

THE COURTS

Title 231—RULES OF CIVIL PROCEDURE

PART II. ORPHANS' COURT RULES

[231 PA. CODE PART II]

Proposed Amendment and Renumbering of Rules 15.1—15.9 and Proposed Rules 15.2, 15.7, 15.9, 15.10, 15.14—15.19 and 15.21

With respect to rules regarding adoptions, the Orphans' Court Procedural Rules Committee is recommending new Supreme Court Orphans' Court Rules 15.2, 15.7, 15.9, 15.10, 15.14, 15.15, 15.16, 15.17, 15.18, 15.19, and 15.21, as well as amending and renumbering 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), these proposed new rules and amendments to current rules are being published for comment.

This is the second publication of proposed new and amended adoption rules. A prior version was published in June of 2011 with a comment period that ended on August 10, 2011. Many comments were received in response to that initial publication. The received comments were carefully reviewed and thoroughly considered, and changes were made to the initial version of proposed new adoption rules. Prior to the Committee submitting this revised proposal to the Supreme Court as a Recommendation, the Committee wanted to publish the revised proposal for additional concerns, comments and suggestions.

Proposed new rule numbers and rule additions are bold. Proposed new rules are so indicated by an Editor's Note above the rule's title, rather than having the entire text bold. Deletions are contained in bolded brackets.

For the convenience of the bench and bar, the Committee has prepared an Explanatory Report following this Publication Notice, which summarizes the proposal. Please note that the Committee's Explanatory Report should not be confused with the official Explanatory Comments that accompany certain rules. Also be aware that the Supreme Court does not adopt the Committee's Explanatory Comments or the contents of the Explanatory Report.

All communications concerning the proposed new and amended adoption rules should be sent no later than Friday, December 27, 2013, 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
FAX 717-231-9555
e-mail: orphanscourtproceduralrules@pacourts.us

*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 [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] the Rules under this Chapter 15. The Orphans' Court Divisions of the several judicial districts of this Commonwealth may adopt local rules in accordance with Rule 1.5 further regulating the practice and procedure with respect to adoptions, provided that such local rules shall not be inconsistent with these Rules and the Adoption Act, 23 Pa.C.S. § 2101 *et seq.*

Explanatory Comment: Adoptions, termination of parental rights, proceedings related to voluntary post-adoption contact and communication agreements, and any other proceedings provided under the Adoption Act are conducted by the Orphans' Court Division and judges sitting as Orphans' Court judges in all counties of the Commonwealth, except in Philadelphia County where such proceedings are conducted in the Family Court Division.

(Editor's Note: The following rule is new and printed in regular type to enhance readability.)

Rule 15.2. Definitions.

In addition to the terms and definitions provided in Rule 1.3, the following words and phrases when used in this Chapter 15 shall have the following meanings:

"Adopted Child" or "Adopted Individual"—Any individual, and if the individual is under 18 years of age a child, for whom a decree of adoption has been entered in accordance with 23 Pa.C.S. § 2902 after a hearing or in accordance with the laws of another country or state of a similar import;

"Adoptee"—An individual proposed and available to be adopted;

"Agency"—Any incorporated or unincorporated organization, society, institution, or other entity, including a County Agency as defined in Pa.R.J.C.P. 1120, which may receive or provide for the care of children, supervised by the Department of Public Welfare and providing adoption services in accordance with standards established by the Department;

"Authorized Representative"—An individual duly trained and certified by the Department of Public Welfare, pursuant to 23 Pa.C.S. § 2938, to handle certain requests for identifying information and to search for the subject of the request as necessary;

"Birth Relative"—A parent, grandparent, stepparent, sibling, uncle or aunt of the Adoptee's birth family, whether the relationship is by blood, marriage or adoption;

"Clerk"—the Clerk or Department responsible for the legal papers and Court orders filed pursuant to the Adoption Act;

“Contact Agreement”—A voluntary written agreement between a Prospective Adoptive Parent and a Birth Relative that is executed and approved by the Court in accordance with 23 Pa.C.S. §§ 2731 *et seq.* and provides for continuing post-adoption contact or communication between the Adopted Child and the Birth Relative or between the adoptive parent and the Birth Relative;

“Court”—the Court of Common Pleas, Orphans’ Court Division in every county of this Commonwealth, except in Philadelphia County, where the Court shall be Court of Common Pleas, Family Court Division;

“Department”—The Department of Public Welfare of the Commonwealth;

“Intermediary”—Any person or persons or Agency acting between the parent(s) and the proposed adoptive parent(s) in arranging an adoption placement;

“Minor”—A person who has not attained eighteen (18) years of age;

“Prospective Adoptive Parent(s)”—Any individual(s) with whom the child has been placed for the purpose of adoption or who has filed a report of intention to adopt under 23 Pa.C.S. § 2531; (*see Mitch v. Bucks County Children and Youth*, 556 A.2d 419, 421 fn. 3 (Pa. Super. 1989));

“Putative Father”—An alleged birth father of a child conceived or born out of wedlock whose parental status has not been legally established; and

“Statement of medical, personal and/or social history information”—the information concerning an Adopted Individual or the birth family of an Adopted Individual as set forth in 23 Pa.C.S. §§ 2102, 2911. The Rules in this Chapter use the term “Statements of medical, personal and/or social history information” because the Adoption Act refers to these statements in varying ways. *Compare* 23 Pa.C.S. §§ 2503(e), 2504(d), 2511(c) with 23 Pa.C.S. §§ 2923, 2934.

Rule [15.6] 15.3. [Notice to persons; method; notice of Orphans’ Court proceedings filed on dependency docket] Notice of hearing to terminate parental rights; method and time.

[(a) Notice to every person to be notified shall be by personal service, service at his or her residence on an adult member of the household, or by registered or certified mail to his or her last known address. If such service is unobtainable and the registered mail is returned undelivered, then:

(1) no further notice shall be required in proceedings under Rules 15.2 or 15.3, and

(2) in proceedings under Rules 15.4 and 15.5, further notice by publication or otherwise shall be given if required by general rule or special order of the local Orphans’ Court. If, after reasonable investigation, the identity of a person to be notified is unknown, notice to him or her shall not be required.

(b) When a child is in the legal custody of a county agency:

(1) Within seven (7) days of the filing of a petition to terminate parental rights under Rules 15.2 or 15.4, or a petition to confirm consent under 23 Pa.C.S. § 2504, or a petition to adopt under Rule 15.5, the county agency shall file a praecipe with the clerk of the court where the child was declared dependent using the caption of the dependency

proceeding, notifying the clerk of the name of the petition filed and the date of filing in substantially the form approved by the Supreme Court.

(2) Within seven (7) days of receiving the Court’s disposition of the petitions described in subparagraph (b)(1), the county agency shall file a praecipe with the clerk of the court where the child was declared dependent using the caption of the dependency proceeding, notifying the clerk of the disposition of the petition and the date of the order in substantially the form approved by the Supreme Court.

(3) If a notice of appeal from an order described in subparagraph (b)(2) is filed, then within seven (7) days of service of the notice of appeal, the county agency shall file a praecipe with the clerk of the court where the child was declared dependent using the caption of the dependency proceeding, notifying the clerk of the appeal and the date of filing in substantially the form approved by the Supreme Court.

(4) Within seven (7) days of receiving the appellate court’s disposition of the appeal described in subparagraph (b)(3), the county agency shall file a praecipe with the clerk of the court where the child was declared dependent using the caption of the dependency proceeding, notifying the clerk of the disposition of the appeal and the date of the decision in substantially the form approved by the Supreme Court.]

(a) *Method of Notice.* Except as otherwise provided in these Rules, every person to be notified of a court hearing to terminate parental rights shall be provided with notice by personal service at his or her residence or at the location where he or she is known to be staying on an adult member of the household, or by registered or certified mail at the last address where he or she is known to be residing.

(1) If personal service is refused or cannot be obtained, service shall be made by registered or certified mail at the last address where he or she is known to be residing or staying.

(2) If service is not obtainable because the registered or certified mail is returned undelivered or the person’s whereabouts are unknown after reasonable investigation, then no further notice need be provided except as provided in subparagraphs (A)—(D) below.

(A) Further notice by publication shall be provided to the Putative Father for a court hearing proceeding under Rules 15.5, 15.6, and 15.7;

(B) Further notice by publication shall be provided to the birth parent, including any Putative Father, named in the petition, for a court hearing proceeding under Rule 15.8;

(C) Further notice by publication shall be provided to the birth parent, including the Putative Father, for a court hearing proceeding under Rule 15.11 if, as part of the court hearing, the petitioner seeks for the Court, pursuant to 23 Pa.C.S. §§ 2711(b) or 2714, to dispense with the consent of a birth parent or Putative Father whose parental rights have not been terminated in a prior proceeding; and

(D) Any further or additional notice shall be given as required by local rule or special order of the local Court.

(b) *Dispensing with Notice if Identity of Birth Parent Unknown.* If the Court makes a finding on the record, after considering testimony or other evidence presented at a hearing, that the identity of a person to be notified is unknown, notice to him or her shall not be required.

(c) *Time for Notice.* Notice of the court hearing shall be provided at least ten (10) days prior to the date of the court hearing for proceedings under Rules 15.5, 15.6, 15.7, 15.8, and for a proceeding under Rule 15.11 if, as part of the court hearing, the petitioner seeks for the Court, pursuant to 23 Pa.C.S. §§ 2711(b) or 2714, to dispense with the consent of the birth parent or Putative Father whose parental rights have not been terminated in a prior proceeding.

(d) *Contents of Notice; Service; and Copies to Others.*

(1) The Agency, Intermediary, counsel representing the Agency or Intermediary, or counsel representing the Prospective Adoptive Parent(s) shall serve notice of the hearing on a petition filed under Rule 15.5 or Rule 15.6 in the form required by subsection 23 Pa.C.S. § 2503(b)(2) on the petitioner in accordance with paragraphs (a) and (c) of this Rule.

(A) A copy of the notice of the hearing shall be served on the other birth parent in accordance with paragraphs (a) and (c) of this Rule.

(B) If the existence of a Putative Father is alleged and his rights are requested to be terminated at the hearing, then a copy of the notice in the form required by subsection 23 Pa.C.S. § 2503(b)(3) shall be served on the Putative Father in accordance with paragraphs (a) and (c) of this Rule.

(2) The Agency, Intermediary, counsel representing the Agency or Intermediary, or counsel representing the Prospective Adoptive Parent(s) shall serve notice of a hearing on a petition filed under Rule 15.7 in the form required by subsection 23 Pa.C.S. § 2513(b) on the consenter in accordance with paragraphs (a) and (c) of this Rule. A copy of the notice of the hearing shall be served on the other birth parent, including any Putative Father whose rights are requested to be terminated, in accordance with paragraphs (a) and (c) of this Rule.

(3) The petitioner or counsel representing the petitioner shall serve notice of a hearing on a petition filed under Rule 15.8 in the form required by subsection 23 Pa.C.S. § 2513(b) on the birth parent(s) who is/are the subject of the petition, including any Putative Father whose rights are requested to be terminated, in accordance with paragraphs (a) and (c) of this Rule.

(4) A copy of the notice of the hearing shall be served on the parent(s) or guardian(s) of any birth parent or Putative Father who has not reached 18 years of age and whose rights are requested to be terminated.

(Editor's Note: The following rule is new and printed in regular type to enhance readability. This proposed rule is based on current Rule 15.6(b).)

Rule 15.4. Certification filed with the Clerk maintaining the dependency docket.

When the child is in the custody of a County Agency:

(a) Within seven (7) days of the filing of a petition to terminate parental rights under Rules 15.5, 15.7, or 15.8, or a petition to adopt under Rule 15.11, the County Agency shall file a praecipe with the clerk of the court where the child was declared dependent using the caption of the dependency proceeding, notifying the clerk of the name of the petition filed and the date of filing in substantially the form approved by the Supreme Court.

(b) Within seven (7) days of receiving the Court's disposition of the petitions described in paragraph (a), the County Agency shall file a praecipe with the clerk of the court where the child was declared dependent using the caption of the dependency proceeding, notifying the clerk of the disposition of the petition and the date of the order in substantially the form approved by the Supreme Court.

(c) If a notice of appeal from an order described in paragraph (b) is filed, then within seven (7) days of service of the notice of appeal, the County Agency shall file a praecipe with the clerk of the court where the child was declared dependent using the caption of the dependency proceeding, notifying the clerk of the appeal and the date of filing in substantially the form approved by the Supreme Court.

(d) Within seven (7) days of receiving the appellate court's disposition of the appeal described in paragraph (c), the County Agency shall file a praecipe with the clerk of the court where the child was declared dependent using the caption of the dependency proceeding, notifying the clerk of the disposition of the appeal and the date of the decision in substantially the form approved by the Supreme Court.

