

THE COURTS

Title 204—JUDICIAL SYSTEM GENERAL PROVISIONS

PART V. PROFESSIONAL ETHICS AND CONDUCT [204 PA. CODE CH. 83]

Amendment of Rule 203 of the Rules of Disciplinary Enforcement; No. 101 Disciplinary Rules Doc.

Order

Per Curiam

And Now, this 26th day of May, 2011 upon the recommendation of the Disciplinary Board of The Supreme Court of Pennsylvania; the proposal having been published for public comment in the *Pennsylvania Bulletin*, 40 Pa.B. 6775 (November 27, 2010):

It Is Ordered pursuant to Article V, Section 10 of the Constitution of Pennsylvania that Rule 203(b) of the Pennsylvania Rules of Disciplinary Enforcement is amended in the following form.

This *Order* shall be processed in accordance with Pa.R.J.A. No. 103(b), and shall be effective in 30 days.

Annex A

TITLE 204. JUDICIAL SYSTEM GENERAL PROVISIONS

PART V. PROFESSIONAL ETHICS AND CONDUCT

Subpart B. DISCIPLINARY ENFORCEMENT

CHAPTER 83. PENNSYLVANIA RULES OF DISCIPLINARY ENFORCEMENT

Subchapter B. MISCONDUCT

Rule 203. Grounds for discipline.

* * * * *

(b) The following shall also be grounds for discipline:

* * * * *

(7) Failure by a respondent-attorney without good cause to respond to Disciplinary Counsel's request or supplemental request under Disciplinary Board Rules, § 87.7(b) for a statement of the respondent-attorney's position.

* * * * *

[Pa.B. Doc. No. 11-958. Filed for public inspection June 10, 2011, 9:00 a.m.]

Title 231—RULES OF CIVIL PROCEDURE

PART II. ORPHANS' COURT RULES

[231 PA. CODE PART II]

Proposed and Renumbered Orphans' Court Rules

With respect to rules regarding adoptions, the Orphans' Court Procedural Rules Committee is recommending new

Supreme Court Orphans' Court Rules 15.5, 15.7, 15.9, 15.10, 15.11, 15.12, and 15.14, as well as the amendment and renumbering of current Rules 15.1, 15.2, 15.3, 15.4, 15.5, 15.6, 15.7, 15.8, and 15.9. Pursuant to Pennsylvania Rule of Judicial Administration 103(a)(1), the proposed amended rules and the proposed new rules are being submitted to the bench and bar for comments and suggestions prior to the Committee submitting this Recommendation to the Supreme Court for adoption.

Proposed new rule numbers and rule additions are bold. Any deletions are bold and bracketed.

All communications in reference to the proposed Recommendation should be sent no later than Wednesday, August 10, 2011, to:

Lisa M. Rhode, Counsel
Orphans' Court Procedural Rules Committee
Pennsylvania Judicial Center
601 Commonwealth Avenue, Suite 6200
P. O. Box 62635
Harrisburg PA 17106-2635

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The Committee has prepared this Explanatory Comment which appears in connection with the proposed amendments for the convenience of the bench and bar. It will not constitute part of the rule nor will it be officially adopted or promulgated.

*By the Orphans' Court
Procedural Rules Committee*

MARGARET GALLAGHER THOMPSON,
Chair

Annex A

TITLE 231. RULES OF CIVIL PROCEDURE

PART II. ORPHANS' COURT RULES

RULE 15: ADOPTIONS

Rule 15.1. Local rules.

The practice and procedure with respect to adoptions shall be as provided by Act of Assembly and **these rules** to the extent not inconsistent [**therewith shall conform either with the pertinent general rule or special order of the local Orphans' Court or, in the absence thereof, with this Rule 15**] with an Act of Assembly. The Orphans' Court Divisions of the several judicial districts of this Commonwealth may adopt local rules regulating the practice and procedure of adoptions. All such rules shall not be inconsistent with these rules and the Adoption Act, 23 Pa.C.S. § 2101 *et seq.*

Rule [15.6] 15.2. Notice; method and time.

[Notice to] (a) *Method of notice.* Except as otherwise provided in these rules, every person to be notified shall be provided with notice by personal service [, service] at his or her residence on an adult member of the household, or by registered or certified mail [to] at his or her last known address. If [such] service is not [unobtainable and] obtainable because the registered or certified mail is returned undelivered, then:

(1) no further notice shall be required in proceedings under Rules [15.2 or 15.3, and] 15.3 or 15.4, 15.5, 15.7, 15.9, 15.10, 15.11;

(2) further notice by publication shall be required in proceedings under [Rules 15.4 and 15.5,] Rule 15.6 and Rule 15.8 only where the petitioner is seeking to have the court, pursuant to 23 Pa.C.S. § 2714, dispense with the consent of a birth parent whose parental rights have not been terminated;

(3) further notice [by publication or otherwise] shall be given if required by [general] local rule or special order of the local [Orphans' Court] court.

(4) If, after reasonable investigation, the identity of a person to be notified is unknown, notice to him or her shall not be required.

(b) *Time for notice.*

(1) Notice of a hearing under Rules 15.3, 15.4, 15.6, 15.9, 15.10 and 15.11 shall be provided at least ten (10) days prior to the date fixed for the hearing.

(2) Notice of a hearing under Rule 15.8 shall be provided at least ten (10) days prior to the date fixed for the hearing only if the parental rights of a birth parent have not been terminated in a prior proceeding and the court is being asked to dispense with the consent of the birth parent pursuant to 23 Pa.C.S. § 2714.

Rule [15.2] 15.3. Voluntary relinquishment to agency.

(a) *Petition.* A petition under [Section 301 of the Adoption Act] 23 Pa.C.S. § 2501 to relinquish parental rights and duties with respect to a child who has been in the care of an Agency shall include the following allegations:

(1) the name, address, age, racial background and religious affiliation of the petitioner;

(2) the information required in subparagraph (1) as to any parent who is not a petitioner, including the father of a child born out of wedlock, if he has been identified, [unless] or the reason(s) why the court [, for cause shown, determines] should find that such information is not essential;

(3) the marital status of the mother as of the time of birth of the child and during one year prior thereto [and, if the mother has ever been married, the name of her husband or husbands and her maiden name];

(4) the name, age, date of birth, place of birth, racial background, sex and religious affiliation of the child;

(5) the name and address of the Agency having care of the child;

(6) [the date when the child was placed with the Agency;

(7) when the child is born out of wedlock, whether the mother and the father of the child intend to marry;

(8)] the reasons for seeking relinquishment;

(7) whether the petitioner has received counseling concerning the termination of parental rights and the alternatives thereto;

(8) that the petitioner has been informed and understands that a birth relative of the child, including the petitioner, and the adopting parent(s) of the child have the opportunity to enter into a legally enforceable Voluntary Agreement for Post-

Adoption Contact or Communication ("Voluntary Post-Adoption Contact Agreement");

(9) [that each] whether or not a Voluntary Post-Adoption Contact Agreement has been submitted and is pending before this court or is being submitted to the court under a separate petition filed at the same time as the filing of this petition;

(10) that the non-petitioning birth parent has been informed that a birth relative of the child, including that birth parent, and the adopting parent(s) have the opportunity to enter into a Voluntary Post-Adoption Contact Agreement, or the reason(s) why such notice has not or cannot be given; and

(11) that the petitioner understands the petition, has considered the alternatives, and has executed the petition voluntarily to promote what the petitioner believes to be in petitioner's and the child's best interests.

Note: Under Act 101, the adoption agency or an attorney for a party is required to give notice to the adopting parent(s), a birth parent, and, in some instances, a child of the opportunity to enter into Voluntary Post-Adoption Contact Agreements. Notice to birth relatives who are not birth parents (*see* 23 Pa.C.S. § 2733(c)) is not required, although birth relatives may negotiate and become parties to a voluntary contract with the adopting parent(s) for post-adoption contact or communication. In some cases, the court may dispense with proof that a non-petitioning birth parent has received notice of the opportunity to enter into a Voluntary Post-Adoption Contact Agreement. By means of examples, without limitation, the following may be reasons why the court may decide to dispense with proof that both birth parents received such notification: the identity of the non-petitioning birth parent is unknown; the location of the non-petitioning birth parent is unknown; the non-petitioning birth parent has never had any contact with the child; or the parental rights of the non-petitioning birth parent were or will be terminated in a separate proceeding. The last example presumes that the non-petitioning birth parent has been or will be informed of the opportunity to enter into a Voluntary Post-Adoption Contact Agreement in that separate proceeding and proof of this notice will be submitted in that proceeding.

If a child is age 12 years of age or older, the child must consent to and sign the Voluntary Post-Adoption Contact Agreement. 23 Pa.C.S. § 2734. The court finalizing the adoption shall verify that a child who has attained twelve (12) years of age prior to finalization of the adoption received notice and information regarding the opportunity to enter into a Voluntary Post-Adoption Contact Agreement. *See* Pa.O.C. Rule 15.8.

(b) *Exhibits.* The petition shall have attached to it the following exhibits:

(1) the notice or agreement to relinquish custody of the child to the Agency signed by the petitioner;

(2) an acknowledgement signed by the petitioner that he or she has received notice and information regarding the opportunity to negotiate and enter into a legally enforceable Voluntary Post-Adoption Contact Agreement;

(3) the joinder of a parent who is not a petitioner or his or her waiver of all interest in the child, if either is obtainable;

(4) if the joinder or waiver of the non-petitioning parent is attached, then an acknowledgement signed by the non-petitioning parent that he or she has received notice and information regarding the opportunity to negotiate and enter into a legally enforceable Voluntary Post-Adoption Contact Agreement;

[(2)] (5) a birth certificate or certification of registration of birth of the child; and

[(3) the written consent of a parent or guardian of a petitioner who has not reached 18 years of age;

(4)] (6) the joinder or consent of the Agency having care of the child and its consent to accept custody of the child until such time as the child is adopted.

Note: The acknowledgements required to be attached as Exhibits under subparagraphs (b)(2) and (b)(4) are not required if a Voluntary Post-Adoption Contact Agreement involving that birth parent already has been submitted and approved by the court, is currently pending before the court, or is attached to a separate petition to approve a Voluntary Post-Adoption Contact Agreement that is being filed simultaneously with the filing of this petition. The acknowledgement under subparagraph (b)(4) is not required if reasons are set forth in the petition, and the court determines that such notification need not or cannot be obtained.

(c) *Notice and hearing.* [If a parent, including the parent of a child born out of wedlock, has not relinquished his or her rights and duties in and to the child or joined in the other parent's petition hereunder, then notice of the hearing on the petition to relinquish rights and duties shall be given to the first referred to parent as provided in Rule 15.6. A parent may waive in writing the right to such notice. Each] After the filing of a petition under 23 Pa.C.S. § 2501, the court shall schedule a private evidentiary hearing providing sufficient time for notice to be given as provided below. The petitioner and each person whose joinder or consent is attached to the petition must appear at the hearing and shall be examined under oath at the hearing unless excused by the court.

(1) In compliance with Rule 15.2, notice of the hearing shall be given to the petitioner and shall contain the information as required in subsection 23 Pa.C.S. § 2503(b)(2).

