

## Mississippi Family Law – Jurisdiction and Service of Process

By Morgan, Lewis & Bockius LLP – March 31, 2021

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### Custody Determination - Jurisdiction

#### Initial Custody Determination

##### **MS Code § 93-27-201. Initial custody determination.**

- (1) Except as otherwise provided in Section 93-27-204, a court of this state has jurisdiction to make an initial child custody determination only if:
- (a) This state is the home state of the child on the date of the commencement of the proceeding, or was the home state of the child within six (6) months before the commencement of the proceeding and the child is absent from this state but a parent or person acting as a parent continues to live in this state;
  - (b) A court of another state does not have jurisdiction under paragraph (a), or a court of the home state of the child has declined to exercise jurisdiction on the ground that this state is the more appropriate forum under Section 93-27-207 or 93-27-208; and:
    - (i) The child and the child's parents, or the child and at least one (1) parent or a person acting as a parent, have a significant connection with this state other than mere physical presence; and
    - (ii) Substantial evidence is available in this state concerning the child's care, protection, training, and personal relationships;
  - (c) All courts having jurisdiction under paragraph (a) or (b) of this subsection have declined to exercise jurisdiction on the ground that a court of this state is the more appropriate forum to determine the custody of the child under Section 93-27-207 or 93-27-208; or
  - (d) No court of any other state would have jurisdiction under the criteria specified in paragraph (a), (b), or (c) of this section.
- (2) Subsection (1) is the exclusive jurisdictional basis for making a child custody determination by a court of this state.
- (3) Physical presence of, or personal jurisdiction over, a party or a child is not necessary or sufficient to make a child custody determination.

<https://law.justia.com/codes/mississippi/2018/title-93/chapter-27/article-2/section-93-27-201/>

#### Temporary Emergency Jurisdiction

##### **MS Code § 93-27-204. Temporary emergency jurisdiction.**

- (1) A court of this state has temporary emergency jurisdiction if the child is present in this state and the child has been abandoned or it is necessary in an emergency to protect the child because the child, or a sibling or parent of the child, is subjected to or threatened with mistreatment or abuse.
- (2) If there is no previous child custody determination that is entitled to be enforced under this chapter and a child custody proceeding has not been commenced in a court of a state having jurisdiction under Sections 93-27-201 through 93-27-203, a child custody determination made under this section remains in effect until an order is obtained from a court of a state having jurisdiction under Sections 93-27-201 through 93-27-203. If a child custody proceeding has not been or is not commenced in a court of a state having jurisdiction under

Sections 9327-201 through 93-27-203, a child custody determination made under this section becomes a final determination, if it so provides and this state becomes the home state of the child.

(3) If there is a previous child custody determination that is entitled to be enforced under this chapter, or a child custody proceeding has been commenced in a court of a state having jurisdiction under Sections 93-27-201 through 93-27-203, any order issued by a court of this state under this section must specify in the order a period that the court considers adequate to allow the person seeking an order to obtain an order from the state having jurisdiction under Sections 93-27-201 through 93-27-203. The order issued in this state remains in effect until an order is obtained from the other state within the period specified or the period expires.

(4) A court of this state which has been asked to make a child custody determination under this section, upon being informed that a child custody proceeding has been commenced in, or a child custody determination has been made by, a court of a state having jurisdiction under Sections 93-27-201 through 93-27-203, shall immediately communicate with the other court. A court of this state which is exercising jurisdiction pursuant to Sections 93-27-201 through 93-27-203, upon being informed that a child custody proceeding has been commenced in, or a child custody determination has been made by, a court of another state under a statute similar to this section shall immediately communicate with the court of that state to resolve the emergency, protect the safety of the parties and the child, and determine a period for the duration of the temporary order.

<https://law.justia.com/codes/mississippi/2018/title-93/chapter-27/article-2/section-93-27-204/>

## **Custody Determination – Service/Notification Requirements**

### **MS Code § 92-27-205. Notice; opportunity to be heard; joinder.**

(1) Before a child custody determination is made under this chapter, notice and an opportunity to be heard in accordance with the standards of Section 93-27-108 must be given to all persons entitled to notice under the law of this state as in child custody proceedings between residents of this state, any parent whose parental rights have not been previously terminated, and any person having physical custody of the child.