Explanatory Comment: This Rule was added in 2013. The purpose of the amendment was to provide a procedure for collecting data concerning children who have been declared dependent under the Juvenile Act and placed in the custody of the county agency. The information is entered into the Common Pleas Case Management System-Dependency Module to comply with reporting requirements and to monitor dependent children in the foster care system. Unlike a "notice," as used in Rule 15.3, the County Agency is not required to serve the praecipe upon the parties to the dependency, termination, or adoption proceeding.

Pursuant to Rule 1.3 (Forms), the Court has approved forms for statewide practice to comply with the requirements of this Rule. These forms can be found in the Appendix to these Rules.

Rule [15.2] 15.5. 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**] **contain** the following [**allegations**] **averments**:

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

(2) the information required in subparagraph (1) as to any parent who is not a petitioner, including the father or Putative Father of a child born out of wedlock, if he has been identified, [**unless the court, for cause shown, determines**] 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 [**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;

(8) **whether each petitioner has been informed of counseling services concerning the termination of parental rights and the alternatives thereto and provided with a list of qualified counselors and counseling services;**

(9) **whether each petitioner has received any counseling concerning the termination of parental rights and the alternatives thereto and, if so, the name of the organization or qualified counselor providing such counseling services;**

(10) **that each petitioner has been informed that a Birth Relative of the child, including the petitioner, and Prospective Adoptive Parent(s), once identified, have the opportunity to enter into a Contact Agreement;**

(11) **whether a proposed, executed agreement providing for post-adoption contact and/or communication has been submitted and is pending before this Court or is being submitted to the Court under a separate petition;**

(12) **whether the non-petitioning birth parent has been informed that a Birth Relative of the child, including the non-petitioning birth parent, and Prospective Adoptive Parent(s), once identified, have the opportunity to enter into a Contact Agreement, or the reason(s) why such notice has not or cannot be given; and**

[(9)] (13) **that each petitioner has read and 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.**

(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 each petitioner;**

(2) the joinder of a parent or **Putative Father** who is not a petitioner or his or her [**waiver of**] **consent waiving** all interest in the child, if either is obtainable;

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

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

(5) **a verified statement from a representative of the Agency, counsel representing the Agency or counsel representing any other party that notice**

was provided to each petitioner and any non-petitioning parent regarding the opportunity to enter into a Contact Agreement and the specific date(s) on which such notice was given; and

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

(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.**] *Hearing and Decree.*

(1) **After the filing of a petition under 23 Pa.C.S. § 2501, the Court shall schedule a private evidentiary hearing providing sufficient time for the Agency, Intermediary, counsel representing the Agency or Intermediary, or counsel representing the Prospective Adoptive Parent(s) to provide notice in compliance with Rule 15.3.**

(2) Each 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**] **Court.**

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

(4) **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 failed to appear at the hearing or file a written objection with the Court prior to the hearing.**

Explanatory Comment: Section 2733(c) of the Adoption Act requires the Agency, the Intermediary or an attorney for a party to provide notice to the Prospective Adoptive Parent(s), birth parent(s), and, in some instances, a child of the opportunity to enter into a Contact Agreement. Notice to Birth Relatives who are not birth parents is not statutorily required, although Birth Relatives may enter into and become parties to a Contact Agreement.

The verified statement to be attached as an Exhibit under subparagraph (b)(5) is not required if a proposed, executed agreement for post-adoption contact and/or communication involving that birth parent has been submitted and is pending before the Court or is attached to a separate petition to approve the proposed agreement that is being filed simultaneously with the filing of the petition under 23 Pa.C.S. § 2501. The verified statement under subparagraph (b)(5) is not required if reasons are set forth in the petition as to why notice of the opportunity to enter into a Contact Agreement was not provided to the petitioner and/or non-petitioning birth parent, and the Court determines that such notification need not or cannot be given.

It is understood that County Agencies may be encouraged early in the process, even during dependency proceedings, to give notice to a birth parent of the opportunity to enter into a Contact Agreement. Requiring the verified statement to set forth the specific date(s) as to when notice was given is only to further ensure that the particular notice was given and not to suggest that providing this notice is time sensitive and expires after a certain time.

Rule [15.3] 15.6. 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 allegations required under subparagraphs (1), (2), (3), (4) and (7), (8) and (9) of Rule 15.2(a) and] Prospective Adoptive Parent(s) shall contain the following averments:

[(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;]

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

(2) the information required in subparagraph (1) as to any parent who is not a petitioner, including the father or Putative 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 name and address of the Prospective Adoptive Parent(s);

(6) the date when the child was placed with the Prospective Adoptive Parent(s);

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

(8) the reasons for seeking relinquishment;

(9) whether each petitioner has been informed of counseling services concerning the termination of parental rights and the alternatives thereto and provided with a list of qualified counselors and counseling services;

(10) whether each petitioner has received any counseling concerning the termination of parental rights and the alternatives thereto and, if so, the name of the organization or qualified counselor providing such counseling services;

(11) that each petitioner has been informed that a Birth Relative of the child, including the petitioner, and the Prospective Adoptive Parent(s) have the opportunity to enter into a Contact Agreement;

(12) whether a proposed, executed agreement providing for post-adoption contact and/or commu-

nication has been submitted and is pending before this Court or is being submitted to the Court under a separate petition;

(13) that the non-petitioning birth parent has been informed that a Birth Relative of the child, including the non-petitioning birth parent, and the Prospective Adoptive Parent(s) have the opportunity to enter into a Contact Agreement, or the reason(s) why such notice has not or cannot be given; and

(14) that each petitioner has read and 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.

(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.]

(1) the joinder of a parent or Putative Father who is not a petitioner or his or her consent waiving all interest in the child, if either is obtainable;

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

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

(4) a verified statement from a representative of the Agency or Intermediary, counsel representing the Agency or Intermediary, or counsel representing any other party that notice was provided to the petitioner and the non-petitioning parent regarding the opportunity to enter into a Contact Agreement and the specific date(s) on which such notice was given; and

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

(c) [*Notice and*] *Hearing and Decree.* [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.]

(1) After the filing of a petition under 23 Pa.C.S. § 2502, the Court shall schedule a private evidentiary hearing providing sufficient time for the Agency, Intermediary, counsel representing the Agency or Intermediary, or counsel representing the Prospective Adoptive Parent(s) to provide notice in compliance with Rule 15.3.

(2) Each 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] Court.

(3) After the hearing, the Court shall enter a decree as set forth in 23 Pa.C.S. § 2503(c) terminating parental rights if the Court is satisfied that each petitioner voluntarily filed the petition and

that termination of petitioner's parental rights is in the best interest of the child.

(4) 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 failed to appear at the hearing or file a written objection with the Court prior to the hearing.

Explanatory Comment: Section 2733(c) of the Adoption Act requires the Agency, the Intermediary, or an attorney for a party to provide notice to the Prospective Adoptive Parent(s), birth parent(s), and, in some instances, a child of the opportunity to enter into a Contact Agreement. Notice to Birth Relatives who are not birth parents is not statutorily required, although Birth Relatives may enter into and become parties to a Contact Agreement.

The verified statement to be attached as an Exhibit under subparagraph (b)(4) is not required if a proposed, executed agreement for post-adoption contact and/or communication involving that birth parent has been submitted and is pending before the Court or is attached to a separate petition to approve the proposed agreement that is being filed simultaneously with the filing of the petition under 23 Pa.C.S. § 2502. The verified statement under subparagraph (b)(4) is not required if reasons are set forth in the petition as to why notice of the opportunity to enter into a Contact Agreement was not provided to the petitioner and/or non-petitioning birth parent, and the Court determines that such notification need not or cannot be given. Requiring the verified statement to set forth the specific date(s) as to when notice was given is only to further ensure that the particular notice was given and not to suggest that providing this notice is time sensitive and expires after a certain time.

(Editor's Note: The following rule is new and printed in regular type to enhance readability.)

Rule 15.7. Alternative procedure for relinquishment.

(a) *Petition.* A petition under 23 Pa.C.S. § 2504 to confirm the consent to adoption given by a birth parent or Putative Father relinquishing parental rights and agreeing to have the child placed for adoption shall contain the following averments:

(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 signed a consent to adoption, including the father or Putative 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, that this date of execution was not within a prohibited period as provided by 23 Pa.C.S. § 2711(c), and the number of days that have elapsed since the consent to adoption was executed by the consenter;

(6) that the consent to adoption was executed with the date and location as shown on the consent;

(7) that the consent was witnessed by at least two individuals who have signed as witnesses and whose names, addresses, and relationship to the consenter appear on the consent;

(8) whether the consenter was informed of counseling services concerning the termination of parental rights and the alternatives thereto and provided with a list of qualified counselors and counseling services;

(9) whether the consenter received counseling concerning the termination of parental rights and the alternatives thereto and, if so, the name of the organization or qualified counselor providing such counseling services;

(10) whether the petitioner, counsel for the petitioner, or the Agency or Intermediary if the Agency or Intermediary is not the petitioner, has received any writing from the consenter revoking or attempting to revoke the previously executed consent to adoption;

(11) that the consenter has been informed that a Birth Relative of the child, including the consenter, and the Prospective Adoptive Parent(s) have the opportunity to enter into a Contact Agreement;

(12) whether a proposed, executed agreement providing for post-adoption contact and/or communication has been submitted and is pending before this Court or is being submitted to the Court under a separate petition;

(13) whether the non-consenting birth parent has been informed that a Birth Relative of the child, including that birth parent, and the Prospective Adoptive Parent(s) have the opportunity to enter into a Contact Agreement, or the reason(s) why such notice has not or cannot be given; and

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

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

(1) the original consent(s) to adoption;

(2) the written consent of a parent or guardian of a consenter who has not reached 18 years of age;

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

(4) a verified statement from a representative of the Agency or Intermediary, counsel representing the Agency or Intermediary, or counsel representing any other party that notice was provided to the consenter(s) and the birth parent who has not signed a consent to adoption regarding the opportunity to enter into a Contact Agreement and the specific date(s) on which such notice was provided; 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.

(c) *Hearing and Decree.*

(1) After the filing of a petition under 23 Pa.C.S. § 2504, the Court shall schedule a private evidentiary hearing providing sufficient time for the Agency, Intermediary, counsel representing the Agency or Intermediary, or counsel representing the Prospective Adoptive Parent(s) to provide notice in compliance with Rule 15.3.

(2) Any person who executed a consent to adoption may appear at the hearing and be examined under oath by the Court, but the presence of such person is not mandatory.

(3) After the hearing, the Court shall enter a decree as provided in 23 Pa.C.S. § 2504(b) terminating the consenter's parental rights if the Court is satisfied that the consent was voluntary, was properly executed in accordance with 23 Pa.C.S. § 2711, and termination of parental rights is in the best interest of the child.

(4) The Court may also terminate the rights of a Putative Father if the Putative Father has been given notice of the hearing and failed to appear at the hearing or file a written objection with the Court prior to the hearing.

Explanatory Comment: Section 2733(c) of the Adoption Act requires the Agency, Intermediary, or an attorney for a party to provide notice to the Prospective Adoptive Parent(s), birth parent(s), and, in some instances, a child of the opportunity to enter into a Contact Agreement. Notice to Birth Relatives who are not birth parents is not statutorily required, although Birth Relatives may enter into and become parties to a Contact Agreement.

The verified statement to be attached as an Exhibit under subparagraph (b)(4) is not required if a proposed, executed agreement for post-adoption contact and/or communication involving that birth parent has been submitted and is pending before the Court or is attached to a separate petition to approve the proposed agreement that is being filed simultaneously with the filing of the petition under 23 Pa.C.S. § 2504. The verified statement under subparagraph (b)(4) is not required if reasons are set forth in the petition as to why notice of the opportunity to enter into a Contact Agreement was not provided to the consenter and/or other birth parent or Putative Father, and the Court determines that such notification need not or cannot be given. Requiring the verified statement to set forth the specific date(s) as to when notice was given is only to further ensure that the particular notice was given and not to suggest that providing this notice is time sensitive and expires after a certain time.

Rule [15.4] 15.8. Involuntary termination of parental rights.

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

[(1) the name and address of the petitioner and his or her standing;

(2) the name, age, date 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, including the father of a child born out of wedlock, if he has been identified;

(4) 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) the date when the child was placed in the care of the petitioner;

(6) facts constituting grounds for the involuntary termination under Section 311 of the Adoption Act, and a reference to the applicable subsection or subsections;

(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) that the petitioner will assume custody of the child until such time as the child is adopted.]

