

THE COURTS

Title 201—RULES OF JUDICIAL ADMINISTRATION

[201 PA. CODE CH. 19]

Amendment of Rule 1922 of the Rules of Judicial Administration Relating to Counsel Fees; No. 453 Judicial Administration Doc.

Order

Per Curiam

And Now, this 29th day of December, 2015, pursuant to this Court's authority under Article V, Section 10 of the Pennsylvania Constitution, Pennsylvania Rule of Judicial Administration No. 1922 is amended to read as follows. The amendments to Pa.R.J.A. No. 1922 are promulgated in order to establish standards and procedures governing the eligibility of a judicial officer for reimbursement of reasonable counsel fees incurred in a criminal or disciplinary matter in which the judicial officer has been successfully defended.

In the exercise of its discretion, the Court has determined that immediate promulgation of these amendments to Rule 1922 is warranted in the interests of justice and efficient administration. See Pa.R.J.A. No. 103(a)(3).

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

Mr. Justice Eakin did not participate in the consideration or decision of this matter.

Annex A

TITLE 201. RULES OF JUDICIAL ADMINISTRATION

CHAPTER 19. MISCELLANEOUS ADMINISTRATIVE PROVISIONS

CRIMINAL AND DISCIPLINARY MATTERS AGAINST JUDGES

Rule 1922. Counsel fees.

(A) Purpose.

The purpose of this rule is to establish standards and procedures under which the Court Administrator shall determine whether a judge may be reimbursed for the expense of attorney's fees incurred in connection with a criminal matter or a disciplinary matter.

[(A)] (B) Criminal matters.

(1) **Mandatory requirements.** A judge may be reimbursed for legal fees paid in the defense of a criminal action only if the following criteria are met:

Official Note: See *Yurgosky v. Commonwealth of Pa., Administrative Office of Pa. Courts*, 554 Pa. 533, 722 A.2d 631 (1998).

[(1)] (a) Notice must be given to the Administrative Office of Pennsylvania Courts within a reasonable time after the charges are filed.

[(2)] (b) The criminal charges must arise directly from the judge's performance of his or her official duties.

[(3)] (c) The judge must be acquitted of the crimes charged or the charges must have been dismissed or *nolle prossed*.

Official Note: Reimbursement of counsel fees is not permitted in cases resolved through participation in pre-trial diversionary programs, through negotiated pleas, or by participation in Accelerated Rehabilitative Disposition (ARD) programs. See *Yurgosky*, 554 Pa. at 545 n.15, 722 A.2d at 637 n.15.

[(4)] (d) The legal expenses must be reasonable and necessary.

(2) Decision of the Court Administrator.

(a) **Standard.** If the mandatory requirements prescribed by paragraph (1) have been met, a request for reimbursement of attorney's fees may be approved only if the Court Administrator determines that the judge's conduct giving rise to the criminal charges did not prejudice the proper administration of justice or bring the judicial office into disrepute.

Official Note: This is the same standard prescribed by Pa. Const. art. V, § 18(d)(1), for determining whether a judge may be subject to discipline.

(b) **Factors to be considered.** In making his or her determination under subparagraph (a), the Court Administrator shall consider the following:

(I) Whether the criminal charges made against the judge had a reasonable basis in law and fact.

(II) The quantity and quality of the evidence supporting the criminal charges made against the judge.

(III) Whether the conduct giving rise to the criminal charges might properly subject the judge to discipline under Pa. Const. art. V, § 18(d)(1), irrespective of whether the judge's conduct prejudiced the proper administration of justice or brought the judicial office into disrepute.

(IV) Whether other criminal or disciplinary charges have been or are reasonably anticipated to be commenced against the judge arising out of the same conduct involved in the criminal matter and, if so, the nature and disposition of those proceedings.

(c) Procedural requirements.

(I) Under no circumstances shall the Court Administrator act upon a request for reimbursement of counsel fees incurred by a judge in a criminal matter until he or she has determined that all possible criminal and disciplinary issues related to the matters involved in the criminal case have been finally concluded in all fora having proper jurisdiction over the judge and a full evaluation of any such additional criminal or disciplinary matter has been made.

(II) A judge who seeks reimbursement of attorney's fees in a criminal matter shall be required to waive confidentiality so that the Judicial Conduct Board and other proper authorities are able to share with the Court Administrator all information relating to actual or potential disciplinary action against the judge. If the judge does not waive

confidentiality, the Court Administrator shall deny the judge's request for reimbursement.

(III) In determining under this part whether a judge should be reimbursed attorney's fees incurred in the successful defense against criminal charges, the Court Administrator may rely upon the same information that was available to the Judicial Conduct Board and other proper authority and may consider the evaluation of that information and its determination by the Judicial Conduct Board or other proper authority, as well as any determination made by the Court of Judicial Discipline or other tribunal.

[(B)] (C) *Disciplinary matters.*

(1) **Mandatory requirements.** A judge may be reimbursed for legal fees paid in the defense of a judicial disciplinary matter only if the following criteria are met:

[(1)] (a) Notice must be given to the Administrative Office of Pennsylvania Courts within a reasonable time after the charges are filed.

[(2)] (b) The allegations of judicial misconduct must arise directly from the judge's performance of his or her official duties.

[(3)] (c) The judge must be acquitted of the misconduct charges, or the charges must have been dismissed or *nolle prossed*.

Official Note: This does not include any rehabilitative or other diversionary programs, or resolution through a "letter of counsel."

[(4)] (d) The legal expenses must be reasonable and necessary.

(2) **Decision of the Court Administrator.**

(a) **Standard.** If the mandatory requirements prescribed by paragraph (1) have been met, a request for reimbursement of attorney's fees may be approved only if the Court Administrator determines that the judge's conduct giving rise to the disciplinary matter did not prejudice the proper administration of justice or bring the judicial office into disrepute.

Official Note: This is the same standard prescribed by Pa. Const. art. V, § 18(d)(1), for determining whether a judge may be subject to discipline.

(b) **Factors to be considered.** In making his or her determination under subparagraph (a), the Court Administrator shall consider the following:

(I) Whether the disciplinary charges made against the judge had a reasonable basis in law and fact.

(II) The quantity and quality of the evidence supporting the disciplinary charges made against the judge.

(III) Whether the conduct giving rise to the disciplinary matter might properly subject the judge to discipline under Pa. Const. art. V, § 18(d)(1), irrespective of whether the judge's conduct prejudiced the proper administration of justice or brought the judicial office into disrepute.

(IV) Whether criminal or other disciplinary charges have been or are reasonably anticipated to be commenced against the judge arising out of the same conduct involved in the disciplinary matter and, if so, the nature and disposition of those proceedings.

(c) **Procedural requirements.**

(I) Under no circumstances shall the Court Administrator act upon a request for reimbursement of counsel fees incurred by a judge in a disciplinary matter until he or she has determined that all possible criminal and disciplinary issues have been finally concluded in all fora having jurisdiction over the judge and a full evaluation of all such criminal or disciplinary matters has been made.

(II) A judge who seeks reimbursement of attorney's fees shall be required to waive confidentiality so that the Judicial Conduct Board and other proper authorities are able to share with the Court Administrator all information relating to actual or potential disciplinary action against the judge. If the judge does not waive confidentiality, the Court Administrator shall deny the judge's request for reimbursement.

(III) In determining under this part whether a judge should be reimbursed attorney's fees incurred in the successful defense against disciplinary charges, the Court Administrator may rely upon the same information that was available to the Judicial Conduct Board and other proper authorities and may consider the evaluation of that information by the Judicial Conduct Board or other proper authority, as well as any determination made by the Court of Judicial Discipline or other tribunal.

[(C) The] (D) Subject to review and approval by the Supreme Court, the Court Administrator shall establish and periodically revise a maximum hourly rate for counsel fee reimbursement and shall develop policies necessary to implement the provisions of this Rule.

[(D)] (E) If a claim for reimbursement is denied in whole or in part, a judge shall have the right to be heard by a hearing examiner designated by the Court Administrator. The hearing examiner shall issue findings of fact and conclusions of law. **Findings of fact by the hearing examiner shall be made based on the standard of preponderance of the evidence.** Appeals from the decision of a hearing examiner shall be as provided by law.