(2) This chapter does not govern the enforceability of a child custody determination made without notice or an opportunity to be heard.

(3) The obligation to join a party and the right to intervene as a party in a child custody proceeding under this chapter are governed by the law of this state as in child custody proceedings between residents of this state.

<https://law.justia.com/codes/mississippi/2018/title-93/chapter-27/article-2/section-93-27-205/>

### **MS Code § 93-27-108. Notice to persons outside state.**

(1) Notice required for the exercise of jurisdiction when a person is outside this state may be given in a manner prescribed by the law of this state for service of process or by the law of the state in which the service is made. Notice must be given in a manner reasonably calculated to give actual notice but may be by publication if other means are not effective.

(2) Proof of service may be made in the manner prescribed by the law of this state or by the law of the state in which the service is made.

(3) Notice is not required for the exercise of jurisdiction with respect to a person who submits to the jurisdiction of the court.

<https://law.justia.com/codes/mississippi/2018/title-93/chapter-27/article-1/section-93-27-108/>

## **Paternity and Child Support Proceeding – Jurisdiction**

### **MS Code § 93-25-201. Bases for jurisdiction over nonresident.**

(a) In a proceeding to establish or enforce a support order or to determine parentage of a child, a tribunal of this state may exercise personal jurisdiction over a nonresident individual or the individual's guardian or conservator if:

- (1) The individual is personally served with process within this state;
  - (2) The individual submits to the jurisdiction of this state by consent in a record, by entering a general appearance or by filing a responsive document having the effect of waiving any contest to personal jurisdiction;
  - (3) The individual resided with the child in this state;
  - (4) The individual resided in this state and provided prenatal expenses or support for the child;
  - (5) The child resides in this state as a result of the acts or directives of the individual;
  - (6) The individual engaged in sexual intercourse in this state and the child may have been conceived by that act of intercourse;
  - (7) The individual asserted parentage of a child as provided by law in this state; or
  - (8) There is any other basis consistent with the constitutions of this state and the United States for the exercise of personal jurisdiction.
- (b) The bases of personal jurisdiction set forth in subsection (a) or in any other law of this state may not be used to acquire personal jurisdiction for a tribunal of this state to modify a child-support order of another state unless the requirements of Section 93-25-611 are met, or, in the case of a foreign support order, unless the requirements of Section 93-25-615 are met.

<https://law.justia.com/codes/mississippi/2018/title-93/chapter-25/article-2/section-93-25-201/>

## **Paternity and Child Support Proceeding – Service/Notification Requirements**

See Paternity and Child Support Proceeding - Jurisdiction Section.

## **Child Abuse/Neglect Proceeding – Jurisdiction**

See section re: domestic violence, as the same Chapter applies to child abuse and protective orders as well.

## **Child Abuse/Neglect Proceeding – Service/Notification Requirements**

See section re: domestic violence, as the same Chapter applies to child abuse and protective orders as well.

## **Divorce and Legal Separation – Jurisdiction**

### **MS Code § 93-5-5. Residence requirement for divorce.**

The jurisdiction of the chancery court in suits for divorce shall be confined to the following cases:

(a) Where one (1) of the parties has been an actual bona fide resident within this state for six (6) months next preceding the commencement of the suit. If a member of the armed services of the United States is stationed in the state and residing within the state with his spouse, such person and his spouse shall be considered actual bona fide residents of the state for the purposes of this section, provided they were residing within the state at the time of the separation of the parties.

(b) In any case where the proof shows that a residence was acquired in this state with a purpose of securing a divorce, the court shall not take jurisdiction thereof, but dismiss the bill at the cost of complainant.

