

## VOLUNTARY RELINQUISHMENT OF PARENTAL RIGHTS

The right to parent your own children is referred to by the U.S. Supreme Court as fundamental. Therefore, strict compliance with the statute must be followed before considering whether to accept a voluntary relinquishment of parental rights. Miss. Code Ann. § 93-15-111 provides the minimum requirements for a valid written relinquishment of parental rights.

- \_\_\_\_\_ Signed under oath
- \_\_\_\_\_ Dated at least 72 hours after the birth of the child
- \_\_\_\_\_ States the terminating parent's full name
- \_\_\_\_\_ States the terminating parent's relationship to the child
- \_\_\_\_\_ States the parent's address
- \_\_\_\_\_ States the child's full name
- \_\_\_\_\_ Child's birthdate
- \_\_\_\_\_ Time of birth (if known)
- \_\_\_\_\_ Place of birth (as indicated on the birth certificate)
- \_\_\_\_\_ Identifies government agency to which the child was surrendered
- \_\_\_\_\_ States parent's consent to adoption
- \_\_\_\_\_ Parent waives service of process for future adoption (if separate proceedings)
- \_\_\_\_\_ Eliminates right to inherit
- \_\_\_\_\_ Knowingly, intelligently, voluntarily
- \_\_\_\_\_ Entitled to consult attorney
- \_\_\_\_\_ Clearly states that they terminate parental rights

**ADOPTION (Non-Agency)**

Even in uncontested adoptions there are several statutory requirements that must be met before the judge can put pen to paper. Those requirements are found at Miss. Code Ann. § 93-17-1 et seq.

- Parental rights previously terminated
- Youth Court properly relinquished
- Sworn petition
- Residency requirements under 93-17-3(1)
- No other state has exercised jurisdiction
- Doctor or nurse's certificate
- Sworn property statement
- Name change requested
- Home study (if required by statute)
- ICWA compliance

## GUARDIANSHIP OF MINOR

The Mississippi Guardianship & Conservatorship Act, or GAP Act, found at Miss. Code Ann. 93-20-101 et seq., has been with us for almost two years, yet lawyers at times fail to adhere to the statutes.

### Petition Requirements

- \_\_\_\_\_ Venue under 93-20-106 properly pled
- \_\_\_\_\_ UCCJEA affidavit information, all of it.
- \_\_\_\_\_ Reason for guardianship set forth in petition
- \_\_\_\_\_ Summons served on minor 7 + days before hearing (if minor is 14+ yo)
- \_\_\_\_\_ Both parents summoned 7 days or more, or joined in petition
- \_\_\_\_\_ Persons with primary care for 60+ days during last 6 months summoned 7+ days before hearing
- \_\_\_\_\_ Proof of notice filed per 93-20-113(2)
- \_\_\_\_\_ Name and address of petitioner's attorney
- \_\_\_\_\_ Necessary language of 93-20-203(3)
- \_\_\_\_\_ 16+ font used per 93-20-113(3)
- \_\_\_\_\_ Bankruptcy/criminal history disclosure per 93-20-117
- \_\_\_\_\_ Does good cause exist to excuse minor from participation in hearing
- \_\_\_\_\_ Does the minor 14+ yo make a nomination for guardian

### Order Requirements

- \_\_\_\_\_ Designated as either full guardianship or limited guardianship
- \_\_\_\_\_ If limited, sets forth specific rights retained by parents
- \_\_\_\_\_ Language from 93-20-206(5) if parent(s) still alive
- \_\_\_\_\_ Duties of guardian under 93-20-208 set forth (not required)
- \_\_\_\_\_ Powers of guardian under 93-20-209 set forth (not required)
- \_\_\_\_\_ Persons entitled to notice of future proceedings identified
- \_\_\_\_\_ Well-being report per 93-20-208(2)(e)

## GUARDIANSHIP OF ADULT

The Mississippi Guardianship & Conservatorship Act, or GAP Act, found at Miss. Code Ann. 93-20-101 et seq., has been with us for almost two years, yet lawyers at times fail to adhere to the statutes.