(2) In compliance with Rule 15.2, a copy of the notice of the hearing shall be given to the other parent, including to the putative father, if applicable. Notice sent to the putative father shall also inform the putative father that his parental rights may be terminated if:

(A) he fails to file either an acknowledgment of paternity or claim of paternity pursuant to 23 Pa.C.S. § 5103 (relating to acknowledgment and claim of paternity); and

(B) he fails to either appear at the scheduled hearing to object to the termination of his parental rights or file, with the court prior to the hearing, a written objection to the termination of his parental rights.

(3) In compliance with Rule 15.2, copy of the notice of the hearing shall be given to the parent(s) of a petitioner who has not reached 18 years of age.

(d) *Decree.* After the hearing, the court shall enter a decree terminating parental rights as set forth in 23 Pa.C.S. § 2503(c), including the obligation of support, if the court is satisfied that the petitioner voluntarily filed the petition and that termination of petitioner's parental rights is in the best interest of the child.

(e) *Putative father.* The court may also terminate the rights of a putative father who has failed to file a separate petition under 23 Pa.C.S. § 2501 or join in the petitioner's petition, if the putative father has been given notice of the hearing and has failed to appear at the hearing or file a written objection with the court prior to the hearing and has also failed to file an acknowledgment of paternity or claim of paternity pursuant to 23 Pa.C.S. § 5103.

(f) *Right to file medical and personal and/or social history information.* The Clerk of the Court shall transmit the decree of termination to the parent whose rights are terminated or to counsel for the parent, if represented. The Clerk of the Court shall also include in that mailing standard instructions advising the parent of his or her continuing right to place and update medical and personal and/or social history information, whether or not the medical condition is in existence or discoverable at the time of adoption, on file with the court and with the Department of Public Welfare. This standard instruction form shall also inform the birth parent that the information will be retained and disclosed only to those allowed to have non-identifying information in accordance with Subchapter B of Chapter 29 of the Adoption Act, 23 Pa.C.S. §§ 2911 et. seq., and further that, identifying information will be disclosed only if there is an authorization or consent form in the file permitting release.

Note: The Clerk of Courts may also include in the mailing to the birth parent or birth parent's counsel any forms promulgated by the Department of Welfare, any forms promulgated by the Department of Health, and any forms adopted by local rule, including those authorizing the release of information, withholding authorization to release information, or revoking any prior authorization to release information. This rule uses the term "medical and personal and/or social history information" because the statute refers to these statements in varying ways. Compare 23 Pa.C.S. §§ 2503(d), 2504(d), 2511(c) with 23 Pa.C.S. §§ 2923, 2934.

Rule [15.3] 15.4. Voluntary relinquishment to adult intending to adopt child.

(a) *Petition.* A petition under [Section 302 of the Adoption Act] 23 Pa.C.S. § 2502 to relinquish parental rights with respect to a child who has been in the exclusive care of an adult or adults who have filed a Report of Intention to Adopt shall include the following allegations [required under subparagraphs (1), (2), (3), (4) and (7), (8) and (9) of Rule 15.2(a) and]:

(1) [the date when the Report of Intention to Adopt was filed;

(2) the date when the child was placed with the adult or adults;]

the name, address, age, racial background and religious affiliation of the petitioner;

(2) the information required in subparagraph (1) as to any parent who is not a petitioner, including the father of a child born out of wedlock, if he has been identified, or the reason(s) why the court should find that such information is not essential;

(3) the marital status of the mother as of the time of birth of the child and during one year prior thereto;

(4) the name, age, date of birth, place of birth, racial background, sex and religious affiliation of the child;

(5) the date when the Report of Intention to Adopt was filed;

(6) the date when the child was placed with the adult(s);

(7) the reasons for seeking relinquishment;

(8) whether the petitioner has received counseling concerning the termination of parental rights and the alternatives thereto;

(9) that the petitioner has been informed and understands that a birth relative of the child, including the petitioner, and the adopting parent(s) of the child have the opportunity to enter into a legally enforceable voluntary agreement for post-adoption contact or communication ("Voluntary Post-Adoption Contact Agreement");

(10) whether or not a Voluntary Post-Adoption Contact Agreement has been submitted and is pending before this court or is being submitted to this court under a separate petition filed at the same time as the filing of this petition;

(11) that the non-petitioning birth parent has been informed that a birth relative of the child, including that birth parent, and the adopting parent(s) have the opportunity to enter into a Voluntary Post-Adoption Contact Agreement, or the reason(s) why such notice has not or cannot be given; and

(12) that the petitioner understands the petition, has considered the alternatives, and has executed the petition voluntarily to promote what the petitioner believes to be in petitioner's and the child's best interests

Note: Under Act 101, the adoption agency or an attorney for a party is required to give notice to the adopting parent(s), a birth parent, and, in some instances, a child of the opportunity to enter into Voluntary Post-Adoption Contact Agreements. Notice to birth relatives who are not birth parents (*see* 23 Pa.C.S. § 2733(c)) is not required, although birth relatives may negotiate and become parties to a voluntary contract with the adopting parent(s) for post-adoption contact or communication. In some cases, the court may dispense with proof that a non-petitioning birth parent has received notice of the opportunity to enter into a Voluntary Post-Adoption Contact Agreement. By means of examples, without limitation, the following may be reasons why the court may decide to dispense with proof that both birth parents received such notification: the identity of the non-petitioning birth parent is unknown; the location of the non-petitioning birth parent is unknown; the non-

petitioning birth parent has never had any contact with the child; or the parental rights of the non-petitioning birth parent were or will be terminated in a separate proceeding. This last example presumes that the non-petitioning birth parent has been or will be informed of the opportunity to enter into a Voluntary Post-Adoption Contact Agreement in that separate proceeding and proof of this notice will be submitted in that proceeding.

If a child is age 12 years of age or older, the child must consent to and sign the Voluntary Post-Adoption Contact Agreement. 23 Pa.C.S. § 2734. The court finalizing the adoption shall verify that a child who has attained twelve (12) years of age prior to finalization of the adoption received notice and information regarding the opportunity to enter into a Voluntary Post-Adoption Contact Agreement. *See* Pa.O.C. Rule 15.8.

(b) *Exhibits.* The petition shall have attached to it the [first three exhibits specified in Rule 15.2(b) and] following exhibits:

(1) [the separate consent of the adult or adults to accept custody of the child.] an acknowledgement signed by the petitioner that he or she has received notice and information regarding the opportunity to negotiate and enter into a legally enforceable Voluntary Post-Adoption Contact Agreement;

(2) the joinder of a parent who is not a petitioner or his or her waiver of all interest in the child, if either is obtainable;

(3) if the joinder or waiver of the non-petitioning parent is attached, then an acknowledgement signed by the non-petitioning parent that he or she has received notice and information regarding the opportunity to negotiate and enter into a legally enforceable Voluntary Post-Adoption Contact Agreement;

(4) a birth certificate or certification of registration of birth of the child; and

(5) the signed consent(s) of the adult(s) to accept custody of the child until such time as the adoption is completed.

Note: The acknowledgements required to be attached as Exhibits under subparagraphs (b)(1) and (b)(3) are not required if a Voluntary Post-Adoption Contact Agreement involving that birth parent already has been submitted and approved by the court, is currently pending before the court, or is attached to a separate petition to approve a Voluntary Post-Adoption Contact Agreement that is being filed simultaneously with the filing of this petition. The acknowledgement under subparagraph (b)(3) is not required if reasons are set forth in the petition, and the court determines that such notification need not or cannot be obtained.

(c) *Notice and [Hearing] hearing.* [If a parent, including the parent of a child born out of wedlock, has not relinquished his or her rights in the child or joined in the petition hereunder, then notice of the hearing on a parent's petition to relinquish rights shall be given to the first referred to parent as provided in Rule 15.6. A parent may waive in writing the right to such notice.] After the filing of a petition under 23 Pa.C.S. § 2502, the court shall schedule a private evidentiary hearing providing

sufficient time for notice to be given as provided below. [Each] The petitioner and each person whose joinder or consent is attached to the petition must appear at the hearing and shall be examined under oath at the hearing unless excused by the court.

(1) In accordance with Rule 15.2, notice of the hearing shall be given to the petitioner and shall contain the information as required in subsection 23 Pa.C.S. § 2503(b)(2).

(2) In accordance with Rule 15.2, a copy of the notice of the hearing shall be given to the other parent, including to the putative father, if applicable. Notice sent to the putative father shall also inform the putative father that his parental rights may be terminated if:

(A) he fails to file either an acknowledgment of paternity or claim of paternity pursuant to 23 Pa.C.S. § 5103 (relating to acknowledgment and claim of paternity); and

(B) he fails to either appear at the scheduled hearing to object to the termination of his parental rights or file, with the court prior to the hearing, a written objection to the termination of his parental rights.

(3) In accordance with Rule 15.2, copy of the notice of the hearing shall be given to the parent(s) of a petitioner who has not reached 18 years of age.

(d) *Decree.* After the hearing, the court shall enter a decree terminating parental rights as set forth in 23 Pa.C.S. § 2503(c) if the court is satisfied that the petitioner voluntarily filed the petition and that termination of petitioner's parental rights is in the best interest of the child.

(e) *Putative father.* The court may also terminate the rights of a putative father who has failed to file a separate petition under 23 Pa.C.S. § 2502 or join in the petitioner's petition, if the putative father has been given notice of the hearing and has failed to appear at the hearing or file a written objection with the court prior to the hearing and has also failed to file an acknowledgment of paternity or claim of paternity pursuant to 23 Pa.C.S. § 5103.

(f) *Right to file medical and personal and/or social history information.* The Clerk of the Court shall transmit the decree of termination to the parent whose rights are terminated or to counsel for the parent, if represented. The Clerk of the Court shall also include in that mailing standard instructions advising the parent of his or her continuing right to place and update medical and personal and/or social history information, whether or not the medical condition is in existence or discoverable at the time of adoption, on file with the court and with the Department of Public Welfare. This standard instruction form shall also inform the birth parent that the information will be retained and disclosed only to those allowed to have non-identifying information in accordance with Subchapter B of Chapter 29 of the Adoption Act, 23 Pa.C.S. §§ 2911 *et. seq.*, and further that, identifying information will be disclosed only if there is an authorization or consent form in the file permitting release.

Note: The Clerk of Courts may also include in the mailing to the birth parent or birth parent's counsel any forms promulgated by the Department of

Welfare, any forms promulgated by the Department of Health, and any forms adopted by local rule, including those authorizing the release of information, withholding authorization to release information, or revoking any prior authorization to release information. This rule uses the term "medical and personal and/or social history information" because the statute refers to these statements in varying ways. *Compare* 23 Pa.C.S. §§ 2503(d), 2504(d), 2511(c) *with* 23 Pa.C.S. §§ 2923, 2934.

(Editor's Note: Rule 15.5 is new and printed in regular type to enhance readability.)

Rule 15.5. Alternative procedure for relinquishment.

