

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

NOTICE OF PROPOSED RULEMAKING

**Proposed Amendment of Rules 4.5, 4.6, 15.4, 15.7, 15.8, 15.9, 15.10, and 15.13 and
Adoption of Form A-13 of the Pennsylvania Rules of Orphans' Court Procedure**

The Orphans' Court Procedural Rules Committee is considering proposing to the Supreme Court of Pennsylvania the amendment of Rules 4.5, 4.6, 15.4, 15.7, 15.8, 15.9, 15.10, and 15.13 and the Adoption of Form A-13 of the Pennsylvania Rules of Orphans' Court Procedure 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 officially 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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All communications in reference to the proposal should be received by **November 5, 2025**. 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,

Kendra D. McGuire, Esq.
Chair

Rule 4.5. Service of Legal Paper by Court and Clerk.

- (a) **[The] Except as provided in subdivision (c), the** clerk and the court may serve all notices, opinions, and orders via electronic means **[where any one of the following has occurred] if:**
- (1) the parties have agreed to receipt of legal paper by electronic transmission;
 - (2) the underlying legal paper related to the notice, opinion or order was electronically filed; or
 - (3) an email address appears on an entry of appearance or other legal paper previously filed with the clerk in the action.
- (b) **[The] Except as provided in subdivision (c), the** clerk and the court may serve all notices, opinions, and orders by facsimile in accordance with **[Rule 4.3(c)] Pa.R.O.C.P. 4.3(c).**
- (c) **This rule does not apply to the service of hearing notices and scheduling orders that have been waived pursuant to Pa.R.O.C.P. 15.4(b)(1), (b)(2), or (b)(3)(iii).**

[Note: Rule 4.5] Comment: Pa.R.O.C.P. 4.5 is based upon former **[Rule 3.7(i)] Pa.R.O.C.P. 3.7(i)**; it has been reformatted and relocated to this Chapter IV. **The rule differs from its counterpart in former Rule 3.7(i) in several respects. First, this rule permits the clerk and the court to serve not only notices, but also opinions and orders, via electronic means as well as by facsimile. Second, it provides that the clerk and court are permitted to send notices, opinions, and orders via electronic means if the underlying legal paper was filed electronically. Service from the court and clerk can occur even if the local judicial district has not implemented electronic filing.**

Subdivision (c) pertains to the service of a notice of a hearing to terminate parental rights pursuant to Pa.R.O.C.P. 15.4(b)(1), (b)(2), or (b)(3)(iii). In some judicial districts, a hearing notice may be known as a “scheduling order.” Any person entitled to notice of the hearing may waive in writing such notice, except for: (1) a petitioning birth parent in a voluntary termination of parental rights proceeding pursuant to Pa.R.O.C.P. 15.7 or 15.8; or (2) a person who is the subject of an involuntary termination of parental rights proceeding and whose parental rights are sought to be terminated pursuant to Pa.R.O.C.P. 15.10.

Historical Commentary

The following commentary is historical in nature and represents statements of the Committee at the time of rulemaking:

Explanatory Comment: This Rule 4.5 differs from its counterpart in former Rule 3.7(i) in several respects: first, this Rule permits the clerk and court to serve not only notices, but also opinions and orders, via electronic means as well as by facsimile; and second, it provides that the clerk and court are able to send notices, opinions, and orders via electronic means if the underlying legal paper was filed electronically. Service from the court and clerk as provided in Rule 4.5 can occur even if the local judicial district has not implemented electronic filing.

Rule 4.6. Notice of the Date of Entry of an Adjudication or Court Order on the Docket.

- (a) **[The] Except as provided in subdivision (c), the** clerk shall immediately give written notice of the entry of an adjudication or court order in a particular matter to each interested party's counsel of record or, if unrepresented, to each interested party. The notice shall include a copy of the adjudication or court order.
- (b) The clerk shall note in the docket the date when notice was given to the interested party or to his or her counsel under **[subparagraph (a) of this Rule] subdivision (a)**.
- (c) **This rule does not apply to the service of hearing notices and scheduling orders that have been waived pursuant to Pa.R.O.C.P. 15.4(b)(1), (b)(2), or (b)(3)(iii).**

[Note: Rule 4.6] Comment: This rule has no counterpart in **the** former Orphans' Court **[Rule] Rules**, but is derived from **[Pa.R.C.P. No. 236.] Pa.R.Civ.P. 236**.