Official Note: See *Yurgosky*, 554 Pa. at 546, 722 A.2d at 637; 42 Pa.C.S. § 763(a)(1).

Comment

In disciplinary matters, judges should contact the Administrative Office of Pennsylvania Courts before retaining counsel if a Notice of Full Investigation by the Judicial Conduct Board has not been issued.

[Pa.B. Doc. No. 16-66. Filed for public inspection January 15, 2016, 9:00 a.m.]

Title 231—RULES OF CIVIL PROCEDURE

PART I. GENERAL [231 PA. CODE CH. 200]

Damages for Delay

Annex A

TITLE 231. RULES OF CIVIL PROCEDURE

PART I. GENERAL

CHAPTER 200. BUSINESS OF COURTS

Rule 238. Damages for Delay in an Action for Bodily Injury, Death or Property Damage.

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Addendum to Explanatory Comment (2016)

The prime rate as set forth in the first edition of the *Wall Street Journal* for a particular year is the basis for calculating damages for delay under Pa.R.C.P. No. 238 as revised November 7, 1988. The prime rate published in the first edition of the *Wall Street Journal* for each of the years specified is as follows:

<i>Date of Publication</i>	<i>Prime Rate Percentage</i>
January 4, 2016	3 1/2
January 2, 2015	3 1/4
January 2, 2014	3 1/4
January 2, 2013	3 1/4
January 3, 2012	3 1/4
January 3, 2011	3 1/4
January 4, 2010	3 1/4
January 2, 2009	3 1/4
January 2, 2008	7 1/4
January 2, 2007	8 1/4
January 3, 2006	7 1/4
January 3, 2005	5 1/4
January 2, 2004	4
January 2, 2003	4 1/4
January 2, 2002	4 3/4
January 2, 2001	9 1/2
January 3, 2000	8 1/2
January 4, 1999	7 3/4
January 2, 1998	8 1/2

Official Note: The prime rate for the years 1980 through 1997 may be found in the Addendum to the Explanatory Comment published in the *Pennsylvania Bulletin*, volume 33, page 634 (2/1/03) and on the web site of the Civil Procedural Rules Committee at <http://www.pacourts.us>.

By the Civil Procedural Rules Committee

PETER J. HOFFMAN,
Chair

[Pa.B. Doc. No. 16-67. Filed for public inspection January 15, 2016, 9:00 a.m.]

PART II. ORPHANS' COURT RULES [231 PA. CODE PART II]

Proposed Rescission of Rules 15.1 through 15.9 and Replacement with the New Rules of Chapter XV

The Orphans' Court Procedural Rules Committee is planning to propose to the Supreme Court of Pennsylvania the rescission of Rules 15.1 through 15.9 and the replacement of these rules with new Chapter XV rules governing Adoptions for the reasons set forth in the accompanying explanatory report. Pursuant to Pa.R.J.A. No. 103(a)(1), the proposal is being re-published in the *Pennsylvania Bulletin* for comments, suggestions, or objections prior to submission to the Supreme Court.

Any notes or comments in the proposal have been inserted by the Committee for the convenience of those using the rules. They neither will constitute a part of the rules nor will be officially adopted by the Supreme Court.

The Committee invites all interested persons to submit comments, suggestions, or objections in writing 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

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All communications in reference to the proposal should be received by March 16, 2016. E-mail is the preferred method for submitting comments, suggestions, or objections; any e-mailed submission need not be reproduced and resubmitted via mail. The Committee will acknowledge receipt of all submissions.

*By the Orphans' Court
Procedural Rules Committee*

JOHN F. MECK, Esq.,
Chair

Annex A

TITLE 231. RULES OF CIVIL PROCEDURE

PART II. ORPHANS' COURT RULES

RULE 15. [ADOPTIONS] (Reserved)

(Editor's Note: Rule 15 of the Orphans' Court Rules, which appears in 231 Pa. Code pages 15-1 to 15-11, serial pages (366185)—(366195), is proposed to be reserved.)

Rules 15.1—15.9. (Reserved).

CHAPTER XV. ADOPTIONS

Rule	
15.1.	Local Rules.
15.2.	Definitions
15.3.	Notice of Hearing to Terminate Parental Rights; Method and Time.
15.4.	Certification filed with the Clerk maintaining the dependency docket.
15.5.	Separate Petition for Each Child.
15.6.	Termination Petitions filed where an Agency is not Involved.
15.7.	Voluntary Relinquishment to Agency.
15.8.	Voluntary Relinquishment to Adult Intending to Adopt Child.
15.9.	Alternative Procedure for Relinquishment by Confirmation of Consent to Adoption.
15.10.	Involuntary Termination of Parental Rights.
15.11.	Notice of Right to File Statement of Medical, Personal and/or Social History Information.
15.12.	Court Review and Approval of Contact Agreement.
15.13.	Adoption.
15.14.	Registration of Foreign Adoption Decree.

- 15.15. Petition for Adoption of a Foreign Born Child.
- 15.16. Notice and Service in Subsequent Petitions regarding Contact Agreements.
- 15.17. Petition to Modify a Contact Agreement.
- 15.18. Petition to Enforce a Contact Agreement.
- 15.19. Petition to Discontinue a Contact Agreement.
- 15.20. Collection of Documents and Maintenance of Court File.
- 15.21. Privacy; Withholding the Court File from Inspection.
- 15.22. Dissemination and Release of Information in the Court File.

Rule 15.1. Local Rules.

The practice and procedure with respect to adoptions shall be as provided by Act of Assembly and the Rules under this Chapter XV. Local rules may be adopted 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: In Philadelphia County, jurisdiction over adoptions, terminations of parental rights, birth records and related proceedings is exercised through the family court division of the Philadelphia Court of Common Pleas. 20 Pa.C.S. § 713. In all other counties, family court judges who have adjudicated a child dependent, conducted permanency hearings, or other dependency proceedings may be assigned to the orphans' court division for purposes of hearing petitions to terminate parental right or adopt a dependent child. 42 Pa.C.S. § 6351(i). *See e.g.*, Administrative Order re: Assignment of Judges Admin. Dkt. No. ____ of 1998 (Allegheny Cty. dated November 17, 1998); Administrative Order re: Assignment of Judges, Admin. Dkt. No. 210 of 1996 (Allegheny Cty. dated October 11, 1996).

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 XV shall have the following meanings:

“Adopted Child” or “Adopted Individual”—Any individual 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 as defined in 23 Pa.C.S. § 2102;

“Agency”—An entity or organization providing adoption services as defined in 23 Pa.C.S. § 2102 or 23 Pa.C.S. § 2732, as applicable;

“Authorized Representative”—An individual as defined in 23 Pa.C.S. § 2911 trained by the Department to handle certain requests for identifying information and to search for the subject of the request as necessary;

“Birth Relative”—An individual as identified in 23 Pa.C.S. § 2732;

“Clerk”—the clerk or department as defined in 23 Pa.C.S. § 2102;

“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 division of the Court of Common Pleas conducting any proceeding under the Adoption Act;

“Department”—The Department of Human Services of the Commonwealth;

“Intermediary”—Any person or agency arranging an adoption placement as defined in 23 Pa.C.S. § 2102;

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

“Prospective Adoptive Parents”—Individuals with whom the adoptee has been placed for the purpose of adoption or who have filed a report of intention to adopt under 23 Pa.C.S. § 2531;

“Presumptive Father”—the man married to the child's mother at any time during the one year period prior to the child's birth;

“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 “statement 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 15.3. Notice of Hearing to Terminate Parental Rights; Method and Time.

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

(1) For a petition filed under Rule 15.7 (relating to Voluntary Relinquishment to Agency) or Rule 15.8 (relating to Voluntary Relinquishment to Adult), notice shall be in the form and served upon the individuals as provided in 23 Pa.C.S. § 2503(b).

(2) For a petition filed under Rule 15.9 (relating to Alternative Procedure for Relinquishment), notice shall be in the form provided in 23 Pa.C.S. § 2513(b) and served upon the individuals as provided in 23 Pa.C.S. § 2504(b).

(3) For a petition filed under Rule 15.10 (relating to Involuntary Termination), notice shall be in the form and served upon the individuals as provided in 23 Pa.C.S. § 2513(b).

