

Rule 1.5 Local Rules

(a) All previously promulgated local rules are hereby vacated, effective September 1, 2016, except for those local rules promulgated under Chapter XIV regarding guardianship of incapacitated persons, Chapter XV regarding adoptions, and Chapter XVI regarding proceedings pursuant to Section 3206 of the Abortion Control Act.

(b) All previously promulgated local rules under Chapter XIV regarding guardianship of incapacitated persons are hereby vacated, effective June 1, 2019.

(c) All previously promulgated local rules under Chapter XV regarding adoptions are hereby vacated, effective July 1, 2022.

[(c)] (d) The requirements for the promulgation and amendment of local procedural rules for orphans' court proceedings are set forth in Pennsylvania Rule of Judicial Administration 103(d).

[(d)] (e) The local rules applicable to practice in the Civil or Trial Division of the local Court of Common Pleas shall not be applicable in the Orphans' Court Division unless so directed by these Rules or by local rule adopted by the court of the particular judicial district in accordance with Pa.R.J.A. No. 103(d).

Note: Effective August 1, 2016, Pennsylvania Rule of Judicial Administration 103 was amended to consolidate and include all local rulemaking requirements. Accordingly, the rulemaking requirements under Pa. O.C. Rule 1.5 for the promulgation and amendment of local procedural rules for orphans' court proceedings were rescinded and replaced.

[This is an entirely new chapter.]

CHAPTER XV. Adoptions

Rule 15.1 Local Adoption 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 further regulating the practice and procedure with respect to adoptions may be promulgated in accordance with Rule 1.5, provided such local rules shall not be inconsistent with these Rules and the Adoption Act, 23 Pa.C.S. §§ 2101 *et seq.*

Rule 15.2 Definitions

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

“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;

“Child” – an adoptee or adopted individual who is a minor, or the individual whose parent’s rights are the subject of a termination proceeding;

“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 18 years of age;

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

“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;

“Putative Father” – an alleged birth father whose parental status has not been legally established and who is not a presumptive father;

“Statement of medical, personal, 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, 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.

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 conducted other dependency proceedings may be assigned to the Orphans’ Court Division for purposes of hearing petitions to terminate parental rights or petitions to adopt a dependent child. 42 Pa.C.S. § 6351(i).

Rule 15.3 Prerequisites for any Petition to Terminate Parental Rights or Petition to Adopt

(a) **Separate Petitions for Each Child and Any Adoptee.** Separate petitions must be filed for each child or adult adoptee who is the subject of a proceeding under Rule 15.7 (Voluntary Relinquishment to Agency), Rule 15.8 (Voluntary Relinquishment to Adult Intending to Adopt Child), Rule 15.9 (Alternative Procedure for Relinquishment by Confirmation of Consent to Adoption), Rule 15.10 (Involuntary Termination of Parental Rights), Rule 15.12 (Court Review and Approval of Contact Agreement), Rule 15.13 (Adoption), Rule 15.14 (Registration of Foreign Adoption Decree), Rule 15.15 (Petition for Adoption of a Foreign Born Child), Rule 15.17 (Petition to Modify a Contact Agreement), Rule 15.18 (Petition to Enforce a Contact Agreement), and Rule 15.19 (Petition to Discontinue a Contact Agreement).

(b) **Filing of Original Birth Certificate.** Unless previously filed, the child's original birth certificate or certification of registration of birth shall be filed when the petition to terminate parental rights is filed, and the clerk shall make the original birth certificate or certification of registration of birth part of the court file pertaining to that child.

Explanatory Comment: For the following reasons, a separate petition must be filed for each child and any adult adoptee who is the subject of any one of the enumerated proceedings: (i) privacy concerns; (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 from an order terminating parental rights is taken as to only one of the involved children. The court in its discretion may consolidate separate petitions for any hearing.

A county agency unduly burdened by the costs of filing separate petitions for a group of siblings may petition the court for relief from such filing costs. It is anticipated that such petitions for relief would be made only when the costs are burdensome.

Rule 15.4 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 Intending to Adopt Child), 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 by Confirmation of Consent to Adoption), 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 of Parental Rights), 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) or Rule 15.8 (relating to Voluntary Relinquishment to Adult Intending to Adopt Child), every person whose parental rights are sought to be terminated in the proceeding and any other person entitled to notice under 23 Pa.C.S. § 2503(b) shall be provided with notice of the hearing by one of the following means:

(A) personal service;

(B) registered or certified mail with delivery restricted to the addressee only and a return receipt requested, or first-class United States mail postage prepaid, mailed 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;

(C) electronic transmission provided such person has signed a writing consenting that notice be sent by electronic transmission, providing an electronic mail address or social media account to which such notice shall be sent, and verifying that he or she regularly accesses and reviews such electronic mail address or social media account; or

(D) such other means including electronic transmission as the court may require under the facts of the individual case.

Any person entitled to notice of the hearing may waive in writing such notice.