<https://law.justia.com/codes/mississippi/2018/title-93/chapter-5/section-93-5-5/>

### **MS Code § 93-5-11. Filing of complaints; transfer of venue.**

All complaints, except those based solely on the ground of irreconcilable differences, must be filed in the county in which the plaintiff resides, if the defendant be a nonresident of this state, or be absent, so that process cannot be served; and the manner of making such parties defendants so as to authorize a judgment against them in other chancery cases, shall be observed. If the defendant be a resident of this state, the complaint shall be filed in the county in which such defendant resides or may be found at the time, or in the county of the residence of the parties at the time of separation, if the plaintiff be still a resident of such county when the suit is instituted. A complaint for divorce based solely on the grounds of irreconcilable differences shall be filed in the county of residence of either party where both parties are residents of this state. If one (1) party is not a resident of this state, then the complaint shall be filed in the county where the resident party resides.

Transfer of venue shall be governed by Rule 82(d) of the Mississippi Rules of Civil Procedure.

<https://law.justia.com/codes/mississippi/2018/title-93/chapter-5/section-93-5-11/>

## **Divorce and Legal Separation – Service/Notification Requirements**

See Divorce and Legal Separation - Jurisdiction Section.

## **Adoption Proceeding – Jurisdiction**

### **MS Code § 93-17-3.**

(1) Except as otherwise provided in this section, a court of this state has jurisdiction over a proceeding for the adoption or readoption of a minor commenced under this chapter if:

(a) Immediately before commencement of the proceeding, the minor lived in this state with a parent, a guardian, a prospective adoptive parent or another person acting as parent, for at least six (6) consecutive months, excluding periods of temporary absence, or, in the case of a minor under six (6) months of age, lived in this state from soon after birth with any of those individuals and there is available in this state substantial evidence concerning the minor's present or future care;

- (b) Immediately before commencement of the proceeding, the prospective adoptive parent lived in this state for at least six (6) consecutive months, excluding periods of temporary absence, and there is available in this state substantial evidence concerning the minor's present or future care;
  - (c) The agency that placed the minor for adoption is licensed in this state and it is in the best interest of the minor that a court of this state assume jurisdiction because:
    - (i) The minor and the minor's parents, or the minor and the prospective adoptive parent, have a significant connection with this state; and
    - (ii) There is available in this state substantial evidence concerning the minor's present or future care;
  - (d) The minor and the prospective adoptive parent are physically present in this state and the minor has been abandoned or it is necessary in an emergency to protect the minor because the minor has been subjected to or threatened with mistreatment or abuse or is otherwise neglected;
  - (e) It appears that no other state would have jurisdiction under prerequisites substantially in accordance with paragraphs (a) through (d), or another state has declined to exercise jurisdiction on the ground that this state is the more appropriate forum to hear a petition for adoption of the minor, and it is in the best interest of the minor that a court of this state assume jurisdiction; or
  - (f) The child has been adopted in a foreign country, the agency that placed the minor for adoption is licensed in this state, and it is in the best interest of the child to be readopted in a court of this state having jurisdiction.
- (2) A court of this state may not exercise jurisdiction over a proceeding for adoption of a minor if, at the time the petition for adoption is filed, a proceeding concerning the custody or adoption of the minor is pending in a court of another state exercising jurisdiction substantially in conformity with the Uniform Child Custody Jurisdiction Act or this section unless the proceeding is stayed by the court of the other state.
- (3) If a court of another state has issued a decree or order concerning the custody of a minor who may be the subject of a proceeding for adoption in this state, a court of this state may not exercise jurisdiction over a proceeding for adoption of the minor unless:
- (a) The court of this state finds that the court of the state which issued the decree or order:
    - (i) Does not have continuing jurisdiction to modify the decree or order under jurisdictional prerequisites substantially in accordance with the Uniform Child Custody Jurisdiction Act or has declined to assume jurisdiction to modify the decree or order; or
    - (ii) Does not have jurisdiction over a proceeding for adoption substantially in conformity with subsection (1)(a) through (d) or has declined to assume jurisdiction over a proceeding for adoption; and
  - (b) The court of this state has jurisdiction over the proceeding.
- (4) Any person may be adopted in accordance with the provisions of this chapter in termtime or in vacation by an unmarried adult or by a married person whose spouse joins in the petition. The adoption shall be by sworn petition filed in the chancery court of the county in which the adopting petitioner or petitioners reside or in which the child to be adopted resides or was born, or was found when it was abandoned or deserted, or in which the home is located to which the child has been surrendered by a person authorized to so do. The petition shall be accompanied by a doctor's or nurse practitioner's certificate showing the physical and mental condition of the child to be adopted and a sworn statement of all property, if any, owned by the child. In addition, the petition shall be accompanied by affidavits of the petitioner or petitioners stating the amount of the service fees charged by any adoption agencies or adoption facilitators used by the petitioner or petitioners and any other expenses paid by the petitioner or petitioners in the adoption process as of the time of filing the petition. If the doctor's or nurse practitioner's certificate indicates any abnormal mental or physical condition or defect, the condition or defect shall not, in the discretion of the chancellor, bar the adoption of the child if the adopting parent or