(1) the name and address of the 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(s), including the father or Putative 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 a Putative Father or is identified as unknown 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;

(6) the date when the child was placed in the care of the petitioner;

(7) the date when the child was removed from the parent(s) who is/are the subject of the petition, if different than the date of placement with the petitioner;

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

(9) a reference to the applicable subsection(s) of 23 Pa.C.S. § 2511(a) providing the ground(s) for termination and specific facts supporting the termination of parental rights pursuant to the subsection(s) referenced;

(10) that the petitioner has informed the birth parent(s) who is/are the subject of the petition that a Birth Relative of the child, including the birth parent(s) who is/are the subject of the petition, and the Prospective Adoptive Parent(s), once identified, have the opportunity to enter into a Contact Agreement or that such notice was given by the Agency or Intermediary or counsel representing a party, or the reason(s) why such notice has not or cannot be given;

(11) whether a proposed, executed agreement for post-adoption contact and/or communication has been submitted and is pending before this Court or is being submitted to the Court under a separate petition;

(12) whether the petitioner has a present intent to adopt and will assume custody of the child until such time as the child is adopted if the petitioner is an individual; and

(13) that each petitioner has read and understands the petition and believes its filing to best serve the developmental, physical and emotional needs and welfare of the child.

(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 petitioner(s) to accept custody of the child until such time as the adoption is completed if the petitioner(s) is other than an Agency; and

(3) a verified Statement from a representative of the Agency or Intermediary, counsel representing the Agency or Intermediary, or counsel representing the petitioner(s), if the petitioner is other than an Agency, that notice was provided to the birth parent(s) that is/are the subject of the petition regarding the opportunity to enter into a Contact Agreement and the specific date(s) on which such notice was given.

(c) *Guardian ad litem.*

(1) When the termination of the parental rights [of a parent who has not attained the age of 18 years is sought] is sought of a birth parent who has not attained the age of 18 years, unless the [court] Court finds the minor birth parent is already adequately represented, the [court] Court shall appoint a *guardian ad litem* or counsel to represent the minor birth parent. The appointment of a *guardian ad litem* or counsel may be provided for in the preliminary [order] decree attached to the petition for involuntary termination of parental rights.

(2) The decree appointing a *guardian ad litem* or counsel shall give the name, date of birth and address (if known) of the individual whom the *guardian ad litem* or counsel is to represent and the proceedings and period of time for which the guardian ad litem or counsel shall act.

(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.] *Hearing and decree.*

(1) 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 the petitioner or petitioner's counsel to provide notice in compliance with Rule 15.3 and to provide notice to any *guardian ad litem* appointed by the Court.

(2) 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 will best serve the developmental, physical and emotional needs and welfare of the child.

Explanatory Comment: An averment of a present intent to adopt the child is not necessary if the petitioner is an Agency. Prospective Adoptive Parents need not have been identified prior to the Agency's filing of a petition to involuntarily terminate parental rights.

Section 2733(c) of the Adoption Act requires the Agency or Intermediary, counsel representing the Agency or Intermediary, or counsel representing any other party to provide notice to the Prospective Adoptive Parent(s), birth parent(s), and, in some instances, a child of the opportunity to enter into a Contact Agreement. Notice to Birth Relatives who are not birth parents is not mandated by the statute, although Birth Relatives may enter into and become parties to a Contact Agreement.

The verified statement to be attached as an Exhibit under subparagraph (b)(3) is not required if a proposed, executed agreement for post-adoption contact or communication involving that birth parent already has been submitted and is currently pending before the Court or is attached to a separate petition to approve the proposed agreement that is being filed simultaneously with the filing of the involuntary termination petition. The verified statement 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 given. It is understood that County Agencies may be encouraged early in the process, even during dependency proceedings, to give notice to a birth parent of the opportunity to enter into a Contact Agreement. Requiring the verified statement to set forth the specific date(s) as to when notice was given is only to further ensure that the particular notice was given and not to suggest that providing this notice is time sensitive and expires after a certain time.

(*Editor's Note:* Rules 15.9 and 15.10 are new and printed in regular type to enhance readability.)

Rule 15.9. Notice of Right to File Statement of Medical, Personal and/or Social History Information.

The Clerk shall transmit the decree of termination to the parent whose rights are terminated or to counsel for the parent, if represented. The Clerk shall include in that mailing standard instructions advising the parent of his or her continuing right to file with the Clerk and with the Department medical and personal and/or social history information and to update the information filed, whether or not the medical condition is in existence or discoverable at the time of adoption. The standard instructions shall also inform the birth parent that any information that he or she provides 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 as to that birth parent will be disclosed only if he or she has signed and placed in the court file an authorization or consent form permitting release.

Explanatory Comment: The Clerk may include in the mailing to the birth parent or birth parent's counsel any forms promulgated by the Department, any forms promulgated by the Department of Health, and any forms adopted by Local Rule, including forms authorizing the

release of information, withholding authorization to release information, or revoking any prior authorization to release information.

Rule 15.10. Court Review and Approval of Contact Agreement.

(a) *Time and Filing.* A proposed, executed agreement for post-adoption contact and/or communication signed by the Prospective Adoptive Parent(s) and any Birth Relative(s) (“the proposed agreement”) must be appended to a petition requesting the Court to approve the proposed agreement.

(1) If the parental rights of either birth parent have not been terminated, the proposed agreement shall be presented by separate petition to the same Court that has or will receive the petition(s) for terminating parental rights.

(2) If all the birth parents’ parental rights, including those of a Putative Father, have been terminated, the proposed agreement shall be presented by separate petition to the Court that will be presented with the adoption petition.

(3) The petition to approve the proposed agreement may be filed by the Agency or Intermediary, any signatory to the proposed agreement, or by the *guardian ad litem* appointed to represent the proposed Adoptee.

(b) *Petition to Approve a Contact Agreement.* A petition to approve the proposed agreement under 23 Pa.C.S. § 2735 shall contain averments setting forth the following specific and material facts, to the extent known to the petitioner:

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

(2) if the Adoptee has attained twelve (12) years of age, whether the Adoptee sign a written consent agreeing to the proposed agreement or signed the proposed agreement as evidence of his or her consent;

(3) whether the Adoptee has been represented by a *guardian ad litem*, and if so, whether the *guardian ad litem* participated in the negotiation and development of the proposed agreement;

(4) whether there are siblings of the Adoptee, and if so,

(a) the age and birth date of each sibling, specifically noting those siblings who are Minors;

(b) who has legal custody and who has physical custody of each sibling who is a Minor, and the name of any *guardian ad litem* currently representing any of these Minor siblings in any proceeding;

(c) whether any Minor sibling has been freed for adoption pursuant to 23 Pa.C.S. §§ 2503(c), 2504(b), and/or 2513(d) and has been or is being adopted by adopting parents or Prospective Adoptive Parent(s) different than those adopting the Adoptee; and

(d) whether any *guardian ad litem* representing any Minor sibling has participated in the negotiation and development of the proposed agreement;

(5) the length of time that the Adoptee has been under the care, custody and control of individual(s) other than a birth parent, even if such individual(s) is/are other than the Prospective Adoptive Parent(s);

(6) the circumstances under which the Adoptee became freed for adoption;

(7) the length of time that the Adoptee has been in the care and custody of these Prospective Adoptive Parent(s);

(8) any other persons who are not signatories to the proposed agreement but who routinely would be present when the signatory Birth Relative(s) have contact or communications with the Adoptee and the Adoptee’s interaction and relationship with such other persons;

(9) the willingness and ability of the signatory Birth Relative(s) to respect and appreciate the bond between Adoptee and Prospective Adoptive Parent(s);

(10) the willingness and ability of the Prospective Adoptive Parent(s) to respect and appreciate the bond between Adoptee and the signatory Birth Relative(s); and

(11) that each petitioner has read and understands the petition and believes its filing and the proposed agreement to be in the best interests of the Adoptee.

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

(1) A copy of the proposed agreement signed by Prospective Adoptive Parent(s) and the involved Birth Relatives;

(2) The Adoptee’s signed consent, if any, agreeing to the proposed agreement;

(3) The signed consent(s), if any, of the Adoptee’s siblings agreeing to the proposed agreement; and

(4) Affidavits of all signatories to the proposed agreement affirmatively stating that the proposed 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) *Service of Petition.*

(1) The petitioner shall mail a copy of the petition with the proposed agreement appended thereto and a notice that any responsive pleading or written objections must be filed with the Clerk within ten (10) days from the date indicated on the petition or notice letter to the following:

(A) all signatories to the proposed agreement or their counsel, if represented;

(B) the Agency or Intermediary, if any;

(C) the Adoptee if he or she signed a separate written consent agreeing to the proposed agreement or signed the proposed agreement as evidence of his or her consent, or his or her counsel, if represented;

(D) the Adoptee’s *guardian ad litem* if one has been appointed;

(E) any *guardian ad litem* who has been appointed to represent any Minor sibling of the Adoptee; and

(F) any sibling who signed a separate written consent agreeing to the proposed agreement or signed the proposed agreement as evidence of his or her consent.

(2) A signed Certificate of Service shall be appended to the petition or filed separately and contemporaneously with the filing of the petition, stating that a copy of the petition with the requisite notice for filing any responsive pleading or written objection was mailed by first-class, United States mail, postage prepaid, to those listed above in subparagraphs (1)(A)—(1)(F), as applicable.

(e) *Guardian ad litem.* Upon its own motion, or if requested by the petitioner or by any previously appointed *guardian ad litem*, the Court shall appoint a new *guardian ad litem* or reappoint any prior *guardian(s) ad litem* for any or all of the following:

(1) the Adoptee if one is not currently serving; and

(2) any Minor sibling(s) of the Adoptee who has been freed for adoption pursuant to 23 Pa.C.S. §§ 2503(c),

2504(b), and/or 2513(d) and has been or is being adopted by adopting parents or Prospective Adoptive Parent(s) different than those adopting the Adoptee.

(f) *Court Review and Approval; Necessity of a Hearing and Notice of the Hearing.*

(1) If, upon a review of the petition and the attached exhibits, the Court determines that the proposed agreement is in the best interest of the Adoptee, the Court may issue a decree approving the proposed agreement attached to the petition, but not less than ten (10) after the date of the Certificate of Service, unless all of those entitled to notice under subparagraph (d)(1) have signed a writing waiving the notice required therein.

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

(A) upon a review of the petition and the attached exhibits, the Court does not find sufficient evidence that the proposed agreement is in the best interest of the Adoptee;

(B) any person receiving notice of the filing of the petition under subparagraph (d)(1) files with the Clerk a responsive pleading or written objections objecting to the petition or the terms of the proposed agreement; or

(C) for any other reason within the Court's discretion.

(3) *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 agreement or their counsel, if represented;

(ii) the Agency or Intermediary, if any;

(iii) the Adoptee if he or she signed a separate written consent agreeing to the proposed agreement or signed the proposed agreement as evidence of his or her consent, or his or her counsel, if represented;

(iv) the Adoptee's *guardian ad litem* if one has been appointed;

(v) any *guardian ad litem* that has been appointed to represent any Minor sibling of the Adoptee; and

(v) any sibling who signed a separate written consent agreeing to the proposed agreement or signed the proposed agreement as evidence of his or her consent.

(B) Notice of the hearing need not comport with the requirements of Rule 15.3, and notice may be sent by first-class United States mail, postage prepaid, by electronic mail, or by 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) A Certificate of Service attested by the petitioner shall be presented to the Court at the time of the hearing. The Certificate of Service shall indicate the method of notice and shall have attached thereto a copy of the notice, any affidavit by one who made personal service, any receipt cards for service sent by registered or certified mail, and any electronic receipt confirmation from anyone receiving notice electronically.

(D) The following persons shall attend the hearing unless otherwise excused by the Court for good cause shown:

(i) All signatories to the proposed agreement;

(ii) the Adoptee;

(iii) any sibling who signed the proposed agreement or signed a separate written consent agreeing to the proposed agreement;

(iv) any *guardian ad litem* appointed to represent the Adoptee or Minor sibling(s) of the Adoptee; and

(v) anyone else that the Court directs to attend the hearing.

(4) *Decree after an evidentiary hearing.* If, after the hearing, the Court determines that the proposed agreement is in the best interest of the Adoptee, the Court shall issue a decree approving the proposed agreement. If, after the hearing, the Court determines that the testimony has failed to establish that the proposed agreement is in the best interest of the Adoptee, the Court shall issue a decree denying approval of the proposed agreement and setting forth the specific reason(s) for the denial.

(g) *Court Decree.* The Court shall review and grant or deny the petition to approve the proposed agreement for post-adoption contact and/or communication on or before the date when the decree of adoption is entered in accordance with 23 Pa.C.S. § 2902.