(2) For a proceeding under 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 and any other person entitled to notice under 23 Pa.C.S. § 2504(b) shall be provided with notice of the hearing by one of the following means:

(A) personal service;

(B) registered or certified mail with delivery restricted to the addressee only and a return receipt requested mailed 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;

(C) electronic transmission provided such person has signed a writing consenting that notice be sent by electronic transmission, providing an electronic mail address or social media account to which such notice shall be sent, and verifying that he or she regularly accesses and reviews such electronic mail address or social media account; or

(D) such other means including electronic transmission as the court may require under the facts of the individual case.

Any person entitled to notice of the hearing may waive in writing such notice.

(3) (A) For a proceeding under Rule 15.10 (relating to Involuntary Termination of Parental Rights), every person entitled to notice as provided in 23 Pa.C.S. § 2513(b) shall be provided with notice of the hearing by one of the following means:

(i) personal service;

(ii) registered or certified mail with delivery restricted to the addressee only and a return receipt requested mailed 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; or

(iii) such other means including electronic transmission as the court may require under the facts of the individual case.

(B) If the identity and location of the person whose parental rights are sought to be involuntarily terminated are known or can be determined after reasonable investigation, a copy of the petition for involuntary termination of parental rights shall be attached to the notice required by 23 Pa.C.S. § 2513(b).

(C) A person who is not the subject of the proceeding and whose parental rights are not sought to be terminated in the proceeding but who is entitled to receive notice of the hearing under 23 Pa.C.S. § 2513(b) may waive in writing such notice.

(4) If service cannot be obtained upon the person whose parental rights are sought to be terminated either because service is refused or unsuccessful and no alternative service is directed by the court or because the person's identity or whereabouts are unknown after reasonable investigation, then notice by publication shall be given as directed by the court, after a motion in accordance with Pa.R.C.P. No. 430(a) and upon a finding by the court that a reasonable investigation was made.

(A) In addition to any other requirements that may be imposed by the court, the publication notice shall include the last name of the birth mother, the date of the child's birth, the place of the child's birth and the child's gender. The publication notice 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.

(B) The publication notice shall direct the person whose parental rights are sought to be terminated to contact the petitioner or counsel for the petitioner as set forth in the notice to obtain a copy of the petition prior to the hearing.

(C) Publication shall occur once in a newspaper of general circulation for the county where the birth parent whose rights are sought to be terminated resides, or if not known, the place where the child was conceived.

(5) If service cannot be obtained upon a person who is not the subject of the proceeding and whose parental rights are not sought to be terminated in the proceeding but who is entitled to receive notice of the hearing under 23 Pa.C.S. § 2503(b), § 2504(b), or § 2513(b), and service could not be obtained either because service is refused or unsuccessful or because the person's identity or whereabouts are unknown after reasonable investigation, no further service of the notice shall be required.

(6) Once service has been obtained in a manner as provided upon the person whose parental rights are sought to be terminated, all persons entitled to receive any subsequent legal paper or notice may be served by hand delivery, 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 or business where he or she is known to be currently employed, by electronic transmission provided such person has signed a writing consenting that notice be sent by electronic transmission, providing an electronic mail address or social media account to which such notice shall be sent, and verifying that he

or she regularly accesses and reviews such electronic mail address or social media account, or to the person's counsel of record, if represented.

(c) **Timing of Notice.** Notice of the hearing shall be provided at least 10 days prior to the date of the hearing.

Explanatory Comment: The notice required by subparagraph (a)(3) advises a parent whose rights are subject to termination in an involuntary termination proceeding that he or she has the right to be represented at the hearing by a lawyer. The notice includes the contact information for the person or agency in the judicial district from whom information as to the availability of legal help may be obtained. The court shall appoint counsel for a parent whose rights are subject to termination in an involuntary termination proceeding, if upon petition of the parent, the court determines that the parent is unable to pay for counsel or that payment would result in substantial financial hardship. See 23 Pa.C.S. § 2313(a.1); Rule 15.10(d)(2).

Personal service in the context of this Rule means service by handing a copy to the person entitled to notice.

See Pa.R.C.P. No. 76 that certified mail is the equivalent of registered mail.

See *also* Pa.R.C.P. No. 430(a) regarding the averments necessary in a motion for alternative service if service cannot otherwise be accomplished. If the motion under Pa.R.C.P. No. 430(a) avers sufficient facts and includes sufficient supporting exhibits to establish that a reasonable investigation was made to ascertain the identity or whereabouts of the subject birth parent, the court need not conduct a hearing on the motion, but shall issue an order directing alternative service, including service by electronic transmission or publication.

The PACFile electronic filing system, developed and administered by the Administrative Office of Pennsylvania Courts, does not provide notice of the hearing that is compliant with the requirements of (b)(1)(C) and (b)(2)(C), unless a person consents in writing to notices being sent by electronic transmission. In the alternative, a court may, per subparagraphs (b)(1)(D), (b)(2)(D), and (b)(3)(A)(iii) and dependent upon the facts of an individual case, permit notification of the hearing by PACFile without requiring consent in writing that the notice be sent by electronic transmission.