parents file an affidavit stating full and complete knowledge of the condition or defect and stating a desire to adopt the child, notwithstanding the condition or defect. The court shall have the power to change the name of the child as a part of the adoption proceedings. The word “child” in this section shall be construed to refer to the person to be adopted, though an adult.

(5) Adoption by couples of the same gender is prohibited.

(6) No person may be placed in the home of or adopted by the prospective adopting parties before a court-ordered or voluntary home study is satisfactorily completed by a licensed adoption agency, a licensed, experienced social worker approved by the chancery court or by the Department of Human Services on the prospective adoptive parties if required by Section 93-17-11.

(7) No person may be adopted by a person or persons who reside outside the State of Mississippi unless the provisions of the Interstate Compact for Placement of Children (Section 43-18-1 et seq.) have been complied with. In such cases Forms 100A, 100B (if applicable) and evidence of Interstate Compact for Placement of Children approval shall be added to the permanent adoption record file within one (1) month of the placement, and a minimum of two (2) post-placement reports conducted by a licensed child-placing agency shall be provided to the Mississippi Department of Human Services Interstate Compact for Placement of Children office.

(8) No person may be adopted unless the provisions of the Indian Child Welfare Act (ICWA) have been complied with, if applicable. When applicable, proof of compliance shall be included in the court adoption file prior to finalization of the adoption. If not applicable, a written statement or paragraph in the petition for adoption shall be included in the adoption petition stating that the provisions of ICWA do not apply before finalization.

(9) The readoption of a child who has automatically acquired United States citizenship following an adoption in a foreign country and who possesses a Certificate of Citizenship in accordance with the Child Citizenship Act, CAA, Public Law 106-395, may be given full force and effect in a readoption proceeding conducted by a court of competent jurisdiction in this state by compliance with the Mississippi Registration of Foreign Adoptions Act, Article 9 of this chapter.

<https://law.justia.com/codes/mississippi/2018/title-93/chapter-17/article-1/section-93-17-3/>

## **Adoption Proceeding – Service/Notification Requirements**

### **MS Code § 93-17-5. Parties to adoption proceeding; consent of child.**

(1) There shall be made parties to the proceeding by process or by the filing therein of a consent to the adoption proposed in the petition, which consent shall be duly sworn to or acknowledged and executed only by the following persons, but not before seventy-two (72) hours after the birth of the child:

(a) The parents, or parent, if only one (1) parent, though either be under the age of twenty-one (21) years;

(b) If both parents are dead, then any two (2) adult kin of the child within the third degree computed according to the civil law; if one of such kin is in possession of the child, he or she shall join in the petition or be made a party to the suit; or

(c) The guardian ad litem of an abandoned child, upon petition showing that the names of the parents of the child are unknown after diligent search and inquiry by the petitioners. In addition to the above, there shall be made parties to any proceeding to adopt a child, either by process or by the filing of a consent to the adoption proposed in the petition, the following:

(i) Those persons having physical custody of the child, except persons who are acting as foster parents as a result of placement with them by the Department of Human Services of the State of Mississippi.



(ii) Any person to whom custody of the child may have been awarded by a court of competent jurisdiction of the State of Mississippi.

(iii) The agent of the county Department of Human Services of the State of Mississippi that has placed a child in foster care, either by agreement or by court order.

(2) The consent may also be executed and filed by the duly authorized officer or representative of a home to whose care the child has been delivered. The child shall join the petition by the child's next friend.