Explanatory Comment: It is the belief and hope of many social workers, Agencies, practitioners and jurists that the opportunity to develop agreements for post-adoption contact and/or communication will facilitate and encourage adoptions. Many advocate that discussions about post-adoption contact and/or communication agreements begin as early as possible, especially once all the necessary parties are identified. To this end, the Courts will accept, review and approve a proposed agreement for post-adoption contact and/or communication at any stage of the proceeding. If practical, a petition to approve a proposed, executed agreement may be conducted as part of a parental rights termination hearing under 23 Pa.C.S. §§ 2503, 2504, or 2513 or as part of an adoption hearing under 23 Pa.C.S. § 2724. The Rule above establishes where the petition to approve the proposed agreement should be filed depending upon whether parental rights have been terminated.

Section 2735 of the Adoption Act, 23 Pa.C.S. § 2735, does not indicate who is responsible for filing the petition seeking Court approval of the proposed agreement for post-adoption contact and/or communication. The Orphans' Court Procedural Rules Committee decided not to impose the obligation on any one party in all instances, but rather, to allow the individuals to the proposed agreement and the Agency or Intermediary facilitating the negotiation and development of the proposed agreement to determine who should be responsible for drafting and filing the petition depending upon the resources and circumstances of all those involved.

The Rule requires an averment as to the existence of any Minor siblings of the Adoptee who are freed for adoption, but not being adopted by the same Prospective Adoptive Parent(s) so that the Court, before reviewing and considering the proposed agreement, can determine whether it is necessary to appoint a *guardian ad litem* to represent any Minor siblings. See 23 Pa.C.S. § 2733(b).

Section 2735 of the Adoption Act, 23 Pa.C.S. § 2735, does not require a court hearing in order to approve the proposed agreement, and the Orphans' Court Procedural Rules Committee decided not to impose an evidentiary hearing requirement in all instances. Nevertheless, given that a Minor cannot attest to a notary that he or she executed or consented to a proposed agreement voluntarily, knowingly, without coercion, fraud or duress, best

practices would be for the Court to conduct its own inquiry whenever an Adoptee or any of the Adoptee's Minor siblings signed a separate consent agreeing to the proposed agreement or signed the proposed agreement as evidence of such consent to ensure that the Minor consented to or signed the proposed agreement voluntarily and fully understands the terms of the proposed agreement. Since section 2738(c)(3) of the Adoption Act, 23 Pa.C.S. § 2738(c)(3), requires any Adoptee who has attained twelve (12) years of age to consent to the proposed agreement, best practices would be to conduct evidentiary hearings in these situations.

Also, at any hearing conducted by the Court, the Adoptee's presence is required regardless of the Adoptee's age and whether the Adoptee consented in writing to the proposed agreement. It is hoped the Court, at that hearing, will ensure that the Adoptee is fully informed of his or her statutory rights to petition to enforce or modify the Contact Agreement or seek its discontinuance in the same Court that conducts the adoption hearing. Also, any sibling who is present at the hearing should be informed by the Court of his or her statutory right to enforce the Contact Agreement in the appropriate Court.

The Court must find, either by reviewing the petition and exhibits or by conducting an evidentiary hearing, that the proposed agreement, as submitted, is in the Adoptee's best interests. Since the statute does not indicate the appropriate standard of proof, this question will have to be determined by developing caselaw. Section 2734 does specify that the proposed agreement may not be enforced without the Adoptee who has attained twelve (12) years of age at the time of the agreement's execution consenting to the proposed agreement, thereby suggesting that a proposed agreement cannot be found to be in the best interests of an Adoptee who has attained twelve (12) years of age and refuses to consent to the proposed agreement.

Notwithstanding the factual averments contained in the petition for approval of the proposed agreement, the affidavits attached as exhibits to the petition, the testimony of witnesses at an evidentiary hearing, including the possible testimony of signatories to the proposed agreement, caseworkers, and psychologists, the Court still may determine that the proposed agreement is not in the Adoptee's best interest, 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 reason(s) for denial, it is intended that the individuals involved will attempt to fashion a revised agreement for post-adoption contact or communication that will meet the Court's approval.

Once approved, the Contact Agreement must be filed with the Clerk of the Court that signs and enters the adoption decree under 23 Pa.C.S. §§ 2902, 2908. Neither the statute nor these Rules impose that obligation on any one of the signatories to the Contact Agreement, except as provided in Rules 15.11 and 15.13 below. Although agreements providing for post-adoption communication or contact may be negotiated and entered into without any seeking judicial approval, the Court will enforce and provide remedies only for those agreements that received Court approval on or before the date when the Adoptee's adoption was finalization. See 23 Pa.C.S. §§ 2735(c), 2738(c)(3).

Rule [15.5] 15.11. Adoption.

(a) *Petition.* [**The**] A petition for adoption under 23 Pa.C.S. § 2701 shall contain [all declarations and

information required by Section 401 of the Adoption Act and any additional information required by local rules.] the following averments:

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

(2) the name of the Adoptee;

(3) the relationship, if any, of the petitioner(s) to the Adoptee;

(4) whether the Adoptee has resided with the petitioner(s), and if so, the length of time that Adoptee has so resided with the petitioner(s)

(5) the Intermediary's name and address, if any;

(6) whether the home study and preplacement report under 23 Pa.C.S. § 2530, the Report of an Intention to Adopt under 23 Pa.C.S. § 2531, and the Report of Intermediary under 23 Pa.C.S. § 2533 have been filed, and if not filed, the date when it is anticipated that such reports will be filed;

(7) if there is no Intermediary, if no Report of the Intermediary has been or will be filed, or if the Adoptee has attained eighteen (18) years of age, all vital statistics and other information required in the Report of the Intermediary, so far as is applicable;

(8) whether a birth certificate or certification of registration of birth of the Adoptee is attached to the petition as an exhibit, and if not attached, the reasons why it is not attached, the efforts made to obtain the birth certificate or certification of registration of birth, and the evidence available to establish a date and place of birth of the Adoptee;

(9) whether all the consents required by 23 Pa.C.S. § 2711 are attached to the petition as exhibits;

(10) if any of the exhibits listed in subparagraph (a)(6) or (a)(9) are not attached to the petition, specific averments explaining why such exhibits have not been attached and the reasons showing cause why the Court may enter a decree of adoption under 23 Pa.C.S. § 2901, notwithstanding the absence of all legal requirements having been met;

(11) whether the Agency or Intermediary, if any, counsel representing the Agency or Intermediary or counsel representing any other party to the adoption has informed the Prospective Adoptive Parent(s) and the Adoptee who has attained twelve (12) years of age of the opportunity to enter into a Contact Agreement, or the reason(s) why such notice has not or cannot be given;

(12) whether a proposed, executed agreement for post-adoption contact and/or communication is attached to the petition as an exhibit, and if so, an averment as to one of the following:

(A) the Contact Agreement and Court order approving the Contact Agreement are attached as exhibits to the petition; or

(B) a proposed, executed agreement for post-adoption contact and/or communication has been submitted and is pending before the Court; or

(C) a proposed, executed agreement for post-adoption contact and/or communication is being

filed with this petition or under a separate petition simultaneously with the filing of this petition;

(13) the proposed new name of the Adoptee if a change in name is desired;

(14) that the petitioner(s) desire to have the relationship of parent and child established between the petitioner(s) and the Adoptee; and

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

(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 consent(s) required by 23 Pa.C.S. §§ 2711, as applicable;

(3) unless previously filed, the Report of the Intermediary with the exhibits required under 23 Pa.C.S. § 2534;

(4) a verified statement from a representative of the Agency or Intermediary, counsel representing the Agency or Intermediary, or counsel representing any other party that notice was provided to the Prospective Adoptive Parent(s) and to the Adoptee if he or she has attained twelve (12) years of age regarding the opportunity to enter into a Contact Agreement and the specific date(s) on which such notice was given; and

(5) any Contact Agreement and the Court order approving the Contact Agreement, or if not previously approved, any proposed, executed agreement for post-adoption contact and/or communication for which Court approval is requested, unless the agreement is being submitted under a separate petition.

(c) *Notice or Consent—Parents of Child.*

(1) Notice [as provided by Rule 15.6] of the hearing on the petition for adoption shall be given to each birth parent as provided by Rule 15.3 unless:

[(1)] (A) 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 15.7;

[(2)] (B) he or she has voluntarily relinquished his or her parental rights in a proceeding under Rule [15.2] 15.5 or Rule [15.3,] 15.6; or

[(3)] (C) his or her parental rights have been involuntarily terminated in a proceeding under Rule [15.4] 15.8.

(2) If, as part of the adoption hearing, the petitioner(s) is/are seeking Court approval for the proposed, executed agreement for post-adoption contact and/or communication, the petitioner(s) shall serve a copy of the petition for approval and the proposed agreement as provided in subparagraph (d)(1) of Rule 15.10 upon the individuals and entities therein listed, shall file a Certificate of Service as provided in subparagraph (d)(2) of Rule 15.10, and shall provide notice of the adoption hearing to these individuals and entities as provided in subparagraph (f)(3) of Rule 15.10.

[(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) Disclosure of fees and costs.] (e) *Hearing.* The Court shall conduct a hearing on the petition for adoption to determine the desirability of the proposed adoption and whether the adoption will promote the Adoptee's needs and welfare. Upon a hearing, if the Court determines that the adoption can be granted, the Court shall enter a decree as provided in Section 2902 of the Adoption Act. See 23 Pa.C.S. § 2902.

(1) If the petition for adoption contains averments as provided in subparagraph (a)(10), the Court shall take evidence to determine if the petitioner has shown cause for failing to meet the statutory requirements of the Adoption Act and has demonstrated that the Adoptee's needs and welfare nevertheless will be best served by entering a decree of adoption. The petitioner shall present evidence upon which the Court can find cause to dispense with a statutory requirement of the Adoption Act at the adoption hearing or in a separate hearing, as the Court may determine.

(2) At the hearing on the petition for adoption, there shall be offered in evidence a report, certified by counsel for the [petitioner] petitioner(s), 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] Intermediary or any other person or institution, in connection with the adoption.

[(e)] (f) *Adult—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.

Explanatory Comment: The Court, in its discretion, can dispense with any statutory requirement of the Adoption Act for cause shown. See 23 Pa.C.S. 2901. As a result, if petitioner is unable to satisfy all the prerequisites or attach all the exhibits required by the Adoption Act, the petition for adoption should not be dismissed summarily. Rather, the petitioner should be afforded an opportunity to demonstrate why a statutory requirement has not or cannot be met and why the proposed Adoptee's best interest is nevertheless served by granting the adoption petition. For example, in *In re Adoption of R.B.F. and R.C.F.*, 569 Pa. 269, 803 A.2d 1195 (2002), the Supreme Court, after construing and relying upon section 2901, determined that the Adoption Act does not preclude two unmarried same-sex partners (or unmarried heterosexual partners) from adopting a child because the hearing judge for cause shown can dispense with the statutory requirement that a consent to adopt under section

2711(d) include, *inter alia*, a relinquishment of parental rights by the parent consenting to the adoption.

If the petition for adoption contains averments as provided in paragraph (a)(10), the Court shall conduct an evidentiary hearing. If after reviewing the averments in the petition, the Court is satisfied that cause can be shown and the Adoptee's best interests will be promoted by the entry of a decree of adoption, then the Court should conduct one hearing on the adoption petition, taking evidence of why all the statutory requirements have not and need not be met as well as why the Adoptee's needs and welfare will be promoted by the adoption. Nothing prevents the Court, in its discretion, from conducting separate evidentiary hearings if the Court after reviewing the petition is uncertain that the averments establish sufficient cause for relieving the petitioner(s) of a statutory requirement under the Adoption Act. In all cases, however, the petitioner is entitled to a hearing and an opportunity to present evidence in support of the averments in the petition. See *In re Adoption of R.B.F. and R.C.F.* The Court, in its discretion, can dispense with any statutory requirement of the Adoption Act if the petitioner presents evidence establishing cause for failing to meet a statutory requirement. See 23 Pa.C.S. § 2901.

Per section 2733(c) of the Adoption Act, 23 Pa.C.S. § 2733(c), notice of the opportunity to enter into a Contact Agreement should be given to any Adoptee who reasonably can be expected to understand the opportunity, benefits and consequences of continuing post-adoption contact and communication with Birth Relative(s). Notwithstanding the statutory language, this Rule requires proof only that notice was given to an Adoptee who is twelve (12) years of age or older because the Court, without separate, independent evidence and observations, is not capable of determining which Adoptees are sufficiently mature and capable of understanding this notice and opportunity; and furthermore, only an Adoptee who has attained twelve (12) years of age must consent to any proposed agreement for post-adoption contact and/or communication submitted to the Court for approval. See 23 Pa.C.S. § 2738(c)(3).

