituted by a petition filed by either:
 - (a) Children and Family Services (“CFS”) acting on behalf of the Tribe;
 - (b) both parents of the child pursuant to a voluntary decision to give up their parental rights;
 - (c) one parent of the child against the other parent thereof;
 - (d) by the guardian or custodian who has had long-term care, custody and control of a child who has been acting as parent (*in loco parentis*); or
 - (e) by any person to whom custody of such child may have been awarded by a court of competent jurisdiction.
- (3) The petition shall state at least the following:
 - (a) the name, birth date, and residence of the child;
 - (b) the names and residences of the child’s parent, guardian or custodian;
 - (c) if the child is in detention or shelter care, the place of detention or shelter care and the time he was taken into custody; and
 - (d) a plain and concise statement of the facts upon which the allegations that parental rights should be terminated are based, including the date, time and location at which the alleged facts occurred.
- (4) In any termination petition not filed by CFS, or not joined in by CFS as co-complainant, CFS shall be named as respondent or co-respondent with the opposing parent (if any). Service of process shall be made upon MBCI’s Attorney General’s Office on behalf of CFS.
- (5) In any termination petition filed against a parent or parents, the said parent or parents shall be named as respondent(s).

- (6) Electronic filing of pleadings with the Court may be permitted at the discretion of the Judge.
- (7) The Tribal Court shall dismiss on its own motion any petition for termination of parental rights which is not filed by a party authorized to file said petition under §9-6-2(2) of this chapter.
- (8) The Tribal Court may dismiss on its own motion any petition for termination of parental rights which does not name CFS as a respondent or may grant leave to amend to allow joinder of CFS.

§9-6-3 Voluntary Surrender of Parental Rights

A parent who has been named a party to the Petition for Termination of Parental Rights may execute a document evidencing the voluntary surrender of their parental rights, consent to termination of parental rights, and such parent may join in the petition by the execution of a document evidencing their joinder and waiver of further process by the Court.

§9-6-4 Court Discretion Not to Terminate

Notwithstanding any other provision of this chapter, the Tribal Court may exercise its discretion not to terminate the parent's parental rights in a proceeding under this chapter if the child's safety and welfare will not be compromised or endangered and terminating the parent's parental right is not in the child's best interests based on one or more of the following factors:

- (a) CFS has documented compelling and extraordinary reasons why terminating the parent's parental rights would not be in the child's best interests;
- (b) there is a likelihood that continuing reasonable efforts for achieving reunification will be successful;
- (c) terminating the parent's parental rights would inappropriately relieve the parent of his/her financial or support obligations to the child; or
- (d) the child is being cared for by the other parent, relative, guardian, or custodian, in a residence not occupied by the abusive or neglectful parent and terminating the parent's parental rights would not expedite the process for obtaining a satisfactory permanency outcome.

§9-6-5 Setting of Hearing and Summons

- (1) The setting of the hearing and issuance of summonses shall be made in accordance with the *Choctaw Tribal Code, Title VI (6) Rules of Civil Procedure, Rule 81*.
- (2) In the event the parent(s) have not executed a written consent and voluntary surrender for their termination of parental rights, then process may be made upon the parties by law for process in person or by publication, if they be non-residents of the State of Mississippi or are not found therein, after a diligent search and inquiry, or are unknown after a diligent search and inquiry. Such process shall contain a return date.

§9-6-6 Pre-Termination Report

- (1) Upon receipt of service of the Petition, CFS shall, unless waived by the Court, initiate a pre-termination report to be submitted to the Court before the Court date set in the summons. The Court shall have the discretion to designate any other date or time for submission of the report in the interest of judicial administration.
- (2) CFS may consult with the child's parents, and any social services agency, health provider, educational system and other relevant personnel who have had prior professional contacts with the child and his parents, guardians or custodians to determine whether termination of parental rights is consistent with the best interests of the child. CFS shall be authorized to review any of the child's previous Tribal Youth Court records, if any, as well as Choctaw Health Center or clinic records, and education records.

§9-6-7 Confidential Hearing; Electronic Hearing

All termination hearings shall be private and closed to the public. The hearing may be held by electronic means in the discretion of the Judge.

§9-6-8 Rights of Parties

- (1) Right to counsel:
 - (a) The Court shall inform the child, if applicable, and his parent, guardian or custodian of their right to retain or obtain counsel or a lay advocate at any stage of the proceedings, and any fees that may be charged for representation, including any fees that may be ordered for the appointment of a guardian ad litem, shall be the responsibility of the parent, guardian or custodian, or a combination thereof.
 - (b) If the parties appear at the hearing without counsel, the Court shall inform the parties of any available services that provide legal representation.
 - (c) On the motion of any party or at the discretion of the Court, a *guardian ad litem* may be appointed in the best interest of the minor. Expenses for said appointment may be assessed to either party, or divided among the parties, at the discretion of the Court.

§9-6-9 Information Considered; Burden of Proof

- (1) The Court shall hear testimony concerning the circumstances that gave rise to the petition and the need for termination of parental rights.
- (2) No termination of parental rights may be ordered in a proceeding under this Code unless the findings and conclusions and evidentiary standards for termination of parental rights under the *Indian Child Welfare Act* and under other applicable provisions of Tribal law are met, and in the case of voluntary consent to termination of parental rights, the comparable provisions of said act and of applicable Tribal law must be met.

- (3) The Court may terminate the parental rights of the parent(s) to their child only if it further finds by clear and convincing evidence that:
- (a) the parent has abandoned the child;
 - (b) the child has suffered physical injuries willfully inflicted by his parent(s) upon the child which caused or created a substantial risk of death, disfigurement or impairment of bodily functions;
 - (c) the parent(s) have subjected the child to a willful act(s) of sexual abuse;
 - (d) the parent has committed a sexual act against the other parent that is unlawful under Title III (3), or any other similar tribe, state, or federal laws where the offense occurred, and that a child was conceived as a result of the unlawful sexual act. A criminal conviction of the unlawful sexual act is not required to terminate the offending parent's parental rights under this chapter;
 - (e) the voluntary written consent of both parents has been given in accordance with 25 U.S.C. 1913 and acknowledged before the court; or
 - (f) such other facts and circumstances exist that warrant the termination of parental rights.

