

**SUPREME COURT OF PENNSYLVANIA
ORPHANS' COURT PROCEDURAL RULES COMMITTEE**

NOTICE OF PROPOSED RULEMAKING

Proposed Amendment of Pa.R.O.C.P. 15.2, 15.3, 15.7, 15.8, 15.9, 15.10, and 15.13

The Orphans' Court Procedural Rules Committee is considering proposing to the Supreme Court of Pennsylvania the amendment of Pa.R.O.C.P. 15.2, 15.3, 15.7 – 15.10, and 15.13 to establish procedures relating to the Indian Child Welfare Act and Bureau of Indian Affairs regulations, for the reasons set forth in the accompanying publication report. Pursuant to Pa.R.J.A. 103(a)(1), the proposal is being published in the *Pennsylvania Bulletin* for comments, suggestions, or objections prior to submission to the Supreme Court.

Any report accompanying this proposal was prepared by the Committee to indicate the rationale for the proposed rulemaking. It will neither constitute a part of the rules nor be adopted by the Supreme Court.

Additions to the text of the proposal are bolded and underlined; deletions to the text are bolded and bracketed.

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

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Orphans' Court Procedural Rules Committee
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All communications in reference to the proposal should be received by **October 27, 2023**. E-mail is the preferred method for submitting comments, suggestions, or objections; any e-mailed submission need not be reproduced and resubmitted via mail. The Committee will acknowledge receipt of all submissions.

By the Orphans' Court
Procedural Rules Committee,

Julian E. Gray, Esq., Chair

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:

...

“Department” – the Department of Human Services of the Commonwealth;

“Indian child” – any unmarried person who is under age eighteen and is either (a) a member of an Indian tribe or (b) eligible for membership in an Indian tribe and is the biological child of a member of an Indian tribe;

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

...

[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).

The definition for “Indian child” originates from the Indian Child Welfare Act, 25 U.S.C. §§ 1901 et seq. and the Bureau of Indian Affairs regulations, 25 C.F.R. § 23.2.

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] shall** 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.

(c) Indian Child Welfare Act.

(1) Inquiry.

(i) At the commencement of the initial proceeding to terminate parental rights or to adopt, the court shall inquire as to the efforts made by the agency and the intermediary, if there is one, to determine whether the child is an Indian child and whether any participant has reason to know the child is an Indian child. All responses shall be placed on the record.

(ii) The court shall advise the participants of their obligation to report to the court if they subsequently receive information that provides a reason to know the child is an Indian child.

(2) Finding of Court. The court shall make a finding as to whether there is reason to know the child is an Indian child.

(3) Additional Requirements.

- (i) In the event the court has reason to know the child is an Indian child, but lacks sufficient evidence to make such a finding, the court shall confirm due diligence has been used to make such determination, and the court shall treat the child as an Indian child until it can determine, from the record, that the child does not meet the definition of an Indian child.
- (ii) If the court has sufficient evidence to conclude the child is an Indian child, then the notification and rights under the Indian Child Welfare Act shall apply.

[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.

The Indian Child Welfare Act, 25 U.S.C. §§ 1901 et seq. and the Bureau of Indian Affairs regulations, 25 C.F.R. § 23.107, require the court at the commencement of the initial proceeding to determine if any participant has reason to know whether the child is an Indian child.

For the definition of “Indian child,” see Pa.R.O.C.P. 15.2. The regulations place the burden on the court to ask every participant if there is any reason to know whether the child is an Indian child and to inform each participant of their ongoing obligation to inform the court if they subsequently learn of any reason to believe the child is an Indian child. Nothing in this rule is intended to prohibit the court from continuing to inquire at every subsequent proceeding. For determination of a reason to know whether a child is an Indian child, see 25 C.F.R. § 23.107. When a court knows or has reason to know that a child is an Indian child, see 25 C.F.R. § 23.111 for notice requirements. See also 25 C.F.R. § 23.11.

For additional requirements concerning the non-emergent placement of an Indian child, see 25 C.F.R. §§ 23.121-122. For the transfer of proceedings to the Indian child’s tribe, see 25 C.F.R. §§ 23.115-119. For requirements concerning voluntary proceedings for the placement of an Indian child, see 25 C.F.R. §§ 23.124-

.127. For the placement preferences of an Indian child, see 25 C.F.R. §§ 23.131-.132.