Rule [15.8] 15.12. Registration of foreign adoption decree.

(a) Adopting parent(s) may petition the Court [of Common Pleas] in the county of their residence to register a foreign adoption decree so that it will be given full and final effect in this Commonwealth. The [Petition and Final Decrees] petition and final decrees shall be in substantially the form approved by the Supreme Court. See Appendix of Forms to these Rules.

(1) As part of the Petition to Register Foreign Adoption Decree, [a child's] an Adopted Child's name may be changed from that appearing on the foreign adoption decree if the [child is younger than] Adopted Child has not yet attained twelve (12) years of age.

(b) A foreign adoption decree previously registered or otherwise finalized by a Court of this Commonwealth or of any other state may not be registered subsequently in another Court of this Commonwealth.

(c) If the Court [of Common Pleas] determines that the foreign adoption decree can be registered, the Court shall sign the [Final Decree] final decree and shall direct the Clerk [of the appropriate Court] to enter the date of the foreign adoption decree and identify the foreign court on the docket. The Clerk shall send Form No. HD01273F, Certificate of Adoption of a Foreign-Born Child, and Form No. HD01275F, Statement of Citizenship and Residency, to the Department of Health, Division of Vital Records, along with a copy of U.S. Government Form N-560, Certificate of Citizenship, and/or a copy of the child's United States passport, if either or both documents have been provided by the adopting parent(s). The Clerk shall issue to the adopting parent(s) a certificate of adoption in accordance with [Section 2907 of the Adoption Act] 23 Pa.C.S. § 2907. [See 23 Pa.C.S. § 2907.]

(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] 15.13 (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 Pa.O.C. Rule [15.9] 15.13.

Explanatory [Note] Comment: 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] 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] petition and accompanying documents, including the [Final Decree] 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—2937 and Pa.O.C. Rule [15.7] 15.20.

The Clerk shall make available to 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.

A change of name from that appearing on the foreign adoption decree is permitted without the need to comply with the procedures of 54 Pa.C.S. § 702 if the child is younger than twelve (12) years of age. Cf. 23 Pa.C.S. § 2711(a)(1). If the foreign born adopted child is twelve (12) years of age or older, then the child and parent(s) would need to follow the procedures set forth in 54 Pa.C.S. § 702 and would not be foreclosed by 54 Pa.C.S. § 702(b)(5)(ii) because the name change petition would not be in connection with any adoption proceeding as the foreign adoption is full and final and therefore completed.

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] 15.13 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] 15.13 is permitted; Pa.O.C. Rule [15.8] 15.12 is not the exclusive means to obtain a Pennsylvania adoption decree and birth certificate for a foreign born adopted child.

Only one court, whether in this Commonwealth or another state, should exercise jurisdiction over the foreign adoption decree. Thus, if the foreign adoption decree has been registered or otherwise finalized in another state court, the adopting parent(s) need not and should not register the foreign adoption decree in this Commonwealth under this Rule. In similar fashion, if the foreign adoption decree has been registered in this Commonwealth, and thereafter, another petitioner in this Commonwealth seeks to adopt this [child] Adopted Individual, the subsequent proceeding will be a standard proceeding under the applicable provisions of the Adoption Act, 23 Pa.C.S. § 2101 *et seq.* Such a situation could occur when the [child] Adopted Child is to be adopted by a step-parent after divorce or death of the original adopting parent(s), or when, after termination of parental rights, the [child] Adopted Child is to be adopted by Prospective Adoptive Parent(s) different than the original adopting parent(s).

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 Pa.O.C. Rule [15.9] 15.13.

Notice of the opportunity to enter into a Contact Agreement is not required to be given to the birth parent(s) of a foreign born Adopted Child if such Adopted 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 Adopted Child pursuant to the laws and rules of that country. Under this Rule 15.12, the 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] 15.13. Petition for adoption of a foreign born child.

(a) *General Rule.* [Adopting] Prospective Adoptive Parent(s) or 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)] 23 Pa.C.S. § 2302 to proceed with an adoption of their foreign born [child] Adoptee or Adopted Child who has entered the United States pursuant to an IR-2, IR-3, IH-3, IR-4 or IH-4 United States visa.

(b) *Required Documents.* The following documents shall be filed in the following order with the Clerk [of the appropriate division of the Common Pleas Court]:

- (1) Preliminary Decree;
- (2) Final Decree;
- (3) Petition for Adoption of a Foreign Born Child, including therein, if the foreign born Adoptee has entered the United States pursuant to an IR-4 or IH-4 United States visa, an averment as to whether the Prospective Adoptive Parent(s), the birth parent(s), and the Adoptee who has attained twelve (12) years of age have been informed of the opportunity to enter into a Contact Agreement and whether an executed, proposed agreement for post-adoption contact or communication has been submitted and is pending before the Court or is being filed with this petition or under a separate petition at the same time as the filing of this petition;
- (4) Copy of United States visa;
- (5) Reports of investigations, home studies, preplacement and postplacement;
- (6) Copy of birth certificate of foreign born [child] Adoptee or Adopted Child (if available), with translation;
- (7) Copy of any other relevant foreign decrees and/or documents with translations;
- (8) Consents of any person and/or [agency] Agency having custody and/or legal and/or physical rights to the [child] Adoptee or Adopted Child;
- (9) Report of Intermediary (if an [intermediary agency] Intermediary was involved);
- (10) Verifications signed by petitioner(s), [intermediary] Intermediary and translator(s) stating that facts set forth are true and correct, copies are true and correct copies of originals, that the English translation of foreign documents is accurate, and that false statements are subject to the penalties of 18 Pa.C.S. § 4904;
- (11) if the Adoptee entered the United States pursuant to an IR-4 or IH-4 United States visa, a verified statement signed by a representative of the Agency or Intermediary, counsel for the Agency or Intermediary, or counsel for any other party that notice was provided to the petitioner(s), the Adoptee's birth parent(s), and the Adoptee if he or she has attained twelve (12) years of age regarding the opportunity to enter into a Contact Agreement and the specific date(s) on which such notice was given; and

(12) Pennsylvania Department of Health, Division of Vital Records Form No. HD01273F, Certificate of Adoption of a Foreign-Born Child with Parts 1 and 2 (and Part 3, if applicable) completed;

[(12)] (13) Pennsylvania Department of Health, Division of Vital Records Form No. HD01275F, Statement of Citizenship and Residency; and

[(13)] (14) A copy of U.S. Government Form N-560, Certificate of Citizenship, and/or a copy of the [child's] Adoptee's or Adopted Child's United States passport, if either or both documents are available.

(c) *Form of Documents.* The Preliminary Decree, Final Decree, Petition for Adoption of a Foreign Born Child, Report of Intermediary (if applicable), and verifications referenced in subparagraph (b)(10) above shall be in substantially the form approved by the Supreme Court. See Appendix of Forms to these Rules.

(d) *Judicial Review and Hearing.*

(1) *Scope of Review.* The [**Petition**] **petition** and accompanying documents filed under this Rule shall be subject to review by the Court as prescribed by the Pennsylvania Adoption Act, 23 Pa.C.S. § 2101 *et seq.*, Pennsylvania Orphans' Court Rules and local rules [**of court**].

(2) *Home Study and Investigation.* The Court may rely in whole or in part upon a home study containing information required by [**Section 2530(b) of the Adoption Act**] 23 Pa.C.S. § 2530(b) and an investigative report containing information required by [**Section 2535(b) of the Adoption Act**] 23 Pa.C.S. § 2535(b) previously commissioned in the foreign adoption proceeding without regard to when such reports were prepared. [**See 23 Pa.C.S. §§ 2530, 2535.**] The Court may in its discretion require additional reports and investigations to be made in accordance with the Pennsylvania Adoption Act, Pennsylvania Orphans' Court Rules and local rules [**of court**].

(3) *Original Documents, Decrees and Translations.* All original documents, decrees and translations must be available for review by the Court upon request.

(4) *Pre-adoption Requirements.* In order to grant an adoption, the Court must be satisfied that the pre-adoption requirements set forth in [**Sections 2530—2535 of the Adoption Act**] 23 Pa.C.S. §§ 2530—2535 have been met. [**See 23 Pa.C.S. §§ 2530—2535.**] If the **Prospective Adoptive Parent(s) or adopting parent(s)** were Pennsylvania residents at the time that the United States visa was issued to the foreign born child, the Court may accept an IH or IR United States visa as proof that the pre-adoption requirements have been met.

(5) *Proof that the Child is an Orphan.* In order to grant an adoption, the Court must be satisfied that the [**child to be adopted**] **Adoptee** is an orphan. The Court may accept the [**child's**] IH or IR United States visa **of the Adoptee or Adopted Child** as proof that the foreign born child is an orphan.

(6) *Hearing.* The Court shall schedule a hearing to allow for testimony pursuant to [**Sections 2721—2724 of the Adoption Act**] 23 Pa.C.S. §§ 2721—2724. [**See 23 Pa.C.S. §§ 2721—2724.**] Petitioner(s) and the [**child to be adopted**] **Adoptee or Adopted Child** shall appear at the hearing. The Court may in its discretion require the presence of additional persons, including a representative of the [**intermediary**] **Intermediary**.

(e) *Disclosure of Fees and Costs.* Prior to or at the hearing, a report shall be filed setting forth the amount of fees, expenses and costs paid or to be paid to counsel, the [**intermediary**] **Intermediary** and/or any other person or [**agency**] **Agency** in connection with the adoption of the foreign born [**child**] **Adoptee or Adopted Child**. The Court may request an itemization of any of the amount(s) reported.

(f) *Final Decree.* After the hearing, the Court shall determine if the adoption of the foreign born [**child**] **Adoptee or Adopted Child** can be granted, and if so, the Court shall enter a decree as provided in [**Section 2902 of the Adoption Act**] 23 Pa.C.S. § 2902. [**See 23 Pa.C.S. § 2902.**]

(g) *Clerk of the Appropriate Court.* Upon the filing of a decree granting the adoption under this Rule, the Clerk [**of the appropriate Court**] shall enter the decree and date of the decree on the docket. The Clerk shall send Form No. HD01273F, Certificate of Adoption of a Foreign-Born Child, and Form No. HD01275F, Statement of Citizenship and Residency, to the Department of Health, Division of Vital Records, along with a copy of U.S. Government Form N-560, Certificate of Citizenship, and/or a copy of the [**child's**] **Adoptee or Adopted Child's** United States passport, if either or both documents have been provided by the **Prospective Adoptive Parent(s) or adopting parent(s)**. The Clerk shall issue to the **Prospective Adoptive Parent(s) or adopting parent(s)** a certificate of adoption in accordance with [**Section 2907 of the Adoption Act**] 23 Pa.C.S. § 2907. [**See 23 Pa.C.S. § 2907.**]

(h) *Only One Court May Assume Jurisdiction.* [**A parent**] **Prospective Adoptive Parent(s) or adopting parent(s)** shall not proceed under this Rule if the foreign adoption has been registered or otherwise finalized by a Court of this Commonwealth or any other state.

Explanatory [Note] Comment: 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**] **Adopted 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**] **15.13**, but can register the foreign adoption decree pursuant to [**Pa.O.C. Rule 15.8**] **Rule 15.12**. 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**] **Adopted 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**] **Rule 15.13**; 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**] **Adoptee** has entered the United States with an IH-4 or IR-4 United States visa, the [**adopting parent(s)**] **Prospective Adoptive Parent(s)** must proceed under [**Pa.O.C. Rule 15.9**] **Rule 15.13** because the adoption of their foreign born [**child**] **Adoptee** was not finalized in the country of the [**child's**] **Adoptee's** birth.

Only one state court, whether in this Commonwealth or another state, should exercise jurisdiction over the registration of the foreign adoption decree or the completion of the adoption initiated in the native country of the foreign born child. Thus, if the adoption has been finalized or the foreign adoption decree has been registered in another state court or in another [**court**] **Court** within this Commonwealth, the adopting parent(s) need not and should not proceed under this Rule. In similar fashion, if the adoption of the foreign born [**child**] **Adopted Child** has been finalized in this Commonwealth, and thereafter, another petitioner seeks to adopt this [**child**] **Adopted**

Individual, the subsequent proceeding will be a standard proceeding under the applicable provisions of the Adoption Act, 23 Pa.C.S. § 2101 *et seq.* Such a situation could occur when the [**child**] **Adopted Individual** is to be adopted by a step-parent after divorce or death of the original adopting parent(s), or when, after termination of parental rights, the [**child**] **Adopted Child** is to be adopted by **Prospective Adoptive Parent(s)** different than the adopting parent(s).

