

RULE 15: ADOPTIONS¹

- Rule
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¹See the Adoption Act of 1970, P.L. 620, 1 P.S. 101 et seq. as to adoption jurisdiction in the Orphans' Court Division in all counties other than Philadelphia, see §§ 711(7) and 713, PEF Code, 20 Pa.C.S. §§ 711(7) and 713.

Rule 15.1. Local rules.

The practice and procedure with respect to adoptions shall be as provided by Act of Assembly and to the extent not inconsistent therewith shall conform either with the pertinent general rule or special order of the local Orphans' Court or, in the absence thereof, with this Rule 15.

Rule 15.2. Voluntary relinquishment to agency.¹

(a) Petition.

A petition under Section 301 of the Adoption Act to relinquish parental rights and duties with respect to a child who has been in the care of an Agency shall include the following allegations:

- (1) the name, address, age, racial background and religious affiliation of each petitioner;
- (2) the information required in subparagraph (1) as to any parent who is not a petitioner, including the father of a child born out of wedlock, if he has been identified, unless the court, for cause shown, determines such information is not essential;
- (3) the marital status of the mother as of the time of birth of the child and during one year prior thereto and, if the mother has ever been married, the name of her husband or husbands and her maiden name;
- (4) the name, age, date of birth, racial background, sex and religious affiliation 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) when the child is born out of wedlock, whether the mother and the father of the child intend to marry;
- (8) the reasons for seeking relinquishment;

¹ For the rights of a father of a child born out of wedlock, see *Stanley v. Illinois*, 405 U. S. 645 (1972).

(9) that each petitioner understands the petition, has considered the alternatives, and has executed the petition voluntarily to promote what the petitioner believes to be in petitioner's and the child's best interests.

(b) Exhibits.

The petition shall have attached to it the following exhibits:

(1) the joinder of a parent who is not a petitioner or his or her waiver of all interest in the child, if either is obtainable;

(2) a birth certificate or certification of registration of birth of the child;

(3) the written consent of a parent or guardian of a petitioner who has not reached 18 years of age;

(4) the joinder of the Agency having care of the child and its consent to accept custody of the child until such time as the child is adopted.

(c) Notice and hearing.

If a parent, including the parent of a child born out of wedlock, has not relinquished his or her rights and duties in and to the child or joined in the other parent's petition hereunder, then notice of the hearing on the petition to relinquish rights and duties shall be given to the first referred to parent as provided in Rule 15.6. A parent may waive in writing the right to such notice. Each petitioner and each person whose joinder or consent is attached to the petition shall be examined under oath at the hearing unless excused by the court.

Rule 15.3. Voluntary relinquishment to adult intending to adopt child.

(a) Petition.

A petition under Section 302 of the Adoption Act to relinquish parental rights with respect to a child who has been in the exclusive care of an adult or adults who have filed a Report of Intention to Adopt shall include the allegations required under subparagraphs (1), (2), (3), (4) and (7), (8) and (9) of Rule 15.2(a) and

(1) the date when the Report of Intention to Adopt was filed;

(2) the date when the child was placed with the adult or adults;

(b) Exhibits.

The petition shall have attached to it the first three exhibits specified in Rule 15.2(b) and

(1) the separate consent of the adult or adults to accept custody of the child.

(c) Notice and Hearing.

If a parent, including the parent of a child born out of wedlock, has not relinquished his or her rights in the child or joined in the petition hereunder, then notice of the hearing on a parent's petition to relinquish rights shall be given to the first referred to parent as provided in Rule 15.6. A parent may waive in writing the right to such notice. Each petitioner and each person whose joinder or consent is attached to the petition shall be examined under oath at the hearing unless excused by the court.

Rule 15.4. Involuntary termination of parental rights.¹

(a) Petition.

A petition for involuntary termination of parental rights under Sections 311 and 312 of the Adoption Act shall include the following allegations:

- (1) the name and address of the petitioner and his or her standing;
- (2) the name, age, date of birth, racial background, sex and religious affiliation of the child;
- (3) the name, address, age, racial background and religious affiliation of the parent or parents, including the father of a child born out of wedlock, if he has been identified;
- (4) the marital status of the mother as of the time of birth of the child and during one year prior thereto and, if the mother has ever been married, the name of her husband or husbands and her maiden name;
- (5) the date when the child was placed in the care of the petitioner;
- (6) facts constituting grounds for the involuntary termination under Section 311 of the Adoption Act, and a reference to the applicable subsection or subsections;
- (7) whether either parent of the child is entitled to the benefits of the Soldiers' and Sailors' Civil Relief Act of 1940, as amended (50 U.S.C.A. 501 et seq.);
- (8) that the petitioner will assume custody of the child until such time as the child is adopted.