(a) *Petition.* A petition under 23 Pa.C.S. § 2504 to confirm the consent of a parent to have the child adopted shall include the following allegations:

(1) the name, address, age, racial background and religious affiliation of the consenter;

(2) the information required in subparagraph (1) as to any parent who has not sign a consent to an adoption, including the father of a child born out of wedlock, if he has been identified, or the reason(s) why the court should find that such information is not essential;

(3) the marital status of the mother as of the time of birth of the child and during one year prior thereto;

(4) the name, age, date of birth, place of birth, racial background, sex and religious affiliation of the child;

(5) the date when the consent to adoption was executed by the consenter and that the date of its execution was not within a prohibited period as provided by 23 Pa.C.S. § 2711(c);

(6) that more than thirty (30) days have elapsed since the consent to adoption was executed by the consenter and that no written revocation of the consent has been served upon the petitioning Agency or the petitioning adult(s) during the intervening thirty (30) day period;

(7) that the consent to adoption was executed with the date and location as shown on the consent, and the consent was witnessed as provided in 23 Pa.C.S. § 2711(d);

(8) whether the consenter received a list of available counselors and counseling services concerning the termination of parental rights and the alternatives thereto;

(9) that the consenter has been informed and understands that a birth relative of the child, including the consenter, and the adopting parent(s) of the child have the opportunity to enter into a legally enforceable voluntary agreement for post-adoption contact or communication ("Voluntary Post-Adoption Contact Agreement");

(10) whether or not a Voluntary Post-Adoption Contact Agreement has been submitted and is pending before this court or is being submitted to this court under a separate petition filed at the same time as the filing of this petition;

(11) that the non-consenting birth parent has been informed that a birth relative of the child, including that birth parent, and the adopting parent(s) have the opportunity to enter into a Voluntary Post-Adoption Contact Agreement, or the reason(s) why such notice has not or cannot be given; and

(12) that each petitioner has read and understands the petition and believes its filing to be in the child's best interests.

Note: Under Act 101, the adoption agency or an attorney for a party is required to give notice to the adopting parent(s), a birth parent, and, in some instances, a child of the opportunity to enter into Voluntary Post-Adoption Contact Agreements. Notice to birth relatives who are not birth parents (*see* 23 Pa.C.S. § 2733(c)) is not required, although birth relatives may negotiate and become parties to a voluntary contract with the adopting parent(s) for post-adoption contact or communication. In some cases, the court may dispense with proof that a certain birth parent has received notice of the opportunity to enter into a Voluntary Post-Adoption Contact Agreement. By means of examples, without limitation, the following may be reasons why the court may decide to dispense with proof that both birth parents received such notification: the identity of the non-consenting birth parent is unknown; the location of the non-consenting birth parent is unknown; the non-consenting birth parent has never had any contact with the child; or the parental rights of the non-consenting birth parent were or will be terminated in a separate proceeding. This last example presumes that the non-consenting birth parent has been or will be informed of the opportunity to enter into a Voluntary Post-Adoption Contact Agreement in that separate proceeding and proof of this notice will be submitted in that proceeding.

If a child is age 12 years of age or older, the child must consent to and sign the Voluntary Post-Adoption Contact Agreement. 23 Pa.C.S. § 2734. The court finalizing the adoption shall verify that a child who has attained twelve (12) years of age prior to finalization of the adoption received notice and information regarding the opportunity to enter into a Voluntary Post-Adoption Contact Agreement. *See* Pa.O.C. Rule 15.8.

(b) *Exhibits.* The petition shall have attached to it the following exhibits:

- (1) the original consent(s) to adoption;
- (2) an acknowledgement signed by the consenter(s) that he or she received notice and information regarding the opportunity to negotiate and enter into a legally-enforceable Voluntary Post-Adoption Contact Agreement;
- (3) an acknowledgement signed by the non-consenting birth parent that he or she received notice and information regarding the opportunity to negotiate and enter into a Voluntary Post-Adoption Contact Agreement;
- (4) a birth certificate or certification of registration of birth of the child; and
- (5) the signed consent(s) of the adult(s) or Agency to accept custody of the child until such time as the adoption is completed.

Note: The acknowledgements required to be attached as Exhibits under subparagraph (b)(2) and (b)(3) are not required if a Voluntary Post-Adoption Contact Agreement involving that birth parent already has been submitted and approved by the court, is currently pending before the court, or is attached to a separate petition to approve a Voluntary Post-Adoption Contact Agreement that is being filed simultaneously with the filing of this petition. The acknowledgement required to be attached as an Exhibit under subparagraph (b)(3) is not required if reasons are set forth in the petition, and the court determines that such notification need not or cannot be obtained.

(c) *Notice and hearing.* After the filing of a petition under 23 Pa.C.S. § 2504, the court shall schedule a

private evidentiary hearing not less than ten (10) days after the filing of the petition.

(1) In accordance with only the method of notice requirements under Rule 15.2(a), notice of the hearing shall be given to the consenter in the form required under subsection 23 Pa.C.S. § 2513(b)(2) and shall state that the parental rights of the consenting parent and the parental rights of any putative father, if applicable, may be terminated at that hearing.

(2) In accordance with only the method of notice requirements under Rule 15.2(a), a copy of the notice of the hearing shall be given to the other parent, including to the putative father, if applicable. Notice sent to the putative father shall also inform the putative father that his parental rights may be terminated if:

(A) he fails to file either an acknowledgment of paternity or claim of paternity pursuant to 23 Pa.C.S. § 5103 (relating to acknowledgment and claim of paternity); and

(B) he fails to either appear at the scheduled hearing to object to the termination of his parental rights or file, with the court prior to the hearing, a written objection to the termination of his parental rights.

(3) In accordance with only the method of notice requirements under Rule 15.2(a), copy of the notice of the hearing shall be given to the parent(s) of a consenter who has not reached 18 years of age.

(d) *Decree.* After the hearing, the court shall enter a decree terminating parental rights as set forth in 23 Pa.C.S. § 2504(b) if the court is satisfied that termination of parental rights is in the best interest of the child, and shall release the parent whose parental rights are terminated of the obligation of support if the child will be in the custody of an Agency.

(e) *Putative father.* The court may also terminate the rights of a putative father who has failed to execute a consent to adoption pursuant to 23 Pa.C.S. § 2711, if the putative father has been given notice of the hearing and has failed to appear at the hearing or file a written objection with the court prior to the hearing and has also failed to file an acknowledgment of paternity or claim of paternity pursuant to 23 Pa.C.S. § 5103.

(f) *Right to file medical and personal and/or social history information.* The Clerk of the Court shall transmit the decree of termination to the parent whose rights are terminated or to counsel for the parent, if represented. The Clerk of the Court shall also include in that mailing standard instructions advising the parent of his or her continuing right to place and update medical and personal and/or social history information, whether or not the medical condition is in existence or discoverable at the time of adoption, on file with the court and with the Department of Public Welfare. This standard instruction form shall also inform the birth parent that the information will be retained and disclosed only to those allowed to have non-identifying information in accordance with Subchapter B of Chapter 29 of the Adoption Act, 23 Pa.C.S. §§ 2911 et. seq., and further that, identifying information will be disclosed only if there is an authorization or consent form in the file permitting release.

Note: The Clerk of Courts may also include in the mailing to the birth parent or birth parent's counsel any forms promulgated by the Department of Welfare, any forms promulgated by the Department of Health, and any forms adopted by local rule, including those authorizing the release of information, withholding authorization to release information, or revoking any prior authorization

to release information. This rule uses the term “medical and personal and/or social history information” because the statute refers to these statements in varying ways. Compare 23 Pa.C.S. §§ 2503(d), 2504(d), 2511(c) with 23 Pa.C.S. §§ 2923, 2934.

Rule [15.4] 15.6. Involuntary termination of parental rights.

(a) *Petition.* A petition for involuntary termination of parental rights under [Sections 311 and 312 of the Adoption Act] 23 Pa.C.S. §§ 2511—2512 shall include the following allegations:

(1) the name and address of the [petitioner and his or her] petitioner(s) and the basis for the standing asserted by the petitioner(s);

(2) the name, age, date of birth, **place of birth**, racial background, sex and religious affiliation of the child;

(3) the name, address, age, racial background and religious affiliation of the [parent or parents] parent(s), including the father of a child born out of wedlock, if he has been identified;

(4) **whether a claim for paternity has been filed under 23 Pa.C.S. § 5103 (relating to claim of paternity) if father of the child is not identified in the petition;**

(5) the marital status of the mother as of the time of birth of the child and during one year prior thereto [**and, if the mother has ever been married, the name of her husband or husbands and her maiden name**];

[(5)] (6) the date when the child was placed in the care of the petitioner, **and the date when the child was removed from the parent(s) who is/are the subject of the petition, if different;**

[(6)] (7) facts constituting grounds for the involuntary termination [**under Section 311 of the Adoption Act**], and a reference to the applicable [subsection or subsections] subsection(s) of 23 Pa.C.S. § 2511(a) providing the ground(s) for termination;

[(7) whether either parent of the child is entitled to the benefits of the Soldiers’ and Sailors’ Civil Relief Act of 1940, as amended, (50 U.S.C.A. 501 *et seq.*);]

(8) **specific facts setting forth why the child was voluntarily or involuntarily removed from the parent(s);**

(9) **specific facts supporting the termination of parental rights pursuant to the ground(s) for termination alleged in subparagraph (7) above;**

(10) **that the petitioner has informed and given notice to the birth parent(s) that a birth relative of the child, including the birth parent(s) who is/are the subject of the petition, and the adopting parent(s) of the child have the opportunity to enter into a legally enforceable voluntary agreement for post-adoption contact or communication (“Voluntary Post-Adoption Contact Agreement”), or the reason(s) why such notice has not or cannot be given;**

(11) **that the petitioner will assume custody of the child until such time as the child is adopted[.]; provided further that, if the petitioner is an individual, an**

adoption petition and report of intention to adopt has been filed or is presently contemplated; and

(12) **that each petitioner has read and understands the petition and believes its filing to be in the child’s best interests.**

Note: Under Act 101, the adoption agency or an attorney for a party is required to give notice to the adopting parent(s), a birth parent, and, in some instances, a child of the opportunity to enter into Voluntary Post-Adoption Contact Agreements. Notice to birth relatives who are not birth parents (see 23 Pa.C.S. § 2733(c)) is not required to be given, although birth relatives may negotiate and become parties to a voluntary contract with the adopting parent(s) for post-adoption contact or communication. In some cases, the court may dispense with proof that a certain birth parent has received notice of the opportunity to enter into a Voluntary Post-Adoption Contact Agreement. By means of examples, without limitation, the following may be reasons why the court may decide to dispense with proof that both birth parents received such notification: the identity of the other birth parent is unknown; the location of the other birth parent is unknown; the birth parent has never had any contact with the child; the petitioner clearly and convincingly established that the birth parent’s rights should be terminated under 23 Pa.C.S. §§ 2511(a)(4) (relating to a child abandoned by an unidentified or missing individual), 2511(a)(7) (relating to a child conceived as a result of rape or incest), 2511(a)(9) (relating to a parent convicted of a criminal homicide or aggravated assault involving his or her child), or that due to abuse and neglect clearly and convincingly established, post-adoption communication or contact would not be in the child’s best interest. If the parental rights of the other birth parent were or will be terminated in a separate proceeding, the court can presume that the other birth parent has been or will be informed of the opportunity to enter into a Voluntary Post-Adoption Contact Agreement in that separate proceeding and proof of this notice will be submitted in that proceeding, or based upon facts to be established during the separate proceeding, the court will dispense with proof of such notification.