(b) *Method of Notice.*

(1) For a proceeding under Rule 15.7 (relating to Voluntary Relinquishment to Agency), Rule 15.8 (relating to Voluntary Relinquishment to Adult), or Rule 15.9 (relating to confirming consent as an Alternative Procedure for Relinquishment), every person whose parental rights are sought to be terminated in the proceeding shall be provided with notice of the hearing by personal service or by registered or certified mail. Any other person entitled to receive a copy of the notice scheduling the hearing, pursuant to 23 Pa.C.S. §§ 2503(b) or 2504(b), may receive notice by hand delivery or by first-class United States mail, postage prepaid, to the person's residence, location where he or she is known to be staying, or business where he or she is known to be currently employed.

(2) For a proceeding under Rule 15.10 (relating to Involuntary Termination), every person entitled to notice as provided in 23 Pa.C.S. § 2513(b) shall be provided with notice of the hearing by personal service or by registered or certified mail.

(3) Delivery of the registered or certified mail must be restricted to the addressee only, and a return receipt must be requested.

(4) If service is not obtainable upon the person whose parental rights are sought to be terminated because the person's whereabouts are unknown after reasonable investigation, personal service is refused or unsuccessful, the registered or certified mail is returned undelivered, or the identity of the person is unknown, then notice by publication shall be given as directed by the court, upon motion in accordance with P.R.C.P. No. 430. Publication shall include the contents of the notice required by 23 Pa.C.S. § 2503(b) or 23 Pa.C.S. § 2513(b), as applicable, but shall not include notice of the opportunity for a birth relative of the child to enter into a Contact Agreement with the Prospective Adoptive Parents, once identified.

(5) Once service has been obtained upon the person whose parental rights are sought to be terminated in a manner as provided above, any subsequent legal paper or notice, including notice of a continued or rescheduled hearing, may be served by hand delivery or by first-class United States mail, postage prepaid, to the person's last known residence, location where he or she is known to be staying, business where he or she is known to be currently employed, or person's counsel of record, if represented.

(c) *Time for Notice.* Notice of the hearing shall be provided at least ten (10) days prior to the date of the hearing for proceedings under Rules 15.7, 15.8, 15.9, 15.10, and for a proceeding under Rule 15.13 if, as part of the 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.

Explanatory Comment: See Pa.R.C.P. 76 that certified mail is the equivalent of registered mail and Pa.R.C.P. 402 regarding service upon a designated agent to effectuate personal service. See also Pa.R.C.P. 430 regarding a motion for alternative service if service cannot be accomplished by personal service or registered or certified mail.

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

(a) Within seven (7) days of the filing of a petition to terminate parental rights under Rules 15.7, 15.8, 15.9, or 15.10, or a petition to adopt under Rule 15.13, 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 that 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 that 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 that 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 that 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 Rule 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. The definition of "county agency" as used in this Rule is that contained in Pa.R.J.C.P. 1120.

Pursuant to Rule 1.8 (Forms), the Supreme 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 15.5. Separate Petition for Each Child.

Separate petitions must be filed for each minor who is the subject of a proceeding under Rule 15.7 (relating to Voluntary Relinquishment to Agency), Rule 15.8 (relating to Voluntary Relinquishment to Adult), Rule 15.9 (relating to confirming consent as an Alternative Procedure for Relinquishment), Rule 15.10 (relating to Involuntary Termination of Parental Rights), Rule 15.12 (relating to Court Review and Approval of Contact Agreement), Rule 15.13 (relating to Adoption), Rule 15.17 (relating to a Petition to Modify a Contact Agreement), Rule 15.18 (relating to a Petition to Enforce a Contact Agreement), and Rule 15.19 (relating to a Petition to Discontinue a Contact Agreement).

Explanatory Comment: A separate petition must be filed for each minor who is the subject of any one of the above mentioned proceedings for the following reasons: (i) privacy concerns as the court file for a particular minor should not include information about the minor's sibling or half-sibling; (ii) better and more accurate data collection, especially if siblings do not share the same birth parents; and (iii) facilitating appellate proceedings if an appeal is taken as to only one of the involved minors. The court in its discretion may consolidate separate petitions for any hearing.

Rule 15.6. Termination Petitions filed where an Agency is not Involved.

Except in cases involving an agency, no petition for termination shall be granted unless a Report of Intention to Adopt under 23 Pa.C.S. § 2531 or an adoption petition under Rule 15.13 has been filed.

Rule 15.7. Voluntary Relinquishment to Agency.

(a) *Petition.* A petition under 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 contain the following 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 birth father, presumptive father and putative father of a child born out of wedlock, or the reasons 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 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) 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) whether notice of the opportunity for a birth relative of the child, including the petitioner, to enter into a Contact Agreement with the Prospective Adoptive Parents, once identified, has been provided to the petitioner; and

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

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

(1) Notice signed by each petitioner and received by the agency to relinquish and transfer custody of the child to the agency.

(2) A birth certificate or certification of registration of birth of the child.

(3) A verified statement from a representative of the agency, counsel for the agency, or counsel representing any other party that notice was provided to the petitioner birth parent regarding the opportunity of a birth relative to enter into a Contact Agreement, that such notice was provided either by first-class, United States mail, postage prepaid, to the last known address or by hand delivery, and the date(s) that such notice was given. A copy of the notice shall accompany this verified statement.

(4) If, as part of the hearing on the petition, the parental rights of a presumptive father or putative father could be terminated pursuant to 23 Pa.C.S. § 2503(d), and if notice of the opportunity to enter into a Contact Agreement has been provided to the presumptive father or putative father in advance of the petition's filing, a verified statement from a representative of the agency, counsel for the agency, or counsel representing any other party that notice was provided to the presumptive father or putative father regarding the opportunity of a birth relative to enter into a Contact Agreement, that such notice was provided either by first-class, United States mail, postage prepaid, to the last known address or by hand delivery, and the date(s) that such notice was given, or the reasons why such notice cannot be given. A copy of the notice shall accompany this verified statement.

(5) The joinder or consent of the agency having care of the child, including its consent to accept custody of the child until such time as the child is adopted.

(c) *Hearing and Decree.*

(1) Notice of the hearing on the petition shall be provided in accordance with 23 Pa.C.S. § 2503(b), and in accordance with 23 Pa.C.S. § 2503(d) if the rights of a presumptive father or putative father are to be terminated as part of the same proceeding, and shall be served in accordance with Rule 15.3. A birth parent, presumptive father, or putative father may not waive the right to receive notice of the hearing.

(2) On or before the hearing, the court shall be presented with a verified certificate of service stating that notice of the hearing in regards to the petition was given to the petitioner and all others entitled to a copy of the notice in accordance with 23 Pa.C.S. § 2503 and Rule 15.3.

(3) If as part of hearing on the petition, the parental rights of a presumptive father or putative father could be terminated pursuant to 23 Pa.C.S. § 2503(d), and if notice of the opportunity to enter into a Contact Agreement was not provided to the subject presumptive father or putative father prior to the petition's filing, then on or before the hearing, the court shall be presented with a verified statement from a representative of the agency, counsel for the agency, or counsel representing any other party that notice was provided to the subject presumptive father or putative father regarding the opportunity of a birth relative to enter into a Contact Agreement, that such notice was provided either by first-class, United States mail, postage prepaid, to the last known address or by hand delivery, and the date(s) that such notice was given. A copy of the notice shall accompany this verified statement.

Explanatory Comment: Section 2733(c) of the Adoption Act requires the agency, the intermediary or an attorney for a party to provide notice of the opportunity to enter into a Contact Agreement to the Prospective Adoptive Parents, a birth parent, and, in some instances, a child. Notice to a birth relative who is not a birth parent is not statutorily required, although birth relatives may enter into and become parties to a Contact Agreement.

The verified statement under subparagraph (b)(4) is required to be attached to the petition as an exhibit if the court will be asked to terminate the rights of the putative father as part of the hearing on the birth parent's voluntary relinquishment petition. If notice of the opportunity to enter into a Contact Agreement was not provided to a birth parent, presumptive father or putative father because the individual could not be located, the person submitting the verified statement shall explain the efforts made to locate the subject person. Upon review of the verified statement and evidence presented at the hearing, if any is requested by the court, the court will make a determination as to whether additional efforts to provide this notice must be made.