(b) Exhibits.

The petition shall have attached to it the following exhibits:

- (1) a birth certificate or certification of registration of birth of the child;
- (2) the joinder of a parent of a petitioner who is under the age of 18, unless excused by the court.

(c) Guardian ad litem.

(1) When the termination of the parental rights of a parent who has not attained the age of 18 years is sought, unless the court finds the parent is already adequately represented, the court shall appoint a guardian ad litem to represent the parent. The appointment of a guardian ad litem may be provided for in the preliminary order attached to the petition for involuntary termination of parental rights.

(2) The decree appointing a guardian ad litem shall give the name, date of birth and address (if known) of the individual whom the guardian ad litem is to represent and the proceedings and period of time for which the guardian ad litem shall act.

(d) Notice and hearing.

¹ For the rights of a father of a child born out of wedlock, see *Stanley v. Illinois*, 405 U. S. 645 (1972).

Notice of the hearing on the petition shall be given, in accordance with Rule 15.6 hereof, to the parent or parents whose rights are sought to be terminated, including the parent of a child born out of wedlock, to any intermediary named in a Report of Intention to Adopt, if one has been filed, and to the guardian of the person or guardian ad litem of any parent or parents who is or are under the age of 18 years. Each petitioner, each person whose joinder or consent is attached to the petition and any intermediary named in a Report of Intention to Adopt shall be examined under oath at the hearing unless they are excused by the court.

Rule 15.5. Adoption.¹

(a) *Petition.* The petition shall contain all declarations and information required by Section 401 of the Adoption Act and any additional information required by local rules.

(b) *Notice or Consent—Parents of Child.* Notice as provided by Rule 15.6 shall be given to each parent unless

(1) he or she has consented in writing to the adoption and waived notice of hearing, or

(2) he or she has voluntarily relinquished his or her parental rights in a proceeding under Rule 15.2 or Rule 15.3, or

(3) his or her parental rights have been involuntarily terminated in a proceeding under Rule 15.4.

(c) *Investigation.* A petition for adoption shall be subject to investigation as prescribed by local rules. The investigation report shall cover the matters alleged in the petition, any other matters that may affect the welfare of the child, and the information required by Sections 335 and 424 of the Adoption Act.

(d) *Disclosure of fees and costs.* At the hearing there shall be offered in evidence a report, certified by counsel for the petitioner, setting forth the amount of fees and expenses paid or to be paid to counsel, and any other fees, costs and expenses paid or to be paid to an intermediary or any other person or institution, in connection with the adoption.

(e) *Adult—Change of Name.* When the person to be adopted is over the age of 18 years and desires to assume the surname of the adopting parent or parents, evidence showing compliance with the law relating to change of name must be introduced before a decree will be made.²

Rule 15.6. Notice; method and time.

Notice to every person to be notified shall be by personal service, service at his or her residence on an adult member of the household, or by registered or certified mail to his or her last known address. If such service is unobtainable and the registered mail is returned undelivered, then:

¹ For the rights of a father of a child born out of wedlock, see *Stanley v. Illinois*, 405 U. S. 645 (1972).

² Act of April 18, 1923, P. L. 75, as amended, 54 P. S. 1 et seq.

- (1) no further notice shall be required in proceedings under Rules 15.2 or 15.3, and
- (2) in proceedings under Rules 15.4 and 15.5, further notice by publication or otherwise shall be given if required by general rule or special order of the local Orphans' Court. If, after reasonable investigation, the identity of a person to be notified is unknown, notice to him or her shall not be required.

Rule 15.7. Impounding; docket entries; reports; privacy.

(a) All proceedings shall be impounded, docket entries made, reports made to the Department of Public Welfare, and certificates of adoption issued as provided in Sections 505, 506, 507 and 508, respectively, of the Adoption Act, 23 Pa.C.S. § 2101, et seq.

(b) The name or names of the natural parents and the name or names of the child before adoption shall not be entered on any docket which is subject to public inspection.

(c) No decision under the Adoption Act of any hearing judge or appellate court publicly reported or in any other way made available to the public by the court shall disclose the identity of the individual parties.

Source

The provisions of this Rule 15.7 amended March 3, 1999, effective immediately, 29 Pa.B. 1494. Immediately preceding text appears at serial page (197039).

Rule 15.8. Registration of foreign adoption decree.

