

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

Publication Notice

With respect to rules regarding adoptions, the Orphans' Court Procedural Rules Committee is recommending new Supreme Court Orphans' Court Rules 15.2, 15.7, 15.9, 15.10, 15.14, 15.15, 15.16, 15.17, 15.18, 15.19, and 15.21, as well as amending and renumbering current Rules 15.1, 15.2, 15.3, 15.4, 15.5, 15.6, 15.7, 15.8, and 15.9. Pursuant to Pennsylvania Rule of Judicial Administration 103(a)(1), these proposed new rules and amendments to current rules are being published for comment.

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

Proposed new rule numbers and rule additions are underlined. Proposed new rules are so indicated underneath the rule's title, rather than having the entire text underlined. Deletions are contained in bolded brackets.

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

All communications concerning the proposed new and amended adoption rules should be sent no later than Friday, December 27, 2013, to:

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By the Orphans' Court Procedural Rules Committee

Margaret Gallagher Thompson,
Chair

EXPLANATORY REPORT

BACKGROUND

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

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

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

In part, Act 101 amended the Adoption Act to provide an option for prospective adoptive parents and birth relatives to enter into voluntary, but legally enforceable,

agreements so that adopted children can have ongoing communication or contact with their birth family, if desirable and if desired by all the involved parties. Enforcing voluntary post-adoption contact agreements through the courts is new; but, the concept of these agreements is not. For years adopting and biological parents have recognized the benefits of post-adoption contact, and they have made such agreements among themselves informally and adhered to the arrangements in good faith. Nothing in Act 101 or these proposed rules precludes or discourages the use of such informal arrangements. However, by complying with the statute and these proposed rules, as ultimately adopted, the parties will have a judicially approved agreement for post-adoption communication or contact that can be enforced in the court that finalized the adoption, upon proper petition.

Act 101 also amended the Adoption Act to allow for the collection of a birth parent's social history in addition to personal and medical history and to permit attorneys to forward their records and information to the court for maintenance as part of the court record.

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

- an adopting parent if the adoptee has been adjudicated incapacitated or is deceased;
- the legal guardian of an adoptee who has been adjudicated incapacitated;
- the issue of a deceased adoptee;
- a birth parent if the adoptee has attained age 21;
- a parent of a birth parent if the adoptee has attained age 21 and the birth parent consents, is incapacitated, or deceased; and
- a birth sibling of an adoptee if both individuals have attained age 21 and the birth sibling meets one of the following criteria:
 1. The birth sibling remained in the custody of a birth parent, and that birth parent consents, is deceased, or is incapacitated;
 2. The birth sibling and the adoptee were both adopted out of the same birth family; or
 3. The birth sibling was not adopted out of the birth family, but did not remain in the custody of the birth parent.

Act 101 then provides extensive procedures for the handling of such informational requests by the court that finalized the adoption, the agency that

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

RECOMMENDATION

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

(1) Amendments to existing rules so that the court can ensure birth parents, prospective adoptive parents, and proposed adoptees (in certain instances) received notice of the opportunity of birth relatives to enter into agreements for post-adoption contact or communication which become legally enforceable, upon court approval, and amendments to existing rules to accurately reference statements of medical and personal and/or social history information, their maintenance in the court record, and their accessibility. (See Proposed Rule 15.5(a)(10), (a)(12), (b)(5), Proposed Rule 15.6(a)(11), (a)(13), (b)(4), Proposed Rule 15.8(a)(10), (b)(3), Proposed Rule 15.7(a)(11), (a)(13), (b)(4), Proposed Rule 15.9, Proposed Rule 15.11(a)(11), (b)(4), and Proposed Rule 15.13(b)(3), (b)(11)).

(2) A proposed new Rule 15.7 to address the statutory alternative procedure for confirmed consent created in Section 2504 of the Adoption Code, 23 Pa.C.S. § 2504. (See Proposed Rule 15.7).

(3) New rules implementing Act 101's provisions regarding the court's approval of voluntary post-adoption contact agreements and the procedure by which the court may modify, enforce, or discontinue such court-approved voluntary post-adoption contact agreements. (See Proposed Rules 15.10, 15.14, 15.15, 15.16, 15.17 and 15.18).

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

petitioner to present evidence establishing cause. (See Proposed Rule 15.11(a)(10), (e)(1)).

(5) New rules and amendments to the existing confidentiality rule to implement Act 101's provisions for releasing information in the court file, including requests for non-identifying information, identifying information and/or for contact. (See Proposed Rules 15.19, 15.20, and 15.21).

The search and contact provisions of Act 101 pose special problems for the court system. The proposed rules are predicated upon an understanding that the county Orphans' Courts (and Family Court in Philadelphia) can delegate the responsibility for search and contact to private adoption agencies, individuals, or the county Children and Youth Service Agencies so long as the delegate has successfully completed a standardized Department of Public Welfare training program. Act 101 allows a reasonable fee for services permitted by the Act, including a fee for responses to requests for information or contact.

Finally, Act 101 imposes certain time deadlines for responding to requests for information and contact. The Committee has declined to incorporate such deadlines in these proposed rules. The Committee assumes the handling of requests for information will be completed expeditiously and consistent with other important judicial responsibilities concerning terminations of parental rights, adoptions hearings, fast track appeals, and other priorities related to children and youth. If that proves not to be the case, the Committee proposes to revisit the issue.