Rule 15.8. Voluntary Relinquishment to Adult Intending to Adopt Child.

(a) *Petition.* A petition under 23 Pa.C.S. § 2502 to relinquish parental rights with respect to a child who has been in the exclusive care of Prospective Adoptive Parent(s) shall contain the following 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 birth father, presumptive father, and putative father of a child

born out of wedlock, or the reasons 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 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 Prospective Adoptive Parents;

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

(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) whether the opportunity for a birth relative of the child, including the petitioner, to enter into a Contact Agreement with the Prospective Adoptive Parents has been provided to the petitioner; and

(12) that each petitioner understands the petition, has considered the alternatives, and has executed the petition voluntarily to promote what the petitioner believes to be in the child'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) A verified statement from a representative of the agency or intermediary, counsel for the agency or intermediary, or counsel representing any other party that notice was provided to the petitioner birth parent regarding the opportunity to enter into a Contact Agreement, that such notice was provided either by first-class, United States mail, postage prepaid, to the last known address or by hand delivery, and the date(s) that such notice was given. A copy of the notice shall accompany this verified statement.

(3) If, as part of the hearing on the petition, the parental rights of a presumptive father or putative father could be terminated pursuant to 23 Pa.C.S. § 2503(d), and if notice of the opportunity to enter into a Contact Agreement has been provided to the presumptive father or putative father in advance of the petition's filing, a verified statement from a representative of the agency or intermediary, counsel for the agency or intermediary, or counsel representing any other party that notice was provided to the presumptive father or putative father regarding the opportunity of a birth relative to enter into a Contact Agreement, that such notice was provided either by first-class, United States mail, postage prepaid, to the last known address or by hand delivery, and the date(s) that such notice was given, or the reason(s) why such notice cannot be given. A copy of the notice shall accompany this verified statement.

(4) The signed consents of the Prospective Adoptive Parents to accept custody of the child until such time as the adoption is completed.

(c) *Hearing and Decree.*

(1) Notice of the hearing on the petition shall be provided in accordance with 23 Pa.C.S. § 2503(b), and in accordance with 23 Pa.C.S. § 2503(d) if the rights of a presumptive father or putative father are to be terminated as part of the same proceeding, and shall be served in accordance with Rule 15.3. A birth parent, presumptive father, or putative father may not waive the right to receive notice of the hearing.

(2) On or before the hearing, the court shall be presented with a verified certificate of service stating that notice of the hearing in regards to the petition was given to the petitioner and all others entitled to a copy of the notice in accordance with 23 Pa.C.S. § 2503 and Rule 15.3.

(3) If as part of hearing on the petition, the parental rights of a presumptive father or putative father could be terminated pursuant to 23 Pa.C.S. § 2503(d), and if notice of the opportunity to enter into a Contact Agreement was not provided to the subject presumptive father or putative father prior to the petition's filing, then on or before the hearing, the court shall be presented with a verified statement from a representative of the agency or intermediary, counsel for the agency or intermediary, or counsel representing any other party that notice was provided to the subject presumptive father or putative father regarding the opportunity of a birth relative to enter into a Contact Agreement, that such notice was provided either by first-class, United States mail, postage prepaid, to the last known address or by hand delivery, and the date(s) that such notice was given. A copy of the notice shall accompany this verified statement.

Explanatory Comment: For additional information about notice of the opportunity to enter into a Contact Agreement as required to be averred in subparagraph (a)(11) and the verified statement to be attached as an Exhibit under subparagraphs (b)(2), (b)(3), or (c)(3) of this Rule, see the Explanatory Comment to Rule 15.7.

Rule 15.9. Alternative Procedure for Relinquishment by Confirmation of Consent to Adoption.

(a) *Petition.* A petition under 23 Pa.C.S. § 2504 to confirm the consent to adoption given by a birth parent, presumptive father, 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 birth father, presumptive father, and putative father of a child born out of wedlock, or the reasons why the court should find that such information is not essential;

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

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

(5) the date when the consent to adoption was executed by the consenter and that the consent was executed in accordance with 23 Pa.C.S. §§ 2711(c) and 2712;

(6) the number of days that have elapsed since the consent to adoption was executed by the consenter;

(7) 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;

(8) 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;

(9) whether the petitioner, counsel for the petitioner, or the agency or intermediary in those cases where 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; and

(10) whether notice of the opportunity for a birth relative of the child, including the consenter, to enter into a Contact Agreement with the Prospective Adoptive Parents, once identified, has been provided to the consenter.

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

(1) The original consent(s) to adoption.

(2) A birth certificate or certification of registration of birth of the child.

(3) A verified statement from a representative of the agency or intermediary, counsel for the agency or intermediary, or counsel representing any other party that notice was provided to the consenter regarding the opportunity of a birth relative to enter into a Contact Agreement, that such notice was provided either by first-class, United States mail, postage prepaid, to the last known address or by hand delivery, and the date(s) that such notice was given. A copy of the notice shall accompany this verified statement;

(4) If, as part of the hearing on the petition, the parental rights of a presumptive father or putative father could be terminated pursuant to 23 Pa.C.S. § 2504(c), and if notice of the opportunity to enter into a Contact Agreement has been provided to the presumptive father or putative father in advance of the petition's filing, a verified statement from a representative of the agency or intermediary, counsel for the agency or intermediary, or counsel representing any other party that notice was provided to the presumptive father or putative father regarding the opportunity of a birth relative to enter into a Contact Agreement, that such notice was provided either by first-class, United States mail, postage prepaid, to the last known address or by hand delivery, and the date(s) on which such notice was given, or the reasons why such notice cannot be given. A copy of the notice shall accompany this verified statement.

(5) The signed consents of the adults or agency to accept custody of the child until such time as the adoption is completed.

(c) *Hearing and Decree.*

(1) Notice of the hearing on the petition shall be in the form specified in 23 Pa.C.S. § 2513(b) and shall be provided and served in accordance with 23 Pa.C.S. § 2504(b) and Rule 15.3. A birth parent, presumptive father or putative father may not waive the right to receive notice of the hearing.

(2) On or before the hearing, the court shall be presented with a verified certificate of service stating that notice of the hearing in regards to the petition was provided in the form specified in 23 Pa.C.S. § 2513(b) and given to the consenter and all others entitled to a copy of the notice in accordance with 23 Pa.C.S. § 2504(b) and Rule 15.3.

(3) If as part of hearing on the petition, the parental rights of a presumptive father or putative father could be terminated pursuant to 23 Pa.C.S. § 2504(b), and if notice of the opportunity to enter into a Contact Agreement was not provided to the subject presumptive father or putative father prior to the petition's filing, then on or before the hearing, the court shall be presented with a verified statement from a representative of the agency or intermediary, counsel for the agency or intermediary, or counsel representing any other party that notice was provided to the subject presumptive father or putative father regarding the opportunity of a birth relative to enter into a Contact Agreement, that such notice was provided either by first-class, United States mail, postage prepaid, to the last known address or by hand delivery, and the date(s) that such notice was given. A copy of the notice shall accompany this verified statement.

Explanatory Comment: For additional information about notice of the opportunity to enter into a Contact Agreement as required to be averred in subparagraph (a)(10) and the verified statement to be attached as an Exhibit under subparagraphs (b)(3), (b)(4), or (c)(3) of this Rule, see the Explanatory Comment to Rule 15.7.

Rule 15.10. Involuntary Termination of Parental Rights.

(a) *Petition.* A petition for involuntary termination of parental rights under 23 Pa.C.S. §§ 2511–2512 shall contain the following averments:

(1) the name and address of the petitioner(s);

(2) the basis for the standing asserted by the petitioner(s);

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

(4) the name, address, age, racial background and religious affiliation of the birth parents, including the birth father, presumptive father, and putative father of a child born out of wedlock;

(5) whether a claim for paternity has been filed under 23 Pa.C.S. § 5103 (relating to claim of paternity);

(6) the marital status of the mother as of the time of birth of the child and during one year prior thereto, and her maiden name;

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

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

(9) specific facts setting forth why the child was voluntarily placed in the custody of an entity or individual or involuntarily removed from the parent;

(10) 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;

(11) whether either parent of the child is entitled to benefits under the Servicemembers Civil Relief Act of 1940, as amended (50 App. U.S.C.A. 501 *et seq.*);

(12) one of the following:

(A) that the parent who is the subject of the petition has been informed of the opportunity for a birth relative of the child, including the subject birth parent, to enter into a Contact Agreement with the Prospective Adoptive Parents, once identified;

(B) that such notice will be given to the subject birth parent by the agency or intermediary or counsel representing a party, or

(C) the reason(s) why such notice cannot be given;

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

(14) that each petitioner 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 signed consent of the petitioner to accept custody of the child until such time as the adoption is completed.