(a) Adopting parent(s) may petition the Court of Common Pleas in the county of their residence to register a foreign adoption decree so that it will be given full and final effect in this Commonwealth. The Petition and Final Decree shall be in substantially the form approved by the Supreme Court. See Appendix of Forms to these Rules.

(1) As part of the Petition to Register Foreign Adoption Decree, a child's name may be changed from that appearing on the foreign adoption decree if the child is younger than twelve (12) years of age.

(b) A foreign adoption decree previously registered or otherwise finalized by a Court of this Commonwealth or of any other state may not be registered subsequently in another Court of this Commonwealth.

(c) If the Court of Common Pleas determines that the foreign adoption decree can be registered, the Court shall sign the Final Decree and shall direct the Clerk of the appropriate Court to enter the date of the foreign adoption decree and identify the foreign court on the docket. The Clerk shall send Form No. HD01273F, Certificate of Adoption of a Foreign-Born Child, and Form No. HD01275F, Statement of Citizenship and Residency, to the Department of Health, Division of Vital Records, along with a copy of U.S. Government Form N-560, Certificate of Citizenship, and/or a copy of the child's United States passport, if either or both documents have been provided by the adopting parent(s). The Clerk shall issue to the adopting parent(s) a certificate of adoption in accordance with Section 2907 of the Adoption Act. See 23 Pa.C.S. § 2907.

(d) If the Court of Common Pleas determines that the foreign adoption decree cannot be registered, the adopting parent(s) shall proceed as applicable under the provisions set forth in the Adoption Act, 23 Pa.C.S. §§ 2101 *et seq.*, Pa.O.C. Rule 15.9 (specific to the adoption of a foreign born child), and local rules of court.

(e) Adopting parent(s) who are eligible to register the foreign adoption decree under this Rule may, for any reason, proceed under Pa.O.C. Rule 15.9.

Explanatory Note: Pursuant to 23 Pa.C.S. § 2908(b), as amended by Act 96 of 2006, a set of forms, consisting of a Petition to Register Foreign Adoption Decree, Final Decrees approving and denying the Petition, and detailed Instructions for the *pro se* petitioner(s) are set forth in the Appendix to these Rules.

The Petition should be filed with the Clerk of the Orphans' Court Division, except in Philadelphia County, where it should be filed with the Clerk of the Family Court Division. The Petition and accompanying documents, including the Final Decree, are confidential and should be impounded and withheld from public inspection as provided in the Adoption Act, 23 Pa.C.S. §§ 2905, 2906, 2907 and 2908(f) and Pa.O.C. Rule 15.7.

The Clerk shall make available to petitioner(s) the necessary Department of Health, Division of Vital Records forms: Form No. HD01273F, Certificate of Adoption of a Foreign-Born Child; and Form No. HD01275F, Statement of Citizenship and Residency.

A change of name from that appearing on the foreign adoption decree is permitted without the need to comply with the procedures of 54 Pa.C.S. § 702 if the child is younger than twelve (12) years of age. Cf. 23 Pa.C.S. § 2711(a)(1). If the foreign born adopted child is twelve (12) years of age or older, then the child and parent(s) would need to follow the procedures set forth in 54 Pa.C.S. § 702 and would not be foreclosed by 54 Pa.C.S. § 702(b)(5)(ii) because the name change petition would not be in connection with any adoption proceeding as the foreign adoption is full and final and therefore completed.

A foreign born child who has been issued an IR-2, IR-3 or IH-3 United States visa has had the adoption proceeding fully completed in the foreign country and the foreign adoption decree only needs to be registered here to be given the full force and effect of an adoption decree issued by this Commonwealth. However, situations may arise that necessitate proceeding under Pa.O.C. Rule 15.9 even though the foreign born child has been issued an IR-2, IR-3 or IH-3 United States visa, such as the inclusion of an incorrect birth year on the foreign adoption decree, or other personal family reasons. Proceeding under Pa.O.C. Rule 15.9 is permitted; Pa.O.C. Rule 15.8 is not the exclusive means to obtain a Pennsylvania adoption decree and birth certificate for a foreign born adopted child.

Only one court, whether in this Commonwealth or another state, should exercise jurisdiction over the foreign adoption decree. Thus, if the foreign adoption decree has been registered or otherwise finalized in another state court, the adopting parent(s) need not and should not register the foreign adoption decree in this Commonwealth under this Rule. In similar fashion, if the foreign adoption decree has been registered in this Commonwealth, and thereafter, another petitioner in

this Commonwealth seeks to adopt this child, the subsequent proceeding will be a standard proceeding under the applicable provisions of the Adoption Act, 23 Pa.C.S. §§ 2101 *et seq.* Such a situation could occur when the child is to be adopted by a step-parent after divorce or death of the original adopting parent(s), or when, after termination of parental rights, the child is to be adopted by different adopting parent(s).