If a child is age 12 years of age or older, the child must consent to and sign the Voluntary Post-Adoption Contact Agreement. 23 Pa.C.S. § 2734. The court finalizing the adoption shall verify that a child who has attained twelve (12) years of age prior to finalization of the adoption received notice and information regarding the opportunity to enter into a Voluntary Post-Adoption Contact Agreement. See Pa.O.C. Rule 15.8.

Only a petitioner who is an individual must have a present intent to adopt the child. Such an averment is not necessary if the petitioner is an Agency; in fact, the adopting parents need not have been identified prior to the Agency’s filing of a petition to involuntarily terminate parental rights.

(b) *Exhibits.* The petition shall have attached to it the following exhibits:

(1) a birth certificate or certification of registration of birth of the child;

(2) [**the joinder of a parent of a petitioner who is under the age of 18, unless excused by the court.**]

the signed consent(s) of the adult(s) to accept custody of the child until such time as the adoption is completed if the petitioner(s) is not an Agency; and

(3) acknowledgement(s) signed by the birth parent(s) who is/are the subject of the petition or a certificate of service attested by the petitioner or counsel for the petitioner that the birth parent(s) who is/are the subject of the petition has or have received notice and information of the opportunity to negotiate and enter into a legally enforceable Voluntary Post-Adoption Contact Agreement.

Note: The acknowledgement(s) required to be attached as Exhibit(s) under subparagraph (b)(3) is not required if the petitioner(s) has alleged that facts will be established to show that post-adoption communication or contact with the birth parent(s) should not be allowed or is not in the child's best interest.

* * * * *

(d) *Notice and hearing.* [Notice of the hearing on the petition shall be given, in accordance with Rule 15.6 hereof, to the parent or parents whose rights are sought to be terminated, including the parent of a child born out of wedlock, to any intermediary named in a Report of Intention to Adopt, if one has been filed, and to the guardian of the person or guardian ad litem of any parent or parents who is or are under the age of 18 years. Each petitioner, each person whose joinder or consent is attached to the petition and any intermediary named in a Report of Intention to Adopt shall be examined under oath at the hearing unless they are excused by the court.] After the filing of a petition under 23 Pa.C.S. §§ 2511—2512, the court shall schedule a private evidentiary hearing providing sufficient time for notice to be given as provided below.

(1) In compliance with Rule 15.2, notice of the hearing shall be given to the birth parent(s) who is/are the subject of the petition and shall contain the form of notice required in subsection 23 Pa.C.S. § 2513(b).

(2) In accordance with Rule 15.2, a copy of the notice of the hearing in the form required by 23 Pa.C.S. § 2513(b) shall be given to the other parent who is not the subject of the petition, the putative father, including any putative father who has filed a claim of paternity pursuant to 23 Pa.C.S. § 5103 (relating to acknowledgment and claim of paternity), and the parent(s) or guardian(s) of a birth parent whose parental rights are sought to be terminated if such birth parent has not reached 18 years of age.

(e) *Decree.* After the hearing, the court shall enter a decree terminating parental rights as set forth in 23 Pa.C.S. § 2513(d) if the court is satisfied that the petitioner has established, by clear and convincing evidence, at least one of the grounds for termination under 23 Pa.C.S. § 2511(a) and thereafter established by clear and convincing evidence that termination is in the best interest of the child.

(f) *Right to file medical and personal and/or social history information.* The Clerk of the Court shall transmit the decree of termination to the parent whose rights are terminated or to counsel for the parent, if represented. The Clerk of the

Court shall also include in that mailing standard instructions advising the parent of his or her continuing right to place and update medical and personal and/or social history information, whether or not the medical condition is in existence or discoverable at the time of adoption, on file with the court and with the Department of Public Welfare. This standard instruction form shall also inform the birth parent that the information will be retained and disclosed only to those allowed to have non-identifying information in accordance with Subchapter B of Chapter 29 of the Adoption Act, 23 Pa.C.S. Section §§ 2911 et. seq., and further that, identifying information will be disclosed only if there is an authorization or consent form in the file permitting release.

Note: The Clerk of Courts may also include in the mailing to the birth parent or birth parent's counsel any forms promulgated by the Department of Welfare, any forms promulgated by the Department of Health, and any forms adopted by local rule, including those authorizing the release of information, withholding authorization to release information, or revoking any prior authorization to release information. This rule uses the term "medical and personal and/or social history information" because the statute refers to these statements in varying ways. *Compare* 23 Pa.C.S. §§ 2503(d), 2504(d), 2511(c) *with* 23 Pa.C.S. §§ 2923, 2934.

(Editor's Note: Rule 15.7 is new and printed in regular type to enhance readability.)

Rule 15.7. Court review and approval of voluntary post-adoption contact agreement.

(a) *Time and filing.* When the adopting parent(s), any birth relative(s) (as defined in 23 Pa.C.S. § 2732), and the child if he or she has attained twelve (12) years have executed a Voluntary Post-Adoption Contact Agreement, it must be approved by the court on or before the finalization of the adoption in order to be effective and legally enforceable.

(1) If the parental rights of both birth parents have not been terminated, the Voluntary Post-Adoption Contact Agreement shall be presented by separate petition to the same court which has or will receive the petition(s) for terminating parental rights.

(2) If both birth parents' parental rights have been terminated, the Voluntary Post-Adoption Contact Agreement shall be presented to the court that will finalize the adoption.

(3) The petition to approve the executed Voluntary Post-Adoption Contact Agreement may be filed by any signatory to the Agreement or the Agency facilitating the adoption.

Note: 23 Pa.C.S. § 2735 does not specify or indicate who is responsible to file the petition seeking court approval of the Voluntary Post-Adoption Contact Agreement. Notwithstanding, the court must approve the executed Voluntary Post-Adoption Contact Agreement in order for it to be legally enforceable (*see* 23 Pa.C.S. § 2735(c)), and this court approval must be obtained on or before the date of the adoption decree. *See* 23 Pa.C.S. § 2738(c)(3).

(b) *Petition to approve voluntary post-adoption contact agreement.* A petition under 23 Pa.C.S. § 2735 to approve the Voluntary Post-Adoption Contact Agreement shall contain specific and material facts providing the following:

- (1) the age and birth date of the child;
- (2) whether the child was represented by a guardian ad litem who participated in the negotiation and development of the Voluntary Post-Adoption Contact Agreement;
- (3) whether there are siblings of the child who have been freed for adoption pursuant to 23 Pa.C.S. §§ 2501, 2502, 2504, 2511—12 and who have not reached 18 years of age, but are not being adopted by the same adopting parent(s) as the child; and if so, whether such siblings have been represented by a guardian ad litem who participated in the negotiation and development of the Voluntary Post-Adoption Contact Agreement;
- (4) the length of time that the child has been under the actual care, custody and control of individual(s) other than a birth parent, even if such individual(s) is/are other than the adopting parent(s), and the circumstances surrounding the child's removal(s) from the care and custody of the birth parent(s);
- (5) the relationship of the child to the birth relative(s) who executed the Voluntary Post-Adoption Contact Agreement, and whether there has been substantiated allegations that any of the signatory birth relative(s) abused or neglected the child or the child's siblings;
- (6) the relationship of the child to the adopting parent(s) and how long the child has been in the care and custody of these adopting parent(s);
- (7) the relationship between the adopting parent(s) and the signatory birth relative(s);
- (8) any other interaction and interrelationship(s) of the child with birth relative(s) and other persons who are not signatories to the Voluntary Post-Adoption Contact Agreement but who routinely interact with the signatory birth relative(s);
- (9) the adjustment of the child to the home, school and community of the adopting parent(s);
- (10) the willingness and ability of the signatory birth relative(s) to respect and appreciate the bond between the child and adopting parent(s);
- (11) the willingness and ability of the adopting parent(s) to respect and appreciate the bond between the child and the signatory birth relative(s);
- (12) whether there have been substantiated allegations that the child has been abused or neglected, even if such person is not a party to the Voluntary Post-Adoption Contact Agreement, and if so, how that person is related to the signatory birth relative(s); and
- (13) that the Voluntary Post-Adoption Contact Agreement is in the best interests of the child.

(c) *Exhibits.* The petition shall have attached to it the following exhibits:

- (1) A copy of the fully signed Voluntary Post-Adoption Contact Agreement; and
- (2) All required affidavits of all signatories to the Voluntary Post-Adoption Contact Agreement affirmatively stating that the Agreement was entered into knowingly and voluntarily and is not the product of coercion, fraud or duress. The affidavits may be executed jointly or separately.

(d) *Court review.* The court shall review the petition and the exhibits to determine if the factual averments in the petition and the terms of the Agreement establish that the Agreement is in the best interest of the child. If

so, the court shall issue a decree approving the Voluntary Post-Adoption Contact Agreement that is attached to the petition.

(e) *Necessity of a hearing and notice.*

(1) The court shall schedule and conduct a private evidentiary hearing under any one of the following circumstances:

(A) the court, upon review of the petition and the terms of the proposed Voluntary Post-Adoption Contact Agreement, determines that a hearing is necessary in order to establish factual averments in the petition or to establish that the terms of the Agreement are in the best interests of the child;

(B) the court, upon review of the petition and the terms of the proposed Voluntary Post-Adoption Contact Agreement, is inclined to withhold approval; or

(C) the child is a signatory to the proposed Voluntary Post-Adoption Contact Agreement or has signed a separate written consent.

(2) *Notice of the hearing.* The petitioner shall provide notice of the scheduled hearing as follows:

(A) Notice of the hearing shall be provided to:

(i) all signatories to the proposed Voluntary Post-Adoption Contact Agreement, or to their counsel, if represented;

(ii) the Agency facilitating the adoption; and

(iii) the child if he or she signed the proposed Voluntary Post-Adoption Contact Agreement or signed a separate written consent, or to his or her counsel, if represented, or to his or her guardian ad litem if one has been appointed to represent the child.

(B) Notice of the hearing need not comport with requirements of Rule 15.2, and notice may be sent by first-class United States mail or whatever other means will effectively inform everyone entitled to notice of the date, time, and place of the hearing and the necessity of their presence at the hearing.

(C) If notice of the hearing is provided by means other than personal service or registered or certified mail, a certificate of service attested by the petitioner shall be presented to the court at the time of the hearing.

(D) The signatories to the Voluntary Post-Adoption Contact Agreement and the child who signed the Agreement or signed a separate written consent shall attend the hearing, unless otherwise excused by the court for good cause shown.

(3) *Decree after an evidentiary hearing.* If, after the hearing, the court determines, by a preponderance of the evidence, that the proposed Voluntary Post-Adoption Contact Agreement is in the best interest of the child, the court shall issue a decree approving the Agreement. If, after the hearing, the court determines that the testimony failed to establish that the proposed Voluntary Post-Adoption Contact Agreement is in the best interest of the child, the court shall issue a decree denying approval of the Agreement and setting forth specific reasons for the denial.