Subdivision (c) pertains to the service of a notice of a hearing to terminate parental rights pursuant to Pa.R.O.C.P. 15.4(b)(1), (b)(2), or (b)(3)(iii). In some judicial districts, a hearing notice may be known as a “scheduling order.” Any person entitled to notice of the hearing to terminate parental rights may waive in writing such notice, except for: (1) a petitioning birth parent in a voluntary termination of parental rights proceeding pursuant to Pa.R.O.C.P. 15.7 or 15.8; or (2) a person who is the subject of a involuntary termination of parental rights proceeding and whose parental rights are sought to be terminated pursuant to Pa.R.O.C.P. 15.10.

Rule 15.4. Notice of Hearing to Terminate Parental Rights; Method and Time.

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

- (1) For a petition filed under **[Rule 15.7] Pa.R.O.C.P. 15.7, [(relating to Voluntary Relinquishment to Agency)]**, or **[Rule 15.8] Pa.R.O.C.P. 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), **except for a petitioning birth parent who is self-represented.**
- (2) For a petition filed under **[Rule 15.9] Pa.R.O.C.P. 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] Pa.R.O.C.P. 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] Service.**

(1) **Voluntary Relinquishment.**

(i) **Generally.** For a proceeding under **[Rule 15.7] Pa.R.O.C.P. 15.7** (relating to Voluntary Relinquishment to Agency) or **[Rule 15.8] Pa.R.O.C.P. 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] served by the petitioner** 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.

(ii) [Any] Waiver. Except for a petitioning birth parent, any person entitled to notice of the hearing may waive in writing such notice by filing the form provided in the Appendix to these rules and serving it on the petitioner and any other person entitled to the notice.

(2) Alternative Procedure for Relinquishment.

(i) Generally. For a proceeding under **[Rule 15.9] Pa.R.O.C.P. 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] served by the petitioner** 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.

(ii) **Waiver.** Any person entitled to notice of the hearing may waive in writing such notice **by filing the form provided in the Appendix to these rules and serving it on the petitioner any other person entitled to the notice.**

(3) **Involuntary Termination of Parental Rights.**

[(A)](i) Generally. For a proceeding under **[Rule 15.10] Pa.R.O.C.P. 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] served by the petitioner** 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; or
- (C) such other means including electronic transmission as the court may require under the facts of the individual case.

[(B)](ii)Petition. 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)](iii)Waiver. 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 **by filing the form provided in the Appendix to these rules and serving it on the petitioner any other person entitled to the notice.**

[(4)](c)Service by Publication. 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] service** by publication shall be **[given] made by the petitioner** as directed by the court, after a motion in accordance with **[Pa.R.C.P. No. 430(a)] Pa.R.Civ.P. 430(a)** and upon a finding by the court that a reasonable investigation was made.

[(A)](1)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)](2)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)](3)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)](d)Other Persons Entitled to Notice. 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)](e)Service of Other Legal Papers. 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)](f)Timing of Notice. Notice of the hearing shall be **[provided] served** at least **[10] ten** days prior to the date of the hearing.

(g) Revocation of Waiver.

(1) Any person who waives service of the hearing notice pursuant to subdivision (b)(1), (b)(2), or (b)(3)(iii) may subsequently revoke the waiver by filing a written revocation of the waiver and serving it on the petitioner any other person entitled to the notice.

(2) Revocation of a waiver of service of the hearing notice does not affect the validity of a consent given pursuant to 23 Pa.C.S. § 2504.

Comment: A petitioning birth parent who is self-represented in a proceeding under Pa.R.O.C.P. 15.7 (Voluntary Relinquishment to Agency) or Pa.R.O.C.P. 15.8 (Voluntary Relinquishment to Adult Intending to Adopt Child) is not required to serve notice of the hearing upon himself or herself. All other circumstances require service of notice of the hearing on a petitioning birth parent, including by an agency, a third party, or counsel for the petitioning birth parent.