### Petition Requirements

- \_\_\_\_\_ Venue under 93-20-106 properly pled
- \_\_\_\_\_ Reason for guardianship set forth in petition
- \_\_\_\_\_ Summons served on ward 7+ days before hearing
- \_\_\_\_\_ Adult relative summoned 7+ days before hearing, or joined in
- \_\_\_\_\_ Veterans' Administration noticed (if necessary)
- \_\_\_\_\_ Proof of notice filed per 93-20-113(2)
- \_\_\_\_\_ Name and address of petitioner's attorney
- \_\_\_\_\_ Necessary language of 93-20-302(2)
- \_\_\_\_\_ 16+ font used per 93-20-113(3)
- \_\_\_\_\_ Bankruptcy/criminal history disclosure per 93-20-117
- \_\_\_\_\_ Two medical certificates from qualified professionals

### Order Requirements

- \_\_\_\_\_ Designated as either full guardianship or limited guardianship
- \_\_\_\_\_ Finding that ward's needs can't be met by less restrictive alternative
- \_\_\_\_\_ Specific finding by clear and convincing evidence of proper notice
- \_\_\_\_\_ Basis for guardianship set forth
- \_\_\_\_\_ Duties of guardian under 93-20-312 set forth (not required)
- \_\_\_\_\_ Powers of guardian under 93-20-309(3) and 93-20-313 set forth
- \_\_\_\_\_ Persons entitled to notice identified per 93-20-309(4), (5)
- \_\_\_\_\_ Proof that Statement of Rights was produced per 93-20-310(2)
- \_\_\_\_\_ Guardian Plan (not required)

\_\_\_\_\_ Conservator's Plan (not required)

\_\_\_\_\_ Bond

\_\_\_\_\_ Inventory (unless waived)

\_\_\_\_\_ Annual accounting per 93-20-424

## OPENING A TESTATE ESTATE

There is a difference between an attestation clause and a Miss. Code Ann. § 91-7-7 witness affidavit. Don't let a sneaky lawyer try to pass off an unsworn attested will as self-proved.

- \_\_\_\_\_ Sworn petition for probate
- \_\_\_\_\_ Proper venue is set forth in petition to open estate per 91-7-1
- \_\_\_\_\_ Original LWT produced
- \_\_\_\_\_ Will is signed
- \_\_\_\_\_ Will is subscribed by at least two credible witnesses (if non-holographic)
- \_\_\_\_\_ Sworn affidavit of at least one of the subscribing witnesses
  - \_\_\_\_\_ Testator of sound and disposing mind
  - \_\_\_\_\_ Signed in the presence of the testator or at their request
  - \_\_\_\_\_ Testator aware witnesses signed
  - \_\_\_\_\_ Witness was aware of what they signed
- \_\_\_\_\_ Executor named in LWT is same as petitioner
  - \_\_\_\_\_ If not, proper declination filed
- \_\_\_\_\_ Bond waived
- \_\_\_\_\_ Accountings waived
- \_\_\_\_\_ Appraisal waived
- \_\_\_\_\_ Inventory waived

## CLOSING AN ESTATE

This one comes courtesy of Judge Larry Primeaux, Chancellor, District 12. Estate practice heavily relies on statutory language. It is not an area that can be “winged.” Many attorneys do just that.

- \_\_\_\_\_ Judgment opening estate filed
- \_\_\_\_\_ Oath
- \_\_\_\_\_ Letters
- \_\_\_\_\_ Bond (unless waived)
- \_\_\_\_\_ Affidavit of known creditors filed before publication to unknown creditors per 91-7-145
- \_\_\_\_\_ Proper publication made for unknown creditors
- \_\_\_\_\_ Inventory (unless waived)
- \_\_\_\_\_ Appraisement (unless waived)
- \_\_\_\_\_ Accountings filed and approved (other than final accounting)
- \_\_\_\_\_ Judgment determining heirship filed (for intestate estates, or testate estates where the will does not contain a residuary clause)
- \_\_\_\_\_ Petition to close estate has been filed
- \_\_\_\_\_ All interested parties (beneficiaries, heirs, creditors, etc.) have either joined in the petition or were subsequently served with notice of the petition
- \_\_\_\_\_ All probated claims have been paid
- \_\_\_\_\_ Attorney’s fees were set forth in petition to close, to no objection

## IRRECONCILABLE DIFFERENCES DIVORCE

Divorce is a creature of statute, and the statutory requirements must be met before a divorce on the ground of irreconcilable differences can be awarded. In fact, "strict compliance with the statute is required." *Perkins v. Perkins*, 787 So. 2d 1256, 1264 (Miss. 2001).