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)] subdivision (a)(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) **whether any petitioner has reason to know the child is an Indian child as defined in Rule 15.2;**
- (6)** the name and address of the agency having care of the child;
- [(6)](7)** the date when the child was placed with the agency;
- [(7)](8)** the reasons for seeking relinquishment;
- [(8)](9)** whether each petitioner has been informed of counseling services concerning the termination of parental rights and the alternatives thereto and provided with a list of qualified counselors and counseling services;
- [(9)](10)** whether each petitioner has received any counseling concerning the termination of parental rights and the alternatives thereto and, if so, the name of the organization or qualified counselor providing such counseling services;
- [(10)](11)** 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)](12)~~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)](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) 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.

(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.
- (5) **At the hearing, the court shall inquire, as provided in Rule 15.3(c), as to the efforts made by the petitioner to determine whether the child is an Indian child and whether anyone present has reason to know whether the child is an Indian child pursuant to Rule 15.3(c). All responses shall be placed on the record.**

[Explanatory] Comment: [Section 2733(c) of the Adoption Act requires the] The agency, the intermediary or an attorney for a party **[to] shall** 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. **See 23 Pa.C.S. § 2733(c).** 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).] See Pa.R.O.C.P. 15.3(b) (pertaining to prerequisites for any petition to terminate parental rights or to adopt).**

The court is required to inquire and determine whether the petitioner has reason to know whether the child is an Indian child. The court is also required to advise the participants of their obligation to report to the court if they subsequently receive information that provides a reason to know the child is an Indian child. See Pa.R.O.C.P. 15.3(c).

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)] subdivision (a)(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) **whether any petitioner has reason to know the child is an Indian child as defined in Rule 15.2;**
- (6)** the date when the child was placed with the Prospective Adoptive Parents;
- [(6)](7)** the date when the Report of Intention to Adopt was filed;
- [(7)](8)** the reasons for seeking relinquishment;
- [(8)](9)** whether each petitioner has been informed of counseling services concerning the termination of parental rights and the alternatives thereto and provided with a list of qualified counselors and counseling services;
- [(9)](10)** whether each petitioner has received any counseling concerning the termination of parental rights and the alternatives thereto and, if so, the name of the organization or qualified counselor providing such counseling services;
- [(10)](11)** 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)]~~~~(12)~~ 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)]~~~~(13)~~ 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)]~~~~(14)~~ 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.
- (5) **At the hearing, the court shall inquire, as provided in Rule 15.3(c), as to the efforts made by the petitioner to determine whether the child is an Indian child and whether anyone present has reason to know whether the child is an Indian child pursuant to Rule 15.3(c). All responses shall be placed on the record.**

[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).] See Pa.R.O.C.P. 15.3(b) (pertaining to prerequisites for any petition to terminate parental rights or to adopt).**

The court is required to inquire and determine whether the petitioner has reason to know whether the child is an Indian child. The court is also required to advise the participants of their obligation to report to the court if they subsequently receive information that provides a reason to know the child is an Indian child. See Pa.R.O.C.P. 15.3(c).

For additional information about notice of the opportunity to enter into a Contact Agreement, **[see the Explanatory Comment to Rule 15.7] see Pa.R.O.C.P. 15.7, cmt.**

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)] subdivision (a)(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) **whether any petitioner has reason to know the child is an Indian child as defined in Rule 15.2;**
- (6)** the date when the consent to adoption was executed by the consenter and that the consent was executed in accordance with 23 Pa.C.S. §§ 2711(c) and 2712;
- [(6)](7)** the number of days that have elapsed since the consent to adoption was executed by the consenter;
- [(7)](8)** 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)](9)** 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)](10)** 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)]~~(11)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)]~~(12)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.
- (4) **At the hearing, the court shall inquire, as provided in Rule 15.3(c), as to the efforts made by the petitioner to determine whether the child is an Indian child and whether anyone present has reason to know whether the child is an Indian child pursuant to Rule 15.3(c). All responses shall be placed on the record.**

[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).] See Pa.R.O.C.P. 15.3(b).**

The court is required to inquire and determine whether the petitioner has reason to know whether the child is an Indian child. The court is also required to advise the participants of their obligation to report to the court if they subsequently receive information that provides a reason to know the child is an Indian child. See Pa.R.O.C.P. 15.3(c).

For additional information about notice of the opportunity to enter into a Contact Agreement, **[see the Explanatory Comment to Rule 15.7] see Pa.R.O.C.P. 15.7, cmt.**

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) **whether any petitioner has reason to know the child is an Indian child as defined in Rule 15.2;**

(5) the name, address, age, and racial background of the birth parents, including the birth father, presumptive father, and putative father;

[(5)](6) if a birth father, presumptive father or putative father is not identified in the above subparagraph, whether a claim for paternity has been filed under 23 Pa.C.S. § 5103 (relating to claim of paternity);

[(6)](7) 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)](8) the date when the child was placed in the care of the petitioner;

[(8)](9) 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)](10) 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)](11) 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)](12) 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)]~~(13)one of the following:

~~[(A)]~~(i)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)]~~(ii)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)]~~(iii)the reason(s) why such notice cannot be given, including efforts made to identify or locate the subject person.