Note: It is the belief and hope of many social workers, adoption agencies, practitioners and jurists that the opportunity to develop Voluntary Post-Adoption Contact Agreement will facilitate and encourage adoptions. Thus, many advocate that negotiations about these Agreements begin as early as possible once all the necessary parties to the Agreement are identified. Toward this end, the courts

will accept, review and approve Agreements at any stage of the proceeding. If practical, any hearing to approve the proposed Voluntary Post-Adoption Contact Agreement may be conducted as part of a termination hearing under 23 Pa.C.S. §§ 2503, 2504, or 2513 or an adoption hearing under 23 Pa.C.S. § 2723.

The rules above establish where the petition to approve the proposed Voluntary Post-Adoption Contact Agreement should be filed depending upon whether parental rights have been terminated. It is the best practice of many courts not to terminate the parental rights of one parent until a petition to terminate the other parent's parental rights has been filed. For this reason, the Committee does not believe that the reference to both parents in subparagraph (a)(1) and (a)(2) will pose complications.

This rule requires an averment as to the existence of any siblings of the child who are freed for adoption, but not being adopted by the same adopting parent(s), so that the court, before reviewing and considering the proposed Voluntary Post-Adoption Contact Agreement, can determine whether the appointment of a guardian ad litem to represent any birth siblings is necessary pursuant to 23 Pa.C.S. § 2733(B)(sic).

This rule also requires that a private evidentiary hearing be conducted if a child of any age is a signatory to the proposed Voluntary Post-Adoption Contact Agreement or has signed a separate consent form. Given that a child cannot attest to a notary that he or she executed or consented to the Agreement voluntarily, knowingly, without coercion, fraud or duress, the court is required to conduct its own inquiry, regardless of the child's age, to determine that the child signed or consented to the proposed Voluntary Post-Adoption Contact Agreement voluntarily, without threats, promises or inducements, and that the child fully understands the terms of the proposed Agreement. Such an inquiry is necessary even if the child's interests were represented by a guardian ad litem who facilitated in the negotiation, drafting and execution of the proposed Agreement. As part of its inquiry, it is hoped the court will ensure that the child is fully informed of his or her statutory right to petition the court finalizing the adoption to modify the Voluntary Post-Adoption Contact Agreement or seek its discontinuance. Since 23 Pa.C.S. § 2738(c)(3) requires any child who has attained twelve (12) years of age to sign or consent to the Agreement, evidentiary hearings will be necessary in all these petitions for approval.

The court must find, either by reviewing the petition and exhibits or by conducting an evidentiary hearing, that a proposed Voluntary Post-Adoption Contact Agreement is in the best interests of the child; the standard of proof is by a preponderance of the evidence. This standard has been selected for several reasons: (1) the explicit statutory references to a clear and convincing standard of proof for purposes of modifying, enforcing or discontinuing the court-approved Voluntary Post-Adoption Contact Agreement suggests that a different standard applies to the approval of proposed Voluntary Post-Adoption Contact Agreements because the statute is silent as to the standard of proof required to approve these Agreements in the first instance; (2) a clear and convincing standard would be impractical and almost impossible to establish if there has not been prior interactions and arrangements between the birth parent(s) and the adopting parent(s) regarding the child; (3) the adopting parent(s) or the child may petition the court to modify the court-approved Voluntary Post-Adoption Contact Agreement if its implementation or enforcement is determined by the petition-

er(s) not to be in the child's best interests, or circumstances otherwise change so that its continuation as written is not in the child's best interests; and (4) for these same reasons, any signatory to the Agreement or the child when he or she has attained twelve (12) years of age may seek to discontinue the court-approved Voluntary Post-Adoption Contact Agreement.

Notwithstanding the affidavits attached to the executed Voluntary Post-Adoption Contact Agreement, the factual averments contained in the petition, the testimony of witnesses at an evidentiary hearing, including the testimony of signatories to the Agreement, caseworkers, and psychologists, the court still may determine that the Agreement, as proposed, is not in the best interest of the child, and the denial of approval shall be appealable as provided in Pa.R.A.P. 311, 312, 1311, and 341. However, by setting forth the specific reasons for denial, it is intended that the individuals involved will attempt to fashion a revised agreement that will meet the court's approval.

Once approved, the Voluntary Post-Adoption Contact Agreement must be filed in the court finalizing the adoption. Neither the statute nor these rules impose that obligation on any one of the Agreement's signatories, except as provided in Rule 15.8 below.

Rule [15.5] 15.8. Adoption.

(a) *Petition.* The petition shall contain all declarations and information required by [**Section 401 of the Adoption Act**] 23 Pa.C.S. § 2701 and any additional information required by local rules. **The petition shall also set forth the following averments:**

(1) that the Agency, if any, or counsel representing a party to the adoption has notified and informed the adopting parent(s), the birth parent(s) and the child who has attained twelve (12) years of age of the opportunity to enter into a legally enforceable Voluntary Post-Adoption Contact Agreement;

(2) if there is an executed Voluntary Post-Adoption Contact Agreement, that one of the following applies:

(A) the executed Voluntary Post-Adoption Contact Agreement and court order approving the Agreement are attached as Exhibits to the petition; or

(B) a proposed and executed Voluntary Post-Adoption Contact Agreement has been submitted and is pending before the court; or

(C) a proposed and executed Voluntary Post-Adoption Contact Agreement is being filed with this petition or under a separate petition at the same time as the filing of this petition;

(3) and that each petitioner has read and understands the petition and believes its filing to be in the child's best interests.

(b) The petition shall have attached to it the following exhibits:

(1) the consent(s) required by 23 Pa.C.S. § 2711;

(2) unless previously filed, the report of the intermediary with the exhibits required under 23 Pa.C.S. § 2534;

(3) any previously approved Voluntary Post-Adoption Contact Agreement and the court order approving the Agreement; and

(4) an acknowledgement or certificate of service that the adopting parent(s), the birth parent(s), and the child who has attained twelve (12) years of age has been notified and informed regarding the opportunity to enter into a legally enforceable Voluntary Post-Adoption Contact Agreement.

Note: Notice of the opportunity to enter into a Voluntary Post-Adoption Contact Agreement should be given to any child who reasonably can be expected to understand the opportunity, benefits and consequences of continuing contact and communication with birth relatives, defined in 23 Pa.C.S. § 2732, after the adoption proceeding is concluded. See 23 Pa.C.S. § 2733(C). Notwithstanding this broad statutory language, this rule requires proof only that notice was given to children who are twelve (12) years of age or older because (1) the court, without separate, independent evidence and observations, is not capable of determining which children are sufficiently mature and capable of understanding this notice and opportunity; and furthermore, (2) only those children who have attained the age of twelve (12) years must sign or consent to any proposed Voluntary Post-Adoption Contact Agreement submitted to the court for approval. See 23 Pa.C.S. § 2738(c)(3).

(c) Notice or [**Consent—Parents of Child**] **consent—parents of child**. Notice as provided by Rule [15.6] 15.2 shall be given to each birth parent unless

(1) he or she has consented in writing to the adoption and [**waived notice of hearing, or**] **his or her consent has been previously confirmed as provided in Rule 15.5;**

(2) he or she has voluntarily relinquished his or her parental rights in a proceeding under Rule [15.2] 15.3 or Rule [15.3,] 15.4; or

(3) his or her parental rights have been involuntarily terminated in a proceeding under Rule [15.4] 15.6.

[(c)] (d) **Investigation**. A petition for adoption shall be subject to investigation as prescribed by local rules. The investigation report shall cover the matters alleged in the petition, any other matters that may affect the welfare of the child, and the information required by [**Sections 335 and 424 of the Adoption Act**] 23 Pa.C.S. §§ 2535 and 2724.

[(d)] (e) **Disclosure of fees and costs**. At the hearing there shall be offered in evidence a report, certified by counsel for the petitioner, setting forth the amount of fees and expenses paid or to be paid to counsel, and any other fees, costs and expenses paid or to be paid to an intermediary or any other person or institution, in connection with the adoption.

[(e)] (f) **Adult—[Change of Name] change of name**. When the person to be adopted is over the age of 18 years and desires to assume the surname of the adopting [**parent or parents**] **parent(s)**, evidence showing compliance with the law relating to change of name must be introduced before a decree will be made.

(g) **Decree**. The Decree of Adoption shall conform to the requirements of 23 Pa.C.S. §§ 2901—2902, 2904.

(Editor's Note: Rules 15.9—15.12 are new and printed in regular type to enhance readability.)

Rule 15.9. Petition to modify a court-approved Voluntary Post-Adoption Contact Agreement.

(a) **General rule**. By filing a petition under 23 Pa.C.S. § 2737 in the court that finalized the adoption, an adoptive parent or a child who has attained twelve (12) years of age may request that the court modify the court-approved Voluntary Post-Adoption Contact Agreement).

(b) **Contents of petition to modify**. The petition to modify the court-approved Voluntary Post Adoption Contact Agreement shall set forth specific and material facts to establish the following:

(1) the age and birth date of the child;

(2) the date when the court approved the Agreement and that such date was on or before the date of the adoption decree;

(3) that the child executed the Agreement, signed a separate written consent, or that the child was not required to execute the Agreement because he or she had not attained twelve (12) years of age at the time of its execution; and

(4) the reasons why the proposed modification serves the needs, welfare and best interests of the child.

(c) **Guardian ad litem**. After a review of the averments in the petition, the court may, either upon its own motion or if requested by the petitioner, appoint a guardian ad litem to represent the child who is the subject of the Voluntary Post-Adoption Contact Agreement.

(d) **Notice and hearing**. After the filing of a petition to modify a court-approved Voluntary Post-Adoption Contact Agreement, the court shall schedule and conduct a private evidentiary hearing providing sufficient time for notice to be given as provided below.

(1) In accordance with Rule 15.2, the petitioner shall provide notice of the hearing to all signatories to the court-approved Voluntary Post-Adoption Contact Agreement, to any court-appointed guardian ad litem, and to the child who has attained twelve (12) years of age and does not have counsel or a court-appointed guardian ad litem;

(2) the petitioner shall give notice at least ten (10) days prior to the hearing, by any of the methods set forth in Rule 15.2(a) or by first-class United States mail, to the Agency that facilitated the adoption, but only if the Agency has been involved in the implementation and continuation of the Voluntary Post-Adoption Contact Agreement; and

(3) the petitioner shall present a certificate of service to the court at the time of the hearing setting forth the manner of service and on whom service was made.

(e) **Decree**. After a hearing, if the court, by clear and convincing evidence, finds that modification of the court-approved Voluntary Post Adoption Contact Agreement shall serve the needs, welfare and best interest of the child, the court shall enter a decree so modifying the Voluntary Post Adoption Contact Agreement as necessary to best serve the needs, welfare and interests of the child.

Note: A guardian ad litem must be appointed to represent siblings who have not attained eighteen (18) years of age in a proceeding to enforce or discontinue a court-approved Voluntary Post-Adoption Contact Agreement, but not in a proceeding to modify such an Agreement. 23 Pa.C.S. § 2741(b)(1). The evidentiary standard of clear and convincing evidence is statutorily mandated. See 23 Pa.C.S. § 2737(b).

Rule 15.10. Petition to enforce a court-approved voluntary post-adoption contact agreement.