A petitioning birth parent in a voluntary relinquishment proceeding may not waive service of the hearing notice because the petitioning birth parent is required to be at the hearing and be available to be examined under oath. See Pa.R.O.C.P. Rules 15.7(c)(3), 15.8(c)(3). Similarly, a person who is the subject of an involuntary termination of parental rights proceeding and whose parental rights are sought to be terminated pursuant to Pa.R.O.C.P. 15.10 may not waive service of the hearing notice.

A waiver of service of the hearing notice does not apply to any other legal papers or orders issued in the proceeding, including, but not limited to, a termination order, a notice of the right to file medical, personal or social history information with the court or Department, or a Contact Agreement.

As used in this rule, personal service means service by handing a copy to the person entitled to notice.

See Pa.R.Civ.P. 76 that certified mail is the equivalent of registered mail.

The notice required by subdivision (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 assistance 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); Pa.R.O.C.P. 15.10(d)(2). See also Pa.R.O.C.P. 1.40 (pertaining to petitions to proceed *in forma pauperis*).

See Pa.R.Civ.P. 430(a) regarding the averments necessary in a motion for alternative service if service cannot otherwise be accomplished. If the motion under Pa.R.Civ.P. 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 subdivisions (b)(1)(iii) and (b)(2)(iii), unless a person consents in writing to notices being sent by electronic transmission. In the alternative, a court may, per subdivisions (b)(1)(iv), (b)(2)(iv), and (b)(3)(i)(C), 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.

Historical Commentary

The following commentary is historical in nature and represents statements of the Committee at the time of rulemaking:

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 15.7. 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) 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] petitioning** birth parent regarding the opportunity **[of] for** 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)] pursuant to Pa.R.O.C.P. 15.4(e)**, and the **[date(s)] date** 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)] pursuant to Pa.R.O.C.P. 15.4(e)**, and the **[date(s)] date** that such notice was given[,], or the **[reasons] reason** 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)] Pa.R.O.C.P. 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] served on** 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)] Pa.R.O.C.P. 15.4(b)(1).**
- (3) The **[petitioner] petitioning** 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)] pursuant to Pa.R.O.C.P. 15.4(e),** and the **[date(s)] date** that such notice was given or the **[reasons] reason** 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.

Comment: The agency, the intermediary, or an attorney for a party 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 a birth relative may enter and become a party 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 Pa.R.O.C.P. 15.3(b).

A petitioning birth parent who is self-represented in a proceeding under this rule is not required to serve notice of the hearing upon himself or herself. See Pa.R.O.C.P. 15.4(b)(1). All other circumstances require service of notice of the hearing on a petitioning birth parent, including by counsel of the petitioning birth parent.

Historical Commentary

The following commentary is historical in nature and represents statements of the Committee at the time of rulemaking:

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)] 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) 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] Pa.R.O.C.P. 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] petitioning** 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)] pursuant to Pa.R.O.C.P. 15.4(e)**, and the **[date(s)] date** 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)] pursuant to Pa.R.O.C.P. 15.4(e)**, and the **[date(s)] date** that such notice was given[,], or the **[reason(s)] reason** 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)] Pa.R.O.C.P. 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] served on** 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)] Pa.R.O.C.P. 15.4(b)(1)**.
- (3) The **[petitioner] petitioning** 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)] pursuant to Pa.R.O.C.P. 15.4(e)**, and the **[date(s)] date** that such notice was given or the **[reason(s)] reason** 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.

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 Pa.R.O.C.P. 15.3(b). For additional information about notice of the opportunity to enter into a Contact Agreement, see Pa.R.O.C.P. 15.7, cmt.

A petitioning birth parent who is self-represented in a proceeding under this rule is not required to serve notice of the hearing upon himself or herself. See

Pa.R.O.C.P. 15.4(b)(1). All other circumstances require service of notice of the hearing on a petitioning birth parent, including by counsel for the petitioning birth parent.

