

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

NOTICE OF PROPOSED RULEMAKING

**Proposed Rescission of Rules 15.1 through Rule 15.9
and replacement with the new rules of Chapter XV**

The Orphans' Court Procedural Rules Committee is planning to propose to the Supreme Court of Pennsylvania the rescission of Rules 15.1 through 15.9 and the replacement of these rules with new Chapter XV rules governing Adoptions for the reasons set forth in the accompanying explanatory report. Pursuant to Pa.R.J.A. No. 103(a)(1), the proposal is being re-published in the *Pennsylvania Bulletin* for comments, suggestions, or objections prior to submission to the Supreme Court.

Any notes or comments in the proposal have been inserted by the Committee for the convenience of those using the rules. They neither will constitute a part of the rules nor will be officially adopted by the Supreme Court.

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 **March 16, 2016**. 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

John F. Meck, Esq.
Chair

EXPLANATORY REPORT

BACKGROUND

These proposed rules seek to implement legislative amendments to the Adoption Act, 23 Pa.C.S. §§ 2101-2938, enacted since the last revision of Rule 15. Additionally, the proposed rules seek to provide procedures effectuating precedent of the Supreme Court that impact the filing of parental rights termination petitions and consideration of adoption petitions. See *In re Adoption of R.B.F. and R.C.F.*, 803 A.2d 1195 (Pa. 2002); *In re Adoption of L.J.B.*, 18 A.3d 1098 (Pa. 2011); *In re T.S.M.*, 71 A.3d 251 (Pa. 2013). A majority of the new rules and substantial revisions to currently existing rules have been occasioned by the Act of October 27, 2010, P.L. 961 (“Act 101”) having an effective date of April 25, 2011. This bill 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.

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. The Act 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. Under prior law, these searches were permissible. 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. Only an authorized representative trained by the Department of Human Services (“Department”) is to perform these searches and contact the person who is the subject of the request.

With In re Adoption of R.B.F. and R.C.F., the Supreme Court held that Section 2901 of the Adoption Act, 23 Pa.C.S. § 2901, permits a prospective adoptive parent to demonstrate why in a particular case he or she cannot meet a statutory requirement of the Adoption Act. In that case, the Court instructed that where the petitioner has failed to satisfy all of the statutory requirements for adoption, the petition for adoption should not be summarily dismissed; rather, the petitioner should be afforded an opportunity to

demonstrate why the particular statutory requirement cannot be met, why the court should dispense with this statutory requirement, and why the proposed adoptee's best interest is nevertheless served by granting the adoption. To effectuate this precedent, the Committee proposes 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 15.13), if a statutory requirement under the Adoption Act cannot be met, the petitioner can include in the adoption petition averments explaining why the statutory requirement has not been met and why it is nonetheless in the child's best interest for the judge to grant the petition. The proposed amendment to this Rule also provides for a hearing at which time the court will consider whether cause has been shown to dispense with a statutory requirement and whether to grant the adoption petition notwithstanding.

PRIOR PUBLICATIONS

Earlier versions of these proposed new adoption rules have been published previously for comment. The first publication of these rules appeared in 41 Pa.B. 2932 (June 11, 2011). A revised version of these rules appeared in 43 Pa.B. 6321 (October 26, 2013).

RECOMMENDATION

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

Rules derived from existing rules, but which have been so substantially modified that it was decided in Committee to simply rescind and replace the current rules. A majority of these rules govern parental rights termination petitions, the adoption petition, and providing notice of the hearing on these petitions.

The proposed new rules require publication in every instance where the identity or whereabouts of an alleged birth parent is unknown. The Committee is of the opinion that a standardized practice is needed statewide. See Proposed Rule 15.3.

Similarly, the proposed new rules eliminate the ability for a birth parent to waive notice of the hearing, an option that is present in the current rules. See Proposed Rules 15.7(c)(1), 15.8(c)(1), and 15.9(c)(1).