§9-6-10 Entry of Judgment

After hearing all of the evidence in regard to the petition, if the Court is satisfied by clear and convincing evidence that termination of parental rights is appropriate, then the Court may terminate the parental rights of the parent or parents regarding the child, and terminate the right of the child to inherit from such parent or parents. The termination of the parental rights of one (1) parent may be made without affecting the parental rights of the other parent, should circumstances and evidence warrant such a decision. The Court shall issue a written judgment containing its finding of facts and conclusions of law that support termination.

§9-6-11 Child Support

A judgment of termination of parental rights does not automatically terminate or eliminate the requirement of child support, or the obligation to pay arrearages until satisfied in full.

§9-6-12 Placing child in custody of a suitable person, or Social Services, or agency; Authority to consent to adoption

Should the Court terminate the parental rights of the parents, or only one (1) of the parents (if they both be living), then the Court shall place the child in the custody of some suitable person, CFS, or other necessary agency, and such person, CFS, or agency shall have authority to consent to adoption, and no further notice shall be given in the adoption proceedings to such parent or parents.

§9-6-13 Affect on Minor's Tribal Status

No adjudication of termination of parental rights shall affect the minor's enrollment status as a member of any Tribe or the minor's degree of blood quantum of any Tribe.

CHAPTER 7. ADOPTION

§9-7-1 General

When natural parents cannot or choose not to be a family resource for their children, adoption is a viable plan for providing their children with a stable, nurturing, and permanent family. In addition, adoption is available for persons to establish a family rather than through the biological process of having children. Adoption is a legal process wherein the biological parent(s) have been freed of legal ties to the child or children.

§9-7-2 Definitions

- (1) “Adopt” means the act of taking voluntarily the child of other parents as one’s own child.
- (2) “Adoption” means the act or process of adopting a child. It is a permanent plan, offering the most stability to the child who cannot return to his parents.
- (3) “Adoptive Parent” means an adult who has become the mother or father of a child through the legal process of adoption.
- (4) “Adoption Placement” means the permanent placement of an Indian child for adoption, including any action resulting in a final decree of adoption.
- (5) “Extended Family Member” shall be defined by the laws or custom of the Indian child’s Tribe, and in the absence of such law or custom, shall be a person who has reached the age of eighteen (18) and who is the Indian child’s grandparent, aunt or uncle, brother or sister, brother-in-law or sister-in-law, niece or nephew, first or second cousin or stepparent.
- (6) “Guardian” means one who is responsible for the care of a minor child, has the right to make all decisions affecting the minor child, and has legal custody of the minor child.
- (7) “Indian Child” means an unmarried person who is under age eighteen (18) and is either (a) a member of an Indian Tribe or (b) is eligible for membership in an Indian Tribe and is the biological child of a member of an Indian Tribe.
- (8) “In Loco Parentis” means one who has assumed parental rights, duties, and obligations in the place of a parent.
- (9) “Interlocutory Decree” means an interlocutory decree is a provisional or preliminary decree, which is not final and does not determine the suit but directs some further proceedings preparatory to the final decree. It is a decree pronounced for the purpose of ascertaining matters of law or fact, preparatory to a final decree.
- (10) “Parent” means any biological parent or parents of an Indian child, or any Indian person who has lawfully adopted an Indian child, including adoption under Tribal law or custom. It does not include the unwed father where paternity has not been established.

- (11) “Pre-adoption Placement” means the temporary placement of an Indian child in a foster home or institution after the termination of parental rights, but prior to or in lieu of adoptive placement.
- (12) “Reservation” means all lands made subject to the governmental jurisdiction of the Tribe, or such other lands as may be held in trust for the Tribe as described in §1-2-2(1) of this Tribal Code.
- (13) “Tribal Court” means a court with jurisdiction over child custody proceedings, which is either a court established and operated under the code or customs of an Indian Tribe or any administrative body of the Tribe which is vested with authority over custody proceedings.
- (14) “Trial Period” means a time period for the adoptive parent and child, ranging from three (3) to six (6) months, more or less, according to the ruling of the court, to insure proper adoption placements. The trial period is an option, according to the ruling of the court, and may be waived if placement is being made with relatives of the child.

§9-7-3 Jurisdiction over Adoption

The Mississippi Band of Choctaw Indians shall have full original jurisdiction in adoption matters where the child to be adopted is an enrolled member of the Tribe or is eligible for enrollment; or where the child lives within the Choctaw Indian Reservation; or where the case has been transferred to the Choctaw Tribal Court from a state court.

§9-7-4 Who May Adopt

- (1) Any minor child subject to the jurisdiction of the Mississippi Band of Choctaw Indians may be adopted by any adult person, age 21 or older, who is a member of a federally-recognized Indian tribe, or non-Indian in accordance with the preferences under this Title and with ICWA, 25 U.S.C 1901, *et seq.*
- (2) A married man, who is separated, but not legally divorced from his wife, cannot adopt a child, nor can a married woman, who is separated, but not legally divorced from her husband, adopt a child.
- (3) A petition filed by a married person shall also be signed by the married person’s spouse.
- (4) A petition filed by a same-sex couple, legally married, shall be signed by the petitioner and the spouse.
- (5) A same-sex partner, who is separated but not legally divorced from the spouse, cannot adopt a child.

§9-7-5 Petition to Adopt

A petition, verified under oath, shall contain the following information:

- (1) The full name and address of the adopting parents;

- (2) The full name, residence, sex, and birth date of each child whose adoption is sought, and attachment of each child's birth certificate, and Certificate of Degree of Indian Blood ("CDIB"), if applicable;
- (3) in the event of a voluntary surrender by the natural parent(s), there shall be attached a "Voluntary Surrender" signed by each parent in separate forms before a Notary Public, a "Consent to Surrender" signed by each parent before a Notary Public, separately; and an "Acknowledgement of Surrender of Parental Rights" (as contained in the attached sample forms provided at the end of this Chapter);
- (4) A full description and statement of value of all property owned or possessed by the child (see sample form provided at the end of this Chapter);
- (5) A statement by the adoptive parents that it is their desire to adopt the child/ren, and to establish the parental relationship with the adopted child/ren, and that they will protect and care for the child/ren to the best of their ability, if the adoption is granted;
- (6) A statement by the adopting parent, that the child/ren to be adopted has the right to inheritance from the adoptive parents;
- (7) The petition shall be accompanied by a doctor's certificate showing the physical and mental condition of each child to be adopted (see sample form provided at the end of this Chapter).
- (8) Electronic filing of pleadings with the Court may be permitted at the discretion of the Judge