Historical Commentary

The following commentary is historical in nature and represents statements of the Committee at the time of rulemaking:

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.

...

(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)] pursuant to Pa.R.O.C.P. 15.4(e)**, and the **[date(s)] date** 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)] pursuant to Pa.R.O.C.P. 15.4(e)**, and the **[date(s)] date** on which such notice was given[,], or the **[reasons] reason** 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)] Pa.R.O.C.P. 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] served on** 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)] Pa.R.O.C.P. 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)] pursuant to Pa.R.O.C.P. 15.4(e)**, and the **[date(s)] date** that such notice was given[,], or the **[reason(s)] reason** 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.

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 Pa.R.O.C.P. 15.3(b). For additional information about notice of the opportunity to enter into a Contact Agreement, see Pa.R.O.C.P. 15.7, cmt.

Historical Commentary

The following commentary is historical in nature and represents statements of the Committee at the time of rulemaking:

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.

...

(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)] pursuant to Pa.R.O.C.P. 15.4(e)**, and the **[date(s)] date** that such notice was given[,], or the **[reason(s)] reason** 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)] Pa.R.O.C.P. 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. § 2513 and **[Rule 15.4(b)(3)] Pa.R.O.C.P. 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)] pursuant to Pa.R.O.C.P. 15.4(e), and the [date(s)] date that such notice was given or the [reason(s)] reason 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.

...

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 Pa.R.O.C.P. 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. If the petitioner is an individual, see Pa.R.O.C.P. 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. See 23 Pa.C.S. § 2733(c). 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 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.

Historical Commentary

The following commentary is historical in nature and represents statements of the Committee at the time of rulemaking:

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 15.13. 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)] subdivision (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)] pursuant to Pa.R.O.C.P. 15.4(e)**, and the **[date(s)] date** 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.

...

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 the petitioner is unable to satisfy all the prerequisites or attach all the exhibits required by the Adoption Act, the adoption petition should not be summarily dismissed. 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. See *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 statutory requirement without conducting a hearing. However, if the court is not inclined to waive the statutory requirement, the petitioner is entitled to a hearing and an opportunity to present evidence in support of the averments in the petition. *Id.*

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 Pa.R.O.C.P. 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 Pa.R.O.C.P. 15.9; (ii) he or she previously relinquished his or her parental rights as provided in 23 Pa.C.S. §§ 2501, 2502 and Pa.R.O.C.P. 15.7 or 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 Pa.R.O.C.P. 15.10.

Historical Commentary

The following commentary is historical in nature and represents statements of the Committee at the time of rulemaking:

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.

—The following text is entirely new—

IN THE COURT OF COMMON PLEAS OF

_____, PENNSYLVANIA

ORPHANS' COURT
(FAMILY COURT DIVISION IN PHILADELPHIA COUNTY)

IN RE: ADOPTION OF ____
(Initials only)

ADOPTION NO. _____

**WAIVER OF SERVICE OF NOTICE OF HEARING TO
TERMINATE PARENTAL RIGHTS**

I, _____, am a person entitled to service of the notice of the hearing to terminate parental rights in the above-captioned matter. Pursuant to Pa.R.O.C.P. 15.4(b)(1), (b)(2), or (b)(3)(iii), I waive my right to have the notice of hearing to terminate parental rights served on me and understand that it means I will not receive notice of the date, time, or location of the termination hearing.

This waiver does not apply to other legal papers that I may be entitled or required by statute or court rule to receive, such as a final termination decree, a notice of the right to file statement of medical, personal, or social history information with the court or the Department of Human Services, or a notice of the right to enter a post-adoption contact agreement pursuant to 23 Pa.C.S. §§ 2731 *et seq.* Such legal papers will be served on me pursuant to Pa.R.O.C.P. 4.5, 4.6, and 15.4(e) unless I provide an alternative service address to the clerk and the court or am represented by counsel.

I may subsequently revoke this waiver by filing a written revocation of the waiver and serving it on the petitioner and any other person entitled to the notice. Revocation of a waiver of service of the hearing notice does not affect the validity of a consent given pursuant to 23 Pa.C.S. § 2504.