The documents referenced in [**Pa.O.C. Rule 15.9**] **Rule 15.13** 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**] **petition** and accompanying documents under 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.**] **2906, 2907, 2908(f), and 2911—2937** and Rule [**15.7**] **15.20**.

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 Contact Agreement is not required to be given to the birth parent(s) of a foreign born child if the Adopted 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 Adopted Child pursuant to the laws and rules of that country. The foreign adoption decree evidences a completed adoption, and the proceeding under this Rule is only to give the foreign adoption decree the full force and effect of a Pennsylvania adoption.

By contrast, for an Adoptee who has been issued an IR-4 or IH-4 United States visa, notice of the opportunity to enter into a Contact Agreement needs to be given to the Prospective Adoptive Parent(s), the Adoptee's birth parent(s) whose identity and whereabouts is/are known, and the foreign born Adoptee who has attained twelve (12) years of age because the adoption was not completed in the native country and is being completed under the laws and statute of the Pennsylvania Adoption Act which requires such notice pursuant to 23 Pa.C.S. § 2733(c). Per section 2733(c) of the Adoption Act, 23 Pa.C.S. § 2733(c), notice of the opportunity to enter into a Contact Agreement should be given to any Adoptee who reasonably can be expected to understand the opportunity, benefits and consequences of continuing post-adoption contact and communication with Birth Relative(s). Notwithstanding the statutory language, this Rule requires proof only that notice was given to Adoptees who are twelve (12) years of age or older because the Court, without separate, independent evidence and observations, is not capable of determining which Adoptees are sufficiently mature and capable of understanding this notice and opportunity; and furthermore, only those Adoptees who have attained twelve (12) years of age must consent to any proposed agreement for post-adoption contact and/or communication submitted to the Court for approval. See 23 Pa.C.S. § 2738(c)(3).

(Editor's Note: The Rule 15.14—15.19 are new and printed in regular type to enhance readability.)

Rule 15.14. Notice and service in subsequent petitions regarding contact agreements.

(a) *Service of Petition.*

(1) The petitioner shall mail to those listed below in subparagraphs (A)—(D), as applicable, a copy of any petition to modify, enforce, or discontinue the Contact Agreement, including therewith a notice that a responsive pleading or written objections must be filed with the Clerk within twenty (20) days from the date indicated on the petition or notice letter:

(A) all signatories to the Contact Agreement;

(B) the Adopted Child who is the subject of the Contact Agreement;

(C) any sibling of the Adopted Child who has continuing contact or communication with the Adopted Child under the terms of the Contact Agreement; and

(D) any Agency or Intermediary that previously had legal custody of the Adopted Child or was involved in facilitating the adoption.

(2) A verified Certificate of Service shall be appended to the petition or filed separately and contemporaneously with the filing of the petition, stating that a copy of the petition with the requisite notice for filing any responsive pleading or written objection was mailed by first-class, United States mail, postage prepaid, to those listed above in subparagraphs (1)(A)—(1)(D), as applicable.

(b) *Notice and Hearing.* After the filing of a petition to modify, a petition to enforce, or a petition to discontinue the underlying Contact Agreement, the Court shall schedule a private evidentiary hearing that shall not be during the twenty (20) days when a responsive pleading or written objections may be filed to the petition.

(c) The petitioner shall provide notice of the hearing at least ten (10) days in advance of the hearing, to the following:

(1) all signatories to the Contact Agreement, or their counsel if counsel has filed an entry of appearance with the Clerk in respect to this proceeding;

(2) the Adopted Child, if he or she will have attained twelve (12) years of age as of the date of the hearing, or to his or her counsel if counsel has filed an entry of appearance with the Clerk in respect to this proceeding;

(3) any *guardian ad litem* appointed to represent the Adopted Child with respect to this proceeding;

(4) any sibling of the Adopted Child who has continuing contact or communication with the Adopted Child under the terms of the Contact Agreement, or to his or her counsel if counsel has filed an entry of appearance with the Clerk in respect to this proceeding;

(5) any *guardian(s) ad litem* appointed by the Court to represent any sibling(s) with respect to this petition; and

(6) the Agency or Intermediary that previously had legal custody of the Adopted Child or was involved in facilitating the adoption.

(d) *Certificate of Service of Notice Given.* A verified Certificate of Service shall be presented to the Court at the time of the hearing. The Certificate of Service shall indicate the method of notice and shall have attached thereto a copy of the notice, any affidavit by one who made personal service, any receipt cards for service sent

by registered or certified mail, and any electronic receipt confirmation from anyone receiving notice electronically.

Explanatory Comment: The petition to modify, enforce or discontinue the underlying Contact Agreement is being served upon the Agency or Intermediary that previously had custody of the Adopted Child or facilitate the adoption in the hopes that this Agency or Intermediary may assist in mediating a resolution to the dispute prior to the Court hearing the petition and rendering a unilateral decision. *See* 23 Pa.C.S. § 2740(a)(2).

Rule 15.15. Appointment of guardians ad litem in subsequent proceedings regarding contact agreements.

Upon its own motion or if requested by the petitioner or by any previously appointed *guardian ad litem*, the Court may appoint a new *guardian ad litem* or reappoint any prior *guardian ad litem* to represent the Adopted Child and may appoint new *guardian(s) ad litem* or reappoint any prior *guardian(s) ad litem* to represent any Minor sibling(s) of the Adopted Child who has continuing contact or communication with the Adopted Child under the terms of the Contact Agreement.

Rule 15.16. Petition to modify a contact agreement.

(a) *General rule.* By filing a petition under 23 Pa.C.S. § 2737 with the Court that entered the adoption decree, the adopting parent(s) or the Adopted Child if he or she has attained twelve (12) years of age may seek to modify the Contact Agreement.

(b) *Contents of petition to modify.* The petition to modify the Contact Agreement shall set forth specific averments to establish the following facts:

- (1) the age and birth date of the Adopted Child;
- (2) the date when the Court approved the Contact Agreement and that such date was on or before the date of the adoption decree;
- (3) whether the Adopted Child was then represented by a *guardian ad litem* who participated in the negotiation and development of the Contact Agreement;
- (4) whether there are siblings of the Adopted Child who have continuing contact or communication with the Adopted Child under the terms of the Contact Agreement, and if so, the name(s), age(s), and birth date(s) of such sibling(s), and the name(s) of the *guardian(s) ad litem*, if any, who represented such sibling(s) in the negotiation and development of the Contact Agreement and the name(s) of the sibling(s) whom the *guardian(s) ad litem* then represented;
- (5) whether the Adopted Child either signed a separate written consent agreeing to the Contact Agreement or signed the Contact Agreement as evidence of his or her consent, or that the Adopted Child had not attained twelve (12) years of age at the time of the execution of the Contact Agreement;
- (6) whether petitioner has engaged or is willing to engage in mediation; and
- (7) the reason(s) why the proposed modification will serve the needs, welfare and best interest of the Adopted Child.

(c) *Decree.* After a hearing, if the Court finds by clear and convincing evidence that modification of the Contact Agreement shall serve the needs, welfare and best interest of the Adopted Child, the Court shall enter a decree so modifying the Contact Agreement as necessary to serve the needs, welfare and best interest of the Adopted Child.

Explanatory Comment: Section 2741(b) provides that a *guardian ad litem* may be appointed to represent siblings who have not attained eighteen (18) years of age in a proceeding to enforce or discontinue a Contact Agreement, but does not specifically mention a proceeding to modify a Contact Agreement. 23 Pa.C.S. § 2741(b)(1). However, the Court has inherent powers to appoint a *guardian ad litem* whenever the Court finds that the interest of a Minor are not adequately represented by others who are *sui juris*.

The evidentiary standard of clear and convincing evidence is statutorily mandated. *See* 23 Pa.C.S. § 2737(b).

Rule 15.17. Petition to enforce a contact agreement.

(a) *General Rule.* By filing a petition under 23 Pa.C.S. § 2738 with the Court that entered the adoption decree, any signatory to the Contact Agreement, the Adopted Child or a sibling of the Adopted Child may seek to enforce the terms of the Contact Agreement.

(b) *Contents of petition to enforce.* The petition to enforce the Contact Agreement shall set forth specific averments to establish the following facts:

- (1) the age and birth date of the Adopted Child;
- (2) the date when the Court approved the Contact Agreement and that such date was on or before the date of the adoption decree;
- (3) whether the Adopted Child was then represented by a *guardian ad litem* who participated in the negotiation and development of the Contact Agreement;
- (4) whether there are siblings of the Adopted Child who have continuing contact or communication with the Adopted Child under the terms of the Contact Agreement, and if so, the name(s), age(s), and birth date(s) of such sibling(s), and the name(s) of the *guardian(s) ad litem*, if any, who represented such sibling(s) in the negotiation and development of the Contact Agreement and the name(s) of such sibling(s) whom the *guardian(s) ad litem* then represented;
- (5) whether the Adopted Child either signed a separate written consent agreeing to the Contact Agreement or signed the Contact Agreement evidencing his or her consent, or that the Adopted Child had not attained twelve (12) years of age at the time of the execution of the Contact Agreement;
- (6) whether the party seeking enforcement is complying with the terms of the Contact Agreement;
- (7) the identity of the party who has materially breached the Contact Agreement and the nature and circumstances of the breach;
- (8) whether petitioner has engaged or is willing to engage in mediation; and
- (9) that enforcement of the Contact Agreement serves the needs, welfare and best interest of the Adopted Child.

(c) *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 Contact Agreement and also finds that the Contact Agreement serves the needs, welfare and best interest of the Adopted Child, the Court shall enter a decree directing specific performance of the Contact 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.

Explanatory Comment: Section 2738 is the exclusive remedy for enforcing a Contact Agreement; there is no cause of action under the common law or any other statutory section. 23 Pa.C.S. § 2738(f). A sibling of the Adopted Child may initiate an action to enforce the Contact Agreement even if the sibling is not 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). The only remedy is a Court order requiring specific performance; there is no separate remedy for awarding monetary damages. Given that the Contact Agreement may have been presented to and approved by the Court terminating parental rights, the Court having continuing jurisdiction over the Contact Agreement is the Court that finalized the adoption decree and not necessarily the Court that approved the Contact Agreement. Subsection 2738(e)(2) is hereby suspended to the extent that it is inconsistent with subsection 2738(a). *Compare* 23 Pa.C.S. § 2738(a) with 23 Pa.C.S. § 2738(e)(2).

Rule 15.18. Petition to Discontinue a Contact Agreement.

(a) *General rule.* By filing a petition under 23 Pa.C.S. § 2739 with the Court that entered the adoption decree, any signatory to the Contact Agreement or the Adopted Child if he or she has attained twelve (12) years of age may seek to discontinue the Contact Agreement.

(b) *Contents of petition to discontinue.* The petition to discontinue the Contact Agreement shall set forth specific averments to establish the following facts:

- (1) the age and birth date of the Adopted Child;
- (2) the date when the Court approved the Contact Agreement and that such date was on or before the date of the adoption decree;
- (3) whether the Adopted Child was then represented by a *guardian ad litem* who participated in the negotiation and development of the Contact Agreement;
- (4) whether there are siblings of the Adopted Child who have continuing contact or communication with the Adopted Child under the terms of the Contact Agreement, and if so, the name(s), age(s), and birth date(s) of such sibling(s), and the name(s) of the *guardian(s) ad litem*, if any, who represented such sibling(s) in the negotiation and development of the Contact Agreement and the name(s) of such sibling(s) whom the *guardian ad litem* represented;
- (5) whether the Adopted Child either signed a separate written consent agreeing to the Contact Agreement or signed the Contact Agreement evidencing his or her consent, or that the Adopted Child had not attained twelve (12) years of age at the time of the execution of the Contact Agreement;
- (6) whether petitioner has engaged or is willing to engage in mediation; and
- (7) the reasons why discontinuance of the Contact Agreement serves the needs, welfare and best interests of the Adopted Child.

(c) *Decree.* After a hearing, if the Court finds by clear and convincing evidence that discontinuance of the Contact Agreement shall serve the needs, welfare and best interest of the Adopted Child, the Court shall enter a decree discontinuing the Contact Agreement.

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

Rule 15.19. Collection of Documents and Maintenance of Court File.

(a) The Clerk where parental rights were terminated and the Clerk where the adoption decree is entered 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 legal papers.