(3) If notice of the opportunity to enter into a Contact Agreement has been provided to the subject birth parent in advance of the petition's filing, a verified statement from a representative of the agency or intermediary, counsel for the agency or intermediary, or counsel representing any other party that notice was provided to the subject birth parent regarding the opportunity of a birth relative to enter into a Contact Agreement, that such notice was provided either by first-class, United States mail, postage prepaid, to the last known address or by hand delivery, and the date(s) that such notice was given. A copy of the notice shall accompany this verified statement.

(c) *Counsel for Minor Birth Parent*.

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

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

(d) *Hearing and Decree*.

(1) Notice of the hearing on the petition shall be provided and served in accordance with 23 Pa.C.S. § 2513(b) and Rule 15.3. A birth parent, presumptive father, or putative father may not waive the right to receive notice of the hearing.

(2) On or before the hearing, the court shall be presented with a verified certificate of service stating that notice of the hearing in regards to the petition was given to the petitioner and all others entitled to a copy of the notice in accordance with 23 Pa.C.S. § 2503 and Rule 15.3.

(3) If notice of the opportunity to enter into a Contact Agreement was not provided to the subject birth parent prior to the petition's filing, then on or before the hearing, the court shall be presented with a verified statement from a representative of the agency or intermediary, counsel for the agency or intermediary, or counsel representing any other party that notice was provided to the subject birth parent regarding the opportunity of a birth relative to enter into a Contact Agreement, that such

notice was provided either by first-class, United States mail, postage prepaid, to the last known address or by hand delivery, and the date(s) that such notice was given. A copy of the notice shall accompany this verified statement.

Explanatory Comment: 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. In circumstances where an agency is the petitioner, an averment of a present intent to adopt the child is not required.

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 Parents, birth parents, and, in some instances, a child of the opportunity to enter into a Contact Agreement. Notice to birth relatives who are not the birth parents is not mandated by the statute, although birth relatives may enter into and become parties to a Contact Agreement.

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.

The verified statement under subparagraphs (b)(3) and (d)(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. If notice of the opportunity to enter into a Contact Agreement was not provided to a birth parent, putative father or presumptive father because the individual could not be located, the person submitting the verified statement shall explain the efforts made to locate the subject person. Upon review of the verified statement and evidence presented at the hearing, if any is requested by the court, the court will make a determination as to whether additional efforts to provide this notice must be made.

Rule 15.11. Notice of Right to File Statement of Medical, Personal and/or Social History Information.

The clerk, in accordance with Rule 4.6, shall transmit the decree of termination to the parent whose rights are terminated or to counsel for that parent, if represented. In that mailing, the clerk shall include 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 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 not be disclosed unless 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 15.12. 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 Parents and any birth relatives (“the proposed agreement”) must be appended to a petition requesting the court to approve the proposed agreement.

(1) If Prospective Adoptive Parents have been identified by the time of the hearing terminating parental rights of the parent whose birth relative is a party to the proposed agreement, the proposed agreement may be presented by separate petition to the same court that has or will conduct the hearing on the petition to terminate parental rights.

(2) If Prospective Adoptive Parents are identified after the time of the hearing to terminate parental rights, 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 party 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 signed 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*;

(4) whether a guardian *ad litem* is required to be appointed under 23 Pa.C.S. § 2733(b), and if so, whether such guardian *ad litem* has been appointed for any minor sibling of the adoptee;

(5) the length of time that the adoptee has been under the care, custody and control of an individual other than a birth parent, even if such individual is other than the Prospective Adoptive Parents;

(6) the circumstances under which the adoptee became freed for adoption, including the name of the judge who terminated parental rights if the petition and proposed agreement are not being presented to the court that heard the termination of parental rights petition or confirmation of consent petition;

(7) the length of time that the adoptee has been in the care and custody of the Prospective Adoptive Parents;

(8) whether the proposed agreement will impact the adoptee’s adjustment to the home, school and community of the Prospective Adoptive Parents;

(9) the names of any other persons who are not parties to the proposed agreement but who routinely would be present when the birth relatives who are parties to the

proposed agreement have contact or communications with the adoptee and the adoptee’s interaction and relationship with such other persons;

(10) the willingness and ability of the signatory birth relatives to respect and appreciate the bond between adoptee and Prospective Adoptive Parents;

(11) the willingness and ability of the Prospective Adoptive Parents to respect and appreciate the bond between adoptee and the birth relatives who are parties to the proposed agreement; and

(12) 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 Parents and the involved birth relatives;

(2) Adoptee’s signed consent if required under 23 Pa.C.S. § 2734; and

(3) Affidavits of all parties 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 exhibits and a notice that any responsive pleading must be filed with the clerk within ten (10) days from the date indicated on the petition or notice letter, whichever is later, to the following:

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

(B) the individual or entity having custody of the adoptee at the time of the petition’s filing;

(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 attorney if acting as counsel, or his or her guardian *ad litem* if one has been appointed; and

(D) 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, or his or her attorney if acting as counsel, or his or her guardian *ad litem* if one has been appointed.

(2) A certificate of service shall be appended to the petition or filed separately and contemporaneously with the filing of the petition, stating the date that a copy of the petition with exhibits and accompanied with the notice for filing a timely responsive pleading was mailed by first-class, United States mail, postage prepaid, to those listed above in subparagraphs (1)(A)—(1)(D), 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 guardians *ad litem* for any or all of the following:

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

(2) any minor siblings of the adoptee entitled to be represented by a guardian *ad litem* pursuant to 23 Pa.C.S. § 2733(b).

(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) days after the date of service, unless all of those entitled to notice under subparagraph (d)(1) of this Rule have waived in writing the notice required herein.

(2) The court shall schedule and conduct a closed hearing under any one of the following circumstances:

(A) upon a review of the petition and the attached exhibits, the court does not find 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 to the petition; 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 to the same parties entitled to notice under subparagraph (d)(1) of this Rule and any other individual or entity that the court directs to receive notice.

(A) Notice of the hearing need not comport with the requirements of Rule 15.3, and notice of the hearing 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.

(B) 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.

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

Explanatory Comment: Although agreements providing for post-adoption communication or contact may be negotiated and entered without anyone seeking judicial approval, the court will enforce and provide remedies only for those agreements that receive court approval on or before the date when the adoption is finalized. See 23 Pa.C.S. §§ 2735(c), 2738(c)(2).

Discussions about post-adoption contact and/or communication agreements should begin as early as possible, especially once all the necessary parties are identified. To this end, the courts can review and approve a proposed agreement for post-adoption contact and/or communication at any time after termination of parental rights and prior to finalization of the adoption. If practical, a hearing on the petition to approve a proposed, executed agreement may be conducted immediately following a hearing to terminate parental rights by the same judge who presided over the termination hearing. The Rule above establishes where the petition to approve the proposed agreement may be filed depending upon whether Prospective Adoptive Parents have been identified by the time of the parental rights termination hearing.

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 require a particular party to file the requisite petition 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.

Section 2735 of the Adoption Act, 23 Pa.C.S. § 2735, does not require a hearing in order for the court 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. At such hearing, the court can ensure that any individual who is a minor consented to or signed the proposed agreement voluntarily and fully understands the terms of the proposed agreement. Because section 2738(c)(3) of the Adoption Act, 23 Pa.C.S. § 2738(c)(3), requires an adoptee who has attained twelve (12) years of age to consent to the proposed agreement, best practice would be to conduct an evidentiary hearing in these situations.

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 case law. Section 2734 does specify that the proposed agreement may not be enforced unless the adoptee who has attained twelve (12) years of age at the time of the agreement's execution consents 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.