(a) *General rule.* By filing a petition under 23 Pa.C.S. § 2738 in the court that finalized the adoption, any signatory to a court-approved Voluntary Post-Adoption Contact Agreement, a sibling, or the child who is the subject of such an Agreement may seek to enforce it.

(b) *Contents of petition to enforce.* The petition to enforce the court-approved Voluntary Post-Adoption Contact Agreement shall set forth specific and material facts to establish the following:

- (1) the age and birth date of the child;
- (2) the date when the court approved the Agreement and that such date was on or before the date of the adoption decree;
- (3) that the child executed the Agreement, signed a separate written consent, or that the child was not required to execute the Agreement because he or she had not attained twelve (12) years of age at the time of its execution;
- (4) that the party seeking enforcement is in substantial compliance with the Agreement;
- (5) the identity of the party who has materially breached the Agreement and the nature and circumstances of the breach; and
- (6) that enforcement of the Agreement serves the needs, welfare and best interest of the child.

(c) *Guardian ad litem.* After a review of the averments in the petition, the court may, either upon its own motion or if requested by the petitioner, appoint one or more guardians ad litem to represent the child who is the subject of the Agreement and any sibling of the child if such sibling has not attained eighteen (18) years of age.

(d) *Notice and hearing.* After the filing of a petition to enforce the court-approved Voluntary Post-Adoption Contact Agreement, the court shall schedule and conduct a private evidentiary hearing providing sufficient time for notice to be given as provided below.

(1) In accordance with Rule 15.2, the petitioner shall provide notice of the hearing to all signatories to the court-approved Voluntary Post-Adoption Contact Agreement, to any court-appointed guardian(s) ad litem, and to the child who has attained twelve (12) years of age and does not have counsel or a court-appointed guardian ad litem;

(2) the petitioner shall give notice at least ten (10) days prior to the hearing, by any of the methods set forth in Rule 15.2(a) or by first-class United States mail, to the Agency that facilitated the adoption, but only if the Agency has been involved in the implementation and continuation of the court-approved Voluntary Post-Adoption Contact Agreement; and

(3) the petitioner shall present a certificate of service to the court at the time of the hearing setting forth the manner of service and on whom service was made

(e) *Decree and remedies.* After a hearing, if the court finds, by clear and convincing evidence, that the petitioner is in substantial compliance with the terms of the court-approved Voluntary Post-Adoption Contact Agreement and also finds that the Agreement serves the needs, welfare and best interest of the child, the court shall enter a decree directing specific performance of the Agreement.

(1) The court may also exercise its equitable and contempt powers as appropriate.

(2) The court may not award monetary damages, but in an appropriate case may award reasonable attorneys fees and costs.

Note: Although not allowed to commence a proceeding to modify or discontinue a court-approved Voluntary Post-Adoption Contact Agreement, a sibling of the child may seek to enforce the court-approved Voluntary Post-Adoption Contact Agreement by the filing of a petition, even if that sibling is not otherwise a signatory to the Agreement. *Compare* 23 Pa.C.S. § 2738 *with* 23 Pa.C.S. §§ 2737, 2739. The evidentiary standard of clear and convincing evidence is statutorily mandated. *See* 23 Pa.C.S. § 2738(d)(2).

Rule 15.11. Petition to discontinue a court-approved voluntary post-adoption contact agreement.

(a) *General rule.* By filing a petition under 23 Pa.C.S. § 2739 in the court that finalized the adoption, any signatory to a court-approved Voluntary Post-Adoption Contact Agreement or a child who has attained twelve (12) years of age may seek to discontinue the Agreement.

(b) *Contents of petition to discontinue.* The petition to discontinue the court-approved Voluntary Post-Adoption Contact Agreement shall set forth the specific and material facts to establish the following:

- (1) the age and birth date of the child;
- (2) the date when the court approved the Agreement and that such date was on or before the date of the adoption decree;
- (3) that the child executed the Agreement, signed a separate written consent, or that the child was not required to execute the Agreement because he or she had not attained twelve (12) years of age at the time of its execution; and
- (4) the reasons why discontinuance of the court-approved Voluntary Post-Adoption Contact Agreement serves the needs, welfare and best interests of the child.

(c) *Guardian ad litem.* After a review of the averments in the petition, the court may, either upon its own motion or if requested by the petitioner, appoint one or more guardians ad litem to represent the child who is the subject of the Agreement and any sibling of the child if such sibling has not attained eighteen (18) years of age.

(d) *Notice and hearing.* After the filing of a petition to discontinue the court-approved Voluntary Post-Adoption Contact Agreement, the court shall schedule and conduct a private evidentiary hearing providing sufficient time for notice to be given as provided below.

(1) In accordance with Rule 15.2, the petitioner shall provide notice of the hearing to all signatories to the court-approved Voluntary Post-Adoption Contact Agreement, to any court-appointed guardian(s) ad litem, and to the child who has attained twelve (12) years of age and does not have counsel or a court-appointed guardian ad litem;

(2) the petitioner shall give notice at least ten (10) days prior to the hearing, by any of the methods set forth in Rule 15.2(a) or by first-class United States mail, to the Agency that facilitated the adoption, but only if the Agency has been involved in the implementation and continuation of the court-approved Voluntary Post-Adoption Contact Agreement; and

(3) the petitioner shall present a certificate of service to the court at the time of the hearing setting forth the manner of service and on whom service was made

(e) *Decree*. After a hearing, if the court finds, by clear and convincing evidence, that discontinuance of the court-approved Voluntary Post-Adoption Contact Agreement shall serve the needs, welfare and best interest of the child, the court shall enter a decree discontinuing the Agreement.

Note: The evidentiary standard of clear and convincing evidence is statutorily mandated. See 23 Pa.C.S. § 2739(b).

Rule 15.12. Collection of documents and maintenance of court file.

(a) The Clerk of the Court where parental rights were terminated and the Clerk of the Court where the adoption was finalized shall maintain as a permanent court file all court records pertaining to the adoption, including the docket, docket entries, all petitions, exhibits, reports, notes of testimony, decrees and other filed papers.

(b) The Clerk of the Court where parental rights were terminated and the Clerk of the Court where the adoption was finalized shall also accept the following items to become part of the permanent court file:

(1) any statement regarding medical and personal and/or social history information filed by a birth parent, survivor of a deceased birth parent, an adoptee who is *sui juris*, the legal or natural guardian of a non-*sui juris* adoptee, or the descendant of a deceased adoptee, including but not limited to, any form promulgated by the Department of Welfare completed by such an individual;

(2) any authorization or consent form signed by a birth parent permitting the release of identifying information, including but not limited to, any signed form promulgated by the Department of Welfare to authorize the release of identifying information or any signed form promulgated by the Department of Health granting the issuance of a summary of the adoptee's original birth record with identifying information about the birth parent;

(3) any form signed by a birth parent withholding the release of identifying information or revoking a prior authorization or consent given, including any such form promulgated by the Department of Welfare or the Department of Health that is signed by the birth parent; and

(4) any notification from the Department of Public Welfare given in accordance with 23 Pa.C.S. § 2915(C)(4) that an Agency has closed and transferred its case records to another Agency.

(c) In addition to the documents listed in subparagraphs (a) and (b) above, the Clerk of the Court where the adoption was finalized shall also accept the following items to become part of the permanent court file:

(1) any authorization or consent form signed by an adoptee permitting the release of identifying information or any form signed by the adoptee withholding the release of identifying information or revoking a prior authorization or consent given, including any such form promulgated by the Department of Welfare that is signed by the adoptee;

(2) any records or written documents from an attorney who represented an individual in the adoption proceeding or who acted as counsel or as the guardian ad litem for the child, if the records and written documents relate to the child, the birth family or the adoptive family; and

(3) any requests for non-identifying or identifying information from an individual permitted by 23 Pa.C.S. § 2931(A) to file such a request.

(d) The Clerk of the Court where parental rights were terminated shall copy and forward any statement regarding medical and personal and/or social history information and any forms signed by the birth parent authorizing the release of identifying information, withholding the release of identifying information, or revoking prior authorizations as follows:

(1) any completed and signed document that is on a form promulgated by the Department of Public Welfare shall be forwarded to the Pennsylvania Adoption Information Registry (PAIR); and

(2) any completed and signed document in whatever form or format shall be forwarded to the Clerk of the Court where the adoption was finalized, if the court that finalized the adoption is known or reasonably ascertainable from information in the court file of the court that terminated parental rights.

(e) All documents described in (b)(1), (b)(2), (b)(3), (c)(1), and (c)(3) shall be stamped or labeled with the date of receipt and an acknowledgement of receipt shall be sent to the individual who sent the document.

Note: In order to avoid confusion, the term "court file", rather than "court records", is being used to describe all the documents that can be part of the court's file because "court record" is statutorily defined in 23 Pa.C.S. § 2911 to include only the petition, exhibits, reports, notes of testimony, decrees and other papers pertaining to the judicial proceeding.

This rule also uses the term "medical and personal and/or social history information" because the statute refers to these statements in varying ways. Compare 23 Pa.C.S. §§ 2503(d), 2504(d), 2511(c) with 23 Pa.C.S. §§ 2923, 2934. The statute contemplates that adoptees, adoptive parents, legal guardians of adoptees, or descendants of adoptees may file statements of medical and personal and/or social history information or update such statements as well as birth parents, legal guardians of an incapacitated birth parent and survivors of a deceased birth parent. See 23 Pa.C.S. § 2934(b). Although permitted, the more likely filings will be by birth parents who received notification of the ability to file these statements at the time of the termination of their parental rights. The statute also directs that notice of the filing of a statement of medical and personal and/or social history information shall be given to "the individual who is at least 21 years of age and whom the information is intended to benefit, if known or identified in its records." 23 Pa.C.S. § 2934(e)(2). Rule 15.14(c) provides the procedure for determining who is the person intended to be benefitted and how notice of the filing of this statement shall be provided to that intended beneficiary. Because the procedure in Rule 15.14(c) requires the filing of an initial request by the person intended to be benefitted and because all requests for information are filed through the court that finalized the adoption, it is that court, and not the court that terminated parental rights, which shall review and process the statement of medical and personal and/or social history information and determine who is the individual intended to be benefitted and whether and how information is to be provided to that individual. The court that terminated parental rights need only forward the statement of medical and personal and/or social history information to the court that finalized the adoption, and if the completed statement is on the form

promulgated by the Department of Welfare, then also to the Pennsylvania Adoption Information Registry ("PAIR").

PAIR has a website (www.pagov-pair.org) and is requesting that any statement of medical and personal and/or social history information be forwarded electronically in a .pdf format. The statement shall be forwarded to PAIR as it is filed; it is not the responsibility of the Clerk or court personnel to re-key the information into the electronic system of PAIR.

Notwithstanding the development of forms by the Department of Public Welfare, the statute does not limit or restrict what statements and forms the Clerk of Court can accept from birth parents and adoptees. Thus, in keeping with the spirit of the statute, the Clerks of the local courts are encouraged to accept any document that reveals medical, personal and/or social history information from a birth parent, adoptee, their statutorily permissible representatives, descendant(s) of a deceased adoptee, or survivor(s) of a deceased birth parent. Likewise, the Clerk of the local courts are encouraged to accept and maintain any form or statement that reasonably can be construed as providing authorization or consent to release identifying information, withholding such authorization or consent, or revoking a prior authorization or consent given. The local courts are also free to adopt their own forms for such uses. The Department of Public Welfare has designed sample forms for the local courts to use or to modify for use.