Lastly, except in the context of registering a foreign adoption decree or finalizing the adoption of a foreign born child, these rules require parental rights termination petitions and the adoption petition to contain an averment and include an exhibit 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.

There is a proposed new Rule 15.9 to address the statutory alternative procedure for confirmed consent created in Section 2504 of the Adoption Code, 23 Pa.C.S. § 2504.

Additionally, there are 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. In response to several comments from prior publications, the Committee reviewed Sections 2735, 2736, 2737, 2738 and 2739 of the Adoption Act and it could not locate a mandate that only the court finalizing the adoption consider and approve the agreement for post-adoption communication or contact. Section 2735 provides in subsection (a) that the agreement shall be filed with the court finalizing the adoption of the child, but requiring the agreement to be filed with the court finalizing the adoption does not necessarily equate to this court being the only court that can approve the agreement. Subsection (b) sets forth criterion for the court to consider in deciding whether to approve the agreement; however, in this subsection, "the court" is not defined or limited to the court finalizing the adoption. In Sections 2737 and 2739, the statute expressly provides that proceedings to modify or discontinue a post-adoption contact or communication agreement shall be commenced in the court finalizing the adoption. Subsection (e) of section 2738 provides that the court approving the agreement shall have continuing jurisdiction over its enforcement. If such court was statutorily required to always be and only could be the court finalizing the adoption, then this subsection would have referred to that court as the court finalizing the adoption. Therefore, it appears that a court other than the court finalizing the adoption may consider and approve the post-adoption contact or communication agreement.

The Committee's proposal that the court terminating parental rights be able to consider and approve proposed post-adoption contact or communication agreements was based on several considerations. First, the judge terminating parental rights will have more familiarity with the situation involving the birth family and the reasons for the child's removal from the home and, therefore, this judge will be better able to determine if continuing post-adoption contact and communication serves the child's best interests. Second, in multi-county adoptions, the birth parent will have fewer resources to travel and attend a hearing before a judge in a county outside of his or her residence. Third, unless proposed agreements are presented and considered by the court near the time of termination, the whereabouts of some birth parents may become uncertain, making it more difficult to locate and provide them with notice of an upcoming hearing. Finally, there is a risk that after parental rights are terminated that prospective adoptive parents will no longer wish to have a court approve a previously negotiated post-adoption contact and/or communication agreement.

There are new rules concerning confidentiality in order 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. The search and contact provisions of Section 2932 and 2933 of the Adoption Act 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 as long as the delegate has successfully completed a standardized Department training program.

Section 2932, 2933, and 2934 impose certain time deadlines for responding to requests for information and contact. The Committee does not propose 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.

Section 2934, 23 Pa.C.S. § 2934, requires the court, agency, or Pennsylvania Adoption Information Registry ("PAIR") to provide notice of the filing of a statement of medical, personal or social history information "to the individual who is at least 21 years of age and whom the information is intended to benefit." This statutory section fails to further define who is the person intended to be benefitted or how such person is to be determined. Moreover, once filed, the statement of medical, personal or social history information becomes part of the court file subject to impounding and confidentiality as provided in Rule 15.21 and 23 Pa.C.S. § 2931 *et seq.* For this reason, the statement of medical, personal or social history information or a statement updating this information should not be shared or disseminated by the clerk absent a later filed request for such information approved by the court. The notification procedure in Rule 15.22(f) is an attempt to comply with 23 Pa.C.S. § 2934(e)(2) while, at the same time, complying with other statutory provisions, such as Section 2931(a), which narrowly defines the individuals who may request non-identifying and identifying information, Sections 2925(c) and 2935, which require the court to maintain confidentiality in conducting a search, and Section 2933, which requires any court-appointed authorized representative to be specially trained by the Department before conducting searches. *Compare* 23 Pa. C.S. § 2934 *with* 23 Pa.C.S. §§ 2925(c), 2931(a), 2933, 2935.