If the Court determines that the foreign adoption is not a full and final adoption because the foreign born child has been issued an IH-4 or IR-4 visa, the adopting parent(s) shall proceed under subdivision (d) of this Rule. See also Pa.O.C. Rule 15.9.

Source

The provisions of this Rule 15.8 adopted August 30, 2006, effective September 5, 2006, 36 Pa.B. 5777; amended January 3, 2011, effective in sixty days, 41 Pa.B. 336. Immediately preceding text appears at serial pages (322457) to (322462).

Rule 15.9. Petition for adoption of a foreign born child.

(a) *General Rule.* Adopting parent(s) who are residents of the Commonwealth may petition the Court of Common Pleas in any county as provided in Section 2302 of the Adoption Act (see 23 Pa.C.S. § 2302) to proceed with an adoption of their foreign born child who has entered the United States pursuant to an IR-2, IR-3, IH-3, IR-4 or IH-4 United States visa.

(b) *Required Documents.* The following documents shall be filed in the following order with the Clerk of the appropriate division of the Common Pleas Court:

- (1) Preliminary Decree;
- (2) Final Decree;
- (3) Petition for Adoption of a Foreign Born Child;
- (4) Copy of United States visa;
- (5) Reports of investigations, home studies, preplacement and postplacement;
- (6) Copy of birth certificate of foreign born child (if available), with translation;
- (7) Copy of any other relevant foreign decrees and/or documents with translations;
- (8) Consents of any person and/or agency having custody and/or legal and/or physical rights to the child;
- (9) Report of Intermediary (if an intermediary agency was involved);
- (10) Verifications signed by petitioner(s), intermediary and translator(s) stating that facts set forth are true and correct, copies are true and correct copies of originals, that the English translation of foreign documents is accurate, and that false statements are subject to the penalties of 18 Pa.C.S. § 4904;
- (11) Pennsylvania Department of Health, Division of Vital Records Form No. HD01273F, Certificate of Adoption of a Foreign-Born Child with Parts 1 and 2 (and Part 3, if applicable) completed;
- (12) Pennsylvania Department of Health, Division of Vital Records Form No. HD01275F, Statement of Citizenship and Residency; and

(13) A copy of U.S. Government Form N-560, Certificate of Citizenship, and/or a copy of the child's United States passport, if either or both documents are available.

(c) *Form of Documents*: The Preliminary Decree, Final Decree, Petition for Adoption of a Foreign Born Child, Report of Intermediary (if applicable), and verifications referenced in subparagraph (b)(10) above shall be in substantially the form approved by the Supreme Court. See Appendix of Forms to these Rules.

(d) *Judicial Review and Hearing*.

(1) *Scope of Review*. The Petition and accompanying documents filed under this Rule shall be subject to review by the Court as prescribed by the Pennsylvania Adoption Act, 23 Pa.C.S. §§ 2101 *et seq.*, Pennsylvania Orphans' Court Rules and local rules of court.

(2) *Home Study and Investigation*. The Court may rely in whole or in part upon a home study containing information required by Section 2530(b) of the Adoption Act and an investigative report containing information required by Section 2535(b) of the Adoption Act previously commissioned in the foreign adoption proceeding without regard to when such reports were prepared. See 23 Pa.C.S. §§ 2530, 2535. The Court may in its discretion require additional reports and investigations to be made in accordance with the Pennsylvania Adoption Act, Pennsylvania Orphans' Court Rules and local rules of court.

(3) *Original Documents, Decrees and Translations*. All original documents, decrees and translations must be available for review by the Court upon request.

(4) *Pre-adoption Requirements*. In order to grant an adoption, the Court must be satisfied that the pre-adoption requirements set forth in Sections 2530—2535 of the Adoption Act have been met. See 23 Pa.C.S. §§ 2530—2535. If the adopting parent(s) were Pennsylvania residents at the time that the United States visa was issued to the foreign born child, the Court may accept an IH or IR United States visa as proof that the pre-adoption requirements have been met.

(5) *Proof that the Child is an Orphan*. In order to grant an adoption, the Court must be satisfied that the child to be adopted is an orphan. The Court may accept the child's IH or IR United States visa as proof that the foreign born child is an orphan.