§9-7-6 Rights of Father; Proceedings for Determination of Rights; Unknown Fathers

- (1) In the case of a child born out of wedlock, the father shall not have a right to object to an adoption unless he has demonstrated, within the period ending thirty (30) days after the birth of the child, a full commitment to the responsibilities of parenthood. Determination of rights of the father of a child born out of wedlock may be made in proceedings pursuant to the filing of a separate petition for the determination of rights.
- (2) Any person who would be a necessary party to an adoption proceeding under this Chapter and any person alleged or claiming to be the father of a child born out of wedlock who is the subject of a petition for adoption or who is determined by any administrative or judicial procedure (to be the "alleged father") may file a petition for determination of rights as a preliminary pleading to a petition for adoption. A petition for determination of rights may be filed at any time after the period ending thirty (30) days after the birth of the child. The prospective adopting parent(s) need not be named a party to such petition. Where the child's biological mother has surrendered the child to MBCI's Social Services department for adoption placement, Social Services may take the place of the biological mother and her interests in the proceedings.
- (3) The Court shall expedite a hearing for the determination of rights, allowing not less than ten (10) days' notice from the service or completion of process on the parties to be served.

- (4) 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 set out under this Chapter.
- (5) Proof of an alleged father's full commitment to the responsibilities of parenthood would be shown by proof that, 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, payments of medical expenses of pregnancy and birth, if applicable, and contributions of consistent support after birth; that he consistently and frequently 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.
- (6) If the Court determines that the alleged father has not met his full responsibilities of parenthood, the Court shall enter an order terminating his parental rights and he shall have no right to object to an adoption under this Chapter.
- (7) If the Court determines that the alleged father has met his full responsibilities of parenthood and that he objects to the child's adoption, the Court shall set the matter as a contested adoption under this Chapter.
- (8) A petition for determination of rights may be used to determine the rights of alleged fathers whose identity is unknown or uncertain. In such cases, the court shall determine what, if any, notice can be and is given such persons. Determinations of rights under this section may also be made under a petition for adoption.

§9-7-7 Causes for Termination and Allowance for Adoption over Objection of Either Parent

- (1) An adoption may be allowed over the objection of a parent where:
 - (a) The parent has abused the child. For purposes of this section, abuse means the infliction of physical or mental injury which causes deterioration to the child; sexual abuse, exploitation, or human trafficking; or overworking of a child to such an extent that his health or moral or emotional well-being is endangered.
 - (b) The parent has not consistently offered to provide reasonably necessary food, clothing or appropriate shelter and treatment for the child. For purposes of this section, treatment means medical care or other health services.
 - (c) The parent suffers from a medical or emotional illness, mental deficiency, behavior or conduct disorder, severe physical disability, substance abuse or chemical dependency, which makes him/her unable or unwilling to provide an adequate permanent home for

the child at the present time or in the reasonably near future based upon expert opinion or based upon an established pattern of behavior.

- (d) Viewed in its entirety, the parent's past or present conduct, including his criminal convictions, would pose a risk of substantial harm to the physical, mental, or emotional health of the child.
- (e) The parent has engaged in acts or omissions permitting termination of parental rights under Chapter 6 of this Title.

§9-7-8 Interpreter for Adoption Proceedings

The Court shall certify that either parent fully understood the proceedings in English or that it was interpreted in their own language. An interpreter may also be provided for the adoptive parent(s).

§9-7-9 Withdrawal of Consent to Adopt and Voluntary Surrender; Invalid Consent

The consent and voluntary surrender of the biological parent(s) may be withdrawn for any reason at any time prior to the entry of the final judgment of adoption. In addition, any consent given prior to, or within ten (10) days after birth of an Indian child shall not be valid.

§9-7-10 Adoption Reports and Home Studies

CFS shall, unless waived by the court, prepare and present to the Court the following reports:

- (1) Report on the applicants, including a home study, within sixty (60) days of the filing of a petition or complaint for adoption. The report shall include any factors as may affect the best interest of the child to be adopted.
- (2) CFS may coordinate with the social service agency in the jurisdiction where the child resides.
- (3) Within thirty (30) days of any court-ordered investigation of a minor to be adopted, CFS shall file a written report with the court, unless good cause is shown for an extension of time to complete the investigation.

§9-7-11 Adoption Hearing; Electronic Hearing

The court shall conduct a hearing to determine if it is in the best interest of the minor to be placed with the applicants. In determining the best interest of the minor, the court shall examine:

- (1) the validity of the written consent and voluntary surrender affidavits;

- (2) the termination of parental rights order, if applicable;
- (3) the length of time of the minor's wardship by the court;
- (4) any special conditions of the minor;
- (5) any parental communication with the child;
- (6) the minor's consent to adoption, if the child is twelve (12) years of age or older,
- (7) the adoption reports and home study, and
- (8) compliance with preference of placement.

The hearing may be held by electronic means in the discretion of the Judge.

§9-7-12 Preference of Placement

The order of preference of placement for adoption, in the absence of good cause to the contrary is:

- (1) a member of the child's extended family;
- (2) other members of the child's Tribe;
- (3) a member of another federally-recognized Tribe; and
- (4) if this order of preference cannot be met, then placement may be made with any person who has some knowledge of the child's Tribal affiliation and his special needs.

§9-7-13 Contents of the Judgment of Adoption

The final order of adoption shall include such facts as are necessary to establish that the child is eligible and suitable for adoption, and that the adoptive home and parents are adequate and capable for the proper care of the child, as shown by the investigation reports and findings of the court upon the evidence adduced at the hearings. In addition, the Court shall have the authority to grant a requested change of name of the child as part of the adoption proceedings.

§9-7-14 Reporting Adoption to Vital Records

Within five (5) business days after the entry of the final judgment of adoption, the Tribal Court Clerk shall submit notification to Department of Vital Records of the State of Mississippi, or such other jurisdiction having issued a birth certificate of the adopted child, to report the adoption, name change and other vital statistics, along with a certified true and correct copy of the final judgment of adoption.