Rule 15.5 Certification Filed with the Clerk Maintaining the Dependency Docket

(a) Within seven 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 its filing in substantially the form approved by the Supreme Court.

(b) Within seven 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 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 its filing in substantially the form approved by the Supreme Court.

(d) Within seven 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: The purpose of the Rule is 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 15.4, 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 15.6 Filing of Termination Petitions when an Agency is Not Involved

Except in cases involving an agency or as otherwise provided by law, a petition to terminate parental rights shall not 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.

Explanatory Comment: This Rule implements long-standing Pennsylvania Supreme Court precedent that a parent can petition to terminate the parental rights of the other parent only where there is evidence of a present plan for the child to be adopted by a stepparent or other person. *In re Adoption of M.R.D.*, 145 A.3d 1117, 1120 (Pa. 2016); *In re T.R.*, 465 A.2d 642 (Pa. 1983); *In re B.E.*, 377 A.2d 153 (Pa. 1977). See also *In re E.M.I.*, 57 A.3d 1278 (Pa. Super. 2012); *In re Adoption of J.F.*, 572 A.2d 223 (Pa. Super. 1990). A mere averment in the petition or testimony by the petitioning birth parent is insufficient; instead, evidence must be presented to the court considering the parental rights termination petition that the child's adoption is intended and foreseeable. However, neither such averments nor evidence are required when a petition has been filed by a parent seeking to involuntarily terminate the parental rights of the other parent pursuant to 23 Pa.C.S. § 2511(a)(7)(relating to a child conceived as a result of a rape or incest). See 23 Pa.C.S. § 2514.

A Report of Intention to Adopt is required to be filed with the clerk within 30 days of when the child is placed with the non-relative individuals. 23 Pa.C.S. § 2532. In the case of an adoption by one not required to file such a report, see 23 Pa.C.S. § 2531(c), this Rule requires the adoption petition to be filed. If the adoption proceeding will occur in the same judicial district as the hearing on the parental rights termination petition, the court will be able to review the Report of Intention to Adopt or the adoption petition to determine if there are any possible impediments to completing the adoption, which then can be explored and investigated as part of the hearing on the parental rights termination petition.

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, and racial background 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, or the reasons why the court should find such information is not necessary;
- (3) the marital status of the mother as of the time of the child's birth and during one year prior thereto, and her maiden name;
- (4) the name, age, date of birth, place of birth, racial background, and gender 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 each petitioner has been informed 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;
- (11) whether the agency's consent to accept custody of the child until such time as the child is adopted is attached to the petition; and
- (12) that each petitioner understands the petition, has considered the alternatives, and has executed the petition voluntarily.

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

(1) Documentation signed by each petitioner as required by 23 Pa.C.S. § 2501(a).

(2) A verified statement from a representative of the agency, counsel for the agency, or counsel representing any other party that written 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 by hand delivery, by first-class United States mail, postage prepaid, to the last known address, or by electronic transmission in accordance with Rule 15.4(b)(1)(C), 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 putative father could be terminated pursuant to 23 Pa.C.S. § 2503(d), and if written notice of the opportunity to enter into a Contact Agreement has been provided to the 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 written notice was provided to the putative father regarding the opportunity of a birth relative to enter into a Contact Agreement, that such notice was provided by hand delivery, by first-class United States mail, postage prepaid, to the last known address, or by electronic transmission in accordance with Rule 15.4(b)(1)(C), and the date(s) that such notice was given, or the reasons why such notice cannot be given, including efforts made to identify or locate the subject person. If notice was given, a copy of the notice shall accompany this verified statement.

(4) 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 putative father are to be terminated as part of the same proceeding, and shall be served in accordance with Rule 15.4(b)(1).

(2) On or before the hearing, the court shall be presented with a certificate of service stating that notice of the hearing on 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 15.4(b)(1).

(3) The petitioner birth parent voluntarily relinquishing his or her parental rights shall be present at the hearing and available to be examined under oath.

(4) If as part of hearing on the petition, the parental rights of a 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 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 written notice was provided to the subject putative father regarding the opportunity of a birth relative to enter into a Contact Agreement, that such notice was provided by hand delivery, by first-class United States mail, postage prepaid, to the last known address, or by electronic transmission in accordance with Rule 15.4(b)(1)(C), and the date(s) that such notice was given or the reasons why such notice cannot be given, including efforts made to identify or locate the subject person. If 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.

An original birth certificate or certification of registration of the child's birth must be filed with the clerk by the time of filing the initial petition to terminate parental rights. See Rule 15.3(b).

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 Parents shall contain the following averments:

- (1) the name, address, age, and racial background 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, or the reasons why the court should find such information is not necessary;
- (3) the marital status of the mother as of the time of the child's birth and during one year prior thereto, and her maiden name;
- (4) the name, age, date of birth, place of birth, racial background, and gender of the child;
- (5) the date when the child was placed with the Prospective Adoptive Parents;
- (6) the date when the Report of Intention to Adopt was filed;
- (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 each petitioner has been informed of the opportunity for a birth relative of the child, including the petitioner, to enter into a Contact Agreement with the Prospective Adoptive Parents;
- (11) whether a Report of Intention to Adopt under 23 Pa.C.S. § 2531 or an adoption petition under Rule 15.13 has been filed;
- (12) whether the Prospective Adoptive Parents' consent to accept custody of the child until such time as the child is adopted is attached to the petition; and

(13) that each petitioner understands the petition, has considered the alternatives, and has executed the petition voluntarily.