Signature: _____ Date: _____

Address: _____

ORPHANS' COURT PROCEDURAL RULES COMMITTEE

PUBLICATION REPORT

Proposed Amendment of Rules 4.5, 4.6, 15.4, 15.7, 15.8, 15.9, 15.10, and 15.13 and Adoption of Form A-13 of the Pennsylvania Rules of Orphans' Court Procedure

The Orphans' Court Procedural Rules Committee is considering proposing to the Supreme Court of Pennsylvania the amendment of Rules 4.5, 4.6, 15.4, 15.7, 15.8, 15.9, 15.10, and 15.13 of the Pennsylvania Rules of Orphans' Court Procedure and the adoption of Form A-13. This proposal would clarify requirements for hearing notices in termination of parental rights proceedings.

In 2021, the Supreme Court of Pennsylvania adopted a comprehensive rewrite of the Pennsylvania Rules of Orphans' Court Procedure related to adoption proceedings pursuant to the Adoption Act, 23 Pa.C.S. §§ 2101 – 2938. See 51 Pa.B. 4267 (August 7, 2021). Among other things, the rules established requisite notice procedures for hearings to terminate parental rights, as well as procedures for waiving such notices. See Pa.R.O.C.P. 15.4. In the time since the rules took effect, the Committee has received comments relating to the notice and waiver procedures that have initiated this proposed rulemaking.

Hearing Notices to Self-Represented Birth Parents

Parental rights can be terminated in one of three ways: (1) voluntarily with the birth parent petitioning to relinquish parental rights; (2) voluntarily with a third party, such as an intermediary or prospective adoptive parents, seeking court confirmation of a previously executed consent to adoption; or (3) involuntarily by establishing one of several grounds set forth in § 2511 of the Adoption Act. Section 2503 addresses notice of the hearing in voluntary relinquishments; § 2504 addresses notice of the hearing in a confirmation of consent proceeding; and § 2513 sets forth notice requirements in proceedings to involuntarily terminate parental rights. Pursuant to these three statutory sections, the parties are entitled to notice of when and where the hearing to terminate parental rights will be conducted.

The Committee received an inquiry from a jurist relating to voluntary petitions to relinquish parental rights. The judge observed that Pa.R.O.C.P. 15.4(b)(1) and (b)(2) require service of the notice of hearing on “every person whose parental rights are sought to be terminated in the proceeding.” It was suggested that the plain language of the rule suggests that a petitioning birth parent must serve the hearing notice upon himself or herself, which is a puzzling requirement to some.

Preliminarily, the Committee observes that § 2503(b)(1) does not make an exception for petitioning birth parents. See 23 Pa.C.S. § 2503(b)(1) (“notice of the hearing shall be given to the petitioner”). The Committee believes that the current notice provisions reflect an agency, intermediary, or prospective adoptive parents or their counsel serving the hearing notice. See *also* Pa.R.O.C.P. 15.7(c)(2) (“[o]n 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.”). When a petitioning birth parent makes the filing on his or her own behalf, *i.e.*, without the assistance of counsel, it would seem evident that the petitioner has notice of the hearing if he or she provides notice to others as reflected in the certificate of service and appears at the hearing. The Committee ultimately agreed that Pa.R.O.C.P. 15.4(b)(1) would benefit from clarifying language.

The Committee proposes revising the commentary to Pa.R.O.C.P. 15.4(b)(1) as follows:

A petitioning birth parent who is self-represented in a proceeding under Pa.R.O.C.P. 15.7 (Voluntary Relinquishment to Agency) or Pa.R.O.C.P. 15.8 (Voluntary Relinquishment to Adult Intending to Adopt Child) is not required to serve notice of the hearing upon himself or herself. All other circumstances require service of notice of the hearing on the petitioning birth parent, including by an agency, a third party, or counsel of the petitioning birth parent.