§9-7-15 Adoption Records

All records, reports and orders in adoption cases are confidential and become permanent records of the Court. These records shall not be available for release to or inspection by the public. Information contained in such records may be released upon petition to the court by the adopted person after reaching the age of eighteen (18), or otherwise upon order of the court upon good and sufficient cause shown.

§9-7-16 Rights and Liabilities of Natural Parents; Child Support Arrearage

The natural parents of an adopted child are, from the entry of the final judgment of adoption, relieved of all parental duties and all responsibility for the child so adopted and shall have no further rights over him. A natural parent who owes an arrearage of child support shall remain liable for such amount until paid in full.

§9-7-17 Full Faith and Credit

The court shall give full faith and credit to any United States State, Territory, or U.S. possession, and to other Tribes' child custody court orders, adoption orders, public acts and records of judicial proceedings applicable to Indian child custody proceedings to the same extent that such entities give full faith and credit to the public acts, records and judicial proceedings of any other entity.

§9-7-18 Limitation on Invalidation of Adoption

Any action or proceeding seeking to invalidate an adoption shall be filed within one (1) year of the entry of the final judgment of adoption. If the final judgment of adoption is vacated, or the adoption fails, the biological parent or prior Indian custodian may petition for return of custody, which shall be granted, unless the court finds that this would not be in the best interest of the child.

§9-7-19 Effect of Adoption on Minor's Tribal Status

An adoption of a child who is enrolled, or is eligible for enrollment, with MBCI, or his enrollment status as a member of any tribe or the minor's degree of blood quantum of any tribe shall not be affected by adoption. MBCI's Tribal Enrollment Office shall be provided a certified copy of the Judgment of Adoption for purposes of amending the enrollment records for the adopted child, or for enrollment of an eligible child, and in the event the adoption includes a change of name, a certified copy of an amended birth certificate, duly issued by the state holding the child's original birth certificate, shall be proof of a name change for amendment of the child's enrollment records.

FORMS

Form 1: Sample Petition for Adoption

Form 2: Joinder and Waiver of Process

Form 3: Voluntary Surrender of Parental Rights- Father

Form 3: Voluntary Surrender of Parental Rights- Mother

Form 4: Acknowledgment of Surrender (Enter separate forms for Mother and Father)

Form 5: Consent to Surrender for Adoption (Enter separate forms for Mother and Father)

Form 6: Physicians Statement Certifying Health of Child

Form 7: Statement of Child's Assets

Form 8: Sample Judgment of Adoption

Form 9: Adoption Checklist

FORM 1

CHOCTAW TRIBAL COURT
MISSISSIPPI BAND OF CHOCTAW INDIANS
CIVIL DIVISION

IN THE MATTER OF THE PETITION
OF _____ FOR THE ADOPTION
OF THE CHILD DESCRIBED HEREIN

PETITIONERS

CAUSE NO. _____

OR

PETITIONER(S)

CAUSE NO. _____

VS.

_____ AND _____
AND THE MISSISSIPPI BAND OF CHOCTAW
INDIANS, CHILDREN & FAMILY SERVICES

RESPONDENTS

PETITION FOR ADOPTION

COMES NOW _____ (*if applicable*) joined hereby

_____ and _____, and files her/their Petition for the
adoption of _____, a minor, and in support thereof would show unto the Court
the following, to-wit:

PARTIES

A. Petitioner, _____, is an adult resident citizen of
_____, whose address is _____. (*if
applicable state whether this Petitioner is a relative of the child). (also state whether this
Petitioner is an enrolled member of this Tribe or another tribal affiliation).*

B. Petitioner, _____, is an adult resident citizen of _____, whose address is _____. (if applicable state whether this Petitioner is the spouse of the first Petitioner and whether he/she is a relative of the child). (also state whether this Petitioner is an enrolled member of this Tribe or another tribal affiliation).

C. [State Co-Petitioner or Respondent], _____, is an adult resident citizen of _____, whose address is _____. (state the relationship—biological parent – and whether he/she is an enrolled member or has another tribal affiliation).

D. [State Co-Petitioner or Respondent], _____, is an adult resident citizen of _____, whose address is _____. (state the relationship—biological parent – and whether he/she is an enrolled member or has another tribal affiliation).

E. Respondent, the Mississippi Band of Choctaw Indians’ (MBCI or the “Tribe”) division of Children & Family Services (“CFS”), is a government division of MBCI, who is represented by the Tribe’s Office of the Attorney General.

_____. Add this paragraph if there are other legal guardians or custodians who would be a Respondent and are opposed to the Petition: _____ and _____ are adult resident citizens of _____, whose address is _____, and who are the guardians/legal custodians of the minor in accordance with a judgment or order dated _____ entered in _____ County, _____, Civil Court Action No. _____.

1. _____ is a minor child, born _____, to his mother _____, and father _____. [*State here whether one or both natural parents join the Petition*]. The minor child is an enrolled member of MBCI, having an enrollment number of _____, or the child is eligible for enrollment and an enrollment application is pending approval through the Tribal Enrollment Office. (*See Certificate of Degree of Indian Blood or Application for Enrollment, attached as Exhibit A*).

2. Petitioner is the [__relationship or no relationship__] of the minor child and is desirous of adopting the child as his/her own child. The adoption is supported and approved by the minor child's natural parent(s), _____ and _____.

3. Both of the minor child's natural parents, _____ and _____, agree that it would be in the best interest of the child for him/her to be adopted by Petitioner. (*See the separate Consent to Adoption and Termination of Parental Rights, Waiver of Process and Joinder in Petition for Adoption executed by _____ and _____, individually, and attached hereto as Exhibits B and C*).

4. Both of the minor child's parents have knowingly and voluntarily terminated their respective parental rights to _____. (*See the separate Surrender of Parental Rights and Acknowledgment of Surrender of Parental Rights executed by _____ and attached hereto as Exhibits D and E and See the separate Surrender of Parental Rights and Acknowledgment of Surrender of Parental Rights executed by _____ and attached hereto as Exhibits F and G*).