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

(1) A verified statement from a representative of the agency or intermediary, counsel for the agency or intermediary, or counsel representing any other party that written notice was provided to the petitioner birth parent regarding the opportunity to enter into a Contact Agreement, that such notice was provided by hand delivery, by first-class United States mail, postage prepaid, to the last known address, or by electronic transmission in accordance with Rule 15.4(b)(1)(C), and the date(s) that such notice was given. A copy of the notice shall accompany this verified statement.

(2) If, as part of the hearing on the petition, the parental rights of a putative father could be terminated pursuant to 23 Pa.C.S. § 2503(d), and if written notice of the opportunity to enter into a Contact Agreement has been provided to the 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 written notice was provided to the putative father regarding the opportunity of a birth relative to enter into a Contact Agreement, that such notice was provided by hand delivery, by first-class United States mail, postage prepaid, to the last known address, or by electronic transmission in accordance with Rule 15.4(b)(1)(C), and the date(s) that such notice was given, or the reason(s) why such notice cannot be given, including efforts made to identify or locate the subject person. If notice was given, a copy of the notice shall accompany this verified statement.

(3) 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 putative father are to be terminated as part of the same proceeding, and shall be served in accordance with Rule 15.4(b)(1).

(2) On or before the hearing, the court shall be presented with a certificate of service stating that notice of the hearing on 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 15.4(b)(1).

(3) The petitioner birth parent voluntarily relinquishing his or her parental rights shall be present at the hearing and available to be examined under oath.

(4) If as part of hearing on the petition, the parental rights of a 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 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 written notice was provided to the subject putative father regarding the opportunity of a birth relative to enter into a Contact Agreement, that such notice was provided by hand delivery, by first-class United States mail, postage prepaid, to the last known address, or by electronic transmission in accordance with Rule 15.4(b)(1)(C), and the date(s) that such notice was given or the reason(s) why such notice cannot be given, including efforts made to identify or locate the subject person. If notice was given, a copy of the notice shall accompany this verified statement.

Explanatory Comment: An original birth certificate or certification of registration of the child's birth must be filed with the clerk by the time of filing the initial petition to terminate parental rights. See Rule 15.3(b). For additional information about notice of the opportunity to enter into a Contact Agreement, 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, and racial background 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, or the reasons why the court should find such information is not necessary;
- (3) the marital status of the mother as of the time of the child's birth and during one year prior thereto, and her maiden name;
- (4) the name, age, date of birth, place of birth, racial background, and gender 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 and 2712;
- (6) the number of days that have elapsed since the consent to adoption was executed by the consenter;
- (7) 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;
- (8) whether the consenter was informed of counseling services concerning the termination of parental rights and the alternatives thereto and provided with a list of qualified counselors and counseling services;
- (9) whether the consenter received counseling concerning the termination of parental rights and the alternatives thereto and, if so, the name of the organization or qualified counselor providing such counseling services;

(10) whether the consenter has been informed 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; and

(11) whether a consent by the Prospective Adoptive Parents or by the agency to accept custody of the child until such time as the child is adopted is attached to the petition, and if custody is to an individual, whether a Report of Intention to Adopt under 23 Pa.C.S. § 2531 or an adoption petition under Rule 15.13 has been filed.

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

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

(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 written notice was provided to the consenter regarding the opportunity of a birth relative to enter into a Contact Agreement, that such notice was provided by hand delivery, by first-class United States mail, postage prepaid, to the last known address, or by electronic transmission in accordance with Rule 15.4(b)(2)(C), 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 putative father could be terminated pursuant to 23 Pa.C.S. § 2504(c), and if written notice of the opportunity to enter into a Contact Agreement has been provided to the 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 written notice was provided to the putative father regarding the opportunity of a birth relative to enter into a Contact Agreement, that such notice was provided by hand delivery, by first-class United States mail postage prepaid, to the last known address, or by electronic transmission in accordance with Rule 15.4(b)(2)(C), and the date(s) on which such notice was given, or the reasons why such notice cannot be given, including efforts made to identify or locate the subject person. If a notice was given, a copy of the notice shall accompany this verified statement.

(4) The signed consents of the Prospective Adoptive Parents 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 15.4(b)(2).

(2) On or before the hearing, the court shall be presented with a certificate of service stating that notice of the hearing on 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 15.4(b)(2).

(3) If as part of hearing on the petition, the parental rights of a 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 was not provided to the subject 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 written notice was provided to the subject putative father regarding the opportunity of a birth relative to enter into a Contact Agreement, that such notice was provided by hand delivery, by first-class United States mail, postage prepaid, to the last known address, or by electronic transmission in accordance with Rule 15.4(b)(2)(C), and the date(s) that such notice was given, or the reason(s) why such notice cannot be given, including efforts made to identify or locate the subject person. If notice was given, a copy of the notice shall accompany this verified statement.