(b) The Clerk where parental rights were terminated and the Clerk where the adoption decree is entered shall also accept the following items that shall then become part of the permanent court file:

(1) a Statement of medical, personal and/or social history information filed by a birth parent, the survivor of a deceased birth parent, the Adopted Individual who is *sui juris*, the legal or natural guardian of a non-*sui juris* Adopted Individual, or the descendant of a deceased Adopted Individual;

(2) a form promulgated by the Department containing medical, personal or social history information completed by an individual named in subparagraph (1) above;

(3) an 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 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 Adopted Individual's original birth record with identifying information about the birth parent;

(4) a 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 or the Department of Health that is signed by the birth parent; and

(5) a notification from the Department 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 paragraphs (a) and (b) above, the Clerk where the adoption decree is entered shall also accept the following items that shall then become part of the permanent court file:

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

(2) records or 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 Adoptee, the minor birth parent, or a minor sibling of the Adoptee, so long as the records and written documents concern the Adopted Individual, the birth family or the adopting family, such records and documents are in the format required by local rule, and the filing fee, if any, is paid; and

(3) requests for non-identifying or identifying information.

(d) The Clerk where parental rights were terminated shall copy and forward any Statement of medical, personal and/or social history information and forms signed

by a birth parent authorizing the release of identifying information, withholding the release of identifying information, or revoking previously given authorizations as follows:

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

(2) completed and signed documents in whatever form or format shall be forwarded to the Clerk where the adoption decree has been entered, if the Court entering the adoption decree is known or reasonably ascertainable from information in the court file of the Court that terminated parental rights.

(e) All documents described in subparagraphs (b)(1), (b)(2), (b)(3), (b)(4), (c)(1), and (c)(3) shall be stamped with the date of receipt and an acknowledgement of receipt shall be sent to the individual who filed the document.

Explanatory Comment: In order to avoid confusion, the term "court file", rather than "court records", is being used to describe all documents that can be part of the court's file because "court records" 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.

The statute directs that notice of the filing of a Statement of medical, 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 15.21(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 15.21(c) requires the filing of an initial request for information and because all requests for information are filed through the Clerk where the adoption decree is entered, it is that Court, and not the Court that terminated parental rights, that shall review the Statement of medical, personal and/or social history information, determining who is the individual intended to be benefitted and whether and how information is to be provided to that individual. The Clerk where parental rights were terminated need only forward the Statement of medical, personal and/or social history information to the Clerk where the adoption decree is entered, if such Court is known or can be readily identified from the items in the court file, and to the Pennsylvania Adoption Information Registry ("PAIR") if the completed Statement is on the form promulgated by the Department.

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

Notwithstanding the development of forms by the Department, the statute does not limit or restrict what statements and forms the Clerk can accept from birth parents, Adopted Individuals or their statutorily permissible representatives. Thus, in keeping with the spirit of the statute, Clerks are encouraged to accept any document that reveals medical, personal and/or social history information from a birth parent, Adopted Individual, his or her statutorily permissible representative, descendant(s) of a deceased Adopted Individual, or survivor(s) of

a deceased birth parent. Likewise, Clerks 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, through the promulgation of local rules, their own forms for such uses. The Department has designed sample forms for the local Courts to use or to modify for use.

Because requests for identifying information are permitted to be filed only with the Clerk where the adoption decree is entered, only the Clerk where the adoption decree is entered shall accept requests for non-identifying or identifying information and forms from the Adopted Individual authorizing the release of identifying information or withholding or revoking such authorization. See 23 Pa.C.S. § 2931(A). Despite the above sentence, the statute implies that the Clerk where parental rights were terminated must accept and maintain as part of its court file an authorization or consent to release identifying information or any document withholding or revoking such authorization signed by a birth parent. See 23 Pa.C.S. §§ 2933(A)(2)—(4). For this reason, Rule 15.19(d)(2) requires the Clerk where parental rights were terminated to forward any such signed authorization or consent form or any document withholding or revoking authorization or consent to the Clerk where the adoption decree is entered, if known, thereby streamlining the efforts required by the Court that entered the adoption decree if a request for non-identifying or identifying information is later filed.

Finally, attorneys representing a party to an adoption proceeding or representing a child thereto either as counsel or as a guardian ad litem are permitted to forward their records and information only to the Clerk where the adoption decree is entered. 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. See 23 Pa.C.S. § 2915. Moreover, the Court, by local rule, may adopt procedures for attorneys forwarding documents to be retained in the court file, e.g., on a disc, CD-ROM, or other electronic format. The Court may charge reasonable fees for the acceptance and retention of an attorney's records. See 23 Pa.C.S. § 2913 ("Any court . . . may charge reasonable fees for services provided under this chapter.")

Rule [15.7] 15.20. 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 Statement of medical, 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 15.21.**

(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 Adopted Individual 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 Adopted Individual before adoption.**

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

(Editor's Note: The following rule is new and printed in regular type to enhance readability.)

Rule 15.21. Dissemination and release of information in the court file.

(a) One seeking non-identifying or identifying information or contact shall file a written request with the Clerk where the adoption decree was entered and the written request shall contain the following information to the extent known:

(1) the name of the Court that entered the adoption decree and the date of the adoption decree;

(2) the requester's relationship to the adoption proceeding as the Adopted Individual, the adopting parents, the Adopted Individual's legal guardian, a descendant of the Adopted Individual, a birth parent, a parent of a birth parent, or a birth sibling of the Adopted Individual; and

(A) If the requester is the Adopted Individual, the Adopted Individual's birth date and that he or she has attained eighteen (18) years of age.

(B) If the requester is an adopting parent, the Adopted Individual's birth date and that the Adopted Individual has not attained eighteen (18) years of age or has attained eighteen (18) years of age and been adjudicated incapacitated, including attaching a certified copy of the court decree of incapacity, or that the Adopted Individual is deceased, including attaching a copy of the death certificate.

(C) If the requester is a legal guardian of the Adopted Individual, the Adopted Individual's birth date and that the Adopted Individual has not attained eighteen (18) years of age or has attained eighteen (18) years of age and been adjudicated incapacitated, including attaching a certified copy of the court decree of incapacity.

(D) If the requester is a descendant of the Adopted Individual, a statement that the Adopted Individual is deceased, including attaching a copy of the death certificate.

(E) If the requester is a birth parent, the Adopted Individual's birth date and that the Adopted Individual has attained twenty-one (21) years of age.

(F) If the requester is a parent of a birth parent, the Adopted Individual's birth date, that the Adopted Individual has attained twenty-one (21) years of age, and that the birth parent either consents to the request for information or contact, has been adjudicated incapacitated, or is deceased, including attaching a signed copy of

the birth parent's consent, a certified copy of the court decree of incapacity, or a copy of the death certificate, as applicable.

(G) If the requester is related to the Adopted Individual as a sibling through either one or both of the birth parents, the birth dates of both the Adopted Individual and the requester, that both the Adopted Individual and the requester have attained twenty-one (21) years of age, and that either the requester remained in the custody of his or her parent and that this birth parent consents to the request for information or contact, has been adjudicated incapacitated, or is deceased, including attaching a signed copy of the birth parent's consent, a certified copy of the court decree of incapacity, or a copy of the death certificate, as applicable, or that the requester was adopted out of the birth family or did not remain in the custody of the birth parent, including a certified copy of the requester's adoption decree or the court order adjudicating the requester dependent or granting legal or physical custody of the requester to another.

(3) a general description of the individual who is the subject of the request explaining the subject's relationship to the adoption proceeding as the Adopted Individual, a birth parent, a parent of a birth parent, or a birth sibling of the Adopted Individual.

(A) If the subject of the request is the Adopted Individual, the Adopted Individual's birth date and that he or she has attained twenty-one (21) years of age.

(B) If the subject of the request is a parent of a birth parent, the Adopted Individual's birth date, that the Adopted Individual has attained twenty-one (21) years of age, and that the birth parent either consents to the request for information or contact, has been adjudicated incapacitated, or is deceased, including attaching a signed copy of the birth parent's consent, a certified copy of the court decree of incapacity, or a copy of the death certificate, as applicable.

(C) If the subject of the request is related to the Adopted Individual as a sibling through either one or both of the birth parents, the birth dates of both the Adopted Individual and his or her birth sibling, that both the Adopted Individual and the birth sibling have attained twenty-one (21) years of age, and that either the birth sibling remained in the custody of his or her parent and that this birth parent consents to the request for information or contact, has been adjudicated incapacitated, or is deceased, including attaching a signed copy of the birth parent's consent, a certified copy of the court decree of incapacity, or a copy of the death certificate, as applicable, or that the birth sibling was adopted out of the birth family or did not remain in the custody of the birth parent, including a certified copy of the birth sibling's adoption decree or the court order adjudicating the birth sibling dependent or granting legal or physical custody of the birth sibling to another.

(b) Upon a review of the request for non-identifying or identifying information or contact, the Court shall determine if it is the proper court to handle the request, if the requester is permitted to seek the requested information or contact by 23 Pa.C.S. § 2931(a), and if the request inquires about an individual who can be the subject of the request per 23 Pa.C.S. § 2931(b).

(1) If the Court cannot affirmatively answer all three of the above questions, the Court shall notify the requester that his or her request for information is denied and the reasons for its denial.

(2) If the Court affirmatively answers all three of the above questions, the Court shall proceed under paragraphs (c) and (d) below, as applicable.

(c) If the request is for only non-identifying information, the Court shall ensure the records and documents from the court file that are to be 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 between the Adopted Individual and his or her birth parent(s), and once such information is redacted, the requested records and documents shall be made available to the requester as provided by local rule or practice;

(d) If the request is for identifying information or contact, the Court shall determine if the court file includes an unrevoked authorization or consent from the individual who is the subject of the request.

(1) if, so the Court shall grant the request and the requested records and documents shall be made available to the requester as provided by local rule or practice, except as provided in subparagraph (3) below;

(2) if not, the Court shall appoint an Authorized Representative and the Authorized Representative shall handle the request and shall either respond to the requester or report to the Court if the Authorized Representative believes one of the circumstances described in subparagraph (3) below exists.

(3) The Court shall not grant a request and shall not provide identifying information under either of the following circumstances:

(A) dissemination of the requested identifying information will compromise the identify or confidentiality of an individual who has not authorized release of the identifying information, and after appointing an Authorized Representative, the Authorized Representative reports to the Court that such individual either cannot be located, or after being located, refuses to consent to the release of such identifying information; or

(B) dissemination of the requested identifying information could cause physical or emotional harm to the requestor, as determined by the Court either with or without the assistance of a report from the Authorized Representative, and in such cases, the Court shall issue an Order to this effect setting forth the basis of its findings.

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

(f) Upon the filing of a Statement of medical, personal and/or social history information, or a statement updating such information, or if either is received from the Clerk where parental rights were terminated, the Clerk where the adoption decree is entered shall send notice as follows:

(1) if the Statement contains information about a birth parent, notice of its filing shall be sent to the Adopted Individual, the adopting parents, the legal guardian of an incapacitated Adopted Individual, or the adopting parents and descendant(s) of a deceased Adopted Individual, 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

(2) if the Statement contains information about the Adopted Individual, notice of its filing shall be sent to the

birth parent(s), any legal guardian of a birth parent, the parent(s) 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.

(3) Notice under this subparagraph (f) 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.

(4) Notice shall inform the individual(s) that a Statement of medical, personal and/or social history information or a statement updating such information has been received, the date of its filing, and that 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.

(5) If a new request for non-identifying or identifying information is thereafter filed, the request shall contain the information required in paragraph (a) and shall be processed as provided in paragraphs (b), (c), and (d), as applicable.

(g) The Court may permit reasonable fees to be charged for the filing, handling, and processing of any request for non-identifying or identifying information, and the fees may vary depending upon the time and efforts involved, the extent of information made available to the requester, whether an Authorized Representative is appointed by the Court, and the extent of any search required,

Explanatory Comment: The handling of requests for non-identifying information, identifying information and/or contact will largely be dictated by local rule, custom and practice. At present, the Committee does not believe that it is in a position to mandate uniform statewide procedures because the number of requests, each 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. Rule 15.21 thus has been drafted so as to leave much to the discretion, practice and custom of the local Courts. The local Courts can determine if such requests are filed as a petition or on a standardized form; the local Courts can permit reasonable fees to be charged for these requests and determine when such fees are due, and the local Court can determine how to appoint Authorized Representatives and undertake searches for individuals who are the subject of a request and do not have a signed authorization or consent form in the court file or with the Agency or the Pennsylvania Adoption Information Registry ("PAIR"). Moreover, the Committee is recommending to the Supreme Court suspension of the time limits being imposed upon the Courts under sections 2932 and 2933 (23 Pa.C.S. §§ 2932, 2933). In addition to the Legislature violating the exclusive province of the Court to set its own deadlines, the time limits fail to account for the resources available or not available to the Court in each county and fail to take into consideration other important judicial responsibilities concerning terminations of parental rights, adoptions hearings, fast track appeals, and other priorities related to children and youth, which are also highly time sensitive.