5. A list of the minor child's property has been completed by _____ . (See the Statement of Property Owned by Child attached hereto as Exhibit H).

6. The minor child shall reside with Petitioner(s) in her/his/their home and under their protection, care and control in _____ (county or community). Petitioner(s) would show that he/she/they believes the child is mentally and physically fit to be adopted, but that the Court should order that he/she be examined by a licensed physician so that the appropriate Physicians' Certificate may be filed and considered by the Court [*or state that the child has been examined and to See the Certificate attached as the next exhibit I*].

7. Petitioner(s) would show unto the Court that he/she/they has/have a viable and loving relationship with the child and shall regard and love him/her as if he/she had been born to her/them. Petitioner(s) desires to adopt the child as her/their own and as her/their heir at law. Petitioner(s) is/are fit, suitable and proper person(s) to adopt the child and to continue to have the responsibility for the child's care, custody and control as if he/she had been born to her/them.

8. Petitioner(s) would further show that no waiting period is necessary, either for the Court, Petitioners or the minor child, between the hearing of this cause and the granting of the final decree or judgment. It would, therefore, be in the best interest of the minor child for this adoption to be approved and for any interlocutory decree to be dispensed with and a final decree or judgment rendered immediately.

9. Petitioner(s) would show that it would be in the best interest of the minor child that a guardian ad litem be appointed by the Court. [*or state that the Court has the discretion to determine whether it's necessary to appoint a GAL*].

WHEREFORE, PREMISES CONSIDERED, Petitioner(s) pray as follows:

1. The child be examined by a licensed physician and an appropriate Physicians' Certificate be filed with the Court, or that the child has been examined and that the Court accepts the Physicians' Certificate as submitted;

2. Upon a hearing, this Court will enter a Judgment of Adoption declaring _____, a male/female child, born _____, to be for all legal intents and purposes the child of _____ (and _____) with all of the benefits and responsibilities arising from the natural born parent and child relationship, including but not limited to, the right of inheritance;

3. The parental rights of _____ and _____ to the minor child be permanently and unequivocally terminated;

4. A final judgment will be entered in this cause without the use of an interlocutory judgment; and

5. For such other further and general relief the Petitioner(s) may be entitled to receive.

RESPECTFULLY SUBMITTED, this _____ day of _____.

PETITIONER

PETITIONER

Attorney, Bar #
Address
Phone No.

STATE OF MISSISSIPPI
COUNTY OF _____

Personally came and appeared before me, the undersigned Notary Public in and for the jurisdiction aforesaid, the within named _____, who, being by me first duly sworn, stated on her oath that the matters and facts set forth and contained in the above and foregoing Petition are true and correct as therein stated.

Petitioner

SWORN TO AND SUBSCRIBED before me, this ____ day of _____, 20____.

NOTARY PUBLIC

My Commission Expires: _____

STATE OF MISSISSIPPI
COUNTY OF _____

Personally came and appeared before me, the undersigned Notary Public in and for the jurisdiction aforesaid, the within named _____, who, being by me first duly sworn, stated on his oath that the matters and facts set forth and contained in the above and foregoing Petition are true and correct as therein stated.

Petitioner

SWORN TO AND SUBSCRIBED before me, this ____ day of _____, 20____.

NOTARY PUBLIC

My Commission Expires: _____

FORM 2

CHOCTAW TRIBAL COURT
MISSISSIPPI BAND OF CHOCTAW INDIANS
CIVIL DIVISION

IN THE MATTER OF THE PETITION
OF _____ FOR THE ADOPTION
OF THE CHILD DESCRIBED HEREIN

CAUSE NO. _____

ENTRY OF APPEARANCE AND WAIVER OF PROCESS

I, the undersigned, _____, mother of the child referenced herein, enter my appearance in said proceeding by my signature herein and I fully waive the requirement of any service of process upon me to the same effect as if I had been duly served with process of this Court in the time and manner required by law for personal service, prior to the finalization of said adoption. I further acknowledge that I have received a signed and filed copy of the Petition for Adoption and consent that this civil action may proceed as stated in the filed Petition, which I received after filing, at any time provided by law that shall be set by the Choctaw Tribal Court.

I also certify (initial one):

[_____] that I requested that an interpreter be provided to me to read this document in the Choctaw language and I understand its contents; or

[_____] that I declined the assignment of an interpreter to read this document in the Choctaw language and I was able to read and understand its contents.

Signature

Date

STATE OF MISSISSIPPI
COUNTY OF _____

Personally came and appeared before me, the undersigned Notary Public in and for the jurisdiction aforesaid, the within named _____, who, being by me first duly sworn, stated that he/she signed the above and foregoing *Entry of Appearance and Waiver of Process* as her/his act and deed having full knowledge and understanding of what it contains and means.

Affiant

SWORN TO AND SUBSCRIBED before me, this ____ day of _____,
20____.

NOTARY PUBLIC

My Commission Expires: _____

PREPARED BY:

Attorney (Bar #)
Address
City State Zip
Phone #

FORM 3 (Father)

CHOCTAW TRIBAL COURT
MISSISSIPPI BAND OF CHOCTAW INDIANS
CIVIL DIVISION

IN THE MATTER OF THE PETITION
OF _____ FOR THE ADOPTION
OF THE CHILD DESCRIBED HEREIN

CAUSE NO. _____

SURRENDER OF PARENTAL RIGHTS - FINAL RELEASE FOR ADOPTION

NOTICE TO BIOLOGICAL FATHER:

THIS IS AN IMPORTANT LEGAL DOCUMENT AND BY SIGNING IT YOU ARE SURRENDERING ALL OF YOUR RIGHTS AND CLAIM TO THE CHILD NAMED HEREIN, SO AS TO FACILITATE THE CHILD'S PLACEMENT FOR ADOPTION.

I, the undersigned, desiring that my male/female child, _____, born on _____, should receive the benefits and advantages of a good home, to the end that he/she may be fitted for the requirements of life, consent to this surrender.

I, the undersigned, father of the child named herein, do hereby surrender the child to _____ and _____ and promise not to interfere in the management of the child in any respect whatsoever and in consideration of the benefits guaranteed by the adopting mother/father/parents, in thus providing for the child, I do relinquish all rights and claim to the child named herein, it being my wish, intent and purpose to relinquish absolutely all parental control over the child.