### Requirements for Petition

- \_\_\_\_\_ One party is resident of MS for 6 months preceding filing of Complaint and resident of subject county
- \_\_\_\_\_ Date of marriage (MCA 93-5-33)
- \_\_\_\_\_ Date of separation
- \_\_\_\_\_ Number of children
- \_\_\_\_\_ Names of children
- \_\_\_\_\_ Whether wife is pregnant
- \_\_\_\_\_ Is it a joint complaint?
- \_\_\_\_\_ If not joint, has spouse been served/waived process
- \_\_\_\_\_ Complaint sworn

### Requirements for Judgment

- \_\_\_\_\_ Styled "Final Judgment of Divorce—Irreconcilable Differences" (UCCR 8.04)
- \_\_\_\_\_ No contests or denials on file
- \_\_\_\_\_ Complaint "on file for 60 days *before* being heard" (MCA 93-5-2(4))
- \_\_\_\_\_ Judgment provides for jurisdiction
- \_\_\_\_\_ Judgment provides for divorce on ID grounds
- \_\_\_\_\_ Judgment states that written agreement for custody, support, and property division is "adequate sufficient" (MCA 93-5-2(2))
- \_\_\_\_\_ Judgment incorporates that written agreement
- \_\_\_\_\_ That written agreement is attached to judgment
- \_\_\_\_\_ Have 8.05s been exchanged? If not, do the parties request waiver
- \_\_\_\_\_ Custody/visitation/support provisions are adequate and sufficient



## CONSERVATORSHIP

The Mississippi Guardianship & Conservatorship Act, or GAP Act, found at Miss. Code Ann. 93-20-101 et seq., has been with us for almost two years, yet lawyers at times fail to adhere to the statutes.

### Petition Requirements

- \_\_\_\_\_ Venue under 93-20-106 properly pled
- \_\_\_\_\_ Reason for conservatorship set forth in petition
- \_\_\_\_\_ Summons served on ward 7+ days before hearing
- \_\_\_\_\_ Guardian, if any, served 7+ days before hearing
- \_\_\_\_\_ Adult relative summoned 7+ days before hearing, or joined in
- \_\_\_\_\_ Veterans' Administration noticed (if necessary)
- \_\_\_\_\_ Proof of notice filed per 93-20-113(2)
- \_\_\_\_\_ Name and address of petitioner's attorney
- \_\_\_\_\_ Necessary language of 93-20-402(3)
- \_\_\_\_\_ 16+ font used per 93-20-113(3)
- \_\_\_\_\_ Bankruptcy/criminal history disclosure per 93-20-117
- \_\_\_\_\_ Two medical certificates from qualified professionals

### Order Requirements

- \_\_\_\_\_ Designated as either full or limited conservatorship
- \_\_\_\_\_ Finding that <sup>ADULT'S</sup>~~minor~~'s needs can't be met by less restrictive alternative
- \_\_\_\_\_ Specific finding by clear and convincing evidence of proper notice
- \_\_\_\_\_ Specific property controlled by conservatorship identified
- \_\_\_\_\_ Basis for guardianship set forth
- \_\_\_\_\_ Duties of guardian under 93-20-418 set forth (not required)
- \_\_\_\_\_ Powers of guardian under 93-20-414 and 93-20-421 set forth
- \_\_\_\_\_ Persons entitled to notice identified per 93-20-411(5), (6), (7)
- \_\_\_\_\_ Proof that Statement of Rights was produced per 93-20-412(2)