Notwithstanding the Committee's deference to local rule, practice and custom, the Committee intends that the

judge, law clerk, or court personnel experienced in adoptions handle and address requests for non-identifying information and that only an appointed Authorized Representative duly trained by the Department 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 have the request answered. See 23 Pa.C.S. § 2931(a). Further, the statute is specific about who can be the subject of a request. See 23 Pa.C.S. § 2931(b). Consequently, requests for non-identifying and identifying information or contact should be reviewed by those trained in the law or otherwise well versed in this statute.

If the Court believes that a request for identifying information or contact could cause physical or emotional harm to the requestor, the Court shall issue an Order to this effect that can be appealed by the requestor in accordance with 23 Pa.C.S. § 2936(b) and R.A.P. 341 *et seq.*

Section 2934, 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, 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, personal and/or social history information becomes part of the court file subject to impounding and confidentiality as provided in Rule 15.20 and 23 Pa.C.S. § 2931 *et seq.* For this reason, the Statement of medical, personal and/or social history information or a statement updating this information should not be shared or disseminated by the Clerk absent a later filed request for such information approved by the Court, or upon other order of Court. The notification procedure in Rule 15.21(f) is an attempt to comply with 23 Pa.C.S. § 2934(e)(2) while, at the same time, complying with other statutory provisions, such as section 2931(a) which narrowly defines the individuals who may request non-identifying and identifying information, sections 2925(c) and 2935 which require the Court to maintain confidentiality in conducting a search, and section 2933 which requires any court-appointed Authorized Representative to be specially trained by the Department before conducting searches. Compare 23 Pa.C.S. § 2934 with 23 Pa.C.S. §§ 2925(c), 2931(a), 2933, 2935. The Clerk and its deputy personnel have no legal training in determining who may request non-identifying and identifying information and no specialized training from the Department 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, personal and/or social history information or a statement updating such information, the Clerk, the Court, and its personnel shall proceed in a more cautious fashion, providing only notice of the filing of any such Statement to an individual who previously has requested and been given information from the court file or whose request was denied only because of the age of the requester or the age of the individual who was the subject of the request. Even then, information from the most recently filed Statement will not be released or disseminated, but will only be provided if a new request for non-identifying or identify information is filed by the requester in accordance with Rule 15.21(a).

EXPLANATORY REPORT

Background

These proposed rules seek to implement amendments to the Adoption Act (23 Pa.C.S. Domestic Relations Chapters 21—29) enacted since the last revision of these Chapter 15 rules. Additionally, the proposed rules amend the averments to be included in an adoption petition in order to implement and facilitate the Supreme Court's decision in *In re Adoption of R.B.F. and R.C.F.*, 803 A.2d 1195 (Pa. 2002).

In that decision, the Supreme Court held that section 2901 of the Adoption Act (23 Pa.C.S. § 2901) permits the prospective adoptive parent to demonstrate why in a particular case he or she cannot meet the statutory requirements of the Adoption Act. Specifically, in *In re Adoption of R.B.F. and R.C.F.*, the Supreme Court concluded that upon cause shown the lower court has discretion to determine whether an adoption petition should be granted even though the biological parent, in consenting to his or her child's adoption by his or her partner, was not relinquishing parental rights as required under section 2711(d). The Court instructed that under these circumstances, the petition for adoption should not be summarily dismissed; rather, the petitioner(s) should be afforded an opportunity to demonstrate why the statutory requirements have not been met and why the proposed adoptee's best interest is nevertheless served by granting the adoption. In order to implement this decision, the Committee proposes amending current Rule 15.5 (proposed new Rule 15.11) to expand upon the averments that can be contained in an adoption petition. Under the proposed amendment to current Rule 15.5 (proposed new Rule 15.11), if a statutory requirement under the Adoption Act cannot be met, the petitioner shall include in the adoption petition averments explaining why the statutory requirements have not been met and why it is nonetheless in the child's best interest for the judge to grant the adoption petition. The proposed amendment to this Rule also provides for a hearing at which the court will consider whether cause has been shown to dispense with a statutory requirement and whether to grant the adoption petition notwithstanding.

As for the other additions and amendments to the current Chapter 15 rules, the proposed changes are intended to reflect recent statutory amendments to the Adoption Act. The most recent and extensive of these amendments occurred when then Pennsylvania Governor Edward G. Rendell signed Senate Bill 1360, Printer's Number 2188, into law with an effective date that occurred on April 25, 2011. This set of amendments is colloquially referred to as "Act 101," a reference to the law's enactment number.

In part, Act 101 amended the Adoption Act to provide an option for prospective adoptive parents and birth relatives to enter into voluntary, but legally enforceable, agreements so that adopted children can have ongoing communication or contact with their birth family, if desirable and if desired by all the involved parties. Enforcing voluntary post-adoption contact agreements through the courts is new; but, the concept of these agreements is not. For years adopting and biological parents have recognized the benefits of post-adoption contact, and they have made such agreements among themselves informally and adhered to the arrangements in good faith. Nothing in Act 101 or these proposed rules precludes or discourages the use of such informal arrangements. However, by complying with the statute and these proposed rules, as ultimately adopted, the parties

will have a judicially approved agreement for post-adoption communication or contact that can be enforced in the court that finalized the adoption, 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 and to permit attorneys to forward their records and information to the court for maintenance as part of the court record.

Lastly, Act 101 expanded both the class of individuals who can request information about others related to the adoption and expanded the class of individuals who can be the subject of an informational request. While the adopted individual upon attaining majority (or the adopted individual's parent or legal guardian during minority) has long been able to request from the court maintaining the adoption file information about the adoptee's biological parents, permissible requestors now also include the following:

- an adopting parent if the adoptee has been adjudicated incapacitated or is deceased;
- the legal guardian of an adoptee who has been adjudicated incapacitated;
- the issue 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 the birth sibling meets one of 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, but did not remain in the custody of the birth parent.

Act 101 then provides extensive procedures for the handling of such informational requests by the court that finalized the adoption, the agency that coordinated the adoption, or its successor. For example, Act 101 now mandates that when a proper request for identifying information or contact is received and no authorization to release such information is on file, the entity receiving the request must 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. Under prior law, these searches were permissible. Searches and contacts are to be provided by an authorized representative trained by the Department of Public Welfare. Act 101 sets forth numerous deadlines for processing informational requests, but for the reasons explained below and in the Explanatory Comment to Rule 15.21, the Committee is recommending that these time deadlines not be incorporated into the rules.

Recommendation

The proposed amendments and new rules fall into the following general categories:

- (1) Amendments to existing rules so that the court can ensure birth parents, prospective adoptive parents, and proposed adoptees (in certain instances) received notice of

the opportunity of birth relatives to enter into agreements 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 15.5(a)(10), (a)(12), (b)(5), Proposed Rule 15.6(a)(11), (a)(13), (b)(4), Proposed Rule 15.8(a)(10), (b)(3), Proposed Rule 15.7(a)(11), (a)(13), (b)(4), Proposed Rule 15.9, Proposed Rule 15.11(a)(11), (b)(4), and Proposed Rule 15.13(b)(3), (b)(11)).

(2) A proposed new Rule 15.7 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 15.7).

(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 15.10, 15.14, 15.15, 15.16, 15.17 and 15.18).

(4) Amendments to the existing rule concerning an adoption petition to provide that the petitioner should inform the court if all statutory requirements are not met or exhibits attached and should also include averments specifying the reasons for noncompliance and why the court nonetheless should grant the adoption petition, along with a procedure for the court to schedule and conduct a hearing in order for the petitioner to present evidence establishing cause. (See Proposed Rule 15.11(a)(10), (e)(1)).

(5) 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 15.19, 15.20, and 15.21).

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 Public 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.

Finally, 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 the handling of requests for information 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.

[Pa.B. Doc. No. 13-1980. Filed for public inspection October 25, 2013, 9:00 a.m.]

Title 25—LOCAL COURT RULES

CARBON COUNTY

Amendment of Local Rules of Civil Procedure 1028(c) Preliminary Objections, 1034(a) Motion for Judgment on the Pleadings and 1035.2(a) Motion for Summary Judgment; No. 13-0523

Administrative Order No. 16-2013

And Now, this 1st day of October, 2013, it is hereby

Ordered and *Decreed* that, effective November 1, 2013, Carbon County Rules of Civil Procedure CARB.R.C.P. 1028(c) governing Preliminary Objections, CARB.R.C.P. 1034(a) governing Motion for Judgment on the Pleadings, and CARB.R.C.P. 1035.2(a) governing a Motion for Summary Judgment be and are hereby *Amended* as follows.

1. The Carbon County District Court Administrator is *Ordered* and *Directed* to File one (1) certified copy of this Administrative Order and Local Rules with the Administrative Office of Pennsylvania Courts.

2. File two (2) certified copies and one (1) CD with the Legislative Reference Bureau for publication in the *Pennsylvania Bulletin*.

3. Publish the Rules on the UJS Portal at <http://ujportal.pacourts.us/localrules/ruleselection.aspx>.

4. File one (1) certified copy with the Civil Procedural Rules Committee.

5. Forward one (1) copy for publication in the *Carbon County Law Journal*.

6. Forward one (1) copy to the Carbon County Law Library.

7. Keep continuously available for public inspection copies of the Administrative Order and Local Rules in the Prothonotary's Office.

By the Court

ROGER N. NANOVIC,
President Judge

Rule 1028(c). Preliminary Objections.

1 A proposed order shall be attached to all preliminary objections.

2 The moving party shall simultaneously file a brief in support of the preliminary objections. See CARB.R.C.P. 210 for form, content of brief, service and filing requirements.

3 The adverse party shall file an answer when endorsed with a Notice to Plead.

4 If an amended pleading is not filed within twenty (20) days of service of the preliminary objections, the matter shall be decided on briefs unless the assigned Judge requests that argument be scheduled. If a party desires argument, a Praecepte for Argument shall accompany the motion or be filed by the respondent within twenty (20) days of service of the preliminary objections. A respondent briefing schedule will be issued by the Court contemporaneous with the scheduling of argument, if so ordered by the Judge or requested by the filing of the

Praecepte for Argument. If the matter is to be decided on briefs, a respondent briefing schedule will be issued.

5 If the Preliminary Objections raise issues of fact not of record, evidence by way of depositions or otherwise shall be filed of record to enable the objections to be properly decided.

Rule 1034(a). Motion for Judgment on the Pleadings.

1 A party moving for judgment on the pleadings shall simultaneously file with the motion a proposed order and supporting brief. If a brief is not filed with the motion, the motion shall be deemed withdrawn, without prejudice, upon motion of the opposing party. A certificate of service in conformance with Pa.R.C.P. 208.2(a)(5) shall be attached to the motion. Pa.R.C.P. 440 governs service. Service shall be required on the District Court Administrator. For form of briefs, see CARB.R.C.P. 210.

2 A response shall be filed within twenty (20) days after service of the motion.

3 If a party desires argument, a Praecepte for Argument shall accompany the motion or response.

4 A respondent briefing schedule will be issued by the Court contemporaneous with the scheduling of any argument ordered by the Judge or requested by the filing of the Praecepte for Argument. If the matter is to be decided on briefs, a respondent briefing schedule will be issued.

5 A party who fails to respond to the motion may be deemed to have no opposition to its grant.

6 A party who fails to file a brief shall not be permitted to argue.

Rule 1035.2(a). Motion for Summary Judgment.

1 A party moving for summary judgment shall simultaneously file with the motion a proposed order and supporting brief. If a brief is not filed with the motion, the motion shall be deemed withdrawn, without prejudice, upon motion of the opposing party. A certificate of service in conformance with Pa.R.C.P. 208.2(a)(5) shall be attached to the motion. Pa.R.C.P. 440 governs service. Service shall be required on the District Court Administrator. For form of briefs, see CARB.R.C.P. 210.

2 Any party opposing the motion shall file a response within thirty (30) days of service of the motion, together with a certificate of service evidencing service in accordance with number one above. Service shall be required on the District Court Administrator. A party who fails to respond to the motion shall be deemed to have consented to the granting of the motion without contest.

3 Upon service of the motion and response on the District Court Administrator, the matter shall be decided on briefs unless the assigned Judge requests that argument be scheduled. If a party desires argument, a Praecepte for Argument shall accompany the motion or response.

4 A respondent briefing schedule will be issued by the Court contemporaneous with the scheduling of any argument ordered by the Judge or requested by the filing of the Praecepte for Argument. If the matter is to be decided on briefs, a respondent briefing schedule will be issued.

5 A party who fails to file a brief shall not be permitted to argue.

[Pa.B. Doc. No. 13-1981. Filed for public inspection October 25, 2013, 9:00 a.m.]