Furthermore, I hereby agree that the adopting mother/father/parents may initiate legal proceedings for the legal adoption of the child without further notice to me. I do, furthermore, expressly waive any other notice or service in any of the legal proceedings for the adoption of the child.

Furthermore, I hereby certify that I have not been subject to any duress or undue pressure in the execution of this surrender document and do so freely and voluntarily.

I also certify:

[] that I requested that an interpreter be provided to me to read this document in the Choctaw language and I understand its contents; or

[] that I declined the assignment of an interpreter to read this document in the Choctaw language and I was able to read and understand its contents.

WITNESS MY HAND AND SEAL this _____ day of _____, 20_____.

STATE OF MISSISSIPPI
COUNTY OF _____

Personally came and appeared before me, the undersigned Notary Public in and for the jurisdiction aforesaid, the within named _____, who, being by me first duly sworn, stated on his oath that the matters and facts set forth and contained in the above and foregoing SURRENDER are true and correct as therein stated.

Affiant

SWORN TO AND SUBSCRIBED before me, this ____ day of _____, 20_____.

NOTARY PUBLIC

My Commission Expires: _____

PREPARED BY:

Attorney (Bar #)
Address
City State Zip
Phone #

FORM 3 (Mother)

CHOCTAW TRIBAL COURT
MISSISSIPPI BAND OF CHOCTAW INDIANS
CIVIL DIVISION

IN THE MATTER OF THE PETITION
OF _____ FOR THE ADOPTION
OF THE CHILD DESCRIBED HEREIN

CAUSE NO. _____

SURRENDER OF PARENTAL RIGHTS - FINAL RELEASE FOR ADOPTION

I, the undersigned, desiring that my male/female child, _____, born on _____, should receive the benefits and advantages of a good home, to the end that he/she may be fitted for the requirements of life, consent to this surrender.

I, the undersigned, mother of the child named herein, do hereby surrender the child to _____ and _____ and promise not to interfere in the management of the child in any respect whatsoever and in consideration of the benefits guaranteed by the adopting mother/father/parents, in thus providing for the child, I do relinquish all rights and claim to the child named herein, it being my wish, intent and purpose to relinquish absolutely all parental control over the child.

Furthermore, I hereby agree that the adopting mother/father/parents may initiate legal proceedings for the legal adoption of the child without further notice to me. I do, furthermore, expressly waive any other notice or service in any of the legal proceedings for the adoption of the child.

Furthermore, I hereby certify that I have not been subject to any duress or undue pressure in the execution of this surrender document and do so freely and voluntarily.

I also certify:

[] that I requested that an interpreter be provided to me to read this document in the Choctaw language and I understand its contents; or

[] that I declined the assignment of an interpreter to read this document in the Choctaw language and I was able to read and understand its contents.

WITNESS MY HAND AND SEAL this _____ day of _____, 20_____.

STATE OF MISSISSIPPI
COUNTY OF _____

Personally came and appeared before me, the undersigned Notary Public in and for the jurisdiction aforesaid, the within named _____, who, being by me first duly sworn, stated on his oath that the matters and facts set forth and contained in the above and foregoing SURRENDER are true and correct as therein stated.

Affiant

SWORN TO AND SUBSCRIBED before me, this ____ day of _____, 20_____.

NOTARY PUBLIC

My Commission Expires: _____

PREPARED BY:

Attorney (Bar #)
Address
City State Zip
Phone #

FORM 4
(Each biological parent executes a separate document)

CHOCTAW TRIBAL COURT
MISSISSIPPI BAND OF CHOCTAW INDIANS
CIVIL DIVISION

**IN THE MATTER OF THE PETITION
OF _____ FOR THE ADOPTION
OF THE CHILD DESCRIBED HEREIN**

CAUSE NO. _____

ACKNOWLEDGMENT OF SURRENDER OF PARENTAL RIGHTS

By execution of this paragraph, the undersigned expressly acknowledges that:

- (a) I have read the accompanying *Surrender of Parental Rights/Final Release for Adoption* relating to my minor child, _____, born _____;
- (b) I understand that this is a full, final and complete surrender, release and termination of all of my rights to the child;
- (c) I have read the accompanying *Surrender* and received a copy thereof;
- (d) Any and all questions regarding the effect of said surrender and its provisions have been satisfactorily explained to me;
- (e) I have been afforded an opportunity to consult with counsel of my choice prior to execution of the *Surrender*; and
- (f) The surrender of my rights has been knowingly, intentionally, freely and voluntarily made by me.

I also certify:

[] that I requested that an interpreter be provided to me to read this document in the Choctaw language and I understand its contents; or

[_____] that I declined the assignment of an interpreter to read this document in the Choctaw language and I was able to read and understand its contents.

WITNESS MY HAND AND SEAL this _____ day of _____, 20____.

STATE OF MISSISSIPPI
COUNTY OF _____

Personally came and appeared before me, the undersigned Notary Public in and for the jurisdiction aforesaid, the within named _____, who, being by me first duly sworn, stated on her oath that the matters and facts set forth and contained in the above and foregoing Acknowledgment are true and correct as therein stated.

Affiant

SWORN TO AND SUBSCRIBED before me, this ____ day of _____, 20____.

NOTARY PUBLIC

My Commission Expires: _____

PREPARED BY:

Attorney (Bar #)
Address
City State Zip
Phone #

FORM 5
(Each biological parent executes a separate document)

CHOCTAW TRIBAL COURT
MISSISSIPPI BAND OF CHOCTAW INDIANS
CIVIL DIVISION

**IN THE MATTER OF THE PETITION
OF _____ FOR THE ADOPTION
OF THE CHILD DESCRIBED HEREIN**

CAUSE NO. _____

**CONSENT TO ADOPTION AND TERMINATION OF PARENTAL
RIGHTS, JOINDER AND WAIVER OF PROCESS**

I, the undersigned, _____, do hereby acknowledge and certify that I am the mother of _____. I do hereby surrender and release said child to the care and custody of _____ with knowledge and understanding that he/she/they has/have instituted proceedings for the legal adoption of the child.