Explanatory Comment: An original birth certificate or certification of registration of the child's birth must be filed with the clerk by the time of filing the initial petition to terminate parental rights. See Rule 15.3(b). For additional information about notice of the opportunity to enter into a Contact Agreement, 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, and gender of the child;
- (4) the name, address, age, and racial background of the birth parents, including the birth father, presumptive father, and putative father;
- (5) if a birth father, presumptive father or putative father is not identified in subparagraph, 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 the child's birth 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 who is the subject of the petition;
- (10) a reference to the applicable subsection(s) of 23 Pa.C.S. § 2511(a) providing the ground(s) for termination and specific facts to support terminating the parental rights of the subject birth parent 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 U.S.C. §§ 3901 *et seq.*);
- (12) one of the following:
 - (A) that the parent who is the subject of the petition has been provided with written notice regarding 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 written notice will be given to the subject birth parent prior to the hearing by the agency, intermediary or counsel representing a party; or

(C) the reason(s) why such notice cannot be given, including efforts made to identify or locate the subject person.

(13) whether a consent by the petitioner, the Prospective Adoptive Parents, or the agency to accept custody of the child until such time as the child is adopted is attached to the petition, and if custody is to an individual, whether a Report of Intention to Adopt under 23 Pa.C.S. § 2531 or an adoption petition under Rule 15.13 has been filed or the reason why such consent or filing is not required by law; 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 following exhibits shall be attached to the petition:

(1) A verified statement from a representative of the agency or intermediary, counsel for the agency or intermediary, or counsel representing any other party that written 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 by hand delivery, by first-class United States mail, postage prepaid, to the last known address, or by such other means as provided in Rule 15.4(b)(3)(A)(iii), and the date(s) that such notice was given, or the reason(s) why such notice cannot be given, including efforts made to identify or locate the subject person. If notice was given, a copy of the notice shall accompany this verified statement.

(2) Except as otherwise provided by law, the signed consent of the petitioner, the Prospective Adoptive Parents, or the 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 provided and served in accordance with 23 Pa.C.S. § 2513(b) and Rule 15.4(b)(3).

(2) On or before the hearing, the court shall be presented with a certificate of service stating that notice of the hearing on 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 15.4(b)(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 written 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 by hand delivery, by first-class United States mail, postage prepaid, to the last known address, or by such other means as provided in Rule 15.4(b)(3)(A)(iii), and the date(s) that such notice was given or the reason(s) why such notice cannot be given, including efforts made to identify or locate the subject person. If notice was given, a copy of the notice shall accompany this verified statement.

(d) **Appointment of Counsel.**

(1) **Child.** In accordance with 23 Pa.C.S. § 2313(a), the court shall appoint counsel to represent the child in an involuntary termination proceeding when the proceeding is contested by one or both parents. If the court determines that the child requires counsel to represent both the best interests and legal interests of the child, the court shall determine on the record whether counsel can represent both interests without conflict before appointing an individual to serve as both guardian *ad litem* and counsel for the child.

(2) **Parent.** In accordance with 23 Pa.C.S. § 2313(a.1), the court shall appoint counsel for a parent whose rights are subject to termination in an involuntary termination proceeding if, upon petition of the parent, the court determines that the parent is unable to pay for counsel or that payment would result in a substantial financial hardship.

Explanatory Comment: An original birth certificate or certification of registration of the child's birth must be filed with the clerk by the time of filing the initial petition to terminate parental rights. See Rule 15.3(b).

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. Also, an averment of a present intent to adopt the child is not required if the petitioner is an agency. Where petitioner is an individual, see Rule 15.6. Neither the averments nor evidence set forth in subdivisions (a)(13) and (b)(2) are required when the petition has been filed by a parent seeking to involuntarily terminate the parental rights of the other parent pursuant to 23 Pa.C.S. § 2511(a)(7)(relating to a child conceived as a result of a rape or incest). See 23 Pa.C.S. § 2514.

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. The statute does not require notice to birth relatives who are not the birth parents, 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.

Rule 15.11 Notice of Right to File Statement of Medical, Personal, 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 a reference to information and instructions for the parent to file with the clerk and with the Department medical, personal, 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 clerk shall also include a reference to information and instructions to redact the birth parent's name from the child's original birth certificate.

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.** An executed proposed agreement for post-adoption contact and 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 the 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, and if not then presented, the proposed agreement shall be presented by petition to the court that will be presented with the adoption petition.

(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 child.

(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 child;

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

(3) whether the child 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 of the child’s minor siblings;

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

(8) whether the proposed agreement will impact the child'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 child and the child'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 the child and Prospective Adoptive Parents;

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

(12) whether the petitioner is aware of any evidence or substantiated allegation that the child has been abused or neglected by the birth relatives who are parties to the proposed agreement; and

(13) 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 child.