See proposed Pa.R.O.C.P. 15.4, cmt. This commentary cross-references the voluntary relinquishment provisions, *i.e.*, Pa.R.O.C.P. 15.7 and Pa.R.O.C.P. 15.8, and reflects that a self-represented petitioning birth parent is not required to serve himself or herself. The Committee further proposes revising the commentary to Pa.R.O.C.P. 15.4 to explicitly note that service of the hearing notice on a petitioning birth parent is required in all other circumstances, including by counsel of the petitioning birth parent. The Committee also proposes revising the commentary to Pa.R.O.C.P. 15.7 and 15.8 in the same manner as Pa.R.O.C.P. 15.4 to reflect that it is incumbent upon counsel representing a petitioning birth parent to serve notice of the hearing upon the client.

The Committee acknowledges the tension between the statutory language requiring service of the hearing notice on the petitioner and other named individuals, without exception, and proposed Rule 15.1(b)(1), excusing a self-represented birth parent from serving themselves and documenting it on a certificate of service. However, in much the same way a waiver of service of the hearing notice, *see, e.g.*, Pa.R.O.C.P. 15.4(b)(1), is an exception to the general rule requiring service of the hearing notice, the Committee believes that excusing a petitioning birth parent from serving himself or herself provides a common sense enhancement to the rule without jeopardizing the purpose of the rule – ensuring that all participants know when and where the hearing will be held.

The Committee also recognizes the peculiarity of the need for the petitioning birth parent's counsel to provide a certificate of service regarding service of the hearing notice on his or her own client. Attorneys provide details regarding the time and location of judicial proceedings in all manner of cases without being required to provide a certificate of service for their clients. However, the Committee believed that requiring service of the notice on a petitioning birth parent by their counsel conforms more closely to the statutory language. The Committee specifically invites comments on this aspect of the proposal.

Waiver of Hearing Notices

The Committee also received suggestions relating to a birth parent's right to waive the hearing notice for a termination of parental rights proceeding. It was suggested that, in some instances, a birth parent has waived service of the hearing notice for a voluntary termination proceeding yet still received copies of the hearing notice from the court by mail. A practitioner who contacted the Committee was concerned that legal papers served on a birth parent who has waived notice of the termination hearing are violative of privacy rights and may present a safety risk, *e.g.*, the birth parent may reside with a third party who is not aware of the termination proceeding or may be exposed to violence by an abusive partner.

Currently, Rule 15.4(b)(1) (Voluntary Relinquishment to Agency) and 15.4(b)(2) (Voluntary Relinquishment to Adult Intending to Adopt Child) provide that "[a]ny person entitled to notice of the hearing may waive in writing such notice." See Pa.R.O.C.P. 15.4(b)(1)–(b)(2). However, upon further review, the Committee observed that the petitioning birth parent is required to appear and testify in voluntary relinquishment proceedings. See 23 Pa.C.S. § 2503(a); *see also* Pa.R.O.C.P. 15.7(c)(3), 15.8(c)(3). As a result, the petitioning birth parent should not be permitted to waive notice of the hearing's scheduling; only the other birth parent, putative father, and parents or guardian of a minor petitioning birth parent can waive the right to receive a copy of the notice regarding the hearing on the petitioner's voluntary relinquishment petition.

In contrast, the birth parent is not the petitioner in confirmation and consent proceedings. There is no requirement in the statute or rules pertaining to such proceedings that the birth parent appear and testify. Therefore, in proceedings brought pursuant to 23 Pa.C.S. § 2304 and Pa.R.O.C.P. 15.9, any person, including the birth parents, any presumptive birth father, and any putative father, can waive the right to be served with notice of the hearing to confirm consent. The Committee does not believe that such waiver jeopardizes due process rights because, by statute, a birth parent's consent to adoption is irrevocable after 30 days. See 23 Pa.C.S. § 2711(c). Further, the waiver cannot be challenged due to fraud or duress after the later of: (1) 60 days after the birth of the child; or (2) the execution of the consent. *Id.* The Committee was previously

advised that confirmation of consent hearings are typically held 60 to 120 days after the execution of the consent.