If the court finalizing the adoption will be different from the court that approved the Contact Agreement, 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, 2907. Neither the statute nor these Rules impose that obligation on any one of the signatories to the Contact Agreement, except as provided in Rules 15.13 below.

Rule 15.13. Adoption.

(a) *Petition.* A petition for adoption under 23 Pa.C.S. § 2701 shall contain the following averments:

(1) the name, current address, any other addresses for the past five years, marital status, age, occupation, racial background and religious affiliation of the petitioners;

(2) the name of the adoptee as it appears on the birth certificate;

(3) the relationship, if any, of the petitioners to the adoptee;

(4) whether the adoptee has resided with the petitioners, and if so, the length of time that adoptee has so resided with the petitioners;

(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;

(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) whether the criminal history records information and child abuse clearance certificate for each Prospective Adoptive Parent prepared in accordance with and as required by 23 Pa.C.S. § 6344(b) are attached to the petition as exhibits;

(11) whether there are any court orders that remain in effect as of the date of filing of the petition for adoption and which:

(A) terminate parental rights of any birth parent, presumptive father, or putative father of the adoptee;

(B) establish rights of guardianship or custody of the adoptee in any person or entity other than the birth parent; or

(C) establish or set forth any special conditions concerning placement, custody or guardianship, and adoption of the adoptee;

(12) whether there has been compliance with the Interstate Compact on the Placement of Children if the adoptee was born in the United States but outside of the Commonwealth of Pennsylvania;

(13) if any of the reports or exhibits listed in subparagraphs (a)(6) or (a)(12) have not been filed or are not attached to the petition, specific averments explaining why such reports have not been filed or 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;

(14) whether notice of the opportunity for the Prospective Adoptive Parents to enter into a Contact Agreement with an adoptee's birth relatives has been provided to the Prospective Adoptive Parents and to the adoptee if required by 23 Pa.C.S. § 2733(c);

(15) if an agreement for post-adoption contact and/or communication has been negotiated and executed by the Prospective Adoptive Parents and one of more birth relatives, an averment of one of the following, as applicable:

(A) the date of the order and the name of the court approving the Contact Agreement and that that the Contact Agreement and court order are attached as exhibits to the petition; or

(B) a petition to approve the proposed, executed agreement for post-adoption contact and/or communication has been submitted and is pending before the court or is being filed under a separate petition simultaneously with the filing of this petition;

(16) whether the adoptee will retain his or her given birth name or the proposed new name of the adoptee if a name change is desired;

(17) that the petitioners desire to have the relationship of parent and child established between the petitioners and the adoptee; and

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

(b) *Exhibits.* Unless the petition contains averments explaining why an exhibit is not attached, 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 consents 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) The criminal history records information and child abuse clearance certificate for each Prospective Adoptive Parent prepared in accordance with and as required by 23 Pa.C.S. § 6344(b).

(5) Certified copies of any court orders referenced in subparagraph (a)(11) above.

(6) If the adoptee was born in the United States but outside of the Commonwealth of Pennsylvania, written approval of compliance by Interstate Compact on the Placement of Children.

(7) 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 Parents and to the adoptee if required by 23 Pa.C.S. § 2733(c) regarding the opportunity to enter into a Contact Agreement. The statement should include the names and addresses of the parties to whom notice was given, that service was provided either by first-class, United States mail, postage prepaid, to the last known address or by hand delivery, and the date(s) that such notice was provided. A copy of the actual notice shall accompany this verified statement.

(8) If previously approved, the Contact Agreement and the court order approving the Contact Agreement.

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

(1) Notice of the hearing on the petition for adoption shall be given to the birth parent, putative father, and presumptive father as provided by Rule 15.3 unless the parental rights of such birth parent, putative father, or presumptive father have been terminated in a prior proceeding.

(2) If, as part of the adoption hearing, the petitioners are seeking court approval for a proposed, executed agreement for post-adoption contact and/or communication, then in accordance with subparagraph (d)(1) of Rule 15.12 the petitioners shall mail a copy of the petition for approval with exhibits to the individuals and entities therein listed, shall file a certificate of service as provided in subparagraph (d)(2) of Rule 15.12, and shall provide

notice of the adoption hearing to these individuals and entities as provided in subparagraph (f)(3) of Rule 15.12.

(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 23 Pa.C.S. §§ 2535 and 2724.

(e) *Hearing.* The court shall schedule a hearing to allow for testimony pursuant to 23 Pa.C.S. §§ 2721—2724. See 23 Pa.C.S. §§ 2721—2724. Petitioner(s) and the adoptee shall appear at the hearing. After a hearing, if the court determines that the adoption can be granted, the court shall enter a decree conforming to the requirements of 23 Pa.C.S. §§ 2901—2902, 2904. See 23 Pa.C.S. §§ 2901—2902, 2904.

(1) If the petition for adoption contains averments requesting that the court waive a statutory requirement of the Adoption Act, the court shall determine if the petitioner has shown cause for failing to meet the statutory requirement and has demonstrated that the adoptee's needs and welfare nevertheless will be best served by entering a decree of adoption.

(2) At the hearing on the petition for adoption, there shall be offered in evidence a report, verified by the petitioners and counsel, setting forth the amount of fees and expenses paid or to be paid to counsel, and any other fees, costs and expenses paid or to be paid to an Intermediary or any other person or institution, in connection with the adoption. The court may request an itemization of any of the amounts reported.

(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 parents, evidence showing compliance with the law relating to change of name must be introduced before a decree will be made.

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. *In re Adoption of R.B.F. and R.C.F.*, 569 Pa. 269, 803 A.2d 1195 (2002). If, upon reviewing the petition's averments as to why a statutory requirement should be waived, the court determines that cause has been demonstrated, the court can grant the relief requested and dispense with the relevant statutory requirement without conducting a hearing. However, if the court is not inclined to grant the relief requested waiving the relevant statutory requirement, 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.*

Subparagraph (c)(1) of this Rule applies if a parent's parental rights are being terminated as part of the hearing on the adoption petition. In such cases, the birth parent whose rights are being terminated must receive notice of the adoption hearing in accordance with Rule 15.3. On the other hand, a birth parent does not need to be notified of the adoption hearing if [i] the birth parent previously consented to the adoption and his or her consent was confirmed by the court as provided in 23

Pa.C.S. § 2504 and Rule 15.9; [ii] the birth parent previously relinquished his or her parental rights as provided in 23 Pa.C.S. §§ 2501, 2502 and Rule 15.7 or Rule 15.8 as applicable; or [iii] the birth parent's parental rights were involuntarily terminated by the court as provided in 23 Pa.C.S. § 2511 *et seq.* and Rule 15.10.

Rule 15.14. Registration of Foreign Adoption Decree.

(a) Adopting parents may petition the court 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 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, an adopted child's name may be changed from that appearing on the foreign adoption decree if the 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 determines that the foreign adoption decree can be registered, the court shall sign the final decree and shall direct the clerk 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 parents. The clerk shall issue to the adopting parents a certificate of adoption in accordance with 23 Pa.C.S. § 2907.

(d) If the court determines that the foreign adoption decree cannot be registered, the adopting parents shall proceed as applicable under the provisions set forth in the Adoption Act, 23 Pa.C.S. §§ 2101 *et seq.*, Pa.O.C. Rule 15.15 (specific to the adoption of a foreign born child), and local rules.

(e) Adopting parents who are eligible to register the foreign adoption decree under this Rule may, for any reason, proceed under Rule 15.15.

Explanatory 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 petitioners are set forth in the Appendix to these Rules.

The petition should be filed with the clerk, except in Philadelphia County, where it should be filed with the Clerk of the Family Court Division. The petition and accompanying documents, including the final decree, are confidential and should be impounded and withheld from public inspection as provided in the Adoption Act, 23 Pa.C.S. §§ 2906, 2907, 2908(f), and 2911—2937 and Pa.O.C. Rule 15.21.

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 Rule 15.15 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 Rule 15.15 is permitted; Pa.O.C. Rule 15.14 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 parents 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 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 adopted child is to be adopted by a step-parent after divorce or death of the original adopting parents, or when, after termination of parental rights, the adopted child is to be adopted by Prospective Adoptive Parents different than the original adopting parents.