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

(1) A copy of the proposed agreement signed by the Prospective Adoptive Parents and the involved birth relatives;

(2) The child'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 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 child at the time of the petition's filing;

(C) the child 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;

(D) the child's guardian *ad litem* if one has been appointed; and any minor 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 when the petition with exhibits and the notice for filing a timely responsive pleading was mailed by first-class United States mail, postage prepaid, to those listed 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 child if one is not currently serving; and

(2) any minor siblings of the child 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 child, the court may issue a decree approving the proposed agreement attached to the petition, provided,

however, that any such decree shall not be issued less than 10 days after the date of service unless all of those entitled to notice under subparagraph (d)(1) of this Rule have signed consents, joined in the petition, or 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 cannot determine if the proposed agreement is in the best interest of the child;

(B) any person receiving notice of the filing of the petition under subparagraph (d)(1) files a responsive pleading in opposition 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 15.4. Notice of the hearing may be sent by first-class United States mail, postage prepaid, by electronic transmission, or by whatever other means will effectively inform everyone entitled to notice of the date, time, and place of the hearing.

(B) A certificate of service shall be presented to the court at the time of the hearing. The certificate of service shall indicate the method of notice and shall have attached thereto a copy of the notice, any affidavit by one who made personal service, any receipt cards for service sent by registered or certified mail, and any electronic receipt confirmation for service sent by electronic transmission.

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

Explanatory Comment: Although agreements providing for post-adoption contact and communication 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 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 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 an executed proposed agreement may be conducted immediately following a hearing to terminate parental rights by the same judge who presided over the termination hearing. This Rule 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 hearing to terminate parental rights.

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 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 one who has not attained the age of 18 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 a child or any of the child'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 a child who has attained 12 years of age to consent to the proposed agreement, best practices 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, the proposed agreement, as submitted, is in the child's best interests. Since the statute does not specify the 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 child who has attained 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 a child who has attained 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 Rule 15.13.

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 or certification of registration of the child's birth;

(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 name and address of the intermediary, 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 18 years of age, all vital statistics and other information required in the Report of the Intermediary, so far as is applicable;

(8) whether the original birth certificate or certification of registration of the child's birth has been filed with the clerk where the adoption petition is being filed, and if not whether a birth certificate or certification of registration of the child's birth is attached to the petition as an exhibit, and if not previously filed or attached, the reason why it is has not been filed or is not attached, the efforts made to obtain the birth certificate or certification of registration of the child's birth, and evidence available to establish a date and place of the adoptee's birth;

(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 23 Pa.C.S. § 6344(b), (d)(1) are attached to the petition as exhibits;

(11) whether there are any court orders that remain in effect as of the date of the petition's filing 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, guardianship, or adoption of the adoptee;

(12) whether there has been compliance with the Interstate Compact on the Placement of Children if 62 P.S. §§ 761 *et seq.* applies to this placement;

(13) if any of the reports or exhibits listed in subparagraphs (a)(6)–(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 the Prospective Adoptive Parents and the minor adoptee, if required by 23 Pa.C.S. § 2733(c), have been informed of the opportunity to enter into a Contact Agreement with any of the minor adoptee's birth relatives;

(15) if an agreement for post-adoption contact and 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 the Contact Agreement and court order are attached as exhibits to the petition; or

(B) a petition to approve the executed proposed agreement for post-adoption contact and 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 adoptee's proposed new name if a name change is desired;

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

(18) that each petitioner has read and understands the petition and believes the adoptee's needs and welfare will be promoted by the adoption.

(b) **Exhibits.** Unless the petition contains averments explaining why an exhibit is not attached, the following exhibits shall be attached to the petition:

(1) Unless previously filed with the clerk where the adoption petition is being filed, a birth certificate or certification of registration of the child's birth.

(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 23 Pa.C.S. § 6344(b).

(5) Copies of any court orders referenced in subparagraph (a)(11).

(6) Written approval by the Interstate Compact on the Placement of Children if 62 P.S. §§ 761 *et seq.* applies to this placement.

(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 written notice was provided to the Prospective Adoptive Parents and to the minor adoptee, if required by 23 Pa.C.S. § 2733(c), regarding the opportunity to enter into a Contact Agreement, that such notice was provided by hand delivery, by first-class United States mail, postage prepaid, to the last known address, or by electronic transmission in accordance with Rule 15.4(b)(1)(C), and the date(s) that such notice was provided. A copy of the 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 in accordance with Rule 15.4 unless the parental rights of such birth parent, putative father, or presumptive father were terminated in a prior proceeding.

(2) If, as part of the adoption hearing, the petitioners are seeking court approval of an executed proposed agreement for post-adoption contact and communication, the petitioner shall mail a copy of the petition to approve the proposed agreement and the accompanying exhibits in accordance with subparagraph (d)(1) of Rule 15.12 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 adoptee, 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. 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.

(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 or 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 to any other person or entity, 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. See 54 Pa.C.S. §702.