Because requests for identifying information are only permitted to be filed with the court that finalized the adoption, any forms signed by the adoptee authorizing the release of identifying information, or withholding or revoking such authorization, and any requests for non-identifying or identifying information shall only be accepted by the Clerk of the Court where the adoption was finalized. *See* 23 Pa.C.S. § 2931(A).

Despite the above paragraph, the statute does imply that an authorization or consent to release identifying information, or withholding or revoking such authorization signed by a birth parent must be accepted by the Clerk of the Court that terminated parental rights and maintained as part of the court file for that court. *See* 23 Pa.C.S. §§ 2933(A)(2)—(4). For this reason, Rule 15.12(d)(2) requires the the Clerk of Court that terminated parental rights to forward any such signed authorization or consent form or any forms withholding or revoking authorization or consent to the Clerk of the Court that finalized the adoption, if known, thereby streamlining the efforts required by the court that finalized the adoption if a request for non-identifying or identifying information is later filed.

Finally, attorneys representing a party to an adoption proceeding or representing the child as either counsel or guardian ad litem are permitted to forward their records and information only to the court that finalized the adoption. 23 Pa.C.S. § 2916. In this age of document management and given the judiciary's limited financial and physical resources, the attorney representing an Agency may not deposit his or her records with the court as the Agency already has record-keeping requirements imposed by the Department of Public Welfare. *See* 23 Pa.C.S. § 2915. Moreover, the local court, by administrative order or local rule, may adopt procedures by which attorneys can forward the documents to be retained in the court file. For example, a local court may prescribe that attorney records are only accepted on a disc, CD-ROM, or other electronic format. The local court also may charge reasonable fees for the acceptance and retention of

attorney's records. *See* 23 Pa.C.S. § 2913 ("Any court . . . may charge reasonable fees for services provided under this chapter.")

Rule [15.7] 15.13. Impounding[; docket entries; reports;] the court file; privacy.

(a) [**All proceedings shall be impounded, docket entries made, reports made to the Department of Public Welfare, and certificates of adoption issued as provided in Sections 505, 506, 507 and 508, respectively, of the Adoption Act, 23 Pa.C.S. § 2101, et seq.] All court records and all other documents in the court file, including but not limited to, completed statements of medical and personal and/or social history information, signed authorization or consent forms, signed forms withholding or revoking authorization, requests for identifying or non-identifying information, and attorney records shall be impounded and withheld from inspection except as provided by 23 Pa.C.S. § 2931 et seq. and Rule 15.14.**

(b) [**The name of names of the natural parents and the name or names of the child before adoption shall not be entered on any docket which is subject to public inspection.] The docket shall not contain the name(s) of the birth parent(s), any information identifying the birth parent(s) or the name of the child before adoption if the docket is subject to public inspection.**

(c) **Certificates of adoption shall be issued as provided in 23 Pa.C.S. § 2907, reciting that the court has granted the adoption, but not disclosing the name(s) of the birth parent(s) or the name of the child before adoption.**

(d) No decision under the Adoption Act of any hearing judge or appellate court publicly reported or in any other way made available to the public by the court shall disclose the identity of the individual parties.

(Editor's Note: Rule 15.4 is new and printed in regular type to enhance readability.)

Rule 15.14. Dissemination and release of information in the court file.

(a) Upon the filing of a written request for non-identifying and/or a written request for identifying information or contact, the Clerk of the Court shall determine if the adoption was finalized in that court, and if so, the request shall be forward to the court and the court shall proceed as follows:

(1) determine who is the requester, what is the requester's relationship to the subject of the request, and whether the requester is permitted by 23 Pa.C.S. § 2931(A) to seek such information, and

(A) if not, promptly notify the requester that his or her request for information is denied and the reasons for its denial; but

(B) if so, proceed under subparagraph (a)(2) below;

(2) determine if the request inquires about an individual who can be the subject of the request per 23 Pa.C.S. § 2931(B), and

(A) if not, promptly notify the requester that his or her request for information is denied and the reasons for its denial; but

(B) if so, proceed under subparagraphs (a)(3) and (a)(4) below, as applicable;

(3) if the request is for only non-identifying information, take steps necessary to ensure that the records and documents from the court file which are made available to the requester are sufficiently redacted so as to not reveal the identity of the subject of the request or compromise the confidentiality of the relationship, and once redacted and identifying information removed, make such records and documents available to the requester as provided by local rule or practice;

(4) if the request is for identifying information or contact, the court shall appoint an authorized representative duly trained and certified by the Department of Welfare, pursuant to 23 Pa.C.S. § 2938, to handle requests for identifying information and search for the subject of the request, if necessary.

Note: The handling of requests for non-identifying information, identifying information and/or contact will largely be dictated by local rule, custom and practice. Handling requests for non-identifying information, identifying information, and/or contact will require time, resources and expertise. At present, the Committee does not believe that it is in a position to mandate a uniform statewide procedure because the number of requests, the court's resources and personnel, and the nature of the relationship of the local court with county and private adoption agencies varies widely from county to county. Thus, Rule 15.14(a) intentionally has been drafted so as to leave much to the discretion, practice and custom of the local courts. The local courts may determine if such requests are filed as a petition or on a standardized form; the local courts may set the fees charged for these requests; and the local court may determine if and how to undertake searches for individuals who are the subject of a request and do not have a signed authorization or consent form in the court or Agency files or with the Pennsylvania Adoption Information Registry ("PAIR"). Notwithstanding the Committee's deference to local rule, practice and custom, the Committee has purposefully used the term "court" once it is determined by the Clerk of Courts that the particular court finalized the adoption. The Committee intends that the judge, the judge's law clerk, court personnel experienced in adoptions, or an appointed representative handle and address requests for non-identifying and, that only an appointed representative duly trained by the Department of Welfare handle and address all requests for identifying information. The statute has very specific rules as to who may request non-identifying and identifying information and the age or existence of one individual may change the requester's right to make the request. For example, an adoptive parent cannot make a request if the adoptee has attained eighteen (18) years of age and is not incapacitated or deceased; a parent of a birth parent can make a request only in limited circumstances; the same applies to birth siblings of the adoptee. *See* 23 Pa.C.S. § 2931(A). Furthermore, the statute is specific about who can be the subject of a request. For example, the adoptee must have attained twenty-one (21) years of age to be the subject of the request; many limitations also apply if seeking information about a grandparent or birth sibling. As a result, these requests for non-identifying and identifying information should be reviewed by those trained in the law or otherwise well versed in this statute.

(b) Anyone requesting an original birth record or a summary of the original birth record shall be directed to contact the Department of Health.

(c) Upon the filing of a statement of medical and personal and/or social history information or a statement

updating medical and personal and/or social history information, or if such a statement is received from another court that handled the termination of parental rights, the Clerk of Court where the adoption was finalized shall send notice of the filing of a statement as follows:

(1) Notice of the filing of a statement of medical and personal and/or social history information shall be sent to the following individuals:

(A) if the statement of medical and/or social history information contains information about a birth parent, notice of its filing shall be sent to the adoptee, the adoptive parents, the legal guardian of an incapacitated adoptee, or the descendant of a deceased adoptee, only if such person, at any time prior, had filed a request for non-identifying or identifying information that was approved by the court or was then denied by the court due only to the age of the requester or the age of the subject of the request; or

(B) if the statement of medical and/or social history information contains information about the adoptee, notice of its filing shall be sent to the birth parent(s), any legal guardian of a birth parent, the parent of a deceased birth parent, and in limited circumstances to a birth sibling, but only if such person, at any time prior, had filed a request for non-identifying or identifying information that was approved by the court or was then denied by the court due only to the age of the requester or the age of the subject of the request.

(2) Notice under this subparagraph (c) shall be provided to the individual at the address listed on the request for non-identifying or identifying information or at the last updated address in the court file.

(3) Notice shall inform the individual(s) that a statement or an updated statement of medical and personal and/or social history information has recently been received and the information contained in the statement may be provided either in redacted form or with identifying information upon the filing of new request for non-identifying or identifying information.

(4) If a new request for non-identifying or identifying information is thereafter filed, the request shall be forwarded to the court and processed as provided in Rule 15.14(a) above.

Note: 23 Pa.C.S. § 2934 requires the court, Agency, or Pennsylvania Adoption Information Registry (PAIR) to provide notice of the filing of a statement of medical and personal and/or social history information "to the individual who is at least 21 years of age and whom the information is intended to benefit." The statutory section fails to further define who is the person intended to be benefitted or how such person is to be determined. Moreover, once filed, the statement of medical and personal and/or social history information becomes part of the court file subject to impounding and confidentiality as provided in Rule 15.13. For this reason, notice of the filing of this information should not be shared or disseminated by the Clerk of Court absent a filed request for such information approved by the court or upon other order of court. The notification procedures in Rule 15.14(c) are, therefore, an attempt to comply with 23 Pa.C.S. § 2934(e) while, at the same time, complying with other statutory provisions, such as 23 Pa.C.S. § 2933(A) which defines the individuals who may request non-identifying and identifying information more narrowly than 23 Pa.C.S. § 2934(b); 23 Pa.C.S. §§ 2925(C), 2935 which require the court to maintain confidentiality in conducting a search; and 23 Pa.C.S. § 2938 which

requires any court-appointed authorized representative to be specially trained by the Department of Public Welfare before conducting searches. The Clerk of the Court and the Clerk's deputy personnel have no legal training in determining who may request non-identifying and identifying information and no specialized training from the Department of Public Welfare in conducting searches while maintaining confidentiality. For these reasons, while the Agency and PAIR may proceed differently in determining who is intended to be benefitted from the filing of a statement of medical and personal and/or social history information, the Clerk, the court, and court personnel shall proceed in a more cautious fashion providing notice of the filing of a statement of medical and personal and/or social history information only to a permitted individual who has previously requested and been given information from the court file. Even then, information from the most recently filed statement will only be provided if a new request for non-identifying or identify information is filed by the requester.

(d) The local courts may set and charge reasonable fees for any of the services provided under this rule, and the fees may vary depending upon the time and effort involved, the extent of information made available to the requester, whether an authorized representative of the court is appointed, and the extent of the search required,

Rule [15.8. Registration of] 15.15. Petition to register foreign adoption decree.

* * * * *

(d) If the Court of Common Pleas determines that the foreign adoption decree cannot be registered, the adopting parent(s) shall proceed as applicable under the provisions set forth in the Adoption Act, 23 Pa.C.S. §§ 2101 *et seq.*, Pa.O.C. Rule [15.9] 15.16 (specific to the adoption of a foreign born child), and local rules of court.

(e) Adopting parent(s) who are eligible to register the foreign adoption decree under this Rule may, for any reason, proceed under Rule [15.9] 15.16.

[Explanatory] Note: Pursuant to 23 Pa.C.S. § 2908(b), as amended by Act 96 of 2006, a set of forms, consisting of a Petition to Register Foreign Adoption Decree, Final Decrees approving and denying the Petition, and detailed Instructions for the *pro se* petitioner(s) are set forth in the Appendix to these Rules.