If the court determines that the foreign adoption is not a full and final adoption because the foreign born child has been issued an IH-4 or IR-4 Visa, the adopting parent(s) shall proceed under subdivision (d) of this Rule. See also Rule 15.15.

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 15.14, 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 15.15. Petition for Adoption of a Foreign Born Child.

(a) *General Rule.* Prospective Adoptive Parents or adopting parents who are residents of the Commonwealth may petition the court in any county as provided in 23 Pa.C.S. § 2302 to proceed with an adoption of their foreign born 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:

- (1) Preliminary Decree;
- (2) Final Decree;
- (3) Petition for Adoption of a Foreign Born Child;
- (4) Copy of United States Visa;
- (5) Reports of investigations, home studies, preplacement and postplacement;
- (6) Copy of birth certificate of foreign born 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 having custody and/or legal and/or physical rights to the adoptee or adopted child;
- (9) Report of Intermediary (if an intermediary was involved);
- (10) Verifications signed by petitioners, 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) 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) Pennsylvania Department of Health, Division of Vital Records Form No. HD01275F, Statement of Citizenship and Residency; and

(13) A copy of U. S. Government Form N-560, Certificate of Citizenship, and/or a copy of the 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 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.

(2) *Home Study and Investigation.* The court may rely in whole or in part upon a home study containing information required by 23 Pa.C.S. § 2530(b) and an investigative report containing information required by 23 Pa.C.S. § 2535(b) previously commissioned in the foreign adoption proceeding without regard to when such reports were prepared. 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.

(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 23 Pa.C.S. §§ 2530—2535 have been met. If the Prospective Adoptive Parents

or adopting parents 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 adoptee is an orphan. The court may accept the 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 23 Pa.C.S. §§ 2721—2724. Petitioners and the 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.

(e) *Disclosure of Fees and Costs.* At the hearing on the petition for adoption, there shall be offered in evidence a report, verified by the petitioners and counsel, setting forth the amount of fees, expenses, and costs paid or to be paid to counsel, and any other fees, costs and expenses paid or to be paid to an intermediary and/or any other person or agency in connection with the adoption of the foreign born 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 adoptee or adopted child can be granted, and if so, the court shall enter a decree as provided in 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 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 adoptee's 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 23 Pa.C.S. § 2907.

(h) *Only One Court May Assume Jurisdiction.* 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 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 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 15.15, but can register the foreign adoption decree pursuant to Rule 15.14. 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 adopted child entering the United States with an IR-2, IR-3, or IH-3 United States Visa may proceed under Rule 15.15; 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 adoptee has entered the United States with an IH-4 or IR-4 United States Visa, the Prospective Adoptive Parent(s) must proceed under Rule 15.15 because the adoption of their foreign born adoptee was not finalized in the country of the adoptee's birth.

If the foreign born adoptee or adopted child has been issued a United States Visa, regardless of the type of Visa issued (e.g., IR-2, IH-2, IR-3, IH-3, IR-4 or IH-4), the birth parents of the foreign born child do not need to receive notice of the opportunity to enter into a Contact Agreement. Efforts to locate parents in a foreign country and notify them of the opportunity to enter into a post-adoption contact and/or communication agreement are both impractical and costly. If the foreign born adoptee or adopted child is entering the country with a United States Visa, then it has been established to the satisfaction of the Department of Homeland Security, United States Citizenship and Immigration Services that the foreign born child is an orphan; thus, the child has no legal parents to receive notice. See Rule 15.15(d)(5).

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 within this Commonwealth, the adopting parents need not and should not proceed under this Rule. In similar fashion, if the adoption of the foreign born adopted child has been finalized in this Commonwealth, and thereafter, another petitioner seeks to adopt this 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 adopted individual is to be adopted by a step-parent after divorce or death of the original adopting parents, or when, after termination of parental rights, the adopted child is to be adopted by Prospective Adoptive Parents different than the adopting parents.

The documents referenced in Rule 15.15 should be filed with the clerk, except in Philadelphia County, where they should be filed with the Clerk of the Family Court Division. The 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. §§ 2906, 2907, 2908(f), and 2911—2937 and Rule 15.21.

The clerk shall make available to the petitioners 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.

Rule 15.16. Notice and Service in Subsequent Petitions regarding Contact Agreements.

(a) The petitioner shall mail a copy of any petition to modify, enforce, or discontinue the Contact Agreement and a notice that a responsive pleading must be filed with the clerk within twenty (20) days from the date indicated on the petition or notice letter, whichever is later, to the following:

- (1) all parties to the Contact Agreement;

(2) the adopted child who is the subject of the Contact Agreement if he or she has attained twelve (12) years of age at the time of the petition's filing;

(3) any sibling of the adopted child who has continuing contact or communication with the adopted child under the terms of the Contact Agreement; and

(4) all counsel who entered an appearance for any party, including appearing as counsel or the guardian *ad litem* for the adopted child, in the proceeding to approve the Contact Agreement or who have filed an entry of an appearance in the current proceeding.

(b) A certificate of service shall be appended to the petition or filed separately and contemporaneously with the filing of the petition, stating the date that a copy of the petition and the notice for filing a timely responsive pleading was mailed by first-class, United States mail, postage prepaid, to those listed above in subparagraphs (a)(1)—(a)(4), as applicable.

Rule 15.17. 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 parents 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*;

(4) 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;

(5) 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 names, ages, and birth dates of such siblings, the names of the guardians *ad litem*, if any, and who such guardian *ad litem* represented;

(6) a description of the proposed modification; and

(7) the reasons 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.

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 15.18. Petition to Enforce a Contact Agreement.

(a) *General Rule.* By filing a petition under 23 Pa.C.S. § 2738, any party to the Contact Agreement, a sibling or the adopted child who is the subject of the Contact Agreement 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*;

(4) 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;

(5) 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 names, ages, and birth dates of such siblings, the names of the guardians *ad litem*, if any, and who such guardians *ad litem* represented;

(6) whether the party seeking enforcement is in substantial compliance with the terms of the Contact Agreement;

(7) the identity of the party who has breached the Contact Agreement and the nature and circumstances of the breach; and

(8) 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 that the petitioner is in substantial compliance with the terms of the Contact Agreement and also finds by clear and convincing evidence 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.

Explanatory Comment: The evidentiary standard of clear and convincing evidence is statutorily mandated. See 23 Pa.C.S. § 2738(d)(2). For purposes of determining where to file a petition to enforce a Contact Agreement, petitioner should consider 23 Pa.C.S. § 2738(a) and 23 Pa.C.S. § 2738(e)(2).

Rule 15.19. 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 party 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*;

(4) 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;

(5) 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 names, ages, and birth dates of such siblings, the names of the guardians *ad litem*, if any, and who such guardian *ad litem* represented;

(6) the reasons why the petitioner seeks to discontinue the Contact Agreement; and

(7) 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 15.20. 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, 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, a 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 or the Department of Health that is signed by the adopted individual;

(2) requests for non-identifying or identifying information; and

(3) 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; provided that, 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.

(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 in the 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 or clerk 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 15.22(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 15.22(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 items in the court file, and to the Pennsylvania Adoption Information Registry ("PAIR") if the completed Statement is in 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.

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, descendants of a deceased adopted individual, or survivors 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 15.20(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 15.21. Privacy; Withholding the Court File from Inspection.

(a) 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 withheld from inspection except as provided by 23 Pa.C.S. § 2931 *et seq.* and Rule 15.22.

(b) Except as provided in (d) below, the docket, court records, and all other documents in the court file shall be closed.

(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 names of the birth parents or the name of the adopted individual before adoption.

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

Rule 15.22. 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 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. In addition:

(A) 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.

(B) 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 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 or others, 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 descendants 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 parents, any legal guardian of a birth parent, the parents 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 individuals 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.

Judges, law clerks, or court personnel experienced in adoptions should handle and address requests for non-identifying information and only an appointed Authorized Representative duly trained by the Department should 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 or others, 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 15.21 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 15.22(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 15.22(a).