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 adoption petition 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 interests nevertheless are served by granting the adoption petition. *In re Adoption of R.B.F. and R.C.F.*, 803 A.2d 1195 (Pa. 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 waive the pertinent 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, putative father, or presumptive father whose rights are being terminated must receive notice of the adoption hearing in accordance with Rule 15.4. On the other hand, such persons do not need to be notified of the adoption hearing if (i) he or she 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) he or she 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) his or her 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. 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 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, or a copy of the child's United States passport, or both, if the 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.*, 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 of the Orphans' Court, 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 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 adopted child is younger than 12 years of age. *Cf.* 23 Pa.C.S. § 2711(a)(1). If the foreign born adopted child is 12 years of age or older, then the adopted child and parent(s) either may proceed under Rule 15.15 or follow the procedures set forth in 54 Pa.C.S. § 702. In this latter situation, the adopted child and parent(s) 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; 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 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 stepparent 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, 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 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 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 with a verification signed by the petitioners stating that the facts set forth therein are true and correct under penalties of 18 Pa.C.S. § 4904;
- (4) Copy of United States Visa;
- (5) Reports of investigations, home studies, preplacement and postplacement;
- (6) Copy of birth certificate of foreign born child (if available), with an English translation for those birth certificates not in English, certified by the translator to be a true and correct translation;
- (7) Copy of any other relevant foreign decrees and documents with an English translation for those decrees and documents not in English, certified by the translator to be a true and correct translation;
- (8) Consents of any person or agency having custody or legal or physical rights to the child;
- (9) Report of Intermediary (if an intermediary was involved) with a verification signed by the intermediary stating that the facts set forth therein are true and correct under penalties of 18 Pa.C.S. § 4904;
- (10) 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;

(11) Pennsylvania Department of Health, Division of Vital Records Form No. HD01275F, Statement of Citizenship and Residency; and

(12) A copy of U.S. Government Form N-560, Certificate of Citizenship, or a copy of the child's United States passport, or both, if the documents are available.

(c) **Form of Documents.** The Preliminary Decree, Final Decree, Petition for Adoption of a Foreign Born Child, and Report of Intermediary (if applicable) 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 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 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 or 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 or to any other person or entity, in connection with the adoption of the foreign born adoptee or adopted child. The court may request an itemization of any of the amounts reported.

(f) **Final Decree.** After the hearing, the court shall determine if the adoption of the foreign born 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, or a copy of the child's United States passport, or both, if the documents have been provided by the Prospective Adoptive Parents or adopting parent(s). The clerk shall issue to the Prospective Adoptive Parents 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 Parents 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, 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 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 Parents must proceed under Rule 15.15.

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 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 stepparent 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 of the Orphans' Court, 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.

Notice of the opportunity to enter into a Contact Agreement is not required to be given to the birth parent(s) of a foreign born child under either Rule 15.14 or Rule 15.15. If the adopted child has been issued an IR-2, IR-3, or IH-3 United States Visa, then the adoption has been completed in the native country of the foreign born adopted child pursuant to the laws and rules of that country. If the foreign born child has been issued an IR-4 or IH-4 United States Visa, then the child has been determined to be an orphan and the parental rights of the child's parents have been terminated pursuant to the laws of the child's native country. The child thus has no legal parents to receive notice. See Rule 15.15(d)(5).

Rule 15.16 Notice and Service in Subsequent Petitions Regarding Contact Agreements

(a) Service of the Petition.

(1) The petitioner shall mail by first-class United States mail, postage prepaid 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 20 days from the date indicated on the petition or notice letter, whichever is later, to the following:

(A) all parties to the Contact Agreement;

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

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

(D) all counsel who entered an appearance for any party, including appearing as counsel or 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.

(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 when the petition and the notice for filing a timely responsive pleading was mailed by first-class, United States mail, postage prepaid, to those listed in subparagraphs (1)(A)–(1)(D), as applicable.

(b) Service of Notice of the Hearing on the Petition.

(1) The petitioner shall provide notice of any scheduled hearing on a petition to modify, enforce, or discontinue the Contact Agreement to the same parties entitled to notice under subparagraph (a)(1) of this Rule and any other individual or entity that the court directs to receive notice.

(2) Notice of the hearing need not comport with the requirements of Rule 15.4, and notice of the hearing may be sent by first-class United States mail, postage prepaid, by electronic transmission, or by whatever other means will effectively inform everyone entitled to notice of the date, time, and place of the hearing.

(3) A certificate of service shall be presented to the court at the time of the hearing. The certificate of service shall indicate the method of notice and shall have

attached thereto a copy of the notice, any affidavit by one who made personal service, any receipt cards for service sent by registered or certified mail, and any electronic receipt confirmation for service sent by electronic transmission.

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 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 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 previously appointed 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) **Exhibits.** A copy of the Contact Agreement shall be attached to the petition.

(d) **Service.** The petition shall be served in accordance with Rule 15.16(a) and notice of any scheduled hearing shall be provided in accordance with Rule 15.16(b).

(e) **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 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 interests 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, the adopted child, or a sibling who has continuing contact or communication with the adopted child under the terms 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 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 previously appointed 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) **Exhibits.** A copy of the Contact Agreement shall be attached to the petition.