~~[(13)]~~(14)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; and

~~[(14)]~~(15)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)(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.
- (4) **At the hearing, the court shall inquire, as provided in Rule 15.3(c), as to the efforts made by the petitioner to determine whether the child is an Indian child and whether anyone present has reason to know whether the child is an Indian child pursuant to Rule 15.3(c). All responses shall be placed on the record.**

(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 must be filed with the clerk by the time of filing the initial petition to terminate parental rights. **[See Rule 15.3(b). See Pa.R.O.C.P. 15.3(b).**

The court is required to inquire and determine whether the petitioner has reason to know whether the child is an Indian child. The court is also required to advise the participants of their obligation to report to the court if they subsequently receive information that provides a reason to know the child is an Indian child. See Pa.R.O.C.P. 15.3(c).

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.] see Pa.R.O.C.P. 15.6.**

[Section 2733(c) of the Adoption Act requires the] The agency or intermediary, counsel representing the agency or intermediary, or counsel representing any other party **[to] shall** 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 15.13. Adoption.

- (a) **Petition.** A petition for adoption under 23 Pa.C.S. § 2701 shall contain the following averments:
- (1) the name, current address, any other addresses for the past five years, marital status, age, occupation, racial background, and religious affiliation of the petitioners;
 - (2) the name of the adoptee as it appears on the birth certificate;
 - (3) the relationship, if any, of the petitioners to the adoptee;
 - (4) whether the adoptee has resided with the petitioners, and if so, the length of time that adoptee has so resided with the petitioners;
 - (5) the intermediary's name and address, if any;
 - (6) whether the home study and preplacement report under 23 Pa.C.S. § 2530, the Report of an Intention to Adopt under 23 Pa.C.S. § 2531, and the Report of Intermediary under 23 Pa.C.S. § 2533 have been filed;
 - (7) if there is no intermediary, if no Report of the Intermediary has been or will be filed, or if the adoptee has attained 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 adoptee'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 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 and as required by 23 Pa.C.S. § 6344(b) are attached to the petition as exhibits;

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

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

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

~~[(C)](iii)~~ 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) **whether any petitioner has reason to know the child is an Indian child as defined in Rule 15.2;**

- ~~(14)~~ if any of the reports or exhibits listed in **[subparagraphs (a)(6)–(a)(12)] subdivisions (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)](15)~~ 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)](16)~~ 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)](i)~~ 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)](ii)~~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)](17)~~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)](18)~~that the petitioners desire to have "a parent-child" relationship established between the petitioners and the adoptee; and

~~[(18)](19)~~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 and as required by 23 Pa.C.S. § 6344(b).
- (5) Copies of any court orders referenced in **[subparagraph (a)(11)] subdivision (a)(11)** above.
- (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] Rule 15.12(d)(1)** to the individuals and entities therein listed, shall file a certificate of service as provided in **[subparagraph (d)(2) of Rule 15.12] Rule 15.12(d)(2)**, and shall provide notice of the adoption hearing to these individuals and entities as provided in **[subparagraph (f)(3) of Rule 15.12] Rule 15.12(f)(3)**.

- (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. See 23 Pa.C.S. §§ 2721-2724. Petitioner(s) and the adoptee shall appear at the hearing. **At the hearing, the court shall inquire, as provided in Rule 15.3(c), as to the efforts made by the petitioner to determine whether the child is an Indian child and whether anyone present has reason to know whether the child is an Indian child pursuant to Rule 15.3(c). All responses shall be placed on the record.** After a hearing, if the court determines that the adoption can be granted, the court shall enter a decree conforming to the

requirements of 23 Pa.C.S. §§ 2901-2902, 2904. See 23 Pa.C.S. §§ 2901-2902, 2904.

- (1) If the petition for adoption contains averments requesting that the court waive a statutory requirement of the Adoption Act, the court shall determine if the petitioner has shown cause for failing to meet the statutory requirement and has demonstrated that the adoptee's needs and welfare nevertheless will be best served by entering a decree of adoption.
 - (2) At the hearing on the petition for adoption, there shall be offered in evidence a report, verified by the petitioners 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] shall** 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] Subdivision (c)(1) 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.

The court is required to inquire and determine whether the petitioner has reason to know whether the child is an Indian child. The court is also required to advise the participants of their obligation to report to the court if they subsequently receive information that provides a reason to know the child is an Indian child. See Pa.R.O.C.P. 15.3(c).