(6) *Hearing*. The Court shall schedule a hearing to allow for testimony pursuant to Sections 2721—2724 of the Adoption Act. See 23 Pa.C.S. §§ 2721—2724. Petitioner(s) and the child to be adopted shall appear at the hearing. The Court may in its discretion require the presence of additional persons, including a representative of the intermediary.

(e) *Disclosure of Fees and Costs*. Prior to or at the hearing, a report shall be filed setting forth the amount of fees, expenses and costs paid or to be paid to counsel, the intermediary and/or any other person or agency in connection with the adoption of the foreign born child. The Court may request an itemization of any of the amount(s) reported.

(f) *Final Decree.* After the hearing, the Court shall determine if the adoption of the foreign born child can be granted, and if so, the Court shall enter a decree as provided in Section 2902 of the Adoption Act. See 23 Pa.C.S. § 2902.

(g) *Clerk of the Appropriate Court.* Upon the filing of a decree granting the adoption under this Rule, the Clerk of the appropriate Court shall enter the decree and date of the decree on the docket. The Clerk shall send Form No. HD01273F, Certificate of Adoption of a Foreign-Born Child, and Form No. HD01275F, Statement of Citizenship and Residency, to the Department of Health, Division of Vital Records, along with a copy of U.S. Government Form N-560, Certificate of Citizenship, and/or a copy of the child's United States passport, if either or both documents have been provided by the adopting parent(s). The Clerk shall issue to the adopting parent(s) a certificate of adoption in accordance with Section 2907 of the Adoption Act. See 23 Pa.C.S. § 2907.

(h) *Only One Court May Assume Jurisdiction.* A parent shall not proceed under this Rule if the foreign adoption has been registered or otherwise finalized by a Court of this Commonwealth or any other state.

Explanatory Note: Pursuant to 23 Pa.C.S. § 2908(e), as amended by Act 96 of 2006, a set of forms, consisting of a Petition for Adoption of a Foreign Born Child, Report of Intermediary, Verification of Translator, Preliminary Decree, and Final Decree are set forth in the Appendix to these Rules.

In most instances, the adopting parent(s) of a foreign born child who has entered the United States with an IR-2, IR-3 or IH-3 United States visa will not need to proceed under Pa.O.C. Rule 15.9, but can register the foreign adoption decree pursuant to Pa.O.C. Rule 15.8. Situations may arise, though, that necessitate proceeding under this Rule, such as the inclusion of an incorrect birth year on the foreign adoption decree, or other personal family reasons. In these situations, adopting parent(s) of a foreign born child entering the United States with an IR-2, IR-3, or IH-3 United States visa may proceed under Pa.O.C. Rule 15.9; however, adopting parent(s) should be advised by counsel of the additional costs, additional documentation required, and the delay caused by the need for a hearing.

If a foreign born child has entered the United States with an IH-4 or IR-4 United States visa, the adopting parent(s) must proceed under Pa.O.C. Rule 15.9 because the adoption of their foreign born child was not finalized in the country of the child's birth.

Only one state court, whether in this Commonwealth or another state, should exercise jurisdiction over the registration of the foreign adoption decree or the completion of the adoption initiated in the native country of the foreign born child. Thus, if the adoption has been finalized or the foreign adoption decree has been registered in another state court or in another court within this Commonwealth, the adopting parent(s) need not and should not proceed under this Rule. In similar fashion, if the adoption of the foreign born child has been finalized in this Commonwealth, and thereafter, another petitioner seeks to adopt this child, the subsequent proceeding will be a standard proceeding under the applicable provisions of the Adoption Act, 23 Pa.C.S. §§ 2101 *et seq.* Such a situation could occur when the child is to be adopted by a step-parent after divorce or death of

the original adopting parent(s), or when, after termination of parental rights, the child is to be adopted by different adopting parent(s).

The documents referenced in Pa.O.C. Rule 15.9 should be filed with the Clerk of the Orphans' Court Division, except in Philadelphia County, where they should be filed with the Clerk of the Family Court Division. The Petition and accompanying documents under this Rule, including the decree granting the adoption, are confidential and should be impounded and withheld from public inspection as provided in the Adoption Act, 23 Pa.C.S. §§ 2905 *et seq.* and Pa.O.C. Rule 15.7.

The Clerk shall make available to the petitioner(s) the necessary Department of Health, Division of Vital Records forms: Form No. HD01273F, Certificate of Adoption of a Foreign-Born Child; and Form No. HD01275F, Statement of Citizenship and Residency.

Source

The provisions of this Rule 15.9 adopted January 3, 2011, effective in sixty days, 41 Pa.B. 336.

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