

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

ADOPTION REPORT

**Amendment of Pa.R.O.C.P. 15.2, 15.7, 15.8, 15.9, 15.10, and 15.13
and Adoption of Pa.R.O.C.P. 15.24**

On July 29, 2026, the Supreme Court amended Rules 15.2, 15.7, 15.8, 15.9, 15.10, and 15.13 and adopted Rule 15.24 of the Pennsylvania Rules of Orphans' Court Procedure. The rule changes are intended to implement the Bureau of Indian Affairs regulation, 25 C.F.R. § 23.107, promulgated pursuant to the Indian Child Welfare Act, 25 U.S.C. §§ 1901 *et seq.* ("ICWA"), in termination of parental rights and adoption proceedings. The Orphans' Court Procedural Rules Committee has prepared this Adoption Report describing the rulemaking process. An Adoption Report should not be confused with Comments to the rules. See Pa.R.J.A. 103, cmt. The statements contained herein are those of the Committee, not the Court.

In 2016, concurrent with the Committee's review and rewrite of the rules governing termination of parental rights and adoption proceedings, the Bureau of Indian Affairs promulgated regulations pursuant to ICWA. Specifically, the regulations were amended to, *inter alia*, add a new Subpart I regarding ICWA. See 25 C.F.R. §§ 23.101-.144. The new Subpart was presented in a question-and-answer format and one of the questions under "pretrial requirements" is "how should a state court determine if there is a reason to know the child is an Indian child?".¹ See 25 C.F.R. § 23.107. To which, the regulation provides the following answer:

State courts must ask each participant in an emergency or voluntary or involuntary child-custody proceeding whether the participant knows or has reason to know that the child is an Indian child. The inquiry is made at the commencement of the proceeding and all responses should be on the record. State courts must instruct the parties to inform the court if they subsequently receive information that provides reason to know the child is an Indian child.

Id. § 23.107(a). Several federal protections apply to child-custody proceedings if there is reason to know the child is an Indian child. See 25 C.F.R. §§ 23.107 – 23.140.

¹ "Indian child" is a defined term in ICWA. See 25 U.S.C. § 1903(4). "Child-custody proceeding" is a defined term and includes, but is not limited to, termination of parental rights and adoption proceedings. See 25 C.F.R. § 23.2.

During the course of rulemaking, litigation arose concerning the constitutionality of the Act and validity of the BIA's regulations. See *Brackeen v. Zinke*, 338 F.Supp.3d 514 (N.D. Tx. 2018). That litigation has since been resolved. See *Haaland v. Brackeen*, 599 U.S. 255 (2023). Upon the resolution of *Brackeen*, the Committee resumed its rulemaking efforts and published proposed amendments to Rules 15.2, 15.3, 15.7, 15.8, 15.9, 15.10, and 15.13 to implement 25 C.F.R. § 23.107. See 53 Pa.B. 5113 (August 19, 2023).

The Committee received one comment in response to the publication suggesting that the proposed amendments place an undue burden on the court and that the inquiry occurs too late in the process to be effective. Rather than having the court make an inquiry and finding at the time of the initial proceeding, it was suggested that the petitioner should provide a responsive certification at the time of filing the petition.

While the Committee was sensitive to concerns regarding burdens on the court, it is the federal regulations that place the burden on the court to ask every participant if there is a 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. See 25 C.F.R. § 23.107(a). Thus, the Committee was not persuaded by the suggestion to diminish the role of the courts in identifying Indian children.

The Committee then suspended its efforts during the pendency of similar rulemaking by the Juvenile Court Procedural Rules Committee to ensure consistency with any adopted rules. Following the Court's adoption of rules implementing these concepts in dependency proceedings, see 55 Pa.B. 244 (January 11, 2025), the Committee resumed rulemaking to incorporate substantive and stylistic post-publication changes before transmittal to the Court.

First, the Committee restyled Rule 15.2 (Definitions) by adding subdivisions and updating the numbering scheme. Second, provisions related to the Indian child inquiry, findings of court, and related requirements were relocated from Rule 15.3, as proposed, to a standalone rule insofar as they are not prerequisites to a petition filing but rather made at the time of filing the petition and at the hearing. New Rule 15.24 (Indian Child) is substantially similar to Pa.R.J.C.P. 1203.

Third, in Rule 15.7(c)(5), pertaining to the court's inquiry regarding Indian child status, the Committee revised the phrase "whether anyone present" to "whether any participant" to reflect the language of 25 C.F.R. § 23.107(a). Similar changes were made to Rules 15.8, 15.9, 15.10, and 15.13.

Fourth, Rule 15.13(e), pertaining to the adoption hearing, was revised by adding subdivisions and titles for ease of reading due to its extended length and coverage of multiple subjects.

Fifth, the Committee made numerous post-publication stylistic changes to the proposal.

Finally, the Committee considered whether Rules 15.14 and 15.15, pertaining to the adoption of foreign born children, also referred to as “international adoptions,” should be amended to incorporate ICWA provisions. The Committee did not identify any federal or state case law that applied ICWA to the adoption of a minor from a foreign country by a United States citizen. Review of the federal regulations reflected that, while an ICWA review is required for a child who is emigrating from the United States for adoption, there is not a corresponding requirement for a child immigrating to the United States for that purpose. “In placing the child for adoption, the agency or person: ... (3) Complies with all applicable requirements of the Indian Child Welfare Act.” See 22 C.F.R. § 96.54(c)(3) (pertaining to placement standards in outgoing international adoption cases). Presumably, if the United States Department of State had intended for ICWA protections to apply to adoptions of foreign born children, a provision similar to § 96.54(c)(3) would have been added to the regulations concerning adoptions of foreign born children. Therefore, the Committee made no further changes to incorporate ICWA considerations in Rules 15.14 and 15.15 relating to adoption of foreign born children.

The new rule and amendments become effective on October 1, 2026.