I do hereby consent and agree to the child being adopted by _____. I further consent and agree that all of my parental rights to the child, including the right of inheritance, will be and are hereby relinquished. I further agree and understand that this surrender and consent is irrevocable, and I will not, in any manner, interfere with the custody of said child thus vested in the adopting parent(s). It is my intention to vest all rights regarding the child in _____, including the unequivocal and explicit right and power of the adopting parent(s) to adopt the child as provided by law.

I am under no legal disability and execute this consent and surrender of my own free will, without any duress or coercion, fully aware and understanding the significance of this consent.

This surrender and consent is voluntarily given by me and I am fully aware and advised and agreed that the adoption of the child shall fully and forever relinquish any and all parental rights that I might have to the child. I further acknowledge that based upon information available to me that the adopting mother/father/parents is/are fit in all respects to become the legal mother/father/parents and guardian of the child.

I fully join in any adoption proceeding instituted by the adopting mother and authorize that the proceeding take place to final hearing without my presence. I enter my appearance in said proceeding by my signature hereon and I fully waive the requirement of any service of process upon me prior to the finalization of said adoption and fully join in the proceeding and the relief sought therein. I further acknowledge that I have received a signed copy of the Petition for Adoption to be filed by the adopting mother/father/parents and join therein.

It is the intent and purpose of this consent to fully and finally give my approval to the adoption of the child by the adopting parents. I hereby certify that this consent is being signed by me more than seventy-two (72) hours after the birth of said child.

I further certify that I am informed in all respects as to the options available to me with regard to said child, including the option to keep the child, and after duly considering same, do believe that it would be in the child's best interest to be placed in the care and custody of the adopting mother/father/parents, to be adopted and thereafter raised and nurtured by her/him/them.

I also certify:

[] that I requested that an interpreter be provided to me to read this document in the Choctaw language and I understand its contents; or

[] that I declined the assignment of an interpreter to read this document in the Choctaw language and I was able to read and understand its contents.

STATE OF MISSISSIPPI
COUNTY OF _____

Personally came and appeared before me, the undersigned Notary Public in and for the jurisdiction aforesaid, the within named _____, who, being by me first duly sworn, stated that he/she signed the above and foregoing *Consent to Adoption, Joinder and Entry of Appearance* as her/his act and deed having full knowledge and understanding of what it contains and means.

Affiant

SWORN TO AND SUBSCRIBED before me, this ____ day of _____, 20____.

NOTARY PUBLIC

My Commission Expires: _____

PREPARED BY:

Attorney (Bar #)
Address
City State Zip
Phone #

FORM 6

CHOCTAW TRIBAL COURT
MISSISSIPPI BAND OF CHOCTAW INDIANS
CIVIL DIVISION

STATE OF MISSISSIPPI

COUNTY OF _____

CERTIFICATE OF EXAMINATION

The undersigned, a duly licensed physician practicing medicine in _____, County, Mississippi, does hereby certify that he/she has examined _____, a minor child born _____, and that said child is in excellent physical and mental condition and appears to be healthy and normal in all respects.

WITNESS MY SIGNATURE, this _____ day of _____, 20_____.

Physician's Signature

Printed Name

SWORN TO AND SUBSCRIBED before me, this _____ day of _____, 20_____.

NOTARY PUBLIC

My Commission Expires:

FORM 7

CHOCTAW TRIBAL COURT
MISSISSIPPI BAND OF CHOCTAW INDIANS
CIVIL DIVISION

STATE OF MISSISSIPPI

COUNTY OF _____

STATEMENT OF PROPERTY OWNED BY CHILD

PERSONALLY APPEARED before me, the undersigned Notary Public,
_____, who, after being duly sworn, states on oath as

follows:

“I am the natural mother of _____. I certify that to my
knowledge said child does not own any property, real, personal or mixed, whatsoever.”

SWORN TO AND SUBSCRIBED before me, this ____ day of _____, 20 ____.

NOTARY PUBLIC

My Commission Expires:

FORM 8

CHOCTAW TRIBAL COURT
MISSISSIPPI BAND OF CHOCTAW INDIANS
CIVIL DIVISION

IN THE MATTER OF THE PETITION
OF _____ FOR THE ADOPTION
OF THE CHILD DESCRIBED HEREIN

PETITIONERS

CAUSE NO. _____

OR

PETITIONER(S)

VS.

CAUSE NO. _____

_____ AND _____
AND THE MISSISSIPPI BAND OF CHOCTAW
INDIANS, CHILDREN & FAMILY SERVICES

RESPONDENTS

FINAL JUDGMENT OF ADOPTION

THIS DAY THIS CAUSE CAME on to be heard on the Petition of
_____ and _____, joined herein by _____,
praying for the adoption of a minor child herein, and the Court having heard and
considered oral, sworn testimony, as well as filings of record in support of said Petition,
hereby finds as follows:

1. This Court has jurisdiction over the parties and the subject matter.
2. On the ____ day of _____, Petitioners filed a Petition for
Adoption seeking a judgment approving the adoption of _____, a minor
child born on _____.

3. The natural mother, _____, has consented to this adoption by signing a Consent to Adoption and Termination of Parental Rights and Joinder of Entry of Appearance, which has been filed herein.

_____. *[If applicable state]* The natural father, _____, has consented to this adoption by signing a Consent to Adoption and Termination of Parental Rights and Joinder of Entry of Appearance, which has been filed herein.

4. The said minor child has been in the care and custody of the Petitioner(s) and that said child is the proper subject of adoption. The child owns no property. The child is in good physical and mental condition as certified by the physician's statement filed herein. The Petitioner(s) is/are fit and suitable person(s) to be the adoptive parent(s) of the child, and the best interest of the child will be promoted and served by the adoption sought in the Petition.

5. After observing the Petitioners and considering the testimony given by the Petitioners, it is the Court's opinion that there is no need for a six-month waiting period before finalization of this adoption in view of the fact that the alleged natural father has no objection to the adoption.