Finally, in involuntary termination of parental rights proceedings, a person who is not the subject of the proceeding and whose parental rights are not sought to be terminated may waive notice of the termination hearing. See Pa.R.O.C.P. 15.4(3)(iii). An individual whose rights are to be involuntarily terminated cannot waive the right to receive notice of the hearing and, presumably, would not want to waive such right. Conversely, others who by statute are entitled to receive a copy of the notice about the hearing, namely, a putative father and the parents of a minor parent whose rights are the subject of the termination petition, can waive the right to receive a copy of the hearing notice.

The Committee proposes rule changes to clarify procedures relating to waiver of hearing notices. First, the Committee proposes changes to the rules governing service of legal papers and court orders, Pa.R.O.C.P. 4.5 and 4.6. The Committee was advised that, in some judicial districts, the court also sends hearing notices to the parties. Sometimes, these hearing notices are titled “scheduling orders.” For the clerk and the court to honor a request to waive service of a hearing notice, they must first be aware of it. Therefore, a new subdivision (c) was added to Rules 4.5 and 4.6 to provide that: “This rule does not apply to the service of hearing notices and scheduling orders that have been waived pursuant to Pa.R.O.C.P. 15.4(b)(1), (b)(2), or (b)(3).” See proposed Pa.R.O.C.P. 4.5(c) and 4.6(c). The commentary to Rules 4.5 and 4.6 provides cross-references to Rules 15.4(b)(1), (b)(2), and (b)(3). The Committee acknowledges that these proposed changes are in tension with the proposed changes to Pa.R.O.C.P. 15.4 (b)(1), (b)(2), and (b)(3), which provide that the petitioner shall serve the hearing notice. However, it appears to the Committee that, in some instances, the court is providing the designated parties with a copy of the hearing notice. In an effort to allow the waiver provision to take full effect, the Committee proposes adding provisions relating to the waiver to Rules 4.5 and 4.6.

Second, the Committee proposes amending Rule 15.4 to specify that the petitioning birth parent in a voluntary termination proceeding and the parent who is the subject of an involuntary termination proceeding may not waive service of the hearing notice. See proposed Pa.R.O.C.P. 15.4(b)(1) and (b)(3). Commentary was added to Rule 15.4 to explain that a petitioning birth parent in a voluntary termination proceeding may not waive service of the hearing notice because he or she is required to appear and testify at the hearing. Similarly, commentary was added to explain that a person who is the subject of an involuntary termination proceedings and whose parental rights are sought to be terminated may not waive service of the hearing notice.

The Committee further proposes adding commentary to Rule 15.4 to clarify that a waiver of the hearing notice does not apply to any other legal paper or order issued in the proceeding. While certain individuals may waive notice of the termination hearing, he or

she will still be served other papers in the proceeding to which they are entitled, such as a termination order, a notice of the right to file medical, personal, or social history with the Court or Department of Human Services, or a post-adoption contact agreement pursuant to 23 Pa.C.S. §§ 2731 *et seq.*

New Rule 15.4(g) addresses revocation of the waiver of the hearing notice. Given the high stakes in a termination of parental rights proceeding, the Committee believes that a revocation of the waiver should be permitted. Moreover, the Committee considered that parental consent to relinquishment and adoption is revocable subject to certain time limits. See 23 Pa.C.S. § 2711(b). If a parent can revoke the consent to relinquishment of parental rights and adoption, then they should also be able to revoke a waiver to receive a hearing notice for the termination proceedings. The proposed commentary also reflects that a revocation of the waiver of the notice of the hearing to terminate parental rights does not affect the validity of a consent given pursuant to § 2504.

Finally, the Committee is proposing a new waiver form intended to notify any person who seeks to waive service of the notice of the termination hearing of: (1) the consequences of the waiver; (2) that it does not apply to other legal papers; and (3) that other legal papers will be served in compliance with Pa.R.O.C.P. 4.5, 4.6, and 15.4(e) unless an alternative service address is provided or the person is represented by counsel. By including this information on a waiver form, the Committee intends to ensure that interested persons understand the scope and limitations of the waiver.

In addition to substantive revisions, the Committee also proposes stylistic revisions throughout the rules. Corollary amendments to Rules 15.9, 15.10, and 15.13 are proposed to incorporate citation changes made in Rule 15.4.

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