EXPLANATORY REPORT

Background

These proposed rules seek to implement legislative amendments to the Adoption Act, 23 Pa.C.S. §§ 2101—2938, enacted since the last revision of Rule 15. Additionally, the proposed rules seek to provide procedures effectuating precedent of the Supreme Court that impact the filing of parental rights termination petitions and consideration of adoption petitions. *See In re Adoption of R.B.F. and R.C.F.*, 803 A.2d 1195 (Pa. 2002); *In re Adoption of L.J.B.*, 18 A.3d 1098 (Pa. 2011); *In re T.S.M.*, 71 A.3d 251 (Pa. 2013). A majority of the new rules and substantial revisions to currently existing rules have been occasioned by the Act of October 27, 2010, P.L. 961 ("Act 101") having an effective date of April 25, 2011. This bill 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.

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. The Act 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. Under prior law, these searches were permissible. 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. Only an authorized representative trained by the Department of Human Services (“Department”) is to perform these searches and contact the person who is the subject of the request.

With In re Adoption of R.B.F. and R.C.F., the Supreme Court held that Section 2901 of the Adoption Act, 23 Pa.C.S. § 2901, permits a prospective adoptive parent to demonstrate why in a particular case he or she cannot meet a statutory requirement of the Adoption Act. In that case, the Court instructed that where the petitioner has failed to satisfy all of the statutory requirements for adoption, the petition for adoption should not be summarily dismissed; rather, the petitioner should be afforded an opportunity to demonstrate why the particular statutory requirement cannot be met, why the court should dispense with this statutory requirement, and why the proposed adoptee’s best interest is nevertheless served by granting the adoption. To effectuate this precedent, the Committee proposes 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 15.13), if a statutory requirement under the Adoption Act cannot be met, the petitioner can include in the adoption petition averments explaining why the statutory requirement has not been met and why it is nonetheless in the child’s best interest for the judge to grant the petition. The proposed amendment to this Rule also provides for a hearing at which time the court will consider whether cause has been shown to dispense with a statutory requirement and whether to grant the adoption petition notwithstanding.

Prior Publications

Earlier versions of these proposed new adoption rules have been published previously for comment. The first publication of these rules appeared in 41 Pa.B. 2932 (June 11, 2011). A revised version of these rules appeared in 43 Pa.B. 6321 (October 26, 2013).

Recommendation

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

Rules derived from existing rules, but which have been so substantially modified that it was decided in Committee to simply rescind and replace the current rules. A majority of these rules govern parental rights termination petitions, the adoption petition, and providing notice of the hearing on these petitions.

The proposed new rules require publication in every instance where the identity or whereabouts of an alleged birth parent is unknown. The Committee is of the opinion that a standardized practice is needed statewide. *See* Proposed Rule 15.3.

Similarly, the proposed new rules eliminate the ability for a birth parent to waive notice of the hearing, an option that is present in the current rules. *See* Proposed Rules 15.7(c)(1), 15.8(c)(1), and 15.9(c)(1).

Lastly, except in the context of registering a foreign adoption decree or finalizing the adoption of a foreign born child, these rules require parental rights termination petitions and the adoption petition to contain an averment and include an exhibit 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.

There is a proposed new Rule 15.9 to address the statutory alternative procedure for confirmed consent created in Section 2504 of the Adoption Code, 23 Pa.C.S. § 2504.

Additionally, there are 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. In response to several comments from prior publications, the Committee reviewed Sections 2735, 2736, 2737, 2738 and 2739 of the Adoption Act and it could not locate a mandate that only the court finalizing the adoption consider and approve the agreement for post-adoption communication or contact. Section 2735 provides in subsection (a) that the agreement shall be filed with the court finalizing the adoption of the child, but requiring the agreement to be filed with the court finalizing the adoption does not necessarily equate to this court being the only court that can approve the agreement. Subsection (b) sets forth criterion for the court to consider in deciding whether to approve the agreement; however, in this subsection, “the court” is not defined or limited to the court finalizing the adoption. In Sections 2737 and 2739, the statute expressly provides that proceedings to modify or discontinue a post-adoption contact or communication agreement shall be commenced in the court finalizing the adoption. Subsection (e) of section 2738 provides that the court approving the agreement shall have continuing jurisdiction over its enforcement. If such court was statutorily required to always be and only could be the court finalizing the adoption, then this subsection would have referred to that court as the court finalizing the adoption. Therefore, it appears that a court other than the court finalizing the adoption may consider and approve the post-adoption contact or communication agreement.

The Committee’s proposal that the court terminating parental rights be able to consider and approve proposed post-adoption contact or communication agreements was based on several considerations. First, the judge terminating parental rights will have more familiarity with the situation involving the birth family and the reasons for the child’s removal from the home and, therefore, this judge will be better able to determine if continuing post-adoption contact and communication serves the child’s best interests. Second, in multi-county adoptions, the birth parent will have fewer resources to travel and attend a hearing before a judge in a county outside of his or her residence. Third, unless proposed agreements are presented and considered by the court near the time of termination, the whereabouts of some birth parents may become uncertain, making it more difficult to locate and provide them with notice of an upcoming hearing. Finally, there is a risk that after parental rights are terminated that prospective adoptive parents will no longer wish to

have a court approve a previously negotiated post-adoption contact and/or communication agreement.

There are new rules concerning confidentiality in order 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. The search and contact provisions of Section 2932 and 2933 of the Adoption Act 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 as long as the delegate has successfully completed a standardized Department training program.

Section 2932, 2933, and 2934 impose certain time deadlines for responding to requests for information and contact. The Committee does not propose 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.

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 or social history information "to the individual who is at least 21 years of age and whom the information is intended to benefit." This 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 or social history information becomes part of the court file subject to impounding and confidentiality as provided in Rule 15.21 and 23 Pa.C.S. § 2931 *et seq.* For this reason, the statement of medical, personal 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. The notification procedure in Rule 15.22(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.

[Pa.B. Doc. No. 16-68. Filed for public inspection January 15, 2016, 9:00 a.m.]

DISCIPLINARY BOARD OF THE SUPREME COURT

Notice of Suspension

Notice is hereby given that Joseph J. Lodge (# 35351) having been suspended from the practice of law in the State of Arizona for a period of six months and one day, the Supreme Court of Pennsylvania issued an Order

dated December 22, 2015 suspending Joseph J. Lodge from the practice of law in this Commonwealth for a period of six months and one day effective January 22, 2016. In accordance with Rule 217(f), Pa.R.D.E., since this formerly admitted attorney resides outside the Commonwealth of Pennsylvania, this notice is published in the *Pennsylvania Bulletin*.

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

[Pa.B. Doc. No. 16-69. Filed for public inspection January 15, 2016, 9:00 a.m.]

SUPREME COURT

Practice of Law by Attorneys Employed in the Unified Judicial System of Pennsylvania; No. 454 Judicial Administration Doc.

Order

Per Curiam

And Now, this 29th day of December, 2015, pursuant to Article V, Section 10 of the Constitution of Pennsylvania, *It Is Ordered* as follows.

An attorney employed in the Unified Judicial System shall be prohibited from appearing as counsel (except in a *pro se* capacity) in the division/section of the court in which the attorney is employed. Further, in courts that have no formally established divisions or sections, or for an attorney who is not employed within a division or section, the attorney is prohibited (except as to *pro se* matters) from appearing as counsel in the court itself. See 42 Pa.C.S. § 2502(a) ("Except as otherwise prescribed by general rule, an attorney at law who is an employee of a court shall not appear as counsel in such court."); Pa.R.A.P. 3121 (prohibiting the practice of law by appellate court staff except in limited circumstances); and *In Re: Practice of Law by and Qualifications of Law Clerks Employed in the Unified Judicial System of Pennsylvania*, No. 438 Judicial Administration Docket (December 11, 2014) (restricting the practice of law by judicial law clerks).

Any outside employment or commercial activities by attorneys employed in the Unified Judicial System, including the practice of law, must be permitted by, and must be approved in accordance with, the Rules of Professional Conduct, the Code of Conduct for Employees of the Unified Judicial System, and any other applicable personnel policies.

This Order shall be processed in accordance with Pa.R.J.A. No. 103(b), and shall be effective January 1, 2017, for all current and future attorneys employed in the Unified Judicial System.

Mr. Justice Eakin did not participate in the decision of this matter.

[Pa.B. Doc. No. 16-70. Filed for public inspection January 15, 2016, 9:00 a.m.]