(3) If consent is not filed, process shall be had upon the parties as provided by law for process in person or by publication, if they are nonresidents of the state or are not found therein after diligent search and inquiry, the court or chancellor in vacation may fix a date in termtime or in vacation to which process may be returnable and shall have power to proceed in termtime or vacation. In any event, if the child is more than fourteen (14) years of age, a consent to the adoption, sworn to or acknowledged by the child, shall also be required or personal service of process shall be had upon the child in the same manner and in the same effect as if the child were an adult.

<https://law.justia.com/codes/mississippi/2018/title-93/chapter-17/article-1/section-93-17-5/>

## **Domestic Violence – Jurisdiction**

### **MS Code § 93-21-5. Jurisdiction and venue.**

(1) The municipal justice, county or chancery court shall have jurisdiction over proceedings under this chapter as provided in this chapter. The petitioner's right to relief under this chapter shall not be affected by his leaving the residence or household to avoid further abuse.

(2) Venue shall be proper in any county or municipality where the respondent resides or in any county or municipality where the alleged abusive act or acts occurred.

(3) If a petition for an order for protection from domestic abuse is filed in a court lacking proper venue, the court, upon objection of the respondent, shall transfer the action to the appropriate venue pursuant to other applicable law.

(4) A record shall be made of any proceeding in justice or municipal court that involves domestic abuse.

<https://law.justia.com/codes/mississippi/2018/title-93/chapter-21/article-1/section-93-21-5/>

### **MS Code § 93-21-7.**

(1) Any person may seek a domestic abuse protection order for himself by filing a petition alleging abuse by the respondent. Any parent, adult household member, or next friend of the abused person may seek a domestic abuse protection order on behalf of any minor children or any person alleged to be incompetent by filing a petition with the court alleging abuse by the respondent. Cases seeking relief under this chapter shall be priority cases on the court's docket and the judge shall be immediately notified when a case is filed in order to provide for expedited proceedings.

(2) A petition seeking a domestic abuse protection order may be filed in any of the following courts: municipal, justice, county or chancery. A chancery court shall not prohibit the filing of a petition which does not seek emergency relief on the basis that the petitioner did not first seek or obtain temporary relief in another court. A petition requesting emergency relief pending a hearing shall not be filed in chancery court unless specifically permitted by the chancellor under the circumstances or as a separate pleading in an ongoing chancery action between the parties. Nothing in this section shall:

(a) Be construed to require consideration of emergency relief by a chancery court; or

(b) Preclude a chancery court from entering an order of emergency relief.

(3) The petitioner in any action brought pursuant to this chapter shall not bear the costs associated with its filing or the costs associated with the issuance or service of any notice of a hearing to the respondent, issuance or service of an order of protection on the respondent, or issuance or service of a warrant or witness subpoena. If the court finds that the petitioner is entitled to an order protecting the petitioner from abuse, the court shall be authorized to assess all costs including attorney's fees of the proceedings to the respondent. The court may assess costs including attorney's fees to the petitioner only if the allegations of abuse are determined to be without merit and the court finds that the petitioner is not a victim of abuse as defined by Section 93-21-3.

<https://law.justia.com/codes/mississippi/2018/title-93/chapter-21/article-1/section-93-21-7/>

## **Domestic Violence– Service/Notification Requirements**

### **MS Code § 93-21-9. Contents of petition.**

This section outlines the required contents and substance of any petition for protection from domestic abuse under this Chapter. The contents vary depending in part on the type of order the petition seeks, and not all requirements are replicated here.

<https://law.justia.com/codes/mississippi/2018/title-93/chapter-21/article-1/section-93-21-9/>

### **MS Code § 93-21-11. Notice and hearing.**

- (1) Within ten (10) days of the filing of a petition under the provisions of this chapter, the court shall hold a hearing, at which time the petitioner must prove the allegation of abuse by a preponderance of the evidence.
- (2) The respondent shall be given notice of the filing of any petition and of the date, time and place set for the hearing by personal service of process. A court may conduct a hearing in the absence of the respondent after first ascertaining that the respondent was properly noticed of the hearing date, time and place.

<https://law.justia.com/codes/mississippi/2018/title-93/chapter-21/article-1/section-93-21-11/>

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