(d) **Service.** The petition shall be served in accordance with Rule 15.16(a) and notice of any scheduled hearing shall be provided in accordance with Rule 15.16(b).

(e) **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 enforcement of 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 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 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 previously appointed 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 interest of the adopted child.

(c) **Exhibits.** A copy of the Contact Agreement shall be attached to the petition.

(d) **Service.** The petition shall be served in accordance with Rule 15.16(a) and notice of any scheduled hearing shall be provided in accordance with Rule 15.16(b).

(e) **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, 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);

(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 and 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), 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 child, the minor birth parent, or a minor sibling of the child; provided that, the records and written documents concern the child, 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, 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 document in the form promulgated by the Department shall be forwarded to the Pennsylvania Adoption Information Registry (“PAIR”); and

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

(e) All documents described in subparagraphs (b)(1), (b)(2), (b)(3), (b)(4), (c)(1), and (c)(3) shall be stamped with the date of receipt and an acknowledgement of receipt shall be sent to the individual who filed the document or the clerk who sent 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, 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(g) 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(g) 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, 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, 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, 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, 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 preceding 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 a copy of 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 statements of medical, personal, 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), 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 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 18 years of age or has attained 18 years of age and been adjudicated incapacitated, including attaching a 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 18 years of age or has attained 18 years of age and been adjudicated incapacitated, including attaching a 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 parent of a birth parent, a statement 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 copy of the court decree of incapacity, or a copy of the death certificate, as applicable.

(F) If the requester is related to the adopted individual as a sibling through either one or both of the birth parents, the birth date of the requester, that the requester has attained 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 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 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 the adopted individual, the adopted individual's birth date and that the adopted individual has attained 21 years of age.

(B) If the subject of the request is a parent of a birth parent, the adopted individual's birth date, that the adopted individual has attained 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 copy of the court decree of incapacity, or a copy of the death certificate, as applicable.

(C) If the subject of the request is related to the adopted individual as a sibling through either one or both of the birth parents, the birth dates of both the adopted individual and his or her birth sibling, that both the adopted individual and the birth sibling have attained 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 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 copy of the birth sibling's adoption decree or the court order granting legal or physical custody of the birth sibling to another.

(b) The clerk shall accept and date stamp the request before forwarding it to the court for review and consideration.

(c) 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 questions in paragraph (c), 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 questions in paragraph (c), the court shall proceed under paragraphs (d) and (e), as applicable.

(d) If the request is for only non-identifying information, an authorization or consent to release information is not needed. To the extent available and provided that the information will 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), the court shall provide a written report containing information such as the date, time and location of the adopted individual's birth; the adopted individual's birth weight and other physical characteristics; where the adopted individual's birth parents were born; the age of the birth parents when the adopted individual was born; the marital status of the birth parents when the adopted individual was born; the facts and circumstances relating to the nature and cause of the adoption; the nationality, ethnic background, race, tribal affiliation, and religious preference of the adopted individual's birth parents; the educational level, course of study, general occupation, talents and hobbies of the adopted individual's birth parents; a general physical description of the adopted individual's birth parents and other birth relatives, including height, weight, color of hair, color of eyes, complexion, and other similar information; whether other children were born to the adopted individual's birth parent, and if so, available non-identifying information about these children; information regarding the adopted individual's birth grandparents; the name of the agency involved in the adoption; the length of time the adopted individual was in the custody of an adopting parent; whether the adopted individual was ever placed in foster care, and if so, the number of foster care placements, the beginning and end dates of each foster care placement, and any significant occurrences in any foster care placement; and available health history of the adopted individual and the adopted individual's birth relatives, including psychological and psychiatric information which may have an effect on the adopted individual's physical or mental health. This report shall be made available to the requester as provided by local rule or practice.

(e) If the request is for identifying information or contact, the court shall appoint an Authorized Representative who shall determine if the court file includes an unrevoked authorization or consent from the individual who is the subject of the request:

(1) If the court file does include such authorization or consent, the Authorized Representative shall determine whether and how to deliver the requested identifying information to the requester or arrange for contact between the requester and the subject of the request and then shall either respond to the requester or report to the

court if the Authorized Representative believes one of the circumstances described in subparagraph (3) exists.

(2) If the court file does not include such an authorization or consent, the Authorized Representative shall proceed in accordance with 23 Pa.C.S. § 2933 and his or her training and thereafter shall either respond to the requester or report to the court if the Authorized Representative believes one of the circumstances described in subparagraph (3) 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.

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

(g) Upon the filing of a statement of medical, personal, 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 (g) 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, 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), (d), and (e) as applicable.

(h) 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, 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.

The statutory deadlines set forth in 23 Pa.C.S. § 2932 for a court to notify a requester of the court's receipt of a non-identifying information request and to fulfill the request are not incorporated in this Rule because these deadlines are procedural and compliance may not be practical in all cases. The statutory deadlines are aspirational, rather than mandatory. Individual judges must view the specific circumstances when enforcing a request for information and a non-response.

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).