IT IS, THEREFORE, ORDERED AND ADJUDGED that the minor child, born _____, be given the name of _____, and be and is hereby adjudicated and declared to be adopted by the Petitioner(s) _____ and _____, and that the child and Petitioner(s) are now given and accorded all of the rights, benefits and responsibilities arising from a natural born parent and child relationship, particularly the full right of inheritance from and through the adopting parent(s) and from all other children of the adopting parent(s), and the child and

the Petitioner(s) herein are hereby vested with all rights, powers, duties, and obligations respectively as if such child had been born to the adopting parent(s), including but not limited to all rights existing by virtue of any applicable Tribal laws and Mississippi Code Annotated (1972) § 11-7-13, *et seq.*

IT IS FURTHER ORDERED AND ADJUDGED that all parental rights of _____ and _____, be and are hereby terminated.

IT IS ORDERED AND ADJUDGED that the birth certificate of the child shall be amended through the Mississippi State Board of Health {or other state board if the child was born out of state} to reflect that the child's name shall be changed to _____, in accordance with statutory and administrative guidelines.

SO ORDERED AND ADJUDGED this _____ day of _____, 20____.

TRIBAL COURT JUDGE

Submitted by:

Attorney / Bar #
Address
Phone

FORM 9- ADOPTION CHECKLIST
Individual checklist to be used per child if there are multiple children

Date Initiated	Documents to be Completed	Date Completed or Filed
	Surrender Parental Rights- Final Release (Mother)	
	Surrender Parental Rights- Final Release (Father)	
	Acknowledgment of Surrender Parental Rights (Mother)	
	Acknowledgment of Surrender Parental Rights (Father)	
	Consent to Adoption-TPR-Joinder- Entry of Appearance (Mother)	
	Consent to Adoption-TPR-Joinder- Entry of Appearance (FATHER)	
	Birth Certificate of Child	
	Statement of Property Owned by Child	
	Physicians' Certificates	
	Paternity Test(s)	
	Termination of Parental Rights	
	Petition for Adoption	
	Service on Biological Parent(s) Rule 81 and Rule 4	
	Guardian Ad Litem	
	Discovery	
	Depositions	
	Final Judgment for TPR and Judgment of Adoption	
	Petition for Determination of Rights – Putative Father Contests (10-day notice)	
	Home Study	
	Final Judgment (6 mos. unless Relative)	
	Amended Birth Certificate –requested from MSDH or out-of-state vital records department where child was born	

CHAPTER 8. GUARDIANSHIP

§8-1-1 General Guardianships

- (a) The natural parent(s), mother and father, are the joint natural guardians of their minor children (age 18 and under) and are equally charged with their care, nurture, welfare and education, and the care and management of their estates, unless there are orders from a court of competent jurisdiction that award such care, custody and control in a different manner. If there are no such custody orders, the father and mother shall have equal powers and rights and neither parent has any right paramount to the right of the other concerning custody of the child or the control of the services or earnings of such child, or any other matter surviving parent. Neither parent shall forcibly take a child from the guardianship of the parent legally entitled to its custody. If any mother or father may be unsuitable to discharge the duties of guardianship, then the court may appoint some suitable person upon application to the court, or having appointed the father or mother, may remove him or her if it appear that such person is unsuitable, and appoint a suitable person.
- (b) The court shall have authority to appoint and remove legal guardians when the child for whom the guardianship is sought is a member of the Mississippi Band of Choctaw Indians.
- (c) The court may appoint guardians over the property or over the person, or both, of a child whose parent, legal guardian or custodian has been determined by the court as being incapable of managing their affairs or who has voluntarily relinquished their responsibility as the parent, legal custodian or guardian.
- (d) The court may require appropriate reports from Children and Family Services (“CFS”) or the assistance of the State of Mississippi or other persons designated by the court to make a report on the parties involved and such other information as the court may order.
- (e) A non-Indian shall not be appointed as guardian of an Indian child unless the non-Indian is a relative of the child, or the proposed guardian has undergone an extensive review by CFS. A report by CFS shall be submitted to the Court for consideration.
- (f) Any guardian appointed under this section shall advise the court by written report at least once a year, upon request of the court, all actions, including the spending of certain monies belonging to the minor, by the guardian on behalf of the child or his estate.
- (g) No guardian may dispose of any of the child’s property without approval of the court in advance. Failure to comply may be grounds for removal and substitution of the guardian in the discretion of the court.
- (h) Any guardianship over the person of a minor shall terminate when the child reaches the age of eighteen (18) years, unless otherwise ordered by the Court. An order releasing the child from guardianship shall be required to formally close the file with the Court.
- (i) Any guardianship over the property of the child shall terminate upon application of the guardian or child for termination of the guardianship to the court and the subsequent approval of the court.

- (j) A special guardian may be appointed for the special purpose of signing documents on behalf of a child. To be valid, the document must be approved by the court.
- (k) In the event a guardian has been appointed for a child suffering from a permanent disability, for which it has been established that the child shall require administration of his estate beyond the age of 18, a petition shall be filed by the guardian, or other such suitable person(s) to convert the guardianship to a conservatorship.

§8-1-2 Guardianship for Minor's Settlement; Requirements for Minor's Settlement

- (a) The Tribal Civil Court shall have jurisdiction over any matter in which a child under the age of 18, who is a member of MBCI or is eligible for enrollment with the Tribe, shall be entitled to settlement proceeds.
- (b) All suits, complaints or actions sought on behalf of a child, with disbursements in the amount of \$10,000 or more, shall be brought in the name of the guardian(s) on behalf of the child, after such guardian has made application to the Tribal Court and has been granted authority by the Court with the issuance of Letters of Guardianship to file on behalf of the minor.
- (c) Any child who is eligible for the receipt of settlement proceeds shall be represented by counsel, independent of any representation provided by and through an insurance company or any other such agency petitioning the court for settlement.
- (d) Agreements for the payment of attorneys' fee shall be approved by the Court.
- (e) Prior to entry of a final judgment, proof of satisfaction of liens, including any amounts owed to MBCI or its departments, such as medical liens, and any liens owed to outside medical providers, Social Security, Medicaid and the like, shall be submitted to the Court.
- (f) Disbursements of \$10,000 or more shall be deposited and held in interest-bearing accounts by a secure, insured financial institution approved by the Court to be held for the child until he reaches the age of majority. Monies held shall not be released without authority from the Court and without good cause shown for withdrawal.
- (g) The guardian shall file an annual accounting with the Court unless waived by the Court.
- (h) The guardian shall obtain a bond unless waived by the Court.