The Petition should be filed with the Clerk of the Orphans' Court Division, except in Philadelphia County, where it should be filed with the Clerk of the Family Court Division. The Petition and accompanying documents, including the Final Decree, are confidential and should be impounded and withheld from public inspection as provided in the Adoption Act, 23 Pa.C.S. §§ [2905,] 2906, 2907 [and], 2908(f), and 2911—2938 and Pa.O.C. Rule [15.7] 15.13.

* * * * *

A foreign born child who has been issued an IR-2, IR-3 or IH-3 United States visa has had the adoption proceeding fully completed in the foreign country and the foreign adoption decree only needs to be registered here to be given the full force and effect of an adoption decree issued by this Commonwealth. However, situations may arise that necessitate proceeding under Pa.O.C. Rule [15.9] 15.16 even though the foreign born child has been issued an IR-2, IR-3 or IH-3 United States visa, such as the inclusion of an incorrect birth year on the foreign adoption decree, or other personal family reasons. Proceeding

under Pa.O.C. Rule [15.9] 15.16 is permitted; Pa.O.C. Rule 15.8 is not the exclusive means to obtain a Pennsylvania adoption decree and birth certificate for a foreign born adopted child.

* * * * *

If the Court determines that the foreign adoption is not a full and final adoption because the foreign born child has been issued an IH-4 or IR-4 visa, the adopting parent(s) shall proceed under subdivision (d) of this Rule. See also Rule [15.9] 15.16.

Notice of the opportunity to enter into a legally enforceable voluntary agreement for post-adoption communication or contact is not required to be given to the birth parent(s) of a foreign born child if the child has been issued an IR-2, IR-3, IH-2, or IH-3 United States visa because the adoption was completed in the native country of the foreign born child pursuant to the laws and rules of that country. The Pennsylvania court is merely registering the foreign adoption decree, which evidences a completed adoption, and giving it the full force and effect of a Pennsylvania adoption.

Rule [15.9] 15.16. Petition for adoption of a foreign born child.

(a) *General [Rule] rule.* Adopting parent(s) who are residents of the Commonwealth may petition the Court of Common Pleas in any county as provided in [**Section 2302 of the Adoption Act (see)** 23 Pa.C.S. § 2302()] to proceed with an adoption of their foreign born child who has entered the United States pursuant to an IR-2, IR-3, IH-3, IR-4 or IH-4 United States visa.

* * * * *

[Explanatory] Note: Pursuant to 23 Pa.C.S. § 2908(e), as amended by Act 96 of 2006, a set of forms, consisting of a Petition for Adoption of a Foreign Born Child, Report of Intermediary, Verification of Translator, Preliminary Decree, and Final Decree are set forth in the Appendix to these Rules.

In most instances, the adopting parent(s) of a foreign born child who has entered the United States with an IR-2, IR-3 or IH-3 United States visa will not need to proceed under Pa.O.C. Rule 15.9, but can register the foreign adoption decree pursuant to Pa.O.C. Rule [15.8] 15.15. Situations may arise, though, that necessitate proceeding under this Rule, such as the inclusion of an incorrect birth year on the foreign adoption decree, or other personal family reasons. In these situations, adopting parent(s) of a foreign born child entering the United States with an IR-2, IR-3, or IH-3 United States visa may proceed under Pa.O.C. Rule [15.9] 15.16; however, adopting parent(s) should be advised by counsel of the additional costs, additional documentation required, and the delay caused by the need for a hearing.

If a foreign born child has entered the United States with an IH-4 or IR-4 United States visa, the adopting parent(s) must proceed under Pa.O.C. Rule [15.9] 15.16 because the adoption of their foreign born child was not finalized in the country of the child's birth.

* * * * *

The documents referenced in Pa.O.C. Rule [15.9] 15.16 should be filed with the Clerk of the Orphans' Court Division, except in Philadelphia County, where they should be filed with the Clerk of the Family Court Division. The Petition and accompanying documents un-

der this Rule, including the decree granting the adoption, are confidential and should be impounded and withheld from public inspection as provided in the Adoption Act, 23 Pa.C.S. §§ 2905 *et seq.* and Pa.O.C. Rule [15.7] 15.13.

The Clerk shall make available to the petitioner(s) the necessary Department of Health, Division of Vital Records forms: Form No. HD01273F, Certificate of Adoption of a Foreign-Born Child; and Form No. HD01275F, Statement of Citizenship and Residency.

Notice of the opportunity to enter into a legally enforceable voluntary agreement for post-adoption communication or contact may at the option of the adoptive parent(s) be given to the birth parent(s) of a foreign born child who has been issued an IR-4 or IH-4 United States visa. When a child has been issued an IR-4 or IH-4 United States visa, it has been determined by the United States Citizenship and Immigration Service ("USCIS") that the child is an orphan. Because the parental rights of the birth parent(s) have been terminated in the native country under the laws and procedures of the foreign country, those birth parents are not before and have never been before a Pennsylvania court, and thus, the court that is finalizing the adoption need not assure itself that such birth parents were given notice of the opportunity to enter into a legally enforceable voluntary agreement for post-adoption communication or contact. The Committee believes that all adoptions of foreign born children should be treated the same, and the notification of the opportunity to enter into a legally enforceable voluntary agreement for post-adoption communication or contact should not depend upon the type of United States visa issued to the child.

EXPLANATORY COMMENT

Background

On October 27, 2010, Pennsylvania Governor Edward G. Rendell signed Senate Bill 1360, Printer's Number 2188, into law. This amendment to the Adoption Act (23 Pa.C.S. Domestic Relations Chapters 21-29), known as Act 101 of 2010, became effective April 25, 2011.

Act 101 of 2010 amended the Adoption Act to provide an option for adopting parents and birth relatives to enter into legally enforceable voluntary agreements so that adopted children can have ongoing communication or contact with their birth family, if desirable. While the enforceability of voluntary post-adoption contact agreements is new, the concept of these agreements is not. For years adopting and biological parents have recognized the benefits of post-adoption contact and have made arrangements informally. Nothing in Act 101 or these proposed rules precludes or discourages the use of such informal arrangements which have benefited children and families through the years. However, by complying with the statute and these proposed rules, as ultimately adopted, the parties will have an agreement for post-adoption communication or contact that can be enforced by the courts, upon proper petition.

Act 101 also amended the Adoption Act to allow for the collection of a birth parent's social history in addition to personal and medical history, to permit attorneys to forward their records and information to the court for maintenance as part of the court record, and to provide new procedures for accessing information from the court record related to adoptions.

For example, Act 101 expands the class of individuals who can file a written request for non-identifying infor-

mation, identifying information or contact with the court that finalized the adoption, the agency that coordinated the adoption, or the successor agency. Permissible requestors now include the following:

- An adoptee who has attained age 18;
- An adopting parent of adoptee who is younger than 18, who has attained 18 but has been adjudicated incapacitated, or who is deceased;
- A legal guardian of adoptee who is younger than 18 or adjudicated incapacitated;
- A descendant of a deceased adoptee;
- A birth parent if the adoptee has attained age 21;
- A parent of a birth parent if the adoptee has attained age 21 and the birth parent consents, is incapacitated, or deceased; and
- A birth sibling of an adoptee if both individuals have attained age 21 and meet the following criteria:
 1. The birth sibling remained in the custody of a birth parent, and that birth parent consents, is deceased, or is incapacitated;
 2. The birth sibling and the adoptee were both adopted out of the same birth family; or
 3. The birth sibling was not adopted out of the birth family and did not remain in the custody of the birth parent.

Finally, Act 101 provides that when there is a proper request for identifying information or contact and no authorization is on file, the entity receiving the request, including the court that finalized the adoption, shall search for the person from whom information or contact is sought, advise that person of the request, and ask that person to consent to the release of identifying information or permit contact. Searches and contact are to be provided by an authorized representative trained by the Department of Public Welfare.

Recommendation

The proposed amendments and new rules fall into four general categories:

(1) Amendments to existing rules so that the court can ensure birth parents received notice of the opportunity of birth relatives to enter into agreements with adopting parents for post-adoption contact or communication which become legally enforceable, upon court approval, and amendments to existing rules to accurately reference statements of medical and personal and/or social history information, their maintenance in the court record, and their accessibility. (See Proposed Rule 15.3(a)(8), (a)(10), (b)(2), (b)(4), (f), Proposed Rule 15.4(a)(9), (a)(11), (b)(1), (b)(3), (f), Proposed Rule 15.5(a)(9), (a)(11), (b)(2), (b)(3), (f), Proposed Rule 15.6(a)(10), (b)(3), (f), and Proposed Rule 15.8(a)(1), (b)(4)).

(2) A proposed new Rule 15.5 to address the statutory alternative procedure for confirmed consent created in Section 2504 of the Adoption Code, 23 Pa.C.S. § 2504. (See Proposed Rule 15.5).

(3) New rules implementing Act 101's provisions regarding the court's approval of voluntary post-adoption contact agreements and the procedure by which the court may modify, enforce, or discontinue such court-approved voluntary post-adoption contact agreements. (See Proposed Rules 15.7, 15.9, 15.10 and 15.11).

(4) New rules and amendments to the existing confidentiality rule to implement Act 101's provisions for

releasing information in the court file, including requests for non-identifying information, identifying information and/or for contact. (See Proposed Rules 15.12, 15.13, and 15.14).

The search and contact provisions of Act 101 pose special problems for the court system. The proposed rules are predicated upon an understanding that the county Orphans' Courts (and Family Court in Philadelphia) can delegate the responsibility for search and contact to private adoption agencies, individuals, or the county Children and Youth Service Agencies so long as the delegate has successfully completed a standardized Department of Welfare training program.

Act 101 allows a reasonable fee for services permitted by the Act, including a fee for responses to requests for information or contact. In addition, Act 101 imposes certain time deadlines for responding to requests for information and contact. The Committee has declined to incorporate such deadlines in these proposed rules. The Committee assumes these tasks will be completed expeditiously and consistent with other important judicial responsibilities concerning terminations of parental rights, adoptions hearings, fast track appeals, and other priorities related to children and youth. If that proves not to be the case, the Committee proposes to revisit the issue.

The Committee anticipates that the experience of the local courts over the next several months working in concert with private adoption agencies, county Children and Youth Service Agencies and PAIR to implement Act 101 will provide a base of practical experience that will

inform the rule-making process. In the meantime, the Committee believes that each court is aware of Act 101 and is seeking to be compliant with its requirements.

[Pa.B. Doc. No. 11-959. Filed for public inspection June 10, 2011, 9:00 a.m.]

DISCIPLINARY BOARD OF THE SUPREME COURT

Notice of Suspension

Notice is hereby given that on May 23, 2011, the Supreme Court of Pennsylvania ordered that Bernard Lambert be placed on Temporary Suspension from the practice of law pursuant to Rule 208(f), Pa.R.D.E., effective June 22, 2011. In accordance with Rule 217(f), Pa.R.D.E., since this formerly admitted attorney resides outside of the Commonwealth of Pennsylvania, this notice is published in the *Pennsylvania Bulletin*.

ELAINE M. BIXLER,
Secretary
The Disciplinary Board of the
Supreme Court of Pennsylvania

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