

# THE COURTS

## ORPHANS' COURT RULES PART II.

[ 231 PA. CODE PART II ]

### Order Amending Orphans' Court Rule 15.8 and Adopting Orphans' Court Rule 15.9; No. 511 Supreme Court Rules Doc.

[41 Pa.B. 336]

[Saturday, January 15, 2011]

#### Order

*Per Curiam*

*And Now*, this 3rd day of January, 2011, upon the recommendation of the Orphans' Court Procedural Rules Committee; the proposal having been published for comment before adoption at 37 Pa.B. 2575 (June 2, 2007):

*It Is Ordered* pursuant to Article V, Section 10 of the Constitution of Pennsylvania that:

Pa. O.C. Rule 15.8 is amended, with accompanying uniform forms (as (1) amended);

Pa. O.C. Rule 15.9 is adopted, with accompanying uniform forms; and (2)

The Index to Appendix Orphans' Court and Register of Wills Forms is (3) amended,

all in the following form.

This *Order* shall be processed in accordance with Pa.R.J.A. No. 103(b), and shall be effective in sixty days.

#### Annex A

### RULES OF CIVIL PROCEDURE TITLE 231.

#### ORPHANS' COURT RULES PART II.

#### RULE 15[.] :ADOPTIONS

Rule 15.8.[Foreign] **Registration of foreign adoption [registration] decree.**

(a) [Adoptive] **Adopting** parent(s) may petition the [court of common pleas] **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] **Petition and Final**

**Decrees 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.**

**If the Court of Common Pleas determines that the foreign adoption (c) 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 2907. accordance with Section 2907 of the Adoption Act. See 23 Pa.C.S. §**

**(d)If the [court of common pleas] Court of Common Pleas determines that the foreign adoption decree cannot be registered, the [adoptive] adopting parent(s) [may] shall proceed as applicable under the provisions set forth in the Adoption Act2101 , 23 Pa.C.S. §§ *et seq.*, Pa.O.C. Rule 15.9 (specific to the adoption of a foreign born child), and local rules of court [to obtain a full and final decree of adoption].**

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

*Explanatory Note*2908(b), as amended by Act : Pursuant to 23 Pa.C.S. § 96 of 2006, a set of forms, consisting of a [petition for registration of a foreign adoption decree, decrees] **Petition to Register Foreign Adoption Decree, Final Decrees** approving and denying the [petition] **Petition**, and detailed [instructions] **Instructions for the *pro se* [petitioners, have been created and] petitioner(s)** are set forth in the Appendix to these [rules] **Rules**.

The [petition] **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 2905, 2906, 2907 and inspection as provided in the Adoption Act, 23 Pa.C.S. §§ 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 [available to petitioners]: **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 702 if permitted without the need to comply with the procedures of 54 Pa.C.S. § 2711(a)(1). the child is younger than twelve (12) years of age. Cf. 23 Pa.C.S. § 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(b)(5)(ii) because the name 702 and would not be foreclosed by 54 Pa.C.S. § § 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 2101 provisions of the Adoption Act, 23 Pa.C.S. §§ *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 [determined] not [to be] a full and final adoption because the foreign born child has been issued an IH-4 or IR-4 visa, the [adoptive] adopting parent(s) [may] shall proceed under [the Adoption Act and local rules to seek a decree of adoption in this Commonwealth] subdivision (d) of this Rule. See also Pa.O.C. Rule 15.9.

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

(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 2302) to proceed with an Section 2302 of the Adoption Act (see 23 Pa.C.S. § 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:

Preliminary Decree; (1)

Final Decree; (2)

Petition for Adoption of a Foreign Born Child; (3)

Copy of United States visa; (4)

Reports of investigations, home studies, preplacement and (5) postplacement;

Copy of birth certificate of foreign born child (if available), with (6) translation;

Copy of any other relevant foreign decrees and/or documents with (7) translations;

Consents of any person and/or agency having custody and/or legal and/or (8) physical rights to the child;

Report of Intermediary (if an intermediary agency was involved); (9)

Verifications signed by petitioner(s), intermediary and translator(s) (10) 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; §

Pennsylvania Department of Health, Division of Vital Records Form No. (11) HD01273F, Certificate of Adoption of a Foreign-Born Child with Parts 1 and 2 (and Part 3, if applicable) completed;

Pennsylvania Department of Health, Division of Vital Records Form No. (12) HD01275F, Statement of Citizenship and Residency; and

A copy of U.S. Government Form N-560, Certificate of Citizenship, (13) 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 2101 Pennsylvania Adoption Act, 23 Pa.C.S. §§ *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 2530, 2535. The Court may in its discretion require additional Pa.C.S. §§

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. If the 2530—2535 of the Adoption Act have been met. See 23 Pa.C.S. §§ 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 2907. accordance with Section 2907 of the Adoption Act. See 23 Pa.C.S. §

(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*2908(e), as amended by Act Pursuant to 23 Pa.C.S. § : 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 2101 the applicable provisions of the Adoption Act, 23 Pa.C.S. §§ *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 2905 et seq. and inspection as provided in the Adoption Act, 23 Pa. C.S. §§ 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.