**SUPREME COURT OF PENNSYLVANIA
ORPHANS' COURT PROCEDURAL RULES COMMITTEE**

PUBLICATION REPORT

Proposed Amendment of Pa.R.O.C.P. 15.2, 15.3, 15.7, 15.8, 15.9, 15.10, and 15.13

The Orphans' Court Procedural Rules Committee ("Committee") is considering proposing to the Supreme Court of Pennsylvania the amendment of Pa.R.O.C.P. 15.2, 15.3, 15.7 – 15.10, and 15.13 to provide procedures relating to the Indian Child Welfare Act ("Act") and Bureau of Indian Affairs regulations.

The Act creates a policy for the United States:

to protect the best interests of Indian children and to promote the stability and security of Indian tribes and families by the establishment of minimal Federal standards for the removal of Indian children from their families and the placement of such children in foster or adoptive homes which will reflect the unique values of Indian culture, and by providing for assistance to Indian tribes in the operation of child and family service programs.

25 U.S.C. § 1902. *See also Haaland v. Brackeen*, 599 U.S. ___, 143 S.Ct. 1609, 1623 (2023) ("The Act thus aims to keep Indian children connected to Indian families.") The Act further provides "[a]n Indian tribe shall have jurisdiction exclusive as to any State over any child custody proceeding involving an Indian child..." 25 U.S.C. § 1911.

In 2016, the Bureau of Indian Affairs promulgated regulations relating to the Act. The regulations require state courts to determine on the record, at the initial proceeding, whether a child subject to a "child custody proceeding" is an Indian child. *See also* 25 U.S.C. §1903; 25 C.F.R § 23.2 (defining "child custody proceeding"); 25 C.F.R. § 23.103 (identifying proceedings in which the Act applies). The courts must also advise the participants of an ongoing obligation to inform the court if any of them subsequently learns the child is an Indian child. 25 C.F.R. § 23.107. If there is reason to know the child is an Indian child, several protections outlined in the Act and regulations must be afforded to the child.

The Committee began rulemaking to implement the Bureau of Indian Affairs regulations in the adoption rules. However, a federal district court in the Northern District of Texas held portions of the Act to be unconstitutional and certain of the regulations to be invalid. *See Brackeen v. Zinke*, 338 F.Supp.3d 514 (N.D. Tx. 2018). The case was appealed to the Fifth Circuit Court of Appeals and the District Court's order was stayed. *See Brackeen v. Berhardt*, *appeal docketed*, No. 18-11479 (5th Cir. Nov. 19, 2018). Because *Brackeen* involved the Act and regulations relied upon by the Committee in

rulemaking, the Committee suspended rulemaking pending the outcome of the litigation. On June 15, 2023, the Supreme Court decided the appeal, holding that the Act was constitutional. See *Haaland v. Brakeen*, 599 U.S. ___, 143 S.Ct. 1609 (2023).

With *Brackeen* decided, the Committee proposes amending Rules 15.2, 15.3, 15.7, 15.8, 15.9, 15.10, and 15.13 to require orphans' courts at the initial proceeding to inquire as to the efforts made by the agency or intermediary, if there is one, to determine whether the child is an Indian child and whether any participant has reason to know the child is an Indian child. The court would be required to advise the participants of an ongoing obligation to inform the court if any of them subsequently learn the child is an Indian child.

Rule 15.2 contains the statutory definition from the Act for "Indian child." The definition applies to those rules requiring that the initiating filing contain an allegation of whether a child is an Indian child. Rule 15.3(c) contains the requirements for the inquiry and determination of whether a child is an Indian child. The requirements apply to those rules containing findings related to the initial proceedings, *i.e.*, commencement of proceedings.

Five rules providing for initial proceedings were identified: 1) Rule 15.7 – voluntary relinquishment to agency; 2) Rule 15.8 – voluntary relinquishment to adult intending to adopt child; 3) Rule 15.9 – alternative procedure for relinquishment by confirmation of consent to adoption; 4) Rule 15.10 – involuntary termination of parental rights; and 5) Rule 15.13 – adoption. Proposed amendments relating to identification of an Indian child were added to each rule.

It should be noted that proceedings involving the same child could have multiple "initial proceedings," such as a termination of parental rights hearing and a hearing on an adoption petition. The same individual may not be the petitioner for all initial proceedings and not all parties may be present at earlier proceedings. Therefore, to identify Indian children as soon as possible and to accommodate the various methods of initiating a proceeding, the pleading, inquiry, and determination requirements have been added to all five proceedings with an understanding that it may be duplicative in some scenarios.

The Committee invites all comments, concerns, and suggestions regarding this rulemaking proposal.